

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

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

WEDNESDAY, AUGUST 11, 2004
10:06 A.M.

Reported by:
Peter Petty
Contract No. 150-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairman

Arthur Rosenfeld

James D. Boyd

John L. Geesman

Jackalyne Pfannenstiel

STAFF and CONSULTANTS PRESENT

Robert Therkelsen, Executive Director

William Chamberlain, Chief Counsel

Betty McCann, Secretariat

Susan Gefter

Paul Kramer

Heather Raitt

Gabriel Herrera

Suzanne Korosec

Arthur Soinski

Pramod Kulkarni

McKinley Addy

John Butler

Randel Reidel

Valerie Hall

Bruce Cenicerros

Ken Koyama

James Hoffsis

PUBLIC ADVISER

Margret Kim

ALSO PRESENT

Robert Sarvey

Scott Galati, Attorney
Galati & Blek, LLP
Michael Boyd (via teleconference)

John C. Gabrielli, Attorney
Gabrielli Law Office

Susan Sarvey
Clean Air for Citizens and Legal Equality

Wes Huffman

Mark Johnson
Golden Sierra Power

I N D E X

	Page
Proceedings	1
Items	
1 Consent Calendar	1
2 Tesla Power Project	1
3 Renewables Portfolio Standard Eligibility Guidebook	41
4 Ox Mountain Landfill Gas Project	44
5 Windridge, LLC	45
6 Windland, Inc.	46
7 Association of State Energy Research and Technology Transfer Institutions (ASERTTI)	47
8 California Polytechnic State University	49
9 Regents of the University of California, Davis	50
10 Miramar College, San Diego Community College District	52
11 University of California, Davis Sponsored Programs	53
12 California State Controller's Office	54
13 Architectural Energy Corporation	55
14 California Air Resources Board	61
15 Intellectual Property Release	62
16 Minutes	66
17 Commission Committee and Oversight	67
18 Chief Counsel's Report	70

I N D E X

	Page
Items - continued	
19 Executive Director's Report	71
20 Legislative Director's Report (none)	71
21 Public Adviser's Report	73
22 Public Comment	74
Mark Johnson Golden Sierra Power	74
Adjournment	80
Certificate of Reporter	81

P R O C E E D I N G S

10:06 a.m.

CHAIRMAN KEESE: Good morning. We'll call this meeting of the Energy Commission to order. We'll recite the Pledge.

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

CHAIRMAN KEESE: Before we get to the agenda there has been an additional item to be heard, item 22. That item has been put over to the meeting on the 25th of the month.

We have the consent calendar. Do I have a motion?

COMMISSIONER ROSENFELD: I move the consent calendar.

CHAIRMAN KEESE: Motion, Rosenfeld.

COMMISSIONER BOYD: Second.

CHAIRMAN KEESE: Second, Boyd.

All in favor?

(Ayes.)

CHAIRMAN KEESE: Opposed? Adopted five to nothing.

Item 2, Tesla Power Project.
Consideration and possible action on both
Intervenor Robert Sarvey's and Intervenor CARE's

1 petitions for reconsideration of the Energy
2 Commission decision certifying the Tesla Power
3 Project, sponsored by Florida Power and Light in
4 eastern Alameda County near the City of Tracy.

5 Ms. Gefter.

6 MS. GEFTER: Yes, I'm going to introduce
7 the item, and then the parties will make their
8 presentations.

9 The Commission certified the project on
10 June 16th of this year. They adopted the revised
11 Presiding Member's Proposed Decision as a final
12 decision for the project.

13 Intervenors Robert Sarvey and CARE,
14 represented by Mike Boyd, each filed a petition
15 for reconsideration of the decision. The Tesla
16 project is an 1120 megawatt project in eastern
17 Alameda County near the border with San Joaquin
18 County and the City of Tracy.

19 Many members of the public in the City
20 of Tracy participated during the course of the
21 hearings and I'm sure Mr. Sarvey will indicate
22 that to the Commissioners.

23 There are two procedural issues raised
24 in the petitions for reconsideration. I'm going
25 to identify those two procedural issues, and then

1 there are substantive issues that will be addressed.

2 The two procedural issues that the
3 Commission needs to rule on is one, Intervenor
4 Sarvey asked the Commission to rule on his motion
5 to compel staff to respond to his data request for
6 a qualitative cumulative air analysis. That's one
7 procedural issue.

8 The second procedural issue is that
9 Intervenor CARE asserts the Commission improperly
10 relied on staff's written rebuttal to Mr. Sarvey's
11 comments on the revised PMPD at the business
12 meeting adopting the decision, notwithstanding the
13 Commission's action to strike staff's rebuttal
14 document from the record.

15 Okay, now those sound like complicated
16 procedural issues. They are not. And I'm sure as
17 the parties address them, they will become clear
18 to the Commissioners.

19 The substantive issues include two
20 items. One dealing with air quality and the CEQA
21 mitigation for potential air quality impacts. And
22 the second issue deals with the land use question
23 of whether Alameda County's findings, that the
24 project complies with County LORS, was
25 appropriate.

1 Both the staff and the applicant filed a
2 reply brief responding to the issues raised in the
3 petitions for reconsideration. Mr. Sarvey is
4 here; I don't know if Mr. Boyd representing CARE -
5 - is he on the phone? -- may be on the phone. I
6 don't know, do we know?

7 CHAIRMAN KEESE: I have an indication
8 that John Gabrielli is here representing the
9 Intervenor --

10 MS. GEFTER: Represent the intervenor,
11 okay.

12 CHAIRMAN KEESE: -- CARE.

13 MS. GEFTER: Also, Mr. Galati,
14 representing the applicant, is here. And we have
15 staff here, also. And probably want to begin with
16 the intervenors.

17 CHAIRMAN KEESE: That's just fine.
18 Intervenor -- Bob, do you want to go first?

19 MR. SARVEY: Commissioners, I filed a
20 motion early on in the proceeding in March of
21 2003, and essentially have been requesting an
22 answer to this motion for a considerable amount of
23 time, prehearing conference statement, reply
24 brief, actually in the PMPD conference section.

25 Essentially title 20, section 1716.5

1 under motions, hearings and decisions, prescribes
2 that any party may file a motion or petition with
3 the Presiding Member regarding any aspect of the
4 notice or application proceeding. Responses to
5 the petition by other parties shall be filed
6 within 15 days of the filing of the petitions
7 unless otherwise specified by the Presiding
8 Member.

9 The Presiding Member may set a hearing
10 to consider argument on the petition, and shall,
11 within 30 days of filing the petition, act to
12 grant or deny the petition in whole or part, or
13 schedule further hearings or written responses to
14 the petition.

15 Well, as outlined in my request for
16 reconsideration I'm asking the full Commission to
17 address my motion to compel staff to provide a
18 cumulative air study with all reasonably
19 foreseeable development projects in the area.

20 In my estimation this study should
21 provide all the impacts from the project in
22 conjunction with other developments in the project
23 area, including annual PM10 and PM2.5 impacts
24 which was failed to be done.

25 While staff has formally refused to

1 perform this study, the Committee's failed to rule
2 on my motion. And even if they had ruled on my
3 motion and denied it, I would have ultimately
4 appealed that decision to the full Commission.

5 So the absence of a Committee response
6 to my motion to compel has not allowed me to
7 appeal this issue to the full Commission and
8 present my case. My position is that as a party
9 with all the rights and duties of the others
10 parties, I filed a formal motion that must be
11 answered under Title 20, section 1716.5 of the
12 rules of practice and procedure.

13 As I've outlined in my request I brought
14 this motion up in my prehearing conference
15 statement, my evidentiary brief and the final
16 April 8th Committee Conference and still have not
17 received an answer at this point.

18 So, this is a study that I've asked for
19 three times. I asked for it in the Tracy Peaker
20 Plant; I asked for it in the East Altamont Energy
21 Center; and I also asked for it here in the Tesla
22 proceedings. So I feel that I should at least
23 have a motion denied here after an effort of three
24 years that I've undertaken.

25 I'm not the only one that's requested

1 this study. My State Representative, Barbara
2 Matthews has requested it. The Energy Commission
3 Staff in the East Altamont Energy case has
4 requested it. And I don't see any reason why my
5 motion should not be answered, and I should be
6 allowed to present my case to the full Commission.

7 Now, there's a second part of my
8 petition but I think at this point it might be
9 prudent to stop and rule on this first part of it.
10 But if you'd like, I'll continue into the second
11 part.

12 COMMISSIONER GEESMAN: Mr. Chairman, I
13 think we ought to deal with this first part
14 separately.

15 CHAIRMAN KEESE: That's fine, thank you.

16 MS. GEFTER: Apparently both the
17 applicant and the staff addressed this in their
18 brief, and they have some comments for you on that
19 topic.

20 CHAIRMAN KEESE: Correct. We'll hear
21 from staff.

22 MR. KRAMER: Good morning. Paul Kramer,
23 Staff Counsel. With me today is Jack Caswell, the
24 Project Manager; Mike Ringer from the air quality
25 staff is in the audience; and I believe Mr.

1 Birdsall, also, who prepared the air quality
2 analysis, is on the telephone. I'm told that's
3 correct.

4 Regarding this motion, the request was
5 probably out of order in the first place, because
6 it wasn't just for data. It was for staff
7 basically to do research for Mr. Sarvey. And
8 that's not staff's role in these proceedings.

9 In any event, that wasn't our response
10 to him because at the time we responded in March
11 of 2003, we had prepared what we thought was an
12 adequate cumulative air quality analysis in, I
13 believe it was the preliminary staff assessment at
14 that point in time.

15 Basically this is a disagreement over
16 the adequacy of the analysis in the Commission
17 decision at this point. We think it was adequate
18 and Mr. Sarvey doesn't. He's framing it in this
19 technical procedural way, but it's our position
20 that by going forward with the hearings and then
21 adopting a decision, the Commission, while perhaps
22 not literally, in effect overruled his motion, or
23 denied it.

24 And we suggest that you clearly spell
25 that out today so that there is no doubt in his

1 mind what the status of that motion is. And that
2 you deny it.

3 CHAIRMAN KEESE: Thank you. Applicant.

4 MR. GALATI: Scott Galati on behalf of
5 Midway Power. And with me, I believe, on the
6 phone is Duane McCloud. And in the audience is
7 Steve Ponder with FPL.

8 To give this just a very brief little
9 background, Mr. Sarvey, for all intents and
10 purposes, is asking for the cumulative impact air
11 analysis to include other development projects
12 such as subdivisions and things like that in the
13 Tracy area and in that area. And he's been asking
14 for that for a long time.

15 Staff had a different opinion of how
16 they could account for the background from those
17 developments. They also had a different opinion,
18 and Mr. Sarvey was allowed to present evidence,
19 put in exhibits about those reasonably foreseeable
20 projects that the Committee was entitled to
21 consider as to what the cumulative impacts
22 analysis should be.

23 But I think that the most important
24 thing here is at the end of the day CEQA requires
25 this applicant to mitigate its contribution to a

1 cumulative air quality impact. This project is
2 mitigating all of its direct impacts. And staff
3 concluded, as does the applicant, there's no
4 leftover unmitigated impact that contributes that
5 also needs mitigation.

6 This applicant is not required to
7 mitigate for those development projects that the
8 City of Tracy or others may have permitted. But I
9 want to assure you that this project has fully
10 mitigated all of its direct impacts.

11 So an analysis, even if it were done,
12 even if it were possible to be done, would not
13 change in any way, shape, or form, the results of
14 the proceeding.

15 That's our opinion. Thank you.

16 CHAIRMAN KEESE: Thank you. We also
17 have Mr. Boyd on the line. Michael? Michael?

18 MR. BOYD: Yeah?

19 CHAIRMAN KEESE: We've got you on the
20 line here. Did you care to comment on this issue,
21 or did you wish Mr. Gabrielli.

22 MR. BOYD: Well, I support Bob's
23 position, but counsel's there to speak in my
24 behalf. I'd rather just kind of listen in unless
25 something comes up where you need me. I'm just

1 here available in case you have any questions of
2 me.

3 CHAIRMAN KEESE: Okay. Mr. Gabrielli,
4 did you care to comment on this.

5 MR. GABRIELLI: No, I think (inaudible).

6 CHAIRMAN KEESE: Thank you.

7 MS. SARVEY: I have a couple of comments
8 directly mistakes on this. May I make it?

9 CHAIRMAN KEESE: Well, let me see how
10 we're going to handle this. Do you suggest we
11 handle it one by one, or --

12 COMMISSIONER GEESMAN: One by one is
13 probably the most expeditious.

14 CHAIRMAN KEESE: -- each issue and then
15 come up with a conclusion at the end?

16 COMMISSIONER GEESMAN: Well, I'd suggest
17 that we deal with them one by one.

18 CHAIRMAN KEESE: All right. Then, we'll
19 hear public comment. Ms. Sarvey.

20 MS. SARVEY: Susan Sarvey, Clean Air for
21 Citizens and Legal Equality. We've been talking
22 to you about the massive amount of residential
23 development in Tracy for the last three years. We
24 are building over 30,000 homes in the next ten
25 years.

1 Sunday we had our annual dry bean
2 festival which attracted 35,000 people to Tracy.
3 This was one of the smallest festivals we've ever
4 had.

5 According to the Pollution Control
6 District the extra vehicle emissions generated by
7 the 35,000 additional people triggered a spare-
8 the-air day that they were not expecting in San
9 Joaquin County.

10 We will soon have that many extra
11 vehicles every day on our roads, so you must be
12 sure that you mitigate all the impacts from your
13 power plant so you do not interfere with our air
14 quality and make it worse than the developments
15 will.

16 Unfortunately, you were lazy to perform
17 the cumulative air analysis which we continually
18 requested, which brings us back to how can 1983
19 PM10 ERCs from Pittsburg provide mitigation for
20 emissions that will occur in 2006 and beyond, when
21 staff's own testimony states that during the PM10
22 season winds are stagnant and less conducive to
23 inter-regional transport.

24 Mr. Birdsall's entire air quality
25 analysis was based on my air quality improvement

1 improving because of better vehicles. This
2 weekend was a classic example of regardless of
3 what's happening in my town people just driving
4 over the hill are putting us in a spare-the-air
5 day. I'm going to have two of the biggest power
6 plants in the State of California within five
7 miles of each other, running every single day,
8 right along the very road that is bringing these
9 35,000 cars in.

10 How can you say a cumulative air quality
11 analysis is not important? They have mitigated
12 nothing. They have mitigated nothing. Right now,
13 according to my newspaper, we had spare-the-air
14 when they didn't expect it. And that's the
15 Pollution Control District that's saying this.

16 They haven't even built yet. By the
17 time they're built and up and running I'm going to
18 have 35,000 more homes. I'm never going to have a
19 clean air day, ever. And these 1983-84 ERCs,
20 they're a joke. They need to re-do the air.

21 Thank you very much.

22 CHAIRMAN KEESE: Thank you. Any other
23 public comment?

24 COMMISSIONER GEESMAN: Mr. Chairman, I
25 think that Mr. Kramer properly identified this as

1 a disagreement between Mr. Sarvey and staff as to
2 how to appropriate structure a cumulative air
3 assessment.

4 The Committee found the staff approach
5 to be appropriate. The Commission, I believe,
6 embraced that in its decision on this case. Mr.
7 Sarvey has framed this now as a procedural
8 question.

9 And I would move that we deny his motion
10 to compel.

11 CHAIRMAN KEESE: Motion, Commissioner
12 Geesman.

13 COMMISSIONER PFANNENSTIEL: I second the
14 motion.

15 CHAIRMAN KEESE: Second, Commissioner
16 Pfannenstiel. Further discussion?

17 All in favor?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed? Denied, five
20 to nothing.

21 COMMISSIONER BOYD: Mr. Chairman.

22 CHAIRMAN KEESE: Commissioner Boyd.

23 COMMISSIONER BOYD: Just a comment.

24 Listening to Ms. Sarvey I am reminded of a classic
25 dilemma that she faces, and maybe other citizens

1 in the state face. What I see personally is just
2 a clash between land use planning decisions that
3 are made, the use of the motor vehicle in the
4 state, and the classic need for development of
5 industrial facilities like power plants.

6 And I don't think I agree completely
7 with the motion, and voted in favor because I
8 agree you can't use this one instance as a forum
9 to address that grievance. But I would agree that
10 there is a dilemma that I think falls more on the
11 local decisionmakers than they've been willing to
12 accept for a long, long time.

13 And I do think you need to work with
14 your local decisionmakers, as well as your local
15 air quality people, to try to get them to better
16 address the cumulative impacts and the decisions
17 that they're making.

18 But it isn't equitable to use this forum
19 and this specific kind of a power plant siting
20 situation as the lever to try to get people to
21 address things that I personally think they've
22 been ignoring for some time.

23 So, it is an unfortunate circumstance,
24 but I don't think this is the right forum for it.

25 CHAIRMAN KEESE: Thank you. Mr. Sarvey,

1 we'll continue with your substantive issue.

2 MR. SARVEY: Okay. I just wanted to say
3 that the rules of practice and procedure have been
4 violated by your decision just now. So I just
5 wanted to make that clear on the record that --

6 CHAIRMAN KEESE: Thank you.

7 MR. SARVEY: -- we all abide by these.
8 I try to abide by them. I believe the Committee
9 should have ruled on my motion so I could have
10 appealed it to the full Commission. And I feel
11 aggrieved.

12 I'll move on to my next topic. The
13 second part of my request is related to EPA's June
14 27, 2004 classification of San Joaquin County as
15 nonattainment for federal PM2.5 standard. San
16 Joaquin is one of only 70 counties in the entire
17 nation that has been classified as nonattainment
18 for both the annual PM2.5 standard and the eight-
19 hour ozone standard. That's very significant.

20 This fact, alone, makes us a poor
21 location for siting a massive 1169 megawatt power
22 plant, much less two of them, as the Commission
23 has done with the approval of the Tesla Power
24 Plant and the East Altamont Energy Center.

25 Staff has identified 111 tons per year

1 of unmitigated PM2.5 emissions from the Tesla
2 Power project, but has chosen to provide only 46
3 tons per year of PM2.5 mitigation in their
4 seasonal strategy.

5 Page 157 of the decision states that Mr.
6 Sarvey submitted data from CARB to show that
7 violations of the state PM10 standard occur every
8 month of the year, not just the first and fourth
9 quarters.

10 So in order for this project to be fully
11 mitigated as staff has advertised, we have to
12 mitigate all 111 tons of that PM2.5. I've
13 provided -- this was an exhibit that I provided
14 during the evidentiary hearings that that comment
15 from the decision refers to. And as you can see,
16 every month in San Joaquin County -- in San
17 Joaquin Valley, I mean, we have PM10 violations.
18 So it's my opinion that we need to provide the 111
19 tons.

20 The annual PM2.5 standard is an average
21 of PM2.5 concentrations over four quarters of the
22 year and cannot be mitigated in a seasonal scheme
23 that only mitigates the project's PM2.5 impacts
24 for five months out of the year.

25 Annual impacts for the other seven

1 months of the year are left unmitigated with
2 staff's strategy. The annual impacts have been
3 identified as 111 tons per year, as I said before,
4 and the mitigation is feasible.

5 So I'm asking the Commission to provide
6 the promised full mitigation of the project
7 impacts to the annual PM2.5 standard, as well as
8 the 24-hour standard, which is less significant in
9 its health impacts.

10 Common sense tells us that full
11 mitigation of the project's PM2.5 emissions will
12 address annual PM2.5 impacts. We do not need an
13 air quality management agency to develop a
14 strategy for the entire basin. We only need to
15 mitigate this project's annual PM2.5 and PM10
16 impacts.

17 You can do this by requiring this
18 project to provide another 64.8 tons of PM2.5
19 mitigation for the other seven months of the year
20 that this project will have unmitigated annual
21 PM2.5 impact in San Joaquin County and San Joaquin
22 Valley.

23 CHAIRMAN KEESE: Thank you. Staff.

24 MR. KRAMER: I'll just summarize what we
25 filed in response to the Committee's request for

1 briefs last week. What staff did was we
2 recognized that there are PM2.5 issues in the
3 area. But this new designation at this point is
4 it's merely the start of a process by which, at
5 some point, maybe a year or two from now, the Air
6 District will adopt some control measures. But
7 they really have no advice to give us today,
8 specific advice about what, if anything, by way of
9 additional control or mitigation, is necessary for
10 PM2.5.

11 But that doesn't mean we just threw up
12 our hands and said we don't know enough, we can't
13 do anything. Staff adopted a mitigation strategy
14 that was based on the air quality mitigation
15 agreement for PM10 and NOx. And believes that we
16 provided adequate mitigation during the
17 nonattainment months that would also sufficiently
18 minimize the impacts to the annual average
19 concentrations.

20 We'd point out that Mr. Sarvey's data
21 that he just handed out today, and of course,
22 isn't evidence, is for the entire San Joaquin
23 Valley air basin. I do not know if Mr. Birdsall
24 has the information in front of him that's more
25 specific to the project area. But it could very

1 well be that these exceedances in the nonseasonal
2 months are in some remote part of the District, at
3 least remote to the Tracy area.

4 But, again, in any event this is not
5 evidence. The evidentiary record was closed some
6 time ago. And I think one of the problems we have
7 with the way Mr. Sarvey has presented things in
8 this case is that we're constantly receiving new
9 pieces of paper, new arguments and at some point
10 we just have to draw the line in this case, and
11 make a decision on the basis of the evidence
12 that's in the record at the time the line is
13 drawn. And as I understand it, that line was
14 drawn in April when we had some further hearings.

15 CHAIRMAN KEESE: Thank you.

16 MR. GALATI: If I could provide some
17 clarification from my perspective, is we had quite
18 an argument at evidentiary hearing. And I
19 remember it in detail because I lost it.

20 And that was an argument that this
21 project should not have to mitigate PM2.5 because
22 there were no standards in place. Commissioner
23 Geesman assumed that San Joaquin Valley would
24 violate, and it would be designated nonattainment
25 for PM2.5, and used that as an additional basis to

1 require us to not only fully offset our PM10,
2 which I'll turn to the decision, air quality-29
3 condition on page 187. Requires 189.95 tons of
4 PM10.

5 Also that's combined for AQC-6, which
6 requires 189.95 tons of PM10 offsets. That's the
7 fully offset PM10. There's no 111 missing.

8 Commissioner Geesman then said, during
9 certain months when I think that there could be
10 violations of PM2.5 standard, I'm going to require
11 additional mitigation. That is required by the
12 AQSC-7.

13 So this project is fully offsetting
14 PM10. And under CEQA is offsetting PM2.5 with
15 real time reductions in emissions and real time
16 emission targets yet to be created. This project
17 is doing more mitigation than was approved than
18 the other two projects.

19 I just wanted to point that out.

20 CHAIRMAN KEESE: Thank you. Mr.
21 Gabrielli -- are you done? Mr. Gabrielli, yes.

22 MR. GABRIELLI: I didn't want to deal
23 with procedurally, but I do have comments --

24 CHAIRMAN KEESE: We've disposed of his
25 one procedural issue. We're now on to this

1 substantive issue of air quality.

2 MR. GABRIELLI: May I make a --

3 CHAIRMAN KEESE: Yes, you may.

4 MR. GABRIELLI: Thank you. The decision
5 approved the project without fully adopting
6 feasible mitigation identified by staff and
7 others. This is particularly true in regard to
8 air pollution, especially impacts on the annual
9 PM2.5 standards, as you've just heard.

10 CEQA prohibits the approval of a project
11 without fully adopting feasible mitigation for its
12 impact. Once feasible mitigation has been
13 identified, CEQA doesn't allow the applicant to
14 then bargain for a lower level. CEQA does not
15 allow the kind of bargaining process carried out
16 in the present case.

17 If the lower level of mitigation is
18 justified by economic factors, in other words
19 economic infeasibility, this must be spelled out,
20 and a finding to that effect must be made. And
21 there must be substantial evidence in the record
22 to support such a finding.

23 For example, the applicant must show
24 that adopting the level of mitigation required by
25 staff will make it impossible to carry out the

1 project with an acceptable level of profitability.
2 Of course, such a showing would require disclosure
3 of detailed financial data on the applicant's
4 profitability factors. This kind of evidence is
5 not in the record. It belongs there if you're
6 going to sustain this decision as it stands.

7 As a related point, nowhere in the
8 record is there any indication that even a
9 threshold investigation was conducted into the
10 applicant's financial capability. That is, the
11 applicant's financial ability to carry out its
12 promises undertaken as conditions of project
13 approval.

14 This is particularly appropriate in the
15 present economic climate, especially in light of
16 the many financial improprieties and scandals in
17 the industry. This CEQA requirement has pretty
18 much been completely ignored. To the extent that
19 a request for such an investigation was not
20 clearly and directly made before, please consider
21 this such a request.

22 We believe it is appropriate for the
23 Commission to reopen the administrative
24 proceedings to carry out such an investigation.
25 The investigation we seek has a potential of

1 disclosing that additional measures must be
2 adopted to assure the applicant's full performance
3 of its many conditions of approval. The
4 imposition of bonding requirements is a good
5 example of such measures.

6 As a final point I would like to remind
7 the Commission of the Alameda County Measure D and
8 Williamson Act issues the intervenors raised.
9 These include improperly deferring to the county
10 on the interpretation and implementation of the
11 voter initiative known as Measure D. This also
12 involves the potential violation of the Williamson
13 Act.

14 We understand these issues were raised
15 rather late in the process and have not been fully
16 briefed. We sincerely apologize for this, but due
17 to the complexity of the issues and the
18 intervenors' lack of financial resources the delay
19 is excusable. Despite the delay, the issues
20 deserve to be looked into.

21 The intervenors and other project
22 opponents have a right to be heard on these
23 matters. This includes a constitutional right
24 under the equal protection and due process clauses
25 of the federal and state constitution. It

1 includes first amendment rights, the right to
2 association, and the right to fair and meaningful
3 access to the courts.

4 Again, we respectfully request that the
5 administrative proceedings be reopened to address
6 these issues, and afford the intervenors these
7 rights.

8 Thank you.

9 CHAIRMAN KEESE: Thank you. Mr.
10 Huffman, did you -- is this a point at which you --
11 -- you know, we're going seriatim here. There's a
12 number of issues, but --

13 MR. HUFFMAN: Thank you very much. I'm
14 happy to be here today and I'm sorry to interrupt
15 the process by my tardy arrival. I had the
16 pleasure of speaking to you last time there was a
17 power plant built near the City of Tracy, of which
18 I'm one of the City Council Members. And the
19 mitigation that was actually recommended by staff
20 was not recommended by the City at that time
21 because of some, I don't know, some procedural
22 issues; and that the County Air Pollution District
23 said that they actually didn't need that much
24 money to mitigate.

25 In retrospect that might not have been

1 the best decision since we're in severe
2 nonattainment at this point. So, obviously the
3 real difficulty is how in the world do you get the
4 air to be better.

5 I certainly don't want to penalize power
6 plants; that would not be the issue for anybody
7 here that actually drove a car, turned on their
8 air conditioner. We want the power and we're
9 willing to pay for it.

10 I notice that when I got my bill the
11 other day it cost me more to pay for my water and
12 garbage than it did to pay my PG&E bill. So don't
13 find that the power rates are onerous.

14 I would appeal to the Commission to
15 explore opportunities for having some sort of
16 surcharge that was passed along to PG&E, which was
17 passed along to the customers in our San Joaquin
18 Air Pollution District, which I think all of them
19 would be willing to pay, since we all breathe the
20 same air. And we don't want to have things
21 mitigated to say we put this much pollution, so
22 we're going to take just that much out.

23 The real issue is how do we get the air
24 to be cleaner than it is today. And I don't think
25 that's necessarily the power plant's

1 responsibility. But there is a really nice
2 opportunity, I think, for them to be the vehicle
3 for distributing some of this expense to the
4 taxpayers, themselves. We are the people who
5 pollute, because we buy the products that are
6 polluting the atmosphere.

7 And I don't mind, and I don't think any
8 of my constituents mind paying an additional fee
9 so that the power plant is not responsible, except
10 for the amount that they do, but that they could
11 be the vehicle by which we make the San Joaquin
12 Valley a place where when you got up in the
13 morning on the west side you could actually see
14 the east side of the Valley. Which those of you
15 who have lived here for a long time remember those
16 spectacular views on some mornings. That would be
17 an exciting prospect. And I'm sure that's a goal
18 of all the Commission.

19 I know that we had the GWF plant, the
20 peaker plant, that was built. In addition to the
21 findings that you had, they provided the City of
22 Tracy with half a million dollars, which we had a
23 committee that leveraged that resource into some
24 really wonderful things. There's two natural gas
25 fueling stations, numerous new buses for the local

1 school districts, which made a big difference.

2 And so having the resource which the
3 Energy Commission can provide via these mitigation
4 numbers or some sort of additional long-term
5 mechanism for funding, cleaning the air.

6 Hopefully there will be some great technology in
7 the future that if we have that money we'd be able
8 to buy it and everybody would be happy because the
9 air would be cleaner.

10 So, also we'll have a PM2.5 -- thank
11 you; my tutor is back here helping me -- so we'll
12 have a 2.5 monitoring station in Tracy provided by
13 mitigation measures in the past. So we'll be able
14 to measure that.

15 And it's not just that we're interested
16 in what we can do, but we are the local agency.
17 And so if we don't come and holler, the people in
18 Fresno probably don't realize the impact this
19 plant will have on them. Because they're really
20 going to be the ones that get the worst end of it.

21 You know, where we live it's really not
22 as bad as the rest of the Valley. But because of
23 our location we're the place where everybody wants
24 to build a power plant, because we're very close
25 to most of the users. There's some infrastructure

1 there that really facilitates that.

2 And so I recognize from a business
3 standpoint that's very good decisionmaking,
4 because we want that power. But we really really
5 really like to have the clean air, as well. And
6 if you can find some way that your Commission can
7 be the lead for creating a revenue stream or some
8 sort of asset that allows these Air Pollution
9 Districts to move forward and have air be cleaner
10 next year than it is today, I would hope that that
11 could be possible.

12 Thank you very much. I appreciate the
13 opportunity to speak to the Commission.

14 CHAIRMAN KEESE: Thank you, Mr. Huffman.

15 MR. HUFFMAN: Thank you.

16 CHAIRMAN KEESE: Ms. Sarvey.

17 MS. SARVEY: I'm on the GWF Oversight
18 Committee that implemented the clean air money
19 from the Tracy Peaker Plant. We were given
20 600,000. I was able to lobby that into almost 1.6
21 million. We put in natural gas fuel stations.

22 But the thing that applies today is we
23 are building a PM10/PM2.5 air quality monitoring
24 station that will be up and running this spring,
25 which addresses his issue of what is real and what

1 is not real.

2 I think when this station comes on board
3 you're going to discover that, yeah, we do have
4 this PM2.5 problem right here in Tracy. That's
5 where it is. And it doesn't necessarily stay
6 there 24/7. It moves down south we all know. But
7 we do have it where I live, and it does need to be
8 addressed.

9 A fair solution to that would be for you
10 to provide some sort of mitigation that we start
11 looking at the numbers now that come in this
12 spring from our PM2.5 station. And when we see
13 what exactly the numbers are for PM2.5/PM10 in my
14 town, base the mitigation on the new numbers that
15 are in my town. That would be fair.

16 And put some kind of mitigation in place
17 so when they start construction in 2006 it's
18 dealing with what I'm really dealing with. We can
19 look at the numbers from now until they break
20 ground.

21 I have a question of you, Chairman
22 Keese. And I'm not trying to be disrespectful. I
23 just don't understand it and I need you to explain
24 it to me.

25 I was very involved in East Altamont,

1 and in the decision you basically had the
2 opinion -- my interpretation, I could be wrong --
3 that the transport factor that was discussed in
4 that decision was absolutely ludicrous. And you
5 made some very scathing comments about that. And
6 I really respected you for that.

7 And now I'm in this siting case, five
8 miles away. They're talking about the same stuff
9 and these Commissioners are sitting here -- you
10 were not here, so I'm not blaming you. I want you
11 to explain it to me. These people found that same
12 argument completely plausible.

13 How did we go from ludicrous in East
14 Altamont to plausible in Tesla? I just really
15 really don't understand that. And you have been
16 able to explain things to me in the past. And I'm
17 hoping you can explain this to me now, because
18 it's really hard for me to understand how we went
19 from ludicrous to plausible.

20 Thank you.

21 CHAIRMAN KEESE: Thank you.

22 COMMISSIONER GEESMAN: Mr. Chairman, as
23 the attorney member of the Commission I would
24 advise you not to get into that type of back-and-
25 forth with Ms. Sarvey because she well knows that

1 each of our cases is determined on the basis of
2 the record for that particular case. And I
3 believe as a participant in the Committee's
4 proceedings on this case, she did have exposure to
5 the evidence that was presented on this case
6 related to the transport factor.

7 The Committee found the staff evidence
8 persuasive. That decision was adopted by the full
9 Commission when it took up the full case.

10 MS. SARVEY: That's what I'm not
11 understanding. We are using the same staff and
12 we're coming up with disparate conclusions that
13 are not even close to matching. And if you can't
14 address my issues I feel the only thing I can do
15 is I'm going to have to highlight all three cases,
16 Tracy Peaker, East Altamont and the Tesla case;
17 send it to the Governor; show him the disparities.
18 And the absolute nonconformity of your opinions
19 and numbers.

20 I mean they just change arbitrarily and
21 we have testimony, direct testimony where Birdsall
22 said, well, we adjust the numbers in order to be
23 able to site the plant. This plausibility that
24 you're trying to sell me on right now, after the
25 statement of how ludicrous it was in East

1 Altamont, I need somebody to explain to me how you
2 can have the same staff never come up with the
3 same story.

4 And I think that's why the Governor has
5 been making comments that he wants to disband the
6 CEC because you're not even consistent. How can
7 you be inconsistent like this and then say, sorry,
8 because of legal reasons we're not going to
9 explain our position. That's not right. You are
10 supposed to be protecting the public. And all
11 you're doing is protecting big business.

12 CHAIRMAN KEESE: Thank you. Now, let me
13 explain where we are in our deliberation of this.
14 We had four issues in front of us. We've handled
15 Mr. Sarvey's procedural motion on his data
16 request.

17 We've now heard comments that have
18 covered the two substantive issues that, number
19 one, that CEQA mitigation for air quality impacts
20 is not sufficient to adequately mitigate the
21 transport of the project's PM10 and PM2.5
22 emissions in the San Joaquin air basin.

23 And we've heard some reference
24 requesting the Commission to override Alameda
25 County's findings that the project complies with

1 Alameda County LORS and the Williamson Act
2 contract cancellation provisions are applicable in
3 this case.

4 Is there any member of the public who
5 wishes to comment further on either of those
6 issues?

7 Is there anybody on the phone?

8 MS. SARVEY: Chairman Keese, are we just
9 talking about the Williamson Act part of this?

10 CHAIRMAN KEESE: Both in the
11 presentations that were made here by Mr. Sarvey
12 and the staff and the applicant and Mr. Gabrielli,
13 those issues were discussed.

14 MS. SARVEY: Okay. So I can talk about
15 any of those?

16 CHAIRMAN KEESE: Well, that's what I had
17 hoped you were discussing when you were up there.
18 Do you --

19 MS. SARVEY: Well, I have one more.

20 CHAIRMAN KEESE: All right.

21 MS. SARVEY: Okay. Currently in our
22 local news, both television and newspaper, there
23 are many articles addressing the issue that we
24 have such severe congestion on the Altamont Pass
25 and the back roads that it is no longer possible

1 during commute hours to make a timely emergency
2 response. And they are looking into how to deal
3 with this situation.

4 And exhibit 71 was denied, and I brought
5 it. And it talks about how the empty roads have
6 fallen victim to choking traffic. The people who
7 live on these roads are screaming bitterly because
8 even if they have a heart attack the ambulance
9 can't get there because of the bumper-to-bumper
10 traffic, because the back roads have turned into a
11 highway.

12 And the entire emergency response for
13 these plants was based on Mr. Greenberg's telling
14 us that a fire truck was going to be able to get
15 there in ten minutes. It's never going to happen.
16 This says it's not going to happen. All my local
17 news says it's not going to happen. They're
18 investigating how on earth it could possibly be
19 corrected.

20 I worked with the head of the hazardous
21 materials unit in New York, Hazmat. He's the
22 instructor. We put this entire binder together
23 for hazardous material for the Tracy Fire
24 Department. They've been going to training. They
25 have no vehicle.

1 The problem is we are going to have
2 three power plants with a hazardous response
3 vehicle coming from Castro Valley. And with
4 things as they stand now, it'll be an hour and a
5 half before it gets there because the shoulder
6 isn't wide enough.

7 And we did nothing to address that. We
8 took Mr. Greenberg's word for it. And in all the
9 news, all the news for the last month, including
10 this that we tried to share with you, agencies,
11 both planning, emergency response, they're all
12 saying it can't be done.

13 So now we have the public health and
14 safety, it's completely at risk. And I asked
15 repeatedly to be given the information on how you
16 were going to monitor for a bacterial release from
17 the recycled water, and who would have the power
18 to shut the plant down if there was a Legionella
19 outbreak. And no one has ever gotten back to me.
20 No one has ever explained to me, despite numerous
21 requests, who exactly is responsible for
22 monitoring this; how they're going to monitor it;
23 and who's going to enforce it.

24 And I think that is a travesty. And I
25 really hope you at least address the issue of who

1 is going to have the power to tell them to turn
2 off before people have gotten sick for two weeks
3 while you guys debate who should be turning it
4 off.

5 Thank you.

6 CHAIRMAN KEESE: Thank --

7 MR. GALATI: I apologize. Just for the
8 record could I please make an objection?

9 CHAIRMAN KEESE: Mr. Galati.

10 MR. GALATI: The petition for
11 reconsideration deals with very finite issues.
12 These issues were discussed at evidentiary
13 hearing. And if were still contested, had an
14 opportunity for petition for reconsideration to be
15 brought before the Commission. Those issues are
16 not before you.

17 CHAIRMAN KEESE: Thank you. I thought I
18 had laid out what the issues were before that
19 discussion.

20 Is there any further comment?

21 Thank you.

22 Commissioner Geesman.

23 COMMISSIONER GEESMAN: I think Mr.
24 Sarvey wanted to be recognized.

25 MR. SARVEY: I just wanted --

1 CHAIRMAN KEESE: Sure.

2 MR. SARVEY: -- one point of
3 clarification very quickly. Mr. Kramer kind of
4 indicated that this wasn't part of the record
5 evidence and it is. It's a part of my April 8th
6 submission in my prehearing conference. I just
7 wanted to clarify that.

8 Thank you.

9 COMMISSIONER GEESMAN: Do you know what
10 exhibit number it is, Bob?

11 MR. SARVEY: No, I don't, Commissioner
12 Geesman, I'm sorry.

13 CHAIRMAN KEESE: We can deal with this.
14 We have one more procedural issue at some time to
15 deal with.

16 COMMISSIONER GEESMAN: Let's deal with
17 the last procedural issue then.

18 CHAIRMAN KEESE: All right. I will read
19 it because we have a representative here and on
20 the phone.

21 Intervenor CARE asserts that the
22 Commission improperly relied on staff's written
23 rebuttal to Mr. Sarvey's comments on the revised
24 PMPD, notwithstanding the Commission's action
25 striking staff's rebuttal document from the

1 record.

2 We have your filing. Would you care to,
3 Mr. Boyd or Mr. Gabrielli, do you care to expand
4 on that issue?

5 Mr. Boyd? Mike, are you on the phone?

6 MR. BOYD: Yeah.

7 CHAIRMAN KEESE: You asserted that the
8 Commission improperly relied on staff's written
9 rebuttal to Mr. Sarvey's comments on the revised
10 PMPD, notwithstanding the Commission's action
11 striking staff's rebuttal document from the
12 record.

13 Do you care to expand on that, your
14 written filing?

15 MR. BOYD: No, I think my brief is
16 sufficient. Unless counsel has something to add.
17 I think it stands on its own merit.

18 CHAIRMAN KEESE: Counsel does not.
19 Okay, thank you.

20 Commissioner Geesman, we have the
21 evidence, we have the --

22 MR. SARVEY: It's exhibit 108,
23 Commissioner Geesman. I'm sorry for interrupting.

24 COMMISSIONER GEESMAN: Exhibit 108?

25 MR. SARVEY: 108. I'm sorry.

1 COMMISSIONER GEESMAN: Thank you.

2 CHAIRMAN KEESE: We are ready for --

3 COMMISSIONER GEESMAN: Well, Members, if
4 you will, I have reviewed the written filings of
5 the intervenors seeking reconsideration. And on
6 that basis have asked the General Counsel to
7 prepare a draft order denying the petitions for
8 reconsideration.

9 I circulated, or had the General
10 Counsel's Office circulate a draft of that order
11 to your offices electronically late in the day
12 yesterday. I've not heard nor seen any of the
13 written materials, any new questions of fact, or
14 any new questions of law raised by the request for
15 reconsideration.

16 I believe that should be a standard that
17 we apply in determining whether we should grant
18 reconsideration.

19 On that basis I would move that we deny
20 the request for reconsideration. And I would
21 offer to work with the General Counsel in
22 finalizing that draft of an order carrying out
23 that decision.

24 CHAIRMAN KEESE: Motion, Commissioner
25 Geesman.

1 COMMISSIONER PFANNENSTIEL: Second.

2 CHAIRMAN KEESE: Second, Commissioner
3 Pfannenstiel. Any further discussion?

4 All in favor?

5 (Ayes.)

6 CHAIRMAN KEESE: Opposed? Adopted five
7 to nothing. Thank you. And counsel will work
8 with Commissioner Geesman on the preparation.

9 Thank you, everybody.

10 MR. SARVEY: Thank you, Commissioners.

11 CHAIRMAN KEESE: Thank you. Item 3,
12 Renewable portfolio standard eligibility
13 guidebook. Consideration and possible adoption of
14 revisions to the renewable portfolio standard
15 eligibility guidebook regarding permit
16 requirements for solid waste conversion
17 facilities. Ms. Raitt.

18 MS. RAITT: Good morning. I'm Heather
19 Raitt with the renewable energy program. Today
20 the Renewables Committee has recommended changes
21 to the RPS eligibility guidebook. And this is the
22 guidebook we use to implement provisions of the
23 RPS, renewable portfolio standard.

24 The guidebook describes the eligibility
25 criteria of renewable facilities to qualify for

1 the RPS and the process for certifying facilities.
2 And as we have said before, the guidebooks are
3 living documents that can be modified as need be
4 for market or regulatory developments or lessons
5 learned.

6 And in this case this is a change that
7 was needed as a result of starting to do
8 certification of the facilities, or processing
9 their request for certification.

10 The proposed change is concerning
11 certifying municipal solid waste conversion
12 technologies. The guidebook currently says,
13 relies on a requirement that such facilities need
14 to receive a conversion technology facility permit
15 from the California Integrated Waste Management
16 Board.

17 But in some cases these facilities can
18 be otherwise eligible under the law, but exempt
19 from needing this facility permit. And so we have
20 allowed for provisions where if a facility
21 operator can show that they have documentation
22 from the local enforcement agency that they do not
23 need to get this permit. And additionally, that
24 the California Integrated Waste Management Board
25 has reviewed the facility and found that it

1 otherwise meets all the certification criteria,
2 then we can use that in lieu of receiving this
3 conversion technology facility permit.

4 CHAIRMAN KEESE: Thank you. I have no
5 indication there's any opposition to this. Is
6 there anybody in the audience who is opposed to
7 this item?

8 MR. HERRERA: Chairman Keese.

9 CHAIRMAN KEESE: Yes.

10 MR. HERRERA: I need to make a comment
11 for the record concerning CEQA. The legal office
12 has taken a look at this activity. It doesn't
13 fall within the definition of a project --

14 CHAIRMAN KEESE: For the record, would
15 you identify yourself?

16 MR. HERRERA: Yes, sir. Gabriel Herrera
17 with the Commission's Legal Office.

18 Again, as I indicated, we've taken a
19 look at this activity. And it's a minor change
20 dealing with general policy procedures. It
21 doesn't meet the definition of a project under the
22 California Environmental Quality Act, and
23 therefore is exempt from that.

24 CHAIRMAN KEESE: Thank you, sir. The
25 item is before us.

1 COMMISSIONER GEESMAN: Move adoption.

2 CHAIRMAN KEESE: Motion, Commissioner
3 Geesman.

4 COMMISSIONER PFANNENSTIEL: Second.

5 CHAIRMAN KEESE: Second, Commissioner
6 Pfannenstiel.

7 MS. RAITT: Thank you.

8 CHAIRMAN KEESE: All in favor?

9 (Ayes.)

10 CHAIRMAN KEESE: Opposed? Adopted five
11 to nothing. Don't get ahead of us.

12 (Laughter.)

13 CHAIRMAN KEESE: Item 4. Ox Mountain
14 Landfill Gas Project. Possible approval of
15 amendment 1 to funding award agreement REN-98-004
16 from the New Renewable Resources Account to the Ox
17 Mountain Landfill Gas Project, a 10 megawatt
18 landfill gas project in Half Moon Bay.

19 MS. KOROSEC: Good morning,
20 Commissioners. I'm Suzanne Korosec with the
21 Renewable Energy Program. The Ox Mountain
22 Landfill gas project holds a funding award from
23 the New Renewable Resources Account. The
24 Commission approved changes to this project at the
25 June 30th business meeting. And we're asking for

1 your approval to sign an amendment to the funding
2 award agreement to reflect those changes.

3 CHAIRMAN KEESE: Thank you.

4 COMMISSIONER GEESMAN: So moved.

5 CHAIRMAN KEESE: Motion, Geesman.

6 COMMISSIONER PFANNENSTIEL: Second.

7 CHAIRMAN KEESE: Second, Pfannenstiel.

8 All in favor?

9 (Ayes.)

10 CHAIRMAN KEESE: Opposed? Adopted five
11 to nothing.

12 Item 5, Windridge, LLC. Possible
13 approval of funding award agreement REN-01-071
14 from the New Renewable Resources Account to the
15 Windridge, LLC project.

16 MS. KOROSSEC: This project was a winner
17 in the Commission's October 2000 auction to award
18 incentives to new renewable generators. The
19 project has changed ownership and its online date
20 since its original bid. And these changes were
21 approved at the June 30th business meeting.

22 According to the rules of that October
23 auction the Commission will not sign funding award
24 agreements with projects until they've met all of
25 their environmental requirements. This project

1 has now met that criteria and so we're proposing
2 to sign the funding award agreement with the
3 project that will also reflect the changes from
4 the June 30th business meeting.

5 CHAIRMAN KEESE: Thank you. Do we have
6 a motion?

7 COMMISSIONER PFANNENSTIEL: Mr.
8 Chairman, I will recuse myself from consideration
9 of this.

10 COMMISSIONER GEESMAN: Move approval.

11 COMMISSIONER BOYD: Second.

12 CHAIRMAN KEESE: Motion, Geesman;
13 second, Boyd. Commissioner Pfannenstiel recuses
14 herself.

15 All in favor?

16 (Ayes.)

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

19 Item 6, Windland, Inc. Possible
20 approval of amendment 1 to funding agreement REN-
21 98-016 from the New Renewable Resources Account
22 for the Windland, Inc. project.

23 MS. KOROSSEC: Again, this is similar to
24 item number 4 in that the Commission approved
25 changes to this project at the June 30th business

1 meeting, and we're merely drafting an amendment to
2 reflect those changes.

3 CHAIRMAN KEESE: Thank you.

4 COMMISSIONER GEESMAN: Move approval.

5 COMMISSIONER PFANNENSTIEL: Mr.

6 Chairman, again I recuse myself.

7 CHAIRMAN KEESE: Motion, Geesman.

8 COMMISSIONER BOYD: Second.

9 CHAIRMAN KEESE: Second, Boyd.

10 Commissioner Pfannenstiel recuses herself.

11 All in favor?

12 (Ayes.)

13 CHAIRMAN KEESE: Opposed? Adopted four

14 to nothing.

15 MS. KOROSK: Thank you.

16 CHAIRMAN KEESE: Thank you. Item 7,
17 Association of State Energy Research and
18 Technology Transfer Institutions, otherwise known
19 as ASERTTI. Possible approval of contract 500-04-
20 003 for \$54,000 to fund the ASERTTI membership
21 agreement for three years.

22 MR. SOINSKI: Good morning.

23 CHAIRMAN KEESE: Good morning.

24 MR. SOINSKI: I'm Arthur Soinski; I'm in
25 the PIER program. Gary Klein is not in the office

1 today, so I am here to carry this item.

2 The Energy Commission was a founding
3 member of ASERTTI in 1990; currently 43 members of
4 ASERTTI. These are organizations from across the
5 country that conduct energy-related research,
6 development and demonstration.

7 The mission of the ASERTTI program is to
8 improve the effectiveness of energy RD&D through
9 collaboration and through technology transfer.
10 I'm involved in a \$2 million project with about
11 eight other organizations doing research on
12 improving the effectiveness of distributed
13 generation.

14 And I request that the Commission
15 approve membership for three years at a cost of
16 \$54,000.

17 CHAIRMAN KEESE: Thank you. I would say
18 ASERTTI has been a very valuable asset to the
19 Commission and to energy research across the
20 country.

21 COMMISSIONER ROSENFELD: I move the
22 item.

23 MR. FAY: Second.

24 CHAIRMAN KEESE: Motion, Rosenfeld;
25 second, Geesman. Any further conversation?

1 All in favor?

2 (Ayes.)

3 CHAIRMAN KEESE: Opposed? Adopted five
4 to nothing.

5 MR. SOINSKI: Thank you.

6 CHAIRMAN KEESE: Thank you. Item 8,
7 California Polytechnic State University. Possible
8 approval of contract 400-99-014 amendment 1 for a
9 no-cost time extension with the California
10 Polytechnic State University Foundation.

11 MR. KULKARNI: Good morning,
12 Commissioners. I'm Pramod Kulkarni with the PIER
13 program, Industry, agriculture and water program. The staff is
14 requesting approval of reallocation of some funds
15 from this existing contract for new tasks.

16 This contract with CalPoly commenced in
17 2000 for \$1.5 million. It was primarily in the
18 area of energy efficiency associated with
19 irrigation water delivery and management.

20 And all the tasks in this particular
21 project have been completed; however, there was
22 some savings which resulted from the judicious
23 management of the funds by the contractor. And so
24 the staff is requesting that the remaining funds,
25 \$113,000, could be reallocated for a project which

1 deals with the field evaluation procedures for
2 variable frequency drives used by water pumps.

3 This will result in possibly saving
4 energy in the Central Valley, especially during
5 the peak hours.

6 COMMISSIONER ROSENFELD: I move the
7 item.

8 CHAIRMAN KEESE: Thank you. Motion,
9 Rosenfeld.

10 COMMISSIONER GEESMAN: Second.

11 CHAIRMAN KEESE: Second, Geesman.

12 All in favor?

13 (Ayes.)

14 CHAIRMAN KEESE: Opposed? Adopted.

15 Item 9, Regents of the University of
16 California, Davis. Possible approval of contract
17 400-99-005 amendment 1 for a no-cost time
18 extension also to redirect unspent funds to be
19 used to fund RD&D in refrigerated warehouses.

20 MR. KULKARNI: Commissioners, this is an
21 identical situation to the last contract I
22 discussed. This was the transition contract from
23 a utility, and transitioned over to the University
24 of California at Davis. Primarily again in the
25 area of agriculture energy use.

1 This contract, which began in 1999 for
2 \$1.79 million, have also completed all tasks,
3 excepting one task. The task was either curtailed
4 because it was found to be either redundant or
5 information existed elsewhere. So it was decided
6 not to go ahead with that particular task.

7 Consequently there's a saving of about
8 \$475,000 which the staff requests be allowed to
9 redirect those funds for the research in the area
10 of refrigerated warehouses in California.
11 Collectively they consume like 225 megawatts of
12 electricity for the food processing industry.

13 So we hope by benchmarking the usage and
14 finding some new ways we can possibly impact the
15 usage in refrigerated warehouses.

16 CHAIRMAN KEESE: Thank you.

17 COMMISSIONER ROSENFELD: I move the
18 item.

19 CHAIRMAN KEESE: Motion, Rosenfeld.

20 COMMISSIONER GEESMAN: Second.

21 CHAIRMAN KEESE: Second, Geesman.

22 All in favor?

23 (Ayes.)

24 CHAIRMAN KEESE: Opposed? Adopted five
25 to nothing.

1 DR. KULKARNI: Thank you.

2 CHAIRMAN KEESE: Thank you. Item 10,
3 Miramar College, San Diego Community College
4 District. Possible approval of contract 600-04-
5 001 for up to \$168,740 to develop the California
6 component of the Hydrogen Technology Learning
7 Centers project. I believe we took up related
8 items at our last meeting. Mr. Addy.

9 MR. ADDY: Yes. Commissioners, good
10 morning. My name is McKinley Addy and I'm Project
11 Manager in the transportation energy division.

12 The Commission previously approved the
13 Energy Commission's receipt of a \$250,000 grant
14 from the National Association of State Energy
15 Officials at the July 14th business meeting.

16 We are now requesting your approval for
17 the Energy Commission to use the NASEO grant to
18 contract with the San Diego Community College
19 District on Miramar College to develop the
20 California component of the Hydrogen Technology
21 Learning Centers project.

22 As mentioned, the contract with Miramar
23 College is for up to \$168,740, and there are other
24 partners in this effort. The partners include the
25 California Air Resources Board, the City of Chula

1 Vista, Sacramento Municipal Utility District and
2 the South Coast Air Quality Management District.

3 Those partners are providing up to
4 \$83,000 in cofunding to match the federal grant.

5 COMMISSIONER BOYD: Mr. Chairman, I move
6 the item.

7 CHAIRMAN KEESE: Thank you. Motion,
8 Commissioner Boyd.

9 COMMISSIONER PFANNENSTIEL: Second.

10 CHAIRMAN KEESE: Second, Commissioner
11 Pfannenstiel.

12 All in favor?

13 (Ayes.)

14 CHAIRMAN KEESE: Opposed? Adopted five
15 to nothing.

16 Item 11, University of California, Davis
17 sponsored programs. Possible approval of contract
18 600-04-003 for up to \$152,122 for similar
19 purposes. Is this an identical issue?

20 MR. ADDY: Yes, Chairman Keese. And we
21 also request your approval for this contract.

22 COMMISSIONER BOYD: Move approval.

23 CHAIRMAN KEESE: Motion, Commissioner
24 Boyd.

25 COMMISSIONER PFANNENSTIEL: Second.

1 CHAIRMAN KEESE: Second, Commissioner
2 Pfannenstiel.

3 All in favor?

4 (Ayes.)

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

7 MR. ADDY: Thank you.

8 CHAIRMAN KEESE: Item 12, California
9 State Controller's Office. Possible approval of
10 contract 200-98-012, amendment 2, for an
11 augmentation of \$300,000 for the continued
12 auditing services and support of the PIER audit
13 program.

14 MR. BUTLER: Good morning, I'm John
15 Butler with the financial services branch.

16 This contract augmentation and extension
17 is to continue to obtain auditing services from
18 the State Controller's Office. The PIER audit
19 program was originally developed to help
20 streamline the PIER invoicing process that we
21 currently use. And the audit program will
22 continue this for three more years and \$300,000.

23 CHAIRMAN KEESE: Thank you. Do I have a
24 motion?

25 COMMISSIONER GEESMAN: I move --

1 COMMISSIONER ROSENFELD: Second.

2 CHAIRMAN KEESE: Motion, Geesman;
3 second, Rosenfeld.

4 All in favor?

5 (Ayes.)

6 CHAIRMAN KEESE: Opposed? Adopted five
7 to nothing.

8 MR. BUTLER: Thank you.

9 CHAIRMAN KEESE: Thank you. Item 13,
10 Architectural Energy Corporation. Possible
11 approval of contract 400-04-001 for \$380,000 to
12 provide engineering, architectural and market
13 research and market assessment services to support
14 development of the AB-549 plan for reducing peak
15 energy consumption.

16 I will note that, Commissioners, what
17 you have in front of you is \$380,000 which is
18 different than what was first put on our agenda.
19 The remaining \$300,000 that was on the agenda will
20 be taken up at our next meeting.

21 With that, please.

22 MR. REIDEL: Good morning,
23 Commissioners. My name is Randel Reidel. I'm a
24 part of the AB-549 staff that reviewed and made
25 the initial selection for the Architectural Energy

1 Corporation to perform this contract.

2 As you will note, the contract is for
3 now the \$80,000, which is coming from the
4 Commission funds. And we're awaiting the process
5 for the final approval of the funds that also will
6 be coming from Southern Cal Edison and the
7 utilities.

8 And if I could just interject for one
9 moment, please, -- this is Bruce Cenicerros, who is
10 the Project Lead on this particular project, also.
11 I'm going to turn it over to him to continue with
12 this presentation.

13 CHAIRMAN KEESE: Thank you. Before we
14 go farther let's make sure we clarify what the
15 number is. Do we have 80,000 in front of us
16 today, or --

17 MS. HALL: It's for approval of the
18 entire contract and concept; \$80,000 is coming
19 from the Commission budget and should be available
20 today for your possible approval.

21 The \$300,000 is coming to the Commission
22 from an outside source. And it's nearly --

23 CHAIRMAN KEESE: And we'll take that up
24 at the next meeting?

25 MS. HALL: Yes, merely --

1 CHAIRMAN KEESE: Thank you.

2 MS. HALL: -- a procedural issue to get
3 that money properly approved here.

4 CHAIRMAN KEESE: Thank you.

5 MR. CHAMBERLAIN: Mr. Chairman, just for
6 clarification, the contract will be approved at
7 \$380,000, but it's contingent upon the receipt of
8 the other money which will then be approved at the
9 following meeting.

10 CHAIRMAN KEESE: Thank you.

11 MR. CENICEROS: Thank you for that
12 clarification. The purpose of this contract with
13 Architectural Energy Corporation and the
14 subcontractors is to provide technical assistance
15 for the AB-549 project, which is a study of
16 potential ways to reduce peak energy consumption
17 in existing buildings in California.

18 AB-549 asked the Commission to provide a
19 plan to the Legislature with options by January 1,
20 2004. We've since extended that to October 1st of
21 2005.

22 And we have managed to partner with the
23 PUC and the investor-owned utilities through the
24 California Measurement Advisory Committee which
25 performs a statewide market assessment and

1 evaluation studies for utilities and the PUC to
2 have the studies serve the utilities' purposes,
3 too, in planning their future public goods charge
4 energy efficiency programs.

5 The partnership will really help us come
6 up with solutions that will integrate good market-
7 based solutions with potential regulatory
8 solutions to improve energy efficiency in both
9 residential and nonresidential buildings in
10 California.

11 CHAIRMAN KEESE: Thank you.

12 COMMISSIONER PFANNENSTIEL: Mr.
13 Chairman, I move the item.

14 CHAIRMAN KEESE: Motion, Commissioner
15 Pfannenstiel.

16 COMMISSIONER ROSENFELD: Second.

17 CHAIRMAN KEESE: Second, Commissioner
18 Rosenfeld.

19 COMMISSIONER GEESMAN: Mr. Chairman.

20 CHAIRMAN KEESE: Commissioner Geesman.

21 COMMISSIONER GEESMAN: I am supportive
22 of this effort, but as I think you recall I voted
23 against the interim report we filed with the
24 Legislature last December on AB-549.

25 I have an ongoing concern that this

1 project, and indeed our entire consideration of
2 the retrofit sector, is a bit of a stepchild in
3 state energy policy. We've achieved a worldwide
4 reputation, quite deservedly so, for our work in
5 building standards for new construction and our
6 work in appliance efficiency standards.

7 But for a long, long, long time for a
8 variety of reasons I think we have under-
9 emphasized the role that existing buildings can
10 play. Call your attention to the recent report of
11 the Bay Area Economic Forum describing the lowly
12 performance in the State of California on demand
13 response.

14 I know we've got some big decisions in
15 that area coming up later this year and early next
16 year. But, if you'll look at that report you find
17 us ranked below number 20 among the 50 states.
18 And the Bay Area Economic Forum suggests that we
19 benchmark ourselves against the State of Florida,
20 of all places, to try and squeeze more performance
21 out of this sector.

22 I'm appreciative of Southern California
23 Edison Company for being willing to make money
24 available; and I think we've achieved good
25 cooperation from each of the utilities in trying

1 to structure a program here.

2 But I think all of us need to be on
3 notice that our performance in this area has not
4 lived up either to our rhetoric or to our
5 accomplishments in the energy efficiency area,
6 particularly addressed toward new buildings and
7 new appliances.

8 CHAIRMAN KEESE: Thank you.

9 COMMISSIONER PFANNENSTIEL: Mr.
10 Chairman, just a comment, or maybe a question.

11 CHAIRMAN KEESE: Commissioner
12 Pfannenstiel.

13 COMMISSIONER PFANNENSTIEL: Just to make
14 sure that this requirement under AB-549, as I read
15 it, is geared toward reducing peak demand. And I
16 want to make sure that that is, in fact, in the
17 workplan with the consultant who has been
18 selected. That, in fact, it is towards the
19 questions of demand response and the issues, I
20 think, that have been raised earlier.

21 MR. CENICEROS: Yes, I can assure you
22 that that's the primary focus of the work scope;
23 it's emphasized sufficiently.

24 CHAIRMAN KEESE: Thank you. I believe
25 we have a motion and a second.

1 All in favor?

2 (Ayes.)

3 CHAIRMAN KEESE: Opposed? Adopted five
4 to nothing. Thank you.

5 MS. HALL: Thank you.

6 MR. CENICEROS: Thank you,
7 Commissioners.

8 CHAIRMAN KEESE: Item 14, California Air
9 Resources Board. Possible approval of contract
10 500-00-017, amendment 3, to add \$1,120,000 to the
11 contract and continue to cost share the purchase
12 of new school buses. This is a motion to receive
13 funds.

14 MR. KOYAMA: Thank you. My name's Ken
15 Koyama; I'm with the transportation and energy
16 division.

17 This amendment to our interagency
18 agreement with the California Air Resources Board
19 will add \$1.12 million for the fourth phase of the
20 lower emissions school bus program.

21 We expect to use these funds to purchase
22 up to ten new school buses and replace pre-1977
23 school buses, ten pre-1977 school buses.

24 We request your approval of this
25 amendment.

1 CHAIRMAN KEESE: Thank you.

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

4 CHAIRMAN KEESE: Motion, Body.

5 COMMISSIONER PFANNENSTIEL: Second.

6 CHAIRMAN KEESE: Second, Pfannenstiel.

7 All in favor?

8 (Ayes.)

9 CHAIRMAN KEESE: Opposed? It's adopted
10 five to nothing.

11 MR. KOYAMA: Thank you.

12 CHAIRMAN KEESE: Thank you. Item 15,
13 Intellectual Property Release. Consideration of
14 possible approval for a resolution releasing
15 intellectual property to an inventor pursuant to
16 Energy Commission patent policy.

17 Mr. Chamberlain.

18 MR. CHAMBERLAIN: Yes, thank you, Mr.
19 Chairman. Not quite four years ago the Commission
20 established an intellectual property committee for
21 the purpose of allowing the Commission to work
22 with members of its staff who came up with ideas
23 that could potentially receive patent protection.

24 The concept was to allow the inventor to
25 disclose the idea to the intellectual property

1 committee in confidence, which was important for
2 preserving the potential patent ability of the
3 idea. And then to allow the Commission, through
4 the Committee, the Committee to make a
5 recommendation to the Commission whether either to
6 release the idea to the inventor for his or her
7 private patenting; or to enter into more or less
8 of a partnership arrangement where the Commission
9 would take an assignment of the patent and fund
10 the filing of the patent application.

11 And then there would be a royalty
12 sharing arrangement should the patent eventually
13 be valuable.

14 In this case the Intellectual Property
15 Committee, which, by the way, originally was to
16 include the members of the RD&D Committee and
17 myself, as general counsel, but one of the initial
18 members of the RD&D Committee, Bob Laurie,
19 indicated that he preferred not to be on the
20 Committee.

21 And therefore the Commission appointed
22 Terry Serles. Now Terry is gone, and it's my
23 understanding that Commissioner Geesman is
24 interested in being on this Committee. It's not
25 on the agenda today, but at some point you will

1 probably want to formally appoint him to the
2 Intellectual Property Committee.

3 What you have before you today is that
4 the Intellectual Property Committee has made a
5 recommendation to you to release an invention that
6 was disclosed by Jack Janes. I believe that all
7 of you have been briefed at one time or another
8 about this particular idea. And therefore I bring
9 it to you -- I have drafted a resolution that
10 would carry that recommendation out, and bring it
11 to your attention.

12 CHAIRMAN KEESE: Thank you. And what we
13 have here is the release of an invention relating
14 to separation of radioactive elements contained in
15 spent fuel from nuclear power plants.

16 The Commission has essentially faced
17 issues of intellectual property during the seven
18 years that I've been here. And in my opinion the
19 powerlessness of the Commission to take advantage
20 of inventions, its inability to, with the
21 governmental processes, to work with private
22 developers and investors militates against us
23 trying to retain these things.

24 So I am fully supportive of releasing
25 this idea so Mr. Janes can pursue it on his own.

1 COMMISSIONER BOYD: Mr. Chairman.

2 CHAIRMAN KEESE: Commissioner Boyd.

3 COMMISSIONER BOYD: A question of Mr.
4 Chamberlain. Did the Intellectual Property
5 Committee discuss the magnitude of the
6 Commission's investment in this idea? I mean I'm
7 painfully aware of this proposal. I've heard a
8 lot, spent a lot of time on it in the time I've
9 been here. And I know it's been an interesting,
10 if not somewhat emotional issue for several
11 members of the staff.

12 And there is a concern about the
13 investment that the organization has made in this.
14 Did the Intellectual Property Committee discuss
15 that in its deliberations and the recommendation
16 that it made?

17 MR. CHAMBERLAIN: Well, I think the
18 Intellectual Property Committee was aware of the
19 number of hours perhaps of staff time that have
20 been expended evaluating this idea. And there has
21 been a certain amount of travel involved.

22 But, actually the investment the
23 Commission has in it at this point is relatively
24 small.

25 COMMISSIONER BOYD: Thank you.

1 CHAIRMAN KEESE: Thank you. Do I have a
2 motion?

3 COMMISSIONER ROSENFELD: I move.

4 CHAIRMAN KEESE: Motion, Rosenfeld.

5 COMMISSIONER GEESMAN: I'll second that.

6 CHAIRMAN KEESE: Second, Geesman.

7 All in favor?

8 (Ayes.)

9 CHAIRMAN KEESE: Opposed? Adopted five
10 to nothing. Thank you.

11 We have a request for public comment at
12 the end of the meeting.

13 I have minutes in front of us, approval
14 of the minutes from July 14th.

15 COMMISSIONER GEESMAN: So moved.

16 CHAIRMAN KEESE: Motion, Geesman.

17 COMMISSIONER ROSENFELD: Second.

18 CHAIRMAN KEESE: Second, Rosenfeld.

19 All in favor?

20 (Ayes.)

21 COMMISSIONER BOYD: I'll abstain as not
22 being here.

23 CHAIRMAN KEESE: Adopted four to
24 nothing, Commissioner Boyd abstaining.

25 Commission Committee and Oversight. We

1 have had a request in public session, at the PUC,
2 for the Commission to look at a document that was
3 prepared by Commissioner Peevey and submitted to
4 the Public Utilities Commission, and will be taken
5 up at some point by the Public Utilities
6 Commission, on the subject of core/noncore.

7 It was presented as part of the energy
8 action plan grouping.

9 Commissioner Geesman?

10 COMMISSIONER GEESMAN: Yes, I'd move
11 that we endorse the Peevey proposal.

12 COMMISSIONER ROSENFELD: Second.

13 CHAIRMAN KEESE: Motion to endorse the
14 Peevey proposal --

15 COMMISSIONER PFANNENSTIEL: Mr.
16 Chairman, I have read the Peevey proposal. And
17 have discussed it with some people internally
18 here. But I wasn't part of a group discussion or
19 I have not discussed it with President Peevey or
20 anybody from the PUC.

21 So I think at this point I wouldn't be
22 comfortable endorsing that proposal, per se. I
23 think that the idea behind it, the market
24 structure that it envisions and that it embraces,
25 certainly is logically appealing to me.

1 But I think that I'm not, at this point,
2 comfortable in saying that I endorse that proposal
3 as President Peevey laid it out.

4 CHAIRMAN KEESE: You're suggesting that
5 you would support it in concept, but --

6 COMMISSIONER PFANNENSTIEL: I am
7 suggesting that. And I'm suggesting that I
8 wouldn't oppose such a thing. But I don't feel
9 that I'm close enough to it at this point to adopt
10 the recommendations that are contained within it.

11 COMMISSIONER GEESMAN: Is there wording
12 of what I thought was a simple motion that would
13 make you supportive? I think the Chairman is
14 inferring support in concept?

15 COMMISSIONER PFANNENSTIEL: Supporting
16 in concept, I definitely am fine with that. I
17 think the question was whether that specific
18 proposal was the best way to implement the concept
19 of core/noncore.

20 COMMISSIONER GEESMAN: And I'm prepared
21 to go there, but I understand that you prefer that
22 it be concept, so why don't I frame the motion as
23 supporting concept.

24 COMMISSIONER PFANNENSTIEL: That's fine
25 with me.

1 CHAIRMAN KEESE: Thank you. Motion in
2 front of us. Do we have a second?

3 COMMISSIONER ROSENFELD: Second, again.

4 CHAIRMAN KEESE: Second, Rosenfeld.

5 All in favors?

6 (Ayes.)

7 CHAIRMAN KEESE: Opposed? Adopted five
8 to nothing. Thank you, both.

9 Anything else in Commission Committee
10 and Oversight?

11 COMMISSIONER BOYD: Mr. Chairman.

12 CHAIRMAN KEESE: Commissioner Boyd.

13 COMMISSIONER BOYD: Since I don't think
14 there's any other Committee forum to discuss this,
15 let me just mention that I've just spent the last
16 three days at the Board of Governors forum in
17 Santa Fe, at which our Governor, the first
18 Governor in quite some time, participated and made
19 a very stirring speech about energy, energy
20 efficiency, participation with the ten states that
21 constitute the Board of Governors in their
22 programs in the future.

23 And in his three-point program of energy
24 basically embraced everything that the Energy
25 Worktable has worked on for the last year. And

1 I've had the privilege of co-chairing that Energy
2 Worktable. So, I think the Commission was well
3 acknowledged in the work that it's done there.

4 And contrary to what Mrs. Sarvey said,
5 I've never heard the Governor say he wanted to
6 abolish this organization. He just has before him
7 a proposal from a Commission. I thought of giving
8 her that advice, if she's going to communicate
9 with the Governor, but why help.

10 In any event, I just -- I think it was a
11 very successful operation, and I think this
12 Commission has put a lot of effort into helping
13 move along the brand new Energy Worktable. And I
14 particularly want to thank Mike Smith, who's done
15 yeoman's work on the work that we presented here
16 this past week.

17 So I just want to report that to my
18 fellow Commissioners.

19 CHAIRMAN KEESE: Thank you very much.
20 Anything further?

21 Chief Counsel's report.

22 MR. CHAMBERLAIN: Yes, Mr. Chairman. I
23 believe a few weeks ago I noted that a Department
24 of Personnel Administration had approved the
25 concept of the Commission having two attorney IV

1 positions.

2 We have now conducted an exam and I'm
3 pleased to announce that we have promoted Dick
4 Ratliff and Caryn Holmes. They're both on
5 vacation so I'm not embarrassing them here. But I
6 wanted you to know that. I think it's very good
7 news for the Commission. And they're both very
8 deserving attorneys.

9 CHAIRMAN KEESE: Thank you. Executive
10 Director's report.

11 MR. THERKELSEN: Good morning,
12 Commissioners. Two real quick things. On about a
13 monthly basis we receive maybe 200 letters from
14 constituents that they're sent to the Governor;
15 and then are forwarded on to us for response.

16 And one of the requirements of the
17 Schwarzenegger Administration is that we rapidly
18 respond to those constituent letters and get
19 information back out to them.

20 Several months ago we received a letter
21 from an individual wanting more information on the
22 renewables program, complimenting the Commission
23 on that renewables program, and asking how they
24 can support it. And we provided a response letter
25 back to her.

1 In response to that, she ended up
2 sending the Commission a check for \$100 to be
3 distributed into the renewable resources trust
4 fund, indicating her level of support for the work
5 that we have been doing.

6 And I wanted to pass that on to you that
7 there are folks out there that even though we have
8 challenges and we have resource issues, people
9 that are appreciative of what we've been doing.

10 COMMISSIONER BOYD: Mr. Chairman, Mr.
11 Therkelsen, would you like to reveal the name of
12 this individual? Did they choose to be anonymous,
13 otherwise it would be good --

14 MR. THERKELSEN: No, the --

15 COMMISSIONER BOYD: -- if the record
16 reflects this generosity.

17 MR. THERKELSEN: The name of the
18 individual is Lynn Paxton; and she lives down in
19 southern California in Beverly Hills.

20 The other thing that we received
21 recently was a letter from the National Conference
22 of State Legislatures, and they issued the
23 Commission an award for distinguished or notable
24 documents.

25 And there were two that were awarded.

1 One was the 2003 PIER annual report; and the
2 second document was the 2003 Integrated Energy
3 Policy Report. And not only did we receive a
4 nifty little --

5 COMMISSIONER BOYD: Did you get a check?

6 MR. THERKELSEN: -- thing --

7 COMMISSIONER BOYD: Oh.

8 (Laughter.)

9 MR. THERKELSEN: No, we -- even better.

10 We got a whole series of stickers that we're
11 allowed to put on any documents that we publish
12 showing that we are a winner of an award, so.

13 CHAIRMAN KEESE: Thank you, Mr.

14 Therkelsen, that's very --

15 MR. THERKELSEN: Yes. And following the
16 business meeting I would like to have a meeting
17 with you on work plans and then also go into
18 closed session and talk about a personnel matter.

19 CHAIRMAN KEESE: Thank you. I do not
20 believe we have any Legislative report.

21 Public Adviser.

22 MS. KIM: I just wanted to remind
23 everyone about a number of IEPR Committee hearings
24 that are coming up in the next couple of weeks.

25 The first one is August 18th and it's to

1 get input on the scope of the 2005 Energy Report.
2 And then we'll have three workshops to seek public
3 comment on the draft staff white papers. And
4 that'll be on transmission on August 23rd; aging
5 power plants on August 26th; and renewables on
6 August 27th. That's all.

7 CHAIRMAN KEESE: Thank you. And we have
8 a request for public comment before we do that.
9 The way we're going to adjourn to the third floor
10 conference room when the Executive Director is
11 going to give us a brief update on the CPR review
12 and how we're focusing on it. We're going to deal
13 with the staff workplans for this year. And then
14 we are going to go into executive session on a
15 personnel matter after those are over. The public
16 is invited to participate, to attend the meeting
17 on the third floor. No action will be taken at
18 that time.

19 Mr. Mark Johnson. Golden Sierra.
20 Welcome.

21 MR. JOHNSON: Thank you. I'm Mark
22 Johnson with Golden Sierra Power. We built a 30
23 kW photovoltaic system up in Summerset, California
24 that was completed at the first week in May.

25 We had an expiration date of our

1 incentive of May 15th. The rule stated when we
2 submitted an extension that we needed to have
3 purchased 25 percent, a minimum of 25 percent of
4 the equipment prior to that extension date.

5 On April 30th we put in for our
6 extension. On July 17th our extension was denied
7 based on that requirement not being fulfilled.

8 We purchased \$100,000 worth of panels on
9 April 30th that went onto an invoice on May 5th.
10 We took delivery on panels on May 5th.

11 We have supplied documents -- we again
12 submitted to the Committee some documentation that
13 we thought had gotten to the Committee for review,
14 stating the purchase date and the amount of
15 purchase that we bought the panels for. Again it
16 was denied.

17 And so we'd like to get some
18 clarification from the Committee Members of what
19 they're looking for so that we can come back next
20 week. We've been ready to submit our rebate as of
21 August 2nd, and I'm paying interest on \$100,000
22 worth of panels right now at 1000 bucks a month.
23 And so I need to figure out what you guys need so
24 I can get this clarified, and so we can get our
25 rebate without having to resubmit.

1 CHAIRMAN KEESE: Unless somebody's
2 familiar -- are you familiar with this?

3 MR. HERRERA: Gabe Herrera with the
4 Commission's Legal Office. I haven't reviewed the
5 information that Mr. Johnson submitted, but by way
6 of background I believe he's referring to the
7 emerging renewables program which provides rebates
8 to individuals that install PV systems.

9 There is a process in place to extend
10 the time in which they have to install the system
11 and still be able to claim the rebate amount that
12 they've been awarded from the Commission.

13 It sounds like, based on Mr. Johnson's
14 comments, that he was getting close to the end of
15 that period in which he had to submit a claim, and
16 then requested an extension. I'm not sure if the
17 Renewables Committee reviewed that request for an
18 extension. But that is the process that's in
19 place.

20 CHAIRMAN KEESE: Well, seeing as the
21 parties --

22 COMMISSIONER GEESMAN: -- saw that. Did
23 the Committee rule on it, Mark, or --

24 MR. JOHNSON: Yes, sir.

25 COMMISSIONER GEESMAN: So you went

1 through a staff process --

2 MR. JOHNSON: I've gone through -- my
3 next step in the process -- I have followed the
4 procedures accordingly. My next step is actually
5 getting on the business, next week's business
6 meeting requesting the full Committee to act on
7 it.

8 I have the documentation. We're just
9 asking for some clarity here --

10 CHAIRMAN KEESE: Yeah, I don't believe
11 we can handle this at the Commission level.

12 COMMISSIONER GEESMAN: I'm just trying
13 to determine where it is. We'll take a look at
14 it.

15 CHAIRMAN KEESE: All the parties are
16 here and so we'll give you some time after we're
17 over here to discuss it offline and --

18 MR. JOHNSON: Is this something that can
19 be resolved today?

20 CHAIRMAN KEESE: It --

21 COMMISSIONER GEESMAN: No idea, --

22 CHAIRMAN KEESE: It's not something that
23 can be resolved here.

24 MR. JOHNSON: But in the procedural --
25 my point is that procedurally the next step is for

1 it to be resolved here.

2 CHAIRMAN KEESE: I don't think --

3 MR. HERRERA: Point of clarification,
4 Chairman Keese. That's correct, the process is if
5 somebody's denied a request for funding there is a
6 petition process to the Renewables Committee. The
7 Renewables Committee will consider that. If the
8 Committee denies the request, there is an appeal
9 process to the full Commission.

10 Obviously that matter hasn't been
11 noticed for this business meeting, so it would be
12 inappropriate for you to take any action --

13 CHAIRMAN KEESE: What I'm suggesting is
14 that they --

15 MR. HERRERA: Yeah.

16 CHAIRMAN KEESE: -- you can discuss that
17 privately for --

18 MR. JOHNSON: We tried that last week,
19 Commissioner. And had no success.

20 MR. HOFFSIS: My understanding of
21 that --

22 CHAIRMAN KEESE: Identify for the
23 record.

24 MR. HOFFSIS: Excuse me, I'm Jim
25 Hoffsis, Manager of the office that administers

1 the program that Mr. Johnson's speaking of.

2 My understanding is that his extension
3 was denied by the Committee. And then was
4 appealed for reconsideration to the Committee.
5 And the Committee, on a second time, on
6 reconsideration, also denied it.

7 So I believe his next appeal process is
8 to the full Commission, which should be noticed
9 for another business meeting.

10 CHAIRMAN KEESE: And evidently he's not
11 received a satisfactory explanation of why he was
12 denied, because I didn't hear it explained.

13 MR. JOHNSON: That's correct.

14 MR. HOFFSIS: Yes.

15 MR. JOHNSON: And we have asked that --

16 CHAIRMAN KEESE: I don't think we want
17 to handle this on a Commission basis --

18 MR. HOFFSIS: Right. We've had a number
19 have come --

20 CHAIRMAN KEESE: -- until he formally
21 appeals. So, if you would discuss it with him
22 after this is over.

23 MR. HOFFSIS: Okay.

24 CHAIRMAN KEESE: Subject to my earlier
25 announcement that we will adjourn to the third

1 floor for the two staffing issues, and then a
2 personnel matter, this meeting will be adjourned
3 at that time.

4 (Whereupon, at 11:34 a.m., the recorded
5 business meeting was adjourned.)

6 --o0o--

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of June, 2004.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345