

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

WEDNESDAY, JULY 11, 2001
10:00 A.M.

Reported by:
Valorie Phillips
Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William Keese, Chairman

Michal Moore

Robert A. Laurie

Arthur Rosenfeld

James Boyd, Ex Officio

STAFF PRESENT

Steve Larson

William Chamberlain

Sandra Fromm

Robert Worl

Paul Kramer

Tim Schmelzer

PUBLIC ADVISER

Roberta Mendonca

ALSO PRESENT

Holly Duncan

Charles C. Hinckley, Project Director
CalPeak Power, LLC

Donna Jones, Attorney
Latham and Watkins
representing CalPeak Power

Rick R. Rothman, Attorney
McCutchen, Doyle, Brown and Enersen
Mark Woodruff
Ed Blackford
representing AES

ALSO PRESENT

Alvin S. Pak, Attorney
Jeffer, Mangels, Butler and Marmaro
representing City of Huntington Beach

Connie Boardman
City of Huntington Beach

Mark Wolfe, Attorney
California Unions for Reliable Energy

Susanna Concha-Garcia
American Lung Association

Dennis Fox
Outdoor Sportsmens Coalition of California

Richard Engel

Mike Evans
Cora Power

Mike McDonough

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10:00 a.m.

CHAIRMAN KEESE: I call this meeting of the California Energy Commission to order. Mr. Boyd, would you lead us in the Pledge, please.

MR. BOYD: My pleasure.

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

CHAIRMAN KEESE: Good morning.

Item 1, Russell City Power Project.

Commission consideration of the Executive Director's data adequacy recommendation for the Russell City Power Project application for certification. Good morning.

MS. FROMM: Good morning, I'm Sandra Fromm, Project Manager. On May 22, 2001, Calpine Corporation and Bechtel Enterprise Holdings, known as Calpine/Bechtel, filed an application for certification seeking approval from the Energy Commission to construct and operate a 600 megawatt natural gas fired combined cycle.

The applicant requested the six-month process. Staff reviewed the AFC and found the project to be data inadequate.

On June 19th the applicant filed a

1 supplement. Staff has reviewed the supplemental
2 information and now determines the project to be
3 data adequate for the six-month process.

4 CHAIRMAN KEESE: Thank you. Any
5 questions? Do I hear a motion.

6 COMMISSIONER ROSENFELD: Motion.

7 CHAIRMAN KEESE: Commissioner Rosenfeld
8 moves.

9 COMMISSIONER MOORE: Second.

10 CHAIRMAN KEESE: Commissioner Moore
11 seconds the Russell City Power Project be found
12 data adequate.

13 All in favor?

14 (Ayes.)

15 CHAIRMAN KEESE: Opposed? Data
16 adequate. Thank you.

17 Item 2 Russell City Power Project.
18 Possible approval of a Committee for the Russell
19 City Power Project application for certification.
20 Commissioner Rosenfeld.

21 COMMISSIONER MOORE: I was going to say,
22 Mr. Chairman, the one thing we know for sure is
23 that on a six-month project I'm an unlikely
24 candidate.

25 (Laughter.)

1 CHAIRMAN KEESE: Commissioner Moore

2 moves that --

3 COMMISSIONER MOORE: Commissioner

4 Rosenfeld be --

5 CHAIRMAN KEESE: -- Commissioner Keese

6 be Presiding and Commissioner Pernel be Second on

7 the Russell City Power Project.

8 COMMISSIONER MOORE: So moved.

9 CHAIRMAN KEESE: Moved by Commissioner

10 Moore.

11 COMMISSIONER LAURIE: Second.

12 CHAIRMAN KEESE: Second by Commissioner

13 Laurie.

14 All in favor?

15 (Ayes.)

16 CHAIRMAN KEESE: Opposed? Approved.

17 MS. FROMM: Thank you.

18 CHAIRMAN KEESE: Thank you. Russell

19 City is dismissed.

20 (Laughter.)

21 CHAIRMAN KEESE: Item 3, CalPeak Power-

22 Border, LLC. Possible adoption of the Committee's

23 Proposed Decision for the CalPeak Power-Border,

24 LLC Project, a 49.5 megawatt power plant --

25 (Conference Call Interruption.)

1 COMMISSIONER LAURIE: Mr. Chairman, this
2 was my proposed recommendation to turn the matter
3 over to staff for a brief presentation. A public
4 hearing was held, and you have a proposed decision
5 before you. Mr. Worl, sir.

6 MR. WORL: My name is Bob Worl. I was
7 Project Manager for the CalPeak Border process.

8 COMMISSIONER LAURIE: Amanda Beje is not
9 here. She was my Hearing Officer. Mr. Worl, why
10 don't you give a brief summary of the project for
11 us, please, and then we'll have some public input.
12 Just let me introduce it briefly, Mr. Chairman.

13 This is an additional project in the
14 Chula Vista area down near San Diego. What you
15 will hear is that the impacts of this project have
16 been fully mitigated. In fact, there's a
17 consensus of view that this is an excellently
18 designed project.

19 The concerns expressed in the
20 neighborhood is the result of the cumulative
21 impact as the result of this project plus the
22 previously approved project, plus additional
23 projects that may come down the line.

24 So, if there's any complaint it is not
25 in regards to this particular project, but this

1 project in combination with others.

2 Sir, in that regard why don't you just
3 go ahead and give a brief description of the
4 project and the comments received and a summary of
5 the conditions proposed.

6 MR. WORL: On June 14th we received an
7 application for emergency permitting project for
8 Border from CalPeak Power. They submitted
9 supplemental information to us on the 15th and on
10 the 18th. The application was deemed complete on
11 the 20th. On the 28th we held the public hearing
12 in Otay Mesa area of San Diego.

13 The project consists of a 49.5 megawatt
14 electrical generating facility utilizing FT8 Pratt
15 and Whitney TwinPack gas-fired turbines in a
16 simple cycle configuration, proposed with
17 selective catalytic reduction at the outset.

18 The NOx emissions are slated to be 2 ppm
19 averaged over a year period. 2.5 ppm and any
20 rolling three-hour average. And this is
21 essentially 3 ppm below the allowed 5 ppm that
22 most simple cycle generators are facing.

23 The Air District, the San Diego County
24 Air Pollution Control District, performed studies
25 not only of this project, stand-alone, but also

1 combined with all the other facilities that have
2 been proposed in the area and are operating in the
3 area. And they found that there are going to be
4 no impacts from the operation regarding the
5 emissions.

6 The bulk of the comments that we
7 received from the hearing process related to the
8 combined effect of all of the plants in the San
9 Diego air district. Those were all -- the CalPeak
10 project was deemed to not add either individually
11 or collectively with the other projects to any air
12 violations of any of the standards that they
13 apply.

14 COMMISSIONER LAURIE: The conditions on
15 the project, sir, are those as recommended in the
16 staff assessment?

17 MR. WORL: The staff assessment
18 recommended that the standard conditions, air
19 quality 1 for construction be imposed; and air
20 quality 3 also be applied. This is in compliance
21 with the Air District rules for construction and
22 operation of power plants.

23 Again, as I said, the NOx is
24 consistently lower than most projects at 2 ppm; CO
25 will be controlled at 6 ppm; and there are no

1 triggered offsets required other than those
2 required by the acid rain process for SO2. And
3 CalPeak Power has indicated that they will, in
4 fact, purchase and hold in the bank those offsets.

5 Also, particulate matter 10 microns and
6 larger will be controlled below minimums.

7 COMMISSIONER LAURIE: Sir, this project
8 was processed under our 21-day emergency process.
9 A condition of that process is that the project be
10 on line September 30th. Is there evidence in the
11 record that this project will meet that
12 requirement?

13 MR. WORL: Their proposed construction
14 schedule allows them, it's approximately a ten-
15 week construction schedule, they will be on line
16 prior to the September 30th deadline.

17 And the City of San Diego, at this
18 point, is going to be acting as the CBO. And they
19 have already had substantial contacts regarding
20 their particular requirements.

21 The project, as proposed, meets all of
22 the LORS that are required for the San Diego area.
23 It's in an industrialized zone. Their nearest
24 neighbor is a Sanyo Plant across the road. And
25 there are no unmitigated noise conditions.

1 Biologically we have several conditions
2 that pertain to protecting a wetlands that's
3 actually on the site. But everybody has come to
4 terms regarding setbacks, flagging, and these are
5 conditions.

6 COMMISSIONER LAURIE: So all LORS have
7 been met and there's no need for any override, is
8 that correct?

9 MR. WORL: There are no needs for
10 overrides. The only thing that loomed on the
11 horizon was that the applicant requested, and we
12 agreed, that an extended construction period be
13 considered above and beyond a ten-hour day.

14 And looking at the San Diego LORS
15 regarding noise, this was deemed to be not only
16 practicable, but within the purview of the
17 emergency LORS that they already have on their
18 books. And they have agreed.

19 So we should be set to go. Cultural
20 resources --

21 COMMISSIONER LAURIE: Let me interrupt,
22 because I don't know if we need to go through
23 every item. I just want to make sure that we
24 touched on the items of greatest significance to
25 the public, and I think we have done that.

1 MR. WORL: There was one thing that did
2 come up late in the process, basically after the
3 bulk of the work was done. And that related to
4 the transmission studies.

5 There are outstanding issues with the
6 transmission system in the Otay Mesa area. These
7 have been raised by not only the applicant, but
8 also by Coral Power in a late thing. Their
9 concern is regarding to tieline 649, some
10 constraints that may exist there.

11 There are studies that are being
12 undergone at this point, the final study for both
13 CalPeak Border and also for Coral Powers Larkspur
14 Project, which indicate that there may be some
15 work that needs to be done in that regard.
16 However, the applicant, SDG&E, and Coral Power
17 have been in contact and are working through
18 those.

19 So those are the only outstanding issues
20 that exist at this point.

21 COMMISSIONER LAURIE: Thank you, sir,
22 appreciate your report.

23 Mr. Chairman, what I'd like to do at
24 this point, I note Ms. Mendonca is present, I'd
25 like to determine whether the applicant has any

1 desire to offer comment; following which I'd ask
2 Ms. Mendonca to determine whether or not there's
3 any public input relevant to this issue.

4 CHAIRMAN KEESE: Commissioner Laurie, I
5 have an indication that we have Ms. Jones, Mr.
6 Hinckley and Mr. Sampson available to answer
7 questions on behalf of the applicant, but not to
8 make a statement.

9 Also, do we have anybody in the audience
10 to speak on this issue? Then I have Holly Duncan
11 is on the phone. Ms. Duncan? Operator, can you
12 connect us with Ms. Duncan?

13 COMMISSIONER LAURIE: Okay, we appear to
14 have lost connection. Ms. Duncan was an active
15 participant in the Otay Mesa case, and she is a
16 participant in this case.

17 I would not want to ask the Commission
18 to take any final action until we can make an
19 attempt to get her back on the phone.

20 CHAIRMAN KEESE: All right, Ms.
21 Mendonca, do you have anything else to add?

22 MS. MENDONCA: Good morning, this is
23 Roberta Mendonca, the Public Adviser.

24 Ms. Duncan was the only member of the
25 public that had communicated with me about this

1 project, so I'm --

2 CHAIRMAN KEESE: And I understand she is
3 on the phone.

4 MS. MENDONCA: Okay, great, I was going
5 to go call her.

6 CHAIRMAN KEESE: And she probably has
7 been listening to us, but we have a system --

8 (Pause.)

9 CHAIRMAN KEESE: Ms. Duncan.

10 MS. DUNCAN: Hello?

11 CHAIRMAN KEESE: Yes.

12 MS. DUNCAN: Can you hear me?

13 CHAIRMAN KEESE: Yes, we can now. Speak
14 up, but we can hear you.

15 MS. DUNCAN: I wish to continue to
16 express my deep concern about the 21-day process.
17 I continue to look for the air quality analysis
18 from the local Air Pollution Control District. I
19 am on record on June 28th requesting a copy of
20 that; it's two weeks hence now, no copy of that.
21 It does not appear on the website for the Energy
22 Commission.

23 These documents have not been posted.
24 Your public comment period ended prior to issuance
25 of the final staff analysis.

1 I, again, dispute the anti-democratic
2 process that is going on here today, and that you
3 are participating in. I protest it vociferously.
4 I protest that what you are doing is dangerous,
5 deadly and irresponsible.

6 The record for Otay Mesa shows
7 environmental impact in biology and air quality.
8 And you say all of these peaker plants coming into
9 our area will have no such impact, despite the
10 fact that the Escondido project has already
11 morphed into a baseload facility instead of a
12 peaking facility.

13 I question, I question the public health
14 impacts of what you are participating in. I
15 protest it vociferously. I challenge the
16 character of the Commissioners to participate in a
17 process that you know will have public health
18 impacts that are going to be quite detrimental,
19 and I assert, at some time will be proven and
20 exposed as criminal behavior.

21 There is no justification for putting an
22 ounce of particulate matter pollution into
23 southern California skies. Your own analysis says
24 that we have the potential, in San Diego County,
25 as it is well documented for Los Angeles County,

1 of producing the killer fog of 2002.

2 We learned a lesson from London in 1952.
3 At least I thought we had. But it would appear
4 that we are bound and determined to duplicate it
5 again.

6 Whether or not there is an energy crisis
7 in California, there are other ways that are
8 cleaner and preferable to fossil fuel based
9 technologies to produce power in the 21st century.

10 I fought hard for that in Otay Mesa and
11 I will continue that fight because the lungs of
12 2.8 million County residents in San Diego are
13 depending on your wisdom to insure that our health
14 is protected. That is part of what you are
15 required to do under CEQA.

16 I'm shocked and appalled that my
17 Governor has suspended CEQA from this process. It
18 is scandalous. And it is unacceptable. And I
19 urge you to deny this application today.

20 And that's all I have to say.

21 CHAIRMAN KEESE: Thank you, Ms. Duncan.

22 COMMISSIONER LAURIE: If there's no
23 additional comment, Mr. Chairman, I would simply
24 move my proposed decision for approval subject to
25 the terms and conditions contained there.

1 CHAIRMAN KEESE: Motion by Commissioner
2 Laurie.

3 COMMISSIONER MOORE: Second.

4 CHAIRMAN KEESE: Second by Commissioner
5 Moore. Any further comment?

6 All in favor?

7 (Ayes.)

8 CHAIRMAN KEESE: Opposed? Adopted four
9 to nothing.

10 COMMISSIONER LAURIE: Thank you, Mr.
11 Worl.

12 CHAIRMAN KEESE: Thank you.

13 COMMISSIONER LAURIE: I'd like the
14 record to also reflect my appreciate to our
15 Administrative Law Judge, Ms. Beje, that assisted
16 so well.

17 CHAIRMAN KEESE: Thank you.

18 COMMISSIONER LAURIE: Also, staff, full
19 planning staff was there. We had a tough time
20 getting Mr. Ogata away from the tv cameras, but he
21 did eventually appear and was somewhat beneficial
22 during the course of the hearing process.

23 (Laughter.)

24 CHAIRMAN KEESE: Thank you. Thank you
25 very much.

1 Item 4, AES, Huntington Beach, LLC,
2 petition for reconsideration. Consideration of
3 the AES Huntington Beach LLC's petition for
4 reconsideration of the Commission decision.

5 We have the petition for reconsideration
6 in front of us. Could we have staff explain the
7 petition, and explain their suggestions.

8 MR. KRAMER: Good morning, Paul Kramer,
9 Staff Counsel. AES has petitioned to have
10 condition emergency 1, which required that they
11 enter into a power sales contract with the
12 Department of Water Resources removed, because
13 their negotiations with DWR were ultimately not
14 successful. As an exhibit to our response you can
15 see the letter from DWR to AES.

16 Staff is recommending that that
17 provision be removed -- that requirement be
18 removed from the condition. We're basically
19 treating this as a, if you will, a no-fault
20 divorce. We're accepting the reality that there
21 is not going to be a contract.

22 But recognizing that the power that
23 would come from units 3 and 4 is necessary and
24 useful to the State of California in the next few
25 years as the electricity emergency resolves

1 itself.

2 We would like to see the project go
3 forward. However, we have proposed to you a
4 substitute condition emergency 1, simply makes it
5 clear that what I think most people would assume,
6 that a condition of the certification is that the
7 project owner comply with all laws that are
8 applicable to the project.

9 And specifically to address the
10 continued concerns of some, I believe the City,
11 among others, that AES might attempt to
12 unreasonably gain from the sales of power in the
13 open market.

14 The proposed condition says that the
15 certification is issued subject to all the rules
16 that have been adopted, and it's not mentioned
17 specifically, but we have in mind the recent FERC
18 orders on pricing.

19 And that if they are found to have
20 violated those orders, the Commission could, of
21 course in its discretion, take some action against
22 the certification up to and including revocation
23 of the certification.

24 We've also proposed though, mindful of
25 the balance that we believe was struck at the last

1 hearing before your Commission, between the
2 duration of the certification, which was set at 10
3 years with a five-year review, and AES' promise to
4 enter into a contract with DWR.

5 We believe that the Commission should
6 rebalance that equation and in consideration of
7 the fact that we no longer have the promise that
8 the power will be available to California, and
9 we'd like to return to staff's initial
10 recommendation which was that the certification be
11 for five years.

12 There is testimony in the record of the
13 hearings in Huntington Beach that AES could
14 recover its investment and then some with the
15 five-year operating period for the plant.

16 The plant is not -- although it is a
17 modern boiler, and it is relatively clean, it does
18 not burn gas, which is a precious resource and
19 probably we will come to find even more precious
20 in the future, as efficiently as a modern combined
21 cycle plant would.

22 So, staff would like to limit the life
23 to a period of five years, period, to allow them
24 to recover their investment, to allow for the
25 power to be provided in this time of extreme need

1 in the state. But then to encourage them to
2 replace this plant with a combined cycle plant,
3 which we believe would be less of a burden upon
4 the citizens of Huntington Beach.

5 In the alternative, if the Commission is
6 not inclined to modify the duration to five years,
7 we would still like the Commission to revisit what
8 we call the burden of proof balance that we
9 discussed for some time with an extended break
10 during the last hearing.

11 And we see that again as a -- it's
12 another form of rebalancing. Our formulation,
13 which is provided in our brief, would put the
14 burden on AES to show that they have adequately
15 mitigated all the environmental impacts before
16 they get another five years authority to operate.

17 So it would be five years. We make the
18 test to see if they've, among other things, done
19 their best effort to mitigate the impacts. And if
20 the Commission finds that to be the case, then the
21 Commission would extend the certification.

22 As opposed to the adopted formulation
23 which puts the burden on the staff and the
24 Commission to go ahead and try to stop them if the
25 Commission finds that there is a problem.

1 And we see that as a real distinction
2 because of the way the courts are likely to
3 approach it. If the Commission bears the burden
4 to prove that they should be stopped, then during
5 litigation over whether the Commission has proven
6 that point, they're likely to be allowed to
7 continue to operate.

8 It's less likely that they would be
9 allowed to continue to operate if they had the
10 burden of showing that they should go forward, and
11 we were litigating Commission determination that
12 they didn't meet that burden.

13 COMMISSIONER LAURIE: I'm sorry, Mr.
14 Chairman, if I may --

15 CHAIRMAN KEESE: Commissioner Laurie.

16 COMMISSIONER LAURIE: -- on that point I
17 really need legal counsel's participation in this.

18 I think there's a distinction between
19 granting a ten-year permit, holding a hearing
20 after five years and saying we're going to pull
21 your permit if we find you're not in compliance.

22 I think under those circumstances, with
23 no references to burden in any condition, the
24 court is going to place the burden on the
25 Commission to find evidence substantial enough to

1 pull the permit.

2 If you grant a permit for five years,
3 but say the Commission will extend for an addition
4 ad infinitum period, then I believe without any
5 reference to burden in the conditions, the courts
6 would impose the burden upon the applicant to
7 provide sufficient evidence in the record that
8 will allow the Commission to make the proposed
9 findings.

10 I need Mr. Chamberlain's view on that
11 subject.

12 MR. CHAMBERLAIN: Well, I think it
13 probably depends a lot on how well you have
14 identified what the criteria are for making that
15 determination.

16 COMMISSIONER LAURIE: Have you seen
17 Commissioner Pernell's proposed language?

18 MR. CHAMBERLAIN: No, I have not.

19 CHAIRMAN KEESE: For your reference I
20 believe Commissioner Pernell's additions are
21 underlined in the emergency two. I believe
22 emergency two is option two of the staff, am I
23 correct?

24 MR. KRAMER: Our alternative --

25 CHAIRMAN KEESE: This is your

1 alternative two with Commissioner Pernel's
2 changes in underlining.

3 COMMISSIONER LAURIE: In other words,
4 he's incorporated your alternative, your section
5 alternative, as his recommendation.

6 MR. KRAMER: Right, sort of, if you
7 will, our fall-back position?

8 COMMISSIONER LAURIE: Right.

9 CHAIRMAN KEESE: Fall-back position.

10 MR. ROTHMAN: Could we see a copy of
11 that?

12 CHAIRMAN KEESE: Yes, you should.

13 COMMISSIONER LAURIE: It's so short
14 maybe counsel could just read it into the record,
15 Mr. Chairman.

16 CHAIRMAN KEESE: Well, they should --
17 (Pause.)

18 MR. ROTHMAN: This has no
19 interlineation.

20 MR. KRAMER: No, just added a few words.

21 MR. CHAMBERLAIN: Yes, I believe that
22 Commissioner Laurie is correct that the project
23 owner, under this language, is required to bear a
24 burden of going forward and producing evidence.

25 And the evidence includes evidence that

1 it has mitigated or is mitigating the project's
2 contribution to environmental impacts.

3 And so to the extent that during the
4 course of the five-year operation that studies
5 determine that, in fact, there are significant
6 impacts, that will be one of the things that would
7 be the applicant's burden to show that it's able
8 to mitigate in the future.

9 CHAIRMAN KEESE: So in response to
10 Commissioner Laurie's question, the parameters
11 that must be met are clearly set out, and the
12 burden is placed upon the applicant to show
13 compliance with those conditions? Is that -- I
14 thought that was the question I heard, and is that
15 your answer?

16 MR. CHAMBERLAIN: Yes, I believe so.

17 COMMISSIONER LAURIE: I have a follow-up
18 question, Mr. Chairman.

19 CHAIRMAN KEESE: Commissioner Laurie.

20 COMMISSIONER LAURIE: Mr. Chamberlain,
21 pursuant to the language that you are looking at,
22 what discretion, if any, would the Commission have
23 five years -- or at the time of any extension
24 hearing to modify or add conditions to the project
25 because the proposed condition is silent on that

1 issue?

2 And let me compare, for analogy
3 purposes, extensions of tentative maps, when they
4 are due to expire and they're brought back to a
5 city or county for extension, the decision makers
6 are free to modify the conditions on that map.

7 Five years from now if this issue comes
8 back, the question is going to be raised, does the
9 project have to meet current BACT. If there's a
10 new impact discovered, does the applicant have to
11 meet that.

12 Or when you talk about extension, or
13 talking about extending pursuant to the terms and
14 conditions, as contained in the project that we
15 are currently approving?

16 I don't want to fight about it five
17 years from now.

18 MR. CHAMBERLAIN: Well, it appears to me
19 that if the Commission cannot make these findings,
20 then it is the same as asking for a new license.
21 So any conditions could be imposed.

22 COMMISSIONER LAURIE: But if the
23 Commission can make the findings, and the
24 approval, a) is not discretionary, and b) should
25 the Commission then assume that if it makes these

1 findings, and thus is obligated to extend, that it
2 cannot and should not seek to add conditions or
3 modifications to the project?

4 MR. CHAMBERLAIN: I think that's
5 correct.

6 COMMISSIONER LAURIE: Thank you.

7 COMMISSIONER MOORE: Mr. Chairman.

8 CHAIRMAN KEESE: Commissioner Moore.

9 COMMISSIONER MOORE: I have a question
10 regarding the presentation. I want to make sure I
11 understand the objective here.

12 Right now we have a plant that is
13 proposed for permitting under extreme emergency
14 conditions. And as a consequence we were willing
15 to overlook air quality concerns, or we were
16 willing to incorporate air quality limits that we
17 perhaps wouldn't in a longer term process, or were
18 we to be absent the emergency that we consider
19 ourselves to be in, is that right?

20 MR. KRAMER: That's correct, although I
21 think the issue that air quality really wasn't the
22 issue where that potential compromise was made.
23 It would be in the area of the water quality, and
24 the possible contribution of this project to the
25 transport of bacteria to the beaches, you know,

1 which had severe impacts at Huntington Beach
2 because the beaches were closed.

3 COMMISSIONER MOORE: So, --

4 MR. KRAMER: And in that case the
5 Commission is adopting overriding considerations
6 because the environmental conclusion was --

7 COMMISSIONER MOORE: Overriding
8 considerations, you mean mitigations?

9 MR. KRAMER: Well, it's try to mitigate
10 as best it can with the study. But until we have
11 the results of the study we don't know -- we don't
12 know if the plant is making a contribution. A lot
13 of people are suspicious that it is. There was a
14 suggestion in one report that it is.

15 But we don't know if once we find out
16 exactly how that occurs, if it can be fully
17 mitigated. So therefore, staff had to recommend
18 that you conclude, for purposes of the CEQA
19 analysis, that you cannot fully mitigate the
20 impact, and you adopted overriding considerations
21 to deal with that.

22 In the case of air quality, all of the
23 conditions of the Air District passed on to us in
24 their report have been imposed. And, in fact, we
25 required that the peaker shut down after two

1 years. So, you know, they're probably the worst
2 source of air contaminants in that project.

3 COMMISSIONER MOORE: So under those
4 circumstances if a five-year window is the
5 appropriate window in which to evaluate or
6 actually to run to meet the emergency, and you
7 don't know what the conditions are that would have
8 to be mitigated either during that five-year
9 period or post that five-year period, how could we
10 even imagine the terms under which you'd reopen
11 this at the end of five years and potentially
12 impose any new conditions?

13 I guess I'm trying to understand why the
14 second alternative is even there at all. If this
15 is an emergency plant, whether or not they were
16 able to get the agreement with DWR or not, we
17 would we go past five years and even consider that
18 second alternative if we have no parametrics to
19 lay down for that second five-year period. We
20 don't have any idea what to suggest as far as
21 reopening it.

22 MR. KRAMER: Well, I don't see it as
23 vague as I think you're telegraphing in your
24 question. Staff, of course, is not recommending
25 that we go beyond five years.

1 But we are addressing the possibility
2 that the Commission, as it did at its last
3 consideration, will decide to go to a maximum of
4 ten years.

5 These conditions were -- I don't think
6 the language is exactly what AES wants, but it is
7 the outcome of rather extensive back-and-forth
8 negotiations between AES and the staff.

9 What AES was looking for was something
10 that they felt they had control over. So they had
11 a specific set of conditions. You know, they
12 recognized that just to operate they have to have
13 all their other permits, their air permit, NPDES,
14 et cetera, in force. So that was not a particular
15 problem for them.

16 They did have a concern about
17 mitigation, you know, whether we can say they
18 fully mitigated the impacts, especially the water
19 quality impact, but I think the best test -- we
20 felt this was the best test we can design at this
21 point.

22 It does leave open the possibility if
23 the study on the water quality issue comes back
24 and says they have to do X, Y and Z to solve the
25 problem, then staff -- it's already a condition of

1 approval that they have to implement -- it's
2 water-something or other, I forget the number --
3 but they have to implement the mitigation measures
4 that are recommended by the study.

5 So, you know, in that sense I don't
6 think it's all this vague as the concern you're
7 expressing in your question.

8 But it was the intent of this that if
9 the Commission can find that they have met those
10 three bulleted items, then the Commission will
11 approve it. It wasn't meant to be open-ended.

12 And that's what -- because AES was
13 objecting to something absolutely open-ended and
14 arbitrary, and staff agreed to go along with their
15 concerns to the degree that we have in this
16 proposed condition.

17 CHAIRMAN KEESE: In your fall-back
18 position. Commissioner Moore, why don't we hear
19 from --

20 COMMISSIONER MOORE: I'm happy to hear
21 from applicants.

22 CHAIRMAN KEESE: All right, let's hear
23 from the applicant. And then I have the City of
24 Huntington Beach and CURE and another speaker in
25 opposition.

1 MR. ROTHMAN: Thank you. Rick Rothman
2 on behalf of AES. Since most of this is not legal
3 issues, I will be doing just a very little bit of
4 talking.

5 Since most of these issues are not legal
6 I will not be speaking for very long, and will
7 simply pass the torch here to Mr. Woodruff and Mr.
8 Blackford, both who, on behalf of AES, have
9 firsthand personal knowledge about some of the
10 facts and circumstances surrounding this petition.

11 But I would like to point out that the
12 reason for this petition is relatively specific.
13 And that is that one of the conditions was made
14 impossible by the act of the DWR deciding that it
15 would not enter into a contract, through no fault
16 of either party.

17 COMMISSIONER LAURIE: Well, let me
18 interrupt for a moment. Simply because one party
19 chooses not to enter into a contract because they
20 can't agree with the terms, Mr. Chairman, I can't
21 accept that DWR made it impossible. We were not
22 at the negotiating table, I don't know what the
23 negotiations were. Maybe AES made it impossible.

24 So I don't want that terminology. I
25 think the fact is that no contract was entered

1 into. Why or who or how come is really irrelevant
2 as far as I'm concerned.

3 CHAIRMAN KEESE: Okay, I think that's
4 fair. Okay, there is no contract, there's not
5 going to be a contract. Let's proceed.

6 MR. ROTHMAN: There is no contract, and
7 there's not going to be a contract which makes
8 complying with emergency condition one impossible.

9 COMMISSIONER ROSENFELD: Right, we get
10 that point.

11 MR. ROTHMAN: Is the point I was trying
12 to make.

13 COMMISSIONER LAURIE: That I understand.

14 MR. ROTHMAN: And that is the only
15 condition that we petitioned to have reconsidered.
16 We --

17 COMMISSIONER LAURIE: Well, wait a
18 minute. There's always a danger in approving a
19 project and accepting a project that has a
20 condition attached to it that says I will enter
21 into a contract. That's always a challenge.

22 If I were a developer I'd be hard-
23 pressed to accept a condition like that. Because
24 that imposes upon the developer, the applicant,
25 the obligation to enter into that contract.

1 And the problem is you agreed with that
2 condition. Which means when you went to the
3 negotiating table with DWR you didn't have a very
4 good negotiating position, because we told you
5 that as a condition of that project you had to
6 enter into that contract.

7 And for whatever reason, that didn't
8 happen. So, I cannot accept an impossibility
9 argument. If you want to come back and say it's a
10 matter of policy we should waive it, well, that's
11 fine.

12 But I'm not going to accept an
13 impossibility argument. I don't think that
14 contract was impossible to perform. That's all I
15 got.

16 CHAIRMAN KEESE: Okay.

17 MR. ROTHMAN: I would also like to
18 acknowledge that we've submitted written response
19 to comments that were received as of this morning.
20 You should have those written comments before you.

21 And we'd like to close by saying that if
22 we're going to reopen other conditions of the
23 certification, there were a number of conditions
24 that AES objected to.

25 There were a number of conditions that

1 fell into the category of what I would call trade-
2 offs for various different considerations, things
3 that we thought were above and beyond what ought
4 to be required in terms of mitigation; above and
5 beyond what is allowed in a number of
6 circumstances; and we would prefer not to get into
7 a discussion of reopening a whole bunch of
8 different additional terms of the certification.

9 And with respect to the timing of the
10 certification you'll hear from Mr. Woodruff. But
11 the staff's recommendation in terms of shortening
12 the timing of the certification is actually
13 illogical given the circumstances.

14 And with that I'll turn this over to --
15 CHAIRMAN KEESE: Let me ask you
16 specifically, although you have not had very long
17 to peruse the language, staff suggested a
18 condition and they suggested a fall-back position.

19 And the fall-back position has been
20 amended by Commissioner Pernel, who cannot be
21 with us because he's in Seattle. Have you had a
22 chance to look at that enough to --

23 MR. ROTHMAN: We have not had a chance
24 to really look at it in enough detail to be able
25 to give you a considered opinion, although we have

1 been discussing language like this in the past.

2 I will tell you that, you know, I think
3 the staff misstated AES' true position which
4 originally was that there was no basis upon which
5 we ought to have any limit to the certification
6 whatsoever. That that seemed to us to be
7 inappropriate and improper.

8 But that for the purposes of the
9 certification, and given the circumstances that
10 existed at the time, the rich mix of factors that
11 went into the certification we were willing to
12 agree to a ten-year term. And we had a lengthy
13 discussion about that at the last hearing.

14 I would need to look at this in some
15 more detail --

16 CHAIRMAN KEESE: Let me ask you, let me
17 be more specific, as I think Commissioner Laurie
18 was specific.

19 MR. ROTHMAN: Okay.

20 CHAIRMAN KEESE: There are three
21 conditions laid out here under which this permit
22 would go from five years to ten years.

23 COMMISSIONER LAURIE: Actually I think
24 it would go from five years to ad infinitum.

25 MR. ROTHMAN: The way this language

1 appears to be worded, it would extend it for an
2 additional five years.

3 CHAIRMAN KEESE: September 30, 2011.

4 COMMISSIONER LAURIE: Okay, sorry.

5 CHAIRMAN KEESE: Okay. So we have three
6 specific conditions and there's not a question of
7 whether those are rather specific, and place a
8 burden on you, on the applicant to come forward.

9 MR. ROTHMAN: I would also argue --

10 CHAIRMAN KEESE: Do you feel those are
11 insurmountable --

12 MR. ROTHMAN: I don't want to --

13 CHAIRMAN KEESE: -- conditions?

14 MR. ROTHMAN: -- opine as to whether
15 they're insurmountable or not. What I would tell
16 you is I don't necessarily agree with legal
17 staff's conclusion about where the burden lies.

18 The way this language is crafted, it's a
19 little vague, but it appears that we would have to
20 come forward with evidence. It doesn't say that
21 that is the only thing upon which the Commission
22 could rely.

23 And then it says the Energy Commission
24 shall approve, if it makes these findings.

25 And so I think there is some ambiguity

1 there. Are these things that we believe are
2 within our control? The answer to that is yes.

3 CHAIRMAN KEESE: Thank you. I believe
4 Commissioner -- I'm going to have to speak for
5 Commissioner Pernell -- Commissioner Pernell
6 wanted it to be an open process. He wanted the
7 applicant to present a rationale that they had met
8 these conditions, and he wanted a discussion on
9 the issue.

10 So he opened it up to others to comment,
11 also. But his intention, I believe, was to place
12 the burden on the applicant to show compliance.

13 MR. WOODRUFF: Thank you, Commissioner.
14 My name is Mark Woodruff, I'm Senior Vice
15 President of AES Pacific. I lead our generation
16 businesses here in southern California.

17 I'm really here to make three points.
18 One, without reiterating the question about
19 impossibility, it's the only condition that is
20 outside of our direct control to comply with. And
21 Mr. Blackford's going to speak to steps we've
22 taken to comply with every other condition since
23 you've approved certification.

24 My second point, and we're not
25 specifically here to talk about, you know, why

1 these negotiations fell apart. I believe the
2 state and AES both worked together in good faith
3 to reach an agreement. However, there's been
4 seismic changes ongoing in the electricity
5 business today, and I'll speak to you about some
6 of those as being some of the issues at risk.

7 And third is that the balance that the
8 staff has struck regarding the speed of permit in
9 this we think is more than achieved by the FERC's
10 most recent June 19th reason. And that we believe
11 is at least part of the reason why the state is no
12 longer interested in contracting.

13 First, whether -- and we'll go to what
14 I'll call impossibility, without trying to pick a
15 fight with you all on any differences we may have
16 over that -- whether it's impossible or not. The
17 simple fact is the state chose not to enter into a
18 contract at this point. They were the ones that
19 broke off negotiations. Again, we don't question
20 their good faith. Difficult negotiations.

21 However, you know, we stood as we had an
22 agreement that was ready to be signed. And for a
23 whole host of reasons the state does not wish to
24 sign long-term power purchase agreements in
25 southern California anymore. They testified to

1 that in the most recent discussions at the FERC
2 over the past two weeks. This is not a condition
3 that we have within our power to comply with.

4 As Mr. Rothman mentioned, there are a
5 number of conditions in this whole process that we
6 objected to on the record, both in principle and
7 practice.

8 However, because we were a willing
9 seller to the state, we did not object at the
10 last -- we don't believe that there should be any
11 limitation on certification. In fact, this
12 Commission has recently approved facilities that
13 are less efficient than this plant, and produced
14 more emissions per megawatt hour, with no
15 limitation on certification whatsoever.

16 We find it objectionable that there's
17 any limitation on certification. We've expressed
18 this repeatedly. And that a ten-year
19 certification, we think, was the minimum
20 acceptable length from our perspective.

21 The staff has referenced testimony by a
22 witness in one of the earlier hearings. We raised
23 our concerns and we think there are numerous
24 technical errors in those economic analyses, and
25 the passage of time and changes in the regulation

1 and the market has only amplified the deeply
2 flawed analysis that was presented. And the
3 reasons for longer certification have only grown
4 greater with the change of events and the passage
5 of time.

6 Yet, we have only objected to the
7 condition that it is not within our control to
8 comply with, which is emergency one. And we think
9 it should be dropped for that reason.

10 That said, we believe that the state
11 has, you know, we and the state worked diligently
12 in good faith to reach an agreement to sell power
13 from Huntington Beach 3 and 4. But I think
14 everyone will agree that there are massive seismic
15 structural changes going on in the electricity
16 business every day, literally every hour.

17 We have always been working with the
18 state, CDWR power buying fund -- the basis of our
19 executed March 2nd term sheet. There's been
20 veiled innuendoes that there's been changes there.
21 Those are just substantially not true.

22 We both have been working off of that
23 despite changes in the ultimate buyer of power,
24 and the creditworthiness of that buyer. And the
25 ability that persists to this day of the state to

1 issue bonds. These are serious issues and
2 committing to a fixed price for any represents
3 potentially billions of dollars of liability.

4 And, you know, those contracts are now
5 under pressure, and there's pressure to
6 renegotiate the contracts that have been signed.
7 No one would enter into an agreement without
8 substantial -- those people who have contracts now
9 are under withering pressure, both of state and
10 federal government, to reconsider and change those
11 contracts.

12 Given the seismic changes that are going
13 on, we think that all parties acted within good
14 faith to try to reach this agreement. And
15 circumstances changed. And perhaps the most
16 significant change that has occurred is the FERC's
17 June 19th order which came out. And we think, you
18 know, without speaking for the state's power
19 buying fund, that June 19th order substantially
20 addressed the two predominate issues, why they're
21 interested in buying power, and without providing
22 them with the financial obligation to purchase
23 electricity.

24 And that is, one, that June 19th order
25 provides for price mitigation in the spot markets;

1 and two, it eliminates any advantage whatsoever to
2 selling to one location in the whole western
3 United States whatsoever.

4 Those two fundamental objectives do
5 perhaps more than achieve the balance that was
6 struck by imposing emergency one in this decision.
7 And we feel that that balance is not disrupted in
8 the least by removing emergency one, given these
9 orders by the FERC.

10 Perhaps you're familiar with the FERC
11 order, but just to recap briefly, the FERC's June
12 19th order provides for price mitigation for all
13 sellers of electricity throughout the entire
14 western system's interconnection, whether they're
15 in-state or out-of-state. And that was one of the
16 prime reasons why the state wished to have long-
17 term contracts, to dampen the volatility that we'd
18 all been experiencing in the spot markets.

19 The second because that order governs
20 all suppliers, not only generators, but marketers
21 in the western U.S. It eliminates what has often
22 been called megawatt laundering, that is the
23 ability to sell out of the state and to achieve
24 advantage in selling into uncapped price markets,
25 and then sell back in under other circumstances.

1 Because that governs every generator,
2 every supplier, every FERC-licensed marketer in
3 the U.S. and including some foreign marketers who
4 are licensed in the U.S. that achieves both of the
5 policy purposes that were necessary for that.
6 And, in my opinion, may be part of the reason why
7 the state is no longer interested in doing that.

8 So if we go back, just to recap. One,
9 emergency one is no longer under our control.

10 Two, we've made efforts, as did the
11 state, to achieve an agreement in good faith. But
12 given the rapid and seismic changes ongoing, you
13 know, we don't fault the state for doing so, but
14 we don't feel that we should be punished because
15 of those changes, when we have stepped forth and
16 took great risks to try to help the electricity
17 emergency, when we don't think there should be any
18 limitation at all, given the other permits that
19 you have issued.

20 And third is the FERC's order achieves
21 the policy objectives that underlie emergency one,
22 and more than addresses the balance that the staff
23 has raised was struck.

24 CHAIRMAN KEESE: Thank you.

25 MR. ROTHMAN: If the Commission would

1 find it helpful we have Mr. Blackford with us who
2 is able to provide a brief report through the
3 status of the project and the status of compliance
4 with the other conditions.

5 CHAIRMAN KEESE: Sure.

6 MR. BLACKFORD: Good morning, Mr.
7 Chairman, Commissioners. My name is Ed Blackford.
8 Under more normal times I'm the Site Manager. For
9 the last year I've performed more in the capacity
10 of project director for the three and four retool
11 project.

12 I want to just briefly bring you up to
13 date with the status of both compliance and
14 construction.

15 As of June 30th our first monthly
16 compliance report was submitted to the compliance
17 program manager. In that report we submitted
18 substantial information and we're basically in
19 compliance with all conditions that are under AES'
20 immediate or direct control.

21 The exceptions are conditions which
22 require interaction or response with the City.
23 Discussions have been ongoing with the City, and
24 we currently are working to come to finality on
25 those issues.

1 As you know from the state we have
2 promoted a very aggressive schedule with this
3 project, and we have been working very diligently
4 since the final permit, the air permit was issued
5 on May 30th.

6 Currently, unit three is 75 percent
7 complete. Unit four is 70 percent complete.

8 Assuming the Commission finds it
9 justified to remove emergency one today, we'll be
10 continuing to move forward with all haste in this
11 project, to provide the needed energy to the
12 California grid.

13 We would anticipate at this time that
14 unit three would be available, supplying megawatts
15 to the grid by August 7th; with unit four
16 following the following week, producing power by
17 August 14th.

18 CHAIRMAN KEESE: Thank you very much.
19 The City of Huntington Beach, Connie Boardman.

20 MS. BOARDMAN: Good morning,
21 Commissioners. My name is Connie Boardman; I'm on
22 the City Council in Huntington Beach. And I'm
23 here on behalf of the City to urge you not to
24 grant the request of AES and relieve them of their
25 obligation to sell electricity generated by

1 retooled units three and four to the California
2 Department of Water Resources.

3 In the beginning of the approval process
4 the City was asking for a new, modern, efficient,
5 cleaner plant. The approval of the permit for AES
6 to retool these plants was done in a very
7 expedited manner due to the fact that the state
8 had an energy crisis on its hands.

9 And since it would take much less time
10 to retool three and four, the idea of a cleaner,
11 efficient new plant with a lower profile was
12 dropped early in the process.

13 Such a crisis existed that the
14 Commission granted permission for a 43-year-old
15 electrical power plant that is 37 percent
16 efficient to be retooled as quickly as possible to
17 help solve the energy problems. And as far as I'm
18 aware we still have energy problems in our state.

19 As part of the process AES agreed on the
20 record before the Commission to sell the
21 electricity generated by units three and four to
22 DWR. And now they're trying to back out of that
23 agreement.

24 It may have been a bad deal for them.
25 It may have been a bad condition to agree to. But

1 they agreed to it.

2 As you may remember in past hearing, the
3 hot water effluent from the AES plant has been
4 implicated in contributing to our bacterial
5 problems in our near-shore waters on the beaches.
6 Studies are going on right now to test the
7 hypothesized link between the hot water effluent
8 and our beach closure problems.

9 I was just communicating with some of
10 the scientists involved in the study and they
11 reported to me that during the month of May when
12 the AES plant was -- units one and two were down
13 to have the scrubbers installed, coincidentally
14 the bacteria levels in the ocean were dramatically
15 better than they were the previous May. These
16 studies continue, however.

17 And the reason I bring this up again is
18 to remind you that the AES plant not only impacts
19 the air quality in the southland, but it also has
20 a big impact and could have a huge impact on the
21 economy of Huntington Beach and our local downtown
22 businesses.

23 So the citizens of Huntington Beach were
24 not very happy that units three and four were
25 coming back on line for a variety of reasons. But

1 at least we could be assured that the sacrifices
2 we were making would help the citizens of the
3 state deal with our energy crisis.

4 I'm here today to ask you not to relieve
5 AES of the obligation to sell the electricity
6 generated by units three and four to the DWR. One
7 of the reasons this Commission granted AES a ten-
8 year permit instead of five was to insure that the
9 electricity generated would stay in the state.
10 The two were linked, as your staff mentions on
11 page 4 of the staff report. Selling it in the
12 state goes with a ten-year permit.

13 Now, with their ten-year permit in
14 place, AES is coming back to you and saying, we're
15 just unable to make an agreement with DWR.

16 If you should decide to reconsider the
17 requirement that the electricity stay within the
18 state, the City of Huntington Beach would also
19 like you to reconsider the ten-year permit. The
20 citizens of Huntington Beach realize this power
21 plant will probably never go away. But we also
22 know there's much more efficient, cleaner, and
23 more aesthetically pleasing technology that could
24 go into place in Huntington Beach. We would much
25 rather see this technology come on line in

1 Huntington Beach sooner than later.

2 So if you grant AES the right to sell
3 outside the state and relieve them of their
4 obligation to enter into a contract with DWR, then
5 please reduce the certification from ten years to
6 five years. That way we would have an opportunity
7 sooner, rather than later, to have a cleaner,
8 lower profile, efficient power plant on our beach.

9 Thank you.

10 CHAIRMAN KEESE: Thank you. Mr. Wolfe,
11 Mark Wolfe, CURE.

12 MR. WOLFE: Good morning, Commissioners,
13 Mark Wolfe for CURE. Quickly I'd like to
14 articulate our view, at least, of the deal that
15 was struck between AES and the people of
16 California, as represented by this Commission.

17 Basically, in exchange for the expedited
18 certification, 60 days, exchange for the ability
19 to dust off these two vintage boiler units instead
20 of going forward with a new efficient combined
21 cycle process. And in exchange for the ability to
22 defer mitigation of significant impacts to future
23 study, the people get the megawatts.

24 Now, as we see it, condition emergency
25 one, the contract with DWR, was essentially a

1 mechanism to insure that we got the megawatts.
2 So, there's no contract with DWR, I think the
3 first question we need to ask ourselves, is there
4 another mechanism that we can substitute into that
5 condition that accomplishes the same goal,
6 insuring that we keep the megawatts.

7 And in our written comments, which
8 hopefully you've seen, we proposed simply
9 replacing DWR with any in-state grid-serving
10 utility. Require AES to have a contract to sell
11 output of the project with the utility, municipal
12 or statewide.

13 We think that condition comports most
14 closely with the original intent of this entire
15 process, and with the original intent of the
16 Commission in issuing the certification.

17 Failing that, we would support staff's
18 recommended curtailment of the project term from
19 ten to five years as the substitute counter-
20 balancing of the interests, if you will.

21 And just the final point I'd like to
22 make in response to what AES said earlier
23 regarding the June 19th FERC order. The question
24 that just popped up in my mind as I was listening
25 to it, is if, in fact, this order eliminates the

1 need for an in-state sale condition by essentially
2 removing the incentive to sell out of state, I
3 think we also need to ask whether that order
4 effectively eliminates the need for this project
5 all together.

6 Thank you.

7 CHAIRMAN KEESE: Thank you. Mr. Pak,
8 did you wish to speak?

9 MR. PAK: Yes.

10 CHAIRMAN KEESE: Mr. Pak represents the
11 City of Huntington Beach also.

12 MR. PAK: Thank you, Mr. Chairman,
13 Commissioners, good morning. My name is Al Pak.
14 I served as special counsel to the City of
15 Huntington Beach during this proceeding. I just
16 want to add a couple of points to the points
17 already made by Council Member Boardman.

18 It's been the general position of the
19 City of Huntington Beach that the addition of the
20 generating capacity from units three and four to
21 the regional supply mix is not, in and of itself,
22 a solution to the California energy emergency.

23 As valuable as the addition of the
24 physical capacity might be, additional terms and
25 conditions are required in order to transmute the

1 physical capacity into a true solution.

2 Specifically there are two intangible
3 characteristics that we have tried to place on the
4 operation of this plant in order to assure that it
5 is a true solution.

6 First, to assure that the delivery of
7 the power from this plant will occur at reasonable
8 prices. And the recent indications here are that
9 the federal government is not going to be very
10 helpful in helping us enforce that specific kind
11 of a characteristic.

12 And secondly to assure the delivery of
13 power during peak load periods. And there have
14 been recent allegations of which you can take
15 official notice that despite the fact that there
16 are in place federally enforced price caps, there
17 are suppliers who are withholding supply during
18 peak periods in order to avoid and evade the price
19 caps.

20 Now, in our minds, as Mr. Wolfe has
21 indicated, condition emergency one was a mechanism
22 by which to impute these two characteristics to
23 the operation of this plant.

24 Removing condition emergency one
25 significantly reduces, if not eliminates, the

1 characteristics from the operation of this plant
2 and the power that it might deliver. So in our
3 view you do require condition emergency one in
4 order to solve the energy emergency, and to abide
5 by the rules under which this whole proceeding was
6 conducted.

7 Secondly, I wanted to address this issue
8 of the Commission's jurisdiction to impose
9 condition emergency one, since AES continues to
10 resist this Commission's authority on that point.

11 It's our position that the state has
12 significant authority to impose reasonable
13 conditions on a plant during its siting review.
14 This is well established as a result of the
15 Supreme Court's holding in the Energy Commission's
16 proceeding long ago related to --

17 CHAIRMAN KEESE: I don't think you have
18 to argue that point, because this Commission voted
19 and accepted that position. So I don't -- unless
20 you're preaching to AES, we upheld that position
21 when we voted for this.

22 MR. PAK: Then I can drop a good deal of
23 this legal argument.

24 CHAIRMAN KEESE: I think you can.

25 MR. PAK: We're very comforted by your

1 holding there.

2 If there is a constitutional question we
3 do want to point out, as the Council Member has
4 already indicated, that AES has waived its
5 objections to this condition. And the City, in
6 fact, relied upon that waiver in assessing its own
7 legal rights and obligations.

8 We were here at the Commission hearing
9 where this condition, emergency two, was amended
10 to reflect a ten-year operating life for this
11 plant, and for this certificate. We heard the
12 exchange. AES argued that it could not both
13 accept emergency one and a short period of time in
14 which to operate this plant, as would have been
15 required under the five-year life of the
16 certificate. And so the Commission amended to ten
17 years.

18 In weighing the discussion that we heard
19 we found that the Commission made a reasonable
20 trade-off that did not constitute an arbitrary or
21 capricious action on the part of this Commission,
22 and therefore determined that we did not have
23 appealable grounds related to the amendment of
24 condition emergency two.

25 Now, with the elimination of condition

1 emergency one, I want to reiterate that we believe
2 that this permit life should be limited to five
3 years. And there are a number of reasons to do
4 that.

5 You granted the certificate and
6 conferred the rights to operate upon AES during an
7 expedited review, and in advance of the
8 determination of the full environmental impacts
9 this plant would have on the local area. Those
10 studies are continuing. There may be additional
11 conditions in mitigation that will be required.
12 That's extraordinarily unusual under the terms of
13 CEQA or NEPA to allow that to occur.

14 So we would again ask you to limit the
15 potential impacts this plant might have on the
16 local area and the State of California by limiting
17 the term of the certificate.

18 Finally, if you do permit the withdrawal
19 of the waiver that AES made during the last
20 hearing, we ask that you do so with respect to the
21 long term. As counsel for the staff has already
22 indicated, there will be a long-term need for
23 additional capacity in this state. We would
24 prefer that those capacity additions be fuel
25 efficient, that they have lower emissions and

1 reduce impacts per kilowatt.

2 And the only way to do that is providing
3 incentive for this owner/ operator to replace this
4 plant at this site with a more modern combined
5 cycle design. And we ask you to amend emergency
6 two in order to accomplish that by having the
7 current term of the certificate from ten years to
8 five years.

9 Thank you.

10 CHAIRMAN KEESE: Thank you, Mr. Pak. Is
11 there anybody else in the audience to speak to
12 this issue?

13 I have on the phone Susanna Concha-
14 Garcia, American Lung Association.

15 MS. CONCHA-GARCIA: Hello, this is
16 Susanna Concha-Garcia from the American Lung
17 Association, San Diego and Imperial Counties.

18 I'm interested in listening to the
19 arguments that are being presented. Will my mike
20 remain open if I have any questions?

21 CHAIRMAN KEESE: This is your time to
22 speak.

23 MS. CONCHA-GARCIA: Oh, okay.

24 CHAIRMAN KEESE: If you have any
25 comments, this is the time.

1 MS. CONCHA-GARCIA: Okay. I'm concerned
2 about having an old plant, an old turbine and not
3 having any of the emissions mitigated, or poorly
4 mitigated. And I just want to make sure that
5 you're all aware that the excess emissions that
6 these plants are producing, if they don't have SCR
7 and they aren't upgraded, will affect and are
8 affecting the health of the residents in
9 Huntington Beach who are healthy, and those who
10 are sensitive because of being very young, being
11 very old, or having a chronic disease like lung
12 disease or heart disease.

13 So, we at the Lung Association are very
14 concerned and feel that if the company cannot
15 upgrade its power plant to the current technology
16 and current monitoring controls for emissions,
17 then their permit should not last for ten years,
18 but should be shortened to whatever the shortest
19 possible time can be. So that they can, when the
20 permit comes up for review, these issues can be
21 dealt with swiftly.

22 CHAIRMAN KEESE: Thank you.
23 Secretariat, that is the last speaker on the
24 phone? Thank you.

25 Well, the issue is before us.

1 MR. ROTHMAN: Could we give comment to
2 respond to that comment? And the other comments
3 or --

4 CHAIRMAN KEESE: No. I could make a
5 long response to that comment, also, but the
6 Commissioners up here are fully aware of the
7 circumstances of this application. And Susanna
8 Concha-Garcia was not exactly accurate in her
9 characterization of what we're talking about here.

10 MR. WOODRUFF: Commissioner, I don't
11 choose to respond to those comments in particular,
12 but there are some underlying inferences that came
13 out in a number of staff comments that I think it
14 is important for the Commission to hear.

15 And that is, number one, by the staff's
16 own testimony on the record this plant's emissions
17 per megawatt hour are as low or lower than
18 anything that you have ever certified. And that
19 is uncontroverted by anyone. Number one. And
20 including plants that have been certified without
21 any limitation on certification.

22 Both the staff and a number of
23 intervenors have addressed questions, you know,
24 expressing a policy preference for, you know,
25 other technology. And I don't know anywhere in

1 the state where there's a mandated statement about
2 what needs to be permitted. And if anything,
3 those impacts may well increase the ocean impacts
4 that are out there.

5 So there seems to be this trade-off that
6 we need to limit certification because of some of
7 these issues. There's no evidence in the record
8 that supports any of that, again. And I just
9 can't allow those misstatements or --

10 CHAIRMAN KEESE: Thank you.

11 MR. ROTHMAN: -- inferences to go
12 un rebutted.

13 CHAIRMAN KEESE: Thank you.

14 COMMISSIONER MOORE: Mr. Chairman.

15 CHAIRMAN KEESE: Commissioner Moore.

16 COMMISSIONER MOORE: I have a short
17 question for the applicant, and that concerns the
18 contract, since this contract is no longer of
19 issue. But obviously was the subject of some
20 protracted negotiations.

21 Can you tell me whether or not one of
22 the conditions for denial was that the Department
23 of Water Resources simply didn't need the volume?
24 They had enough power? Was that one of the things
25 that was said?

1 MR. ROTHMAN: I believe that's true.
2 Number one, prices had dropped significantly; they
3 didn't need the volume; the FERC order achieved
4 many of the objectives that the purpose of
5 contracting was the case. And number three,
6 additional contracts in hand would make issuance
7 of bonds more difficult, not less.

8 I also believe that the location of this
9 resource is also an issue. The state perhaps
10 would prefer to buy power under contract north of
11 path 15. But as expressed in the most recent FERC
12 proceedings that we participated in actively, they
13 expressed that resources south of path 15 they
14 weren't interested in buying power.

15 COMMISSIONER MOORE: Thank you. Mr.
16 Chairman, --

17 CHAIRMAN KEESE: Thank you.

18 COMMISSIONER MOORE: -- a couple of
19 comments on the matter before us, which I'm going
20 to refer to the docketed petition from AES in
21 making my remarks.

22 They indicate they hope that we do not
23 expand this out into other areas or other
24 conditions. And I want to support that and say
25 that I think we should confine our discussion to

1 the condition that we're just discussing, that is
2 the requirement to buy from DWR.

3 I think that's unfortunate that I'm put
4 in a position to have to support that, because
5 some of the policy remarks that I'm going to make
6 suggest the absolutely dysfunctional response that
7 we've had to meeting this challenge. And it seems
8 to me it's a shame, at best, and I'm tempering my
9 remarks when I say that, greatly, believe me, that
10 we would be in a position to consider this under
11 the circumstances that we are.

12 Under the circumstances where there is
13 no coordinated response to the breadth of the kind
14 of energy resources that we're going to need.
15 Specifically I'm aggrieved that the renewable
16 resources which are being used as kind of a shell
17 game to hold up for a response, but which may die
18 as a result of this uncoordinated market response.
19 And for which we will pay a price 35 and 40 years
20 down the line. I'm very aggrieved at that.

21 We had an emergency situation that
22 prompted a series of emergency orders to shorten
23 the timeframe under which projects like this would
24 be reviewed. This project came up under that
25 emergency sequence and was considered fairly, I

1 believe, and in some depth using an accelerated or
2 compressed process.

3 The applicant has stated, at least in
4 one comment today, that some of the analysis that
5 was performed in that was deeply flawed. And I
6 presume that that remark was made from their own
7 standpoint, saying that some of the benefits that
8 could have accrued in the analysis weren't
9 revealed. But frankly, I've heard it from the
10 other side saying that the analysis was deeply
11 flawed in that it didn't reveal all of the warts
12 and shortcomings of the applicant.

13 What that suggests to me is that the
14 process, in fact, precluded perhaps the fullest
15 analysis that we would have expected from a
16 project of this size.

17 To come to the end of an emergency
18 process where we said we need every megawatt that
19 we can get, we have to get them on line, and
20 therefore we will abridge and abrupt our existing
21 rule structure in order to make things happen as
22 fast as possible, and then turn around and say,
23 thank you very much, we don't need the power, it
24 seems, to me, is hypocritical at best. And I'll
25 stop with that.

1 There are other issues that we have to
2 consider, which is the long-term relevance of the
3 process that we control. It seems to me that we
4 need to very clearly examine what we're going to
5 do in the future with regard to where the volume
6 of the applications that are made, and how we
7 treat them.

8 I believe in my heart that this project
9 should not have been considered under emergency
10 orders. That this is, in fact, something that
11 should have been considered thoughtfully and at
12 some length in the normal one-year process.

13 It seems to me that the alternative
14 designs that have been discussed and/or potential
15 mitigation measures, as well as the analyses that
16 should underlie this would have been done more
17 clearly and perhaps in better form for the public
18 decision makers, the five of us, to consider.

19 The applicant entered into this in good
20 faith using the rules that we set up. I believe
21 that. And I believe that they complied in good
22 faith with a set of conditions that perhaps they
23 shouldn't have, or that they shouldn't have agreed
24 to, and made the best effort that they could to
25 cut a deal.

1 There was no deal. And in fact, if you
2 can believe the circumstances, we don't have an
3 emergency any more. What we've got is a mess.
4 And so, whether or not they sell into that mess or
5 not, they're going to be bound by the FERC order.
6 And whether or not neighboring states can use the
7 power or not, I think will depend on their own
8 growth rates and, frankly, the market conditions
9 under which the prices are charged.

10 So, in saying that I guess I would call
11 out one other thing, and that is CURE raised an
12 interesting point, Mark, in talking about the idea
13 of any grid-serving entity. It was a novel
14 suggestion. I'm sorry I didn't hear it before. I
15 think it would have been an appropriate out, and
16 perhaps would have served AES better had they had
17 that option as well.

18 But they didn't. We don't. And as a
19 consequence, it seems to me that the best
20 compromise would be a five-year certification and
21 relieve the condition, I think that they've met
22 the -- I think they've met the test of something
23 in response to a fairly flawed condition.

24 But I'll tell you, I'm embarrassed to be
25 here under these conditions, and to have the

1 absolutely transparent lack of coordination drive
2 us to the point where we actually have to have a
3 hearing like this.

4 I'm not prepared to make a motion, Mr.
5 Chairman, but my suggestion is that the five-year
6 certification and removal of the condition
7 requiring -- that is condition emergency one --
8 requiring a sell into the DWR contract process is
9 not relevant anymore. Thank you.

10 COMMISSIONER LAURIE: Mr. Chairman, my
11 views are the same as Dr. Moore's -- Commissioner
12 Moore.

13 Certainly there was a question as to the
14 legality of imposing a condition requiring sell to
15 DWR. But, in fact, that matter was discussed, and
16 clearly all parties considered that when they
17 agreed that that was part of the deal.

18 And when you enter into discussions
19 which we did in open session regarding terms and
20 conditions of approving a project that is really a
21 discussion of the terms and conditions of a deal,
22 that is we are providing opportunity to develop
23 and other parties agree that they will perform
24 certain services in return. And this applicant
25 agreed and concurred with that condition.

1 Again, I do not know the circumstances
2 under which DWR and this applicant did not reach
3 agreement. If, in fact, DWR is taking the
4 position that they are no longer interested in
5 buying power in this area, or any area for that
6 matter, well, then, you know, that really concerns
7 me.

8 Because that places into question the
9 continued legitimacy of the Governor's emergency
10 order. And it places into question what our
11 jurisdiction thus is in that regard.

12 I don't know what DWR's position is. I
13 would like to hear DWR's position. We've heard
14 from the applicant that DWR was simply not in a
15 position to reach any agreement. They did not
16 want to buy. I'd like to hear from DWR in that
17 regard.

18 But in approving this project in the
19 first instance, with the agreed-upon condition
20 that there was a guarantee that the state would
21 get the power, well, there were some balances that
22 were agreed upon, and part of that was the
23 expedited process which frankly would have
24 naturally resulted in an abbreviated review of the
25 environmental impacts of this project, or other

1 social impacts of this project.

2 And now we're being asked to change the
3 deal. Well, I'm prepared, unlike Commissioner
4 Moore, I'm prepared to examine the whole deal if
5 that's what the parties want. But I am not
6 prepared simply to erase the important condition
7 that had been previously approved, which under
8 applicant's proposal, and even under emergency
9 two, would be the result.

10 So, I'm headed along the same path as
11 Commissioner Moore. And I'm interested in
12 determining what the intent is of the remainder of
13 the Commissioners' views are.

14 CHAIRMAN KEESE: Commissioner Laurie, my
15 view, I believe, is that the actions that FERC has
16 taken have essentially freed DWR from the -- or
17 whoever else in state government felt that there
18 was a need to continue the requirement to sell
19 into the California market.

20 First of all, we have a plant here that
21 will be supporting the grid in the Huntington
22 Beach area, because that's where it's located.
23 So, it is an augmentation to our grid no matter
24 what happens. That's part one.

25 Secondly, can they sell it out of state?

1 There's no longer a benefit of selling it out of
2 state. That's the financial part of the
3 transaction. The production side is it supports
4 the California grid.

5 So, the incentive for DWR or others to
6 feel that they have to get this power and keep it
7 in state has been significantly diminished. And I
8 can understand when we were here the first time,
9 as I recall, we had a noted memorandum between the
10 parties on what the deal was. DWR thought they
11 had a deal and the applicant thought they had a
12 deal. They noted what the deal was. Now
13 circumstances have changed, and we're not going
14 through.

15 So I'm not sure that the applicant
16 should be faulted in this case for those changed
17 circumstances.

18 COMMISSIONER LAURIE: No, I'm not, I'm
19 not faulting the applicant, I'm just suggesting
20 that it's a different deal than we had previously
21 examined.

22 CHAIRMAN KEESE: That is true. And it's
23 with some reluctance that I come into this, but I
24 think I concur with Commissioner Pernell's
25 alternative. And I guess at this point I will

1 defer to Commissioner Rosenfeld who headed up this
2 Committee.

3 COMMISSIONER MOORE: Commissioner
4 Pernell's alternative being the second --

5 CHAIRMAN KEESE: The fallback --

6 COMMISSIONER MOORE: -- five and five.

7 CHAIRMAN KEESE: -- staff position as
8 amended. Five, and then another five if those
9 specific conditions are met.

10 MR. CHAMBERLAIN: Mr. Chairman, if I
11 could just clarify, Commissioner Pernell's
12 position then would be to remove emergency one,
13 and modify emergency two as we've discussed today.

14 CHAIRMAN KEESE: It would be to remove
15 emergency one and modify emergency two. But I'd
16 leave that to Commissioner Rosenfeld.

17 COMMISSIONER ROSENFELD: Having listened
18 to all that I think that's the best compromise,
19 and I'm prepared to so move.

20 COMMISSIONER MOORE: Second.

21 CHAIRMAN KEESE: Motion by Commissioner
22 Rosenfeld, second by Commissioner Moore.

23 COMMISSIONER LAURIE: Mr. Chairman, I
24 want to make sure I understand the motion. The
25 motion is to delete condition one, and modify

1 condition two as proposed by Commissioner Pernell?

2 CHAIRMAN KEESE: Correct.

3 COMMISSIONER LAURIE: Before I take a
4 vote I need to have applicant's view as to whether
5 or not they're prepared to accept the
6 modification.

7 MR. ROTHMAN: With all due respect I'm
8 not sure we're in a position to accept because we
9 haven't had an opportunity to completely review
10 Mr. Pernell's --

11 COMMISSIONER MOORE: Mr. Chairman, --

12 MR. ROTHMAN: -- or discuss with --

13 COMMISSIONER MOORE: You know, Mr.
14 Chairman, perhaps considering that they're not
15 prepared to instantly respond to Commissioner
16 Laurie's question, maybe continuance is in order
17 and --

18 COMMISSIONER LAURIE: I would move a
19 substitute motion to continue this item to the
20 next business meeting.

21 MR. CHAMBERLAIN: There is a concern
22 here. This is the last day on which the
23 Commission has jurisdiction under the statute that
24 provides for a petition for reconsideration of the
25 decision. You have 30 days from the filing of the

1 petition.

2 COMMISSIONER LAURIE: Can the applicant
3 waive that?

4 MR. CHAMBERLAIN: If you -- I don't
5 believe so -- if you grant the petition, then you
6 have the matter before you and you can decide it
7 in the future. But I believe you do have to act
8 on the petition for reconsideration in order --

9 COMMISSIONER MOORE: Then I
10 parliamentarily --

11 CHAIRMAN KEESE: I would like the
12 applicant to take a close look at that language
13 and see if they --

14 COMMISSIONER MOORE: Okay, I'm going to
15 withdraw my second --

16 CHAIRMAN KEESE: Are there any game-
17 breakers in that language?

18 COMMISSIONER MOORE: Mr. Chairman, you
19 know what I'm going to do, I'm going to withdraw
20 my second on Commissioner Rosenfeld's motion. And
21 would offer a substitute motion that grants the
22 petition. And then ask you to take up
23 Commissioner Laurie's --

24 COMMISSIONER LAURIE: And I would second
25 that motion. And what that allows us to do is set

1 a public hearing to consider a modification of the
2 project, is that correct, Mr. Chamberlain?

3 CHAIRMAN KEESE: We have a suggestion --

4 MR. CHAMBERLAIN: Yes.

5 CHAIRMAN KEESE: Let's hold on here for
6 a second.

7 Right now we have in front of us
8 Commissioner Rosenfeld's, and Commissioner Moore
9 is suggesting that he might like to do something.
10 I'm going to ask the applicant once again --

11 MR. ROTHMAN: Can we take five minutes?

12 COMMISSIONER LAURIE: I'll have to --
13 I'm leaving, Mr. Chairman.

14 CHAIRMAN KEESE: Commissioner Laurie is
15 leaving.

16 MR. ROTHMAN: Two minutes?

17 COMMISSIONER ROSENFELD: Commissioner
18 Laurie, I just wanted one point, that time is
19 running on and they mentioned getting the things
20 on line by the 7th of August. And we need -- we
21 can't forget --

22 CHAIRMAN KEESE: Commissioner Laurie,
23 can you --

24 COMMISSIONER LAURIE: I understand that.

25 CHAIRMAN KEESE: -- hang on for three

1 minutes?

2 COMMISSIONER LAURIE: Yes.

3 CHAIRMAN KEESE: All right. We will
4 take this when that -- three minutes.

5 COMMISSIONER LAURIE: Yeah, I --

6 CHAIRMAN KEESE: When the big hand hits
7 seven, we're going to take this up again.

8 COMMISSIONER MOORE: Well, let's take up
9 the oversight board --

10 CHAIRMAN KEESE: Okay, --

11 COMMISSIONER MOORE: -- challenge.

12 CHAIRMAN KEESE: -- this is put over for
13 three minutes.

14 COMMISSIONER LAURIE: I move the next
15 item, Mr. -- I'm sorry, you have to read it.

16 CHAIRMAN KEESE: Item 5, the Electricity
17 Oversight Board. Possible approval of the
18 interagency agreement 200-99-006 amendment 1.

19 Motion by Commissioner Laurie.

20 COMMISSIONER LAURIE: Can we get the
21 payment in cash?

22 COMMISSIONER MOORE: I have a question
23 on it, and see if you get a second.

24 CHAIRMAN KEESE: Motion by Commissioner
25 Laurie.

1 COMMISSIONER ROSENFELD: Second.

2 CHAIRMAN KEESE: Second by Commissioner
3 Rosenfeld.

4 COMMISSIONER MOORE: On the motion, Mr.
5 Chairman.

6 CHAIRMAN KEESE: Commissioner Moore.

7 COMMISSIONER MOORE: And this is a
8 question to Mr. Larson. Mr. Larson, the \$245,000
9 payment for these services, is it your opinion
10 that that will cover all of the services that
11 we're likely to render to the EOB? Are we fully
12 covering our costs on this?

13 MR. LARSON: Of course.

14 COMMISSIONER MOORE: We are?

15 MR. LARSON: Best as we can make out,
16 you know, we are --

17 COMMISSIONER MOORE: So we're not
18 going --

19 MR. LARSON: We're not --

20 COMMISSIONER MOORE: -- into net
21 negative?

22 MR. LARSON: We're certainly trying not
23 to do that. We'll let you know if we do.

24 COMMISSIONER MOORE: Okay. You had me
25 on the thin edge on that one. I was prepared

1 to --

2 MR. LARSON: Help out, I --

3 COMMISSIONER MOORE: -- help, yeah.

4 CHAIRMAN KEESE: Any further questions?

5 We have a motion and a second.

6 All in favor?

7 (Ayes.)

8 CHAIRMAN KEESE: Opposed? Adopted four

9 to nothing.

10 I have to move to item 12, Science
11 Applications International Corp. Possible
12 approval of contract 400-00-078 for \$500,000 to
13 assist the state in the implementation of the
14 Governor's 20/20 Program.

15 COMMISSIONER MOORE: Mr. Chairman, I'm
16 prepared to move for approval on that item.

17 CHAIRMAN KEESE: Commissioner Moore
18 moves.

19 COMMISSIONER ROSENFELD: Second.

20 CHAIRMAN KEESE: Commissioner Rosenfeld
21 seconds.

22 Any further conversation?

23 All in favor?

24 (Ayes.)

25 CHAIRMAN KEESE: Opposed? Adopted four

1 to nothing.

2 Let's go to Chief Counsel's report.

3 MR. CHAMBERLAIN: Mr. Chairman, I was
4 going to ask for a closed session today to discuss
5 a potential litigation matter.

6 COMMISSIONER MOORE: You'll have three
7 of us, won't you?

8 MR. CHAMBERLAIN: Yeah.

9 CHAIRMAN KEESE: You'll have three.

10 MR. CHAMBERLAIN: That's all I have.

11 CHAIRMAN KEESE: Okay, we will go into a
12 closed session at the end.

13 Go back towards our agenda. We have no
14 minutes today. Is there anything under Energy
15 Commission Committee and Oversight?

16 Public Advisor's report before we take
17 up the Executive Director's report?

18 MS. MENDONCA: Mr. Chairman, there is
19 nothing specific at this time.

20 CHAIRMAN KEESE: Executive Director's
21 report.

22 MR. LARSON: No.

23 CHAIRMAN KEESE: There is no Executive
24 Director's report.

25 The big hand is approaching the seven.

1 COMMISSIONER MOORE: Well, why don't we
2 let Commissioner Laurie go into --

3 COMMISSIONER LAURIE: I'll stay for two
4 more minutes.

5 COMMISSIONER MOORE: -- go to the
6 executive session, and then we can come back and
7 consider the item.

8 COMMISSIONER LAURIE: Well, that's --

9 CHAIRMAN KEESE: Well, he's got to
10 leave.

11 COMMISSIONER MOORE: I understand.

12 COMMISSIONER LAURIE: Well, I'll wait
13 and see what they're going to do. I can wait
14 another one or two minutes.

15 MR. CHAMBERLAIN: Mr. Chairman, could I
16 ask with respect to item 12 which was added to the
17 agenda, --

18 CHAIRMAN KEESE: I'm sorry, --

19 COMMISSIONER MOORE: Science
20 Applications?

21 CHAIRMAN KEESE: I'm sorry, we'll start
22 that over again, item 12.

23 MR. CHAMBERLAIN: Well, it would be
24 helpful for someone to address the reason why this
25 was added late so that the Commission could

1 address the appropriateness.

2 CHAIRMAN KEESE: Yes. The first vote we
3 will rescind that vote by which we approved item
4 12. The first motion by Commissioner Moore,
5 second by Commissioner Rosenfeld is that we add to
6 the agenda item 12, Science Applications.

7 MR. CHAMBERLAIN: And is that because it
8 is an urgent matter that came to the Commission's
9 attention after the agenda?

10 CHAIRMAN KEESE: Yes, it is.

11 MR. CHAMBERLAIN: Thank you.

12 CHAIRMAN KEESE: This is an urgency
13 matter that came -- all in favor?

14 (Ayes.)

15 CHAIRMAN KEESE: Adopted four to
16 nothing. We placed it on the agenda four to
17 nothing.

18 Now, once again on item 12, Commissioner
19 Moore moves; Commissioner Rosenfeld seconds the
20 approval of item 12.

21 COMMISSIONER MOORE: Right.

22 CHAIRMAN KEESE: All in favor?

23 (Ayes.)

24 CHAIRMAN KEESE: Opposed? Adopted four
25 to nothing.

1 Thank you, Mr. Chamberlain, for clearing
2 up the record here.

3 COMMISSIONER MOORE: Mr. Chairman, on
4 the earlier item, it seems to me, and I ask for
5 your indulgence in this, knowing that Commissioner
6 Laurie has got another meeting, it seems to me
7 that perhaps the best approach really is to grant
8 the petition.

9 It seems to me there's a consensus that
10 the condition is not relevant would have to be
11 removed. And then take this matter up when
12 Commissioner Pernell is here and let us -- I'll
13 allow his voice to be heard. He was the Second
14 Member on the Committee.

15 It's an important enough issue we can do
16 it at the next regular and/or emergency board
17 meeting that we have. Once it's an open item we
18 can simply be continued to the next --

19 COMMISSIONER LAURIE: And, in fact, I
20 think that's the right protocol. I don't know if
21 we've ever -- well, I don't think they've granted
22 a petition for reconsideration --

23 COMMISSIONER MOORE: Well, we've done
24 that before.

25 COMMISSIONER LAURIE: -- since I've been

1 here, but my understanding of the way it would
2 work is if we want to -- if, in fact, we want to
3 rehear it, then we grant the petition, and we
4 rehear it. That's my understanding how it --

5 COMMISSIONER MOORE: But in this case
6 the rehearing it would really only be on the
7 narrow item of Commissioner Pernell's change. but
8 the item that was -- the petition for
9 reconsideration, it seems to me, it's appropriate,
10 given what we've heard, to grant that petition.
11 Grant the applicant's position on that.

12 Leave the matter of how to seal the deal
13 for --

14 CHAIRMAN KEESE: All right, let's --

15 MR. ROTHMAN: If it would help in this
16 discussion, we've had our three minutes to review
17 this and find that it is consistent with the
18 discussions we had had with staff prior to the
19 last hearing.

20 And in the spirit of compromise and the
21 ability to get this thing on line by August, we
22 would accept the proposed changes per Commissioner
23 Pernell.

24 CHAIRMAN KEESE: Is that acceptable,
25 Commissioners?

1 COMMISSIONER MOORE: Fine. I indicated
2 that I would go with that, and I will honor --

3 COMMISSIONER ROSENFELD: We need your
4 re-second.

5 COMMISSIONER MOORE: -- I will honor my
6 commitment to that.

7 CHAIRMAN KEESE: Okay.

8 COMMISSIONER MOORE: So your motion now
9 then that I would be seconding is the granting the
10 petition and --

11 CHAIRMAN KEESE: With respect to
12 emergency one, and amending emergency two as fall-
13 back position of the staff as amended by
14 Commissioner Pernell.

15 COMMISSIONER MOORE: Correct.

16 CHAIRMAN KEESE: Motion and second.

17 All in favor?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed? Adopted three
20 to nothing.

21 COMMISSIONER LAURIE: Excuse me, Mr.
22 Chairman, I don't think you've recorded my vote.

23 CHAIRMAN KEESE: Did you vote?

24 COMMISSIONER LAURIE: Not yet.

25 CHAIRMAN KEESE: Okay.

1 COMMISSIONER LAURIE: I'm voting no.

2 CHAIRMAN KEESE: Three ayes, one no.

3 COMMISSIONER LAURIE: Thank you.

4 CHAIRMAN KEESE: Thank you. Under
5 public comment, Mr. Fox.

6 MR. FOX: Thank you. Mr. Chairman,
7 Members of the Commission. I imagine you people
8 are used to having the NIMBY and we don't want it
9 in our backyard. This is the opposite.

10 CHAIRMAN KEESE: I'm sorry?

11 MR. FOX: I'm kind of here for the
12 opposite of the NIMBY syndrome.

13 CHAIRMAN KEESE: Okay.

14 MR. FOX: Make your day. I'm with the
15 Outdoor Sportsmens Coalition of California, and we
16 have a -- sometimes you've heard the concerns
17 about water, that discharge of hot water into the
18 Sacramento and its effect on the fish.

19 We'd like to see, perhaps as an
20 alternative, perhaps also as just an extra couple
21 power plants put in up in the Sacramento Valley,
22 which would discharge hot water into the rice
23 fields, and into the duck refuges. It would
24 increase rice production, warm water. And it
25 would terminate it faster. They would use less

1 water.

2 I'm from Bakersfield. We can always use
3 a little extra water down there. And the rest of
4 the state. It would save the farmers up there
5 some money and costs in pumping and things like
6 that. It would also be a place that they could
7 burn their rice straw, cogen. And I come from the
8 land of cogen. And I think it's worth a look.
9 Don't know if, guarantee it'll work, but it's
10 worth a look.

11 Thank you.

12 CHAIRMAN KEESE: Thank you. I'm aware
13 that we have a proposal for another large power
14 plant in northern Sacramento Valley Tuesday,
15 yesterday? Colusa. We have a proposal for a
16 power plant in Colusa filed with us, I believe,
17 earlier this week.

18 MR. FOX: Thank you.

19 CHAIRMAN KEESE: Thank you very much.
20 Do we have any other comment?

21 MR. LARSON: Mr. Chairman, if you don't
22 have any other comment --

23 CHAIRMAN KEESE: Mr. Larson.

24 MR. LARSON: -- the Legislative
25 Committee did do a review of legislation yesterday

1 and Tim would like to make a presentation for some
2 positions, if you're willing?

3 CHAIRMAN KEESE: Yes, I think we are.
4 Are we --

5 MR. LARSON: I know you're a little
6 grumpy right now, but that's okay.

7 CHAIRMAN KEESE: We're okay.

8 COMMISSIONER ROSENFELD: We're all
9 relaxed.

10 MR. SCHMELZER: I have the agenda to
11 pass out which just got completed --

12 (Pause.)

13 CHAIRMAN KEESE: In Commissioner
14 Pernell's absence I will say that the Leg
15 Committee did hold a meeting yesterday which
16 followed a number of policy committee meetings
17 that fed input in.

18 And we did feel that there were a number
19 of these issues that would be appropriate to bring
20 to the Commission today.

21 Mr. Schmelzer.

22 MR. SCHMELZER: There are five measures.
23 I'll just go one by one. AB-1574, this is by
24 Assembly Member Lowenthal. It authorizes the
25 Energy Commission to adopt energy efficiency

1 standards for existing buildings.

2 It also authorizes a person who performs
3 a home inspection to inspect for energy efficiency
4 at the time of the home sale, at the request of
5 the buyer, or alternatively to recommend a
6 certified inspector to perform that energy
7 efficiency inspection.

8 The bill has been significantly amended
9 since the Commission last brought this up, and had
10 recommended an opposed position. And, in fact,
11 the Efficiency Committee and Legislative Committee
12 now are recommending a support position on that
13 measure.

14 And is the preference of the Commission
15 I go through all of them first, or do you want to
16 do it one by one?

17 COMMISSIONER MOORE: It's probably most
18 efficient to --

19 CHAIRMAN KEESE: Sure, let's do that.

20 MR. SCHMELZER: Okay. The next measure,
21 AB-1031. This is another item that's been
22 significantly amended since we last discussed.

23 This bill requires some alternative
24 scenario analyses to be performed when the Energy
25 Commission performs its natural gas forecasting.

1 Recommendation here is to support that measure.

2 The next measure is SB-86XX by Senator
3 Peace. This measure would revoke a power plant
4 license after six months from certification by the
5 Energy Commission unless there's a show of good
6 cause as to why construction was not begun in that
7 six-month period.

8 At that time the California -- I can
9 never remember the name -- the California Power
10 Authority would be authorized to obtain that
11 permit.

12 The recommendation from the Legislative
13 Committee on this item is to extend that period
14 from six months to 12 months; to exempt from the
15 provisions of the bill cogeneration and self
16 generation; and also to sunset the provisions of
17 the bill to transfer to the Power Authority so
18 that it parallels the sunset of the authorization
19 of the Power Authority, itself.

20 So that is a support, if amended,
21 recommendation on that bill.

22 Next measure, SB-84XX by Senator Burton.
23 This would create a \$10 million general fund
24 appropriation to the Energy Commission to
25 implement a grant program for battery backup

1 systems at traffic signal intersections that have
2 been converted to LED.

3 The recommendation is support with
4 amendments. These are some technical cleanup
5 amendments that don't affect the substance of that
6 bill.

7 And the final measure AB-52XX. This
8 would grant a sales tax exemption for EnergyStar
9 clothes washers and refrigerators.

10 The recommendation on this is support
11 with amendments. The amendment is to sunset this
12 bill in three years in accordance with when the
13 new Energy Commission appliance standards are
14 proposed to go into effect.

15 COMMISSIONER MOORE: What's the position
16 of local government on that, since they benefit
17 almost directly from sales tax dollars?

18 MR. SCHMELZER: I'm not aware of their
19 position on that. I know the bill did succeed in
20 going through the Assembly Revenue and Taxation
21 Committee just this week. So it is moving, and
22 presumably they would have considered their
23 objections in that forum. But I do not have
24 specific knowledge on that.

25 COMMISSIONER MOORE: I'm prepared to

1 support, Mr. Chairman.

2 CHAIRMAN KEESE: Thank you. The only
3 comment I would make on behalf of the Leg
4 Committee is on 86XX, the Peace Bill, extending it
5 from six months to 12 months.

6 The data we saw indicated that large
7 entities don't have any problem meeting the six
8 months. It's the independent developers who have
9 to go out and seek financing and often run into
10 that six-to-12 month period.

11 COMMISSIONER MOORE: A year is
12 appropriate.

13 CHAIRMAN KEESE: So we believe that this
14 will probably be received with open ears across
15 the street.

16 MR. SCHMELZER: It's certainly the hope
17 and, you know, we intend --

18 CHAIRMAN KEESE: So do we have a motion
19 to adopt the positions suggested by Mr. Schmelzer?

20 COMMISSIONER MOORE: Move all the
21 recommendations.

22 CHAIRMAN KEESE: Moved by Commissioner
23 Moore.

24 COMMISSIONER ROSENFELD: Second.

25 CHAIRMAN KEESE: Second by Commissioner

1 Rosenfeld.

2 All in favor?

3 (Ayes.)

4 CHAIRMAN KEESE: Opposed? Carried --

5 MR. SCHMELZER: Thank you very much;

6 appreciate you taking this up on such short

7 notice.

8 CHAIRMAN KEESE: Thank you. Is there

9 anything else to come before the Commission?

10 Then, subject to going into executive

11 session, this meeting is adjourned.

12 (Executive Session.)

13 (Whereupon, at 11:50 a.m., the business

14 meeting was adjourned.)

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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 meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of July, 2001.

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