

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

WEDNESDAY, OCTOBER 8, 2003

10:01 a.m.

Reported by

Alan Meade

Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSION MEMBERS PRESENT

Robert Pernell, Chairperson

James D. Boyd, Commissioner

John L. Geesman, Commissioner

STAFF PRESENT

William Chamberlain, Chief Counsel

Scott Matthews, Chief Deputy Director

Joseph Wang, Project Manager
Nonresidential Buildings Office

Margret Kim, Public Advisor

Betty McCann, Secretariat

Gabriel D. Herrera, Senior Staff Counsel

Ram Verma
Nonresidential Buildings Office

Linda Kelly
PIER Program, Energy Systems Integration

Lisa De Carlo, Staff Counsel

Pramod P. Kulkarni, Program Manager
Industry, Agriculture & Water

Gary Flamm
Nonresidential Buildings Office

Timothy Tutt, Technical Director
Renewable Energy Program

Bill Pennington, Manager
Buildings and Appliance Office

Mark Rawson, Program Manager
Distributive Energy Resource Integration R&D

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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

2 10:01 a.m.

3 COMMISSIONER PERNELL: I'd like to call
4 the Energy Commission Business Meeting to order.

5 Commissioner Boyd, would you lead us in
6 our pledge, please.

7 COMMISSIONER BOYD? Yes.

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

10 COMMISSIONER PERNELL: I would note for
11 the record that Commissioners Rosenfeld and
12 Commissioner Keese are out on Commission business,
13 so I'll be chairing this meeting.

14 First of all, I want to acknowledge and
15 welcome our new Public Advisor, Ms. Margret Kim.
16 So, if -- do you want to stand or do a speech or
17 anything?

18 (laughter)

19 Margret Kim, we're happy to have Margret
20 as our new Public Advisor.

21 Also, I want to acknowledge a good
22 friend, Scott Matthews, who is -- I think this is
23 your first meeting as Chief Deputy Director. So,
24 our Executive Director is out, Scott is the number
25 two young man in this organization, so we

1 certainly thank you for being here, Scott. We've
2 got a ton of questions for you, so just sit tight.

3 On the consent calendar --

4 COMMISSIONER BOYD: Move adoption.

5 COMMISSIONER GEESMAN: Second.

6 COMMISSIONER PERNELL: The move and
7 second to approve the consent calendar, all those
8 in favor?

9 (Ayes.)

10 COMMISSIONER PERNELL: Opposed?

11 Ayes have it three to zero.

12 Item number two, reconciliation of
13 retailers claims, possible approval of SB 1305.
14 Report reconciliation of retailers claims, which
15 requires the Energy Commission to annually prepare
16 and submit a report to the California Public
17 Utility Commission about retail power source
18 claims made to consumers.

19 Staff, would you brief the board please.

20 MR. ORTA: Yes, this is a report that's
21 due to the Public Utilities Commission by October
22 15th of each year, and what this report does is it
23 verifies that retail provider claims of
24 electricity procured by generators is actually
25 enough generation out there by those plants to

1 meet those claims.

2 And so what we're doing is we're
3 reconciling the claims by these retail electric
4 providers with generation data that's provided to
5 the EIA and to our electricity analysis folks here
6 at the Energy Commission.

7 And we were able to find that there is
8 definitely more than enough generation to
9 substantiate these claims.

10 COMMISSIONER GEESMAN: Jason, did you
11 introduce yourself?

12 MR. ORTA: Oh, that's another integral
13 part of the process. My name is Jason Orta, and I
14 am the author of this report.

15 COMMISSIONER PERNELL: All right, any
16 questions from the board?

17 COMMISSIONER BOYD? I'd move adoption of
18 the report.

19 (Thereupon, the motion was made.)

20 COMMISSIONER GEESMAN: Second the
21 motion.

22 (Thereupon, the motion was seconded.)

23 COMMISSIONER PERNELL: So moved and
24 seconded that we approve staff recommendations.

25 All in favor?

1 (Ayes.)

2 Opposed?

3 Ayes have it three to zero.

4 East Altamont Energy Center.

5 Consideration of any petitions for reconsideration
6 filed pursuant to Public Resources Code section
7 25530.

8 And I would ask that -- Mr. Williams,
9 would you brief the board please.

10 MR. WILLIAMS: Good morning,
11 Commissioner Pernell, and members of the
12 Commission. My name is Major Williams, and I am
13 the Hearing Officer in this matter.

14 The Commission is hearing several
15 petitions for reconsideration of the Commission
16 decision in the East Altamont Energy Center case,
17 01-AFC-4, which was decided by this Commission on
18 August 20th, 2003.

19 Intervenors Mr. Michael E. Boyd, on
20 behalf of Californians for Renewable Energy, CARE,
21 and Mr. Robert Sarvey, an individual, filed
22 separate petitions for reconsideration on
23 September 9th and September 15th respectively.
24 The petitions were timely.

25 CARE's petition of the Commission

1 decision is based on two underlying theories.
2 One, the decision is not supported by substantial
3 evidence and adequate findings; and two, the
4 decision is contrary to the Warren-Alquist Act, in
5 that the decision-makers do not exercise their
6 powers to override certain environmental impacts
7 identified by Energy Commission staff.

8 On the other hand, Mr.Sarvey's petition
9 for the Commission decision is also based on two
10 underlying theories. One, the decision failed to
11 comply with the California Environmental Quality
12 Act, or CEQA, and by doing so jeopardizes the
13 public's health and welfare.

14 And two, the decision fails to protect
15 adequately the public's health and welfare by not
16 adopting Energy Commission staff's recommendations
17 to mitigate toxic emissions and criteria
18 pollutants.

19 Commissioners, you have received copies
20 for the petitions and have had an opportunity to
21 review the submittal. I should also point out
22 that both Intervenors have, on September 19th,
23 2003, jointly filed with the California Supreme
24 Court a petition for writ of mandate, petitioning
25 the Court to nullify the Commission's decision in

1 this case.

2 The Commissioners may wish to direct any
3 questions on the writ of mandate to Chief Counsel
4 Mr. Chamberlain. Thank you.

5 COMMISSIONER PERNELL: Thank you, Mr.
6 Williams.

7 MR. WILLIAMS: Are there any questions
8 at this point?

9 COMMISSIONER PERNELL: Why don't we hear
10 from our Chief Counsel before we bring it to the
11 board.

12 MR. WILLIAMS: Thank you.

13 COMMISSIONER PERNELL: Mr. Chamberlain?

14 MR. CHAMBERLAIN: Thank you,
15 Commissioner Pernell. As the Commission is aware,
16 section 25530 of the Public Resources Code allows
17 parties to the Commission siting proceeding to
18 petition for reconsideration of its decisions.

19 Prior to 1999 that was required in order
20 to go to court. And then the Supreme court held,
21 in Sierra Club versus Lafco, that parties didn't
22 have to do that in order to go to court.

23 That's why we have the odd situation
24 here where these petitioners filed their petitions
25 for reconsideration, but also went directly to the

1 Supreme Court, because they were not required to
2 wait for the Commission to decide the petitions
3 for reconsideration.

4 The petition for reconsideration
5 basically allows the Commission the opportunity,
6 if it decides that the petitions have raised
7 issues that the Commission didn't fully
8 understand, or perhaps knew information that
9 couldn't have been provided in the exercise of
10 reasonable diligence.

11 It allows the Commission one more chance
12 to correct any errors. Other than that, that is
13 basically the law of California on petitions of
14 reconsideration. Other than that, Section 25530
15 doesn't give a lot of guidance on what standard
16 you should use. You have complete discretion to
17 grant or deny these petitions.

18 COMMISSIONER GEESMAN: So Mr.
19 Chamberlain, if I understand you correctly, if we
20 simply chose to change our minds, we could do that
21 in this reconsideration?

22 MR. CHAMBERLAIN: Yes you could.

23 COMMISSIONER GEESMAN: Thank you.

24 COMMISSIONER PERNELL: Okay, thank you
25 Mr. Chamberlain. What I'd like to do first is

1 hear from the public. I understand we have two
2 people on the phone that want to speak to this
3 item, Mr. McDonald and Mr. Carter.

4 So at this time I'll take the -- I have
5 blue cards here, so I urge anyone who wants to
6 speak on this item to fill out a blue card. Ms.
7 Sarvey, Susan Sarvey. You have a blue card on Ms.
8 Sarvey? Yes.

9 MS. SARVEY: Thank you so much for
10 granting the rehearing, so I could finally have a
11 chance to have my final comment, since I couldn't
12 come last time. My name is Susan Sarvey, I live
13 at 26139 Corral Hollow Road in Tracy, California,
14 and I represent Clean Air for Citizens and Legal
15 Equality, known as CACLE.

16 When I came and spoke to you last time I
17 told you that you owed it to the taxpayers to have
18 a litigation-proof decision, that you would need
19 to use your override and explain why we the people
20 do not deserve to be compensated for our public
21 health and safety.

22 As a Commission you chose to do neither.
23 You took the \$500,000 away that even you said I
24 needed for my fire department. You gave us
25 \$1,002,480.00 for air mitigation, which I feel is

1 a joke. This plant will put out 51,420 tons of
2 pollution over the life of the plant, if it's only
3 there for 30 years. It could be there for another
4 ten or 15.

5 And you chose to mitigate 66.8 tons of
6 NOX. Why did you even bother? You left 51,354
7 tons unmitigated in my town. Do you really thing
8 66.8 tons will make any difference to my public
9 health and safety?

10 Staff did an excellent CEQA analysis of
11 my air quality problems. Why you chose to
12 disrespect their analysis is beyond me. Could
13 someone please explain to me how you can ignore
14 the only CEQA analysis that was done, and decide
15 that the mitigation that was called for in that
16 analysis is unnecessary?

17 I noticed you asked for briefs on why
18 your decision was acceptable. Staff cannot defend
19 your decision in any way because to do so would
20 not support the facts presented in the entire
21 record.

22 The basic lack of regard for the facts
23 presented in the record demonstrates the futility
24 of participating in the process, and shows the
25 hearings to be a sham because you are biased

1 towards the plant and refuse to recognize the
2 record.

3 Therefore, you left me no choice but to
4 sue for justice, and you persist in trying to deny
5 my rights of a fair hearing in a court of law so
6 that I can have my public health and safety
7 protected.

8 Your decision seems political at best.
9 We have a new governor who professes to care about
10 the environment, air quality, and water. Please
11 at least grant a continuance until he can review
12 this terrible decision. Thank you.

13 COMMISSIONER PERNELL: Thank you, Ms.
14 Sarvey. Ms. Sundberg.

15 MS. SUNDBERG: Good morning,
16 Commissioners. I'm Irene Sundberg, 451 Hickory
17 Avenue, Tracy, California.

18 COMMISSIONER PERNELL: Good morning.

19 MS. SUNDBERG: Nice to see you again,
20 and I'm glad to be able to speak here again today.
21 I'm glad we're taking a second look at this
22 project. The last time I stood here and spoke I
23 reminded you that our fire department was made up
24 of men that are very responsible. They are
25 outstanding citizens to our community.

1 These men do the best to keep me and the
2 rest of my community safe. Being first response
3 is a great responsibility on this project, and
4 sharing the funding with Alameda County is a slap
5 in the face to the taxpayers of San Joaquin
6 County.

7 Your very own staff stated that the
8 mitigation for this project needed to be
9 approximately \$13 million. But yet, when the
10 staff said that, and when the record shows the
11 evidence, you chose not to agree.

12 This is in the record, this is something
13 that you need to look at very carefully, and it's
14 your responsibility to do the very best job you
15 can, and ignoring the facts is not the very best
16 job you can do.

17 I would only like to say now that, as I
18 said last time, these are very brave men and they
19 risk their lives for us every day. And that they
20 deserve the best that we can give them, to be
21 given a fair and equitable amount of money to
22 protect our community.

23 Again, I want to remind you that the air
24 quality in Alameda County doesn't take care of the
25 San Joaquin County residents. We are going to get

1 the brunt of all the pollution. It's been stated
2 in the record. How more blatantly can it be said?

3 We're going to get all the pollution
4 from Alameda County. Not fair. Air quality's not
5 fair. I hope Arnold does something about this.

6 My health and safety and welfare, and my
7 community's health and safety and welfare, are
8 highly valued. And I hope you value that in your
9 community, and I'm sure you wouldn't let this
10 happen to your community. Thank you.

11 COMMISSIONER PERNELL: Thank you Ms.
12 Sundberg. Mr. Pinhey.

13 MR. PINHEY: Good morning members of the
14 Commission. Nicholas Pinhey, city of Tracy,
15 Public Works Department. And I appreciate the
16 opportunity to speak with you this morning.

17 I'm going to present to you the text of
18 a letter to the Commission from the city of Tracy,
19 and on behalf of the city of Tracy I am urging the
20 Commission to reconsider its decision pertaining
21 to AQSC5 for the East Altamont facility.

22 And specifically the city requests that
23 the Commission modify the requirement to address
24 concerns regarding the mitigation of NOX impacts
25 over the operational life of the project. In this

1 case we understand that AQSC5, as originally
2 proposed, obligated the project Applicant to
3 compute and make up annual mitigation shortfalls.

4 We further understand that this proposed
5 requirement could create some project uncertainty
6 that could result in difficulty obtaining the
7 project financing.

8 The Commission sought to eliminate
9 potential uncertainty by revising the requirement
10 to fund the air emission reduction measures and
11 the air quality mitigation plan through a payment,
12 a one time payment of a million dollars to the San
13 Joaquin Unified Air Pollution Control District.

14 The logic behind the revised AQSC5 is
15 understandable; however, concerns remain regarding
16 the mitigation of ongoing NOW impacts. It may not
17 be adequately addressed by this one time payment.

18 And specifically concerns remain
19 regarding mitigation offsets, centering on the
20 assertion that projects identified in the AQMD
21 will have a life of approximately 15 to 20 years,
22 when the average life span of equipment in the
23 heavy equipment replacement program is 7.7 years,
24 as cited in a staff assessment.

25 Thus, the city supports Intervenor's

1 Boyd and Sarvey's analyses that state that the
2 decision fails to feasibly and adequately address
3 necessary air quality mitigation measures for East
4 Altamont facility, as identified by CEC staff, and
5 we urge the Commission to reconsider requirements
6 for air quality mitigation to ensure the impacts
7 are adequately addressed for the entire
8 operational life of the project before you.

9 Once again I thank you for this
10 opportunity to speak an consider this.

11 COMMISSIONER PERNELL: Thank you Mr.
12 Phinhey. What's your position with the city of
13 Tracy?

14 MR. PINHEY: I am the Director of Public
15 Works and I am actively involved in air quality
16 issues with the city, working currently with
17 citizens' committee on mitigation measures that
18 have been entered into with the GWF facility.

19 COMMISSIONER PERNELL: And you have some
20 written comments?

21 MR. PINHEY: Yes I do.

22 COMMISSIONER PERNELL: Ms Kim will take
23 those. Thank you again.

24 MR. WHEATLAND: Commissioner Pernell?

25 COMMISSIONER PERNELL: Yes.

1 MR. WHEATLAND: I'm Gregg Wheatland,
2 attorney for the Applicant. We have not received
3 a copy of the comments, and to our knowledge no
4 comments were filed by the city of Tracy by the
5 deadline that was specified in the Committee order
6 for filing written comments on this matter. Are
7 there additional copies available?

8 COMMISSIONER PERNELL: Ms. Kim will make
9 sure that you get a copy, Mr. Wheatland. Are
10 there additional copies? Okay, Mr. Sarvey. We're
11 still on item four.

12 MS. SARVEY: Excuse me, Commissioner
13 Pernell. My Fire Chief is here, and he didn't
14 know he needed to put in a blue public comment
15 card. Can I bring it to you?

16 COMMISSIONER PERNELL: Give it to Ms.
17 Kim please.

18 MR. SARVEY: Commissioners, thanks for
19 the opportunity to discuss this project one more
20 time. I know this has been a tedious, long,
21 arduous voyage through this project, and I
22 appreciate that you're giving us another
23 opportunity to address it.

24 And obviously it's been a really tough
25 project, because it's a unique project in may

1 ways, and the first is a well-known fact that,
2 although the project is under the Bay Area's
3 jurisdiction, it lies in the San Joaquin Valley,
4 which has caused many problems for the Committee.

5 Second, this is one of the largest
6 projects that's ever been certified by the CEC at
7 1,100 megawatts. Obviously there's a lot of
8 impacts from a facility that size, and that makes
9 it very difficult to decide what's appropriate.

10 Another fact is that there's an 1,160
11 megawatt plant that we are currently considering
12 certifying within six miles of this project, and
13 there's also 40,000 homes being built within that
14 six mile radius.

15 For those reasons, I believe that the
16 project's emissions should be fully mitigated for
17 the life of the project. We do not accept the
18 word of the San Joaquin Valley Air Pollution
19 Control District that this project is fully
20 mitigated, when they say on the record that ERC's
21 are worthless pieces of papers.

22 As Commissioner Boyd said at the July
23 Business Meeting, this is a crapshoot. The record
24 supplies the evidence needed to quantify the
25 Applicant's liability here. It doesn't have to be

1 a crapshoot.

2 On page 145 of the decision, the
3 decision heralds the draft consensus air quality
4 plan as the guide which forms a credible reference
5 to determine which measures should be adopted for
6 use in the AQMA. The draft consensus plan
7 provides the calculations necessary to determine
8 the cost per ton of NOX reductions in the heavy
9 duty engine program.

10 That cost is \$20,867. It's not \$5,000,
11 it's not \$15,000. I have copies of that. If
12 necessary, I'll supply them to you. The
13 evidentiary record, exhibit 1, page 5.131,
14 provides that the average life of a project in the
15 heavy duty engine program is 7.7 years. Most of
16 the projects in the heavy duty engine program last
17 five to 12 years.

18 The 15 to 20 year life span is not a
19 reasonable life span for projects in this program.
20 From the facts included in this record the
21 Applicant's costs to provide 66.8 tons of NOX
22 reductions can be computed for a 30 year life
23 span.

24 As noted in my reply brief, that amount
25 is \$5,400,000. The evidence in the record

1 provides a credible reference to provide certainty
2 in the project's costs and certainty in the
3 Applicant's financing. AQSC5, as adopted in the
4 final decision, does not guarantee the project
5 will provide 68 tons for one year much less 30.
6 All it provides is that the Applicant provide
7 \$1,002,480 and nothing else.

8 We're asking that the decision be
9 revised to provide \$500,000 to Tracy Fire as well,
10 as was identified in the RPMPD.

11 In conclusion, we're asking you to
12 mitigate the impacts that the Committee itself has
13 identified. Not the staff's impacts, not our
14 impacts, but the ones that the Committee itself
15 has identified. To do this you must reinstate
16 AQSC5, as provided in the errata, to the RPMPD,
17 which compels the Applicant to meet the CEQA
18 impacts, defined by the Committee as 66.8 tons per
19 year for the life of the project.

20 We are also asking you to provide
21 \$500,000 to Tracy Fire to mitigate impacts that
22 you, not staff, not Intervenors, identified.
23 Thank you very much.

24 COMMISSIONER PERNELL: Thank you Mr.
25 Sarvey. Let's hear from the Chief of Tracy Fire

1 Department. State your name for the record
2 please?

3 MR. FRAGOSO: Larry Fragoso, Division
4 Chief with the Tracy Fire Department, in charge of
5 the Operations. Basically, what we're here today
6 for is to request that our role in the future with
7 this energy event be spelled out one way or
8 another, so that we can plan for the future.

9 And with a fire station designated to be
10 within three miles of the energy plant, we feel
11 strongly that we're going to be part of any issues
12 or problems that may occur sometime in the
13 future.

14 And if the Commission would consider,
15 basically what the statements that have been
16 mentioned before, would go a long ways in helping
17 us plan for any future issues or probabilities
18 that may occur in the future that we can either
19 train or be better prepared for in the future when
20 the plant does go into effect.

21 Other than that, that's it. Our role
22 basically up to this point has not been spelled
23 out, other than we're either on or we're off, and
24 because of jurisdictional reasons but,
25 localities -- that really hasn't eliminated us

1 from the process.

2 COMMISSIONER PERNELL: All right. Any
3 questions for the Chief?

4 COMMISSIONER BOYD: Yes, Mr. Chairman.
5 Chief, I don't purport to be a fire expert, but
6 the facility, as I understand it, is located in
7 the adjacent county, and therefore I'm assuming
8 jurisdiction is that of fire agencies in that
9 county.

10 However, you're the closest fire
11 department. So what kind of mutual aid types of
12 agreements exist between your fire department and
13 those in the adjacent county? And how would they
14 operate in the case of an event at this facility,
15 in that you are the closest facility.

16 Would they call upon you, and would they
17 in turn provide you any kind of financial support
18 for that support that you gave to them should they
19 call upon you?

20 MR. FRAGOSO: Basically, the way it is,
21 the mutual agreement that we have with Alameda
22 County works is they can request our assistance at
23 any time they feel that we can arrive at an
24 incident prior to or for assistance as the
25 incident calls for.

1 Because of our location on the east end
2 of Alameda County, our major calls in that area
3 are usually vehicle accidents that come through
4 the Altamont pass, and we usually arrive anywhere
5 from five to ten minutes well in advance of any
6 emergency response form the Alameda County side.

7 So we usually, basically, apply an
8 assistance to the incidence that we can apply for.
9 Either we resolve it completely, or we turn over
10 the operations of the incident to the proper
11 agency once they arrive on scene and assume the
12 responsibility.

13 Under a mutual aid agreement there is no
14 exchange for services, financially or otherwise,
15 other than returning the favor should we need
16 their assistance in the future.

17 In the case of East Altamont the areas
18 of concern that we're facing would be the areas of
19 emergency medical services, which require a more
20 rapid response. The future staffing for the
21 Mountain House Fire Station, which would be under
22 our jurisdiction, calls for advanced life support,
23 which would be a paramedic engine company, and
24 would be basically available to the Calpine energy
25 plant should they have a medical emergency.

1 Or the other thing would be, if we had a
2 case of a hazmat spill, in which we are down wind
3 from any probable hazardous clouds or vapors that
4 would be coming out of the plant should they have
5 a chemical spill of any kind.

6 And that's the area that we would need
7 assistance. if they had a major emergency there at
8 the plant, in which it took both agencies, we
9 would still be first in responsibility for either
10 evacuations or establishing some kind of a
11 protocol, depending on the design of the plant.
12 And then basically we would be turning those
13 operations over to Alameda County once they arrive
14 on scene.

15 COMMISSIONER BOYD: Thank you.

16 COMMISSIONER PERNELL: All right, thank
17 you. What I'd like to do is -- did you have a
18 question, Mr. Wheatland?

19 MR. WHEATLAND: I'd like to comment
20 briefly on Chief Fragaso's comments, if I might.

21 COMMISSIONER PERNELL: Well, I'm going
22 to give you a chance to do that. We have two
23 people on the phone. We will hear from them, then
24 we will hear from the Applicant, staff, and bring
25 this issue back to the dais.

1 Okay, on the phone, Mr. McDonald.

2 MR. MCDONALD: (via phone) Hello? Yes,
3 hi. My name is James McDonald. I live at 274
4 Pebble Beach Loop, Pittsburgh, CA. I'm a former
5 trustee of the Pittsburgh Unified School District
6 and as such it was my fiduciary responsibility to
7 look after the health and welfare of children,
8 which this community gave me the privilege of
9 serving.

10 As such, I've participated in numerous
11 sitings, either directly or indirectly, of power
12 plants with the California Energy Commission,
13 particularly for the Los Medanos and Delta Energy
14 Centers.

15 At those proceedings the California
16 Energy Commission staff assured the community that
17 the new power plants would operate within the
18 guidelines set by the California Energy
19 Commission, that the community did not have to
20 worry about the health of its children or its
21 citizens, because the CEC had the authority to
22 take swift action against any plants, including,
23 up to and including pulling their permits to
24 operate.

25 Since the operation of these new power

1 plants I have noticed considerable odors
2 originating from the area of these power plants,
3 considering wind conditions. And I would consider
4 them to be highly suspect of these new odors and
5 breathing problems I've been experiencing.

6 Unfortunately I can't confirm this,
7 since the Bay Area Quality Management District has
8 been unhelpful in responding or pinpointing any of
9 my concerns.

10 I feel that the community has been
11 betrayed by the California Energy Commission and
12 the Bay Area Quality Management District. They
13 have not been forthcoming with information
14 regarding violations of these plants, they have
15 not taken any steps to prevent further violations,
16 they have not required the plants to give
17 additional mitigation for the health effects, and
18 they have not done any health studies.

19 You definitely cannot take the position
20 that all concerns have been addressed in the past
21 by either of these agencies, and then that proper
22 mitigation has been forthcoming. In fact it has
23 not.

24 And they have not taken their charge
25 seriously, as they continue to claim that they

1 have. So I definitely would ask that this
2 committee reconsider the Altamont and reconsider
3 the past action of the agencies that are
4 supposedly monitoring and making sure that in fact
5 these power plants operate within the guidelines
6 set.

7 COMMISSIONER PERNELL: Thank you. Is
8 that it?

9 MR. MCDONALD: That's pretty much it,
10 yes sir.

11 COMMISSIONER PERNELL: All right. Any
12 questions for Mr. McDonald? Hearing none, thank
13 you, Mr. McDonald. Mr. Carter?

14 MR. CARTER: I'm not commenting.

15 COMMISSIONER PERNELL: And now we're
16 going to call Mr. Boyd. And let me just say that
17 at the beginning of this I asked everyone to fill
18 out a card. Mr. Boyd, we will hear from you, even
19 though you didn't fill out a card, which was I
20 think a simple request. Mr. Boyd.

21 MR. BOYD: I apologize for not filling
22 out a card. I thought it was sufficient that I
23 was one of the parties --

24 COMMISSIONER PERNELL: You are one of
25 the parties.

1 MR. BOYD: -- that I would be basically
2 given the same rights as the other parties, and
3 that's why I didn't fill out a card. But in the
4 future I promise I'll fill out a card.

5 COMMISSIONER PERNELL: All right.
6 Please begin.

7 MR. BOYD: First off, I'm Mike Boyd.
8 I'm the President of Californians for Renewable
9 Energy, CARE. To start with, we provided a reply
10 brief on Monday, and basically at this point we
11 feel like it's kind of a futile proceeding that
12 we're involved with, in that -- and I respect what
13 you said, Commissioner Geesman, about the fact
14 that you guys have an opportunity to change your
15 mind.

16 Unfortunately, we weren't in that
17 position, because of the way of -- our
18 understanding of the Warren-Alquist Act is that we
19 only had 30 days to file our legal action in the
20 Supreme Court, or else it wouldn't have been
21 timely.

22 And we filed on the 19th, and you didn't
23 make a decision to hear our reconsideration until
24 after that date, so there was no way for us to
25 know that we were going to be reconsidered.

1 So we had no choice, you forced our
2 hand, we had to litigate the matter. And so,
3 because of that, we kind of feel like this is a
4 slight bit of an exercise in futility. But
5 irrespective of that, we'll do our best to make
6 our case before you.

7 But before I do that we must
8 respectfully object in all respects to the
9 proceeding being followed where our petition for
10 reconsideration is being heard after the time for
11 filing a legal action challenging the CEC's final
12 decision has expired.

13 As you know, CARE filed in the
14 California Supreme Court, it's a verified petition
15 for exercise of original jurisdiction to review an
16 issue of writ of mandate nullifying a decision of
17 the California Energy Commission on September
18 19th, 2003.

19 Our case number is S119194. This means
20 we object to whatever happens as a result of this
21 proceeding. Although we could not afford to have
22 him appear in what he considered a very strange
23 proceeding, our legal counsel will undoubtedly
24 provide additional argument if and when this new
25 evidence is subject to our litigation.

1 CARE on Monday provided our reply brief,
2 and then on Tuesday we provided an addendum and an
3 errata to the reply brief. In that addendum and
4 errata we provided exhibits, including information
5 obtained as a party in relevant and related
6 proceedings to the corporate character of Calpine,
7 which is part of our participation for
8 reconsideration as well as our action in the
9 Supreme Court.

10 This was before the Federal Regulatory
11 Commission, or FERC, under dockets EL0095 and
12 PA02-2, and CARE's administrative complaints
13 before FERC under dockets EL01-2 and EL0165. CARE
14 has provided an index of exhibits. There's 22, in
15 which we asked that all these materials be fully
16 incorporated by reference into this reply brief.

17 We respectfully demand that an immediate
18 investigation be conducted in these matters,
19 starting with the question of whether and for what
20 reason the Bay Area Quality Management District is
21 withholding relevant public records on these
22 issues.

23 We have provided relevant information to
24 Calpines financial problems, as well as Enron and
25 other power companies. In addition to being

1 relevant on the critical issue of whether Calpine
2 is willing or able to perform its mitigation and
3 other conditions of certification approvals, the
4 materials bearing on Calpine's financial woes, and
5 particularly the information about Calpine having
6 abandoned the construction of one or more of its
7 power plants, are relevant to the CEC decision-
8 makers admitted balancing or tradeoff between the
9 benefits of an immediate cash out front payment
10 versus full, long-term life of the project
11 mitigation.

12 Indeed, the bigger Calpine's financial
13 loads the more they support the decision-makers
14 decision to take the cash and run. Of course, we
15 don't believe that you have the CEQA authority to
16 make such tradeoffs, and that's what we call part
17 of the substantive mandate issue in CEQA, which is
18 part of our reconsideration and our petition to
19 the Supreme Court.

20 But even if you do, this new evidence
21 has a direct bearing on those issues. And I
22 really apologize to the Public Advisors Office,
23 but -- and in the past, when we have participated
24 in the meetings and stuff, if we just provided a
25 single page or took a section out of a document,

1 it was stricken as irrelevant because it didn't
2 have -- it wasn't a complete document.

3 So that kind of forced us to provide all
4 of the documentation that we had. And I have
5 about 200 pages of notice of violation information
6 that we got from the Bay Area Air Quality
7 Management District, plus I have some exhibits
8 that come out of the FERC proceedings,
9 specifically the fact-finding investigation of
10 potential manipulation of electric and natural gas
11 prices, where I have admissions from Calpine for
12 participating in things called waste trades, for
13 example.

14 I also provided their quarterly reports
15 for the first three quarters of the year 2000
16 where the energy crisis began, where you see that
17 their price of power that they sold to the
18 California Power Exchange went from \$80 a megawatt
19 hour to \$1,100 a megawatt hour.

20 This is all relevant, we believe, to the
21 corporate character of the Applicant. We think
22 it's all relevant to their ability to perform on
23 the conditions of approval of this project.

24 COMMISSIONER PERNELL: Do all the
25 reporters have copies of what you're reciting?

1 MS. KIM: It's my understanding that
2 you're referring to the exhibits that you faxed to
3 my office at around 4:00 p.m.?

4 MR. BOYD: That's correct.

5 MS. KIM: I believe we are making
6 copies. It was docketed yesterday, and we have
7 circulated to the Commissioners the exhibit. And
8 also, I was just handed additional documents, I'm
9 not sure whether they're exhibits?

10 MR. BOYD: Yes, I'll address this too.
11 And the other issue in my reply brief I talked
12 about this records act request that we had done,
13 and the fact that the Air District was telling us
14 that we couldn't get the information because of
15 the law enforcement investigation going on.

16 On the other hand, we're a co-plaintiff
17 in a Title V compliant with another group called
18 Our Children's Earth in San Francisco, who -- they
19 had their own thing going on with the air district
20 over Los Medanos, and as a result they were able
21 to get this information because of a lawsuit that
22 they have, or some legal action they had brought
23 against the air district that required them to
24 provide the information.

25 So basically I got all this information

1 from Golden Gate University, and I got it on the
2 26th, or it was sent to me on the 26th. They
3 received it, according to this letter that they
4 provided me last night after 5:00, they received
5 it on August 26th.

6 I received a letter on September 4th
7 from the air district saying they wouldn't give me
8 that same information. So that's why we're asking
9 -- there needs to be some investigation. I think
10 it's more than just what's going on with you guys
11 in the CEC, it's also that the air district is not
12 doing it's job in communicating with you and the
13 public, and that's what's putting you in this
14 position.

15 And so really, that's ultimately why we
16 are still calling for an investigation. You guys
17 gotta do the base level investigation on these
18 notices of violations. You've got to come up with
19 some kind of compliance record that you can base
20 your decision on.

21 Right now, the evidence that I've
22 provided you, there's no response to most of their
23 recent violations at both plants. There's no
24 response from Calpine in these records we were
25 provided.

1 So we can only interpret that to mean
2 that those matters are still open and subject to
3 investigation, and we're not getting that
4 information because of that. We're not getting
5 that information because they're not treating us
6 the same way they're treating Golden Gate
7 University.

8 So that's why we brought this in like we
9 did, because we didn't have any choice, because
10 the way your rules are set up we can't just give
11 you a little snippet to of it, we've got to give
12 you the whole thing. And unfortunately, honestly,
13 I didn't give you all the stuff. I've got all
14 this stuff here from the refund pricking and the
15 manipulation investigations by the FERC.

16 All this stuff which is totally relevant
17 to their corporate character that I didn't put in
18 just because I'm trying not to burden you guys,
19 but I really think you need to do a base level
20 investigation of what's going on with these guys
21 before you give them any more permits.

22 That's the bottom line, and as far as
23 this thing from Golden Gate University, I only had
24 two copies. I provided her a copy, I would be
25 happy if we could get it copied off and you could

1 get a chance to look at it. If you don't I just
2 ask that you docket it and make it part of your
3 administrative records.

4 And that's all I have to say, except for
5 one other thing, which is fundamentally I feel
6 like your decision that was made at the last
7 meeting was a political decision, because
8 basically you were balancing your political desire
9 to make this Applicant able to get financing for
10 his project against staff's recommended
11 mitigation.

12 So we consider your last decision as
13 purely political, and it's for that reason alone
14 tha I agree with what Ms. Sarvey said. I think,
15 in the best interest of everybody and to provide
16 more time to review these, all this information
17 that you've just received, that would be in the
18 best interest to refer this matter to another day,
19 preferably when the new governor is seated. Thank
20 you.

21 COMMISSIONER PERNELL: Thank you, Mr.
22 Boyd. Okay, we'll hear from Mr. Wheatland, who
23 represents the Applicant, and then staff, and then
24 we will bring this issue back to the dais. Mr.
25 Wheatland.

1 MR. WHEATLAND: Thank you. We have
2 filed a written response to each of the two
3 petitions. I know that you and your advisors have
4 read the petitions and the responses. I'm not
5 going to repeat our response. We are certainly
6 available to answer any questions tha you have.

7 The EAEC proceeding has spanned more
8 than two years. Two years of exhaustive review,
9 which is reflected by a decision of more than 500
10 pages.

11 If you listen carefully to Mr. Sarvey
12 and Mr. Fragoso and Mr. Pinhey, all of the issues
13 that have been raised by them here today and in
14 their petition, have been exhaustively examined by
15 the Commission's decision.

16 I'd like to turn to Mr. Rubinstein
17 briefly, to discuss some of the air quality issues
18 that were raised by the city of Tracy, and then
19 I'll come back and briefly touch on some of the
20 issues that were raised by Mr. Fragoso.

21 MR. RUBENSTEIN: Thank you, Mr.
22 Wheatland. Gary Rubenstein of Sierra Research for
23 the Applicant. Frankly, I'm a bit at a loss in
24 terms of understanding most of the arguments that
25 are raised in these petitions regarding air

1 quality mitigation program.

2 Most of those arguments focus on the
3 adequacy of the heavy duty engine replacement
4 program, which is one component of the overall
5 mitigation package.

6 On the concerns that have been raised by
7 both Mr. Boyd and Mr. Sarvey, that program is only
8 likely to result in emission reductions over a
9 period of roughly seven to eight years.

10 The reason why I'm confused is that is
11 precisely why this Commission, in adopting it's
12 decision, added as the last paragraph, under
13 paragraph three of condition AQC5 the following
14 statement: "when selecting participants for
15 participating in the heavy duty engine replacement
16 retrofit program, only that equipment which has a
17 projected 15 to 20 year lifespan or more will be
18 selected."

19 The issue was raised during the regular
20 proceeding, it was a focus of contention, and the
21 Commission quite clearly indicated in the decision
22 that engines that have a lifetime of seven or
23 eight years should not be included in this
24 mitigation program. And you've conditioned the
25 mitigation program accordingly.

1 That will, in my opinion, focus the
2 mitigation efforts more on agricultural and
3 industrial sources, which have a longer life,
4 which is exactly the objective that the Commission
5 set forth. Consequently, I think that all of the
6 discussion regarding the heavy duty engine
7 program, in the context of these petitions, is
8 misplaced, because you specifically addressed that
9 issue in your decision.

10 COMMISSIONER PERNELL: Thank you, Mr.
11 Rubenstein. Mr. Wheatland.

12 MR. WHEATLAND: What is clear from the
13 record is that we have an Applicant and a project
14 that satisfies the air requirements not just of
15 the Bay Area Quality Management District, but also
16 the San Joaquin District.

17 What is clear from this record is that
18 we have an Applicant that is going to be making a
19 substantial financial contribution not only to the
20 improvement of fire services in Alameda County,
21 but a substantial contribution to the improvement
22 of fire services in San Joaquin County as well.
23 Both counties will receive a financial
24 contribution.

25 Mr. Fragoso has made statements here

1 this morning that are at some variance from the
2 testimony that was received during the course of
3 the proceeding. During the course of that
4 proceeding we received testimony that 9/11 calls,
5 emergency calls, will be received by Alameda
6 County dispatch, and that Alameda County will
7 dispatch Alameda County Fire Services as a first
8 responder.

9 There is also the opportunity for mutual
10 aid, but that is a determination that is made on a
11 case-by-case basis. There was no testimony that
12 Tracy Fire would be first in, as Mr. Fragoso has
13 said.

14 Further, there is extensive testimony
15 that the hazmat response would be from Alameda
16 County, it would not be from San Joaquin County.
17 There is extensive testimony regarding the fact
18 that Tracy Fire currently does not have paramedic
19 services, and those services are currently
20 provided by Alameda County.

21 We believe tha the testimony summarizing
22 the Commission decision fully supports the fact
23 that the facility will be adequately served by
24 Alameda County Fire Services, and that the amount
25 of financial contribution that the Applicant will

1 make to fire services in both counties is adequate
2 to meet the needs of those that will respond.

3 If you listen carefully to Mr. Boyd this
4 morning, what you hear is something different.
5 Unlike Mr. Sarvey, who has at least addressed
6 issues that are on the record at this proceeding,
7 Mr. Boyd is attempting, through his petition for
8 reconsideration -- and most especially his reply
9 to our response -- to raise new issues that have
10 not been previously addressed in this proceeding.

11 The Commission has been very clear. For
12 example, in it's decision denying the petition for
13 reconsideration of the Sutter Power Plant Project,
14 that "a petition for reconsideration may only
15 address matters that have been previously raised
16 on the record during the course of a proceeding,
17 before the decision or order at issue is made,
18 unless it would be impossible to do so."

19 And Mr. Boyd has not made any showing
20 here today why any of these so-called corporate
21 character issues, issues and matters that relate
22 to a period of time which he says is several years
23 ago, could not have been raised during the course
24 of this proceeding.

25 Even if they could not have been raised

1 until now, we believe that they are simply
2 irrelevant to any determination that the
3 Commission must make under the Warren-Alquist Act
4 for the license of this proceeding.

5 So, in summary, if you look particularly
6 at the reply that he has filed, we would note that
7 it doesn't respond to issues that were raised in
8 our response, therefore isn't a proper reply. It
9 doesn't address issues that were raised in CARE's
10 initial petition. And it doesn't raise issues
11 that are raised during the proceeding.

12 And on top of all that, many of the
13 documents that he filed were filed yesterday, one
14 day after the deadline that the Commission
15 specified for filing replies. You could strike
16 all of that information if you chose to do so, but
17 I think another possible and more appropriate
18 response would be simply to find that all of it is
19 irrelevant.

20 That then briefly summarizes the
21 position of the Applicant with respect to the two
22 petitions, and we would encourage you to deny both
23 petitions, and we would be available to answer any
24 questions that you may have.

25 COMMISSIONER PERNELL: All right. Thank

1 you. Any questions for the Applicant? Now we
2 turn to staff.

3 MS. DE CARLO: Thank you. Lisa De Carlo,
4 Staff Counsel. Staff does not believe that
5 Petitioners have provided any new information
6 calling into question the sufficiency or the
7 validity of the Commission's decision. While the
8 Commission did not adopt all the staff's proposed
9 air quality mitigation, it nevertheless relied on
10 evidence in the record to support it's decision.

11 Therefore, staff does not believe that
12 petitioners have provided any compelling reason to
13 revisit the decision, or any issues on which the
14 decision was based.

15 COMMISSIONER PERNELL: Any questions for
16 staff? Thank you. Before we return to the dais
17 for this issue, I'm going to allow Ms. Sarvey one
18 last shot, and then it's coming to the dais. Ms.
19 Sarvey.

20 MS. SARVEY: I'd like to apologize. I
21 wrote on my comment card I wanted to make
22 additional comments about fire, Mr. Rubenstein and
23 Ms. De Carlo's position.

24 In relation to the fire department, I
25 would like to clarify what the community is asking

1 for. Mr. Fragoso, our Deputy Chief, was correct
2 in identifying that we will probably be responding
3 for an injury or illness at the plant, and would
4 be there first to save a life or somebody is
5 burning.

6 And the other situation where we would
7 be responding would be a hazardous materials
8 situation, where my community could be exposed to
9 something that is spilled, and we may need to be
10 informed that we need to go inside and close our
11 doors and windows.

12 We have no early warning system in our
13 community. None's been provided, even though the
14 Commission is getting ready to put three plants
15 next to our community, there's been no discussion
16 on this.

17 It is very important that the money be
18 provided for the hazardous materials vehicle,
19 because we will be the ones who are going to have
20 to assess whether or not my community is at risk.
21 And to do that we need a hazardous material
22 vehicle that has the computer and all the
23 information and equipment to make those decisions
24 in a proper manner.

25 If you are going to not provide the

1 equipment my fire department needs you at least
2 must address the issues that we brought up, that
3 if we respond in any way Alameda County does not
4 reimburse us for our manpower, our maintenance, or
5 our fuel costs.

6 And it is unconscionable that Tracy as
7 taxpayers are expected to absorb this burden when
8 we are not even getting the electricity. It's
9 predominately for the Bay Area.

10 So that's not fair. You have to at
11 least make some kind of condition that the Alameda
12 County Fire Department must reimburse us for
13 whatever they use. That's the only fair thing
14 that you can do for the taxpayers.

15 Now in response to Mr. Wheatland's
16 comments, Calpine is well aware that they are
17 having compliance issues. They are well aware of
18 their violations. If they had had true corporate
19 character they would have told you that they have
20 issues, and they would have voluntarily told you
21 how they are working towards resolving these
22 issues.

23 But they chose to be deceitful and to
24 hide that information. And it is not fair to say
25 that we cannot examine their corporate character

1 because it's past the date. They are making the
2 people have to go and look and beat the bushes to
3 find out what's going on, while they are spending
4 millions to make it impossible to find that
5 information.

6 If they wanted to be able to have a say
7 and respond to the corporate character issues that
8 were brought up, during the hearing they would
9 have said "we're having problems, this is what
10 we're doing to address them. We are working hard
11 to be a good neighbor."

12 They chose to hide their corporate
13 character. We did not ask them to make that
14 decision, they chose that on their own.

15 Mr. Rubenstein[s comments I really need
16 to address. I am implementing the money that was
17 given to the GWF air quality committee. I'm
18 working specifically in the heavy duty engine
19 program. I have been working on this program six
20 days a week, fulltime, trying to implement this
21 program, for almost two years.

22 We are making headway, I'm working hand-
23 in-hand with the pollution control district, we
24 still do not have a single vehicle completed. We
25 hope to have 33 school buses completed by January

1 1st. We're working hard, everybody's trying hard.

2 The heavy duty engine program is a very,
3 very difficult program to implement. The real
4 issues is not what he was saying, that we were
5 given 66.8 tons of mitigation and that that is
6 acceptable. It's not.

7 The reason it's not is my pollution
8 control district, on the record, said that the
9 ERC's that were provided are worthless pieces of
10 paper that do nothing to improve my air quality.

11 I'm being left with over 51,000 tons of
12 pollution in my town that are not being mitigated.
13 And if it's taking me two years to do the best job
14 possible in the school bus program, what is being
15 done for my air quality while they're polluting
16 that 66.8 tons and we're trying to get the program
17 off the ground.

18 We're sucking fumes the whole time. The
19 problem is this project is not mitigated. The
20 pollution control district said that ERC's are
21 worthless. The only thing that affects air
22 quality and improves it is the heavy duty engine
23 program.

24 I am working on that program. Mr. Seyed
25 has testified that I'm very good at working in his

1 program, in the Tesla proceedings. That I know
2 what I'm doing. I'm telling you, it is a hard,
3 hard program to implement. It's not as they are
4 presenting it. We are going to be at risk.

5 And in regards to no new issues being
6 raised, and things not being on the deadline, I
7 have to go back to what I said before. It is not
8 our fault. They chose not to be forthcoming about
9 their difficulties. It is not our fault. That
10 was a choice they made on their own.

11 And you have to look at the fact that it
12 is in the record that ERC's are worthless, they do
13 nothing for my air quality, that it's going to be
14 difficult to implement, and I disagree, I think
15 you have to look at what happened.

16 COMMISSIONER PERNELL: Ms. Sarvey, can
17 you begin your summation please.

18 MS. SARVEY: My summation, I guess, is
19 please think for yourselves. Think for
20 yourselves, follow your heart, be a human being,
21 think about the air that you breathe and ask him
22 to tell his company you should have been a man and
23 come clean in the first place. Thank you.

24 COMMISSIONER PERNELL: Thank you. And
25 now this item is back to the dais. Commissioners,

1 any comments?

2 COMMISSIONER BOYD: Mr. Chair?

3 COMMISSIONER PERNELL: Commissioner
4 Boyd.

5 COMMISSIONER BOYD: Since you did the
6 courtesy to Ms. Sarvey of extraordinary testimony
7 I feel I've got to ask Mr. Wheatland if he has any
8 response. I would particularly like to have
9 somebody, either on staff or from the Applicant,
10 to address this continuing reference to ERC's and
11 their irrelevance, and the statements of the
12 district that, I think, from my understanding of
13 the record and my participation at the last
14 hearing, are not accurate or relevant to what
15 we're dealing with today.

16 But the record is now replete with
17 constant references. This record is liable to be
18 utilized in legal testimony, and I just think the
19 issue needs to be discussed so I can understand
20 the issue.

21 MR. WHEATLAND: And to answer your
22 question I'd like to turn to Mr. Rubenstein
23 please.

24 MR. RUBENSTEIN: Commissioner Boyd, I
25 share your concern. The statements that have been

1 referred to, both in the written submissions and
2 today's hearing, relate to a comment made by Seyed
3 Sadredin of the San Joaquin air District during, I
4 believe it was the August 20th adoption hearing by
5 the Commission, at which a question was put to him
6 as to whether the district would find it
7 acceptable to have the approximately \$1 million in
8 litigation funds be applied to the purchase and
9 surrender of additional emission reduction
10 credits.

11 In that specific context Mr. Sadredin
12 said that, on behalf of the San Joaquin district,
13 he would not find that acceptable as mitigation.
14 However, the context of that statement is that the
15 underpinnings of the air quality mitigation
16 agreement between East Altamont and the San
17 Joaquin district, and the underpinnings of the San
18 Joaquin staff's and board's position ultimately
19 adopting that agreement and concluding that
20 impacts had been mitigated, was reliant on exactly
21 the same type of emission reduction credits that
22 had been surrendered to satisfy the Bay Area Air
23 District's requirements in mitigation a portion of
24 this project's impacts.

25 So I think to fully appreciate and

1 understand Mr. Sadredin's comment, you have to
2 recognize that, prior to making that comment he
3 had already accepted the surrender of emission
4 reduction credits, exactly the same form of
5 credits we're talking about here. Had accepted
6 those as mitigation for the bulk of the impacts
7 associated with the East Altamont project.

8 He was specifically objecting to the
9 surrender of additional mitigation credits for the
10 \$1 million in mitigation fees. And I'll be happy
11 to answer any further questions, but I hope that
12 places it in some context.

13 COMMISSIONER BOYD: Thank you, Mr.
14 Rubenstein. I wanted to hear the Applicant's
15 interpretation, and I must say that, based on my
16 over 25 years in the air quality business, that's
17 the way I understood the dialogue.

18 I believe I put the question to the
19 district as to whether -- and it was all
20 hypothetical, and now I find the record replete
21 with this of ERC's that are irrelevant in my mind
22 -- it was put to Mr. Sadredin as a question about
23 well, in a general sense in the air pollution
24 business, ERC's could have been utilized, but the
25 district said they would rather have the offset,

1 the money for the programs we've talked about than
2 to have ERC's, and yes he did make a rather flip
3 comment about ERC's might perhaps be worthless in
4 that case.

5 But I agree with Mr. Rubinstein, he did
6 not say that the ERC's that preceded this
7 agreement were affected by that statement. So
8 I've been quite concerned about the misuse and
9 mischaracterization of the agreement that was
10 reached in front of this Commission at -- it
11 started out at the July meeting and ended up in
12 the August meeting.

13 Another comment I want to make, Mr.
14 Chairman, is the reference to my statement in July
15 about this being a crapshoot. I don't want that
16 in the record misunderstood. That was part of the
17 discussion this Commission was having about the
18 case that had been presented to us that day.

19 And it was unclear to many members of
20 this Commission where this item was going. And
21 that led to the decision by the members of this
22 Commission to defer action on the item, and to put
23 it off.

24 And it was brought back to us in August,
25 and we had a lengthy hearing in August to discuss

1 all the issues. And i believe I said in August --
2 although I didn't use the term -- that I was
3 satisfied with all the explanations that I had
4 heard. So I want the record to reflect that.

5 Lastly, the Bay Area counsel in the
6 record and at the hearing told us that the
7 violations that had been cited in the July hearing
8 had been resolved, and that there were no
9 outstanding violations. So I just know what's in
10 the record, and I am puzzled by the continuing
11 discussion of violations.

12 But I know it's a question brought by
13 the Intervenors regarding the character of the
14 Applicants, which I don't think is relevant to
15 this issue. Thank you Mr. Chairman.

16 COMMISSIONER PERNELL: Thank you
17 Commissioner Boyd.

18 COMMISSIONER GEESMAN: Mr. Chairman?

19 COMMISSIONER PERNELL: Commissioner
20 Geesman.

21 COMMISSIONER GEESMAN: I guess as an old
22 Intervenor myself I don't begrudge the
23 Intervenor's the opportunity to mischaracterize
24 the record.

25 (laughter)

1 I hope I never did it myself. I will
2 say, Commissioner Boyd, that I do appreciate your
3 pointing it out when it has been as obvious as it
4 has been I think this morning.

5 Mr. Chamberlain clarified this morning
6 that if we want to change our minds this does give
7 us the opportunity to change our minds. I haven't
8 heard anything today that suggests that would be a
9 wise thing to do.

10 I believe all these issues, including
11 the one of notice of existing violations, was in
12 front of us in August, and there's nothing new
13 that I have heard today that would cause me to
14 question the wisdom of the decision that we made
15 in August.

16 I was not available for the July
17 meeting, but in preparation for the August meeting
18 I did review the staff FSA, the brief filed by the
19 various parties. I've reviewed the briefs for
20 this petition, and also the pleadings in front of
21 the Supreme Court.

22 I remain convinced that we made a good
23 decision in August, I remain convinced that this
24 is a good project, and I would move that we deny
25 both Mr. Sarvey's and CARE's petitions for

1 reconsideration.

2 (Thereupon, the motion was made.)

3 COMMISSIONER PERNELL: Okay, there is a
4 motion on the floor.

5 COMMISSIONER BOYD: Mr. Chairman, I'd
6 like to second that motion, and I'd like to make a
7 comment.

8 (Thereupon, the motion was seconded.)

9 COMMISSIONER PERNELL: All right. There
10 is a motion and a second. The motion is to deny
11 both Intervenor's -- Mr. Sarvey and CARE's --
12 petitions for reconsideration on the question.

13 COMMISSIONER BOYD: My comment would be
14 that I concur with the calm, reasoned explanation
15 that my peer, Commissioner Geesman, has given
16 relative to the issues. I just wanted to say that
17 I wanted to thank the Commission Committee and the
18 staff for the work that they've done on this
19 issue.

20 This has been a difficult issue. I
21 agree totally with Commissioner Geesman's comments
22 about the rights of Interveners, and I have no
23 complaints or objections about the rights of
24 people to bring their case before this body.

25 This is a very good form of government

1 that does its work in the sunshine, and I think
2 it's most appropriate -- and I think we can both
3 agree and disagree with a staff who legally are
4 intervenors and with whom we can't deal on some of
5 these cases.

6 And with the intervenors -- I didn't
7 want my efforts to clarify the record to in any
8 way demean the rights of people to intervene. And
9 I just want to indicate that, based on my comments
10 about my long history in air quality, I really do
11 care about air quality and the public health, and
12 I do think that what the staff and the Commission
13 has done is extremely protective of the health of
14 the people in the area, and I do believe we've
15 done the right thing, and I don't think politics
16 had anything to do with it.

17 So, as I said, I have seconded the
18 motion.

19 COMMISSIONER PERNELL: Thank you,
20 Commissioner. Anything else on the question?
21 Hearing none, all those in favor to deny the
22 reconsideration of both petitioners signify by
23 saying aye.

24 (Ayes.)

25 Opposed?

1 The ayes have it three to zero. Thank
2 you all for coming.

3 All right, we're now on item five,
4 Report to the Legislature, SB 284, possible
5 approval of the Commission's recommended report to
6 the Legislature mandated by Senate Bill 284,
7 regarding the Best Design Practices for All New
8 Public Schools.

9 Staff, will you brief the board,
10 briefly.

11 MR. FLAMM: Good morning,
12 Commissioners. I'm Gary Flamm with the Energy
13 Efficiency Division, and today we are requesting
14 approval to send a report to the Legislature
15 entitled "Recommended Best Design Practices For
16 All New Public Schools."

17 The Legislature, with the enactment of
18 Senate Bill 284, Senator Polanco directed the
19 Energy Commission, in consultation with the state
20 department of Education, Division of the State
21 Architect, and the Office of Public School
22 Construction, to recommend Best Design Practices
23 that include energy efficiency measures for all
24 new public schools, including best design
25 practices, and measures that would be cost-

1 effective and incorporate energy efficiency design
2 and technology that would provide the greatest
3 amount of energy efficiency savings within a seven
4 year cost recapture period.

5 The Commission staff had completed this
6 report, in consultation with the other state
7 agencies, and the report has been approved by the
8 Energy Efficiency Committee. Fortunately, we
9 didn't have to start from scratch. The report
10 builds on the excellent work done by the
11 Collaborative for High Performance Schools, also
12 known as CHIPS.

13 CHIPS -- in addition to the Energy
14 Commission staff being involved in CHIPS -- it's
15 members include the state's IOU's, two major
16 municipalities, municipal utilities, state
17 agencies, the Department of Education Division of
18 State Architect, Office of Public School
19 Construction, the Integrated Waste Management
20 Board.

21 There's been an extensive peer review for
22 the CHIPS documents. And the Collaborative for
23 High Performance Schools defines a high
24 performance school as a facility with a superior
25 learning environment and low operating costs

1 because of saving energy, resources, and money.

2 And the findings of this report to the
3 Legislature includes that schools can effectively
4 exceed minimum energy standards by up to 20
5 percent, using a variety of design strategies and
6 technologies. In fact many are already doing
7 this.

8 The increased first cost to achieve
9 these savings can range from zero to five percent,
10 as state's new construction grants to qualifying
11 schools. State's new grants to schools of up to
12 five percent additional funds over traditional
13 allocation formulas would be enough to pay for the
14 best practices recommendation, and are sufficient
15 to encourage schools to build high performance
16 school criteria.

17 And the extra funds would be returned to
18 school districts and lower operating costs within
19 the seven years, as required by the Legislature.
20 The additional funds could be made available using
21 procedures similar to those used in Assembly Bill
22 16, which require California schools, for this
23 grand adjustment, to build schools 15 percent
24 better than Title 24.

25 The projects must have a seven year

1 payback, and the grant adjustment is not to exceed
2 five percent of the state grant authorization on
3 the education code for the state's share of the
4 cost associated with design and other plant
5 components.

6 So staff recommends your approval to
7 send this report to the Legislature, and we're
8 available to answer any questions.

9 COMMISSIONER PERNELL: Okay. Mr. Mills,
10 is there anything you want to add before --?

11 MR. MILLS: We did rely very extensively
12 on work that was already done by the CHIPS, and
13 rather than give the Legislature the types of
14 material that has been produced by CHIPS, which is
15 probably more and in excess of what was really
16 requested, we are going to provide a rather brief
17 report.

18 We are going to ask the Office of
19 Governmental Affairs, when we transmit this to
20 them, to cite the websites and other material that
21 is available in this report.

22 COMMISSIONER PERNELL: Thank you. The
23 item is back to the dais. Any questions?

24 COMMISSIONER GEESMAN: Question, Mr.
25 Chairman.

1 COMMISSIONER PERNELL: Commissioner
2 Geesman.

3 COMMISSIONER GEESMAN: I recognize the
4 statute specified the seven year payback period,
5 but we're providing a longer payback threshold in
6 our bond program, are we not?

7 MR. MILLS: We allow a ten year payback
8 in our loan program, yes.

9 COMMISSIONER GEESMAN: And do you know
10 what the Department of General Services is using
11 now, in terms of state buildings, to determine
12 improvements?

13 MR. MILLS: The seven year number
14 appears quite a bit in legislation, a couple of
15 pieces of legislation, and our discussions with
16 the Department of Financing and the Department of
17 General Services are kind of the origin of those
18 numbers. The Department of Finance has been using
19 a seven year simple payback criteria.

20 COMMISSIONER GEESMAN: So our loan
21 program is the only one you know of that actually
22 goes out the longer period?

23 MR. MILLS: Our loan program, as well as
24 private municipal-type leasing programs, go out
25 beyond.

1 COMMISSIONER GEESMAN: Okay. And that
2 of course would allow a broader array of both
3 techniques and technologies to be utilized, right?

4 MR. MILLS: Yes.

5 COMMISSIONER GEESMAN: Thank you. I
6 would move that we approve the report.

7 (Thereupon, the motion was made.)

8 COMMISSIONER BOYD: I would second that
9 item, with compliments to Commissioner Pernel. I
10 know that he has been very dedicated to this
11 issue, and I'm glad to see additional success in
12 this area.

13 (Thereupon, the motion was seconded.)

14 COMMISSIONER PERNELL: Well, thank you.
15 It's been moved and seconded that we approve staff
16 recommendations for the report. All those in
17 favor?

18 (Ayes.)

19 Opposed?

20 Ayes have it three to zero.

21 Item number six. Renewable portfolio
22 standard implementation. Possible adoption of
23 the Decision on Phase 2 Implementation Issues
24 Final Committee Report. Staff, would you brief
25 the board?

1 MR.TUTT: Thank you, Commissioners. The
2 item before you is the possible adoption of the
3 Energy Commission's decision on phase two of the
4 renewable portfolio standard implementation rules.

5 COMMISSIONER BOYD: Give your name.

6 MR.TUTT: I'm sorry, my name is Tim
7 Tutt, Energy Commission, Renewable Energy Program
8 Technical Director. I'm with Gabe Herrera, our
9 esteemed counsel, who was going to refuse to come
10 up here with me, but I twisted his arm.

11 Commissioners, the item before you is,
12 as I said, adoption of a decision document on
13 phase two of the implementation issues for the
14 renewable portfolio standard. This document
15 covers three main parts of the Energy Commission's
16 responsibility for renewable portfolio standard.

17 The allocation of supplemental energy
18 payments, the certification of renewable
19 providers, and the development of an accounting
20 system to trap the generation tha is used for
21 compliance within renewable portfolio standards.

22 In this document, the Committee is
23 recommending that you decide some basic rules for
24 supplemental energy payments and basic structure
25 of accounting systems. For example, part of the

1 document that we're asking you to decide, what
2 counts -- or rather, when counts as "new."

3 And the document suggests that you adopt
4 January 1st, 2002 as the starting date, so that
5 something that was built or repowered after that
6 date would count as new. That's significant,
7 because only new facilities are eligible for
8 supplemental energy payments from the public good
9 charge fund under the RPS.

10 Existing facilities may receive some
11 public goods charge payments under the existing
12 account, but they are not eligible for
13 supplemental energy payments.

14 We've got extensive language in here
15 about what is meant by repowering, and to allow
16 existing facilities -- and there's a significant
17 number of them in California, existing renewable
18 facilities of a certain age that could repower and
19 participate in the RPS and get some supplemental
20 energy payments if appropriate, under the language
21 in the document.

22 We address the issue in the document of
23 how facilities who participated in our old
24 renewable energy program, SB 90 new account, and
25 received tentative funding awards, should they

1 come online, how those funding awards are handled
2 under the new RPS structure.

3 Whether they will be, whether companies
4 would get those awards or supplemental energy
5 payments -- there's a choice they have to make in
6 the document in order to get those.

7 We address how we will handle
8 certification of these facilities, and address how
9 we will handle the accounting of, the tracking of
10 the energy from these facilities, and help the
11 Utilities Commission determine compliance with the
12 RPS.

13 We will have an interim accounting
14 system initially, while we are planning and
15 working assiduously at setting up a comprehensive
16 centralized electronic accounting system, and we
17 are working with the Western Governor's
18 Association to have that be a western
19 interconnection-wide accounting system, so that we
20 will be able to track whether renewable energy is
21 sold only once here, and in any other state
22 connected to the western interconnect.

23 The report that you have before you was
24 developed with extensive public comment, and we
25 have workshops on May 12th and 13th where staff

1 received comment from stakeholders. There was a
2 Committee document on June 30th, a draft decision
3 that was released, and a committee hearing on July
4 14th.

5 A final committee draft was released in
6 October, and on October 29th we had second --

7 COMMISSIONER GEESMAN: September 29th.

8 MR.TUTT: September 29th, excuse me, I'm
9 jumping ahead of myself. And we also have before
10 you a one page or one and a half page addendum to
11 the document, which addresses some final cleanup
12 of language in a few instances, clarifying what
13 will happen since SB 183 has passed and has been
14 signed by the Governor, and SB 67 has passed and
15 is pending signature, we believe, with the
16 Governor.

17 Those both address the issues of how
18 out-of-state facilities will participate in the
19 RPS and particularly in supplemental energy
20 payment process. We also clarify the definition
21 of new, and some of the definitions of repowering,
22 and clarify what we mean for wind facilities in
23 terms of how they repower.

24 And we've addressed stakeholder comments
25 with those clarifications. So, with that summary,

1 I would urge that you adopt the report.

2 COMMISSIONER PERNELL: Thank you, Mr.
3 Tutt. I know that we have some people on the
4 phone, they want to speak to this issue. I would
5 ask that you state your name and spell your last
6 name for the record, in case I mispronounce it.
7 The first speaker is Mr. Kjellund.

8 MR. KJELLUND: Thank you for the
9 opportunity to speak. I'm not planning on
10 speaking today, I'm happy just to listen in.

11 COMMISSIONER PERNELL: Okay. Would you
12 still spell your name for the record.

13 MR. KJELLUND: My name is Meils
14 Kjellund, the last name is K-j-e-l-l-u-n-d.

15 COMMISSIONER PERNELL: Thank you. Our
16 next listener is Ms. Risch.

17 MS. RISCH: Yes, I'm Peggy Risch. My
18 last name is spelled R-i-s-c-h. Can you hear me
19 well?

20 COMMISSIONER PERNELL: Yes.

21 MS. RISCH: Okay. First of all, I want
22 to thank you for the opportunity to report today
23 on this very important decision before you. And
24 it is an important decision because, from a
25 financial standpoint, what you decide today will

1 have a direct relationship on the business plans
2 of renewable energy companies, and thus your
3 decision today will directly give the green light
4 to renewable energy projects that could
5 disproportionately impact minority populations,
6 unless the California Energy Commission adopts
7 criteria and prohibits the supplemental energy
8 payment and certification of those renewable
9 energy projects that have a documented
10 environmental justice impact.

11 On September 29th I sent the California
12 Energy Commission a letter regarding this issue,
13 and it is clear from looking at the California
14 Public Utilities Code, 383.5D2F, which states "in
15 awarding funding, the Energy Commission may
16 provide a preference to projects that provide a
17 tangible, demonstratable benefit to communities
18 with a plurality of minority or low-income
19 populations."

20 Now the Commission is very much aware of
21 the controversial geothermal projects proposed in
22 the Sacred Medicine Lake highlands. Those two
23 projects, proposed by Calpine, have a documented
24 environmental justice impact, and that providing
25 or lack of guidelines that would prohibit these

1 certifications will give the green light to these
2 projects in the Medicine Lake highland that will
3 do precisely opposite of what the Public Utility
4 Code set forth.

5 And that through this process there will
6 be a significant, disproportionate impact to the
7 minority population in a way that few other
8 renewable energy projects could do. Simply
9 meaning, it will result in the desecration of
10 these sacred lands, effectively destroying one of
11 the most important Indian sites in the state of
12 California.

13 Therefore, I urge you -- and I
14 representing the Mount Shasta Regional Ecology
15 Center -- urge the Commission to give very careful
16 consideration of the language that is utilized in
17 determining what facilities get certified, what
18 facilities receive supplemental energy payment.

19 This public policy should be one that
20 takes a very strong position that states that you
21 will withhold funding and certification of those
22 projects that have a documented environmental
23 justice impact.

24 I also have reviewed some of the
25 previous input from other policy holders, and it

1 is clear from their comments, for example the
2 comment of Mr. Bill Short, the Vice President of
3 the Power Marketing of Ridgewood Power Management,
4 where he basically describes that there is this
5 red light, green light, amber light sort of
6 determination that would come from this
7 certification and/or pre-certification by the
8 California Energy Commission.

9 And it was clearly stated in those
10 transcripts that this decision was important from
11 a financial standpoint for the renewable energy
12 projects because the energy companies will adjust
13 their business plans according to this green
14 light, red light, or amber light that the
15 Commission gives.

16 Therefore it is very clear to me, and it
17 seems to be very clear to you, that your decision
18 today will affect these minority income
19 populations in a very positive or negative way,
20 depending on the criteria that you set forth
21 today.

22 So I urge you very strongly to set for
23 the strongest language, and as I said to prohibit
24 the certification, and to prohibit supplemental
25 energy payments to projects that have documented

1 environmental justice impacts.

2 And --- as I think the Commission is
3 very much aware -- right now pending before the
4 Department of Justice is an investigation by the
5 other California Energy Commission, a violation of
6 Title Six under the Civil Rights Act of 1964.

7 And I believe that, if you would insert
8 this language, that would go a long way to
9 demonstrate the Energy Commission's desire to have
10 support for those communities. And in regards to
11 the Medicine Lake highlands, that minority low-
12 income population is native American. And I thank
13 you very much for your serious consideration of
14 this and my comment.

15 COMMISSIONER PERNELL: Thank you. Any
16 questions?

17 COMMISSIONER BOYD: Mr. Chairman, I'd
18 like to hear the staff's comments on this
19 testimony to understand better their point of view
20 on the issues raised here.

21 MR.TUTT: Commissioner Boyd, there is a
22 provision in SB 1038 -- as Ms. Risch mentioned --
23 that talks about the Energy Commission providing
24 preference to projects that provide tangible,
25 demonstrable benefits to communities with a

1 plurality of minority or low-income populations.

2 On page 26 of our report we have listed
3 that as one of the issues that we are deferring
4 until the more detailed guidebook stage of
5 development of rules for the RPS. So we will be
6 addressing that concept, that requirement in law,
7 at a later stage.

8 It's perhaps premature to address it in
9 this document given that we are deferring it.
10 There's lots of things happening at the Public
11 Utilities Commission and our Commission that we
12 need to understand before we can really implement
13 that part of the law that governs the RPS and our
14 responsibility under it. Mr. Herrera, do you
15 have --?

16 MR. HERRERA: Yes, with respect to the
17 CPUC, it's directed to utilities in putting
18 together their procurement plans, their renewable
19 resource procurement plans, to identify in those
20 plans what factors the utilities would consider in
21 giving preference to these types of communities.

22 And so I think, as Mr. Tutt has
23 identified, it doesn't make sense at this point in
24 time for the Commission to take any action. It's
25 better for us to wait, get more informed, to see

1 how these utilities propose to address this, and
2 then in the development of guidelines establish
3 criteria to give or provide preferences to these
4 types of projects.

5 Also, just one other point of
6 clarification, the statute allows the Commission
7 to give preference with respect to the issuance of
8 supplemental energy payments. It doesn't say that
9 we should preclude payments or preclude
10 certification to facilities that don't.

11 So I think Ms. Risch has somewhat of a
12 leap of logic there, and it's not directly
13 connected to the statutory provisions that apply
14 to us.

15 COMMISSIONER PERNELL: Okay,
16 Commissioner Geesman.

17 COMMISSIONER GEESMAN: Mr. Chairman, I
18 would move the adoption of the decision, and thank
19 the staff and various stakeholders for their
20 participation in a very extended public process.

21 (Thereupon, the motion was made.)

22 COMMISSIONER PERNELL: So moved by
23 Commissioner Geesman.

24 COMMISSIONER BOYD: I'll second the
25 motion, Mr. Chairman.

1 (Thereupon, the motion was seconded.)

2 COMMISSIONER PERNELL: Second by
3 Commissioner Boyd. On the question, I would just
4 echo Commissioner Geesman's comments. I know that
5 oftentimes the Legislature passes and bills and we
6 have to do reports and come up with the regulatory
7 scheme and make it work. And it's not an easy
8 task. So I also want to thank staff, and
9 particularly Commissioner Geesman for overseeing
10 this work project.

11 On the question, all those in favor?

12 (Ayes.)

13 Opposed?

14 Ayes have it three to zero.

15 Commissioners, items seven, eight, nine
16 and ten are all energy conservation assistance act
17 account items. I'd like to, without objection,
18 take these items into one motion. I will read
19 each item, and perhaps we can do one motion to
20 satisfy those four items.

21 Item number seven, energy conservation
22 assistance account. Possible approve of a \$2
23 million loan to the Irvine Valley College to
24 install energy efficient lights, HVAC systems,
25 controls and photovoltaic panels. This project is

1 estimated to save about \$200,000 annually and
2 reduce energy cost and has a simple payback of ten
3 years.

4 Item number eight, energy Conservation
5 Assistance Account. Possible approval of a
6 \$203,491 loan to Gateway Hospital and Mental
7 Health Center to install energy efficient lights,
8 HVAC systems and controls. This project is
9 estimated to save about \$25,061 annually and
10 reduce energy costs, and has a simple payback of
11 eight years.

12 Item number nine, Energy Conservation
13 Assistance Account. Possible approval of a loan
14 to the Mojave Desert Air Quality Management
15 District for \$175,000 to install a 77 kilowatt
16 photovoltaic solar system on the district
17 building's roof. This project is estimated to
18 save \$17,500 annually, and have a simple payback
19 of ten years.

20 Item number ten, Energy Conservation
21 Assistance Account. Possible approval of a loan
22 to the city of Escondido for \$1,107,890 to install
23 a 150-ton natural gas engine driven chiller system
24 at the California Center for the Art building
25 complex. This project is estimated to save about

1 \$110,789 annually and has a simple payback of ten
2 years.

3 COMMISSIONER GEESMAN: Mr. Chairman, I
4 would move that we approve the loans identified in
5 items seven, eight, nine and ten.

6 (Thereupon, the motion was made.)

7 COMMISSIONER PERNELL: It's been moved
8 that --

9 COMMISSIONER BOYD: I'll second that
10 motion.

11 (Thereupon, the motion was seconded.)

12 COMMISSIONER PERNELL: It's been moved
13 and seconded that we approve the loans identified
14 in items seven, eight, nine and ten. On the
15 question, all those in favor?

16 (Ayes.)

17 Opposed?

18 Ayes have it.

19 Thank you for the presentation. All
20 right. Item number 11. 2005 Building Energy
21 Efficiency Standards. Commission consideration of
22 adopting hearing -- commission consideration of
23 adoption hearing of the '05 building energy
24 efficiency standards to November 5th, '03, to
25 allow for publication of 15-Day Language; however,

1 no decision will be made, but comments may be
2 received. Just briefly, Mr. Pennington.

3 MR. PENNINGTON: Hi, I'm Bill
4 Pennington, Manager of the Buildings and
5 Appliances Office at the Commission. The
6 Commission has been involved in a proceeding for
7 the last two years to develop the extensive
8 changes to the building standards to go into
9 effect in 2005.

10 And have had 15 public workshops and
11 hearings on those standards so far. We're at the
12 point where, in the formal process, the rulemaking
13 proceeding, we issued 45 day language to open the
14 45-day comment period on August 8th.

15 And in the Notice Of Proposed Action
16 that's required by the Administrative Procedures
17 Act to describe and justify the rulemaking,
18 agencies have to specify the adoption date if
19 they're going to be adopting the proposed
20 standards without any changes.

21 So at the end of the 45-day period that
22 would be the date that's noticed to adopt. Well,
23 that's where we're at right now, October 8th was
24 what was in that Notice of Proposed Action. But
25 we have, the Committee has held a committee

1 hearing on September 4th, and we've had a variety
2 of written comment submitted to the record.

3 And there are good reasons to make a
4 number of changes to the 45-day language proposal.
5 So to do that administratively, we need to release
6 15-day language, and have that language out to
7 public review for 15 days. So that means that
8 we're not here to have the standards adopted
9 today, but we need to continue the adoption
10 hearing to November 5th.

11 And so that's what's proposed. Since
12 this day is officially noticed in the Notice of
13 Proposed Action, some people might not have gotten
14 the word that there was not going to be an action
15 today, and they may have come to speak. So part
16 of the item is to give people a chance to comment
17 on the standards if they wish, recognizing there
18 is no decision to be made today.

19 COMMISSIONER PERNELL: Thank you, Mr.
20 Pennington. I notice we have one blue card, so
21 would you come forward please. Mr. Arita.

22 MR. ARITA: Good morning Commissioner
23 Pernell, members of the Commission. For the
24 record, my name is Steven Arita with the Western
25 States Petroleum Association.

1 I'd like to start by just expressing
2 staff's recommendation to continue this item. As
3 you know, we have submitted comments, and we did
4 testify during the Energy Efficiency Committee
5 Workshop held last month. Suffice it to say, we
6 still have many concerns.

7 We do appreciate the fact that Mr.
8 Pennington and his staff -- we have met, as
9 recently as last Friday, and we hope to continue
10 to meet, address and resolve our issues and
11 concerns. And again, we support the
12 recommendation to continue this item. Thank you.

13 COMMISSIONER PERNELL: Thank you.
14 Anyone else? The item is now back to the dais.

15 COMMISSIONER BOYD: Mr. Chairman, I move
16 for adopting staff recommendation as we were
17 hearing.

18 (Thereupon, the motion was made.)

19 COMMISSIONER GEESMAN: Second.

20 (Thereupon, the motion was seconded.)

21 COMMISSIONER PERNELL: It's been moved
22 and seconded to adopt staff recommendation on the
23 question. All those in favor?

24 (Ayes.)

25 Opposed.

1 Ayes have it three to zero.

2 Okay, Energetics Incorporated. Possible
3 approval of Contract 500-03-010 for \$42,992 to
4 develop a roadmap report for petroleum refineries
5 in California. Staff, would you please brief the
6 board. Briefly.

7 MR. KULKARNI: My name is Pramod
8 Kulkarni. I'm with the Public Interest Research
9 Program. I'm Program Lead for industrial part of
10 the PIER Research Program. We are requesting this
11 contract with Energetics to develop a map.

12 We got a grant from USDOE, Department of
13 Energy, for \$185,000 to conduct activity in area
14 of analysis and identifying research opportunities
15 for petroleum refineries.

16 We are using that portion of the money
17 to have a contract with Energetics so we can have
18 a workshop and identify issues that could be
19 resolved through research and development and PIER
20 contributions. So this is the summary of the
21 proposal.

22 COMMISSIONER PERNELL: Any questions?

23 COMMISSIONER BOYD: I'll move the item.

24 (Thereupon, the motion was made.)

25 COMMISSIONER GEESMAN: Second.

1 (Thereupon, the motion was seconded.)

2 COMMISSIONER PERNELL: The item has been
3 moved and seconded to approve staff
4 recommendations on the question.

5 All those in favor?

6 (Ayes.)

7 Opposed?

8 Ayes have it, thank you very much.

9 Item number 13, Reflective Energies.
10 Possible approval of contract 500-03-012 for
11 \$710,000 to do follow-one work to the existing
12 Reflective Energies Contract, to further improve
13 interconnect standard for distributed generation.
14 And I think we have Mark.

15 MR. RAWSON: Yes, good morning,
16 Commissioners. My name is Mark Rawson. If you'll
17 permit me, I'll just take 15 seconds, I know it's
18 been a long meeting, to give a little context for
19 this item, 13, and the next two items, 14 and 15,
20 that my colleagues will present.

21 I'm Program Manager for the Distributive
22 Energy Resource Integration R&D Program within
23 PIER, under Laurie Ten Hope. These are three
24 research contracts that we're presenting today.
25 Our plan is part of our program, and our research

1 prime, and it's focused on interconnection grid
2 effects and market integration issues associated
3 with distributed energy resources.

4 These projects are consistent with our
5 research plan. They are also consistent with and
6 in support of policies adopted by the Commission
7 in both the DG strategic plan that was adopted
8 last summer, and with item five of the recently
9 adopted Energy Action Plan.

10 All these projects have been brought to
11 the R&D Committee for their consideration and
12 approval, and we're going to be seeking your
13 approval on these contracts in order to attain the
14 goals and objectives of our research program and
15 the state policies in this area.

16 So with that context, I'd like to
17 introduce my colleague, Dave Michel, who'll
18 provide some specific information, if you desire,
19 on the agenda item 13.

20 COMMISSIONER PERNELL: Okay. Let me
21 just ask, are there any questions on item 13?

22 COMMISSIONER GEESMAN: No, I would add,
23 for 13, 14, and 15, this is important work and
24 will also help along the long-awaited and about to
25 launch OII of the PUC on distributive generation

1 policy issues.

2 And I think that Commissioner Boyd and I
3 have heard a lot about distributed generation in
4 our hearings on the IEPR this past week. I think
5 the staff is on the right track and this is
6 important work for us to do.

7 COMMISSIONER PERNELL: All right. Is
8 there any objection in taking the three items in
9 one motion, if I read them? Okay, let me read --
10 I've read item 13.

11 Item number 14, National Renewable
12 Energy Laboratory. Possible approval of Contract
13 500-03-011 for \$1,614,492 to develop a universal
14 interconnection device, study the effects of
15 unbalanced loading of distributed generation (DG)
16 on voltage regulation, model anti-islanding
17 effects of DG and evaluate innovative rate designs
18 for distributed generation.

19 Item number 15, M.Cubed. Possible
20 approval of Contract 500-03-009 for \$595,647 to
21 establish a "test bed" to demonstrate and measure
22 the impacts of actual distributed energy resources
23 on a distribution system.

24 COMMISSIONER GEESMAN: Mr. Chairman, I
25 would move the contracts identified in items 13,

1 14, and 15.

2 (Thereupon, the motion was made.)

3 COMMISSIONER BOYD: Mr. Chairman, I'd
4 like to concur in the comments of Commissioner
5 Geesman about these projects. I did receive a
6 very good briefing from the staff on these items,
7 and I would agree, they're incredibly important to
8 the future of distributed energy and distributed
9 generation, so I would be glad to second the
10 motion.

11 (Thereupon, the motion was seconded.)

12 COMMISSIONER PERNELL: All right. It's
13 been moved and seconded to approve staff
14 recommendations on items 13, 14, and 15. All
15 those in favor?

16 (Ayes.)

17 Opposed?

18 Hearing none, the ayes have it. Items
19 13, 14 and 15 will be approved. Thank you very
20 much for all your good work.

21 Okay, item 16, the minutes. To approve
22 the approval of minutes from September 9th.

23 COMMISSIONER GEESMAN: So moved.

24 (Thereupon, the motion was made.)

25 COMMISSIONER BOYD: Since you need a

1 quorum I'll second the motion, but note that I was
2 absent from the meeting, so I am not reflecting on
3 content.

4 (Thereupon, the motion was seconded.)

5 COMMISSIONER PERNELL: Okay. IT's been
6 seconded, and perhaps we should move the approval
7 of the minutes to the next meeting, because we
8 only have two votes here?

9 COMMISSIONER BOYD: Well, I didn't
10 abstain, unless legal counsel advises me to do so.

11 MR. CHAMBERLAIN: I think a Commissioner
12 who wasn't here can still vote on the sufficiency
13 of the minutes.

14 COMMISSIONER PERNELL: All right. Thank
15 you, Mr. Chamberlain. All those in favor of
16 approval of the minutes of September 9th?

17 (Ayes.)

18 Opposed?

19 Ayes have it three to zero.

20 Commission Committee and Oversight.

21 Hearing none, Chief Counsel's Report.

22 MR. CHAMBERLAIN: Thank you, Mr.
23 Chairman. I know you've all been on the road a
24 lot for the IEPR hearings so you may not have
25 caught up with all your e-mail, but I did want to

1 bring to your attention that I sent around an
2 electronic copy of the filing that we made in the
3 California Supreme Court on the East Altamont
4 case.

5 I have paper copies in case you would
6 like to have one. In addition, Mr. Bles has made
7 an important filing in the Ninth Circuit Court of
8 Appeals, which I believe he also provided you by
9 electronic copy.

10 This was a motion to stay the effect of
11 the district court's decision on our appliance
12 efficiency standards. The district court had
13 issued an injunction enjoining us from collecting
14 information, or requiring the collection of
15 information from appliance manufacturers, and this
16 has the effect of causing our appliance database
17 to become stale as time goes on as we appeal that
18 decision.

19 And so we asked the Court of Appeal to
20 put a stay on that injunction, to allow us to
21 continue to collect the information pending the
22 appeal. We also asked for an expedited appeal, so
23 that in case the court doesn't grant the stay,
24 which is -- it's both an evaluation of the
25 probability of our success on the merits, and also

1 the relative hardships between granting or denying
2 the stay.

3 And there are, arguably, impacts on both
4 sides. So we're not exactly sure how the court
5 will come out on that. So we've asked them to
6 expedite the appeal as well, so that regardless of
7 their decision on the stay the impacts would be
8 minimized.

9 I should also indicate to you that I got
10 a letter yesterday from Cory Briggs, who indicates
11 that he will be commencing an action in the
12 California Supreme Court on behalf of William E.
13 Powers in the Palomar Energy Project. We will
14 anticipate that that will come in today or
15 tomorrow, and we'll have another busy weekend.

16 Finally I'd like to thank the renewables
17 program. In my office we've been doing a lot of
18 work to pare down the law library in response to
19 the reductions in our operating budget. As you
20 may know, the law library, which generally costs
21 about \$40,000 a year to maintain, has to be
22 reduced because of the reductions in the operating
23 expense budget.

24 That's more than half of our operating
25 expense budget, so -- and a portion of our

1 operating expense budget is bar dues, which we're
2 required to pay anyway. So we have had to go
3 through and really determine what things we need
4 to keep in paper, and what things we can obtain
5 through Westlaw or other electronic services.

6 If it weren't for those electronic
7 services, we would not be able to do our legal
8 research without the paper volumes that we'll be
9 giving up, but we are cutting some very
10 substantial things, including the federal
11 Appellate decisions, and FERC decisions, and a
12 number of other things that are significant.

13 But I do think the exercise we went
14 through, which was participated in by everyone in
15 my office, resulted in a streamlined library that
16 will still allow us -- assuming we get some of the
17 older members of the office, myself included -- up
18 to speed on Westlaw, and electronic research.

19 And assuming that that remains available
20 to us, we will still be able to do our work. But
21 in particular there were a few items that it
22 appeared we were going to have to cut. We asked
23 the renewables and PIER program if they could pick
24 them up as administrative costs as is allowed
25 under the statute.

1 And they supported us, and I'm very
2 appreciative of that.

3 COMMISSIONER BOYD: Well, Mr.
4 Chamberlain, I think perhaps our new Public
5 Advisor can help you with your Westlaw lessons.

6 COMMISSIONER PERNELL: All right, it's
7 nice to know we're all working together here. Are
8 there any questions?

9 COMMISSIONER GEESMAN: Actually I did
10 have a question. Is there anything that's
11 happened with the San Diego Superior Court case?

12 MR. CHAMBERLAIN: We got an extension of
13 15 days, I believe, to respond to that. We're
14 planning on filing a demurrer, but so far nothing
15 has happened.

16 COMMISSIONER PERNELL: All right. Any
17 other questions? Thank you, Mr. Chamberlain.

18 Executive Director Report. Mr.
19 Matthews?

20 MR. MATTHEWS: Mr. Therkelson is in
21 Oregon, and reportedly doing well from the one
22 postcard he's managed to get out in the two weeks
23 he's been gone. I'll be very glad when he's back.
24 I did have the great pleasure during my short
25 watch here of welcoming Margret Kim as our new

1 Public Advisor.

2 She's impressed a lot of people already
3 who didn't have a chance to know her before, and
4 I'm looking forward to great things.

5 COMMISSIONER PERNELL: Thank you. We
6 also, from the -- Commissioner Ro wants to welcome
7 you Ms. Kim, and I speak for everybody up here
8 that our door is open, if you have any questions
9 or if there is anything we can do to help you in
10 your transition, please feel free to come by.

11 COMMISSIONER GEESMAN: This was a great
12 meeting to start at too. We had three of our most
13 experienced and sometimes combative Intervenors.

14 MS. KIM: I'm delighted to be here, and
15 I just want to say I look forward to working with
16 all of you. Thank you.

17 COMMISSIONER PERNELL: Thank you.

18 COMMISSIONER BOYD: Well, you've had
19 good training, sitting up here looking down.

20 COMMISSIONER PERNELL: Public comments?
21 Any public comments? Hearing none and seeing
22 none.

23 There is no closed session. So is there
24 any other business to come before this committee,
25 this commission? Any other business to come

1 before the Commission?

2 Seeing none, this meeting is adjourned.

3 (Thereupon, the business meeting was
4 adjourned at 11:55 a.m.)

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CERTIFICATE OF REPORTER

I, ALAN MEADE, 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 15th day of October, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345