

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Business Meeting)
)
-----))

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

WEDNESDAY, MAY 2, 2001

10:08 A.M.

Reported by:
Valorie Phillips
Contract No. 150-99-002

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

Michal C. Moore, Associate Chairman

Robert A. Laurie

Robert Pernel

Arthur Rosenfeld

James Boyd, Ex Officio

STAFF PRESENT

Steve Larson

William Chamberlain

Kent Smith

Scott Tomaschefsky

Ricardo Amon

Mark Rawson

Philip Spartz

Paul Richins

Cheri Davis

Bob Eller

Marwan Masri

Gabriel Herrera

PUBLIC ADVISER

Roberta Mendonca

ALSO PRESENT

Jackie Williams

Jeffery D. Harris

ALSO PRESENT

Bryan J. Bertacchi

Keith Breskin

Richard Zeckentmayer

Bob Judd

Stephen Kelley

Gordon E. Hart

Bob Lucas

Tom Lagerquist

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

2 10:08 a.m.

3 ASSOCIATE CHAIRMAN MOORE: Good morning.
4 We're going to begin the regular Business Meeting
5 of May 2nd for the California Energy Commission.

6 Commissioner Keese is out of town on
7 official business, and I'll be chairing the
8 meeting today.

9 We'll begin with the Pledge of
10 Allegiance. Commissioner Laurie, would you lead
11 us.

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

14 ASSOCIATE CHAIRMAN MOORE: By way of
15 bookkeeping for everyone who is here for the items
16 that are on the listed agenda, let me tell you
17 some of the changes that have been made. And then
18 let me inform you that the Commissioners will
19 adjourn briefly for an executive session to
20 consider a matter of possible litigation. And we
21 will return following that and take up the regular
22 business meeting items.

23 Item 2 has been moved to a future
24 meeting. I don't have a date for that. Item 4
25 has been moved to a future meeting date. No date

1 for -- I'm sorry -- 2 and 4 -- well, why is --
2 I'll tell you what, we'll come back and we'll
3 discuss 4, as to whether or not it's properly
4 moved or not. That's probably in line with some
5 of the other stuff that we'll be talking about
6 today.

7 Item 8 has been deleted. Item 10 has
8 been moved to the May 10 meeting. And item 15 has
9 been withdrawn. Added item 24 has been moved.
10 And item 25 is recommended to be pulled this
11 morning.

12 So, with that, -- I'm sorry -- item 7,
13 the Mojave Desert Air Quality Management District,
14 and they're recommending that that be postponed.

15 MR. CHAMBERLAIN: Mr. Chairman, we're
16 recommending that that item be postponed to the
17 May 10th special meeting.

18 And it might be a good idea, to the
19 extent that we know it, that we identify if, for
20 example, we wish to take up either item 24 or 25
21 at that May 10th meeting, we should identify that
22 at this time.

23 ASSOCIATE CHAIRMAN MOORE: And I suppose
24 there's no real good argument for just taking
25 everything from today and moving it to May 10 so

1 that we --

2 (Laughter.)

3 ASSOCIATE CHAIRMAN MOORE: More
4 efficient? No. Okay.

5 MR. CHAMBERLAIN: Well, we could do
6 that. That would allow us to do that on May 10th,
7 if they're ready. But if someone knows that
8 something will not be ready then, then it would
9 not be a good idea.

10 ASSOCIATE CHAIRMAN MOORE: No. All
11 right.

12 With that, let me just tell you that
13 we're going to be in a brief recess to executive
14 session, and we'll return forthwith. Thank you.

15 (Whereupon, the business meeting was
16 adjourned to executive session, to
17 reconvene later this same day.)

18 --o0o--

19 ASSOCIATE CHAIRMAN MOORE: The
20 Commissioners have been in executive session to
21 discuss matters regarding the possible litigation
22 in the future. No decisions were made in the
23 meeting, and we will take up our regular agenda.

24 Consider item 1, Concio, possible
25 approval of contract 300-00-007 for \$36,540 to

1 streamline the interconnection application review
2 process.

3 And, Mr. Tomaschefsky.

4 MR. TOMASCHEFSKY: Thank you,
5 Commissioner Moore. Good morning, Commissioners.
6 To my right is Bill Junker. He's the contract
7 manager for this proposed contract.

8 Since late '98 the Energy Commission and
9 the PUC have been working together to investigate
10 distributed generation in the California energy
11 market. And as part of that effort we have led a
12 process to develop standardized interconnection
13 rules for customers seeking to connect with the
14 investor-owned utilities in the state.

15 The rules were adopted by the PUC in
16 December; became effective in early January. The
17 \$36,000-plus contract we're looking for this
18 morning has been endorsed by the Siting Committee.
19 And represents followup work that we committed to
20 do once those rules were adopted.

21 The contract looks for Concieo to
22 develop and implement an electronic application
23 form for DG customers seeking to interconnect with
24 investor-owned utilities, and also put together a
25 database containing a list of all DG equipment

1 certificated for interconnection, including the
2 relevant data needed by the utilities to complete
3 the application.

4 The specific issues surrounding access
5 to what type of information will be addressed as
6 part of our ongoing rule 21 interconnection
7 working group meetings that we hold on a monthly
8 basis.

9 And the completed form databases should
10 be available by the early part of July, and will
11 be posted on our webpage.

12 ASSOCIATE CHAIRMAN MOORE: Thank you.
13 Do you expect this to be password protected in the
14 end?

15 MR. TOMASCHEFSKY: Portions of it will
16 be.

17 ASSOCIATE CHAIRMAN MOORE: So, a
18 subscription will allow access?

19 MR. TOMASCHEFSKY: That's right. We'll
20 have various firewalls so that the access to all
21 the specific technical information the utilities
22 will have full access to in the context of
23 reviewing the application. But, we wouldn't put
24 it in a position where there would be sensitive
25 data that would be trade secret related that would

1 not be touchable by all parties.

2 ASSOCIATE CHAIRMAN MOORE: Thank you.
3 Commissioner Rosenfeld. You have a question?

4 COMMISSIONER ROSENFELD: No.

5 ASSOCIATE CHAIRMAN MOORE: I'm sorry.

6 COMMISSIONER LAURIE: I started to
7 mumble for a moment, but I changed my mind. I'll
8 just move the recommendation, Mr. Chairman.

9 ASSOCIATE CHAIRMAN MOORE: Moved by
10 Commissioner Laurie. Is there a second?

11 COMMISSIONER PERNELL: Second.

12 ASSOCIATE CHAIRMAN MOORE: Second by
13 everyone. Is there anyone in the public who would
14 like to address us on this matter?

15 All those in favor say aye.

16 (Ayes.)

17 ASSOCIATE CHAIRMAN MOORE: Motion
18 carries four to zero.

19 Item 2 was pulled.

20 Item 3, the Watertech Partners.
21 Possible approval of contract 500-98-030,
22 amendment 1, -- how many amendments were we
23 expecting on this -- for an additional \$80,512.36.
24 And, good morning.

25 MR. AMON: Good morning. Thank you very

1 much. My name is Ricardo Amon; I'm the contract
2 manager for the Watertech Partners.

3 The project is a PIER research economic
4 project funded by the PIER Program. This project
5 was funded in the second PIER solicitation with
6 \$440,400, to advance the use of ozone and
7 membranes to disinfect poultry processing, and
8 replace chlorine and other disinfectants, and
9 reduce energy use in the cooling, the chill bath
10 process.

11 The project is in need of an additional
12 \$80,512 to complete the work. Specifically, after
13 reviewing the protocol developed by the project by
14 the U.S. Food and Drug Administration and the U.S.
15 Department of Agriculture that were the federal
16 agencies to approve these projects.

17 They have requested that additional work
18 be done, testing and other activities. The
19 project would be moving to the second phase with
20 this augmentation, and should be finalized by
21 December of this year with the results on their
22 activities, and how effective this technology is.

23 ASSOCIATE CHAIRMAN MOORE: Thank you,
24 Ricardo. Are there questions, Commissioners, of
25 Mr. Amon. Is there a motion?

1 COMMISSIONER ROSENFELD: I so move.

2 COMMISSIONER LAURIE: Second.

3 ASSOCIATE CHAIRMAN MOORE: Moved by
4 Commissioner Rosenfeld, second by Commissioner
5 Laurie. Is there anyone in the public who would
6 like to address us on this item?

7 MS. WILLIAMS: I'd like to ask, I can't
8 hear the items 1 or 3. Is there any way that
9 something could be done with the microphones?

10 MS. MENDONCA: I believe this is Jackie
11 Williams who's on the line. Her interest is
12 Golden Gate. It's sort of a generic question she
13 has. She's not able to hear the speakers.

14 ASSOCIATE CHAIRMAN MOORE: All right,
15 we'll do better on the generic speaking into the
16 microphones.

17 And I think I'll turn to the Executive
18 Officer and simply indicate this: Mr. Executive
19 Officer, this has been a problem. Perhaps we can
20 get the business services people to use some of
21 our newfound state assistance, and maybe it's time
22 to just go through and get the contractor to take
23 these away, and replace them with whatever we
24 really contracted for that would allow humans to
25 hear us on the other end. We've probably waited

1 long enough for that. Thank you.

2 All those in favor of the motion signify
3 by saying aye.

4 (Ayes.)

5 ASSOCIATE CHAIRMAN MOORE: Those
6 opposed? That motion carries.

7 We'll now drift easily out of item 4,
8 which has been replaced by item 26, and we'll
9 consider the item on the California State
10 University Chico Research Foundation, which is
11 contract 500-00-018, and I think we probably need
12 an explanation as to why the amount is changed
13 from \$557,000 to \$800,000. This money is coming
14 out of the PIER Program, and perhaps you can
15 elaborate for us.

16 MR. RAWSON: Sure. Good morning. My
17 name is Mark Rawson. I'm from the Strategic
18 Program in PIER.

19 The original contract that was proposed
20 with PG&E was to conduct testing of a switching
21 device that potentially allows for California to
22 implement soft blackouts for the residents,
23 allowing them to still have lighting and safety
24 devices, and just disabling their 240 volt
25 services within their home.

1 In the course of putting together this
2 project that was brought to the attention of the
3 Strategic Program by Commissioner Rosenfeld, there
4 were several components that needed to be done to
5 evaluate the technical and economic feasibility of
6 the switch.

7 The proposed contract with PG&E was for
8 just the testing. In the course of putting
9 together the project we realized that there would
10 be some issues with getting this testing done with
11 PG&E.

12 And so we opted for another route to
13 actually incorporate some of the other components
14 that were still planned for this project in one
15 contract with Chico State University.

16 Consequently the cost increase in the
17 project is for these additional components to the
18 overall project that now we're going to complete
19 in one contract as opposed into several contracts.

20 ASSOCIATE CHAIRMAN MOORE: Thank you.
21 Commissioner Rosenfeld.

22 MR. CHAMBERLAIN: Mr. Chairman, --

23 ASSOCIATE CHAIRMAN MOORE: I'm sorry.
24 Mr. Chamberlain.

25 MR. CHAMBERLAIN: -- before we go any

1 further, this is an item that was added to the
2 agenda one day after the normal ten-day window.
3 And the reason was because there were facts about
4 this item that came to our attention after the
5 agenda had already gone out.

6 Under Government Code section 11125.3 we
7 can do this, but only if you determine by a two-
8 thirds vote that there exists a need to take
9 immediate action, and that the need for that
10 action came to the attention of the Commission
11 subsequent to the agenda going out, so --

12 COMMISSIONER LAURIE: Mr. Chairman, I
13 move to add the item onto the agenda by adopting
14 such findings.

15 COMMISSIONER PERNELL: Second.

16 ASSOCIATE CHAIRMAN MOORE: Moved and
17 seconded to add this under extraordinary
18 circumstances. Any discussion? All those in
19 favor signify by saying aye.

20 (Ayes.)

21 ASSOCIATE CHAIRMAN MOORE: That motion
22 carries four to zero.

23 Gentlemen, let's take up the item.
24 Commissioner Rosenfeld.

25 COMMISSIONER ROSENFELD: I move the

1 item.

2 COMMISSIONER LAURIE: Second.

3 ASSOCIATE CHAIRMAN MOORE: Moved by
4 Commissioner Rosenfeld, seconded by Commissioner
5 Laurie. Any discussion on the motion?

6 All those in favor say aye.

7 (Ayes.)

8 ASSOCIATE CHAIRMAN MOORE: That motion
9 carries four to zero.

10 MR. RAWSON: Thank you.

11 ASSOCIATE CHAIRMAN MOORE: Thank you
12 very much, Mr. Rawson.

13 Item 5, a possible approval of contract
14 150-00-004 for \$500,000 pursuant to the executive
15 order of May 26, '01, for additional counsel. And
16 perhaps we can get some elaboration on this.

17 Mr. Chamberlain, one of the reservations
18 that I have about an item like this is that it
19 begins to look as though when we reach into the
20 pockets of talent that are out there, whether
21 we're going to the outside world, or whether we're
22 saying within the state family, that the number of
23 people available to do the work who have requisite
24 experience in this field is pretty limited.

25 So, what good does it do us to have

1 \$500,000 extra to spend if there simply are no
2 professional people out there who have experience
3 that we could use?

4 MR. CHAMBERLAIN: Let me explain a
5 little bit about this contract. This contract is
6 somewhat similar to the Aspen contract that the
7 Siting Division has used in order to insure that
8 the Commission has adequate analytic capability to
9 handle some of the expedited proceedings that
10 we've been handling under the emergency orders.

11 In this case I don't know whether we'll
12 even need to use this contract. And I should
13 indicate that the amount should actually be
14 \$250,000, not \$500,000.

15 ASSOCIATE CHAIRMAN MOORE: Minor error.

16 MR. CHAMBERLAIN: Well, we put it out
17 for \$500,000. And the Governor's Office --

18 ASSOCIATE CHAIRMAN MOORE: Can I have
19 the extra 250?

20 (Laughter.)

21 MR. CHAMBERLAIN: -- has only -- has
22 suggested that we start with a \$250,000 contract.
23 And if we need more then we can --

24 ASSOCIATE CHAIRMAN MOORE: Work our way
25 up.

1 MR. CHAMBERLAIN: Right.

2 ASSOCIATE CHAIRMAN MOORE: Right.

3 MR. CHAMBERLAIN: The purpose of the
4 contract was simply to insure that if, during the
5 next few months, we have more legal problems than
6 we currently anticipate -- my priority is always
7 to use the counsel that we have here, and the
8 counsel that we might have available to us within
9 the state, the attorney general's office, for
10 example, to assist us.

11 But the attorney general's office has
12 indicated that there are limitations on what they
13 can probably do for us, and they have suggested
14 that we at least retain outside counsel.

15 This particular firm has recently
16 acquired a gentleman whose name is David Nowi.
17 David Nowi was the former chief counsel of the
18 California Air Resources Board, and most recently
19 was the solicitor for Region IX of the Department
20 of the Interior. So he has both state and federal
21 background.

22 And some of the most difficult questions
23 that we have come upon in some of these emergency
24 proceedings have been lining up state and federal
25 interests, particularly in the air quality area.

1 And so it occurred to me that, and
2 particularly given that some of our counsel may
3 not be available to us this summer as much as they
4 have been, that it would be useful to us to have
5 that kind of capability available should there be
6 these kinds of problems.

7 ASSOCIATE CHAIRMAN MOORE: And the
8 source of the money is general fund? I mean, or
9 is it coming out of Commissioner Keese's office
10 budget?

11 MR. CHAMBERLAIN: I believe it's the
12 same source as the Aspen contract. Is that
13 general fund?

14 ASSOCIATE CHAIRMAN MOORE: So in essence
15 what you're telling me is this is coming out of
16 our own funds, as opposed to the state general
17 fund, is that correct?

18 I ask it a little tongue-in-cheek, but
19 in the long term this could be a big deal in terms
20 of some of our tech support contracts --

21 MR. LARSON: Why don't you put it over
22 for a moment and we'll find out.

23 ASSOCIATE CHAIRMAN MOORE: All right.
24 Put the item over.

25 Well, let me ask, I'm sorry,

1 Commissioner Laurie, a question?

2 COMMISSIONER LAURIE: I don't have any
3 problem with the concept of having folks available
4 or on standby assistance. Just a clarification.

5 This is not being used for the hearing
6 office, is that right, Bill? It's for --

7 MR. CHAMBERLAIN: That's correct. This
8 is just for analysis of legal problems, probably
9 mostly for trying to avoid challenges, but also
10 potentially for responding to challenges to your
11 decisions.

12 ASSOCIATE CHAIRMAN MOORE: And are we
13 paying a premium for somebody in San Francisco as
14 opposed to Sacramento?

15 MR. CHAMBERLAIN: Mr. Nowi, who is the
16 one that I anticipate, relying on the most, is
17 actually here in Sacramento.

18 ASSOCIATE CHAIRMAN MOORE: Okay.

19 MR. LARSON: This comes from the general
20 fund.

21 ASSOCIATE CHAIRMAN MOORE: Comes from
22 the general fund. All right. Are there questions
23 about this tech support item which is now
24 modified? Instead of reading \$500,000, should
25 read \$250,000.

1 COMMISSIONER LAURIE: I would move the
2 recommendation.

3 ASSOCIATE CHAIRMAN MOORE: Moved by
4 Commissioner Laurie.

5 COMMISSIONER ROSENFELD: Second.

6 ASSOCIATE CHAIRMAN MOORE: Second by
7 Commissioner Rosenfeld. A question from
8 Commissioner Pernell.

9 COMMISSIONER PERNELL: Thank you, Mr.
10 Chairman. On the question, Mr. Chamberlain, this
11 is not for the hearing office or any of the other
12 areas that we might need some legal
13 interpretation?

14 And I only mention that because I'm in
15 favor of the item, but I only mention that because
16 we have a lot of legislative statutory work coming
17 to us, and to beef up those areas that the
18 existing counsel is working on, would be, I think
19 would be of some help.

20 So, is there any way we can include
21 additional legal staff for the hearing office, and
22 some of these contracts, for example, some of the
23 other areas?

24 MR. CHAMBERLAIN: Well, as you know, we
25 have made arrangements with the Office of

1 Administrative Hearings to provide additional
2 support to the hearing advisors in the emergency
3 proceedings.

4 And we, of course, try to coordinate as
5 best we can with the hearing office on legal
6 issues. And so to the extent that there are legal
7 issues that they're concerned about, if we can't
8 provide that support then we might be able to rely
9 on this contract.

10 COMMISSIONER PERNELL: Okay. And what
11 about in the contracts area in efficiency?

12 MR. CHAMBERLAIN: That might be
13 possible. I'm not sure that this firm has the
14 kind of expertise that we would look for in that
15 area. We can probably try to provide that in a
16 different way.

17 COMMISSIONER PERNELL: Okay, thank you,
18 Mr. Chairman.

19 ASSOCIATE CHAIRMAN MOORE: Thank you.
20 Other questions? Is there anyone here in the
21 public who'd like to address us on this item?
22 There are none.

23 All those in favor of the motion signify
24 by saying aye.

25 (Ayes.)

1 ASSOCIATE CHAIRMAN MOORE: Opposed?

2 That motion carries four to zero.

3 Item 6, the Davis Energy Group. That
4 must be just a contraction of the synergistic
5 water heating and distribution technologies group,
6 right? Right.

7 Okay, possible approval of contract 400-
8 00-038 for \$767,038. How did we get so precise on
9 that one? Where's the extra \$38 being spent?

10 (Laughter.)

11 ASSOCIATE CHAIRMAN MOORE: -- to provide
12 water heating and distribution technologies
13 through the PIER building fund. Good morning.

14 MR. SPARTZ: Good morning,
15 Commissioners. My name is Philip Spartz. I'm the
16 contract manager for this synergistic water
17 heating contract.

18 This contract with the Davis Energy
19 Group is one of three that were selected by the
20 PIER buildings program from their solicitation of
21 last year.

22 Two of these contracts were approved by
23 you last month, and this is the third one from
24 that solicitation.

25 The purpose of this contract is to

1 develop more efficient hot water heating and
2 distribution for California homes. As you stated,
3 the cost of this contract is \$757,000. This
4 contract is to be completed within three years
5 with Davis Energy Group as the prime contractor.

6 Our building team recommendation is that
7 the Commission approve this contract.

8 ASSOCIATE CHAIRMAN MOORE: I'm going to
9 turn to Commissioner Rosenfeld and ask him for
10 discussion or a motion on this.

11 COMMISSIONER ROSENFELD: I so move.

12 ASSOCIATE CHAIRMAN MOORE: Motion --

13 COMMISSIONER LAURIE: Second.

14 ASSOCIATE CHAIRMAN MOORE: -- for
15 approval, seconded by Commissioner Laurie. Is
16 there discussion on this item?

17 Before we go too much farther, let me
18 just ask Commissioner Rosenfeld, are you
19 proceeding apace with the last PIER solicitation
20 so we're seeing these come literally in the proper
21 sequence to help out with the summer --

22 COMMISSIONER LAURIE: Yeah, --

23 ASSOCIATE CHAIRMAN MOORE: -- summers to
24 come.

25 COMMISSIONER LAURIE: -- comfortable.

1 Good progress.

2 ASSOCIATE CHAIRMAN MOORE: Good
3 progress. All right, I think it might be well for
4 all of us to be able to hear, at some point when
5 there's a break, what's happening with PIER and
6 just to keep us all current. I think that might
7 be very enlightening for all of us to hear. We're
8 spending a tremendous amount of money on these
9 programs, it might be good to have an open -- one
10 of the afternoon forums on that.

11 All those in favor signify by saying
12 aye.

13 (Ayes.)

14 ASSOCIATE CHAIRMAN MOORE: Those
15 opposed? That motion carries.

16 We've moved item 7, the Mojave Air
17 Quality Management District item to May 10th. And
18 we have deleted the peak demand production
19 program. Will that come back?

20 COMMISSIONER PERNELL: Mr. Chairman, at
21 the end of the meeting I intend to brief the
22 Commission on that item. We can do that now or
23 wait until Commissioners comments.

24 ASSOCIATE CHAIRMAN MOORE: All right.
25 True to form, I guess this is becoming,

1 unfortunately, repetitive for my office. We don't
2 have the copies of the decision. And so on item 9
3 I'm going to just put it over. We'll take up some
4 other items and come back to it as soon as Mr.
5 Eller tells me that the copies are en route. Hear
6 that in so many different variant forms, they're
7 on the way. Okay.

8 So, with your indulgence we'll push item
9 9 for a few minutes until we get the copies down
10 here for the Commissioners. Which is not to say
11 that my decisions are always made on the fly, but
12 I do seem to be making some last minute changes.
13 Just proves that the process is very dynamic.

14 COMMISSIONER LAURIE: Well, you have all
15 those notes that you made on your earlier --

16 ASSOCIATE CHAIRMAN MOORE: That's right,
17 and the beauty of this is that when the copies
18 come they'll have all my original Post-Its as part
19 of the record. So, that'll be part of my
20 decision, proposed decision.

21 Item 10, the Hanford Energy Peaker Power
22 Plant project has been moved to May 10, to our
23 special meeting.

24 And let's take up item 11 and 13. And
25 so we'll start with item 11, the Golden Gate Power

1 Plant Phase II project, which is officially docket
2 01-AFC-3, and possible approval of the Executive
3 Director's data adequacy recommendation for same.

4 We'll ask for staff to give us an
5 update.

6 MR. RICHINS: Good morning, my name is
7 Paul Richins, the Project Manager is Marc Pryor.
8 He's on military leave for two weeks, so I'm
9 pinch-hitting for Marc.

10 Staff's recommendation is that this
11 project, we've reviewed the data adequacy, and
12 they have requested both a six-month process. We
13 reviewed both the 12-month and the six-month, and
14 they're inadequate in a number of areas for both
15 the six- and 12-months.

16 So we recommend that the project be
17 found data inadequate. Our understanding is that
18 they will be coming in with some supplemental
19 information in the middle of the month. We will
20 process that as expeditiously as we can and get it
21 back on the calendar probably three weeks after we
22 receive the material sometime in mid-June if they
23 proceed as we anticipate.

24 ASSOCIATE CHAIRMAN MOORE: So, Mr.
25 Richins, under those circumstances when do you

1 think you'll get the data, realistically? And
2 then we'll add three weeks to that. I mean when
3 do you think --

4 MR. RICHINS: The last we had talked
5 with them was the middle of this month. Now, part
6 of --

7 ASSOCIATE CHAIRMAN MOORE: I'm asking my
8 question badly. Let me try again. Given the
9 nature of the inadequate portions of the
10 submittal, and with your experience in looking at
11 this type of submittal, what's your guess as to
12 when the information would be adequate?

13 MR. RICHINS: I don't have a guess, but
14 I can tell you that there is some additional
15 material, additional work that they need to do for
16 the Air District from the standpoint of air
17 quality modeling.

18 They also have an outstanding question
19 of site control. And I don't know the status of
20 their negotiations for site control of the area.

21 ASSOCIATE CHAIRMAN MOORE: All right, we
22 have a recommendation for data inadequacy.
23 Gentlemen, your pleasure.

24 COMMISSIONER PERNELL: Mr. Chairman, I
25 would move the Executive Director's

1 recommendation.

2 ASSOCIATE CHAIRMAN MOORE: Moved by
3 Commissioner Pernell. Is there a second?

4 COMMISSIONER ROSENFELD: Second.

5 ASSOCIATE CHAIRMAN MOORE: Second by
6 Commissioner Rosenfeld to find this project, at
7 this date, inadequate. Discussion?

8 COMMISSIONER PERNELL: Mr. Chairman, --

9 ASSOCIATE CHAIRMAN MOORE: Commissioner
10 Pernell.

11 COMMISSIONER PERNELL: -- I would ask,
12 is the applicant here today? Golden Gate? Thank
13 you, Mr. Chairman.

14 ASSOCIATE CHAIRMAN MOORE: Negative.
15 Commissioner Rosenfeld.

16 COMMISSIONER LAURIE: We have people on
17 the phone, Mr. Chairman, I'm wondering if they
18 want to --

19 ASSOCIATE CHAIRMAN MOORE: And I'll turn
20 to them as soon as we get -- I'm sorry, we do have
21 a motion on the floor, --

22 COMMISSIONER LAURIE: Yes.

23 ASSOCIATE CHAIRMAN MOORE: -- so I'm out
24 of order. Commissioner Boyd, you have a question?

25 COMMISSIONER BOYD: No, I was --

1 ASSOCIATE CHAIRMAN MOORE: Deferring
2 to --

3 COMMISSIONER BOYD: -- referring you
4 to --

5 ASSOCIATE CHAIRMAN MOORE: -- our
6 esteemed Board Member. All right. So there is
7 someone apparently who would like to join us by
8 phone, and would like to comment on this. Would
9 you identify yourself?

10 MS. MENDONCA: Jackie, are you still
11 there?

12 MS. WILLIAMS: Yes, I am.

13 MS. MENDONCA: Do you have any --

14 MS. WILLIAMS: My name is Jackie
15 Williams. I am a resident of South San Francisco.
16 As far as the data adequacy, I'm very glad that
17 you decided to wait until you have data adequacy
18 for the six months and the 12 months, because
19 there are items like air quality that don't meet
20 either. And also cultural resources, and noise,
21 and project overview, and reliability, and visual
22 resources and water resources.

23 My understanding is that there's no
24 signed agreement with the San Francisco Airport
25 Commission yet re phase I yet.

1 And I also ask at this time that the Bay
2 Area Air Quality Management be requested by the
3 CEC to ask the applicant to install in
4 preconstruction phase an ambient air quality
5 monitoring system at the most effective spot, the
6 low point suggested has been San Bruno.

7 This way the residents of San Mateo can
8 have a baseline to what the air pollution is now.
9 And as data is collected, what the pollution the
10 power plant is generating in the area above the
11 baseline.

12 I'm not sure if this is the right time
13 to do this, but I know we kind of got confused
14 with onsite monitors and ambient air quality
15 monitors. But I'm a bit more educated now. And
16 understand that it's ambient air quality monitors
17 that is the main problem, because our closest one
18 is in Redwood City, quite a way away.

19 So I'd like to bring that up again. But
20 I'd like to thank you for this opportunity to
21 participate. Thank you.

22 ASSOCIATE CHAIRMAN MOORE: Thank you
23 very much. Mr. Richins, perhaps you can comment
24 on this, but I think this is not the forum to
25 bring up those changes to the air quality

1 monitoring standards or mechanics, but, in fact,
2 those are properly addressed at the opening
3 hearing of such a project when it is deemed data
4 adequate.

5 MR. RICHINS: Yes, issues such as the
6 appropriateness of monitoring and asking for
7 monitoring to be placed near the project is
8 something that we encounter on many projects.

9 And that's an issue that we will work
10 through during our staff assessment, and through
11 our analysis of the project. And working with the
12 Air District to determine whether it's appropriate
13 or not.

14 ASSOCIATE CHAIRMAN MOORE: Thank you.
15 Is there anyone else who's on the public line that
16 would like to address us?

17 All right, hearing none, we have a
18 motion and second on the floor to find this
19 project data inadequate. All those in favor
20 signify by saying aye.

21 (Ayes.)

22 ASSOCIATE CHAIRMAN MOORE: Those
23 opposed? That motion carries four to zero. Which
24 negates the need to take up item 12.

25 Item 13 is Altamont Energy Center,

1 docket 01-AFC-4, the possible approval of the
2 Executive Director's data adequacy recommendation
3 for this project. And we have a staff report to
4 us, and then we'll take this up.

5 MS. DAVIS: Good morning, Commissioners.
6 My name is Cheri Davis and I am Project Manager
7 for the East Altamont Energy Center Project. And
8 to my left is Lisa DeCarlo; she's staff counsel
9 for this project.

10 On March 29th East Altamont Energy
11 Center, Limited Liability Company, a wholly owned
12 subsidiary of Calpine Corporation, filed an
13 application for certification seeking approval
14 from the Energy Commission to construct and
15 operate an 1100 megawatt, natural gas fired,
16 combined cycle power plant in the far northeast
17 corner of Alameda County.

18 The applicant has proposed that this be
19 a 12-month application for certification.
20 Thirteen out of 23 areas are data inadequate
21 according to staff.

22 Problematic areas include water and
23 biological resources.

24 We recommend at this time that you find
25 this application data inadequate.

1 The applicant has indicated that it will
2 file supplemental materials, all the supplemental
3 materials this week. Our regulations normally
4 give us 30 days to determine data adequacy.

5 The applicant has requested that we put
6 this project on the May 16th business meeting.
7 However, staff normally require at least three
8 weeks. That's two for staff review, and then one
9 for the public and Commissioners.

10 Staff will do their best but we cannot
11 make any promises about meeting this May 16th
12 timeline.

13 ASSOCIATE CHAIRMAN MOORE: Well, I'm
14 going to just assume that the applicant might have
15 a comment on this, considering they've moved up to
16 the table to talk to us. Let's see if I can read
17 the tea leaves on this. Jeff.

18 MR. HARRIS: Thank you, Commissioner.
19 I'm Jeff Harris on behalf of the applicant.
20 Couple things. First off, we agree with staff's
21 recommendation today. I think they've made the
22 right recommendation and we're in agreement there.

23 We would like to schedule this for the
24 16th of May. There are, again, a number of areas
25 that have outstanding requests. By my count there

1 are six areas that are simply one minor item has
2 to be turned in.

3 So while the yes/noes don't look good,
4 the actual amount of data required here is not
5 that substantial.

6 So, with that in mind, we understand
7 that staff does need adequate time to review.
8 Given that it can be continued from the 16th, we
9 would request that the Commission agenda this item
10 for the 16th, and continue it, if necessary, to
11 the next available meeting.

12 Finally, there were a few of the
13 requests for data that at initial review applicant
14 thought might have bordered on things that might
15 be more appropriate for discovery.

16 We've had discussions with staff since
17 that time. I think we're reaching an
18 understanding, and that issue may very well go
19 away. And our full intent is to provide
20 everything actually today. We have a confidential
21 filing going on this morning, and then an
22 additional filing later today.

23 So, we're not anticipating having to
24 have any disagreements with staff, but I obviously
25 need to reserve the right to have that discussion

1 with you on the 16th if we're not able to work out
2 those final details.

3 But overall I think the project's in
4 good shape. It's not that much information that's
5 going to be coming in. And we do ask for your
6 consideration in taking this up on the 16th.

7 ASSOCIATE CHAIRMAN MOORE: Well, I'm not
8 sure, Mr. Harris, that we can assign it to the
9 16th at this point, but we'll take it up at the
10 earliest possible time, assuming that the timing
11 is met, and we'll make sure it gets on the agenda
12 if all the data comes in.

13 So, I'll commit to that for you. And
14 the 16th looks probable. We'll get it on the
15 agenda if the information's in.

16 Gentlemen, your pleasure.

17 COMMISSIONER PERNELL: Mr. Chairman, I
18 would move the Executive Director's decision to
19 find the item inadequate.

20 COMMISSIONER ROSENFELD: Second.

21 ASSOCIATE CHAIRMAN MOORE: Motion by
22 Commissioner Pernell, second by Commissioner
23 Rosenfeld to find the project at this time data
24 inadequate. We'll bring it back following receipt
25 of the information and change of recommendation at

1 the earlier possible date.

2 Is there anyone in the public who would
3 like to address us on this item? Anyone on the
4 line who'd like to address us on this item?

5 MR. HARRIS: Commissioner, I just wanted
6 to introduce Tom Lagerquist, who's the Project
7 Manager for Calpine on this project.

8 ASSOCIATE CHAIRMAN MOORE: Good, welcome
9 to the process.

10 MR. LAGERQUIST: Thanks.

11 ASSOCIATE CHAIRMAN MOORE: Thank you.

12 All those in favor signify by saying aye.

13 (Ayes.)

14 ASSOCIATE CHAIRMAN MOORE: Those
15 opposed? That motion carries four to zero.

16 All right, well, you'll notice that Mr.
17 Glaviano hand-delivered, great service, the
18 decision that is proposed, so we now have at least
19 text in front of us. And I'll indicate that this
20 is also on the web, available. But I have to make
21 a couple of corrections to the text.

22 So, with that, let me take up item 9,
23 which is the King City LM 6000 Power Plant project
24 for which I presided, and bring you a
25 recommendation. This is docket 01-EP-6, a 50

1 megawatt power plant proposed to be located in
2 King City. And it was applied for under our
3 emergency siting program and the Governor's
4 executive order D-2601 and D-2801.

5 And I'm going to ask Mr. Eller for some
6 comments. I'll turn to the applicant for
7 comments. Then I'd like to talk about the
8 specifics of the decision. And then I know we
9 have some people who would like to address us.

10 Mr. Eller.

11 MR. ELLER: Good morning, Commissioners.
12 Bob Eller from Commission Staff. Staff has
13 reviewed the proposed decision from the Committee,
14 and with maybe small exceptions on the land use
15 issues related to King City, and the stack height,
16 we believe the decision is appropriate. And we
17 recommend its approval.

18 On the issue of land use, Keith Breskin
19 from the City of -- the City Manager of King City,
20 is here today. It's our staff's understanding
21 that there was no need for any land use permit
22 application with the City, because they were
23 exclusive authority. The City would have approved
24 this if it had been before them. I think Mr.
25 Breskin can speak for the City.

1 ASSOCIATE CHAIRMAN MOORE: Thank you,
2 Mr. Eller. Let me turn to the applicant, and ask
3 them if they have comments on this. Mr. Harris,
4 welcome back.

5 MR. HARRIS: Thank you, it's good to be
6 back.

7 (Laughter.)

8 MR. HARRIS: Just would like to say a
9 couple words and then have Bryan Bertacchi, who is
10 the Calpine Vice President for Western Region
11 Operations, gas-fired operations, say a few words.

12 But, this is a great project. I think
13 the staff assessment and the PMPD are excellent
14 work. They were presented not only in a timely,
15 but maybe a heroic manner, very quick and very
16 good work.

17 So, with that I'd like to have Bryan
18 Bertacchi then to say a couple words on behalf of
19 the applicant.

20 MR. BERTACCHI: Thank you,
21 Commissioners, good afternoon. Calpine has a
22 contract with the State of California, with the
23 Department of Water Resources for 11 peaker units.

24 These are low-cost, reliable and clean
25 projects which will help relieve the energy crisis

1 in California. Calpine has been working, at risk,
2 diligently to process as many activities in
3 parallel to advance the COD dates of these
4 projects.

5 And at the same time, these will be
6 Calpine projects. And what I mean by that,
7 they'll be efficient, low impact to the community,
8 low emissions and highly reliable projects.

9 And at the same time they'll be in
10 compliance with LORS, federal and state
11 regulations, even though this is a very fast track
12 project.

13 I'm here today representing Calpine to
14 request the approval of the King City project,
15 which is the first of these projects before the
16 Commission.

17 And Calpine would like to acknowledge
18 and thank the efforts of many parties here who
19 really worked diligently to get this done in a
20 rapid manner. Specifically Commissioner Moore,
21 who presided on this, Spencer Joe, Bob Eller,
22 Roger Johnson and Bob Therkelsen.

23 And we also wanted to thank the Monterey
24 Bay Unified Air Pollution Control District, Fred
25 Thoits and Mike Sewell. And we'd also like to

1 thank PG&E, who's been very diligent in trying to
2 expedite all the technical studies required,
3 specifically also in King City, Art Macauley.

4 And last, but not least, we want to
5 thank King City, the elected officials and the
6 staff, specifically the elected officials for
7 having the understanding to recognize the
8 importance of reliable energy, not only in their
9 community, but for California. And to help us in
10 a timely way to have this project comply with all
11 the regulations.

12 Again, Calpine is here today to request
13 approval of the King City project. Thank you.

14 ASSOCIATE CHAIRMAN MOORE: Thank you. I
15 appreciate your comments. Mr. Breskin, can I ask
16 you to come up to the microphone for just a
17 moment. And talk about the potential variance on
18 the stack height that is part of this application,
19 so that for the record we make sure that we're
20 including what actions the City is undertaking.

21 And then I'm going to ask some members
22 who accompanied you to be recognized.

23 MR. BRESKIN: Okay, with regard to the
24 stack height, and our Planning Director is here,
25 as well, today, and can talk specifically if you

1 have any questions after my comment.

2 The stack height that is proposed is
3 less than the stack height that currently exists,
4 Calpine's 115 megawatt cogeneration plant. So we
5 have every reason to believe, while we can't speak
6 for the City Council, that the variance for the
7 stack height would have no problems, and would be
8 approved without any conditions whatsoever.

9 ASSOCIATE CHAIRMAN MOORE: And in terms
10 of the review that's already scheduled for either
11 your planning commission or your city council, to
12 take this matter up?

13 MR. BRESKIN: Well, we have not received
14 the applications yet from Calpine, but we are
15 anticipating getting them any day now. They might
16 be able to speak to that.

17 We have it scheduled for our May 15th
18 planning commission meeting, and on May 22nd, the
19 city council meeting. We can move that quickly.

20 ASSOCIATE CHAIRMAN MOORE: Thank you.
21 I'm going to go back to Mr. Harris, while you've
22 got the floor for just a second. Mr. Harris,
23 you're in the process of submitting that
24 application?

25 MR. HARRIS: Yes, this is actually the

1 one area flagged in the decision, but we are in
2 the process of submitting that application. My
3 understanding is that use permit would be subsumed
4 within the Commission's general authorities. But,
5 per typical process, the Commission, as I
6 understand it, typically looks to the local
7 government for an advisory resolution as to what
8 they would do were they the permitting agency.

9 And so I'm not seeing any issues there,
10 but I think we've got a process we have to work
11 through with the city, so.

12 ASSOCIATE CHAIRMAN MOORE: Now, there's
13 an additional land lease that has to be
14 accomplished before this project can go ahead.
15 And I'm given to understand, and we took testimony
16 in the public hearing regarding the proceedings on
17 that land lease agreement. And I assume that
18 those are still in process?

19 MR. HARRIS: Yes, that's the correct
20 assumption. We've had a series of negotiations
21 and several iterations of documents back and
22 forth. But we're making, I think, substantial
23 progress and I think we're going to get there.

24 ASSOCIATE CHAIRMAN MOORE: Gentlemen,
25 the proposed decision that you have before you

1 calls this out, and points out that this
2 certification can't take place without these
3 events taking place.

4 So, in effect, yes, we're relying on the
5 applicant to complete what they have to do,
6 frankly, in order to proceed in good business
7 sense anyway, but it is conditioned as a part of
8 the decision.

9 So, the City's aware of that, and the
10 City is also aware of the need to deal with the
11 FAA on the airport, on the height, so just in the
12 interests of full disclosure here, in spite of the
13 fact that this process is going very rapidly and
14 some decisions are out of sequence, if you will,
15 we can't get the air quality permit because
16 there's a 30-day review period that couldn't kick
17 off until the middle of our process, considering
18 ours is only 21 days long and theirs is 30-plus
19 days, so.

20 Mr. Manager, you've brought with you the
21 Mayor Pro Tem and a couple of Council Members.
22 Would you like to introduce those individuals? If
23 the Pro Tem would like to offer a few words, we'd
24 love to hear it.

25 MR. BRESKIN: I think it's proper to say

1 they brought me.

2 (Laughter.)

3 ASSOCIATE CHAIRMAN MOORE: We do have
4 our etiquette down here. Understand.

5 MR. BRESKIN: We have our Mayor Pro Tem,
6 Richard Zeckentmayer is here, as well as two
7 Council Members, Margarita Lopez and Robert Tomes.
8 And I believe the Mayor Pro Tem would like to --

9 ASSOCIATE CHAIRMAN MOORE: Council
10 Members, welcome, Mr. Mayor Pro Tem.

11 COMMISSIONER PERNELL: Welcome.

12 MAYOR ZECKENTMAYER: Chairman Moore,
13 Members of the Commission, I am Richard
14 Zeckentmayer. And as Mayor Pro Tem of the City of
15 King, and we are delighted to be able to be, I
16 think, the first city enabling this process to
17 occur in California.

18 And we are very happy that Calpine has
19 been working with staff. And we're looking
20 forward to the Commission taking favorable action
21 on this as recommended by staff.

22 Thank you very much.

23 ASSOCIATE CHAIRMAN MOORE: Thank you Mr.
24 Pro Tem. We have also in the audience the
25 Economic Development Director, Scott Galbraith,

1 who's here. There's Scott. And Planning Director
2 David Van Etten, under whose able hand all of this
3 is occurring with the microscope as he watches the
4 permits and keeps us whole on this.

5 Is there anyone else who would like to
6 address us on this item?

7 Gentlemen, I have one change to make,
8 and that is in my recommended decision on page 5
9 under hazardous materials. The second sentence,
10 we'll add the word even, so it will now read: The
11 amount of ammonia piped into the proposed facility
12 would not pose a potential for significant impacts
13 even in the event of a complete failure of the
14 piping."

15 And otherwise the decision is as posted
16 on the web. And I am going to make the motion on
17 this, and in making a motion for approval, I'll
18 tell you, this is easily the easiest project I
19 have worked on here. And all thanks to the
20 applicant and staff for the tremendous amount of
21 work that they did to make it easy. And to
22 Spencer Joe, who is not here, who was on loan to
23 us and came up to speed very fast and helped us
24 tremendously in making the decision.

25 And also to say what a pleasure it was

1 to be able to go back to my home County and be
2 able to do something with one of the cities that I
3 used to represent. So I thank you very much for
4 that opportunity.

5 We have a motion on the floor.

6 COMMISSIONER PERNELL: Second.

7 ASSOCIATE CHAIRMAN MOORE: Second by
8 Commissioner Pernell.

9 COMMISSIONER LAURIE: Question, Mr.
10 Chairman.

11 ASSOCIATE CHAIRMAN MOORE: And a
12 question on the motion.

13 COMMISSIONER LAURIE: If you would turn
14 to page 8 of your proposed decision?

15 ASSOCIATE CHAIRMAN MOORE: Yes.

16 COMMISSIONER LAURIE: Under the heading,
17 terms of certification, second paragraph.

18 ASSOCIATE CHAIRMAN MOORE: Yes.

19 COMMISSIONER LAURIE: First sentence:
20 The project shall be certified for the length of
21 the project, et cetera, et cetera. I don't
22 understand that.

23 And I also don't understand in the next
24 paragraph, last line: The project will meet the
25 following criteria in order to continue the permit

1 through the life of the project. I don't
2 understand -- I understand the intent, but I don't
3 understand the language.

4 ASSOCIATE CHAIRMAN MOORE: Well, I'll
5 tell you that the intent, which I believe is
6 pretty obvious, that the life of the project is a
7 little extraordinary in the case of the peaker
8 projects.

9 The intent was to try and make sure that
10 the conditions are in effect throughout whatever
11 that life is. And that the expiration of the --
12 I'm sorry, the contract period basically defines
13 the life of the project.

14 So, in other words, the -- Mr. Glaviano
15 is handing me a note that's clarifying my own
16 decision, so let me see if I can understand that.

17 (Laughter.)

18 ASSOCIATE CHAIRMAN MOORE: You know, if
19 I can just slide in a word sideways, without
20 offending our -- it has something to do with
21 lawyers -- is that it's having about five lawyers
22 in the same room trying to make this language
23 happen yesterday afternoon made it a little
24 difficult.

25 Mr. Glaviano is suggesting that the

1 first sentence of that paragraph be modified to
2 read: The project shall be certified for the
3 length of the project contract. And thereby
4 clarifying it to tie it into the contract with
5 Water Resources.

6 Mr. Chamberlain, if I can lean on you
7 for assistance on this. The intent, which I
8 thought I was being pretty transparent in
9 projecting here, the intent was to tie this to the
10 DWR contract. Is there a simpler way that I could
11 have done this?

12 MR. CHAMBERLAIN: So I take it, then,
13 what you're proposing is for the length of the
14 project contract with the Department of Water
15 Resources, and then you would put a period there,
16 and say, at the expiration of its power purchase
17 agreement with the Department of Water Resources,
18 the project owner, et cetera.

19 So that it's clear that the project can
20 continue beyond that contract if they make these
21 findings.

22 COMMISSIONER LAURIE: Yeah, and if it's
23 continued beyond the term of the DWR agreement,
24 then it has to meet these conditions; it's
25 continued in perpetuity without a termination.

1 ASSOCIATE CHAIRMAN MOORE: I don't have
2 any conditions, given the executive order, in
3 which to set up a termination date. I simply
4 don't.

5 COMMISSIONER LAURIE: Okay, so the idea
6 is that the conditions prescribe that the term of
7 the project is coterminous with the term of the
8 water agreement. At the expiration of the term of
9 the water agreement the project may nevertheless
10 continue if these conditions are met. And it will
11 continue without any specified termination date.

12 ASSOCIATE CHAIRMAN MOORE: With no
13 specified termination date, but it is still
14 subject to the same oversight that we apply --

15 COMMISSIONER LAURIE: Correct.

16 ASSOCIATE CHAIRMAN MOORE: -- in order
17 to meet terms of certification, yes.

18 COMMISSIONER LAURIE: Okay. Well, one,
19 I would ask that the language be modified to read
20 that.

21 But then if you go to condition one, --

22 ASSOCIATE CHAIRMAN MOORE: Um-hum.

23 COMMISSIONER LAURIE: -- under the
24 criteria, the project is permanent rather than
25 temporary or mobile in nature.

1 I don't know how you reach any
2 conclusions regarding that criteria. How do
3 you -- how will you determine whether or not it's
4 permanent?

5 ASSOCIATE CHAIRMAN MOORE: I think the
6 easiest way that I could visualize to determine
7 that was that they would be pouring permanent pads
8 in which to house the turbines. And that, in
9 effect, these wouldn't be towed in on a truck or
10 railcar, and then towed away.

11 So, I envisioned them a being installed
12 on permanent footings, and that was my criteria
13 for saying they were a permanent fixture as
14 opposed to a temporary fixture.

15 I suppose it's kind of like the
16 permanent temporary buildings in the school where
17 I went to high school. They're still there.

18 COMMISSIONER LAURIE: Okay, Mr.
19 Chairman, I would ask that the language in
20 paragraph two of the section entitled, terms of
21 certification, be modified to read: The project
22 shall be certified for the length of the power
23 purchase agreement with California Department of
24 Water Resources. Period.

25 The project shall continue beyond --

1 ASSOCIATE CHAIRMAN MOORE: May continue.
2 It's their option.

3 COMMISSIONER LAURIE: Well, but the idea
4 is not to give us any discretion outside of
5 these --

6 ASSOCIATE CHAIRMAN MOORE: Understand,
7 but if you put the project may continue beyond
8 that period, if the project owner can verify they
9 meet the following continuation criteria --

10 COMMISSIONER LAURIE: Using the word may
11 gives us discretion, and that's not the idea.

12 ASSOCIATE CHAIRMAN MOORE: Well, I was
13 thinking that it's their discretion as to whether
14 or not the project might be terminated. In other
15 words, they could, at the end of the contract with
16 Water Resources they can simply --

17 COMMISSIONER LAURIE: Then we have to
18 say may at the discretion of the owner.

19 ASSOCIATE CHAIRMAN MOORE: I accept.
20 Second --

21 MR. CHAMBERLAIN: Mr. Chairman, I think
22 it's worth noting that any project that is
23 licensed of course has to recognize that it is
24 still subject to the police power of the state and
25 local governments.

1 For example, there are projects that
2 were licensed 30 years ago that are now being
3 subjected to new retrofit requirements for air
4 quality because technology has simply come along
5 to the point where it's reasonable to impose those
6 kinds of requirements on projects that were
7 permitted at a time when those kinds of
8 technologies were not even perceived to be
9 possible.

10 So, I don't think that the fact that we
11 license these projects on a permanent basis
12 precludes the state from requiring reasonable
13 things in the future. And we shouldn't be
14 pretending that we're doing that.

15 ASSOCIATE CHAIRMAN MOORE: No, I don't
16 think the changes that Commissioner Laurie is
17 proposing pretends that. I was simply --

18 MR. CHAMBERLAIN: I don't, either. I
19 simply wanted to clarify the record on that.

20 ASSOCIATE CHAIRMAN MOORE: Right, and I
21 was simply trying to clarify that in fact you
22 couldn't set up a condition here that required
23 them to keep running after the contract period was
24 up.

25 In other words, I'd just like to -- that

1 was the reason for my putting may in there. They
2 may decide that the King City operation, at the
3 end of their contract with DWR, is no longer
4 economically feasible. They won't be subject to
5 any criteria at all if they close the plant down,
6 take the turbines out and terminate their contract
7 with King City Foods and go on.

8 That's all I was trying to do.

9 COMMISSIONER LAURIE: Mr. Chairman, the
10 only other thing is, I'm not sure I heard any
11 statement from the applicant agreeing to the
12 conditions on the project. And I would ask that
13 such a statement be entered onto the record.

14 ASSOCIATE CHAIRMAN MOORE: Okay, and the
15 maker of the motion agrees with those changes.
16 Does the second agree?

17 COMMISSIONER ROSENFELD: Yes.

18 ASSOCIATE CHAIRMAN MOORE: All right,
19 second agrees. And let me turn to Mr. Harris and
20 ask him if he has any trouble with those changes.

21 MR. HARRIS: No, actually that's the way
22 I understood the language. And I'd --

23 COMMISSIONER LAURIE: Actually, Mr.
24 Chairman, I was referring to the conditions and
25 not the changes. Do you agree --

1 ASSOCIATE CHAIRMAN MOORE: Oh, I'm
2 sorry, he's talking about the conditions as a
3 whole. Excuse me, Commissioner.

4 MR. HARRIS: The overall conditions of
5 certification in the proposed decision?

6 ASSOCIATE CHAIRMAN MOORE: Yes.

7 MR. HARRIS: Yes, we find them
8 acceptable, if that's the question, yes.

9 ASSOCIATE CHAIRMAN MOORE: Thank you.
10 Commissioner Pernell.

11 COMMISSIONER PERNELL: Mr. Chairman, the
12 questions on the changes is also relevant here,
13 whether the applicant agrees.

14 MR. HARRIS: Yes. That's how I
15 understood the language, with the proposed
16 changes. And the reason I didn't want to -- and I
17 am a lawyer, but I didn't want to take --

18 ASSOCIATE CHAIRMAN MOORE: You just
19 didn't want to embarrass me with the language of
20 my own decision.

21 (Laughter.)

22 MR. HARRIS: As I said at the beginning,
23 I think this is a heroic effort by staff that put
24 something together, and the proposed decision as
25 quickly. I understood it. I think it was clear

1 enough. And I love the changes, thank you.

2 ASSOCIATE CHAIRMAN MOORE: Very tactful,
3 Mr. Harris, that's --

4 COMMISSIONER PERNELL: Love the
5 changes --

6 (Laughter.)

7 ASSOCIATE CHAIRMAN MOORE: Well, all
8 accolades to the chair. All right, all those in
9 favor of that motion signify by saying aye.

10 (Ayes.)

11 ASSOCIATE CHAIRMAN MOORE: Those
12 opposed? That motion carries. Thank you all for
13 your work.

14 COMMISSIONER PERNELL: Mr. Chairman, --

15 ASSOCIATE CHAIRMAN MOORE: Commissioner
16 Pernell.

17 COMMISSIONER PERNELL: -- may I make
18 just a brief statement on this. As this project
19 come before us, I think it's an example of the way
20 in which the city of the affected area, the
21 applicant, the Commission and everybody can work
22 together to get a project through that is of
23 benefit, not only to the local area, but to
24 California.

25 And I just want to commend everybody

1 involved in this, because it's one that went
2 forward with the collaborative effort and the
3 communication lines were open.

4 And I think it's a model in which we
5 will strive for as we move forward.

6 ASSOCIATE CHAIRMAN MOORE: Thank you
7 very much.

8 COMMISSIONER PERNELL: So, thanks, every
9 one, and certainly thank the City for coming up.

10 ASSOCIATE CHAIRMAN MOORE: Thank you
11 very much. Thank you for making the trip up from
12 King City. We appreciate it very much.

13 Let's go to item -- item 15 was
14 withdrawn, as I indicated earlier. Items 16 and
15 17 are related. Mr. Masri, Mr. Herrera, welcome
16 to the hot seats.

17 Now, just by way of introducing this
18 item I'll tell you that you know that the
19 renewables program has been trying to maintain its
20 dynamic stature in the face of rapidly changing
21 legislation and the interest on the part of the
22 Legislature and the Governor with regard to these
23 facilities.

24 And we've been trying to keep a good
25 close eye on the amount of funds that we have in

1 the rollover fund, and also to respond as fast and
2 as efficiently as we can to some of the changes in
3 the market that are affecting the folks that we
4 have sponsored over the last three and a half
5 years.

6 So with that, the Committee has a
7 recommendation that we'd like to discuss, and
8 potentially take action on. I know that there are
9 a couple of members of the interested public who
10 would like to talk to us about this.

11 So let me simply open the item and ask
12 Mr. Masri to introduce it, and Mr. Herrera to
13 comment on the legal parameters that are either
14 restricting or guiding us.

15 Mr. Masri, you have the floor.

16 MR. MASRI: Thank you, Commissioner
17 Moore. There are two items before you today. The
18 first one is to authorize a third option for new
19 renewable projects to come on line next summer.

20 The renewable program, and this
21 Commission is proud that we have already conducted
22 two options that had just over 1000 megawatts of
23 winning projects, 118 of those are already on line
24 contribution power to California today.

25 And this feature of the program that

1 allows the Commission to reallocate money among
2 accounts was built in the policy report, as well
3 as Senate Bill 90, so this action before you today
4 is completely within the authority granted the
5 Commission, and Gabe will speak to that a little
6 more, in Senate Bill 90.

7 You should also know that this
8 authorization to conduct this auction to
9 reallocate the money to the new account is in no
10 way impacts the ability and readiness of the
11 Commission to pay going forward from this point
12 on, existing projects or other parts of the
13 program.

14 The reallocation here would be for money
15 that could be used in a more productive way to
16 bring more power to assist with the California
17 energy situation.

18 The other item is sort of minor. We do
19 refer to the Cal PX in our guidebooks as at some
20 point in time, for example, the benchmark that we
21 use to pay the existing projects would switch from
22 the shorter -- costs to the Cal PX price.
23 Obviously that's not going to happen, given the
24 status of the Cal PX.

25 So we are making minor corrections in

1 the guidebooks to reflect the status that the Cal
2 PX is no longer exists.

3 So that's really a summary of the items
4 before you. And I'd be happy to answer any other
5 questions.

6 ASSOCIATE CHAIRMAN MOORE: The
7 Commissioners may want to understand what the new
8 benchmark will be now that the PX is not in
9 existence anymore, and what we would choose to use
10 as a substitute or a surrogate for the SRAC price
11 in the future.

12 MR. MASRI: Well, it is the SRAC now.
13 And it will remain the SRAC until there is a
14 substitute formula for computing payments to the
15 existing projects.

16 At the time this program began I believe
17 the enabling legislation in AB-1890 said SRAC will
18 be the formula until the PUC finds that the market
19 is functioning properly. Then the switch will
20 occur to the market price, the competitive market
21 price at the Cal PX at the time.

22 So right now it will be the SRAC until
23 at some point in time, SRAC being the short run
24 avoided costs, that another formula is adopted and
25 agreed to in which payments would be made. At

1 that point we will then consider switching to that
2 benchmark.

3 ASSOCIATE CHAIRMAN MOORE: This is
4 probably not very high on the PUC's agenda of
5 immediate things to get at, but I'll just trust
6 them that they will one day get to it. Mr.
7 Herrera.

8 MR. HERRERA: Just to follow up on what
9 Marwan said, the Commission does have authority to
10 reallocate money from the different accounts in
11 the renewable resources trust fund. And that
12 authority is specified in Public Utility Code
13 section 33.5. It gives the Commission authority
14 to reallocate money in a manner consistent with
15 our policy report on the AB-1890 renewable
16 funding.

17 And that authority allows us to do this
18 without going back and getting further legislative
19 approval. And it allows us to make these
20 reallocations in a manner that is different than
21 the allocations initially identified in AB-1890,
22 as well as the allocations for each of the
23 accounts in SB-90.

24 So it's pretty clear that the
25 Legislature intended us to have some authority

1 here to reallocate money in the manner we saw fit.
2 And, again, we told them in the policy report how
3 we were going to do this, based on account needs
4 and based on market conditions.

5 The other point I need to make with
6 respect to the transfer is that what the
7 Commission is doing is authorizing the transfer of
8 funds right now, but we need to recognize the
9 amount of money that's being pulled from one
10 account and used for the options, actually won't
11 happen until later in time, possibly six months
12 down the road.

13 Because it's not until that time that
14 we're going to know for sure how much money we
15 need. There could be some winning bidders in this
16 auction that back out, and so their awards won't
17 be used, or we won't need to fund their awards.
18 Some of them could have their awards reduced.

19 In the second auction, as you recall,
20 what we did is we tried to encourage bidders to
21 come on line sooner by giving them a bonus, and
22 discouraging delayed online dates by penalizing
23 them.

24 And I'm assuming that this third
25 auction, if it goes forward, is going to be

1 structured in the same way.

2 And just one last point on SRAC. When
3 you look at SB-90, what it says is we need to
4 determine market clearing prices based upon SRAC.
5 And that's specified in the Public Utility Code
6 section 390. So it's pretty clear that our, in
7 terms of how we decide what the market clearing
8 price is, that it needs to be SRAC.

9 ASSOCIATE CHAIRMAN MOORE: Thank you.
10 Now, in the interests of fairness, let me just say
11 that this is a proposal to -- a policy call as to
12 how to use the money. There may be other possible
13 solutions for, or suggestions as to how to address
14 the broader market. And I know of at least one of
15 those which has been thought about and which the
16 industry would like to talk to us about today.

17 And so I'd like to ask Mr. Judd if he
18 would come on up to the microphone and talk to us
19 on behalf of the biomass industry, and some of the
20 concerns that they've had before we take up any
21 kind of a motion on this. We get the other ideas
22 that are out there on the table so that you'll
23 know what the Committee's been wrestling with, and
24 what the general public is thinking, as well.

25 Good morning.

1 MR. JUDD: Thank you, Commissioner
2 Moore. We would have no problem with the minor
3 reallocation of existing renewable money to
4 upgrade your sound system here.

5 (Laughter.)

6 MR. JUDD: But that's about as far as
7 we're willing to go.

8 Thank you, Commissioners and Staff
9 Members. First, thank you very much for your
10 attentiveness to the concern that we raise. We
11 believe it's a serious one.

12 Today I'm here speaking both on behalf
13 of the existing California biomass power industry
14 and California Wind Energy Association.

15 Two weeks ago we made a proposal in
16 front of the Commission that had three parts to
17 it. Part one, do not reallocate funds from
18 existing to new renewable now. We felt that such
19 an action was premature and inappropriate. It
20 puts existing renewable at unnecessary risk.

21 Instead, part two, we argued that the
22 Commission should use these funds earmarked for
23 existing renewable to support existing renewable
24 as intended, and as needed now.

25 In essence, we claim the following: The

1 existing renewable are in a situation of extreme
2 financial stress, crisis at this point. Existing
3 renewable, we believe, are currently eligible for
4 SB-90 funds according to the formula in the
5 guidebook.

6 The price that existing renewable have
7 been paid over the past four months is less than
8 the target price established by the existing
9 rules.

10 Therefore, under existing rules we
11 believe that existing renewable can submit their
12 generation data and their payment data to
13 demonstrate that they have been paid substantially
14 less than the target price established by SB-90.

15 Having proven that, we believe that they
16 are eligible to receive the payment that they need
17 now which would help alleviate their stress and
18 keep renewable generation on line this summer when
19 we need it most, rather than bring generation on
20 line two years out, or possibly three years out,
21 which is also needed, but not immediately needed,
22 and which could be addressed in the investment
23 plan that will be forthcoming from the Commission.

24 To do otherwise, to take the funds out
25 of existing renewable, reallocate them to a third

1 auction would be a radical restructuring of SB-90
2 intent and funding levels, albeit legitimate with
3 the flexibility that exists, the authority given
4 to the Commission, it would nonetheless be radical
5 restructuring that would have the effect of moving
6 \$80 million away from existing renewable to new
7 renewable.

8 And if you move the money to the new
9 renewable now, even though the money won't be
10 spent until the projects are built, that's an
11 irretrievable loss of the funds to existing
12 renewable that are in a situation of high
13 volatility and risk at the moment.

14 Now, this money should not come to the
15 existing renewable as a windfall. If, at some
16 future point, the payments they receive for
17 electricity generated in this period exceed the
18 target price, at that point it would be the
19 responsibility of the existing renewable, by MOU
20 with the Commission, to return those funds to the
21 Energy Commission.

22 This has a couple of benefits that
23 should be important. Such an action would protect
24 the dollars that are currently at risk in the
25 existing renewable or the new renewable fund.

1 That is they would be put to productive use rather
2 than be vulnerable for a sweep for other purposes.

3 The dollars would be put to constructive
4 use, and the Energy Commission would get to use
5 the dollars twice for constructive purposes.

6 We do not agree with staff counsel's
7 literal interpretation of this matter. As the
8 Chair points out, this is a policy call. We
9 believe the Commission can make this work if it
10 wants to make it work.

11 It would allow the Commission to use its
12 discretion to keep as much existing renewable
13 power on line this summer as it possibly can.
14 Ultimately it is your judgment on that.

15 Perhaps in the biomass industry we are
16 overly sensitive to the financial stress because,
17 among all of the renewable, we are the ones who
18 have had to pay out of our pockets to buy the fuel
19 to keep our plants on line at a time that we were
20 not getting paid by the utilities.

21 As you know, we received payment of 15
22 percent in December for the electricity we
23 generated; 15 percent in January; nothing in
24 February; nothing in March. We have been paid for
25 April. We have no assurance that we will be paid

1 for May, June, July or August.

2 There are actions in play now in the
3 Legislature and at the PUC that could place us in
4 extreme financial risk. And that is why we argue
5 that reallocating these moneys in an irretrievable
6 fashion is premature and inappropriate.

7 Now, as a final word, should the
8 decision be made by the Commission not to allocate
9 the money in response to requests from the
10 existing generators now, and not to hold this
11 money in abeyance, and not commit it to the
12 existing renewable, now, in other words if you
13 decide today to commit these funds to a renewable
14 auction, we would argue that you first commit all
15 available funds from the customer credit account,
16 then commit unexpended funds from the new
17 renewable account, auction one and auction two,
18 commit unexpended funds from the emerging
19 renewable. And do as little harm as possible to
20 the existing renewable, which are in a position of
21 highest risk and vulnerability of going off line.

22 Thank you, sir. I'll respond to
23 questions if you have them.

24 ASSOCIATE CHAIRMAN MOORE: Are there
25 questions for Mr. Judd? I don't think there are,

1 Bob, but I'd stick around for --

2 MR. JUDD: Thanks.

3 ASSOCIATE CHAIRMAN MOORE: --
4 discussion. Mr. Kelley, did you want to address
5 us on this item, as well?

6 MR. KELLEY: Thanks. Stephen Kelley,
7 Independent Energy Producers. And I would like to
8 address one issue that I think is something that
9 we need to, as a policy matter, need to address.

10 One of the critical issues that's here
11 before you and embedded in the documents, the
12 guidebooks that we use for renewable is the
13 trigger mechanism for determining what payments
14 are made.

15 And as was pointed out in the guidebooks
16 that we all approved a couple years back, the
17 trigger mechanism was the difference between the
18 posted SRAC price and whatever the target price
19 was that was deemed important to keep these
20 generators operational.

21 At that time, though, we did not
22 contemplate, I don't think anybody contemplated
23 that the utilities would not pay 100 percent of
24 the SRAC posted price.

25 And we've ended up in a situation where,

1 as pointed out by Mr. Judd, since November we were
2 paid either zero or 15 percent of the SRAC posted
3 price, depending on which service territory you
4 were at.

5 And going forward there is continued
6 risk, due to the credit worthiness of the
7 utilities that QFs may not be paid 100 percent of
8 their SRAC going forward.

9 So I would recommend that one, we look
10 at, as a policy matter, what is going to be the
11 trigger mechanism for determining when the Energy
12 Commission is going to make payments. Is it going
13 to be the posted SRAC or the actual payment to the
14 generators under the SRAC program?

15 And I would recommend that we revisit
16 that because according to your legal counsel we're
17 bounded by some language that's been approved
18 either in the guidebooks, themselves, or in
19 legislation particularly that triggers it off the
20 posted SRAC.

21 And particularly in situations where
22 companies are getting zero SRAC or less than 100
23 percent of the SRAC posting, it may not make sense
24 to use that as the trigger. And we should look at
25 that as a policy matter.

1 ASSOCIATE CHAIRMAN MOORE: Good, thank
2 you. I appreciate that comment. And I'm going to
3 ask Mr. -- let me find out if there's anyone else
4 who would like to address us.

5 COMMISSIONER PERNELL: Mr. Chairman, I
6 have a question.

7 ASSOCIATE CHAIRMAN MOORE: Yes, sir,
8 Commissioner Pernell.

9 COMMISSIONER PERNELL: I'm sorry to ask
10 you to go all the way back and sit down, this is
11 just for my own information. Do the QFs contract,
12 or have they had discussions with DWR?

13 MR. KELLEY: Yes, there have been
14 discussions. QFs is a FERC defined term. You can
15 be a QF with a utility contract; you can be a QF
16 without the utility contract.

17 There have been QFs that have utility
18 contracts, or have suspended those contracts, that
19 have approached DWR to enter into contracts with
20 DWR. And my understanding, have been rebuffed.

21 They have been rebuffed either because
22 they're less than 25 megawatts in size, and my
23 understanding is DWR has set a criterion for that.
24 Or alternatively, some of the intermittent
25 resources, the wind and solar resources have

1 approached DWR with an intent of trying to engage
2 in some contract negotiations. And the
3 intermittency of their production has rendered
4 those discussions difficult so far.

5 COMMISSIONER PERNELL: But collectively
6 have they, as a group or association, do you know
7 if they've approached DWR collectively so that
8 rather than individually approaching them,
9 collectively saying, you know, we're the QF
10 association, and we want to do business with DWR?

11 MR. KELLEY: There have been discussions
12 along those lines, both in the Legislature, in the
13 development of 47X legislation.

14 One of the problems is these are
15 contracts, and under contract, you know, the
16 contract law provides there are some assignment
17 provisions within the contracts, but those
18 provisions require that both parties not
19 unreasonably withhold the assignment rights.

20 My understanding is in some cases the
21 utilities do not agree, would not agree to an
22 assignment of the contract rights to DWR. I've
23 heard various legislators suggest that an
24 assignment of QF rights to DWR would be
25 inappropriate. And that was in the context of us

1 developing the 47X legislation.

2 So while there have been discussions
3 about that, they've usually not gone too far
4 because of the nature of the contract and people's
5 interest in having DWR step up to that role.

6 COMMISSIONER PERNELL: Thank you, Mr.
7 Chairman.

8 ASSOCIATE CHAIRMAN MOORE: Thank you,
9 Mr. Kelley, I appreciate your comments. Mr.
10 Herrera, do you want to respond? And take up the
11 issue of whether or not we have the authorization
12 to make any changes to go through with payments
13 outside the guidelines. Let's deal with that
14 first. And then let's deal with the question of
15 defined use of the SRAC, posted SRAC versus
16 market.

17 MR. HERRERA: Right. Yeah, hopefully
18 can address both at one time. While it's true
19 what Mr. Judd was saying about SB-90 being set up
20 to provide assistance to existing QFs, the
21 assistance it had in mind, it contemplated, was a
22 special nature as specifically defined in SB-90.

23 And unfortunately, the Commission was
24 not given discretion to go outside the rules
25 specified in the statute. I think the Legislature

1 went to ends to make sure that we didn't exercise
2 our administrative discretion in a manner that
3 circumvented their intent.

4 Indeed, there's uncodified language in
5 SB-90 that says specifically that the Commission
6 shouldn't exercise administrative discretion in a
7 manner that's inconsistent with what's provided in
8 the statute.

9 With respect to determining market
10 clearing prices, SB-90, the statute, specifically
11 Public Utility Code section 383.5(b) says when it
12 comes to determining market clearing price, you
13 need to do it, Energy Commission, based upon what
14 we say in Public Utility Code section 390, which
15 is SRAC.

16 So the Legislature defined --

17 ASSOCIATE CHAIRMAN MOORE: Can I stop
18 you for just a second, counselor, and that is just
19 to clarify, we built those rules. And so we
20 literally used the term SRAC as opposed -- we had
21 no idea, none of us had any idea that this was
22 going to be coming about.

23 So what Mr. Kelley was proposing with
24 regard to what the companies were paying simply
25 wouldn't have anticipated it. So we defined it

1 rather narrowly. And so what I'm asking Mr.
2 Herrera to explore a little bit is our legal
3 wiggle room. I think that's a technical term that
4 you lawyers use.

5 MR. HERRERA: I'm not sure that we have
6 a whole lot of wiggle room, given what the law
7 says in section 390 with respect to SRAC. I mean
8 it doesn't, for example, give us authority to do
9 what Mr. Judd proposes, and that is determine
10 market clearing prices on an ad hoc basis,
11 arbitrarily, based upon what PG&E or Edison
12 decides they're going to pay their QFs.

13 I mean that would result in an absurd
14 situation there. So it's very clear that what
15 we're supposed to do is determine SRAC based upon
16 the formula laid out in the law. And that's what
17 we've been doing. In fact, that's what we
18 contemplated in the report.

19 So, I guess my suggestion to Mr. Judd,
20 and it's a suggestion that we've made to other QFs
21 who have come to us with the same proposal, is,
22 listen, go to your friends at the Legislature and
23 get us some discretion, some authority to do what
24 you're proposing. Or at least to consider that.

25 ASSOCIATE CHAIRMAN MOORE: Let's address

1 the question, then, of what happens when you
2 believe that the market price -- I'm sorry, the
3 market target price that we're using is actually
4 lower and should allow us to pay in the future,
5 that was brought up by Mr. Judd.

6 MR. HERRERA: The target prices are set
7 in the statute.

8 MR. MASRI: I think what, Commissioner
9 Moore, what you're asking is if the prices, the
10 SRAC prices in the future drop below our target.

11 ASSOCIATE CHAIRMAN MOORE: No, --

12 MR. MASRI: The targets are set. The
13 targets don't really fluctuate as Gabe was saying.

14 ASSOCIATE CHAIRMAN MOORE: I guess I'm
15 trying to get from the other Commissioners, on the
16 table here, the issue of whether or not there will
17 be a condition that could be foreseen or will come
18 about in the near term where we can adjust the
19 forward, going forward target so as to allow --
20 anticipate being able to pay for stressed
21 utilities, if you will, biomass or the like.

22 How much room do we have to make
23 adjustment going forward, as opposed to
24 retrospective.

25 MR. HERRERA: To the target price?

1 ASSOCIATE CHAIRMAN MOORE: Yes.

2 MR. HERRERA: Well, I think if you look
3 at the statute, what it says is that target prices
4 will be set consistent with the recommendations we
5 made in the policy report.

6 And so the way I view it, the
7 recommendations that we included in the policy
8 report are the ones we need to carry forward. If
9 we're going to adjust those in the future, I think
10 we should take the opportunity in the investment
11 plan under AB-995 to do that, to go back and take
12 a look at that to see whether that was
13 appropriate.

14 ASSOCIATE CHAIRMAN MOORE: Are there
15 other questions for staff on this?

16 COMMISSIONER BOYD: Mr. Chairman, --

17 ASSOCIATE CHAIRMAN MOORE: Commissioner
18 Boyd.

19 COMMISSIONER BOYD: -- when Mr. Judd
20 brought this, we continued to be troubled by this
21 issue, and I'm troubled by the rigid adherence to
22 the current rules we seem to be following in what
23 is a totally atypical situation. As you said
24 earlier, nothing in statute envisioned the
25 situation we find ourselves in now. The statute's

1 even put us in the situation, so to speak,
2 unknowingly, unwittingly and so on and so forth.

3 So I am a little worried about actions
4 that this body might take that would send signals,
5 maybe improper signals to an industry that some of
6 us have invested an awful lot of time in trying
7 to, you know, throw life preservers to keep
8 afloat, incent, expand and so on and so forth.

9 So, I'm not saying I have a solution.
10 I'm just perhaps like you, or maybe moreso,
11 troubled by an action that might foreclose some
12 additional solution that folks might come up with
13 by stepping out of the box a little bit and
14 dealing with the issue.

15 So, it's just kind of a, I don't like to
16 put the crimps on an auction which sounds good,
17 but I also recognize the huge investment that has
18 been made in the infrastructure that exists today,
19 both in time and in dollars. And a sensitive
20 infrastructure we need to preserve, as well as
21 enhance for the future.

22 I'm a little worried about undermining
23 the foundation while adding more to the house.
24 So, just a comment.

25 ASSOCIATE CHAIRMAN MOORE: Are there

1 other questions or comments, Commissioners?

2 All right, gentlemen. We've had a lot
3 of time to contemplate this and to try and imagine
4 a way out. I am persuaded by my legal counsel in
5 the Committee hearings that I don't have the
6 authority to go backwards. And to use the rescue
7 device that we had talked about in terms of
8 restructuring the price, the market, target price.
9 That we don't have the ability to redefine the
10 SRAC at this time, especially in a retrospective
11 sense. I'm limited in the ability that we can go
12 forward and make any changes.

13 On the other hand, what Mr. Judd is
14 saying is absolutely true and worries us greatly
15 that we might have industries at risk that we
16 can't rescue. And, again, I should be clear, this
17 is for the renewable portion of the QFs contracts.
18 What's happening with the gas cogenerators is a
19 different matter, and is really not before us.

20 So, lest we confuse those two issues,
21 these are the renewable providers, and not the
22 folks with the natural gas facilities.

23 So, --

24 COMMISSIONER LAURIE: Question on that
25 comment, if I may, Mr. Chairman.

1 ASSOCIATE CHAIRMAN MOORE: Yes.

2 COMMISSIONER LAURIE: If you're being
3 advised that you don't have the ability to go back
4 and make changes, what would give us that ability?
5 Any rule, any law has to be able to be changed
6 somehow, unless it's constitutional.

7 ASSOCIATE CHAIRMAN MOORE: That's
8 correct.

9 COMMISSIONER LAURIE: So, how do we do
10 that?

11 ASSOCIATE CHAIRMAN MOORE: Well, the way
12 we do that, and in fact we solicited this kind of
13 an action through some of the renewable providers
14 almost a year ago, the way we get the ability or
15 the flexibility to do that is through the
16 Legislature, itself. They'd have to change the
17 rules.

18 And there have been attempts made to get
19 them to change those rules. They have not been
20 successful in the past. I don't know whether or
21 not they will be in the future. But that's the
22 only source of a rule change that I'm advised that
23 we have, to get any additional flexibility.

24 Maybe Mr. Herrera would like to comment
25 on that, and reiterate some of the advice that

1 he's been giving me and Commissioner Rosenfeld in
2 the Committee.

3 COMMISSIONER LAURIE: There's no way to
4 take language as set forth in statute and provide
5 our interpretation?

6 ASSOCIATE CHAIRMAN MOORE: And that
7 guiding language, of course, is contained in the
8 SB-90, --

9 COMMISSIONER LAURIE: Right.

10 ASSOCIATE CHAIRMAN MOORE: -- which was
11 our implementing language out of AB-1890. Mr.
12 Herrera, can you address the question and the
13 point that's being raised by Commissioner Laurie?

14 MR. HERRERA: Well, I might ask to defer
15 to Bill Chamberlain on this one in terms of what
16 other mechanism that we could employ to give us
17 additional authority. If the statute says we
18 can't do something and we propose to do it, then,
19 you know, absent a legislative change, perhaps an
20 executive order from the Governor would give us
21 some relief from these provisions.

22 COMMISSIONER LAURIE: And it's legal
23 counsel's opinion that the statute says we can't
24 do something?

25 MR. HERRERA: It's my opinion that the

1 statute says when it comes to setting market
2 clearing prices we need to do it based on SRAC as
3 prescribed in section 390 of the Public Utility
4 Code.

5 ASSOCIATE CHAIRMAN MOORE: Mr.
6 Chamberlain, you're reaching for the microphone
7 there.

8 MR. CHAMBERLAIN: Well, only to ask for
9 a continuance. I fear that Gabe and I haven't had
10 an opportunity really to talk about this issue.
11 And I think that what Gabe is saying is that the
12 statute is so clear that he doesn't feel that we
13 have the ability to interpret it.

14 But I would certainly like to have the
15 opportunity to look at the statute. I notice that
16 my own copy of it doesn't have a 390 in it, so I
17 was sort of trying to find that language as you
18 were discussing it.

19 ASSOCIATE CHAIRMAN MOORE: I may have a
20 way around that for you when we get to the
21 discussion. Let me take that under advisement.

22 Mr. Judd, you wanted to add one
23 additional comment while we're on this point.

24 MR. JUDD: Let me hold for a moment,
25 sir.

1 ASSOCIATE CHAIRMAN MOORE: All right.

2 MR. MASRI: I'd like to make a comment
3 if I may, please.

4 ASSOCIATE CHAIRMAN MOORE: Mr. Masri.

5 MR. MASRI: I think just for clarity for
6 the rest of the Commissioners here and for all of
7 us, what is the rescue we're talking about here.
8 The incentive for existing projects was meant to
9 augment what the projects receive in the market
10 and under SRAC. It's an incentive.

11 The maximum, even if the payment is
12 possible, would be one cent that would be paid
13 under this program.

14 Now, these projects are owed money by
15 the utilities. They've been delivering power and
16 under contracts they're owed, in some months 16
17 cents a kilowatt hour. That's what we're talking
18 about. The revenue that they are owed by the
19 utility and they're not receiving.

20 So our payment, if it kicks in, is a
21 small fraction of what these projects really are
22 due, the money that's due to them from the
23 utilities.

24 It should be clear that the money we
25 have isn't really a substitute or isn't enough to

1 substitute for what they are not getting. It's a
2 really small fraction of that.

3 And in a way these projects have the
4 money coming to them, so it's a legal obligation
5 the utility has; of course, there's bankruptcy and
6 so on, it's not clear how much they would be
7 getting.

8 And that's really the question before us
9 here. It's not that these projects don't have any
10 money due to them. It is the money that, they
11 have IOUs rather than actual cash, and at some
12 point when that is resolved, we don't know how
13 much of that money will be paid to these projects.
14 It could be the full amount, it could be a
15 fraction of it. We have no idea what that is.

16 And as Mr. Judd was alluding to, that's
17 another part of this equation, is what happens
18 when that settlement takes place, and the projects
19 get compensated either partially or wholly to what
20 they were owed. There would be a double dipping
21 here. And I think Mr. Judd referred to that by
22 saying we will be then paid back this money.

23 There isn't any mechanism in the whole
24 process right now that can even handle that if it
25 arises.

1 I just wanted to put that out there to
2 know what the magnitude of rescue we're talking
3 about here.

4 ASSOCIATE CHAIRMAN MOORE: Well, I think
5 Mr. Judd was clear on that when he spoke, in
6 saying that this is something that would be used
7 to supplement whatever's coming in, to try and
8 keep the projects at least a little more alive.

9 I don't think we have any evidence in
10 front of us to suggest that this was a whole
11 replacement. So, it's a good call, Mr. Masri, to
12 put that out, but I think we're all pretty clear
13 that the magnitude of difference of what we could
14 supply, given the amount of funds that we have,
15 versus what's needed, to repay the whole debt is
16 vastly out of proportion.

17 Mr. Judd, I'll allow you to come on up
18 and add to this discussion. We don't have a
19 motion on the floor.

20 MR. JUDD: Thank you, sir. To address a
21 couple questions. We appreciate Mr. Chamberlain's
22 willingness to have a further look at this, if
23 that's the decision of the Commission.

24 I'd like to respond to Marwan, and I
25 always hesitate to differ with Marwan because he's

1 been such a strong supporter of the existing
2 renewable.

3 The one cent payment that we believe the
4 existing renewable are eligible for at this point
5 is a small fraction of what we are owed. But it's
6 a large fraction of what we've received.

7 Most of our facilities have received
8 something in the range of 2.25 cents, 2.5 cents,
9 maybe, per kilowatt hour in those months that
10 they've been paid the 15 percent by PG&E.

11 So having received 2.25, 2.5 cents, to
12 have that supplemented by the Energy Commission
13 SB-90 funds, in fact, adds 30 percent to what they
14 have received. So in the real world, in the
15 practical world, receiving these funds from the
16 Energy Commission are very useful to these
17 facilities that have reached in their pockets and
18 paid out money without receiving compensation, in
19 order to keep running.

20 Facilities do have dollars coming to
21 them hopefully, if bankruptcy is resolved. That
22 may be at some very future point.

23 In fairness, we do propose that if
24 repayment from bankruptcy court or from some other
25 miraculous act exceeds the target price, that that

1 money rightfully goes back to the Energy
2 Commission. There is no intent to double dip here
3 in the least. And we would certainly stipulate to
4 that.

5 Further, on the repayment issue, the
6 idea of something like this, which some would call
7 a loan, others would not, is not addressed in the
8 statute. It certainly is not proposed in the
9 statute, but it's not prohibited in the statute,
10 as well.

11 It's an opportunity for a creative act
12 on the part of the Commission where you could use
13 money, both for existing renewable now and
14 existing renewable again in the future.

15 It's a very productive act at a time
16 when a productive and creative act is needed. And
17 we hope as you address this you consider it in
18 that light.

19 ASSOCIATE CHAIRMAN MOORE: Thank you.
20 Commissioner Rosenfeld.

21 COMMISSIONER ROSENFELD: I have a
22 question. I'm certainly on a guilt trip for not
23 understanding this very well, and Commissioner
24 Boyd and Mr. Judd have got my attention.

25 If we postpone this for a week or so,

1 what would it hurt?

2 ASSOCIATE CHAIRMAN MOORE: Art is asking
3 now if we postpone it for a week or so what's the
4 harm. The harm is only that we push back the date
5 at which things could effectively come on line.

6 And I'll let staff respond on a more
7 technical basis if there are any other glitches
8 that are involved in that.

9 No one leaping to the microphone to
10 speak on that.

11 MR. HERRERA: I think we've set some
12 targets in terms of having a third auction. I
13 think we'd have to push those dates back, but --
14 happens all the time.

15 ASSOCIATE CHAIRMAN MOORE: Nothing
16 pejorative in that. Of course, nothing but --

17 MR. HERRERA: I mean we --

18 (Parties speaking simultaneously.)

19 MR. HERRERA: -- we've pushed this item
20 back once before, I mean, this item was before the
21 Commission two weeks ago, at which time Mr. Judd
22 suggested we hold off and meet and confer. We did
23 that finally, just prior to this business meeting.

24 ASSOCIATE CHAIRMAN MOORE: Commissioner
25 Rosenfeld, I don't have a problem pushing it back,

1 although I think that the question that Mr.
2 Chamberlain's asking really doesn't constrain us
3 on a policy matter, such as this is.

4 And let me try something that I think
5 addresses what Mr. Judd is saying, and really
6 underlines the seriousness with which he and other
7 folks have addressed us in the past.

8 The fact that these industries are at
9 risk in the largest sense of the word, can't be
10 underscored enough. The fact that there has been
11 slowness to respond on the part of various public
12 officials to get the solution together that might
13 have made this a lot easier on everyone is well
14 known and well reported in the press. I suppose
15 it doesn't help at all to know that we're not at
16 blame for that. It doesn't help, in fact, anyone
17 other than to note that if we had the tools we'd
18 be making some of the changes.

19 I'm incredulous that this is being
20 treated as cavalierly as it is at some of the
21 higher reaches of government, whatever those
22 higher reaches are.

23 But it seems to me that there is a way
24 to keep this going and still not abrupt the
25 ability to address what Mr. Judd is asking for.

1 And I believe he gave us that tool at the end of
2 his earlier remarks.

3 And that is that if we authorize the
4 auction today and we authorize it up to \$40
5 million, which was our target. And we then
6 establish the discretion within the Committee to
7 fund such an auction in a reverse fashion, if you
8 will, using moneys from the other accounts, such
9 as customer credits account, which is under
10 utilized, such as the merchant account, which is
11 under utilized, and move backwards, filling it.

12 And use the existing funds last, with
13 the idea that if there is a change, specifically
14 if there is a legislative change that would give
15 us the discretion, we still have the money to
16 accommodate what Mr. Judd and his colleagues are
17 asking for, then it seems to me we've not lost
18 track of the time. That is fairly critical, after
19 all. And we've not precluded our ability to
20 respond. And give them some relief.

21 Again, this is not going to save people
22 who haven't been able to sort of by their own
23 bootstraps save themselves. It seems to me that
24 we don't preclude at the level that he's asking
25 for, some help in the future. And, in fact, we

1 don't jeopardize any of the other programs.

2 It seems to me that's the solution that
3 allows us to move forward the best way. Frankly,
4 if there was an authorization to do what he's
5 asking for today, or if there is one in the future
6 that allows the SRAC to be calculated differently,
7 or for us to calculate the derivative market price
8 that we're using differently, then I would be very
9 happy to recommend to you a program that allows us
10 to start paying back -- I'm sorry, start paying,
11 going forward -- I should be clear, this is a
12 going forward measure.

13 We're not in any position to be able to
14 pay back. So for those who traveled on that
15 glorious rescue idea that I had before, it didn't
16 work, and I'm sorry.

17 But for going forward basis. I think
18 that's a solution that allows us to get the
19 auction underway, start to make it move forward,
20 and not lose our ability to pay back -- pay the
21 proper recipients for the power that they
22 generate.

23 I'm open to your opinion on this.

24 MR. LARSON: Mr. Chairman.

25 ASSOCIATE CHAIRMAN MOORE: Mr. Larson.

1 MR. LARSON: In listening to the
2 comments I have one concern which is that the
3 original intent of the legislation for the other
4 accounts, and as well as for this one, you know,
5 it's pretty well described.

6 I'm a bit cautious about the idea of
7 moving money from one account to another, you
8 know, for other purposes. I certainly understand
9 the problem with QFs. I am a bit assured, at the
10 moment, you know, that things are turning around
11 in that arena. At least more of them seem to be
12 back on line, though they haven't been paid in
13 terms of their back pay.

14 DWR is saying publicly that they expect,
15 predict, you know, recognizing their limitations
16 here, that by the end of May that 90 percent of
17 them will be back on line.

18 I'm not sure that what's been discussed
19 here isn't a part of the other 10 percent that
20 won't be back on line, and may never come back.

21 I think that it is important, also, that
22 we proceed. You know, that we achieve what we're
23 trying to do with the auction. And that, you
24 know, that is meritorious. And that it is within
25 the realm of the Commission to move there.

1 So, I just would urge caution about
2 changing.

3 ASSOCIATE CHAIRMAN MOORE: Mr. Kelley,
4 can I ask you to come back to the microphone for
5 just a moment. You represent and your
6 organization represents a great number of
7 independent producers, including a lot of the
8 renewable folks in the state.

9 Can you give us an update on the status
10 of your membership, and who's running, who's
11 likely to come back on line in the near term?

12 MR. KELLEY: It's a little uncertain
13 right now. There's conflicting reports being
14 announced in the press by some of the utilities as
15 opposed to when we contact the actual QFs.

16 It sounds like the biggest chunk of QFs
17 that are not running or will have difficulty
18 running in the future are the gas fired
19 cogenerators in southern California service
20 territory.

21 The renewable QFs, upon repayment of the
22 SRAC which began for the April timeframe for
23 Edison, and after the first week in April for
24 PG&E, where they were going to pay going forward
25 100 percent of the SRAC payment, my understanding

1 is the QFs are receiving those payments, and as a
2 result of that, a number of PG&E QFs, renewable
3 QFs have come back on line. And I think the same
4 is true in Edison service territory.

5 For the most part, the renewable kept
6 running. What was accumulating was the debt.
7 What I had mentioned earlier was my expectation or
8 the chance that even though the QFs are getting
9 paid 100 percent this month, there is a reduced
10 likelihood that they're going to get paid 100
11 percent in June, July and August when the full
12 burden of the DWR payments are made known

13 And as you're aware, in a recent PUC
14 decision, DWR was put in front of the line for the
15 asset, generation asset owners, to get payment.
16 So I am expecting that at some point in time the
17 utilities will not have the resources to pay all
18 the generation that they're obligated toward.

19 And as a result of that, will be cutting
20 back, and the people at the end of the line are
21 most likely going to be the QFs, which means even
22 while SRAC is kicking out a number that is
23 something, and it may be higher than your target
24 that's in your guidebook, we'll be in a situation
25 yet again where the QFs are not getting paid that

1 number. And they may not be getting paid the
2 target price that's in your guidebook.

3 In which case, it seems to me from a
4 public policy perspective, our goal was to insure
5 that the existing resources persisted, and that we
6 need to address it as the difference between not
7 the posted SRAC but what they're actually getting
8 paid and your target price.

9 That's a critical issue --

10 ASSOCIATE CHAIRMAN MOORE: And how do
11 you see us changing that definition? What do you
12 see as the most efficient path in the mind of the
13 industry to change that definition?

14 MR. KELLEY: Well, the SRAC -- Gabe has
15 referred to section 390 which describes how to
16 determine what SRAC is. The PUC has the authority
17 to render some decisions within those parameters,
18 and have done so. A lot of that is being
19 litigated right now.

20 I don't know that you -- changing
21 section 390 is a very complicated thing. And I
22 don't think that that's going to be the solution
23 for you in the near term.

24 I think you have the authority, though,
25 to alter your interpretation of how you can pay,

1 based not on the posted SRAC, but on the payments
2 pursuant to the SRAC, and whatever your target
3 was.

4 I would bet that there is discretion
5 there for you to exercise, and that you should
6 look at that as a solution to the problem.

7 ASSOCIATE CHAIRMAN MOORE: All right.
8 Why don't -- yes, Commissioner Pernell.

9 COMMISSIONER PERNELL: One quick
10 question. On the legislation you mentioned
11 earlier, is that in the special session or regular
12 session?

13 MR. KELLEY: 47X is being discussed in
14 the special session.

15 COMMISSIONER PERNELL: Okay.

16 ASSOCIATE CHAIRMAN MOORE: Thank you,
17 Mr. Kelley.

18 MR. KELLEY: Sure.

19 ASSOCIATE CHAIRMAN MOORE: All right,
20 gentlemen, I would propose that the point just
21 raised by Mr. Kelley, which was an amplification
22 of the points raised by Mr. Judd, worthy of us
23 taking up.

24 I'd like to request two weeks, bring
25 this back on May 16th, with a recommendation, and

1 we will see if we can lay this better to rest, and
2 move forward on both fronts, because nothing in
3 this recommendation from staff should be taken by
4 anyone to think that we don't treat the QFs,
5 especially biomass QFs, with the greatest amount
6 of respect. And that we want them to remain
7 whole.

8 We're seeking to not lose ground on any
9 other front at the same time.

10 COMMISSIONER LAURIE: Move continue this
11 to May 16th, Mr. Chairman.

12 ASSOCIATE CHAIRMAN MOORE: Moved.

13 COMMISSIONER ROSENFELD: Second.

14 ASSOCIATE CHAIRMAN MOORE: Second. All
15 those in favor say aye.

16 (Ayes.)

17 ASSOCIATE CHAIRMAN MOORE: Motion
18 carries. Thank you.

19 MR. HERRERA: Can I get some
20 clarification on that? If, for example, Bill
21 Chamberlain and I come back in two weeks, or in
22 the interim --

23 ASSOCIATE CHAIRMAN MOORE: Actually
24 you'll be coming back to Committee.

25 MR. HERRERA: We'll be coming back to

1 Committee. If, for some reason, we take a look at
2 the statute again and find that there is, in fact,
3 no discretion, would it be the Commission's desire
4 that we then pursue some other avenue. If an
5 executive order, for example, is do-able and would
6 give us the type of discretion we're seeking?

7 ASSOCIATE CHAIRMAN MOORE: Well, that's
8 a much longer term. I think we'll probably find
9 ourselves back with the recommendation that we had
10 today, and we'll end up pursuing the auction, but
11 we'll have exhausted the other remedies.

12 Mr. Masri, Mr. Herrera, thank you very
13 much.

14 MR. MASRI: Thank you. See you in two
15 weeks.

16 ASSOCIATE CHAIRMAN MOORE: See you in
17 two weeks.

18 All right, we have pulled item 24. Item
19 25, the Chair has a request from the Presiding
20 Member to pull that item. We'll take that up
21 again on Wednesday next.

22 And I have a blue card that was
23 submitted to me by --

24 MR. CHAMBERLAIN: Mr. Chairman, I
25 believe that's on Thursday, the 10th.

1 COMMISSIONER ROSENFELD: It's eight days
2 from today.

3 ASSOCIATE CHAIRMAN MOORE: Oh, I'm
4 sorry. It is the 10th. Okay, sorry.

5 Gordon Hart, an attorney with American
6 Gas Cooling Center, who would like to talk to us
7 about item 8.

8 Mr. Hart, we've already disposed of item
9 8, but we'd be happy to entertain your comments.

10 MR. HART: Thank you, Mr. Chairman.
11 Gordon Hart with the lawfirm of Paul, Hastings,
12 Janofsky and Walker on behalf of Ticogen, Inc.,
13 which is a member of the American Gas Cooling
14 Center.

15 I won't take up much of your time. I'm
16 aware that you withdrew item 8 from the agenda.
17 But the Executive Director of the American Gas
18 Cooling Center had asked us specifically to put
19 some information in the record.

20 We do intend to talk to your staff, just
21 in brief. Our issue with the peak demand
22 reduction program relates to we want to make sure
23 that natural gas cooling is eligible for the
24 various peak demand reduction programs.

25 There has been a tendency in this

1 Commission to make ineligible fuel switching
2 programs. And without speaking to whether or not
3 that's appropriate in all instances, we believe
4 that in the particular instance of natural gas
5 cooling systems that it makes sense for the
6 Commission to revisit that historic position
7 related to prohibiting eligibility for fuel
8 switching.

9 We believe, for example, in the
10 municipal program that was going to be on this
11 agenda, the amount of kilowatt hours reduction was
12 going to be, cost about \$1200 per kilowatt. And
13 we believe that with natural gas cooling it's more
14 on the magnitude of \$400.

15 We have information to submit to the
16 record, and would be happy to talk to your staff
17 about it.

18 ASSOCIATE CHAIRMAN MOORE: Gentlemen, --

19 COMMISSIONER ROSENFELD: I have a --

20 ASSOCIATE CHAIRMAN MOORE: Commissioner
21 Rosenfeld, and then Commissioner Pernell.

22 COMMISSIONER ROSENFELD: I have a
23 friendly comment. I think that makes a lot of
24 sense. Thanks for bringing it up.

25 ASSOCIATE CHAIRMAN MOORE: Commissioner

1 Pernell.

2 COMMISSIONER PERNELL: I would echo
3 Commissioner Rosenfeld's comments. If you have
4 information, get it to the Committee. And there's
5 nothing to preclude you from going forward with
6 the various municipals with your documentation,
7 because at this point they are administering their
8 program.

9 MR. HART: If I can, Mr. Chairman, --

10 ASSOCIATE CHAIRMAN MOORE: Certainly.

11 MR. HART: -- that's right, Mr. Pernell,
12 it is our intention to meet with the municipals
13 and try to go forward with them.

14 As a general matter for example, in the
15 none-of-the-above program it does specifically
16 indicate in the eligibility criteria that, quote,
17 fuel switching is not going to be eligible. And
18 so we would specifically ask the Commission to
19 revisit that with regard to that program.

20 With regard to the municipal program we
21 don't believe that there is a prohibition, and we
22 are going to meet with the municipals about that.

23 ASSOCIATE CHAIRMAN MOORE: Looks to me
24 as though you got the attention of the Committee
25 Members who are going to be making that

1 recommendation. So, I'd say, well done.

2 MR. HART: Thank you very much.

3 ASSOCIATE CHAIRMAN MOORE: Thank you.

4 COMMISSIONER PERNELL: Thank you.

5 ASSOCIATE CHAIRMAN MOORE: All right, a
6 hand in the audience. Rarely have those. Want to
7 identify yourself for the record?

8 MR. LUCAS: Certainly. Bob Lucas
9 representing Carrier Corporation. There were no
10 more blue cards out there, which is why I was just
11 waiting until you got to the public comment, and I
12 saw you call Gordon, so I assumed that that's
13 where you are.

14 ASSOCIATE CHAIRMAN MOORE: Well, we're
15 here.

16 MR. LUCAS: Okay, if I may, --

17 COMMISSIONER LAURIE: Well, I'm not sure
18 we can hear from you without a blue card.

19 (Laughter.)

20 MR. LUCAS: If I may, on the same point,
21 item number 8, Carrier Corporation obviously
22 understands the exigencies under which that was
23 withdrawn today, and the program is moved over to
24 the municipal utilities. And have a couple of
25 comments to make.

1 First, the record from your workshop
2 yesterday is regrettably incomplete because
3 Carrier was not there. And I wanted to be sure
4 that you understood that Carrier wasn't there, not
5 because it didn't desire to be there, or because
6 it feels any less strongly over the points that it
7 has made before about encouraging the sale or the
8 sale and the rebate program to the higher
9 efficiency products that were the subject of the
10 Commission action in February, increasing the
11 appliance efficiency standards to 13, or any
12 relaxation of our desires to draw attention to the
13 fact that there are complete product lines
14 available from all the major manufacturers of
15 these high efficiency products using non ozone
16 depleting refrigerant.

17 Our absence yesterday was solely a
18 matter of notice. We're not on the few lists that
19 were used to notice that workshop. And we didn't
20 pick it up in any of the staff discussions or any
21 of the other discussions over the last week.

22 So, I just wanted to let you know that
23 we haven't relaxed, even though you didn't hear
24 our comments yesterday at the workshop.

25 We do find it regrettable that these

1 programs are going to proceed at least initially
2 without seemingly paying attention to those two
3 issues that I just raised.

4 If these programs are put on the street,
5 in our view, in the same general context as last
6 year, then we think it's reasonable to expect
7 approximately the same result as last year.

8 And if you look at last year's product
9 sales in the state, year 2000 end, we expect about
10 80 percent at 10 SEER and about 16 percent at 12
11 SEER. That was the results last year.

12 If you expect different results, then we
13 would think that you would want to entertain a
14 different direction to the program. We will be
15 working with the municipal utilities on that.

16 Be that as it may, we would like to urge
17 you to look, continually to look for
18 opportunities, though, that these points might be
19 addressed in whatever informal correspondence, or
20 formal direction you may yet come up with for the
21 municipal utilities with these programs.

22 And we'd like you to please also be
23 cognizant of the message that may be sent if these
24 points are ignored.

25 Carrier Corporation, I know that you may

1 be frustrated with the stance it has taken
2 nationally on national standards, but it did
3 perceive reason to encourage you to move ahead
4 here in California with the higher levels because
5 of the higher hours of air conditioning use.

6 There are not a lot of members of the
7 industry that share that viewpoint. And, we would
8 like to encourage you to continue along a forward
9 looking path and send the right message wherever
10 you have the opportunity.

11 Thank you.

12 ASSOCIATE CHAIRMAN MOORE: Thank you
13 very much. I'm troubled by the docket --

14 COMMISSIONER PERNELL: Mr. Chairman, --

15 ASSOCIATE CHAIRMAN MOORE: -- not having
16 your name on it, so we're going to see if we can
17 fix that. Commissioner Pernell.

18 COMMISSIONER PERNELL: Yeah, I have a
19 question for you.

20 MR. LUCAS: Sure.

21 COMMISSIONER PERNELL: On the ozone
22 depleting refrigerant that you mentioned, --

23 MR. LUCAS: Yes.

24 COMMISSIONER PERNELL: -- and we've had
25 conversations about this.

1 MR. LUCAS: Right.

2 COMMISSIONER PERNELL: My question is
3 does that refrigerant -- is that refrigerant less
4 efficient in terms of the unit?

5 MR. LUCAS: At this point, in the
6 context of the minimum appliance efficiency
7 standards, where you establish the efficiency
8 level at 13 SEER or some equivalent EER level, at
9 your preference, talking about holding that
10 efficiency level constant.

11 All we're changing here is what
12 refrigerant you're using in order to achieve that
13 level in the precise piece of equipment.

14 So in the context of this discussion,
15 energy efficiency should be constant.

16 ASSOCIATE CHAIRMAN MOORE: Good. And
17 would you give your business card to the
18 secretariat, please, before you leave?

19 MR. LUCAS: Sure.

20 ASSOCIATE CHAIRMAN MOORE: All right,
21 thank you. The Committee is going to look forward
22 to hearing from you on that matter in the future.

23 We have no minutes from previous
24 meetings. Any other Committee reports?

25 COMMISSIONER PERNELL: Mr. Chairman, if

1 I may?

2 ASSOCIATE CHAIRMAN MOORE: Commissioner
3 Pernell.

4 COMMISSIONER PERNELL: On item 8 was
5 pulled, and I wanted to just briefly talk about it
6 to the Commissioners.

7 We have a -- well, let me back up. SB-
8 5X has been going through the Legislature. It is
9 now through and signed. But we were hoping to get
10 that a couple of months earlier.

11 We didn't do that, and we're trying to
12 expedite the SB-5X criteria, and get that out so
13 that we can have savings this summer.

14 And one of the things that we've done is
15 got an executive order to allow us to expedite the
16 process. Yesterday's meeting, this item relates
17 to the municipal utility districts. We've had a
18 workshop yesterday. We've expedited that item.

19 Those utilities that you see in the
20 numbers on item 8, all of those have been -- those
21 moneys have been dispensed. They don't have them,
22 but they've left the Commission. LADWP got \$16
23 million; SMUD, Sacramento Municipal Utility
24 District got \$8 million; Northern California Power
25 Agency got \$8 million; and Southern California

1 Public Power Agency got \$8 million.

2 Also we moved out of this Commission \$7
3 million to the State and Consumer Services for
4 information purposes, to get information out about
5 the program.

6 So what we're doing is through executive
7 order, expediting AB-5X as it relates to the
8 Commission. We'll be moving forward with other
9 contracts to get efficiency up as soon as possible
10 in the May/June timeframe.

11 And those municipal utility districts
12 have assured us that -- some of them have assured
13 us that they will be coming forward with contracts
14 and have some savings this summer. That is our
15 goal, is to get these moneys out and get the
16 savings this summer.

17 So, it got pulled because we didn't --
18 we weren't sure that we were going to get the
19 executive order. If we hadn't got the executive
20 order, we would have to go through the regular
21 process. So that's why you see that on your
22 agenda.

23 Any questions?

24 ASSOCIATE CHAIRMAN MOORE: No, I think
25 it all was very clear.

1 COMMISSIONER PERNELL: Thank you, Mr.
2 Chairman.

3 ASSOCIATE CHAIRMAN MOORE: Other
4 Committee reports?
5 Chief Counsel?

6 MR. CHAMBERLAIN: I have nothing further
7 beyond what we covered in the closed session.

8 ASSOCIATE CHAIRMAN MOORE: Mr. Executive
9 Officer.

10 MR. LARSON: Only would like to have a
11 meeting afterwards in the third floor conference
12 room where we might, if it's okay with you, to
13 talk about some --

14 ASSOCIATE CHAIRMAN MOORE: We might take
15 a lunch break and come back.

16 MR. LARSON: The briefers, one has a
17 medical appointment at 1:30, and the other one has
18 another important -- perhaps later?

19 COMMISSIONER ROSENFELD: I'd sooner keep
20 going, too, because I have a 1:30.

21 ASSOCIATE CHAIRMAN MOORE: All right,
22 well, we'll keep going until --

23 COMMISSIONER BOYD: Is this a closed
24 session?

25 ASSOCIATE CHAIRMAN MOORE: No, it's open

1 briefing session, so third floor conference room,
2 and it's open to the public.

3 MS. MENDONCA: I'm sorry, you probably
4 asked for the Public Adviser's comment, and I'm
5 sorry, I was --

6 ASSOCIATE CHAIRMAN MOORE: No, I
7 haven't. I haven't finished with Mr. Larson yet.
8 Mr. Larson, can we get the topic of the briefing
9 on the record?

10 MR. LARSON: Talk a little bit about the
11 current status of the numbers.

12 ASSOCIATE CHAIRMAN MOORE: The numbers
13 of generation, forecast generation, potential
14 deficits?

15 MR. LARSON: Yes. Crisis.

16 ASSOCIATE CHAIRMAN MOORE: The crisis.
17 Public Advisor?

18 MS. MENDONCA: Yes. I just learned that
19 not everybody knows where the Public Adviser's
20 Office is located. And so you're all welcome to
21 come down and say hi. I'm at the end of the hall.
22 It's not terribly convenient for the public.

23 The Public Adviser does put out on each
24 and every siting case a one-page project
25 description in English and Spanish, as well as

1 makes available to the public a timeline that
2 gives a graphic explanation of our process from
3 beginning to end.

4 We have now brought to the foyer a black
5 literature rack which will contain the one-page
6 siting summary for our cases, and you'll see that
7 getting fleshed out over the next several weeks,
8 so that the public that does not know to find the
9 Public Adviser will have that information
10 available.

11 ASSOCIATE CHAIRMAN MOORE: Flushed out
12 or fleshed out?

13 MS. MENDONCA: Fleshed out.

14 ASSOCIATE CHAIRMAN MOORE: Yes, thank
15 you.

16 COMMISSIONER PERNELL: And you're at the
17 end of the hall on the third floor, second floor?

18 MS. MENDONCA: The first hall. First
19 floor.

20 COMMISSIONER ROSENFELD: Maybe your rack
21 should have an arrow pointing towards your office.

22 ASSOCIATE CHAIRMAN MOORE: All right.

23 MS. MENDONCA: Thank you.

24 ASSOCIATE CHAIRMAN MOORE: Any member of
25 the public who would like to address us on other

1 items? There are none.

2 This meeting is adjourned.

3 (Whereupon, at 12:50 p.m., the business
4 meeting was concluded.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said business meeting, nor in any way interested in outcome of said business meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of May, 2001.

VALORIE PHILLIPS

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