

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

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

WEDNESDAY, APRIL 17, 2002
10:00 A.M.

Reported by:
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COMMISSIONERS PRESENT

William J. Keese, Chairman

Robert A. Laurie

Arthur H. Rosenfeld

Robert Pernell

James D. Boyd

STAFF PRESENT

Steve Larson

Jonathan Blee

Betty McCann

Ezra Amir

Steve Williams

Gary Fay

Caryn Holmes

Christopher Meyer

Dan Rios

Bill Pennington

Alan Argentine

Joseph McCabe

Sue Kately

PUBLIC ADVISER

Grace Bos

ALSO PRESENT

Bonita Churney
Coastal Alliance on Plant Expansion

Jeffrey D. Harris, Attorney
Ellison, Schneider and Harris, LLP
Andrew Trump, Director Business Development
Duke Energy North America
Morro Bay Power Project

Mark Wolfe, Attorney
California Unions for Reliable Energy

Danny Walsh, Consultant/Lobbyist
Danny Walsh & Associates

Thomas L. Trimberger, Senior Mechanical Engineer
County of Sacramento
California Building Officials

Robert E. Raymer, Technical Director/Senior
Advocate
California Building Industry Association

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P R O C E E D I N G S

10:00 a.m.

CHAIRMAN KEESE: We call this meeting of the Energy Commission to order. Commissioner Laurie, would you lead us in the Pledge.

(Whereupon, the Pledge was recited in unison.)

CHAIRMAN KEESE: Thank you very much. Before we start the formal agenda, I would like to ask Steve Williams and Ezra Amir to come forward. Commissioner Laurie.

Standing room only, huh? Must be a popular event.

(Pause.)

COMMISSIONER LAURIE: I'd like to have the better looking of the two go first.

(Laughter.)

COMMISSIONER LAURIE: We'll take it in alphabetical order. Mr. Amir. Ezra, the purpose of today is to acknowledge 25 years of loyal service to the people of the State of California by yourself. It is difficult to put on a small piece of paper one's contributions during that time. And we can never do justice in that regard.

But just a very brief summary, we should

1 note that you're currently serving as a member of
2 the Technology Systems Division, which you have
3 for a good period of time. One of your major
4 efforts at the Commission is you have served as a
5 union steward for CAPS employees, and your duties
6 must certainly be recognized, and the improvements
7 you have created as a result of that service.

8 You are known for working on our
9 strategic planning; you're known for moving to
10 create in all aspects such a positive working
11 environment at this Commission.

12 Technically you've, especially lately
13 you have worked on the managing contracts relating
14 to our R&D projects. And, again, you deserve
15 great kudos for working in our strategic planning
16 function.

17 Again, Ezra, it's unfair to attempt to
18 put a person's life into a 30-second synopsis.
19 All I can say is that we know the service that you
20 have provided, not only to the people of this
21 building, but in turn to the people of this state.
22 And we thank you.

23 In honor of that the people of the State
24 of California wish to present to you a plaque
25 commemorating your 25 years of service, signed by

1 the Honorable Gray Davis, Governor, and the
2 Honorable Bill Jones, Secretary of State. So you
3 get that.

4 You also get this incredibly pretty
5 pocket knife which I think it has the seal of the
6 State of California on it. The danger is don't
7 get anywhere near an aircraft security line with
8 this because you will not be able to keep it for
9 long.

10 So, on behalf of the people of the State
11 of California and the California Energy
12 Commission, let me thank you for a job --

13 (Applause.)

14 MR. AMIR: I would like to say only one
15 thing. In connection with this occasion my wife
16 noted to her manager that for someone to stay in
17 one workplace for 25 years it's either a sign of
18 tenacity or stupidity.

19 (Laughter.)

20 MR. AMIR: Her manager's answer was
21 probably it's a bit of both.

22 (Laughter.)

23 (Applause.)

24 COMMISSIONER LAURIE: Oh, Ezra, here you
25 go.

1 MR. AMIR: I need this for self defense.

2 (Laughter.)

3 COMMISSIONER LAURIE: Different forum.

4 We're here celebrating Mr. Williams' 50th

5 anniversary --

6 (Laughter.)

7 COMMISSIONER LAURIE: Steve and I have a
8 very special relationship because Steve had the
9 humbling obligation to serve as my Second Advisor
10 for over a year a short while ago, and that
11 experience is enough to crush even the heartiest
12 of souls. And you seem to have recovered quite
13 well.

14 Steve has been in the energy business
15 for a long time. I note that your first
16 participation with the Energy Commission was in
17 1976, when you were representing the County of
18 Riverside in the Sun Desert Nuclear Project.
19 Which is fascinating, because in 1976 I was
20 representing the County of Imperial in the Sun
21 Desert Nuclear Project. And I am sure we were
22 sitting across the table from each other. Were
23 you married at the time? Neither was I, so we
24 were probably concentrating on issues different
25 than we do --

1 (Laughter.)

2 COMMISSIONER LAURIE: And so we've been
3 working together for a very long time. Steve
4 joined the Commission in '77. He has worked in a
5 myriad of responsibilities. Served as Office
6 Manager, served as a Planner, served as a Senior
7 Supervisor in a number of very critical areas.
8 Served as the Coordinator for the Green Team's
9 participation in the East End Green Team Task
10 Force, which was a very important, positive
11 experience for the Commission.

12 Worked as part of PIER; worked as my
13 Advisor, and continued to work on the PIER program
14 today. But that's only been part of your
15 participation and your commitments to the people
16 of this state; as you've been active in a number
17 of community service roles including a member and
18 Vice Chair of your School Board. You've been a
19 Planning Commissioner. You served on the American
20 Association of University Women, right? And all
21 that time you've been a husband and father;
22 husband to Mary Kay and father to Kate.

23 I can tell you personally that again
24 your contributions are felt and deeply
25 appreciated. You cannot put into 30 seconds what

1 a man does over a lifetime, so I apologize for
2 that. But you need to go away from today's
3 meeting knowing that you should feel satisfied for
4 a job very well done to this date.

5 (Laughter.)

6 (Applause.)

7 MR. WILLIAMS: Thank you, Commissioner
8 Laurie. I'm especially honored that you are the
9 one that chose to make the remarks on behalf of
10 the Commission. Serving with you as a Second
11 Advisor was definitely one of the highlights of my
12 career at the Energy Commission. And I've enjoyed
13 working with you, and I enjoy looking forward to
14 working with you. Thank you very much.

15 I'd also like to acknowledge my wife,
16 Mary Kay, in the audience. She's also been a key
17 part of why I've enjoyed working for the Energy
18 Commission because I can always come home and talk
19 to her and she listens and she understands. And
20 she's a great person to have as your wife and as
21 your best friend.

22 I actually started 39 years ago with the
23 State of California. I was working with the
24 California Department of Parks and Rec. And
25 little did I realize, as I was sitting at my

1 lifeguard stand at Lake Folsom, that I would end
2 up with the Energy Commission. And it's been an
3 interesting experience and I'd like to share a few
4 of those with you.

5 I think part of being with the Energy
6 Commission is having to explain to other people
7 what you do. And I know when my wife is asked
8 what does your husband do, it's always -- her
9 response has always been something like well, he
10 does something with the energy of the State of
11 California. And that's about as good as you can
12 get with some of the things that I've been doing
13 for the California Energy Commission.

14 I looked at the 1977 org chart for the
15 Commission, for those people who are in O&M and
16 positions and higher. And the people on the org
17 chart, there's only three people that are still
18 with the Energy Commission. One is Sy Goldstone;
19 one is Mike Sloss; and the other is Steve Larson.
20 So, a lot of changes over 25 years.

21 During the past 25 years I've gained 30
22 pounds.

23 SPEAKER: Haven't we all?

24 MR. WILLIAMS: Yes.

25 (Laughter.)

1 MR. WILLIAMS: Worked in three different
2 divisions and eight different offices. Supervised
3 125 individuals during the span of that time. And
4 during that 25 years I advanced from Senior
5 Supervisor to Senior Supervisor.

6 (Laughter.)

7 MR. WILLIAMS: I think at this point in
8 time I actually have had the most years of
9 experience as a supervisor for anyone in the
10 Commission. And I've enjoyed that and appreciated
11 the opportunity to be a supervisor for these
12 different areas.

13 I'd like to take this opportunity,
14 though, to recognize some special people and why
15 they're special to me during the past 25 years,
16 and for the reason.

17 First of all I'd like to recognize Roy;
18 he's the Printer and in charge of reproduction.
19 To me Roy epitomizes the essence of a good staff
20 person. Whenever I've needed help over the years
21 with printing jobs, Roy has always been there. No
22 matter what the deadline that we face, he would
23 work with staff and work with me to make sure that
24 we had the highest quality job. And to me he
25 epitomizes what all of us strive to be in terms of

1 a work ethic here at the Commission.

2 Second I'd like to recognize the late
3 Chairman Imbrecht. The Chairman took charge of
4 the Commission at a time of great difficulty for
5 us, when we faced a demand by many people,
6 including political leaders, to abolish the
7 Commission. And he came in probably without
8 mandate from the incoming Governor. And instead
9 he recognized that the job we do is unique; the
10 job we do needs to be done; and he took the
11 leadership, the political leadership and helped
12 continue this agency working and doing the
13 critical work that it's doing.

14 Another reason I remember Chuck is that
15 many years ago I made a presentation, had to
16 present testimony at a hearing where Chuck was
17 presiding. And at the end of the hearing I
18 received a handwritten note from Chuck saying, you
19 know, excellent presentation, very professional.
20 And I kept that note pinned on my cork board for
21 ten years. And that's the type of motivation that
22 a true leader can inspire in people that work for
23 him.

24 I also remember Ross Deter. Ross
25 retired. He was Division Chief for three

1 different divisions here at the Commission, and
2 for a very good reason. Ross was my epitome of
3 what a good manager is. He knew that the essence
4 was to hire good people and give them meaningful
5 responsibilities and turn them loose and let them
6 do their job. And I really enjoyed working with
7 Ross over the years.

8 The final two people I'd like to
9 recognize are Rosella Shapiro and Susanne
10 Garfield. Not only for the work they've done as
11 Advisors and the other work for the Commission
12 over the years, but for a very personal
13 experience.

14 At the time my wife delivered our
15 daughter 13 years ago, she had a very difficult
16 delivery. And she ended up in intensive care for
17 five days. Rosella and Suzanne put together a
18 food chest and brought it to me. And it was, you
19 know, meals, for like a week. And this came at a
20 time when my office manager at the time had called
21 me and threatened to dock me a day's pay for not
22 calling in to the office to say I wasn't coming in
23 that day. So that type of experience, you know,
24 that warmth, I think, symbolizes the compassion
25 that the staff of the Energy Commission has.

1 And we've reached out recently to
2 Richard Rohrer's family, and to other people
3 through the years. And to me that is also part of
4 the essence of why I enjoy being a member of the
5 Energy Commission.

6 I've finished 25 years, and as
7 Commissioner Laurie noted, about to start the next
8 25. It's been a joy, and I've enjoyed being here.
9 All of us have the opportunity to choose to work
10 where we work, and I chose the Energy Commission,
11 and I have no regrets.

12 Thank you for the gold watch and I'm
13 here for the next 25 years.

14 (Applause.)

15 COMMISSIONER LAURIE: I should also note
16 that one of my first discussions with Steve
17 Williams was when we started officially
18 celebrating Veterans Day here at the Commission,
19 and we raised a new flag three years ago.

20 At that time Captain Williams, the
21 United States Army Special Forces, had the honor
22 of raising that flag, along with his daughter.
23 And that was an honor for me to call upon Steve to
24 do that.

25 (Pause.)

1 CHAIRMAN KEESE: Thank you, Commissioner
2 Laurie, and congratulations.

3 Consent calendar. Before we take up the
4 consent calendar I would ask for a motion. I will
5 read two items to be added to the consent
6 calendar.

7 One, Silicon Valley Manufacturing Group,
8 California Energy Summit on May 17, 2002. And the
9 other Energy Solutions for California Industry:
10 Ways to Improve Operations and Profitability on
11 May 15th, which involves a \$9000 PIER-funded
12 subsidy.

13 COMMISSIONER LAURIE: Move to add to the
14 agenda.

15 CHAIRMAN KEESE: Motion by Commissioner
16 Laurie to add them to the consent calendar agenda.

17 COMMISSIONER PERNELL: Second.

18 CHAIRMAN KEESE: Second by Commissioner
19 Pernell.

20 All in favor?

21 (Ayes.)

22 CHAIRMAN KEESE: Opposed? Adopted five
23 to nothing.

24 Now, I will ask for a motion on the
25 consent calendar as amended.

1 COMMISSIONER ROSENFELD: I move the
2 consent calendar.

3 CHAIRMAN KEESE: Motion, Commissioner
4 Rosenfeld.

5 COMMISSIONER BOYD: Second.

6 CHAIRMAN KEESE: Second, Commissioner
7 Boyd.

8 All in favor?

9 (Ayes.)

10 CHAIRMAN KEESE: Opposed? Consent
11 calendar is adopted.

12 Item 2, Morro Bay. Commission
13 consideration of Intervenor Coastal Alliance on
14 Plant Expansion, petition for review of a Morro
15 Bay AFC Committee order denying CAPE's request for
16 subpoena. Good morning. We'll have the
17 Intervenor present first.

18 MS. CHURNEY: Good morning, my name is
19 Bonita Churney and I represent the Intervenor
20 Coastal Alliance on Plant Expansion. Thank you
21 for considering this petition and for listening to
22 my comments here today. We appreciate it.

23 Before I begin I would like to point out
24 that the packet that has been circulated to the
25 Commission appears to be missing the final brief

1 prepared and filed timely on April 10th of the
2 petitioner.

3 This brief contains the factual and
4 legal background for supporting the petition, so I
5 would urge you to, if you have not received copies
6 of that, to review that prior to making your
7 decision.

8 I'd also note that the memorandum by the
9 Executive Director Mr. Larson, which recommended
10 denial of the petition, was prepared on April 9th,
11 the day before the briefs were due. And the day
12 before Intervenor's brief was filed. So, again,
13 his recommendation appears to have been made
14 before all facts and all legal arguments were
15 considered. And I would urge that that brief be
16 considered prior to your final decision.

17 Turning to the petition, I think in
18 considering this petition the first thing that has
19 to be considered and the prime thing that has to
20 be considered is the purpose of the hearing and
21 the Committee's purpose in holding these hearings
22 with respect to the application for certification.

23 And that is fact finding; to hear all
24 relevant facts, and to seek the complete truth.

25 And this is provided for in the hearing order,

1 which states the purpose of the formal evidentiary
2 hearings is to establish the factual record
3 necessary to reach a decision in this case.

4 It's also established by the
5 Commission's own rules and regulations, including
6 20CCR section 1741, which provides for the purpose
7 and objectives of the application proceedings,
8 including to insure that the applicant
9 incorporates into the project all resources and
10 measures that can be shown to be feasible,
11 reasonably necessary and available to
12 substantially lessen or avoid the project's
13 significant adverse environmental effects.

14 It also provides that the purpose is to
15 insure that any sites and related facilities
16 certified provide a reliable supply of electrical
17 energy in a manner consistent with public health,
18 safety and the promotion of general welfare and
19 protection of environmental quality.

20 20CCR section 1748 also provides the
21 Commission guidance with respect to the purpose.
22 And that section provides that the hearing shall
23 be used to identify significant adverse impacts of
24 the proposal on the environment. And shall assess
25 the feasibility of measures to mitigate any

1 adverse impacts.

2 It also provides for the burden of proof
3 that an intervenor has with respect to proposing
4 additional conditions, modifications and other
5 provisions relating to the manner in which the
6 proposed facility is sited or operated.

7 And it states that the intervenor shall
8 have the burden of making a reasonable showing to
9 support the need and feasibility of any condition,
10 modification or provision.

11 So this, by refusing to issue the
12 subpoena in this case, the Commission is
13 preventing the Coastal Alliance, my client, from
14 meeting its burden of proof on certain air quality
15 issues that we've identified in our brief.

16 And I think all other arguments and
17 objections by Duke or by CURE and staff must be
18 secondary to the principal fact-finding mission of
19 this Commission.

20 And that is because the Commission is
21 obligated, I believe, to apply its rules and
22 regulations fairly and even-handedly to all
23 parties, and to allow the development of facts,
24 relevant facts by all parties.

25 And as a simple policy matter, I don't

1 think the Commission wants to be in the position
2 of precluding relevant facts and information from
3 consideration simply because a subpoena is
4 required to obtain that information.

5 And that is one of the reasons the
6 Committee's order in this case is so odd. In
7 essence it holds that the Coastal Alliance can
8 present the desired information of Dr. Fox if she
9 will agree to testify without the need for a
10 subpoena. But is precluded from doing so if a
11 subpoena is required.

12 And I think this can mean only one of
13 two things. Either the Committee has determined
14 that the information is relevant and material,
15 because it's willing to listen to the information
16 and the evidence if Dr. Fox will appear without a
17 subpoena. Or the Committee has determined that
18 the information isn't relevant and is not
19 important enough to hear at all if a subpoena is
20 required to obtain it.

21 And in this case I think the Committee
22 has prejudged the evidence and the information.
23 And I think this is a terrible ruling as a matter
24 of policy.

25 The sole determining factor in the

1 Committee's decision, whether the information is
2 worth their while to even hear appears to be that
3 a subpoena is required to obtain it. And this
4 makes no sense at all as a policy matter. The
5 information is either relevant and material to the
6 Committee's decision, which we claim, and believe
7 we have provided facts to support that it is; or
8 it isn't. And the need for the subpoena should
9 have nothing to do with the Committee's decision
10 to hear the testimony.

11 And so I think this takes us into
12 whether, well, is it relevant, is the information
13 relevant and material. And there is no dispute
14 that it is relevant and material. Neither Duke,
15 nor CURE, nor staff has contended that it isn't
16 relevant.

17 But just so that it's absolutely clear
18 to the Commission that it is, the Coastal Alliance
19 has made no secret of the fact that one of its
20 primary arguments in this case is that any
21 increase in PM10 emissions and concentrations from
22 the proposed new plant will create a significant
23 adverse environmental effect that must be
24 mitigated.

25 Now, the Coastal Alliance believes that

1 the emission rates of PM10 have been understated
2 by Duke by a factor of at least two. And this
3 evidence that we wish to present would go to that
4 issue.

5 If the Committee condones this
6 understatement, it will be allowing Duke to gamble
7 that it won't get caught exceeding the permit
8 limits, or alternatively that it will be setting
9 Duke up for failure. The Committee would also be
10 gambling with the public's health.

11 If the emission rates are understated,
12 then the mitigation already proposed to the
13 Committee is de facto inadequate by a factor of
14 half again as much.

15 So this is a very critical issue, and
16 clearly is relevant. And as I've indicated it
17 hasn't been contended by any party that it isn't
18 relevant.

19 There are also other issues with respect
20 to acrolein and the method 201A and 8 utilized by
21 Duke's expert. And we've briefed all of this, and
22 I won't go into further detail on that.

23 But, again, these are all relevant
24 issues with respect to air quality and the
25 mitigation proposed by the intervenor.

1 So then turning to the law, there is no
2 requirement anywhere in the law, whether in the
3 Commission's rules and regulations or in general
4 California subpoena procedures and regulations,
5 that provides that a subpoenaed witness must be
6 the only person in the world possessing the
7 desired information in order for a subpoena to
8 issue.

9 And yet that is, in effect, what the
10 Committee is holding by requiring -- by refusing
11 to issue the subpoena. The Committee's order
12 provided that, quote, "there are many such experts
13 who are so qualified and have so testified in the
14 past."

15 But I defy the Committee to point to any
16 other person who can testify on these very
17 specific and very narrow issues, and has the
18 requisite knowledge and background that Dr. Fox
19 has on these issues. And finally, is willing to
20 testify. I don't believe that was a valid reason
21 for the subpoena request to be denied.

22 And I think the Committee needs to
23 identify these many experts because there's no
24 evidence of these experts anywhere on the record.

25 And I believe good cause has also been

1 shown for the issuance of the subpoena. As set
2 forth in our brief there are various ways to
3 determine good cause. But I think the California
4 Supreme Court has hit the nail on the head by
5 stating and holding that good cause is shown when
6 the subpoena request won't abuse the inherent
7 rights of an adversary. And I think clearly here
8 there's no question that issuance of this subpoena
9 would not abuse the rights of Duke or any other
10 party of these proceedings.

11 Duke has had more than sufficient time
12 to prepare for the evidence that would be
13 presented, the testimony to be presented by Dr.
14 Fox. And nobody would be hurt by the presentation
15 of the complete truth and the complete facts.

16 And it's also, I believe, an abuse of
17 the discretion of the Committee to have denied
18 this subpoena request. And, again, there are
19 various ways to determine abuse of discretion, but
20 I think the cases cited by us in our brief
21 succinctly set forth what must be shown to
22 determine an abuse of discretion.

23 There are three factors. First, if the
24 agency has not proceeded in a manner required by
25 law. Second, if the order or decision is not

1 supported by the facts. And third, if the
2 findings are not supported by the evidence.

3 And I think under all three of these
4 tests there has been abuse of discretion by the
5 Committee.

6 First, the Commission is required, by
7 some of the rules and regulations, specifically
8 20CCR section 1748, to use the hearings to
9 identify adverse impacts and assess the
10 feasibility of measures to mitigate those adverse
11 impacts.

12 The Coastal Alliance has evidence of
13 additional significant adverse impacts which have
14 not been considered by the Committee or by Duke.
15 Refusing to issue the subpoena precludes CAPE from
16 presenting this evidence.

17 Because the Commission is required by
18 law to use the hearings to identify significant
19 impacts, it is acting in a manner contrary to this
20 law by refusing to issue the subpoena. Thus the
21 agency, the California Energy Commission, has not
22 proceeded in a manner required by law.

23 Second, the order is not supported by
24 the facts. The facts show abundant good cause for
25 issuance of the subpoena, yet the Committee states

1 that there is none. We have shown that this
2 witness is uniquely qualified with knowledge,
3 background, experience, familiarity with the case,
4 and finally, willingness to testify.

5 Also the facts show that the subpoena
6 was timely requested. It was requested shortly
7 after it became apparent on February 6th that a
8 rebuttal witness would be necessary. And it was
9 filed by February 20th in a timely manner that
10 would have given the Committee three weeks to
11 issue the subpoena and to obtain the witness on
12 the next scheduled hearing date. And also all
13 parties would have had adequate time, three weeks,
14 to prepare for the testimony.

15 And finally, the findings are not
16 supported by the evidence. The Committee claims
17 that CAPE made no persuasive demonstration as to
18 why Dr. Fox is uniquely qualified. But we have
19 gone into great detail to show how that is not the
20 case. And I've just given you examples of why she
21 is.

22 Second, the Committee has stated that
23 there are many such experts who are so qualified.
24 Again, this is wholly unsupported by any facts in
25 the record. There's no evidence of this. The

1 Committee has also stated that Dr. Fox is
2 reluctant to volunteer because she has previously
3 established relationship as a consultant and
4 witness for CURE. Again, there's no evidence of
5 this in the record.

6 Finally, the Committee states that the
7 request for subpoena is not timely. And, again,
8 there's no evidence of this in the record, either.
9 Again, a subpoena was applied for as soon as CAPE
10 determined the need for the rebuttal, and Dr.
11 Fox's willingness to serve.

12 In summary, there's more than adequate
13 good cause for the issuance of this subpoena. No
14 rights of any party to these proceedings will be
15 abused by issuance of the subpoena. And the
16 subpoena will aid the Commission and the
17 Committee's duty to seek out and hear the relevant
18 facts necessary to reach a decision in this case.

19 And as an aside, I have confirmed with
20 Dr. Fox that she would be available to testify on
21 June 6th or 7th, the next scheduled hearing
22 scheduled in this matter.

23 I'd like to briefly address a few of
24 Duke's arguments and CURE's arguments which were
25 brought up in their briefs filed on April 10.

1 First of all, CAPE does have a right to
2 present rebuttal, and this is found in 20CCR
3 section 1212(c), contrary to what Duke has
4 claimed. CAPE was not required to prefile its
5 rebuttal. 20CCR section 1718.5 does not stand for
6 that proposition. It does not provide for the
7 prefiling of rebuttal as Duke mistakenly claims.
8 It doesn't say anything of the sort.

9 Third, Duke's witness, Mr. Rubenstein,
10 either lied on cross-examination or he failed to
11 tell the complete truth. There's no requirement
12 in the rules of evidence of which I am aware that
13 the examining attorney must object at the time a
14 witness on cross-examination lies or misrepresents
15 the facts in order to preserve a right to
16 rebuttal. There's no such rule. Duke's
17 attorney's suggestion to the contrary is absurd
18 and it's not supported by any law.

19 Fourth, the request was timely. Under
20 section 1203(b) by its own terms it is not limited
21 to a discovery subpoena.

22 Fifth, CAPE is represented on air
23 quality topics by one attorney, and one attorney
24 only. And you're looking at her. The fact that I
25 had conversations with Dr. Fox in 2001 does not --

1 it is irrelevant to the current request. Because
2 the current request was made necessary, it only
3 became necessary on February 6th of this year when
4 it was determined that rebuttal would be needed
5 with respect to specific points made by Mr.
6 Rubenstein on cross-examination.

7 CAPE has offered testimony as to why
8 only Dr. Fox can provide the needed relevant
9 testimony. And it is not a preference of one
10 witness over another, as stated by Duke. There is
11 no other witness available.

12 Seventh, this is not a subterfuge. Dr.
13 Fox won't appear without a subpoena. We've made
14 that abundantly clear. There is no hidden agenda
15 here.

16 And finally, had the hearings concluded
17 on February 6th as planned, CAPE can still have
18 applied for a subpoena to offer the evidence; and
19 could have petitioned this Commission to reopen
20 the testimony. It is not unjustly benefitting in
21 any way by the continued hearing.

22 With respect to CURE's arguments, it is
23 correct that Dr. Fox is unwilling to testify.
24 That's the whole point of this request. We had
25 shown that Dr. Fox alone possesses the knowledge

1 and experience that is unique and critical to the
2 Committee's fact finding mission. We are not
3 asking the Commission to find a witness for us, as
4 CURE claims. We've found one already, thank you.
5 And we need only a subpoena issued to obtain her
6 presence at the hearing.

7 CAPE will not be forcing Dr. Fox to
8 testify against her will. The evidence is quite
9 to the contrary. There's no evidence that she
10 will be a hostile or uncooperative witness.

11 The argument by CURE that the Coastal
12 Alliance is somehow poaching on their experts is
13 really a distasteful and disgusting argument to
14 make. I find it hard to believe that CURE would
15 have made this argument.

16 Dr. Fox is not CURE's property. She's
17 not wild game that belongs to CURE that they are
18 attempting to protect from poaching. She is an
19 independent expert; she works for other clients.
20 In fact, she's working for the City of San
21 Francisco now on another siting case.

22 And I really wonder whether CURE is as
23 concerned with the City of San Francisco's so-
24 called poaching as they are with our request that
25 she be subpoenaed in this hearing.

1 CURE's argument that there will be
2 alarming ramifications in future proceedings is
3 really balderdash. No attorney in his right mind
4 is going to go out willy-nilly and subpoena
5 another party's experts on a regular basis.
6 Because, for the most part, you won't get a
7 cooperative witness. For the most part, you will
8 have a hostile and uncooperative witness, and will
9 not obtain the facts or the evidence that you wish
10 to present.

11 Our case is different. And we've
12 presented facts to show that it's different. She
13 will testify. We've set forth in sworn testimony
14 what she will say, and it's relevant and material.
15 So this is a different situation.

16 CURE also claims that subpoenaing Dr.
17 Fox will prejudice CURE. First of all, I'd just
18 like to remind the Commission that CURE is not a
19 party in this proceeding. They have no standing
20 to raise these objections as a party, although
21 they can speak as a member of the public. But
22 whatever they say cannot serve as a basis for any
23 Committee or Commission decision.

24 And I would refer the Commission to the
25 hearing orders issued in this case which provide

1 in section 2, under public participation, public
2 comments, by themselves, are not sufficient to
3 support a finding of fact or a decision on an
4 issue.

5 So, although the comments may have been
6 provided by CURE, they may not serve as a basis
7 for the Committee's or the Commission's decision.
8 And I would submit that that is exactly what
9 occurred here, at least in part.

10 Also there is evidence that Dr. Fox will
11 continue to be able to attend to CURE's work and
12 that she will not be precluded from attending to
13 CURE's work in any event.

14 And there's no evidence that Dr. Fox
15 won't be paid for her services in some fashion.

16 Finally, both CURE's and Duke's briefs
17 are bereft of any factual or legal support. The
18 law cited by Duke is cited incorrectly, or does
19 not support the points for which it has been
20 cited, as I've indicated.

21 So based on all of these facts and on
22 briefs presented by the Intervenor, I would
23 respectfully request that the Commission
24 reconsider the Committee's order and issue a new
25 order providing that Dr. Fox should be subpoenaed

1 and providing for the subpoena.

2 As I have indicated, she would be
3 available to testify on either June 6th or 7th.
4 And good cause has been shown for this, and the
5 information is relevant and necessary for the
6 Committee's decision in this case.

7 Thank you.

8 CHAIRMAN KEESE: Thank you. Applicant.

9 COMMISSIONER BOYD: Mr. Chairman, --

10 CHAIRMAN KEESE: Commissioner Boyd.

11 COMMISSIONER BOYD: -- could I ask a
12 question of staff at this point? The intervenor
13 has raised one issue that I need clarification on,
14 and that is the fact that the agenda package does
15 lack the April 10th submittal. I wonder if Mr.
16 Blees could make some comment on that.

17 And secondly, if anyone who doesn't have
18 a copy of that could be afforded a copy?

19 HEARING OFFICER FAY: Commissioner, Gary
20 Fay, Hearing Officer for the Committee. I can
21 address that.

22 I can understand why Ms. Churney has
23 that impression. The filing date for the final
24 briefs, which were optional and only two parties
25 filed them, Duke Energy and CAPE, the final brief

1 was due after the packets were due to the
2 Secretary of the Commission. And the memo was due
3 at the same time.

4 So, the memo reflecting a recommendation
5 from the staff against this petition reflected the
6 staff position at the time the memo was filed.
7 And it's my understanding that staff still has the
8 same position.

9 As to the briefs, they were due on
10 Wednesday and they were served on the
11 Commissioners as a supplement to their agenda
12 packet on Friday, they were given to the
13 Secretary. Can you confirm that? Yes.

14 So they were served on each
15 Commissioner's office as a supplement to the
16 agenda packet, which is what we do in the normal
17 course of business with the filings.

18 CHAIRMAN KEESE: Commissioner Boyd, it
19 is in my packet. I was privy to this.

20 COMMISSIONER BOYD: I want the record to
21 reflect --

22 CHAIRMAN KEESE: Thank you.

23 COMMISSIONER PERNELL: Mr. Chairman, I
24 have a question for the intervenor. And I can
25 wait until the applicant finishes his

1 presentation, whatever your desire.

2 CHAIRMAN KEESE: Why don't we -- I think
3 we're going to have probably three other speakers
4 first, so if you want to -- whatever you'd like.

5 COMMISSIONER PERNELL: Well, why don't
6 we --

7 CHAIRMAN KEESE: All right, --

8 COMMISSIONER PERNELL: -- have a
9 question --

10 CHAIRMAN KEESE: Do you want to --

11 COMMISSIONER PERNELL: -- get it out of
12 the way real --

13 CHAIRMAN KEESE: All right. For the
14 intervenor, please. Your question.

15 COMMISSIONER PERNELL: My understanding
16 is this is still an active case?

17 MS. CHURNEY: That's correct.

18 COMMISSIONER PERNELL: And so I don't
19 want to get into specifics, but I guess my
20 question is you went through evidentiary hearings
21 and if you had information why wasn't it presented
22 then?

23 MS. CHURNEY: Well, that was the purpose
24 of requesting the subpoena for Dr. Fox. We would
25 like to present it, and could have presented it at

1 the scheduled hearing on air quality had the
2 subpoena been issued in a timely fashion.

3 COMMISSIONER PERNELL: Why would you
4 need a subpoena to present information?

5 MS. CHURNEY: Because she is a qualified
6 expert in this area, and --

7 COMMISSIONER PERNELL: She wasn't on
8 your list?

9 MS. CHURNEY: She was not on our list.
10 We did not determine until after cross-examination
11 of the applicant's witness, expert witness, that
12 rebuttal testimony would be necessary. Nor had we
13 confirmed with her that she would be willing to
14 testify if subpoenaed.

15 COMMISSIONER PERNELL: Okay.

16 MS. CHURNEY: Some the timeline was the
17 hearing was held on February 6th where the
18 applicant's expert testified and was cross-
19 examined. During the course of the cross-
20 examination on February 6th the intervenor
21 determined that rebuttal would be necessary on
22 certain issues.

23 That hearing was cut short because of
24 unforeseen circumstances, and was continued over
25 for a month. In the intervening period we spoke

1 with Dr. Fox to determine that she would be
2 willing to present rebuttal, and then made our
3 application.

4 COMMISSIONER PERNELL: All right, so --

5 CHAIRMAN KEESE: But only if subpoenaed?

6 MS. CHURNEY: But only if subpoenaed,
7 correct.

8 CHAIRMAN KEESE: She's not willing to
9 come forward voluntarily, only if ordered to?

10 MS. CHURNEY: Correct.

11 CHAIRMAN KEESE: Okay.

12 COMMISSIONER PERNELL: Okay, no further
13 questions.

14 COMMISSIONER LAURIE: Question, Mr.
15 Chairman.

16 CHAIRMAN KEESE: Commissioner Laurie.

17 COMMISSIONER LAURIE: Ma'am, what's your
18 understanding of Dr. Fox's specific knowledge and
19 participation in this case?

20 MS. CHURNEY: In this case? She had
21 informed me that she's been following this case
22 quite closely from day one because it's providing
23 her information which it's very similar in certain
24 aspects with respect to the Potrero case.

25 COMMISSIONER LAURIE: But she has not

1 been called as a witness nor has she done any work
2 on behalf of any party to this case, is that
3 correct?

4 MS. CHURNEY: Not in this case, no. She
5 is working on the Potrero case, and for that
6 reason has been following Morro Bay very closely.

7 COMMISSIONER LAURIE: Thank you.

8 COMMISSIONER PERNELL: I guess I'm not
9 following why she needs to be subpoenaed. If
10 she's interested in the case and certainly I'm
11 assuming has knowledge, why does she need to be
12 subpoenaed to testify?

13 MS. CHURNEY: Because she's unwilling to
14 testify voluntarily.

15 CHAIRMAN KEESE: Why?

16 COMMISSIONER PERNELL: Then do we -- for
17 some reason I'm not understanding this. Why
18 should we make her testify if she's unwilling to?

19 MS. CHURNEY: Because she has the
20 information, the unique knowledge and expert
21 testimony that is required to give the Committee
22 in this case a complete understanding of very
23 relevant facts.

24 COMMISSIONER PERNELL: And no one else
25 in the state has this information?

1 MS. CHURNEY: We have not found another
2 expert similarly qualified who is familiar with
3 the Morro Bay case and is willing to testify on
4 behalf of the intervenor.

5 COMMISSIONER PERNELL: No further
6 questions, thank you.

7 CHAIRMAN KEESE: I stumble over the is
8 willing. In other words, there may be a number of
9 others out there who, if subpoenaed, would do it,
10 too, who are in the same category as she is, as
11 Dr. Fox?

12 MS. CHURNEY: We haven't found any. I
13 mean she is the only witness that is qualified in
14 this area of expertise that would provide the
15 evidence that we need, we believe is necessary to
16 present the Committee with the complete facts and
17 complete information.

18 CHAIRMAN KEESE: Thank you. The
19 applicant, please.

20 MR. HARRIS: Thank you, Mr. Chairman and
21 Commissioners. My name is Jeff Harris; I'm here
22 on behalf of Duke. To my right is Mr. Andy Trump.

23 I'm troubled by what I've heard today.
24 I was troubled by what I read. I'm all the more
25 troubled now that I've heard the word lied put

1 forth. I think that's a very serious charge and
2 something we take very seriously.

3 I, however, am going to take a different
4 approach. I'm going to actually deal with the
5 facts in this case. And I'm also going to deal
6 with the specifics.

7 And the thing that you all are, I think,
8 sensing and the thing I want you to take home at
9 the end of the day is that there were absolutely
10 no restrictions placed upon CAPE in their ability
11 to produce evidence and to produce witnesses.

12 And to the contrary, as I will
13 demonstrate after Mr. Trump has an opportunity to
14 speak, CAPE has had every opportunity to present
15 evidence, and has chosen to, in most cases, hold
16 it back and try to surprise us with it. And I'll
17 talk a little bit about that later.

18 I do want to ask Mr. Trump, before I go
19 into the merits, to take a point of personal
20 privilege here and talk about the allegations,
21 because they're very serious and they're something
22 we take very seriously. So, before I turn to the
23 merits, Mr. Trump, would you please.

24 MR. TRUMP: Certainly. Commissioners,
25 my name is Andrew Trump. I'm the Director of

1 Business Development for Duke Energy North
2 America. I'm the Project Manager for the Morro
3 Bay Modernization Effort. I appreciate the
4 opportunity to come here today and provide a few
5 observations relevant to the CAPE petition.

6 Specifically, I'd like to address the
7 allegation made in the CAPE brief, and today, that
8 Duke Energy and/or its consultants have been
9 untruthful in its testimony before the Commission
10 hearing the case.

11 While we consider this charge serious
12 and one that suggests perjury, it also raises
13 important questions about the integrity of the
14 Energy Commission process, itself.

15 I'd like to share a few observations for
16 starters, we place -- I place a high premium on
17 enlisting the help of very talented and ethical
18 consultants. Furthermore, we have made these
19 consultants an integral part of this process.
20 We've made them available to the community in
21 numerous ways, unprecedented ways, to address
22 community concerns, as well as participate
23 formally in the CEC process.

24 Secondly, our outside legal counsel and
25 Duke management have personally instructed,

1 personally instructed each and every consultant
2 and Duke Energy witness to do one salient
3 overriding thing, that's to tell the truth.

4 In fact, we often get questions from
5 consultants in the nature of how might I respond
6 to this or that question, to which the response is
7 consistently, invariably and simply, just tell the
8 truth. And I have every confidence in the fact
9 they do.

10 We also insist the consultants exercise
11 their independent judgment at every step of the
12 process, not just in the testimony and hearing
13 phases. And, in fact, this independent judgment
14 is a vital part of insuring a successful project.
15 It's particularly true in the case of Mr.
16 Rubenstein.

17 We certainly object to the claim that
18 one of our consultants has been untruthful. I do
19 not believe this is true. There is no evidence
20 that this is true. And it's incumbent on those
21 bringing the accusation to provide specific
22 evidence accordingly.

23 While we accept the fact that there are
24 disagreements over policy or the interpretation of
25 data, and that will arise, these disagreements

1 should not be used to accuse a witness of criminal
2 behavior, that is, at the best, is unsubstantiated
3 hearsay.

4 Either the issue at hand has real
5 substance or if it does not, then -- excuse me --
6 either the issue at hand has real substance, or it
7 does not. If it does, and there should be
8 evidence versus the hearsay that we've heard.

9 If the issue does have substance those
10 leveling the charges should be admonished to in
11 effect not abuse the CEC process with
12 unsubstantiated claims. It is important the CEC
13 process remain above rebuke in this regard.

14 Thank you.

15 MR. HARRIS: Thank you, Andy. I do want
16 to turn, now, to the merits of this petition, and
17 actually I guess I should say the lack of merits.
18 And I'll briefly go through and summarize, I
19 think, some of the highlights. I won't go through
20 all the things in our prefiled, because I think
21 you have that before you.

22 The fundamental issue is that there is
23 not a right to a rebuttal witness in the form that
24 CAPE is requesting. The Commission's practice is
25 well established; it's consistent with your

1 regulations; and it's clear, and what you all have
2 sat through as typical.

3 You put on a witness in a panel. One
4 witness provides direct testimony. The panel is
5 available for cross-examination. The panel is
6 available for rebuttal of the prefiled testimony
7 of the other parties.

8 There has not ever been, nor is there
9 anything in the regulations to support the
10 contention that a party has a right to listen to
11 the oral testimony and then provide a third
12 witness, someone who is not on their witness list,
13 as a direct witness, or someone part of their
14 panel.

15 CAPE is actually asking you to go
16 against that practice and your regulations in that
17 respect. And so the right that CAPE seeks is not,
18 in fact, present in your regulations. They have
19 not right to that.

20 The second thing I want to emphasize is
21 that CAPE fundamentally tangles two concepts, and
22 you need to untangle them to understand where we
23 are here. Those concepts are the compulsion of a
24 witness versus the relevance of testimony and
25 evidence.

1 CAPE is essentially arguing, well, we're
2 talking about PM10, we're talking about an issue
3 that's relevant to the proceeding, so therefore I
4 have the right to compel a witness. Those are not
5 one and the same. They have fundamentally
6 misunderstood the difference between material
7 information for you and a material witness.

8 CAPE's argument boils down to
9 essentially we want to make this argument and we
10 have a right to make it with that witness.
11 There's no support for that proposition in
12 California law, or in any other law.

13 CAPE has routinely surprised the
14 applicant with documents that they call rebuttal
15 testimony. And essentially what it is, it's been
16 exhibits, literally hundreds of pages in one
17 section, where they bring the documents to the
18 hearing; they have them marked as exhibits; and
19 then say, well, gee, you know, these are rebuttal
20 exhibits.

21 Again, your regulations do not allow for
22 this kind of rebuttal exhibit. And your order is
23 unambiguous. Your order says prefile your
24 testimony and bring your exhibits. It does not
25 distinguish between exhibits for direct testimony

1 and exhibits for rebuttal. That distinction does
2 not exist in your order. You can't, in the most
3 contortionist view, read that into your order.

4 And on the March 12th hearing at page
5 113 in the transcript, Mr. Fay clearly rules that
6 you don't have a right to bring these things in
7 for surprise. And I think that's indicative of
8 what's going on here.

9 CAPE has a duty to prefile their
10 testimony. Commissioner Pernel's questions go
11 right to the very heart of that matter. CAPE said
12 in their statement they had evidence that they
13 wanted to get into the record. They have a right
14 to prefile it. You have not constrained them from
15 prefiling that evidence. You've not constrained
16 them in presenting witnesses in that regard.

17 It's also important to note the pretext
18 here. This is offered as rebuttal testimony.
19 They're claiming that they're rebutting the direct
20 testimony of Mr. Rubenstein, or comments he made
21 during his cross-examination. Now, I need you to
22 focus on that issue because basically they're
23 saying we have a right, based upon what was said.

24 As to the prefiled testimony, the
25 prefiled testimony is what it was. They got it

1 early, two weeks early. Nothing in there could be
2 a surprise. Nothing in there prevented them from
3 cross-examining on it. They don't need rebuttal
4 on that.

5 As to the cross-examination, each and
6 every point that was brought forth was brought
7 forth in response to questions from CAPE. They
8 asked the questions -- and this is the kernel of
9 the whole issue here -- they didn't get the
10 answers they expected. Because they didn't either
11 understand or they weren't willing to accept the
12 facts. And that, then, leads them to charge
13 falsehood or misstatements. It's absolutely
14 incorrect.

15 So everything that came out from Mr.
16 Rubenstein's testimony was the result of his
17 direct testimony or the result of his responses to
18 questions from CAPE. And now they're saying
19 essentially, indemnify us because we didn't know
20 what the answers might be. And they've gone
21 beyond that and they've charged untruthful
22 statements, which to me is simply outrageous.

23 Fourth, at law, and as the staff has
24 argued, as well, CAPE's subpoena is not timely.
25 They simply missed the deadline. Your regulation

1 1716(e) provides that information requests must be
2 submitted no later than 180 days from the date of
3 data adequacy. They've missed that date, and
4 there's no rebuttal to that argument.

5 Next, CAPE argues that in essence,
6 inequity. They ought to be able to have a chance
7 to put this on; they're just a little intervenor
8 group, they're not represented by sophisticated
9 counsel. I think the equities are apparent here.
10 CAPE is represented by two attorneys, both Harvard
11 educated. The questions you heard from Ms.
12 Churney at the beginning here evidence that legal
13 sophistication. And I think that CAPE's trying to
14 hide behind a lack of legal sophistication is
15 repugnant.

16 That's equally repugnant given that CAPE
17 has admitted that they knew about their interest
18 in Dr. Fox since as early as 2001. And they did
19 nothing about that. So, to claim, again, surprise
20 that they didn't know they might want to have Dr.
21 Fox testify, that is contradicted in their very
22 filing. They say right in their filing, since
23 2001 they've been looking for Dr. Fox.

24 As to the issues of the materiality of
25 the testimony, they've said again today, gee, we

1 don't know of any other witness in the state who
2 could do this. That's simply incorrect.

3 The whole acrolein issue rose out of the
4 Metcalf proceeding. The acrolein issue
5 substantively is a non-issue. At worst, an eye
6 irritant. But that entire issue has been injected
7 in the Energy Commission proceedings based upon
8 the testimony of Steve Radis -- maybe Dr. Steve
9 Radis, on behalf of CVRP in the Metcalf
10 proceeding. And also by David Marcus in that
11 proceeding.

12 I am certain CAPE picked up the issue
13 from the previous proceeding. There are two more
14 experts in that proceeding that CAPE has never
15 shown any interest in obtaining.

16 I do need to make one more argument that
17 isn't in the written material before you, but I
18 think it was so implicit that I thought it was
19 obvious. Maybe it wasn't, so let me make it
20 obvious.

21 There is no evidence here before you
22 from CAPE. No admissible evidence that would
23 stand alone to allow you to issue this subpoena.
24 All of CAPE's evidence, and I use the term
25 evidence loosely, all of their proffer is hearsay.

1 It's all hearsay. It is Bonita Churney reporting
2 a conversation to a second party, supposedly with
3 Dr. Fox. That is all hearsay. That is the sum
4 and substance of the evidence before you today.
5 It is all hearsay.

6 And the fact that it's offered in the
7 form of a declaration does not remove the fact
8 that it is hearsay evidence.

9 The Government Code in section 11513(d)
10 as in David, gives you guidance on this issue. It
11 says essentially hearsay evidence is available to
12 supplement or explain other admissible evidence.
13 But hearsay evidence alone is insufficient for you
14 to make a finding.

15 All you have before you today from CAPE
16 is hearsay, and it's double hearsay. Bonita
17 saying here's what Dr. Fox told us. Everything is
18 hearsay. And on that legal basis, you ought to
19 deny the petition.

20 I'll sum up now. Basically the issue
21 here is that CAPE asked some questions on cross-
22 examination and they received answers.
23 Essentially one of two things happened with those
24 answers.

25 One, either CAPE got an answer they did

1 not expect, because they didn't understand the
2 issue. That is not a lie. That is not
3 untruthful. The fact that CAPE did not understand
4 the answer does not have any bearing whatsoever on
5 its veracity as truthfulness.

6 They ask a question, they don't get the
7 answer they want, that does not give them a right
8 to compel a witness to attend.

9 As a specific example of that, CAPE has
10 made some very serious charges against Mr.
11 Rubenstein because they don't understand. Here's
12 what they don't understand factually. They don't
13 understand the difference between a vendor
14 specification, a vendor guarantee and an emission
15 limit. Those are three different things.

16 The vendor specification is generally
17 what you can get on the GE website: Here's what
18 our turbine does, here's what we think it's going,
19 you know, here's our profile of our turbine, just
20 like for a new automobile. That's a vendor
21 specification.

22 The second concept is a vendor
23 guarantee. That is a commercial negotiation
24 between the turbine buyer and the turbine seller,
25 an allocation of risk.

1 The third concept and the one that the
2 Commission deals with is the concept of emission
3 limits.

4 And what CAPE has done, in essence, is
5 saying those three things are not the same, so
6 Gary Rubenstein is lying. And that is wrong.
7 Their ignorance does not create an untruthfulness
8 on the part of our witness.

9 There's been no restriction on CAPE's
10 ability to put witnesses before you. There's been
11 no restriction on their ability to present
12 evidence. And there's been nothing but truthful
13 testimony from our side, notwithstanding their
14 inability to understand it.

15 And on that basis, and on the basis that
16 everything before you today is absolutely hearsay,
17 you're well within your rights, and I think within
18 your obligation, to deny this petition.

19 CHAIRMAN KEESE: Thank you, Mr. Harris.
20 Does staff have a comment on this?

21 MR. RIOS: I'm not here for this matter.
22 (Laughter.)

23 MS. HOLMES: Good morning, Caryn Holmes,
24 Staff Counsel. Staff did not file a brief on the
25 appeal to the full Commission, but we did take a

1 position on this matter when it originally came
2 before the Morro Bay Siting Committee.

3 And staff recommended that the request
4 for a subpoena be denied because it was not timely
5 filed. I don't want to get into all the details,
6 I think you've heard quite a bit of detail, but
7 I'll just summarize the basic reasons for our
8 position.

9 The issues that would be raised,
10 according to CAPE, or would be addressed by Dr.
11 Fox have to do with the appropriate PM10 emission
12 limits that would apply to the project. And the
13 appropriate test methods that would be used to
14 measure those limits.

15 Those were issues that were fully
16 addressed in both the preliminary determination of
17 compliance and the final determination of
18 compliance.

19 CAPE, in fact, filed extensive comments
20 on the preliminary determination of compliance.

21 For that reason, staff believes that they
22 knew many many months ago that these issues would
23 be raised; they knew what the emission limits
24 would be; they knew what the assumptions were;
25 they knew what test methods would be used.

1 And to come in and request a subpoena
2 many months after those documents were issued
3 seemed to us to be quite untimely.

4 We continue to recommend that the
5 petition for a subpoena be denied.

6 CHAIRMAN KEESE: Thank you. I will now
7 ask for comments from the public, and I understand
8 Mr. Mark Wolfe is on the phone. Mr. Wolfe.

9 MR. WOLFE: Can everyone hear me?

10 CHAIRMAN KEESE: Yes, we can, thank you.

11 MR. WOLFE: Okay, good. Good morning,
12 Mr. Chairman and Members of the Commission. This
13 is Mark Wolfe, counsel for CURE. We are not a
14 party to the Morro Bay proceedings, as you know,
15 but we did want to say a few words, because as you
16 probably also know, Dr. Fox is and has been a
17 principal CURE witness in many Energy Commission
18 siting cases.

19 Let's just be clear, Dr. Fox, to our
20 knowledge, is unwilling to testify, as CAPE said,
21 that's the whole reason we're here, regardless of
22 how -- been with CAPE, the fact remains she is
23 unwilling to appear voluntarily.

24 And so I think the question is under
25 what circumstances does the Energy Commission

1 compel the attendance of a witness who otherwise
2 isn't willing to attend voluntarily.

3 And one distinction that I would like to
4 draw is a distinction between I guess you would
5 call a percipient eye witness, on the one hand,
6 and an expert witness offering expert opinion, on
7 the other.

8 It seems to me that if in order to
9 vindicate the Commission's fact finding mission
10 certain actual hard facts need to be adduced. It
11 may be appropriate to subpoena a percipient
12 witness to adduce such facts. And I guess a
13 classic example that I can come up with is if
14 there's a question regarding soil contamination
15 under a proposed power plant site, and there would
16 be adequate records of prior land uses, but there
17 was a retired site manager somewhere who knew what
18 hazardous materials had been used at the site, but
19 he or she was unwilling to appear voluntarily, it
20 seems to me it would be appropriate to subpoena
21 that person to testify with percipient facts.

22 By stark contrast I think what's going
23 on here is they're asking for an expert, certainly
24 a qualified one with substantial expertise, to
25 come forward and offer a rebuttal opinion against

1 another party's expert who also testified offering
2 opinions.

3 I think those two circumstances are, as
4 I said, starkly different. And I think that as
5 the Commission decides whether to exercise its
6 discretion to issue a subpoena, it should keep
7 that distinction firmly in mind. Primarily
8 because, as we said in written comments, I do
9 think that there is a potential to establish a
10 precedent here.

11 CAPE said that in practical terms nobody
12 is going to be out asking for a subpoena for other
13 parties' witnesses because the witnesses would
14 probably be hostile. That's speculation,
15 obviously, but ultimately I think it's immaterial,
16 because once a witness is subpoenaed and forced to
17 appear, they're placed under oath and they have to
18 testify truthfully, whether or not there's
19 hostility. I think it really doesn't come to
20 bear.

21 But that's pretty much all I have to
22 say. I do think that if the subpoena were granted
23 here today, it would establish a precedent where
24 essentially parties not happy with their own
25 witnesses, or unable to find other witnesses,

1 could simply request subpoenas of other parties'
2 witnesses in a proceeding, and I think it would
3 potentially open the floodgates for many
4 proceedings along the lines of what we've just
5 heard today.

6 And so we, as a non-party, would ask
7 that their request for the subpoena be denied.
8 Thank you.

9 CHAIRMAN KEESE: Thank you. Any other
10 comment from members of the public?

11 MS. HOLMES: Could I make one more
12 comment, please?

13 CHAIRMAN KEESE: Yes.

14 MS. HOLMES: Is this appropriate?

15 CHAIRMAN KEESE: Staff, yes.

16 MS. HOLMES: I just wanted to let the
17 Committee know since we didn't make a filing after
18 the petition went to the full Commission, that the
19 Commission may not be aware that at the air
20 quality hearings that were held last month, the
21 representative of the local Air Pollution Control
22 District testified, and walked through the points
23 one by one that CAPE raised in its request for a
24 subpoena.

25 So to the extent that CAPE's claim is

1 that there was no other information available to
2 address these points, the fact is that the
3 District representative was able to address them
4 one by one for the Committee's benefit.

5 Thank you.

6 CHAIRMAN KEESE: Thank you.

7 MS. CHURNEY: If I might have one
8 further comment in response to that, since staff
9 is, in essence, testifying --

10 CHAIRMAN KEESE: One brief, one minute.

11 MS. CHURNEY: It is true that the
12 representative from the Air Quality District was
13 there, Mr. Willey. He was not able to answer our
14 questions. And, in fact, indicated that
15 specifically with respect to the vendor guarantees
16 and specifications, that the District did not
17 consider those, did not look at them. Nor did
18 they look at other tests results.

19 So, this is new testimony, new evidence
20 that was not presented by staff.

21 CHAIRMAN KEESE: Thank you. Mr. Fay,
22 did you have anything to add to this?

23 HEARING OFFICER FAY: Certainly. I'd
24 just like to point out a couple things for the
25 Commission's consideration.

1 Aside from what I believe and advised
2 the Committee are a number of legal bases for
3 denying the request for subpoena, I think you
4 clear that all away and what the Commission should
5 be concerned about is preventing a project from
6 imposing significant adverse environmental
7 impacts.

8 And in this situation we have the
9 testimony of the applicant, the staff and the Air
10 District, in the form of the final determination
11 of compliance, that states that all significant
12 impacts have been mitigated through the conditions
13 of certification that are proposed.

14 And as Ms. Holmes just said, we went
15 back over that again during the March 12th hearing
16 to insure that the Air District, the Chief of the
17 Air District had actually thought about these
18 matters that were raised in Ms. Churney's
19 declaration of the concerns of Dr. Fox.

20 And one of the things that Mr. Willey
21 said is that yes, we're concerned about these
22 things. That's why we have permit conditions to
23 cover these areas.

24 He indicated that one of the
25 methodologies in question has not been approved by

1 the California Air Resources Board. If it becomes
2 approved, that the District may impose that at
3 some time in the future. But it's not been
4 approved at this time.

5 And in referring to acrolein, he said
6 that the Air District has required significant
7 source testing. And then a reevaluation of toxic
8 impacts on the test results. And that to Mr.
9 Willey's knowledge he hasn't seen that required in
10 any other air quality permits.

11 So he actually referred to this project,
12 as far as he knew, as unique in that area. He
13 also mentioned that in terms of acrolein control
14 that the project requires the use of an oxidation
15 catalyst that will control something like 90
16 percent of acrolein release once the project is up
17 and going.

18 So, the record shows that the Air
19 District and the staff, having analyzed these
20 matters, were satisfied that the conditions will
21 mitigate any significant environmental impacts to
22 a level of insignificance.

23 I'd also just like to point out that I
24 think, I've got to take issue with Ms. Churney's
25 concept of timeliness. From the Committee's point

1 of view, timeliness is determined in terms of the
2 Committee order that sets out the time for
3 managing the case.

4 It's not determined by the last
5 discovery of the availability or access to a
6 witness. If we allowed that to be the determining
7 factor, then weeks after a witness has been
8 excused from testifying, which is the case here,
9 then a party would come in and say, we had another
10 thought, we found somebody who can rebut that, and
11 we'd like to bring it in now, and it's timely
12 because we, just today, discovered that they're
13 willing to rebut this witness.

14 That's irrelevant. The Committee
15 determines what is timely in terms of processing
16 the case. And the Warren Alquist Act puts a
17 premium on timeliness.

18 So, that's all I'd like to bring up
19 unless there's questions from the Commission.

20 COMMISSIONER LAURIE: Question, Mr.
21 Chairman.

22 CHAIRMAN KEESE: Commissioner Laurie.

23 COMMISSIONER LAURIE: Mr. Fay, our
24 process is a quasi-judicial process, is that a
25 fair way to define it?

1 HEARING OFFICER FAY: Yes.

2 COMMISSIONER LAURIE: Under our
3 regulations, including the most recent revisions
4 to our regulations, does not a Presiding Member
5 have great and broad discretion to determine the
6 ability of the parties to call witnesses and to
7 cross-examine witnesses?

8 HEARING OFFICER FAY: That's correct,
9 but I would caution we certainly would like to see
10 the various Committees use that consistently. And
11 I think that's been the case in this proceeding.
12 That whenever we learned, prior to testimony, that
13 rebuttal is requested, we try to accommodate that.

14 And in some cases, in unusual cases,
15 there has been a request immediately upon the
16 giving of direct testimony that the other party
17 will really need to rebut that. And then we deal
18 with how to do that in a way that won't cause
19 surprise to any of the parties, and won't delay
20 the case.

21 And if those factors can be met, then
22 the Committee considers it. But, in 22 years I've
23 never seen a situation where after the witness has
24 been excused there's been a request not only weeks
25 later to offer rebuttal, but that the Commission

1 essentially underwrite that rebuttal by
2 subpoenaing a witness to come.

3 COMMISSIONER LAURIE: Expert witnesses
4 are called to offer opinion testimony, is that
5 correct?

6 HEARING OFFICER FAY: Yes.

7 COMMISSIONER LAURIE: In order to offer
8 opinion testimony don't you preliminarily have to
9 determine whether the expert has an opinion?

10 HEARING OFFICER FAY: We would have to
11 do that.

12 COMMISSIONER LAURIE: If the expert
13 chooses not to form an opinion can you force an
14 expert to form an opinion?

15 HEARING OFFICER FAY: Well, I think the
16 Committee, if they have an expert before them
17 under oath, the Committee could ask if that expert
18 is knowledgeable on certain facts. And then based
19 on that knowledge, if they have an opinion.

20 COMMISSIONER LAURIE: And if the party
21 says no, I do not have an opinion, how do you
22 force a party to develop an opinion?

23 HEARING OFFICER FAY: That's probably
24 not a problem in this situation since I have no
25 reason to doubt Ms. Churney's assertion that Dr.

1 Fox has been following this along.

2 I don't think there's a relevancy
3 problem or an expertise problem. The Committee's
4 view was it was a timeliness problem because it
5 was so late brought to the Committee's attention,
6 and the uniqueness of this particular witness that
7 requires a subpoena, as opposed to some other air
8 quality expert.

9 But even with another expert we would
10 have expected it to be asked for at the very
11 latest at the time that the testimony was given.
12 I mean, and this is assuming their argument,
13 CAPE's argument, that they were surprised in the
14 answers to questions that they, themselves, posed.

15 But even assuming arguendo all that, the
16 very latest that somebody, in my opinion, could
17 bring that up would be at the time the statements
18 were made on cross-examination. And it was not
19 brought up.

20 COMMISSIONER LAURIE: Thank you, Gary.

21 CHAIRMAN KEESE: Thank you. We have
22 before us the petition for review. Do I have a
23 motion?

24 COMMISSIONER BOYD: Mr. Chairman.

25 CHAIRMAN KEESE: Commissioner Boyd.

1 COMMISSIONER BOYD: A couple of comments
2 if you would indulge me. I'm sympathetic to the
3 issues of public health and what-have-you. I
4 think most people in the audience know I've spent
5 more than 20 years of my life in the air quality
6 business.

7 But I must confess I'm troubled by the
8 statement that no other experts are available.
9 From personal knowledge I know there are many many
10 experts in the subject areas in question, and both
11 the PM10 ambient air quality standard and the
12 state's toxic air contaminant program were
13 launched on my watch, or while I was at the State
14 Air Resources Board. So I think I have a keen
15 interest in the health of the public of the State
16 of California as relates to air quality issues.

17 But I'm troubled by this process and any
18 statements that other witnesses are not available,
19 and equally troubled by staff's comments on the
20 procedure protocol, and also by the peculiarity of
21 having to subpoena a witness.

22 So, from my perspective -- and in having
23 a lot of respect, quite frankly, for the ability
24 of this particular local Air District to worry
25 about the health of the people in the area, I'm

1 going to move to deny the intervenor's petition.

2 CHAIRMAN KEESE: We have a motion to
3 deny.

4 COMMISSIONER PERNELL: Second.

5 CHAIRMAN KEESE: Commissioner Boyd
6 moves; Commissioner Pernell seconds.

7 COMMISSIONER LAURIE: Question, Mr.
8 Chairman.

9 CHAIRMAN KEESE: Commissioner Laurie.

10 COMMISSIONER LAURIE: Do you we need
11 specific findings?

12 MR. BLEES: No, sir.

13 CHAIRMAN KEESE: Anything further?

14 All in favor?

15 (Ayes.)

16 CHAIRMAN KEESE: Opposed? Adopted five
17 to nothing.

18 Thank you, all. Educational process.

19 Item 3, Pegasus Power. Possible
20 approval of the permanent closure of the Pegasus
21 Power Project and the implementation of the
22 closure plan.

23 COMMISSIONER PERNELL: Mr. Chairman.

24 CHAIRMAN KEESE: Commissioner Pernell.

25 COMMISSIONER PERNELL: Mr. Chairman, I

1 know that we're going to hear from the staff and
2 possibly an intervenor, but given the
3 circumstances that I'm aware of in the Pegasus
4 Power project, I am prepared to move permanent
5 closure and implementation of the closure plans.

6 I do see that we do have some witnesses,
7 so I don't want to preempt them.

8 CHAIRMAN KEESE: I'm not sure we do.
9 Yes, we'll hear very briefly.

10 MR. MEYER: Thank you, Commissioners.
11 Christopher Meyer, Compliance Project Manager for
12 the Pegasus Power Plant.

13 Basically all I have is a summary, and
14 we have no one that I'm aware of who has any
15 objections to this.

16 CHAIRMAN KEESE: It's not being
17 contested?

18 MR. MEYER: It is not being contested.

19 CHAIRMAN KEESE: There's no contesting
20 taking place here. All right, then I'll ask the
21 question is there anybody in the audience who's
22 going to contest this?

23 We have a motion by Commissioner
24 Pernell.

25 COMMISSIONER BOYD: Second.

1 CHAIRMAN KEESE: Second by Commissioner
2 Boyd.

3 All in favor?

4 (Ayes.)

5 CHAIRMAN KEESE: Opposed? Adopted five
6 to nothing. Thank you.

7 Item 4, Energy Efficiency standards.
8 Commission consideration and possible adoption of
9 amendments to the building energy efficiency
10 standards related to cloth-backed rubber adhesive
11 duct tapes used for field-fabricated duct systems
12 in low-rise residential buildings.

13 COMMISSIONER PERNELL: Mr. Chairman.

14 CHAIRMAN KEESE: Commissioner Pernell.

15 COMMISSIONER PERNELL: I seem to have
16 all these today. Just by a matter of, I guess,
17 history, in response to the Commission's
18 discretion on December 19th, the energy efficiency
19 Committee considered amendments to the building
20 standards and concerns of Tyco's petition.

21 February 22nd there was a rulemaking
22 proceeding which acted on the petition. March
23 21st of '02, by the way that was December of '01,
24 so now we're on March 21st of '02, the Committee
25 conducted a public hearing to review the possible

1 amendments. A number of stakeholders were at that
2 public hearing.

3 Then on March 26th the Committee
4 summarized the hearing comments and its
5 conclusions and issued a notice of Committee
6 conclusions, which was dated March 26th.

7 The Committee's recommendation is that
8 the Commission do not adopt any changes to the
9 existing building standards. And I might add that
10 we have discussed this issue with Tyco, as well as
11 a number of legislative members.

12 So, Mr. Chairman, with that brief
13 history, and I don't know if we have witnesses for
14 this or if staff wants to comment.

15 MR. PENNINGTON: I'm Bill Pennington
16 with staff. I'm here if you have questions.

17 CHAIRMAN KEESE: All right.

18 MR. PENNINGTON: I don't have any
19 prepared comments.

20 CHAIRMAN KEESE: Do we have anybody else
21 who would like to testify on this?

22 MR. WALSH: Did you get my card?

23 CHAIRMAN KEESE: Yes, I have your card.

24 MR. WALSH: Oh, okay, great. Danny
25 Walsh, Tyco Adhesive.

1 CHAIRMAN KEESE: Yes, I'm sorry.

2 MR. WALSH: First of all I'd like to
3 thank the Commission and the Chairman of the
4 Committee, also Mr. Rosenfeld, for sitting through
5 an awful lot of discussion on the issue. I'll try
6 to make this as quick as possible.

7 We don't have any trouble with you
8 moving ahead with the motion as Commissioner
9 Pernell stated it at this time. However, be aware
10 that because of your efforts and the collaboration
11 between Tyco and the Commission that the 181
12 cloth-backed tape is presently being tested in the
13 LBL Labs, and is performing well after three
14 months on the collar-to-collar situation.

15 So, given that, the motion is fine at
16 this point. But if that tape continues to perform
17 as we expect it to, on the collar-to-collar
18 example, we may be back here in four, five, six,
19 either months, depending upon how long those tests
20 go.

21 So, thank you very much for --

22 CHAIRMAN KEESE: Thank you, appreciate
23 that.

24 MR. WALSH: -- your patience with us.

25 CHAIRMAN KEESE: Thank you. Mr. Raymer.

1 MR. RAYMER: Mr. Chairman and
2 Commissioners, I'm Bob Raymer representing the
3 California Building Industry Association. And we
4 support the Committee recommendation. Our initial
5 concerns are listed quite well in the staff
6 summary of comments.

7 And there was one other curious note.
8 As of late, when special notices are put out on
9 particular products, has nothing to do with the
10 duct tape issue, but just in general, I've noticed
11 that some of our larger members have a tendency
12 just to simply pull back from use of that product
13 regardless of what the notice says.

14 And so there could have been an
15 unintended consequence here by a lot of builders
16 actually pulling away from using any type of cloth
17 tape material.

18 So, with that, once again we support the
19 recommendation.

20 CHAIRMAN KEESE: Thank you. Staff will
21 note. Any other comments?

22 MR. TRIMBERGER: Good morning, I'm Tom
23 Trimberger representing California Building
24 Officials Association, and the Chair of CEC
25 Subcommittee for that organization.

1 And I'm just speaking in support of the
2 recommendation to deny the new language.

3 CHAIRMAN KEESE: Thank you. Any other
4 comments?

5 Do I have a motion?

6 COMMISSIONER PERNELL: Yes, Mr.
7 Chairman, I would move that the Commission approve
8 Committee's recommendation to take no action to
9 adopt changes to the existing building standards.

10 CHAIRMAN KEESE: Motion by Commissioner
11 Pernell.

12 COMMISSIONER ROSENFELD: Second.

13 CHAIRMAN KEESE: Second by Commissioner
14 Rosenfeld.

15 All in favor?

16 (Ayes.)

17 CHAIRMAN KEESE: Opposed? Adopted four
18 to nothing.

19 COMMISSIONER PERNELL: Mr. Chairman, I
20 also want to publicly thank Mr. Walsh for his
21 cooperation and we certainly appreciate that.
22 And, as the product is being tested, we will
23 certainly -- Mr. Pennington is in contact with
24 LBNL on a daily basis.

25 COMMISSIONER ROSENFELD: I'll second

1 that, too.

2 CHAIRMAN KEESE: Thank you. Item 6 in
3 front of us is Fuel Infrastructure Grant Program.
4 Possible approval of eleven alternative fuel
5 infrastructure grants to assist public agencies as
6 a result of the January 2002 Program Opportunity
7 Notice. Total funding \$813,063.

8 MR. ARGENTINE: Good morning, Mr.
9 Chairman and Commissioners. Staff's requesting
10 approval of 11 alternative fuel infrastructure
11 grants to assist public agencies as a result of
12 January 9, 2002 program opportunity notice.

13 From the notice we received 18
14 proposals; 16 passed initial screening; and we had
15 a scoring committee of six people. Twelve of the
16 16 passed, and we're recommending 11 for funding
17 due to the available funding.

18 And the funding is the remaining funding
19 allocated from the fiscal year 2000/2001
20 Governor's budget. And the difference between
21 this particular program opportunity notice and the
22 previous ones is that we reduced the amount for
23 new facilities from \$250,000 to \$100,000; and we
24 added expansions of existing facilities.

25 The Fuels and Transportation Committee

1 was briefed on April 3rd. And the projects are
2 for CNG, LPG and LNG.

3 On an average the potential grant
4 recipients are providing \$3 to every \$1 they're
5 requesting from the Energy Commission.

6 CHAIRMAN KEESE: Thank you.
7 Commissioner Boyd.

8 COMMISSIONER BOYD: Mr. Chairman, as
9 indicated, the Transportation and Fuels Committee,
10 new name, reviewed these projects and recommends
11 to the Commission the staff recommendation.

12 CHAIRMAN KEESE: Motion by Commissioner
13 Boyd.

14 COMMISSIONER ROSENFELD: Second.

15 CHAIRMAN KEESE: Second by Commissioner
16 Rosenfeld. Any comment?

17 All in favor?

18 (Ayes.)

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

21 Now, we'll return to item 5 which I
22 inadvertently skipped here.

23 Item 5, Local Jurisdiction Energy
24 Assistance Loan Account. Possible approval of a
25 \$300,000 loan to the City of Garden Grove for the

1 installation of energy efficient lighting.

2 COMMISSIONER PERNELL: Mr. Chairman.

3 CHAIRMAN KEESE: Commissioner Pernell.

4 COMMISSIONER PERNELL: This item came
5 before the Efficiency Committee and passed out of
6 the Efficiency Committee with blessing. It is a
7 continuation of what we've been doing with cities
8 and counties in relationship to the efficiency in
9 lighting.

10 And I would move staff's recommendation.

11 CHAIRMAN KEESE: Motion by Commissioner
12 Pernell.

13 COMMISSIONER ROSENFELD: Second.

14 CHAIRMAN KEESE: Second by Commissioner
15 Rosenfeld. Any public comment?

16 All in favor?

17 (Ayes.)

18 CHAIRMAN KEESE: Opposed? Adopted four
19 to nothing. Thank you.

20 Item 7, Clean Power -- let me just
21 announce before we lose everybody in the audience,
22 once again that we will not have hearings of the
23 Commission on May 1st and May 15th. The business
24 meetings are canceled, but we will have a May 8th
25 meeting. And thereafter go back to the regular

1 published schedule of the Energy Commission.

2 I will also announce that we will go
3 into executive session on three legal matters
4 after we are done with this meeting.

5 Item 7, Clean Power Research. Possible
6 approval of contract 500-01-029 for \$49,500 to add
7 an efficiency module to the clean power estimator
8 software.

9 MR. McCABE: Mr. Chairman and
10 Commissioners --

11 CHAIRMAN KEESE: Real briefly explain
12 what we're talking about here.

13 MR. McCABE: -- this is Joe McCabe, work
14 with PIER Renewables. We're looking for your
15 approval of software update to a product that will
16 help efficiency estimation as well as
17 photovoltaics over the web.

18 I would like to make one correction in
19 the agenda. It says \$49,500; in your packet it
20 actually is correct, is \$43,500 request.

21 CHAIRMAN KEESE: Thank you. So noted.
22 Any questions up here?

23 COMMISSIONER PERNELL: Mr. Chairman, I
24 have been briefed on this item, and I'm very
25 comfortable with it. And am prepared to move it.

1 CHAIRMAN KEESE: Motion, Commissioner
2 Pernell.

3 COMMISSIONER ROSENFELD: Second.

4 CHAIRMAN KEESE: Second, Commissioner
5 Rosenfeld. Any public comment?

6 All in favor?

7 (Ayes.)

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

10 COMMISSIONER PERNELL: Thank you.

11 CHAIRMAN KEESE: Item 8, Department of
12 Transportation. Possible approval of contract
13 700-01-104, amendment 1, for \$180,000 to extend
14 the term that funds multiple land use planning
15 demonstration projects using PLACE3S.

16 MS. KATELY: Good morning, Mr. Chairman.

17 CHAIRMAN KEESE: Good morning.

18 MS. KATELY: Mr. Chairman and
19 Commissioners, this item's been recommended to you
20 from the Transportation Fuels Committee and I
21 would just like to clarify, this is a no-cost time
22 extension for the Commission to receive funds from
23 Caltrans to fund another contract that does
24 community planning with the City of San Diego.

25 CHAIRMAN KEESE: Thank you, that was --

1 COMMISSIONER BOYD: Mr. Chairman, I move
2 the item.

3 CHAIRMAN KEESE: -- shortens the item.
4 Motion, --

5 COMMISSIONER ROSENFELD: Second.

6 CHAIRMAN KEESE: -- Commissioner, Boyd.
7 Second, Commissioner Rosenfeld. Any public
8 comment?

9 All in favor?

10 (Ayes.)

11 CHAIRMAN KEESE: Opposed? Adopted four
12 to nothing. Thank you.

13 MS. KATELY: Thank you very much.

14 CHAIRMAN KEESE: Item 9 has been
15 withdrawn from the agenda.

16 We have no minutes.

17 Commission Committee and Oversight.

18 Chief Counsel's report. Do we have
19 anything other than our three special items in
20 executive session?

21 MR. BLEES: No, sir.

22 CHAIRMAN KEESE: Thank you. Executive
23 Director's Report.

24 MR. LARSON: No, sir.

25 CHAIRMAN KEESE: Public Adviser's.

1 MS. BOS: No, sir.

2 CHAIRMAN KEESE: Thank you. Any public
3 comment?

4 We will then go into -- this meeting is
5 adjourned to executive session in my office on
6 three matters of potential litigation.

7 (Whereupon, at 11:30 a.m., the business
8 meeting was adjourned.)

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of April, 2002.

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