

MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

HEARING ROOM A
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 4, 2001

10:00 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

CONTRACT NO. 150-99-002

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSIONERS

Michal Moore, Acting Chairperson
William Keese, Chairperson(via teleconference)
Robert Laurie
Robert Pernell
Arthur Rosenfeld

STAFF

Steve Larson, Executive Director
Bill Chamberlain, Chief Counsel
Bob Eller
Sandra Fromm
Susan Gefter
Sue Kately
Kevin Kennedy
David Mundstock, Senior Staff Counsel
Bill Pennington
Tony Rygg
John Sugar
Ron Wetherall

PUBLIC ADVISER

Marija Krapceovich

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Boyd

Michael Carrol

Sheryl Freeman

Keith Golden

John Jones

James Mullen

Sam Wehn

Jeff Welton

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

INDEX

	PAGE
Opening remarks by Acting Chairperson Moore	1
Pledge of Allegiance	1
Executive Session	1
Item 1 Consent Calendar	2
d. City of Davis	3
Item 2 Lawrence Berkeley National Lab	102
Item 3 Commission Privacy Policy	103
Item 4 Larkspur Energy Facility	10
Item 5 Indigo Energy Facility	85
Item 6 Pastoria Energy Facility 250 MW Expansion	105
Item 7 Pastoria Energy Facility 250 MW Expansion	108
Item 8 Net System Power Report	109
Item 9 AB 970 Peak Load Reduction Program Guidelines	112
Item 10 AB 970 Building Energy Standards Environmental Documents	115
Item 11 Possible Adoption of 15-Day Language for the AB 970 Building Energy Efficiency Standards	117
Item 12 Minutes	120
Item 13 Energy Commission Committee and Oversight	120
Item 14 Chief Counsel's Report	125
Item 15 Executive Director's Report	125
Item 16 Public Adviser's Report	126
Item 17 Public Comment	127
Adjournment	128
Reporter's Certificate	129

PROCEEDINGS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMISSIONER MOORE: We'll convene the Wednesday, April 4th, 2001 meeting of the California Energy

Commission. We're going to stand for the Pledge of Allegiance, which will be led by Commissioner Rosenfeld
(Thereupon the Pledge of Allegiance was recited in unison.)

COMMISSIONER MOORE: Well, as most of you may have noticed I am not Commissioner Keese, who is out of town on State business today, but we'll be joining us for part of our proceedings by phone. And in what's probably come to be expected from my office, we're going to change the schedule a little bit here.

And I'll tell you that before we pick up the listed items on the agenda, we are going to immediately adjourn to an executive session to discuss a potential legal matter that will affect the Commission. And when we reconvene, we'll take up the consent calendar and then we will move the items on the so-called peaker plants up to follow immediately after the consent calendar.

So having said that, the Board will recess to executive session in the Executive Officer's office on the third floor.

We'll be back. Thank you.

(Thereupon the Commission adjourned into

1 executive session.)

2 COMMISSIONER MOORE: Here we go.

3 CHAIRPERSON KEESE: Bill Keese here.

4 COMMISSIONER MOORE: We're back in session. The
5 California Energy Commission has met in executive session
6 to discuss a legal matter, a matter of potential impending
7 legal action. And we have made no decisions during that
8 executive session and we are now back in active session.

9 We'll take up our consent calendar. And I should
10 note that Item F on consent has been pulled to an
11 indefinite day in the future, and that I am going to pull
12 Item D and deal with it separately.

13 And so I'll entertain a motion on the remainder
14 of the items on consent.

15 COMMISSIONER PERNELL: Mr. Chairman, I would move
16 the consent calendar with the deletions mentioned.

17 COMMISSIONER ROSENFELD: Second.

18 CHAIRPERSON KEESE: Seconded by Commissioner
19 Rosenfeld.

20 All those in favor signify saying aye?

21 (Ayes.)

22 COMMISSIONER MOORE: Those opposed?

23 Motion carries 3 to 0.

24 CHAIRPERSON KEESE: Aye.

25 COMMISSIONER MOORE: I'm sorry 4 to 0. I should

1 point out Commissioner Keese is listening from
2 Philadelphia and is going to be voting on line under our
3 new system that we pioneered only a couple of weeks ago,
4 which allows him to be present virtually and to vote
5 virtually as well.

6 We pulled Item D, which is the City of Davis.
7 Possible approval of Contract 500-00-007 agreement with
8 the City of Davis to transfer and sell the PVUSA facility,
9 City of Davis, assign the original transfer agreement
10 between PG&E and the Energy Commission to the City of
11 Davis, to terminate the existing lease between the Energy
12 Commission and the City of Davis for that land occupied by
13 the facility, to transfer the decommissioning
14 responsibilities to the City of Davis, along with the
15 funds that remain in the PVUSA decommissioning account and
16 to authorize the Executive Director to execute the same on
17 behalf of the Energy Commission.

18 This has, for all of you who are involved, been a
19 long struggle. And I'll say struggle and an opportunity
20 at the same time. And I want to thank the staff for
21 making this possible to emerge at this point. I know that
22 there are representatives from the City of Davis who might
23 like to say something. So before we do that, let me just
24 ask if there is any staff comment on this on behalf of the
25 Executive Director or the Executive Director himself.

1 MS. KATELY: Commissioner Moore, Commissioners,
2 I'm Sue Kately of the California Energy Commission,
3 understudy to Dr. Art Soinski off of your staff. He is
4 not able to be here today, but I am sure that he would
5 like to urge you to have this item approved as well as I
6 would like to urge you to have this item approved. That
7 you're right it has been a long struggle and a challenging
8 assignment.

9 A lot of people have worked on it. If you
10 wouldn't mind, could I take a moment --

11 COMMISSIONER MOORE: I actually have a list
12 provided. And I want to acknowledge them, but I want to
13 wait till after the City of Davis has had a chance to
14 comment.

15 MS. KATELY: Surely. If I can answer any
16 questions.

17 COMMISSIONER MOORE: Good. Someone from the City
18 of Davis, please.

19 EXECUTIVE DIRECTOR LARSON: Mr. Chairman, if I
20 might, before you do that. I would also like to -- when I
21 first came to the Energy Commission about a year ago, this
22 was actually one of the first issues that came up. And it
23 was a very difficult situation. I want to really
24 congratulate everybody who has performed here,
25 particularly Sue and Art, who sort of master-minded it at

1 the staff level, and did really a remarkable job of
2 bringing diverse groups together, trying to negotiate out
3 complicated contractual difficulties that existed at the
4 time.

5 And we were quite prepared to go the distance
6 here. Still it was difficult, and I think everyone
7 involved deserves a great deal of credit, not the least of
8 which is the City of Davis, which under Chuck really
9 brought responsibilities and the best interests of their
10 community to make this happen.

11 COMMISSIONER MOORE: Thank you, Mr. Executive
12 Director.

13 Yes, ma'am.

14 MS. FREEMAN: Good morning. Thank you, Mr.
15 Larson and thank you members of the Commission. My name
16 is Sheryl Freeman. I'm on the City Council in the City of
17 Davis and very, very happy to be here today. I just want
18 to note as we move into this next phase of this project,
19 gratitude for the 15 years of excellent research data that
20 your support has helped produce at that site.

21 That has been significant to the viability of the
22 photovoltaic industry. And I think it's a timely point at
23 which we evolve the site into the next phase of
24 production, electrical production taking that energy
25 information and helping it make the industry contribute to

1 the current energy crisis in a positive way. And we're
2 just thrilled to be a part of it.

3 There really couldn't be a better time for
4 helping people understand the significant role that
5 photovoltaic energy can play among the many renewable
6 energy options in the state. And we hope to continue to
7 help you get that word out and make it successful.

8 I, too, want to particularly thank your role in
9 this, in seeing the clear public policy benefits and
10 making this happen. I want to thank the staff who just
11 can't be thanked often enough, honestly. We put a lot of
12 hours on the City side. And I know that your staff put at
13 least twice as many hours on their side. I can only begin
14 to imagine, you're Executive Director, Mr. Larson, Sue
15 Kately, Art Soinski, Michael Heintz, all of the people who
16 they work with that I know we created a lot of work for
17 that I didn't get to meet and we do appreciate that.

18 We think of this, in addition to being a
19 significant contribution to good energy policy in the
20 state, we view it as a benefit for the city, too. It's an
21 investment in our economic development plan, which
22 includes the promotion of green technology, green energy,
23 green services. And we hope to create a niche market and
24 help make those services stronger in this region.

25 I'm just here to say thanks and answer any

1 questions you might have and look forward to the
2 implementation.

3 COMMISSIONER MOORE: Stay with us for just a
4 second. There were a couple of names that you didn't
5 mention that I'd like to add to the list, Jamie Patterson
6 and Marwan Masri from our Renewables' staff. You
7 mentioned Mike Heintz, Gabe Herrera, our staff attorney
8 who works with the Renewables Programs, Cheryl Raedel,
9 Sandra Bennett -- Barnett, excuse me, Mark Huchison, Randy
10 Roesser, John Butler, Roy Sanders, Steve, of course, and
11 Nancy Deller, the division chief who oversaw this.

12 And I'd just say that in the end, of course, one
13 of the toughest things that they had to deal with is they
14 had to deal with me. And so I acknowledge the tremendous
15 effort that it took to overcome some of the difficulties
16 that I had with the process along the way and for hanging
17 in there and remaining good soldiers and good souls and
18 keeping your sense of humor even when you had to come up
19 to my office. That goes a long ways.

20 And so this --

21 COMMISSIONER PERNELL: That does take a lot.

22 (Laughter.)

23 COMMISSIONER MOORE: So let me see if I can get a
24 motion on the floor to approve this item.

25 COMMISSIONER ROSENFELD: I move, I guess it's

1 just called Item D.

2 CHAIRPERSON KEESE: Item D, the transfer of
3 ownership.

4 COMMISSIONER MOORE: Is there a second?

5 COMMISSIONER PERNELL: I would second it, Mr.
6 Chairman. And just a brief comment if I may?

7 COMMISSIONER MOORE: Absolutely.

8 COMMISSIONER PERNELL: I was a little concerned
9 when you pulled this off, so I thought we wouldn't have an
10 opportunity to vote on it today. I am very, very
11 impressed with all of the work on all of the various
12 agencies. And this is a great project given our challenge
13 we have before us. And I am very happy to second the
14 motion.

15 COMMISSIONER MOORE: Other comments on the
16 motion?

17 All those in favor signify by saying aye?

18 (Ayes.)

19 COMMISSIONER MOORE: Those opposed. That motion
20 carries 4 to 0. Ms. Freeman, although they never thought
21 they would ever let me handle these, I have a present for
22 you.

23 Here are the keys.

24 (Laughter.)

25 MS. FREEMAN: Here's the dollar.

1 (Laughter.)

2 (Applause.)

3 COMMISSIONER MOORE: Like anything else, in order
4 to avoid a Prop 9 disclosure, I'm going to have to turn
5 this over to the Executive Officer and my Chief Counsel.

6 (Laughter.)

7 CHIEF COUNSEL CHAMBERLAIN: I was just going to
8 say you are now a fiduciary.

9 COMMISSIONER MOORE: Just so I won't be reporting
10 it on my forms. Thank you, Ms. Kately.

11 MS. KATELY: Thank you.

12 COMMISSIONER MOORE: We appreciate it very much.

13 With that aside, we'll turn now to the items that
14 are concerning us today regarding the peaker facilities,
15 those are Items 4 and 5. Let me make a couple of
16 introductory remarks and tell you how we're going to
17 conduct these hearings.

18 Under the Governor's Executive Order, we have
19 been conducting extraordinary hearings under extraordinary
20 circumstances to look at some emergency additions to our
21 electrical supply system within the State.

22 Commissioners have been assigned to these cases
23 under circumstances that we have not had historical
24 precedent for. And as all of you know, who have been
25 reviewing this, a single Commissioner is actually sitting

1 on any of these cases. And following the 21-day calendar
2 period that's mandated in the Executive Order, a report is
3 issued recommending either approval or denial and a set of
4 conditions, under which if there is an approval an
5 operating certificate would be granted.

6 So we have before us today the first two of these
7 proposed decisions along with a set of proposed operating
8 conditions that we will debate and take cognizance of in
9 our deliberations today.

10 Commissioner Keese will be listening in. And if
11 there's any change in your status, Commissioner, then
12 you'll let us know prior to leaving the line, so we'll
13 know whether or not you're going to vote on these items.

14 CHAIRPERSON KEESE: Yes.

15 COMMISSIONER MOORE: All right. With that, I'm
16 going to take up Item 4, which is the Larkspur Energy
17 Facility and ask for a staff report on that. That will
18 introduce this and then I'm going to turn to the Presiding
19 Member and ask for comments.

20 So, Ms. Gefter, you have taken the stand.

21 MS. GEFTER: Yes, I am the Hearing Officer.

22 COMMISSIONER MOORE: You are Susan Gefter --

23 MS. GEFTER: I am Susan Gefter a hearing officer
24 who assisted the Commissioner and the assigned ALJ on the
25 Larkspur Energy Facility. This is the first emergency

1 case that we heard under the Emergency siting process.

2 COMMISSIONER MOORE: And the assigned
3 Administrative Law Judge or ALJ is?

4 MS. GEFTER: And the assigned Administrative Law
5 Judge is Joyce Warton, who is here today to assist the
6 Commission if you have any questions about the record.
7 And Joyce is sitting over here. And we'll ask her to come
8 forward. The applicant's representatives are also here
9 and we'll ask them to introduce themselves. And also
10 staff is here to answer any questions that the
11 commissioners have as well to describe some errata that
12 the staff has proposed.

13 The Larkspur facility is located in San Diego,
14 actually in the Chula Vista area. And we're going to ask
15 the applicant to make a presentation to the Commissioners
16 describing the facility.

17 COMMISSIONER MOORE: Why don't we ask them --
18 let's get everyone identified who participated in this,
19 and then we can proceed with that.

20 MS. GEFTER: And also after everyone is
21 identified, I want to give you a little procedural
22 background as well.

23 COMMISSIONER MOORE: All right, fine.
24 Applicant.

25 MR. JONES: My name is John Jones. I'm the

1 Project Manager for the Wildflower Energy Project.

2 CHAIRPERSON KEESE: And can you identify who
3 Wildflower is, please.

4 MR. JONES: Wildlife is wholly owned by InterGen
5 North America.

6 COMMISSIONER MOORE: And InterGen is based in?

7 MR. JONES: Is a Boston based company. Our North
8 American operations are based in Houston.

9 CHAIRPERSON KEESE: Thank you.

10 Yes, sir.

11 MR. CARROLL: And my name is Mike Carroll, I'm
12 with Latham and Watkins on behalf of the applicant.

13 COMMISSIONER MOORE: And you're the attorney for
14 the applicant?

15 MR. CARROLL: Yes, I am.

16 COMMISSIONER MOORE: Staff.

17 MR. ELLER: Bob Eller, Commissioner Project
18 Manager.

19 COMMISSIONER MOORE: Other staff, perhaps the
20 Administrative Law Judge would like to introduce herself.

21 MS. WARTON: Joyce Warton.

22 COMMISSIONER MOORE: I think he can hear you.

23 MS. GEFTER: The application on this emergency
24 case was data adequate on March 16th; is that correct?

25 MR. JONES: Yes.

1 MS. GEFTER: And we conducted a hearing on March
2 22nd. And Commissioner Pernell was presiding. And the
3 proposed decision was issued by Commissioner Pernell
4 yesterday on April 3rd. And it went up on the web site
5 and was distributed to the interested parties. And I hope
6 that all the Commissioners have copies of the decision
7 before them.

8 COMMISSIONER MOORE: We do.

9 MS. GEFTER: And so at this point, it makes sense
10 to ask applicant to go forward with their presentation to
11 describe the project to you.

12 COMMISSIONER MOORE: Good.

13 MS. GEFTER: And also in the proposed decision,
14 the Commissioner recommends that the Commission adopt the
15 decision and grant the certification.

16 COMMISSIONER MOORE: All right.

17 Are slides a part of this presentation as well?

18 MR. JONES: I have a few things that we'll be
19 going through. There was a thank you letter to you.

20 COMMISSIONER PERNELL: Thank you.

21 MR. JONES: And we have boards that we're going
22 to have -- that I've pointed out that way that are in the
23 same order as these slides. So I'll reference them.

24 COMMISSIONER MOORE: You have the floor.

25 MR. JONES: Thank you.

1 Again, my name is John Jones. I'm with InterGen
2 North America. And we are very pleased to be here today
3 to go through the process and complete the process of the
4 21-day siting application process.

5 We've had great cooperation from your staff. And
6 it's been a large effort on both their part and on ours to
7 help address the emergency that California is facing and
8 we were very happy to be the first and second docket
9 numbers under this order. And we're extremely pleased to
10 be the first and second, hopefully, to be approved under
11 the same deal.

12 First, I'll talk about the Larkspur Energy
13 Facility. It's sited in the southern part of San Diego.
14 It's in the City of San Diego on Otay Mesa Road. And it's
15 in an area that's predominantly farm land though it is
16 zoned industrial. We have very few neighbors, and it's
17 an ideal site for a power project, in that it's adjacent
18 to the San Diego Gas and Electric border substation and
19 just a few feet away from an SDG&E gas line both of which
20 are the places where we're interconnecting the facility.

21 Additionally, the water line, which is going to
22 supply the small amount of water that we need for the
23 project, is under the street right in front of the
24 project. So as far as a community disturbance standpoint,
25 we found it was a very, very good site for interconnecting

1 these two facilities.

2 Next, you see a simulated photo of the project.
3 You can see that it's predominantly agricultural being
4 zoned industrial site. The projects are very low in
5 stacks. The Larkspur Energy Facility has 60 foot stacks,
6 which is comparable to the transmission poles that are in
7 the area that are, I believe, 57 feet. And, again, it's
8 with the landscaping around the project, we expect it not
9 to be a visual nuisance or a noise issue at all.

10 To describe the project, it's two LM6000s, which
11 is an air derivative combustion turbine. We also have
12 fitted SCR on the projects to ensure that we are in full
13 compliance with California's environmental standards.

14 In discussing the environmental impact, this
15 project is meeting 5 ppm of NOx, which is backed for a
16 peaking project or for a simple cycle project. In
17 comparing that to some local peaking projects, the
18 Cabrillo peakers, which were sold by San Diego Gas and
19 Electric to NRG a couple of years ago, the emissions of
20 these projects is roughly 11 percent of the emissions of
21 the Cabrillo peakers.

22 You also see there the comparison between this
23 project and the average of California generation. So even
24 though this is a simple cycle plant operating generally as
25 a peaker, though, for more hours during this energy

1 crisis, these projects are much cleaner than the average
2 fossil fueled power plant in California.

3 Also, regarding water consumption, water is used
4 in this project for inlet chillers which cools the inlet
5 air to make the project more efficient as well as for
6 other plant needs. The water usage is very low. It is
7 about 25 percent of the water usage of a typical golf
8 course.

9 COMMISSIONER MOORE: Let me stop you for a
10 second. Your asterisk in small type says, "Assumes power
11 plant running on 50 percent load factor." What are the
12 numbers of hours that you're planning to run in year one?

13 MR. JONES: We expect to run on the order of 60
14 percent of the ours in the year. We're permitting for
15 more than that to the extent that there's continued
16 shortages or other need for the generation to run more
17 than that.

18 COMMISSIONER MOORE: So what capacity factor are
19 you expecting as far as the permit goes?

20 MR. JONES: I believe we are permitting at
21 Larkspur 85 percent.

22 COMMISSIONER MOORE: So 85 percent capacity. And
23 so that would make the green line just a little taller?

24 MR. JONES: Yes, sir. That would make it 35 or
25 40 percent of a golf course.

1 COMMISSIONER MOORE: How many gallons per year,
2 how many acre feet per year would that be?

3 MR. JONES: This uses 320 gallons per minute. At
4 the permitted level, this would be -- I'm sorry, I'm
5 having to do the calculations in my head, but roughly --

6 COMMISSIONER MOORE: You can come back and give
7 me an answer on that.

8 MR. JONES: I'll come back to you with an answer
9 on that. It should be on the order of 450 acre feet a
10 year at the permitted level. The expected level is much
11 lower than that.

12 COMMISSIONER MOORE: Okay.

13 MR. JONES: And that concludes the presentation
14 of the project.

15 COMMISSIONER MOORE: Let me ask you a couple of
16 other questions before I turn to the Presiding Member for
17 a second. Just to clarify, in the Presiding Member's
18 decision on page two it says, "The facility will supply
19 capacity and energy to CalISO pursuant to an SRA executed
20 with ISO on 28, November 2000." It requires you to be on
21 line by the summer. And then you're attempting to
22 renegotiate. Can you tell us the terms of the
23 renegotiation with the DWR proposed terms?

24 MR. JONES: Yes, those -- that agreement is still
25 under negotiation. We have reached final terms through

1 our affiliate, who's negotiating with DWR. There are
2 final terms and we are expecting to have an approved
3 letter of intent within the next couple of days.

4 COMMISSIONER MOORE: Can you tell us the term
5 that you intended to get under --

6 MR. JONES: We expect the term to be on the order
7 of ten years or longer.

8 COMMISSIONER MOORE: And would that contract, if
9 it were consummated, overtake or replace the contract with
10 the CalISO?

11 MR. JONES: It would replace the California ISO
12 contract, yes.

13 COMMISSIONER MOORE: And they're amenable to
14 that, they're a signatory to all this, a cosigner?

15 MR. JONES: Yes. The CalISO requested that the
16 DWR help them in that the, given their current credit
17 issues, it was not likely that many projects would be
18 built selling to California ISO due to the credit
19 concerns.

20 COMMISSIONER MOORE: In the CalISO contract was
21 there a limit on, other than the -- up to 500 hours,
22 that's what they expected to obtain, I understand, from
23 this document. Was there a cap on it as well?

24 MR. JONES: In the CalISO contracts there was no
25 cap on the hours that the project would run. The contract

1 was for 500 hours of the project being on call or that
2 CalISO could call it to turn on if the plant was not
3 already on, but there was no cap on the number of run
4 hours in the ISO contract.

5 COMMISSIONER MOORE: That's a signed contract and
6 that exists?

7 MR. JONES: Yes, it is. That is an executed
8 agreement.

9 COMMISSIONER MOORE: So I'm going to have to
10 assume from the fact that it was signed that the term was
11 acceptable to you that that three-year -- it was -- that
12 that three-year contract was acceptable to bring something
13 on for 500 hours a year, and that whatever -- for whatever
14 decision that you went through, it was economically
15 feasible to sign that contract?

16 MR. JONES: Yes, but the basis of that probably
17 bears a little more discussion, in the sense that the
18 CalISO contract is for ancillary services, if you will.
19 It's for a ten-minute reserve. And so if a generator had
20 that contract, one would expect to be paid under that
21 contract for ancillary services for three years additional
22 to whatever they would receive from the market during the
23 life of the project. We did not expect for the projects
24 that would be filling that contract to be permitted for
25 less than the life of the project.

1 COMMISSIONER MOORE: And so that means that at
2 least potentially that those rates were extraordinarily
3 high, which of course we've seen for ancillary services or
4 some of the outer market calls. And that was the reason
5 that it made economic sense to sign a contract for such a
6 short number of hours?

7 MR. JONES: It was not necessarily out of market.
8 I think that if you were to calculate the price that the
9 Cal --

10 COMMISSIONER MOORE: Well, I wasn't going to say
11 that you were going to sell out of market. I'm just
12 saying that some of the rates approximated the activities
13 that were taking place in the outer market sales?

14 MR. JONES: I'd have to go back and look at the
15 prices, but if I recall correctly, first of all, the
16 contracts that we had were among the least expensive for
17 California of the ISO contracts.

18 Additionally, the prices for all generators under
19 those contracts, I believe the ancillary service price was
20 below what had been seen in the market, which was why the
21 ISO was entering into that.

22 COMMISSIONER MOORE: Okay. All I was really
23 trying to establish was that whatever that price is, and
24 we're not privy to some of the negotiated prices of the
25 ISO nor are we unfortunately privy to any of the

1 negotiated prices for DWR, which is a different matter,
2 but I'm going to assume that those were attractive enough
3 at that rate to allow you to sign the contract. That's
4 all I was trying to establish.

5 MR. JONES: Yes, they were. My understanding of
6 the intent of the ISO in bidding for those contracts was
7 to encourage generators to spend more money to accelerate
8 their development process in order to have generation on
9 line for the summer.

10 COMMISSIONER MOORE: Is there a reason why these
11 contracts couldn't exist coterminously, could you not have
12 a continuation of the contract with the ISO for ancillary
13 services and a contract for base load as well?

14 MR. JONES: I don't see why not. It would depend
15 on the final terms of the DWR contract.

16 COMMISSIONER MOORE: So it's not necessarily that
17 this new contract, should it be approved with DWR, would
18 have to replace the contract with the ISO?

19 MR. JONES: Yes, but it's our expectation that it
20 will.

21 COMMISSIONER MOORE: Thank you. I appreciate
22 your comments. And I'm going to ask for comments from the
23 Presiding Member and then we'll open it up and see if
24 there are public questions and other questions from the
25 Commissioners.

1 Thank you. You're going to stay with us though.

2 COMMISSIONER PERNELL: Thank you, Mr. Chairman.

3 I would make some very brief comments but reserve my time
4 for the motion and any follow-up comments that I deem
5 necessary after all of the witnesses and staff have made
6 their comments.

7 Let me just start by saying that I was the
8 Presiding Member. And staff -- and I especially want to
9 thank our ALJ who came into this with the professionalism
10 that our staff has. I know that she was new to the
11 process.

12 One of the things that I was very happy with is
13 that the applicant was very amenable to some of the
14 suggestions by the community, by representatives of public
15 agencies and I thought the process went well.

16 But, again, I want to reserve my statements and
17 comments for the end during the motion. So with that, Mr.
18 Chairman, I think we can proceed, perhaps, with staff.

19 COMMISSIONER MOORE: Are there -- can you hold on
20 just one minute, commissioner Laurie. And Commissioner
21 Keese, if you have questions, sound up so we'll get them
22 on.

23 Commissioner Laurie.

24 COMMISSIONER LAURIE: Mr. Chairman, I want to
25 make sure I have an understanding regarding the

1 jurisdiction under which we are hearing this application.
2 And this question can go to Ms. Gefter, Mr. Eller, Mr.
3 Chamberlain or Commissioner Pernell.

4 The process being utilized for these series of
5 applications is an extraordinary process created by the
6 Commission to handle a certain specified and defined set
7 of applications. And I want to make sure that I have an
8 understanding of those kinds of projects that we are to
9 examine under this extraordinary process.

10 We are -- and this is a question, are we
11 operating under the 21-day process pursuant to the
12 Governor's Executive Orders 2601 and 2801?

13 MS. GEFTER: Yes.

14 COMMISSIONER MOORE: Let me ask, Mr. Chamberlain,
15 to answer that on the record?

16 CHIEF COUNSEL CHAMBERLAIN: Yes, we're operating
17 under those Executive Orders and also Public Resources
18 Code Section 25705, which specifically authorizes the
19 Commission to license facilities under such terms and
20 conditions as specified by the Commission to protect the
21 public interest when there are certain specific emergency
22 findings that are made by the Governor or the Legislature,
23 which the Governor's Executive Orders do make those
24 findings.

25 COMMISSIONER LAURIE: Okay, 2601 and 2801 direct

1 the Commission to waive its standard procedural rules for
2 peaking and renewable projects that are to be on line no
3 later than September 30th, is that a correct statement?

4 CHIEF COUNSEL CHAMBERLAIN: I think it might be a
5 more correct statement to say that they authorize the
6 Commission to do that, yes.

7 COMMISSIONER LAURIE: And the Commission has
8 proceeded under that authorization; is that correct?

9 CHIEF COUNSEL CHAMBERLAIN: Yes.

10 COMMISSIONER LAURIE: First of all, can you point
11 me to the condition that requires this project to be on
12 line on September 30th, is there a specifically numbered
13 condition that says that?

14 MS. GEFTER: There are findings and conclusions
15 in the proposed decision which indicate that the --

16 COMMISSIONER MOORE: He's asking if there's a
17 specific condition that sets that out and I don't believe
18 there is.

19 MS. GEFTER: That's accurate. That's right,
20 there's a finding, but there is not a condition in the
21 staff assessment or in the proposed decision.

22 COMMISSIONER LAURIE: So what is the remedy if
23 the project is not on line by September 30th?

24 CHIEF COUNSEL CHAMBERLAIN: Well, the Commission,
25 theoretically, could indicate that the applicant is out of

1 compliance with the license.

2 COMMISSIONER LAURIE: But there's no condition
3 saying that they have to be on line, so what would they be
4 out of compliance with?

5 CHIEF COUNSEL CHAMBERLAIN: Well, there's a
6 finding or a conclusion that they will be able to be on line
7 by that time.

8 COMMISSIONER MOORE: Bill, if I can interrupt for
9 one second and say, as I opened these comments, I was
10 saying that this is an extraordinary process. We don't
11 have a precedent for it. And, frankly, one of the reasons
12 that this is before us today, is because Ms. Geftter got
13 into the middle of it and helped organize the materials.

14 So, in a sense, we have to view this as a dynamic
15 process, where we're kind of inventing things as we go
16 along. I don't want everyone to put too much of a spin on
17 that. But it seems to me that Commissioner Laurie is
18 bringing up the point that, as a practical matter, as in
19 typed words on a piece of paper, we don't have a set of
20 conditions that we would normally have when we issue a
21 decision. And that probably something that ought to come
22 out of any decision that we do today, if it's positive,
23 would be a set of conditions that implements what the
24 intentions or the policies of the Commission actually are.
25 So it seems to me what we've done is identify a gap, a

1 procedural gap.

2 CHIEF COUNSEL CHAMBERLAIN: Could I add to my
3 statement. I believe what the Executive Order calls for
4 is a good faith effort on the part of the applicant to be
5 on line by that time. You could theoretically put a
6 condition on that says that the license expires if the
7 project is not on line. But if you did so, then if it
8 were two days short because of circumstances beyond its
9 control, you'd have to start the license all over.

10 COMMISSIONER LAURIE: What happens if it's next
11 February?

12 CHIEF COUNSEL CHAMBERLAIN: Well, if they didn't
13 proceed in good faith, then I believe that you could go
14 back.

15 COMMISSIONER LAURIE: Proceeding in good faith
16 doesn't mean that you're not going to run into problems.
17 You can proceed in good faith and run into problems. You
18 can run into financing problems. You can run into
19 personnel problems. You can run into all kinds of issues
20 and be proceeding in good faith and still -- as I read the
21 Executive Order, the purpose is to get these megawatts on
22 line this summer, originally July 31st and now it's the
23 end of September.

24 So we were, pursuant to the direction of the
25 Governor, willing to waive and being directed to consider

1 waiving all of those things that we normally do, so we can
2 get power on line this summer. So my question is, given
3 the fact that we've utilized this process, what if the
4 project doesn't come on line for this summer or even this
5 fall, is there a remedy?

6 MS. GEFTER: There's the beginning of a remedy at
7 page nine of the proposed decision where we added a
8 condition called Compliance Reporting, where we are asking
9 the applicant to provide status reports every two weeks
10 indicating its progress in meeting milestones for
11 preparing necessary components and obtaining required
12 approvals for construction by July 5, which is the date
13 that they have proposed that they will be on line.

14 Now, this particular language could be augmented
15 to address the concerns that you've raised, Commissioner
16 Laurie.

17 COMMISSIONER LAURIE: But there currently is no
18 power in the decision to seek any additional remedy if by
19 some drop-dead date, whatever that date is, the project is
20 not there?

21 MS. GEFTER: Yes, that's correct what you stated.

22 COMMISSIONER LAURIE: That's fine. Just so long
23 as I have that understanding.

24 COMMISSIONER PERNELL: Mr. Chairman, on that
25 point. Commissioner Laurie, I think you bring up a good

1 point. And the applicant is on record, because I asked
2 them the same question, about the need to have this
3 generation up and running this summer. And they are on
4 record as saying that they indeed will have it up in July,
5 or the middle of July, if I'm correct, and correct me if
6 I'm wrong.

7 But that particular question was raised. I have
8 no feeling they were somehow on record being less than
9 truthful with that. But I understand your point, which is
10 it's not listed as a condition, but I was very comfortable
11 with the answer, given what Ms. Geftter has said, in terms
12 of a progress report on how the plan is proceeding.

13 So I just wanted to put that out there, that this
14 is something that has been addressed to the applicant.
15 They have assured us of that. Although, your point is
16 valid because it's not stated in a condition. And perhaps
17 with the Chair's indulgence after you get done with your
18 other points, the applicant can respond to that.

19 MR. BOYD: Mr. Chairman.

20 COMMISSIONER MOORE: Mr. Boyd.

21 MR. BOYD: I'd like to direct a question to Mr.
22 Chamberlain.

23 COMMISSIONER LAURIE: I'm sorry, Mr. Boyd, was it
24 on this issue?

25 MR. BOYD: It's on this issue. I would like

1 to -- is it possible, Mr. Chamberlain, although I know
2 this body and staff are not privy to the provisions of
3 power sales contracts, and the contract with DWR, might
4 that contract have some specific provisions that would
5 affect the proponent's timing with regard to producing
6 power and selling power to the State of California. And
7 even the proponent is able to shed some light on this
8 question a little later by talking about other inducements
9 i.e. that that contract would help assure us that there is
10 a desire to get that power plant done and operating by the
11 dates that have been specified as kind of good faith dates
12 in this dialogue. So I just put that on the table.

13 COMMISSIONER MOORE: Well, I don't even -- Mr.
14 Chamberlain, have you seen any contracts from DWR?

15 CHIEF COUNSEL CHAMBERLAIN: No, I have not.

16 COMMISSIONER MOORE: So you're not going to be
17 able to respond to that.

18 CHIEF COUNSEL CHAMBERLAIN: Obviously, a contract
19 could contain such a term.

20 COMMISSIONER MOORE: Commissioner Laurie.

21 COMMISSIONER LAURIE: Thank you. Referring again
22 to the Governor's Executive Orders 2601 and 2801, those
23 Executive Orders authorize us and we did, in fact -- us
24 meaning the Energy Commission, and we did, in fact, adopt
25 rules pursuant to those Executive Orders. And those

1 Executive Orders authorize us to modify rules relating to
2 peaking plants and renewable plants; is that correct?

3 CHIEF COUNSEL CHAMBERLAIN: Yes.

4 COMMISSIONER LAURIE: And so this project is
5 being processed under the rules which we devised pursuant
6 to the Executive Orders relating to peaking plants and
7 renewable plans; is that correct?

8 CHIEF COUNSEL CHAMBERLAIN: Yes.

9 COMMISSIONER LAURIE: Is this a peaking plant?
10 Well, strike that. Is this a renewable plant?

11 CHIEF COUNSEL CHAMBERLAIN: It certainly is not a
12 renewable plant.

13 COMMISSIONER LAURIE: Is this a peaking plant?

14 CHIEF COUNSEL CHAMBERLAIN: The Executive Orders
15 do not define what a peaking plant is. I believe they
16 assume that any plant that can operate during the peak
17 period and can be on line during that period is a peaking
18 plant.

19 COMMISSIONER LAURIE: So San Onofre Nuclear
20 Generating Station could be defined as a peaking plant?

21 CHIEF COUNSEL CHAMBERLAIN: Under that
22 definition, I suppose so.

23 COMMISSIONER LAURIE: Okay. And what I'm getting
24 to is that clearly by the decision we make today we are
25 defining peaking plants for the purposes of every other

1 application which follows, is that a fair statement?

2 CHIEF COUNSEL CHAMBERLAIN: You're setting, more
3 or less, a precedent for that purpose.

4 COMMISSIONER LAURIE: Okay. So what I'm hearing
5 from you and absent any other comment from staff, I will
6 assume you're speaking for staff, it is staff's
7 recommendation and proposal that we attach to the term
8 peaking plant, any plant that would be expected to run
9 during peaking hours, is that a fair statement, yes?

10 CHIEF COUNSEL CHAMBERLAIN: During this summer's
11 peaking period, yes.

12 COMMISSIONER LAURIE: Okay. I'm trying to get my
13 arms around the extent of the nature of the types of
14 projects that we are going to see under the 21-day
15 process. And what I'm hearing is that, up to this point,
16 we're looking at projects where a good faith attempt will
17 be made to get on line by September 30th, and that's it,
18 is that a fair statement?

19 CHIEF COUNSEL CHAMBERLAIN: Well, I think that
20 there is knowledge on the part of the staff and the
21 Commission that certain kinds of plants can be installed
22 within a short period of time and other kinds of plants
23 could not. For example, if there was another unit of San
24 Onofre proposed, I don't think we would be making the
25 finding that we believe this can be in operation by

1 September 30th.

2 COMMISSIONER LAURIE: Okay, but pursuant to the
3 guidelines adopted by the Energy Commission or adopted by
4 staff, because this Commission -- that is whatever is out
5 there is on a formal Energy Commission document, that
6 there are criteria where staff is saying if you meet this,
7 then it is -- we're very likely to be able to say that we
8 are satisfied that environmental concerns have been met,
9 and therefore we can get this done in 21 days, is that a
10 fair statement?

11 CHIEF COUNSEL CHAMBERLAIN: I'm not sure if I
12 understand the question. Staff put out a document that
13 indicated I would characterize what they felt they could
14 recommend to the Commission as being in this very
15 difficult balance that you're making here as to what's in
16 the public interest under the very extraordinary
17 circumstances we have. So I guess from that perspective,
18 the answer to your question is probably yes.

19 COMMISSIONER LAURIE: Okay. And what we're going
20 to see are projects, such as this, which will have
21 operating hours not limited to peaking hours, and, in
22 fact, are not proposed to be limited as to the life of the
23 permit; is that correct?

24 CHIEF COUNSEL CHAMBERLAIN: Well, of course,
25 given that there is no definition of what peaking hours

1 means. I mean, in other words, if the summer is hot
2 enough, you could have virtually every hour of the summer
3 being what we might consider a peaking hour under a normal
4 year.

5 COMMISSIONER LAURIE: Okay, but in the industry,
6 peaking used as a term of art is normally 150, 200 plus or
7 minus hours a year, maybe a little bit more, is that
8 right, as normally construed within the industry?

9 CHIEF COUNSEL CHAMBERLAIN: It really depends. I
10 don't think there is a specific definition within the
11 industry of what peaking hours are.

12 COMMISSIONER LAURIE: Well, what I'm really
13 trying to get to is I want to be transparent about what
14 we're being asked to do here today. And if what we're
15 being asked to do is recognize that we have a problem this
16 summer, and therefore as a matter of public policy we want
17 to get as many megawatts on line preferably at the
18 beginning, next preferably in the middle, if we have to,
19 at the end of summer to help us out.

20 And in order to accomplish that, we're waiving
21 rules. And that's okay with me. That's valid public
22 policy. I just want to make sure I understand -- I want
23 to have the same understanding that the public has as to
24 the nature of these projects that we're considering. And
25 what I'm hearing is that they may be large. They may be

1 small. They may operate 300 hours a year. They may
2 operate 8,000 hours a year. They may last three years.
3 They may last 20 years or more. And that may be okay,
4 too, just so long as the public understands that that is
5 what we are doing. And if we want to do that, well that
6 may be okay, too, just so long as we're being honest about
7 it. And that's the basis of my concerns and my questions.

8 One final question, under page nine of the
9 proposed decision, the last bullet up at the top of the
10 page, it states, "The project continues to meet BACT under
11 local air district rules and CARB requirements."

12 And, Susan, maybe this is -- I'm sorry, Ms.
13 Gefter, maybe this is a question for you. These bullets
14 make reference to the review that's to be conducted within
15 six months of the expiration of the CalISO implement.

16 So when you State the project continues to meet
17 BACT, do you mean, at that time, or is it the intention
18 that this project always meet BACT for however long it
19 operates?

20 MS. GEFTER: The intention is that it meets BACT
21 at the time that it's licensed and continues to meet that
22 requirement that exists in the authority to construct
23 permit.

24 COMMISSIONER LAURIE: If, at any time, whether
25 it's 30 days after the contract is entered into or a year

1 and a half after the contract is entered into and the
2 permit issued, if it doesn't meet BACT, it's in violation
3 of the permit, is it not?

4 MS. GEFTER: Yes, it would be.

5 COMMISSIONER LAURIE: And, in fact, all of the
6 conditions imposed upon the project are such that we have
7 responsibility to enforce from day one; is that correct?

8 MS. GEFTER: That's right.

9 COMMISSIONER LAURIE: So the review is simply a
10 recognition that we have an ongoing responsibility, but
11 it's the proposal to take an extra look, a closer look,
12 perhaps a public look at the status of compliance that is
13 specified at a point in time; is that correct?

14 MS. GEFTER: I think your characterization is
15 accurate, yes.

16 COMMISSIONER LAURIE: Was any thought given to
17 having additional reviews any time -- any more formalistic
18 reviews, at any time, beyond this six-month point?

19 MS. GEFTER: Well, are you asking whether there's
20 any thought to that, I'm sure there is, but it wasn't
21 included in the proposed decision.

22 COMMISSIONER LAURIE: So there is a one-time
23 formal, and it doesn't even say formal, but I would
24 anticipate it would be a much more formalistic review than
25 staff normally conducts on a day-to-day basis.

1 MS. GEFTER: That's what the bullets refer to,
2 yes.

3 COMMISSIONER LAURIE: That's all I have for right
4 now, Mr. Chairman.

5 COMMISSIONER MOORE: Thank you.

6 MR. BOYD: Mr. Chairman.

7 COMMISSIONER MOORE: Mr. Boyd.

8 MR. BOYD: I'd like to just comment on one of
9 Commissioner Laurie's comments earlier in trying to
10 establish the framework or the parameters to educate the
11 public on what we're dealing with here. I don't disagree
12 with a lot of the points he ticked off. If I disagreed
13 with any of them, I think I would like to elaborate on one
14 point, and that had to do with the size. I think there
15 was a reference we could be talking about any size here.

16 I don't want the public to think that, you know,
17 you can drive a nuclear power plant into this arena, et
18 cetera, et cetera or anything major. I think the logic of
19 energy, i.e. power plant construction, dictates that the
20 criteria established by the State, this 21-day permitting
21 criteria is predicated upon peakers for the summer of this
22 year defined now to include, you know, to the month of
23 September, pretty well indicates that you can't build
24 anything very big in that period of time.

25 And that, indeed, you would meet the State's

1 desired intent only by building something that can be up
2 and running by that time. And it's going to be pretty
3 small, relatively speaking. It's not going to be a
4 traditional base load plant. It's going to be something
5 that meets the intent and the desire of the State of
6 California to get power on line ASAP to meet the pretty
7 well acknowledged shortages that face us for this quote
8 "summer".

9 Therefore, you know, I think what we're looking
10 at, as I look at the queue of things lined up for the
11 Energy Commission, is predominantly relatively small
12 simple cycle types of plants that can be built in this
13 short period of time. So just to assuage any concerns the
14 public might have about driving a giant base load plant,
15 you know, under the tent of the 21-day process, I don't
16 think that's theoretically possible. And I think this
17 body and other bodies would resist any efforts to, you
18 know, disguise something major that obviously couldn't be
19 done in that period of time and allow it to proceed.

20 So just to help the public understanding of where
21 we're all going on this, I thought I might make that
22 comment.

23 Thank you.

24 COMMISSIONER MOORE: Let me ask if Commissioner
25 Keese has any questions.

1 CHAIRPERSON KEESE: None at this time.

2 COMMISSIONER MOORE: Thank you. Other
3 Commissioners who have questions on this item?

4 All right, I have a couple of additional ones.
5 Let me just go to paragraph about four on page two of the
6 proposed decision. It says that, "LEF is a simple cycle
7 project that will operate during periods of high demand.
8 And applicant requests certification of the life of the
9 project."

10 Just so I'm clear, operate during periods of high
11 demand establishes the floor, you have to be operating
12 whether there's a high demand, but it establishes no
13 ceiling. So, in effect, this is a grant that should it be
14 approved, that says your key into this club is that you've
15 operated under periods of high demand and after that it's
16 your decision whether or not to run flat out in response
17 to market conditions or not; is that correct, Ms. Gefter,
18 that that's the way the decision is crafted, am I
19 interpreting it correct?

20 MS. GEFTER: Based on the application, that's how
21 the decision has summarized what the application requests,
22 yes.

23 COMMISSIONER MOORE: And so the applicant
24 responded that they have the intention of running at 50
25 percent or so capacity factor, but that it could go as

1 high as 85 percent capacity factor. And there is, as you
2 go between the arbitrarily defined target of 50 percent up
3 to 85 percent, are there any constraints other than BACT?

4 MS. GEFTER: In terms of air emissions?

5 COMMISSIONER MOORE: Air emissions or any other
6 constraints on operation that are implied in this
7 decision.

8 MS. GEFTER: With respect to air emissions, the
9 decision incorporates the authority to construct permit,
10 which puts a limit of 50 tons of NOx per year cap on the
11 operation of this facility. So if they exceed the 50 tons
12 per year of NOx, they need to go back to the air district
13 for a variance.

14 COMMISSIONER MOORE: And if that variance wasn't
15 granted?

16 MS. GEFTER: They would have to comply with the
17 air district's requirements, which would mean they'd have
18 to pay a fine.

19 COMMISSIONER MOORE: They'd have to pay or shut
20 down?

21 MS. GEFTER: I couldn't speak for the air
22 district what their rules are.

23 COMMISSIONER MOORE: Are those air district rules
24 embodied in this decision in some way other than by
25 reference? I'm speaking out of ignorance, because

1 normally in my PMPD, what I would expect is that at the
2 back I would have referenced and cited elements of the Air
3 District decision which were germane to controlling the
4 decision and/or compliance out into the future. So I'm
5 just highlighting that I don't see those. Are they here
6 somewhere and I'm just missing it?

7 MS. GEFTER: The situation right now is that the
8 authority to construct permit is a draft. It's been put
9 out for notice for 30 days. It's not complete. And as
10 soon as it is approved by the air district, then our
11 decision is written in such a way as to incorporate the
12 final permit that the air district grants to the
13 applicant.

14 With respect to the air district rules on if
15 variances are granted, we can access those rules and
16 they're not appended to the decision. However, the
17 conditions that would be contained in the ATC permit are
18 appended to the conditions once -- I'm sorry, appended to
19 the decision once the final ATC permit is approved and
20 granted to the applicant.

21 COMMISSIONER MOORE: So let's just take a
22 theoretical case where 30 days from now the air district
23 issues their decision, and it is more lenient an
24 application than what we would have wanted, are we then
25 enslaved to that decision because we've referenced it, so

1 that, in effect, our decision parameters go down?

2 MS. GEFTER: There's a draft out, Commissioner
3 Moore, of the ATC permit. It's not expected to change in
4 any substantive way, so we do have that.

5 COMMISSIONER MOORE: But it could? All I'm
6 saying is it could?

7 MS. GEFTER: That's a possibility.

8 COMMISSIONER MOORE: And if it did, what would
9 happen -- and if it did and it lowered the standard, what
10 would happen to our decision, our decision would trail
11 that lower standard, would it not?

12 MS. GEFTER: Yes.

13 COMMISSIONER MOORE: Okay. Then let me ask a
14 couple of questions of the applicant, if I may, Mr. Jones,
15 and I'll go back to you. It's been inferred, and I say
16 inferred, because I only have anecdotal evidence of what
17 some of the developers are saying about this type of
18 application, that it is not practical, economically, to
19 either, A, have a permit which is constrained in terms of
20 time, three years, and/or some period of time other than
21 infinity, I guess, or that it is not practical,
22 economically, i.e. to go to the financing bodies that are
23 out there and ask for help financing these facilities if
24 you're constrained in terms of hours per year. Is that
25 your opinion and is that the evidence that you folks put

1 on the record?

2 MR. JONES: Yes. To the extent that the facility
3 is a permanent facility, one like ours where we are
4 installing SCR and meeting BACTs, that is the case. I
5 would imagine that there are some, you know, trailer
6 mounted types of facilities where a three-year permit
7 would suffice, but for a facility like ours, your
8 assertions are correct.

9 COMMISSIONER MOORE: So let me go back to the
10 question that I asked you earlier, and that is that what
11 made the contract with DWR acceptable was that it was a
12 contract specifically for ancillary services, which are
13 commanding a premium in this market. And that in the
14 absence of that, you have to get a longer term of some
15 kind in order to make it practical.

16 MR. JONES: Actually, the contract with the ISO
17 was for ancillary services.

18 COMMISSIONER MOORE: I'm sorry, I said DWR,
19 didn't I?

20 MR. JONES: Yes. But one would expect that that
21 would not be your only source of revenue. We're not
22 burdening that contract with the entire economics of the
23 project. We have some expectation that the project would
24 be available to run the years after the end of the
25 contract as well as for those hours when we would not be

1 serving the California ISO.

2 COMMISSIONER MOORE: So it wasn't, in fact, a
3 500-hour contract. It was something 500 hours for
4 ancillary services and then an agreed upon period above
5 those hours that could be negotiated.

6 MR. JONES: It's the intention when the contract
7 was negotiated that on those hours when the California ISO
8 did not purchase the energy from the project that the
9 energy would be sold on the market.

10 COMMISSIONER MOORE: So, in fact, just so I
11 understand, that contract did not have a cap of 500 hours?

12 MR. JONES: No, it did not. The cap in the
13 contract was a cap on the number of hours that the ISO
14 could call on the project if the project was not running,
15 but there was no cap on the number of hours that the
16 project could run.

17 COMMISSIONER MOORE: Okay. Well, at the very
18 least, that suggests that our findings in this document
19 are inaccurate, and probably ought to reflect the actual
20 conditions of those contracts. Again, you'll understand
21 my discomfort in having this debate with you, where I kind
22 of have one foot in the bucket, as it were, because DWR
23 and the Governor's office have not seen fit to give me any
24 data about the contracts that they've gone out and
25 executed on my behalf.

1 And so I'm just a little bit behind the curve in
2 terms of some of the players on the other side of the
3 table have information that I don't have. So it makes it
4 a little tougher for me to have an effective debate here.

5 Of course, it's not, in any way, to be critical
6 of the powers that be and their wisdom of executing these
7 contract.

8 (Laughter.)

9 COMMISSIONER MOORE: So let me see if I can just
10 go one step further and understand your relationship to
11 BACT in executing these. I also heard anecdotally that it
12 was stated by certain developers that a review at a
13 certain period of time would make -- a formal review, such
14 as what was being discussed by Commissioner Laurie would
15 make it impossible to get financing, that lenders would
16 simply say, if you're going to go back in and your
17 contractor or your operating certificate was open to any
18 kind of review, we're not interested. It induces a risk
19 factor that's too high.

20 Is that your opinion, that you can't get
21 satisfactory financing if there are those types of
22 uncertainties, I use the word uncertainty as loosely as I
23 can here, embedded in this?

24 MR. JONES: Yes. As you see in the proposed
25 decision, the conditions that are there are those that are

1 administerial, if you will, and that if we are in
2 compliance, that it will be granted. So the burden we're
3 placing on ourselves is to meet these conditions. And
4 that's a risk that we're comfortable taking, being open,
5 to an additional process as a risk that would be very
6 difficult to finance.

7 COMMISSIONER MOORE: Would you object if there
8 was a condition that went along the lines of what
9 Commissioner Laurie was suggesting earlier that said that
10 this certificate was valid at least at the front end
11 assuming that you did come on line by some specified
12 period of time and that it, in fact, became invalid would
13 have to be reapplied for if you miss that deadline?

14 MR. JONES: That would be difficult for us, in
15 that there are, as he referenced, development problems
16 that can arise. And in our good faith demonstration, I'd
17 like to make a few points.

18 First of all, since December, we have purchased
19 all of the equipment that we need for these projects. And
20 that equipment is waiting for this approval and our
21 district approvals for us to begin putting it on the
22 ground. We actually entered into this process when the
23 cutoff date was July 31st not September 30th, so it was
24 our intention to have both of these projects on line in
25 July, rather than squeaking under the September window.

1 So we have an EPC contract negotiated and they're
2 ready to mobilize pending the decision of this Commission.
3 And so it's clear, at least from our part, that we're
4 prepared to make these generators available for this
5 summer.

6 Additionally, the contracts which we currently
7 have executed with the California ISO, the payments under
8 that contract go away and the contract goes away if the
9 projects are not on line by October 31st. So in addition
10 to the financial penalties of not being available for the
11 summer, there's the additional penalty if we are to miss
12 the October 31st commercial operations date.

13 COMMISSIONER MOORE: That's the ISO contract?

14 MR. JONES: Yes, it is.

15 COMMISSIONER MOORE: But didn't you tell me that
16 that contract doesn't have any bearing if you enter the
17 new one with DWR?

18 MR. JONES: That's correct.

19 COMMISSIONER MOORE: And does that contract, the
20 one I haven't seen -- I haven't seen either one for that
21 matter. Does the DWR contract have any constraint about
22 payment if you're not on line by a certain date?

23 MR. JONES: It's not fully negotiated. They're
24 finalizing the letter of intent, but it's my expectation
25 that it will be expensive for us not to be on line.

1 COMMISSIONER MOORE: Very diplomatic. All right.

2 And if --

3 MR. JONES: I guess to clarify my position,
4 having a hard date where the permit would expire if we
5 were not on line would be very difficult for us to make
6 the financial commitment, in that we're subject to risks
7 that are not entirely under our control. And if those
8 surface to delay the project, it would be difficult to
9 move forward.

10 COMMISSIONER MOORE: Well, clearly the dilemma
11 from this end is that we're entering an extraordinary
12 period. And if we can believe the staff forecast, the
13 extraordinary period actually will commence some time in
14 May, in June at a time of really critical demand. And
15 what Commissioner Laurie was probing with you is the idea
16 of a September date. You're aiming for July and I don't
17 think anyone up here has any reason to doubt your
18 sincerity or your efforts to meet that July date. So
19 nothing is implied about that from any of our comments, I
20 think.

21 But clearly if the peak period is in May, June,
22 July, August and we set a if-you're-not-on-line-date by
23 September, it's kind of like closing the door after the
24 horse has left. What emergency exists if that causes us
25 to need these services beyond September and what is the

1 harm or the fault in establishing a clear intention
2 drop-dead date of September, what happens then?

3 MR. JONES: Well, what happens then is that we
4 then have a project which is perhaps 90 percent complete,
5 say for an interconnection or say for, you know, one last
6 piece of equipment that was delivered late, that we are
7 not able to run. And in beginning construction on a
8 project that has that risk is a precarious financial
9 decision.

10 COMMISSIONER MOORE: Well, clearly, the other
11 side of discomfort is that we didn't get the power that we
12 needed. And that's the whole reason for going through
13 this exercise, this extraordinary exercise in the first
14 place.

15 MR. JONES: Well, I think in looking at least at
16 our projects, though this is an expedited process, we are
17 in full compliance with BACT and we're meeting all of the
18 standards that are generally required of power projects
19 like this under a longer approval process. And so you
20 didn't trade anything away in going through this process
21 with our projects from an environmental standpoint. And
22 that just backs our community or our commitment to meeting
23 the environmental standards of California and these being
24 permitted facilities.

25 So you're not losing anything by having

1 accelerated the process from our perspective.

2 COMMISSIONER MOORE: I understand.

3 Thank you.

4 Are there other questions for Mr. Jones?

5 COMMISSIONER PERNELL: Mr. Chairman.

6 COMMISSIONER MOORE: Commissioner Pernell.

7 COMMISSIONER PERNELL: I have a couple of
8 questions.

9 Just so that we can be clear to this body and the
10 general public, we're talking about a 90 megawatt simple
11 cycle plant; is that correct?

12 MR. JONES: Yes.

13 COMMISSIONER PERNELL: And it has or it will emit
14 5 ppms versus some of the existing simple cycle plants
15 that we have, which is, at least I'm told, approximately
16 100 ppms?

17 MR. JONES: That's correct.

18 COMMISSIONER PERNELL: So that this is one of the
19 best technologies that we have in terms of this facility,
20 and that's an opinion not a question.

21 MR. JONES: I agree with you.

22 (Laughter.)

23 COMMISSIONER PERNELL: The other one is -- the
24 other question I have is maybe directed to our staff, and
25 that is, Mr. Chamberlain, we have the statutory authority

1 to review or go back and look at whether or not existing
2 plants are maintaining their requirements under the
3 certification?

4 CHIEF COUNSEL CHAMBERLAIN: Yes, we do.

5 COMMISSIONER PERNELL: So that regardless of
6 whether or not this is a one-year or ten-year or 15-year
7 license, we can always go back, if the Commission
8 perceives that there's a problem or that the applicant,
9 whoever is running whatever plant, is not appearing to the
10 certification, we can go back and review that?

11 CHIEF COUNSEL CHAMBERLAIN: Yes.

12 COMMISSIONER PERNELL: Okay. And, Mr. Chairman,
13 at this time, just to put this before us, if the Chairman
14 is agreeable, I'd like to move the item for further
15 discussion among the Commissioners.

16 COMMISSIONER MOORE: You moved the item as
17 submitted, the proposed decision as submitted?

18 MS. GEFTER: Commissioner Moore, I also wanted to
19 ask staff to make a presentation. Staff has some addenda
20 to their staff assessment, and we'd like to put that on
21 the record.

22 COMMISSIONER MOORE: I apologize and I apologize
23 to Mr. Eller. He did give me that ahead of time and I got
24 caught up in these discussions.

25 Mr. Eller.

1 MR. ELLER: I promise to be brief, Commissioner.

2 Thank you.

3 This morning I provided the Commissioners a staff
4 errata for environmental justice. We inadvertently left
5 the section out in error when our staff document that was
6 published on Saturday, and we will docket this item today.

7 The second item is that the proposed facility is
8 dual fueled. And the original application indicated that
9 under operations during the curtailment period of natural
10 gas, so it would be operating at 42 ppm NOx. And that
11 number also appears in the Committee's proposed decision.

12 That number actually, according to the proposed
13 authority to construct from the air district, is 13 ppm,
14 not 42. So that should be changed throughout the decision
15 and staff's document.

16 With that, staff has reviewed the proposed
17 decision and recommends its adoption by the Commission.

18 COMMISSIONER MOORE: All right. So I'm going to
19 accept Commissioner Pernell's motion as amended by the
20 errata submitted by staff and as outlined by Mr. Eller.

21 Ms. Gefter, do you have anything else?

22 MS. GEFTER: I have another question.

23 COMMISSIONER MOORE: Hang on one second. Let me
24 find if there's a second to the motion.

25 Is there a second to the motion?

1 COMMISSIONER ROSENFELD: Second.

2 COMMISSIONER MOORE: Seconded by Commissioner
3 Rosenfeld. We have the matter on the floor.

4 Ms. Gefter.

5 MS. GEFTER: My question is to the Commission,
6 whether the Commission seeks to propose additional
7 language that would be included in the final decision
8 based on the vote on this motion?

9 COMMISSIONER LAURIE: We're not there yet.

10 COMMISSIONER MOORE: We're not there yet. My
11 guess is probably. Film at 11:00.

12 (Laughter.)

13 COMMISSIONER MOORE: So let me find out, now that
14 we have a motion and a second on the floor, is there
15 anyone in the public who would like to comment on this
16 item to us?

17 Seeing none, I'll bring this back.

18 COMMISSIONER LAURIE: Mr. Chairman.

19 COMMISSIONER MOORE: Commissioner Laurie.

20 COMMISSIONER LAURIE: I have another question.
21 Mr. Chamberlain, can you make reference to Executive Order
22 2801, which I do not have in front of me, but I think I
23 know sort of what it says.

24 Can you read to me the provision relating to the
25 importance of bringing new power on line by September

1 30th, just one or two sentences down by that, "Be it
2 further resolved."

3 CHIEF COUNSEL CHAMBERLAIN: Yes. "It is further
4 ordered that the Energy Commission, in addition to
5 expediting the processing of applications for
6 certification for peaking or renewable power plants
7 pursuant to Public Resources Code Section 25705 and
8 Executive Order D-2601, shall expedite the processing of
9 applications for certification for peaking or renewable
10 power plants for construction and operation by September
11 30th, 2001."

12 Did you want me to go on?

13 COMMISSIONER LAURIE: No.

14 CHIEF COUNSEL CHAMBERLAIN: I should say that may
15 be an awkward way of putting it, but in the previous order
16 that that was referenced there, the date of July 31st,
17 2001 had been the date. I think it's basically the same
18 language. So what was being done here was to extend the
19 date to September 30th.

20 COMMISSIONER LAURIE: And so do you interpret
21 that paragraph as indicating an intent that we go through
22 this process to get power on line, and I think there's a
23 reference to, no later than September 30th; is that right?

24 CHIEF COUNSEL CHAMBERLAIN: It just says -- no,
25 it says, "expediting the construction and operation" --

1 I'm sorry, "...expediting the processing of applications
2 for certification for peaking or renewable power plants
3 for construction and operation by September 30th, 2001."

4 COMMISSIONER LAURIE: What was the language in
5 2601? I thought there was a "no later than" in there
6 somewhere.

7 CHIEF COUNSEL CHAMBERLAIN: 2601 says that, "The
8 Energy Commission shall expedite the processing of
9 applications for certification for peaking and renewable
10 power plants pursuant to Public Resources Code Section
11 25705 for construction and operation by July 31st, 2001."

12 MS. GEFTER: Commissioner Laurie, where you may
13 have seen the language which says no later than September
14 30th is in the findings and conclusions of the proposed
15 decision where we stated that the Larkspur facility shall
16 be on line by July 5 and no later than September 30th.

17 COMMISSIONER LAURIE: Okay, but in your language
18 when you say shall be --

19 MS. GEFTER: Well, I just said shall be, actually
20 what we said is, "expected to be on line."

21 COMMISSIONER LAURIE: Well, is it the intent that
22 it's expected to be or is that it shall be?

23 MS. GEFTER: That was the question you raised
24 earlier. Right now, it just says, "expected to be" based
25 on what the applicant stated to us during the hearing.

1 COMMISSIONER LAURIE: Now, in the proposed
2 decision, is there any drop-dead date?

3 MS. GEFTER: I would say that, again, we don't
4 have a condition, we just have a findings and conclusions.
5 And the way the language in the findings and conclusions
6 reads is "and no later than" But if the Commission
7 prefers to add a condition with that language -- if you'd
8 like us to do so.

9 COMMISSIONER PERNELL: Mr. Chairman, let me just
10 say that I would be a little bit uncomfortable putting a
11 hard date for the simple reason of having come from the
12 construction industry, we're always kind of bound by what
13 we call an Act of God. So if we put a hard date in and
14 there's an earthquake or something happens and they can't
15 meet it when it's not their fault, then I think that's,
16 you know, that's not a good effort -- procedure for us to
17 get into.

18 I guess my question to the applicant is minus any
19 Act of God, what is the expected time frame that you would
20 have this facility up and running?

21 MR. JONES: We expect to have both facilities up
22 and running, both turbines at Larkspur and two of the
23 three turbines at Indigo in the middle of July of this
24 year. We expect the third turbine at Indigo to be on line
25 in the middle of September.

1 COMMISSIONER PERNELL: Okay, we're talking about
2 Larkspur.

3 MR. JONES: Larkspur, we expect it to be on line
4 in the middle of July.

5 COMMISSIONER PERNELL: And there is no -- And you
6 have the Turbines and you have the contracts lined up and
7 we're ready to go barring and Act of God.

8 MR. JONES: We are prepared to mobilize as soon
9 as we've satisfied the conditions of the approval that you
10 guys are hopefully going to give us later today.

11 COMMISSIONER MOORE: Are there other questions
12 for staff or for the applicants?

13 MR. CARROLL: Just a point of clarification from
14 the applicant just to make sure we've closed the loop with
15 respect to the 7th finding and conclusion. Applicant does
16 not read the September 30th, 2001 date as this finding is
17 currently written to be a drop-dead date. We read this to
18 be a statement of the expectation of the on line date.

19 COMMISSIONER LAURIE: That's understood.

20 MR. CARROLL: Thank you.

21 COMMISSIONER MOORE: Thank you. We'll bring this
22 back to the dais. What's your pleasure? We've a motion
23 and a second to approve the decision as it is written.
24 Are there changes or modifications to that that are
25 appropriate?

1 All right. I have a couple that I'd like to
2 suggest to the maker of the motion and the Presiding
3 Member.

4 It seems to me that in the public interest, that
5 we're hopefully reflecting here, it is reasonable that
6 since the application is operating under an emergency
7 order, and that emergency, at least in terms of time frame
8 is at the front end, is known to us to commence with this
9 summer period, that we should expect a response that is in
10 time with that. And I would suggest to the maker of the
11 motion and the second that there ought to be a firm date
12 at which this project is either out of compliance or has
13 to seek some clarification from this Commission to go on.

14 So I recognize the point that the applicant is
15 making about and that the maker of the motion makes about
16 an Act of God. And certainly I don't want to set up
17 something that's so hard and fast that's just -- I don't
18 know if the Turbines got blown up on a train and couldn't
19 make it to the site, well then clearly that's something
20 that's out of their control and shouldn't invalidate a
21 permit.

22 But it seems to me at the same time, the
23 extraordinary conditions under which we're operating
24 demand extraordinary compliance. And for that, we're, as
25 a society, prepared to pay a premium in terms of the price

1 of electricity and in terms of taking our process, which
2 is time tested, and compressing it considerably almost by
3 a long factor as a matter of fact.

4 And so I would suggest that there ought to be a
5 -- first of all, that there ought to be a set of
6 conditions that are dictated in this and future decisions.
7 The decisions ought to come out from each Presiding Member
8 that have, at the end, I believe, a set of conditions that
9 say this is the sequence of conditions that are to the
10 extent should this operating certificate be granted.

11 And it seems to me what I'm about to suggest
12 falls in line with that. And that is that this has to
13 come on line by September 30th in this case 2001 or this
14 Commission has to make a finding that extraordinary
15 circumstances prevailed and that the license should be
16 extended to some period to be determined based on those
17 extraordinary circumstances. So at least there is a
18 formal review of those. It's not just in lock step and
19 then at some point in the undefined future something comes
20 on.

21 At least as one commissioner, I'm unwilling to
22 give up what I consider to be my responsibilities to
23 oversee and maintain control over the approvals or denials
24 that we give.

25 CHAIRPERSON KEESE: Mr. Chairman, if I may

1 comment?

2 COMMISSIONER MOORE: Mr. Keese.

3 CHAIRPERSON KEESE: This process is a two-way
4 street. We are responding to the emergency by doing
5 emergency siting. And applicants are responding to the
6 emergency by rushing a process and committing significant
7 revenues. I think we would all agree that should this
8 applicant not be up and running by mid-July, they will
9 suffer a very large economic penalty. So the burden is
10 also upon them to expedite this process.

11 Had we crafted something which suggests that the
12 applicant will exert due diligence or something of that
13 nature, I think I could be comfortable with that. But to
14 suggest that we're going to have a hard and fast date and
15 something that would, in my mind, jeopardize the funding
16 of projects like this, I couldn't support that.

17 COMMISSIONER MOORE: Well, Bill, then let me -- I
18 respect that and let me come back to that. I guess one of
19 the things that I have in mind here is that as Bob Laurie
20 was saying earlier, this is not -- we anticipate this is
21 not the last of these projects that we'll see. And as a
22 consequence, how they either come in or do not come in for
23 conditions that we ought to be aware of, it seems to
24 concern this Commission. And we ought to be involved in
25 the review and really understand what the limitations are.

1 If some set of conditions occurs between now and
2 September 30th, which causes the applicant to either
3 suffer greatly -- so greatly that they can't bring this on
4 line or there's a change in decisions, that regarding
5 their own or the market economics, we ought to be aware of
6 that and we ought to take that into account in our own
7 planning process.

8 I don't know how to get there unless we have some
9 sort of continuing dialogue in the case of changed
10 circumstances with this or any other applicant in the
11 future. And so it seems to me that the kind of condition
12 that I am suggesting doesn't do anything to financing,
13 except to assure, in fact, the financing agency, whoever
14 that is, that due diligence will be made to get this on
15 line. I can't really see where this would hurt anyone
16 except to assure the markets and assure the lenders that
17 good efforts were going to be made and that we're holding
18 all parties accountable.

19 Let me just elaborate on the two other points and
20 then, if there's support for it, fine, if there's not,
21 then we'll go back and take your point up, Bill.

22 And my second point is that the conditions ought
23 to explicitly say that the project will be in compliance
24 with BACT or it will be found out of the operating
25 certificate. That ought to be explicit in whatever

1 conditions of approval would go along with this or any
2 other proposed certificate of operation.

3 And third, what I'd like to propose is that we
4 somehow find a way to formally review the progress, the
5 compliance with BACT, the need for and the continuing role
6 of projects like this in meeting need, and that we
7 formally institute some kind of review of the status of
8 the project. I'm not suggesting that there be a change in
9 the operating certificate, that is that it would expire at
10 some period of time, but the intention was that we would
11 get three years of life out of any of these. I understand
12 that that's changed in time.

13 But it seems to me we ought to have a formal
14 review of some kind that says, now I'm going to suggest
15 three years, in which the applicant is back and reviews
16 how we've done in terms of compliance of BACT, the need
17 for the power, the operating hours that were achieved, and
18 what we got in the end from pursuing this type of
19 enterprise.

20 If we're ever going to get back to the point
21 where the Energy Commission and the State of California
22 know where we're going as a whole, we're going to have to
23 have this kind of interaction and this kind of compliance.
24 If it sounds like a surrogate for what we used to do, in
25 terms of the needs compliance and/or the overall resources

1 review, it is a back door way to get there, but it seems
2 to me this formalizes it. It gets, in a sense, the
3 developers to come in, make a formal report to us and
4 telling us how these things have performed under the
5 operating certificate that we have.

6 I understand that we already have the authority
7 to declare noncompliance, so we could take action at one
8 minute after a certificate was approved, but this would
9 formally require a report back at some prespecified period
10 of time and get a review. I don't think that condition,
11 as well, would have anything to do with interrupting
12 anyone's financing difficulties or financing ability.

13 So it seems to me we can more formalize the
14 review process and find out what the effects of this
15 extraordinary process have been. So I would suggest those
16 as modifications in the form of conditions, if the maker
17 of the motion and the second would concur. And, Bill,
18 I'll come right back to your point in a second.

19 Ms. Gefter, you have a comment?

20 MS. GEFTER: Just a clarification on the request
21 that you made for a formal review schedule. Now, under
22 conditions of certification, we have a monitoring program
23 where the project proponent has to come back and report on
24 their compliance. What it sounds to me you're proposing
25 here is that after a period of say three years, a formal

1 report comes back to the full Commission for review, is
2 that what you're proposing?

3 COMMISSIONER MOORE: That's correct. And the
4 full Commission could and, in fact, might, under normal
5 circumstances, submit such a review or an oversight to the
6 members of the then siting committee, which is probably
7 the forum under which such a review would take place. But
8 it seems to me it gets us in a more formal linkage with
9 the process and review of our approvals.

10 CHAIRPERSON KEESE: Mr. Chairman, I guess I would
11 not object to that, but I would prefer that it not be -- I
12 don't know where it would have to reside, but I would
13 think that since we anticipate a number of these peaking
14 units, there should be one generic report that covers them
15 all. And therefore, I would hesitate to pick a date based
16 on the siting of any specific facility, but it would seem
17 to me rational to have a report on our experience with all
18 of these peaking facilities that this year are to be on
19 line by September 30th.

20 COMMISSIONER MOORE: Well, you know, Bill, as a
21 practical matter, in fact, I wouldn't expect every project
22 developer to be in front of us in a hearing, but, in fact,
23 would have to submit something, which seems to me, as a
24 matter of fact, would be compiled, collected, collated so
25 that it came to us at a consistent period of time, but

1 they would, in fact, have to file that formally in
2 someday.

3 CHAIRPERSON KEESE: If they filed it in three
4 years, then we'd do our --

5 COMMISSIONER MOORE: Not just project. In other
6 words, this is just the first project that we're
7 considering. That's why it's getting such scrutiny. And
8 the applicant understands that well, since they're the
9 second project as well.

10 CHAIRPERSON KEESE: Well, I can support the
11 report in three years, with the understanding that the
12 Commission will do a comprehensive report on all the
13 applications that have been done after all the reports on
14 this years' filings have been submitted. And as long as
15 it is added, I think I can support your point number two
16 also.

17 COMMISSIONER MOORE: Of the BACT, complying with
18 BACT?

19 CHAIRPERSON KEESE: I think we had said that, but
20 you're right, it seems to me it's vague in the order.

21 COMMISSIONER MOORE: And, Bill, part of what I'm
22 doing here is to outline for us, I'm outlining for myself
23 since I'm going to have apparently a couple of cases
24 coming up. So trying to get a little more formal about
25 the way we prepare these reports and what ought to be in

1 them, what ought to guide us in the future.

2 Let me turn to my colleagues and ask if there's
3 other comments on what I've suggested as modifications.

4 COMMISSIONER LAURIE: Mr. Chairman.

5 COMMISSIONER MOORE: Commissioner Laurie.

6 COMMISSIONER LAURIE: And I'll refer to
7 Commissioner Pernel to respond, but I want to add to your
8 comments before any specific language is looked at or
9 Commissioner Pernel responds to your questions
10 specifically. So if I may.

11 COMMISSIONER MOORE: Yes, it's timely.

12 COMMISSIONER LAURIE: I recognize and am in
13 concurrence with the intent behind the declaration of the
14 energy emergency. In fact, my preference would have been
15 that the emergency be declared earlier and that it be
16 broader than having a reference to merely peakers and
17 merely renewables.

18 My preference would have been to acknowledge the
19 potential shortage that we have known about for some time
20 and to simply mandate that we do everything that we can
21 possibly do to get sufficient megawatts on line through
22 2002, through the summer of 2002.

23 And so when I look at the more restrictive nature
24 of the Executive Order that was issued, I become
25 concerned, because the Executive Order that was issued,

1 under which we are proceeding, says peaker plants and
2 renewables.

3 I am unwilling to accept a definition of a peaker
4 plant as anything that operates any time, including
5 peaking time. That flies in the face of rationality to
6 me. But I want these 90 megawatts on line. And I want to
7 be able to define this project in such a manner that we're
8 not defining peaker plants as anything that operates any
9 time 8,000, 88 hours a year.

10 I do not think that's what the Executive Order
11 says. I would like the Executive Order changed, frankly,
12 to give us broader authority, get the word peaking plants
13 out of there if that's not what we're doing. Basically, I
14 want to be truthful about it.

15 I understand the economic issue. I believe that
16 you cannot get financing for a three-year project. So the
17 alternatives are two-fold, either you don't have three
18 year projects or if the Government, as a matter of public
19 policy, says we want peaker plants as the world knows
20 them, then we're willing to pay for it. We've never had
21 that debate. I would be willing to consider paying a
22 higher price as a matter of public policy for peakers if
23 that's what you have to do.

24 But the direction we're going is we're not doing
25 peakers, because as a matter of public policy, we're

1 saying we don't want to ask the people to pay for that, so
2 we're not talking about peaking plants here. We're
3 talking about bringing new megawatts on line, and that's
4 fine. I want to and I desire to do that. But, again, I
5 think we owe the public a degree of transparency, which
6 has not been clear up to this point.

7 So I do understand the economic issue. I
8 understand that in order to get financing not to operate
9 as a peaker that you can't limit it as to number of hours
10 and you can't limit it as to a three- or five-year time
11 constraint.

12 That, however, was how this process was
13 originally described. So if that's not the deal, then
14 let's admit that that's not the deal and see what we have
15 to do to get the job done. I think top priority is
16 getting these megawatts on line and letting the public
17 know that we are taking extraordinary measures and that's
18 part of the price that we have to pay in order to
19 accomplish that. I don't want to pretend that our process
20 is so perfect that we don't have to pay a price for
21 getting new power on line under emergency conditions.

22 If that's the case, why not approve every project
23 in 21 days or every project in 120 days under our four
24 month process.

25 (Thereupon a cell phone rings.)

1 COMMISSIONER LAURIE: I was giving a presentation
2 the other day and I had said please make sure all of your
3 cell phones are off, and 30 seconds into my presentation
4 my phone, which was in my attache case right behind me
5 started with, I don't know, Merry Christmas or something.
6 My credibility went right down the tubes.

7 COMMISSIONER ROSENFELD: Sorry, sir.

8 COMMISSIONER MOORE: What little you have left.

9 (Laughter.)

10 COMMISSIONER LAURIE: To start with.

11 (Laughter.)

12 COMMISSIONER LAURIE: So I'm not satisfied that
13 these applications go to the original intent of the
14 language of the Executive Order. I was thus anxious to
15 get before this Commission a formal discussion of how are
16 we going to define some of these terms that are utilized
17 in the Executive Order. And I would encourage
18 modification of the Executive Order to be consistent with
19 what we're trying to do here today.

20 Specifically, on the question of any drop-dead
21 date. The Governor's Executive Order was issued for the
22 purpose of bringing megawatts on line for this summer.
23 Well, then the drop-dead date was September 30th. After
24 September 30th, as Commissioner Moore indicated, the
25 energy emergency, as declared, will have expired and where

1 are the megawatts? No assurances that the megawatts will
2 be there. I, too, come from the development industry and
3 I know stuff happens. I hate drop-dead dates.

4 But that drop-dead date was provided for the
5 expressed purpose of satisfying this condition of bringing
6 power on line for summer 2001, not summer 2001 or fall
7 2001 or spring 2002 or summer 2002, in which case that's
8 what the Executive Order should have said.

9 So I would like that issue discussed. I would
10 prefer a reference to the intent being September 30th, and
11 if it's not done by September 30th, we want to know why.
12 And if no good cause exists, I think we should have the
13 ability to provide a drop-dead date.

14 That means if turbines are blown up on the way
15 over from Omaha, well, that's a pretty good reason. If,
16 however, the project is being sold and there's, you know,
17 discussions going on between buyer and seller and we don't
18 know whether it's going to be March or April, well, then
19 folks we shouldn't be sitting here today.

20 So what I'm looking for is a recognition that the
21 intent of the Executive Order is to provide power for this
22 summer, although it still could get hot in October, I
23 understand. And if it's not done, then I want to know why
24 it's not done. And if there's not some plausible reason
25 and continued good faith effort, then I want to have the

1 ability to say if this baby isn't on line by January 1,
2 then we'll see you around some other time.

3 COMMISSIONER MOORE: I take that as support of
4 the suggestion I made for a September 30 review -- call
5 for review by this Commission if the project is not on
6 line is my suggestion to the maker of the motion.

7 COMMISSIONER LAURIE: I guess I didn't hear that
8 specifically, but, yes, I am supportive of that.

9 COMMISSIONER MOORE: And you're supporting
10 meeting BACT that Bill was indicating support of.

11 COMMISSIONER LAURIE: Well, let me ask you a
12 question about that. By meeting BACT, what we're
13 indicating is BACT at the time of certification. We're
14 not talking about changing BACT.

15 COMMISSIONER MOORE: That's correct, but they
16 have to continuously meet that. And what I was talking
17 about there is formally putting it into a condition of
18 approval.

19 COMMISSIONER LAURIE: Yeah, I would -- I concur
20 with that. I also concur with a more formalistic report
21 of compliance on all of these projects with some time
22 frame, whether it's two years or three years. Now,
23 understand, that absent violation of a condition, we have
24 no authority to modify conditions. I want to make sure
25 that that's understood.

1 COMMISSIONER MOORE: That's absolutely
2 understood. And it, I think, will guide a future
3 Commission in further decisions regarding power plant
4 expansion in the state at that point.

5 MR. CARROLL: Commissioner Moore, at some point,
6 when you deem it's appropriate, I'd just like to request a
7 couple of clarifications on your three points but when
8 it's appropriate.

9 COMMISSIONER MOORE: Sure. We don't have
10 anything to clarify yet, because we don't have a
11 consensus. So let me -- Commissioner Rosenfeld, do you
12 have comments on these?

13 COMMISSIONER ROSENFELD: No, I'm happy to take
14 your three suggestions.

15 COMMISSIONER MOORE: All right. Will the maker
16 of the motion comment and --

17 COMMISSIONER PERNELL: Yes, I have a couple of
18 comments. And this is specifically to your friendly
19 amendment to the main motion. And my understanding of the
20 first one is that there's a September 30th, 2001 date, and
21 if that can't be met, then there needs to be an
22 explanation to the Commission.

23 COMMISSIONER MOORE: So it comes back formally to
24 the Commission for an explanation and the Commission then
25 has control of the operating certificate. I mean we quite

1 literally -- they would be out of compliance at that
2 point, we would have to grant, similar to what we have
3 done with a lot of our contracts today, we'd have to hear
4 the reason why.

5 COMMISSIONER PERNELL: So this is not -- just so
6 I can be clear on this particular amendment, it is not a
7 September 30th and you're off the table, but it's
8 September 30th and you come back to this Commission with
9 justification as to why it's going past that?

10 COMMISSIONER MOORE: That's correct, but I guess
11 it should be clear that what I have in mind is that, going
12 along with the comments by Commissioner Laurie, if, at
13 that point, it is clear to the Commission that something
14 has happened which makes this project untenable for some
15 long foreseeable future period, the Commission's
16 discretion is still available to use as far as compliance
17 with the operating certificate. That is very plainly
18 saying you could deny it.

19 COMMISSIONER PERNELL: Absolutely. So with that,
20 I would offer a friendly amendment to the amendment of the
21 main motion, which is to add, "or the earliest possible
22 date". And I don't want -- and the reason I'm doing this
23 is if applicant has said that they can be on in July, then
24 that's when we want them on. I don't want to relax that
25 and give them more time up until September.

1 So I guess my addition to that would be that they
2 come on at the earliest possible date, and then
3 piggy-backing on yours, which would be if by September
4 30th, you're not on line, then it comes back to the
5 Commission at that time. So all I'm trying to do is to
6 say that if you come on earlier than that, then that needs
7 to be the effort that the applicant is making.

8 COMMISSIONER MOORE: All right. Let me turn to
9 the --

10 CHAIRPERSON KEESE: Commissioner Moore?

11 COMMISSIONER MOORE: Commissioner Keese.

12 CHAIRPERSON KEESE: I'm still uncomfortable
13 without setting a standard. I can understand -- it sounds
14 to me like we still have the drop-dead date. I would
15 suggest that what we should do is say that, if you're
16 going to say anything, say that if they haven't made it by
17 September 3rd, they will come back. And if there are
18 indications or proof that they failed to exercise due
19 diligence, you have to -- we have to have a standard here.
20 We can't just say the Commission can reopen it. There has
21 to be a standard by which we're going to judge this.

22 And my suggestion, and I would ask the applicant
23 if that was acceptable to them, would be a finding that
24 they have failed to exercise due diligence in attempting
25 to meet the September 30th date.

1 COMMISSIONER MOORE: Bill, I think that's a
2 reasonable standard. I mean, that addresses the question
3 of whether or not an Act of God was involved.

4 CHAIRPERSON KEESE: Let's ask the applicant, that
5 might simplify this.

6 MR. JONES: We would accept the standard of due
7 diligence in getting the projects on line by September
8 30th.

9 MR. CARROLL: Just a point of clarification to --

10 COMMISSIONER PERNELL: Excuse me, one second,
11 you'll have your chance. But I am not comfortable with
12 having the schedule as it exists in my decision slip until
13 September 30th. So I understand that you'll accept the
14 proposed amendment to the motion, but I also want to
15 stress that we need this plant up and running at the
16 earliest possible date. So I don't want it to be
17 misconstrued that we're allowing any schedule to slip.

18 MR. CARROLL: That was actually going to be my
19 point of clarification.

20 COMMISSIONER LAURIE: Commissioner Pernell, I
21 will have specific language, I think, that takes your
22 primary concerns into consideration. At such time, I'd
23 like to offer specific language.

24 COMMISSIONER MOORE: This is probably that time,
25 why don't you put that on the table and we'll see if the

1 maker of the motion and the second will accept that.

2 COMMISSIONER LAURIE: I would propose that a
3 condition be imposed which states something like the
4 project shall be on line and operating at the earliest
5 possible opportunity but no later than September 30th,
6 2001.

7 Should the project not be on line by such a date,
8 the hearing shall be held by the Commission to determine
9 the cause of the delay. If it is determined, at such
10 hearing, that the applicant has failed to proceed with a
11 proper exercise of due diligence, then the Commission may
12 impose specified, some language, for a drop-dead date at
13 that time.

14 COMMISSIONER MOORE: Does that go where you
15 wanted it to go, Commissioner Pernell?

16 COMMISSIONER PERNELL: I think it covers the two
17 items that I had concerns with.

18 CHAIRPERSON KEESE: That's acceptable with me.

19 MR. CARROLL: If I may just clarify with respect
20 to the first portion of the proposal. With respect to the
21 earliest possible date, I guess that seems perhaps
22 somewhat vague. I mean, I think what we are committing to
23 is to proceed with due diligence to bring this project on
24 line at the earliest possible date. But I think it's
25 important that the due diligence standard be both in the

1 commitment to bring on it line by the earliest possible
2 date and the commitment to bring it on line no later than
3 September 30th.

4 COMMISSIONER MOORE: I think that was clear in
5 his language that that's --

6 COMMISSIONER ROSENFELD: We can slightly change
7 that.

8 COMMISSIONER MOORE: It seems to me that that's
9 exactly where Commissioner Laurie was going.

10 COMMISSIONER PERNELL: And that is my intent as
11 well.

12 MR. JONES: I just wanted it to be clear that
13 earliest possible didn't impose on us that we had to fly
14 turbines out here instead of putting them on trucks or
15 some other standard to accelerate the construction.

16 COMMISSIONER LAURIE: Under the language, as
17 proposed, we're not going to see you before some time in
18 October. That is come July 20th if you're not on line and
19 operating, then -- well, I have to think about that.

20 COMMISSIONER MOORE: Then they would be
21 exercising due diligence to try and make sure that it
22 happened between that time and September 30th.

23 COMMISSIONER LAURIE: And so my understanding
24 would be, under the language that we're discussing, we
25 would not be holding a hearing unless you were on line and

1 -- unless you were not on line and operating by September
2 30th.

3 COMMISSIONER MOORE: We wouldn't see you again
4 unless that trigger happened.

5 MR. CARROLL: And the purpose of that hearing
6 would be to evaluate whether or not the applicant had
7 proceeded with due diligence from the time of the
8 certification up until the date of that hearing.

9 COMMISSIONER LAURIE: And if we determine that
10 you have not been, then at that time, we may impose a
11 condition which imposes a specified date.

12 COMMISSIONER PERNELL: All right. Just let me be
13 clear. I think we're all there, but let me just state my
14 intent. It is the intent of the maker of the motion that
15 the date of the schedule in my proposed decision doesn't
16 slip because there is some flexibility on the back end. I
17 just want to make that clear.

18 Due diligence is fine on both ends, but I want to
19 make it clear to the applicant that it is my intent not to
20 have the schedule slip because there is some flexibility
21 on the other end.

22 MR. CARROLL: That is absolutely understood. And
23 I can assure you we've taken every step possible to
24 commence with this project as soon as possible and we'll
25 continue to do that.

1 COMMISSIONER MOORE: All right. Then the maker
2 of the motion accepts the language advanced by
3 Commissioner Laurie for inclusion in the motion.

4 COMMISSIONER LAURIE: To be modified so that it
5 makes sense once it's put into the English language.

6 (Laughter.)

7 COMMISSIONER MOORE: And the second?

8 COMMISSIONER ROSENFELD: The second accepts.

9 COMMISSIONER MOORE: Discussion on the motion?

10 COMMISSIONER PERNELL: No discussion on this.

11 COMMISSIONER MOORE: Let's go.

12 COMMISSIONER PERNELL: Can we go to number two.

13 COMMISSIONER LAURIE: Did we already vote on the
14 motion or --

15 COMMISSIONER MOORE: We're going to vote on the
16 motion.

17 COMMISSIONER LAURIE: No, I mean vote on the
18 amendment? Do you want to vote?

19 COMMISSIONER MOORE: No, no. We'll take the
20 motion as a whole. So we have two other items that were
21 suggested. And we have concurrence from Commissioner
22 Laurie and Commissioner Rosenfeld on adding BACT as a
23 formal condition that they --

24 COMMISSIONER PERNELL: And my observation here is
25 that -- and I don't have a problem with adding this in

1 some other more direct --

2 COMMISSIONER MOORE: A review in three years?

3 COMMISSIONER PERNELL: No, this is compliance
4 with BACT, which was your second amendment. And we have,
5 in my proposed decision, as one of the bullets, which I
6 guess is the last one, that says you will continually meet
7 the BACT technology. So I don't see any difficulty with
8 that. It's there. It's stated a little differently. I
9 don't see that there's a problem with that.

10 MR. CARROLL: May I just clarify one point on
11 that issue. We certainly don't have any problem meeting
12 BACT. I would point out that the conditions of
13 certification incorporate, by reference, the conditions of
14 the authority to construct to be issued by the air
15 district. And those conditions do require us to meet BACT
16 on a going forward basis.

17 So while we don't object to a condition that
18 makes that explicit one more time, I guess I would like us
19 to acknowledge that we're doing that for purposes of
20 redundancy, so that there isn't any confusion later about
21 the reason that this was done, because it would be
22 redundant, I believe, with the conditions as they're
23 currently written.

24 COMMISSIONER MOORE: It just needs to be explicit
25 in our decision.

1 And Robert.

2 COMMISSIONER PERNELL: And then on -- just a
3 question. On the review, and I guess this is for staff,
4 Ms. Gefter, the review that's being discussed now, is that
5 done by our compliance staff or is that done by the air
6 district, who's that done by?

7 MS. GEFTER: Staff has a compliance unit. And
8 the applicant is required under the conditions in this
9 decision that were listed in the staff assessment
10 incorporated into the proposed decision. The applicant
11 must meet monthly deadlines of filing monthly process
12 project reports and also other reports that are required
13 under the compliance monitoring program that would be in
14 place upon adoption of this decision.

15 And I indicated earlier to Commissioner Moore
16 when he made his proposal that this monitoring program
17 will be in existence in any event. But what Commissioner
18 Moore indicated is that he wanted a more formal compliance
19 review at the end of three years.

20 COMMISSIONER MOORE: That's correct.

21 MS. GEFTER: And that review would come before
22 the full Commission.

23 COMMISSIONER MOORE: Right. And I'm proposing
24 that this be the kind of standard that we put into every
25 one of our decisions, so that there is a period where we

1 look back at this history of what we've done in this
2 peaker program.

3 COMMISSIONER PERNELL: Just one second. My
4 question earlier was we have the authority and statute to
5 do this review anyway.

6 MS. GEFTER: Yes.

7 COMMISSIONER MOORE: Mr. Larson, you have a
8 question?

9 EXECUTIVE DIRECTOR LARSON: Mr. Chairman, I have
10 a concern I guess on the BACT issue, in that there may be
11 circumstances where some facilities in the course of the
12 21-day process as we go down through other applications,
13 where through negotiation --

14 CHAIRPERSON KEESE: Mr. Chairman.

15 COMMISSIONER MOORE: Yes.

16 CHAIRPERSON KEESE: I have got to get my computer
17 out of another room. I'm going to leave the phone on and
18 I'll be back in three minutes.

19 COMMISSIONER MOORE: We'll still be here.

20 COMMISSIONER PERNELL: It sounds like a restroom
21 break to me.

22 (Laughter.)

23 COMMISSIONER MOORE: Mr. Larson.

24 EXECUTIVE DIRECTOR LARSON: It occurs to me that
25 there may be circumstances where through negotiation some

1 clients that aren't in the courts of BACT at the moment,
2 but through negotiations with air boards and so forth will
3 become in conformance within a certain period of time and
4 over the life of the project will conform to air rules.

5 Those conditions might exist, and therefore the
6 certificate or the condition you're talking about in every
7 application may not be appropriate.

8 COMMISSIONER MOORE: Good point. And I think
9 that the Presiding Member in each case is going to be
10 apprised of that. And each decision should have to be
11 modified to take that into account. It's probably going
12 to reflect that.

13 But I think in this case that doesn't apply.

14 COMMISSIONER PERNELL: I would just add that
15 we're voting on this particular one.

16 COMMISSIONER MOORE: Yeah, right, but Steve
17 raises a good point. It's something that each Presiding
18 Member ought to have in the back of their mind. A
19 negotiated BACT or flex or ramped BACT could be possible
20 with any given project.

21 EXECUTIVE DIRECTOR LARSON: That's true. I mean,
22 it seemed to me, you were listing criteria you wanted to
23 apply to most cases.

24 COMMISSIONER MOORE: I'm suggesting that we
25 are -- I'm just acknowledging that we are, in fact,

1 setting a standard for ourselves that we're going to have
2 to comply with on this.

3 And as soon as Commissioner Keese returns from
4 getting his computer, we'll take this up in a more formal
5 way. And then it is my intention that -- I believe I can
6 see the way the votes are going to go on this. And it is
7 my intention that following this, we'll take a very short
8 luncheon break about a half an hour and come back and take
9 up the next project, which I think will go far faster than
10 this. And then we'll take up the rest of the items on the
11 agenda.

12 So I don't hear Commissioner Keese coming.

13 COMMISSIONER ROSENFELD: We don't know how
14 Chairman Keese is going to vote, maybe --

15 COMMISSIONER MOORE: And have him add his vote.

16 COMMISSIONER PERNELL: In that case, Mr.
17 Chairman, I would call for the question.

18 COMMISSIONER MOORE: All right, the question has
19 been called for.

20 All those in favor of this motion as amended
21 signify by saying aye?

22 (Ayes.)

23 COMMISSIONER MOORE: Those opposed?

24 Motion carries. And should Commissioner Keese
25 want to add his vote to the role, we'll accept that when

1 we come back. In the meantime, we are adjourned for lunch
2 until 1:00.

3 COMMISSIONER LAURIE: Mr. Chairman, before we
4 leave, let me just note that my timing got screwed up
5 today, because at noon or no later than 12:30 there was
6 supposed to be a meeting in this hearing room involving
7 all siting related staff. And I guess Mary is doing
8 something with that. And I don't know what the status of
9 all that is. The point being that if, as you leave, you
10 find food out on the table, don't touch it, because it
11 doesn't belong to you.

12 (Laughter.)

13 COMMISSIONER LAURIE: We're in recess until 1:30.

14 CHAIRPERSON KEESE: Did we take a vote?

15 COMMISSIONER LAURIE: Bill, did you want to add
16 your vote to the roll? It so far passed 4 to 0.

17 CHAIRPERSON KEESE: No, that would be fine.

18 COMMISSIONER MOORE: Bill, I think you don't need
19 to come back for the other items. I think you're free,
20 because the other item is going to follow suit and I'll
21 advance your decision forward.

22 CHAIRPERSON KEESE: Thank you. I have my cell
23 phone should you need me.

24 COMMISSIONER MOORE: Thank you. We're in recess.

25 (Thereupon a lunch recess was taken.)

1 unable to return to the group.

2 COMMISSIONER MOORE: All right. We're going to
3 return to our agenda in sequence. We're taking Item 5,
4 which is the Indigo Energy Facility. Consideration and
5 possible adoption of the Commissioner's Proposed Decision,
6 in this case it is Commissioner Keese proposed decision on
7 the Indigo Energy Facility, a 135 megawatt power plant
8 applied for under the Energy Commission Emergency Siting
9 Process, again by Wildflower Energy LP, for construction
10 in the City of Palm Springs.

11 And Ms. Gefter I'll turn to you to introduce the
12 item and then we'll proceed on the record with the same
13 sequence that we used before.

14 MS. GEFTER: The Indigo facility -- the
15 application was deemed data adequate on March 16th. We
16 had an informational hearing on March 27th. Chairman
17 Keese was presiding. We had an ALJ assigned from the
18 Office of Administrative Hearings, Samuel Reyes who is
19 here today. Mr. Reyes is sitting behind me.

20 COMMISSIONER MOORE: Welcome to the Commission.

21 MS. GEFTER: And the Applicant, again, is here to
22 identify themselves and also make a presentation on this
23 particular project, which is located in Palm Springs,
24 actually was in the city limits of Palm Springs. And
25 staff is here, Mr. Kennedy, to answer questions. Staff

1 also has some additional comments.

2 MR. KENNEDY: No.

3 MS. GEFTER: No, we don't. Staff doesn't have
4 additional comments. However, the applicant in this case
5 does, some amendments that they would like to offer as
6 well to the staff assessment.

7 With that, you can begin with that.

8 COMMISSIONER MOORE: Good. With that, let me
9 turn to the applicant and ask for you to reintroduce
10 yourself for the record and then we'll entertain your
11 comments. I believe we have a copy of the amendments. So
12 we've got your color presentation and the amendments that
13 you proposed.

14 MR. JONES: My name is John Jones. I'm the
15 project manager for the Wildflower Project and I'm an
16 employee of InterGen North American.

17 MR. CARROLL: Mike Carroll of Latham and Watkins,
18 counsel for the applicant.

19 COMMISSIONER MOORE: Gentlemen, go ahead and give
20 us an overview of the project.

21 MR. JONES: The Indigo Energy Facility is, as Ms.
22 Gefter said, a 135 megawatt natural gas fired project
23 within the City of Palm Springs. The site is actually in
24 the north end of Palm Springs and is on a site that's
25 pretty much dominated by windmills and transmission lines.

1 It's very well sited, because it's close to
2 transmission interconnection points as well as natural gas
3 interconnection and would feed power into the So Cal
4 Edison 115 kV system.

5 You can see an aerial photograph showing the site
6 and the proposed rights of way for the electrical and
7 natural gas interconnection. The electrical
8 interconnection is about .6 miles running from the project
9 site over to the Devers-Garnet transmission line.

10 The natural gas line runs roughly a mile south
11 from the site, along an existing right of way and dirt
12 road to interconnect on the other side of I-10 So Cal
13 Gas's 30-inch gas transmission line.

14 Next, you see a photo-sim of the project. The
15 stacks on this project are 110 feet high, which is less
16 than half of the height of the surrounding windmills.
17 Also, the frontage of the project will have a visual wall
18 with landscaping around it as well.

19 COMMISSIONER MOORE: That's the device that's
20 painted, in that case the corn flower yellow color.

21 (Laughter.)

22 MR. JONES: Yes.

23 As far as emissions for this project, very
24 similar to the Larkspur facility, it's the same technology
25 using SCR to reduce NOx to 5 ppm. This is a single-fueled

1 unit. San Diego faces intermittent natural gas
2 curtailments, while Palms Springs does not. So these are
3 single-fueled units, which are considerably cleaner, both
4 than the Etiwanda peakers which are 60 miles away, by a
5 long shot as well as being much cleaner than the average
6 power plant in California.

7 COMMISSIONER MOORE: And your water consumption.

8 MR. JONES: The water consumption at this project
9 even though it's three turbines instead of two is lower at
10 the Palm Springs site than at the San Diego site. The
11 Palm Springs site is 240 gallons per minute. And the
12 water consumption is reduced as we're using evaporative
13 cooling to enhance the efficiency of the machine rather
14 than using chillers as we did in San Diego.

15 COMMISSIONER MOORE: And to go back to the point
16 that we were making in the earlier case, your capacity
17 factor that you're expecting to run at versus the capacity
18 factor that is possible?

19 MR. JONES: Our permit is for a 90 percent
20 capacity factor. Our expectation is that we'll run around
21 60 percent of the hours for the first two or three years.
22 And as new generation comes on line in California, the
23 actual run hours will reduce significantly.

24 COMMISSIONER MOORE: Why don't you take a moment
25 and talk about the proposed revisions that you've got to

1 the staff and the Presiding Member's Proposed Decision and
2 then we'll talk about some of the conditions that were
3 imposed on the last project and debate whether those are
4 applicable here.

5 MR. JONES: For that, I'm going to have Mike
6 Carroll with Latham walk through the proposed changes.

7 MR. CARROLL: Thank you. We have three
8 relatively minor proposed changes to the conditions of
9 certification, which we have previously discussed with the
10 staff.

11 The first one relates to Land Use Condition 1,
12 which amongst other things requires the project to pay a
13 public arts fee. In our preliminary discussions with the
14 City of Palm Springs, they indicated that this arts fee
15 may not be required for this particular project. And we
16 are continuing our discussions with them about what an
17 appropriate level, including possibly zero, would be for
18 that.

19 And so we proposed some language which would
20 simply say, "unless waived by the City of Palm Springs,
21 the project would pay the public arts fee."

22 COMMISSIONER MOORE: And what would be the reason
23 for not paying it, why wouldn't it apply?

24 MR. CARROLL: The main reason that it wouldn't
25 apply, is that due to the cost of the project, the fee is

1 fairly exorbitant. It would be in excess of a half a
2 million dollars. And given the location and the nature of
3 the project, there's some question about whether a public
4 arts fee for a project located in a relatively remote
5 desert area is appropriate and certainly one of that
6 magnitude.

7 COMMISSIONER MOORE: Still within the city
8 limits? Still within the incorporated city limits?

9 MR. CARROLL: Yes, it is.

10 COMMISSIONER MOORE: How is this different than
11 from the Big Box Kmart or something that goes in downtown,
12 which has not very much relationship -- well, depending on
13 what they have on their shelves I suppose, to an arts fee?
14 How is this different?

15 MR. CARROLL: I think the distinction is, again,
16 the location and the extent to which you would expect the
17 public to have visual access to the facility. This is in
18 a relatively remote desert location. It's not an area
19 where you would expect pedestrians or even vehicle
20 passenger traffic. And it's in an industrialized area,
21 not the sort of area that you would normally expect to be
22 enhanced with a significant amount of public art.

23 COMMISSIONER MOORE: Have they waived or given a
24 variance for this kind of fee in the past?

25 MR. CARROLL: I do not know that.

1 COMMISSIONER MOORE: So what you're suggesting is
2 that the language be modified to say that if they wanted
3 you'll -- if they finally come down on the side of we want
4 it, you'll pay it, but if they say that they're going to
5 waive it, it's okay with us.

6 MR. CARROLL: That's right. That's exactly
7 right.

8 COMMISSIONER MOORE: What's your second one?

9 MR. CARROLL: The second one relates to a valid
10 permit or agreement from the approving agency for waste
11 water discharge. This is a zero discharge facility. We
12 don't believe that a waste water discharge permit will be
13 required, so we simply wanted to insert the words, "if
14 required" at the beginning of that condition, because our
15 belief is, at this point, we will not require a waste
16 water discharge permit, because of the zero discharge
17 nature of the project. And that's Soil and Water
18 Condition 4.

19 And then the final proposed change is Soil and
20 Water Condition 7. You may hear some discussion about the
21 water supply for this project as we move into it, but one
22 of the potential supplies of water would be to put a well
23 on the site. And we understand that the staff would like
24 us to evaluate the impacts of doing that prior to putting
25 the well in, but there is a need to put a test well in to

1 determine whether or not the quality of the water would be
2 sufficient and adequate for the well in the first place,
3 and we would like an exception from the modeling
4 requirements that would be imposed on the permanent well
5 for the test well.

6 So we've proposed that condition that requires
7 modeling to show the impact of the project's water use on
8 the local aquifer provided for an exception for sinking in
9 the test well.

10 COMMISSIONER LAURIE: Let me stop you there.

11 Mr. Chairman, a question.

12 COMMISSIONER MOORE: Commissioner Laurie.

13 COMMISSIONER LAURIE: Let me ask staff, maybe.

14 How do we approve a project with a condition that says you
15 will do an environmental analysis of something, and then
16 indicate that the environmental analysis that we performed
17 at the date of approval shows that we've satisfied all
18 impacts? Do you understand what my problem is?

19 MR. KENNEDY: Yes, I do, Commissioner.

20 My name is Kevin Kennedy. I'm the staff project
21 manager for this project. The issue of water supply for
22 this project became a bit more complicated last week.
23 There had been an initial agreement in the Mission Springs
24 Water District to supply water to the project. And staff
25 had conducted most of the analysis based on a will-serve

1 letter that had been initially issued.

2 COMMISSIONER PERNELL: Could you get a little
3 close, I'm having some difficulty.

4 MR. KENNEDY: Sorry about that. There we go.
5 And early last week the Mission Springs Water district
6 indicated that they had not understood the full scope of
7 the project when they had issued that will-serve letter.
8 And there have been concerns expressed by Mission Springs
9 about serving the project.

10 The applicant has been in negotiations over the
11 last week with Mission Springs over whether or not they
12 will be able to serve the project and under what
13 conditions. I'm not sure whether there is someone from
14 Mission Springs here today, but a letter has been sent to
15 the Commissioners, I believe, that you have seen a letter
16 from Mission Springs.

17 The applicant has indicated that they have water
18 rights and they, last week, pulled a groundwater -- a
19 permit to drill a well on the site to supply the project.

20 So what we have included, given the expedited
21 nature of this project and the need for power in the
22 summer, a condition that would allow us, should they need
23 to use their own well to supply the project if they are
24 unable to receive the water from Mission Springs, a
25 condition that will stop them from drilling that well

1 until we have been able to establish the appropriate
2 mitigation for any possible impacts to that.

3 COMMISSIONER LAURIE: Let me stop you there,
4 where is our power to impose appropriate mitigation?

5 MR. KENNEDY: It is in Condition Soil and Water
6 7, that basically --

7 COMMISSIONER LAURIE: What page is that on,
8 Kevin?

9 MR. KENNEDY: What was that?

10 COMMISSIONER MOORE: What page is that on?

11 MR. KENNEDY: I think there's a version of it in
12 their suggested modifications.

13 MR. CARROLL: It's on page 46 of staff analysis.

14 MR. KENNEDY: It's in the staff assessment and it
15 has been incorporated by reference into the proposed
16 decision.

17 COMMISSIONER LAURIE: Okay, but what happens if
18 you do your environmental analysis and you show there's
19 impact here and you want to mitigate it? What gives you
20 the power, under any of these conditions, to impose
21 mitigation measures over and above what we're currently
22 approving?

23 MR. KENNEDY: Part of what you are approving
24 gives the compliance project manager the authority to --
25 and a requirement for the applicant to receive approval

1 from the compliance project manager for an appropriate
2 mitigation plan before they can start drilling a well to
3 supply the project.

4 At this point, it is staff's expectation that an
5 agreement will ultimately be reached between Mission
6 Springs Water District and the applicant, and that this
7 condition may not apply. Essentially, this has been put
8 in as a fail safe so that we will be able to go back and
9 impose mitigation, if it turns out that they do have to
10 drill their own well.

11 COMMISSIONER MOORE: While you're talking about
12 this, Kevin, let's go a little bit farther. They're
13 proposing, as I understand it, that the condition be
14 modified so that it says, "except for test wells," which
15 would imply that the modeling that we would normally do
16 would now include the results from the test well. In
17 other words, it would be okay to drill the test well
18 because that's part of finding out whether or not there
19 are going to be any impacts or not. Do you have any
20 problem with that?

21 MR. KENNEDY: I do not, no.

22 COMMISSIONER MOORE: So you're not objecting to
23 this at all. And let me just go back to Bob's question
24 before, and that is Soil and Water 7 is where in this?

25 COMMISSIONER LAURIE: Page 46.

1 MR. KENNEDY: Page 46 of the staff assessment.

2 COMMISSIONER MOORE: It's not in the proposed
3 decision?

4 MR. KENNEDY: The proposed decision incorporates
5 by reference all of the conditions in the staff
6 assessment.

7 COMMISSIONER MOORE: Okay. Other comments from
8 the applicant?

9 MR. CARROLL: No, those conclude our proposed
10 changes.

11 Thank you.

12 COMMISSIONER MOORE: Kevin, do you have any other
13 comments from staff that you'd like to give?

14 MR. KENNEDY: Simply, that staff has reviewed the
15 proposed decision and recommends approval of the project
16 with the conditions as proposed. Staff also has no
17 concerns with the changes to conditions suggested by the
18 applicant.

19 COMMISSIONER MOORE: Let me go back to the
20 applicant for just a moment and say do you have any
21 objections to the Commission were we to impose the
22 additional conditions that we imposed on the previous
23 project to this?

24 MR. JONES: No, that would be fine.

25 COMMISSIONER MOORE: Is there anyone in the

1 public who would like to address us on this item?

2 MR. CARROLL: I do have, not any additional
3 proposed changes to the conditions of certification, but
4 two points of clarification that we'd like to make on the
5 proposed decision when the time is appropriate.

6 COMMISSIONER MOORE: Why don't you hold off on
7 those and we'll come back.

8 MR. WELTON: My name is Jeff Welton.

9 COMMISSIONER MOORE: You're going to have to pull
10 that microphone up to get closer to it.

11 MR. WELTON: My name is Jeff Welton. I'm with
12 WinTech Energy. And the one issue you had a question
13 whether or not the City of Palm Springs has waived that .5
14 percent on the art fee. And we are the landlord on the
15 project next to it, which is the Enron project of, I
16 think, it's nine wind turbines and there's another four.
17 And they did not charge -- I don't believe they charged an
18 art fee for them, so that's a case where it was waived.

19 COMMISSIONER MOORE: Okay. Thank you. And I
20 appreciate it.

21 Some precedent to go armed with to the City.

22 Ms. Gefter, you have a comment for us or
23 question.

24 MS. GEFTER: Just a point of clarification. When
25 you requested the applicant to agree to conditions made on

1 the previous case for the record you're speaking about the
2 Larkspur case, which was approved earlier this morning,
3 and the three additional conditions that the Commission
4 wanted to propose to that case, you're also referring to
5 for this Indigo case?

6 COMMISSIONER MOORE: That's correct. Thank you
7 for that. I would have elucidated those in a moment
8 anyway, but that gets it clearer. Anyone else who would
9 like to address us on this?

10 Back to the applicant, you have a point of
11 clarification.

12 MR. CARROLL: Just two very minor points of
13 clarification. On page three of the staff report, I
14 neglected to make this point, with respect to the previous
15 decision, but I'll make it here. There's a statement that
16 construction will begin upon issuance of the authority to
17 construct permit by the South Coast Air Quality Management
18 District.

19 We have been engaged, and I think this sort of
20 goes to the issue that we spent a fair amount of time
21 talking about this morning, the diligence with which we
22 are proceeding with this project. We have engaged in
23 discussions with all three of the air agencies, the local
24 air districts, the California Air Resources Board and EPA
25 Region 9 about appropriate circumstances under which we

1 could proceed with construction prior to the completion of
2 the public notice period on the air permits. And it's our
3 anticipation, although the documentation hasn't been
4 finalized yet, it's our anticipation that we will be given
5 authority to commence construction prior to the
6 exploration of the comment periods on the air permits. So
7 I just wanted to make that point.

8 The second point is on page six of the staff
9 report, there's a statement at the bottom of that page,
10 which states that the project will nevertheless exceed
11 emission standards established by the air district. An
12 applicant is required to obtain the necessary emission
13 reduction credits. I believe what the statement was
14 intended to say was that the project will exceed emissions
15 offset threshold and we will therefore obtain offsets.
16 The project will not exceed any applicable emission
17 standards, although we will exceed the emissions offset
18 thresholds and therefore we will acquire the emissions
19 offsets.

20 COMMISSIONER MOORE: I think that's an important
21 clarification. I have that sentence underlined in my own
22 copy, so thank you for that one.

23 MS. GEFTER: Another point of clarification. Mr.
24 Carroll was referring to the staff report and actually
25 this is the Presiding Member's Proposed Decision that

1 you're referring to, is that correct?

2 MR. CARROLL: Yes, it is. If I said staff
3 report, I was mistaken, I meant the proposed decision.

4 COMMISSIONER MOORE: Commission Pernell.

5 COMMISSIONER PERNELL: Just a question for staff.
6 Does staff concur with the interpretation of what was
7 written?

8 MR. KENNEDY: I would concur with the
9 interpretation put forward by Mr. Carroll.

10 COMMISSIONER PERNELL: Thank you.

11 COMMISSIONER MOORE: All right. Are there any
12 other points, questions from the Commissioners?

13 Commissioner Laurie.

14 COMMISSIONER LAURIE: Mr. Chairman, would it be
15 your intent to address the same questions that we
16 addressed in the previous application?

17 COMMISSIONER MOORE: Yes. And on behalf of
18 Commissioner Keese, let me offer a motion to the floor and
19 offer to move that the Presiding Member's Proposed
20 Decision and the operating certificate, along with the
21 amendments, changes to the conditions of certification
22 proposed by the applicant for Land 1, Soil and Water 4,
23 Soil and Water 7, and the three conditions that were
24 previously imposed on the Larkspur project, which had to
25 do with the time to come on line, that is a September 30

1 deadline, the meaning of BACT conditions and a compliance
2 and review report by three years be added along with the
3 other conditions of certification and that the project be
4 granted an operating certificate.

5 COMMISSIONER LAURIE: I would second that motion.

6 COMMISSIONER MOORE: Seconded by Commissioner
7 Laurie.

8 Are there questions or discussion on the motion?

9 All those in favor signify by saying aye?

10 (Ayes.)

11 COMMISSIONER MOORE: Those opposed?

12 That motion carries 4 to 0. Congratulations and I
13 suppose your work has just started.

14 MR. CARROLL: Thank you.

15 MR. JONES: Thank you very much.

16 COMMISSIONER MOORE: Thank you very much.

17 COMMISSIONER PERNELL: Thank you very much and
18 congratulations.

19 COMMISSIONER MOORE: All right, we're going to
20 take backup to the regular agenda and we have Item 2,
21 Lawrence Berkeley National Laboratory. Possible Approval
22 of Contract 400-00-039 for \$305,000 to determine the
23 savings associated with cool roofs. And I suspect, given
24 that kind of introduction, that I ought to turn to
25 Commissioner Rosenfeld and ask him if he knows anything

1 about this matter of cool roofs.

2 COMMISSIONER ROSENFELD: I think we should pass
3 it immediately.

4 (Laughter.)

5 COMMISSIONER PERNELL: Second.

6 COMMISSIONER MOORE: Well, that's -- no
7 discussion on that motion? You don't want to debate that
8 point, Commissioner?

9 All those in favor signify by saying aye?

10 (Ayes.)

11 COMMISSIONER MOORE: Those opposed?

12 That motion carries 4 to 0.

13 Thank you.

14 We have a Commission privacy policy. Shut our
15 door and not let the administrative officer come in on
16 bidding -- actually, it's not that. Mr. Mundstock, do you
17 want to talk about something that we have been debating
18 for at least four years, five years since I've been here
19 trying to figure out a good way to protect our secret
20 stuff.

21 Mr. Mundstock.

22 SENIOR STAFF COUNSEL MUNDSTOCK: Commissioners,
23 this item is before you because of a new California law
24 that requires -- this item is before you because of the
25 new California law effective this year that requires all

1 State agencies to adopt a privacy policy. And the privacy
2 policy is intended to protect personal information from
3 individuals that is collected by the agency, such as
4 mailing lists would be a perfect example, other
5 information the web site might collect, such as E-mail
6 addresses. And it's not related to the ordinary data
7 collection that we do that is associated with energy
8 policies.

9 COMMISSIONER MOORE: Is the public being made
10 aware of this policy?

11 SENIOR STAFF COUNSEL MUNDSTOCK: The policy will
12 be placed on the web site, and the policy is also to be
13 placed on the web site where there are -- where data of a
14 personal nature is requested. And the resources agency
15 also wishes a copy of this from each agency. And their
16 deadline is immediate, which is why you put it on the
17 agenda today.

18 COMMISSIONER MOORE: I understand.

19 Questions, Commissioners?

20 The Chair will entertain a motion.

21 COMMISSIONER ROSENFELD: Actually, I guess I do
22 have a question. I haven't thought about this at all.
23 Can you give me a couple of examples of the sorts of data
24 that come to mind.

25 SENIOR STAFF COUNSEL MUNDSTOCK: Certainly. If

1 you sign up to receive one of our publications, you give
2 your name and your home address, maybe your phone number,
3 and that's personal information. And you're entitled to
4 be certain that the Commission will keep that information
5 private or not sell it to some mailing house and give you
6 a bunch of junk mail.

7 And the same thing on the E-mail equivalent, that
8 you will not be spammed because the Commission sold your
9 E-mail address when you signed up to be informed about the
10 Metcalf case, you end up getting 500 E-mails on something
11 else.

12 COMMISSIONER ROSENFELD: Thank you.

13 COMMISSIONER PERNELL: Mr. Chairman.

14 COMMISSIONER MOORE: Mr. Pernell.

15 COMMISSIONER PERNELL: Mr. Chairman, I would move
16 staff recommendation on the Commission's privacy policy.

17 COMMISSIONER LAURIE: Second.

18 COMMISSIONER ROSENFELD: Second.

19 COMMISSIONER MOORE: Seconded by everyone.

20 All those in favor signify by saying aye?

21 (Ayes.)

22 COMMISSIONER MOORE: Those opposed?

23 That motion carries.

24 All right, back to Pastoria Energy Facility,
25 number 6. A 250 megawatt expansion, and possible approval

1 of the Executive Director's data adequacy recommendation
2 for the Pastoria facility and possible approval of a
3 Committee assignment for this. And let me turn to staff.

4 MS. FROMM: Good afternoon, Commissioners. I'm
5 Sandra Fromm, project siting manager. With me today is
6 staff counsel, Dave Abelson.

7 In December 2000, the Commission approved
8 99-AFC-7, a project for a nominal 750 megawatt power
9 plant. In February 16th of this year, Pastoria Energy
10 Facility, LLC, filed an application for certification
11 seeking approval from the Energy Commission for an
12 additional 250 megawatts at that same site.

13 This was proposed as a six-month process. The
14 regulations for the six-month process require that the
15 applicant or the project meet both the six-month
16 requirements and the 12-month requirements.

17 Originally, the project was found to be data
18 inadequate for both the 12-month and the six-month
19 process. The applicant submitted additional information
20 on March 19th. Staff reviewed this and found that the
21 project is now data adequate for the 12-month process.
22 However, it is still data inadequate for the six-month
23 process.

24 COMMISSIONER MOORE: All right. And for the
25 12-month process, is there a protest that we know of for

1 undertaking the 12-month versus the six-month?

2 MS. FROMM: None that I know of.

3 COMMISSIONER MOORE: Applicant is shaking their
4 head.

5 COMMISSIONER PERNELL: So the applicant --

6 COMMISSIONER MOORE: Mr. Wehn, maybe we could get
7 you to come up to the microphone for a second.

8 MR. WEHN: Sam Wehn with Enron, the Pastoria
9 project.

10 COMMISSIONER MOORE: Sam, for the record, do you
11 have any objection to being found adequate for the
12 12-month process and commencing that?

13 MR. WEHN: No objection at all.

14 COMMISSIONER MOORE: Thank you. All right.
15 Anyone else in the public who would like to speak to us
16 about this?

17 COMMISSIONER LAURIE: Move the recommendation.

18 COMMISSIONER MOORE: Moved by Commissioner
19 Laurie.

20 COMMISSIONER PERNELL: Second.

21 COMMISSIONER MOORE: Second by Commissioner
22 Pernell.

23 All those in favor signify by saying aye?

24 (Ayes.)

25 COMMISSIONER MOORE: Opposed?

1 That motion carries.

2 We are to assign a committee assignment to that.

3 And so we'll assign Commissioner Laurie and Commission
4 Laurie --

5 (Laughter.)

6 COMMISSIONER MOORE: Oh, you can't do both first
7 and second.

8 COMMISSIONER LAURIE: There will be a problem
9 some time in the future.

10 (Laughter.)

11 COMMISSIONER MOORE: He'll have a problem
12 replacing himself. We'll assign Commissioner Laurie and
13 Commissioner Moore the second member to that. And I'll
14 move for approval.

15 COMMISSIONER PERNELL: Second.

16 COMMISSIONER ROSENFELD: Second.

17 COMMISSIONER MOORE: Second by everybody.

18 All those in favor signify by saying aye?

19 (Ayes.)

20 COMMISSIONER MOORE: Those opposed?

21 And the motion carries.

22 Ms. Fromm, I guess we'll see you in Pastoria.

23 MS. FROMM: Thank you.

24 COMMISSIONER MOORE: Thank you very much.

25 All right, the fabled Net System Power Report.

1 My favorite --

2 MR. WETHERALL: Good afternoon, Commissioners.

3 My name is Ron Wetherall, electricity office.

4 I'm here to talk about the Net System Power

5 report for this year. I'll keep my comments brief.

6 Basically, what Net System Power is is the
7 estimate of the relative percentages of fuel types used to
8 produce electricity which comprised the pool of generic
9 electric power available for purchase in California.

10 What that means is people that buy power from
11 their utilities, if the utility is making no other claim
12 as to the fuel type, we've determined that it is the
13 following: approximately 16 percent coal, 19 percent
14 large hydroelectric, 35 percent natural gas, 17 percent
15 nuclear, one percent other, 12 percent eligible
16 renewables.

17 Are there any questions?

18 COMMISSIONER MOORE: Ron, those percentages have
19 not changed demonstrably since last year, am I correct?

20 MR. WETHERALL: Well, there was actually some
21 changes. As you know, this last year, we've had some
22 electricity shortages. And the power that was available
23 from out of state was not as available this year, so the
24 natural gas units tended to run a little harder. It went
25 from 31 percent last year, natural gas, to 35 percent.

1 Everything else was pretty close to the same.

2 COMMISSIONER MOORE: And it's fair to say that
3 we're tracking this dynamically so that the members of the
4 Legislature who sponsored this change, this reporting
5 change, can be satisfied that that dynamic market is being
6 reflected in our annual updates?

7 MR. WETHERALL: Yes. One of the things that did
8 change this year was more than one municipal utility
9 decided to report all of its sales as specific purchases.
10 And since the specific purchases are subtracted from the
11 gross system power, it did have a large effect. We saw a
12 lot less coal show up this year. And the overall numbers,
13 last year the total was 259,000 gigawatt hours. This
14 years it's only 236.

15 That's the result of specific purchases being
16 subtracted out. Yes, we are tracking every year and we
17 have records going back to 1998.

18 COMMISSIONER MOORE: Questions of Mr. Wetherall?

19 COMMISSIONER LAURIE: Question, Mr. Chairman.

20 COMMISSIONER MOORE: Commissioner Laurie.

21 COMMISSIONER LAURIE: Ron, I was on a panel last
22 week, and there was a somebody there, and he was -- part
23 of his presentation was a discussion of the power net.
24 And I am sure he said gas is 52 percent. Does that make
25 any sense, do we have some other charts that reflect a

1 much higher number?

2 MR. WETHERALL: Well, he may have been talking
3 about the domestic California gas share. He may have also
4 been talking about a particular utility. I'm not sure.
5 It seems pretty high to me. He may have also been talking
6 about maybe a monthly number. It's hard to say. It does
7 seem like it would be much higher than I would expect on
8 an annual basis.

9 Also, realize that the Commission also puts out
10 another table, called Table J-11. It's on our web page.
11 And for making comparisons from year to year,
12 historically, that is a better set of data to use. These
13 numbers that we have for the net system power report
14 should be considered preliminary in the sense that we get
15 the numbers at the beginning of March and we review them,
16 but there is still the possibility that people will send
17 us revisions and that sort of thing. The table J-11 that
18 comes out in the summer is a better set of numbers to use
19 to make year to year comparisons.

20 Just for one example, you don't have the issue of
21 specific claims being subtracted out, that's a market
22 issue, and that has to do with the green market. If
23 you're just trying to get a snapshot of what the overall
24 mix is, J-11 is probably more suitable.

25 This is actually -- Net System Power is used as a

1 base line for making comparisons of different electricity
2 products. But the J-11 is probably a better number to
3 look at in a historical context.

4 COMMISSIONER MOORE: All right. Other questions?

5 The Chair will move for approval of the net
6 system power report.

7 Is there a second?

8 COMMISSIONER ROSENFELD: Second.

9 COMMISSIONER MOORE: Seconded by Commissioner
10 Rosenfeld.

11 Discussion?

12 All those in favor signify by saying aye?

13 (Ayes.)

14 COMMISSIONER MOORE: Opposed?

15 The motion carries 4 to 0.

16 Mr. Wetherall, thank you.

17 Item 9, AB 970 peak load reduction program
18 guidelines.

19 Mr. Sugar, welcome.

20 MR. SUGAR: Thank you, Commissioner. My name is
21 John Sugar. I'm with Energy Commission staff. I'm here
22 to present a proposed change to the AB 970 peak demand
23 program guidelines. It would expand flexibility in
24 extending project deadlines.

25 The current guidelines have a fixed deadline for

1 the completion of most projects. It requires that they be
2 completed by June 1st. If an applicant would like an
3 extension, they must demonstrate to the Committee that
4 they face insurmountable difficulties in completing the
5 project on time.

6 If they succeed at that, the Committee may extend
7 their deadline to July 15th, but there's a ten percent
8 penalty. Their award is reduced ten percent as a result
9 of the extension. The Committee originally adopted this
10 to encourage proponents to come up with projects that
11 would meet our June 1st goal, and it has worked well.

12 We're getting to a point now, though, that there
13 are three problems, which this inflexibility is going to
14 cause, and so it appears appropriate to make a change.

15 The first problem is that our program, combined
16 with some of the utility programs, has increased the
17 demand for a number of products. And that demand now
18 appears to be exceeding the ability of manufacturers to
19 provide the products. This includes green LED traffic
20 signals, some metering and control systems and some pump
21 modification equipment.

22 And so our awardees are starting to get letters
23 from their suppliers that are now extending the delivery
24 dates for this equipment to the point where they may not
25 be able to make a June 1st deadline. This is in spite of

1 their best efforts and assurances that they received
2 earlier that equipment would be available on time.

3 The second case that we're encountering is that
4 we're reallocating funds. As some projects drop out or
5 don't get -- either don't get started or begin and the
6 awardee determines that they're not going to be able to
7 finish the project, we have funds that we then reallocate
8 to projects that will be completed as soon as possible.

9 As the date gets later, the ability of these new
10 awardees to meet a June 1st deadline is severely
11 compromised. Many of them won't be able to make it by
12 June 1st, but they can have savings in place this summer.
13 And so it seems counterproductive to try to hold them to a
14 June 1st deadline. They simply aren't in a position to
15 undertake the projects and we lose potential savings.

16 The third situation we face relates to potential
17 additional funding. We do have projects which are
18 unfunded. We were oversubscribed in AB 970. We are
19 hoping that either from SB 5X or AB 29X, we will have
20 additional funding that we can use to complete funding
21 applicants we had for our initial program.

22 When that comes in, those projects will be unable
23 to make a June 1st deadline. Although, if we're able to
24 fund them, under the existing guidelines, we can get the
25 savings in more quickly than if we wait for the next

1 program.

2 So for those three reasons, it would be very
3 useful to provide flexibility to the Committee to provide
4 extension to deadlines so that we can get these projects
5 in.

6 COMMISSIONER MOORE: Thank you.

7 Opinions of the Committee?

8 Commissioner Pernell.

9 COMMISSIONER PERNELL: Mr. Chairman, this item
10 came before the Energy Efficiency Committee. I won't be
11 redundant. I think Mr. Sugar has done an excellent job in
12 articulating the Committee's concerns and I would move for
13 approval.

14 COMMISSIONER ROSENFELD: Second.

15 COMMISSIONER MOORE: Second by Commissioner
16 Rosenfeld.

17 Discussion on that motion?

18 All those in favor signify by saying aye?

19 (Ayes.)

20 COMMISSIONER MOORE: That motion carries 4 to 0.

21 Thank you.

22 COMMISSIONER MOORE: Item 10, AB 970 Building
23 Energy Efficiency Standards Environmental Documents. We
24 rarely get involved in initial studies and neg decs.

25 Tony.

1 MR. RYGG: Good afternoon. My name is Tony Rygg.
2 I'm a member of the Commission's staff and supervise the
3 CEQA analysis of the proposed amendments to the building
4 energy efficiency standards.

5 Our analysis concluded that there would be no
6 significant impacts on the environment and our
7 recommendation was the Commission adopt a negative
8 declaration for the project. The analysis and our
9 recommendation have been available for public review for
10 about two and a half months. And as of this time, we
11 haven't received a single comment.

12 COMMISSIONER MOORE: Well, let's find out if
13 there's anyone here. Now is the time for anyone who does
14 have such a comment to raise it to the Commission and
15 we'll take it into consideration.

16 Seeing none --

17 COMMISSIONER PERNELL: Mr. Chairman.

18 COMMISSIONER MOORE: Mr. Pernell.

19 COMMISSIONER PERNELL: Mr. Chairman, there hasn't
20 been any comments, so I won't comment on it, I'll just
21 move the item.

22 (Laughter.)

23 COMMISSIONER ROSENFELD: Second.

24 COMMISSIONER MOORE: Moved by Commissioner
25 Pernell seconded by Commissioner Rosenfeld.

1 Discussion?

2 All those in favor signify by saying aye?

3 (Ayes.)

4 COMMISSIONER MOORE: Those opposed?

5 That motion carries four to zero.

6 Item 11, Possible Adoption of 15-day Language for
7 the AB 970 Building Energy Efficiency Standards.

8 Mr. Pennington.

9 MR. PENNINGTON: Good morning or I guess good
10 Afternoon. I was prepared to say good morning.

11 COMMISSIONER MOORE: It slipped by and went right
12 past all of us.

13 (Laughter.)

14 MR. PENNINGTON: My name is Bill Pennington. I'm
15 the manager of the AB 970 Building Energy Efficiency
16 Standards project. Today, what's before the Commission is
17 the permanent adoption of the AB 970 standards that were
18 adopted as an emergency on January 3rd, 2001. The
19 Committee has completed all of the Administrative
20 Procedures Act requirements for permanent adoption of
21 those standards.

22 On February 5th, 2001 the Efficiency Committee
23 conducted a committee hearing on the permanent adoption of
24 the emergency standards.

25 On March 7th, at the full Commission business

1 meeting on that day, the full Commission took additional
2 comment. And on March 19th, the Committee released
3 proposed 15-day language to respond to comments on the
4 permanent adoption. There's copies of the 15-day language
5 at the front table.

6 The most significant 15-day language changes
7 establish an alternative for the thermostatic expansion
8 valve requirement in Package D to allow refrigerant charge
9 and air flow measurement with fuel verification instead of
10 the TXV, at the option of the builder.

11 Also, the TXV and refrigerant charge and air flow
12 measurement alternative are required for replacement of
13 air-conditioners in building alterations. Other wise, the
14 15-day language changes are relatively minor.

15 Today, the Committee and staff are proposing
16 permanent adoption. There is an errata of nonsubstantive
17 changes that provide additional clarification. Those are
18 in your binders and people in the audience have been
19 provided with a copy. So I'd be happy to respond to any
20 questions you have.

21 COMMISSIONER MOORE: Are there any questions from
22 Commissioners?

23 We have someone who would like to speak to us.

24 Jim Mullen.

25 MR. MULLEN: Good afternoon. My name is Jim

1 Mullen. I'm an employee of Lennox International, but I'm
2 speaking on behalf of the Air-conditioning and
3 Refrigeration Institute. ARI has submitted written
4 comments and I just want to summarize a couple points.

5 First, we would like to express our appreciation
6 to the Commissioners, to their advisors and in particular
7 to Mr. Pennington and Mr. Leber of the technical staff and
8 one of your contractors, Mr. Proctor, for the willingness
9 to define and develop an acceptable alternative to the
10 mandatory expansion valve proposal.

11 Secondly, we'd like to stress our support for an
12 initiative to improve the overall installation quality of
13 HVACR equipment. ARI would suggest that CEC consider an
14 appropriately designed requirement for equipment
15 installation by certified technicians. The North American
16 Technician Excellence Program, also known as NATE, is the
17 leading certification program and is endorsed by the US
18 Department of Energy and ARI.

19 In conclusion, ARI looks forward to a cooperative
20 relationship with the CEC in future matters such as
21 improving overall installation quality.

22 COMMISSIONER MOORE: I'm assuming that the
23 Committee is going to take that comment into account as
24 they go through their own revisions and further
25 consideration of this?

1 COMMISSIONER PERNELL: That is correct, Mr.
2 Chairman.

3 COMMISSIONER MOORE: Is there anyone else --
4 thank you, Mr. Mullen. Is there anyone else who'd like to
5 address us on this matter?

6 Mr. Pernel.

7 COMMISSIONER PERNELL: Mr. Chairman, thank you
8 very much. I would move the item.

9 COMMISSIONER MOORE: Is there a second?

10 COMMISSIONER ROSENFELD: Second.

11 COMMISSIONER MOORE: Seconded by Commissioner
12 Rosenfeld.

13 Comments, questions on the motion?

14 All those in favor signify by saying aye?

15 (Ayes.)

16 COMMISSIONER MOORE: Those opposed?

17 The motion carries.

18 We have no minutes.

19 Committee and Oversight, Committee Members who
20 would like to speak?

21 Commissioner Laurie.

22 COMMISSIONER LAURIE: Mr. Chairman, this was only
23 an indirect siting issue. There has been much discussion
24 in the public about the current crisis, and how we got
25 into it and what singular individuals are at fault and who

1 is to blame. And needless to say, the issues or the
2 answers are not perhaps as easily identifiable as some may
3 wish.

4 But one of the questions that keeps arising is
5 making reference to lack of supply. And early on there
6 were comments that California approved no new power plants
7 in the last 15 years. And we have sought to correct that.
8 We approved, roughly, 3,300 megawatts between 1985 and
9 1995.

10 That may have been insufficient, but there are
11 reasons, and I would be very interested in having an
12 understanding of why there were so few applications during
13 those years. I think it's easily explainable, but I'd be
14 very interested in having a professional look at that.

15 And yet the comments about no new power plants
16 continues to pervade the media. The Governor, in fact,
17 continues to make reference to that fact, and he did so
18 again at the Democratic National -- Democrat State
19 Convention, I guess, just last week.

20 COMMISSIONER ROSENFELD: They don't say no new
21 power plants. They say no new major power plants.

22 COMMISSIONER LAURIE: No, I wish to correct you,
23 Commissioner Rosenfeld, the Governor said no new power
24 plans approved during the previous 12 years prior to his
25 administration. And that is simply and incorrect fact.

1 I don't know if we have to issue or do more than
2 we've already done, but this is simply a fact which causes
3 attention to be placed or attention to be misplaced on
4 potential problems or potential issues.

5 There has been some discussion about looking at
6 how many power plants were, in fact, built and whether
7 more should have been built, and the reason there were so
8 few applications. And I don't know if the Electricity
9 Committee is going to look at that question, but I'm
10 certainly interested in getting the correct facts out so
11 that all of our leadership is on the same page with them.

12 And that's all I have.

13 COMMISSIONER MOORE: Good point. And we will, in
14 fact, take it up at the Electricity Committee. And
15 there's been some suggestion as to whether or not an OII
16 would be appropriate. There may be other opportunities to
17 discuss that issue where we can have people come to us
18 with relevant information about industry investment
19 intentions and decisions in the past decade. Certainly,
20 we can be perhaps a little more factual than we have been
21 in the past, maybe more forceful in putting the
22 information out.

23 Other committee reports?

24 COMMISSIONER PERNELL: Mr. Chairman, let me just
25 comment on that. Having been a delegate to that

1 convention and actually heard the Governor's speech, I
2 would have to concur with Commissioner Rosenfeld in that
3 the Governor did say no new major power plants.

4 And with my colleagues' indulgence, I would like
5 to give my impression of why there's no new major power
6 plants built. And as an elected official sitting on the
7 Sacramento Municipal Utility District's Board, we had a
8 major power plant, actually the bonding for that
9 particular plant was about to get approved when the whole
10 issue of AB 1890 began to surface.

11 And I would submit that, and this is not in any
12 way an answer to whether or not we need an OII and all of
13 those other things. But I would submit that because of
14 the uncertainty of AB 1890 and how it was portrayed as we
15 need to reduce our overhead as an organization or as a
16 company, no one wanted to get involved in any debt, debt
17 whether it's with bonding or any investor wanted to fund a
18 major power plant, when it was articulated that rates
19 would be as low as two and a half cents, at least to us on
20 the SMUD board, two and a half cents a kilowatt hour --
21 yeah, kilowatt hour.

22 One of the reasons everything went soft is
23 because there was a lot of uncertainty out there and this
24 is in 1996 before the legislation even got past, that
25 people began to take these major power plants off their

1 drawing board.

2 And so I would agree that there needs to be --
3 that we need to do a better job articulating that. We
4 have done some power plant siting, and also that -- and I
5 don't know what the Governor said in the past, but
6 certainly I know Mr. Larson and a lot of us have
7 articulated that we have, in fact, licensed power plants
8 within the ten years. And I think that you will see the
9 Governor softening his response in terms of whether or not
10 any power plants have been built.

11 He did say, though, however, in the speech that I
12 heard, that there was no new major power plants built.

13 COMMISSIONER LAURIE: And thank you, Commissioner
14 Pernell. And to that extent, I certainly stand corrected.
15 I believe in a presentation that I heard him make on CNN a
16 week before with a great degree of certainty, I am sure he
17 said that there were no new power plants.

18 I'm in 100 percent concurrence with your view as
19 to why we did not have more power plants built. I think
20 there are some other reasons. I think that the market
21 would not have demanded it, but even the lack of certainty
22 was in existence in the very early nineties, because we
23 started talking about dereg in '92 or '93, and that
24 created uncertainty in the market.

25 So I think there are very easily explainable

1 reasons, other than some administration policy or some
2 Energy Commission policy that was a barrier to, in fact,
3 what folks wanted to do. So I'd be interested in looking
4 at that question. And I appreciate your comments very
5 much.

6 That's all I have, Mr. Chairman.

7 COMMISSIONER MOORE: Thank you.

8 Chief Counsel.

9 CHIEF COUNSEL CHAMBERLAIN: I have nothing today,
10 Mr. Chairman.

11 COMMISSIONER MOORE: Mr. Executive Director.

12 EXECUTIVE DIRECTOR LARSON: Just to add, Mr.

13 Chairman, a little bit to the discussion about what

14 happened with the Governor and the Governor's speech.

15 It was an interesting dialogue that went on.

16 Because of the -- I mean, we've for some time been

17 attempting to get the Governor to use at least the term

18 "major" in the way -- when he wants to use this phrase

19 about whether the power plants were built or not in the

20 last 12 years. And you had talked to me about CNN and I

21 heard it from other sources, so I went into those wherever

22 I came across folks who might interact with the Governor.

23 I certainly didn't see him myself during this period, but

24 I kept saying, you know, he did it again, he did it again.

25 And on Friday night, late, I got a transcript of

1 the energy portions of the Governor's speech that he was
2 going to make the next day. And the speech writer asked
3 me some questions about it, and I noted in there that it
4 said major. And I noted to him that this was good. He
5 was on the right track here. It all sounds like we were
6 going to be okay. And he said, yes, it's been a big
7 problem. We've been trying to fix this for some time.

8 So I think that maybe he's got it now. So we're
9 still working on it.

10 COMMISSIONER LAURIE: Then the only question is
11 the context in which that language is used. Certainly, we
12 have no control over that.

13 COMMISSIONER PERNELL: I might also add that,
14 Commissioner Laurie, I didn't see his CNN presentation, so
15 I can't speak to that. I was merely speaking to the
16 democratic convention speech.

17 COMMISSIONER LAURIE: I understand, and I do
18 stand corrected.

19 Thank you.

20 COMMISSIONER MOORE: Public adviser?

21 ASSISTANT PUBLIC ADVISER KRAPCEVICH: No report,
22 at this time.

23 COMMISSIONER PERNELL: You sat here all this
24 time.

25 COMMISSIONER MOORE: Getting educated. Is there

1 any member of the public who would like to address us on
2 any item not on the agenda?

3 Seeing none -- Keith, wearing your public hat.

4 MR. GOLDEN: Well, yes. I just happened to be
5 listening to this discussion about no new major plants and
6 just in the context I've been here 20 years --

7 COMMISSIONER MOORE: Please identify yourself.

8 MR. GOLDEN: My name is Keith Golden. I'm a
9 member of the CEC staff.

10 COMMISSIONER MOORE: But you're also a citizen.

11 MR. GOLDEN: But I'm putting on my hat as a
12 citizen, because I hear this over and over again about no
13 new major power plants. And in 20 years we did obviously
14 site just about every project that came before us. Most
15 that we're not sited were pulled by the applicant for
16 whatever reasons.

17 The largest project we ever had in 20 years was
18 the ARCO/Watson power plant license back in the mid-1980s,
19 85/86 time frame. That was 385 megawatts. And everything
20 else was always much smaller 240, 120, 100. And I just
21 have to wonder what the context of -- somebody needs to
22 define, as I alluded last week, what is a peaker project?
23 Well, perhaps we need to define what is a major power
24 plant? How big does it have to be to be called a major
25 power plant?

1 COMMISSIONER MOORE: Fifty thousand megawatts.

2 MR. GOLDEN: I just leave that with you.

3 COMMISSIONER PERNELL: Also, in California.

4 MR. GOLDEN: Obviously, the advent of the High
5 Desert project brought the first, certainly, large power
6 plant around 600/700 megawatts that we'd ever seen in
7 many, many years, certainly since I've been at the
8 Commission since 1981.

9 So I just want to put that out there, somebody
10 needs to clarify with Governor Davis we need to get a
11 definition of major and it in the right context.

12 COMMISSIONER MOORE: Thank you. We appreciate
13 it.

14 Anyone else?

15 This meeting is adjourned.

16 (Thereupon the California Energy Commission
17 meeting adjourned at 2:45 p.m.)

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Energy Commission meeting was
7 reported in shorthand by me, James F. Peters, a Certified
8 Shorthand Reporter of the State of California, and
9 thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 9th day of April, 2001.

15

16

17

18

19

20

21

22

23

JAMES F. PETERS, CSR, RPR

24

Certified Shorthand Reporter

25

License No. 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

□