

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

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

WEDNESDAY, APRIL 13, 2005

10:06 A.M.

Reported by:
Peter Petty
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

Jackalyne Pfannenstiel, Acting Chairperson

Arthur Rosenfeld

James D. Boyd

John Geesman

STAFF PRESENT

Scott Matthews, Acting Executive Director

William Chamberlain, Chief Counsel

Song Her, Secretariat

Roger Johnson

Gary Fay

Sue Kateley

Gordon Schremp

Tom Glaviano

Elaine Hebert

Dick Ratliff

Adam Pan

Barbara Byron

Nancy Libonati

Joe O'Hagan

Guido Franco

Caryn Holmes

Mike Jaske

Kevin Kennedy

PUBLIC ADVISER

Nick Bartsch

ALSO PRESENT

Chris Ellison, Attorney
Ellison, Schneider and Harris, LLP

Steven Kelly
Independent Energy Producers Association

Scott Galati, Attorney
representing Roseville Energy Park

Bob Hren
Roseville Energy Park

Gina Grey
Western States Petroleum Association

David A. Smith
bp America, Inc.

Jay McKeeman
California Independent Oil Marketers Association

Ronald M. Van De Pol
Van De Pol Enterprises, Inc.

Craig Lease
L&L Suppliers
Stockton Roofing

Gregory S.G. Klatt, Attorney
Douglass and Liddell
representing APS Energy

Greggory L. Wheatland, Attorney
Ellison, Schneider and Harris, LLP

Mona Tierney
Constellation NewEnergy

Jennifer Chamberlin
Strategic Energy

Laura Genao
Southern California Edison Company

ALSO PRESENT

Christopher J. Warner, Attorney
Pacific Gas and Electric Company

Joseph Kloberdanz
San Diego Gas and Electric
Sempra Energy Utilities

Stuart Hemphill
Southern California Edison Company

Kevin Woodruff
Woodruff Expert Services

Randy Howard
Los Angeles Department of Water and Power
(via teleconference)

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10:06 a.m.

ACTING CHAIRPERSON PFANNENSTIEL: The meeting will come to order. Pledge, Commissioner Geesman.

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

ACTING CHAIRPERSON PFANNENSTIEL: Good morning. Before we start the business meeting I'd like to make a change to the order of the agenda.

We have items 12 through 17, all of which deal with a common subject, which is the appeal of the confidentiality rulings. And I'd like to take them all as a group after we've gone through the remainder of the agenda and the reports. So we'll go all through everything else on the business meeting and then take up numbers 12 through 17.

So with that, we'll then start with item number 1 on the agenda. California Coastal Commission. Possible approval of a memorandum of agreement between the California Coastal Commission and the California Energy Commission to insure timely and effective coordination during the Energy Commission's review of an application

1 for certification of a proposed site and related
2 facilities in the coastal zone and under Energy
3 Commission jurisdiction.

4 Yes, Mr. Johnson.

5 MR. JOHNSON: Good morning,
6 Commissioners. My name's Roger Johnson, Manager
7 of the Siting and Compliance Office.

8 This agreement before you today, the
9 need for this agreement was recognized by both
10 Commissions from recent coastal project
11 proceedings. The two Commissions directed their
12 staffs to develop this agreement that's before you
13 today.

14 The purpose of this agreement is to
15 insure timely and effective coordination between
16 the Energy Commission and the Coastal Commission
17 during the Energy Commission's review of coastal
18 power plants.

19 The agreement recognizes the exclusive
20 authority of the Energy Commission to certify
21 sites and related facilities subject to the Energy
22 Commission's jurisdiction. And it also recognizes
23 the Coastal Commission's role in the AFC
24 proceedings as described in the Warren Alquist Act
25 and the Coastal Act.

1 The agreement describes the manner in
2 which the two Commissions and their staffs will
3 coordinate during AFC reviews in the four main
4 areas of timing of the Coastal Commission's
5 30413(d) report; information necessary to complete
6 the Coastal Commission's report; and how the
7 information will be obtained.

8 Staff coordination during AFC
9 proceedings and supplemental Coastal Commission
10 review for substantial project changes.

11 ACTING CHAIRPERSON PFANNENSTIEL: Thank
12 you. I also have Chris Ellison who would like to
13 speak to this.

14 MR. ELLISON: Thank you, Madam Chairman,
15 Commissioners. Chris Ellison, Ellison, Schneider
16 and Harris.

17 As you know, we have a number of clients
18 who are potentially interested in this topic.
19 Among them Duke Energy and others who have been
20 involved in some of the coastal projects that have
21 led to this exercise.

22 And the first thing I want to say is to
23 commend both Commissions for working on this MOU.
24 I think there's some good things in the MOU.

25 That said, however, we are here on

1 behalf of our lawfirm and our clients, generally,
2 to ask that you put this over and have some sort
3 of stakeholder process for review of this
4 document. And that you urge the Coastal
5 Commission to do the same thing.

6 There has been no stakeholder process
7 that I'm aware of on this. There have been no
8 workshops. It has not been sent out to any
9 mailing list that I know of.

10 We are here only because we saw it on
11 your agenda and asked for a copy from the staff;
12 and did get a copy and have had a chance to look
13 at it. In a moment I'll make a couple of
14 substantive comments against the possibility that
15 you are going to act on this today.

16 But our bottomline is that there really
17 hasn't been any serious input from anyone outside
18 the two agencies. And we think procedurally
19 that's an important flaw and that you should
20 create some kind of opportunity for people to
21 submit comments on this.

22 Having made that point, there are a
23 couple of issues here that I do want to discuss
24 very briefly. The first is there is a very good
25 thing in this MOU in that it does, I think, do a

1 good job of addressing the timing of the Coastal
2 Commission's report and insures that it comes in
3 early enough that the parties and the Committee
4 can consider it in the Energy Commission hearing
5 process; as opposed to coming in after the fact.
6 I think that's an important positive development.

7 But there are two other issues the MOU
8 does not address that I think are critical. The
9 first is what happens if the Coastal Commission,
10 for whatever reason, doesn't meet the deadlines in
11 this MOU? And in particular, does that create a
12 legal flaw in the Energy Commission's process?
13 Could the Energy Commission's ultimate decision be
14 attacked for failure to follow this MOU or not?

15 The second issue that I want to raise,
16 and this is a very real-world problem that I think
17 we've seen in some cases, the statutes that are
18 discussed here, and I'm not going to re-raise the
19 issues that we've talked about with respect to the
20 statute, but other than to say for the record we
21 do disagree with the interpretation of the statute
22 given in the MOU.

23 But putting that aside, and I think
24 that's been well discussed, the statutes generally
25 address what I would characterize as policy

1 recommendations from the Coastal Commission. And
2 so the Energy Commission's findings that it must
3 make to not follow those policy recommendations
4 are questions as to whether they are feasible or
5 whether the Energy Commission is adopting
6 something that is more environmentally protective.

7 But another serious issue is the Energy
8 Commission's findings of fact. And the concern
9 that I think needs to be addressed through the
10 stakeholder process is what happens if the Energy
11 Commission, following its hearings, makes finding
12 of fact that are inconsistent with the Coastal
13 Commission recommendations?

14 And in that circumstance, if you don't
15 find some way to address it -- and there are
16 various ways to address it; I won't get into them
17 now unless you want me to -- and frankly, my
18 clients have not had an opportunity to select
19 among the various ways of addressing it, either --
20 but if you don't address it, let me give you an
21 example of the kind of problem that you can come
22 up with. And I'm just going to pick one of
23 several hypotheticals.

24 But one hypothetical would be the Energy
25 Commission finds, as a question of fact, that

1 there is not a significant environmental impact on
2 an issue for which the Coastal Commission
3 recommends mitigation.

4 In that circumstance, assuming the
5 mitigation is feasible, and assuming that it is
6 the most environmentally protective
7 recommendation, and since the Energy Commission
8 would have found no impact, presumably it would be
9 the most environmentally preferable
10 recommendation, the Energy Commission would find
11 itself in the position of agreeing in this MOU
12 that it will adopt mitigation for something that
13 it would be making a finding of fact that there is
14 no impact.

15 In that circumstance the Energy
16 Commission has essentially painted itself into a
17 corner where it has to adopt a decision that's not
18 legally defensible. As you know, your decision is
19 required, by law, to make findings of fact and
20 conclusions of law that support the conditions of
21 certification.

22 So I think what we need to do here on
23 that issue is to create a process that insures
24 that while the agencies, the Commissions, may
25 disagree about policy, that they're all working

1 from the same findings of fact. There's nothing
2 novel about that. The role of the lead agency
3 under CEQA is essentially to produce the document
4 that sets forth the facts upon which other
5 agencies comment. The Energy Commission is the
6 lead agency under CEQA.

7 It's equally important to protect the
8 integrity of the one-stop siting process, the
9 Energy Commission being the ultimate arbiter of
10 facts. If that's not preserved in this MOU then
11 what you may find is that applicants and
12 stakeholders will have to participate in a second
13 hearing process at the Coastal Commission if
14 that's where the factual issues are being
15 resolved. This is a pretty serious issue in my
16 judgment, and it's not addressed at all in the
17 MOU.

18 So, to sum up, thank you for giving me
19 this time. This is a good thing. We support this
20 process, but there's more work to be done and
21 there has not been a stakeholder process. So I
22 would urge that you not act on this today; put it
23 over for some sort of stakeholder process.

24 Thank you very much.

25 COMMISSIONER GEESMAN: Madam Chair.

1 ACTING CHAIRPERSON PFANNENSTIEL:

2 Commissioner Geesman.

3 COMMISSIONER GEESMAN: Because you've
4 been around the Commission a long time, do our
5 staff-to-staff MOUs ordinarily take on a
6 stakeholder process?

7 MR. ELLISON: Well, that's an
8 interesting topic, Commissioner Geesman. For two
9 agencies that value highly stakeholder process and
10 input I would have to answer that question no.
11 Typically a lot of MOUs do not have a stakeholder
12 process.

13 I think in this case there should be
14 one. I think that one of the concerns that
15 applicants have often had about public
16 participation at the Energy Commission is that
17 somehow that gets cast aside when the discussion
18 is between agencies as opposed to between an
19 agency and the applicant. We can have a longer
20 conversation about that.

21 But this is something for which I think
22 stakeholder input would be valuable, and there are
23 certainly stakeholders who care about this.

24 COMMISSIONER GEESMAN: Yeah, I guess in
25 reading the backup material and having interaction

1 with the staff on this question, it occurs to me
2 that what they're attempting to accomplish, and
3 this is in response to Chairman Keese, if I recall
4 correctly, after the Morro Bay decision in which
5 your firm represented the applicant, they're
6 attempting to address two seemingly
7 straightforward things.

8 One is the timing of the Coastal
9 Commission's input into our process, which I take
10 it was a problem in the Morro Bay proceeding. And
11 the second is the information required to enable
12 the Coastal Commission to provide that timely
13 input.

14 Your comments, I think, went more to
15 questions of what I would regard as more
16 appropriately rulemaking or the adoption of regs
17 by this Commission. And I have a real hesitancy
18 to address too many, if any, of the questions you
19 raise in the abstract.

20 I think it's much better for this
21 Commission to try to preserve as much discretion
22 as possible for its individual siting committees
23 in cases where it can review the actual evidence
24 brought before it, rather than bind itself, in the
25 abstract, in advance of that.

1 So I'd urge you to look at this as an
2 MOU and not as regulations in disguise. I guess
3 I'd also be a bit concerned that despite your
4 disclaimer we not relitigate statutory
5 construction. As you're aware, the Commission
6 came down on the opposite side of your firm as it
7 related to reconciling the Coastal Act with the
8 Warren Alquist Act in the Morro Bay proceedings.

9 And we have faithfully applied that
10 construction in the El Segundo proceeding
11 thereafter.

12 All that having been said, I think you
13 do raise an important question of public
14 participation.

15 What I would recommend, Madam Chair, is
16 that we ask our Executive Director and General
17 Counsel to review whether this is a subject
18 appropriate for a stakeholder process. And we not
19 take any action today, but wait for the Executive
20 Director and General Counsel to report back to us.

21 COMMISSIONER BOYD: Madam Chair.

22 ACTING CHAIRPERSON PFANNENSTIEL:

23 Commissioner Boyd.

24 COMMISSIONER BOYD: I want to join
25 Commissioner Geesman. As I listened, Chris, to

1 your presentation I reflected back on many years
2 in government and I thought it a little unusual to
3 have an MOU between two agencies that are just
4 trying to reach an understanding on how to handle
5 their existing processes work more smoothly; to
6 have that challenged on the grounds that there
7 wasn't public scrutiny of the issue.

8 But you did raise some interesting legal
9 questions. And not being a lawyer, I'm glad
10 Commissioner Geesman spoke first. And I'm also
11 glad that he referenced Mr. Chamberlain's
12 involvement. Because there admittedly are some
13 issues here that, having participated in both of
14 the most recent contentious coastal power plant
15 siting cases, I can readily understand,
16 unfortunately, some of the legal issues that are
17 raised.

18 So I would agree with, and if it was a
19 motion, second Commissioner Geesman's suggestion
20 on the fact that this needs to be looked into a
21 little bit more before we immediately jump to the
22 public process agreement. You do raise some
23 interesting questions.

24 ACTING CHAIRPERSON PFANNENSTIEL: Thank
25 you, Chris. I think before we move on it, we do

1 have Steve Kelly would like to speak to this item
2 also.

3 MR. KELLY: Steven Kelly with
4 Independent Energy Producers. I think you've
5 addressed this for me, anyway, in deciding to
6 delay. I would just make one observation.

7 In this particular case my usual scouts
8 and attendants didn't bring this to my attention
9 until yesterday when I was coming back from San
10 Francisco. So I really have not had time to
11 review this document, which may be part of one of
12 the issues that Chris has raised.

13 I'll note in the context in which there
14 are a number of RFOs that are either now on the
15 streets, or soon to go out in the procurement of
16 the PUC, that hopefully will result in new
17 generation being developed, resolving this issue,
18 the potential litigation risk on this is
19 important.

20 We have always been strong advocates for
21 the Energy Commission's process, an efficient and
22 timely process, and the results of that which
23 diminish or minimize the likelihood of litigation
24 at the end.

25 So we would like to see whatever you

1 adopt here in this case move toward that goal, as
2 well. And if there has apparently been some
3 issues raised on the legal perspective that I
4 think need to be vetted, and I'm glad that you
5 appear to be moving toward that direction so we
6 can have an opportunity to provide you thoughts on
7 that.

8 Thank you.

9 ACTING CHAIRPERSON PFANNENSTIEL: Thank
10 you, Mr. Kelly.

11 I think, given what we're hearing today,
12 I'm persuaded that there really does need to be
13 some more at least opportunity for public review
14 of the document.

15 I agree with the fellow Commissioners
16 that this is not a rulemaking. And, in fact, it
17 is a good faith effort of the staffs of two
18 agencies to define a way that the process should
19 work better.

20 But I do think that we can work with the
21 Executive Director and see if there needs to be
22 further public involvement in the process before
23 this comes up for adoption. So we'll hold it over
24 till the next business meeting.

25 Item 2, Roseville Energy Park.

1 Consideration and possible adoption of the
2 Presiding Member's Proposed Decision for the
3 Roseville Energy Park. Mr. Fay.

4 MR. FAY: Thank you, Chairman
5 Pfannenstiel, ViceChair Pfannenstiel.

6 The Roseville Energy Park is owned by
7 the applicant Roseville Electric. That's a
8 municipal utility and it's the City of Roseville's
9 electric department.

10 Roseville Electric has proposed this
11 project in order to improve service to its
12 customers by locating electric generation within
13 Roseville's own service area, and connecting
14 directly to the Roseville Electric distribution
15 grid.

16 The project allows this municipal
17 utility to provide its customers rate stability at
18 reasonable cost while minimizing environmental
19 impacts from the plant and related gas, water and
20 transmission lines. Namely because those lines
21 are so short.

22 The power plant will be located on a 12-
23 acre site within the City of Roseville and will be
24 a natural gas-fired combined cycle facility with a
25 nominal generating capacity of 125 megawatts. And

1 the ability to use duct firing, thereby achieving
2 peaking capacity up to 160 megawatts.

3 The Presiding Member's Proposed Decision
4 or PMPD contains the Committee's evaluation of the
5 evidence of record regarding this project, and the
6 Committee's rationale in determining that the
7 Roseville Energy Park project complies with all
8 applicable laws, ordinances, regulations and
9 standards, and may therefore be licensed.

10 The PMPD provides references to the
11 records supporting the Committee's findings and
12 conclusions, and specifies the conditions of
13 certification required to insure that the project
14 is designed, constructed and operated in the
15 manner necessary to protect public health and
16 safety, promote the general welfare, and preserve
17 environmental quality.

18 Roseville Electric anticipates
19 commencing construction of the project shortly
20 after Commission approval, and plans to begin
21 operations by late 2007.

22 If there's any questions, I can answer
23 them.

24 ACTING CHAIRPERSON PFANNENSTIEL:
25 Questions for Mr. Fay? Others to speak on the

1 subject?

2 MR. GALATI: My name is Scott Galati
3 representing Roseville Electric. And with me
4 today is Tom Hoddishey (phonetic) head of
5 Roseville Electric, Andrea Grenier who helped
6 shepherd our process through as a consultant to
7 the team, and the Project Manager Bob Hren.

8 I'd like to thank specifically the
9 Commission and the Committee for working
10 diligently specifically to get this Presiding
11 Member's Proposed Decision out in what might be
12 record time. And we thank you very much; we're
13 appreciative of the attention that we've gotten.

14 I think Mr. Hren would like to say a few
15 words.

16 MR. HREN: Thank you. Bob Hren, the
17 Roseville Energy Park Project Manager for
18 Roseville Electric. I'd like to first thank all
19 the members of the Commission that have assisted
20 in moving this process forward. But in particular
21 I'd like to recognize the active involvement of
22 the Committee at appropriate times in the process
23 that really did help move the process quickly.
24 And for that, we thank you.

25 ACTING CHAIRPERSON PFANNENSTIEL: Thank

1 you.

2 COMMISSIONER GEESMAN: Madam Chair.

3 ACTING CHAIRPERSON PFANNENSTIEL: Yes,
4 Commissioner Geesman.

5 COMMISSIONER GEESMAN: This is a good
6 project. It's enjoyed good staff work and a very
7 responsive applicant. So I would move adoption of
8 the PMPD, the accompanying Committee errata
9 thereto. I would also authorize the Hearing
10 Officer to make nonsubstantive edits as needed to
11 reflect the Commission's decision today.

12 COMMISSIONER ROSENFELD: I second.

13 ACTING CHAIRPERSON PFANNENSTIEL: Okay.
14 Further discussion? Motion and second.

15 All in favor?

16 (Ayes.)

17 ACTING CHAIRPERSON PFANNENSTIEL:

18 Opposed? Carries. Thank you.

19 MR. ELLISON: Thank you.

20 MR. HREN: Thank you.

21 ACTING CHAIRPERSON PFANNENSTIEL: Item
22 3, Petroleum Industry Information Reporting Act.
23 Possible adoption of proposed amendments to the
24 Petroleum Industry Information Reporting Act
25 regulations published as express terms of proposed

1 regulations dated March 16, 2005. Ms. Kateley.

2 MS. KATELEY: Thank you, ViceChair
3 Pfannenstiel and Commissioners. My name is Sue
4 Kateley and I work in the transportation fuels
5 office here at the Energy Commission.

6 The item before you is a rulemaking to
7 add new reporting requirements to the Energy
8 Commission's petroleum industry information
9 reporting act regulations.

10 This proposal is the first modification
11 since the early 1980s. The proposed changes will
12 expand the type of data reported, increase the
13 number of participants required to report
14 information to the Commission. It also increases
15 the number of companies that must file weekly,
16 monthly and annual reports.

17 The reporting requirements in these
18 regulations are based on new statute added to the
19 Public Resources Code in 2000 and 2003.

20 The Energy Commission will use this
21 information to analyze the cause and conditions
22 that lead or may lead to problems with fuel
23 supplies or fuel prices. This data is important
24 to developing state policies that can alleviate
25 problems, and also to assess proposed policies for

1 their potential effect on supplies and prices.

2 It also helps to provide informed
3 responses to inquiries from members of the public,
4 the Legislature and the Governor.

5 Last and perhaps most important, this
6 information can be used in the event of
7 emergencies, local, statewide and in neighboring
8 states. I mention neighboring states because
9 California is important to Arizona and Nevada fuel
10 supplies.

11 I will briefly summarize the changes.
12 The new weekly reporting requirements collect
13 information on production, inventory, shipments
14 and wholesale prices. The Energy Commission also
15 receives information on weekly wholesale
16 deliveries and prices in the major regions of
17 California. These companies are refiners,
18 importers, exporters, pipeline operators and
19 terminal operators.

20 The new monthly reporting requirements
21 apply to the same companies reporting weekly data
22 and approximately 80 additional companies. The
23 monthly reporting requirement is similar to the
24 weekly data, but applies to a larger population of
25 companies and is more accurate than weekly

1 reports.

2 Those additional companies require to
3 report, by the way, are marketers who sell 20,000
4 barrels of fuel, that is 840,000 gallons of fuel,
5 a month.

6 Both the weekly and monthly reports
7 provide information that can be used to estimate
8 demand, determine wholesale price trends, evaluate
9 constraints on distribution and storage, volumes
10 of product shipped, and average wholesale prices.

11 The new annual reports added by these
12 proposed regulations provide information on
13 storage facilities in California and retail
14 fueling stations. This information is
15 particularly important in light of projections
16 indicating California will become more dependent
17 on imported products to meet its transportation
18 needs.

19 The retail station information will be
20 used, for example, in assessing regional supply
21 and price effects, policy proposals that may
22 restrict retail ownership arrangements.

23 During the 45-day comment period three
24 parties filed comments. The Western States
25 Petroleum Association; the California Independent

1 Oil Marketers Association; and the Coalition for a
2 Safer Environment.

3 While staff was able to incorporate many
4 of the comments we are aware that there continue
5 to be areas of concern. CIOMA suggested that the
6 retail fueling station information is already
7 publicly available. We have researched this
8 extensively and found that while some data is
9 available it is incomplete and could not be used
10 to replace this reporting requirement.

11 WSPA asked that the Commission use
12 either weekly or monthly reporting to reduce
13 reporting of redundant information. The monthly
14 and weekly data requirements are not the same.
15 The information collected on the weekly and
16 monthly forms is markedly different.

17 Although there is some similarity in
18 both weekly and monthly reports reflecting total
19 product volumes and prices, depending on the
20 report, they are not similar in that monthly data
21 cannot provide trends and patterns on weekly
22 prices, productions and shipments. These trends
23 and patterns are critical to understanding
24 constraints that may be of a seasonal nature or
25 result of a brief interruption in supply or drop

1 in inventory.

2 Weekly data is reported within a few
3 days of the end of the week cycle. Monthly data
4 is reported as much as 30 days after the close of
5 the month. Last, monthly data is reconciled with
6 other monthly data sources and cannot be
7 substituted with the weekly reports.

8 CIOMA asked to exclude major marketers
9 from reporting their monthly sales, volumes and
10 prices. They have indicated that there will be
11 hardships related to the cost of reprogramming
12 custom software. The information on sales volumes
13 and prices that occurs through independent
14 companies versus refinery operators is important
15 to analyzing price and supply issues and trends.

16 The companies required to report as a
17 result of the proposed regulations are the same
18 companies that are already required to file a
19 similar report with the Federal Energy Information
20 Administration.

21 The industry also expressed concerns
22 that the forms were not part of the rulemaking.
23 The Administrative Procedures Act exempts forms
24 and instructions, however staff has made draft
25 forms and instructions available, help workshops

1 and met with industry to take comment on them
2 outside of the rulemaking.

3 As a result of those interactions staff
4 has changed the forms and instructions. Once the
5 rulemaking is complete, draft forms and
6 instructions will be made available again for
7 review and comment before they're final.

8 Before I finish I would like to mention
9 that the industry has been cooperative throughout
10 this process and they've worked with us on getting
11 it right. We really appreciate their input.

12 We have narrowed the differences through
13 productive discussions and exchanges of
14 information. We would be happy to respond to any
15 questions. Joining me to respond to questions is
16 Gordon Schremp, our Senior Staff Specialist on
17 crude oil and petroleum product issues; and Tom
18 Glaviano from the General Counsel's Office.

19 Thank you for your consideration.

20 ACTING CHAIRPERSON PFANNENSTIEL: Thank
21 you, Ms. Kateley. We have a number of parties who
22 have requested to speak on this time. So why
23 don't we hear their comments. Gina Grey.

24 MS. GREY: Thank you, Madam Chair,
25 Commissioners and Staff. For the record my name

1 is Gina Grey. I work for the Western States
2 Petroleum Association, commonly known as WSPA.

3 Overall WSPA can understand the need to
4 balance the sharing of information with government
5 in order to allow a better comprehension of our
6 industry, with a need to minimize intrusion into
7 private business matters and decisionmaking.

8 In return we hope the CEC understands
9 and recognizes the level of burden this kind of
10 detailed reporting places on our industry in terms
11 of the commitment of resources. It is not as
12 minor as often portrayed.

13 We do appreciate the Commission's
14 stakeholder process and staff attempts to work
15 with our industry on the amendments, especially
16 Sue Kateley's efforts. We also appreciate the
17 additional confidentiality provisions dealing with
18 situations where more informal submittal takes
19 place.

20 As you are well aware our industry
21 considers the kind of information requested in
22 these reports as highly confidential. And we hope
23 that government employees, both regular and
24 contract, are made familiar with these
25 confidentiality provisions.

1 We want to insure the CEC is committed
2 to working closely with our industry on actual
3 forms and guidelines. The specific report forms
4 were not included as an appendix to the
5 regulations as part of this review. And although
6 we are told this is not customarily done, we are
7 still concerned that staff is working on revising
8 the September of '04 forms and want to insure we
9 can review and comment on them before they are
10 finalized and adopted. And I think from Sue's
11 comments just a moment ago it sounds like that
12 will take place.

13 Also we encourage the continuation of
14 private meetings or tutorials with individual
15 companies to help insure full compliance, since
16 the requirements are very detailed and complex,
17 reflecting the complexity of our industry's
18 operations.

19 Some of our members may not have geared
20 up internally for the formal reporting since they
21 may have elected to not participate in the
22 voluntary reporting over the past year. We would
23 appreciate any flexibility the Commission can
24 provide during the transition phase into full
25 reporting over a several-month period of time.

1 The majority of our 13 pages of
2 previously submitted comments have been
3 incorporated or dealt with in some fashion by
4 staff. There are still, however, a number of
5 outstanding issues we have concern with and I'll
6 mention three in particular.

7 First, we have repeatedly observed to
8 staff that the proposed monthly requested
9 information was almost the same -- and I know Sue
10 mentioned they're not identical, which we agree
11 with -- as that requested weekly. Therefore, we
12 suggested in our January comments that the monthly
13 reports be eliminated and that the Commission use
14 slightly expanded weekly reports to capture the
15 required information.

16 CEC Staff responded that since the month
17 doesn't normally end at the end of a week, they
18 didn't want to prorate the last week's data to
19 calculate a monthly report. Staff's official
20 response failed to include this concern, but quote
21 that EIA believes the monthly data is more
22 accurate or better, and is useful for more in-
23 depth review.

24 We question this new rationale for
25 retaining the monthly reports. The weekly

1 information is the most timely and likely the most
2 useful to the Commission. Limited company assets
3 should be focused on collecting and reporting the
4 best weekly information possible.

5 Although the monthly data may be
6 slightly more accurate for any individual company
7 for a specific report period, there is no evidence
8 that supports the idea that the monthly data is
9 any better for purposes of evaluating short- or
10 long-term trends, evaluating seasonal differences
11 or making future projections.

12 The alleged improvement in monthly data
13 quality doesn't justify the significant
14 duplication of effort to report the monthly
15 information. We therefore request again that the
16 monthly reports be eliminated, except for one
17 major exception I will speak about in a minute.

18 At a minimum we would request that the
19 Commission direct the staff to report back to the
20 Commission, in a six-month period after obtaining
21 the new weekly and monthly information, with an
22 evaluation of whether or not the monthly reports
23 are really that much better and useful, and to
24 justify the continued duplication of reporting
25 effort.

1 Second. Relative to DTW reporting.

2 While WSPA has no knowledge or information on the
3 particular pricing policies or practices of our
4 members, we believe there may be important
5 differences in the way individual companies handle
6 such matters as rent, rebates and other price-
7 related issues.

8 WSPA has indicated several times now in
9 written and oral comments that our companies are
10 concerned about the mandatory weekly DTW
11 reporting.

12 Our first concern has to do with the
13 usefulness of the new data requirement which
14 mandates a volume balanced calculation on a weekly
15 basis. DTW pricing practices vary between market
16 participants. As stated in our comments, we
17 believe this calculation does not capture what is
18 actually going on in the marketplace, as the DTW
19 invoice may or may not reflect the actual cost to
20 the dealer given the application of rebates,
21 volume discounts, rent and other competitive
22 adjustments that may occur on an individual
23 company basis.

24 Also, the sales volume information
25 needed for the requested volume-adjusted DTW

1 weekly reports has a two- to three-day lag from
2 the actual DTW pricing information. This lag time
3 between the data sources availability raises
4 questions about the accuracy of the truing up
5 calculations of the submitted information. This
6 is especially true with weekly submittals where a
7 three-day lag could distort the final numbers.
8 Monthly submittals of the weighted information
9 significantly smooth out these distortions and
10 allow for a more accurate data set.

11 We found the CEC's response to comments
12 document unsatisfactory in its response to our
13 concerns. The CEC's response waives their comment
14 by stating that the Public Resources Code requires
15 weekly and monthly data to be reported to the
16 Energy Commission. But we believe the DTW needs
17 special consideration. WSPA's request is that the
18 DTW information and volume calculations be
19 required on a monthly basis rather than weekly.

20 Third. WSPA commented in January on the
21 new requirement for refiners to file flow diagrams
22 and site maps annually. The actual requirement is
23 to annually submit flow diagrams of the refinery
24 showing process units, interconnecting lines,
25 input/output streams, tank farms, location of

1 tanks, pipeline connections, marine facilities, et
2 cetera, et cetera, et cetera. All clearly labeled
3 with the capacity or actual rates being shown.
4 There is also a mention of site maps being to
5 scale.

6 This requirement had not previously been
7 discussed with our industry and has caused a
8 significant degree of concern. The concern is
9 based on a number of factors, not the least of
10 which is the additional burden of supplying all of
11 this information. Another very real concern is
12 the security threat to our facilities and the
13 associated risks of this type of information
14 getting into the wrong hands, even with the
15 agency's established confidentiality procedures.

16 The CEC Staff response alluded to the
17 fact there is already a requirement to file
18 pipeline maps and specs in the existing
19 regulations. We can find no existing requirement
20 for refiners, however. We also can't find any
21 basis in statute for this. And I will not go into
22 all of our detailed comments on this, but will
23 probably provide that to Sue at a later time.

24 And last, a very minor comment relative
25 to distribution of nonCalifornia fuels, and this

1 can probably be handled later, too. But a
2 clarification is needed regarding whether trucks
3 can be aggregated as in 3F and G.

4 Thank you very much.

5 ACTING CHAIRPERSON PFANNENSTIEL: Thank
6 you. Questions?

7 COMMISSIONER GEESMAN: Madam Chair.

8 ACTING CHAIRPERSON PFANNENSTIEL: Yes,
9 Commissioner Geesman.

10 COMMISSIONER GEESMAN: I wanted to
11 follow up on your comments about confidentiality.
12 And as I think you know, I have a 19-year gap in
13 my personal recollection of the Commission's
14 experience in this area, but are you aware of any
15 instance where there has been a breach by our
16 employees or contractors of our confidentiality
17 requirements?

18 MS. GREY: Good question. I would
19 respond, Commissioner, by saying that no, we don't
20 have any examples at this point in time. I think
21 staff have been, by and large, very good regarding
22 confidentiality.

23 There is always, however, of a high
24 degree of --

25 COMMISSIONER GEESMAN: Sure.

1 MS. GREY: -- concern in our industry
2 regarding --

3 COMMISSIONER GEESMAN: I understand.

4 MS. GREY: -- this. It's not just with
5 the California Energy Commission, it's with any
6 kind of very competitively sensitive data being
7 put in government's hands. You do have contract
8 staff, not only just regular staff, who handle
9 this material. And it's a huge concern of ours
10 which actually was one of the reasons why we did
11 work with staff to incorporate more of a
12 confidentiality protection relative to data that
13 is supplied on a voluntary basis, or maybe done
14 over the phone, et cetera, as not part of regular
15 reporting.

16 COMMISSIONER GEESMAN: I think your
17 concern is appropriate, and I had thought that our
18 record was pretty good and --

19 MS. GREY: Correct.

20 COMMISSIONER GEESMAN: -- I'm happy to
21 hear you corroborate it.

22 MS. GREY: It has been.

23 ACTING CHAIRPERSON PFANNENSTIEL: Thank
24 you, Ms. Grey. Would the staff like to comment on
25 a couple -- any of the points that Ms. Grey

1 raised?

2 MS. KATELEY: Gordon.

3 MR. SCHREMP: My name is Gordon Schremp.
4 I'm the senior fuels specialist on staff in the
5 fuels office of the California Energy Commission.

6 Thank you for the opportunity to shed
7 some additional information on these issues that
8 were raised by Gina Grey.

9 The monthly versus weekly issue has been
10 raised before. I just want to point out that
11 weekly and monthly reporting requirements, as well
12 as annual reporting requirements, have been part
13 of our data collection and data collection efforts
14 at the federal level, the EIA or Energy
15 Information Administration, for decades.

16 So we have a long history of collecting
17 information on a weekly and monthly basis. And
18 the industry has an excellent record of providing
19 said information up to this point in time, and
20 including this point in time.

21 The information is different, as Gina
22 Grey points out. In many cases it's markedly
23 different on a weekly and monthly basis. Usually
24 the monthly forms for refiners have much more
25 extensive reporting requirements on the types of

1 products produced versus the weekly form, which is
2 a simplified version.

3 With regard to our new forms, such as
4 import/exports, interstate movements, the monthly
5 forms are more detailed than the weekly forms. We
6 have simplified the weekly forms based on
7 discussions with industry because much of the
8 information we were requiring on the monthly forms
9 was unable to be obtained in the short term as
10 required to report weekly information to staff,
11 which is why we responded and simplified that form
12 and put some of the information back on the
13 monthly form to respond to those concerns.
14 So that new form actually has very different data
15 requirements on a weekly and monthly basis.

16 I think the other points were raised on
17 the close of the period, end-of-month inventories,
18 reconciliation cannot be done with a weekly form
19 versus a monthly form. We usually do as the
20 federal government does, a lot of analysis of
21 historical data. That information can easily be
22 compared when looking at months in previous years.
23 And that same comparison is not as valid on a
24 weekly basis.

25 So those are some of the main points I'd

1 like to add to the discussion on weekly versus
2 monthly.

3 The dealer tank wagon reporting
4 purposes. I think Sue mentioned that we have been
5 getting interim compliance by the companies. The
6 companies have done a fabulous job. And they have
7 been able to report this information on a weekly
8 basis. And they should be commended for that.

9 We do understand the discounts and
10 discounts is a relative term. The companies have
11 various ways of discounting or rebating some of
12 the cost of the DTW or dealer tank wagon price.
13 And that can only be done after the monthly sales
14 have closed for specific sites. So we understand
15 it's difficult for them to do that on a weekly
16 basis. So we've recognized that and we try, when
17 we use this information, to recognize that all of
18 these discounts are not accurately captured. So
19 the apparent dealer margins are lower than they
20 actually should be.

21 With regard to the flow diagrams and the
22 site maps, previously discussed or highlighted in
23 a workshop, no. As part of the regulation
24 language that has been reviewed on multiple
25 occasions by the stakeholders, yes, it has been in

1 there. And we have received some comments, as
2 Gina has shared with us today.

3 I think we do have an excellent track
4 record regarding keeping confidential information
5 inhouse and not having it released. I think that
6 was a very good question by Commissioner Geesman.

7 The difficulty in obtaining information,
8 site diagrams, flow diagrams are information that
9 in almost all cases is provided in public
10 documents concerning environmental impact reports,
11 environmental impact statements when companies go
12 to expand a refinery, do an expansion of a tank
13 farm. So, we've seen similar information. What
14 we're asking for is that information, ourselves.
15 The difference is we're keeping that information
16 confidential inhouse.

17 The flow diagrams, I think the
18 difference that should be pointed out, we are
19 looking at, and it was accurately mentioned, the
20 interconnection and the capacities and the actual
21 utilizations -- or throughputs, excuse me. And
22 this is so that we can do utilization assessments
23 of the process units of the refineries. This is
24 part of our ongoing infrastructure work, as is the
25 site maps, plot maps for the marine

1 infrastructures, the refineries and the tank farms
2 that is also part of our ongoing analysis for
3 petroleum infrastructure. And we think that's one
4 of the reasons why we believe we need this
5 information.

6 MS. KATELEY: The last point that WSPA
7 mentioned was whether or not we could aggregate
8 the nonCalifornia truck values, and we can work
9 with them on that. We're looking for the total
10 volumes, not the per-truckload volumes.

11 ACTING CHAIRPERSON PFANNENSTIEL: Thank
12 you.

13 MR. SCHREMP: Yeah, and --

14 ACTING CHAIRPERSON PFANNENSTIEL: If
15 there's another point to be made, otherwise I
16 think we should move on to the other speakers who
17 have asked to comment on this. Dave Smith from bp
18 ARCO.

19 MR. SMITH: Thank you. Dave Smith with
20 bp. We sell petroleum products through ARCO
21 service stations throughout the state.

22 First off, I would like to echo Gina's
23 comments about the appreciation to CEC Staff for
24 their efforts. I am representing bp, and the
25 comments, although generally supportive of WSPA's,

1 would like to focus in on one other comment which
2 was about the duplication of effort that the staff
3 is asking us to do relative to the weekly reports
4 and monthly reports.

5 Kind of as a matter of principle, we
6 support the goals and objectives of this rule, and
7 having the agency have the adequate information to
8 do what you need to do. We value that. We even
9 hold up the Energy Commission to other states as
10 examples of how they should consider running their
11 programs.

12 Having said that, although we support
13 giving you this information, we, in principle, are
14 concerned when we have to report it twice, so to
15 speak. And with all due respect to the staff, and
16 I do respect them immensely, the four forms in
17 question in some cases are exactly the same.

18 The four forms, and I hate to get into
19 this kind of detail, but just to make the point,
20 the W900 forms and the M900 forms, other than the
21 reporting period, are exactly the same.

22 The other two forms, the 700 series and
23 the 08 series, are very similar in the type of
24 information required. I'd say, looking through
25 each of the forms, that at least 70 or 80 percent

1 of the information is exactly the same.

2 In the case of our company, actually
3 because of our activities, the differences between
4 the weekly and monthly forms are very small.
5 Probably less than 5 percent.

6 And there is one form that there is a
7 considerable difference, and that has to do with
8 the refineries weekly and monthly forms. And
9 they, in fact, do -- the refinery does have to
10 submit additional information on a monthly basis,
11 but the refinery's a distinct unit and actually
12 our proposal, WSPA's proposal, was not to
13 eliminate any of the data from being reported to
14 you, it was just that we wouldn't duplicate the
15 reporting. So that if there was information that
16 you needed, we would provide it to you on a weekly
17 basis, and eliminate entirely the three or four
18 monthly reports. There are still two or three
19 other monthly reports that we wouldn't object to.

20 So let me kind of conclude these remarks
21 by saying that our evaluation is that because of
22 these rules we're going to be submitting about
23 1200 forms to you each year. The amount of
24 reporting is going to increase for us probably
25 three to four times, if not more.

1 We have been -- me, personally -- have
2 been one of your biggest supporters and for the
3 roles that you have played. The suggested change
4 that we're suggesting to you would reduce the
5 amount of reporting forms by roughly 15 percent.
6 I don't think that's an unreasonable request.

7 So, again, we would like to suggest that
8 the staff consider some way eliminating having to
9 report the same essential information in
10 duplicate, or essentially the same information.

11 One way would be to eliminate the
12 monthly forms in question. One way would be to
13 revise the monthly forms so that you wouldn't have
14 to report that information that you've already
15 reported on the weekly forms. Or, you know, maybe
16 the most flexibility, which may not be something
17 that you'd be open to, is let the refineries
18 choose.

19 In the case of bp and most of the WSPA
20 comments that were submitted, we were willing to
21 submit this information to you on a weekly basis
22 which would give you more information, weekly
23 basis, more timely. And the only thing we're
24 asking for is that you'd eliminate the monthly
25 reports.

1 Now, the second comment I would have,
2 I'd just summarize to say that bp definitely
3 appreciates the staff's support and work on this
4 rule. We set up a tutorial situation where some
5 of their staff came down and helped the people who
6 are actually going to fill out these forms and
7 prepare the computer programs to understand
8 exactly what was going to be required. And that
9 has been very helpful for us as a company. And
10 hopefully those type of activities can continue to
11 help make the implementation smooth and effective
12 for both of us.

13 And I'd love to entertain any questions.

14 ACTING CHAIRPERSON PFANNENSTIEL:
15 Commissioner Geesman.

16 COMMISSIONER GEESMAN: I'm having a hard
17 time figuring out what's at stake here. Why do
18 you think the staff has such an attachment to the
19 monthly reporting cycle?

20 MR. SMITH: Well, they have given us two
21 reasons. One is that originally they said that
22 they do have some of their information on a
23 monthly basis and they'd like to be able to
24 compare that in the future with historical
25 information.

1 COMMISSIONER GEESMAN: That sounds
2 reasonable.

3 MR. SMITH: Reasonable. And so we
4 suggested, well, there's no reason why you can't
5 take the weekly information and create a pseudo
6 monthly report.

7 COMMISSIONER GEESMAN: And they said
8 they had some concerns about the adjustment factor
9 there. They'd probably rather hear it from the
10 company than do their --

11 MR. SMITH: That's right.

12 COMMISSIONER GEESMAN: -- own internal
13 adjusting.

14 MR. SMITH: And we responded by saying
15 that, you know, the amount of variation, you know,
16 trying to create these pseudo monthly reports
17 would create minimal errors and would probably
18 have, in our opinion, would have little to no
19 effect on the purposes of collecting the data and
20 using it in the way that the Energy Commission
21 Staff does.

22 So we had thought that we had addressed
23 that, and actually in the written comments,
24 written response, they didn't include that reason.
25 They suggested that the monthly reports were more

1 accurate and could be more useful for in-depth
2 analysis.

3 And I guess I'd have to say that
4 certainly given the fact that the monthly reports
5 don't actually have to be turned in until 30 days
6 after the end of the month -- I guess that's right
7 -- that, you know, arguably they may be
8 incrementally more accurate; we have more chances
9 to compare.

10 But, you know, for bp, we would be
11 really concerned if our weekly reports didn't, you
12 know, coincide with our monthly reports. In fact,
13 as we've been talking about how we're going to
14 comply with these rules, we've said we have to
15 check. I mean it would be kind of shame on us if
16 we started, you know, if we reported four or five
17 weekly reports, and then at the end of the month
18 we gave a monthly report with fairly significant
19 different numbers.

20 COMMISSIONER GEESMAN: Yeah, but you've
21 got to acknowledge your company's probably a
22 little higher up the food chain than some of the
23 other reporting entities.

24 MR. SMITH: Certainly, you could very
25 well say that. But I think that companies are

1 going to have to deal with these on a case-by-case
2 basis. And I think that many companies that are
3 maybe not up as far the food chain as we are,
4 using your words, will probably be doing these
5 forms manually. And, you know, they'll have the
6 data on their desk right at the time. They'll
7 fill out the weekly report, and they want to get
8 it off and get out of the way and go on to doing
9 their business, not having to worry about, you
10 know, here comes some monthly report. Gee, I'm
11 going to have to do the same thing I just did last
12 week. When I have to pull out my old weekly
13 reports and basically use them to complete the
14 monthly report.

15 So, I mean to us this is probably a
16 matter of principle more than anything else. We
17 think we work with the staff; we've supported the
18 staff; we've supported the CEC. And we're
19 suggesting what we would consider a modest change,
20 and not an unreasonable one.

21 COMMISSIONER GEESMAN: But it only
22 diminishes the number of forms your company has to
23 submit by 15 percent. So, I'm left trying --

24 MR. SMITH: You know, I'm --

25 COMMISSIONER GEESMAN: -- to balance

1 your interest in a 15 percent reduction and the
2 staff, I presume, is going to say we really need
3 this information.

4 I thought Gina had a novel idea. Maybe
5 we ought to check back after some period of time
6 as to whether we're using the information well or
7 not.

8 MR. SMITH: Well, actually I'm glad that
9 Gina brought that up, because that was one of the
10 suggestions I had. Unfortunately, I'm the one who
11 has to go to the terminal operators, the people
12 who do this, the computer people are going to
13 report it. And certainly, if that's the outcome,
14 to say okay, let's try this for six months to see
15 how much better quality these monthly reports are.
16 What advantage does this give the staff as
17 compared to the weekly reports. We'll do that.

18 I can tell you we'll, probably for those
19 six months, probably look at doing them manually,
20 those particular forms, until we finally resolve
21 the issue of whether or not we're going to do this
22 long term of not. Because the computer people
23 aren't going to want to make those changes, you
24 know, and then have to reverse it.

25 I think, as an alternative, it may be

1 that to look specifically at the data that is
2 reported on a weekly and monthly basis exactly.
3 Because there are differences. But, you know, I
4 would disagree respectfully with Gordon that I
5 don't think those differences are that
6 significant.

7 But if there are differences and you
8 want to see those on a monthly basis, those
9 greater reporting requirements, put those on the
10 monthly reports and eliminate the other data that
11 we've already given you throughout the month. So
12 that would be an alternative suggestion.

13 COMMISSIONER GEESMAN: Thank you.

14 ACTING CHAIRPERSON PFANNENSTIEL: Thank
15 you, Mr. Smith. We also have Jay McKeeman from
16 CIOMA.

17 MR. McKEEMAN: Good morning. My name is
18 Jay McKeeman; I'm with the California Independent
19 Oil Marketers Association, also known as CIOMA.

20 We do appreciate the efforts of staff in
21 meeting with us and we have been an active part of
22 the process of interacting with the agency on
23 these requirements.

24 However, we have some very serious
25 concerns. Our first -- primarily these reporting

1 requirements that we're concerned about are the
2 monthly reporting requirements, and the service
3 station reporting requirements are reaching a
4 whole new level of compliance, or people that need
5 to fill out these forms.

6 And we have serious concerns about that.
7 We've expressed those concerns all along. And
8 we've not been able to resolve those concerns with
9 staff. So that's why we're here.

10 I'd like to go through some points on
11 why we disagree that this requirement is, in fact,
12 necessary.

13 The Commission Staff report notes that
14 SB-1962 is an element of implementing these
15 requirements. CIOMA was the sponsor of that bill.
16 And I can tell you personally, and as a result of
17 our interaction with now Congressman Costa, that
18 there was no intent, nor was there a requirement
19 for CIOMA members to have to report under SB-1962.
20 And if we need to get a letter of intent from
21 Congressman Costa, we can do that. But there was
22 no intent or premonition that CIOMA members would
23 need to report under the elements of SB-1962.

24 The staff report also lists AB-1340 as
25 an implementing force for these requirements.

1 CIOMA was an active participant in the negotiation
2 of the language, especially regarding the price-
3 reporting elements. And we received assurances
4 from Mr. Schremp and Mr. Glaviano that the measure
5 would not require members of CIOMA to report under
6 the legislation. They indicated on several
7 occasions the large number of data that would be
8 gathered from our members would overwhelm their
9 system, and it didn't really have a lot of use to
10 them. So, we do not agree with the staff report
11 that these requirements are, in fact, mandated by
12 legislation. In fact, we argue the opposite.

13 Another problem that we see with the
14 analysis that's been prepared on these regulations
15 is that the Energy Commission Staff has not
16 complied with Government Code section 11346.3
17 which requires agencies to estimate the impact on
18 businesses resulting from regulations. We do not
19 see any mention of adequate analysis; we're not
20 aware of any empirical analysis done by staff to
21 fully investigate the costs of what this record
22 keeping and reporting requirement would attach to
23 businesses. And we do not see any evidence that
24 the Commission thoroughly evaluated the
25 requirements of 11346.3 in their staff report or

1 in supporting material. We would argue that this
2 rulemaking is deficient until it complies with
3 those requirements.

4 The information provided with the
5 reporting forms, and we understand that that's not
6 part of the regulation, however it is integral in
7 understanding whether the requirements apply to
8 our members, and how they apply to the members is
9 severely deficient. And we've taken a look at
10 those instructions, and there are many many
11 questions that they leave unanswered.

12 The Commission Staff has completely
13 underestimated the number of companies that would
14 have to report. And this is something that I'd
15 like to delve into a little bit right now.

16 In discussions with staff this morning
17 we understand that the intent of the reporting
18 requirement is to apply to only those companies
19 that are already reporting to the EIA.

20 Unfortunately, the regulation
21 establishes a volume threshold, and it's our
22 understanding in taking a look at the instructions
23 for the EIA forms, that EIA uses a selected sample
24 of companies; they don't necessarily use a
25 reporting threshold.

1 So it was curious to me as I got
2 involved in the investigation of who was
3 reporting. It's sporadic; it depends. EIA makes
4 up, I guess they tell you that you need to report
5 to them, and you do, because a number of our
6 members that are in the -- that exceed the
7 reporting threshold are not reporting to EIA right
8 now. And this would include a new reporting
9 requirement upon them.

10 So, we do have very serious concerns.
11 We believe at least 100 of our members are going
12 to have to report on these requirements, and that
13 that's a great variation with the number of
14 companies that the staff estimated for this
15 particular reporting form.

16 We also have concerns that the Energy
17 Commission is significantly increasing the amount
18 of data it's collecting, and yet not increasing
19 the analytical capability of staff. So, there may
20 be a significant likelihood that this information
21 gets put into the file and isn't really used in a
22 constructive manner. And that would be, as far as
23 we're concerned, a travesty.

24 We think that the Energy Commission
25 needs to take a look at what information it would

1 like to have, and what information it needs to
2 have. Especially when the information-gathering
3 process imposes significant costs on our members
4 and those costs aren't addressed in the staff
5 report.

6 I think there needs to be an
7 understanding that especially for the independent
8 oil marketer in the state, these are tough times.
9 And that the Commission should be looking at ways
10 in how to reduce the costs to those in the
11 business, rather than increase the costs and the
12 complexity of being in the business.

13 The independents are struggling. There
14 are many many other costs that they have to absorb
15 in relation to state and federal mandates. This
16 is only one of them. But at some point there is
17 going to be a straw, and I hope this one isn't it.

18 We would like the Commission to postpone
19 the adoption of this regulation. We believe there
20 are some issues that need to be worked out about
21 who's reporting under EIA; who is not reporting
22 under EIA; how the regulation language needs to
23 conform with that intent, rather than just a
24 straight volume assessment. And we also would
25 like to see additional economic analysis put into

1 the evaluation of this and presented to the
2 Commission as part of their consideration.

3 That's it.

4 COMMISSIONER GEESMAN: Madam Chair.

5 ACTING CHAIRPERSON PFANNENSTIEL: Yes,
6 Commissioner Geesman.

7 COMMISSIONER GEESMAN: I'd like to ask
8 the General Counsel's Office if it could respond
9 to the concern expressed that the staff did not
10 comply with Government Code section 11346.3
11 requiring the business impact analysis.

12 MR. GLAVIANO: Yes, that physical
13 application was filled out and approved by the
14 Department of Finance prior to the submitting of
15 the information to the Office of Administrative
16 Law. Sue Kateley has some of the numbers
17 associated with that. I think you would need to
18 take a look at it, but --

19 MS. KATELEY: We had estimated about two
20 to three hours to complete a form maximum. That
21 was less than \$150 per small businesses. The
22 fiscal impact analysis applied to just small
23 businesses. So, companies that were considered
24 large businesses were not part of the
25 consideration.

1 COMMISSIONER GEESMAN: Thank you.

2 ACTING CHAIRPERSON PFANNENSTIEL: Thank
3 you, Mr. McKeeman. We'll take the last commenter
4 on this and then perhaps ask if there are
5 additional responses. Ron Van De Pol.

6 MR. VAN DE POL: Good morning,
7 Commissioners. Thank you for the time to give a
8 marketer's point of view from our business. I'm a
9 second generation marketer. Our business was
10 started in 1959. We serve all classes of trade
11 that the monitoring report is requesting that we
12 require information on. That being retail service
13 stations, both branded and unbranded, governmental
14 agencies, commercial businesses, agriculture. We
15 supply every facet of that.

16 And while WSPA and bp have said that
17 they appreciate working through this with the
18 staff, I've got to tell you, from a marketer's
19 point of view, it's an unnecessary thing that we
20 feel is just another report we're going to have to
21 submit with no value.

22 And I'd like to go into the reasons for
23 that. Gallonage figures are something we live by.
24 And those are easy. We have reports, we can break
25 them down fairly easily and make the report.

1 But, this monitoring report is requiring
2 pricing information. Let me -- you know, I don't
3 want to go into too much detail, but I want to
4 give you an example of for us, we supply 60
5 branded stations. Each one has a different price
6 almost every day because they're in a variety of
7 areas.

8 And we supply 400 commercial accounts,
9 farming, whatever. We deliver 40 to 60 deliveries
10 a day. Those vary in price, depending upon the
11 size of the delivery, the distance that we have to
12 go.

13 And so on the reporting form you have
14 all these categories. And it's volume by class of
15 trade. And then you have price. Okay. So we
16 take, you know, 1200 deliveries, and over a month
17 you add them all up, divide by whatever number it
18 is, what value is that number?

19 I can tell you today I looked at all of
20 our station pricing and that pricing varies today
21 by 19 cents a gallon from one to the other. And
22 that's just in the service station portion. You
23 go to the wholesale it's a totally different
24 pricing mechanism.

25 We look at the cost of that as being

1 not, aside from having to reprogram, if we can do
2 that, and still manually have to do some of these
3 things. It's going to cost us at least \$30,000 a
4 year. Now that may not seem much to people in the
5 audience, but it's significant with a marketer who
6 is struggling with high prices; suppliers saying
7 you have an extended credit line, you can't go any
8 more; the bank saying, hey, we can't give you any
9 more, either.

10 We're watching our pennies and quarters
11 of a penny. You know, people ask me, well, what's
12 your profit margin. And I go, if we can eke out 1
13 percent at the end of a year in our net that's
14 been a fantastic year.

15 So every penny we spend on producing
16 reports and reporting takes away from our limited
17 bottomline.

18 It's been brought up, as Mr. McKeeman
19 said, that staff is saying well, this is only in
20 the EIA report, and that's who we're structuring
21 towards. As Jay said, that's a selected sampling,
22 okay. So right now I don't report, and I meet the
23 threshold. But, so it's not going to cost me
24 anything today. But when the EIA changes their
25 selective sampling and I'm required to report to

1 them, then I've got to do the same thing.

2 It's a cost that I don't see how pricing
3 information the staff is going to be able to
4 assimilate. And then you look at the volatility
5 of the pricing market, you have from one end of
6 the month to the other you can have a 40-cent-a-
7 gallon increase or decrease. So you price average
8 again. What value is that to determining how
9 California gets their product out?

10 Thank you.

11 ACTING CHAIRPERSON PFANNENSTIEL: Thank
12 you. Questions from the Commissioners?

13 COMMISSIONER BOYD: Well, I'd like to
14 hear the staff's response to the last gentleman's
15 concerns with regard to the price data either
16 being not useful or bordering on worthless. I'd
17 like to hear the response.

18 And frankly, while I've got the mike,
19 I'd like to also go back and have a little more
20 response to the concerns that CIOMA raised with
21 regard to the intent of the legislation and any
22 commitments that staff might have given, and see
23 if there's an understanding or misunderstanding
24 there.

25 ACTING EXECUTIVE DIRECTOR MATTHEWS: Let

1 me, before technical staff responds, let me do a
2 little bit of overview; step back a little bit
3 about why we're here, why are we looking for this
4 data, what's the use of this data.

5 As you all are well aware we're facing
6 an increasingly tight fuels market. There are
7 increasing demands on the Energy Commission to
8 provide accurate, timely information to support
9 situations when we have gasoline and other fuels
10 disruption. But also to provide information on
11 policies and legislation that have been, and I
12 would imagine, will be forthcoming again as prices
13 get high, so that we have the facts about how the
14 market is really working. And that we end up with
15 a well functioning market rather than some of the
16 Draconian measures that have been proposed in the
17 past.

18 My general view is that a lot of the
19 issues that have been raised we can resolve in
20 working on revising the forms. And the staff will
21 try to resolve any duplication issues so that you
22 aren't -- so that the industry is maximizing the
23 amount of impact they have for the amount of work
24 they're doing.

25 We did put in -- and I appreciate the

1 support, for more resources -- we did put in BCP
2 and it's working its way through the Legislature
3 for two more PY to support the effort specifically
4 to deal with this particular set of data.

5 And see what the technical staff's
6 response to the other questions are.

7 Oh, one other factor. We'd be more than
8 willing to come back in a year, after we've had a
9 chance to experience the situation, and review
10 what's worked and what hasn't worked, and
11 recommend any changes to the regulations to make
12 it more effective.

13 COMMISSIONER GEESMAN: I'd like to
14 encourage that last point.

15 ACTING CHAIRPERSON PFANNENSTIEL: Are
16 there further staff responses to any of the
17 comments we've heard?

18 MR. SCHREMP: Sure, I'll -- Gordon
19 Schremp, again. With regard to the comments by
20 Mr. Van De Pol on the variability of the data, the
21 price series in the month, we acknowledge that
22 there is a great deal of variability in price
23 information by location, by date in a monthly
24 period.

25 We do collect other price information on

1 a statewide basis through other price services to
2 understand the degree of volatility that is
3 occurring in California's marketplace.

4 I think the stronger value of the
5 monthly reporting form in coming up with an
6 average price is to compare months over periods of
7 time, recognizing that price volatility does exist
8 in all months. Price volatility may be greater
9 now than it has been say ten years ago. And price
10 volatility may be greater in specific months
11 occurring on a seasonal basis.

12 So we understand there's a volatility
13 element in the monthly averages that is not
14 captured in these forms, and we acknowledge that.
15 But we think the forms have other uses, looking at
16 what average prices are, we think there's validity
17 in comparing those across different years and
18 different months and seasons, as well.

19 But we do acknowledge that, yes, for
20 volatility it does not capture that very well
21 whatsoever.

22 COMMISSIONER BOYD: Gordon, that's a
23 fairly broad answer, though. And I agree with
24 some of what you said. But when you get down to
25 the specifics with regard to what marketers have

1 to report, you know, what the gentleman with the
2 fairly small business says he has to report, and
3 the value of the data, are you saying the answer
4 you gave applies specifically to even this niche
5 of the whole fuel chain?

6 MR. SCHREMP: I think I'll back up,
7 Commissioner Boyd, a little bit and go back to the
8 intent of which we mentioned and has been
9 acknowledged by CIOMA and Mr. Van De Pol, that our
10 intent is to collect the information from those
11 companies that are and should be reporting to the
12 federal government.

13 Our form is almost identical to the
14 federal form, except that we do break out our rack
15 price sales into branded and unbranded per
16 legislation. So our intent was not to create an
17 additional class of reporting entities to us,
18 which would incur additional burdens because they
19 have never been reporting in the past.

20 Our intent has been and is to collect
21 the information from those currently reporting to
22 the federal government. In other words, it's
23 almost a data transfer. Because they are
24 undertaking this activity and they just transpose
25 the numbers to our form, except for --

1 COMMISSIONER BOYD: But what about the
2 element he just raised of the federal report is a
3 random sample basis, i.e., obviously it moves
4 around the country depending upon EIA's desire to
5 change its sample?

6 So it sounds to me, and I just learned
7 this today in this hearing, that a lot of people
8 don't report, probably the majority don't. Some
9 small minority do. And that will change over time
10 if they want to keep their sample base fairly
11 valid by changing who they sample. How do you
12 reconcile that dilemma?

13 MR. SCHREMP: Well, we do understand
14 that EIA endeavors to obtain that representative
15 samples from the different markets. Market
16 participants do change over the year. Mr. Van De
17 Pol's company has been around a long time, so he
18 hasn't changed.

19 But there are new entrants that go into
20 the marketplace and there are companies that do
21 exit the marketplace. So EIA is trying to obtain
22 a representative sample.

23 They are struggling with the vast number
24 of participants in this class of trade. And
25 understand the diminishing return to get every

1 single drop, or attempt to do so. So they weight
2 if off. That's why they do have representative
3 sample. And we think that is good enough for our
4 purposes, as well.

5 And with regard to your specific
6 question, and that raised by Mr. Van De Pol, what
7 if all of a sudden in the future I now am required
8 by the federal government to report. That would
9 incur additional costs to comply with that federal
10 requirement as well as our requirement.

11 We do agree with that, and so we have
12 not specifically put into our analysis those
13 additional companies that could come aboard that
14 would be a new reporting entity that never ever
15 reported to the federal government before. And we
16 have not done that, sir.

17 COMMISSIONER BOYD: Well, my concern, I
18 guess, is that the industry has accepted, whether
19 they like it or not, the fact that, you know, that
20 EIA plays roulette, and the field will change.
21 And they're willing to take that gamble.

22 But I guess we're going to require the
23 same data of everybody on a continuing basis. And
24 that is a cost. I'm glad Mr. Matthews gave his
25 comment introducing why we're even considering

1 this. I, more than anyone sitting up here, have
2 been through gasoline price issues over decades
3 now, and am very sensitive to what's happened in
4 the last several years over price spikiness and
5 the concerns of the Legislature and the public and
6 the desire for more visibility in this arena.
7 Which I think we all deserve.

8 But, you know, I don't want to over-
9 burden, particularly small businesses, with things
10 that are nice, but are questionable in terms of
11 their validity. So I'm a little stuck on that
12 one. But I'm also sympathetic to the earlier
13 suggestion that we have a shakedown cruise of
14 maybe six months in length to see what's good and
15 what's not and so on and so forth. So maybe we
16 can work it out there.

17 My other question was regarding Mr.
18 McKeeman's comments about the intent of the
19 legislation and the commitment that may or may not
20 have been made by staff of this agency. Do you
21 want to respond to that?

22 MR. SCHREMP: Yes, Commissioner Boyd.
23 I'm not quite sure, maybe Mr. McKeeman can
24 clarify, but it's my understanding that initially
25 in our process we were looking at collecting

1 dealer tank wagon or delivered wholesale price to
2 retail outlets from the industry.

3 There was a concern raised by Mr.
4 McKeeman that did you mean all industry. And we
5 responded by saying no, we intended to only
6 collect the DTW from refiners. And there was a
7 concern because we had not, he had not seen
8 language that that was going to be the case in
9 terms of the reporting forms and in the
10 instructions on who should be providing the
11 information.

12 Subsequent to those conversations and
13 commitments, we put into the regulatory package in
14 the language in there specifically calling out
15 that the people who would be providing information
16 on the weekly and monthly basis for dealer tank
17 wagon would only be the refiners per our
18 definition in the regulations. So we clarified in
19 that document that he has been able to review on a
20 couple of occasions.

21 So I believe that is one of the issues
22 that was raised, and that was one of the
23 commitments that was mentioned that we did abide
24 by.

25 And I think we've already covered the

1 ground on the 782 form that we proposed to collect
2 for sales by class of trade by end-use customer
3 that we are trying to get from the CIOMA members
4 who are currently providing said information to
5 the federal government.

6 MR. GLAVIANO: May I just ask this
7 clarification? If Ron Van De Pol's company does
8 not report to the federal government today, are
9 they required to report to us with these
10 regulations?

11 MR. SCHREMP: No.

12 MR. GLAVIANO: So only if they are
13 reporting to the federal government -- thank you
14 for that thoughtful answer --

15 (Laughter.)

16 COMMISSIONER BOYD: Is that really clear
17 in the regulation? Apparently since we've had
18 such consternation today --

19 ACTING CHAIRPERSON PFANNENSTIEL: Right,
20 that seems to --

21 COMMISSIONER BOYD: -- I was confused --

22 ACTING CHAIRPERSON PFANNENSTIEL: Yeah,
23 that seems to be a point of confusion here. I
24 just want to make sure that that's the
25 understanding, and that is what the regulations

1 say.

2 MR. SCHREMP: I believe that the
3 regulations as they are currently written do not
4 specifically state it is only those providing
5 information to EIA. So, based on the
6 conversations we've had here this morning, there
7 needs to be clarification in that document, yes,
8 to specifically state that is our intent.

9 ACTING CHAIRPERSON PFANNENSTIEL: Thank
10 you, I think that's important.

11 I'd like to see if we're ready to act on
12 this item. I think that we did hear a strong,
13 both reason for doing and requirement for
14 gathering data. But I think there remains some
15 concern about the form and the format and the
16 timing.

17 So, perhaps in a motion then we can not
18 only have the clarification we just agreed to, but
19 a clarification that this will be re-examined
20 perhaps by the Executive Director in a period of
21 like six months. Because I think that that would
22 give us enough time to see what's happening. And
23 then bring a report back to the Commission at that
24 time.

25 COMMISSIONER BOYD: Madam Chair, I'd

1 like to bring up one additional item before
2 someone makes a motion.

3 ACTING CHAIRPERSON PFANNENSTIEL:
4 Certainly.

5 COMMISSIONER BOYD: We were just handed
6 a few moments ago an email from Chevron raising
7 questions about the diagrams. And hopefully the
8 staff has that.

9 Mr. Schremp gave a much better answer to
10 that question earlier in the day than admittedly
11 is in the staff response. I had concerns. I
12 guess, as one Commissioner who has some specific
13 duties in the terrorism public safety arena, maybe
14 more than most, I am very sensitive to the
15 revealing of detailed data about our
16 infrastructure or the operations of refineries,
17 but I did think the response relative to the fact
18 that that information is provided for public
19 safety reasons, and that we have a good track
20 record, as established by Mr. Geesman, of
21 protecting confidentiality, that kind of satisfied
22 my concern a little better than the staff
23 response.

24 However, now we have yet another
25 industry member raising that same concern. So, I

1 think I'm satisfied with the staff response, but I
2 am -- I just want to register some degree of
3 concern.

4 I mean, as some of you know, we're going
5 to go through an emergency exercise tomorrow
6 involving the transportation fuel arena here in
7 California. And there is, of course, concern
8 about just how much we publicize how to damage
9 ourselves.

10 So it is a concern, but I think we, as
11 an agency, have an excellent track record in
12 protecting that concern. So at the moment I am
13 persuaded by the staff's point on that issue.

14 ACTING CHAIRPERSON PFANNENSTIEL: Thank
15 you, Commissioner Boyd.

16 Do we have a motion on this item?

17 COMMISSIONER GEESMAN: I'll move it,
18 Madam Chair.

19 COMMISSIONER BOYD: I'll second it.

20 ACTING CHAIRPERSON PFANNENSTIEL: Moved
21 and seconded.

22 All in favor?

23 (Ayes.)

24 ACTING CHAIRPERSON PFANNENSTIEL:

25 Opposed? Passed four to nothing.

1 COMMISSIONER BOYD: Excuse me, but did
2 we --

3 COMMISSIONER GEESMAN: I think we
4 extracted a commitment from --

5 ACTING CHAIRPERSON PFANNENSTIEL: Yes.

6 COMMISSIONER GEESMAN: -- the Executive
7 Director to report back to us. And you and the
8 Chair have made clear that that's to be in six
9 months.

10 COMMISSIONER BOYD: Good.

11 ACTING CHAIRPERSON PFANNENSTIEL: And
12 we'll confirm that. Mr. Matthews, that's --

13 ACTING EXECUTIVE DIRECTOR MATTHEWS:
14 Yes.

15 ACTING CHAIRPERSON PFANNENSTIEL: --
16 understood? Thank you.

17 MS. KATELEY: Thank you.

18 ACTING CHAIRPERSON PFANNENSTIEL: Item
19 4, National Coatings Corporation , et al, and Roof
20 Coating Manufacturers Association. Possible
21 approval of petition to conduct a rulemaking to
22 change referenced test method procedures for
23 liquid-applied cool roof coatings in the 2005
24 building energy efficiency standards. Ms. Hebert.

25 MS. HEBERT: Good morning, Commissioners

1 and audience members. I am Elaine Hebert from the
2 building and appliances office of the energy
3 efficiency and demand analysis division. And I'm
4 here before you today because the Energy
5 Commission received a petition to make a change to
6 the 2005 building energy efficiency standards
7 which were adopted by this Commission in November
8 of 2003, and which will take effect in October of
9 this year.

10 It would likely be a small change to
11 language, but it is still substantive, thus
12 invoking a possible rulemaking.

13 The item has to do with performance
14 requirements, specifically the test methods for
15 cool roof coatings to prove that they hold up at
16 low temperatures.

17 The petitioners, a consortium of 24 roof
18 coating manufacturers led by National Coatings
19 Corporation of Camarillo, California, believe the
20 one test that we referenced restricts the list of
21 qualifying cool roof coatings in such a way as to
22 not serve the public interest.

23 We've had a number of phone and email
24 conversations with several of the parties
25 representing the petitioners. The argument seems

1 sound.

2 The petitioners offer an additional test
3 method that they say is an industry standard and
4 removes an undue burden of testing for their
5 products.

6 Staff also received a letter from the
7 Roof Coating Manufacturers Association on the very
8 same item though they are offering a different
9 solution, that is to remove the performance
10 requirements for these roof coatings.

11 Staff wants to hear all the argument as
12 we are, of course, interested in best serving the
13 public interest; and we recommend approving the
14 petition to open a rulemaking on this very
15 specific item.

16 ACTING CHAIRPERSON PFANNENSTIEL: Thank
17 you. Is there anybody here to speak to this item?
18 Thank you.

19 Do we have a motion?

20 COMMISSIONER ROSENFELD: I move item 4.

21 MR. RATLIFF: Commissioners, if I may, I
22 think --

23 ACTING CHAIRPERSON PFANNENSTIEL: Yes.

24 MR. RATLIFF: -- your action is
25 basically twofold. You will be granting --

1 adopting a motion to grant the petition, but also
2 to order the staff adopting an order instituting
3 rulemaking directing the staff to initiate a
4 rulemaking.

5 ACTING CHAIRPERSON PFANNENSTIEL: Thank
6 you for the clarification. And was that your
7 motion, Commissioner Rosenfeld?

8 COMMISSIONER ROSENFELD: Yes.

9 COMMISSIONER GEESMAN: Second.

10 ACTING CHAIRPERSON PFANNENSTIEL: Moved
11 and seconded.

12 All in favor?

13 (Ayes.)

14 ACTING CHAIRPERSON PFANNENSTIEL:
15 Opposed? Thank you. Carried four to nothing.

16 MS. HEBERT: Thank you.

17 ACTING CHAIRPERSON PFANNENSTIEL: Thank
18 you. Number 5, Net System Power Report. Possible
19 approval of the 2004 net system power report for
20 use in the power content label required by SB-
21 1305.

22 MR. PAN: Thank you, Commissioners. My
23 name's Adam Pan and I'm staff at the electricity
24 analysis office. We are presenting this as
25 required by the legislation, Senate Bill 1305 of

1 97, as part of the power source disclosure
2 program. And this is power calculation will be
3 used by the retailers of electricity in their
4 power content label. This calculation is done by
5 gathering generation in California by fuel types
6 and apply an estimate to annotate a net import of
7 electricity into California into major fuel types.
8 And then subtract the specific claims of purchases
9 of utilities under energy service providers.

10 And the remainder is called net system
11 power, and it's presented in this very small
12 report.

13 ACTING CHAIRPERSON PFANNENSTIEL: Thank
14 you. Discussion?

15 COMMISSIONER GEESMAN: Madam Chair, I
16 would move adoption of the report, but I do have a
17 couple of things to say about it before I ask for
18 a second.

19 One is Commissioner Boyd and I have
20 pointed out in past years when we adopted this
21 report, this is an increasingly outdated and
22 misleading way in which to look at the sources of
23 electricity that any particular customer purchases
24 on his bill.

25 Because of the reporting nature and the

1 self selection on the part of the load-serving
2 entities as to how they report, the concept of net
3 system power, which is a carryover from the
4 deregulated era, increasingly gives a skewed
5 picture.

6 And we have asked the Legislature for
7 several years now to fix the problem, the statute.
8 Our office of governmental affairs assures me that
9 they are attempting to do the same thing again
10 this year.

11 Of a larger concern, though, is what I
12 think is the most accurate aspect of the report,
13 and that's the gross system power numbers. That's
14 table 2 in the report.

15 If you look at the line item for
16 renewables you'll see that in 2004 on a gross
17 system power basis, that is statewide,
18 Californians purchased 10.6 percent of their
19 electricity from renewable sources.

20 I look back at 2003, saw in the table 2
21 from that report, that we purchased 10.4 percent
22 of our electricity from renewable sources in 2003.

23 I went back to 2002, which was the year
24 that the renewable portfolio standard passed, and
25 saw that we purchased 11.0 percent.

1 So, despite all of our efforts, despite
2 an enormous amount of self congratulatory rhetoric
3 and press releases over the course of the last
4 several years, we haven't moved the needle. And I
5 think that is not particularly surprising when you
6 look at the lead time required to get any of these
7 programs underway.

8 But I would caution all of us, and most
9 particularly the larger utilities in the state,
10 that we very much need to scale up these efforts
11 if we are going to achieve the goals that we've
12 set for ourselves, and the goals that we all
13 appear to have embraced, endless procurement
14 cycles that do not result in contracts, or that
15 result in pathetically small numbers of megawatts
16 are not going to get us there. And it will
17 require a significant change in the way in which
18 we've been conducting business.

19 I would also note that in the 2004
20 report the gross system power table 2 identifies
21 natural gas as a source of 41.9 percent of our
22 electricity in 2004. In our 2003 Integrated
23 Energy Policy Report we expressed concern that we
24 appeared to be moving from a 36 percent dependence
25 on natural gas to what we estimated to be about a

1 46 percent dependence at the end of the decade.
2 We are already half-way there. And that's a time
3 period when the price of natural gas has risen
4 from the low \$3 range up to about \$8.

5 So I don't think that we've been headed
6 in the right direction. We're clearly going to
7 need to take some fairly strong corrective
8 measures to change that.

9 But I would move adoption of the report.

10 COMMISSIONER BOYD: Second.

11 ACTING CHAIRPERSON PFANNENSTIEL: In
12 favor?

13 (Ayes.)

14 ACTING CHAIRPERSON PFANNENSTIEL: Any
15 opposed? Carried four-nothing. Thank you for
16 your observations, Commissioner Geesman.

17 The next three items I understand, Ms.
18 Byron, we should take as a group or take them --
19 discuss them as a group. Let me introduce them
20 each separately, however.

21 Item 6 is Western Governors Association.
22 Possible approval of contract 150-03-002,
23 Amendment 4, to provide \$59,902.80 in additional
24 funds to the Energy Commission to continue
25 preparation for transuranic waste shipments in

1 California to the Waste Isolation Pilot Plant in
2 New Mexico.

3 Item 7 is Governor's Office of Emergency
4 Services. Possible approval of interagency
5 agreement 150-03-003, Amendment 4, to provide
6 \$43,903 of additional funding to continue
7 emergency response preparation for federal nuclear
8 waste shipments in California to the Waste
9 Isolation Pilot Plant in New Mexico.

10 Item 8, California Highway Patrol.
11 Possible approval of interagency agreement 150-03-
12 004, Amendment 2, for \$10,000 to provide
13 additional funds to reimburse expenses for
14 inspecting and/or escorting shipments of
15 transuranic nuclear waste in California and for
16 travel necessary to attend meetings to prepare for
17 these shipments.

18 Ms. Byron.

19 MS. BYRON: Yes. As you mentioned,
20 these three contracts are all related. The first
21 is the Western Governors Association gives funds
22 to the Energy Commission; and the second two items
23 are to pass through these funds to the California
24 Highway Patrol and the Office of Emergency
25 Services.

1 And I would request your approval of
2 these contracts. Thank you.

3 COMMISSIONER BOYD: Madam Chair, I move
4 approval of all three items, 7, 8 and 9.

5 COMMISSIONER GEESMAN: Second.

6 ACTING CHAIRPERSON PFANNENSTIEL: Is
7 there any further discussion?

8 Then do I hear ayes?

9 (Ayes.)

10 ACTING CHAIRPERSON PFANNENSTIEL:
11 Opposed? All three approved. Thank you, Barbara.

12 Number 9, Electric Power Research
13 Institute. Possible approval of contract 500-02-
14 028, Amendment 1, for \$756,622 to fund the 2005
15 and 2006 membership in national collaborative
16 research projects.

17 MS. LIBONATI: Good morning. I'm Nancy
18 Libonati with the PIER program. And as you
19 mentioned, I'm asking for approval to amend this
20 contract with the Electric Power Research
21 Institute. The contract will fund 13 national
22 collaborative membership programs for two years.
23 PIER leads and program area staff have
24 specifically selected these programs because they
25 address PIER program area objectives; they have

1 value to California specifically.

2 A summary of each membership selected is
3 included in the backup package. And in general,
4 and very generally, what we get from these
5 memberships is access to information, access to
6 technical experts, and an opportunity to influence
7 these collaborative memberships with the
8 California perspective.

9 Thank you.

10 ACTING CHAIRPERSON PFANNENSTIEL: Thank
11 you. Discussion? Is there a motion?

12 COMMISSIONER ROSENFELD: I move the item
13 9.

14 COMMISSIONER GEESMAN: Second.

15 ACTING CHAIRPERSON PFANNENSTIEL: Moved
16 and seconded.

17 In favor?

18 (Ayes.)

19 ACTING CHAIRPERSON PFANNENSTIEL:
20 Opposed? Carried four-nothing. Thank you.

21 MS. LIBONATI: Thank you.

22 ACTING CHAIRPERSON PFANNENSTIEL: Item
23 10. San Jose State University Foundation - Moss
24 Landing Marine Laboratory. Possible approval of
25 contract 500-04-025 for \$1,499,800 to identify,

1 fund and manage research on the ecological effects
2 of the use of once-through cooling technology for
3 power plants.

4 MR. O'HAGAN: Thank you. Yes, we're
5 asking for approval for this agreement with the
6 San Jose State Foundation for this research
7 program which would be administered through the
8 Moss Landing Marine Lab, which is administered by
9 San Jose State.

10 As you're aware, California has 21 power
11 plants located either on the coast, on our bays or
12 estuaries that use once-through cooling
13 technology. These power plants represent a
14 significant proportion of our thermal installed
15 capacity, over 20,000 megawatts.

16 The once-through cooling technology, as
17 you're familiar, uses large volumes of water to
18 condense the steam running past the condenser, and
19 then immediately discharging that water back to
20 usually the same water body that the water was
21 taken in.

22 And each of these facilities can use
23 millions of gallons of water. To take an extreme
24 example, Diablo Canyon uses 25 thousand - million
25 gallons per day. That's their permitted maximum.

1 They operate at less than that, but still that's a
2 significant amount of water.

3 And if you look at the permitted maximum
4 for all 21 power plants it's about 17 billion
5 gallons of cooling water is used per day.

6 Concerns, of course, with the use of
7 this once-through cooling technology's effects on
8 aquatic resources. The issues generally can be
9 grouped as entrainment, where small eggs and
10 invertebrates, fish, small fish, larval stage of
11 aquatic organisms are carried into the cooling
12 water; are either injured or killed by the heat
13 being dispensed from the condenser. There's
14 chemicals added to the cooling water; there's
15 mechanical abrasion of the organisms passing
16 through the cooling water.

17 And so, you know, the assumption by
18 staff biologists, the Fish and Game biologists is
19 that everything in this cooling water is dead.

20 The other concern is impingement, and
21 this is where larger aquatic organisms can be
22 captured against the intake screens. So in
23 situations such as at San Onofre, whether the
24 intake is a mile offshore, large fish can get into
25 that system and they can't get out, though they

1 have implemented measures to address that. So,
2 impingement you're actually dealing with larger
3 creatures.

4 And, of course, the discharge water, the
5 heat can affect individual species that can't
6 tolerate the higher temperatures. And we're
7 talking often 20 degrees Fahrenheit above the
8 receiving water body temperature, sometimes as
9 high as 30 degrees or more. A sharp increase.

10 Or if there's habitat. Eel grass beds
11 are being affected by some coastal power plants in
12 southern California because of the thermal
13 discharge.

14 So the concern is that we don't really
15 understand the effects of these once-through
16 cooling technology. Many of these facilities were
17 constructed in the '50s and the '60s before we had
18 good baseline ecological information.

19 As you're well aware, we've had several
20 projects come in for repowering before the
21 Commission. Other facilities, such as the Los
22 Angeles Department of Water and Power, are being
23 repowered, as well. So not only are these older
24 facilities continuing to operate, but they're to
25 operate for maybe another 30 to 50 years.

1 Another important factor to consider is
2 that the EPA has finally adopted regulations
3 regulating cooling water intake structures, which
4 in California really addresses these coastal power
5 plants using once-through cooling technology.

6 The EPA has come up with a large
7 document dealing with existing power plants. It
8 has numerous requirements involving impingement
9 and entrainment. It has performance standards
10 that power plants need to meet. Yet there's no
11 real information, and certainly not in the
12 California context, of what these measures mean,
13 how you compare them, what's the appropriate
14 protocols and things like that.

15 So, the PIER program has identified the
16 effects of once-through cooling technology on
17 aquatic resources as a important priority when we
18 did our strategic plan.

19 The proposal is that Moss Landing would
20 do -- the post-DOC researcher at Moss Landing
21 would do a literature review. We would hold
22 workshops inviting all parties, including
23 utilities, regulatory agency staff, other
24 interested stakeholders to have their input on
25 what they see as high research priorities.

1 We'd have a technical advisory committee
2 with representatives from all those groups
3 involved. Identify what we see as the high need
4 for research. The Moss Landing, through San Jose
5 State, would issue a request for proposals. And
6 then Moss Landing and San Jose State would fund
7 the winning proposals and manage those contracts.

8 Potential research has not been firmly
9 identified. But some issues that are very clear
10 to me anyway, are a high priority and need to be
11 addressed. And these include that entrainment is
12 a key issue for everyone of these once-through
13 cooling power plants in California.

14 And doing an entrainment analysis is a
15 very difficult exercise that requires field work,
16 lab work. It generally takes a year to do it
17 properly.

18 One of the concerns is that there's over
19 300 species in California that are either impinged
20 or entrained by these power plants. Yet any
21 individual analysis that is required by a
22 regulatory agency for entrainment really looks at
23 maybe eight to 20 species at the most. And
24 there's good reasons for that. It's expensive.
25 There's limitations on our ability to identify

1 species.

2 So one possible research effort would be
3 to come up with indicator species. These species
4 are not only indicative of what's going on with
5 that individual population, but that ecosystem.

6 We have analogous efforts to look at
7 what they call bio-indicators, where you look at
8 benthic macroinvertebrates to talk about water
9 quality. Well, it's possible to do that in terms
10 of just the overall health of the aquatic
11 ecosystem.

12 There are other possible criteria. The
13 Regional Water Quality Control Boards are the
14 regulatory agency with direct authority over these
15 power plants. And they need to reissue the NPDES
16 permits every five years. Well, if a utility
17 funds an entrainment study say five years ago,
18 which is several million dollars, then is there a
19 need to redo this study. Do conditions change?
20 How indicative of this these studies are.

21 So it's a moving target, and for the
22 Regional Water Quality Control Board the question
23 is should we require them to do another study, or
24 is the information we received five years ago
25 adequate.

1 There's also questions about technology.
2 Many facilities are proposing the use of filter
3 fabric material, better known as a Gunderboom.
4 There's issues about the long-term stability of
5 that, especially in regard to biofouling and how
6 effective these are.

7 There's also questions about what's
8 called wedgewater screens which has a very small
9 aperture, and how effective they are in reducing
10 entrainment.

11 So there's a whole host of issues.
12 Another one would be offsite mitigation. The
13 Energy Commission, as well as the Regional Water
14 Quality Control Boards, has required for
15 facilities including Morro Bay, Moss Landing,
16 Diablo Canyon, offsite mitigation to mitigate the
17 entrainment impacts as well as the thermal
18 impacts, in the Diablo Canyon situation, anyways
19 from this.

20 Well, how do you equate erosion control
21 with reducing the effects on fish larvae, plant
22 larvae, fish eggs, other invertebrates that are
23 taken into cooling water intake? Certainly under
24 CEQA we need to identify a nexus between those.

25 And so there's a lot of areas that are

1 really -- we really don't know what the answer is
2 to these, and there's ripe opportunities for
3 research. And the purpose of the research would
4 be to really inform the regulatory process, be it
5 technical evaluations to provide information to
6 the utilities, the regulatory agencies and other
7 stakeholders interested in these facilities; and
8 to, you know, hopefully inform and expedite the
9 regulatory process; to provide information to the
10 decisionmakers, both in regulatory and policy
11 avenue.

12 COMMISSIONER BOYD: Madam Chair.

13 ACTING CHAIRPERSON PFANNENSTIEL:

14 Commissioner Boyd.

15 COMMISSIONER BOYD: I just want to say
16 that I look forward anxiously to the product of
17 this work. As was briefly referenced in an
18 earlier item today, I've had too much experience
19 with some coastal power plant siting cases lately.
20 And in each case I inherited the task from
21 Commissioners whose terms ran out before the
22 project was completed.

23 Just illustrating how difficult the
24 questions that are going to be addressed in this
25 research are, and how relevant they are to some of

1 the actions this Commission has taken. And that I
2 hope very much that the information derived will
3 be of help not only to this agency, but to our
4 sister agencies who play a role in this particular
5 issue.

6 And some of the problems and issues laid
7 out here give rise to reasons why these siting
8 committees and this Commission, as a whole, have
9 approved some of the conditions in the siting
10 committee cases of late that have, in some cases,
11 raised objections from others.

12 But I think the actions we've taken have
13 laid out a course to mitigate the issues in
14 question while some of the very issues that have
15 been raised here today in this description are
16 researched and finally resolved. And thus good
17 reasons why I think many of the actions we've
18 taken were the right actions in light of the fact
19 that there are so many questions sitting on the
20 table.

21 So, this is a very worthy piece of
22 research.

23 ACTING CHAIRPERSON PFANNENSTIEL:

24 Further discussion? Is there a motion?

25 COMMISSIONER ROSENFELD: I think between

1 the staff and Commissioner Boyd I ought to move
2 this motion.

3 COMMISSIONER GEESMAN: Second.

4 ACTING CHAIRPERSON PFANNENSTIEL: Moved
5 and seconded.

6 All in favor?

7 (Ayes.)

8 ACTING CHAIRPERSON PFANNENSTIEL:

9 Opposed? Passed, four-nothing.

10 MR. O'HAGAN: Thank you very much.

11 ACTING CHAIRPERSON PFANNENSTIEL: Thank
12 you.

13 Number 11, TIAX, LLC. Possible approval
14 of work authorization number MR-038, PIER research
15 agreement 500-02-004 with the University of
16 California, not to exceed \$1,999,846 for the
17 research project entitled, "Evaluating the effects
18 of advanced energy system pathways on energy flows
19 and emissions in California."

20 MR. FRANCO: Good morning,
21 Commissioners. The purpose of this research
22 project is to investigate the potential effect of
23 the natural gas on existing system, the different
24 energy pathways that (inaudible) use for the
25 different sectors of the economy.

1 As we know, alternative fuel pathways
2 will impact and increase the natural gas systems
3 either directly, for example, by consuming
4 electricity; or indirectly by competing for energy
5 sources such as natural gas that might otherwise
6 be used to make electricity.

7 For California in particular, the two
8 key alternative fuels that come close to meet the
9 zero emission -- mandate, hydrogen fuel cells and
10 (inaudible) hybrids, will likely have a profound
11 impact on every aspect of electricity and natural
12 gas systems.

13 Under this project researchers such as
14 associated with TIAX, GETF, Lawrence Livermore
15 National Lab, UC Berkeley and UC Davis will
16 perform detailed topical studies on topics such as
17 economics, (inaudible) application of larger scale
18 deployments, (inaudible) hybrid cars and option
19 for the combined production of hydrogen and
20 electricity.

21 This study will be used as an input to a
22 new all fuels energy model to be developed by
23 Lawrence Livermore National Laboratory. This
24 model will be a technology rich model that will
25 include the representation of the energy flows

1 from extraction, imports, transformation,
2 transmission and final consumption.

3 Finally, the University of California
4 will integrate all of this efforts with the
5 enhancement and use of a computer generated model
6 to estimate economicwide implications of all the
7 potential energy scenarios.

8 This is a long-term study. The time
9 horizon for the study will be what may happen from
10 now to the middle of the century, 2050.

11 This item was approved by the
12 (inaudible) Committee. I would also like to note
13 that we're going to be working very closely with
14 the natural gas office, the fuels office, the
15 demand forecast offices. And with that I'm ready
16 to answer any questions you may have.

17 ACTING CHAIRPERSON PFANNENSTIEL: Are
18 there questions or discussion by the
19 Commissioners?

20 COMMISSIONER ROSENFELD: I just want to
21 say that I think this is a very important study.
22 Big visions at stake. Guido, particularly, has
23 put I think nearly a year into organizing this
24 study and coordinating with the federal
25 government. And I move item 11.

1 COMMISSIONER GEESMAN: Second.

2 ACTING CHAIRPERSON PFANNENSTIEL: Moved
3 and seconded.

4 In favor?

5 (Ayes.)

6 ACTING CHAIRPERSON PFANNENSTIEL:

7 Opposed? Carried four-nothing.

8 Now, as I mentioned earlier, we're going
9 to take up 12 through 17 after we've finished
10 everything else on our plate.

11 So let's move to number 18 --

12 ACTING EXECUTIVE DIRECTOR MATTHEWS:

13 Madam Chair.

14 ACTING CHAIRPERSON PFANNENSTIEL: Yes.

15 ACTING EXECUTIVE DIRECTOR MATTHEWS: The
16 representative from Los Angeles Department of
17 Water and Power is on his way. He understood that
18 he was going to be at the end of the day, so he
19 wasn't scheduled to get her earlier.

20 The representative that will also be
21 included in number 8, ABS Energy Services, I
22 believe is in the room because they're on item
23 number 14. So, if we could put item 8 off until
24 the L.A. representative gets here.

25 ACTING CHAIRPERSON PFANNENSTIEL: I'm

1 sorry, what item do you want to put off?

2 ACTING EXECUTIVE DIRECTOR MATTHEWS:

3 Eighteen, I'm sorry.

4 ACTING CHAIRPERSON PFANNENSTIEL: Oh,
5 18?

6 ACTING EXECUTIVE DIRECTOR MATTHEWS: I
7 just dropped a 1.

8 ACTING CHAIRPERSON PFANNENSTIEL: And
9 we're putting it off until how long, Mr. Matthews?

10 ACTING EXECUTIVE DIRECTOR MATTHEWS: We
11 can either put it off until the end. The L.A.
12 representative is coming all the way from Los
13 Angeles, so he can stay for awhile, or until he
14 shows up, your pleasure. But I'm sure they'd like
15 to have the ability to respond.

16 COMMISSIONER GEESMAN: And I do think
17 it's probably important that they be here or
18 connected by phone before we deal with 18.

19 ACTING CHAIRPERSON PFANNENSTIEL: Fine.
20 Let's move on for the completion then of our
21 reports. And then we're going to go back and pick
22 up at number 12.

23 Minutes from the March 30th meeting. Do
24 I have a motion?

25 COMMISSIONER ROSENFELD: I move the

1 minutes.

2 COMMISSIONER GEESMAN: Second.

3 ACTING CHAIRPERSON PFANNENSTIEL: Motion
4 and second.

5 All in favor?

6 (Ayes.)

7 ACTING CHAIRPERSON PFANNENSTIEL:
8 Opposed?

9 Number 20, Commission Committee and
10 Oversight. Let me just mention a couple items.
11 One is that there was an Assembly utility and
12 commerce committee meeting this past Monday to
13 look once again at the issues surrounding the
14 summer of '05. And whether there would be
15 sufficient capacity in the state to meet the needs
16 during the summer.

17 They had Joe Desmond speaking, followed
18 by a panel of utilities, followed by the ISO,
19 followed then by Scott Matthews, myself and Steve
20 Larson from the PUC. And then I believe a
21 representative from TURN.

22 And as one might expect the conclusion
23 was as we have heard for a number of these same
24 subject proceedings, that looks like it's going to
25 be a tight summer, but we believe that we've taken

1 the right actions, and there will, in fact, be
2 sufficient capacity for the summer.

3 I expect that there will probably be
4 subsequent hearings by that committee. It's a
5 relatively new committee, and they're interested
6 in investigating and understanding a lot of energy
7 issues. So we'll probably hear more from them.

8 One other, just an announcement I'd like
9 to make is I understand that Bill Chamberlain, our
10 Chief Counsel, has been elected to be the Vice
11 Chair of the Western Electricity Coordinating
12 Council at its annual meeting last week. And I
13 think that we should note that. And Bill's the
14 first, as I understand it, state member
15 representative to hold an executive leadership
16 office since the new stakeholder board structure
17 was implemented in 2002.

18 I think this election demonstrates a
19 high regard and professional trust the 26-member
20 board has for Mr. Chamberlain. It also provides
21 for us an important voice for California in this
22 regional decisionmaking entity. And it reflects
23 the wisdom of the current Administration in
24 encouraging the Energy Commission Staff, including
25 Bill, to invest the time into the Western

1 Collaboration. So I want to congratulate Bill and
2 wish him all the support.

3 MR. CHAMBERLAIN: Thank you very much.

4 ACTING CHAIRPERSON PFANNENSTIEL: Thank
5 you.

6 Chief Counsel's report.

7 MR. CHAMBERLAIN: I think the only thing
8 that I have to report is that briefing in the El
9 Segundo matter has been completed, and I will be
10 sending you an electronic copy of the reply brief
11 that was filed by Baykeepers. If you need any
12 further more detailed information on that, we
13 should probably do it in closed session.

14 ACTING CHAIRPERSON PFANNENSTIEL: Yes,
15 thank you.

16 Executive Director's report, Mr.
17 Matthews.

18 ACTING EXECUTIVE DIRECTOR MATTHEWS: I'd
19 like to briefly report on the budgetary process.
20 We had a hearing with the Assembly budget on the
21 6th of April. The hearing went well.
22 Commissioner Pfannenstiel was excellent in her
23 presentation and summary.

24 The only issue that appears to be
25 outstanding is reaction on the part of the

1 Legislators, because it applies in the Senate, as
2 well, on the LAO's recommendation that appeared to
3 a longer term study of its future resource needs.

4 So our budget in the Assembly side was
5 held open until trailer bill language can be
6 drafted that says something to that effect.

7 We had a meeting with staff in the
8 Senate in a premeeting the same afternoon. Much
9 of the same discussion about PIER future needs
10 were investigated by the Senate Staff. There also
11 were questions about our work in once-through
12 cooling, which we had provided quite a bit of
13 information. There's a lot more going on than
14 just the PIER work, but there's a lot of work that
15 the staff's doing on that. And some other minor
16 issues.

17 But I would anticipate that -- our
18 hearing on the Senate side is on the 18th. I
19 would anticipate that they, as well, will want to
20 do some kind of direction to us to look at the
21 long-term staffing needs of PIER.

22 COMMISSIONER BOYD: Mr. Matthews, what's
23 the Legislature's definition of long term? What
24 period of years --

25 ACTING EXECUTIVE DIRECTOR MATTHEWS: I

1 believe in this case it's five years. We're
2 obligated, I think it's next year, to do a look-
3 forward in five years for a more strategic look.
4 And so if we could combine that look with where
5 PIER is going and what we want to do for the
6 second half of PIER basically, that would be a
7 logical timeframe to have that in.

8 And hopefully we'll get some input into
9 what that language says about that.

10 COMMISSIONER BOYD: Thank you.

11 ACTING CHAIRPERSON PFANNENSTIEL: Thank
12 you. Leg Director's report. No, I don't see
13 Cece. Public Adviser report.

14 MR. BARTSCH: Nothing new to report,
15 Madam Chair.

16 ACTING CHAIRPERSON PFANNENSTIEL: Thank
17 you. Public comment. I see that we have one
18 request for public comment from a Craig Lease.
19 Mr. Lease.

20 MR. LEASE: Yes, I'm with L&L Suppliers.
21 We manufacture roof coatings in Stockton,
22 California. My family's company is Stockton
23 Roofing Company, incorporated since 1912, the
24 third oldest roofing company in California.

25 We have been doing roof coating since

1 1938. And cool roof coating, the white coatings,
2 starting in 1960.

3 I believe we're America's oldest and
4 most experienced roof coating contractor. And I
5 am -- well, I'm the formulator of our white cement
6 products, and I'm also the spray foreman. And I
7 do get some on the roof.

8 (Laughter.)

9 MR. LEASE: Anyway, when I saw that a
10 group of 23 manufacturers were asking to -- or
11 22 -- were asking to change the rules on low
12 temperature flexibility I disagree that you should
13 change that.

14 First of all, low temperature
15 flexibility and flexibility do not even go toward
16 my product, which is a white cement coating. We
17 do it on capsheet roofing and tar-and-gravel
18 roofs. So the tar-and-gravel roofs are a quarter
19 inch deep with rock, and we fill in with cement,
20 making white concrete.

21 Our oldest roof has lasted 43 years.
22 And I think my dad was the only contractor who
23 ever tried to make anything last longer.

24 So consequently I was listed as an
25 exception to the flexibility rules. On these

1 flexibility, the low-temperature flexibility rule
2 is very important. If you do decide to change to
3 what they're recommending, the one group of 22
4 manufacturers, that you go to essentially a bend
5 test at zero degrees.

6 There's also a bend test at minus 30
7 degrees. And I would definitely ask you guys to
8 consider if you're going to change it to a zero,
9 then change it to a minus 30, also, inclusive. As
10 this will eliminate problem products that can
11 affect performance.

12 We were in the January 10, 2002, they
13 started all the cool roof program with Ray Darby
14 running it. I've since worked with Ray Darby,
15 Virginia Lew, Mike Sloss, Daryl Mills, Bob
16 Therkelsen, Bill Pennington, Bryan Alcorn, Charles
17 Eley, Audrey of Eley, Energy Solutions, Melinda
18 Rogers, Ray Treathaway, and, well, I won't say
19 that, Dr. Lisa Gartland.

20 I have had nothing but problems since
21 January 10, 2004 -- excuse me, 2001, when the
22 program started. And I need somebody to help out
23 here. My testing requirements are that they're
24 incorrect; they don't exist. ASTM that my white
25 cement coating was supposed to pass, which I just

1 found out last week by calling the testing lab in
2 Florida. I said, sir, I'm supposed to pass ASTM
3 test D822, which essentially is a 2000 hour
4 weatherization test where it's accelerated
5 weathering to tell how your coating works and how
6 it lasts, the durability.

7 Well, I'm informed that that is the
8 procedure to run the weatherization machine. So
9 it's not a test at all. It's how you turn the
10 machine on and how you operate the machine.

11 Emails about this thick. And as of now
12 I'm listed as the exception to the flexible
13 coatings. And I don't have any test to pass.
14 That would be nice, too.

15 We've been doing this for 43 years.
16 Over 30 million square feet. And no warranties,
17 no problems. And I'll give you guys a copy of
18 this, because I don't care to read it, of Dr. Lisa
19 Gartland's assessment of myself, my family, and
20 our products, which is horrible.

21 ACTING CHAIRPERSON PFANNENSTIEL: Thank
22 you for your comments, Mr. Lease. You understand
23 that we did open --

24 MR. LEASE: Yes, I understand.

25 ACTING CHAIRPERSON PFANNENSTIEL: --

1 authorize staff to open a rulemaking, and I hope
2 you can participate in that.

3 MR. LEASE: Yeah, that'd be great.

4 ACTING CHAIRPERSON PFANNENSTIEL: Thank
5 you.

6 MR. LEASE: Who should I get ahold of
7 now?

8 ACTING CHAIRPERSON PFANNENSTIEL: To the
9 Executive Director.

10 MR. LEASE: Okay, thank you.

11 ACTING CHAIRPERSON PFANNENSTIEL: We
12 have a ways to go yet today, miles to go before we
13 sleep. So we have items 12 through 18 remaining.

14 I'm going to suggest that we take about
15 a half-hour break and come back, I would say
16 looking at that clock, at least, 12:45, and
17 reconvene the meeting.

18 With that we will adjourn for half an
19 hour.

20 Whereupon, at 12:10 p.m., the business
21 meeting was adjourned, to reconvene at
22 12:45 p.m., this same day.)

23 --o0o--

24

25

1 Director's decision denying in part their
2 application for confidentiality pursuant to the
3 California Code of Regulations Title 20, section
4 2505(a)(3).

5 Item 14, APS Energy Services, Inc.
6 Appeal. Consideration of an appeal by APS Energy
7 Services (APS) of the Executive Director's
8 decision denying in part their application for
9 confidentiality pursuant to California Code of
10 Regulations Title 20, Section 2505(a)(3).

11 Item 15, Southern California Edison
12 Company Appeal. Consideration of an appeal by
13 Southern California Edison Company of the
14 Executive Director's decision denying in part
15 their application for confidentiality pursuant to
16 the California Code of Regulations Title 20,
17 section 2505(a)(3).

18 Item 16, San Diego Gas and Electric
19 Company Appeal. Consideration of an appeal by San
20 Diego Gas and Electric Company of the Executive
21 Director's decision denying in part their
22 application for confidentiality pursuant to
23 California Code of Regulations Title 20, Section
24 2505(a)(3).

25 Item 17, Pacific Gas and Electric

1 Company Appeal. Consideration of an appeal by
2 Pacific Gas and Electric Company of the Executive
3 Director's decision denying in part their
4 application for confidentiality pursuant to the
5 California Code of Regulations Title 20, section
6 2505(a) (3).

7 With that, Ms. Holmes.

8 MS. HOLMES: Thank you very much. Good
9 afternoon. The item before you today is six
10 appeals of decisions by the Executive Director to
11 deny confidential designation for certain
12 electricity demand forecast data sought by the
13 Commission in order to prepare the 2005 IEPR.

14 Appellants are three investor-owned
15 utilities, SDG&E, PG&E and SCE, and three ESPs,
16 APS, Constellation and Strategic.

17 They submitted data in early February
18 with requests for confidential designation. The
19 Executive Director granted confidential
20 designation for some of the data, but denied
21 confidential designation for other portions of the
22 data. And the parties have appealed the denials.

23 The question that the Commission must
24 answer today from each of the appeals is whether
25 the appellants have made a reasonable claim that

1 confidentiality is authorized under the Public
2 Records Act.

3 This is not a high threshold, but
4 neither is it a meaningless one. It's important
5 to note that it's not sufficient simply for the
6 applicant to make any claim that confidentiality
7 is justified. Rather, the applicant must
8 demonstrate that their claim is reasonable in
9 light of the facts before the Commission.

10 For example, to the extent that the
11 claims are based on a statement that annual peak
12 demand can be used to back-calculate into an
13 hourly net short, the question that you would be
14 facing is whether or not it's reasonable to claim
15 that such a calculation can be made based on the
16 facts in front of you.

17 As you make your decision you should
18 keep in mind that the Executive Director has
19 already granted confidential designation for
20 virtually all of the supply side data for which
21 confidentiality was sought.

22 I have several recommendations in terms
23 of process. First, I recommend allowing the
24 moving parties, the appellants, to make their
25 presentation. I have encouraged both the ESPs and

1 the IOUs to consolidate and coordinate their
2 presentations, so hopefully you'll only have to
3 hear one discussion of each of the common issues.

4 To the extent that there are issues that
5 are unique to each entity, those will need to be
6 discussed separately.

7 Secondly, staff is available to answer
8 technical questions about its reactions on a
9 technical basis to the appellants' claim for
10 confidentiality, and I encourage you to take
11 advantage of that opportunity.

12 I also recommend that you allow staff
13 and the appellants to ask questions of each other
14 at the conclusion of their presentations in order
15 to develop a full record for your resolution of
16 these issues.

17 And with that, I think we can begin.

18 ACTING CHAIRPERSON PFANNENSTIEL: Thank
19 you, Ms. Holmes. I think that your
20 recommendations on process seem reasonable to me.
21 Let me ask my fellow Commissioners if there's any
22 problem with that.

23 Then why don't we ask whoever would
24 represent the ESP's to come forward and make a
25 discussion of your case.

1 MR. KLATT: Good afternoon, Madam Chair
2 and Commissioners. My name is Gregory Klatt and I
3 am speaking today on behalf of APS Energy Services
4 and Strategic Energy. Gregg Wheatland, who is
5 seated to my right, will be speaking on behalf of
6 Constellation NewEnergy.

7 We have coordinated beforehand to try to
8 minimize the amount of overlap between the
9 presentations.

10 Before I start I wanted to note that all
11 three companies are electric service providers, or
12 ESPs. And that they are in vigorous competition
13 with each other, and also compete against the
14 bundled rate and special rates offered by the
15 utilities. All under a competitive marketplace
16 where they do not have the same type of cost
17 recovery guarantees that are enjoyed by the
18 utilities. So they're in a somewhat different
19 situation than the IOUs.

20 The basic issue before you today is
21 whether my clients have made a reasonable showing
22 that public disclosure of the information at issue
23 in the appeals would cause them some competitive
24 harm.

25 The information at issue includes

1 information concerning the total loads and total
2 peak loads of each company for the period of 2003
3 through 2016. And in the case of Strategic,
4 detailed information about the company's forecast
5 methodology and uncertainty analysis.

6 Strategic and APS, and this is also true
7 for Constellation, have made efforts to keep this
8 information confidential. They believe it is
9 extremely sensitive commercially; and, in fact,
10 constitutes trade secrets.

11 In anticipation of what we have been
12 told today is likely to be extensive questioning
13 from the dais on the competitive harm issue, Mr.
14 Wheatland and I have arranged for knowledgeable
15 personnel from the companies to be here today to
16 speak to that issue and answer any questions you
17 may have.

18 Before we get to that discussion,
19 however, I'd like to make a few preliminary -- I
20 would like to address a few preliminary matters.

21 First, in their appeals, my clients
22 requested that the three years of confidentiality
23 granted by the Executive Director be extended to
24 ten years. Upon further consideration my clients
25 have determined or concluded that a five-year

1 rolling period would afford adequate protection
2 for the forecast load data. And they amend their
3 request accordingly.

4 I understand that Constellation
5 NewEnergy will do likewise, although I'm not here
6 to speak on behalf of Constellation.

7 And that Mr. Wheatland will explain the
8 importance of having a rolling, as opposed to a
9 static, confidentiality period for the load
10 forecast information.

11 I'd like to distinguish, however, the
12 forecast methodology and uncertainty analysis that
13 was provided by Strategic Energy, unlike the load
14 forecast information -- and this is particularly
15 true for the forecast methodology data, or
16 information, basically the description of how they
17 do forecasting.

18 That information does not really have a
19 shelf life. There's unlikely to be significant
20 change between now and three years from now, or
21 five years from now, as to the methodology that
22 Strategic uses to conduct its forecast.

23 And so we are requesting that that
24 particular piece of information be granted
25 confidentiality on a permanent basis.

1 The same is also true with respect to
2 the uncertainty analysis. Conceivably, as time
3 goes by, the commercial value of the uncertainty
4 analysis could decline. However, we are now at a
5 static marketplace. There have not been any
6 changes as of yet to the market structure. So,
7 the same considerations that go into the
8 uncertainty analysis today might very well be the
9 same five years from now.

10 So, also with respect to the uncertainty
11 analysis we're requesting that the grant of
12 confidentiality be permanent, or at the very
13 least, for ten years.

14 The second point I'd like to address is
15 the competitive harm standard. In denying
16 confidentiality for information about my clients'
17 total loads and total peak loads, the Executive
18 Director held that the information, quote, "is not
19 sufficiently detailed to provide others with a
20 competitive business advantage."

21 Similarly, with respect to the forecast
22 methodology and uncertainty analysis provided by
23 Strategic, the Executive Director found that this
24 information is not commercially sensitive, and
25 disclosure would not confer a competitive

1 advantage on a competitor.

2 I submit that the Executive Director has
3 used the wrong standard. As reflected in the
4 Commission's regulations the Public Records Act
5 and relevant judicial decisions, the issue is not
6 whether the information would bestow a competitive
7 advantage on a competitor or other market
8 participant, but whether the information has
9 commercial value to the reporting company and its
10 disclosure would result in a loss of competitive
11 advantage or other harm to the reporting
12 company. It's a subtle difference, but important.

13 Third, and actually, Ms. Holmes made
14 this point to some extent, my clients were not
15 required to prove their case for confidentiality
16 beyond a reasonable doubt, by a preponderance of
17 the evidence, or even by substantial evidence,
18 which is the standard that's common for regulatory
19 proceedings. Rather the Commission's regulations
20 provided that the Executive Director shall grant
21 confidentiality if an applicant has made, quote,
22 "a reasonable claim that the Public Records Act or
23 other provision of law authorizes the Commission
24 to keep the record confidential."

25 I submit that while it is reasonable to

1 ask a company that is seeking confidentiality to
2 explain in general terms why the information at
3 issue has commercial value to the reporting
4 company, it would be unreasonable to require an
5 applicant to get into the heads of its competitors
6 or much less, explain in its application exactly
7 how those competitors could use the information to
8 their advantage.

9 And in that respect with respect to that
10 area, when Ms. Chamberlin and Ms. Tierney speak,
11 depending upon how detailed the questions are that
12 are presented to them, we may request that we go
13 into closed session. And, in fact, it may be
14 appropriate to have only Constellation in the room
15 for that session, and only Strategic in the room
16 for their session. We may not get there, but
17 that's just something we wanted to raise as a
18 possibility.

19 I want to just make a point that this
20 information is extremely sensitive and they don't
21 want it to get into the hands of their
22 competitors.

23 Third, my clients -- excuse me. Fourth,
24 I wanted to point out that there are alternative
25 grounds for the Commission to grant

1 confidentiality to the information in question.

2 If the Commission is not convinced that
3 the information necessarily satisfies the
4 requirements to be characterized as a trade
5 secret, the Commission also has the authority to
6 grant confidentiality where the public interest in
7 nondisclosure outweighs the public interest served
8 by disclosure.

9 We believe it is not necessary to
10 disclose ESP-specific information in order for the
11 debate on key energy issues facing the state to be
12 open and informed. That interest can be satisfied
13 by ESP information that has been aggregated for
14 all ESPs on the statewide level.

15 On the other hand, public disclosure of
16 ESP-specific load information could prompt
17 reporting entities to adopt a minimalist approach
18 with respect to future data requests and data
19 submittals. And that would be in contrast to the
20 cooperative and open approach they've adopted so
21 far.

22 In short, the balance of public interest
23 provides additional ground for the Commission to
24 grant confidentiality to the ESP-specific
25 information at issue before you today.

1 Lastly, I wanted to speak to the issue
2 of consistency on a national level. It's been
3 suggested that somehow what we are doing here
4 today is different than what's being done in other
5 states. That there's more disclosure in other
6 states.

7 Now, our understanding is actually that
8 the opposite is true. With respect to ESPs
9 they're simply not required to disclose this type
10 of information in other jurisdictions. They do
11 make some reports to the DOE, to the Energy
12 Information Administration, but not to state
13 jurisdictions. And there certainly is no
14 jurisdiction in which the type of information that
15 we're discussing today would be made public, the
16 forecast information.

17 The only information that they report is
18 historical. And some of that is public already.
19 But there's no other jurisdiction where the ESPs
20 are reporting information about the future and
21 that information is being made public.

22 I'd like to end by making a proposal.
23 We think that the Commission's purposes can be
24 served while at the same time providing adequate
25 protection to ESPs by taking two steps:

1 First, with respect to the data that's
2 been submitted by ESPs, to deem that confidential,
3 but to make it public on an aggregated basis,
4 where all ESP information is aggregated. We
5 believe that that would serve the public purpose
6 of having an open informed debate, while at the
7 same time not disclosing sensitive information.

8 The second part of our proposal is that
9 the period of confidentiality be five years and on
10 a rolling basis. And, again, Mr. Wheatland will
11 talk more to that.

12 That concludes my prepared remarks.
13 Before turning the microphone over to Mr.
14 Wheatland, I would be happy to try to answer any
15 questions you may have. And also I wanted to
16 repeat the Ms. Chamberlin is here today from
17 Strategic to answer specific questions you may
18 have about the competitive harm issue.

19 ACTING CHAIRPERSON PFANNENSTIEL:
20 Commissioner Geesman.

21 COMMISSIONER GEESMAN: I want to get a
22 better handle on this historical information that
23 your clients disclose to the federal government.
24 Doesn't that negate the argument for a rolling
25 period of nondisclosure?

1 MR. KLATT: I don't believe so. If you
2 don't have a rolling period you're going to be in
3 a situation where, for example, the forecast
4 information about the year 2008 that's been
5 submitted to the Commission, that would be
6 disclosed in 2008, made public. So you'd have
7 2008 information available in the year 2008.

8 For the historical information there's a
9 lag between the period that's covered and the time
10 the information's reported, and an additional lag
11 between the time that information's reported and
12 the time it's made public by the EIA.

13 So, I believe it's about a year, a year
14 gap or so. And so what's being made public by the
15 federal government is always a year, two years in
16 the past. And it's only --

17 COMMISSIONER GEESMAN: And you're
18 suggesting that because we're merely a state
19 government that five years ought to be sufficient?

20 MR. KLATT: No, that's not the point I
21 was making at all. That's actual information;
22 it's already happened; it's reported; it's out
23 there; it's made public about a year or so after
24 the period in question.

25 COMMISSIONER GEESMAN: And --

1 MR. KLATT: The information here is
2 forecast information; it's not just --

3 COMMISSIONER GEESMAN: Forecast
4 information after the fact is more potentially
5 damaging to your clients than actual information?
6 How does that work?

7 MR. WHEATLAND: May I --

8 COMMISSIONER GEESMAN: No.

9 MR. KLATT: Forecast information would
10 be -- just give an example. You're talking about
11 actual information and why forecast information is
12 more sensitive than actual information.

13 The forecast covers several years in the
14 future. That information, say for example the
15 year 2008. The actual information for the year
16 2008 won't be public until 2009.

17 COMMISSIONER GEESMAN: And I believe
18 you're suggesting that we keep the forecast
19 information of 2008 confidential until 2013.

20 MR. KLATT: Yes.

21 COMMISSIONER GEESMAN: I don't think you
22 fully appreciate the magnitude of the task that we
23 have to perform in terms of adequately assessing
24 the state's energy situation, making policy
25 recommendations to ourselves, other regulatory

1 agencies, the Governor and the Legislature.

2 MR. KLATT: Um-hum.

3 COMMISSIONER GEESMAN: And the necessity
4 of having timely data in order to do that.

5 MR. KLATT: Certainly I do understand
6 that, and I think the difference is that the
7 information that you need for that process does
8 not need to be ESP-specific information. It can
9 be aggregated --

10 COMMISSIONER GEESMAN: Let's go to that.
11 I think on one level you make a good point about
12 aggregation. But I'm not certain statewide
13 aggregation is the appropriate level of
14 aggregation.

15 I'm fearful that we would develop a
16 Swiss cheese understanding of what our electrical
17 supply and demand situation is. And I'm not
18 certain that utility service territory is the
19 right level, or some subset of utility service
20 territory.

21 But I understand your point on
22 aggregation. I'm just not convinced that a
23 statewide aggregate quite gets us to where we need
24 to be.

25 MR. KLATT: And we've explored this a

1 little bit with staff, too, and I know exactly
2 where you're coming from.

3 COMMISSIONER GEESMAN: Okay.

4 MR. KLATT: It may be that service
5 territory level information is more helpful to the
6 process. The main concern we have about service
7 territory level information is that there are few
8 enough market participants at this point in terms
9 of number of ESPs, and in some classes, some
10 service territories there are only a small number
11 of customers in a particular customer class.

12 The concern is that if the information
13 is broken down to the service territory level that
14 you would effectively be facilitating -- you would
15 be effectively disclosing customer-specific
16 information, or ESP-specific information, even
17 though it's been aggregated for ESPs for the
18 service territory level.

19 If that consideration is taken into
20 account and measures are taken to insure that
21 breaking the information down to the service
22 territory level does not create those problems,
23 then there's two ways to get at that.

24 One is, for example, if there was only a
25 few customers in a certain subcategory of the

1 commercial class, you just aggregate that small
2 customer class with the rest of the commercial
3 class. And so you don't have that information for
4 a few customers hanging out there on the chart so
5 people can back-engineer it.

6 Similar situation where the ESP is --
7 there's only one or two ESPs that serve the
8 customers in a class in a service territory. You
9 may want to do some additional masking there. But
10 I certainly understand the issue you're getting
11 to. And I think there may be ways to work that
12 out. Although there may be different
13 considerations for different ESPs.

14 I'm certainly not familiar with all the
15 information that has been submitted. I've, you
16 know, barely even looked at or been allowed to
17 look at the information that was submitted by my
18 client, so I don't know what other people have
19 submitted. But that's the main concern that we're
20 getting at.

21 Back to the question about duration. I
22 think more important than it being five years or
23 ten years is the idea of there being a rolling
24 period. If you don't -- and I believe Mr.
25 Wheatland can speak more to this, but really

1 having the confidentiality period being rolling is
2 extremely important, otherwise you're going to
3 have the situation where every year the
4 competitors are going to see a snapshot for the
5 whole period that's covered by the report.

6 So 2003 to 2016, the next year it'll be
7 2004 to 2017, or I guess there's a two-year gap
8 between the report. But you start putting those
9 snapshots next to each other and you get a pretty
10 clear picture of what the ESP supply/demand
11 situation is. And that's the concern that we
12 have.

13 COMMISSIONER GEESMAN: The ESP business,
14 is that static?

15 MR. KLATT: It is now. Hopefully --

16 COMMISSIONER GEESMAN: Doesn't change.

17 MR. KLATT: -- that will change soon,
18 but we don't know. I mean there are -- basically
19 load will go from ESP to ESP. But I don't think
20 you can anticipate a huge difference in the loads
21 of each individual ESP over the next couple years
22 unless, of course, direct access is reopened.

23 And there's also the problem where
24 they're not only competing against each other, but
25 they are competing against the utilities' bundled

1 rates and their special rates. And that also
2 could affect, you know, what their situation is
3 going forward.

4 But you made an important point,
5 Commissioner Geesman, because the market is static
6 now, the fact that a few years may go by before
7 the information is disclosed doesn't necessarily
8 give you the protection that you would want.
9 That's why you want to have the rolling period.

10 COMMISSIONER GEESMAN: You suggested
11 that you have another witness for competitive
12 advantage questions?

13 MR. KLATT: Yes. Thank you. Jennifer
14 Chamberlin from Strategic Energy.

15 ACTING CHAIRPERSON PFANNENSTIEL: But
16 before we move on, Commissioner Rosenfeld, did you
17 have a question?

18 COMMISSIONER ROSENFELD: Yeah. I'm
19 sorry to be confused about the five-year rolling,
20 but let's take your example. It's now 2008 and
21 the 2007 data have just been published by EIA and
22 presumably has no confidentiality at value
23 anymore.

24 You're suggesting that your forecast for
25 the years 2008 out to 2013 be kept confidential?

1 I'm not fighting about this, I just don't
2 understand.

3 MR. KLATT: Right. Yes, that
4 information, that's the idea of the rolling
5 period, you're right. The information after that
6 time would continue to be confidential until the
7 rolling period catches up with it.

8 COMMISSIONER ROSENFELD: Well, in fact,
9 until the calendar catches up.

10 MR. KLATT: Yes.

11 COMMISSIONER ROSENFELD: And do you
12 submit forecasts for more than five years ahead?
13 You're supposed to submit --

14 MR. KLATT: From 2003 to 2016. And the
15 fact may be that not all the years are covered,
16 depending upon what the actual data submittal is.
17 But the notion is they basically forecast out as
18 far as they could without it becoming so
19 speculative that there's really no use or value to
20 the staff.

21 COMMISSIONER ROSENFELD: Right. I guess
22 the point I'm confused about is I would have
23 thought you would have said that you just want
24 future estimates kept confidential. And, of
25 course, they drop off when the calendar catches up

1 with them.

2 MR. KLATT: Right, that's the basic
3 idea. And I may be, you know, like I said, we
4 kind of divvied this up a little bit, the
5 responsibilities in terms of the presentations.
6 And I do think that Mr. Wheatland is actually more
7 prepared to speak to kind of the nuts and bolts of
8 how the rolling period would average.

9 And I would --

10 COMMISSIONER ROSENFELD: Okay.

11 MR. KLATT: Not to duck the question,
12 but I think really to get a better answer I should
13 defer to Mr. Wheatland.

14 COMMISSIONER GEESMAN: But if I
15 understand correctly the Executive Director
16 provided three years of confidentiality.

17 MR. KLATT: Right, meaning --

18 COMMISSIONER GEESMAN: You had
19 originally suggested ten; today you've changed
20 that to five.

21 MR. KLATT: For the rolling.

22 COMMISSIONER GEESMAN: FERC observes one
23 based on historical information. So, Commissioner
24 Rosenfeld, your question really related more to
25 the forecasts between now and 2008. And I believe

1 that what his answer implied was that he would
2 suggest forecast demand for each year between now
3 and 2010 be kept confidential until 2010. Then in
4 2011 you would be able to see the 2006 forecast.
5 Despite the fact that FERC would have -- EIA would
6 have published the actual consumption on a one-
7 year lag basis.

8 COMMISSIONER ROSENFELD: Yeah, that's
9 why I'm confused. It seems like confidentiality
10 is of something which is almost valueless.

11 ACTING CHAIRPERSON PFANNENSTIEL: Well,
12 perhaps now we should go --

13 COMMISSIONER ROSENFELD: We should let
14 Mr. Wheatland -- yes. Sorry.

15 ACTING CHAIRPERSON PFANNENSTIEL:
16 Enlighten us, please.

17 MR. WHEATLAND: Well, first of all, let
18 me say I'm Gregg Wheatland, Constellation
19 NewEnergy. And I agree with the comments Mr.
20 Klatt has made, to say in the interests of time we
21 have made an effort to coordinate our
22 presentation.

23 I have just a few additional comments.
24 I'm going to juggle the order here to talk a
25 little bit about this one issue that's come up

1 right now.

2 The important thing to realize is the
3 Executive Director's determination looks at the
4 information that's on form 1.1 which shows total
5 retail sales in gigawatt hours by customer class
6 for each IOU service area.

7 And the Executive Director believes that
8 the retail sales totals for each service area
9 should be disclosed now. There's no three-year
10 confidentiality protection to those numbers. So,
11 for an ESP like Constellation the Executive
12 Director's recommendation is that the total retail
13 sales for that ESP for each of the utilities'
14 services areas be disclosed now without any
15 protection.

16 Second of all, we report on that form
17 and break it out by the data for each customer
18 class. And the Executive Director has determined
19 that with respect to the customer class that
20 information can be held confidential until March
21 9th of 2008.

22 So on March 9th of 2008 the entire
23 forecast would be released, including both the
24 totals for each service area and the breakdown by
25 customer class.

1 Now, a forecast has two important
2 elements to it. One, it builds on the historical
3 data. But the more important and perhaps even
4 more sensitive aspect of that forecast is the
5 business plans of that entity.

6 And we believe very strongly that there
7 is important confidentiality interests to be
8 protected in the business plans of the utility.
9 And we would prefer not to give competitors of
10 Constellation, or persons who Constellation must
11 purchase energy from the advantage of seeing what
12 we purchased historically last year, as well as
13 our business plan for this year and next year.

14 So the rolling confidentiality is a way
15 of protecting the long-term business plans of the
16 utility, of the ESP and shielding it from that
17 level of discovery.

18 COMMISSIONER GEESMAN: So, if I
19 understand correctly, you're suggesting that the
20 forecast that Constellation made for the year 2000
21 would be characterized as a trade secret which
22 should be kept confidential until 2005, because it
23 represents a competitive advantage that you have
24 over your competitors?

25 MR. WHEATLAND: That's right. And it's

1 not only with respect to the competitors. You
2 also have to realize that Constellation is out
3 purchasing energy. And when you make an energy
4 purchase there are two important components to
5 that purchase. One is price and volume. For it
6 to disclose -- and many of these purchases may be
7 for a short term or it may be for a long term.
8 But the last thing Constellation wants to do is to
9 provide to all of the wholesalers, the suppliers
10 from whom they're purchasing, a detailed breakdown
11 on what their long-term business plan is and
12 energy purchase needs are.

13 This would be extremely damaging in
14 their ability to negotiate a fair sale, especially
15 where the supply side information is all kept
16 confidential.

17 So here you have the seller, whose
18 information is confidential. You have the buyer
19 with all of their information, under the Executive
20 Director's recommendation, laid out on the table.

21 And Mona Tierney, who is with
22 Constellation, is here today and can speak in more
23 detail to these concerns if you'd like to hear us
24 discuss them.

25 COMMISSIONER GEESMAN: Well, but I want

1 to come back to a couple of things you said. I
2 didn't understand how the confidentiality of the
3 supply side information exacerbated your
4 sensitivity to disclosure of the demand side.

5 MR. WHEATLAND: Well, it's basically an
6 unlevel playing field if the supplier knows
7 exactly what the energy needs are of the buyer,
8 but the buyer doesn't have information with
9 respect to the supplies. Then the parties are in
10 obviously an unequal bargaining position.

11 COMMISSIONER GEESMAN: So would that
12 then motivate Constellation to want to disclose
13 its supply side?

14 MR. WHEATLAND: No, I think what we
15 would like to do is, in the interests of not
16 having disclosure in this area, because it's too
17 difficult to balance these issues.

18 One of the other points that I wanted to
19 make which is related to this issue is that as an
20 Administrative Law Judge for many years at the PUC
21 I fashioned protective orders. And it was one of
22 the issues that I anguished over the most.

23 Because on the one hand there certainly
24 is an interest in the public understanding these
25 numbers. But there's also a real significant harm

1 that can result if the disclosure is unnecessarily
2 burdened and tramples on a trade secret.

3 In this case you have to keep in mind
4 that the ESPs are not saying that the Energy
5 Commission cannot use this information in its
6 analysis. That isn't the issue.

7 Also the issue is not aggregation,
8 because the ESPs are comfortable with having this
9 information aggregated on a statewide basis. And
10 incidentally, that aggregation on a statewide
11 basis would still be much less than any of the
12 other columns that you probably have on the table.

13 So the issue is not aggregation. The
14 issue is not disclosure. But the issue is
15 breaking the information down so specifically, not
16 only breaking it down by year, but by utility
17 service area, then by customer class, such to a
18 level that competitors might actually be able to
19 ascertain the customers that are on the system for
20 the ESP at any given year, and the customers that
21 may be leaving the next year. This is our
22 concern.

23 COMMISSIONER GEESMAN: Well, as one of
24 the most distinguished alumni of our legal office,
25 I know that you recognize you're not at the Public

1 Utilities Commission now, and I am less concerned
2 with what your client would like or what it would
3 prefer, than trying to relate back to the
4 requirements of the Public Records Act and our
5 statute.

6 And I wonder if you would walk us
7 through why you consider any of the information
8 that you've just described as a trade secret that
9 confers a competitive advantage over competitors
10 to your client, such that disclosure of that trade
11 secret would deprive you of a competitive
12 advantage.

13 MR. WHEATLAND: Right, I'd be happy to
14 do that. We also have here witnesses that can do
15 it in much greater detail, and that's --

16 COMMISSIONER GEESMAN: Okay, well --

17 MR. WHEATLAND: -- why we wanted to
18 bring the people that do it on a hands-on basis.
19 But let me just walk you through from a larger
20 perspective.

21 As an ESP we have a number of customers
22 with contracts of differing terms. And while one
23 of the most important things is when that contract
24 term ends that we're able to sign that customer up
25 again. That information is not available to

1 anyone other than the ESP and the customer.

2 But if someone can look at a spreadsheet
3 for a given year and see the shifts in loads, they
4 can ascertain from that information which
5 customers are going on and off the system.

6 And we're concerned that that type of
7 information that's for these very small ESPs,
8 broken down by service area and customer class,
9 may actually reveal our contracts and our
10 customers, and provide a competitive advantage to
11 others to go out and to market to those customers.

12 COMMISSIONER GEESMAN: Now, does
13 Constellation fit that definition in any utility
14 service territory in California?

15 MR. WHEATLAND: We believe it does, yes.

16 COMMISSIONER GEESMAN: So that you feel
17 disclosure of this information would allow a
18 competitor to identify one of your client's
19 customers?

20 MR. WHEATLAND: That's correct.

21 ACTING CHAIRPERSON PFANNENSTIEL: Mr.
22 Jaske, why don't you -- you have a single question
23 now, but generally we'll get into --

24 DR. JASKE: Merely a point of
25 clarification.

1 ACTING CHAIRPERSON PFANNENSTIEL: Okay,
2 thank you.

3 DR. JASKE: -- help you to better
4 understand the sensitivity they're bringing
5 forward between forecasts and history.

6 There are five ESPs that have submitted
7 demand forecasts pursuant to the forms and
8 instructions. Among those five there are two
9 different styles of forecast, I'll use sort of
10 loosely.

11 One is sort of forecasters are well
12 familiar with is a prediction of the number of
13 customers in a future year and the sort of loads
14 and energy associated with that prediction of
15 customers. So it's a sort of permanently viable
16 going-forward business sort of view of the future.
17 There's at least one of those among these five.

18 As well, there's a different style among
19 these five, which is to, in effect, not make a
20 forecast at all, but they have reported to us the
21 load they continue to have under contract in a
22 future year.

23 And as businesses that have contracts of
24 various durations, in effect that becomes a stair-
25 step down, so that by 2008 or '09 there are no

1 more customers. And so the forecast is zero.

2 So, in that style of so-called forecast,
3 which sort of says they're going out of business,
4 if you sort of literally interpret what they're
5 telling us, the increments of load that are
6 decreasing from one year to the next are precisely
7 the amount of either load that they're not going
8 to sign up, or load that they have to go out and
9 get supply contracts for.

10 And so it's actually the very peculiar
11 nature of that kind of forecast, the second kind,
12 that makes them, I think, more sensitive to the
13 issue of the release of it. And why, in response
14 to Commissioner Rosenfeld's question and
15 Commissioner Geesman's question, why would they be
16 more concerned about the forecast than actual
17 history. It's because the particular forecast
18 style that they have used exposes the set of
19 loads, the amount of loads that they have under
20 contract and the term of those loads.

21 So, it is, in effect, more commercially
22 sensitive because it was prepared in that style,
23 than if it was a sort of going-forward estimate
24 that we're more accustomed to from a utility.

25 COMMISSIONER GEESMAN: You suggested

1 four of the five submitted that style forecast?

2 DR. JASKE: Both styles are represented
3 within those five.

4 COMMISSIONER ROSENFELD: Mike, do I
5 understand you that one of the styles, the
6 decreasing ones, if there's no contract for say
7 2009, that it won't appear on the forecast?

8 DR. JASKE: That's correct, there's at
9 least one or more of these five ESPs that has zero
10 loads let's say starting 2009 or 2008, and from
11 that point forward.

12 COMMISSIONER ROSENFELD: Now, that's a
13 very good clarification. Thank you.

14 MR. KLATT: Yeah, Mr. Jaske actually did
15 a much better job of explaining that than I ever
16 could even hope to do.

17 But it takes us to one of the points I
18 was trying to make is that if you're going to have
19 information disclosed, or aggregated information
20 on a service territory level, at a minimum you'd
21 want to break it down into just two blocks,
22 residential and nonresidential. If you get to any
23 more level of detail it's likely that you're going
24 to have the type of complications that especially
25 Constellation is concerned about.

1 And it would just make it more complex
2 with not necessarily having any additional value.

3 COMMISSIONER GEESMAN: So, identity of
4 customer you would consider a trade secret?

5 MR. WHEATLAND: Yes.

6 COMMISSIONER GEESMAN: And I believe
7 that one of you suggested forecast methodology
8 would also be a trade secret?

9 MR. KLATT: Yes, actually Strategic
10 submitted in forms 4 and 6, in form 4 a fairly
11 detailed description of their forecast
12 methodology, including formula and assumptions.
13 And that information is extremely sensitive for
14 Strategic, as is the information about their
15 uncertainty analysis.

16 And the distinction I was going to make
17 between the two is that, you know, we think the
18 uncertainty analysis could very well have the same
19 sensitivity five years from now, ten years from
20 now as it has today because of the static market.
21 That may change possibly.

22 But with respect to the forecast
23 methodology, that is less likely to evolve over
24 time. Or if it does evolve it will be very small
25 incremental changes. It doesn't have a shelf

1 life; it has a half life of, you know, 50, 100
2 years. That's an exaggeration, but it's an
3 ongoing use. And it seems to fall squarely within
4 the definition of trade secrets, as that term is
5 defined in the statements and in the cases.

6 ACTING CHAIRPERSON PFANNENSTIEL: My
7 question about that, though, is why, if that's
8 true for Strategic, that's a trade secret for
9 Strategic, it is not true for the other ESPs?

10 MR. KLATT: They haven't yet submitted
11 that information. Strategic was actually --

12 ACTING CHAIRPERSON PFANNENSTIEL: I see.

13 MR. KLATT: I mean I don't want to
14 suggest that the other ESPs didn't fully comply,
15 because they're going to give you basically the
16 same information in their April 1st filings. But
17 Strategic did it a little bit early.

18 ACTING CHAIRPERSON PFANNENSTIEL: It's
19 just what's already been filed as opposed to what
20 there has not.

21 MR. KLATT: They've already filed it,
22 right. And so they're kind of having this
23 discussion a bit before the rest.

24 And also another point I wanted to make
25 is that, you know, it's true that there's going to

1 be some similarities between the forecast
2 methodologies that the ESPs and the utilities use.
3 There's going to be similarities in the
4 uncertainty analysis.

5 The fact that there are similarities
6 does not, in and of itself, make it not a trade
7 secret. And that's very clear in the statements
8 and in the cases.

9 Just because this isn't something that's
10 unique to that company doesn't mean that just
11 because it's not unique to the company it's not a
12 trade secret. They have kind of a pool of
13 knowledge that they're using, and if someone else
14 knows exactly what they're doing in terms of
15 forecast methodology or uncertainty analysis, that
16 gives them an insight into their competitor's
17 business. That causes the reporting company to
18 lose a competitive advantage.

19 And it would be particularly unfair for
20 Strategic since to date they're the only ones who
21 have submitted this information. Actually, I
22 can't speak for the utilities, because I'm not
23 sure, but with respect to ESPs that's the case.

24 ACTING CHAIRPERSON PFANNENSTIEL: Is
25 there a sense that we should have the technical

1 people from the ESPs available for questioning
2 now, or should we perhaps hear the utilities and
3 then, since the issues of confidentiality are
4 similar -- Ms. Holmes, in your suggestion how were
5 you thinking about doing this process?

6 MS. HOLMES: I think it depends on
7 whether or not the Commission decides to move into
8 a closed session or not. I think if there's not
9 going to be a closed session at this point, you
10 can move on and address the utility concerns.
11 Although I don't believe there was much of a
12 discussion of form 1.3 from the ESPs yet.

13 MR. WHEATLAND: All right.

14 ACTING CHAIRPERSON PFANNENSTIEL: Mr.
15 Wheatland.

16 MR. WHEATLAND: If I might just add, we
17 can present this information to you at one level
18 without going into closed session. So if you'd
19 like to hear from our technical experts, we can
20 present it at one level without a closed session.

21 I think it depends on whether you're
22 convinced that there are some important trade
23 secret aspects to the information. If you're not,
24 then we'd like you to hear from them.

25 ACTING CHAIRPERSON PFANNENSTIEL: Yes,

1 that's fine. We then will, I guess, hear from
2 your experts without going into closed session.

3 MR. WHEATLAND: Okay.

4 MR. KLATT: Just the thought was if it
5 gets to the point where the level of questioning
6 is detailed enough, then we may want to consider
7 breaking there and going into closed session.

8 ACTING CHAIRPERSON PFANNENSTIEL: I
9 understand.

10 MS. TIERNEY: Good afternoon,
11 Commissioners. My name is Mona Tierney; I'm with
12 Constellation NewEnergy. And I just, first of
13 all, want to support the comments that were made
14 by both counsel.

15 The concern about the sensitivity that
16 was asked relative to being able to deduct
17 specific customer loads and number of customers,
18 we believe is a commercially sensitive piece of
19 information that could be deduced from the
20 forecast information.

21 COMMISSIONER GEESMAN: Well, now, let me
22 interrupt you, Mona, because I thought we were
23 talking about identity of customers, not number of
24 customers. Is number of customers a trade secret,
25 as well?

1 MS. TIERNEY: Well, to the extent that I
2 guess I'll take a step up higher than that. The
3 issue about number of customers and then
4 associated load, especially if it's identified by
5 utility service territory, could lead to the
6 identification of specific customers. That's our
7 concern.

8 COMMISSIONER GEESMAN: Is it your belief
9 it's that identification which is the trade
10 secret? Or is it the number of customers, or the
11 aggregated load? Or all?

12 MS. TIERNEY: Well, actually all,
13 Commissioner Geesman. And the reason is by ESP
14 our respective positions in the marketplace has
15 not been publicly disclosed. So our relative
16 megawatt numbers or our gigawatt hour numbers have
17 not been publicly disclosed. They have all -- I
18 know you already said that this is not the Public
19 Utilities Commission, but any information that's
20 been provided to the Public Utilities Commission
21 to date relative to direct access service
22 requests, which is the vehicle by which we enlist
23 customers into the direct access market, has only
24 been reflected, the load associated with those
25 direct access service requests has only been

1 reflected publicly by the Public Utilities
2 Commission in aggregate across the state on a
3 historic basis only.

4 So, our relative position in that total
5 direct access load has never been identified by
6 energy service provider, nor has our megawatt
7 number been identified.

8 And we consider our position in the
9 marketplace to be a sensitive piece of
10 information. From one aspect, just having that
11 revealed to our competitors, but also because we
12 are a purchaser in the marketplace, having what
13 our load requirements are by year within a utility
14 service territory, we believe, is commercially
15 sensitive information in our abilities to go out
16 and secure energy supplies or for the upcoming
17 resource adequacy requirements.

18 COMMISSIONER GEESMAN: I wasn't clear.
19 Did you say that the PUC had published that
20 information on a statewide basis?

21 MS. TIERNEY: They publish on a monthly
22 direct access service request form, which reflects
23 the number of direct access service requests that
24 have been submitted and processed by utility
25 service territory. But then they report

1 separately the historic, the previous month's
2 direct access load activity in aggregate across
3 the state.

4 COMMISSIONER GEESMAN: And when they
5 make that aggregation do they identify how much of
6 that load is served by Constellation?

7 MS. TIERNEY: No, they do not.

8 COMMISSIONER GEESMAN: So there's no
9 place in any public document that associates
10 Constellation with a certain number of megawatts?

11 MS. TIERNEY: That's correct.

12 COMMISSIONER GEESMAN: And that
13 information is of some competitive benefit to you,
14 such that if we told one of your competitors what
15 it was, that competitor could deprive you of that
16 competitive advantage?

17 MS. TIERNEY: I'm not sure that a
18 competitor could deprive me of that competitive
19 advantage, but my position in the marketplace, we
20 feel, is sensitive information --

21 COMMISSIONER GEESMAN: I understand
22 that.

23 MS. TIERNEY: The concern is mainly from
24 a purchase perspective, in sending a signal to the
25 wholesale market about what our relative position

1 in the marketplace is.

2 COMMISSIONER GEESMAN: Yeah, I
3 understand that part. I'm just trying to
4 reconcile your concern with the statute that we
5 have to apply. And the statute speaks to a trade
6 secret giving its user an opportunity to obtain a
7 business advantage over competitors who do not
8 know it or use it.

9 MS. TIERNEY: Well, Commissioner
10 Geesman, because this information is not currently
11 public, I don't know how my competitors might use
12 my overall megawatt level or my gigawatt hour
13 level.

14 If my level appears to be lower than
15 another ESP's level in the state, can they use
16 that as a marketing tool against customers that
17 I'm currently serving? That's a potential use of
18 that information.

19 If that relative position in the
20 marketplace somehow confers a preference to the
21 ESP that has a larger market share, I think that
22 can be used as a marketing tool against me.

23 ACTING EXECUTIVE DIRECTOR MATTHEWS:
24 Commissioner Geesman, just to clarify. The
25 historic information is by number of customers,

1 revenue sales and average price. So we have the
2 details on the number of customers.

3 MR. KLATT: Let me clarify. It's price
4 charged to the customer, not the ESP's cost.

5 ACTING EXECUTIVE DIRECTOR MATTHEWS:
6 Yes.

7 MS. TIERNEY: Is that the Energy
8 Information Agency --

9 COMMISSIONER ROSENFELD: Scott, did you
10 say number of customers and price, but not sales
11 in kilowatt hours?

12 ACTING EXECUTIVE DIRECTOR MATTHEWS:
13 There's sales and megawatt hours.

14 COMMISSIONER ROSENFELD: Thank you.

15 MS. TIERNEY: That information is the
16 historical EIA information --

17 ACTING EXECUTIVE DIRECTOR MATTHEWS: By
18 state.

19 MS. TIERNEY: By state.

20 ACTING EXECUTIVE DIRECTOR MATTHEWS: For
21 all the service providers.

22 COMMISSIONER GEESMAN: With a one-year
23 lag.

24 DR. JASKE: It's actually a two-year
25 lag, 2003 data came out in early 2005. And I

1 think that's the pattern that EIA has fallen into.
2 It's been somewhat erratic over the years.

3 COMMISSIONER GEESMAN: And was it
4 Constellation that had the claim on forecast
5 methodology, or was that simply Strategic?

6 MR. WHEATLAND: That was Strategic.

7 COMMISSIONER GEESMAN: Okay. Are there
8 any other trade secrets at risk here?

9 MS. TIERNEY: Well, again, going back to
10 the -- I think the point has already been made,
11 but relative to the forecast information, the
12 ability to deduce the customer relationship, the
13 load and the customer, and being able to determine
14 certain customers if it's broken down by utility-
15 specific service territory.

16 The other concern is that it sends -- it
17 can also send a signal about our average contract
18 terms, for example, to our competitors, as well as
19 to the IOUs.

20 COMMISSIONER GEESMAN: How's that?

21 MS. TIERNEY: Based on the forecast
22 information.

23 COMMISSIONER GEESMAN: The forecast --

24 MR. WHEATLAND: Mona, explain how the
25 IOUs can use that information, what information

1 they already have regarding Constellation, and how
2 that additional information would help.

3 MS. TIERNEY: In signing up customers
4 for direct access through this direct access
5 service request, the DASR, the utilities receive
6 those requests. So they know the customer,
7 basically; and they have an idea of the load. But
8 they don't have an idea about the contract term
9 under how long that customer has signed a contract
10 with an energy service provider.

11 So, again, the more granular this
12 information is relative to customer type and
13 utility service territory, also provides the
14 utility with information about contract term.

15 COMMISSIONER GEESMAN: I don't
16 understand how it provides that information.

17 MS. TIERNEY: If the forecast is based
18 on the type of forecast methodology that Mike
19 Jaske indicated earlier, which reflects the load
20 based on what's currently under contract.

21 If you have a diminishing amount of load
22 and number of customers over time, because your
23 contracts are of a specific duration, then if you
24 look at an ESP's load data and determine when
25 those, you know, you can look at the decline in

1 load and number of customers over that forecast
2 period. And, you know, at some point in time
3 there's not many customers and there's not much
4 load out there. That's the concern that we have,
5 that this would indicate a duration of contract
6 for energy service providers.

7 COMMISSIONER GEESMAN: Would it indicate
8 anything else about the contract?

9 MS. TIERNEY: Not any price --

10 COMMISSIONER GEESMAN: Not other terms
11 and conditions?

12 MS. TIERNEY: Not any price information.

13 COMMISSIONER GEESMAN: Okay. But, going
14 back to the identity of the customer, the utility
15 already knows that customer's identity; he simply
16 doesn't know the terms and conditions that you are
17 providing the customer.

18 MS. TIERNEY: That's right.

19 COMMISSIONER GEESMAN: If the utility
20 has a motive to compete for that customer's
21 business, can't the utility simply call the
22 customer and say, you know, I'm going to make you
23 an offer that's better than the deal you've got
24 from Constellation?

25 Is there really any trade secret or

1 competitive advantage being conveyed to the
2 utility if the utility knows who your customer is?

3 MS. TIERNEY: The point is well taken
4 that the utility already knows the customer's
5 identity. And if the utility wanted to market to
6 that customer, that opportunity exists outside of
7 this reporting requirement.

8 What we feel is sensitive is that this
9 reveals Constellation's contract term information
10 with its current customer base. That's what we're
11 concerned about. That is what we consider a trade
12 secret.

13 MR. WHEATLAND: And, Commissioner
14 Geesman, if I could just add, where a customer is
15 under contract with Constellation for a term of
16 years, it isn't going to do the utility much good
17 to go in the first year of that contract and try
18 to market their services, because they're barred
19 from doing so by the existing contract.

20 What the utility would like to do, or
21 the other competitor, would be to like to go to
22 that customer at the expiration of the contract
23 term. And that's the very sensitive information
24 that could be revealed by a type of forecast based
25 on actual contracts.

1 COMMISSIONER GEESMAN: I don't have any
2 other questions, Madam Chair.

3 ACTING CHAIRPERSON PFANNENSTIEL: Any
4 other Commissioners have further questions? Thank
5 you, Ms. Tierney.

6 MS. TIERNEY: Thank you.

7 ACTING CHAIRPERSON PFANNENSTIEL: Why
8 don't we hear from the IOUs, then.

9 MR. WHEATLAND: Could you --

10 ACTING CHAIRPERSON PFANNENSTIEL: Oh,
11 I'm sorry, I did not --

12 MR. WHEATLAND: -- one more witness.

13 MR. KLATT: I didn't know if Ms.
14 Chamberlin wanted to say a few words. And also
15 you may want to have, if you had any questions --

16 ACTING CHAIRPERSON PFANNENSTIEL: At the
17 mike, please.

18 MR. KLATT: Ms. Chamberlin did want to
19 say a few words. And also if you had any more
20 questions about the forecast methodology or
21 uncertainty analysis, she's the person it should
22 be directed towards.

23 ACTING CHAIRPERSON PFANNENSTIEL: Thank
24 you. Ms. Chamberlin.

25 MS. CHAMBERLIN: Thank you,

1 Commissioners. Thank you for the opportunity to
2 talk with you today. I want to agree with the
3 things said by counsel and Ms. Tierney about the
4 confidentiality terms and provisions leading to
5 the various forms 1 and form 2.

6 Additionally, Strategic is in a unique
7 position among the ESPs, at least those filing
8 appeals today, or that are being heard today, in
9 that we have filed our demand forecast
10 methodology, which is a document that discusses
11 the methodology by which we determine the amount
12 of power that we need to procure for our
13 customers, procure and schedule for them.

14 And the way that we get from the
15 historical usage information that's out there in
16 the marketplace from the utilities to the
17 forecasted use in the future, both that we procure
18 and schedule on.

19 We believe that this document contains
20 certain formulas and compilations of information,
21 including explanations for some of our process
22 inputs that go to the heart of how we, as a
23 competitive supplier, make our procurement
24 decisions, which is a huge part of our product for
25 our customers.

1 We're at a disadvantage if others can
2 gain insight into this process. Among other
3 potential harms, competitors could use this to
4 market against us if they understand how we do
5 this and how good we are at it, that that puts us
6 at a competitive disadvantage.

7 Strategic also filed form 6 and sought
8 confidential treatment for this, as well, with our
9 uncertainty analysis. It was very similar to the
10 information that's being provided by a lot of ESPs
11 and others in response to the April 1st data
12 request.

13 The uncertainty analysis is a
14 quantitative view of our view of the marketplace
15 we operate under and the risks and uncertainties
16 we see affecting our business now and in the
17 future. A significant part of our business is
18 energy experts, and that's part of what we market
19 ourselves as to our customers, is as energy
20 experts. It's being able to help our customers
21 understand the market and make wise procurement
22 decisions.

23 Allowing our competitors to gain access
24 to our views takes away our current advantage in
25 this area, one that helps us gain and retain

1 customers.

2 And I think there's a commercial
3 sensitivity there that I'm not sure was thought
4 about when this was being evaluated originally.

5 MR. KLATT: Price being one of the
6 things that customers look at, but not necessarily
7 the only thing they look at when they choose the
8 SPE. And, in fact, Strategic is kind of the
9 Cadillac of the ESPs in terms of the quality of
10 information that they provide the customers about
11 the market.

12 That is their competitive advantage.

13 COMMISSIONER GEESMAN: So I am trying to
14 get a better understanding of the uniqueness or
15 special status of this Cadillac engine that
16 provides your forecast methodology --

17 MS. CHAMBERLIN: The forecast
18 methodology isn't necessarily the Cadillac
19 methodology. The forecast of demand is something
20 that I think is unique and sensitive to each
21 supplier.

22 We have to take historical usage
23 information and figure out how to turn what
24 happened in the past into what our customers will
25 do in the future. And how best we can predict

1 that based on a number of inputs and intelligence
2 that we glean from talking to our customers.

3 And experience in the marketplace allows
4 us to take historical usage and forecast, both on
5 a longer term basis for longer term procurement
6 planning, you know, the supplies we buy for our
7 customers; as well as on, you know, a day-ahead or
8 couple day-ahead, the information we give to the
9 ISO.

10 So our ability to do that carefully and
11 to make wise decisions, essentially predicting
12 what's going to happen based on what's happened in
13 the past, is -- every entity does that, but the
14 inputs and the things they consider and the
15 methods by which they do that can evaluate how
16 well they make those predictions and how much the
17 power they procure for their customers will cost.
18 Which goes into kind of the price buildup.

19 COMMISSIONER GEESMAN: And if you knew
20 the way in which Constellation does that --

21 MS. CHAMBERLIN: I could --

22 COMMISSIONER GEESMAN: -- you could
23 derive a competitive advantage over them because
24 of that?

25 MS. CHAMBERLIN: I think so, because I

1 could take the way that I do it, and we think that
2 we're good at it. We know that there are others
3 in the marketplace that are good at it, as well.

4 But if I had somebody else's information
5 or they had mine, I could look at it, I could
6 compare it to mine. Say, wow, I didn't think of
7 that. Or, you know what, they're doing this
8 better than I am. And these are processes that
9 remain, I think, relatively static over time with
10 tweaks and small improvements.

11 But if I could see what others were
12 doing, I could say, wow, I could use that on top
13 of mine and make mine better. And then I'd have
14 all of my information plus the things that they
15 have done.

16 COMMISSIONER GEESMAN: And if I could
17 ask the staff, you presumably did not find there
18 to be a reasonable case having been made that this
19 forecast methodology constituted a trade secret,
20 is that right?

21 DR. JASKE: I am actually not able to
22 reconcile what little I know about the methodology
23 with the points that Ms. Chamberlin is making.
24 And so either I have looked at the wrong document
25 or have somehow not seen the full material that

1 she is describing for you.

2 MR. KLATT: Ms. Chamberlin was not
3 speaking to the forecast methodology. She was
4 speaking to the uncertainty analysis. Right?

5 COMMISSIONER GEESMAN: No, my questions
6 were on the --

7 MS. CHAMBERLIN: We were on the
8 forecast.

9 COMMISSIONER GEESMAN: -- forecast
10 methodology, but if we want to --

11 MS. CHAMBERLIN: Our forecast discussed,
12 you know, the different inputs and things we take
13 into consideration. And I don't know if other
14 ESPs and other market participants take the same
15 things into consideration in doing their forecast
16 that I do.

17 And, you know, --

18 ACTING CHAIRPERSON PFANNENSTIEL: But I
19 would like to get back to Mr. Jaske's answer. I
20 mean I'm just confused here. You did not see a
21 methodological -- you didn't see anything in the
22 methodology that you thought gave a strategic
23 advantage or a strategic difference?

24 DR. JASKE: The documents that I recall
25 seeing from the ESPs in the category of forecasts

1 and uncertainty are so minimal as to not, you
2 know, reveal anything. And some of them I don't
3 think submitted anything at all. I thought I
4 heard that confirmed earlier today, they weren't
5 going to submit them until April 1st.

6 So I'm frankly not able to speak to
7 what -- either to confirm or refute anything Ms.
8 Chamberlin is saying.

9 ACTING CHAIRPERSON PFANNENSTIEL: Ms.
10 Holmes.

11 MS. HOLMES: If it would be helpful to
12 the Commission I can give you a copy of what
13 Strategic did file with the Executive Director.
14 Or we could -- if that would be helpful to you.

15 ACTING CHAIRPERSON PFANNENSTIEL: It
16 would be helpful to me. Thank you.

17 Mr. Wheatland.

18 MR. WHEATLAND: Yeah, we've been talking
19 here about the competitive advantage with respect
20 to competitors, that is ESPs versus ESPs. But I
21 also urge the Commission to consider the trade
22 secret implications of the information and how it
23 can benefit the wholesalers.

24 I know they're not a competitor, but the
25 emphasis on competitor is unduly narrow. The

1 Executive Director in his letter cites the case of
2 Uribe v. Howie, talking about obtaining an
3 advantage over competitors. And while that's a
4 great case, that's an overly narrow reading of the
5 actual civil code section which is much broader.

6 And it is, indeed, the civil code
7 section that will -- the California Civil Code
8 section 3426.1 that defines trade secrets. And
9 that talks about deriving independent economic
10 value from not being generally known to the
11 public, or to other persons who could obtain value
12 from the disclosure or use.

13 So it's not just competitors that we're
14 concerned about, but other persons who could
15 obtain value from the disclosure or use. And we
16 believe having the load information out there in
17 any form, other than aggregated on a statewide
18 basis, could provide value to the persons whom the
19 ESPs must buy power from.

20 COMMISSIONER GEESMAN: Well, the
21 Strategic petition directs us to the Government
22 Code section 6254.7(d) as the pertinent definition
23 of trade secret.

24 MR. KLATT: That's actually just a
25 reference in the Government Code that contains a

1 definition of trade secrets. It's --

2 COMMISSIONER GEESMAN: So you'd like to
3 expand your remarks to include Mr. Wheatland's
4 definition, as well?

5 MR. KLATT: There are several places in
6 the California Code -- yeah, the short answer is
7 sure.

8 COMMISSIONER GEESMAN: Thanks.

9 (Laughter.)

10 COMMISSIONER GEESMAN: So would you like
11 to elaborate on that, Gregg, as to how disclosure
12 of this information would provide a competitive
13 advantage to the people from whom your clients
14 procure electricity?

15 MR. WHEATLAND: Yes. Well, in a
16 nutshell, when an ESP goes out and purchases
17 energy in the market, the factors that are going
18 to influence that purchase are both volume and
19 price. And there's a relationship between those
20 two.

21 Oftentimes when negotiations are
22 commenced the ESP is not disclosing to the
23 purchaser the precise volume of energy that they
24 may purchase, or the term of it, which they would
25 like to purchase the information.

1 If the supplier has in hand the forecast
2 of the load of the ESP broken down by service area
3 for the year 2005, -- and may we just state very
4 soon where there may be an obligation for the ESP
5 to purchase 90 percent of that number -- if the
6 supplier knows, going into the negotiations, how
7 much energy exactly the ESP must purchase, they
8 lose quite a bit of advantage in the bargaining
9 over the ultimate price and volume that they'll
10 obtain.

11 MR. KLATT: And, again, I want to
12 reiterate that --

13 COMMISSIONER GEESMAN: That same
14 principle, though, would apply in any market? Or
15 is that restricted to the electricity market that
16 ESPs confront?

17 MR. WHEATLAND: I can only speak today
18 with respect to the ESP market. Because you keep
19 in mind that ESPs are competing within a
20 competitive market. They're trying to obtain the
21 lowest possible price for their customers. And
22 it's that lower price that will help them to get
23 future customers.

24 So, in this respect they're unlike an IOU.
25 They are operating in a very competitive market.

1 COMMISSIONER GEESMAN: Of course, we
2 were told earlier that ESPs secure their customer
3 relationships with a lot more than simply price.

4 MR. WHEATLAND: Yes. But price is
5 certainly an important component.

6 MS. CHAMBERLIN: I think it depends on
7 the ESP and the customer, what they're looking
8 for. Whether it's a strictly -- I believe that
9 there are customers in the marketplace that are
10 strictly price shoppers. And those that want
11 additional information or services. And it
12 depends on the sophistication of the customer and
13 their own interests.

14 MR. KLATT: I just want to reiterate the
15 point that the standard isn't necessarily that we
16 have to prove that the information, if disclosed,
17 would confer an advantage on a competitor or some
18 other market participant. The standard is whether
19 or not the information has commercial value to us.

20 And the value is in part derived from
21 the fact that it's not public.

22 Once that showing's been made, that's
23 the end of the inquiry. It's a trade secret.

24 COMMISSIONER GEESMAN: Yeah, but you
25 have to make a reasonable argument. And just

1 because I happen to use yellow legal pads in my
2 business and that's important to me because I like
3 the color yellow, it's not as if I will be
4 conferring a competitive advantage to my colleague
5 if he discovers that I don't use white legal pads.

6 There's got to be some rule of reason
7 here. And I think that's the test that we need to
8 apply.

9 MR. KLATT: Point well taken, and I
10 think in terms of just when you're looking at load
11 and supply information, just think in terms of any
12 business. That isn't necessarily a public company
13 where they have a lot of information out there in
14 their reports and stuff.

15 You know, how much they're buying, how
16 much they're selling, all that stuff is
17 commercially sensitive to that company. If
18 competitors know it, they're going to have a
19 better insight into how to compete with that
20 company for customers or business.

21 And, in fact, we have done quite a bit
22 of research into the case law. I'm sure staff
23 has, too. And the fact of the matter is most of
24 these cases that deal with trade secrets are
25 dealing with really weird types of information.

1 You don't find cases out there that talk
2 about sales volume. Why? Because it's a given.
3 How much you're selling out there is a secret to
4 that company.

5 COMMISSIONER GEESMAN: I have to tell
6 you, I mean I spent 19 years in a very competitive
7 business, and I felt that I had a pretty good
8 sense of what my competitors were charging and
9 what their volumes were. And I think that we're
10 kidding ourselves if we don't think that all of
11 you have a pretty good sense of what each other is
12 doing, and who your customers are, and what the
13 general outlines of the terms and conditions of
14 the contracts you offer.

15 MR. KLATT: But some are better than
16 others at making those guesses.

17 COMMISSIONER GEESMAN: And the ones that
18 are weaker generally don't last in the business.
19 You folks are all survivors.

20 MR. WHEATLAND: But if I could just add,
21 I think that we all have an idea of the general
22 outlines. The real issue here is the degree of
23 granularity of disclosure.

24 Overall in the state there are only
25 about 9000 direct access customers in the

1 commercial sector today out of 1 million
2 commercial direct access customers. Do we really
3 need to disaggregate the information any more than
4 that, to break it down to individual ESPs and
5 individual service areas?

6 Or can we live in terms of fair public
7 disclosure with a degree of aggregation of less
8 than -- which totals just 1 percent of the total
9 customers?

10 COMMISSIONER GEESMAN: You know, last
11 year when we decided to break the state into north
12 and south, all of a sudden a fairly tranquil
13 situation on the statewide basis turned into a
14 supply challenge in the southern part of the
15 state. So we have found value in some
16 disaggregation in the past.

17 The ISO has asked us to disaggregate or
18 demand forecast down to a much more granular level
19 in order to facilitate their use of our data for
20 transmission planning.

21 I don't know how much of a
22 disaggregation we'll actually be able to achieve
23 in this cycle. But there are needs for us to be
24 able to disaggregate the data.

25 It has to be consistent with the

1 legitimate business interests your clients have in
2 trade secrets, but we're trying to determine which
3 arguments are reasonable and which ones aren't.

4 MS. CHAMBERLIN: To add to that point,
5 we recognize that you have a need for this data
6 and the ability to look at it in a disaggregated
7 form in order to make the analyses you're needing
8 to do.

9 And there hasn't been a question about
10 whether or not we would provide that data to you.
11 And we've done so, at least from my company's
12 perspective, to the best of our ability. And are
13 glad to do so.

14 The question really becomes to what
15 extent does completely disaggregated data need to
16 be made public. And I think that --

17 COMMISSIONER GEESMAN: I think that's a
18 good point.

19 MS. CHAMBERLIN: -- there's a large
20 difference from our perspective.

21 COMMISSIONER GEESMAN: I think that's a
22 very good point.

23 ACTING CHAIRPERSON PFANNENSTIEL:
24 Further questions for the ESPs?

25 Thank you.

1 MS. CHAMBERLIN: Thank you.

2 MR. KLATT: Thank you.

3 ACTING CHAIRPERSON PFANNENSTIEL: Ms.
4 Holmes.

5 MS. HOLMES: Yes, Madam Chair.

6 ACTING CHAIRPERSON PFANNENSTIEL:
7 Procedurally, do we think that the discussion with
8 the IOUs will bring some more information back to
9 the questions that we're facing with the ESPs, and
10 therefore we should wait and deal with them all at
11 once? Or was your initial suggestion that we deal
12 with each of the groups separately?

13 MS. HOLMES: I believe that you have
14 completed all the issues that were raised by the
15 ESPs. So I suggest that at this point you move to
16 the IOUs, as a group. My understanding is that
17 they do plan to have a common discussion of the
18 common issues, so hopefully it will go --

19 ACTING CHAIRPERSON PFANNENSTIEL: I
20 understand. I was trying to determine, I think,
21 really whether we should act, decide on the
22 questions in front of us with the ESPs right now,
23 or wait until we have heard from the IOUs, being
24 that that might inform our other discussion, also.

25 MS. HOLMES: Two points. First of all,

1 I'd like to provide you with the opportunity to
2 ask staff questions about what their technical
3 understanding is of what the ESP presentation was,
4 so that you have the benefit of, if you will, an
5 independent perspective as to the reasonableness
6 of the statements of the ESPs.

7 And in addition, I do agree that there
8 may be additional information that may come out
9 from the IOU presentation.

10 But it's up to you as to whether you'd
11 like to hear the staff presentation, or ask staff
12 questions first. Or whether you'd like to move
13 directly to the IOUs, and then ask questions of
14 staff when you've completed with that. It doesn't
15 matter.

16 ACTING CHAIRPERSON PFANNENSTIEL:
17 Commissioner Geesman.

18 COMMISSIONER GEESMAN: I do have one
19 question for Dr. Jaske. In looking at the
20 Strategic filing it appears to be form 4 that they
21 are concerned with as it relates to their forecast
22 methodology and uncertainty methodology.

23 Have you got their form 4 filing in
24 front of you?

25 DR. JASKE: I believe I was handed it a

1 couple minutes ago.

2 COMMISSIONER GEESMAN: And without
3 disclosing any reportedly proprietary information,
4 it does not appear to be too many pages in your
5 hand.

6 DR. JASKE: No, sir. There are only two
7 pages.

8 COMMISSIONER GEESMAN: Can you tell me
9 if you see anything on there that could reasonably
10 be characterized as proprietary or a trade secret?

11 DR. JASKE: I don't consider anything
12 here a trade secret.

13 COMMISSIONER GEESMAN: I don't think I
14 have any other questions.

15 ACTING CHAIRPERSON PFANNENSTIEL: No
16 other questions for the staff on this?

17 All right, well, let's turn to the IOUs.
18 Let's hear, is there a single representative, or
19 do we have several?

20 COMMISSIONER ROSENFELD: Several.

21 MS. GENAO: My name is Laura Genao and
22 I'm representing Southern California Edison today,
23 and I'll be the representative for PG&E and SDG&E
24 with regard to the opening remarks.

25 They may want to add to these opening

1 remarks once I'm done. And we also have several
2 experts of our own on all three sides to answer
3 any questions you may have following this
4 presentation.

5 First, we'd like to thank the Commission
6 and the staff for the March 30th decision on the
7 supply side forms. We believe that that's an
8 appropriate balancing of the issues before the
9 Commission. And the IOUs currently have no plans
10 to appeal that decision, although SCE may ask the
11 Commission to reconsider the three-year
12 confidentiality limit they put on that, at a later
13 date, if market conditions seem to indicate that
14 the information is fairly static and won't change
15 very much.

16 But moving on to the scope of this
17 appeal, I have the advantage of having had the
18 ESPs go first and they've aired a lot of the
19 issues. And I'd like to echo a lot of what
20 they've said and point out to the Commission that
21 we are LSEs just like they are.

22 And the number of customers and our
23 position in the marketplace with regard to buying
24 generation is exactly the same as theirs. And the
25 information should be protected for us, as it is

1 for them, if it is protected at all.

2 COMMISSIONER GEESMAN: Okay, how about
3 the converse? If it's not protected for them.

4 MS. GENAO: The reasoning should be
5 consistent with whatever the Commission's decision
6 is.

7 COMMISSIONER GEESMAN: Thank you.

8 MS. GENAO: Right now -- I'm not sure
9 what the decision was on theirs, right now we have
10 no protection for our bundled customer peak annual
11 number. I don't know what theirs is. So if
12 they're not consistent right now, they should be
13 made consistent.

14 So I want to also emphasize that the
15 IOUs' appeal is limited to one issue. It is the
16 protection of the annual bundled customer peak at
17 ISO number, both historical and going forward.

18 We're asking for protection on three
19 different forms, but two of those columns are the
20 exact same number which is that number. The other
21 two columns are a number that if you subtract one
22 from the other you get annual bundled customer
23 peak. So I want that to be very clear.

24 This isn't an issue of us wanting to
25 withhold the information from the world. We are

1 committed to working with the CEC, with the PUC,
2 with the ISO, with nonmarket participants to make
3 sure that they have the information needed to make
4 appropriate decisions to set state policy.

5 What we do not want to do is to allow
6 market participants to disadvantage ratepayers by
7 being able to gain some kind of advantage from
8 knowing what our needs for bundled customer are on
9 an annual basis. It is a peak number, so clearly
10 it is what we are procuring to.

11 You used an example of notebooks before.
12 If the person selling you knows that you will only
13 use 20 in a year, they will charge you a lot for
14 those 20.

15 COMMISSIONER GEESMAN: Because I have
16 the inability to go to somebody else and buy 20
17 notebooks?

18 MS. GENAO: Say you do, and then he
19 knows you only have one left. The last one's
20 going to cost you a lot. So he knows the pool is
21 only 20.

22 COMMISSIONER GEESMAN: I don't know
23 where you buy notebooks from, but you know,
24 competitive markets work in --

25 MS. GENAO: We'll get to that later.

1 We've submitted an expert report that discusses
2 exactly how competitive markets work. And what
3 happens when demand information is given out when
4 supply information is protected. And that's in
5 the record and it's been attached to our appeal
6 and our application.

7 COMMISSIONER GEESMAN: Is this Professor
8 Platt's paper?

9 MS. GENAO: Professor Platt's study.
10 But just getting to that, as you know, annual IOU
11 peak demand is an essential component of the
12 residual net short, which is a very important
13 number.

14 The demand side is as critical to that
15 equation as the supply side is. And as you aware,
16 the supply side of that has been made confidential
17 by the Executive Director's decision of March
18 30th.

19 So we believe that the demand side
20 should be equally protected to have consistency
21 with the idea that that is an important equation.

22 COMMISSIONER GEESMAN: Well, but doesn't
23 the logic arguably work the other way, as well,
24 that since the Executive Director has chosen to
25 afford confidential treatment to the supply side

1 information, the demand side information is
2 consequently --

3 MS. GENAO: No.

4 COMMISSIONER GEESMAN: -- of very little
5 value?

6 MS. GENAO: Trade secret is a matter of
7 law. It is not a matter of fact. So, it doesn't
8 matter what you did with the supply side. If you
9 think that the information is essential to an
10 equation, the demand side should be protected as
11 equally as the supply side is.

12 COMMISSIONER GEESMAN: But is --

13 MS. GENAO: It is not a matter of fact.

14 COMMISSIONER GEESMAN: -- is the demand
15 side essential to an equation?

16 MS. GENAO: Yes.

17 COMMISSIONER GEESMAN: Without knowing
18 the supply side?

19 MS. GENAO: It doesn't matter. If you
20 deemed the equation important, both A and B should
21 be protected.

22 MR. WARNER: Commissioner Geesman, let
23 me try to address that. Chris Warner from PG&E.
24 And I recognize your question. I think your
25 question really is, okay if the supply information

1 is protected, then how could a seller use the peak
2 annual demand information in order to construct
3 the residual net short.

4 And I think the answer is that even
5 though the supply information is protected, there
6 are other sources for putting together that
7 equation. There's nameplate capacity for the
8 various units. There's QF data in a kind of
9 aggregate basis out there in the public domain.

10 So PG&E feels very strongly that even
11 with the good decision we've had in terms of
12 protecting the supply forms, the peak annual
13 information is still, if that is made available to
14 the public, it can be used with the other
15 available public information on the supply side to
16 construct what amounts to a net short number.

17 And therefore we believe it is not
18 sufficient to say that if you protect the supply
19 information you can go ahead and make the annual
20 peak demand number available.

21 COMMISSIONER GEESMAN: Do you carry a
22 credit card?

23 MR. WARNER: Absolutely.

24 COMMISSIONER GEESMAN: You know those
25 last four digits on your credit card number, you

1 know, I want to keep my credit card number
2 confidential, but every restaurant I go to, when
3 the bill comes back, they disclose those last four
4 numbers.

5 Are you suggesting that from that I
6 could derive the preceding 12 digits, as well?

7 MR. WARNER: If you had other public
8 sources where a range of those last, those
9 previous 12 digits would be available, then the
10 answer would be yes. I don't think the analogy
11 really works when you're talking about public
12 domain information.

13 In the case of a credit card, unless
14 you're going to go out there with a supercomputer
15 and generate every possible combination of the
16 first 12 digits --

17 COMMISSIONER GEESMAN: Those exist.
18 Those exist.

19 MR. WARNER: And, again, I think there
20 are people who do have credit cards with just that
21 type of approach. It doesn't make them disclosing
22 the first four digits any less damaging in terms
23 of that overall ability to put together all the
24 digits.

25 COMMISSIONER GEESMAN: But I think that

1 society has determined that it is reasonable to do
2 so, and if there are other benefits attached, then
3 consequently, I don't have a trade secret interest
4 in those four digits.

5 MS. GENAO: But they're not publishing
6 your number on the front page of the Sacramento
7 paper.

8 COMMISSIONER GEESMAN: We don't often
9 get that kind of coverage for our information.

10 (Laughter.)

11 MS. GENAO: Or in a public report, if
12 that's the -- you know, the number of everybody in
13 this room in a 100-page report that you could pick
14 up at your local CEC.

15 COMMISSIONER GEESMAN: Although opinions
16 would differ, I would suggest to you my credit
17 card stubs have just as much accessibility to
18 thieves as your electricity demand data would.
19 The ratios are probably the same.

20 MS. GENAO: I guess one other --

21 ACTING CHAIRPERSON PFANNENSTIEL: Before
22 you continue, I just want to get to -- I'm a
23 little -- let me follow up on something Mr. Warner
24 just said.

25 Your comment was that the demand data,

1 the bundled peak demand data, would be -- I'm
2 sorry, the supply data would be derivable
3 elsewhere? Is that what you were pointing out?

4 MR. WARNER: Yes, or a kind of a
5 construct of it in terms of a range there for the
6 components of it. Even though the supply, the
7 specific supply data that we provided you is
8 protected under the Executive Director's
9 subsequent decision. There is --

10 ACTING CHAIRPERSON PFANNENSTIEL: But
11 it's otherwise derivable?

12 MR. WARNER: It's otherwise derivable in
13 certain forms. If you use, for example, nameplate
14 capacity; if you know that for specific units. If
15 you have some of the aggregate QF data by utility
16 available, then someone who is an overall supplier
17 in our ongoing procurement efforts can basically
18 say, okay, good, now I've got the annual peak
19 demand. That's the key remaining number that I
20 can't really come up with an estimate from public
21 sources.

22 So, here's PG&E's annual peak demand
23 number. I'm going to go back-calculate using
24 publicly available data at what I guesstimate to
25 be QF, hydro, nuclear, nameplate capacity, other

1 things, and that capacity subtracted from the
2 annual peak demand gives us an idea of what the
3 residual net short is.

4 ACTING CHAIRPERSON PFANNENSTIEL: Let me
5 just ask Dr. Jaske, do you find that supply number
6 is otherwise derivable?

7 DR. JASKE: I think the point Mr. Warner
8 is making about an estimate of supply at the time
9 of summer peak from otherwise available sources is
10 probably correct.

11 What I also think is that one can do an
12 approximation of their peak forecast from
13 otherwise available data.

14 And I guess getting to the point that
15 was made by Edison's representative earlier in her
16 remarks is whether -- the question is whether the
17 gap between supply and demand at one point in the
18 summer, you know, that single hour peak demand, is
19 sufficient to actually turn into an hourly
20 residual net short that I would agree is probably
21 a confidential piece of information, and that does
22 indicate the nature of their needs.

23 And moreover, more specific is the kinds
24 of resources that they need. I have not been
25 convinced in all the discussions I've had with the

1 utilities that knowing that supply demand gap for
2 the single peak hour, presumably a weekday
3 afternoon in the summer, allows generators, which
4 is the community they're concerned about, to know
5 what magnitude of resources they're going to
6 acquire, when they're going to acquire them, the
7 kind of resources they're going to acquire.

8 There are many ways in which the IOUs
9 can meet that peak demand with their own hydro
10 resources particularly PG&E and Edison, lesser
11 extent San Diego; with demand response, it's
12 growing and as a matter of state policy they're
13 being pushed.

14 So I don't think there is a really tight
15 connection between that one descriptor of need and
16 the concern of market, and the competitive process
17 gaming that is the core of their argument.

18 MS. GENAO: Do you want to address that,
19 Chris?

20 MR. WARNER: I wanted to respond,
21 because I think Dr. Jaske has put it very very
22 well. This is not a balancing test, at least for
23 PG&E, between private interest and public
24 interest, frankly. This is a balancing test
25 between competing public interests.

1 The public interest on behalf of our
2 customers that PG&E is pursuing right now in the
3 real world is after three years of coming up with
4 a long-term procurement program we are out with
5 requests for procurement, both intermediate term
6 and long term and for renewables.

7 We're out in the marketplace there. And
8 these are really culminating for our three-year
9 effort of coming out of the energy crisis and
10 making sure we never get back into the position we
11 got in in the energy crisis in terms of market
12 manipulation.

13 And there is a judgment call here, a
14 balancing test that you have to apply as between
15 whether making this information on annual peak
16 demand available to the public would harm PG&E's
17 procurement process as we're going forward.
18 Versus I think the overall public interest of
19 making data available generally to the public.

20 It's, of course, available to you for
21 your planning purpose. It's available within the
22 procurement review group at the CPUC. Where we
23 and our major customer groups, TURN, ORA, the
24 three utilities and the CPUC have agreed this type
25 of data is sensitive enough that it should be

1 protected.

2 But it is a balancing test; and I think
3 we would agree with staff that that's a balance
4 you have to strike.

5 We happen to believe if there's a risk,
6 as we see it, that that information would be
7 usable by the suppliers to manipulate or to gain
8 our ongoing procurement proceedings, you should
9 err on the side of protecting our customers from
10 the negative consequences of that. And that's
11 where we would recommend that you side.

12 MS. GENAO: And we also want to -- I
13 don't know if it was in our papers, but we are
14 comfortable with the level of aggregation of north
15 and south, PG&E being in the north, Southern
16 California Edison being in the south. And
17 aggregating at that level if you wish to put out
18 some information about what the peak demand
19 is. We, all three of the IOUs, are
20 comfortable with that level of aggregation.

21 And then also I just wanted to point out
22 one thing. In the March 30th decision on the
23 supply side forms, that decision covers peak
24 demand information. So whatever decision you make
25 has to conform to what you're doing with respect

1 to confidentiality.

2 COMMISSIONER GEESMAN: I'm not --

3 MS. GENAO: Because I think the CEC --

4 COMMISSIONER GEESMAN: I'm not certain I
5 follow you.

6 MS. GENAO: The forms that we -- the
7 supply forms had a certain number of lines that
8 were related to peak demand forecast.

9 COMMISSIONER GEESMAN: Yeah.

10 MS. GENAO: We filed applications for
11 confidentiality to protect that information.

12 COMMISSIONER GEESMAN: Right.

13 MS. GENAO: On March 1st. On March 30th
14 we got a letter that said, yes, it's protected for
15 three years forward.

16 COMMISSIONER GEESMAN: And that's what
17 the Executive Director told you?

18 MS. GENAO: Yes.

19 COMMISSIONER GEESMAN: So, and you had
20 indicated previously you will not be appealing
21 that decision.

22 MS. GENAO: As long as that decision
23 stays that way, yeah.

24 COMMISSIONER GEESMAN: Well, he's made
25 it. I --

1 MS. GENAO: So, yeah, we won't be
2 appealing that decision. But you have an
3 inconsistency right now.

4 COMMISSIONER GEESMAN: So does that moot
5 our ability to rule today? Or does that
6 predetermine what the outcome should be?

7 I'm asking you, counsel.

8 MS. GENAO: If given the option, yes. I
9 think it does moot your ability to rule on the
10 previous ones.

11 COMMISSIONER GEESMAN: The Executive
12 Director's decision on March 30th compels that we
13 grant your appeal?

14 MS. GENAO: There's an inconsistency is
15 all I'm pointing out. You have covered peak
16 demand forecast data that is contained in the
17 supply side forms. You have not covered bundled
18 peak annual data that is contained in the demand
19 forms.

20 DR. JASKE: Let me clarify a distinction
21 between the demand forms and the supply forms
22 that Ms. Genao is mentioning. The demand forms
23 ask for annual energy, annual peak. Utilities did
24 not ask for annual energy protection, unlike the
25 ESPs. That's a distinction I wanted you to become

1 aware of if you aren't already.

2 The annual peak is what is in contest
3 today. The Executive Director's March 1st letters
4 or thereabouts grant confidentiality for the 8760
5 hourly load forecast level. As I mentioned before
6 I believe that is a level of disaggregation that
7 can lead to competitive disadvantage of the IOUs
8 and their customers.

9 What was on the supply forms, however,
10 is monthly peak for each year, 2006 through 2016.
11 So what was protected in the top row of that form
12 is the monthly peaks. So that is the next step,
13 of course, beyond annual peak is the monthly peak.

14 So the inconsistency that Ms. Genao is
15 raising is, you know, you've decided to protect
16 something on the supply side, you should be
17 consistent on the demand side. Well, there's a
18 step beyond on the supply side is that is what is
19 protected. And there actually isn't a designation
20 on the supply forms, themselves, as to which one
21 of those months is the annual peak, probably June,
22 July, August, September, you know, one of those.
23 But there is nothing on the form that says, you
24 know, what's the annual value.

25 So everything on the supply forms

1 themselves is in terms of monthly values.

2 MR. WARNER: And, again, I think Dr.
3 Jaske is absolutely right. We're trying to
4 balance the legitimate concerns that we utilities
5 have regarding impacts on our procurement process,
6 and your concerns that you not over-protect data
7 that should be part of a transparent disclosure to
8 the public.

9 And there's a judgment call in there,
10 and between monthly peaks in terms of supply
11 forms, and the annual peak demand. We happen to
12 think that if you're going to protect the monthly
13 data in terms of the peak, the same logic applies
14 to our appeal here today.

15 Does that mean you're legally precluded
16 from deciding otherwise, I don't think we, for
17 PG&E, want to argue the legal issues here today.
18 I think it's more of an opportunity to talk about
19 how we're trying to balance the public interest
20 and our legitimate concerns on both sides.

21 So I think it's an important data point,
22 that the monthly peaks are protected. And we're
23 here today trying to ask for consistent treatment
24 in terms of the annual peak demand.

25 COMMISSIONER GEESMAN: I appreciate what

1 you're saying in terms of this balancing question
2 and the policy issues at the heart of that. But I
3 think that from a forum standpoint you've got your
4 best opportunity on those questions, at least
5 initially, with the Executive Director when he
6 makes a ruling on your original request for
7 confidentiality.

8 When his decision gets appealed to us I
9 think we're constrained by attempting to apply the
10 law. And I do think the questions in front of us
11 today are principally legal questions.

12 And to the extent that you're content
13 with the March 30th discussion or ruling by the
14 Executive Director and not appealing that, I'm not
15 certain that that question or the advisability of
16 the Executive Director's judgment there ever comes
17 in front of us unless and until some other party
18 raises a Public Records Act request.

19 But today I think what we're trying to
20 do is determine whether the information that
21 you're seeking confidentiality for in these forms
22 constitutes a trade secret.

23 MR. WARNER: And let me -- Commissioner,
24 I think you're right because -- and I don't think
25 we disagree on the legal standard. The legal

1 standard, I believe, has within it the balancing
2 test. I think the Public Records Act precedents
3 provide for an overlay of a balancing test.

4 But getting back to Judge Wheatland's
5 presentation, I think he got it dead right in
6 talking about what the breadth of legal definition
7 of a trade secret is. And it doesn't involve
8 merely harm based on value gained by your
9 competitors.

10 The utilities aren't in the same
11 position as the ESPs in precisely that way in
12 terms of harm to competitors. But we are in the
13 same position in terms of avoiding economic value
14 being transferred from us and from our customers
15 to the suppliers who, themselves, are not under
16 any obligation sitting here today to provide
17 transparent information that would level the
18 playing field. I think Judge Wheatland also made
19 that point very well.

20 So PG&E very strongly agrees that this
21 information is trade secret because it is of
22 economic value to the suppliers, to us and our
23 customers. We believe that our customers
24 recognize that. The support we've had at the CPUC
25 from TURN and ORA; the support we've had actually

1 within this Commission for the procurement review
2 group process that we pursue at the CPUC. Which,
3 by the way, is a closed process in terms of
4 protecting proprietary and confidential
5 information.

6 But the reason that that works at the
7 CPUC, and we believe should work here, is because
8 parties get the information, they just not are
9 permitted to provide it, disclose it to those who
10 could take advantage of it in a way that would
11 extract value from our customers.

12 So, --

13 COMMISSIONER GEESMAN: Well, I'd remind
14 you that this Commission, at the Commissioner
15 level, expressed very strong concerns to the PUC a
16 couple of years ago about what this Commission
17 felt was the excessive confidentiality embedded in
18 their process. And in particular, the nonpublic
19 nature of the PRGs.

20 Our staff has continued to participate
21 in the PRGs, but you should not mistake that as an
22 endorsement or embrace by this Commission of that
23 Commission's approach to confidentiality.

24 And they operate under a different
25 statute and different regulatory scheme.

1 MR. WARNER: And we understand that and
2 we believe reasonable people can differ as to
3 where you strike the balance.

4 We also understand that this Commission
5 is working in a coordinated fashion with the CPUC
6 on behalf of procurement planning --

7 COMMISSIONER GEESMAN: We most certainly
8 are.

9 MR. WARNER: -- for the state. We also
10 understand that this Commission and the CPUC, many
11 of us in the utility area, as well as other
12 parties, including the State Attorney General, are
13 pursuing refund claims at the federal government
14 that are based on exactly the types of market
15 manipulation that we want to try to avoid the next
16 time. And we're all together on that.

17 So, I know that we all agree that the
18 statutory underpinning for this Commission is
19 different than the Public Utilities Commission.
20 But I think we all would agree that we have a
21 mutual interest in striking the balance in a way
22 that assures that the ongoing procurement that we
23 utilities are going through right now to try to
24 put things back in a good place and avoid the next
25 energy crisis, that those procurements can go

1 forward without the threat that economic value
2 will be extracted again from our customers through
3 market manipulation.

4 COMMISSIONER GEESMAN: And we're all in
5 favor of that. I think I speak for my colleagues,
6 we're all in favor of the war on terror, at least
7 we're against terrorism. I suspect we're still
8 against the spread of international communism.

9 But the fact in front of us today are
10 whether these forms contain trade secrets, such
11 that they should be afforded confidentiality. And
12 I'm waiting to hear a better articulation than
13 simply the fact that somebody may be able to drive
14 a harder bargain with you from their disclosure.
15 I'm waiting to hear a clearer rationale on what
16 exactly is it in this information that meets that
17 test of trade secret.

18 MR. WARNER: Again, I do believe that
19 Dr. Jaske pointed out the judgment call you have
20 to make in that regard. And that is if our
21 residual net short is conceded to be of value to
22 suppliers to know --

23 COMMISSIONER GEESMAN: You're ahead of
24 us. That is not in front of us today.

25 MR. WARNER: Okay. Let me try it again.

1 If you assume, and I won't assume for you, you
2 make that judgment that the residual net short is
3 of little value to suppliers, okay, we would
4 disagree with that.

5 But let's assume, for the sake of
6 argument, the residual net short number, as PG&E
7 goes through its active procurement right now, is
8 of value to suppliers in a way that could extract
9 what you call a harder bargain, what I think some
10 of our customers would call millions of dollars of
11 higher procurement costs, let's assume that for
12 the sake of argument.

13 Then I think the judgment call is if you
14 take the annual peak demand number and you take
15 publicly available information that could allow
16 kind of a look at the numbers for our resources,
17 nameplate capacity, QF aggregate costs, demand,
18 could that allow the suppliers, as part of our
19 procurement proceedings, which are going on right
20 now, to come up with that net short number.

21 PG&E believes very strongly that it
22 could. And that that is our priority.

23 By the way, we are under an obligation,
24 speaking of different statutory standards, we're
25 not sitting here as merely a pass-through

1 mechanism for these costs. We are under an
2 obligation under the Public Utilities Code to
3 procure prudently and reasonably on behalf of our
4 customers. If we don't do that we are subject to
5 penalties, disallowances, reasonableness reviews
6 and all of that.

7 So we have to do everything we can to
8 procure at minimum cost and at the highest
9 possible reliability for our customers.

10 COMMISSIONER GEESMAN: And, of course,
11 you recognize that the argument is that you are
12 more likely to do that if more of these facts are
13 transparent to the public, the regulators, the
14 Legislature and others.

15 MR. WARNER: But, Commissioner, the day
16 that the suppliers provide us those same
17 transparent facts, maybe we can sit down and say
18 that would be a procurement process that would be
19 different. We put our cards on the table, the
20 suppliers put their cards on the table. We see
21 all their costs, all their supplies.

22 But that's not the case here. What
23 we're talking about is the utilities showing all
24 their cards on the table and the suppliers not
25 having any reciprocal obligation to do the same.

1 COMMISSIONER GEESMAN: During the
2 regulated era, pre 1997 or whatever -- 1998 I
3 guess is when started with the experiment --
4 during the regulated era when you were required to
5 put all your cards on the table, did you find
6 yourselves disadvantaged in your out-of-state
7 purchases?

8 MR. WARNER: I'm trying to understand
9 what you mean by being required to put all our
10 cards on the table. We were subject --

11 COMMISSIONER GEESMAN: Well, when this
12 agency and others --

13 MR. WARNER: -- to four --

14 COMMISSIONER GEESMAN: -- conducted this
15 sort of process in a more transparent fashion than
16 is being recommended by your company today.

17 MR. WARNER: Well, I think there's some
18 key differences between the regulated era, and I
19 call this the regulated era, as well. We had an
20 interim period of some different -- a different
21 structure.

22 But, during the regulated era, of course
23 we had a lot more utility-owned resources that
24 were a strong buffer against the manipulation at
25 the margin, A. B, we had a very active and strong

1 amount of seasonal exchanges of power. And we had
2 also longer long-term contracts, exchange
3 contracts, with various entities.

4 And all of that combined to basically
5 provide the type of resource mix that was not
6 susceptible to the type of manipulation, at least
7 to the same degree, that we might have today.

8 Here, today, we're really looking at
9 recreating the regulated era, but in a way in
10 which there's a much larger component of long-term
11 procurement from third-party resources.

12 So I do believe, respectfully, that the
13 sensitivity today is not merely because we've had
14 an energy crisis in between, but the sensitivity
15 is because the market structure right now is
16 different. We have not recreated the type of
17 capacity markets that we're all trying to create.
18 And if we don't create a good capacity market this
19 time around in terms of this procurement process,
20 then we really are susceptible to some of the same
21 things that occurred during the energy crisis.

22 COMMISSIONER GEESMAN: I don't think I
23 have any more questions, Madam Chair.

24 ACTING CHAIRPERSON PFANNENSTIEL: Yes.

25 MR. KLOBERDANZ: Madam Chair,

1 Commissioners, I'm Joe Kloberdanz, representing
2 San Diego Gas and Electric today. And when we
3 spoke of aggregation a few moments ago and between
4 north and the south, I just want to remind you we
5 would be in the south.

6 (Laughter.)

7 MR. KLOBERDANZ: I just wanted to assure
8 you that I agree with, and we have developed in
9 concert, the positions that have been described to
10 you today by my two colleagues to my left.

11 I'm not an attorney, and that's why you
12 have not seen me jump in on the legal discussion
13 that has just occurred. I would be fired for
14 practicing law in front of you.

15 But, I would point out that my
16 observation as a nonattorney is that there is some
17 room for interpretation here as to what the law
18 requires and what it allows. And that discretion
19 is with you now because of this appeal.

20 And the people who will ultimately pay
21 if this doesn't go right are my customers and your
22 citizens. You know that, I won't harp on it. But
23 I want to be sure and get that out. This is real
24 for those people.

25 I just wanted to urge you to, in this

1 matter which I believe involves some discretion on
2 your part, to not exercise that discretion in such
3 a way to put our customers at risk unnecessarily
4 for higher costs.

5 Thank you.

6 COMMISSIONER GEESMAN: Joe, I take it
7 you discount any prospect that your customers are
8 likely to be exposed to higher costs with an
9 opaque procurement process not subject to full
10 public scrutiny.

11 MR. KLOBERDANZ: I believe the public
12 scrutiny, as we move into something between the
13 old regulatory regime and the more recent market
14 structure we have, whatever that is going to be
15 called eventually, and history will name it, we
16 won't.

17 I believe that right now the best I can
18 see is that that oversight is again in the hands
19 of regulatory agencies.

20 COMMISSIONER GEESMAN: Who are best
21 protected when nobody else can see what we're
22 doing. And when we're not accountable to the
23 Legislature or the Governor in terms of our
24 performance, because we can't really share the
25 information with the Legislature or the Governor.

1 I mean I agree it's a balance, but it's
2 a balance that works both ways. And I'm not
3 certain that there's any empirical evidence,
4 Professor Plott's study notwithstanding, that
5 would suggest the opaque system produces better
6 results for your customers than the transparent
7 system does.

8 MR. KLOBERDANZ: I can't sit here today
9 and prove to you that proposition or disprove it,
10 as I'm not sure which way you stated it. I am
11 convinced that having certain information in the
12 hands of those who we need to buy from at certain
13 times has a high probability of being bad for my
14 customers.

15 I am not persuaded, but I will
16 acknowledge I cannot disprove the converse.

17 MS. GENAO: Commissioner Geesman, I
18 think Mr. Hemphill can probably talk to that point
19 a little, as well, if you would like additional
20 information.

21 COMMISSIONER GEESMAN: Sure.

22 MR. HEMPHILL: Good afternoon. My name
23 is Stu Hemphill, I work at Southern California
24 Edison. You did bring up an interesting point and
25 one that I've looked at quite a bit. In fact, I

1 worked with Dr. Plott and Tim Cason from Purdue
2 University on their experiments on economics
3 related to this very topic.

4 The situation can best be analogized as
5 a poker game. And that would be a poker game
6 where one player has all of the cards exposed and
7 the other players do not. And the question is
8 does the player with the cards exposed have a
9 disadvantage to those who do not have to show
10 their cards.

11 And the answer is obviously yes, because
12 each of the persons who is holding the cards is
13 able to see, but not have to show their own. So
14 they're no worse off than they were when those
15 cards were exposed.

16 And so actually it's the countervailing
17 argument that you need to be thinking about, which
18 is how our customers are advantaged by sharing
19 information of one party without sharing the
20 information of all parties. I think that's the
21 argument that needs to be addressed.

22 COMMISSIONER GEESMAN: Well, I'm glad
23 you raised the poker metaphor, Stu, because I
24 think it's unfortunate that your company, and at
25 least the California wing of your industry, seem

1 to have embraced that metaphor for your
2 procurement.

3 Most of the rest of the manufacturing
4 businesses in the world, the larger ones, anyway,
5 have tried to move more toward an open auction
6 form of procurement, convinced that the
7 competitive bidding process, particularly when
8 conducted in a transparent environment, produces a
9 lower price.

10 And I'm not an economist. I am
11 something of an empiricist, so I do like to see
12 the evidence. But I acknowledge with Joe, at this
13 point this is just an argument or clash of values.
14 There's not much evidence on one side of the
15 equation or the other.

16 MR. HEMPHILL: I would, just to point
17 out, you do have an experiment done, conducted by
18 two prominent econometricians in the U.S., and you
19 have nothing on the other side.

20 COMMISSIONER GEESMAN: I reviewed that
21 paper very carefully, and I would have to say that
22 I believe that if your company actually thought
23 that accurately replicated what the electricity
24 trading environment is really like, you'd probably
25 out-source your procurement to undergrads at

1 Purdue and at CalTech.

2 MR. HEMPHILL: No, I think -- I mean the
3 issue that you saw there was that people who had
4 the information were able to bid higher. It had
5 nothing to do with the buying side, it had
6 everything to do with information being provided
7 to the selling side.

8 And I'd be happy to make Dr. Plott
9 available, or Dr. Cason. We basically gave them
10 the information; they ran with it. We believe
11 it's sound information. And we can make them
12 available if you'd like to speak with them more
13 specifically.

14 COMMISSIONER GEESMAN: I think they
15 probably made their best arguments in their paper,
16 itself. And I will say, I didn't find it to be a
17 credible replication of the electricity trading
18 process. And I would think that most of the
19 professionals in your procurement department would
20 be insulted by the comparison.

21 MR. HEMPHILL: Oh, actually, I don't
22 think so, because they were also involved. I mean
23 we took --

24 COMMISSIONER GEESMAN: Well, then
25 perhaps you're overpaying them.

1 MR. HEMPHILL: No, I don't believe so.
2 I mean the truth is we spent a lot of time setting
3 up the markets. We did make sure that there was
4 an accurate representation of the numbers of
5 buyers, the numbers of sellers in the market, the
6 relative sizes of the markets.

7 Is it a perfect? No, it's not perfect.
8 But it was not an uninformed experiment. And so
9 it is the only evidence you have in front of you
10 that specifically addresses this topic.

11 You've mentioned manufacturers.
12 Manufacturing in whatever open transparent -- I
13 don't know exactly which one you're thinking
14 about, but that one clearly does not represent the
15 electricity markets in California. So that, in
16 itself, is an analogy that doesn't work.

17 COMMISSIONER GEESMAN: Thank you.

18 ACTING CHAIRPERSON PFANNENSTIEL: Mr.
19 Warner.

20 MR. WARNER: Just one last comment.
21 We've talked a lot about what the utilities'
22 concerns are, customers concerns. But I also
23 think that we utilities have tried to address,
24 through the north/south disaggregation proposal,
25 what we believe to be the interests of the

1 Commission in terms of public transparency, in
2 terms of its work.

3 And so we believe that that is a way to
4 achieve both public interest goals here. And
5 would hope that -- and certainly from the utility
6 standpoint, would be willing to move toward that
7 as part of any action by the Commission on our
8 appeals.

9 COMMISSIONER GEESMAN: So if we can't
10 disaggregate SDG&E from Southern California Edison
11 Company in our process, how are we to evaluate the
12 need hypothetically for a transmission project in
13 the San Diego service territory; or, for that
14 matter, in the Edison territory, if we're looking
15 at everything on an aggregated basis?

16 Knowing full well that the other
17 participants in our process are quite likely to
18 contest any determination of need that we might
19 make on the basis of readily available
20 alternatives to San Diego on the one hand, or
21 perhaps Edison on the other?

22 MR. WARNER: And, Commissioner, we agree
23 completely. And there's a process that we've used
24 for years at the CPUC in which market participants
25 basically are either under a nondisclosure

1 agreement when they participate in a proceeding at
2 the CPUC, and nonmarket participants, like the
3 customer groups, are not under necessarily the
4 same restrictions, the Commission has available to
5 it all the information in these various
6 proceedings and it makes the decision.

7 To the extent that there's competitively
8 sensitive information that is subject to seal.
9 But all the parties are participating, including
10 those contesting the applicant, have all the
11 information available to them. They just can't go
12 out and use it in a way that would allow them to
13 manipulate the process.

14 COMMISSIONER GEESMAN: So when the
15 Legislature calls me up and wants to know what's
16 really going on here, I'm left in a position to
17 say, well, Senator, I can tell you but I'd have to
18 shoot you?

19 MR. WARNER: Well, the Legislature is a
20 co-equal branch of government, obviously. And the
21 Legislature views its obligations to protect trade
22 secrets from its perspective.

23 But, as far as I can tell in the history
24 of every Legislature in this country, to the
25 extent that the courts have determined that trade

1 secrets are protected, those trade secret laws
2 also apply to legislators. And to the extent that
3 legislative committees, oversight committees, seek
4 to review trade secrets, they sign nondisclosure
5 agreements, they make pledges. Even though they
6 do not like to and they don't want to. But they,
7 indeed, get their oversight function done by
8 respecting the value of trade secrets.

9 COMMISSIONER GEESMAN: We don't have a
10 very good history in this state with opaque
11 procurement. Or economists.

12 ACTING CHAIRPERSON PFANNENSTIEL: Dr.
13 Jaske, did you have another comment?

14 DR. JASKE: Yes, I just have a couple
15 factoids you might call them. And then one
16 concept that hasn't yet been raised.

17 Obviously the key issue here is focusing
18 on annual peak. I just want to remind you that
19 historic annual peaks are frequently available,
20 even those defined down to the service area level.
21 Just a couple three weeks ago the Electricity
22 Committee conducted a workshop on the short-run
23 supply/demand balance, and San Diego put forward
24 historic peak data, and even the weather
25 adjustments to take the individual years back to

1 normal.

2 And so one can take that kind of
3 historic data and generate your own peak forecast
4 with the energy forecasts that are already
5 available that are not going to be the same as
6 what the utilities put forward, but, you know,
7 they're not going to be too far off.

8 MS. GENAO: Mike, can I just ask you a
9 clarifying question?

10 DR. JASKE: Sure.

11 MS. GENAO: Are you referring to the
12 bundled customer peak when you refer to that
13 number?

14 DR. JASKE: In that particular instance
15 I believe that was a San Diego service area peak,
16 so it was bundled plus ESPs.

17 And there are peak forecasts that are
18 used in the transmission planning process that are
19 lying out there in public all over the place
20 through the documents the PTOs put forward to the
21 ISO, to the documents the ISO prepares. Again,
22 those look to be something more like the service
23 area or traditional planning areas, as opposed to
24 bundled. So, that's the distinction.

25 Secondly, none of the munis have asked

1 for confidentiality for anything connected to
2 their demand forecast. Even though they are also
3 buying from or selling to these markets.

4 And lastly, no one today has raised the
5 concept of the distinction between protecting the
6 near-term versus not protecting the long-term.
7 So, for example, you know, the first three or four
8 years are years where these issues of existing
9 generators exercising market power are clearly
10 more germane than the period beyond that where the
11 markets are contestable by new entrants. And in
12 fact, we want quite explicitly to be encouraging,
13 you know, the generator community to make
14 investments and bring forward new projects that
15 can help the supply/demand balance.

16 I just wanted to make sure you were
17 aware of those additional factors for your
18 consideration.

19 ACTING CHAIRPERSON PFANNENSTIEL: Thank
20 you for raising those. Yes.

21 MS. GENAO: I just wanted to point out
22 that we believe that the bundled customer peak
23 distinction is an important one, and that that
24 number, as far as I know, neither the historic nor
25 the forecast is made public.

1 MR. KLOBERDANZ: I would agree.

2 ACTING CHAIRPERSON PFANNENSTIEL:

3 Understood. Are there other questions here? I
4 have a couple people who have asked to speak on
5 this subject, which I'll take in a minute. But I
6 want to see if anybody has questions of Dr. Jaske
7 or of the IOUs? Anybody here on the panel?

8 Thank you.

9 MR. WARNER: Thank you.

10 ACTING CHAIRPERSON PFANNENSTIEL: Why
11 don't we ask Steven Kelly, then, who had asked to
12 speak on the subject.

13 MR. KELLY: Thank you, Commissioners.
14 Steven Kelly with the Independent Energy Producers
15 Association.

16 First, I'd like to address you just to
17 kind of following up to what was just spoken, and
18 deal with a little theory in practice here. And
19 then talk a little bit about the reasonable
20 standard that was addressed and raised in front of
21 you earlier.

22 I've heard now both from the ESPs and
23 the IOUs what I view as a red herring. That the
24 need to keep data confidential is in order to
25 preclude wholesalers from gaming the marketplace.

1 And I think, as was addressed earlier, the best
2 way to keep wholesalers from gaming the
3 marketplace is buying long-term contracts, which
4 is exactly where the state is going today.

5 And I think what the utilities have
6 found is the praxis part of things, is that when
7 they actually went out with an open competitor
8 procurement for renewables they were inundated
9 with suppliers. All of them putting on the table
10 their bids.

11 The utilities were in the unique
12 position at that point of looking at a multitude
13 of bids from many many generators what they would
14 offer that product for at that particular time for
15 that duration.

16 So they actually have a means to acquire
17 the data that they think they need, and they can
18 do it through open competitive procurement
19 processes. And it's proven over the last year
20 that that works.

21 And the other thing I'll just remind you
22 is that the other prevention that we're having, or
23 we're in the process of developing, is the
24 resource adequacy requirement. Which is going to
25 have the utilities buying up to 115 percent of

1 their peak need on a capacity basis. And probably
2 have the energy to follow.

3 So we're really not talking, as we look
4 forward in the future, of an environment in which
5 the utilities ought to be on the edge facing one
6 sole supplier threatening them across a
7 negotiating table. What we're really looking at
8 is an environment where there's going to be
9 multiple suppliers if the information is out there
10 ahead of time so that they can plan their
11 projects.

12 And if the utility doesn't actually need
13 to buy from that last supplier, it probably need
14 not do that if the price is too high, because it
15 will be adequately resourced.

16 Now, I'd like to talk, move to a little
17 bit about the reasonableness standard, and I'm
18 really focusing my comments on planning data and
19 procurement. And my comments are in light of the
20 fact, as mentioned previously, that the PUC has
21 now essentially deferred to this Commission for
22 the data development in the planning process. And
23 in light of the fact that the PUC has adopted, and
24 I think this Commission has endorsed repeatedly,
25 the concept of an open, transparent, competitive

1 process as a means, and probably a very good
2 means, to move forward for procurement.

3 But ironically we're in a unique
4 situation here, and when you can calculate and
5 consider your reasonableness standard, I want you
6 to think of this, which is a slightly different
7 bent than what I've heard today.

8 The unique situation is particularly in
9 the long-term procurement decision that was voted
10 out by the PUC, is that the utilities are supposed
11 to buy resources, future resources, under a least-
12 cost, best-fit methodology. And so far that
13 methodology is totally opaque to anyone but the
14 utilities. Nobody really knows what that means.

15 But it means that whatever they buy it has to
16 fit into what that need is.

17 The other thing that that decision said
18 was that the utilities are going to be in a hybrid
19 market, not only as a buyer, which we've heard of
20 today, but as a seller to themselves.

21 And when you take the two components of
22 a requirement for least-cost/best-fit with the
23 reality that the utility will be the only one
24 under their scenario to know exactly what that
25 means and how to fit that, and they're the seller,

1 or potential seller, in a competitive market, or
2 through bilateral negotiations, you're creating
3 what I think is a very negative situation for
4 consumers.

5 The lack of transparency, the lack of
6 openness, the lack of competition gives the IOUs a
7 tremendous advantage as a seller in that
8 marketplace.

9 The closed, nontransparent,
10 noncompetitive process creates an unlevel playing
11 field which will, I believe, ultimately harm
12 consumers and their ability -- because they lose
13 their ability to compare proposals. And they'll
14 only be seeing one possibly, and that will be the
15 utility proposal. Because they're the only ones
16 who are going to know exactly what the need is and
17 when. They will be able to plan ahead of time;
18 nobody else will be able to do that.

19 Now, I recognize, and I've said this in
20 front of the Commission in the past, that some
21 data is commercially sensitive and proprietary.
22 And I don't think we've got a very good fix on
23 that. And followup to what Mike Jaske said
24 earlier, I think it does make a lot of sense to
25 realize that there is some short-term period where

1 there is commercially sensitive information, from
2 the IOUs, as a buyer, that does not need to be
3 publicly available.

4 I don't believe that's 15 years out; I
5 don't believe it's ten years out; I don't even
6 believe it's five years out. Because if you've
7 read their filings on the renewable resource
8 procurement plans, they basically have given some
9 projections that were redacted, and then indicated
10 that they were all contingent on things.

11 Nobody knows what's going to happen in
12 five years. I think we're down into a period --
13 and in one of your workshops I indicated it's
14 probably somewhere between 90 days to a year, and
15 maybe up to three. And I think the Executive
16 Director apparently picked three. In the short
17 term that may seem reasonable.

18 What I urge the Commission to do,
19 because you're playing such an important role as
20 we go forward in procurement, is to be
21 conservative on this and adopt a policy that says
22 essentially that barring some very clear rationale
23 for keeping something proprietary and
24 confidential, it ought to be made publicly
25 available.

1 I also believe that we ought to have a
2 workshop where we talk about these subject matter
3 headings, not necessarily the discrete data behind
4 them. And have a more robust discussion about
5 whether some of this data is actually proprietary.
6 Because I happen to believe a lot of it is
7 probably publicly available someplace else, or it
8 can be mined.

9 But it's important that as you think
10 about this when you go forward is to think about
11 this role of the utilities, not only as the buyer,
12 but as the seller in this market. And what the
13 impact of that is going to be on consumers choice
14 and opportunities down the road.

15 Because when you do that I think when
16 you apply your reasonableness test you're going to
17 see that a reasonable decision would say more
18 openness rather than less. More transparency
19 rather than less. Which will foster more
20 competition rather than less, and realize better
21 value for consumers.

22 So, I thank you. If you have any
23 questions, I'd be happy to answer any.

24 ACTING CHAIRPERSON PFANNENSTIEL:
25 Questions for Mr. Kelly? Thank you, Steve.

1 MR. KELLY: Thanks.

2 ACTING CHAIRPERSON PFANNENSTIEL: We'd
3 like now to hear from TURN, Kevin Woodruff.

4 MR. WOODRUFF: Thank you, Commissioner.
5 I'm Kevin Woodruff; I work extensively with TURN
6 on resource adequacy issues. And I wanted to just
7 talk today about some of these confidentiality
8 issues that this Commission is facing in the IEPR
9 process.

10 I think the compete conflicting public
11 policy imperatives have been very well framed
12 already, so I'm not going to spend a lot of time
13 discussing them. I think, Commissioner Geesman,
14 you've been very forceful on greater openness.
15 And I think it's entirely correct that an IEPR
16 process with no numbers in it of any sort, or
17 extremely generalized level of detail is not going
18 to satisfy the Legislature or the media or the
19 public. It is not going to gain a lot of
20 confidence.

21 By the same token, I also have a lot of
22 sympathy for the positions of both the IOUs and
23 the ESPs that revealing peak, and in the ESPs'
24 case, energy data, as well, has some potential to
25 do them some serious competitive harm. Both with

1 their competitors and potentially with their
2 counterparties, the generators and their
3 intermediaries.

4 A lot of it depends on what other data
5 is revealed during this process, and is available
6 from public sources. It's hard to look at these
7 numbers in isolation. But I have no doubt that
8 there is some incremental -- there's a good chance
9 of some incremental detriment to their position
10 could occur from revealing it.

11 TURN and myself and the other TURN
12 consultant that looks at these issues have
13 discussed this. And we came up also with the
14 notion that for this IEPR process, I think it
15 makes a lot of sense to get moving with some sort
16 of an aggregate of load by various regions, as has
17 been discussed by some of the parties. The idea
18 we had was by IOU service territory.

19 And I know it's more than the ESPs
20 wanted, and possible more than the IOUs want to
21 give up, but that's IOU service territory
22 revelation matches very well with the Public
23 Utilities Commission's responsibilities. It
24 provides some protection for individual customers
25 on individual load-serving entities' data.

1 You may lessen your chance of a legal
2 challenge that could delay this process. And as
3 I've told this Commission before, the state needs
4 to get moving forward with really assessing what
5 its mid- to long-term needs are. We've been
6 diverted by 2005, for better or worse, for the
7 last several months.

8 I think you might be able to move
9 forward with the process on this front. But also,
10 that kind of aggregation would also give Mr.
11 Kelly's clients some sense of whether they should
12 be looking in the San Diego load pocket, or
13 southern California or northern California. And
14 provide some notification to the market about
15 where long-term resources are likely to be most
16 needed.

17 I think that's the general distillation
18 of my comments about what could be done in this
19 IEPR cycle. More generally, the Commission, in
20 the future, needs to have a more, what I call a
21 more generalized process where all LSEs know what
22 they need to give up coming into this process,
23 what's going to be public and what isn't.

24 Right now the process is ad hoc. And in
25 an ad hoc process you create an incentive system

1 where if I'm an LSE of any sort, and I don't want
2 to be disadvantaged, I'm going to stamp as much
3 confidential as I possibly can, and hope that my
4 competitors are willing to give up more off the
5 bat. That's the incentive structure you create
6 with an ad hoc process.

7 It needs to be a much more generalized
8 process. And it's conceivable, once we go through
9 a cycle or maybe a couple cycles, that parties
10 will get more comfortable giving up more
11 information. You hear a lot of resistance here
12 from parties that have been greatly traumatized
13 over the last few years.

14 And I think there's some hope in the
15 future we can have a more open process than we're
16 likely to have this time around. I'd suggest
17 before this next cycle that there be some serious
18 discussion about how to come up with a generalized
19 process so that all LSEs know what they're giving
20 up to the public.

21 You might create an intermediate class
22 of data that's available to various intervenors
23 under a protective order that allows parties to do
24 a fairly detailed analysis of load resource
25 balances and the types of resources that are

1 needed.

2 But I think this Commission will need to
3 do that before you engage in the next IEPR cycle.
4 Thank you.

5 ACTING CHAIRPERSON PFANNENSTIEL: Thank
6 you, Mr. Woodruff. Any further comments? Ms.
7 Holmes, any further comments from staff?

8 MS. HOLMES: No.

9 ACTING CHAIRPERSON PFANNENSTIEL: Thank
10 you. Comments from the Commissioners before we
11 decide these matters?

12 COMMISSIONER BOYD: Comment, please.

13 ACTING CHAIRPERSON PFANNENSTIEL:
14 Commissioner Boyd.

15 COMMISSIONER BOYD: First, I want to
16 thank Commissioner Geesman for doing a lot of the
17 heavy lifting today. He and I and Commissioner
18 Rosenfeld are signatories to that letter that was
19 referenced some time ago about openness. And he
20 and I share a lot of Committees together, and I
21 know his strong feelings on this subject. And he
22 knows mine.

23 And I knew he would far more eloquently
24 today deal with the lawyers on this issue. And as
25 the economist sitting up here, I don't want to

1 even engage in that discussion. I'm one who
2 crawled out from the rubble of the sky falling
3 during the electricity crisis. And let that be
4 history.

5 A lot of what's been said by folks here
6 today has been agreed to, or certainly agreed to
7 by those of us sitting up here, I'm sure, when it
8 comes to -- certainly when it comes to protecting
9 the California public, or the California public's
10 welfare in the electricity arena. And that
11 therefore, by reference, includes California
12 customers.

13 So, we are struggling with this. I
14 don't want to even analogize this to a game, any
15 kind of gambling game, but I thought of Russian
16 roulette a few times while sitting up here, but
17 certainly didn't want to make that reference.

18 I reacted to the statement about, you
19 know, we're becoming a regulated market again. I
20 appreciated Mr. Kelly's reference to the hybrid
21 market because I think that's what we are. And
22 that's what we will be for a long time as we still
23 work to figure our way out of this. And/or we
24 will always be. We will create a new type of
25 system, and it will be the California whatever.

1 Right now it's hybrid market.

2 Therefore, I still find myself falling
3 heavily on the side of transparency and risk
4 taking. I do want to hear from my fellow
5 Commissioners, but I just want it known that I
6 don't feel a lot different about the subject than
7 I did when I signed that letter in the first place
8 sometime ago to the PUC about the need for
9 transparency. And therefore, fall down very
10 heavily on the side of where the staff is trying
11 to go; where the Executive Director was trying to
12 go.

13 I do think the suggestions of continued
14 dialogue about aerial displays of data, but it
15 north/south or by IOU service area, what-have-you,
16 deserve discussion. And I think the parties need
17 to continue to have that dialogue as we still work
18 on correcting the experiment, or building and
19 designing the hybrid market.

20 With that I'll pass the microphone.

21 COMMISSIONER ROSENFELD: I'm certainly
22 not a lawyer or an economist. And the idea of
23 continuing dialogue seems a way to go.

24 I guess I'm going to ask Commissioner
25 Geesman, I did hear some suggestions for

1 mitigation of this disagreement that didn't seem
2 very serious to me.

3 The third-party providers talked about
4 five years instead of three. And aggregation by
5 area. And the IOUs talked about just aggregation
6 by north and south. Certainly in the north it
7 sort of seems like it's PG&E territory to me,
8 anyway. So that seems like a fine distinction.

9 Do we want to grab any of these small
10 offers?

11 COMMISSIONER GEESMAN: I don't think
12 right now. And let me, if I can, say I think
13 Kevin Woodruff hit a lot of the right notes on
14 this.

15 And one of the things that's difficult
16 is the fact that this is a case of first
17 impression. We are doing this now for the first
18 time. You know, we've previously conducted a
19 similar function in a more classically regulated
20 market environment. We've gone for some ten years
21 without having done it.

22 Because of the press of time and our
23 important role in the PUC procurement process, we
24 are taking these -- I'm not certain that I can
25 come up with a better word than Kevin's ad hoc --

1 but we are taking these up without benefit of
2 having adopted regulations in this area.

3 Frankly, we don't know enough to have
4 prescribed regulations. And I think that for this
5 cycle dealing with these matters on a case-by-case
6 basis really is the best approach.

7 I think the Executive Director has
8 faithfully, or I should say our prior Executive
9 Director, because that's the decision that's in
10 front of us today, decisions that Bob Therkelsen
11 made in February, I think he faithfully applied
12 both our regs and the Public Records Act, as well
13 as the Warren Alquist Act.

14 I believe this came up for at least
15 brief discussion when Scott stepped in. And our
16 direction to Scott was to look at that earlier
17 letter that has been referenced several times
18 before. And, you know, Commissioner Pfannenstiel
19 wasn't with us at the time, so it's the three of
20 us that signed on to that earlier letter to the
21 Public Utilities Commission, as the best
22 expression of our policy beliefs, or where we
23 would strike that balance between transparency and
24 opaqueness.

25 I frankly have not heard arguments today

1 by either the ESPs or the IOUs that would suggest
2 a reasonable case can be made that the specific
3 information in front of us is, in fact, a trade
4 secret. Or that that balance should be struck
5 against disclosure.

6 Having said that, I do think it would be
7 productive if the staff, and probably more
8 important the various parties that participate in
9 our process, see fit to enter into a dialogue as
10 to what information is best kept confidential that
11 would inform us in our next cycle.

12 I think one of the things that is
13 troubling to me, it's somewhat akin to the
14 discussion we had on the petroleum information
15 earlier in our business meeting today, I think the
16 staff is going to need to determine, based on its
17 experience in this cycle, what information is it
18 that is actually usable to us.

19 We tend, like most other organizations,
20 to have this enormous vacuum cleaner interest in
21 sweeping up information. But how much of it is
22 actual vital information that is either of value
23 to us, as a regulator, or is valuably disseminated
24 to the public and the various parties that
25 participate in our process.

1 I think Kevin's right, a dialogue would
2 very much inform those types of decisions. But I
3 don't think we can do that in time to affect this
4 cycle of the IEPR. And for this cycle I think
5 we're left with the Public Records Act, our own
6 regulations, the Warren Alquist Act.

7 I find the Executive Director's
8 determination persuasive. I've not heard anything
9 today that would suggest that it wasn't the right
10 decision for the Executive Director to make. And
11 when the Chair so indicates, I'm prepared to move
12 that we ratify and uphold his decision in each of
13 the appeals that's been filed.

14 ACTING CHAIRPERSON PFANNENSTIEL: Thank
15 you, Commissioner Geesman.

16 I'd like to say that I wasn't involved
17 in the earlier letter that was signed. And I came
18 in today having read the material, and I believe,
19 with a fairly open mind about what we needed to
20 do. And I have to say that I do come down very
21 strongly, in general, public policy standpoint, on
22 the side of transparency. I think that
23 transparency is better for the citizen of
24 California and for the electric customers of
25 California.

1 I think in the immediate case there is
2 that question about is there some harm that would
3 be caused by release, disclosure of certain
4 information. And I haven't heard that harm. I've
5 heard some potential fears of, you know, potential
6 outcomes. But I haven't seen the conclusion which
7 says that there is something that would harm
8 customers or provide a competitive disadvantage
9 from the disclosure of the information that is
10 being questioned here. I feel that the Executive
11 Director's analysis and results were compelling to
12 me.

13 I also think that we do need to move
14 forward. We need to move forward not just with
15 the IEPR, although, you know, that's in front of
16 us this year, but with the IEPR feed into the
17 procurement process. And that's important to all
18 of us in California.

19 There is an opportunity, I don't think
20 this is the end of anything, I think there's an
21 opportunity and perhaps compelling need to look
22 for areas of compromise. And there were several
23 raised today, and I think we can keep talking
24 about them, to see if we can find some areas,
25 whether it's a matter of aggregation or of

1 separate discussion.

2 We're going to be working with the
3 parties; we're going to continue through the IEPR
4 and through all of the Energy Commission
5 processes, to working with the same people who are
6 here in this room. And so I think that through
7 those processes, perhaps by the next cycle, we'll
8 have resolved some of what seems so unresolvable
9 today.

10 I think it is now the time that we do
11 need a motion on each of the items, 12 through 17.
12 And we would be voting to uphold or affirm the
13 decision of the Executive Director in each of
14 these.

15 So perhaps we should go in order.

16 COMMISSIONER GEESMAN: Madam Chair, I
17 move that we uphold the Executive Director's
18 decision in the appeal of Strategic Energy, LLC.

19 COMMISSIONER BOYD: Second.

20 ACTING CHAIRPERSON PFANNENSTIEL: In
21 favor?

22 (Ayes.)

23 ACTING CHAIRPERSON PFANNENSTIEL:
24 Continue.

25 COMMISSIONER GEESMAN: Madam Chair, I

1 move that we uphold the Executive Director's
2 decision in the appeal of Constellation NewEnergy,
3 Inc.

4 COMMISSIONER BOYD: Second.

5 ACTING CHAIRPERSON PFANNENSTIEL: In
6 favor?

7 (Ayes.)

8 COMMISSIONER GEESMAN: Madam Chair, I
9 move that we uphold the Executive Director's
10 decision in the appeal of APS Energy Services,
11 Inc.

12 COMMISSIONER BOYD: Second.

13 ACTING CHAIRPERSON PFANNENSTIEL: In
14 favor?

15 (Ayes.)

16 COMMISSIONER GEESMAN: Madam Chair, I
17 move that we uphold the Executive Director's
18 decision in the appeal of Southern California
19 Edison Company.

20 COMMISSIONER BOYD: Second.

21 ACTING CHAIRPERSON PFANNENSTIEL: All in
22 favor?

23 (Ayes.)

24 COMMISSIONER GEESMAN: Madam Chair, I
25 move that we uphold the Executive Director's

1 decision in the appeal of San Diego Gas and
2 Electric Company.

3 COMMISSIONER BOYD: Second.

4 ACTING CHAIRPERSON PFANNENSTIEL: All in
5 favor?

6 (Ayes.)

7 COMMISSIONER GEESMAN: Madam Chair, I
8 move that we uphold the Executive Director's
9 decision in the appeal of Pacific Gas and Electric
10 Company.

11 COMMISSIONER BOYD: Second.

12 ACTING CHAIRPERSON PFANNENSTIEL: Before
13 we vote on that, I recuse myself on this because
14 of potential conflict.

15 But, in favor?

16 (Ayes.)

17 ACTING CHAIRPERSON PFANNENSTIEL: Three
18 to nothing.

19 Thank you, all.

20 We still have open item 18, the 2005
21 Integrated Energy Policy Report. Consideration
22 and possible decision to initiate enforcement
23 activities, including issuing a subpoena, for
24 certain load-serving entities subject to the
25 Energy Commission's November 3, 2004 order

1 adopting demand forecast and price information
2 forms and instructions and January 19, 2005 order
3 adopting electricity resources in both
4 transmission forms and instructions.

5 And I understand that Randy Howard from
6 LADWP is on the line. So at the appropriate time
7 we'll ask Mr. Howard to speak, also.

8 But let me ask first, staff.

9 ACTING EXECUTIVE DIRECTOR MATTHEWS:

10 Madam Chairman, Commissioners, we have two
11 separate items, entities that are affected by this
12 particular item on the agenda. One is LADWP and
13 Kevin Kennedy will address that in a moment. The
14 other one has to do with APS Energy Services,
15 Inc's filing.

16 As you know, we've been working trying
17 to get the information for some time on a number
18 of fronts here, which has cost staff considerable
19 time and its tight schedule on the APR has been
20 somewhat frustrating.

21 We have not, as of yet, gotten the APS
22 filing, although we've been told that it's in the
23 mail. So I am recommending, in order to be
24 certain that in fact we get a complete filing,
25 that you pass the subpoena for the APS Energy

1 Services Inc company to get the information that
2 we've requested.

3 MR. KLATT: Can I speak to that? I'm
4 here as counsel for APS. I'd like to respond to
5 that whenever the opportunity arises.

6 ACTING CHAIRPERSON PFANNENSTIEL: Now
7 would be fine.

8 Gregory Klatt again with Mr. Matthews --
9 I'm sorry, for APS Energy Services. With all due
10 respect to Mr. Matthews, staff never made one
11 phone call to APS to push on this data submittal.
12 All the ESPs have been trying to submit the
13 information in a timely fashion.

14 The reason that they didn't submit it
15 today is not because they were blowing off the
16 Commission or somehow disrespectful of the
17 process; in fact, the exact opposite is true. The
18 reason it's taken so long for APS to submit this
19 last data submittal is because the managing
20 director of the company, himself, has took over
21 the process of putting together the uncertainty
22 analysis in order to make sure that the
23 information that's provided to the Commission is
24 actually useful.

25 It's not just a compliance filing. He's

1 hoping to have the information that APS is going
2 to provide which incorporates all sorts of recent
3 developments, including the request for offers
4 that was issued by Edison on Friday. That is
5 included in the analysis.

6 I think it's inappropriate to put a
7 hammer over their head when they've said basically
8 we're getting in -- you know, we're sorry we're
9 taking so long. If you would have let us know a
10 little bit earlier that you were really anxious
11 about it, we would have made every effort to get
12 it done even a little bit sooner, if possible.

13 And the reason it's taken awhile is
14 because we want to give you something that's
15 actually useful that can act as the starting point
16 for a real informed discussion about the
17 uncertainties that face LSEs going into the
18 future.

19 So I would strongly urge you to not
20 issue a subpoena against APS Energy Services. I
21 don't think it'll serve any purpose, also, because
22 I just got off the phone with Bob Anderson, the
23 Managing Director, and he says it's in the mail.
24 It's overnight, it's already out.

25 So, with that, those are my comments.

1 Thank you.

2 COMMISSIONER BOYD: I think if you just
3 said the check's in the mail and a few other
4 polite things, it might have served you well. But
5 I find it absolutely ludicrous that you would try
6 to shift it back on the staff.

7 I mean when we establish deadlines we
8 don't do it for the fun of it. And the deadline
9 has long since come and gone. And it was a
10 meaningful deadline, and I won't ask the staff how
11 many phone calls they made and what-have-you, but
12 needless to say I was a little irritated by that
13 response.

14 COMMISSIONER GEESMAN: Question for
15 counsel. What options do we have here?

16 MS. HOLMES: Well, you can adopt the
17 subpoena that directs them to provide the
18 information. One of the reasons -- and you cannot
19 adopt the subpoena and issue it if the information
20 is not provided in two weeks, or if they do
21 provide the information, then the issue --

22 COMMISSIONER GEESMAN: Can we adopt or
23 issue a subpoena and allow the Executive Director
24 to determine whether he has received the
25 information tomorrow in the mail or not?

1 MS. HOLMES: Well, the subpoena becomes
2 moot in essence once the information is received.
3 There's nothing to enforce once the information
4 that's identified in the subpoena comes in.

5 So that once they actually comply the
6 subpoena has no force of law, no meaning.

7 I want to point out one issue that I
8 think is important when you consider what your
9 options are. Under the terms of the subpoena
10 consistent with the terms of the Government Code
11 they have 15 days to respond. And as even I can
12 do the math, that means that the next time that
13 you would have is two business meetings hence that
14 you would have to wait if you were to seek
15 enforcement and the information were not provided.

16 So if this were to ultimately go to some
17 kind of a judicial enforcement you couldn't make
18 that decision at the next business meeting. You
19 have to wait until two business meetings hence.
20 So there's something of an advantage in terms of
21 protecting your ability to move quickly on
22 enforcement should it become necessary, which it
23 sounds as though it will not. But should it
24 become necessary, there is something of an
25 advantage in adopting a subpoena today.

1 And, if, as Mr. Klatt has indicated, the
2 information is provided before the 15 days
3 expires, then the subpoena has no force of law; it
4 has no -- it's in essence mooted.

5 COMMISSIONER GEESMAN: And I take it the
6 staff is recommending that we move forward with
7 the subpoena?

8 ACTING EXECUTIVE DIRECTOR MATTHEWS:
9 Yes, we are.

10 COMMISSIONER GEESMAN: Madam Chair.

11 ACTING CHAIRPERSON PFANNENSTIEL: Well,
12 let me just say that it has been business meeting
13 after business meeting after business meeting that
14 we have sat here considering subpoenas. And each
15 time hearing that the information was forthcoming.

16 And so this is the first time, I think,
17 that we've finally said let's draw the line and
18 let's say we really need this information, let's
19 go for it.

20 I see no reason not to adopt -- not to
21 issue the subpoena, and if it's mooted within 24
22 hours because the information is received, that
23 would be an excellent outcome.

24 COMMISSIONER GEESMAN: And I would move
25 then that we issue an administrative subpoena.

1 COMMISSIONER BOYD: And I'll second it.

2 ACTING CHAIRPERSON PFANNENSTIEL: In
3 favor?

4 (Ayes.)

5 ACTING CHAIRPERSON PFANNENSTIEL:

6 Approved, three-nothing.

7 Mr. Kennedy.

8 MR. KENNEDY: Thank you, Madam Chair,
9 Commissioners. I'm Kevin Kennedy, the Manager for
10 the Energy Report proceeding in this cycle.

11 As Scott mentioned, in addition to the
12 APS consideration, still talking about the March
13 1st data requirements, which is what we were
14 dealing with there, we received data from LADWP.
15 And as we have had an opportunity to review that
16 data and work through it, we have some concerns
17 with the data, itself.

18 Before I get into a more detailed
19 discussion of that, I would like to give a very
20 quick update on the next round, which are the data
21 filings that were due on April 1st. And just give
22 the Commissioners a quick update on where things
23 stand on that, with the expectation that we will
24 be coming back in two weeks to update you on the
25 status again of the April 1st filings, and may or

1 may not be needing to make enforcement
2 recommendations at that point for that data.

3 So, this is in terms of the information
4 that was required on uncertainties and scenarios
5 from the various LSEs.

6 At this point we have received
7 information from all three of the IOUs. With at
8 least one instance, I think possibly all three, we
9 may not have all of the information that was
10 requested. We're in the process of reviewing the
11 specifics of the filing.

12 The most recent filing was actually this
13 morning by PG&E. So that's data that we haven't
14 had a chance to look at, and we're still looking
15 at the filings from the other two.

16 In terms of the municipal utilities, of
17 the 13 that we're expecting data from we have
18 received data from six at this point. And part of
19 what we will be doing over the next several days
20 is very aggressively working the phones on
21 contacting them, finding out exactly when that
22 information is coming.

23 In general, we have been getting fairly
24 good cooperation in terms of getting the
25 information from the munis, although it has not

1 been unusual for them to be a bit slow in getting
2 the information to us.

3 So, I would expect that by the time we
4 come back in two weeks, most, though I don't know
5 that it will be all, of the munis will have filed
6 this information.

7 And what I will also work to do is make
8 sure that there's a letter that goes out from
9 Scott Matthews to the munis towards the middle of
10 next week for any that we have still not received
11 data at that point, reminding them that the
12 deadline has passed, and that we will be reporting
13 back to the business meeting two weeks from today.

14 In terms of the electricity service
15 providers, my understanding is we have received
16 the information from four of the five, and the one
17 exception is APS. And I believe, if I understand
18 correctly, that the filing that is, as we
19 understand it, on its way would also satisfy the
20 April 1st filing, as well as the March 1st filing
21 requirements. So if that comes in as expected and
22 contains what we expect, then that would complete
23 the filings from the ESPs.

24 With all of this, staff is still
25 reviewing the information that has been received,

1 making sure it's complete, consistent, and that we
2 don't have any concerns that we need to come back
3 to the Commission with.

4 But that is the status for the April 1st
5 filings.

6 With that, I would like to turn back to
7 the question of LADWP's filing from the March 1st
8 requirements. Throughout this proceeding we have
9 been working with LADWP. They have been
10 providing, in general terms, the information we
11 have been requesting at each step, though they
12 alone, among the various LSEs, have been providing
13 it in a different format. They have not been
14 filling out the forms as instructed. The
15 instructions have allowed some degree of latitude
16 for the different utilities to provide us
17 equivalent information as long as it's clearly
18 labeled.

19 With the supply filings that we received
20 for the March 1st deadline, as we have attempted
21 to walk through the information that we actually
22 received from LADWP, some of the electricity
23 staff, Jim Woodward in particular, have been
24 trying quite seriously to work with LADWP Staff in
25 order to translate the information that we

1 received into something that is consistent with
2 the forms we were hoping that everyone would use.

3 And what we have found in the course of
4 that process is that much of the basic forms can
5 be filled in, but there are inconsistencies and
6 gaps that have us very concerned. And in
7 addition, we also have a concern that while we
8 have a staff-generated set of forms for LADWP that
9 is based on information they gave us, what we have
10 been unable to do so far in terms of the staff
11 level communications, is actually get a clear
12 agreement from LADWP in any meaningful way that
13 that information accurately represents the
14 information that they provided, and sort of
15 provides a good picture of their situation.

16 To give a few examples of the sorts of
17 things that we're concerned about in terms of
18 making sure that we understand what information
19 they gave us and whether or not it actually
20 provides what we have been looking for, in terms
21 of capacity numbers we've been consistently
22 looking for dependable capacity for the filings
23 from the different LSEs.

24 And so, for example, we have information
25 on one of their major contracts from the

1 Intermountain project that provides capacity
2 numbers for that project. However, we know that
3 at times other parties can take some of that
4 capacity. So what is there as a standing line
5 across the board is probably not actually
6 dependable capacity, but overall capacity. We've
7 not been able to work out what the appropriate
8 dependable capacity number would be.

9 In other ways they have not consistently
10 differentiated between nameplate capacity and
11 dependable capacity. For example, in the hydro
12 data we did not get derate information. For the
13 nuclear project that they have an interest in
14 there's no accommodation for the scheduled
15 maintenance outages down the line.

16 In terms of the energy information they
17 provided, we had asked for monthly energy
18 information going out to 2016. While we have that
19 for total demand, we don't have more detailed
20 information for most of the forecast period, 2010
21 and beyond.

22 So these are number of particular areas
23 where we have attempted to work with their staff,
24 gotten some degree of clarification, but have not
25 been able to get a final answer that, okay, as we

1 have been able to put the information together,
2 this accurately represents LA's filing.

3 So what we are recommending today is
4 essentially two things. First and foremost, we're
5 recommending adoption of an order that would
6 direct LA to take a look at the S1 and S2 forms
7 that have been filled out by staff. To take the
8 time to review those, and to tell us very clearly
9 by the next business meeting whether or not those
10 forms are accurate.

11 And in particular, the order, as it's
12 been drafted, would require them to give us any
13 corrections that they felt were necessary, in
14 writing, by the date is two days before the next
15 business meeting, that Monday.

16 Or if they actually agree with all of
17 the information in the tables as provided, they
18 could come to the business meeting and simply tell
19 us that verbally.

20 In addition, we expect to continue
21 working with LADWP. We have some indication, and
22 I believe you'll be hearing from Randy Howard
23 shortly, that they're willing to continue working
24 with us to try to figure out how to fill in some
25 of the gaps.

1 We may need to come back in two weeks
2 with a recommendation for a subpoena for not the
3 entire information, because much of it has been
4 provided, they're not in the form we had hoped to
5 get it, but for the gaps that have been clearly
6 identified.

7 So that is the recommendation at this
8 point to move ahead with an order today, and then
9 to see where we stand in two weeks.

10 ACTING CHAIRPERSON PFANNENSTIEL: Thank
11 you. And we have, I believe, Randy Howard on the
12 line. Mr. Howard.

13 MR. HOWARD: Yes, good afternoon,
14 Commissioners. I appreciate the opportunity to be
15 able to speak on this matter.

16 LADWP is very committed to working with
17 the CEC and the staff on the data requests, and I
18 think that has been shown in all of the documents
19 that we have provided.

20 As a large and fully integrated public
21 utility, though, LADWP chose to submit our
22 comprehensive planning documents concerning our
23 forecast, our fuel budget, our resource planning,
24 our transmission planning and the integration of
25 renewables into our resource pool.

1 And by doing so we felt that it would
2 give the staff a broader view of not just input
3 data or result data, but a process on how we got
4 from one place to the other. And we thought it
5 would give a more comprehensive view.

6 We attempted throughout the process to
7 highlight the areas where the actual data within
8 those documents could be used for what was being
9 requested in the forms. And we attempted to do
10 that.

11 These planning documents that we
12 provided show kind of a detailed roadmap as to how
13 LADWP plans to insure energy reliability for our
14 customers. And due to our public governing
15 process, these planning documents in most all
16 cases have been reviewed and approved in a public
17 forum by our governing body.

18 Unfortunately, due to the timing in some
19 of these documents, meaning that they span several
20 years, they tend to be ten-year or five-year
21 planning type documents. There are some
22 inconsistencies. And I think that's what the
23 staff has been concerned with, and we have been
24 recently working with the staff to try to clarify.

25 The enactment dates of those documents

1 unfortunately because they are living planning
2 documents, things get altered a little bit, the
3 timelines, as to which project might go. The new
4 implementation of the Department's RPS, and how
5 we're putting that in a longer term, ten-year
6 integrated resource plan has kind of changed our
7 view of going forward for some of the resource
8 mixes. And so there are a few gaps.

9 But, you know, some of my concerns that
10 I've heard from my own staff would be, we have
11 provided monthly data related to the Intermountain
12 power project as a single source, because we view
13 it, at least from the LA service territory, as
14 this is a line, a transmission line that comes in,
15 and this the source that it comes from.

16 I think the concern of the staff was
17 they wanted us to break it out by Intermountain
18 power project unit 1, unit 2, excess power, and
19 the IPP (inaudible) power. We do not here
20 typically model it that way. But we will work
21 with staff and are committed to do so to try to
22 bring that other level. We didn't think that was
23 quite necessary because it is a take-or-pay
24 purchase power agreement, and it's not necessarily
25 related to specific units.

1 So I think that's been some of the
2 differences. But, again, we are committed to
3 working with staff. It would be my recommendation
4 at this point, because most of the documents
5 reside here, for this purpose, that if we could
6 get the staff to come down to L.A., we'd like to
7 certainly show them our energy control center, and
8 how, as an integrated utility, we utilize the
9 various resources, and how they interface. And I
10 think that would give some help as to what these
11 documents mean, a little further clarification.

12 So, with that, I would just state again
13 that we will fill those gaps. We're committed to
14 doing so in an expedited fashion.

15 ACTING CHAIRPERSON PFANNENSTIEL:

16 Commissioner Geesman.

17 COMMISSIONER GEESMAN: Randy, this is
18 John Geesman. For the last year and a half
19 Commissioner Boyd and I have listened to you and
20 to John Shuman repeatedly pledge your cooperation
21 in our IEPR process, and the Department's eager
22 participation in statewide planning efforts. And
23 certainly appreciative of that.

24 I would ask you today, though, that you
25 step up your level of involvement in your dealings

1 with us. I think your suggestion that our staff
2 come down and visit you is a good one. But I
3 would ask that you increase the level of
4 engagement or raise the level of priority that the
5 Department has attached to this process.

6 I was shown a copy last week of a letter
7 that the Department sent to Southern California
8 Edison Company regarding the Palo Verde-Devers II
9 transmission project, in which the Department
10 indicated it was exercising its contractual rights
11 to take over the project and directed Edison to
12 make no further regulatory filings on that
13 project.

14 And I don't have a view and I don't
15 believe my colleagues have a view as to the merits
16 of that, or the public desirability of that. I'm
17 certainly not familiar with the contract rights
18 that are referred to, but I use that as an example
19 of what a central role the City of Los Angeles
20 plays in statewide electricity considerations.
21 And would strongly urge you to reflect that
22 priority in the degree of effort that you and your
23 staff put into our process.

24 MR. HOWARD: Your comments are fully
25 understood. And I believe we have throughout. I

1 think the first email that I saw regarding these
2 inconsistencies actually occurred right before the
3 spring break, April 7th, I think, was when I saw
4 some of this.

5 And as you know, a couple of our key
6 staff, Mark Ward, and now John Shuman, Mark
7 recently retired, John's soon to retire. So we
8 are gearing up again with some key individuals
9 that will be able to participate in the processes
10 of the CEC. And we are committed to stepping up.

11 COMMISSIONER GEESMAN: Thank you.

12 ACTING CHAIRPERSON PFANNENSTIEL: Any
13 further comments from staff?

14 MS. HOLMES: I'd just like to make one
15 comment. We appreciate LADWP's expression of
16 interest in working with us to resolve the
17 problems that we've had in tracking the data.

18 Staff still believes that it's very
19 important for the Commission to adopt the order
20 directing LADWP to review the staff's attempt to
21 put the data that LADWP has provided into the
22 standard S1 and S2 forms. We believe that that's
23 the most -- that that will be the fastest and most
24 efficient way for us to go over that data when we
25 do sit down and work with them.

1 ACTING CHAIRPERSON PFANNENSTIEL:

2 Commissioners will hear a motion to do that.

3 COMMISSIONER GEESMAN: Madam Chair, I
4 move that we adopt the order prepared by staff
5 directing the Los Angeles Department of Water and
6 Power to verify the data that is contained as a
7 45-page attachment to the order.

8 COMMISSIONER BOYD: You beat me to the
9 punch. I'll second that order.

10 ACTING CHAIRPERSON PFANNENSTIEL: In
11 favor?

12 (Ayes.)

13 ACTING CHAIRPERSON PFANNENSTIEL: Passed
14 three to nothing.

15 I apologize, I just realize that Steve
16 Hilly had asked to speak on this item, also. But
17 he chooses not to do so.

18 MR. HILLY: No, not on that one.

19 ACTING CHAIRPERSON PFANNENSTIEL: All
20 right.

21 ACTING CHAIRPERSON PFANNENSTIEL: Does
22 that mean that our business has been concluded?

23 Thank you, all. We'll be adjourned.

24 (Whereupon, at 3:45 p.m., the business
25 meeting was adjourned.)

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 30th day of April. 2005.

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