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

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

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

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

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

MS. RICE: We will have a staff presentation in a moment.
CHAIR HOPPIN: With that, I would like you to --

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

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

MR. GREGORIO: Good morning, Chair Hoppin and members of the Board. Again, my name is Dominic Gregorio. I manage the Ocean Unit in the Division of Water Quality. And we have a brief PowerPoint presentation that I am going to start here in a second, but I did want to make one quick
recommendation before I get into the PowerPoint presentation. As you know, there have been revisions to the policy and, just from the initial feedback that I am getting, I think it would be really good if I recommended about a one week comment period, where folks could submit written comments just on the revisions themselves. I did not build that into the PowerPoint presentation, but I thought I would just make that suggestion now.

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

MR. GREGORIO: So, that would be --

CHAIR HOPPIN: That would be Friday or the close of business Monday?

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

CHAIR HOPPIN: A week from this Thursday.

MR. GREGORIO: Yeah.

CHAIR HOPPIN: I have no objections to that.

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

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

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

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

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

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

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

Okay, so I guess we could have the next slide. So I want to go over some of the major portions of the policy one more time. Our goal is to develop a policy to protect marine life and in compliance with Clean Water Act Section 316(b), while at the same time ensuring the continuity of the state's electrical grid. The proposed policy would apply to the 19 power plants with the capacity to withdraw over 15 billion gallons a day of water from our coastal and estuarine waters through a process referred to as Once-Through Cooling, or OTC. There are substantial impacts to
marine life. The impingement mortality for fish only is over 2.6 million fish a year, based on a five-year period, 2000 to 2005, so these are estimates that I am giving you, but they are pretty well established estimates. The entrainment mortality for that same period is 19 billion fish larvae a year, and that does not count the benthic invertebrate larvae that are also entrained.

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

So in staff's mind, once-through cooling has the largest impact to marine life of any activity regulated by the Water Boards. The cumulative entrainment for all 12 of the Southern California plants causes mortality of about 0.8 to 1.4 percent of all the fish larvae in the Southern California Bay. We do not have cumulative figures on the Central Coast, but just looking at the largest plant on the Central Coast, Diablo Canyon, it impacts the source area of about 93 square miles and, in that 93 square miles,
approximately 10.8 percent of the larvae are killed for nine rock fish species. And to put that in terms of habitat through the habitat production forgone methodology. That comes out to about 296 to 593 acres of rocky reef that would be needed to replace the larvae lost as a result of the entrainment from that one plant.

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

And, of course, as I mentioned earlier, we are recommending as policy to comply with Clean Water Act Section 316(b), which essentially requires the best technology available be applied for minimizing adverse impacts from once-through cooling systems. And that is our
main focus with the policy is to comply with the Federal law, but it is worth mentioning that we also have a California Water Code Section that relates to new or expanded coastal power plants, with a very similar requirement.

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

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

So we have a two-track system that we are
proposing. Track 1 involves a reduction of intake flow rate
at each unit, each power generating unit, to a level
commensurate with that which could be achieved with closed
cycle wet cooling, and a minimum of 93 percent reduction is
required, compared to the design intake flow rate. So that
is Track 1 and it is by unit at the power plants. Track 2
is really being proposed to encourage flexibility. If
compliance to Track 1 is not feasible, the impingement
mortality and entrainment for the facility as a whole must
be reduced to a comparable level to Track 1, using
operational or structural controls, or both. So what are
some of those other technologies? One of the major
technologies that can be applied is closed cycle dry
cooling, which essentially uses no water, and there would be
some plants, for example, that might want to convert to
closed cycle dry cooling for some of their system, and then
do some other measures for the other part of their plant,
maybe a couple units left on once-through cooling, but only
operated very sparingly, either through operational
controls, or possibly through the insulation of variable
frequency drive pumps, that sort of thing. And there are
also wedge wire screens. I just wanted to mention them
really quickly. They have not been tried on the West Coast
at a major power plant; they have been used in estuarine and river systems on the East Coast with success. We do have estuarine power plants here, the Delta plants, so this is always one possibility that is more of a proven use there in that river or estuarine system, but I thought I would mention it as another type of technology that a company might want to investigate.

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

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

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

MR. BISHOP: Let me jump in and see if I can give
it to you in a different way. There are both statewide grid
impacts for power plants being offline, but there are also
local nodal impacts, areas of the grid that need certain
load balancing, so you have both local impacts and grid
impacts, you cannot replace necessarily the same amount of
megawatts in Northern California if you take it off in
Southern California, and keep the grid balanced.

CHAIR HOPPIN: That is getting closer. Fran?

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

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

MS. SPIVY-WEBER: Thank you.

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

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

MS. DODUC: Okay.

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

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

MR. GREGORIO: Yeah, that is my understanding, as
well, is it should be some time next year.

MS. DODUC: Jonathan?

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

MS. DODUC: I will. Thank you.

MR. GREGORIO: Okay, so kind of a logical point here is to discuss this adaptive management strategy. I mentioned that we have been talking to the energy agencies, and they are part of a task force, essentially, at this point, it has not been officially convened by the Board, but they have been very helpful in helping staff to develop the implementation strategy and we are proposing that that group be formalized in an advisory committee that we have an acronym for, SACCWIS, that will be convened to review the implementation progress and report back to the Board, and then the Board, we would envision, would consider the SACCWIS recommendations and make modifications to the policy, as appropriate, because we think that there might be things that come up over time that might need a little bit of adaptation. And then, finally, the regional water boards
would re-issue or modify the NPDES Permits to conform with
the policy, that would be with the current form of that
policy; as things change, we would have some feedback also
with the regional boards.

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

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

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

MR. BISHOP: That is correct. That is totally
correct. This is not -- this policy does not interfere in
any way with the Regional Board's authority or ability to
regulate the discharge from these plants.

MS. DODUC: Thank you.

CHAIR HOPPIN: Jonathan -- or, Dominic -- I am
going to quit calling you Jonathan here pretty quick, okay?

When I look at the advisory committee and I look at the
acronym, it is easier for me to refer to it as the advisory
committee, so if you would humor me along with that, I would
appreciate it. But as we go forward on this policy, the
input of this advisory committee and the composition of it
are very critical to me. I mean, clearly we have expertise
in water quality areas, we have got people here that
represent a diverse cross-section of the energy regulatory
community in the state of California, and I am sure we are
going to hear from everyone before we adopt a final policy
that is involved in this committee, there are pleasures and
displeasures on this, but going forward, the personalities
are going to change, this board is going to change, the
composition of all of these regulatory bodies is going to
change, and it would make sense to me, although probably not
legally binding -- Mr. Laufer will correct me if I am wrong
-- the idea of having an MOU as we go forward on this would
help memorialize the commitment of the various regulatory
agencies that are going to play a key role going forward, so
it is not something that we are going to have to decide
today, but it is something that I would like to have
discussed, and unless I am convinced otherwise, I think it will be an important -- maybe not of this document, but something to have in hand as we go forward because this is not just a State Water Board issue, solely.

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

CHAIR HOPPIN: Thank you, Jonathan.

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

MR. BISHOP: What I would suggest, or that we can think about in the interim while we are moving forward, is a
direction to staff to include the local regional board and
local air districts in the discussion when it is appropriate
for them to be there, and not make them official members of
the group.

MS. SPIVY-WEBER: Okay.

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

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

MS. DODUC: What does "engage" mean?

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

CHAIR HOPPIN: I think you are going to hear more
from her at a later date about that engagement.
MS. DODUC: You are reading my mind again, Mr. Chairman.

CHAIR HOPPIN: Please go ahead, Dominic.

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

So, just to kind of go over what has gone on up to this point, recently we released our Draft Policy on June 30th, the Substitute Environmental Document was released on July 15th, and we noticed the policy and the document for public comment. A public hearing was held on September 16th. The deadline for submitting comments on the policy and the SED was September 30th, 2009. Staff received 41 comment letters representing an estimated 440 individual comments. We are currently developing responses to those comments, but
we have read through all the comments, and have developed
many of those responses already, just in a very draft form,
and we also have to revise the SED. So, based on the
consideration of the comments we received and the direction
we received from the Board members, we are recommending some
revisions. We can consider these revisions to be minor and
intended to clarify the intent of the policy, and I am going
to ask Joanna Jensen, who is our lead staff on this issue,
to present the remaining of the PowerPoint presentation and
what it does is it goes through all of those revisions.

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

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

MS. DODUC: Thank you.

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

MR. GREGORIO: We will attempt to do that.

CHAIR HOPPIN: Thank you.

MS. JENSEN: Good morning. Thank you for the
introduction, Dominic. Before I start, I would like to also
thank the people who took the time to study policy and the SED, and write us letters explaining what their comments were. We spent some time going over those comments and, as Dominic said, in the end we ended up making what we feel are fairly minor corrections to the policy. And I would like to point out that --

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

MS. JENSEN: Sure. Is that better?

MS. DODUC: Yes.

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

As far as the issues we looked at, there were quite a few comments related to the SACCWIS, this is the Statewide Advisory Committee on Cooling Water Intake Structures, nobody mentioned different names for this committee, so we are sticking with SACCWIS. People asked to have the membership, the structure, the function, the meeting schedule, the public involvement, clarified, and we
feel we did that and those revisions are found in Sections 1(i), 2(b)(2), 3(b), and 3(c)(1). And also, to clarify how the SACCWIS and the adaptive management approach would work, what would the role of the SACCWIS be in this, so those were the types of changes we made. We just clarified what was always our intent of how SACCWIS would function.

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

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

And probably one of the issues we had most comments on was the wholly disproportionate determination. It used to be the previous Section 4. After chewing over the comments, it was decided that we were better off deleting the entire section because there was a lot of non-
clarity as far as this section would be implemented and we could foresee that just leaving it in would place a great implementation burden on the regional boards, and that was not the intent of the policy.

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

CHAIR HOPPIN: Jonathan, before you go on to the nukes, from comments that I have received in the last week or so, it seemed at least at one point, and yesterday and
the day before I was preoccupied with issues and I did not really receive any comments, but there was some concern or lack of clarity on the minds of some, certainly, as to how that credit would be determined. And are you comfortable -- I am sure we are going to hear from folks, looking at the cards, their view of that -- but certainly the clarity of that issue is important. I have read what you had written down, but I was still getting questions from those that would be affected, so --

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

CHAIR HOPPIN: Thank you.

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

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

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

Some minor changes to the section related to the nuclear power plants. We emphasized that the State Water Board shall consider cost and feasibility when considering the results of the Special Studies, this was always the intent, but we just placed a little more emphasis on it. And this is in Section 3(D)(7).
Finally, we changed the compliance date for the Diablo Canyon Power Plant. Our intent was that the nuclear plants would need to comply by the earliest relicensing dates, and we received some information that the final compliance date for the Diablo Canyon Power Plant Unit 1 had changed to November 2\textsuperscript{nd}, 2024, so we changed the final compliance date for Diablo Canyon to December 31\textsuperscript{st}, 2024. And that is in Section 3(E).

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

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

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

MR. GREGORIO: I will try and answer that. So the
shellfish larvae are zooplankton, but they are a form of zooplankton that we refer to as meroplankton, that is the official oceanographic term because they are only in the plankton for a portion of their lifetime, and so it applies to those zooplankton that are meroplankton.

MS. SPIVY-WEBER: Okay.

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

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

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

MS. SPIVY-WEBER: Ah, okay.

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

MS. SPIVY-WEBER: It is.

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

MS. SPIVY-WEBER: Okay.
MR. GREGORIO: And the reason why zooplankton as a
definition was left in was because, in the definition of
meroplankton, we refer to that component of zooplankton, so
it is sort of a connected definition.

MS. SPIVY-WEBER: Thank you.

MS. JENSEN: And that concludes our presentation.

Thank you.

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

MS. DODUC: Do you yodel, Laura?

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

MS. HUNTER: That was early in the morning, my
yodeling is decidedly off. I had some handouts that I hope
that you have received. The top one should be a letter from
the ISO, do you have that packet of handouts? Okay. To try
to stay to my five minutes, I think I would just like to
walk you through our packet, so that would help, so if you
could not start my clock until you get the fascinating
information I am delivering to you right now?
CHAIR HOPPIN: No short jokes, huh, Jeanine?
Okay.

MS. HUNTER: Great. Thank you very much for the
opportunity to be here today. I am Laura Hunter from the
Environmental Health Coalition in San Diego, and we have
come up because this is a very important policy for us. We
strongly want to support the removal of the WDD, which we
think is very appropriate, but there is one change that
actually did not get made that I really want to speak to
primarily today, and that is the deadline compliance date
for the South Bay Power Plant. I want to thank Board Member
Doduc for raising that. We are very concerned that, if that
does not get shortened, you may inadvertently be extending
the life of this plant further than it needs to be, and I
brought you some new evidence that we did not have last time
we presented in front of you. The first is a letter from
the ISO removing Units 3 and 4, there is no RMR, there is no
need for them, and they are off line. The second letter is
permit modifications that have been passed by the State, or
that have been issued by the Regional Board staff. They are
having a ratification hearing later, but if you look, the
most important parts of this are the date, December 31,
2009, for half of the plant, and December 31, 2010, for the
rest of the plant, so here you have got the Regional Board's
actions saying this plant is done at the end of 2010,
another reason why we think you should shorten that
compliance deadline shorter than that. Otai Mesa is on
line, to answer your question, it is on line, it is hooked
up, and it is operating. Another bigger plan that is under
construction, more contracts have been issued, and we have
more than enough energy which I will show you in a minute.
We also have -- this is a page from the Dynergy FERC filing
-- I do not know if it shows up really well -- but, in
yellow, they are reporting to the FERC that ISO said we may
even shut down Units 1 and 2, which is the remaining half,
before the end of the contract year based on new generation
coming on line. All of that, which we think they are
talking about, is on schedule again. They are not very
transparent in terms of what they mean, but that, we think,
is all on track. I am so glad you raised the issue about
the discharge impacts because, even if we can all agree that
the intake impacts are all terrible in all the plants, but
the discharge impacts, we think there is a big difference.
And ours is particularly bad, and ours is a major
environmental justice issue. I have done the Tale of Two
Power Plants, these are two OTC plants in California and you
can see that one impacts a low income community of color with twice as many people in it, a fraction of the public access, much worse swimming water quality, not to mention very few areas to swim, and the fishing impacts -- we have subsistence fishers from low income communities, communities of color, and it is posted against that. I am also done. The last handout demonstrates that the ISO, they are a moving target in terms of their analysis, and we really want you to preserve your own chance to look at these issues because, in this case, here is what they presented to the Water Board in September, different things changed like how much they thought the peak would be, the need for the whole plant has been wiped out, and yet it is still going to operate for one more year. But we really hope that you will move that deadline and recognize that we have a very serious condition in San Diego. Thank you.

CHAIR HOPPIN: Questions of Laura?

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

MR. PETERS: Good morning, Chair Hoppin and members of the Board, Dennis Peters. I am the External Affairs Manager for the California ISO, and I do have separate comments that I can provide later, but Board member Doduc, I
will respond to your questions, as Ms. Hunter had raised
some concerns about South Bay's dates. And I will just
validate some of the facts as she indicated that are true.
Otai Mesa is on line, we have designated Units 3 and 4 are
no longer designated as what is called "reliability must-
run" for the year 2009. We also indicated that we would
need Units 1 and 2 at South Bay for the year 2010, as
reliability must-run units. With regard to beyond 2010,
what we will do is do further studies in 2010 to determine
the need for those plants in the future, or those units in
the future. A key component of that study is our 2011 local
capacity requirement study, the L.A. Basin and, sorry, the
San Diego area in which the South Bay units are in, is a
local reliability area, it is transmission constrained, and
we do have an open and transparent stakeholder process which
we will conduct in 2010. Any member of the public is
invited to participate in that open process, and at that
point, we will receive key information through the studies
as to the further need for Units 1 and 2.

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

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

MS. DODUC: Jonathan, anything to add?

MR. BISHOP: Well, I guess I have two things to
add, first is that, you know, we took it upon our direction
to move forward with this to essentially look to the CAISO for the grid reliability needs, and to use their expertise on that, and as you can see, it is not always on the time frame that we would like. Their schedule does not always meet with when we would like to have information, but that is the way it is. The other is that, you know, the schedule says as soon as possible, but no later than that date, so if things change in the interim year, there is no reason why the regional board cannot say, "Well, it is no longer needed because of the CAISO's report," and they have made that determination that "as soon as possible" reduces that timeframe. I would caution that, you know, we have set this policy up so that statewide and grid reliability, local and statewide reliability, are in your purview. And we want to retain that. So there is a little bit of a conflict there of the regional board doing something earlier; but if, given what we just heard from CAISO, that over the next year in 2010 they will be looking at the need further in 2011 and 2012, that would give the opportunity if it is determined it is not needed for the regional board to move forward.

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

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

MR. BISHOP: Yes.

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

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

MR. PETERS: I appreciate your pointing out the fact that conditions do change each year. There was a comment made of moving targets, you know, there are a lot of moving parts in the electric grid and things change with
regard to schedule, water conditions change, and that is why we have to continually study the system and what is needed to ensure reliable electric service to the citizens of California. With regard to the hydro plants, and if you want to make a connection to the South Bay study, the study which I referenced, which was a local reliability area study for the San Diego local reliability area, the hydro plants would not really have much impact there in that it is a transmission constrained unit. And most of the hydro plants are up north.

CHAIR HOPPIN: Thank you. Fran?

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

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

MS. SPIVY-WEBER: Okay.

CHAIR HOPPIN: Thank you, Dennis. I am sure we will get another cut at you later -- or another opportunity
to speak with you is what I meant to say.

MR. PETERS: Okay, thank you.

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

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

On the reliability issue, I think the intent of the Board and the staff and their policy is quite clear. You are really suggesting that you are going to rely on the expertise of the energy agencies to determine, as we just heard in this discussion about South Bay, which plants are needed, and for how long. And implicit in that is recognition that this Board does not have either the expertise or, in fact, the responsibility and accountability...
for ensuring reliability in the state, but you are
supporting that policy through your intent, and that is
clear throughout Section 1 of the document, and even in the
revisions that have been made. However, we do not think
that that intent is actually implemented in the revised
policy, and we would ask that you change the policy so that
it is. And I want to try to be a little bit specific about
that. In Section 2(B)(2) where this is covered in the
revised version, we would suggest words to the effect where
it begins, "To maintain the reliability of the electric
system as annually determined by the CAISO CEC or CPUC, the
State Water Board after public hearing...," this would be a
kind of suggested change we would request, "...shall make
modifications to the implementation schedule consistent with
the reliability determinations of the energy agencies, to
assure that the schedule can be implemented without threat
to the electric system reliability." And that, we think, is
necessary because, unless this Board actually makes a full
commitment that they are actually going to change the policy
consistent with those recommendations, it is an open-ended
thing, more open ended than the studies that we talked about
just a little bit earlier. We think that to do less would
put you in the position of assuming the full responsibility
for the reliability of the electric supply system of the
state, and if you are going to do that, then we would
request that we be given time to supply you with suggested
language, so that that is absolutely clear and you are
taking on that responsibility. We do not think that is the
intent of the Board or the staff, and we think that this
change keeps you in charge of the policy, but fully
implements your intent to have reliance on the advice of the
energy agencies. So let me -- I know there may be questions
about that and I am happy to talk about it right now, but I
would like to give Paul a chance to address some of the
other more important issues that we have raised.

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

DR. HERTELL: Sure.

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

DR. HERTELL: Excellent question. That is why we
chose the phrase "consist with." In our view, that language
implies that the Board retains discretion, but announces its
intention to rely on the advice that you are given. Now,
let us just suppose that this South Bay issue came up and
people want the date advanced, and then CAISO does its
studies and comes back to you with, just suppose, a piece of
advice that says, "No, we need that plant beyond 2010, that
unit, those two units." If this Board decides in its wisdom not to rely on that advice, then obviously you are taking on the responsibility and accountability for what happens as a result of that. We think, however, your intention in the policy is quite clear, you are not intending to do that, you are intending to rely on the advice of the CAISO and CPUC and CEC, and perhaps the LADWP Board in their case, but you retain the functional ability to say, "Even though I have got that expert advice, I am not going to follow it, I am going to go a different direction." So that is why we chose that phrase, "consistent with."

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

DR. HERTELL: Understood.

MS. DODUC: I think we definitely, as you said, the Board has signaled our clear intent to take into consideration very seriously the recommendations, the concerns that are raised by the Energy agencies including, obviously, CAISO; that is actually what we have done for the last year, year and a half, through Dominic's task force. And the language as it currently has just been added to the policy concerns me enough, as it is, in terms of the Board's commitment to consider suspending the dates until we evaluate the new data that is in, to actually commit and tie a potential future Board action, is something that I am not
comfortable doing. You are right, if the Board -- the future Board, or whomever is still left on the Board when that matter comes up to us -- decides to override concerns that are raised by CAISO and the other energy agencies, then, yes, that board, that future board, would be potentially taking good reliability into their own hands, but that is not the situation here today, that is not the situation in the policy. I think the policy is very accommodating, in fact, I believe it is too accommodating in terms of especially the new language that has been added, which I am still not comfortable with, in terms of tying the Board's hands. I fully appreciate that the Board would need to consider very seriously concerns that are raised on grid reliability issues when we conduct any future hearings to consider revising the dates, but we would also have to consider any other comments that may come in with respect to marine impacts, with respect to local community concerns, and to obligate a future decision and tie it to only one set of input is something I am not comfortable with.

DR. HERTELL: I know that Board member Doduc understands that I hold her in great respect, as well. I continue to maintain my position for this reason. The problem with consideration is it does put the input of the energy agencies on virtually the same level as every other input. And if your intent is to do that, then you need to be clear about that. And you need to right now, I think,
announce to the state that you are taking on the responsibility for reliability of the supply. That is a big responsibility that the Legislature, we believe, has lodged with these other agencies; that is why we have encouraged the very close cooperation that you have shown with those agencies. We are not asking you to tie your hands and say, "I will follow that no matter what," but we are asking that you be clear about your intent to follow it. So I think we have to leave it there, but that is why we have taken this position and we have honestly tried to come up with something that kind of bridged this very difficult area in a way that respected the Board's responsibilities with respect to water quality and also the energy agencies' responsibilities with respect to reliability.

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

DR. HERTELL: Thank you. Mr. Singarella.

CHAIR HOPPIN: Mr. Singarella?
MR. SINGARELLA: Thank you, Mike. Paul Singarella of Latham & Watkins here this morning on behalf of Southern California Edison. Good morning, Chair Hoppin and other members of the Board. Let me first say that we have appreciated the opportunity to work with the agency on this very complicated and important subject. I want to start by identifying that which we are requesting of you, and then I will explain our request. Request 1 is the reliability request, and we are asking the agency to commit to a schedule that is based on findings of the energy agencies with respect to grid reliability as opposed to just consider or asking you to commit to their findings on that topic; 2) we are asking you to put back into the policy that which just recently came out, and that is the wholly disproportionate standard; and 3) we are asking you to adopt as best technology available the suite of technologies as proposed by Southern California Edison, instead of the wet cooling tower approach. If I have a minute at the end, I will return to grid reliability, but I want to jump right in to the issue of wholly disproportionate. I never thought I would be standing here today defending wholly disproportionate. The reason for that is I assumed, as I think many in the regulated community have, that wholly disproportionate is really a given, it is part of the fabric of 316(b). Why do I feel that way? Well, 1) EPA has used the wholly disproportionate standard for 30 plus years, it
has always been part of the Federal EPA program under 316(b), and 2) the Entergy case from earlier this year, where the United States Supreme Court looked at 316(b) and spent a lot of time talking about economics under 316(b) and, in fact, the Supreme Court said that it was fair game, it was fine to consider economics and cost benefit considerations when regulating under 316(b). And the Supreme Court actually identified three different kinds of cost benefit approaches, and the one that it favored the most is wholly disproportionate. It actually wrote into a Supreme Court opinion a full endorsement of the wholly disproportionate standard, including 30 years of EPA statements and lower court decisions, in which it was said basically that if you do not have wholly disproportionate as part of your 316(b) program, you do not have a valid program, your program is per se, unreasonable, your program would be arbitrary and capricious, so you really need to have wholly disproportionate as part of a 316(b) program. Any other approach would be rudderless and without a standard, and we think would be unlawful. We think you have moved into some fairly shaky ground on that at that point, and we urge you to reconsider it and put the wholly disproportionate standard back in.

There are three other problems with eliminating wholly disproportionate under the current posture of this matter, number one was your notice, calling this change,
this major policy shift clarifying and minor is just not the
way to tee up this topic. Number two is a CEQA point, and
the CEQA point is this, when you defined the CEQA term
project for your Substitute Environmental Document, you
defined it with respect to a wholly disproportionate off-
ramp. Why wouldn't you? It has always been there, it has
been a given for 30 plus years. Now you are proposing to
move forward with a policy that does not have that, in
essence, you have removed wholly disproportionate from your
project description. Well, that puts you at great risk of
recirculation, and we think, because of the significant
environmental impacts of having to move forward with a
policy that does not have that off-ramp, in fact, you are
going to have to re-circulate your Substitute Environmental
Document and put it out for at least 45 days. And then,
finally, the third other problem besides the Federal
problems that you have created for yourselves, is that you
have created a Porter-Cologne problem. Under Porter-Cologne,
you are in fact required to do balancing, balancing of what?
The economics on the one hand, with other facts on the other
hand. What other factors? Well, water quality benefits.
How in the world can you do balancing of economics if you
actually take economics out of your policy and, in fact, we
do not think you really can. Now, Southern California
Edison is particularly troubled by taking out economics. In
reliance on the Board's prior versions of this policy, and
all that history that I referred to, we went ahead and did an economics study and we submitted it to you. And in that study, it was determined by the economists that the cost of going to closed-cycle cooling towers at SONGS has a ratio of 140:1 versus the environmental benefits. That is an unimpeached study that has been presented to you. What should you do in light of receiving a study like that? It seems to us that what you should do is perhaps use that as a case study to show how this very important standard that has been there for all these decades would be applied. But we see today's -- well, I am sorry, not today's move -- but we see the recent draft as signaling that you are going in a different direction. Then, finally, why embrace wet cooling towers as best technology available? We do not think that is required by the Federal Clean Water Act, we think it is plainly infeasible for the two nuclear power plants in this state, and if you do not have off-ramps in this policy, and you do have BTA equaling wet cooling towers, we think that is a recipe for dispute and controversy that is unnecessary. What is the alternative? Well, in the alternative, why not adopt Edison's suite of technologies approach? We think that is plainly within your discretion to do so. And with that, I will be glad to answer any questions.

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

MR. BAGGETT: I mean, I am missing, Paul, here, I mean Section D on page 7 and 8, I thought it was pretty laid
out methodology for doing studies. It says flat out in number 7, "The State Board shall consider the results of special studies, including cost and feasibilities." What am I missing here?

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

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

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

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

MR. SINGARELLA: 30 plus days--

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

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

MR. BAGGETT: And so have others, and they disagree.
MR. SINGARELLA: I am sorry?

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

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

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

MS. DAMRON: Susan Damron, Los Angeles Department of Water and Power. Thank you very much for the opportunity to come and speak today. Just in opening, LADWP supports the goals set forth in the Draft Policy, namely to reduce
once-through cooling and to minimize the impacts from once-
through cooling on marine life. DWP, over the last 15
years, has been engaged in repowering its facilities. To
date, we have reduced our once-through cooling units from 14
to nine. We have two new projects that should be completed
by 2017, that will reduce the once-through cooling units to
five. It is DWP's desire to continue repowering its fleet
and to decrease once-through cooling usage and to minimize
impacts. However, the policy continues to present dilemmas.
The first dilemma for us is it will take time to repower and
retrofit. The dates listed in the table, the implementation
schedule, cannot be met by LADWP without impacting energy
supply and reliability for the City of Los Angeles. At the
request of the State Board members at the September 16\textsuperscript{th}
hearing, DWP did provide dates, and we believe these are
extremely aggressive dates. The dates that are in the
November 23\textsuperscript{rd} revised policy are unchanged and would continue
to pose serious supply and reliability issues. The origin
of these dates appears to stem from a conversation that
LADWP staff and State Board staff had in May -- May 12\textsuperscript{th} of
2009 via conference call. Because none of the energy
agencies can advise the State Board staff on dates as they
pertain to our facilities, we had this conversation about
plausible dates that LADWP could make. And we were asked to
provide a schedule in two weeks, which we did on our May 26\textsuperscript{th}
letter, and in that letter we had five stipulations
associated with our schedule, one is that repowering is sequential for us, no two facilities can be taken out at the same time; the dates that we provided did not have the approval of our Governing Board, they did not have the backing of any engineering or financial analysis, and they assumed that all permits, licenses, and approvals could be obtained. Just as an example, in this letter we provided that Haynes could meet a 2013 date with only a 50 percent flow reduction, so 50 percent flow reduction could be achieved by 2013. Or, a second scenario would be, we could achieve a 72 percent reduction by 2015. Well, those dates were taken and put into the policy, but neither of those flow reduction percentages get anywhere near the Track 1 and Track 2 percentages that you are seeking. So, my point is that the dates that we gave staff back in May are not valid and they are not accurate, unless you are going to take into consideration all of the stipulations and the percentages that we need. So our request is to modify the dates in the table to reflect the aggressive dates that we provided in our September 30th comment letter.

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

MS. DAMRON: For the Harbor Generating Station, we asked for five years after the adoption of the policy, we did not provide dates, but we assumed that the policy, whenever it was adopted, we needed five years; for our
Haynes generating station, that was nine years after policy adoption; and for Scattergood Generating Station, that was 12 years after policy adoption, that is actually the most challenging engineering-wise, that is why it needs the longest date.

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

Next has to do with the Track 2 compliance. The policy must provide a viable Track 2 compliance pathway.
The November 23rd version makes it clear that compliance with the policy is determined by measured reductions in entrainment pursuant to Section 4(B), so it links monitoring with compliance. Entrainment reductions for any aquatic life organism that is 200 microns in size is not attainable. No facility within the United States is operating an entrainment reduction technology that is below 500 microns in size. Therefore, neither monitoring nor entrainment compliance reductions should address any aquatic organism that is less than 500 microns. I know that it was mentioned earlier that the size had to do with sampling nets, and I would like to address that. As far as I know, all of the sampling nets that were used were at a minimum pretty much standardized in the scientific community at 333 microns, so the sampling nets are larger than 200 microns. And I would also like to reiterate that you have linked monitoring now with compliance, and therefore, why would we be monitoring for smaller organisms if we cannot use those organisms for compliance purposes? The monitoring provisions that are in Section 13267(B)(1) require that any monitoring bear a reasonable relationship to the need for that monitoring, and the benefits to be obtained. Our suggestion would be that entrainment impact reductions should focus on fish and shellfish, eggs and larvae, which I think is kind of what Dominic had, he had crabs and lobster, the shellfish, and should not talk about zooplankton and meroplankton, and
should remove any reference to size -- organism size. And lastly, my comment is with regard to the wholly disproportionate, the policy goes to great lengths to indicate that it will ensure energy supply and reliability of the state's electrical system. Previously, the Draft Policy provided a mechanism whereby, if Track 1 was infeasible, Track 2 could be pursued with the installation of best performing control technology, and mitigating for the difference between the performance level of the technology and the Track 2 standard. At the September 16th hearing, staff indicated that it believed three facilities qualified for the wholly disproportionate demonstration as of the date of that policy, two of which are LADWP facilities. It is important to note that these repowered units still use a level of once-through cooled water, however, with the current version under Track 2, if the performance level of the best performing control technology cannot be achieved, these modernized, highly efficient units, would have to be shut down. This would represent to us 800 megawatts. If Track 2 is infeasible, and a facility cannot fully meet Track 2 standard, its only recourse would be to shut down. Is this what the policy intended? Our request would be to reinstate the wholly disproportionate demonstration for all facilities. And just one comment, Mr. Baggett, to your comment about cost, you know, if it is in the nuclears, but it is not going to be in for all of the
other facilities that are not -- non-nuclear, the ability to incorporate cost in any kind of feasibility studies. And it also had the three facilities -- staff indicated that they had moved and incorporated those provisions into the other areas, but it only would benefit facilities that had undergone repowering as of the date of the adoption. What about the two facilities, the two units, the two sets of units that we will repower in the future? They will not be able to take advantage of any of that language that has been moved over. Thank you.

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

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

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

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

MR. GREGORIO: That is correct.
MS. DODUC: Okay. And --

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

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

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

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

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

MS. DODUC: Thanks, Dominic.

MS. SPIVY-WEBER: And to make changes in the schedule, which I -- you received the letters from DWP suggesting that having to do two in one time period, which were Harbor and Scattergood, in 2017, it seems to me that that is not staggered, you know, like we are expecting in
other areas, and so is there any problem with making the changes that were recommended of having Harbor first, instead of Haynes? By having Haynes second and then later on having Scattergood? Is there any problem with that?

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

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

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

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

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

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

MR. GREGORIO: Definitely. So there was a couple
of inaccuracies, no offense to Ms. Damron, but there were a
couple inaccuracies. One of them had to do with
standardized nets. The nets that were used for previous
studies were decided upon with the intention of collecting
fish larvae, there is nothing standard, necessarily, about
that. So when we used the measurement of 200 microns, that
catches the shellfish larvae and the fish larvae, both, so
that you could make a determination of what species are
being entrained. If you used a higher or a larger mesh
size, you would not get the shellfish larvae. In terms of
another slight inaccuracy is the reference to shellfish
larvae that could be included in the definition, without
using the term "meroplankton," that is not correct because
shellfish larvae are meroplankton, that is a standard oceanographic term, and they are a component of the zooplankton, but there are many many other species of zooplankton that are larger than 200 microns, that would not be considered -- would not have to be assessed or analyzed in their study, so they could disregard things like -- and I know I am getting kind of technical here, but things like copepods, those would not be something that they would need to consider, those are very numerous organisms, and we do not think there is an effect on those organisms. But they would be caught in the 200 micron mesh size net, but a consultant would not have to count them up because we are specifically talking about the invertebrate larvae that grow up to be benthic organisms, in other words, grow up to be shellfish.

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

CHAIR HOPPIN: Thank you, Ms. Damron. Ms. Rubin. And I will remind you all that -- I do not know why Ms. Damron reminded me of it, but we have a time schedule we need to try and keep here. It will be my intention after Ms. Rubin to take a ten-minute break, and then we will do our best to complete this workshop as soon after the lunch hour as we possibly can, considering that some of us have planes to catch this afternoon. With that, Ms. Rubin, would you please identify yourself and proceed?
MS. RUBIN: Sure. Good morning, Chairman Hoppin and members of the Board, and State Board staff. My name is Katherine Rubin, I am with the Los Angeles Department of Water and Power, the Environmental Affairs Section. And I have just a few more comments for you regarding the definition of feasibility, the interim mitigation, and if time permits, some of the definitions. We do intend to submit written comments and they will be in our written comments. So, to start with the definition of "feasibility," over the next 10 years, LADWP estimates it will have to expend approximately $11 billion for climate change compliance, purchasing and developing renewable energy resources, transmission upgrades for renewable integration, power plant repowering, and the 316(B) compliance. Secondly, the EPA and the Second Circuit Court decision affirmed that cost should be considered and whether the industry could reasonably bear the cost. As of right now in the revised policy, and the definition of feasibility, they have taken the cost out, that we cannot use cost. And so we are requesting that the feasibility definition should consider cost and cost be put back in there. Regarding the interim mitigation, the policy requires both interim mitigation and mitigation to close the gap between the performance level of the best performing control technology and the Track 2 standard. Mitigation is a permanent measure, it cannot be initiated on an interim
basis, and then withdrawn at a subsequent date once in compliance. Therefore, LADWP recommends that we apply some sort of scaling factor to account for the time period in which interim mitigation would be needed, and that you apply the mitigation performed towards any final mitigation requirement, if any. So we are requesting that the policy be modified to scale the interim mitigation and apply it to any final mitigation that may be required. I think I just repeated myself. This comes from the position of LADWP and our General Manager, and he believes that the benefits to be achieved from the adoption of this policy as currently written have not been fully identified and characterized when contrasted with the impacts to both the environment and the state's electrical supply and reliability, and that the environmental benefits to be gained do not outweigh the negative environmental impacts and the costs, making this an inefficient policy for reducing the once-through cooling impacts. And what is being requested is that the State Board staff should be directed to take some additional time to fully evaluate all the comments, and modify the SED and a policy accordingly. And to go on, if I have a few more minutes, I think I have two more minutes here, just to get into the definitions since we have some time, for the closed cycle wet cooling, there is not any water associated with the boiler blow-down with the closed cycle wet cooling, so we suggest that you delete the reference to wastewater
associated with the blow-down, with the boiler water. And
the definition for combined cycle power generating units,
you need to delete the word "several" so that it reads -- it
refers to units. And power generating activities, once
more, this definition needs to be fixed to include the use
of being able to run your pumps for biofouling, etc. As
written, it only allows for critical maintenance activities
for those facilities regulated by the Nuclear Regulatory
Commission, and so this would not include the plants for
LADWP. That concludes my comments.

CHAIR HOPPIN: Any questions for Ms. Rubin?

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

MR. BISHOP: It never was.

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

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

(Off the record.)

(Back on the record.)

CHAIR HOPPIN: We will resume. Francisco Estrada?

Mr. Estrada, in the interest of time, I will apologize to
you on your way up. Generally, we provide special deference
and consideration to legislative members and their staff,
and I did not notice your card until a few moments ago, so if you would accept my apology for taking you out of order, I would appreciate it.

MR. ESTRADA: No need to apologize.

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

MR. ESTRADA: I will only take 15. My name is Francisco Estrada. I represent Assembly Member Mary Salas. I am here today to deliver and to put into the record two letters, one from the City of Chula Vista, and one on Congressman Bob Filner's letterhead, which demonstrates something that is kind of rare now days, and that is unanimous bipartisan opposition to the continued operations of the South Bay Power Plant. We believe, and I speak for all of them, that the South Bay Power Plant should be decommissioned as quickly as possible because it is old, obsolete technology, fails to use best practices available, has extraordinary impacts to our bay because it draws water in and discharges into a very shallow bay, with very limited flushing action. Now, in 2004, the plant was given a NPDES Permit for five years, and there was little opposition to the permit at that time, and the reason for that is because we were all under the impression that it would be the last permit that would be issued for this plant, and that this plant would be decommissioned at the end of that permit. We have found now that there has been some changes. We
believe, still, that the plant is no longer necessary, and
under the previous permit that was granted, there was very
limited mitigation, very limited investments in trying to
upgrade the plant because we all realized at the time that
it was for a very short term, it would be operating for a
very short term and would really not warrant the kinds of
investments that are needed. Now, things have changed, and
I think your policy that is before you in this workshop
today gives it a very long period of time for the South Bay
Power Plant to come into compliance, and so, on behalf of
the City of Chula Vista, Congressman Filner, State Senator
Denise Ducheny, Assembly Member Marty Block, the County
Supervisor for the area, Greg Cox, and Assembly Member Mary
Salas, I am here to urge you on their behalf to really
change your policy, really a minor change, but a very
parochial change, in our instance, but to make sure that
this plant comes into compliance within one year from
approval of your new policy, as is the same for several
other plants in California. Thank you very much.

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

MR. DUNLAN: Chairman Hoppin, members of the
Board, my name is Robert Dunlan. I am an attorney with the
law firm of Ellis, Schneider and Harris here in Sacramento.
I am representing RRI Energy in this proceeding, they own
and operate two facilities in Southern California that are
affected by this policy. Mr. Hoppin, I wanted to observe
that it is my wife's birthday today, not to incur any favor
with you, but -- and her wish when I left this morning --

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

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

Our comments today are focused on the third point,
and that is reliability. And what we would like to say
about the Draft Policy is that we think it took a step in
the right direction in more clearly stating and confirming
the fact that reliability is an issue, that the replacement
power needed to implement this policy is uncertain, the time
lines are uncertain, and that the schedule likely will
change in order to accommodate that uncertainty. So there is really no question about, you know, uncertainty. I think the main issue for this Board is how to grapple with the best mechanism to deal with that uncertainty. And in this respect, there are two key issues, who is going to make the decision about reliability, and what is the process for adjusting the schedule in the policy in order to accommodate reliability issues. And we fear that staff has reached the wrong conclusion in the current draft. Primarily, we are concerned that they are taking on -- the State Water Board would be taking on responsibility for making reliability determinations. Notwithstanding, the expectation that the energy agencies' recommendations would be considered, as drafted, the policy puts the burden on the State Water Board to make that finding. The other problem that we see with the policy, as currently proposed is that it necessitates an onerous administrative process, environmental review, every time the calendar needs to be adjusted in order to accommodate reliability issues. You will need to go through a regulatory process to amend the policy, not unlike what you have gone through over the last three or four years to implement this policy, and you will need to do that for every permit, every time a calendar needs to change.

RRI's comments, which we submitted earlier, and hopefully you have before you, are narrowly tailored to address those two issues. On the first point, RRI would
propose to have CAISO and LADWP in its jurisdictional area
solely responsible for making determinations about
reliability and whether there is adequate replacement
infrastructure. Those determinations would be communicated
to the State Water Board on an annual basis or more
frequently, as the policy directs. And at that point, the
State Water Board would implement a schedule in an
individual NPDES Permit. The other major change that we
would propose to staff's proposed policy is that we would
make the schedule advisory and not binding until such time
that CAISO or LADWP makes a finding on reliability, such
that a facility owner could decide whether to comply with a
policy, or allow the facility to be retired. At that point,
when the determination is made, RRI's proposal would be to
require the State Water Board to implement a schedule and
individual permit on a going forward basis.

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

MS. DODUC: Can we start asking questions now?

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

MR. DUNLAN: I just wanted to make one additional
observation, and harking back to RRI's comments on the prior
version of the proposed policy in the supplemental or the
Substitute Environmental Document, we expressed significant
corporate about the adequacy of the environmental document.
RRI's proposal, we think, would help mitigate one of the deficiencies with the environmental document, and that is that it did not look at reasonably foreseeable environmental impacts of implementation of this policy at a facility level. And by implementing the schedule at the same time, the determinations are being made about replacement infrastructure on a more narrow and contemporaneous timeline, we think that you will probably avoid some of the issues that you have with the environmental document.

CHAIR HOPPIN: Thank you. Tam, questions?

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

MR. DUNLAN: I am not sure I followed the last part about the next time it is changed. What we are proposing is that we allow CAISO or LADWP to perform the functions that they are performing right now, and that is assessing the adequacy of grid reliability. And on an annual basis, or a six-month basis, or a two-year basis, whatever the Board's desire is, they would report back to the State Water Board and say, "Looking into the future, we
see adequate replacement infrastructure to ensure that this
facility can either come off line or they can comply with
the policy, but in either case, we are not going to have a
reliability issue." And at that point, our proposal is to
insert a schedule into that individual NPDES Permit, it is a
five-year look, so you are looking out on the horizon, we
are not saying that the replacement infrastructure needs to
be in place, we are saying that it is sufficiently along in
the planning stages that CAISO or LADWP can make that
determination, and then, the trigger is reached, and when
they make that determination, and the schedule goes into the
individual NPDES permit, the policy is implemented when you
adopt it, and so all of the mitigation, the interim
measures, will go into place on Day 1.

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

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

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

    MR. DUNLAN: Well, yes, it is hard because it is
saying, "By this year, this facility needs to comply." So
for planning purposes --

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

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

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

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

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

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

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

MR. BAGGETT: Right, but -- well, I guess a couple questions, but then, Michael, I assume you would be open to
the anti-backsliding argument, right? Because this is a policy in place, and if we changed it by a year, extended it a year, and we already made this determination --

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

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

MR. LAUFFER: Again, I think the core issue is you would not be -- to the extent impingement and entrainment is even subject to an anti-degradation analysis, the idea is the Board would not be authorizing a reduction in water quality. Instead, the Board would be providing, based on a policy that you have already established, an opportunity for deferred compliance for an individual facility based on the showing of energy reliability, and through the entire advisory council, or advisory process.
MR. BAGGETT: So I am trying to understand how this would work, I do not know, Rob, so you are proposing not that the Board shall adopt, but that the Board refinements and modifications, as appropriate, so the Board would be required to consider those modifications based on ISO's determination?

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

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

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

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

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

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

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

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

MR. DUNLAN: We are focusing on --

MR. BAGGETT: I mean, why do we have it if we
actually totally defer to them? Then why do we have a
policy? They just make a grid reliability and end of story. They do not have to try to send us something that this Board will likely consider or agree with, but there is absolutely no reason for them to read it, or to comply with it, they can just say, "We find this unreliable, the Board has to put that in their permit, so end of story." Right?

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

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

MR. DUNLAN: Well, it certainly does, and the policy goes into place immediately, and when that determination is made, and we have no reason to believe that CAISO or LADWP would not be discharging their obligations to assess grid reliability on an ongoing basis, and to communicate that to the State Water Board. Mr. Hoppin
earlier today suggested an MOU; that may be a place to flesh out a bit some of the parameters around their analysis.

But, again, what we are trying to focus on is moving the State Water Board away from being the final arbiter. You are raising good questions about, you know, pushing that over to CAISO, but somebody has got to make a decision, we think it should be with the agencies, with the expertise and the resources to make those decisions.

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

MS. HARTMAN: Good morning. My name is Audra Hartman. I am representing Dynergy, and I will try to be brief and not discuss any comments that have already been talked about. But I wanted to thank you for the efforts to address concerns that were raised on the version of the OTC Draft Policy released earlier this year; unfortunately, the version of the policy that was released last week still contained several significant flaws. The removal of the wholly disproportionate section of the policy is a huge step back, in our opinion. And the current draft on page four in track 2 attempts to provide credit to generators for reductions from combined cycle units put into service prior to this policy. While we appreciate this effort, the language as currently drafted does not include Moss Landing because of the unique circumstances surrounding the facility. It is my understanding, and correct me if I am
wrong here, that the Board meant to include all of the new combined cycles in the language, and that these facilities would be automatically eligible for Track 2 without having to prove that Track 1 was infeasible. We would like to work with you to draft language that recognizes the investments that have already been made at the combined cycle facilities, and the environmental benefits that have occurred because of these new investments. We would also like the Board to clarify that the combined cycle facilities are automatically eligible for Track 2, and do not have to make a finding that Track 1 is infeasible. These changes are needed to recognize the significant investments in infrastructure and habitat enhancement that Dynergy has already made at Moss Landing based on the California Energy Commission and the Central Coast Regional Water Board. The CEC and Regional Water Board found the absence of significant adverse environmental impact from OTC at Moss Landing. These findings were reached after extensive site-specific evidentiary hearings and upon the recommendation of a technical working group comprised of many of the same neutral experts relied upon by the Board in this proceeding. Additionally, we would like to see the Board add in a provision that allows for costs to be considered in Track 2 compliance options. Costs were a part of the wholly disproportionate language and we would like it to be considered in the combined cycle Track 2 provisions. If
these changes are unacceptable to the Board, we prefer the Board reinstate the wholly disproportionate language and clarify the wholly disproportionate provision applies to all units at an OTC plant that has a facility-wide heat rate of 8,500 Btu's per kilowatt hour, or less. I would like to also note that the Draft Policy does not sufficiently address grid reliability issues. We agree with some of the concerns expressed by Edison and RRI. We think the policy should be revised so that compliance dates are determined by the ISO to ensure reliability, and we have some of the same concerns about the NPDES permits and what was addressed about the modification -- I did not bring my notes up -- but the modification addressed by Jonathan earlier. We would like to think that NPDES Permits can be amended by the Regional Water Boards as necessary, without amending the Water Board policy. In conclusion, the Draft Policy and Draft Substitute Environmental Document still contains environmental flaws that need to be addressed. Dynegy would like to work with you to draft language within the next few weeks that address these concerns. Thank you.

CHAIR HOPPIN: Thank you, Ms. Hartman.

MR. BAGGETT: Do you have any language for Track 2? I mean, it is my understanding that was the intent of these combined cycles, right, Dominic? That was the intent, so do you have language that would cure that problem? That is all we need.
MS. HARTMAN: We discussed it internally this morning, very early this morning, and we are working on draft language this afternoon and tomorrow, and hopefully we can firm it up and give you a copy.

MR. BAGGETT: Does that --

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

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

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

MR. BISHOP: The wholly disproportionate allowed them to make a showing that, if the cost were wholly disproportionate to the benefit that they could then do -- they could be relieved of their requirements under Track 1
and Track 2, and do whatever the Regional Board thought was
the best available technology. That is what wholly
disproportionate, the way it was --

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

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

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

      MR. BISHOP: Right. Remember that what they
installed was a new generating facility at that plant, that
increases their efficiency and increases their
profitability, reduces the amount of water that they need to
take in, so they have done this for a business reason. What we were trying to do was acknowledge that in Track 2, but if they were still able to meet Track 1, if they were able to feasibly put in cooling towers, those cooling towers are going to be smaller than what would be needed for a boiler type because they are using less water, that is the assumption here.

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

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

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

MS. SPIVY-WEBER: I had a question on that, particularly because Moss Landing is a little -- kind of an odd duck, if you will, in that they came in with their
combined cycle after a period when the former units that
were owned by somebody else were not in use, so if they were
calculating their reduction, would they use the design flow
of the former units as what they are offsetting, even though
they -- they have kind of a completely different system?

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

MS. SPIVY-WEBER: Of the former?

MR. GREGORIO: Yes, of the former units.

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

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

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

MR. BISHOP: Excuse me, but I think you maybe
misunderstood what staff said, which was that reduction
would be based on design. So are you saying that the new
combined cycle units use more water than the design of the
original boiler plants?
MR. ELLISON: Members of the Board, staff, Chris Ellison, Ellison, Schneider & Harris, on behalf of Dynergy.

I represented Dynergy in the Regional Water Board and Energy Commission permitting proceedings on Moss that we are discussing, and I will attempt to answer some of these questions. My understanding, subject to check, is that the design capacity did not increase, the plant does operate more because it is more efficient, and I think that is the distinction. I would like to also clarify, though, that this is a fairly recent -- unlike many of the other permits that you are looking at, this is a fairly recent within the last decade decision of the Regional Board and the Energy Commission, after very very extensive site-specific hearings, and a technical working group that included many of the experts that you are relying upon here, that came to the conclusion that once-through cooling with habitat enhancement was the most preferable cooling system technology for that plant in that specific case, and it did look at closed cycle cooling, it did look at all the alternatives, you know, air cooling condensers, all of that. In reliance upon that decision, Dynergy has invested close to a billion dollars and that investment is not just building a new combined cycle, but it is also fundamental changes in the cooling system, moving the intake, for example, from where it was previously in Elk Horn Slough, habitat enhancement for Elk Horn Slough, all of those sorts
of things. So I think one of the things that sets Moss Landing apart is the fact that you do have this recent decision that a company has relied upon with a very substantial investment and made, you know, important investments, not just for business reasons, but also to address the Water Board policies and direction, Regional Water Board policies and direction, that were given to it after a very lengthy proceeding.

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

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

MS. HARTMAN: Yes, we will.

MR. HOPPIN: Thank you.

CHAIR HOPPIN: Any other questions? Tam.

MS. DODUC: Not for Audra, but for staff. I think at some point, perhaps at the end of the testimony, Jon, you were not in my briefing with staff yesterday, we had a discussion regarding the wholly disproportionate section that was formerly in the draft, the earlier draft, and what that meant, or what was staff's intent, and we came to the conclusion that there was a really significant, perhaps misunderstanding of that issue, and I think at some point it may behoove Dominic, Joanna, Marleigh, one of you, bringing that up because I can see, based on the discussion we had
yesterday, why some of the folks are seeing this as such a significant change, whereas, based on my understanding, and based on staff's intent, it really is not that big of a change. So at some point, I would like you to discuss that, and then a heads up for you that the whole feasibility determination aspect has always, and still continues to trouble me, as you know. So at some point, I would like to have the opportunity to discuss why there needs to be a feasibility determination, why couldn't we just set a Track 1 and Track 2, have them both at the same reduction level, and allow whichever track to make sense to go forth without having to do a feasibility determination. So I know you have tried to explain it to me, I still have not fully understood it, so this is an area that I would like to pursue with you perhaps later today.

MR. GREGORIO: So, if you would, I would just give a quick answer to your first request, and that is when we originally considered including the wholly disproportionate demonstration or determination in our earlier draft, we were doing that with the combined -- for the fossil fuel plants, now -- we were doing that with the combined cycle plants in mind. We had done an initial analysis of water usage and, after the installation of the combined cycle technology, they actually -- and this has nothing -- well, it is related to power generation, but they do use less water in their operations per year after they have installed the combined
cycle technology, and so that is why we initially thought about giving them the wholly disproportionate determination. That does not mean that they would get that determination, but they would be eligible to try to get it, and so after listening to the comments we received, we determined that, if the combined cycle units really are that much better than not combined cycle, and that they have expended considerable funds and energy and permit conditions have been applied to them by the Regional Boards, that we would give them credit for that in Track 2. That is the reason why we just directly included them in this new draft in Track 2, because we were trying to give them credit for that. And so that was the rationale behind that. Nowhere did we ever say in the first draft that they would automatically get that wholly disproportionate determination, that they would be successful in that. All we were saying is they would be eligible to try to get it. So, actually, by giving them the credit in Track 2, we thought that was more straightforward, it got the Regional Boards out of a very complex determination, having to go through that effort, for the State Board to give guidance along those lines, and so we just thought it was more efficient to do it this way with the understanding that they actually do entrain less organisms because they are putting less water through their system.

MS. DODUC: Was it staff's intention with the
earlier draft that, if someone were to successfully
demonstrate wholly disproportionate impacts, that they would
not have to comply with either Track 1 or Track 2, but could
just continue as is?

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

MS. DODUC: But it was not a get out of jail free

card?

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

MS. DODUC: Thanks, Dominic.

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

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

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

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

First, a section that has been discussed by previous speakers, Section 2(B)(2) of the Draft Policy, states that the Water Board will hold a hearing to consider
suspending the final compliance date for a power plant in response to a communication from the ISO, regarding the need for continued operation of the existing power plant to maintain the reliability of the electric system. During any such process, the policy should provide that the final compliance dates shall be stayed, pending full evaluation of amendments to final compliance dates contained in the policy. We do believe the Board is within its authority to adopt such a procedure as part of this policy. The proposed language would require a stay of the final compliance dates only for so long as it takes the Water Board to evaluate whether to extend the final compliance dates for a specific unit. The Water Board would retain its discretion to set the final compliance dates in the policy, including not extending the final compliance dates. And the ISO is willing to confer with the State Water Board's counsel regarding this procedural issue.

Second, the draft, as you have heard from other speakers discussion, removes the wholly disproportionate cost test to determine whether the nuclear units and more efficient combined cycle natural gas units must adhere to the policies compliance tracks. If adopted, we believe this revision creates added uncertainty for these facilities. So, first, Section 3(D) of the Draft Policy directs that Southern California Edison and Pacific Gas & Electric Company conduct special studies to investigate alternatives
for the nuclear fueled power plants to meet the requirements of the policy. We think it is important that the Board provide guidance concerning the scope of these studies. At a minimum, the Policy should articulate that any alternatives assessment should consider the following factors: first, the impacts to the electric system reliability from retiring the nuclear units, or taking them off line for an extended period of time, second, it should consider the additional cost to electric ratepayers and the availability of replacement power for the remaining useful life of the nuclear units, or for a period of time to allow development of infrastructure to comply with the policy. And, finally, it should consider the air quality impacts that result from retiring nuclear units, or retrofitting them. The other portion of the wholly disproportionate section with regard to Section 2(A)(2)(D), the Policy, as you have already discussed, attempts to provide some environmental credit related to reduced impingement mortality entrainment under a Track 2 compliance approach resulting from replacement of older steam units with more efficient combined cycle natural gas units. You have already heard from interests representing these units today, and the ISO would encourage the Board to take time to consider their concerns. And to close, let me emphasize the ISO's role is to operate reliably the electricity grid in support of the public safety, health and welfare of
California citizens. We believe the Water Board wants to adopt a policy that does not interfere with this public good, and we look forward to continuing our cooperative work together. Thank you.

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

MR. PETERS: Well, Chair Hoppin, optimistically we do look forward to working with the SACCWIS, the Statewide Task Force, and we would hope that the policy would work in a way that SACCWIS has considered. As you previously noted before the break, there could potentially be problems with agreement among the parties that are part of that SACCWIS, that along with concerns around timing. Someone up here previously noted that in order for you to have some sort of hearing to consider a stay, or reconsider compliance dates based upon a communication from the ISO, could take 45 to 60 days, so between the timing and potential disagreement among parties, we felt it was important to include that language
in Section 2(B)(2), but that said, we would hope that most of the concerns that we would have could be addressed by being a participating member of the SACCWIS.

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

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

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

MR. LAUFFER: And if I can, Mr. Hoppin and Mr. Baggett, there is a little bit of a passing of ships in the night here, at least, I think, as I hear Mr. Peters' comments. There is an issue of actually amending the dates, which is going to require the Board to amend this policy, and that is what Mr. Bishop and I were discussing earlier; however, the process here, and the hearing that is contemplated under this particular section, is not a specific amendment to the Water Quality Control Policy, but it is if the energy agencies inform the Board of a reliability issue, the Board then holds a hearing, that is
not a hearing that would require 60 days' notice, it is a hearing, you know, we would evaluate based on the comments, and determine it probably requires a 30 day hearing notice, and the Board would then be able to suspend at that point in time the final compliance date, so it operates as a stay. As I understand what Mr. Peters was saying, you would essentially like -- CAISO would like an amendment to this to clarify that, once the energy agencies reach a determination that there is a reliability issue, that that effects a stay until the State Board can act?

MR. PETERS: That is correct.

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

MR. BAGGETT: Right, but we could also -- we could make this tighter -- the Board shall hold a hearing within 60 days of notice, or 30 days of notice, so it is not discretionary. Well, it is not discretionary, it says "shall hold a hearing," but the time is wide open. So you could say that the Board shall hold a hearing within 30 days upon notice by the above agencies, and the stay shall take
MR. PETERS: I think it would be fine to include a time frame by which you need to hold a hearing. I guess what we would ask, though, is that the dates are stayed until you do conduct that hearing, at which point you have your own authority to decide to change them or not. You know, our hope is that this is more of a backstop mechanism, that, you know, the majority of the time, 90 percent of the time, you know, we are going to resolve these things through the Statewide Committee, but in the case where there is a timing issue or some other unforeseen circumstance, we would like to have this ability to notify you so that you are aware of a reliability concern.

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

MR. BISHOP: Essentially, that is what we were proposing with this, is that this would be a advocated hearing, a short time frame just to hear, should we suspend this or not. What the CAISO is requesting is that, upon them issuing a letter to you, it is automatically stayed, that it is stayed, and that is the difference between the two.
MR. BAGGETT: Pending the final hearing is what I heard.

MR. PETERS: Yes, I guess --

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

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

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

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

MR. BAGGETT: That is not what I am proposing. What I think -- if I can interpret, it seems there the concern is that we would just some day hold a hearing to consider the suspension of compliance, and it might be two months, one year, you know, sometimes it takes us a while to do things. I think if they want an immediate -- an ability that says the Board shall hold a hearing within one week to consider a temporary stay, and a full hearing on the merits within six months, you know, I just want a quick --

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

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

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

MR. LAUFFER: Well, and let me just say, I understand both where CAISO is coming from, as well as the comment, and I just wanted to make one observation for the benefit of the full Board. I am not sure I would want to
draw a parallel to our typical water quality stay because, there, the issue is a need to immediately stay something because this Board has up to 330 days if we get extensions to evaluate a petition. I think if, for example, Mr. Baggett's suggestion is accepted, that there be a commitment by the Board to, within 30 days, hold a hearing on whether or not there should be a suspension. I think that putting on any extra process of saying, "Well, within a week, we'll hold a TRO" does not really get you much because, keep in mind, we are only talking about with respect to the final compliance dates, which are only these dates falling at the end of the year, so we are only talking about if there cannot be -- in a situation where people are not forward-looking enough to realize that, in November, we are going to have a reliability issue come January 1. So I think if we commit to hold a hearing within 30 days, in reality we will address the concerns that CAISO is raising.

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

CHAIR HOPPIN: Mr. Peters, to Mr. Lauffer's concerns, the only reason I could see that you would be concerned with his analysis is if you had some unanticipated emergency that was out of the normal channels of a compliance, some just totally unanticipated emergency. Absent that, I would think that the schedules before you would give you time to present your concerns and have it
handled in an expedited manner. Is there something there
that I am missing?

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

CHAIR HOPPIN: Thank you.

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

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

MR. PETERS: Thank you.

CHAIR HOPPIN: Ladies and gentlemen, we have got
probably, if we do not ask questions, which we seem to be
doing, more than an hour's worth of cards here. I would
suggest that we take a half hour lunch break and return at
let's say 12:40 to resume with these proceedings. Thank you.

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

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

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

CHAIR HOPPIN: That would be fine.

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

CHAIR HOPPIN: Yes, thank you.

(Off the record.)

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

CHAIR HOPPIN: Thank you. Any questions?

MS. SPIVEY WEBBER: It is a question of Michael or
Marleigh. The point about using the word -- not using the word "mitigation" because of its use in another context that is different. Is that --

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

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

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

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

MR. BAGETT GEEVER: That is right.

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

MR. LAUFFER: And here I thought you were throwing your voice.

CHAIR HOPPIN: Rich* [Chris?] [3:44]
MR. *LAUFFER: But, seriously, if it is a
distraction for the Board members, we can talk to the AV
people who I understand are diligently working to try to fix
Mr. Fleischli's technical issues --

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

MR. *LAUFFER: Yeah, that is correct.

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

CHAIR HOPPIN: Yeah, I was just being --

MS. DODUC: Now that the voices have stopped.

MR. GREGORIO: Chair Hoppin, just a quick update.

So one of the things we were considering, I was talking to
Jeanine and we could possibly print-out Steve Fleischli's
presentation, and that way we do not have to rely on the
electronics, and possibly she could make copies for you all
if that will work.

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

I am surprised you are here today.

MR. LUCAS: Hi. Good afternoon. My name is Bob
Lucas. I am here representing the California Council for
Environmental and Economic Balance. And I would like to say at the outset that the comments that were made earlier by SEC, by LEDWP, by RRI, by Dynergy, by CAISO on their tolling recommendation, all of those recommendations were designed to help the Board create a policy that not only meets your water resource needs, but also provides a type of protection that these people who work on the grid and provide the power to the grid believe are essential to protect the liability of the grid, so that you can meet both of these objectives at once. As the policy stands right now, as you notice, we have serious concerns that, although you may meet your water quality concerns, the other concerns about grid reliability have still not been met. With regard -- and with due respect to staff -- but we do dispute the claim that the changes that were just made to the Draft Policy are minor and clarifying revisions. We regard the elimination of the wholly disproportionate test as being a profound change. When you couple that with the new definition of not feasible to exclude consideration of cost, we think at that point you have made very significant material changes to this policy, which is why we are reacting to these changes the way we are. As SE pointed out earlier, these changes go in the opposite direction of the 30-year history of U.S. EPA and the implementation of 316(b). We think they are contrary to the U.S. Supreme Court decision that opened up the cost issue, as was previously explained. And we also believe
that you have an obligation under California law to balance
cost and benefits. Now, interestingly enough, you have done
that before in, perhaps, policies just as significant as
this one. And I refer to Policy 9249, which is your clean-
up and abatement policy. In that policy, you have an
explicit consideration of the balancing of technological
feasibility and economic feasibility. That policy,
incidentally, since it has to do with clean-up of ground
water that could be used as drinking water, does have a
human health consequence, as well as an ecological
consequence. And so, you would think if you were to exclude
costs from consideration of a policy, that would be the one
that you would consider first, before this one. But, by
excluding costs from this one, the impression -- I know you
do not want to think that -- that this policy is actually
arbitrarily restricting consideration of costs where you
have legitimately, and we think in concert with the law,
considered it in other policies. And, in fact, you do not
even have to create it. Those definitions already exist in
that policy, technical feasibility, as well as economic
feasibility. Unfortunately, these changes combine to
increase the risk to the reliability of the Grid. It makes
Tier 1 compliance and Tier 2 compliance even less feasible
than before. We think that puts these plants into a
situation of either repowering or retiring. That is a very
significant choice that needs to be made, and it is being
made consciously here by staff. Staff wants to put these plants into that position in making that decision. However, it also increases the risk that those plant owners who may not have the commitment of LADWP to repower all of their units over a finite time, may decide to retire early, outside the control of your policy, outside the control of CAISO. That is a risk that is not yet anticipated in this policy, that that could occur. We also think that there is a risk in this policy of adding these final compliance dates to NPDES permits prior to any determination by CAISO or the L.A. Water and Power Commissioners with regard to determination of grid reliability impacts. Remember, the Clean Water Act, Federal Clean Water Act, has citizen suit provisions, and those citizen suit provisions, we think, could be employed under these circumstances, to enforce those dates in the NPDES Permits, without regard to the adaptive management strategy that you are putting into this policy. And it could be along a claim that, Art, I think you were exploring a little later, or a little earlier, as to whether or not a certain legal challenge could be made. Who knows what the basis of the challenge could be? But it could be a challenge before the SACCWIS meets, it could be a challenge after the SACCWIS meets and the Board makes a determination. So there is another element of risk. We think you should try to avoid all of these pieces of potential risk as much as possible. Finally, with regard to
notice, you all know that CCEEB did put a letter in, Charlie, to you, yesterday with regard to our understandings of how notice provisions operate in California. We stand by that letter. I know that staff may differ on interpretation of the points that we make, but we think that these are very serious changes that were made to this policy and three working days to respond to them is insufficient. I understand at the beginning of the meeting, you extended a written comment date to December 8th, okay, now you are taking a three-day notice period and making it an eight-day notice period. We do not think that is sufficient. It is going to be extremely difficult to meet that date. We ask that you give serious consideration to not rushing to judgment, defer your January 5th adoption date, and give us time to put together serious comments with regard to what we believe are the actual impacts associated with the changes that have just been made to the draft policy. And with that, I will stop. Thank you very much.

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

MR. FLEISCHLI: Good afternoon, Chair Hoppin, members of the Board. My name is Steve Fleischli. I am an attorney representing Santa Monica Baykeeper today. I appreciate your accommodation for the technical difficulties today and for the presentation that I am about to give. Instead of being a summary of what is going to be said,
maybe some of this will be a summary of what was already said, and I will try, though, to focus on unique points that were not touched upon by the others. There was color coding in my presentation, much like last time, to try to show you the red, the green, and the yellow of what is good, bad and ugly in the policy, but I think you will get a sense from my comments what those things are. Track 1, we are still happy with Track 1, which should come as no surprise. Track 2, though, has moved into a category where I think there is some danger in that section that causes us some problems. And Mark Gold talked about some of those, in particular, with regard to compliance determination for impingement and entrainment. A couple other issues I wanted to talk about was, one, the definition of "infeasible." I do have concerns about that definition. I am glad that there is technical infeasibility in there, I think that is reasonable. I am concerned, however, about the infeasibility with regard to getting and obtaining permits and compliance with local ordinances and environmental statutes. To me, for this industry, in particular, it is often hard for them to get permits and to come into compliance with environmental conditions, even when they want to. And my concern is, in this context, this may be an incentive for them not to want to try so hard in terms of obtaining permits to upgrade. And maybe that is not a fair characterization, but from my experience, it certainly has
born out. So, for me, you know, permit delay, those sorts of things, I do not think that should render it infeasible in the absence of a more formal showing that, you know, really diligent efforts have been made in that regard to try to accommodate, try to mitigate, and address whatever environmental issues arise in that permitting process.

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

MR. FLEISCHLI: Right. Well, for me, the question becomes whether or not your obligation is to ensure that these facilities comply with every other law. And I think this actually comes into context of some of the CAISO discussion, as well. This Board's obligation is to make sure that these facilities comply with Best Technology
Available under 316(b). I think there is a balance in there on technical feasibility. My concern is that, all of a sudden, this Board is accepting a burden to essentially waive 316(b) Grid reliability, some of these other issues based on what other entities are saying, and, to me, this Board's mandate is compliance with 316(b), and you cannot abdicate that responsibility to any other agency, whether it is CAISO, or whether it is a local zoning board, or whether it is the Coastal Commission. So I think that is where the balance comes in.

MR. Baggett: Right, but as long as the requirement is the Board shall consider, then that is acceptable.

MR. Fleischli: I think if it is considered, it is okay. The problem is, there is no standard for what that means, and it is sort of the flip of what industry has argued in terms of wanting you guys to just defer to these other agencies. You know, you could just as easily put in here if the local zoning commission in some small town says, "This isn't going to fly," you guys are going to have to defer to that. For me, I would prefer not to have anything in there. So, you know, I understand you guys can exercise your diligence on this, but how does it relate to Best Technology Available? And if you are making a finding that it is not available because it does not comply with the local ordinance, that is not consistent to me with the case
MR. BAGGETT: If they cannot get permits, then -- is it appealable if they cannot get the necessary permits?

MR. FLEISCHLI: Well, the technology itself is available, it exists out there in the world, and that is what that standard is about. It is not saying, "Look, can this one particular facility comply with zoning ordinances in X location?" It says, "Look, what are the best technologies out there within this industrial category," which we would argue is either closed cycle or dry cooling, and then they need to move forward and implement that. I think technical feasibility, I think we are willing to accommodate on that because we understand from an engineering standpoint, there may be some difficulties. My concern is, then, we start accommodating on these other levels and what is the standard of review? What are the Regional Boards going to consider when they look at that [quote unquote] "to their satisfaction" that they have gone through that process? Now, do not get me wrong, I think the environmental community has an obligation, as well, to go in front of the Coastal Commission and some of these other agencies and say, "Look, there are important environmental impacts here from once-through cooling, and we need to address those things," and those agencies need to take that into consideration. But this Board cannot abdicate that
final responsibility, at the end of the day, to make sure the best technology available is incorporated into these permits. And you cannot say, "Okay, just because you...," essentially what I am saying is they need to comply with all laws, including your laws. They should not be able to get out from under your law if some other agency says they are having difficulty in complying with their law.

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

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

MR. BAGGETT: But if they cannot get the permits --

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

MR. FLEISCHLI: No, that --

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

MR. FLEISCHLI: Yes.

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

MR. FLEISCHLI: I think the Court decisions have said that the outcome -- in this context, the two track system -- works. The courts have said that the 90 percent or a margin of error is acceptable in determining compliance. You still must achieve that outcome, but you can measure that compliance with a margin of error, so that is where the 90 percent comes from, and that is not my issue. The problem is, under Track 2, I think we lack the confidence in the environmental community that Track 2 is going to achieve the outcome that Track 1 would achieve, and there are a couple reasons for that, one of which are the comments that Dr. Gold raised with regard to how we are measuring compliance. You know, we have got one year here
and there where essentially you are looking at -- you are comparing impingement and entrainment, and at the same time you are allowing operational controls, and that is another comment that I want to make, where essentially you are allowed to manipulate flow in a way where maybe you are not achieving the same outcomes. But because you are manipulating the flow, you can make it appear as if you are achieving the same outcomes. And that is my concern with Track 2. And I look at Track 2 and I really do not have confidence that Track 2 is as robust or as protective, or will lead to the same outcomes as Track 1. Track 1, there is sort of no question, if you reduce cooling water intake by 93 percent, with the exception of the per kilowatt hour, per megawatt hour, that Joe was talking about, you know, you should see a comparative reduction in how many fish and larvae are killed because it is flow-based, and you know that is going to happen. If you do not take the water in, nothing is going to die. On the second side, they can still take the water in, they could put Gondar* booms up, or they could try, they could put these other wedge wire screens, other sorts of technologies where, through studies and other ways, allow to manipulate a process to demonstrate to their satisfaction that they have achieved the same outcome, which, to me, I do not have confidence, Dr. Gold and the other biologist, Tom Ford, do not have confidence in this section the same way that they do in Track 1.
MS. DODUC: Okay, thank you.

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

MS. DODUC: Thank you.

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

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

The next issue goes to grid reliability, and I have eluded to this a little bit. I do have significant concerns that this agency could abdicate its responsibility to CAISO, or any number of other authorities on this issue, so I would reject the comments of Southern California Edison, in particular, that you just wholesale adopt what CAISO recommends on grid reliability, and I would ask that, for consistency purposes in that regard, that on page 7, Paragraph 3B4, that in that paragraph the paragraph read, "The State Board shall consider the SACCWIS' recommendations
and may direct staff to make modifications if appropriate for the State Water Board's consideration." To me, that sentence does not really make sense if it reads, "The State Water Board shall consider SACCWIS' recommendations and shall direct staff to make modifications, if appropriate."

Just a clarifying point there. And, similarly, on 3C1, I would modify that, if the State Water Board determines -- and I would insert some language to say, "Through amendment to this policy," make sure that it is a formal determination by this Board, that a longer compliance schedule is necessary to maintain reliability. I think that would provide more comfort in that regard. And I would like to say for the record that I think that if the Water Board were to defer without consideration of the other factors that Board Member Doduc has talked about today, without comment from the public, on these grid reliability issues, I do think it would be an arbitrary, capricious, and abusive discretion decision and contrary to law. So I would encourage you not to take that route.

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

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

MR. *[—]BAGGETT*: Right.

MR. FLEISCHLI: You know, I cannot predict -- I am going to be a good lawyer here, Art, I cannot predict what
is going to happen in some of these permits, so I do not know what -- if there is a compliance date in there, depending on whether it is a compliance schedule, or whether it is in the permit itself, whether or not you are going to see compliance from the environmental community about those dates shifting. I think you have seen from us, not only today, but at the prior hearing, that the compliance schedule is not where we are fighting the hardest. You know, I think there are some exceptions, Potrero, and I think the South Bay, those are some areas where it does not make any sense to extend these compliance schedules beyond what these facilities have already agreed to, essentially. You are not seeing a lot of fight there, you probably will see some fight in Los Angeles with Scattergood and some of these other facilities in L.A. where we think they can do faster, so we are going to preserve our legal arguments. But I do not think you can abdicate that responsibility to someone else -- under the Water Code, you cannot.

MR. BAGGETT: No, I was not proposing that. What if they were targets -- the actual hard number would be in the permit, I mean, then you would have something that --

MR. FLEISCHLI: If there are targets, I do not really know what the point of this policy is. I mean, essentially you are saying, "Some day we want you to comply with 316(b)," which I will say has sort of been the approach
for the last 30 years, unfortunately. So, to me, the
targets and actually having something that can hold people
accountable, so they can plan, and so they can know that
some day, unless they demonstrate to your satisfaction that
there is a reason for them to get out from under those
targets, that they are actually going to achieve best
technology available. I mean, I know I have said it before,
this battle literally has been going on since 1972. And
when industry sued in '77 to dismiss the EPA Regs, this
issue just disappeared essentially until 1993, until we, the
Water Keeper organizations, sued EPA to get this thing back
on the agenda. So it has really been to their benefit for
the last 30 years that there has not been consistency across
the country on this issue, and it is really time to have
consistency and to hold them accountable -- most
importantly, so they can plan and start moving in that
direction and know they have to do this some day. They
cannot keep wiggling out of this requirement.

Another issue I wanted to talk about was the
nuclear facilities. To me, regardless of what the review
committee decides on the nuclear issues, they still have to
comply with best technology available and, again, you cannot
abdicate that responsibility. I was a bit troubled by the
comments today by Southern California Edison about the cost
considerations because I looked at this section and I was
concerned because this section now includes cost
considerations, and they were complaining that they were not
getting the benefit of the wholly disproportionate impact
section, and yet now they have a totally open-ended cost
consideration that might be interpreted as a cost benefit,
it might be interpreted as cost-cost, it might be
interpreted as wholly disproportionate benefits. So, to me,
I do not like the costs in there for the exact opposite
reasons of them because, to me, I mean, anybody can say,
"Oh, it is going to cost them $100 million and that just
sounds like a big number to me, so we should not require
this of you." And that is certainly not what we want to see
as this moves forward. In regard to the economic issues,
just the recap on that stuff, we are very happy that you
have taken out this wholly disproportionate test and sort of
put it in other sections, which was your intent. We do not
think there is any valid reason for additional excuses for
delay, based on economics. We do think you have considered
the costs in this policy. We have not seen the supplemental
environmental documents, so we do not know what the benefits
are. We thought last time that there was an inaccurate or
-- sorry -- inadequate characterization of benefits in the
Substitute Environmental Document. If you actually look at
the economics section of the document, it goes on for about
two pages and there is no mention at all of benefits, and I
do think it would be good to see that information in there.
Again, the policy already contemplates economics,
particularly in your adaptation of Track 1 and Track 2, of wet cooling as opposed to dry cooling. To have that wholly disproportionate test does not achieve the stated goals of trying to relieve the burden on the local agencies and provide consistency across the board with this type of policy. And I think, very importantly, as this Board has pointed out in comment letters to EPA, often times cost benefit analysis are not workable because of the uncertainty of benefits, as well as sometimes the under-valuation of benefits, and sometimes the over-valuation of costs. So, with that, I did want to say one final comment, and I hope it is not construed disrespectfully, but it was really directed towards the Southern California Edison folks, where they were essentially, I thought, disrespecting this Board, and essentially telling you that it was your responsibility if there was a grid failure in California if you adopt this plan and that you need to accept responsibility for any grid reliability issues down the road if you choose not to just adopt wholesale what CAISO does. And I would like to suggest that, instead of taking that approach, again, this Water Board needs to exercise its independent authority under the Porter-Cologne Act, as well as the Clean Water Act, and Southern California Edison and those like them need to expect responsibility for providing energy in a reliable manner that complies with all of our environmental laws, not just the ones that they want to comply with. Thank you.
CHAIR HOPPIN: Thank you, Mr. Fleischli. Mark Krausse, would you like to come up, or would you just like to concur with Mr. Fleischli's comments? It is up to you.

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

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

MR. KRAUSSE: No, no, no, this is SMUD territory, we cannot take responsibility for that. While -- well, I am not even sure if the slide deck can be brought up. You can look at the pool thing, otherwise that is just one slide, you saw it at the last presentation, those of you who were here. We do agree with Mr. Fleischli on one point and that is the lack of a standard is problematic in terms of how costs are to be considered. And let me just back up. I will try to focus all my comments, and folks have covered a number of other areas, on the major amendment to take the variance out in this case, and I know that staff has characterized it as not taking it out, but moving it elsewhere. But when you take six, I believe it is, five or six paragraphs of language out, that is fairly detailed, and by the way, we in our last comments wanted to give even greater detail, and I will cover that in a moment, but when you take those five or six paragraphs out and you replace it
with the words, "costs and feasibility", in a section that
deals with the study that the Board is empowered to get the
nuclear plants to do, there is no if/then in that part of
the regulation. Essentially, I guess to try to read it in
the context of the policy overall, it is like every other
plant, the nuclear plants have a deadline for compliance,
and once the study is complete, costs and feasibility will
be considered in whether that compliance schedule sticks.
Is that -- okay. But the point is, that is not the same
thing as a variance process where we come in and prove up,
and PG&E is perfectly willing to prove up, that the costs
are wholly disproportionate. I mean, we have a study that
is posted on your website, so I have heard maybe one or more
members had mentioned that the costs are a little vague. In
terms of the costs of implementation, anybody is welcome to
question those, but we have a study that documents -- oh,
here we are -- it is one of the later slides here that I
will show you -- where we work through it is not just the
cost of putting up cooling towers, there is so much more
involved in any one of these retrofits, but, in particular,
in the nuclear -- retrofits for the nuclear plants. And I
do want to touch on the earlier statement that Dominic made
about the plant in Michigan that had been retrofit, you
really need to cover these things closely, that was
Palisades in Michigan. It was designed for closed cycle wet
cooling. So, of course you can retrofit a plant that has
been designed for that type of cooling system, it was
designed for closed cycle wet cooling; when they began
construction, they decided to switch to once-through
cooling, and during construction they switched back to
closed cycle wet cooling. That is a very different matter
than taking a plant that has been built for OTC and try to
retrofit it to closed cycle wet cooling. I am not here to
tell you it is not possible, we are engineers and the study
that, again, is on your website, they do not say it is not
possible, they raise some questions about feasibility in
some instances, but the biggest issue is cost, and the other
environmental impacts that would visit upon the site, and
the issue that -- again, I do not want to jump around -- but
Mr. Fleischli raised about not, you know, the diligence that
a given plant operator might exercise in trying to get a
permit. We are not really -- we have a letter Duke was
given when they tried to do a repower at Morro Bay, that are
regional board said there are not adequate air credits to be
able to retrofit to closed cycle wet cooling, and we find
that OTC is best available control technology; from an air
perspective, once through cooling is the best cooling system
you can have. So this is not a conjectural matter of would
somebody allow a permit. And while we submit an application
for the permit, but in reality we really do not want to get
it, I think you are going to have other regulators who will
have major problems with the kinds of retrofits, certainly
at the nuclear plants that we are talking about. And I do not know, do I have -- let me just step through this as quickly as I can, and it is which button? The wheel? Great. So completion of the variance is a major step back in our estimation, and I want to acknowledge -- I think maybe part of the thinking in deleting the variance was why go through this administrative workload of making a determination here, when maybe we all acknowledge that certain plants are likely to get an out, to get alternative compliance. I guess I am still troubled by the way that it has been moved elsewhere in the policy. There is no clarity on how that is to be handled. I mean, just as Mr. Fleischli is concerned, we are very concerned that it is wide open. There is no standard of review. And, by the way, let's take us back to at least what I have heard Board member Doduc say in the past, what we are looking for, what the Board I understood was looking for in adopting a policy here, was standardization, that the multiple regional boards would have one method of implementing this particular once-through cooling policy. Now, if that -- and I see in some aspects that might be lifted up to the State Board, that certainly will provide standardization, but a standard for how to consider cost benefit, I think, is very important. Simply putting the words "costs and feasibility" in what is to be considered is --

MS. SPIVEY-WEBER: Okay, tell me how on earth are
you going to figure out -- or how is anyone going to figure
out cost benefit now? Aren't you going to have --

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

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

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

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

MR. KRAUSSE: You have it in there.

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

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

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

MR. KRAUSSE: The cost side or the benefit side?
MS. SPIVEY-WEBER: Maybe even both, but certainly the cost side, because we just simply do not know.

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

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

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

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

MR. KRAUSSE: This, though, we are not projecting how much it might cost then, but with regard to how technology might change, I thought that was the beauty of having the NPDES every five year process play out, was that, if technology does change, you might later be found -- we did not like that aspect of it, we wanted a certain answer, but that was, as I understood from staff, the way this would be implemented was the regional boards would every five years treat this like any other NPDES Permit and make that -- the language has been stricken -- make that determination about cost benefit and whether it is wholly
disproportionate. So if technology changes, I think it used
to accommodate that. I mean, I am open to other approaches,
but I do not think an approach that simply says, "Consider
costs and feasibility," that is the change, can hardly be
described as moving wholly disproportionate. The words
"wholly disproportionate" are no longer in the policy, I
mean, that I have seen it, anyway. So it is just inaccurate
to say it has been moved to another place.

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

MR. BISHOP: That was not my understanding, that
this was a one-time deal to the regional board, it was not
meant to be done every five years. But you know, my
interpretation of moving this, and I am open to hearing
comments and suggestions, was that there was no need to go
through the paperwork of saying that it is going to cost a
lot of money to do this at the nuclear power plants; we know
that, we understand that. But what we need to understand is
that what is feasible and what that costs. I am not saying
-- and that the way this is written, or the way it was
proposed, was that that would then be brought to the Board
for them to be able to consider an independent look at the
cost and the feasibility of different actions. Those
actions are what can be done. And so what you are saying is
-- what you would like, I think, is a variance from having
to comply with the policy. Our variance that we had in the
wholly disproportionate just meant that you might not have
to comply with what is in Phase 1 and Track 1 and Track 2,
but then you would have to go to the regional board and get
the best deal you could get, essentially. You would have to
do everything possible determined by the regional board. It
does not mean you get to just operate the way that you were
operating.

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

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

MR. KRAUSSE: Okay. Let me just jump through this
as quickly as I can. The first issue is that the variance
did, for the first time, acknowledge that the nuclear plants
deserved a different treatment. As Jonathan has pointed
out, that is now moved to the words "costs and feasibility,"
are moved to a section that is about the study -- and purely
about the study, it does not say "once the study is
complete," it appears to be that the Board would treat that,
again, like other data points for other plants in
determining whether the compliance date should change. I
think the important points that we have tried to point out
in the past is that the nuclear plants -- and I thought this
was acknowledged in the previous sort of threshold for
whether or not you were eligible for the variance -- nuclear
plants are not able to repower like the gas plants, they get
only dirtier, so to speak, in a retrofit regime; so, in
other words, they produce less net power that has to be made
up somewhere, and contrary to what a gentleman said, base
load power is not going to be solar or wind. So, you know,
in terms of replacing the nuclear plant production, that is
important. And then, of course, the particulate matter that
is produced, that is all new. It is not like with the gas
plants, there might be some reductions, there may be some
air benefits, but with the nuclear plants, it is different.
So, you know, we maybe intuited why the threshold for
entrance to the variance, but we were willing to prove that
up -- as opposed to, Jonathan, I guess what I am
understanding this to be is, since we know you are not going
-- since we know costs will so heavily outweigh benefits, it
is an exemption. I do not know that we are comfortable
being exempt, we are trying to prove that we are deserving
of a variance, and trying to make our case. So the way I
interpreted the variance, I thought it accommodated changing
technologies, but it does not sound like it did previously.
Now, with regard to -- so we talked about other issues. Let me just jump forward. These were the issues we wanted to see included in the variance and, again, I raise it, even if you are not of a mind to replace the variance, or to reinsert the variance, at least to provide some guidance. So one of the issues is to simply say consider cost, how are you going to consider it? Is it a cost benefit weighing? It does not say that currently. When we thought it was a cost benefit weighing and the measure was wholly disproportionate, we were proposing that some ratio be put in, so we were not looking for a more lax policy, we were looking for a more proscribed policy that would give the Board more certainty so that, really, the administrative burdensomeness would be minimized, so that it is more a checklist of, "Did you meet this particular ratio?" That kind of thing. It is our job, as I understand it, to prove up the costs, and you can question those, I guess that is what we proposed earlier, was you have some peer review of our studies; that would minimize some of the costs and time in producing new studies. And if that peer review felt that they were not adequate, they could recommend fully new studies, but I think that would save some time.

So in terms of other -- monetizing the benefits, get an agreed-to method, another place where we agree with Mr. Geever, that the habitat protection foregone is not ideal, is that it is very ill-defined. If you were going to
use it or any other standard, we would like to see it included in the policy, laid out in the policy, whatever methodology you want to use. We are perfectly comfortable with that. And there are really two issues for that, there is habitat protection foregone, or some other model, and in my estimation, it is both to monetize the benefit, and there may be other things beyond just habitat, there are certainly other benefits that need to be counted, but also to arrive at some appropriate mitigation restoration. What is appropriate to try to right this wrong? So in that regard we also think that some trust fund, something to make sure that money actually goes to some restoration efforts would be helpful, so we had provided most of this in our last comments. We are now making comments on something that is out of the policy, but that is in general of where we were at. Now, this is a rendering of the retrofit and it is not to try to really shock anybody, it is more a matter of -- and, by the way, Steve asked about the plume there -- it is not an issue with Diablo Canyon that there are any roadways or anything to be obstructed by that, that is actually a plume from an operating nuclear plant that they simply took one cell and reproduced it across the cells here, so that is not an artist's rendition, that is a photograph that has been overlaid in there. It is a sizeable retrofit, as I think I mentioned to many of you, it would require an offshore diffuser to discharge the saltier, warmer
discharge; there are just a number of reasons that we think you should be looking at more than cost and feasibility, environmental impacts, other things that were in the old variance language, by the way. It took account of other environmental impacts, including air impacts. And on that point, member Spivey-Weber had mentioned having the Regional Boards involved, this goes back to Mr. Fleischli's comment about, you know, how diligent you are about pursuing your permit. I think that is why the Regional Air Pollution Control Districts need to be involved in the SACCWIS, at least on a plant-by-plant basis, because they are the ones who can tell you if they have a real problem, not if PG&E is not pursuing it with all diligence, but where they will really come out on that, because in some ways you need a pre-determination. I am not sure a policy works to have to have you go through that entire process first. If you could consult with the permitting agency, that would be helpful. And I will just try to move through the rest of this.

These are the environmental impacts we have talked about. It is a 7-10 million ton per year GHG cost just for the down time that we have in having to retrofit. So it is a 17-month down time estimate, it is 12-15 million metric tons of GHG. And as I have done for you in the past, the electric sector reduction under AB 32 is about 34 million metric tons if we were just given a proportionate reduction to our contribution, so it is meaningful. This is huge.
Someone in the audience made a comment when the staff remarked that they had moved the implementation deadline to 2024, reflecting our recaptured license period, someone made the comment that, well, it will be underwater by then anyway. That kind of glib reference misses the fact that the nuclear plants are part of the contribution to keeping it from being underwater, and that if these plants, as I guess Mr. Fleischli was saying, if you cannot get a permit, apparently that means you shut down. If you are not able to get permitted for air or other impacts, compliance is no longer operated. Well, it is different for the nuclear plants, I keep trying to make this point. The nuclear plants should be treated differently.

Salt drift, I think we have covered all the rest of this. And in terms of cost, you will notice that cooling towers are the fifth item down there, it is the site prep, it is so much more of what has to be done at Diablo Canyon, at least. We have a very large site surrounded mostly by Indian burial grounds on the north, and some other issues that cause us to have to work pretty much within our current industrial zoned area, so we would have to tear out most of the buildings that are already there, we would have to level that ground down to plant level so that the condenser, you know, the water pressure basically, is appropriate. Trust me, there is, as I say, a study on your site and I have copies here if anybody is interested in it, some 50 pages
without the appendices, that describes in detail this could be done. I mean, engineers have said it could be done for $4.5 billion. And that number, again, was estimated based on our $800 million steam generator replacement, which was a like-kind replacement where we literally took it apart out of the plant and replaced it with the same part, and that is the kind of money that cost. There is nuclear adder, but none of these things are cheap, for sure.

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

CHAIR HOPPIN: Thank you, Mr. Krausse. Any questions? Michael Jaske?
DR. JASKE: Good afternoon. Michael Jaske representing the California Energy Commission. The energy agencies put a joint letter together and gave that to you on September 14th, we each testified at your September 16th hearing. In particular, the Energy Commission said it supports the imposition of an OTC Policy, we understand this policy to largely mean the retirement of these old fossil power plants. Everyone is fighting against that. The handwriting is on the wall for these plants. The Energy Commission has had a retirement policy for these power plants for several years. The essence of the joint agency proposal that is included in your substitute environmental document as an attachment or an appendix lays out a schedule that we believe is a realistic step through of each of the mechanisms that have to be considered in order to bring infrastructure that will replace these plants on line. The staff has accepted that proposition as the basis for the schedule that is in the actual policy, itself. There are plenty of uncertainties about whether that specific schedule can be realized for each of the 19 some plants and all their many units. Built into the policy is this every two-year update of the schedule, a review of it, and as Mr. Bishop said earlier in response to a question, an expedited hearing process that would have you amend the policy in some regard, maybe two, or three, or four of those plants, or a subset of the units in those plants might have to have their schedule
tweaked a few years. That is the nature of the update that
you should expect. A lot of the changes in the current
draft of the policy are a sort of spelling out on paper
about the implicit discussions, the things that were
implicit earlier, and have been the subject of the task
force that was convened and has been operating for a year
and a half. We all understand that what is going on here is
the eventual replacement of most of these plants. Some of
them will be repowered in place, some of them will be
retired entirely and their capacity will no longer appear in
that location. It will be converted to some other higher
use and the power that the system needs will come from some
other source. It will come from renewables in the state,
out of state, some other gas plant built in some other
location, and there may need to be a transmission line built
that will allow that particular local area to have reliable
service, using more remote plants relative to the load.
That all takes time. I think we have communicated to the
staff that that takes time, they have understood that it
takes time, there are conditions under which our current
expectations about how much that will take may change, it is
already in your policy that we are going to revisit and
update that as needed. So essentially, the industry is
attempting to think of this rule in the manner in which they
are independent stand-alone industrial facilities, they are
not; they are power plants that are connected to an
electricity grid that operates as a system. We are taking a system approach to try to figure out how to replace them in a manner that assures reliability through time and so the whole essence of this policy has to be different than it is in an ordinary industrial facility that might deal with through some other means.

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

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

MS. KELLY: Hi. Thank you for the opportunity to speak today. I am Angela Kelly, program director for California Coast Keeper Alliance, and I have to say we are very encouraged that we are this close to finally adopting a policy for once-through cooling, it has been a long time coming and over 30 years just -- I guess I have not been
working on it for over 30 years, but I have been working on it for quite some time, so we are very excited that we are close. We submitted extensive written comments on September 30th and I know we have not quite received responses back, but I want to focus today on the changes that were made to the policy, but before I do that, there is just one issue that we submitted comments on, that has not been explicitly covered by my colleagues today that I just wanted to mention. That is in regard to Track 2. So currently the phrasing of the policy suggests that a plant, if it were to fall under Track 2, would have to achieve 90 percent reduction that could be achieved under Track 1. So this is 90 percent of 93 percent, which if my math is correct, is around 83 percent reduction. We urge the State Board to require that all plants reduce entrainment and impingement consistent with the Track 1 standard. We think this is consistent with the River Keeper decisions. I would like to read you a quote from one of those decisions. The Second Circuit Court noted -- and this is a direct quote -- "A facility must aim for 100 percent, and if it falls short within 10 percent, that will be acceptable. It may not, however, aim for 90 percent and achieve only an 89 percent reduction in impingement and entrainment." So we look forward to receiving the response back from staff on our written comments.

With regard to the proposed changes, we strongly
support removing the wholly disproportionate exemption.

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

With regard to grid reliability and timelines, the staff has done a really commendable job working with the CEC, CAISO, PUC to develop a timeline for compliance that will not disrupt the grid. And as Mr. Jaske just testified, we agree with Mr. Jaske's testimony and that there is adequate opportunity in this policy as written for continued looking and modification should that become necessary, and
we do not feel that any further modification needs to be put into the policy, and further, we do not believe that any deference to other agencies is necessary, and that it would potentially undermine the State Board's authority to enforce the Clean Water Act.

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

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

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

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

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

MS. SPIVEY-WEBER: I am interested in the legal.

MS. WOOD: You are interested in the 10 percent
that is in Track 2 --

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

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

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

MS. WOOD: From 93.

MR. BISHOP: Let me try to explain. What we are -- the difference is that we are not saying that Track 1 and Track 2 have to do 100 percent reduction in impingement and entrainment, we are saying Track 1, you need to get at least 93 percent reduction because that is what it would take for closed cycle wet cooling. What we have then said is that
Track 2 needs to be comparable to Track 1, and we are using a 10 percent margin of error. That does not mean that they shoot for 83 percent, they are shooting for getting a comparable amount of what they would get if they did the whole plant as cooling towers. Now, you can debate if that is what you want them to do, but that is the way we set it up. It is not that we are shooting for 10 percent lower, we are shooting for the same equivalence, but we are using a margin of error because we are doing different technologies. If you say you have to meet exactly what you would meet in Track 1, they you are setting everyone up for this discussion about, are you in compliance, all the time with that. If you have got this margin of error, then they can shoot for that and if they are in that range, they are okay. I would agree with you that, if they shoot for 83 percent, we are going to be in exactly the same position that we would be if we said it has got to be exactly there, because you have got to have this ability to move around.

MS. DODUC: And I think that is my concern, and this is something that staff and I have gone back and forth on, and I am not still satisfied with the answer, and that is the way Track 2 is phrased right now, regardless of staff's intent, or maybe even the Board's intent, I would bet that most folks would shoot for the 83 percent because that is the minimum that is required in Track 2. And I have tossed back and forth with staff's various idea about making
Track 1 and Track 2 the same level, and obviously the Regional Boards always has enforcement questions when it comes to non-compliance issues, but I am concerned that, by putting language in Track 2 the way it is, we are setting a de facto standard of 83 percent for Track 2.

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

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

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

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

MR. BAGGETT: We could have another hearing.

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

MR. DILLON: I do not mind at all. The discussion has been fascinating and has given me a lot to think about.
My name is Joe Dillon. I am the Water Quality Coordinator for National Marine Fishery Service, Southwest Region. I feel underprepared having sat here all day because our local school districts canceled school last week for budget regions, and so I took the week off and played with the kids. And I did not pick this up, really, until yesterday. But I do want to -- I did note that the Response to Comments documents is not out yet, and I hope it will be out soon. I am curious to see the reasoning that some of our comments in the last round did not appear to be adopted into this round, but I will defer that until I see the Response to Comments document. I want to express that, taking a long-term view, we still support this policy. This policy, though it may have some warts, will lead to increased protection of beneficial uses, most notably, marine resources. And I agree with Ms. Doduc, it is the outcome of the policy that counts, the dance steps in between may be -- there is some room for wiggle.

I want to praise the staff for keeping going on this, I hope you will keep going here as the holidays come up. I want to praise the Board for continuing the touch debate, embracing your regulatory authorities, and frankly, backfilling the gap that we, the federal government, have left in this arena. It is long overdue. So I hope you will not delay this process unduly and get this policy across the goal line.
A couple of things I heard today that I just want to mention. In case there is any confusion, most of these old fossil fuel plants, they are going to repower. It is not that we are talking about making them add a cooling tower to their existing facility, their generation units are 40-50 years old. I have visions of duct tape and bubble gum, I do not know how accurate that is. The majority of the costs that they will incur comes from the repowering when they tear these places down to the studs, they order the brand new generators from GE, or whomever, and then the additional expense of putting in cooling towers or air cooling is a smaller percentage of the overall project. There are examples you could pull up of repower projects off the CEC website to get an idea of what we are talking about. You know, is it 2 percent of total project cost? Ten percent of total project cost? I am sure it is variable based on what you have to do and where you have to do it. The other phrase that I heard several times today, that I do not really agree with, is that these are peaker plants. They are not peaker plants, they are run as peaker plants because they are inefficient. They burn more gas per unit of energy that is put up in the newer units. They could be replaced with real peaker plants, either a small air-cooled facility, or, as we are seeing in some places in the Central Valley, a small unit that is hooked up to a wastewater treatment plant, that only comes on when ISO says we need
some local grid reliability. They were not designed to be peakers. That is all I really have to say. I look forward to the Response to Comments document. I am trying to turn that around real quick for you.

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

MR. BAGGETT: Thank you. You know, I look forward to written comments. I am glad we have allotted some more time, particularly for the plants that have just spent hundreds and hundreds of millions retrofitting, I understand that was staff's intent, to see what language Moss Landing and some of the plants come up with, and look forward to reading that. In terms of the ISO issue, I think it is pretty tight right now. I think if you put the 30-day clock so that we cannot just -- so we shall consider, but we take five years, I mean, I can understand some concern from ISO that we put some time frame -- 30 days is reasonable, come up with the number or we can talk about it later, but some reasonable time that we will take into account their concerns. I still need to go back and understand better how
that relates to the time frame, the overall time frames laid
out in the policy, if that is a one-year extension, or open-
ended. I need to think about that one some more. I need to
look more at some of the other language-related ISO.
Otherwise, I think we are a lot closer than we were a few
months ago to getting something done. We could have more
hearings, but I think at some point we have got to make some
decisions, so I would hope we can get this done in January.
That is all. Thank you.

CHAIR HOPPIN: Thank you.

MR. BAGGETT: Now I am going to go study
desalinization and water quality.

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

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

DR. HERTELL: Thank you, Mr. Chairman, members of
the Board. I just think that Mr. Fleischli mischaracterized
our position, and I cannot leave it on the record the way it
is. We did not suggest a wholesale deferral and incorporation of whatever the agency agencies say. We did suggest that you use a phrase something like "consistent with" to indicate your intention to follow those pieces of advice, but clearly you are taking on that responsibility, and that is not disrespectful. Trying to serve the needs of 14 million people with a safe and reliable supply of electricity is something like an obligation that we feel very very hard about, we take that very very seriously. So I know the Board accepts the comments that we are offering and have made over the last two and a half years in a respectful way. I think the notion that San Onofre, which has spent more than $500 million in in-plant technology protection, mitigation, and offsetting all of the impacts at that site under supervision of your sister regulatory agency, the Coastal Commission, to suggest that that is a disregard for the marine protection that we also feel very strongly, is in itself disrespectful, and I cannot leave that on the record either. So thank you for that opportunity to just clear the air a little bit.

CHAIR HOPPIN: Thank you, Dr. Hertell. Tam.

MS. DODUC: Thank you, Mr. Chair, and thank you to everyone who has participated in this effort. I want to especially do our shout-out and thank Mr. Jaske from the Energy Commission. Sir, I think you made the most mature comments of all the comments I heard today, and that is it
is the Board's intent and it has been reflected in everything the staff has done, to work with the energy agencies, to accomplish both of our goals in a responsible manner, that also serves the public, as well as the marine environment that we are charged with protecting. I have appreciated the opportunity to get to know more of the energy folks during this process and I am fully confident that we will continue to work in partnership to accomplish these goals. So I really appreciate, in particular, your comment, Mr. Jaske. And as someone, obviously as one Board member who has been tremendously engaged in this effort, especially after the former Vice Chair Jerry Secundy abandoned me to go work for CCEEB, I can tell you that I personally have a lot of confidence in the staff, in the partners that we have formed, and I feel that this policy, while it may not be everything I personally would like it to be, is a darn good policy. It sets a darn good foundation for us to go forward and achieve the reductions that we need to achieve, but, again, to do so in partnership with energy agencies and to do so in a responsible manner. That having been said, there are still a couple areas that I will like to suggest, and we will continue the discussion with staff on this area, and I have no idea where the rest of my Board is on this, but here are some of the things that I would like to further explore.

As I said earlier today with respect to the South
Bay plant, you know, we have heard from CAISO, we received a lot of paperwork that, as of right now, or as of I guess what all those documentations were provided, they do not anticipate needing that plant after 2010. Now, obviously that could change, it could change for any of the 19 plants in this policy, so I would like to see that date be moved from 2012 to one year from the effective date of the policy, and that, I think, will make it consistent with some of the other -- well, at least with the Potrero plants, anyway, in terms of compliance dates. With respect to the issue of NPDES Permits, I would like staff to propose some language in the introduction section, perhaps a new "M" or something, that clearly specifies that this policy -- I know it does, but let's be very specific in it -- that this policy addresses intake, and the Regional Boards have the full authority and discretion to take steps that are needed in order to address the discharge component from these power plants. I think there are concerns from some of the communities that somehow our once-through cooling policy will hamper the Regional Water Board's effort with respect to the water quality discharge side of the house, and I want it to be very clearly understood that that is not the case. With respect to Track 2, I am still uncomfortable with that 83 percent gap that we have now created. I am still uncomfortable with potential inconsistencies in determining feasibility. I do not have a specific solution, so I look
forward to any additional comments that may be submitted, and I certainly will also review very carefully the suggestions with regard to generational flow rates and how perhaps that could be a better reflection of achievement for Track 2. With respect to the new language that was added in Section B2, that commits the Board to holding a hearing, when I first saw it, I was opposed to it, you know, I think it is an additional step that does not need to be specified in the policy. I gather from the discussion today that most of my colleagues support that policy. I would like to -- I am not comfortable with the idea of the board suspending a date, but I am willing to leave it open, depending on the information that was presented to us in making that consideration. I will say that I strongly oppose any change that would lead to the automatic suspension of a date based on input, just based on a determination from CAISO, LAPWD, or any other agency. That decision needs to come back before the Board to make. I appreciate that it might need to be on an expedited basis, but let's keep in mind, also, Mr. Geever's comment that public members also need to have the opportunity to provide input. I think one of the concerns I have in terms of additional hearings and additional workshops on this matter is, you know, for a lot of community groups and NGO's, it is not something they can continue to travel and participate in; it is an important issue for them, obviously, they have participated in all the
efforts all these years, so let's make sure that their voice continues to be heard on this issue by not rushing any process. And then, finally, with respect to what has turned out to be a somewhat controversial matter regarding "wholly disproportionate" determination, as I said at the previous hearing, I was very concerned about that section because of the tremendous potential for inconsistent application by the regional boards. I support the elimination of that section and basically for the nuclear plants, bringing that determination back to the State Board, and so I would be strongly opposed to staff reinserting the wholly disproportionate section, and then, finally, I absolutely agree with the Vice Chair's concerns that we need to engage other agencies, besides the energy agency that we have worked with, obviously. The discussion about permits and the ability to get permits is an important one. On the one hand, you know, it is easy to say, "Nah, those permits are not within our purviews, and therefore we should not consider them," but, to be fair, we are asking somebody to do something and they legally cannot do it. That is something that we need to take into account. However, how we engage the AQMDs into this process, I am not sure. I am not suggesting that we make them a member of the committee, the advisory committee, but I do believe that they need to have a role. I myself have made several attempts to contact, for example, the South Coast AQMDs, or at least the
Air Pollution Control Officer, to try to engage them in this issue. And now I am going to move on to, I think, a couple board members. But it is challenging and --

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

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

CHAIR HOPPIN: Thank you. Frances?

MS. SPIVEY-WEBER: I will not add to what Tam just said about the Regional Air Quality agencies and LADWP, I stated what I think we -- I think we should include them in some way, not necessarily as part of the statutory group, I do not think they actually want that, but when issues that they have control over are before that advisory group, they should be invited to attend and encouraged to attend, and if we need to get help from other parts of our family to get them there, I think that would be appropriate, as well. Secondly, it seems to me that we should at least in the
start-up of this policy, we should be -- this group should be meeting at least annually and reporting back at least annually, rather than every two years. Two years seems awfully long to me. And maybe as we go along, and this actually raises a question, as I said to folks earlier, 2020 and 2024 are a long way off, and we are establishing a policy now, and we have incorporated into it ways of adjusting compliance dates, but there may be new technologies that come along, that make a lot of sense. And certainly there could be things that would happen where people cannot get something done, and so there may be some problems, but on the other hand, there could be things that come along that could actually make an enormous amount of sense, and I would hate for this policy to hold back that kind of opportunity -- I do not think it is going to happen in the next five years, so I am not too worried about it -- and so my question is to the attorneys, is future Boards, what options might they have vis a vis this policy if in the future there are significant changes that they would want to re-visit this policy? Do they just start all over from scratch, more or less as we did? I would like to know that.

MR. [85:16]LAUFFER - Ms. Spivey-Weber, in general, I think all of you recognize, when we do a policy like this, it is an organic document. This particular policy is a little bit unique because we have so much built
in so that it could be periodically revisited. But these
are living, breathing documents, and as the suites of
technology change over time, it is an issue that this Board
can revisit. I think the one sensitivity that future Boards
will have is that you went through a fairly detailed, multi-
year process to develop this policy, and as you have heard
today, some of these facilities have already expended
significant amounts of money based on an understanding of
the regulatory scheme. And what your future Board members,
your brother in the future, and sister in the future, will
look at is the fact that there will be commitments based on
that, and that will obviously factor into the kinds of
decisions that they make. However, you know, this is an
issue that has faced the industry and the regulated
community for 30 years, and the environmental community, and
we have not seen a silver bullet come in those 30 years. If
one comes in the next five or six years, the State Water
Resources Control Board, U.S. EPA, they will be able to look
at those issues and look to incorporate that newer
technology. And I think, especially if it is an effective
and a cost-effective technology, I think you will see the
power community willing to embrace it. But the short answer
is, just because you are making a determination when the
Board ultimately adopts -- considers and votes on this
policy as to what the best technology available is, it will
not literally hamstring the boards in the future, however,
it will certainly give the boards and the future board pause because of commitments that will have been made based on this determination.

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

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

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

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

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

MS. SPIVEY-WEBER: Okay, well, that seems -- then
we should look at that, but I do think -- but by 2020, there
should be a phase-out, or these actions should have happened
by 2020. And if DWP wants to come in with some additional
dates or new dates that would be phasing -- I take your
point on phasing, absolutely you cannot have two plants out
at one time -- so tell us what you need, but 2020 really is,
I think, reasonable. Everyone else is doing it, so it seems
like DWP can do it, as well. And thank you, though,
Jonathan, I had missed that point. Definitely, as I think
many of you could see, I really think it is -- we are unable
-- the regional boards are unable, and quite frankly, I
think the industry is unable to do a disproportionate cost analysis now. I just do not see it. So I do not want to put that back in. And on the section about combined cycle, about closing down for bio fouling, I think that is something that should be taken into account. The per kilowatt hour for intake flow makes sense to me, but I would like to hear. And I think we need to make clear that we are not expecting -- well, again, when we look at whether to do the monthly flow or, or and/or, the entrainment and impingement measures, you know, let's look at it in the context of mesh size for screens and make sure that it makes sense, or that we are clear that if we are using this 200 micron for just a dip net, well, then say it because it looks like you are expecting that these would be kept out of the system and they might not be. And they would not be because they cannot be. And I think that is all that I wrote down. And thank you. Really, as I think everyone has said, it has been pretty difficult for lots of people, but I agree with Tam, I think it was very refreshing to hear from the Energy Commission their commitment, and from the CAISO, their commitment, and from the National Marine Fishery Service, their commitment to work with us as we move through the next 10 years of making this policy work, because it is going to be a long haul, this is just the beginning. And I am fairly sure that, over time, it will be -- we will see a lot of change on the coast, and probably very few, if any,
old power plants.

CHAIR HOPPIN: Walt.

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

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

With respect to dates, we received some pretty definitive input. With respect to the South Bay plant, I think that needs to be looked at again, my first reaction was that maybe that is appropriate with respect to all the other issues we got, I am not sure how important it is; with respect to the timeframe we are looking at, which is, as far as I can see, is 1972 to 2020, a year or so in the South Bay plant is something we may need to look at, I am not sure how big an issue it is. With respect to the Department of Water and Power's schedule, I agree with Ms. Spivey-Weber that we need to look at that, and I do not have any fixed conclusion
on it, but I think it does bear a little review. The monitoring with respect to compliance and the possible alternative of using a flow issue struck me, and maybe that is because when I looked at the "habitat protection foregone" provisions without having a biologist's insight into it, I had some doubts and wrote them off to the fact that I am not a biologist, so I was quite interested today in hearing a couple of recommendations that there may be a better way to do that. And I will be interested in looking at that possibility. With respect to Track 2, I am not sure whether I have a big problem with the 90 percent provision because, as I read it, we do not get into Track 2 unless Track 1 is not feasible, which to my mind means that you cannot meet the objectives of Track 1, so there has to be some fallback objective. I do not know if it needs to be 90 percent, but if we cannot meet Track 1, we have to give some definition of what is going to be adequate for Track 2, so I think that is something we need to consider further. And, as I say, I will not try to go through the laundry list of other things, which I largely agree with my colleagues on. Thank you.

CHAIR HOPPIN: Thank you, Walt. I will have to acknowledge the staff that, when I first came on the Board, I really did not believe we would be this far, this soon. And I realize there are those out there that can say we should have been here a long time ago, and shame on you, but
given the magnitude of this task, I certainly commend you. We do have a very aggressive schedule that gets us from today to the proposed Board meeting in January, we will see how all of that works out given holidays, furlough days, and New Years hangovers, but we are going to do everything we can to accommodate that. But I genuinely want to thank you. I, like Walt, am not going to go through a list of all of the things that I agree with my colleagues on because it is late in the day. I would say, as pertains to South Bay, we have heard consistently legitimate concerns about this plant and, when we look at the overall environmental impacts from South Bay, they may not be the greatest player in the game, but I think anything that we can do to accelerate the proposed schedule would help indicate to all concerned the intent of this Board, of not just following rigid schedules, but accomplishing goals as soon as we possibly can. So anything that you can do, staff, in the near future to give us more ammunition on that, I would appreciate. I have a concern, a continuing concern, and I do not expect to have it answered in the next few moments, about consistency. You know, we have an enormous amount of responsibility here as far as, number one, maintaining -- or, maybe number two, maintaining grid reliability, number one, addressing our environmental concerns, on an issue that clearly is a threat to the environment. But how we are consistent in our administration of the policies that are put forward, there
are still elusive parts to be -- Jonathan -- Dominic, I have called you Jonathan four times, now I will get over it here before too long -- you know, you talked about the regional issues on grid and how they are not necessarily statewide issues, I am not convinced in my own mind that they necessarily follow the borders of regional boards, if you will. Certainly when we were dealing with two nuclear facilities, we were dealing with two regional boards that have shown in the past that they are very autonomous and very independent, and I would like to discuss more at length with staff the interaction in the intentions of this policy as they pertain to our authority and our delegation of authority to regional boards. I was pleased, as my colleagues were, that it was clarified, the regional boards' continuing responsibility for discharges. But I still have some concerns. You know, we do not always administer things perfectly, we would like to say we do and we know we do not, but at least if we do things wrong, we do it consistently wrong. That probably was not the most professional statement I have made all day, Mr. Lauffer, you can roll your eyes in the back of your head now. But you all know what I mean, I mean, given the magnitude, particularly of some of the larger plants, I need more comfort than I have right this moment as to regional responsibilities and State Board responsibilities. So I am sure we will be talking before very long. Jonathan, do you need one more pen?
Okay. With that, I would like to thank you all for being here. It is always refreshing to me when people can have differences of opinion and treat each other in a civil way, and you have heard me say that before on other issues, but it makes this job certainly much more bearable, and it makes me feel like I am part of a professional process. So, with that, we will adjourn for the day -- but not before we hear from Mr. Bishop.

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

CHAIR HOPPIN: You want to cancel the holidays?

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

MS. DODUC: I withdraw all my comments. Just kidding.
MR. BISHOP: So I just want to let you know, I think that we need to be able to give staff enough time to review the written comments next week and then make the changes consistent with what we have heard today and with the written comments, and then give the public a reasonable amount of time to review those changes before we have the hearing. And so I think we are really more likely looking at the meeting in February.

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

MS. DODUC: Actually, I do not have the answer. I was going to raise a concern that I will look to probably Michael to help address. My concern is -- I mean, obviously the Board is very careful to have, you know, open processes, to ensure adequate opportunity for public comment, but I do
not want us to get into this do loop of comment, review, revise, comment, review, revise, and so on and so forth. And we try very hard, I know staff does and the Chair, to his credit, does as well, to keep saying that any additional comments are only on the revisions, but as we have seen today, and it was across the board, the power plants, as well as the enviro's, we keep going back to things that -- so, in other words, changes -- the comments are not focused on just the changes that have been made, we are revisiting comments as to why certain things were not changed, and so I do not know if there is a way to make that balance because my concern is you are going to end up with another 400 -- excuse me, let me -- another 400 or so, you know, sets of comments, and then we will have another revision now, and we will have another comment period, so is there a way to help us better manage the commenting process so that we are not revisiting old grounds every time?

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

MS. DODUC: Oh, no thank you.

MR. LAUFFER: I think part of the issue, Ms. Doduc, is what you have identified. I mean, we do -- when we provide the notices, and when we provide the notice for a meeting like this, we do indicate that the comments are to be limited, and we certainly -- both from a staff level in looking at written comments can, with the
notice of appropriately crafted, disregard comments that are beyond the scope of the notice, in other words, beyond just changes. And that is something I would expect that, as we go forward, if in the event that staff, after looking at the issues that you all have identified, and having an opportunity to confer with the Executive Director and the Chief Deputy, and really kind of sit back, look at the comments we have received, look at the Board member comments, because many of you did not say make the change, you said, "I want you to look at this particular issue and come forward with your recommendation." Jon is giving you a very conservative estimate, that given the fact that staff is still working on Response to Comments, and trying to complete the SED to incorporate the changes necessary, that the issues you have raised may require additional changes to the policy. And that is something that Ms. Wood and I will look at once the staff has come up with the recommendations, and we will have to figure out, okay, does this really have to go out for further comment? Or, it could be that staff changes, based on everything you have raised today -- and there are a lot of issues, and that is what causes Jon some concern in terms of how the staff will get through all those, so they can give you and the public meaningful answers to those questions, it could be that the Response to Comments will address those, and there will be no changes. And if there are not really any additional changes to the
policy based on what staff determines is necessary, based on
today's Board meeting and workshop, and the Board members'
comments, it could be that we will not even need to take
additional comments. We will still try to get it out early
so that everyone can see what the final policy that is being
proposed by staff looks like, but it could be that there are
not a lot of changes requiring any comments. If there are
changes requiring comments, I think we will take what you
have said to heart, and really try to tighten up in the
notice to make it clear, we are only interested in receiving
and will only consider the comments that go to the changes
that have been addressed. I think, in all fairness to the
commenters, a lot of these issues interlock, though, and it
is sometimes tough to identify where a new issue begins and
ends.

MS. DODUC: Well, I have one other question.

Several commenters today asked about the Response to
Comments and I am of conflicted opinions regarding that. On
the one hand, I believe it is only fair when people submit
comments that they get a response in terms of, you know,
what was incorporated, what was not, and why. And I
appreciate that they want to see that, but on the other
hand, my concern is then we will get comments on the
responses to comment and, again, we will get into this
infinite do loop, and I do not know, I raise it as an issue.
I do not have a solution, but I think we have heard from
enough commenters today that they are waiting for the
Response to Comments, and I do not want them to go away
thinking that they are going to get a Response to Comments
next week, and then have the opportunity to comment on that,
as well. So what is staff's plan with respect to the
Response to Comments?

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

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

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

MR. LAUFFER: Yeah, and just as a matter
of law, I mean, Ms. Wood is dead on with that. I mean, this
is not designed to be a, "Okay, here is another bite at the
apple because we do not like --

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

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

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

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

(Whereupon, at __:__ p.m., the hearing was adjourned.)
CERTIFICATE OF REPORTER

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