

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

WEDNESDAY, FEBRUARY 4, 2004

10:04 a.m.

Reported by

Alan Meade

Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSION MEMBERS PRESENT

William J. Keese, Chairperson

Arthur H. Rosenfeld, Commissioner

John L. Geesman, Commissioner

John D. Boyd, Commissioner

B.B. Blevins, Commissioner

STAFF PRESENT

William Chamberlain, Chief Counsel

Margret Kim, Public Advisor

Bob Therkelsen, Deputy Director

Robert Worl, Project Manager, Los Esteros

Stan Valkosky, Hearing Officer, MEGS

William Westerfield

Michael Martin

Melinda Merritt

ALSO PRESENT

Bill Jacoby, San Diego County Water Authority

Charles Samuels, Esq. Association of Home

Appliance Manufacturers

Michael Hazinski, East Bay MUD

Christopher T. Ellison, Esq., Ellison, Schneider &

Harris, LLP

Bob Sarvey, private citizen

Joy Warren, Esq., Modesto Irrigation District

Gary Fernstrom, PG&E

ALSO PRESENT (continued)

Mary Ann Dickerson, California Urban Water
Conservation Council

Devra Bachrach, NRDC

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

Proceedings	1
ITEMS	
1. Consent Calendar	
a. Architectural Energy Corp. (AEC)	1
2. Consumer Power and Conservation Financing Authority	2
3. Los Esteros Critical Energy Facility Phase 2 Project	4
4. Los Esteros Critical Energy Facility Phase 2 Project	8
5. Modesto Irrigation District (MEGS)	8
6. Residential Clothes Washer Standards	22
7. Minutes - Approval of Minutes from January 21, 2004 meeting	66
8. Commission Committee and Oversight	66
9. Chief Counsel's Report	66
10. Executive Director's Report	67
11. Public Advisor's Report	69
12. Public Comment	69
Adjournment	69
Certificate of Reporter	70

P R O C E E D I N G S

10:04 a.m.

(The Pledge of Allegiance was recited in unison.)

COMMISSIONER KEESE: Good morning, and we welcome to our group Mr. B.B. Blevins, who some of you know.

B.B. was appointed Commissioner last week. Welcome.

COMMISSIONER BLEVINS: Thank you, Mr. Chairman.

COMMISSIONER KEESE: B.B. will be sitting in on all the Committees that former Commissioner Pernell sat in on.

(laughter)

Is that the angels you're bringing with you?

We intend to have an Action Item before us to confirm that B.B. will be on those Committees two weeks from now. The Commissioners, amongst themselves, will be reviewing future assignments, and we intend sometime in the next few months to realign ourselves.

Consent Calendar, do I have a motion?

COMMISSIONER ROSENFELD: I move the Consent Calendar.

1 (Thereupon, the motion was made.)

2 COMMISSIONER KEESE: Motion, Rosenfeld.

3 COMMISSIONER GEESMAN: Second.

4 COMMISSIONER KEESE: Second, Geesman.

5 All in favor?

6 (Ayes.)

7 Opposed? Adopted five to nothing.

8 Item Two, Consumer Power and

9 Conservation Financing Authority. Possible
10 approval of Contract R500-02-006 Amendment 1, to
11 amend the scope of work and terms for implementing
12 the Solar Schools Program. Good morning.

13 MS. MERRITT: Good morning. I'm Melinda
14 Merritt with the Commission staff. The Item
15 before you is the possible approval of an
16 Amendment to contract with the California Power
17 Authority. It was originally signed in September
18 of 2002.

19 The amendment reflects a reduction in
20 the total amount of funding now available for the
21 Solar Schools Program. It was previously up to
22 \$25 million over three years. It's now set at a
23 one time transfer of \$2.25 million.

24 There have been some significant --
25 well, not so significant -- changes to the scope

1 of work and the terms for implementing the
2 program. It is now linked much more closely to
3 your implementation of the Emerging Renewables
4 Buydown Program.

5 The incentive level is now set at a
6 maximum matching whatever the current rebate level
7 is under the Buydown Program, which is currently
8 at \$3.20 per watt. Therefore, the maximum a
9 participating school might be able to obtain in
10 funding for a solar system at their school would
11 be \$6.40 per watt.

12 There have been some other changes in
13 the program design. There was previously a
14 requirement of an allocation by investor owned
15 utility service area. That's been relaxed and
16 removed, again consistent with the Buydown
17 guidelines.

18 And there is no longer a strict
19 requirement for a prescribed school curriculum
20 tie-in. That is now more up to the school
21 districts and the schools involved, and it's
22 seriously encouraged.

23 Administrative changes are really
24 directed at improving the ease of administering
25 the program, given all the activity in the Buydown

1 right now. So that concludes --

2 COMMISSIONER KEESE: Thank you.

3 Basically, we've amended the program, so we're
4 asking our contractors to live with the amendment
5 as made. Okay, any comment up here?

6 COMMISSIONER BOYD: Move approval.

7 (Thereupon, the motion was made.)

8 COMMISSIONER ROSENFELD: Second.

9 (Thereupon, the motion was seconded.)

10 COMMISSIONER KEESE: Motion,
11 Commissioner Boyd, second Commissioner Rosenfeld.

12 Any public comment?

13 All in favor?

14 (Ayes.)

15 Opposed? Adopted five to nothing.

16 Thank you.

17 Item Three, Los Esteros Critical Energy
18 Facility Phase 2 Project. Commission
19 consideration of the Executive Director's Data
20 Adequacy recommendation for the Los Esteros
21 Critical Energy Facility Phase 2 Application for
22 Certification.

23 And before you give us your
24 recommendation please give us a brief explanation
25 of what the project is.

1 MR. WORL: Good morning. We're here
2 with Los Esteros Critical Energy Facility Two.
3 Oh, my name is Bob Worl, so many familiar faces.
4 I'll give you a card.

5 COMMISSIONER KEESE: We like it on the
6 record.

7 MR. WORL: And my name is spelled W-o-r-
8 l. We're here with the Los Esteros Critical
9 Energy Facility Two Data Adequacy Recommendation.
10 Los Esteros was originally certified under the
11 urgency provisions of 28X in July of 2002, as a
12 180 megawatt simple cycle plant, to operate for a
13 period of three years.

14 What we have before us now is an
15 application to take care of this in two phases.
16 Phase One, the Applicant is requesting re-
17 certification of the 180 megawatt plant to operate
18 indefinitely.

19 And Phase Two of this project is to
20 complete the conversion to a combined cycle
21 facility, adding duct burning and steam turbine
22 generator, adding an additional 140 megawatts to
23 the plant's potential output, for a total of 320
24 megawatts.

25 There is an additional switchyard,

1 Silicon Valley Power, which is planning on being
2 built directly adjacent to the facility. And the
3 PG&E switchyard, Los Esteros switchyard, which was
4 built not too long ago. And the project at this
5 time is data inadequate in 14 areas, based on the
6 staff's initial analysis of the AFC.

7 COMMISSIONER KEESE: Thank you. Comment
8 from the Applicant?

9 MR. ELLISON: Chris Ellison, Ellison,
10 Schneider and Harris, on behalf of the Applicant.
11 We do not object to the staff's recommendation of
12 data inadequacy, and expect to work with the staff
13 to provide some additional information to satisfy
14 the staff's concerns.

15 We're not completely in agreement that
16 all of the issues identified by the staff are data
17 adequacy issues. We think some of them are more
18 appropriate for discovery. But we're going to be
19 in discussion with staff and expect and hope to
20 work those out.

21 COMMISSIONER KEESE: Thank you very
22 much. Commissioner Geesman?

23 COMMISSIONER GEESMAN: Could either the
24 staff or the Applicant or perhaps both give me
25 some indication as to when we could expect to see

1 you back on this project?

2 MR. WORL: The indications that we've
3 had in our discussions have been that they're
4 looking to be able to come back as early as the
5 first Business Meeting in March. I think that
6 that's fairly accurate.

7 Many of the items are, we think, will be
8 fairly readily dealt with. We're in discussions
9 with them about some of the other issues, and we
10 don't think that that's necessarily an
11 unreasonable assumption at this time.

12 COMMISSIONER KEESE: Mr. Ellison,
13 that --?

14 MR. ELLISON: I would just concur with
15 what the staff just said. There are a couple of
16 issues that we need to work out with the staff
17 that, if we're unsuccessful, could require a
18 longer time period, but we're very optimistic that
19 we can work those out and be back in front of you
20 very quickly.

21 COMMISSIONER KEESE: Thank you. Can I
22 have a motion?

23 COMMISSIONER GEESMAN: I'd move
24 acceptance of the Executive Director's
25 recommendation.

1 (Thereupon, the motion was made.)

2 COMMISSIONER BOYD: Second.

3 (Thereupon, the motion was seconded.)

4 COMMISSIONER KEESE: Motion,
5 Commissioner Geesman, second Commissioner Boyd.

6 Any further discussion?

7 All in favor?

8 (Ayes.)

9 Opposed? Adopted five to nothing.

10 Thank you. We'll place you in early March.

11 That alleviates the need to take up item
12 Four, Mr. Blevins.

13 So Item Five, Modesto Irrigation
14 District. Commission consideration and possible
15 adoption of the Revised Mitigated Negative
16 Declaration and Proposed Decision for the Modesto
17 Electric Generation Station Application for a
18 Small Power Plant Exemption. I'm glad that's not
19 an acronym.

20 COMMISSIONER BOYD: Mr. Chairman?

21 COMMISSIONER KEESE: Commissioner Boyd.

22 COMMISSIONER BOYD: I'll lead this item
23 off. The Modesto Irrigation District's Modesto
24 Electric Generation Station, or MEGS as we called
25 it, is a 95 megawatt simple cycle gas-fired

1 project in Ripon, California, which will operate
2 both as a peaker and also fulltime during part of
3 the year.

4 The Committee released the original
5 Proposed Decision, a Notice Of Intent To Adopt A
6 Mitigated Negative Declaration for this project,
7 in November of last year. The Applicant moved to
8 re-open the record in order to supplement the
9 evidence on energy resources, where we were having
10 some differences of opinion.

11 And we conducted another evidentiary
12 hearing in January of this year, and then we
13 issued a revised Proposed Decision on January
14 21st. And I'd like the hearing officer, Mr.
15 Valkosky, to provide the Commission and the
16 audience with additional details.

17 COMMISSIONER KEESE: Mr. Valkosky?

18 MR. VALKOSKY: Good morning,
19 Commissioners. In this case, I'd like everyone to
20 be aware that neither Applicant nor staff
21 submitted formal comments requesting changes to
22 the revised Proposed Decision. The Intervenor,
23 Mr. Sarvey, however, submitted comments requesting
24 in effect that we reinstate the initial Proposed
25 Decision, or deny the small power plant exemption.

1 The principal difference between the two
2 versions is that, in the initial Proposed
3 Decision, the Committee concluded that the
4 evidence established that the project could
5 operate only up to five thousand hours per year
6 without adversely affecting energy resources.

7 In the revised decision, issued after
8 consideration of the supplemental evidence
9 presented in the January hearing, the Committee
10 concluded that the project could operate up to --
11 could generate, excuse me -- up to 760,000
12 megawatts of energy.

13 In other words, 95 megawatts for 8,000
14 hours per year, for no more than two consecutive
15 years, without creating adverse energy resources
16 impacts. During this process the Committee has
17 attempted to accommodate to the extent reasonable
18 concerns voiced by local citizens and the
19 intervenor, Mr. Sarvey. The Committee believes
20 that it has accomplished this.

21 Additionally, the Committee is
22 comfortable that the evidence establishes that the
23 projects, with the conditions imposed, will not
24 create substantial adverse impacts to the
25 environment or to energy resources, and that the

1 project is therefore eligible for a small power
2 plant exemption. That concludes my comments. Are
3 there any questions?

4 COMMISSIONER KEESE: Thank you. First
5 we'll hear from some others here. Why don't --
6 Mr. Sarvey, why don't we hear from you. Any
7 comments?

8 MR. SARVEY: As Mr. Valkosky stated, I
9 support the original decision. I think it was an
10 excellent decision. And as a procedural matter, I
11 think anytime that a revised decision is issued it
12 should be the subject of the hearing on the
13 revised decision.

14 A public hearing before it comes to the
15 Business Meeting, to prevent complications at the
16 Business Meeting where certain items have not been
17 explained or certain evidence has not been
18 established.

19 So, in that case, I would just say it's
20 a procedural matter. Anytime you have a revised
21 decision it represents a substantial change to the
22 decision. It should be the subject of a public
23 hearing, and that's just to open.

24 But to me the change in the decision,
25 which allows MID to produce 760,000 megawatts a

1 year, doesn't establish the Committee's goal of
2 limiting this project from running year-round year
3 after year. Obviously we don't want peaker plants
4 running 8,760 hours a year unless it's absolutely
5 necessary.

6 In the instant case all the Applicant
7 has to do is run this project for 760 hours at
8 half production to fall under the 760,000 megawatt
9 magic number that's been established to trigger a
10 combined cycle evaluation of this project.

11 So literally this Applicant could run
12 this project 8,760 hours a year with this existing
13 condition. It does not prevent it. And it
14 actually is very easily manipulated. So I think
15 that, in this instant case, this condition doesn't
16 accomplish what the Committee has rightfully
17 established as a purpose.

18 I also wanted to say that, to me,
19 because this project establishes a peaker plant
20 can run 8,760 hours, it sets a very dangerous
21 precedent, one that I haven't seen in the Energy
22 Commission before.

23 I've only seen two cases in my limited
24 experience -- the Henrietta Project and the Tracy
25 Project -- both allowed to operate 8,000 hours.

1 Their reasoning in both decisions was that these
2 projects were subject to the market, and they
3 would not run unless the market rate was such that
4 they could make money, and that would prevent the
5 project from running in an excess.

6 But in this particular case we're
7 talking about a municipality, there is no
8 limitation as far as profit motive for running
9 this project. So I think this is a very dangerous
10 precedent that we need to examine before we make a
11 decision on this project.

12 And essentially in this decision, when
13 we allow this project to operate 8,760 hours, it's
14 based on MID's integrated resource plan, which the
15 Commission and the public are not a party to its
16 development, nor have we seen the finished
17 project.

18 And I believe there is substantial
19 evidence in the record that MID already has
20 adequate peaking capacity with their McClure
21 peaking plant.

22 MID has operated with the McClure
23 peaking plant for 877 hours limitation for many
24 years, and is now installing SCR on this project,
25 so I think the question is does MID now need two

1 peaker plants that can generate 100 megawatts each
2 for 8,760 hours? I think that's another question
3 that remains unanswered.

4 And then finally, I just want to take
5 issue with Finding Number 22 in the Proposed
6 Decision. Finding Number 22 says that "evidence
7 as supplemented contains an analysis of impacts
8 upon energy resources were the MEGS Project to
9 operate 8,760 hours per year."

10 I have not seen that analysis, and when
11 I asked staff's witness to provide me with that
12 analysis-- I'll read to you what the response
13 was. And my question was "Mr. Baker, can you
14 describe that analysis that you did to conclude
15 that the MEGS will have no impact to energy
16 resources if it runs 8,760 hours?"

17 And his response was "again, I believe
18 your question is continuing confusion here. We're
19 talking about 8,760 hours as though it was going
20 to be for the life of the project. No one here
21 intends this project to run 8,760 hours for 30
22 years, and as long as we keep allowing ourselves
23 to believe that in the back of our minds we're
24 never going to come to an answer."

25 So essentially there has been no

1 analysis to energy resources if this project were
2 to run 8,760 hours. Thank you.

3 COMMISSIONER KEESE: Thank you, Mr.
4 Sarvey. I note that Mr. Valkosky stated at the
5 beginning that neither staff nor applicant had any
6 comments on this. Can we hear right now from
7 staff, particularly with reference to what Mr.
8 Sarvey has raised? But initially on the
9 revision.

10 MR. WESTERFIELD: Yes, Mr. Chairman, it
11 is staff's position that the record -- I'm sorry.
12 William Westerfield for staff.

13 It is staff's position that there is
14 substantial evidence in the record to support that
15 it is not a drain on energy resources for the
16 plant to operate up to 800, excuse me, 8,760
17 hours.

18 It is the professional opinion of our
19 energy resource's analyst that it would be, the
20 construction of this plant would be the most
21 efficient addition to the portfolio of resources
22 for MID, and thus would be an improvement of the
23 energy efficiency of their entire system.

24 Secondly, I think it's also fair to say
25 that what Mr. Sarvey is asking for is in fact a

1 needs analysis. And one of his points in his
2 comments is that this plant should not be approved
3 because they already have enough peaking capacity
4 within the core plant.

5 A needs analysis is not something that
6 is part of the Commission's analysis for approval
7 of either AFC's or exemptions from the AFC
8 process, so I think that process is essentially
9 irrelevant to the decision you have before you.

10 Moreover, I think this new plant would
11 improve energy efficiency because it has the
12 potential to displace old peaking power for MID,
13 and to the extent that it runs instead of existing
14 peaking plants such as McClure, then it would
15 improve energy efficiency to its entire system.

16 COMMISSIONER KEESE: Thank you. Any
17 questions? Commissioner Geesman?

18 COMMISSIONER GEESMAN: I just want to
19 make sure that I understood Mr. Sarvey correctly.
20 In distinguishing between the market impacts on
21 the Tracy and Henrietta plants versus an MID
22 plant, I think I understood you to say that,
23 because it was a municipality, it would be
24 indifferent to cost considerations, in terms of
25 the amount of reliance it placed on operating a

1 plant?

2 COMMISSIONER KEESE: Mr. Sarvey, would
3 you --

4 COMMISSIONER GEESMAN: Well, I can
5 indicate, he seems to be nodding his head. And I
6 guess I would just register, based on professional
7 experience, strong difference with that view.

8 In my experience municipal utilities are
9 quite cost focused in deciding what plants to
10 operate, and their customers have a tendency to
11 force them to be quite cost-conscious.

12 MR. SARVEY: Well, I think that issue
13 was thoroughly discussed, and Commissioner
14 Pernell, our departing Commissioner, was of the
15 opinion that that was an important factor. And as
16 he was the head of SMUD for some period of time,
17 he indicated that he felt that that was a very,
18 very, important factor, that they were not
19 constrained by the amount of money that they would
20 make by selling this on the market, or what they
21 would lose if they produced it like this.

22 So, that's where that came from,
23 Commissioner Pernell's insight. Thank you.

24 COMMISSIONER KEESE: Thank you.
25 Applicant?

1 MS. WARREN: Yes, thank you. Joy Warren
2 from Modesto Irrigation District. First, I'd like
3 to thank the staff and the Committee for all their
4 time and hard work put in to this project, and
5 would like to concur with staff's comments here
6 today.

7 The District supports the recommendation
8 of the Committee in the Proposed Decision, and
9 asks the Commission that it would adopt the
10 proposed Mitigated Negative Declaration and Grant,
11 the small power plant exemption.

12 Intervenor Sarvey has made a couple of
13 points today. I think I'll just follow up, first
14 of all, with his comments regarding being subject
15 to the market, and just to address the question
16 being asked here.

17 I think the record is full of the
18 District's response to that, but, as Commissioner
19 Geesman pointed out, the District is governed by
20 an elected Board of Directors. That elected Board
21 of Directors is accountable to its ratepayers.

22 We are in an era now of competition,
23 even for the municipal utilities. And we have
24 every incentive to be as economic in our
25 facilities and operations as possible.

1 Further, regarding Mr. Sarvey's comments
2 regarding the review of the revised decision in a
3 public hearing, I would like to refer back to the
4 January 7th evidentiary hearing, where the energy
5 resources matter was fully aired, and where the
6 condition of exemption that was adopted and is
7 part of the current decision was proposed by the
8 district.

9 At that point, when given the
10 opportunity to comment or question that proposed
11 condition of exemption, Mr. Sarvey had no problem
12 with it.

13 I'd like to also address some of the
14 issues that Mr. Sarvey raised regarding the
15 integrated resources plan, and regarding the
16 measurement of energy efficiency of the MEGS
17 Project.

18 All of Mr. Sarvey's comments were made
19 at the January 7th hearing. The issues were
20 before the committee when the Committee considered
21 and proposed its revised Decision. Regarding the
22 integrated resources plan, the conclusion that it
23 is flawed, that Mr. Sarvey raises in his comments,
24 is based on the erroneous assumption that the
25 McClure plant, that there will be an increased

1 efficiency in the McClure plant due to the changes
2 and the improvements being made to it.

3 The retrofit is being done to comply
4 with air regulations. It will not change the
5 District's need for additional peaking capacity
6 because it will not change the efficiency or per
7 se the operating hours of the McClure plant.

8 The District has fully reviewed and
9 studied the integrated resources plan before
10 coming up with its conclusion that it did have a
11 need for a peaking plant, and at this point do not
12 believe it's appropriate for that analysis or that
13 conclusion to be re-evaluated.

14 Efficiency is not measured by gas
15 consumption. Heat rate does not directly
16 correlate to gas use. Heat rate is the
17 appropriate measure of the efficiency. And to
18 judge the efficiency of a proposed project, even
19 the CEQA requirements recognize that you have to
20 look at the need that project is trying to meet.

21 The proposed two unit simple cycle
22 configuration proposed for MEGS is the most
23 efficient way to meet all of the District's needs
24 as are set forth in the decision, and through the
25 evidentiary hearings.

1 We hope to start construction as soon as
2 possible, and so again we would urge you to grant
3 the exemption. Any questions?

4 COMMISSIONER KEESE: Thank you. And I
5 assume then that the elevated limits you have
6 obtained further offsets? It's fully offset?

7 MS. WARREN: We have obtained offsets
8 for the full 8,760 hours per unit, yes.

9 COMMISSIONER KEESE: Thank you.

10 COMMISSIONER BOYD: Mr. Chairman?

11 COMMISSIONER KEESE: Commissioner Boyd?

12 COMMISSIONER BOYD: Speaking for the
13 Committee, I'd like to make a couple of points for
14 the record. One, just to point out -- although
15 the last witness touched upon this -- that this is
16 an energy limitation, not an hours of operation
17 limitation. And I think that's a fairly important
18 feature.

19 And secondly, Mr. Westerfield has
20 already pointed it out, but it's beyond the
21 purview of the CEC these days to conduct needs
22 assessments. So, like it or not, that's not part
23 of what we are able to do in these situations.

24 So with those comments, just speaking
25 again for the Committee, I'd like to recommend the

1 Commission's adoption of the Proposed Decision,
2 including the Mitigated Negative Declaration.

3 And I would point out that there are a
4 couple of extremely minor editorial changes to
5 condition Vis one that Mr. Valkosky pointed out to
6 me this morning that have no basic substance to
7 them other than an editorial that would be
8 incorporated into the final decision.

9 COMMISSIONER KEESE: Thank you. Motion
10 by Commissioner Boyd, with editorial changes of an
11 insignificant nature.

12 (Thereupon, the motion was made.)

13 COMMISSIONER GEESMAN: Second the
14 motion.

15 (Thereupon, the motion was seconded.)

16 COMMISSIONER KEESE: Second by
17 Commissioner Geesman. Any further discussion?
18 Any further public comment?

19 All in favor?

20 (Ayes.)

21 Opposed? Adopted five to nothing.

22 Thank you everyone.

23 Item Six, Residential Clothes Waster
24 Standards. Docket No. 03-A-AAER-01(RCW).
25 Possible adoption of revised standards for

1 residential clothes washers, to include a
2 legislatively mandated water factor standard.

3 This has been on our agenda a number of
4 times, and we have received clearance from the
5 Governor's Office to move forward on it at this
6 time. Mr. Martin?

7 MR. MARTIN: I'm Michael Martin. In
8 2002 the Commission adopted extensive revisions to
9 the Appliance Regulations, including energy and
10 water efficiency standards for commercial clothes
11 washers.

12 The current water efficiency standard,
13 which applies to all such commercial clothes
14 washer units manufactured on or after January 1st,
15 2007, prescribes a maximum water factor of 9.5.

16 Water factor is the ratio of the amount
17 of water used in a typical wash and rinse cycle in
18 gallons, to the capacity of the wash tub in cubic
19 feet. Hence a lower water factor indicates a more
20 water efficient appliance.

21 After the Commission adopted the
22 commercial clothes washer standard the California
23 Legislature enacted a statute that requires the
24 Commission, not later than January 1st, 2004, to
25 require that residential clothes washers

1 manufactured on or after January 1, 2007 be at
2 least as water efficient as commercial clothes
3 washers.

4 In September the Commission published
5 proposed regulatory text, and provided a Notice of
6 Proposed Action and Initial Statement of Reasons,
7 Statement of Economic and Fiscal Impacts, to the
8 Office of Administrative Law, as required by the
9 California Administrative Procedures Act.

10 The proposed standards require a maximum
11 water factor of 8.5 for units manufactured on or
12 after January 1st, 2007, and a maximum water
13 factor of 6.0 for units manufactured on or after
14 January 1, 2010.

15 Executive Order S-2-03 requires state
16 agency to cease processing proposed regulations
17 for up to 180 days in order to conduct a
18 reassessment of the affects of the proposed
19 regulations on California businesses.

20 The Commission conducted that
21 reassessment as required. Based on the entire
22 record of this proceeding, we find that the
23 adopted regulations are based on reasonable use
24 patterns, apply to appliances whose use requires a
25 significant amount of energy on a statewide basis,

1 requires efficiencies that are feasible and
2 attainable, and do not result in any added total
3 cost to the consumer over the design life of the
4 appliance.

5 The adopted regulations will not result
6 in a direct or reasonably foreseeable indirect
7 physical change in the environment, and therefore
8 are not subject to the California Environmental
9 Quality Act.

10 The Energy Commission's Appliance
11 Efficiency Standards Rulemaking for residential
12 clothes washers is using a real three percent
13 discount rate in its total cost effectiveness
14 calculations.

15 This is the discovery that is being used
16 by all efficiency standards rulemaking procedures
17 at the Energy Commission. This choice was
18 questioned. Our calculations indicate that a
19 discount rate as high as 15.5 percent could be
20 used in our cost-effectiveness calculations for
21 clothes washer water factor of 6.0, while still
22 remaining cost-effective.

23 Our calculations also indicate that a
24 discount rate as high as 17 percent could be used
25 in our cost-effectiveness calculations for a

1 clothes washer water factor of 8.5, while still
2 remaining cost-effective. And that concludes my
3 introduction.

4 COMMISSIONER KEESE: Thank you very
5 much. We have a series of witnesses here. Shall
6 we hear them -- who first? Mr. Fernstrom?

7 MR. FERNSTROM: Commissioners, staff,
8 interested parties, I am Gary Fernstrom, Senior
9 Project Manager from the Pacific Gas and Electric
10 Company. Welcome to newly appointed Commissioner
11 Blevins.

12 PG&E serves over nine million electric
13 and gas customers in northern and central
14 California. That represents about a third of the
15 states' population. We proposed to the California
16 Public Utilities Commission an energy standards
17 program. It was approved.

18 The objective of that program is to
19 identify improvements in the energy efficiency of
20 appliances, design practices, and building
21 materials, and to recommend to the California
22 Energy Commission when those improvements appear
23 to be cost-effective and merit adoption in the
24 California Energy Standards.

25 The Appliance Standards Program makes

1 sense to the extent that the Public Utilities
2 Commission has requested California's investor-
3 owned utilities to pursue energy efficiency.

4 Under that directive, PG&E pursues a
5 wide range of energy efficiency programs,
6 including education incentives and ultimately the
7 recommendation when high efficiency equipment
8 becomes commonplace in the marketplace, the
9 adoption of efficiency standards that support that
10 improved efficiency.

11 As part of the Appliance Standards
12 Program, PG&E and its consultants have done
13 extensive research on water factor. We recognize
14 that both water and energy are precious
15 commodities in the state of California, and
16 important to the population here.

17 And we recommend adoption of this
18 standard, which has proposed to implement a water
19 factor measure for clothes washers. We've
20 determined that this standard is cost-effective,
21 and that the equipment is available, and the
22 adoption of this measure is strongly in the
23 interest of California and its public. Thank you.

24 COMMISSIONER KEESE: Thank you very
25 much.

1 MS. BACHRACH: Good morning,
2 Commissioners. I'm Devra Bachrach, I'm here
3 representing the Natural Resources Defense
4 Council, and our more than 110,000 California
5 members.

6 NRDC strongly supports the proposed
7 standard to improve the water efficiency of
8 residential clothes washers in California. And we
9 support the two tier approach that has been
10 proposed, which will provide a clear path to
11 continue improving the efficiency of these
12 washers.

13 The analyses that we have seen in this
14 docket have shown that the proposed Standard is
15 clearly cost-effective and will benefit consumers.
16 And the state will also realize significant energy
17 and water savings as a result of the Standard.

18 Over the next ten years the energy
19 savings will be equivalent to the energy use by
20 24,000 households. That's enough to supply a
21 community about the size of Walnut Creek. And
22 this in turn will be saving the water agencies
23 tens of millions of dollars by 2013. That of
24 course means that they can pass those savings on
25 to their customers.

1 Along with these energy savings comes a
2 clear environmental benefit, as we reduce the
3 pollution emissions from the power plants that are
4 generating that electricity.

5 And of course while these energy savings
6 are important, the availability of water is also a
7 critical issue in California, and the water
8 savings from these proposed standards would be
9 very significant as well.

10 In ten years the standard would save
11 enough water for about 250,000 households. That's
12 about two thirds of the water used by the city of
13 Fresno. So that's clearly significant savings
14 there. And they would be saving customers more
15 than 100 million dollars per year by 2013.

16 One of the questions that the Commission
17 staff had to address in proposing this standard is
18 whether the technology is available, and whether
19 the standard would be feasible.

20 So two weeks ago I took a trip down to
21 my local SEARS, where I think many people would go
22 to look for a new appliance. And I found that
23 about half of the models that were on the floor
24 were Energy Star clothes washers. Twelve of the
25 models on the floor that day already have a water

1 factor less than 8.5. So I could already pick
2 between 12 models that would meet the 2007
3 standard.

4 And six of the models would already meet
5 the water factor of less than 6.0. So more than
6 six years before the second tier would go into
7 effect I could already pick from among different
8 models.

9 I brought a couple of pictures. The
10 Kenmore model that's selling for \$699 has a water
11 factor of 5.87. And of course there's a wide
12 variety of models. This is another one, water
13 factor of 4.36. I could take it home for \$999 at
14 Sear today.

15 So I think it's clear that the
16 technology is out there already. It will be
17 feasible to meet on the gradual schedule that the
18 proposed standard has laid out. It will be cost-
19 effective for customers. And we urge you to adopt
20 the standard today, before the next drought or the
21 next power crisis affects California. Thank you.

22 COMMISSIONER KEESE: Thank you.
23 Commissioner Geesman?

24 COMMISSIONER GEESMAN: Yes, a question
25 for Devra. Mr. Martin discussed alternative

1 discount rates, and I believe he indicated that
2 the staff had used a real discount rate of three
3 percent in the economic analysis, but that the
4 standards would prove cost-effective at
5 substantially higher discount rates as well.

6 Does NRDC have a view as to the
7 appropriate discount rate to be used for this type
8 of analysis?

9 MS. BACHRACH: The NRDC has participated
10 for, I believe, several decades now, in front of
11 this Commission, and has had several discussions
12 about the appropriate discount rate.

13 We recommend the discount rate somewhere
14 in the range of two to three percent real for
15 evaluating energy efficiency.

16 COMMISSIONER GEESMAN: And why is that?

17 MS. BACHRACH: It's because, from a
18 social perspective, energy efficiency is a
19 relatively low risk investment, and discount rates
20 tend to relate to the risk, as well as the fact
21 that in the market, when you look at the returns
22 that you get out of the market over a very long
23 time period -- and we're looking at these energy
24 savings over a long time period -- the actual
25 discount rates that you see are in that range,

1 from a real perspective.

2 COMMISSIONER GEESMAN: So you think
3 that's a preferable approach than trying to impute
4 a cost of financing, which I presume the discount
5 rates that Mr. Martin mentioned in the mid to high
6 teens, would attempt to simulate?

7 MS. BACHRACH: Well, I think you need to
8 look at both sides. The discount rate is also
9 being used to value, you know, energy and
10 pollution savings in the future, and you're using
11 it to value, well, are pollution savings ten years
12 from now any less valuable to us than they are
13 today.

14 So yes, I think you need to look at it
15 from both a social perspective as well as from
16 more of a business perspective.

17 COMMISSIONER GEESMAN: And you'd apply
18 that to any energy saving investment over a long
19 period of time?

20 MS. BACHRACH: I'm sorry, I'm not sure I
21 understood --

22 COMMISSIONER GEESMAN: Well, a long-time
23 investment in energy efficiency, you believe,
24 merits a social discount rate, if you will?

25 MS. BACHRACH: Something in the two to

1 three percent real rate, that's correct.

2 COMMISSIONER GEESMAN: Thank you.

3 COMMISSIONER KEESE: Thank you. Mr.
4 Bill Jacoby?

5 MR. JACOBY: Thank you, Mr. Chair,
6 members of the Commission. My name is Bill
7 Jacoby, I'm from the San Diego County Water
8 Authority. And as you may know, the Water
9 Authority was the sponsor of the legislation AB
10 1561 by Kelly, that provided direction to the
11 Commission to move forward with these regulations.

12 During the process of hearings in both
13 the Senate and Assembly Committees, there was a
14 wide-ranging discussion of the st of regulations.
15 There was strong support for moving forward.

16 And one of the features that's in the
17 staff recommendation, that of increasing the
18 efficiency over time, was specifically added in
19 Senate Committee. So that's something that the
20 Senate Committee thought was important enough to
21 make sure to give you the authority to do.

22 The Water Authority, like many other
23 large water agencies throughout California, has
24 been offering incentives for folks who will buy
25 clothes washers with a 9.5 or better water factor

1 for a number of years now. We've done over 22,000
2 clothes washers in this manner.

3 And we've recognized a really
4 interesting trend in the last two years. We've
5 seen people go to much more efficient machines.
6 In the last two years we've seen 81 percent of the
7 machines that we've provided incentives for to
8 have a 8.5 water factor or better. So those
9 machines are already meeting the 2007 standard
10 that your staff is recommending.

11 Also impressive, 30 percent of the
12 machines meet the 6.0 standard that your staff's
13 recommending for 2010. So you can see, people are
14 already buying these machines, they like the
15 machines. We've got an 85 percent customer
16 approval response. When we ask customers or folks
17 who participate if they like these machines better
18 than their old machines and 85 percent say yes
19 they do.

20 So, in conclusion, the Water Authority
21 has sponsored the legislation. We stand ready to
22 help you and your staff in any way we can as this
23 goes forward to the Department of Energy, and we
24 commit to continue to offer incentives up until
25 2007 when these regulations start having an impact

1 on California. Thank you, Mr. Chairman.

2 COMMISSIONER KEESE: Thank you. Mr.
3 Charles Samuels.

4 MR. SAMUELS: Mr. Chairman and
5 Commissioners, my name is Charles Samuels, I'm
6 counsel to the Association of Home Appliance
7 Manufacturers in Washington. We represent the
8 manufacturers of virtually every clothes washer
9 sold in the United States, including California,
10 and I appreciate very much the opportunity to
11 speak with you about this subject this morning.

12 AHAM makes the products that presently
13 comply with proposed standards, and we make the
14 products that don't. And we represent the full
15 range of manufacturers, both domestic and foreign,
16 with respect to clothes washers.

17 As I'll discuss, although we are very
18 supportive of a wide range of efforts to improve
19 the water efficiency of clothes washers, we are
20 very much opposed to state standards that would
21 impose a water factor on what is already federally
22 regulated products.

23 But we are supportive of incentive
24 programs. There is consideration now at EPA for a
25 water labeling program. And we don't doubt that,

1 as time goes on, these products will improve in
2 their water efficiency. In fact, that's already
3 occurring and will continue to occur under the
4 federal regulatory regime.

5 So it is unfortunate that the
6 legislation is requiring you to act. But beyond
7 that, even given that fact, I think it's
8 unfortunate the way in which this analysis has
9 been conducted, as I'll describe.

10 First I would say that, in our opinion,
11 the Commission's revised analysis in response to
12 the Governor's Executive Order request really
13 gives short shrift to the Governors' request that
14 agencies such as you consider the potential for
15 economic impact on California business enterprise
16 and the individuals, and to reassess such
17 regulations within the system of state government
18 that is perceived to work against businesses and
19 inhibit growth and economic prosperity.

20 Unfortunately, with adoption of these
21 rules today you're putting yourself right in the
22 mainstream of those agencies that have had that
23 detrimental, and have that detrimental affect on
24 both California and out of state agencies.

25 One can have, I think, a very reasonable

1 discussion about the value of the Commission
2 adopting regulations for non-federally regulated
3 products, and we've had those discussions before
4 and will have them in the future.

5 But with respect to products that
6 already are comprehensively regulated for their
7 energy by the federal government, I think there's
8 a lot less room for discussion.

9 The consequence of your probable actions
10 today is that you would force all Californians to
11 purchase either so-called front loaders or
12 horizontal access products, or very, very
13 expensive vertical access products. These
14 products today represent only about ten percent of
15 the market.

16 They do have some appeal, our
17 manufacturers make them and market them and are
18 proud of them, but the fact is they have limited
19 appeal to California consumers, both because of
20 their cost and because of certain attributes of
21 the horizontal or front loader product, which I
22 could discuss more if you would like.

23 The effect of your action is to take
24 today's average \$350 clothes washer and force
25 Californians and the home builders and

1 distributors and retailers that sell these
2 products to Californians to purchase much more
3 expensive products, the cheapest ones of which are
4 in the \$600 range all the way up to almost \$2,000.

5 Please consider that clothes washers
6 have been the subject of four federal energy
7 efficiency standards, all of which have taken into
8 account the desirability of achieving greater
9 water efficiency. There was a legislated standard
10 in 1990 that was the result of the National
11 Appliance Energy Conservation Act that this
12 Commission, and a number of the stakeholders here,
13 were instrumental in passing in the Congress.

14 There was a 1994 Department of Energy
15 clothes washer standard, and, thanks to agreement
16 by stakeholders, including the Commission and NRDC
17 and others, a new federal energy standard for
18 clothes washer went into effect in 2004, and a
19 very stringent standard is going into effect in
20 2007.

21 Now these standards do not explicitly,
22 directly, regulate water efficiency. But it has
23 been recognized, and the data certainly supports
24 it, that as a general matter, one of, probably the
25 major way that you restrict the energy use of a

1 clothes washer, is to use less water or less hot
2 water.

3 And therefore it shouldn't be surprising
4 that the modern products are getting more water
5 efficient, and the Energy Star products are even
6 more efficient than that. And we've provided data
7 to the Commission contrary to the PG&E analysis
8 that the staff is using, that shows that our
9 products today are more efficient than you think
10 that they are, for the purposes of your analysis,
11 and are likely to be more efficient in the future
12 without your state standard.

13 But that the differential, the
14 additional cost on consumers of purchasing
15 products that would comply with this proposed
16 standard, is much higher than you think.

17 The beauty of the federal energy
18 standards was that tremendous amounts of energy
19 and water were saved, but that we set the
20 standards very carefully, at a level that
21 everyone, including the manufacturers, were
22 satisfied would maintain the viability of a full
23 panoply of products available to consumers.

24 Meaning that we believe, under the
25 federal standards, we can make conventional,

1 reasonably priced, vertical access products, as
2 well as the more niche, exotic, expensive
3 products.

4 However, the application of this water
5 factor would essentially totally disrupt that fine
6 balance. The good news, of course, is that this
7 regulation cannot go into effect by itself.

8 That the legislation recognizes, that
9 you'll need to seek waiver from the Department of
10 Energy, and we are quite confident that this first
11 time ever request by any state for an exemption
12 from pre-emption will fail, because you will be
13 unable to make the case for an unusual and
14 compelling need to do this in California.

15 And we will certainly be making the case
16 for the harm that it will do to consumers, to
17 retailers, to distributors, to home builders in
18 California, as well as the manufacturers.

19 I could go into some more detail, but
20 your Efficiency Committee was very courteous in
21 allowing us to provide all the possible
22 information that we were able to, so I think the
23 record is pretty full on this point.

24 And I just want to say that it's
25 unfortunate that we are in a situation where you

1 are compelled to take action on a water factor
2 standard, and additionally unfortunate that the
3 standard that you are proposing is based on very
4 thin analysis which is contradicted by a number of
5 the data points that we brought forward.

6 And that's all I have, and obviously I'd
7 be glad to answer any questions. Thank you.

8 COMMISSIONER KEESE: I have a couple of
9 questions for starters. You're saying that there
10 are higher front-end costs for the consumer. Are
11 you giving any credit for the savings that might
12 result?

13 MR. SAMUELS: Absolutely. I mean, as I
14 say, we make very efficient products. There's no
15 differential or gap between the manufacturers I
16 represent and any others making any other
17 products. They're all the same companies.

18 But the fact of the matter is that
19 doubling or even tripling the price of what
20 consumers are paying now is I think a tremendous
21 burden on Californians. Done in an involuntary
22 way, and restricting greatly the models that will
23 be available.

24 We're going to save water regardless of
25 this standard. We're moving in that direction,

1 that is the trend. And many of the utility
2 programs that were discussed today have been quite
3 successful in moving the marketplace.

4 But what we're opposed to, particularly
5 on the state level, is forcing all products to
6 have this new, limiting design factor of water
7 efficiency, and then very strictly limiting the
8 number of models that we can make available in
9 California.

10 Now, your analysis is exacerbated by the
11 use of the three percent discount rate. I wasn't
12 going to go into this but this was mentioned
13 earlier. That is a discount rate that regulators
14 use when they want to justify their regulations.

15 Obviously, from the consumers point of
16 view, his or her discount rate is considerably
17 higher, and I think if you did an analysis at 15
18 percent or higher I think you'd find this to be a
19 lot less cost-effective than you think it is.

20 COMMISSIONER KEESE: Do you sell the
21 same models that comply with our regulations
22 across the country?

23 MR. SAMUELS: They're all generally
24 available. The so-called front loaders, or
25 horizontal access. It started off in the United

1 States with foreign import products, but now the
2 U.S. manufacturers are making the same products.

3 In terms of what the mix is, the mix is
4 different. And my guess is that in California you
5 probably do have a higher percentage of the more
6 efficient products, although it is still a fairly
7 small percentage.

8 That's because Californians are more
9 energy and water conscious, because you've been
10 more aggressive than most other states in terms of
11 marketing and utility programs, etc. But
12 essentially the same products are sold throughout
13 the United States.

14 Which is one of the problems of having a
15 state standard, because of the burden this places
16 on interstate commerce, which is recognized in the
17 federal law and is something that we'll be
18 discussing with the Department of Energy.

19 COMMISSIONER KEESE: Correct. And as I
20 recall from the lesson of refrigerators many years
21 ago, the movement to a federal standard is
22 certainly beneficial to everybody, and if you
23 would assist us in getting the federal government
24 to adopt this standard we could spend our time on
25 other issues.

1 I guess my question is, when we go
2 forward with this and we see the Legislature feels
3 this is a significant problem in California, and
4 we recognize that we've introduced shower heads
5 that give us less water and low flush toilets,
6 water is a big concern in California.

7 I juxtapose your argument that the
8 consumer is going to have to pay for more
9 expensive equipment. It would seem to me the
10 manufacturers are going to be producing more
11 expensive equipment, which generally equates to a
12 little bit more profit at that level, with a
13 concern that we have for water.

14 And it looks to me like the
15 manufacturers are just ignoring the policy issues
16 that we're dealing with. You're not talking about
17 the policies.

18 I mean, you're not coming out and saying
19 we want you to continue to waste water or
20 something like that, but you're not accepting the
21 fact, it seems to me, that we have a water problem
22 here, that we've been approaching our energy
23 efficiency for many years, and we reduce our
24 energy consumption annually by significant number
25 through efficiency, and this is one of the tools.

1 MR. SAMUELS: Respectfully, Chairman, I
2 couldn't disagree with you more, in terms of our
3 perception of things. We understand the
4 significance of water savings in California and
5 other places, and we are increasingly providing
6 products that use less water.

7 The energy standard analysis that led to
8 the federal energy standards, which the CEC was
9 part of, in part looked at water savings, but it
10 didn't put in an explicit water factor. And one
11 of the ways that it drew the line was to balance
12 off the legitimate need for more energy and water
13 savings versus the very important need to be able
14 to provide a wide range of reasonably priced
15 products to consumers.

16 Now, ironically, my industry was
17 criticized by conservative think tanks and
18 conservative members of the Congress for agreeing
19 to these federal energy standards, on the ground
20 that we were ripping off consumers and we were
21 trying to force on them these very, very,
22 expensive products.

23 And what we said was, no, we were fairly
24 aggressive on the energy standards, saving energy
25 and water, but we went as far as we could go and

1 still be comfortable about what we would be able
2 to provide consumers in the future.

3 This, though, is exactly the scenario
4 that we were trying to avoid at the federal level,
5 which is going too far, putting too much
6 restrictions on these products, and making it,
7 disabling us from providing people with the
8 conventional products that most of us want.

9 So there's no difference between us in
10 appreciating and understanding that water is,
11 conservation is important, and is something that
12 should be improved. That is going to happen, and
13 there are other ways besides these standards that
14 it can happen more quickly. We think this is very
15 much an overkill and there are far less
16 restrictive alternatives than this.

17 COMMISSIONER KEESE: Thank you.
18 Commissioner Rosenfeld?

19 COMMISSIONER ROSENFELD: I guess I'd
20 like to ask Michael Martin whether he agrees. As
21 I heard you a few minutes ago, you said that a
22 typical washer these days is around \$350?

23 MR. SAMUELS: Yes.

24 COMMISSIONER ROSENFELD: And a complying
25 one would be around \$600?

1 MR. SAMUELS: The cheapest complying --

2 COMMISSIONER ROSENFELD: Well, up to
3 \$2,000, but \$600.

4 MR. SAMUELS: \$600, well, \$650 to
5 \$1,800.

6 COMMISSIONER ROSENFELD: So we're
7 discussing a first cost difference of about \$250?

8 MR. SAMUELS: No, that's incorrect. You
9 can't assume, as the PG&E and CEC analysis does,
10 that all the products are going to end up being at
11 the cheapest point of the existing products.

12 COMMISSIONER ROSENFELD: I'm just not
13 smart enough to do all that integration in my
14 head.

15 MR. SAMUELS: Oh, I know that you are.
16 But what you're doing is that you're cherry
17 picking one particular unit at the lowest possible
18 cost. And that unit is made by my members, and
19 obviously the manufacturers stand behind their
20 product. That is not a product that a vast
21 majority of Californians will care to purchase.

22 COMMISSIONER ROSENFELD: Well, okay,
23 I'll think 650 if you want. What I'd like to ask
24 you and Michael Martin is what are the dollar
25 savings per year because we use less electricity

1 to put the water in the state. Or just, given the
2 price of water -- what I'm trying to drive at is
3 what are the payback times?

4 Because Geesman has asked directly what
5 are the discount rates, and I just want to know
6 what the simple payback time is?

7 MR. SAMUELS: I think that Mr. Martin
8 should help you on that. We've simply said that
9 we think that your savings are exaggerated because
10 you're not taking into account the improvements
11 that would occur anyways under the combination of
12 the federal standards and the various programs and
13 incentives in California. But you'd have to ask
14 the staff -- and it's in your briefing papers.

15 COMMISSIONER ROSENFELD: You see, my
16 problem is the word "exaggerated" has been used a
17 lot here, and I'm trying to get a little deeper
18 into --

19 MR. SAMUELS: Well, it's in your
20 briefing papers, which are very similar to what
21 you had before you before.

22 MR. MARTIN: Yes, we recognize that not
23 only you can't remember all these things, I can't
24 remember them either, which is why you'll find
25 them on page five of the package in front of you,

1 with the paying back period.

2 However, I would like to interject
3 here --

4 COMMISSIONER KEESE: Why don't you give
5 us a general figure. Do you have the savings in
6 energy and the savings in water? Dollar savings
7 in energy and dollar savings in water?

8 MR. MARTIN: For the 8.5 water factor
9 there's a table that shows the annual unit water
10 cost savings, at .0032 dollars per gallon, at
11 \$7.53. The annual unit reduction in energy use at
12 13 kilowatt hours. The annual unit electrical
13 cost savings, based on 11 and a half cents per
14 kilowatt hour, at \$1.49.

15 Annual unit reduction in gas use of
16 three therms. Annual unit gas cost savings based
17 on 60 cents a therm, \$1.89. With a simple payback
18 of 6.1 in years. And we've assumed a design life
19 of 14 years. There are similar figures with a 6.0
20 water factor, which I can read if you --

21 COMMISSIONER KEESE: Ah, no I think
22 that's enough.

23 MR. MARTIN: One of the things I think
24 we need to bear in mind is we should not be
25 comparing the cheapest models that are available

1 today when we are looking at these standards.
2 Because the energy factor standard, the federal
3 one, will take effect on January 1st, 2007.

4 So the ones that are cheapest today will
5 not be on the market then. They will be illegal
6 throughout the United States. So we are comparing
7 those which meet the energy factor, but not the
8 water factor, as our base case. Which is what you
9 will find on the market in 2007.

10 COMMISSIONER ROSENFELD: Thanks. So,
11 just to clear it up, I think the disagreement
12 between you two gentlemen is at a slightly deeper
13 level. If we could agree that -- if I believe
14 Michael Martin's timetable at that time of six
15 years on a 16 year device -- then I'm not too
16 concerned about, I don't have to look at discount
17 rates.

18 I mean, it's just a good deal for my
19 children and my grandchildren. But I see that
20 there might be some differences in the input data.

21 MR. SAMUELS: I think there's quite a
22 few differences. We've supplied that for the
23 record and, you know, will continue to provide
24 that data in every form.

25 COMMISSIONER ROSENFELD: Thanks.

1 MR. SAMUELS: Sure.

2 MR. FERNSTROM: Mr. Chairman, may I add
3 something?

4 COMMISSIONER KEESE: Sure, we'll give
5 you a shot.

6 MR. FERNSTROM: Thank you. Gary
7 Fernstrom, PG&E. I'd just like to note that
8 history and experience have shown that where
9 standards have been adopted that have covered
10 appliances, the price of conforming appliances has
11 come down.

12 To give one example in another area,
13 light emitting diode street light lamps for
14 traffic signals in California are now part of the
15 Appliance Standards, and the cost of those
16 products today are one third of what they were
17 originally.

18 I realize that semiconductor electronics
19 is different than clothes washers; however, that
20 is an example of how the price of conforming
21 equipment does tend to come down when standards
22 are enacted.

23 COMMISSIONER KEESE: Thank you. Any
24 more questions here? We have two more witnesses.
25 Michael Hazinski?

1 MR. HAZINSKI: Good morning,
2 Commissioners. I'm Michael Hazinski, here on
3 behalf of the East Bay Municipal Utility District
4 to support the adoption of a water factor and a
5 standard, a legislatively demanded standard.

6 East Bay MUD is a water and wastewater
7 utility. We serve about 1.3 million people in
8 Alameda and Contra Costa Counties. And we had a
9 large water conservation program, which is a key
10 component of our effort to ensure a reliable water
11 supply for our customers, especially in critically
12 dry years.

13 Clothes washers are an end use that use
14 about, nearly 25 percent of indoor water use in a
15 home. And improving the efficiency of that end
16 use is, we think, a substantial contribution of
17 that program, and ensuring our reliable water
18 supply.

19 To that end we've rebated nearly 30,000
20 clothes washers since we began doing this in 1995.
21 More recently, in the last two and a half years,
22 our rebate payments issued to customers have
23 totalled \$1.7 million, and almost a third of that
24 was funded through a Cal Fed grant that was
25 administered by the state Department of Water

1 Resources.

2 That was our piece of it, because we
3 obtained it in partnership with other Bay Area
4 water utilities, where we operate a regional
5 program. And this regional program, of late we're
6 coordinating our outreach efforts with PG&E, and
7 trying to benefit from the programs that run
8 concurrently on the energy side and the water
9 side.

10 So we've had a lot of success with it,
11 and I'm just telling you what East Bay MUD has
12 invested in this, but you can multiply that
13 statewide by the hundreds of agencies that do
14 implement this program. So it's a substantial
15 investment on the part of the water utilities to
16 support these programs.

17 And we do this as a demand management
18 measure, but we're also investing it as a market
19 transformation strategy, and it's really been quite
20 effective. We can't take credit for the dawn, but
21 there's a lot of factors that have contributed to
22 this dramatic market transformation.

23 But when we first started out in 1995
24 there were just a handful of clothes washers that
25 qualified. Right now on our list there's 130

1 different models that represent 24 brands that can
2 qualify for our rebates. And I think about 80 of
3 those models will qualify under the 8.5 water
4 factor standard.

5 COMMISSIONER KEESE: Okay, is that
6 Energy Star, is that the standard you're using?

7 MR. HAZINSKI: Right now, the standard
8 we're currently using is the CEE list of clothes
9 washers. They've established tiers, and we
10 reference that list. It's very close to Energy
11 Star, but it's not exactly the same.

12 So what we're seeing is these
13 substantial investments paying off. And one of
14 the benefits of incorporating this water standard
15 will ensure that all the products on the market
16 are water energy efficient. We won't have to
17 invest in these expensive programs, we can advance
18 those savings on to our ratepayers, or shift those
19 fundings to other water savings programs.

20 Statewide that will be a big boon to the
21 water utilities and their conservation efforts.
22 I'd also like to address the benefits to the
23 consumers, some of which we've heard discussion
24 about already.

25 One thing that we learned -- and we're a

1 water retailer, so a lot of times we're
2 interacting directly with our customers -- and as
3 a water conservation supervisor I'm on the phone
4 with customers, out buying these things. We
5 haven't heard any complaints about these products,
6 they really like them. There's really high
7 customer acceptance out there.

8 And I think when it started out we could
9 describe these products as niche market products,
10 but since then so many more products have come up
11 on the market with different price points, that
12 it's really no longer a niche market products.

13 And that's one of the developments that
14 has happened in this market transformation
15 process, is we saw models with lower prices coming
16 on the market and increasing market share.

17 At the same time, there is no direct
18 correlation between price and energy and water
19 efficiency. You can find the same prices of
20 models in different tiers of efficiency. And one
21 of the reasons for that I think is that the energy
22 efficiency design or water efficiency design isn't
23 what's driving the price, these models are.

24 They're very cool products. They have
25 fancy controls, a lot of different wash cycles.

1 Some of them have sanitizing rinse functions, so
2 they have a booster heater that will add two or
3 three hundred dollars to the cost.

4 So when you're talking about that high
5 range of cost on the products that are in the
6 market, those are the products with a lot of
7 whistles and bells, the Mercedes, you know, of
8 clothes washers. But there's a lot of good
9 Toyota/Ford type clothes washers that really do
10 the job, and you don't have to pay an arm and a
11 leg for them.

12 And I concur with the thought that was
13 aired earlier, that one of the likely outcomes of
14 energy efficiency standard will be that we'll see
15 more products coming out at a lower price point,
16 so that the market will be expanded to incorporate
17 those customers that are very sensitive to that
18 initial cost.

19 And they'll be able to get into the high
20 efficiency products and start to reap the savings,
21 which I estimate, at the 8.5 water factor,
22 between \$300 and \$800 over a 14 year life cycle.

23 And that's what we tell our customers,
24 that's what their potential life cycles savings
25 would be. So it's enough to offset the cost

1 differential between a standard and a high
2 efficiency clothes washer for a customer.

3 COMMISSIONER KEESE: One quick question.
4 If we should wind up adopting this standard today,
5 would you expect that, for your incentive
6 programs, you would adopt this standard, or stick
7 with where you are?

8 MR. HAZINSKI: In the very near term we
9 would probably stick with where we are. But we
10 make course corrections as we go, beginning
11 January of 2004 we adopted this CEE list as our
12 standard. And that's because of the phasing in of
13 a energy efficiency standard, the national
14 standard.

15 We are committed to offering rebates
16 through 2007. We've partnered, again, with our
17 Bay Area water utilities, and are hoping to obtain
18 a pending grant of \$2.4 million in matching funds
19 for rebates that would cover this interim period
20 between 2004 and 2007. We haven't established
21 exactly where eligibility will be for that program
22 with models. We will be updating.

23 COMMISSIONER KEESE: Thank you.

24 MR. HAZINSKI: Thank you.

25 COMMISSIONER KEESE: Mary Ann Dickinson?

1 MS. DICKINSON: You've heard a lot of
2 testimony today, and I'll try and be brief. But
3 there were some comments that I'd like to make,
4 points that I'd like to make in closing, since I
5 guess I am privileged enough to be the last
6 speaker.

7 My name is Mary Ann Dickinson, I'm the
8 Executive Director of the California Urban Water
9 Conservation Council, which is a non-profit
10 organization composed of water agencies and
11 environmental groups throughout the state of
12 California that support a list of best management
13 practices that have been negotiated.

14 There are about 316 of those entities
15 that have pledged a commitment to those practices.
16 Those practices include encouraging water users to
17 reduce water consumption by purchasing water
18 efficient appliances.

19 And all of our practices have been
20 validated by sound economic principles, and are
21 deemed cost-effective for both the water agency
22 and society in general. So we have not attempted
23 to be economically onerous to any sector.

24 The council has determined high
25 efficiency clothes washers to be of such great

1 value that one of the 14 practices is dedicated
2 solely to the strategy of significantly increasing
3 the market share of high efficiency washers.

4 The lack of a California state standard,
5 one that is more stringent than the federal
6 standard, places a severe economic burden on the
7 water agencies, who offer rebates and financial
8 incentives to encourage that market
9 transformation. And you've heard from both Bill
10 Jacoby and Mike Hazinski about their work in this
11 area.

12 The cost to the water agency are a
13 burden to the consumers, as the costs are
14 recovered through the rates. Now they are
15 avoiding purchasing water that is potentially more
16 expensive, but it's still a cost that's borne by
17 the water utility sector.

18 On the other hand, state water factor
19 standards are a more cost-efficient means to
20 reduce that water, and would ease the burden on
21 water agencies and thus the consumer. So there
22 are a couple of points, maybe five points that I'd
23 like to leave you with.

24 First of all, we agree with the savings
25 projections that have already been mentioned. And

1 we actually extrapolated it out to 2019 to give
2 you more of a window on what you'd actually be
3 saving.

4 And we figure that the annual savings of
5 water by 2019 with the adoption of the standards
6 as proposed would be more than 80 billion gallons
7 a year, or the equivalent of 207,000 acre feet,
8 which is nearly equivalent to the city of San
9 Diego's annual water use.

10 So each year that these standards in
11 effect -- you've heard some projections for 2010,
12 but by 2019 those standards get incredibly
13 efficient in the savings that they yield.

14 Second point, is a a point on energy.
15 And Commissioner Rosenfeld had asked us to take a
16 look at that. California has a uniquely high
17 embedded energy cost to water, because we
18 transport water such large distances. This is not
19 typical of the rest of the country. And I would
20 submit that that's an excellent reason for an
21 exemption justification.

22 Our cost per acre foot, on average, is
23 about 1955 kilowatt hours per acre foot. That's
24 an average. 1955 kilowatt hours per acre foot,
25 that's the energy consumption to move an acre foot

1 of water or to basically generate the water
2 delivery to the customer.

3 That's nearly twice that of other
4 states. That's average. In southern California it
5 goes up to 2,300 kilowatt hours per acre foot
6 because so much of it is pumped from northern
7 California, pumped over the Tehachapis, and then
8 pumped through distribution systems throughout the
9 state. And most of the water consumption, as we
10 know, is actually in southern California. So you
11 have to look at the high as well.

12 So if you take a look at the energy
13 issue, by year 2019 the annual savings would be
14 404 million kilowatt hours, which is a lot of
15 energy. And, as NRDC mentioned, there is a
16 resultant increase also in pollutant loading, so a
17 reduction of 331,000 tons of CO2. So these are
18 not insignificant numbers. So that's point number
19 two.

20 Point number three has been amply made
21 already by the previous speakers. There are
22 plenty of purchasing options for the consumers.
23 At the current proposed standards of 2007, 8.5
24 which you are proposing, we estimate over 53
25 models that currently meet that standard.

1 At the 2010 standard of 6 water factor
2 or less, 21 models already meet that. And so we
3 anticipate a market transformation that will make
4 those models even more plentiful as times goes on.

5 I'd like to point out, though, that
6 right now California is experiencing a 23 percent
7 saturation of Energy Star appliances. So we
8 already are way above the national norm in the
9 amount of Energy Star fixtures that are purchased
10 by the consumers. But the point has also been
11 made that Energy Star and water efficiency are not
12 the same.

13 And this was an issue that came out very
14 clearly in the standards for discussion at the
15 national level. And I'm very sensitive to Chuck
16 Samuel's concerns that, you know, when states
17 start quilting different standards around the
18 company, that's difficult for manufacturers.

19 But I'd also like to point out that this
20 issue was discussed at great length for many, many
21 months at the federal level. The water agencies
22 that participated in negotiations were urging that
23 a water factor be adopted as well as an energy
24 factor, and at that time the association of the
25 manufacturers opposed that.

1 And the implication was made abundantly
2 clear that there were going to be states who would
3 proceed if a national standard didn't include a
4 water factor. And it wasn't California at the
5 table saying that.

6 It was the state of Texas, it was the
7 city of Seattle, those were the two
8 representatives that were negotiating nationally
9 for the water industry.

10 So I don't personally feel guilty about
11 California stepping forward on this issue. The
12 state of Texas already has legislation that they
13 submitted to their legislature, specifying a
14 minimum water factor. So you're not alone in
15 this.

16 The fourth point I want to make has to
17 do with the rebate issues for our water agencies.
18 Our members have already rebated about 50,000 of
19 these washers. There is very high customer
20 satisfaction. But it is costly for the water
21 agencies, and that's why we favor an adoption of a
22 state standard. It will be a much more efficient
23 way to do that.

24 And in answer to a question that was
25 raised earlier, our best management practice is

1 going for revision at our next March meeting of
2 the general membership, and we will be revising
3 that best management practice to be incentivising
4 the levels that you're talking about in your
5 standard.

6 So water agencies will begin to comply
7 and offer rebates even well before 2007, for those
8 machines that will be meeting those standards.
9 Agencies will be getting extra points for
10 incentivising those low water using appliances.
11 So we're returning to work in tandem with what
12 you're doing at the regulatory level.

13 And then finally, the point that I would
14 just like to leave you with is that yes, you will
15 likely face a pre-emption battle. And the water
16 industry has already -- Bill Jacoby, Mike
17 Hazinski, and those who have already testified,
18 will be happy to help you in that process.

19 The California Urban Water Conservation
20 Council will be very pleased to be a partner with
21 you. We feel there's ample demonstration for a
22 special case for California, and I can't imagine
23 that that wouldn't be justified.

24 So we strongly urge you to support the
25 standards in front of you today, and offer any

1 assistance to you that we can give. Thank you.

2 COMMISSIONER KEESE: Thank you. Is
3 there any other public comment? Hearing none, Mr.
4 Rosenfeld?

5 COMMISSIONER ROSENFELD: I move for the
6 standards.

7 (Thereupon, the motion was made.)

8 COMMISSIONER KEESE: Motion,
9 Commissioner Rosenfeld, for adoption of the
10 clothes washer standards.

11 COMMISSIONER GEESMAN: Second.

12 (Thereupon, the motion was seconded.)

13 COMMISSIONER KEESE: Second by
14 Commissioner Geesman. Any comment up here?

15 COMMISSIONER BLEVINS: Mr. Chairman?
16 Just to confirm a little bit more of the process
17 relative to applying for the federal preemption.
18 We will be including in that application the views
19 of all the parties as they were presented here in
20 this proceeding, is that correct?

21 COMMISSIONER KEESE: That's correct.

22 COMMISSIONER BLEVINS: Thank you.

23 COMMISSIONER KEESE: All in favor?

24 (Ayes.)

25 Opposed? Adopted five to nothing.

1 Thank you very much. Thank you everyone. That
2 was an excellent discussion on both sides.
3 Unfortunately it was overloaded on one side.

4 The Minutes, do I have a motion on the
5 Minutes?

6 COMMISSIONER GEESMAN: So moved.

7 (Thereupon, the motion was made.)

8 COMMISSIONER KEESE: Motion, Geesman.

9 COMMISSIONER BOYD: Second.

10 (Thereupon, the motion was seconded.)

11 COMMISSIONER KEESE: Second Boyd.

12 All in favor?

13 (Ayes.)

14 Opposed? Adopted four to nothing.

15 Committee and Oversight?

16 Chief Counsel's Report?

17 MR. CHAMBERLAIN: Yes, Mr. Chairman, we
18 thank you for this additional assignment you've
19 just given us.

20 (laughter)

21 I just have two items. First of all, I
22 just want to bring to your attention a filing that
23 was made in the California Supreme Court that was
24 made on Monday in the Blythe One case, which I've
25 sent around to you.

1 And the second thing was referenced
2 earlier, the Executive Order S-02-03, or S203, I
3 guess. Paragraph 1E of the Executive Order
4 requires the Commission to submit to the legal
5 Affairs Secretary a report on the regulations that
6 have been adopted over the past six years
7 approximately.

8 We have drafted that report and have
9 sent it around to you -- I believe we've sent it
10 around to you -- for your review and the review of
11 your advisers. I don't believe this is going to be
12 a best seller, but you do have an opportunity to
13 look at it. And I would actually like to get that
14 report in a little bit early, perhaps early next
15 week.

16 COMMISSIONER KEESE: Thank you. I have
17 a feeling that you're correct, that that's not
18 going to be a best seller, but we'll give our
19 staffs until Tuesday -- is that acceptable --
20 we'll give all our Commissioner's staffs until
21 Tuesday to make comments to Mr. Chamberlain.

22 Anything else? Thank you.

23 Executive Director's Report?

24 MR. THERKELSEN: Good morning,
25 Commissioners. I specifically would like to

1 welcome Commissioner Blevins. I note for your
2 information that he is the third Energy Commission
3 Executive Director to reach the exalted position
4 of Commissioner. This is a good trend.

5 COMMISSIONER KEESE: I would observe
6 that he has more seniority at the Energy
7 Commission than all five Commissioners combined.

8 MR. THERKELSEN: If seniority is a
9 criteria, --. Well, two things I wanted to
10 report. We had an Indian Energy Conference that
11 took place this last weekend in San Francisco. I
12 understand it was a very successful event.

13 There were several Energy Commission
14 people involved in that. And I think a special
15 thanks and appreciation goes to Darcie Houck from
16 our staff, who helped coordinate and put together
17 that whole event. She did a fantastic job, and
18 made sure the Commission was well represented at
19 the event.

20 The other thing I wanted to report on
21 was next week, on the 10th, there will be a
22 hearing over in the Senate on the work activities
23 of the PUC and the Energy Commission, and I will
24 be representing the Energy Commission at that
25 event.

1 And one of the things I will be
2 stressing is the role of the Integrated Energy
3 Policy Report 2003 in terms of shaping our work
4 activities, but also where the 2005 IEPR is going,
5 and the importance that will play in setting
6 energy policy in the future.

7 COMMISSIONER KEESE: Thank you very
8 much. Questions here?

9 Public Advisor's report?

10 MS. KIM: Nothing special to report
11 today. But I'd like to highlight for you that
12 tomorrow, at 10:00 here, there will be a hearing
13 by Renewable Committees, to solicit input on
14 proposed guidelines for implementing California's
15 Renewable Portfolio Standards. That's all.

16 COMMISSIONER KEESE: Thank you. Any
17 public comment at this time? Seeing none, this
18 meeting is adjourned. Thank you everybody.

19 (Thereupon, the meeting ended at 11:28 p.m.)

20

21

22

23

24

25

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 business meeting, nor in any way interested in outcome of said business meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of February, 2004.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345