

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, NOVEMBER 7, 2007

10:00 A.M.

Reported by:  
John Cota  
Contract Number: 150-07-001

COMMISSIONERS PRESENT

Jackalyne Pfannenstiel, Chairperson

James D. Boyd

John L. Geesman

Arthur H. Rosenfeld

STAFF and CONTRACTORS PRESENT

Ricardo Amón

Norman Bourassa

William Chamberlain, Chief Counsel

Judy Grau

Jim Holland

Melissa Jones

Harriet Kallemeyn, Secretariat

Che McFarlin

Joseph Merrill

Jason Orta

Jamie Patterson

Richard Ratliff

Mike Smith

Arthur Soinski

Kerry Willis

ALSO PRESENT

Scott Galati, Galati|Blek  
representing Kings River Conservation District

Jim Richards, Kings River Conservation District

Greggory L. Wheatland, Ellison, Schneider &  
Harris, representing Russell City Energy Center

Brian E. Washington, Office of the County Counsel,  
County of Alameda

Laura Schulkind, Liebert Cassidy Whitmore,  
representing Chabot Las Positas Community College  
District

Joel L. Kinnamon, EdD, Chabot Las Positas  
Community College District

Hal G. Gin, EdD, Chabot Las Positas Community  
College District

Marsha Gerfarud, California Department of Fish and  
Game (via telephone)

Paul N. Haavik, Checkaboard Square Rentals, Inc.

Jewell J. Hargleroad, Law Office of Jewell J.  
Hargleroad, representing Group Petitioners  
California Pilots Association, Citizens for  
Alternative Transportation Solutions, San Lorenzo  
Homeowners Association, Skywest Townhouse  
Homeowners Association, Hayward Democratic Club  
and Hayward Area Planning Association

Frank Wilson, Pacific Lumber Company

Henry Long, Pacific Lumber Company

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

2 10:02 a.m.

3 CHAIRPERSON PFANNENSTIEL: Good morning,  
4 I think we can begin. This is the Energy  
5 Commission biweekly Business Meeting. Please join  
6 me in the Pledge of Allegiance.

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

9 CHAIRPERSON PFANNENSTIEL: We have a  
10 couple agenda changes today. Items 5, 10 and 13  
11 will be held for a later Business Meeting, will  
12 not be taken up today.

13 In addition let me just mention that  
14 Items 3, Russell City, we will take that up but  
15 probably out of order. I would like to wait until  
16 Commissioner Geesman gets here; he is on his way  
17 and will be here shortly. So we'll move through  
18 the agenda and then take it up when he has gotten  
19 here.

20 The Consent Calendar. Is there a  
21 motion?

22 COMMISSIONER ROSENFELD: I move the  
23 consent calendar.

24 COMMISSIONER BOYD: Second.

25 CHAIRPERSON PFANNENSTIEL: All in favor?

1 (Ayes.)

2 CHAIRPERSON PFANNENSTIEL: The Consent  
3 Calendar is approved.

4 Item number 4, possible approval of  
5 Amendment 1 to PIER Work Authorization MR-054 with  
6 Virginia Poly Tech Institute and State University  
7 to add \$10,000 and a time extension of 12 months.  
8 MR-054 is under the UC Master Research Agreement  
9 Number 500-02-004 with the Regents of the  
10 University of California-Office of the  
11 President/CIEE, for Advanced Protection Systems  
12 using Wide Area Measurements. Good morning.

13 MR. PATTERSON: Good morning,  
14 Commissioners. I am Jamie Patterson, staff of the  
15 Energy Commission R&D. I am manager of the  
16 transmission research program under which this  
17 project is.

18 We are asking for \$10,000, which will  
19 increase the total amount of the contract from  
20 \$599,000 to about \$609,000 and a 12 month  
21 extension. We are asking for this money, this is  
22 early on in the project. We ran into a little  
23 glitch. We originally intended to have this  
24 project use a program called the Extended  
25 Transient Mid-Term Stability program. That's a

1 large software program commonly used by many  
2 utilities and it was available at Virginia  
3 Polytechnic Institute, who was going to be the  
4 performing institution for the contract.

5 On convening the program advisory  
6 committee we learned that many of the utilities  
7 here in California, as a matter of fact all of the  
8 IOUs, use something known as the General Electric  
9 PSLF Grid Simulation program. That program is not  
10 available at Virginia Polytechnic Institute.

11 So working with General Electric and  
12 with the Department of Energy, who has a keen  
13 interest in the research going on here, I was able  
14 to get a substantial reduction in cost for the  
15 program and training for the people at Virginia  
16 Polytech to use the GE program.

17 The cost totals up to about \$18,000.  
18 The Department of Energy will contribute \$8,000 of  
19 funding toward matching that program so that we  
20 can use the GE PSLF. The Commission then would  
21 make up the difference with the additional  
22 \$10,000.

23 The advantages are that the results are  
24 directly transferrable to the California utility  
25 grid as the California utilities use that program

1 and they can verify the results coming out of this  
2 academic institution for their applicability to  
3 California.

4 CHAIRPERSON PFANNENSTIEL: Thank you,  
5 Mr. Patterson. Are there questions?

6 COMMISSIONER BOYD: Yes, one simple  
7 question, hopefully. I just want to reaffirm that  
8 I heard you say that the \$10,000 we're approving  
9 today, the entire amount will go to Virginia  
10 Polytech.

11 MR. PATTERSON: I believe so, yes.  
12 Well, probably it will make its way somewhere  
13 along the line and be divided out to General  
14 Electric. You know, they will pay for training on  
15 the use of the program, installation and  
16 maintenance. These programs are huge so there's  
17 always usually a maintenance fee that goes along  
18 with them to make sure its bug-free, operational  
19 and stays up. I honestly can't tell you exactly  
20 where every dollar of the \$10,000 is going.

21 COMMISSIONER BOYD: Okay, but you said  
22 it's an \$18,000 project that Virginia Polytech  
23 will manage.

24 MR. PATTERSON: Yes.

25 COMMISSIONER BOYD: And we put up ten

1 and the feds will put up eight.

2 MR. PATTERSON: Yes.

3 COMMISSIONER BOYD: Okay, thank you.

4 COMMISSIONER ROSENFELD: I move the  
5 item.

6 COMMISSIONER BOYD: I'll second it.

7 CHAIRPERSON PFANNENSTIEL: All in favor?

8 (Ayes.)

9 CHAIRPERSON PFANNENSTIEL: It has been  
10 approved, thank you.

11 MR. PATTERSON: Thank you.

12 CHAIRPERSON PFANNENSTIEL: Commissioner  
13 Boyd pointed out to me that I had passed over Item  
14 2, Possible adoption of the Executive Director's  
15 data adequacy recommendation for the Kings River  
16 Conservation District Community Power Project.  
17 Good morning.

18 COMMISSIONER BOYD: The Vice Chair has  
19 got to do something once in a while.

20 (Laughter.)

21 MR. McFARLIN: Good morning Chairman  
22 Pfannenstiel and Commissioners. I am Che  
23 McFarlin, staff siting project manager for  
24 community power projects; staff council Kerry  
25 Willis is here with me.

1                   COMMISSIONER BOYD:  Che, move up closer  
2                   to your microphone.

3                   MR. McFARLIN:  On September 27 the Kings  
4                   River Conservation District filed an Application  
5                   for Certification seeking approval from the Energy  
6                   Commission to construct and operate a proposed  
7                   community power project.  This project proposes a  
8                   12 month AFC.

9                   The proposed site is located near the  
10                  city of Parlier, an unincorporated area of Fresno  
11                  County, in the service area of Kings River  
12                  Conservation District.  The site is an area  
13                  currently zoned for agricultural use and under a  
14                  Williamson Act contract.

15                  The proposed project will connect to the  
16                  transmission system by a five mile double circuit  
17                  transmission line that connects to the  
18                  transmission system by a five mile double circuit  
19                  transmission line that connects to the McCall  
20                  substation west of the project site.

21                  The project is a nominal 565 megawatt,  
22                  natural gas-fired, combined-cycle power plant.

23                  And at this time the only agency that  
24                  has submitted comments to us is Fresno County and  
25                  those were in regards to some of their hazardous

1 materials requirements.

2 We are currently speaking with the Air  
3 District to obtain their completeness letter for  
4 determination of compliance. And that is one of  
5 the things that we are still missing at this time.

6 The staff's analysis determined that the  
7 project is data inadequate for the 12 month  
8 process in nine areas at this point. At this  
9 point staff recommends that you find the AFC  
10 incomplete and data inadequate for those and other  
11 reasons.

12 Staff and Applicant are working towards  
13 -- we actually believe that the application will  
14 be adequate for the 12 month process at the  
15 Commission's November 21 Business Meeting. I'd be  
16 happy to answer any questions you might have.

17 CHAIRPERSON PFANNENSTIEL: Thank you.  
18 Mr. Galati.

19 MR. GALATI: Scott Galati representing  
20 Kings River Conservation District and on my right  
21 is Jim Richards who is the Director of Power  
22 Generation for Kings River and the project manager  
23 for this project.

24 The AFC was put together by Navigant  
25 Consulting, headed up by the AFC project manager,

1 who did a fantastic job.

2 Staff has been very helpful with us. We  
3 are very, very close to data adequacy. There's a  
4 couple of outstanding items, one a letter from the  
5 Air District which we understand on someone's desk  
6 waiting to be signed.

7 We look forward to being here on the  
8 21st and getting a committee assigned and getting  
9 on with this important project. We accept the  
10 staff's recommendation, thank you.

11 CHAIRPERSON PFANNENSTIEL: Thank you.  
12 Are there questions?

13 COMMISSIONER BOYD: I'll move the  
14 staff's recommendations.

15 COMMISSIONER ROSENFELD: Second.

16 CHAIRPERSON PFANNENSTIEL: All in favor?

17 (Ayes.)

18 CHAIRPERSON PFANNENSTIEL: The data  
19 inadequacy recommendation is accepted. Thank you.

20 Then moving to Item 6. Possible  
21 approval of Contract 500-07-018 for \$30,000 with  
22 the Regents of the University of California for  
23 the Energy Commission's membership in the UC  
24 Berkeley Center for the Built Environment. Good  
25 morning.

1                   MR. BOURASSA: Good morning. Is this  
2 working?

3                   COMMISSIONER BOYD: Press where it says,  
4 push.

5                   MR. BOURASSA: Good morning,  
6 Commissioners, Directors and attendees. My name  
7 is Norman Bourassa from the PIER Buildings  
8 Program. This \$30,000 contract will continue the  
9 PIER Buildings Program's membership in the UC  
10 Berkeley Center for the Built Environment research  
11 collaborative.

12                   The CBE, otherwise known as CBE, at UC  
13 Berkeley was formed in the mid-1990s under the  
14 National Science Foundation's Industry/ University  
15 Cooperative Research Center Program. The mission  
16 of CBE is to improve the design, operation and the  
17 environmental quality of buildings through the  
18 research and development of timely, unbiased  
19 information on building technologies and design  
20 techniques.

21                   CBE is guided by an industry advisory  
22 board that meets semiannually to discuss research  
23 directions, approve annual budgets and plan future  
24 research. The advisory board is populated by one  
25 representative from each member organization and

1 represents the diversity of the building industry,  
2 including manufacturers, building owners, facility  
3 managers, contractors, architects, engineers,  
4 government agencies and professional associations.  
5 Basically everybody in the construction gamut.

6 The Energy Commission has been a member  
7 of CBE for the last four years. During these  
8 meetings partner representative provide CBE  
9 researchers with valuable comments, feedback and  
10 knowledge gained from practical experience.

11 Continued participation in the advisory  
12 board meetings will provide PIER with valuable  
13 information needed to make informed  
14 recommendations to the Commission on research  
15 needs and trends in the building industry as well  
16 as provide the Commission with a valuable voice on  
17 the future research directions of the Center for  
18 the Built Environment.

19 Both the Budget and Management  
20 Committees and the Research and Development  
21 Committee have approved this contract and staff  
22 requests your approval of this organizational  
23 membership. I'll try to answer some questions if  
24 my voice will hold up.

25 CHAIRPERSON PFANNENSTIEL: Are there

1 questions?

2 COMMISSIONER ROSENFELD: I move the  
3 item.

4 MR. BOURASSA: Thank you.

5 COMMISSIONER GEESMAN: Second.

6 CHAIRPERSON PFANNENSTIEL: All in favor?  
7 (Ayes.)

8 CHAIRPERSON PFANNENSTIEL: It has been  
9 approved, thank you.

10 Since Commissioner Geesman has joined us  
11 we will then go to the Russell City amendment,  
12 Item number 3, consideration and possible action  
13 on petitions filed by the County of Alameda  
14 October 23, 2007, and Group Petitioners October  
15 26, 2007, regarding the Russell City Energy Center  
16 Amendment. Mr. Chamberlain, do you want to lead  
17 us in this discussion?

18 MR. CHAMBERLAIN: Thank you, Madam  
19 Chairman, Commissioners.

20 This is a legally complex matter and  
21 I'll apologize now for the length of my  
22 introduction and hope that it will help us through  
23 this difficult matter.

24 By way of introduction, in 2002 the  
25 Commission approved an AFC for the Russell City

1 Energy Center, a 600 megawatt combined-cycle power  
2 plant in Hayward.

3 The project has not yet been  
4 constructed, however last year the project owner  
5 filed a request for an amendment of the  
6 Commission's certificate asking for approval to  
7 move the project location approximately a quarter  
8 of a mile northwest of the originally approved  
9 location. On September 26 of this year you  
10 approved that amendment.

11 In October, petitions for  
12 reconsideration of the September 26 decision were  
13 filed by three entities, the County of Alameda,  
14 the Chabot Las Positas Community College District  
15 and the Group Petitioners, which is comprised of  
16 six, local interest groups.

17 Each of these three entities correctly  
18 recognized that petitions for reconsideration can  
19 under Section 25530 of the Public Resources Code  
20 be filed only by parties. And because none of the  
21 three entities was a party each also petitioned to  
22 intervene and thereby to be granted party status.

23 Oppositions to the intervention  
24 petitions and reconsideration petitions have been  
25 filed by the project owner, the Commission staff

1 and Intervenor Paul Haavik.

2 All the petitions and the oppositions  
3 focus on whether the petitioners received adequate  
4 notice of the Russell City amendment proceeding;  
5 the petitioners claiming no and the project owner,  
6 the staff and Mr. Haavik claiming yes.

7 This is particularly important for the  
8 intervention petitions. Under the law petitions  
9 to intervene must be filed relatively early in the  
10 proceeding. July 3rd of this year in the Russell  
11 City amendment proceeding. Late intervention  
12 petitions may be filed only if the petitioner  
13 demonstrates that there was good cause for the  
14 delay. If all three petitioners claim -- I'm  
15 sorry. All three petitioners claim that the good  
16 cause justifying their delay was the asserted  
17 inadequacy of the notice of the proceeding.

18 Today you have before you both the  
19 intervention and reconsideration petitions. I  
20 have two recommendations on how you handle them.  
21 The first is reflected on the agenda, and that is  
22 that you take up the petitions for intervention  
23 first. Because if you deny those then that  
24 indicates that the petitions for reconsideration  
25 must be summarily denied, as they would not have

1       been filed by parties.

2               The second recommendation is that you  
3       make several assumptions about preliminary legal  
4       issues that the project owner has raised.  These  
5       are, first, whether the notice requirements  
6       applicable to NOI and AFC proceedings are also  
7       applicable to amendment proceedings such as the  
8       one that we are in now.

9               Second, whether reconsideration is  
10       available in amendment proceedings.

11              And third, whether petitions for  
12       intervention can be filed during the  
13       reconsideration phase.

14              If the petitioners fail to get over any  
15       of these hurdles the petitions must be denied.  
16       The project owner has argued forcefully that the  
17       hurdles are insurmountable.  However, because the  
18       parties have focused largely on the notice issue,  
19       and because I believe that resolution of the  
20       notice issue is clear, I suggest that you simply  
21       assume on these other issues without deciding that  
22       the three hurdles I have described have been  
23       overcome.

24              I would also suggest that if you decide  
25       that the petitions for intervention should be

1 denied that you also address whether if they had  
2 been granted the reconsideration petitions would  
3 have been granted.

4 I suggest that because there may be  
5 judicial review, and if there is, and in the  
6 unlikely possibility that the court should decide  
7 that you should have granted the petitions,  
8 assuming that you deny them, then the court should  
9 know what your decision would have been on the  
10 question of reconsideration.

11 So before the petitioners speak do you  
12 have any questions?

13 CHAIRPERSON PFANNENSTIEL:  
14 Mr. Chamberlain, you recommended that we focus on  
15 the notice issue. Would you describe that a  
16 little more.

17 MR. CHAMBERLAIN: I'm sorry, I am not  
18 sure what --

19 CHAIRPERSON PFANNENSTIEL: Well, you  
20 went through the three points that you felt we  
21 needed to consider and one was the question of  
22 whether there was, I believe it was whether the  
23 amendment requires the same level of notice as a  
24 full AFC.

25 MR. CHAMBERLAIN: Yes. I was suggesting

1 actually with respect to that issue whether  
2 reconsideration is available in the amendment  
3 proceedings and whether the petitions for  
4 intervention can be filed during the  
5 reconsideration phase. That those all simply be  
6 decided as if -- or not decided, I'm sorry.

7 CHAIRPERSON PFANNENSTIEL: Assume.

8 MR. CHAMBERLAIN: Just assume that those  
9 hurdles have been overcome and address the  
10 petitions for intervention. Is it appropriate  
11 under the facts and circumstances of this case  
12 that you would grant a late intervention at this  
13 late date.

14 CHAIRPERSON PFANNENSTIEL: Are there  
15 questions from the Commissioners?

16 Shall we hear from the project owner and  
17 then we'll hear from the petitioners.

18 MR. WHEATLAND: I am Gregg Wheatland and  
19 I am the attorney for the project owner. And I  
20 would be pleased to address all of these issues  
21 for you but they are the petitioners and the  
22 moving party.

23 CHAIRPERSON PFANNENSTIEL: Fine.

24 MR. WHEATLAND: I would recommend that  
25 you would hear from them first.

1                   CHAIRPERSON PFANNENSTIEL: Well we have  
2 here a request from Brian Washington, the  
3 Assistant County Counsel from the County of  
4 Alameda. Mr. Washington.

5                   MR. WASHINGTON: Thank you, Chair  
6 Pfannenstiel and Members of the Commission. I am  
7 Brian Washington, Assistant County Counsel for  
8 Alameda County. I would like to thank the  
9 Commission for hearing our petitions today. I  
10 would also like to thank staff for being  
11 responsive to some of our requests for information  
12 as we came up to speed on this.

13                   The County's papers and the oppositions  
14 presented by staff and the applicant I think  
15 really demonstrates there's two things here that  
16 are basically undisputed. One, that the noticing  
17 for this proceeding was flawed; and two, that the  
18 County knew about the project at various levels at  
19 various times. I think the record is pretty clear  
20 that both of those facts are true.

21                   The key issue for your Commission is,  
22 are you comfortable approving a project that is  
23 the product of a flawed process.

24                   We think the Commission has discretion  
25 to hear our petition for intervention, to grant us

1 intervention, and to hear to reconsider -- and to  
2 reconsider its previous decision.

3 Very briefly I'll summarize the  
4 arguments that are in our paper on the noticing  
5 issue. The amended application that was from last  
6 fall, toward the end of last year 2006, placed the  
7 site partially in unincorporated Alameda County.  
8 Under the Commission's rules and regulations for  
9 noticing, Section 1714(c), clearly the county had  
10 to be noticed as the jurisdiction that had land  
11 use authority over a portion of the site at that  
12 time.

13 The Planning Department was never  
14 noticed, the Board of Supervisors was never  
15 noticed. The Community Development Agency was  
16 never given the formal notice that your  
17 regulations, Section 1714(c), require.

18 Does the County have experience in  
19 working with the CEC? Not a lot but it does.  
20 There's two power plants that have been considered  
21 for the eastern part of Alameda County, again  
22 where the county has land use jurisdiction.  
23 That's the East Altamont Project, the Tesla  
24 Project. In both of those instances the County  
25 Board of Supervisors was noticed, the Coummunity

1 Development Agency was noticed, the Planning  
2 Department was noticed. They were contacted by  
3 CEC staff and involved in the process. That did  
4 not occur here.

5 Was it appropriate for the County to  
6 wait for these formal notices before beginning its  
7 review processes? I think it was. The County is  
8 entitled to look at the process that's laid out in  
9 the regulations and wait for that process to  
10 occur. So I think the County was justified in its  
11 approach.

12 This is not a meaningless oversight by  
13 any stretch of the imagination. Governments work  
14 through processes and are sometimes bureaucratic.  
15 The formal notice as the James Sorensen  
16 declaration indicated, triggered a review process  
17 that simply did not occur because the formal  
18 notices were never received by the appropriate  
19 agencies. So that's the County's key argument,  
20 which I think is somewhat mis-characterized by  
21 staff and the applicant.

22 The other argument we want to emphasize  
23 is at your September 26 hearing the FAA came in  
24 with a letter very late that indicated aviation  
25 safety was not a concern of theirs or could be

1 mitigated. That issue had been bounced around the  
2 County's Airport Land Use Commission for about  
3 three months with other parties involved.

4 And the County feels it would be  
5 appropriate for your Commission -- your Commission  
6 certainly has the discretion to give the County  
7 the opportunity to respond to that letter. There  
8 had been a lot of input prior to that September 26  
9 meeting. The FAA comes in with a change at the  
10 last minute. No one is given a chance to provide  
11 expert analysis of that change. And we think your  
12 proceeding would be better, your product would be  
13 better if you allowed that.

14 I want to actually summarize our  
15 response to Calpine's argument, staff's argument.  
16 Again, I think they set up a straw man for you.  
17 Yes, the County knew at various levels that the  
18 project was going forward. That is not in  
19 dispute. The dispute is, have the formal noticing  
20 provisions been met by the CEC.

21 The CEC staff offers no authority, not  
22 one legal citation, for the proposition that the  
23 standard should be the County reasonably should  
24 have known this was happening. Not one legal  
25 citation in their brief supporting that

1 proposition.

2           The applicant does offer a few  
3 citations. I think, candidly, they are laughably  
4 off the mark. They are from the 1920s, civil  
5 litigation matters. They have absolutely nothing  
6 to do with your Commission's regulations,  
7 administrative procedures. I don't think they  
8 carry any authority.

9           In conclusion we would just like to  
10 emphasize the County thinks the Commission  
11 definitely has discretion to allow us to intervene  
12 at this stage of the proceeding. We feel like we  
13 have shown good cause as to why we should be  
14 allowed to intervene and we urge the Commission to  
15 take a step back.

16           The County hasn't decided it doesn't  
17 like this project. The County isn't here telling  
18 you this is a bad project. The County is here  
19 telling you the process that led to this has been  
20 flawed. We'd like to take a step back. Maybe in  
21 a couple of months when you reconsider this item,  
22 hopefully we'll be sitting arm in arm with the  
23 applicant supporting their project, but we think  
24 the people of Alameda County deserve a process  
25 than they received.

1 I'd be happy to answer any questions.

2 CHAIRPERSON PFANNENSTIEL: Are there  
3 questions from the Commission?

4 Mr. Washington, you concede that the  
5 County did know of the project. And they knew of  
6 the project because parts of the county were, in  
7 fact, formally noticed by the Commission during  
8 this proceeding, as I understand it. Is that  
9 correct?

10 MR. WASHINGTON: That's correct. There  
11 was a notice that went out to six County  
12 department agencies, not including the Board of  
13 Supervisors, the Community Development Agency, the  
14 Planning Department, the land use-oriented  
15 entities that should have been noticed. But yes,  
16 that is correct.

17 CHAIRPERSON PFANNENSTIEL: Thank you,  
18 thank you.

19 Mr. Ratliff, did you have any comments?

20 MR. RATLIFF: Actually it was eight  
21 agencies.

22 CHAIRPERSON PFANNENSTIEL: Eight  
23 agencies of the county government that received  
24 formal notice?

25 MR. RATLIFF: Formal direct notice and

1 mailings of all of the significant notices for  
2 workshops and hearings.

3 CHAIRPERSON PFANNENSTIEL: Thank you.  
4 Are there questions from the Commission?

5 I also have a request to comment from  
6 Rick Thomas of Calpine on the phone.

7 MR. WHEATLAND: No.

8 CHAIRPERSON PFANNENSTIEL: I'm sorry, I  
9 was told --

10 MR. WHEATLAND: I believe he is, I  
11 believe he is just listening in today.

12 CHAIRPERSON PFANNENSTIEL: Okay, thanks.

13 With that, Mr. Chamberlain, anything  
14 further that we should consider?

15 MR. CHAMBERLAIN: Would you like to hear  
16 from the applicant?

17 MR. WHEATLAND: I did ask.

18 CHAIRPERSON PFANNENSTIEL: I've been  
19 asking.

20 (Laughter.)

21 MR. WHEATLAND: I had done so in order  
22 for Mr. Washington to speak first. And I'm glad  
23 he did because he did help to focus the issues.  
24 The County concedes that the knew, had actual  
25 knowledge of this proceeding at various levels.

1           Those various levels were from top to  
2 bottom from the Board of Supervisors that had  
3 actual knowledge of this project as early as  
4 December 19 of 2006 all the way down through all  
5 of the agencies, the Community Development Agency,  
6 the redevelopment agencies that Mr. Sorensen  
7 heads, the Planning Department staff that met with  
8 our staff and participated in our proceedings, and  
9 all of the various other agencies that were  
10 noticed.

11           But we don't agree, though, that the  
12 notice for the request for agency participation  
13 was flawed and we actually make three arguments  
14 with respect to that notice. The first argument  
15 we make, and this is based on the Commission's own  
16 regulations and the statute, is that the  
17 Commission was not legally required to provide  
18 that notice.

19           That notice is applicable to instances  
20 where the Commission has received an application  
21 or a notice of intent. And in this instance we  
22 are not dealing with an application, we are not  
23 dealing with a notice of intent, we are dealing  
24 with an amendment to a previous Commission  
25 decision.

1           It's great the Commission provided that  
2 notice. We're glad they did. But it wasn't  
3 something that they were legally required to do  
4 under the statute and under the regulations and  
5 therefore it can't be legal error, even if there  
6 had been a flaw in that notice for the Commission  
7 to have not sent it out to everyone that might  
8 have wanted to receive one.

9           We don't believe, though, that the  
10 notice was flawed because it was sent to seven  
11 different county agencies. And the agencies that  
12 it was sent to weren't random. Those were the  
13 agencies that had been involved in the  
14 Commission's original proceeding.

15           And as we set forth in our pleadings,  
16 you will see a number of conditions in the  
17 original license for this project that rely upon  
18 the County of Alameda for various forms of review  
19 and participation and enforcing the conditions of  
20 certification. Those are the agencies that have  
21 been actively involved and those are the agencies  
22 that received a notice.

23           If the County had wished additional  
24 notice they are experienced practitioners in our  
25 process. They were actively involved in the East

1 Altamont proceeding and they certainly know how to  
2 contact the Commission and add additional names to  
3 the service list.

4 We presume, and I think that the  
5 reasonable conclusion to be drawn, is that the  
6 County didn't request additional service either  
7 because they actual knowledge and didn't feel it  
8 to be necessary. Or alternatively, that they were  
9 satisfied with this project going forward in the  
10 manner it did.

11 And one of the best ways to look at that  
12 issue is to look at the fact that the County did  
13 actively participate in our proceeding. The  
14 Commission's involvement with the County didn't  
15 end with that notice, that was the beginning of  
16 the process. And we recount in our pleadings in  
17 the opposition to the petition to intervene the  
18 numerous instances in which the staff and the  
19 Commission went out of its way to involve the  
20 County in the proceeding.

21 The Airport Land Use Commission, which  
22 was an active participant, which entered an  
23 exhibit into the record after the Commission  
24 granted them an extension of time to do so, is a  
25 subdivision within the redevelopment agency and

1 the community development agency. And clearly if  
2 that subdivision of the agency could participate  
3 there is no reason why the other land use  
4 jurisdictions could not have done so also.

5 So we believe that the County did in  
6 fact have actual notice of the proceeding; that  
7 that notice was legally sufficient in the sense  
8 that there was no legal requirement that it be  
9 sent out at all but they certainly had knowledge.  
10 And we believe that the petition to intervene at  
11 this late date has not be justified.

12 One of the key things also I think you  
13 need to focus on with respect to the petition to  
14 intervene is assuming that they didn't receive  
15 that notice but they did have actual knowledge,  
16 what is their excuse for not coming into this  
17 Commission in December, January, February, March,  
18 April, May, June, July or August and asking this  
19 Commission for additional time to participate?

20 Because we have recounted for you that  
21 Mr. Sorensen, the Board of Supervisors and those  
22 agencies had actual knowledge of the proceeding.  
23 Their pleadings fail to show why they did not come  
24 in to you and ask for additional time. Time that  
25 could have been granted just as you granted time

1 to the Airport Land Use Commission.

2 For those reasons we urge you to reject  
3 the petition for intervention. We believe that  
4 the notice was not flawed and the County concedes  
5 to that actual knowledge.

6 MR. WASHINGTON: May I have one minute  
7 rebuttal?

8 CHAIRPERSON PFANNENSTIEL: Yes.

9 Mr. Washington, please.

10 MR. WASHINGTON: Thank you for a quick  
11 opportunity to rebut. First on the point that you  
12 are not legally required to even give any notice  
13 on the amendment proceeding. I think that is a  
14 very flawed, poor reading of your regulations. I  
15 would encourage you not to adopt an interpretation  
16 of the regulations that cut the public out of the  
17 process like that.

18 COMMISSIONER GEESMAN: I didn't hear  
19 Mr. Wheatland say that. I heard him say that our  
20 statute and the particular section of the  
21 regulations you cite do not compel notice for an  
22 amendment. I don't think that goes to whether we  
23 provide notice or not, I think he was arguing the  
24 construction of the section of the regulations you  
25 focused on. So I think you have been a bit over-

1 broad in your rebuttal.

2 MR. WASHINGTON: Well okay, let me focus  
3 that. I think that is a fair point, Commissioner.

4 Part of the formal notice triggers  
5 public processes at the county level and I think  
6 if you interpret the regulations as he is inviting  
7 you to interpret them that would eliminate some  
8 public process that would otherwise be there. So  
9 I think that is an appropriate clarification.

10 In terms of the ALUC, the County's  
11 Airport Land Use Commission. CEC staff this  
12 summer specifically came to the ALUC and asked  
13 them to participate. So your staff came and  
14 grabbed the ALUC, asked them to participate. They  
15 never came to the County and did that.

16 And finally, reiterating the point I  
17 previously made. There simply is not a standard  
18 of actual knowledge in your regulations. The  
19 regulations provide for a formal notice process  
20 which hasn't been met. No authority to substitute  
21 actual knowledge for that. Thank you.

22 COMMISSIONER BOYD: Mr. Washington, a  
23 question. This whole debate to me in reading the  
24 staff's response, it does bring into question in  
25 my mind communications within the County and the

1       responsibilities of agencies to inform higher-ups  
2       within the County of something that is deemed to  
3       be perhaps controversial. Which this project,  
4       although I don't sit on the Siting Committee,  
5       seemed to have already become long before any  
6       decisions were rendered. So I am struggling a  
7       little bit with, do we have a flaw or an omission  
8       in the County's procedures of lower level or even  
9       high level agencies who are informed not passing  
10      the word up to their superiors.

11               MR. WASHINGTON: Thank you,  
12      Commissioner, I think that is a great question. I  
13      think we have both. I would never point to this,  
14      the County's handling of this as a model of  
15      interagency Communication but the fact is there is  
16      a legal requirement for the formal notice to come.

17               So I think we have both. We have the  
18      County maybe not communicating internally as it  
19      would like to and we have the initial notice  
20      having been flawed and perhaps not triggering the  
21      County to communicate as it otherwise would have.

22               CHAIRPERSON PFANNENSTIEL: Thank you.

23               MR. WASHINGTON: Thank you.

24               CHAIRPERSON PFANNENSTIEL: We have  
25      another person who has asked to speak on the

1 subject, Laura Schulkind, for the Chabot Las  
2 Positas Community College District.

3 MR. RATLIFF: Commissioner, could I just  
4 respond to Mr. Washington on a couple of points  
5 that he made, briefly?

6 CHAIRPERSON PFANNENSTIEL: Yes.

7 MR. RATLIFF: Commission staff did not  
8 solicit the participation of county staff in June  
9 as Mr. Washington said. They solicited their  
10 participation in February as the record clearly  
11 shows. They repeatedly tried to get the County to  
12 participate in a timely manner and they even held,  
13 urged the Commission to hold the record open so  
14 that they could file late comments. So the County  
15 had plenty of time to participate and was allowed  
16 to participate, even after they otherwise would  
17 not have been able to because the Commission held  
18 the record open for them to do so.

19 Secondly the notice itself which was  
20 sent to eight county departments, that notice was  
21 sent to those departments which during the  
22 original NOI proceeding had actually had some  
23 interaction with the staff or had actually come to  
24 workshops that did not by all accounts include the  
25 Planning Department.

1                   CHAIRPERSON PFANNENSTIEL: Thank you.

2                   Ms. Schulkind.

3                   MS. SCHULKIND: Good morning, Members of  
4                   the Commission. Thank you for the opportunity to  
5                   address you here today on this matter. My name is  
6                   Laura Schulkind, I am with Liebert Cassidy  
7                   Whitmore, we are counsel to the Chabot Las Positas  
8                   Community College District. I am also here today  
9                   with Dr. Joel Kinnamon, the Chancellor of the  
10                  District, and Dr. Hal Gin, one of the Trustees who  
11                  also will be addressing the Commission on this  
12                  matter.

13                  But before they speak I just wanted to  
14                  set the legal framework for what we believe is the  
15                  District's right to intervene in this matter. You  
16                  will notice that I will raise similar legal issues  
17                  as to the County, although I don't believe  
18                  duplicative and conscious of the Commission's  
19                  time. But also please note that the factual  
20                  context for our seeking intervention is quite  
21                  different from the County's.

22                  Initially there are two key items that  
23                  are undisputed here and it is important to  
24                  remember those. The first that is undisputed is  
25                  that the Commission never provided formal notice

1 of this proceeding to the District or any agency  
2 or any department or any individual within the  
3 District at any time in the manner described in  
4 Section 1417(c).

5 It is also undisputed that 1417(c)  
6 requires notice to agencies at which, quote, have  
7 been identified as having a potential interest in  
8 the proposed site and related facility. And  
9 shall, it is a command, require analyses, comments  
10 and recommendations thereon from those entities.

11 So we seek intervention not as a local  
12 agency that would otherwise have jurisdiction,  
13 which is the County's basis to seek intervention,  
14 but we assert that we are, in fact, an interested  
15 local governmental agency that should have  
16 received notice.

17 In short, the District's position is  
18 simple. It is and should have been recognized as  
19 a potentially interested agency. It should have  
20 been noticed. And more importantly, the  
21 District's analysis, comments and recommendations  
22 should have been sought and that the failure to do  
23 so was to the detriment of the District and this  
24 process. And that this failure establishes good  
25 cause for the District to intervene.

1           The oppositions raise three points to  
2           which the District takes exception and I would  
3           like to respond to each of those briefly. First,  
4           that the District is not an interested party, it  
5           is not a local agency which was entitled to  
6           notice.

7           Second, that the public hearing  
8           provided, in the public hearing process provided  
9           what is described in the papers as constructive  
10          notice and the assertion that constructive notice  
11          is legally sufficient, which we also disagree  
12          with. And that the district lacks good cause to  
13          intervene at this stage.

14          So first on the issue of the adequacy of  
15          notice. The only activity -- I'm sorry.  
16          Chancellor Kinnamon and Trustee Gin will speak to  
17          the fact that the District is a local agency with  
18          deep interest covered by 1417 so I will not dwell  
19          on that. But I will note briefly that if there is  
20          any doubt as to the interest there is a Board  
21          Policy that I can provide copies to you if you  
22          wish to have them and I refer you to it here, it  
23          is Board Policy 2312 which states in part:

24                         "It is the policy of the Board  
25                         of Trustees to take an active

1 interest in the development of the  
2 area surrounding the college  
3 campuses of the District.

4 "The Chancellor shall keep the  
5 Board advised as to planning and  
6 zoning developments and shall be  
7 expected to report to the Board any  
8 land use developments which in his  
9 or her opinion may be potentially  
10 detrimental to the colleges."

11 We submit that this policy establishes  
12 an institutional interest of this local agency in  
13 land development and that the failure to provide  
14 formal notice to the District impeded the  
15 Chancellor's ability to comply with the local  
16 regulation and that should be of concern to this  
17 Commission.

18 The Russell City opposition attempts to  
19 argue that the notice requirements of 1417(c) do  
20 not apply. We find this claim very troubling.  
21 And that the modification petition somehow does  
22 not require the same sort of public airing that  
23 1417 envisions.

24 The County has already noted that staff  
25 appears to disagree with this. In their papers

1 they recount at length the 1417(c) notice that  
2 they did provide to certain county agencies. We  
3 take that as an admission by the staff that in  
4 fact 1417(c) notice was required on this petition.

5 We would also note that the structure of  
6 the regulation itself defies the interpretation  
7 that is being offered by the Russell City  
8 applicant. Chapter Five of the regulations cover  
9 all site certifications; 1714 falls under the  
10 general provisions that apply to all site  
11 certifications and 1717.69 falls under Article 3,  
12 which is entitled, Applications for  
13 Certifications. So as a matter of structure this  
14 is part of a site certification process.

15 It is clearly the intent of the  
16 Commission to have open airings and public  
17 consideration and comment on the siting of plants.  
18 and to say, but this is a modification and  
19 therefore it did not require the same level of  
20 notice does not seem to be supported either by the  
21 intent or the structure of the regulation.

22 The claim that the failure of notice is  
23 excusable because the District got constructive  
24 notice is also unpersuasive for Chabot Community  
25 College District for two reasons.

1           First, the District did not get  
2           constructive notice. If you look at the briefing  
3           by the parties the opposition papers recount in  
4           detail the correspondence and interactions between  
5           the CEC and various county agencies. And on that  
6           basis assert constructive notice not only to the  
7           County but to the District. Notice to county  
8           agencies cannot be construed as constructive  
9           notice to a completely, separate governmental  
10          entity.

11           The only activity with any connection to  
12          the District that was referenced in any of the  
13          papers was a single, public hearing that was held  
14          at the Chabot campus related to a different  
15          proceeding, the Eden site proceeding, at which it  
16          is alleged that the Russell City proceeding was  
17          discussed.

18           We would submit that this simply does  
19          not describe constructive notice of the Russell  
20          City proceedings. It certainly does not describe  
21          constructive notice of what the District should  
22          have known, which that it had an opportunity and a  
23          right to provide analysis, recommendations and  
24          comment on the proceeding.

25           Please note that under the law community

1 colleges are required to maintain public fora on  
2 their campuses pursuant to the California Civic  
3 Center Act at Education Code 82542. What this  
4 means is community colleges are required to make a  
5 public forum available for public hearings, public  
6 gatherings and public meetings at each of their  
7 campuses. They have the public coming onto their  
8 campuses on a regular basis, possibly even a daily  
9 basis for meetings. To submit that a district  
10 gets institutional, constructive notice based upon  
11 the expectation that it will track who is coming  
12 on and off its campuses pursuant to the Civic  
13 Center Act places an unreasonable burden on the  
14 District and does not describe constructive  
15 notice.

16 We also submit that constructive notice  
17 has not been established as a matter of law and  
18 that, in fact, as a question of law we commend to  
19 you the case Perez v. 222 Sutter Street Partners  
20 at 222 Cal App 3rd 938, which does stand for the  
21 proposition that the adequacy of constructive  
22 notice is a question of law and is therefore  
23 appropriate before this Commission.

24 But second and more importantly, even if  
25 there had been constructive notice it is

1       insufficient as a matter of law. The regulation  
2       is clear. If the failure to provide the formal  
3       notice that is commanded in the regulation, if  
4       that could be excused by a claim of constructive  
5       notice, the entire public notice process would be  
6       undermined. And what it would do is improperly  
7       shift the burden of inquiry from the Commission to  
8       potentially interested parties. And that is not  
9       where the burden should lie.

10               Russell City argues that intervention  
11       cannot be granted when moved for in an untimely  
12       fashion if there were actual notice. Our response  
13       that is number one, no actual notice has been  
14       demonstrated or could be demonstrated in this case  
15       because there was no actual notice by the  
16       District. And as the County noted, the legal  
17       reliance of the parties on that are to a law that  
18       is, case law that is quite old and inapplicable.

19               So this leads us to the key question  
20       here as to whether or not these facts and this law  
21       demonstrates a good cause for the District to seek  
22       intervention at this time and we submit that it  
23       does. To find otherwise invites abuse. We simply  
24       can't have a system where a governmental agency is  
25       provided no notice and then is told, too late,

1 when it does realize it has an opportunity to be  
2 heard.

3 We similarly note that it is not proper  
4 to deny intervention because the District has not  
5 stated a position at this time or described its  
6 intended, the intended scope of its intervention.  
7 We do not seek intervention on that basis. We  
8 seek intervention because there was an error of  
9 law and the procedures do permit intervention on  
10 that basis.

11 It is the District's position that it  
12 would be irresponsible for it to assert a position  
13 at this time. We are not taking a position on the  
14 merits of the position. What we are saying is, we  
15 have a right and a duty in fact to intervene. You  
16 will hear from Trustee Gin that we are here at the  
17 demand of his constituents and of the District who  
18 have expressed concern.

19 And we have not had the opportunity to  
20 hold meetings or hearings or town halls of our  
21 community. We have not had the opportunity to  
22 inform you of what the college community is  
23 concerned about in this case. In particular  
24 because the District is situated, and its Chabot  
25 campus is situated, between the Russell site and

1 the Eden site, and we have not had an opportunity  
2 to consider the potential cumulative impact or  
3 share that information with you.

4 Finally, allowing intervention does not  
5 create a danger the proceedings will never end, as  
6 threatened by Russell City. It is true that all  
7 proceedings must have an ending. The procedures  
8 for site certifications establish that these  
9 proceedings end upon expiration of the  
10 reconsideration period. We have sought to  
11 intervene within that short, 30-day window and we  
12 respectfully request that it be granted.

13 I would like to ask that you give a few  
14 moments to Dr. Kinnamon and Dr. Gin who would like  
15 to speak to the facts on this. Thank you.

16 CHAIRPERSON PFANNENSTIEL: Commissioner  
17 Geesman has a question.

18 COMMISSIONER GEESMAN: Before we do that  
19 I have a question for counsel. Have you had the  
20 opportunity to read or review Attachment 2 to the  
21 staff's papers?

22 MS. SCHULKIND: I have reviewed all of  
23 the papers; I don't have them at the dais with me.  
24 Is there a particular question? Was that the list  
25 of entities that the --

1                   COMMISSIONER GEESMAN: That were  
2 directly contacted. According to this memo Chabot  
3 College is included on that list. There is also  
4 an extensive list of news coverage of the  
5 proceedings dating back to last May. Excuse me,  
6 dating back to last February. I wonder what you  
7 consider constructive notice to be. There are  
8 several dozen instances, I think, in this  
9 memorandum that could be construed as constructive  
10 notice.

11                   MS. SCHULKIND: I am happy to address  
12 that as a matter of law and I also believe  
13 Dr. Kinnamon and Dr. Gin are prepared to respond  
14 to that as factual matters.

15                   I think first of all the papers in  
16 opposition to the intervention address two  
17 separate but related concepts, constructive notice  
18 and actual notice. And there was no actual  
19 notice. The Chancellor and --

20                   COMMISSIONER GEESMAN: It's contradicted  
21 by this memo. I understand you may disagree but  
22 it is contradicted by this memo.

23                   MS. SCHULKIND: Well I would  
24 respectfully suggest that the fact of newspaper  
25 coverage does not show actual notice. It shows it

1 was in the newspapers and may be an argument for  
2 constructive notice, which I will also address.

3 I also don't know who was allegedly  
4 contacted at Chabot College and Chabot College is  
5 not a governmental entity. The entity is the  
6 Chabot Las Positas Community College District.  
7 Its Board, its Chancellor, its District Office had  
8 no knowledge of the proceeding.

9 We don't know what Chabot College was  
10 told, we don't know who was told anything. And  
11 what is clear is that the District had no idea  
12 that it was entitled to provide recommendations  
13 and analysis. So the fact that there may have  
14 been an awareness, which I would submit there was  
15 not of the District that this proceeding existed,  
16 is not adequate notice in any case because the  
17 District had no way to know that it could come to  
18 this Commission, prepare analyses, hold its own  
19 meetings and say, these are the concerns of our  
20 community. And that simply was not invited.

21 So I would say that the record neither  
22 establishes actual notice of anyone in the  
23 District at the colleges or at the District  
24 Office. And that as a matter of law the fact that  
25 it was in the newspapers, and the fact that there

1 is an attachment to a report that is hearsay that  
2 simply says, Chabot College, without any more  
3 detail, does not create a factual basis for find  
4 constructive notice either.

5 I am happy to address any other  
6 questions as to our legal basis. Otherwise I  
7 would welcome the opportunity to cede some time to  
8 the Chancellor and the Trustee who traveled up  
9 here today.

10 CHAIRPERSON PFANNENSTIEL: Thank you. I  
11 would like that also but let me just follow up on  
12 one question. So if notice went to Chabot College  
13 that is not the same as going to the Community  
14 College District? It doesn't work such that that  
15 constitutes some part of your district?

16 MS. SCHULKIND: The structure of a  
17 district, of a community college district, is  
18 there is a district office that is overseen by a  
19 Chancellor, a Board of Trustees and district staff  
20 and such. There are two separate college  
21 campuses, each with a President and an internal  
22 administrative structure. It is all one district.

23 I do not believe notice of any kind was  
24 provided to Chabot College, I dispute that. I  
25 don't know what information may have been given to

1       somebody at Chabot College. I have no idea what  
2       that might be. I am unaware of any notice going  
3       to the College so I can't say that that notice was  
4       adequate or not.

5               The formal obligation to provide notice  
6       on a suit or any other matter, if it is to the  
7       District, must go to the District. But I am not  
8       making a formalistic argument here, which is, you  
9       told the wrong person. My argument is, no person  
10      was told, and there is nothing to prove otherwise.  
11      There was no notice of contemplated 1417(c) that  
12      was given to anybody, any administrator within  
13      this district.

14             CHAIRPERSON PFANNENSTIEL: Thank you.  
15      We would be glad to hear from the Chancellor and  
16      the Trustee.

17             MS. SCHULKIND: Thank you very much.

18             DR. KINNAMON: Good morning, Chairman  
19      and Commissioners.

20             CHAIRPERSON PFANNENSTIEL: Good morning.

21             DR. KINNAMON: Thank you for allowing us  
22      to speak this morning. I am Dr. Joel Kinnamon,  
23      Chancellor of the Chabot Las Positas Community  
24      College District. You have already received my  
25      declaration in support of the District's petition

1 to intervene and petition to reconsider.

2 I briefly wish to emphasize three  
3 points. That the District is an interested  
4 governmental agency; that the district did not  
5 receive formal notice and was thus unaware that it  
6 had a right to be heard as an interested  
7 governmental agency in those proceedings. That as  
8 a result the District and the community it serves  
9 was deprived the opportunity to provide input into  
10 the decision and the Commission was deprived of  
11 the perspective of the District and its community  
12 that it serves.

13 No actual notice was provided before the  
14 first week of October of this year. And that was  
15 not a formal notice, that was an informal notice  
16 that was provided.

17 There is no dispute that the District  
18 was not provided with a notice of these  
19 proceedings and that its analysis and input were  
20 not sought. I find it troubling that the Chabot  
21 Las Positas Community College District was not  
22 considered to be an interested, government entity.  
23 We are clearly interested.

24 First, our policies, Board Policy 3212  
25 -- 2312 that was mentioned earlier, actually

1 mandate that I keep the Board advised as to  
2 planning and zoning developments and shall be  
3 expected to report to the Board any land use  
4 development which in his or her opinion may be  
5 potentially detrimental to the colleges.

6 This policy is a formal expression of  
7 the District's interest. And by failing to  
8 provide notice to the district may have -- my  
9 ability to comply was impeded.

10 Second, our role in the community leaves  
11 no room for doubt that we are interested in the  
12 well-being of the community we serve. As  
13 described more fully in my declaration, the  
14 District has been providing education and  
15 employment opportunities to Bay Area residents for  
16 over 44 years. The District has deep ties to and  
17 a strong interest in the well-being of the  
18 community we serve.

19 The District's Chabot campus serves  
20 15,000 students on a daily basis and has 500  
21 employees. The Chabot campus, less than three  
22 miles from the proposed site, covers 94 acres,  
23 including a significant amount of outdoor space,  
24 athletic fields, playgrounds, et cetera. A large  
25 concentration of young people, including infants

1 and toddlers, are in our children's center.

2 In 2003 an outside company analyzed  
3 Chabot's economic impact on the local service area  
4 and made four key conclusions. Chabot College  
5 stimulates the regional economy; Chabot leverages  
6 taxpayers' dollars for social benefits; Chabot  
7 generates a return on governmental investments;  
8 and Chabot increases individuals' earning  
9 potential.

10 Third, not only is the Russell site less  
11 than three miles from our Chabot campus, the  
12 Chabot campus is sandwiched between the Russell  
13 site and the Eden site that is currently up for  
14 consideration. Thus we have a particular and  
15 unique interest in the potential, cumulative  
16 impact of these sites. And our exclusion from the  
17 process has meant -- excuse me -- this concern may  
18 not have been given due consideration.

19 Despite our clear interest the District  
20 did not receive notice from the Commission of  
21 Russell City's application. I understand that the  
22 Commission staff and applicant have argued that  
23 the District must have known about the project  
24 because it got a lot of publicity and because one  
25 public hearing was apparently held on the Chabot

1 campus.

2 I am here to tell you that the Chabot  
3 Las Positas Community College District, its  
4 Chancellor and its Board, were not aware until  
5 shortly before the petitions were filed that we  
6 were entitled to play a role in these proceedings.

7 General awareness that a plant site was  
8 being considered is far different from an actual  
9 notice and a request for analysis. Please also  
10 note that by law the District is required to  
11 maintain an open, public forum for community  
12 events. Many meetings, performances, gatherings  
13 and activities occur on our two campuses on a  
14 regular basis, such as the public hearing that was  
15 mentioned at Chabot.

16 That we made our campus available for  
17 this meeting did not put the District on notice of  
18 the proceeding or its right to be involved in the  
19 proceedings. As a result of the failure of notice  
20 an important perspective has gone unheard. This  
21 is especially troubling since the District serves  
22 a population that historically goes unheard.

23 I know the Commission is sensitive to  
24 the impact of its decision on low-income and  
25 minority communities, so please consider you have

1 not heard from the district that serves on its  
2 Chabot campus alone the 15,000 student body, its  
3 majority minority, 75 percent of the students are  
4 non-white. The student population is 14 percent  
5 African American, 18 percent Asian American, 9  
6 percent Filipino, 22 percent Latino and 25 percent  
7 White. Race and ethnicity of the remainder  
8 percent is unknown or Other.

9 Over a third of our students are first  
10 generation of their family to attend college.  
11 Fifty-seven percent of our students have low or  
12 very low household income levels. Lack of notice  
13 and opportunity to participate has deprived a  
14 largely non-white and impoverished community an  
15 important voice in these proceedings.

16 we are not asking the Commission to  
17 change its decision but that it correct its  
18 process. The District is fully prepared to accept  
19 a decision that is made after a full and proper  
20 airing and consideration of the issues by all  
21 interested entities. We are asking for you to  
22 provide us 120 days to do this and perhaps combine  
23 with the Eden site consideration so that we can  
24 see the cumulative impacts of both power plants on  
25 our college. Thank you. I can answer any

1 questions at this time.

2 CHAIRPERSON PFANNENSTIEL: Yes,  
3 Commissioner Geesman.

4 COMMISSIONER GEESMAN: Do you read the  
5 Oakland Tribune?

6 DR. KINNAMON: No, I don't.

7 COMMISSIONER GEESMAN: Anybody in your  
8 office read the Oakland Tribune or receive it?

9 DR. KINNAMON: I'm sure there are some  
10 that do.

11 COMMISSIONER GEESMAN: The attachment to  
12 the staff filing, which I'd mentioned to your  
13 counsel, identifies between February and September  
14 2007, 20 different stories on this project in the  
15 Oakland Tribune. And I understand very well you  
16 are interested now, but it doesn't seem to me that  
17 you were very interested during that period of  
18 time when you could have actually had an  
19 opportunity to participate.

20 DR. KINNAMON: Commissioner, with all  
21 due respect, the first week of October was the  
22 first time our District became aware and our  
23 trustees that the Russell City plant was located  
24 where it was located and it was moving forward.  
25 Even the name of the plant wouldn't necessarily

1 raise an antenna because I am not sure where  
2 Russell City exists. I didn't realize it existed  
3 in my service area.

4 So again, the Trustees, and I visit with  
5 all the Trustees. I visit with our College  
6 President's office and with our staff. We did not  
7 receive formal notice and was unaware of what was  
8 taking place with the Russell City plant.

9 COMMISSIONER GEESMAN: Despite 20  
10 separate articles in the Oakland Tribune neither  
11 you nor any of your trustees had any awareness of  
12 this proposed plant?

13 DR. KINNAMON: That is my understanding  
14 from the trustees but that is definitely -- and  
15 they're not here to say that but I can say that  
16 for myself and for our administrative team. So my  
17 response is yes, we weren't aware.

18 COMMISSIONER GEESMAN: Thank you.

19 CHAIRPERSON PFANNENSTIEL: Sir, you have  
20 an obligation, I think your counsel read the  
21 obligation to advise your Board of Trustees on  
22 issues in your local area. Do you find out about  
23 all of them from formal notice or do you  
24 occasionally know things going on in your area  
25 that you report to your Board from other sources?

1 DR. KINNAMON: Most things are formal  
2 notice, especially if they are of significant  
3 magnitude. If you have a small development that  
4 is petitioning typically what they will have to do  
5 is work with us to get the right type of zoning  
6 permits and those types of things. And of course  
7 in this situation, since Russell City wasn't  
8 adjacent to us, there weren't those types of  
9 loopholes that would require that.

10 CHAIRPERSON PFANNENSTIEL: Thank you.  
11 You have a Trustee who would like to speak?

12 DR. KINNAMON: Certainly.

13 DR. GIN: Good morning, Commissioners.

14 CHAIRPERSON PFANNENSTIEL: Good morning.

15 DR. GIN: I am Hal Gin. I am a Board of  
16 Trustees member for the Chabot Las Positas Board.  
17 We have a seven member board and my particular  
18 area represents the area where the power plant is  
19 being proposed. It constitutes a very large area.  
20 An area from San Leandro to the north to Union  
21 City to the south and to the shoreline and the  
22 Union Pacific tracks, whatever that means.

23 This particular -- What you heard  
24 previously from Chabot Las Positas'  
25 representative, I don't want to be redundant by

1 repeating what they have said. But it is clear  
2 from the public, the students that I represent,  
3 that not being aware of this situation is very  
4 paramount.

5 I do read the papers. I do read two  
6 papers in fact, three papers, the Chronicle, the  
7 Daily Review, as well as the East Bay Business  
8 Times. And it is until recently that I realized  
9 that this power plant was approved. Granted there  
10 may be arguments that there have been notices out  
11 there. But it is only recently within the past  
12 month or so that I realized the gravity of this  
13 particular project.

14 Of the constituents that I represent  
15 they are all asking, what happened, why weren't we  
16 notified. That's simple, bottom line. We did not  
17 know about this. Now whether or not they are  
18 Chabot students or represent the Chabot community,  
19 they are community members in the East Bay area.  
20 They represent their families, they represent  
21 children and parents and so-forth. They all are  
22 saying to us, we did not know about this.

23 In the interest of time, again, I don't  
24 want to repeat what was said. I do agree with all  
25 of the individuals who spoke before me regarding

1 the lack of notification, the process we need to  
2 look at. I'll be glad to answer any questions  
3 that you may have.

4 CHAIRPERSON PFANNENSTIEL: Thank you,  
5 sir.

6 COMMISSIONER BOYD: I have --

7 CHAIRPERSON PFANNENSTIEL: Commissioner  
8 Boyd.

9 COMMISSIONER BOYD: I'm still struggling  
10 with the fact -- I mean, as a veteran, as all the  
11 Commissioners here are of many, many, many siting  
12 cases throughout the state, and having had the  
13 experience of seeing what at least I consider the  
14 very extensive outreach that is made with regard  
15 to each and every facility by our Public Adviser's  
16 Office, which is working for the public to try to  
17 communicate the fact that there is a proposal for  
18 a power plant and that the Energy Commission would  
19 be engaging in what is usually at least a year-  
20 long process.

21 And as Commissioner Geesman noted and as  
22 I had noted as well, we have a document from our  
23 Public Adviser's Office listing dozens and dozens  
24 and dozens of organizations, schools, business, et  
25 cetera, et cetera. Particularly schools,

1 elementary et cetera, that were notified of this  
2 very early in the process. And I have seen the  
3 extensive documents that are provided to affected  
4 publics and Chabot College is listed here.

5 So I am wondering, what does the college  
6 do with this notice? What responsibility does the  
7 college feel towards its constituents as you call  
8 them, the students who live in hosts of  
9 communities also probably advised, and what  
10 responsibility does the college have to let its  
11 oversight board, yourselves, know about situations  
12 like this.

13 Because I am struggling. I have no  
14 question about what you feel is your  
15 responsibility and what the College feels is its  
16 responsibility, the District feels is its  
17 responsibility. But I am struggling with whether  
18 people received notice and whether the system  
19 failed somewhere.

20 DR. GIN: Well I can say that we have a  
21 good working Board. The staff keep the Board very  
22 much apprised of all activities, all local event  
23 that goes on. The fact I live in that particular  
24 area, I would have seen something in the newspaper  
25 in the time that we're talking about but I did

1 not.

2 I feel that we have a very progressive  
3 and a very good working district. We are not as  
4 large as perhaps the county because we have a very  
5 manageable size. So I would say if anything of  
6 that stature came up we would have known about it.

7 COMMISSIONER BOYD: Thank you.

8 DR. GIN: Thank you.

9 CHAIRPERSON PFANNENSTIEL: Thank you.

10 We do have a person on the phone who would like to  
11 speak. Marsha Gerfarud from the Department of  
12 Fish and Game.

13 MS. GERFARUD: Marsha --

14 CHAIRPERSON PFANNENSTIEL: I'm sorry,  
15 you are not coming through well, try again.

16 MS. GERFARUD: My name is Marsha  
17 Gerfarud.

18 CHAIRPERSON PFANNENSTIEL: Thank you.

19 MR. GERFARUD: I am the environmental  
20 scientist for the Department of Fish and Game in  
21 Alameda, Contra Costa and San Francisco Counties  
22 and I did see the CDs that were sent out and the  
23 notices for this.

24 However, I knew that the project had  
25 been approved back in I think it was in 2002 was

1 mitigation. And I wasn't aware that with this  
2 amendment that all the mitigation for the wetlands  
3 and habitat compensation and the perching  
4 management plan were removed.

5 So I am a little bit concerned about the  
6 location without having any of these items. Or  
7 for not addressing the issues of the four  
8 protected species that are in the area, which are  
9 the California Least Tern, the California Clapper  
10 Rail and the Salt Marsh Harvest Mouse. There  
11 wasn't anything that I saw just briefly that  
12 addresses how these animals won't be affected. So  
13 that is my concern.

14 CHAIRPERSON PFANNENSTIEL: Mr. Ratliff,  
15 do you want to respond to her, have staff respond  
16 to that.

17 MR. RATLIFF: The Commission staff in  
18 the original proceeding considered biological  
19 impacts. It was one of the major issues at that  
20 proceeding, particularly the impacts upon the  
21 adjoining salt marsh habitat and additionally the  
22 displacement of a small, seasonal wetland at the  
23 original site.

24 As a consequence of the impact that was  
25 considered to be important there, particularly as

1 mitigation for the seasonal wetland, the Energy  
2 Commission staff required the contribution of I  
3 think it was -- I can't remember how many acres.  
4 It was at least 15 acres of adjoining salt marsh  
5 to be dedicated to preservation and to be  
6 substantially improved in terms of its habitat  
7 value. The relocation of the project removed this  
8 impact because the seasonal salt water marsh was  
9 no longer subject to that impact.

10 Likewise the removal of the wave design,  
11 which had been of concern to the biologists of the  
12 Fish and Game and the Energy Commission in the  
13 original proceeding with regards to the potential  
14 perch habitat. That it would provide for raptors  
15 who might eat Salt Water Harvest Mouse. That was  
16 also removed as part of the project.

17 So with those changes those various  
18 mitigation measures were removed in the analysis  
19 that followed. But there was still a review of  
20 the impacts from the new site, which was  
21 considered to be far better from a biological  
22 impact perspective than the original one.

23 CHAIRPERSON PFANNENSTIEL: Thank you,  
24 Mr. Ratliff. I understand that subject wasn't in  
25 front of us today but I appreciate your clarifying

1       that.

2                     Yes, Mr. Wheatland.

3                     MR. WHEATLAND: I'd like to briefly  
4       address the Chabot Community College District's  
5       arguments, if I could.

6                     CHAIRPERSON PFANNENSTIEL: Please.

7                     MR. WHEATLAND: Both the District and  
8       the County's arguments, the petition to intervene,  
9       rest on the argument that they were legally  
10      entitled to notice under 1714(c). I previously  
11      addressed why I don't believe that section is even  
12      applicable where an amendment is involved.

13                    And I would like to point out that the  
14      Commission receives many, many amendments to the  
15      various decisions. It has not been the practice  
16      of this Commission as a general rule to send out  
17      notice under 1714(c). The amendments range in  
18      complexity and size but the general practice of  
19      this Commission has not been to send out a notice  
20      under that section. And to do so now would be a  
21      change in Commission practice.

22                    But I want to direct your attention to  
23      1714(c) for a very important reason because it  
24      identifies three types of parties that are  
25      entitled to notice. And I believe that the

1 Community College District has not shown that they  
2 fall into any one of those three classes. The  
3 first class are certain named agencies. These are  
4 federal and state, regional and local agencies  
5 that have been named in the section and obviously  
6 the Chabot College District is not within that  
7 list.

8 Another group are agencies that would  
9 have had jurisdiction over this project but for  
10 the Commission's authority. And again the  
11 Community College District is not an agency that  
12 would have had jurisdiction.

13 So the third and only possible group  
14 that they can fall into are agencies that have  
15 been identified as having an interest. And I  
16 explained to your earlier that there are certain  
17 agencies that have already been identified as  
18 having interest. For example, the county agencies  
19 that participated in the last application  
20 proceeding who were identified and they received  
21 notice. Also other agencies have written in to  
22 the Commission and said, we want to be notified if  
23 you have these proceedings and they received  
24 notice.

25 But the Chabot College District is not

1 an agency that had been identified as having an  
2 interest. And if you listen very carefully to  
3 what the counsel for Chabot argued to you, she  
4 said, it is an agency that should have been  
5 identified.

6 But goodness, this is not the test for  
7 the statute and there are literally scores of  
8 agencies that could have been identified or should  
9 have been identified but were in fact not  
10 identified. And that is why the Commission has  
11 the Public Adviser. Because the Public Adviser  
12 goes out and talks to all of these other agencies  
13 that had not been identified to let them also know  
14 of this project.

15 Counsel for Chabot also said that there  
16 was no opportunity for town halls. I believe that  
17 Mr. Haavik's response indicated that there was at  
18 least one town hall meeting on the subject of  
19 power plants at the Chabot Community College.

20 So we believe not that they had  
21 constructive notice but that they had actual  
22 notice. The two reasons for dismissing the  
23 petition are one, the notice was not legally  
24 required, and two, they had actual notice.

25 MS. SCHULKIND: May I have one minute?

1 CHAIRPERSON PFANNENSTIEL: Yes.

2 MS. SCHULKIND: Thank you.

3 You've heard directly from those with  
4 percipient knowledge that they did not have actual  
5 notice and there is no percipient rebuttal to  
6 that. I believe that the Chancellor and Dr. Gin  
7 have indicated a lack of actual notice and I think  
8 that that disposes of that issue.

9 I think it is very troubling to take a  
10 local agency that serves this community who has a  
11 campus less than three miles from one site and  
12 sandwiched between the two and then utilize as a  
13 way to get out from under the 1417(c) notice  
14 obligations that we didn't identify you as a  
15 party, as a potentially interested party.

16 They should have been identified as a  
17 potentially interested party and this process  
18 would have been better for it. This is not a  
19 process objection for processes sake. This is a  
20 local agency with a unique perspective that could  
21 have brought something valuable to this process  
22 given its location in relation to both Russell and  
23 Eden and the 1417(c) would have been the  
24 appropriate notice.

25 Looking again at the exhibit that you

1       referenced. I am concerned about the Commission  
2       relying on this memorandum for two reasons. One,  
3       this was created after the fact in response to our  
4       petitions. This was not a preexisting  
5       documentation of notice.

6               Second, it simply describes outreach and  
7       then lists a number of agencies. As I said in my  
8       remarks in response to your question,  
9       Commissioner, we do not know what this outreach  
10      consisted of, we don't know who it went to, if it  
11      went to anyone. We don't know what it says. The  
12      outreach documentation is not provided in support  
13      of this. It is a hearsay document prepared not by  
14      the individuals who may have provided that notice.  
15      I don't think this provides real evidence before  
16      the Commission.

17             And again, that notice I am quite  
18      confident did not invite the District to provide  
19      an analysis or a recommendation which we assert  
20      under 1417(c) the District was entitled to do.  
21      Thank you.

22             COMMISSIONER GEESMAN: Did the District  
23      participate in the original licensing proceeding  
24      in 2001-2002?

25             MS. SCHULKIND: No, it did not receive

1 notice of that either. The exclusion of the  
2 District is historic and it sort of has snowballed  
3 into the position that is here. Perhaps if under  
4 that original application they had been recognized  
5 as an interested party their input would have been  
6 provided at that time and we wouldn't be before  
7 you today.

8 COMMISSIONER GEESMAN: So all of the  
9 same defects that you are asserting today relate  
10 back to that original licensing proceeding as  
11 well.

12 MS. SCHULKIND: That is correct.

13 COMMISSIONER GEESMAN: And all of the  
14 same ignorance as well in terms of not being aware  
15 that the power plant was being --

16 MS. SCHULKIND: That would have to be  
17 the case. I don't think that the Chancellor or  
18 the Trustee are being clever here in the way they  
19 have honestly told you that they did not  
20 understand the location of the site, its impact on  
21 the District. And more importantly, its right to  
22 submit recommendations and analyses. That they  
23 had any particular footing or standing before this  
24 Commission that would be different because of its  
25 status, or what should have been its status, as an

1 interested, potentially interested local agency.  
2 And that is how we feel the District should have  
3 been treated.

4 COMMISSIONER GEESMAN: Thank you very  
5 much.

6 MS. SCHULKIND: Thank you.

7 CHAIRPERSON PFANNENSTIEL: One last  
8 comment, Mr. Wheatland.

9 MR. WHEATLAND: One last comment just as  
10 a factual matter. It appears to me that the  
11 District even today is not aware of the location  
12 of this facility. Counsel and her witnesses  
13 mention that the Chabot College was sandwiched  
14 between these two projects, Russell City and East  
15 Shore. To my knowledge both of the projects are  
16 to the west of that campus.

17 References were made to a Mt. Eden  
18 project but we are the project that is within the  
19 Mt. Eden sub-area that was annexed by the County.  
20 But I don't believe just as a matter, a factual  
21 matter, that the Chabot College is sandwiched  
22 between the two projects.

23 COMMISSIONER GEESMAN: When you said  
24 annexed by the County I think you meant to say  
25 annexed by the City.

1                   MR. WHEATLAND:  Annexed by the City from  
2                   the County, that's correct, yes.  
3                   If I may add a few final comments.

4                   CHAIRPERSON PFANNENSTIEL:  Please.

5                   MR. HAAVIK:  Thank you very much.  First  
6                   of all I wanted to make a comment and I don't know  
7                   how politically correct this is.

8                   COMMISSIONER BOYD:  Could we have your  
9                   name for the record.

10                  MR. HAAVIK:  Paul Haavik, I'm sorry,  
11                  Intervenor.  Sorry about that, Mr. Boyd.

12                  I don't know how politically correct  
13                  this may be but I read in one of the opposition's,  
14                  and I believe it was by Mr. Ratliff, that even if  
15                  some folks took a sabbatical somewhere else that  
16                  it would be hard to justify that they did not have  
17                  the knowledge.

18                  Well in my objection to this, not only  
19                  as the Intervenor but also as the party which is  
20                  sandwiched in-between Chabot College and the  
21                  plants, and I will explain that in a moment, I  
22                  take certainly an offense that no one had any  
23                  knowledge of this.  Because I would have said,  
24                  their heads must have been in sand.

25                  I can tell you that all the plants and

1 Chabot College are located on one street, Depot  
2 Road. Chabot College is to the far east at the  
3 end of Depot Road, then comes my residence 1100  
4 feet from the first power plant to the west, which  
5 is the East Shore Energy Center, and then at the  
6 end of Depot Road is the Russell City Energy  
7 Center. So Chabot is not sandwiched in-between,  
8 they are certainly at the one end. They are at  
9 the most easterly end of Depot Road.

10 In fact, I have a daughter that attends  
11 Chabot College. And even though she knows what I  
12 do and that I am an intervenor for both East Shore  
13 and for Russell she came home one day and said,  
14 dad, and she is 24 years old in the nursing  
15 program. She said gee. She says, I think you  
16 know a guy that was on campus distributing some  
17 stuff. And I said yes I do, I know about that.

18 So the students knew about the Chabot  
19 College, the students at Chabot College certainly  
20 knew of the issues on campus. As well as there  
21 were several meetings attended by I think one of  
22 the declarants in regards to emissions for not  
23 only Russell but also the East Shore situation.  
24 So I do take an offense that they just do not have  
25 the knowledge or they do not have the

1 notification.

2 Plus as I cited in my declaration in my  
3 opposition, that I believe it was either in August  
4 or June -- excuse me, June 6 there was a Hayward  
5 Daily Review article indicating the joint meeting  
6 of the committee for both Russell and East Shore.

7 There were flyers, approximately 2,000  
8 flyers distributed by local residents. Those  
9 local residents are in and around Chabot College  
10 on all of the residential areas around Chabot  
11 College as well as there are over 100 people that  
12 attended the meeting. Mr. Geesman may remember  
13 that meeting. There was a lot of discussion about  
14 both Russell and East Shore. And certainly  
15 several of those folks came from the community  
16 surrounding Chabot College.

17 So for Chabot as well as the County not  
18 to know this is very perplexing to me. And I take  
19 offense as the Intervenor who has met all of the  
20 various requirements of this Commission to  
21 participate, and I do appreciate that privilege,  
22 and I think it is a privilege. For additional  
23 folks to come in after the fact and demand that  
24 same responsibility I think it is an insult to the  
25 intervenorship of the Commission which is afforded

1 through the Commission's petitions and approvals  
2 but also the fact that it reduces the effect of  
3 intervenorship for a private person like myself to  
4 participate. Thank you.

5 CHAIRPERSON PFANNENSTIEL: Thank you,  
6 sir. I just got notice that there is another  
7 person who would like to speak on this. Jewell  
8 Hargleroad, who is counsel for the group  
9 petitioners.

10 COMMISSIONER GEESMAN: Yes, I believe  
11 that is the third petition.

12 CHAIRPERSON PFANNENSTIEL: Yes.

13 MS. HARGLEROAD: Yes.

14 COMMISSIONER GEESMAN: Are we done with  
15 the Chabot --

16 CHAIRPERSON PFANNENSTIEL: That's the  
17 third -- Oh, I'm sorry.

18 MS. HARGLEROAD: Hi.

19 COMMISSIONER GEESMAN: Or are you going  
20 to speak on the Chabot petition?

21 MS. HARGLEROAD: I am speaking on behalf  
22 of the group petitioners.

23 COMMISSIONER GEESMAN: Which is the --

24 MS. HARGLEROAD: You also have, that is  
25 also -- It is the third petition.

1                   CHAIRPERSON PFANNENSTIEL: Were there  
2 other questions or comments on the Chabot?

3                   Then let's move on to the third.

4                   MS. HARGLEROAD: Thank you. Hi, I am  
5 Jewell Hargleroad and I am here on behalf of the  
6 group petitioners, the California Pilots  
7 Association, which is a statewide organization,  
8 the Citizens for Alternative Transportation  
9 Solutions, the San Lorenzo Homeowners Association,  
10 the Hayward Democratic Club and the Skywest  
11 Townhouse Homeowners, and the Hayward Area  
12 Planning Association.

13                   First as a procedural matter I just  
14 would like to submit to your secretary, and I'll  
15 provide those to her, some petitions from the  
16 public of 543 signatures which were gathered to  
17 address this and to urge you to reconsider this  
18 project.

19                   Also I just want to bring to your  
20 attention that I presented to you a declaration  
21 from Carol Ford who is the vice president of the  
22 California Pilots Association. And she attaches  
23 to her declaration a letter she just received this  
24 Friday from your staff which is not on your East  
25 Shore docket from the FAA which is dated October

1       8. And that letter clearly has huge concerns  
2       about both these projects and their cumulative  
3       impact and the ability of the Hayward Airport to  
4       operate.

5               Also I have provided to the Commission,  
6       and I apologize for our tardiness on this but I  
7       had a substantial filing yesterday or on Monday.  
8       A declaration from Mr. Toth. He was unable to  
9       attend but he wanted to respond given the  
10      Commission staff's statements towards his  
11      declaration. One of the points he would like to  
12      clarify is that Chabot College is not three miles  
13      from the Russell City project, it is one and a  
14      half miles. So just as a factual matter.

15              Also procedurally your staff,  
16      Mr. Ratliff had stated that he wanted you to  
17      engage in some procedural assumptions as to how  
18      would you have decided the reconsideration if you  
19      deny the intervention. We would object to that  
20      and ask that there be further briefing because  
21      that is totally premature. If you deny the  
22      petitions for intervention how are we able to  
23      present our case on reconsideration.

24              Now the Group Petitioners, we have  
25      clearly presented evidence which came about after

1       September 26. There is no question about that.  
2       And there is substantial evidence, and even as  
3       recent as this Friday we received that additional  
4       information.

5                 Also we did ask that the City of Hayward  
6       contracts be referred to the Attorney General's  
7       Office for an opinion. What weight should be  
8       given? We disagree that land use conformity is a  
9       factual matter that the city staff can testify  
10      about in contradiction to the city's ordinances.  
11      And that is clearly established by you have an  
12      excellent exchange between your planning staff,  
13      March 2006. And that is an attachment to my  
14      declaration. I apologize I was not able to  
15      present it in electronic form but you have that.  
16      And the city staff.

17                There has been no public hearing with  
18      any elected representatives for this project at  
19      all, neither before the County Board of  
20      Supervisors nor before the City of Hayward.  
21      Because in 2001 they made a land use designation  
22      saying yes it is consistent in July 2001. But  
23      their staff report says, you are not reviewing the  
24      merits of this project. You are not reviewing  
25      this project, you are just looking at consistency

1       sake.

2                   Then in 2002 the code changes. The City  
3       Council readopts and amends that area's planning  
4       and it changes. We would submit that that is a  
5       legal issue and the contracts with the former  
6       applicant or whoever this is at whatever point in  
7       time are not entitled to any weight absent -- we  
8       think you should send that to the Attorney  
9       General's Office for their opinion as to that.

10                   Also the exchanges and the responses  
11       from counsel for the applicant, Mr. Wheatland, I  
12       think really highlight the problem here. And this  
13       is something that your staff also obviously was  
14       struggling with. Here it is, you have a  
15       certification in 2002 and now there is a new  
16       project owner in a new location, five years later.  
17       The population has doubled in this area.

18                   And to be fair to the County on the  
19       redevelopment contract, yes there is a section  
20       that is entitled, Power Plant, but I didn't see  
21       anything saying, 600 megawatt with a thermal plume  
22       in there. That is not in there.

23                   Also what is in there is affordable  
24       housing. This area is going to be developed for  
25       affordable housing. Well that shows a disconnect

1       because under the Public Resource Code  
2       specifically the applicant can be required to  
3       acquire additional land in the area so that there  
4       is no population growth. Because you don't want  
5       people living next door to a very large power  
6       plant emitting a lot of toxins and pollutants and  
7       that's what that is.

8                 So in that regard the reason why they  
9       didn't get notice is because this was an amendment  
10      process. It was not properly noticed with a new  
11      project application as it should have been. And  
12      that is why we object.

13                And we acknowledge, yes, we are late to  
14      objecting to your granting just this August an  
15      extension of time for the applicant to build a  
16      plant where they can't build it. Because that is  
17      what you granted. You granted an application to  
18      extend the time to build a plant that you know you  
19      can't build for a year so you could process this  
20      amendment.

21                We would argue that's expired. It  
22      should be revoked and properly noticed, as it  
23      should be just by the substantial change in the  
24      population growth alone. And that's why we cited  
25      to you the park district's findings on the

1 population growth.

2 Additionally Carol Ford had testified to  
3 you earlier, and I brought these with me and I  
4 will provide you copies for your records and the  
5 staff as well as the opposition, is the grant  
6 applications by the City of Hayward and the FAA.  
7 This discusses you need to protect the airport.  
8 We are giving you \$1.7 million so you can continue  
9 to utilize the airport as an airport.

10 And this is one reason why we have --  
11 the group petitioners consist of a broad variety.  
12 The San Lorenzo Homeowners Association. That's a  
13 very large community and in the unincorporated  
14 district next door. They're in complete  
15 agreement. They don't want planes flying over  
16 their neighborhood because you've got these poor  
17 pilots trying to avoid the invisible plumes.

18 So we would suggest that you grant the  
19 petition for intervention, you grant  
20 reconsideration, and you combine it in the East  
21 Shore process. Because you already have an  
22 ongoing proceeding in this regard.

23 When I initially looked at this I  
24 thought, why isn't this being treated as a multi-  
25 facility application? And in fact your staff had

1 looked and you had reviewed, you had some hearings  
2 reviewing both the projects. Well we would  
3 suggest they need to be returned together and you  
4 have substantial evidence in front of you. There  
5 is no question about that. New information which  
6 clearly justifies that grant.

7 And I understand Mr. Haavik is concerned  
8 about the integrity of the intervenor process.  
9 And that's again one of the reasons you could say,  
10 group petitioners were accused of being naive.  
11 Well, group petitioners read your notice and your  
12 notice says, you incorporate and follow the CEQA  
13 provisions.

14 You didn't say, we follow the state  
15 administrative procedures, you better go get  
16 counsel, this is an adversarial proceeding, the  
17 rules of hearsay apply, and you better become a  
18 party if you want any weight to be accorded to  
19 your opinion and your evidence and your needs.  
20 That wasn't on that notice.

21 So yes, we relied on that. And if staff  
22 wants to say that we are unreasonable for relying  
23 on your notice then I think that is a very  
24 interesting proposition here and that would be a  
25 very unusual case. I would hope that is not the

1 case but following the rules we therefore  
2 proceeded with the petition to intervene to bring  
3 out that new information to this body so you are  
4 aware of it and you have, may act upon it.

5 Also I would suggest that this  
6 proceeding or this application stands for the  
7 proposition that when an applicant moves into a  
8 new jurisdiction that you have to provide notice  
9 to that legislative body as a matter of law so  
10 they can make a determination.

11 Also as far as Attachment 2 on the list,  
12 the list of articles, the newspaper articles. I  
13 would just like to refer you to Mr. Toth's  
14 declaration. That is from his web page. That is  
15 from he and his family's web page. They are the  
16 ones who put those articles together. So he would  
17 appreciate it but staff's report does not  
18 attribute it to their web page. So we would  
19 suggest that the solution is to combine them.

20 And also as far as legal notice.  
21 Constructive notice is interesting but that is not  
22 good enough. That does not satisfy it as a matter  
23 of law and there is a good reason why it should  
24 not satisfy it as a matter of law. And that is so  
25 elected representatives receive that notice and

1       they are held accountable. And they can hold a  
2       hearing so that an application is just not  
3       provided to an agency which is subject to the  
4       legislative authority.

5                 And then an administrator puts it in the  
6       drawer and closes it and nobody knows about it.  
7       Or maybe they have a meeting on their facility.  
8       Well that's interesting but that is not giving  
9       notice to the elected representative, the Board of  
10      Supervisors who are required as a matter of law to  
11      provide notice. Because that is where the buck  
12      stops. That is where the buck stops.

13                And they have a right to know about it  
14      and to state, is this is inconsistent with their  
15      land use policy. And because we argue that as a  
16      matter of law this is inconsistent with local land  
17      use policy both based on the contracts with the  
18      City of Hayward and the FAA on the land use  
19      ordinances, the City of Hayward's ordinance itself  
20      adopted in 2002 as summarized very well by your  
21      staff in the March 2006 letter.

22                And we don't know about the County  
23      because they haven't been asked but we've heard,  
24      you know, maybe they'll be sitting with the  
25      applicant, we don't know. But maybe if there is a

1 hearing there might be a different issue.

2 Well then you have to determine need.

3 And we appreciate your reference or your staff's  
4 reference to the 2003 Integrated Report. We did  
5 not have a page number to refer to that. But also  
6 I see right here on the table outside the door we  
7 have the 2005 policy, we have the 2007 policy, and  
8 there is even more. I brought those copies with  
9 me. So we would like that opportunity to explore  
10 that discussion if in fact -- our argument is that  
11 that has to be explored in order to approve this  
12 project. Because presently as a matter of law it  
13 is inconsistent and non-conforming.

14 Do you have any questions?

15 CHAIRPERSON PFANNENSTIEL: Questions of  
16 counsel?

17 COMMISSIONER GEESMAN: You had opened  
18 your remarks by referring to the attachment to  
19 Carol Ford's declaration and saying that it was  
20 not in the East Shore docket but the copy that I  
21 have in front of me has the docket number clearly  
22 stamped on it.

23 MS. HARGLEROAD: I understand that. And  
24 I thought it was because I saw the docket number  
25 stamped. But when I went to download it from your

1 web page, from the East Shore web page, I could  
2 not find it. Now maybe that is just my technical  
3 inability but it was not jumping out at me and I  
4 was looking for an October 9 letter.

5 That letter was addressed to staff. I  
6 believe there is your docket, the clerk's office  
7 receives it, they stamp it and then it's  
8 processed. There might be internal reasons  
9 because this is the East Shore. It was submitted  
10 concerning East Shore. And that's why we're  
11 saying, you have an ongoing proceeding that this  
12 project already was part of and it is time to put  
13 it back.

14 CHAIRPERSON PFANNENSTIEL: Other  
15 questions? Any comments, Mr. Wheatland?

16 MR. WHEATLAND: Just very briefly. The  
17 question before you at this moment is the petition  
18 to intervene. And with respect to the group  
19 petitioners the question is whether they have  
20 shown good cause for intervention beyond the  
21 specified deadline.

22 Here they cannot allege that they were  
23 entitled to notice under 1714(c). Here they  
24 cannot allege that they did not have actual  
25 knowledge of the proceeding because many of the

1 members of the group petitioners actually  
2 participated in our proceeding.

3 The Airline Pilots Association actually  
4 presented testimony and other members of their  
5 group spoke at various times throughout the  
6 proceeding. Some members of their group spoke  
7 more than once, so they have had an active  
8 opportunity to participate in the proceeding.  
9 They have done so and they have not shown good  
10 cause for failing to file the petition to  
11 intervene prior to the deadline.

12 MS. HARGLEROAD: If I may briefly  
13 respond.

14 CHAIRPERSON PFANNENSTIEL: Briefly.

15 MS. HARGLEROAD: Thank you.

16 As we stated, the notice provision was  
17 that this was similar or followed the CEQA  
18 proceedings, which is what the group petitioners  
19 relied on. And this is not a CEQA proceeding  
20 because you don't -- In CEQA to challenge a  
21 decision of the legislative body you do not have  
22 to become a party and intervene. And you do not,  
23 you are not governed by the rules of evidence.  
24 And you do not have the rule that this body may  
25 only support an affirmative finding based on the

1 admitted evidence offered by a party which is not  
2 subject to the hearsay rule. That is very  
3 different than the CEQA proceeding.

4 CHAIRPERSON PFANNENSTIEL: Thank you.  
5 Mr. Chamberlain.

6 MR. CHAMBERLAIN: Thank you, Madame  
7 Chairman. There has been a lot of focus on  
8 Section 1714(c). And taking it for the sake of  
9 argument that it would apply I agree with  
10 Mr. Wheatland's analysis of Section C which is  
11 that basically three different types of notice are  
12 required.

13 The County's argument is based on the  
14 second type. That is that the County had land use  
15 authority at the commencement of the proceeding.  
16 And Mr. Washington goes on and essentially  
17 impliedly suggests that if there is any error in  
18 the notice at that point the entire proceeding is  
19 poisoned, regardless of how much notice there  
20 might have been afterwards or what actual notice  
21 the County did have.

22 I disagree with that. In this  
23 proceeding the County lost its land use  
24 jurisdiction approximately three months into the  
25 proceeding. And there were efforts before that

1 time and after that time to get the County  
2 involved in the proceeding. Those have been  
3 detailed. So I think the County did have actual  
4 notice, they did participate and the Commission  
5 has good cause to deny their petition to intervene  
6 at this time.

7 With respect to the Chabot College  
8 argument. I agree that Section 1714(c)  
9 essentially requires best efforts of the Executive  
10 Director to find out which state, local and  
11 regional entities/agencies may have an interest  
12 and to provide notice.

13 It does not require the Executive  
14 Director to be precient as to how all of those  
15 agencies are set up, how their boards are set up,  
16 what their interests are. If we required that  
17 these proceedings would potentially never end  
18 because there could always be some entity that  
19 didn't get noticed. And even though it didn't  
20 have any land use authority it could come forward  
21 at the last minute representing parties who were  
22 disappointed that their points had not been heard  
23 during the proceeding.

24 So once again I believe that it is up to  
25 the Commission to determine whether Chabot

1 College's late request to intervene should be  
2 granted.

3 With respect to the final set, the group  
4 petitioners. As Mr. Ratliff has noted -- I'm  
5 sorry, Mr. Wheatland noted, these parties have  
6 participated for the most part and there is no  
7 provision here that requires them to get noticed.

8 So in short I think the Commission, I  
9 would recommend that the Commission deny the  
10 petitions to intervene at this time. I believe  
11 also that you should address -- In many cases the  
12 petitions --

13 I am not going to go through each of the  
14 points that are made in the various petitions but  
15 most of the arguments either could have made  
16 during the course of the proceeding and were not  
17 or are simply rearguments of items that were fully  
18 debated during the proceeding. So in that case  
19 you would probably deny those petitions for  
20 reconsideration, even if you did grant the  
21 petitions to intervene.

22 CHAIRPERSON PFANNENSTIEL: Are there  
23 comments from the Commission or is there a motion  
24 on acting on these petitions for intervention?

25 COMMISSIONER GEESMAN: I am prepared to

1 make a motion. And I guess to seek Bill's advice  
2 as to whether each of the petitions should be  
3 dealt with in separate motions or whether if in  
4 fact the same motion or the same disposition would  
5 apply to each of the three and a single motion  
6 would suffice.

7 MR. CHAMBERLAIN: I think a single  
8 motion would suffice and the Commission could  
9 issue an order addressing all three.

10 COMMISSIONER GEESMAN: Okay. In my  
11 judgement we had a very rich contribution from the  
12 local community in the several hearings that we  
13 held in Hayward. Commissioner Byron and I spent  
14 several evenings in the City Hall and at Chabot  
15 College related to this proceeding. I am well  
16 aware that there is a second proceeding still to  
17 come, the East Shore facility that will take us  
18 back to Hayward I believe later this month or in  
19 December.

20 And I think that each of the three  
21 petitions have been well presented to us today.  
22 And I don't mean to fault counsel by saying that  
23 the content of their arguments I think leaves a  
24 lot to be desired. In my judgment none of the  
25 three petitions have merit in terms of seeking to

1       intervene and that our process could not be  
2       conducted in any meaningful way if it didn't have  
3       an end point. And that requires us to observe  
4       deadlines and to indicate when we have made a  
5       decision on the basis of an appropriately compiled  
6       evidentiary record.

7                So I would move that we deny each of the  
8       three petitions to intervene.

9                I would also follow Mr. Chamberlain's  
10       recommendation and include in the motion the  
11       judgment, which having reviewed all of the papers  
12       I feel quite strongly that had we granted any of  
13       the three petitions to intervene we would not have  
14       reconsidered our decision. In reviewing the  
15       submittals of the various petitioners I don't find  
16       any new information or new questions that would  
17       cause me to think that it would be appropriate for  
18       us to reopen or reconsider our decision granting  
19       the license.

20               CHAIRPERSON PFANNENSTIEL: Is there a  
21       second on Commissioner Geesman's motion to deny  
22       the intervention?

23               COMMISSIONER BOYD: I am going to second  
24       the petition because I defer heavily to our  
25       learned counsel, Mr. Chamberlain, and to

1 Commissioner Geesman who is the Presiding Member  
2 of this hearing, the Siting Committee as well as  
3 the statutory lawyer on this body. And I agree  
4 with all that he has said in the context of  
5 putting forth his petition.

6 I want to comment to the Community  
7 College folks. I am sympathetic to your desire to  
8 serve an additional educational role to your  
9 constituents, your students. But as in my mind I  
10 go through the kinds of issues that might be of  
11 value such as their health and the public health I  
12 note that staff and the Air Quality District have  
13 extensively reviewed that issue.

14 When I look to the visual impacts, the  
15 noise impacts, the environmental impacts and the  
16 kinds of things that your constituents would be  
17 interested in I feel that they probably have been  
18 pretty adequately covered. Not that you couldn't  
19 provide a better service and enhance the role of  
20 the District Board. But nonetheless I think this  
21 body has done an exceptional job and the staff has  
22 done an exceptional job in addressing the issues  
23 that statutorily we have a responsibility to  
24 address. Thereby I do second the --

25 CHAIRPERSON PFANNENSTIEL: Motion.

1                   COMMISSIONER BOYD: Motion, excuse me.  
2           I'm sitting here suffering with the flu and I'm  
3           not feeling too good.

4                   CHAIRPERSON PFANNENSTIEL: Well let me  
5           comment that I am concerned that there are parties  
6           who feel that we have gone through a process that  
7           in our opinion was a very fulsome, public process.  
8           And then we get to the end of it and people say,  
9           well gee, I didn't know it was happening.

10                   We put a great deal of the Commission's  
11           time, effort and resources into involving the  
12           public in our processes. And I think we do a very  
13           good job of that. I think what happens, and what  
14           seems to have happened in this proceeding, is when  
15           we got to the end of that, those who didn't like  
16           the outcome felt that this was an opportunity to  
17           re-raise some of these issues.

18                   The process that we have is not perfect  
19           but I do think it is very good and I think it is a  
20           very good way of bringing the public in. I have  
21           been involved in a great number of siting cases  
22           since I have been here and each one of them  
23           involves the community as much as we possibly can.

24                   I do regret that there are parties or  
25           petitioners here who felt that they should have

1 known earlier, should have known more about how we  
2 conducted our process. But in fact we did give  
3 notice, we gave as much as we could find. Nobody  
4 can argue that this wasn't very public. If they  
5 felt that they should have been more directly  
6 involved, well that is, as I as I say,  
7 unfortunate. I don't hear that it was a flaw in  
8 our notice process.

9 So with that further comments and we  
10 will then I think call for a vote on the motion on  
11 the petitions for intervention. I believe we will  
12 take a separate motion for the reconsideration.  
13 But on the denying the petitions for intervention  
14 per Commissioner Geesman's motion, all in favor?

15 (Ayes.)

16 CHAIRPERSON PFANNENSTIEL: So that  
17 motion is carried and the petitions for  
18 intervention are denied.

19 On the petitions for reconsideration of  
20 reopening, I believe the second part of  
21 Commissioner Geesman's motion concerned that.  
22 Commissioner Boyd, was your second also of that  
23 part of the motion?

24 COMMISSIONER BOYD: Yes.

25 CHAIRPERSON PFANNENSTIEL: All in favor

1 of the motion?

2 (Ayes.)

3 CHAIRPERSON PFANNENSTIEL: So the  
4 petition for reconsideration is denied also.  
5 Thank you all for participating.

6 Moving back to the agenda. Taking up  
7 Item 7, possible approval of Amendment 1 to  
8 Contract 700-05-002 for \$4,905,560 with Aspen  
9 Environmental Group for additional spending  
10 authority and funds to provide technical support  
11 to the Energy Commission's Power Plant Licensing  
12 Program for peak workload levels not anticipated  
13 when the contract was competitively bid and  
14 awarded. Good morning.

15 MR. MERRILL: Good morning. My name is  
16 Joseph Merrill, I'm with the siting division.  
17 Thank you for hearing this.

18 COMMISSIONER BOYD: Joseph, is that mic  
19 on? Do you have a green light?

20 MR. MERRILL: I think -- Yes it is.

21 COMMISSIONER BOYD: You're just tall.

22 MR. MERRILL: The siting and planning  
23 peak workload contract is a three year contract  
24 for \$18.6 million. It is used to support the  
25 siting and planning peak workload program on power

1 plant licensing and policy planning work.

2 Another thing is it's a three year  
3 contract so the \$18.6 million is allocated in  
4 three years. At the beginning of each fiscal year  
5 \$6.2 million is encumbered into the contract.

6 During the first 15 months of the  
7 contract ending June 30, 2007 work authorizations  
8 totalling \$11.6 million were issued for power  
9 plant siting and energy planning work. This  
10 leaves a spending authority of \$7 million the last  
11 21 months of the contract, which will likely be  
12 insufficient to meet the siting case workload  
13 unmet by staff resources during this period.

14 To address this shortcoming in spending  
15 authority staff proposes the approximately \$4.9  
16 million budget augmentation. This amount was  
17 calculated based on the AFC/SPPE filing forecast  
18 provided by project developers, which indicates a  
19 significant increase in filings over recent years,  
20 on historical information about the workload  
21 associated with siting cases and the corresponding  
22 contract cost for the workload unmet by staff  
23 resources, and staff projections about the  
24 percentage of proposed filings that are likely to  
25 be filed.

1                   It is also worth mentioning that if  
2                   approved the budget augmentation would provide  
3                   additional spending authority but the siting and  
4                   planning Peak Workload Program has only \$.9  
5                   million of funds. So if the staff projections are  
6                   correct and the caseload comes in as expected  
7                   there will be \$4 million that the program can't  
8                   fund. So that would be a decision made by the  
9                   Commission to reallocate funds from existing  
10                  programs and salary savings.

11                  CHAIRPERSON PFANNENSTIEL: Questions?

12                  COMMISSIONER GEESMAN: This came up in  
13                  the Siting Committee; we recommend approval. So I  
14                  would move approval of the contract.

15                  COMMISSIONER BOYD: I'll second that  
16                  motion. Recognizing how many cases now that all  
17                  of us up here have suddenly been assigned there is  
18                  obviously a workload issue.

19                  CHAIRPERSON PFANNENSTIEL: All in favor?

20                  (Ayes.)

21                  MR. MERRILL: Thank you.

22                  CHAIRPERSON PFANNENSTIEL: Item 8,  
23                  possible approval for the Energy Commission to  
24                  accept a \$122,000 grant from the US Department of  
25                  Energy's State Energy Program and to administer a

1 sub-award to the Regents of the University of  
2 California. The grant is an augmentation to  
3 previous grants totaling \$538,485.

4 MR. SOINSKI: Good morning,  
5 Commissioners. By way of background. The PRAC is  
6 one of eight centers throughout the United States  
7 that encourage the adoption of combined heat and  
8 power as an energy efficiency measure for  
9 buildings and industry. These centers are funded  
10 by the US Department of Energy. And there's some  
11 match funding but the lion's share of the funds  
12 come from the Department of Energy.

13 The specific center leverages the  
14 activities of the Energy Commission in a number of  
15 ways including workshops where PIER contractors  
16 describe their scientific and technology  
17 advancements. I presented a paper on the  
18 Commission's policy initiatives at one of the  
19 myself.

20 They have prepared a California action  
21 plan as well as action plans for the states of  
22 Nevada and Hawaii that rely heavily, at least in  
23 the case of the California plan, on the  
24 recommendations in the 2005 Integrated Energy  
25 Policy Report. They also prepare a history of

1 your combined heat and power educational  
2 materials.

3 This item has been approved by the RD&D  
4 Committee. I will answer any questions you may  
5 have.

6 CHAIRPERSON PFANNENSTIEL: Thank you.  
7 Are there questions?

8 COMMISSIONER ROSENFELD: I move the  
9 item.

10 COMMISSIONER GEESMAN: Second.

11 CHAIRPERSON PFANNENSTIEL: In favor?

12 (Ayes.)

13 MR. SOINSKI: Thank you.

14 CHAIRPERSON PFANNENSTIEL: Thank you.

15 Item 9, possible approval of a \$2.94  
16 million loan to the County of Alameda to install  
17 high-efficiency boilers, pumps, motors, lighting,  
18 low-flow water fixtures and water flow controllers  
19 and a laundry hot-water recovery system at the  
20 Santa Rita Jail Facility in Dublin. Good morning.

21 MR. HOLLAND: Good morning Madame  
22 Chairman.

23 CHAIRPERSON PFANNENSTIEL: Good  
24 afternoon.

25 MR. HOLLAND: Good morning Madame

1 Chairman and Commissioners. You're right,  
2 afternoon. I'm Jim Holland with the public  
3 programs office and I am here to request a loan of  
4 \$2.94 million for the County of Alameda for their  
5 Santa Rita Jail Project.

6 This funding would project the following  
7 measures: boiler plant improvements including the  
8 replacement of one 20 million BTU per hour boiler  
9 having a combustion efficiency of 70 percent,  
10 replacing this with four 3 million BTU per hour  
11 condensing boilers having combustion efficiencies  
12 of up to 96 percent. Installation of high  
13 efficiency heating, hot water pumps with variable  
14 frequency drives is also included.

15 A second measure is the installation of  
16 heat exchangers to capture heat from the existing  
17 fuel cell project.

18 A third measure is including a number of  
19 hot water saving upgrades including a hot water  
20 reclamation system in the laundry processing  
21 facility that will allow approximately 60 percent  
22 of the previously used hot water to be reused.

23 And a fourth major measure, a facility-  
24 wide lighting retrofit where all first generation  
25 T8 lamps and standard electronic ballasts will be

1 replaced with long-life, high lumen output T8  
2 lamps and high efficiency, third generation  
3 electronic ballasts.

4 These upgrades are estimated to save  
5 over 940 kilowatt hours per year, will result in  
6 130 kW demand reduction, will save over 200,000  
7 therms of natural gas per year, will save over  
8 112,000 cubic feet of water per year, and is  
9 estimated to reduce greenhouse gas emissions by  
10 approximately 1,488 tons of carbon dioxide.

11 This loan has been approved by the  
12 Efficiency Committee. This is the fifth loan to  
13 Alameda County and to date the Energy Commission  
14 has provided loans totalling over \$10 million to  
15 the County. And this is an additional point, they  
16 have always been on time with their payments.

17 And that concludes my discussion. If  
18 you have any questions.

19 CHAIRPERSON PFANNENSTIEL: Thank you,  
20 Jim. I was going to specifically ask you how much  
21 we had loaned to the County so far. I knew it was  
22 a substantial amount. Are there questions?

23 COMMISSIONER ROSENFELD: on behalf of  
24 the Energy Efficiency Committee and with pleasure  
25 I move the item.

1                   COMMISSIONER GEESMAN: I'll second it  
2 and note that it's good to be on the friendly side  
3 of Alameda County.

4                   CHAIRPERSON PFANNENSTIEL: Yes. I'm  
5 sorry they all left before they heard about the  
6 \$10 million we've loaned to them. All in favor?

7                   (Ayes.)

8                   CHAIRPERSON PFANNENSTIEL: Thank you,  
9 Jim.

10                  MR. HOLLAND: Thank you.

11                  CHAIRPERSON PFANNENSTIEL: Agenda Item  
12 number 11, possible approval of a \$500,000 loan to  
13 Tollenaar Holsteins, Incorporated to install an  
14 anaerobic digester unit to produce 229 kilowatts.  
15 Good afternoon.

16                  MR. AM N: Good afternoon,  
17 Commissioners, thank you very much. My name is  
18 Ricardo Amcn, I am with the Energy in Agriculture  
19 Program in the Efficiency Division.

20                  I am bringing a recommendation for you  
21 to approve a \$500,000 loan to Tollenaar Holsteins,  
22 a dairy farm. This is our first loan from the  
23 low-interest loan program, the agricultural loan  
24 program that we announced in April of this year.

25                  Tollenaar has requested a \$500,000 loan

1 to install an anaerobic digester unit to process  
2 manure waste and food waste through an anaerobic  
3 digester to recover biomass to fuel an engine-  
4 generator. The project will generate around 230  
5 kilowatt hours -- excuse me -- kilowatts  
6 continuously. It operates year round.

7 The farm is located in Elk Grove.  
8 Sacramento Municipal Utility District is the  
9 electric supplier. They will be entering into a  
10 net metering agreement with SMUD. The SMUD net  
11 metering agreement actually nets out equivalent  
12 kilowatt hours used on the farm at retail prices  
13 and also compensates the dairy for any excess  
14 generation at wholesale prices. So it is a very  
15 beneficial net metering agreement that they will  
16 be receiving.

17 The project will start upon approval and  
18 the signature of loan documentation and it is  
19 expected to be completed by July of 2008. The  
20 interest rate for this loan is 3.2 percent. There  
21 is a 3.5 year payback.

22 I just wanted to also clarify that the  
23 Petroleum Violation Escrow Account is the source  
24 of funds for this loan.

25 If you have any questions I'd be happy

1 to answer them.

2 CHAIRPERSON PFANNENSTIEL: Are there  
3 questions?

4 COMMISSIONER ROSENFELD: A 3.5 year  
5 payback sounds pretty good to me. Let's do it.

6 COMMISSIONER GEESMAN: I had one  
7 question. And that is that the net metering  
8 arrangement at wholesale rates, does that provide  
9 some sort of time of delivery recognition so that  
10 power provided on peak effectively is compensated  
11 at a higher rate than power delivered off peak?

12 MR. AM N: They have a set amount, a  
13 price. SMUD is actually paying 5.8 cents per kWh  
14 regardless of when that is offered. Thank you.

15 COMMISSIONER GEESMAN: Thank you. I am  
16 prepared to second Art's motion.

17 CHAIRPERSON PFANNENSTIEL: All in favor?

18 (Ayes.)

19 CHAIRPERSON PFANNENSTIEL: It's  
20 approved, thank you.

21 COMMISSIONER GEESMAN: Go biogas.

22 CHAIRPERSON PFANNENSTIEL: Yes.

23 MR. AM N: Thank you very much.

24 CHAIRPERSON PFANNENSTIEL: Item 12,  
25 possible approval of Funding Award Notices

1 pursuant to the Energy Commission's Existing  
2 Renewable Facilities Program Guidebook, Renewables  
3 Portfolio Standard Eligibility Guidebook and  
4 Overall Program Guidebook. These Funding Award  
5 Notices commit funding to production incentive at  
6 the following facilities pursuant to the  
7 guidelines and the terms of their respective  
8 funding awards. Mr. Orta.

9 MR. ORTA: Good afternoon. My name is  
10 Jason Orta and I am the account lead for the  
11 Existing Renewable Facilities Program.

12 The Existing Renewable Facilities  
13 Program provides funding in the form of production  
14 incentives to eligible renewable energy facilities  
15 for each kilowatt hour of eligible energy  
16 generated. The statutory purpose of the existing  
17 Renewable Facilities Program is to improve the  
18 competitiveness and achieve self-sustainability of  
19 existing, in-state, solid fuel biomass, solar,  
20 thermal, electric and wind facilities.

21 Facilities eligible for funding are  
22 issued a Funding Award Notice by the Energy  
23 Commission to provide funding pursuant to the  
24 Existing Renewable Facilities Program Guidebook,  
25 the Renewables Portfolio Standard Eligibility

1 Guidebook and the Overall Program Guidebook.

2 Staff is submitting seven Funding Award  
3 Notices for the Energy Commission's approval  
4 today. Funding Award Notices do not specify a  
5 dollar amount to paid to the facility nor does the  
6 funding award notice encumber funds for each  
7 facility. However, each Funding Award Notice  
8 identifies a facility-specific target price and  
9 production incentive path.

10 Facilities are paid in months in which  
11 the price that they receive for energy is less  
12 than the facility's specific target price, up to  
13 the facility-specific production incentive cap.

14 Staff is recommending approval for the  
15 following Funding Award Notices: The Pacific  
16 Lumber Company, Wadham Energy LP, Burney Forest  
17 Power, Big Valley Power, Woodland Biomass Power,  
18 Rio Bravo Rocklin and Rio Bravo Fresno.

19 Energy Commission staff evaluated the  
20 Funding Award applications of each of these  
21 facilities based on the required information  
22 submitted by each facility. Based on the  
23 information submitted in these applications staff  
24 believes that the funds provided to this facility  
25 will assist these facilities to become self-

1       sustaining and to provide the benefits for  
2       California which include environmental, economic  
3       and reliability.

4               This evaluation of these applications  
5       was performed in accordance with Public Resources  
6       Code Section 25742 and with the March 2007  
7       Existing Renewable Facilities Program Guidebook.

8               Based on the information submitted the  
9       staff recommends the approval of the target prices  
10      and production incentive caps listed in the  
11      proposed Funding Award Notices along with the  
12      approval of each Funding Award Notice in its  
13      entirety.

14              I will gladly answer any questions that  
15      the Commission may have on these Funding Award  
16      Notices.

17              CHAIRPERSON PFANNENSTIEL: Thank you,  
18      Jason. I also have two parties who have asked to  
19      speak to this.

20              Are there questions for Mr. Orta first?

21              COMMISSIONER GEESMAN: Do we have more  
22      coming later in the year?

23              MR. ORTA: Yes we do.

24              COMMISSIONER GEESMAN: Thank you.

25              CHAIRPERSON PFANNENSTIEL: Frank Wilson,

1 Pacific Lumber Company.

2 MR. WILSON: I just thank you for the  
3 opportunity to address the Commission. We'd like  
4 to thank the staff's participation in listening to  
5 our application and information. We came down  
6 just to participate and make sure that you  
7 understood that we do appreciate the effort of the  
8 Energy Commission to support biomass and that it  
9 is a viable alternative to other fuels.

10 Again I would like to thank Jason Orta  
11 and the staff for their help. Thank you.

12 CHAIRPERSON PFANNENSTIEL: Thank you.

13 And Henry Long, Pacific Lumber Company.

14 MR. LONG: Thank you. Frank, I think,  
15 did a good job.

16 CHAIRPERSON PFANNENSTIEL: Thank you.

17 COMMISSIONER GEESMAN: Let me say,  
18 Madame Chair, that the staff had quite a bit of  
19 interaction with the representative of the  
20 industry on this and I think we've benefitted  
21 quite a bit from the quantity and quality of  
22 information that the industry has provided.

23 CHAIRPERSON PFANNENSTIEL: And wasn't  
24 this a more difficult operation than ever before  
25 because of -- was it SB 1250 that required the

1 facility by facility determination?

2 MR. ORTA: That is correct.

3 CHAIRPERSON PFANNENSTIEL: We didn't  
4 know how we would do it and we did, you did.

5 MR. ORTA: Well it was a learning  
6 experience.

7 CHAIRPERSON PFANNENSTIEL: Is there a  
8 motion?

9 COMMISSIONER GEESMAN: So moved.

10 COMMISSIONER BOYD: Second.

11 CHAIRPERSON PFANNENSTIEL: All in favor?

12 (Ayes.)

13 CHAIRPERSON PFANNENSTIEL: Thank you,  
14 Jason.

15 MR. ORTA: Thank you.

16 CHAIRPERSON PFANNENSTIEL: Item 14,  
17 possible approval of the Final Joint Committees  
18 Strategic Transmission Investment Plan as required  
19 by the Public Resources Code Section 25324.

20 MS. GRAU: Good afternoon, I am Judy  
21 Grau.

22 CHAIRPERSON PFANNENSTIEL: Good  
23 afternoon, Judy.

24 MS. GRAU: Thank you. I'm with the  
25 Commission's Transmission Evaluation Program.

1           First by way of background, this is the  
2           second Strategic Transmission Investment Plan.  
3           The first was published in November of 2005.

4           Building upon the problems and solutions  
5           noted in 2005 a total of four workshops were held  
6           for this 2007 cycle, a staff workshop on  
7           transmission forms and instructions and three  
8           Committee workshops on pressing transmission  
9           issues, including barriers to renewable project  
10          development, implementation of the Energy  
11          Commission's Senate Bill 1059 corridor designation  
12          process and in-state and interstate transmission  
13          projects.

14          The IEPR and Electricity Committees then  
15          published their Joint Committees Draft Strategic  
16          Plan on August 31 and held a joint hearing on  
17          September 13. The Committees received comments  
18          from a number of parties, all of which are  
19          available on our website.

20          These comments were considered by the  
21          Joint Committees and are included where  
22          appropriate in the Joint Committees Final Version  
23          published on October 24. It is this Joint  
24          Committees Final Version that is being considered  
25          for adoption today.

1           I do have a summary of the  
2        recommendations if you'd like but I assume in the  
3        interest of time I will skip that as I believe you  
4        are all familiar with the document.

5           And I would just like to make one final  
6        note and that is that upon adoption of the report  
7        the staff is recommending a few minor changes to  
8        bring the document current to the date of  
9        publication. Specifically, a few items that were  
10       discussed in the future tense back on October 24  
11       have since occurred. Thank you.

12           CHAIRPERSON PFANNENSTIEL: Thank you. I  
13        have to say it's a really impressive document with  
14        a lot of useful and insightful information. I  
15        have relied on it in fact in a number of  
16        instances. My assumption is that once it is  
17        adopted by this Commission then it forms the basis  
18        for the recommendations on transmission in the  
19        IEPR, which is --

20           MS. GRAU: Yes, that is correct.

21           CHAIRPERSON PFANNENSTIEL: -- timely.  
22        Further questions, discussion?

23           COMMISSIONER GEESMAN: I would just  
24        observe that I think the staff has come a long way  
25        over four or five years on this subject matter. I

1 had the benefit yesterday of participating in the  
2 transmission siting section of the Edison Electric  
3 Institute in Orange County being held this week  
4 and there was quite a bit of acknowledgement from  
5 a variety of fairly surprising sources as to the  
6 knowledge and expertise that is now embodied in  
7 our staff.

8 And I think Judy, you and the others on  
9 your team that have worked on this report deserve  
10 a lot of credit for that. You have brought quite  
11 a bit of distinction to all of us and I think made  
12 a real contribution in helping the state try to  
13 sort through these problems.

14 We are a long way from having solved  
15 them but I do think that this report and some of  
16 the others that you have put together provide a  
17 very good perspective that should inform policy  
18 makers as to how to solve them.

19 MS. GRAU: Thank you. And I would just  
20 like to stress that this truly was a team effort  
21 and I have been really fortunate to have a great  
22 staff to work with me on this document.

23 COMMISSIONER GEESMAN: One area that I  
24 think we intentionally go a bit light on because  
25 it is a shorter term concern than the type of long

1 term issue the strategic plan is directed to is  
2 the ISO queuing issue. I see Tom Kelly in the  
3 audience. I really think we ought to make this a  
4 prominent part of our next energy action plan  
5 meeting. It certainly involves our concerns and  
6 the Public Utilities Commission's concerns as well  
7 as the ISO's.

8 Earlier this month I had the opportunity  
9 to hear a presentation made by Ron Lutzinger,  
10 Senior Vice President at Southern California  
11 Edison Company, on their perspective on the queue.  
12 And I really, Tom, would invite you to try and get  
13 that presentation or something quite similar to it  
14 for our energy action plan agenda. From the  
15 utilities' perspective this is a traffic jam that  
16 is growing exponentially in size.

17 And I think from the Commission's  
18 standpoint and from the Public Utilities  
19 Commission's perspective we are not going to be  
20 successful in accomplishing our renewable energy  
21 goals unless we figure out a way to interconnect  
22 generators in a much more orderly fashion than we  
23 are doing now. And there is a lot of what at  
24 least appears to be wasted time and effort being  
25 expended in the process as it currently exists.

1                   CHAIRPERSON PFANNENSTIEL:  So I hear.  
2                   It sounds like that is a learning exercise yet to  
3                   happen.

4                   COMMISSIONER GEESMAN:  Well I would move  
5                   approval of the report and commendations to all of  
6                   the staff that worked on it.

7                   COMMISSIONER BYRON:  I'll second it,  
8                   probably substituting for Commissioner Byron who  
9                   would probably like to if he had been here, to  
10                  second it.

11                  But I want to thank Judy too for her  
12                  work on this and her thorough briefing of me on  
13                  this topic.

14                  And I want to thank Commissioner Geesman  
15                  for his dogged determination in pushing us to  
16                  address the transmission issue in California.  As  
17                  he says, no matter what circles we travel in, in  
18                  talking to energy folks transmission just comes up  
19                  as an issue that needs to be moved along boldly  
20                  and I think this agency keeps trying.  I think we  
21                  should keep trying.

22                  CHAIRPERSON PFANNENSTIEL:  And I think  
23                  we have made a great deal of progress as  
24                  Commissioner Geesman said, both at the staff --  
25                  and politically I think it is recognized that we

1 -- and it is largely because of the great staff  
2 analysis that we carry to it we have a lot of  
3 credibility in transmission and transmission  
4 planning and renewables transmission. And again,  
5 that is largely attributable to the staff analysis  
6 but it is also attributable to Commissioner  
7 Geesman's determination to make sure that we do  
8 get that recognized.

9 So the report has been moved and  
10 seconded. All in favor?

11 (Ayes.)

12 CHAIRPERSON PFANNENSTIEL: It's adopted.  
13 Thank you, Judy.

14 Quickly we'll move through the rest. We  
15 have no minutes for approval today.

16 Commission presentations. Anything to  
17 raise? Nothing.

18 Chief Counsel Report.

19 MR. CHAMBERLAIN: Yes, Madame Chairman.  
20 At the last meeting I noted that the County of  
21 Alameda perhaps in anticipation that you might not  
22 grant their petition to intervene had taken the  
23 arguments they had, the argument that you heard  
24 this morning about notice, to the California  
25 Supreme Court. Our response was due on Monday and

1 we filed it on Monday. I'm sorry, I was traveling  
2 and didn't get it into your boxes until this  
3 morning but you do have a copy of it now.

4 CHAIRPERSON PFANNENSTIEL: Thank you.

5 Executive Director's Report? Chief  
6 Deputy Executive Report.

7 MS. JONES: Good morning. I wanted to  
8 take the opportunity to just report some good  
9 news. When I started this job back in July I  
10 worked with a group of key managers here at the  
11 Commission who have done an outstanding effort.

12 As you know the Commission as well as  
13 the state work force in general has an aging  
14 population. We have had a lot of retirements and  
15 a lot of turnover. We have had a high level of  
16 vacancies. But since July we have reduced our  
17 vacancy rate by 30 percent so I am pleased to  
18 announce that. So when you see some new young,  
19 exuberant employees, those are the employees that  
20 we recently got.

21 We believe that the Commission is a  
22 great place to work and we are also launching a  
23 new web page to make it easier for people to  
24 understand how to get into the state work force,  
25 to explain better what the Commission does and how

1 they can make a difference. So thank you.

2 CHAIRPERSON PFANNENSTIEL: Good news,  
3 thank you very much.

4 COMMISSIONER BOYD: Yes, very good.

5 CHAIRPERSON PFANNENSTIEL: Leg, Mike.

6 MR. SMITH: Good afternoon,  
7 Commissioners, Chairman. Two very brief notes.  
8 The CEC oversight hearing that was going to be  
9 convened by the Assembly Utilities and Commerce  
10 Committee on the 14th of November has now been  
11 rescheduled to November 27 at 10 a.m.

12 CHAIRPERSON PFANNENSTIEL: Substituting  
13 a date when I was not available for now a date  
14 when Commissioner Boyd is not available and I am  
15 available. The worst of all worlds.

16 (Laughter.)

17 COMMISSIONER BOYD: I think I just saw  
18 the bullet go by.

19 COMMISSIONER GEESMAN: Still the Beverly  
20 Hills venue?

21 CHAIRPERSON PFANNENSTIEL: No.

22 MR. SMITH: No, here at the Capitol,  
23 here at the Capitol.

24 The other note is we are arranging a  
25 briefing of the AB 1007 report for legislative

1 staff and that right now is tentatively scheduled  
2 for November 13 over at the Capitol. So I'll keep  
3 you posted as that gets firmed up and as we move  
4 closer to that date.

5 CHAIRPERSON PFANNENSTIEL: That does  
6 raise the question of the IEPR report, which will  
7 be posted today or tomorrow for adoption on  
8 November 21.

9 Now clearly we don't need to walk around  
10 with that until it has been adopted but it will be  
11 presumably reviewed by some people in the  
12 Legislature. Certainly some of the staff people  
13 there in various parts. So I think we need to be  
14 ready to talk to them and be familiar with what is  
15 in there and recognize where the issues are.  
16 We'll probably hear from them.

17 MR. SMITH: I agree.

18 CHAIRPERSON PFANNENSTIEL: No Public  
19 Adviser report I am told.

20 Any additional public comment today?  
21 Anything else for the Commission?

22 We'll be adjourned.

23 (Whereupon, at 12:30 p.m., the  
24 business meeting was adjourned.)

25 --o0o--

## CERTIFICATE OF REPORTER

I, JOHN COTA, 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 16th day of November, 2007.

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