BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

HEARING ROOM A

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 19, 2001

10:00 a.m.

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

COMMISSIONERS PRESENT

William J. Keese, Chairman

Robert A. Laurie

Michal C. Moore

Robert Pernell

Arthur Rosenfeld

James Boyd, Ex Officio Member

STAFF PRESENT

Steve Larson, Executive Director

William Chamberlain, Chief Counsel

Garret Shean

Arlene Ichien

Bill Pennington

Rick Buell

Kerry Willis

Bob Eller

Kevin Kennedy

Robert Hudler

Martha Brook

John Butler

Philip Spartz

Irene Salazar

Dave Ashuckian

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

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

2 CHAIRMAN KEESE: Call this meeting of

3 the Energy Commission to order.

4 We'll say the pledge.

5 (Thereupon the Pledge of Allegiance

6 was recited in unison.)

7 CHAIRMAN KEESE: Thank you.

8 We postponed our last meeting, and we're

9 going to take up first items that were on that

10 agenda. Those items were noticed.

11 Item 2 will be the first issue, and that

12 is the Modesto Irrigation District Woodland II

13 project, Modesto Irrigation District.

14 Consideration of the possible adoption of the

15 Presiding Member's Proposed Decision in the 80

16 megawatt natural gas fired Modesto Irrigation

17 District Application for a Small Power Plant

18 Exemption.

19 Commissioner Moore, do you have a

20 recommendation?

21 COMMISSIONER MOORE: Yes. I'm going to

22 turn to Mr. Shean to give the summary of our

23 recommendations. But, in sum, I will tell you

24 that we do recommend that this go ahead, and that

25 it turned out to be one of those projects where

the cooperation with the local agencies was tremendous, and I can simply say that the working relationship between Staff and the Applicant and local government was as good as I've ever seen it.

So I'm -- I'm pleased to have been, in this case, possibly a not major part of this, and for that I recognize the Staff and Mr. Shean for the tremendous role that they've played.

Mr. Shean.

HEARING OFFICER SHEAN: Thank you, Commissioner.

Earlier this year the Modesto Irrigation District filed an Application for a Small Power Plant Exemption for their 80 megawatt combined cycle facility that will sit adjacent to its existing power plant on Woodland Avenue. They propose to have this up and running in two years, by the summer of 2002. The project not only includes the power train, but also additional transmission and gas -- natural gas pipeline upgrades.

Staff conducted an initial study, and issued a Negative Declaration. The public comments on it, as well as the Proposed Decision, have all been supportive. The community comments,

in my opinion, reflect public support for MID, and the job and services it has provided to the community. There were no adverse or negative comments.

I think -- I want to reiterate, but I won't take very long to do it -- my thanks to the Staff, who would be Susan Lee, who is the Aspen Environmental Group Project Manager, Sandra Fromm, Kerry Willis, and also to the MID people, Susan Strachan, who is their Environmental Project Manager, and Scott Stefan and Greg Salyer.

What we would ask, and there's a little bit of a legal requirement here, is to have you first adopt, if you choose to do so, the initial study and the proposed Negative Declaration, followed by the adoption of the Proposed Decision.

CHAIRMAN KEESE: Thank you.

COMMISSIONER MOORE: I don't know whether Staff has anything to add, Mr. Chairman, but I'd be prepared to move the initial study and recommendations in order to get this on the -- on the floor.

CHAIRMAN KEESE: Motion by Commissioner Moore.

COMMISSIONER ROSENFELD: Second.

1 CHAIRMAN KEESE: Second by Commissioner
2 Rosenfeld.
3 All in favor?
4 (Ayes.)
5 CHAIRMAN KEESE: Approved, four to
6 nothing.
7 COMMISSIONER LAURIE: Mr. Chairman, Mr.
8 Shean, I -- can you explain that? I -- are we
9 talking about the rule that you have to act on the
10 environmental documentation before you act on the
11 project? I don't understand what -- what you just
12 asked us to do.
13 HEARING OFFICER SHEAN: That's what I
14 was informed. It was an outgrowth of the Hanford
15 SPPE. What the Legal Office advised me at the
16 time was that that was the appropriate sequence,
17 and without having researched it any further,
18 since it's basically so easy to deal with, I
19 acceded to the request of the Legal Office and
20 suggested the sequencing of the motions.
21 COMMISSIONER LAURIE: Mr. Chamberlain,
22 any -- this is an SPPE project, and so we handle
23 the process differently?
24 CHIEF COUNSEL CHAMBERLAIN: I can't
25 recall ever discussing this issue. You know, it

1 may have been that the -- I don't know who you
2 talked to in the Legal --
3 HEARING OFFICER SHEAN: It was Caryn
4 Holmes.
5 CHIEF COUNSEL CHAMBERLAIN: Caryn
6 Holmes. Okay. I would just have to discuss it
7 with her, and advise you, if you're concerned
8 about --
9 CHAIRMAN KEESE: Do you see anything
10 wrong with the recommended procedures?
11 COMMISSIONER MOORE: Well, let me -- let
12 me just say that the reason I went along with it,
13 and we talked about this before in the -- in the
14 case, was just to make sure that we were very
15 clear that we had each element documented. I
16 think under normal circumstances, we simply
17 wouldn't have -- wouldn't have taken it up,
18 would've had it all inclusive. And so in this
19 case, with Mr. Shean's advice, what we've done is
20 to just try and make sure that we, in fact,
21 crossed every "t", dotted every "i". So if it
22 seems a little unusual, it's because under normal
23 circumstances this would be rolled into -- into
24 the rest. And that's the reason for -- for
25 parsing it, as it were.

COMMISSIONER LAURIE: That's fine. Thank you, Commissioner Moore.

CHAIRMAN KEESE: Okay. We have -- we have the first motion adopted. Commissioner Moore.

COMMISSIONER MOORE: Mr. Chairman, I'd like to move the Presiding Member's Proposed Decision for this project.

CHAIRMAN KEESE: Motion by Commissioner Moore.

COMMISSIONER ROSENFELD: Second.

CHAIRMAN KEESE: Second by Commissioner Rosenfeld.

Any further discussion?

All in favor.

COMMISSIONER MOORE: Is there public input on the question, Mr. Chairman?

CHAIRMAN KEESE: Is there any public input on this issue?

All in favor.

(Ayes.)

CHAIRMAN KEESE: Opposed?

Adopted, four to nothing.

Thank you.

Item 9 on that agenda, the previous

1 agenda, was the GWF Energy, LLC, Henrietta Peaker
2 Project. Commission consideration of the
3 Executive Director's data adequacy recommendation
4 for the GWF Energy, LLC, Henrietta Peaker Project
5 Application for Certification.
6 Staff has a recommendation.
7 MR. ELLER: Good morning, Commissioner.
8 Yes, we do. Bob Eller, for --
9 COMMISSIONER MOORE: Bob, you're going
10 to have to speak closer to that microphone.
11 MR. ELLER: Bob Eller, for Commission
12 Staff. I'm Project Manager for the GWF Henrietta
13 Peaker Project.
14 The project is a 91.4 megawatt simple
15 cycle natural gas fired power plant that will be
16 located west of the City of Lemoore in Kings
17 County. The application was submitted on August
18 the 27th. On September the 10th, the Executive
19 Director issued his recommendation to the
20 Commission. We found that the application was
21 inadequate in 11 areas for the 12-month process,
22 and eight areas for the four-month process.
23 For the 12-month process, they were
24 inadequate in the areas of Air Quality,
25 Alternatives, Biological Resources, Cultural

1 Resources, Land Use, Public Health,
2 Socioeconomics, Soil Resources, Traffic and
3 Transportation, Visual Resources, and Water
4 Resources.
5 For the four-month process, we found
6 that they were inadequate in the Air Quality,
7 Biological Resources, Land Use, Project Overview,
8 Public Health, Socioeconomics, Soil Resources, and
9 Water Resources.
10 Staff recommends that the Commission
11 adopt the Executive Director's recommendation and
12 find them inadequate, and adopt the deficiencies
13 Staff has cited.
14 CHAIRMAN KEESE: Applicant?
15 MR. WHEELER: Good morning,
16 Commissioners. My name is Doug Wheeler. I'm here
17 this morning representing GWF Energy, and the
18 Henrietta Peaker Project.
19 I would first like to thank Staff for
20 the very thorough and professional review of the
21 application submitted to this Commission, and
22 concur with the recommendation before you this
23 morning.
24 We have reviewed the issues raised by
25 Staff and are preparing the additional information

1 requested to complete the data adequacy review,
2 and expect to submit that information by Friday.
3 GWF is fully committed to construction
4 and commission of the Henrietta Peaker Project on
5 an aggressive development schedule to meet
6 California's critical energy needs for the summer
7 of 2002. We have entered into a contract with the
8 California Department of Water Resources that
9 calls for energy deliveries to begin in June of
10 2002.
11 Several important measures have been
12 taken to ensure that we can meet that schedule.
13 All the time critical components for the project,
14 including the gas turbines, air pollution control
15 systems, have been purchased. To date, we've
16 committed over $50 million to this project.
17 We are pulling the same experienced team
18 of engineers, consultants, and legal counsel that
19 you have worked with on the previous cases GWF has
20 brought before this Commission, which include URS,
21 Black and Veach, and Grattan and Galati.
22 We thank you for your consideration in
23 this matter and look forward to working closely
24 with your Staff to do all we can to accelerate the
25 project -- review of this project.

1 Thank you very much.
2 CHAIRMAN KEESE: Thank you.
3 Do we have any other -- any public
4 comment on this issue?
5 We have a Staff recommendation --
6 COMMISSIONER MOORE: Staff has a
7 recommendation, Mr. Chairman, and I'd move to
8 support the Executive Director's recommendation
9 for data inadequacy.
10 COMMISSIONER LAURIE: Second.
11 CHAIRMAN KEESE: Motion by Commissioner
12 Moore, second by Commissioner Laurie.
13 All in favor?
14 (Ayes.)
15 CHAIRMAN KEESE: Opposed?
16 Adopted, four to nothing.
17 Thank you. We are now moving to the
18 agenda -- that dispenses with the need to appoint
19 a committee for that case, Item 10.
20 We're now moving to the agenda for
21 September 19th, and I will note at this time that
22 we will take up Item 8, Power Plant Site
23 Certification Regulations, at 11:00 o'clock, when
24 Commissioner Pernell will be with us, joining us
25 by phone. He's out of state on government

business.

Item 1, Consent Calendar. Do I have a motion?

COMMISSIONER MOORE: Move Consent.

COMMISSIONER ROSENFELD: Second.

CHAIRMAN KEESE: Moved by Commissioner Moore, second by Commissioner Rosenfeld.

All in favor on the Consent Calendar?

(Ayes.)

CHAIRMAN KEESE: Opposed?

Adopted, four to nothing.

Item 2, Sunrise Power Project. This item has been moved to the October 3rd agenda.

Item 3, we will move that item over to the September 25th Business Meeting. We need -- we are meeting next Monday, on the 24th, to hear the Metcalf Siting Case. We will have a Commission meeting on the 25th. I understand that in order to move Items 3 and 4, which need a little more Staff work before we can take them up, that we do need a motion to move them to the agenda for November [sic] 25th.

COMMISSIONER MOORE: So move, Mr. Chairman.

COMMISSIONER ROSENFELD: Second.

1 CHAIRMAN KEESE: Moved by Commissioner
2 Moore, second by Commissioner Rosenfeld.
3 All in favor?
4 (Ayes.)
5 CHAIRMAN KEESE: Opposed?
6 Adopted, four to nothing. That item is
7 moved to next Tuesday.
8 Item 5. Spartan 1 Energy Center, San
9 Jose. Commission consideration of Executive
10 Director's data adequacy recommendation for the
11 Spartan 1 Energy Center, San Jose, Application for
12 Certification.
13 Good morning.
14 MR. KENNEDY: Good morning, Chairman and
15 Commissioners. My name is Kevin Kennedy, and I am
16 the Staff Project Manager for the Spartan 1 Energy
17 Center project.
18 This is a proposed 96 megawatt project,
19 simple cycle, a little bit south of downtown San
20 Jose, and on -- it was --the application was filed
21 for review under the six-month process on August
22 9th.
23 On September 5th, the Executive Director
24 filed a recommendation that the application as
25 filed be found not data adequate. We found --

1 Staff review found deficiencies in 15 of the
2 technical areas for the 12-month regulations, and
3 deficiencies in 10 areas for the six-month
4 regulations.
5 The deficiencies primarily, though not
6 entirely, had to do with the need for a new
7 interconnection study, and lack of information on
8 some of the linear facilities in a number of the
9 technical areas. At this point, Staff is not
10 certain when we are expecting -- when to expect
11 the supplement, because it will require a new
12 interconnection study from PG&E before the
13 supplement can be filed.
14 The areas that the application was found
15 inadequate in for the 12-month process included
16 Air Quality, Biological Resources, Cultural
17 Resources, Land Use, Noise, Paleontological
18 Resources, Traffic and Transportation,
19 Transmission System Engineering, Visual Resources,
20 and Water Resources.
21 The additional requirements for the six-
22 month process, Staff found the application was
23 deficient for Air Quality, Biological Resources,
24 Cultural Resources, Land Use, Project Overview,
25 Socioeconomics and Environmental Justice, Traffic

1 and Transportation, Transmission Systems
2 Engineering, Visual Resources, and Water
3 Resources.
4 Staff recommends that the Commissioners
5 adopt the Executive Director's recommendation that
6 the application be found data inadequate at this
7 point.
8 CHAIRMAN KEESE: Thank you. Were you
9 expressing an opinion there regarding six and
10 twelve month?
11 MR. KENNEDY: In terms of which process
12 the -- the application should be considered under?
13 CHAIRMAN KEESE: Yes.
14 MR. KENNEDY: Essentially, the request
15 came in for the six-month. At this point, it's
16 not adequate under either. Once we see the
17 completed application we'll be able to make a
18 recommendation whether to move it into the six-
19 month process.
20 CHAIRMAN KEESE: Thank you. I just --
21 Applicant.
22 MR. DINAPOLI: Thank you. Good morning,
23 Commissioners. I'm with Spartan Power. My name
24 is Jason Dinapoli.
25 I first want to thank Staff for the hard

work they've done in the Spartan 1 Energy Center, and we concur with their --

CHAIRMAN KEESE: You've got to -- you've got to get just about an inch from that speaker in order to make it operate.

MR. DINAPOLI: Is that better?

CHAIRMAN KEESE: You've got to -- you've got to get real --

MR. DINAPOLI: Real close. Okay. Thank you.

CHAIRMAN KEESE: -- real close.

MR. DINAPOLI: Thank you.

I want to thank Staff for the hard work they've done on the Spartan 1 Energy Center. We have received their -- their list of inadequacies and concur with the list. We are working to -- to provide that information, targeting a two week timeframe to have that information for Staff.

CHAIRMAN KEESE: Thank you. The interconnection study in two weeks, is that --

MR. KENNEDY: The -- the interconnection study is underway in -- we're working with PG&E. They're working very hard on the study, so we're hopeful that they will have that completed very shortly.

1 CHAIRMAN KEESE: Thank you.
2 Do we have a motion?
3 COMMISSIONER MOORE: I move the
4 Executive Director's recommendation.
5 COMMISSIONER ROSENFELD: Second.
6 CHAIRMAN KEESE: Motion, Commissioner
7 Moore. Second, Commissioner Rosenfeld.
8 All in favor?
9 (Ayes.)
10 CHAIRMAN KEESE: Opposed?
11 Adopted, four to nothing.
12 Thank you. That will dispense with Item
13 6, need for a committee.
14 Item 7. Residential Building Energy
15 Efficiency Standards. Commission consideration
16 and possible approval of the public domain
17 computer program CALRES2, Version 1.4, effective
18 September 19th, 2001, for use in complying with
19 the 2001 AB 970 Residential Building Efficiency
20 Standards. Also effective September 19, 2001,
21 decertification and rescission of approval of
22 CALRES2, Version 1.35, for use in complying with
23 the Residential Building Efficiency Standards.
24 Could we get a brief explanation of what
25 we're doing here, please?

1 MR. HUDLER: Yes. Good morning,
2 Commissioners. My name is Rob Hudler. I'm with
3 the Efficiency Standards Office.
4 Under the Energy Efficiency Standards,
5 there are requirements for the development and
6 review of computer programs to do analysis for
7 compliance with the building standards. The
8 reporting and approval process includes a public
9 domain computer program, which is CALRES2, in its
10 various versions.
11 Staff has prepared CALRES2 in the
12 current new version 1.4, for use with the current
13 standards approved on June 1st, and we are seeking
14 approval of that program and decertification of
15 the older version.
16 COMMISSIONER ROSENFELD: I move the
17 adoption of --
18 CHAIRMAN KEESE: We have a motion by
19 Commissioner Rosenfeld.
20 COMMISSIONER LAURIE: Second.
21 CHAIRMAN KEESE: Second, by Commissioner
22 Laurie.
23 Any further comments?
24 All in favor?
25 (Ayes.)

CHAIRMAN KEESE: Opposed?

Adopted, four to nothing. Thank you.

Item 8, we will take up at 11:00 o'clock.

Item 9. Berkeley -- Lawrence Berkeley National Laboratory. Possible approval of Contract 500-01-002 for $65,000 to test new duct sealant products and continue the development of the ASTM standard for duct sealant longevity testing.

MS. BROOK: Good morning.

CHAIRMAN KEESE: Good morning.

MS. BROOK: My name is Martha Brook. I'm with the PIER Buildings program, and Energy Commission Staff.

The purpose of this interagency agreement is to continue laboratory testing and field research on duct sealing products. This will ultimately lead and support ASTM standard for performance testing of the durability of duct sealants. Once a national testing standard is in place, California's Title 24 codes can be improved to refer to this performance standard.

A more immediate use of this work will be to test new, advanced duct sealant products

being introduced in the California homebuilding markets. This will confirm whether or not these products meet the recently revised Title 24 code requirements for duct sealing. And from a research perspective, to improve future products by understanding how current duct sealing methods fail over time.

Are there any questions?

COMMISSIONER MOORE: Martha, I have one. Will this take us into the zone of understanding the adhesives used on cloth versus vinyl duct tape?

MS. BROOK: Yes.

COMMISSIONER MOORE: And how long would you expect before we would get some sense of what works and what doesn't, just in terms of duct tape, not talking about mastics or -- or any other --

MS. BROOK: Right.

COMMISSIONER MOORE: -- snap-together fittings.

MS. BROOK: I think right now we -- we know what doesn't work. And the commercial product called "duct tape" doesn't work. Those -- the manufacturers of the commercial products are

1 actually coming up with new adhesives, tape based
2 adhesive, with new sticking on the back, and those
3 are the products that we would like to test with
4 this -- with this interagency agreement with the
5 National Lab.
6 COMMISSIONER MOORE: And how long before
7 you expect first results of that to be coming out?
8 MS. BROOK: I would think this calendar
9 year. So if we start the contract in a couple
10 weeks we can -- and the products come in, they
11 actually haven't -- haven't come in yet. Once
12 they do, within 120 days I think is the testing
13 period, I think. But I'm not sure.
14 COMMISSIONER MOORE: Thank you. And
15 Commissioner Rosenfeld, I -- I'm assuming that
16 once this does start to come in you'll be able to
17 take advantage of this and -- and resolve the
18 dilemma that we were faced with a while back, when
19 we were being lobbied by some different
20 manufacturers of this to get a -- a resolution of
21 whether or not they were going to be accredited
22 within the market.
23 COMMISSIONER ROSENFELD: No. This is --
24 this is -- really scandalously badly on this
25 situation, and I think it's a great contract. And

1 I move that we --
2 CHAIRMAN KEESE: Let me -- let me ask --
3 we have a motion, Commissioner Rosenfeld. Let me
4 ask, do we have anybody in the audience to speak
5 to this issue?
6 We have a motion by Commissioner
7 Rosenfeld. Do we --
8 COMMISSIONER MOORE: Second.
9 CHAIRMAN KEESE: Second, Commissioner
10 Moore.
11 I do have a question. I would like to
12 be -- I would like to understand where we are on
13 duct tape. In our regs that we adopted, did we
14 not adopt that duct tape didn't meet the standard?
15 MS. BROOK: That's right. And --
16 CHAIRMAN KEESE: As of what date?
17 MS. BROOK: I don't know the effective
18 date of the standards. I think Valerie Hall just
19 left, but --
20 CHAIRMAN KEESE: Here comes Bill
21 Pennington.
22 MS. BROOK: Thanks, Bill.
23 MR. PENNINGTON: The standards went into
24 effect on June 1st. So --
25 CHAIRMAN KEESE: Duct tape doesn't meet

1 the standard.
2 MR. PENNINGTON: Yeah.
3 CHAIRMAN KEESE: How are we going to
4 test --
5 MR. PENNINGTON: That --
6 CHAIRMAN KEESE: How are we going to
7 test duct tape in the marketplace when it doesn't
8 meet the standard, from now on?
9 MR. PENNINGTON: What -- what has been
10 proposed by the major manufacturers of duct tape,
11 in particular Tyco, they're proposing to introduce
12 a superior product duct tape into the market, and
13 have us test it to make ourselves confident that
14 it meets durability requirements.
15 So they're -- they're proposing to put
16 in -- you know, the standards prohibit the use of
17 fabric back rubber adhesive duct tape. They're
18 proposing to introduce a product that has a butyl
19 adhesive or mastic adhesive on a fabric backing.
20 And that should be a superior product, but we need
21 to test it.
22 CHAIRMAN KEESE: Okay. And it --
23 MR. PENNINGTON: So this contract will
24 help us do that.
25 CHAIRMAN KEESE: And will it meet our

1 standards?
2 MR. PENNINGTON: At that point we will
3 clarify that that meets our standards.
4 CHAIRMAN KEESE: So -- so the first
5 applications of this will be a pilot project, or a
6 test project, or something like that? Is that --
7 MR. PENNINGTON: We're expecting that
8 Tyco -- actually, Tyco has already had some
9 contact with LBNL about trying to get this new
10 product to them for testing. And so this will
11 facilitate testing that product.
12 EX OFFICIO MEMBER BOYD: Mr. Chairman.
13 CHAIRMAN KEESE: Mr. Boyd.
14 EX OFFICIO MEMBER BOYD: Can those of us
15 sitting up here volunteer to be guinea pigs? As a
16 homeowner of two homes in the last several years
17 where I have dealt with acres, literally, of
18 hanging, ineffective duct tape on the ducts under
19 my house, at one home, and in the basement of the
20 present home, I -- I am anxiously awaiting the
21 outcome of -- of this activity, and would
22 volunteer my ducts for retaping anytime.
23 (Laughter.)
24 COMMISSIONER ROSENFELD: Mr. Boyd, your
25 -- your volunteering is great, but the -- the

1 Berkeley test setup accelerates all this aging by
2 about tenfold, so --
3 EX OFFICIO BOYD: It was somewhat a
4 facetious remark, Mr. Rosenfeld.
5 CHAIRMAN KEESE: Thank you. We have a
6 motion -- excuse me. We have a motion and a
7 second.
8 All in favor.
9 (Ayes.)
10 CHAIRMAN KEESE: Opposed?
11 Adopted, four to nothing.
12 EX OFFICIO MEMBER BOYD: Duct tape does
13 work on broken water hoses in your automobile for
14 a little while.
15 (Laughter.)
16 EX OFFICIO MEMBER BOYD: I wouldn't go
17 anywhere without a roll in my trunk, but not in my
18 attic or my basement.
19 CHAIRMAN KEESE: Item 10. State
20 Controller's Office. Possible approval of
21 Interagency Agreement 200-98-012 Amendment 1, for
22 $300,000 to provide a three-year time extension
23 and monetary support to the PIER Audit Program to
24 the year 2004.
25 MR. BUTLER: Good morning. My name is

1 John Butler. I'm the manager of the Grants and
2 Loans Office.
3 This request is a continuation of an
4 existing interagency agreement with the State
5 Controller's Office to provide auditing services
6 and support for the PIER Audit Program. The PIER
7 Audit Program was developed three years ago as
8 part of the contract streamlining effort.
9 The Audit Program conducts onsite
10 financial assessments of PIER contractors to
11 ensure adequate documentation of project expenses
12 is maintained, and that PIER contractors comply
13 with administrative requirements of contracts.
14 Training and guidance is also offered to assist
15 contractors on complying with the administrative
16 requirements.
17 This extension and augmentation extends
18 the interagency agreement for a period of three
19 years, and provides $100,000 per year of funding.
20 The request is -- or your approval is requested.
21 CHAIRMAN KEESE: Thank you.
22 COMMISSIONER ROSENFELD: I so move.
23 CHAIRMAN KEESE: Motion by Commissioner
24 Rosenfeld.
25 COMMISSIONER LAURIE: Second.

1 CHAIRMAN KEESE: Second by Commissioner
2 Laurie.
3 Any further conversation?
4 All in support?
5 (Ayes.)
6 CHAIRMAN KEESE: Opposed?
7 Adopted, four to nothing. Thank you.
8 Item 11. UC Regents Center for the
9 Built Environment. Possible approval of
10 Interagency Agreement 500-01-001 for $52,500 for a
11 PIER Buildings Area Center.
12 A little explanation, please.
13 MR. SPARTZ: Good morning. Yes. My
14 name is Philip Spartz. I'm the Contract Manager
15 on the PIER Buildings team.
16 And our request this morning is for
17 approval of a partnership with the University of
18 California's inter-industry university research
19 cooperative, called the Center for the Built
20 Environment. Their work is with cutting edge
21 building technologies, and this -- we've just
22 completed a contract with them, received some
23 excellent results, and would request that you
24 would consider approving this new partnership.
25 CHAIRMAN KEESE: Thank you.

COMMISSIONER ROSENFELD: Move the agreement.

CHAIRMAN KEESE: Motion by Commissioner Rosenfeld.

COMMISSIONER LAURIE: Second.

CHAIRMAN KEESE: Second by Commissioner Laurie.

Any further questions?

All in favor?

(Ayes.)

CHAIRMAN KEESE: Opposed?

Adopted, four to nothing. Thank you.

Item 12. City of San Diego. Possible approval of Contract 700-99-017, Amendment 1, to extent the PLACE3S Mid-City Technical Development, Phase Two contract by six months to allow the project to complete the required testing and better coordinate the related ongoing work.

COMMISSIONER MOORE: Mr. Chairman, I notice that Nancy's stepped out of the room.

The PLACES program is something that we've been supporting as long as I've been at the Commission, and in terms of its relationship to all the other programs that we run in terms of energy efficiency and transportation efficiency,

1 and land use that in turn will support more energy
2 use efficiency just generally throughout the
3 state, it seems to me we can't do any better than
4 to support and expand the PLACES program. And I
5 hope that, in fact, in future years we'll see more
6 staff work, and that we'll its application in
7 other cities, other than San Diego, throughout the
8 state.
9 Certainly, areas in the Central Valley
10 could use this, the fastest growing region in the
11 state. And I hope that we take steps to move it
12 into those regions, and I would be pleased to move
13 for approval.
14 COMMISSIONER LAURIE: Mr. Chairman, I
15 fully support Commissioner Moore's comments, and
16 I'm pleased to second the motion.
17 CHAIRMAN KEESE: Motion by Commissioner
18 Moore, second by Commissioner Laurie.
19 This is a -- this is a time extension.
20 Is anybody familiar, do we need a -- are we going
21 to see a re-funding of this coming after this?
22 COMMISSIONER MOORE: I believe that we
23 will see a request for re-funding of this in the
24 near term -- in the near future, sorry. But not
25 in this case. Not in today's motion.

1 CHAIRMAN KEESE: Thank you.
2 All in favor?
3 (Ayes.)
4 CHAIRMAN KEESE: Opposed?
5 Adopted, four to nothing. This is --
6 this is a good program. I'm very supportive of
7 it.
8 Item 13. Advanced Technology and
9 Efficient Gasoline Fuel Vehicle Incentive Program.
10 Item A, Toyota Motor Sales, $2 million. Item B is
11 Ford Motor Company, $2 million, and Item C is
12 American Honda Motor Company, $2 million, to
13 provide incentives for efficient gasoline and
14 alternative fuel vehicles and information to
15 private individuals, fleets, and dealers.
16 MS. SALAZAR: Good morning, Mr.
17 Chairman, Commissioners.
18 EX OFFICIO MEMBER BOYD: Mr. Chairman --
19 CHAIRMAN KEESE: Mr. Boyd.
20 EX OFFICIO MEMBER BOYD: No. Let me
21 hear the Staff's --
22 CHAIRMAN KEESE: Okay, go ahead.
23 MS. SALAZAR: Sorry. I am Irene
24 Salazar, and I am your Staff in the Transportation
25 Technology Office.

1 This is -- I am the Contract Manager for
2 the Vehicle Incentive Programs, and this is a
3 request for approval to contract with American
4 Honda, Ford Motor, and Toyota Motor Sales to
5 provide incentives for efficient fuel and
6 alternative fuel vehicles, and also provide
7 information to private individuals and fleets, as
8 well as dealerships.
9 Up to $1,000 incentives for efficient
10 gasoline vehicle and up to $3,000 for dedicated
11 alternative fuel vehicles would be provided to
12 reduce the price of these vehicles. The
13 automakers will provide a minimum of $50 per
14 vehicle in kind outreach information and other
15 purchase incentives to dealers and customers to
16 introduce the program.
17 In addition, administration and
18 reimbursement of these incentives will be provided
19 by the contractors to ensure that customers do
20 receive their incentives upon completion of all
21 purchase or lease documents related to the
22 vehicle. Funding for this program is from PVEA
23 Budget Act of 2000. The term of these contracts
24 will be a three-year term, hopefully starting
25 September 19th to March 30th of 2004.

1 Also, air districts have agreed to join
2 the Energy Commission and will be providing
3 information in addition to contribute additional
4 funding towards this program.
5 CHAIRMAN KEESE: Thank you.
6 COMMISSIONER MOORE: Mr. Chairman, this
7 -- this matter has come before the Fuels
8 Committee, but for the benefit of the other
9 Commissioners, it seems to me that we ought to
10 discuss this just a little bit and -- and --
11 CHAIRMAN KEESE: Yes. Let me ask, do we
12 have any spokesperson in the audience who's going
13 to speak to this issue?
14 Commissioner Moore, would you like to
15 characterize Mr. Modisette's --
16 COMMISSIONER MOORE: Well, I'm -- Mr.
17 Modisette has communicated with us, and I think in
18 a really productive way he's asked the question,
19 are we not buying things that -- are we not, in
20 effect, giving some of this incentive money back
21 to people who have already made a purchase.
22 Aren't we failing to fully fund the forward market
23 and influence that, as opposed to just
24 backstopping what we've already done.
25 And I think it's a fair criticism of --

of the program, and worthy of some debate. What we're trying to accomplish here, and what we I think can look back on as already having accomplished are worthy of at least restating, so maybe I can ask Dave to comment on this a little bit, and just outline for the Commissioners where we've been, and what it is philosophically we hope to accomplish by this, and what evidence we have to suggest that by reinforcing the choice that consumers have already made, we in fact influence the forward market.

MR. ASHUCKIAN: Sure. Thank you very much, Commissioner Moore.

In fact, the Energy Commission and the state, in general, has provided incentives for zero emission vehicles for a number of years now, and through that program we decided that we need to expand incentives to other advanced technology vehicles, including gasoline vehicles that provide very similar benefits towards not only clean emissions, but also energy dependence.

What we have identified was that we've taken a look at the existing market and find out which vehicles are offered to consumers that do provide the most significant incentives. And what

we've done with this program is identified what we call the best of the best, vehicles available today that offer the -- the most clean emissions, as well as provide the biggest opportunity for reducing our demand for gasoline.

Now, we have conducted market -- consumer market focus groups on these advanced technologies, and we find that actual -- the average consumer is really not interested in purchasing an additional -- paying for the additional cost of these vehicles. Right now these hybrid vehicles that we're talking about, and the dedicated natural gas vehicles, cost between four and $6,000 more than a comparable vehicle of similar class and utility. So they've indicated that they're not willing to pay that kind of premium for these vehicles without some added incentive or benefits.

The purpose of this program is to not only make them interested, but continue to -- to build on the momentum that the market has placed on energy efficiency, to make sure that the manufacturers are -- are aware that there is a significant market for this.

So, in answer to your question, we

1 realize that there are some -- there's some --
2 some demand for this. But right now, for the
3 manufacturers' concern, the numbers of vehicles
4 that are being sold today are not significant
5 enough for them to actually change their
6 manufacturing procedure or processes, or determine
7 to make more -- more vehicles.
8 We want to make sure that this program
9 basically allows these efficient products to go
10 beyond the early adopter stage and get into the
11 mainstream markets.
12 CHAIRMAN KEESE: Thank you. And if my
13 voice holds out I will try to say something here.
14 The -- the controversy, or the -- the
15 balancing is between funding free riders who
16 would've made the decision anyway, versus a policy
17 of funding only those products that can't make it
18 in the marketplace. And -- and you can look at
19 this issue from either one of those perspectives
20 and -- and try to weigh it.
21 One of the important parts we have
22 placed in here is a study of the impact of free
23 riders in this marketplace, and I think all in all
24 we have quite an excellent program going forward
25 here.

1 EX OFFICIO MEMBER BOYD: Mr. Chairman.
2 CHAIRMAN KEESE: Mr. Boyd.
3 EX OFFICIO MEMBER BOYD: Those who know
4 my background may be puzzled by this question, but
5 I -- I, too, am a little concerned about, in these
6 days of really scarce monetary resources,
7 investing in a program where the current -- what
8 you read in the media of late is these vehicles
9 are flying off the dealers' lots, or that all that
10 have -- that are going to be built will be sold
11 quite easily. So I, too, wonder what are we
12 getting for the investment.
13 Are we able to somehow or another
14 leverage this in a way that the manufacturers will
15 produce more? I mean, I -- I agree with
16 everything that Staff has said about what the
17 purpose of these kinds of programs are, and -- and
18 join all of you in saying we want vehicles like
19 this in mass quantities on the highways. But I do
20 wonder if we're -- if we're able to really
21 influence this, or if the, as you stated, the free
22 rider issue is getting in the way.
23 If we could somehow or another guarantee
24 ourselves that -- that the demand will be so
25 significant that the manufacturers will increase

1 their quotas, then -- then I would feel very good
2 about it. If we are just going to help people who
3 seem to be willing to pay the extra dollars, if I
4 believe what I read in the media, and I'd like the
5 Staff to -- to correct that, then these things,
6 you know, the inference is they're flying off the
7 lots and there'll be no trouble selling the
8 vehicles. And -- and the people who are buying
9 them have no reservation about paying the extra
10 amount.
11 What I'd like to see is some way of
12 getting the, you know, the quotas that the
13 manufacturers will build increased somehow,
14 through added incentives and what have you. I
15 just wondered if Staff had any comments on that.
16 MR. ASHUCKIAN: That is one of the
17 reasons why we are partnering with the
18 manufacturers in this program. They, too, are
19 interested in determining what the true market is
20 for these vehicles, and, in fact, haven't
21 increased production of those vehicles because
22 they're not sure how -- how long this kind of
23 demand is going to last.
24 We do know that there's some plans for
25 potential expansion, that these kinds of programs

that show support from -- from California are giving them the right messages that -- that they're -- that they could actually increase production with additional support.

In regard to what the actual direct benefits are, the most sought after vehicle today is the -- is the Toyota Prius. That vehicle is only available on a special order basis nationwide. They do not bring vehicles to California. It is only brought to California once a purchase has been made.

We believe that by offering incentives here in California, we can actually increase the number of those vehicles available to California, because every -- every purchase, every product made will be brought to California rather than brought to another state. So we actually do think that even though it's a long term market transformation program, we still get direct benefits by actually increasing the number of vehicles in California today.

EX OFFICIO MEMBER: I infer, from what you said, that -- that if there's an order, they'll build it. Is that an unlimited commitment on their part, or do they have a cap of some --

1 MR. ASHUCKIAN: What -- they've had an
2 annual production quota, although they have
3 indicated that they're willing to increase
4 production if the market will warrant it. Toyota
5 has, again, the greatest demand. They've
6 indicated that they have -- they are committed to
7 increase production to -- from what's currently
8 today about -- about 12,000 a year, up to 300,000
9 by 2005, if, in fact, the market will -- will bear
10 that kind of demand.
11 COMMISSIONER ROSENFELD: Dave --
12 CHAIRMAN KEESE: Commissioner Rosenfeld.
13 COMMISSIONER ROSENFELD: -- I have a
14 question for you, too.
15 I'm very sympathetic to the idea of
16 trying to see that sales don't sag. Have you had
17 any discussion maybe of approving this money, but
18 then holding on to it, and if sales do start to
19 sag, use it to fill the breach, but if sales just
20 keep mounting, then we could use it for something
21 more effective.
22 MR. ASHUCKIAN: Exactly. Actually,
23 these contracts are designed, if you actually go
24 to the language, they're designed to provide up to
25 $1,000. We actually don't expect to just have a

1 flat out program to provide a fixed amount until
2 that money is gone. And, in fact, we're going to
3 be negotiating the actual incentive amount with --
4 with the manufacturers, depending on the product
5 availability, depending on the timing.
6 So -- so if, in fact, we find that --
7 that the program is -- or the incentive money is
8 -- is exuberantly successful, we can actually
9 reduce the amount, or change the program
10 altogether. And it's giving us the authority to
11 -- to contract with them, essentially.
12 CHAIRMAN KEESE: Thank you.
13 Do we have a motion on this?
14 COMMISSIONER MOORE: Mr. Chairman, I
15 move for approval.
16 COMMISSIONER ROSENFELD: Second.
17 CHAIRMAN KEESE: Motion by Commissioner
18 Moore. Second by Commissioner Rosenfeld.
19 Any further comments?
20 All in favor?
21 (Ayes.)
22 CHAIRMAN KEESE: Opposed?
23 Adopted, four to nothing.
24 COMMISSIONER MOORE: And I might just
25 add that we do expect to come back to the

1 Commission with a report on absorption rates, and
2 make this a regular item. I know that the Fuels
3 Committee will be interested in what the
4 penetration is, and we'll be reporting back to you
5 on the progress that we're making in -- in this.
6 Clearly, it's a next generation of trying to make
7 sure that more efficient vehicles get into the
8 fleet. And it represents a maturation of opinion
9 on the part of all the people involved. That's
10 us, the Air Board, manufacturers.
11 So this is an important step. It should
12 be seen for -- for its exterior relations, as --
13 as well.
14 MR. ASHUCKIAN: Thank you very much,
15 Commissioners.
16 MS. SALAZAR: Thank you.
17 CHAIRMAN KEESE: Thank you.
18 We have no minutes here. Do we have
19 anything under Commission Committee and Oversight?
20 COMMISSIONER LAURIE: Yes, Mr. Chairman.
21 CHAIRMAN KEESE: Commissioner Laurie.
22 COMMISSIONER LAURIE: This Commission,
23 the Commissioners, for a one-year period between
24 three and four years ago, spent a great deal of
25 its time resources in examining its functions.

1 And during that same period, we spent a
2 significant amount of time talking about the
3 administrative functioning of this Commission.
4 And as part of that process, we
5 developed protocols and this Commission reached
6 agreement as to those protocols. And those
7 protocols related to the responsibilities of
8 designated elements of this Commission, including
9 the responsibilities of the Commission as a body,
10 the responsibilities of individual Commissioners,
11 the responsibility of the Chairman, the
12 responsibility of Committee members, Presiding
13 Members, Second Members; the responsibilities of
14 the Executive Director, vis-a-vis all the above,
15 the responsibility of Staff vis-a-vis all the
16 above. And there was concurrence as to that, Mr.
17 Chairman.
18 It has now been over three years since
19 that agreement was reached. Since that time we
20 have had a new Executive Director, and two new
21 Commissioners take office. I think it is
22 important to the functioning of this Commission,
23 Mr. Chairman, to revisit those issues. I think
24 the agreement reached has basically disintegrated,
25 and must be re-examined so that responsibility

1 division of this agency is very clear.
2 I would thus request that we agendize
3 the subject for an afternoon meeting, like we did
4 over three years ago, to revisit the issue. And I
5 will be making that request, Mr. Chairman.
6 COMMISSIONER MOORE: Actually, you know,
7 Mr. Chairman, just on that note, it seems to me
8 that although Commissioner Laurie's pointing out
9 this item in an extraordinary context, it's
10 reasonable to assume that the Commission ought to
11 revisit this on a periodic basis, in any case.
12 There ought to be a reaffirmation of the rules if
13 the replacement of Commissioners happens on a
14 regular or routinized basis, and there'll be new
15 faces at least periodically.
16 And frankly, that kind of a forum to
17 which Commissioner Laurie is referring is a really
18 good way to establish what the protocols are, who
19 has responsibility in certain circumstances,
20 whether they're extraordinary or routine. And it
21 seems to me it's -- it's a great forum to have for
22 interaction. In spite of some of the frustration
23 involved in going through those endless meetings
24 of the strategic planning process, some of them
25 prior to Commissioner Laurie coming on board, and

1 certainly prior to Commissioner Rosenfeld and
2 Commissioner Pernell coming on board --
3 COMMISSIONER LAURIE: I have to tell
4 you, however, Commissioner Moore, there's high
5 entertainment value in watching you kicking and
6 screaming to a routine conclusion.
7 COMMISSIONER MOORE: I suppose. And I
8 realize that -- that part of my job is to provide
9 that entertainment value.
10 But I -- it seems to me that in spite of
11 that, this is -- this is a tremendous opportunity
12 to discuss the roles of the Commissioners and the
13 roles of Staff, and -- and I hope that we do see
14 that on an agenda. We can certainly make time for
15 it, and I think we'll all benefit from it. So I
16 -- I hope that that takes place prior to, oh, say
17 January 6th of next year.
18 CHAIRMAN KEESE: Thank you, Commissioner
19 Moore. Thank you, Commissioner Laurie, for the
20 suggestion. I think it's extremely appropriate.
21 The -- the world of the Energy
22 Commission has certainly changed in the two years
23 or three years since we adopted our rules, and
24 we're -- we're dealing with the subject of one
25 siting every six months, versus six siting cases

1 every month, which on occasion we've been dealing
2 with. So I think it's an extremely important
3 point. I think it's -- it's well taken. We've
4 all struggled and worked here this year in -- in
5 what could almost be called a crisis mode, time
6 and again, not even being able to abide by our
7 normal procedures in the case of our -- the moneys
8 that Commissioner Pernell's Efficiency Committee
9 is putting out without bringing them even to the
10 Commission.
11 So I think it's very appropriate, and I
12 would suggest that Staff look at an appropriate
13 time. I think the fall here is going to be the
14 time when we'll have to look at these issues like
15 this. So I will ask Staff to come up with a
16 recommendation for that.
17 I would also respond to a --
18 COMMISSIONER LAURIE: First part of
19 November, Mr. Larson.
20 CHAIRMAN KEESE: The -- additionally, I
21 -- Commissioner Laurie, you've brought to the
22 Commissioners' attention a code section that has
23 been in the Warren-Alquist Act since its adoption,
24 I believe in 1975, which suggests that when we're
25 in an emergency siting process, that we should be

1 issuing reports on a 60 day basis regarding those
2 -- regarding the process, and making
3 recommendations as to its continuation.
4 I think your letter, which went
5 privately to the Commissioners, is very well
6 taken. And I will ask Staff to prepare such a
7 draft document for adoption by the Commission for
8 the Commission to send to the appropriate bodies.
9 We'll need some clarification from counsel. The
10 time period is a 60 day period. So I'd like to
11 find out whether we're supposed to issue this
12 report after each emergency activity, or whether
13 we're supposed to do is once --
14 EXECUTIVE DIRECTOR LARSON: Let me --
15 let me respond. Given this --
16 CHAIRMAN KEESE: Mr. Larson.
17 COMMISSIONER MOORE: Your microphone's
18 not on, Steve, I don't think.
19 EXECUTIVE DIRECTOR LARSON: -- given
20 this provision, we -- actually, when it was first
21 -- when we first entered the emergency under the
22 Governor's Executive Orders, we were aware of this
23 provision and decided that there were so many
24 projects coming along under the emergency
25 provisions that it made sense at some point when

1 we could, by -- we thought the summer, because the
2 -- the emergency declarations were aimed at the
3 summer, and so much was happening, that at the end
4 of that it would make sense to come in with sort
5 of a summary that this is -- this is where we
6 went, and -- and really to use it as sort of a
7 futures document, also, you know, anticipating
8 that it would go on, that it wasn't over at the
9 end of the first summer, that might give some
10 guidance in terms of the future.
11 Also, we've been requested by -- by the
12 generation group to provide a summary of this
13 sort, and we're in the process of preparing that
14 now, and we hope to have something to you by the
15 end of the month.
16 COMMISSIONER MOORE: Mr. Chairman --
17 CHAIRMAN KEESE: Thank you.
18 Commissioner Moore.
19 COMMISSIONER MOORE: -- before you get
20 the clarification that you're seeking from
21 counsel, let me refer back to an item that I
22 raised, and I -- I trust there's been enough time
23 elapsed now that I can ask it again.
24 And that is, with regard to the
25 emergency period and the Governor's declaration of

1 an emergency, what is the life span of such a
2 declaration, or is -- is that known, and under
3 what authority does the Executive Order continue,
4 or in some way or manner extinguish itself. And
5 what is our relationship or our project
6 relationship to that, if it's not renewed over
7 time.
8 CHIEF COUNSEL CHAMBERLAIN: Which
9 question shall I address first?
10 COMMISSIONER MOORE: Well, is it -- are
11 we still in a state of emergency, and does the
12 Executive Order have any currency at this time?
13 CHIEF COUNSEL CHAMBERLAIN: I have -- I
14 have prepared a memo at your request on that
15 question. I prepared it under the attorney/client
16 privilege --
17 CHAIRMAN KEESE: Let me -- let me --
18 we're going to get a memo, I understand.
19 CHIEF COUNSEL CHAMBERLAIN: I'm get --
20 I'm ready to give it to you right now.
21 CHAIRMAN KEESE: Okay. That's -- that's
22 fine. I was going to give you the short version
23 and see if you concurred with it, but go ahead.
24 CHIEF COUNSEL CHAMBERLAIN: Yes. Well,
25 all right.

1 COMMISSIONER MOORE: Well, perhaps we --
2 you can answer the question outside the
3 attorney/client privilege zone, and just give us
4 some general direction as to --
5 CHAIRMAN KEESE: Let me -- let me just
6 ask the question, Commissioner Moore, and see if
7 this simplifies it.
8 The Governor has declared a state of
9 emergency. And as I understand it, the Governor
10 -- it will last until the Governor undeclares it,
11 or there are provisions under which the
12 legislature can do it.
13 One of the houses of the legislature did
14 adopt a resolution to undo it, the other house did
15 not. It stands. The Governor has not taken an
16 action to undo it. It stands. And this
17 Commission doesn't have an authority to go beyond
18 what the Governor has done in declaring an
19 emergency.
20 Is that --
21 CHIEF COUNSEL CHAMBERLAIN: I believe
22 that's -- that's basically accurate. In addition,
23 the -- the Executive Orders in question all expire
24 by their own terms on December 31st, 2001. So
25 unless they're extended by the Governor making yet

1 another declaration of emergency, those Executive
2 Orders will expire on their own terms.
3 And with respect to your question
4 relating to the 60-day requirement, that
5 requirement in -- in this statute, you know,
6 statutes often set deadlines, and sometimes those
7 deadlines are mandatory and sometimes they're
8 directory. And the difference between the two is
9 that when they're mandatory a consequence is
10 specified; if you don't do something by a certain
11 time, then something else happens.
12 In this case, the 60-day direction is
13 directory. There's no consequence specified for
14 our not having provided it. I think Steve Larson
15 has given adequate grounds for our not being able
16 to prepare that report in time. But I do think
17 that Commissioner Laurie is certainly accurate in
18 his observation that we have an obligation to
19 prepare it as -- as soon as we can.
20 CHAIRMAN KEESE: Thank you. And Staff
21 will have a draft for us by the end of the month,
22 or within two or three weeks. Is that
23 satisfactory?
24 COMMISSIONER LAURIE: Yes, sir. Thank
25 you.

1 CHAIRMAN KEESE: Did we -- Chief
2 Counsel, do you have any other report, other than
3 that?
4 CHIEF COUNSEL CHAMBERLAIN: Yes, Mr.
5 Chairman. Just -- just before I came up here I
6 was informed that there is a litigation matter
7 that I need to ask for a brief closed session at
8 the conclusion of the meeting.
9 In addition, I was going to mention to
10 you that while I am giving you this memo under the
11 attorney/client privilege, it is entirely up to
12 the Commission whether they wish to make it
13 available to the public. I have had a request by
14 J.A. Savage of the California Energy Markets for a
15 copy of it if the Commission will release it. And
16 so I suggest that you review it, and then make a
17 decision, perhaps at the next meeting.
18 CHAIRMAN KEESE: Thank you. Or should
19 -- that's fine. So --
20 CHIEF COUNSEL CHAMBERLAIN: Let's put it
21 this way. In the absence of direction I will
22 maintain its confidentiality.
23 CHAIRMAN KEESE: Thank you.
24 I'm having a little trouble with my
25 voice today, here. The Executive Director's

1 report?

2 EXECUTIVE DIRECTOR LARSON: Nothing

3 else, Mr. Chairman.

4 CHAIRMAN KEESE: Thank you.

5 Public Adviser's report?

6 PUBLIC ADVISER MENDONCA: Nothing else

7 this morning, Mr. Chairman.

8 CHAIRMAN KEESE: Thank you.

9 COMMISSIONER LAURIE: Mr. Chairman, I

10 would ask for a five minute recess while we're

11 setting up for Item 8.

12 COMMISSIONER ROSENFELD: Good. I get

13 coffee.

14 CHAIRMAN KEESE: At Commissioner

15 Laurie's request we're going to take a five minute

16 recess, and come back and start Item 8.

17 Thank you.

18 (Thereupon a recess was taken.)

19 COMMISSIONER LAURIE: I'd like to wait

20 for Commissioner Rosenfeld, Mr. Chairman.

21 CHAIRMAN KEESE: Okay, we will

22 reconvene, taking up Item 8. Power Plant Site

23 Certification Regulations. The Siting Committee

24 is proposing this item to request that the

25 Commission provide guidance on what modifications

1 the Siting Committee should pursue through a
2 formal rulemaking with the State Office of
3 Administrative Law.
4 We have four Commissioners here. We
5 have Commissioner Pernell on the phone.
6 Mr. Chamberlain, would you --
7 COMMISSIONER LAURIE: Let me -- it's my
8 item, Mr. Chairman. Let me offer an introduction,
9 please.
10 CHAIRMAN KEESE: Commissioner Laurie.
11 COMMISSIONER LAURIE: This item comes to
12 you as a result of a history of items previously
13 discussed. The Siting Committee has been working
14 on modifications to its licensing process since at
15 least shortly after I got here in January of 1997.
16 We started a hearing process in 1998. That
17 hearing process was formalized by legislation that
18 asked us to formally submit to the legislature
19 proposals to streamline our licensing process.
20 And we submitted that report in March of 2000.
21 In that report, we indicated that there
22 were a number of essential issues that remained
23 without resolution. It was our intent, meaning
24 both the Commission as a whole, and the Siting
25 Committee, to further examine those issues that

1 remain unresolved, and seek to resolve them. And
2 again, that report was issued in March of 2000.
3 No action was taken for over a year, and
4 finally, in June of this year, on my own
5 initiative, without a Siting Committee action,
6 meaning Commissioner Pernell, I brought to the
7 Commission proposed language dealing with those
8 issues that generally had been previously
9 discussed, but not resolved.
10 There was Staff objection to the
11 language that I had brought forward to this
12 Commission in June. I indicated at that time that
13 the language was for the purpose of bringing the
14 issue to the attention of the Commission, and I
15 sought Staff assistance in modifying my language
16 so that it improved upon what I was seeking to
17 accomplish. I want to thank Mr. Chamberlain for
18 the efforts of the General Counsel's office in
19 providing that assistance.
20 The Siting Division Staff felt objection
21 to my proposals, generally speaking, and offered
22 formal objection in writing to those proposals,
23 and submitted their own proposed language, as did
24 Commissioner Pernell.
25 This issue has been discussed at length

in hearings and workshops, and at the Siting Committee. Staff and Commissioner Pernell remain in objection to my proposals. With my consent, I concurred that Staff's expressions of concern and objection could be raised independently, and I think it was appropriate that that question be raised since it would be normally inappropriate for our Staff to submit an independent judgment when action is taken by Commissioners. But I'm pleased to entertain the discussion and consider all information and comment that may be available.

After hearing and receiving significant input, I modified my earlier proposal, and that was done in the latter part of -- or mid-part of August. And there were comments from Staff to that extent. I don't know if Staff was critical of my seeking to modify my comments in light of my response to the concerns expressed, but nevertheless I felt it my responsibility to -- having heard the comments, to seek to modify my proposal in an attempt to accommodate the concerns that I heard expressed. I thought my modified language accommodated to a very great extent.

So what you have before you today is my proposal. You also have Staff's proposal. I'm

1 aware that Commissioner Pernell has been in
2 communication with Staff. I do not know whether
3 Commissioner Pernell is offering his own
4 independent -- or continues to offer his own
5 independent proposals or is incorporating his
6 comment into Staff's proposal.
7 So the way I'd like to proceed today is
8 Staff has a presentation. I would ask Staff to
9 make that presentation. I know that there is
10 public input that is proper and appropriate.
11 Following Staff's presentation, I would ask your
12 consideration because I intend to offer an
13 expression and an explanation of my own proposal.
14 COMMISSIONER MOORE: Mr. Chairman.
15 CHAIRMAN KEESE: Commissioner Moore.
16 COMMISSIONER MOORE: You know what I
17 would like to suggest is a modification of what
18 Commissioner Laurie has just suggested. And that
19 is since the -- as the Chairman of the Siting
20 Committee since the initiative for making these
21 changes started in Commissioner Laurie's office,
22 it seems to me that that's really where the -- the
23 trail ought to start. Rather than have Staff make
24 a presentation of their own viewpoint, in fact
25 that viewpoint, as I understand it, was not the

1 initial point of departure, but in fact was a
2 reaction to something that was initiated by
3 Commissioner Laurie.
4 And so rather than have Staff's proposal
5 be the point of departure that we're arguing
6 against or for up here, it seems to me that the
7 proper way to do this is to deal with the
8 initiative that was started by the Commissioner
9 who started it, and then proceed apace.
10 And if the Commissioners agree with
11 that, then what I'd like to suggest is that
12 Commissioner Laurie at the very front end of this
13 summarize what he intended to do, what his
14 objective was, and the rationale for doing it. We
15 can argue about language as we often do ad nauseam
16 here, but in fact, we ought to get it clear what
17 the objective was, and perhaps that point of
18 departure will allow all of us to see any of the
19 proposals or counterproposals in the proper
20 context.
21 COMMISSIONER LAURIE: Mr. Chairman,
22 Commissioner Moore's comments are very well taken.
23 I have no objection and would be pleased to offer
24 introductory comments. I'd also be pleased to
25 initiate my presentation following those

1 introductory comments.
2 COMMISSIONER PERNELL: Mr. Chairman,
3 Commissioner Pernell.
4 CHAIRMAN KEESE: Commissioner -- yes,
5 Commissioner Pernell.
6 COMMISSIONER PERNELL: Mr. Chairman, can
7 you hear me?
8 CHAIRMAN KEESE: Yes, we can.
9 COMMISSIONER PERNELL: Mr. Chairman, as
10 the Second Member of the Siting Committee, I'd
11 like to offer some brief comments, if I may.
12 First of all, I want to commend
13 Commissioner Laurie for his -- for his continuing
14 efforts on this -- on this subject. I think the
15 Siting Committee and many others realize that
16 those -- our present regulations can be more
17 effective and user friendly. Although we don't --
18 we do not agree on all of the proposed changes, I
19 do want to publicly commend him for his efforts.
20 And -- and let me correct something that
21 was said. First of all, I have, because of
22 discussions in Siting Committee and with Staff,
23 modified my original comments or proposed
24 modifications, so much so that they are extremely
25 close, if not exactly what Staff has proposed. I

1 want to be clear that as a Commissioner, the
2 modifications in the proposal that will be
3 presented will be one in which I put forth, and
4 not necessarily Staff putting forth something in
5 opposition to a Commissioner.
6 My understanding, and I'm not there, but
7 my understanding is that I have a proposal on the
8 table, and so does Commissioner Laurie. And Staff
9 is, at least from my understanding, somewhat in
10 agreement with my proposal. And so I -- I have no
11 objection in proceeding as, you know, articulated
12 by Commissioner Moore, but I wanted to make those
13 corrections for the record.
14 CHAIRMAN KEESE: Thank you.
15 COMMISSIONER LAURIE: Seeking
16 clarification, Mr. Chairman, on -- on the table,
17 Staff did have written objection and written
18 proposals. Is Staff withdrawing those objections
19 and -- and proposals? I'd like to hear from
20 Staff.
21 MR. BUELL: Staff is not withdrawing its
22 recommendations to the Commission on any of the
23 sections that are in contention. We have made an
24 effort to try to work with Commissioner Pernell to
25 revise our language regarding noticing to conform

with what we understand Commissioner Laurie's position to be, to the extent that we believe we can, and also to incorporate Commissioner Pernell's concerns.

That's the only change that Staff is making in our recommendations that were contained in the Staff report docketed on the 29th of August.

COMMISSIONER LAURIE: Well, I --

CHAIRMAN KEESE: If you -- what we have, I -- I don't want to segment Commissioner Laurie's proposal, but you're dealing -- you've focused on five different sections, generally speaking. And as I understand it, Commissioner Pernell and Staff are not dealing with one amendment but -- which may cross over on three of those. Is that accurate?

The -- it seems to me that Commissioner Laurie -- we should let Commissioner Laurie lead off, and -- and lead us through this, with his suggestions.

COMMISSIONER LAURIE: I think that would be fine, Mr. Chairman.

CHAIRMAN KEESE: Okay.

COMMISSIONER LAURIE: And then --

1 CHAIRMAN KEESE: Let me -- let me just
2 mention, so that we all know, that Mr. Joseph of
3 -- Marc Joseph, of CURE, Jeff Harris, representing
4 IEP, and Mr. Chaddock, representing himself,
5 regarding from the Elverta area, have indicated an
6 interest in commenting. So we'll accommodate them
7 as we get through this process.
8 COMMISSIONER LAURIE: Thank you. Mr.
9 Chairman, I do have a presentation, and I'd like
10 to approach the microphone and utilize the
11 overhead, if I may.
12 CHAIRMAN KEESE: Thank you.
13 COMMISSIONER LAURIE: Mr. Chairman,
14 members of the Commission, for the record, my name
15 is Robert Laurie. I'm not speaking as Presiding
16 Member of the Siting Committee. I'm speaking as a
17 singular Commissioner that has put forward a
18 proposal to modify our siting regulations.
19 As I had indicated, Mr. Chairman, the
20 issues are generally not new issues. When I
21 arrived at the Commission in January of 1997, and
22 I assumed the Chairmanship of the Licensing
23 Committee shortly thereafter, Siting Staff was
24 already working on the recognition that there
25 would be a large increase in applications. And

1 also, fully recognized that the process previously
2 utilized needed to be reviewed and examined for
3 the purpose of consideration of how the process
4 could be improved.
5 Accordingly, we did initiate hearings,
6 multiple hearings. We did have workshops. All of
7 that was incorporated into our SB 110 report.
8 Little progress was made on the remaining issues
9 until recently. Those issues, there are some
10 issues that all parties are in concurrence with,
11 and I will leave those for Staff's -- by all
12 parties, I mean the Siting Committee -- and I'll
13 leave that for Staff's presentation.
14 There are four primary issues of which I
15 remain most concerned, and offered proposals. The
16 first deals with the ability and the power of the
17 Presiding Member being the judge, the primary
18 judge of the case, to control the proceedings as
19 she or he sees fit. I will be getting into detail
20 on these proposals following my introductory
21 comments.
22 The second issue deals with
23 communications. What communications can the
24 parties have with one another. Our SB 110 report
25 stated as follows, and this is the report adopted

1 by our full Commission. Greater clarity is needed
2 in the regulations regarding how Staff meets with
3 and obtains information from parties. The
4 Commission should examine the need for flexibility
5 and open exchange of information, and should
6 change the regulations regarding noticing
7 requirements accordingly. Thus, my
8 recommendations, Mr. Chairman. Which, again, I
9 will get into in detail.
10 I've also addressed the issue of
11 intervenors. I found some sections to be
12 conflicting, and I believe clarification was
13 necessary, and I will detail those for you.
14 And finally, I want to deal with the
15 issue of the relationship between Energy
16 Commission Staff and the staff of other state and
17 local agencies. Over the last many years that
18 question has been asked, that is, what's the
19 responsibility of licensing Staff in preparation
20 of hearing information, in light of data and
21 information submitted by other state agencies.
22 And that will be the last topic of my discussion.
23 I'd like to begin, therefore, Mr.
24 Chairman -- what do we need to do to make that
25 clearer. Is that too dark? I can't tell.

1 CHAIRMAN KEESE: We -- we can read it on
2 our monitors. I don't know -- I don't know if the
3 audience can see it or is familiar with it, but
4 it's showing up quite clearly on our --
5 COMMISSIONER LAURIE: Let me note that
6 I'm reading from Section 1203 of our regulations.
7 Specifically referring to Section 1203(c), and let
8 me read that for you.
9 "It is the power of the Chairman,
10 meaning in this context also the power
11 of the Presiding Member of the Hearing
12 Committee, to regulate the conduct of
13 the proceedings and hearings including,
14 but not limited to, disposing of
15 procedural requests, admitting or
16 excluding evidence, receiving exhibits,
17 designating the order of appearance of
18 persons making oral comments or
19 testimony, and continuing the hearing."
20 I then refer you to Section 1212(c), and
21 let me read that to you.
22 "Rules of evidence. Each party
23 shall have the right to call and examine
24 witnesses, to introduce exhibits, to
25 cross examine opposing witnesses on any

1 matters relevant to the issues in the
2 proceeding, and to rebut evidence
3 against such party."
4 I found, Mr. Chairman, that those two
5 sections had the potential for being conflicting.
6 1203(c) seeming to give the Presiding Judge the
7 power to some degree to control the proceeding,
8 but 1212(c) clearly given by law, by regulation,
9 the right to each party to call and examine
10 witnesses, to introduce exhibits and to cross
11 examine. There is no reference back to the
12 discretion seemingly permitted to the Presiding
13 Judge in 1203(c).
14 Thus, my request was very simple. That
15 is, make it clear in our rule that the right of
16 the parties was, in fact -- sorry -- subject to
17 the discretion as provided for in 1203(c).
18 Now, Staff comment was well, it already
19 is, so there's no need for the change. Well, my
20 position, Mr. Chairman, is it is our role, as the
21 judge of -- of the case, to administer the case.
22 If in my view I think clarification is necessary,
23 and it's Staff's view that well, it really isn't
24 necessary and your proposal doesn't change the
25 law, but in my view, I say I think I need the

1 clarification, then, Mr. Chairman, I -- I cannot
2 understand why there is such vociferous objection
3 to my proposal to seek to clarify what Staff
4 believes is existing law.
5 And I would do that by simply modifying
6 1212(c) to make it clear that the rights of the
7 parties are subject to the discretion of the
8 Presiding Member as provided for in 1203(c).
9 Again, Staff concurs that the rights of the party
10 are in fact subject to the discretion, and that's
11 all I say in my proposal.
12 Do I have any questions from the
13 Commissioners before I move on to the next item?
14 COMMISSIONER MOORE: I have a question,
15 Mr. Chairman.
16 Would it not be possible to modify the
17 language in that case to simply say that it is
18 subject to -- that it is subject to the discretion
19 of the Presiding Member, pursuant to 1202, I
20 guess, and just refer back to the previous
21 section. Would that not provide the -- the
22 clarification --
23 COMMISSIONER LAURIE: 1202 or 1203?
24 COMMISSIONER MOORE: 1203.
25 COMMISSIONER LAURIE: That -- that's all

1 my proposal does, Commissioner Moore. That's all
2 it does. It just makes it clear that there is a
3 reference back to the discretionary authority as
4 already contained in 1203(c). It does not seek to
5 expand that authority.
6 Any other questions of Commissioners?
7 COMMISSIONER PERNELL: I have a
8 question, Mr. Chairman, directed to Commissioner
9 Laurie.
10 CHAIRMAN KEESE: Go ahead.
11 COMMISSIONER PERNELL: Commissioner
12 Laurie, is this your modified proposal? Has this
13 -- has this been your proposal in this particular
14 section that has always been on the table?
15 COMMISSIONER LAURIE: At least since
16 August 9th, Commissioner Moore -- Commissioner
17 Pernell. At least since August 9th.
18 COMMISSIONER PERNELL: Okay.
19 COMMISSIONER LAURIE: Okay. Thank you.
20 Let me move on to the next item.
21 MS. ICHIEN: Commissioner Laurie --
22 excuse me, Arlene Ichien, from the General
23 Counsel's Office.
24 COMMISSIONER LAURIE: Do you have a -- a
25 question?

1 MS. ICHIEN: A question, yes. Does your
2 proposal also include additional modification to
3 that section that you just referred to, Section --
4 what is it, 1212(c)? In addition to the reference
5 back to Section 1203, are you also proposing
6 additional amendment to that section?
7 COMMISSIONER LAURIE: You mean the
8 underlined portions?
9 MS. ICHIEN: Yes.
10 COMMISSIONER LAURIE: Referring to --
11 CHAIRMAN KEESE: I think she's referring
12 to the words after "on any matters the Presiding
13 Member deems relevant."
14 COMMISSIONER LAURIE: Yeah. Okay.
15 Well, the -- the language was on any matters
16 relevant to the issues. And all I'm saying is
17 that the -- it's the Presiding Member that -- that
18 determines relevancy. And that -- that's current
19 law. It's current regulation. And that's all
20 that is.
21 COMMISSIONER PERNELL: Commissioner --
22 Mr. Chairman.
23 CHAIRMAN KEESE: Go ahead.
24 COMMISSIONER PERNELL: Just to follow up
25 on that point. If it's current law, then why do

1 we need it? Why do we need that in there if it's
2 already current law?
3 COMMISSIONER LAURIE: Because in my
4 view, Commissioner Pernell, the law needs
5 clarification and better understanding because
6 there are parties that would have read this
7 section without having 1203 in front of them, and
8 therefore believing that under our own regulations
9 they have greater authority than they in actuality
10 do.
11 COMMISSIONER PERNELL: If -- if your --
12 and I'm not arguing the point, but I'm just trying
13 to get clarification on it, Mr. Chairman. And if
14 your first proposed amendment to Section 1212(c)
15 refers back to 1203(c), then that should take care
16 of it. And my question is, if in fact that does,
17 then the additional proposed modification is not
18 needed.
19 COMMISSIONER LAURIE: You mean the --
20 the latter part, about the Presiding Member
21 determining what's relevant?
22 COMMISSIONER PERNELL: Yes.
23 COMMISSIONER LAURIE: Well, I --
24 Commissioner Pernell, I -- from everything I've
25 heard about Staff, from Staff, the relevancy issue

1 is well within the determination of the Committee.
2 I don't think anybody -- because it is the
3 Committee that determines the admissibility of any
4 and all evidence, and so to simply say that the
5 Presiding Member determines relevancy is a
6 restatement of current law. And I don't believe
7 anybody is in a position to say that it is not the
8 Presiding Member that determines relevancy.
9 COMMISSIONER PERNELL: But that --
10 that's not -- my point is redundancy, Commissioner
11 --
12 COMMISSIONER LAURIE: Well, Commissioner
13 Pernell, all I can say to that is that as -- as
14 much as I abhor redundancy, and I do, I found in
15 my reading of the section that in my seeking to
16 apply my responsibilities as a Presiding Member of
17 cases, I seek and I need this clarification which
18 in my view does not change the law, simply
19 clarifies the law. I feel I need that, as a
20 Presiding Member. And I see no harm being done to
21 the process thereby.
22 COMMISSIONER PERNELL: Thank you.
23 That's all the questions I have on this section.
24 CHAIRMAN KEESE: Thank you. Okay.
25 Let's do Item 2.

1 COMMISSIONER LAURIE: Let me move on to
2 the next item.
3 CHAIRMAN KEESE: Communications.
4 COMMISSIONER LAURIE: This is Section
5 1710, Mr. Chairman. As noted to you, this
6 Commission has previously indicated its concerns
7 with the current language in this section and the
8 implementation thereof. Staff admits confusion as
9 to what they think they are allowed to do and not
10 do.
11 My earliest proposal was to suggest to
12 this Commission that any and all barriers and
13 restrictions to any and all communications among
14 the parties be lifted. And the basis of that
15 recommendation, Mr. Chairman, rests with all of my
16 life's professional experiences. That is to say,
17 in my professional career, I have participated
18 either as a staff member or a legal counsel for
19 individuals in, I've estimated, 3,000 licensing
20 procedures. In those 3,000 is included 15 siting
21 cases where I have participated as first or second
22 member.
23 I think Commissioner Moore, in his
24 previous life as a county supervisor, has similar
25 type of experiences.

1 In every one of those instances, Mr.
2 Chairman, either as staff counsel or as a member
3 of the public in a representative capacity, or, in
4 some cases, as a representative of the public, I
5 had the ability to converse with staff, to seek to
6 explain my point of view. That process, Mr.
7 Chairman, is the process followed by local
8 government at a national basis, and is probably
9 done thousands of times per week throughout the
10 U.S.
11 I think clearly, Staff has -- and
12 certain members of the public have objected,
13 certain members of the public object because there
14 is a degree of mistrust where the public may feel
15 threatened by a concern that deals might be made,
16 and I understand that, and I respect that. The
17 basis of Staff's objection, I think, is somewhat
18 consistent with that. I would suggest to you,
19 however, that there is probably another concern
20 that if additional meetings between the parties
21 and Staff were permitted, it would impede or add
22 burden to Staff's current responsibilities.
23 So I -- I considered all of the
24 expressed concerns, Mr. Chairman, and I -- I went
25 back and I read 17 very, very closely, and what I

1 saw in 17(a), and let me read that to you. "All
2 hearings, presentations, conferences, meetings,
3 workshops, and site visits shall be open to the
4 public", period. That statement is abundantly
5 clear.
6 You then must skip down to subsection
7 (h), which says, "Nothing in this section shall
8 prohibit an applicant" -- "an applicant from
9 informally exchanging information or discussing
10 procedural issues with the staff without a
11 publicly noticed workshop."
12 And some problems with that subsection,
13 Mr. Chairman. One, it only makes reference to the
14 applicant and not any other party. Seemingly,
15 therefore, to preclude any party not the applicant
16 from informally exchanging information with the
17 staff. The term "informally" is ambiguous to me,
18 and I have concerns about that.
19 Therefore, looking at those two
20 sections, let me attempt to explain to you what I
21 am seeking to accomplish.
22 If I am an interested party and there is
23 information that I believe Staff is considering,
24 what I want, and whether I'm the applicant or a
25 non-applicant party, or a member of the public,

1 doesn't matter, that's not a -- a party. What I
2 want is the ability to sit down with Staff and
3 explain what I am trying to express. That is
4 often difficult to do with cameras rolling, tape
5 recordings -- tape recordings being made, and
6 often a hectic and public process.
7 What I want, then, is to have Staff be
8 able to input what I have had to say and consider
9 my input and what I have had to say. So if I am a
10 member of the public and you are Staff, and I say
11 to you, Mr. Staff Member, I have read your section
12 4B, and I think your information is wrong because,
13 one, two, three, I want you to consider what I
14 have had to say. And either then to on your own
15 modify your current thinking, or not modify your
16 current thinking.
17 I do not feel that I have the right to
18 demand a deal. I think I should have the right to
19 be able to express my view and listen to what you
20 have to say without that being done at a public
21 meeting, about any issue relevant to the
22 proceedings.
23 Now, Staff has proposed language that
24 does exactly that. Exactly that. And I -- I
25 think almost identically copies my language, but

1 for they have added a provision that says
2 basically, nevertheless, in no cases do you
3 negotiate or -- or do deals. Well, I cannot
4 support that, Mr. Chairman, because I don't
5 believe that's what we do. Under no circumstances
6 should be negotiate and do deals. That is not the
7 role of Staff. I therefore don't believe that it
8 is essential or necessary to incorporate that into
9 law, when it should be abundantly clear that that
10 is not what we do. We don't do deals.
11 Now, if I am a member of the public and
12 you are Staff, and I bring to you information
13 suggesting that your earlier thinking was based
14 upon incorrect facts or incorrect assumptions, and
15 you therefore modify your thinking, that is not a
16 deal, nor is that negotiation. Nor do I think, as
17 a member of the public, I have the ability and the
18 right to negotiate with you. All I am asking for
19 is a restatement of what we are currently doing,
20 or, if not currently doing what I think we should
21 do. And that is allow any member of the public,
22 based upon the convenience of the process, to be
23 able to meet, exchange information, and discuss
24 procedural issues, period.
25 And that is my language that I am

1 seeking to modify under Section 1710.
2 CHAIRMAN KEESE: Let me -- let me try to
3 ask you a question. Do you see a different -- are
4 you holding public agencies to the same standard?
5 COMMISSIONER LAURIE: I have -- you mean
6 making reference to my last sentence, which allows
7 Staff to meet with any governmental agency?
8 CHAIRMAN KEESE: Yes. Meet and
9 negotiate. I mean, what -- what is the -- you
10 have --
11 COMMISSIONER LAURIE: My -- my last --
12 CHAIRMAN KEESE: -- explained your
13 standard with respect to the parties, they can
14 meet and confer, and discuss, and put issues
15 forward. Not negotiate.
16 COMMISSIONER LAURIE: My last sentence,
17 Mr. Chairman, says, Staff may meet with any
18 governmental agency for the purpose of discussing
19 any matter related to the project, without public
20 notice.
21 CHAIRMAN KEESE: And that -- that would
22 involve -- does that include negotiation?
23 COMMISSIONER LAURIE: Yeah, I don't, you
24 know, most state agencies are not parties to the
25 action.

1 CHAIRMAN KEESE: That -- I agree with
2 that, Commissioner Laurie. I'm just trying to --
3 COMMISSIONER LAURIE: And -- and
4 therefore, they can talk about whatever they want
5 to talk about, in whatever context and in whatever
6 manner. That's my intent, Mr. Chairman.
7 Thus, my proposed language that does as
8 I have said, which simply seeks to incorporate the
9 general language in subsection (h) with the
10 language in subsection (a), so that it reads,
11 "All hearings, presentations,
12 conferences, meetings, workshops and
13 site visits shall be open to the public
14 and noticed as required by law,
15 provided, however, these requirements do
16 not apply to communications between
17 parties, including Staff, for the
18 purpose of exchanging information or
19 discussing procedural issues. Staff may
20 meet with any governmental agency for
21 the purpose of discussing any matter
22 related to the project without public
23 notice."
24 Therefore, what I would expect under
25 this section, Mr. Chairman, and this is how 1710

1 would read, as modified, it would delete
2 subsection (h). What I would expect as being
3 implemented under this section is that any member
4 of the public, which under no circumstance is
5 restricted, I don't believe, by our regulations
6 whatsoever, but I want to make it clear that
7 particularly parties can call up Staff, or meet
8 with Staff, and say, you know, I've read your
9 section 4(b), and it's wrong. It's wrong because
10 I have this piece of -- of paper, and it didn't
11 rain 97 times last year, it rained four times last
12 year, and I don't know where you're coming from.
13 I'd like to come in and talk to you about it.
14 And I see no harm to that, Mr. Chairman.
15 There are no secret deals. There are no deals.
16 There's no negotiation. It is an exchange of
17 information, which is what we are already doing in
18 a confused state. And remember, it is -- Staff is
19 not the decision maker. You are the decision
20 maker. And by our own ex parte rule, which has
21 not been changed, everything you hear and
22 everything you see during the course of your
23 proceedings is conducted in open, noticed and
24 public meetings.
25 Let me ask for questions on my issue

1 number two, Mr. Chairman.
2 COMMISSIONER MOORE: Mr. Chairman, I
3 have one question.
4 CHAIRMAN KEESE: Commissioner Moore.
5 COMMISSIONER MOORE: And that goes to
6 the issue of no deals. And I -- actually, I'd
7 like you to clarify this for the record.
8 What happens now in some of the
9 workshops is that there will be an agreement
10 reached, which is often described as a
11 stipulation, that's brought back to the Presiding
12 Member or to the Committee, which represents an
13 agreement of sorts to make an issue either not
14 significant anymore, or to represent some
15 agreement about how to mitigate or resolve an
16 issue.
17 I've been frustrated in the past because
18 there isn't a well documented trail, often, that
19 represents how that stipulation was arrived at,
20 and/or the details of what it means in terms of
21 other issues that might be in front of the
22 Commission, or in front of the Committee. I take
23 responsibility for not having pursued that in
24 perhaps the depth that I should have in the past
25 in some of the cases that I've presided over.

1 But it seems to me that there's an
2 example of an area that a potential deal is being
3 made, where the excluded party is the Committee,
4 not the public, and, in fact, resolving that so
5 that the details of any stipulation and how it was
6 arrived at are available for the record and for
7 the Presiding Member to consider is a part of
8 this. And -- and I believe leads to a trail of
9 how to implement what the intention of all the
10 proposals that are before us, it seems to me, is,
11 and that is that where there is any kind of a
12 solution that is arrived at, that it be
13 documented, and the documentation be available for
14 the record.
15 As I -- now for my question. As I
16 understand it, the proposal that you are making
17 does not preclude the documentation or
18 presentation of such documents to the Committee,
19 and inclusion in the Presiding Member's report.
20 Am I correct?
21 COMMISSIONER LAURIE: You raise an
22 excellent point, Commissioner Moore. And thank
23 you, let me attempt to respond.
24 I believe it to be inappropriate, having
25 thought about it, that Staff submit a stipulation

1 of a done deal, even though the done deal may have
2 been accomplished during a workshop. That is not
3 Staff's position. That's the Committee's job. It
4 is proper and correct for the Staff to propose a
5 stipulation. It is proper for other parties
6 involved in said stipulation to offer comment
7 relating thereto. But it is the responsibility of
8 the Committee to determine whether or not the
9 facts support such a stipulation and such a
10 stipulation would be in the best interest of the
11 public.
12 I believe your -- your comment is very
13 appropriate. I think, in many instances, my
14 hearing Committees have been lazy and simply
15 willing to accept a stipulation without supportive
16 facts or evidence. I believe that's a mistake.
17 Although not a legal mistake, I think it can be
18 done better. And the way it should be is that no,
19 you don't do deals. You can discuss proposed
20 solutions to a problem, and present those to the
21 Committee for acceptance. It is the Committee,
22 therefore, that determines whether or not a
23 stipulation is appropriate or not.
24 Is that responsive to your question,
25 Commissioner Moore?

1 COMMISSIONER MOORE: It does. Thank
2 you.
3 COMMISSIONER PERNELL: Mr. Chairman.
4 CHAIRMAN KEESE: Commissioner Pernell.
5 COMMISSIONER PERNELL: Commissioner
6 Pernell.
7 Mr. Chairman, I have two issues here.
8 One of them is just in response to the last
9 comments that were made. And I -- I want to
10 remind the Commission that this is not a bash
11 Staff proceeding. I think that when these
12 workshops are done, the information comes back to
13 the Committee and the Committee makes the
14 decision. In no instances that I've been involved
15 in that Staff has held a workshop and not reported
16 back to the Committee whether or not there were --
17 and incidentally, let me just say that those
18 workshops are open to the public. So this is not
19 anything that's being done secretly or negotiated
20 secretly, or being kept from the Committee.
21 So I just wanted to point out that we
22 are here discussing -- discussing a very important
23 issue, and it appears to me that it's turning into
24 a bash Staff proceeding, and I don't want that to
25 happen.

1 Secondly, on this particular issue,
2 1710, Commissioner Laurie and I are in about 98
3 percent agreement. However, I think it's
4 important for the integrity of our process, for
5 public confidence in our process, that it be
6 stated that the additional language that was
7 proposed by Staff and myself, but -- I don't care
8 who proposed it, I think it's correct -- that the
9 additional language be put into our regulations.
10 It is imperative that the general public,
11 intervenors, even the applicant, know that there
12 is no negotiating behind the scenes. Any
13 substantive issue can't be negotiated without
14 being in the public eye.
15 And -- and that is an issue that I am
16 very adamant about, and -- and I will do whatever
17 I can to ensure that the public, the general
18 public stay engaged in this process and keep the
19 confidence of the Commission's proceedings to
20 heart. So I am opposed to deleting the final
21 sentence in this section as proposed by myself and
22 Staff.
23 COMMISSIONER MOORE: Mr. Chairman, just
24 -- Commissioner Moore, for Commissioner Pernell's
25 benefit. I -- with regard to his first statement,

1 quite the contrary, I wasn't trying to bash
2 anyone. In fact, my -- my remarks were meant to
3 say -- Staff works pretty hard to get these
4 stipulations, and they do so in the workshop
5 milieu and environment. And so they have a
6 record, they have a proceeding that, as you
7 properly point out, is open to the public. All
8 I'm saying is -- and taking responsibility for it,
9 I believe, is that I haven't in many cases taken
10 the next step, which is to recognize that data
11 source and incorporate it, rather than simply
12 accept a stipulation, to incorporate the arguments
13 and then make a decision. That stipulation is not
14 law, it's not adopted until it is included in the
15 Presiding Member's Proposed Decision.
16 And so I'm just saying that I have been,
17 I believe, a little remiss in not taking it the
18 next step. The record's there, it can be
19 incorporated, and the stipulation that is proposed
20 can be adopted or not. But we wouldn't get there
21 if we didn't have Staff doing the work in the
22 workshops.
23 So I guess I'm just trying to clarify
24 that I -- I don't think there's any Staff bashing
25 going on here at all. It's just a matter of

1 defining the roles, and the role is, in the end,
2 that the decisions are made, proposed decision is
3 made not by Staff, not by the Applicant, and not
4 by an Intervenor, but by the Presiding Member and
5 -- and the other Committee member. And that's --
6 everything else is support. Everything else is to
7 bring a set of facts together so that they can be
8 adjudicated properly in a public forum.
9 And so getting the roles straight, I
10 think is -- is proper, and, frankly, defining how
11 information is used, how it's stored, and how it's
12 referred to in the compendium of the decision is
13 very, very important, and I think it is proper for
14 us to question how we use the data that's
15 developed in those workshops. So that's -- that's
16 basically all I was saying.
17 COMMISSIONER PERNELL: Commissioner
18 Moore, I would agree with you, and thank you for
19 your clarification.
20 That's all I have, Chairman Keese.
21 COMMISSIONER LAURIE: Thank you,
22 Commissioner Pernell.
23 Let me just close by noting that I think
24 the only difference now between my proposal and
25 Commissioner Pernell's objection and -- and

1 Robert, if I misstate, certainly correct me -- is
2 the issue of the last sentence, which by law would
3 prohibit -- I don't have the language, and we'll
4 hear it from Staff -- is, any kind of negotiation
5 or agreement.
6 My objection, Mr. Chairman, is that I
7 think that confuses the issue more than helps the
8 issue. For example, what happens if -- if I go in
9 to see Staff, and I say well, I have -- I have
10 some issues. First of all, let me give you this
11 information, and the information is --
12 COMMISSIONER MOORE: Actually,
13 Commissioner Laurie, I don't think you can do
14 that. I don't think -- since they're a party, I
15 don't think, in the case, that you can go in to
16 see Staff.
17 COMMISSIONER LAURIE: If -- sorry, not
18 me as a Commissioner; me, as a party.
19 COMMISSIONER MOORE: All right.
20 COMMISSIONER LAURIE: Okay. I -- I go
21 in and say I just want you to know that the
22 project is not located on Maple Street, it's
23 located on Locust Street, and Staff goes oh, okay,
24 you're right, I'm going to change my report. Is
25 that an agreement? Boy, do I not want to

1 discourage that from happening. Is that a
2 negotiation? No, it's not a negotiation. It's an
3 exchange of information.
4 I can't imagine the circumstance where
5 there should be a deal. There should never be a
6 deal. Staff doesn't make deals, under any
7 circumstances. However, I don't think it should
8 be written into the law, because it should be so
9 abundantly clear, things -- certain things need
10 not be said.
11 If --
12 COMMISSIONER PERNELL: Commissioner
13 Laurie --
14 COMMISSIONER LAURIE: Just let me
15 finish, Commissioner Pernell, please.
16 COMMISSIONER PERNELL: Okay.
17 COMMISSIONER LAURIE: If Staff thinks
18 they need clarification, then let Mr. Therkelsen
19 send Staff a note that says under no circumstances
20 do you do deals, whatever that means.
21 And that's my objection, Mr. Chairman.
22 I -- I don't believe such language is necessary.
23 In fact, I believe such language is harmful, given
24 my example I just mentioned.
25 Commissioner Pernell, I'm sorry.

1 COMMISSIONER PERNELL: Mr. Chairman,
2 this might come as a -- as a shock to Commissioner
3 Laurie, but I agree with his statement. And I'm
4 simply making the case, and I think he's correct.
5 Existing Staff will not make deals. Existing
6 Commissioners will not make deals. The point is,
7 we are -- we are proposing these changes for the
8 future. We don't know. Mr. Therkelsen, at some
9 point, I would hope that he's going to retire.
10 (Laughter.)
11 COMMISSIONER PERNELL: So that someone
12 coming along 15 years from now, look at this,
13 might have a different impression.
14 All I'm saying is that I agree with
15 Commissioner Laurie, but we should be clear in the
16 proposed regulations that these types of
17 activities will not happen in the future.
18 COMMISSIONER LAURIE: Thank you,
19 Commissioner Pernell, very much.
20 Any other questions on that section?
21 CHAIRMAN KEESE: I think we're okay on
22 number two.
23 COMMISSIONER LAURIE: Thank you. Let me
24 then move on to the next item. This deals, Mr.
25 Chairman, with the subject of intervention. And

1 I'm going to make reference to two sections of the
2 regulations, Section 1207 and Section 1712.
3 Let me put up for you Section 1207.
4 What this section does, it, (a), tells you that
5 any person may file to intervene, and it tells you
6 what the contents of the -- of the petition should
7 include. And it tells you the time period in
8 which such a petition need be filed.
9 1207(c) then talks about the authority
10 of the Presiding Member, what action the Presiding
11 Member may take in regards to such petition, and
12 the authority of the Presiding Member in regards
13 to such petition if the timeframes as contained in
14 subsection (b) are not met.
15 (d) simply talks about the appeal rights
16 of the petitioner, and (e) simply talks about the
17 ability to withdraw. That's 1207.
18 1712, again, says any person may
19 petition to intervene pursuant to the section we
20 just read. Well, we already know that. But then
21 it goes on to say that that person shall have all
22 the rights and duties of a party, and that makes
23 sense. And there's no disagreement about that
24 issue. But then it goes on to say, under (b),
25 what the rights and duties of the Intervenor are,

1 or under (b) and (c), what the rights and duties
2 of the Intervenor are. Those rights and duties
3 are the same as the rights and duties of the
4 parties. And thus (b) and (c) is a redundancy of
5 (a), because (a) already says you shall have the
6 rights of the parties, and then it goes on to
7 repeat that in (b), and you shall have the duties
8 of the party, as referenced in (c).
9 And my concern is that you have to read
10 1207 and 1712 together. In reading those, I
11 become confused, but, of course, that's a fairly
12 low standard. But I do want to avoid confusion of
13 people with similar IQs as mine.
14 Thus, all I have sought to do is to
15 recognize that subsections (b) and (c) are a
16 redundancy of both subsection (a) and 1207, and I
17 seek to clarify that redundancy by simply saying
18 under 1207, once you are a party, under the rules
19 contained in 1207, you have the rights of all
20 parties and you have the duties of all parties.
21 Which is really all 1712 says.
22 So that the modified Section 1207 would
23 read as follows. Subsection (a) continues to talk
24 about the ability to petition. Subsection (b)
25 continues to talk about the time periods in which

1 it is filed. Subsection (c) continues to talk
2 about the power and authority of the Presiding
3 Member to rule on the petition, but then adds the
4 entirety of the subject matter of 1712 by saying
5 once you are a party, you'll have the rights and
6 duties of a party.
7 That's all it says. It's not adding
8 rights, it is not taking away rights. It enables
9 you to do away with arguably conflicting sections,
10 so all you have to do now is read one section,
11 instead of two. That's all it does.
12 Questions from the Commission --
13 COMMISSIONER PERNELL: Mr. Chairman.
14 COMMISSIONER LAURIE: -- on the issue of
15 intervention.
16 CHAIRMAN KEESE: Commissioner Pernell.
17 COMMISSIONER PERNELL: Mr. Chairman,
18 just a -- a quick question. Commissioner Laurie,
19 does -- as an Intervenor, let me put a scenario
20 out there.
21 I'm an Intervenor living in X city.
22 COMMISSIONER LAURIE: Living where,
23 Commissioner Pernell?
24 COMMISSIONER PERNELL: Living somewhere
25 in California.

1 COMMISSIONER LAURIE: Okay.
2 COMMISSIONER PERNELL: I have, under --
3 under your proposal, I have the rights and the
4 duties as a party, once I become an Intervenor.
5 COMMISSIONER LAURIE: Yes, sir.
6 COMMISSIONER PERNELL: When we have
7 these Commission meetings in the community, I step
8 up and say I want to become an Intervenor. Does
9 that then require me to submit briefs to the
10 Committee and do all of those legal things that
11 some of the parties have representation, paid
12 representation, to do?
13 COMMISSIONER LAURIE: Is that your
14 question, Mr. --
15 COMMISSIONER PERNELL: Yeah. Well, my
16 question is, as an Intervenor, a member of the
17 general public who is not familiar with these
18 proceedings, do I have to then submit briefs to
19 the Committee in order to become an Intervenor?
20 COMMISSIONER LAURIE: I think the answer
21 to that question, Commissioner Pernell, lays in a
22 series of sections throughout the regulations,
23 that tell the parties what their obligations are.
24 To the extent, for example, that the Committee
25 directs all parties to submit a document, to

1 submit an argument or -- or proposed testimony in
2 writing, in order for oral testimony to be
3 admitted, in whatever circumstances the Committee
4 determines what the parties must do, then the
5 parties must follow the direction of the
6 Committee.
7 It is clear, however, that in every
8 Committee that I've had the honor of sitting on,
9 either first or second, that when it comes to non-
10 represented individuals, a great deal of
11 flexibility has been shown. Nevertheless, the
12 Committee has the authority to mandate that its
13 orders be followed, so that if a Committee
14 determines that necessity requires certain
15 documents to be filed, then any party choosing to
16 become -- or any individual choosing to become a
17 party need to follow the Committee order.
18 Now, perhaps that takes you to the
19 question of when should an individual become a
20 party. That question, we've talked about
21 indirectly for a number of years. It's always
22 been my view, I think accepted by Staff and
23 counsel, that the record consists of public
24 comment. Although I acknowledge that testimony is
25 given greater weight, nevertheless, public comment

1 is a part of the record upon which the decision is
2 based.
3 So it's -- it would always be my
4 recommendation that if an individual wants to
5 participate but is not satisfied that they can
6 meet the obligations of being a party, then just
7 be a public participant. It is correct that you
8 would not be permitted discovery, you would not be
9 permitted to bring your own witnesses or cross
10 examine witnesses, but you can certainly use the
11 public input process to provide information you
12 think is necessary, and to offer comment.
13 I think in direct answer to your
14 question, is that is entirely at the Committee's
15 discretion. If the Committee feels an issue is so
16 important that a non-represented party must comply
17 to the same extent as the represented party, well,
18 then I think the Committee has that discretion.
19 Generally, I think you would agree that when it
20 comes to non-represented parties, Committees have
21 been much more flexible.
22 COMMISSIONER PERNELL: And I do agree
23 with that. And I -- so that -- so that I can be
24 clear on this. This doesn't limit the general
25 public's ability to participate in the process,

1 regardless of whether the Presiding Member deem it
2 necessary or not.
3 COMMISSIONER LAURIE; That's absolutely
4 correct, Commissioner Pernell. This issue does
5 not in any way limit or inhibit the right of the
6 general public to participate in our proceedings.
7 COMMISSIONER PERNELL: Thank you,
8 Commissioner Laurie.
9 COMMISSIONER LAURIE: Anymore questions,
10 Mr. Chairman? Let me get to my last item.
11 This deals, Mr. Chairman, with the
12 relationship between Energy Commission Staff and
13 staffs from other agencies.
14 Our SB 110 report considered the issue,
15 and noted in a recommendation adopted by this
16 Commission, as follows. The Commission Staff
17 should not duplicate the review of other agencies
18 regarding a project's compliance with applicable
19 legal requirements, except, it notes, where the
20 agencies are not performing the work in a timely
21 manner or where reliance on their analysis may
22 place the Commission's decision in jeopardy.
23 I don't like that language, Mr.
24 Chairman, but that is the language adopted by the
25 Commission, and it stands as the Commission's

1 recommendation.

2 This issue, Mr. Chairman, is not, again,

3 a new issue. For literally years, I have had

4 discussions with Staff regarding what they feel

5 their responsibilities are vis-a-vis other

6 agencies. And for years, I have had conflicting

7 responses.

8 The issue of difference is an issue that

9 I've discussed with Mr. Therkelsen not

10 infrequently, over the last few years. And I have

11 to admit to a misunderstanding, because when I

12 first proposed my language it was my understanding

13 that in light of earlier conversations, this

14 reflected Mr. Therkelsen's view. And I accept

15 responsibility for not having a correct

16 understanding in that regard.

17 What I am seeking to avoid, as a matter

18 of good government, is a duplication of effort.

19 That is, I do not believe that the taxpayers or

20 the ratepayers of the State of California should

21 be paying a bureaucracy twice to do one job. And

22 thus, I have sought to clarify what everybody

23 thinks our responsibilities are.

24 I asked Mr. Therkelsen to consider the

25 rules and the protocol that he feels would be

1 appropriate, and Mr. Therkelsen's office -- Mr.
2 Therkelsen submitted a report to the Siting
3 Committee, citing our own regulations as a basis
4 for independent review authority by the
5 Commission. With all due respect, I don't think
6 you can cite our own regulations for that
7 authority. I think you have to go to authority
8 external to our own rules.
9 Section 1714.5, and there's a series of
10 regulations starting with Section 1714. Section
11 1714 indicates that the Energy Commission sends
12 out requests to other state agencies for
13 information. 1714.3 says any agency requested
14 pursuant to 1714 to comment shall do each of the
15 following, and it has subsections (a) through (e),
16 as to what it should do. And basically, it
17 comments within those matters within its
18 jurisdiction.
19 1714.5 only expands on that, and again
20 says that any time we request an agency to
21 comment, the agency that we're requesting to
22 comment shall do the following: (a), update the
23 information requested or previously submitted;
24 perform or conduct analysis as needed to resolve
25 concerns; submit to the Commission and -- and

1 defend its position.

2 What I have sought to do in my proposed

3 language is to say what do we do, what is our

4 responsibility in looking at that information.

5 And thus, I have proposed the following language.

6 Comments and recommendations submitted to the

7 Commission pursuant to this section shall be given

8 great deference -- as -- as that term would be

9 defined in the dictionary -- by Commission Staff,

10 so as to avoid a duplication of effort and

11 resources.

12 When an agency submits comments and

13 recommendations pursuant to this section, it is

14 only submitting comments and recommendations

15 within its jurisdiction. Any information beyond

16 its jurisdiction is what we do.

17 I can just note that as a citizen, I

18 think it is inappropriate and arrogant for any

19 agency of any governmental body to attempt to

20 second-guess the professionalism or conduct or

21 information of their peer. If we truly believe

22 that information coming from other agencies is

23 unreliable, then, by golly, you know, we have to

24 do something about that. But I suggest we do

25 something about that by a direct -- by a direct

1 approach in curing the problem, rather than doing
2 the work all over again.
3 All my proposal does is say that when
4 agency X, pursuant to our request, acts within
5 their jurisdiction on matters within their
6 jurisdiction, and gives us their comment on
7 matters within their jurisdiction, we do not
8 second-guess that comment. Now, if that comment
9 does not include an environmental evaluation
10 because it is not what they do, well, then, we do
11 that. And there is nothing in this section that
12 inhibits or prohibits our obligation or ability to
13 accomplish that.
14 Thus, under my proposal, Section 1714.5
15 would simply add a clarification, and, frankly,
16 the proposed addition to 1714.5 could easily, and
17 probably should well as fit into 1714.3, because
18 it basically goes to the same issue, that when we
19 make a request of -- pick your agency -- and say
20 within your jurisdiction, comment within your
21 jurisdiction, and they comment, that we must give
22 that comment great deference. Which means that
23 absent express information to the contrary, we
24 accept that as the position of that state agency,
25 and thus the state. Rather than us hire the same

1 -- or different people to do the same work.
2 Now, Staff's objection is that we do
3 things that other agencies do not. Fine. I have
4 never objected to that. Such as environmental
5 work. My language does nothing to suggest that we
6 do not continue to do that. If you read this
7 section, equally applicable to 1714.3, all it says
8 is that when an agency acts within its
9 jurisdiction, we give that great deference.
10 Now, for the life of me, I don't have a
11 problem with that. I think that's good
12 government.
13 I'd be pleased to respond to any
14 questions you may have on this issue.
15 CHAIRMAN KEESE: Commissioner Pernell?
16 COMMISSIONER PERNELL: Yes. Thank you,
17 Mr. Chairman. Just a couple of questions.
18 First of all, it -- it is my
19 understanding, Commissioner Laurie, that the --
20 the agency that is putting forth the -- the
21 proposal, meaning us, are defined as the lead
22 agency. In other words, we -- we will put out
23 information to other agencies for response, but we
24 are still responsible, as the lead agency. Is
25 that correct?

1 COMMISSIONER LAURIE: That is correct.
2 COMMISSIONER PERNELL: And if we accept
3 comments from other agencies that are wrong, and
4 for whatever reason, maybe we look at it and it
5 starts out right and then they say okay, let's go
6 forward because we've got a backload of workload
7 over here, for whatever reason it's wrong, and we
8 accept it, we are liable as the lead agency. Is
9 that correct?
10 COMMISSIONER LAURIE: I don't know if I
11 want to respond to the question of liability.
12 It's certainly our responsibility. And it is our
13 decision, yes.
14 COMMISSIONER PERNELL: Right. And --
15 and by making that decision, at least in my view,
16 we are liable for the outcome.
17 COMMISSIONER LAURIE: That is correct.
18 COMMISSIONER PERNELL: And the other
19 question that I think you dealt with, with your --
20 what I think the definition of great deference is,
21 is if there's a conflict with other state laws
22 and, you know, ABC city or county up in the far
23 north says as a affirmative position that is in
24 conflict with some other state or federal law, we
25 do not have to accept that. Then -- is that an

1 example of great deference?
2 COMMISSIONER LAURIE: I -- I think the
3 issue, Commissioner Pernell, is to what extent do
4 we expend resources in determining incorrect
5 information, or non-compliance with law, that is.
6 Let's assume for a moment that we make a request
7 of a local water district as to their water
8 supply. And we get a letter back saying their
9 annual allocation is 100,000 acre/feet a year.
10 Our Staff member is sitting there with a document
11 that says -- that seems to say that the allocation
12 of the water district is 200,000 acre/feet a year.
13 Well, I do not believe that we then have an
14 obligation to ignore the fact in front of us.
15 If, however, the water district sends us
16 a letter saying their allocation is 100,000
17 acre/feet a year, and we have no information to
18 the contrary, then how many resources should we
19 spend trying to find out. If we are going to do
20 an analysis of the issue on our own, then why in
21 the world spend the taxpayers' money and have the
22 other agency do it; why don't we just do it all.
23 And the -- the tone of that response is
24 not intended to be critical of the question,
25 because I -- I think it's an important question,

1 and a -- and a valid question.
2 COMMISSIONER PERNELL: Let me --
3 COMMISSIONER LAURIE: In my --
4 COMMISSIONER PERNELL: Go ahead. I'm
5 sorry.
6 COMMISSIONER LAURIE: The issue is not
7 unique to our agency. If a member of a board of
8 supervisors is considering a housing project, and
9 the local water purveyor says there is adequate
10 water to supply the project, then to what extent
11 should the board of supervisors question that?
12 Sometimes they do, sometimes they do not, as a
13 matter of policy. I believe most local
14 governments have the policy of accepting
15 information provided by sister agencies. But
16 there's no law saying that they must do that.
17 COMMISSIONER PERNELL: And your -- I'm
18 sorry, are you done?
19 COMMISSIONER LAURIE: Yeah. Go ahead.
20 COMMISSIONER PERNELL: Let me -- let me
21 use your example of a water agency.
22 COMMISSIONER LAURIE: Okay.
23 COMMISSIONER PERNELL: And they say that
24 they have a allocation of 100,000 -- well, not
25 100,000, we'll pick a number -- we'll use 100,000

1 acre/feet.

2 COMMISSIONER LAURIE: Okay.

3 COMMISSIONER PERNELL: The project that

4 we are proposing are going to use -- are within

5 that. Do we then look at the proposed development

6 of that area, or do they look at it, or do they

7 have a public comment period? Because if -- if

8 the project is taking up over 50 percent, for

9 example, of their allocation, what does that do to

10 the farmers in the area, proposed development, et

11 cetera, et cetera.

12 And my point is only this, that if we

13 don't take, or if they don't take in their report

14 a in depth look at the future use of that

15 allocation, and weigh that against the allocation

16 that is being proposed, I don't think that we will

17 be doing the general public and XYZ area a good

18 service.

19 COMMISSIONER LAURIE: I --I have no

20 disagreement with that statement, Commissioner

21 Pernell. I would suggest, however, that in your

22 scenario, that when the water district responds by

23 saying we have 100,000 acre/feet allocation, and

24 that response is within their jurisdiction, any

25 issue regarding how the use of that water may

1 affect development of the county's general plan,
2 for example, is probably not within their
3 jurisdiction, but is within the responsibility of
4 our -- and our obligations under our environmental
5 analysis. And therefore, it -- in fact, it is
6 something that we do, on a case by case basis.
7 So my language does not inhibit in any
8 way our obligation to perform our function. What
9 it would say, however, is that if a water district
10 says we have 100,000 feet, then we go oh, okay.
11 We don't send somebody out to examine water
12 district records to see if, in fact, there's
13 100,000 feet. I would not want to pay my staff to
14 do that.
15 COMMISSIONER PERNELL: No, I would agree
16 in that scenario. But I'm simply suggesting that
17 it has to -- one has to look deeper than the fact
18 that they have 100,000 square feet, and it -- so
19 they have some excess capacity that can be used.
20 So I'm not sure how -- and you can help me with
21 this since you've dealt a lot with local
22 government land use issues -- I'm not sure how in
23 depth the water district gets with their analysis,
24 other than saying we have 100,000 acre/feet, and
25 the, you know, the proposal only -- only needs

1 40,000 acre/feet, or something.
2 So I'm -- I'm just questioning the --
3 how in depth will these agencies, using your
4 example, get in order for us to -- or Staff to do
5 a adequate analysis of their proposal?
6 COMMISSIONER LAURIE: Well, your
7 question is a good question, and I fault myself
8 for picking perhaps the most complicated example I
9 could come up with.
10 (Laughter.)
11 COMMISSIONER LAURIE: Because it's -- in
12 fact, this issue has arisen. Now, I would suggest
13 to you that in practicality, what -- what should,
14 under the law, should occur, is that if a water
15 district is considering an application and they
16 determine to enter into an agreement to allocate
17 water supply to a power plant, then that agreement
18 is subject to CEQA, and environmental analysis is
19 conducted. And that CEQA analysis would normally,
20 I think, include the kind of analysis that you're
21 talking about.
22 COMMISSIONER PERNELL: But, let me stop
23 you right there, just briefly. Would that extend
24 the length of our proceedings by going through an
25 entire CEQA analysis?

1 COMMISSIONER LAURIE: Oh, sure. Yeah.
2 Sure. Anytime the project, if -- if we require
3 written agreement of proof of a water supply, and
4 that proof of -- or that evidence of the water
5 supply is a written agreement, and the agreement
6 requires an environmental analysis, well, then you
7 get into the same issue of are you going to use
8 our own environmental analysis or are they going
9 to do their own, obviously, and that's the one
10 major issue that we chose not to tackle in this
11 question. But anytime you need expressionary
12 authority from the local agency, yeah, it always
13 extends our time.
14 But the issue remains that if an
15 environmental analysis is conducted by a local
16 agency, do we have the authority and
17 responsibility to examine that environmental
18 analysis. Yes, we do, and I don't question that.
19 But I'm talking about the degree in which we
20 question the facts and the conclusions reached by
21 other public servants. And by utilization of the
22 term great deference, it means, to me, if I were
23 Presiding Member of the Committee and the issue
24 arose to what extent do I want to ask Staff to
25 conduct further analysis, is if some state or

1 local agency gives me a fact and there's no
2 evidence suggesting that fact is incorrect, then I
3 am going to accept that fact. I am not going to
4 direct Staff to duplicate the work that's already
5 been done.
6 And that's all my language says. I
7 think it does nothing beyond that. It is not my
8 intention that it do anything beyond that.
9 COMMISSIONER PERNELL: Thank you,
10 Commissioner.
11 Chairman Keese, I have nothing else on
12 this item.
13 CHAIRMAN KEESE: Thank you.
14 CHAIRMAN LAURIE: Any additional
15 questions from the Commission
16 CHAIRMAN KEESE: I don't think so.
17 COMMISSIONER LAURIE: Thank you. That
18 concludes my comments, Mr. Chairman. I believe
19 Staff will explain the basis of their objections
20 to my proposals. I give them freedom to do so.
21 The public will have comments, and then I would
22 offer closing comment.
23 CHAIRMAN KEESE: Thank you.
24 COMMISSIONER LAURIE: Thank you, Mr.
25 Chairman.

1 CHAIRMAN KEESE: I'll ask Staff to, for
2 our benefit, to follow the one, two, three, four
3 order.
4 MR. BUELL: Yes.
5 CHAIRMAN KEESE: So we'll start with the
6 control of the hearings by the Presiding Member.
7 MR. BUELL: Before I begin on that
8 specific item, I would like to make a general
9 comment.
10 CHAIRMAN KEESE: Feel free.
11 MR. BUELL: I want to thank Commissioner
12 Laurie for his summary of the issues. I think he
13 did an excellent job.
14 I want to emphasize that I think we're
15 in agreement on more points than we were in
16 disagreement on. There's some eight sections of
17 the regulations that we are in agreement, both
18 Commissioner Pernell and Staff and Commissioner
19 Laurie, on what the changes should be. We fully
20 recommend that those changes go forward, despite
21 the discussion here today.
22 I also wanted to clarify that the
23 purpose of today's hearing is not to adopt
24 regulations, but, rather, to identify what the
25 policy recommendations of this Commission are for

1 future changes to the regulations that we'll take
2 forward to the Office of Governmental Law.
3 With that opening statement, I'd like to
4 go, as you suggest, section by section.
5 Beginning with Section 1212, which deals
6 with the rights of a party. Or, excuse me, the
7 rights of the Presiding Member to conduct the
8 hearings.
9 I'd like to clarify that actually the
10 first opening sentence that Laurie has provided in
11 his recommendations, Staff really has no objection
12 to. It's basically simply restating the obvious,
13 that another section of the regulations governs
14 that section.
15 Where our concerns lie primarily are the
16 additions that he's making to the second sentence,
17 or later in that paragraph, that read, the
18 Presiding Member, Committee members, deems
19 relevant. We're concerned that that provides
20 additional discretion that was not originally
21 intended by the regulations, and therefore
22 potentially may be viewed by the public as
23 limiting their ability to participate in the
24 process.
25 So on that basis, we were opposing

1 Commissioner Laurie's suggested changes to that
2 section of the regulations.
3 CHAIRMAN KEESE: Okay.
4 COMMISSIONER LAURIE: Question, Mr.
5 Buell.
6 MR. BUELL: Yes.
7 CHAIRMAN KEESE: Commissioner Laurie.
8 COMMISSIONER LAURIE: Under Section
9 1203, it is the power of the Chairman, the
10 Presiding Member, the judge, to request and secure
11 information as is relevant and -- and necessary.
12 But if the Presiding Member doesn't determine
13 that, who does? Who, other than the Presiding
14 Member, determines relevancy?
15 MS. ICHIEN: I think Staff agrees that
16 the Presiding Member does have the responsibility
17 of determining relevancy. But the implication in
18 1203 is that to the extent there are differing
19 views as to whether or not an issue is relevant,
20 you -- the Presiding Member would hear argument
21 from the parties representing different views.
22 The implication with the change you're
23 proposing to Section 1212(c), by inserting the
24 words "the Presiding Committee Member deems
25 relevant", implies perhaps not what you intend,

1 that the Presiding Member unilaterally, without
2 necessarily hearing input --
3 COMMISSIONER LAURIE: I have to
4 apologize, but I really think you folks are -- are
5 nitpicking. Any decision of the Presiding Member
6 is either done following a hearing or not
7 following a hearing. Whatever the Presiding
8 Member wants to do. If the Presiding Member
9 doesn't want to do it properly, and -- and listen
10 to a matter being debated, then they don't.
11 But to suggest that the Presiding Member
12 doesn't have the power to deem relevancy is simply
13 incorrect. Of course the Presiding Member has the
14 power to deem relevancy. Whether you want to put
15 in the law that they have to hold a hearing before
16 that action is taken, I think is absurd. It is
17 only the Presiding Member that has the power to
18 deem relevancy, and that's all that section says.
19 COMMISSIONER MOORE: Well -- well maybe,
20 Mr. Chairman, there's another way to get at what
21 Commissioner Laurie is -- is suggesting.
22 Let me go back to Arlene's statement,
23 and say Arlene, is there any other place, or is
24 there any other individual or body that would, in
25 fact, deem what is relevant and what is not?

1 Where -- where else could you go? Because if --
2 if there's another place beyond that, and perhaps
3 it's in -- in appeal, or something, to this full
4 body. But if there's any other place beyond the
5 Presiding Member's decision, I'm unaware of it.
6 So maybe -- maybe there's a part of this that I'm
7 just not recognizing.
8 MS. ICHIEN: Well, may I ask a question.
9 And that is, what would be the harm of simply
10 removing that second underlined phrase and leaving
11 it to be clear that that section is subject to the
12 exercise of --
13 COMMISSIONER LAURIE: Well, I guess I
14 would respond to your question with the same
15 question. If -- if the law is that the Presiding
16 Member deems relevancy, and that is the law, and I
17 am asking as a Commissioner and as a Presiding
18 Member of some cases that I would like that
19 clarification, then you tell me what the harm is.
20 COMMISSIONER PERNELL: Mr. Chairman, may
21 I ask a question to --
22 CHAIRMAN KEESE: Commissioner Pernell,
23 are you going to ask a question of Staff?
24 COMMISSIONER PERNELL: Yes.
25 CHAIRMAN KEESE: Okay.

1 COMMISSIONER PERNELL: And that is, is
2 it -- it's been stated that the -- the Committee
3 Chair has discretion in existing law. Is that
4 correct?
5 CHAIRMAN KEESE: I will -- since you
6 don't have it in front of you, I will refer you to
7 the first part of this statement, which is that
8 the power of the Chairman includes 1203(c) to
9 regulate the conduct of the proceedings and
10 hearings, including, but not limited to, disposing
11 of procedural requests, admitting or excluding
12 evidence, receiving exhibits, designating the
13 order of appearance of persons making oral
14 comments or testimony, and continuing the
15 hearings.
16 COMMISSIONER PERNELL: And that's
17 existing law?
18 CHAIRMAN KEESE: Yes. That's existing
19 law. Current law, for the purpose of this, I
20 would say involves admitting or excluding
21 evidence. And the question, I guess, is, is
22 adding the words the Presiding Committee Member
23 deems, to language which already says on any
24 matters relevant, does that add or take away
25 anything?

1 We have Commissioner Laurie suggesting
2 it clarifies, and we have Staff suggesting that it
3 could -- an attempt to convince the public that
4 we're giving the Chair added discretion. Those
5 are -- those are the positions. Correct?
6 COMMISSIONER PERNELL: Right. And --
7 CHAIRMAN KEESE: Is that --
8 MS. ICHIEN: Yes.
9 COMMISSIONER PERNELL: -- I understand
10 that. And on this -- on this issue, Mr. Chairman,
11 I would have to agree with Staff, simply because
12 of perception in the integrity of our process.
13 And I've said that before. And the other issue I
14 would want to bring up here is that if it's
15 already there, then it's a redundancy addition.
16 And you can't argue redundancy on one hand, and on
17 another section argue that we shouldn't have
18 redundancy.
19 So I'm not, you know, I'm having some
20 problems with this particular addition.
21 COMMISSIONER LAURIE: And, Mr. Chairman,
22 let me ask a question of clarification of the
23 record. If the language, the Presiding Member
24 deems, is taken out, then who determines
25 relevancy?

1 CHAIRMAN KEESE: The Presiding Member.
2 MS. ICHIEN: May I suggest a modest
3 change, and this can be perhaps comment, responded
4 to or commented upon by others. And that would be
5 to change the wording to say the Presiding
6 Committee Member has determined is relevant. And
7 see whether or not --
8 COMMISSIONER LAURIE: I -- I certainly
9 have no objection to that language, if --
10 MS. ICHIEN: Or determines is relevant.
11 COMMISSIONER LAURIE: -- that meets the
12 needs of my esteemed legal counsel.
13 COMMISSIONER PERNELL: I'm not sure --
14 this is Commissioner Pernell. I'm not sure that
15 that -- changing anything was the intent of the --
16 CHAIRMAN KEESE: Well, it changes what
17 Staff is suggesting, so -- and this -- this is
18 Staff's -- this is Staff's chance to go through
19 the -- so at -- I think she is suggesting the word
20 "deems" be changed to "determines". Is that --
21 did I get that correct?
22 MR. BUELL: That's my understanding,
23 yes.
24 CHAIRMAN KEESE: Or deems, becomes
25 determines.

1 All right. Let's -- let's leave that
2 here. We have -- we have at least three or four
3 members of the public who are going to comment on
4 all four of these issues, too.
5 Item two. Can we go to Item two.
6 MR. BUELL: Item two, regarding --
7 regarding the noticing requirements and --
8 CHAIRMAN KEESE: Communications between
9 parties.
10 MR. BUELL: Right. Here I'd like to
11 acknowledge Commissioner Laurie's frustration,
12 that this has been an issue for a lot longer than
13 he has been a Commissioner at the Commission.
14 It's been confusing. He's correct that this
15 section of the regulation needs to be cleaned up.
16 Staff concurs with that.
17 And yesterday I met with a couple of the
18 advisors to try to find out exactly how close
19 Staff could come to both Commissioner Pernell's
20 position, as well as Commissioner Laurie's
21 position.
22 We reached a tentative agreement with
23 some of the Commissioners' advisors on what might
24 be appropriate language, and I have distributed
25 that by e-mail to each of the advisors of the

1 Commissioners. I have copies of that. This is
2 the agreement that Commissioner Pernell referenced
3 moments ago in asking questions of Commissioner
4 Laurie. If anyone would like to have a copy, I
5 have that -- and distribute copies for the members
6 of the public.
7 Let me explain that we don't believe
8 this substantively changes the text that we had
9 proposed in our August Staff report. The reason
10 for doing this is twofold. It -- excuse me.
11 CHAIRMAN KEESE: I want to ask a
12 question. You know, I believe that the parties
13 are almost -- the parties. I believe that
14 everybody is almost identical except for some
15 words.
16 MR. BUELL: Right. I think that's the
17 point that I'd like to get to.
18 CHAIRMAN KEESE: It's just verbiage
19 things here, that -- that between the
20 Commissioner's proposal, between Commissioner
21 Pernell's proposal, between what I heard from --
22 from this morning, it sounds to me like I'm
23 hearing the same issues laid out in the same
24 perspective.
25 MR. BUELL: Right.

1 CHAIRMAN KEESE: We just have a few
2 different words. Is that --
3 COMMISSIONER LAURIE; The only
4 difference, Mr. Chairman, is Staff proposed
5 additional language, by regulations, both
6 specifically prohibiting negotiations. Or --
7 MR. BUELL: If I might speak to that
8 point. Commissioner Laurie is correct. It's the
9 last sentence that's in Staff's proposal that is
10 causing Commissioner Laurie's heartburn.
11 CHAIRMAN KEESE: Okay. Well, then let's
12 restrict our comments -- Ms. Mendonca, do you have
13 --
14 PUBLIC ADVISER MENDONCA: I just wanted
15 to comment that basically, you've called on Staff
16 and the Commissioners. In this area, the Public
17 Adviser has had a wealth of public participation.
18 It's true there are only three people here today,
19 but I do have faxes, e-mails, and a great amount
20 of information to share when the time is
21 appropriate --
22 CHAIRMAN KEESE: Okay.
23 PUBLIC ADVISER MENDONCA: -- about the
24 public's view. And so I was taking issue with the
25 fact that parties are close, because I do believe

1 the public continues to have --
2 CHAIRMAN KEESE: Okay, I'm sorry. I
3 meant --
4 PUBLIC ADVISER: -- a position different
5 from Staff.
6 MR. BUELL: Let me reemphasize that --
7 CHAIRMAN KEESE: I meant the three
8 proposals here.
9 MR. BUELL: -- today we're not adopting
10 regulations. And if the Commission made a policy
11 decision on what regulations to go forward, the
12 public would still have an opportunity to provide
13 comments on that concern to the regulations
14 governing adoption of rules and regulations.
15 So I appreciate that not all members of
16 the public may agree with what we agree with
17 today, but there's still an opportunity for them
18 to comment.
19 If we might go back and try to focus on
20 that last sentence, because I think that is the
21 bone of contention here.
22 CHAIRMAN KEESE: Okay.
23 MR. BUELL: I'd like to start off by
24 saying Staff at times acts as though it is the
25 decision maker, but we fully recognize that that's

1 not the case. We're not here making a decision
2 for the Committee on a siting case. That's their
3 responsibility. The fact that we may enter into a
4 stipulation with an applicant or another party on
5 a case does not mean that the Committee should not
6 go forward and question the validity of that
7 stipulation, and take evidence on whether that's a
8 rational decision for the Commission to enter
9 into. That's -- I think we all agree that that's
10 the way the game should be played.
11 That brings me to the point of the word
12 "negotiations". And what I understood today is
13 that that is causing Commissioner Laurie some
14 problems. It caused Staff problems in trying to
15 figure out the exact right word to use in that
16 context. One of the suggestions that has been
17 made by Staff, as well as some other parties, is
18 to substitute the word "discuss". Discuss the
19 resolution of issues. If that provides a greater
20 flexibility in Commissioner Laurie's viewpoint, I
21 certainly think Staff is willing to agree to that
22 change.
23 Another one might be -- another
24 alternative phraseology might be to discuss
25 recommendations on resolution of issues, because

1 that would acknowledge that definitely Staff
2 doesn't have the right to reach a conclusion about
3 issues, only to provide recommendations to the
4 full Commission, or the Committee, rather, on what
5 the appropriate siting regulations are.
6 If either of those two things are --
7 that the Commission would like to consider, would
8 accomplish that and remove the impediment that I
9 understand Mr. Laurie to have in -- with Staff's
10 last sentence, then I would like to entertain
11 those.
12 CHAIRMAN KEESE: Yeah, I don't -- I'm
13 not sure that I -- I understand the difference.
14 I'm not -- I'm not going to characterize what his
15 objection is.
16 Would the addition of the words "for
17 presentation to the Committee" --
18 MR. BUELL: That would be acceptable.
19 CHAIRMAN KEESE: -- add anything?
20 MR. BUELL: I think that that would
21 clarify the fact that Staff is not reaching a
22 resolution, but providing a recommendation to the
23 Siting Committee.
24 CHAIRMAN KEESE: So I -- and I'm not
25 trying to pick the words you're going to use here,

1 but I -- if -- what you have just said is that
2 you're doing something for presentation to the
3 Committee.
4 MR. BUELL: Right.
5 CHAIRMAN KEESE: Would the -- the
6 explicit use of those terms bring anybody comfort?
7 COMMISSIONER PERNELL; A question, Mr.
8 Chairman.
9 CHAIRMAN KEESE: Commissioner Pernell.
10 COMMISSIONER PERNELL: Mr. Chairman, on
11 -- on that recommendation, I guess -- I'm having a
12 little heartburn now, because Staff can still
13 negotiate substantive issues and bring those to
14 the Committee for -- as a recommendation. And so
15 we're still -- I mean, the -- the perception of
16 negotiating substantive issues behind closed
17 doors, whether they bring it to the Commission --
18 to the Committee for a vote or not, is irrelevant.
19 The fact is it's being negotiated behind closed
20 doors.
21 MS. ICHIEN: One suggestion would be to
22 add the word "proposed" in front of -- of
23 "settlement" or "resolution".
24 COMMISSIONER LAURIE: Are you referring
25 to Staff's language?

1 MS. ICHIEN: I'm referring to the one
2 sentence that I think is at issue here, beginning
3 with, in no event shall Staff hold an unnoticed
4 meeting.
5 CHAIRMAN KEESE: So --
6 COMMISSIONER PERNELL: What --
7 CHAIRMAN KEESE: -- so let me ask,
8 because I've heard a number of words flowing from
9 Staff here. Are you saying instead of negotiate,
10 to -- to discuss a proposed settlement? Discuss a
11 proposed --
12 MS. ICHIEN: Right.
13 MR. BUELL: Right.
14 CHAIRMAN KEESE: -- strike "negotiate"
15 and add "discuss a proposed"?
16 MS. ICHIEN: Right.
17 MR. BUELL: Yes.
18 COMMISSIONER PERNELL: Okay. Would you
19 read that with the suggested changes, please?
20 MR. BUELL: Why don't I read the whole
21 sentence.
22 COMMISSIONER PERNELL: Yes.
23 MR. BUELL: The sentence would read, "In
24 no event shall Staff hold unnoticed meeting with
25 the Applicant or other party, other than a

1 governmental agency, to discuss proposed
2 settlement or resolution of one or more
3 substantive issues."
4 COMMISSIONER PERNELL: That's fine with
5 me.
6 COMMISSIONER MOORE: Well -- well, hold
7 it. It's not -- not fine with me. Just so we get
8 out stuff out, I -- I'm absolutely adrift as to
9 what the difference is between not negotiating in
10 private between a public agency and an applicant.
11 And if you tell me, because this has turned into a
12 -- if I can be so kind as to describe it as a
13 tedious discussion over -- a narrow fencing match
14 here over what -- badinage over what's -- what's
15 proper and what's not.
16 What I'm understanding is that there's
17 an attempt to make sure that every single thing
18 that's done, a discussion or a negotiation, if I
19 can use the word broadly, take place at -- in some
20 sort of noticed public hearing. And --
21 COMMISSIONER PERNELL: That -- that's
22 incorrect, from my --
23 COMMISSIONER MOORE; Excuse me, Robert.
24 I'm just trying to -- to understand sort of the
25 length and breadth of this, and --

1 COMMISSIONER PERNELL: Okay.

2 COMMISSIONER MOORE: -- see if I can cut

3 to the chase.

4 The idea is that -- or at least as I was

5 understanding the language that was being

6 presented a second ago, is that it would be

7 permissible for Staff to engage in discussions

8 regarding an issue, a set of issues or procedures,

9 with an Applicant, or an Intervenor, for that

10 matter.

11 Frankly, an Intervenor could come to

12 Staff and say what about this, and Staff could, in

13 fact, have a discussion on that item. And that

14 when such a discussion resulted in a

15 recommendation of one kind or another, that Staff

16 would then present that to the Committee and say

17 we've had a discussion. We've had Applicant come

18 in, or we've had the Intervenor come in, or a

19 member of the public, who has suggested that an

20 interpretation or a recommendation be modified so

21 as to read, and then they would describe the

22 language. We've considered that, and in our

23 opinion, it should be given weight or it should be

24 adopted, it makes sense, and the Committee ought

25 to consider that.

1 And in fact, to make sure that that kind
2 of discussion can't take place outside a public
3 hearing, it seems to me is to -- just to fetter
4 the Staff. Staff is -- they're public servants.
5 They're trying to make sure that the -- that the
6 process goes ahead in the most expeditious manner
7 possible. And it's -- so I'm -- I'm just
8 mystified by the -- by the disagreement over what
9 -- what has to happen here, unless what's
10 happening in the background is that there's a move
11 afoot to make sure that any discussion, any
12 correspondence, any negotiation -- again, to use
13 the word broadly -- between the Staff and anyone
14 concerned with the case, absolutely has to take
15 place in a noticed public hearing.
16 If that's what's going on, then it seems
17 to me we're -- we're really preparing ourselves to
18 shackle the process. So I -- I just need some
19 clarification. I can't -- I can't understand what
20 the distinction, perhaps without a difference, is
21 -- that's being made here.
22 COMMISSIONER PERNELL: Mr. Chairman, if
23 I may. I think Commissioner Moore makes a good
24 point, and it seems to me that I'm more
25 comfortable with the word "discussion" than I am

1 with the word "negotiate". And this is my first
2 time hearing a proposed -- a proposal, a -- and I
3 hope that you're submitting that as a -- as a
4 proposed recommendation, Commissioner Moore, I
5 don't want to mischaracterize what you're saying.
6 CHAIRMAN KEESE: We're not negotiating
7 here. This is a discussion. We're discussing a
8 proposed settlement.
9 COMMISSIONER PERNELL: Right.
10 (Laughter.)
11 COMMISSIONER PERNELL: But -- but the
12 idea of having discussion is -- is -- I'm more
13 comfortable with -- in saying negotiate settlement
14 or resolutions than --
15 COMMISSIONER MOORE: Well, Commissioner
16 Pernell, as I understood it, what Staff was doing
17 was taking Commissioner Laurie's language,
18 changing one word in it --
19 MR. BUELL: That's not completely
20 correct. We're taking Commissioner Laurie's
21 language and adding a full sentence that is not in
22 his, and that is the last sentence I just read.
23 CHAIRMAN KEESE: And -- and Staff has
24 added the last sentence, and Commissioner Laurie
25 doesn't care for it.

1 COMMISSIONER LAURIE: Basically, my
2 language is you can get together and exchange
3 information. That, to me, includes the term
4 "discussion". If you exchange information, you're
5 going to discuss it. Staff is saying yeah, you
6 can have that discussion, but you can't negotiate.
7 Well, I -- I honestly don't know what
8 that means. I don't think Staff negotiates. I
9 don't think Staff reaches agreement. Based upon
10 the information provided, Staff may, in its own
11 mind, adopt a specific provision, but there's no
12 -- there's no agreement. It's -- it's a
13 unilateral action by Staff.
14 COMMISSIONER MOORE: Well, that -- I
15 guess that's why I'm -- I said this was
16 potentially a distinction without a difference,
17 because in fact, if there cannot be a negotiated
18 settlement of one kind or another, there can only
19 be a set of recommendations that follow a
20 discussion, then -- then, so what? What -- what
21 is this -- what does this language add, what have
22 we done here by adding this?
23 COMMISSIONER LAURIE; Are you talking
24 about adding the last sentence?
25 COMMISSIONER MOORE: Right. I -- I

1 don't -- I don't understand why add it, I don't --
2 I don't understand why --
3 MR. BUELL: Let me try to explain what
4 --
5 COMMISSIONER MOORE: -- what you've
6 cleaved off that isn't settled by simply saying --
7 well, in fact, I guess your -- your word does
8 appear in Commissioner Laurie's edition,
9 discussing procedural issues.
10 I -- what have you added? What -- what
11 do we gain by potentially adding this sentence?
12 MR. BUELL: What we gain, potentially,
13 is making an affirmative statement for members of
14 the public and for Staff to acknowledge that we do
15 not meet in an unnoticed meeting to discuss a
16 negotiation, if you will, of an issue. That those
17 meetings shall be done in a public forum. What we
18 gain is an affirmative statement to that effect.
19 You're correct that the language
20 excluding that last sentence in effect would
21 accomplish the same thing, except that it doesn't
22 address the public's concerns directly, that the
23 Staff be meeting outside of the public forum.
24 CHAIRMAN KEESE: Why --
25 MR. BUELL: So that's the bad thing.

1 CHAIRMAN KEESE: -- why don't we leave
2 it there. We have --
3 COMMISSIONER PERNELL: Mr. Chairman, I
4 just want to note for the record, I think that my
5 position on this issue is clear, and I have no
6 further comments on it.
7 CHAIRMAN KEESE: Okay. So we -- we have
8 where the two parties are, or where -- we have
9 where Staff is coming on this one.
10 Item three. Intervenors.
11 MR. BUELL: Regarding the section 1207,
12 let me clarify again that we believe that the
13 addition of the last sentence to 1207 is harmless.
14 It does not -- it's simply moving a sentence that
15 was contained in 1712 to 1207. And in doing that,
16 it has no harm.
17 Where Staff has objections to this
18 series of changes is actually the deletion of 1712
19 itself, and I think we need to consider both of
20 these changes in concert.
21 We believe that the deletion of 1712
22 makes unclear as the rights of an intervening
23 party, and that's the basis for our objection,
24 that we believe that leaving that section in there
25 provides clarification of the rights of an

1 Intervenor to file petitions, to file briefs, et
2 cetera, file testimony. And we believe that
3 that's appropriate to maintain that, that
4 condition of their responsibilities and their
5 rights as a member of the party to a case.
6 So that's the basis for an objection to
7 both 1207 and the deletion of 1712.
8 CHAIRMAN KEESE: Okay. But on its face,
9 you're saying that 1207(c), the addition of the
10 last sentence is harmless --
11 MR. BUELL: Is -- is basically harmless,
12 yes.
13 CHAIRMAN KEESE: It's just that you're
14 wondering about the implications of deleting 1712.
15 MR. BUELL: Right.
16 COMMISSIONER LAURIE: Let me ask a
17 question.
18 CHAIRMAN KEESE: Commissioner Laurie.
19 COMMISSIONER LAURIE: Is there any other
20 regulation which sets forth the rights and duties
21 of a party, other than 1712?
22 MS. ICHIEN: I don't -- I don't believe
23 there is. I could be wrong, but -- I don't recall
24 there being a section that does set forth in one
25 section all the rights and duties of a party.

1 COMMISSIONER LAURIE: Okay. But 1712
2 only applies to Intervenors, does it not?
3 MS. ICHIEN: 1712 applies to -- to
4 parties, also. Intervenors become parties. It
5 sets forth the rights and duties of all parties,
6 including Intervenors. And you are right that it
7 is repetitive of other sections, but it also adds
8 language that I don't believe is contained in
9 other sections.
10 For example, in subsection (a), the
11 second sentence there, there's a restriction --
12 COMMISSIONER LAURIE: Under --
13 MS. ICHIEN: -- placed on --
14 COMMISSIONER LAURIE: -- under
15 subsection (a), where the language is -- all the
16 rights and duties of a party under these
17 regulations. Is that in reference to under the
18 section, or under the regulations, which would
19 include any other reference to rights and -- and
20 duties?
21 MS. ICHIEN: I think it refers to the
22 regulations on the siting process.
23 COMMISSIONER LAURIE: Okay. And there's
24 no other section which states what the rights of
25 the parties are, and what the duties of the

1 parties are, other than Section 1712?
2 MS. ICHIEN: Not all -- right, not one
3 section that has all the rights and duties listed
4 in one place, that I know of.
5 COMMISSIONER LAURIE: And does 1712(b)
6 incorporate all of the rights of the parties, and
7 does 1712(c) incorporate all of the duties of the
8 parties, or just some?
9 MS. ICHIEN: I think it's comprehensive.
10 I -- I believe (b) and (c) are comprehensive. And
11 they, you know, provide -- they refer back to
12 other sections that do list the rights of parties.
13 COMMISSIONER LAURIE: Okay. Well, if --
14 if 1712(b) is intended -- if the purpose for its
15 existence is to be the place in the regulations
16 that sets forth the rights of the parties, and if
17 the purpose of 17(c) is intended to set forth the
18 duties of the parties, and that's the only place
19 it exists, and my sense is that that's not my
20 recollection, but if in fact that is correct, then
21 you're right, I have no problem with keeping that.
22 I have a problem with keeping (a).
23 MS. ICHIEN: Well, Commissioner Laurie,
24 the second sentence in (a) I think is helpful in
25 putting people on notice who do petition to

1 intervene, that they'll be restricted as to
2 matters that will be allowed to be reopened. And
3 so I think that's of --
4 CHIEF COUNSEL CHAMBERLAIN: I think
5 that's the third sentence.
6 MS. ICHIEN: -- guidance to the -- I'm
7 sorry, the -- is it the third sentence? You're
8 right. The third, the last sentence in subsection
9 (a) is what I'm referring to.
10 COMMISSIONER LAURIE: Okay.
11 MS. ICHIEN: And I think that is helpful
12 guidance.
13 COMMISSIONER MOORE: Okay.
14 CHAIRMAN KEESE: Okay, anything further?
15 COMMISSIONER MOORE: Thank you, Arlene.
16 I have no more questions.
17 CHAIRMAN KEESE: I think we're pretty
18 clear on that one.
19 All right. Subject four. Great
20 deference. And we'll just -- what is, for -- for
21 starters, does Staff give great deference now?
22 MR. BUELL: Staff --
23 CHAIRMAN KEESE: Some deference?
24 MR. BUELL: Staff believes it gives
25 great deference. I suspect there's some

1 applicants and some local agencies that don't
2 agree that we do that. And I think the issue here
3 can be summed up using the example that's been
4 given.
5 We have a water agency that's identified
6 and has an allocation of 100,000 acre/feet
7 available to distribute to users in its
8 jurisdiction. Where does Staff start and stop
9 accepting that number? If, on page two of the
10 water agency's annual report it says that it's
11 really only 500,000 acre/feet if the use is for
12 power plants, is Staff required to look at page
13 two, or is it prohibited from looking at page two?
14 The problem of using the words "great
15 deference" and adding this language to the
16 regulations is it potentially would be a method
17 for parties to object to Staff looking at any
18 information outside of a -- a one statement that a
19 local agency or a state agency might make to our
20 process.
21 As Commissioner Laurie's indicated, I
22 think Staff has an obligation to try to ensure
23 that we have a sound decision that withstands the
24 test of any legal challenge. We need to provide a
25 complete analysis. That is not only a requirement

of our regulations, but it's also a requirement of the CEQA guidelines.

Mr. Bob Therkelsen, I don't recall if he had provided a reference to CEQA in his report that Commissioner Laurie referenced, but CEQA is also guiding what the role of a lead agency is, what information it should take, and it also defines the responsibilities of a responsible agency, which would be in this case those other agencies who we're gaining information from.

CEQA clearly defines that the Commission, as the lead agency, would be responsible for supplementing the information from a responsible agency to ensure that a complete record is given to the decision maker, in this case the Siting Committee.

Our concern with the word "great deference" is, is that it can be construed to limit Staff's ability to comply with those other regulations. And that's the basis for our concern.

I appreciate Commissioner Laurie's interpretation of the -- his intent here. Like Mr. Therkelsen, someday he may retire and not be here, and we may not have a Commissioner that has

his enlightened view of what "great deference" means. Therefore, Staff is concerned that we not adopt regulations that might be misunderstood in the future.

COMMISSIONER MOORE: Mr. Chairman.

CHAIRMAN KEESE: Commissioner Moore.

COMMISSIONER MOORE: I -- I'd like to clarify, and I guess we're all stuck on the water district example, so I'll stay with it, and suggest that perhaps we've gotten off in a cul-de-sac that -- that is not productive.

What was just described, it seems to me, could better be characterized as a limitation of questions. If, in fact, Staff went to the water agency in question and said how many -- how many acre/feet of water do you have available in the upcoming years, and left it at that, and you got an answer of 100,000 acre/feet, well, then that information is -- is information that you and the Committee would have to use in your analysis. I believe Commissioner Laurie is right, that you'd have to give deference to that.

If, on the other hand, you expanded your brief in your questioning of the agency and said, in a series of questions, perhaps 50 or 100

1 separate questions, where you ask them to define
2 how that water was available for use, whether it
3 was, in fact, temporal or on a continuing flow
4 basis, whether it was likely to be augmented in
5 the future, and any other of a host of questions
6 in which they would be required to narrow their
7 focus and, in fact, give you the information that
8 you need, have to have, in order to make a
9 recommendation to the Committee, then I think
10 they've defined their position and they are the
11 authoritative body to provide such information to
12 the Committee.
13 And in that case, it seems to me the
14 proper deference means that you -- that Staff or
15 the Applicant don't second-guess them and say
16 well, now, wait a second, that's not quite the
17 answer I wanted. And so what we're going to do is
18 we're going to hire an independent water expert to
19 go back and look at the aquifer tables, look at
20 the e-logs, the wells, and, in fact, render an
21 independent judgment as to whether or not they
22 actually have water available in each one of the
23 hundred categories that we ask them questions on.
24 It seems to me that what Commissioner
25 Laurie is saying is that as the responsible public

1 agency for giving that information in response to
2 the questions you ask, do we give them due
3 deference. And it seems to me that as a public
4 agency, that's the right thing to do. But it's
5 also incumbent on us to force them to answer the
6 right questions in order to have a complete public
7 record.
8 Now, it may be that the Presiding Member
9 determines that the breadth of the right question
10 wasn't asked, and that, in fact, a further series
11 of inquiries need to be made. It strike me that
12 the Presiding Member of the Committee are then
13 bound by the same kind of a precept, if you will,
14 that says they ought to give due deference to the
15 answer that comes out. I don't think we ought to
16 second-guess a public agency who has jurisdiction
17 over an area.
18 And that's the way I read the language.
19 I see the difficulty here in the neighborhood of
20 what questions we're asking. If you ask a simple
21 question, a broad one that elicits a response that
22 you're not comfortable with, well, it seems to me
23 you ought to broaden the -- the brief and ask more
24 questions.
25 So that would be my clarification of --

1 of that. I would ask if Staff agrees that that,
2 in fact, clarifies it, or I would put the question
3 to Commissioner Laurie.
4 MR. BUELL: Maybe -- maybe I could offer
5 another hypothetical that would make the issue
6 more clear from Staff's perspective.
7 Suppose we ask the water agency all the
8 right questions and we get the answers that we're
9 looking for, or at least that we can accept with
10 due deference. And an Intervenor --
11 COMMISSIONER MOORE: What -- what if you
12 get the answer that you're not looking for?
13 MR. BUELL: Even if I get the answer I'm
14 not looking for. Let's assume that I have an
15 answer from the district and I have no reason to
16 presume that the answer is wrong. And I have an
17 Intervenor that comes in and provides a report
18 that they -- was prepared by a third party, that
19 indicated that the water district, for lack of a
20 better word, is all wet. Does Staff ignore that
21 second report and simply accept the water
22 district's recommendation, or is it Staff's
23 obligation to weigh that evident and determine
24 which is the right position, to --
25 COMMISSIONER MOORE: No, absolutely not.

1 In -- I would stop you right after the determine
2 the right position. I think it's your
3 responsibility to bring both of those positions to
4 the Presiding Member and to the Committee.
5 MR.BUELL: And that's our concern with
6 the language, with due deference, is it could be
7 interpreted by some parties to mean that Staff
8 should not provide that clarification to --
9 COMMISSIONER MOORE: Well, I -- I think
10 Commissioner Laurie was pretty clear in his
11 presentation to say that where there's a conflict,
12 that you're going to have -- that you're going to
13 have the responsibility to make -- to make the
14 decision at this level. So it seems to me that
15 due deference simply acknowledges --
16 COMMISSIONER LAURIE: Great -- great
17 deference.
18 COMMISSIONER MOORE: I'm sorry.
19 COMMISSIONER LAURIE: Great deference.
20 COMMISSIONER MOORE: Great deference,
21 excuse me -- acknowledges the fact that there are
22 public agencies in charge who are in a position to
23 render a judgment. If -- I have to make the
24 presumption that a public agency, such as this
25 one, will have the public interest in mind. And I

1 have to the position, given no other evidence,
2 that any Intervenor has a bias, whether it's a
3 good bias or a bad bias, I don't -- I don't weigh
4 it either way, but it's -- it's a bias. And if it
5 is -- if it is a position that is against whatever
6 the public agency is, then I have to assume that
7 in one way or another, what that Intervenor is
8 saying is that public agency isn't doing what I
9 want them to do, and, in fact, we elected the
10 wrong people, we appointed the wrong people,
11 they're not acting in the public interest.
12 Well, you know what? So what. That's
13 -- that's a local question that ought to get
14 resolved by the voters, the constituency at a
15 local agency. And I don't want to be put in a
16 position where I second-guess the voters in a
17 local area, no matter what evidence an Intervenor
18 brings to me that suggests that the public agency
19 in charge is corrupt, misled, out of touch with
20 reality, no matter what, I -- there's just -- as
21 much as I would love to do it, in some cases, but
22 I can't go there.
23 CHAIRMAN KEESE: Let -- let me -- let me
24 point out that this -- this does not say the
25 Committee has to give deference to anything. It

1 just says the Staff must give great deference.
2 If -- do we have our --
3 COMMISSIONER LAURIE: I'd like to seek
4 to clarify Mr. Buell's last scenario. Clearly,
5 I'm not the only lawyer in this room. And but for
6 rare exception, however, I am the oldest lawyer in
7 the room.
8 (Laughter.)
9 COMMISSIONER LAURIE: And all I would
10 say in that regard is there is a legal difference
11 between giving great deference and having there be
12 a conclusive presumption.
13 I would tear any argument apart that
14 would suggest giving great deference takes away
15 all discretion. It does not. That's not what the
16 word "deference" means. Whether you use great
17 deference or deference, I don't care. But I do
18 not accept as reasonable Staff's argument that
19 giving great deference takes away all discretion.
20 I -- I simply do not accept that.
21 COMMISSIONER PERNELL: Mr. Chairman.
22 CHAIRMAN KEESE: Commissioner Pernell.
23 COMMISSIONER PERNELL: Mr. Chairman,
24 I've expressed my views on this issue during
25 Commissioner Laurie's presentation. But, you

1 know, I have a couple of points here. One of them
2 is that we're the presiding agency, we're
3 responsible. I don't think there's an argument
4 there.
5 And secondly, I think this opens up an
6 opportunity to delay our process, and I'm not sure
7 that this is the intent of us reviewing or
8 revisiting these regulations. And an example is,
9 even if the agency does everything right and send
10 us the correct information, what's to stop a local
11 group from saying there wasn't a CEQA process
12 done, and because we're accepting that, and -- and
13 our process is supposedly CEQA equivalent, that
14 they don't sue for a CEQA analysis, which would
15 delay another six months. So I'm not sure that
16 we're -- we're actually moving in a -- in a
17 positive direction with this language.
18 And -- and in terms of the -- the
19 applicant, I would -- I would think in some
20 instances, given this -- my scenario, that they
21 would have some problems with that, as well.
22 CHAIRMAN KEESE: Thank you. I -- I did
23 hear the suggestion from Commissioner Laurie that
24 he didn't care whether it was great deference or
25 due deference. We'll let Staff mull and consider

what they think about that.

Commissioner Pernell, what is your time schedule here?

COMMISSIONER PERNELL: Well, I'm overdue, but I'm -- I'm -- I want to --

CHAIRMAN KEESE: You're going to hang in there, huh?

COMMISSIONER PERNELL: Yes. It would be difficult --

CHAIRMAN KEESE: Are we okay in continuing here?

COMMISSIONER PERNELL: -- Mr. Chairman, for me to -- to leave for a lunch break or something, and then come back. I would -- I would prefer getting to the end --

CHAIRMAN KEESE: Okay.

COMMISSIONER PERNELL: -- so that I can vote on this.

CHAIRMAN KEESE: All right. If -- are we okay on Staff, now? Do we have a final statement, or do we have a final question?

MR. BUELL: I -- I believe we've made our final statement --

CHAIRMAN KEESE: I think you've clarified your positions?

1 MR. BUELL: Yes.
2 CHAIRMAN KEESE: Okay.
3 COMMISSIONER LAURIE: There is, Mr.
4 Chairman, however, what about the consensus?
5 Isn't there a whole group of other issues that you
6 wanted to put forward?
7 MR. BUELL: Well, there is a number of
8 sections of the regulations that I believe there
9 is a consensus between the two Commissioners that
10 should go forward. I see no reason for us to
11 discuss those today. The Siting Committee can go
12 forward without any recommendation from the
13 Commission.
14 CHAIRMAN KEESE: All right. And we'll
15 find out -- so what we're going to do here is
16 we'll take a three or four minute break, and then
17 we'll come right back and we'll take up Mr.
18 Joseph, first; Mr. Harris, second; Mr. Chaddock
19 third, commenting on these. Then we'll see if
20 there's another member, any other member of the
21 public who'd like to comment, and then we're going
22 to go to Roberta.
23 Thank you. We'll start back in -- three
24 minutes, or as fast as you can make your run.
25 (Off the record.)

1 CHAIRMAN KEESE: Okay, we're back.
2 Thank you, Mr. Joseph. And I'd appreciate it if
3 -- you're welcome to make general statements, but
4 if -- if you're going to be specific, can you keep
5 our one, two, three, four order, so that our notes
6 can stay consistent?
7 MR. JOSEPH: Absolutely.
8 CHAIRMAN KEESE: Thank you.
9 MR. JOSEPH: Thank you, Commissioner
10 Keese, Commissioners. My name is Marc Joseph, I
11 represent the California Unions for Reliable
12 Energy.
13 I did send a letter.
14 CHAIRMAN KEESE: I have your letter. I
15 think we all have your letter.
16 MR. JOSEPH: Thank you.
17 First, I want to thank Commissioner
18 Laurie, Commissioner Pernell, and the Staff for
19 their responsiveness to the concerns the public
20 has raised in the past. I think the proposals
21 have evolved substantially from what we saw
22 several months ago, and we do appreciate that.
23 And I also think, having heard the discussion so
24 far today, that the differences in opinions have
25 narrowed very substantially.

1 I will go through in the -- in the order
2 we've been discussing.
3 First, with respect to Section 1212.
4 Commissioner Laurie, as you read the clause in
5 question, it adds nothing of substance but simply
6 reinforces what we all understand to be the role
7 of the Presiding Officer. And I can see how --
8 how you read that language that way, and it's a
9 reasonable reading of that language.
10 Staff reads that language as potentially
11 adding another element into the relevancy
12 determination. If we can put it this way, it
13 could be read as changing the standard of
14 relevance for the -- for the Commission, and not
15 just saying who makes the relevance determination.
16 If you look at the proposed Section
17 1212(c), that's all one sentence. And it seems
18 redundant in the same sentence to twice identify
19 the discretion of the Committee Member to make the
20 determination.
21 CHAIRMAN KEESE: Hold one second. Okay.
22 MR. JOSEPH: I think we would be more
23 comfortable without the second clause in there,
24 only because it could be read differently from how
25 you are intending it. And we wouldn't want a

1 future Commissioner, none of whom is present now,
2 to think that it adds -- it -- it gives him more
3 discretion to have a different standard of
4 relevance, rather than simply identifying who it
5 is who makes the determination.
6 COMMISSIONER LAURIE: Mr. Joseph, do you
7 have any opinion as to who else, other than the
8 Presiding Member, has the authority to deem
9 relevancy?
10 MR. JOSEPH: No, I think it's absolutely
11 clear the Presiding Member has the authority.
12 I've been in situations where the Presiding Member
13 has exercised that authority. And while I've
14 disagreed with the wisdom of the decision
15 sometimes, I have no doubt the Presiding Member
16 has the authority to make the determination.
17 My point is that the clause here, while,
18 on one hand, possibly being read as just
19 reinforcing the notion that it is the Presiding
20 Member who makes that determination, could also be
21 read as changing the standard by which that
22 determination is made. And it's that alternate
23 reading, which you are not making, but which could
24 be made, which concerns me.
25 COMMISSIONER MOORE: And yet, Mr.

1 Joseph, there's no standard that's -- that's set
2 out somewhere in -- in terms that I know of, that
3 says when you determine relevancy, it has to be by
4 XYZ, so, in fact, if you've acknowledged in answer
5 to Commissioner Laurie's question, that the
6 Presiding Member is -- is the final authority,
7 then in a sense, they're following either accepted
8 practices or something that's dictated. And if
9 there is nothing dictated, then they're following
10 accepted practices.
11 And how could you -- just mechanically,
12 how could you set a different standard? I -- I
13 can't -- I can't come up with an example in my
14 mind, and I'm --
15 CHAIRMAN KEESE: We have two words here
16 floating, and one is the word "deems", and one is
17 "determines". And both of those were floated this
18 morning, so they're still -- that's still
19 floating, I believe.
20 MR. JOSEPH: As between the two, I think
21 determine is an improvement over deems, because it
22 makes it more clear that it is the determination
23 that is being made.
24 COMMISSIONER LAURIE: I don't have any
25 problem with that.

1 CHAIRMAN KEESE: Okay.
2 COMMISSIONER LAURIE: I think that's --
3 MR. JOSEPH: And let me also say that of
4 the issues that are currently live, this is not
5 one of the biggest ones.
6 CHAIRMAN KEESE: All right. Let's go to
7 number two.
8 MR. JOSEPH: Number two is one of the
9 biggest ones. The various proposals now raise two
10 issues for us. And I'll first talk about the
11 issue which has been discussed widely, and then
12 the other, an issue which has not yet been
13 discussed.
14 The question is, in -- should there be a
15 last sentence, as Staff has proposed, making it
16 ever more clear what Staff can and cannot do. And
17 my thinking has evolved on this, having listened
18 to the discussion. And I think that this sentence
19 does add value if it's written as the latest
20 suggestion from Staff says.
21 If you look in the Staff proposal, it
22 talks about discussing procedural issues, and --
23 COMMISSIONER LAURIE: Marc, let me
24 interrupt. Can I get another copy of that from
25 Staff, please?

1 COMMISSIONER MOORE: Yeah. Actually,
2 Marc, it may help if you read what you understand
3 their last sentence to be, so that you're
4 commenting on something, then we're all current
5 with the language.
6 MR. JOSEPH: Sure. I understand the
7 last sentence to say, in no event shall the Staff
8 hold an unnoticed meeting with the applicant or
9 another party, other than a governmental agency,
10 to discuss a proposed settlement or resolution of
11 one or more substantive issues.
12 That formulation I believe is a good
13 formulation. And I think the word discuss is
14 better than negotiate, for consistency within this
15 section, because twice before in this section the
16 word discuss is used. It says, you know, it's
17 okay to discuss procedural issues, it's okay to
18 discuss matters with a governmental agency. It's
19 not okay to discuss a proposed settlement or
20 resolution. I think it -- it's a much clearer
21 formulation the way the Staff ultimately
22 formulated it.
23 COMMISSIONER LAURIE: That's the
24 question at this time. When -- there's a
25 reference in the sentence to a settlement or

resolution. Does Staff or the parties have the authority to settle or resolve an issue?

MR. JOSEPH: No, and that's why I read it with the word proposed in there. I think that's a useful addition. It does clarify that the Staff is not the final arbiter here, but is merely an -- an important and weighty party, bringing information and bringing proposals to the Committee.

COMMISSIONER LAURIE: Clarify -- you're okay with the proposed -- I mean, you're okay with the Staff discussing a proposed settlement?

MR. JOSEPH: Well, this says the Staff can't do it in --

COMMISSIONER LAURIE: I -- I know --

MR. JOSEPH: -- an unnoticed meeting.

COMMISSIONER LAURIE: -- I think I really messed up that language when we were discussing this earlier.

MR. JOSEPH: I -- I'm okay with it. That's what happens in a workshop. It's common in a workshop to have a proposed condition of certification out in front of people, and discuss how to craft that language so that everybody is content.

1 COMMISSIONER LAURIE: Okay. So let's
2 say --
3 MR. JOSEPH: And that comes to -- as a
4 proposal --
5 COMMISSIONER LAURIE: -- let's say the
6 workshop is over. And you go home, and you don't
7 sleep all night because you thought about what's
8 been going on. The next morning, you determine
9 that, you know, you had a question on item seven.
10 Can you then call up Staff and say what did we
11 decide in regards to item seven, or can you go
12 over with me what so-and-so said about item seven,
13 or what was your view on item seven. Should you
14 be allowed to do that?
15 MR. JOSEPH: Virtually all those
16 examples you -- you say I would say yes, and those
17 are exchanges of information. You know.
18 COMMISSIONER LAURIE: That -- that isn't
19 --
20 MR. JOSEPH: My notes are -- my notes
21 are unclear here, what did we really end up with,
22 how did this really read at the end.
23 COMMISSIONER LAURIE: That isn't a
24 discussion of a proposed settlement?
25 MR. JOSEPH: I think that is an exchange

1 of information.
2 COMMISSIONER LAURIE: What's -- I --
3 what's the difference, Marc? I mean, what is a
4 discussion as opposed to an exchange of
5 information? I -- I have a really --
6 MR. JOSEPH: A discussion --
7 COMMISSIONER LAURIE: -- hard time
8 distinguishing.
9 MR. JOSEPH: I would say a discussion
10 involves some intent to persuade the other person
11 of a view.
12 COMMISSIONER LAURIE: Do you ever -- how
13 often do you exchange information without an
14 attempt to persuade?
15 MR. JOSEPH: It's almost always the
16 case, and that's why -- and, in fact, it's not
17 just us. Everybody does it. And that's why it
18 should be public. The overarching issue here is
19 are we going to conduct the public's business in
20 public, or in private? And I think the
21 Commission's practice has been, and it's a
22 practice worth continuing, is that the public's
23 business is conducted in public.
24 And I think that the -- the methods of
25 doing that can vary. I don't think everybody has

1 to get together in the same room. I don't think
2 there's anything wrong with having a conference
3 call to which all parties are invited to
4 participate. The business can keep going, but
5 everybody should be involved.
6 COMMISSIONER MOORE: Well, let me just
7 take that a little bit -- a little bit farther,
8 and I'm -- I'm sensitive to it in at least one of
9 my cases where time is an issue. And timeliness
10 is an issue.
11 Once you've concluded a workshop which
12 is, given the way we do business here, noticed,
13 has a time parametric that's assigned to that
14 notice, and if some issue is -- is incomplete or
15 is not, in fact, fully fleshed out at the workshop
16 and you go -- I go back to Commissioner Laurie's
17 question about you have further thoughts about,
18 and you want to pursue those, you want to clarify
19 those. And, in fact, that clarification may lead
20 to a difference in conclusion. Then is the
21 public's interest served in re-noticing another
22 public workshop, which in -- in turn implies a
23 time delay, which may in fact push back other
24 timing that is put on us by the law or by the
25 Executive Order.

1 Is -- is the public interest served in
2 calling that a discussion which has to be done in
3 public, or, in fact, can that not be fairly
4 reflected in the report of the Staff, who are
5 burdened with making it clear that they've had
6 this discussion, and what the item was that was
7 discussed, and present it to the Committee. And,
8 in fact, is the process not equally served by --
9 by doing that.
10 What -- what have we gained by creating
11 a -- an artificial distinction between the public
12 noticing and whatever that -- that brings out, and
13 the fact that in all discussions, or all facts are
14 revealed in front of everyone, and fairly
15 adjudicated in -- in the public eye.
16 MR. JOSEPH: Let me say first that I
17 don't think because some member of the public has
18 second thoughts after an issue has been
19 workshopped, that the Staff has an obligation to
20 hold another workshop. I think that if that
21 person has second thoughts, or is dissatisfied
22 with the way the results of the workshop turned
23 out, they have the option of writing a letter and
24 copying everybody on the service list, and that
25 makes it a public process.

1 I think it would be wrong for everybody
2 to sit in a workshop, think that there is
3 consensus on an issue, and then somebody else come
4 back a week later and bend the Staff's ear with
5 nobody else listening.
6 COMMISSIONER MOORE: But -- but what
7 happened as a result of that. They bend their
8 ear, the Staff comes back, and they -- and they
9 haven't reached an agreement because they're not
10 empowered to do that, and they -- they come back
11 and they say look, we had a workshop, this is what
12 happened, the consensus was reached, and then, in
13 fact, a week later the applicant came back in and
14 said they had second thoughts about what we
15 discussed and they presented an alternative. And
16 we've thought about it, and here it is.
17 What -- what didn't get served in that?
18 MR. JOSEPH: The public's ability to
19 participate fully didn't get served --
20 COMMISSIONER MOORE: Why?
21 MR. JOSEPH: Because --
22 COMMISSIONER MOORE: They're -- they're
23 now invited to participate. There's an idea
24 that's up in front of them, and -- and the
25 Presiding Member says all right, what do you think

about that. No -- no decision has been made.

MR. JOSEPH: I think we have to acknowledge that the Staff's recommendations that they make to you carry great weight. You need them to, you need the Staff to do the enormous amount of work it takes to get a -- a siting process ready for decision. You have to rely on them for, you know, an enormous amount of work that you can't possibly do in a hearing, and do personally. You need them to narrow the issues that are contested to a manageable size, or you'll spend all your time in hearings.

COMMISSIONER MOORE: Well, let me -- let me pursue this just a little farther, because you -- you're right. This is important.

You've had a workshop. And everyone has -- has made their point clear, and a consensus about what ought to be presented to the Presiding Member and the Committee is -- is there. And everyone goes away. And Staff is having a post mortem after the workshop, and all of a sudden one of the Staff members says well, wait a second. You know what, we didn't think of so and so. And in fact, that's what should've been the basis of -- of our discussion. And they start talking

1 about it, and, in fact, they go, you know what,
2 that's right. We should've done that.
3 Now, under the rule that you're
4 advancing, that ought to be the subject of a
5 public hearing, a public notice. It's a
6 difference in opinion.
7 MR. JOSEPH: That's -- that's not what
8 I'm saying. There's nothing in your regulations,
9 and nothing in any of the proposed regulations
10 which requires the Staff to workshop issues at
11 all. And that, the example that you have given,
12 is just as though the Staff had never workshopped
13 the issue at all. And, you know, if there's a
14 flaw in these regulations, is that the Staff could
15 tomorrow say, you know what, after the site visit
16 you're not going to hear from us until the --
17 COMMISSIONER MOORE: Right. But -- but
18 Marc -- but then they're going to come back in,
19 and this same group that you acknowledge we give
20 great deference to, because they're our Staff and
21 we trust them, they're going to come in and
22 they're going to go, you know what, a workshop
23 took place, but, you know what, we've -- we've
24 concluded that in fact there's another -- another
25 solution available to us.

1 How is that different than having an
2 applicant come in and talk to them and stimulate
3 that discussion, and have them come back and say
4 you know what, we had a workshop, and now we've
5 thought of something different. The public didn't
6 get involved in that internal Staff discussion.
7 Should they? You know, I maintain no. It's --
8 it's the public's business to find it out in the
9 public hearing, but in fact, the public has no
10 business being in the Staff room when these --
11 these kind of things are being discussed.
12 I -- I don't know that I can find a
13 difference in that, procedurally. And -- and
14 again, I'm -- I'm trying to -- to imagine myself,
15 because I have to vote on this, going to a place
16 that says how do we make the best and most
17 efficient public decisions without being
18 ridiculous. I mean, I, you know, I'll just state
19 straight out, I am not going to vote for something
20 that causes every single time there's -- there's
21 some discussion between Staff and everyone else,
22 that we're going to have to post a public notice
23 for that. We'll collapse under the weight of
24 that.
25 We've got to have reasonable guidelines

1 that say how people communicate, and then what the
2 responsibility of -- of discussions are. And I
3 don't have a problem, in fact I have not had a
4 problem in the past with -- with docketing ex
5 parte communications that I've had with Staff on
6 various items. And I think that's fair. I think
7 that's my responsibility if I -- if I do that.
8 How are we served by --
9 CHAIRMAN KEESE: Can I ask a quick
10 question.
11 You deal with other governmental bodies,
12 also.
13 MR. JOSEPH: Correct.
14 CHAIRMAN KEESE: Do they have the same
15 limitation on their staff as we have on ours?
16 MR. JOSEPH: Generally not.
17 Commissioner Laurie is absolutely correct. There
18 is a difference, though. Most other governmental
19 bodies do not have an ex parte rule prohibiting
20 communication with the decision makers. And so if
21 I'm before a county board of supervisors, and I'm
22 unhappy with the direction the staff is going, I
23 can go to the decision makers and talk to them.
24 That's not your rule. And your rule is
25 a good rule. I think it's -- it's an appropriate

1 rule to limit those contacts, and to do the -- the
2 business of the public in the public.
3 You know, to respond to your
4 hypothetical, what if the Staff changes their
5 mind. Staff, like any other party, can change its
6 mind. And until they put out their Staff
7 Assessment, they're not bound to any set of
8 thinking at all. And when they put out their
9 Staff Assessment, okay, now they're taken a
10 position on a particular issue. And they are
11 absolutely free to have as many internal
12 discussions as they want, and to come out with any
13 position they feel is justified. And they don't
14 have to involve the public, nor should they.
15 Staff, like any other party, should be allowed to
16 have internal discussions.
17 The difference is when you have external
18 discussions with another party. External
19 discussions with another party, everybody should
20 be allowed to participate. That -- that's the
21 only point here.
22 COMMISSIONER LAURIE; I'd like to ask a
23 clarifying question. Commissioner Moore, I'm
24 sorry. Were you done?
25 COMMISSIONER MOORE: I'm done.

1 COMMISSIONER LAURIE: Marc, the current
2 rule, as written, seems to indicate an ability of
3 the Staff to meet with the Applicant for the
4 purpose of exchanging information and discussing
5 procedural issues. Do you disagree with that
6 concept?
7 MR. JOSEPH: I think your proposal to
8 consolidate (a) and (h), consolidate (h) into (a),
9 and get rid of that perhaps inadvertent
10 implication, is a good one.
11 COMMISSIONER LAURIE: And you have no
12 problem on the issue of state agencies being able
13 to talk to each other.
14 MR. JOSEPH: That was my second point,
15 which I haven't gotten to yet.
16 COMMISSIONER LAURIE: Okay. All of this
17 last discussion that we've been having for the
18 last 15 minutes deals only with the question of
19 whether it is necessary to have some other
20 verbiage specifically saying that you can't cut
21 deals. Is -- is that right, or -- or not?
22 MR. JOSEPH: All the discussion is
23 whether it's necessary and useful to have this
24 last sentence. I -- I'm not sure I want to
25 characterize it as cutting deals. I think the way

1 Staff has proposed it, it's discussing proposed
2 resolutions, you know, discussing the proposed
3 conditions of certification, I think is something
4 which should be done publicly. And I think it's
5 useful to say so.
6 And perhaps it's redundant, but we -- we
7 have other redundant proposals which serve a
8 purpose.
9 COMMISSIONER LAURIE: i -- I guess what
10 I don't understand is how one can agree with the
11 concept of being able to exchange information, but
12 disagree with the concept of discussing -- of
13 discussing relevant issues. I -- I don't know how
14 you do one without doing the other.
15 Why -- why would you exchange
16 information unless it dealt with a relevant
17 substantive issue?
18 MR. JOSEPH: The Staff can call up and
19 say we read your comments in some other case, and
20 you cited five documents in there. Can you send
21 us those. I view that, responding to that
22 request, as exchanging information. The Staff can
23 say, in your application you've relied on this
24 study, but you didn't provide it. Can you provide
25 that information. That's an exchange of

1 information.
2 Or, the Staff Assessment comes out, and
3 relies on some report, or some study, but doesn't
4 provide it. I think it's --
5 COMMISSIONER MOORE: Can they interpret
6 the report, then? I mean, in other words, they --
7 you send -- the Applicant sends in report X, as
8 requested. But it's filled with some judgment.
9 Now, you could have a special study group that's
10 prepared the report. Are you then allowed to ask
11 so what's your interpretation of this, do you
12 think it means XYZ, does this change the
13 conclusion that is, or has been advanced in the
14 FSA -- or, PSA, sorry.
15 MR. JOSEPH: It's clearly possible to
16 construct situations which are so gray it's
17 impossible to -- to decide whether -- what's out
18 of line or falls --
19 COMMISSIONER MOORE; I'm not trying to
20 do that. I'm just trying to adopt -- or, I'm
21 trying to imagine a general rule that says what's
22 a discussion, what -- where do you -- where do you
23 stop. For instance, to take that to its absurd --
24 absurd level, I guess, is -- is to say if, in
25 order to ask for supporting documents or

1 supporting reports, you have to notice a public --
2 issue a public notice and then -- and then ask for
3 same, and do your questioning about same document
4 in a public forum, it seems to me the public is
5 not -- not well served by that kind of narrow
6 interpretation. Perhaps that's the extreme end.
7 MR. JOSEPH: I think that is. I think
8 the -- you know, one of the purposes here, one of
9 the things that Staff has requested is, be clear
10 of what we're allowed to do and not do. Because
11 we need to know what the rules are. The easiest
12 way to make -- make that distinction, I think, is
13 substance versus process.
14 Now, the exchange of information is
15 perhaps a little less clear. An exchange of
16 information, the information is going to be
17 substantive. But when you get to the point of
18 saying well, you know, do you know how they really
19 did that on their machine, and do you think that
20 you can reach these same emission levels. No, we
21 don't think so, because we've got this problem
22 with -- with such and such. Well, maybe that's
23 true, and maybe that isn't. But the substantive
24 interaction should be done in the public.
25 I think, ultimately, that's where I come

1 down --

2 CHAIRMAN KEESE: I think we've pretty

3 much clarified where you're coming from.

4 Commissioner Laurie, do you have any --

5 any comment --

6 COMMISSIONER LAURIE: I don't think I'll

7 add, Mr. Chairman.

8 CHAIRMAN KEESE: Okay.

9 MR. JOSEPH: If I could, the other point

10 I wanted to make --

11 CHAIRMAN KEESE: And you wanted to go on

12 the governmental --

13 MR. JOSEPH: Yeah. It strikes me as

14 ironic, very ironic, that two public agencies,

15 charged with serving the public, are the only

16 entities that can meet in secret. That doesn't

17 make sense to me. If -- particularly in -- in

18 conjunction with the proposal to give the

19 recommendations of that other agency great

20 deference, to say that Agency X is going to get

21 great deference and we're going to meet with them,

22 and nobody else is going to be allowed to be in

23 that meeting, suggests that important pieces of

24 the case, important issues are being excluded from

25 public input.

1 And I -- I think that it's wrong to say
2 just because you're meeting with a government
3 agency, you can do it secretly. And I'll also
4 discuss the -- the great deference issue. But I
5 wanted to make that point. I recognize that.
6 Otherwise, everything I've heard from
7 the Commissioners is we like that provision.
8 CHAIRMAN KEESE: Okay.
9 MR. JOSEPH: Okay. Issue number three.
10 CHAIRMAN KEESE: Intervenors.
11 MR. JOSEPH: Yes. And I think,
12 Commissioner Laurie, in your discussion with Ms.
13 Ichien, you almost reached resolution on that, and
14 I would simply affirm that I think you're --
15 you're on the right track now. 1712(b) and (c)
16 seem to be provisions which outline the rights of
17 all parties in the case, and seem to have no other
18 place where they're stated in your regulations.
19 And so those should not be deleted.
20 The provision of 17(a) saying an
21 intervenor has the rights of a party, can appear
22 either in 1712, or where you propose to put it, in
23 1207. We're agnostic on that point.
24 But (b) and (c) should not be deleted,
25 because no place else says what the rights of a

1 party are.
2 CHAIRMAN KEESE: Okay.
3 MR. JOSEPH: Finally, the relationship
4 with other parties. First, I would say it's our
5 experience that in fact, the Staff does show great
6 deference in almost all cases to almost everything
7 another agency says. They rely on the other
8 agencies, and -- and it's a rare case when they
9 don't show deference.
10 Second, this Commission, as has been
11 articulated, is the lead agency for purposes of
12 CEQA. You are not just assembling the pieces that
13 other people give you. You don't just assemble
14 the determinations of other agencies. You -- you
15 have the role, both legally and as a matter of
16 policy, of looking at the big picture. And
17 there's a reason for that. The reason is you have
18 to see the big picture in order to understand
19 whether each of these individual pieces, perhaps
20 separately valid, make sense together. And you
21 have to look at the big picture with respect to
22 other cases that you're looking at.
23 Let me give you an example. Suppose
24 you've got a power plant in County A, and they're
25 proposing to put in an oxidation catalyst, and

1 removes -- reduces CO emissions, VOCs, and toxics.
2 Right next door to that, you've got another
3 county. It's a county that hasn't had a power
4 plant in it before. It's a small county, doesn't
5 have much industrial development. It's got one
6 permit engineer. The permit engineer has never
7 worked on a power plant before. The permit
8 engineer doesn't know anything about an oxidation
9 catalyst, and yet is willing to send you a
10 determination of compliance which doesn't require
11 it.
12 I think you have a role and a
13 responsibility, as the agency which is looking at
14 the big picture, to say, you know what, we still
15 think there needs to be an oxidation catalyst
16 here. Or to -- to discuss with them, you know,
17 did you really think about whether you should have
18 an oxidation catalyst here. This is important.
19 They're doing it right in the next county, this is
20 not some wild idea. We'd ask you to go back and
21 think about that.
22 That's the reason you're here. You're
23 not just assembling the various, you know,
24 approvals or -- or recommendations for approval
25 that people are sending you. You're supposed to

1 look at the big picture. And I'm concerned that
2 articulating the deference, or great deference,
3 which the Staff already does, will send a signal
4 to the Staff that they shouldn't be doing that.
5 And that you shouldn't be doing that, either. And
6 I don't think that's the position you want to get
7 to.
8 COMMISSIONER LAURIE; So do you believe
9 it is incorrect for Staff to show deference, or
10 great deference, under those circumstances under
11 which they are doing so?
12 MR. JOSEPH: I think it usually is not,
13 but sometimes it is. Sometimes, they should say
14 well, you know what, even if the water agency says
15 it's okay to evaporate 5,000 acre/feet a year,
16 it's clearly feasible not to, and we want to
17 recommend to the Committee that you don't do that.
18 That's why you have a Staff. That's why the
19 Energy Commission exists.
20 COMMISSIONER LAURIE: So if -- if there
21 is a written rule, as opposed to a practice, that
22 great deference be shown, that that doesn't allow
23 Staff any discretion to do what they would want to
24 do under those extraordinary circumstances?
25 MR. JOSEPH: I think the reality of

1 human nature is that if -- if there is an explicit
2 direction in your regulations to show great
3 deference, it's going to be tough for a Staff
4 member to decide that the resources ought to be
5 devoted to thinking about another question, to
6 thinking about it in the bigger context, because
7 you've told them accept this piece of paper, plug
8 it in, and move on.
9 I think it's -- it's already the case
10 that we've headed too much in that direction
11 because of the workload the Staff is under. And I
12 think this is the wrong direction to go.
13 COMMISSIONER LAURIE: Okay.
14 MR. JOSEPH: Thank you.
15 CHAIRMAN KEESE: Thank you.
16 Mr. Harris. Thank you for your
17 patience.
18 MR. HARRIS: Oh, thank you for --
19 enjoyable, in some weird way, to sit here and
20 listen to everybody.
21 Thank you for the opportunity. I'm here
22 on behalf of the Independent Energy Producers
23 Association, IEP. In keeping with your request,
24 I'll go through these issues one through four, in
25 the order they're presented.

1 I will, though, say, by way of preview,
2 that issue two is the one of greatest concern to
3 IEP, and that's where I'll focus the majority of
4 -- of my comments.
5 With regard to the first issue of the
6 Presiding Member's discretion. We fully agree
7 that existing law gives the Presiding Member
8 substantial discretion. We, though, nevertheless,
9 believe that the clarifications proposed are
10 important and actually required. I think that
11 they are not simply something you can dismiss as
12 being duplicative. They actually do clarify.
13 That's point one. Existing law does that.
14 The other thing that I would point to
15 that hasn't been discussed yet, which I think
16 really kind of dictates that you take a look at
17 the proposed changes, is the new language that was
18 added by SB 28x, and that was approved by the
19 legislature. As you know, in Section 6 of that
20 new legislation there's an amendment to Section
21 25521 of the Public Resources Code, 25521. That
22 amendment, although it's not shown in red line or
23 strikeout here, I think what it did is simply add
24 the final sentence to 25521.
25 And what that says -- and again, by way

1 of background, IEP was very interested in this
2 legislation, and that's one reason that it's on
3 our minds -- consistent with the requirements of
4 this section, the Commission shall have the
5 discretion -- the discretion -- to determine
6 whether or not a hearing is to be conducted in a
7 manner that requires formal examination of
8 witnesses, or that uses other similar adjudicatory
9 procedures.
10 That new language was intended to
11 further clarify what we think is already your
12 existing authority to greatly control your
13 proceedings. So I would ask that you take that
14 language into consideration when you're looking at
15 these proposed changes.
16 By way of background again, IEP's intent
17 in seeking that language in 28x was to clarify and
18 take all potential losses and challenges -- excuse
19 me -- off the table. The Presiding Member does
20 have plenary discretion to decide what he wants to
21 hear, or she wants to hear, and in what detail.
22 In fact, in our reading of that new
23 statutory language, as part of the pre-hearing
24 conference order the Presiding Member could say
25 there's no disagreement on, say, power plant

1 efficiency. We'll take written submissions on
2 power plant efficiency. We're not going to
3 require witnesses on that subject. People can
4 brief as they want, but we're not going to set up
5 a situation where somebody simply delaying the
6 process says oh, I want to cross examine on power
7 plant efficiency, just so that we have to schedule
8 a day for that, have hearings, and have complete
9 rounds of -- of iteration on those.
10 And so that -- the intent behind that is
11 precisely to give you the discretion that we think
12 you already had, in no uncertain terms, so we
13 don't have to debate that publicly.
14 CHAIRMAN KEESE: And that law becomes
15 effective when?
16 MR. HARRIS: I believe it's already
17 effective. If I could turn to Mr. Chamberlain.
18 CHAIRMAN KEESE: Thank you.
19 MR. HARRIS: So that's one, I guess, new
20 piece of information. And again, it's -- it's
21 kind of on our mind because we were very much
22 involved in getting that legislation in for that
23 very purpose, to provide you with greater
24 discretion.
25 Those are my comments on the first

1 issue.
2 I guess I'd turn to the second issue
3 now. This is the one where we have the greatest
4 interest, and I think there are probably the
5 greatest potential to impact the siting
6 proceeding. The reason IEP has asked me to be
7 here for a long day is because hours spent here
8 today I think can greatly improve the efficiency
9 of your hearing process, and that's something I
10 think everybody is interested in doing.
11 The -- the simple message I guess IEP
12 has on this issue is that whatever the rule ends
13 up being, it needs to be clear, and it needs to be
14 applied consistently to every party and every
15 entity. Every party at the proceeding, and, in
16 agreement with Mr. Joseph, every governmental
17 entity. Whatever that rule is, it ought to apply
18 to everybody.
19 That -- that rule, again, being clear
20 and being consistently applied, falls out of a
21 corollary of that -- of that main message, which
22 is that the status quo is unacceptable. The
23 status quo is not working. It's defective, and
24 let me be specific about that because I think I
25 owe you the specificity.

1 While it's not the intent of Staff to
2 have an inconsistent application, the effect is
3 that there is inconsistent application of this
4 rule. And I want to -- I want to highlight that
5 point again. My belief is the intent of Staff is
6 that they are carrying out their duties and doing
7 it in a proper way. I'm focusing only on the
8 effect. It's simply the effect that we're
9 concerned about.
10 And that effect results in inconsistent
11 application of this rule. It's different between
12 governmental entities and non-governmental
13 entities, as we've discussed. There'll be
14 meetings, there won't be meetings. There's
15 differences between high profile cases and low
16 profile cases, in terms of Staff's willingness to
17 meet with applicants and other parties. It even
18 varies from Staff member to Staff member. And
19 again, I think they're absolutely fulfilling their
20 duties and acting in good faith when this occurs,
21 but the effect is that it's applied -- excuse me
22 -- inequitably.
23 Some Staff member are okay with
24 meetings. I've had one situation where Staff told
25 me that they wouldn't meet with us, but we could

all get together on a conference call, without any limitations on the subject. It was just the fact that we were going to be physically in the same room that was the limitation.

I've had different interpretations from Staff counsel as to what would be an allowed meeting and what isn't an allowed meeting, in the same case. I've had different interpretations from one air quality specialist to another air quality specialist, in terms of -- of who they'll meet with. And I just use air quality as one of the disciplines, not -- not singling them out.

And most recently, we've seen a difference between the CEC employees and the CEC's contractors. The contractors, I think we all understand, don't have the same kind of discretion as permanent Staff. Again, no evil intent here, but the effect on the applicant is that it very much matters who your Staff people are, and what their view of this rule is.

I want to reiterate again that it's very important that there not be a carve out for any governmental entities. I think that sends the wrong message. I'm in agreement with Mr. Joseph on that. I think it's a hyper-technical

1 distinction, and one that the Commission should
2 not -- should not follow.
3 The reason I think, though, that -- that
4 IEP has supported freer communication, because
5 this process is unique. Your general counsel has
6 done an excellent memo, very clearly describing
7 that you are unique in this respect. There are
8 not -- at least any other energy agencies that I'm
9 aware of, that have the same kind of restrictions
10 on Staff communications. In fact, they -- they've
11 run to the opposite extremes, allowing
12 communications with decision makers on substantive
13 issues, so long as there's notice and reporting.
14 So I think you're unique in many ways.
15 And what the rule does, effectively, is
16 to rive the Staff, I think, of useful information.
17 It filters the information and it doesn't allow
18 the Staff to communicate fully with -- with all
19 parties, and I think it doesn't lead to informed
20 decision making.
21 The word "negotiate" has been bandied
22 about a lot, and I think that's a very hot button
23 issue with applicants. The position that IEP has
24 taken is that -- that the Staff is not a decision
25 maker, so the Staff is not a position to negotiate

1 anything to final resolution. I think that's an
2 important point to make.
3 First off, I don't think that happens.
4 Second, I also know that the direction from you
5 all and from management is that it's not to
6 happen. But even if you assume a hypothetical
7 situation where you end up with a Staff person who
8 doesn't follow that direction, someone that drives
9 Bob Therkelsen to early retirement, and does their
10 own thing, and goes out and negotiates with either
11 another agency or another party, the substance of
12 that is they'll develop a position. That position
13 is put into the process. We've heard a lot of
14 talk about public participation.
15 Well, even if you were to assume that
16 there was a negotiation and an agreement, and that
17 ended up in a Final Staff Assessment as a
18 position, that's not the end of the story. That's
19 just the very beginning. What happens at that
20 point is that position has to be supported by
21 evidence in the record, and then look at all the
22 public participation opportunities that follow.
23 You have a chance for written testimony.
24 You have a chance for written rebuttal testimony.
25 You have a chance for oral testimony. You have a

1 chance for cross examination. You have a chance
2 for briefing. You have a chance to comment on the
3 PMPD. On a controversial case you have a chance
4 to comment on the Revised PMPD. You have a chance
5 to comment on the Final Decision. You have a
6 chance to ask for reconsideration.
7 So to somehow suggest that the public is
8 limited by anything that might happen in that
9 respect, I think misses the point on how the
10 process goes forward.
11 As to Staff's position, again, we would
12 definitely think that the carve-out for
13 governmental entities is the worst of all worlds,
14 from a generator perspective. It puts us in the
15 position of saying you can't be in the room with
16 anybody to discuss issues. You can't even come to
17 clarify factual issues. And these things are
18 going to be decided without your input. So we
19 think that's a limiting factor.
20 We also think, from a practical
21 perspective, that Staff's proposal just simply
22 would not work. And let me give you two real
23 world examples of why we think that's the case.
24 If you were at an evidentiary hearing,
25 and discussing, say a setback of 100 feet.

1 Applicant said it should be 100, other folks are
2 arguing differently, 200, perhaps. If during a
3 break the Applicant and the party who was
4 advocating 200 got together and said is 150 really
5 where we need to be? Yeah, I think 150's where we
6 need to be, there's evidence in the record to
7 support that. That would not be allowed by the
8 rule that the Staff's put forward, at least in my
9 reading. You would not be able to have those kind
10 of discussions about conditions and substantive
11 issues, even during a break in a hearing.
12 Staff's rule also, I think, would
13 eliminate your ability to do things like talk to
14 Staff about data responses. You're putting
15 together a data response, you think you understand
16 the question. You have a workshop on those, the
17 initial set, but the way I've read Staff's
18 proposal, I would not be able to get on the phone
19 and call the Staff person and say, you know, what
20 does this word mean, are you looking for this, is
21 this enough information. Those kind of things
22 wouldn't be able to occur. And so those -- those
23 kind of practical problems with doing business I
24 think are really quite substantial.
25 We have spent a lot of time at IEP

1 trying to figure out what would be a good solution
2 to this, and as late as this morning, on a
3 conference call, we talked about how do we get
4 there from here. Our -- our position continues to
5 be -- our preferred position continues to be that
6 open communications, no restrictions. That's
7 where we'd like to be.
8 We also realize that there's probably
9 not three votes to support that position, and so
10 we talked about how do we get to a point that's
11 going to work for everybody. One proposal that is
12 as new as this morning, around 10:00 o'clock,
13 would be a hybrid approach. And let me put that
14 out for your consideration. I apologize for not
15 having specific language on that, but it would be
16 quite simple.
17 The Commission has a formal process up
18 to evidentiary hearings. Once you get to
19 evidentiary hearings, the process converts, I
20 think, in my view, from an informal process to a
21 very formal process. You have cross examination,
22 very serious rules of evidence. That, to us, is
23 an important trigger, and maybe that ought to be
24 the dividing line. And this -- this concept of a
25 point in time was -- was elicited in Mr.

1 Chamberlain's memo.
2 And so the idea that we came up with
3 this morning on the phone would look something
4 like this. You'd have a rule similar to what
5 Commissioner Laurie has, for open communications
6 from the inception of the proceeding up through
7 and including the pre-hearing conference. So
8 basically, the rule for that point in time, during
9 the discovery, during the informal period, is
10 anybody can talk to anyone about anything, no
11 records of conversation. And, by the way, that
12 includes the Staff's discretion to say we don't
13 want to talk to you. Staff shouldn't be forced to
14 talk to anybody they don't want to talk to,
15 either. But up through that point, basically an
16 open communication rule.
17 As part of the pre-hearing conference,
18 there'd be a proposed date established for the
19 institution of -- of the rule similar to that put
20 forth by Commissioner Pernell. And so essentially
21 what you would have at that point is the rule
22 changing from this open communication rule to a
23 more restricted rule, somewhere along the lines of
24 what we talked about now. And that would be done,
25 triggered based upon the change in the proceedings

1 from a formal -- informal to a formal proceeding.
2 So it combines elements of all three.
3 It's Commissioner Laurie's, in essence, proposal,
4 at the beginning of the -- of the proceeding.
5 It's Mr. Chamberlain's discussion about a point in
6 time when it makes sense to limit that, and it's
7 with Mr. Pernell's -- Commissioner Pernell --
8 Commissioners -- ideas related to the public
9 perception. And that's a new idea that we have
10 floated out, and would submit that for your
11 consideration.
12 The bottom line is, though, that the
13 status quo is not working. And we need to figure
14 out a way to get there from here.
15 COMMISSIONER LAURIE: So the -- I'm
16 sorry. Question, Mr. Chairman.
17 CHAIRMAN KEESE: Commissioner Laurie.
18 COMMISSIONER LAURIE: Under your last
19 point, if you have the pre-hearing conference --
20 see, my -- my problem is I don't know what Staff's
21 language, what Commissioner Pernell's language
22 means. So I don't care if you impose a time
23 point, or not. I think language saying that you
24 can't discuss certain things on one hand, but on
25 the other hand you can say you can exchange

information, is unworkable, to me.

If -- if one wants to suggest that after a given point you can't do either, well, I -- at least I understand that. But I can't in my own mind distinguish between exchanging information and discussing things. So if I'm to consider that kind of proposal, then I'm going to have to educate myself as to how in the world I differentiate between exchanging information and having a discussion about substantive issues. But I -- I think I understand the concept.

MR. HARRIS: And we didn't have specific language, in part because we'd have to work on that language. The concept, I think, is -- is pretty straightforward. We -- we don't want a complete ban on communications, you know, past a certain date. I think that would be a mistake, because there are going to be times, as I described, in hearings where parties can take a ten minute break and realize that they're not that far apart, and do that without a noticed meeting.

So recognizing the role of the Commissioners as the decision makers, you know, again, our preference would be to have the free communication throughout the entire proceeding.

1 But we offered this concept, if you will, of -- of
2 a point in time certain, in hopes of getting us
3 closer to where we want to be. And that's --
4 that's where the origin of the idea comes from.
5 CHAIRMAN KEESE: Okay.
6 MR. HARRIS: Other questions on that
7 issue?
8 CHAIRMAN KEESE: I think we --
9 MR. HARRIS: Beat it to death?
10 CHAIRMAN KEESE: We've got your general
11 concept.
12 MR. HARRIS: Okay. Thank you.
13 I'll skip issue number three. We -- we
14 don't have a position on that issue currently, and
15 that's just from lack of time to focus on it.
16 CHAIRMAN KEESE: Sounds like we may not
17 -- we're coming closer on that one, anyway.
18 MR. HARRIS: The discussion I've heard
19 today has been very productive.
20 On the fourth issue, the relationship of
21 the Staff to other agencies. I think the -- the
22 proposed language by Commissioner Laurie is
23 appropriate. If the word great deference is
24 giving people heartburn, you know, deference to me
25 is -- is all right. But the language says what it

1 says, and what it does not say is it doesn't say
2 complete deference to those other agencies, and it
3 doesn't say complete capitulation to those other
4 agencies.
5 The term that comes to mind, the
6 corollary term from great deference should be
7 independent analysis. The Staff does an
8 independent analysis of the information they
9 receive, and if they receive good information and
10 nothing to the contrary, deference seems easy. If
11 they receive conflicting information, then they're
12 going to have to do some more investigation on
13 your behalf.
14 And I guess the -- the bottom line there
15 is I think we support the proposed change, the
16 deference language. I think it -- it's helpful,
17 from our perspective, in kind of bounding the --
18 the scope of what goes on. But we'd ask you to,
19 you know, trust your Staff to know the difference
20 between when something requires further
21 investigation and when they can, in a sense, defer
22 to another agency.
23 CHAIRMAN KEESE: Thank you. Thank you,
24 appreciate that. And if you are going to have
25 further thinking on your 10:00 o'clock this

1 morning idea, converting it to language would be
2 very helpful.
3 Mr. Chaddock. I believe we had.
4 MR. CHADDOCK: Yes. My name is Chris
5 Chaddock, and mine's more of a general comment for
6 you to take into consideration. As a -- as I'm a
7 property owner next to the Florida Power and
8 Light's proposed Merchant Power Plant, as an
9 individual I'm being forced to partake in the
10 proceedings, unlike other people who wish to
11 participate.
12 As a result of siting, it is -- it is
13 extremely great to the people living next to a
14 proposed site. Even if you find it less than
15 significant in your findings, we will have
16 significant effects from a power plant close to
17 us. Our resources are nil compared to that of a
18 power producer. I feel anything limiting
19 Intervenors' rights will have undue burden to
20 property owners, such as myself.
21 As such, I would like to -- I would hope
22 you could put a special consideration to adjacent
23 property owners to sites, plant sites, and/or
24 their ability for financial reimbursement such as
25 government agencies have.

1 In my case, seven months into the
2 project, Florida Power and Light is making great
3 changes to their AFC, it's a supplemental AFC
4 proposed in another month. It will cause me great
5 new expenditures to myself to protect my life and
6 the financial well-being that I'm looking at to
7 protect my interests. I hope that you'll take a
8 close look from all sides, including property
9 owners, and oppositions from other people in
10 reviewing your new changes to your proceedings of
11 -- of the various ones that you're looking at
12 today.
13 And that's just a small comment, and
14 from somebody that's a small individual. And --
15 CHAIRMAN KEESE: Thank you. And we do
16 appreciate your sticking with us here to give your
17 comments. You're going to hear some other
18 comments momentarily from other people who have
19 used our Public Adviser.
20 MR. CHADDOCK: Thank you.
21 CHAIRMAN KEESE: Thank you.
22 Roberta, it's your -- your turn. Before
23 I give -- do we have anybody else in the audience
24 who is going to care to speak to this issue?
25 All right. Roberta.

1 PUBLIC ADVISER MENDONCA: Thank you,
2 Chairman Keese.
3 The public has consistently and, I think
4 much to Mr. Laurie and the Siting Committee's
5 interest, has participated in the discussion
6 that's been ongoing ever since I've been here at
7 the Energy Commission, in the process of trying to
8 come forward with a regulatory view, and to
9 suggest review changes.
10 Overwhelmingly, they do not want to
11 change the way the public currently has the
12 opportunity to participate in our process. The
13 support for that is widely available on the Energy
14 Commission's Web site, under the docket for this
15 OIR. And I believe there are more than 30 public
16 participants, some of the comment sort of
17 voluminous. To assist in your understanding, we,
18 in my office, did a synopsis of what the public
19 thought about the proposed regulations.
20 The process that we've gone through
21 today shows, to me, at least, very clearly that at
22 the Energy Commission, the public's ability to
23 participate is that of reaction. The only way
24 that they have an opportunity to even be a part of
25 today's discussion was by knowing about the notice

1 of this meeting, and the subject that was up for
2 consideration. My office did mail out, and Mr.
3 Buell, Staff, also mailed out to the public,
4 people that have been participating, suggested
5 language. But what's being discussed here today
6 has not had an opportunity to be reviewed by the
7 public that has indicated a strong interest in
8 participating.
9 So my point is, the public's ability to
10 participate in our process is dependent upon our
11 notice to them that we're talking. Whether we're
12 talking about regulations or siting cases, or
13 whatever the discussion, they only know to
14 interrupt their daily lives, based upon our notice
15 to them.
16 So the Commission sets the rules, and is
17 now entertaining a major change in the way that we
18 do our public being noticed responsibility,
19 because if we change the way Staff and Applicant
20 can talk, we're going to change the way we do
21 notice. And I think what's been overlooked is
22 that the public, yes, at the Energy Commission, is
23 not participating in the same way that they do at
24 a local agency, because with a local government
25 they do have the opportunity, when they disagree,

1 to exercise their opinion with a vote. We, at the
2 Energy Commission, are not elected. We are here
3 to do a job and to be servants of the public.
4 So I think the critical question as
5 decision makers about this language is what
6 changes will follow if rules are clarified. If
7 there are no changes to follow in our public
8 process, then there's probably not much of a need
9 for a change. If there are changes that are going
10 to follow from the new language, then I think we
11 have to ask will that result in a reduction in the
12 ability of the public to participate. And for the
13 most part, the ability of the public is not
14 organization or organized public, but just the
15 public. People on the street, perhaps people who
16 maybe will have a power plant close to them.
17 Of course, Staff doesn't vote on the
18 decisions, and there's been a lot of discussion
19 that the Staff is not a decision maker. But I
20 think, realistically, Staff is making many, many
21 decisions. We set them up to be an independent
22 party. They make as many decisions by deciding
23 not to do things as they do by deciding what to
24 do. And as an independent party, to be consistent
25 with an independent party their communications

1 should be viewed by all the other parties, in much
2 the same way that the Commissioners abide by the
3 ex parte rule. It's not appropriate to have Staff
4 be independent and have meetings behind closed
5 doors.
6 So, in response to just a couple of the
7 comments that would be made, again, I'll go
8 through the four specific changes.
9 Change number one. The response that my
10 office received was overwhelmingly opposed to the
11 deletion of the rules of evidence, 1212. I
12 couldn't give you feedback on the discussion
13 that's taken place in changing that language
14 today.
15 On the noticing, 710, the -- the
16 language that went out to the public included that
17 the Staff would not discuss or negotiate
18 positions. And that's the language that the
19 public supports, and would oppose the change that
20 was issued in Commissioner Laurie's proposal.
21 In 712, which was the third change, they
22 again unanimously opposed changing that language.
23 And 1714.5, deference to local agencies, they
24 unanimously oppose adding the great deference
25 comment.

1 I -- I found it interesting that one of
2 the commenters said that it would be very
3 important to the Independent Energy Producers to
4 not allow our Staff to meet with government
5 agencies, and to have them excluded was unfair.
6 Well, I believe that the public shares the same
7 feeling about discussions between our Staff and
8 the Applicant. And to be excluded is unfair.
9 So I look forward to continued
10 participation in the discussions about the
11 proposed language changes. Basically, what I have
12 to report on, and the public's participation
13 received in my office is -- is best summarized,
14 please don't change our current process.
15 Thank you.
16 CHAIRMAN KEESE: Thank you.
17 COMMISSIONER LAURIE: Question, Mr.
18 Chairman.
19 CHAIRMAN KEESE: Commissioner Laurie.
20 COMMISSIONER LAURIE: Roberta, under the
21 provisions of 1710.
22 PUBLIC ADVISER MENDONCA: Yes.
23 COMMISSIONER LAURIE: The current
24 language seems to indicate that Staff can meet
25 with the Applicant for purposes of exchanging

information and discussing procedural issues.

PUBLIC ADVISER MENDONCA: That's correct.

COMMISSIONER LAURIE: Do you object to that?

PUBLIC ADVISER MENDONCA: No, I do not. My office is limited by the procedural and substantive descriptions. I do not meet with the public to discuss substantive issues. That's my mandate. I cannot meet with the public to discuss substantive issues.

COMMISSIONER LAURIE: Okay. But the --

PUBLIC ADVISER MENDONCA: So --

COMMISSIONER LAURIE: -- but the language under the current regulation is to exchange information and discuss procedural issues. Correct?

PUBLIC ADVISER MENDONCA: I don't have a problem with that.

COMMISSIONER LAURIE; And is that not what my proposal includes?

PUBLIC ADVISER MENDONCA: It includes negotiating positions.

COMMISSIONER LAURIE: No, it does not. It says nothing about negotiating.

1 CHAIRMAN KEESE: No negotiating.
2 PUBLIC ADVISER MENDONCA: Your language
3 would not require public notice of that
4 discussion, and that's the biggest difference.
5 COMMISSIONER LAURIE: Current law
6 permits exchange of information and discussion of
7 procedural issues, and that is my recommendation.
8 COMMISSIONER MOORE: I have a question,
9 Mr. Chairman, after -- after --
10 PUBLIC ADVISER MENDONCA: Okay.
11 Apparently there is a change that I don't have
12 before me. So if I could read it, I'll get back
13 to you with your question. I apologize.
14 COMMISSIONER LAURIE: Okay.
15 COMMISSIONER MOORE: Mr. Chairman, I --
16 CHAIRMAN KEESE: Commissioner Moore.
17 COMMISSIONER MOORE: -- I have a
18 question. Roberta, what was the form in which
19 these things were put out on the Web for response
20 by the public? Was -- was there a commentary that
21 people were -- were given, or was there simply
22 language that said what do you think of -- of
23 Commissioner Laurie versus Commissioner Pernell's
24 position?
25 PUBLIC ADVISER MENDONCA: It was the

1 Siting Committee's Staff Report that was issued by
2 the Staff, and I obtained permission to send it to
3 people, and then in the context of doing comments,
4 it's put under the OIR rulemaking process, which
5 is noticed on our Web. And it's in a section
6 called Public Comment on the OIR Rulemaking
7 Process.
8 COMMISSIONER MOORE; So what they were
9 commenting on was the Staff report.
10 PUBLIC ADVISER MENDONCA: Correct. And
11 in addition to the Staff report, we also made
12 available Commissioner Laurie's proposal, and also
13 Commissioner Pernell's proposal.
14 COMMISSIONER MOORE: Thank you.
15 COMMISSIONER LAURIE: Roberta, the --
16 you indicated that you received about 30 comments.
17 PUBLIC ADVISER MENDONCA: That's
18 correct.
19 COMMISSIONER LAURIE: Out of those 30
20 comments, how many are individuals that have been
21 or are participants in our process today? As
22 opposed to members of the non-participating
23 general public.
24 PUBLIC ADVISER MENDONCA: I don't
25 believe that the non-participating general public

had an opportunity to know about it. Some of the people that participated have participated in more than one siting case. Some are new, some were in the emergency process. Some were organizations.

COMMISSIONER LAURIE: The purpose for my question is I accept your statement that 30 members of the public responded, and what you have concluded in regards to their response. I will not accept a conclusion that that represents the views of the general public.

PUBLIC ADVISER MENDONCA: That represents the views of the general public who responded to me.

COMMISSIONER LAURIE: Okay. That's fine. Thank you.

PUBLIC ADVISER MENDONCA: Sorry.

CHAIRMAN KEESE: Okay. We have before -- well, I guess before I say that, what we're talking about is the start of a process of adopting a change in regulations. What we have from the Siting Committee is a broad proposal that has a number of provisions in it on which no one seems to have a problem.

COMMISSIONER MOORE: Correct.

CHAIRMAN KEESE: I don't know how many

1 those are. But we have a broad set of -- of
2 adjustments to the process to make it better, on
3 which nobody has a problem. We've come down to
4 what we synthesized today to be four issues.
5 It seems to me that we've come pretty
6 close to some kind of a consensus on as many as
7 three of them, that on one, on item two, there are
8 definitely divergent opinions. I don't know how
9 far apart the Commissioners are. It would be my
10 suggestion, Commissioner Laurie, that we -- we
11 take what we've gotten here, we allow some more
12 discussions between you and Staff on some of the
13 verbiage, that we get a clean copy of this, and
14 that we present it to the Commission meeting on
15 Monday next.
16 COMMISSIONER LAURIE: Mr. Chairman, am I
17 correct in assuming that Commissioner Pernell is
18 no longer on the line?
19 CHAIRMAN KEESE: Commissioner Pernell is
20 no longer on the line, but he will be here Monday.
21 COMMISSIONER LAURIE: I would accede to
22 your suggestion, but only because I think it's
23 important that my colleague on the Committee,
24 Commissioner Pernell, have an opportunity to be
25 personally in attendance, if he's able to do so.

1 CHAIRMAN KEESE: Okay. I have polled
2 the Commission, and all five members will be here
3 Monday. So it would be my recommendation -- the
4 Monday hearing is devoted to the Metcalf Siting
5 Case. It would be my proposal we start with this
6 issue, and -- and we see if we can close it off.
7 Closing it off meeting, we are at the point where
8 we start the process of changing the regulations.
9 COMMISSIONER LAURIE: Did I actually
10 agree to be here when Metcalf was being heard?
11 (Laughter.)
12 CHAIRMAN KEESE: I think you did.
13 COMMISSIONER LAURIE: Okay.
14 CHAIRMAN KEESE: Do we have any further
15 to add?
16 COMMISSIONER LAURIE: Not from me, sir.
17 Thank you.
18 CHAIRMAN KEESE: This item is put over
19 until Monday, when it will be taken up at 10:00
20 a.m. as the first order of business.
21 This meeting is adjourned. Subject to
22 -- subject to us going into a very quick Executive
23 Session to discuss a matter of litigation.
24 (Thereupon, the meeting was
25 adjourned at 2:45 p.m.)

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 the outcome of said Meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of October, 2001.

VALORIE PHILLIPS