

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, JANUARY 8, 2003
10:07 A.M.

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COMMISSIONERS PRESENT

Robert Pernell

Arthur H. Rosenfeld

James Boyd

John L. Geesman

Margaret J. Kim, Ex Officio

STAFF PRESENT

William Chamberlain, Chief Counsel

Robert Therkelsen, Chief Deputy Director

Betty McCann, Secretariat

John Wilson

Marla Mueller

Tony Wong

Gary Klein

David Maul

PUBLIC ADVISER

Roberta Mendonca

ALSO PRESENT

Steven Kelly, Policy Director
Independent Energy Producers Association

Robert Mussetter
Everland, LLC

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P R O C E E D I N G S

10:07 a.m.

ACTING CHAIRMAN PERNELL: Good morning.

And before we start our meeting it really gives me great pleasure to swear in one of our colleagues who's already been here working, as you all know, and is doing a good job.

This is for the oath of office as a member of the State Energy Resource Conservation and Development Commission with terms expiring on January 6, 2008. John, would you please raise your right hand and repeat after me.

I, John L. Geesman, --

COMMISSIONER GEESMAN: I, John L. Geesman, --

ACTING CHAIRMAN PERNELL: -- do solemnly swear or affirm --

COMMISSIONER GEESMAN: -- do solemnly swear or affirm --

ACTING CHAIRMAN PERNELL: -- that I will support and defend the Constitution of the United States --

COMMISSIONER GEESMAN: -- that I will support and defend the Constitution of the United States --

1 ACTING CHAIRMAN PERNELL: -- and the
2 Constitution of the State of California --

3 COMMISSIONER GEESMAN: -- and the
4 Constitution of the State of California --

5 ACTING CHAIRMAN PERNELL: -- against all
6 enemies, foreign and domestic.

7 COMMISSIONER GEESMAN: -- against all
8 enemies, foreign and domestic.

9 ACTING CHAIRMAN PERNELL: I will bear
10 true faith and allegiance --

11 COMMISSIONER GEESMAN: I will bear true
12 faith and allegiance --

13 ACTING CHAIRMAN PERNELL: -- to the
14 Constitution of the United States --

15 COMMISSIONER GEESMAN: -- to the
16 Constitution of the United States --

17 ACTING CHAIRMAN PERNELL: -- and the
18 Constitution of California.

19 COMMISSIONER GEESMAN: -- and the
20 Constitution of California.

21 ACTING CHAIRMAN PERNELL: That I take
22 this obligation freely --

23 COMMISSIONER GEESMAN: That I take this
24 obligation freely --

25 ACTING CHAIRMAN PERNELL: -- without any

1 mental reservations --

2 COMMISSIONER GEESMAN: -- without any

3 mental reservations --

4 ACTING CHAIRMAN PERNELL: -- or purpose

5 of evasion.

6 COMMISSIONER GEESMAN: -- or purpose of

7 evasion.

8 ACTING CHAIRMAN PERNELL: And that I

9 will well and faithfully discharge --

10 COMMISSIONER GEESMAN: That I will well

11 and faithfully discharge --

12 ACTING CHAIRMAN PERNELL: -- the duties

13 upon which I am about to enter.

14 COMMISSIONER GEESMAN: -- the duties

15 upon which I am about to enter.

16 ACTING CHAIRMAN PERNELL: Thank you.

17 Congratulations.

18 COMMISSIONER GEESMAN: Thank you.

19 (Applause.)

20 COMMISSIONER GEESMAN: And may my second

21 term be as enjoyable as my first.

22 (Laughter.)

23 COMMISSIONER GEESMAN: But longer.

24 ACTING CHAIRMAN PERNELL: Commissioner

25 Rosenfeld, would you lead us in our pledge,

1 please.

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

4 ACTING CHAIRMAN PERNELL: All right,
5 before we begin our agenda I understand that
6 Commissioner Rosenfeld has a presentation.
7 Commissioner Rosenfeld.

8 COMMISSIONER ROSENFELD: Thank you.
9 It's my pleasure to ask John Wilson to come up.
10 It's his 25th year at the Energy Commission. And
11 to quote our Chairman, for the first 25 years he's
12 doing a pretty good job.

13 (Laughter.)

14 COMMISSIONER ROSENFELD: No photo ops
15 yet. Before we go on, Marilyn Wilson, who seems
16 to be the family photographer, has given Pat
17 McAuliffe a collection of a few photographs which
18 have been scanned.

19 (Laughter.)

20 COMMISSIONER ROSENFELD: -- run through
21 these quickly, and then I'll have to say, give
22 John his dues.

23 (Laughter.)

24 COMMISSIONER ROSENFELD: This is John
25 just before he joined the Energy Commission, and

1 having a good weekend in San Francisco in the
2 Haight-Ashbury -- he started here about 1976.

3 Next one, please, Pat. This is John, a
4 little younger, just before he became an Advisor.
5 He's been an Advisor to a large stream of
6 Commissioners.

7 This is John in the San Francisco
8 Marathon. Some undocumented date between 1929
9 and --

10 (Laughter.)

11 COMMISSIONER ROSENFELD: This is John's
12 last vacation. His oldest daughter is now at
13 LaJolla.

14 This is John and his younger daughter,
15 Lauren, on a good hair day. Wait till you see the
16 next one.

17 This is Lauren discovering that there's
18 nothing inside John's skull.

19 (Laughter.)

20 COMMISSIONER ROSENFELD: This is John
21 about to be dumped into a lake at Yellowstone by
22 his two now older daughters.

23 This is his oldest daughter, Whitney.
24 And next one, this is John wondering whether he's
25 ready for another 25 years.

1 (Laughter.)

2 COMMISSIONER ROSENFELD: And I want to
3 thank Pat for scanning that, and giving --

4 (Applause.)

5 COMMISSIONER ROSENFELD: And I'm sorry
6 that there aren't any of Marilyn Wilson, but
7 that's what happens to the family photographer.
8 You always get left out of family pictures.

9 Now, a couple of remarks. It's not
10 often, I guess, that a Commissioner can stand up
11 here and say that his Advisor has been his good
12 friend for 25 years. But my graduate student,
13 Dave Goldstein, who just got one of the McCarthy
14 Genius Awards and I got interested, I'd say
15 obsessed, with the importance of building
16 appliance standards back in the first year at the
17 Energy Commission, thought that was the thing the
18 Energy Commission should do.

19 And John joined a couple years later and
20 was very interested in this. So we've been
21 working together really for 25 years.

22 During that time there's never been a
23 time when John didn't either have the information
24 we needed or go get it. And since John has this
25 habit of working till 7:00 or 8:00 every evening,

1 the communications were always marvelous.

2 And I've seen him also take huge
3 initiatives. He's been on the Board of ASAC; he's
4 been on the Board of -- he's been a stalwart of --
5 he's been a man of the year at Asilomar a couple
6 of times -- the New Buildings Institute. Served
7 on the Department of Energy's National Appliance
8 Advisory Committee -- I probably have some of
9 these names messed up, but more or less.

10 And I became so impressed with John that
11 I actually two or three times tried to hire him
12 down to Lawrence Berkeley Lab. And had it all
13 arranged once near the end of -- well, John was
14 Advisor to Chairman Imbrecht. Imbrecht's health
15 began to fail and John felt his loyalty with the
16 Energy Commission was such that he just couldn't
17 come. So I didn't get John.

18 But now, instead of getting John to
19 Berkeley, I've decided it's nice in Sacramento
20 anyhow. It's been a great pleasure.

21 So, now we come to the -- let's do the
22 formal things first, and then one from the office.
23 This is from the State of California to John
24 Wilson in recognition of employment with the state
25 for 25 years signed by Gray Davis and Bill Jones.

1 That will be photo op number one in a second.

2 Here's a watch. It doesn't have an
3 alarm on it, so it wouldn't be usable for me,
4 but --

5 (Laughter.)

6 COMMISSIONER ROSENFELD: -- it does say,
7 the State of California, 25 years of service. You
8 deserve that.

9 (Applause.)

10 COMMISSIONER ROSENFELD: And finally
11 from the office the newest-fangled things, it's
12 actually interesting what you can get these days.
13 This is a digital audio recorder; not a tape
14 recorder, but a media card recorder.

15 It's so high tech that it actually even
16 has dynamic noise suppression. So we plan to
17 spend the afternoon playing.

18 (Laughter.)

19 COMMISSIONER ROSENFELD: A new toy. The
20 idea is that you can record NPR at any given time
21 off the web, and then either listen to it while
22 you're biking home or during dull meetings or
23 whatever.

24 In fact, Betty, I was thinking, with
25 this device you can actually record a meeting; put

1 it on your computer; do voice recognition; turn
2 out minutes and never listen to it at all.

3 (Laughter.)

4 COMMISSIONER ROSENFELD: So, John, this
5 is from your office.

6 (Applause.)

7 COMMISSIONER ROSENFELD: And just before
8 the photos, your office wants to invite you all to
9 carrot cake and soft drinks at 2:00. We may be
10 playing with the new recorder --

11 ACTING CHAIRMAN PERNELL: Just set the
12 cake outside.

13 (Laughter.)

14 (Pause - asides.)

15 COMMISSIONER ROSENFELD: Okay, you're
16 going to say a few words?

17 MR. WILSON: I'll say a couple words.

18 COMMISSIONER ROSENFELD: Do you want to
19 face the audience or do you -- all right, I'll get
20 out of your way.

21 MR. WILSON: I just want to thank Art
22 and my good friend, Pat McAuliffe, for the
23 recognition and notoriety.

24 (Laughter.)

25 MR. MCAULIFFE: Our pleasure.

1 MR. WILSON: I know. When Art said I
2 was getting a gold watch I thought, oh, good,
3 retirement. And then Art said, oh, no, you can't
4 retire until I do. And then I thought, oh, no,
5 this is 25 more years.

6 (Laughter.)

7 MR. WILSON: But I've always wanted to
8 work in a place with bright and motivated people,
9 and working on important public policy issues.
10 And the Energy Commission has provided that, which
11 is why I've stayed here.

12 So I want to thank my colleagues and the
13 Commissioners for giving us a lot of interesting
14 challenges to work on.

15 It's also nice working with Art
16 Rosenfeld who, of course, has his own list of
17 prestigious awards and recognitions for his work
18 in physics and energy efficiency. A lot of those
19 unsightly boxes in Art's office are full of
20 plaques that don't get ever put up on the wall.
21 And some day --

22 COMMISSIONER ROSENFELD: I'm going to do
23 it.

24 MR. WILSON: Yeah, I know, you keep
25 saying that. But the other nice thing about Art

1 is that he's also working all the time to nominate
2 people for other recognition and awards, so that
3 they get some credit for the work that they have
4 done.

5 And Art's kept asking me, you know, what
6 I've done that can be recognized. And so, you
7 know, I finally came up with something --

8 (Laughter.)

9 MR. WILSON: -- which achieved that
10 level of recognition. And I do appreciate it,
11 thank you very much.

12 (Applause.)

13 COMMISSIONER ROSENFELD: Thank you,
14 John.

15 ACTING CHAIRMAN PERNELL: Okay, great
16 presentations.

17 All right, on the consent calendar.
18 Consent calendar we have four items: Commission
19 co-sponsorships; ethanol in California; 2000
20 International Energy Conservation Code; c. is
21 Scripps Institution of Oceanography, University of
22 California at San Diego; and Elk Hills Power Plant
23 project TRANS-7.

24 Is there a motion for the consent
25 calendar?

1 COMMISSIONER ROSENFELD: I move the
2 consent calendar.

3 COMMISSIONER BOYD: Second.

4 ACTING CHAIRMAN PERNELL: Moved and
5 seconded on the consent calendar.

6 All those in favor signify by saying
7 aye.

8 (Ayes.)

9 ACTING CHAIRMAN PERNELL: Opposed? Ayes
10 have it, four to zero.

11 Item number 2. Haider Taha Consultant.
12 Possible approval of contract 500-02-013 for
13 \$140,798 to develop meteorological and air quality
14 models, develop model inputs, estimate reductions
15 in energy consumption from the heat island
16 reduction strategies and assess the effectiveness
17 of heat island reduction in improving air quality
18 in two to three California air basins.

19 Staff, would you please brief the Board.

20 MS. MUELLER: Good morning,
21 Commissioners. I am Marla Mueller -- is this on?

22 COMMISSIONER ROSENFELD: Marla, can
23 barely hear you.

24 (Pause.)

25 MS. MUELLER: Good morning; I'm Marla

1 Mueller, and I'm with the PIER environmental
2 assessment program.

3 And I am presenting for you today the
4 possible approval of contract with Dr. Haider Taha
5 to evaluate heat island impacts.

6 Urban heat temperatures can be two to
7 ten degrees higher than surrounding areas. This
8 is known as an urban heat island effect. Urban
9 heat islands are formed as a result of increased
10 construction buildings and roads to accommodate
11 population growth.

12 This temperature increase impacts both
13 energy demand and air quality. Higher
14 temperatures can result in increased use of air
15 conditioning requiring more electricity, and in
16 turn, more fossil fuel burned to produce that
17 electricity.

18 This results in an increase in power
19 plant emissions which include ozone precursors and
20 greenhouse gases.

21 Higher temperatures also enhance the
22 formation of smog and adversely impact the air
23 quality of the urban environment.

24 A number of state and federal agencies
25 throughout this country are becoming increasingly

1 interested in exploring the concept of heat island
2 reduction and its potential impact on energy use,
3 meteorology, air emissions and ozone air quality.

4 Heat island reduction measures such as
5 using light surfaces and vegetation can have
6 positive impacts. A major goal of this project is
7 to provide California with alternative and
8 innovative strategies that can help basins to
9 reach or maintain ambient air quality standards
10 and reduce energy use.

11 The study would assess the potential
12 energy reductions and ozone air quality
13 improvements of heat island reduction measures.

14 In this project we will work closely
15 with the Air Resources Board, appropriate Air
16 Quality Management Districts and the USEPA. The
17 objective is to develop a heat island reduction
18 model that is scientifically sound and that is
19 approved and supported by the USEPA.

20 I'd like to try to answer any questions
21 you may have. Thank you.

22 ACTING CHAIRMAN PERNELL: Thank you.
23 Questions from the Board? Commissioner Rosenfeld.

24 COMMISSIONER ROSENFELD: I just want to
25 say I am completely comfortable with this and not

1 only will it help California, which is our reason
2 for doing it, but it's also going to help the
3 folks in Houston who are trying to get cool
4 communities work done there, and where the EPA has
5 honestly said it needs some more help from us.

6 So I think this is a nationally
7 important thing which we're doing, and I move item
8 number 2.

9 COMMISSIONER GEESMAN: Second.

10 ACTING CHAIRMAN PERNELL: It's been
11 moved and seconded. Any questions?

12 All those in favor?

13 (Ayes.)

14 ACTING CHAIRMAN PERNELL: Opposed? Ayes
15 have it four to zero.

16 On item number 3 there's been a change
17 to the contract number. The contract number is
18 now 500-02-013. Item number 3. Petroleum
19 Technology Transfer Council. Possible approval of
20 contract 500-02-013 for \$300,000 to analyze well
21 geology and demonstrate suitable technological
22 solutions that can reduce electric power
23 consumption in California oilfields by reducing
24 the excess water production. Mr. Wong.

25 MR. WONG: Good morning, Commissioners.

1 ACTING CHAIRMAN PERNELL: Good morning.

2 MR. WONG: We are requesting the
3 Commission to approve a Public Interest Energy
4 Research contract for \$300,000 to the Petroleum
5 Technology Transfer Council, to identify common
6 causes for high water production in the California
7 oilfield. Also assess technology that can reduce
8 water intake during oil pumping. And also
9 demonstrate such technology on a cost-share basis
10 to reduce excessive water production.

11 Also Transfer Technology, through
12 industrial workshops. We estimate a successful
13 demonstration of this project will potential save
14 the industry about \$20 million a year, or
15 equivalent to 148 gigawatt hour a year.

16 The Research and Development Committee
17 approved staff's request, and recommended to move
18 this item for the full Commission approval today.

19 ACTING CHAIRMAN PERNELL: Thank you.
20 Questions from the Board? Commissioner Rosenfeld.

21 COMMISSIONER ROSENFELD: I move item 3.

22 COMMISSIONER BOYD: Second.

23 ACTING CHAIRMAN PERNELL: Moved by
24 Commissioner Rosenfeld, second by Commissioner
25 Boyd. All in favor?

1 (Ayes.)

2 ACTING CHAIRMAN PERNELL: Opposed? Ayes
3 have it four to nothing. Thank you.

4 MR. WONG: Thank you.

5 ACTING CHAIRMAN PERNELL: Item number 4.
6 Electricity Innovation Institute. Possible
7 approval of contract 500-02-014 for \$2.1 million
8 to conduct collaborative research, development and
9 demonstration projects. Mr. Klein.

10 MR. KLEIN: Good morning. The purpose
11 of this agreement is to perform targeted
12 collaborative research, development and
13 demonstration projects with the Electricity
14 Innovation Institute.

15 EII is a not-for-profit 501(c)(3) public
16 benefit corporation that's based in Palo Alto.
17 They conduct strategic public interest RD&D in
18 energy related science and technology through the
19 creation of public/private collaborations.

20 There are two types of projects that
21 PIER intends to fund under this agreement. The
22 first type is a project that's initiated by the
23 Commission. An example of this type of PIER
24 project is one that PIER began several months ago
25 with EII on the industry of the future for the

1 electronics industry.

2 If the first phase of this effort is
3 successful, then we would like to continue to
4 expand the project using this new contract.

5 The second type of project is a project
6 initiated by EII. An example of this is the
7 distributed energy resources initiative. PIER
8 Staff were invited to participate in the planning
9 of this initiative. And the program expects to
10 participate in the energy systems integration
11 environmental portions of this program in the
12 first year. If it's successful, it may continue
13 for multiple years.

14 We expect that both types of projects
15 will involve collaboration with other entities
16 other than just EII.

17 The RD&D Committee is proposed to select
18 the research projects based on recommendations
19 from staff. And work authorizations will be used
20 to implement the selected research projects.

21 Any questions?

22 ACTING CHAIRMAN PERNELL: Questions from
23 the Board? Commission Rosenfeld.

24 COMMISSIONER ROSENFELD: I move item 4.

25 ACTING CHAIRMAN PERNELL: Moved by

1 Commissioner Rosenfeld.

2 COMMISSIONER GEESMAN: Second.

3 ACTING CHAIRMAN PERNELL: Second by
4 Commissioner Geesman. On the question.

5 All in favor?

6 (Ayes.)

7 ACTING CHAIRMAN PERNELL: Opposed? Ayes
8 have it four to zero.

9 MR. KLEIN: Thank you.

10 ACTING CHAIRMAN PERNELL: Thank you.

11 Item number 5 has been moved to the
12 January 22nd meeting. Item number 6 has been
13 moved to the February 5th meeting.

14 We're now on item number 7. Item number
15 7. 2002/2003 budget bill reviewed. During the
16 2002/03 budget bill review the Legislature
17 considered adopting fees to finance the Energy
18 Commission's energy facilities siting program.
19 The Legislature directed the Energy Commission to
20 prepare a report on alternative fee structures for
21 imposing fees on developers seeking approval for
22 power plants and related facilities and for
23 ongoing costs associated with the compliance
24 monitoring program. This item is to brief the
25 Commission on the staff's finding and

1 recommendation in response to the directive and to
2 seek approval to forward the report to the chairs
3 of the specified legislative committees.

4 Mr. Maul.

5 MR. MAUL: Good morning, Commission.

6 ACTING CHAIRMAN PERNELL: Good morning.

7 MR. MAUL: We're here today to offer for
8 your consideration a report that the staff has
9 prepared regarding this topic of whether the
10 Commission should impose a fee on power plant
11 developers in the application process as well as
12 in the compliance monitoring process.

13 As you mentioned, Commissioner Pernell,
14 the Legislature last year directed us to conduct a
15 study of whether we should or should not prepare a
16 fee. The staff did an investigation of this issue
17 last year, surveyed other state agencies, surveyed
18 other states, as well, to see what they did.
19 Examined the policy issues here; gathered data on
20 financial issues in our conduct of the energy
21 facility licensing program.

22 And then held a workshop in November to
23 gather input from the public and interested
24 parties to see what their views would be from
25 developers, from the public, to see how they might

1 do this.

2 And we've met a couple times with the
3 Siting Committee to gather guidance from them.

4 And then as a result of all that we put
5 together a report on this topic laying out the
6 information that we had, the policy issues and a
7 recommendation.

8 That report is before you today. It was
9 posted on the web on December 20th. So this is
10 the first time the public has had a chance to see
11 the report. They've had it for several weeks now.
12 So today's event would be not only our
13 presentation of the report to you, but also an
14 opportunity for the public to provide comments to
15 you.

16 And I believe we have some members of
17 the public here today who would like to make some
18 comments on this topic.

19 With that, I'm here to answer any
20 questions you may have on this general subject or
21 our recommendation.

22 ACTING CHAIRMAN PERNELL: Okay.

23 Questions from the Board.

24 COMMISSIONER BOYD: Do we have any
25 public testimony on this issue?

1 ACTING CHAIRMAN PERNELL: Yeah, we do
2 have -- I have one card. Mr. Kelly.

3 MR. KELLY: Good morning, Commissioners.
4 Steven Kelly with the Independent Energy Producers
5 Association.

6 And, one, I want to indicate my support
7 for this report. I think the staff did a very
8 good job of putting this report together, and I
9 want to thank them specifically for holding a
10 workshop with interested parties, including the
11 industry. I thought it was very fruitful and
12 helpful to have that discussion, and I believe I
13 see some of our comments in this report. So I
14 think it's a very good report.

15 I just have two comments on the report
16 that one is relatively minor, and the other is
17 food for thought.

18 First, there is a paragraph in the
19 report that indicates that the workshop that we
20 had was sparsely attended. And two companies were
21 there. For the record, IEP was there on behalf of
22 its member companies, and many of our companies
23 are interested in this issue. So I would hope
24 that the Legislature wouldn't come away with the
25 impression that the energy companies and the

1 industry, itself, was not interested in this
2 issue. We were very much.

3 Secondly, a more substantive issue is
4 the issue about -- we talked about in the workshop
5 and which relates to where the fees go that are
6 collected, if there are fees imposed.

7 And first off, I want to say that I
8 agree with the staff that I think it's paramount
9 important that you have a stable funding mechanism
10 and that that come through the budget process, as
11 the staff recommended in the report. So I'm not
12 addressing that matter at all.

13 The issue that I have before me is a
14 mechanism that creates -- has the funds going back
15 to the general fund. And it seemingly integrates
16 the decision about what the level of the fee might
17 be, the entities that make that decision, with the
18 entities that receive the benefits from the
19 monies.

20 And I'm concerned, for example, in this
21 context today, where the Legislature which might
22 have a general fund reason for raising fees, to
23 serve a purpose separate from energy systems,
24 energy reliability or the need to build new
25 development three or four years down that road.

1 That they might be in a position to raise fees
2 which would be a disincentive to build that
3 infrastructure four years down the road.

4 So I'm concerned that, at a minimum, if
5 the funds need to go to the general fund, fee
6 revenues, that we create a mechanism that somehow
7 separates that a little bit more. I'm quite
8 frankly worried that there would be some decision
9 made at 2:00 in the morning on a general fund
10 budget matter without the advice of the
11 Commission, and without the opportunity for our
12 industry to provide comment. And there may be
13 negative implications for that three or four years
14 hence that we can't contemplate now.

15 So, at a minimum, if the funds have to
16 go to the general fund I think, in my mind I'm
17 thinking that maybe we need to create a mechanism
18 to separate the determination of what that level
19 is, with the actual parties at 2:00 in the morning
20 that are working on general fund issues, for
21 matching it up.

22 So, those are my -- and it's a difficult
23 question, I understand that. And I'm just posing
24 it out there now. We talked about it a little bit
25 at the workshop. And I still am a little

1 uncomfortable with this mechanism.

2 ACTING CHAIRMAN PERNELL: Mr. Kelly, you
3 understand that this is a recommendation to the
4 Legislature --

5 MR. KELLY: Yes.

6 ACTING CHAIRMAN PERNELL: -- so I'm --

7 MR. KELLY: Yeah, I understand.

8 ACTING CHAIRMAN PERNELL: -- sure you
9 would argue that point in a different venue --

10 MR. KELLY: Yes, but I also recognize
11 that if you addressed it -- if you agreed with me
12 and were able to address it in the report, that
13 would be helpful in that debate.

14 You know, if you disagree with me on
15 that, I obviously will take it up in a later
16 context. But it seems to me from an energy
17 reliability perspective there's a -- might be
18 sensitive to this issue.

19 COMMISSIONER GEESMAN: Mr. Chairman.

20 ACTING CHAIRMAN PERNELL: Yes.

21 COMMISSIONER GEESMAN: I think this does
22 present a difficult question. And I guess I think
23 we should be a little circumspect in offering our
24 advice to the Legislature on what the Legislature
25 chooses to do with the general fund.

1 Now, I understand that the author of
2 this original suggestion is now in the Executive
3 Branch, and I don't think we should have any
4 inhibitions about offering our advice to him.

5 But as it relates to the Legislature,
6 itself, I think it crosses a line where our
7 expertise is not really well suited to provide
8 them with that sort of recommendation.

9 I will say my own personal view is that
10 the New York State example is a good one. I'm not
11 certain your industry would find it very
12 acceptable, or enjoyable. But in New York they
13 direct fees collected into an intervenor fund.
14 And fund the intervenor groups in the siting
15 process.

16 MR. KELLY: I could get my own self
17 funded, maybe?

18 (Laughter.)

19 COMMISSIONER GEESMAN: So, I guess if
20 the Legislature was asking me what they should do
21 with the money, that would be the direction I'd be
22 headed in. But I think there are a lot of
23 competing uses and competing needs for the general
24 fund, and the public elects the Legislature. And
25 the Legislature is really the appropriate

1 decision-making body for making those
2 determinations.

3 MR. KELLY: I appreciate that. At a
4 minimum, though, it might be helpful -- I mean my
5 concern is the decisions made today could
6 forestall the energy infrastructure needs that are
7 going to show up in four years when the
8 Legislature's gone.

9 And that disconnect of time is something
10 that might be appropriate to point out to them in
11 some form, gentle form.

12 ACTING CHAIRMAN PERNELL: Mr. Kelly, are
13 you in favor of charging fees?

14 MR. KELLY: I don't believe fees would
15 create the proper incentives, so I support the
16 report that basically says that imposing fees
17 would not be the right answer. And having said
18 that, that would be my position.

19 If fees are to be imposed, I also think
20 that the staff recommendation is the proper way to
21 proceed on that.

22 ACTING CHAIRMAN PERNELL: Thank you.
23 Any other questions for Mr. Kelly? Yes.

24 MS. KIM: I don't have a question for
25 him, but I had a question.

1 ACTING CHAIRMAN PERNELL: Okay.

2 MS. KIM: I read the report --

3 ACTING CHAIRMAN PERNELL: Thank you, Mr.
4 Kelly.

5 MS. KIM: I read the report and my
6 question is while I understand that to insure
7 continuity we'll have to continue to rely on the
8 account, however, when you talk about the benefit,
9 I just wanted clarification that it is not
10 going -- if you decide to collect the fee, then it
11 will not go to the ERPA account, so there won't be
12 any direct benefit to the ratepayers. Correct?

13 But you're talking more in terms of the
14 benefit the developers will otherwise have, even
15 though they may be selling the electricity to
16 other states.

17 MR. MAUL: Strictly speaking you're
18 correct. This is kind of a complex issue with
19 many overlapping layers to it. And obviously
20 there is a fair overlap between taxpayers and
21 ratepayers. We'd like to keep them separate so we
22 don't cross-benefit folks.

23 But the ratepayers do directly receive
24 benefit from the licensing program here in the
25 State of California at the Energy Commission

1 through the provision of the electricity system,
2 the power plants that are generated.

3 The power plant developers also receive
4 a benefit by going with this process and
5 minimizing their costs. They have direct costs in
6 preparing the applications, but they do not
7 currently pay a cost to file the application to
8 cover the state's cost to process the application.
9 That's clearly funded by the ratepayers of
10 California.

11 And the complexities that, you know,
12 start to mushroom out quickly are that you could
13 have a power plant built out of state where
14 there's no fees paid to provide benefit to
15 ratepayers in the state.

16 You could have a power plant instate
17 that sells power out of state. Therefore we pay
18 for it and we get no benefit from it.

19 And so you get a lot of complex issues
20 very fast. Given all those together we thought
21 this was probably the best way to provide some
22 reasonable balance between who benefits, who has
23 costs imposed in the situation.

24 And looking at historical practices, the
25 public's concerns, and we keep going back to our

1 provision is to provide benefit to the public of
2 the State of California. And given all that, we
3 thought in balance this was the best
4 recommendation we could come up with.

5 MS. KIM: And just one more question,
6 Mr. Chairman. And that is you mentioned that you
7 have surveyed other agencies. And I'm assuming
8 that you've surveyed other state agencies with
9 permitting authority.

10 My question is do you have examples or
11 cases where there have been problems with being
12 able to render objective independent analysis and
13 decisions?

14 MR. MAUL: We only surveyed some local
15 agencies here in the local area of Sacramento
16 County, Sacramento City, and I think it was Solano
17 County, to get an idea from the local agency
18 perspective.

19 We did not survey all other state
20 agencies in the State of California and see what
21 kind of problems they did or did not have. So, I
22 don't have an answer for you on that one.

23 MS. KIM: Right, because I have trouble
24 understanding the presumption. The presumption
25 should be that the government will comply with law

1 and be able to render independent decisions.

2 ACTING CHAIRMAN PERNELL: Regardless of
3 whether there is fees charged or not, --

4 MS. KIM: That's correct.

5 ACTING CHAIRMAN PERNELL: -- is what
6 you're saying?

7 MS. KIM: Right.

8 MR. MAUL: The basis for that position,
9 it really comes from our experience of the last 25
10 years in the licensing program dealing with
11 intervenor groups, the local -- we have a local
12 power plant licensing case we got into, and the
13 comments we got from the public that were affected
14 by the power plant proposals from developers. And
15 our participation, our leadership in conducting
16 the process for the licensing process.

17 The public often does not know who we
18 are when we first enter a local community. They
19 quickly learn who we are, and at first are
20 skeptical about who we are. And then when they
21 realize the quality of the work that we do, the
22 objectivity, the thoroughness of our analysis they
23 become very impressed.

24 And the question soon comes up, well,
25 who pays for our program. And the comments we

1 generally get from the public, in our licensing
2 process, for the last number of years has been
3 that they're impressed that we can maintain an
4 objective process that's independent from a
5 financing source from developers.

6 That doesn't mean to imply that other
7 local agencies are tainted in any way by their
8 taking funding from developers to conduct their
9 processes or not. I was giving you the anecdotal
10 information that we've gotten from our experience.

11 MS. KIM: Thank you.

12 COMMISSIONER BOYD: Mr. Chairman.

13 ACTING CHAIRMAN PERNELL: Commissioner
14 Boyd.

15 COMMISSIONER BOYD: As Mr. Maul knows
16 I've had this discussion with him on several
17 issues in this report. And let me first say that
18 I support the conclusion, but it's a painful
19 process to get to that support.

20 I was bothered by the language of the
21 report that seems someone could infer that if you
22 got fee support you couldn't objectively do your
23 job.

24 I was also concerned about the equity of
25 if there were a fee, not based on actual cost of

1 service, but just on principle, that perhaps the
2 revenue ought to go to benefit the ratepayers and
3 not the taxpayers.

4 But, having been a fiscal and budget
5 analyst for the State of California, and having
6 been here a long time, and knowing the swamp or
7 the mush that this is involved in, I finally
8 rationalized my way to the same place where the
9 staff ended up in terms of probably no fees is the
10 best way to go, if it can be done for some of
11 their reasons, and maybe others. And probably
12 deposit the money in the general fund with no
13 further word.

14 I agree with Mr. Geesman that once it's
15 identified for general fund it's just swept off
16 the table. And you're not going to get any
17 earmarking, particularly in this day and age.

18 Would be not the most desirable, but
19 could be a compromise. But I would leave it to
20 the Legislature to give guidance on this
21 ultimately. And kind of concur, therefore, do
22 concur where the staff ended up. Although it was
23 a painful analysis that I went through to get
24 there.

25 ACTING CHAIRMAN PERNELL: Before I bring

1 it back to the dais, we do have one other speaker
2 on this item. Mr. Mussetter.

3 COMMISSIONER BOYD: Former Commissioner
4 Mussetter.

5 MR. MUSSETTER: Good morning,
6 Commissioners.

7 ACTING CHAIRMAN PERNELL: Good morning.

8 MR. MUSSETTER: And the rest of you in
9 the room. I'd like to get just a cut below all
10 these lofty policy issues and talk from the
11 practical end of it.

12 First place, when the report refers to,
13 you know, a \$350 million plant cost or something
14 like that, and uses that as the denominator, and
15 then uses the \$600,000 or \$700,000 estimated state
16 cost as the numerator, that's not a fair -- that's
17 not a fraction that you should keep in your mind.
18 You ought to throw it out.

19 Because what happens is when one of
20 these projects is trying to get started, that's
21 the critical time, that's the time of birth. And
22 the money involved is very small. It's not
23 anything in the multi-millions. It's in the tens
24 of thousands, or hundreds of thousands of
25 dollars. And if the thing doesn't get going

1 then, it won't.

2 Now, you had a bubble here a couple
3 years ago where almost anything would fly. It was
4 like, you know, a Florida land boom or any of
5 those kinds of things.

6 You're probably not going to see that
7 again. You might see just a tincture of that
8 sometime down the road. But that, forget about
9 all that, too. I mean that is not real common
10 everyday market economics.

11 So these things have to pencil and they
12 have to work and they have to pencil early. So,
13 as far as the fees go, I don't want to see you put
14 any on projects. But if the Legislature, because
15 it's in such a jam, resorts to that, then what
16 your efforts should be in order to balance the
17 need for money over there with the need for power
18 in a couple of years, and by the way, I don't know
19 where this four years came from that's being
20 talked about. I think it's more like one and a
21 half or two, or tomorrow.

22 But anyway, what you should be telling
23 the Legislators, Mr. Peace and others, that if
24 you're going to charge a substantial part of these
25 Energy Commission costs, then collect it, make it

1 due later. And only if the plant comes onstream,
2 online.

3 Because once the income starts it's not
4 nearly so painful. But if you're trying to add
5 this to the original capital outlays, you're just
6 killing what you're trying to create. I mean
7 you're in direct conflict with one another.

8 And I don't think people who work here
9 have a very good idea of this. Pardon me, but I
10 just don't. I mean you haven't been in my shoes.
11 And so, please listen to that.

12 And a couple of other things. I think
13 your \$75,000 figure is low. I don't know how you
14 got that, per PUI, I guess that's what it is,
15 isn't it, Dave?

16 MR. MAUL: Yeah, --

17 MR. MUSSETTER: I would just guess. I
18 don't know, but I would just kind of suppose that
19 it's more like \$100,000 when you add in all the
20 payroll expenses, all the other costs associated
21 with having an employee in this place. I'd just
22 ask you to take another look at that.

23 Also, a piece of information. I've said
24 this at the same place before, but I'll say it
25 again, it is relevant here. Reliant spent \$5.2

1 million, they tell me, and I have no reason to
2 doubt what they told me in this respect, on their
3 application in a period of about eight months;
4 most of it was the first six months.

5 ACTING CHAIRMAN PERNELL: Let me ask you
6 on that statement, who benefitted from that?

7 MR. MUSSETTER: What? The 5 million?

8 ACTING CHAIRMAN PERNELL: Whatever
9 Reliant spent --

10 MR. MUSSETTER: Well, nobody benefitted
11 from --

12 ACTING CHAIRMAN PERNELL: -- on their
13 application.

14 MR. MUSSETTER: -- it, Commissioner.
15 The people who did the work, you could say
16 benefitted. I mean it was people like URS, they
17 had jobs and worked and charged their fees. And
18 Duke FluorDaniel and so on. And a flock of
19 attorneys. That's where it went.

20 So, --

21 ACTING CHAIRMAN PERNELL: Didn't go to
22 the ratepayers, though?

23 MR. MUSSETTER: Well, not yet, no.
24 You're trying to get -- what they were trying to
25 do was comply with your regulations here. That's

1 where that -- the 5.2 million went to produce
2 these big thick books that are in dockets. All
3 that engineering work, every detailed analysis,
4 the biological stuff, everything.

5 So it's not cheap. And I think your
6 report needs to look at that, too. You go ask
7 Duke and some of the others that have done this in
8 this state, and you'll find out that it costs a
9 tremendous amount of money now, without any fees
10 like you're talking about.

11 And you start adding on top of that,
12 pretty soon you're going to weed out some of them,
13 I'll guarantee you, you will.

14 The other thing is this little business
15 about out-of-state, you know, electricity flowing
16 out of state. Well, sure, it can. Sure, it will.
17 Just leave that alone. That's just more business
18 that helps the people who are being asked to
19 invest these \$400-million-a-pop chunks of capital;
20 it helps them justify that investment.

21 If you say all of a sudden, well, no,
22 you can't send power north for a few days, even
23 though there's a demand for it there and the price
24 is higher, that's just -- that would be the
25 silliest thing on earth. So, please don't do

1 that.

2 I agree with IEP's remarks in large
3 part, not totally. But I've talked long enough,
4 thanks very much for listening. I appreciate it.

5 ACTING CHAIRMAN PERNELL: Any questions
6 from the Board? Thank you. Mr. Geesman.

7 COMMISSIONER GEESMAN: The Siting
8 Committee reviewed this and concluded that the
9 staff had done a good job of balancing the various
10 interests. And we, as a Committee, were
11 supportive of the report when it came before us.
12 So, I would move the staff recommendation.

13 ACTING CHAIRMAN PERNELL: All right,
14 it's been moved by Commissioner Geesman.

15 COMMISSIONER BOYD: Second.

16 ACTING CHAIRMAN PERNELL: Second by
17 Commissioner Boyd. On the question. I do have
18 some comments on the question.

19 And they go to what I would describe --
20 well, first of all, let me say that I think the
21 staff did a good job on this. And I served on the
22 Siting Committee. We wrestled with this question.
23 I am now somewhat fortunate not to be on the
24 Siting Committee, and they're still wrestling with
25 the question.

1 So, I would agree with Commissioner Boyd
2 that it's a difficult question. But I want to
3 assure the staff that whether we charge fees or
4 not is not going to affect the resources of the
5 siting division. I think that they do a good job;
6 they've always done a good job. And that's number
7 one.

8 And I think that's -- and as people get
9 to know me, that will always be number one. If
10 you're doing a good job I don't mind saying that.

11 Having said that doesn't mean that I
12 agree with everything that -- every report that I
13 read that comes from this Commission that does a
14 good job.

15 So let me say this. One is the survey
16 of other states that are doing similar work all
17 charge fees. I come from a local government
18 perspective, having served in local government.
19 We charged fees.

20 When the applicant are going to build a
21 power plant and they need site -- they need a
22 site, they need a building permit from the local
23 jurisdiction, they charge fees for their permit.

24 Now, I understand that we've been doing
25 this for some 25 years, and we haven't charged

1 fees. But I would argue that when the structure
2 was set up, we're in a different environment, a
3 different regulatory environment, and a different
4 industry environment -- environment as it relates
5 to industry. Those things have changed. We have
6 not.

7 I would also suggest to you that there
8 needs to be, if the argument is that the public is
9 paying for this on their rate charge or wherever,
10 that this is the public is paying for it, then
11 somebody's getting a free ride here. I wouldn't
12 call it free, as the last speaker has said, it
13 costs a lot to put those documents together. But
14 it also costs a lot for us to review them. I
15 don't think any of that is free. And if you go to
16 any local government, even state government in
17 some instances, there is fees there, because there
18 is work to be done. Someone has to review that.

19 If you go with the argument that well,
20 the ratepayers are paying for this anyway, so we
21 should let that go, then my question would be what
22 happens -- do the ratepayer benefit if we go
23 through this process, the developer get a permit
24 and decides not to build. Which is why I think
25 this legislation came up in the first place. Who

1 gets the benefit there? It is not the ratepayer.

2 Having sat on a number of siting
3 projects, regardless of whether we're paying fees
4 or not, we walk into a community saying we're
5 going to put up a power plant, we're the bad guys.
6 We're the bad guys, we're in the developer's
7 pocket, those perceptions are already there.

8 Now, it can be argued that, you know, it
9 would be much more intense if we were charging
10 fees. And that might be true. But the fact of
11 the matter is when we walk in, it takes time for
12 us to, sometime a long time, 2:00 or 3:00 in the
13 morning, for us to at least have the community to
14 feel comfortable about the process. But that's
15 the process, not necessarily us.

16 The other thing I would mention here is
17 given the high cost of energy now that California
18 consumers are facing, or have faced, and probably
19 will in the future, the question becomes those
20 that are outside of the state that has no real
21 connection, are coming in, getting a free ride. I
22 think that the perception of us giving out-of-
23 state developers a free ride is more -- has more
24 credence than the perception of you're charging
25 fees so you're in somebody's pocket.

1 I agree with part of the report which
2 puts me in a difficult position. I agree with
3 part of the report, I don't necessarily agree with
4 the recommendation that we shouldn't charge fees.
5 Because there's a fee for service everywhere you
6 look around. I mean that's the nature of this
7 economy. There's a fee for service.

8 So I don't agree with that. I agree
9 with the staff report. I think they did a great
10 job on it. But the recommendation of not charging
11 fees I don't agree with.

12 So the question becomes, in my mind, why
13 are we making a recommendation one way or another.
14 The legislation didn't ask us to recommend fees or
15 no fees. It asked for a report. We've done that
16 report. I think it's a good report. But the
17 recommendation of charging fees is not in the
18 legislation. It's divisive among the, at least
19 from my standpoint, here at the Commission, among
20 the Commissioners. And it's something that the
21 staff has been struggling with.

22 So why should we go through the pain?
23 And when you do that, when you make a
24 recommendation either for or against, somebody is
25 going to be unhappy. And I don't know what we

1 gain. So we going through the pain and no gain.

2 Again, I think the report is well
3 written; well investigated. It points to the fact
4 that everybody else is paying fees.

5 Even when I was on the Siting Committee
6 and this question came up, I've always been in
7 favor of fees. As a homeowner and a property
8 owner I always get charged fees. And we can make
9 the argument that, well, you're paying taxes, so
10 when a developer want to put up a new development
11 we shouldn't charge him fees because that's going
12 to add to the tax base, so you're benefitting.

13 That is the argument we're making when
14 we say that this is coming out of the ratepayers'
15 electrical rate.

16 So, having said that, Mr. Chairman, --
17 COMMISSIONER BOYD: You are the
18 Chairman.

19 ACTING CHAIRMAN PERNELL: I'm not used
20 to being Chairman here, so --

21 (Laughter.)

22 ACTING CHAIRMAN PERNELL: -- having said
23 that, Commissioner Geesman, is there anyone else
24 want to speak on this issue?

25 I will now call for the vote. We are

1 voting on item 7, which is the 02/03 budget bill
2 review. It's a report to the Legislature. And,
3 again, I want to emphasize, it's only a report to
4 the Legislature. It is not, by any means, policy
5 or regulations coming out of this Commission.

6 All those in favor signify by saying
7 aye.

8 (Ayes.)

9 ACTING CHAIRMAN PERNELL: Opposed? Aye.
10 Motion passes three to one.

11 Okay. Minutes of the previous meeting.

12 MR. MAUL: Thank you, Commissioners.

13 ACTING CHAIRMAN PERNELL: Thank you,
14 Dave. You were on the hot seat there for a
15 minute.

16 COMMISSIONER BOYD: Move approval of the
17 minutes.

18 COMMISSIONER GEESMAN: Second.

19 ACTING CHAIRMAN PERNELL: It's been
20 moved and seconded approval of the minutes. All
21 those in favor?

22 (Ayes.)

23 ACTING CHAIRMAN PERNELL: The minutes
24 will be approved four to zero.

25 Commission Committee and Oversight.

1 Any? Seeing none.

2 Chief Counsel's Report.

3 MR. CHAMBERLAIN: Yes, Mr. Chairman and
4 Commissioners. As you're aware a group of
5 intervenors in the Metcalf proceeding has not only
6 exercised their opportunity to seek judicial
7 review of the Commission's decision, but they have
8 also, in a number of creative ways, attempted to
9 seek judicial review of other agencies' decisions
10 that contributed to that decision.

11 And a couple of months ago you
12 authorized us to intervene in a case that was
13 brought against the Bay Area Air Quality
14 Management District.

15 I'm pleased to report to you that
16 through the good work of Dick Ratliff of my
17 office, we were successful in the Superior Court
18 in San Francisco in getting a general demurer
19 sustained without leave to amend. So those folks
20 will have to now take their issue to the Court of
21 Appeal.

22 The other item that I wanted to mention
23 is that I need a brief closed session on a
24 litigation matter.

25 ACTING CHAIRMAN PERNELL: Okay. Any

1 questions for the Chief Counsel?

2 Seeing none, Executive Director's
3 Report.

4 MR. THERKELSEN: Good morning,
5 Commissioners. This is Bob Therkelsen. Steve
6 sends his regrets. He intended to be here today
7 but was called up to a last-minute meeting in San
8 Francisco this morning. So he should be in a
9 little bit later.

10 One other comment. Commissioner
11 Mussetter mentioned that he thought the staff
12 probably made closer to \$100,000 in terms of
13 salaries and benefits. And I sincerely wish that
14 was the case, because our staff work hard and
15 really deserve more than they get.

16 But in reality the average salary plus
17 benefits around here is only a \$75,000 figure.

18 I think there is also one other item in
19 terms of executive session that we wanted to bring
20 to your discussion regarding legal matter, so it
21 will be two items on that agenda.

22 Thank you.

23 ACTING CHAIRMAN PERNELL: All right.
24 Any questions for the Executive Director?

25 Seeing none, Public Adviser's Report.

1 MS. MENDONCA: Thank you, Commissioner.

2 I have nothing specific this morning.

3 ACTING CHAIRMAN PERNELL: Thank you.

4 Public comment, any public comment?

5 Ms. McCann, is anyone on the phone?

6 MS. McCANN: No.

7 ACTING CHAIRMAN PERNELL: All right, no

8 public comment, this meeting will adjourn to

9 closed session. Thank you, all.

10 (Whereupon, at 11:00 a.m., the business

11 meeting was adjourned into closed

12 session, to be concluded thereupon.)

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CERTIFICATE OF REPORTER

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 10th day of January, 2003.

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