

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

WEDNESDAY, AUGUST 22, 2001

10:05 A.M.

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

Michal Moore

Robert A. Laurie

Robert Pernel

STAFF PRESENT

Steve Larson

William Chamberlain

Jeff Ogata

Dick Ratliff

Robert Worl

Chuck Najarian

Dara Dubois

Suzanne Krosec

Gabe Herrera

Peter Villanueva

Melissa Jones

Al Alvarado

Gina Barkalow

PUBLIC ADVISER

Roberta Mendonca

ALSO PRESENT

Jane Luckhardt, Attorney
Downey, Brand, Seymour and Rohwer
Todd Stewart
Los Esteros
Calpine Corporation

ALSO PRESENT

Jeffery D. Harris, Attorney
Ellison, Schneider and Harris
Bryan J. Bertacchi
Calpine King City
Calpine Corporation

Sandra Spilliscy, General Counsel
Planning and Conservation League

Keith Breskin, City Manager
City of King

Stephen K. Gardner, Attorney
Charles H. Pomeroy IV, Attorney
McKenna and Cuneo
representing City of Chula Vista

Manuel Alvarez
Southern California Edison Company

Carolyn A. Baker, Attorney
Duke Energy North America

Patricia Fleming
Sempra Energy, Southern California Gas Company,
San Diego Gas and Electric

Lad Lorenz
Southern California Gas Company, San Diego Gas and
Electric, Sempra Energy

Trina Horner, Advisor to President Lynch
California Public Utilities Commission

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

2 10:05 a.m.

3 ACTING CHAIRMAN MOORE: Good morning;
4 welcome to the August 22nd regular meeting for the
5 California Energy Commission. And we'll stand and
6 Commissioner Pernell will lead us in the Pledge of
7 Allegiance.

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

10 ACTING CHAIRMAN MOORE: By way of
11 notekeeping Commissioner Rosenfeld and
12 Commissioner Keese are out of town, and won't be
13 here in person at the meeting. Either or both may
14 be present via our telephone linkup for some of
15 the items that are on the agenda today.

16 We do not have a consent calendar today.
17 Take up item 1, Los Esteros Critical Energy
18 Facility, consideration of the data adequacy
19 determination by the Executive Director.

20 Do we have a staff report?

21 MR. WORL: Good morning. My name is
22 Robert Worl. I'm the Project Manager for the CEC
23 on the Los Esteros Critical Energy Facility.

24 And if there are other questions Dick
25 Ratliff, the assigned CEC Attorney, is also here

1 with us today.

2 On August 6, 2001, we received the Los
3 Esteros Critical Energy Facility application. The
4 project is located in north San Jose at the
5 intersection of state route 237 and Zanker Road.
6 It's being proposed by C-Star Power, a Calpine
7 subsidiary.

8 It's a 15-acre site proposed for a power
9 plant as part of a larger 115-acre site, 55 acres
10 of which is owned by the applicant. And some
11 owned by the City.

12 The proposed site is to be the home of a
13 future U.S. Dataport Server Farm Facility. And
14 adjacent to the site is also the planned area for
15 relocated substation called the Los Esteros
16 substation.

17 It's 180 megawatt facility proposed for
18 simple cycle operation and planned to be converted
19 to combined cycle within three years.

20 The project is proposed as a mitigation
21 for the original U.S. Dataport Server Farm Power
22 Facility which some may recollect was somewhere in
23 the nature of 90 diesel powered generators.

24 The applicant has requested that this
25 application be reviewed as mitigation for the U.S.

1 Dataport original power facility. And that it be
2 reviewed under the expedited four-month process.

3 In our initial review by the resource
4 staff we found the application deficient in 14 of
5 23 resource categories for the 12-month process.
6 And in 11 of 23 areas for the four-month process.

7 And we're proposing that the Commission
8 adopt our initial list of deficiencies and find
9 the application inadequate at this time.

10 The applicant has initiated efforts to
11 address all of the noted deficiencies. And we
12 feel that most of them can be clarified or
13 supplemented satisfactorily within a short period
14 of time.

15 There are three areas that may require
16 more effort: air quality, land use, and
17 transmission system engineering.

18 The air quality issue revolves around
19 modeling and interpretation of potential impacts
20 and discussions are underway between the
21 applicant, the air district and our staff, aimed
22 at resolution.

23 The applicant has three interconnection
24 options, and needs to supply a little more
25 information on the selected option for

1 interconnecting to the grid.

2 The City of San Jose has just recently
3 submitted to us a letter that provides assurances
4 that the project is consistent with the planned
5 development zone for the U.S. Dataport site; and
6 that they're also planning to approve a revived
7 PDOC encompassing this specific project.

8 The City has indicated that the they're
9 the owner of some of the land in question and that
10 they are serving as a co-applicant for the planned
11 development permit which is a functional
12 equivalent of a use permit for the site for the
13 power plant.

14 We don't, at this point in time, know
15 whether or not the City can act in a timely
16 fashion to maintain this project in the four-month
17 process, but they haven't provided us the timeline
18 and the benchmark steps required to complete the
19 zoning change.

20 And that pretty much is a summary of
21 where we stand at this point.

22 ACTING CHAIRMAN MOORE: Thank you. Does
23 the applicant have any comments on this?

24 MS. LUCKHARDT: This is Jane Luckhardt
25 from Downey, Brand, Seymour and Rohwer,

1 representing Los Esteros. And with me here today
2 is Todd Stewart, and he can update you on the
3 status of responding to staff's requests.

4 MR. STEWART: Yes. My name is Todd
5 Stewart. I'm with Calpine. I would like to thank
6 the staff for their very thorough review of our
7 application. We have already begun our
8 preparation of the responses to each of the
9 questions. We understand all of the questions,
10 and we are in contact with the various staff
11 reviewers. And plan to have all of our responses
12 filed in a very expeditious manner, and hope to be
13 back before the Commission on their next regularly
14 scheduled meeting at September 5.

15 ACTING CHAIRMAN MOORE: I take that to
16 mean that you do not disagree with the Executive
17 Director's recommendation for data inadequacy at
18 this time?

19 MR. STEWART: No, sir.

20 ACTING CHAIRMAN MOORE: Anyone else
21 who'd like to comment on this item? The Chair
22 will entertain a motion.

23 COMMISSIONER LAURIE: Mr. Chair, I move
24 the recommendation.

25 COMMISSIONER PERNELL: Second.

1 ACTING CHAIRMAN MOORE: Moved by
2 Commissioner Laurie, second by Commissioner
3 Pernell to find this application data inadequate
4 at the present time.

5 All those in favor signify by saying
6 aye.

7 (Ayes.)

8 ACTING CHAIRMAN MOORE: Opposed? That
9 motion carries. Thank you.

10 And we'll move to item 3, the Calpine
11 LM6000 Power Plant Project. It's our
12 consideration of a petition by Calpine to amend
13 the decision in order to extend the commercial
14 online date for the LM project beyond September
15 30, 2001.

16 MR. NAJARIAN: Commissioner Moore, my
17 name is Chuck Najarian; I'm the Power Plant
18 Compliance Program Manager. We'd be happy to
19 introduce this item.

20 ACTING CHAIRMAN MOORE: I'd appreciate
21 that. Thank you.

22 MR. NAJARIAN: The Calpine King City
23 LM6000 emergency peaker project was certified by
24 the Commission on May 2nd. And you may recall on
25 June 25th the Commission authorized an amendment

1 to relocate the site.

2 Calpine is now requesting that the
3 Commission amend the decision to extend the online
4 date beyond the September 30 deadline.
5 Specifically they are requesting a delay of three
6 months to December 28, 2001.

7 The decision specifies that the test to
8 determine whether or not to approve the amendment
9 and therefore grant the extension is due
10 diligence. The staff analysis filed yesterday
11 presents a timeline of key events, points
12 suggesting a finding of due diligence, and points
13 suggesting a failure to proceed with due
14 diligence.

15 Our analysis also presented options for
16 your consideration. We offered how sanctions
17 might apply in this case. We also suggested when
18 amending the decision to remove the forfeiture
19 requirement might be appropriate.

20 Staff does not have a recommendation at
21 this time because we want to allow Calpine the
22 opportunity to address two issues. The first is
23 nondisclosure of a May 31, 2001 preliminary title
24 report on or before the Commission's June 25, 2001
25 approval to relocate the facility. And the second

1 item is the relocation of the project turbine.

2 Calpine's response to these issues will
3 have a significant bearing on staff's
4 recommendation concerning due diligence.

5 ACTING CHAIRMAN MOORE: Thank you. Mr.
6 Harris, would you like to respond?

7 MR. HARRIS: Thank you. Jeff Harris on
8 behalf of Calpine. To my right is Bryan
9 Bertacchi, who's the Vice President for Calpine
10 for Gas-Fired Operations.

11 We appreciate the opportunity to
12 respond. We think staff is very judicious in
13 providing us that opportunity in their staff
14 report.

15 Bottomline is that this project has
16 proceeded with due diligence, and we're prepared
17 to go through in detail, I think, the evidence of
18 that due diligence to the extent that the
19 Commission would like us to do that.

20 Let me deal directly with the two issues
21 that were raised by staff, not surprisingly
22 they're the first two issues on my outline of
23 things that I wanted to present to the Commission,
24 and give you some more background on that.

25 First, factually, the issue that arose

1 on the parcel here, and this really all comes down
2 to a land issue. It's all about the availability
3 of the site, period. That is the emphasis that I
4 want to put forth for you today. That drives
5 everything from turbine deliveries to the rest of
6 the work. And let me explain where we are on site
7 availability.

8 We moved the project from the original
9 site, as you know, through the amendment. It was
10 and remains our best judgment that at that time
11 that was the way we were most likely to get online
12 by September 30th. And we think that's still a
13 good judgment.

14 There were issues with title on the
15 second parcel, the amended parcel. We raised
16 those issues. And I think the staff has that
17 report on title, because we provided it to them.

18 In terms of whether there should have
19 been a disclosure of those issues, I guess I'd
20 take some issue with that characterization. But
21 the bottomline is let me explain the actual title
22 issue and tell you why I think it didn't seem
23 material at the time.

24 Basically the issue that has clouded
25 title on this property has been an option. That

1 option was held by a company that has now been
2 dissolved. That option was nontransferable.

3 And so from a legal perspective it
4 seemed a pretty easy issue. You have a company
5 which no longer exists, having an option that's
6 not transferrable. That is the cloud that's been
7 on the title.

8 Nevertheless there has been some
9 continuing work with that company, their
10 representatives, to work through this issue. That
11 ultimately did result in a lawsuit being filed and
12 some intense negotiations. The lawsuit ultimately
13 did not end up going through court because there
14 was a settlement that was put together on this
15 issue.

16 Calpine has basically, in the form of a
17 settlement, offered them about \$25,000 to get this
18 project moving. So we're out that money right
19 now.

20 We do have title cleared as of a week
21 ago yesterday. The deed will be recorded quickly;
22 the deed will be recorded either yesterday or
23 today. So that will happen. And escrow will
24 close.

25 So on the title issue, you know, I do,

1 again, take issue with the characterization of
2 nondisclosure. I think it was nonmaterial at the
3 time for the reasons I described.

4 Secondly, in terms of the turbine
5 delivery date, again let me say that the central
6 theme here is that the critical path item for this
7 has always been the availability of the land.

8 Mr. Bertacchi can talk about
9 availability of turbines. We had many
10 opportunities between, well, between then and now,
11 to acquire turbines, to move up in lines with
12 other vendors. The issue has always been about
13 where would you put that turbine.

14 The turbine delivery would have been
15 very problematic on a site that we did not
16 control. I think staff would not reasonably
17 expect us to deliver a piece of equipment this
18 expensive to a parcel that we arguably did not
19 have a right to be on.

20 It would be like, you know, telling a
21 farmer that we think you'll be able to farm that
22 parcel, so go ahead and put your tractor out there
23 and the rest of your equipment, and we'll deal
24 with it later when the lawsuit comes along.

25 So, again, the critical path issues

1 being the land here. We didn't have a foundation
2 to deliver that turbine to. And quite frankly I
3 think, in a sense, a casual remark, a disclosure
4 by our staff person, I think, was taken out of
5 context.

6 In terms of proceeding with diligence,
7 I've mentioned already we've engaged in the
8 litigation that ultimately settled, that allowed
9 us to move forward. We've complied, I think, with
10 basically 29 of the 30 conditions that are
11 operative to date.

12 The one outstanding condition relating
13 to landscaping we've been talking to staff about.
14 We've been through a couple iterations. And so
15 staff is well aware of that issue.

16 I do want to talk, as well, about the
17 question of whether an amendment is required here.
18 Our position is that an amendment is not required.
19 And let me be specific about why that is.

20 First off, the King City decision,
21 itself, as set forth in the staff report, talks
22 about being on line by September 30th, or coming
23 back to the Commission for a hearing. And so I
24 think that process, on the face of the decision,
25 is the process we're in here today.

1 Secondly, looking at the regulations
2 related to amendment, they deal basically with
3 design, operation or performance of the facility.
4 They don't deal with the online date. And keep in
5 mind, as well, that when those regulations were
6 put together they were contemplating a 12-month
7 process.

8 A 12-month process does not contemplate
9 a condition that requires an online date. And so
10 reading an online date into that amendment
11 provision, I think, is inconsistent with that
12 regulation.

13 And then finally I think we've taken the
14 issue off the table by filing with you, in our
15 filing on the 16th, in substantive form, the
16 information that would be in an amendment.

17 And so from an informational perspective
18 I think the staff has the information that is
19 required.

20 With that I'd like Bryan to just say a
21 few words on behalf of Calpine.

22 MR. BERTACCHI: I just think I'd like to
23 reiterate what Mr. Harris spoke to, was that
24 Calpine has over 225 turbines on order with the
25 two major manufacturers.

1 We've got over 25 LM6000s on order,
2 which are specifically the type of turbines being
3 used on this project.

4 There were so many opportunities to be
5 able to take early delivery units of LM6000s for
6 Calpine over the last four or five months. And I
7 think if we had, as Calpine, additional sites that
8 had all the infrastructure needed and had a
9 permit, we would have been able to proceed on
10 multiple projects early on and meet the September
11 30th date.

12 So, again, I'd like to reiterate that
13 the turbine was not causing the delay on this
14 project. It was strictly the land issue on this
15 project.

16 ACTING CHAIRMAN MOORE: Mr. Bertacchi,
17 is it your opinion that you'll be able to acquire
18 the turbine now and put it on the site, given the
19 recordation of the deed transfer?

20 MR. BERTACCHI: Right now the schedule
21 on the project is set up to have the turbine come
22 at the appropriate time when the foundations are
23 finished on the project.

24 ACTING CHAIRMAN MOORE: Given the change
25 in the status of the title, what is the earliest

1 that you could actually physically have that
2 turbine installed?

3 MR. BERTACCHI: Well, when you say
4 installed, I think let me respond to that. I
5 think we've looked at this schedule and we think
6 maybe an early completion date on this project
7 could be as early as late November.

8 ACTING CHAIRMAN MOORE: All right. Mr.
9 Najarian, does that answer any of your concerns?

10 MR. NAJARIAN: It does and it doesn't.
11 I'd like to first address the question of the
12 amendment real quickly.

13 We believe that the amendment is the
14 best vehicle to process this request because
15 essentially Calpine is modifying the project
16 operation and performance consistent with why it
17 was permitted. It was permitted to meet the
18 energy crisis this summer's peak period. We
19 believe that's relevant to performance and
20 operation in this case. And we still believe that
21 the best vehicle to bring this before you is an
22 amendment process.

23 The other -- my initial reaction to the
24 preliminary title report is that their explanation
25 appears to be plausible. I can see why they felt

1 the title report was not material and essentially
2 insignificant. It turned out that it, of course,
3 was significant and is why we're here today.

4 After the turbine issue one thing
5 staff's been trying to understand is the timing of
6 the business decision that Calpine made to
7 relocate the turbine. In fact, if relocation is
8 the correct term here.

9 But at some point Calpine, we believe,
10 secured a turbine and then at some point they made
11 a decision to move the turbine or redirect it,
12 because we understand it. So, we'd like a little
13 bit of an explanation on that, please.

14 ACTING CHAIRMAN MOORE: Hold on one
15 second. I'll come right back to you.

16 I'm assuming that that is -- the answer
17 to that was included in Mr. Bertacchi's
18 explanation, the fact that the land not tied up,
19 not secured, that the turbine was simply either
20 stored somewhere or diverted to some other more
21 active use until such time as they actually had a
22 secured piece of land. Is that -- do I understand
23 you correctly?

24 MR. BERTACCHI: Yes, I think I can
25 respond again. Calpine has a large number of

1 turbines on order. And, in fact, we get
2 contacted, personally I get contacted almost
3 weekly by parties wanting us to take earlier
4 delivery turbines and exchange them for actually
5 later delivery turbines.

6 So, again, I want to reiterate that if
7 the schedule had been even moved up earlier on
8 this, if we had been able to accomplish and permit
9 this site earlier than we did, I personally don't
10 believe Calpine would have had any issue locating
11 and having a turbine available to support any
12 earlier delivery, if it had been the reverse.

13 ACTING CHAIRMAN MOORE: Commissioner
14 Pernell.

15 COMMISSIONER PERNELL: My question is
16 when you say that Calpine has modified the
17 performers, explain that to me. Are there adding
18 more megawatts, or --

19 MR. NAJARIAN: I'm tying it to the 21-
20 day permit process that they qualified for in
21 order to perform by a certain date. I think the
22 key there was being able to perform by a certain
23 date, and that's how we're tying it into the
24 amendment process. They wouldn't have qualified
25 otherwise.

1 ACTING CHAIRMAN MOORE: All right, --

2 MR. HARRIS: Commissioner, if I could
3 respond to that issue?

4 ACTING CHAIRMAN MOORE: Mr. Harris.

5 MR. HARRIS: These are unusual
6 circumstances, the 21-day process. The
7 regulations typically contemplate a 12-month
8 process. And, again, in those 12-month siting
9 cases there are not specific online dates set in
10 the 12-month siting case. There are milestones,
11 of course, but there are not.

12 And so, again, I would not read the
13 word operation to be an operational date here. I
14 think the regulations don't support that reading.
15 And that's why we think legally we're not required
16 to have an amendment.

17 But, again, let me point out that the
18 information we filed on the 16th was in the form
19 required by the regulation 1769. And so the
20 information is before you. And I think that the
21 decision, the King City decision, itself,
22 contemplates the process that we're in right now.
23 That we come back, there's a hearing held, and you
24 all make a decision.

25 ACTING CHAIRMAN MOORE: So you're not

1 discomfited by the idea that an amendment might be
2 the route to take you where you'd like to go.
3 You'd just rather not do it that way?

4 MR. HARRIS: I don't think it's
5 necessary, number one. I don't think that's what
6 the regulations require.

7 And number two, I do think that time is
8 of the essence here. The decision in this
9 process, the specific decision for King City
10 contemplated this process. We come in for a
11 hearing and there would be a decision rendered.

12 And let me speak to that issue, as well.
13 I think a timely decision here is very important.
14 We have what we think now very secure site
15 control. We still have escrow to close. We've
16 cleared title. And we actually have work ongoing
17 on the site consistent with our existing license
18 that was just re-initiated yesterday.

19 And we're continuing today, and we're
20 proceeding at risk, understanding that we'll have
21 to return that site to its original condition if
22 you all decide not to allow us to go forward.

23 And so I think the amendment process,
24 from a timely perspective, is one that concerns
25 me, as well.

1 COMMISSIONER LAURIE: Mr. Chairman,
2 question. According to the information we have in
3 front of us, and the agenda. The agenda item is
4 consideration of a request to amend. And so I
5 don't understand the timing issue.

6 If the Commission wanted to amend the
7 application today it could amend its
8 application --

9 ACTING CHAIRMAN MOORE: I don't, either.
10 So that's why I was pursuing this. It seemed to
11 me that if the Commissioners found in your favor,
12 would simply make the amendment, unless staff is
13 telling me something different.

14 And as a consequence, timing is not an
15 issue. That's a little bit of confusion.

16 MR. HARRIS: And to be real precise, we
17 did not request an amendment here. And the notice
18 talks about consideration of our request to extend
19 the deadline.

20 And so I think you do have the authority
21 to act today from the rostrum. And I don't think
22 you'd have that authority if you went through an
23 amendment process.

24 COMMISSIONER LAURIE: I'd like to get
25 that straight, Mr. Chairman. Do we have a request

1 for amendment in front of us, or not? Because if
2 we have a preliminary issue, do we need an
3 amendment? Well, that's a preliminary issue, and
4 I'd like to address that.

5 What is that? Is that somebody on the
6 line?

7 MR. NAJARIAN: From the staff's
8 perspective we believe we have an amendment;
9 they've met all the requirements of the amendment
10 process to this point. We think they qualify.

11 ACTING CHAIRMAN MOORE: So there is the
12 potential to have an amendment in front of us
13 right now. Okay.

14 Betty, if you can find out what that is,
15 I think we're going to have to ask the home folks
16 to truncate that access.

17 All right, I have a request to speak --

18 COMMISSIONER PERNELL: Mr. Chairman, --

19 ACTING CHAIRMAN MOORE: I'm sorry,
20 Commissioner Pernell.

21 COMMISSIONER PERNELL: -- just a point
22 of clarification. We have a request for an
23 amendment. If that's approved by this Commission
24 everything goes forward and there's no delay.
25 Would you have an objection to that, Mr. Harris?

1 MR. HARRIS: No. Let me be real clear.
2 We have not requested an amendment. I think has
3 put the issue of amendment on the table.

4 COMMISSIONER PERNELL: That's not my
5 question. My question is if there's an amendment
6 before us, and we rule in your favor, and there's
7 no delay, would you have an objection to that?

8 MR. HARRIS: The question was too easy,
9 I guess. I'm sorry. The answer is no, we would
10 not object to that.

11 COMMISSIONER PERNELL: Okay.

12 ACTING CHAIRMAN MOORE: Sandra
13 Spilliscy. Good morning.

14 MS. SPILLISCY: Good morning, Mr. Chair
15 and Members. My name is Sandra Spilliscy; I'm
16 General Counsel with the Planning and Conservation
17 League. Thank you for the opportunity to address
18 you on this issue this morning.

19 We're here in opposition to the granting
20 of the request by the applicant. And on somewhat
21 different grounds than what's already been
22 discussed here this morning.

23 But first and foremost, we would submit
24 to you that this Commission respectfully is
25 without legal authority to allow what the

1 applicant is requesting, that should there be
2 certification of this plant, and it is not
3 operational by September 30th, then there will be
4 a violation of the California Environmental
5 Quality Act.

6 Because the authority for this
7 Commission to proceed without following the
8 provisions of CEQA is found in the Governor's
9 executive orders. And they are very clear that
10 that relief is only available to those plants that
11 are operational by September 30th.

12 So I'd like to say at the outset that I
13 think the issues of diligence, sanctions and other
14 things that you're discussing don't go to the
15 heart of the issue here, which is the fact that
16 this Commission has never had the authority to
17 allow a plant to go through the expedited process,
18 and then not become operational by September 30th,
19 and not go through the provisions of the
20 California Environmental Quality Act.

21 ACTING CHAIRMAN MOORE: Counselor, is it
22 your opinion that in the process that we went
23 through we, no matter what the timing was, that we
24 didn't adequately address the environmental
25 issues?

1 MS. SPILLISCY: You did not follow the
2 provisions of the California Environmental Quality
3 Act, and you would be subject to, I believe, to
4 legal action for not doing that if you're not
5 operating within the constraints of the exemption
6 that was allowed you in the executive orders.

7 And the executive orders are clear that
8 the exemption from CEQA applies to plants that are
9 operational by September 30th. It does not say
10 plants that are operational by September 30th, or
11 that demonstrate diligence in attempting to become
12 operational by September 30th, or that pays
13 sanctions if they're unable to become operational
14 by September 30th.

15 The restrictions of the executive order
16 are quite clear, I believe.

17 ACTING CHAIRMAN MOORE: I think I'm
18 asking you a slightly different question. And my
19 question goes to the heart of what's contained
20 within CEQA, the kind of information CEQA asks an
21 applicant to provide, or asks to be developed so
22 that a decision maker has an adequate decision
23 base in front of them.

24 MS. SPILLISCY: Yes, and I would submit
25 that within the 21-day process that was absolutely

1 not complied with. It was a rather extraordinary
2 event. I would submit to you that the Governor's
3 executive order exempting these plants from CEQA,
4 the scope and the duration of the order was
5 something that was unprecedented in the history of
6 the Act.

7 It was not something I think the
8 Governor undertook lightly, but I think he did it
9 based on, you know, fears and perceptions that all
10 of us had six or seven months ago about what may
11 or may not occur this summer.

12 But, it was an extraordinary action. It
13 has consequences. I think the environmental
14 consequences of that action we don't yet know and
15 may not know for some time, but there was clearly
16 harm to the public by exempting the licensing of
17 these plants from the CEQA process.

18 And the public was harmed in not being
19 able to fully participate in decisions that were
20 very important to the communities, to not be able
21 to shape the decision making that went on. I
22 don't think there's any question that, I don't
23 think anyone would tell you that the public
24 participation was adequately protected under the
25 21-day process. It was something that the state

1 simply, for policy reasons, decided to forego.
2 But it was not a consequence that we should take,
3 that we should take lightly.

4 And so therefore I think that it was
5 clear that the executive orders were drawn so that
6 they applied specifically to those plants who
7 would do exactly what Mr. Najarian suggested,
8 which would provide energy for this summer when we
9 had all the unknowns about what was going to
10 happen in terms of blackouts and everything else
11 this summer.

12 But, there's nothing in the reading of
13 the executive orders that gives the Commission the
14 ability to continue the CEQA exemption for any
15 plant that's not operational by September 30th.

16 Now, we've seen a number of plants have
17 had to drop out of the 21-day process because it
18 was clear they would not be able to make the
19 appropriate deadline. And I think that, you know,
20 if you look at what happened with Baldwin Hills;
21 they couldn't get an air permit in time for
22 September 30th because it was clear that they
23 could not get a legal air permit without having
24 SCR installed.

25 If you look at Lancaster, the problems

1 with their transmission lines. I think it's clear
2 that Pegasus will not make the September 30th
3 deadline, and we'll be in the same position.

4 So what we have here are a number of
5 applicants who made a business decision to enter
6 into the 21-day process. And it was a business
7 decision not without risk. And clearly, people
8 have spent money and they've spent resources.

9 But it also conferred on them a
10 significant benefit, and that was the benefit of
11 not having to go through the proper environmental
12 reviews that a plant would ordinarily have to
13 undergo.

14 And so in this case, you know, this is a
15 case of them having undertaken a risk for the
16 purpose of receiving the benefit. And it's just
17 simply not working out.

18 I would also suggest that they haven't
19 demonstrated the diligence that the staff is
20 looking for here. I think the withholding of the
21 information about the title problems was material,
22 whether or not their attorneys assumed it to be
23 material at the time or not, it was something that
24 they should have erred on the side of full
25 disclosure to the Commission.

1 They should have immediately taken steps
2 to get a quitclaim deed signed or have a quiet
3 title action undertaken. It seems like they
4 simply relied on the assurances of the City that
5 everything would be taken care of.

6 And then, finally, when they made the
7 business decision again to transfer the turbine to
8 a different site, they made the decision that they
9 would not be able to meet the deadline here, and
10 they more likely did it for business reasons. And
11 they took that risk, and now they have to accept
12 the consequences.

13 ACTING CHAIRMAN MOORE: Thank you.

14 MS. SPILLISCY: So, --

15 ACTING CHAIRMAN MOORE: Questions?

16 COMMISSIONER PERNELL: I have a question
17 for our legal counsel.

18 ACTING CHAIRMAN MOORE: I'll turn to him
19 in just a second. Thank you. There are no
20 questions of you, thank you.

21 MR. HARRIS: Could I respond --

22 ACTING CHAIRMAN MOORE: -- I think that
23 does take it back to you to raise the issue of
24 whether or not you believe this complies with the
25 executive order and its intent. Whether we have a

1 proper action in front of us.

2 MR. CHAMBERLAIN: The executive order
3 speaks in terms of peaking or renewable power
4 plants that have a current contract with the
5 Independent System Operator, and can be online by
6 September 30th, may apply in this process.

7 I believe, as a practical matter, you
8 have to read that to mean that those plants, those
9 facilities that had a reasonable expectation at
10 the time they applied of being able to be online
11 on September 30th could enter into the process.

12 Now once they've entered into the
13 process and they've gotten a license, one has to
14 ask the question, is there really a public benefit
15 if they can't make it by one day or by two days,
16 is there a public benefit in saying you've
17 invested all this money, you've, you know,
18 proceeded with due diligence, but you didn't make
19 it so therefore now you have to start licensing
20 all over again.

21 Now, that isn't quite the situation we
22 have here, but Ms. Spilliscy's legal argument
23 basically suggests that a project would have to be
24 denied its license, and would have to sit there
25 and do no good for the public at all for four

1 months or however long it took to get yet another
2 license. And we'd have to go through a licensing
3 process that I believe would probably be pretty
4 meaningless.

5 So, I believe the Commission does have
6 authority to follow through on what --

7 ACTING CHAIRMAN MOORE: No, counsel,
8 this is not a debate.

9 MS. SPILLISCY: Yeah, I was going to
10 request an opportunity to respond if I could.

11 MR. CHAMBERLAIN: -- believe it has
12 authority to follow through on the statement in
13 the decision that the applicant would have the
14 opportunity to come back if they were not going to
15 meet that date, and attempt to show due diligence.

16 No one challenged that at the time, and
17 I believe that it's probably beyond the point of
18 being able to challenge that provision of the
19 decision.

20 ACTING CHAIRMAN MOORE: I'll give you a
21 minute to respond.

22 MS. SPILLISCY: Well, as we've all
23 noted, what's happened this summer with the
24 licensing of this plant is extraordinary. And
25 there has been harm done to the public by not

1 being allowed to be involved in the licensing of
2 these plants in the way that they normally would
3 be under the law.

4 And so to say that for them to not be
5 able to get their license through this process,
6 and have to go through a different process would
7 be meaningless I think is not correct, because
8 there would be a lot of meaning to following the
9 complete strictures of the law.

10 I think it was very clear that the
11 reason the Governor took this extraordinary action
12 was he wanted this to apply to plants that would
13 give us power this summer. We now have the luxury
14 of time. We have passed through the summer
15 because of the grace of the weather and the wisdom
16 of the citizens of the state who understand
17 conservation and efficiency.

18 We now have the luxury to comply fully
19 with the law. And I think that, again, it was a
20 risk undertaking here for a great benefit that was
21 to be conferred, and I simply --

22 ACTING CHAIRMAN MOORE: Counsel, you
23 made that point, and we don't need to double up on
24 that.

25 MS. SPILLISCY: But I think that Mr.

1 Chamberlain's comment that the provision in the
2 final decision allowing them to come back
3 supersedes the California Environmental Quality
4 Act is incorrect.

5 I don't think the Commission had
6 authority to state that when it had no authority
7 to waive the California Environmental Quality Act
8 beyond the provisions of what was allowed in the
9 executive order.

10 ACTING CHAIRMAN MOORE: Thank you.

11 MR. HARRIS: Commissioner, could I
12 respond on the legal issue, as well?

13 ACTING CHAIRMAN MOORE: Before you do I
14 have a question from Commissioner Pernell.

15 COMMISSIONER PERNELL: Will the speaker
16 come back to the podium?

17 ACTING CHAIRMAN MOORE: Ms. Spilliscy.

18 COMMISSIONER PERNELL: Ms. Spilliscy.

19 MS. SPILLISCY: Yes, I'm sorry.

20 COMMISSIONER PERNELL: What is your
21 opinion on the argument by our counsel that says
22 basically is it fair if these applicants miss the
23 deadline by one day?

24 MS. SPILLISCY: Well, first of all it's
25 clear that they're not going to miss the --

1 COMMISSIONER PERNELL: Well, but that's
2 what --

3 MS. SPILLISCY: -- by one day. And this
4 is not a request for a de minimis exception from
5 the deadline. This is a three-month extension. I
6 mean this is an extension that you should be able
7 to build --

8 COMMISSIONER PERNELL: I know what this
9 is. Excuse me, excuse me.

10 MS. SPILLISCY: So, -- but --

11 COMMISSIONER PERNELL: I know what this
12 is. If you would respond to my question --

13 MS. SPILLISCY: Yes, and I would say
14 that this is a situation because basically the
15 waiver of one of our state's most significant
16 environmental laws for the licensing of these
17 plants was so extraordinary that this is a
18 situation that calls for a very bright line test.

19 And the question is where do you draw
20 the line. Is one day okay?

21 ACTING CHAIRMAN MOORE: Well, he -- I'm
22 sorry, counselor, he asked you a question on that
23 bright line, he asked you does one day make a
24 difference.

25 MS. SPILLISCY: Yes.

1 ACTING CHAIRMAN MOORE: If it was one
2 day late, then you believe it is outside the
3 authority?

4 MS. SPILLISCY: Yes. Yes.

5 ACTING CHAIRMAN MOORE: All right, thank
6 you.

7 MS. SPILLISCY: And I think that it
8 raises the --

9 ACTING CHAIRMAN MOORE: Counselor,
10 you've answered the question.

11 MS. SPILLISCY: Yes, but it raises for
12 you the issue, which again if one day is okay,
13 then is two days okay. Is a month okay. What
14 happens if you get to December 28th and they're
15 not on line then?

16 I mean there are reasons why we have
17 bright line tests in the law, and I think there's
18 a very appropriate one in this case.

19 ACTING CHAIRMAN MOORE: Thank you. Mr.
20 Harris.

21 MR. HARRIS: Thank you, Commissioner.
22 From a legal perspective I want to make the point
23 that there are at least two different bases that
24 the Commission can act.

25 Number one, I'm in complete agreement

1 with Mr. Chamberlain as to the scope of the
2 executive order. I would also point out that the
3 Commission does have authority under 25705 related
4 to declared states of emergency which were made by
5 that executive order, and that authority includes
6 but is not limited to the Commission shall
7 authorize the construction and use of generating
8 facilities under such terms and conditions as are
9 specified by the Commission to protect the public
10 interest.

11 And so that declared state of emergency
12 which is reflected in those executive orders, is
13 still going forward.

14 I think this provision of law provides
15 you with an independent basis, a second basis for
16 the decision that you're contemplating today.

17 I'd also like to note factually in terms
18 of harm, there were public notices of these
19 proceedings. The air proceeding, the air
20 district, there were no shortcuts in air quality
21 analysis. It went through the same process any
22 project goes through to go through the local air
23 district. And you have before you a 57-, I think,
24 page staff report that looks at each of the
25 subject matter areas that you look at as its staff

1 assessment, the original analysis looks at each of
2 those areas.

3 So to suggest that there's been some
4 kind of environmental shortcutting here, I think,
5 is really part of a larger agenda. And Mr.
6 Breskin is here from the City of King, the City
7 Manager. And I think what he's seeing is that
8 we're getting sucked into a statewide issue here
9 for an agenda wholly unrelated to this project.

10 ACTING CHAIRMAN MOORE: No, ma'am, no.
11 Please --

12 MS. SPILLISCY: Well, I --

13 ACTING CHAIRMAN MOORE: No. No.

14 MS. SPILLISCY: Should I be able to
15 respond to the --

16 ACTING CHAIRMAN MOORE: I thank you --
17 thank you --

18 MS. SPILLISCY: -- issue of a statewide
19 agenda?

20 ACTING CHAIRMAN MOORE: No. Counselor,
21 counselor, you had your audience.

22 MS. SPILLISCY: Okay.

23 ACTING CHAIRMAN MOORE: Thank you.

24 MS. SPILLISCY: But this goes to the
25 public process.

1 ACTING CHAIRMAN MOORE: Well, it does go
2 to the public process, and I'll have some comments
3 on that when we close this part of the hearing,
4 since I conducted that public process. And as a
5 former County Supervisor for the area, I'm very
6 well aware of the public interest in my old
7 district, and of what my old constituents were
8 interested in saying. And stepping up to the
9 plate, and did say.

10 So, I'm very personally aware of that.
11 And I'll comment on it in a second.

12 Mr. Najarian, let's go back to you.
13 You've heard a debate going back and forth now.

14 COMMISSIONER LAURIE: i'm going to have
15 some additional questions, Mr. Chairman, --

16 ACTING CHAIRMAN MOORE: All right.

17 COMMISSIONER LAURIE: -- before you --

18 ACTING CHAIRMAN MOORE: Well, let me
19 wait, Mr. Najarian, and ask Commissioner Laurie to
20 offer his questions.

21 COMMISSIONER LAURIE: Two questions, Mr.
22 Harris. If XYZ Corp, in thinking about filing an
23 application under the expedited process,
24 determined that it could not meet the September
25 30th deadline, and it would miss it by 30 days.

1 And therefore made a decision not to do that. How
2 do you distinguish that from a company that
3 determines that, well, it will give it a shot.
4 And if it doesn't make it and it misses it by 30
5 days, well, then it would be allowed to proceed.

6 Why would that be fair?

7 MR. HARRIS: Let me answer the question
8 by saying I think as soon as Company XYZ knows
9 that they will not meet the online date, that they
10 have an obligation to this Commission to reveal
11 that. And that's precisely what happened here.

12 I think a company that thinks maybe they
13 can, maybe they can't, they'll give it a shot,
14 they will know at some point that they're not
15 going to make that deadline, and again I think
16 they have the obligation to come forward and let
17 you all know that.

18 ACTING CHAIRMAN MOORE: Okay. How could
19 you not anticipate that the existence of a
20 nonliving person or entity on title, how could you
21 not understand that that would create a
22 substantial cloud and complicate the title?

23 MR. HARRIS: Well, I think again it's
24 important to look at the specific facts of this
25 case. We have a company that has been dissolved,

1 number one. And an option that was
2 nontransferable, number two.

3 I think those are two significant bars
4 to anybody claiming that they have a right to this
5 land. And for whatever reasons that claim was
6 maintained, and magically it disappeared when we
7 agreed to pay for costs and other fees.

8 So I think that, you know, if the folks
9 want to second guess our legal opinion on that,
10 please understand the facts that we were facing at
11 the time. It was not material at the time. We
12 would not have come back to the Commission for an
13 amendment if we thought that we weren't going to
14 be able to secure this parcel, number one.

15 And number two, that this parcel would
16 not allow us to get online on time, because we
17 could have proceeded with the first parcel, as
18 well.

19 COMMISSIONER LAURIE: What's the
20 likelihood that if the Commission were inclined to
21 permit continuation of the certification that you
22 would be online by December 28th?

23 MR. HARRIS: Well, I think you heard Mr.
24 Bertacchi say that his early date would be in
25 November. We put the 28th date in there basically

1 because you can't control weather, you can't
2 control road conditions. And there are other
3 contingencies that are currently unforeseen now
4 that might affect us.

5 And also, I think if we'd have put the
6 earlier date in there, as well, we'd have been
7 forced to come back to this Commission yet again
8 and explain why instead of November 31st, it was
9 December 1st.

10 And so our understanding and expectation
11 is that we could beat the 28th, and that's
12 certainly what we're going to be -- that's what
13 the plan is.

14 COMMISSIONER LAURIE: Okay, thank you.

15 ACTING CHAIRMAN MOORE: I've had a
16 request by Mr. Breskin, the City Manager, to
17 speak. Mr. Breskin.

18 MR. BRESKIN: Thank you, Commissioner
19 Moore. I just wanted to speak very briefly to the
20 comments by a previous speaker regarding the
21 public process. And if I may anticipate,
22 Commissioner, what you may be saying in a few
23 minutes.

24 We did have a public process in King
25 City, in which in April we had a very well

1 publicized public hearing, overseen by
2 Commissioner Moore.

3 I had people call my office and ask when
4 and where is the hearing so I can speak in favor
5 of the project. I believe we had seven or eight
6 people from the community, former council members,
7 business leaders speak in favor of the project.
8 No one spoke against the project.

9 But regardless of that process we also,
10 for the parcel itself that was originally proposed
11 for this project, we still went through a
12 conditional use permit process, and a local
13 hearing and a public notice meeting. And no one
14 spoke against the project in King City.

15 We've had more of a public process than
16 we typically have for land use issues because this
17 was a statewide matter, as well. And in both of
18 those processes no one spoke against it.

19 The public has been aware, the public
20 has participated locally in King City, and the
21 public has not spoken against this project at any
22 time.

23 ACTING CHAIRMAN MOORE: Thank you, Mr.
24 Breskin.

25 COMMISSIONER PERNELL: Thank you.

1 ACTING CHAIRMAN MOORE: Is there anyone
2 else who hasn't spoke on this matter that would
3 like to address the Commission on this?

4 Okay, I'm going to close the --

5 COMMISSIONER LAURIE: Did you want to
6 hear from Mr. Najarian?

7 ACTING CHAIRMAN MOORE: Yes. I'm going
8 to close the public portion of the discussion;
9 turn back to Mr. Najarian. You've heard the
10 debate back and forth. And you had points that
11 you wanted to be satisfied on before you made a
12 recommendation.

13 Are you satisfied that you can make a
14 recommendation at this point?

15 MR. NAJARIAN: If I could ask for a
16 little more clarification I would prefer that.

17 ACTING CHAIRMAN MOORE: Go ahead.

18 MR. NAJARIAN: The question of -- first
19 of all a comment -- the question of the disclosure
20 and the judgment that Calpine used in determining
21 whether or not that was material.

22 I don't think anybody would argue that
23 ultimately that the Calpine would attain site
24 control there, based on the facts as we know it.

25 However, the question before us was

1 time, how much time would it take to clear title.
2 And that's what, I think, was relevant on June
3 25th. I think in this case it was a question of
4 judgment.

5 The other issue of the turbine
6 availability, we just want to understand from
7 Calpine the timing of the decision vis-a-vis the
8 June 25th Commission business meeting in which the
9 Commission approved the relocation of the site.

10 I think it's important to understand if
11 Calpine had relocated or redirected the turbine
12 prior to that point, or was it after that point.
13 That's more specifically I think what we're trying
14 to get at.

15 ACTING CHAIRMAN MOORE: Mr. Harris, Mr.
16 Bertacchi?

17 MR. HARRIS: I guess I feel like we've
18 been over the ground, but I'll try again. There
19 are a fleet of turbines that Calpine has
20 available. Those slots are designated by
21 management decisions based upon availability of
22 sites. That that's the main criteria for
23 determining which turbine goes to which site.

24 In this case, without having the land
25 available, there was an ability to put that

1 turbine on the ground somewhere and get it
2 operating and generating power to take care of the
3 crisis that we've heard everybody's so concerned
4 about, from the public.

5 So, that business decision, I think,
6 reflects a rational approach to the site not being
7 available --

8 ACTING CHAIRMAN MOORE: Mr. Harris, let
9 me stop you for a second. Are you suggesting that
10 you have a pool available to you, and that there
11 is not, if I went to the nameplate on turbine X
12 that number on that nameplate was not designated
13 to arrive at King City, but in fact, you made a
14 virtual assignment of something out of the pool,
15 and that the pool simply stays fluid waiting for a
16 new assignment? Is that what you're telling us?

17 MR. HARRIS: Yes, I'll let Bryan
18 elaborate, but yes, not only is there a pool,
19 there are also folks out there in the business
20 community, who are not Calpine, who have
21 approached Calpine to take earlier deliveries.

22 And so in addition to what's available
23 in this fleet, I'll call it, of Calpine turbines,
24 there are also other opportunities that are there,
25 also.

1 MR. BERTACCHI: I think the larger issue
2 here in this is that a project such as this one
3 requires a turbine on a certain date to support
4 the schedule that's in place.

5 The turbine has never been an issue to
6 stop or provide a delay in the schedule. If this
7 project had been moved up three months from where
8 it is today, we would have been able to supply a
9 turbine to support that schedule. I think that's
10 the --

11 ACTING CHAIRMAN MOORE: So in answer to
12 Mr. Najarian's question, you did not redirect a
13 turbine out to some other project as a result of
14 land use decision; you simply didn't allocate
15 something from the pool on the day that you
16 formerly expected, because that date was not
17 fixed?

18 MR. BERTACCHI: Right. We manage a pool
19 of turbines, and again, as Mr. Harris said,
20 there's turbines outside that are always becoming
21 available.

22 And so we work turbines, it's like a
23 commodity almost. We can supply a turbine to
24 support the schedule on a particular project.

25 This project, as it is right now today,

1 the turbine is coming at an appropriate time in
2 the schedule of this project.

3 ACTING CHAIRMAN MOORE: Mr. Najarian.

4 MR. NAJARIAN: This turbine issue is
5 still confusing on our end. I think ideally it
6 would be nice to have a written explanation from
7 Calpine as to the schedule.

8 I understand you'd like to move to a
9 decision today. It's difficult to make a
10 recommendation today based on what we've heard in
11 the record. There are lingering questions we have
12 about the turbines.

13 ACTING CHAIRMAN MOORE: Tell me your
14 lingering questions.

15 MR. NAJARIAN: Well, the explanation
16 that the --

17 ACTING CHAIRMAN MOORE: Well, let me ask
18 you this. Did you expect that there would be a
19 turbine with a serial number and nameplate
20 assigned to King City as of the June 25th
21 decision?

22 MR. NAJARIAN: Yeah, exactly. We would
23 expect that in order to meet the deadline of
24 September 30th, that when the Commission decided
25 on June 25th to relocate the site, that a turbine

1 would be available.

2 And if a turbine was available at that
3 time, and could be brought on site in a timely
4 manner to meet the September 30 deadline, we have
5 no problems.

6 ACTING CHAIRMAN MOORE: Well, I guess
7 I'm confused now because I just heard Mr.
8 Bertacchi say that a turbine, not necessarily a
9 named turbine, that is by serial number, was
10 available. And it has been, out of a pool of
11 turbines, has been continuously available during
12 this period.

13 Mr. Bertacchi, did I misunderstand you?

14 MR. BERTACCHI: No. And, again, I guess
15 I'm struggling with this as an issue, too, because
16 this is not controlling the schedule on this
17 project.

18 If we hadn't gone through this process,
19 if there had not been a land issue, and we didn't
20 encounter this delay, we would have had a turbine
21 available to support the schedule on this project.

22 MR. HARRIS: And just to make the point,
23 if there was a turbine available for delivery
24 today you wouldn't want it delivered today,
25 because there are no foundations or other basic

1 preliminary work in that schedule to support it.

2 ACTING CHAIRMAN MOORE: All right, let's
3 try this a different way. Let's say that
4 tomorrow, after close of business tomorrow a pad
5 was poured, the foundation with securing bolts was
6 available, could you reach into your pool and
7 cause a turbine to be delivered?

8 MR. BERTACCHI: Normally that process
9 would take about three weeks, but given some
10 window of opportunity, turbines are available to
11 support schedules on, you know, earlier schedules
12 on projects.

13 ACTING CHAIRMAN MOORE: And would there
14 have been a turbine available on the 25th of June?

15 MR. BERTACCHI: Yes.

16 ACTING CHAIRMAN MOORE: All right. Mr.
17 Najarian, I'll tell you what I'm going to do. I'm
18 going to take a break on this item and ask you to
19 go off and confer with the Executive Director or
20 members of his staff, and we'll take this item up
21 again as close to 11:15 as we can.

22 And we'll proceed to some other items.
23 And let's allow you time to --

24 COMMISSIONER LAURIE: And what are you
25 looking for, Mr. Chairman? A specific --

1 ACTING CHAIRMAN MOORE: Well, I'm
2 looking for --

3 COMMISSIONER LAURIE: -- recommendation?

4 ACTING CHAIRMAN MOORE: -- either a
5 recommendation or a -- well, actually my sense is
6 it will be in the form of a recommendation.
7 You'll either decide that in your estimation we
8 should proceed ahead, or we should not.

9 And then we'll take up at that time the
10 larger debate that Ms. Spilliscy raises about the
11 issue.

12 So, I need to get the factual staff
13 stuff straightened out, and then we can move to a
14 little bit higher plane here in the debate.

15 So, with your indulgence, I'll let all
16 those who came to hear this item, we're going to
17 recess on that item briefly.

18 I'll tell you that item 4 has been moved
19 to the September 5th meeting, as has item 5.

20 And I think the fault for that lies
21 somewhere in Commissioner Pernell's office. Not
22 that I want to levy blame, but I'm pretty sure it
23 rests there.

24 Item 6, the Clean Cities Project. Clean
25 Cities Special Projects 2001.

1 MS. DUBOIS: Good morning, I'm
2 Dara Dubois in the Transportation Technology
3 Office. This is to approve projects that DOE has
4 selected this year.

5 DOE provides PVEA funding to the State
6 Energy Office, State Energy Program for Clean
7 Cities Special Projects.

8 This year a total of \$3.8 million was
9 available nationwide. And the Commission received
10 and submitted to DOE 21 proposals from Clean
11 Cities stakeholders.

12 This year DOE awarded nine projects for
13 over \$836 which is approximately 20 percent of the
14 total nationwide funding.

15 We're asking for approval to enter into
16 agreements with project participants selected by
17 DOE. The Commission acts as a pass-through
18 agency, administers and oversees the projects.

19 And over the past four years the
20 Commission has received funding from DOE of over
21 \$3 million to assist in funding 27 projects for
22 alternative fuels and vehicles and -- coordinated
23 positions.

24 ACTING CHAIRMAN MOORE: Just so it's
25 clear for everyone, there's no administration

1 money that comes with this. We do act as a pass-
2 through, and we literally assign I believe one
3 person a year to administering these grants. But
4 they do, we believe, carry out the mission of the
5 Commission and behalf of the state.

6 This has been looked at and approved by
7 the Fuels Committee, and on their behalf I'll move
8 for approval of the Clean Cities Special Projects
9 2001.

10 COMMISSIONER PERNELL: Second.

11 ACTING CHAIRMAN MOORE: Second by
12 Commissioner Pernell. Is there discussion on the
13 item?

14 All those in favor signify by saying
15 aye.

16 (Ayes.)

17 ACTING CHAIRMAN MOORE: Those opposed?
18 That motion carries three to zero. Thank you,
19 Dara.

20 MS. DUBOIS: Thank you very much.

21 ACTING CHAIRMAN MOORE: Appreciate it.
22 Item 7, the renewable resources trust fund items.
23 Suzanne and Gabe. And I just might note for the
24 record how happy we are to have our counselor here
25 following a pretty nasty automobile accident. And

1 we're all very grateful that you're recovering
2 well. Glad to have you with us.

3 We have items a, b, c and d on the
4 agenda, and I would note that there's a change in
5 time a. Not 1.2 megawatts, but 7.5 megawatts.
6 Ms. Korosec, if --

7 COMMISSIONER PERNELL: Well, that's a
8 nice change.

9 ACTING CHAIRMAN MOORE: Always nice to
10 have numbers go up. Ms. Korosec.

11 MS. KOROSEC: Commissioners, this item
12 relates to winners from our second auction for new
13 renewable resources that we held in November of
14 2000.

15 One of the requirements of that auction
16 was that winning bidders had to receive all of
17 their environmental permits before the Commission
18 would sign the formal funding award agreements for
19 the projects.

20 I want to stress that the funding award
21 agreements are conditional; they're based on the
22 projects coming on line and delivering energy.
23 And no payments are made until that time.

24 These four projects are online. They
25 have complied with CEQA. And we have the

1 documentation from the lead agencies supporting
2 that. And we recommend that you approve these
3 funding award agreements.

4 ACTING CHAIRMAN MOORE: Just to amplify
5 what Suzanne just said, if you look at some of the
6 successes of this agency, this has got to be one
7 of the paramount successes that we have ever had.

8 In a contentious market climate these
9 projects are coming on line and it's nice to see
10 them being actually funded at the end of this.

11 And if there aren't any questions I'll
12 claim the Chair's privilege and move for approval
13 of these items.

14 MR. HERRERA: If I can add one item,
15 Commissioner Moore, and that is that there has been
16 a revision to the resolution -- and made available
17 to the public. The original resolution did not
18 identify the -- under CEQA had approved projects,
19 and the Commission has relied on that assessment
20 approval. And the revised resolution now
21 addresses that.

22 ACTING CHAIRMAN MOORE: Right, I
23 appreciate the --

24 COMMISSIONER LAURIE: I would second the
25 motion --

1 ACTING CHAIRMAN MOORE: Seconded by
2 Commissioner Laurie.

3 COMMISSIONER LAURIE: -- for the amended
4 resolution.

5 ACTING CHAIRMAN MOORE: Any discussion?
6 Anyone in the public who'd like to comment?
7 Congratulate the staff on this achievement? No
8 one besides me?

9 COMMISSIONER PERNELL: Well, I certainly
10 would like to congratulate the staff as always.

11 ACTING CHAIRMAN MOORE: I knew if I
12 waited long enough.

13 All those in favor signify by saying
14 aye.

15 (Ayes.)

16 ACTING CHAIRMAN MOORE: Those opposed?
17 That motion carries three to zero. Thank you.

18 Item 8, the University of California
19 interagency agreement 300-97-009, amendment 4.
20 Too bad we don't have any other sub-clauses on
21 that. It's always nice to have to spend like five
22 minutes reading the title, sub-clause, sub-clause.

23 For \$100,000. Why so low? I mean we
24 hardly ever approve anything that's this low.

25 MS. BARKALOW: Well, the hope is that

1 eventually the PIER program will develop its own
2 interagency agreement with the University of
3 California. So this is just a temporary thing.

4 We have PhD students we would like to
5 hire immediately, and the transportation and
6 energy division has agreed to allow us to add
7 dollars to their contract for us to hire interns.

8 COMMISSIONER LAURIE: I move the
9 recommendation, Mr. Chairman.

10 ACTING CHAIRMAN MOORE: Moved --

11 COMMISSIONER PERNELL: Second.

12 ACTING CHAIRMAN MOORE: -- and seconded
13 by Commissioner Pernell. I might just add in
14 passing that this is a wonderful source, not only
15 for our interim needs, but for our future needs of
16 individuals who will work and provide guidance and
17 background for the Commission.

18 So I hope we utilize this solution for
19 manpower of more in the future.

20 All those in favor signify by saying
21 aye.

22 (Ayes.)

23 ACTING CHAIRMAN MOORE: Those opposed?
24 That motion carries three to zero.

25 Thank you.

1 COMMISSIONER PERNELL: Good job from
2 both departments.

3 MS. BARKALOW: Thank you.

4 ACTING CHAIRMAN MOORE: Item 9, the
5 Daimler-Chrysler Corporation, contract 500-98-045,
6 amendment 4. Funny, amendment 4 again. To
7 disencumber \$70,000 from South Coast, and so we
8 get some free work.

9 MR. VILLANUEVA: Thank you,
10 Commissioner. This is basically just kind of a
11 formal item that this item is from the electric
12 vehicle infrastructure incentive program, in which
13 we partnered with the South Coast Air Quality
14 Management District.

15 And the funding was originally placed in
16 the contract to provide infrastructure incentives
17 in the South Coast Air Basin. But upon receiving
18 the invoice from Daimler-Chrysler, those charges
19 were placed in the San Diego region, which is
20 outside of the South Coast Air Basin.

21 And they had already previously expended
22 all Energy Commission funding, so they couldn't
23 qualify for this \$70,000. And so essentially
24 after the contract expired, it just has to be
25 returned to the South Coast AQMD.

1 ACTING CHAIRMAN MOORE: But am I not
2 correct, the work was performed?

3 MR. VILLANUEVA: The work was performed,
4 yes.

5 ACTING CHAIRMAN MOORE: So, in essence
6 they're going to just have to eat this cost, but
7 we get the public benefit of the work.

8 MR. VILLANUEVA: Yes, exactly.

9 ACTING CHAIRMAN MOORE: Well, we don't
10 have that very often. Is there anyone here from
11 Daimler-Chrysler who would like to complain or --

12 COMMISSIONER PERNELL: Mr. Chairman, I
13 move the item.

14 COMMISSIONER LAURIE: Second.

15 ACTING CHAIRMAN MOORE: Moved by
16 Commissioner Pernell, seconded by Commissioner
17 Laurie.

18 All those in favor signify by saying
19 aye.

20 (Ayes.)

21 ACTING CHAIRMAN MOORE: Those opposed?
22 That motion carries.

23 I'm going to pass on 970 energy trends
24 report until the Executive Director returns,
25 because I know he's got some comments on that.

1 So, let's go to the Chula Vista Peaker
2 Project, which is docket 01-EP-3, petition for
3 reconsideration of the RAMCO Chula Vista Peaker
4 Project filed by the City of Chula Vista.

5 Counselor?

6 MR. OGATA: Good morning, Commissioners.
7 My name is Jeff Ogata; I'm a Staff Attorney for
8 the Commission.

9 On June 13th of this year the Energy
10 Commission approved the certification of the Chula
11 Vista Peaker Generating Station. On July 11th,
12 the City of Chula Vista, through the City
13 Attorney, submitted a letter to the Commission
14 asking that the Commission immediately withdraw
15 the adoption order proceeding on the basis that
16 RAMCO, in a letter also dated July 11th, stated
17 that they would not build the project.

18 On July 13th the City of Chula Vista
19 filed an application for reconsideration and
20 petition for rehearing with the Commission.

21 In a notice of complaint dated July 26th
22 the Chairman of the Commission noticed the hearing
23 on the application for reconsideration and
24 petition for rehearing and on a complaint for it
25 today.

1 The basis for the complaint is that the
2 final decision in this matter contains a condition
3 that RAMCO begin operation of this power plant by
4 September 30, 2001. If the plant is not
5 operational by that date, and if the Commission
6 decides that the applicant has not proceeded with
7 due diligence, the certification is forfeited.

8 What staff is recommending today is that
9 the Commission adopt an order to show cause to
10 RAMCO, asking RAMCO to state why they should not
11 forfeit their certification.

12 It is pretty clear from the letter we
13 received July 11th that they do not intend to
14 build a project. In a filing by the City of Chula
15 Vista they have a declaration from their building
16 official that indicates that he has observed the
17 site and that there is no construction going on.

18 So it's pretty clear that this project
19 is not going forward. However, staff believes
20 that RAMCO should be given one last opportunity to
21 convince the Commission that this license should
22 not be forfeited.

23 And so we're requesting that the order
24 to show cause be issued, and that this matter be
25 heard on September 5th.

1 Mr. Gardner from the lawfirm of McKenna
2 and Cuneo, representing the City of Chula Vista is
3 present.

4 COMMISSIONER LAURIE: Mr. Chairman, if I
5 may?

6 ACTING CHAIRMAN MOORE: Commissioner
7 Laurie.

8 COMMISSIONER LAURIE: I've heard Mr.
9 Ogata's statements. I'm familiar with the July
10 11th letter from RAMCO. I'm familiar with the
11 declaration issued by the building official.

12 I have reviewed the docketed material
13 filed by the City of Chula Vista. I am in support
14 of the proposal by staff to provide an opportunity
15 through the OSC to give RAMCO an opportunity to
16 respond. And if they fail to do so, to consider
17 forfeiture at the time.

18 I am, therefore, supportive of staff's
19 recommendation. And I would move that
20 recommendation.

21 ACTING CHAIRMAN MOORE: Commissioner
22 Laurie, before I accept the motion let me just ask
23 if there are comments, in opposition to what Mr.
24 Ogata has suggested, by the applicant?

25 MR. GARDNER: Good morning,

1 Commissioners. I'm Steve Gardner with McKenna and
2 Cuneo. I have my colleague, Chuck Pomeroy, here
3 with me, as well. And we do represent the City of
4 Chula Vista.

5 We don't have an inherent problem with
6 Mr. Ogata's recommendation except to note that the
7 fact that RAMCO has not responded, even to this
8 point in time. And the fact that there's been no
9 construction whatsoever done on this site.

10 And combined with the letter that RAMCO
11 has written the Commission that it does not intend
12 to proceed with the project, I think at this point
13 in time it's not a question of due diligence.
14 There's a question of no diligence.

15 And given the timeframe, the Commission
16 is so familiar with, it takes to construct a
17 peaking unit of this nature, it just simply cannot
18 be done between today's date and September 30th.

19 COMMISSIONER LAURIE: One moment, sir.
20 Point of order, Mr. Chairman. I have a motion on
21 the floor, and I may or may not ask questions,
22 depending upon what the status of my motion is.
23 I'd like to determine whether or not there's going
24 to be a second to my motion, and then entertain
25 public comment. And that will determine the route

1 by which I may seek to add --

2 ACTING CHAIRMAN MOORE: Well, I was
3 going to delay accepting your motion, but I'll
4 second the motion so it is on the floor. And do
5 you have questions in response -- I'm assuming
6 that your response from the City of Chula Vista is
7 that you don't disagree with Mr. Ogata's
8 recommendation, you're simply pointing out to us
9 that nothing's happened on the --

10 MR. GARDNER: And nothing can happen
11 between now and -- the project simply cannot be
12 constructed between today's date and September
13 30th.

14 ACTING CHAIRMAN MOORE: All right.

15 MR. GARDNER: And it's not a question of
16 due diligence; it's a question that there is no
17 project to be constructed.

18 ACTING CHAIRMAN MOORE: Okay. Is there
19 anyone else who'd like to address us on the RAMCO
20 project?

21 Seeing none, we have a motion and a
22 second to accept staff recommendation for an order
23 showing cause and due diligence.

24 All those -- I'm sorry, go ahead.

25 COMMISSIONER LAURIE: Question, Mr.

1 Chairman. Mr. Ogata, this will be agendized for
2 the September 5th meeting, is that right?

3 MR. OGATA: That's correct.

4 COMMISSIONER LAURIE: Thank you.

5 ACTING CHAIRMAN MOORE: All those in
6 favor signify by saying aye.

7 (Ayes.)

8 ACTING CHAIRMAN MOORE: Those opposed?
9 That motion carries.

10 COMMISSIONER LAURIE: Thank you, Mr.
11 Chairman. Thank you, Jeff.

12 ACTING CHAIRMAN MOORE: Thank you, all.
13 We'll proceed to item 12, natural gas
14 infrastructure report. Ms. Jones, if you'd like
15 to introduce the item, and then I've got a number
16 of people who would like to comment on the report,
17 as it's been released.

18 And then we'll decide what action the
19 Commission would like to take.

20 COMMISSIONER LAURIE: Question, Mr.
21 Chairman. This is liable to take some time. You
22 gave the other folks until 11:15. Do you want to
23 take a three-minute break? Because I'm prepared
24 to take quick action on the other item once it
25 comes back in. What's your pleasure?

1 ACTING CHAIRMAN MOORE: All right, we'll
2 take a three-minute recess, and see if we can get
3 the Executive Director back in and take action.

4 (Brief recess.)

5 ACTING CHAIRMAN MOORE: All right, we're
6 going to reconvene on item 3, the Calpine King
7 City LM6000 Power Plant Project requested
8 extension. And staff requested an amendment or
9 proposed amendment, should the Commission decide
10 to go ahead.

11 Mr. Najarian, we asked that you confer
12 with your colleagues and come back with a staff
13 recommendation as to whether or not your questions
14 were answered concerning the possibility of
15 granting an amendment.

16 MR. NAJARIAN: Commissioner Moore, thank
17 you for the additional time. The staff will
18 accept Mr. Bertacchi's testimony concerning the
19 turbine pool and the availability of turbines on
20 June 25th.

21 Further, we believe that the Commission
22 should grant the extension but require a more
23 aggressive construction schedule.

24 With regard to the issue of
25 nondisclosure, the staff is considering its

1 options, and we'll be back before the Commission
2 at a later date.

3 ACTING CHAIRMAN MOORE: Say that last
4 sentence again?

5 (Laughter.)

6 MR. NAJARIAN: With regards to the issue
7 of nondisclosure of the preliminary title report,
8 we're currently considering our options and we'll
9 make a determination on what we will do later.

10 ACTING CHAIRMAN MOORE: What options do
11 you think you have? I mean what's the range? I'm
12 not sure I understand the import of what you're
13 saying.

14 MR. NAJARIAN: We're specifically
15 referring to the issue of sanctions as specified
16 in the decision.

17 ACTING CHAIRMAN MOORE: So you believe
18 that there may still be room to impose sanctions
19 as a result of the possibility that the delay
20 didn't have to happen in the manner that is
21 alleged?

22 MR. NAJARIAN: It would be linked to a
23 noncompliance matter.

24 ACTING CHAIRMAN MOORE: Should the
25 amendment be granted?

1 MR. NAJARIAN: That's correct.

2 ACTING CHAIRMAN MOORE: All right.

3 COMMISSIONER PERNELL: Mr. Chairman.

4 ACTING CHAIRMAN MOORE: Commissioner
5 Pernell.

6 COMMISSIONER PERNELL: Chuck, on the
7 aggressive construction schedule, how is that
8 defined? Is it --

9 MR. NAJARIAN: I think the best way to
10 proceed with that is to require that Calpine
11 submit another construction schedule that shows
12 diligence in bringing the plant online
13 significantly sooner than what's articulated in
14 the schedule they presented on August 16th.

15 COMMISSIONER PERNELL: And will that
16 come back, along with the other item that you're
17 suggesting?

18 MR. NAJARIAN: Yes.

19 COMMISSIONER PERNELL: Which is the due
20 diligence.

21 MR. NAJARIAN: We'd be prepared to make
22 a recommendation based on a new schedule.

23 COMMISSIONER LAURIE: Mr. Chairman, I'm
24 prepared to make a motion unless you had
25 additional comments.

1 ACTING CHAIRMAN MOORE: Before you make
2 your motion let me ask Mr. Bertacchi, are you
3 prepared to come back with a more aggressive
4 construction schedule?

5 MR. BERTACCHI: I guess I'd like some
6 further definition from the staff what that means.
7 Are they asking us to, you know, look at the more
8 aggressive end of the schedule and submit a
9 schedule based on the most aggressive potential
10 dates?

11 MR. NAJARIAN: We're just noting that
12 generally speaking three months is an adequate
13 time to build the emergency simple cycle projects.
14 And if a turbine is essentially available, and
15 clear title is imminent, we can see how that
16 schedule can be accelerated.

17 MR. HARRIS: If I could, three months
18 would put us at the end of November, and I think
19 we've said on the record already that that's our
20 target. We put the later date in there because we
21 can't control the weather and we can't control a
22 whole bunch of other things.

23 And so I guess I don't see that as an
24 issue from a practical --

25 COMMISSIONER LAURIE: So the answer to

1 my question is yes?

2 MR. HARRIS: Well, I guess I still want
3 some further definition. And I want to go to the
4 issue of shifts. Is that what staff is
5 suggesting, that we -- somehow 7/10s is not enough
6 in terms of an aggressive schedule? Or what
7 precisely would staff like to see in terms of
8 schedule that we haven't already provided, knowing
9 that the foundation construction date drives the
10 turbine delivery?

11 COMMISSIONER PERNELL: Mr. Harris, does
12 the schedule now allow for 7/10s?

13 MR. HARRIS: Yes, --

14 MR. BERTACCHI: That's right, the
15 schedule now has 7/10s in it. And, in fact,
16 within the schedule there will be different times,
17 and the project will be working night shifts on
18 top of the 7/10s.

19 MR. HARRIS: And there are certain
20 limitations about evening construction and
21 noise --

22 MR. BERTACCHI: Because of the noise
23 constraints.

24 COMMISSIONER PERNELL: And just for
25 those in our audience, we're talking about seven

1 days a week, 10 hours a day?

2 MR. HARRIS: Right, we're talking about
3 a lifestyle none of us want to live. And I think
4 that's -- we're not going to ask staff to work
5 7/10s. I think we will to get this done on time.

6 ACTING CHAIRMAN MOORE: Commissioner
7 Laurie, you're prepared to offer a motion?

8 COMMISSIONER LAURIE: Thank you, Mr.
9 Chairman. I move to amend the certification for
10 the Calpine King City Project as follows:

11 Regarding that specific condition
12 entitled start of operations, I would offer to
13 amend the language of that paragraph to read as
14 follows: The Calpine King City LM6000 Project
15 shall be online by no later than December 28,
16 2001, period. Deleting the remaining verbiage.

17 No, I'm sorry, December 28, 2001, comma,
18 subject to a revised construction schedule to be
19 approved by Energy Commission Staff, period.

20 This motion is based upon a finding of
21 due diligence, based upon the record before us.

22 ACTING CHAIRMAN MOORE: Do you second
23 the motion?

24 COMMISSIONER PERNELL: I second.

25 ACTING CHAIRMAN MOORE: Second by

1 Commissioner Pernell. On the motion I have a
2 couple of comments that I'd like to make.

3 I think that in the main, in other
4 circumstances, Ms. Spilliscy raised some good
5 issues. I think in this case they're probably
6 misdirected and late, unfortunately. Because the
7 issue that is at hand is whether or not the
8 executive order and what it set out to do was
9 appropriate, timely and addressed the issue that
10 we faced.

11 I'm not sure that given the Energy
12 Commission forecasts and the number of plants that
13 we had on line that it was necessary to abrupt
14 CEQA or to abrupt many of the other environmental
15 controls and reviews that we have available to us.

16 And as a consequence, and the same
17 arguments that I made on the AES question that we
18 faced some weeks ago, it seems to me that the
19 applicant in this case pursued, with due
20 diligence, to use Commissioner Laurie's phrase,
21 and by the rules.

22 And so, to me, we have to look back at
23 what the rules were and what the design, the
24 overall design of the system entailed, i.e., the
25 instructions to us via the executive order, and

1 whether or not those were appropriate.

2 To the best of my knowledge they became
3 inappropriate pretty early on, but there was no
4 revision or revocation of those. And as a
5 consequence it seems to me we ended up being bound
6 by something that was probably not relevant to the
7 circumstances that the state faced.

8 Nonetheless, the applicants proceeded in
9 good faith. And, I believe, satisfied the
10 requirements of the system as it was laid out and
11 the guidelines that we were given. And in terms
12 of honoring that, in terms of honoring the
13 commitment we made to them, especially in the
14 decision that was given to you or proposed to you
15 by myself, I think that we can do no less than
16 proceed with the motion as it's proposed.

17 One final remark, and that is on public
18 participation, and that I would say, I guess I
19 feel a little bit of umbrage over some of the
20 remarks that were made.

21 We, given the rules that we had to
22 operate under, I think we conducted a fair and
23 very very open public hearing process. And I
24 believe that in comparison to any other process
25 that's available in this state, and I include the

1 County and City hearing processes which utilized
2 CEQA as their background, I do not believe we have
3 a peer in terms of the access that we grant the
4 public, or the consideration that we give their
5 views.

6 I know each Presiding Member handles
7 things differently, but I know that in fact we
8 bend the rules to every degree possible to make
9 sure that people who are, for instance, not
10 intervenors in the larger, long-term cases, are
11 heard. And that their views are taken into
12 account, and actually utilized in terms of
13 decisions that we render.

14 So I believe that the heart and soul of
15 CEQA was observed and it continues to be observed
16 by the Commissioners on this Commission in their
17 public hearing process no matter what was intended
18 or directed by some of the executive orders, which
19 it seems to me, are the heart and soul of the
20 issue that's raised, properly I think, by Ms.
21 Spilliscy, about whether or not the environmental
22 issues actually get addressed.

23 I believe in my heart of hearts that for
24 a project this size, in this location, that we
25 more than adequately considered those issues. I

1 don't think I'll be sorry to see the 21-day
2 process go away. And to see us back in the full
3 year process.

4 But, I think under these circumstances,
5 under the narrow conditions that we face, this is
6 the right decision to make.

7 All those in favor of the motion --

8 COMMISSIONER LAURIE: Mr. Chairman, just
9 before we vote, I would like to --

10 ACTING CHAIRMAN MOORE: Commissioner
11 Laurie.

12 COMMISSIONER LAURIE: -- for the record
13 concur with your comments, except on one point.
14 And I think the record may have to be clarified.

15 You did not say that the Commission
16 bends the rules, what you said was the Commission
17 liberally interprets the rules to allow maximum
18 participation, is that -- did I hear that
19 correctly?

20 ACTING CHAIRMAN MOORE: I stand
21 corrected. I want to make sure that everyone
22 knows that the Commissioners are interested in the
23 broadest possible public input, oftentimes, no
24 matter what our attorneys say. No specific cases,
25 of course, come to mind. But the public is

1 welcome in all of our hearings, and I hope we
2 never ever lose that. It's one of the signal
3 commitments that we've made to uphold the value of
4 the environment in California.

5 All those in favor signify by saying
6 aye.

7 (Ayes.)

8 ACTING CHAIRMAN MOORE: Those opposed?
9 That motion carries, three to zero.

10 Let's go back to item 12 -- I'm sorry,
11 item 10, which is the -- I'm sorry, Ms. Jones,
12 you've now been preempted by something earlier --

13 COMMISSIONER PERNELL: She's stood up at
14 least three times already.

15 ACTING CHAIRMAN MOORE: -- in the agenda
16 that -- we'll be right back to you.

17 The AB-970 Energy Trends Report. We
18 have possible consideration and adoption of the
19 Energy Outlook AB-970 Electricity and Natural
20 Trends Report which responds to the AB-970
21 requirements in section 25553 of the Public
22 Resources Code.

23 Mr. Alvarado, if you'd briefly overview
24 the report for us, and then I believe the
25 Executive Director would like to make some

1 comments on this, as well.

2 MR. ALVARADO: Good morning,
3 Commissioners. My name's Al Alvarado with the
4 Electricity Analysis Office. I am responsible for
5 preparing this report, the California Energy
6 Outlook, Electricity and Natural Gas Trends
7 Report.

8 Originally I had intended coming before
9 you today to ask for the adoption of this report.
10 The intention of having it adopted is so that the
11 Commission can formally transmit this report to
12 the Governor's Office and Legislature per
13 requirements of AB-970.

14 However, as of just the last few days
15 I've received a few comments from industry
16 representatives expressing concern and interest of
17 having a chance to review the report.

18 I've had some discussion, tried to
19 explain, at least give them a broad overview of
20 the purpose of the report, the content. The
21 report is intended only to provide a summary of
22 the past supply and demand trends for electricity
23 and natural gas, as well as present an outlook of
24 our demand, natural gas and electricity demand
25 forecast, which actually has been available to the

1 public over the past year. It's been on our
2 website.

3 We also include an overview of looking
4 at the new generation developments, as well as
5 some of the conservation efficiency developments
6 over the past year given by the emergency siting
7 process, as well as some of the programs that were
8 brought forward by legislation, to provide an
9 outlook of the supply and demand balance for this
10 summer and the next few years, which we find to be
11 optimistic.

12 The report is not intended, and does not
13 provide any recommendations of policy issues.
14 It's intended to be strictly an overview of the
15 demand trends in our outlook.

16 Considering the comments that I've
17 received from industry representatives, I'd pose
18 to the Commission if we could move this report to
19 a later date, possibly September 5th, and during
20 the interim release the current staff draft to the
21 interested parties, so that the parties will have
22 a chance to review.

23 The staff draft that I have available is
24 a little dated. The draft report is currently
25 being reviewed by our technical editor and we also

1 have a graphics designer, who is steam-cleaning
2 the report. We're adding some updated to our
3 graphics, you know, so the content has not
4 changed. We're just trying to make the report a
5 little more readable.

6 Considering that our goal is to have
7 this report adopted and transmitted to the
8 Legislature before the end of the legislative
9 session, which is I guess the middle of September,
10 we're hoping to be able to receive comments, turn
11 around any concerns and issues, present it to the
12 Electricity and Natural Gas Committee, and hope to
13 have it adopted possibly on September 5th.

14 ACTING CHAIRMAN MOORE: Let's go to one
15 of your comments about the lack of
16 recommendations, or no recommendations. Is it not
17 cited in 970 that there should be recommendations?

18 MR. ALVARADO: Yes. The legislation
19 asks for the Commission to provide recommendations
20 on how to address supply adequacy issues, as well
21 as conservation improvements.

22 However, since the legislation was
23 originally adopted, which was towards the middle
24 of last year, there's been a lot of developments
25 that have occurred.

1 There's been additional legislation to
2 implement new efficiency programs, such as what
3 was provided under Senate Bill 5X and Assembly
4 Bill 29X.

5 There's been also a number of new
6 generation projects that have actually come into
7 construction and have been approved, and the
8 groundbreaking events.

9 There has been actions by the
10 Independent System Operator to work on some of
11 their market design concerns --

12 ACTING CHAIRMAN MOORE: Al, you're
13 actually going beyond my question. The answer to
14 the question was 970 did require us to make
15 recommendations, whether --

16 MR. ALVARADO: Right.

17 ACTING CHAIRMAN MOORE: -- or not
18 circumstances have intervened to change the scene
19 or not doesn't change the legislative requirement.

20 In anticipation of questions other
21 Commissioners may ask let me turn to Mr. Larson
22 and ask him what the implications of not having
23 recommendations in, where they're specifically
24 called out in the legislation, are.

25 MR. LARSON: I think that when this

1 section of this bill was approved certainly it was
2 a very different circumstance. The Legislature
3 believed that it -- they didn't really realize how
4 fast they were going to be overtaken by events.
5 And that certainly did happen very quickly.

6 Originally this report was due much
7 earlier, in January. And in discussing it with
8 the Legislature, with Representative of the
9 Legislature, by that time, by January, events had
10 substantially changed from when this piece of
11 legislation was approved in September.

12 And they were very willing to let us
13 proceed down this course, you know, to delay the
14 report. I think it would be, if we could do it,
15 wise, you know, to get it in during the
16 legislative session this year.

17 But certainly the Legislature has been
18 kept informed as we've been going as to what was
19 going on in this report, and I think are basically
20 okay with the outline that's been described.

21 ACTING CHAIRMAN MOORE: So you don't
22 think there's any legislative discomfiture coming
23 as a result of limited --

24 MR. LARSON: I don't think so. I think,
25 I'm always troubled, myself, by the fact that it's

1 an opportunity to push other, you know, other
2 options. But I don't think that there is a
3 problem with the Legislature in this matter at
4 this point.

5 ACTING CHAIRMAN MOORE: Of course we
6 could just --

7 MR. LARSON: And there are also many
8 other ways in which we convey to the Legislature,
9 usually on a very immediate basis, you know, when
10 they ask us what do we think about this or that.
11 We certainly are very quick to respond in an
12 analytical way.

13 ACTING CHAIRMAN MOORE: Or, I was going
14 to say, as a stopgap we could reach back to the
15 report that came out of my office in January, just
16 pick up the recommendations that were in that --

17 MR. LARSON: Of course.

18 ACTING CHAIRMAN MOORE: -- and insert
19 them. We have some cards of people who would like
20 to address us on this item. Let me ask that they
21 come forward and make some comments.

22 Manuel Alvarez from Edison.

23 MR. ALVAREZ: Good morning,
24 Commissioners. Manuel Alvarez, Southern
25 California Edison.

1 I guess first of all let me actually
2 support the staff's recommendation to delay this
3 report until September 5th, I believe, the next
4 business meeting. I think that's appropriate.
5 And we'll do our best to comment on the draft
6 report.

7 But the report is referred to as it
8 exists. And currently we are unable to see what
9 the report says. Your executive summary was
10 posted up on your website yesterday, and so it's
11 the first opportunity we've had to look at that
12 report.

13 There are some comments in that report
14 that are intriguing in terms of some of the
15 conclusions, and whether you call them
16 recommendations or findings or direction, it's a
17 little bit disturbing in terms of what the
18 implications are.

19 I don't want to go through that
20 specifically. I'll wait until the final report.
21 But given your last comments regarding the siting
22 cases and the public's participation in these
23 kinds of discussions we just haven't had that
24 opportunity. So we're kind of running blind here.

25 COMMISSIONER LAURIE: Mr. Chairman, I

1 would concur that this is a concern. I don't know
2 the status of the draft report, who has it in-
3 house, who might have it outside this building,
4 but most certainly it would be a document that it
5 would be important to have a dialogue concerning.
6 And you can't have that dialogue if the public
7 doesn't have access to it.

8 So, I would want to insure, matter of
9 fact, I would not be prepared to take action until
10 I'm assured that the public has had an adequate
11 opportunity to read the document. And that means
12 more than 24 hours.

13 ACTING CHAIRMAN MOORE: And just to re-
14 emphasize what Mr. Alvarez was saying, you're
15 indicating that if you have a copy of that you'll
16 be able to get comments back to us in writing in a
17 timely fashion?

18 MR. ALVAREZ: Yes, I believe we can do
19 that in a two-week period of time between this
20 business meeting and the September 4th business
21 meeting.

22 ACTING CHAIRMAN MOORE: All right.

23 MR. ALVAREZ: That might mean a 7/10,
24 seven days, but --

25 (Laughter.)

1 COMMISSIONER PERNELL: Well, that would
2 be a change for you, wouldn't it?

3 (Laughter.)

4 MR. ALVAREZ: That's true.

5 ACTING CHAIRMAN MOORE: He's just
6 referring to since you left the Commission.

7 COMMISSIONER PERNELL: Mr. Chairman, on
8 this, I --

9 ACTING CHAIRMAN MOORE: Let me -- I have
10 a couple more comments that we need --

11 COMMISSIONER PERNELL: All right.

12 ACTING CHAIRMAN MOORE: -- to get on the
13 record. Pat Fleming.

14 MS. FLEMING: Good morning,
15 Commissioners. I'm Pat Fleming with Sempra
16 Energy, and this morning I'm representing both
17 Southern California Gas and San Diego Gas and
18 Electric, because I can see in reading the
19 executive summary, I only saw yesterday afternoon
20 late, that both companies are going to want to
21 have an opportunity to review this report and
22 comment.

23 And I've spoken to Mr. Alvarado about
24 that fact. So I don't think he's surprised at
25 what I am going to advocate for. And that is I

1 almost want to advocate for a four-week delay
2 rather than the two weeks, because I think we're
3 going to have to have an opportunity to comment.

4 There are some important issues that
5 this report raises that could influence the
6 industry and any legislation that might come from
7 this.

8 So, definitely a two-week delay, but I
9 would like to consider a little further time so
10 that we can have more time to discuss and comment,
11 because we are definitely going to want to
12 comment.

13 Thank you.

14 ACTING CHAIRMAN MOORE: Thank you.

15 Carolyn Baker.

16 MS. BAKER: Thank you, Commissioner
17 Moore, Commissioners. Carolyn Baker, Duke Energy
18 North America.

19 I would like to second the comments of
20 the speakers preceding me, and I don't want to
21 take up any more of the Commission's valuable
22 time, other than to concur with what Commissioner
23 Laurie has said.

24 And also just to bring to your attention
25 item number 12 which you will be hearing next, and

1 the process that was used on that report which I
2 believe was released on June 5th.

3 We had the opportunity twice to file
4 written comments. It was the topic of a public
5 workshop. That is the kind of process that we
6 expect to see from the Energy Commission.

7 I hesitate to even commit to saying we
8 can live with two weeks, we can live with four
9 weeks. I understand staff's desire to get a
10 report to the Legislature quickly, but quite
11 frankly, with all due respect, it's not like this
12 report has been any kind of surprise.

13 So, I would like to just encourage the
14 Commission to give interested parties enough time
15 to give thoughtful comments and provide input to
16 what we consider to be a very important report.

17 Thank you.

18 ACTING CHAIRMAN MOORE: Thank you very
19 much. Commissioner Pernell.

20 COMMISSIONER PERNELL: Thank you, Mr.
21 Chairman. I, too, like my colleague, Commissioner
22 Laurie, am a little troubled by this.

23 First of all, regardless of the events,
24 if the statute says that we are to give
25 recommendations, then that's what we need to be

1 doing. We can't anticipate that because of a
2 number of events and some conversation with some
3 legislators that we don't have to do that.

4 Unless there's legislation that repeals
5 the statute, I think that we're obligated to do
6 what the statute says. That's number one.

7 Secondly, we're up against a timeline
8 and we haven't had, as you've heard from the other
9 speakers, we haven't had proper public dialogue or
10 participation in this report.

11 I just don't want to rush this thing
12 through for the sake of doing it to get it off
13 someone's desk. It needs to be aired out, it
14 needs to be thought, and we need to look at the
15 statute and do what the statute says.

16 And if the statute says recommendations,
17 that's what we should have. We've had
18 recommendations from all of these reports that
19 we've done, why not this one?

20 So I'm a little troubled by this and I'm
21 glad it's being put over to get additional
22 comments. But we've got to do what the statute
23 says, whether we like it or not, or whether we try
24 and interpret what the intent of the Legislature
25 is. Fact of the matter is, it's a law, we need to

1 abide by that law or we're in violation of that
2 law.

3 Thank you, Mr. Chairman.

4 ACTING CHAIRMAN MOORE: The Chair will
5 entertain a motion to table this item, release a
6 draft of the report for public comment. And we'll
7 reschedule. We'll try for the 5th, and if we
8 can't we'll try for the next available meeting to
9 get this back in front of the Commissioners with
10 public comment and review from the Electricity and
11 Natural Gas Committee and recommendation.

12 Is there such a motion?

13 COMMISSIONER LAURIE: I so move.

14 ACTING CHAIRMAN MOORE: Moved by
15 Commissioner Laurie.

16 COMMISSIONER PERNELL: Second.

17 ACTING CHAIRMAN MOORE: Second by
18 Commissioner Pernell. All those in favor signify
19 by saying aye.

20 (Ayes.)

21 ACTING CHAIRMAN MOORE: Those opposed?
22 Motion carries.

23 Ms. Jones, welcome back to the dais.
24 Will you introduce the topic of the natural gas
25 report and run through the sequence of events that

1 brought us to today.

2 MS. JONES: I'd be happy to. For the
3 record, my name is Melissa Jones, I'm with the
4 staff of the Energy Commission.

5 And the staff released a draft report on
6 natural gas infrastructure issues in May, May
7 22nd. The Electricity and Natural Gas Committee
8 had a hearing on this staff draft report on June
9 5th, and extended the written comment period until
10 June 11th for comments on that report.

11 Today we have before you the Electricity
12 and Natural Gas Committee's draft final report
13 that responds to those comments that we have
14 received in the public process. And this item is
15 before you today.

16 ACTING CHAIRMAN MOORE: Just to re-
17 emphasize, we've released this item on the web;
18 we've made it widely available. And it was
19 actually the discussion of a very public meeting
20 that we had here with two of the FERC
21 Commissioners earlier about a month and a half
22 ago.

23 And the conclusions were discussed in a
24 pretty broad forum. So, this report certainly has
25 been vetted on a very wide basis.

1 MS. JONES: This draft has been
2 available on the web since August 9th.

3 ACTING CHAIRMAN MOORE: And it has
4 undergone some significant revisions, and we're
5 attempting to make it as timely as possible. And
6 I might also point out that it appears in an
7 abbreviated version, or at least the conclusions
8 of it do or are intended to, in Mr. Alvarado's
9 report, as well, the CEO.

10 Thank you, Ms. Jones. Let me see if I
11 can invite a couple of speakers to comment on
12 this, and then we'll decide what we're going to do
13 next.

14 Mr. Alvarez, part of your 7/10
15 responsibilities. Welcome back. You're still
16 with Edison, right?

17 MR. ALVAREZ: As far as I know.

18 ACTING CHAIRMAN MOORE: Okay.

19 (Laughter.)

20 MR. ALVAREZ: Manuel Alvarez, Southern
21 California Edison. I'll try to be brief here. We
22 have one issue with the report that we'd like to
23 bring to the Commission's attention.

24 Edison has participated in this process
25 all along. We have filed previous comments and

1 participated in a series of workshops, and thank
2 the Commission for that.

3 There is one item that we want to bring
4 to your attention and that's the issue of the gas
5 price increase that you cite in your report. The
6 report basically attributes that price increase to
7 the lack of capacity in California. And it's
8 actually very limited for the other reason for
9 price increase, and that is the use of market
10 power.

11 We'd like the Commission to consider the
12 recognition of the use of market power that has
13 taken place. I'll point to the CPUC proceeding at
14 FERC that has, in fact, taken that position. And
15 in your final report, your final edits, we'd like
16 you to acknowledge that position taken. And, in
17 fact, recognize that not only is it the lack of
18 capacity, but also the use of market power that,
19 in fact, is attributed to the price increases that
20 California experienced.

21 And that's the only issue I have.

22 ACTING CHAIRMAN MOORE: All right. And
23 I'm assuming that you're prepared to take another
24 look at the draft and offer more comments should
25 this matter be held over?

1 MR. ALVAREZ: Yes. Well, we did, in our
2 letter we noted the study that we undertook, and I
3 think we filed that, once again. But I think it
4 was available to the Commission Staff during the
5 course of the proceeding.

6 MS. JONES: We should probably get that
7 docketed.

8 MR. ALVAREZ: I believe I did.

9 MS. JONES: Okay.

10 MR. ALVAREZ: Thank you.

11 ACTING CHAIRMAN MOORE: Okay, well,
12 let's make sure that -- I don't remember docketing
13 that material, but --

14 COMMISSIONER PERNELL: Mr. Chairman.

15 ACTING CHAIRMAN MOORE: Commissioner
16 Pernell.

17 COMMISSIONER PERNELL: Mr. Chairman, for
18 the record, Mr. Alvarez does work very hard for
19 his clients. So I want to withdraw what I said
20 before.

21 (Laughter.)

22 ACTING CHAIRMAN MOORE: Good. Thank
23 you. Lad Lorenz. Barely, but still good morning.

24 MR. LORENZ: Good morning,
25 Commissioners. I appreciate the opportunity. Lad

1 Lorenz on behalf of Southern California Gas and
2 San Diego Gas and Electric, Sempra Energy.

3 I'll be very brief. SoCalGas has also
4 participated extensively in this process, and
5 intends to continue to participate in the process.
6 We urge the Commission to delay consideration and
7 adoption of this report at this time.

8 We submitted a number of comments,
9 extensive comments yesterday. And we are prepared
10 to work with the staff to try and have those
11 comments incorporated and those issues considered
12 within the context of the final report.

13 We believe that 2001 is not indicative
14 of the future infrastructure needs for the
15 Southern California Gas Company system; that
16 SoCalGas will have sufficient slack capacity in
17 the year 2001 and beyond; that the high gas prices
18 were not caused by a lack of infrastructure in
19 southern California and on the SoCalGas system;
20 and that we need to move toward a structure of
21 long-term contracts between electric generators
22 and the builders of infrastructure, the utility
23 building of infrastructure, rather than improving
24 forecasts or changing the design criteria for
25 consideration.

1 So those are our principal concerns and
2 we have provided extensive comments. We urge you
3 to provide an opportunity for those comments to be
4 incorporated. We're prepared to work extensively
5 with the staff to make the necessary
6 modifications.

7 It's a good product, it just needs some
8 more work.

9 ACTING CHAIRMAN MOORE: Thank you, Mr.
10 Lorenz, appreciate your help.

11 Ms. Horner.

12 MS. HORNER: Good morning,
13 Commissioners. I think it is still morning.
14 Trina Horner from the California PUC here, and I
15 appreciate the opportunity.

16 I would simply like to echo the comments
17 made by Edison and by Sempra, or SoCalGas, and
18 respectfully urge that the Commission hold over
19 this item until a later meeting.

20 The PUC does have some comments on the
21 draft report which -- on the modified draft
22 report. We have been following it since its
23 issuance in May, and had read the revisions with
24 interest.

25 I think we still have a few concerns

1 that we'd like to share with you. I won't go into
2 those concerns in detail right now, although I
3 would like to echo the specific issue raised by
4 Edison regarding the market power issue playing a
5 factor in high California border prices.

6 So we will be following and responding
7 to articulate our concerns thoroughly in very
8 short order. So we'd just ask that you defer it
9 to incorporate, or at least consider those
10 comments.

11 Thank you.

12 ACTING CHAIRMAN MOORE: Thank you.

13 COMMISSIONER PERNELL: And you will have
14 a written response to the Committee in a
15 reasonable amount of time?

16 MS. HORNER: Yes, we will.

17 COMMISSIONER PERNELL: Thank you.

18 ACTING CHAIRMAN MOORE: Thank you. Is
19 there anyone else who'd like to address us on the
20 issue of the gas report?

21 For the record let me indicate that we
22 got a fax transmission from TURN, The Utility
23 Reform Network, signed by Marcel Hawlger, Staff
24 Attorney. And I will make sure that the Committee
25 sees this and that it gets the appropriate

1 attention it deserves in due course.

2 And with that, let me ask my colleagues,
3 I would appreciate it if you'd consider giving me
4 a little bit more time to incorporate these
5 comments, take them into account, and come back to
6 you with a modified version that reflects some of
7 the concerns that we've heard.

8 I had a discussion with the PUC
9 President yesterday, and understand some of her
10 concerns. I want to make sure that we address
11 those.

12 And to the other actors who have played
13 such an important part in getting us the data on
14 this. I want to make sure that this is a good
15 platform to be going forward with, and to tell you
16 that the kind of cooperation that we've been
17 getting from the different entities in the private
18 sector, it seems to me is indicative of a brighter
19 future, perhaps, than we might have had otherwise.

20 So this is a good thing and we need to
21 build on it, and make the report even sounder than
22 it is today. Make the data as current as we
23 possibly can.

24 So, with your indulgence I'd like to
25 entertain a motion to delay this.

1 COMMISSIONER PERNELL: Mr. Chairman, if
2 I may, I would move that we delay the report until
3 September 12th, or some future date -- scratch
4 that.

5 ACTING CHAIRMAN MOORE: Is there --

6 COMMISSIONER PERNELL: That we would
7 delay the report until the Committee is ready to
8 present it before the full Commission.

9 ACTING CHAIRMAN MOORE: I think it will
10 be ready to come back to you at the latest
11 September 12th. That's our target.

12 I accept the motion. Is there a second?

13 COMMISSIONER LAURIE: Second.

14 ACTING CHAIRMAN MOORE: Second by
15 Commissioner Laurie. Discussion on the motion?

16 All those in favor signify by saying
17 aye.

18 (Ayes.)

19 ACTING CHAIRMAN MOORE: Those opposed?
20 That motion carries.

21 COMMISSIONER LAURIE: I'd like to note,
22 Mr. Chairman and Mr. Larson, that September 12th
23 agenda, I think the notice has the meeting
24 starting at 1:00. That is going to be a 27-hour
25 business meeting.

1 So I'd ask you to look at that and get
2 perhaps a draft agenda out early so that the
3 Commissioners can properly prepare and adjust
4 their schedules accordingly.

5 COMMISSIONER PERNELL: Point well taken.

6 ACTING CHAIRMAN MOORE: Thank you. We
7 have Committee Oversight. Any reports of
8 Committees?

9 Chief Counsel. Counselor?

10 MR. CHAMBERLAIN: I have no report
11 today, thank you.

12 ACTING CHAIRMAN MOORE: Thank you, sir.
13 Executive Director, anything to report to us?

14 MR. LARSON: No, except that I'd like to
15 get together in the continuation of this meeting
16 to talk a little bit about -- not such a good
17 idea?

18 ACTING CHAIRMAN MOORE: Say that again?

19 MR. LARSON: I wanted to talk a little
20 bit about some of the numbers and some CPA
21 activity that's going to take place this week.

22 ACTING CHAIRMAN MOORE: That's the --

23 MR. LARSON: Would you prefer to do
24 it --

25 ACTING CHAIRMAN MOORE: -- not our

1 accountants, that's the Power Authority.

2 MR. LARSON: Yes. Would you prefer to
3 do that at some other --

4 ACTING CHAIRMAN MOORE: We may delay a
5 little bit and take a lunch break, and do it
6 immediately after that. I'll confer with my
7 colleagues.

8 But in any case we will adjourn to a
9 session which is available to public, since there
10 will be three of us, to attend, if they wish.

11 COMMISSIONER LAURIE: Mr. Chairman,
12 before you adjourn.

13 ACTING CHAIRMAN MOORE: I'm not quite
14 there yet, but --

15 COMMISSIONER LAURIE: That's fine. I
16 just want to offer comment before you adjourn.

17 ACTING CHAIRMAN MOORE: All right.
18 Public Adviser?

19 MS. MENDONCA: Good morning,
20 Commissioners Moore, Pernell and Commissioner
21 Laurie.

22 It's with a great deal of pleasure that
23 I introduce to you my new Staff Manager, Grace
24 Bosc, and she spells it with one "s" by the way.

25 Grace is a former Energy Commission

1 employee who is returning to the Public Adviser's
2 Office. She was here from 1991 to 1996, and I'm
3 just super-elated to have the talent and the fine
4 reputation that has preceded Grace to return to
5 me.

6 So, with that, I'd like to let her say
7 hello.

8 MS. BOSCH: Thank you. It's good to be
9 back. I recognize a lot of you. The only
10 Commissioner I recognize is Mr. Moore. But it's
11 good to be back, thank you. I'll do my best.

12 ACTING CHAIRMAN MOORE: Welcome back.

13 COMMISSIONER PERNELL: Welcome back.
14 Ms. Mendonca, does that complete your vacancies?
15 Did someone leave, or --

16 MS. MENDONCA: She is an addition to my
17 staff who will be managing and filling in for me
18 when I can't be there.

19 COMMISSIONER PERNELL: Good. Well,
20 welcome aboard.

21 ACTING CHAIRMAN MOORE: Anyone in the
22 public who has not spoken who would like to
23 address us?

24 Seeing none, Commissioner Laurie.

25 COMMISSIONER LAURIE: Thank you. Mr.

1 Chairman, at the last meeting I offered comment
2 about the issue relating to the consideration of
3 the contract between the PUC and the DWR regarding
4 delegation of rate setting responsibility.

5 I have had an opportunity to review
6 additional documentation in regards to that,
7 including the report summarized by Ms. Trachera.

8 And I understand that the Energy
9 Commission is not going to be taking a position on
10 that issue, and I respect that and understand it.

11 I'd just like to note, however,
12 personally that I have to express deep concern
13 about the bigger policy implications behind such
14 an action.

15 I understand that the State Treasurer is
16 suggesting that this is something that just needs
17 to be done in order to insure a revenue stream for
18 the proposed bonds that are being sold, but I
19 think utmost consideration must be given to, which
20 should always be a primary question of any
21 governmental decision, and that is is this good
22 government.

23 And I would suggest to you that
24 delegation of the ratemaking authority of the PUC,
25 which is what they are constitutionally created to

1 do, although one may argue that may or may not
2 constitutionally be mandated. Nevertheless, it is
3 clear through history and practice that that is
4 their job, that is the public perception of their
5 job.

6 The PUC ratemaking practice is one that
7 industry and all stakeholders have been accustomed
8 to.

9 The idea that lack of discretion might
10 be taken away, and that the public --

11 ACTING CHAIRMAN MOORE: That discretion
12 might be taken away.

13 COMMISSIONER LAURIE: Yes, thank you.
14 That discretion may be taken away, and that the
15 amount of scrutiny available for public
16 participation may be lessened, and that the public
17 might be bound to a set of rates, perhaps not in
18 perpetuity, but for a very long time, in order to
19 accommodate a bond sale today, I believe simply to
20 be bad government.

21 I'm not asking the Energy Commission to
22 take a position on this question. I simply offer
23 that for the record. Thank you, Mr. Chairman.

24 ACTING CHAIRMAN MOORE: Well, you know,
25 in response to that, because I think it's more

1 than just an interesting point, the time to have
2 taken a position on it was probably in the 12
3 seconds that the Legislature made available when
4 they were debating, and I use the term very
5 loosely, debating this during the special session.

6 And it goes back to the point that I was
7 making earlier about our process and our public
8 involvement, and the ability of the public to
9 understand, debate and offer an opinion about an
10 issue, especially one that is as weighty as this,
11 and as long-lived as this.

12 Because the implications of these bond
13 sales and the rates which will almost literally be
14 foisted on the Public Utilities Commission to
15 implement, without a lot of discretion, or perhaps
16 any discretion, it seems to me portends larger
17 issues than we've had to deal with in a long time.

18 The forum that was accorded for that was
19 a hastily drawn up set of hearings in a committee
20 chamber across the street, which were not at least
21 well attended in the public sense, not what we're
22 used to.

23 So, the blame, if it works to give any
24 blame, literally falls on the Legislature, I
25 think, on this. And if there's anything to be

1 said at the end of the day, it is that the cause
2 of good government was not, and continues not, to
3 be served by this kind of action.

4 And I guess it's one of those cases
5 where I'm glad I'm not a Commissioner across the
6 Bay who has to vote on this, because I think it
7 would cause me some difficulty.

8 Any other comments?

9 We are adjourned. And we will attend to
10 an informal meeting with the Executive Officer
11 after this. I don't know whether it will be after
12 our luncheon break or not, we'll decide that in a
13 few moments.

14 We're adjourned.

15 (Whereupon, at 12:10 p.m., the business
16 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 31st day of August, 2001.

VALORIE PHILLIPS

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