COMMITTEE WORKSHOP

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Guideline Revisions for	)	Docket No.
Renewable Energy Program and	)	02-REN-1038
RPS Implementation	)	
_____	)	

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

THURSDAY, DECEMBER 13, 2007

2:04 P.M.

Reported by:
Peter Petty
Contract No. 150-07-001

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John L. Geesman, Presiding Member

Jackalyne Pfannenstiel, Associate Member

ADVISORS, STAFF and CONSULTANTS PRESENT

Suzanne Korosec, Advisor

Timothy Tutt

Jason Orta

Fernando DeLeon

Heather Raitt

ALSO PRESENT

Julee Malinowski-Ball
California Biomass Energy Alliance

Bob Ellery
Sierra Pacific Industries

Kent Duysen
Sierra Power Corporation

Ed Cazalet
MegaWatt Storage Farms

Diane Fellman
FPL Energy Project Management, Inc.

Chris Trott
Thermal Energy Development Partnership

Dina Del Dotto
Covanta Energy

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P R O C E E D I N G S

2:04 p.m.

PRESIDING MEMBER GEESMAN: This is a meeting of the Renewables Committee of the California Energy Commission to discuss revisions to our guidelines for the existing renewable facilities program.

I'm John Geesman, the Presiding Member of the Committee. To my left, Jackalyne Pfannenstiel, the Commission's Chair and the Associate Member of the Committee.

To her left, Tim Tutt, her Advisor; to my right Suzanne Korosec, my Advisor.

Jason, do you have a presentation?

MR. ORTA: Yes, I do. Thank you.

Before I begin, I would like to inform those who are listening on the web or otherwise, of some additional information. If you would like to call in to the workshop, please dial 888-469-3052. When they ask for a call leader, please say Jason Orta. The passcode is workshop. And, as a reminder, written comments are due on Monday, December 17th.

I will go over the agenda for this workshop, which is basically to discuss proposed

existing renewable facilities program guidebook revisions by staff.

First of all I will start with some background information, a little bit as to how we got here and where we are right now.

One of the proposed guidebook changes will codify the award decision process on how these funding awards are distributed.

Then the third part here is proposed changes to the applications that facilities would submit in applying for funds.

And then the next slide would be discussion of other changes, including the change in the program funding allocation per SB-1036.

We've also included as part of the agenda various issues that we would like stakeholders to comment on during this workshop. And there will be time for additional public comment by stakeholders.

I apologize to the audience for forgetting to dim the lights so you can see the presentation.

A little bit of background. SB-1250, which was enacted January 1st of this year, included Public Resources Code section 25742,

which requires the Energy Commission, in terms of evaluating each -- well, it requires the Energy Commission to evaluate each facility on an individual basis to determine a target price production incentive cap if the finding is that the facility is eligible for funding.

From 1998 to 2006 target prices and production incentive caps were established on a technology basis. Public Resources Code section 25742 requires that the Energy Commission collect the following information from each facility that requests an award.

This includes the cumulative amount of funds that the facility has previously received from the Energy Commission and other state sources. The value of any past and current federal or state tax credits. The facility's contract price for energy and capacity.

The market value of the facility. An estimate of the incentive payment that is needed above the energy payments that the facility will receive during the year that they're applying for funding for. And also each facility would be required to provide an explanation as to why this incentive level is needed.

And finally, Public Resources Code section 25742 calls for an explanation of how the incentive payments from the existing renewable facilities program will allow the facility to become cost competitive by the end of 2011.

Additionally the existing renewable facilities program seeks to secure for California the environmental, economic and reliability benefits these facilities provide by continuing to operate.

The fourth edition of this guidebook as incorporated was drafted in response to the changes in SB-1250, and that was adopted by the Energy Commission on March 14th of 2007.

The next slide discusses our proposal, staff's proposal for the award decision process. The first step is that staff will review the applications on a facility-by-facility basis. In this step there may be requests by staff for additional information by the facility.

For example, this year we've met with most of the facilities on an individual basis; and those meetings were helpful in providing us some very useful information. And that may be a part of this step, but there will also be, before that,

the facilities will need to complete an application.

There will also -- the next step is that based on the review and on the information submitted in those applications staff's recommendation will be taken to the Renewables Committee for approval.

The step after that is the applicant will be informed in writing of the Renewables Committee's decision. And subsequent to that, the Renewables Committee's decision will be submitted to the full Energy Commission for approval at a business meeting.

If there is dissatisfaction with that decision the applicant may request reconsideration from the Renewables Committee and appeal the full Energy Commission's decision as specified in the overall program guidebook.

The next slide basically discusses staff's proposed changes to the funding award applications. Before I go through this slide I would like to give you basically a gist of where we're going with this.

First of all, think of it as past, present and future. Say for 2008 we would like

the applicants to help us look back at 2007 and the funds that were awarded by the Energy Commission, how those funds helped the facility meet the goals of the program, such as increasing generation, maintaining generation and helping the facility become self-sustaining.

So, in other words, information that was provided to us in previous years, say when we're reviewing the 2008 applications, information from 2007 will be used in the analysis.

For the year that you're applying, say 2008, we're proposing to ask for a description of the exact use and the allocation of the funds requested to give us an idea of what kinds of projects and investments the facility will make, and how these funds would enable each facility to make those investments to help further the program goals.

We're also going to look back, as well, you know, because one of the things that we want to keep track of is what are the results. What is the additional generation that could be attributed to the various investments that the facility made with the funding provided by the existing renewable facilities program.

In looking ahead, one thing that we are interested in finding out from each facility is looking to the future. What are the kinds of obstacles that the funding would expect to address in the future. And, again, it's just basically trying to get a holistic view, past, present and future, from each facility to hear the facilities' perspective on how the funds will help further the goals of the program.

In addition to the proposed changes in the funding applications, there are other proposed changes to the guidebook, as well. As I mentioned earlier, SB-1036 reduced the funds that are collected by the renewable resources trust fund by 51 percent. In turn, it also revises the allocation of funds to the existing account from 10 percent to 20 percent. Keep in mind that it is 20 percent of a smaller pie.

And in addition, there will also be proposed conforming changes to forms and to the draft funding award notice that's in the guidebook.

And additionally, I didn't include it on this slide, but one of the things that we are proposing to do is to put a template for

confidentiality applications into the guidebook because we are aware that what we are asking for from each of the facilities may be considered a trade secret, or the facility may want some confidentiality protection.

And after the presentation I have asked on of our attorneys, Fernando DeLeon, to give a short talk on the confidentiality process.

As always, and this goes back to my experience and other staff's experience in meeting with these facilities, stakeholder input is always appreciated. We really like everyone's input in administering this program.

Among the various areas that we would like stakeholder input are comments on the proposed changes that I have presented to you here, and also that were presented in the notice that was sent out on December 3rd, some comments on the award decision process, our proposed process for having these award decisions approved. And also changes to the funding award application.

The second bullet on this slide is something that staff thinks is very important to think about, because this is, as we all know in this room, this has been a challenge to administer

this program, considering the newness and also the diversity of information that we need.

One of the things that we are exploring is what kinds of quantitative factors can we use to help us with, you know, determining these awards. What kinds of numerical information that we can look at to help us make these decisions. Among some of the factors that we may incorporate in the forms, or we would also like your input on, are basically include, for instance, number of days that are lost because of maintenance needs. Number of, you know, how long -- how much down time each facility had because of major repairs and investments needed to be made.

Other information such as possibly the facility's net earnings and losses. What kind of return does the facility owners expect on their investment and that kind of thing. These are just discussion points that we would appreciate stakeholders' input on.

Another issue that we would also appreciate the input of stakeholders is suggestions on how the facilities and their fuel suppliers could accurate attest that the fuel procured for each facility meets -- conforms to

the restrictions imposed in the statute, in SB-1250.

Again, I'd like reiterate the call-in information. If you would like to provide comments by the telephone, please call 888-469-3052. And if they ask for the call leader it's Jason Orta. The passcode is workshop.

And another reminder: Written comments, which are greatly appreciated, are due on Monday, December 17th.

If the Committee doesn't mind I would like to turn to Fernando DeLeon, who will provide a short discussion on confidentiality issues, and to answer some of your questions, if you have any.

MR. DeLEON: Thank you. Good afternoon. I am Fernando DeLeon. I am an attorney here at the Energy Commission. One of my responsibilities is to review applications for confidentiality. Entities maybe wishing to submit an application, and that application may have confidential information.

Jason has informed me that they're planning to include in their guidebook in their guidebook our template application. We've developed this over the course of years, and it

outlines the requirements that we look for here at the Commission to designate certain data as confidential.

In the past this has been a controversial subject here. This past year when I worked with Jason luckily we didn't have too many problems with this particular program and people seeking confidentiality designations for the information they submitted.

The template is a very easy thing. You fill it in; it asks you certain questions. You have to label the data that you want confidential. You have to state how long you want the data to be confidential; the basis for that confidentiality in the law. That's generally it's a business or trade secret. Information that would harm the submitter if it was disclosed to the public. It would provide your competitors with an undue advantage over you if it was to be made public.

These are some of the examples that you can use to base your designation in confidentiality.

You need to have a penalty of perjury statement included on the application for confidentiality. State the time, how long you

want it to be confidential and the reason for that length of time. We've had anywhere from one year to we want this information forever to be confidential.

Let me state, when people ask for their information to be labeled designated as confidential forever, it's rarely, rarely granted. Only in the case of say cultural resources, or Indian burial grounds where we grant something forever.

You can always ask for it, and you can have a reason to ask for it. But please explain why you want it for the length of time.

One of the biggest problems we have here is people don't sign their application. Believe it or not, we get applications, there is no signature. We will return the application and say, please sign it. Please send five copies of the application, including the data that you want confidential.

There is a preliminary determination. The application goes to the Executive Director who makes a determination of confidentiality. The Executive Director sends that application, including all the information seeking

confidentiality to our dockets unit.

The docket unit reviews the application for fundamental things. Has it been signed; are there a number of copies included; is there a penalty of perjury statement included; is there a docket number. Believe it or not, people do not include the docket number, so we have no idea what this information and what docket it's supposed to be included.

And include the address of the responsible party who's making the application. We have, in the past, received applications where there was no address. We had no idea. There was no name for the person who submitted the application, just the entity. No individual person, no address. We had no idea where it was to go. So, those are some fundamental issues.

It's a pretty simple process. Any questions you might have?

Great. If you have any questions, Jason can ask you the questions; he can forward them to me if you have any specific questions later. Thank you. That was easy.

PRESIDING MEMBER GEESMAN: Thank you, Fernando. As is our tradition, we will go by blue

cards and take public comment. So if you'd care to address us, please fill out a blue card and someone will bring it up to me. I'll take the people in the room first, and then I'll go to the phones to see if there are any comments there.

The first one I have is Julee Malinowski-Ball from the California Biomass Energy Alliance.

MS. MALINOWSKI-BALL: Thank you, Commissioners, Advisors, Staff. I appreciate having the opportunity today to speak about this. I'm Julee Malinowski-Ball; I represent the California Biomass Energy Alliance, which is comprised of 850 megawatts of existing solid fuel, biomass and solar thermal generating facilities.

I know that it sounds weird that the Biomass Alliance includes the solar thermal folks, but we have a lot in common, including the development of this guidebook and this program.

I want to give a little background, too. I think that this year was definitely a challenging year. Jason said it just right. It was a challenging year and I just kind of want to lay it out from our perspective, how it went, and maybe how we can work to make it better.

2007 began wit a clear direction in mind. The biomass and solar thermal industries collectively worked with this Commission and this Committee and staff to craft a new existing account guidebook that took into account the new direction that the Legislature set forward. And that was requiring more detail of individual plant assessments. Good or bad, it actually just added another layer for you guys to take on.

And so you created an application process that was much more cumbersome, but fine, workable. And everyone put in their applications. And all the applications came in with roughly two sets of target prices requested by the facilities with the required justifications as to the needs of those individual plants.

And each and every one of those plants then received what we now call draft award notices denying their request to target prices and offered no more than what they received in 2006.

Even though the increase in fuel prices, alone, for the biomass industry was justification enough to get more in 2007, everyone was summarily denied.

You sought to rectify that, but really,

first was truly a lack of explanation across the board for this denial with individual meetings. Those individual meetings were very valuable. Staff appreciated them; all the plants appreciated them.

But at the end of that process, though, which by the way, it still going on today -- just unfortunate -- a whole host of target prices were then awarded to all the plants whose representatives came in and explain their application, and in many instances provided additional information.

This whole host target prices resulted, in our opinion, in, we think, a process that rewarded inefficiencies, divided historically cooperative industries, a process that if we think continues again unchanged this year will further create inequities among these industries, and produce fewer positive results, and not focus on, you know, both goals of this program.

One thing SB-1250 didn't change was the goals for this program. Current law states that the distribution of funds will comply with both long-term and short-term goals.

The short-term goals is, of course,

increasing renewable generation for the state. It also is recognizing that you need to secure for the state the environmental, economic reliability benefits that these facilities provide.

And the long-term goals were always, and continue to be, trying to put forward a fully competitive and self-sustaining industry.

Now, I'm representing two industries in which the vast majority of these representatives don't favor the continuation of that same approach this year.

We urge this Committee to support a more balanced approach to appropriating what little funds are left in the account. It's challenging. I actually have in my notes it's a gargantuan task. It may not be that big, but you have a big task in front of you with roughly only $22 million for next year.

You're responsible for balancing -- finding a balance between short-term/long-term goals that are mapped out in law. And you are responsible for designing a program that not only keeps the current level of generation, attempts to increase the generation and tries to find some balance that will make these plants then also

self-sustaining post-2011.

Now those may not be mutually exclusive, but they are large tasks with little amount of money. And historically this program, you know, set forth in the guidebooks, set one or two sets of target prices and caps for the plants to qualify.

Now, we thought that this was a very efficient and fairly effective program as long as the prices were following, you know, the ebbs and flow of the market.

Historically the program has shown results. When the target prices were raised you saw an increase in generation. And when the target prices went down or didn't go up, you know, or stayed steady for a long period of time, you know, you saw a decrease in generation.

There's no reason you can't design this program the same today with, you know, a few tweaks. I think our first request would be, is to do just that. You know, consult with our industries and agree on a set target price and cap or one or two sets of target price and caps.

Plants would apply for that; applications would include clear justification for

what those funds mean to them in terms of their need. They would prevent curtailment, possibly increase generation. And what those funds would do to, you know, self-sustaining past 2011.

And the CEC would continue to do what it's required to do under statute now, and that is do an individual plan assessment, you know, whether or not they qualify for that target price or cap seems simple enough. It worked before, it could easily work again.

And the guidebook today even states that that's within your realm of authority. The guidebook states that you can set a target price and cap if you so choose. And we urge you to actually consider, you know, returning to that method.

Ultimately we could look at it. If you really want to focus on the long-term goal and the short-term goal, you can set up two pots of funds, which we recommend one pot being say your short-term goal, trying to make sure that you don't lose generation by denying plants what they requested in their original applications.

What you were saying was -- our interpretation -- was that generation, that

additional generation or that, you know, maintaining that just wasn't worth the money. That there was no incentive now for those plants that weren't getting any incentive when the prices were lowest.

We need that generation, whether it's onpeak, offpeak or around-peak. That's important generation for the state as I'm sure you would agree.

But we could set up different pots of money. We recommend, you know, 75 percent of the pot be set up for a single target price where you justify your need for that. And that need would answer the simple question, you know, will this present further curtailment. You have historical information to say whether or not, in the future years, whether or not that worked.

The second pot would be your quote/ unquote self-sustaining goal generation. You know, where companies come in with special projects that further that particular goal. We think that's one way to do it.

But, again, I think the simpler way is preferable for the majority of plants. I think, you know, the first way is preferable and we just

think, you just get simply a bigger bang for your buck on that.

PRESIDING MEMBER GEESMAN: Why don't you take that argument to the Legislature.

MS. MALINOWSKI-BALL: I don't know where in the statute it prevents you from doing that. I would go back to the Legislature and say I need more money. I think you guys have done a great job of crafting a program over the years. And 1250 really didn't change how you went about doing that. It --

PRESIDING MEMBER GEESMAN: Well, that individualized analysis, which, as I think you'll recall, was a very strong flavor coming from the drafters of SB-1250, is something that we found impossible to ignore. And I think the notion of trying to set up a bifurcated process, or bifurcated pools of funds runs pretty directly contrary to that very strong flavor.

It may very well be an excellent idea, but I think it's the sort of thing that the Legislature ought to decide rather than have us put ourselves in their shoes.

MS. MALINOWSKI-BALL: I don't think that you absolve yourself of that responsibility when

you set a target price, or a set, or even doing what you're doing right now. You still have to do that individual facility analysis.

But even your guidebook today says that you can set a single target price if you wanted to. It's within your authority.

PRESIDING MEMBER GEESMAN: But there was a pretty clear legislative dissatisfaction with the way in which we were conducting the program previously, and --

MS. MALINOWSKI-BALL: Because there wasn't that deep analysis that you are currently asking for in the guidebook for 2007 --

PRESIDING MEMBER GEESMAN: But it's the deep analysis that you're saying is divisive and creating problems for your members.

MS. MALINOWSKI-BALL: We have to figure out exactly what Jason pointed out in his presentation, is what are the right documents, how do you quantify this. And, you know, we sat down with your staff last week for, you know, several hours and tried to hash out what that was. It is a very challenging task.

This year I think you've put yourselves in the position of being a PUC-like body --

PRESIDING MEMBER GEESMAN: Those are fighting words here.

(Laughter.)

PRESIDING MEMBER GEESMAN: Watch out.

MS. MALINOWSKI-BALL: I understand, sir. You know, you're now forced to take, you know, analyze each individual facility, how they run, what kind of investments they're making, are they making economic investments, cost effective investments.

I think you end up forcing plants this year, if you don't, you know, rein in this process I think you're forcing plants to go, well, I've got this project on the shelf that looks good; it maybe isn't cost effective. I'm going to put it in my application this year and ask for more money.

And how are you to know that that was not a good application, you know, that was not a good project to put down. I just don't think it's within this body's role to look at it in that way.

PRESIDING MEMBER GEESMAN: I don't think I disagree.

MS. MALINOWSKI-BALL: I could be wrong, but --

PRESIDING MEMBER GEESMAN: But I don't recall having sought out the responsibilities from the Legislature to do this. In fact, as I recall, the legislation was written pretty well over our expressed concerns.

MS. MALINOWSKI-BALL: I think the Chair of the Committee who requested this information, she was very clear. She didn't know exactly where the money was going. And I think this year when you put together your analysis which is required in this section, as well, I think you'll show that the additional information, more than anything this additional information, the valuable stuff, not everything, you know, the fuel curves are good, and some of the project stuff, I think you're showing that you're getting a good bang for your buck.

I just think there's an easier way to do it, an easier way that doesn't create so much divisiveness in the industry and spend another 12 months working on sending out award notices. I just don't see --

PRESIDING MEMBER GEESMAN: So, can --

MS. MALINOWSKI-BALL: -- I don't see it changing if we don't rein this in.

PRESIDING MEMBER GEESMAN: -- you persuade the Legislature of that?

MS. MALINOWSKI-BALL: I guess we're going to have to agree to disagree on that. I just don't see that in statute what specifically it says where you can't do that. When your own guidebook tells you you can.

PRESIDING MEMBER GEESMAN: Our lawyers tell us we can't.

MS. MALINOWSKI-BALL: So, are we deleting that statement from the guidebook?

MR. ORTA: I'd just like to point out that the guidebook does state that we can recommend and this agency can approve target prices and caps for groups of facilities. But that takes into account the evaluation that has to be done in order for us, the staff, to recommend that finding to the Renewables Committee.

That can be done, but looking back at what I have recommended this year, the findings show that, you know, that different target prices were warranted for some of the facilities.

MS. MALINOWSKI-BALL: I would have to at least say that as hard as the staff worked on making those determinations, I believe that they

were made inequitably. I think that those who came in with better presentations, maybe those who didn't come in but felt that their application was complete all on its face, were treated differently.

For example, there's, you know, one facility that has a two-cent-lower energy price, but has the same exact target price as a facility with two cents more. So there doesn't seem to be a lot of sense, sometimes, to the setting of the target prices.

And it's not for me to know what happened in all those meetings and to know the evaluation of each of those individual plants. But what I am seeing overall, when you start talking to the plants and hearing who got what and when, and who presented what, there does simply be -- it's an imbalance.

And I'm suggesting that those that were saying they would at least maintain their generation with suggested target price, those folks were left out of the game.

And that's why you're focusing on the whole self-sustaining issue more than you're focusing on the maintaining the generation that

you have.

It's a declining industry. And you have this task, unfortunately, of trying to stop that downward tide. We think it can be done.

PRESIDING MEMBER GEESMAN: Well, the task that I think that the Committee has, and the full Commission ultimately, is to try and faithfully discharge the law. And with the expenditure of public funds involved, we take a fairly conservative approach. What does the law say; what do we believe the Legislature intended in the use of the words that they used; what's our staff's technical recommendation.

And as you know, in this last cycle we asked the staff to go back and take a second look at a number of the projects.

But I don't think that we have the unilateral authority to rewrite the law. And I think your proposal for a bifurcated structure really does run contrary to --

MS. MALINOWSKI-BALL: Well, that's my --

PRESIDING MEMBER GEESMAN: -- SB-1250.

MS. MALINOWSKI-BALL: -- that's plan B. Preferably I'd like to see to take the whole pot and set a set of target prices and caps instead of

bifurcating.

PRESIDING MEMBER GEESMAN: Let's persuade the Legislature then.

MS. MALINOWSKI-BALL: My preference is that.

PRESIDING MEMBER GEESMAN: Take our discretion away. Say provide a one-size-fits-all. If the Legislature thinks that that's the best way to do it, you know, we know how to do that. But we don't have the ability to tell the Legislature that despite what they told us in SB-1250 we think there's a better way and we're going to follow that better way with no change in legislation. That's beyond our authority.

MS. MALINOWSKI-BALL: Can I just ask for a quick clarification? I'm sorry. Jason, did you say whether or not we would remove that language from the existing guidebook?

MR. ORTA: No, I did not propose removing that language from the existing guidebook.

MS. MALINOWSKI-BALL: That's all I have, thank you.

PRESIDING MEMBER GEESMAN: Thanks, Julee.

MR. TUTT: Yeah, Julee, I have a question. The guidebook does say that you may request that we establish a single target price and cap for a group or category of facilities. And you should accompany that request with an explanation and justification of why these facilities should be assigned the same target price and cap.

MS. MALINOWSKI-BALL: Um-hum.

MR. TUTT: Have you provided that justification and explanation at all?

MS. MALINOWSKI-BALL: It would be in the individual applications. There's no role, of course, for the Biomass Alliance to ask for that. In the individual applications at the beginning of this year, all the facilities did request two different sets of target prices. And then went ahead in those applications and justified why that target price was appropriate for that facility.

So, we went down this path already. We started down that path in the beginning of '07, and we somehow deviated from it as the year went on.

So I'm actually asking not so much that this change, I just want to get us back to where

we were at the beginning of the year.

PRESIDING MEMBER GEESMAN: Thanks. Bob Ellery, Sierra Pacific Industries.

MR. ELLERY: Commissioners, Staff, thank you for inviting me to speak today. Sierra Pacific has numerous cogeneration facilities in California. But the one that we're most concerned about that basically is running because of this program is our Loyalton facility. It's a 10 megawatt, what used to be a cogen facility, which is now a stand-alone power plant when the sawmill was closed down a number of years ago.

Power contract at the time when the sawmill was running was deemed adequate. Today without a sawmill it doesn't work. And so, quite frankly, without the funding from this program that facility wouldn't exist today.

The concern we have with what happened this year is -- and I think perhaps I learned a few minutes ago that somewhere in the middle of the program it changed. We all kind of assumed it was a universal target, you know, price cap. And then somewhere along the line it changed.

And, you know, nobody else was notified of this change. It was just surprise when you see

all of a sudden these different caps coming out.

I guess our real concern is inadequate funds in this account to fund everybody. And we understand the program. It basically says, okay, if we run out of money we just prorate a cut to everybody. That cut's not going to be universal, you know. That cut for a facility like our Loyalton facility is devastating.

You know, if I had a 9 cent target price that cut's not going to really mean a whole lot to me. Yeah, it would be nice to get nine cents, but, you know, when I'm getting less than 6, it is a much bigger issue.

And so our real driving concern is how are you going to structure a program giving individual awards without totally over-subscribing it, and therefore giving me effectively a fake award. Say we'll give you six cents, Bob, but you know, when we get done with the program your six is now down to five.

And so I guess that's what we don't see in the program. Talking to Jason he's already told me, you know, this year you're going to dip into the rollover money by $3 million. What happens next year? Obviously it's not sustaining.

So, I guess, you know, the structure that Julee was elaborating was kind of, you know, how do we address the problem that there's inadequate funds. And how do we keep the plants like Loyalton, and we're not the only one, that are in that category from going out of business because we run out of money and everybody gets cut.

And so maybe the lawyers can work on some way of looking at it but we really think, you know, this is a serious potential issue in the future. When we get capped, you know, we're not getting anywhere near these 8- or 9-cent deals.

I've told many of my associates, you know, you want to trade your $64 energy contract, you know, bring it on. So it's just hard for me to sit there and say, oh, great, they get 80 cents -- $80 a megawatt and we're struggling at less than 60.

So, anyway I think my message is we've got to be able to keep these other small projects like us alive. And, you know, giving us an award that ultimately is going to just be cut is just not going to be good policy.

Okay, that's all I have to say. Does

anybody have any questions?

PRESIDING MEMBER GEESMAN: Thanks for your comment, Bob. Kent Duysen, Sierra Power Corporation.

MR. DUYSEN: Kent Duysen, Sierra Power Corporation. I want to thank you for your time today for putting this workshop together. We run about an 8 to 9 megawatt plant; it's in the south portion of the San Joaquin Valley.

And first of all, I'd like to say I do support Julee's comments that she made for the Alliance. And my comments are probably going to run very very parallel to what Bob Ellery just spoke of.

Unfortunately, I call it unfortunate, when we brought out plant back online here about five, six years ago we were in a position, as Julee mentioned, we are one of those plants that our energy payment is about 2 cents lower than the bulk of the industry. We're commonly referred to as the orphan plants.

And I guess I've urged the last couple of years is we ask for some type of parity with the bulk of the industry. I said, you know, 2 cents is huge. And as Bob said, you know, without

assistance from the CEC funding, we're not going to be in existence. That's just too large of a gap to pull together.

And you folks are going to have to figure it out. SB-1250 really has made your life, your staff's, and our job to put these applications together much more difficult.

It almost -- what's --

PRESIDING MEMBER GEESMAN: To what benefit, I mean I search to find what we've accomplished by the current legislative structure that we have now, but --

MR. DUYSEN: As you can see, I think I'm a fairly simple person. I have a lot of things to do, wear a lot of hats. But it almost seems like to me it's the one who never has a staff person or go out and hire a wordsmither to put the most creative project together might go home with the goods. The rest of us, again, without some fairly significant funding as we've received the last year and the year before, unfortunately we're not just going to be here.

So, there's four others, plus Bob's. We're asking for some type of parity --

PRESIDING MEMBER GEESMAN: Let me ask

you, and I don't want you to take this the wrong way, --

MR. DUYSEN: Sure.

PRESIDING MEMBER GEESMAN: -- but what if the Legislature decided that was okay? What if, embedded behind the words of SB-1250 was that very intent?

MR. DUYSEN: Help me out.

PRESIDING MEMBER GEESMAN: Well, you know, I can't make money out of thin air.

MR. DUYSEN: Oh. No, and I --

PRESIDING MEMBER GEESMAN: And I can't violate the law that they've given me.

MR. DUYSEN: No, I understand that, and we're really putting our application in. Although, in a sense, if funding is not going to come forward there's, you know, we have still some very significant maintenance issues that need to be addressed. And, again, if we're not going to make it through the long run, which I think with your funding we can. I think we've demonstrated over the years we have a relatively high capacity on run time.

But we're not going to go out and spend another half a million dollars if we know that 2

cents isn't coming, or, I'm not saying the full 2 cents, but a significant portion of that two cents.

PRESIDING MEMBER GEESMAN: My fear is that there may be an unexpressed or unarticulated desire by the Legislature not to turn the water off immediately, but just gradually turn it off, and force us into a plant-by-plant extremely specific, and I think unduly detailed, --

MR. DUYSEN: Right.

PRESIDING MEMBER GEESMAN: -- calculation of well, how much pain can this particular project take and still make it another six months or another 12 months.

MR. DUYSEN: I understand your question now. And I wish there was a better solution and maybe we can work together on it and come up with a better program for the out years.

PRESIDING MEMBER GEESMAN: I think that's worth thinking about. Thanks for your comments.

MR. DUYSEN: Thank you.

PRESIDING MEMBER GEESMAN: Ed Cazalet.

MR. CAZALET: Thank you --

PRESIDING MEMBER GEESMAN: Still another

new role.

MR. CAZALET: Still another new role, and I'm not here representing the Cal-ISO, make that clear.

PRESIDING MEMBER GEESMAN: MegaWatt Storage Farms.

MR. CAZALET: Yeah, so MegaWatt Storage Farms, our objective is to build, own and operate large-scale storage farms on the grid across the country primarily for renewables integration.

We're, of course, aware of the CEC work in this area, and the Cal-ISO report that just got published and the other activities you have ongoing at the Commission to facilitate solving the renewables integration problem. And one of the potential solutions is storage.

Well, I'm here for a very narrow purpose right now, and that is to perhaps understand and maybe get to think about what is the definition of a renewable resource. Does that include storage or does it not?

And I noticed in this guidebook on page 22, section 3C, include pump storage, hydro pump storage as a renewable resource eligible for funding. Does that extend -- this is a question,

does that extend to other forms of storage such as battery-based storage, or you know, what is the rule?

Now, I know storage is new and perhaps these rules haven't been sorted out, so not just for this program, but other programs, the question is what is the definition of a renewable resource, does storage that would assist in the integration of the renewable resource qualify?

PRESIDING MEMBER GEESMAN: I think those are good questions, and I believe that our RPS eligibility guidebook has a procedure for making that determination on a technology-by-technology basis, either a sponsor's request, or perhaps on our staff's own motion. Heather, were you going to say something?

MS. RAITT: Yeah, I was just going to add that I think you're referring to the RPS eligibility guidebook, and we can help you with that. We can work with you on that. But I think what it says basically is that the energy that is produced that's stored is what would be the renewable resource; and the storage device, itself, at least as currently crafted in the guidebook, would not be considered a renewable

resource.

MR. CAZALET: But that doesn't apply to hydro, I guess.

MS. RAITT: So I think what it's saying there is that if the hydro was a small hydro facility then that energy that was stored could be considered RPS eligible.

MR. CAZALET: And so next, would a small battery receive the same consideration? I don't need an answer to it right now. We'd be happy to work through that process. Thank you.

PRESIDING MEMBER GEESMAN: Thanks, Ed. Diane Fellman, FPL Energy.

MS. FELLMAN: Good afternoon, Commissioners, Committee, Staff. I'm here today on behalf of FPL Energy Project Management, Inc., just to be clear.

Our company, our affiliate is the half-owner and full operator of the SEGS facilities. Ms. Malinowski-Ball referred to those solar facilities as part of the Biomass Energy Alliance.

And I wanted to comment specifically on our challenge in dealing with the existing funds. The challenge that we have is that we cannot, under penalty of perjury, state that our facility

will go out of business without these funds.

What we have requested is to utilize this money for increasing the output of our facilities, to stop the natural degradation of the aging solar facilities. As the Committee knows, we're investing $70 million in a re-tubing project.

I'm not here to talk about -- next week we'll talk about that specific funding request. But rather I'm here to underscore that part of the criteria for evaluating projects, as the staff says in here, is to increase the capacity factor and generation, and to mitigate foreseeing future risk to self sustainability.

If the intent of these funds is to wait until a facility is becoming unprofitable and then bolster operations, I know that was initially a focus of it, I would implore the staff to consider, and the Committee to adopt an approach that also creates an incentive for investment in these existing facilities.

The existing facilities are 5000 megawatts of renewables in California. They're the core of the RPS compliance. I'm sure both of you Commissioners and your Advisors have been

tracking the PUC compliance reports. You know, RPS compliance is declining in the state based on load growth.

To keep every megawatt hour of production in place is absolutely essential. And if our facilities, solar facilities and other tier one facilities, are forced to allow our output to degrade, to put our projects in economic peril, and then come in and get the funds to build it back up, it really creates a perverse incentive for our operations.

So, we want to underscore that each megawatt hour of renewable coming out of our solar project specifically reduces -- that we are allowed to increase, reduces the amount of natural gas that we have to generate. So it's not only increasing the RPS eligibility output, it's also decreasing the amount of fossil fuel that's burned to meet our capacity requirements under our power purchase agreement.

So that --

PRESIDING MEMBER GEESMAN: So what's your desired remedy?

MS. FELLMAN: Well, we are unclear with respect to -- because, and I'll, if I may, use the

example of our funding award experience this year. We didn't hear from you, Jason, you know, exactly why our award was what it was, but what we would recommend is that as one of the criteria for evaluating projects that increased eligible output is given equal weight to financial sustainability of the project.

PRESIDING MEMBER GEESMAN: So, if I'm correct, though, it's a zero-sum game. That means we take money away from one of these projects that's about to shut down?

MS. FELLMAN: No, that can be -- there's an allocation, there's funds. Each project -- Julee Malinowski-Ball put forth another way of looking at it. I do not want to address the particulars of setting one target price. But if you look at projects on a case-by-case basis, you make decisions for each project.

And then the staff is in the unique position of looking at once it makes those decisions, doing a balancing of how to allocate the money.

PRESIDING MEMBER GEESMAN: If we can't add to the pool of money, more money for one project means less money for the others

presumably.

MS. FELLMAN: That's correct. And I wanted -- I jotted that down at the top of my list of points to make, that we supported or opposed, however you -- the decrease in these funds because we consider in the Legislature we would be more than happy to go hand-in-hand with whomever is advocating that the Energy Commission, other -- CBA, other biomass tier one projects.

Because, again, the existing facilities are the cornerstone today of RPS compliance in the state, 5000 megawatts versus, if I'm generous, 500 megawatts of RPS projects.

PRESIDING MEMBER GEESMAN: So how long are your existing contracts still to run?

MS. FELLMAN: Our existing contracts go, I think the start tapering off in, I think 2015, 2015 and 2016.

PRESIDING MEMBER GEESMAN: So your projects aren't in danger of a near-term shutdown. I mean it seems to me the Legislature's created this lifeboat circumstance. Jason's got the water. He gets to determine who gets to drink. And then Commissioner Pfannenstiel and I are supposed to review his judgment and determine

whether he made the right choice or not.

You come in and you want more water, but I think you need to acknowledge that you're going to take water away from somebody else under the way that the program is currently structured.

And perhaps that's a good thing, but you're about seven, eight years away from collapsing, yourself, if the contract doesn't get renewed. Some of these other guys collapse much more quickly.

Have I got that right?

MS. FELLMAN: You do. You do.

PRESIDING MEMBER GEESMAN: Why aren't we thinking more in terms of some kind of tariff arrangement where the utilities are required to pay you an appropriate price. You're not going to like, I suspect, the level of transparency in evaluating your business to determine an appropriate return. But it would seem to me that would make a lot more sense than this year-to-year welfare payment that we're supposed to administer under rules that the Legislature creates that aren't especially workable.

MS. FELLMAN: We'd support that.

PRESIDING MEMBER GEESMAN: I think you

ought to initiate it.

ASSOCIATE MEMBER PFANNENSTIEL: Even if the price went down on a regular basis and you knew that five years from now it would be significantly less than it is today, and at some point would go away?

MS. FELLMAN: The challenge we have is specifically for the solar projects. If you look at how the funds of what it costs is allocated on a time-of-use basis, which is how we're paid, we're under fixed price contracts, that's public. And the cost of operating is the same for every kilowatt hour.

So our challenge is that during the -- the peak periods are fine and we're not asking for funds during the peak periods. And that's when we feel we have the greatest value to the --

PRESIDING MEMBER GEESMAN: Right.

MS. FELLMAN: -- system. We're asking for support when that -- during that shoulder period when the fixed price dips below the target price that we're going to be paid and there's insufficient funds during that time. So we can cover the costs of operation during that specific time.

Our costs of operation have gone up, you know, just as everyone else's. With respect to what you just asked, Chairman Pfannenstiel, if we had a fixed price in decline, as you know our company's perspective in California is we understand there's regulatory changes, regulatory uncertainty, but we want to be able to understand what the risks are, what the rules of the game are, and then manage to those risks.

PRESIDING MEMBER GEESMAN: I think we've got to change the current program. This makes no sense.

MS. FELLMAN: And I heard your invitation, and I will take that back to our management to consider initiating that as part of the 2008 legislative session.

PRESIDING MEMBER GEESMAN: Yeah, I'd strongly encourage it.

MS. FELLMAN: We would also, as you know, like the Energy Commission to have discretion to move pots of money around when they're not spent out of certain accounts.

So, if that's something you're interested in, too, we'll throw it in as a freebie.

PRESIDING MEMBER GEESMAN: The Legislature took about $350 million of our discretion away from us last year, so that may not be a real winner of an argument.

MS. FELLMAN: We can try. We understand, you know, in the era of a $14 billion deficit that any money that is taken away from the general fund and other purposes is, you know, every penny counts.

However, we understand that the Governor of the State and we heard the Commissioners of both Commissions on, was it Tuesday? I feel like we're in a space ship just sort of moving around from venue to venue, and you know, President Peevey, you know, pounding the dais in San Francisco saying we need solar, we need something other than business-as-usual in a carbon-reduction environment, which will -- you know, we see renewables, both existing and RPS, because, of course, we're committed to development, as well, as a cornerstone of that carbon reduction policy.

You know, the state is going to have to make some choices about the funds.

PRESIDING MEMBER GEESMAN: Well, put President Peevey to a test. You know, maybe it's

time to reform all of these tariffs and must-buy obligations. And try and create actual purchase commitments for projects that will be there in a way that would make our rhetoric real. Put us to a test. Maybe it doesn't require legislation.

MS. FELLMAN: Well, we definitely support that. And we participate in the RPS. On Monday there was a prehearing conference on MPR reform. I hope the Energy Commission is participating in that conversation. And, you know, we certainly are.

Because it's more than just pumping that up. It's really looking at what gets renewables built. And I think the IEPR recommendation on the feed-in tariff is an appropriate message and position to insert into that MPR reform conversation.

PRESIDING MEMBER GEESMAN: Hold our feet to the fire.

MS. FELLMAN: That's what I've been trying to do.

PRESIDING MEMBER GEESMAN: Keep it up.

MS. FELLMAN: All right, thank you.

PRESIDING MEMBER GEESMAN: Thank you, Diane.

Chris Trott, Thermal Energy Development Partnership.

MR. TROTT: Good afternoon. My name's Chris Trott; I'm representing Thermal Energy Development Partnership, a 20 megawatt plant near Tracy, better known as Tracy Biomass. It's been there since 1990.

I've been in this biomass business for a long time, nearly 20 years I guess, maybe, in the fuel procurement side of things. And I've seen a lot of changes come and go in this industry.

But one thing that is alarming to me that I just want to say right off the bat is you've heard it said over and over that the existing biomass industry in California is in decline. And it's true.

There seems to be a little bit of a misunderstanding on how the economics of this, among some, that how the economics of the biomass industry works.

From 2001 to 2006 most of the biomass plants in the state had a fixed 5.37 cent energy price contract; no inflation, nothing. This same program was in place during that period of time. The target price was set at 5.37 cents, which was

helpful, especially at first. But unfortunately, our costs during that period of time increased way faster than inflation.

As you probably know, biomass in particular is particularly vulnerable to diesel prices. Okay. And when the target price was increased to 5.87 in late 2005, that equated to a diesel price at that time of about $2.50 a gallon. And today it's $3.50 a gallon, okay.

And it takes about four gallons of diesel to make a bone dry ton, to gather, process and transport a bone dry ton of wood chips to a power plant. And then the power plant uses diesel to move it around, as well.

And so four gallons per BDT is pretty close to four gallons of diesel per megawatt hour, okay. So a dollar increase in the diesel price is $4 per megawatt hour increase just in diesel alone in the production costs and procurement costs for fuel.

And that's not just the only thing that has gone up, of course, you know.

PRESIDING MEMBER GEESMAN: Let's focus on that fuel input because if I had the natural gas fired plant, maybe one of the peaker plants

out around Tracy, I would wager the contract I had with the utility would allow me to simply pass through my fuel costs to the utility's customers. My contract arrangement with the utility has the utility pick up that fuel obligation.

And my costs have gone up probably even at a greater rate in some years than diesel costs, not this last year perhaps, but they've greatly exceeded general inflation.

But state policy is trying to encourage you guys, they're trying to discourage us fossil fuel guys, but I get my fuel costs. How does this make any sense?

MR. TROTT: It doesn't make any sense to me whatsoever. I mean people say to me all the time, well, everybody's talking of biomass, you know, because it's friendly, it's environmentally friendly, it's renewable, it's a good thing. Are you guys getting a bunch more money or, you know, something. And I just say, you know, --

PRESIDING MEMBER GEESMAN: You get a bunch more talk. Talk is cheap.

MR. TROTT: -- all talk and no action, yeah. When it's all -- when all is said and done, more is usually said than done, okay. So, that's

my probably biased view.

But getting back to my point, this fixed energy price from 2001 to 2006, and costs continuing to go up, really resulted in heavy deferred maintenance at these aging facilities.

And so what you have is not only an industry in decline, but the plants that are operating are just barely hanging on; and they're ready to fall off another cliff really, if they don't get an infusion of cash.

And it's not coming from the energy price, okay. There was an infusion in cash in that the energy price went up to the 6.45 starting in late 2006. But if you take into account inflation, beginning in 2001 to 2006, it comes right out to 6.4 cents.

So I mean it's nothing more than just an adjustment to inflation. So I wanted to point that out to start with.

Secondly, having gone through this what I would consider very frustrating process this year, and I'm sure staff would say it's was very frustrating for them, too. My first suggestion is even though there's lots of information that's required under the law, to simplify, simplify,

simplify as much as possible.

One of the frustrating things for us when we started going through this process after the first award letter that we got denying our request for the target price that we asked for and thought we supported in our application, is that there didn't appear to be any set way to score the individual applications.

And so for staff they couldn't really say, well, what -- I mean the first meeting that we had was to explain well, this is why we decided what we did. But, I didn't really understand why. Because there was no kind of way to compare all of the applicants across the board, even though there's individual information. People supplied that information that was asked for.

So, that would be very helpful if no matter what guidebook you decide on, what rules, to decide in advance kind of how you're going to score all the applications. That would be so helpful so that it could actually be explained to us why the decision was made that was made.

PRESIDING MEMBER GEESMAN: I think that's a good point.

MR. TROTT: Secondly, one of the things

that we ran into was kind of staff's not really understanding how the biomass industry works. Not only the process, but how the contracting works and things like that.

And I would suggest that, and I'd like to invite CEC Staff to come and visit several operating plants early in the year, right after the first of the year. I think this will help you guys to be more informed on how things work and kind of when we talk about certain things you'll be able to have a picture in your mind what we're actually talking about. So you can make better decisions; so you can kind of get an idea of where the fuel comes from, how it's produced, you know, why it costs so much. And some of the challenges that are facing existing operations.

So, --

PRESIDING MEMBER GEESMAN: I'd suggest you try and get Julee to find some legislative staff to go along on that same trip.

MR. TROTT: We have no problem with that, but, you know, if any Legislator wants to come we'll be --

PRESIDING MEMBER GEESMAN: Well, their staff are the important ones.

MR. TROTT: Staff, yes. But I'm specifically speaking about Jason and his people. You know, because any knowledge that they can gain will be helpful. So if you could approve their, you know, I mean, Jason, if you want to come visit Tracy, please just give me a call. I'm inviting you and whoever you want to bring. Okay.

MR. ORTA: I appreciate that opportunity. I'd like to take --

MR. TROTT: Okay. Well, good. And lastly, I think I just want to say the California Biomass Energy Alliance has done a lot to bring along the existing industry and to keep it from completely falling apart.

So, I just urge you to try, in whatever is done here, to try to keep the industry, kind of as a whole, solvent. Because I think it's been -- the point has been made before that if the existing industry can't continue to operate, if its continuing decline, how do we expect banks to ever finance new biomass industry in the state to help meet the RPS.

Okay, that's -- if anybody has any other questions for me.

PRESIDING MEMBER GEESMAN: Thanks,

Chris.

MR. TROTT: Okay.

PRESIDING MEMBER GEESMAN: Dina Del Dotto, Covanta Energy.

MS. DEL DOTTO: I'm going to pass.

PRESIDING MEMBER GEESMAN: Okay. Those are all the blue cards I have. Is there anyone else in the audience who cares to address us? Is there anyone on the phone? No one on the phone.

Okay, difficult subject. I don't think we have any clear solutions, but I think we've got a general sense as to the direction we need to push.

Thank you all very much. We'll be adjourned.

(Whereupon, at 3:15 p.m., the Committee workshop was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of December, 2007.