



COMMISSIONERS PRESENT

Karen Douglas, Chair  
James D. Boyd, Vice Chair  
Jeffrey D. Byron  
Anthony Eggert  
Robert Weisenmiller

STAFF PRESENT

Melissa Jones, Executive Director  
Michael Levy, Chief Counsel  
Jennifer Jennings, Public Advisor  
Harriet Kallemeyn, Secretariat  
Claudia Chandler, Chief Deputy Director

Dennis Beck, Chief Counsel's Office  
Eric Solario, Project Manager (CEC)  
Jared Babula, Staff Counsel  
Terry O'Brien, Deputy Director  
Eurlayne Geiszler, Supervisor, Compliance and Enforcement Unit  
Efficiency and Renewable Energy Division  
Joe Loyer, High Performance Building and Standards  
Larry Rillera, Fuels and Transportation Division  
Jennifer Allen,  
Jim McKinney, Office Manager, Emerging Fuels Office  
Kyle Emigh, Budget Office  
Anish Gautam, Energy Research and Development Division,  
Industrial Agricultural Water Group  
Misa Milliron, PIER, Environmental  
Rich York, Siting Division  
Paul Roggensack, Energy Research and Development Division  
Craig Holworth, Supervisor, High Performance Buildings  
S. T. Seran, Lead Mechanical Engineer, Non-Residential HVAC  
Systems and Developing Alternative Calculation Methods  
Kenneth Celli, Hearing Officer  
Paul Kramer, Hearing Officer

Public:

Michael Short

Douglas Beaman, Board of Directors, CHEERS

Jane Luckhardt, Project Counsel (Beacon Solar Energy Project)

Tanya Gulesserian, Counsel, California Unions for  
Reliable Energy

Michael Bevins, Public Works Director, City of California City

Jack Stewart, (Retired) General Manager, Community Service  
District and former City Manager, California City

Scott Busa, Director, Next Era Energy Resources

Lisa Cottle, Counsel, Mirant Marsh Landing, LLC

John Chillemi, President, Mirant California and  
President, Mirant Marsh Landing

Kerry Willis, Senior Staff Counsel

Mike Monasmith, Project Manager

Rick York, (to address air issues)

Heather Blair, Aspen Environmental Group

Matt Layton (to address air issues)

Gerry Bemis, (to address air issues)

Dr. Alvin Greenberg, (to discuss DTSC current issues)

Rob Simpson, Sierra Club California

George Nesbitt, Environmental Design Build and Founding  
Board Member, CalHERS

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P R O C E E D I N G S

August 25, 2010 10:09 a.m.

CHAIRPERSON DOUGLAS: Good morning. Welcome to the California Energy Commission Business Meeting of August 25<sup>th</sup>, 2010.

Please join me in the Pledge.

(Whereupon, the Pledge of Allegiance was received in unison.)

CHAIRPERSON DOUGLAS: Very well. Item 1, the Consent Calendar, I under -

COMMISSIONER BYRON: Madam Chair, if I may, I would like to move Item 1G to discussion.

CHAIRPERSON DOUGLAS: Very well. Item 1F is also going to move to discussion, so we will take those in order after the Consent Calendar. Is there a motion on the Consent Calendar Items A through E?

COMMISSIONER BYRON: Move approval.

VICE CHAIR BOYD: Second.

CHAIRPERSON DOUGLAS: All in favor?

(Ayes.)

Consent Calendar is approved. Item F. I understand there will be a presentation by Ms. Geiszler. Please come forward.

MS. GEISZLER: Good morning, Commissioners. I am Eurlyne Geiszler, a Supervisor of the Compliance and

1 Enforcement Unit in the Efficiency and Renewable Energy  
2 Division. California Home Energy Efficiency Rating  
3 Services, better known as CHEERS, submitted a letter to  
4 the Energy Commission requesting to be de-certified as a  
5 Home Energy Rating System (HERS) field verification and  
6 diagnostic testing provider for the newly-constructed  
7 buildings and the New Solar Homes Partnership (NSHP)  
8 programs for the 2008 Energy Standards, while they  
9 undertake a software update. CHEERS was approved as a  
10 HERS field verification and diagnostic testing provider  
11 for the newly-constructed buildings and the New Solar  
12 Homes Partnership for the 2008 Standards in November of  
13 2009. At that time, CHEERS demonstrated a registry and  
14 database they referred to as "the Navigator." On July  
15 2<sup>nd</sup>, 2010, CHEERS notified us that they would no longer be  
16 using the Navigator for the newly-constructed buildings  
17 and New Solar Homes Partnership Programs, but would  
18 continue to use it for the Alterations projects. CHEERS  
19 is working on a replacement registry and database and  
20 staff is working daily with them on the review of the new  
21 system. When the Registry and database are complete and  
22 reviewed by staff, we will bring the item back to the  
23 full Commission for approval, for recertification as  
24 required by Title 20, Section 1674(f). Staff supports  
25 the request from CHEERS to be de-certified as a field

1 verification and diagnostic testing provider for the  
2 newly-constructed buildings and New Solar Homes  
3 Partnership Programs for the 2008 Standards and to  
4 continue to be certified as a field verification and  
5 diagnostic testing provider for alterations. We  
6 recommend that you approve this item, and we are  
7 available to answer any questions.

8 CHAIRMAN DOUGLAS: Thank you, Ms. Geiszler.

9 MS. GEISZLER: As are CHEERS, actually. We  
10 have a representative from CHEERS here today, as well.

11 CHAIRMAN DOUGLAS: Very good. And I have a  
12 card from George Nesbitt. Would you come forward?

13 MR. NESBITT: Thank you. George Nesbitt,  
14 Environmental Design Build and a Founding Board Member of  
15 CalHERS, the California Association of HERS Raters.

16 First, I would like to thank the Commission for  
17 directing staff in February to work with me and CalHERS  
18 on the New Solar Home Partnership Guide Book that you  
19 approved. Their edit exceeded my expectation, although  
20 our work there is not done. I think, in the process,  
21 staff found it very valuable to talk to a rater and to  
22 get insight into what the process is like for us raters  
23 and specifically for us CHEERS raters.

24 In 1999, when the Commission approved HERS  
25 Phase 1, you did two things differently than the rest of

1 the country, you prohibited the rater from having the  
2 conflict of interest with the contractor, as well as you  
3 separated the function of the provider and the rater;  
4 these were both the right thing to do. Unfortunately,  
5 this also created a wall of separation between the rater,  
6 the provider, and the Commission. The Commission works  
7 extensively with the providers on training, registry,  
8 certification, compliance issues, you name it, but not  
9 with the rater. The providers do not work with the  
10 raters. When the HERS 2, Phase 2 proceedings went on,  
11 you had worked with the providers for months prior to a  
12 public meeting. None of the providers ever notified the  
13 rater, nor did the CBPCA, the California Building  
14 Performance Contractors Association, notify building  
15 performance contractors of the proposed regulations that  
16 were coming down, that would affect them.

17           If you decertify CHEERS today, you will be de-  
18 certifying, I do not know, something like 400 CHEERS HERS  
19 raters. We will lose business. There will be a cost.  
20 We are going to have to scramble and get recertified with  
21 CalCERTS in the short term because who knows how long  
22 this process may take. CHEERS will lose business, as  
23 well as raters, over this at a time none of us can afford  
24 to. Decertifying CHEERS will do nobody any good, not  
25 CHEERS, not its raters, not the Commission. You have

1 been told that this is the only option, yet, when CHEERS  
2 allowed Masco to operate under a conflict of interest for  
3 four years, no action was taken. You reapproved CBPCA  
4 this spring as a provider, despite the fraud in the  
5 third-party analysis that continues to this day. When  
6 you approved Micropass and Energy Pro under the 2008  
7 Code, you approved them conditionally, despite the  
8 problems that still existed in the programs. You  
9 approved both of them in June, despite the fact Micropass  
10 has one glaring violation of the Energy Code to this day,  
11 you approved Energy Pro for HERS ratings in July, despite  
12 the fact it does not produce the standard report  
13 properly. Decertifying CHEERS does not solve the core  
14 problem; the core problem is the registry, a registry  
15 which you had approved, but apparently the requirements  
16 changed in the process and there are issues. I recommend  
17 that you do not decertify CHEERS today if for no other  
18 reason CHEERS has not notified one single rater that, as  
19 of today, they would be out of business unless they only  
20 exist in the change-out and alteration market, which I do  
21 not because I am in Zone 3, and we only care about air-  
22 conditioning. I should be in Lathrop today, getting my  
23 Core Plus Certification for CHEERS, I didn't bother to  
24 sign up, why? They're on the agenda to be decertified  
25 before I would even be through with the class, as just as

1 CBPCA is holding training for certifications is not  
2 approved for, or has no applications for yet. It feels  
3 like the Energy Commission and the providers are throwing  
4 us raters under the bus, but not without you feeling the  
5 bump and the screams along the way. Because of this  
6 process, we are delaying CHEERS being approved for HERS 2  
7 at a time we need that desperately, as well as this  
8 process, the time spent bickering and back and forth  
9 about decertification in the process and all this, has  
10 taken away from actually solving the problem of the  
11 registry. It is time to tear down the wall that  
12 separates the Energy Commission and the providers from  
13 the Raters, it is time to recognize that we are an equal  
14 and valuable partner, for within us raters, providers  
15 mean nothing, as well as without a provider, we raters  
16 are nothing. I would like to thank you for allowing me  
17 to throw myself under the bus today on behalf of all HERS  
18 raters, and I would be happy to answer any questions,  
19 thank you, if there is anything left in me.

20 COMMISSIONER EGGERT: Madam Chair, I would like  
21 to suggest that we would hear from the Executive Director  
22 of CHEERS, who is the provider in this case that made the  
23 request of the staff, perhaps to speak to some of the  
24 comments that were just made. Is it Mr. French or -

25 MS. GEISZLER: It is either Don or Doug.

1           MR. BEAMAN: My name is Douglas Beaman. I am  
2 on the Board of Directors of CHEERS. Dawn Carton is the  
3 Operations Manager for Cheers. I have also handled the  
4 training for CHEERS for 10 plus years. Actually, I  
5 appreciate Mr. Nesbitt's comments. We actually need to  
6 go back and try to understand this agenda item a little  
7 bit better. I think the way it is being looked at right  
8 now is unfortunate. CHEERS developed our registry debt  
9 early [phon] as explained to you, we called it the  
10 Navigator last fall. It turned out that using that  
11 method, a PC desktop-based program to do all of the  
12 program management, and by that, it is not just the  
13 registration of the forms, but it is also the control of  
14 sampling groups, to use that program for that did not  
15 work very well, we made a mistake. So we needed to go  
16 back to a web-based design. This became a much larger  
17 project than what we had envisioned, we truly made a  
18 mistake in how we went about that. We did not put the  
19 resources to that, that we should have, and that was  
20 necessary. On July 2<sup>nd</sup>, we actually - this all kind of  
21 came to pass that last week of June - and at that point,  
22 when it became clear that our registry process was not  
23 working, staff said to CHEERS, after about a three-hour  
24 meeting, that they were going to pursue with their legal  
25 counsel decertification of CHEERS. I suggested, is there

1 a compromise position here? Is there something we could  
2 do other than just going on and being decertified, it  
3 seemed like it was too harsh a step. Staff came back to  
4 us in a week or so and they said, "We're going to make an  
5 offer. If you voluntarily decertify, we will continue to  
6 work with you to review your materials, to review your  
7 registry, to review your user - the database user  
8 interface. We'll continue to do that and we'll continue  
9 to look at your HERS 2 application. If you don't do  
10 that, we're going to stop all review, we're going to  
11 start a public hearing process, it may take months, it  
12 will be public, it will be ugly," we did not want that.  
13 We would have been certified for that entire time and at  
14 the time of the public hearing, we literally would have  
15 been in there saying, "You guys, we have everything ready  
16 to go. What this public hearing is about is what we were  
17 doing in the past." So, we went to - I went to our Board  
18 of Directors, I explained the situation, our Board of  
19 Directors voted to write a letter that said we would  
20 voluntarily decertify ourselves. We notified the staff  
21 of that. We assumed 100 percent that that was an  
22 informal process, that it was not coming to a business  
23 meeting, that it would be a - we would decertify  
24 ourselves, we would notify our raters when staff was  
25 sufficiently satisfied with our registry process, with

1 our database user interface, we would reactivate  
2 ourselves. We were told by staff after we submitted the  
3 letter that their counsel said no, that would not be  
4 acceptable, we would need to go on a Consent Calendar  
5 with a business meeting. We continued to work with staff  
6 under the understanding that they would continue to  
7 review our materials, which they have, and that if we  
8 were sufficiently far along, if we were close, if not all  
9 the way there, they would pull us off the agenda. We  
10 were faced with a dilemma, we could go and notify all of  
11 our raters that, "Hey, on the 25<sup>th</sup>, CHEERS might be  
12 decertified and we might not." We chose to focus our  
13 energies on trying to meet all the requirements that we  
14 needed to for our registry. At the present time, we can  
15 - staff has been looking at our registry at our  
16 registration of CF6R documents and our registration of  
17 the CF4R documents. Last Thursday we got, you know, a  
18 lengthy punch list, if you will, of things we needed to  
19 change, we had that changed by the end of the day Monday.  
20 We are ready to go live with our registration process, it  
21 is deficient in one area, and it is deficient in the area  
22 of sampling. Sampling is extraordinarily complicated in  
23 terms of being able to get it into the registry; we are  
24 not there with the sampling, we need a little more time  
25 for that. But we are ready right now to take our

1 registry live, staff has been reviewing it, they have not  
2 said, "Oh, everything is perfect with it," we have not  
3 talked to them in response after their comments last  
4 Thursday, I talked to staff yesterday, I know they were  
5 continuing to review it. Another deficiency that we had  
6 was our database user interface. We have submitted to  
7 staff the concept that we are proposing for the user  
8 interface meeting the requirements that they gave us on  
9 August 4<sup>th</sup>, they gave us a list of all the fields they  
10 wanted to have done on August 4<sup>th</sup>. We submitted that, we  
11 are working on that. We actually do not want to be  
12 decertified. When we submitted our letter, we thought it  
13 was going to be an informal process, even when it went on  
14 the Consent Calendar, we were hoping - and it was not  
15 just wishful thinking - we thought we would be far enough  
16 along, and we believe we are far enough along, the staff  
17 would pull it off of the Business Meeting. So, while,  
18 yes, we have submitted a letter requesting to be  
19 decertified for new construction, New Solar Homes, that  
20 truly is not what we want.

21 CHAIRMAN DOUGLAS: Thank you for that. We may  
22 have questions of you, but I would like to ask staff to  
23 respond to both the commenters, provider perspective.

24 MS. GEISZLER: First off, we do not want CHEERS  
25 to be decertified either. The process came about and I

1 want to respectfully disagree with Doug on one point,  
2 which we were very clear up front after consulting with  
3 our legal counsel that it would need to go to a Business  
4 Meeting and that we would put it on the Consent Calendar  
5 because we did feel that - we were trying to find the  
6 easiest and most palatable approach for everybody  
7 involved, and looking for that. The staff, well, let me  
8 go back to the Title 20 section, if a provider changes  
9 information or, in this case, their data registry from  
10 what was certified, they are required to not only notify  
11 the Commission, but to come back for recertification. It  
12 was through our review of CHEERS' HERS 2 whole house  
13 application that we discovered that the data registry  
14 was, in fact, not working, not operable, and was not what  
15 had been certified back in November. So, rather than  
16 CHEERS coming to us and saying, "Our registry that we had  
17 certified in November, we need to be making some changes  
18 to, therefore, you know, we need to come back in for  
19 recertification, we, through our several days of  
20 conference calls and WebEx meetings, discovered that in  
21 fact it was not operable, and that's where we needed to  
22 take a look at how to come forward - how to proceed from  
23 there." We have been in contact with the other provider,  
24 which is approved for newly-constructed buildings and New  
25 Solar Homes Partnership, and have worked with them in

1 discussions if this were to come to pass, are there some  
2 things that they could do with like the cost of training  
3 and days of training, in order to accommodate these  
4 raters that may be left without a certification during  
5 this period. So, we have worked on that front to  
6 mitigate those raters being certified and able to  
7 continue their work in those areas. Dennis, do you have  
8 anything?

9 COMMISSIONER EGGERT: Maybe a quick question,  
10 and if Dennis might want to chime in here.  
11 Hypothetically, if CHEERS had addressed its issues and  
12 was ready to be recertified today, would this still  
13 require a Business Meeting decision to do the recert for  
14 the purposes of their compliance of the rules?

15 MR. BECK: Chair, Vice Chair, Commissioners,  
16 Dennis Beck with the Chief Counsel's Office.  
17 Commissioner Eggert, I think that probably if all of the  
18 problems with the registry were solved by today, to the  
19 satisfaction of staff, that we would probably tell CHEERS  
20 that maybe they could go ahead and withdraw their request  
21 for decertification because there would be no violation  
22 of the terms of their approval at that point. So, if all  
23 the problems had been taken care of by today, then I  
24 don't think there would be a need for Commission action.

25 MS. GEISZLER: We would probably have to come

1 back for a recertification, though, just not  
2 decertification, the way that 1674(f) reads.

3 MR. BECK: Well, the Commission's vote today,  
4 the matter before the Commission is whether or not to  
5 decertify, so if there was no decertification at that  
6 point, there would not be a need to recertify.

7 COMMISSIONER BYRON: Excuse me. Did I miss  
8 something? I thought I heard Mr. Nesbitt say that he  
9 does not want to be decertified.

10 MR. BECK: I do understand that and that  
11 contradicts the letter that we received from CHEERS  
12 saying that they were asking to be decertified. I think  
13 what they want is, they want to continue to have staff  
14 and the Commission allow them time to work on the  
15 problems that they have with their system, but, as Ms.  
16 Geiszler said, staff has been working with CHEERS on this  
17 issue for quite a while, and finally it came to a  
18 situation where staff felt that something needed to be  
19 done, that there was not sufficient progress towards  
20 meeting the terms of the approval, in terms of the  
21 reliability of the system and the functionality of the  
22 system, and that is when they broached the subject with  
23 me and I advised that CHEERS could simply ask to be  
24 decertified and, if not, then staff could go forward with  
25 a complaint process under Section 1230 of the California

1 Code of Regulations, or Title 20, which would be a public  
2 and open process with a hearing likely before the  
3 Efficiency Committee, submission of evidence, and so  
4 forth. And so I think that is what Ms. Geiszler relayed  
5 to CHEERS, that those were their potential options, that  
6 if they did not agree to decertify, then we would feel  
7 the need to move forward with filing a formal complaint.

8 COMMISSIONER EGGERT: Sorry to interrupt. I  
9 guess maybe I might be able to cut this short. Some of  
10 this is new information to the Efficiency Committee in  
11 terms of the specific position of CHEERS, you know, their  
12 stated intent to work rapidly towards a solution and some  
13 of the consequences of the gap that would be created  
14 through a decertification process. And what I might  
15 suggest is that this might be remanded back to the  
16 Efficiency Committee for further deliberation with a very  
17 strong encouragement to CHEERS to try to resolve some for  
18 those remaining items so that there does not need to be a  
19 gap, and I recognize the desire of the staff to push this  
20 issue to a head by bringing it before us today, but I do  
21 think it does need some further consideration before a  
22 vote.

23 VICE CHAIR BOYD: Commissioner Eggert, is that  
24 a motion?

25 COMMISSIONER EGGERT: That is a motion.

1 VICE CHAIR BOYD: I will second it.

2 CHAIRMAN DOUGLAS: All in favor?

3 (Ayes.)

4 MR. BECK: I am sorry, I think what might be  
5 the more correct procedural option is for CHEERS to  
6 formally come up and withdraw their request for  
7 decertification. That seems to be what they are saying  
8 at this point, is, "Yes, we filed this letter, but we  
9 really do not want to," and I think that would be the  
10 cleaner procedural way of doing it that way, it would not  
11 even necessitate a vote on the part of the Commission.

12 CHAIRMAN DOUGLAS: We have the request still  
13 before us, they have said here on the record that that is  
14 not really what they want, but I think also implied is  
15 that is what they thought was necessary, given the  
16 process described to them by staff. Commissioner  
17 Eggert's motion would have the Efficiency Committee, I  
18 hope quickly, do some of the fact-finding to resolve any  
19 potential concerns by the Commission so that we may have  
20 this before us, and we may proceed to act on this item.

21 COMMISSIONER EGGERT: Great. I guess maybe  
22 with the further comment that, if it is not resolved, you  
23 know, within a satisfactory period of time, and we will  
24 have to discuss that within the committee, that this  
25 could again come back before us, for a decertification.

1           VICE CHAIR BOYD: Resolved to your satisfaction  
2 as committee, you can suggest that they then take the  
3 action to withdraw their motion and you can finish your  
4 process and we can move on.

5           COMMISSIONER EGGERT: Correct.

6           CHAIRMAN DOUGLAS: Because it is not clear to  
7 me from hearing everything that it is not, in fact, the  
8 right approach that they request decertification, it is  
9 just that the Committee would like some amount of more  
10 time to analyze the issue.

11           MR. BECK: I just want to make one thing clear,  
12 though, it seems to be implied with what you are saying  
13 that staff told them that this is the way you have to do  
14 it; that is not true. In my discussions with staff, staff  
15 said this is one way you can resolve this issue, another  
16 way to resolve this, another way if you do not do this,  
17 it will force the hand of staff in order to protect the  
18 integrity of the HERS program, to file a complaint, and  
19 that we would have to go through the process that we went  
20 through last year with Masco when we did, in fact, have a  
21 public hearing, which Masco was found to be in violation  
22 of the conflict of interest rules, and this Commission  
23 did adopt a resolution regarding that. So, any  
24 characterization, I think, that staff told them, "This is  
25 what you have to do," as far as I know, is not correct.

1 They were given this one as an option and they chose this  
2 particular option.

3 COMMISSIONER BYRON: I am glad, Mr. Beck, that  
4 you spoke to that issue. I found Mr. Nesbitt's comments  
5 very troubling. But, Madam Chair, we have a full agenda.  
6 This one - the Efficiency Committee will do its work and  
7 we will report back as soon as we can.

8 CHAIRMAN DOUGLAS: I agree with that and I  
9 understand that there may be different ways that this  
10 could go forward, certainly if CHEERS would like to jump  
11 up and down and say, "Yes, please do decertify us today,"  
12 this is your opportunity to do so. And if you do not do  
13 so, then our decision to remand this to the efficiency is  
14 how we will proceed. Very well. We are still in the  
15 Consent Calendar. Commissioner Byron -

16 COMMISSIONER BYRON: And I apologize, Madam  
17 Chair, my comments are a little bit different than the  
18 reason for pulling Item 1F. At times I certainly miss  
19 being on the Siting Committee, and there are times this  
20 year that I do not miss being on the Siting Committee. I  
21 would like to acknowledge the tremendous work that you  
22 have done this past year, I think it has been  
23 extraordinarily challenging in the siting area, and this  
24 item, of course, is to approve the change of the  
25 Chairmanship to Commissioner Weisenmiller, who I think

1 has really distinguished himself in recent months and has  
2 been very helpful to a number of the various project  
3 siting committees that we have been all involved with,  
4 and I just wanted to make sure that we acknowledged his  
5 efforts there as a new Commissioner, and I am so glad  
6 that he will be taking over the Chairmanship of that  
7 Committee.

8           CHAIRMAN DOUGLAS: Thank you, Commissioner  
9 Byron. And I would like to add to that, the work of the  
10 Siting Committee is, in these days, just about  
11 bottomless, and Commissioner Weisenmiller has stepped  
12 into that and put a tremendous amount of time and energy  
13 and expertise in helping us deal with and resolve the  
14 policy issues, the process issues that come before us.  
15 So, this change reflects that work and that contribution  
16 and the fact that, over the time he has been on this  
17 Commission, he has stepped up and continued to step up,  
18 and continued to take on more and more work, and we have  
19 benefitted tremendously from it.

20           COMMISSIONER BYRON: And aren't you relieved?

21           CHAIRMAN DOUGLAS: And I am quite relieved and  
22 quite grateful that he has done it and been able to do  
23 it.

24           VICE CHAIR BOYD: In other words, the thought  
25 that we needed to allow him to be broken in results in

1 the fact that he is broken in, and it is time to move on.  
2 I agree.

3 COMMISSIONER EGGERT: And I will just say as  
4 the other new Commissioner, it has been great to have  
5 Commissioner Weisenmiller - I think I had a steeper  
6 learning curve than him, but obviously he has filled his  
7 position quite well, and I think this promotion is well  
8 earned.

9 COMMISSIONER WEISENMILLER: Well, thank you all  
10 for you kind words. Obviously, the siting process, I  
11 think, has tested about all of our lives at the  
12 Commission this year, and I have had the opportunity to  
13 be part of that, and as in many cases behind every  
14 successful man, there is a hardworking woman, so I really  
15 want to acknowledge Arlene Allen's role in moving this  
16 forward.

17 VICE CHAIR BOYD: And you let her actually go  
18 on vacation.

19 COMMISSIONER WEISENMILLER: Part of the  
20 process, right?

21 COMMISSIONER BYRON: So, Madam Chair, I  
22 apologize for pulling this, I think the comments were  
23 necessary, and I would move approval of Item 1G.

24 VICE CHAIR BOYD: Second.

25 CHAIRMAN DOUGLAS: All in favor?

1 (Ayes.)

2 Item 1G is approved.

3 Item 2. City Of Simi Valley. Possible  
4 approval of the City of Simi Valley's proposed locally  
5 adopted energy standards. Mr. Loyer.

6 MR. LOYER: Commissioners, Joe Loyer, High  
7 Performance Building and Standards Development Office, at  
8 least in this capacity. With this ordinance, the City of  
9 Simi Valley ensures that newly-constructive non-  
10 residential buildings under their jurisdiction will  
11 achieve 15 percent exceedance of the 2008 California  
12 Building Energy Efficiency Standards, Title 24.6. The  
13 ordinance also ensures that newly-constructed residential  
14 buildings will achieve 10 percent and additions in  
15 alterations to existing residential buildings will  
16 achieve 5 percent exceedance of the 2008 Building  
17 Standards. The City of Simi Valley is the first local  
18 jurisdiction to use the California Green Building Code,  
19 Title 24, Part 11, and the Tier 1 option will be  
20 implemented as a mandatory requirement in this ordinance.

21 Staff had reviewed the ordinance and had  
22 determined that it complies with all necessary  
23 requirements of Title 24, Part 1, Section 10 106, and  
24 recommends the application be approved, and the Energy  
25 Commission Resolution be signed. I am available to

1 answer any questions you may have.

2 CHAIRMAN DOUGLAS: Thank you. Questions or  
3 comments.

4 COMMISSIONER BYRON: None, except is this your  
5 night job now, Mr. Loyer?

6 MR. LOYER: It kind of seems that way, yeah.

7 COMMISSIONER BYRON: I know you have other  
8 responsibilities that you have taken on recently. I have  
9 no questions or comments. I am prepared to move the  
10 item.

11 VICE CHAIR BOYD: Second.

12 CHAIRMAN DOUGLAS: All in favor?

13 (Ayes.)

14 The item is approved.

15 VICE CHAIR BOYD: Madam Chair, a quick comment.

16 CHAIRMAN DOUGLAS: Please.

17 VICE CHAIR BOYD: We have had several of these  
18 over the last several years and we usually praise the  
19 locale for doing what they have done, and I think we have  
20 done that here today, but I have been thinking about this  
21 and I might suggest that the Commission, the Chair could  
22 actually send a letter to the officials of these Cities  
23 in relaying our commendations to them, so at least they  
24 know, and so at least they have something to show that  
25 somebody recognized what they are doing, rather than us

1 just saying, "Good job, City," and hope the message gets  
2 back to them.

3 CHAIRPERSON DOUGLAS: I think that is a great  
4 idea, Commissioner.

5 MS. CHANDLER: Vice Chair Boyd, we actually do  
6 a letter, as well as a resolution, so we will be sending  
7 a resolution to them, not the formal one, but more the  
8 gracious one that we have, and we will certainly put a  
9 cover letter on that and make sure that they know how  
10 much we appreciate them standing up and taking energy  
11 efficiency further than what is required by state law.

12 VICE CHAIR BOYD: Excellent.

13 CHAIRMAN DOUGLAS: That is excellent. Thank  
14 you, Ms. Chandler.

15 Item 3. CALISOLAR, INC. Possible approval of  
16 Agreement 004-10-CEB for a \$5 million loan to CaliSolar,  
17 Inc., to purchase equipment to expand the manufacture of  
18 solar cells at CaliSolar's Sunnyvale, California,  
19 factory. Mr. Rillera.

20 MR. RILLERA: Good morning, Chairman and  
21 Commissioners. My name is Larry Rillera with Fuels and  
22 Transportation Division. And with me are Jacob Orenberg,  
23 Marcia Smith, and Mike Doughton with the Clean Energy  
24 Business Financing Team. The American Recovery and  
25 Reinvestment Act of 2009, also known as ARRA, had a

1 three-fold design to it, to rescue a rapidly  
2 deteriorating economy, put the country on a path to  
3 recovery by putting Americans back to work quickly, and  
4 reinvesting in the country's long-term economic future,  
5 building a foundation for a new and robust competitive  
6 American economy. The Energy Commission, through the  
7 State Energy Program, or SEP, identified \$226 million  
8 that would be used for various program developments that  
9 met ARRA, State, and Energy Commission goals. Of this  
10 amount, approximately \$30.6 million was earmarked for the  
11 development of a clean energy manufacturing program. In  
12 December of 2009, staff conducted the workshop on the use  
13 of ARRA funds for eligible manufacturers of clean  
14 technology products. Feedback from this workshop was  
15 positive, stakeholders had expressed the value of such a  
16 program given the inability of this industry to access  
17 capital by lenders and banks. It also became clear that  
18 much work was still ahead, as staff engaged in developing  
19 potential implementing partners and marketing.

20 In February 2010, the Commission approved  
21 amending the SEP Guidelines to include the Clean Energy  
22 Business Financing Program, or CEBFP. The CEBFP is a low  
23 interest loan program, 2.57 percent, available to  
24 eligible clean energy manufacturers of both energy  
25 efficiency projects and renewable energy products, and

1 components. The minimum size loan is \$50,000, and the  
2 maximum is \$5 million, with the intention that small  
3 business could apply for loan financing, as well as the  
4 larger companies. The architecture of the program is to  
5 provide financing for fixed assets.

6 In March of this year, the Commission approved  
7 an agreement with the Business Transportation and Housing  
8 agency, also known as BTH, to provide the financing  
9 partnership the Commission needed through the financial  
10 development corporations. The NPCs or Non-Profit  
11 Corporations disbursed throughout the State in providing  
12 loan packaging and servicing requirements to the CEBFP  
13 borrowers. In April, the Commission announced the  
14 release of the Clean Energy applications. In May, the  
15 applications were due to the Commission, where staff  
16 conducted a thorough technical program review. Eligible  
17 applicants were then forwarded to the financial  
18 development corporations for business credit analysis and  
19 financial review. In July, the Commission released a  
20 Notice of Proposed Awards, or NOPA, that identified  
21 projects that were proposed to be funded. The NOPA also  
22 identified all of the compliance documentation needed to  
23 ensure loan funding.

24 Yesterday, the White House released a report  
25 titled "The Recovery Act: Transforming the American

1 Economy Through Innovation." Today, the Commission will  
2 approve the first project, CaliSolar, Inc., that is  
3 eligible to receive innovative CEBFP financing underneath  
4 ARRA. CaliSolar seeks to expand their solar photovoltaic  
5 manufacturing facility in Sunnyvale from 60 megawatts to  
6 150 megawatts annually by December of 2011. The project  
7 will create an estimated 180 full-time equivalent jobs,  
8 and will help offset approximately 81,000 tons of carbon  
9 dioxide. I should also note that CaliSolar received \$51  
10 million in Section 48C Tax Credit Manufacturing from DOE  
11 in January of this year.

12 Staff would ask for the Commission's support to  
13 approve Item 3 for a loan agreement with CaliSolar, Inc.  
14 in the amount of \$3 million.

15 CHAIRPERSON DOUGLAS: Mr. Rillera, thank you so  
16 much for bringing this before us. Commissioners, I would  
17 just like to make some general comments. The Clean  
18 Energy Business Financing Program is a very new program  
19 for the Commission, it is the first time, well, this with  
20 the AB 118 similar program, is really our first venture  
21 into supporting manufacturing, in this case supporting  
22 manufacturing of Clean Energy technologies, solar cells  
23 in the case before us, PV. This State with its  
24 leadership in renewable energy policy in deployment of  
25 renewable energy, both in terms of large scale solar and

1 in terms of distributed generation, and the tremendous  
2 innovation in the State fostered by the CARE Program, by  
3 the great Universities that we have in the State, the  
4 tremendous amount of private venture capital and private  
5 research that goes on in the State of California, has led  
6 us to a point where we are increasingly seeing  
7 manufacturing in California, as well. This program,  
8 through a \$5 million loan, would create or retain an  
9 estimated 181 full-time equivalent jobs, that is a very  
10 effective jobs per dollar ratio, in addition to fostering  
11 and supporting the growth of this industry, which creates  
12 jobs for Californians. So, this is the first of these  
13 proposals to be brought before us, and I am very pleased  
14 to see that, first of all, the staff was able to really  
15 step up and create this new program under the  
16 tremendously condensed timelines that we have to deal  
17 with in ARRA; and secondly, to see it come to fruition  
18 here today.

19 Is CaliSolar in the room today? Okay.

20 COMMISSIONER EGGERT: Just a quick comment,  
21 Madam Chair. I just want to echo what you just said.  
22 You know, we have the policies in our State that are  
23 driving the deployment of these technologies, and we are  
24 seeing a tremendous amount of exciting activity,  
25 particularly on rooftop solar. So, the fact that we are

1 able to provide some assistance and partnership with a  
2 company that is extending manufacturing facilities here  
3 in the State, that is given, and provide that technology  
4 using, you know, California workers and providing  
5 benefits to the California economy, is really a  
6 tremendous thing. So I am very excited about this, too,  
7 as well.

8 COMMISSIONER BYRON: Madam Chair, I had my  
9 doubts about this program when we first set it up, but my  
10 compliments to you and your vision for how this could  
11 work, and I think this is an excellent example of how it  
12 can be effective, so I am very much in favor of this. I  
13 was so pleased to see this on the agenda for approval.  
14 It has taken us a while to get here, but I am looking  
15 forward to more of these.

16 VICE CHAIR BOYD: I concur in all the comments  
17 of my fellow Commissioners, and just add another kudos to  
18 the staff for handling this in the environment in which  
19 we have been operating for the past many many months. I  
20 do not think the public has any idea of what has been  
21 going on in the efforts here to meet these incredible  
22 demands made upon the agency and the staff in a whole  
23 host of areas, in these otherwise tough times, but what  
24 we are trying to do is turn around those otherwise tough  
25 times. So, I think this is a very good - another payment

1 along this track of doing what we can as an agency to  
2 create businesses, create jobs, and bring some vitality  
3 back to the California economy, so we can pay for all the  
4 other good things we want to do, that have been so  
5 challenged of late. So, kudos to the staff.

6 COMMISSIONER EGGERT: I would like to move the  
7 item.

8 COMMISSIONER BYRON: Second.

9 CHAIRMAN DOUGLAS: All in favor?

10 (Ayes.)

11 Item 3 is approved. Thank you. Yes, Claudia.

12 MS. CHANDLER: I would like to add to what Vice  
13 Chair Boyd said in a way of these dollars, as you well  
14 know, have come with huge accountability and fiscal  
15 responsibility, so staff did a fantastic job in creating  
16 a program that balanced that going out and looking for  
17 those companies that needed and could use this money to  
18 create those jobs in California, and advance the State's  
19 goals, while at the same time ensuring that fraud, waste  
20 abuse, transparency, and accountability occurred. They  
21 are also setting the foundation for a program -

22 COMMISSIONER BYRON: Could we correct you a  
23 little bit on that?

24 CHAIRMAN DOUGLAS: Please.

25 COMMISSIONER BYRON: Accountability and the

1 transparency, we would like to occur, the first three  
2 items, the fraud, waste and abuse, we do not want those.

3 MS. CHANDLER: Thank you, that is a good  
4 comment. But they are also setting the foundation for a  
5 program that we hope to see go forward with this money  
6 coming back as a revolving loan program, rather than a  
7 grant, as many other states did, will allow us to have  
8 that program in the future right here at the Energy  
9 Commission, and they are developing the expertise to  
10 allow them to be able to do that going forward, so it is  
11 a new groundbreaking, I think, as well, for the  
12 Commission in terms of our vision going forward with  
13 these dollars.

14 CHAIRMAN DOUGLAS: Thank you, Ms. Chandler.

15 Item 4. Propel Fuels, Inc. Possible approval  
16 of Grant Agreement ARV-10-002, awarding \$1 million to  
17 Propel Fuels, Inc., to build ten ethanol (E85) dispensers  
18 at publicly-accessible fueling stations. Ms. Allen.

19 MS. ALLEN: Good morning, Chairman Douglas and  
20 Commissioners. This first one on the agenda is from the  
21 Infrastructure Solicitation that was - this is the only  
22 E85 project that we are proposing under the  
23 Infrastructure Solicitation. It would be to Propel Fuels  
24 for \$1 million for ten E85 stations that will be located  
25 throughout California, and it would be matched by almost

1 \$3 million of private funding from Propel. This would  
2 continue the network of E85 stations that we have started  
3 with the ARRA projects that leveraged about \$6.9 million  
4 of federal dollars with \$4 million of Energy Commission  
5 dollars, and will provide a very nice network of E85  
6 stations throughout California for the Fuel Flexible  
7 Vehicles that are already in the fleets and continue to  
8 be put into California by the OEMs. So, staff recommends  
9 funding of this project.

10 CHAIRMAN DOUGLAS: Thank you, Ms. Allen.  
11 Commissioners, questions or comments.

12 MS. WEBSTER-HAWKINS: Chair, if I may? Renee  
13 Webster-Hawkins. Staff Counsel. As you know, with the  
14 projects that we are funding under AB 118, the legal  
15 office considers whether or not the California  
16 Environmental Quality Act applies to the projects, due to  
17 the nature of the projects. Legal Office has undertaken  
18 a review of this project and we have determined that the  
19 nature of the activities that Propel would undertake  
20 would be categorically exempt under CEQA, under two  
21 categorical exemptions, the first one is the CEQA  
22 Guidelines 15301, the Existing Facility exemption, and  
23 the second is CEQA Guideline Section 15303, Conversion of  
24 Small Structures. So, I would recommend that, if the  
25 Commission approves this project, it include a finding

1 that the project is indeed categorically exempt under  
2 those two provisions. Thank you.

3 VICE CHAIR BOYD: My fellow Commissioners  
4 probably recall that you are starting to see now more and  
5 more projects and awards coming through on AB 118  
6 program, this is the State's program, funded by the State  
7 for an Alternative Fuel and Advance Vehicle Technology  
8 stimulation and incentivizing in the State of California.  
9 And I am looking forward to seeing quite a few more of  
10 those come before the Commission. The Fuels and  
11 Transportation Committee, consisting of myself and  
12 Commissioner Eggert, have been dealing with the  
13 formulation and launch of the AB 118 program, which also  
14 had to go through all the rigorous processes and over the  
15 hurdles that are involved in the State of California,  
16 establishing such a program that provides significant  
17 amounts of money to those who are successful in most of  
18 the competitive competitions that are involved. This is  
19 a major effort to make a contribution to an alternative  
20 fuel, E85, which is 85 percent Ethanol, for which there  
21 are roughly half a million cars in California to take  
22 advantage of that fuel, and there have been to date very  
23 few fueling stations, this is our effort to contribute to  
24 making more of this fuel available to California drivers  
25 who have Fuel Flexible automobiles, and thus fulfilling

1 the promise of the auto industry when they make those  
2 cars that they get better fuel economy and contribute to  
3 environmental improvement, fulfilling it by actually  
4 providing a fuel that completes that commitment. So I  
5 think this is another significant step and, again, kudos  
6 to staff because those of us who sit here have seen the  
7 horrendous pipeline through which all of these kinds of  
8 projects have to be forced, and there are only so many  
9 people here to do it. So I am very pleased to see more  
10 and more of these projects coming before the full  
11 Commission for approval. And I will move approval and  
12 await additional comments.

13 COMMISSIONER EGGERT: Just a couple of  
14 additional, I think we have this item, as well as the  
15 next several, that are all coming out of the  
16 infrastructure program from AB 118, and it is a great  
17 pleasure to see these coming before us, the product of a  
18 significant amount of work. Just a couple of quick  
19 points on this particular one with, as Commissioner Boyd  
20 mentioned, there is about a half a million vehicles in  
21 the State that can utilize E-85. Propel has a  
22 particularly interesting business model in that they  
23 directly market to consumers at the stations, and also at  
24 least have a - as part of their model, an attempt to  
25 source from the lowest carbon sources of Ethanol,

1 including some of the more advanced second and third  
2 generation cellulosic Ethanol as they become available.  
3 So this is something that can help us meet our Low Carbon  
4 Fuel Standard, particularly as we start bumping up  
5 against what is called the blended wall, which is the  
6 amount of Ethanol that is allowed to be blended with  
7 gasoline, without having a Flex Fuel Vehicle that is 10  
8 percent, and I think, as the Commissioner mentioned, this  
9 is our opportunity to show, demonstrate and test to see  
10 the demand for this particular fuel in the State. So I  
11 will second the item.

12 CHAIRMAN DOUGLAS: Any other comments? We have  
13 a motion and a second. All in favor?

14 (Ayes.)

15 That item is approved.

16 Item 5. Eurisko Scientific. Possible approval  
17 of Grant Agreement ARV-10-003, awarding \$1,830,132 to  
18 Eurisko Scientific to install an anaerobic digester for  
19 wastewater sludge and effluent at the Elk Grove  
20 Wastewater Treatment Facility. Ms. Allen.

21 MS. ALLEN: I do not want to disappoint you,  
22 Commissioner Boyd, this is the first of the Biomethane  
23 solicitation projects to come forward to the Commission.  
24 Eurisko Scientific is the receiving arm for Argonne  
25 National Labs for funding any non-Federal funding that

1 they may be awarded, and so this is a patented process by  
2 Argonne National Lab, and they will be installing - it is  
3 a magnesium silicate substance that is added to a  
4 digester, and it increases the amount of gasses produced,  
5 speeds up the rate at which the gas is produced, and then  
6 sequesters the carbon dioxide and some other emissions  
7 into a granular material that can then be either disposed  
8 of, or used for cover for a variety of uses, maybe  
9 landscaping, maybe landfill cover, but this would be  
10 installing that process at the Elk Grove Wastewater  
11 Treatment Facility and doing basically a demonstration of  
12 the process. And there would be matching of our award of  
13 a little over \$1.8 million with about \$1.8 million of  
14 their funds, too.

15 CHAIRMAN DOUGLAS: Thank you, Ms. Allen.  
16 Questions or comments?

17 MS. WEBSTER-HAWKINS: Chairman Douglas -

18 VICE CHAIR BOYD: I will not repeat myself -  
19 oh, we need to hear from our attorney.

20 CHAIRMAN DOUGLAS: Renee, I am sorry, I keep  
21 forgetting to turn to you. Please.

22 MS. WEBSTER-HAWKINS: That is all right. Just  
23 quickly, the Legal Office has reviewed this project under  
24 CEQA and has determined that it is categorically exempt  
25 from further environmental review under CEQA Guideline

1 Section 15301, the Exemption for Existing Facilities, so  
2 I would recommend that that finding be included in your  
3 vote. Thank you.

4 CHAIRMAN DOUGLAS: Thank you.

5 VICE CHAIR BOYD: I will be brief, I will not  
6 repeat my previous comments, as Commissioner Eggert  
7 properly pointed out, and that was the beginning of  
8 several and many more in the future. I appreciate  
9 Jennifer Allen's pointing out to the Biogas fanatic  
10 Commissioner up here that this is the first of, I hope,  
11 many in this arena, and I am extremely pleased that it is  
12 taking place in our own community here, this is the  
13 Wastewater Treatment Plant that serves the entire greater  
14 suburban Sacramento Area, and it will be good to see us  
15 in this community taking some actions to test out some  
16 technologies that may be very applicable. So, again,  
17 kudos and I move approval.

18 COMMISSIONER EGGERT: Yeah, just a quick point,  
19 as well. I mean, this is interesting in that it is a  
20 process that could be utilized in other areas beyond  
21 biomethane for CO<sub>2</sub> sequestration into a solid form. So, I  
22 will second it.

23 CHAIRMAN DOUGLAS: All in favor?

24 (Ayes.)

25 The item is approved.

1           Item 6. City Of Reedley. Possible approval of  
2 Grant Agreement ARV-10-004, awarding \$480,400 to the City  
3 of Reedley, to install a solar electric vehicle charging  
4 system and a clean natural gas fueling station. Ms.  
5 Allen.

6           MS. ALLEN: The City of Reedley is putting  
7 together a very interesting project that they call the  
8 Central Valley Transportation Center, and this will be  
9 the hub of the City and the School District's transfer of  
10 their fleets and their buses to alternative fuels. And  
11 so, this center will act as a mechanism for both the  
12 maintenance of the vehicles plus the refueling  
13 infrastructure for the vehicles, plus the availability of  
14 alternative fuels for the surrounding community. And so  
15 this project for \$480,400 is to install the natural gas  
16 portion and electric vehicle charging associated with the  
17 solar panel eventually on the roof of the bus barn that  
18 they will be building in the future. So, we will be  
19 doing the first two aspects of the refueling  
20 infrastructure for this center. As they develop it, what  
21 they would like to do is to put in this refueling  
22 infrastructure now because they have those vehicles  
23 available and it would be a start for use of the  
24 alternative fuels for their existing fleets. They will  
25 be matching this with - I'm not finding it now on my

1 notes - but there is a considerable - it is well over \$1  
2 million -

3 COMMISSIONER BYRON: \$1.5 million.

4 COMMISSIONER EGGERT: I think - or is it \$3.2?  
5 It says in the Abstract Summary -

6 MS. ALLEN: Oh, \$3.2 total. Yeah, that is for  
7 the two projects, so for both of those together.

8 CHAIRMAN DOUGLAS: I think Ms. Webster-Hawkins,  
9 would you like to say something at this point?

10 MS. WEBSTER-HAWKINS: Thank you, Chairman  
11 Douglas. As Ms. Allen mentioned, these activities that  
12 the Energy Commission is funding are components of the  
13 larger project that the City of Reedley is undergoing  
14 with the Kings Canyon Unified School District, known as  
15 the Central Valley Transportation Center, and for that  
16 larger project, the School District actually served as a  
17 lead agency in preparing, adopting, and certifying an  
18 Environmental Impact Report for that transportation  
19 center. The Legal Office has reviewed that EIR and  
20 independently considered whether or not the environmental  
21 analysis is adequate to cover our needs for funding these  
22 two activities, and we determined that, while the project  
23 as a whole could present some cumulative impacts to air  
24 quality biological resources, cultural resources, and  
25 noise levels, the mitigation measures included in the EIR

1 are adequate to reduce any of those potential impacts to  
2 a level below significant and, so, I would recommend  
3 that, if you approve this project, that you find that any  
4 environmental impacts are indeed adequately mitigated by  
5 the mitigation plan included in the EIR.

6 CHAIRMAN DOUGLAS: Thank you. Commissioner  
7 Byron.

8 COMMISSIONER BYRON: Thank you. Ms. Allen, I  
9 just want to make sure I understood what we are funding  
10 here. You had said the first two aspects of this are  
11 being funded by us, but it talks about two phases. Is  
12 that what you meant?

13 MS. ALLEN: The entire complex is still in the  
14 process of being built, so there will be maintenance  
15 barns, there will be a learning and education center,  
16 they will have fueling infrastructure, and they will have  
17 natural gas, electric, biodiesel, and I thought there was  
18 something else -

19 COMMISSIONER BYRON: Well, Ms. Allen, what I  
20 want to try to understand is that it discusses two phases  
21 here. Are we funding both phases?

22 MS. ALLEN: We are funding just the first phase  
23 of the - the first phase is the natural gas, and I think  
24 that this might be a little bit of a mis-wording of what  
25 we are actually doing here. We will be funding natural

1 gas first, and then we will put in the electric vehicle  
2 infrastructure, which would be the second phase of this  
3 project, because that has a little bit more in that there  
4 is a solar panel that goes along with the electric  
5 vehicle portion of this.

6 COMMISSIONER BYRON: Right, I got that. So  
7 \$480,000 that we are putting towards this project is for  
8 Phase 1.

9 MS. ALLEN: Is for both, it is for both the  
10 natural gas and the electric vehicle infrastructure.

11 COMMISSIONER BYRON: So it is for both phases.

12 VICE CHAIR BOYD: It is parts of both Phase 1  
13 and Phase 2.

14 MS. ALLEN: Yes.

15 COMMISSIONER BYRON: All right, and I note here  
16 that they are matching funds according to this write-up,  
17 additional matching funds for approximately \$1.5 million  
18 will be provided by the project. Is that correct?

19 MS. ALLEN: Those are direct match for what we  
20 are putting in, yes.

21 COMMISSIONER BYRON: Okay, well, looks like a  
22 very good project and I suspect the Transportation  
23 Committee has other comments they want to add, but it is  
24 wonderful to see cities taking this kind of initiative,  
25 and congratulations to the City of Reedley.

1           COMMISSIONER EGGERT: I was just going to agree  
2 that this is an interesting one, that it is providing a  
3 multitude of fuels - natural gas, biodiesel, E85,  
4 electric charging stations, in includes repair  
5 facilities, educational centers, etc. And I was trying  
6 to remember having a conversation with Commissioner Boyd  
7 on whether or not this is linked at all with our  
8 workforce training activities, either the Unified School  
9 District, or the Local Community College.

10           MS. ALLEN: At this time, I do not know if  
11 there is a link, but there is a potential for us to -  
12 they have been working very closely with the Energy  
13 Commission, even prior to submitting this proposal, for  
14 those aspects. But I think that, since this is still -  
15 at the time they were talking to us, this was still in  
16 development, they were still working on their EIR, now we  
17 are in the situation where we can move forward and start  
18 having more discussions with them on that. Currently,  
19 they are having to drive - the closest refueling for  
20 their alternative fuel vehicles is about 20 minutes away,  
21 and so this for them would be just to do the natural gas  
22 portion and the electric portion - well, natural gas, in  
23 particular, is a huge time savings for them.

24           COMMISSIONER EGGERT: Okay, thank you.

25           VICE CHAIR BOYD: I would just comment, a

1 couple positive things about this, in addition to all the  
2 other things that have been said in previous items, is  
3 that it really drives home has been a policy of this  
4 Commission, reflected in several years with the  
5 Integrated Policy Reports and other alternative fuels  
6 plans, that we look to a diversified portfolio of  
7 transportation fuels, that we do not pick individual  
8 winners, and this certainly is an example of that. The  
9 other thing is, there is a broad partnership here, a  
10 major member of whom is the San Joaquin Valley Pollution  
11 Control District, who is going to administer the project,  
12 in effect, for us, and that begins to indicate a  
13 partnership we are developing with other Air Districts in  
14 the State, as the long known nexus between energy, air  
15 quality, climate change, energy security, etc., is  
16 identified and all the folks work together in  
17 partnership, so I hope - and we have had projects  
18 involving other Air Districts, and this is yet another,  
19 and this moves into the Central Valley, which is a very  
20 prime area in many ways, jobs, environmental impacts, and  
21 what have you. So, again, I would like to move approval.

22 COMMISSIONER EGGERT: Second.

23 CHAIRMAN DOUGLAS: All in favor?

24 (Ayes.)

25 That item is approved.

1           Item 7. Foothill Transit. Possible approval  
2 of Grant Agreement ARV-10-005, awarding \$200,000 to  
3 Foothill Transit for the procurement and installation of  
4 2 electric drive charging stations. Ms. Allen.

5           MS. ALLEN: Foothill Transit is going to be  
6 putting in two what they call the Halo chargers for their  
7 electric Proterra buses. These are magnetic conductive  
8 charging, so that the buses can just drive under the Halo  
9 chargers and, within about a 10-minute period of time,  
10 the battery packs are completely recharged. And,  
11 according to them, the driver does not even have to get  
12 out of the bus. And so the Foothill Transit, their  
13 headquarters are in West Covina, but the Halo chargers  
14 will be put in at the Pomona Transit Center, and these  
15 are going to be supporting three of their Proterra buses  
16 that they already have, that they received with Federal  
17 Transit Administration ARRA awards, and their goal is to  
18 have a total of nine of these buses available, and be a  
19 demonstration for other transit fleets in California as  
20 to their efficacy and being able to have an electric bus  
21 that works well in transit routes, and be able to  
22 recharge very quickly and conveniently for the drivers.  
23 And so they will be matching this with \$3.2 million of  
24 Foothill Transit's funding, and we recommend going  
25 forward with this project.

1 MS. WEBSTER-HAWKINS: Chairman Douglas and  
2 Commissioners, the Legal Office has reviewed the  
3 activities proposed under this award and finds that there  
4 are three categorical exemptions that would apply to the  
5 project under CEQA Guidelines, Section 15301, the  
6 Existing Facility exemption, Section 15303, the  
7 Conversion of Small Structures exemption, and Section  
8 15304, the Minor Alterations to Land exemption. And if  
9 you approve this project, I recommend including findings  
10 to that regard. Thank you.

11 CHAIRMAN DOUGLAS: Thank you. Are there  
12 questions or comments on this item? Commissioner Byron.

13 COMMISSIONER BYRON: Ms. Allen, you may not  
14 know this, but it is a question I just cannot fathom, a  
15 10-minute charge from 10 to 95 percent for a bus, I mean,  
16 that is going to make that bus driver's hair stand up.  
17 Tell me, do you know the megawatt - that is not the  
18 question - do you know the megawatts that this is drawing  
19 to do this charge?

20 MS. ALLEN: Well, we do have that in the  
21 proposal, but off the top of my head, I do not remember.  
22 It is - I remember it was considerable, but the battery  
23 packs are located on the top of the bus with this  
24 configuration and because it is a magnetic conductive  
25 charge, the bus drives under -

1           COMMISSIONER BYRON: You do not have to explain  
2 how it is done again, I'm just really curious how the  
3 impact is on the infrastructure. Obviously, we cannot  
4 sustain an awful lot of these, and there has to be a way  
5 to address this on the local distribution system -

6           MS. ALLEN: Oh, I see what you are saying.

7           COMMISSIONER BYRON: -- because I suspect it is  
8 a substantial demand that is being - and I can understand  
9 why, you have got to charge the batteries, and this is  
10 great, this is exactly what we want, but I will be very  
11 interested to see how the utility adopts this into their  
12 system.

13           MS. ALLEN: And we are requiring a considerable  
14 amount of data gathering with this project so that we can  
15 find these things out, and I am sure that we will be  
16 working very closely with the utility.

17           COMMISSIONER BYRON: Yes, and I see  
18 Commissioner Eggert is doing some calculations over  
19 there, maybe he will give me the number.

20           MR. McKINNEY: Commissioner Byron, if I might  
21 add - Jim McKinney, Office Manager, for Emerging Fuels  
22 Office, we do have a new initiative to develop a  
23 statewide kind of a Strategic Plan for electric vehicle  
24 charging and infrastructure, and I think your question is  
25 a good one, and that is something that we will add into

1 the mix of issues that we look at in that process.

2 COMMISSIONER EGGERT: Yeah, we do have a number  
3 of activities going on which are going to be looking at  
4 these issues, and I would note, I just saw on their  
5 Website that this bus program actually began in 2004 as  
6 part of an FTA initiative to develop a bus of tomorrow,  
7 including at least initially a fuel cell bus powertrain,  
8 and then they have evolved the powertrain to include fuel  
9 cell range extenders, and now a pure battery electric bus  
10 with at least the state ability to charge within 10  
11 minutes. I think both myself and Commissioner Boyd were  
12 at a plug-in electric vehicle conference recently and  
13 there was a lot of discussion about fast charging and the  
14 current state of technology, the need, the different  
15 types of applications, the inductive vs. conductive is  
16 still a debate that is alive outside of the context of  
17 the light-duty sector. So, I think we will learn a lot,  
18 hopefully, from this project and be able to apply it to  
19 our strategic planning for the 118 program.

20 VICE CHAIR BOYD: Well, as Commissioner Eggert  
21 indicated, there are a lot of activities going on, not  
22 the least of which is the new Electric Vehicle  
23 Collaborative that has been formed to specifically get  
24 everybody around the table to address all these type  
25 questions relative to our future. Luckily, while we're

1 building this up rapidly, as compared to past experience,  
2 we still have plenty capacity in our system, we are still  
3 predicating most of what we do on off-peak charging, but  
4 you are right, we do worry about the long term future,  
5 but this is an application of almost space age 21<sup>st</sup>  
6 Century technology to today, in a demonstration of  
7 technology that AB 118 legislation was predicated upon  
8 the legislature and all sponsors of this bill really  
9 wanted demonstration and deployment to take place, and  
10 that is what we are doing, so we shall see. I move  
11 approval.

12 COMMISSIONER EGGERT: Second.

13 CHAIRMAN DOUGLAS: All in favor?

14 (Ayes.)

15 The item is approved.

16 MS. ALLEN: Thank you.

17 CHAIRMAN DOUGLAS: Item 8. State -

18 COMMISSIONER BYRON: Thank you, Ms. Allen.

19 CHAIRMAN DOUGLAS: Thank you, Ms. Allen. Thank  
20 you, Ms. Webster-Hawkins.

21 Item 8. STATE CONTROLLER'S OFFICE. Possible  
22 approval of Amendment 4 to Contract 200-98-012 for  
23 \$300,000 with the State Controller's Office to continue  
24 to provide auditing services and support to the Public  
25 Interest Energy Research (PIER) program. Mr. Emigh.

1                   MR. EMIGH: Good morning, Chairman,  
2 Commissioners. I am Kyle Emigh representing the Energy  
3 Commission Budget Office this morning, and I will tend to  
4 be brief. I am here this morning, requesting your  
5 approval to amend the existing Interagency Contract that  
6 we have with the State Controller's Office to continue to  
7 provide Fiscal Auditing services for the PIER Program.  
8 The purpose of this contract is to continue providing  
9 auditing services and expertise for the PIER Program by  
10 SCO. SCO has the necessary expertise. This PIER Program  
11 was established to assess the adequacy of Contractor  
12 Accounting, Policies, and Procedures, as they relate to  
13 the cost and invoices submitted to the Commission, and  
14 verifying compliance with contractual fiscal terms. In  
15 addition, SCO assists the Budget Office in the Fiscal  
16 Branch in developing a risk analysis on which recipients  
17 annually that should be reviewed, typically on average,  
18 the SCO has about eight to 10 assessments that they are  
19 reviewing on behalf of the PIER Program. This contract  
20 is for \$100 K per year for three years, and I am  
21 requesting your approval.

22                   COMMISSIONER BYRON: Madam Chair, a couple  
23 quick questions. Mr. Emigh, thank you very much. How  
24 long have we been doing this?

25                   MR. EMIGH: This contract was initiated in '98,

1 this is Amendment 4, and it is has been for \$100K each  
2 year.

3 COMMISSIONER BYRON: Good. And have the  
4 Auditors uncovered anything?

5 MR. EMIGH: They have. And often the audits,  
6 the assessments that they provide for us are not always  
7 at the end, they are often out there mid-term or at the  
8 beginning, and reviewing their policies and practices up  
9 front, so we can take corrective action before the end of  
10 the product, and we have years and years to go back and  
11 review it and take corrective action, so it is often  
12 preventative action that we are taking.

13 COMMISSIONER BYRON: That is good. Is the  
14 information available such that the Legislature, if they  
15 were interested in seeing these results, they could have  
16 them?

17 MR. EMIGH: Absolutely.

18 COMMISSIONER BYRON: Good. I think this is  
19 extremely important that we conduct these kinds of  
20 audits, I mean, we do not typically see these, I suppose,  
21 unless they rise to the level of grave concern, but I am  
22 glad to hear we have been doing this for a while and that  
23 the results are certainly available to the Legislature,  
24 because these are the kinds of questions they ask me, and  
25 I want to be able to answer them. So, thank you.

1 MR. EMIGH: Sure.

2 CHAIRMAN DOUGLAS: Additional questions or  
3 comments? Is there a motion?

4 COMMISSIONER BYRON: Madam Chair, I move  
5 approval of Item 8.

6 VICE CHAIR BOYD: Second.

7 CHAIRMAN DOUGLAS: All in favor?

8 (Ayes.)

9 Item 8 is approved. Thank you.

10 Item 9. American Biodiesel, Inc., dba  
11 Community Fuels. Possible approval of Agreement PIR-10-  
12 016 for a grant of \$349,524 to American Biodiesel, Inc.,  
13 dba Community Fuels to demonstrate, document and validate  
14 the performance and water savings from an integrated  
15 water treatment system. Mr. Gautam.

16 MR. GAUTAM: Good morning, Commissioners. My  
17 name is Anish Gautam and I am here on behalf of the  
18 Energy Research and Development Division's Industrial  
19 Agricultural Water Group, and we are here to seek  
20 approval for Items 9, 10 and 11. All three items were a  
21 result of our Emerging Technologies Demonstration Grants.  
22 This was a partnership between the Energy Commission and  
23 the California Utilities with the goal of demonstrating  
24 emerging technologies and having the utilities provide  
25 the measurement and verification of the technologies,

1 such that they can go forward and provide incentives and  
2 rebates. This project with American Biodiesel will be  
3 the very first industrial scale demonstration of an  
4 integrated approach to treating washed water from  
5 biodiesel production. It will integrate ultra-  
6 filtration, reverse osmosis, and distillation, together  
7 through this water consumption from biodiesel washing, by  
8 85 percent and result in a zero discharge process. The  
9 demonstration site will be American Biodiesel's 10-  
10 million-gallon unit production facility at the Port of  
11 Stockton. Now, currently, the industry produces  
12 approximately 47 million gallons of biodiesel a year, and  
13 this is also an industry that uses quite a bit of water  
14 in the upfront washing of the crude, mainly vegetable  
15 oils and animal fats. The range can be anywhere between  
16 half a gallon to two gallons for every gallon of  
17 biodiesel processed, and it is also noteworthy to  
18 consider that the waste stream is high in biological  
19 oxygen demand, as well as high in total dissolved solids,  
20 so it has to be disposed of properly by the Regional and  
21 local municipalities. In this project, the washed water  
22 will first go through a ultra-filtration process where  
23 soaps, oils and emulsified solids will be removed. The  
24 cleaned water will then go through a reverse osmosis  
25 process where dissolved salts and glycerol will be

1 removed, and after that will go through a distillation  
2 column where the remaining Methanol will be extracted.  
3 At the end of the distillation column, 85 percent of the  
4 water will be recovered and will be sent back to the  
5 front end to be reused again, so instead of having 100  
6 percent new water, you will have to only put in 15  
7 percent of new water. The waste stream will be re-used  
8 on-site, it will be used in the byproducts, as well as  
9 the Methanol will be used downstream in biodiesel  
10 production. A successful demonstration here at American  
11 Biodiesel will provide the critical information  
12 performance, reliability, and also the economics, so the  
13 industry can get behind this technology, and also to  
14 provide the utilities the information they need for the  
15 proper incentives and rate structures.

16 For this project, the anticipated energy  
17 savings will be approximately 160 to 800 megawatt hours  
18 per year at the local and regional municipalities, it  
19 will save approximately 60 to 80 million gallons of water  
20 by the industry. For this project, American Biodiesel is  
21 providing almost \$180,000 in matched funding, the project  
22 term is 35 months. We request approval of this project.  
23 If you guys have any questions, I will be happy to  
24 address them.

25 CHAIRMAN DOUGLAS: Thank you. Questions or

1 comments?

2 COMMISSIONER EGGERT: Just a quick question. I  
3 had gotten, I guess, probably a second-hand briefing on  
4 this and apparently this particular step contributes  
5 pretty substantially to the cost of biodiesel, \$.15 per  
6 gallon, approximately -

7 MR. GAUTAM: That is the estimated cost that --  
8 not the overall cost of water, to purchase the water and  
9 use the water, and treat the water, they anticipate it is  
10 about \$.15 per gallon of biodiesel produced.

11 COMMISSIONER EGGERT: And do we know if this is  
12 successful what that could be reduced to? Or what the  
13 potential is?

14 MR. GAUTAM: That, we do not know yet. It will  
15 be an outcome from the results of the M&V that we do here  
16 in this project.

17 COMMISSIONER EGGERT: Okay. No further  
18 questions.

19 COMMISSIONER BYRON: I do not really have a  
20 question either, except to say I learned a tremendous  
21 amount about this technology just reading the project  
22 description, and I note that this will be the first  
23 demonstration of these combined technologies.

24 MR GAUTAM: That is correct.

25 COMMISSIONER BYRON: I find these always very

1 exciting, to be able to approve these kinds of projects.

2 I hope it goes well for you.

3 MR. GAUTAM: Thank you.

4 COMMISSIONER EGGERT: So, I will move the item.

5 COMMISSIONER BYRON: Second.

6 CHAIRMAN DOUGLAS: All in favor?

7 (Ayes.)

8 The item is approved. Thank you.

9 Item 10. CO2NEXUS, INC. Possible approval of  
10 Agreement PIR-10-017 for a grant of \$396,200 to CO2Nexus,  
11 Inc., to demonstrate, document and validate the  
12 performance and energy savings of a commercial  
13 supercritical-carbon dioxide textile cleaning machine.  
14 Mr. Gautam.

15 MR. GAUTAM: I would say it is probably one of  
16 the most interesting projects we received from the  
17 Emerging Technology Demonstration Grant. This will be  
18 the first commercial demonstration of a supercritical-  
19 carbon dioxide based laundry machine. For this project,  
20 the demonstration site will be Aramark's Cleanroom  
21 Laundry facility in the Los Angeles Area, and we have not  
22 one, but two utilities sponsoring the Measurement and  
23 Verification for this technology, it will be San Diego  
24 Gas and Electric for the natural gas savings, and LA  
25 Power and Water for water and possibly electricity

1 savings. This is an industry that has always been a  
2 large consumer of potable fresh water, using almost or  
3 more than millions of gallons a year. While the industry  
4 has implemented the water efficiency and conservation  
5 measures, it has not found a suitable substitute for  
6 water. It provides the same performance, environmental,  
7 and also the cost benefits. To give you an example, a  
8 typical 100 pound industrial washer weighing 100 pounds,  
9 these 100 pounds of garments that are going to be washed,  
10 cleaned, contains approximately 300 gallons per water per  
11 cycle, and these do approximately 10 cycles a day, and  
12 more than 300 days a year, for that one individual  
13 machine you are looking at almost over 900,000 gallons of  
14 water a year. So, any technology that can reduce or  
15 eliminate the need of using water will go a long ways to  
16 the competitiveness of this industry in California.

17           This project will use the supercritical phase  
18 of carbon dioxide; this is a phase that has properties of  
19 both gas and liquid, and the liquid phase will be used,  
20 or liquid-like phase will be used, for the actual  
21 cleaning of the garments, the textiles. We will be  
22 looking at different temperature and pressure  
23 combinations with different surfactants or detergents on  
24 different garments and textiles, to get the actual real  
25 world performance of these machines. It will also

1 provide the first measured safe and reliable operations  
2 and we will be working with the utilities to do the  
3 different document to water energy savings. The most  
4 interesting part of this project is what happens when the  
5 textiles are cleaned, so when they are washed, you  
6 essentially de-pressurize the wash chamber and the carbon  
7 dioxide goes into the gas phase, which you can extract  
8 out, so now you have the garments that are essentially  
9 dry, and you pretty much bypassed the entire drying  
10 process that you will see with your typical water-based  
11 laundry machines. For this project, a successful  
12 demonstration at Aramark's facility, which is the number  
13 2 uniform supplier in the nation, will go a long ways to  
14 the industry acceptance, the performance, and economics  
15 and energy savings will go a long ways for the utilities  
16 to consider this going forward.

17 In terms of energy savings, you are looking at  
18 over 250 million kilowatt hours per year, a savings of  
19 almost over 20 million therms a year, and water savings  
20 of over 600 million gallons a year. For this project,  
21 CO<sub>2</sub>Nexus will be providing \$200,000 in matched funding,  
22 the project term is 29 months. We request your approval  
23 of this project. If you have any questions, I will be  
24 happy to answer them.

25 CHAIRMAN DOUGLAS: Thank you very much. Are

1 there questions or comments?

2           VICE CHAIR BOYD: A comment, if I might, and a  
3 comment I might have made on the last proposal, as well.  
4 Here are two proposals that relate to savings of water,  
5 and in this case we are talking about energy in general  
6 and water, also. And, I mean, the water/energy nexus is  
7 something this agency has recognized for many years,  
8 again, this is an issue brought up in the Integrated  
9 Energy Policy Reports many times, and I have always been  
10 pleased with the work we do here. It gets comment in  
11 this room, and we recognize it, but I sat in this room  
12 about a week ago in a hearing on - as I sat in the  
13 audience, as the Blue Ribbon Task Force on carbon capture  
14 sequestration held a meeting here, and I was distressed  
15 that a very high profile representative of the  
16 environmental community, or more really the environmental  
17 justice community, not only stated that the Energy  
18 Commission's whole mission in life is to foster and  
19 perpetuate the use of fossil fuels, but that we paid no  
20 attention to things like water impacts, water use, and  
21 this, that and the other. And I was not in a position to  
22 spring up from the audience and correct that, it was not  
23 my hearing, but it just reminds me somehow or another, we  
24 need to advertise better that which we do, that which we  
25 are concerned about, and that which we spend ratepayers'

1 money on with respect to finding better and more  
2 efficient ways - and this agency, in particular, from the  
3 energy crisis forward, has been pushing the water/energy  
4 nexus very hard, and I guess we just need to get our  
5 message out to a broader base of people. So, as we make  
6 these awards for these projects that have the huge water  
7 nexus, I just hope our information office can get the  
8 information out there, at least for some public to see  
9 and read.

10 COMMISSIONER BYRON: Commissioner, I suspect  
11 the individual you are talking about, like me, skips  
12 through all the ads, so I don't know how much advertising  
13 effect you might have on that person, but I think your  
14 point is well taken.

15 CHAIRMAN DOUGLAS: Other comments?

16 VICE CHAIR BOYD: Move approval.

17 COMMISSIONER BYRON: Is there a second?

18 COMMISSIONER BYRON: Second.

19 CHAIRMAN DOUGLAS: All in favor?

20 (Ayes.)

21 That item is approved.

22 COMMISSIONER BYRON: Thank you, Mr. Gautam.

23 You have more?

24 MR. GAUTAM: One more.

25 CHAIRMAN DOUGLAS: Very well.

1                   Item 11. MC2 CONSULTING, INC. Possible  
2 approval of Agreement PIR-10-018 for a grant of \$399,565  
3 to mc2 Consulting, Inc. to measure the effectiveness of  
4 the combined use of optimization software and drag  
5 reducing agents for transporting fluids in pipelines.  
6 Mr. Gautam.

7                   MR. GAUTAM: Yes, this project will be  
8 partnering with mc2 Consulting and also with  
9 ConocoPhillips Pipeline Company to demonstrate a software  
10 optimization package to reduce energy consumption on  
11 their Line 200 Pipeline. This is a pipeline that begins  
12 in Los Angeles, or in Coalinga, which is half way between  
13 Los Angeles and San Francisco, and ends at Conoco's  
14 refinery in Rodeo. For this project, we have support  
15 from Measurement and Verification by Pacific Gas &  
16 Electric. Currently, the industry focuses on maximizing  
17 output of existing equipment to measure refinery needs at  
18 any given point in time. To give you just an idea of how  
19 large this industry is in California, last year the oil  
20 extraction and refining industry consumed over 12  
21 kilowatt hours of electricity and over 12 billion therms  
22 of natural gas. And currently, there does not exist a  
23 standalone software package that optimizes pump  
24 optimization, so looking at natural gas-fired electricity  
25 usage for your pumps, depending on what the fluid is,

1 there is not a standalone software that optimizes drag  
2 reducing agents. These are hydrocarbon-based chemicals  
3 that reduce the fluid friction so you have a lower  
4 pressure drop between pump station and the pipelines.  
5 And then, currently, there does not exist a software that  
6 does optimization for pipeline and refinery scheduling  
7 which would be a facility software. To give you guys  
8 further detail on what the project will be doing, mc2 has  
9 already developed the pump optimizer, so we already have  
10 the foundation to do optimization for pumps, whether they  
11 are natural gas or electricity. We will be adding to  
12 that the optimization package for crack reducing agents,  
13 we will be looking at the optimal drag reducing agent  
14 basically when the fluid is transported. We will be  
15 looking at the optimal concentration levels for the drag  
16 reducing agents, and also to take into consideration the  
17 physical geometries of the pipelines and the locations.  
18 In terms of looking at the pipeline scheduling, we will  
19 attempt to identify, forecast, schedule periods of high  
20 flows which correspond to periods of high energy use, and  
21 optimize those schedules to reduce these periods as much  
22 as possible while maintaining output of the pipelines.

23           The overall goal here is to demonstrate a  
24 software package that can reduce energy consumption in  
25 the industry, while maintaining the output. It is also

1 important to note that this is a technology that is not  
2 just for this industry, it has applications in the  
3 pharmaceutical chemical industries, and also a potential  
4 use in non-potable water transportation by  
5 municipalities. But as far as a demonstration here, a  
6 successful demonstration at Conoco's Line 200 will  
7 provide the necessary performance, reliability, and  
8 economic data necessary for acceptance by the industry,  
9 but also to provide the information the utilities need to  
10 incentivize the use of this software package by the  
11 industry.

12 In terms of energy savings, we are looking at,  
13 conservatively, over about 23 gigawatt hours in energy  
14 savings; in terms of demand reduction, we are looking at,  
15 conservatively, 50 megawatts, which is about the size of  
16 a typical peaker plant. For this project mc2 will be  
17 providing almost \$125,000 in matched funding. The  
18 project term is 28 months. We request approval of this  
19 project. If you have any questions, I will be happy to  
20 address them for you.

21 CHAIRMAN DOUGLAS: Thank you, Mr. Gautam. We  
22 have one member of the public on the phone who may wish  
23 to make a comment on this item, Michael Short.

24 MR. GAUTAM: Michael, are you there?

25 MR. SHORT: Yes, can you hear?

1           CHAIRMAN DOUGLAS: Please proceed. Is there  
2 anything you wanted to say?

3           MR. SHORT: Okay.

4           MR. GAUTAM: I think we are good for now,  
5 unless you have questions for Mike.

6           CHAIRMAN DOUGLAS: Okay, he is just here to  
7 answer questions.

8           MR. GAUTAM: Yes.

9           CHAIRMAN DOUGLAS: Very well, thank you.  
10 Comments or questions?

11           COMMISSIONER EGGERT: I just have a real quick  
12 question related to the product. When we fund software  
13 like this, I noticed on the tech transfer plan, "the plan  
14 shall explain how the knowledge gained in this project  
15 will be made available to the public." What are we  
16 asking the proposer to do to make sure that the software  
17 gets used, and utilized broadly?

18           MR. GAUTAM: As far as the project, we will  
19 have a Project Advisory Committee which will consist of  
20 the utilities and the pipeline owners and operators, so  
21 from the frontend, we will have access to software and we  
22 will be working with them to improve the software. And  
23 we will be making this available through our Website as  
24 much as possible. The utilities will be involved in

1 advertising this and providing the software to use for  
2 free of charge by the industry, so...

3 COMMISSIONER EGGERT: So the software would be  
4 made available through our Website?

5 MR. GAUTAM: Yes, if possible, yes. And it is  
6 also to be made through their Website and the utilities'  
7 source code will be confidential, but the software, it  
8 will be available for free.

9 COMMISSIONER EGGERT: Okay, thank you.

10 MR. GAUTAM: You are welcome

11 CHAIRMAN DOUGLAS: Other questions?

12 Commissioner Byron.

13 COMMISSIONER BYRON: Madam Chair, I move  
14 approval.

15 VICE CHAIR BOYD: Second.

16 CHAIRMAN DOUGLAS: All in favor?

17 (Ayes.)

18 The item is approved. Thank you, Mr. Gautam.

19 MR. GAUTAM: Thank you, Commissioners.

20 CHAIRMAN DOUGLAS: Item 12. University Of  
21 California, Davis. Possible approval of Contract 500-10-  
22 017 for \$580,907 with the Regents of the University of  
23 California, Davis, to provide new location data and  
24 enhanced habitat suitability models for predicting the

1 potential distribution and habitat of the Mojave and  
2 Colorado Desert rare plants. Ms. Milliron.

3 MS. MILLIRON: Hi. I am Misa Milliron here  
4 representing PIER in the Environmental Area. Also with  
5 me is Rick York of the Siting Division, to express  
6 support for this, the first of several desert renewable  
7 energy related research projects that are going to be  
8 coming before you. This project is with UC Davis and it  
9 involves key partners at UC Berkeley, as well as the  
10 California Native Plant Society.

11 In the way of background, the Environmental  
12 area of PIER released a Competitive Request for  
13 Agreements with agencies and other governmental entities  
14 to facilitate renewable energy in the desert, while  
15 minimizing biological impacts and filling important data  
16 gaps that hinder the environmental review process. The  
17 idea was to select projects that have great benefit and  
18 utility to the Siting Division, as well as other agencies  
19 involved in the Desert Renewable Energy Conservation  
20 Planning process, the reviewers of all the proposals,  
21 including staff not only from the PIER Environmental  
22 area, but also PIER Renewables, Siting, and the  
23 Department of Fish and Game.

24 The purpose of this project is to provide  
25 location data and map the distributions of, as well as

1 predict habitat through modeling for desert rare plants  
2 that would be effected by solar energy development. For  
3 plants, there is very little data available, compared to  
4 desert wildlife and, in fact, the California deserts have  
5 been described as a botanical frontier due to their -  
6 because they are less explored compared to other regions  
7 of the state, and also there have been some really  
8 significant botanical finds in recent years in the  
9 desert. This critical missing information has created  
10 uncertainty in the siting process, and continues to be an  
11 issue that not only the Commission, but other agencies  
12 struggle with, in the siting of these large facilities.  
13 Within the first year of this two and a half year  
14 project, there will be high quality location data  
15 generated from about 12,000 herbarium specimens, and that  
16 will not be made publicly available online. And then,  
17 this information will be used not only in the DRECP  
18 planning process to identify conservation opportunities,  
19 as well as siting opportunities, but it will also be used  
20 to conduct robust environmental review to understand  
21 impacts of desert rare plants. This will fill critical  
22 biodiversity gaps in the desert that hinder environmental  
23 review, as well as help mitigation planning to avoid and  
24 minimize impacts. This project span approved by the RD&D  
25 Committee, and I am bringing it forward to the full

1 Commission for your approval. I am happy to answer any  
2 questions.

3 CHAIRMAN DOUGLAS: Thank you very much. Are  
4 there questions or comments on this item?

5 COMMISSIONER BYRON: Ms. Milliron, not too long  
6 ago, if you had brought a project like this to me, I  
7 would have asked, "Why are we spending money on this?  
8 Why are we doing research on this subject matter? We are  
9 the Energy Commission." Now, I understand.

10 VICE CHAIR BOYD: Painfully, too

11 COMMISSIONER BYRON: Yeah, and this is a  
12 crucial issue, it has come up numerous times, and in many  
13 cases that we have got, and I could put this in the form  
14 of a question, but I think what I will do is ask, if you  
15 have not already, please coordinate and include - at  
16 least let them know about this research project, some of  
17 the parties that participate in our siting cases. I am  
18 thinking about the California Native Plant Society and I  
19 am sure there are others that would be very interested to  
20 know that this Commission is conducting this kind of  
21 work. And, as usual, two years ago, I would have asked  
22 you why are we doing it, now I'm saying I understand, and  
23 I will add, "I want the results now!" Thank you, Ms.  
24 Milliron. Did you want to add something?

1 MS. MILLIRON: Oh, I just wanted to add that  
2 the Native Plant Society is a key partner in this project  
3 and they will be involved with the selection of the  
4 species that we are going to be studying.

5 COMMISSIONER BYRON: Thank you.

6 MS. MILLIRON: Thank you.

7 CHAIRMAN DOUGLAS: Other questions.  
8 Commissioner Weisenmiller.

9 COMMISSIONER WEISENMILLER: Just a comment  
10 that, obviously, when we have gotten the feedback from  
11 the Science Advisory Group in the DRECP, and certainly  
12 they had an impassioned plea there for dealing with the  
13 data gaps in this area. This is very very important work  
14 to do, and it certainly influences a lot of not only  
15 siting but our planning. And obviously, when we started  
16 to pioneering ready work, we took what was available on  
17 the shelf out in these areas and there is pretty thin  
18 data in a lot of cases. So, as we get the better data, I  
19 mean, that is certainly really going to inform our  
20 planning processes, particularly the DRECP and ultimately  
21 siting, in a way that will make it must more effective, I  
22 hope. So, thanks for pushing this forward and  
23 particularly working with the siting staff on it.

24 CHAIRMAN DOUGLAS: Thank you. Is there a  
25 motion on this item?

1 COMMISSIONER WEISENMILLER: I would move.

2 VICE CHAIR BOYD: Second.

3 CHAIRMAN DOUGLAS: All in favor?

4 (Ayes.)

5 The item is approved. Thank you.

6 MS. MILLIRON: Thank you.

7 CHAIRMAN DOUGLAS: Item 13. Kennedy/Jenks  
8 Consultants, Inc. Possible approval of Agreement PIR-10-  
9 008 for a grant of \$299,956 to Kennedy/Jenks Consultants,  
10 Inc. to research the use of innovative additives that can  
11 reduce the water content of sewage sludge. Mr.  
12 Roggensack.

13 MR. ROGGENSACK: Good morning, Commissioners.  
14 My name is Paul Roggensack. I am with the Energy  
15 Research and Development Division. This project is  
16 called the Use of Nanoscale Materials for Sludge  
17 Dewatering. To dewater sludge, a facility will put the  
18 sludge through a filter press. The filter press will  
19 increase a percent solids from 3-4 percent to up to 25  
20 percent. To enhance the performance of the filter press,  
21 polymers are added to the sludge, however, bench scale  
22 work has shown that, if you add nanoscale particles, in  
23 addition to the polymers, that performance can improve to  
24 where the percent of solids in the sludge is increased to  
25 30 percent. That additional 5 percent will mean a

1 savings of 30 percent of the energy use of the filter  
2 press, plus the sludge will be compacted to where there  
3 is a 20 percent reduction in volume. So, in addition to  
4 the savings in the filter press, you have reductions in  
5 downstream process such as drying using natural gas, and  
6 also transporting the sludge to a landfill will reduce  
7 the carbon footprint.

8 Kennedy/Jenks will partner with Los Angeles  
9 County Sanitation District in Carson, California. They  
10 will synthesize the nanoparticles, screen them, and then  
11 do all the necessary testing, and then, finally do a  
12 demonstration at the facility in Carson. So, if the  
13 sludge can reduce the energy of dewatering by 30 percent,  
14 it could represent a significant savings to California  
15 since dewatering is the most energy intensive portion of  
16 wastewater treatment. And it would be - we estimate that  
17 if only 10 percent of the facilities, or 10 percent of  
18 the wastewater treatment in California uses this process,  
19 that would result in a savings of approximately 24  
20 gigawatt hours per year.

21 The funding for this is \$300,000; Kennedy/Jenks  
22 is providing \$175,000 in match. The term is 31 years,  
23 and this project was selected by the Emerging  
24 Technologies Demonstration Grant Solicitation put out by

1 the PIER IAD Team. I would be happy to answer any  
2 questions regarding this.

3 CHAIRMAN DOUGLAS: Thank you. Questions or  
4 comments?

5 COMMISSIONER BYRON: Mr. Roggensack, I note  
6 this was your number 1 proposal amongst the competitive  
7 solicitations. Is that correct? It said Number 1 Rank.

8 MR. ROGGENSACK: It was highly ranked, I do not  
9 recall the exact -

10 COMMISSIONER BYRON: You know, all these  
11 important research projects merit more discussion, I am  
12 certainly in favor of this, and I hope you and everyone  
13 else accept my apologies that we are buzzing through  
14 these because we have got some significant items to get  
15 through, and we have got a meeting, a number of meetings  
16 to go. But a very good research project. I certainly  
17 endorse this to my fellow Commissioners. And I will make  
18 that a motion, move to approve.

19 VICE CHAIR BOYD: Second.

20 CHAIRMAN DOUGLAS: All in favor?

21 (Ayes.)

22 That item is approved.

23 MR. ROGGENSACK: Thank you.

24 CHAIRMAN DOUGLAS: Thank you. Item 14. EQUEST  
25 3.64 AND D2 COMPLY 3.64. Possible approval of adding

1 eQUEST 3.64 and D2 Comply 3.64 to the Energy Commission's  
2 list of computer simulation programs used to demonstrate  
3 compliance with the 2008 Non-Residential Building Energy  
4 Efficiency Standards. Mr. Seran.

5 MR. HOLWORTH: My name is Craig Holworth, I  
6 will be speaking, as well. I am the Supervisor of High  
7 Performance Buildings, and S. T. Seran is our Lead  
8 Mechanical Engineer for Non-Residential HVAC systems and  
9 developing Alternative Calculation Methods. The Title 24  
10 Building Energy Efficiency Standards allow prescriptive  
11 and performance path for demonstrating compliance with  
12 the requirements of our energy efficiency standards. A  
13 performance path relies on approved building simulation  
14 computer programs to evaluate building energy  
15 performance. There are presently two approved programs,  
16 they are Energy Pro and Perform 2008 for Non-Residential  
17 Buildings. James J. Hirsch and Associates has submitted  
18 the eQUEST and D2 Comply computer programs version 3.64  
19 for certification as alternative calculation methods for  
20 new non-residential buildings.

21 MR. SERAN: We have reviewed these two,  
22 according to the requirements on the 2008 [phon] for  
23 certification as compliance tools. And we found these  
24 subject tools pass all the pre-established requirement  
25 set forth in the SEM Manual, therefore, staff recommends

1 approval of eQUEST 3.64 and D2 Comply 3.64, as compliance  
2 tools.

3 CHAIRMAN DOUGLAS: Thank you. Questions or  
4 comments, Commissioners?

5 COMMISSIONER EGGERT: Just a quick comment.  
6 I'm increasingly becoming aware of the substantial effort  
7 that it takes to show compliance with software matched to  
8 our Building Standards, so I just want to recognize what  
9 I expect is a significant amount of work that went into  
10 bringing this item before us today, and I support and  
11 move for approval.

12 CHAIRMAN DOUGLAS: Thank you, Commissioner  
13 Eggert, and actually, before we get a second, I should  
14 note, Kevin Madison is on the phone. Are you on the  
15 phone with a comment? Or are you available for -

16 MR. SERAN: He said he was available for  
17 answering any questions you have.

18 CHAIRMAN DOUGLAS: All right, thank you. So,  
19 in that case, we have a motion. Do we have a second.

20 COMMISSIONER WEISENMILLER: I will second.

21 CHAIRMAN DOUGLAS: Any comments? All in favor?

22 (Ayes.)

23 The item is approved.

24 MR. SERAN: Thank you.

25 CHAIRMAN DOUGLAS: Thank you very much. Now,

1 Commissioners, we are on Item 15 out of 17 on the Agenda  
2 and - or out of 16 of the substantive - we have 15 and 16  
3 to go. I just wanted to have a quick conversation about  
4 schedule before we move forward. As you referenced,  
5 Commissioner Byron, there is a 1:00 Calico hearing and  
6 so, two of the five of us will be going to that. And the  
7 next two items, not necessarily, but certainly could  
8 conceivably push past 1:00, plus I have to imagine that  
9 every participant in the Calico Hearing would appreciate  
10 it if you both had an opportunity to have just a little  
11 bit of lunch before you go into that, so what I wanted to  
12 ask is whether we should proceed with Beacon and proceed  
13 with Marsh, and at some point you step out and go into  
14 the hearing, or whether you would move the hearing back  
15 to finish the business meeting, or what your preference  
16 is, just so that we know this going into these next  
17 items.

18 COMMISSIONER EGGERT: I would just maybe start  
19 out by saying this Commissioner definitely appreciates  
20 lunch, but I wanted to raise a logistical issue and that  
21 is that the hearing is actually in this room, so -

22 COMMISSIONER BYRON: Press on?

23 COMMISSIONER EGGERT: I guess with that  
24 information, we did warn some of the participants that,  
25 you know, it could move a little bit later than 1:00, but

1 we do have a lot of topics to go through for that  
2 hearing, so I will just add that to the discussion, I am  
3 not making any specific recommendation.

4 CHAIRMAN DOUGLAS: All right, well, let me ask  
5 Ms. Chandler if you could find out if Hearing Room B is  
6 available, if that is necessary?

7 MS. CHANDLER: I will be happy to. We actually  
8 looked into this ahead of time and Mr. Kramer indicated  
9 that he would prefer to go forward with the business  
10 meeting and then pick up Calico here, but in light of the  
11 fact that we might be even going longer than 1:00, we  
12 will find out and get back to you.

13 CHAIRMAN DOUGLAS: All right, well, if you  
14 could find out, that would be great. We can pick up the  
15 scheduling conversation at the close of Beacon, but I  
16 just wanted to raise the issue now. All right.

17 Well we are ready to go with Beacon.  
18 Commissioner Boyd just observed that Hearing Officer  
19 Kramer is critical to the Marsh presentation.

20 HEARING OFFICER CELLI: He will be here.

21 CHAIRMAN DOUGLAS: Well, I understand that, but  
22 that means that he is also Calico, anyway. All right,  
23 well, let's just begin with Beacon.

24 Item 15. Beacon Solar Energy Project (08-AFC-  
25 2). Possible adoption of the Presiding Member's Proposed

1 Decision on the Beacon Solar Energy Project, and Errata.  
2 Mr. Celli.

3 HEARING OFFICER CELLI: Good morning, Chairman  
4 Douglas and Commissioners. Kenneth Celli appearing on  
5 behalf of the Beacon AFC Committee. The PMPD, Presiding  
6 Member's Proposed Decision, reflects the Committee's  
7 careful consideration of all evidence submitted by the  
8 parties, as well as all public comments. The PMPD  
9 recommends that the Commission grant certification  
10 because the Beacon Solar Energy Project is consistent  
11 with laws, ordinances, regulations, and standards and,  
12 pursuant to CEQA, will have no significant adverse  
13 effects on the environment. On March 14<sup>th</sup>, 2008,  
14 Beacon Solar, LLC, a subsidiary of Next Era Energy  
15 Resources, LLC, submitted an AFC to construct and operate  
16 the Beacon Solar Energy Project, a nominal 250 megawatt  
17 solar thermal power plant, on the site of an abandoned  
18 Alfalfa farm at the western edge of the Mojave Desert in  
19 Eastern Kern County, California. The Beacon Solar Energy  
20 Project is a 2,012- acre site located along the  
21 California State Route 14 Corridor, approximately four  
22 miles north northwest of the northern boundary of  
23 California City, approximately 50 miles north of the town  
24 of Mojave, approximately 50 miles north of Edwards Air  
25 Force Base, and approximately 40 miles northeast of the

1 City of Rosamond. The project site arrangement generally  
2 consists of a 1,266-acre rectangular array of parabolic  
3 trough solar collectors, surrounding a centrally located  
4 power block. The power block facility houses the  
5 majority of the electrical generation equipment and  
6 related systems, with the exception of the solar field.  
7 The solar collectors will be constructed in long rows, or  
8 troughs, across the project site, and aligned side-by-  
9 side in a north-south orientation, to allow the troughs  
10 to slowly rotate from east to west, tracking the movement  
11 of the sun. Adjoining the solar field, immediately to  
12 the west, are various support facilities including  
13 administration and storage buildings and evaporation  
14 ponds. The site is currently bisected by Pine Tree  
15 Creek, which is the dry desert wash that will be rerouted  
16 to the southern and eastern boundaries of the project  
17 site, together with the solar fields, support facilities,  
18 transmission lines, and drainage feature, the project  
19 will occupy the majority of the 2,012-acre site. There  
20 will be no gas pipeline because the two auxiliary boilers  
21 will be propane-fired, and the propane will be delivered  
22 by truck and stored on-site. The project will be located  
23 approximately 1.5 miles north of the Barren Ridge  
24 Switching Station owned by LADWP. The project's  
25 interconnection route will be approximately 3.5 miles in

1 length, of 230 KV line using up to 39 concrete monopoles  
2 averaging 79-feet in height and spaced approximately 500-  
3 feet apart. The project may use up to 8,086-acre-feet of  
4 groundwater during the 25 months of construction. The  
5 project originally proposed to use groundwater for  
6 cooling, but decided to switch to recycled water during  
7 around December of 2009. Tertiary treated recycled water  
8 for cooling will be conveyed by underground pipe for  
9 wastewater treatment facilities located either in  
10 Rosamond, or in California City. The California City  
11 option would include an approximately 12-mile-long  
12 recycled water pipeline from California City Wastewater  
13 Treatment Facilities to the project.

14           The Committee heard substantial evidence and  
15 comment regarding the environmental benefits of  
16 converting California City's Septic System to a Sewer  
17 System in order to avoid the serious threat of toxic  
18 contamination of the groundwater basin below California  
19 City. The Rosamond Community Service District option  
20 would require construction of a recycled water pipeline  
21 from Rosamond, approximately 40 miles to the project, but  
22 it will occur almost entirely along the shoulder of already  
23 disturbed and developed roadsides. Right now, Rosamond's  
24 recycled water is piped to the ocean unused. In either  
25 case, the Beacon Solar Energy Project will consume

1 approximately 1,400-acre-feet per year of recycled water  
2 and 153-acre-feet per year of groundwater with another  
3 47-acre-feet of groundwater per year held in emergency  
4 reserve. The on-site water treatment process includes a  
5 partial ZLD System, three two-acre evaporation ponds will  
6 also be installed.

7 CURE, which is California Unions for Reliable  
8 Energy was the only Intervener in this proceeding. As  
9 usual, the public was presented a full opportunity to  
10 participate at every stage of these proceedings. The  
11 Committee received many public comments and the hearings  
12 were well attended by interested local people. The  
13 comments overwhelmingly supported the Beacon Solar Energy  
14 Project.

15 The Committee recommends that the Commission  
16 adopt the PMPD on the Beacon Solar Energy Project, along  
17 with the Committee Errata dated August 24<sup>th</sup>, 2010, which  
18 was served on all parties. The Errata incorporates the  
19 parties' and public's comments on the PMPD and includes  
20 clarifications of the record. With that, the matter is  
21 submitted, and I am happy to answer any questions on  
22 procedural matters, or on the PMPD, otherwise the parties  
23 are here to address the Commission, and I believe  
24 representatives from California City and Rosamond  
25 Community Service District also wishes to address the

1 Commission, as well. Thank you.

2 CHAIRMAN DOUGLAS: Thank you, Hearing Officer  
3 Celli. Let's hear from the parties, and then we will  
4 hear from Rosamond and California City. Can we begin  
5 with the Applicant, please?

6 MS. LUCKHARDT: Good morning. My name is Jane  
7 Luckhardt. I am Project Counsel on behalf of this  
8 project. I would just like to point out one thing in the  
9 Errata that we believe is simply a typo, and that is on  
10 page 11 of the Errata, at the very bottom of the page  
11 there is a modification to page 203 of the Presiding  
12 Member's Proposed Decision, and in the Errata, two lines  
13 up from the bottom, there is a strikethrough. This  
14 strikethrough currently goes through "III through IX in  
15 San Bernardino County since 1998." All of that should be  
16 struck through beginning with VIII and through 1998, so  
17 "VIII and IX in 1998" should not be struck out, and  
18 should remain in the Decision, or should be marked, I  
19 think, with an underline as an addition. So, the  
20 sentence should read as changed, starting at the top of  
21 that complete revision: "The record shows that BSEP is  
22 owned by NextEra Energy Resources which began operating  
23 the Luz Solar Electric Generating System (SEGS) VIII and  
24 IX in 1998 and SEGS III-VII in 2005." Other than that,  
25 we appreciate the efforts of the Committee in creating

1 the Errata, and we support the decision and the Errata as  
2 written with that change. At this point, we believe it  
3 would probably be best for us to hold any remaining  
4 comments we have until after we hear from CURE.

5 CHAIRMAN DOUGLAS: Thank you, Ms. Luckhardt.  
6 Staff, could you make opening comments and also address  
7 the issue of the Errata?

8 MR. BABULA: We have had a chance to review the  
9 Errata and the one thing we would like to note on page 22  
10 of the Errata, at the top, the A-12, which is a table, a  
11 LORS table, that LORS table is also in the original PMPD  
12 with the same - with the Title 8 CCR Section 5189, and  
13 then the paragraph that corresponds to that section is  
14 slightly different in the Errata vs. in the PMPD, and we  
15 would recommend that the language in the Errata most  
16 closely fits to the record in what staff had said. While  
17 they both are similar, I just did not want this Title 8  
18 CCR Section 5189 to appear twice, and so I just want to  
19 point that out, that we had suggested it be added, but it  
20 already is in the PMPD, so if you add it, you will just  
21 have two lines with the same text, except for the  
22 paragraphs are slightly different, so I would go with the  
23 Errata version. And then the other thing to note, Mr.  
24 Celli stated that the Rosamond is currently piping their  
25 wastewater to the ocean, I believe that was the Orange

1 Grove Project, the record indicates that it is currently  
2 being evaporated.

3 HEARING OFFICER CELLI: I stand corrected. My  
4 apologies.

5 CHAIRMAN DOUGLAS: Thank you.

6 UNIDENTIFIED SPEAKER: Then one other thing on  
7 page 19 of the Errata, at the very top it reads,  
8 "Rosamond Boulevard, Sierra Highway, Sopp Road, Lone  
9 Butte Road," and then it says "California Boulevard." It  
10 should just read "California City Boulevard" is the  
11 correct name of the street. Thank you.

12 CHAIRMAN DOUGLAS: Thank you, and I am about to  
13 turn to CURE, but I would like to make sure, Hearing  
14 Officer Celli, that you have captured the suggestions on  
15 the Errata?

16 HEARING OFFICER CELLI: I have, thank you.

17 CHAIRMAN DOUGLAS: You have captured the  
18 suggestions. Let's hear from CURE, and then I would like  
19 to ask you to speak to the proposed changes. Ms.  
20 Gulesserian.

21 MS. GULESSERIAN: Thank you, Chair, Vice Chair,  
22 Commissioners. My name is Tanya Gulesserian. I am an  
23 attorney for California Unions for Reliable Energy. I  
24 would like to say congratulations, you are about to  
25 approve your first solar thermal power plant on your fast

1 track list. I am not here this morning, this afternoon,  
2 to talk about CURE's concern with the substantive and  
3 procedural legal problems in the PMPD; instead, I would  
4 like to talk to you about the bigger picture. You are  
5 about to approve the first solar thermal power plant on  
6 the fast track list. Everyone worked really hard on this  
7 project. The project manager, Mr. Solario, and staff  
8 worked extremely hard to review the project and to  
9 analyze alternatives to the proposed use of potable  
10 ground water for the project. The Hearing Officer worked  
11 very hard to move this application through the process,  
12 and get us to where we are today, and we appreciate the  
13 Committee's hard work, as well, in reviewing and  
14 listening to the testimony that was submitted in  
15 Evidentiary Hearings.

16           For two of you, it will be your first chance to  
17 vote on a project of this nature, and I am certain that  
18 parties down the street are going to be watching very  
19 carefully, so I am not going to talk about the legal  
20 flaws with this project, but I would simply note that,  
21 despite all the hard work that was done, this project  
22 will not get built any time soon. It has no Power  
23 Purchase Agreement, it has no Interconnection Agreement,  
24 and it has no water. Instead, I want to talk to you  
25 about two things that we would hope you keep in mind for

1 the fast track projects, neither of which anyone should  
2 have to ask you to do. First, it is okay to go fast, but  
3 it is not okay to ignore public comment periods. When a  
4 project changes at the very last minute and there is a  
5 potential for new significant impacts, a new analysis is  
6 going to occur; that requires public notice and an  
7 opportunity for public comment. When an analysis is done  
8 for the very first time, that analysis needs to be  
9 subject to public review and comment. Or, when a new  
10 mitigation measure that is required to mitigate a  
11 significant impact is introduced for the very first time,  
12 that mitigation measure triggers public notice and  
13 comment periods. And the Commission is required to  
14 respond to public comments. If you skip public notice  
15 and comment, you have not accomplished much. Without it,  
16 the Commission has no basis upon which to say that its  
17 ultimate decision is based on substantial evidence and is  
18 legally defensible. If you skip public notice and  
19 comment, you have done a disservice to people of this  
20 State, the resources of the State, and the reputation of  
21 this Commission.

22           Second, sometimes the law presents you with  
23 unpleasant substantive obligations. But there is good  
24 reason for these obligations. I am sure nobody wants to  
25 look back five or 10 years from now and say, "Gee, we

1 wish we had paid a little bit more attention, been a  
2 little bit more careful," or, "We wish we hadn't sped  
3 through the process so quickly that we ignored the damage  
4 that's left in our wake." So we would ask you to do  
5 justice to the history of the Commission, a history which  
6 has always been focused on environmental protection, and  
7 which has never sacrificed what it knows to be right  
8 because of external pressures. This case is the first,  
9 but there are a number in line right behind. We hope  
10 that you will think very carefully about the issues  
11 raised by all of the parties, and not lose sight of the  
12 substance in the rush to meet external deadlines. Thank  
13 you for the opportunity to comment today.

14 CHAIRMAN DOUGLAS: Thank you, Ms. Gulesserian.  
15 And let me just ask one point of clarification. Are  
16 these general comments, or are there issues you would  
17 like to raise today about this decision in terms of  
18 comment periods or substantive obligations?

19 MS. GULESSERIAN: These are general comments,  
20 thank you.

21 CHAIRMAN DOUGLAS: Thank you. Hearing Officer  
22 Celli, the Errata?

23 HEARING OFFICER CELLI: Well, actually, the  
24 Errata, as I said, are simple clarifications,  
25 amplifications of the record, there is nothing new

1 contained in the Errata in terms of that which would  
2 support a revision finding. And all of the parties  
3 received the Errata, as you can hear, it is ongoing, but  
4 we - I would assert that the public was given ample  
5 notice of comment at every hearing, at every conference,  
6 everything that we put out has been noticed according to  
7 regulation, and the public has been very vocal and very  
8 participatory in this process. And so, I would like to  
9 assure the Commissioners that the Beacon Project has been  
10 well vetted with the public, and all notices and  
11 documents were fully noticed appropriately so, and  
12 legally so. So, do you have a specific question,  
13 Commissioner Douglas?

14 CHAIRMAN DOUGLAS: No, well, the specific  
15 question I have is that both Applicant and staff  
16 suggested changes to the Errata, and I guess my question  
17 was, do you -

18 HEARING OFFICER CELLI: I will join in those  
19 motions, yes.

20 CHAIRMAN DOUGLAS: You join in the  
21 recommendation of staff and applicant for the changes  
22 that they suggested?

23 HEARING OFFICER CELLI: Yes, those are good  
24 comments and we appreciate that.

25 CHAIRMAN DOUGLAS: And that is actually what I

1 was asking about. Okay, let's hear from California City  
2 and Rosamond, then. California City first.

3 UNIDENTIFIED SPEAKER: Well, I would just like  
4 to add one thing. This project, even though it is being  
5 characterized as fast tracked, it was actually filed in  
6 2008 and has been in our process, we have been working on  
7 it for over two years, so it happened to fall into the  
8 lap of being a fast track because of the availability of  
9 the funds, but it is not one that came in most recently.  
10 We have been plowing through this one intently for the  
11 last two and a half years.

12 CHAIRMAN DOUGLAS: Thank you. Please.  
13 California City.

14 MR. BEVINS: Commission, my name is Michael  
15 Bevins. I am the Public Works Director for the City of  
16 California City. I have been asked by the Counsel and by  
17 our City Manager to represent our City in this particular  
18 issue. We want to thank you for the consideration that  
19 you have given to the Beacon Project. We have been on  
20 and off attached with this project since about 2006-2007.  
21 We have been in constant support for this project on a  
22 number of levels. First of all, we have a commitment  
23 also to renewable energy, and we think this is an ideal,  
24 if not perfect location inside our area. We have a lot  
25 of fragile desert surrounding it, a particular land upon

1 which this is built has many years ago been desecrated  
2 and was a tremendous drain on our aquifer. That drain  
3 has ended. The new project is consistent, even if it was  
4 only using groundwater, we believe, and we ran an  
5 independent study to verify it, that there would not be a  
6 significant drain on our groundwater and it would be an  
7 appropriate activity, therefore, we supported it before  
8 we ever had a reclaimed water option. And we supported  
9 this project when the reclaimed water option was just  
10 Rosamond, also, before we had looked out and looked at  
11 all the various possibilities in the Rosamond option. So  
12 we would just like you to know that, as a city, we  
13 support this project completely. Do you have any  
14 questions?

15 CHAIRMAN DOUGLAS: I do not see any questions  
16 at the moment, but please stay here in case there are  
17 questions coming up.

18 MR. BEVINS: Thank you.

19 CHAIRMAN DOUGLAS: Thank you for being here.  
20 Rosamond, please.

21 MR. STEWART: Good morning, Madam Chairman,  
22 members of the Commission. My name is Jack Stewart, and  
23 I just recently retired as General Manager last month to  
24 the Community Service District, and previously have been  
25 City Manager in California City.

1           For the last two years, we have been very much  
2 involved with this project. At the same time, Rosamond's  
3 Community Service District represents about 17,000  
4 residents in southeast Kern, and an unincorporated area.  
5 We currently have upgraded our waste treatment plant, and  
6 we are in the process of looking to expand it for future  
7 involvement. We have been working both with the  
8 Applicant, also with the staff. We appreciate the  
9 support. On behalf of Rosamond and the Board of  
10 Directors, we have been involved in public involvement  
11 and public discussion, and also to make sure that in all  
12 of the discussions and participations that we have been  
13 involved, along with California City, that we have made  
14 sure that we adhere to CEQA and that through our future  
15 expansion, there are no significant impacts to what we  
16 are proposing. We support the project, we think it is  
17 beneficial, not only for the use of the recycled water  
18 within the Antelope Valley in their adjudication, and the  
19 saving the groundwater, but we also think it would be  
20 economically viable back for the State of California in  
21 job creation, and in energy savings. And therefore, we  
22 thank the Commission and staff and for participation.

23           CHAIRMAN DOUGLAS: Thank you very much and  
24 thank you for being here today. Would the parties have  
25 anything to add, having heard the first round of

1 comments?

2 MR. BUSA: Just on behalf of the Applicant,  
3 this is Scott Busa, I am a Director in our Business  
4 Development Group of Next Era Energy Resources. I just  
5 want to add my thanks to the over 27 month of  
6 consideration that the Commission, and particularly the  
7 Committee, the Hearing Officer, and much so the staff  
8 here at the Energy Commission have give to this project.  
9 It has been a lengthy process an almost embarrassingly  
10 long lengthy process, I would say, you know, coming in at  
11 27 months since Data Adequacy. I am hoping that Beacon  
12 is going to be held up as an example of the first project  
13 to be approved since the solar thermal - utility scale  
14 solar thermal project since the SEGS projects in the  
15 early 1990s, so it has been a long time coming, and  
16 hopefully a lot of lessons have been learned through our  
17 process that will allow the Energy Commission to stay on  
18 track in its 12-month siting process for the following  
19 projects, the solar projects that are coming right after  
20 Beacon. So, hopefully we are going from a lengthy  
21 process to a timely process as this Applicant has other  
22 applications before the Commission and would like to get  
23 those done in the 12-month timeframe. So, I appreciate  
24 all the hard work, and am very excited to move forward  
25 with the Commission's blessing today.

1           CHAIRMAN DOUGLAS: Well, thank you and thank  
2 you for your comments.

3           COMMISSIONER BYRON: Mr. Busa, there is at  
4 least one person in this room that does not think you are  
5 going to build this project. Would you respond to that?

6           MR. BUSA: Well, one of the reasons that there  
7 has been some delay on some of the items that Ms.  
8 Gulesserian has brought up has been the uncertainties and  
9 the length of time of the siting of this project, and now  
10 that hopefully we are able to move on from this, or  
11 through any appeal periods, that we will be able to  
12 conclude our final negotiations on the Power Purchase  
13 Agreement for this project. So, this is a flag that we  
14 are waiting for and hoping will be one of the final  
15 things that we have to get before we can move on with the  
16 building of the projects. So, it's not a done deal yet,  
17 but hopefully this will get us over the line and can make  
18 it that.

19           CHAIRMAN DOUGLAS: Well, thank you. And  
20 Commissioners, I would just like to make some brief  
21 comments as the Presiding Member on this case, and I will  
22 also note, I think this was my first site visit and  
23 informational hearing as a new Commissioner, going to  
24 California City and participating in the hearing on this  
25 project. And so, it has been with me during most of my

1 time on the Commission. I am pleased to see that it has  
2 gotten to this point. As has been noted, it is the first  
3 fast track solar thermal project that is before us for  
4 approval, it is also, as has been noted, the first major  
5 solar approval for this Commission and, really, within  
6 the State since the '90s, so it has been a long time  
7 coming. So it is proposed on land that was formerly used  
8 in agriculture, that has been essentially fallow for  
9 quite a long time, it does not present the difficult  
10 biological issues that some projects before us, including  
11 certainly the proceeding, if anyone wants to stick around  
12 and listen this afternoon, might present. It is - the  
13 major issue with this project as first proposed was water  
14 use, and that was probably the one issue of contention,  
15 certainly that we heard from the public, as well as from  
16 our staff. That has been resolved by the project moving  
17 try cooling and also the work with Rosamond and  
18 California City for the early years of the project. So,  
19 I would tend to agree with the Applicant that this is the  
20 sort of project that we like to see, it is - I am really  
21 pleased with - I would like to thank staff for sticking  
22 it out up here and I would like to thank Applicant for  
23 sticking with the process, and also showing flexibility  
24 and, in that way, managing to avoid significant potential  
25 issues. Commissioners, I would like to recommend that we

1 approve this project before you, so I would like to hear  
2 from my Associate member and anyone else who would like  
3 to speak.

4           COMMISSIONER BYRON: That would be me, Madam  
5 Chair. First, I agree, I hope this is the first of many  
6 more large scale renewable projects that this Commission  
7 will permit, since SEGS was permitted in the early '80s.  
8 This is exactly the kind of project that we want to see.  
9 I would like to thank the Developer and the Applicant for  
10 bringing this forward. As the Chairman noted, the  
11 adjustments and the changes that made this project  
12 better, demonstrated responsiveness to the laws of the  
13 State. Mr. Busa, I hope you learned your lesson, doing  
14 development in California, well, let's say, Kermit the  
15 Frog said it the best, "It ain't easy being green."  
16 California Environmental Quality Act is tough. And we  
17 call these Fast Track Projects, but they are really  
18 involved and complicated. I think the staff has done an  
19 excellent job. These solar thermals take a lot more  
20 effort on the part of our staff. And they present new  
21 challenges for the State with regard to land use, and a  
22 lot of new challenges under CEQA. And, of course, they  
23 have had to endure the furloughs and a lot of overtime, I  
24 think the staff, quite honestly, is doing better work in  
25 recent years than - I hate to make the comparison, but I

1 think they are getting better.

2 I do take exception to Ms. Gulesserian's  
3 comments, I normally do not respond to commenters, but  
4 she is an Intervener. I find her accusations of how this  
5 project was conducted, her impugning this Commission and  
6 its permitting process, is completely off base. We hold  
7 the Interveners to a higher standard than the public, and  
8 I find your comments today certainly did not endear you  
9 or your organization to me. Thank you, Madam Chairman, I  
10 think you did an excellent job on this, as did our  
11 Hearing Officer. It was a pleasure to be associated with  
12 this project. I also endorse it.

13 MR. SOLARIO: Excuse me, if I may.

14 CHAIRMAN DOUGLAS: Please, Mr. Solario.

15 MR. SOLARIO: If you do not mind, can I make a  
16 comment before you go to vote? And I would also like to  
17 ask our Deputy Director to come up and address the  
18 Commission if you will allow that.

19 CHAIRMAN DOUGLAS: Please.

20 MR. SOLARIO: Eric Solario, Project Manager for  
21 the Energy Commission. I would like to briefly recognize  
22 our staff counsel, Jared Babula, who has done a great job  
23 in supporting and advising all of the staff when it comes  
24 to CEQA compliance and environmental laws, to help us  
25 produce a solid document. Additionally, Jared's calm

1 demeanor has really helped us move through the issues and  
2 the public workshops with the Applicant, his ability to  
3 really see the issue, aside from the differences, I just  
4 want to recognize Mr. Babula. In addition, it was a  
5 pleasure for me to work with this Applicant, although  
6 they had a contentious issue on water and they definitely  
7 brought their A team to this project, and it was a  
8 pleasure working with Scott Busa and Kenny Stein, who is  
9 not here today, as well as their counsel, Ms. Luckhardt.  
10 And with that, I will turn it over to our Deputy  
11 Director, Mr. O'Brien.

12 MR. O'BRIEN: I would just like to say that,  
13 obviously, we would have liked to have moved faster on  
14 this project in response to Mr. Busa's comment, but haste  
15 makes waste and I believe that, in the end, the Energy  
16 Commission has arrived at a satisfactory point. The  
17 project has been improved, we spent a fair amount of time  
18 working with the Applicant to change the water source,  
19 and I think that is a good thing for the Applicant, and I  
20 think that is a good thing for the State of California, I  
21 certainly want to compliment the Energy Commission staff,  
22 the staff in my division, who have worked very very hard  
23 on this project, while at the same time working very hard  
24 on other projects, including the Genesis project, which  
25 we are moving along at a very rapid clip. So, I think

1 this obviously is the first of many projects that are  
2 going to come before you, Commissioners, for approval.  
3 It is a new era, I think, for the State in terms of  
4 transitioning from natural gas to renewable projects, I  
5 think that has huge environmental benefits, and I think  
6 everybody in the agency and with the other agencies that  
7 we worked with, to feel very good about what we have  
8 accomplished.

9           CHAIRMAN DOUGLAS: Well, thank you, Mr.  
10 O'Brien. Thanks to you, and your staff and the Siting  
11 Division, and Staff Division now as we are calling it.  
12 This is when the ARRA projects first presented themselves  
13 with the ARRA deadlines, there was a lot of doubt in the  
14 world about whether we would be able to speed up our  
15 process and do the adequate analysis, and bring these  
16 projects forward to a decision point, and what we have  
17 seen from staff is that you are meeting your end of the  
18 challenge, you are moving these projects along as best  
19 you can, and as fast as you can, and we are approaching  
20 decision points on the ARRA projects within the deadline  
21 and within the timeframe, so I think the hard work and  
22 the challenge has shifted to this side of the Dais and,  
23 as noted by all of the Commissioners in hearings, I think  
24 all the time, but that is exactly going according to  
25 plan, and so thank you for getting that part of this

1 done.

2 MR. O'BRIEN: And staff is very comfortable  
3 with the shifting of the workload from the staff to the  
4 Commissioners, so we support them.

5 COMMISSIONER WEISENMILLER: Of course, we will  
6 come back in compliance.

7 CHAIRMAN DOUGLAS: All right, other comments,  
8 Commissioners, or questions?

9 COMMISSIONER WEISENMILLER: I would like to  
10 make a few comments. I mean, I think, again, I always  
11 look back to the vision of Charlie Warren and Al Alquist  
12 in establishing this agency, and certainly the challenge  
13 we have of both meeting Charlie Warren's vision of a very  
14 public process, emphasis on environmental mitigation,  
15 with the Al Alquist part of sort of timely one-stop  
16 signing [phon]. And I think this process, as has been  
17 indicated, it has been 27 months, and that is certainly  
18 going back, again, to the original timeline contemplated  
19 in the Act, it is not particularly a fast track, but I  
20 mean, I think part of the consequence of being sort of on  
21 that leading edge, or bleeding edge, of, you know, this  
22 is a project, as of others where the Commission really  
23 had to grapple with a much larger footprint, that sort of  
24 fragile environment these are in, and try to come up with  
25 a way to move the projects through. Again, I think

1 having this on disturbed land certainly simplifies some  
2 of the issues. Certainly, the choice of the Applicant to  
3 switch to dry cooling is a significant advancement, and I  
4 think the interesting part about this is, to the extent  
5 this is sort of - I am going to say the next generation  
6 of SEGS in a way - I am hoping the financial community  
7 views this as a mature technology now that we have  
8 decades' worth of experience. I think, in terms of  
9 having said, you know, I do not know if we are going to  
10 find many perfect projects, or perfect processes as we go  
11 forward, but I think, again, this is good, certainly  
12 would like to thank the staff and CURE for making this a  
13 better project, and I think that is one of the important  
14 parts of our process, is that, as problems come up, the  
15 Applicant can help reshape that. And, again, certainly  
16 the shift to dry cooling, I think, given the location and  
17 given where we are, it is certainly going to help  
18 mitigate the impacts of the project quite a bit. But,  
19 again, I think this is sort of a historic day for us in  
20 that it has been a couple of decades since we have looked  
21 at utility scale projects; this is the first, we are  
22 going to be facing many more decisions, some of them  
23 perhaps easier, some more complicated than this one, but  
24 again, I think at this point, looking at the benefits it  
25 is going to provide to California in terms of renewable

1 energy, reduced greenhouse gas emissions, in terms of  
2 jobs, I mean, we are in the throes of a real - I do not  
3 know if we want to argue about whether it is a Great  
4 Recession or Depression, but, I mean, having those  
5 hundreds of jobs at this time is important to us, and  
6 having that economic development in the State, and  
7 particularly to try to flesh out our vision of a green  
8 energy economy in the future.

9 HEARING OFFICER CELLI: We just wanted to make  
10 clear for the record that the Beacon Project will be wet-  
11 cooled using recycled water, not dry cooled.

12 CHAIRMAN DOUGLAS: That is right, that is  
13 right.

14 COMMISSIONER EGGERT: Just maybe a real quick  
15 comment in the interest of time, but I just want to thank  
16 the Committee and the staff, as well, for what appears to  
17 be a very well put together decision, and a project that  
18 has a lot of great attributes. This is an exciting time.  
19 I think the level of activity we are seeing in this space  
20 with all these projects coming to our dais, as well as  
21 the projects that are outside of our jurisdiction, I  
22 think, reflects well on our ability to meet our  
23 environmental and energy goals. I think if we can  
24 sustain this, if we can create this, or help to create to  
25 help this vibrant new industry, or actually an industry

1 that has been around for a long time, but it is just now  
2 getting its legs underneath it, I think we do have a  
3 great future for the State.

4 VICE CHAIR BOYD: In the interest of time, I  
5 will sign on to all previous remarks and look forward to  
6 the next item on the agenda.

7 CHAIRMAN DOUGLAS: All right, well, is there a  
8 motion on this item?

9 COMMISSIONER BYRON: Madam Chair, as your  
10 Associate Member on this Committee, I move approval of  
11 Item 15, the Beacon Solar Energy Project, Application for  
12 Certification.

13 HEARING OFFICER CELLI: We ask that the -

14 COMMISSIONER BYRON: Ah, you have exact text  
15 that we need, don't you?

16 HEARING OFFICER CELLI: Right. We are asking  
17 that the motion include the PMPD and the Commission's  
18 Errata dated Tuesday, August 24<sup>th</sup>, 2010.

19 COMMISSIONER BYRON: Thank you - with that  
20 addition.

21 MS. LUCKHARDT: I would just like to point out  
22 that there was another Errata that was issued -

23 HEARING OFFICER CELLI: But is that not  
24 included in this Errata?

25 MS. LUCKHARDT: I do not think it is included.

1                   COMMISSIONER BYRON: Mr. Celli, is there  
2 another Errata, or is there only one?

3                   HEARING OFFICER CELLI: What happened initially  
4 was, when the PMPD went out, the soil and water, and I  
5 believe biology - cultural - had an earlier iteration of  
6 Conditions of Certification. Immediately following that,  
7 we sent out an e-mail and a mailing list to everybody  
8 with the new change, with the updated current Conditions  
9 of Certification, I do not have the date for that -

10                  COMMISSIONER BYRON: So the Errata that I am  
11 looking at is the one I received yesterday afternoon, and  
12 is there any ambiguity about that? I mean, there is only  
13 one Errata that I know of.

14                  MS. LUCKHARDT: There is another Errata that  
15 was issued on Thursday, July 29<sup>th</sup>, 2010, that Errata  
16 included all of the cultural resources Conditions of  
17 Certification, it included all of the soil and water  
18 Conditions of Certification, as well as Appendices I and  
19 J to the soil and water section, and we would ask that  
20 all of those - that that Errata, including both the  
21 revised sets of Conditions of Certification, as well as  
22 the two Appendices, be included as a part of the final  
23 decision.

24                  HEARING OFFICER CELLI: So, that is a correct  
25 statement, so the August 29<sup>th</sup> Errata - I am sorry, the

1 July 29<sup>th</sup> Errata and the August 24<sup>th</sup> Errata, in addition  
2 to the PMPD, need to be moved in together.

3 COMMISSIONER BYRON: Okay. Ms. Luckhardt,  
4 thank you for bringing this to our attention. I would  
5 like to -

6 MR. LEVY: Pardon me, Commissioners, and also  
7 the orally recited changes.

8 COMMISSIONER BYRON: Yes, and the minor changes  
9 that were noted in the Business Meeting today. I would  
10 like to amend my motion to include today's Errata with  
11 those minor changes, and the August 24<sup>th</sup> Errata, and Ms.  
12 Luckhardt referenced -

13 MS. LUCKHARDT: July 29<sup>th</sup>.

14 COMMISSIONER BYRON: July 29<sup>th</sup> and August 24<sup>th</sup>.

15 MS. LUCKHARDT: Correct.

16 CHAIRMAN DOUGLAS: Very well. We have a motion  
17 and I am looking at counsel, everything got into the  
18 motion, I believe? Very good. Is there a second?

19 VICE CHAIR BOYD: Second.

20 CHAIRMAN DOUGLAS: All in favor?

21 (Ayes.)

22 This project is approved. Thank you.

23 All right, Item 16. Marsh Landing Generating  
24 Station (08-AFC-3). Possible adoption of the Presiding  
25 Member's Proposed Decision on the Marsh Landing

1 Generating Station. Hearing Officer Kramer.

2 HEARING OFFICER KRAMER: Okay, I guess I can  
3 start while people are seating themselves. The Marsh  
4 Landing Generating Station was originally filed as a  
5 Combined Cycle project in May of 2008. Since it was  
6 awarded a Power Purchase Agreement and for reconfigured  
7 project that is a 760 megawatt four turbine simple cycle  
8 peaking facility, and that Power Purchase Agreement has  
9 in fact been approved by the PUC, the Presiding Member's  
10 Proposed Decision was issued on July 23<sup>rd</sup> of this year,  
11 and we have received comments from the Department of  
12 Toxic Substances Control, U.S. Fish and Wildlife Service,  
13 Rob Simpson, the Applicant, and staff. Because of the  
14 nature of the comments, we are going to have to have some  
15 dialogue, perhaps even some sworn testimony, but  
16 certainly we need to answer some of the issues that were  
17 raised in the comments, at least by reference to what  
18 already exists in the record, and parts of that  
19 discussion will be conducted, I believe, both by the  
20 staff and by the Applicant. But the Committee  
21 recommends, at least in a PMPD, approval of the project.  
22 There is no formal Errata yet because of these comments  
23 having come in at, I guess it would be the 11<sup>th</sup> hour and  
24 the 59<sup>th</sup> minute. What we will have ultimately in an  
25 Errata is a moving target, but I can tell you that it

1 will include various changes to the Decision that the  
2 Applicant included in their comments, which were filed  
3 roughly a week and a half ago, and those were related to  
4 updating the language to reflect that the Power Purchase  
5 Agreement was approved following the release of the PMPD.  
6 So, I certainly see those as ministerial changes, and  
7 nothing of substance, and there are a couple of other  
8 typographic and grammatical errors that were corrected in  
9 the Applicant's comments. And following your discussion,  
10 I may have more changes to suggest, and I will need to  
11 circulate to you a final Errata to reflect the changes  
12 you make if you decide to make a decision today. So, I  
13 would suggest that the parties introduce themselves and  
14 address the various comments we have received.

15 CHAIRMAN DOUGLAS: Thank you, Hearing Officer  
16 Kramer. And as you noted, we do have comments on Marsh  
17 that Presiding Member and I, as the Marsh Committee,  
18 would like to ask Applicant and staff to address. Let's  
19 have the Applicant first. Will you introduce yourselves,  
20 please?

21 MS. COTTLE: Yes, good morning, Madam Chair and  
22 Commissioners. My name is Lisa Cottle. I represent the  
23 Applicant in this proceeding, Mirant Marsh Landing, LLC.  
24 With me is John Chillemi, he is the President of Mirant  
25 California, and also the President of the Project Owner,

1 Mirant Marsh Landing. I am going to address the comments  
2 that were submitted after talking just a moment about the  
3 project and why we asked for a vote at today's meeting.  
4 And then, once we finish, Mr. Chillemi would just like to  
5 say a few words, as well.

6 CHAIRMAN DOUGLAS: Thank you.

7 MS. COTTLE: Should I go ahead and proceed,  
8 then?

9 CHAIRMAN DOUGLAS: Well, let's have everybody  
10 introduce themselves, and then let's go back to you. So,  
11 staff, please.

12 MS. WILLIS: Good afternoon. My name is Kerry  
13 Willis. I am Senior Staff Counsel, and with me is Mike  
14 Monasmith, who is the Project Manager. We also have in  
15 the audience Rick York and Heather Blair, who can address  
16 the biological issues, and Matt Layton and Gerry Bemis,  
17 who can address the air issues, and I believe on the  
18 phone is Dr. Alvin Greenberg, who can discuss the DTSC  
19 current issues. Thank you.

20 CHAIRMAN DOUGLAS: Thank you. All right,  
21 Applicant, then, you can proceed, please.

22 MS. COTTLE: Okay, thank you. We wanted to  
23 emphasize that the Marsh Landing Project has been  
24 identified as a project that is needed to meet  
25 California's need for new flexible generating capacity.

1 As Hearing Officer Kramer mentioned, Marsh Landing was  
2 selected as a winning project in the most recent PG&E All  
3 Source Solicitation, and Mirant and PG&E did execute a  
4 long term Power Purchase Agreement. The CPUC approved  
5 that PA on July 30<sup>th</sup>, confirming that the project is  
6 needed to meet the identified needs and also noting that  
7 it provides a number of important benefits. It will be  
8 located at the site of an existing power plant site, the  
9 Contra Costa Power Plant, so it is located very close to  
10 existing gas and transmission lines, and avoids the need  
11 for any significant new lateral facilities. It will be a  
12 very flexible resource, it will have very fast start  
13 capability and rapid ramping capabilities, so it is  
14 ideally suited to meet peak energy needs and to integrate  
15 a growing fleet of renewable resources. It also  
16 facilitates the retirement of two aging units that rely  
17 on once-through cooling the Units 6 and 7 of the Contra  
18 Costa Power Plant. Mirant's affiliate has agreed to shut  
19 down and retire those units at the end of the day on  
20 April 30<sup>th</sup>, 2013, provided that they are no longer needed  
21 for reliability. And the record in this proceeding  
22 includes a letter from the California Independent System  
23 Operator, confirming that construction of the Marsh  
24 Landing project will make it very likely that those  
25 projects will not be needed, or those units will not be

1 needed for reliability. So, approving this project today  
2 and allowing the construction to go forward directly  
3 facilitates the retirement of those once-through cooled  
4 units.

5           We do really appreciate the efforts of staff  
6 and the committee to complete their analysis so that we  
7 can appear on this agenda today. We have explained that  
8 we do need a license by the end of this month, August, in  
9 order to stick to the current construction schedule in  
10 the executed and now approved PPA; frankly, this is sort  
11 of the last date that we had planned for in the schedule.  
12 And we know that everyone has worked really hard, and  
13 unfortunately we have fallen right into your busiest time  
14 through the other projects that you have before you, so  
15 we do appreciate everything that has gone into it. But I  
16 do want to emphasize at the outset that, now that the PUC  
17 has approved our Power Purchase Agreement, this is the  
18 last hurdle for Mirant to have all of its requirements in  
19 place, so that it can give the notice to its vendors to  
20 go ahead and start their work, and we really need to - we  
21 have to do that by the end of next month, by the end of  
22 September, so today is really the last day that we can  
23 achieve that existing goal, and slipping beyond today  
24 will require us to go back and make some changes to our  
25 contracts. So, with that, I did want to address the

1 comments that we received from U.S. Fish and Wildlife  
2 Service, and DTSC, and Mr. Simpson.

3           Starting first with the Fish & Wildlife  
4 Service, they submitted a letter late last week, I  
5 suppose, that explains their concern about whether this  
6 project, and specifically its emissions of nitrogen,  
7 could have an adverse impact on certain endangered  
8 species at the Antioch Dunes National Wildlife Refuge.  
9 The issue is that nitrogen in the atmosphere causes  
10 certain non-native plant species to grow at the Dunes,  
11 which crowds out three specific native plant species,  
12 including one that is the food plant for the endangered  
13 Lange's Metalmark Butterfly. And this issue was  
14 addressed in the revised staff assessment and in our  
15 testimony, and staff concluded that the evidence showed  
16 that the impacts would be very very small, and therefore  
17 concluded that, at most, there would be a contribution to  
18 a cumulative impact for purposes of CEQA on the Butterfly  
19 and other species at the Dunes, but found that the  
20 project otherwise complies with all applicable laws,  
21 ordinances, regulations, and standards. So, there is  
22 some mitigation that is required to mitigate just that  
23 contribution to the cumulative effect.

24           The Service's letter expresses some concern  
25 about whether that mitigation is adequate. The Service

1 also suggests that some form of Take Authorization is  
2 required under the Endangered Species Act, they suggest  
3 that there should be a consultation process under Section  
4 7 of the ESA, or that there should be Incidental Take  
5 Authorization under Section 10.

6           We filed a rather detailed written response to  
7 the Service letter on Monday and we, first of call,  
8 explained that the evidence shows that our project's  
9 nitrogen emissions that reached the Antioch Dunes are  
10 very very small. The rate is .0447 kilograms per  
11 hectare, per year. The staff had indicated that there is  
12 evidence that a rate of between 11 and 20 kilograms per  
13 hectare, per year would exacerbate existing plant growth.  
14 There is some suggestion that a rate of 4 to 5 kilograms  
15 per hectare, per year, could cause some limited  
16 additional invasions; so, using those two standards if a  
17 potential measure of when extra nitrogen might cause  
18 plants to grow more. Our project is a very very very  
19 small contribution to that and well below those  
20 standards. So our response on Monday explained in some  
21 detail why the evidence supports staff's analysis that  
22 the project's contribution is very small and why the  
23 mitigation that staff proposed, which is in Condition of  
24 Certification BIO-8 is more than adequate. And that  
25 mitigation requires the project owner to make an annual

1 payment that is directly proportionate to the project's  
2 contribution to the additional nitrogen deposition and  
3 the payment would be used to support weed mitigation  
4 efforts at the Dunes Reserve, so this project would be  
5 required under the PMPD to contribute some amount of  
6 money to help remove the source of the problem, which is  
7 the added weed growth. We also explained in our letter  
8 that we do not think any form of consultation is  
9 required, and certainly Section 7 of the Endangered  
10 Species Act does not apply here, it only applies to a  
11 Federal agency's actions, it does not apply to a State  
12 agency's such as the Commission or a private Applicant  
13 such as Mirant Marsh Landing and, frankly, the Service  
14 letter quotes some of the legal standards that would  
15 apply if there were a Section 7 consultation requirement  
16 and those legal standards just simply are not applicable  
17 here. We also explained that, while Section 10 of the  
18 ESA can give a private party Applicant Take Authorization  
19 when there is not a Federal nexus, you would only need to  
20 get a Section 7 Take Authorization if a Take were going  
21 to occur. And we were very confident that the record  
22 shows that there is no way that you could find a Take  
23 based just on the project's very small incremental  
24 contribution to an existing level of nitrogen, which the  
25 evidence also shows is really primarily due to the cars

1 and the trucks. There is a study cited in the Service  
2 letter and also cited in the revised staff analysis,  
3 showing that the levels of nitrogen in the air are about  
4 60 percent the result of car and truck emissions, so we  
5 do not think there is - in order to show a Take, you  
6 would have to show a direct causal connection between  
7 this project's individual very small amount of nitrogen  
8 emission and a significant habitat modification that  
9 actually kills or injures the wildlife. And it would  
10 need to be shown that it has a population level of fact.  
11 And, given that our .0447 kilogram per hectare, per year,  
12 is so far below any identified threshold at which you  
13 might cause additional plant mitigation, we do not think  
14 there is any way that you could ever demonstrate a Take.

15           So, our position is that, while staff could  
16 reasonably conclude that the project contributes to a  
17 cumulative effect for purposes of CEQA, and require  
18 mitigation, which we frankly did not necessarily agree  
19 that there was a significant effect, and we had provided  
20 testimony explaining that, but we did agree to the  
21 mitigation. So, we are comfortable with their mitigation  
22 they have required under CEQA, but we do not believe that  
23 there is any requirement at .04, any kind of Take  
24 Authorization under Section 7.

25           We did contact the Service on Monday, actually

1 last week, and we got their letter and we spoke with them  
2 on Monday, explained our position. We provided them a  
3 copy of our written comments. You know, we have offered  
4 to continue a dialogue with the Service to further  
5 explain why Take Authorization is not required. We think  
6 it is pretty clear that Section 7 does not apply, but we  
7 will continue talking with them to help resolve any  
8 lingering questions about Take because we are very  
9 confident in that position. And to address any concerns  
10 about, you know, potential impacts vs. CEQA, we offered  
11 to provide some additional mitigation. And our Response  
12 lays out a proposal as to how you might arrive at a  
13 different number, which was calculated to be  
14 approximately \$12,000 per year, as opposed to the \$2,693  
15 per year that the staff analysis requires in Condition of  
16 Certification BIO-8. That number was kind of loosely  
17 tied conceptually to the idea that we might contribute a  
18 payment in proportion to the amount that our incremental  
19 contribution is for the level of nitrogen that is above 5  
20 kilograms per hectare, per year. So, the background was  
21 calculated to be roughly 6.39; we calculated our share of  
22 the increment above 5 and came up with about \$12,000.

23 Just to make things simple and to try and  
24 alleviate any and all concerns, we proposed to add an  
25 additional voluntary annual payment of \$20,000 per year.

1 We made that recommendation in our comments filed on  
2 Monday. And, really, in our minds, this would be  
3 providing an additional contribution that might help  
4 mitigate some of the effects from the cars and trucks and  
5 the other sources that have been identified as the main  
6 source of the issue at the Dunes, so we are prepared and  
7 comfortable, you know, increasing our mitigation by  
8 \$20,000 a year, that would be on top of what staff  
9 recommends, which we believe is a very sound analysis,  
10 and the additional payment we are recommending is offered  
11 voluntarily, but would be mandatory if you included it in  
12 the licensing decision.

13           So, with that, we feel that we have addressed  
14 the Service's concerns and there is not any reason to  
15 delay adoption of the Order today. This morning, we also  
16 received word that DTSC has submitted some comments. We  
17 read them this morning, we spoke with a representative  
18 from DTSC who had signed the letter, to try and  
19 understand the issues they were raising. To give you, I  
20 guess, just a little information about this, this  
21 project, the Marsh Landing project, will be constructed  
22 by Mirant Marsh Landing, but Mirant acquired the project  
23 site from PG&E back in 1999, when PG&E divested its gas-  
24 fired power plants. And as part of that transaction,  
25 PG&E retained responsibility to remediate certain

1 hazardous substances at the site that were there when  
2 PG&E sold the site. And they also retained the sole  
3 right to carry out that remediation. So it is not a pure  
4 indemnity in the sense that they would, you know,  
5 reimburse you for doing it, they actually retained sole  
6 responsibility to do it. So, it may complicate our  
7 situation just a little, but we had worked through all of  
8 this and staff has analyzed all of the data that was  
9 provided, and there was quite a lot of data about what  
10 might be on the site in terms of the substances, and the  
11 contaminants of concern. And the staff was comfortable  
12 and prepared their revised staff assessment on the basis  
13 that they knew enough about the site to conclude that all  
14 potential impacts had been adequately identified and that  
15 the mitigation was sufficient to ensure that there would  
16 be no significant adverse impacts to the off-site public,  
17 and that all applicable laws would be complied with.  
18 Staff also included a Condition of Certification that is  
19 in Waste-10, that requires the project owner to ensure --  
20 which is Mirant -- to ensure that any mitigation that may  
21 be required by DTSC, which is identified as the agency  
22 with the authority to oversee the remedial action, and  
23 that is also in the record, so any remediation that might  
24 be required by DTSC must be completed before the project  
25 owner can commence groundbreaking activities in the

1 affected areas. And that was discussed and put into the  
2 revised staff assessment and we think that, with that,  
3 staff and the PMPD fully complies with all obligations  
4 under CEQA to identify and analyze any potential adverse  
5 impacts.

6 As we understand it, I think DTSC's concern is  
7 that, now they are the agency that is responsible for  
8 reviewing and approving the remedial plan, I guess it  
9 will be called a Corrective Measures Plan, that PG&E has  
10 put together to determine what, if any, mitigation needs  
11 to be required. And the way that the revised staff  
12 assessment was prepared, that was always assumed to be  
13 something that would occur post-certification, subject to  
14 compliance with Waste-10. So DTSC's letter now says  
15 that, as they review PG&E's proposed Corrective Measures  
16 Plan, which was just presented in draft form last week,  
17 so this information was not available when the record  
18 closed in this proceeding on July 1<sup>st</sup>, but in that  
19 Corrective Measures Plan, PG&E is proposing remediation  
20 that consists of the removal of between 250 and 300 cubic  
21 yards of contaminated soil, so on the 27-acre site, they  
22 are only taking out a maximum of 300 cubic yards. It is  
23 a very small amount of required remediation, that is all  
24 that PG&E determined after extensive study was necessary.  
25 So, DTSC would like to be able to rely on the CEC's

1 analysis under CEQA to meet DTSC's obligation to ensure  
2 that all requirements of CEQA are met for the remedial  
3 action plan that it will approve. And so, in speaking  
4 with the representative from DTSC, we explained that, you  
5 know, as it turns out, because of the amount of  
6 remediation is so small, it actually was encompassed  
7 within the analysis that staff did in its revised staff  
8 assessment, notwithstanding the fact that staff was not  
9 required to evaluate a Remedial Action Planning detail  
10 and did not have that plan to evaluate at the time its  
11 analysis was conducted. But, as it turns out, staff had  
12 assumed that as much as 11,000 cubic yards of soil, some  
13 of it contaminated, could be removed from the site. And  
14 all the impacts associated with that potential soil  
15 removal have been analyzed in the Revised Staff  
16 Assessment. So, we have explained that this morning to  
17 DTSC. There seems to be some agreement that all of the  
18 potential environmental impacts probably have been  
19 sufficiently analyzed in the Revised Staff Assessment,  
20 but that the wording may not be exactly in the format  
21 that DTSC would like to see, so that they can use it for  
22 their CEQA purposes, and so they have asked for some  
23 changes.

24           What I proposed to do was to try and clarify in  
25 today's evidentiary record how the Revised Staff

1 Assessment actually does analyze all of those potential  
2 impacts so that they could point to this transcript as  
3 one place where all of those impacts are identified,  
4 because they do appear in different parts of the Revised  
5 Staff Assessment. I also offered to put on the record  
6 the authority under which DTSC has oversight over the  
7 clean-up, it is California Health and Safety Code Chapter  
8 6.5. So, we had some sense that that might help  
9 alleviate their concern, but, again, we do not believe  
10 that their concern really goes to the sufficiency of the  
11 CEQA analysis that was done in this case.

12           So, if that were an acceptable approach, I  
13 would propose to go through each issue they have raised  
14 and explain how it is addressed in the Revised Staff  
15 Assessment. I can either do that now, or I can continue  
16 and explain our response to Mr. Simpson's comments.

17           VICE CHAIR BOYD: As the Presiding Member of  
18 this Committee, I would recommend that we do as  
19 recommended and that you take us through the steps so it  
20 is in the record of today's activities.

21           MS. COTTLE: Okay. So the first item to  
22 clarify is that staff, in the Revised Staff Assessment,  
23 did recognize that there would be a DTSC approved clean-  
24 up if it were required by DTSC, that would occur prior to  
25 construction, so it was identified as an element of this

1 larger project that would need to be satisfied before  
2 construction could commence. The second point to  
3 clarify, which I think I have already done, is that the  
4 authority under which DTSC has oversight is in California  
5 Health and Safety Code Chapter 6.5. The third point is  
6 that the remedy that has been identified in PG&E's most  
7 recent Corrective Measures Plan is that there will be the  
8 excavation and removal of between 250 and 300 cubic yards  
9 of contaminated soil from a portion of this site. That  
10 remedy is not specifically identified in the Revised  
11 Staff Assessment, but the Revised Staff Assessment did  
12 assume that as much as 11,000 cubic yards of soil, some  
13 of it contaminated, could be removed from the site, and  
14 analyzed all - analyzed, evaluated, and addressed all  
15 potential environmental impacts associated with 11,000  
16 cubic yards of soil removal. So, those analyses are  
17 found in various parts of the revised staff assessment.  
18 There was an analysis of potential impacts on worker  
19 safety, which can be found on page 4.14.4 and 4.14.5,  
20 that ensures that workers will be adequately protected  
21 during an excavation of any contaminated soil. The Waste  
22 Management section specifically addressed this on pages  
23 4.13-5 and page 4.13-26. Potential impacts under Traffic  
24 and Transportation associated with trucking the  
25 contaminated soil off-site, we understand there could be

1 a certain number of truck trips that might be required,  
2 those potential impacts were analyzed in the Traffic and  
3 Transportation section. There also was an analysis of  
4 whether or not there was sufficient space available in  
5 landfills for trucking the contaminated soil and the  
6 Cattleman Landfill was recognized as one potential place  
7 that was analyzed in the waste management section on page  
8 4.13-17 and 4.13-18. I guess, to clarify one point on  
9 the Traffic and Transportation, that is on page 4.10-4,  
10 there, the analysis is that there are no limits on the  
11 applicable highways where these trucks would be  
12 traveling, and therefore there will not be any adverse  
13 impacts on traffic and transportation.

14 Potential impacts to air quality as part of the  
15 construction process were analyzed on page 4.1-15, and  
16 page 4.1-16, where they considered emissions due to  
17 construction activities, which would include trucks and  
18 other equipment involved in soil excavation. They  
19 considered potential impacts under their greenhouse gas  
20 analysis for construction activities on page 4.1-73, and  
21 I believe that covers it. There also was an analysis of  
22 potential cumulative impacts and you can find that on  
23 pages 4.13-18 and 4.13-20.

24 So, for those reasons, we do believe that the  
25 potential impacts associated with what now appears to be

1 the clean-up plan for the site, have already been  
2 analyzed and that DTSC should be able to use those for  
3 purposes of its analysis.

4           The third set of comments that were filed very  
5 late Monday night were filed by Rob Simpson on behalf of  
6 himself and Sierra Club California. Mr. Simpson raised  
7 some comments that, frankly, he has raised previously in  
8 this proceeding, and that he has raised before the ARA  
9 Air Quality Management District in his comments on the  
10 Preliminary Determination of Compliance, so we do not see  
11 anything that has not been thoroughly addressed in the  
12 record on this proceeding. He does first complain about  
13 the format of the PMPD and the fact that it does not  
14 specifically list the individual Conditions of  
15 Certification that were adopted, but those are clearly  
16 set forth in the Revised Staff Assessment, which is  
17 listed as an attachment to the PMPD, so it should not be  
18 difficult to find all the relevant conditions. Mr.  
19 Simpson alleges that the Commission failed to allow  
20 public participation in this case, but that we do not  
21 believe is accurate. Interested members of the public  
22 had approximately 20 months to intervene in this case and  
23 to participate as parties, and had even longer to provide  
24 public comment. There is evidence from the record  
25 showing that Mr. Simpson was long aware of this project

1 and that he has participated by providing comments on the  
2 Air District's document, but he made no attempt to  
3 participate in this case until a week after the deadline  
4 for intervention. The Committee found that he had not  
5 shown good cause for allowing his late intervention as a  
6 formal party, which is a requirement of the rules;  
7 however, when we appeared before you on June 30<sup>th</sup>, I  
8 believe that all of you encouraged Mr. Simpson and other  
9 members of the public to participate in our hearing on  
10 July 1<sup>st</sup>, and no one did. So, we think there has been  
11 ample opportunity for public participation and it is not  
12 accurate to allege otherwise.

13           Mr. Simpson also repeats the comments in the  
14 Service's letter regarding the potential impacts from  
15 nitrogen deposition. I think I have addressed those  
16 already and our written comments address them in even  
17 more detail. But he seems to be suggesting that there  
18 should be some additional mitigation potentially through  
19 reductions in the project's ammonia slip limit, but we  
20 have already established in the record that this ammonia  
21 slip limit is at the lowest achievable level for this  
22 project. He asked for additional contemporaneous  
23 emission reduction credits. The project actually is  
24 already providing ERC's that mitigate its emissions of  
25 nitrogen and, in fact, those were not even counted at all

1 in the mitigation, there was no offsetting credit for  
2 those ERC's, so, if anything, the rate of nitrogen  
3 deposition is really overstated. So, as I have  
4 explained, the rate of nitrogen deposition would be very  
5 small and the mitigation recommended by staff is adequate  
6 to mitigate the project's contribution to any cumulative  
7 impacts. You know, our added voluntary mitigation goes  
8 even further, of course.

9           Mr. Simpson takes issue with the way we  
10 calculated the background nitrogen deposition rate at the  
11 Antioch Dunes Refuge, but that point is really moot  
12 because staff used a different background that was much  
13 higher than the one we provided evidence on, so staff did  
14 assume that the background level was 6.39 kilograms per  
15 hectare, per year, not 1.69, which is what our monitoring  
16 data showed. He also questions a statement in the  
17 Revised Staff Assessment about whether the project would  
18 be in compliance with a Federal regulation 40 CFR  
19 60(K)(k)(k)(k); but in questions whether there is  
20 compliance because the NO<sub>x</sub> emission rate required under  
21 that regulation is 19 ppm, our project has a NO<sub>x</sub> emissions  
22 rate of 2.5 ppm, but that rate does not apply, it is not  
23 achievable during start-up or shut-down. The Air  
24 District did confirm in its Final Determination of  
25 Compliance that the facility complies with the Federal

1 Regulation he cites; we have also confirmed that start-up  
2 and shut-down is not included in the calculation for  
3 purposes of that Regulation, and you cannot have a  
4 violation based on start-up and shut-down emissions. So,  
5 the project does comply with that Federal Regulation.

6           Mr. Simpson questions whether the project meets  
7 the new Federal NO<sub>2</sub> Standard, but staff analyzed this  
8 issue and concluded that standard will be met, the Air  
9 District also confirmed in its Final Determination of  
10 Compliance that the standard will be met, so we think  
11 that issue has been resolved. He questions the  
12 sufficiency of the ERC's that the project will surrender,  
13 but the concern seems to be a little more aimed at the  
14 fact that the ERC's were identified as being owned by  
15 Mirant California and available for Marsh Landing or  
16 Willow Pass, which is another project that is before you,  
17 that is owned by a Mirant entity. But staff's Air  
18 Quality Table 19 shows which emission reduction credits  
19 will be used for this project, we also provided an  
20 exhibit, Exhibit 43, which specifically identifies which  
21 ERC's we will surrender, so I think their question of the  
22 sufficiency of the offsets is already addressed pretty  
23 clearly in the record.

24           Mr. Simpson repeats an argument that he  
25 presented at the Air District, and that was discussed in

1 a lot of detail there, which is his assertion that this  
2 project requires the Federal prevention of significant  
3 deterioration, or PSD Permit. The Air District and staff  
4 concluded that a PSD Permit is not required because the  
5 project does not meet the requirements for a major  
6 source, or a modification to a major source, under the  
7 applicable Federal Regulations. There is a lot of  
8 information on this in the record. The Applicant  
9 provided testimony on it, we provided a position paper  
10 that the Air District reviewed and considered that  
11 explains why under the applicable legal authority this  
12 can be treated as not a major source. You know, I think  
13 the concern is that he thinks this is part of the Contra  
14 Costa facility; it clearly is not. And the Air District  
15 has confirmed that these are separate facilities. The  
16 existing Contra Costa units are one facility, Marsh  
17 Landing will be a new facility, they are not related,  
18 they have separate contractual arrangements, and  
19 completely separate fuel arrangements, separate off-take  
20 arrangements, and the District also conferred twice with  
21 the U.S. Environmental Protection Agency to confirm its  
22 analysis was correct and received that confirmation. So,  
23 we think the PSD question has really been answered quite  
24 thoroughly and the confirmation is that a PSD is not  
25 required for this project.

1           Mr. Simpson questions the adequacy of staff's  
2 analysis of cumulative air quality impacts and expresses  
3 concern that staff did not consider potential impacts  
4 from the Oakley project, which is another project that is  
5 pending before the Commission. You know, our view is  
6 that staff correctly concluded that, for purposes of that  
7 analysis, Oakley was not a foreseeable project and its  
8 emissions were not subtle enough to be required to be  
9 included. I know that staff was going to address this in  
10 more detail. We were just also going to note that, while  
11 the Air District was not actually required to look at  
12 this issue, they did in an Addendum to the Final  
13 Determination of Compliance, and they did some Air  
14 Quality modeling, and the air modeling took a much more  
15 kind of worse case approach, and included the Oakley  
16 emissions in the model, and confirmed that Mirant Marsh  
17 Landing, in combination with all the projects that staff  
18 considered, and Oakley, would not result in any new  
19 exceedance of any applicable air quality standards. So,  
20 the Air District had a different standard to follow, but  
21 they did actually look at this and confirm that there is  
22 no adverse impact.

23           Then, finally, Mr. Simpson asserts that it was  
24 improper to apply the - I think the test that was  
25 established in your Avenal decision for analyzing whether

1 a natural gas-fired plant will be consistent with the  
2 State's goals for reducing greenhouse gas emissions,  
3 system-wide. I am not sure that we really understand his  
4 comment because the Avenal decision, I think, is pretty  
5 clear in what it requires. Staff did do an analysis and  
6 confirmed that this project will be more efficient than  
7 other power plants that are currently used to provide  
8 peaking capacity in the Bay Area, and therefore reduces  
9 greenhouse gas emissions because it is very likely to  
10 displace those plants. I think the ISO's letter that I  
11 alluded to earlier provides some additional proof of  
12 that, that this plant is very likely to displace the need  
13 for the Contra Costa units, which are less efficient.  
14 There is also evidence in the record that this project,  
15 because it has extremely fast start capabilities, it can  
16 start - each turbine can start-up and reach the load in  
17 approximately 12 minutes, and it does not have any kind  
18 of significant minimum run times. You can start this  
19 plant, run it just to meet and identify need, and then  
20 shut it down again. The units that are being used for  
21 that purpose today have much longer minimum start-up  
22 times and much longer minimum operating times. So, you  
23 are essentially running units that have to operate much  
24 more, and therefore emit more greenhouse gas emissions to  
25 meet the same reliability need that you could meet with

1 this project, and have fewer emissions.

2           So, all of that is included in the Revised  
3 Staff Assessment and we think that staff reached the  
4 sound conclusion that this project is likely to reduce  
5 overall system-wide greenhouse gas emissions. So, I  
6 think I have reached the end of my responses to the  
7 comments. I did mention that John Chillemi, who is here  
8 with me, would like to just say a few words. I was going  
9 to ask if we could have him go ahead and do that now and  
10 then turn to the rest of our presentation.

11           MR. CHILLEMI: Is that okay?

12           VICE CHAIR BOYD: Go ahead. I think we have  
13 some questions before we let go of the two of you, and  
14 then turn to staff.

15           MR. CHILLEMI: Thank you, Madam Chair and  
16 Commissioners. I, too, would really like to express my  
17 appreciation for all the hard work from the staff and the  
18 committee over the last two plus years to really get to  
19 where we are today. And we are ready to do our part.  
20 You know, we have got the project and all the commercial  
21 arrangements lined up, including our Turbine Supply  
22 Contract, our Engineering Procurement and Construction  
23 Contract, our labor agreements, such that, with a  
24 decision today, we can reach our financial closure within  
25 the next few weeks and release these vendors to start

1 working on schedule and really begin construction within  
2 just a few months. So, you know, we appreciate all the  
3 effort here and we will uphold our end of the bargain and  
4 start construction and build this plant on schedule. The  
5 one thing I would add is that this project, Marsh  
6 Landing, is the first step in a process of our plan to  
7 improve our generation fleet in California. As Lisa  
8 noted, and as you know, this project does facilitate the  
9 closure of two aging facilities that utilize once-through  
10 cooling and effectively eliminate once-through cooling at  
11 an entire site. We are proud of that fact and we want to  
12 be before you in future cases to continue doing that with  
13 the rest of our fleet, retiring older generation and  
14 eliminating once-through cooling, and building the  
15 technology to meet the new energy and environmental  
16 policies of the State. So, again, thank you for your  
17 time. We are excited about getting started on this  
18 project, and appreciate all the efforts.

19 VICE CHAIR BOYD: Thank you. Do we have  
20 questions from Commissioners of the Applicant before we  
21 move to the staff?

22 CHAIRMAN DOUGLAS: I have just one question.  
23 As you note, some commenters, or one commenter asserted  
24 that the proposed Marsh Landing Power Plant and Gateway  
25 Power Plant are under common control. And you did

1 address that to some - you did address that in your  
2 comments, but I wanted to just clarify, you did not  
3 really talk about ownership. Can you clarify that the  
4 corporate structures and ownership are different, as well  
5 as the arrangements for fuel and so on?

6 MS. COTTLE: Yes. Well, I guess, first of all,  
7 the Gateway Generating Station is owned by Pacific Gas &  
8 Electric Company, it is next door to Mirant's Contra  
9 Costa site, but it is not owned by any Mirant entity,  
10 there is no common ownership there. So, that is, you  
11 know, to the extent that there is an assertion that that  
12 is a commonly owned project, that is not correct. The  
13 Marsh Landing project and the existing Contra Costa Power  
14 Plant share indirect common upstream ownership, meaning  
15 that Mirant Corporation does own indirectly both Mirant  
16 Delta, which owns the Contra Costa Power Plant, and  
17 Mirant Marsh Landing, which will own the Marsh Landing  
18 Power Plant. However, the applicable guidance from EPA  
19 and their decisions confirm that, notwithstanding common  
20 upstream ownership, it can be shown that projects are  
21 indeed separate facilities if the other indicia's of  
22 separateness are met. And in this case, those factors  
23 are satisfied because they will be separate projects,  
24 they have separate financing structures, they have  
25 separate gas lines, they have separate electric

1 transmission lines, they will have separate control  
2 rooms, they have separate agreements for the sale of  
3 their output, they have separate agreements for the  
4 supply of their fuel, which actually in this case is the  
5 same contract, it is the tolling agreement, so PG&E  
6 supplies the fuel; but it is separate from any  
7 arrangement for Unit 6 and 7.

8           So the Air District and the EPA have confirmed  
9 that this project is its own independent project under  
10 all the applicable legal authorities. I would also note  
11 that this project is scheduled to come on line in the  
12 summer of 2013. Contra Costa Unit 6 and 7 are scheduled  
13 to retire on April 13<sup>th</sup> of 2013, there is not even an  
14 expectation that there would be any, frankly, overlap in  
15 operation. That was not necessary for the Air District  
16 and the EPA to reach the result that they are separate  
17 facilities, but it certainly gives some sort of common  
18 sense proof that these are not one facility.

19           VICE CHAIR BOYD: I have one question of you,  
20 Ms. Cottle. I just want to reaffirm that what I infer  
21 from what you have said, and what I certainly inferred  
22 from your written document, we have had several very late  
23 filed and a couple of very interesting, if not quite  
24 detailed, issues to deal with here, but I want to  
25 reaffirm that you feel the PMPD does correctly address

1 the understanding of site ownership of the various pieces  
2 of property and the responsibility for remediation and  
3 the fact that it is pretty well documented that Mirant  
4 cannot proceed with construction until the remediation of  
5 the site, which has been stated repeatedly, belongs - is  
6 PG&E's responsibility to remediate, until that is taken  
7 care of, and you referenced Waste-10. I just need to  
8 hear you reaffirm that that understanding in the PMPD is  
9 correct from your perspective.

10 MS. COTTLE: That is correct. The PMPD -- all  
11 of the requirements in the PMPD apply to the project  
12 owner, which in this case is Mirant Marsh Landing, LLC.  
13 Waste-10 very clearly specifies that ground disturbing  
14 activities cannot start in areas where contamination has  
15 been identified until all necessary remediation, as  
16 determined by DTSC, as the agency of responsibility for  
17 that have been completed to the satisfaction of the  
18 Compliance Project Manager. The document definitely  
19 restricts the start of construction until the remediation  
20 in the necessary areas has been completed. And that has  
21 always been our expectation and we are comfortable that  
22 the document is clear on that.

23 VICE CHAIR BOYD: I presumed you would agree  
24 that this body is unable to put conditions on PG&E as a  
25 result of the action we are taking here, since it is not

1 relevant to their ownership of the piece of land, it is  
2 relevant to your application to construct the facility?

3 MS. COTTLE: That is correct. And we agree,  
4 the Commission does not have authority to require PG&E to  
5 do anything. But, the condition does restrict the  
6 project owner from starting construction. The project  
7 owner has a contractual agreement with PG&E that we think  
8 sufficiently covers that, so we cannot start construction  
9 until it gets done, and it is up to the project owner to  
10 ensure that PG&E follows through on its contractual  
11 obligations.

12 VICE CHAIR BOYD: Thank you. Ms. Willis, you  
13 might as well take note of those questions, you are going  
14 to get the same questions. I guess I would ask now for  
15 the staff's comments.

16 COMMISSIONER WEISENMILLER: I have two  
17 questions.

18 VICE CHAIR BOYD: Oh, I am sorry, I could not  
19 see you in my chair here.

20 COMMISSIONER WEISENMILLER: For the record, you  
21 referenced the PUC's decision approving this project.

22 What did that decision say about Oakley?

23 MS. COTTLE: The PUC's decision on July 30<sup>th</sup> did  
24 not approve the Oakley Purchase and Sale Agreement, it  
25 approved the Marsh Landing Power Purchase Agreement.

1 There were some conditions in the decision describing the  
2 circumstances under which PG&E might reapply for approval  
3 of the Oakley Purchase and Sale Agreement, but on July  
4 30<sup>th</sup>, the decision does not approve that contract.

5 COMMISSIONER WEISENMILLER: Okay, and does your  
6 PPA have a limit on the number of start-ups per year?

7 MS. COTTLE: Our PPA has - specifies the number  
8 of starts that PG&E is entitled to for its scheduled  
9 operations. Our Air Permit will limit the number of  
10 operating hours.

11 CHAIRMAN DOUGLAS: And I wanted to clarify,  
12 prompted by Commissioner Weisenmiller's question, you  
13 said that the Air District had looked at Oakley, as well  
14 as this project, in its modeling?

15 MS. COTTLE: That is correct. It is in a  
16 memorandum that is attached to the Final Determination of  
17 Compliance. It was actually done under the framework of  
18 a PSD analysis, but this project does not require a PSD  
19 analysis, so in our case it is a little bit of extra  
20 credit homework, but it does conclude - consider kind of  
21 a worst case analysis of Oakley emissions and concludes  
22 that there will not be a new violation of any applicable  
23 air quality standard.

24 VICE CHAIR BOYD: Staff, Ms. Willis, would you  
25 like to respond?

1 MS. WILLIS: Thank you. Just briefly, since we  
2 basically agree with the Applicant because they are  
3 discussing our Revised Staff Assessment, in response to  
4 the U.S. Fish and Wildlife Service's comments, we filed  
5 our written comments on Monday, and basically, we just  
6 agree with the Service's recommendation that a Section 7  
7 or a 10A Permit is required because we did not agree that  
8 there is a Take. Staff thoroughly analyzed the nitrogen  
9 deposition impacts on the Antioch Dunes and that was the  
10 conclusion that we came up with. Since there is not a  
11 PSD Permit required, there would not be a Federal nexus,  
12 and therefore a Section 7 Permit would not be relevant.  
13 If the Applicant elects to obtain a Section 10 Permit and  
14 they go through that process, that can happen post-  
15 certification, so we do not believe that there was  
16 anything in the U.S. Fish and Wildlife Service's letter  
17 that would stall this process today. The Applicant  
18 included -- and I am not sure if that was addressed --  
19 some changes to the -- I think it is Bio-8 -- that would  
20 include their voluntary contribution to funding and at  
21 this point, staff is basically neutral on that since it  
22 does not change the mitigation that we have required, it  
23 is just an addition to that. We do want to say for the  
24 record that we have not heard from the Service whether  
25 this amount is agreed upon, or not, so it is just an

1 additional amount that the Applicant and the Service have  
2 been discussing in the last several days.

3           As far as the DTSC letter, we received that  
4 early just this morning and so we have been on phone  
5 calls with DTSC staff, with our staff and the Applicant,  
6 together. We still confirm that our CEQA analysis is  
7 more than sufficient to cover in the worst case  
8 situation. Staff will continue to work with DTSC post-  
9 certification, as we always do, and that is typically  
10 where a refinement occurs. But we did not receive the  
11 specific remediation information until just a few days  
12 ago, so that is why that was not included in this  
13 analysis. As stated earlier, the Energy Commission does  
14 not have the authority to condition a third party, and  
15 that would be PG&E in this case; therefore, we crafted  
16 and, through an extension amount of discussion at a  
17 public workshop, Waste-10, a condition Waste-10, that  
18 would ensure that, as the last sentence of the condition  
19 says, "no soil excavation or grading shall commence until  
20 the CPM, which is the Compliance Project Manager at the  
21 Energy Commission, gives approval. So, we are ensuring  
22 that nothing happens until DTSC is satisfied with  
23 remediation and our staff Compliance Project Manager is  
24 satisfied. And if you have any specific - oh, and I did  
25 have one correction. And Ms. Cottle was listing some --

1 in response to DTSC -- was listing some of the sections  
2 that apply to -- that addressed environmental impacts,  
3 and Waste Management, she said 4.13-5, and it was 4.13-  
4 15, and we just wanted to make that correction for the  
5 record. But I would like to offer that we have plenty of  
6 staff available if there are any questions on either air  
7 quality, of this DTSC issue, or biology.

8 VICE CHAIR BOYD: I have one question if you do  
9 not mind. And that is this very late breaking letter  
10 from DTSC, which has caused a lot of concern,  
11 consternation, and the need to go into an extraordinary  
12 amount of analysis and discussion here, I almost  
13 apologize to my fellow Commissioners for having a siting  
14 case hearing in the context of this regular Business  
15 Meeting, but it is necessary under the circumstances, one  
16 could perceive that the working relationship between us  
17 and DTSC is a little awkward, or not very frequent, or  
18 what have you, but I - at least the Committee - is very  
19 aware of a longstanding Memorandum of Understanding  
20 between the two agencies on dealing with issues of mutual  
21 concern. Did you want to say anything about that so that  
22 perhaps the public can - and the record do not seem to  
23 reflect that we are flying by the seat of our pants here,  
24 but in reality we have a longstanding understanding of  
25 process with the DTSC, in this type of circumstance.

1 MS. WILLIS: If Dr. Greenberg is on the line, I  
2 would like him to address that since that is his  
3 expertise.

4 DR. GREENBERG: I am on the line.

5 MS. WILLIS: Thank you. Did you hear the  
6 question?

7 DR. GREENBERG: Yes, I did.

8 MS. WILLIS: Thank you.

9 DR. GREENBERG: I believe that was Commissioner  
10 Boyd asking the question?

11 VICE CHAIR BOYD: Correct.

12 DR. GREENBERG: Yes. Commissioner Boyd, and  
13 other Commissioners, this is Alvin Greenberg. I am  
14 talking remotely from San Luis Obispo County, I  
15 apologize, I did not anticipate having to be there in  
16 Sacramento with you and I am here helping San Luis Obispo  
17 County Environmental Health conduct some audits on a  
18 composting facility, so my apologies.

19 VICE CHAIR BOYD: No apologies necessary, thank  
20 you, Dr. Greenberg.

21 DR. GREENBERG: I am the author of the Waste  
22 Management Section, I also authored Worker Safety and  
23 Fire Protections. I want to assure you that there has  
24 been a very good and cordial and cooperative longtime  
25 understanding and working relationship with DTSC. Now,

1 it is also reflected specifically for this particular  
2 site in a record of conversation of multi-pages that lay  
3 down the framework for our joint review, and that was a  
4 record conversation between myself and Janet Naito of  
5 Region 2 DTSC. She did task, however, this project off  
6 to Mr. Tony Natera, who is handling it for DTSC. I would  
7 say that some of the confusion -- and that is all it is,  
8 really, is some confusion and slightly different  
9 interpretations of what is necessary, probably stems from  
10 the fact that this is a somewhat unusual site because  
11 there is another party involved that has the  
12 responsibility for cleanup, in other words, for  
13 remediation, in that they worked rather quickly, which of  
14 course they should be applauded for, they worked rather  
15 quickly, and yet some of the work that was anticipated to  
16 be done post-certification came up and was done pre-  
17 certification. We did not get the remedial action plan  
18 or remedial work plan, it may have a different name and,  
19 again, I apologize I do not have the documents in front  
20 of me, you know, in time to go over the concerns of Tony  
21 Natera of the DTSC. And that is something that I believe  
22 was eloquently described by Ms. Cottle, and so I will not  
23 repeat what she has to say, but it is covered, in my  
24 view, by the Staff Assessment in various sections,  
25 whether it be Waste Management, Worker Safety and Fire

1 Protection, Traffic and Transportation, or Air Quality.  
2 And so I feel that the longstanding agreement in  
3 relationship with DTSC is still in place, this is just a  
4 minor confusion over whether or not there is adequate  
5 documentation, I feel that there is, for this soil  
6 removal process. We think we have it covered. Mr.  
7 Natera seems to think that something additional is  
8 needed, but whatever is needed, it is my professional  
9 opinion, is minor and can be handled relatively easily  
10 and quickly by DTSC in their process because, after all,  
11 it is their process that PG&E is following.

12 VICE CHAIR BOYD: Thank you.

13 DR. GREENBERG: You are welcome.

14 VICE CHAIR BOYD: Any further questions from -

15 CHAIRMAN DOUGLAS: I have a question for staff.

16 On what date was the Remediation Plan or the Corrective  
17 Measures Plan issued? Do you know?

18 HEARING OFFICER KRAMER It was submitted on  
19 August 5<sup>th</sup> from PG&E to DTSC.

20 CHAIRMAN DOUGLAS: Okay, so it was submitted by  
21 PG&E to DTSC on August 5<sup>th</sup>.

22 HEARING OFFICER KRAMER: That is correct. And  
23 then they reviewed it and then we received an e-mail from  
24 Tony Natera from DTSC on Thursday, an e-mail to me, and  
25 then the official correspondence followed, of which we

1 received this morning.

2 CHAIRMAN DOUGLAS: All right. And switching  
3 now to Fish and Wildlife Service, could you describe when  
4 -- and maybe I am assuming, but to what extent  
5 disagreements between Fish and Wildlife Service and staff  
6 were surfaced within our process, and what efforts staff  
7 went through to bring issues like that into the process?

8 MS. WILLIS: Yes, and I am going to have  
9 Heather Blair address that.

10 MS. BLAIR: Good afternoon. I am Heather Blair  
11 with Aspen Environmental Group, and I authored the  
12 Biological Resources section of the staff assessment and  
13 the RSA. There is a longstanding record of coordination  
14 with the Fish and Wildlife Service for this proceeding,  
15 it is demonstrated in Attachment A to the recently  
16 submitted response to the Fish and Wildlife Service's  
17 comment. I can go over a summary of our coordination  
18 efforts, but initially in May of 2009, I presented the  
19 nitrogen deposition issue to the Fish and Wildlife  
20 Service and, at that point, we were talking about  
21 significant determinations and criteria thresholds, and  
22 they were unsure about mitigation strategies. In, let's  
23 see, January 4<sup>th</sup>, they came back with an approach that  
24 would require the Applicant to pay the entire operating  
25 budget of the Antioch Dunes National Wildlife Refuge to

1 mitigate their impacts from nitrogen deposition.  
2 Expressing my disagreement with that approach, I  
3 scheduled a meeting nearly immediately with them, the  
4 amount being \$385,000 a year, and they requested that  
5 that be set up upfront in a non-wasting endowment.  
6 Recognizing that Marsh Landing's contribution to the  
7 cumulative nitrogen deposition is, in fact, very small, I  
8 scheduled a meeting with them and Rick that presented an  
9 approach that would assign mitigation that was  
10 proportional to the contribution, which took Marsh  
11 Landing's nitrogen deposition and essentially divided it  
12 by the cumulative nitrogen deposition baseline at the  
13 Refuge, multiplied that proportion by the annual  
14 operating budget of the Refuge, to get a payment of  
15 approximately - I think it was \$2,300 a year. Again,  
16 staff being in disagreement with the Service about  
17 mitigation, I expressed to them that I could not defend  
18 that in my testimony and it educated them on the Energy  
19 Commission's process and encouraged them to participate -  
20 very much, I encouraged them to participate in staff  
21 assessment workshops, invited them to submit formal  
22 comments on the staff assessment, on the revised staff  
23 assessment, invited them to the evidentiary hearing to  
24 defend this position, but I guess we did not prevail.  
25 So, without the service being available to defend the

1 position, staff moved forward with my own professional  
2 determinations and conclusions.

3 VICE CHAIR BOYD: And just following onto that,  
4 staff, it is my understanding you attempted to get Fish  
5 and Wildlife Service to attend this hearing?

6 MS. BLAIR: Yes.

7 VICE CHAIR BOYD: Thank you.

8 COMMISSIONER WEISENMILLER: Just to follow-up  
9 as to whether staff attempted to get Department of Toxic  
10 Substance Control here today - or whether anyone is  
11 representing them is available?

12 HEARING OFFICER KRAMER: Well, I know that I  
13 asked - I know Ms. Cottle was going to be calling the  
14 gentleman today, so I asked her to, on our behalf, invite  
15 him to the meeting, and she can report his response.

16 MS. COTTLE: I did extend that invitation and  
17 then we spoke with him twice more after that. Our very  
18 last conversation was just before walking in this room,  
19 and we directed them how to find the instructions for the  
20 dial-in on the Website, so we thought perhaps someone  
21 might dial-in, I have not heard anyone.

22 CHAIRMAN DOUGLAS: We did hear somebody trying  
23 to speak. Harriet?

24 VICE CHAIR BOYD: Staff, did you have anything  
25 more?

1 MS. WILLIS: Mr. Kramer brought to our  
2 attention that I guess there was some concern that  
3 cumulative impacts of the Oakley Station was not  
4 addressed in the staff's revised Staff Assessment, so  
5 just for the record, I do not know if you need the page  
6 numbers, but I can tell you the sections and page numbers  
7 where it is addressed, so however you would like me to  
8 proceed.

9 CHAIRMAN DOUGLAS: Well, since this was raised  
10 in a comment, why don't you indicate where it was  
11 addressed?

12 MS. WILLIS: Okay, it starts off in the Air  
13 Quality Section, 4.1-35, and the Noise Section, 4.6-14,  
14 in the Socioeconomic Section, 4.8-8 and -9, in the TSC  
15 Section, it would be part of the Phase 2 Cluster Study,  
16 and in Worker Safety, Section 4.14-13, in the Waste  
17 Section, 4.13-18, and Biology, 4.2-18, in Cultural, 4.3-  
18 15 to 16, and Land Use, 4.5-18. And that was just  
19 something that we reviewed quickly before we came in, so  
20 this may not be inclusive.

21 CHAIRMAN DOUGLAS: Are there any other  
22 questions by Commissioners? We have one member of the  
23 public on the phone who would like to speak, Rob Simpson.  
24 Are you available?

25 MR. SIMPSON: Can you hear me?

1           CHAIRMAN DOUGLAS: We sure can. Go ahead,  
2 please.

3           MR. SIMPSON: Oh, good, thank you, thanks for  
4 the opportunity to comment on the PMPD. First, I would  
5 like to point out the agenda item, it was not fully  
6 described as it is written, it is just "Possible Adoption  
7 of the Presiding Member's Proposed Decision on the Marsh  
8 Landing Generating Station. The proposed project is a  
9 nominal 930 megawatt natural gas-fired combined cycle  
10 power plant." Now, that statement is consistent with  
11 what has been disclosed to the public, each public notice  
12 has identified this as a 930 megawatt combined cycle  
13 facility, but that does not appear to be what is  
14 considered here today. It appears that what is being  
15 considered is a 760 megawatt simple cycle facility.  
16 There has been no public notice that this facility design  
17 has been changed to a simple cycle facility, and the  
18 agencies that participated, it appears that the notices  
19 that they received were pursuant to the combined cycle  
20 facility. So, I think there is some problems with how it  
21 is identified on the agenda and in the public documents.  
22 Now, I represent the Sierra Club in participation in this  
23 matter, along with myself, we participated in the PUC  
24 proceedings, we have participated in the Air District  
25 proceedings, and we attempted to participate in the CEC

1 proceedings, but we were denied intervention; apparently  
2 the program changed a bit with this proceeding, perhaps  
3 based on the desire to expedite this thing, what we are  
4 used to is a staff assessment followed by a final staff  
5 assessment, but that did not occur here. What occurred  
6 was a document called a staff assessment, and followed by  
7 a revised staff assessment. Now, the revised staff  
8 assessment was published - let me back up a bit - the  
9 amendment for this proceeding changed from a combined  
10 cycle to a simple cycle was apparently November 6<sup>th</sup> of  
11 2008. On May 26<sup>th</sup>, 2010, a prehearing conference and  
12 evidentiary hearing was scheduled for the same date, for  
13 July 1<sup>st</sup>. Now, so that was a few days before the hearing.  
14 We did not receive notice of the pre-hearing conference  
15 and evidentiary hearing. Apparently, when Mr. Sarvey  
16 found out about it, he petitioned to participate on June  
17 4<sup>th</sup>, nearly a month before the proceeding, but he was  
18 denied an intervention, we were denied an intervention,  
19 the local Clean Energy Alliance was denied intervention,  
20 and we all petitioned to intervene before the pre-hearing  
21 conference, as historically we have done and historically  
22 was agreed to. So, on June 21<sup>st</sup>, the staff assessment  
23 came out, and that was weeks after the opportunity to  
24 participate had been closed. On June 29<sup>th</sup>, the FDOC came  
25 out from the Air District, two days before the

1 proceeding. On July 1<sup>st</sup>, apparently you had what you  
2 considered an evidentiary hearing and made a decision by  
3 July 23<sup>rd</sup>. Now, part of that decision includes a finding  
4 of facts that the MLGS will be located on a 27-acre site  
5 that is entirely within the current site of GCCP. Now,  
6 there is a contention that the EPA agreed with this idea  
7 that the project does not need a PSD Permit because it is  
8 not part of another project, it is not what the letter  
9 from the EPA says, the letter from the EPA to the Air  
10 District says that the Air District can use its  
11 discretion, it does not agree with the contention that  
12 this is okay, it says that if the delegated authority,  
13 the Air District, that authority to make this  
14 discretionary decision. Now, staff properly concluded  
15 that the project's emissions will result in significant  
16 impacts to species in the Antioch Dunes, and Fish and  
17 Wildlife's position has been consistent that this \$2,000  
18 a year mitigation is not based on any science, it is not  
19 based on the effects, and it is not sufficient. And you  
20 had comments on the - I believe it was the FSA, with the  
21 California Department of Fish and Game comment that "the  
22 proposed fee does not meet DFG's definition of full  
23 mitigations for impacts on sensitive and listed species.  
24 Please consult with Refuge staff and DFG and adjust the  
25 fee accordingly." And staff responded that the thing

1 that required the offset to the MLGS project's effects of  
2 nitrogen deposition was provided to staff by the U.S.  
3 Fish and Wildlife Service in consultation with NWR staff.  
4 But U.S. Fish and Wildlife Service commented that the  
5 Service disagrees with the finding of fact on page 75 of  
6 the Presiding Member's Proposed Decision, that the  
7 implementation on BIO-8, the effects of nitrogen  
8 deposition on the three endangered species and the  
9 designated critical habitat for the two listed plants  
10 will not be significant. The proposed BIO-8 mitigation  
11 of \$2,000 per year is inadequate for mitigating the  
12 adverse effects of nitrogen from the Marsh Landing  
13 Generation Station on the three endangered species. It  
14 is unclear what specific actions would be implemented  
15 using these funds, nor do there appear to be success  
16 criteria over reporting requirements. In addition, the  
17 cumulative effects of the project, as proposed, on these  
18 three endangered species, are unlikely to be mitigated to  
19 levels that are less than significant, as described on  
20 page 76 of the Presiding Member's Proposed Decision, the  
21 Service is concerned that, in contradiction to the  
22 conclusion on page 76 of the Presiding Member's Proposed  
23 Decision, the Marsh Landing Generating Station, as  
24 proposed, will not be in compliance with laws,  
25 ordinances, regulations, and standards, specifically the

1 Endangered Species Act of 1973, as amended, because  
2 adverse impacts to the Lange's Metalmark Butterfly and  
3 adverse effects on the Antioch Dunes, Evening Primrose,  
4 and Contra Costa Wildflower, are virtually certain to  
5 occur as a result of this project. So, you have got the  
6 Department of Fish and Game saying this is inadequate,  
7 you have got staff saying, "Well, it's okay, Fish and  
8 Wildlife said it was okay," and then you have got Fish  
9 and Wildlife saying, "No, it's not okay." Now, there is  
10 a number of items that the Air Quality Cumulative  
11 Analysis on the FDOC only covers nitrogen deposition, not  
12 criterion pollutants. And the Marsh Landing facility is  
13 to be licensed for 167 starts per year, it is not  
14 sufficient to back-up intermittent renewables. And in  
15 the rest of the Decision, we are ignoring the fact that  
16 PG&E just filed for a Petition for Modification at the  
17 PUC for the Marsh Landing approval. There is also an  
18 appeal pending at the Air District for the Marsh Landing  
19 Decision, so there is no rush to judgment on this. The  
20 matter is not settled at the PUC with PG&E intending to  
21 make an amendment, the matter if not settled with the Air  
22 District, and the matter is not properly noticed on your  
23 agenda. So, the fact that the contention is that you do  
24 not need a Section 7 consultation because there is no PSD  
25 Permit required is incorrect. There is Take involved if

1 this facility is built, that is Fish and Wildlife's  
2 position at this point. There is nothing that a \$2,000  
3 or a \$20,000 payment intends to demonstrate it can  
4 mitigate on the extinction of several species.

5 CHAIRMAN DOUGLAS: Mr. Simpson, are you  
6 wrapping up? Please continue, but if you could, it is  
7 nearing 2:00 now and -

8 MR. SIMPSON: I realize and I have been on the  
9 phone since 10:00, so you can have my couple minutes of  
10 speech here. We have tried to participate in this  
11 because we have not had the opportunity to participate,  
12 and we need to raise our issues now. The contention is  
13 this comports with the Avenal Decision, the heat rate for  
14 this facility is 11,124 BTUs, the system-wide heat rate  
15 in California is about 9,750 BTUs, so the projects would  
16 increase the average heat rate for California's natural  
17 gas generation, so it does not comport with the Avenal  
18 Decision. So, my contention is that, yes, this project  
19 is improperly noticed on your agenda, this project did  
20 not afford the opportunity for public participation, and  
21 there is other pending matters that will preclude this  
22 fast track construction of this project, so we would like  
23 to recommend that the CEC allow public participation,  
24 consider adequate mitigation for the effects of the  
25 project, and properly notice these proceedings. Thank

1 you.

2 CHAIRMAN DOUGLAS: Thank you. Two questions  
3 come to my mind, Hearing Officer Kramer. It has been  
4 asserted that the CEC did not afford adequate  
5 opportunity, or opportunity for public participation in  
6 this proceeding. Can you respond to that?

7 HEARING OFFICER KRAMER: Well, the process has  
8 been going on, as I said, since May of 2008. I believe  
9 when the Amendment was received at the end of 2008, staff  
10 sent out another notice of the receipt of the  
11 Application. As far as the Notice of the Hearing goes,  
12 the Evidentiary Hearing, and the Pre-Hearing Conference  
13 that were held earlier this summer, I would not expect  
14 Mr. Simpson to receive a personal invitation, unless he  
15 was a surrounding property owner, he had not signed up to  
16 that point as a party in the case, he could have  
17 requested to intervene earlier, he certainly knew about  
18 the project because he participated at the PUC and at the  
19 Air District proceedings, as he has told us, and another  
20 way he could have found out was, if he had signed up for  
21 the project Listserv, when a significant document goes up  
22 on the Website, such as a Notice of a Hearing, an e-mail  
23 notice goes out to people who have requested it. I  
24 apologize that for some reason we had the old version of  
25 the project in the Notice, but I will note that it

1 describes a larger project, so it is not as if somebody  
2 was surprised to find that what you had on the agenda was  
3 a 50 megawatt or 51 megawatt peaker is now all of a  
4 sudden turned into 700 megawatts, it in fact has gone  
5 down from 900 with presumably, as a combined cycle would  
6 run more often and produce more emissions, to a 700 and  
7 some megawatt peaker. And then, finally, preliminary and  
8 final staff assessments, while quite often the way the  
9 work flows in our process are not required by our rules,  
10 and there are times -- and this is one of them -- where  
11 staff elected to produce simply an effective Final Staff  
12 Assessment, but it was just called a Staff Assessment  
13 because there was no reason to distinguish, and, in fact,  
14 the Supplement was perhaps as much for the convenience of  
15 the Committee in the way we were attempting to prepare  
16 the Decision, as anything else, it was a re-printing of  
17 the staff assessment, but the changes were not very large  
18 in magnitude, it was mostly the same words with changes  
19 here and there, requested by the Committee, and also made  
20 in response to comments on the first assessment. I hope  
21 that answers your questions.

22           CHAIRMAN DOUGLAS: Thank you, Hearing Officer  
23 Kramer, it does. I would just like to ask our Chief  
24 Counsel what your thoughts are on the noticing with the  
25 correct name and a larger project size in the

1 description?

2 MR. LEVY: Thank you, Chairman and  
3 Commissioners. I agree with Hearing Officer Kramer. The  
4 purpose of the requirement for public notice is to give  
5 the public a reasonable opportunity to understand what is  
6 under consideration, and based upon the many  
7 opportunities before this proceeding has taken place, I  
8 believe all of the interested stakeholders have had  
9 adequate notice of the proceedings today, especially  
10 since the agenda item reflects a larger project, not a  
11 smaller project.

12 CHAIRMAN DOUGLAS: Thank you. Those are all my  
13 questions, Commissioners.

14 COMMISSIONER BYRON: Just one, I think. Let's  
15 give Mr. Simpson his due, it is an embarrassing mistake  
16 that we have noticed the wrong size project, and we need  
17 to correct that and be careful in the future, but I think  
18 it is obviously clear that there was no intent to mislead  
19 the public with regard to what we were discussing today.

20 CHAIRMAN DOUGLAS: Thank you, Commissioner  
21 Byron.

22 COMMISSIONER EGGERT: Just a quick comment.  
23 This has been a very very useful discussion for my own  
24 understanding about some of these late filings, which,  
25 again, I also think it is unfortunate to have this

1 material come in; I think there was a good job describing  
2 perhaps why we received this at such a late stage and  
3 some of the issues associated with ownership and  
4 responsibility have allowed for me to understand how this  
5 would relate to our Decision before us today.

6 CHAIRMAN DOUGLAS: Thank you, Commissioner.  
7 Commissioner, I think that - and I did jump in, so I will  
8 let you continue - I wanted to ask your Chief Counsel,  
9 because so many issues come in late today and because  
10 there is often litigation on our projects, whether you  
11 think we just have a brief Executive Session just to  
12 discuss some of the litigation potential and some of the  
13 legal issues that might be implicated here?

14 MR. LEVY: Well, apart from litigation, it is  
15 the Commission's province to always have an Executive  
16 Session for deliberations if it chooses to do so, that is  
17 perfectly authorized to deliberate in private if you  
18 choose to do so.

19 CHAIRMAN DOUGLAS: Well, we have a room right  
20 over to the side, I think it might be helpful given the  
21 amount of material that we have covered in a very short  
22 period of time, and because of the potential for  
23 litigation on the -

24 MR. LEVY: Did you want to set a time certain  
25 when we will come back so folks might grab a bite or

1 something?

2 CHAIRMAN DOUGLAS: We will be 10 minutes or  
3 less.

4 MR. LEVY: Okay.

5 (Off the record.)

6 (Back on the record at 2:09 p.m.)

7 CHAIRMAN DOUGLAS: All right, everybody, we are  
8 out of Executive Session and back into our regular  
9 business meeting. What we are going to do is move on  
10 from this item. When we finish the rest of the agenda,  
11 we will recess the Business Meeting and resume the item  
12 at 5:00 p.m. today -

13 COMMISSIONER BYRON: 5:30.

14 CHAIRMAN DOUGLAS: 5:30, thank you, 5:30 p.m.  
15 today, in order to give the Hearing Officer time to draft  
16 Errata that the Committee would like to recommend be part  
17 of the Order should the Commission vote to approve the  
18 project. So, at this point, we will take no further  
19 comment on this issue. We will be back at 5:30.  
20 Everyone will have the opportunity to comment further at  
21 5:30 with proposed Errata in front of them. So, I think  
22 the rest of this meeting is going to start moving more  
23 quickly.

24 Item 17. Minutes, 17A and B, if we could take  
25 them together.

1 COMMISSIONER BYRON: Can we?  
2 CHAIRMAN DOUGLAS: We were all here. We -  
3 COMMISSIONER BYRON: All right, I move approval  
4 of -  
5 VICE CHAIR BOYD: Second.  
6 CHAIRMAN DOUGLAS: All in favor?  
7 (Ayes.)  
8 The Minutes are approved.  
9 Item 18. Is there any Commission Committee  
10 Presentation and Discussion today?  
11 VICE CHAIR BOYD: Would not dare.  
12 CHAIRMAN DOUGLAS: Would not dare is correct.  
13 Okay, Item 19. Chief Counsel's Report.  
14 MR. LEVY: No report.  
15 CHAIRMAN DOUGLAS: Item 20. Executive  
16 Director's Report.  
17 MS. JONES: No report.  
18 CHAIRMAN DOUGLAS: Item 21. Public Advisor, do  
19 you have a report today?  
20 MS. JENNINGS: No report.  
21 CHAIRMAN DOUGLAS: Item 22. All right, is  
22 there any public - yes, there is public comment. Mr.  
23 Nesbitt has been patiently waiting for his opportunity,  
24 please come forward.  
25 MR. NESBITT: And I appreciate the Commission's

1 patience, too. I would like to thank Commissioner Eggert  
2 for his reasoned motion earlier and the Commission for  
3 going along with it. I do not think CHEERS realizes the  
4 wrath they would have faced had they been decertified  
5 today from the Raters, as well as, quite frankly, the  
6 possibility that it could have put them under as a  
7 provider because they would have lost a lot of Raters.  
8 CHEERS' comments, as well as staff's point to the fact  
9 that the Rater has not been part of this process, and is  
10 often without a process, so part of the reason we formed  
11 CalHERS was to try to organize the Rater industry and  
12 give the Rater voice and involved in processes. So, we  
13 look forward to working with the Commission and staff on  
14 all items that affect us and are of interest to us.

15           What I wanted to speak about, actually, is the  
16 implementation of the HERS 2. Unfortunately, there has  
17 been delays with the providers coming with applications,  
18 unfortunately, CHEERS just suffered a delay in being  
19 approved, and CBPCA is much further off, apparently.  
20 Unfortunately, CBPCA has definitely been pushing to delay  
21 HERS 2, the implementation, and that BPI has sort of  
22 inserted as a substitute for. I attended the June 29<sup>th</sup>  
23 meeting that the Commission had on the interim HERS 2  
24 rules, which only applied to the Energy Commission  
25 Stimulus funded programs, and I would like to inquire of

1 the status of it, other than that. The thing is that,  
2 despite staff's assertion that it would not undermine  
3 HERS 2, quite frankly, I have seen it already do that.  
4 The City of Berkeley is not requiring a rating for their  
5 non-Energy Commission Stimulus funded programs, the  
6 Utilities are not going to require it; two weeks ago, I  
7 spoke on the phone about Davis Energy Group's \$1.2  
8 million contract, and as we heard, "Well, maybe we'll do  
9 a rating on a project and we'll use it as a guideline."  
10 So, all of this is working against getting HERS 2 out  
11 there and it is, as of last September 1<sup>st</sup>, it is the rule.  
12 The Home Performance Contractor is basically being given  
13 the carrots that the rules would give them, without any  
14 of the sticks. And the other issue I wanted to raise is,  
15 Build It Green has a module of Energy Pro that calculates  
16 a HERS Index and an Audit Report and a Rating Report, and  
17 all of that is available to anybody to buy in the public,  
18 whereas the rules are quite clear that only a whole house  
19 rater and analyst can produce those things. So, I would  
20 like to bring those to your attention. And thank you for  
21 your patience.

22 CHAIRMAN DOUGLAS: Thank you.

23 COMMISSIONER EGGERT: I just want to say a  
24 quick thank you to you, as well, Mr. Nesbitt, and I would  
25 ask perhaps, again, in the interest of time, that the

1 staff follow-up with you about the current status of the  
2 interim HERS, as well as, I share your desire to move as  
3 quickly as possible towards a comprehensive  
4 implementation of the HERS 2 rating system. You know, we  
5 are trying to develop that through some of our Stimulus  
6 activities, and it would be news to me if it was  
7 completely disregarded, or if it was being systematically  
8 disregarded, I think. That is certainly not the intent,  
9 or not the intent of the Committee. I had one other  
10 thought, but it is now escaping me -

11 MR. NESBITT: I have one. I would like to  
12 apologize because I know sometimes I am saying "the  
13 Commission," but I do not always mean this Commission, I  
14 mean in the broader staff, and I do not always  
15 distinguish, and you may notice I do not try to attack  
16 anyone, I do not attack people personally, I may attack  
17 what is going on.

18 COMMISSIONER EGGERT: And we appreciate -

19 MR. NESBITT: There is no point in going there,  
20 it never helps you in an argument and -

21 COMMISSIONER EGGERT: And we definitely  
22 appreciate your participation and I think your points  
23 about making sure that the Raters are a part of the  
24 discussion of actions taken by the Commission that would  
25 eventually affect the Raters, basically you are our

1 implementers for the auditing component of a lot of our  
2 activities, that we should definitely make sure we are  
3 listening to that community.

4           MR. NESBITT: I think the Commission staff, the  
5 providers, Raters, and perhaps other utility programs  
6 that utilize HERS Raters, we really need to get together,  
7 have a meeting, talk about the issues we all face, and I  
8 think we need to look at the regulations and maybe  
9 possibly some large changes to help deal with some of  
10 these issues, you know, and obviously we need to figure  
11 out who we can go to, so I need your help in directing me  
12 to appropriate staff. Sometimes it is important to come  
13 to the commission because obviously you do not know  
14 everything that is going on at the staff level, and you  
15 cannot. You know, some of it good, some of it bad. But  
16 it is also not good to have to come to the Commission all  
17 the time.

18           COMMISSIONER EGGERT: Again, I appreciate your  
19 comments and I would ask maybe if Ms. Chandler could  
20 provide the appropriate contact information, and then we  
21 will follow-up. So thank you very much.

22           MR. NESBITT: Thank you.

23           CHAIRMAN DOUGLAS: At this point, we will be  
24 recessed until 5:30. Thank you everybody.

25 (Whereupon, at 2:17 p.m., the business meeting was adjourned.)

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