

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

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

WEDNESDAY, AUGUST 2, 2006

10:01 A.M.

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

COMMISSIONERS PRESENT

John L. Geesman, Acting Chairperson

Arthur Rosenfeld

Jeffrey D. Byron

STAFF and CONSULTANTS PRESENT

Scott Matthews, for Executive Director

William Chamberlain, Chief Counsel

Madeleine Meade

Rasa Keanini

Prab Sethi

Guido Franco

Tony Goncalves

David Rubens

Gary Fay

Arlene Ichien

ALSO PRESENT

Lynne Brown
Californians for Renewable Energy
(via teleconference)

Les Guliasi
Pacific Gas and Electric Company

Emilio "Gene" Varanini, Special Counsel
California Power Authority

Robert Sarvey, Intervenor

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

2 10:01 a.m.

3 ACTING CHAIRPERSON GEESMAN: If you'll
4 please join me in the Pledge of Allegiance.5 (Whereupon the Pledge of Allegiance was
6 recited in unison.)7 ACTING CHAIRPERSON GEESMAN: Before we
8 get started I have an announcement I received from
9 the United States Department of Energy yesterday
10 announcing the first recipient of the Jeffrey A.
11 Johnson Award for Excellence in the Advancement of
12 Building Energy Codes and Performance, given to
13 none other than our own Bill Pennington, Manager
14 of the Buildings and Appliances Office.15 He was presented with the award during a
16 plenary session yesterday at the national workshop
17 on state building energy codes being held in
18 Denver.19 Bill hasn't come back yet. But I did
20 want to share with all of you that he has been
21 designated the first recipient of this national
22 award. And as you know, since 1979 he's been a
23 real spearhead of the building standards that have
24 brought quite a bit of acclaim to the Commission
25 from all around the world.

1 COMMISSIONER ROSENFELD: I just want to
2 say he really deserves that. I've never seen
3 anybody who works so effectively and so hard, and
4 has so many admirers.

5 ACTING CHAIRPERSON GEESMAN: Why don't
6 we take up, then, the consent calendar.

7 COMMISSIONER ROSENFELD: I move the
8 consent calendar.

9 COMMISSIONER BYRON: I second.

10 ACTING CHAIRPERSON GEESMAN: Consent
11 calendar has been moved and seconded.

12 All in favor?

13 (Ayes.)

14 ACTING CHAIRPERSON GEESMAN: I should
15 indicate that item 9 is going to be put over, as
16 will item 11, the approval of our minutes, because
17 I was not at the July 19th meeting, I'm unable to
18 vote for the approval of the minutes. So we'll
19 simply take that up at our next meeting.

20 Item 2, Clean Energy Stats Alliance.
21 Possible approval of contract 400-06-002 for
22 \$240,000 for a three-year renewal of the Energy
23 Commission's membership in the Clean Energy States
24 Alliance.

25 MS. MEADE: Good morning; I'm Madeleine

1 Meade with the renewable energy program. The item
2 before you deals with the Clean Energy States
3 Alliance membership which presently consists of 18
4 state-level clean energy funds in 14 states.

5 States that are involved in CESA run the
6 gamut of a variety of states in the northeast,
7 Massachusetts, New York, Connecticut,
8 Pennsylvania, Rhode Island and New Jersey. And in
9 the midwest, Ohio, Minnesota, Wisconsin and
10 Illinois. As well as here in the west,
11 Washington, Oregon, California, Arizona and New
12 Mexico is in a trial period for one year.

13 CESA provides its members the
14 opportunity to share best practices, lessons
15 learned and participate in collective problem
16 solving; focus toward effectively implementing
17 their various clean energy programs.

18 CESA is managed by the Clean Energy
19 Group, a nonprofit organization, and has been in
20 existence since early 2003.

21 It's important to realize that CESA
22 functions as more than simply a membership,
23 because at its heart they are a technical
24 consultant to the state clean energy funds.

25 The majority of CESA's activities

1 involve joint projects. These involve activities
2 to find solutions to key cross-cutting problems
3 that many state members face, such as development
4 of the solar PV market, wind facility siting, RPS
5 implementation, biomass development, public
6 education, climate change and other projects.

7 CESA efforts of particular benefit to
8 the Energy Commission have been CASE studies on PV
9 cost trends in California; analysis of the
10 implications of new federal tax credits on solar
11 programs; programmatic experience and
12 recommendations on supporting solar PV in
13 residential new construction.

14 They also developed a report providing
15 the Energy Commission with practical strategies to
16 increase the use of solar PV in affordable
17 housing. CESA is presently assisting the Energy
18 Commission in a state collaborative to develop
19 California statewide guidelines for reducing the
20 impacts on wildlife from wind energy development.

21 Ultimately membership in CESA provides
22 the Energy Commission with opportunities to
23 exchange information with other member funds,
24 participate in biannual meetings, and monthly
25 update conference calls, serve on CESA committees,

1 influence proposed joint project work, guide
2 targeted assistance for program challenges facing
3 California.

4 The Energy Commission has already
5 received Department of General Services' approval
6 to execute a multiyear contract because we are
7 receiving a reduced rate for this three-year
8 contract. And we have also received approval from
9 the Budget Management Committee for the membership
10 as part of this fiscal year's workplans.

11 So, if you have any questions I'm happy
12 to answer them.

13 ACTING CHAIRPERSON GEESMAN: Are there
14 questions?

15 COMMISSIONER ROSENFELD: I'm ready to
16 move it.

17 ACTING CHAIRPERSON GEESMAN: It's been
18 moved.

19 COMMISSIONER BYRON: Second.

20 ACTING CHAIRPERSON GEESMAN: Moved and
21 seconded.

22 All those in favor please say aye.

23 (Ayes.)

24 MS. MEADE: Thank you.

25 ACTING CHAIRPERSON GEESMAN: Thank you,

1 Madeleine.

2 Item 3, the Western Electricity
3 Coordinating Council. Possible approval of
4 contract 400-06-003 for \$2,202,750 to the Western
5 Electricity Coordinating Council to establish a
6 fund administration operations of WREGIS from July
7 2006 through March 2011. Rasa.

8 MS. KEANINI: Good morning,
9 Commissioners. I am Rasa Keanini with the
10 renewable energy office.

11 The item before you for adoption is
12 approval of a contract between the Energy
13 Commission and the Western Electricity
14 Coordinating Council. The Western Renewable
15 Energy Generation Information System is a
16 renewable energy tracking system being developed
17 by the California Energy Commission in conjunction
18 with WECC, the Western Electricity Coordinating
19 Council, and the Western Governors Association.

20 There are two main components. One is a
21 software portion, which is to modify a renewable
22 energy registry and tracking system. And the
23 other is the administrative operations of WREGIS.

24 This contract deals with the latter,
25 which is setting up the infrastructure of WREGIS

1 at WECC for the administrative operations.

2 The contract is for four years and nine
3 months. We anticipate nine months for the
4 development of the administrative infrastructure
5 at WECC, three years of operations with a one-year
6 close-out period.

7 The total amount of the contract is
8 \$2,202, -- I'm totally flubbing that, but it's
9 \$2.2 million. The contract is funded using the
10 renewable resource trust fund. And we anticipate
11 having the contract in place by September after
12 both parties have signed, pending approval today.

13 Are there any questions?

14 ACTING CHAIRPERSON GEESMAN: Questions
15 for Rasa?

16 COMMISSIONER ROSENFELD: I move it.

17 COMMISSIONER BYRON: Second.

18 ACTING CHAIRPERSON GEESMAN: Moved and
19 seconded.

20 All in favor?

21 (Ayes.)

22 MS. KEANINI: Thank you, Commissioners.

23 ACTING CHAIRPERSON GEESMAN: Thank you,
24 Rasa.

25 COMMISSIONER ROSENFELD: I'm so happy to

1 have you round \$2 million -- to \$2.2 million.

2 (Laughter.)

3 MR. CHAMBERLAIN: Mr. Chairman.

4 ACTING CHAIRPERSON GEESMAN: Mr.
5 Chamberlain.

6 MR. CHAMBERLAIN: I'd just like to say
7 that Kate Zocchetti and Michael Heintz made
8 excellent presentations to the WECC Board last
9 week to get approval of this there.

10 ACTING CHAIRPERSON GEESMAN: And was it
11 unanimously approved?

12 MR. CHAMBERLAIN: Not quite. There was
13 one Board Member who voted no, and one abstained.
14 And I didn't vote because I work for you.

15 ACTING CHAIRPERSON GEESMAN: Well, thank
16 you for that effort, anyway. One opposed and one
17 abstention is not that bad. And hopefully it
18 harbors a very good future relationship between
19 the state and WECC on something that I think will
20 have considerable importance all around the west.

21 Item 4, EDTEK, Inc. Possible approval
22 of contract 500-06-003 for \$500,000 to EDTEK, Inc.
23 to develop and demonstrate the long-term
24 feasibility of operating a solar combined heat and
25 power system. Prab.

1 MR. SETHI: My name is Prab Sethi. The
2 proposed solar combined heat and power project is
3 next phase of a previous PIER-funded project. The
4 focus is the development and demonstration of a
5 beta prototype solar combined heat and power
6 system which consists of solar parabolic dishes
7 that produce hot water and electricity.

8 Fifteen of these subsystems will be
9 installed, field tested and monitored for one year
10 for water heating at California State University
11 San Diego campus, to confirm the long-term
12 operational reliability for commercial
13 applications.

14 The project is for \$500,000, and is
15 expected to be completed in three years. This
16 system can be used in supermarkets, hospitals,
17 restaurants and food processing plants for supply
18 of hot water and electricity.

19 The Energy Commission Staff is
20 requesting that the solar combined heat and power
21 project may be approved for funding for PIER
22 natural gas program, which addresses cost
23 effective renewable alternatives for gas-fueled
24 water heating in industrial and commercial
25 processes.

1 Any questions?

2 ACTING CHAIRPERSON GEESMAN: Are there
3 questions for Prab?

4 COMMISSIONER ROSENFELD: I move the
5 item.

6 COMMISSIONER BYRON: I second it.

7 ACTING CHAIRPERSON GEESMAN: It's been
8 moved and seconded.

9 All in favor?

10 (Ayes.)

11 ACTING CHAIRPERSON GEESMAN: Thank you,
12 Prab.

13 MR. SETHI: Thank you very much.

14 ACTING CHAIRPERSON GEESMAN: Item 5,
15 U.S. Department of Energy, Lawrence Berkeley
16 National Lab. Possible approval of contract 500-
17 06-005 for \$550,000 with Lawrence Berkeley
18 National Laboratory to estimate the potential
19 energy savings in the residential, commercial and
20 industrial sectors in California under different
21 socioeconomic scenarios. Guido.

22 MR. FRANCO: Yes, good morning,
23 Commissioners. My name is Guido Franco. I'm the
24 Technical Project Manager in the Public Interest
25 Energy Research program, working on climate

1 change.

2 I'm here to ask you for approval of a
3 research project with Lawrence Berkeley National
4 Lab designed to estimate a long-term saving
5 potentials in California, energy savings potential
6 in California, under different socioeconomic
7 scenarios.

8 The work would be based on past energy
9 efficiency potential studies, which will be
10 enhanced in several ways. First, the study will
11 have a longer time horizon as required by climate
12 change studies. We try to emphasize what is
13 possible in the next 20 years.

14 Second, (indiscernible) will be
15 developed. We try to incorporate the observed
16 trend of lower cost with the increased penetration
17 of a given technology in what is known as learning
18 by doing.

19 Third, the new methods that will be
20 developed as part of this project will be both
21 standard engineering type of energy efficiency
22 estimates with econometric methods. Trying to
23 produce a more robust estimates of long-term
24 energy efficiency potentials in California.

25 This work will be highly coordinated

1 with Bill Pennington and Sylvia Bender here at the
2 Commission. With respect to, I mean they become
3 an integral part of our project.

4 Finally, the results of the study will
5 be directly applicable to future studies dealing
6 with options available to California to
7 substantially reduce greenhouse gas emissions to
8 comply with the targets adopted by the Governor in
9 his June 1, 2005 executive order.

10 I'm ready to answer any questions; and
11 Dr. Allen Sanstad is also here if there are any
12 questions.

13 ACTING CHAIRPERSON GEESMAN: Are there
14 questions for Guido? Jeff.

15 COMMISSIONER BYRON: I would just like
16 to thank you both for spending some time with me
17 yesterday morning to give me the background and
18 answer all my questions on this. Allen, thanks
19 for making another trip here today.

20 ACTING CHAIRPERSON GEESMAN: Is there a
21 motion?

22 COMMISSIONER ROSENFELD: I move the
23 item.

24 COMMISSIONER BYRON: I second.

25 ACTING CHAIRPERSON GEESMAN: Been moved

1 and seconded.

2 All in favor?

3 (Ayes.)

4 ACTING CHAIRPERSON GEESMAN: My mistake.

5 I believe we have Lynne Brown on the line

6 representing CARE. Mr. Brown.

7 MR. BROWN: Yeah.

8 ACTING CHAIRPERSON GEESMAN: Did you

9 care to address us on this contract item?

10 MR. BROWN: No, that's not our item.

11 ACTING CHAIRPERSON GEESMAN: Okay. You

12 want to talk to us, I think, on item 10, the San

13 Francisco Electric Reliability project?

14 MR. BROWN: Yeah.

15 ACTING CHAIRPERSON GEESMAN: Okay. I

16 will call on you then when we get to that item on

17 the agenda.

18 MR. BROWN: Thank you.

19 ACTING CHAIRPERSON GEESMAN: Thank you.

20 Item 6, U.S. Department of Energy, Lawrence

21 Berkeley National Laboratory. Possible approval

22 of contract 500-06-006 for \$660,000 with Lawrence

23 Berkeley National Laboratory to study the

24 feasibility of using measurements of ambient

25 concentrations of methane, nitrous oxide and other

1 nonCO2 greenhouse gases in California to estimate
2 the accuracy of existing GHG inventories and track
3 emission trends in the future. Guido.

4 MR. FRANCO: Yes, again, my name is
5 Guido Franco. The emission estimates on nonCO2
6 greenhouse gases in California, actually around
7 the world, are highly uncertain.

8 For this reason we commissioned a
9 roadmap of research (indiscernible) to UC Berkeley
10 to find out what such would be needed to reduce
11 this uncertainty.

12 Following their recommendation we're
13 funding research project designed to improve the
14 method used to estimate emissions for some key
15 sources in California, such as landfills and dairy
16 farms.

17 However, the UC Berkeley team also
18 recommended to measure ambient concentrations of
19 these gases to see if these measurements are in
20 agreement with what will be expected from values
21 reported in existing inventories.

22 Under this project Lawrence Berkeley
23 National Laboratory will measure the
24 concentrations of nonCO2 gases in two or three
25 communication towers in California. And use that

1 trajectories to estimate the origin of the air
2 masses reaching the towers.

3 With this information they will be able
4 to estimate how well the emissions inventories
5 from the areas contributing to the measured
6 concentrations compare with the measured
7 concentrations in the towers.

8 In theory it may be possible to
9 determine if current estimates are relatively
10 accurate or if large errors are present.

11 At the end of this project we will have
12 a determination of the feasibility of these type
13 of measurements to track emissions in California,
14 and a plan for a more expansive network of
15 monitoring stations if this study is successful.

16 And with that I'm ready to answer to any
17 questions that you may have.

18 ACTING CHAIRPERSON GEESMAN: Are there
19 questions for Guido?

20 COMMISSIONER ROSENFELD: I'm ready to
21 move the item.

22 COMMISSIONER BYRON: I second it.

23 ACTING CHAIRPERSON GEESMAN: It's been
24 moved and seconded.

25 All in favor?

1 (Ayes.)

2 ACTING CHAIRPERSON GEESMAN: Thank you,
3 Guido.

4 Item 7, the reallocation of SB-90
5 program funds. Possible approval of reallocation
6 of \$45,058,246 to the emerging renewables program
7 from various renewable energy program funding
8 sources, including unused SB-90 funds, Tier 2
9 existing renewable facilities program funds,
10 customer credit account funds, interest earnings
11 on the renewable resources trust fund, and
12 voluntary contributions. Tony.

13 MR. GONCALVES: Thank you,
14 Commissioners. My name is Tony Goncalves with the
15 renewable energy program.

16 The emerging renewables program is
17 designed to reduce the capital cost of installing
18 emerging renewable systems used for onsite use by
19 providing rebates that are scheduled to decline
20 periodically.

21 Historically when one of these drops
22 occurs we get a large influx of additional
23 applications. In fact, here when the rebate
24 dropped by 20 cents on July 1st, we saw a increase
25 in applications of approximately eight times what

1 we would normally see in a regular month.

2 We are currently authorized to spend
3 funds that are to be collected through the end of
4 this year. And we have come to you in the past
5 over the past couple years and requested
6 reallocation of funds to the emerging to insure a
7 smooth continuous program.

8 Additionally, the Legislature, in 2004,
9 in AB-135, authorized the emerging program to
10 expend \$60 million in funds that are due to be
11 collected from 2007 through 2011.

12 Before you today we are requesting that
13 approximately \$45 million be reallocated to the
14 emerging program. Without this reallocation the
15 emerging program will not have sufficient funds to
16 provide rebates through the end of this year.

17 The funds we are seeking to reallocate
18 are from several different sources, as follows:
19 \$15,123,000 from existing, SB-90 existing funds;
20 \$23,600,000 from existing renewable resource
21 account tier two, which is wind technologies,
22 which have not received any funding for
23 approximately three years and are not expected to
24 do so between now and the end of the year.

25 \$6 million in interest earnings.

1 \$315,829 from the customer credit account, which
2 was closed out a couple of years, and this
3 transfer will zero out the account. And finally,
4 \$19,417 from voluntary contributions.

5 I'd be glad to answer any questions you
6 might have.

7 ACTING CHAIRPERSON GEESMAN: Are there
8 questions for Tony?

9 COMMISSIONER BYRON: Just a comment, if
10 I may. Tony, I'm so glad to see that we
11 anticipate these funds running out so that these
12 programs continue in a timely way. So I'm
13 definitely very pleased to see this.

14 MR. GONCALVES: Thank you.

15 ACTING CHAIRPERSON GEESMAN: I have a
16 card from Les Guliasi, PG&E.

17 MR. GULIASI: Thank you, Commissioner
18 Geesman, Commissioners. I'm here to speak in
19 support of this reallocation of funds. We
20 participated actively in the workshops that you
21 held and subsequently submitted written comments
22 when you were considering the renewable energy
23 investment plan some months ago.

24 We made basically two points in our
25 comments, both verbally here at the workshop, and

1 then subsequently in our written comments.

2 The first point we made was we asked
3 that you not subtract from the funds available for
4 supplemental energy payments. To the extent that
5 they may be needed in the future, we wanted to
6 insure that those funds would be available when
7 needed. Given that that program is still in its
8 infancy.

9 And the second point we made was that we
10 asked you to maintain administrative flexibility
11 to reallocate funds if conditions warranted. And
12 I see today that you're actually exercising that
13 discretion.

14 We support the solar initiative. We
15 think that it's important to insure that the
16 program continue without disruptions. Customers
17 are depending on these funds to participate
18 actively in this program.

19 We look forward to working with the
20 Energy Commission as your program evolves. PG&E
21 is very strongly interested in participating in
22 the program with you. We would like to administer
23 the program. We believe we have the right kind of
24 marketing expertise. We have the right kind of
25 contacts with customers. And we think we can do a

1 good job of folding in this program with our
2 existing portfolio of energy efficiency programs.

3 So, again, we're very eager to work with
4 you and participate actively in this program and
5 support today's action.

6 Thank you.

7 ACTING CHAIRPERSON GEESMAN: Well, thank
8 you for your comments. I would add to your
9 litany, you also have the right scale to
10 accomplish the ambitious objectives that the
11 Governor and the Commission have set for the solar
12 program.

13 Is there a motion?

14 COMMISSIONER ROSENFELD: I feel like
15 I'm -- Chairman Geesman really should move this,
16 but I guess he can't, so with pleasure I move this
17 item.

18 COMMISSIONER BYRON: And I second it.

19 ACTING CHAIRPERSON GEESMAN: Moved and
20 seconded.

21 All in favor?

22 (Ayes.)

23 ACTING CHAIRPERSON GEESMAN: Okay, item
24 8. City of West Covina. Possible approval of a
25 loan of \$1,278,000 to the City of West Covina to

1 operate a central heating plant that serves the
2 City Hall, Police Department and Communications
3 Center; and to retrofit traffic lights with light-
4 emitting diodes. David.

5 MR. RUBENS: Good morning,
6 Commissioners. My name is David Rubens and I'm
7 with the public programs office.

8 The City is requesting this loan to
9 improve energy efficiency of its facility, and to
10 resolve some operating problems with its central
11 plant heating.

12 These projects will reduce the City's
13 annual energy costs by 30 percent.

14 The staff has reviewed these projects
15 and determined that they meet the requirements of
16 the Energy Conservation Assistance Act program.
17 The Energy Efficiency Committee has approved the
18 loan request of \$1,278,000 to the City.

19 Staff recommends approval of this loan.
20 I'll be happy to answer any questions.

21 ACTING CHAIRPERSON GEESMAN: Are there
22 questions for David?

23 COMMISSIONER ROSENFELD: My only
24 question is why did it take the City of West
25 Covina so long to get around to putting in LED

1 traffic lights.

2 MR. RUBENS: The City of West Covina has
3 LED traffic lights installed; these are for the
4 pedestrians, the --

5 COMMISSIONER ROSENFELD: Oh, these --

6 MR. RUBENS: -- Title 24 calls 2006
7 January 1 to convert. And so with the energies
8 that they're saving for the pedestrian-enhanced
9 walk, this project will be able to be completed.

10 COMMISSIONER ROSENFELD: That's great.
11 I move it.

12 COMMISSIONER BYRON: And I second it.

13 ACTING CHAIRPERSON GEESMAN: It's been
14 moved and seconded.

15 All in favor?

16 (Ayes.)

17 ACTING CHAIRPERSON GEESMAN: Thanks,
18 David.

19 MR. RUBENS: Thank you.

20 ACTING CHAIRPERSON GEESMAN: That brings
21 us to item 10, the San Francisco Electric
22 Reliability project, docket 04-AFC-01. Commission
23 review of the Intervenors' appeals and Committee
24 rulings in the proceeding.

25 I'm go to ask Gary Fay to walk us

1 through these multiple items. And then I believe
2 it's his desire that we take each one up
3 individually.

4 MR. FAY: Thank you, Commissioner
5 Geesman. Yes, and I propose that two of them be
6 consolidated, but I'll make that clear as we go
7 along.

8 Item 10 has listed five separate
9 subparts. The first, item 10(a) is a July 10,
10 2006 appeal of the Committee ruling denying
11 Intervenor Californians for Renewable Energy,
12 Inc., CARE, its request for reconsideration
13 seeking the admission into evidence of a January
14 12, 2004 transcript from the CPUC hearing on the
15 Jefferson-Martin 230 kV transmission line.

16 By way of background, and this will take
17 a little while, I'm going to go through the
18 various volley and return of filings.

19 At the evidentiary hearing in the San
20 Francisco Electric Reliability project case that
21 occurred on April 27, 2006, applicant, San
22 Francisco, objected to CARE's initial attempt to
23 introduce into evidence the transcript of the PUC
24 hearing held on January 12, 2004.

25 The PUC evidentiary hearing was on the

1 certificate of public convenience and necessity
2 authorizing the construction of Jefferson-Martin
3 230 kV transmission project.

4 CARE was not present at the Energy
5 Commission evidentiary hearing to respond to
6 applicant's objection. And therefore, the
7 Committee took the admissibility question under
8 submission at that time.

9 Then on May 11, 2006, CARE filed a
10 request for subpoena on Manho Yeung of PG&E. Mr.
11 Yeung was a PG&E witness at the January 12th PUC
12 hearing. The Committee denied CARE's subpoena
13 request on May 17th.

14 At the May 31, 2006 Energy Commission
15 evidentiary hearing on the San Francisco project,
16 CARE again attempted to introduce the CPUC
17 transcript as an attachment to witness testimony
18 on the topic of alternatives. And, again,
19 applicant objected.

20 In response to the Hearing Officer's
21 ruling that the CPUC transcript be marked for
22 identification only, as exhibit 59, and not be
23 admitted into evidence Mike Boyd of CARE stated,
24 and I quote, "That would be fine." Unquote.

25 Nevertheless, on June 5 CARE filed a

1 request for reconsideration and clarification of
2 the ruling denying admission of exhibit 59.

3 Applicant filed a response on June 6th.

4 On July 6th, the Committee did
5 reconsider its prior ruling and found that the
6 prior testimony of Manho Yeung, given at the
7 January 12, 2004 CPUC hearing, is not only
8 inadmissible hearsay, but is immaterial and
9 irrelevant to the matter that was being heard by
10 the Energy Commission. Therefore, the transcript
11 of the prior testimony contained in exhibit 59 is
12 inadmissible. And it remains marked for
13 identification only.

14 On July 10th CARE petitioned the full
15 Commission to review the Committee's ruling. And
16 on that same day, applicant, the City and County
17 of San Francisco, filed a response.

18 You may want to take comments and then I
19 believe --

20 ACTING CHAIRPERSON GEESMAN: Why don't
21 we do that.

22 MR. FAY: -- you have motion and --

23 ACTING CHAIRPERSON GEESMAN: Mr. Brown,
24 are you still on the phone?

25 MR. BROWN: Yes, Commissioner.

1 ACTING CHAIRPERSON GEESMAN: The
2 microphone is yours.

3 MR. BROWN: I am Lynne Brown; I reside
4 at 24 Harbor Road in Bayview Hunter's Point, San
5 Francisco. I'm not a lawyer, but a lawyer may
6 have been involved in preparing these motions to
7 strike. I am the Vice President of the Board of
8 Directors of CARE. Therefore, anything I say only
9 serves to supplement any motion to strike, not
10 change or replace in any way.

11 I have asked Martin Homec to be
12 available on the phone if you need him, if you
13 have any questions for him.

14 I participated before in the California
15 Public Utilities Commission as a member of CARE to
16 support the approval of the Jefferson-Martin
17 transmission 230 kV transmission project in return
18 for PG&E's agreement to shut down the Bay View
19 Hunter's Point Power Plant in my low-income
20 community of color.

21 This was a good deal because the power
22 plant has been shut down without any air pollution
23 emissions from the plant. Now the applicant,
24 CCSF, was a party in that proceeding, application
25 02-09-043, and they were not -- they are now

1 claiming they supported this project instead of
2 seeking a delay of the project's construction, as
3 I remember.

4 That there is no value to this evidence,
5 as staff claims. Then what harm is caused to the
6 parties to accept the evidence, other than to
7 prejudice me against -- prejudice me because I am
8 poor and black and live in a low-income community
9 of color. Enough to propose a project to breathe
10 its emissions.

11 CARE asked the full Commissioners to
12 review the ruling regarding CARE request for
13 reconsideration, dated July 6, 2006. The issue is
14 the denial of admission into evidence of the
15 transcript from the California Public Utilities
16 proceeding regarding CARE's goal of closing power
17 plants in residential neighborhoods in the City
18 and County of San Francisco.

19 This ruling was contrary to the -- state
20 law, to an accepted practices for the use of prior
21 testimony in administrative proceeding involving
22 the same parties and the same issue.

23 CARE asked the Commissioners to reverse
24 the July 6, 2006 ruling denying CARE's
25 introduction of the transcript of PG&E's Mr. Yeung

1 into the record as evidence in this case.

2 This evidence is material to CARE's
3 case. It is denial of due process in the equal
4 protection law to allow applicants to present its
5 case and denying CARE to make its presentation.

6 CARE represents the residents who will
7 not do well, have to live next to the proposed
8 power plant while the Energy Commission and staff
9 of the CFC -- CCSF do not.

10 Thank you.

11 ACTING CHAIRPERSON GEESMAN: Thank you,
12 Mr. Brown. Does the staff have any comment to
13 make on this item?

14 MS. ICHIEN: Good morning,
15 Commissioners. I'm Arlene Ichien here on behalf
16 of staff. Staff agrees with the Committee ruling
17 that the testimony from the CPUC case is
18 immaterial and irrelevant in this proceeding.

19 And the Committee, in making its ruling,
20 was well within its discretion conferred upon it
21 under the regulations of the Energy Commission,
22 under which the Presiding Member of the Committee
23 has the same powers as the Chairman of the
24 Commission in conducting proceedings, in
25 conducting hearings including ruling on the

1 admissibility of evidence.

2 There's no dispute here that the
3 testimony from the CPUC case is hearsay. And
4 CARE's witness, Mr. Homec, referred to the
5 transcript for the purpose of identifying a claim
6 that was made by the PG&E witness that if the
7 Jefferson-Martin transmission project were
8 completed, there would be no need for generation
9 in San Francisco.

10 With respect to that Mr. Homec does not
11 testify, based on his filed written testimony, as
12 to the accuracy of that statement. Only that he
13 agrees with it.

14 Under the Commission's regulations,
15 section 1212, hearsay is allowed for the purpose
16 to supplement or explain other evidence. Here Mr.
17 Homec's testimony that he agrees with the
18 conclusion is not in need of further explanation
19 by accepting into this record the CPUC transcript.
20 I think Mr. Homec's testimony is clear and speaks
21 for itself with respect to his agreement with that
22 conclusion.

23 In addition, Mr. Brown referred to the
24 fact that San Francisco was a party in the CPUC
25 case, and had the same -- or was dealing with the

1 same issue as in this case. And, in fact, that's
2 not quite accurate. Because the need for the
3 proposed San Francisco facility is not an issue
4 that the Commission must make a decision on in
5 this case.

6 And so, even if the testimony were
7 admitted into the record, it would go to an issue
8 that is not material for purposes of the
9 Commission's decision.

10 We don't believe that the testimony
11 falls within or meet the criteria for any of the
12 exceptions that would allow for the admission of
13 hearsay evidence into a civil action. And the
14 staff believes that the Commission should allow
15 the Committee's ruling to stand. That it did not
16 result in any prejudice or violation of due
17 process rights.

18 ACTING CHAIRPERSON GEESMAN: Thank you.
19 Does the applicant wish to make a comment?

20 MR. VARANINI: Thank you, Mr. Chairman.
21 I'm Gene Varanini; I'm with the DRP program; we're
22 counsel to the City and County of San Francisco.
23 And I'm representing them here today.

24 We agree wholeheartedly with the
25 Committee's decision. We filed numerous moving

1 papers that lay out our perspective on this
2 matter. And we support the staff's analysis, as
3 well.

4 But I think one of the things that was
5 raised this morning is that in some sense the
6 intervenors believe that the SFERP proceeding and
7 Jefferson-Martin proceedings have the same issues.
8 And as we pointed out in our moving papers,
9 nothing could be further from the truth.

10 In the Jefferson-Martin proceeding our
11 position and our focus was on advancing the
12 interest of putting that transmission line into
13 operation; getting it funded and built. And so
14 our perspective in that proceeding really had
15 nothing to do with SFERP. And we have no mutual
16 interest in terms of understanding that any party
17 in that proceeding was attempting to litigate a
18 later-filed CEC proceeding before the PUC.

19 So in that sense they were not the same
20 issues; we didn't have the same perspective. And
21 for that reason we think that the hearsay rule and
22 the lack of exceptions to the hearsay rule are
23 perfectly correct. And we believe that the full
24 Commission should support its Committee and affirm
25 the Committee's decision.

1 ACTING CHAIRPERSON GEESMAN: Thank you.
2 Now, Mr. Fay, I believe the Committee asked you to
3 prepare a motion which the Committee would like to
4 see the Commission adopt. Could you read that
5 into the record?

6 MR. FAY: Yes. The recommended language
7 for a motion on item 10(a) is that the Commission
8 finds that the testimony of Manho Yeung, appearing
9 on the January 12, 2004 transcript at the CPUC
10 hearing concerning the Jefferson-Martin 230 kV
11 transmission line, is not relevant to the May 31,
12 2006 Energy Commission evidentiary hearing on
13 alternatives for the San Francisco Electric
14 Reliability project AFC. And that the Commission
15 hereby affirms the Committee's July 6, 2006 ruling
16 on the matter.

17 ACTING CHAIRPERSON GEESMAN: Thank you.
18 Is there any discussion or questions the
19 Commission wishes to ask? Is there a motion on
20 the matter?

21 COMMISSIONER BYRON: Mr. Commissioner, I
22 move the Committee's recommendation.

23 ACTING CHAIRPERSON GEESMAN: Is there a
24 second?

25 COMMISSIONER ROSENFELD: Second.

1 ACTING CHAIRPERSON GEESMAN: All in
2 favor?

3 (Ayes.)

4 ACTING CHAIRPERSON GEESMAN: Thank you.
5 We'll go now to item 10(b). Mr. Fay.

6 MR. FAY: Thank you. Item 10(b) is the
7 July 10, 2006 appeal by CARE of the Committee's
8 ruling denying the joint motion of Intervenors
9 CARE and Sarvey -- actually the appeal is from
10 both parties -- denying the motion of CARE and
11 Sarvey to exclude applicant's opening brief.

12 And the background is as follows: At
13 the close of the May 31, 2006 evidentiary hearing
14 at the Energy Commission, the Hearing Officer
15 directed the parties to file opening briefs by
16 close of business on June 26th, and to file reply
17 briefs on July 10th.

18 On June 26th applicant filed its opening
19 brief at 5:53, 53 minutes after the close of
20 business. Less than three hours later Intervenors
21 CARE and Sarvey filed a joint motion to entirely
22 exclude applicant's opening brief. At the same
23 time both CARE and Sarvey failed to serve their
24 own respective opening briefs on counsel for
25 applicant. This was a violation of the

1 Committee's requirements in the orders granting
2 Sarvey's, and later CARE's, petitions to intervene
3 in this case granted on June 22, 2004, and July 9,
4 2004, respectively.

5 I'll just add that the failure to file
6 apparently had to do with a typographical error in
7 misaddressing the email to applicant's counsel.
8 However, this was kind of a rare mistake. These
9 parties had previously filed correctly and filed
10 correctly thereafter. In other words, there was
11 no excuse for this.

12 On July 5, 2006, the Committee denied
13 Intervenors' joint motion stating that
14 Intervenors' failure to properly serve their
15 opening briefs on applicant eliminated any
16 equitable argument based on applicant's untimely
17 filing, and noting that the remedy Intervenors
18 sought was entirely disproportionate to the
19 inconvenience caused other parties.

20 On July 10th Intervenors appealed the
21 matter to the full Commission.

22 ACTING CHAIRPERSON GEESMAN: Mr. Brown,
23 do you wish to address us on this item?

24 MR. BROWN: Yes, I do, Commissioners.

25 ACTING CHAIRPERSON GEESMAN: Go right

1 ahead.

2 MR. BROWN: I'm a black man and I have
3 six kids and I live in public housing near the
4 proposed site. There's no dispute that CARE has a
5 financial hardship, and therefore the Commission
6 docket's office will prepare the proof of service
7 and will serve CARE's documents and POS on the
8 parties to this application.

9 So what else, then? The Committee, and
10 possibly at your discretion today, you are
11 prejudiced against me because I'm poor and black.
12 Why else would the Committee blame CARE for the
13 docket stamp error as a reason to allow the
14 applicant's clearly untimely opening brief as part
15 of the record on which you will make your decision
16 without even a request to date a file out of time.

17 The Committee wrongly stated that CARE
18 did not serve its brief on applicant. CARE has
19 filed a petition to intervene with financial
20 hardship with the Commissioner, which was granted
21 on July 9, 2004. And so is excused from serving
22 all parties.

23 The Committee grants financial hardship
24 status. Petitioner may email its filings to those
25 on the proof of service list with email addresses

1 indicated, but must provide proper copies to
2 others. In addition, petitioner shall provide an
3 email copy to and a paper copy of all the filings
4 to the Commissioner's docket unit staff through
5 the docket unit and other appropriate entities
6 shall insure petitioner's filings are timely
7 distributed.

8 CARE did serve its brief on the
9 Commission's docket office according to the
10 Commission's regulation. Even though not required
11 by the regulation, CARE did electronically send its
12 brief to applicant's attorney, to the address that
13 the Commission's docket provides to CARE pursuant
14 to the Commission's regulations.

15 However, the docket office provided the
16 wrong email address. CARE complied with the
17 Commission's regulations as required by law, and
18 should not be penalized for it. This is clear
19 violation of CARE's due process and equal
20 protection of the law, protection as specific by
21 the Constitution of California and the United
22 States.

23 CARE asks the full Commission to review
24 and rescind the July 6, 2006 Committee ruling
25 regarding joint motion of CARE and Sarvey to

1 strike opening brief of applicant.

2 Thank you.

3 ACTING CHAIRPERSON GEESMAN: Thank you,
4 Mr. Brown. Is Mr. Sarvey on the line? I don't
5 see him in the audience, either, so I'll assume
6 that he is not represented here today.

7 Does the staff wish to make a comment?

8 MS. ICHIEN: Yes, Commissioners. I
9 think in this instance the Intervenors are trying
10 to make a mountain out of a grain of sand in
11 moving to strike an opening brief, the applicant's
12 opening brief, that was electronically 53 minutes
13 late.

14 As a practical matter, the Intervenors
15 ended up receiving the applicant's opening brief
16 one day, conceivably two or more days, earlier
17 than they otherwise would have, had the applicant
18 chosen to mail its opening brief, which it had the
19 right to do, based on proof of service
20 instructions dated July 5, 2006 from the
21 Committee.

22 And so as a result of having received
23 the applicant's opening brief the evening of the
24 day it was due there was no prejudice or due
25 process violations that occurred.

1 And the Committee's ruling, again was
2 well within its discretion to make, given the
3 powers that are conferred upon the Presiding
4 Member under the Commission's regulations.

5 And I think ultimately it benefits the
6 record in this case to have all of the arguments,
7 the final arguments from all of the parties, so
8 that the Committee and the Commission can make as
9 well-informed a decision and as well-founded a
10 decision as possible in this case.

11 So, again the staff believes that the
12 Commission should allow the Committee's ruling to
13 stand, allowing the opening brief of the applicant
14 to remain in the record.

15 ACTING CHAIRPERSON GEESMAN: Thank you.
16 Does the applicant have anything to say?

17 MR. VARANINI: Yes, Mr. Chairman. We
18 acknowledged to the Committee that we were 53
19 minutes late. We apologized for that. There was
20 a glitch in our system. We got the document out
21 as quickly as possible. And we have indicated in
22 our moving papers that we feel that having our
23 brief stricken is certainly both Draconian and
24 inappropriate, given that delay.

25 As well, we note that in one set of

1 ruling papers there's an inference that we had 53
2 minutes to see the filings from the Intervenors
3 and to restructure our brief. And I think it's
4 important to note that we didn't get their brief
5 or any of their moving papers so that we weren't
6 able to engage in any chicanery during the 53-
7 minute glitch.

8 And I think it's certainly appropriate
9 that the Committee's decision, and given the level
10 of the error on our part, and the significance of
11 the action which the Intervenors propose. So we
12 support the Committee's decision.

13 ACTING CHAIRPERSON GEESMAN: Thank you.
14 Now, Mr. Fay, would you read the Committee's
15 recommended motion into the record?

16 MR. FAY: Yes, I will. But if I may,
17 Mr. Chairman, just one correction. Mr. Brown
18 apparently is mistaken as to the meaning of the
19 Committee's order granting CARE's petition to
20 intervene.

21 That order, and I think it's recent
22 conduct of all siting committees, in an effort to
23 limit the range of the hardship status so that it
24 didn't prejudice other parties. So even parties
25 with hardship status must file directly on all

1 other parties. And if those parties have an email
2 address, they must use that email address and file
3 directly. They can't merely file with the docket
4 office and then expect the staff at the Energy
5 Commission's Docket Office to quickly serve all
6 the other parties. That puts the burden in the
7 wrong place.

8 In addition, as to the error in the
9 address for the applicant's attorney, there is an
10 official proof of service that is online and in
11 the docket, and placed out before the world. And
12 it's maintained throughout a case in all of our
13 siting cases. Parties are responsible to use
14 that. If they happen to pick up a typographical
15 error from someplace else in the process, that
16 doesn't forgive them from properly serving all the
17 parties.

18 I think that's an important point to
19 make, because I think it would undermine our
20 process if parties could essentially blame
21 somebody else for their error in making a proper
22 service.

23 Now, I'll read the proposed language
24 For item 10(b): The Committee finds that
25 Intervenors CARE and Sarvey failed to properly

1 serve their opening briefs on applicant, and now
2 seek to entirely strike applicant's untimely filed
3 opening brief, a remedy which is both inequitable
4 and entirely disproportionate to the inconvenience
5 Intervenors have experienced. Therefore,
6 Intervenors appeal is denied, and the Commission
7 hereby affirms the Committee's July 5, 2006 ruling
8 on the matter.

9 ACTING CHAIRPERSON GEESMAN: Is there
10 discussion or question that the Commission would
11 like to engage in?

12 Is there a motion?

13 COMMISSIONER BYRON: Mr. Commissioner, I
14 move the Committee's recommendation for item
15 10(b).

16 ACTING CHAIRPERSON GEESMAN: Is there a
17 second?

18 COMMISSIONER ROSENFELD: Second.

19 ACTING CHAIRPERSON GEESMAN: All in
20 favor?

21 (Ayes.)

22 ACTING CHAIRPERSON GEESMAN: Thank you.
23 Let's move on then to item 10(c). And I believe,
24 Mr. Fay, you wanted to consolidate this with
25 10(d), as well?

1 MR. FAY: Yes, with the Commission's
2 indulgence I think we can combined item 10(c) and
3 10(d). They both resulted from a motion by CARE.
4 The 10(c) is the Committee's referral to the full
5 Commission of a ruling which denied CARE's motion
6 to strike staff's reply brief; and item (d) is the
7 Committee's referral to the full Commission of the
8 Committee's ruling denying CARE's motion to strike
9 applicant's reply brief.

10 And the background is as follows: On
11 July 11, 2006, staff filed its reply brief 24
12 hours late. Staff also filed a request to file
13 its late brief.

14 July 12th CARE filed a motion to strike
15 the reply briefs of the CEC Staff and applicant.

16 July 13th the Committee's ruling was
17 issued, which allowed staff's late-filed brief,
18 but granted all other parties eight days to file
19 an additional response.

20 July 17th the Committee ruling denied
21 CARE's motion to strike both reply briefs and
22 referred it to the full Commission. And on July
23 20th Sarvey and CARE each filed a third round
24 brief benefitting from the Committee's ruling.

25 I should point out that CARE's argument

1 that in addition to the staff's reply brief being
2 struck, that applicant's reply brief also be
3 struck was on CARE's theory that since the
4 Commission had not yet ruled on striking
5 applicant's opening brief, that therefore
6 applicant's reply brief should also be struck.
7 And that argument was not supported by the
8 Committee.

9 ACTING CHAIRPERSON GEESMAN: Thank you,
10 Mr. Fay. Mr. Brown, do you care to address us on
11 this?

12 MR. BROWN: What about the applicant's
13 motion to file out of time? I mean they had
14 opportunity to file out of time, but they didn't
15 even file that.

16 ACTING CHAIRPERSON GEESMAN: Do you have
17 any other comments on items 10(c) or (d), Mr.
18 Brown?

19 MR. BROWN: Once again, why else would
20 the Commission allow -- Committee allow the
21 Commission Staff to file its reply brief, as part
22 of the record on which we will make your decision,
23 a day late. And allow the applicant to file a
24 reply brief when the Committee know that
25 applicant's opening brief untimely, what else than

1 the Committee and possibly at the discretion
2 today. You are prejudiced against me because I'm
3 poor and black.

4 Our motion is to strike the CEC Staff
5 reply brief for the staff's failure to file within
6 the due date of July the 10th. And the motion to
7 strike the applicant's reply for their failure to
8 file their opening brief with the specific CEC
9 closing business on the June the 26th, 2006, as
10 directed by the Hearing Officer.

11 The applicant failed to include, as with
12 its opening brief, a motion to file out of time.
13 The applicant filed its opening brief after 5:00
14 p.m. Despite this undisputed fact, the Committee
15 denied CARE's opening -- CARE's motion to strike
16 the applicant's opening brief. And allowing the
17 applicant to file an opening brief, the Committee
18 set a precedent that it is okay for parties who
19 support the project's approval. And the
20 applicant, and the Commission Staff, for example,
21 to ignore the Commission's regulations and flaunt
22 the orders of the Hearing Officer and file their
23 pleadings whenever they please at the sole
24 discretion. And therefore as a direct result of
25 this prejudicial action, the Commission Staff

1 filed its reply brief out of time.

2 The CEC Staff, by filing this reply
3 brief a day late, was provided 24 hours to
4 consider CARE's reply brief, and then file its
5 reply brief and the response to CARE's reply
6 brief.

7 To offer CARE an opportunity to respond
8 at a later date is of no benefit to CARE, because
9 the CEC Staff already has an unfair advantage over
10 CARE in that it can apparently file its brief
11 whenever it pleases, which sets a bad precedent
12 for the Commissioners siting cases in the future
13 that CARE may participate in.

14 In light of the fact that CARE -- that
15 CEC Staff is fully aware of the improper action
16 taken by the applicant in filing their opening
17 brief, and the Hearing Officer's threat of
18 sanctions for filing, the Commissioners -- for
19 violating the Commission's regulation. And it
20 would be improper for the Committee to allow the
21 Commission Staff to file their reply brief then a
22 day late.

23 Therefore, we hereby move to strike the
24 reply brief of the CEC Staff filed on July the
25 11th. To do otherwise will demonstrate prejudice

1 against CARE and its members who are predominately
2 low-income people of color, residents impacted in
3 the community of Bay View Hunter's Point in San
4 Francisco. A violation of due process and equal
5 protection.

6 Thank you.

7 ACTING CHAIRPERSON GEESMAN: Thank you,
8 Mr. Brown. Does the staff have any comment?

9 MS. ICHIEN: Yes, Commissioners. With
10 respect to the staff's late-filed reply brief I
11 regret the oversight of having filed what had
12 already been an already written reply brief,
13 written by the staff counsel in this case, before
14 he left in early July for his summer trip.

15 In staff's request for leave to file the
16 brief, the reply brief that day after it was
17 officially due, staff also suggested to the
18 Committee that should it accept the staff's reply
19 brief, it offered an opportunity to the other
20 parties to file an additional response. And the
21 Committee so ruled.

22 And, again, such a ruling is well within
23 the discretion of the Presiding Member to make
24 under the regulations of the Commission.

25 Mr. Brown referred to the staff as

1 having violated a Commission regulation for its
2 late filing of the reply brief. But, in fact, it
3 was a noncompliance with a Committee directive
4 that was given at the end of the March 31, 2006
5 evidentiary hearing. And, again, the Committee's
6 directive is well within the Presiding Member's
7 purview to schedule events such as briefing by the
8 parties as the Committee sees fit. And to accept
9 and to make rulings on the acceptability of
10 filings that may happen to be late.

11 In this case the Intervenors, in fact,
12 did file an additional response on July 21, when
13 it was due. And so did take advantage of the
14 additional opportunity to file an additional
15 response to the staff's reply brief.

16 Again, there was no prejudice or
17 violation of due process rights. And, in fact, an
18 additional opportunity afforded the Intervenors,
19 which they did take advantage of in this case.

20 So the staff believes the Commission
21 should allow the Committee's ruling to stand, and
22 allow the record to remain with all of the
23 parties' final arguments in their briefs.

24 Thank you.

25 ACTING CHAIRPERSON GEESMAN: Does the

1 applicant have a comment?

2 MR. VARANINI: Yes, Mr. Chairman. We're
3 puzzled that there was a motion to strike our
4 reply brief which was timely filed. We don't
5 understand that, and we certainly support the
6 Committee's ruling on that matter.

7 In terms of the staff's late filing and
8 their other moving papers, we'd note that the
9 Committee, in exercising its prerogatives, granted
10 the Intervenors almost two more weeks to respond
11 and to provide a sur-reply brief to the record
12 which they did so thoroughly and diligently.

13 So we think to the extent there was any
14 implication from a one-day late filing that the
15 Committee, in exercising its discretion, certainly
16 returned and restored all equities to all parties.
17 And we support the Committee's ruling.

18 ACTING CHAIRPERSON GEESMAN: Mr. Fay,
19 would you read into the record the Committee's
20 recommended motion?

21 MR. FAY: Certainly. For items 10(c)
22 and 10(d) the Committee recommends the following
23 motion: The Committee's ruling, which gave
24 Intervenors a third round of briefing, has
25 equitably compensated Intervenors for any

1 prejudice they may have experienced by staff's
2 untimely filing of its reply brief.

3 CARE's motion to strike applicant's
4 reply brief is completely without merit.
5 Therefore, the prior ruling of the Committee to
6 allow staff's and applicant's reply briefs, and to
7 deny CARE's motion is affirmed.

8 ACTING CHAIRPERSON GEESMAN: Are there
9 questions or any discussion the Commission would
10 like to engage in?

11 Is there a motion?

12 COMMISSIONER BYRON: Mr. Commissioner, I
13 move the Committee's recommended motion on agenda
14 items 10(c) and (d).

15 COMMISSIONER ROSENFELD: Second.

16 ACTING CHAIRPERSON GEESMAN: All in
17 favor?

18 (Ayes.)

19 ACTING CHAIRPERSON GEESMAN: Thank you.
20 Now, Mr. Fay, to 10(e).

21 MR. FAY: 10(e) is the Committee's
22 referral to the full Commission of a ruling
23 denying Intervenor Sarvey's request for a
24 Committee conference.

25 On July 13th Intervenor Sarvey filed a

1 request for a Committee conference, urging that
2 things were out of control and it was essential to
3 have such a conference. The Committee denied
4 that, but did refer the matter to the full
5 Commission to take place today at this opportunity
6 here. And that Committee ruling was issued on
7 July 17th.

8 And it was part of the same motion that
9 denied CARE's motion to strike both the reply
10 briefs.

11 We have no recommended language. the
12 Committee only recommends that the Commission
13 entertain any concerns Mr. Sarvey may have.

14 ACTING CHAIRPERSON GEESMAN: Can I ask
15 again, is Mr. Sarvey on the phone? And I don't
16 see him in the audience, so this matter, I
17 presume, would die if the Commission chooses not
18 to -- excuse me, Mr. Sarvey?

19 MR. SARVEY: Thank you, Commissioner
20 Geesman. I had no intention of appealing this to
21 the full Commission. That was done by the
22 Committee. I apologize for wasting valuable
23 business meeting time on this issue.

24 Basically I'm satisfied with the remedy
25 provided by the Committee for staff's late filing.

1 I believe that applicant still should be required
2 to file for leave to file late. That's pretty
3 much procedure, and the applicant should be
4 required to do such.

5 And I also object to the fact that my
6 opening brief is being characterized as not being
7 served on the applicant's attorney because if you
8 look on the July 5, 2006 docketing of it by
9 dockets, they admit the applicant's attorney had
10 failed to provide the correct email address. So I
11 don't see how that falls onto the Intervenors,
12 myself or CARE.

13 And that's all I have to say. I
14 apologize once again; never intended this to go
15 before the full Commission. Thank you.

16 ACTING CHAIRPERSON GEESMAN: Thank you
17 for your comments, Mr. Sarvey.

18 Mr. Fay, as I understand it then, item
19 10(e) is now moot.

20 MR. FAY: I believe that's correct.

21 ACTING CHAIRPERSON GEESMAN: Well, I
22 think that disposes of the matter entirely.

23 MR. FAY: It does.

24 ACTING CHAIRPERSON GEESMAN: Thank you
25 for helping us through it.

1 MR. FAY: Okay. Thank you.

2 ACTING CHAIRPERSON GEESMAN: We'll now
3 go to item 12, Commission Committee presentations.
4 Do we have any? Doesn't appear so.

5 Item 13, the Chief Counsel's report.

6 MR. CHAMBERLAIN: Yes, Mr. Chairman, I
7 have reported to you on a number of occasions
8 about the Supreme Court matter in the ARI versus
9 Energy Commission matter. That matter has now
10 made its way back to the Ninth Circuit. And the
11 mandate from the Ninth Circuit has made its way to
12 the District Court.

13 The District Court has set a status
14 conference on September -- maybe it's August 28th,
15 I'm not sure. In any case, August 31st, I'm not
16 sure. But a status conference has been set in the
17 near future. We anticipate that this should be a
18 formality, but we will keep you informed if there
19 are any surprises.

20 ACTING CHAIRPERSON GEESMAN: Questions?
21 Thanks, Bill.

22 Executive Director's report, item 14.

23 MR. MATTHEWS: The Executive Director is
24 on personal business and will be back on August
25 14th. And I'm looking forward to his return.

1 (Laughter.)

2 ACTING CHAIRPERSON GEESMAN: Item 15,
3 Legislative Director's report. I don't see the
4 Leg Staff.

5 Item 16, Public Adviser's report. No
6 Public Adviser's report.

7 Item 17, public comment. Is there any
8 public comment?

9 Very well, we'll be adjourned. Thank
10 you very much.

11 (Whereupon, at 11:05 a.m., the business
12 meeting was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of August, 2006.

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