

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, SEPTEMBER 26, 2007

10:03 A.M.

Reported by:
Peter Petty
Contract No. 150-07-001

COMMISSIONERS PRESENT

Jackalyne Pfannenstiel, Chairperson

Arthur Rosenfeld

John L. Geesman

Jeffrey D. Byron

STAFF and CONTRACTORS PRESENT

Melissa Jones on behalf of
Executive Director Blevins

William Chamberlain, Chief Counsel

Harriet Kallemeyn, Secretariat

Connie Bruins

Christopher Meyer

Kevin Bell

Paul Kramer

Dick Ratliff

Bernard Treanton

Steve Williams

Martha Brook

Arthur Soinski

Randy Roesser

Jason Orta

Misa Ward

Kerry Willis

William Walters, Consultant
Aspen Environmental
(via teleconference)

PUBLIC ADVISER

Nicholas Bartsch

Michael Monasmith

ALSO PRESENT

Jane Luckhardt, Attorney
Downey Brand Attorneys, LLP

Harry Scarborough
MMC Energy North America, LLC

David Butterfield
Federal Aviation Administration

Greggory Wheatland, Attorney
Ellison, Schneider and Harris, LLP

Paul N. Haavik, Property Manager
Checkaboard Square Rentals, Inc.

Mike Argentine
Calpine Corporation

Scott Flint
California Department of Fish and Game

Gary Cathey
Office of Airports
Caltrans Division of Aeronautics

Carol Ford
California Pilots Association

Andrew Wilson, III

Robert Bauman, Public Works Director
City of Hayward

James Sorensen, Director, Community Development
Executive Director, Redevelopment Agency
Airport Land Use Commission
County of Alameda

Krishneel Lall
Sierra Club San Francisco Bay Chapter

ALSO PRESENT

Kim Finn

Juanita Gutierrez

Stuart M. Flashman, Attorney
Citizens for Alternative Transportation Solutions

Ernest Pacheco

Nancy Rader
California Wind Energy Association

Michael T. Azeka
AES Alternative Energy

Kevin Martin
Acciona Energy North America Corporation

Andy Linehan
PPM Energy

Brenda LeMay
Horizon Wind Energy

Paul Vercruyssen
Center for Energy Efficiency and Renewable
Technologies

Julia Levin
National Audubon Society
representing Sierra Club; Defenders of Wildlife

Michelle Conway
Oak Creek Energy Systems

Nicole Hughes
RES America Developments

Stu Webster
Clipper Windpower Development Co., Inc.

Greg Blue
Enexco Development

Matt Giblin
Invenergy

ALSO PRESENT

Eli Saddler
Golden Gate Audubon Society

Fred Noble
Wintec Energy

Linda Parker
Kern Wind Energy Association

Garry George
L.A. Audubon Society

Patricia Brown (via teleconference)
University of California Los Angeles

John Day (via teleconference)
County of Santa Barbara

Kenny Stein (via teleconference)
Florida Power and Light Energy

Bronwyn Hogan (via teleconference)
SAC

I N D E X

| | Page |
|--|------|
| Proceedings | 1 |
| Items | 1 |
| 1 Consent Calendar | 1 |
| 2 Midway Sunset Cogeneration Project | 1 |
| 3 Chula Vista Energy Upgrade Project Data Adequacy Recommendation | 4 |
| 4 Russell City Energy Center | 7 |
| Evidentiary Hearing | 10 |
| David Butterfield, FAA, witness | 11 |
| Examination/Direct Testimony | 11 |
| Questions | 16 |
| Exhibits 109, 110 in evidence | 24 |
| Public Comment | 25 |
| 5 National Renewable Energy Laboratory | 82 |
| 6 San Jose State University Foundation | 85 |
| 7 Lawrence Berkeley National Laboratory | 88 |
| 8 ADI Thermal Power Corporation | 90 |
| 9 California Resources Agency | 92 |
| 10 Existing Renewable Facilities Program Funding Award Notices | 93 |
| 11 California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development | 97 |
| 12 Minutes | 187 |
| 13 Commission Committee Presentations/ Discussion | 188 |
| 14 Chief Counsel's Report | 188 |
| 15 Executive Director's Report | 188 |

I N D E X

| | Page |
|----------------------------------|------|
| Items - continued | |
| 16 Legislative Director's Report | 188 |
| 17 Public Adviser's Report | 188 |
| 18 Public Comment | 189 |
| Adjournment | 189 |
| Certificate of Reporter | 190 |

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

2 10:03 a.m.

3 CHAIRPERSON PFANNENSTIEL: Good morning.
4 This is the California Energy Commission's
5 biweekly business meeting. Please join me in the
6 Pledge of Allegiance.

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

9 CHAIRPERSON PFANNENSTIEL: We'll begin
10 with the consent calendar. Is there a motion on
11 the consent calendar?

12 COMMISSIONER ROSENFELD: I move the
13 consent calendar.

14 COMMISSIONER GEESMAN: Second.

15 CHAIRPERSON PFANNENSTIEL: All in favor?

16 (Ayes.)

17 CHAIRPERSON PFANNENSTIEL: The consent
18 calendar is approved.

19 Item number 2, possible approval of a
20 petition to increase the amount of unreacted
21 ammonia (ammonia slip) into the stack emissions
22 from 5 to 10 parts per million at the Midway
23 Sunset Cogeneration Project. Good morning.

24 MS. BRUINS: Good morning, Chairman
25 Pfannenstiel, Commissioners. The amendment before

1 you this morning was received on June 29th from
2 Midway Sunset Cogeneration Project.

3 The petition requests to increase the
4 amount of unreacted ammonia, referred to as
5 ammonia slip, into the stack emissions from 5 to
6 10 parts per million.

7 The increase is required because of the
8 addition of a selective catalytic reduction system
9 in 2003, and installation of an evolution rotor in
10 2006. I'll discuss that a little more later on in
11 my presentation.

12 This is a 225 megawatt natural-gas fired
13 cogeneration facility located in Kern County. And
14 it's owned and operated by Midway Sunset Cogen
15 Company. The project was certified in 1987 and
16 has been operational since May of 1989. The
17 project uses cogeneration steam to aid in the
18 enhanced oil recovery process.

19 In September 2003 an amendment was
20 approved by the Commission to add SCR systems to
21 all three turbines. The addition of SCR was
22 required to meet the District's rule 4703 NOx
23 limit of 5 ppm.

24 The SCR systems resulted in a small
25 amount of ammonia slip being emitted into the

1 stack emissions. The District's BACT procedure
2 stimulated an ammonia slip emission limit of 10
3 ppm.

4 Since the California Air Resources Board
5 Staff guidelines recommend an ammonia slip limit
6 of 5 ppm, and Midway Sunset included with the
7 petition a manufacturer's performance guarantee of
8 5 ppm, the Commission Staff recommended, and the
9 project agreed to, a 5 ppm ammonia slip.

10 Then in October of 2006 an amendment was
11 approved to install an evolution rotor to increase
12 output by 9 percent, approximately 7 megawatts,
13 lower the heat rate and reduce NOx from 5 to 2
14 ppm.

15 However, subsequent field tests have
16 shown that Midway Sunset cannot maintain a NOx
17 emission of less than 2 ppm, and hold the ammonia
18 slip under the Commission's 5 ppm limit.

19 Our amendment process is a public
20 process. The notice of receipt was published on
21 July 17th. Staff's analysis was published on
22 August 10. And I have had no responses to date.

23 Staff's analysis concluded that there
24 will be no new or additional unmitigated
25 significant environmental impacts or violation of

1 LORS associated with these changes, and the
2 required findings of 1769 can be made.

3 Staff recommends approval of the
4 petition and the revisions to Commission
5 certification air quality 48.

6 That concludes my presentation.
7 Representatives from the project are here if you
8 have any questions.

9 CHAIRPERSON PFANNENSTIEL: Thank you.
10 Are there questions?

11 COMMISSIONER GEESMAN: I would move the
12 recommendation. This got quite a bit of
13 discussion in the Siting Committee; and it was our
14 belief that it's important from a NOx control
15 perspective to make the change. And that there
16 appears to have been no opposition from any
17 members of the public or any agencies.

18 So I would move recommendation.

19 COMMISSIONER BYRON: I second it.

20 CHAIRPERSON PFANNENSTIEL: All in favor?

21 (Ayes.)

22 CHAIRPERSON PFANNENSTIEL: It's
23 approved, thank you.

24 MS. BRUINS: Thank you.

25 CHAIRPERSON PFANNENSTIEL: Item 3,

1 possible approval of the Executive Director's data
2 adequacy recommendation for Chula Vista Energy
3 Upgrade Project.

4 MR. MEYER: Good morning, Chair
5 Pfannenstiel and Commissioners. I'm Christopher
6 Meyer. I'll be staff's project manager for the
7 Chula Vista Energy Upgrade Project. And Kevin
8 Bell is with me as -- representation.

9 August 10, 2007, MMC Energy filed a AFC
10 for the Chula Vista Energy Upgrade Project. It's
11 a nominal 100 megawatt peaker project consisting
12 of two LM6000s. It will be located in the City of
13 Chula Vista, San Diego County, on the site of the
14 existing Chula Vista Power Plant. And thus will
15 be using the linear facilities associated with
16 that current project.

17 If the project's approved construction
18 will begin in the fall of 2008 with commercial
19 operation planned by the fall of 2009.

20 Staff initially found nine technical
21 areas were data inadequate, and subsequently we
22 have provided those data adequacy worksheets to
23 the applicant on September 6th. And the applicant
24 was able to give us draft supplement to the AFC by
25 the 14th.

1 And staff actually fairly expeditiously
2 was able to review those draft sections; found
3 that they addressed the data inadequacies in all
4 nine areas. And we were able to, with the
5 submission of the full supplement package,
6 recommend a data adequacy for the project.

7 So, at this point I would recommend that
8 the Commission accept the Chula Vista Energy
9 Upgrade Project as complete and data adequate.
10 And request the assignment of a committee.

11 CHAIRPERSON PFANNENSTIEL: Thank you,
12 Mr. Meyer. Any comments from the applicant?

13 MS. LUCKHARDT: At this point -- this is
14 Jane Luckhardt from Downey Brand; and with me here
15 today is Harry Scarborough from MMC. We would
16 just like to take a moment to thank the staff for
17 their efforts in getting the data adequacy
18 worksheets to us.

19 We'd also like to thank Dave and his
20 folks for turning around the response, and staff
21 in reviewing our response to the data adequacy
22 issues. And we're pleased to be here today found
23 as data adequate.

24 CHAIRPERSON PFANNENSTIEL: Are there
25 questions of the staff or the applicant on this?

1 Is there a motion to approve the
2 Executive Director's recommendation?

3 COMMISSIONER GEESMAN: So moved.

4 COMMISSIONER BYRON: Second.

5 CHAIRPERSON PFANNENSTIEL: All in favor?

6 (Ayes.)

7 CHAIRPERSON PFANNENSTIEL: As to the
8 appointment of a committee, I propose a committee
9 of myself as Presiding Member, and Commissioner
10 Boyd, who chose not to be here today -- who was
11 not able to be here today -- as the Associate
12 Member.

13 Is there a motion for that Committee?

14 COMMISSIONER GEESMAN: So moved.

15 COMMISSIONER ROSENFELD: So moved.

16 (Laughter.)

17 CHAIRPERSON PFANNENSTIEL: A second?

18 COMMISSIONER GEESMAN: I'll second it.

19 CHAIRPERSON PFANNENSTIEL: All in favor?

20 (Ayes.)

21 CHAIRPERSON PFANNENSTIEL: Okay, so
22 there is a Committee. Thank you.

23 MR. MEYER: Thank you very much.

24 CHAIRPERSON PFANNENSTIEL: Item number
25 4, continued consideration of the Presiding

1 Member's amended decision for the Russell City
2 Energy Center. Mr. Kramer.

3 HEARING OFFICER KRAMER: Good morning,
4 Madam Chair and Members of the Commission.

5 Two weeks ago this item was before the
6 Commission and a request came in from the Federal
7 Aviation Administration to continue the item so
8 that they could review a few points.

9 COMMISSIONER BYRON: Mr. Kramer, is your
10 microphone on?

11 CHAIRPERSON PFANNENSTIEL: The green
12 light needs to be illuminated.

13 HEARING OFFICER KRAMER: Okay. Two
14 weeks ago this matter was before the Commission
15 and the FAA that morning requested additional time
16 in which to consider several aspects of the
17 project and its relationship to the Hayward
18 Airport, which is near to the project.

19 Since then the FAA sent the Commission a
20 letter last week on the 18th. And, again,
21 yesterday, a followup letter explaining its
22 findings and conclusions.

23 David Butterfield, who is one of the
24 main actors behind the preparation of that letter
25 is here today and will be available to explain

1 that in a little more detail and answer questions.

2 During that time we've also received
3 several letters including one from the County
4 Supervisor for the area, and the County Community
5 Development Director, requesting additional time
6 for the County agencies, and also for the
7 community, to consider this project and provide
8 comments to the Commission.

9 I recommend that the Commission reopen
10 the evidentiary record, limited to the topic of
11 aviation safety, to take additional evidence that
12 the parties may propose. And then close that
13 record and consider public comments on all the
14 aspects of the decision. And then make an
15 appropriate determination.

16 CHAIRPERSON PFANNENSTIEL: Commissioner
17 Geesman.

18 COMMISSIONER GEESMAN: My recommendation
19 would be that we proceed as Mr. Kramer has
20 suggested. I would also recommend that we be
21 prepared to resolve the matter today. We've had
22 extensive hearings in the community previously.
23 And while I recognize that there are a number of
24 people and government officials that think that we
25 could beneficially spend more time on it, I don't,

1 myself, believe that that would, in fact, lead to
2 a better or more informed decision.

3 So I would recommend against granting
4 the continuance requests, but that we certainly
5 should reopen the record, take in the aviation
6 safety material, give the parties their
7 opportunity to cross-examine. And certainly hear
8 from members of the public that are here today, on
9 aviation and any other subject that members of the
10 public wish to address us on.

11 CHAIRPERSON PFANNENSTIEL: Okay, so the
12 evidentiary record is open. And what additional
13 evidence do we have, Mr. Kramer? Is it the
14 material that was docketed yesterday, the letter
15 from the FAA?

16 HEARING OFFICER KRAMER: I'll leave it
17 to staff or the applicant to introduce them, but I
18 think the two relevant documents would be the
19 September 18 and September 25 letters from the
20 FAA.

21 And then I would suggest that Mr.
22 Butterfield come forward and be sworn as a
23 witness.

24 CHAIRPERSON PFANNENSTIEL: Fine. Mr.
25 Butterfield.

1 Whereupon,

2 DAVID BUTTERFIELD

3 was called as a witness herein, and after first
4 having been duly sworn, was examined and testified
5 as follows:

6 THE REPORTER: Please state and spell
7 your full name for the record.

8 MR. BUTTERFIELD: David Allan
9 Butterfield, D-a-v-i-d A-l-l-a-n
10 B-u-t-t-e-r-f-i-e-l-d.

11 CHAIRPERSON PFANNENSTIEL: Thank you,
12 Mr. Butterfield.

13 MR. BUTTERFIELD: Thank you.

14 EXAMINATION

15 CHAIRPERSON PFANNENSTIEL: You were the
16 author of the letter that was sent on the 18th,
17 and then again a different letter on the 25th?

18 MR. BUTTERFIELD: That is correct.

19 CHAIRPERSON PFANNENSTIEL: Why don't you
20 describe what was in those letters.

21 MR. BUTTERFIELD: I'd be happy to. And,
22 thank you, I want to express on behalf of FAA
23 Flight Standards, the opportunity to address this
24 issue. We were brought into it late in the game,
25 unfortunately, because of how business is done

1 inside of a large bureaucracy. And thank you for
2 the opportunity.

3 In the first letter we basically say
4 that the FAA did a safety risk analysis, which is
5 a statistical analysis of the risk of aircraft
6 flying through an industrial plume.

7 That analysis concluded that the risk is
8 very low, on the order of 10-to-the-minus-9th.
9 The target level of safety for general aviation
10 aircraft is established at 10-to-the-minus-7th.
11 So it is a acceptably low level of risk.

12 However, there's the statistical data is
13 not substantiated by flight test data. It's
14 strictly statistical data. And therefore the FAA
15 said -- or the Safety Risk Analysis then stated,
16 in spite of the already low risk, we recommend
17 pilots avoid flying through industrial plumes when
18 below 1000 feet above the site.

19 In our initial assessment we were led to
20 believe that the traffic pattern, the VFR, the
21 visual traffic pattern at the Hayward Executive
22 Airport, was at a mile and a half, which basically
23 put the traffic pattern over the Russell City
24 Energy Center.

25 We have subsequently found out, through

1 radar and traf data, and through my visual
2 observations, that the VFR traffic pattern is
3 actually at a mile. And that is consistent with
4 the recommended FAA pattern for that category of
5 aircraft that operate out of the Hayward Airport,
6 that it is a mile. But it has a half-mile buffer
7 to allow for an increase in the number of aircraft
8 in the pattern, and the speed of the aircraft.

9 Obviously, the more aircraft in the
10 pattern, the more airspace it's going to occupy.
11 The faster an aircraft is in the pattern, the
12 larger piece of sky that it has to fly through in
13 order to maneuver for a landing.

14 So, even though the -- I acknowledge
15 that the vast majority of aircraft operating in
16 and out of Hayward will be at the one-mile range
17 and will not be affected by the Russell City
18 Energy Center, but there will be aircraft, when
19 it's necessary, to operate at the more extended
20 pattern, or on departure from Hayward, or possibly
21 on arrival into Hayward, that are currently flying
22 over the proposed site. It's a very low number.

23 Now, the FAA has said, all right, based
24 on our analysis, statistical analysis, if an
25 aircraft inadvertently strays into an industrial

1 plume, the chances of catastrophic effect are
2 minimal. But that has not been substantiated by
3 flight tests. So therefore pilots are recommended
4 to see and avoid.

5 So the question now becomes is it
6 reasonable to expect a pilot operating out of
7 Hayward to see and avoid the plume that is, for
8 the most part, not visible. Which means the pilot
9 has to look down on the ground, locate the plant,
10 I mean it's got a couple of stacks to 146 feet, I
11 believe, so that shouldn't be too difficult to do,
12 okay.

13 In our initial letter when we thought
14 that the pattern was over the Russell City Energy
15 Center we stated that we did not think that that
16 was a reasonable expectation for a pilot in the
17 traffic pattern who's looking for his interval,
18 looking for his position in the pattern,
19 monitoring where the runway is, and responding to
20 air traffic control, to look down on the ground
21 and find the power plant.

22 Now, since the majority pattern is at a
23 mile instead of a mile and a half, that is less
24 than impact. We still have aircraft on departure
25 and arrival that have to see and avoid that plume

1 below 1000 feet. And they cannot climb above 1000
2 feet because of conflicting traffic going into
3 Oakland. So they have to remain below 1000 feet
4 until they're west of the San Francisco Bay
5 shoreline.

6 As my second letter stated, that's
7 largely problematic. On departure pilots are
8 going to be configuring their aircraft for climb.
9 They're going to be busy flying the airplane, and
10 the aircraft will be in a nose-high attitude.
11 They would have to make a conscious effort to look
12 out, locate the plume and fly around it. And,
13 again, it's not a visible plume.

14 I can guarantee the Commission, I can
15 guarantee the Commission that there will be
16 aircraft that will fly through the plume if the
17 plant goes into place. Will it have catastrophic
18 impact? According to the safety risk analysis,
19 no.

20 I'll be happy to answer any questions.

21 CHAIRPERSON PFANNENSTIEL: Questions
22 from the Commissioners? Questions from the staff?
23 Commissioner Geesman.

24 COMMISSIONER GEESMAN: You have also
25 recommended a series of changes to the conditions

1 that the Commission Committee had previously
2 proposed, is that correct?

3 MR. BUTTERFIELD: What we are saying,
4 sir, is that the FAA is not in the business of
5 land use, okay. If the Commission decides to
6 proceed with -- to approve the Russell City Energy
7 Center, the FAA would like to see these
8 implemented.

9 COMMISSIONER GEESMAN: Thank you.

10 MR. BUTTERFIELD: Yes, sir.

11 CHAIRPERSON PFANNENSTIEL: And let me
12 just, as I looked at those conditions, they looked
13 like they were geared towards pilot avoidance.
14 They were pilot information and ways of offering
15 notices to airmen that would keep them away from
16 the plume, is that correct?

17 MR. BUTTERFIELD: That is correct.

18 CHAIRPERSON PFANNENSTIEL: Yes,
19 Commissioner Byron.

20 COMMISSIONER BYRON: Mr. Butterfield,
21 thank you for being here today.

22 MR. BUTTERFIELD: You're welcome.

23 COMMISSIONER BYRON: As I recall,
24 reading your letters, that the area the plant is
25 in is also a helicopter departure area, is that

1 correct?

2 MR. BUTTERFIELD: That is correct.

3 COMMISSIONER BYRON: And so your
4 conclusions in your letters apply equally to
5 helicopters as well as fixed-wing?

6 MR. BUTTERFIELD: The safety risk
7 analysis does not differentiate between the two.
8 So the conclusions would apply to both.

9 COMMISSIONER BYRON: Thank you.

10 MR. BUTTERFIELD: And that is in the
11 preferred departure quadrant for helicopter
12 traffic departing the airfield.

13 COMMISSIONER GEESMAN: Madam Chair, I
14 think we should afford the parties an opportunity
15 now to cross-examine Mr. Butterfield. We have the
16 applicant, our staff and the intervenor all
17 represented at the table. I would suggest that we
18 proceed with the applicant.

19 CHAIRPERSON PFANNENSTIEL: Certainly.
20 Does the applicant have questions?

21 MR. WHEATLAND: Good morning,
22 Commissioners. I'm Gregg Wheatland; I'm the
23 attorney for the project owner. Let me say at the
24 outset that we have reviewed the Regional
25 Administrator's letter, and the proposed

1 conditions, and we thank Mr. Butterfield for being
2 here today.

3 The project owner agrees with the
4 proposed recommendations from the Regional
5 Administrator. We would accept and agree to those
6 conditions.

7 As the Regional Administrator's letter
8 says, these are things that will help to further
9 lower an already acceptable risk. And on that
10 basis, we agree with the recommendations. And I
11 would not have any questions of Mr. Butterfield at
12 this time.

13 CHAIRPERSON PFANNENSTIEL: Thank you,
14 Mr. Wheatland. Does staff have any cross-
15 examination?

16 MR. RATLIFF: Dick Ratliff, counsel for
17 staff. Staff's goal in this proceeding has been
18 to elevate this issue such that the Committee
19 consider --

20 SPEAKERS: Microphone.

21 MR. RATLIFF: Sorry. The goal of staff
22 in this proceeding has been to elevate this issue
23 to the Committee such that it got its full
24 attention. And to get the FAA to comment on the
25 specific situation at Hayward Airport.

1 I believe staff has succeeded in both of
2 these goals. And thus my only question to Mr.
3 Butterfield would be whether or not the FAA has
4 concluded then, that based on the situation at
5 Hayward and their own understanding of the issue
6 of thermal plumes, the FAA has concluded in this
7 situation that the Hayward Airport, the situation
8 of the RCEC Plant in juxtaposition to the Hayward
9 Airport is an acceptable risk in their view.

10 MR. BUTTERFIELD: The FAA cannot object
11 to something being built. We can only issue a
12 determination of hazard or determination of no
13 hazard.

14 From a statutory standpoint, the
15 determination is based on the brick-and-mortar
16 height structure, not the plume. So, again, from
17 a statutory standpoint. the FAA cannot say that
18 the plume is a hazard. We don't have the
19 authority to do that. We're trying to get that
20 implemented, but that's neither here nor there in
21 this particular hearing.

22 The safety risk analysis has said, has
23 shown that the risk is very low. We would prefer
24 that -- we would request that pilots avoid flying
25 through the plume. Because it's not a visible

1 plume there will be pilots that do fly through
2 it. We do not think that it will be catastrophic
3 if they do.

4 I will say that the Hayward Airport
5 supports a wide variety of pilots in terms of
6 experience level. It's a large training base. So
7 there are pilots who are very low time that will
8 be up there by themselves under solo
9 circumstances. To say whether or not that would
10 be upsetting to the pilot or frustrating to a
11 pilot with low time, again it's unknown. It's not
12 known whether this is a mild event or this is
13 something that's more than a mild event.

14 But I don't have the ability to say we
15 either object to or don't object to the Russell
16 City Energy Center. I don't have the authority to
17 do that. I'm sorry, I have to evade, but that's
18 where we are.

19 MR. RATLIFF: My question wasn't whether
20 you object to it, the question was whether it was
21 in the FAA's view an acceptable risk.

22 MR. BUTTERFIELD: According to the
23 safety risk analysis the answer is yes, it is an
24 acceptable risk.

25 MR. RATLIFF: Thank you.

1 MR. BUTTERFIELD: You're welcome.

2 CHAIRPERSON PFANNENSTIEL: And does the
3 intervenor have any questions?

4 MR. HAAVIK: Yes, just one. Mr.
5 Butterfield, I'm Paul Haavik. I'm a resident,
6 obviously of the Hayward area, and I am blessed
7 with having to live right underneath the approach
8 zone to Oakland.

9 But also in the morning I can hear from
10 early morning all of the helicopters taking off
11 from Hayward. And they do go into that quadrant.

12 And I was a little concerned with your
13 comment, Mr. Butterfield, in regards to the
14 helicopter. Is there a difference between the
15 flight of the helicopters versus the flight of
16 fixed-wing?

17 And the visible plume, you said it was
18 not addressed in the study. But, in your opinion,
19 as Flight Standards representative here, is there
20 a difference? And should we be more careful of
21 notification to helicopters versus fixed wings?
22 Or is it all considered the same?

23 MR. BUTTERFIELD: it's all considered
24 the same. the fixed wing do operate at a
25 different -- excuse me, the helicopters do operate

1 at a different altitude than the fixed wing, just
2 to get separation from slow-movers versus faster
3 movers.

4 But as far as the proposed mitigations
5 of seeing and avoiding, they would remain the
6 same.

7 MR. HAAVIK: So your statement just
8 prior to the acceptable risk would be the same
9 between the fixed wing and the helicopters?

10 MR. BUTTERFIELD: Per the safety risk
11 analysis, yes, --

12 MR. HAAVIK: Thank you.

13 MR. BUTTERFIELD: -- the same.

14 CHAIRPERSON PFANNENSTIEL: Further
15 questions? Commissioner Geesman.

16 COMMISSIONER GEESMAN: Madam Chair, I
17 would recommend that we thank Mr. Butterfield for
18 being here and for the promptness with which the
19 FAA has been able to respond over the course of
20 the last two weeks. And that we close the
21 evidentiary record now.

22 I would anticipate that Commissioner
23 Byron and I will amend the proposed decision that
24 we put in front of the Commission to incorporate
25 the conditions the FAA has suggested in which the

1 applicant does agree to.

2 And then I think we should turn to
3 members of the public and receive public
4 commentary on not just the aviation issue, but
5 anything else associated with the proposed license
6 amendment which the public chooses to comment
7 upon.

8 CHAIRPERSON PFANNENSTIEL: Thank you,
9 Mr. Butterfield, --

10 MR. BUTTERFIELD: You're welcome.

11 CHAIRPERSON PFANNENSTIEL: -- this has
12 been very very helpful for us in this proceeding.

13 MR. BUTTERFIELD: You're welcome.

14 COMMISSIONER BYRON: Yes, I'd like to
15 add, if I may, Mr. Butterfield, I need to kind of
16 retract some statements I made a couple of weeks
17 ago. I appreciate that the federal government
18 could, indeed, respond within a two-week period.
19 I'm quite surprised --

20 (Laughter.)

21 CHAIRPERSON PFANNENSTIEL: We all
22 appreciate it.

23 MR. BUTTERFIELD: We're a very large
24 bureaucracy, sir.

25 (Laughter.)

1 MR. RATLIFF: Madam Chair, if I may.

2 CHAIRPERSON PFANNENSTIEL: Yes.

3 MR. RATLIFF: I don't believe anyone has
4 moved the two letters, the September 18 FAA
5 letter, and the September 25th letter, into the
6 evidentiary record. Staff would do so at this
7 time.

8 CHAIRPERSON PFANNENSTIEL: Thank you.
9 Any objection?

10 MR. WHEATLAND: No objection.

11 MR. HAAVIK: No objection.

12 COMMISSIONER GEESMAN: Mr. Kramer may
13 want to identify them as exhibit numbers so that
14 the transcript states.

15 HEARING OFFICER KRAMER: Yes. The
16 September 18th letter would be exhibit 109; and
17 the September 25th letter would be 110.

18 CHAIRPERSON PFANNENSTIEL: Thank you,
19 Mr. Kramer.

20 We have a number of members of the
21 public who have asked to address us on Russell
22 City. So why don't I just go through the blue
23 cards that I have.

24 Gary Cathey. Please just come up to the
25 podium and give your name for the record.

1 MR. CATHEY: Sure. My name is Gary
2 Cathey, C-a-t-h-e-y. I'm Chief of the Office of
3 Airports, Caltrans Division of Aeronautics.

4 And before I make a statement I'd like
5 to ask Mr. Butterfield one question if that would
6 be permissible?

7 COMMISSIONER GEESMAN: Madam Chair, for
8 better or for worse, our process affords
9 intervenors the ability to cross-examine. We're
10 not going to be able to complete a process if we
11 do extend that opportunity to you.

12 MR. CATHEY: No problem.

13 COMMISSIONER GEESMAN: Sorry.

14 MR. CATHEY: Okay.

15 CHAIRPERSON PFANNENSTIEL: You can put
16 the question on the record and we can consider
17 that.

18 MR. CATHEY: Sure. I guess the
19 question, for the record, is Mr. Butterfield
20 stated that the helicopters had a different
21 traffic pattern altitude other than fixed-wing
22 aircraft. And I was just curious what that
23 altitude was.

24 Because fixed-wing aircraft is 600 feet,
25 which is one of the lowest traffic patterns that

1 I'm aware of at any public use airport. It's very
2 low. And it's low because of the impact that the
3 various types of airspace associated with Oakland
4 and San Francisco International Airports has about
5 Hayward. So there's not a lot of latitude to
6 implement a change to the traffic pattern.

7 And my comment would be the FAA's report
8 on thermal plumes specifically recommended they
9 change to the airspace evaluation procedures. And
10 that change would be to state that any traffic
11 pattern less than 1000 feet above a site that
12 generates thermal plumes would, in fact, be
13 considered to be hazardous to air navigation.

14 If that recommendation, which was part
15 of the report, were implemented, this would be a
16 whole different subject.

17 And I would like to urge the Board to
18 consider the fact that because of the lag time
19 that the FAA has not implemented their own
20 report's recommendation, that that should not be
21 discounted.

22 I'd also like to state that there's
23 approximately 10,000 annual, or 10,000 monthly
24 operations out of that airfield, many of which are
25 by student pilots. And the runway closest to the

1 Russell City Power Plant site is the primary
2 runway for the airfield. So that's where the
3 majority of the traffic is going to be using that
4 runway which is closest, as I stated.

5 I'd also like to state that I conducted
6 flight tests on behalf of the Caltrans Division of
7 Aeronautics over a Sutter Power Plant site, which
8 is up by Yuba County Airport.

9 And I began that the plant was operating
10 at 100 percent output. And I don't know, I can't
11 tell you if the exhaust plumes are substantially
12 similar or different from the proposed site. But
13 what I can say is that when I overflew the stacks,
14 I began flying at 1200 feet above ground level,
15 and I dropped my altitude in 200-foot increments.

16 And at 1000 feet I could feel the
17 effects of the thermal plumes. At 800 feet it
18 affected aircraft maneuverability. I experienced
19 what's called asymmetrical lift, which is where
20 part of the exhaust plumes concentrated the
21 lifting action on one of my wings, because I
22 wasn't directly over the stack. One of the wings
23 was more centered above the stack than the other,
24 which caused the aircraft to yaw in flight.

25 And 800 feet was the lowest that I would

1 take that aircraft because of my safety concerns
2 and my ability to recover the aircraft if it
3 entered a stall.

4 And, indeed, I experienced what would be
5 called a partial wing stall when I flew at 800
6 feet. I do not think flying at 600 feet would be
7 something that any pilot would do intentionally,
8 flying over that site. It would definitely affect
9 the aircraft maneuverability and possibly control.
10 For a student pilot it could have very adverse and
11 possibly fatal effects.

12 And I think the Board really needs to
13 consider that. Many of these, quote-unquote,
14 mitigation efforts are more like a "we told you
15 so, you shouldn't have done that". And that might
16 be fine for the attorneys after the fact when
17 they're cleaning up all the legal issues as the
18 result of a potential crash.

19 But I don't think that this site in any
20 way is conducive to aviation safety. As a matter
21 of fact, we think it is just the opposite. It
22 degrades safety at the airport. Thank you.

23 CHAIRPERSON PFANNENSTIEL: Thank you.

24 COMMISSIONER GEESMAN: I wonder if I
25 could ask you, has Caltrans filed a written

1 comment in our record to that effect? That's a
2 pretty strong conclusion you just drew, and I've
3 not seen anything of that nature in our written
4 record.

5 MR. CATHEY: Yes, sir. On July 17th we
6 wrote a letter to Jim Adams expressing these
7 concerns.

8 COMMISSIONER GEESMAN: Thank you.

9 MR. CATHEY: Sure.

10 CHAIRPERSON PFANNENSTIEL: Thank you,
11 Mr. Cathey. Carol Ford.

12 MS. FORD: Thank you, Commissioners;
13 thank you for the opportunity to address you. I
14 am Carol Ford with the California Pilots
15 Association. And I have just brief comments.

16 I agree that this is a serious safety
17 issue, and the major part of the problem is that
18 the FAA addresses the bricks and mortars and not
19 the visible or invisible plumes.

20 And even though Mr. Butterfield
21 mentioned that, it's not part of what they would
22 have addressed, because had they been able to,
23 from their form, their 7460 form, this would be a
24 more serious issue.

25 And I also realize that the FAA doesn't

1 have control over land use issues, but they are
2 supposed to comment for planes in the air.

3 And I certainly wouldn't want to be
4 among the very small number of their statistics
5 which could have an upset by flying over this
6 plume that they can't see at a very low altitude,
7 and maybe they're a little further out from the
8 pattern than they might normally be, and have a
9 catastrophic event.

10 I wouldn't want to be that pilot, and I
11 don't think you would want to have that issue
12 known and not have acted on it.

13 So I'm asking you today to decline this
14 application. Thank you.

15 CHAIRPERSON PFANNENSTIEL: Ms. Ford, as
16 a pilot I assume you've read the suggestions by
17 the FAA which have been incorporated now into this
18 record, for mitigation such as the notice to
19 airmen and that kind of information. Do you think
20 that's not useful?

21 MS. FORD: I think it's insufficient
22 because if you happen to be the pilot who, because
23 the tower is telling you to make way for other
24 aircraft in the pattern, and you have to fly a
25 little wider pattern than normal, doesn't matter

1 if you've read the note if you end up over the
2 site and the invisible plume at 600 feet.

3 CHAIRPERSON PFANNENSTIEL: Thank you.
4 Andy Wilson.

5 MR. WILSON: Thank you, Madam Chair and
6 Commissioners. I also agree with Commissioner
7 Byron, who would have thought getting one letter
8 from the FAA, let alone two.

9 I just have a couple of brief comments
10 to continue with the comments from --

11 COMMISSIONER BYRON: Mr. Wilson, by the
12 way, as I recall, you told us we would be getting
13 something from the FAA.

14 MR. WILSON: Yes, I did.

15 COMMISSIONER BYRON: So you made that
16 prediction.

17 (Laughter.)

18 MR. WILSON: But two were beyond my
19 expectations.

20 One thing I would like to say is that in
21 continuing with the conversations here, it was
22 also under oath that the RCEC expert witness
23 noticed in the datatrax that there were aircraft
24 doing 360-degree turns in that area.

25 And also, at that time, as you've heard

1 just now, how do you continue spacing within a
2 very small space. And what it is is that you can
3 either extend the pattern out towards the RCEC
4 plant, or you can do a 360. We still don't know
5 why the aircraft were doing 360s out there.

6 I'd also like to bring to the attention
7 that the Hayward Airport is a very high aircraft
8 maintenance airport; they do a lot of maintenance
9 there. You can only test aircraft so much on the
10 ground; then you have to take it in flight. So a
11 lot of times they'll stay in close proximity to
12 the airport in that area, the same area that we're
13 talking about the RCEC Power Plant being sited.

14 So the question at issue is if you have
15 an aircraft taking off and staying in close
16 proximity to the airport, however trying to avoid
17 the area of the power plant, it becomes very
18 confusing and very congested.

19 The other thing I'd like to bring up is
20 the fact that the California Energy Commission
21 continues to site power plants in the vicinity of
22 airports. And typically an airport, a controlled
23 airport, you're talking to the tower within five
24 miles of that airport. This power plant is within
25 a new number we have is 1.56 miles of the airport.

1 The problem is we all have heard the
2 stories of aircraft, that's commercial aircraft,
3 on runways for a long period of time, as high as
4 seven hours. As you begin closing off airspace
5 within these airports, that has a cumulative
6 effect for the larger airports, also, because IFR
7 traffic in a small airport such as Hayward, as
8 opposed to Oakland or San Francisco, we all use
9 the same computer system for IFR flights.

10 It compresses as we get closer to
11 airports. It compresses as you move these
12 aircraft closer together. And it's also more
13 dangerous.

14 I would certainly hope that from a
15 cumulative effect that you would certainly keep
16 this in mind for your decision. Thank you.

17 CHAIRPERSON PFANNENSTIEL: Thank you.
18 I'm having trouble with the handwriting, but
19 Robert Bauvell, City of Hayward? I can see I got
20 it wrong.

21 MR. BAUMAN: I apologize, it must be my
22 handwriting. That's Robert Bauman. I am the
23 Public Works Director for the City of Hayward.
24 I'm also responsible for the operation of the
25 Hayward Airport.

1 The primary reason that I put in the
2 card was whether there were any questions of the
3 Commission relative to the City's position on what
4 has been said by the FAA. We have spent a fair
5 amount of time with the FAA Staff, both those that
6 are on the airport, i.e., the tower operators, to,
7 as best as we can, understand their perspective
8 and the issues of how this would affect.

9 I did have one comment, and I'm not sure
10 if staff has noted it, but the recommendation for
11 revisions that were made by the FAA seem to be
12 inconsistent with the land-10. And so some of
13 them I wasn't quite sure what they were trying to
14 say or change.

15 I believe that there has been some
16 recommendations that we have reviewed, that the
17 applicant made. I think some of those may have
18 been incorporated into the list. I'm sure that
19 those details can be worked out, because from the
20 City's perspective we want to make sure that the
21 very best mitigation can occur.

22 Having looked at a lot of trax flights
23 relative to this particular location, I can concur
24 or confirm that almost all of those flights that
25 are within the pattern are much closer in than

1 this particular location.

2 Most of the aircraft that fly over this,
3 almost all that have over the data that we've
4 looked at, even though it's a small number, are
5 doing either approaches or departures. Because
6 they want to go out to the Bay, and they're
7 allowed to do that, okay, the recommendations to
8 insure that they know that there's something that
9 they should avoid are important.

10 I believe there was a question about
11 helicopters. Helicopters don't really have a
12 limit as far as altitude. And they do, sometimes,
13 come down to 500 feet. The data showed several of
14 those that were doing circles were helicopters,
15 because they were looking at a particular accident
16 or something and they chose that particular
17 location to hover over.

18 The one thing that is true about
19 helicopters is they have a much easier ability to
20 see what's on the ground and be able to avoid it.
21 We, and also the tower operators, don't see that
22 as a significant problem.

23 We would also like to reiterate
24 something I think Mr. Wilson mentioned, is that
25 our position relative to the other project that is

1 in this area, which is the Eastshore Energy Center
2 project, which will be coming before you at some
3 future date, is significantly different. Both
4 because it is much closer to that standard traffic
5 pattern, and also it would be a cumulative impact
6 as far as operations of the pilots.

7 With that, I conclude my comments.

8 CHAIRPERSON PFANNENSTIEL: Thank you,
9 Mr. Bauman.

10 COMMISSIONER BYRON: Thank you for being
11 here. May I ask, can you call out any specifics
12 with regard to the potential discrepancies you saw
13 between those two conditions? I think you said
14 land use-10 --

15 MR. BAUMAN: Yeah, they used a numbering
16 system that is not consistent with the numbering
17 system that either was in your original land-10
18 and/or the recommendations of the applicant, which
19 the City had reviewed.

20 And so I was really -- there was a
21 couple that they said were deleted, and stayed the
22 same. And I wasn't quite sure each and every one
23 of them, maybe assuming staff has figured that
24 out.

25 CHAIRPERSON PFANNENSTIEL: Mr. Kramer.

1 HEARING OFFICER KRAMER: It sounds as if
2 he didn't see the errata. So I'll see if there's
3 one on the table and show him that. Because when
4 I reviewed the FAA's recommendations, they were
5 relatively minor modifications and clarifications,
6 but nothing of significant substantive change.

7 CHAIRPERSON PFANNENSTIEL: Thank you.

8 COMMISSIONER BYRON: Thank you, Mr.
9 Bauman.

10 CHAIRPERSON PFANNENSTIEL: James
11 Sorensen.

12 MR. SORENSEN: Madam Chair and Members
13 of the Commission, James Sorensen from the County
14 of Alameda. I'm the Director of Community
15 Development. Also actually oversee the staff of
16 the Airport Land Use Commission. And the
17 Executive Director of the Redevelopment Agency.

18 The Board of Supervisors of the County
19 of Alameda, which is also the Board of Directors
20 of the Redevelopment Agency, unanimously, and with
21 all members present yesterday, adopted a
22 resolution asking that the CEC continue its
23 consideration of this matter for an appropriate
24 amount of time so the Board can investigate and
25 report to the CEC on various issues that are of

1 concern to it, to the Board, and acting as the
2 Redevelopment Agency Board, and its constituents.

3 We're being inundated by members of the
4 public. I'm not sure whether your experiencing
5 the same. But, we're being inundated by members
6 of the public in the unincorporated area of the
7 County which includes about 140,000 people. And
8 most -- well, all of which are due east of this
9 proposed land use, or northeast.

10 And also members of the incorporated
11 areas. And the County Board of Supervisors, you
12 know, represents about 1.5 million people
13 throughout the whole County.

14 So these inquiries are specifically
15 about issues that I know you have discussed. But
16 the Board of Supervisors and the public are
17 unclear as to the severity of the issues, and to
18 specific ways they are being dealt with.

19 I know that it would seem that we're
20 late in this process, but we actually haven't been
21 on a notice list or referral list for this
22 project. And this amendment that was recently
23 brought forward actually moved the site into an
24 area that includes part of our redevelopment area.
25 And so this site is included in the redevelopment area.

1 The County has an actual investment with
2 the City of Hayward, a partnership with the City
3 of Hayward on lands immediately to the east of
4 this, that are within the City of Hayward, but
5 still within our redevelopment area.

6 They're being developed residentially,
7 and we're concerned, the Board is concerned, it
8 hasn't said that this is a bad land use, it's just
9 concerned that it will impact that redevelopment
10 project, and that investment that the
11 redevelopment agency is making.

12 We almost look at ourselves as a
13 responsible agency similar to a responsible agency
14 under CEQA, and really didn't get the notification
15 that we would appropriately get under CEQA.

16 The other issues that the Board is
17 concerned about, they may not be all of the
18 issues, but certainly some of them, at this point,
19 are this whole aircraft and airport operations
20 issue; the Airport Land Use Commission, which is
21 appointed by the Board of Supervisors, weighed in
22 on this.

23 They acted in a timely way, I think.
24 And actually recommended that the site be
25 relocated; that the land use be relocated. They

1 felt that the risk was too great. They haven't
2 had the benefit of this latest FAA information.
3 And perhaps that would be one of the outcomes of a
4 continuance is that the ALUC could revisit it.

5 I know that the ALUC works very closely
6 with the Division of Aeronautics, and I believe at
7 this point in time, with the information that I've
8 heard, that all I can report today is that the
9 ALUC would support what the Division of
10 Aeronautics has suggested. If they were to get
11 this back again and look at it, and have the
12 benefit of hearing both sides, the FAA and the
13 Division, they might change their opinion.

14 But their opinion right now is to - -
15 that the site, or the use should be relocated.

16 A couple of other issues. One that
17 seems to come up in every message we get has to do
18 with air quality. And I know the Air Quality
19 Management District has commented and indicated
20 that this use will not cause any significant
21 impacts or be injurious to the health of residents
22 in the area.

23 But the community isn't convinced, and
24 it's partly because the information we have, and
25 we need to investigate it further, is that the Air

1 Quality Management District has granted certain --
2 in the form of mitigations or in lieu of
3 mitigations they've granted credits that actually
4 don't necessarily mitigate the local impact on air
5 quality.

6 At least that's the perception in the
7 community. That's the perception the Board has.
8 And the Board would like to understand that before
9 you make a final decision.

10 And then there may be some other impacts
11 to County facilities that we're unaware of. And
12 we'd like the time to evaluate that.

13 I have indicated in my letter to you
14 that the soonest we could get this on an agenda of
15 the Planning Commission is October 15th; and then
16 we would endeavor to get it on a Board agenda, you
17 know, shortly thereafter and report back to you.

18 I appreciate, and I've read the letter
19 from the applicant, and I appreciate timing is
20 important to them. But this is equally important
21 to the public who we serve and the public who you
22 serve, that they feel that this is -- that your
23 decision is in their best interests, looking out
24 for their safety.

25 So, thank you.

1 CHAIRPERSON PFANNENSTIEL: Thank you,
2 Mr. Sorensen. I think we'll continue -- oh, I'm
3 sorry, Mr. Wheatland, you had a comment?

4 MR. WHEATLAND: Yes, I would like to
5 briefly comment. Mr. Sorensen has said that --

6 COMMISSIONER BYRON: Mr. Wheatland, is
7 your microphone on?

8 MR. WHEATLAND: I hope so. Mr. Sorensen
9 said that his agency hasn't been notified. But,
10 in fact, they have. He'd asked that the Public
11 Works Department be added to the list.

12 But they've been on the Commission's
13 distribution list since the commencement of this
14 proceeding. And they received the request from
15 the Commission dated November 28, 2006, the agency
16 notice and request for agency participation.

17 In addition, the Public Works Department
18 has been regularly copied with the significant
19 correspondence in this proceeding, including the
20 staff's letter of March 18, 2007, requesting input
21 on land use and zoning questions regarding the
22 Russell City project.

23 In addition, other staff of his agency
24 have actively participated in this proceeding.
25 Ms. Cindy Horvath has been regularly consulted by

1 your Commission Staff since February of this year.
2 She's been regularly copied on all significant
3 correspondence regarding this project. She
4 attended the evidentiary hearing before the
5 Committee. And she introduced herself and said,
6 "I'm the Senior Transportation Planner for Alameda
7 County Community Development Agency. And one of
8 the hats I wear is staff to the Airport Land Use
9 Commission, the Alameda County Land Use
10 Commission."

11 But in addition she wears other hats,
12 including the staff person responsible for the Mt.
13 Eden General EIR that was recently reviewed,
14 general plan EIR. So, in fact, we have sent
15 correspondence to her at 224 West Winton Avenue,
16 Number 111, the same address that Mr. Sorensen has
17 asked be added to the list. She has regularly
18 received correspondence from the Commission
19 throughout this proceeding at that address.

20 So I think it's incorrect to say that
21 his agency has not had notice of this proceeding.
22 They've been actively noticed by the Commission
23 throughout the process, and have actively
24 participated in this proceeding.

25 CHAIRPERSON PFANNENSTIEL: Thank you,

1 Mr. Wheatland.

2 Kim Finn.

3 MS. FINN: Good morning, Chairman
4 Pfannenstiel and Members of the Commission. My
5 name is Kim Finn, F-i-n-n. I'm a resident of
6 Hayward. And I would just like to make a few
7 comments on behalf of myself and other residents
8 in the community who are here with us today, and
9 also some who are not.

10 I, and the other Hayward citizens
11 present today object to this proceeding. This is
12 an improperly processed application for a minor
13 modification when, in fact, Calpine's December
14 2006 petition for amendment should have been
15 rejected, requiring them to apply for a new
16 application.

17 It was a new location falling within
18 another jurisdiction after changed circumstances,
19 as admitted by Calpine, and found by the City.
20 This is not a minor modification. And Calpine
21 should not rely on any prior certification because
22 they never performed, as evidenced by their last-
23 minute application, to obtain an extension to
24 construct for one year.

25 Also, you, the California Energy

1 Commission, should not rely on any purported
2 support by the City of Hayward. We object to
3 that, too. The record reflects that the project
4 was never adequately presented to the public, and
5 that any purported support is without the local
6 jurisdictions hearing from the public on the
7 project.

8 That legislative exercise was improperly
9 contracted away, and as a matter of law, may not
10 be relied on. Legislative bodies may not contract
11 away their legislative obligations improperly so.

12 The FAA last-minute letter posted late
13 Tuesday was difficult for us to respond to, given
14 the less than 12 hours opportunity to review. Our
15 question is with lack of flight data information,
16 this common occurrence of flying through the
17 plumes -- and this common occurrence of flying
18 through the plumes, how reliable is the SRA report
19 that you are now citing to say that it's okay to
20 fly through these plumes.

21 Although it is otherwise presents a
22 clear and present danger to pilots and therefore
23 the public may be detrimentally impacted by an
24 accident.

25 And those are my comments, thank you.

1 CHAIRPERSON PFANNENSTIEL: Thank you.

2 MS. FINN: And I have a copy for the
3 record, also.

4 CHAIRPERSON PFANNENSTIEL: Thank you.
5 Krishneel Lall.

6 MR. LALL: Good morning, Members of the
7 Board. I have a letter here from the Sierra Club
8 that I would like to read. And it's dated
9 September 23, 2007. It's from the Sierra Club San
10 Francisco Bay Chapter:

11 Dear CEC: The Sierra Club opposes the
12 Russell City Energy Center in Hayward for the
13 following reasons: Sensitive populations live
14 nearby, children, the elderly and people with
15 asthma, such as hikers, birds and wildlife at the
16 Hayward shoreline area would all be affected by
17 the emissions from the proposed power plant.
18 Especially because those emissions enter the
19 existing stressors in the area causing a
20 cumulative impact.

21 "Global warming needs to be considered.
22 State policy is to aggressively reduce emissions
23 of greenhouse gases such that total emissions are
24 back to 1990 levels by 2020. This directive by
25 Governor Schwarzenegger, executive order S305,

1 would be virtually impossible to meet so long as
2 new CO2 emitting power plants are permitted.

3 "Combustion of fossil fuels is
4 responsible for 81 percent of state greenhouse gas
5 emissions. And the proposed power plant uses
6 nonrenewable fuels. State policy is to increase
7 the percentage of renewable power in the state by
8 20 percent by 2010; and to 33 percent by 2020.
9 Adding new, nonrenewable generation moves further
10 away from state goals rather than towards them.

11 "California is overly dependent on
12 natural gas and imports 80 percent of its natural
13 gas supply. State policy is to reduce dependence
14 on natural gas. Adding new gas generation runs
15 counter to state goals of reducing reliance on
16 this increasingly important and ever more precious
17 source of energy.

18 "More cost effective and environmentally
19 sustainable ways exist to meet demand than by
20 adding new power plants. Reducing demand to
21 energy is the most effective way to reduce energy
22 costs and bolster California's economy, concludes
23 the California Energy Commission.

24 "Reducing demand also reduces the
25 likelihood of supply shortages that can cause

1 costly price spikes and affect reliability.
2 Demand response programs are the most promising
3 and most cost effective options for reducing peak
4 demand on California's electricity system.

5 "Efficiency and renewable sources are
6 top priorities in California's electricity loading
7 order policy. Since the sun shines brightest when
8 peak demand is greatest, it would make most sense
9 to supply the residual power that cannot be met by
10 demand reduction, with solar energy.

11 The next point. "Alameda County
12 Supervisors have not had an opportunity to review
13 this project. FAA has great issue with this plant
14 regarding safety to aircraft and potential loss of
15 two runways, as well as the 1000-foot thermal
16 plume and attendant 230 kV transmission lines.

17 "The proposed plant is 600 megawatts;
18 largest built is 800. The plant built in
19 Pittsburg, California, by Calpine, and another in
20 Blythe have had releases of hazardous materials
21 requiring emergency responses, directing the
22 public to stay indoors for miles around.

23 "Hayward and the surrounding region are
24 already at unacceptable level of particulate
25 matter. Circumstances since 2001 have changed.

1 Calpine is in bankruptcy and the County, as well
2 as cities, are now under new and different
3 obligations as mandated by AB-32.

4 "We are asking California Energy
5 Commission to reject this project until the County
6 of Alameda, FAA and the public has proper time to
7 review all issues and concerns.

8 "Sincerely, Diana Hanna, Chair, Southern
9 Alameda County Sierra Club."

10 And I have a copy for the record.

11 CHAIRPERSON PFANNENSTIEL: Thank you,
12 sir.

13 COMMISSIONER BYRON: Madam Chair, I
14 believe this letter has already been docketed.

15 CHAIRPERSON PFANNENSTIEL: Thank you.
16 Juanita Gutierrez.

17 MS. GUTIERREZ: My name is Juanita
18 Gutierrez. Ladies and gentlemen, I am a
19 naturalized U.S. citizen. I am a California
20 resident, a proud California resident, because
21 California, as I have written to you before, is
22 number one in our nation. It is respected in the
23 United States; it is respected in the world
24 because California cares. California cares for
25 its people; California doesn't only listen to the

1 representative of power plant, representative of
2 people, industry, California listens and protects
3 its people.

4 So now that I been in -- I am a real
5 estate broker, I am a neighborhood representative,
6 and I am in contact with many people, all those
7 people that I have discussed this matter with,
8 they all area against it. Many have sent letters,
9 emails. Those letters, ladies and gentlemen, have
10 been ignored.

11 Every time we come to talk to you
12 everything is denied; everything is, oh, no
13 problem, no problem. People have nothing negative
14 to you. This is not California, ladies and
15 gentlemen; California cares for people.

16 And now finally Mr. Sorensen came and
17 talked for us. Thank you, sir. Thank you for
18 coming to us. I live just a few blocks away from
19 the airport. The airport, as I have written to
20 you, is surrounded by a park that is packed on
21 weekends. We have businesses; we have --
22 townhouses, we have lots of houses popping up in
23 all the area. All that is ignored. Nothing
24 matters. The only thing that matters to our City
25 representative, to whoever is in charge of

1 protecting us, is revenues.

2 Please use common sense. Listen to the
3 possible hazard. Protect us. Do your job. You
4 are here to protect the citizens. Please don't
5 let me down.

6 Thank you.

7 CHAIRPERSON PFANNENSTIEL: Thank you.

8 Stuart Flashman.

9 MR. FLASHMAN: Good morning. I'm
10 Stuart Flashman; I'm an attorney representing
11 Citizens for Alternative Transportation Solutions.
12 And I spoke before you two weeks ago. And at that
13 point I did not discuss the aeronautical issues
14 because I wanted to hear what the FAA had to say.

15 Now that we have heard from the FAA I do
16 want to revisit those aeronautical issues, as well
17 as make some more general comments, particularly
18 about this project's CEQA review, under the
19 California Environmental Quality Act.

20 Now, of course, this agency does not do
21 environmental impact reports, but nevertheless the
22 agency's decisions are subject to CEQA. And I am
23 very concerned about the effect of the FAA's
24 changed position in terms of this project's CEQA
25 review.

1 The FAA has kind of approached this from
2 two angles. On the one side they've said, well,
3 we've done our safety, our computerized safety
4 analysis and there doesn't appear to be a
5 significant risk here, based on our computerized
6 analysis.

7 But, speaking, if you will, out of the
8 other side of their mouth, they say, on the other
9 hand, though, these computer analyses have never
10 been validated by real-life experience. They are
11 only computer analysis, and therefore you really
12 shouldn't rely on them because we don't know that
13 it's really going to turn out to be the way the
14 computer models say it's going to be.

15 And you have evidence in front of you
16 from testimony at your evidentiary hearing, the
17 testimony particularly of Ms. Ford, regarding the
18 Blythe Airport were there is currently a thermal
19 plume in the vicinity of an airport; and where
20 there have been, admittedly at this point it's
21 really not systematic, it's anecdotal evidence.
22 But the anecdotal evidence thus far indicates that
23 those thermal plumes do, indeed, cause significant
24 problems for aircraft.

25 And let me read what her statement was.

1 "And that Blythe Airport, with their plume
2 velocity, people flying over it, even at 1000 feet
3 have come into great difficulty."

4 You also have Mr. Cathey's statement
5 today about his personal experience flying through
6 a plume in an aircraft, and that below 1000 feet,
7 or I believe it was below 800 feet, he felt it was
8 unsafe, based on his personal experience of flying
9 through the plume to go any further.

10 And yet it is the FAA admits that even
11 though they are recommending that you put up
12 notices that you inform the airport, have the
13 airport inform pilots that they should not fly
14 over the plume, the FAA admits that pilots will
15 fly over the plume. And that's a significant
16 impact, based on the evidence you have before you.

17 I don't think you can say that's
18 insignificant. I don't think you can say that
19 there's not going to be a significant effect on
20 the environment. There will be an impact, and
21 unfortunately it could even be a physical impact
22 of a plane hitting the ground.

23 And your current environmental review
24 doesn't address it. Let me quote from your
25 proposed Presiding Member's Proposed Decision. It

1 states: Pilots are trained to respond to unusual
2 disruptions that are far beyond any likely to
3 occur from encountering a thermal plume.

4 Well, maybe, back several months ago
5 when you didn't have the recent FAA evidence and
6 when you didn't have the evidence of the
7 experience of pilots flying over the Blythe Power
8 Plant you could say that. I don't think you can
9 say that anymore.

10 I think you have to take into account
11 the fact that we're dealing with a situation that
12 really is not adequately documented. And you
13 cannot, with any certainty, say that there's not
14 going to be significant -- that there's not a
15 significant impact.

16 I think your proposed decision needs to
17 be modified to address the new information you got
18 from the FAA; and the new information from the
19 evidentiary hearing regarding the effect of
20 thermal plumes at Blythe.

21 I also think that the proposed decision
22 is inadequate in one other respect, which is only
23 made more problematic by this new information.
24 And that is its failure to address the cumulative
25 impact of the two power plants, both of whom are

1 proposed in the same area around the same airport.

2 What's been proposed for this power
3 plant is an avoidance zone. And as everyone
4 acknowledges, that's going to decrease the
5 available area for runway approaches and takeoffs
6 to the Hayward Airport.

7 You have before you another power plant
8 that is also, if treated the same way, going to
9 further restrict the approaches. And yet your
10 response in terms of the cumulative impact is to
11 say, we'll deal with the cumulative impact on air
12 traffic when we deal with the other power plant.
13 That is contrary to CEQA. CEQA says you cannot
14 put off to a future time consideration of
15 cumulative impact.

16 When you know that there were two
17 projects coming before you, you have to address
18 the cumulative impact now before you approve the
19 first project, rather than putting the whole onus
20 on that second power plant. It's improper. It's
21 a violation of CEQA to do that. You really need
22 to address the cumulative impact now.

23 Thank you.

24 COMMISSIONER GEESMAN: Madam Chair.

25 CHAIRPERSON PFANNENSTIEL: Yes,

1 Commissioner Geesman.

2 COMMISSIONER GEESMAN: Mr. Flashman,
3 your reference to the Blythe materials -- is it
4 your belief that those were not in front of us
5 previously?

6 MR. FLASHMAN: What was not in front of
7 you previously was the letter from the FAA that
8 says that contrary to your previous letter from
9 the FAA, that there is a potential problem here.

10 COMMISSIONER GEESMAN: I'm asking you
11 about Blythe.

12 MR. FLASHMAN: I understand that you got
13 this evidence, I believe it was the September 5th
14 meeting that there was testimony about the Blythe
15 plant.

16 COMMISSIONER GEESMAN: Thank you.

17 CHAIRPERSON PFANNENSTIEL: Ernest
18 Pacheco.

19 COMMISSIONER GEESMAN: Mr. Wheatland had
20 his hand up.

21 MR. WHEATLAND: May I address one issue
22 with Mr. --

23 CHAIRPERSON PFANNENSTIEL: Go ahead.

24 MR. WHEATLAND: -- Flashman up here?

25 While Mr. Flashman was still here I wanted to say

1 I believe he's mischaracterized the FAA safety
2 risk analysis as a computerized study divorced
3 from real life.

4 What that study was, and that document
5 is a part of the Commission's record, but what
6 that study was, was an examination of more than
7 650,000 general aviation incident reports, and
8 more than 150,000 general aviation accident
9 reports for the past 30 years from 1974 to 2004.

10 So it was an examination of about
11 800,000 real-life incidents, real-life reports.
12 And what they found when they examined the real-
13 life evidence was that during this time period
14 there was not one single incident or accident
15 reported that was the result of a thermal plume.

16 And they concluded that the risk to
17 aviation of the thermal plume is essentially zero.
18 The only computerized aspect of this was the
19 calculation of the probability that there could be
20 an incident, despite the fact that there hasn't
21 been one reported incident. And that they
22 calculated using a computer to be a probability of
23 less than one in a million.

24 But the FAA safety risk analysis was
25 definitely a real-life analysis. It was not a

1 computerized or theoretical analysis.

2 MR. FLASHMAN: Let me comment on that.
3 And that is basically essentially what the FAA is
4 saying, is we don't have any reports of crashes or
5 accidents caused by thermal plumes, and therefore,
6 on the basis of that evidence, we don't know of a
7 risk.

8 That doesn't say there isn't a risk, it
9 simply says they don't have any reported
10 accidents.

11 Now, thermal plumes are not all that
12 common. It's certainly not all that common to
13 have thermal plumes in the vicinity of airports.
14 So there isn't much data for them to go on.

15 If they knew, for example, there were
16 several power plants in the vicinity of airports
17 and those power plants had thermal plumes, and
18 they had records of hundreds of planes flying
19 through those plumes with no effect, then they
20 could be more certain. But they don't.

21 What they have is they have records of
22 what incidents have been reported, and those don't
23 include thermal plumes. But this situation that
24 we're dealing with here is not one that's common
25 for the FAA to deal with.

1 COMMISSIONER GEESMAN: Well, you're
2 asserting that. This is not the evidentiary phase
3 of this particular process. Frankly, we don't
4 know, on a national or international basis,
5 whether thermal plumes are common or not.

6 And I don't think that it's appropriate,
7 and I actually think that, as counsel, you know
8 better than to suggest that we take as a matter of
9 evidence that thermal plumes are uncommon. Or
10 that their proximity to airports is --

11 MR. FLASHMAN: All I'm going from is the
12 statement from the FAA representative today that
13 while there was the FAA's analysis, they cannot
14 say that that analysis is corroborated by direct
15 evidence.

16 COMMISSIONER GEESMAN: We heard the
17 gentleman's statement. I think we'll have the
18 ability to evaluate the statement for what it's
19 worth. I think you've also mischaracterized the
20 degree of difference in the FAA's most recent two
21 letters and that which was submitted to our record
22 in July.

23 It's your privilege to make those
24 characterizations, but I don't think you ought to
25 try to pass them off as either evidence or

1 unshakable. They're simply argument.

2 MR. FLASHMAN: Let me just quote from
3 their most recent letter. "Flight standards
4 maintains its original position that it is not
5 reasonable to expect pilots individual traffic
6 patterns to see and avoid a plume located under
7 the pattern." And they basically say that, yes,
8 seeing and avoiding the RCEC plumes while arriving
9 and departing from Hayward Executive Airport is
10 feasible, but poses additional workload on the
11 pilots at a critical time of flight.

12 Essentially they're asterisking that
13 particular situation and saying, we're not sure
14 that simply warning pilots to avoid these plumes
15 is an adequate precaution. And, indeed, when they
16 submit their proposed modifications to the
17 conditions on the project, they don't say that
18 these modifications reduce the risk to a less than
19 significant level. They make no statement to that
20 effect. They simply say we think these
21 modifications are advisable. And certainly they
22 are if you're going to approve the plant.

23 However, I would say that the better --
24 the more cautious and more prudent decision would
25 be to deny this plant and look at other sites.

1 Thank you.

2 CHAIRPERSON PFANNENSTIEL: Thank you.
3 Ernest Pacheco.

4 MR. PACHECO: Good morning. I would
5 like to state for the record that the announcement
6 of the Presiding Member's Proposed Decision on
7 approving Russell City only days before Memorial
8 Day weekend, and only, I believe, it was four
9 working days before the final opportunity for
10 input in Hayward by the citizenry was not enough
11 time.

12 COMMISSIONER GEESMAN: I think you meant
13 to say Labor Day, not Memorial Day?

14 MR. PACHECO: I'm sorry, exactly, Labor
15 Day. And I believe that having Caltrans here and
16 representatives from the County of Alameda show
17 that even some of the bureaucracy that should have
18 been involved weren't even fully aware, much less
19 the citizenry.

20 And you may have actually complied with
21 the letter of the law, I don't know. But
22 certainly not with the spirit. And so I do
23 believe that there should be more time for both
24 the citizens of Hayward and bureaucracies that
25 should have a fuller chance to contribute their

1 opinions, do so. And that there shouldn't be a
2 decision today.

3 And perhaps 90 days, at least, should be
4 added so that everyone can come up with their data
5 and present it before you. And that they won't be
6 rushed, irregardless of how long it's taken to get
7 to this point.

8 I also believe that the decision on the
9 new siting, the current siting for Russell City is
10 inappropriate. I believe that it should have
11 produced a brand new EIR and not just a petition
12 to amend. I believe that going from 12 pages on
13 biological data to one is absurd. And that it's
14 data inefficient, not data complete -- data
15 adequate, I'm sorry. That needs to be taken into
16 consideration.

17 On another matter, while it's perfectly
18 legal having ex-Commission members or people that
19 worked for the CEC know the ins and outs of the
20 process becoming counsel or lobbyists for Calpine,
21 again, while legal, hurts the spirit of the law,
22 or goes against the spirit of the law.

23 I, myself, work for one of the largest
24 corporations in the world; it's a PUC controlled
25 company. And we have byzantine laws that are

1 probably equal to or even greater than the laws
2 you have, which are considerable.

3 Knowing the ins and outs of my own
4 company I know that I can manipulate the system,
5 and even stay within the PUC guidelines, in a way
6 that concerned citizenry on the outside never
7 could. I can get things done, take shortcuts,
8 always just cleaving to the very edge of the law.
9 That people, even while throwing their hearts and
10 souls and all their time into it from the outside
11 just can't do.

12 I believe that's happening here. I
13 believe your staff has been manipulated, again
14 through law, shortcuts have been taken, again
15 within the law, by people who have previous
16 experience on how to manipulate these matters.

17 The spirit of the law, public consent
18 and input have not actually been followed, at
19 least not in spirit. Perhaps by the --

20 COMMISSIONER GEESMAN: Now are you
21 referring to Mr. Wheatland?

22 MR. PACHECO: Perhaps, yes.

23 COMMISSIONER GEESMAN: Let's call a
24 spade a spade.

25 MR. PACHECO: Yes, yes, I am. Exactly.

1 Exactly.

2 COMMISSIONER GEESMAN: If I can simply
3 interrupt briefly and ask Mr. Wheatland, how long
4 has it been since you worked at the California
5 Energy Commission?

6 MR. WHEATLAND: I left the Commission in
7 1986.

8 MR. PACHECO: If I were -- nonetheless,
9 the connections you --

10 (Laughter.)

11 MR. PACHECO: Okay, that's not good.
12 The connections you make inside an organization
13 and the base rules that you learn still apply.
14 And I truly believe whether or not you can
15 actually canvass your staff and ask them what are
16 their feelings on the pressures that they've been
17 getting from the outside by people who do know the
18 process, 1986 or not.

19 All right. I believe that's just back,
20 and perhaps you can actually look inside your
21 organization so that in the future the pressures
22 and the shortcuts that have been taken perhaps
23 won't be repeated.

24 On another measure which I would hope
25 you take into consideration, I don't know if you

1 will, but I hope you would, is that the post-
2 siting of both Russell City and Eastshore in
3 Hayward have done something that was overdue,
4 which it's awakened the people of Hayward, and
5 starting to awaken the City government on the
6 downsides of the business-as-usual with energy
7 production, and our responsibility to do something
8 about it.

9 What is going to happen in Hayward, and
10 hopefully it is mine and other people's
11 conviction, by the proposed startup date of
12 Eastshore, that we will have implemented, begun
13 implementation of a community choice aggregation
14 or a Solar Santa Monica style efficiency and
15 bundling system. I and many of the people are
16 committed to making this happen.

17 It is part of the CEC's mandate to help
18 turn the state away from dirty, global-warming,
19 gas emission fuels to cleaner energy. You will be
20 hurting your own mandate. And in your, I believe
21 it was the 2005 energy reports you set certain
22 goals for yourself.

23 The bi-yearly, or the 2006 update that
24 you gave yourself screams out in bureaucratic
25 language, as much as bureaucratic language screams

1 out, we're failing. Why are we failing? Your
2 report doesn't even know, says we have to look
3 into it.

4 Well, I can tell you one way that you
5 can help is by, in Hayward anyway, not siting
6 these plants. Because what happens in Hayward, is
7 if you talk to people on the ground, and I've
8 talked to at least 100, myself, and other people
9 have talked more, we have 100 percent support
10 under the current conditions when you say would
11 you be willing to vote for a \$30 million bond so
12 that we can do a CCA like San Francisco. Or would
13 you be willing to participate and buy in,
14 yourself, in a Solar Santa Monica style template,
15 the answer has been 100 percent yes.

16 But when the narrative changes to, okay,
17 we have a 600 megawatt toxic monster spewing
18 poison into our lungs, the answer goes, why should
19 my tax money go to that. We're already breathing
20 this poison.

21 Or under a Santa Monica style template
22 the answer becomes, why am I going to take out a
23 loan to produce clean energy and do my part if I'm
24 already breathing this poison.

25 It changes, whether or not you believe

1 that's a valid reason for a human being to change
2 their mind, it's what happens.

3 You will be doing perhaps fatal damage
4 to the implementation of clean energy in Hayward.
5 Due to indigenous conditions in Hayward, we have a
6 chance to, with perhaps the exception of Santa
7 Monica, have a clean energy ratio to usage greater
8 than any other municipality right now; 80 to 90
9 percent green, renewable.

10 Now, of course, it's going to take a lot
11 of work to do, but we have that capacity. And
12 right now we have growing support on the ground.
13 You will be completely -- not completely, but you
14 will be seriously, perhaps fatally undermining
15 that support if either of these power plants, or
16 for today the 600 megawatt monster is placed in
17 our city because people won't buy in. There will
18 be no \$30 million bond. There will be no
19 individual buy-in. And I hope you take that into
20 consideration and take in consideration the 2006
21 update of your energy plan.

22 You guys -- not you guys, we all are, we
23 collectively are failing in making the change-
24 over. The time is brief. Here in Hayward we have
25 a chance to be a leader in making this happen.

1 Don't hurt us. Give us a chance to actually do
2 this. Don't site this plant. Thank you.

3 CHAIRPERSON PFANNENSTIEL: Thank you.

4 COMMISSIONER GEESMAN: Mr. Pacheco
5 expressed concern about Caltrans and notices. Mr.
6 Cathey had indicated they did file written
7 comments with us on July 18th, a letter signed by
8 Patrick Miles for Gary Cathey. And we, of course,
9 got the benefit of Mr. Cathey's opinion today.

10 I have to say I've searched through the
11 July 18th letter and Mr. Cathey's opinion today
12 was several orders of magnitude more forcefully
13 put than the letter of July 18th.

14 But they have had the opportunity to
15 participate in our process. And we have had the
16 written comments in our evidentiary record.

17 CHAIRPERSON PFANNENSTIEL: I also have a
18 request to speak from William Walters, from Aspen
19 Environmental, on the phone. Harriet.

20 Yes, Mr. Walters.

21 MR. WALTERS: Did you not hear me
22 before?

23 CHAIRPERSON PFANNENSTIEL: We did not.

24 MR. WALTERS: I'm only here in case
25 questions came in my direction, as requested by

1 CEC Staff.

2 CHAIRPERSON PFANNENSTIEL: Thank you.
3 That's all the public comment that I have in front
4 of me. Is there anybody else who has not yet had
5 an opportunity to address Russell City who would
6 like to do so now?

7 Mr. Kramer.

8 HEARING OFFICER KRAMER: Yes, given all
9 the conversation we've heard about notice, I'd
10 recommend that you take a moment to hear from both
11 the staff and the Public Adviser about their
12 efforts to get the word out about this case to the
13 public and agencies.

14 CHAIRPERSON PFANNENSTIEL: I think
15 that's fine. Who's going to speak for the Public
16 Adviser's Office? Mr. Monasmith.

17 MR. MONASMITH: Thank you, Chairman
18 Pfannenstiel, Commissioners. Thank you, Paul. I
19 wasn't going to speak today, I wasn't prepared, so
20 I apologize for not being --

21 We did do extensive outreach into the
22 community of Hayward in December initially, the
23 December 15th informational hearing and site
24 visit. We contacted the sensitive receptors in
25 the area, local schools, daycare centers, elderly

1 care facilities.

2 We also contacted nonprofits, youth
3 sports groups, folks that might have been
4 outdoors, anyone dealing with children
5 organizations, primarily nonprofits, 401(c)(3)s
6 and other that we were able to find. And we did
7 notify them.

8 Subsequent to that, of course, we've had
9 a higher degree of involvement because we've been
10 doing two cases at once in the Public Adviser's
11 Office, with Russell and with Eastshore.

12 But from the beginning we have been
13 doing an extensive degree of work in the Hayward
14 community. There's been the highest degree of
15 public involvement that I've experienced in my
16 four years with the Commission, with these two
17 cases. And these citizens are very committed to
18 this process. They have been very involved. They
19 have been active in our workshops as well as in
20 the hearings. The Presiding Members have been
21 present in Hayward.

22 We continue to be involved. We continue
23 to do outreach, working with intervenor Paul
24 Haavik on this, as well as the Eastshore case.
25 I'm available for questions that you may have.

1 And I can also file lists, if you would
2 find that helpful for the record, on our outreach
3 efforts that were conducted initially, as well as
4 those subsequent to the December 15, 2006
5 informational hearing.

6 CHAIRPERSON PFANNENSTIEL: Thanks, Mike.
7 Any questions?

8 COMMISSIONER BYRON: If I may?

9 CHAIRPERSON PFANNENSTIEL: Yes.

10 COMMISSIONER BYRON: Mr. Monasmith, I
11 have a copy of the list that -- I should say I
12 have a copy of the list that I think is all the
13 folks that were served.

14 This is a license amendment, and did we
15 fulfill all of the obligations under the
16 requirements in terms of notification for an
17 amendment?

18 MR. MONASMITH: Yes. The official
19 notice was filed by the Hearing Office. The
20 outreach that we did in regards to the hearing,
21 itself, was a flyer; it wasn't the four-page
22 notice that the Hearing Office sends out. It was
23 a one-page flyer which we usually do in all cases,
24 which were, again, sent to all sensitive
25 receptors, as well as nonprofits in Hayward. And

1 public schools in Hayward Unified, as well as
2 those in San Lorenzo and other surrounding
3 communities. All were sent information.

4 And we have subsequently followed up
5 with folks in the community that have come as a
6 result of that initial outreach. But all outreach
7 that was conducted by our office is ongoing, as I
8 said. We have fulfilled the responsibility that
9 we have heretofore always conducted.

10 And, again, I'm here to present -- I
11 will put on the record, if you want me to, that
12 list, which again is primarily the sensitive
13 receptors and nonprofit organizations. It does
14 not include elected officials, agencies. That, of
15 course, is done by the Siting Office, itself.

16 CHAIRPERSON PFANNENSTIEL: Thanks, Mike.
17 I see somebody who would like to speak. Why don't
18 you come up to the microphone.

19 MS. FINN: Again, my name is Kimberly
20 Finn and I'm a resident of Hayward. While
21 listening to Mike's presentation, I just had to
22 raise my hand.

23 First of all, the reason you have so
24 much community involvement, initially with
25 Eastshore, and finally at the tail-end of this

1 Russell City event, is not because of the Public
2 Adviser's Office whatsoever.

3 It is because of community members who
4 have spent untold hours of their own time and
5 money going door to door talking to residents to
6 make them aware. Because your office has sadly
7 failed at this task.

8 And when we learned what was happening
9 to our city, we took it upon ourselves, time,
10 money, you name it, to organize and to try to get
11 the word out. It wasn't -- Mike's own statement,
12 I believe it was in the May staff meeting at the
13 Hayward City Hall, said that you don't have the
14 financial resources to place ads in the paper
15 because you're so under-budgeted, to alert the
16 citizens of Hayward.

17 And after our direction to tell him that
18 you could, in fact, put a free ad in the public
19 meeting section, it was finally done. And that
20 took a lot of work on our part. Because there is
21 a section in the paper that the public meetings
22 weren't even listed.

23 People in Hayward did not know what was
24 going on with these power plants. There was a sad
25 lack of information. I don't know who you

1 contacted, but obviously it did not get through,
2 as evidenced by all of these other agencies that
3 are now coming onboard, because they finally
4 realize what's going on.

5 So I take offense, let's say, that you
6 had adequately -- you might have done it like
7 Ernest had said earlier, by the letter of the law,
8 but not by the spirit of the law. Notifying only
9 to a 1000-foot radius, or whatever your radius is,
10 is not adequate when you have hundreds of children
11 in schools down the street, and thousands and
12 thousands of residents that will be impacted by
13 this.

14 Thank you.

15 CHAIRPERSON PFANNENSTIEL: Thank you,
16 Mike.

17 MR. MONASMITH: Can I respond, if that's
18 all right, Chairman?

19 Kim is absolutely correct. The
20 thousands of letters which are docketed for both
21 this case and Eastshore are a direct result of the
22 outreach that has been conducted by Kim and
23 members of the Hayward community. I do not take
24 responsibility for that.

25 I merely wanted to articulate the

1 initial outreach that was conducted with sensitive
2 receptors, schools, daycares, elderly care
3 facilities, hospitals, nonprofits, youth sports
4 leagues and others about the initial 12/15/06
5 informational hearing.

6 And she has, she's been fantastic, and
7 the level of involvement on this case really is
8 the direct result of her and other folks'
9 involvement and not mine.

10 CHAIRPERSON PFANNENSTIEL: Thank you.
11 Anything further?

12 MR. RATLIFF: I would only add that in
13 response to the County's letter, staff looked at
14 the mailing lists and identifies no fewer than
15 eight different offices of Alameda County that
16 have been on the mailing list during the
17 proceeding.

18 And the County has participated, as has
19 been stated, during the proceeding. In addition
20 to that I would say that the County also
21 participated during the original licensing process
22 where it also received direct notice.

23 CHAIRPERSON PFANNENSTIEL: Thank you.
24 Commissioner Geesman, --

25 MR. HAAVIK: Madam Chair.

1 CHAIRPERSON PFANNENSTIEL: Yes.

2 MR. HAAVIK: If I could make a comment.
3 Paul Haavik, again, intervenor. I'd like to thank
4 Mike Monasmith for his involvement, but I'd also
5 like to caution the procedures of the Commission
6 in regards to both Calpine, as well as the
7 Eastshore project.

8 Although the sensitive receptors and all
9 of the various organizations were contacted
10 initially, I think the staff falls short in their
11 budgeted areas, which is the Public Adviser's
12 Office, to continue to notify the public, continue
13 to notify the organizations as the procedures go
14 on.

15 And I have had talks with Mr. Monasmith
16 and he sadly has informed me of the budgetary
17 constraints within the CEC in regards to making
18 sure that the public is informed. Although I
19 think he's doing the best job and the Public
20 Adviser's Office is doing their best job, it can
21 be done much better. And I believe that would
22 take some movement with your goals for this coming
23 year.

24 Thank you.

25 CHAIRPERSON PFANNENSTIEL: We'll ask the

1 Executive Office to take note of that. That is an
2 important issue.

3 Commissioner Geesman, as the Presiding
4 Member, where would you recommend that we take
5 this at this point?

6 COMMISSIONER GEESMAN: Well,
7 Commissioner Byron and I are prepared to offer the
8 same recommendation that we had earlier, that you
9 approve the proposed decision, as amended by the
10 conditions suggested by the FAA and agreed to by
11 the applicant, and as supplemented by the
12 previously distributed errata sheet.

13 With that motion, let me also address
14 one of the concerns that Mr. Pacheco raised, and
15 which does come up regularly with respect to
16 contested siting cases involving natural gas
17 plants. And that is the consistency with the
18 state loading order. And this Commission's
19 strongly stated policies of preferring greater
20 emphasis on efficiency and greater emphasis on
21 renewable sources of electricity.

22 In each instance the Commission attempts
23 to incorporate as aggressive a set of policies as
24 we have articulated in making a determination on
25 these projects. And I think having participated

1 both in the 2005 IEPR and the 2006 IEPR update,
2 and this about-to-be-released draft IEPR, I can
3 assure the other members of the Commission that
4 approval of this project is consistent with the
5 loading order.

6 And it is consistent with our past and
7 hopefully our future articulated policies to
8 strengthen the state's efforts in energy
9 efficiency and to strengthen the state's efforts
10 in developing renewable sources of electricity.

11 I think one of the themes that will
12 receive more prominence as this year's IEPR is
13 disseminated is the importance of natural gas-
14 fired generation in displacing reliance on coal-
15 fired generation. And I think, as each of us is
16 well aware, a major emphasis of the state's
17 greenhouse gas reduction policy is reducing our
18 reliance on coal-fired generation.

19 It would be nice, it would be preferable
20 if we could rely on an even greater contribution
21 from energy efficiency and renewable sources of
22 electricity. And hopefully, consistent with the
23 policy recommendations of this Commission, in the
24 future we will be able to.

25 But I'd remind each of us that our

1 policies have kept the level of per-capita demand
2 growth level. We hope to be able to bring it
3 actually into a negative trajectory. But we've
4 not accomplished that thus far.

5 Our policies have been to urge a 20
6 percent contribution from renewable sources of
7 electricity by the year 2010, and to strengthen
8 that to 33 percent by the year 2020. At some
9 point we're hopeful that the Legislature codifies
10 that 33 percent goal.

11 But approval of this project does not
12 contradict either of those policy objectives. And
13 for those reasons, I would recommend adoption of
14 the PMPD.

15 CHAIRPERSON PFANNENSTIEL: Commissioner
16 Byron.

17 COMMISSIONER BYRON: Madam Chair,
18 despite some accusations heard today, and perhaps
19 some implications with regard to noticing of the
20 public, I believe that there's been not only
21 adequate, but a great deal of public participation
22 and noticing as a result -- I'm sorry, noticing
23 and public participation as a result.

24 We've listened to a great number of
25 members of the public, some new here today, and

1 mostly we've heard from many of these individuals
2 before. And, of course, we welcome their comments
3 and input. It's been very informative.

4 But I think the additional evidence that
5 was entered today allows us to make a
6 determination. And I also second the PMPD, the
7 proposed Members' decision, subject --

8 CHAIRPERSON PFANNENSTIEL: As modified.

9 COMMISSIONER BYRON: -- subject to the
10 modifications, I believe, in trans-10.

11 CHAIRPERSON PFANNENSTIEL: Before we
12 take a vote, I would just like to comment that I
13 am concerned, and I'm always concerned when
14 members of the public or members of a local
15 government agency come forward and say they didn't
16 know in time to participate in one of our
17 proceedings.

18 I believe it's a hallmark of this
19 Commission that we try very hard, and I believe
20 usually successfully, to not only allow, but to
21 invite, to encourage members of the public and
22 other levels of government to participate in our
23 proceedings. It's important to us. It makes the
24 process what it is.

25 And so it is of concern that we get to

1 the end of the day and we hear from people who
2 have not heard. I did look at the list, as
3 Commissioner Byron did, of those who had received
4 notice. I reviewed what was in the newspapers and
5 local communities during the proceeding. And came
6 away convinced that, in fact, there was a great
7 deal of information provided in the local
8 community.

9 Clearly, we need to do things better
10 next time, if there are still groups that feel
11 they did not receive notice in time. But, we not
12 only did the letter of the law, I believe we went
13 much beyond, as we are wont to do.

14 It's very important to us, and we do
15 appreciate the input from the community. We
16 appreciated it during the proceeding, and we
17 appreciate it hearing from members of the
18 community today.

19 With that, Commissioner Rosenfeld, any
20 comments?

21 COMMISSIONER ROSENFELD: I think we
22 didn't do a perfect job, but I'm convinced.

23 CHAIRPERSON PFANNENSTIEL: Well, the
24 Presiding Member's amended decision with the
25 modifications today then has been moved and

1 seconded.

2 All in favor?

3 (Ayes.)

4 CHAIRPERSON PFANNENSTIEL: It's
5 approved.

6 MR. ARGENTINE: Could I make a quick
7 statement?

8 CHAIRPERSON PFANNENSTIEL: Yes.

9 MR. ARGENTINE: I'm Michael Argentine,
10 Project Manager for Russell City Energy Center. I
11 wanted to thank particularly the Commission for
12 approving this important project for the Bay Area.
13 And, of course, Commissioners Geesman and Byron.

14 I'd also like to thank the Energy
15 Commission Staff, led by Lance Shaw and Dick
16 Ratliff, because I think they did a very thorough
17 job in evaluating the project.

18 And I think now it's time that we get it
19 built. Thank you very much.

20 CHAIRPERSON PFANNENSTIEL: Thank you.
21 We then move on to item 5, possible approval under
22 contract 500-05-027, and I'll note that's a change
23 in the contract number from what was in the
24 written agenda, for the National Renewable Energy
25 Laboratory to contract two successful bidders to

1 RFP 500-06-504. Good morning.

2 MR. TREANTON: Good morning, Madam
3 Chairman.

4 CHAIRPERSON PFANNENSTIEL: Is your
5 microphone on? Please check and make sure the
6 green light is illuminated.

7 MR. TREANTON: Good morning, Madam
8 Chairman and Commissioner. My name is Bernard
9 Treanton. I work for the PIER program in the
10 energy research and development division.

11 Today I am requesting the Commission to
12 approve the addition of two subcontractor, UQM and
13 US Hybrid, to NREL Commission contract 500-05-027,
14 advance power electronic interface.

15 Last February, under this contract NREL
16 release an RFP for the research and development of
17 advanced power electronic with application in
18 distributed energy resource equipment.

19 CEC and DOE Staff reviewed and scored
20 the proposal. Proposal from UQM and US Hybrid
21 successfully passed the RFP criteria.

22 A condition for this contract require
23 the Energy Commission to approve this
24 subcontractor prior to providing funds. The
25 amount for UQM is for \$680,441. UQM will develop

1 a scalable third generation 1 kilowatt to 5
2 kilowatt inverter. The inverter will be modular
3 and ready to be commercialized for application in
4 the DR.

5 UQM building block approach include
6 highly flexible AC output, high -- and high
7 efficiency that optimize packaging and cooling and
8 electrical plug-and-play.

9 The one for US Hybrid is for \$281,842 to
10 develop a 5 kilowatt modular efficient and cost
11 effective power conductor prototype. The high
12 efficiency conductor will provide dc/ac and ac/ac
13 for various distributed energy resources
14 interface.

15 The high operational frequency allows
16 small footprint, lightweight, -- cleaner --
17 current, and it fuels with a fuel cell; this can
18 increase the fuel cell efficiency.

19 Thank you. I would answer any question
20 you have.

21 CHAIRPERSON PFANNENSTIEL: Thank you,
22 sir. Are there questions?

23 COMMISSIONER GEESMAN: I'll move the
24 item.

25 COMMISSIONER ROSENFELD: Second.

1 CHAIRPERSON PFANNENSTIEL: All in favor?

2 (Ayes.)

3 CHAIRPERSON PFANNENSTIEL: It's
4 approved.

5 MR. TREANTON: Thank you.

6 CHAIRPERSON PFANNENSTIEL: Item 6,
7 possible approval of contract 500-07-009 for
8 \$220,000 for San Jose State University Foundation
9 to provide the necessary expertise to enable
10 recipients of PIER funds to bring their
11 technologies and services to market. Mr.
12 Williams.

13 MR. WILLIAMS: Good morning,
14 Commissioners. My name is Steve Williams, and I'm
15 a Senior Supervisor with the energy efficiency
16 research office. I'm presenting this item on
17 behalf of Pramod Kulkarni, the Program Manager for
18 the PIER industrial, agriculture and water
19 efficiency research program.

20 Staff requests your approval of a
21 \$220,000 contract with the San Jose State
22 University Foundation. The proposed funding will
23 enable the Environmental Business Cluster, a
24 business incubator affiliated with the San Jose
25 State University, to provide the expertise needed

1 to help selected PIER-funded research projects
2 bring their technologies to market.

3 This assistance is consistent with
4 Senate Bill 1250's directive to, quote, "help
5 develop and bring to market energy technologies
6 that provide increased environmental benefits,
7 greater system reliability and lower system
8 costs." End quote.

9 The EBC is the only business incubator
10 in California that has joined into a partnership
11 with the Energy Commission and the National
12 Renewable Energy Lab to assist companies to bring
13 energy efficiency and renewable energy
14 technologies to market.

15 Recipients receive assistance in market
16 analysis and planning, market commercialization
17 options and strategies, financial analyses and
18 market projections, and assistance in developing a
19 business plan.

20 This item has been recommended for
21 approval by the RD&D Committee; and staff requests
22 your approval of this \$220,000 contract.

23 In the audience this morning is Mr.
24 Chuck Erickson from the Environmental Business
25 Cluster. Are there any questions?

1 CHAIRPERSON PFANNENSTIEL: Are there
2 questions, Commissioners?

3 COMMISSIONER ROSENFELD: I've got to
4 make a positive comment. The PIER experience with
5 Environmental Business Cluster has been very good.
6 Any of our projects who want incubation, we have
7 up to \$25,000 per project available. Something
8 like 60 to 65 percent of these projects have ended
9 up becoming commercial through that process.

10 The Committee is very pleased with it.
11 So I move the item.

12 COMMISSIONER GEESMAN: Second.

13 CHAIRPERSON PFANNENSTIEL: Commissioner
14 Byron.

15 COMMISSIONER BYRON: Well, Madam Chair,
16 I just wanted to comment, as well. I was not
17 aware of this program until seeing the item on the
18 agenda, and I'm very encouraged by it. So I'd
19 also like to endorse its existence.

20 CHAIRPERSON PFANNENSTIEL: Thank you.
21 It's been moved and seconded.

22 All in favor?

23 (Ayes.)

24 CHAIRPERSON PFANNENSTIEL: Thank you.

25 Item 7, possible approval of contract

1 500-07-008 for \$400,000 with the U.S. Department
2 of Energy, Lawrence Berkeley National Laboratory,
3 to extend the capabilities of the EnergyPlus
4 building energy simulation software for use in
5 Title 24 building energy efficiency standards.
6 Ms. Brook.

7 MS. BROOK: I'm Martha Brook with the
8 efficiency standards office. As you know, the
9 Commission has aggressive goals to increase energy
10 efficiency and reduce greenhouse gas emissions by
11 significantly increasing the stringency of Title
12 24 building energy efficiency standards in the
13 future.

14 The Commission does not currently have
15 the appropriate building energy simulation
16 software to analyze new energy efficiency measures
17 for consideration in future versions of the
18 standards.

19 EnergyPlus has been chosen by the
20 Commission as the next generation of simulation
21 software that should be used as the reference
22 program for the standards.

23 However, there are specific capabilities
24 that EnergyPlus still needs before it can be used
25 effectively for Title 24. This project will

1 identify and then implement specific simulation
2 features needed in EnergyPlus so that the Title 24
3 standards can be effectively modeled. Standards-
4 related analysis using EnergyPlus will also be
5 completed.

6 Finally, this project will focus on
7 decreasing the processing time of EnergyPlus to
8 enable more widespread use of the software by the
9 building design industry.

10 I'm here to answer any questions that
11 you have.

12 CHAIRPERSON PFANNENSTIEL: Are there
13 questions?

14 COMMISSIONER ROSENFELD: Again, I have a
15 positive comment about how the world works.
16 EnergyPlus has been supported as a replacement for
17 DOEII by the Department of Energy. As Martha
18 said, it wasn't California-specific. I think it's
19 a nice example of where the PIER program stepped
20 into the breach and got the program ready to be
21 used by the standards office under Martha's able
22 direction. And I think it's good cooperation all
23 around. So, I move the item.

24 COMMISSIONER GEESMAN: Second.

25 CHAIRPERSON PFANNENSTIEL: In favor?

1 (Ayes.)

2 CHAIRPERSON PFANNENSTIEL: It's
3 approved, thanks, Martha.

4 MS. BROOK: Thank you.

5 CHAIRPERSON PFANNENSTIEL: Item 8,
6 possible approval of a grant for \$249,536 to ADI
7 Thermal Power Corporation, under RFP-GRT06502-11.

8 MR. SOINSKI: Good morning,
9 Commissioners. I'm Arthur Soinski; I'm the Team
10 Lead for environmentally preferred advanced
11 generation in the Public Interest Energy Research
12 program.

13 I'm here to request approval for a grant
14 to ADI Thermal Power Systems for improvements to
15 the controls and burner for 100 kilowatt Sterling
16 Engine based combined heat and power system.

17 ADI Thermal Power was the second highest
18 ranked proposal in a competitive solicitation for
19 CHP systems developed using PIER natural gas
20 funds.

21 By way of background, ADI Thermal Power
22 is completing work on a 600 kilowatt PIER electric
23 contract. That contract focused on materials
24 selection and component development to support
25 higher operating temperatures and durability.

1 The new grant would support technology
2 advancement related to combined heat and power
3 operation leading to higher system operating
4 efficiency.

5 This item has been approved by the R&D
6 Committee, and I'll be happy to answer any
7 questions.

8 CHAIRPERSON PFANNENSTIEL: Thank you.
9 Are there questions? Yes, Commissioner Byron.

10 COMMISSIONER BYRON: Just briefly, Mr.
11 Soinski. Thank you for the opportunity or the
12 offer, I should say, to brief me on the subject.
13 I'm sorry that time did not permit. Having seen
14 what the material is for this project I'm going to
15 endorse it, but I'm also very interested in it.
16 I'm just apologizing publicly that I didn't have a
17 chance to get more into it. Thank you.

18 MR. SOINSKI: I'll be happy to brief you
19 on this sometime in the future, and give you my
20 perspective on Sterling Engines, and why I
21 consider this to be a high risk with potentially
22 very high payoff project in part of our portfolio.

23 COMMISSIONER BYRON: Good.

24 COMMISSIONER ROSENFELD: I move the
25 item.

1 COMMISSIONER GEESMAN: Second.

2 CHAIRPERSON PFANNENSTIEL: In favor?

3 (Ayes.)

4 CHAIRPERSON PFANNENSTIEL: It's
5 approved.

6 MR. SOINSKI: Thank you.

7 CHAIRPERSON PFANNENSTIEL: Item 9,
8 possible approval of amendment 1 adding \$135,000
9 to contract 200-07-001 with the California
10 Resources Agency. Mr. Roesser.

11 MR. ROESSER: Good morning. I'm Randy
12 Roesser with the budget office here at the Energy
13 Commission. And I'm here to request the
14 Commission's approval for amendment 1 to our
15 reimbursement contract with the Resources Agency.

16 Resources provides the principal contact
17 between the Governor's Office and the Energy
18 Commission, representing us in those types of
19 policy discussions.

20 It also provides funding for a climate
21 change executive who will also represent the
22 interests of the Energy Commission with the
23 policymakers of the state.

24 CHAIRPERSON PFANNENSTIEL: Are there
25 questions? Is there a motion?

1 COMMISSIONER ROSENFELD: I move it.

2 COMMISSIONER BYRON: I'll second.

3 CHAIRPERSON PFANNENSTIEL: All in favor?

4 (Ayes.)

5 CHAIRPERSON PFANNENSTIEL: It's

6 approved, thank you.

7 MR. ROESSER: Thank you.

8 CHAIRPERSON PFANNENSTIEL: Item 10,

9 possible approval of funding award notices

10 pursuant to the Energy Commission's existing

11 renewables facility program guidebook. Mr. Orta.

12 MR. ORTA: My name is Jason Orta, and I

13 am the Account Lead for the existing renewable

14 facilities program.

15 The existing renewable facilities

16 program provides funding in the forms of

17 production incentives to eligible renewable energy

18 facilities for each kilowatt hour of eligible

19 electricity generated.

20 The statutory purpose of the existing

21 renewable facilities program is to improve the

22 competitiveness and achieve self-sustainability of

23 existing instate solid fuel biomass, solar thermal

24 electric, and wind facilities.

25 Facilities eligible for funding are

1 issued a funding award notice by the Energy
2 Commission to provide funding pursuant to the
3 Energy Commission's existing renewable facilities
4 program guidebook, renewable portfolio standard
5 eligibility guidebook, and overall program
6 guidebook.

7 Staff is seeking the Energy Commission's
8 approval of funding award notices for the
9 following facilities: Sierra Pacific Industries-
10 Loyalton, Sunray Energy-SEGS I and II, Chowchilla
11 II, El Nido and Colmac Energy, Inc.

12 Funding award notices do not specify
13 dollar amounts to be paid to the facilities, nor
14 do the funding award notices encumber funds for
15 each facility. Rather the funding award notices
16 identify the following information:

17 Pertinent information about the
18 applicant, the facility and the facility's power
19 purchase agreement; the facility-specific target
20 price and production incentive cap for that
21 calendar year; the terms and conditions under
22 which the existing renewable facilities program
23 funding will be provided, including any funding
24 restrictions and prevailing wage requirements.

25 From 1998 through 2006 existing

1 renewable facilities program target prices and
2 production incentive caps were assigned
3 collectively for facilities based on technology.

4 Previous editions of the existing
5 renewable facility program guidebook specified
6 these target prices and production incentive caps.
7 However, Senate Bill 1250 amended Public Resources
8 Code section 25742(e) to require the Energy
9 Commission to evaluate facilities individually
10 based on the required information submitted by
11 each facility.

12 This evaluation includes the following
13 factors: the cumulative amount of funds that the
14 facility has previously received from the Energy
15 Commission and other state sources; the value of
16 any past and current federal or state tax credits;
17 the facility's contract price for energy and
18 capacity; the market value of the facility; and
19 the facility's estimate of the incentive payment
20 needed above the energy payments that the facility
21 will receive during the calendar year that the
22 applicant is applying for. And also, the
23 facility's explanation as to why this incentive
24 level is needed.

25 Also looked at is the facility's

1 explanation of how the incentive payments from the
2 existing program will allow the facility to become
3 cost competitive by the end of the year 2011.

4 The facility's responding award notices
5 that I am submitting for approval submitted the
6 aforementioned information. Energy Commission
7 Staff reviewed and analyzed the information
8 submitted by these facilities in accordance with
9 statutory and program guidelines.

10 Based on the information submitted staff
11 recommends the approval of the target prices and
12 production incentive caps listed on the proposed
13 funding award notices, along with the approval of
14 those funding award notices in their entirety for
15 these facilities.

16 CHAIRPERSON PFANNENSTIEL: Thank you,
17 Jason. Are there questions from the
18 Commissioners? I also have a Jim Turner of SPI,
19 who, I believe, only wants to speak if there are
20 questions. But I just wanted to give him an
21 opportunity.

22 All right, if no questions, is there a
23 motion?

24 COMMISSIONER GEESMAN: I'll move the
25 item.

1 COMMISSIONER ROSENFELD: Second.

2 CHAIRPERSON PFANNENSTIEL: All in favor?

3 (Ayes.)

4 CHAIRPERSON PFANNENSTIEL: It's
5 approved, thank you, Jason.

6 MR. ORTA: Thank you.

7 CHAIRPERSON PFANNENSTIEL: Item 11,
8 possible approval of the voluntary California
9 guidelines for reducing impacts to birds and bats
10 from wind energy development, prepared by the
11 California Energy Commission and the Department of
12 Fish and Game. Good afternoon.

13 MS. WARD: Good afternoon, Chairman,
14 Commissioners. I'm Misa Ward, Energy Commission
15 Senior Biologist. With me here today is Mr. Scott
16 Flint of the California Department of Fish and
17 Game.

18 I have worked as the Project Manager in
19 developing the California guidelines for reducing
20 impacts to birds and bats from wind energy
21 development, which is a document presented for
22 your approval today.

23 In its 2005 Integrated Energy Policy
24 Report, the Energy Commission recommended the
25 development of statewide protocols to address

1 avian impacts from wind energy development.

2 In 2006 many stakeholder participants at
3 a workshop entities, understanding and resolving
4 bird and bat impacts, collectively requested such
5 guidance from the Energy Commission and the
6 California Department of Fish and Game.

7 The two agencies started working
8 collaboratively on the voluntary guidelines on May
9 24, 2006, when the full Commission adopted an
10 order instituting informational proceeding 06-OII-
11 1, and assigned the task to its Renewables
12 Committee.

13 To assist the development of guidelines
14 that would be inclusive, collaborative and based
15 on the best available science, the Committee
16 established a science advisory committee and
17 solicited suggestions from stakeholders on how to
18 incorporate public input.

19 The overall goal of this effort is to
20 minimize impacts to birds and bats from wind
21 turbines while encouraging wind energy development
22 by facilitating the issuance of necessary permits
23 and reducing regulatory uncertainty.

24 The Energy Commission and California
25 Department of Fish and Game have hosted eight

1 public workshops or hearings in Sacramento,
2 Bakersfield, Riverside and Livermore; and have
3 received over 100 public comment letters on four
4 draft versions of the guidelines, including the
5 document before you.

6 More than 80 interested parties,
7 including representatives from the wind industry,
8 resource agencies, environmental groups,
9 nongovernmental organizations, utilities, county
10 planning departments, elected officials,
11 universities and research institutes participated
12 in these events and/or submitted written comments.

13 After considering all this input the
14 Committee published its final guidelines on
15 September 14, 2007. The public release of the
16 final Committee guidelines was accompanied by a
17 notice of availability which included a decision
18 document that responded to comments on the
19 previous draft and explained the rationale for
20 accepting or rejecting suggested revision.

21 The recommendations and protocols
22 discussed in the voluntary guidelines are
23 suggestions for local permitting agencies to use
24 at their discretion and serve as a resource for
25 other parties involved in the permitting process

1 for wind energy development.

2 Staff encourages the Energy Commission
3 to approve the document and thanks the many
4 participants in this process who have helped
5 improve the guidelines through written comments
6 and discussions at hearings or workshops.

7 The guidelines are a better document
8 because of the active participation and the many
9 comments received from parties.

10 That concludes my presentation; and I
11 would now like to invite Ms. Kerry Willis, Senior
12 Staff Counsel, to comment on the guidelines
13 approvals compliance with CEQA. And then to Mr.
14 Scott Flint, who will speak on behalf of the
15 California Department of Fish and Game. Thank
16 you.

17 MS. WILLIS: Good afternoon. My name is
18 Kerry Willis; I'm Senior Staff Counsel. The
19 Energy Commission's legal office has considered
20 the application of the California Environmental
21 Quality Act to the approval of these guidelines.

22 And it is our opinion that the approval
23 of these guidelines is exempt from CEQA because it
24 is not a project pursuant to CEQA's Title 14
25 California Code of Regulations section

1 15378(b)(2), in that it deals with the
2 continuation of administrative activities in the
3 form of voluntary protocols and tools that may be
4 followed at the discretion of local permitting
5 agencies.

6 CHAIRPERSON PFANNENSTIEL: Thank you,
7 Kerry. Scott.

8 MR. FLINT: Good morning, afternoon,
9 Chairman Pfannenstiel and Commissioners. I'm
10 Scott Flint for the California Department of Fish
11 and Game; and I'm here this morning to represent
12 the Department and make a statement on behalf of
13 our Acting Director, Mr. John McCamman.

14 I'll apologize in advance for a little
15 bit of repetition here with Misa's comments, but
16 overall it should be short.

17 Since the issuance of the 2005
18 Integrated Energy Policy Report in a conference
19 held in January 2006 to address understanding and
20 resolving bird and bat impacts, and because of the
21 importance of addressing these issues to achieve
22 our agency's respective missions, that of the
23 Commission to promote responsible wind energy
24 development as an alternative energy source, and
25 the Department's mission to protect fish and

1 wildlife species for the public trust, we engaged
2 jointly with the Energy Commission and have had
3 staff working from both the Department and Energy
4 Commission jointly to develop the voluntary
5 guidelines that are before you for consideration
6 and action today.

7 The guidelines development process has
8 been an attempt to collaborate effort involving
9 both of our agencies, the wind energy development
10 industry, environmental groups, local government
11 representatives and the general public.

12 Development of the guidelines proceeded
13 through a series of no less than three public
14 workshops, three formal public hearings and three
15 public review document drafts. Many comments were
16 provided by all the participants both in
17 interactive workshop discussions and as written
18 submissions.

19 Many of these comments were incorporated
20 into the document in one form or another. And
21 because of the quality and input received from
22 all, the final version before you today is a much
23 improved and balanced document from where the
24 initial draft, where we started.

25 As stated, the purpose of the guidelines

1 is to provide voluntary guidance that describes
2 methods to assess bird and bat activity at
3 proposed wind energy sites, design pre- and post-
4 operational monitoring plans, and to develop
5 impact avoidance minimization and any necessary
6 mitigation measures.

7 In the Department view the use of these
8 guidelines will accelerate the siting of wind
9 energy facilities, while protecting bird and bat
10 species that the Department is charged with
11 protecting, as a matter of public trust.

12 It does so by providing the following:
13 One, science-based and consistent assessment tools
14 to inform facility siting and the CEQA process.
15 Two, insures that all potential impacts are
16 identified and addressed as early as possible in
17 the process of project development.

18 Three, provides a list of known
19 mitigation measures that can be selected by local
20 agencies, if impacts are needed to be mitigated
21 for a site, that are known to work for birds and
22 bats. And four, provides flexibility to account
23 and adjust specific recommendations for site-
24 specific needs.

25 Just last week a presentation on the

1 California draft guidelines was made before AWFA,
2 which is the Association of Fish and Wildlife
3 Agencies. And this is a national organization of
4 the state wildlife agency directors or their
5 designees. And reactions to the California
6 guidelines were very positive.

7 AWFA is tracking 26 states which have
8 adopted similar guidelines, and five others which
9 are poised to distribute guidelines shortly.

10 The feedback from the presentation and
11 from others in this organization indicate the
12 proposed California guidelines are by far the most
13 comprehensive, balanced and well-written set of
14 guidelines available to address this issue.

15 If the version before the Commission
16 today -- the version of the document before the
17 Commission today is approved, the Department is
18 prepared to jointly endorse the guidelines as
19 primary guidance for DFG Staff to use in
20 consultation with project developers and local
21 lead agencies to insure that impacts to birds and
22 bats species are addressed as siting decisions are
23 made.

24 In rolling out the guidelines direction
25 and training is anticipated. We would provide

1 direction and training to Department Staff on the
2 technical issues surrounding bird and bat impacts,
3 and to the use of the guidelines as in standard
4 procedure.

5 Some comments that were passed to Acting
6 Director McCamman, and that I observed during this
7 process, relate to the Department's staffing
8 levels and ability to review projects. And we
9 wanted to let the Commission know today that the
10 Department is poised and has final approval to add
11 30 positions Department-wide this fiscal year for
12 our CEQA program responsibilities. So that will
13 be a significant boost to our staffing to be able
14 to address some of these projects.

15 Are all these staff dedicated to review
16 wind energy proposals? No. Will adding 30 staff
17 allow us to review every CEQA document or comment
18 adequately in every document? No. But it's a
19 significant boost in our efforts to address our
20 ongoing mission and responsibilities under CEQA.

21 The focus of these staff is to be
22 working with local lead agencies as early as
23 possible in project planning to develop species
24 protection strategies and avoid impacts before
25 they happen.

1 The Department would like to thank the
2 Commission for providing the leadership to address
3 this issue. And is high appreciative of
4 Commission Staff for providing valuable -- and our
5 own Department Staff, I almost left them out --
6 for providing valuable technical expertise,
7 logistics and support for the collaborative
8 process and development of the guidelines.

9 I would also like to say that we
10 understand work is not done to resolve all of the
11 issues to be addressed. The Department is
12 available to participate in followup issues
13 identified in the guidelines, including refining
14 assessment methods for bat species, working to
15 establish a statewide scientific advisory
16 committee, and working to insure necessary and
17 appropriate research into bird and bat impact
18 issues continue.

19 Commissioners, I've also been the
20 Department's primary point of contact regarding
21 the proposed guidelines, and I am available to
22 respond to any questions as you move through the
23 proceeding. Thank you.

24 CHAIRPERSON PFANNENSTIEL: Thank you,
25 Scott. Misa mentioned that there were some 80

1 interested parties. A good number of them are
2 here today seeking to speak.

3 Are there comments before we begin?

4 Yes, Commissioner Geesman.

5 COMMISSIONER GEESMAN: As you know, this
6 effort arose initially in 2005 and was one of the
7 recommendations in the 2005 Integrated Energy
8 Policy Report.

9 I was slow to come to the conclusion in
10 2005 that this was a worthwhile effort. It was
11 spawned by the spectacle created in the Altamont
12 Pass; in part, the result of various pieces of
13 research that the Commission had been involved
14 with over the years; and part an inability to
15 reach closure on the part of industry advocates
16 and environmental organizations. And the
17 difficulty faced by the county in making decisions
18 there.

19 Based on requests from leading members
20 of the wind industry, nationally, and based on
21 similar requests from leadership, the Audubon
22 Society, and several other prominent environmental
23 organizations, I came to the conclusion that this
24 would be something worth pursuing.

25 And as a consequence, the full

1 Commission joined in that recommendation in 2005.
2 We spent a long time trying to get to where we are
3 today. And I want to particularly thank the staff
4 and the Department of Fish and Game in sticking
5 with the process. It's been a lot longer than we
6 had anticipated it would be. And I think for
7 several of the participants, it's been a lot more
8 arduous.

9 We've gotten terrific input from people
10 across the spectrum of involvement in this issue.
11 And I think we've benefitted from all of them,
12 including comments made by many of the people to
13 speak in opposition of the guidelines.

14 My own belief is that the intent here is
15 to accelerate the development of the wind resource
16 in California. And the intent is to provide a
17 path through the jungle that characterizes the
18 permitting process in California.

19 These are entirely voluntary guidelines,
20 which a local lead agency will have to determine
21 are applicable before they have any relevance to
22 any particular permit at all.

23 Our permitting process in California is
24 driven by a local lead agency under CEQA. And
25 that lead agency will have full discretion under

1 these guidelines as to whether to apply them or
2 not. But I do believe the underlying message here
3 is to encourage the development of wind energy in
4 California.

5 And I certainly thank everybody who has
6 participated in the process.

7 CHAIRPERSON PFANNENSTIEL: Let me just
8 observe before we go to the commenters, that this
9 has been an amazing process. Both because it was
10 something the Commission took on in seeing a
11 problem and looking for a solution. And the
12 problem was the inevitable conflict between wind
13 development and the avian impacts of that
14 development.

15 We wanted to see wind; we want to see
16 more wind development. And so we undertook this
17 process. And as Commissioner Geesman said, it was
18 longer and in some ways more difficult than we had
19 expected. But I think that the collaboration
20 between the Energy Commission Staff and the
21 Department of Fish and Game, and then all of the
22 many parties who participated not just
23 occasionally, but actively, and continually, and
24 thoroughly throughout has brought us to the point
25 we're at today, with a document that is, I would

1 have to say, a very good balance.

2 And I think that even those who take
3 issue with some parts of it would agree that it
4 does represent, for a set of voluntary protocols,
5 really amazing place to be.

6 With that, any other comments from the
7 Commissioners? I can open it then to the blue
8 cards. Start with Nancy Rader.

9 MS. RADER: Thank you. Good afternoon,
10 Commissioner Pfannenstiel -- Chair Pfannenstiel
11 and Commissioners. My name's Nancy Rader from the
12 California Wind Energy Association. CalWEA's
13 members include a dozen companies that
14 collectively are developing more than 8000
15 megawatts of wind energy projects in the state;
16 collectively, enough to supply 8 percent of the
17 state's electricity needs.

18 California's ability to meet its
19 renewable energy and greenhouse gas reduction
20 goals with instate resources will depend, in large
21 part, on the willingness of these companies to
22 continue to spend their risk capital dollars here
23 rather than in other states.

24 The guidelines before you will have a
25 direct and material effect on whether these

1 companies choose to invest in California, as many
2 of them will explain, and the extent to which
3 California is going to be able to avoid more
4 Russell power plants in this state in the future.

5 Our companies are willing to do, and in
6 fact, are doing all the studies and mitigation
7 that they should do to avoid significant impacts
8 on wildlife.

9 But the guidelines before you impose
10 particular studies and process requirements that
11 are not necessary or appropriate at every site.
12 And they will add months, if not years, of delay,
13 along with millions of dollars in cost to the cost
14 of each project, by aiming to quantify and
15 mitigate impacts, rather than significant impacts.
16 The guidelines would hold wind projects to a far
17 higher standard than required under CEQA.

18 In so doing, these guidelines will
19 threaten the viability of projects and deter
20 investment in the state without reducing impacts
21 to wildlife.

22 And this undue focus on relatively minor
23 local impacts, while the entire planet is in peril
24 due to fossil fuel consumption that is radically
25 disturbing ecosystems globally, the cliché

1 fiddling while Rome burns seems apt.

2 CalWEA strongly encourages you not to
3 adopt these guidelines today, and instead to
4 direct staff to revise the document to correct
5 several serious flaws so that it achieves
6 everyone's shared goal of promoting wind
7 development, while protecting wildlife.

8 And let me also note that the companies
9 who will today support adoption of these
10 guidelines are on record objecting to the same
11 things that the CalWEA is objecting to. There is
12 widespread industry concern about this document,
13 despite the fact that some companies have chosen
14 to support its adoption today.

15 At a minimum we urge you to add a
16 statement that the guidelines are intended to be
17 applied prospectively only. As we have indicated
18 to you previously, these guidelines, in their
19 draft form, are already being applied to projects
20 in the late stages of development. Projects that
21 would otherwise come online by 2009 in time to
22 meet the state's 2010 RPS goals.

23 If developers are forced to reconduct
24 their multiyear studies as now threatens several
25 projects now, it will be a further setback to the

1 achievement of the state's RPS goals. And these
2 projects may well be abandoned all together. We
3 need these projects to meet our 2010 RPS goals.

4 We ask that you, in fairness, add a
5 simple statement about the prospective application
6 of these guidelines to protect the viability of
7 these projects.

8 I've prepared language for your
9 consideration on this point.

10 Thank you.

11 CHAIRPERSON PFANNENSTIEL: Thank you,
12 Nancy. Michael Azeka.

13 MR. AZEKA: Good afternoon, Madam Chair
14 and Members of the Commission. I'm Mike Azeka
15 from AES C West. I'm Vice President.

16 First off I want to thank Commissioner
17 Geesman for his long-term leadership on this
18 topic. I first talked to him about this nearly
19 two years ago. And I know there's a lot of time
20 that he's put into this, and that's very much
21 appreciated by the industry.

22 But I also want to state that in
23 addition to agreeing with the points that Nancy
24 Rader raised, that I want to underscore a couple
25 of things. First, with these guidelines, projects

1 will be advised to consult with California Fish
2 and Game more than, I counted 18 times.

3 And now, let's assume that we can
4 consolidate that down to ten times. The reason I
5 say it's ten times is that we're asked to consult
6 prior to initial screening; we're asked to consult
7 prior to conducting the site-specific studies;
8 we're asked to consult again to determine if the
9 studies need to be conducted for an additional
10 year.

11 We're asked to consult before we start
12 operation; we're asked to consult when we've done
13 post-construction monitoring to determine if
14 additional post-construction monitoring is
15 required, et cetera, et cetera. I mean there are
16 different points in this timetable that we're
17 talking about when we go through to develop a
18 project.

19 I appreciate that California Fish and
20 Game is going to be adding staff to try and
21 address this, but what we're talking about is
22 going from three or four consultations to more
23 like 14 consultations. And they would have to not
24 only add people, but train them.

25 And they would have to spend all the

1 time to familiarize those people with all of the
2 information that some of the experts have spent
3 their careers developing here. And I don't think
4 they can get up that curve quickly in time to help
5 us meet this 2010 RPS goal.

6 The next point I want to make is that
7 because this additional level of requirements is
8 now being proposed here, our company, who is
9 operating across the U.S., is looking at the
10 scarce turbines. You know, right now our industry
11 can only get so many turbines. And our company,
12 who can afford to buy them, have standing orders
13 with the vendors, has to look, where do we put
14 those scarce turbines, where do we put our
15 investment dollars, where do we put our staff and
16 our efforts.

17 And we're, frankly, seriously looking at
18 doing projects in all of the other states except
19 California because this adds so much more risk and
20 so much more delay to that timetable.

21 So, therefore, we request that these
22 guidelines provide additional guidance statement
23 that guides Fish and Game and other wildlife
24 agencies, and also the permitting authorities, so
25 that we avoid this piling on of consultations.

1 Clearly additional consultation is
2 needed, but I think it's stated so many times that
3 it really implies that there will be an unworkable
4 amount of consultation. Because there will be, I
5 can tell you from doing this work for 25 years,
6 there will be a collision between all these
7 requests for guidance and the staff's ability to
8 provide appropriate recommendations.

9 So, in addition to that, I respectfully
10 urge this Commission to add a statement on page 3,
11 in the purpose of the document section, that says
12 that it's not intended that all projects implement
13 all of these recommendations, but that the
14 appropriate recommendations be employed.

15 Now, we respectfully ask this Commission
16 to consider these matters and these requests.
17 We've been part of a participation through CalWEA,
18 but also our company has submitted written
19 comments.

20 We know that it's a good thing to have
21 this kind of guidance. We know that it will help
22 eventually. But our concern is meeting 2010.

23 Thank you very much.

24 CHAIRPERSON PFANNENSTIEL: Thank you.

25 Kevin Martin.

1 MR. MARTIN: Madam Chair, Commissioners,
2 my name is Kevin Martin. I'm a Biologist and
3 Permitting Specialist for Acciona Energy North
4 America.

5 This reminds me of 17 years ago when my
6 career first started with dealing with salmon and
7 steelhead issues for the Columbia River Basin in
8 the Pacific Northwest, dealing with hydroelectric
9 generation.

10 And this effort is commendable by both
11 the Department of Game and Fish and the
12 Commission.

13 With these guidelines, as written, it
14 has to be understood, though, that there's still
15 work to be done. And regarding how they're used
16 by the Department of Game and Fish and the
17 industry, and in the development of alternative
18 energy sources in California.

19 Current projects scheduled by my company
20 in the central part of the state, current projects
21 online for 2008 and 2009, are experiencing
22 complications from the application of these
23 guidelines, due to the local field-level staff
24 having confusion on their part on how these
25 guidelines should apply. This may result in the

1 unnecessary postponement and recirculation of EIRs
2 that may, in fact, kill the projects.

3 We have voluntarily scheduled
4 approximately \$800,000 over the next year in
5 supplemental surveys to avoid complications as a
6 result of these guidelines, and as an intent to do
7 the right thing for environmental compliance.

8 We ask the adoption of the guidelines be
9 postponed until there is a better understanding of
10 how the implementation, and there's an evaluation
11 on the Commission's part of how this field-level
12 use of the guidelines impacts current projects and
13 the attainment of the goals for California.

14 Prior to the adoption of guidelines, or
15 before the application of them, to the project, we
16 ask that the California Fish and Game be given
17 implementation policy in how they can and cannot
18 use the guidelines in supporting the efforts to
19 develop California alternative energy sources.
20 And avoiding unnecessary development and possible
21 disincentives for those of us who are trying to
22 address the state energy needs and policy.

23 In articulating an implementation plan
24 to the Department for policy, the Commission can
25 be proactive in addressing two problems that may

1 arise in the future, and not distant future. One
2 is the unnecessary delay or possible failure of
3 these projects from complications stemming from
4 the California Department of Fish and Game trying
5 to fill a nebulous role in how they need to apply
6 these guidelines.

7 The second, it is unnecessary, or
8 avoiding unnecessary appeals, opposition and
9 litigation from parties that may misunderstand
10 that the guidelines are voluntary, and not
11 required standards used by the Fish and Game to
12 regulate these projects.

13 Thank you very much.

14 CHAIRPERSON PFANNENSTIEL: Thank you.
15 Andy Linehan.

16 MR. LINEHAN: Madam Chairman and
17 Commissioners, I'm Andy Linehan with PPM Energy.
18 We have several projects in California that are in
19 operations, and one in the Palm Springs area which
20 is in the middle of construction.

21 I've been involved in this process for
22 the full two years of it. I was very eager to see
23 it started, and I'm also eager to see it
24 concluded.

25 I think that in any kind of a

1 negotiation there's bound to be folks who don't
2 get a hundred percent of what they're looking for;
3 and that's true for my perspectives about this set
4 of guidelines, as well.

5 I think there are a number of areas that
6 need some clarification in terms of implementation
7 date, grandfathering and some inconsistencies
8 among sections which might lead local permitting
9 agencies to have confusion about the intent.

10 But I think all of those issues could be
11 clarified subsequent to the adopting of these
12 guidelines through follow-on clarifications. And
13 I'd urge the Commission to go ahead and pass these
14 guidelines, adopt these guidelines today. We've
15 spent a lot of time on them; I think they're a
16 great improvement for predictability about how
17 projects can be permitted in California. And I
18 appreciate all the effort that's gone into this
19 from the Commission and from the agencies.

20 Thank you.

21 CHAIRPERSON PFANNENSTIEL: Thank you,
22 Andy. Brenda LeMay.

23 MS. LeMAY: Good afternoon. I liked it
24 when Scott said good morning, afternoon, --

25 MR. SPEAKER: It was right on the cusp.

1 MS. LeMAY: Maybe we're running a little
2 late. I wanted to say that I am very pleased.
3 I've been involved in this process for the last
4 two years. I felt as though the process was run
5 very smoothly. The document is well written,
6 albeit it has, you know, some potential
7 clarifications.

8 I'm in support of the adoption of the
9 guidelines today. And, you know, one thing I
10 would like to point out, and I agree that a lot of
11 the wind developers actually on the exact comment,
12 would agree, that, you know, maybe it's a little
13 heavy-handed in some of the areas on the one hand.

14 On the other hand, in my interpretation
15 there is a lot of language here that gives the
16 Department of Fish and Game flexibility for
17 implementation, which is something that we strived
18 for.

19 Scott, we're going to lean on you for
20 reasonable implementation of these guidelines.
21 And things such as, I wanted to bring up a couple
22 of examples that I know of with projects that I'm
23 working on in development right now in California,
24 that have gone through studies already. They
25 don't apply exactly. I feel that they're

1 extremely reasonable and above expectation in some
2 areas.

3 And in the one area in particular that
4 we did 20-minute studies instead of 30-minute
5 studies on a preconstruction basis. So, you know,
6 and sometimes we did twice a week during spring
7 and fall, which was, you know, more above the
8 average, and every other week in the summer.

9 Those are situations, and I give you
10 specific examples because those are situations
11 that the Fish and Game is going to have to
12 consider. And that's exactly what people are
13 talking about when they say projects that have
14 already been studied.

15 Now, I'm not in an official process. I
16 don't have a lead agency representing me right now
17 with the Fish and Game, so I'm sort of trying to
18 get input from the Fish and Game, and I'll tell
19 you, unfortunately it hasn't been that fast a
20 process.

21 So I'm very pleased that 30 staff
22 members are going to be there. I've also been
23 very pleased with the Fish and Game's involvement
24 in this. So I don't want to -- I'm not
25 criticizing anybody, I'm just saying, you know,

1 it's going to be up to the industry, the agencies
2 and Fish and Game to make sure that this is well
3 implemented.

4 Like I said, I wanted to give those
5 specific examples so that you understand that from
6 our perspective there are going to be some
7 requests for variances.

8 So I am very pleased that we're coming
9 towards the end whether you adopt them today or
10 not.

11 CHAIRPERSON PFANNENSTIEL: Paul
12 Vercruyssen.

13 MR. VERCRUYSEN: Good afternoon, Madam
14 Chair, Commissioners. My name is Paul
15 Vercruyssen; I'm here from the Center for Energy
16 Efficiency and Renewable Technologies. For those
17 in the room that don't know, we are a coalition
18 organization that represents a number of renewable
19 and clean energy technology developers, as well as
20 a number of national and statewide environmental
21 groups.

22 Our participation in this process has
23 been one with the goal of consensus. That said,
24 I'm not sure if I was the only one that realized
25 this, but I certainly realized from the very

1 beginning that we weren't going to end up with a
2 document that everyone was 100 percent happy with.

3 I certainly agree with some of the other
4 people that have come up here earlier that we do
5 need to adopt this document today. I think that
6 there are some clarification issues that people
7 have pointed out, and they may continue to arise.
8 And it will be up to the Commission and the
9 Department to clarify those issues however you see
10 fit. Whether formal responses or on a case-by-
11 case basis with the projects.

12 But at the end of the day, the content
13 of the document is separate from the way that it
14 is implemented, and both are very very important.
15 At the end of the day, though, we are going to
16 have to rely on the good faith implementation of
17 Department of Fish and Game, local lead agencies,
18 other pertinent agencies, other land use agencies
19 for the Fish and Wildlife Service, et cetera, to
20 be reasonable.

21 And you've heard a lot of examples.
22 This is something that concerns us, but I also
23 tend to agree with the response of the Commission
24 on the points of retroactivity to state when the
25 guidelines should be implemented and shouldn't be

1 implemented takes away from the importance of
2 their voluntary nature, and the discretion of the
3 lead agencies, whether to use them, whether to
4 not.

5 To say that you have a date when they
6 need to be implemented implies that they do, in
7 fact, need to be used on every case.

8 And so I tend to agree with you on that.
9 I also would say very strongly that we do need to
10 very carefully consider how these are going to be
11 used. I think training Fish and Game Staff is
12 crucial, as well as counties, in that respect.

13 And we would like to continue to work
14 with both CDFG and the CEC to facilitate that in
15 any way, or offer our input.

16 I would like to -- I have also been
17 engaged in this process for the past two years,
18 actually going back a little bit further. And I
19 would just like to remind people of the situation
20 when it began, which was that there was a rather
21 ugly lawsuit festering in the Altamont. There was
22 other lawsuits popping up outside of that area.
23 There was generally not a lot of cooperation
24 between the wind industry and the environmental
25 community.

1 This is something that is, from our
2 organization's perspective, a major problem, and
3 something that we always very proactively try and
4 address whenever we see it.

5 There was also relatively little
6 uniformity in the way that these studies were
7 being conducted across the state. And it was
8 really a case of developers knowing that they
9 needed to address it, but really shooting in the
10 dark as far as how to do it. Which, at the end of
11 the day, doesn't really benefit anybody, because
12 you're not getting data that you can compare
13 across sites. You're not really going to be
14 answering the bigger questions that these
15 guidelines will eventually, I feel, answer.

16 And it will benefit both the wildlife
17 populations as well as the wind developers, who
18 may be able to streamline some of these studies on
19 their projects, as well.

20 Again, I will just say that in adopting
21 these we are relying on the reasonableness of
22 their implementation, as they are voluntary. And
23 we're going to rely on that from the CEC, CDFG,
24 the environmental groups, the wind developers,
25 everyone in this room.

1 But I do feel that it is a very good
2 document, and I urge you to adopt it today.

3 COMMISSIONER GEESMAN: I think your idea
4 about training is an excellent one, and one that
5 we should make a priority going forward.

6 MR. VERCRUYSSSEN: Very good, thank you.

7 CHAIRPERSON PFANNENSTIEL: Thank you,
8 Paul. Julia Levin.

9 MS. LEVIN: Now I think it's officially
10 good afternoon. Good afternoon, Madam Chair and
11 Commissioners. I'm Julia Levin; I am the Global
12 Warming Director for the National Audubon Society.
13 But I am also representing the Sierra Club and
14 Defenders of Wildlife. Unfortunately, Kim Delfino
15 from Defenders of Wildlife had to leave for
16 another meeting; and Carl Zichella is out of state
17 today.

18 So our three organizations collectively
19 represent over 2 million members in the United
20 States. And we strongly support the Commission's
21 adoption of the guidelines today without further
22 delay.

23 I would like to thank in particular
24 Commissioner Geesman and Chair Pfannenstiel for
25 your leadership on this issue. It has really been

1 a unique experience in my 17 years of
2 environmental policy.

3 I think it has been a very public and
4 constructive process. I think many of the
5 developers and environmental groups and agencies
6 in the room would agree that these have been fully
7 vetted; there have been ample opportunities for
8 written and oral comments; and real dialogue, not
9 just comments that disappear into a vacuum. But a
10 give-and-take that sometimes some of the
11 stakeholders have come up with new ideas, and the
12 staff and the consultants have been very open to
13 them. And I really think that this is just a
14 model process on every level.

15 We think that the final result, hope the
16 final result is well balanced, that they are
17 efficient, that they're practical, and that they
18 will help to achieve the twin goals of satisfying
19 our RPS and protecting wildlife in California.

20 And I think several of you know, but for
21 those that don't, I personally led the campaign to
22 pass California's RPS with a great deal of blood,
23 sweat, tears and sleepless nights, as my husband
24 and many others will attest to.

25 I would not be standing here before you

1 today if I thought that the adoption of these
2 guidelines would in any way slow down the
3 implementation of the RPS. I think quite the
4 opposite, that adopting these guidelines today
5 will help us move forward.

6 As Paul and others have mentioned, we
7 were in a very contentious and unproductive
8 situation two years ago when we began this
9 process. It's important to implement these
10 guidelines, and I agree with Paul that we are all
11 relying on reasonable implementation. There will
12 be a lot of learning in the process, but it's time
13 to move to that phase.

14 And we do have five specific suggestions
15 for strengthening the implementation. And I think
16 a couple of them already have been mentioned. I'm
17 thrilled to hear about the 30 new positions at
18 Fish and Game. I hope that those are long
19 lasting. This seems to be the last agency to
20 receive funding and the first agency to receive
21 cutbacks. And so I think it is important for all
22 of us to continue to support full funding of Fish
23 and Game so that they can provide timely input, as
24 needed.

25 I also think it's important for the

1 Commission -- you've been a great leader on
2 research. And the results of your research in the
3 PIER program and other programs, it's being used
4 globally now on birds and windpower and other
5 issues, energy issues. But I urge you to
6 continue, and if possible, even increase the
7 amount that goes into this.

8 Because one of the biggest obstacles we
9 faced in the development of the guidelines was all
10 the uncertainty that still exists on the
11 interactions of wind power with birds and bats.
12 So continuing the research is very important,
13 particularly applied research on the mitigation
14 side.

15 I do urge you to appoint and convene a
16 scientific advisory committee as quickly as
17 possible. I think that's going to be an important
18 resource to the permitting agencies and the
19 applicants. It will be important for trying to
20 insure some sort of consistency for answering
21 technical questions, helping shape the research in
22 the future, connecting it to practical
23 applications.

24 And finally I do agree with the wind
25 industry that there are areas in the guidelines

1 that could be further clarified. We do not
2 support any clarifications or changes being made
3 today that have not been fully vetted.

4 You've led such a stellar public process
5 with adequate input so far. I wouldn't change
6 that at the last minute. Some of the suggestions
7 being made, I think, are quite substantial and
8 deserve more than 12 or 18 hours of consideration.
9 And by some parties, no consideration whatsoever.

10 But I do think it would be appropriate
11 for the Commission to offer clarifications on an
12 ongoing basis, additional guidance. These are
13 voluntary. I don't think you have to wait five
14 years to make changes.

15 We will hopefully be learning a lot and
16 may be able to simplify some things; may need to
17 strengthen some things in the future.

18 Finally, I want to end with a concern
19 that I know a number of counties and wind
20 developers have about the retroactive application
21 of the guidelines. And I think it's been said
22 before, but you do need to reach out to counties
23 and permit applicants to make very clear that
24 while the guidelines, themselves, are voluntary
25 suggestions, underlying the guidelines are actual

1 laws on the books in California and nationally.
2 And compliance with those laws is not voluntary,
3 nor does the Commission nor the Department of Fish
4 and Game have the authority to say you don't have
5 to worry about those laws until the guidelines go
6 into effect.

7 The guidelines don't have the force of
8 law, they're voluntary. But the underlying laws
9 are already there and should be complied with.

10 And I think statements about retroactive
11 application go back to the reasonableness of the
12 application of the guidelines, but are not
13 appropriate in the guidelines, themselves.

14 And, again, I want to thank you on
15 behalf of Audubon, Defenders of Wildlife and
16 Sierra Club, and strongly urge you to adopt the
17 guidelines today. Thank you.

18 CHAIRPERSON PFANNENSTIEL: Thank you,
19 Julia. Want to thank you for your support
20 throughout this. Michelle Conway.

21 MS. CONWAY: Good afternoon; Michelle
22 Conway, Oak Creek Energy Systems. Oak Creek has
23 been operating wind turbines in California for
24 over 30 years and has begun developing projects in
25 the last few years.

1 The changes that we have seen in the
2 industry have been incredible. For example,
3 utilities once reluctant to meet with us are now
4 issuing RFPs for renewable energy. And global
5 warming has gone from a concept to a major issue
6 in the presidential debates.

7 Therefore, we value the forum that we
8 are currently in with the guidelines. This is
9 why, even in light of not seeing eye to eye on all
10 the guideline protocols, Oak Creek appreciates the
11 effort and dedication of the CEC and Staff, the
12 CDFG and all other stakeholders who have
13 participated.

14 Oak Creek knows that other stakeholders
15 are frustrated with the wind industry for
16 continuing to push back on many of the protocols
17 in the guidelines. Please keep in mind that we
18 are not opposed to responsible wind energy
19 development or reducing impacts to birds and bats.

20 The reason why we have pushed back on
21 many issues is because of our long history in the
22 business. We know what it takes to get these
23 projects built. We have been in the trenches
24 every day fighting the uphill battle to get
25 renewable energy to be a major source of power in

1 California. And until very recently we have been
2 doing so with little to no support.

3 We believe the guidelines, as written,
4 still contain some unreasonable protocols that
5 will drive up project costs. And if the costs
6 have too great an impact on project returns there
7 is a real risk that such costs will cause some of
8 our projects to be delayed or not to be built at
9 all in California.

10 To use an analogy to illustrate why we
11 are disappointed that the guidelines may be
12 adopted today, we don't understand why the cake
13 must come out of the oven before it's done. We
14 know that we have all had to compromise on flavor,
15 ingredients, method of baking and time to cook.
16 But ideally we would want to finish baking the
17 cake and enjoy the fruits of our labor.

18 If the Commission is still willing to
19 consider some last-minute clarifications before
20 adoption, please consider the following. These
21 are three of our most important issues:

22 Retroactivity. The guidelines should
23 clarify that retroactive applications of the
24 guidelines should be discouraged. Developers who
25 have bird and bat studies already underway on

1 their projects, and who have been working in good
2 faith with lead agencies to comply with local,
3 state and federal laws, should not be penalized.

4 Bats. The guidelines should clarify
5 that while one year of pre-permitting bat
6 acoustical monitoring may be desired, the shortage
7 of qualified bat professionals and the manhours
8 required to interpret the data may make acoustical
9 monitoring difficult, if not impossible to
10 accomplish. And that projects should not be
11 delayed when such studies are not feasible.

12 And lastly, long-term monitoring. The
13 guidelines should clarify that if long-term, post-
14 construction monitoring is needed on a project,
15 state funding will likely be required to help
16 defray the costs. Thank you.

17 CHAIRPERSON PFANNENSTIEL: Thank you.
18 Nicole Hughes.

19 MS. HUGHES: Good afternoon, Madam Chair
20 and Commissioners. Thanks again for another
21 opportunity to speak before you. And I'd like to
22 also thank the preparers of the document for
23 incorporating comments and recommended edits in
24 the latest draft. It was apparent that they did
25 take those concerns into consideration.

1 But we still have some concerns that I
2 don't believe have been adequately addressed.

3 COMMISSIONER BYRON: Excuse me, Ms.
4 Hughes, could you identify who you're with?

5 MS. HUGHES: Oh, I'm sorry. Nicole
6 Hughes, RES America Developments. We're a wind
7 energy developer.

8 COMMISSIONER BYRON: Thank you.

9 MS. HUGHES: I apologize for that.

10 I still believe that there's some stuff
11 in the guidelines that will have a serious impact
12 on our ability to obtain permits, and to finish
13 permitting current projects that we're working on.

14 My specific concern is the lack of a
15 strong statement prohibiting the retroactive use
16 of the guidelines. When I came to you before, I
17 gave an example of a consultation that I was
18 current in with the Department of Fish and Game
19 and how I was experiencing delays.

20 I did receive my comments finally, and
21 I'd like to read a section from this letter to
22 highlight my concerns about the retroactive use.
23 And this starts at the beginning of a paragraph:

24 "A final citable version of the
25 guideline" -- oh, the letter is dated August 24,

1 2007 -- "A final citable version of the guidelines
2 dated July 2007 has been posted on the
3 Commission's website on July 17th, and is now
4 intended for use by lead agencies and project
5 planners. The Department of Fish and Game
6 recommends that the EIR include a comparative
7 analysis of the bird and bat survey protocol
8 recommendations in the guidelines with those that
9 have been conducted by the applicant to date, or
10 are proposed to be conducted prior to
11 construction.

12 "The EIR should disclose those survey
13 activities conducted to date which are consistent
14 in design and scope of recommendations of the
15 guidelines, and should provide justification for
16 omitting surveys which may have been recommended
17 by the guidelines based on project-specific
18 criteria.

19 "The EIR should also discuss potential
20 applicability to the project of the guidelines
21 recommended adaptive management strategy options.

22 And these recommendations come two years
23 after the Department of Fish and Game already
24 signed off on our study protocol. So, now we have
25 to go back and do additional studies that I

1 haven't listed in here, including preparing a
2 report comparing the studies that we've done to
3 the studies that are recommended in the
4 guidelines.

5 I'm also concerned about, you know,
6 there's statements in the document about the
7 voluntary nature of the guidelines. But as
8 evidenced by recent communications with the field
9 agencies, field Department of Fish and Game Office
10 that I've been working with, they have suggested
11 these will be adopted as policy, and deviations
12 may result in permitting difficulties, appeals,
13 remands or potential liability under Department of
14 Fish and Game law.

15 Our lead agency that we're working with
16 asked me to hire a lawyer to prepare a memo saying
17 that if the permitting agency approved our project
18 without following the guidelines that they would
19 not be liable under Department of Fish and Game
20 law. And that was another added expense to our
21 permitting.

22 So, for these concerns I really urge you
23 to postpone adopting the guidelines today, and to
24 urge the preparers to strengthen the language
25 about retroactive use of the guidelines. And to

1 address some of the persistent ambiguities that
2 may affect project financing and our ability to
3 obtain permits.

4 Thanks for this opportunity, and
5 hopefully look forward to working with you on some
6 changes to the document. Thank you.

7 CHAIRPERSON PFANNENSTIEL: Thanks. Stu
8 Webster.

9 MR. WEBSTER: Good afternoon, Madam
10 Chair, Commissioner Geesman, Commissioner Byron.
11 I guess in coming to you today to provide some
12 verbal comments I've been really kind of
13 struggling with what really to focus in on.

14 From my 18-and-some-odd years of
15 environmental consulting and industry consulting
16 experience I would say that this process has been
17 one of the most thorough, well done processes that
18 I've been engaged in. And I want to thank you and
19 CDFG and all the stakeholders that have inputted
20 on this and provided the leadership for it.

21 Clipper Windpower has been a wind energy
22 developer since 2000. And with the intention of
23 generating research and development funds to
24 produce the next generation of wind energy
25 technology.

1 The primary focus of our development has
2 been in the midwest and on the east coast, though
3 we do have some assets under early stage
4 development in California.

5 The limited amount of available
6 resources we have prompt us to sort of go after
7 what most often is termed the low-hanging fruit
8 and California assets have not really been pursued
9 aggressively. Other hindrances such as DOD issues
10 have complicated it further.

11 The idea of Mr. Dielsen's intent to
12 start Clipper Windpower, as well as his previous
13 wind company, Zondh (phonetic), was to bring forth
14 to the energy generation industry the next
15 generation or future of low-impact electricity
16 generation; and has accomplished that to a large
17 extent as evidenced by the amount of folks
18 involved in this industry today.

19 One concern that has been often raised
20 by stakeholders who feel industry has not
21 addressed bird and bat impact issues is that there
22 is a great deal of uncertainty that remains
23 unaddressed. And I feel that I need to bring
24 forth the fact that many of my counterparts, as
25 well as Clipper Windpower, have been actively

1 involved with other agencies, as well as each
2 themselves with formulating various associations
3 and organizations to try and address these issues,
4 while at the same time protecting business
5 interests in a highly competitive industry. Where
6 releasing seemingly benign information becomes
7 problematic with protecting your interests.

8 The guidelines that California decided
9 to undertake were meant to address some of these
10 uncertainties and concerns by other stakeholders.
11 And industry, as well as Clipper, were very happy
12 to see this process started, and have been
13 actively engaged in it from day one. Myself, for
14 the past year.

15 The intent was twofold. One, to assist
16 wind energy to get through the permitting process
17 that was already somewhat of a hurdle in
18 California for energy development, as well as to
19 address the uncertainties.

20 It seems, in looking at the response to
21 comments that were issued two weeks ago, that by
22 and large both of those intentions have been
23 addressed. However, I feel that, and it's
24 Clipper's opinion that one supersedes somewhat the
25 other, based on the content of the document.

1 And that is that the uncertainties that
2 exist in the research and the impacts of bird and
3 bats has become more of a focus than the attempt
4 to try and assist industry getting through the
5 permitting process. Unintentionally, I might add.

6 We feel, based on that, that a delay in
7 adoption is warranted. At the very least for one
8 more workshop. Where we feel that taking
9 exception to CEC Staff's opinion that unresolvable
10 issues can, in fact, be resolved. Because we feel
11 that it's essentially a question of semantics,
12 almost, moreso than intent in the content of the
13 document as it's currently drafted.

14 Realizing, of course, that Clipper is
15 not alone, and not really wanting to extend this
16 process any further, but feels it's necessary, we
17 have also provided written comments with specific
18 recommendations to address our concerns and
19 hopefully some of the concerns of other
20 counterparts in the industry, to try and
21 ameliorate what we see as a deficient document to
22 date.

23 Please consider those written
24 recommendations. And I personally apologize for
25 getting those in today versus Monday, due to

1 unforeseen circumstances.

2 In lieu of those recommendations being
3 considered, we feel that all parties agree that
4 this document may go forward and be adopted today,
5 but does have some inadequacies that need to be
6 addressed, and therefore request that the five-
7 year review period be reduced to two years, so
8 that some of these issues can be looked at with
9 some examples behind them of practical
10 application.

11 We appreciate the time that you've given
12 me to speak today, and thank you very much.

13 CHAIRPERSON PFANNENSTIEL: Thank you.
14 Greg Blue.

15 MR. BLUE: Good afternoon. My name is
16 Greg Blue; I'm with Enexco Development. We're a
17 wind and solar developer, headquartered in
18 California.

19 Enexco has been involved in this process
20 from day one, and are very supportive of this
21 collaborative process. It's been a very good
22 process. And while we have filed comments, we've
23 given oral comments before at one of the hearings,
24 and have participated.

25 Now, while a lot of our issues have been

1 resolved, not all of them have been resolved, and
2 we understand that's the way it works sometimes in
3 these processes, we are left with one issue. And
4 you've heard it from virtually every speaker
5 today.

6 And to be real specific, we have a
7 project; we have completed our avian studies; we
8 have not received our final permit yet. And
9 unknown when that's going to be happening due to
10 other issues.

11 So we are concerned about the, and I'll
12 use the word retroactive application. This could
13 be dealt with by either adopting the CalWEA
14 language, I believe it's one sentence, two
15 sentences. Or in the clarifications we've heard
16 from, I would like to hear on the record from the
17 Commission their -- in lieu of, if you don't want
18 to adopt this language, at least give us something
19 on the record that we will work forward with, and
20 as part of these clarifications that we've been
21 hearing requested.

22 COMMISSIONER GEESMAN: My personal
23 opinion is that local agencies should not make
24 inappropriate application of these guidelines,
25 either prospectively or retroactively.

1 The difficult with trying to be more
2 definitive than that creates for us is invading
3 the discretion of local agencies in circumstances
4 that we very well may not know anything about.

5 You pose one particular scenario, which
6 I'll characterize is at one end of the spectrum.
7 At the other end of the spectrum is the guy who
8 talked to the county planning agency yesterday
9 about a project. Would application of these
10 guidelines to that particular individual at that
11 end of the spectrum constitute retroactive
12 application?

13 We don't know. We trust in the good
14 judgment and prudent application of these
15 guidelines by local decisionmakers.

16 MR. BLUE: Right, and --

17 CHAIRPERSON PFANNENSTIEL: Well, and,
18 Greg, that's the whole point of them being
19 voluntary guidelines.

20 MR. BLUE: I understand that. I was --

21 COMMISSIONER BYRON: Mr. Blue, also I
22 have to say I haven't seen any proposed language,
23 at least I'm not aware of any proposed language
24 that's come forward yet.

25 MR. BLUE: I think it was submitted --

1 wasn't it submitted on Monday?

2 MS. RADER: I sent -- after our meeting
3 yesterday.

4 CHAIRPERSON PFANNENSTIEL: So it was
5 after the end of the day yesterday?

6 MS. RADER: It was probably after 5:00,
7 yes.

8 MR. BLUE: I'll just read the language;
9 it's two sentences. Since I'm here.

10 "These guidelines are intended to serve
11 as prospective guidance for local agencies.
12 Applications of the guidelines to projects for
13 which pre-permitting surveys have substantially
14 commenced is not recommended."

15 That's --

16 COMMISSIONER GEESMAN: And one person's
17 pre-permitting survey is another person's
18 inadequately structured --

19 MR. BLUE: Right.

20 COMMISSIONER GEESMAN: -- crack survey.

21 MR. BLUE: Okay. I'll say, as far as --
22 I'm not debating the voluntary nature of all this,
23 because I do believe they are voluntary. However,
24 in light of the lawsuit filed by our Attorney
25 General against one of the -- forget which county

1 it is -- San Bernardino, regarding their general
2 plans, it's likely that a lot of these permitting
3 lead agencies, counties, are going to start
4 looking at this as a way to answer, you know, that
5 kind of claim, looking at the global warming issue
6 and so forth.

7 So I understand there's no voluntary.
8 Just down to this one issue, because we are glad
9 to see this process coming to an end because we've
10 got a lot of other issues going on with radar
11 which we'll be back to see you about later.

12 Thank you.

13 CHAIRPERSON PFANNENSTIEL: Thanks, Greg.
14 Matt Giblin.

15 MR. GIBLIN: Good afternoon, Madam Chair
16 and Commissioners. My name's Matt Giblin. I'm a
17 Project Manager and Developer with Invenergy. We
18 are a wind development company.

19 And we have several projects in various
20 stages of development here in California. And
21 specifically the Horse Lake Windfarm in Lassen
22 County is one that I'm currently heavily involved
23 in.

24 We believe that there's substantial
25 issues still exist within the guidelines, and we

1 would ask that the guidelines are postponed until
2 these issues can be addressed further. And many
3 of those issues are the same issues that have been
4 raised here.

5 And what I'd like to talk about is the
6 guidelines and the issues that have been raised
7 will specifically affect the Horse Lake project.
8 And as kind of an example for, I think, the
9 statewide effects.

10 And we feel that, first of all, the
11 retroactive application -- currently we've
12 completed six months of our year-long avian study
13 protocol. The protocols were designed by our
14 biologists specifically for this project site.
15 And they differ somewhat significantly with the
16 CEC guidelines.

17 We greatly fear that the adoption of
18 these guidelines will either require -- either
19 open us to significant legal challenges because we
20 fail to comply, from challengers. Or could cause
21 us to have to begin the studies again and
22 seriously affect our timeline and our project
23 budget. Possibly to where it, with the risks
24 inherent in the studies, you may not, at the end
25 of the study process no guarantee for permitting.

1 So starting that process over again, and the
2 budgetary requirements would seriously impact our
3 project.

4 A specific example of this is the
5 acoustic monitoring requirements for bats. Our
6 project size in northeast California, it's in a
7 high alpine environment. And the fall migration
8 of bats and sometime during November. So the bats
9 are not present in this environment where the
10 turbines will be located in December, January and
11 February, the mid-winter months.

12 And therefore the 12-month prescriptive
13 nature of the acoustic monitoring study prescribed
14 in the study is wasted dollars. And it doesn't
15 apply to our particular environment. And we think
16 that the ability -- the wording of the document
17 should show that there is more flexibility there
18 than it seems to provide for now.

19 Finally, the adaptive management
20 techniques suggested, including methods such as
21 seasonal closures of projects, we believe that
22 this specifically introduces a level of project
23 risk that is, we believe our lenders will find
24 this level of project risk intolerable. And this
25 could end up in us not being able to finance

1 projects within the state.

2 So we believe that these issues should
3 be addressed before the guidelines are adopted.
4 Thank you.

5 CHAIRPERSON PFANNENSTIEL: Thank you.
6 Eli Saddler.

7 MR. SADDLER: Good afternoon; thank you
8 for this opportunity. My name's Eli Saddler; I'm
9 the Conservation Director for Golden Gate Audubon.
10 We represent over 9000 members in the Bay Area,
11 both in San Francisco and Alameda and Contra Costa
12 Counties.

13 As you know, we've been involved in the
14 Altamont issue for awhile. And although I'm
15 relatively new to this issue and this position, I
16 have to say that one of the things that is most
17 alarming and troubling about the scale of what
18 happened at Altamont and the process that's going
19 on now to address it, is the issue of delays.

20 And so for that reason I urge the
21 Commission to accept the guidelines as they are;
22 move forward without major modifications. To
23 avoid any delays and to, you know, get to the
24 point that we can start applying these and have
25 consistent guidelines.

1 And I wanted to again echo what Julia
2 said earlier, and support what she said. And also
3 to emphasize that, again, they're existing laws
4 that compliance already required, is ongoing. And
5 these are voluntary guidelines, and we
6 respectfully disagree that further delay is needed
7 when we're discussing voluntary guidelines. And
8 it's time to move forward, and we hope you'll take
9 this opportunity to vote for the passage of these
10 guidelines and to continue to work collaboratively
11 with all of us and the stakeholders to apply this
12 effectively.

13 Thank you.

14 CHAIRPERSON PFANNENSTIEL: Thank you.
15 Fred Noble.

16 MR. NOBLE: Madam Chair, Members of the
17 Commission. I see that I have quite a task ahead
18 of me here, given the tone of the proceedings to
19 this point.

20 I'm Fred Noble on behalf of Wintec
21 Energy and the Desert Wind Energy Association. I
22 put the first commercial windmill in the desert in
23 1980. Been around for awhile, sort of the last of
24 the pioneers, except for Mike here, because he's
25 been around longer. At least, I hope so.

1 In my reasoned judgment you're about to
2 make a very big mistake. And I'd like to tell you
3 why I think so. First, relating to Riverside
4 County, and then to the larger estate.

5 I believe there is in evidence a
6 certified resolution of the board of supervisors
7 in Riverside County requesting that the county be
8 explicitly exempted from the voluntary rules. And
9 that all drafts and copies of the rules make that
10 clear. I don't know if that's in evidence, but
11 here's another certified copy.

12 The reason for the board's position is a
13 recent study of the last two or three projects
14 they've permitted and the EIRs. Riverside County
15 and the San Gorgonio Pass, we have a desert. We
16 just do not have the bird and bat interaction with
17 windmills that you have elsewhere, if you do.

18 And that, of course, gets us to the
19 veracity of the underlying report in your study,
20 which I'll address in a minute.

21 But at the risk of taking more time than
22 you might want, I'd kind of like to put this in an
23 historical context. You know Kevin Star, who is
24 the great historian for California, the State
25 Librarian, has said that the Energy Commission is

1 a progressive agency in the tradition of Hiram
2 Johnson and the classic progressives.

3 And I find that generally to be the
4 case. You sponsored the first windmill project we
5 ever built in the desert. And it would not have
6 gotten started without you.

7 So here we stand now looking like you're
8 going to give us a grievous injury. And speaking
9 for myself, before I'll attempt another 100
10 megawatts and go through this sort of behavior I
11 just won't develop it. The land can be used for
12 commercial development, probably make more money
13 anyhow.

14 And so how do I come t that point?
15 Because there's sort of a big-lie technique. It's
16 happened, I think, by accident, but it's here.
17 They're not voluntary. We have 10, 14
18 consultations with an agency which is going to
19 look at the voluntary guidelines and impose those
20 standards.

21 In my 30 years owning 1500 acres in the
22 desert, and being in those properties every day
23 for most of that time, I have found not one dead
24 bird, except for a crow that got electrocuted by a
25 transformer which was left open, in 30 years.

1 We've found no dead bats. And the reason is the
2 bats like insects, and they go stay over by the
3 golf courses where there's water. Out in the
4 desert bats don't come around.

5 Yet I'm supposed to deal with a one-
6 size-fits-all protocol here. And I just don't
7 think I'm going to do it. I don't think a lot of
8 people will; who have choices of going elsewhere
9 will go out of state.

10 I think it's a serious thing and I
11 appreciate there's a momentum here. I appreciate
12 this has been tiresome and everybody would like to
13 get it over with. But it's fundamentally flawed
14 at least insofar as the desert is concerned.

15 COMMISSIONER GEESMAN: Well, Mr. Noble,
16 let me ask you, if you don't think that the
17 guidelines are applicable to the situation in
18 Riverside County --

19 MR. NOBLE: Every study that's been done
20 has showed that there just isn't a bird and
21 windmill interaction.

22 COMMISSIONER GEESMAN: -- then why can't
23 the county make that determination?

24 MR. NOBLE: They can, and they will.
25 They have. They've looked at this --

1 COMMISSIONER GEESMAN: Well, the
2 resolution that was submitted asks us to make that
3 determination for them, which seems a little
4 antithetical to a notion of local control.
5 They're much better informed than we are as to the
6 circumstances in Riverside County.

7 But it would seem to me that by the very
8 terms of the guidelines, if the County comes to
9 that conclusion the County can determine that
10 they're not going to apply the guidelines. And
11 you're home free.

12 MR. NOBLE: Not at all because Fish and
13 Wildlife and Fish and Game will. And everybody
14 wants to litigate an EIR will hand this to the
15 judge and say, well, your honor, this is what
16 really should have been done.

17 And more often than not they'll be able
18 to not only sue environmentally, they'll be able
19 to get an injunction to stop it. It's a serious
20 matter. And I think what's happened here is that
21 some of the nuts and bolts of this thing have
22 gotten lost in the analysis.

23 There is an NREL study in the desert by
24 Anderson. EIRs that just got adopted, Mr.
25 Linehan's EIR found the impacts to be biologically

1 insignificant; the project was permitted; it's
2 getting built.

3 COMMISSIONER GEESMAN: And when you say
4 Anderson, that's Dick Anderson, --

5 MR. NOBLE: Yes.

6 COMMISSIONER GEESMAN: -- the former
7 Energy Commission Staff Member that was --

8 MR. NOBLE: I don't know his history;
9 that's his name --

10 COMMISSIONER GEESMAN: -- a consultant
11 to these guidelines?

12 MR. NOBLE: It was a CEC/NREL study done
13 by a fellow named Anderson. I believe it's the
14 same fellow.

15 COMMISSIONER GEESMAN: Yeah, no, I think
16 he's the same guy that we employed. In fact, I
17 think he's actually sitting in the audience.

18 MR. NOBLE: Well, good, then he can get
19 up and evaluate what I'm saying about him.

20 (Laughter.)

21 MR. NOBLE: In the area of the property
22 where we are, his study was two biologists eight
23 hours a day, five days a week for two years. They
24 didn't find one dead bird, much less, you know,
25 killed, even if it was there. Not one dead bat.

1 You've already heard me talk about the
2 Smallwood study and the unfortunate reality that
3 based on records retrieved from your agency, there
4 are a variety of altered documents in the field
5 study. The field report of birds, cause of death
6 unknown is altered to say by a windmill. A lot of
7 that. And that was material produced by your
8 staff after a certain amount of prodding was
9 required. And then not all of it.

10 So I think you've got a fundamental
11 underpinning here that the premise is
12 questionable. The premise is that there's this --
13 these are great macerators killing trillions of
14 birds.

15 We have one small project in the
16 Altamont. Our landlord is the East Bay Park
17 District. They're in the middle of doing a bird
18 study to see what goes on there. And so far
19 they've found I think one dead -- no dead raptors,
20 one dead bird, two dead nestlings. And that's
21 since last I think May of '06.

22 So before we go rushing to judgment,
23 before we, in fact, delay projects by a couple of
24 years, and that's without regard to whether you
25 can get a bat guy to show up with this equipment,

1 you might want to stop and think about it a little
2 bit. Because you're going to do great damage to
3 the industry, great damage to the portfolio
4 standard requirements based upon false assumptions
5 and erroneous assumptions.

6 I understand the need for some large
7 corporations to sort of go along to get along.
8 And they have to make their own judgments about
9 whether they want to make a bargain here for a
10 really bad, bad deal. I don't have to do that.
11 I'm in a position where I can speak out, and so I
12 will, and I have.

13 This is a very big mistake. It's not in
14 the tradition of the Energy Commission. It's not
15 in the tradition of what you stand for. And
16 before you make a mistake I think you ought to
17 take another look, listen to what people have to
18 say, and carefully consider the fallout, because
19 people just won't develop here. It will be, in
20 terms of environmental damage, very serious.

21 Next summer people, for the first time
22 in recorded history, are going to take merchant
23 ships across the North Pole from Europe to Asia.
24 And here we're talking about slowing down the one
25 industry which really does tend to offset the

1 greenhouse gases caused by conventional
2 generation.

3 I'm not even going to comment on what
4 global warming does to trillions of birds, because
5 I'm not in the Audubon Society. But I'm surprised
6 they haven't.

7 So you got a real serious problem here
8 for the industry. It's based upon the wrong
9 assumption; some of which is based upon just out-
10 and-out fraud. And I think before you adopt it
11 you would be well advised to carefully consider
12 these issues.

13 Thank you.

14 CHAIRPERSON PFANNENSTIEL: Thank you,
15 Mr. Noble. Linda Parker.

16 MS. PARKER: Good afternoon, Chairman
17 and Commissioners. My name is Linda Parker and
18 I'm the Executive Director for the Kern Wind
19 Energy Association. And Assemblywoman Jean Fuller
20 was here this morning and wanted to make some
21 comments. And in her behalf she wrote a note that
22 I was going to read for her, as well as make a
23 statement, myself.

24 She -- addressed to the Energy
25 Commission from Jean Fuller, 32nd Assembly

1 District: I had hoped to be able to testify in
2 person this morning, however Assembly business
3 required that I leave prior to the item on the
4 agenda presentation time.

5 "I wish to ask the Board to move this
6 agenda item back one to two months in order to
7 give all stakeholders, particularly the wind
8 energy stakeholders, to assess the impacts of this
9 regulation on their industry.

10 "Counties and local government obviously
11 have not had enough time. My County is one of the
12 few that have responded." That's Kern County.

13 "More time for input on these voluntary guidelines
14 will insure a better implementation of the
15 guidelines, when adopted. For example, better
16 participation and more efficient monitoring will
17 result.

18 "Thus, I hope you will grant us the gift
19 of time to study and discuss, consider the impacts
20 of these new regulations. Sincerely, Jean
21 Fuller."

22 Certainly there are many mixed emotions,
23 and I see that within my area in the Tehachapi/
24 Mojave wind resource area. Fortunately for us, we
25 have been in a county where wind development has

1 been going on for 20-some-odd years.

2 The industry certainly has brought up a
3 lot of good input or ideas today. And we know
4 that some are supportive today, but they're not
5 entirely supportive.

6 But we would ask that before a vote is
7 taken or these are officially put in place, that
8 these items are addressed in a final document.
9 And I know that, you know, it's almost there. We
10 want to all wrap our arms around this document.
11 We believe in our area, for instance, that we want
12 to be good stewards. We want to develop wind in
13 accordance with everybody who is involved. And we
14 truly try to do that.

15 Kern County, fortunately, is a wonderful
16 lead agency. They have a great knowledge and
17 education in this industry. And we would just ask
18 that before this is final and a vote is taken,
19 that everybody's considerations are taken, and
20 looked at, and addressed.

21 And we know that the guidelines are
22 coming. We expect them to be there. And, believe
23 me, we have been abiding by a lot of that already.

24 And, Commissioner Geesman, if you can
25 streamline the permitting process, I will be

1 jumping up and down. Right now it is extremely
2 lengthy. And if we can get it shortened I think
3 it would be for the benefit of everybody.

4 Kern County is to meet 42 percent of the
5 renewable portfolio standard and, believe me, we
6 also want to be a success. We want this to be a
7 win/win for you as well as for us in the
8 Tehachapi/Mojave wind resource area.

9 Thank you.

10 COMMISSIONER GEESMAN: If you speak to
11 the Assemblymember, --

12 MS. PARKER: Yes.

13 COMMISSIONER GEESMAN: -- you might
14 direct her attention to the disclaimer that's on
15 the second page of the guidelines. You used the
16 word, I believe you were quoting from her,
17 regulations a couple of times.

18 The second paragraph of the disclaimer
19 says, "The recommendations and protocols discussed
20 in this report are intended to be suggestions for
21 local permitting agencies to use at their
22 discretion. These guidelines are strictly
23 voluntary and are not intended to implement,
24 replace, duplicate, interpret, amend or supplement
25 any current statute or regulation."

1 So every effort that our lawyers could
2 think of including most of the words they could
3 pull out of a thesaurus to make clear these are
4 not regulations.

5 (Laughter.)

6 MS. PARKER: And, you know, and I will
7 definitely pass that on. And certainly I believe
8 that training of all county agencies that are
9 going to be looking at these is highly necessary
10 so that they all are aware of exactly that
11 comment.

12 COMMISSIONER GEESMAN: I certainly agree
13 with you on that.

14 CHAIRPERSON PFANNENSTIEL: Garry George.

15 MR. GEORGE: Madam Chair, Honorable
16 Commissioners, my name is Garry George and I'm
17 from Los Angeles Audubon. I want to commend you
18 on your great leadership and your staff in these
19 guidelines. And we urge strongly that you pass
20 them today. There's no reason to delay.

21 It's been a two-year process, and I
22 think we've been involved in it for the last year
23 and a half. I think everybody's had a great
24 chance to express their concerns.

25 I'd like to thank some of the wind

1 industry that's shown up for every one of them,
2 Brenda, Andy, Sarah, Nancy, they've shown up for
3 every workshop, so we've worked through this very
4 long and lots of outside conversations, lots of
5 meetings.

6 As a southern Californian I want to just
7 respectfully respond to Mr. Noble. With all due
8 respect, and this is one of the problems I think
9 the Commission can maybe -- we urge the Commission
10 to take up, and that is that there's only been one
11 study in terms of migratory birds in the State of
12 California, that was in 1981, that used radar and
13 did any kind of nocturnal surveys. That was 1981.
14 And that was actually in the San Geronio Pass.

15 And it actually found that something
16 like 72 million birds, migratory song birds, went
17 through that pass every year. And at that time
18 the turbines were smaller, and that approximately
19 12 to 15 percent of those birds could come in
20 contact with the turbines.

21 There was a followup study done in 1986
22 for Southern California Edison, but it was never
23 released. And all of the studies were done, the
24 biologists were under confidentiality agreements.
25 So that data, very very important data, is not

1 part of the public record. It's not part of our
2 understanding of the impacts of wind on birds and
3 bats, especially on birds.

4 So, I would urge the Commission to
5 continue to fund PIER and other research into the
6 kinds of things that we need to know that we're
7 not knowing because not looking is not the same as
8 not seeing. And we would actually think that in
9 the long run this kind of research could actually
10 free many of the developers from some of the
11 guidelines. Because I think it would begin to
12 tell us what's actually happening, rather than
13 conjecture.

14 So, it's not true that there aren't
15 birds coming in contact with turbines in the
16 desert. They just happened to look for it only
17 once in 1981.

18 So we think these guidelines might not
19 only, if followed -- and they're voluntary,
20 they're not written on the Rosetta Stone, so
21 anybody can do as they want -- would give us more
22 understanding of how birds in California might be
23 affected by wind turbines.

24 And I just want to say how proud I am to
25 live in California, to be here. I don't think

1 that the wind industry is not going to be here.
2 We have fantastic wind, we have great resources,
3 we have economic incentives. The U.S. government
4 provides economic incentive.

5 I think it's very competitive here. And
6 what we understand from wind developers that it is
7 competitive. They're almost afraid to give us
8 sites because other wind developers are ready to
9 pounce on them. So I have no fear that there
10 won't be a development of wind industry here.

11 We encourage it, we need it, we want it.
12 It just needs to be done right. And thank you so
13 much for your leadership in this two-year process
14 for guidelines. Thank you.

15 CHAIRPERSON PFANNENSTIEL: Thank you,
16 sir. We have three people on the phone if they
17 are still there. Patricia Brown.

18 MS. BROWN: Hi; I'm Patricia Brown; I'm
19 a Research Associate at UCLA and I've been
20 conducting research in California since 19 --
21 there are bat standards.

22 But, first off, I've worked closely with
23 the California Bat Working Group in having input
24 into these guidelines. And as this process has
25 gone along I have been keeping track of it, even

1 thought I have not actively commented on that.
2 (inaudible) yesterday clarify one issue in regards
3 to the biology of bats -- addressed in the
4 guidelines.

5 For a nonbiologist or non-bat-biologist,
6 bats are long-lived. Some species can live over
7 30 years. But they have an inconveniently slow
8 reproductive potential. Bats have but one baby a
9 year, and some species it may be up to five years
10 before babies or young bats survive to reproduce.

11 So taking out bats, and large numbers of
12 bats can have consequences and may take a long
13 time to reproduce.

14 Windfarms (inaudible) have shown that
15 wind turbines selectively (inaudible). And these
16 are principally migratory species. The red bats,
17 the (inaudible) bats, the silver-haired bats. And
18 these are species, especially the red bat
19 (inaudible) California that are already in
20 decline, already at risk.

21 These animals follow wind patterns when
22 they migrate (inaudible) and they migrate
23 (inaudible) from what we can determine. The data
24 that we collected on the (inaudible) shown
25 actually as a small turbine, such as occurred near

1 Beaumont Pass going down into the Coachella
2 Valley, really did not harm -- bats. But as soon
3 as large turbines, such as are now being
4 constructed are put up in the area, mortality rose
5 dramatically.

6 So Mr. Noble might be very correct in
7 saying that under the old-style turbines there was
8 not the large impact to bats; however, I think
9 that the new turbines puts that in a whole
10 different set of possible bat mortality. And
11 birds, too. But I can't address birds.

12 I think that these guidelines are
13 wonderful where we've got in them, and should be
14 considered to be flexible and made, as it is, a
15 voluntary guideline. What's happening with bats
16 and bat acoustics and the ability for us to detect
17 bats, analyze the data is growing by leaps and
18 bounds. And filters are being developed to look
19 at bat sounds a lot easier. The equipment is such
20 now that it can be put up on met towers and
21 actually detect bats that are flying in the
22 airspace where they may be impacted, as opposed to
23 at ground level. Different bats make different
24 intensity calls, and that all bats are equally
25 detectable as they are flying through the

1 airspace.

2 So I think that the guidelines are good;
3 they are going to need to be fine-tuned, at least
4 for bats, to keep up with technology. I think if
5 anything, the cost of doing these surveys will be
6 declining. And I urge the energy companies to
7 work with the biologists in finding solutions.

8 Because I don't think any of us who are
9 active in the environmental field want to
10 discourage what is otherwise a clean energy
11 source. We just do not want to see bats being
12 killed and selectively hurt bat species that are
13 already in decline. Don't want to have that as
14 our legacy for future generations, that if, in
15 California, possibly in other areas of the west,
16 we are responsible through these wind energies to
17 have caused extinction or near extinction of some
18 species.

19 I think the burden of proof that there
20 isn't an impact, again addressed with the energy
21 company. But the partnership should be there,
22 that when we find the impacts and we can identify
23 the extent of the problem, that we can work
24 together to find solutions, be it in different
25 designs of turbines, different placement of the

1 facility.

2 And I actually have a question for the
3 Commission. If in pre-surveys, either done
4 according to the guidelines or in some other
5 manner, sensitive species such as red bats
6 (inaudible) bats are detected (inaudible) before
7 the turbines are constructed, is there any ability
8 of the Commission to rethink the placement of
9 these turbines, or the design of these turbines?

10 In other words, if we document the
11 potential for impacts, what happens then?

12 CHAIRPERSON PFANNENSTIEL: Ms. Brown, I
13 do believe that we put in the guidelines the
14 possibility for updating based on further
15 information. So we'll clearly have that as a
16 possibility.

17 Thank you for your comments.

18 MS. BROWN: Okay. Thank you for
19 allowing me the time to comment.

20 CHAIRPERSON PFANNENSTIEL: John Day.

21 MR. DAY: Good afternoon, Madam Chair,
22 Commissioners. Everybody can hear me?

23 CHAIRPERSON PFANNENSTIEL: We can hear
24 you fine.

25 MR. DAY: Okay, great. My name's John

1 Day and I'm a Planner with Santa Barbara County.
2 Thanks for the opportunity to speak today. I
3 think my comments are in a little different
4 direction than some of the others. We also share
5 the issue with -- activities with some of the
6 other speakers.

7 Santa Barbara County is currently
8 finalizing the EIR for the Blanco (phonetic)
9 Energy Project, the first major wind project in
10 the county. As the principal planner for the
11 project, I've been following the development of
12 the guidelines, and reading the literature as best
13 I can.

14 I've provided some previous comments,
15 questions; and I really appreciate how responsive
16 staff has been.

17 First let me say I believe that the
18 voluntary guidelines are a very good idea, and
19 ultimately they should expedite wind resource
20 development and also reduce the impacts to birds
21 and bats.

22 However, as they are currently drafted,
23 the guidelines may cause confusion with the CEQA
24 process. And my comments focus on that issue.
25 the reason I'm making these comments at this late

1 stage in the guidelines development process is
2 that the public comment period for the Blanco
3 (phonetic) Project draft EIR just ended a few
4 weeks ago.

5 Comments we received from the Department
6 of Fish and Game, Audubon Society and the
7 Environmental Defense Center state that pre-
8 permitting studies done for the project were
9 inadequate. And that to be adequate under CEQA
10 additional studies must be conducted using the CEC
11 guidelines protocols.

12 These EIR comments were based on several
13 assumptions which we believe are unjustified.
14 First, they assume that the current science is
15 capable of providing meaningful estimates of post-
16 construction impacts at new project sites based on
17 pre-permitting studies.

18 Second, they assume that bird/bat
19 interactions with windfarms are understood well
20 enough that pre-permitting studies can effectively
21 reduce impacts by means of project design, siting
22 and mitigation measures.

23 They say that using the guidelines is
24 therefore essential for CEQA adequacy based on the
25 promise of reducing impacts to birds and bats.

1 In our review of the guidelines and
2 literature we found little or no evidence that
3 current science can predict further bat impacts in
4 a new project area with a reasonable degree of
5 confidence based on the pre-permitting studies.
6 Nor are the pre-permitting studies currently able
7 to specify turbine layout, except perhaps in a
8 very general way, and siting to reduce impacts at
9 new sites.

10 There are also no risk models currently
11 available that account for the major risk factors.
12 And the interplay of site-specific risk factors is
13 poorly understood. Witness the PIER review in
14 2006 of the 2004 Smallwood/Thelander study.

15 The studies and models have yet to be
16 tested and validated in a range of science. I
17 believe from my review that the science is just
18 not there yet. Until the risks to birds and bats
19 are better understood and impact assessment
20 methods developed to test it, pre-permitting
21 studies cannot be claimed to reduce impacts.

22 And until the studies offer actual
23 reduction of impacts and not just a future promise
24 of it, there is no solid basis to consider
25 adherence to the guidelines a CEQA requirement.

1 The final draft of the guidelines
2 includes a disclaimer stating that adherence to
3 the guidelines is not a CEQA requirement, and we
4 really appreciate that clarification in the final
5 draft.

6 Yet, the guidelines still give the
7 reader the impression that the guidelines are
8 required, that the CEC guidelines are required for
9 CEQA adequacy. This is because they imply that
10 the recommended pre-permitting studies are
11 currently capable of reducing impacts to birds and
12 bats.

13 On one hand the document lacks a frank
14 discussion of the limitations of current studies
15 for predicting impacts. Such a discussion should
16 be added to the introduction under status of with
17 energy research, and in chapter 4, assessing
18 impacts.

19 On the other hand, the document includes
20 many statements that would lead the reader to
21 believe that pre-permitting studies currently
22 provide a foundation for impact assessment of
23 turbine siting and mitigation measures.

24 If we're mistaken in this, and if, in
25 fact, the current state of science does enable

1 well-founded predictions of impacts and
2 recommendations for mitigation measures for new
3 wind farm locations based on pre-permitting
4 studies, then we would strongly suggest adding a
5 full explanation of the methods of their
6 scientific basis and -- in the guidelines, or in
7 an appendix.

8 In defense, the Blanco (phonetic) energy
9 project is the canary in the coal mine. It gives
10 you a sneak preview of how the guidelines will be
11 used in practice. The comments we've received on
12 the EIR indicate that the guidelines are
13 misleading as to their effectiveness in reducing
14 impacts given the current state of the science.
15 In reality, such sound predictions of impacts
16 (inaudible) for the future.

17 I believe the problem can easily be
18 corrected with fairly minor edits. And I urge
19 your Commission to defer adoption of the
20 guidelines until it's addressed.

21 Thank you very much.

22 CHAIRPERSON PFANNENSTIEL: Thank you.

23 We also have Bronwyn Hogan.

24 THE OPERATOR: Ms. Hogan, your line is
25 open.

1 (Pause.)

2 CHAIRPERSON PFANNENSTIEL: Is she not
3 there?

4 We also have a Kenny Stein.

5 MR. STEIN: Yes, I'm here.

6 CHAIRPERSON PFANNENSTIEL: Why don't you
7 go ahead.

8 MR. STEIN: Can you hear me okay?

9 CHAIRPERSON PFANNENSTIEL: Yes, just
10 fine.

11 MR. STEIN: All right. My name's Kenny
12 Stein and I'm with FPL Energy Project Management.
13 I want to thank the Commission and Fish and Game
14 Staff and all the stakeholders for all the hard
15 work on the guidelines. I think everyone did an
16 excellent job. There were a lot of compromises
17 made, and I think generally speaking, it is a good
18 document.

19 And while they're not going to be
20 considered perfect by any one stakeholder, with
21 the exception of a few small, but important,
22 provisions we do support the adoption of the
23 guidelines.

24 We submitted some very specific, I
25 think, minor wording changes in writing. I'd like

1 to think that those suggested changes are simple
2 clarifications of the guidelines, current intent.
3 However, without such clarification we're
4 concerned the guidelines might be misinterpreted
5 or misused in a manner that could delay or
6 increase the cost of wind project development
7 without any corresponding environmental benefit.

8 We don't believe that making these
9 changes should really cause any material delay in
10 adopting the guidelines; and we don't want that to
11 happen. We want these to move forward quickly.

12 We've all worked very hard and we'd hate
13 to see the guidelines come under attack and be
14 discredited because we didn't take a few extra
15 days to get it right. We can only look at the
16 situation that surrounded the U.S. Fish and
17 Wildlife Service interim guidelines where a few
18 problematic words seemingly resulted in the entire
19 guidelines being viewed as problematic.

20 A lot of folks, states and other
21 agencies are watching these guidelines. And I
22 think they have the potential to be a resounding
23 success, universally supported with some minor
24 changes.

25 Alternative, if the Commission and

1 Department could put something into the record,
2 for example, in the form of a response to comments
3 that made some of these clarifications, perhaps
4 there wouldn't actually be a need to make any
5 changes to the wording of the guidelines,
6 themselves.

7 I won't go into the details of the
8 specific comments. We provided some specific
9 comments related to what we thought was an
10 inadvertent inconsistency on how certain projects
11 would be categorized; some comments related to the
12 circumstances under which operational changes like
13 feathering and turbine shutdown might be
14 appropriate; clarification on the circumstances
15 under which long-term monitoring might be
16 appropriate. And a minor change to clarify that
17 project proponents really need to have considered
18 input from all outside stakeholders instead of
19 incorporating it, but from all outside
20 stakeholders.

21 We didn't submit any written comments on
22 this issue of retroactivity that's come up.
23 Frankly, I didn't think it was necessary. I would
24 have thought a reasonable interpretation of the
25 guidelines would be such that once a project had,

1 you know, was well on their way through detailed
2 preconstruction studies, that Fish and Game would
3 not step in to suggest that they need to be redone
4 in accordance with these guidelines.

5 I don't know the specific circumstances
6 surrounding some of the issues that have been
7 brought up; I'm a little disturbed to hear the
8 letter that the individual from RES read.

9 We do have a project where we did do
10 preconstruction studies. We did solicit input
11 from Fish and Game. And those studies were done
12 not inconsistent with anything that Fish and Game
13 said at the time.

14 However, I am now concerned that without
15 some sort of clarification in the guidelines, or
16 not in the guidelines, on the record somehow, that
17 Fish and Game will not be requiring projects to go
18 back and redo those studies in situations where
19 Fish and Game's input had already been solicited
20 in the past. And that the studies were not done
21 inconsistent with any input that might have been
22 provided by Fish and Game.

23 Obviously there are situations where
24 Fish and Game's input has been solicited, but none
25 was provided simply because of, you know, perhaps

1 because of lack of resources.

2 So I think that the Commission and Fish
3 and Game should be concerned that certain projects
4 may have to go back and redo studies when it
5 really doesn't need it.

6 Commissioner Geesman, you brought up a
7 really good point where you might want a project
8 proponent that has engaged in preconstruction
9 studies that, you know, don't even come close to
10 meeting a CEQA standard, you know, should have to
11 go back and do them in accordance with CEQA.

12 But where a project has gone forward in
13 all good faith, and has solicited the input of
14 Fish and Game, they should not have to go back and
15 redo them. And I'm afraid that without some
16 clarification on the record on that point, that
17 you are going to wind up delaying certain
18 projects.

19 We don't want to delay these guidelines
20 in any significant way; however, we do think that
21 there are a couple important things that need to
22 be addressed. And we think they can be addressed
23 extremely quickly.

24 Thank you.

25 COMMISSIONER GEESMAN: Madam Chair.

1 CHAIRPERSON PFANNENSTIEL: Yes,
2 Commissioner Geesman.

3 COMMISSIONER GEESMAN: I tried to listen
4 quite carefully to the lady from RES read the
5 letter. To me the operative word in the letter
6 was a request, at least as I heard it, that RES
7 justify why they not go back and do additional
8 studies.

9 And I think given the fact circumstances
10 which she described in terms of prior guidance
11 from Fish and Game seemed to me that that would
12 require about a one-sentence justification.

13 Now, I acknowledge you can object
14 whenever a government agency says justify. It
15 goes along the lines of the famous movie where, "I
16 don't need no stinkin' justification."

17 But at the same time, I didn't
18 understand the letter to say go do another set of
19 studies. And if I'm mistaken in that I'm sure
20 I'll be corrected.

21 I read the FPL comments, and I think
22 that they did seem well founded, to me, at least
23 on a qualitative basis. And I would put them into
24 the category, I think, of Paul Vercreyssen from
25 CEERT, who made some similar comments, and Julia

1 Levin, as well, of post-adoption clarification.

2 And I don't want to prejudge what form
3 that clarification should take because I don't
4 know specifically what will be coming from the
5 other parties. Perhaps a letter will suffice.

6 And I think that one of the things that
7 multiple parties kind of reminded us of today is
8 that this is a living process, for better or for
9 worse, and nothing ends today. And these
10 guidelines are going to be in need of tinkering
11 and recalibrating and adjustments as factual
12 circumstances evolve in the future.

13 But I found FPL's comments to be
14 reasonably well focused, and would put them in the
15 category of things that we ought to clarify after
16 we adopt these guidelines.

17 CHAIRPERSON PFANNENSTIEL: I thought
18 they were well taken; and in fact, I've heard
19 other comments today where people either have sent
20 something that I haven't yet seen, or said
21 something today that I hadn't yet thought of, that
22 I believe should fit in that category.

23 We have one last speaker. Ms. Hogan,
24 are you back on the line?

25 MS. HOGAN: Yes, I am. Sorry, I'm on a

1 phone that is not my own, and I had to hang up on
2 that phone.

3 Anyway, I came into the call late
4 because I, again, am not at my office, so I'm not
5 sure if this has been addressed. I just wanted to
6 -- I'm from the Science Advisory Committee and I
7 just wanted to make a comment that I've spoken
8 with a number of different researchers who do bat
9 acoustic monitoring; there's been a lot of
10 discussion about how expensive the acoustic
11 monitoring is.

12 And pretty much the people that I have
13 talked to are not employees of large consulting
14 firms, so that may be why the cost is so
15 different. But none of them have come even close
16 to giving an estimate anywhere near what some of
17 the industry has been saying it would cost for
18 acoustic monitoring.

19 So, I think that's a little bit of a red
20 herring. And I also think that, as Pat Brown
21 said, the costs are going to come down rapidly.
22 And as soon as some companies say, you know what,
23 we need this kind of -- the technology is kind of
24 almost there, and what it needs is a little bit of
25 attention. And I think that's going to come.

1 So I just wanted to say that I did go
2 out and talk to people who do acoustic monitoring
3 and try to get some sense of what it would cost.
4 And a lot of the cost is the initial equipment
5 purchase. And once you've done that, with some of
6 the filtering and some of the being able to scan
7 through files and not actually have to analyze
8 every single site for specific species, -- the
9 cost is not as high as people have been saying.

10 So I just wanted to kind of set that out
11 there, that, you know, that I did do some research
12 on cost and I think the cost that the response to
13 comments that said they -- we had put into the
14 response to comments, are reasonable.

15 CHAIRPERSON PFANNENSTIEL: Thank you. I
16 think that concludes the speakers on this subject.
17 We've heard a lot of useful and new and
18 informative information today, as well as what we
19 had in front of us going into today.

20 And I just come back to the fact that
21 this has been a nearly two-year process. And we
22 keep learning more. And the document keeps
23 getting better. But we do have in front of us a
24 report, guidelines that are intended to go out as
25 voluntary guidelines.

1 As Commissioner Geesman said, there's
2 some cleanup that we can consider doing, the
3 Renewables Committee can look at what we now have
4 that makes sense. The FPL comments and some
5 others that may be in some -- need to go out as
6 cleanup following that.

7 But given that, I think that we have a
8 document up for consideration.

9 COMMISSIONER GEESMAN: I would move that
10 we approve it. In doing so I do want to
11 acknowledge one person that's not here today;
12 presumably her billing rate is such that her
13 client chose that she didn't need to be here.
14 But, Annie Mudge, the counsel that the CalWEA
15 employs in this, has made an ongoing significant
16 contribution to the improvement of the guidelines.

17 And I recognize the difficulty in a
18 circumstance where her view and that of her client
19 was that this was not a good thing for the state
20 to do. Nevertheless, the contributions that both
21 CalWEA and Annie made, I think, have helped us a
22 great deal, and improved the guidelines.

23 So I would move that we improve them,
24 and take what satisfaction we can from a process
25 well conducted.

1 COMMISSIONER BYRON: Prior to seconding
2 I have one short question. I hope the answer will
3 be short, as well. Directed towards staff:

4 What are the provisions, in fact perhaps
5 my fellow Commissioners know the answer, what's
6 the provisions or the thoughts about updating
7 these guidelines going forward?

8 MS. WARD: I believe the language is, as
9 needed, approximately every five years. I'm
10 getting the nod that that's correct.

11 CHAIRPERSON PFANNENSTIEL: But I'd also
12 think that it's the as needed is perhaps the key
13 phrase there. They are our guidelines; on our
14 motion we can come back to them.

15 COMMISSIONER BYRON: Well, and I hope we
16 do. I've met with some of the folks that are here
17 today recently and asked that are in opposition to
18 our adopting these voluntary guidelines, and
19 phrases were used such that we've been talking
20 past each other.

21 And so I'd encourage all the parties to
22 not do that. That really this is a good
23 collaborative process. And if we're talking past
24 each other, then we're missing the opportunity to
25 revise these guidelines as we learn with regard to

1 their implementation.

2 Having said that, I'll second the
3 adoption of these guidelines.

4 CHAIRPERSON PFANNENSTIEL: The approval.

5 COMMISSIONER BYRON: The approval, the
6 approval of these voluntary guidelines.

7 CHAIRPERSON PFANNENSTIEL: In favor?

8 (Ayes.)

9 CHAIRPERSON PFANNENSTIEL: The
10 guidelines then are approved.

11 And I want to thank the staff;
12 enormously good job. Thank you, Fish and Game,
13 also.

14 COMMISSIONER BYRON: Yes, and everyone
15 that was here today. Thank you all for coming.

16 CHAIRPERSON PFANNENSTIEL: Quite an
17 effort, thank you.

18 Let's conclude the business meeting.
19 Minutes from the September 12th meeting. I
20 believe we were all here.

21 COMMISSIONER GEESMAN: I'll move
22 approval.

23 COMMISSIONER BYRON: Second.

24 CHAIRPERSON PFANNENSTIEL: In favor?

25 (Ayes.)

1 CHAIRPERSON PFANNENSTIEL: Commission
2 presentations, any discussion? Commissioner
3 Byron.

4 COMMISSIONER BYRON: One very short one.
5 I would like to let everyone know publicly that
6 I'm welcoming to my office my new Advisor, Laurie
7 tenHope. Welcome, Laurie.

8 CHAIRPERSON PFANNENSTIEL: Welcome,
9 Laurie.

10 Chief Counsel report.

11 MR. CHAMBERLAIN: I have no report
12 today, Madam Chair.

13 CHAIRPERSON PFANNENSTIEL: That was good
14 --, thank you.

15 Executive Director's report, Melissa.

16 MS. JONES: I have no report today.

17 CHAIRPERSON PFANNENSTIEL: I see no Leg
18 Director here. Anybody --

19 MS. JONES: He is not going to provide a
20 report today.

21 CHAIRPERSON PFANNENSTIEL: Public
22 Adviser.

23 MR. BARTSCH: Madam Chair, Members, Nick
24 Bartsch for the Public Adviser's Office. No
25 report today, thank you.

1 CHAIRPERSON PFANNENSTIEL: Any further
2 public comment? Nobody on the phone. Nobody
3 else.

4 We'll be adjourned.

5 (Whereupon, at 1:48 p.m., the business
6 meeting was adjourned.)

7 --o0o--

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of October, 2007.