BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY COMMISSION

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

BUSINESS MEETING

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 13, 2011

10:10 A.M.

Reported by:
Kent Odell

Commissioners Present

Robert B. Weisenmiller, Chair
James Boyd, Vice Chair
Karen Douglas
Carla J. Peterman

Staff Present:

Michael Levy
Rob Ogelsby
Jennifer Jennings

	Agenda Item
Angela Gould	4
Patrick Saxton	5
Gabe Herrera	6, 7
Robert Sarvey	6, 7
April Rose Sommer	6, 7

Interested Parties

	Item #
Morgan Groover, Mountain House Community Services District	16
Edward Mainland, Sierra Club, CA	16
Greg Wheatland and Chris Curry, Mariposa Power Plant	6, 7
Rajesh Dighe, Intervener	16
Caryn Holmes, Chief Counsel's Office	6, 7
Kerry Willis, Senior Staff Counsel, Energy Commission	6, 7

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a. CITY OF BELMONT. Possible approval of the City of Belmont's locally adopted building energy standards to require greater energy efficiency than the 2008 Building Energy Efficiency Standards.

b. CITY OF COTATI. Possible approval of the City of Cotati's locally adopted building energy standards to require greater energy efficiency than the 2008 Building Energy Efficiency Standards.

c. CITY OF SAN MATEO. Possible approval of the City of San Mateo's locally adopted building energy standards to require greater energy efficiency than the 2008 Building Energy Efficiency Standards.

d. CITY OF SANTA ROSA. Possible approval of the City of Santa Rosa's locally adopted building energy standards to require greater energy efficiency than the 2008 Building Energy Efficiency Standards.

e. TOWN OF TIBURON. Possible approval of the Town of Tiburon's locally adopted building energy standards to require greater energy efficiency than the 2008 Building Energy Efficiency Standards.

f. STATE WATER PROJECT CONTRACTORS AUTHORITY. Possible approval of early termination of Contract 500-08-028 by mutual agreement between the Energy Commission and the State Water Project Contractors Authority.

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1. CONSENT CALENDAR (Continued).

g. ASSOCIATION OF BAY AREA GOVERNMENTS. Possible approval of Amendment #2 for Contract 400-09-021 with the Association of Bay Area Governments (ABAG). This request is for reallocation of funds among various tasks for Retrofit Bay Area, a program that promotes energy efficiency retrofits for single family and multifamily homes in several Bay Area Counties. Additionally, the amendment will give the Contractor authority to receive funding in advance for incentive payments and other payments required at time of subcontract execution or upon receipt of deliverable or purchase. The amendment will not increase the total amount of the contract or extend the contract period.

2. ENERGY COMMISSION COMMITTEE APPOINTMENTS. Possible approval of Energy Commissioner appointments to the Energy Commission's Standing Committees and Siting Case Committees. **Postponed**

3. PRAGMATIC BUSINESS SOLUTIONS. Possible approval of Contract 500-11-001 for $207,880 with Pragmatic Business Solutions to provide temporary technical editing of PIER project reports and fact sheets. (PIER electricity funding.)

4. RENEWABLES PORTFOLIO STANDARD PROGRAM - ORDER INSTITUTING RULEMAKING. Possible approval of an order instituting a rulemaking proceeding to develop and adopt regulations specifying the procedures to implement RPS procurement requirements for publicly owned electric utilities under Public Utilities Code section 399.30 (SB x1 2, Simitian, Chapter 1, statutes of 2011). The rulemaking will amend the Energy Commission's existing RPS eligibility guidelines to address changes in the law as a result of Senate Bill x1 2. 10

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Possible approval of proposed revisions to the Guidelines for California's Solar Electric Incentive Programs. These guidelines establish eligibility criteria, conditions for incentives, and equipment rating standards for all ratepayer-funded solar electric incentive programs in California. The proposed guideline revisions are limited in nature, and clarify and revise the accuracy requirements for inverter-integrated performance meters.

6. MARIPOSA ENERGY PROJECT (Docket No. 09-AFC-3). Possible 16
decision on a Petition for Reconsideration filed by Rob Simpson regarding the Energy Commission's May 18, 2011 decision to approve the Application for Certification of the Mariposa Energy Project. The petition asks the Commission to reconsider and revoke the written decision of May 18, 2011 on several grounds.

7. MARIPOSA ENERGY PROJECT (Docket No. 09-AFC-3). Possible 16
decision on a Petition for Reconsideration filed by Robert Sarvey regarding the Energy Commission's May 18, 2011 decision to approve the Application for Certification of the Mariposa Energy Project. The petition asks the Commission to reconsider and correct the written decision of May 18, 2011 on several grounds.

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P R O C E E D I N G S

JULY 13, 2011 10:10 a.m.

CHAIRMAN WEISENMILLER: Good morning. Let's start today's Business Meeting with the Pledge of Allegiance.

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

CHAIRMAN WEISENMILLER: Good morning. Item number 2 is going to be held until the next meeting and we're going to consider Item 6 and 7 in a consolidated fashion. So with that, let's go to the Consent Calendar.

COMMISSIONER BOYD: Move the consent calendar.

COMMISSIONER DOUGLAS: I second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes) Consent Calendar passes unanimously. Let's go to Item number 3. This is the Pragmatic Business Solutions. This is a PIER contract for $207,880. Jamie?

MR. PATTERSON: Good morning, Commissioners. I'm Jamie Patterson, a Senior Electrical Engineer in the Energy Research Development Division. Today we are asking for possible approval of a contract with Pragmatic Business Solutions to provide some temporary

technical editing of PIER project reports and fact sheets. The contract is rewarded as a result of a competitive solicitation held by the Energy Research Development Division. And they awarded the low cost bidder. This is a contract that will be of a temporary nature to clear out a temporary backlog of reports. PIER has been working with the Media Office to develop a streamlining process so that that way we can get these reports to the public much faster. Our current backlog has been reduced from approximately 390 reports to now about 200 due to our streamlining processes we have instituted so far. Any questions?

CHAIRMAN WEISENMILLER: Commissioners, any questions or comments?

COMMISSIONER BOYD: No questions. If there are no questions by my fellow Commissioners, this was, of course, reviewed in the R&D Committee and the Committee recommends its approval by the Commission. So, I'll move Approval.

COMMISSIONER PETERMAN: I'll second and also add that I'm glad to see the Division is working on this. It'll be good to get that research out and available to the public. And that was a second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) This Item passes. Thank you,

1 Jamie.

2 Item number 4. Renewables Portfolio

3 Standard Program - Order Instituting Rulemaking.

4 Angela?

5 MS. GOULD: Good morning, Chair

6 Weisenmiller. Commissioners. My name is Angie Gould

7 and I'm from the Renewable Energy Office. I'm joined

8 by Gabe Herrera the Renewable Portfolio Standard Legal

9 Council. We're here this morning to request adoption

10 of the Order Instituting the Rulemaking or OIR

11 Proceeding to serve two purposes.

12 The first is to develop and adopt

13 regulations specifying procedures to enforce RPS

14 procurement requirements for publicly owned electric

15 utilities or POUs. The Energy Commission has been

16 directed to adopt these regulations into law as

17 enacted by Senate Bill X12.

18 The second purpose is to amend the existing

19 RPS eligibility guidebook to address changes in the

20 law as a result of SB X12.

21 SB X12 is signed into law in April of this

22 year and it increases the RPS procurement requirements

23 from 20 percent by 2010 to 33 percent by 2020. This

24 bill also expands the requirements to include POUs,

25 revises the responsibilities of the California Public

1 Utilities Commission with respect to retail sellers
2 of electricity and gives the Energy Commission new
3 regulatory responsibilities with respect to POUs.
4 The OIR will delegate the Renewables
5 Committee to preside over the proceeding which will
6 replace the Energy Commission's existing proceeding,
7 implementation of renewable portfolio standard
8 legislation Docket Number 03-RPS-1078. The current
9 RPS Eligibility Guidebook and the Overall Program
10 Guidebook for the Renewable Energy Program will be
11 incorporated into, and made part of, the new
12 proceeding. However work on legislative and policy
13 reports commenced under the prior proceeding such as
14 work on the verification reports for 2008, 2009 and
15 2010 compliance years will continue under Docket
16 Number 03-RPS-1078.
17 In developing the POU regulations and
18 amendments to the RPS Eligibility Guidebook, Energy
19 Commission staff will collaborate with the CPUC and
20 the Air Resources Board on the RPS related issues
21 pertinent to these agencies.
22 With that, I ask you to consider adoption of
23 this OIR.
24 CHAIRMAN WEISENMILLER: Commissioners, any
25 questions or comments?

COMMISSIONER PETERMAN: I'll just comment that staff has already held a workshop addressing some of these issues and hearing some of the concerns of the public utilities. I'm glad that they've started that process and look forward to continuing to work with them as well as the POUs on this.

COMMISSIONER BOYD: I would just add that I'm very pleased to see this request and very much supportive of it; and look forward to the work the staff and the Commissioner are going to do in this area.

COMMISSIONER DOUGLAS: I'm very pleased to see this request as well. It is a good day to be considering a rulemaking on the 33 percent RPS. This has been a long time in coming so thanks for bringing this before us. I see Gabe jumping for his microphone. Do you have something to add?

MR. HERRERA: No, Commissioner Douglas. Thank you. I was just here to answer any questions if you had any of the legal office.

COMMISSIONER DOUGLAS: Thank you.

COMMISSIONER PETERMAN: So with that, I'll move Item number 4.

COMMISSIONER BOYD: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) This Item also passes unanimously. Let's go on to Item number 5. Guidelines for Solar Electric Incentive Programs. Patrick?

MR. SAXTON: Good morning. I'm Patrick Saxton from the High Performance Buildings and Standards Development Office. This Item was originally scheduled for the June 29th Business Meeting and moved to today's meeting in order to ensure that the statutorily required noticing period was met.

Staff is requesting the adoption of proposed revisions to the guidelines for California's Solar Electric Incentive Programs. These guidelines are frequently referred to as the SB 1 Guidelines. They establish eligibility criteria, conditions for incentives and equipment rating standards for all ratepayer funded solar electric incentive programs in California.

The proposed revisions are limited in nature and clarify and revise the accuracy requirements for inverter integrated performance meters. Specifically, they remove the July 1, 2011 requirement—effective date, excuse me, for requiring inverter integrated performance meters to be tested to plus/minus five percent accuracy by a nationally recognized testing laboratory.

1 Additionally, they delay implementation of
2 any new meter accuracy requirements for inverter
3 integrated performance metrics until, in a separate
4 proceeding, the Energy Commission establishes
5 renewables portfolio standards eligibility
6 requirements for distributed generation systems
7 located on the customer side of the meter. The
8 determination of RPS eligibility requirements for
9 these types of systems has been made necessary by a
10 January Public Utilities Commission authorizing the
11 use of traceable renewable energy credits for RPS
12 compliance.
13 A delay in any new accuracy requirements
14 will give Commission staff an opportunity to
15 coordinate metering requirements across the two
16 proceedings to the extent possible.
17 The metering accuracy requirements are the
18 only revisions being addressed at this time.
19 If there are any questions, I'm ready to
20 answer them.
21 CHAIRMAN WEISENMILLER: Commissioners, any
22 questions or comments?
23 COMMISSIONER BOYD: Again, if there are no
24 questions, I'll move approval of the Item.
25 COMMISSIONER PETERMAN: I'll second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) This Item passes unanimously. Thank you.

MR. SAXTON: Thank you.

CHAIRMAN WEISENMILLER: Let's go on to Items 6 and 7. We have two separate petitions for reconsideration that we're going to address today and we have a draft ruling that we'll address.

Okay. Applicant, do you want to—Let's start with Mr.—with the petitioners.

MR. SARVEY: Good morning, Commissioners. Thanks for giving us this opportunity to speak to you about this. There are a couple of issues I'd like to talk about as you see in the order and in the petition.

First, I'd like to talk about the condition at Bruns Road. And that is the main access road to this project. And I first raised—well, this issue was first raised at the adoption hearing and was raised by a member of the public. I went over there to examine what this member of the public was talking about in terms of the degradation of this main access road. I drove over there and I saw the condition of it. I notified the Compliance Manager of the issue on June 6th and I haven't heard anything about it so. That's

one of the main reasons that I'm here now.

And the reason that this is important is if you look at the first part of the handout that I've given you, Bruns Road, as it was evaluated in the FSA—and as you can see the road is in fairly decent condition and should be no problem for the developer or, more importantly, the residents.

Now the second page of my hand out here is the condition of Bruns Road as it exists now. This picture was taken on Monday morning. As you can see, it doesn't resemble the road that was evaluated in the FSA. I don't blame this on the developer. This condition happened because of another development called the GreenVolt Solar Development. And over a short period of time this road has become dangerous. It's an issue because it's dangerous for the residents to drive on this road but also continuously using this road without repair could put it in a serious state of disrepair.

The proposed order suggests that TRANS-8 deals with this issue suggesting that the developer will repair this road after he completes his development in 14 months. Well, that's unfair for two reasons.

One is that it's unfair for the developer to

1 have to repair damage that someone else has done.
2 Number two is that it's unfair to make
3 residents to drive across this road for 14 months in
4 the condition that it's in and it's dangerous. The
5 problem with TRANS-8 is that it states that the
6 applicant is to notify the County of Alameda and the
7 folks in charge of the road here. And the purpose of
8 the notification is to request that the jurisdictions
9 consider postponement of any planned public right-of-
10 way repair or improvement activities in areas affected
11 by the project construction until the project is
12 completed.
13 So the issue here, number one, is that
14 residents should not have to put up with this
15 condition for 14 months. Number two, the developer
16 should not be held responsible for damage done by
17 another developer.
18 So those are the two issues that I have
19 there with that part of the proposed order.
20 A couple of the Items in the proposed order
21 I do agree with and they're adopted into the decision.
22 I agree with that. I don't see any reason to reopen
23 the decision for those two issues.
24 One other issue is the demographics issue
25 and this has been a bone of contention if a couple of

1 different siting cases. What I did was for
2 reconsideration I contacted the State Department of
3 Finance Demographics Unit and I got the correct
4 demographics for that area. And there's a reason that
5 that's important.
6 Number one, not just to make sure that the
7 decision contains the right demographics but without
8 the right demographics we don't know the location of
9 the sensitive receptors, the minority groups and we
10 can't do a thorough evaluation in the analysis of
11 impacts from this project.
12 So I think that the demographics should also
13 be part of this decision, the correct demographics.
14 We're using 2000 demographics that say there are only
15 2,154 people in a six mile radius. There are actually
16 10,548 people. Sixty-nine point four percent is
17 minority and the FSA classifies it as 33 percent was
18 minority. So that's an important distinction.
19 And then, lastly, I want to talk to you
20 about the Mariposa Project being authorized to proceed
21 to construction before reconsideration has been
22 completed. And I think that that does two things.
23 One, it demonstrates a pre-commitment to the
24 issue. You're already allowing them to go through
25 construction without actually going through the

1 party's issues in making sure that there are no loose
2 issues like this road issue or other issues.
3 And also, I think, it deprives the parties
4 of due process rights because you're already
5 constructing this project and you've got this
6 applicant's momentum going. It's not fair to the
7 applicant to then tell him, "Oh, you can't construct
8 this project because reconsideration, we've come up
9 with an issue and we don't think you should go forward
10 with the project or we think that you should
11 postpone." I think that anytime you have a siting
12 case, the construction should not be approved until
13 reconsideration is finished and that would be today,
14 you know, tonight. So I think that would be an
15 important issue.
16 Secondly, the reason why it's important. I
17 was down at the project site Monday as that picture
18 depicts and at the project site there's no noise sign.
19 There's no sign that alerts folks that there's a noise
20 issue. That's required by Noise One. They're
21 supposed to have a sign up there that people can call
22 and say, "Hey look, We've got a problem with the noise
23 here, the construction or your operation and, in fact,
24 the noise sign is supposed to stay up there for a year
25 after operation has commenced. At the present time,

1 there's no sign there at all.

2 And the second thing is, and I don't know

3 who's responsible for this, the last picture that I

4 have here. This is an area that was supposed to be

5 preserved. There's sensitive species there and

6 somebody has driven heavy equipment through it.

7 And so I think that these are issues that

8 need to be taken care of. I think that the site

9 probably needs more supervision. And that's all I

10 have. Thank you.

11 CHAIRMAN WEISENMILLER: Thank you. I just

12 want to make sure that you identified yourself for the

13 record?

14 MR. SARVEY: Bob Sarvey. Thank you.

15 CHAIRMAN WEISENMILLER: Thank you. Any

16 other—yes, go ahead. Please identify yourself to the

17 record.

18 MS. SOMMER: Good morning. April Rose

19 Sommer for Intervener Rob Simpson. Staff and

20 applicant's main objective to Mr. Simpson's Motion is

21 that it reiterates prior arguments. This is to be

22 expected in a request for reconsideration.

23 1720 requires that a petition be set forth

24 in error of law. Mr. Simpson brings this motion in

25 that the hopes that the Commission will see the clear

1 errors of law, given the second chance to review its
2 decision.
3 Staff has used the proposed order as a
4 vehicle to offer additional arguments never raised
5 before. The notice of today's hearing set forth a
6 briefing schedule with responses from the parties due
7 July 6. This proposed order was emailed July 11 after
8 the staff submitted a response that did not include
9 the arguments in the proposed order. This is yet
10 another example of this department's unwillingness to
11 follow its own rules.
12 Staff was not content to follow the
13 prescribed timeline and follow response with the need
14 for another bite of the apple in raising new arguments
15 in the proposed order.
16 Ironically, the arguments that the staff
17 makes for the first time in the proposed order address
18 past failures to follow the rules. Namely, the total
19 failure of the Commission to respond to Mr. Simpson's
20 earlier motion for reconsideration regarding the
21 subpoena of PG&E and prohibitive ex parte
22 communications.
23 In the proposed order, staff argues, for the
24 first time, and I'm going to throw out a number of
25 sections here so please interrupt me with questions or

1 if you need clarification.

2 Staff argues for that first time that

3 Section—Public Resources Code Section—Commission

4 Regulations Section 1720, quote, "Applies only to

5 petitions to reconsider a final Energy Commission

6 decision to approve a project." Staff presents no

7 authority, including the language of the actual rule,

8 for this proposition. Section 1720 is not limited to

9 only project approvals. It reads, "Within 30 days

10 after a decision or order is final, the Commission

11 may, on its own motion order, or any party may

12 petition for reconsideration thereof. In this case,

13 there was an order and it was final. The order being

14 that the Commission would not subpoena PG&E.

15 Staff then argues for the first time that

16 this is in an interlocutory appeal governed by Section

17 1215. Again, the staff is wrong. 1215 reads, "During

18 proceedings before a Committee, a party may request

19 that a ruling of the Committee or Presiding Member be

20 issued in the form of a written order. Any such

21 request will be made no later than five calendar days

22 following the ruling. Any party may petition the full

23 Commission to review any order prepared pursuant to

24 this section."

25 This is not what occurred. What occurred

1 was that Mr. Simpson brought a Motion requesting that
2 the Presiding Member to exercise her power to issue
3 subpoenas at the direction of the Commission or upon
4 application of any party.
5 Section 1716.5 governs Mr. Simpson's
6 official motion, not 1215. Under 1716.5, any party
7 may file a motion or petition with the Presiding
8 Member regarding any aspect of the notice or
9 application proceedings. The Presiding Member may set
10 a hearing to consider arguments on the petition and
11 shall within 30 days of the filing of the petition act
12 to grant or deny the petition.
13 The denial of Mr. Simpson's motion was a
14 final order for which he requested consideration
15 pursuant to the plan and clean language of Section
16 1720. Again, 1720 reads, "Within 30 days after a
17 decision or order is final a Commission may, on its
18 own motion, order or any party may petition for a
19 reconsideration thereof. The Commission shall hold a
20 hearing for the presentation of arguments on a
21 petition for consideration, as we're doing today, and
22 shall act to grant or deny the petition within 30 days
23 of its filing.
24 The issue of the meaning of "shall" has come
25 before this Commission before with the staff putting

1 forth flagged legal analysis. The California Supreme
2 Court is very clear on the legal meaning of "shall."
3 The Court says that quote, "The ordinary meaning of
4 shall or must is a mandatory effect."
5 The Commission must hold a hearing and take
6 actions on all petitions for reconsideration within 30
7 days. This is mandatory under Section 1720. No
8 hearing was ever held and the petition was never
9 granted nor denied. This is a procedural violation of
10 the Warren-Alquist Act that substantively impacts
11 these proceedings as Mr. Simpson's motion addresses
12 the quality of the evidence in which the approval was
13 supposedly based and the actions of the Presiding
14 Member in making decisions about this application.
15 Apparently looking to cover all bases,
16 rather than argue actual propositions of law, the
17 staff also makes the following assertion, "Even if Mr.
18 Simpson is correct in arguing that the petition for
19 reconsideration of a decision by a Committee in course
20 of proceeding shall be afforded a hearing under
21 Section 1720, the petition was discussed at the
22 Business Meeting. An absent and an affirmative vote
23 of three members of the Commission to grant the
24 petition for a reconsideration, the petition was
25 denied.

1 Strangely, staff first argues that no
2 hearing was necessary and also argues that a hearing
3 was also conducted. If the Commission concurs with
4 the staff assessment that a hearing was held, it
5 further implicates itself in additional procedural
6 violations. A hearing held at the March 18 Business
7 Meeting wouldn't have been beyond the 30 days required
8 by 1720 and was not noticed. Further, 1720 does not
9 simply require a decision. It requires a hearing.
10 And in absence of an affirmative vote does not a
11 hearing and decision make.
12 The Commission did not notice a hearing, did
13 not hold a hearing and took no vote on the matter and
14 staff's contention to the contrary is ridiculous.
15 The staff makes a number of unfounded
16 conclusions regarding prohibitive ex parte
17 communication. Staff relies on Government Code
18 Section 11430.20 Part E to excuse the ex parte
19 communication. This Section permits ex parte
20 communication where quote, "The communication concerns
21 a matter of procedure or practice that is not in
22 controversy." First, the matter concerns a
23 substantive and not procedural issue. Whether or not
24 the Committee would issue a subpoena is unquestionably
25 an issue of substance. Second, the matter was

1 obviously in controversy.

2 I'd like to hear the staff's explanation of

3 how exactly this matter was no in controversy. I

4 wouldn't be standing here before you discussing this

5 matter if it wasn't in controversy.

6 No exception to the Prohibition against ex

7 parte communication applies in this situation. Yet

8 another new argument brought forth in the proposed

9 order is that Mr. Simpson has shown no bias or

10 prejudice in the communication that would justify

11 disqualification of a Committee member. The staff

12 quotes a single case for this wrong proposition that

13 the moving party must quote, "demonstrate concertedly

14 the actual existence of bias."

15 This case addressed the removal of judges

16 and was superseded by a California Code of Civil

17 Procedures 170.1. This item calls for the

18 disqualification of judges if quote "for any reason

19 any person aware of the facts might reasonably

20 entertain a doubt that the judge would be able to be

21 impartial."

22 The statues against ex parte communications

23 exist to prevent even a question of impartiality and

24 do not require any showing of actual bias. The Court

25 of Appeals explains "just as in judicial proceedings,

1 due process and an administrative hearing also
2 demands an appearance of fairness and the absence of
3 even the probability of outside influence on the
4 adjudication." The circumstances in this case
5 certainly allow for the probability of an outside
6 influence on the adjudication and it is only because
7 this Commission wrongly ignored Mr. Simpson's motion
8 for reconsideration that bias was never investigated.
9 Not content to bring forth faulty
10 propositions of law, the staff also makes an attack on
11 the facts. Totally disregarding the Hearing Officer's
12 blatant misstatement of the facts to the Commission
13 regarding the timeliness of Mr. Simpson's motion for
14 reconsideration, the staff also claims in the proposed
15 order for the first time that Mr. Simpson's petition
16 contains several factual errors about the events of
17 the hearing at which the communication occurred.
18 The reasoning is difficult to follow but
19 this appears to be followed by some facts that staff
20 claims were wrongly described in Mr. Simpson's
21 petition.
22 First, staff states, "counsel for PG&E did
23 not testify as a witness but merely entered a
24 statement on behalf of PG&E." which proves that the
25 matters that the Committee allowed PG&E council, Mr.

1 Galati, to offer unsworn testimony and then deprived
2 other parties of the right to cross-examine the
3 witness.
4 The Hearing Officer states that Mr. Galati
5 is not a witness but then asked him a question and
6 says, "You actually already testified."
7 Staff also claims that the counsel of PG&E
8 made himself available to answer questions of any of
9 the parties at the hearing. This is very interesting.
10 Actually, Mr. Galati stated that we will not
11 participate in the proceedings. After the Hearing
12 Officer asked his question of Mr. Galati the following
13 transpired when Mr. Sarvey attempted to follow up Mr.
14 Galati's monologue with questions. "Mr. Sarvey: Do we
15 get to ask Mr. Galati any questions? Hearing Officer
16 Sully: You know something. He's here voluntarily.
17 He's not a witness. Mr. Sarvey: This is my big
18 chance. Hearing Office Sully: He generously made
19 himself available to talk to anyone afterwards and I
20 think that that's as good as you're going to get
21 here."
22 Mr. Simpson's motion for reconsideration has
23 shown a number of errors in law and I urge you to
24 reconsider you decision. Thank you.
25 CHAIRMAN WEISENMILLER: Thank you. Any

other interveners? If they're here in the room or on the phone.

MR. DIGHE: Yes. Can you hear me?

CHAIRMAN WEISENMILLER: Would you please identify yourself for the record?

MR. DIGHE: Yes. I'm Intervener Rajeesh Dighe.

CHAIRMAN WEISENMILLER: Good morning.

MR. DIGHE: Good morning. Hello. So actually I'm here to support reconsideration from the petitioners and also I want to get some assurance from the Energy Commission in light of the new data and the development around a possibility of the funding and how the operations—how it's going to operate going forward?

I also sent my questions and some concerns so again I repeat that I definitely want to get reassurance that Mountain House represents safety and is not threatened. Having said that, I request that the Energy Commission to do their due diligence and delay (inaudible) around the safety factor of Mountain House which is now a minority community. And since there's been some (indiscernible) around the minority community which has not been happened because of the consideration earlier, I request the Energy Commission

1 to do justice for the fine people of Mountain House.
2 Thank you.
3 CHAIRMAN WEISENMILLER: Thank you.
4 Applicant, do you want to respond to the petitions?
5 MR. WHEATLAND: Yes. Good morning. I'm
6 Greg Wheatland. I'm the attorney for the applicant
7 and with me hear this morning is Mr. Chris Curry who's
8 the Senior Project Manager for Diamond Generating.
9 The arguments you've heard this morning from
10 Mr. Sarvey and Ms. Sommer are essentially the same
11 argument that sets forth in their petitions. And
12 these arguments, we believe, have been addressed fully
13 and correctly by the proposed order. So I'm not going
14 to go over in detail unless you do have specific
15 questions or concerns about them.
16 I would like to comment, just briefly, on
17 two of them. One is the argument by Miss Sommers that
18 Section 1720 is—which provides for petitions for
19 reconsideration is applicable to Commission—Committee
20 rulings as the proposed order correctly states. This
21 provision is applicable to the final orders and
22 decisions of the Commission. In looking all the way
23 back to 1975, I could not find an instance in which
24 the Committee has granted reconsideration of a
25 Committee ruling. That section under the Commission's

1 practice is specifically not applicable.

2 And I also wanted to comment briefly on Mr.
3 Sarvey's concern about Bruns Road. I think that this
4 is an important concern. But as he correctly notes,
5 the current damage to the road is not caused by the
6 Mariposa Energy Project. The damage to the road, to
7 the extent that it may exist, is a result of other
8 activities that are occurring on that road and Mr.
9 Sarvey mentioned one of those which is the GreenVolt
10 Energy Project. A project, as I understand it, not
11 licensed by this Commission. So the concerns to the
12 respect of the current condition of the road are
13 properly addressed to the licensing agencies that are
14 responsible for that project. This is simply
15 something that the Commission cannot deal with;
16 however, there is an important condition in our
17 license, our condition, of certification that places
18 responsibility on us for remedying the damage that may
19 be caused by our construction activities. We are
20 going to be carefully monitoring and documenting the
21 condition of the road and we will be fully repairing
22 any damage that may result from our activities.

23 So those are the two points that I wished to
24 touch on briefly. If you have any others questions or
25 concerns, I'd be happy to address them.

COMMISSIONER BOYD: Question. Mr. Wheatland, what will be your baseline for repairing the road? The condition of the road as was indicated in Mr. Sarvey's picture pre-this other project and upon which the original considerations by staff were predicated on the condition of the road today, so to speak; and do you feel as a company, and maybe this is a second question, want to approach the country who's probably responsible with regard to this seeming injustice that you might be finding yourself in or someone else having beat up the road but you end up being enforced by this Commission through its compliance folks to restore it to the condition which it was first documented by this Commission.

MR. WHEATLAND: Mr. Curry would be pleased to address your question.

MR. CURRY: Sure. First off, once our facility goes into operation we're going to want those roads in good condition just for the safety of our own workers. We're already entered into agreements with Contra Costa County for that portion of Bruns Road where the majority of damage from the GreenVolts Project has occurred. And we've already entered into a construction road maintenance agreement with Contra Costa County. And I've also been in contact with

1 Alameda County and they did not want to sign a
2 construction road maintenance agreement with the
3 project but we've committed to working with Alameda
4 County to make sure that the road is going to be safe
5 and drivable for our workers. I also understand that
6 there could be some opportunity to work with the solar
7 project as it stands right now. It may not make a
8 whole lot of sense for them to go in and completely
9 repave the road if we're going to be doing
10 construction for the next year or so. We're exploring
11 some opportunities between the county and possibly
12 that project to do a one-time sort of repair. But in
13 the meantime there is some gravel that every day is
14 being laid down in some of those potholes and being
15 graded and so we're keeping the road in the best of
16 condition as we can right now.
17 COMMISSIONER BOYD: You're doing this or the
18 county is doing this?
19 MR. CURRY: I believe the GreenVolts project
20 is doing this. They're still under construction and
21 they continue to do that.
22 MR. WHEATLAND: Chris, what will be the
23 baseline? Did we take photographs of the road?
24 MR. CURRY: We did. We took photographs of
25 the road, extensive photographs, we've documented

1 those with the Energy Commission on the day—on the
2 morning that we began construction.
3 MR. WHEATLAND: So, Commissioner, the
4 baseline that we'll be using will be the condition of
5 the road on the date that we commenced construction.
6 COMMISSIONER BOYD: Which is more likely to
7 be Mr. Sarvey's most recent picture?
8 MR. WHEATLAND: Which is prior to his most
9 recent picture?
10 COMMISSIONER BOYD: What's your assessment
11 of the condition of the road? His most recent picture
12 versus the picture you took versus the picture, the
13 original picture, which was everything before anybody
14 started?
15 MR. WHEATLAND: The picture that he has
16 taken shows the road in worse condition that the
17 baseline that we established. That means that we're
18 going to have more work to do.
19 COMMISSIONER BOYD: I have no more questions
20 but I'm not sure that I'm satisfied but I have no more
21 questions.
22 COMMISSIONER PETERMAN: I have a question.
23 What's your response to Mr. Sarvey's concern about the
24 lack of signage on noise?
25 MR. WHEATLAND: Well, this is an issue is

raised—well, I will respond to it but I want to point out that this is an issue that was raised just this morning. He has not raised it previously to us in any of his pleadings but I'll ask Mr. Curry if he's able to respond.

MR. CURRY: Yes. It's my understanding that signs were put out at the main gate of the project which is not being used at the project which some of you may recall with our burrowing owl that has inhabited the main project road. But I'm going to put in a phone call as soon as this hearing is over to make sure that that sign is there and if not I'll rectify that today.

I would add that noise letters were mailed out to all of the project neighbors prior to construction of the project.

MS. HOLMES. Yeah, I'd like to make a comment of clarification. My name is Caryn Holmes. I'm with the Chief Counsel's Office. For people who don't have the order in front of them, you should be aware of the fact that the draft order was prepared by the Chief Counsel's Office. There was some representation earlier this morning that there was a staff order and, of course, as people know the ex parte rule that prohibits communications between staff

1 and the Commissioners is still in effect pending the
2 reconsideration period. So I wanted to make sure that
3 people knew that this was an order that was prepared
4 by the Chief Counsel Office. And if there are any
5 questions of the Chief Counsel Office, I would be
6 prepared to answer them. Although I do agree with Mr.
7 Wheatland that all of the issues that were raised in
8 the petition for consideration and discussed earlier
9 this morning have been discussed in the proposed
10 order.
11 CHAIRMAN WEISENMILLER: Any questions? Then
12 let's hear from staff.
13 MS. WILLIS: Good morning. My name is Kerry
14 Willis. I'm Senior Staff Counsel. And I do represent
15 the Energy Commission staff and I was going to
16 actually make that clarification too. Ms. Sommers
17 seemed to be a little confused on what was a staff
18 document and what was a Committee document throughout.
19 The notice and order regarding petitions for
20 reconsideration that was issued, I believe, on June
21 24, 2011 was actually a Committee order. It wasn't a
22 staff document. And staff responded to that in a
23 timely manner on July 6 as required by the Order.
24 And, furthermore, as Ms. Holmes just stated. The
25 Proposed ordering denying the petitions is not a staff

1 document but we, however, agree with the proposed
2 order and we have reviewed it carefully and do agree
3 with the points made.
4 As far as what Mr. Wheatland had addressed
5 on Bruns Road, just as a point of clarification, Mr.
6 Sarvey talked about TRANS-8, a condition of
7 certification. It's actually TRANS-2 and it does
8 require, as part of verification, that the project
9 owner take photographs prior to site mobilization so
10 apparently that has been done. So they're following,
11 as far as we're concerned, the letter of the condition
12 as it was approved.
13 And the only other part that I wanted to
14 clarify was that Ms. Sommer was not actually in
15 attendance on the March 7 evidentiary hearing so some
16 of her characterizations is really just—I'm not sure
17 what it's based on but it isn't part of---staff was
18 there and we did not feel that the events happened as
19 she described. And, as she kept saying, Mr. Galati
20 was a witness or not a witness. Mr. Galati is an
21 attorney for PG&E therefore he wouldn't be a witness
22 in the case whether PG&E was there or not. He was
23 there just to provide information as a courtesy to the
24 Committee and to the other parties and was available
25 for questions. I do believe that was a misstatement.

1 Otherwise, we filed our brief and if there
2 are any questions of us we're more than happy to
3 answer them.
4 CHAIRMAN WEISENMILLER: Thank you.
5 Commissioners, any questions or comments at this
6 stage?
7 COMMISSIONER DOUGLAS: Commissioners, I
8 wanted to make a brief comment, not so much about the
9 ex parte discussion which I think the Committee order
10 addresses—or the order before us addresses correctly,
11 that this was a non-substantive conversation that was
12 then reported on the record as what it was. We have
13 not had much discussion about the concerns about the
14 Williamson Act that was raised in the petitions and I
15 wanted to briefly address those concerns so that it's
16 clear the basis upon which I recommend the decision
17 before us.
18 The Energy Commission, under the Warren-
19 Alquist Act and our regulations, enforces laws,
20 ordinances, regulations and standards. And what laws,
21 ordinances, regulations and standards have in common
22 is that they're rules of generation application. They
23 apply generally to the people or the party that is
24 regulated.
25 The Williamson Act is very clearly a law and

1 it provides for protections of agricultural lands and
2 it providers for local governments to do contracts to
3 preserve that land in agricultural use under certain
4 circumstances and with certain conditions attached to
5 that. And it clearly, and this was not in dispute,
6 allows power plants as compatible uses. Now, under
7 the Williamson Act, the county may in turn do a
8 contract that narrows what is a compatible use for a
9 particular contract and so in evidentiary hearings we
10 heard probably too many hours of testimony about
11 whether this particular contract allowed power plants,
12 but the act itself but the contract.
13 And, in retrospect, I think that we—as we
14 thought it through probably didn't need those hours of
15 testimony because we ultimately decided that we were
16 not in privity in the contract. We're not empowered
17 to enforce a contract. We don't have the power to
18 remedy any breach of contract. And we don't have the
19 ability to override a contract nor would we claim that
20 our resolution of a contract dispute could only be
21 litigated in the Supreme Court not do we have any way
22 of righting any wrong through any alleged contract
23 issue.
24 So the analogy that I draw when I think
25 about this is what if a dispute arose over the

1 ownership of the land that the power plant was
2 proposed to be put on? Would we survey an old will
3 and attempt to analyze whether they will correctly
4 transfer the land to the person who sold it to the
5 applicant? Having had to study wills and trusts, I
6 can guarantee you that we would not.
7 (LAUGHTER.)
8 We would not. I would not. So if a dispute
9 arose over the conduct of the contractor to the
10 applicant, if a dispute arose over ownership of the
11 technology the applicant used—these are disputes that,
12 in my view, are not disputes that we need to settle
13 within a proceeding. Obviously we need to enforce the
14 conditions of a decision that we put out but it's not
15 something, in my view, that we have the ability to
16 settle or the need to settle and the contract, to the
17 agree that people think the contract is not compatible
18 with the use, is---I don't think that we're the forum.
19 It's clearly not a LORS issue and I think that
20 probably spent too much time thinking about whether it
21 was a contract issue, in my view after we really set
22 down with the evidence and looked through the law.
23 The Williamson Act provides for a pathway
24 for parties who think a contract is being violated.
25 It's a pretty clearly prescribed set of actions that

1 someone can take and it evolves. It has to be
2 brought by a landowner. It's just out there in the
3 statute. So I think that we're not the place to
4 resolve questions about a Williamson Act contract. I
5 think that a contract is not a law, ordinance,
6 standard or regulation.
7 CHAIRMAN WEISENMILLER: Thank you. I would
8 note that our sister agency, the PUC, came to us with
9 a similar decision on dispute on QF contracts. In the
10 case of Colmac where the utility and the counterparty
11 basically had a dispute over an interpretation of a
12 specific contract term. After a lengthy case at the
13 PUC, the AOJ ultimately said it's a matter of contract
14 law. Go to the appropriate venue to deal with the
15 dispute.
16 So, again, your approach is at least
17 consistent with what the PUC has done on similar
18 issues.
19 Do we have any other questions or comments
20 on this?
21 COMMISSIONER BOYD: I might just ask the
22 staff to comment on Mr. Sarvey's last point about
23 seaming. I know that this picture is very hard to
24 decipher in seaming evidence on his allegation that
25 there's evidence of heavy or of construction equipment

1 moving in an area that theoretically was perhaps out
2 of bounds as an area that is particularly sensitive.
3 Is there, and this not being my case I'm trying to
4 recall our action, are there any conditions in the
5 action taken by the Commission that would indeed
6 protect this piece of land. Is there any way to
7 indicate—or even to identify who might have moved
8 through that area if there's truly evidence of
9 movement. And, I must admit, this picture is really
10 hard to decipher and to see if there's any movement
11 other than the barrier erected which is fairly
12 traditional in construction to prevent the movement of
13 materials but I was just wondering if staff has any
14 comments on that? And ultimately, I guess I'll back
15 up to the applicant since I failed to raise it the
16 first time.
17 MS. WILLIS: Well, just as a brief comment.
18 This is the first time that we've seen this picture
19 and it's not been authenticated as to where it was
20 even taken from. So I wouldn't be able to comment on
21 the photo but we have quite a few biological research
22 conditions that I'm sure would prevent any action that
23 Mr. Sarvey's claiming. I wouldn't be able to address
24 where this photo was taken. There's no documentation
25 of where or when or who took the photo.

COMMISSIONER BOYD: Well, I'm sure Mr. Sarvey can discuss this with our compliance staff.

MS. WILLIS: And that would really be the appropriate place for him to discuss that.

COMMISSIONER BOYD: I don't know if the applicant has any comments at all or whether you can tell any more from this picture than I can tell.

MR. WHEATLAND: Well, it's the first time that we've seen the picture. In fact, when I was talking to Mr. Sarvey before the meeting he didn't even show me the picture then so the first time that we saw it was when he handed it to me now. We're not sure where this picture was taken. However, I can tell you that on this particular construction site we have a biological monitor whose present quite often at the site. We have the appropriate monitors on the site and we will try to determine what this picture represents but this is the first that we've seen it here today.

COMMISSIONER BOYD: Okay. Thank you.

COMMISSIONER DOUGLAS: I wanted to ask about the issue of funding for the Tracy Fire Department because the information that was presented today is new information and so I wanted to ask staff and applicant to what degree that impacts fire

1 responsibility of the stations.

2 MR. WHEATLAND: I'd like to address that if

3 I could, please. As you may be aware, the

4 responsibility for fire services falls to Alameda

5 County and not with Tracy Fire. But Tracy Fire does

6 have a mutual aid agreement with the Alameda County in

7 the event that they would be called to our project

8 site. There was a dispute in the proceeding of

9 whether or not our project would have any impact at

10 all over Tracey—on Tracy fire. And, if so, whether or

11 not any mutual aid that they would be providing would

12 be reimbursed through their mutual aid agreement.

13 But to avoid that controversy what the

14 applicant did was enter into a voluntary agreement

15 with Tracy Fire to pay them $75,000 to compensate them

16 for any potential impacts that they feel might arise

17 from this project. Tracy Fire agreed to that

18 agreement and is represented on the record of this

19 proceeding that it satisfies their concerns. So we

20 believe that we have fully mitigated any impacts that

21 may arise from this project regardless of what other

22 funding conditions may arise in San Joaquin County

23 with Tracy Fire.

24 COMMISSIONER PETERMAN: Could staff also

25 clarify and comment on Ms. Sommer's comment regarding

1 the timing of the construction versus orders coming
2 out, etcetera?
3 MS. WILLIS: I believe her comment was that,
4 in her opinion, construction couldn't begin because
5 the petition for reconsideration hadn't been heard.
6 The project was licensed and therefore compliance has
7 begun and so, I think, a letter to begin construction
8 was issued, and I'm not sure but Mr. Curry could
9 probably state the date, so it's at the applicant's
10 risk that they move forward. And they have. I
11 believe the site mobilization.
12 MR. CURRY: We have started.
13 MR. WHEATLAND: If I could also add, when
14 the Warren-Alquist Act was originally written this was
15 one of the most heavily debated aspects of the Warren-
16 Alquist Act was the question of motions for
17 reconsideration and provisions for judicial review.
18 The legislature determined that the motions for
19 reconsideration would have to be filed within 30 days.
20 The legislature determined that petitions for writ of
21 review needed to be filed with the Supreme Court
22 within 30 days of the decision. And the legislature
23 decided that neither the Commission was granted to
24 require a stay of construction pending its review. So
25 this is a longstanding legislative determination that

1 has been in effect since the creation of the
2 Commission and if petitioners have any concern about
3 that, that's a question that needs to be addressed to
4 the legislature.
5 CHAIRMAN WEISENMILLER: I think the issue
6 may have been raised by Mr. Sarvey as opposed to—
7 Any other questions or comments? Do I have
8 a motion?
9 COMMISSIONER DOUGLAS: I will make a motion.
10 I might ask for help in formulating the motion so we
11 have two petitions and we have a proposed order. So
12 we are deciding Item 6 and 7. I'll take them in
13 order.
14 MR. LEVY: If I may help the Commission, you
15 have a proposed order from the Chief Counsel's Office
16 which responds to both Items 6 and 7 so if you wanted
17 to move to approve or disapprove the order and move to
18 adopt or not adopt the order that would be an order
19 and it would address both items on the agenda.
20 COMMISSIONER DOUGLAS: Thank you, Mr. Levy.
21 In that case, I move to adopt the order provided by
22 the Chief Counsel's Office pertaining to Items 6 and
23 7.
24 COMMISSIONER BOYD: I'll second the motion.
25 CHAIRMAN WEISENMILLER: Motion has been

moved and seconded. All those in favor?

(Ayes.) Motion passes unanimously. Thank you.

MR. LEVY: Thank you.

CHAIRMAN WEISENMILLER: Item 8 is the minutes. Let's start with A) June 15.

COMMISSIONER BOYD: Move adoption.

COMMISSIONER PETERMAN: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.)

CHAIRMAN WEISENMILLER: Let's look at Item B. June 29 minutes.

COMMISSIONER BOYD: Move adoption.

COMMISSIONER PETERMAN: I'll second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.)

CHAIRMAN WEISENMILLER: Item C. June 30.

COMMISSIONER BOYD: Move adoption.

COMMISSIONER PETERMAN: I'll second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) This also passes unanimously.

Let's go to Item 9, Commission Committee Presentations and Discussions. You want to go first?

COMMISSIONER PETERMAN: I have a couple updates in Committee Presentations. I returned last

1 night from San Diego where I participated in a
2 Storage Week Conference and represented the Commission
3 on a panel of Commissioners from different states
4 including Illinois and New Jersey talking about our
5 perspective on storage. And it was good to dialogue
6 with other states and understand where they are in the
7 process. One thing that clearly came out was the
8 importance of the research that the Energy Commission
9 is doing in the PIER program in storage in particular
10 on cost. A concern that was continuously raised was
11 the cost effectiveness of storage. And the research
12 that we've done in this area and demonstration
13 projects have helped with reducing costs as well as
14 just informing not only our state but other states
15 about these technologies and the particular
16 advantages. And how they can fit and particularly
17 this is with integration of renewables and so I'm glad
18 I was able to participate in that.
19 Also, I'd like to update—I'd like to take
20 this opportunity to update the Commissioners and the
21 public on the status of the Emerging Renewables
22 Program which is something that the Renewables
23 Committee, myself and Commissioner Boyd, have been
24 actively following. So as you all may remember, the
25 Commission suspended the ERP program last March 4 to

1 address deficiencies with existing program
2 requirements. The Commission was particularly
3 concerned with the combination of current program
4 design and changes in the small wind energy system
5 market resulting in overly generous rebates.
6 In the weeks leading up to the suspension,
7 the Commission saw a significant increase in the
8 number of applications for small wind energy systems
9 where the applicant was requesting rebate amounts
10 close to or equal to the total cost of the system.
11 Now the goal for the ERP has been to build a
12 market for emerging distribution renewable
13 technologies and help them reach the cost competitive
14 status. However the program was never intended to
15 fully eliminate the consumer's economic interest by
16 covering the entire cost of a system.
17 The Commission initially believed we would
18 have the program back up and running within 120 days
19 of that notice. On July 1 however we informed ERP
20 stakeholders by way of email that we will need more
21 time as our initial investigation into the program has
22 required a more thorough review.
23 Part of that review will require a staff
24 workshop in early August to review proposed changes to
25 the ERP. Commission staff will soon release a draft

1 of a new version of the program guidebook. The
2 proposed changes for stakeholders and the public to
3 consider and comment on shall include but are not
4 limited to setting a cap on rebate amounts, splitting
5 rebate payments into multiple installments and
6 requiring third-party certification for program
7 eligibility.
8 With the workshop in mind, I would also like
9 to inform the public and stakeholders and my co-
10 Commissioners on the status of available funding for
11 the program.
12 Over the last several years, nearly
13 $180,000,000 from the Renewable Energy Program has
14 been loaned out or re-appropriated for other purposes.
15 Taking into account pending reservations, this will
16 leave the ERP with roughly $20,000,000 for future
17 reservations.
18 I understand the suspension of the ERP has
19 been frustrating for program applicants, system
20 installers, retailers and technology companies. But
21 this thorough review of the program has been necessary
22 to ensure consumer protection and efficient use of
23 ratepayer dollars.
24 I look forward to working with the public,
25 stakeholders and my fellow Commissioners in the weeks

1 ahead as we get this program back up and running.
2 And so thank you. I look forward to give
3 you future updates on the issue.
4 CHAIRMAN WEISENMILLER: Thank you for the
5 update. I think all of us remember that when this
6 program was suspended that was your first Business
7 Meeting. And it's certainly a welcome aboard and we
8 appreciate your effort to work through the issues on
9 this program. It's clearly not been easy.
10 COMMISSIONER PETERMAN: Yes. And I am
11 thankful for my co-Commissioner on the Committee,
12 Commissioner Boyd as well as our staff and various
13 departments who have diligently worked on this issue
14 and continue to do so.
15 CHAIRMAN WEISENMILLER: Again, thanks again.
16 COMMISSIONER BOYD: I have a couple of items
17 to report on.
18 I've attended the past two days, two days of
19 the week long annual CCEEB summer seminar series which
20 is well attended by legislatures, industry legislative
21 staff and various government agencies. I would report
22 the complete absence of one agency from the seminar
23 that caused quite a stir. Rob and I can field this
24 one. ARB boycotted the meeting purposely. It didn't
25 go down well with legislatures and a lot of other

1 folks. And I guess they're upset about a piece of
2 legislature. Admittedly, I was not familiar with it,
3 introduced by Bill Berryhill AB-1095 which is labeled
4 a dispute resolution proposal. It is a proposal to in
5 effect create a hearing board at the state level to
6 adjudicate AB-32 matters, not any of the other matters
7 that have historically been considered by the ARB.
8 But I guess ARB, understandably, is perturbed and
9 chose that. Interestingly enough, in researching
10 that, I find that the bill is a supported by the South
11 Coast Air Quality Management District, maybe not
12 surprising, but surprising to me supported by Jerry
13 Hill who is a former ARB member himself and supported
14 by Felipe Fuentes as well. So, it's going to
15 obviously prove to be an interesting situation for the
16 ARB and we'll watch from the bleachers I'm sure as
17 this one moves forward.
18 The first two days of the series were
19 dedicated to greenhouse gases and air quality issues.
20 And I found myself lecturing folks about the lack of
21 recognition in their agenda and what have you in the
22 energy climate change, air quality nexus and ended up
23 making quite a few comments. And as Linda Adams said,
24 "You should be sitting here with me on this panel."
25 But nonetheless I afforded myself a lot of

1 opportunities to comment as you can probably
2 understand. I think everybody in the audience kind of
3 agreed and we had a very healthy discussion, frankly,
4 over two days of this nexus and perhaps a little
5 better working together on the same subject in the
6 future.
7 In the context of both days, but in
8 particular yesterday, environmental justice issues
9 were discussed fairly lengthily. And, actually a
10 member of the CCEEB staff made a very lengthy
11 presentation about the total lack of state attention
12 to this issue. And there being no visible activity.
13 I came out of my seat and out of order made quite a
14 presentation about our active participation in this
15 subject area with regard to each and every power plant
16 citing case that comes before the group. I think
17 CCEEB may or some subset of CCEEB may choose to hold a
18 separate forum, seminar, something on the subject of
19 environmental justice which was discussed at length.
20 Causes, dilemmas related thereto and the fact that it
21 cuts across greenhouse gas air quality and energy
22 issues. And so you might look forward to some
23 activity in that area in the future.
24 Another item that I would just mention is
25 that the meeting was well attended by representatives

1 of the railroad industry and the various railroads.
2 I had an opportunity to discuss a matter of litigation
3 that we will discuss in closed session later. But
4 also, to my Commissioner on the Renewables Committee,
5 I pose several questions privately, not in the
6 sessions, about the issue of small fuel cells as it
7 relates to our Emerging Renewables Program because we
8 are beginning to hear stories of possibly being
9 flooded with applications for small fuel cells in
10 order for—as a result of various federal requirements
11 of folks. Actually, some of the railroad people were
12 very unfamiliar with this. By last night, I was
13 getting a briefing from one railroad and they promised
14 to come back to us with more information as they dig
15 into it but apparently there is obvious truth to the
16 fact of the need for backup generation as required by
17 federal authorities all tied to the horrific
18 Chatsworth, California train wreck of some time ago
19 and the decision that there's inadequate backup
20 generation for some of the signaling systems in the
21 railroad. So we may indeed see more traffic there.
22 The last thing that I want to mention is
23 that, I believe, the Chairman mentioned in an email or
24 we've heard internally about the South Coast Air
25 District having—the staff having brought to the

1 District Board a draft air quality management
2 district energy policy which caught everybody by
3 surprise. The District Board has remanded the issue
4 back to the staff after they heard lots of concerns,
5 if not complaints, about the fact that no, it wasn't
6 vetted with any of the State of California Energy
7 Agencies. No, it really wasn't vetted with any
8 stakeholders. I've talked to the Executive Director
9 about this last week and since he was in attendance at
10 this conference and spent quite a bit of time talking
11 about the issues. They have committed and released a
12 draft, that I have not had a chance to look at yet,
13 but I saw our staff comment in an email today
14 indicating that there are substantial changes to the
15 draft and references to the need to communicate with
16 this agency and other energy agencies. They're going
17 to be scheduling meetings with Commissioners and other
18 staff of this agency to develop the coordination that
19 I think they've got to recognize needs to take place.
20 As I pointed out, if one wanted to, one could really
21 critique these pages and pages of whereas to indicate
22 the significant activity of the various state agencies
23 that have been engaged in over long periods of time
24 that address these issues. And that they should
25 really identify to their Board these issues rather

than make it sound like they're going unaddressed and therefore the staff of the South Coast District would need to solely address them. And they should pick out areas that would be appropriate to partner with the state agencies that tend to have the lead and perhaps they could identify areas within their district that are very district specific and invite state agencies to work with them on issues in that area. And Mr. Wallerstein promises me that is where they are heading so we will see more. I understand that they're going to have workshops, we have staff that's going to monitor those workshops but in any event this afforded, as it usually does, a unique opportunity to have some face-to-face discussions.

And lastly, I would mention both Pete Price and Kip Lipper were in attendance and intend to be in attendance for the duration of the conference. So this afforded an opportunity for good exchanges among many of us over the past two days. And Senator Padilla was there yesterday and I talked to him some and he gave a keynote address last evening and other legislators have been in and out of the conference. I think that the Energy Commission was much appreciated with regard to its attendance. Linda Adams and I appeared to be the only state representatives and I'd

1 honestly say I wasn't sure if I was there on vacation
2 or as an official representative of the state. In any
3 event, I appreciated the opportunity to have the
4 interaction with all of the folks. I think that it
5 did reflect positively on us, at least in the eyes of
6 several legislatures and certainly the CCEEB
7 organization. And, of course, while sitting and
8 talking with Linda Adams she got the news that her
9 replacement had been selected although I guess she
10 goes out of office on the First of August. The new
11 Cal EPA secretary will assume his duties at that point
12 in time. And so I think that covers everything that I
13 wanted to reference. Thank you.
14 CHAIRMAN WEISENMILLER: Let me just follow
15 up on couple of yours points. One was that in the
16 IEPR, we had a hearing down at the South Coast and as
17 part of that we made contacts with a number of folks
18 in the South Coast. One was a representative of the
19 Chamber and she was the one who basically appointed me
20 to that South Coast Energy Plan, saying that the LA
21 Chamber had a lot of concerns and hoping that we were
22 aware of it. Thank you for picking up that.
23 I would also note, certainly in that
24 workshop, we really reached out particularly under
25 Commissioner Douglas' leadership to the environmental

1 justice community, to have them well represented. We
2 also reached out in the DG workshop, in the IEPR, to
3 have the environmental justice community well
4 represented. And I anticipate over time, I know we've
5 talked about maybe at next year's IEPR having a larger
6 component dealing with environmental justice issues.
7 COMMISSIONER BOYD: Mr. Lipper and I hit a
8 very harmonious chord on one point that I think was
9 very helpful. He was very critical of the fact that
10 there hadn't been significant mention and appreciation
11 given to the fact that global climate change is not
12 the sole responsibility of Cal EPA / ARB. That he's
13 quite aware, particularly since he in-depth reviewed
14 the zero base budget that all agencies were prepared
15 to submit. And that he was quite aware of the
16 significant efforts on the part of many agencies such
17 as the Energy Commission in this arena and that such
18 recognition should be noted. In any event,
19 appreciated the fact that we were there as an agency
20 to join in in the discussion so. Hopefully that will
21 help in some quarters.
22 COMMISSIONER PETERMAN: I just wanted to add
23 because you reminded me that I did get feedback from a
24 woman who runs an environmental justice organization
25 about the Clean Energy Futures Workshop, IEPR

1 Workshop. And she particularly commented on Chair
2 Weisenmiller and Commissioner Douglas, how responsive
3 you were to some of the concerns there, particularly
4 Commissioner Douglas. The line of questioning that
5 you asked and your interest. And it was very well
6 received and appreciated.
7 COMMISSIONER DOUGLAS: I appreciate that. I
8 think that it's critical that we work well with the
9 environmental justice communities and we help them,
10 the community group and the organizations representing
11 these groups. That we help empower them to reach out
12 to their constituencies. I think this is a natural
13 constituency for clean energy and clean air and this
14 is a constituency that votes for clean energy and
15 clean air. It's a constituency that wants more
16 outreach and more assistance. And just the
17 perspective that comes with how do you help this
18 person reach out to a constituency that's not going to
19 show up to a workshop, that doesn't have hundreds of
20 dollars to spend on an energy audit but wants to do
21 something and I think that there's definitely ways
22 that we can do more.
23 COMMISSIONER PETERMAN: I would also just
24 add, that as Commissioner Boyd noted, that a lot of
25 our interaction with this community has been around

1 the siting of power plants and as we're thinking
2 about things besides power plants and moving toward a
3 renewable future, it's important to continuing having
4 dialogue and understand what the EJ concerns are
5 around these issues because they may be different and
6 we don't want to only keep the lenses in perspective
7 as we have from our siting experiences.
8 COMMISSIONER BOYD: If I might, one last
9 interruption. You reminded me of a scientific
10 discussion that occurred yesterday by Professor
11 Jacobson of Stanford University about the, in the
12 context of environmental justice discussion and air
13 quality and the co benefit issues and what have you,
14 co-pollutant issues—he put forth the thesis that there
15 are CO2 domes over major metropolitan areas that was
16 quite interesting. And there was some very lengthy
17 debate about it. I'm sure there would be more of a
18 debate but it was aimed at the idea that there are
19 localized issues that have to be dealt with and where
20 highly disputed by other eminent scientific folks so
21 it's an issue that we'll obviously hear being debated
22 for some time now. Some folks unable to see this any
23 different than an allegation that could be made, a NOx
24 dome or a hydrocarbon dome or an ozone dome or what
25 have you but it proved to be interesting, nonetheless.

1 CHAIRMAN WEISENMILLER: That would be. I
2 mean certainly there are heat islanding effects in
3 urban areas which can certainly effect kinetics of
4 chemical reactions and accelerate those. I was just
5 going to mention that last night some of us had dinner
6 with the German Minister Katherina Reiche was in town.
7 And she was responsible for the renewable program so
8 it was very good to be able to talk to her about
9 renewables, energy, climate change issues and build
10 off the German experience.
11 Chief Counsel's Report?
12 MR. LEVY: Good morning, Commissioners. I'd
13 like to request a closed session on five items today.
14 Those are 10-D and 10-F and also to discuss an
15 adjudicatory proceeding to which the Commission is a
16 party which has been initiated and that's Communities
17 for a Better Environment and Sarvey vs. the PUC and
18 Energy Commission. And also to discuss matters where
19 based on existing facts and circumstances there is a
20 significant exposure to litigation against the
21 Commission and we have two matters in that regard to
22 discuss. Thank you.
23 CHAIRMAN WEISENMILLER: Okay. We'll go into
24 closed session. Executive Director's Report?
25 MR. OGELSBY: I have nothing to add.

1 CHAIRMAN WEISENMILLER: Public Advisor
2 Report.
3 MS. JENNINGS: I have nothing to report.
4 CHAIRMAN WEISENMILLER: Public comment.
5 Okay. Then we're going to recess into Executive
6 Session. Why don't we meet at quarter of 12.
7 (Whereupon, at 11:24 a.m., the business
8 meeting was adjourned.)
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