

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, FEBRUARY 25, 2009

10:00 A.M.

Reported by:
Peter Petty
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COMMISSIONERS PRESENT

James D. Boyd, Vice Chairperson

Jeffrey D. Byron

Julia A. Levin

STAFF PRESENT

Melissa Jones, Executive Director

William Chamberlain, Chief Counsel

Harriet Kallemeyn, Secretariat

Mark Hutchison

Gabriel Herrera

Michael Smith

Jared Babula

Jim McKinney

Raoul Renaud

Felicia Miller

Deborah Dyer

Lisa DeCarlo

Terry O'Brien

Betty LaFranchi

Valerie Hall

Michael Gravely

Thom Kelly

Linda Spiegel

David Hungerford

PUBLIC ADVISER

Elena Miller

ALSO PRESENT

Andrew E. Panson
California Air Resources Board

Richard Lyon
CyberTran International, Inc.

Gina Grey (via teleconference)
Western States Petroleum Association

Doug Wickizer
California Department of Forestry and Fire
Protection

Danielle Fugere
Friends of the Earth

John Shears
Center for Energy Efficiency and Renewable
Technologies

Allan J. Thonpson, Attorney
on behalf of City of Riverside

Robert B. Gill
City of Riverside

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

Anne Runnalls
URS Corporation

Kent Larsen
Martifer Renewables Solar Thermal

John S. Lague
URS Corporation

Jim Swaney (via teleconference)
San Joaquin Valley Air Pollution Control District

Leilani Johnson Kowal
Department of Water and Power
City of Los Angeles

ALSO PRESENT

Norman Pedersen
Southern California Public Power Authority

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

2 10:00 a.m.

3 VICE CHAIRPERSON BOYD: Good morning,
4 everybody. Welcome to the February 25th business
5 meeting of the California Energy Commission. And
6 I invite you all to join us in the Pledge of
7 allegiance.

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

10 VICE CHAIRPERSON BOYD: Thank you. I
11 would like to note that we fortuantely have the
12 bare minimum quorum here today, once again. The
13 flu bug is ravishing this place. Commissioner
14 Douglas, however, is on maternity leave, home
15 taking care of her new daughter, and hopes to
16 rejoin us for meetings in March. And for all I
17 know she's listening in to this. Best be careful.

18 And Commissioner Rosenfeld is about now
19 in China, on his own time, at the invitation of
20 the Chinese government, I guess, and expense of
21 our federal government, imparting his wisdom on
22 efficiency to folks there. So we wish him well.

23 I want to take this opportunity to
24 welcome our newest Commissioner, Commissioner
25 Levin, Julia Levin. And normally I would call

1 upon the new Commissioner to make any remarks
2 she'd like to make, but she's a week or two behind
3 me in whatever it is that ails us, and has lost
4 her voice. And so she asked for the opportunity
5 to have time in two weeks to make her opening
6 remarks. And we want to save what little voice
7 she can muster for the ayes and nays that might be
8 necessary through this meeting.

9 But we do very much welcome you to the
10 Commission, a great addition. I've had the
11 fortunate opportunity of knowing the Commissioner
12 for more years than I'll admit for both of our
13 benefits. But, in any event, it's a real pleasure
14 having you here.

15 And we look forward to Chairman Douglas
16 joining us, as I said, in the not too distant
17 future, when she's ready, as she said, in March,
18 to start coming into the office.

19 Would you like to say a welcoming
20 remark?

21 COMMISSIONER BYRON: Yeah, I don't
22 normally speak on behalf of other Commissioners,
23 but I know that Commissioner Levin is very happy
24 to be here.

25 (Laughter.)

1 COMMISSIONER BYRON: I'm going to speak
2 quickly, but no one is more happier to have her
3 here than we are, so, welcome, Commissioner Levin.

4 VICE CHAIRPERSON BOYD: All right, thank
5 you. You'll find Commissioner Byron and I more
6 than make up in terms of words for the third
7 voice.

8 Agenda and revisions to the agenda. I
9 want to mention that agenda item number 4 has been
10 pulled from the agenda, to be discussed at a
11 future meeting when we have, perhaps, a full
12 Commission.

13 And I believe with that there are no
14 other agenda corrections. Well, I might as well
15 do it now while I'm at it. We're not going to be
16 able to act on the minutes today because we don't
17 have a quorum of those who were present for the
18 meeting in question to even vote on the minutes.
19 It's not a big item, but noted for the record.

20 And with that, I'll move to the first
21 item, agenda item number 1, which is the consent
22 calendar. Is there any discussion or motion on
23 the consent calendar?

24 COMMISSIONER BYRON: I move the item.

25 COMMISSIONER LEVIN: Second.

1 VICE CHAIRPERSON BOYD: There's a motion
2 and really a second.

3 All in favor?

4 (Ayes.)

5 VICE CHAIRPERSON BOYD: Opposed? None.
6 That carries three to nothing. Thank you.

7 Agenda item number 2, Energy Commission
8 Committee appointments. I don't see anybody
9 springing up to the microphone, interestingly
10 enough. So I will do my best in explaining the
11 item.

12 This is agenda item number 2. There are
13 two documents, both labeled Energy Commission
14 order number 09-0225-2. This order is to make
15 changes in our standing committees and in the
16 siting department, siting committees of the
17 Commission to reflect three things.

18 One, the departure of Commissioner
19 Pfannenstiel. Number two, the arrival of our new
20 Commissioner. And number three, the elevation of
21 Commissioner Douglas to Chairman of the
22 Commission.

23 So there's been modifications to the
24 Budget and Management Committee, which will be
25 presided over by Commissioner Douglas, with myself

1 as the Associate Commissioner.

2 The Legislative and Intergovernmental
3 Committee, again presided over by Commissioner
4 Douglas, with myself as the Associate
5 Commissioner. Maybe you're picking up the pattern
6 there of Chairman and Vice Chairman on those two
7 Committees is the historical practice.

8 The Research, Development and
9 Demonstration Committee, Chairman Pfannenstiel
10 having left, and the Presiding Commissioner will
11 be Commissioner Douglas, and I am the Associate
12 Commissioner.

13 The Efficiency Committee, which is
14 presided over by Commissioner Rosenfeld, will be
15 joined as his Associate, Commissioner Levin.

16 The Renewables Committee will now be
17 presided over by Commissioner Levin, with
18 Commissioner Douglas as the Associate.

19 And the AB-32 Committee, as we call it,
20 which is, in effect, an ad hoc committee of this
21 Commission, will be presided over by myself and
22 Commissioner Byron will continue as the Associate
23 Commissioner.

24 This Committee was formed quite some
25 time ago to fulfill -- oversee the

1 responsibilities of this Commission as it related
2 to AB-32 and specifically the electricity
3 component thereof. Everyone's quite aware of the
4 fact that a joint decision of the CPUC and this
5 Commission were forwarded quite some time ago to
6 the Air Resources Board for their consideration.
7 The ball is in their court, our agencies have
8 continuing responsibilities.

9 We will continue this Committee to
10 provide oversight for the time being on AB-32
11 activities. But it is our intention, the Chair
12 and myself talked at length about exploring the
13 need, the possibility of making changes in the way
14 to oversee our climate change activities. All of
15 us are interested and concerned and have in our
16 policy committees some form of responsibility for
17 the many many activities that constitute the work
18 that has to be done to carry out AB-32.

19 And we are likely to move to our various
20 policy committees those components of the climate
21 change program that are appropriate to those
22 policy committees. And perhaps continue oversight
23 through our existing Budget and Management
24 Committee. Commissioner Douglas is very
25 interested in climate change, as are we all. But

1 until such time as she returns and we're able to
2 discuss this, we'll continue with our existing ad
3 hoc committee.

4 The other document details all the
5 various power plant siting committees. I am not
6 going to read them all to the audience, because
7 there's pages of them. But let us just say that
8 we anxiously assigned Commissioner Levin to
9 several committees, which I'm sure she's
10 speechless over at the present time. And that
11 that order so reflects those changes, which also
12 reflect the departure of Commissioner
13 Pfannenstiel.

14 So, with that description, do any of my
15 fellow Commissioners have any questions? And if
16 not, do we have a motion to approve this order?

17 COMMISSIONER BYRON: I'd like to move
18 the item with a comment. And, of course, it's
19 probably more of an inside baseball comment. I
20 cannot say enough about the value of this
21 Commission's structure, having watched now other
22 commissions in the state function.

23 I think the committee structure is
24 extremely valuable to the state. It really allows
25 us to move through a lot more business being more

1 Commission driven and the things it can do.

2 You know, I think it's an extremely
3 valuable process that I've only come to appreciate
4 more and more as I'm here.

5 So I certainly move the item, and I
6 thank our new Commissioner Levin for meeting up
7 with a healthy case load on the power plant
8 siting.

9 VICE CHAIRPERSON BOYD: Thank you,
10 Commissioner Byron.

11 COMMISSIONER LEVIN: Second.

12 VICE CHAIRPERSON BOYD: There's a motion
13 and a second.

14 All in favor?

15 (Ayes.)

16 VICE CHAIRPERSON BOYD: Opposed? None.
17 Three to nothing. I think I heard an aye over
18 here.

19 All right. Going to move now to more
20 traditional business. Agenda item number 3. I
21 jsut want to remind those of you in the audience,
22 if you want to speak to any of the items on the
23 agenda, please fill out one of these blue cards
24 which you'll find on the table around the corner
25 there. And provide it to our Public Adviser, who

1 just delivered yet another blue card. And it'll
2 reach me and we'll be sure to call on you for the
3 appropriate agenda item.

4 So, wiht that, agenda item number --
5 they're rolling in today -- agenda item numer 3,
6 emerging renewables program guidebook. Possible
7 adoption of revisions to the emerging renewables
8 program guidebook. The guidebook addresses the
9 requiremnts for receiving incentives to install
10 eligible fuel cell systems and small wind
11 generating systems that receive electricity from
12 specified investor-owned utilities. Mr.
13 Hutchison, are you going to present this item?

14 MR. HUTCHISON: I am. Good morning,
15 Commissioners. For the record I am Mark Hutchison
16 with the renewable energy office.

17 The emerging renewables program provides
18 investor-owned utility electricity consumers with
19 a financial incentive to purchase and install
20 renewable energy systems, fuel cells and small
21 wind turbines up to 50 kW on their property.

22 The Energy Commission's Renewables
23 Committee and staff have developed revisions to
24 the emerging renewables program guidebook that
25 conform to recent statute changes and other

1 clarifying changes, and are recommending
2 Commission adoption of the revised guidebook.

3 Prior to 2007 backup generating systems
4 were not considered eligible for the emerging
5 renewables program because the systems were not
6 intended to offset much, if any, of the consumers'
7 onsite electrical demand, and because these
8 systems could not meet the requirements for grid
9 interconnection.

10 The eligibility of backup systems
11 changed as the result of Senate Bill 1250. SB-
12 1250 expanded the emerging renewables program
13 eligibility to cover backup systems used for
14 emergency, safety or telecommunication purposes,
15 and also carved out an exception for backup
16 systems and exempted them from the requirement of
17 being interconnected to the grid.

18 Therefore, the proposed guidebook
19 changes address the following: the definition of
20 renewable fuel is clarified to include hydrogen
21 produced from an eligible renewable energy
22 resource.

23 Fuel cell systems used for purposes of
24 backup generation may be eligible for incentives
25 in either grid-connected or stand-alone applications.

1 Eligible fuel cell technologies must
2 have an emission profile equivalent to or better
3 than the state ARB 2007 standard.

4 And applicants applying for rebates for
5 fuel cell systems will be required to provide an
6 attestation that the system will be fueled only
7 with a renewable fuel.

8 Other proposed changes that provide some
9 clarification and simplification of the guidebook
10 include defining backup system generation, fuel
11 cell supplemental information, and renewable fuel
12 supplier attestation.

13 Therefore, your approval of this
14 guidebook revision is requested. And I'm
15 available to answer any questions.

16 VICE CHAIRPERSON BOYD: Thank you, Mr.
17 Hutchison. Any questions of the staff from the
18 Commissioners? Commissioner Byron.

19 COMMISSIONER BYRON: You answered most
20 of my questions, Mr. Hutchison. I think there was
21 one, though, that I didn't quite understand. And
22 that is on page 6, system location is defined as
23 it must be located on the same site where the
24 customer's own electric demand is located.

25 Maybe you covered it, but is there a

1 reason why we limited it to on the customer's
2 site?

3 MR. HERRERA: Yeah. Good morning,
4 Commissioners. Gabe Herrera with the Commission's
5 legal office.

6 The reason we require that is it's
7 required in the statute. The statute says that
8 the renewable resource has to be located on the
9 site where the consumer's own electrical demand is
10 located.

11 So, this provision has been in the law
12 for quite some time. We did not feel it was
13 necessary early on to include a provision that
14 repeated the statute. But for clarification we
15 just went ahead and added it as a proposed
16 revision to the guidebook.

17 COMMISSIONER BYRON: All right. Thank
18 you.

19 VICE CHAIRPERSON BOYD: Okay. I don't
20 have any indication that there's anyone here in
21 the audience who wanted to testify on this item.
22 If so, please make yourself known.

23 Seeing no interest, I guess we're ready
24 to entertain discussion.

25 MR. HERRERA: Commissioner Boyd, if I

1 could make some comments for the record.

2 VICE CHAIRPERSON BOYD: Yes, I was
3 waiting for you to.

4 MR. HERRERA: Okay.

5 (Laughter.)

6 MR. HERRERA: It's okay to go ahead?

7 VICE CHAIRPERSON BOYD: Please do.

8 MR. HERRERA: Yeah, I need to make some
9 comments concerning the California Environmental
10 Quality Act. When the Commission proposes
11 adoption of guideline revisions like we're doing
12 today, the legal office evaluates the guidelines
13 to determine whether the act of the adoption
14 constitutes a project under CEQA and is subject to
15 an environmental review under CEQA.

16 In this case the guideline revisions the
17 Commission is adopting is not a project under CEQA
18 because the guideline revisions fall within the
19 list of excluded activities, specifically Title
20 14, California Code of Regulations section
21 15378(b)(2) and (b)(4) in that the activities
22 relate to general policy- and procedure-making,
23 and the creation of governmental funding
24 mechanisms which do not, in themselves, constitute
25 a commitment of any funding to a specific project

1 which may result in a potential significant
2 physical impact on the environment.

3 In addition, the adoption of guideline
4 provisions is also exempt under what is commonly
5 referred to a common sense exemption pursuant to
6 Title 14 of the California Code of Regulations
7 section 15061(b)(3). This section indicates that
8 CEQA only applies to projects that have a
9 significant effect on the environment. And that
10 is defined in Public Resources Code section 21068
11 and Title 14 of the California Code of Regulations
12 section 15382 as being a substantial adverse
13 change in the environment.

14 So, with that, please move forward.

15 VICE CHAIRPERSON BOYD: Thank you, Mr.
16 Herrera. I noted your name down here to call upon
17 you for that very reason, and when you responded
18 to a question it totally threw me off. So, thank
19 you.

20 All right, any other questions? If not,
21 is there a motion?

22 COMMISSIONER BYRON: Commissioner Levin,
23 I'll continue to move the items so you can just
24 say a minimal amount, if that's all right.

25 I'd like to move this item.

1 COMMISSIONER LEVIN: Second.

2 VICE CHAIRPERSON BOYD: There's a motion
3 and a second.

4 All in favor?

5 (Ayes.)

6 VICE CHAIRPERSON BOYD: Opposed? None.
7 The ayes have it, three to nothing. Thank you,
8 staff. Good job on that.

9 Item number 5, alternative and renewable
10 fuel and vehicle technology program, known to some
11 of us as the AB-118 program. Possible adoption of
12 regulations to implement the said program under
13 Health and Safety Code section 44270-44273. Mr.
14 Smith.

15 MR. SMITH: Good morning,
16 Commissioners. Welcome, Commissioner Levin, to
17 the Energy Commission.

18 As you stated, Commissioner Boyd, this
19 item is to adopt the regulations for the
20 alternative and renewable fuels and vehicle
21 technology.

22 With me is Mr. Jared Babula who is staff
23 counsel and has been working with us since the
24 beginning in developing these regulations.

25 The regulations that are before you

1 today are the culmination of a year's worth of
2 effort on the Energy Commission's part. We began
3 last year with the release, adoption of the order
4 instituting rulemaking at the end of January,
5 which kicked off an informal process of
6 conversations with stakeholders and interest
7 groups to begin to put structure to the
8 regulations and the areas of the statute that need
9 clarification in regulatory language.

10 Just to give you a feel for what
11 transpired, during that process there were four
12 public workshops that the Transportation
13 Committee, you and Commissioner Douglas held. One
14 on April 2nd, one on July 8th, August 11th, and
15 again on September 9th, to discuss regulatory
16 concepts and to discuss actual draft language.

17 Additionally staff held three public
18 meetings of what has become known as the
19 sustainability working group which was formed,
20 kind of an outgrowth of the rulemaking process, to
21 gain greater clarity and greater insight on the
22 issue of sustainability, and how we develop
23 sustainability goals for the program that statute
24 requires us to establish. Those workshops were
25 held on July 24th, August 15th, and again on

1 December 5th.

2 The regulations that were finally
3 crafted and ultimately proposed in a order this
4 past January, last month as a matter of fact, deal
5 with several areas of the statute.

6 In particular we have language that
7 addressed advanced vehicle technologies; we have
8 language that describes criteria for program
9 funding; we have language that goes into great
10 detail on the sustainabilty goals.

11 We have language that discusses funding
12 restrictions that are required in the statute.
13 And we have language that addresses the makeup and
14 function of the advisory committee, and the
15 content and purpose of the Energy Commission's
16 investment plan. The latter two of which also are
17 required in statute, and are further clarified in
18 regulations.

19 As I said, we released the notice of
20 proposed action on January 2nd of this year.
21 Released the proposed language for public comment.
22 And it kicked off a 45-day review period, which
23 ended on February 16th.

24 We received three -- we actually
25 received nine letters, but six of those letters

1 were actually mis-docketed. Not of any of our
2 staff's fault, they just -- the letters were
3 addressed incorrectly. And they deal more with
4 the investment plan and the programmatic issues.

5 There were three, however, that were
6 specifically related to the OIR and the
7 regulations, themselves.

8 The first letter we received from the
9 California Natural Gas Vehicle Coalition. We
10 received a letter from the Western States
11 Petroleum Association. And finally, we received a
12 letter that was jointly signed by representatives
13 from Friends of the Earth, the Center for Energy
14 Efficiency and Renewable Technologies, and the
15 American Lung Association.

16 We spent a great deal of time, staff and
17 our legal counsel, in reviewing the comments,
18 carefully considering the comments. We've had
19 several discussions with the Transportation
20 Committee in deliberating the comments and the
21 extent of the impact that the comments would have
22 on our regulations.

23 And after that, those deliberations, we
24 feel that while the comments are very interesting
25 and are, you know, enlighten us about how the

1 program, you know, can be effectively managed,
2 none of the language of the comments, we believe,
3 warrant any alterations to our proposed language
4 that we released January 2nd.

5 Either because they are more
6 programmatic in nature, and are addressed
7 elsewhere within the program, particularly in the
8 investment plan. Or they are -- the comments
9 actually are already specifically addressed within
10 the proposed language. Or the comments address
11 more general language that is contained in the
12 regulations that cover broad areas of interest
13 within the regulations. And we feel that some of
14 the comments are already covered by some of this
15 broader language.

16 What I'd like to do is just take a few
17 minutes to walk you through some of the most
18 important points that were raised in the comment
19 letters, and what staff's and legal counsel's
20 proposed responses are.

21 From the Natural Gas Vehicle Coalition,
22 these folks were concerned that the production of
23 biomethane from landfills be specifically
24 addressed as an eligible project or eligible for
25 funding within the program. And, indeed, it is.

1 We dno't feel that there's any
2 requirement to alter the language of the
3 regulations. This is covered in our investment
4 plan fairly explicitly. So, we want to assure the
5 folks at the Natural Gas Vehicle Coalition that
6 this type of activity is in it. And we do see it
7 as a very important strategy in significantly
8 reducing greenhouse gas emissions.

9 Western States Petroleum Association
10 raised a number of comments, but I just want to
11 focus on an area that several comments that are
12 related that focus on the relationship between
13 eligible projects within our program, funding
14 restrictions as are described in the program
15 statute, and clarified in our regulations.

16 And the issue of the low carbon fuel
17 standard that is being promulgated by the Air
18 Resources Board.

19 And specifically, WSPA points out in
20 their comments in relation to section 3101.5 of
21 the proposed regulations that strong preference
22 will be given to projects we are proposing in the
23 regulations -- that strong preference be given to
24 projects that can best contribute to meeting
25 California's climate change policy goals, as

1 described in Health and Safety Code section 38550.
2 The Governor's executive order S0305 and the low
3 carbon fuel standard.

4 And that demonstrate the best potential
5 for substantial reduction of greenhouse gas
6 emissions associated with California's
7 transportation system.

8 WSPA points out in their comments that
9 the program -- while the program does give
10 preference to projects that contribute to
11 compliance with the low carbon fuel standard, it
12 also restricts funding from going to projects that
13 are tied to the low carbon fuel standard. And
14 they believe that this inconsistency needs to be
15 resolved.

16 We actually find no inconsistency. And
17 don't feel that there's any requirement to alter
18 the regulatory language.

19 WSPA incorrectly states that the
20 Commission will give preference to projects that
21 contribute to compliance with the low carbon fuel
22 standard. In actuality, Health and Safety Code
23 section 44271(c) specifically prohibits the
24 funding of projects that are required to be
25 undertaken in order to comply with, in this case,

1 the low carbon fuel standard.

2 Section 3101.5 of the regulations
3 indicates that preference would be given to
4 projects that best contribute to meeting the
5 state's climate change goals. And examples of
6 such projects are actually found in the Health and
7 Safety Code section 38550 and in the low carbon
8 fuel standard.

9 The over-arching goal is put forth in
10 the Commission's sustainability regulations, or
11 the regulatory language dealing with
12 sustainability, is to fund projects which
13 demonstrate the best potential for substantial
14 reduction of greenhouse gas emissions.

15 There are a number of ways a project
16 that does not involve mandated compliance with the
17 low carbon fuel standard can show support of
18 climate change -- California's climate change
19 policy goals. And, indeed, would be eligible for
20 funding from us.

21 The applicant can look to the
22 sustainability goals in the regulations for
23 guidance on demonstrating greenhouse gas emissions
24 reductions.

25 Likewise, in a later comment, WSPA

1 acknowledges the Commission's desire, again
2 dealing -- this is in section 3103 under funding
3 restrictions. WSPA again acknowledges the
4 Commission's desire to restrict funding to those
5 entities that aren't required to comply with a
6 law, ordinance or standard.

7 But would request that the regulations
8 be amended so that project investments addressing
9 the low carbon fuel standard be recognized as
10 viable candidates for AB-118 funding.

11 Again, Health and Safety Code section
12 44271(c) prohibits the Energy Commission from
13 funding projects that are required to comply with,
14 in this case, the low carbon fuel standard.

15 However, this is the important point,
16 however applicants who are not mandated under the
17 low carbon fuel standard are potentially eligible
18 for funding.

19 So we need to separate eligibility of a
20 project with eligibility of an entity that is
21 obligated to comply with a law, ordinance or
22 standard or regulation.

23 Lastly, and also in relation to this
24 issue WSPA comments on the obligated party
25 restriction, that under the current restrictions a

1 new renewable fuels plant would be able to apply
2 for funding, AB-118 funds, but it would appear
3 that if a petroleum or an energy company is
4 involved in that project in some way the project
5 would not be eligible to receive AB-118 funding,
6 since they are an obligated entity or obligated
7 party under the low carbon fuel standard.

8 And WSPA goes on to comment or request
9 that they believe the guidelines should, the
10 regulations should be structured in a manner that
11 allows AB-118 funds to be used to fund alternative
12 or renewable fuel projects where entities that are
13 obligated parties may be involved.

14 And our response is, again, we don't
15 feel that the regulations need to be altered to
16 accommodate this. The regulations do not prohibit
17 a fuel production project from funding if a
18 petroleum or energy company is involved in the
19 project.

20 However, and we emphasize that the
21 program regulations will be applied during the
22 project evaluation to determine whether or not the
23 project will receive funding or not.

24 Lastly, the comments received from the
25 jointly signed letter from the American Lung

1 Association, CEERT and Friends of the Earth. I
2 wanted to touch on a couple of points that they
3 have raised in their comments. And I'll try and
4 be brief on these.

5 The first one I want to highlight is
6 that these three organizations have asked, or
7 request that section 3101.5 be modified to state
8 the following. It currently states that for
9 projects using purpose-grown energy crops,
10 furtherance of environmental protection and
11 natural resource preservation goals would be
12 demonstrated by -- and it goes on to list several
13 items.

14 But the two items that the commenters
15 had pointed out are, by avoiding lands
16 historically used for agricultural purposes.
17 That's what's in the regulation now.

18 The commenters would like to add the
19 phrase that currently provided important habitat
20 or ecosystem values.

21 They go on to also ask that the next
22 item that use of marginal croplands that are not
23 used for food crops and that do not displace or
24 disrupt cropping patterns for food production. To
25 that they would like added, and that demonstrate a

1 net carbon benefit when evaluated on a lifecycle
2 basis.

3 Our response, we disagree with the
4 suggested changes, and we don't feel that they are
5 necessary. The regulations seek to encourage the
6 use of lands historically used for agricultural
7 purposes for potential bioenergy crops so as not
8 to encourage expansion of agricultural production
9 for bioenergy crops onto wild lands or other
10 noncultivated lands with ecological and habitat
11 values.

12 Placing the phrase historically used
13 lands into this prohibition -- excuse me --
14 historically used lands off limits because they
15 currently provide important habitat or ecosystem
16 values contradicts the intent of the regulations
17 and seeks to impose an evaluation system that
18 really has no specific legal or scientific
19 definition.

20 Current state and federal law would
21 already protect habitat designated for endangered
22 or special status species. In addition, the
23 regulations already emphasize in another section
24 the need to protect, for the Energy Commission
25 making in making the investments, to protect

1 natural resources by providing strong preferences
2 for projects which demonstrate environmental
3 protection, natural resource preservation and
4 superior environmental performance.

5 The second part of the request -- the
6 second part of the regulation seeks to encourage
7 the use of more marginal croplands that would not
8 interfere with food production in California.
9 Adding another lifecycle analysis component to
10 this part of the regulation is redundant to
11 sections 3101.5(a) and 3101.5(b), which fully
12 address the obligation to assess projects on a
13 greenhouse gas or carbon footprint basis.

14 The commenters also ask that given the
15 large invasive potential for nonhabitat plants
16 being considered as feedstocks for future biofuel
17 production in the state, they recommend that
18 section 4, Roman numeral IV, rather, of that same
19 section be modified by adding the phrase -- well,
20 by prohibiting native or -- excuse me, let me just
21 read the phrase, it's easier that way.

22 Currently the regulation states use of
23 crops -- as crops uniquely suited to climate,
24 water and natural resource constraints in
25 California and the arid west that require less

1 irrigation water than commonly produced
2 agricultural commodities.

3 To that they would like to add the
4 phrase, use of either native species or species
5 determined to be noninvasive.

6 And to that we don't believe that that
7 phrasing, that added phrasing is necessary in this
8 regard. Again, the regulations already point out
9 that there's strong preference for projects that
10 demonstrate protection, natural resource
11 preservation and superior environmental
12 performance.

13 We also point out that many crops
14 already being grown in California as agricultural
15 crops are invasive and not native. And so it
16 doesn't seem it more prudent to limit biofuel
17 crops where we can demonstrate that the investment
18 in projects that use these particular crops are
19 not degrading natural resources.

20 Two last comments that were raised deal
21 with forest biomass issues. And the commenters
22 would like the -- well, actually let me read their
23 comment. They request that the language in
24 section 3101.5 be clarified.

25 As currently structured, this statement

1 can be read to find that all biomass projects that
2 use certain specified collection and harvesting
3 practices are advancing natural resource
4 protection goals.

5 This is not the case, according to the
6 commenters. Even in situations where collection
7 and harvesting practices are the best available,
8 the simple act of removing biomass from certain
9 areas can be profoundly detrimental. We suggest
10 the following language be adopted instead.

11 And their request is to insert the word
12 waste to describe forest biomass resources that
13 can be harvested under investments from the AB-118
14 program.

15 The Energy Commission Staff disagrees
16 with the suggested change. The Commission has
17 evaluated numerous policy issues associated with
18 the use of forest biomass resources for
19 alternative fuel production during comments from
20 the environmental coalition on the first draft of
21 these regulations in choosing the specific
22 language for the sustainability criteria, in
23 3101.5 of these regulations.

24 The Energy Commission Staff deliberately
25 chose to link the sustainability goals for forest

1 resources used for alternative fuels with state
2 fire risk management restoration and ecosystem
3 management goals established for public and
4 private land, forest lands throughout California.

5 A policy decision was made -- this
6 decision was made after consultation with experts
7 from state and federal forestry agencies, resource
8 experts at the University of California, and the
9 Environmental Defense Fund.

10 Lastly, the commenters state that in
11 addition to preventing deterioration of the
12 remaining intact forest ecosystems by creating
13 incentives for the removal of critical ecosystem
14 components, they request that the following
15 provision be added. And I just want to very
16 quickly read it.

17 The would suggest that 3101.5(b) (2) (G)
18 be added. It states, notwithstanding subsection
19 (F), biomass projects, one, that increase
20 greenhouse gas emissions or reduce net forest
21 carbon sequestration; two, that diminish the
22 ecological values of any native ecosystem; or
23 three, whose feedstocks are sourced from native
24 ecosystems cleared after January 1, 2007, from
25 federal forest lands, from forest or forest lands

1 that are ecological communities with a global or
2 state ranking of critically impaired, imperiled,
3 or rare pursuant to the State Natural Heritage
4 program, or from old-growth forests or late
5 successional forest will not be eligible for
6 funding consideration.

7 The Energy Commission Staff disagrees
8 with the proposed language, and dno't believe that
9 it is necessary. The Environmental Coalition made
10 the same recommendatino in their comment letter on
11 the first draft regulations back in September of
12 08.

13 The Energy Commission is concerned that
14 prohibiting use of forest biomass material on
15 federal lands in California, which comprise 42
16 percent of all 40 million acres of forestlands in
17 California, would remove a large and important
18 biomass resource that can be used to produce
19 alternative fuels.

20 All projects that are funded through AB-
21 118 by the Commission would be subject to the
22 requirements found in these regulations. Again,
23 section 3101.5, which states that strong
24 preference will be given to projects that
25 demonstrate environmental protection, natural

1 resource preservation and superior environmental
2 performance.

3 In addition, criteria is included in the
4 regulations that create additional incentives for
5 sustainable use of biomass resources and
6 alternative fuels projects.

7 In particular we are suggesting that
8 certification programs under the Forest
9 Stewardship Council be strongly considered.

10 So we feel that the proper protections
11 are in place from a regulation-language
12 standpoint, and don't feel that any changes are
13 warranted.

14 Those are the comments that I just want
15 to highlight. And, again, we feel that the
16 proposed language address the concerns or comments
17 raised in the three letters. And feel that the
18 language that the staff has proposed on January
19 2nd should be approved by the Commission and
20 submitted to the Office of Administrative Law as
21 quickly as possible.

22 I will only add that should the
23 Commission approve the language today, we
24 anticipate, in considering the time it takes to
25 submit the package, our final statement of

1 reasons, and the regulation package to OAL, and
2 the time it takes for their consideration and
3 publication by the Secretary of State, that the
4 regulations will be in effect in late May.

5 VICE CHAIRPERSON BOYD: Thank you, Mr.
6 Smith.

7 MR. SMITH: I'll be happy to answer any
8 questions.

9 VICE CHAIRPERSON BOYD: Thank you for
10 that lengthy presentation.

11 MR. SMITH: I apologize. I tried to be
12 as quick as possible.

13 VICE CHAIRPERSON BOYD: No, no, I'm not
14 criticizing. I, for one, as well as Chairman
15 Douglas, being the Transportation Committee, we
16 have sat through a lot of this with you, and know
17 how sensitive, delicate a lot of these issues are.

18 So, I appreciate your taking the time to
19 explain the staff's position.

20 First, let me ask if my fellow
21 Commissioners have any questions -- well, let me
22 make one comment about the biomass component,
23 since this is a subject near and dear to my heart.

24 As the Chairman of the Governor's
25 Bioenergy Working Group for years, we definitely

1 do not want to do any damage to forests or to
2 ecosystems. But, by the same token, California
3 has a huge effort in exploring how it might use
4 what would be deemed more or less a wastestream
5 frmo the forest for good purposes. Turn this
6 waste into a resource. So we have explored this
7 issue.

8 I know the Air Resources Board, within
9 the context of the low carbon fuel standard, is
10 exploring this issue. I know, from personal
11 discussions with Chairwoman Nichols, we both share
12 an interest in seeing California remain on the
13 cutting edge of trying to solve some of these
14 problems, including the federal forest biomass,
15 renewable biomass definition.

16 And I guess tomorrow will be the -- or
17 Friday will be the first meeting of a newly
18 formed, by the Resources Agency, working group on
19 forest issues. I'll just leave it in that broad
20 general definition and description.

21 So, just to assure folks listening and
22 in the audience that we do care about this, but it
23 is a difficult issue. And we will all continue to
24 work on resolving the issue. And that is getting
25 access to these materials, while at the same time

1 causing absolutely no harm to the forests. And
2 precluding that ant harm could ever come.

3 So, I, for one, and I know Commissioner
4 Douglas and I independently reviewed all these
5 comments; and independently, and it turns out
6 collectively, have agreed with the staff's
7 position on the comments as presented by Mr. Smith
8 today.

9 And with that I'll ask if Commissioner
10 Byron has any questions. I do have notice of at
11 least three witnesses who'd like to speak to this.

12 COMMISSIONER BYRON: Vice Chair Boyd, I
13 prefer to hear --

14 VICE CHAIRPERSON BOYD: That's fine.

15 COMMISSIONER BYRON: -- the witnesses'
16 comments before I comment.

17 VICE CHAIRPERSON BOYD: All right. The
18 first presenter is Mr. Andrew Panson of the Air
19 Resources Board. So this is a fellow state
20 agency, not a member of the public. Welcome,
21 Andrew.

22 MR. PANSON: Thank you, Commissioner
23 Boyd. Good morning, Commissioners. My name's
24 Andrew Panson, representing the Air Resources
25 Board. I'm ARB's lead staff on the implementation

1 of the AB-118 incentive programs.

2 I'm here to testify in support of the
3 proposed regulation. We appreciate the Energy
4 Commission's hard work in developing this
5 important new program. And we want to thank staff
6 for their efforts.

7 The adoption of this regulation would
8 mark a key milestone in AB-118 development. We've
9 been working closely with Energy Commission Staff
10 since early last year to develop the AB-118
11 incentive programs.

12 While the ARB and Energy Commission's
13 parts of AB-118 each have their own statutory
14 focus, there's a fair amount of overlap in the
15 types of projects and the technologies that can be
16 funded under each program.

17 Given this, it's important for our two
18 agencies to work together to insure that the
19 programs are rolled out in a coordinated manner.

20 We greatly appreciate the Energy
21 Commission's willingness to work with ARB at the
22 staff, management and Commissioner level to make
23 sure that these new programs are successful.

24 We look forward to continuing our
25 coordination as we move into the implementation

1 phase where we can start funding projects and reap
2 the benefits of this important investment.

3 Again, we support the proposed
4 regulation and we thank you for your time.

5 VICE CHAIRPERSON BOYD: Thank you for
6 your comments. And take our thanks back to all
7 the folks in your agency who have worked very
8 closely with all of us on this.

9 MR. PANSON: Will do.

10 VICE CHAIRPERSON BOYD: Mr. Richard Lyon
11 of CyberTran International. I have two cards from
12 CyberTran, but I think only one name. So, Mr.
13 Lyon, I think you're lead spokesperson.

14 MR. LYON: Thank you for this
15 opportunity this morning. I wanted to bring to
16 light that during the workshop in December 08,
17 which I was a participant of, that I requested to
18 make some changes to the sustainability goals in
19 the evaluation criteria to add the same vehicle
20 technology emphasis that is part and parcel for
21 AB-118.

22 Those considerations were detailed and
23 documented. And at the request of staff, were
24 submitted to the docket.

25 And it was very unfortunate to hear when

1 Mr. Smith said that there was basically four
2 elements he was going to talk to this morning,
3 none of those was not the emphasis on the vehicle
4 technology, which, in all honesty, gave the
5 analysis and the information of the statistics
6 that we ran is really the solution of the root
7 cause of the total emissions, the gas reduction,
8 as well as the overall impact to society.

9 So, I'm very concerned. And still would
10 like to ask that the Commission take those
11 considerations, which are a part of the docket,
12 into your analysis before this is passed this
13 morning.

14 Also, there was also some request to put
15 an emphasis, or a strong preference, as the
16 verbiage goes, within the document, to be given to
17 zero emission vehicles, which is not in
18 consideration at this point.

19 And also looking at the overall
20 reduction of VMTs. I know Mr. Ward, in a number
21 of presentations that I've been involved in, has
22 spoke directly to VMT reduction. And there's not
23 a preference or a preference given to the
24 technologies that actually address directly the
25 VMTs.

1 So, I'd like to request that the
2 Commission take those considerations in before
3 this is passed this morning. Thank you.

4 VICE CHAIRPERSON BOYD: Thank you. Mr.
5 Smith, would you like to elaborate on this?

6 MR. SMITH: Certainly, just very
7 quickly. The comments -- the Commission is
8 required to respond to comments submitted during
9 the 45-day public comment period for the
10 rulemaking. That began January 2nd with the
11 released of the notice of proposed action. And
12 concluded on February 16th.

13 The comments that Mr. Lyon refers to
14 were made prior to that period. And, indeed, were
15 submitted to the docket. We're well aware of
16 them, and we're well aware of the technology and
17 its potential for California.

18 I just want to point out that we must
19 focus on those comments made regarding the
20 regulation language proper, submitted to the
21 Energy Commission during the 45-day review period.

22 VICE CHAIRPERSON BOYD: Okay, I
23 appreciate that technicality, but --

24 MR. SMITH: I understand. I just want
25 to be clear on that.

1 VICE CHAIRPERSON BOYD: -- can we
2 address the --

3 MR. SMITH: But the issue of --

4 VICE CHAIRPERSON BOYD: -- policy
5 points?

6 MR. SMITH: Yeah. The issue of the
7 technology, itself, is something that we are
8 considering again in a broader programmatic
9 standpoint.

10 And so to the extent that CyberTran has
11 a technology that may very well be very useful to
12 California in reducing greenhouse gases through
13 reduced VMT, that's something that we would
14 certainly like to consider from a programmatic
15 standpoint. But it's not within the scope of the
16 regulations, doesn't need to be.

17 The regulations don't require to have
18 specific language addressing that technology.
19 It's more of a programmatic issue, and one that we
20 will need to work closely with the Transportation
21 Committee in defining more appropriately for the
22 program.

23 VICE CHAIRPERSON BOYD: Okay, I just
24 wanted to indicate that from my perspective of,
25 let's say a policy person here, the goals that the

1 two agencies, the Air Resources Board and the
2 Energy Commission, laid out in completing the AB-
3 1007, the alternative fuels plan for California,
4 very solidly recognized, as I always like to say,
5 the three-legged stool upon which this subject
6 sits.

7 That is one leg is vehicle technology,
8 another is alternative fuels, and the third is VMT
9 reduction, mass transit, so on and so on and so
10 forth.

11 Therefore, I haven't been conscious of,
12 and maybe to assuage Mr. Lyon's concerns, I
13 haven't been aware of, in all these many months,
14 that any of the efforts underway by this agency to
15 fulfill the requirements of AB-118, which was
16 passed frankly in response to the alternative
17 fuels plan, would take away from any of those
18 three major goals and objectives.

19 And while I think I agree with you that
20 the regulations don't necessarily bore in on the
21 policy points, I'm of the opinion that the policy
22 points are well documented in the policies of this
23 agency.

24 And I'm not aware of any lack of
25 attention to any of the three, or any -- well,

1 I'll stop there. I, for one, think that while I
2 appreciate Mr. Lyon's concern and very aware of
3 his technology and I wish him well, and am in
4 receipt this morning of Mayor Dellum's letter of
5 support for your project and your participation
6 inside the state program that we're talking about
7 today, nonetheless I, for one, think there's not a
8 concern. That there's no bias toward or against
9 any of those three policies.

10 But that's just me.

11 MR. SMITH: And we agree completely with
12 that. We are -- the statute, AB-118, and later as
13 amended by AB-109 last year, lays out a fairly
14 comprehensive list of eligible activities that we
15 can fund through this program.

16 And it covers the waterfront of
17 transportation-related opportunities for
18 alternative and renewable fuels.

19 And so I agree with you, the policies of
20 this agency focus more broadly on VMT reduction,
21 land use considerations and alternative and
22 renewable fuels and vehicle efficiency.

23 We, in terms of this program, must give
24 careful consideration to what the statute tells us
25 we can do with this particular pot of money. And

1 like I said, we are very familiar with CyberTran
2 technology and understand its potential value in
3 reducing VMT. And would welcome the opportunity
4 to work as closely wiht the Commissioners in
5 identifying how that may be eligible or appleid
6 for, applicable to this program.

7 VICE CHAIRPERSON BOYD: Thank you. The
8 next witness I have, and it's come to me on a
9 piece of white paper, so I suspect it's a phone
10 witness, is Gina Grey of Western States Petroleum
11 Association.

12 MS. GREY: Yes, good morning,
13 Commissioners.

14 VICE CHAIRPERSON BOYD: Good morning.
15 We hear you fine.

16 MS. GREY: Good, thank you very much.
17 Good morning, Mr. Chair and Commissioners. As Mr.
18 Smith has indicated, WSPA did submit comments by
19 the February 17th deadline.

20 On behalf of our members I'd just like
21 to testify on three points this morning. First, I
22 think, is a process point. Since this morning is
23 the first time that we've heard staff's response
24 to our comments, and it appears that they've
25 focused on just one sort of set or area of

1 comments, we'd just like to recommend to them in
2 the future staff contact the commenters,
3 particularly since in this case it seems that
4 there were only a handful of people that did
5 comment. So that we could hear back from staff
6 before a hearing takes place.

7 And that will give us an opportunity at
8 least to consider what those responses are, and
9 whether or not we would like to continue to
10 testify at the actual hearing.

11 So, that's just a future process
12 request.

13 Secondly, I guess now that we have heard
14 the response on the funding restriction area
15 relative to AB-118 and to the LCFS, I think we
16 would respectfully disagree with the Commission's
17 explanation.

18 And just like to say finally on this
19 point that we think there's quite a task in front
20 of all of us in terms of determining which
21 projects do or do not have linkage to the LCFS
22 program. So we could probably debate that for
23 quite awhile, but I think that's our sort of final
24 closing comment on that point.

25 And thirdly, our final comment today

1 would just be that we did provide comments and
2 requests on a number of other items, as well, that
3 did not relate to the funding restriction area.
4 And we would like to know, definitely it does not
5 have to be this morning, but we would like to hear
6 back from staff at some point on what their
7 thoughts were with respect to those other
8 comments, as well.

9 And that concludes my testimony.

10 VICE CHAIRPERSON BOYD: Thank you. Let
11 me ask Mr. Smith if perhaps your other comments
12 that you're asking be responded to were in that
13 category that you described at the beginning of
14 comments you felt were more relative to the
15 investment plan than to these regulations. Or, I
16 don't know if protracted is more, do you think?

17 MS. GREY: And I would just comment,
18 Commissioner, that in my mind they do not fit in
19 that category. I think we were very careful to
20 make sure that we did differentiate between the
21 programs. So that would be my comment.

22 MR. SMITH: In part, some of WSPA's
23 initial comments do, indeed, in our opinion, fall
24 in that category. Their first comment requests
25 the CEC, on an ongoing basis, with CARB and the

1 air districts to track GHG and criteria emissions.
2 We are -- that's a requirement already of us; it's
3 something that's required in statute.

4 They asked that then we determine if
5 these can be counted towards attainment. That's
6 not our area of legal responsibility. That's --
7 we only track the emissions. It's up to the Air
8 Resources Board and local districts to determine
9 if that's a subject that can be used for
10 attainment purposes.

11 WSPA makes a comment about the
12 information in our economic impact assessment.
13 Again, we don't see that as germane to the
14 regulations. We've submitted the impact
15 assessment to the Department of Finance as part of
16 the initial statement of reasons. And feel that
17 we've covered the requirements that the Department
18 of Finance has imposed on us in describing
19 generally the economic impacts.

20 WSPA had suggested that we also assess
21 and analyze the economic impacts of businesses
22 that do not receive funding from the Energy
23 Commission as to the -- well, let me read their --
24 in the economic impact on businesses, recognize
25 potential adverse economic impact to businesses is

1 in a competitive position with other businesses in
2 the state and that do not receive AB-118 funds.
3 Businesses will be disadvantaged by the program
4 providing what could be substantial funds to
5 competitors.

6 The assessment regarding jobs and
7 businesses essentially ignores competitive market
8 economic forces that may result in a competitor
9 being put out of business with jobs and loss.

10 The program is a voluntary program.
11 It's open to any and all except those entities
12 that are obligated to comply with a rule, law,
13 ordinance and so on. It's an open process; it's a
14 voluntary process.

15 To the extent that a entity applies for
16 funding from us and receives funding, we have no
17 way of knowing how that may disadvantage any other
18 business or no way of assessing that in any way
19 that would be reasonable in a timeframe submittal
20 to the Department of Finance.

21 So, again, it's not relevant to the
22 regulations.

23 MS. GREY: Can we pause there for a
24 moment? Can I just comment on that?

25 VICE CHAIRPERSON BOYD: Please.

1 MS. GREY: Thank you, Mike. I guess our
2 comment here was basically that in the economic
3 impact assessment section it just says that there
4 was really no impact. And we were just requesting
5 that there be at least one sentence in there that
6 would indicate exactly what you just said, Mr.
7 Smith, which is that because of the nature of hte
8 program it would be probably impossible to
9 delineate all of the different impacts to
10 business.

11 But I think there, to be -- probably be
12 warranted to include a statement in here that
13 would indicate that there could be a possibility
14 of adverse economic impact to businesses in the
15 state.

16 So that was merely what we were trying
17 to indicate here.

18 VICE CHAIRPERSON BOYD: Okay, thank you.
19 I'm presuming that Mr. Smith will make part of the
20 record that's submitted to OAL is his response to
21 your question.

22 MS. GREY: Thank you.

23 VICE CHAIRPERSON BOYD: Which should
24 satisfy the record.

25 MS. GREY: Thank you.

1 VICE CHAIRPERSON BOYD: Thank you. Was
2 that it, Ms. Grey?

3 MS. GREY: There was one section on
4 compliance and enforcement.

5 MR. SMITH: And if I may speak?

6 VICE CHAIRPERSON BOYD: Please.

7 MR. SMITH: Here WSPA is asking the CEC
8 publish an annual report on the results of the
9 project audits. And the progress of the program
10 in process needs to allow public and legislative
11 review on the comment.

12 Again, we are required by statute to
13 produce a report to the Legislature, I think
14 beginning iwth the 2011 energy report.

15 We have made comment in various forums,
16 workshops in this process, that we would -- it is
17 our intent to do an annual review of the program.
18 But the statute does require us to make that
19 review available, and to present it in the
20 Integrated Energy Policy Report. The statute's
21 very clear about six or seven or so items that we
22 are to address in that review.

23 So, again, we feel that the statute
24 already requires us to do this. And don't feel
25 that we need to add language to the regulation

1 that -- as WSPA is suggesting.

2 VICE CHAIRPERSON BOYD: Thank you. Ms.
3 Grey, anything else?

4 MS. GREY: That is it; thank you very
5 much.

6 VICE CHAIRPERSON BOYD: Thank you.

7 MR. SMITH: Well, actually, Gina, I did,
8 under the compliacne and enforcement section, you
9 did raise the notion that we should -- the
10 Commission should not fund projects that involve
11 fuels that do not have specification and
12 standards.

13 And that we should not fund projects --
14 funding should not be provided if the applicant
15 has any state waivers from ASTM standards.

16 MS. GREY: Correct.

17 MR. SMITH: The statute already provides
18 the Energy Commission with the authority to -- or
19 we can give preference to projects that have
20 concentration, renewable concentrations greater
21 than 20 percent. Again, it's a preference.

22 We recognize the limitation on ethanol.
23 Anything greater than E-10 is going to run afoul
24 of the federal requirments, and will certain run
25 afoul of the Air Resources Board's predictive

1 model.

2 We're clear that the anti-backsliding
3 guidelines that the Air Resources Board developed
4 for our program and for their own AB-118 program
5 prevent the Energy Commission from funding
6 projects that violate the air quality standards,
7 as embedded in the anti-backsliding regulations.

8 As far as funding projects greater than,
9 for example, as was illustrated in the comment
10 letter, biodiesel, greater than 5 percent
11 concentration, or greater than 20 percent
12 concentration, there's nothing that prohibits
13 these fuels from being used in vehicles in
14 California.

15 And we recognize the warranty issues
16 with vehicles that are still under OEM warranties.
17 We recognize fuel quality issues. But, again, we
18 don't feel that the Energy Commission should put
19 in its regulations prohibitions or restrictions on
20 funding opportunities for projects that involve
21 renewable fuels of those higher concentrations.

22 VICE CHAIRPERSON BOYD: Thank you, Mike.

23 MS. GREY: Thank you.

24 VICE CHAIRPERSON BOYD: All right, thank
25 you, Ms. Grey.

1 Next I have Mr. Doug Wickizer of the
2 California Department of Forestry and Fire
3 Protection, otherwise known as CalFire.

4 MR. WICKIZER: Thank you, Commissioner
5 Boyd, Members of the Committee, Commissioners. I
6 simply want to offer a quick comment in support of
7 your regulations. And a heartfelt thank you for
8 the efforts that you and your staff have made in
9 working through the forestry issues on this. And
10 being open-minded during the full process.

11 I'm glad you recognize that California
12 has, as with other areas, the highest level of
13 protection nationally for its forest resources and
14 the ecosystems associated with that.

15 And also recognize the need for all of
16 the biomass that we have available under those
17 conditions to meet the renewable energy goals that
18 we have set out in the state.

19 So, we, again, appreciate your efforts
20 and support your adoption. Thank you.

21 VICE CHAIRPERSON BOYD: Thank you, Doug.

22 COMMISSIONER BYRON: Yes, thank you, Mr.
23 Wickizer, for taking hte time to be here.

24 VICE CHAIRPERSON BOYD: Ms. Danielle
25 Fugere, Friends of the Earth.

1 MS. FUGERE: Thank you. I just wanted
2 to say we do support these regulations, as well.
3 And we wanted to commend staff, especially I think
4 to McKinney for the work done to implement the
5 sustainabilty requirements of the statute in this
6 regulation.

7 Staff has taken a very difficult mandate
8 and developed concrete and implementable goals for
9 insuring that California invest in the cleanest,
10 most sustainable fuels, alternative fuels.

11 We did submit comments on the language
12 of the regulation. And we look forward to working
13 with staff and resolving those concerns as we move
14 forward with the investment plan, solicitations
15 and development of sustainability criteria,
16 including, of course, the forestry issues.

17 So, tahnk you.

18 VICE CHAIRPERSON BOYD: Thank you. I
19 noted that you and the next witness, Mr. Shears,
20 arrived here after we'd had a lengthy discussion
21 of that subject. So, I'll let you talk to the
22 staff in the future to learn the outcome of that
23 discussion.

24 Mr. John Shears, Center for Energy
25 Efficiency and Renewable Technologies.

1 MR. SHEARS: Good morning,
2 Commissioners; and a special welcome to
3 Commissioner Levin. Welcome to the world of the
4 California Energy Commission.

5 VICE CHAIRPERSON BOYD: Both of you
6 missed the fact that Commissioner Levin has
7 laryngitis today and can't utter a word other than
8 a mere aye or nay. But nonetheless, I'm sure she
9 appreciates -- speaking for her, I'm sure she
10 appreciates your kindness.

11 MR. SHEARS: I'm here today, as well, to
12 speak in support of the regulations and also to
13 express my heartfelt thanks and appreciation for
14 the considerable efforts that the Commission and
15 the staff has put into developing the regulation.
16 And especially given the breadth and the
17 complexity of such a regulation with the two
18 dockets and trying to coordinate the investment
19 plan and the regulations which we're here to
20 discuss today.

21 And as Danielle mentioned, we've also
22 jointly submitted the comments that she referred
23 to. And when we recognized that there's a lot to
24 be learned as we further develop and move the AB-
25 118 program along, both here at the ARB and also

1 in conjunction with the low carbon fuel standard,
2 we look forward to working with the Energy
3 Commission and its staff in further developing and
4 honing the program in the future years.

5 So, thank you.

6 VICE CHAIRPERSON BOYD: Thank you, Mr.
7 Shears. And I should take this opportunity to
8 thank you and Danielle for the many hours you've
9 devoted to this subject, and the participation in
10 the advisory committee, and the many many hours we
11 spent in this room together.

12 This has been a very interesting
13 process, to say the least. And as you indicated,
14 today we're just dealing with the regulations.
15 Tomorrow, in the figurative sense, we have yet to
16 deal with the investment plan. So there's more to
17 come.

18 That's the last of the blue cards I have
19 or any indication of witnesses on this item of
20 anyone wants to speak. Therefore I would turn to
21 my fellow Commissioners --

22 MR. BABULA: I'd just like to --

23 VICE CHAIRPERSON BOYD: Ah, sure --

24 MR. BABULA: -- right quick --

25 VICE CHAIRPERSON BOYD: -- the lawyer

1 hiding in the shadows there that has to talk about
2 CEQA.

3 MR. BABULA: That's right. I just want
4 to get the CEQA thing to wrap things up here.
5 Legal analyzed these regulations and we don't
6 believe that it triggers the need for any CEQA,
7 primarily because the regulations don't produce
8 any significant impacts on the environment.
9 Particularly under Title 14, the California Code
10 of Regulations, the project is exempt from the
11 CEQA, where it can be seen with certainty that
12 there's no possibility that the activity in
13 question may have significant effect on the
14 environment.

15 Also, you need to have a project. And
16 in this case Title 14 again states that a project
17 does not include the creation of government
18 funding mechanisms or other government fiscal
19 activities which do not involve any commitment to
20 any specific project which may result in a
21 potentially significant physical impact on the
22 environment.

23 In this case these regulations are part
24 of a government funding mechanism which will
25 provide funding for currently unidentified and

1 unspecific projects. These regulations basically
2 clarify details of the funding program and set
3 forth administrative procedures of process
4 selection with stakeholder participation. But the
5 regulations do not direct any specific activity --
6 project that would cause direct or indirect
7 impacts on the environment.

8 There you go.

9 VICE CHAIRPERSON BOYD: Thank you. And
10 while I know that's an administrative and legal
11 necessity, I do hope these regulations result in
12 very positive impacts on the environment, et
13 cetera, et cetera, some day in the future. But
14 that's the role of the investment plan and the
15 individual projects, so thank you.

16 Now, my fellow Commissioners, although
17 that really means just you, Commissioner Byron,
18 any comments or questions?

19 COMMISSIONER BYRON: I'll be brief. I
20 have taken the time to read through the comments
21 and the recent responses on the part of the staff.
22 Staff also took time to brief me in some detail on
23 this subject.

24 (Parties speaking simultaneously.)

25 COMMISSIONER BYRON: This has taken

1 awhile to get to this point. I think it's also a
2 good example of the Committee structure, again;
3 the leadership the Committee's provided, the work
4 the staff has done has been very good.

5 I believe that what you've done here in
6 developing the regulation meets the intent of the
7 statute. And so my compliments.

8 And I would like to move this item so we
9 can get to work on the implementing this
10 alternative and renewables fuels programs.

11 I'd like to thank everybody who's here
12 and providing the comments today, and all the work
13 that's preceded this. But, let's get to work on
14 this.

15 VICE CHAIRPERSON BOYD: Thank you for
16 your motion. And before asking for a second,
17 Commissioner Levin has whispered to me that she
18 really would like to ask a question.

19 I want the record to show that I'm
20 sitting here drinking hot tea trying to keep my
21 voice going. I had laryngitis two weeks ago, but
22 I've had no contact with her until we met this
23 Monday. So whatever it is she has, I didn't do
24 it, but --

25 (Laughter.)

1 VICE CHAIRPERSON BOYD: -- it's going
2 all over this building. So, take care of yourself.

3 COMMISSIONER LEVIN: Thank you, staff.
4 Hopefully you can all hear me. Not a great way to
5 start my first hearing. And I want to thank
6 staff, and also the public for some very
7 thoughtful comments in this process.

8 And I will second the motion in just a
9 moment. But, I want to ask Danielle and Michael,
10 in response to your comments, which I thought were
11 very helpful suggestions, what is it that
12 satisfies you that we will address those concerns
13 with more specific criteria moving forward? Or
14 how and when do you see them addressed?

15 Because I thought that you raised some
16 important clarifications.

17 MS. FUGERE: I guess that my thought was
18 that I would take it on good faith that those
19 issues would be addressed.

20 (Laughter.)

21 MS. FUGERE: That, you know, the concern
22 was more with how the language could be
23 interpreted one way or another, and there was some
24 bad interpretations. And so I was believing that
25 we would work through those issues as we move

1 forward.

2 COMMISSIONER LEVIN: I guess that was my
3 expectation, as well. I just want to flag those.
4 And I think that Vice Chairman Boyd already did,
5 that we want to be sure we do no harm with these
6 regulations, and do a lot of good, obviously.

7 So, I do think it's incumbent on us, as
8 a Commission, and the Air Resources Board, to make
9 sure that they really are being implemented in a
10 way that minimizes impacts on the environment, on
11 sensitive resources.

12 With that I'll second the motion.

13 VICE CHAIRPERSON BOYD: Thank you. And
14 I'll thank you for your question and just point
15 out that I very much appreciate what Danielle just
16 said, because a year ago I doubt she would have
17 said it.

18 And that is faith and trust. We have
19 worked very closely together, our two communities,
20 for a long, long period of time. And I think it's
21 a tribute to all that we have reached the ability
22 to say that we can work things out over time. And
23 this is a particularly difficult and sensitive
24 area.

25 Mr. McKinney, you look like you would

1 like to say something.

2 MR. McKINNEY: Yes. Commissioner Levin,
3 also welcome on behalf of staff of the AB-118
4 program.

5 And in regards to your question to
6 Danielle Fugere and the other members of the
7 Environmental Coalition here, I would just like to
8 acknowledge from staff's perspective that we've
9 worked very closely with them for almost a year
10 now. They've been active participants in our
11 sustainability working group and in the Commission
12 proceedings or workshops that we've had around
13 issues of sustainability.

14 They've raised a lot of good issues and
15 they've really spurred staff to think very
16 carefully and clearly about a series of issues
17 that are technically complex. And, I think, as
18 all of us recognize, a rapid expansion of any
19 biofuel or biomass-based feedstock for alternative
20 fuels can indeed do environmental harm and damage
21 to the state's resources.

22 We are working to insure that we craft a
23 program that will not allow that to happen. And I
24 think with the criteria established thus far in
25 these regulations, and a continued kind of close

1 working relationship we have with different
2 members of the Environmental Coalition here, I
3 think we have a similar goal and are now working
4 to that similar end point.

5 COMMISSIONER LEVIN: Thank you.

6 VICE CHAIRPERSON BOYD: Thank you.

7 There's been a motion and a second, and I'll call
8 for the question.

9 All in favor?

10 (Ayes.)

11 VICE CHAIRPERSON BOYD: Any opposed?

12 None. It's approved three to nothing, and
13 congratulations to staff and all the stakeholders.
14 Another significant step in a very long pathway
15 here.

16 COMMISSIONER BYRON: Vice Chairman,
17 you're really moving the agenda along here.

18 (Laughter.)

19 VICE CHAIRPERSON BOYD: Well, this was a
20 regulation and a hard, I won't say a hard fought,
21 but a regulation that necessitated a lot of work,
22 and thus a lot of discussion.

23 Item number 6, the Riverside Energy
24 Resource Center Units 3 and 4. Consideration and
25 possible adoption of the proposed small power

1 plant exemption decision and notice of intent to
2 adopt a mitigated negative declaration for this
3 project. Mr. Renaud.

4 MR. RENAUD: Good morning,
5 Commissioners. I'm Raoul Renaud, the Hearing
6 Officer assigned to this matter.

7 The applicant in this case is the City
8 of Riverside, which is seeking a small power plant
9 exemption in connection with its proposal to add
10 capacity to its existing power plant in the city.

11 Currently there is a 96 megawatt power
12 plant there which the Commission granted a small
13 power plant exemption to in 2004. They now are
14 planning to roughly double the capacity, adding
15 two more turbines, and have filed a small power
16 plant exemption application.

17 The Committee conducted a site visit and
18 informational hearing on May 12, 2008. The Energy
19 Commission Staff released its final initial study
20 on December 22, 2008. And the Committee conducted
21 an evidentiary hearing on January 5, 2009.

22 I see we have here today the staff
23 counsel for the project, Deborah Dyer; the project
24 manager Felicia Miller; and counsel for the
25 applicant, Allan Thompson.

1 VICE CHAIRPERSON BOYD: Thank you. Mr.
2 Thompson, as representative of the applicant,
3 would you like to say a few words before we
4 further discuss this item?

5 MR. THOMPSON: Thank you. To my right
6 is Bob Gill, the project manager for the City of
7 Riverside. We'll keep this short.

8 One thing I did hear that with
9 laryngitis it's easier to say aye than nay.

10 (Laughter.)

11 MR. THOMPSON: Let me pass it on to Mr.
12 Gill for a short comment.

13 MR. GILL: Yes, my name is Bob Gill.
14 I'm the project manager for the city. And I would
15 just like to thank the Commission and the
16 Commission Staff for all of the effort that's gone
17 on in the past year. It's been phenomenal to
18 reach the point that we're at, to allow the city
19 to, as has been brought out in the past, that the
20 city is facing potential rolling blackouts in the
21 summer of 2010 and 2011. And these units will
22 relieve that situation.

23 So, again, thank you.

24 VICE CHAIRPERSON BOYD: Well, thank you.
25 And just speaking for myself as a member, along

1 with Commissioner Douglas, of the siting committee
2 for this particular project, I would like to thank
3 both the staff and the applicant for their
4 efforts.

5 While it takes time to do these kinds of
6 things, this has been one that has moved along, I
7 think, as best as it can. And I appreciate your
8 positive remarks. I'm going to save them for a
9 future hearing on some other project that perhaps
10 we won't hear such positive remarks.

11 In any event this has been one of the
12 more delightful projects for me, after seven years
13 as an Energy Commissioner, and I commend the staff
14 for the smooth operation of this project
15 application.

16 So, with that, staff, any comments you'd
17 like to make? Or are you going to rest on your
18 laurels?

19 MS. MILLER: They're resting.

20 MS. DYER: We don't have any comments.
21 We will rest.

22 VICE CHAIRPERSON BOYD: Commissioners,
23 any questions or comments?

24 COMMISSIONER BYRON: No questions. Mr.
25 Gill, I'm glad to hear that the economy of the

1 City of Riverside is doing well enough that you
2 need the additional power. So, I'll move the
3 item.

4 MR. GILL: Yes.

5 COMMISSIONER LEVIN: Second it.

6 VICE CHAIRPERSON BOYD: There's a motion
7 and a second.

8 All in favor?

9 (Ayes.)

10 VICE CHAIRPERSON BOYD: Opposed? No.
11 Therefore, it carries three to nothing. And
12 congratulations and good luck in the future.

13 MR. GILL: Thank you very much.

14 VICE CHAIRPERSON BOYD: See, I can do
15 better. All right, item number 7, San Joaquin
16 Solar 1 and 2 Power project. Possible approval,
17 or I should say, consideration of Executive
18 Director's data adequacy recommendations for this
19 project. Good morning.

20 MS. DeCARLO: Good morning,
21 Commissioners. Welcome, Commissioner Levin. My
22 name is Lisa DeCarlo; I am the staff counsel
23 assigned to represent staff in the review of the
24 application for certification for the San Joaquin
25 Solar 1 and 2 Hybrid project. With me is Joe

1 Douglas, Energy Commission Project Manager for
2 this project.

3 On January 14, 2009 the Energy
4 Commission, on staff's recommendation, determined
5 that the San Joaquin Solar AFC was not complete.
6 This determination was based on informational
7 requirements in the Energy Commission's
8 regulations, and resulted in the Commission
9 adopting staff's list of deficiencies.

10 The applicant submitted a supplemental
11 package on February 4th, and followed this up with
12 additional information on February 12th and
13 February 13th.

14 Having reviewed all submittals to date,
15 staff continues to recommend that the application
16 be considered incomplete. Missing is a letter of
17 completeness from the San Joaquin Valley Air
18 Pollution Control District.

19 This letter is one of the items
20 identified on the list of deficiencies adopted on
21 January 14th, and is based on the requirement in
22 our regulations in subsection (g) (8) (A) of
23 appendix B to, quote, "provide the information
24 necessary for the air pollution control district
25 where the project is located to complete a

1 determination of compliance" end quote.

2 The applicant has not provided such a
3 letter. And based on discussion staff had with
4 the air district yesterday, such a letter is
5 unlikely to be forthcoming until the applicant
6 provides certain information to the district.

7 On Friday, February 20th, the air
8 district sent a letter to the applicant
9 identifying information the district needs from
10 the applicant to complete a determination of
11 compliance.

12 According to the air district, as of
13 February 24, 2009, all of the outstanding
14 information has been provided except for one
15 piece, the identification of emission reduction
16 credits certificate, and signed purchasing
17 contracts, if the ERCs are not owned by San
18 Joaquin Solar, to provide as offsets for increases
19 in emissions above the rule 2201 offset thresholds
20 for NOx, SOx, PM10 and VOC proposed in this
21 project.

22 Staff recommends that the AFC be deemed
23 incomplete until such time that the applicant
24 provides a letter of completeness from the
25 district. It is our understanding that the

1 applicant opposes this recommendation.

2 We have asked Jim Swaney of the San
3 Joaquin Valley Air Pollution Control District to
4 be available on the phone in case you have any
5 questions of the air district regarding this
6 matter.

7 This concludes my presentation. Both
8 Mr. Douglas and I are available to answer any
9 questions you may have.

10 VICE CHAIRPERSON BOYD: Thank you, Ms.
11 DeCarlo. First let me ascertain, Mr. Swaney, are
12 you there? Can you hear this proceeding?

13 MR. SWANEY: Yes, this is Jim Swaney
14 with the San Joaquin Valley Air District.

15 VICE CHAIRPERSON BOYD: Thank you. I
16 just wanted to make sure you were there and
17 available if we had questions.

18 I'm going to now ask the applicant if
19 they'd like to provide some comments in response.

20 MR. WHEATLAND: Thank you,
21 Commissioners. I'm Gregg Wheatland; I'm the
22 attorney for the applicant. And as you can see,
23 I've come prepared here today. I, too, am just
24 recovering my voice, so I have my water and my
25 cough drops. And I think we're good to go.

1 VICE CHAIRPERSON BOYD: I think there's
2 a lot of cough drops up here in case anybody runs
3 short.

4 MR. WHEATLAND: We're bringing before
5 you today another delightful project. It's also a
6 very --

7 (Laughter.)

8 MR. WHEATLAND: -- important project,
9 and it's a renewable energy project. And we
10 believe that we have satisfied all of the data
11 adequacy requirements that are set forth in the
12 Commission's regulations, and in the rules of the
13 air district.

14 The reason that we are denied data
15 adequacy today is that the air district is
16 imposing upon us a new requirement, and it's not
17 an informational requirement, it's a substantive
18 requirement, that has never been imposed on any
19 other project that has ever come before the
20 Commission.

21 And that requirement is that we obtain
22 all of the necessary offsets, that we actually
23 purchase and own those offsets that may be
24 required for htis project. And that we do so even
25 before we file the application with the

1 Commission.

2 This is an unprecedented requirement.
3 And we believe that it's not a requirement that's
4 supported by the rules.

5 If you would indulge us just a couple of
6 minutes, we'd like to briefly explain to you about
7 the project, and about how this requirement came
8 upon us. And then perhaps you might want to ask
9 the district to explain why it is that they're
10 imposing this new requirement, unwritten
11 requirement.

12 With me here is Anne Runnalls; she's the
13 environmental project manager for htis project.
14 And I'd like her to briefly tell you about the
15 project that's before you.

16 VICE CHAIRPERSON BOYD: Thank you.

17 MS. RUNNALLS: Good morning. As Gregg
18 said, I'm Anne Runnalls. I'm with URS
19 Corporation. And we are the environmental
20 consulting supporting the applicant with this
21 permitting process. I'm the project manager in
22 charge of this job.

23 I just want to get you a little bit
24 familiar with San Joaquin Solar 1 and 2. This is
25 an exciting project. We're looking at about 106.8

1 megawatt production of solar energy, coupled with
2 another renewable technology which will be biomass
3 combustion.

4 The biomass will supplement the solar
5 production so that if there's a cloudy day, you
6 know, during the winter months when the sun is not
7 as intense, we can keep our turbine production at
8 maximum.

9 And then during the shoulder hours when
10 the sun goes down and even at night this power
11 plant will continue to produce renewable energy
12 through the combustion of biomass.

13 The main source of biomass that they are
14 looking at is orchard waste. There is an
15 abundance of this in the San Joaquin Valley. And
16 it will be supplemented by urban wood waste.

17 The biomass facilities have exemplary
18 emission controls in the fact I believe the air
19 district was impressed by the proposed emission
20 controls that will be put on the biomass
21 production.

22 This project will help California meet
23 its renewable energy goals. It is welcomed by the
24 community. The applicant has created a
25 partnership with the California Mental Hospital,

1 which is adjacent to the proposed site location.
2 We will be sharing some steam with them. They
3 will be using the energy of our steam to meet some
4 of their hot water demands, so that we will be
5 supplementing their energy needs by direct
6 renewable energy production.

7 Additionally, the City of Coalinga has
8 already got an EIR passed. They are looking to
9 build a wastewater treatment plant which will
10 support the future needs of the city wastewater.
11 And we partnered with them to take their
12 wastewater, so without this plant we do not have
13 any other -- we don't know where the city plans to
14 discharge the water from their city treatment
15 plant.

16 So I think it's a great project. It has
17 renewable energy on both technologies. It's
18 partnered and accepted by the community.

19 MR. WHEATLAND: Now I'd like to have --

20 VICE CHAIRPERSON BOYD: Commissioner
21 Byron, I believe, has a question.

22 COMMISSIONER BYRON: Just one quick
23 question. You may have said it, Ms. Runnalls, and
24 I missed it. But who is the developer on this
25 project?

1 MS. RUNNALLS: They're called Martifer
2 Renewables.

3 MR. WHEATLAND: And we'd like to ask Mr.
4 Kent Larsen, who's the vice president for project
5 finance, to come up and tell you a little bit
6 about the development.

7 MR. LARSEN: Good morning. Thank you
8 very much for having us here, and particularly
9 want to appreciate all the work that the staff has
10 provided along the way.

11 We filed our original application on the
12 26th of November, and since then it's been -- and
13 preceding that a lot of close work between staff
14 and the folks at URS who have been our
15 consultants.

16 Martifer Renewables is a Portugese-based
17 multilateral corporation doing renewable energy
18 projects in 26 different countries. In the United
19 States we use, in fact, North America for that
20 matter, an affiliate called Spinnaker Energy. So
21 that's why we'll have different names on different
22 cards.

23 Martifer Renewable is doing both
24 photovoltaic and solar thermal and biomass. This
25 will be the first project in California for them.

1 And although we're already under contract to the
2 utility PG&E for the sale of 100 percent of the
3 output of our production, we've been short-listed
4 by them for an identical project to follow in
5 sequence and in time.

6 The size of the company and commitment
7 to the execution of the project is material. As
8 you've learned we have developed a close working
9 relationship not only with the city and the
10 surrounding area and the region, but with the
11 county, as well.

12 We've filed and have been authorized
13 under enterprise zone by the county, and now is at
14 the state for final approval. So, we've been
15 developing a very extensive business relationship
16 within the community, itself.

17 From a project-specific standpoint in
18 the development phase and at the schedule we are
19 at today, we've expended in engineering,
20 development, land acquisition and other
21 contractual and legal undertakings well in excess
22 of \$5 million.

23 We've completed the design of the
24 facility; have issued a number of purchase orders
25 for what we refer to as the long-lead major

1 equipment, biomass boiler components, the solar
2 thermal troughs, the mirrors, the heat-collecting
3 elements.

4 Those contracts have already been in
5 negotiation to be completed with early payments in
6 excess of \$50 million between now and the end of
7 June, so that we can maintain the schedule that we
8 committed ourself under in our power purchase
9 agreements with PG&E.

10 The delay that may be caused as a result
11 of being data inadequate, and in particular for
12 this particular reason, with the air qualty
13 district, to us will delay all that process.

14 It is not practical to us to expend 50s,
15 tens of millions of dollars without knowing,
16 having a clear path before us from a permitting
17 standpoint.

18 So we respectfully request that the
19 Commission accept our explanation as to where we
20 are and why. And with the acknowledgement of
21 staff that this one item remains outstanding, and
22 we believe will show, with a little further
23 information from the URS folks, that this should
24 not be holding up your approval of our data
25 adequacy.

1 Thank you.

2 VICE CHAIRPERSON BOYD: Thank you.

3 MR. WHEATLAND: Commissioner Boyd, I'd
4 like you also to hear briefly, if you would,
5 please, from our air quality expert on this issue.

6 MR. LAGUE: Good morning. My name is
7 John Lague; I work for URS Corporation. And I'm
8 the air quality consultant on this project. In
9 that role it's my job to advise my client, the
10 applicant, what and when he has to make certain
11 commitments.

12 And I did not advise him to obtain
13 control and contracts for all of his offsets
14 before, or as a condition of approval for the air
15 permit application, the initial application.

16 The reason I didn't advise that is
17 because this is the twentieth AFC I've worked on,
18 and I've never advised that insofar as being a
19 hard requirement.

20 I've gone in with the applicants for
21 projects that had no offsets yet, some of the
22 offsets they needed yet. And in some cases all
23 the offsets they needed at the time of
24 application. But I've never recognized it as a
25 hard requirement on any of those projects.

1 So, it was quite a surprise to us on
2 Friday to hear that that was going to be required.
3 I've worked on 15 AFCs -- this is the 15th, I
4 guess, starting in the last three years, and this
5 would be the fourth one in San Joaquin Valley. So
6 we felt taken off guard a little bit.

7 We're certainly, by no means, attempting
8 to avoid providing emissions offsets. We
9 acknowledge that our AFC shows the calculations of
10 the offsets we believe we need. And, of course,
11 that's also part of the ATC permit application to
12 San Joaquin Valley.

13 We are, in fact, quite motivated to get
14 these offsets as fast as we can because we have
15 been made aware that this equivalency issue that
16 is sort of looming over the San Joaquin Valley
17 APCD which could invalidate some NOx credits later
18 on if we aren't having our permit in place before
19 late this year.

20 So, there's certainly every intention
21 and every motivation for this project to go ahead
22 and obtain the offsets. We intend to do so. We
23 acknowledge that they're needed. We just didn't
24 know they were needed now.

25 VICE CHAIRPERSON BOYD: Thank you.

1 Mr. Wheatland, any --

2 MR. WHEATLAND: Just to sum up,
3 Commissioners. As you've heard the sole issue
4 that's between us and the finding of data adequacy
5 is a new requirement that the district is imposing
6 on this project, and this project alone.

7 That it actually obtain or purchase all
8 of the offsets that are required for the project
9 even before the filing of data adequacy.

10 There are many projects that are
11 currently pending before the Commission that were
12 found to be data adequate without having all their
13 offsets in place. There are projects that have
14 proceeded far along the licensing path without
15 having all the offsets in place.

16 We agree we need to provide the offsets.
17 But we believe that it would be very unfair to
18 single out this project and this project alone as
19 the only one that has to produce all of the
20 offsets before we file our application.

21 The Commission rules are very specific
22 about what needs to be in the application. We
23 followed those rules scrupulously. It requires a
24 discussion of the potential offsets that need to
25 be acquired. And we provided that.

1 The district rules are also very
2 particular about what needs to be in the
3 application. And nowhere in any of the district
4 rules is there a requirement that all the offsets
5 be obtained before the application is filed.

6 So, we really have satisfied all of the
7 requirements of the Commission's rules. And we
8 are asking you today for nothing other but to
9 treat us the same as every other project that has
10 come before the Commission. Allow us to provide
11 the offsets once the preliminary determination of
12 compliance is done. We know what we need to
13 obtain.

14 Allow us time to get those for you, and
15 we will have them in place. But please don't put
16 that as a barrier to this project that says that
17 we can't even enter the process until that very
18 expensive capital outlay has been made.

19 VICE CHAIRPERSON BOYD: Thank you, Mr.
20 Wheatland.

21 Mr. Swaney, we'd like to hear from you
22 now, and like you to address the issues as you see
23 them. And particularly to address the question
24 that's been raised that this is a very new, never
25 done before requirement on the part of your

1 district with regard to an application for a
2 project like this.

3 MR. SWANEY: Yes, good morning,
4 Commissioners. I am Jim Swaney; I'm a permit
5 services manager with the San Joaquin Valley Air
6 District.

7 I do want to make a couple of things
8 clear based on the statements of Mr. Wheatland.
9 We are not, at this time, requiring them to
10 actually have the offsets in hand before they file
11 an application.

12 What we have said is that they either
13 need to have the credits in hand, or they need to
14 have sufficient credits lined up. In the past
15 what organizations or companies have used have
16 been things that could be termed option contracts.

17 Now, we learned late last week that with
18 the current market in the ERC world, those option
19 contracts are basically not available. Like I
20 said, we learned that fact late last week.

21 We have, yesterday, provided the
22 applicant further discussion, a possible way
23 around this. But realizing, though, given that
24 yesterday would not have allowed them time to
25 demonstrate that fact to us by this morning.

1 Then they're saying this is a new
2 requirement, and that it's being applied to this
3 project alone. This is not a new requirement. I
4 can say that it's a fairly recent requirement, but
5 it's not a brand new requirement.

6 And it's not that we're applying it to
7 this project alone. There are two other projects
8 that are before the Energy Commission for two
9 power plants, those being the Modesto Irrigation
10 District and the Lodi Energy Company.

11 For both of those project applicants
12 they did provide us with that they've --
13 sufficient credits for their projects when they
14 applied to district. So for those projects that
15 issue just never came up.

16 When we look at what needs to be
17 complete for us to determine a project is
18 complete, that is not specifically laid out in our
19 rules. Our rules, and specifically it's rule
20 2201, our -- modified stationary source rule,
21 outlines some timeframes.

22 What we use for completeness is to have
23 all the information that we need in order to
24 determine can we approve or not approve a project.
25 So the necessity of knowing the specifics of their

1 offsets package plays right into that. Based on
2 distance ratios of credits, if there's
3 interpollutant trading going on between credits,
4 we need to have that information to evaluate.

5 And if we know that we do not have the
6 information that we need, then our practice is not
7 to deem the project complete.

8 But, as I said, we have provided
9 yesterday some additional information to the
10 applicant, and hopeful that they'll look at that
11 and be able to come up with something to satisfy
12 us that even if they cannot purchase the credits
13 right now, and they cannot enter into any options
14 contracts, that they still will be able to
15 demonstrate that they have the financial resources
16 and the will to purchase the credits.

17 Then we would look at that and determine
18 is this sufficient for us. And it might be. And
19 just hearing the statements that the applicant has
20 made this morning, I think it's safe to write that
21 up and give that to us. That is what we would be
22 looking for right now.

23 But, as again, they were not aware that
24 that was a possibility until yesterday.

25 VICE CHAIRPERSON BOYD: Okay, Mr.

1 Swaney. I want to hear from the staff, Ms.
2 DeCarlo, Mr. Douglas and whomever else, your
3 comments on what's transpired to date. And I want
4 you to respond to that, recognizing that quite
5 frankly I'm swayed by Mr. Wheatland and the
6 client's comments.

7 As Ms. Jones knows this morning, I did
8 comment to her that I've been sitting here a long
9 time, done a lot of siting cases. And it was a
10 little fuzzy, I didn't -- I'll confess to not
11 totally understanding what was going on here, but
12 I found this a little unusual that we would find
13 something data inadequate just because the air
14 quality issues hadn't been totally resolved.

15 And try to help me understand why this
16 may be different. Because this doesn't seem much
17 different than dozens, if not by now, hundreds, of
18 cases where the air quality issue, you know, takes
19 quite some time, and happens cncurrent with our
20 other considerations of the project.

21 I am sympathetic to the dilemma that
22 faces an applicant when the official state agency
23 finds a project data inadequate and they're facing
24 financing challenges, so on and so on and so forth.

25 So, help me understand why this is so

1 unusually different that we wouldn't go ahead and
2 find it data adequate and let them continue to
3 resolve the air quality problem.

4 MS. DeCARLO: Well, it's different
5 because the air district is telling us that at
6 this point they don't have enough information to
7 complete the determination of compliance.

8 And usually with regard to this data
9 adequacy requirement we defer to the district for
10 their determination of whether or not they can
11 proceed with the determination of compliance.

12 I will mention, just in the grand scheme
13 of things, a lot of information has come forth
14 this morning and yesterday, that perhaps it would
15 be best to defer a determination on adequacy until
16 the next business meeting to give staff the
17 opportunity to coordinate with the air district
18 and the applicant to see if we can reach some sort
19 of resolution.

20 It seems that the air district has
21 proffered an alternative to a potentially strict
22 interpretation that the applicant has to provide all
23 of the ERCs upfront. So I see a window of
24 opportunity here for us to resolve this issue by
25 the next business meeting.

1 But in terms of the substantive position
2 with regard to this data adequacy requirement, our
3 general approach is to defer to the air district's
4 determination.

5 With regard to the concern for
6 scheduling and the contract with PG&E, I'm not
7 sure that proceeding at this point necessarily
8 resolves that because if a PDOC is ultimately
9 delayed because of the failure to make headway on
10 obtaining the ERCs, then that ultimately would
11 potentially result in delay in our preliminary
12 staff assessment, and a delay in the processing of
13 the application.

14 So, rushing into a completeness
15 determination at this point doesn't necessarily
16 resolve any scheduling concerns in the long run.

17 VICE CHAIRPERSON BOYD: Mr. Wheatland,
18 would you like to respond to that?

19 MR. WHEATLAND: A couple of things, yes.
20 First of all, I think we heard from Mr. Swaney that
21 if we put in writing what you received as
22 testimony here today that that would satisfy the
23 district's concerns.

24 I suggest that there's really no
25 necessary for that bureaucratic step of reducing

1 it to writing. The testimony you heard today is
2 part of your record and you can rely upon it just
3 the same as if it was a written record.

4 And also I think it's very important to
5 point out that it has not been the practice of th
6 district to require every project to have an
7 option agreement or a purchase agreement before.
8 There are a number of projects that are currently
9 before this Commission that do not have all of the
10 offsets they need, but that the district and the
11 Commission found to be data adequate.

12 So we're just asking here today to find
13 us to be data adequate on the same basis as the
14 last project that came before the Commission. I
15 can name it, if you'd like. But we're asking to
16 go forward on the same basis.

17 We are in the process of obtaining the
18 necessary offsets. We have a broker that's
19 actively engaged in that process. The dilemma we
20 face is simply we don't have all of them that are
21 needed to go forward today.

22 And in the next couple of months, as we
23 proceed in the initial steps of this project, we
24 are very confident that we will be able to satisfy
25 both you and the district.

1 MS. DeCARLO: If I may, I just have one
2 point to add. Staff did take a look at the
3 history of various power plant applicatinos filed
4 in the San Joaquin District to determine whether
5 or not this was an anamolous approach.

6 And for most of the power plant projects
7 filed when they filed they did have either all or
8 almost all of their ERCs already identified. So
9 it didn't become a data adequacy issue.

10 The one recent case that did not have
11 any ERCs identified was the, and I believe this
12 may be what Mr. Wheatland is referring to, the
13 Kings River Conservation Community Power Plant.
14 And that plant is currently experiencing
15 difficulties in the siting process. So I don't
16 know that we want to model that as the approach we
17 necessarily want to take here.

18 COMMISSIONER BYRON: Is it the result of
19 the inability to acquire ERCs?

20 MS. DeCARLO: I'm not sure if the air
21 quality issues are the biggest cause for a delay
22 in that.

23 VICE CHAIRPERSON BOYD: Well, I'm still
24 struggling with this. This is a solar project, a
25 biomass project; it's got all the positive virtues

1 that we stand for as an agency.

2 And notwithstanding the fact that I'm a
3 45-year bureaucrat of the state of California, I
4 hate bureaucratic, you know, barriers, et cetera,
5 et cetera. I am a little concerned about maybe
6 setting a precedent here that could bite us on
7 future cases.

8 But by the same token, it seems like
9 such a relatively small bump in the road, not to
10 just get on with it and move.

11 Well, I'm seeing our division chief --
12 our deputy would like to address this.

13 MR. O'BRIEN: Thank you, Commissioner
14 Boyd. Terry O'Brien for the Energy Commission
15 Staff.

16 I think it bears noting that the last
17 bit of information, as the staff has indicated,
18 did not come in to us until about mid-February.
19 And we'd been taking the position with the
20 applicants, given our extremely heavy workload,
21 that it takes 30 days for the Commission, after
22 that last bit of information comes in, to make a
23 determination on data adequacy after a project has
24 originally gone through data adequacy and failed.

25 There have been new issues that have

1 been brought up. The staff really hasn't had much
2 time to examine this issue.

3 I really believe it would be in the
4 interest of the Commission to postpone this to the
5 next business meeting so that the staff can have
6 further discussions with the applicant, and also
7 with the district, to see if there is a position
8 that is going to be reached that all the parties
9 can agree to.

10 So, I think it would be beneficial. We
11 are certainly cognizant of and sympathetic to the
12 applicant wanting to move forward as quickly as
13 possible. We want to be cooperative in that. We
14 also want to insure that we maintain a very
15 positive working relationship with the district.
16 We are always concerned about the concerns that
17 disricts bring forward.

18 That having been said, clearly and
19 ultimately the final determination on data
20 adequacy rests with the Commission. But I think
21 historically if you go back in time the Commission
22 has had very positive working relationships with
23 the district. It's in everybody's interest,
24 including the applicant, that we have that sort of
25 positive working relationship going forward.

1 So, I would recommend that you postpone
2 a decision today, give us a little more time. We
3 haven't had sufficient time to fully digest this
4 issue. And I think that that would be the more
5 positive approach.

6 VICE CHAIRPERSON BOYD: Thank you. Two
7 things: I want to ask Mr. Swaney if he'd like to
8 make any other comments. And then I'm going to
9 ask the Chair of our siting committee, being a
10 fellow Commissioner here at the table, if he might
11 have any observations he wants to share with us.

12 Mr. Swaney, did you want to make any
13 other comments?

14 MR. SWANEY: I'll just make one
15 additional comment. The district does appreciate
16 the staff concern on keeping a good working
17 relationship with air district. But I do want to
18 let the Commissioners know that we take no
19 position on whether or not, for Energy Commission
20 purposes, this project should be considered to be
21 data adequate.

22 Thank you.

23 VICE CHAIRPERSON BOYD: Commissioner
24 Byron, any comments?

25 COMMISSIONER BYRON: Thank you, Vice

1 Chair Boyd. This has all been a very good
2 discussion. I appreciate Mr. O'Brien coming
3 forward with his reasoned arguments, as well.

4 Mr. Swaney, thank you for being on the
5 line. I had heard you indicate this new concept
6 that you put forward to the applicant centers
7 around them demonstrating the financial resources
8 and the will to move forward.

9 And I would hope that -- and that sounds
10 very reasonable to me. I would hope that a
11 company that is doing business in 26 countries, as
12 well as the statements that they made here today,
13 would go a long way towards demonstrating that.

14 I was inclined, prior to Mr. O'Brien's
15 comments, to indicate that I think we should move
16 forward on this. This is exactly the kind of
17 project the state is interested in. A developer
18 that's willing to obtain the ERCs. I don't mean
19 to prejudge the outcome of the proceeding at all,
20 but we want to give priority to these kind of
21 projects. And our Executive -- the Governor has
22 indicated the same thing.

23 And putting another hurdle in front of
24 an applicant of this nature is not something that
25 we want to do.

1 However, I think it does behoove us to
2 maintain excellent working relationships with the
3 air districts so that we can get through the data
4 adequacy process and get through the evaluation
5 process as quickly as possible.

6 I would just point out that even the
7 earlier project that we approved is an SPPE, did
8 still take approximately nine months to get
9 through. And these projects are taking longer,
10 not just because of the workload that the
11 Commission has. They are getting more
12 complicated, there's more and more hurdles, if you
13 will, for the applicants.

14 So I'm very sympathetic to that.
15 However, my fellow Commissioners, I'm inclined to
16 accept Mr. O'Brien's recommendation. And if it's
17 not too soon, I'd like to move this issue -- I'm
18 sorry, I'd like to move to accept the staff's
19 recommendation at this time that the application
20 is data inadequate.

21 VICE CHAIRPERSON BOYD: Commissioner
22 Byron, I appreciate your comment. Let me, one
23 thing, I do not like overturning the staff. Was a
24 staff person, myself, for many many years. And I
25 have a lot of respect for our siting staff and the

1 hard work that they do. They keep us afloat a lot
2 of the time.

3 Might I suggest an alternative motion.
4 That we put over this item to the next meeting,
5 and therefore not go through the process of a
6 finding of data inadequacy or a new finding of
7 data inadequacy, but just continue the resolution
8 of this item to the next business meeting in hopes
9 that all that we heard today can be adequately
10 documented and to the satisfaction of our staff
11 such that they can return on a continuation of
12 this hearing with a new recommendation.

13 I have to look at the lawyers to see if
14 what I just said is legal.

15 MS. DeCARLO: That's fine, that approach
16 is fine with staff.

17 COMMISSIONER BYRON: Good, I withdraw my
18 motion.

19 VICE CHAIRPERSON BOYD: Would you like
20 to offer a substitute motion since the Chair
21 rarely does that?

22 COMMISSIONER BYRON: No, I defer to my
23 fellow Commissioner.

24 VICE CHAIRPERSON BOYD: Ah, well, then
25 I've offered a motion, which is unusual as the

1 Chair of the meeting, but --

2 COMMISSIONER LEVIN: Could I just ask
3 the applicant, do you think you will be able to
4 provide what's needed within two weeks? And what
5 would the impact on the project be?

6 MR. WHEATLAND: Well, if I understand
7 what the district is now asking for, they're
8 asking for us to show our intent and wherewithal,
9 our ability to obtain offsets. And I believe that
10 we can show very clearly to them that we have an
11 intent to obtain offsets, and we have the
12 financial ability to do so.

13 I understand that the district is not
14 asking for us to actually own or have an option on
15 all of the offsets at this time. And so I believe
16 that we can meet that requirement.

17 By delaying this project for data
18 adequacy for two weeks, for making that finding,
19 it will delay the eventual construction of the
20 project for that period of time.

21 And certainly a continuance is better
22 than a finding that the project is data
23 inadequate.

24 Another option to consider would be to
25 find the project to be data adequate today, but to

1 require us to provide that showing to the district
2 within the next seven days. And we could do that,
3 as well.

4 VICE CHAIRPERSON BOYD: Thank you. I
5 would comment that while I'm heavily inclined to
6 agree with Mr. Wheatland, I also don't want to
7 override our staff. And after all, I've spent 20
8 years of my life in the air quality business. I
9 don't want to damage relationships with an air
10 district.

11 And I think we all need a little bit of
12 time to sort this out. I don't want to set a
13 precedent, but I think we're tramping on new
14 ground here a tiny little bit.

15 So it's kind of like without prejudice
16 continue this hearing for two weeks, and hopefully
17 have this issue straightened out. Because I don't
18 want to be revisited with this issue ever again.
19 And you're going to break ground and help us
20 perhaps solve this kind of problem.

21 In any event, I have offered a motion.

22 COMMISSIONER LEVIN: Second.

23 VICE CHAIRPERSON BOYD: And there's a
24 second.

25 All in favor?

1 (Ayes.)

2 VICE CHAIRPERSON BOYD: Opposed? It
3 carries three to nothing. Thank you, everybody.
4 And thanks for the expression of cooperative
5 attitude. And, Mr. Swaney, I hope you and the
6 applicant and our staff can get this resolved post
7 haste.

8 Okay. This is a fun day. Agenda item
9 number 8, Los Angeles Department of Water and
10 Power. Energy Commission consideration of the
11 request for rehearing/reconsideration of the LADWP
12 final opinion on greenhouse gas regulatory
13 strategies.

14 We have a representative of the
15 petitioner, which happens to be the LADWP. And
16 since we usually turn to the petitioner to present
17 their case, I'm going to ask the representative if
18 she would like to make a statement, or would you
19 prefer to wait -- I'll give you the option --
20 prefer to wait until we hear from our Chief
21 Counsel Mr. Chamberlain, and then comment and
22 respond to whatever he has to say.

23 I'll give you the option since you are
24 the petitioner and we like to defer to the
25 petitioners in a situation like this.

1 MS. JOHNSON KOWAL: If he is planning on
2 making a presentation either way, then perhaps he
3 can go first. If he's choosing to opt to not have
4 a presentation then I can certainly make my
5 statement now.

6 VICE CHAIRPERSON BOYD: Well, I believe
7 he's worked real hard on a presentation, so --

8 (Laughter.)

9 MS. JOHNSON KOWAL: I'm sure he had a
10 great Thanksgiving and Christmas, too.

11 VICE CHAIRPERSON BOYD: Mr. Chamberlain.

12 MR. CHAMBERLAIN: Well, Mr. Chairman,
13 you've already heard from a number of attorneys
14 today, and I'm sure you're looking forward to
15 this.

16 VICE CHAIRPERSON BOYD: I find myself in
17 need of attorneys lately.

18 MR. CHAMBERLAIN: On November 21, 2008,
19 the Los Angeles Department of Water and Power
20 filed a request for rehearing/reconsideration on
21 the final opinion on greenhouse gas strategies,
22 which was adopted by this Commission on October
23 16, 2008.

24 The request makes four legal arguments
25 to the effect that if the Air Resources Board

1 adopts the recommendations in the final opinion
2 relating to the method for allocating allowances
3 for a GHG cap-and-trade program and puts that
4 recommended method into its regulations
5 implementing AB-32, the regulations would be
6 legally invalid under the California constitution.

7 You have before you a draft order
8 denying this request on both procedural and
9 substantive grounds. As the draft order
10 indicates, the Commission could deny the request
11 based exclusively on procedural grounds.

12 However, because the Commission has made
13 recommendations to the California Air Resources
14 Board, or CARB, and the legal arguments made in
15 the request may be used to attack CARB regulatory
16 action, should CARB accept the Commission's
17 recommendations, it's appropriate for the
18 Commission to address those legal arguments so
19 that CARB can consider your response when it
20 decides what action to take on the
21 recommendations.

22 The draft order addresses four legal
23 arguments and finds all of them to be without
24 merit. Each argument revolves around the common
25 concern by LADWP that it may have to purchase more

1 allowances than it is allocated under the
2 Commission's recommendations.

3 The recommendations leave the detailed
4 formula for allocation to the CARB rulemaking
5 proceeding, but they do suggest two essential
6 principles for allocation.

7 First, in the first four years of the
8 program there should be a transition that divides
9 allowances 80/20 in 2012, 60/40 in 2013, 40/60 in
10 2014, and 20/80 in 2015 between two distribution
11 programs.

12 The first one would be allowances that
13 are allocated freely to deliverers of power. And
14 that means generators located in California and
15 also those entities that import power from outside
16 California into the state. And that program would
17 be based on historic emissions.

18 The second program would be allowances
19 that are allocated to the retail providers who
20 will be required to put those allowances up for
21 auction so that generators and deliverers could
22 buy them.

23 The proceeds of the auction would then
24 be used by those retail providers to make
25 investments in efficiency, low-emitting resources,

1 and bill relief particularly to low-income
2 customers.

3 And by 2016 all allowances in the
4 electricity sector would be allocated to retail
5 providers under the second program.

6 Second, there should be an additional
7 transition for the auctioned allowances, the ones
8 in the second program, that begins in 2012 with
9 allowances being allocated based on retail
10 provider portfolio historic emissions, and ends
11 with all allowances allocated based on output or
12 sales.

13 This transition should be complete no
14 later than 2020. And, as I say, the CARB is left
15 to craft the exact formulas, but those are the
16 basic principles on which the Commission
17 recommended that they allocate allowances in the
18 electricity sector.

19 The combined impact of these principles
20 is to give a utility like LADWP most of the
21 allowances it needs in 2012 to continue to operate
22 as it has in the past. But also to give a clear
23 signal that it will have to change its operations
24 fairly rapidly to a lower emitting portfolio and
25 take actions to help customers reduce demand if it

1 wishes to avoid having to purchase more allowances
2 than it will be selling through the auction.

3 The first legal argument in the request
4 for reconsideration is that if CARB adopted the
5 Commission's recommendations on allowance
6 distribution the cap-and-trade program would
7 amount to a tax that has not been adopted by the
8 required two-thirds majority of the Legislature.

9 Our response to that is twofold. First,
10 unlike a tax, the cap-and-trade program does not
11 require the payment of money to the state
12 treasury. And its purpose is not to raise state
13 revenues. Rather it only requires the acquisition
14 of allowances if an entity's operations involve
15 greater emissions than their allocation of
16 allowances. Efficiency programs and investments
17 in renewable energy may greatly reduce the number
18 of allowances LADWP must purchase.

19 Second, even if LADWP does have to pay
20 for allowances, that requirement would be more
21 analogous to a regulatory fee program such as the
22 one the California Supreme Court upheld in the
23 case of Sinclair Paint Company v. State Board of
24 Equalization.

25 In that case the court held that the

1 state's police power allows it to impose a
2 regulatory fee designed to mitigate the adverse
3 impact of a product or business practice so long
4 as the fee is reasonably related to the harm
5 caused by that product or business practice. Such
6 a fee is not a tax that requires a two-thirds vote
7 of the Legislature to authorize.

8 The second argument in the request
9 asserts that if CARB adopts our recommendations in
10 its regulations they would violate the home rule
11 provisions of the constitution.

12 This argument also fails for two
13 reasons. First, the courts have required those
14 who wish to invoke this provision to show that
15 there's an actual conflict between state and local
16 law.

17 An example of an actual conflict could
18 be a state rule that requires a two-thirds vote
19 for a city council to put a proposed tax on the
20 ballot while the local city charter would allow a
21 majority vote of the city council to do so.

22 In this case all LADWP has argued is
23 that it has limited resources and cannot keep its
24 rates low if it must simultaneously carry out its
25 own renewable portfolio goals and also purchase

1 allowances. This is not an actual conflict.

2 There would be an actual conflict if
3 LADWP wished to be a vertically integrated
4 electric utility and the state was prohibiting it
5 from doing so. In this case all the state is
6 doing is creating rules by which all such
7 utilities must operate. The home rule provision
8 does not exempt municipal utilities from such
9 rules.

10 Second, even if the court found that
11 there was an actual conflict between state and
12 local law in this case, it would not find the home
13 rule provision to be violated if the state law is
14 reasonably related to the resolution of a
15 statewide concern and is narrowly tailored to that
16 purpose.

17 As the California Supreme Court has said
18 in a case upholding the regulatory power of the
19 Tahoe Regional Planning Agency against a home rule
20 challenge, quote, "The air which the agency must
21 protect knows no political boundaries. Only an
22 agency transcending local boundaries can devise,
23 adopt and put into operation solutions for the
24 problems besetting a region as a whole." Plainly
25 the problem of climate change that GHG emissions

1 are causing is a classic example of the problem
2 that knows no political boundaries and that calls
3 for a higher level solution.

4 The third argument made in the request
5 for reconsideration asserts that article 13,
6 section 19 of the constitution prohibits the state
7 from imposing a higher tax on utilities than it
8 does on other industries, and that our
9 recommendations would do so.

10 First, of course, we reiterate that the
11 cap-and-trade program does not levy a tax at all.
12 But even if it did, articles 13, section 19 is
13 designed to insure that local property taxes are
14 levied fairly by having utility property assessed
15 by the State Board of Equalization. And then
16 having the local taxing power limited to taxing
17 utility property at the same rate as other
18 industrial property.

19 Article 13, section 19 has nothing to do
20 with the state power to tax utilities as it sees
21 fit. But, again, these recommendations are not
22 about levying taxes at all. They relate to
23 regulatory requirements. And most importantly,
24 they're exactly the same for every ton of GHG
25 emitted, whether by a utility or by some other

1 industry.

2 If utilities will bear a heavier burden
3 it is because their generation portfolios cause
4 them to emit more tons. And that is not
5 prohibited by article 13, section 19.

6 Finally, LADWP argues that our
7 recommendation would violate the constitution's
8 provision against a gift of public funds in two
9 ways.

10 First, that it would cause LADWP to pay
11 public funds to private parties to purchase
12 allowances. And second, that the allocation of
13 allowances, which would have intrinsic market
14 value, is a gift in itself of a public asset.

15 As the draft order notes, the allowance
16 allocation methods this Commission has recommended
17 is not a gift, but rather part of a regulatory
18 scheme designed to achieve public goals through
19 market activity.

20 To the extent that private entities
21 receive freely allocated allowances, they also
22 receive duties to adjust their operations to
23 reduce emissions if they wish to be able to sell
24 those allowances. So there is consideration for
25 the allocation, and it is not a gift.

1 Similarly, if LADWP must pay private
2 entities for allowances, that is no more a gift
3 than is LADWP's need to purchase any other raw
4 material it requires to produce and deliver
5 electricity to its customers, including, for
6 example, criteria pollutant emission reduction
7 credits.

8 LADWP also argues that the Commission's
9 recommendations conflict with California
10 Constitution Article 16, section 3, which
11 provides, quote, "No money shall ever be
12 appropriated or drawn from the State Treasury for
13 the purpose or benefit of any corporation,
14 association, asylum, hospital or any other
15 institution not under the exclusive management and
16 control of the state as a state institution." End
17 quote.

18 LADWP argues that it will have to pay
19 public funds to private entities to purchase
20 allowances, and that their boards are not under
21 the exclusive management and control of the state.

22 But plainly, our recommendations have
23 nothing to do with drawing money from the state
24 treasury. Indeed, the Commission recommends that
25 the proceeds of the allowance auction for the

1 electricity sector should be directly applied to
2 efficiency programs, renewable energy procurement
3 and utility bill relief.

4 Under the exiting case law CARB has
5 plenty of room to craft its programs so that there
6 is sufficient control to insure that these public
7 purposes are, in fact, served by the entities that
8 receive the auction proceeds. Indeed, paragraphs
9 16 and 17 of the final opinion's recommendations
10 offers the services of the Energy Commission and
11 the Public Utilities Commission to review and
12 approve how utilities use these proceeds.

13 Because each of the arguments in the
14 request is without merit, we recommend that the
15 Commission adopt the proposed draft order denying
16 reconsideration as further guidance to CARB in its
17 upcoming rulemaking proceeding.

18 VICE CHAIRPERSON BOYD: Thank you, Mr.
19 Chamberlain. Any questions of Mr. Chamberlain?
20 All right.

21 So, Ms. Kowal, would you like to speak.

22 MS. JOHNSON KOWAL: Yes, thank you very
23 much. Good afternoon. My name is Leilani Johnson
24 Kowal, and I am with the legislative and
25 regulatory affairs office of Los Angeles

1 Department of Water and Power. I do not represent
2 the city attorney's office.

3 I do want to make three points. One
4 is --

5 COMMISSIONER BYRON: Excuse me, Ms.
6 Kowal, just for clarification, --

7 MS. JOHNSON KOWAL: Sure.

8 COMMISSIONER BYRON: -- so I assume by
9 your statement that the city attorney's office is
10 the one that brought the petition before this
11 Commission, is that correct?

12 MS. JOHNSON KOWAL: The city attorney's
13 office is the one that counsels LADWP regarding
14 these types of issues. And we did have several
15 discussions after the adoption of the final
16 opinion as to what our next step would be.

17 And my statement will go into that, but
18 they are --

19 COMMISSIONER BYRON: Please.

20 MS. JOHNSON KOWAL: -- not present here
21 today. And I think their guidance to us was that
22 it would be appropriate for us to request a
23 rehearing.

24 I would like to make three points. One
25 is regarding process. The second is regarding the

1 greenhouse gas policy. And then the third is
2 really about LADWP's commitment to greenhouse
3 gases. And I'm sure that, as you've reviewed any
4 of these filings, I think that has become a
5 boilerplate statement regarding what direction
6 we're taking with regards to our commitment on
7 reducing our emissions related to our high carbon
8 resources.

9 The Los Angeles Department of Water and
10 Power appreciates the efforts of Mr. Chamberlain
11 and other staff to review our request for
12 rehearing. And I think, due to the unusual nature
13 of the joint proceeding that culminated in a final
14 opinion, and in some regards was referred to as a
15 final decision on greenhouse gas regulatory
16 strategies, the fact that it was adopted by both
17 Commissions, we do appreciate his clarification
18 that this is a recommendation. And that, in fact,
19 it does not have an operative effect unless and
20 until it is implemented in CARB's upcoming
21 rulemaking to adopt AB-32 regulations.

22 So, as much as LADWP has been involved
23 with this for the last two years, we will continue
24 to be involved with it for the following two years
25 until the regulations are adopted.

1 And I think at this point right now we
2 can simply agree to disagree regarding the legal
3 issues. And as these issues come up in the
4 rulemaking process, I am sure that we will have to
5 examine them in closer detail.

6 Our purpose for filing our request for
7 rehearing is simply to do two things. One is to
8 avoid the arguments associated with the legal
9 doctrine of exhaustion of administrative remedies;
10 and second, to continue to provide additional
11 perspective regarding the potential legal
12 infirmities associated with certain aspects of the
13 recommendations.

14 As we all know, the process and the
15 evolution of this whole proceeding has been that
16 we evaluated cap-and-trade with regards to
17 California-only cap-and-trade program. And it has
18 since expanded to a regional program. And more
19 recently we now see that very closely on the
20 horizon we are going to be looking at this as
21 being a model for a federal program.

22 We do agree with the Commission that the
23 judicial review would be premature at this time.
24 Moreover, LADWP is not seeking to have this
25 process result in any sort of judicial review. To

1 the contrary, our participation in the joint
2 proceeding is with the intent to inform the joint
3 Commissions of both the policy considerations as
4 well as the legal infirmities associated with
5 different approaches to reducing greenhouse gases.
6 And I would say that our specific legal concerns
7 have to do with the cap-and-trade design.

8 LADWP would hope that by identifying and
9 addressing the issues a regulatory program can be
10 developed that minimizes the potential for legal
11 challenges in the future.

12 Now, my second point has to do with the
13 policy regarding greenhouse gases. And I think
14 we've had several workshops. We've have them in
15 this arena, we've had them at the Public Utilities
16 Commission. We've had an en banc a year and a
17 half ago. And certainly numerous filings, too
18 many to count.

19 Regardless of that I think we, as
20 California overall, with all the stakeholders,
21 have done a very good job of identifying pretty
22 much what the key debate is regarding allowance
23 allocations. And this will be the same debate
24 that happens at the federal level.

25 LADWP does remain concerned about the

1 double burden of making investments in emission
2 reductions such as renewables and energy
3 efficiency programs. And also simultaneously,
4 paying for emission allowances under a cap-and-
5 trade program.

6 Certainly this can be addressed with how
7 the program is designed, and how the allowances
8 are either allocated or auctioned, to minimize
9 disincentives to high carbon utilities that want
10 to shift to a low carbon future.

11 In appreciation of the fact that the
12 parties agree that the reconsideration is
13 unnecessary and that judicial review is not
14 warranted at this time, LADWP does not see the
15 need for addressing the substantive and legal
16 arguments yet again.

17 However, I do want to get to my third
18 point which is regarding LADWP and our commitment.
19 In a number of places the draft order appears to
20 imply that LADWP is trying to avoid making hard
21 choices about keeping high-emitting resources and
22 avoid paying its fair share. The LADWP objects to
23 any such implication and characterization.

24 To be clear, LADWP has been publicly
25 vocal about our support for a statewide 33 percent

1 RPS, and we have embraced the mandate to pursue
2 all cost effective energy efficiency measures.
3 We've also demonstrated our commitment to reduce
4 our reliance on coal.

5 The challenge that LADWP has
6 specifically is that under SB-1368, the greenhouse
7 gas emissions performance standard, LADWP must
8 replace nearly 500 megawatts of baseload coal-
9 fired generation by 2019. This has been something
10 that we have seen in terms of the PUC and CEC
11 modeling. It is something that is very well
12 known.

13 And some of the challenges that we have,
14 going forward, is to replace that baseload power
15 in the absence of available baseload nuclear or
16 hydro resources. From a system reliability
17 perspective, intermittent wind and solar simply
18 won't be enough.

19 And the thing that we certainly want to
20 avoid would be something like rolling blackouts on
21 a regular basis.

22 A viable option is to pursue baseload
23 geothermal resources in areas like the Salton Sea,
24 and to build new transmission to bring that energy
25 home. 2019 is only ten years away, and it may

1 seem like a long time, but from a resource
2 planning perspective that is an extremely
3 aggressive schedule. And it would be daunting for
4 any utility. But I would say that LADWP, at this
5 point right now, is certainly embracing that
6 challenge, is up to the task.

7 Specifically regarding our permanent
8 actions that we're taking now, we're not waiting
9 until 2012 to change our carbon profile. I think
10 it would be important to highlight some of the
11 commitments that we've been making in four
12 different areas.

13 First of all, with regards to our
14 dependence on high carbon resources, LADWP
15 deliberately did not renew our contracts prior to
16 the regulations under SB-1368 going into effect.

17 More recently last year LADWP did secure
18 merging acquisition advisory services to explore
19 our options for divestiture of our ownership
20 interest in the coal-fired Navajo Generating
21 Station.

22 In terms of energy efficiency, that's
23 the second area that we have been focused on, we
24 have seen a sixteen-fold increase -- we are on
25 track to achieve a sixteen-fold increase in energy

1 efficiency savings from our levels of 2005 and '6.
2 And we've just exceed our historic high of 164
3 gigawatt hours that was achieved during the
4 2000/2001 energy crisis.

5 With that said, I am very happy to say
6 that we are also on target for meeting our fiscal
7 year goals of 274 gigawatt hours.

8 Third, with regards to renewable energy,
9 I did indicate that we have a commitment to
10 support a statewide 33 percent RPS. We
11 individually have a commitment of a 35 percent RPS
12 by 2020.

13 DWP, which is located in the southern
14 part of California with no rivers around -- I'm
15 sorry, I missed my point -- we have basically gone
16 from a very low of 3 percent in renewables back in
17 2005 to 11 percent today. That is something that
18 we are continuing to move forward on. And I
19 believe that we are still on track for meeting our
20 goals for 2010, perhaps towards the later end of
21 2010, in terms of reaching 20 percent.

22 DWP is developing several wind resources
23 throughout not just the state, but outside of the
24 state, as well. These include the PineTree
25 Windfarm, Pebble Springs, Milford Windfarm, Willow

1 Creek Windfarm. And we also purchased 12,000
2 acres of land next to PineTree to build the Pine
3 Canyon Windfarm for 156 megawatts. Simply said,
4 we are doing everything that we possibly cn.

5 We are also exploring geothermal that's
6 available just north of Los Angeles, as well as in
7 the Salton Sea area. And we recently signed a
8 geothermal power purchase agreement south of the
9 border with the Mexican Comision de Federale
10 Electricidad, CFE to boost our supply of renewable
11 energy by up to 2.5 percent per month.

12 More recently we also unveiled our Solar
13 LA program. This is the city's comprehensive plan
14 to create 1.3 gigawatt hours of solar through
15 residential-, commercial- and municipally owned
16 solar installations.

17 So, to put it lightly, in terms of
18 renewables, we are not just looking within the
19 state; we're looking within the city; we're
20 looking out of the state. And we're also looking
21 south of the border, which is an extremely
22 aggressive and ambitious commitment on our part.

23 And last, but not least, on the fourth
24 point in terms of our approach to reducing
25 greenhouse gas emissions, we're also very

1 aggressively pursuing transmission to bring these
2 types of renewables home.

3 We have three major projects. The first
4 one is our GreenPath North project in which we are
5 going to soon be issuing a notice of intent to
6 connect those renewables to our grid system.

7 And then we also have an upgrade of our
8 southern transmission system that will help access
9 out-of-state renewable energy resources such as
10 wind, biomass and geothermal.

11 Just to the north of Los Angeles we have
12 the Barren Ridge renewable transmission project,
13 which will also access resources in the Tehachapi
14 Mountains and the Mojave Desert areas.

15 Perhaps the Commission will agree that
16 these are not the actions of a utility operating
17 in a business-as-usual mode. And I would hope
18 that you would agree that a cap-and-trade program
19 is a design of that, should be one that
20 complements these types of strategies, as opposed
21 to undermines it.

22 LADWP firmly supports the goals of AB-32
23 to reduce greenhouse gas emissions from our
24 portfolio and will continue to pursue its
25 renewable energy and energy efficiency programs to

1 the full extent possible.

2 At this time the LADWP's history -- this
3 is a time in the LADWP's history in which it is
4 undergoing a fundamental and permanent
5 transformation that requires the continued capital
6 investment from within, as well as collaboration
7 with other stakeholders outside.

8 And most importantly, particular with
9 regard to this joint proceeding, we believe that
10 the support of a cohesive cap-and-trade policy is
11 also extremely important.

12 We look forward to working with the Air
13 Resources Board and the joint Commissions to
14 further examine the design of cap-and-trade, to
15 insure that it does not undermine these efforts,
16 but instead represents a true model for how a
17 federal program can help a high carbon utility
18 successfully make the transition to low carbon
19 future without -- I'm sorry -- while insuring the
20 system reliability is not compromised and its
21 consumers receive the direct benefit of their
22 investments.

23 Thank you for your time.

24 VICE CHAIRPERSON BOYD: Thank you. And
25 I, for one, would compliment you on the change

1 that you documented with regard to the views of
2 LADWP. And you can report back that my friend of
3 long standing, Mr. Caldwell, has been all over
4 most of this for quite some time in making your
5 case. So, appreciate that you're working with us
6 so closely on those kinds of issues. We like a
7 good working relationship with the municipal
8 utilities of California. And I'm glad to see that
9 you're looking at it the same way.

10 Did you have any questions? We do have
11 one other person --

12 COMMISSIONER BYRON: Go ahead.

13 VICE CHAIRPERSON BOYD: -- who's asked
14 to testify. Mr. Norm Pedersen, Southern
15 California Public Power Authority.

16 MR. PEDERSEN: Good afternoon,
17 Commissioners. I am Norman Pedersen for the
18 Southern California Public Power Authority, SCPA.

19 SCPA joins LADWP, a SCPA member, in
20 appreciating the Commission's efforts to address
21 the rehearing issues presented by it
22 comprehensively, although frankly, we very much
23 hope that the ultimately adopted ARB AB-32
24 implementation program will avoid raising the
25 issues that your draft order addresses.

1 There are some puzzling passages for us
2 in the decision. For example, at footnote 4
3 there's a passage that says the term "wealth
4 transfer" is a term of art that is used by
5 economists.

6 Well, it might be. But we're not sure
7 that you have to be Timothy Geithner to understand
8 what a wealth transfer is.

9 Senator Rod Wright, whom I'm sure you
10 now quite well, often talks about the two-feet-on-
11 the-ground view of a guy on Crenshaw in south
12 central. Ultimately, the AB-32 program is going
13 to need popular support from people like Rod
14 Wright's guy on Crenshaw. And I'd like to give
15 you an example of a concrete effort to get the
16 support of that type of a guy.

17 Yesterday, there was a forum in Los Angeles
18 about Measure B. If you don't know, Measure B
19 provides for the installation of 400 megawatts of
20 solar energy by LADWP in L.A. and at the airports
21 that are under the City of Los Angeles'
22 jurisdiction.

23 The cost of Measure B is estimated to be
24 \$1.3 billion. Some estimates go actually
25 substantially higher.

1 At yesterday's forum in Los Angeles Bill
2 Corcoran from the Sierra Club called Measure B a
3 game-changing move. He also explained, and I'm
4 quoting him, "you need to have the will of the
5 people fixed in place to get solar to move
6 forward."

7 In order to get the will of the people
8 fixed in place, Mr. Corcoran said, and I'm quoting
9 him again, "Measure B will put money in the pocket
10 of people here in L.A. It will bring industry
11 here." That's what he was telling the people of
12 Los Angeles.

13 Echoing Mr. Corcoran, the general
14 manager and CEO of LADWP, David Nahai, said
15 Measure B means renewables in L.A., by L.A., and
16 for L.A.

17 We are concerned about the possibility
18 that we will have an ARB AB-32 implementation
19 program that tells Rod Wright's guy n Crenshaw
20 that you're going to have to pay for the
21 renewables in L.A. And you're also going to have
22 to pay for cap-and-trade allowances with the
23 revenues that are derived frmo the sale of the
24 cap-and-trade allowances going off to pay for
25 renewable and goodness knows what else in other

1 communities.

2 Your draft order does not assuage our
3 concern. Make no mistake about it, SCPPA, like
4 LADWP, supports AB-32. SCPPA fully supports the
5 ARB's valiant efforts to implement AB-32. But we
6 believe that at the end of the day we are going to
7 fully need -- all of us are going to need the will
8 of the people, as Bill Corcoran put it, fixed in
9 place behind the program. And avoiding wealth
10 transfers, as fully understood by Rod Wright's man
11 on the street, is one of the ways to get that
12 support, in our view, fixed in place.

13 Thank you very much for having the
14 opportunity to address you today.

15 VICE CHAIRPERSON BOYD: Thank you, Mr.
16 Pedersen.

17 Seeing no other indicatinos of public
18 comment, I'll ask my fellow Commissioners if they
19 have any questions or comments they would like to
20 make.

21 COMMISSIONER BYRON: I do have a
22 question, thank you. We were here about four
23 months ago adopting the joint recommendation back
24 on October 16th of last year.

25 The Energy Commission and the PUC put a

1 great deal of effort into this. Dare I say nearly
2 as much effort as our chief counsel put into the
3 response to this petition.

4 You know, all that effort and the
5 resulting recommendation is not nearly as
6 important as what we do from here on. We need to
7 focus on regional and federal greenhouse gas
8 reduction efforts. And we need to aggressively
9 pursue all the GHG reduction programs, especially
10 around energy efficiency, combining power and
11 renewables.

12 Now, we stated in our joint decision
13 back on the 16th of October business meeting that
14 this is a recommendation to the ARB. I know I
15 said that at least three times in my comments.

16 And it's particularly true in the market-
17 design elements of what we proposed.

18 In my mind that's the essence of our
19 denial of this petition. The ARB is free to
20 accept or reject our recommendations.

21 But that doesn't mean we're advocating
22 our policy role here, our energy policy role.
23 We're very committed to working wiht the ARB and
24 our colleagues at the Public Utilities Commission
25 to craft what I like to call a glide path that

1 gets to the aggressive GHG reductions that the
2 state has identified in AB-32. And we're going to
3 continue to assist the ARB as it moves through the
4 regulatory process. And we need, and I hope, that
5 LADWP and the SCPPA members will be active
6 participants in that process.

7 I'm pleased to hear the petitioner
8 reiterate its commitments to the greenhouse gas
9 reduction goals. Ultimately that's what we need
10 to focus on, not on these legal challenges.

11 I've been in several forums where the
12 Energy Commission is asked what we're doing to
13 assure that the munis will meet their commitments
14 to greenhouse gas reduction programs, particularly
15 energy efficiency and renewables.

16 It would seem that many folks want us to
17 become your regulator. I do not want to regulate
18 a group of utilities, publicly owned utilities,
19 such as Los Angeles Department of Water and Power,
20 that are already closely monitored by those they
21 serve, are meeting the needs of their citizens,
22 and are doing it at much lower costs.

23 But, we do have some critical state
24 policies that we want to see applied throughout
25 the entire state. And therefore it's critical that

1 your constituents and us here at the Commission
2 and the Public Utilities Commission, because we're
3 partners in this, hear and see the fulfillment of
4 your commitments to these policies. Your
5 statements today go a long way towards that.

6 And the Measure B that Mr. Pedersen
7 brought up in March will provide some indication
8 of the support of citizens. I wish you good luck
9 in that campaign.

10 I also read news today of an additional
11 100 megawatt project site for photovoltaics that
12 you didn't have on your list. And you probably
13 don't want to comment on it at this point. All of
14 these are very good indications of the direction
15 that LADWP is headed.

16 But given the importance of your size to
17 the state, and all the changes that we've been
18 seeing of late, I'd like to see you become leaders
19 of innovation in program delivery and execution.
20 My sense is that LADWP has somewhat of a history
21 of being a, or take a go-it-alone kind of approach
22 -- I'll say that again, taking a kind of a go-it-
23 alone approach. And you also cited a number of
24 the transmission projects that you're doing.

25 We want to make sure, in our renewable

1 energy transmission initiative, that we do not
2 impede LADWP's desires and intentions. But at the
3 same time we hope you will be party to that, and
4 you will contribute to the state's goals.

5 Back to that notion of being leaders,
6 please inform your attorneys, Ms. Johnson, that
7 these kinds of legal maneuvers do not contribute
8 to your message as leaders. And have quite the
9 opposite effect, at least in my mind.

10 On that note, I think you did an
11 excellent job representing the Department. And we
12 stand ready to be your partners and want to engage
13 LADWP in a constructive manner going forward to
14 move the state's energy and climate change
15 policies.

16 MS. JOHNSON KOWAL: Thank you very much.
17 LADWP also agrees that we will be working in
18 partnership with you on all of these efforts, not
19 just on greenhouse gases, but on transmission
20 development, energy efficiency and renewable
21 energy.

22 Thank you.

23 COMMISSIONER BYRON: Good. Thank you.

24 VICE CHAIRPERSON BOYD: Thank you, both.

25 It's good to see we've just about buried the

1 hatchet on this one, and I agree, let's look
2 forward, let's not look back.

3 So, do I have any comments or a motion
4 of some type relative to this item?

5 COMMISSIONER BYRON: I would like to
6 move the motion -- I'm sorry, I'd like to move the
7 item. I think Mr. Chamberlain's done an excellent
8 job preparing the response here that I agree with
9 in its entirety.

10 COMMISSIONER LEVIN: Second it.

11 VICE CHAIRPERSON BOYD: There's a motion
12 and a second.

13 All in favor?

14 (Ayes.)

15 VICE CHAIRPERSON BOYD: Opposed?
16 Hearing nothing, it carries three to nothing. And
17 let's put this in a file drawer and get on with
18 life.

19 (Pause.)

20 VICE CHAIRPERSON BOYD: We're going to
21 take a five-minute break in deference to --

22 (Brief recess.)

23 VICE CHAIRPERSON BOYD: We're back on
24 the record. Item number 9, possible approval of
25 contract 150-08-003 with Robert J. Watson

1 Enterprises. Enough said. Ms. LaFranchi, if you
2 would.

3 And I would ask all staff, we're going
4 to lose a quorum at 1:00, so we need to march
5 rapidly through these items.

6 MS. LaFRANCHI: I'll keep it brief. But
7 I do believe this morning's agenda clearly shows
8 how many of our programs and critical work
9 products rely on team efforts and include outside
10 stakeholders with diverse interests.

11 Even this approach is essential for the
12 successful completion of these products at the
13 Commission, teams and working groups present
14 special challenges when sensitive issues and often
15 conflicting perspectives are involved.

16 We propose to contract with Robert
17 Watson Enterprises to help the Commission Staff
18 work more efficiently and effectively in the team
19 environment.

20 During this contract approximately 600
21 employees will participate in facilitated
22 instruction and practice sessions. They will
23 learn how to increase an individual's commitment
24 to the team, prevent communication problems, keep
25 groups focused and mission-oriented, and learn how

1 to effectively resolve conflicts and deadlocks.

2 Additionally this contract will build on
3 some previous contract work that was done by
4 Robert Watson almost ten years ago. And there are
5 still almost 20 percent of the staff here at the
6 Commission who have already learned these skills.
7 And so this will be another building block to that
8 previous work.

9 So I recommend and request your approval
10 of this contract.

11 VICE CHAIRPERSON BOYD: Thank you. I
12 personally am very supportive of what you're
13 proposing here. Comments, questions, a motion?

14 COMMISSIONER BYRON: Well, maybe 605
15 employees --

16 MS. LaFRANCHI: I think we can flex.

17 COMMISSIONER BYRON: I move the item.

18 COMMISSIONER LEVIN: Second it.

19 VICE CHAIRPERSON BOYD: All in favor?

20 (Ayes.)

21 VICE CHAIRPERSON BOYD: Opposed?

22 Hearing nothing, approved three to nothing.

23 MS. LaFRANCHI: Thank you.

24 VICE CHAIRPERSON BOYD: Thank you. Item
25 10, Haagen-Smit symposium. Possible approval of

1 contract 600-08-005 for \$25,000 to the Air
2 Resources Board for cosponsorship of said
3 symposium. Mr. Smith.

4 MR. SMITH: Good afternoon at this
5 point, Commissioners. This is the annual Haagen-
6 Smit conference that we're requesting
7 cosponsorship of. It provides an excellent
8 opportunity for policymakers, scientists and other
9 stakeholders to convene and discuss the
10 relationship between energy and climate change.

11 This cosponsorship puts us on the
12 steering committee for this very very important
13 conference. This year the subject is -- I don't
14 have the title, I'm sorry -- oh, yes, I'm sorry --

15 COMMISSIONER BYRON: Addressing the
16 missing half.

17 MR. SMITH: -- the missing half of the
18 carbon footprint. This has a relationship to what
19 we're trying to do in our program, coincidentally.
20 Beginning this fiscal year we're trying to
21 understand much better the demand implications of
22 freight and aviation demand implications for fuel
23 and the related greenhouse gas emissions.

24 So we recommend the Commission approve
25 the cosponsorship.

1 VICE CHAIRPERSON BOYD: Questions,
2 comments? Questions, comments, concerns?

3 COMMISSIONER LEVIN: I'll move to
4 approve.

5 VICE CHAIRPERSON BOYD: Motion.

6 COMMISSIONER BYRON: Second.

7 VICE CHAIRPERSON BOYD: Second.

8 All in favor?

9 (Ayes.)

10 VICE CHAIRPERSON BOYD: Approved three
11 to nothing. Thank you, Mr. Smith. Very good
12 symposium at that.

13 COMMISSIONER BYRON: It is.

14 VICE CHAIRPERSON BOYD: Item number 11,
15 oil price information service renewal, or OPIS, as
16 some of us say. Possible approval of a purchase
17 order 08.445.03-022 -- can you make it more
18 complicated -- for \$130,963 with OPIS to renew our
19 subscription for two years. Mr. Smith again.

20 MR. SMITH: Hello, again. This
21 subscription service is one of the key elements of
22 our program within the division, intended to help
23 us understand the supply/demand pricing
24 implications of the fuels market in California.

25 We've been using this service for quite

1 some time, and it has proven invaluable over the
2 years in helping us understand those factors.

3 We've been able to provide information
4 when there has been emergencies. It helps us in
5 our more routine analytical functions. And we
6 urge the Commission to approve the renewal.

7 VICE CHAIRPERSON BOYD: Thank you.

8 Questions?

9 COMMISSIONER BYRON: None.

10 VICE CHAIRPERSON BOYD: Motion?

11 COMMISSIONER BYRON: I move the item.

12 COMMISSIONER LEVIN: Second.

13 VICE CHAIRPERSON BOYD: Motion and

14 second.

15 All in favor?

16 (Ayes.)

17 VICE CHAIRPERSON BOYD: Approved three

18 to nothing, thank you. Another very positive

19 document that we need.

20 Item number 12, BR Laboratories, Inc.

21 Possible approval of contract 400-08-003 for

22 \$170,000 to conduct testing to insure that

23 appliances sold or offered for sale in California

24 comply with energy efficiency standards.

25 Good afternoon.

1 MS. HALL: Good afternoon. I'm Valerie
2 Hall, the deputy director for efficiency and
3 renewable energy. And with me is Tova Ealey, who
4 is our enforcement staff person for the appliance
5 regulations.

6 The Commission has been adopting and
7 implementing and enforcing efficiency standards
8 for appliances since the mid-1970s. The
9 regulations allow for independent testing of
10 appliances. And we do that because that can
11 confirm for us the energy efficiency claims of
12 manufacturers who certify their products to us.

13 It can prove or disprove allegations
14 made by one manufacturer against another over
15 claimed efficiencies. And can support other
16 independent enforcement activities that we would
17 be looking at.

18 We have been contracting for independent
19 laboratory testing since 1981 whenever funding was
20 available. We basically direct the contractor to
21 purchase state-regulated appliances from the
22 retail facilities that you or I or any California
23 consumer is going to use. So we're getting real
24 product and testing them.

25 And then, of course, we test them

1 according to the test procedures specified in the
2 regulations. And we verify whether or not they
3 meet the efficiencies claimed or not. And if not,
4 we take appropriate action.

5 The proposed contract is a two-year,
6 170,000 noncompetitive bid contract with BR
7 Laboratories. The funding is from ERPA and the
8 contract should start in late April or early May,
9 and would conclude on March 31st of 2011.

10 We chose BR Laboratories out of 594
11 approved appliance testing laboratories that exist
12 worldwide. We chose them because we needed a
13 contractor located in California to reduce
14 shipping costs from the retail facilities here in
15 California.

16 We needed someone experienced in testing
17 a variety of the over 160 appliance types. We
18 needed someone familiar with the numerous
19 appliance-specific state, federal and industry
20 test methods. And we also needed somebody who was
21 not associated with any regulated manufacturer to
22 avoid potential conflicts of interest.

23 And BR Laboratories was the only
24 laboratory that met those criteria. We've worked
25 with this company before under contract and have

1 been very pleased with their work.

2 And with that, I would seek your
3 approval of this contract.

4 VICE CHAIRPERSON BOYD: Thank you, Ms.
5 Hall. Questions, comments?

6 COMMISSIONER BYRON: Well, a comment,
7 and that is that, you know, not being on the
8 Energy Efficiency Committee, I don't get to see
9 all these things. And I'm so pleased to read this
10 last -- I shouldn't say this -- last night. And,
11 of course, I always assumed we did these kind of
12 enforcements. But to read through on how we go
13 about it, I'm very impressed. This is a very
14 important part of the energy efficiency program.

15 So, I say thank you. I would move the
16 item.

17 COMMISSIONER LEVIN: Second it.

18 VICE CHAIRPERSON BOYD: A motion and a
19 second.

20 All in favor?

21 (Ayes.)

22 VICE CHAIRPERSON BOYD: Opposed?

23 Hearing none, it carries. Thank you very much.

24 MS. HALL: Thank you.

25 VICE CHAIRPERSON BOYD: Item 13, San

1 Diego Gas and Electric Company. Possible approval
2 of contract 500-08-025 for \$2,808,488 with SDG&E
3 to demonstrate smart grid applications in
4 interconnected network. And I'll let Mr. Gravely
5 explain the details.

6 MR. GRAVELY: Good morning. I'm Mike
7 Gravely from the -- development division. As
8 California pursues the smart grid of the future,
9 field demonstrations are very critical.

10 This project represents an opportunity
11 for us to work with San Diego to demonstrate a
12 technology such as the AMI system, distributed
13 generation and storage and other technologies,
14 renewables at customer sites and obtain
15 information about that, and obtain that new data
16 to encourage customers to participate in these
17 types of programs to reduce their energy use. And
18 can transfer their energy use to more desirable
19 greenhouse gas reduction type techniques.

20 This project also will benefit from the
21 collaboration with a DOE grant that San Diego got
22 from \$6.9 million in this area also. So will be
23 leveraging other funds in this project.

24 And so we think this is a great
25 opportunity for us to get field results that would

1 help us in the future.

2 And we're requesting your approval today
3 for this contract.

4 VICE CHAIRPERSON BOYD: Thank you, Mike.
5 Any chance that this project might become a magnet
6 for some more of that economic stimulus money
7 directed a smart grids?

8 MR. GRAVELY: Yes, sir. It is a good
9 candidate. This is one of the projects where the
10 lessons learned can be literally leveraged to all
11 the utilities in California. So there is some
12 knowledge here on the smart grid, and knowledge on
13 technologies, clean technologies, that could be
14 repeated through many utilities in California.

15 VICE CHAIRPERSON BOYD: Thank you. Any
16 questions, comments?

17 COMMISSIONER BYRON: A quick comment.
18 You know, there are so many, I find, exciting
19 issues and projects that we deal with here at the
20 Commission. And is one of those things that makes
21 you proud to be part of this organization.

22 But, this is one of those projects that
23 I'm really behind. Hats off to the staff of San
24 Diego Gas and Electric. When I read through this,
25 I found it to be one of the most customer-centric

1 items I've ever seen an investor-owned utility do.

2 So, I'd love to read the goals into the
3 record that would validate that statement. But
4 I'm fully in support of this, I think it's an
5 excellent project. And enough said. I'll move
6 the item.

7 COMMISSIONER LEVIN: Second it.

8 VICE CHAIRPERSON BOYD: There's a motion
9 and a second.

10 All in favor?

11 (Ayes.)

12 VICE CHAIRPERSON BOYD: Opposed?

13 Hearing nothing, it's approved three to nothing.

14 Thank you very much.

15 I was very pleased to hear about this
16 when we did it in the Research Committee, because
17 it gave me faith that we really are doing smart
18 grid stuff.

19 All right, item 15, Lawrence Berkeley
20 National Laboratory. Possible approval of work
21 authorization MRA-02-081 for \$180,000 with
22 Lawrence Berkeley. This is you.

23 MR. GRAVELY: Item 14, sir, I think. We
24 still have 14 to cover.

25 VICE CHAIRPERSON BOYD: Oh, I jumped

1 ahead. I am very sorry. I'm trying to move us
2 and I'm delaying us.

3 University Enterprises, Inc., item
4 number 14. Possible approval of contract 500-08-
5 027 for \$200,000 with California State University
6 Sacramento Center for Information Assurance and
7 Security. I'll let you explain the rest, Mr.
8 Gravely.

9 MR. GRAVELY: Yes, sir. Again, a smart
10 grid area has been moved forward. One of the
11 areas that's really important to us is cyber
12 security, information security.

13 California State University Sacramento
14 has a center for information assurance and
15 security that's received a national certification
16 for academic excellence from the Homeland
17 Security, and also NSA.

18 This project will help us. They will be
19 doing some assessments for us and looking at smart
20 grid technologies, particularly in the area of
21 communications and the wide use of communications,
22 two-way communication technologies, looking for
23 cyber security opportunities for problems to be
24 resolved.

25 And also developing research and

1 development goals for us in the future to help us
2 insure the smart grid of the future is, in fact,
3 secure. And that individuals are not able to hack
4 into the system or do things like that.

5 So, this is an opportunity for us to
6 begin to look into that area and identify future
7 problems, if they exist. And also to identify
8 future reseach.

9 And we request your appoval for this
10 contract.

11 VICE CHAIRPERSON BOYD: Thank you.
12 Questions, comments?

13 COMMISSIONER BYRON: No comments. I
14 want to move the item.

15 COMMISSIONER LEVIN: Second.

16 VICE CHAIRPERSON BOYD: A motion and a
17 second.

18 All in favor?

19 (Ayes.)

20 VICE CHAIRPERSON BOYD: Approved three
21 to nothing.

22 All right, item number 15 now that I
23 accidentally cross off already. Lawrence Berkeley
24 National Laboratory work authorization MRA-02-081
25 for \$180,000. Mr. Kelly, please explain this.

1 MR. KELLY: Good afternoon. Thom Kelly,
2 deputy director for research and development.

3 This project costs a lot less than a lot
4 of model development and tool development because,
5 in part, it's built on the shoulders of previous
6 work that's been very effective for us.

7 It started in distributed generation,
8 how do you help people figure out what this really
9 -- generation options there are in their
10 businesses. This will change that to make it
11 focus on storage, electricity storage. That's
12 going to be a big part of the smart grid in the
13 future.

14 And this is a web-based tool that will
15 help the businesses identify the characteristics
16 of storage devices, match it with their loads and
17 their rates, and turn that into ideas about
18 technologies that will fit in their circumstance.

19 VICE CHAIRPERSON BOYD: Thank you.
20 Questions? Comments?

21 COMMISSIONER BYRON: No comment. I'd
22 like to comment, but I think in the interest of
23 time I'll just move the item.

24 COMMISSIONER LEVIN: Second.

25 VICE CHAIRPERSON BOYD: A motion and a

1 second.

2 All in favor?

3 (Ayes.)

4 VICE CHAIRPERSON BOYD: Opposed?

5 Hearing none, approved three to nothing. Thank
6 you. Another smart grid oriented activity.

7 Item 16, State Water Project Contractors
8 Authority. Possible approval of contract 500-08-
9 028 for \$400,000 with the aforementioned
10 organization for analysis and optimization of
11 water and energy balances for storage and
12 conveyance systems.

13 Mr. Kelly, again.

14 MR. KELLY: As most children, I think,
15 are taught in the schools, there's water-centric
16 northern California. And it sends that resource
17 to the population-centric southern California.
18 And just before the Tehachapis it branches off.
19 Part goes over and part goes around. And the east
20 branch is the part that goes around.

21 DWR is looking at spending \$500 million
22 to improve that section of the Water Project. And
23 this is geared for the users, the State Water
24 Project Contractors Authority, to help make sure
25 that they can get as much water as possible out of

1 the system. Get help with the electricity, help
2 efficiency and potentially build in renewables
3 into that part of the canal.

4 So this is a -- it's being awaited by
5 both DWR and the Authority.

6 VICE CHAIRPERSON BOYD: Thank you, Mr.
7 Kelly. You do need to bone up on how the State
8 Water Project is geographically distributed,
9 though. All the water goes through the
10 Tehachapis. And on the south side it splits into
11 a --

12 MR. KELLY: Oh, it splits there --

13 VICE CHAIRPERSON BOYD: -- west branch
14 and an east branch. Having spent eight years of
15 my life working on that project, and the east
16 branch is a good place to do this kind of work.

17 Questions, comments?

18 COMMISSIONER BYRON: Well, be as it may,
19 I found the discussion in the last minute or two
20 very enlightening.

21 (Laughter.)

22 COMMISSIONER BYRON: Having not gone to
23 school to learn that. I'd like to move this item.

24 COMMISSIONER LEVIN: Second.

25 VICE CHAIRPERSON BOYD: Motion and a

1 second.

2 All in favor?

3 (Ayes.)

4 VICE CHAIRPERSON BOYD: Opposed? None.
5 Approved three to nothing in spite of.

6 Item number 17, Southern California Gas
7 Company. Possible approval of contract 500-08-026
8 for \$200,000 with the aforementioned company to
9 develop web-based software to identify natural gas
10 savings opportunities.

11 MR. KELLY: The first contract I talked
12 about was electricity efficiency. The second was
13 water efficiency and renewables. And the third is
14 natural gas.

15 We have a web-based tool that's been
16 piloted already. And customers indicate it's very
17 good. We've found that it needs some additional
18 updating before it's made available throughout the
19 state. That's what the \$200,000 is for, is to
20 make it more customer friendly and user friendly.

21 And SoCalGas has added \$219,000 to this
22 project to help make sure it works for their
23 customers before we roll it out to the state.

24 VICE CHAIRPERSON BOYD: Thank you.

25 Questions, comments? Motions?

1 COMMISSIONER BYRON: I move the item.

2 COMMISSIONER LEVIN: Second.

3 VICE CHAIRPERSON BOYD: A motion and a
4 second.

5 All in favor?

6 (Ayes.)

7 VICE CHAIRPERSON BOYD: Opposed?

8 Hearing none, carries three to nothing. Thank
9 you, Mr. Kelly.

10 Item 18, --

11 COMMISSIONER LEVIN: There are
12 advantages to being late.

13 VICE CHAIRPERSON BOYD: Yes. University
14 of California Berkeley. Possible approval of
15 contract 500-08-031 for \$299,992 to enhance tools
16 for balancing hydropower and environmental
17 protection, et cetera. Ms. Spiegel.

18 MS. SPIEGEL: Good afternoon,
19 Commissioners, and welcome, Commissioner Levin.

20 I'm requesting approval of the contract
21 with UC Berkeley to build upon our knowledge and
22 understanding of how to identify and reduce
23 impacts of hydropower operations on aquatic
24 species, in this case a key indicator amphibian
25 species, to inform and facilitate FERC

1 relicensing.

2 PIER program has sponsored research to
3 develop models to simulate the effects of pulsed
4 or ramp flows on amphibians of particular concern
5 in the past. And this particular model will build
6 upon those models by adding a temperature and
7 habitat quality components.

8 This project meets the goals identified
9 in the '05 IEPR to improve efficiency and
10 effectiveness of FERC hydropower relicensing
11 process to best balance environmental and energy
12 concerns. And the goals of SB-1250 to provide
13 electricity while protecting finite water
14 resources.

15 VICE CHAIRPERSON BOYD: Thank you. Very
16 familiar with the work that's been done here; it's
17 very good work.

18 Questions, comments, motions?

19 COMMISSIONER BYRON: Long live the
20 foothill yellow-leg frog.

21 (Laughter.)

22 VICE CHAIRPERSON BOYD: I'll move the
23 item.

24 COMMISSIONER LEVIN: Second it.

25 VICE CHAIRPERSON BOYD: A motion and a

1 second.

2 All in favor?

3 (Ayes.)

4 VICE CHAIRPERSON BOYD: Opposed? None.
5 Carries three to nothing. Thank you.

6 All right, item 20 we have deferred --
7 oops, item 19. Once again I crossed something off
8 before I totally finished it.

9 Item 19, memorandum of understanding
10 with the Indian Forum of Regulators and the Delhi
11 Regulatory Commission. Mr. Hungerford, for
12 Commissioner Rosenfeld, I believe.

13 MR. HUNGERFORD: Yes, David Hungerford,
14 Commissioner Rosenfeld's Advisor. I'm here to ask
15 for your approval of two memoranda of
16 understanding between the Energy Commission and
17 Lawrence Berkeley National Labs, the Public
18 Utilities Commission and two different regulatory
19 authorities in India.

20 The purpose of these memoranda are to
21 promote information exchanges in future joint
22 research activities on the topics of energy
23 efficiency and demand side management, integrated
24 resource planning, regulatory frameworks for
25 facilitating demand side management, training of

1 regulator and utility staff, and measurement and
2 evalaution of efficiency impacts.

3 The way this would be accomplished is
4 through information exchanges, visits, joint
5 seminars, conferences and workshops in future
6 collabortive research.

7 The intended outcome is to support the
8 transfer of our experience and knowledge to India
9 with the goal of helping them incorporate energy
10 efficiency and demand side management at a
11 critical time in the expansion of their
12 electricity infrastructure and growing electricity
13 consumption.

14 VICE CHAIRPERSON BOYD: Thank you, Mr.
15 Hungerford. Were we to not approve this agreement
16 would Commissioner Rosenfeld be stranded in India
17 indefinitely?

18 MR. HUNGERFORD: I believe he would.

19 (Laughter.)

20 VICE CHAIRPERSON BOYD: Not wanting that
21 to happen, any comments, questions?

22 COMMISSIONER BYRON: Well, yeah,
23 Commissioner Rosenfeld clearly leverages his
24 position here, as the MOU says, at one of the most
25 progressive states in the United States. And here

1 he is taking two weeks vacation to work in China
2 and India on these issues.

3 So I wholeheartedly support his efforts.
4 I'm not planning, myself, to take a vacation to do
5 this, but I appreciate his dedication.

6 I move the item.

7 COMMISSIONER LEVIN: Second it.

8 VICE CHAIRPERSON BOYD: A motin and a
9 second.

10 All in favor?

11 (Ayes.)

12 VICE CHAIRPERSON BOYD: Opposed?

13 Hearing none, carries three to nothing. And tell
14 Art he can come home.

15 MR. HUNGERFORD: I'll --

16 VICE CHAIRPERSON BOYD: Okay, now
17 skipping item 20 for lack of an appropriate
18 quorum, item 21, Commission Committee
19 presentations?

20 COMMISSIONER BYRON: It's not a
21 presentation. It's just the only opportunity to
22 say thank you to Commissioner Levin, as miserable
23 as she must feel with her illness, to be here
24 today so we can conduct business. Thank you very
25 much.

1 VICE CHAIRPERSON BOYD: Yeah, I was not
2 willing to make the sacrifice two weeks ago, and
3 we lost a quorum.

4 In any event, thank you.

5 Chief Counsel's report.

6 MR. CHAMBERLAIN: I have no report
7 today, Mr. Chair.

8 VICE CHAIRPERSON BOYD: Thank you.

9 Executive Director's report.

10 COMMISSIONER LEVIN: Can we give him a
11 raise for that?

12 (Laughter.)

13 EXECUTIVE DIRECTOR JONES: No report
14 today.

15 COMMISSIONER LEVIN: And her, too?

16 VICE CHAIRPERSON BOYD: We have no Leg
17 Director, so I assume no report.

18 The Public Adviser is here.

19 PUBLIC ADVISER MILLER: Two quick items,
20 I apologize. I just want to make an --

21 VICE CHAIRPERSON BOYD: Don't apologize.

22 PUBLIC ADVISER MILLER: -- announcement
23 that we have Vaca Station site visit is scheduled
24 for March 12th. And I think that that's important
25 to get the word out early.

1 We also have the Chula Vista Committee
2 Conference on the Presiding Member's Proposed
3 Decision, has been rescheduled on April 6th. That
4 is also reflected on our website.

5 That's all I have. Thank you.

6 VICE CHAIRPERSON BOYD: Thank you. Last
7 item, public comment. There is no public.

8 So, thank you, all. And we have no need
9 for an executive session, so I adjourn this
10 meeting.

11 (Whereupon, at 1:02 p.m., the business
12 meeting was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of March, 2009.

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