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, JULY 30, 2008

10:13 A.M.

Reported by:
Peter Petty
150-07-001

COMMISSIONERS PRESENT

James D. Boyd, Vice Chairperson, Acting Chairperson

Arthur H. Rosenfeld

Karen Douglas

STAFF and CONTRACTORS PRESENT

Melissa Jones, Executive Director

William Chamberlain, Chief Counsel

Harriet Kallemeyn, Secretariat

David Vidaver

Caryn Holmes

Dale Rundquist

Elizabeth Flores

Michael Seaman

Kevin Bell

Mary Dyas

Suzanne Garfield

PUBLIC ADVISER

Loreen McMahon

ALSO PRESENT

Greggory Wheatland, Attorney
on behalf of RCEC

Richard E. Winnie, County Counsel
Lindsey Stern, Associate County Counsel
County of Alameda

ALSO PRESENT

Arlin Kachalia, Attorney
Chabot-Las Pasitas Community College District
and Faculty Association

Nancy Van Huffel
San Lorenzo Village Homes Association

Suzanne Barba
Group Petitioners

Audrey Le Pell
Citizens Against Pollution, CAP

Doug Grandt

Gary Cathey, Chief of the Office of Airports
Caltrans Division of Aeronautics

John McCarthy
USAR Retired

Jewell Hargleroad
Group Objectors

Rob Simpson
HAPA

Ernesto Pacheco
Citizens Against Pollution, CAP

Andrew Wilson, III

Carol Ford
California Pilots Association

Kari Koster (via teleconference)
California Air Pollution Control Officers
Association

Scott Galati, Attorney
Galati and Blek

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

2 10:13 a.m.

3 ACTING CHAIRPERSON BOYD: I'd like to

4 call this meeting to order. Welcome to the July

5 30th meeting of California Energy Commission. And

6 please join me in the pledge to the flag.

7 (Whereupon the Pledge of Allegiance was

8 recited in unison.)

9 ACTING CHAIRPERSON BOYD: Pardon the

10 slight delay. The three Commissioners you see are

11 the three Commissioners you're going to get for

12 the day. So, had to wait till we had the quorum

13 present.

14 MS. HOLMES: Commissioner Boyd, we're

15 having difficulty hearing you.

16 ACTING CHAIRPERSON BOYD: Well, my mike

17 is on. That's the first time in my life anybody

18 ever said they had trouble hearing me.

19 (Laughter.)

20 ACTING CHAIRPERSON BOYD: The mike was

21 on, the green light is shining. I will speak

22 directly into it, I'm sorry.

23 As I was saying, Commissioners

24 Pfannenstiel and Byron are on vacation, so this is

25 the Commissioners that you will see for the day.

1 And thank you all for being here.
2 First, let me talk about changes to the
3 agenda. We're going to reverse some items and we
4 have removed some items. We are going to hear
5 items 1, 2, and 4 in that order. Items 5 through
6 9 have been pulled from the agenda due to lack of
7 some necessary paperwork. We'll then hear item
8 10. We will then hear item 3, which is obviously,
9 it appears, going to take some time.
10 And the remaining items are housekeeping
11 items that we will handle at the end of our
12 agenda.
13 And let me just say, since I know I'm
14 receiving blue cards and there may be a desire for
15 people to speak at this meeting about agenda
16 items, the process we follow is for people who
17 want to speak to an item need to fill out one of
18 these blue cards, which are on the table around
19 the wall inside the door there. And provide them
20 to a representative of our Public Adviser's
21 Office, standing there, who has a supply of blue
22 cards; and she is the person who will see that
23 they make it up here to the dais.
24 So, if you want to speak, please get a
25 blue card, pull it out and send it up to us.

1 With that, we can turn to the agenda.
2 And agenda item 1 is the consent calendar. Do I
3 have a motion --
4 COMMISSIONER ROSENFELD: I move the
5 consent calendar.
6 COMMISSIONER DOUGLAS: Second it.
7 ACTING CHAIRPERSON BOYD: All in favor?
8 (Ayes.)
9 ACTING CHAIRPERSON BOYD: Consent
10 calendar is approved three to nothing.
11 Item number 2 is the High Desert Power
12 project. Staff.
13 MR. RUNDQUIST: Good morning. My name
14 is Dale Rundquist and I'm the Compliance Project
15 Manager for the High Desert Power project
16 amendment petition.
17 High Desert Power project was approved
18 on May 3, 2000, and began commercial operation on
19 April 22, 2002. It is an 830 megawatt, combined
20 cycle power plant located in the City of
21 Victorville in San Bernardino County.
22 This amendment petition was filed on
23 August 30, 2006. It would allow annual source
24 testing for nitrogen oxides, sulfur oxides, carbon
25 monoxide and ammonia slip to be changed to once

every five years.

Annual source testing for volatile organic compounds would be changed to once every three years.

It would also waive the testing requirement for opacity and make one administrative change. Up to this point all annual source tests have shown that the continuous emission monitoring system is accurately tracking emissions.

In 2005 the relative accuracy test audit for volatile organic compounds shows each of the three units emits 0.08 pounds per hour, which is only 3 percent of the permit limit. In 2006 the relative accuracy test audit shows no detection of volatile organic compounds.

Waiving the test requirement for opacity will cause no increased emissions because the facility is using pipeline quality natural gas. And the continuous emission monitoring system tracks carbon monoxide.

The administrative change has to do with wording that was inadvertently inserted in a previous amendment.

This petition meets all filing criteria

of section 1769(a) of the siting regulations that concern post-certification project modifications.

We received no comments to this proposed amendment and there will be no increased emissions with any of these changes.

Staff has analyzed the petition and recommends its approval. There is an air quality technical staff here to answer any questions.

ACTING CHAIRPERSON BOYD: Thank you. Anybody in the audience have a comment on this item? My fellow Commissioners have questions?

COMMISSIONER ROSENFELD: None.

COMMISSIONER DOUGLAS: No questions.

ACTING CHAIRPERSON BOYD: Anybody prepared to make a motion?

COMMISSIONER ROSENFELD: I move the item.

COMMISSIONER DOUGLAS: I second the item.

ACTING CHAIRPERSON BOYD: All in favor?

(Ayes.)

ACTING CHAIRPERSON BOYD: Approved three to nothing. Thank you very much. And I salute the positive air quality performance of this plant. We can use all of that that you say we're

1 getting. Thank you.

2 MR. RUNDQUIST: Thank you.

3 ACTING CHAIRPERSON BOYD: All right,

4 item number 4.

5 Item number 4 is the possible approval

6 of amendment 1 to a contract with O'Banion and

7 Ritchey to add one year and revise the scope of

8 work and funds. Ms. Flores.

9 MS. FLORES: Good morning. I'm Liz

10 Flores of the legal office. This contract is with

11 the lawfirm of O'Banion and Ritchey for legal

12 services in the area of trademark law.

13 The original contract was for the

14 purpose of evaluating a potential trademark

15 dispute. And this amendment revises the work

16 scope in order to allow for further negotiation

17 toward settlement and litigation, if necessary.

18 The amendment also adds $140,000 to the

19 existing $10,000 contract, making the total

20 $150,000.

21 I'll note that the details of the

22 dispute will be discussed in a closed session at a

23 later time. And I would also like to note that a

24 legal services contract must be approved by the

25 Governor's Office and the Attorney General's

1 Office. And at this time we've received approval
2 from the Attorney General's Office, and are still
3 waiting for approval from the Governor's Office.
4 So, at this time the Commission's
5 approval is contingent upon approval from the
6 Governor's Office.
7 And with that I ask for approval of that
8 contract amendment.
9 ACTING CHAIRPERSON BOYD: Thank you.
10 Any questions?
11 COMMISSIONER DOUGLAS: Just a comment.
12 I strongly support this contract amendment, and
13 I'm glad to see us going forward with it.
14 ACTING CHAIRPERSON BOYD: Do I have a
15 motion?
16 COMMISSIONER DOUGLAS: I'll move
17 approval.
18 COMMISSIONER ROSENFELD: Second.
19 ACTING CHAIRPERSON BOYD: All in favor?
20 (Ayes.)
21 ACTING CHAIRPERSON BOYD: Approved three
22 to nothing, thank you very much.
23 All right, as I indicated, now we're
24 going to move to agenda item number 10. Agenda
25 item number 10 is relative to the American Council

for Energy Efficient Economy. Possible approval of a contract for $50,000 with, as we call it, ACEEE, to co-sponsor their 2008 summer study on buildings. Good morning.

MR. SEAMAN: Good morning, Commissioners. I'm Michael Seaman from the PIER buildings team; I'm here for Chris Scruton.

The American Council for an Energy Efficient Economy is a catalyst for improving the efficiency of buildings, industry and transportation. Since its founding in 1980, ACEEE has contributed to the adoption of efficiency standards for over two dozen products, saving consumers and businesses a cumulative $50 billion in the ten years from 1990 to 2000.

Utility sector efficiency programs assisted by ACEEE are currently saving about 60 billion kilowatt hours annually. ACEEE is also a major source of efficiency information for consumers, energy professionals and policymakers.

Every two years ACEEE holds a major conference in Pacific Grove on efficiency in buildings. This provides a venue for those involved with energy efficiency to review the latest research and program advances, and find out

1 what's working best.

2 The theme of this year's conference is

3 scaling up solutions; something that must happen

4 for California to meet its energy policy and

5 greenhouse gas reduction goals.

6 The California Energy Commission has, in

7 past years, been a sponsor and strong supporter of

8 the ACEEE summer study in buildings, and we hope

9 that you will continue that tradition.

10 I'll try to answer any questions you may

11 have.

12 ACTING CHAIRPERSON BOYD: Thank you, Mr.

13 Seaman.

14 Any questions from the Commissioners?

15 COMMISSIONER ROSENFELD: I strongly

16 endorse what Michael Seaman is saying. This is

17 the premiere every-other-year conference on the

18 west coast. It produces something like 200

19 referee papers, and we all get a lot out of it.

20 So, I move the item.

21 ACTING CHAIRPERSON BOYD: Do we have --

22 COMMISSIONER DOUGLAS: Second.

23 ACTING CHAIRPERSON BOYD: -- a second?

24 COMMISSIONER DOUGLAS: Second.

25 ACTING CHAIRPERSON BOYD: A motion and a

1 second.

2 All in favor?

3 (Ayes.)

4 ACTING CHAIRPERSON BOYD: Approved three

5 to nothing. Thank you very much, Mr. Seaman.

6 And our Executive Director informed me

7 this morning that in light of the fact that some

8 of us are working for free and there's no budget

9 in the State of California, that she has succeeded

10 in getting the staff more free attendance at this

11 conference. I think that's a positive move for

12 the taxpayers of the state anyway.

13 Thank you.

14 All right. Now we'll move to agenda

15 item number 3, the Russell City Energy Center.

16 Possible approval of Russell City Energy Company,

17 LLC's petition to extend the deadline for

18 commencement of construction of the Russell City

19 Energy Center in Hayward from September 10, 2008

20 to September 10, 2010.

21 And I think first we would like to hear

22 from the applicant, their presentation on the

23 basis for their petition.

24 MR. WHEATLAND: Good morning,

25 Commissioners. My name is Gregg Wheatland. I'm

1 the attorney for the project owner.
2 Let me say first that we have filed
3 written response to the objections and comments
4 that have been received by various interested
5 parties, and I'm not going to repeat those
6 comments here this morning.
7 We very much appreciate the staff's
8 recommendation in support of our petition. And we
9 are in concurrence with the proposed order that
10 the staff has submitted.
11 In the past, the Commission has granted
12 extensions of the construction deadline for good
13 cause shown. And that good cause, the Commission
14 has found to be in circumstances where there is a
15 delay outside the control of the project owner.
16 Here the construction deadlines that the
17 project has faced, we have not been able to meet
18 because of litigation that has stayed our ability
19 to commence construction. That litigation is
20 still ongoing, and we are not in a position at
21 this time, until certain matters are resolved,
22 particularly an appeal before the Environmental
23 Appeals Board, which I can discuss in more detail
24 if you'd like, is fully resolved.
25 Once that matter is resolved the project

1 is prepared to go forward. In fact, we are
2 anxious to move forward and we would therefore
3 request the extension of time for this particular
4 project.
5 Again, I'm not going to repeat what we
6 have set forth in our written comments, but I
7 would be pleased to answer any questions that you
8 may have regarding our petition.
9 ACTING CHAIRPERSON BOYD: Well, I am
10 going to ask a question right now, because one of
11 the reasons this meeting was 15 minutes in getting
12 started is the revelation to we Commissioners of
13 the document that I'm not sure even you have seen,
14 relative to this process before the USEPA. But
15 apparently we received -- we, the Commissioners,
16 and some of the staff in this room, at about five
17 minutes after ten this morning, a document that
18 implies that the USEPA has remanded the permit
19 back to the district to reopen the public comment
20 period on the draft permit.
21 That certainly casts a different light
22 on the issue before us today. Are you aware of
23 this?
24 MR. WHEATLAND: Yes, I am aware of it.
25 ACTING CHAIRPERSON BOYD: Would you like

1 to comment on it, therefore --

2 MR. WHEATLAND: I certainly would.

3 ACTING CHAIRPERSON BOYD: -- and its

4 relevance to your petition.

5 MR. WHEATLAND: I certainly would. This

6 remand order was issued by the Environmental

7 Appeals Board of the Environmental Protection

8 Agency just yesterday afternoon.

9 Approximately six months ago on January

10 2nd of this year, Mr. Robert Simpson, an

11 individual in the City of Hayward, filed an appeal

12 of the PSD permit that was issued by the Bay Area

13 Air Quality Management District under its

14 delegated authority from the Environmental

15 Protection Agency.

16 The appeal raised allegations regarding

17 procedural defects in the noticing procedures that

18 the District used when it noticed the public

19 hearings on the PSD permit.

20 The appeal also raised a number of

21 substantive issues alleging defects in the permit,

22 itself, on a substantive basis.

23 The appeal was vigorously litigated by

24 the District. There was a hearing before the

25 Environmental Appeals Board in April. And just

1 yesterday the Board issued its decision.
2 The decision remands to the District the
3 PSD permit. It finds that, indeed, the District
4 erred in the way that it noticed the hearing. It
5 did not provide complete notice to all necessary
6 parties, according to the Board. And therefore
7 the Board has ordered the District to go back, to
8 re-notice the permit, to hold a further public
9 hearing. And once the hearing and comment period
10 is closed, to make a decision on the permit again.
11 The Board also realized that in the
12 interest of administrative efficiency it was
13 important that it addressed the substantive issues
14 that were raised by the appeal. And the decision
15 of the Board ruled against the petitioner on all
16 of the substantive claims that he raised. And the
17 Board indicated that if those substantive issues
18 were raised again, the Board would not consider
19 them.
20 We anticipate a period of approximately
21 90 days, 75 to 90 days, in which the Board will go
22 back and send out the notices, this time
23 completely to all the necessary parties. They
24 will conduct a 30-day public comment period. And
25 there will be a 45-day comment period for the EPA

1 to comment. After which, the District may make a
2 determination on the PSD permit.
3 If the decision is favorable, and we
4 expect that it will be, we would then be in a
5 position to move forward with the project once
6 again.
7 ACTING CHAIRPERSON BOYD: Thank you very
8 much. Any questions of Mr. Wheatland before I
9 call on the staff?
10 COMMISSIONER DOUGLAS: I have one
11 question. Initially, there was the two-year
12 extension request based in part on the uncertainty
13 about how long it would take the EPA to take
14 action on this petition.
15 Now that we have action and it's been
16 remanded to the Bay Area, does that change, in
17 your view, the timeline?
18 MR. WHEATLAND: No, we would still
19 request two years. And the reason for that is
20 that we've had a pattern in this case of
21 litigation popping up from unexpected sources,
22 unexpected times.
23 And just to be careful, to make sure
24 that all the litigation will be resolved, we'd
25 like the two-year period. If there's litigation

following further action by the EAB or other agencies, we'd like time to resolve that and to be sure we can move forward with the new deadline that the Commission will set.

ACTING CHAIRPERSON BOYD: Any other questions? Okay.

Thank you, Mr. Wheatland.

Staff, would you like to provide your presentation on this item?

MR. BELL: Thank you. Good morning, Commissioners. Kevin Bell, Staff Counsel.

Staff received a petition for extension for the deadline of construction for the Russell City Energy Center. and analyzed that petition under the appropriate legal standard, which is section 1720.3, which provides for extensions of time to commence construction upon a showing of good cause.

In analyzing that application, staff found, on its face, that the project owner has shown good cause, and recommends approval of the petition.

ACTING CHAIRPERSON BOYD: I need to ask you the question that I put to applicant about this latest document that admittedly some of us

1 have just seen. I'm not sure how long the staff
2 has had to see this.
3 Does this issue, the remanding back to
4 the Air District of the permit, change your views
5 at all on the situation?
6 MR. BELL: It does not. I do agree with
7 the statements provided by Mr. Wheatland about the
8 uncertainties of peripheral matters to our
9 certification of this facility.
10 I know there was some discussion the
11 last time we were before the Commission on this
12 subject, as to whether or not we should have a
13 single-year extension or beyond. And I do agree
14 with Mr. Wheatland's representations, that given
15 the uncertainties with third-party action in this
16 case, that two years is still justified. Staff's
17 position has not changed.
18 ACTING CHAIRPERSON BOYD: Thank you very
19 much. Any questions of staff? All right.
20 I have a number of people who wish to
21 speak to this item, quite a number. And I am just
22 taking them in the order in which they were
23 presented at the dais here. And the first card in
24 the stack is, I believe it's Richard Winnie of the
25 County Counsel's Office, County of Alameda.

1 Did I get your name right?
2 MR. WINNIE: Yes, you did, thank you.
3 ACTING CHAIRPERSON BOYD: Thank you.
4 MR. WINNIE: Rare to have it correctly
5 pronounced, so I appreciate that.
6 Commissioners, thank you for the
7 opportunity to address you. I'll be very brief
8 because Lindsey Stern of my office will be
9 presenting our legal arguments.
10 I think the significance of yesterday's
11 action by the Environmental Appeals Board is that
12 it demonstrates the flawed public process that
13 we've experienced so far.
14 I'm really here just to express the deep
15 concern of the County of Alameda about the very
16 significant effects that this application will
17 have on the unincorporated area of Alameda County,
18 which is a densely residential area.
19 And we are concerned that all the
20 effects of this application have not yet been
21 vetted because of the flawed public process.
22 Lindsey Stern of my staff will be
23 addressing the legal points about why we feel that
24 this petition today should not be granted under
25 the regulations. But we do have very grave

1 concerns about the impacts that have not yet been
2 thoroughly reviewed or properly considered by the
3 public.
4 Thank you very much.
5 ACTING CHAIRPERSON BOYD: Thank you.
6 That's a fairly broad-sweeping statement, flawed
7 public process. So I hope Ms. Stern is going to
8 address that for us. Lindsey Stern.
9 MS. STERN: Good morning. I'm Lindsey
10 Stern with the Office of County Counsel for the
11 County of Alameda. And I believe, as our previous
12 comments that have been filed have stated, we do
13 object to the staff's recommendation that the RCEC
14 petition be granted without an evidentiary hearing
15 in accordance with CCR 1769.
16 Now, this preliminary question of the
17 standard of review seems to be a stumbling block
18 in this situation. It's not as clear as the
19 applicant or as staff has stated.
20 While the authority to grant the
21 extension is found under 1720.3, that section
22 provides no guidelines for how to assess good
23 cause or approach this petition.
24 And as we can tell, the guidelines are
25 scarce. And so while the applicant denies that

1 past cases may be treated as precedent, they are
2 illustrative.
3 And as we have provided in our brief,
4 the 1999 SEPCO petition is clearly illustrative,
5 in that knowing that this was a case of first
6 impression for a petition for an extension, the
7 Committee intended to set some type of precedent
8 and held a procedural conference prior to the
9 actual hearing on the extension to determine how
10 to approach determining whether or not good cause
11 for an extension existed.
12 Now more recently, as counsel for the
13 applicant knows, because I believe they also
14 represent East Altamont, the nearly identical
15 petition for an extension was filed for East
16 Altamont two weeks before this petition was filed.
17 And the notice of receipt that went out said a
18 notice of receipt of petition to amend under 1769,
19 and contains a full analysis of the 1769 criteria.
20 And so that's being treated as a modification or
21 an amendment, apparently.
22 And we're looking at this and trying to
23 figure out where the differences are and why this
24 isn't just an arbitrary treatment of one under
25 1720 rubberstamp good cause, and one under 1769,

1 evidentiary analysis, full staff analysis.
2 Now, the applicant also mentioned the
3 Salton Sea and Gateway petitions for an extension.
4 Both of those, I note, there were no objections
5 filed to those. And so I could understand it
6 might be easier to make a quick finding of good
7 cause and move that along.
8 But it appears that if there are
9 objections in the past, these 1769 criteria fall
10 into place.
11 Now, in the instant case, the notice of
12 receipt that went out, I believe, on June 13th
13 actually says that it was filed pursuant to 1769.
14 Again, that's the regulation for amendments and
15 modifications.
16 At this time, therefore, it should go
17 forward with a 1769 analysis. And that requires
18 an evidentiary hearing.
19 Now, 1720.3 provides for no evidence; it
20 can go just on the pleadings apparently. But then
21 again, 1720.3 doesn't provide the process. It
22 only provides the authority.
23 And the objectors and the County have
24 all demanded in their initial comments to this
25 petition that a full evidentiary hearing be held.

1 The staff recommendation did not address our
2 request, and at this point we're going solely on
3 the assurances of counsel in the pleadings. And
4 there's nothing in the record to support a finding
5 of good cause.
6 Now, the hearing, we believe, should
7 take evidence relating to the likelihood of
8 obtaining financing. This has been an issue in
9 the past with this plant.
10 There should also be some inquiry into
11 the status of the power purchase agreement with
12 PG&E. Now my understanding is that while the
13 applicant's papers state that the power purchase
14 agreement exists, the last time that I checked
15 into PG&E's take on this, is that there's an
16 agreement in principle. That's based on a press
17 release that they put out recently. So it seems
18 to me that there would be some testimony that
19 should be taken as to whether or not an agreement
20 exists with PG&E at this point.
21 And I take note that the California
22 Native Plant Society filed comments; East Bay
23 Regional Parks filed comments; Audubon Society
24 filed comments. I don't know exactly what
25 specific concerns they may have, but there may be

1 some evidentiary issues that they would raise, as
2 well.
3 Now, the question about whether or not
4 1720 allows for one extension or multiple
5 extensions, now the statute or the regulation,
6 itself, says an extension. And we believe that
7 only one extension is appropriate.
8 I note that the case cited as authority
9 for more than one extension, which, you know, the
10 question of whether or not cases are precedent, of
11 course, has already been at issue here.
12 But the case used as an example for more
13 than one extension being granted was, I believe,
14 Midway. And that was construction milestones, not
15 beginning construction. In Midway they'd already
16 begun construction. They were, I think, 10
17 percent complete. Maybe it's a different
18 situation. Milestones maybe should be treated
19 differently than the ready to begin construction.
20 One additional concern that I have is
21 that the granting of this extension appears to be
22 discretionary act, and therefore would be subject
23 to a CEQA analysis.
24 In conclusion, it's the County's
25 position that a full evidentiary hearing should be

1 held. And without that it's impossible to
2 determine whether the cause for an extension
3 exists. And I don't see how the Commission would
4 be able to make a finding that good cause exists
5 without any evidence in the record.
6 And if the Commission decides not to
7 hold an evidentiary hearing, then at this time I
8 believe they should summarily deny the petition.
9 And I've submitted additional written
10 comments, as well.
11 ACTING CHAIRPERSON BOYD: Thank you.
12 Any questions by Commissioners of Ms. Stern before
13 I call first on the staff, and then the applicant?
14 Thank you very much.
15 MS. STERN: Okay, thank you.
16 ACTING CHAIRPERSON BOYD: Mr. Bell,
17 I'm -- I think there are many procedural questions
18 here. I'll ask you to respond first, and then Mr.
19 Wheatland can add whatever he might want to the
20 discussion.
21 MR. BELL: Yes, thank you, Commissioner
22 Boyd. I note that there were some concerns raised
23 about the notice of receipt that went out with
24 respect to this.
25 Staff appreciates the opportunity to

1 perfect our system. I will note that the notice
2 of receipt mentioned 1769 that was sent out in
3 East Altamont and in this matter was in error.
4 It's a standard form that goes out, and we
5 apologize for any confusion that that may have
6 caused.
7 However, the relevant standard still is
8 whether or not good cause can be found to grant
9 this petition.
10 I also note that whether or not an
11 objection is lodged or negative comments are filed
12 in a matter before the Commission really has no
13 bearing on whether or not there's a finding of
14 good cause. I note many of the comments and
15 objections that we have before the Commission as
16 to this project had nothing to do with good cause.
17 Those comments and those objections have
18 to do with matters that have previously been
19 decided and are not subject to re-review. So
20 whether or not a third party objects to a
21 particular project has no bearing on good cause,
22 depending on the nature of those objections.
23 Of course, if those objections go to it
24 that good cause does not exist, that's something
25 that the Commission or staff can consider. But in

1 this case they do not. The analysis is the same
2 either way. Good cause either exists or it does
3 not.
4 With evidence on financing and power
5 purchase agreement that has been requested by the
6 County of Alameda, staff doesn't believe that
7 evidentiary hearing is necessary for those
8 findings.
9 If the project owner fails to obtain
10 financing or fails to obtain a power purchase
11 agreement after the Commission's granted them an
12 extension, that's at their peril. It's expected
13 that they will do those things, otherwise they
14 will not have the authority to construct the
15 project.
16 Also there was a comment made that other
17 comments and objections had been received by other
18 parties. And, again, those comments are simply
19 not relevant to a finding of good cause in this
20 case. Again, they go to issues that have already
21 been decided in this matter.
22 ACTING CHAIRPERSON BOYD: Okay, thank
23 you. Any questions?
24 COMMISSIONER DOUGLAS: There was also a
25 comment or a question raised of whether 1720

1 allows for multiple extensions. And my
2 understanding is that it does, but if you could
3 clarify that or address that.
4 MR. BELL: The deadline to commence
5 construction that we're operating under right now,
6 I believe is September 10th of this year. It
7 would not logically follow for the applicant to
8 come in and file two extensions from that date.
9 They would file for one extension at a time.
10 For them to come in and file two
11 petitions, we want to extend the September 10th
12 date to September 11th, oh, and at the same time,
13 we want you to grant another petition to extend to
14 September 12th, that doesn't follow.
15 Of course they're only going to file one
16 extension at a time.
17 ACTING CHAIRPERSON BOYD: Thank you.
18 Mr. Wheatland.
19 MR. WHEATLAND: Thank you. I'd like to
20 comment just briefly on a couple of points. I
21 agree with staff counsel that the issues of the
22 availability of financing or a power purchase
23 agreement are not really relevant to the
24 determination that you need to make here today.
25 But if you need to have evidence on this

1 issue you don't need to hold an evidentiary
2 hearing. You can easily take administrative
3 notice of decision 06-11-048 issued by the
4 California Public Utilities Commission on November
5 30, 2006, which approved the power purchase
6 agreement between the project owner and PG&E.
7 And the Commission, in its own
8 proceeding on our amendment number one, has also
9 recognized the existence of this power purchase
10 agreement.
11 That decision also expressly addressed
12 the issue of financing. County Counsel is correct
13 that that, a couple of years ago, that was an
14 issue. But that issue has been resolved long ago.
15 As the Public Utilities Commission
16 stated, there was an allegation at that time that
17 Calpine cannot reasonably be expected to meet its
18 contractual obligations, as demonstrated by its
19 efforts in bankruptcy court, to invalidate an
20 existing power purchase contract with PG&E.
21 But we are not, the Commission said, we
22 are not persuaded that the Calpine Hayward PPA
23 poses an undue or exceptional risk of
24 nonperformance. PG&E is dealing with the Calpine
25 entity that is not in bankruptcy. And one of the

1 parties to the agreement is General Electric,
2 which is undisputed to be one of the nation's
3 soundest counterparties.
4 The Commission goes on to make an
5 express finding, finding number 11, on that same
6 point. We came into the Commission last year and
7 petitioned for change of ownership, to transfer
8 the ownership, in part, to General Electric, to
9 establish the financing that would be necessary to
10 carry this project forward.
11 So the Commission can take official
12 notice or administrative notice of decision 06-11-
13 048 of the Commission's own decision approving the
14 change of ownership last year, and of footnote two
15 on page one of amendment number one of the
16 Commission's decision regarding that change of
17 ownership.
18 So we believe there is already evidence
19 that's amply available in the decisions of the
20 Public Utilities Commission and this Commission.
21 And that no further evidentiary hearing would be
22 necessary on those points.
23 That's the only comments I think I need
24 to make that are not covered already in our
25 written response.

1 ACTING CHAIRPERSON BOYD: Thank you.
2 Any questions of Mr. Wheatland? Thank you very
3 much.
4 The next card I have, and see if I get
5 the name right, Arlin Kachalia, Chabot-Las Pasitas
6 Community College District.
7 MS. KACHALIA: Arlin Kachalia.
8 ACTING CHAIRPERSON BOYD: Oh, boy, I did
9 real bad, sorry about that.
10 (Laughter.)
11 MS. KACHALIA: Thank you. I'm here as
12 Counsel for Chabot-Las Pasitas Community College
13 District and its Faculty Association in this
14 matter.
15 The District is a local interested
16 agency in close proximity to the proposed site
17 here. We're less than one-and-a-half miles from
18 the proposed site.
19 And the District objects to the
20 applicant's petition for extension.
21 In the interests of preserving time I
22 will not repeat the arguments raised, but we do
23 join the County of Alameda and the Group Objectors
24 in their written objections and arguments and
25 comments to the petition for an extension.

1 I do have to note for the record,
2 however, that I make no representations regarding
3 the Bay Area Air Quality Management District's
4 findings, processes and their recent EPA case.
5 We merely ask that the Commission deny
6 the petition, and that it reject the staff's
7 recommendation. And that we join the County's
8 request for an evidentiary hearing.
9 Thank you.
10 ACTING CHAIRPERSON BOYD: Thank you.
11 Any questions?
12 Staff, any response?
13 Mr. Wheatland?
14 MR. WHEATLAND: No.
15 ACTING CHAIRPERSON BOYD: Okay. Nancy
16 Van Huffel, San Lorenzo Village Homes Association.
17 MS. VAN HUFFEL: Good morning. I'm
18 a -- San Lorenzo Village Homes Association; I'm
19 their Executive Director. Our San Lorenzo Village
20 is parallel to Hayward. And, in fact, we believe
21 that a lot of the pollution and environmental
22 arguments will affect our community.
23 I'm not an attorney. Our attorney is
24 here today, so we'll be making legal arguments. I
25 simply want to state that we have very many

1 concerns about things that we've read about. And
2 most recently yesterday's decision, as far as the
3 Environmental Protection Agency.
4 We believe that we're not being covered.
5 And if you are even considering granting these
6 folks an extension, we would highly recommend that
7 once they start construction, that construction
8 has to be with whatever rules and regulations
9 affect new construction in terms of being able to
10 make sure that we are protected by any new laws
11 that have taken place since they were approved, I
12 believe back in 2006.
13 I know Alameda County has sent written
14 comments about some of the CARBs, and what that
15 would do to the area. And some of the new
16 findings, and some of the things that we could
17 make it preventable. So I would hope that the
18 Commission would take this into consideration.
19 Thank you for your time.
20 ACTING CHAIRPERSON BOYD: Thank you.
21 Questions? Comments?
22 COMMISSIONER DOUGLAS: I have a comment
23 actually that I'd like to raise as I listen to
24 some of the public comment.
25 I think it's helpful to hear from the

1 public on the broader set of issues that they're
2 concerned with. At the same time it would be
3 particularly helpful to hear if speakers have
4 comments directly to the question of good cause,
5 which is, is this delay due to a matter beyond the
6 applicant's control.
7 I just want to encourage people, to the
8 extent that they have comments on that issue, in
9 particular, to bring it forward.
10 A lot of the other issues that I've
11 heard raised so far were dealt with in the
12 amendment proceedings and in the initial project
13 application in terms of the extensive public
14 review and process in those two processes.
15 And the appeals time period for that has
16 passed, and that's not really the core of the
17 issue in front of us today.
18 So, I'm not trying to cut off in any way
19 the public's ability to raise any issue they'd
20 like to raise right now, but I'd like to encourage
21 you to be sure not to miss questions pertaining to
22 the good cause question, as well. Thank you.
23 ACTING CHAIRPERSON BOYD: Thank you. I
24 would join Commissioner Douglas in that request.
25 We intend, I intend, to hear from all who have

1 signed up. But there does remain an issue of
2 keeping the testimony today relevant to the issue
3 before the Commission, versus rehearing issues
4 that were, let's just say, heard and adjudicated
5 in the entire process of the Siting Committee and
6 then the Commission approval of the initial
7 application for construction.
8 So, with that, next I have Suzanne
9 Barba.
10 MS. BARBA: Thank you. I have sort of
11 two statements, on the one hand, and on the other
12 hand.
13 On the one hand, I'm opposed to the
14 extension. I think the applicant has a proven
15 record of things that have happened, and a lot of
16 them, perhaps, are not their fault.
17 They went into bankruptcy, and then
18 there would be people that said, well, there, it
19 is their fault; that's the way they manage their
20 business, so they went into bankruptcy.
21 They moved the project from the original
22 site into another site. And this extension is
23 less than six weeks off. I can't believe that
24 knowing what they must know, they would have known
25 months and months ahead of time that they weren't

1 going to be able to meet their construction target
2 dates. And that this request for an extension
3 should have been here much much sooner than it has
4 been with just six weeks ahead to go.
5 That they haven't gotten their finances
6 arranged properly in order to do this kind of
7 thing. And then they have all these other
8 excuses.
9 If it is granted, that's the other hand,
10 if it is granted for the extension, then I would
11 hope that the evidentiary hearing happens. And
12 then they would have to meet all the new
13 requirements that have been -- because this
14 thing's been going on for over five years. And
15 since that time, AB-32 has happened and several
16 other things have happened.
17 I know, for instance, I was on a
18 hospital board, and our building was fine, you
19 know, 20 years ago. But then they increased the
20 earthquake standards and so we had to retrofit.
21 And then ten years later, they increased
22 the standards again. And so a new hospital will
23 have to be built. And the money would have to be
24 found for it.
25 And that's why an example of things have

1 changed since they started their project. And
2 perhaps some of the rules that they were operating
3 under, as far as air quality standards, social
4 justice, environmental justice and things like
5 that, that there are more stringent requirements.
6 And that they should, if this extension is
7 granted, that they should meet those more
8 stringent requirements.
9 Thank you.
10 ACTING CHAIRPERSON BOYD: Thank you.
11 Comment or questions? Commissioner Douglas.
12 COMMISSIONER DOUGLAS: I've got a
13 question for staff. I'd like to hear staff
14 address the question of should there be more
15 stringent environmental standards either before
16 construction commences, particularly I think in
17 air quality standards, before construction
18 commences or during the lifetime of the project.
19 What is our process for insuring that these more
20 stringent standards are met?
21 MR. BELL: Thanks for asking that
22 question, I appreciate that. During the licensing
23 process those matters are thoroughly analyzed by
24 staff and incorporated into the final decision of
25 the project.

1 The final decision that we have, the
2 license to construct and operate this facility
3 incorporates all of those issues within the
4 license, itself, through the conditions of
5 certification.
6 The compliance unit here for the
7 Commission monitors each project to make sure
8 they're complying with all the relevant laws,
9 ordinances, regulations and standards, including
10 air quality.
11 COMMISSIONER DOUGLAS: So if the Bay
12 Area District were to tighten its PM10 standards
13 for example, what would we do? Would we require
14 them to have an amendment in our process in order
15 to incorporate the tighter standards?
16 MR. WHEATLAND: Our understanding of the
17 rules that apply to the Bay Area Air Quality
18 Management District is that the authority to
19 construct that they have issued to us will remain
20 in effect. And if there is a change in statewide
21 or district standards in the future, that would be
22 applicable to future projects and not to any
23 currently licensed projects that have received an
24 authority to construct. We received our authority
25 to construct last December.

1 Also, I should mention that this project
2 was thoroughly reviewed and updated on all aspects
3 of air quality last year during the process of
4 amendment number one. The Bay Area District did a
5 thorough review of all aspects of our air permit;
6 made many changes to the conditions regarding our
7 amended final determination of construction. And
8 so we received that thorough review just last
9 year.
10 ACTING CHAIRPERSON BOYD: Thank you.
11 Any other questions? If not, Audrey Le Pell.
12 MS. Le PELL: Good morning. I'm Audrey
13 Le Pell and I live in Hayward. I'm the President
14 of CAP, Citizens Against Pollution.
15 Just procedurally I'd like to ask three
16 quick questions. I brought to you from the Bay
17 Area Air Quality Management District their
18 evaluation of the pollutants that will be put out
19 by Calpine or the Russell City Energy Center. And
20 I would like to give those to you. And
21 procedurally, how would I do that?
22 And then secondly, I also have a
23 petition about the same. And then I also have
24 pictures of our shoreline because I have no idea
25 if the Commissioners have had an opportunity to

1 visit our shoreline. So, how would I do that,
2 please, sir?
3 ACTING CHAIRPERSON BOYD: Well, I do
4 have to raise a question of the relevance of the
5 issues you want to bring to our attention to
6 the --
7 MS. Le PELL: Well, you will -- I have
8 my remarks here, and so --
9 ACTING CHAIRPERSON BOYD: -- the good
10 cause issue. But, if you would --
11 MS. Le PELL: Okay.
12 ACTING CHAIRPERSON BOYD: -- give your
13 -- if the representative of the Public Adviser's
14 Office would receive the material from you -- and
15 she's approaching you now -- we'll see that it
16 comes to the dais and ends up in the docket for
17 today's discussion.
18 MS. Le PELL: My remarks pertain
19 specifically to the orange sheet. And Ms. Douglas
20 was not a member the last time I appeared in front
21 of you. And then there are two extra copies for
22 the other Commissioners who are not present.
23 So, in response to the application for
24 the extension of the RCEC for two years, I, as
25 President of CAP, have this to say.

1 In 2001/2002, the City of Hayward made a
2 grievous error. It accepted an agreement with the
3 Calpine Energy to build an enormous, 600 watt
4 energy plant adjacent to our beautiful Hayward
5 shoreline.
6 Since that time, especially the past two
7 years, the citizens of Hayward have spoken to you,
8 your representative, Mr. Jeffrey Byron, and others
9 about this poisonous proposition on the part of
10 Calpine. Poisons, I say. Because of the risk of
11 formaldehyde, as presented to you in the orange
12 sheet, and acrolein, also presented to you on the
13 orange sheet. Specifically known as cancer
14 causers.
15 You have received a listing of the
16 pollutants of the Bay Area Air Quality Management
17 District that Calpine will put into our specific
18 air streams that blow from west to east in
19 Hayward.
20 Hayward claims that the city did not
21 know all of the severe negative effects at the
22 time of this agreement with Calpine. Hayward is
23 afraid of Calpine, we believe, and its bank of
24 lawyers who might sue.
25 But Calpine broke its contract when it

1 went bankrupt. Do not let Calpine continue its
2 efforts to locate its unwanted presence near our
3 shoreline. CAP says no to Calpine and its
4 requested extension. And we would hope the CEC
5 would do likewise.
6 And lastly, other government agencies,
7 organizations and citizens agree with us. Names
8 of those who oppose Calpine and the extension are
9 all the people who have notified you recently.
10 Already they are, some of them, Alameda County,
11 Chabot-Las Pasitas Community College, San Lorenzo
12 Village Homeowners Association, Skywest Townhouse
13 Homeowners Association, Hayward Dimas (phonetic)
14 Club, Hayward Area Planning Association, Citizens
15 for Alternative Transportation Solution, and the
16 California Native Plant Society. They say no to
17 Calpine.
18 And I thank you.
19 ACTING CHAIRPERSON BOYD: Thank you very
20 much. Questions, comments?
21 Doug Grandt; it says Hayward resident.
22 Okay, no longer present.
23 MS. HARGLEROAD: He's present, but I
24 think he just had to leave the room.
25 ACTING CHAIRPERSON BOYD: Excuse me? I

1 could not hear that.

2 MS. HARGLEROAD: I'm sorry. He's here,

3 but I think he --

4 MR. SPEAKER: There he is right now.

5 MS. HARGLEROAD: -- he needed to go --

6 ACTING CHAIRPERSON BOYD: All right. We

7 understand.

8 MR. GRANDT: I expected you to take more

9 time. Sorry

10 ACTING CHAIRPERSON BOYD: Mr. Grandt.

11 MR. GRANDT: I'm Doug Grandt. I'm a

12 resident of Hayward. And 350, if anybody's

13 recording this, I want you to remember 3-5-0 if

14 you remember nothing else.

15 I'm here as a Hayward resident. I've

16 lived in Oakland most of my adult life, but I'm

17 not here to speak for Hayward, I'm not here to

18 speak for Oakland or the East Bay, I'm here to

19 speak for the planet.

20 350 is the level of parts per million of

21 CO2 that we can afford to have in our environment.

22 We cannot exceed that if we're not going to go

23 over 2 degrees Centigrade higher than pre-

24 industrial temperatures.

25 Dr. James Hansen of the NASA Goddard

1 Institute for Space Science has recently published
2 in March, with his associates, a statement that
3 350 is the number we need to get back to. We're
4 already at 385 parts per million, and we're headed
5 toward 400 and 410. And if we continue to emit
6 CO2 we are going to create a different planet for
7 our offspring.
8 So, I met with Dr. Hansen a couple
9 months ago, and he explained that to me. I met
10 with Dr. Rajendra Pachauri a couple weeks ago, and
11 he said 8032 is very honorable, and he appreciates
12 what we're doing, but it's not enough. It's
13 headed toward 450 and 550, in that range. We need
14 to get to 350.
15 By continuing to emit CO2 we're not
16 going to get down. This plant should not be built
17 now or ever. Whatever it takes, business as usual
18 is not the way to do.
19 As you probably know, former Vice
20 President Al Gore has issued a challenge for a
21 carbon-free electrical system within ten years.
22 This plant will last longer than ten years. It
23 will emit CO2.
24 So, in closing I'd just like you to make
25 the decision that whatever it takes, just cause, I

1 see no just cause. We got to stop this plant.
2 Thank you very much.
3 ACTING CHAIRPERSON BOYD: Thank you.
4 And I invite you to follow the proceedings of this
5 agency in that arena of climate change and the
6 actions that the agency has taken, along with the
7 PUC in reference to legislation that leads to
8 emission controls and what-have-you relative to
9 greenhouse gases in electricity generation.
10 But, that's not the issue before us
11 today.
12 Gary Cathey, Chief of Airports,
13 Caltrans.
14 MR. CATHEY: Good morning,
15 Commissioners. My name is Gary Cathey; I'm Chief
16 of the Office of Airports, Caltrans Division of
17 Aeronautics. And I appreciate the opportunity to
18 give you some additional information.
19 It's been brought to my attention that
20 our previously provided written and oral testimony
21 was not officially entered into the record for
22 formal consideration. And therefore, we request
23 that the request for construction permit extension
24 be denied. And if that is not the case, then that
25 a full evidentiary hearing be conducted so that

1 our input could be provided in a formal manner.
2 I would like to briefly reiterate a
3 couple of points that the FAA made in a letter
4 dated July 29 that was authored by Andy Richards,
5 the District Manager of the San Francisco Air
6 Traffic Control District.
7 In that letter he states that the ATO
8 does not consider a NOTAM, which is a notice to
9 airmen, to be adequate mitigation for the effects
10 of the plume therms generated by the construction
11 of this facility. We wholeheartedly agree with
12 their opinion.
13 And they also state that altering the
14 Hayward traffic airport pattern for plume
15 avoidance is not a reasonable alternative. We
16 also agree with that opinion.
17 It's a fact that pilots flying in
18 instrument conditions at that airport can legally
19 fly at a altitude of a mere 248 feet above the
20 height of the stacks; 248 feet in instrument
21 conditions. That, we anticipate that if that
22 occurred and a pilot would overly these stacks
23 operating at 100 percent, that that would be
24 hazardous to aviation safety as we stated in our
25 testimony that was also provided at the Eastshore

1 complex. We would like that testimony to be
2 considered and admitted into evidence.
3 Thank you.
4 ACTING CHAIRPERSON BOYD: Could I ask
5 you a question. When you say your views, your
6 testimony, what-have-you, relative to this
7 particular power plant siting case was not entered
8 into the record during the course of the
9 proceedings, which went on for quite a long
10 time, --
11 MR. CATHEY: I have been advised of that
12 by legal representatives that were working in
13 opposition to the establishment of this facility.
14 ACTING CHAIRPERSON BOYD: Does our staff
15 have any comment on that point?
16 MR. BELL: No.
17 COMMISSIONER DOUGLAS: Which proceedings
18 specifically --
19 MR. CATHEY: I don't recall the date
20 that --
21 COMMISSIONER DOUGLAS: -- are you
22 referring to?
23 MR. CATHEY: -- that I offered the
24 testimony.
25 COMMISSIONER DOUGLAS: You said July

1 29th --

2 MR. CATHEY: It was for Russell City,

3 and we also had written correspondence.

4 MS. HARGLEROAD: September 18.

5 September 18th, last year.

6 MS. SPEAKER: 2007.

7 (Simultaneous audience remarks.)

8 ACTING CHAIRPERSON BOYD: Well, was it

9 closed because time had lapsed and it was untimely

10 or --

11 MS. HARGLEROAD: I was not present at

12 that hearing, but the FAA representative was here

13 briefly, and the evidentiary record was closed.

14 Mr. Cathey appeared --

15 THE REPORTER: Excuse me, I'm not

16 getting this for the record unless she comes to a

17 mike.

18 ACTING CHAIRPERSON BOYD: That's true.

19 We can't deal with people speaking from the

20 audience. I'm sorry to have let this go on so

21 long. If you want to say something on the

22 subject, you'll have to come to the podium.

23 MR. CATHEY: I'd be glad to defer.

24 ACTING CHAIRPERSON BOYD: Well, you

25 brought the subject up. I would request that you

1 provide the specifics to the staff, because
2 they're somewhat unaware of some of this,
3 apparently.
4 MR. WHEATLAND: Through the Chair could
5 I ask two questions?
6 ACTING CHAIRPERSON BOYD: Certainly.
7 MR. WHEATLAND: The first question is
8 with reference to the July 29 letter from the FAA,
9 what is the date of that letter? July 29 of what
10 year?
11 MR. CATHEY: 2008.
12 MR. WHEATLAND: Could we be provided a
13 copy of that letter?
14 MR. CATHEY: Sure.
15 MR. WHEATLAND: And the second question
16 is whether Mr. Cathey is speaking today on behalf
17 of himself or on behalf of Caltrans, and whether
18 Caltrans has authorized his testimony for today.
19 MR. CATHEY: I'm speaking on behalf of
20 the Department.
21 ACTING CHAIRPERSON BOYD: And that's the
22 way you've signed in, so I took it as such.
23 MR. CATHEY: Correct.
24 ACTING CHAIRPERSON BOYD: Okay. No
25 comment from the staff. Mr. Wheatland, any other

1 questions or comments?
2 MR. WHEATLAND: No, no comments. Thank
3 you.
4 MR. CATHEY: Thank you.
5 MR. BELL: I do have one comment,
6 Commissioners. I know Commissioner Douglas made
7 it very clear earlier that we were going to limit
8 the scope of today's proceeding.
9 And it does seem that we're getting into
10 issues that have already been vetted, that have
11 already been decided, and for which any sort of
12 appeal process has already run.
13 We're getting beyond what the scope of
14 this proceeding is. It is meant to be and should
15 be, which is under the relevant legal standard of
16 a finding of good cause.
17 ACTING CHAIRPERSON BOYD: Well, I
18 certainly agree with that. And we're being very
19 tolerant of the witnesses who are asking to
20 actually leverage open the entire siting case,
21 whereas today we're dealing with an extension of a
22 construction permit, just to deal with the
23 adjudicatory process of the USEPA.
24 And we have gone back, obviously, quite
25 a long ways into issues I would have presumed, and

1 I'm moderately familiar with, were debated during
2 the initial licensing of this process.
3 But I'm trying to be deferential to the
4 public, who's made an effort to come here. So,
5 we'll hear what they have to say. But, again, I
6 must caution you that, and ask you to bear in on
7 the relevance of your testimony with respect to
8 the issue before us today.
9 We are not reopening the case. All the
10 time for appealing the case has long since lapsed.
11 We're dealing with an extension that has been
12 requested on the basis of good cause tied to the
13 USEPA receiving and dealing with an appeal of the
14 PSD permit issued by the Bay Area District.
15 And we've heard some of what's
16 transpired on that today. And that the Bay Area
17 District has had the issue remanded back to it
18 strictly with regard to the procedure of noticing
19 of hearing and what-have-you.
20 So, we are pretty far afield. But, in
21 deference to those who have made the trip up here,
22 I'm going to continue to hear from them. But we
23 all have to remember the issue that we're dealing
24 with today.
25 Mr. -- it looks like J.B. McCarthy.

1 This appears to be, perhaps, another aviation
2 issue. And I warn you, I caution you on the
3 discussion we just had, and we've had before
4 relative to retrying the entire case, versus the
5 issue before us today.
6 MR. McCARTHY: Well, then perhaps I
7 should start with I live in Hayward. My name is
8 John McCarthy. I've been involved in the Russell
9 City proceedings as well as the Eastshore
10 proceedings.
11 Perhaps I should start with how the
12 dockets unit insists that they posted my email
13 regarding this issue to the docket here. As of
14 yesterday, it was still not showing on the docket.
15 I have all of that material with me. And I'm
16 going to leave it with you.
17 That's an issue with the CEC over the
18 record, okay.
19 Going further, a very late email reply
20 on that yesterday, at the last minute. It's just
21 by chance I saw this thing just appear on the
22 email while I was leaving email. That was the
23 first response I got from the docket unit on my
24 input.
25 As I said, they still are not showing my

1 input on the record that they insist was posted to
2 the record right here.
3 I am concerned about the CEC's decision
4 to exclude all other issues but those of the
5 applicant's choosing as a procedural issue. And
6 the staff's incomplete report regarding anything
7 else that may have been raised, particularly
8 aviation.
9 My concern about aviation is general,
10 but also more specific to rotorcraft. As I
11 understand it, there was a request by Caltrans for
12 a study that was subsequently ignored. And, in
13 fact, I've had some discussion yesterday with
14 Caltrans on this issue.
15 It's interesting, as a note on that,
16 that the cone of traffic, the main traffic zone
17 for rotorcraft approaching the Hayward Air
18 Terminal, particularly from the west side, comes
19 to a point just short of the Russell City site.
20 Which, by the way, if Oakland does build a second
21 main runway for its commercial carrier traffic,
22 that is likely to come in right over the Russell
23 City site even closer and lower to that site than
24 it currently does with the Eastshore side. Very
25 interesting set of circumstances.

1 Where are the people who I would have
2 assumed are doing their job, looking for this
3 stuff? I have to keep asking myself the same
4 question. Where are they?
5 Thank you.
6 ACTING CHAIRPERSON BOYD: Staff, would
7 you like to comment on Mr. McCarthy's process
8 questions with regard to the docket and the
9 relevance therefore to today's hearing?
10 MR. BELL: Well, I simply don't have any
11 information on what's occurred with our dockets
12 unit. I do know that comments that are received
13 are docketed. I do know they will be part of the
14 record. But I simply have no information about
15 what's been submitted and what's been docketed
16 thus far without going and looking, myself.
17 MS. DYAS: Mary Dyas, Compliance Project
18 Manager. I believe Mr. McCarthy's comments are
19 included in the packet that I gave you guys back
20 when we first received the emails.
21 As to whether or not it was actually
22 entered onto the docket log, again, that would be
23 the same with me. I'd had to check with dockets
24 to make sure it's on the docket log.
25 But I believe his copy is in there

1 docketed. But I would have to check with dockets
2 to verify whether or not it's actually on the log
3 or not.
4 ACTING CHAIRPERSON BOYD: Comment,
5 Commissioner Douglas.
6 COMMISSIONER DOUGLAS: I have a brief
7 comment. I would just like to clarify, Mr.
8 McCarthy and others, that the reason why the
9 subject of this hearing is limited to a showing of
10 good cause is not because this is the applicant's
11 choosing, as was represented in the commenter's
12 remarks. It's because this is the issue before us
13 for this extension, and for other license
14 extensions.
15 And it's part of our process as set out
16 in the Warren Alquist Act and our implementing
17 regulations. So, that's the reason for the focus
18 on good cause. And I would object to the
19 implication that the subject of this hearing is at
20 the applicant's request. That's just not
21 accurate. Thank you.
22 ACTING CHAIRPERSON BOYD: Thank you.
23 Next witness is Jewell Hargleroad.
24 MS. HARGLEROAD: Very good.
25 ACTING CHAIRPERSON BOYD: It takes me a

1 moment.

2 MS. HARGLEROAD: Good morning. My

3 name's Jewell Hargleroad, and I'm representing the

4 Group Objectors, and the attempted group

5 intervenors, California Pilots Association, which

6 is a statewide organization, San Lorenzo Village

7 Homes Association, which has 24,000 residents, and

8 Hayward Area Planning Association.

9 And also, as you know, Gary Cathey was

10 here, who was a witness for us in the Eastshore

11 proceeding where we were able to participate in

12 the evidentiary process there.

13 And as you know, we have filed

14 objections to this unverified petition. There's

15 no declaration under penalty of perjury before you

16 confirming anything in this petition by a person

17 with personal knowledge. And I refer to your

18 docket entry, a four-page petition is what is

19 docketed. There is no accompanying declaration

20 from any person with personal knowledge.

21 Also, as you know, we have objected to

22 Mr. Bell's letter dated July 17, and his July 24

23 recommendation allegedly on behalf of staff. And

24 we would assert that counsel is not staff. So you

25 do not have a staff recommendation before you.

1 Before you is a petition to which
2 numerous objections have been submitted. Further,
3 since the petition has been filed May 30, the EPA
4 yesterday vacated the PSD permit and remanded it
5 back. And you have had an evidentiary hearing in
6 the related Eastshore proceedings, which is
7 literally down the street from this project.
8 That is where much of the evidence which
9 we attempted to offer in support of
10 reconsideration was precluded from this Russell
11 City proceeding. And that's Mr. Cathey's
12 declaration which was submitted to you in support
13 of reconsideration, but it was rejected. And you
14 never got the evidence. You did get it in the
15 Eastshore proceeding.
16 Now, one of the bases for this petition
17 is Robert Simpson's allegedly frivolous appeal of
18 the permit to significantly deteriorate the air.
19 That has been resolved. And the EPA, in its
20 published opinion, has remanded that federal
21 permit back to be renoticed.
22 Further, the FAA air traffic control has
23 informed you that -- and you just received a copy
24 of it, I gave one to Ms. Dyas and she stated she
25 provided you copies -- that the so-called

1 mitigation of a NOTAM, which Mr. Cathey was
2 referring to, is not a mitigation.
3 And the CEC has no authority to restrict
4 airspace, as was made clear during the Eastshore
5 evidentiary hearing. So, any attempt to restrict
6 airspace above Russell will interfere with the
7 operation of both Hayward's General Aviation
8 Airport and Oakland's International Airport.
9 And the air traffic organization has not
10 received any application to restrict airspace.
11 This was a prime area mitigation adopted in your
12 final decision. This project is not mitigated.
13 And also you had here today, Mr. Cathey,
14 on behalf of Caltrans confirming that he agreed
15 with Mr. Richards' letter.
16 We would submit, as a matter of law,
17 that you only have one option under the plain
18 meaning of the statute, and that is because the
19 CEC, under 1720.3, has no authority to be handing
20 out multiple extensions after the expiration of
21 the five-year period to build.
22 And that's where the statute, itself,
23 refers to. That an application for an extension
24 may be submitted prior to the expiration of the
25 five-year period. They've already had their

1 extension. They already got it. You're beyond
2 the five years.
3 And we would submit that that's good
4 public policy, and that is the proper
5 interpretation of this section.
6 If Russell City wants to reapply, they
7 can do so. But they need to follow the current
8 requirements, not the 2006 requirements, which Mr.
9 Wheatland in his response notices, oh, we're
10 obligated to follow November 2006. Because it's
11 the time of the application that the requirements
12 are tied to.
13 So, as you've heard, and we are all
14 aware, the importance of addressing global warming
15 is here, as you, yourselves, have stated in Flex
16 Your Power. I just saw the advertisement last
17 night. I thought it was very effective. The
18 advertisements have been very good.
19 Denial, of course, would also be the
20 easier course for your staff, who has 12 solar
21 applications which we would submit are far more
22 important than this very expensive, dirty plant
23 located at the shoreline of the San Francisco Bay
24 next to the largest marsh restoration project, and
25 the intersection of highways 92 and 880, close in

1 proximity to what the reliever airport for the
2 Oakland International Airport.
3 Absent denial of this point, minimally
4 an evidentiary hearing is required under 1769.
5 And I've heard staff state that oh, their notice
6 provision under 1769 was a mistake. Well, they
7 didn't make that mistake in the East Altamont
8 notice provision.
9 They also refer to 1769, as County
10 Counsel has point out to you, where you had a real
11 staff report. And they were following 1769, which
12 is also consistent with your earlier decisions in
13 SEPCO, which are cited and discussed in both our
14 pleading and the County's pleading in our initial
15 objections to the petition filed on July 1.
16 Yesterday, both the Group Objectors and
17 the County objected to Mr. Bell's staff
18 recommendation. Under 1769(a).3 minimally this
19 must be processed as a formal amendment.
20 The so-called recommendation by Mr.
21 Bell, who is an attorney, is not the real staff
22 analysis. And, in fact, if you -- we would ask
23 you to take administrative notice of that staff
24 analysis, which is very complete, and states, page
25 1, quote, "staff" -- this is under the Tesla --

1 "staff reviewed the petitions and assessed the
2 impacts of the proposal on environmental quality,
3 public health and safety, and believes that at
4 least four areas will need additional attention.
5 There, like here, the applicant no
6 longer has a valid permit, although some would say
7 that here there was no valid permit in the first
8 place, as the EPA's opinion, I believe, states.
9 There's a report, also you have no staff
10 review before you. So, absent that denial is the
11 most efficient and complete means for staff
12 analysis is to appoint an evidentiary committee to
13 take testimony. To take the testimony which was
14 precluded from the County, Chabot and Group, what
15 we've tried to be, intervenors offer of proof in
16 this proceeding.
17 So, absent that summary denial the Bay
18 Area Air Quality District will also have to hold
19 hearings anyway, which are presently folded into
20 your proceedings, adding further complexity on the
21 analysis of this since the Bay Area, that was part
22 of the criticism is it was too close.
23 So we would urge you, the most efficient
24 and best and supportable decision is summary
25 denial because you don't even have a verified

1 petition in front of you. You have no declaration
2 under penalty of perjury.
3 It's not our burden to produce the
4 evidence, it's the petitioner's burden. And the
5 petitioner has produced no evidence. All they've
6 produced is their attorney's representations.
7 Nobody with personal knowledge.
8 Now they have somebody here at this
9 Commission hearing, we would object because we
10 certainly haven't had opportunity to examine their
11 qualifications.
12 Absent that, minimally an evidentiary
13 committee should be assigned, since today you
14 cannot make the necessary findings as required
15 under 1769(a).3 and 1755 that this project remains
16 in compliance because it does not, as established
17 by Mr. Richards' testimony and the EPA's decision.
18 It is not beneficial to the public, nor
19 to the County, nor Group Objectors, the students
20 at Chabot College, and those of us who sought to
21 intervene.
22 You also have substantial change in
23 circumstances. And that goes to the CARB air
24 report which I would refer to you, and was just
25 recently brought to the Commission's attention in

1 the Eastshore matter, which is a very impressive
2 document, the Methodology of Estimating Premature
3 Deaths. And that's on nondiesel particulate
4 matter that CARB just published May 22, which we
5 would submit is by requiring that evidentiary
6 hearing and requiring a new application, at least
7 this applicant will have to abide by.
8 So, we would urge you that, as a matter
9 of law, you have plenty of grounds to deny this.
10 But minimally you need to appoint an evidentiary
11 committee if you choose not to deny it.
12 ACTING CHAIRPERSON BOYD: Thank you.
13 Any questions from the Commissioners?
14 COMMISSIONER DOUGLAS: No.
15 ACTING CHAIRPERSON BOYD: Mr. Wheatland,
16 would you like to respond, and, Mr. Bell after.
17 MR. WHEATLAND: I'll respond just
18 briefly. I always enjoy Ms. Hargleroad's colorful
19 comments.
20 But if you listen carefully to what
21 she's arguing, she's asking you to reopen and hold
22 evidentiary hearings on matters that were heard
23 before this Commission last September.
24 Those matters were carefully considered
25 by the Commission, and the Commission ruled on

1 those issues in its decision order denying
2 petition for intervention, and denying petition
3 for reconsideration.
4 Ms. Hargleroad raised those issues again
5 in her petition for writ of review to the
6 California Supreme Court. The Court carefully
7 considered her arguments and issued an order
8 denying that writ.
9 So, she's already had two bites at this
10 apple; once in September before this Commission,
11 once before the Supreme Court. In both cases the
12 issue's been denied. There is no justification
13 whatsoever for holding a third hearing where the
14 matter's already been ruled upon twice and denied.
15 ACTING CHAIRPERSON BOYD: Thank you.
16 Mr. Bell.
17 MR. BELL: My response to the
18 presentation that was just heard by the
19 Commissioners will be limited to only that which
20 was relevant in that presentation, which was the
21 relevant legal standard, which is 1720.3.
22 And my comment is that I will be
23 submitting, based on my previous comments and the
24 comments made by Mr. Wheatland, as well, it was a
25 lengthy presentation but really there was only one

1 relevant section within that, which was her
2 comments with respect to the relevant legal
3 standard.
4 ACTING CHAIRPERSON BOYD: Thank you. I
5 don't want to let lie on the floor the issue of
6 your ability to represent the staff before this
7 Commission. And, Ms. Jones may want to say
8 something, but I will just add that we
9 Commissioners are aware that things do not come
10 onto our agenda with representations of a staff
11 recommendation or point of view without, indeed,
12 the Executive Director participating in the
13 process, and forwarding them to us as the staff's
14 recommendation.
15 I don't know, unless if you just want to
16 affirm that fact, but I don't --
17 EXECUTIVE DIRECTOR JONES: Yes, I do
18 want to affirm that.
19 ACTING CHAIRPERSON BOYD: -- want to
20 leave it on the record that Mr. Bell is
21 freelancing here.
22 EXECUTIVE DIRECTOR JONES: Right.
23 (Laughter.)
24 EXECUTIVE DIRECTOR JONES: Staff,
25 including Ms. Dyas, did talk to me about this

1 issue. It was raised during our normal agenda
2 review for the business meeting. We went through
3 the facts of the situation. Mr. Bell is a staff
4 attorney. And so we fully vetted it before
5 forwarding it to you to be placed on the business
6 meeting agenda.
7 ACTING CHAIRPERSON BOYD: Thank you.
8 Next witness is Rob Simpson.
9 MR. SIMPSON: Good morning,
10 Commissioners, Staff, people of California. My
11 name is Rob Simpson; I live in the City of
12 Hayward.
13 I filed a timely application for
14 intervention into this proceeding with hopes that
15 I'd get a ruling on that before this hearing.
16 Apparently it was lost by the CEC docket unit and
17 found yesterday.
18 So I'm asking for a recess until such
19 time as you can rule on my application for
20 intervention.
21 ACTING CHAIRPERSON BOYD: Well, let's
22 respond to that because I think we're familiar
23 with that. I don't know if Mr. Bell wants to
24 respond before he hears from us up here.
25 MR. BELL: All I'll say at this point is

1 that I found out about this application for
2 intervention yesterday at the end of the day. And
3 that's -- I haven't had a chance to respond to it
4 in these proceedings. I'm not sure that I would
5 file a response based on the nature of these
6 proceedings.
7 ACTING CHAIRPERSON BOYD: Well, I was
8 just going to say, is a filing to intervene even a
9 relevant issue with regard to today's proceedings?
10 MR. BELL: I don't believe so. There's
11 no testimony by expert witnesses, no cross-
12 examination, no presentation of evidence. This is
13 not an evidentiary hearing. Intervenors generally
14 want to intervene so they can participate as a
15 party to a hearing. And there is no evidentiary
16 hearing in this matter.
17 ACTING CHAIRPERSON BOYD: Thank you. Do
18 you have any --
19 MR. SIMPSON: Sure. My understanding
20 of, I think it's 1207 of your rules is that I can
21 apply to intervene in any proceeding, and this is
22 a proceeding and I've applied to intervene. So,
23 I'd like to get a response to my application to
24 intervene.
25 Just because they found it yesterday

1 doesn't mean that that's when they got it. It was
2 received in a timely fashion with my objection,
3 which my objection was also lost.
4 The bulk of my EPA appeal that was filed
5 in response to this application for extension
6 during the time period that they asked was lost
7 until yesterday.
8 I received a letter from Mr. Bell that
9 said we've considered your objection, like
10 yesterday and today, again, he acknowledges that
11 he didn't see the bulk of it. He didn't see the
12 bulk of it until yesterday, which was well past
13 when he sent me the letter that says he saw it.
14 So without considering my objection, or
15 considering my application for intervention, I
16 have been named repeatedly by Calpine in this
17 proceeding. And I think I should have the
18 opportunity to cross-examine the evidence
19 presented which is the letter of recommendation
20 for approval of this, and the applicant.
21 ACTING CHAIRPERSON BOYD: Commissioner
22 Douglas.
23 COMMISSIONER DOUGLAS: Well, anyone who
24 comes forward as a member of the public in this
25 proceeding has the opportunity to speak. And if

1 you have a question or have questions you'd like
2 to ask, why don't you put them forward. I think
3 we're very open to hear your questions.
4 MR. SIMPSON: Thank you. Will there be
5 a ruling on my application for intervention?
6 Because if it's after this hearing, then I think
7 it's sort of decided.
8 ACTING CHAIRPERSON BOYD: I think we're
9 struggling with the relevance or even the
10 appropriateness of a petition to intervene in this
11 hearing where by presenting yourself today as
12 somebody who wanted to speak to this issue, and
13 whose testimony would be taken into consideration,
14 you are afforded the opportunity to present to us
15 what your views on the issue before us today.
16 And I'm not sure, and I'm again looking
17 to counsel, of the relevance of a petition to
18 intervene in today's proceeding, or the
19 appropriateness.
20 MR. SIMPSON: And, again, I have been
21 named by Calpine, referred -- my litigation has
22 been referred to as vexatious litigation. Their
23 argument of good cause, they say we have good
24 cause to extend this proceeding, this process,
25 because we violated the Clean Air Act.

1 Now, if they break another law next
2 month, next year, is that good cause for another
3 extension? Or is there some point that this ends?
4 Because this is not -- I'm hearing you continue to
5 lean on this air permit but there is no air
6 permit. The air permit's been remanded.
7 So you're faced with a situation of
8 approving a project that's already been
9 demonstrated to be in violation of the Clean Air
10 Act. Now, that's just the one point they touched
11 on with this PSD permit.
12 But the Environmental Appeals Board also
13 said that they considered it advisable to alert
14 potential parties of several issues raised by Mr.
15 Simpson's appeal, which include Endangered Species
16 Act occurrence, includes violations of the Clean
17 Water Act, Migratory Bird Treaty Act, the Coastal
18 Zone Management Act, as well as their implementing
19 regulations.
20 And so this is not a minor point, this
21 notice. This notice was supposed to go to our
22 County Supervisors. That was supposed to be the
23 executive summary, if you will, that alerts the
24 County Supervisors to the air implications of this
25 action.

1 You've decided, well, the County
2 Supervisors must have known about this activity.
3 But they didn't have the relevant information to
4 make a decision for the benefit of the County of
5 Alameda.
6 So, if you're telling me I'm not offered
7 the opportunity to intervene or cross-examine
8 witnesses or present evidence, then I'll continue
9 to make my points here. But I'm still looking for
10 an answer of whether I'll be afforded the
11 opportunity to intervene in this proceeding.
12 CHIEF COUNSEL CHAMBERLAIN: I'd like to
13 just to --
14 ACTING CHAIRPERSON BOYD: Mr.
15 Chamberlain, let me hear from our staff counsel
16 first, and then Mr. Chamberlain.
17 CHIEF COUNSEL CHAMBERLAIN: I'm just
18 noting that section 1207 does, indeed, indicate
19 that any person may petition to intervene in any
20 proceeding. But it goes on to say that in power
21 plant siting cases, the petition shall be filed no
22 later than the prehearing conference, or 30 days
23 prior to the first hearing held pursuant to
24 section 1725, et cetera.
25 What this says to me is that even

1 though, yes, there are other kinds of proceedings
2 besides power plant siting proceedings, for
3 example we have complaint and investigation
4 proceedings under section 1231.
5 And so petitioners to intervene could be
6 allowed in those kinds of cases. What the
7 Commission was really focused on here was trying
8 to define a process where there is going to be an
9 evidentiary process, to allow interventions in a
10 timely manner.
11 The question here of good cause, I don't
12 believe, calls for the Commission to take
13 evidence, because in essence it's undisputed that
14 this gentleman has filed an appeal with the
15 Environmental Appeals Board. You've already heard
16 that he's been successful on some procedural
17 issues. He's been unsuccessful on some other
18 issues.
19 And the question is simply with respect
20 to that appeal that deals with a federal question
21 that this Commission would have no jurisdiction to
22 handle or override, is there good cause for you to
23 grant an extension for the portions, the state and
24 regional portions of law that were already handled
25 last year in the amendment proceeding, had the

1 applicant asked for a three-year extension, an
2 amendment with a three-year deadline, it probably
3 would have been granted.
4 And they only asked for one year because
5 they were unaware of this litigation. So the
6 question really is, okay, the litigation occurred.
7 It delayed their project. Is there good cause to
8 grant them some additional time to see how that
9 plays out.
10 If they ultimately don't get the PSD
11 permit, then your license will expire. If they do
12 get the PSD permit, the question is should they be
13 allowed to begin construction based on your
14 license, which has already been fully considered
15 by the Commission just less than a year ago.
16 ACTING CHAIRPERSON BOYD: Thank you for
17 reminding us once again of the purpose of today's
18 hearing and the procedure. That's why I've been
19 struggling with the relevance of an intervention
20 at this point in time based on today's agenda
21 item.
22 Mr. Simpson, does that help you in any
23 way?
24 MR. SIMPSON: Yes. My application to
25 intervene is into this compliance proceeding, it's

1 not into their original power plant siting
2 decision. It's today's proceeding I'd like to
3 intervene in.
4 ACTING CHAIRPERSON BOYD: Once again,
5 the relevance of an intervention in this
6 proceeding has been discussed and seriously
7 questioned.
8 CHIEF COUNSEL CHAMBERLAIN: Mr. Simpson
9 has the opportunity to say whatever he wants to
10 say today.
11 ACTING CHAIRPERSON BOYD: Right. And we
12 welcome you to say whatever you want to say. We
13 do not see that it's relevant to have a petition
14 to intervene in this proceeding. And I think Mr.
15 Chamberlain just reinforced that.
16 So, we're not going to rule on something
17 that's been deemed irrelevant, so to speak.
18 MR. SIMPSON: Well, without considering
19 the actual application for intervention and the
20 reasons that I gave, then I'm afraid we don't have
21 the information in front of us to argue for this
22 intervention.
23 ACTING CHAIRPERSON BOYD: Mr. Wheatland.
24 MR. WHEATLAND: I just would like to
25 add, in addition to what Mr. Chamberlain stated,

1 that the rule cited by Mr. Chamberlain also
2 requires Mr. Simpson to serve any copy of his
3 petition on the applicant. And I have not
4 received a copy of any such petition. Even
5 sitting here today Mr. Simpson has not provided me
6 with a copy.
7 MR. SIMPSON: Yeah, I provided the
8 copies to the docket unit as I was instructed,
9 with the information from our prior hearings, that
10 the docket unit distributes this information.
11 That's what the testimony in the EPA hearing was,
12 that that's the function of the docket unit.
13 Now whether that's correct or not, I
14 don't know. But that was the testimony during the
15 EPA hearing.
16 ACTING CHAIRPERSON BOYD: Would you like
17 to present your views with regard to the item
18 before this Commission today?
19 MR. SIMPSON: Yes, thank you. We
20 received a notice that said this process would be
21 subject to your rule 1769. We responded to that
22 notice. And then we received the letter that said
23 basically 1769 isn't a part of this proceeding.
24 Now, we haven't received the opportunity
25 to brief a response to this staff report, I guess

1 you could call it, from the attorney. You know, I
2 look at other proceedings, I look at even the name
3 change, the Russell City name change. When that
4 happened the staff recommendation, staff has
5 reviewed the petition and finds that it complies
6 with the requirements of Title 20 of California
7 Code of Regulations 1769.
8 So, I read the applicant's response to
9 our objections. And they cited a number of cases
10 that you've granted extensions. But when I pulled
11 up these cases and I find Contra Costa Power Plant
12 Unit, that case also references it was subject to
13 1769.
14 East Altamont extension filed at the
15 same time, same applicant, same county, that
16 received a notice subject to 1769 and staff
17 report. We had actual staff analysis of new air
18 quality laws; we had staff analysis. All we have
19 in this is a letter from the attorney that says,
20 well, it's not going to violate any environmental
21 standards.
22 Now, we've demonstrated that it did. It
23 violated the Clean Air Act. And I demonstrated in
24 my objection, that they didn't see until
25 yesterday, that it also violates particularly the

1 Endangered Species Act. Fish and Wildlife was
2 given the wrong information. When this thing
3 moved they were given incorrect information to
4 make their decision. The original biological
5 opinion was canceled and this thing moved forward
6 with no biological opinion from Fish and Wildlife.
7 This processing of this amendment
8 ignored your own report on nitrogen deposition.
9 This project is adjacent to vernal pools, it's
10 adjacent to protected habitats. And although you
11 have the study, it wasn't taken into consideration
12 with this application.
13 I could go on with these extensions.
14 Calpine's Gilroy project, made an extension again
15 subject to 1769.
16 Now, the first extension with Calpine,
17 it was in the process of that amendment. So, the
18 argument at that point was, well, we're doing an
19 amendment anyway, so let's have the extension and
20 the amendment will make sure everything's right.
21 Now, we're not seeing that here. You've
22 got a plant that's licensed. When you licensed it
23 you recommended this fast-start technology because
24 this thing is licensed to start and stop on a
25 daily basis.

1 The Air District didn't take that
2 recommendation. They said that they have to build
3 this thing with the old technology, and buy their
4 air credits instead.
5 Now, this thing pollutes about two and a
6 half times what it would pollute with the fast-
7 start technology that's available today. So, we
8 don't have the facts. We don't have the best
9 available control technology for particulate
10 matter, for any of the other major pollutants.
11 Valero Cogeneration project filed an
12 extension, again subject to 1769. So what we're
13 looking for is at least a staff report, not just
14 from the attorney that says, oh, we don't have to
15 conform with our own laws or those of the Clean
16 Air Act, the actual staff to look at this thing
17 and say, oh, yeah, there are some valid points in
18 here. For somebody to actually review our
19 objections and respond to the applications that
20 we've made.
21 In addition to my objection and the
22 attachments, I attached objections from about 800
23 residents of the City of Hayward signed objections
24 to this proceeding. I submitted that with my
25 objection that was apparently lost until

1 yesterday.

2 In the Valero proceeding they say the

3 staff responds if the Energy Commission approves

4 this petition Valero would have to demonstrate

5 that the petition meets the criteria set down in

6 1769.

7 So, I haven't found an extension that

8 you've processed without taking into consideration

9 the environmental effects, which is what 1769

10 triggers is that consideration.

11 Now, my understanding is this is a

12 compliance proceeding. Now, on your website at

13 this year's compliance proceedings, it's not on

14 here. There's no compliance proceeding noticed on

15 your website. There's no compliance proceeding

16 docket that we can get to.

17 The information has gone to the

18 amendment file, so we found at least the

19 applicant's response and staff's response, but we

20 can't find the County's input, we can't find other

21 relevant information that we need to be clear on

22 this.

23 Looks like that's about it for me.

24 ACTING CHAIRPERSON BOYD: Thank you, Mr.

25 Simpson.

1 MR. SIMPSON: Thank you.
2 ACTING CHAIRPERSON BOYD: Any further
3 comments or questions from my fellow
4 Commissioners? The staff?
5 MS. DYAS: I would like to just make one
6 comment as Mr. Simpson had stated, the bulk of his
7 comments were lost, so to speak, in dockets. But
8 you did receive the original 30 pages that did get
9 filed. But I just wanted to make sure that you
10 were aware of that, that there were the first 30
11 pages, it was the remainder of the binder that he
12 filed.
13 ACTING CHAIRPERSON BOYD: Yes, we have
14 seen that material.
15 MR. SIMPSON: But what you didn't
16 receive was the bulk of the EPA appeal, which is
17 the basis of what's wrong with this project. The
18 EPA has, I don't know how this could be ignored at
19 this point, the EPA has said that this permit is
20 remanded.
21 So, do you approve projects without a
22 valid air permit?
23 ACTING CHAIRPERSON BOYD: I think Mr.
24 Chamberlain already addressed the fact that if and
25 when the Bay Area District acts upon the issue

1 that's been remanded back to them, they will
2 govern what the future is with regard to those
3 provisions.
4 And if those aren't adhered to there is
5 not a valid authority to construct, and the
6 project does not go forward.
7 All we're dealing with here today is
8 whether the applicant has showed cause for why
9 additional time should be given with regard to
10 that application, as other matters are dealt with.
11 MR. SIMPSON: And that cause, at this
12 point, has been proved that the cause if a
13 violation of the Clean Air Act. So is that good
14 cause to extend this?
15 And, how is it different than East
16 Altamont? They make these arguments that are
17 basically the same arguments for extending East
18 Altamont, but they don't have me to blame or the
19 EPA to blame or the rest of the parties, that the
20 market's not there for their product. That's why
21 they don't have the financing. That's why they're
22 not building these things.
23 They had an approved plant in East
24 Altamont that would satisfy this power purchase
25 agreement, this secret agreement they had with

1 PG&E. So, again, I object to this extension.
2 ACTING CHAIRPERSON BOYD: Thank you, Mr.
3 Simpson.
4 MR. SIMPSON: Thank you.
5 ACTING CHAIRPERSON BOYD: Any other
6 comments? Mr. Wheatland.
7 MR. WHEATLAND: I just feel compelled to
8 state for the record that the EAB decision did not
9 find that the applicant violated the Clean Air
10 Act. What the EAB decision found was that there
11 was a procedural defect in the notice that the
12 District provided under certain guidelines for how
13 they would notice the public hearing.
14 Any implication that Mr. Simpson might
15 raise that the applicant violated the Clean Air
16 Act or that there was a finding by the EAB as to
17 such, is clearly incorrect.
18 ACTING CHAIRPERSON BOYD: Thank you.
19 MR. SIMPSON: I'd like to request that
20 you take judicial notice of the EPA appeal and its
21 decision. Thank you.
22 ACTING CHAIRPERSON BOYD: All right, I
23 have three more cards left. They all indicate
24 issues with regard to folks who are pilots,
25 members of any pilot association, or something

1 else with regard to aviation.

2 I will call you all up here, but I will

3 caution you that we've heard this issue over and

4 over again. If you just want to agree with the

5 people who have testified before you, we

6 appreciate that.

7 But I think you've pretty well

8 concluded. We've heard a lot on the subject of

9 concern of pilots.

10 Ernest Pacheco. Now, that may not be --

11 it just says CAP.

12 MR. PACHECO: Yeah, that --

13 ACTING CHAIRPERSON BOYD: It could be

14 read Civil Air Patrol or it could be read a host

15 of --

16 MR. PACHECO: It's Citizens Against

17 Pollution, of which I'm a founding member.

18 ACTING CHAIRPERSON BOYD: Very good.

19 MR. PACHECO: We're a citizens group, as

20 you're probably aware by now, that incorporated,

21 came together to fight Russell City/Eastshore

22 siting in our city and to bring 100 percent

23 renewable clean energy to Hayward.

24 So, no, this is not a aviation issue,

25 though the aviation issue is absolutely pertinent.

1 I don't know whether this is going to be
2 considered under 1720 or 1769, I'll let you
3 decide. But it's something that I would like to
4 put out there for you to take into consideration.
5 The EPA has ruled that there are
6 fundamental flaws in the way that Russell City
7 notification was done. Looking, as we have, over
8 the past year at the CEC siting procedure in
9 general, there are fundamental flaws with the
10 entire system.
11 There is an inhouse mess in back of it
12 right now due to EPA's decision, and there's
13 probably, and there should be, an inhouse mess
14 right now due to the EPA's remanding the PSD
15 permit.
16 You haven't seen anything yet. This is
17 your best chance to stop this before we start
18 looking, or EPA and we continue to shine a light
19 on what's going on inside the CEC and other
20 agencies like Fish and Wildlife, BAAQMD, et
21 cetera.
22 When we get to the biological stuff
23 that's when it's really going to get interesting.
24 You can choose -- Calpine's already had a bite at
25 this apple. All right, this is going to be their

1 second extension.

2 A correct interpretation of the

3 Commission's own decision, or their own reading on

4 how to enact 1720.3 is a rational process, and it

5 is, I believe, appropriate to deny them under your

6 prior decisions, your two prior decisions, not to

7 give them the extension.

8 Anyway, as I said, I don't know where

9 you're going to fit it in, but it's going to get

10 ugly. And this is your best chance to shut this

11 project down is by simply not giving them the

12 permit. It ends. The EPA's suit will go away,

13 and no one's going to look at all the dirty

14 laundry.

15 Now, for me, it is not a NIMBY thing.

16 I'm not just concerned about this project. I

17 actually believe there needs to be some serious

18 change here at the CEC with the siting procedures.

19 Serious change. This is something that hurts the

20 entire state. And, in fact, the entire world, as

21 we realize that we have to make the change to

22 clean energy.

23 The rubber-stamping of all these fossil

24 fuel power plants is absurd. And looking at the

25 way it is actually done, there are loopholes all

1 over the place. There are abuses of discretion.
2 But the system, itself, is flawed.
3 I believe the CEC is starting to make
4 some changes, and this is a good chance to say no
5 to the last of the bad as we move forward with
6 clean energy.
7 Anyway, that's all I'd like to say.
8 Thank you.
9 ACTING CHAIRPERSON BOYD: Thank you, Mr.
10 Pacheco. You're certainly entitled to your views.
11 I'll pit our record, though, against any other
12 agency who has the same responsibility in the
13 world.
14 Andy Wilson.
15 MR. WILSON: Mr. Chairman,
16 Commissioners, Staff. My name is Andy Wilson; I'm
17 a pilot; I'm instrument rated. I'm also a
18 resident of Hayward since 1974.
19 My response will be given for me by Ms.
20 Hargleroad.
21 ACTING CHAIRPERSON BOYD: This is a
22 little unusual to get two bites at the apple.
23 MS. HARGLEROAD: Well, thank you for
24 entertaining that. And I would just like to take
25 the opportunity to reply to some of the statements

1 that were made, because we haven't had that
2 opportunity to reply because we have not been
3 recognized as formal intervenors.
4 And that is the state -- representations
5 have been made to you that this petition is
6 undisputed. That is a misstatement of fact. That
7 is not correct.
8 And we have brought that out in our
9 pleadings in response to staff's recommendation.
10 We have disputed that there has been exhaustive
11 environmental review. That is totally disputed,
12 and I think you've heard it, yourselves. And
13 that's based on the notice, because the evidence
14 was not admitted during the evidentiary
15 proceeding.
16 We have also disputed the applicant's
17 attorney's representation that financing is not
18 complete because of pending litigation. And we
19 raised that in our pleading we filed yesterday.
20 And on page 4, referring to the
21 applicant's 2007 petition for an extension, and in
22 that petition the applicant represents once the
23 CPCN is approved, project financing will be
24 promptly completed. Which they anticipated to be
25 in the last quarter of 2007.

1 Now, as you've heard Mr. Simpson's
2 appeal to the EPA was not filed until January 2.
3 So, this applicant made representations to you
4 that the financing was dependent upon the CPCN in
5 2007. And now they're blaming it on litigation
6 which was filed after the time for them to have
7 completed the financing.
8 We raise that as important inconsistent
9 statements from this applicant. And under your
10 statute, and I'll be happy to provide you the
11 citation, I don't have it immediately with me but
12 I can later, is that's grounds to revoke this
13 license.
14 Thank you. So, I'd like to clarify.
15 Their petition is disputed. We disputed it. We
16 disputed the allegations of good cause and the
17 County also disputed it. We specifically disputed
18 those.
19 Thank you.
20 ACTING CHAIRPERSON BOYD: Thank you.
21 Questions?
22 COMMISSIONER DOUGLAS: No.
23 ACTING CHAIRPERSON BOYD: Comments from
24 staff?
25 Mr. Wheatland?

1 MR. WHEATLAND: Yes, just briefly. Ms.
2 Hargleroad is misstating the history of this
3 matter. With respect to the decision by the
4 Commission that approved this amendment, Ms.
5 Hargleroad and others applied for reconsideration.
6 We could not begin construction until
7 the completion of the Commission's decision on the
8 petition for reconsideration.
9 Then Ms. Hargleroad and others filed a
10 petition for writ of review to the California
11 Supreme Court. We awaited the commencement of
12 construction until the writs were denied on
13 January 3rd, but the day before, on January 2nd,
14 Mr. Simpson filed his appeal with the EPA.
15 Under federal law the filing of that
16 appeal stayed the construction of this project.
17 So, it's been exactly because of the actions of
18 Ms. Hargleroad, Mr. Simpson, the County and others
19 that have delayed the implementation of this
20 project and the commencement of construction.
21 And it's very clear that that continues
22 even today.
23 ACTING CHAIRPERSON BOYD: Thank you.
24 Mr. Chamberlain, is proof of financing a siting
25 criteria of this agency?

1 CHIEF COUNSEL CHAMBERLAIN: I'm unaware
2 of any regulation that requires proof of
3 financing.
4 ACTING CHAIRPERSON BOYD: Thank you.
5 CHIEF COUNSEL CHAMBERLAIN: It could be
6 relevant --
7 ACTING CHAIRPERSON BOYD: It's always
8 considered relevant.
9 CHIEF COUNSEL CHAMBERLAIN: Right. By
10 the way, I would like to clarify that I did not
11 say that the parties had not disputed this
12 application. What I said was there was not a
13 dispute, the trail of litigation that Mr.
14 Wheatland has just laid out. Those are facts that
15 you can take official notice of.
16 ACTING CHAIRPERSON BOYD: Thank you.
17 The last witness, Carol Ford.
18 MS. FORD: Thank you, Commissioners. I
19 just have a couple of items. First of all, I
20 represent the -- I'm Carol Ford and I represent
21 the California Pilots Association. I'm the Vice
22 President for Region 3.
23 And it is not Ms. Hargleroad speaking
24 for herself. She's speaking for the statewide
25 organization of the California Pilots Association

1 and those other groups previously mentioned.
2 And one of the things that I'm greatly
3 concerned about is the lack of notification under
4 your rules 1769. Not only weren't the pilots at
5 Hayward Airport notified that this was going to be
6 nearby and interfering with the airspace, neither
7 were various parts of the FAA, including the
8 airspace people and the air traffic control
9 division. There are many divisions of the FAA.
10 And it's Mr. Richards whose testimony
11 about Eastshore was very vital to the Eastshore
12 Presiding Member's Preliminary Decision against
13 Eastshore. That's information that Mr. Richards
14 provided in December, is the same information that
15 he would have provided had he been allowed to
16 testify and noticed. He wasn't noticed, therefore
17 he couldn't testify on the Russell City project.
18 That's of great concern to all the
19 pilots in this state, not to mention the country.
20 Because, as you know, people fly from other states
21 into Hayward or Oakland.
22 So we weren't noticed. And we want that
23 information applied directly to Russell, as well.
24 And speaking as a breather, I'm very
25 concerned that the permit for substantial

1 deterioration of the air that I have to breath is
2 not given. And that that is of great concern to
3 me, that they're even applying for a permit to
4 wreck the air further is of great concern.
5 So, thank you very much.
6 ACTING CHAIRPERSON BOYD: Thank you, Ms.
7 Ford.
8 All right, there are no more witnesses.
9 Does the applicant have any concluding remarks?
10 And I'll ask the same of the staff.
11 MR. WHEATLAND: No, thank you. I think
12 we've exhausted this topic, and certainly
13 exhausted me.
14 ACTING CHAIRPERSON BOYD: Staff?
15 MR. BELL: No further comments.
16 ACTING CHAIRPERSON BOYD: Thank you.
17 All right, we have an item before us. We have a
18 recommendation from our staff. How would the
19 Commission like to proceed?
20 Commissioner Douglas, you have a
21 comment?
22 COMMISSIONER DOUGLAS: Well, I'd like
23 to, I'd like to make a comment. I'd like to point
24 out again that commenters have been asking us to
25 reopen issues that have been decided. And what's

1 before us is not to relitigate the merits of the
2 Commission's decision to grant the major amendment
3 in 2007.
4 The Commission considered the merits of
5 that decision thoroughly already in making that
6 decision. There was also a petition for
7 reconsideration. And that decision was also
8 challenged in three petitions to the California
9 Supreme Court, none of which were successful.
10 I think we have, the time for appeal has
11 passed. I think these issues have been
12 adjudicated, as Commissioner Boyd has pointed out.
13 So, I think on the issue before us
14 today, the question of good cause, -- are you
15 asking for a motion?
16 ACTING CHAIRPERSON BOYD: I'm prepared
17 to entertain a motion.
18 COMMISSIONER DOUGLAS: I'll move
19 approval.
20 COMMISSIONER ROSENFELD: Second.
21 ACTING CHAIRPERSON BOYD: All in favor?
22 (Ayes.)
23 ACTING CHAIRPERSON BOYD: Motion
24 carries, three to nothing. Thank you, everybody.
25 Item 11 on our agenda is the minutes of

1 our July 16th meeting. Do I have a motion?
2 COMMISSIONER ROSENFELD: I move the
3 minutes.
4 ACTING CHAIRPERSON BOYD: Commissioner
5 Douglas, would you like to second that motion?
6 COMMISSIONER DOUGLAS: Yes, second that
7 motion.
8 ACTING CHAIRPERSON BOYD: All in favor?
9 (Ayes.)
10 ACTING CHAIRPERSON BOYD: We were all
11 present; we're, therefore, eligible to make such a
12 vote.
13 Any Commission Committee presentations
14 or discussion by the Commissioners? Any items you
15 want to bring up?
16 Hearing none, I'll move to the Chief
17 Counsel's report.
18 CHIEF COUNSEL CHAMBERLAIN: Thank you,
19 Mr. Chairman. I have two items today. First is
20 to report to you that in a case in which the
21 Commission filed an amicus brief some time ago,
22 this was the case challenging the South Coast Air
23 Quality Management District's rule 1309.1 relating
24 to priority reserve credits.
25 A decision was issued yesterday by the

1 Superior Court on the issues that the Commission
2 wrote the brief about, which the brief, as you may
3 recall, was not accepted by the court.
4 But nevertheless, on the issues that the
5 Commission wrote the brief about, concerning the
6 authority of the District to adopt a rule of that
7 nature, the court granted summary adjudication of
8 those issues in favor of the District.
9 With respect to a number of other issues
10 that were raised by the environmental plaintiffs
11 relating to the CEQA compliance, the court ruled
12 in favor of the environmental plaintiffs, and
13 remanded the rule to the District for further
14 consideration.
15 I'm not sure, you know, I've been
16 reading exceedingly small print on my Blackberry
17 trying to get the details, and I obviously
18 haven't --
19 ACTING CHAIRPERSON BOYD: Been there,
20 that's hard.
21 CHIEF COUNSEL CHAMBERLAIN: -- haven't
22 done that yet. But I wanted to let you know of
23 that news.
24 The second thing is that I have an item
25 for closed session relating to whether the

1 Commission has facts and circumstances warranting
2 the initiation of litigation. In essence this has
3 to do with a letter that we received from the
4 Secretary of State. And I need to discuss it with
5 the Commission.
6 ACTING CHAIRPERSON BOYD: Okay. Thank
7 you. We will then have an executive session
8 following adjournment of this meeting.
9 Executive Director's report.
10 EXECUTIVE DIRECTOR JONES: I only have
11 one very short report this morning. I wanted to
12 -- most of you know her, but I wanted to introduce
13 Suzanne Garfield who is the newest member of our
14 executive management team. She's our Assistant
15 Director for the Media and Public Communications.
16 Go ahead and stand up, Suzanne.
17 ACTING CHAIRPERSON BOYD:
18 Congratulations, Suzanne.
19 COMMISSIONER ROSENFELD:
20 Congratulations.
21 MS. GARFIELD: Thank you.
22 ACTING CHAIRPERSON BOYD: You have your
23 work cut out, based on what you heard today.
24 MS. GARFIELD: Well, I'm referring
25 everything to our new Public Adviser, Associate

1 Public Adviser.

2 ACTING CHAIRPERSON BOYD: Oh, no.

3 You've got some sweeping up to do here.

4 Not seeing the Legislative Director

5 available --

6 EXECUTIVE DIRECTOR JONES: She had

7 nothing to report.

8 ACTING CHAIRPERSON BOYD: Thank you.

9 Public Adviser's report.

10 MS. McMAHON: The same thing, the Public

11 Adviser's Office doesn't have anything substantive

12 to report. I just wanted to add, though, that

13 Elena's on vacation and I've enjoyed meeting staff

14 my first two weeks, so thank you.

15 ACTING CHAIRPERSON BOYD: Well, welcome.

16 Welcome and congratulations --

17 (Operator interruption>

18 MS. McMAHON: Thank you.

19 ACTING CHAIRPERSON BOYD: -- on being

20 here and you are --

21 (Operator interruption.)

22 ACTING CHAIRPERSON BOYD: -- you were

23 introduced to --

24 (Operator interruption.)

25 ACTING CHAIRPERSON BOYD: Harriet, is

1 there a problem here?
2 Anyway, welcome aboard.
3 MS. McMAHON: Thank you.
4 ACTING CHAIRPERSON BOYD: I'm about
5 ready to call for public comment.
6 (Operator interruption.)
7 ACTING CHAIRPERSON BOYD: Do we have a
8 public comment? I have a note that a
9 representative of the California Air Pollution
10 Control Officers Association would like to speak
11 to a item 1.c., which we already took action on.
12 But if somebody wants to say something,
13 is that who we're trying to patch in?
14 Keri Koster.
15 MS. KOSTER: Yes.
16 ACTING CHAIRPERSON BOYD: Are you there?
17 MS. KOSTER: Yes, I'm --
18 ACTING CHAIRPERSON BOYD: Would you like
19 to say something to the Commission?
20 MS. KOSTER: Yes. Good morning,
21 Commissioners. My name is Kari Koster; I'm
22 (inaudible) today.
23 ACTING CHAIRPERSON BOYD: All right,
24 we're having a very difficult time hearing you.
25 The reception is breaking up badly. So, bear with

1 us.

2 MS. KOSTER: Hold on. Can you hear

3 better?

4 COMMISSIONER ROSENFELD: I, for one,

5 cannot hear you.

6 ACTING CHAIRPERSON BOYD: Hello?

7 MS. KOSTER: -- better now?

8 COMMISSIONER ROSENFELD: No.

9 MS. KOSTER: -- trying.

10 ACTING CHAIRPERSON BOYD: All right,

11 quickly, if you can. If you'd say what you'd like

12 to say, we'll try to interpret.

13 MS. KOSTER: When I was (inaudible)

14 today that my comment, as it relates to the

15 conference is that I (inaudible) in green energy.

16 And I represent people (inaudible) involved in

17 green energy issues.

18 ACTING CHAIRPERSON BOYD: All right.

19 Well, we appreciate your comment. You might be

20 pleased to know that we unanimously approved this

21 item about two hours ago, so in any event --

22 MS. KOSTER: (inaudible).

23 ACTING CHAIRPERSON BOYD: -- thank you

24 for your support.

25 MS. KOSTER: And that (inaudible) my

1 client (inaudible) is very happy to work with the
2 Commission (inaudible) California, and not just
3 concerned residents, but as concerned people
4 across the nation (inaudible) green energy into
5 California, as well as other places, as well.
6 ACTING CHAIRPERSON BOYD: Well, we
7 appreciate the offer. Thank you very much.
8 MS. KOSTER: Thank you.
9 ACTING CHAIRPERSON BOYD: Mr. Galati.
10 MR. GALATI: Yes, thank you. Take just
11 a brief moment. I have, throughout my career I
12 have sought to --
13 ACTING CHAIRPERSON BOYD: Excuse me,
14 excuse me, can we break that connection, Harriet?
15 Thank you. Go ahead.
16 MR. GALATI: Scott Galati speaking on
17 behalf of my firm. Throughout my career here
18 working with the Energy Commission, we have
19 engaged in a prefiling meeting with Commissioners
20 about projects.
21 It has come to my attention, I've had
22 conversations with some Commissioner's Advisors,
23 as well as Gary Fay, that that may be coming close
24 to the line of violating the spirit of the ex
25 parte rule.

1 So, I wanted to let you know that after
2 those conversations I will not be requesting those
3 types of meetings anymore to try to work with the
4 Commission. Although I may have a disagreement on
5 whether or not it violates the spirit.
6 And it certainly meant no intention on
7 my behalf of myself or my clients of ever doing
8 that.
9 But there is some things that I think
10 that we get out of those meetings that I would
11 like the Commission to consider, providing an
12 opportunity for us to be able to get, I think, the
13 appropriate input from Commissioners.
14 Sometimes there is a dispute or a
15 disagreement or worse, lack of guidance, as to
16 what Commission direction may be taking place.
17 Staff will often, in a prefiling meeting, do their
18 best to advise an applicant early on in the
19 process about what they think the applicant needs
20 to do in order to successfully comply with the
21 Commission policies and successfully get through
22 the process.
23 We find those meetings very very
24 helpful. But unfortunately, once in awhile, there
25 is maybe a disagreement or a discrepancy or lack

1 of guidance on how Commission policy might affect
2 a particular project.
3 Let me give you an example. We,
4 unfortunately, had to go through the siting
5 process during what I term the water war years
6 where we fought with staff over and over and over
7 again about the application of state water policy.
8 Until the Commission identified, in its
9 2003 IEPR report, a very clear policy for this
10 Commission, we had to litigate those issues over
11 and over again. It was very inefficient. I think
12 it created bad will. I think it made it difficult
13 for applicants to design a project early on,
14 because they weren't sure what the outcome would
15 be.
16 I know that the Siting Committee has
17 routinely taken issues up that might be policy
18 guidance issues. Those are the kinds of issues
19 that I would like to hear from the Commissioners
20 early on when advising my clients how to design
21 their project.
22 It's very very difficult to change the
23 design of a project appreciably when I get to
24 evidentiary hearing, or a final staff assessment,
25 and find that I am at odds with staff. It's very

1 difficult, especially in this particular type of
2 market because we are bidding in firm price bids
3 often at the same time, or prior to, or during the
4 process.
5 And that makes it difficult, I think for
6 an applicant to change course without -- and so
7 what we end up having, I think, is more
8 adjudicative nature of a process instead of the
9 way I try to strive for, is to come to evidentiary
10 hearings with no disputes.
11 And so if we could have some input from
12 the Commissioners early on, and I'm fine with that
13 being in a public setting, I'm fine with that
14 being -- from a policy guidance I would like to
15 know what kinds of policies are the Commissioners
16 working for.
17 I can think of two projects that if I
18 knew that the 2003 IEPR report was being worked
19 on, with that particular potential outcome, we
20 would have changed our project rather than
21 litigate with staff.
22 Because staff took a position for quite
23 some time, before the Commission ever did, and the
24 Commission decisions were split. Sometimes you
25 would -- they would side with staff, and sometimes

they wouldn't.

So, in order to avoid that, if the Commission is considering policy guidance, and I'm going to raise the big issue, which is what are we going to do with solar thermal in the desert.

I am representing applicants that are considering nine to 12 projects between now and next year, and they're asking me very difficult tough questions regarding policy related issues that I think would be very inefficient to handle on a siting case-by-siting case basis.

So, I would implore the Commission, especially on solar, to engage in an outreach and a subsequent either public process or take it up in one of your IEPRs.

I have requested a meeting with the Siting Committee on August 6th -- I will not be bringing any of my clients -- in which I want the Siting Committee to hear an applicant's point of view of what some of the hurdles are.

I know such meetings have taken place between the Siting Committee and staff. And I would like to have an opportunity, as well, to, on a nonproject-specific basis, tell you some of the things real life that we're dealing with.

1 ACTING CHAIRPERSON BOYD: I appreciate
2 those comments. There's been a fair degree of --
3 it would be too strong to label it blowback, but
4 there's been some discussion of the recent issue
5 with regard to what constitutes ex parte
6 communication and what-have-you.
7 And I haven't had a chance since that
8 occurred to have discussions with my fellow
9 Commissioners. But you touched upon something
10 that was going through my mind. And probably with
11 the Executive Director and legal counsel and other
12 Commissioners, we maybe need to talk about, or can
13 talk about it.
14 But one thought was, I know there's
15 disappointment on the part of many Commissioners
16 in that they lost this opportunity to convey that
17 policy. And I was just wondering, I think, we'll
18 debate it a little bit, or discuss it.
19 The possibility of the Siting Committee,
20 one of whose members is here today, having --
21 noticing a public meeting to discuss issues like
22 that. Having had it noticed, the rest of us can
23 attend. And listen to and partake in the
24 discussions as long as it's held in a public
25 forum.

1 And you just touched upon one of the
2 things that's been rattling around here, just with
3 regard to the solar issue. And frankly, if you,
4 and/or applicants, and all the other public
5 listening to this, have similar broad policy
6 thoughts, would bring them to our attention, it's
7 quite possible there'd be some mechanism where we
8 could have a very timely discussion.
9 I'm glad to hear you reference the IEPR
10 as helping to provide policy on some things. And
11 I appreciate that that came along when it did and
12 provides that opportunity.
13 But there are some things that probably
14 need to be handled outside, or talked about
15 outside the scope of an IEPR, which may not be as
16 timely or what-have-you.
17 So, you make a good point. And I think
18 I'm sure we'll dwell on it.
19 Commissioner Douglas, you --
20 COMMISSIONER DOUGLAS: I have a couple
21 brief responses, as well. As a member of the
22 Siting Committee, and also a Commissioner with a
23 great interest in particular in the solar thermal
24 projects that you brought up.
25 First of all, I very much think that

many of these meetings can be productively held in public. And in some cases, many or most cases are appropriately held in public.

And the example of issues where staff is beginning to have a position and there may be policy differences between Commissioners, and applicants want guidance on where the Commission is heading, having a noticed meeting where the Commissioners with particular interest in either siting in general, or the specific environmental issue of concern, in particular take part in a public discussion, I think provides better long-term guidance for you, as to where the Commission is heading. And it also helps the Commission formulate its own ideas better on these issues.

So, I welcome your outreach, particularly on the solar thermal. We have talked quite a lot internally about doing some kind of best practices set of guidelines or a guidebook for solar thermal projects in the desert.

We're also talking to Fish and Game and Bureau of Land Management, Fish and Wildlife Service about working together on some larger scale planning activities for solar thermal, in particular in the Mojave and Colorado Deserts.

1 So we have put a lot of thought and a
2 lot of effort into this, which we'd be more than
3 happy to share with you and other members of the
4 public as this comes forward.
5 I'll also say that I, for one, and I
6 think other Commissioners would say the same
7 thing, really value your experience, your long-
8 standing experience with our process. And on the
9 many many many cases that you have participated in
10 before us.
11 And so I don't -- I hope you don't see
12 this new policy direction, or legal direction
13 coming out of the Commissioners as in any way
14 preventing you from coming to us and saying, based
15 on your years of experience doing this, these are
16 your observations about our process in general,
17 and how it can be improved.
18 I very much value that from you and
19 others, including not only the attorneys
20 representing applicants, but obviously intervenors
21 and members of groups that typically participate
22 in these proceedings.
23 So, again, I think the issue really
24 where the concerns have been raised and where,
25 frankly, I agree with the concerns, are when there

1 is a specific project that is clearly about to be
2 filed, pending.
3 And I know there's been a practice of
4 applicants coming in with their attorneys and
5 saying, well, this is approximately what we think
6 we're doing, and these are the issues we see
7 rising. And I think these are the situations that
8 we want to avoid.
9 But we very much don't want that to
10 impede us from achieving these other goals.
11 MR. GALATI: I appreciate that; thank
12 you very much. And, you know, I will insure that
13 when I do meet with a Commissioner, that I will
14 not be talking about any specific project. And I
15 will be talking about procedure and process, or
16 major general hurdles.
17 COMMISSIONER DOUGLAS: Great.
18 MR. GALATI: And those are the kinds of
19 things that I think are important, to be able to
20 engage in a discussion for issue identification,
21 not for resolution. I'm not seeking a meeting
22 with a Commissioner that says, if you do this
23 you'll get the project approved. I never have,
24 and I certainly won't.
25 But what I would like to make sure that

we get some guidance. Because I'll tell you, as I sit here right now, it is easier for me to permit a project in the middle of a community that's burning natural gas than it is for me to permit a renewable project in California anywhere.

That is my observation. And I don't think that's what we want. I think we would like to see that the other way around.

And my observation is that when people bore down on the individual impacts and see only their technical area, it's very difficult to make tradeoff between land disturbance and air quality, or natural gas pipeline risks and water cooling.

And those tradeoffs need to be made if we are going to be successful in the renewable area of having utilities-scale renewable generation.

And unfortunately, it's not something that I, as an applicant, can do. And it's also not something that I think staff is equipped to do. Staff does its job, does it well; looks at its individual issues. But it's for you, the Commissioners, to decide which tradeoff will be made.

Those are the large policy guidance that

1 my clients need to know right now, unfortunately.
2 COMMISSIONER DOUGLAS: I agree with you.
3 And I also think it's those larger tradeoff issues
4 that really will be best decided through public
5 discussion in a public process.
6 And I'll commit that particularly on the
7 solar thermal issues, we very much want to get
8 something like that underway.
9 MR. GALATI: Okay.
10 ACTING CHAIRPERSON BOYD: I'd just
11 comment, you've brought up a word that's been
12 bandied about a lot lately, and that is tradeoffs.
13 And then you've mentioned specific arenas.
14 And I would just add that that question,
15 the questions you raised, that issue is even
16 bigger than this agency. It has to be dealt with
17 at a policy level between multiple agencies. And
18 I think we need to have, you know, high-level
19 discussions internally as it affects our program.
20 And we need to have the discussion with others who
21 are affected by it.
22 I think, I just personally think that's
23 an issue that is a very knotty issue that needs to
24 be dealt with. Because things now just cut across
25 everything else.

1 MR. GALATI: Right.

2 ACTING CHAIRPERSON BOYD: And people are

3 a little afraid to say the word tradeoffs.

4 MR. GALATI: And I wanted to also

5 clarify that by the word tradeoff I don't mean

6 having environmental impacts in one area and not

7 having them in the other.

8 I think it's possible to have no

9 environmental impacts in all the areas. But the

10 level of conservatism of what mitigation might be

11 appropriate, or the level of conservatism of how

12 deeply we bore into the analyses of one versus the

13 other, that might need some larger policy

14 guidance.

15 I'll give you a perfect example. A

16 conservative approach would be to mitigate

17 tortoise habitat at a four-to-one acreage. That's

18 a conservative approach. That is mitigation.

19 Would the other agencies care to engage in a

20 debate about whether one-to-one is more

21 appropriate.

22 So, I'm not talking about not

23 mitigating. I'm talking about how do we decide

24 the balancing act. And that's something we need.

25 We need policy-level guidance for that. Because

1 individually, it's very difficult to resolve on a
2 specific area-by-area basis.
3 So, anyway, I don't want to take up any
4 more time.
5 ACTING CHAIRPERSON BOYD: No, --
6 MR. GALATI: I really appreciate it and
7 want to make sure that you guys all understand you
8 won't be getting those requests from me anymore.
9 ACTING CHAIRPERSON BOYD: All right.
10 MR. GALATI: Thanks.
11 COMMISSIONER DOUGLAS: Thank you.
12 ACTING CHAIRPERSON BOYD: Thank you.
13 All right, I see virtually no other
14 public, except the eternal public. Hi, Manuel.
15 (Laughter.)
16 ACTING CHAIRPERSON BOYD: I will adjourn
17 this hearing, and we, at the request of our Chief
18 Counsel, will go to executive session now to
19 discuss the one item he brought to our attention.
20 And I would suggest we do it in the
21 Chair's Office, just because it will take me half
22 an hour to clean up enough to make room for
23 everybody in mine.
24 (Whereupon, at 12:30 p.m., the business
25 meeting was adjourned into executive session.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of August, 2008.