

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
Business Meeting)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 8, 2010

10:00 A.M.

Reported by:
Peter Petty

Commissioners Present

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

Staff Present:

Melissa Jones, Executive Director
Michael Levy, Chief Counsel
Jennifer Jennings, Public Advisor

	<u>Item No.</u>
Mark Hutchison	2
Panama Bartholomy	3,4,5
Angela Gould	3
Laurie ten Hope	8

Also Present

Interested Parties

Public Comment

(*via Webex)

	<u>Item No.</u>
Samuel Cannon, for Assemblyman Paul Cook	3
Rick Bishop, Western Riverside Council of Governments (WRCOG)	3
Martha Alvarez, CAEATFA	3
*Kate Meis, Local Government Commission (LGC)	3
*Rich Chen, City/County of San Francisco	3
*Omar Pena, Marin County Community Development Agency	3
*Liz Yager, Sonoma County Energy Independence Program	3
*Shawn Thompson, City of Irvine	3
*Jeri Gill, Sustainable Napa County	3
*Barbara Spoonhour, WRCOG	3
*Allan Krauter, Kern County	3
*Charlene Carlson, Santa Clara County	3
*Cruz Ramos, City of San Joaquin	3
*Demetra McBride, Santa Clara County	3
*Tom Butt, Councilman, City of Richmond	3
*Jordan Ehrenkranz, Councilman, City of Canyon Lake	3
*Kirk Girard, County of Humboldt	3
*Josephine Fleming, Green Careers Partnership	3

Also Present

Interested Parties

Public Comment (Continued)

	<u>Item No.</u>
*Steven DeBaun, Esq., Best, Best & Kriegers for WRCOG	3
*Fred Mason, City of Banning	3
*Jeff DeGrandpre, Mayor pro tem, City of Eastvale	3

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P R O C E E D I N G S

NOVEMBER 8, 2010 10:00 a.m.

CHAIRPERSON DOUGLAS: Good morning. Welcome to the California Energy Commission Business Meeting of November 8th, 2010.

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

CHAIRPERSON DOUGLAS: All right, Item 1.
Consent Calendar.

VICE CHAIR BOYD: Move Consent.

COMMISSIONER BYRON: Second.

CHAIRMAN DOUGLAS: All in favor?

(Ayes.)
Item 1 is approved.

Item 2. Electricity Consumption Surcharge Rate.
Possible approval of an adjustment to the Electricity Consumption Surcharge Rate for calendar year 2011 from the current rate of twenty-two hundredths mil (\$.00022) to twenty-nine hundredths mil (\$.00029). Mr. Hutchison.

MR. HUTCHISON: Good morning, Chairman Douglas and Commissioners. Mark Hutchison, Deputy Director for Administration. I am here today to request your support to increase the Energy Resources Program's Account Surcharge Rate from \$.00022 to \$.00029. The Energy

1 Commission is facing severe budget constraints due to
2 unprecedented workloads, combined with a substantial
3 decline in ERPA revenue due to the decrease of
4 electricity consumption as a result of California's
5 economy, as well as envisioned, the rigorous energy
6 efficiency measures that the Energy Commission has
7 implemented over the years. Electricity sales are down
8 6.5 percent from the last full fiscal year 2008-'09
9 revenue. Preliminary staff analysis forecasts that
10 electricity sales and, therefore, ERPA revenues and
11 reserves will further decline. This decline comes at a
12 time when the Commission budget was increased to
13 accommodate the staffing resources needed to process the
14 significant increase of facility siting cases. Increase
15 in the surcharge beginning January 1, 2011, will increase
16 revenues to cover baseline activities and provide a
17 prudent reserve. Your approval of this increase is
18 requested at this time, and I am available to answer
19 questions.

20 CHAIRMAN DOUGLAS: Thank you, Mr. Hutchison.
21 Questions, Commissioners?

22 VICE CHAIR BOYD: I would just say I have no
23 questions because the Chairwoman and I sit through this
24 in the Budget Management Committee and we understand
25 thoroughly all that you've just said and appreciate the

1 concern, the good news and the bad news part, so, to my
2 fellow Commissioners, the Budget Management Committee has
3 been all through this every which way and recommended
4 this item for ultimate consideration by the full
5 Commission.

6 COMMISSIONER EGGERT: So, it appears that, at
7 least if I understand the presentation, we're partially a
8 victim of our own success, the fact that we've been
9 successful in energy efficiency means that we have
10 reduced revenues from this particular source. I guess
11 it's just a question in terms of - what is the max mil
12 rate that is allowed.

13 MR. HUTCHISON: Three-tenths of a mil. We're
14 just under the cap.

15 COMMISSIONER EGGERT: We are below the cap,
16 okay. Yeah, I was previously briefed on this item and
17 I'm aware that this is definitely necessary to be able to
18 meet a lot of our statutory requirements for the programs
19 that we're trying to administer. So, I think it's a good
20 action.

21 COMMISSIONER BYRON: Mr. Hutchison was kind
22 enough to come brief me earlier last week on this topic.
23 Remind me, please, though, when is the last time we made
24 an adjustment in this?

25 MR. HUTCHISON: Two thousand and three.

1 COMMISSIONER BYRON: Was that an upward or
2 downward adjustment at that time?

3 MR. HUTCHISON: Legislation was passed in 2002
4 to give us the authority to adjust the rate and the
5 Legislature also requested that we increase it to the cap
6 because there was a General Fund shortfall. As soon as
7 that money was swept to the General Fund the very next
8 cycle, which would have been 2003, we dropped it back
9 down to the current rate of \$.00022 of a mil.

10 COMMISSIONER BYRON: Thank you, Mr. Hutchison.
11 I'm prepared to move the item.

12 CHAIRMAN DOUGLAS: Is there a second?

13 COMMISSIONER EGGERT: I will second.

14 CHAIRMAN DOUGLAS: All in favor?

15 (Ayes.)

16 The item is approved. I will just note that it
17 is certainly my expectation that the incoming
18 Administration will be asking all agencies to review and
19 justify baseline expenditures in the Budget, and so we
20 certainly expect to do that, but it is important for us
21 to take action to meet our authorized budget as we've
22 done today, so thank you, Mr. Hutchison.

23 MR. HUTCHISON: Thank you.

24 CHAIRMAN DOUGLAS: Item 3. And we've got a
25 fair amount of public comment on Item 3. The Commission

1 will consider ratifying the actions taken on October
2 21st, 2010, on the following items: (these items were
3 originally noticed for the October 20th, 2010 meeting as
4 Items 17, 18 and 19, and were continued to October 21st,
5 2010.) Item 3. Local Government Commission. Possible
6 approval of Contract 400-10-004 for \$33,176,912 with the
7 Local Government Commission to support Energy Upgrade
8 California, the state-wide energy and water efficiency
9 and renewable energy generation retrofit program for
10 single- and multi-family residential and commercial
11 buildings. Mr. Bartholomy.

12 MR. BARTHOLOMY: Thank you, Madam Chair,
13 Commissioners, Executive Director, Chief Counsel, my name
14 is Panama Bartholomy, I work in the Energy Efficiency and
15 Renewable Energy Division here at the Commission. Just a
16 brief history lesson on the use of these funds before we
17 get into what this contract is. If you remember, we
18 originally in 2009 had a solicitation for the use of
19 these Recovery Act funds, to the amount of \$30 million,
20 that went out under what we call the 401 solicitation.
21 The solicitation was to help local governments set up
22 Property Assessed Clean Energy Districts, or PACE
23 Districts. Under the 401 solicitation, we were to award
24 five different contracts for just over 24 counties and
25 180 cities, covering 75 percent of the State's population

1 in a PACE District. Unfortunately, on July 6th, the
2 Federal Housing Finance Authority offered new guidance
3 about the use of Property Assessed Clean Energy financing
4 districts that basically undercut the approach of
5 jurisdictions across the country in the use of this new
6 financing model. In light of this memo that was released
7 on July 22nd, you as the Commission canceled the 401
8 solicitation, and asked staff to come back with revised
9 Guidelines, to be able to help us to continue to use this
10 Recovery Act money to push forward and bring about new
11 financing opportunities for energy efficiency retrofits
12 in the State. The staff came back on August 6th to offer
13 new State Energy Program, or SEP Guidelines, which you
14 then approved at your Business Meeting, and staff worked
15 forward towards a September 22nd new contract for \$33
16 million with the California Statewide Community
17 Development Authority, to create a new program, to help
18 local governments and jurisdictions put together energy
19 efficiency retrofit programs. After September 22nd, the
20 CSCDA, the statewide authority that we were working with,
21 had expressed concern with contracting requirements of
22 the Recovery Act, and had asked to be taken out as a
23 major partner in this effort. We were lucky to have a
24 partner and local government Commission that was willing
25 to take on the oversight authority of running this new

1 program called Energy Upgrade California, and on October
2 21st, the Commission approved the new \$33 million contract
3 with the Local Government Commission, that contract
4 before you, asking for ratification today.

5 I will just briefly go over what some of the
6 benefits of the program are. You've seen this contract a
7 couple of times now, so hopefully by now, if you've paid
8 attention to me in the previous testimony, you are
9 somewhat familiar with what I'm going to talk about.
10 But, just to briefly go over, Energy Upgrade California
11 is a partnership between the Public Utilities Commission
12 and the investor-owned utilities, municipal utilities,
13 and local governments across California. It is going to
14 offer a statewide marketing brand and campaign to help
15 with energy efficiency retrofits, water efficiency
16 retrofits, and renewable energy retrofits, for all
17 building types across the state. It's going to be
18 offering a financing clearinghouse run out of the State
19 Treasurer's Office and the California Alternative Energy
20 and Transportation Fuels Authority that will be offering
21 a competitive solicitation for financial institutions to
22 be able to bid loan products that building owners in
23 California can use to retrofit their buildings. It's
24 going to offer credit enhancements such as interest rate
25 buy-downs and loan loss reserves to help lower the cost

1 of financing for building owners, as well as helping to
2 prop up the HERS II roll-out through the rebates for
3 homeowners to get HERS II audits and HERS II verification
4 of the work that's done. It has a significant focus on
5 workforce development in the contract by offering
6 scholarships for HERS training and building performance
7 institute training, and it has a significant focus on
8 helping local governments put together plans for how to
9 best access this program and be able to best leverage all
10 of the different programs together, offering finance,
11 offering funding for 30 counties across the State, to
12 help them put together comprehensive plans for how to do
13 outreach and implementation of energy efficiency retrofit
14 programs that will bring together all of the various
15 stakeholders in each county, to be able to develop the
16 plans so the local governments are working with the
17 contractors, the trade association, the realtors, and
18 community groups, to be able to best run a retrofit
19 program within their communities. The contract also
20 contains an effort to try to develop strategies for how
21 to overcome the Federal agencies, the FHFAs, the barriers
22 they've put in place around PACE. You have stated at
23 various Business Meetings your support of PACE as a
24 financing model, and the desire to develop strategies for
25 how we can still continue to operate PACE in California,

1 even under this new regulatory regime.

2 So, to that end, contained within this contract
3 is two different pilot programs working with four
4 communities that have the greatest amount of experience
5 working with PACE in the State. There is a residential
6 PACE pilot program working with Sonoma County, who has
7 now been running their program for about a year and a
8 half. We thought that they provided an excellent partner
9 to be able to develop strategies for how to overcome the
10 Federal regulatory barriers. This contract will fund
11 them to develop strategies, tools, and then put that into
12 a toolkit and fund them to go across the State to work
13 with other local governments who want to put together a
14 residential PACE program that still meets and overcomes
15 the barriers put in place by FHFA.

16 There is also a commercial pilot program
17 working with the other three jurisdictions with the
18 greatest amount of experience running a PACE program in
19 the State. These are jurisdictions that have already
20 gone through all of the legal, technical, and staffing
21 infrastructure development to be able to run a program in
22 the State. It was a really big effort to not fund start-
23 up programs out of this; we needed to work with the most
24 experienced jurisdictions to be able to develop the
25 strategies, to be able to overcome these Federal

1 barriers. And so we were working with the City of LA,
2 the County of Placer, and the City and County of San
3 Francisco to develop a commercial PACE program. This
4 program, just like the residential program, were to
5 develop strategies, and then a toolkit to overcome the
6 Federal barriers put in place by FHA and the Office of
7 Currency Controller, to help to run the commercial PACE
8 programs in the State, and then take those tools and
9 lessons and spread them out to other jurisdictions across
10 the state, as well.

11 We think that this program and this contract
12 well complies and really carries out the mission that has
13 been put in place through the Recovery Act, as well as
14 the guidance of the Commission around market
15 transformation efforts and long-term sustainable benefits
16 to the State. We hope to avoid what is being called the
17 "ARRA cliff" across the country, where, once ARRA money
18 goes away, the program benefits end and we think we'll
19 have a long term sustainable program effort to really
20 start to transform the energy efficiency and renewable
21 energy and retrofit market here in the State. At this
22 point, I would be happy to answer any questions. I'm
23 also joined up on the dais by our technical lead on this
24 contract, and the contract manager, Ms. Angela Gould, who
25 can answer any questions that I don't know the answer to.

1 Thank you very much for your time and I look forward to
2 the discussion.

3 CHAIRMAN DOUGLAS: Thank you, Mr. Bartholomy.
4 If you could, why don't you sit down and we'll go through
5 public comment. And we very well may have questions for
6 you, but we've got a number of members of the public in
7 the room and on the phone who would like to speak. So,
8 I'm starting with the members of the public in the room
9 who have indicated an interest to speak, and is Assembly
10 Member Paul Cook in the room? If you could please come
11 forward.

12 MR. CANNON: I'm Sam Cannon and I'm Chief of
13 Staff to Assemblyman Paul Cook. Mr. Cook is traveling
14 today and he asked me to present before you this morning.
15 Thank you, Commissioners, for allowing me the opportunity
16 to speak. Assemblyman Cook is the representative from
17 the 65th Assembly District and is also the Chair of the
18 Bipartisan Senate and Assembly Inland Empire Caucus, and
19 he is here - he has asked me, rather, to be here - to
20 express his concerns with the California Energy
21 Commission's handling of the Municipal Financing Program
22 Grant process as it relates to the Western Riverside
23 Council of Governments, or WRCOG, grant application, and
24 would respectfully request that the CEC not move forward
25 with the disbursement of any of those program funds. It

1 is Assemblyman Cook's belief that constituents and
2 taxpayers in Riverside are being unfairly penalized and
3 that the WRCOG has never truly been given any due process
4 throughout this matter. WRCOG is willing to sit down
5 with the Commission to see about working out a fair and
6 equitable solution, and Assemblyman Cook would strongly
7 encourage all parties to pursue this route. There are
8 representatives that are here from WRCOG who will be
9 providing detailed information as to their specific
10 issues of concern, and Assemblyman Cook would
11 respectfully request that the Commission take their
12 requests seriously. Thank you.

13 CHAIRMAN DOUGLAS: Thank you, Mr. Cannon. And
14 I should note that we also got a letter, I think this
15 morning, from Senator Cogdill, expressing some of the
16 same concerns. Now, we - I think one of the things we
17 need to do, because we always take these communications
18 very seriously, is sit down with both your boss and
19 Senator Cogdill, and other members of the Legislature,
20 Assembly or Senate, who might have concerns. There were
21 some misperceptions in the letter that I certainly would
22 like to be able to speak to him about, and you did not
23 say anything that I really want to - you did not raise
24 specific issues like that, but we definitely want to work
25 with you, we're pleased to see that the members of

1 Western Riverside COG are here, and we're certainly
2 looking - I'm calling them up next, and we're certainly
3 looking forward to having a chance to speak to them on
4 the record. It's been frustrating and disappointing
5 probably on both sides to have this issue come up, and I
6 appreciate your being here, and I'll hope you'll be able
7 to stay and hear the rest of the discussion on this item.

8 MR. CANNON: Thank you very much for allowing
9 me to speak.

10 CHAIRMAN DOUGLAS: Thank you. The next speaker
11 I'd like to ask to come forward is Rick Bishop, Executive
12 Director of Western Riverside Council of Governments.

13 MR. BISHOP: Thank you, Chair Douglas and
14 members of the Commission. It's a pleasure to be here.
15 I'm Rick Bishop, Executive Director of the Western
16 Riverside Council of Governments. Commissioner Eggert,
17 it was a pleasure to meet you Friday morning, thank you
18 for coming down to Southern California. My request to
19 you, of course, I think the Chairman indicated that we
20 are very frustrated with this process as it has been
21 going on for several months with regard to the previous
22 PON. We've been dissatisfied with the CEC staff
23 explanations with regard to our particular proposal. Our
24 request is that, as was mentioned by the prior speaker,
25 Mr. Cannon, is that the Energy Commission defer its

1 decision on awarding these contracts for our purposes
2 until the Courts have settled this issue. And if the
3 Commission is not willing to do that, then we think it's
4 fair, especially considering the fact that there is no
5 urgency in the Commission taking action today, that
6 perhaps the Commission consider starting over. There are
7 a couple of issues that I wanted to bring to your
8 attention. I think that we have staff and elected
9 officials who will be participating via phone, that will
10 provide additional comments, but I have three things that
11 I wanted to mention. One is, I did mention this earlier,
12 contrary to prior CEC assertions, there never has been an
13 October 21st date, a drop dead date, for allocating these
14 Federal dollars, and that is something that was brought
15 to light by the Chair in a letter to the Court of
16 Appeals, pending conversations with the Department of
17 Energy, we've been told, and members of the public have
18 been told time and time again that it is very important
19 for the Energy Commission to disburse and allocate these
20 funds by October 21st or risk losing them, we clearly know
21 that that's not the case. A couple of things I also
22 wanted to mention, that the CEC's Chief Legal Counsel,
23 Mr. - is it Levy or Levy, I'm not quite sure of the
24 pronunciation - Mr. Levy had indicated in a
25 correspondence submitted to the Court of Appeals that

1 WRCOG had suspended its PACE Program. That was a strong
2 letter from the CEC, it demanded that WRCOG withdraw its
3 lawsuit that it is engaged with the CEC right now, it had
4 phrases such as "disingenuous, frivolous, absurd, and
5 reprehensible," describing our lawsuit against the CEC
6 that we're embroiled in. The only problem with that is
7 that WRCOG has never suspended its PACE Program, it is in
8 place, it is moving ahead on the commercial front, and,
9 as I mentioned to you before, Chair Douglas and
10 Commissioner Eggert, on the 18th, we hope that our program
11 will be the most successful program in the State of
12 California. Also, I think you know that we have concerns
13 that your prior meeting in October was held in violation
14 of the Bagley-Keene Act Opening Meeting Act, the Energy
15 Commission, I think, had said that it wasn't, although we
16 think it's a little peculiar why you are having a meeting
17 today to ratify decisions that were made previously, and
18 I know that there have been materials that have been
19 submitted to you from our Legal Counsel, that further
20 take issue with the Commission's holding of that meeting.
21 Lastly, despite staff's comments about the funds being
22 distributed equitably across the State, we don't think
23 that's the case at all. We've taken a look at two prior
24 PONs that have been distributed, namely PON402 and 403,
25 and if you let me finish out here, we note that, in

1 Central Southern California, in those two PONs, 57
2 proposals were submitted to the CEC and one was awarded
3 in an amount of \$5.9 million. Northern California
4 entities submitted 20 proposals, five of those were
5 awarded in an amount of \$55 million. The State of Oregon
6 submitted one proposal and it was awarded in an amount of
7 \$18.8 million. And so, if you break it all down, of \$80
8 million on those prior two PONs, 70 percent of the
9 dollars were awarded to Northern California entities, 24
10 percent of the dollars were allocated to Oregon, 7
11 percent of the dollars were allocated to Southern and
12 Central California, combined, despite the fact that the
13 vast majority of proposals were submitted from Central
14 and Southern California. So, again, our request to you
15 today is that you consider delaying award of these
16 contracts, let the court process work its way though; in
17 the absence of doing that, we think that, especially
18 considering there is no urgency in taking action today
19 based on the lack of an October 21st deadline, that it
20 might behoove the Commission to pursue a transparent
21 process, start the bid process over, and let all local
22 jurisdictions and entities in California have a shot at
23 the equitable distribution of these dollars. Thank you.

24 CHAIRMAN DOUGLAS: Well, thank you, Mr. Bishop,
25 for being here. If you don't mind, I think some of us

1 might have some questions for you. And some of the
2 statements that you made, I think, are incorrect and do
3 go to some of the issues in one of the Legislator's
4 letters I thought I wanted to sit down and talk to him
5 about. First of all, I really understand how
6 disappointed Western Riverside was with its initial PACE
7 proposal being disqualified. My understanding is that
8 you, Western Riverside, thought that our instructions on
9 the loading order were ambiguous, we did not think we
10 were, but that was going to be the issue that was
11 adjudicated. And no doubt, when DGS dismissed your
12 Protest, that was salt in the wound, so to speak, and so
13 I understand from that perspective where the litigation
14 comes from. I have to say, though, that that's in the
15 past, that is so much in the past, because of actions the
16 Federal Government took. Even if - well, let me ask you
17 this, would you feel better if we paid DGS to hear that
18 protest, even though it was for programs that can't go
19 forward as designed?

20 MR. BISHOP: Well, the Court ordered DGS and
21 the CEC to hear the Protest, and for some reason, that
22 hasn't occurred. So, I don't know if DGS and the CEC are
23 refusing to, or what, but in any indication, the Superior
24 Court Judge ordered that to occur, and it has not.

25 CHAIRMAN DOUGLAS: So, Mr. Bishop, the reason

1 that - and this decision really went to my office - the
2 reason that I did not want to ask DGS to go forward with
3 the Protest is that changes in Federal Regulation, which
4 led cities and counties across the State to cancel or
5 suspend their PACE Programs, including from your Minutes
6 on your Website, Western Riverside's Residential Program.
7 And I definitely understand that you didn't cancel your
8 commercial program, but you suspended the residential
9 program for the same reason that we saw our vision of
10 having PACE Programs cover the entire State of
11 California, frustrated by the Federal Government. And in
12 my view, it would have been a waste of public resources
13 and a waste of time, and an inexcusable delay in getting
14 the money out on the street, to hear a Protest about a
15 solicitation for a program that just isn't feasible in
16 the current environment. So, what happens is that the
17 Energy Commission has discretion to cancel a program that
18 no longer works, and once the Energy Commission cancels a
19 solicitation, DGS, to our understanding, doesn't even
20 have jurisdiction to hear it. So, if your concern really
21 is whether you were appropriately disqualified for the
22 first program, that really nobody can deliver on, as
23 conceived, you know, I suppose there would be a way that
24 we could talk about looking into getting you an answer on
25 that, but I don't think that gets you anything more than

1 an answer. Please.

2 MR. BISHOP: Thank you. Well, with regard to
3 the salt in the wound comment, I guess my reply would be,
4 I still don't understand why the DGS and CEC never just
5 complied with its own processes on hearing a protest,
6 much less the order of the court. Now, to the issue of
7 being a done deal because that PON had been canceled, I
8 do understand that the CEC had canceled that, and I
9 understand that is the CEC's right to cancel that. But,
10 in the eyes of the Judge, the Superior Court Judge, in
11 taking a look at the prior cancellation and the proposed
12 award of the new contracts, he found that it was - the
13 proposed awards was strangely - I think he might have
14 used the term "suspiciously similar," in fact, I have the
15 quote from the Judge, and he says, if I may, "It doesn't
16 take Hamlet to figure out that something rotten happened
17 in this case. Suspiciously, the Awardees under the EUC
18 Program, the Energy Upgrade California Program you are
19 considering in these contracts today, the Awardees under
20 the EUC program are strikingly similar to those winners
21 from the canceled PON. The distribution of these funds
22 under the auspices and discretion, and cloaked in
23 executive independence in conjunction with the history of
24 the conduct and actions taken by the CEC and DGS is
25 dubious, at best." Now, you reference the fact that our

1 Minutes show that we suspended our PACE program. There
2 has never been an action taken to the Executive Committee
3 of the Western Riverside Council of Governments asking
4 them to suspend the PACE program, all we have ever done,
5 and we're talking to our Executive Committee, is to
6 discuss the Freddie Mac and Fannie Mae actions, and the
7 impacts that has on residential programs nationwide and,
8 in fact, if your attorneys were to take a look at the
9 Minutes from our prior meetings, we have the green light
10 to continue to move ahead on the commercial aspect of our
11 program, which was a piece that was included in our
12 original submittal under the previous PON that's now been
13 cancelled, so we haven't been talking about solely a
14 residential program, or solely a solar program, which has
15 also been articulated by the CEC staff on our original
16 proposal. So, we never have suspended our residential
17 PACE program, we've discussed with our Executive
18 Committee the reality that everybody, nationwide, is
19 facing with residential PACE programs at this time and,
20 in fact, our Executive Committee has directed us to
21 continue to pursue how we might be able to help overcome
22 those barriers we have supported, the two Federal bills
23 at the House level and the Senate level, supporting the
24 resolution of that issue. So, I'm not quite sure what to
25 tell you. I mean, the Judge has said that the contracts

1 that are being issued under this proposed issuance that
2 you're considering today are suspiciously similar to
3 under the original PACE that was cancelled, he says that
4 that is dubious, at best, and I guess I leave that with
5 you to decide whether or not that's something that you
6 agree with.

7 CHAIRMAN DOUGLAS: So, Mr. Bishop, are you
8 aware that this matter is now in the Court of Appeal?

9 MR. BISHOP: Yes, I am.

10 CHAIRMAN DOUGLAS: So, without re-litigating in
11 front of everybody in this room what happened at the
12 Superior Court, because we're now in the Court of Appeal,
13 I think I'd like to ask a few more questions, and then
14 I'll ask our Chief Counsel to speak to what he's seen in
15 the Minutes. Now, you looked at just two Program
16 Opportunity Notices, two competitive solicitations, in
17 order to substantiate your assertion that the bulk of the
18 funding went to regions other than Southern California.
19 Did you look at the total amount of funding allocated by
20 the Energy Commission? Did you look at any of the other
21 programs or any of the other even residential retrofit
22 allocations?

23 MR. BISHOP: We looked at PONs 402 and 403.

24 CHAIRMAN DOUGLAS: Okay, so you didn't look at
25 the direct Block Grants to LA, San Diego, and Fresno and

1 Kern Counties?

2 MR. BISHOP: Correct.

3 CHAIRMAN DOUGLAS: Okay, so I would submit, and
4 I would be happy to talk to you, and this is one of the
5 things that is very - it is essential for the Energy
6 Commission to talk to Legislators about - that the Energy
7 Commission actually did an extraordinary job of getting
8 funding, particularly to parts of rural California, and
9 small cities and counties that typically have not been
10 successful. But I don't want to linger on that because
11 right now we're talking about your county, and let me see
12 if I have any other questions right now for you. So, let
13 me just ask you this. Are you really here right now to
14 ask for - let me sort of go back, just one more thing - I
15 think, Mr. Bishop, I take some offense, frankly, at your
16 suggestion that there never was a deadline and there is
17 no deadline, and there is no need to get this money out
18 on the street. You didn't live the last year and a half
19 with us, and so you didn't experience, and I don't think
20 you have any reason to have experienced, the incredible
21 pressure that we've been under to get this money out
22 quickly. But there certainly is a contract that we have
23 with the Department of Energy. On October 21st, they
24 would have perfected their right to take the money away.
25 Every message that I've gotten from the Legislature and

1 from the Governor and Governor's Office is that it was
2 totally unacceptable to get there, we've just had mid-
3 term elections, and I think that the House of
4 Representatives, in particular, is going to become both
5 less friendly to the Stimulus Program, but also in a
6 position to really advance the campaign issue that a
7 number of particularly the Republicans have been raising
8 about taking back unspent and unallocated Stimulus funds.
9 So, you see the risk as zero, I see it as much higher
10 than non-zero, so I'm really pleased that we were able to
11 meet the deadline. But I also know that you didn't live
12 through the past year and a half the way that we did.
13 And I don't know that I apologize, that wasn't really a
14 question. Commissioners, do any of you have questions?

15 VICE CHAIR BOYD: Yes, I do. Well, I'm glad
16 that the Chair entertained the subject of there never was
17 a drop dead date because I would just echo her sentiment
18 that you haven't lived with us, and you haven't lived
19 with the many programs and the many dollars that we've
20 had to disburse over the past year, and the deadlines
21 that we have and were operating under. I would note that
22 you, in your long, almost evasive response about your
23 PACE Program, finally did mention the Federal action, and
24 if I've heard you right, your residential PACE Program is
25 not proceeding because your governing body asked you to

1 look into ways to solve that problem much like we've told
2 our staff to look at ways to solve that problem, but in
3 the face of an action by the Federal Government, we felt
4 we had no choice to do what we did. Finally, the data
5 you referenced about PONS 402 and 403, which I find
6 coincidentally reflect exactly the data in Senator
7 Cogdill's, who I believe is from the Central Valley, his
8 letter to this agency, so obviously you're reaching out
9 throughout the State in your campaign. But you stated on
10 the record here today that the State of Oregon submitted
11 a request and was awarded money. Did I hear you
12 correctly?

13 MR. BISHOP: A firm in Oregon, yes.

14 VICE CHAIR BOYD: Oh, a firm in Oregon.

15 MR. BISHOP: A firm located in the State of
16 Oregon.

17 VICE CHAIR BOYD: All right, so you stated the
18 State of Oregon and you said the State of Oregon was -

19 MR. BISHOP: My apologies. Let me clarify - a
20 firm located in the State of Oregon -

21 VICE CHAIR BOYD: And that all the \$18 million
22 went to people of the State of Oregon. That's the
23 inference in your statement.

24 MR. BISHOP: Well, let me take that back, okay?
25 \$18.8 million were awarded to a firm in the State of

1 Oregon.

2 VICE CHAIR BOYD: To be disbursed where?

3 MR. BISHOP: Uh -

4 VICE CHAIR BOYD: In programs in the State of
5 California.

6 MR. BISHOP: Okay.

7 VICE CHAIR BOYD: Okay, you're very loose with
8 your wording. I have no other questions.

9 COMMISSIONER EGGERT: I just have one question
10 and I do want to say, I appreciated the fact that the
11 Inland Empire Economic Partnership invited me down to
12 speak to their members. It was a very good experience
13 and it was very heartening to see the actions that are
14 being taken in the Inland Empire, especially in the area
15 of energy efficiency and clean energy, some remarkably
16 impressive actions by the industry down there, and I
17 might even mention a little bit more of the details if we
18 have time at the end of the meeting. I guess I have one
19 question, which is relating to the currently proposed
20 program for Energy Upgrade California. Do you see any
21 benefits to the Western Riverside Region with respect to
22 the existing proposal of Energy Upgrade California?

23 MR. BISHOP: Frankly, no. And we discussed
24 this in our teleconference on October 18th, at which time
25 the Chair articulated to me that, under the current

1 proposal that Riverside County would see a guarantee of
2 \$200,000 for its program, and largely for web-based
3 applications, I believe, and I indicated in response to
4 the Chair that WRCOG had already developed all those
5 programs in anticipation of launching our program for
6 Western Riverside County. My understanding also,
7 Commissioner, is that \$200,000 is explicitly targeted for
8 counties, so there is no guarantee as to how the County
9 of Riverside would utilize and allocate those dollars,
10 whether it would be to the local jurisdictions within
11 Riverside County, or to the COGs, so \$200,000, I
12 acknowledge from the Chair, is coming to Riverside
13 County.

14 COMMISSIONER EGGERT: I was just going to say,
15 I think also during that discussion we did mention the
16 millions of dollars, and I forgot the exact specific
17 number, I think it was over \$7 million that would be
18 available to all participants of the program, including
19 Western Riverside residents. I think one of the purposes
20 of this program is to try to create an umbrella program
21 that takes advantage of all the existing residential and
22 commercial retrofit programs that have been administered
23 under ARRA, so certainly the idea would be that, if
24 Western Riverside could access those funds on a first
25 come first serve basis, and the purpose of that is to try

1 to make the best use of the money, to make this program
2 be available across the State and, in totality, to not
3 leave anybody out, and to make efficient use of the
4 program dollars. So, I guess I would say it's probably
5 worth another closer look, just to look at the structure
6 of this program and see what benefits might accrue.

7 COMMISSIONER BYRON : Thank you, Madam Chair.

8 Mr. Bishop, did I understand you're the Executive
9 Director of the Western Riverside Council of Governments?

10 MR. BISHOP: Correct.

11 COMMISSIONER BYRON: So, are you the individual
12 responsible for the original proposal that was provided
13 to this Commission in response to Program Opportunity
14 Notice - what we called an abbreviated 401?

15 MR. BISHOP: Correct.

16 COMMISSIONER BYRON: And are you also the
17 individual that I understand may have made a request for
18 settlement for this issue before this Commission right
19 now?

20 MR. BISHOP: That is incorrect.

21 COMMISSIONER BYRON: What part is incorrect?

22 MR. BISHOP: That I was the person that made
23 the settlement - what you just said is incorrect. Maybe
24 you want to rephrase the question.

25 COMMISSIONER BYRON: Mr. Bishop, you're the

1 Executive Director of this organization. Are you aware
2 of a request to settle this issue before this Commission?

3 MR. BISHOP: Yes, I'm aware of a request, yes.

4 COMMISSIONER BYRON: Would you mind describing
5 that to me, please?

6 MR. BISHOP: Uh, we had a video - a
7 teleconference with, uh, the Chair, and with Commissioner
8 Eggert, representatives from the Governor's Office, and
9 some CEC staff, I don't know if I'm missing anybody, at
10 which time we talked about this situation we're in, the
11 status of the litigation that is being undertaken, and
12 our Vice Chair offered that perhaps there could be a way
13 for us to continue - or to not continue - the further
14 litigation which, by the way, is coming at great cost to
15 both our entity and yours, and provided a settlement
16 offer for consideration by the CEC, at which time the
17 folks that were up here in Sacramento said that they
18 would consider that offer and they would get back to us -
19 I think it was either later that afternoon, or the next
20 morning, and that was on October 18th; we still haven't
21 heard.

22 COMMISSIONER BYRON: What was that offer for
23 you to settle this issue?

24 MR. BISHOP: I'm not inclined to discuss that.

25 COMMISSIONER BYRON: Why not?

1 MR. BISHOP: Because I'm not inclined to.

2 CHAIRMAN DOUGLAS: Let's see, Mr. Bishop, I had
3 a question for you and I'm just - no, I guess - here's my
4 question. Are you interested at this point, are you look
5 at expanding the residential program? Or, are you now
6 solely focused on the commercial program?

7 MR. BISHOP: No, we're not solely focused on
8 the commercial program, we continue to proceed with a
9 program that's going to work in any shape or form. As I
10 mentioned at the beginning of my comments, we're looking
11 to have the largest program in the State of California,
12 if not the country. Right now, our focus is moving ahead
13 on the commercial aspects of the program, recognizing
14 that the residential side of things needs to be addressed
15 at the Federal level.

16 CHAIRMAN DOUGLAS: And is the fact that being a
17 Program Plus county and having access to millions of
18 dollars of financing, subsidies, and audit subsidies, is
19 that of zero value to Riverside County - or to Western
20 Riverside?

21 MR. BISHOP: Well, it's of some value, as it
22 would be for all the counties, but you indicated that
23 there are - what - 30 of these counties? And we're
24 talking about how many dollars are potentially going to
25 be allocated for actual energy retrofits for those 30

1 counties, I don't have that information in front of me.
2 As I mentioned before, Chair, we've done everything short
3 of implementing the program. We're looking for funds to
4 actually begin the process of implementing the program
5 and achieving the retrofits, so the start-up costs that I
6 think are largely part of the current effort, we're not
7 real interested in that, it's not providing much value to
8 us in the Western Riverside Region.

9 CHAIRMAN DOUGLAS: Mr. Bartholomy, let me ask
10 you, because I know that there are a number of counties
11 in that position that are not pilot programs, that have
12 really done a lot of the start-up work and are now moving
13 forward with implementation. So, let me ask you or Ms.
14 Gould what sorts of uses of that \$200,000 in access to
15 the financing and audit funding, you know, what those
16 counties, the counties that are similarly situated, are
17 doing with the funding.

18 MR. BARTHOLOMY: Thank you, Madam Chair.
19 You're right. Of the 30 counties that were selected,
20 these were counties selected for a variety of criteria,
21 but generally because of their commitments they've made
22 towards energy efficiency efforts. This commitment could
23 be shown through the investment of their own Energy
24 Efficiency and Conservation Block Grant funds, their own
25 General Fund monies, or other funds, their historic work

1 around energy efficiency or renewable energy retrofits,
2 or commitments they've made officially out there,
3 governing boards towards these efforts. You're
4 absolutely correct that some of these are a lot farther
5 along and have a lot more experience than some of the
6 other ones who are just now starting in these efforts
7 with this recent infusion of Recovery Act money, and new
8 commitments. So, what this \$200,000 - or about \$200,000
9 - per jurisdiction represents is an opportunity for the
10 contracting team to go to that county and work with them
11 where they're starting from, to be able to take what
12 they've already developed, or haven't developed yet, and
13 develop a plan that works for them. So, the plan for
14 Kern is going to be different than the plan for Alameda
15 than it is going to be for Trinity County, than it is
16 going to be for San Diego County, because every county
17 has a unique situation, a unique amount of experience,
18 and relationships that need to be worked on within that
19 area. They are going to develop a plan that brings
20 together all of the pertinent stakeholders in the
21 community to figure out how to outreach the program, and
22 how to be able to message the program to make it best
23 reach the critical communities that that jurisdiction
24 wants to focus on. At that point, those 30 counties are
25 going to have access to about \$7 million in additional

1 rebates that the other counties of California are not
2 going to be able to access. This breaks down to about \$4
3 million in incentives or interest rate buy-downs, some
4 loan loss reserves, so there will be a lower cost of
5 financing for homeowners and commercial building owners
6 in those 30 Program Plus counties than in the non-Program
7 Plus counties, about \$2 million in HERS rebates to help
8 with offsetting the costs of audits, to be able to entice
9 homeowners to want to continue on with energy efficiency
10 retrofit, as well as verification after the retrofit is
11 done, and then a million dollars in scholarships just for
12 the Program Plus counties, so that contractors within
13 those communities can access workforce development
14 programs to be able to advance their knowledge around
15 building performance and building science, to be able to
16 qualify to take part in not only our program, but also
17 investor-owned utility programs and local government
18 programs. Ms. Gould, would you like to add anything
19 else?

20 MS. GOULD: The scholarship portion is actually
21 available - that portion, only, is available statewide.

22 CHAIRMAN DOUGLAS: Thank you for that
23 explanation and that clarification. I guess, Mr. Bishop,
24 I just had one more comment, really, and that pertains to
25 your question of why we are rehearing this item. And it

1 really came about because, when Western Riverside
2 protested, or sent a letter to us saying that you didn't
3 think you'd had sufficient notice of the continuation,
4 even though we believe we've done everything right and
5 within Bagley-Keene, we really wanted to make sure that
6 we gave you and your region, to the extent that people in
7 your region wanted to come speak to us, an opportunity to
8 be here. So, I can't tell you enough how pleased I am
9 that you have come here and I realize you've had to stand
10 up there a long time, and take a lot of questions, but I
11 want to thank you for being here and - oh, Mr. Levy.

12 MR. LEVY: Yes, may I ask Mr. Bishop just a
13 couple of questions, as well?

14 CHAIRMAN DOUGLAS: Oh, of course.

15 MR. LEVY: Thank you. Mr. Bishop, who is
16 Barbara Spoonhour?

17 MR. BISHOP: Barbara Spoonhour is a Program
18 Manager in our organization.

19 MR. LEVY: Is she responsible for your PACE
20 application to the Energy Commission?

21 MR. BISHOP: Pardon, could you repeat it?

22 MR. LEVY: Is she responsible for your PACE
23 application to the Energy Commission under PON 401?

24 MR. BISHOP: She was a prime staff member
25 putting it together, yes.

1 MR. LEVY: And she also wrote a staff report
2 for the Executive Committee of the Western Riverside
3 Council of Governments that was delivered on August 2nd,
4 2010. Isn't that correct?

5 MR. BISHOP: Possibly.

6 MR. LEVY: It is or it is not correct?

7 MR. BISHOP: Possibly, I don't know. You're
8 asking me a question and I don't have the available
9 information.

10 MR. LEVY: Well, if I gave you the staff
11 report, would that assist you?

12 MR. BISHOP: Sure.

13 MR. LEVY: The August 2nd staff report, please.
14 In the staff report, Mr. Bishop, I'll see if this
15 refreshes your recollection, did not the staff report
16 state that WRCOG staff recommends cancellation of PON 09-
17 401 because the 400-09-401 solicitation only allowed for
18 financing through first priority liens such as PACE,
19 which FHFA has opened violates the Fannie Mae and Freddie
20 Mac Uniform Security Instrument prohibitions against
21 senior liens?

22 MR. BISHOP: Well, again, not having the staff
23 report in front of me, I'll just assume that that's
24 exactly what it says. We had no problem with the Energy
25 Commission canceling the PON, our program is with the

1 reissuance under this Energy Upgrade California contract
2 that essentially, as the Superior Court agrees, and I
3 think you know, has contracts that are essentially the
4 same. That's what our issue is, and we've always had
5 that issue. So, again, no problem with the cancellation
6 of the prior PON, that's fine, but when Energy Upgrade
7 California came along and the contracts that were to be
8 let and considered here today, and previously by the CEC,
9 we're moving ahead, we take issue with the fact that
10 they're very similar to the prior PON.

11 MR. LEVY: Are the services the same in both
12 contracts, sir?

13 MR. BISHOP: They're very close to the same for
14 several of the contracts.

15 MR. LEVY: How can the services be the same if
16 Fannie Mae and Freddie Mac and FHFA don't allow for first
17 priority PACE financing, and that was the purpose of the
18 original solicitation?

19 MR. BISHOP: Because the Freddie Mac and Fannie
20 Mae issues aren't as prevalent with the commercial
21 programs that are being undertaken in LA and Placer, and
22 I think three or four counties, that Mr. Bartholomy had
23 indicated.

24 MR. LEVY: What proportion -

25 MR BISHOP: That's why we're moving ahead with

1 our commercial program in Western Riverside County.

2 MR. LEVY: What proportion of WRCOG's contract
3 that it proposed under PON 401 was dedicated to
4 residential? And what proportion was dedicated to
5 commercial?

6 MR. BISHOP: You know, I don't know, and I
7 don't know if we specified the proportions, to be
8 perfectly honest. I don't know if there was any
9 specification of portion. I know it was for both.

10 MR. LEVY: Is Western Riverside Council of
11 Governments today prepared to move forward on any portion
12 of its residential PACE program as stated in the contract
13 that it bid under PON 401?

14 MR. BISHOP: We would not be moving ahead with
15 the residential program, nor did we suspend it, as you
16 had indicated in your memo to the Court of Appeals.

17 MR. LEVY: Your September 13th staff meeting of
18 2010 - excuse me, Executive Committee meeting - also
19 contained an item on this matter, didn't it?

20 MR. BISHOP: Yes, it did.

21 MR. LEVY: And didn't your staff report over
22 the signature of Barbara Spoonhour also say that, if
23 Freddie Mac and Fannie Mae follow through, the action
24 would effectively stop WRCOG's program?

25 MR. BISHOP: Yes.

1 MR. LEVY: Do you agree that that's a correct
2 statement?

3 MR. BISHOP: The residential portion of the
4 program. And if you could go to the Executive Committee
5 staff recommendations, do you see anything in there where
6 staff is recommending that the WRCOG Executive Committee
7 and the WRCOG organization suspend its PACE program? Do
8 you see that recommendation? Or have you seen an action
9 by the Executive Committee on that topic?

10 MR. LEVY: I see a statement that states,
11 "WRCOG's program hinges on the fact that PACE loans must
12 be superior to mortgage loans or identify some other loan
13 guarantee process to allow for these loans to work."

14 MR. BISHOP: Residential program, you are
15 correct.

16 MR. LEVY: And WRCOG cannot move forward at
17 this time with the residential aspects -

18 MR. BISHOP: Oh, but we could move ahead, we
19 are not because we want the Freddie Mac/Fannie Mae issue
20 to be resolved. Yes, we could move ahead with the
21 program, but under the advice of our managing consultant,
22 we're electing not to do so at this time. But, again,
23 we'd never suspended our program - ever.

24 MR. LEVY: How many banks do you have lined up
25 that are willing to underwrite first priority PACE loans,

1 consistent with your original proposal?

2 MR. BISHOP: Lined up right now?

3 MR. LEVY: Yes.

4 MR. BISHOP: None.

5 MR. LEVY: Thank you. I have a couple more
6 questions. And I believe the Chairman represented,
7 commented on this a little earlier, your statement that
8 there is no urgency, your sole basis for that statement
9 is the Chairman's Declaration of the Court of Appeal.
10 Isn't that correct?

11 MR. BISHOP: No, that's not correct. That's
12 one very pertinent one, you're talking about the October
13 19th Errata sheet that was provided to the Court of
14 Appeals?

15 MR. LEVY: That's correct.

16 MR. BISHOP: Okay, and what did the Chairman
17 say in that Errata sheet?

18 MR. LEVY: What other evidence do you have in
19 addition to that Declaration that there is no deadline?

20 MR. BISHOP: Well, one, I don't think there is
21 an October 21st deadline date specified for the allocation
22 in those funds from the Department of Energy. There's an
23 April 2012 date that is the drop dead date for spending
24 those dollars.

25 MR. LEVY: And there's an 18-month date, isn't

1 there?

2 MR. BISHOP: And is it written anywhere? Is it
3 written in the DOE document?

4 MR. LEVY: It is written -

5 MR. BISHOP: October 21st? And if the October
6 21st date is not met, then the Federal Government would
7 definitively take those dollars away from California. Is
8 that written anywhere?

9 MR. LEVY: What is written in there -

10 MR. BISHOP: Is it written anywhere?

11 MR. LEVY: What is written in there is that the
12 funds must be obligated within 18 months of the award.
13 The award was issued on April 21st, 2009. Mathematically,
14 October 21st, 2010 is the end of 18 months.

15 MR. BISHOP: Correct, and the Errata sheet and
16 the Errata that was provided to the Court of Appeals from
17 the Chair indicates she had spoken with staff at the DOE,
18 and that I think the quote in there, I don't have the
19 document, is that, after that discussion, it relaxes
20 somewhat the sense of urgency regarding that October 21st
21 date, which, to me, when it says "relaxes the urgency"
22 means that it's not urgent at all. I don't know what it
23 means to you. It means it's not urgent, it's not drop
24 dead.

25 MR. LEVY: Are you an attorney?

1 MR. BISHOP: No, I'm not.

2 MR. LEVY: I would just like to point out for
3 the Commission, the claims about the violation of the
4 Open Meeting Act aren't really relevant here today
5 because the purpose of this hearing in the language of
6 Bagley-Keene is to correct or cure any alleged violations
7 if there were, that there may have been, and so, going
8 back to what happened at the earlier meeting of October
9 20th and 21st, while the Commission always takes public
10 comments, especially open meeting comment, seriously, the
11 purpose of this hearing is to have a do-over so that
12 WRCOG and anybody else has a full opportunity to present
13 to the Commission anything that it may choose to
14 consider, irrespective of what may have transpired
15 previously. I just want to comment on two other things,
16 one is Mr. Bishop's comments about why the Court ordering
17 CEC to hear the protest, the Court did not order CEC to
18 hear a protest, the Court ordered DGS to hear a protest
19 that is DGS's oversight responsibilities for public
20 contracting for procurement contracts in California. CEC
21 is one of the agencies that issued the awards, we cannot
22 hear a protest. The Court ordered us to not disburse the
23 funds under the solicitation pending the outcome of a
24 protest. Of course, that is pursuant to Public Contract
25 Code Section 10345, that's the Black Letter Law, where

1 there is a valid protest that has been filed, we must
2 await the outcome of the protest, unless we cancel the
3 solicitation, which we did. But we were not ordered to
4 hear a protest, so we've complied with every rule that is
5 directed to us, and Mr. Bishop's statement is just plain
6 erroneous that we've not. I think that's all I have to
7 say at this point.

8 CHAIRMAN DOUGLAS: Thank you, Mr. Levy. And I
9 guess I have one more question for you, Mr. Bishop, and
10 that is, do you recall that we offered to hear the
11 protest if Western Riverside would drop the lawsuit -
12 long, long, long ago?

13 MR. BISHOP: Forgive me, I'm trying to think
14 back. Perhaps, vaguely.

15 MR. LEVY: Precise, we offered to pay DGS -

16 CHAIRMAN DOUGLAS: Yes.

17 MR. LEVY: -- to hear the protest for the
18 benefit of WRCOG's claim that they believed they were
19 unfairly disqualified, so to end their need to spend
20 money on litigation, we offered them that we would pay
21 DGS, even though they're not required, or don't have
22 authority under 10345 to hear a protest, we offered to
23 pay them to do so, to settle the lawsuit.

24 CHAIRMAN DOUGLAS: Thank you, Mr. Levy. Other
25 questions, Commissioners? I think we're out of

1 questions, Mr. Bishop. Thank you for being here.

2 MR. BISHOP: Thank you very much for you time.

3 I appreciate it.

4 CHAIRMAN DOUGLAS: All right, I'm going to

5 other speakers in the room, and then I'll go to the

6 phone. Martha Alvarez, an Analyst for CAEATFA.

7 MS. ALVAREZ: Good morning, Martha Alvarez on
8 behalf of the California Alternative Energy and Advance
9 Transportation and Financing Authority within the
10 Treasurer's Office. I'm here on behalf of CAEATFA to
11 express our strong support for the Energy Upgrade
12 California Program. We believe that this statewide
13 portal will be very beneficial to consumers, both in the
14 residential and commercial sector, for them to have a
15 one-stop-shop of what financing products are available to
16 them. We look forward to working with the Local
17 Government Commission and any other stakeholders in this
18 statewide program. Thank you.

19 CHAIRMAN DOUGLAS: Thank you, Ms. Alvarez, and
20 Commissioners, you may know, or you certainly do know,
21 that we as the Commission through my office, the PUC
22 through the President of the PUC, the State Controller's
23 Office, the Department of Finance, and the State
24 Treasurer, of course, all have the privilege of directing
25 CAEATFA and serving on the Board, and that's an

1 organization that is really coming into its own, or it's
2 a sub-unit of the Treasurer's Office, but one that is
3 really coming into its own recently with Energy Upgrade
4 California, and also with the SB 71 sales tax exemption,
5 the \$50 million of PACE money - or renewable trust fund
6 funding for PACE - that CAEATFA is now administering,
7 that I think has a lot of potential for potentially
8 marrying up to the Energy Upgrade California, and in a
9 number of other programs. The Treasurer's Office has
10 been an extraordinary partner for the Energy Commission,
11 and I think it's great that we have somebody of their
12 stature doing this statewide financing portal. I think
13 it will be a benefit to everyone in the State, and it's a
14 program that has tremendous potential both on the
15 residential side, and also on the commercial side. But
16 I'm pleased at how excited they are to do the work. So,
17 thank you, Ms. Alvarez. Kate Meis, if I've said your
18 name right, Local Government Commission?

19 MS. MEIS: Meis.

20 CHAIRMAN DOUGLAS: Meis, sorry.

21 MS. MEIS: Okay. Good morning, Chair,
22 Commissioners. I'm Kate Meis, the Director of Climate
23 Change and Energy Programs at the Local Government
24 Commission. Thank you for the opportunity to be here
25 today and provide comments. LGC is really excited to be

1 a part of this groundbreaking alliance. The breadth of
2 this collaboration and the resources involved in this
3 umbrella program is unprecedented and we really believe
4 it will provide extensive benefits across the state. By
5 promoting and financing energy efficiency and renewable
6 energy projects, Energy Upgrade California will help
7 cities and counties to meet state energy and climate
8 change goals. It will stimulate market demand and create
9 new local jobs at a time when cities and counties are
10 really hurting. Local governments are trying to do their
11 part to reduce energy use and greenhouse gas emissions
12 with limited budgets and resources. Programs like this
13 are really vital to support their efforts and we really
14 do believe that there is urgency in getting this program
15 rolled out, and our members are really anxious to see the
16 resources on the ground. LGC brings a lot of experience
17 in working with local governments to promote energy
18 efficiency and renewable energy. We have an extensive
19 network of local governments who are on the ground
20 implementing cutting edge energy programs that serve as
21 the template for the rest of the state and for the rest
22 of the nation. Additionally, as part of the Statewide
23 Energy Efficiency Collaborative, with the four investor-
24 owned utilities, ICLIE, and the Institute for Local
25 Government we are well positioned to build off of that

1 effort to provide a foundation for this project and to
2 really add additional value, we believe, to this effort.
3 We appreciate your commitment to this program and we hope
4 that there won't be any further delay in getting these
5 resources rolled out, they're really needed on the
6 ground, and there's a lot of support for this program,
7 and we really appreciate all your efforts. Thank you.

8 CHAIRMAN DOUGLAS: Thank you, Ms. Meis. Is
9 there anybody else in the room who has public comment,
10 who would like to speak on this item? All right, if
11 there is nobody else in the room, I'm going to go to the
12 people on the phone and what I get is a list of everybody
13 who identifies themselves as being on the phone, and so,
14 it's not necessarily the case that everybody who is on
15 the phone and has identified themselves wants to speak,
16 but the only way I can do this is to go through the list
17 of people on the phone. Omar Pena? Are you on the
18 phone? Would you like to speak? I apologize in advance
19 for any mispronunciations of names. All right, I'm going
20 to skip Omar Pena. Liz Yager, are you on the phone?
21 Okay, Rich Chen?

22 MR. CHEN: Here. Good morning, Commissioners.
23 This is Rich Chen from the City and County of San
24 Francisco. Thanks for the opportunity to speak to this
25 item again. I will be brief. We in San Francisco

1 launched our residential PACE Program, Green Finance
2 S.F., in April, a few weeks before FHFA and Fannie and
3 Freddie came down on PACE programs. Our program did
4 integrate the Department of Energy's best practices on
5 PACE with full integration of the loading order to
6 maximize energy efficiency benefits and quality assurance
7 of project contractors. We're very excited about the
8 Energy Upgrade California program, as delineated. I
9 think the State is ready to leverage millions of dollars
10 in local Energy Efficiency Conservation Block Grants and
11 other ARRA funds, and San Francisco is included in that,
12 and also, more importantly, potentially leveraging many
13 millions more in private investment and we're looking
14 forward to getting implementation going on this key
15 aspect of California's greenhouse gas reduction plan, as
16 you get California's retrofit economy going, and we urge
17 swift action to approve this contract. Thank you.

18 CHAIRMAN DOUGLAS: Thank you, Mr. Chen. I
19 understand that our lines weren't open, so I am going to
20 again call Omar Pena.

21 MR. PENA: Here.

22 CHAIRMAN DOUGLAS: Here. Go ahead, please.

23 MR. PENA: Good morning, Commission. This is
24 Omar Pena with the Marin County Community Development
25 Agency. The County of Marin supports the approval of the

1 contract with the Local Government Commission to support
2 Energy Upgrade California. Once implemented, we feel
3 this program will significantly improve the potential for
4 energy efficiency retrofits within our county and
5 throughout the entire State, while providing much needed
6 work for our contractors. Thank you.

7 CHAIRMAN DOUGLAS: Thank you, Mr. Pena. Liz
8 Yager?

9 MS. YAGER: Yes. Can you hear me now?

10 CHAIRMAN DOUGLAS: Absolutely.

11 MS. YAGER: Okay. This is Liz Yager. I'm the
12 Program Manager for the Sonoma County Energy Independence
13 Program in Sonoma County, California. And we want to
14 offer our strong support for Energy Upgrade California.
15 We actually have an active PACE program, commercial and
16 residential, here in Sonoma County, with actually having
17 completed over 1,100 projects and disbursing over \$36
18 million to both commercial and residential projects, and
19 are looking forward to Energy Upgrade California taking
20 this new process and these kinds of programs to the next
21 level, with the audits and the offering of the statewide
22 web portal, and the toolkit for expanding this to other
23 municipalities throughout the State of California. As
24 far as the sense of urgency, the one point I would like
25 to make is that, with our program actually being in

1 operation, that the contractor community has grown to
2 rely on this and the alternative financing that hopefully
3 will be offered to Energy Upgrade California as the
4 driving force in their continuing jobs, and keeping those
5 jobs created. Thank you for this opportunity. We
6 support you.

7 CHAIRMAN DOUGLAS: Thank you, Ms. Yager. Shawn
8 Thompson.

9 MS. THOMPSON: I'm here. Can you hear me?

10 CHAIRMAN DOUGLAS: Yes.

11 MS. THOMPSON: Good morning, Chair and
12 Commissioners. Thank you for this opportunity again.
13 I'm with the City of Irvine. First of all, I would like
14 to tell you that I share WRCOG's disappointment on the
15 distribution of funding among Northern, Central and
16 Southern California cities. The City of Irvine had
17 dedicated half of its EECEBG funds to set up some PACE
18 program, and it did apply to PON 401 for \$2 million to
19 help fund that program. We weren't successful, but the
20 nail in the coffin, of course, was the FHA announcement.
21 We scrambled to readjust our EECEBG funds and we are no
22 longer pursuing a PACE program in any form. I do want
23 to, however, encourage you to approve the contract for
24 the Local Government Commission. I believe that this is
25 an opportunity we haven't had for a very long time and

1 there are three elements of that contract that are really
2 important to me, the unified approach by the utilities is
3 unprecedented, and we are very happy to see that, the
4 consistency that it gives the contractors, the trade
5 associations, and the auditors, is going to be very good
6 for PACE in the future, the consistent message that it
7 gives the public is also essential, and it will provide
8 the foundation for residential PACE in the future, I
9 believe, and I think that we will, at least, probably not
10 at the city level, but at a county level participate in
11 PACE if the FHA issue has been resolved. Lastly, the
12 economies of scale that this program allows in the
13 financing sector will actually be very very helpful for
14 the programs in the future. So, again, thank you very
15 much for this opportunity and I do want to encourage you
16 to approve the contract for the Local Government
17 Commission. Thank you.

18 CHAIRMAN DOUGLAS: Thank you, Ms. Thompson, and
19 thanks for speaking to us today. Jeri Gill?

20 MS. GILL: Yes, I'm here.

21 CHAIRMAN DOUGLAS: Please proceed.

22 MS. GILL: Again, Jeri Gill. I am the CEO of
23 Sustainable Napa County in Napa County, and we are also
24 the local government partner for the Napa County Energy
25 Watch Program, so we are on the ground every day working

1 with municipalities on their own operations, commercial
2 and small businesses, local nonprofits, residents,
3 schools, on bringing energy and water efficiency programs
4 to them. And we're also at the same time, as an
5 organization working with our local government on
6 policies that support this, for example, high performance
7 building ordinances, we are working on the next phases of
8 those renovations and remodels which would really really
9 benefit from the support that Energy Upgrade California
10 can bring for people who otherwise would not be able to
11 retrofit their homes and their businesses. Also, we're
12 working with governments on climate action planning and
13 greenhouse gas emission targets, I mean, the Local
14 Workforce Development piece, I really can't strongly
15 encourage you enough to support the contract today. And
16 I know that, while I can appreciate the position of
17 Western Riverside, I guess I'm just regretful that no one
18 in California would be receiving this funding, or the
19 benefits from the funding, if this is continued to delay
20 and I can't underscore the sense of urgency enough, we
21 need this in our communities yesterday, and so, because
22 we are quite without a PACE program, thanks to Fannie and
23 Freddie, this is a very reasonable, if not exactly
24 identical replacement, and we are very much looking
25 forward to it here in Napa County. It is unfortunate

1 that we are fighting about this in the courts, and the
2 actions of a petulant child, when what we really need to
3 be doing is working together to figure out how we can
4 leverage our limited resources and benefit everyone in
5 the State, not just a particular region, so speaking for
6 our organization, we strongly support this contract
7 today.

8 CHAIRMAN DOUGLAS: Thank you, Ms. Gill.
9 Barbara Spoonhour, are you - would you like to speak?

10 MS. SPOONHOUR: Yes, I am.

11 CHAIRMAN DOUGLAS: Please proceed.

12 MS. SPOONHOUR: Good morning, Madam Chair,
13 Commissioners, my name is Barbara Spoonhour. I'm the
14 Environmental Programs Manager for the Western Riverside
15 Council of Governments, WRCOG for short. I'd like to
16 provide comments to the CEC's backup materials for Agenda
17 Item 3, and I want to thank you for the opportunity to
18 speak today. To begin, the CEC continues to state that
19 the Department of General Services has determined WRCOG's
20 petition as being untimely. WRCOG did provide third-
21 party phone records to demonstrate to the DGS the WRCOG
22 [inaudible] [1:06] on time, in March. However, the DGS
23 did not accept this third-party information and WRCOG was
24 forced to go to court to have our petition heard. The
25 Riverside Court, an impartial third-party, found in favor

1 of WRCOG's documentation twice in April and May. WRCOG
2 had believed that a resolution had been determined when,
3 on April 27th, the Attorney General's Office submitted a
4 settlement to have DGS hear WRCOG's protest. However, at
5 the last minute, it withdrew its offer. Instead, the DGS
6 hearing WRCOG's protest as ordered by the Riverside
7 Court, filed an appeal with the Appellate Court in June,
8 thus dragging out the process. While the FHFA issue
9 occurred on July 6th, CEC has painted WRCOG as holding up
10 the process to award these funds through press releases
11 and with phone calls to jurisdictions throughout the
12 State, making WRCOG look like the bad guy, when in fact
13 the DGS could have heard the protest any time in March,
14 April, May, or June, and the issue would have been
15 settled. The CEC's memo to the Commissioner states that
16 WRCOG has received notices of the July 28th and August 6th
17 meeting. I, however, have not received any notices and
18 respectfully request them from your staff if I could find
19 out who in our agency was notified. WRCOG continues to
20 monitor CEC's website and that's how we did find out
21 about both meetings. The subject matter that was
22 presented was not seen as anything to object to because
23 the CEC staff presented a concept for a completely new
24 program and didn't have any specifics available. In
25 regards to the September 22nd, meeting, backup materials

1 were posted to the CEC's website late on the 21st.
2 Neither WRCOG, nor anyone in public had sufficient
3 opportunity to review the materials. Rick Bishop, the
4 Executive Director, did leave a message for Panama
5 Bartholomy approximately 15 minutes before the Business
6 Meeting to express WRCOG did not have adequate time to
7 review the materials and that we wanted to know how the
8 contracts differed from the original contracts. Later
9 that afternoon, Rick Bishop, Panama Bartholomy, Chair
10 Douglas, and myself, had a conference call to discuss the
11 CEC's actions and requested time to review the documents,
12 and then pose questions and concerns, if necessary. As
13 part of the phone call and several e-mails, the CEC
14 agreed to give WRCOG time to review the documents and
15 provide comments or concerns. In fact, Panama succinctly
16 stated he wanted to see if you would like to follow-up
17 on how we can move forward together. Upon reviewing the
18 proposal, WRCOG found too many similarities to the
19 original proposal and did respond to the CEC on October
20 5th with their concerns. Again, the CEC staff references
21 noticed meeting to WRCOG and, again, I have not received
22 any notices. I respectfully request to know from staff
23 who has been receiving those notices. We would like to
24 point out that Chair Douglas spoke to the DOE on October
25 19th and was informed that the October 21st deadline was

1 not a firm date, and that the DOE had no intentions of
2 taking back funds. Again, WRCOG has been painted as the
3 bad guy in holding up the CEC and costing the State
4 millions when, in fact, it is not true. The October 22nd
5 meeting references that there was no one in person or on
6 the phone at 10:00 a.m. I did try to call several times
7 and also tried to log into the meeting, but was not
8 successful. WRCOG did not find out about the meeting
9 until after 2:00 p.m. and actually it was through our
10 legal counsel. By the time I was able to log on, I was
11 unable - it was past the time to object to the CEC's
12 action -- in addition, to the Appellate Court's, which
13 was successfully filed with the Courts five days after
14 the State Order, Chair Douglas states, "From the
15 Commission's perspective, this new information relaxes
16 somewhat the urgency with the immediate releases needed,
17 as the passing of the October 21st deadline will not
18 immediately trigger withdrawals of this award." With
19 this statement, the CEC should not have needed to call
20 for immediate action on the 21st. I would like to make
21 everyone aware that the Appellate Court has made a
22 decision based on inaccurate information since the CEC
23 did not file Chair Douglas' statement. The remainder of
24 comments to the CEC memo relates to the violation of the
25 Bagley-Keene Act, and I will leave those comments up to

1 our legal counsel, which were hand delivered comments
2 this morning to your meeting. Again, WRCOG is requesting
3 that the Commissioners take no action today and wait
4 until the courts have finished its review of cases. In
5 addition, as stated in legal counsel's letter, we request
6 that the CEC rescind its illegal and unagendized October
7 21st action approving the contract. Thank you.

8 CHAIRMAN DOUGLAS: Thank you, Ms. Spoonhour, I
9 am glad you were able to call and speak today. I think
10 Mr. Levy would like to respond to one of your remarks, or
11 maybe more than one.

12 MR. LEVY: I just wanted to note for the record
13 that I've just been handed the telephone conference call
14 records from our operator for October 20th, 2010, and also
15 for October 21st, 2010 at 1:30 p.m., and Ms. Spoonhour is
16 identified as being on the telephone on both occasions.

17 CHAIRMAN DOUGLAS: Thank you, Mr. Levy. I
18 think we've covered this ground. Did Ms. Spoonhour's
19 comments raise any issues that Commissioners would like
20 to ask questions about that we haven't already discussed
21 during Mr. Bishop's remarks?

22 COMMISSIONER BYRON: For counsel. Mr. Levy,
23 did we do anything to improperly notice or fail to do
24 something in the conduct of the business meeting for
25 October 20th and 21st?

1 MR. LEVY: So we first noticed the agenda on, I
2 believe it was October 8th for the October 20th business
3 meeting, and on October 13th, we learned that the CSCDA,
4 largely in deference to the Western Riverside Council of
5 Governments, whose members are also members of CSCDA,
6 that they were not going to go forward and accept the
7 award that we had given to the CSCDA back on September
8 22nd, and that created an urgent situation in view of the
9 October 21st contractual deadline because, all of a
10 sudden, we had nobody lined up to take the funds. So, we
11 had the obligation to have all of those funds obligated
12 in Federal parlance, or encumbered by October 21st, and
13 upon the passage of October 21st, the right in the United
14 States Department of Energy to take back those funds
15 would have vested, and as several Commissioners have
16 noted, we have been consistently cajoled, threatened, and
17 pressed upon in other ways, by a variety of State and
18 Federal officials about the need to get the Stimulus
19 money out - not just by those deadlines, but sooner than
20 the deadlines in some cases under the threat of having
21 those funds that are not yet encumbered withdrawn even
22 before the deadlines. What we know is that legally on
23 October 21st, had we not obligated the funds, DOE's right
24 to take back the money would have vested. So we noticed
25 under 11125.3 of the Bagley-Keene Act, the Government

1 Code, three add-on agenda items to our preexisting
2 October 20th Business Meeting, and it's perfectly
3 appropriate to do that. We noticed them up as soon as we
4 had notice that we needed to, that there was an urgency,
5 and those three items were, 1) for the LGC contract, and
6 two other items, which were back-up plans in case the
7 Commission declined to award the money to the LGC. Then,
8 the Western Riverside Council of Governments filed its
9 claims regarding contempt in the Superior Court, and
10 obtained a temporary restraining order barring us from
11 acting. We filed our Petition for Writ of Mandate on
12 October 18th in the Court of Appeal, and at the time of
13 the business meeting on October 20th, we had not yet heard
14 anything from the Court of Appeal, and so, consistent
15 with Bagley-Keene, the Commission continued the hearing
16 on those items, on those three items, until the 21st of
17 October, and at the same time, adjourned the business
18 meeting until the next day at 10:00 a.m. in hopes that
19 the Court of Appeal would issue an Order that would allow
20 the Commission to move forward. The Court of Appeal did
21 that late in the day on October 20th. We learned about it
22 approximately 10:00, the time of the Business Meeting,
23 and so, therefore, the Chair issued an Order continuing
24 the Business Meeting, which is her right under our
25 regulations, until 2:00, so that we could provide as much

1 public notice as possible, to ensure that anybody
2 interested in the item would know that there was an Order
3 that allowed the Commission to act, and also to make sure
4 that as many people as possible could participate, rather
5 than having the Business Meeting immediately at 10:00
6 with everybody believing that there was a restraining
7 order. That was consistent with the Bagley-Keene Act,
8 too. The first thing that you had to do, then, on the
9 21st, which was the second day of the October 20th business
10 meeting, was to determine under 11125.3 whether or not a
11 need for immediate action had occurred, that came to the
12 Commission's attention after the agenda item was noticed.
13 You made that vote by a 4:0 vote, which was unanimous of
14 the four Commissioners who were there, and then you
15 agendized those items, and then you properly heard them.
16 It wasn't until after that date that we received claims
17 from Western Riverside that they believed that meeting
18 violated the Bagley-Keene Act. Western Riverside Council
19 of Governments demanded that we correct or cure the
20 violation - the alleged violation - and then they
21 demanded that we rescind the money, and we decided,
22 again, in the name of open government, to notice up this
23 meeting so that you could reconsider, and while it's
24 styled as a ratification, the Commission is perfectly at
25 liberty to cancel, to modify, to award, to ratify, to do

1 virtually any number of items that is a logical outgrowth
2 out of the agenda item today. I also will point out to
3 the Commission that, last week, we actually did receive a
4 lawsuit challenging your open meeting compliance by
5 Western Riverside Council of Governments. And, again,
6 styling the Chairman's statements to the Court of Appeal
7 as demonstrating somehow that there's no contractual
8 deadline for us to obligate the funds, and again
9 mischaracterizing a variety of the facts of the fact that
10 had been transpired along the way, that you've heard
11 again today. So, we are in the process of reviewing that
12 lawsuit to see which way to go. We don't believe that
13 there's a court anywhere in California that will view our
14 process that we took on October 20th and 21st, to not be at
15 least in substantial compliance with the Bagley-Keene
16 Act; nevertheless, again, for the interest of open and
17 public participation, we wanted the Commission to
18 reconsider this item on 10 days' notice with the full
19 opportunity to be heard by anybody.

20 COMMISSIONER BYRON: Counselor, that was the
21 longest answer to a yes/no question I have ever heard,
22 but thank you very much for your complete answer. Just a
23 couple more quick questions. Do we routinely provide
24 phone access to all of our business meetings?

25 MR. LEVY: Yes.

1 COMMISSIONER BYRON: Does the Bagley-Keene Open
2 Meeting Act require that we provide phone access to these
3 meetings?

4 MR. LEVY: No.

5 COMMISSIONER BYRON: Thank you.

6 CHAIRMAN DOUGLAS: Mr. Bartholomy and Ms.
7 Gould, both Mr. Bishop and Ms. Spoonhour have relied on
8 and asserted similarities in the PON 401 contracts and
9 the Energy Upgrade California contract in, I think,
10 trying to explain why they still are challenging us in
11 the courts, and I don't hear them saying that the
12 contracts are exactly the same, but I do hear them
13 potentially underplaying, or not entirely understanding
14 how different they actually are. And I wonder if one or
15 both of you could speak to some of the critical
16 differences between the approach in Energy Upgrade
17 California and the roles of the participating parties,
18 which is really the entire State, but in Energy Upgrade
19 California, vs. what was contemplated in PON 401? And I
20 never remember the rest of the number either, but the
21 original PACE solicitation.

22 MR. BARTHOLOMY: Sure. I'll start, and then
23 Ms. Gould can finish, fill in anything that I miss, or
24 anything, she'd like to bring to it, as well. The
25 original 401 solicitation, as I mentioned in my earlier

1 comments, would have awarded about 23 counties and around
2 184 cities with the opportunity to create the foundation,
3 the infrastructure, and the roll-out first priority lien,
4 PACE jurisdictions, PACE districts within their
5 communities. There was a wide variety of implementation
6 based upon the applications that were received, and so
7 you had a very different approach on the North Coast than
8 you would have had down in the LA area, for instance.
9 Energy Upgrade California represented an opportunity for
10 us to take a step back and look at a much wider part of
11 the retrofit market. PACE districts and PACE financing
12 was always going to be somewhat limited as far as which
13 part of the market it addressed; Energy Upgrade
14 California's financing clearinghouse is going to allow us
15 to address a much more significant part of the market,
16 including hard to reach areas such as renters and dealing
17 with the renter/owner disincentives around energy
18 efficiency retrofits. Energy Upgrade California, instead
19 of being a disparate group of five different programs
20 rolling out across the State is one comprehensive program
21 rolled out, all with common program components, common
22 program metrics, all being focused on statewide
23 consistency, while respecting and building upon local
24 ingenuity and innovation that comes out of those areas.
25 The PACE programs that are funded in the four communities

1 under Energy Upgrade California are focused only on
2 overcoming the Federal barriers that have been put in
3 place by FHFA and the Office of Currency Controller. In
4 the original 401 solicitation, there is a lot of
5 innovation about the variety of ways and the additional
6 program elements that could be wrapped around a first
7 priority lien mortgage program under PACE. Under this
8 program, it's very focused on just how to overcome the
9 Federal barriers, how to develop that into a toolkit and
10 outreach to other communities across the area, and so
11 it's a completely different approach under Energy Upgrade
12 California than under the 401 solicitation. I would ask
13 Ms. Gould if she would like to add anything to that.

14 MS. GOULD: Yes. In the 401 awards, it was
15 going to about 23 counties for various programs. This
16 program is a singular vision, it is something that is
17 statewide. It's a collaboration among the PUC,
18 ourselves, the larger Muni's, the IOUs, and local
19 governments across the state. There are various
20 statewide portions of this, the financing clearinghouses
21 available to homeowners and commercial building owners
22 statewide. The scholarships are available statewide, the
23 web portal, which is an integrated web portal where you
24 can track your project, you can apply for funds, you can
25 look for qualified contractors, that is available

1 statewide, and then we looked at the - as Panama was
2 mentioning earlier, the counties that have shown real
3 leadership in the energy retrofit area. And those
4 counties are getting additional benefits, and so that is
5 available to 30 counties. So, we really expanded our
6 focus for this program, far more than in the 401 awards.

7 CHAIRMAN DOUGLAS: And, Ms. Gould, when you
8 mentioned the counties that get extra benefit, obviously,
9 those are the Program Plus counties, including Riverside
10 County?

11 MS. GOULD: Yes, Riverside County is included.

12 CHAIRMAN DOUGLAS: All right, thank you. If
13 there are no more questions of Ms. Spoonhour, I will go
14 to the next speaker. Allan Krauter, are you on the
15 phone? Go on.

16 MR. KRAUTER: Yes, I am. Can you hear me?

17 CHAIRMAN DOUGLAS: Yes, please speak.

18 MR. KRAUTER: Yes. This is Allan Krauter with
19 the Kern County Administrative Office. Everything that
20 Ms. Meis at the Local Government Commission has said
21 regarding the need to get this program on the ground as
22 soon as possible holds true in Kern County. We have 15
23 percent unemployment, we are in an ozone non-attainment
24 area, we have ambitious greenhouse gas reduction goals to
25 try to reach, and our median income is less than forty

1 grand a year. That doesn't leave a lot of spare income
2 for people to do this on their own. If we don't get this
3 going soon, it is certainly not going to get done here.
4 We need this help. We urge you to approve this contract.

5 CHAIRMAN DOUGLAS: Thank you, Mr. Krauter.
6 Charlene Carlson.

7 MS. CARLSON: Good morning, Commissioners.
8 This is Charlene Carlson and I'm the Community Energy
9 Program Manager for Santa Clara County. I want to
10 strongly support the Commission's approval and the
11 direction you're going with Energy Upgrade California.
12 In this county, we are actively rolling out a marketing
13 campaign in conjunction with a grant we have with the
14 Association of Bay Area Governments, and the incentives
15 and rebates additionally will be very critical to our
16 efforts in doing that. Also, we're very concerned about
17 the workforce development aspects, we need to put our
18 contractors back to work in this county, and that part is
19 going to be very helpful in reaching that goal, as well.
20 We're excited about the collaboration and the leveraging
21 of dollars and the comprehensiveness of Energy Upgrade
22 California, and we urge you to continue and to approve
23 the contract. Thank you.

24 CHAIRMAN DOUGLAS: Thank you very much. Now,
25 Cruz Ramos, are you on the phone?

1 MS. RAMOS: Yes, I am. This is Cruz Ramos,
2 City Manager for the City of San Joaquin. I want to
3 strongly stress the need for this type of program to be
4 approved and the contract to be awarded to the Local
5 Government Commission. Let me say that the City of San
6 Joaquin is one of the smallest and poorest cities in the
7 State of California. Our unemployment rate currently is
8 47 percent, three-quarters of our community meets or
9 exceeds the Federal guidelines for poverty. There are
10 households that don't even have subflooring or just a
11 floor, period, in their homes. We also were fortunate to
12 have been approved by the CPUC for a Local Government
13 Partnership and we are working in collaboration with
14 PG&E, the County, and the Local Government Commission.
15 We see this as a need not only to meet the guidelines for
16 the climate change, but also to help our families survive
17 these tough economic times. But we also see it as an
18 opportunity for job creation, workforce development. I
19 think it is imperative for the Commission to look at the
20 need that exists in communities and be very realistic
21 about the fact that small communities, probably as well
22 as our large urban neighbors, have a very very strong
23 need because of limited resources. Thank you.

24 CHAIRMAN DOUGLAS: Thank you, Ms. Ramos.
25 Thanks for being on the line and for speaking today.

1 Now, Jenna Gulager, you're on the phone. You actually
2 asked to speak on Item 7B, but it's really the same
3 topic. Is this the topic you'd like to speak on, Jenna
4 Gulager? Oh, she's disconnected, all right. I just got
5 one more card, or one more note, for Josephine Fleming.
6 Are you on the phone? Oh, that's for 10, I'm sorry,
7 wrong number. All right, Commissioners, is there anyone
8 else on the phone whose name I did not read, who would
9 like to speak? Is there anyone else? I'm just repeating
10 myself.

11 MS. McBRIDE: Yes, may I interject just one
12 more comment from Santa Clara County?

13 CHAIRMAN DOUGLAS: Please.

14 MS. McBRIDE: Yes, my name is Demetra McBride.
15 I've actually just started with the Office of
16 Sustainability today. This has been an interesting
17 Baptism. I just wanted to note that, in addition to all
18 the other comments that have been made, and I certainly
19 re-double and re-stress those, with the need to go ahead
20 and support the adoption of this contract as soon as
21 possible, is the fact that, with regard to the urgency.
22 Your attorney, Mr. Levy, as I believe his name is
23 pronounced, made the case for the fact that the October
24 21st date is the contractual obligation, in terms of
25 transactional law. My understanding is that no oral

1 conversation for there being less urgency or any oral
2 indication that there would be any kind of deviation from
3 that date isn't binding in transactional law. There is a
4 social urgency here. There is an environmental urgency.
5 There is a financial urgency, and certainly, the possible
6 and very real jeopardy of losing this money. So, again,
7 we just want to add that the legal argument for there
8 being an actual urgency and the conversation, this
9 somewhat anecdotal assessment, that there isn't - we
10 don't find really compelling. We also, with due
11 deference to the Petitioner who came before you today,
12 and which was articulated by Mr. Bishop so eloquently, is
13 that we do sympathize with them, but understand that they
14 are entering into other venues of resolution of this,
15 etc., and being potential settlement, so we hope that the
16 Petitioner will have other venues to make itself whole,
17 or to compensate itself for any loss it feels it may have
18 suffered. Thank you.

19 CHAIRMAN DOUGLAS: Thank you for that comment.
20 I'll just ask one more time, is there anyone else on the
21 phone who would like to speak?

22 MR. BUTT: Yes, I would.

23 CHAIRMAN DOUGLAS: I heard two people.

24 MR. BUTT: Yes, Tom Butt.

25 CHAIRMAN DOUGLAS: All right, why don't you

1 start, then we'll hear from the second person. Please
2 proceed. And if you could say your name more slowly for
3 the record, I didn't hear it.

4 MR. BUTT: Okay, the name is Tom Butt, spelled
5 B-u-t-t. I am a City Council member in Richmond and I
6 also am Chair of the Local Government Commission, but
7 I'll speak first about Richmond. Richmond supports
8 Energy Upgrade California and supports awarding this
9 contract to the Local Government Commission because it
10 will promote and finance energy efficiency and renewable
11 energy projects for homes and businesses in Richmond. It
12 will also stimulate market demand and create new local
13 jobs. I was going to tell you that our unemployment rate
14 is twice the state's average; I thought that was
15 compelling before I heard the person from San Joaquin
16 County speak with 47. But, anyway, we think we do have
17 an unemployment problem. Richmond is trying to do its
18 part to meet state energy and climate change goals, but
19 we have a limited budget and, in the last couple years,
20 particularly with the State takeaways, it's been a real
21 challenge to do it. However, we have achieved amazing
22 things; we have the highest per capita use of solar
23 voltaic of any city in the State right now. So, it's
24 vital to see this rolled out. Second of all, I mentioned
25 that I am Chair of the Local Government Commission

1 currently, and I just want to tell you that the staff at
2 the Commission is highly capable and experienced. They
3 have decades of successful experience working with Local
4 Government Agencies, and I have no doubt that they can
5 manage this program very very successfully.

6 CHAIRMAN DOUGLAS: Thank you, Mr. Butt, and I
7 should say that we really look forward to working with
8 Local Government Commission and we think very highly of
9 that organization, so thanks for your comments and your
10 work on Local Government Commission. Before we go to the
11 other person who spoke up, for the purpose of a complete
12 record, one of our speakers just now, Santa Clara County,
13 I believe, Demetra, are you still here?

14 MS. McBRIDE: Yes.

15 CHAIRMAN DOUGLAS: Could you tell us your last
16 name, please?

17 MS. McBRIDE: Oh, I'm sorry, McBride.

18 CHAIRMAN DOUGLAS: McBride, M-c-B-r-i-d-e? Is
19 that correct?

20 MS. McBRIDE: Yes, thank you.

21 CHAIRMAN DOUGLAS: Oh, I'm sorry, could you
22 spell Demetra?

23 MS. McBRIDE: D-e-m-e-t-r-a.

24 CHAIRMAN DOUGLAS: Thank you, Ms. McBride. I
25 heard somebody else speaking up. Is there another member

1 of the public who would like to speak?

2 MR. EHRENKRANZ: Yes. I had to step away from
3 the telephone, I'm not sure where you are on the agenda.
4 My name is Jordan Ehrenkranz and I'm City Councilman from
5 Canyon Lake.

6 CHAIRMAN DOUGLAS: We're on Item 3. And could
7 I ask you to repeat your name more slowly for us?

8 MR. EHRENKRANZ: First name is Jordan, J-o-r-d-
9 a-n, last name is Ehrenkranz, E-h-r-e-n-k-r-a-n-z.

10 CHAIRMAN DOUGLAS: Mr. Ehrenkranz, we are on
11 Item 3 and it's the Energy Upgrade California contract
12 with the Local Government Commission. Is this the item
13 you'd like to speak on?

14 MR. EHRENKRANZ: Yes, I would.

15 CHAIRMAN DOUGLAS: Please proceed.

16 MR. EHRENKRANZ: Pardon me?

17 CHAIRMAN DOUGLAS: Please proceed, then. We're
18 doing public comment for Item 3 and you're up.

19 MR. EHRENKRANZ: Okay, well, I would like to
20 comment that I certainly would like to request that the
21 award of these contracts be delayed at this particular
22 time. We are a very small city of about 11,000 people,
23 and not quite as severely unemployed as some of the
24 others I've heard. We have about 9.5 percent
25 unemployment, but all we would really - and Canyon Lake

1 is a member of WRCOG, so obviously you can see why I'm
2 speaking in regards to the way that I am. All WRCOG has
3 ever wanted was a fair and honest chance to secure
4 municipal financing program funds. The CEC really should
5 take very seriously the task of ensuring that the Federal
6 Stimulus funds are distributed equitably across all
7 portions of the State. So far, it seems that we've heard
8 mostly from Northern California, I don't know if I'm the
9 first Southern Californian to speak or not, but you know,
10 these dollars are needed to help residents and businesses
11 in our communities. Even though our unemployment rates
12 are not quite as high as others I heard, it sure would
13 help us reduce our reliance on unsustainable energy
14 across the whole city. Once again, I'll repeat, we're an
15 all electric city and we've been working very hard trying
16 to get relief with our electric, and this program is
17 hopefully going to be put in place, is certainly going to
18 help us. So, once again, I would request that we delay
19 the awarding of these contracts. And I thank you for the
20 opportunity to speak.

21 CHAIRMAN DOUGLAS: Mr. Ehrenkranz, thank you
22 for being on the phone and speaking to us, and I'd
23 certainly like to tell you that we take your comments
24 very seriously and we, as the Energy Commission, and as a
25 statewide body, certainly have a responsibility to make

1 sure that the way that we administer programs benefits
2 all parts of the state. You may not have been on the
3 line when we spoke briefly about some of the broader
4 impact of the programs and some of the efforts that we
5 actually undertook to ensure that we did get broad
6 statewide representation of programs, of retrofit
7 programs, but also of other programs in the Stimulus Act
8 that we administered, for example, the Block Grant
9 Program. I take very seriously the concerns of Western
10 Riverside, and I want to make sure that Western Riverside
11 understands that we at the Energy Commission certainly do
12 have a statewide responsibility, and we take seriously
13 your needs, just as we do of others. We made Riverside a
14 Program Plus County in recognition of Riverside's
15 advances in this area, and Riverside's ability, we
16 believe, to compete successfully for the interest rate
17 reductions, the financing subsidies, and some of the
18 other benefits of Energy Upgrade California. And I
19 should also say that - and I'm almost surprised to find
20 myself saying this - that I do wish we had more money.
21 After suffering for a year and a half to allocate all of
22 the Recovery Act money by the deadline, I think we've
23 done good work, we've met the deadlines, we have provided
24 benefits throughout the State of California, but if we
25 did have another \$5 or \$10 or \$15 million, we could do so

1 much more, and there are regions that are not on the
2 phone that it would have been nice to have been able to
3 do more for in terms of the retrofit programs. The
4 retrofit programs have covered many of the major areas of
5 the state - Fresno and Kern County, Los Angeles County,
6 San Diego County, the Bay Area, Sacramento, we've got
7 retrofit programs going into far rural northern and
8 northeastern California, we've got programs in the Sierra
9 Nevada, we've got programs on the North Coast, but really
10 only in Sonoma, except for the Energy Upgrade California
11 Program, which reaches further. It would have been nice
12 to be able to do more with some of the regions in the
13 State that are not Los Angeles', but that are very
14 important. It would have been nice to be able to do more
15 in Orange County, it would have been nice to be able to
16 do more in the Central Coast, to be able to do more in
17 certainly the Inland Empire, to be able to do more in
18 some of the other regions - in the North Coast, frankly,
19 the North Coast initially was one of the winners in the
20 401 program, and so there was an award that would have
21 gone to many of the counties on the North Coast. And
22 when we canceled that solicitation and went forward with
23 Energy Upgrade California, we made those Counties Program
24 Plus numbers because they had the infrastructure and
25 they're able to do that, but we didn't give them a pilot

1 program, we didn't get them any special benefits. So, as
2 I sit here reflecting on what we've been able to do in
3 the area of residential retrofit and commercial retrofit,
4 I wish we could have reached out more in the North Coast
5 and in commercial retrofit. And maybe I'll ask Panama,
6 both Mr. Bartholomy and Ms. Gould, to speak to this, but
7 in the area of commercial retrofit, this is an area that
8 the actions of Fannie Mae and Freddie Mac have not
9 impacted as severely. This is an area where a number of
10 cities and counties across the state are prepared to move
11 forward and, certainly, if we had more funding and
12 commercial retrofit, there would be a number of entities
13 that would be ready, willing, and delighted to do more
14 commercial PACE programs. But I do think, and our staff
15 can maybe speak to this, too, I do think that the Energy
16 Upgrade California infrastructure that we're putting out
17 will benefit all of the cities and counties that want to
18 move forward with PACE programs. And let me just ask Mr.
19 Bartholomy and Ms. Gould to respond to those two
20 questions, and if you're on the phone and you still
21 haven't made comment and you'd like to, you'll have an
22 opportunity when they are done answering the question.

23 MR. BARTHOLOMY: Madam Chair, you are correct
24 that it's the opinion of experts, consultants in this
25 field, that the guidance from FHFA and the Office of

1 Currency Controller have left a pathway for commercial
2 PACE programs in California and across the nation, and an
3 opportunity for there still to be first priority lien
4 commercial assessments, as long as there is agreement
5 from the mortgage holder on the building. And so,
6 because of that, a pathway forward under Energy Upgrade
7 California, we're working with the City of LA, County of
8 San Francisco, and County of Placer, because they already
9 had their infrastructure in place to develop strategies
10 for how to develop a program on that path and be able to
11 meet those requirements. Again, those communities had
12 already developed the staffing, the technical, the legal,
13 and the financial expertise, they'd worked to develop and
14 bring on banks within their communities to help out with
15 this effort, and they've done some of the strategizing to
16 work on it. You are correct, we've been contacted by
17 probably somewhere between 10 to 15 other counties across
18 California with a significant interest in working on
19 commercial PACE programs, but because, as I stated
20 earlier, we're not interested with these funds, because
21 of the current state of the PACE market in developing
22 start-ups, or helping to develop infrastructure, what
23 we're interested in is how do you develop strategies to
24 be able to then be taken to other local governments, to
25 be able to begin their programs. And so that's what

1 we're funding under Energy Upgrade California. You're
2 absolutely right, if we had more money, there definitely
3 would be many more communities interested in rolling out
4 a commercial PACE program in California. Ms. Gould,
5 would you like to add anything?

6 MS. GOULD: Yes. And on the commercial PACE
7 pilot, the Clinton Climate Initiative is working with
8 those counties and with us to help put together that
9 replication intent. So, they'll be working as the
10 resources allow with other cities and counties to get
11 these measures that are being developed as part of our
12 commercial PACE program, to get these to work in other
13 counties.

14 CHAIRMAN DOUGLAS: Good, and the Clinton
15 Climate Initiative is obviously another great partner
16 that has come in with Energy Upgrade California, and I
17 certainly hope, and we expect, that rolling out more
18 commercial PACE pilots and being able to use ever more
19 effectively the infrastructure in Energy Upgrade
20 California for residential retrofits will be increasingly
21 the trend in California, and that we'll be able to open
22 up the statewide program on infrastructure and pathway
23 for communities to do that throughout the state. And I
24 also notice, or note that the incoming Governor, Jerry
25 Brown's energy and jobs platform has a very very

1 significant role for rolling out energy efficiency
2 retrofits, and so I certainly hope that the incoming
3 Administration will also place a very high priority on
4 ensuring that this statewide program is boosted in any
5 way possible. And there certainly are ways that it could
6 be bigger, and if we had more funding, we would certainly
7 make it bigger. Is there anyone else on the phone who
8 would like to speak, who has not spoken yet.

9 MR. GIRARD: Yes, Madam Chair.

10 CHAIRMAN DOUGLAS: I heard two voices, so we'll
11 call on you both, if somebody could start.

12 MS. FLEMING: Good morning, can you hear me?

13 CHAIRMAN DOUGLAS: Yes, please.

14 MS. FLEMING: Okay, my name is Jo Fleming.
15 Thank you, Chair, Commissioners, for this opportunity to
16 speak. I am a Co-Director of the Green Careers
17 Partnership and the Green Careers Partnership is composed
18 of Workforce Investment Boards, nonprofits, and community
19 colleges in the Tri-County region of the Monterey Bay
20 Area, and that area includes Santa Cruz County, Monterey
21 County, and San Benito County. Energy Upgrade California
22 is really a cornerstone of our Green Workforce
23 Development efforts. We have been participating in this
24 program for quite some time in various iterations. We've
25 been working hard toward making such a program successful

1 and creating growth in the green jobs market. We're
2 actively training and retooling people that are
3 desperately in need of jobs right now, and we think this
4 program will create those jobs. We are engaging local
5 employers in informing of what is most needed right now
6 is marketing and promotion, so that they can hire the
7 people that we are training. And we believe Energy
8 Upgrade California will undoubtedly include that
9 marketing and promotion that they indicate they need so
10 much. So, without this program, we feel that the past
11 year's worth of collaboration, work, and training, will
12 be for naught. So, we really hope that your Commission
13 will overcome these hurdles and approve the contract
14 necessary to implement Energy Upgrade California. Thank
15 you once again.

16 CHAIRMAN DOUGLAS: Thank you, Ms. Fleming.
17 Thank you for your work in workforce training, it's been
18 an incredibly important field and one that the Energy
19 Commission has been pleased to support because of the
20 importance. Let me just ask you, you are signed up to
21 speak also on Item 10. Do you still want to speak during
22 public comment?

23 MS. FLEMING: No, I'm sorry, that was an error.
24 I meant to speak at this time.

25 CHAIRMAN DOUGLAS: All right, thank you. Well,

1 I'm certainly glad you had the opportunity to do so. Let
2 me ask the next speaker on the phone to speak.

3 MR. GIRARD: Yes, this is Kirk Girard, K-i-r-k,
4 G-i-r-a-r-d, and I'm the Community Development Director
5 for the County of Humboldt. I'm also the Regional
6 Administrator for the North Coast Energy Independence
7 Program, and thank you, Madam Chair, for mentioning our
8 program earlier, and thank you for the opportunity to
9 speak. The North Coast Energy Independence Program is a
10 partnership between Sonoma, Lake, Mendocino, Humboldt,
11 Del Norte, Siskiyou, and Trinity Counties. And we did
12 take the original PACE solicitation opportunity and did
13 receive the second highest ranked proposal, and we're as
14 disappointed as anybody that the turn of events led to
15 the cancellation of that Opportunity Notice. We want to
16 applaud your Commission, the legal staff, Panama and
17 Angie, because we think, in the face of the turn of
18 events, you all were very innovative and very supportive
19 of the intent of those funds, and we think that, really,
20 we want to encourage you to proceed with the contract
21 with the Local Government Commission in the face of the
22 challenge from Western Riverside Council of Governments.
23 And we are relying on Energy Upgrade California and the
24 spending of these Stimulus funds for our own goals, and I
25 just want to reinforce your actions and underline the

1 importance to our region in getting our North Coast
2 Energy Independence Program off the ground. So, thank
3 you very much.

4 CHAIRMAN DOUGLAS: Thank you. Thank you for
5 speaking. I know that you were disappointed, as were all
6 of us, by the actions that we had to take as a result of
7 the Federal changes. Is there anybody else on the phone
8 who has not made a comment, who would like to speak?

9 MR. DeBAUN: Yes. My name is Steven DeBaun.
10 I'm the attorney for the Western Riverside Council of
11 Governments. I actually hadn't planned to address the
12 body today, allowing our staff and elected to do - but I
13 did want to address a couple of the points that were
14 raised regarding the compliance or lack thereof with the
15 Bagley-Keene Act that were addressed by Mr. Levy. First
16 of all, under the Bagley-Keene Act, in order to add an
17 item to the agenda, there is a requirement, and Mr. Levy
18 referred to this, that there is a requirement that there
19 be a finding of immediacy, and that finding needs to be
20 made by a two-thirds vote of the Board, that finding is
21 evidenced in the transcript, however, that finding needs
22 to be made based on facts that are presented to the
23 agency. In this case, we believe that the facts that
24 were presented by Mr. Levy are - were just simply not
25 accurate, or not full. If you look at the transcript,

1 the transcript indicates that Mr. Levy describes numerous
2 places during his presentation of immediacy, that there
3 was a deadline to act of October 21st. That - there is no
4 reference made to the conversation of the Department of
5 Energy, or any of the mitigating events that had
6 mitigated that deadline. We think that the Board, when
7 it heard that information, it was misinformed, that it
8 had not been fully briefed by the agency's legal counsel
9 as to the true sense - the true urgency or lack thereof
10 of taking an action prior to October 21st. So, for that
11 reason, we don't think that the finding of immediacy
12 could be appropriately made. Secondly, if there is, as
13 part of the agenda item, there is a long discussion of
14 how this particular meeting was - how the particular
15 October 21st meeting, the 2:00 meeting, was noticed, and
16 there's frankly some inaccuracies or inconsistencies
17 between the memo and the agenda and the transcript. The
18 transcript for the October 21st business meeting indicates
19 that the October 21st business meeting was a continuation
20 of the October 20th business meeting. The face of the
21 agenda indicates that, as well. However, in one section
22 of the memorandum, it states that the 2:00 p.m., October
23 21st business meeting, is essentially recessed - or the
24 adjournment of the 10:00 a.m. October 21st business
25 meeting. So, there's an inconsistency. And then,

1 further on in the memo, there is a reference to the fact
2 that the Court of Appeal Decision was made known to the
3 CEC at about 10:30, which was after the 10:00 a.m.
4 meeting, so it's hard to imagine how the 10:00 a.m.
5 meeting, if it could have been continued, how it could
6 have been continued until 2:15, if the information upon
7 which the continuance was alleged to have been made
8 occurred after the meeting was supposed to have been
9 held. So, there are inconsistencies in the memorandum
10 that is attached - or that is a part of the staff report.
11 There is also in the memorandum, and it was also
12 reference by Mr. Levy, a statement that the Commission's
13 compliance with the Bagley-Keene Act was - that the
14 Commission substantially complied with the Bagley-Keene
15 Act, and there is, in fact, an exemption when substantial
16 compliance is found by a Court, a Court can be found to
17 waive small inaccuracies or mistakes that are made by a
18 State Board. And the Commission relies upon a particular
19 case in North Pacifica vs. California Coastal Commission
20 case, that is referenced in the staff report, however,
21 that particular staff report is - or, I'm sorry, that
22 particularly case is just a far cry from anything that
23 was present in this case. In that case, the actual
24 notice that was provided was six days notice, as opposed
25 to one or two, or maybe three hours of notice in this

1 case. And also, the Court found that it avoided
2 prejudice to the Plaintiffs. In this case, we weren't
3 aware of the meeting until minutes before it occurred, if
4 even then, and were unable completely to react to it.
5 So, to say this is substantial compliance, to me, seems
6 to be a far stretch. The last point that I want to make
7 with regards to the Bagley-Keene Act is with regards to
8 the action today, it is agendized as a ratification - a
9 ratification of an action, of an illegal action, that is
10 taken, is not - does not cure the action under the
11 Bagley-Keene Act. You have to rescind the action that
12 was taken on October 21st, and then agendize the action as
13 a new action in order for it to cure the defect. So, I
14 want the Commission members to be aware of the fact that
15 the action today to ratify the contract does not cure the
16 Bagley-Keene Act violation. In fact, we are just - very
17 quickly - with that, we are requesting that this action
18 today be tabled and that a new action be brought back if,
19 in fact, you proceed to go that way, that a new action be
20 brought back at the next business meeting in which the
21 item is properly agendized, or that, preferably, that a
22 new process be established that will be transparent and
23 will allow all the parties to be able to fairly
24 participate.

25 CHAIRMAN DOUGLAS: Thank you for your comments.

1 I will ask our Chief Counsel to respond briefly, although
2 we will not sit here and litigate any Bagley-Keene issue
3 today. So, before you respond, though, I do want to say
4 that the Commission finding that the need to act in order
5 to prevent the Federal Government from perfecting its
6 right to rescind our money, and to ensure that the
7 contract goes to the entity that will actually do the
8 work, as opposed to an entity that will not do the work,
9 on a program that is supposed to create jobs and reduce
10 unemployment quickly in the State of California, to me,
11 constitutes a need for immediate action. And I know that
12 you disagree and that Western Riverside wants to believe
13 that, just because we get an oral assurance that there is
14 no current intention to take the money, doesn't mean that
15 we should worry. It's our responsibility to be stewards
16 of this money for the State of California, and we do
17 worry. So, Mr. Levy.

18 MR. LEVY: I think our position with respect to
19 the October 20th and 21st, the two-day business meeting on
20 October 20th, has been fully fleshed out, both today and
21 also on the record. I will just state, today's meeting,
22 assuming whatever you do with it, essentially moots out
23 the actions of the 20th and 21st, so whatever your actions
24 today, this is a new business meeting. Western Riverside
25 Council of Governments and everybody else on our agenda

1 list received notice of this meeting today, and so you
2 are certainly at liberty to do whatever you choose to do,
3 based on the record today.

4 CHAIRMAN DOUGLAS: Thank you, Mr. Levy.

5 MR. DeBAUN: May I ask a question or not? With
6 regards to that specific comment by Mr. Levy? If not, I
7 will not, I don't want to break decorum. May I?

8 CHAIRMAN DOUGLAS: Okay, ask one question.

9 MR. DeBAUN: Okay, yes. When you say, Mr.
10 Levy, that the meeting of October 21st is moot, that means
11 that the contracts that will be entered today will be
12 entered as of November 8th, 2010. Is that correct?

13 MR. LEVY: All I said, Commissioners, was that
14 the Bagley-Keene violations that are alleged to have
15 occurred at the meeting of the 20th, which took place over
16 two days, those violations would be moot by whatever you
17 do today.

18 CHAIRMAN DOUGLAS: For those alleged
19 violations, if any.

20 MR. LEVY: Alleged violations, thank you.

21 CHAIRMAN DOUGLAS: Thank you, Mr. Levy.

22 Enough, I think, on that topic. Is there anybody else -
23 and I keep asking this because I keep finding people who
24 want to speak, even though they haven't given their
25 names. So, if there's a long line of you, it would be

1 convenient if you would provide your names. But, in any
2 case, is there anybody else on the phone who has not
3 spoke, who would like to? I heard two voices. Go ahead.

4 MR. MASON: Okay, I'll go ahead and go first.
5 This is Fred Mason. I'm the Electric Utility Director
6 for the City of Banning. Basically, I just wanted to say
7 we're a member of WRCOG and we have a municipal electric
8 utility and we have quite a few programs for both
9 residents and commercial customers, but because we are a
10 small utility, we have limited funds that we're able to
11 expend on those programs, and we entered a partnership
12 agreement with WRCOG, with anticipation that we would be
13 able to direct our commercial customers and residential
14 customers, as well, to them to get funding for energy
15 efficiency improvements to the properties. So, having
16 listened to all of the comments, I can definitely
17 understand where the Commission is coming from. To say
18 we're disappointed is an understatement, but if there is
19 any way that the Commission can delay this and provide
20 WRCOG a chance to prove their case and get funding, that
21 would be much appreciated by the citizens of Banning.

22 CHAIRMAN DOUGLAS: Thank you for your comments.
23 I appreciate that. I think, to give people a sense of
24 perspective, because I hear WRCOG asking us to start over
25 with a new competitive solicitation, and a) I think it

1 doesn't make a lot of sense to do that, given that what
2 we've created is a statewide program, as opposed to
3 regional or local programs, albeit with a small number of
4 pilots; but b) maybe staff could just let everyone know
5 how long it took us to do the 401 solicitation and make
6 the awards which were later challenged?

7 MS. GOULD: From the time that the solicitation
8 went out to when the awards were made took four months.
9 To actually draft the solicitation was, to my
10 recollection, at least two, so that would be another six
11 months that this funding would be delayed in actually
12 getting out and doing the good that it's supposed to be
13 doing. And I believe that we had a letter from the
14 Governor's Recovery Task Force asking us, urging us, to
15 re-purpose these funds after the FHFA submission went out
16 by no later than September 30th, so we have already passed
17 the deadline given to us from the Governor's Recovery
18 Task Force, and I think any further delay would be very
19 bad.

20 CHAIRMAN DOUGLAS: It certainly wouldn't be
21 anything I would like to try to explain to DOE, or the
22 Governor's Office, or the Legislature. Let me ask, I
23 heard another voice on the phone. Is there anyone else
24 who would like to speak?

25 MR. DeGRANDPRE: Yes.

1 CHAIRMAN DOUGLAS: Please proceed.

2 MR. DeGRANDPRE: My name is Jeff DeGrandpre, D-
3 e-G-r-a-n-d-p-r-e. I am the Mayor Pro Temp of Eastvale.
4 I think Mr. Bishop has given valid arguments in a precise
5 manner, and I would just like to add that, from my point
6 of view, all I want is a fair process and I believe that
7 the CEC should rescind the action taken at the October
8 21st meeting. In addition, I think that the CEC should
9 freeze allocation of the funds under this agreement until
10 the full judicial review is complete. There is no
11 urgency. By the CEC's own admission on October 19th,
12 there is no October 21st compliance to LGC funds or lose
13 them, thus there is no urgency, really, to allocate them.
14 And I ask that you let the judicial review be completed,
15 after all, that is what they're there for. Thank you.

16 CHAIRMAN DOUGLAS: Thank you. Is there anyone
17 else on the phone who would like to speak, who has not
18 yet? Is that somebody trying to speak? Is there anyone
19 else on the phone who would like to speak, who has not
20 yet? I think, Commissioners, we have completed public
21 comment.

22 VICE CHAIR BOYD: Can we temporarily moot -
23 mute - the phone? We need to tell people about telephone
24 etiquette in the future, I believe. All sounds that take
25 place out there are broadcast loudly in this room, so -

1 CHAIRMAN DOUGLAS: And hold music is also
2 broadcast loudly in this room.

3 VICE CHAIR BOYD: Are you open for comments,
4 Madam Chair?

5 CHAIRMAN DOUGLAS: Open for comments and
6 questions.

7 VICE CHAIR BOYD: Well, I'm out of questions.
8 I want to thank everyone for their attention to this
9 matter and for many people testifying, yet again. We've
10 had a number of meetings and conversations about the
11 intent of these funds in their former state and in their
12 present state, an effort to do good in California for
13 employment, for the economy, and for our main
14 responsibility, energy and energy efficiency. So I want
15 to thank all the speakers today and all who have paid
16 attention to this subject today. I think I want to thank
17 Mr. Bishop for the blue dossier or blue file that he
18 provided us of actions that they have taken to influence
19 the decision here today, actions, of course, favoring
20 their position, which unfortunately, in my opinion, could
21 undermine the program that people have talked so
22 passionately about. One gentleman said that they're just
23 seeking a fair and honest chance, but I see an awful lot
24 of tilting at windmills, grasping for straws. I'm
25 troubled with the "facts" [quote unquote] that have been

1 presented to us, particularly in the fact sheet used by
2 WRCOG in this issue, I think they play it very fast and
3 loose with, in my opinion, with a version of the facts.
4 I'm going to make particular reference to the beaten to
5 death October 21st deadline. A lot of speakers were
6 pretty bold in saying that it does not exist as evidence
7 by this agency's ultimate letter on the subject and
8 comments. I think that has been addressed multiple times
9 with regard to what the original going in 18-months
10 period was, and in four decades of state service, and
11 eight and a half years in this Commission, while you can
12 get a wink and a nod from a Federal agency, they don't
13 document it, you've got no guarantees. I think
14 absolutely no credit has been given to this Commission,
15 and in particular, to the Chair of this Commission, in
16 working with the U.S. Government to get them to choose
17 not to enforce their deadline of October 21st, but it is
18 almost a wink and a nod, in my opinion, and instead it is
19 represented as there never was a deadline, and we have
20 falsely left that impression with lots of people to
21 justify our previous actions. That's a victory for the
22 State, but you'd never know it in listening to things.
23 And what the Chair of this Commission did, both as Chair
24 and in her responsibility as a lawyer to the Courts, is
25 make a significant effort to get that fact into the

1 courts in Riverside, and obviously that information is
2 shared by many. In my opinion, this agency has
3 continuously on this subject operated with an abundance
4 of concern and an abundance of caution with respect to
5 the program, and the multitude of problems that have been
6 rolled out in front of this program, that have been
7 visited upon the efforts of this staff and many many
8 people who testified many many times before us, to aid
9 California entities in all subject areas that I mentioned
10 before - energy efficiency, jobs, the economy, and what
11 have you. So, I while very sympathetic to the concerns
12 of many people that we've heard from today, hopefully
13 they've heard a different version of facts and can
14 recognize that the efforts of some to adjudicate this
15 matter in their own interest, and I don't fault people
16 for going after their own interest, but the facts in my
17 opinion have been very loosely interpreted and
18 incorrectly interpreted in many cases. And after re-
19 hearing this issue today and all the facts behind this
20 issue and the urgency involved here, I am prepared to
21 totally support the Energy Upgrade California program and
22 all the benefit that it brings. I feel sorry for those
23 who feel that their issue has not been properly heard,
24 and if that issue is totally heard in the future, it is
25 my opinion that the facts that have been presented here

1 today by many many people will prevail as to what really
2 happened out there. But, in any event, Madam Chair, I'm
3 totally prepared to support anyone who makes a motion in
4 favor of the action on the agenda for us here today.

5 CHAIRMAN DOUGLAS: Thank you. Commissioner
6 Eggert.

7 COMMISSIONER EGGERT: Thank you, Chair Douglas,
8 and thank you, Commissioner Boyd, for your comments. I
9 want to just make mention of, you know, we have had
10 several discussions about this item, so I don't want to
11 repeat everything, but I think it is probably important
12 to repeat a number of things about the unprecedented
13 nature of this program. It's unprecedented in the fact
14 that it is an incredible effort by the staff to take the
15 setback that we received from FHFA. Basically, we were
16 proceeding along and thought we had a good set of
17 programs. The actions of the FHFA that set back PACE
18 definitely represented a challenge, but the staff took
19 the opportunity to create something that I think will
20 provide a tremendous value to the entire state, and that
21 it is important, I think, for people to really recognize
22 that this is a statewide program that will bring benefits
23 to all parts of the state. It is unprecedented in the
24 level of collaboration between the relevant agencies and
25 the local counties and cities, both - I think I know you

1 had sat in on one, and myself and Commissioner Byron sat
2 in on a workshop in San Francisco at the PUC, and the
3 leverage that this is going to be getting from the cities
4 that are providing their own Energy efficiency Block
5 Grant and other funds, the utilities' incentive programs,
6 means that this will be leveraging tens if not hundreds
7 of millions of dollars of additional public and private
8 dollars to really sort of maximize the potential
9 benefits. The coordination with the Workforce Investment
10 Boards and the workforce development activities is,
11 again, just an incredible integration of everything that
12 we need to establish this new retrofit industry. And to
13 the urgency, I think it's unprecedented, the urgency that
14 we face, in particular in the area of the construction
15 industry. This is probably one of the most severely
16 impacted industries in the State because of the housing
17 down-turn, it's contributed significantly to the State's
18 unemployment rate, and in some areas of the State, it's a
19 dramatic contribution to their unemployment rate, so the
20 potential and the possibility that we have to put these
21 people to work, to actually be making energy efficiency
22 upgrades both to resident and commercial facilities, I
23 think, is just a wonderful thing and we really do need to
24 get going on that. There is really not a day to spare.
25 This should have been launched months ago, but obviously

1 we've had our challenges and that's why we're considering
2 it today. And I think, with that, I'll just say that,
3 you know, given all of these unprecedented aspects of
4 this program, and the fact that I've talked with folks up
5 and down the State, there is just a tremendous level of
6 excitement, a lot of people that are anxious to get
7 going, to get to work, and to actually put these program
8 elements into practice, and I would urge the Commission's
9 support.

10 COMMISSIONER BYRON: Thank you, Madam Chair. I
11 agree with the comments of my fellow Commissioners,
12 Commissioners Boyd and Eggert. I would also like to
13 thank, by my count, about 21 members of the public who
14 joined us today in providing their comments. Clearly,
15 amongst many of them, there is a great deal of
16 frustration, in some cases anger, and it would seem a
17 desire to blame this Commission for some misconduct that
18 I believe is misplaced. It's an extremely serious
19 accusation to accuse this body of a violation of the
20 Bagley-Keene Open Meeting Act, but this also seems to be
21 the latest in a series of accusations that have been
22 brought against this Commission, all stemming back from
23 Western Riverside Council of Governments original
24 proposal. And the information that we've heard today has
25 convinced me that this is all directed at covering up the

1 failings of that original proposal. It was provided to
2 us, as I understand, it was non-responsive, and it was
3 disqualified by the staff in accordance with the
4 established procedures that this Commission uses to
5 review proposals. What I'm most appalled by today is Mr.
6 Bishop, the Executive Director of this organization seems
7 to misrepresent the facts, and has made enormous efforts
8 to mislead members of his own organization,
9 representatives of the Legislature, I'm in receipt of a
10 number of letters that seem to all be written by the same
11 author, and directed towards the Governor's Office, by
12 the way, not to this Commission, and also misleading of
13 the public and the press here today. So, I am aware of
14 the facts of the case, I wholly support the Energy
15 Commission's October 21 action, although I was not here
16 on October 21st for the business meeting, I am prepared
17 when you're ready, Madam Chair, to move ratification of
18 the action item - I'm sorry - to move ratification of
19 Item 3 on our Business Meeting Agenda today.

20 CHAIRMAN DOUGLAS: Thank you, Commissioner
21 Byron. I just have a brief additional comment because,
22 of course, we've had a long meeting so far and we've
23 really heard this item, and we've heard from all sides on
24 this item, and that is that I, too, think it's very
25 important that we get this program off the ground and

1 running, and we've been, with some help from Energy
2 Commission administered ARRA funds, we've been training
3 people to do these retrofits, and do these audits. We've
4 got people standing by statewide, ready to do it and
5 waiting for this program. So, I think that time is not
6 on our side and we need to get this out, and we need to
7 get people to work, and we need to start saving energy.
8 So, that's really where I am, that the goals of the
9 Recovery Act are to stimulate the economy and create
10 jobs; that Recovery Act passed more than 18 months ago.
11 I think that we will certainly take criticism for having
12 taken this long and I certainly don't want to take any
13 longer. So, those are my comments. Commissioner Byron,
14 we would entertain a motion.

15 COMMISSIONER BYRON: Madam Chair, I move
16 approval of Item 3 on the Agenda.

17 COMMISSIONER EGGERT: I will second that.

18 CHAIRMAN DOUGLAS: All in favor?

19 (Ayes.)

20 Item 3 has been approved. Mr. Bishop, we would
21 certainly welcome the opportunity to talk further, we
22 certainly want to repair relationships that have been
23 frayed by the experience of the last six months and more,
24 so the door is open and we would be very happy to talk to
25 you. Thank you.

1 Item 4. Now, Item 4 is an item that we tabled
2 on the 21st, and nevertheless, I have a member of the
3 public who would like to speak on Item 4. I don't think
4 we are going to act on Item 4 because it conflicts with
5 Item 3, but let me ask if Joe Oldham - are you on the
6 phone? Joe Oldham? Okay, good. Disconnected, all
7 right.

8 Item 5, again, is moot and I suggest we table
9 Item 5.

10 Item 6. Are there any Commission Committee
11 Presentations or Discussion?

12 COMMISSIONER EGGERT: Maybe just a minute. I
13 did want to sort of follow-up on the comment that I made
14 earlier. On Friday of last week, I was invited to
15 participate in what was called the Inland Empire Economic
16 Partnership, which is a partnership between local
17 regional government entities, San Bernardino County,
18 Riverside County, some of the cities, and a lot of the
19 small and medium sized businesses that are active within
20 that region. And just briefly, it was a very good
21 meeting and a good discussion. We heard from a number of
22 businesses that were taking action to save energy through
23 energy efficiency improvements, reduce greenhouse gas
24 emissions. There is actually a steel mill down there,
25 which surprised me, and they gave a very interesting

1 presentation about how they take actions within their
2 facility to improve the efficiency of steel milling, and
3 actually had at least mentioned the fact that they had
4 not laid off anybody in, I think it was, over 20 years,
5 including during the downturn by putting people to work
6 in community projects, and are now bringing them back in
7 to do steel production. There were discussions about
8 building retrofit activity and new building construction,
9 using some of the latest and greatest designs in terms of
10 LEED and others. And we also had a discussion about the
11 policy environment, and after the election the fact that
12 we now certainly still have the energy and environmental
13 policies, and particularly AB 32, and certainly what
14 opportunities existed for businesses to be able to
15 participate in reducing emissions and saving energy. So,
16 it was an excellent discussion. Certainly, I brought up
17 the Energy Upgrade California program as one of those
18 that that region, I believe, will benefit substantially
19 from, and there was a lot of interest in that. So, I
20 look forward to continuing to work on projects that will
21 have benefits to the Inland Empire, and again, I think
22 they've at least demonstrated to me during that
23 partnership meeting that they're looking forward to
24 partnering with us on those programs.

25 CHAIRMAN DOUGLAS: Item 7. Moving on, then, to

1 Chief Counsel's Report.

2 MR. LEVY: I have no report.

3 CHAIRMAN DOUGLAS: Item 8. Executive
4 Director's Report.

5 MS. JONES: I would like to do a brief
6 introduction. We have selected two new members of our
7 Executive Management Team and they are Laurie ten Hope,
8 who will be the Deputy Director for the R&D Division.
9 Laurie, if you want to come up? And I just missed
10 Panama, they're still trying to find him.

11 MS. TEN HOPE: Hello, I won't take very long
12 since I know it's been a long morning, but I want to
13 thank Melissa for the opportunity to serve in this
14 capacity. I think we're really lucky to have the Public
15 Interest Energy Research Program, and I look forward to
16 guiding it through reauthorization in the next decade of
17 innovation here at the Energy Commission for the State of
18 California.

19 COMMISSIONER BYRON: Ms. Jones, is there any
20 chance we can reconsider this decision at the next
21 business meeting?

22 MS. JONES: Of course, we can.

23 COMMISSIONER BYRON: Actually, I'm joking, of
24 course. Ms. ten Hope has served my office very well for
25 the last three years, and I'm very glad that she has been

1 given this new opportunity at the Commission, and I wish
2 you good luck and I agree with your assignment, we're all
3 about getting the reauthorization of PIER, but at the
4 same time, I think you'll do an excellent job of managing
5 this Division going forward.

6 MS. TEN HOPE: Thank you. And it was a
7 pleasure to be in your office - most of the time.

8 VICE CHAIR BOYD: Well, I was just going to
9 thank Commissioner Byron for his charitable loss, albeit
10 for the greater good of the organization, and Laurie,
11 we're very pleased and certainly wish you well. You'll
12 still get Commissioner Byron on the Research Committee,
13 and now you'll have me in that group, so we look forward
14 to working with you very close together.

15 MS. TEN HOPE: My pleasure, thank you.

16 COMMISSIONER EGGERT: Yeah, I just want to
17 thank Commissioner Byron for his charitable loss, as
18 well, as well as the charitable loss of Panama first to
19 the ARRA program, and now to renewable energy and energy
20 efficiency, and I do very much look forward to working
21 with Laurie, Ms. ten Hope, on the research activities of
22 this Commission.

23 MS. TEN HOPE: I look forward to your input.
24 Thank you.

25 CHAIRMAN DOUGLAS: All I will add is I couldn't

1 be happier either, with you selection. I'm looking
2 forward to working with you in this new capacity, of
3 course, I've worked with you a lot as Commissioner
4 Byron's Advisor, but this is a great step and I think
5 you'll do very good work.

6 MS. TEN HOPE: Thank you very much. It will be
7 a great opportunity, I appreciate it. Thank you,
8 Melissa.

9 MS. JONES: And then the other addition is
10 Panama Bartholomy, who is now the Deputy Director of
11 Efficiency and Renewables Division.

12 MR. BARTHOLOMY: Good afternoon, Commissioners,
13 it's good to see you again. I am, of course, very
14 pleased and very honored by the selection to lead this
15 Division. I think, as Commissioner Byron said in his
16 congratulatory e-mail to me, they're very large shoes to
17 fill and I hope to live up to the reputation and to the
18 legacy that is left by the predecessors that proceeded me
19 in this position. We have a very heavy workload in the
20 Division, and if you look at the new Administration's
21 goals for energy efficiency, it's only going to be so
22 much more focus on our efforts. And I look forward to
23 working with you, the Executive Office, and the new
24 Administration and Legislature in achieving some of our
25 energy and environmental goals.

1 VICE CHAIR BOYD: Good luck to you, Panama.

2 COMMISSIONER BYRON: Go ahead.

3 VICE CHAIR BOYD: I just said good luck to him,
4 and notice how we held this until after the previous item
5 was positively disposed of.

6 COMMISSIONER BYRON: And I also said in my e-
7 mail it was a great choice, and best of luck to you,
8 Panama.

9 MR. BARTHOLOMY: Thank you, sir.

10 COMMISSIONER EGGERT: And looking forward to
11 our first Committee meeting tomorrow. We've got a lot of
12 work to do, so welcome aboard.

13 MR. BARTHOLOMY: Thank you.

14 CHAIRMAN DOUGLAS: Good luck, Panama.

15 MR. BARTHOLOMY: Thank you.

16 CHAIRMAN DOUGLAS: Ms. Jones?

17 MS. JONES: That's it.

18 CHAIRMAN DOUGLAS: Item 8. Public Advisor's
19 Report.

20 MS. JENNINGS: I have no report.

21 CHAIRMAN DOUGLAS: All right, is there any -
22 oh, there may be some additional public comment,
23 actually. I have two people who wanted to speak on Item
24 1, but we're not - I think they didn't get on the phone
25 in time, and so they wanted to speak on Item 10, and

1 those are Jordan Ehrenkranz.

2 VICE CHAIR BOYD: He did speak.

3 CHAIRMAN DOUGLAS: Oh, he did speak, I'm sorry.
4 Tom Butt.

5 VICE CHAIR BOYD: He spoke also.

6 CHAIRMAN DOUGLAS: Oh, he spoke also. Okay,
7 then we got everybody. So, is there anybody else who
8 would like to make public comment at this time? Is there
9 anybody else who would like to make public comment on the
10 line? The lines are open now, so if you'd like to speak,
11 please speak up. All right, I see nobody in the room, so
12 we are adjourned.

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

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