

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

BUSINESS MEETING

Wednesday, August 12, 1998

10:00 a.m.

Held at the:

California Energy Commission
1516 Ninth Street, Hearing Room A
Sacramento, California 95814

Reported by: George Palmer

COMMISSIONERS

WILLIAM J. KEESE, Chairman

DAVID A. ROHY, Vice Chair

MICHAL C. MOORE

ROBERT A. LAURIE

JANANNE SHARPLESS

PARTICIPATING STAFF MEMBERS
(Alphabetically listed)

LAURA BECKSTROM

BILL CHAMBERLAIN

SUSAN GEFTER

JUDY GRAU

DON KAZAMA

MATTHEW LAYTON

MARWAN MASRI

DAVID MAUL

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STEPHEN RHOADS

TIM SCHMELZER

TONY WONG

PUBLIC PARTICIPANTS
(Alphabetically listed)

DAVID GREELEY, Dow Chemical

ALLAN J. THOMPSON, Project Counsel for the La Paloma Generating
Company

BRUCE WILCOX, P. E., Berkeley Solar Group, representing DuPont
Company

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Wednesday, August 12, 1998 10:08 o'clock a.m.

P R O C E E D I N G S

CHAIRMAN KEESE: I call this meeting to order.

Commissioner Sharpless, would you like to lead us in the Pledge?

(Attendees participate in the Pledge of Allegiance.)

CHAIRMAN KEESE: Thank you.

Sandy Harris, in the yellow dress, will be standing in as our public advisor today. So you may contact her if you care to testify on issues coming up this morning.

Just because we all care, it will be supposedly 108 degrees here, but the ISO has issued another warning this morning at 7:47 of deficiencies in operating reserve and is seeking more power at this time. So the ISO has had many challenges, but they've met them all so far.

Item 1, Delano-Earlimart Irrigation District. Possible approval of a loan for \$425,000 to expand the Delano-Earlimart Irrigations District's Supervisory Control and Data Acquisition System.

Good morning.

MR. WONG: Good morning. Today were are requesting the Commission to approve a ECAA loan for \$425,000 to the Delano-Earlimart Irrigation District to expand the district's SCADA system to the district's remaining water delivery system. The district started their modernization program in 1993 and

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they have participated in the Commission's Energy and Agriculture Program.

First, in 1993, they obtained a loan of \$66,000 to install variable speed dry on three of their pumping stations. And in 1995 they also obtained a loan from the Commission to install a pilot SCADA system in one of their five lateral pipelines that has the largest electrical load. Based on the results of this initial SCADA system the district wanted to expand the system to the remaining four pipe lines.

The expanded system, we estimated, will save the district about \$81,700 annually in reduced pumping costs and also the mileage traveling to the turnout to make adjustments. This results in a 5.2-year payback. This payback calculation does not include any on-farm energy saving or any reduced labor costs resulting from this project as well as the water cost.

We have briefed the Resource Conservation Committee and the Committee recommended to move this item to the Commission for their approval today.

CHAIRMAN KEESE: Thank you.

I just have a quick question. The repayment of the loan comes from the reduced energy bills, not from the additional savings? These additional savings just accrue to the project?

MR. WONG: The ECAA Program only considers energy savings.

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CHAIRMAN KEESE: Thank you.

Any comments?

COMMISSIONER SHARPLESS: I'd like to move approval of this item.

CHAIRMAN KEESE: We have a motion.

COMMISSIONER MOORE: Second.

CHAIRMAN KEESE: A motion and a second.

COMMISSIONER LAURIE: Just an additional comment, Mr. Chairman, if I may.

This kind of project, efficiency in pumping, is not only advantageous from an energy standpoint, but it's also advantageous from a water standpoint, and certainly in technology that we want to see expanded throughout our agricultural industry. A great project. Thank you.

CHAIRMAN KEESE: Thank you.

Any public comment?

(No response.)

CHAIRMAN KEESE: All in favor?

COMMISSIONERS: Aye.

CHAIRMAN KEESE: Opposed?

(No response.)

CHAIRMAN KEESE: Adopted five to nothing.

(Motion unanimously carried to approve the loan for \$425,00 to the Delano-Earlimart Irrigation District Supervisory Control and Data Acquisition system.)

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CHAIRMAN KEESE: Thank you.

Item 2, Expert Witness Contracts. Possible approval to increase funding from \$10,000 to a maximum of \$25,000 for expert witness contracts. The delegated authority given to the Executive Director to sign expert witnesses contracts necessary to process energy facility licensing cases and compliance amendments.

Mr. Maul.

MR. MAUL: Good morning, Chairman Keese, Commissioners. I'd like here address this issue very quickly. Let me just quickly outline a few key points regarding this item.

This is a proposal to increase the existing delegation of authority from the Commissioners to the Executive Director. It's limited to siting cases and compliance case expert witness contracts only.

It also requires the Executive Director report back to each business meeting whenever there is any activity of any amount in this particular area. So you'll be briefed on all proposals in this area. This is consistent with the Commission's direction to streamline our contract process. And it's been approved by the Siting Committee to go forward.

We have been working with the Contracts Office and the Legal Office to develop this particular proposal to make sure this is consistent. This is one part of a three-part strategy

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we have developed to improve our contract processing. The first part was to develop a contract template to speed up the processing of individual contracts.

The second part was to establish an expert witness candidate pool of people who are interested in being potential expert witnesses, to shorten the overall time period for us to establish this. We have over 100 candidates who have who have already expressed interest in being considered in the future.

And the third part was to increase the delegation of authority to the Executive Director to sign the contracts.

The increase that they were proposing today is needed for the following reasons:

First, our siting cases are presenting Staff with more controversial issues that require analytical expertise which we currently don't have in all cases.

Second, the developers are still expecting us to adhere to the very tight processing schedules of their individuals cases.

Third, this proposal can cut up to 30 days off the normal contract approval time for contracts above \$10,000. And we do expect to have some expert witness contracts that exceed that amount.

Fourth, we expect at least four to eight siting cases this calendar year and perhaps up to 14 cases by the end of this particular fiscal year. We also expect anywhere from one to

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five expert witness contract per case. And each expert witness contract would be somewhere in the neighborhood of \$2,000 to \$25,000.

We currently have \$50,000 in our budget for expert witness contracts. And we are currently requesting an additional \$400,000, in our deficiency request, to the Department of Finance to cover the remainder of this particular fiscal year for the cases that we expect to be filed.

We currently are processing expert witness contracts for \$8,000 for hydro geology. We have initiated contacts for additional expert witness contracts. The first bid we received was one for \$12,000, which we are not perusing that particular bid. We will be initiating additional contacts for expert witnesses in the next two weeks in the Traffic and Transportation Area.

Can I answer any questions?

COMMISSIONER SHARPLESS: Mr. Chair?

CHAIRMAN KEESE: Commissioner Sharpless.

COMMISSIONER SHARPLESS: Mr. Maul, can you cite any examples currently where we've run into a problem?

MR. MAUL: Can I cite any examples? No, I cannot. This is our anticipation of how we handle our future case workload.

COMMISSIONER SHARPLESS: Okay. So right now we don't have a precise problem. We're not running into a problem

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where we can't go forward in a timely way with the expert witness contracts given our current workload?

MR. MAUL: As of right today we don't have a problem. In the next month to two months my answer may be different.

COMMISSIONER SHARPLESS: So this is an anticipation of an increased workload because of new projects coming in?

MR. MAUL: Correct.

COMMISSIONER SHARPLESS: The rest of the organization will remain at a \$10,000 limitation for discretion to the Executive Officer. It would be only the Siting Division. And it would be expert witnesses that apply, not only to siting cases, but compliance cases as well. Is that right?

MR. MAUL: That's correct.

COMMISSIONER SHARPLESS: Why did you pick \$25,000 as the sum that is magical in this case?

MR. MAUL: Actually it's not really a magical number. It was our best judgment. We looked at the initial contacts we have already. They were coming in in the 15,000-to-\$12,000 range. We could probably picked a number of \$20,000, \$25,000, \$30,000. We felt that it would be inappropriate for us to sign a sole-source contract to an individual above \$25,000 without the direct approval of the full Commission. At that level we feel uncomfortable as managers of this process to make that unilateral decision.

And it was our best judgment the \$25,000 would capture

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the bulk of the contracts that we might have. And the few that might exceed \$25,000 should be brought back to the full Commission for approval.

COMMISSIONER SHARPLESS: So over the passage of time, since we established the policy of \$10,000, cost of living has gone up, cost of consultants have gone up, and so \$10,000 is no longer a typical consulting, expert witness contract. And so the levels have increased. Is that partially driving this issue?

MR. MAUL: I wouldn't quite use the word "typical." We would hope that most of our contracts will still stay below \$10,000. In fact, the bulk of them should stay below \$10,000. But we are now experiencing some initial contacts that are coming in above \$10,000. And so we will be expecting to have to process contracts above \$10,000 in the next several months.

So it's basically our anticipation of that outcome and our ability to try to manage the cases as quickly as we can. We could stay with the \$10,000 limit we have right now. It would just add time to individual siting cases. And given the tight timeframes we have we thought that would not be prudent for us, with that anticipation, not to take action now to try to resolve that problem.

COMMISSIONER SHARPLESS: So this is to give the Division added flexibility in anticipation of the increasing workload?

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MR. MAUL: That's correct.

COMMISSIONER SHARPLESS: Okay. I believe that Legal Counsel has informed you of a concern about delegation of authority over contracts?

MR. MAUL: That's right. That was in our memo to you regarding that issue.

COMMISSIONER SHARPLESS: How do you think we ought to address that question?

MR. MAUL: Well, the issue of the increase in delegation is a sub-issue of a larger issue which is the delegation as a whole.

I don't know, Bill Chamberlain, did you wish to address that issue or would you like me to continue on?

MR. CHAMBERLAIN: I think the Commission needs to decide first, as a policy matter, whether this sort of delegation is the kind of thing you want to do. If it is, I would recommend that you direct us to seek a statutory change to ensure that we do have the authority to proceed in that direction.

In the meantime, given the Commission has been delegating contractual authority at a lower level to the Executive Officer with controls by the Committees for some period of time, we could proceed in the way Staff has proposed. But it's a matter for you to decide, at what level of risk you're comfortable.

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COMMISSIONER SHARPLESS: And what is the liability here? What could happen if somebody challenges this delegation of authority since we don't have statutory authority to delegate discretion to the Executive Officer on these types of contracts? What's our liability?

MR. CHAMBERLAIN: Well, the worst case would be that our contracts that are handled in this manner are considered unenforceable. And that perhaps the delegation of authority that we have from the Department of General Services would be reviewed.

COMMISSIONER SHARPLESS: But we've been doing this for how many years?

MR. CHAMBERLAIN: Several years.

MR. MAUL: Thirteen.

MR. CHAMBERLAIN: Thirteen years?

COMMISSIONER SHARPLESS: Thirteen years. Nobody has said anything? The Department of General Services has never said anything?

MR. CHAMBERLAIN: Not yet.

COMMISSIONER SHARPLESS: We've had no claims against this particular provision?

MR. CHAMBERLAIN: That's correct.

COMMISSIONER SHARPLESS: Why do you think we should get a statutory change now given the fact that 13 years has passed by and nothing happened? Just to remove all risk and

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liability, as a good attorney?

MR. CHAMBERLAIN: I think it's because the people in my office, who work with General Services, Legal on a regular basis, have a pretty strong impression that there is a view in that office that a multi-member agency needs that kind of authority in order to be able to make this kind of delegation. And they have a concern that at some point this could rise up and cause a problem for the Commission.

COMMISSIONER SHARPLESS: I would only sort of go back a little bit. I think that about a year ago, or two years ago -- it's all a blur now -- but we talked about increasing the limit before Commission-wide.

VICE CHAIR ROHY: Commission-wide, correct.

COMMISSIONER SHARPLESS: Right. And this now is specific to one siting division. At that time the Commission did not feel disposed to do that because we were going through a contract streamlining process and felt that we ought to look at it in a broader context. So we find ourselves back sort of in the same loop again.

I don't know that I have a particular problem with this other than the fact that we do have this legal issue. And it probably would be well that as we go through the Warren-Alquist Act and look for reforms and revisions that this should be added to the list. And I guess that would satisfy my concern about following the letter of the law.

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COMMISSIONER LAURIE: Mr. Chairman?

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: If I may, I certainly concur 100 percent with Commissioner Sharpless. I'd ask Commissioner Rohy to express his view. I've discussed it with the General Counsel's Office. I understand their concern. I appreciate the expression of their concern. I believe the risk, in my view, on balance is minimal.

I'm strongly supportive of an increase in delegation authority especially in these cases as applicable to these types of contracts. I fully concur the issue should be looked at in a broader sense, as well, and should be included for consideration as part of overall Warren-Alquist amendments. In this case, the Committee having reviewed on balance the issue is fully supportive of Staff's recommendation.

CHAIRMAN KEESE: Commissioner Rohy?

VICE CHAIR ROHY: I just want to second what Commissioner Laurie has just said and say I'm totally in agreement that we need to streamline our processes internally and that will probably be a two-step process, a little bit of risk now, and then work on the Warren-Alquist Act revisions, as you suggest, Commissioner Sharpless.

COMMISSIONER MOORE: Mr. Chairman.

CHAIRMAN KEESE: Commissioner Moore.

COMMISSIONER MOORE: I'm going to very, very

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strongly dissent from the opinion that has been just registered. And I think that this is the time. I think it's serendipitous, I think it's fortuitous that we're here looking at this now. It seems to me the move to increase the amount is exactly in the wrong direction.

And as I finish my remarks I will be willing and, in fact, intend to offer a motion to reduce the amount overall from 10,000 to \$3,000 because I would like to see more of what happens in terms of contracts. The number I've always used in my mind has been \$3,000 for expert witness contracts. It seems to me to go the other direction is foolhardy for the following reasons:

One, there's been a sea change in the way we do business. To listen to the Division's proposal you'd pretend you would engage in a fiction, a fantasy, that we're still engaged in a monopoly-regulated world where we do everything on behalf of the ratepayer and not on behalf of merchant plants. We'll see this issue come up again on Item 5, and I know all of you have seen a draft copy of my dissent on that. My point is simply that we don't and shouldn't do business as we have in the past.

The Siting Division as you know it today, I believe, is an anachronism. It doesn't represent the way we do business. It doesn't represent the product we ought to be producing here. We're not in the business of doing a needs assessment the way we

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used to do it. In fact, we're doing a much more comprehensive environmental analysis that I think can be accomplished in a different way.

Frankly, I think by looking at the number of cases that are probably coming up -- if you can believe Mr. Maul's numbers, and I do -- then it seems to me we'll find ourselves, even in the best of circumstances, under-staffed and under-prepared to deal with environmental analysis, not so much siting analysis, but environmental analysis on the scale that it needs to be addressed.

To that end, \$25,000 is probably going to be inadequate for some very specialized cases. It wouldn't matter if it was \$10,000 and you started multiplying that by the number of expert witnesses that could be called up by the Staff independently. You could quickly, very quickly, run out of budget money. I think we should be aware of that. I think we should control that at this level, at the policy level.

I think the Siting Committee ought to have a view of that as it's coming up on a very quick basis. I think this should be under the purview of the Commissioners on an ongoing and regular basis and not in the Executive Branch. So I think that to pursue this maintains, as I said before, the fiction that we do business the way we used to do business. Siting is not what it used to be.

And I think if we push down this path we'll find

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ourselves literally supporting a process that doesn't exist anymore. I hope we will take steps to revise the process and use this as the front end wedge in order to do that.

I frankly think the money involved, if it were extended out, is simply awesome. It's overwhelming. And I don't want to lose control of that. I don't want the primary representatives of this Commission, the Siting Committee to lose control of that.

This is not a discussion, Mr. Therkelsen. And so I'm not asking any questions that I'm expecting an answer on. I'm making a statement and I'm about to make a motion.

So in my view of the way the Commission ought to operate, it seems to me we need a brand new paradigm. And the paradigm I believe we need is where we treat merchant plants as something other than ratepayer-funded entities. And that means the merchant plant proponents put up a fund, just the way anyone else would when they convene a project proposal, and pay into a fund; we select from an independent list of environmental impact report providers who are independent. We hire them and they do the work. We don't do the work any more.

And guess what that means? That means that in the big scale of things in this building we're not going through a convoluted fiction of BCPs for projects. We're not really functionally engaged anymore. That frees up talent. And I mean that very seriously, talent, that we can use elsewhere in our

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own projects and forces us to quit the shell game of moving people around in this building to support a process that's anachronistic, outdated and frankly inefficient.

Mr. Chairman, I move that the --

CHAIRMAN KEESE: Can I --

COMMISSIONER MOORE: I'm going to put a motion on the --

CHAIRMAN KEESE: Can I get a comment in before you make your motion, Commissioner Moore?

COMMISSIONER MOORE: Oh, I'd like to see if I could get a second to the motion.

CHAIRMAN KEESE: Okay. Go ahead take a try at it.

COMMISSIONER MOORE: I'm not sure that I could.

I'd like to move that the Expert Witness Contract matter be approved at a level of \$3,000 and as an amendment to the proposal that is before us.

CHAIRMAN KEESE: We have a motion.

I'm hearing no second.

I think I disagree, Commissioner Moore, with most of your comments. Frankly, as an economist, I would think you would recognize that \$10,000 in 1985 and \$25,000 today are essentially the same number. So I don't see that we're going to be breaking the bank if for the last 13 years, when we've been able to survive on this \$10,000 without breaking our bank, we can probably survive with \$25,000.

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I also felt the Committee carefully put together a system for prompt reporting of all of these contracts to the Committee and the Commission so that we would have our fingers on this at all times.

I guess as far as the comment on siting I believe that siting is a fundamental responsibility of this Commission. And I anticipate that as restructuring goes through, that the role of the Energy Commission in siting energy facilities and their ancillary activities will increase rather than decrease.

I have been and continue to be concerned about micro management at the Commission level of Staff activities. And I think suggesting that every contract worth \$3,000 be reviewed by the Commission itself just tends to lead us more towards micro management. I think our goal should be to, as the Committee has suggested, move towards contract streamlining; move towards freeing up Staff to do their activities; and allowing the Commission to work as a board, not as a micro manager of Commission programs.

COMMISSIONER LAURIE: Mr. Chairman, if I may.

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: I certainly appreciate Commissioner Moore's comments. Certainly circumstances regarding siting cases has changed. The propriety of having the ratepayer continue to pay for the processing of merchant plants is problematic. I think it is an extremely legitimate question,

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a legitimate issue that has been discussed and will be discussed, I would say, immediately. It is a very, very proper question and one that I entertained probably my first week here.

We know how the system normally works in most land-use matters; that is, the applicants put the money up. When I inquired in regards to how or why our process works the way it does, the answer I received was, "The question has been brought up before. It is currently the manner in which our system is processed. And in the past there was a feeling that seeking statutory change would have been inappropriate." It may very well be that that is no longer the rule. And the question is deserving of further investigation.

I have absolutely no problem in putting responsibility and accountability in management both at the Executive Office and at the division level for contract management or contracts above \$10,000. Whether the number is 25,- or 30,- or 20,-, it certainly is perhaps somewhat arbitrary. But responsibility and accountability are very important, just so long as we know where the responsibility stops, and certainly it is ultimately with this Commission. However, in this instance the Staff does report directly to the Committee. The Committee will have responsibility for keeping tabs on those expenditures. And if there is a failure on the Committee's part then we will be called to task for that.

As indicated earlier, perhaps the entire issue needs

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investigation in regards to the delegation of contract authority. It is something that should be brought up again on a Commission-wide basis, and I would urge us to do so. The bottom line, however, in regards to the propriety of contract delegation for this office in these cases, I think, is extremely proper.

In that light I would move Staff's recommendation.

CHAIRMAN KEESE: We have a motion.

VICE CHAIR ROHY: I'll second.

CHAIRMAN KEESE: Second. Any further discussion?

COMMISSIONER MOORE: On the motion, just to clarify some points made by the Chairman.

One, I was not debating the issue of inflation of the \$10,000 or deflation of 10,000 to \$3,000, so that really wasn't what was on my mind.

And, second, in no way do I denigrate the responsibility of this Commission to have siting matters under its purview. I only suggest the siting system that we're using is, as Commissioner Laurie just said, should be under thorough review because it seems to me this is the opportunity to reform it and to understand what the real work that's going on is. It's in the environmental arena as opposed to the needs test that we used to do. It seems to me this is a perfect time to reform it.

So with that I intend to oppose the motion.

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CHAIRMAN KEESE: Any further discussion? And public comment?

(No response.)

CHAIRMAN KEESE: All in favor?

COMMISSIONER SHARPLESS: Aye.

COMMISSIONER LAURIE: Aye.

VICE CHAIR ROHY: Aye.

CHAIRMAN KEESE: Opposed?

COMMISSIONER MOORE: No.

CHAIRMAN KEESE: Four to one.

(Motion carried with a four-to-one vote to approve the increase in expert witness contracts from \$10,000 to \$25,000 with signature authority to the Executive Director.)

CHAIRMAN KEESE: Thank you.

Item 3, Blythe Energy, LLC. Possible consideration and assignment of a Committee to conduct proceedings on the Jurisdictional Determination petition filed by Blythe Energy, LLC.

MS. GEFTER: Good morning, Commissioners. This is just a proforma matter. On July 23rd Blythe Energy filed a petition for Jurisdictional Determination requesting an exemption from the NOI requirements. The purpose of this item is to assign a committee to conduct proceedings on the petition. The Commission has typically assigned the Energy Facility Siting Committee to these matters.

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CHAIRMAN KEESE: Sounds like a splendid idea. So Commissioner Laurie moves the Blythe petition for Jurisdictional Determination be referred to the Energy Facility Siting Committee? Is that Acceptable?

COMMISSIONER LAURIE: I would so move, Mr. Chairman.

CHAIRMAN KEESE: Do we have a second?

COMMISSIONER SHARPLESS: Second.

COMMISSIONER MOORE: Second.

CHAIRMAN KEESE: Second. Any further discussion?

COMMISSIONER MOORE: Third.

CHAIRMAN KEESE: Any public comment?

(No response.)

CHAIRMAN KEESE: All in favor?

COMMISSIONERS: Aye.

CHAIRMAN KEESE: Opposed?

(No response.)

CHAIRMAN KEESE: Five to nothing. We have Blythe.

(Motion unanimously carried to approve the assignment of a committee to conduct proceedings on the Jurisdictional Determination petition filed by Blythe Energy, LLC.)

CHAIRMAN KEESE: Item 4, La Paloma Generating Company. Possible consideration and approval of the Energy Facility Siting Committee's recommendation concerning La Paloma Generating Company's petition for Jurisdictional Determination

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under Public Resources Code Section 25540.6.

Good morning.

COMMISSIONER LAURIE: Mr. Chairman.

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: Members of the Commission,
good morning.

What you're hearing is the Proposed Decision in
regarding the application for --

CHAIRMAN KEESE: Commissioner Laurie, may -- I'm
sorry, go ahead. I'm sorry.

COMMISSIONER LAURIE: That's okay.

-- for the NOI exemption filed by La Paloma Generating
Company. La Paloma intends to build a 1,000-megawatt gas-fired
merchant plant in Eastern Kern County near the town of
McKittrick, and proposes to sell its electricity to the
California Power Exchange.

A Petition for Jurisdictional Determination requesting
exemption from the NOI requirements was filed in June of this
year, the applicant basing its request on the provision which
allows NOI exemption for gas-fire projects that are the result
of a competitive solicitation or negotiation.

The Committee, the Siting Committee, myself and Vice
Chairman Rohy conducted a public hearing on the matter and
issued its Proposed Decision on July 31st. The Proposed
Decision recommends that the application be granted.

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That Decision is based on the premise that the Power Exchange represents a series of solicitations which creates a competitive marketplace where negotiations continuously occur between suppliers and consumers and thus is a result of a competitive solicitation.

The Committee further determined that such a determination is consistent with Commission policy as expressed in the addendum to *ER 94* as well as policies expressed in *ER 96*. The finding that the current market mechanisms were designed to provide power at acceptable prices without risk to ratepayers, this being a merchant plant, this proposal falls within that category.

The Proposed Decisions specifically does not offer a blanket exemption for merchant projects. Consistent with what the Committee felt to be Commission policy, as expressed in earlier Commission reports, the Committee determined to offer a proposal which continues the policy of issuing decisions on a case-by-case basis.

In the Decision the Siting Committee states that we do intend to examine the propriety and necessity of modifications to the NOI exemption process in light of AB 1890. Further, the Decision recommends that the Commission review its integrated assessment of need criteria. In particular, the Decision suggests that more specific guidance is necessary to assist the Committee Staff and project proponents in evaluating NOI

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exemption requests.

Finally, the Decision clarifies that a project proponent must complete the NOI exemption process prior to filing an AFC. In this case La Paloma filed its AFC before the Committee issued its Decision on the NOI exemption or before even being considered by the Commission as a whole. And the Decision thus instructs La Paloma to refile its AFC should the exemption be granted.

I think in consideration, Mr. Chairman, of this application it was recognized that it is timely for perhaps not only an investigation of the path as expressed in *ER 96*. And it is urged that that particular number in *ER 96* be immediately reviewed and attended to, but also the issue as a whole be addressed from a policy perspective. And if this Commission determines a policy needs to be changed, then we would certainly propose that that discussion take place.

I'm aware in Commissioner Moore's proposed dissention that there is some reference to disagreement with the verbiage in both the Addendum to *ER 94* and perhaps the policies expressed in *ER 96*. Although I was not present as a Member of this Commission when the Addendum to *ER 94* was passed, I certainly recognized it however as the existing policy of this Commission even though arguably the verbiage in that report could have, or would have, or arguably was supplanted by *ER 96*.

The message I got out of both of those policy documents

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however, including *ER 96*, which although I didn't author, I certainly voted on and feel loyal to, is that the world has changed when we have applications for merchant plants. And the NOI exemption process needs to be reexamined in light of that as well as in light of recent legislation.

I think the Siting Committee felt bound, not necessarily negatively so, by the way, by what we felt Commission policy to be as expressed in earlier adopted Commission reports. We believe -- and I don't intend to speak for Commissioner Rohy, I'll ask for his opinion separately -- but the Committee Decision, I believe, is felt thoroughly consistent with Commission policy as it exists today.

It is recommended by the Committee that the Proposed Decision be adopted. Staff is available to respond to your questions.

CHAIRMAN KEESE: Thank you.

I think procedurally since we do have a dissent that has been filed, and you perhaps are the only one who was able to read it, perhaps we should have -- Commissioner Moore, would you like to explain to the rest of us on the nature of the dissent?

COMMISSIONER MOORE: Thank you, Mr. Chairman.

First of all, I have a couple of just opening comments. First of all, I want to thank the Committee for the thoughtful way they went through this and the fact that it is on the table. Because it seems to me that it, once again, points to some of

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the very much larger issues that we have to contemplate before us.

Second, I believe Susan was the one who wrote up the Committee opinion on behalf of the Committee.

Is that correct, did Susan --

COMMISSIONER LAURIE: It's a Committee document, Commissioner Moore. I don't know if we need to identify the specific author of it.

COMMISSIONER MOORE: Well, actually I --

COMMISSIONER LAURIE: Certainly --

COMMISSIONER MOORE: I wanted to offer some --

COMMISSIONER LAURIE: Certainly Ms. Gefter is familiar with the Decision.

COMMISSIONER MOORE: Okay. Well, it was a nice job. I thought it was clear and, really, for things like this in the future it's a good model.

COMMISSIONER LAURIE: In which case the Committee takes full credit for it.

(Laughter.)

COMMISSIONER MOORE: That's what I thought was going to happen. That's why I thought I'd get the primary authors out.

I think you all have a copy of the non-draft that I signed of the dissent. And, really, let me say a couple of things about the dissent itself.

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First of all, it's a respectful dissent with the Committee opinion. I obviously had the advantage of that ahead of time. And for those who didn't know that it was coming, I apologize. I actually thought we had made it pretty public that we were intending to publish this out of my office. So --

COMMISSIONER LAURIE: For the record, Commissioner Moore, I don't believe either the Committee or any Staff member had any knowledge of the intended dissent.

COMMISSIONER MOORE: I take complete responsibility for that and I offer you my apology. I thought that that was in process.

I think the bulk of my comments can be summed as this. It seems to me the NOI process is still valuable today even in spite of the things I have said about the needs assessment. It seems to me the needs assessment can be a vehicle and the NOI process, which includes alternative sites, can be a vehicle to help us understand the larger question of how the market will actually respond to these proposed merchant plant locations or siting requests in the context of whether the system is actually going to have a reliable -- and we use the word "reliability" a lot around here -- whether it will have a reliable structure that we can look to.

And I think that that question of reliability in terms of geographic structure is relevant, one that really can only be answered either through a very comprehensive NOI process or

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through an expansion and modification of the cumulative impact section of the AFC or the final document, when it comes out.

It seems to me that this is the world we will have to move into. And to the extent that we lose arrows out of our quiver, we lose the power to view how siting is actually taking place and how the market is actually responding to requests.

My second point is really contained in the remarks on page 3, which is headed "*Addendum to the 1994 Electricity Report and Its Applicability During the Pendency of the 1996 Electricity Report.*" I, as Commissioner Laurie just mentioned, was a signator to *ER 96*, and appreciate what the Committee is saying about a case-by-case basis for NOI exemption requests. That is exactly as you see in the document, the way that I read the '96 *Electricity Report*. I understand there are may be other opinions about that, but that's the way I read it.

And, as a consequence, it seems to me that we run the risk by taking the action the Committee is proposing today, for a merchant plant, we run the risk of losing the context in which these plants are actually expected to compete. We lose the context of the reliability question that all of us are interested in asking and achieving some kind of an answer to in the future. And, as a consequence, it seems to me that by voiding it -- avoiding it, that we do the public a disservice.

Frankly, this is a competitive process for all the players in the outside world. I would hate to set a precedent

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that would have to be overcome later on in terms of our ability to see siting on a broad scale.

So I have literally compressed five pages of comments into those. My sense is we set a precedent by following the Committee's Recommendation in this case. As I indicated, I will dissent.

Assuming the Committee Recommendation passes, I think we need to, at the very least, maintain the case-by-case status. We have just assigned the Blythe case to the Committee. I hope and trust they will review that on an individualized basis, but that we use this opportunity to go ahead and ask ourselves what tools we are going to use evaluate siting cases when we don't have the opportunity to view them in alternative, geographic arenas.

As a post script to that, and then I will stop, I should indicate to you I have been discussions with some of the technical Staff about producing a new product that each one of the Presiding Commissioners and Associate Commissioners can use in the siting cases that will start to bring up a GIS map showing where each project is in location to every other map and starting to draw some of the overlaps in such a way that we can begin to visualize how confluence of plant sitings might affect the overall environment, including the economic environment of a local community, and begin to set the context for some of the reliability questions that we want to ask.

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So that is the context of the dissent. I hope it provides a thoughtful and constructive argument for revising our procedures in the nearterm, especially given the number of siting cases we have in front of us.

Thank you.

CHAIRMAN KEESE: Thank you.

Commissioner Rohy or Laurie?

VICE CHAIR ROHY: Thank you, Mr. Chairman.

Commissioner Moore, I have some problems understanding your positions. When we had the discussion on Item 2 versus the discussion on Item 4, --

COMMISSIONER MOORE: Yes.

VICE CHAIR ROHY: -- as I recall in Item 2 you described a new method for doing siting process that relied pretty strongly on environmental issues and not getting into the issues that we once considered were important during the regulated world.

My understanding was you wanted to focus primarily in the siting cases on environment and the effect on the environment.

COMMISSIONER MOORE: Actually what may have happened, Commissioner Rohy, is that I may have simply stumbled in what I was saying or attempting to say on the previous item.

The case I was trying to make was not that each one of the issues, which are included in your sentence, weren't

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important, but that it was a task we could better manage by reaching out to the outside world and contracting for it through independent contractors. As Commissioner Laurie pointed out, we have a long history with CEQA in NEPA in doing that, where you reach out to independent contractors to do the work.

So, no, if I came across is that, I sincerely apologize because I don't think that there are any of the issues that we currently evaluate that we shouldn't be looking at. And, as a matter of fact, it seems to me that strengthening the relationship of the cumulative impact analysis, which is a knotty problem anyway, is frankly an area we ought to go more fully into in the future.

And to me one of the easiest and perhaps most direct ways to do that is to use the NOI process as the umbrella in which to ask some of the geographic questions upfront. The alternative, I think, is simply to, when the environmental impact process is undertaken, to take and really expand the cumulative impact analysis in that document. To me it's one or the other.

But if I came across as wanting to delete items, I wasn't. I was simply trying to find a different forum to do them in other than having internal Staff perform the environmental impact analysis.

VICE CHAIR ROHY: Well, perhaps I was going there in my own mind, that I think in the new world we need to streamline

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the process certainly not at the expense of the environmental issues. And I think Staff has done and continues to do a very good job on the impacts analysis from an environmental point of view.

However, when I look at the new world we're in, it is up to the offeror, the plant applicant, to suggest a site. In my mind, if that site is unacceptable because of cumulative effects, they lose. They take that risk. They have that opportunity to come to us with a full NOI and go through the process. They are requesting an exemption from that process, and that is their choice.

Should they take that choice, we grant them the NOI exemption and we find the cumulative effects are well beyond what we want to approve, they have just a lot of time and perhaps a lot of money. So I see the risk as being put on the applicant. And I certainly would encourage our Staff, with outside help, as you suggest, and parties to look at the impacts on the local area and on the broader state area.

I'm not sure we have an authority yet to go as far as on reliability as your suggestion, but I know Staff would and should do the reliability analysis as part of any new application, just so we have that information.

And, to a last point, we do run the risk of setting a precedent with this, but I believe Commissioner Laurie and I in the Decision have stated that this is not precedent-setting,

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that it is not our intention to set precedent, although I acknowledge your statement that it could be a possibility.

COMMISSIONER LAURIE: Mr. Chairman.

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: Again I find Commissioner Moore's comments to be thoughtful. And I often find them to be constructive, but that generally depends on whether or not I agree with them. In this case I do.

The NOI process does provide important information. I think the legislation setting up the NOI process had a very legitimate basis behind it. I also acknowledge that, in my view, we should be doing a deeper cumulative analysis under CEQA. I have found in the past that analysis has not met my expectations, although in my view it has meet the expectations under the law. I believe we should be doing more in that regard, and I will be commenting on that at a further point in time.

Nevertheless, recognizing the import of the NOI process, recognizing the mandates under CEQA and perhaps some improvement we can do in that regard regarding the cumulative analysis, a portion of that work, I must again go back to our interpretation of the law, our interpretation of Commission policy as it exists as of this date and as it existed at the time the applicant filed their request.

It was our finding that that application is consistent

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with the law and is consistent with Commission policy. It is noteworthy that we have stated in the Decision that a review of both the law and policy is timely and it is our intention to have the Commission conduct such a review.

CHAIRMAN KEESE: Thank you, Commissioner Laurie.

Commissioner Sharpless, do you have a comment?

COMMISSIONER SHARPLESS: Yes. I think what this project has brought out is a real knotty issue.

And, thank you, Commissioner Moore, for trying to take a stab at it and using the NOI as a vehicle, which we have been kind of working around the margins of. And now that we see the large number of possible large applications coming through the door, they have raised issues of how we have done the business and what we have based on our decision on.

This NOI process, I don't believe we have ever rejected an NOI request, for as long as I've lived here at the Commission. I think time and again, as it's come up, because it meets very strict statutory requirement, I began to wonder whether our exemption process was worth the time and effort to go through it, since it seemed as though we were always granting them. And perhaps the Committee position to look at the NOI and perhaps eliminate the NOI came from the same conclusion, I'm not exactly sure.

But I think one has to go back and look at why we have an NOI and why the Legislature -- or what was the rationale in

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the legislation to provide for an exemption, and where does that bring us today.

I think Commissioner Moore raises a very good point regarding how are we going to deal with all of these facilities if in fact we're no longer doing a needs analysis; if in fact we can't look at these from a statewide perspective; if in fact we can't look at the impact of these or at least don't have authority to do anything about the impact of these facilities, perhaps on the overall reliability of the system, even though perhaps CEQA would require us to analysis it. That's one thing to analyze it, it's another thing to have some kind of mechanism or authority to do anything about it. I think I have heard every Commissioner speak today to some aspect of that point.

On this particular project we have already granted NOI on merchant facilities. We have been able to do that because the law said we would look at these proposals and if they met the strict requirements of the statute, that is if they had signed contracts and they were in some kind of bid, solicitation or contract process, that in fact they should be exempt. And in fact that is what this Commission has done.

This project is a little bit different. I think it's noteworthy that the Committee really had to grapple with the point of how this is different. And this is different because this project doesn't have signed contracts, as I understand it, but will sell its power through the Power Exchange. And the

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argument being made here is that by selling power through the Power Exchange it's the same thing.

So if in fact the Committee finds that or the Commission finds that, that basically I think, Commissioner Moore, opens the door for everything. Is that not your point?

COMMISSIONER MOORE: That is my point. And actually you find that in my dissent, that if you make that finding, that that's the effect of selling through the Power Exchange, then why have it. And, frankly, I disagreed with the conclusion.

COMMISSIONER SHARPLESS: If in fact you follow that logic and you say, no, that we're not going to say that that's what the law -- we're going to take a narrow interpretation and say the law does not allow for this, of course people can get amendments to that law, what is the basic outcome of that?

Does anybody have an opinion on what the outcome is? That all projects that now no longer have contracts will have to go through the notice instituting -- what's the "NOI" stand for -- notice of intent?

COMMISSIONER MOORE: Notice of intention.

COMMISSIONER SHARPLESS: Notice of intent, which is, what, about a year's process?

COMMISSIONER MOORE: It can be a year's process, so --

COMMISSIONER SHARPLESS: And out of that what would we get?

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COMMISSIONER MOORE: Well, under my thinking what you would get is a very complete analysis of the alternative sites that meet the criteria for location. You would get --

COMMISSIONER SHARPLESS: But is that sites only within the region? Can we look statewide?

COMMISSIONER MOORE: You could look statewide.

COMMISSIONER SHARPLESS: Do we think the NOI would allow us to do that, Mr. Chamberlain?

MR. CHAMBERLAIN: I'm sorry. I was reflecting on something else in the statute I wanted to add to your point. What was your point?

COMMISSIONER SHARPLESS: The idea is that during the NOI process we could reflect on what would be the best site for this facility and it would not have to be as we have done in the past, whether it's on H Street or I Street or J Street in Sacramento, but we could have the luxury of looking statewide as to where the best site for a project would be during the NOI process.

MR. CHAMBERLAIN: Well, you can do that during the NOI. You could also do it during the AFC. During the NOI, though, the applicant under the NOI process is required to bring forward three sites, a minimum of three sites. That's all they're required to do.

COMMISSIONER MOORE: And they wouldn't have to bring those forward statewide. What Jan is saying is that we could

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look at things statewide. Let's say that a proponent of a project brought in a site that was a possible site in Eureka and a possible site in Fresno and a possible site in the Imperial Valley. Nothing precludes us from looking at all three of those sites.

But I don't believe we have the power to say, "You have to show us three very diverse sites." They could bring us three sites in a ten-square-mile area.

COMMISSIONER SHARPLESS: In other words, Commissioner Moore, we wouldn't -- you mentioned the map activity. And if in fact we had this map activity and we found that from a reliability and system operation, and there's a lot of policy issues that go into that, that instead of this project being placed in Bakersfield, it really ought to be in Eureka or it really ought to be somewhere down in Southcentral L.A., do you think we have the authority then to tell the applicant the only acceptable site would be a site in some other part of the state than what his project in the NOI process would provide?

COMMISSIONER MOORE: I think that we have the responsibility to take many, many factors into account, not the least of which is whether or not an area, if fully developed -- let's say you have an area that's removed from most urban centers, maybe it's in the desert somewhere, and you have three, four-plus proposals for siting coming in. And let's say that as a result of you determine there is only capacity to utilize on

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the lines in the interconnect two of those or one of those.

Let's say you can't handle all of those. They're not going to do anything to add to the system. What is the responsibility of a Commissioner to issue an opinion about the propriety of the site? It seems to me you have to take in not just the strict environmental impacts, but the cumulative and overlapping effects, some of which include market participation. I don't think that's off the radar screen.

And that means, and I know that this is just a dreaded thing to say, but it means there may be an applicant who has a Presiding Member's recommendation to turn them down, saying, no, it is not our job, it is not the job of the Staff or the Commissioners to facilitate the entry of any one of these plants into the market.

And I get the feeling sometimes that that's the way many players view the action of the Commission. Our responsibility is to adjudicate the siting question at large. And as you opened your comments, you said the "knotty question of this." It is extremely knotty. And I think that how we tease apart the interplay between some of these plants and their imposition of impacts on the environment is extremely important.

I am simply say there may be geographic and locational questions that ought to be asked and ought to be looked at in some format as well as simply some of the more classic questions of whether or not there's an endangered species that gets upset

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or whether air quality impacts will be mitigated or not over time. So I'm looking for another tool.

When I use the map tool, really I was intending, and I think the first version of it that you see is really just intended for the five of us so you can kind of visualize where things are. It will get more sophisticated over time. But the first iteration of it is to just try and put some of these things in context with some of the data that we develop.

COMMISSIONER SHARPLESS: Well, based on that vision then we should not -- notwithstanding the statute that says we shall exempt, it seems to mean like there should be no exemption of any project from this process for all of the very valid reasons that you lay out. And perhaps what the Committee might consider is to go the Legislature and remove the exemption requirement, not remove NOI, but remove the exemption requirement as a more appropriate approach to get to the issue that you've laid out.

COMMISSIONER MOORE: I think that's a legitimate policy question for us to ask. Under the rubric of the NOI exemption, it seems to me the question that ought to be asked is: Is this an extraordinary rather than an ordinary circumstance. And, frankly, the arguments that were advanced by the applicant in this case, it seems to me, seem ordinary and not extraordinary.

MR. CHAMBERLAIN: Mr. Chairman, --

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CHAIRMAN KEESE: Thank you.

Pardon?

MR. CHAMBERLAIN: Mr. Chairman, could I just add?

CHAIRMAN KEESE: Yes, Mr. Chamberlain.

MR. CHAMBERLAIN: There are many, many interesting aspects of this discussion.

CHAIRMAN KEESE: It was a very interesting discussion.

MR. CHAMBERLAIN: Yes. I think I could add a lot, but let me just add one very brief thing. And that is the exemption which you're talking about, which is in Section 25540.61, is limited to gas-fired power plants.

And so if someone proposed a coal-fired power plant or a nuclear-fired power plant or some other technology, even though it might very well be considered the result of a competitive solicitation --

COMMISSIONER SHARPLESS: Right. Right.

MR. CHAMBERLAIN: -- or negotiation, it would not qualify.

COMMISSIONER MOORE: Couldn't do it.

COMMISSIONER SHARPLESS: I mean it just goes to the point, if we're trying to do something through the NOI process, what I wanted to point out is that maybe the goal and objective that Commissioner Moore brings out is valid from where we're moving in the new environment. But we still have the NOI

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exemption. It doesn't cover all of the facilities. And so there's like a fairness issue, where we're making some facilities go through a tighter test than we are others.

And we're not going to be able to achieve an objective of looking -- well, we would, but not in the NOI process. We'd have to do some in the AFC process and some in the NOI process.

And, quite frankly, it just sounds like it'd be kind of messy to do it that way because you are making some projects go through a longer loop, even though, as Commissioner Rohy said, the applicant would be running the risk through the AFC process versus the NOI process.

So what I'm really trying to explore is Michal's outcome and his recommendation here. His recommendation is to deny the NOI exemption in this case because he feels as though -- I think, Michal, and make sure that I don't misstate you -- that it is opening up a precedent that virtually will eliminate the NOI process for thermal that have gone through some kind of bidding --

MR. CHAMBERLAIN: For natural.

COMMISSIONER SHARPLESS: -- bidding process, --

MR. CHAMBERLAIN: Yes.

COMMISSIONER SHARPLESS: -- even if that's through the Power Exchange, which is virtually everything.

On the other hand, there will be projects that won't be incorporated in this. He's gone to a much larger policy issue.

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So what do we do? Do we hold up a lot of projects that come in on the NOI process and those that don't fall into that we go forward? And how do we resolve this issue?

If, in fact, we deny this request how do we resolve the issue in a timely way?

COMMISSIONER MOORE: Well, the way we resolve this issue is, if you deny the request, an NOI would have to be prepared and the alternatives would have to be presented to us. That I think would, in turn, effectively set a precedent the opposite way, which would suggest to any applicant that they're going to have to start presenting data in that way for us to make a decision.

The second part of your question, which is directed to us, to the five of us, is that it seems to me we need to convene a meeting of the minds, an offsite, something that's devoted specially and specifically to the issue of siting objectives and procedures.

And, perhaps under that umbrella, the Siting Committee, in addition to all the other work they have got to do, today would have to come up and present us with a set of debate points which would then work our way through on a policy basis at this level.

VICE CHAIR ROHY: Mr. Chair, may I add some comments, join in the fray?

CHAIRMAN KEESE: Sure. Go ahead.

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VICE CHAIR ROHY: I'm listening to the debate. It is something that we, as a Commission, need to debate in great detail. However, having been on not only this Siting Committee but the previous one, and working with Staff for the full time I've been at the Commission, I've not been convinced that there is any reasonable use for an NOI at this point for gas-fired power plants.

The only option that an NOI gives is the alternate-site option. And if we start getting into a site-picking business here in this Commission -- and we've had this argument between Staff and myself on various cases, and I don't mean it to be a negative argument, more of an intellectual one going back and forth -- if we get into a responsibility for the site, for the power plant's financial operations, for its full viability, if however we do what you suggest, Commissioner Moore, and have a GIS system available that, in fact, shows where transmission constraints exist, where reliability would be enhanced by new power plants, I'm sure applicants who are putting hundreds of million of dollars at risk would be very well advised to look at data and, in fact, before they came to us with a proposed power plant, look at those data, work with Staff, and say, "By golly, if I put my power plant here I bet you it not only will sell a lot, it might even be a must-run power plant. I could bump out someone else."

So they would be advantaged by looking at the data that

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Staff is putting together and, in fact, probably would bring us a better power plant site. So I am convinced the process that we have in place now, to do AFCs, is a very thorough process. It's a process that does examine environmental issues. It examines cumulative effects. It can examine the reliability issues.

I don't know what we would be gaining by delaying applicants another year.

CHAIRMAN KEESE: Thank you.

COMMISSIONER LAURIE: Mr. Chairman.

CHAIRMAN KEESE: Yes.

COMMISSIONER LAURIE: If I may, and I will close my comments after this. I again respect the issues put forward.

I suppose I would be construed to be, in my role as a Member of the Siting Committee, what is deemed to be a strict constructionist. That is, I am not about to bring to this Commission or recommend to this Commission a substantial modification or, in fact, any modification to policy without bringing it forward as a proposed policy modification.

I consider it to be my role, when looking at a particular case as a Member of the Siting Committee or as a Member of the Project Committee, to rely on what I understand to be the law as well as Commission policy.

And in regards to Commission policy, now I have to admit to having been educated on this because I was not here in

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February 1996 when the Addendum to *ER 94* was adopted, but I have read the following verbiage of this Commission:

"We regard AB 1884," which I believe was the statute that created the exemption, "as an important change in the philosophy underlying the requirement of need conformance, in which the Legislature has indicated that the forces of competition are inadequate and perhaps a superior alternative to governmental attempts to determine what is the in the best interests of ratepayers.

"As clarified in this Addendum, we also regard AB 1884 as providing for important changes in the permitting process for natural gas-fired products. That is, we believe AB 1884 also reflects a view that for natural gas-fired power plants, the forces of competition or the act of negotiation with competing developers should produce and establish power pool on a realtime basis."

Now I may or may not fully agree with that statement. Nevertheless, I consider it my responsibility, in thinking about this particular case that is up for consideration, to rely on what I thought to be the intent behind that verbiage.

And I believe the Proposed Decision of the Siting Committee is consistent with what we understand past and current Commission policy to be.

If it deserves changing, and very well perhaps it does or at least very well perhaps it deserves consideration, then it

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would be appropriate for us to do so.

CHAIRMAN KEESE: Commissioner Laurie, I would note your report to us suggests the Energy Facility Siting Committee shall immediately move to examine the propriety and necessity of modifications to the NOI exemption process and offer recommendations to the Commission. I think that's been apparent from all the comments that have been made here, that that is appropriate.

It could well be that the NOI is outdated. Certainly a number of elements of our process are outdated in the 1890 environment. I believe the fact that within months of deregulation we now are aware, through either direct discussions or third parties' press releases, that there are somewhere over 7,000 megawatts of generation being discussed already. And a number of surprising proposals, such as Blythe slipping in, that we are not aware of. So I think it is incumbent upon us to look at it.

I was very concerned about this issue. I reviewed your document in depth. I believe you've taken very good steps to assure this is not a wide-open precedent, that you are not dispensing with the NOI, that there will be standards applied to it. And so I would congratulate you on your document. I think you present a very good case.

COMMISSIONER LAURIE: Thank you.

Mr. Chairman, it should be noted that *ER 96*

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specifically says it's a policy of this Commission not to do away with the NOI.

Now what that all means, in light of what we're going to do on a case-by-case basis, I think is up for further discussion.

I would like to note you have been passed out an errata sheet which simply corrects some typos. There is no substitute modification.

And, Mr. Chairman, at this point I would move to approve the Proposed Decision with the errata sheet.

VICE CHAIR ROHY: I second that motion, Mr. Chairman.

CHAIRMAN KEESE: We have a motion and a second. And I will declare all of these erratas are editorial except for three substitutions of the month "July" for "June," which was just an error. So these are editorial amendments.

We have a motion and a second.

COMMISSIONER SHARPLESS: I have a question on the motion.

CHAIRMAN KEESE: Commissioner Sharpless.

COMMISSIONER SHARPLESS: Within the Committee Report there is a recommendation that the Commission reconvene the *ER 96* Committee for the purpose of reviewing an integrated assessment of needs' standard adopted therein.

To Commissioner Laurie's point about *ER 96*, *ER 96* as

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was *ER 94*, were transitional documents. We understood them to be transitional documents. We were dealing with moving targets in those documents. We do not have an *ER 98*. It's unclear what we're going to do in the future about integrated assessment of need processes and all of the issues that we have talked about here this morning.

I would only say to that recommendation that I don't believe that *ER 96* is the appropriate place to review these issues, inasmuch as *ER 96* is working from a transitional document.

And I believe that it is appropriate that we get started right away on these issues in some kind of forum that lifts away from what we've done in the past and can address these issues in such a way as we are going to do them in the future.

So I would like to remove, if that motion includes, a recommendation to reconvene the *ER 96* Committee to, rather than reconvene, to convene or to establish this process be placed in the appropriate forum where we can look at these questions anew and not be based on what we said in *ER 96*, why we said it in *ER 96*, the numbers that we're stuck with in *ER 96*, and the policies that we establish in *ER 96*.

I guess that would be an amendment to the motion
to --

COMMISSIONER LAURIE: Mr. --

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COMMISSIONER SHARPLESS: -- to make it go somewhere else.

CHAIRMAN KEESE: Okay. I have looked at this, Commissioner Sharpless, also. Actually *ER 96* suggested a limited continuing role for the *ER 96* Committee, which was to look at adjusting the number, should that be appropriate.

The order adopting *ER 96* -- to my amazement -- established *ER 96* as a continuing, standing committee for that purpose, of looking at that number.

COMMISSIONER SHARPLESS: Well, then --

CHAIRMAN KEESE: So it's really not necessary for the Commission to reconvene it. I think of its own, the *ER 96* Committee sits there and can reconvene --

COMMISSIONER SHARPLESS: With all due respect to the Chair, Mr. Chair, --

CHAIRMAN KEESE: One, can I --

COMMISSIONER SHARPLESS: Surely. I'm sorry.

CHAIRMAN KEESE: I have discussed with Commissioner Rohy the issue. It seems to me appropriate that this issue be brought to the full Commission through one means or another.

We were planning on not bringing it up, leaving this in, not bringing it up and trying to figure out what the appropriate method of getting this to the Commission as soon as possible might be, whether that is the '96 Standing Committee or another committee.

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COMMISSIONER SHARPLESS: Well, I guess I just loop back and say it perhaps differently, because I don't think the point got across. And that was looking at the number that we established in *ER 96* and changing it based on a situation done today means that we have to use the same assumptions, premises and databases that we used in *ER 96*. I don't think that's going to get us to the issue we need to get to. And I think we need to get beyond that transitional document.

So rather than say, "*ER 96*, go back and look at the six thousand seven hundred some odd megawatts you said was needed in the *ER 96* time period," it doesn't deal with the issues of integrated assessment, it doesn't really -- it dealt with NOIs on a case-by-case basis because we didn't know exactly what was going to happen then, it puts the *ER 96* Committee in a situation when we're -- that we're dealing with a framework that we're really talking about trying to change at this point in time. So that's really my point.

ER 96 is not the appropriate place to do that. We need a new forum. We need a new committee. We need new thinking. New, new, new thinking.

CHAIRMAN KEESE: As one of the Members of *ER 96*, does the other Member of *ER 96* -- I would suggest why don't we take a vote on this -- do you see a need to remove this from here? The Commission has taken action. I would suggest that we close this issue, and then if somebody wants to make

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a --

COMMISSIONER SHARPLESS: I was just recommending, and since we're acting on the Committee report, that we strike -- recommend the Commission reconvene and just add verbiage that says the Commission will convene an appropriate committee for the purpose of reviewing the integrated assessment of needs standard adopted therein.

COMMISSIONER LAURIE: And, Mr. Chairman, Commissioner Sharpless, the basis for that specific recommendation was -- I read this one sentence in *ER 96*, which is in parentheses, by the way, that says, "(If during the pendency of *ER 96*, a total number of megawatts permitted exceeds 6737 (a prospect that is extremely unlikely), the *ER 96* Standing Committee shall reassess)" yada-yada-yada.

So I think all the intent of that paragraph says is: There needs to be a mechanism for dealing with that number.

COMMISSIONER SHARPLESS: But don't forget, there was an anticipation that there would be an *ER 98*. If there is going to be an *ER 96* for the reason of the millennium, I strongly protest that it's the wrong framework in which to review these issues.

COMMISSIONER LAURIE: Why, by golly, that section wasn't my idea, but --

COMMISSIONER SHARPLESS: It was somebody's. And it wasn't mine, either, Commissioner Laurie.

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COMMISSIONER LAURIE: -- but I have no personal objection to deleting that sentence from the Proposed Decision.

Clearly, however, it would then fall to some other body to address the issue. I'm certainly most interested in Commissioner's Rohy's view, since he is a Member of the Standing *ER 96* Committee, as to his desires.

VICE CHAIR ROHY: Well, my guess is that if we didn't do *ER 96*, it would be the Siting Committee. And either way, I'm on it, so --

COMMISSIONER MOORE: You're also on *ER 98*, which never got convened. You're Second Member on *ER 98*.

VICE CHAIR ROHY: Wonderful.

(Laughter.)

VICE CHAIR ROHY: Commissioner Sharpless and I did spend a lot of time, and I understand the concerns that she just expressed of the foundation and framework that was laid for that decision. However, it's been the tradition of this Commission to have the Standing Committee for however long, and I say that with trepidation, that *ER* is in pending, that that Committee take action to interpret and to solve its issues.

My concern is, if we don't make a committee decision today, that these issues will go on further with lack of commitment by any particular group of Commissioners to see this through. So if *ER 96* is not the committee, we ought to make an assignment today rather than leave it in limbo.

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And my preference would -- I have a hard time saying this because of the recollection of all the *ER 96* hearings that we went through with many of you, but I still think it's probably the best forum to hear this in.

Having said that, I do it with trepidation, understanding Commissioner Sharpless' admonitions. And if we go forward with that, I'm sure I will hear from her saying, "I told you so."

And I will have to say, "You're absolutely correct. You did."

COMMISSIONER LAURIE: I would like to clarify for the record, Mr. Chairman, that the Addendum to *ER 94* which provides the basis for much of our decisionmaking today went through the Siting Committee rather than through a standing *ER 94* Committee. I don't think that's relevant for any other purpose than clarifying any question on the record.

In any case, I certainly again don't have any problem with the *ER 96* Standing Committee addressing the 6737-cap issue. I think timeliness is critical. Whatever mechanism we create to bring back to the Commission for a public hearing on the question, if we're going to, in fact, amend *ER 96*, I think it's important the matter be addressed very quickly so that we can have a public hearing on it at the Commission level in very, very short order.

COMMISSIONER MOORE: Well, Mr. Chairman, on the

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motion and on the statement that Mr. Laurie just made, it won't be just the 6737 number that the Standing Committee or any other committee takes up. It will be a much broader issue of the market context in which these proposals are appearing.

The fact is that *ER 96* was designed, as Commissioner Sharpless said, as an interim document, one that anticipated, but not perfectly, the fact that the regulated market structure was disappearing, but it wasn't gone yet.

And, as a consequence, you operated with a fiction that said that it was still in place and that you still had responsibilities under the old Warren-Alquist Act. And, as a consequence, it seems to me that we should understand: This is much bigger question than just what's that number and do we exceed the cap.

So the Committee recommendation is much broader in nature. It should be just understood in that context.

COMMISSIONER LAURIE: On the question, Commissioner Moore, the Committee recommendation seeks to distinguish between the cap number and, in fact, the broader issue, if you can, in fact, segregate those issues.

And the basis for that is *ER 96* says specifically as to the cap number, if there is a desire to change the cap number, bring it back to the Standing Committee for that specific purpose.

It's my personal opinion that, dealing with any broader

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policy issue, that that matter should be brought up in a different forum.

COMMISSIONER MOORE: Well, Bob, I guess I would answer that by saying the classical, "So what?"

I propose a new cap, 28,000. How is that any more relevant than 6700? It is no more relevant except in the context that were you ever to get to a cap that was absurdly large like that you would begin to impact transmission facilities, you would begin to impact environmental communities in a way that was absolutely unprecedented.

So in that sense the cap is a different animal or the objective in this case is a different animal, because you could turn the question around and say is it an objective to reach a certain number or is it a limit to reach a certain number.

So the definition of a "cap" won't even suffice. You'll be dealing with a number, but it will have no relevance to a cap or a lid, but it will have every relationship to an objective. And so the Committee, whatever committee deals with this, is going to have a fundamentally new question to ask itself about market capacity.

COMMISSIONER SHARPLESS: Well, here's a recommendation. Why don't we refer it to the ER 98 Committee and have the ER 98 Committee specifically focus on this issue?

CHAIRMAN KEESE: We don't formally have a ER 98 Committee, I don't believe. The --

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COMMISSIONER MOORE: Actually I think we had one when we formed the 1890 Committees, formed it at the same time.

CHAIRMAN KEESE: I don't believe so.

I would like to, Commissioner Moore, throw in one other option which is the --

COMMISSIONER MOORE: That was brief.

(Comments off the record regarding the public address system.)

CHAIRMAN KEESE: Are we back on again?

One of the other options, actually, is to have no cap. And that is an option that at least two of the Commissioners were very interested in voting on when we adopted *ER 96*, to my knowledge.

So I think that, whoever the body is, goes through it, we should look at whether the cap should remain the same, or whether the cap should be adjusted, or whether a cap should be removed in the new marketplace where anticipated generation well may be replacing old generation and is not, as in the old utility days, just a mere add-on to supply.

COMMISSIONER MOORE: This is a good topic for an *en banc*.

CHAIRMAN KEESE: Well, it seems to me we need to send a signal to the marketplace, and we're sending a false signal today. And therefore I believe the number should be dealt with expeditiously.

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And my suggestion would be that we try to deal with it at our first meeting in September. If there is someone who feels that a separate committee hearing is necessary, prior to bringing the solution to the Commission, then I would suggest we have an arrangement where we have a separate independent committee hearing.

If not, I believe we could have -- any member here could put a proposal forward for what we do with that number in September. And I would be very comfortable if Commissioner Rohy, through whatever means possible, did that.

Would you be comfortable if we just left this issue open and let Commissioner Rohy come up with a forum to do it in before the day is over, or tomorrow?

COMMISSIONER LAURIE: Well, what we can certainly do is bring it back for full Commission consideration. Clearly, however, there should be -- there's going to have to be working with Staff and some Staff guidance and an *en banc* on the specific question should be arranged and should be scheduled.

I certainly have no difficulty in having Commissioner Rohy, as I think the Presiding Member or as one of the Members of *ER 96*, work with Staff in preparing Staff's presentation to the full *en banc* Commission hearing.

VICE CHAIR ROHY: I'd like to add one more item. I don't think it's just a matter of picking a number. And this is along with what Commissioner Moore and Commissioner Sharpless

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have been saying.

If we just pick a number out of the air, we have no foundation and it will be subject to a lot of discussions and perhaps unpleasantries. But there are some other options that we have need to explore.

One of them is we have the cap on approvals. The cap could be on installations. So we get around this rush to approval. People could get in line, get their facility approved, and then not build waiting for the market to develop out.

But we could set a different type of approval for the same cap, saying you can get your approval, but it's contingent on somebody else getting to 6700. If they hit that 6700, guess what, your approval just disappeared.

I'm not saying that is **the** answer, but there are different creative ways that we could look at this issue as different from just picking a number. And I would be glad to talk with my fellow Commissioners about a process that we could go through offline.

CHAIRMAN KEESE: Would the Commissioners be comfortable with just asking Commissioner Rohy and Commissioner Laurie to come up with a proposal for hearing at our first meeting in September?

I would suggest that perhaps Mr. Chamberlain, Mr. Valkosky, Mr. Therkelsen and Mr. Nix could coordinate a Staff

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proposal of options available to us, give them to a committee of Commissioner Rohy and Laurie and set them for hearing at the first meeting in September, a public hearing?

COMMISSIONER LAURIE: Mr. Chairman, I would modify my earlier motion to delete the provision in the proposed Decision referring the issue of the cap directly back to the *ER 96* Standing Committee. And I'll leave that as a modification in my earlier motion.

Then, secondarily, I would ask for another motion that sets the issue of the cap on a specific agenda item, probably the first meeting in September, but I won't include that as part of my first motion.

CHAIRMAN KEESE: We have a motion on the La Paloma generating --

VICE CHAIR ROHY: I had the second, and I will accept the modification of the motion as modified by Commissioner Laurie just now.

CHAIRMAN KEESE: And we have a second with our errata and our amendment.

Does any other Commissioner care to speak before we hear from anybody else?

(No response.)

CHAIRMAN KEESE: Does anybody feel a need to discuss this issue?

(No response.)

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CHAIRMAN KEESE: All in favor?

VICE CHAIR ROHY: Aye.

COMMISSIONER LAURIE: Aye.

CHAIRMAN KEESE: Aye.

Opposed?

COMMISSIONER MOORE: No.

COMMISSIONER SHARPLESS: No.

CHAIRMAN KEESE: Three to two. Adopted.

(Motion carried by a three-to-two vote to accept the Energy Facility Siting Committee's Recommendation concerning La Paloma Generating Company's petition for Jurisdictional Determination.)

CHAIRMAN KEESE: Thank you.

MR. THOMPSON: If I may.

CHAIRMAN KEESE: Certainly.

MR. THOMPSON: I wanted to wait until the Decision was -- until the issue was decided before I bored you with my one or two minutes.

CHAIRMAN KEESE: Identify yourself, please.

MR. THOMPSON: Pardon me?

CHAIRMAN KEESE: Identify yourself, please.

MR. THOMPSON: My name is Allan Thompson. I am project counsel for the La Paloma as well as two other projects in front of the Commission.

I would urge, in going through these steps of the procedures that you have been discussing today, the cap number,

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the disposition of the NOI process, to involve industry to the extent you can, developers, within those decisions. Let me give two examples.

Number one. If NOIs were required the result would be that you would get no NOIs, I believe. You would have cogeneration facilities. You would have facilities out of state, but I do not know a client or potential client that I have talked to that will file an NOI. It's just too far from putting the information together to when you hit the market. You may have them in special circumstances, but I think it actually could take care of your 14-application problem, if that's what the Commission desires.

The second is the number. There are areas of the state, for example, San Francisco comes to mind, where generation is required. And it seems to me that locational value should be a part of any decision on a number or a cap and how you would deal with that.

Those are just two examples of the kinds of things that I would hope that industry could help you with, to the extent that they can be a part of that interest.

And on behalf of La Paloma, I want to thank you very much for the Decision.

CHAIRMAN KEESE: Thank you.

Item 5.

COMMISSIONER MOORE: Mr. Chairman.

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CHAIRMAN KEESE: This is the one I want to be careful about. The agenda item is erroneous. Items 1 and 2 are not appropriate and should be stricken from the agenda item, but I believe they were appropriately dealt with in the body of the presentation.

Is that correct?

MR. MASRI: That's correct, Mr. Chairman. Thank you.

CHAIRMAN KEESE: And with that we will -- Item 5, Renewable Technology Program. Possible approval of substantive changes to the Energy Commission's guidelines for the Existing Renewable Resources Account on eligibility requirements for qualifying energy, specifically deleting requirements numbers -- we can strike number 3, but energy cannot be excluded from the competitive transition charge for any reason.

COMMISSIONER MOORE: Mr. Chairman.

CHAIRMAN KEESE: Mr. Moore.

COMMISSIONER MOORE: It's a day for apologies, I guess. And so on behalf of the Committee I take responsibility for the fact that we had this listed wrong. Although the item that went out to the public and the item that the -- or, I'm sorry, -- the agenda package that went out to the public and the agenda package that came to the Commissioners were correct. We didn't list it correctly because of the item being listed before withdrawn from the agenda and then put back on, and the Secretariat was under the impression that we were simply putting

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the item back on the exact way that it came off, and it wasn't.

We had made some other modifications to it, and I do apologize for the slip-up. Although I think that in terms of what the public got, the items, that it was abundantly clear what we were intending to do.

And it boils down to two items in terms of the competitive transition charge, the original language in the guidelines -- and I'm literally quoting from your packet now, and I'd like just now to get this on the record -- stated that to be eligible energy could not be excluded from the CTC for any reason. That we suggested modifying the requirement so that only energy that is avoiding an applicable transition charge is ineligible.

With regard to the Power Exchange, our guidelines originally did not address the issue of power sold through the Power Exchange or any alternate Power Exchange, such as APX. The modification to the guidelines next includes language that specifically states that power sold through any power exchange is eligible for funding if it meets all the other requirements.

And there are some other minor technical changes that we made in terms of text, but for the substance; and I have to say, we're learning as we go. We didn't anticipate, for instance, APX's role and didn't appreciate the really pretty vital contribution that something like that was going to make. So we're trying to be timely about changes in the guidelines.

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We're trying to be responsive to questions or criticism that's coming in from the public. So we reconvene as necessary to make the changes and hopefully our response was possible.

And perhaps I can ask Marwan to elaborate on the other nonsubstantive changes.

MR. MASRI: Thank you, Commissioner Moore.

This is exactly what we are doing. We have come before you more than once now. When we adopted our policy report, in that report we have said, right in the beginning, "This Report represents conceptual policy framework rather than the details necessary to implement policies. Future procedures are expected to include changes that are necessary to effectively carry out policies and any further legislative guidance." That's exactly what we are doing.

As Commissioner Moore said, we are learning by doing. We could not necessarily anticipate all the fine details of who we encounter. In fact, in our work plan we have allocated resources to resolve what we call "unusual circumstances" we will run into as we implement the program.

In this case, again we are trying to make the program as least restrictive as possible while still preserving the policies the Commission adopted in that report, and also consistent with SB 90.

In these two particular cases we are accommodating the fact that the outside contract market is really facilitated

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greatly by the creation of a Power Exchange to move green power from suppliers to marketers and, ultimately, to customers.

That's something, again, that was not anticipated. And we are now making a change in our guidelines to recognize the important role of such an exchange in facilitating the creation of a green power market and giving marketers basically a means of obtaining green power efficiently.

The second change rests on the policy in our report, and about the CTC. The exclusion of the CTC really was for the purpose of denying projects double subsidy that, if someone is avoiding a CTC, that's already a significant subsidy and we should not add to that.

The current change or flex app. basically says that if there is a CTC in place and energy is avoiding that, that energy is not qualified. But it does not require, as a narrow interpretation of the guideline would have led us to, that a CTC be in place for the energy to be eligible.

So that's really the summary of the two items we have before you here. We are trying to make the program -- and both for example, of course, were triggered by us as we implement the program running into these cases, that require these changes.

In the one case a facility signed to Sierra Pacific Power, that does not have a CTC in place right now, and in the other case, of course, the creation of the Automated Power Exchange.

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I'll be happy to answer any questions you may have.

CHAIRMAN KEESE: Thank you.

VICE CHAIR ROHY: Mr. Chairman, may I ask a question?

CHAIRMAN KEESE: Commissioner Rohy.

VICE CHAIR ROHY: Specifically with regard to the Power Exchange, when I read the language that's been given to me, "The Power Exchange," with capital letters refers to the California PX as put in place by AB 1890, I presume.

However, you say, "Alternate power exchanges." Do you have definitions of "alternate power exchanges"? Do they have to be in California? Do they abide by the same rules? Are they licensed by the PUC? What is an "alternate power exchange"? Will we get into problems down the road by being loose about what a power exchange is?

MR. MASRI: The actual change in the guidelines just says "a power exchange." In other words, we don't specify what it is because we don't know what the exchange is that will emerge. And if we run into an exchange that is not the Automated Power Exchange or -- this is the two we know of right now, the Power Exchange, with the capitals, then we would have to look at that and see if allowing sales to that exchange violates the policies we adopted or not or violates SB 90, and come back before you --

COMMISSIONER MOORE: You know, Commissioner Rohy, a

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good question, good link to a set of questions.

We anticipated that we would take this up on a case-by-case basis. We only have one example coming before us.

But what you've just said will prompt me to bring that set of questions up because it seems to me that -- we've been going through the business of defining terms each time one comes up that we didn't anticipate. This is a good one. So we'll take it up and come back with a proposed set of definitions, because clearly there could be other exchanges.

And what strikes me most about the question you just asked is what if they are out of state, and you literally have to have -- or in order for that exchange to work, you'd have to have transmission out and wheeled through the exchange and back in.

What if something like that happened and they claimed it was simply a virtual exchange? What if it's a market exchange like on the Chicago Mercantile or something, that never changes hands, but the ownership of it changes hands? We'll take it up.

VICE CHAIR ROHY: Would you want to move this language today with the clarification later? What is your desire?

COMMISSIONER MOORE: Well, my intention would be to move it today, and then we'll -- we're going to be continuously refining these issues because each month that goes on we get a

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new challenge from the outside. So I think in this case there's no threat to the integrity of the system, given the language that's proposed in this change.

I can see there could be one. It certainly hasn't made itself visible yet in terms of alternative exchanges. We'll take that up prior to ever getting them in a report back to you, but I think this language could suffice today and --

VICE CHAIR ROHY: Could you give us a commitment on time to come back to us with the definition?

COMMISSIONER MOORE: I'll have a definition back to you by the end of September.

VICE CHAIR ROHY: Thank you.

CHAIRMAN KEESE: Thank you.

Any further discussion by the Commission?

(No response.)

CHAIRMAN KEESE: Any public comment?

(No response.)

CHAIRMAN KEESE: All in favor?

COMMISSIONER MOORE: No, we don't have a motion.

CHAIRMAN KEESE: That's right. I'm sorry. I'm rushing you.

COMMISSIONER MOORE: I move for approval.

COMMISSIONER SHARPLESS: Second.

CHAIRMAN KEESE: We have a motion and a second.

Now do we have any public comment, now that we're

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serious about this.

(No response.)

CHAIRMAN KEESE: All in favor?

COMMISSIONERS: Aye.

CHAIRMAN KEESE: Opposed?

(No response.)

CHAIRMAN KEESE: Adopted five to nothing.

(Motion unanimously carried to approve the substantive changes to the Energy Commission's guidelines for the Existing Renewable Resources Account.)

CHAIRMAN KEESE: Item 6, the California Alliance for Distributed Energy Resources. Discussion of CADER recommendation.

COMMISSIONER LAURIE: Mr. Chairman, what's the Commission's desire as far as time? I don't know whether this discussion is going to take five minutes or a half-hour. We had a good discussion last meeting. We didn't want to take action because I believe Commissioner Moore was unavailable.

So we have talked about these issues, but we wanted to save an opportunity for full and complete discussion. And I have no idea what that may entail. Again, it could be five minutes. It could be an hour.

In addition, pursuant to my memo I am hoping to have a full discussion on the *Residential ACM Manual*, and that could take at least a half-hour. So I bring it up to you to determine

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whether or not you want to do a lunch break.

COMMISSIONER SHARPLESS: A question on CADER.

COMMISSIONER MOORE: I have a question on the lunch.

COMMISSIONER SHARPLESS: A question that deals with lunch, but what we expect to accomplish regarding CADER, as to whether it's five minutes or longer.

We entered into a preliminary discussion in the absence of Commissioner Moore. And there are a series of questions in our book that talk about the Commission's role. There's a number of budget change proposals that went before the Budget Management Committee that could anticipate there are some personnel years that would be allocated to certain CADER activities, although the relationship between those budget change proposals and what we're trying to accomplish today is not clear to me yet.

But if today is merely a discussion about leadership in the most general sense, without getting down to the specifics of what does it mean in terms of our personnel year commitment, it seems to me that's going to be difficult to do.

I think I've already expressed an opinion that we're already into it with CADER, that distributed energy generation is going to be an important energy in the future. Asking the question whether or not we want a role in it is sort of like saying do you want to win the lottery. Well, of course, but what does that mean?

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And then I think the second issue that I brought up last time was the fact can we self-ordain ourselves the state leader inasmuch as there are some important activities going on at the CPUC and other things that would have to happen at other state agencies and local governmental agencies.

Wouldn't it perhaps be well to consider getting an executive order from the Governor ordaining us if, in fact, we are serious about this leadership role and what it means in terms of our resource commitment.

So I don't know exactly, Commissioner Laurie, what your expectation is from this debate and how much detail we get into it. Do you think it's a five-minute debate, or what?

COMMISSIONER LAURIE: Let me discuss what my expectations are, and I think they are consistent with Staff, but I'd ask Staff to comment if not necessarily so.

We have had two discussions on distributed energy in the recent months. One, the CADER proposal which we're considering and, two, our discussion of the last meeting.

All I personally am looking for, and I think the Siting Committee is looking for, is pretty much the Commission's go-ahead to engage into that set of specific discussions that have to be held.

And those specific discussions would include two immediate questions. One, an analysis of what other governmental agencies or nongovernmental agencies or bodies, or

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otherwise, are doing or think they should be doing on distributed energy issues so that we have an understanding of what's going on in the minds of others and thus being able to, at that point, frame how we best can serve the people of the state of California given our knowledge and expertise.

And, two, once that question is determined, what should our internal process be. That is, we have a number of -- this is clearly a cross-committee, clearly a cross-divisional set of issues.

And it would be the hope that the Siting Committee could help coordinate and bring the questions up to the Commission to determine appropriate forums for those cross-cutting issues.

I believe I have heard an affirmative response to the basic questions of whether we should be involved in distributed energy issues. I understand an affirmative answer cannot be more specific until you have specific questions brought before you.

You do have in your briefing material a set of questions. I'm certainly prepared to have a complete and full debate on that set of questions today.

Frankly, I don't believe I need all those questions answered to allow the Commission to find a forum to pursue the issue of distributed energy, as I have initially outlined.

It would be the primary, immediate goal of the Staff

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that has been working on the project -- primarily you see Mr. Layton and Ms. Grau in front of you; Mr. Wong had been a leader on the subject, too -- it would be their plan, in the space of the next few weeks, frankly, to prepare a specific plan for this Commission to consider as to how we are going to address the overall issue of distributed energy.

Thus, I think all we're looking for is your consent to have that process go forward.

Let me pose a question to Staff.

Am I missing something important? Do we feel that you have sufficient direction just from the Siting Committee today to go forward with the preparation of a plan of design or process to bring back to the Commission the various roles and goals internally in regard to DER?

I think at the Committee we discussed and debated these specific questions satisfactory to us. The question is: What do you think you need out of the Commission today?

MS. GRAU: I think today what we're looking for is pretty much what you said. We want to be sure that we have agreement we should be moving forward, that the Siting Committee should be the lead.

Matt and I, as you mentioned, have been thinking about what needs to be done. And you're right, that coordinating with the other agencies and other entities working on distributed resources is paramount. We don't want to step on anyone's toes,

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but there are a lot of things going on out there.

So our plan of action, I think the first step would be getting all the pieces of the puzzle, see where they fit, see where there are pieces missing. When it comes to things like resources we would need beyond just as Staff, us as Staff, obviously we would need the commitment for resources and possibly redirection of resources and priority-wise. So we would need that. But, technically speaking, I think we have the capability to put the plan together. It's a matter of getting the resource commitments from the Commission.

COMMISSIONER LAURIE: It would be the hope and intent that this issue be the subject of a full Commission hearing within a very short order. I think both Mr. Rohy and I understand the Siting Committee has it for coordinating purposes only, that everybody in their own area has a very important role to play in this issue, but somebody just has to take the ball and kind of start that process.

CHAIRMAN KEESE: Commissioner Laurie, two questions.

One of the issues is whether we would continue to serve as a chair or a co-chair, I believe. Do you need direction on that?

COMMISSIONER LAURIE: CADER is meeting. And thank you for bringing that up. CADER is meeting, I think, in San Diego on a Monday. The request has been made to get Commission permission to have a representative from the Energy Commission

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serve on that board.

I bring it up to you. I don't know if we need -- and we have lots of folks serving on various boards and commissions all over the place as our representatives. So I'm not sure we need to have a Commission decision on that, but it is brought forward to you for your input.

If the Commission feels that for some reason we do not want CEC representation on CADER, then we should know that. Otherwise, we will work on coming up with recommendations as to who that representative should be.

CHAIRMAN KEESE: To be specific, I believe the suggestion is that Mr. Wong in his new occupation would be willing to serve as a co-chair, but would like to see a co-chair from the Energy Commission probably. So that's something I am comfortable with. Whether you need a motion or something...

I think you're welcome to negotiate it as best you can, but I'm comfortable with that.

On another level we had a discussion. The CADER group made a presentation to the administration that goes somewhat along with Commissioner Sharpless' point, made a presentation to the PUC, the Energy Commission, who they had previously made positions to; and EPA and ARB and the Governor's Office, who they had not made presentations to, and asked for a coordinated state effort on this issue, which I was informed late last night that Secretary Rooney is going to take to the Cabinet in due

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course, suggesting that there be some sort of red team, if that means anything to anybody in this room, created to deal with this issue.

I can't really report more than that. It would seem to me appropriate that the Energy Commission, who has been the one involved in this and has brought it to everybody else's attention, might well be interested in taking the lead on any state-coordinated activity.

COMMISSIONER MOORE: Mr. Chairman, I'm still interested. Commissioner Sharpless put a question on the table to Commissioner Laurie, and I'm still waiting to get his response.

Bob, how much time do you think we would want to deal with this today and in what depth? My understanding of the item was we were going to take these pieces and talk about whether or not they correctly discussed the scope of what we were interested in, whether they left anything off the table, put too much on the table or whether or not there were other facets of these that we ought to be examining. That's what I thought we were doing today, and I'm interested in where you think we're going and really how much time.

COMMISSIONER LAURIE: The purpose of today's agenda item, Commissioner Moore, was exactly for that purpose: To allow a free-flowing, thorough discussion on the proposed questions.

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We did get into those questions somewhat at the last meeting. And so I guess the reason I don't have a good answer as to how much time is because I know what's in my mind, but I don't know what's in the other Commissioners' minds. So it could very well take three hours to get through these questions. I really don't know.

COMMISSIONER MOORE: Is it your sense that that would be the type of discussion that would take place in any case when this came back to us, or do we need to have that kind of a discussion prior to the inception of the San Diego meeting? For instance, should we go to that meeting armed?

COMMISSIONER LAURIE: I think all we have to do in -- well, yes. We do have to go to the San Diego meeting armed. That is, I think our representative has to have an understanding of the Commission's thoughts on CADER questions or the types of questions that CADER may propose.

I think the expectation was there would be a thorough discussion to the extent that we haven't previously discussed it. And I certainly don't have any desire to limit the Commission's discussion. That's why it's on the agenda.

COMMISSIONER MOORE: Right. I certainly wasn't implying that.

And to the extent all these other things have been debated by the other Members and not by me, we should bypass that because I can get my questions answered at any point. So

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I'm willing to go along with whatever the other Commissioners want to do as far as time today.

CHAIRMAN KEESE: Yes. I just talked to Commissioner Rohy, and he's obligated from one o'clock on. I have a meeting at 2:30 that I am pretty well tied to. So I would suggest we go on.

And I don't know if it helps, but I would say I agree with a categorical yes on 1. I agree with a categorical yes on 3.

And on number 2, when we say "enhance existing programs and create new programs," I think I would like to sort of see what we had in mind before we bless that.

COMMISSIONER LAURIE: No. I understand that.

And --

CHAIRMAN KEESE: So, yes, to the extent we have been participating, I would fully support continued participation on the team.

Does anybody else want to -- is an informal response is acceptable?

COMMISSIONER LAURIE: It's acceptable to me. Now the issue of PY, I will discuss that with Staff a little further. And those are critical questions.

I think we do need clearly an understanding of, if we have PY, what else are we not going to do and things like that. Those questions are to be addressed. I don't think we need an

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answer to the PY question today, as much as Staff may desire it.

CHAIRMAN KEESE: Any formal input here?

COMMISSIONER SHARPLESS: Well, I guess that I believe we're going to be involved in CADER or distributed energy resources regardless of whether we call it CADER or something else. It's embedded in everything we do. It's embedded in the PIER Program. It's embedded in the Renewables Program.

Distributed energy resources is a huge universe. And it can mean all kinds of things. So that's why I kind of keep getting back to can we just add up everything we're currently doing that touches on, I think this was the point maybe Staff was getting, that touches to CADER or distributed energy resources, highlight the fact we're doing stuff, see how it relates to the stuff other people are doing, and determine whether or not there are any gaping holes. And then figure out what we do about the gaping holes and whose role it is to do that.

I think that is a very doable process. Staff calls that a coordination process. That is perceived as what will happen in the next fiscal year without any enhancement.

The fact Cal/EPA has gone forward to the Governor's Office with a red team -- Chairman Keese, my understanding of red teams and my involvement in red teams usually occur in a siting process. They are initiated project-by-project to help

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large projects get through the siting process, federal, local and state. And red teams are interagency. I mean they are all over the place. They are from the resources agency and Cal/EPA and whoever has a role in this stuff.

So I'm not quite sure what Cal/EPA has in mind by creating a red team. I think really some of the pertinent issues have to do with some market barriers that kind of have to be dealt with before you put your red teams in place. But it would be interesting to have a discussion with those folks to see what problems they think they are solving in the larger realm of things.

What this all goes to say is I think distributed energy resources is going to be a very important thing, huge potential, many issues. They even get back into the reliability issues and the transmission issues and the distribution issues. There's no question about it, that we've got to be a player in this.

To be a leader, just naturally, because we span the energy realm, that we're placed well to be a leader in this area, but I don't think we can just self-ordain ourselves a leader. I think we need to get an executive order that says thou shall be a leader. And we write it and we say what that means. At the top of it will be coordination.

I am very concerned about additional resource requirements and any programs at this point in time, because we've got other programs that also require resource

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requirements. And if we are trying to figure out where our priorities are doing this onesy-twosy kind of thing means we say everything is a priority, and we can't fund everything.

So we're going to have to find a way that we put this in the context of the PIER Program, the Renewable Program, the Energy Efficiency Program, the Siting Program, and the Information and Education Programs that we've got going on here, too, and not to forget transportation.

So I guess that means I would weigh in with Commissioner Laurie and Commissioner Rohy about the importance of this issue and want to play a strong role. And if we could be designated leader, all the better.

VICE CHAIR ROHY: Just a few comments. I totally agree with Commissioner Sharpless' comments and certainly appreciate her strong endorsement.

I believe we have been seen as a leader. We have acted as a leader as a Commission, so what I hear you saying is we should continue to be a leader and look at some official endorsement of that status.

I also agree with your comments on how we use resources. And I believe there are programs in place that are doing the distributed, and we need to make better use of those to integrate them.

CHAIRMAN KEESE: Enough guidance?

COMMISSIONER LAURIE: I guess, Mr. Chairman, the

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purpose of today's agenda item was to provide for some opportunity for discussion, and we have that.

As Commissioner Sharpless has indicated, we're all already doing distributed energy and we will be continuing to do it. In light of the Chairman's discussion about involvement in the Executive Office, we will see what they have to say. But obviously if we're called to participate we will be doing so. And we will hopefully be doing so in a coordinated effort. We consider it somewhat our responsibility to help provide that coordination.

CHAIRMAN KEESE: Thank you.

Any final?

Okay. The approval of minutes. We have none to approve.

Under Commission Committee and Oversight, I would observe there may be persons who want to comment on the proposed adoption of the *Residential ACM Approval Manual*. The adoption hearing, which was originally noticed for this date, has been continued until September 9th so the Commission can publish and receive comment on 15-day language modifying the proposal.

The Efficiency Standards Committee will briefly update us on this issue. And when we get to where we are, Committee Reports, any public comment will be heard on the *ACM Manual* after this presentation.

COMMISSIONER LAURIE: Thank you, Mr. Chairman.

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The item before you today is an Informational Presentation and Status Report on Revisions to the Commission's *Residential Alternative Calculation Method Approval Manual*, known as the *ACM Manual*.

About two months ago we issued 45-day language in the Notice of Proposed Action indicating that today's business meeting would be the form in which we would adopt the language. The item was left off of the agenda.

Based upon a couple of public comments that we received in hearing since then, the Efficiency Standards Committee provided draft 15-day language about two weeks ago and will be providing proposed 15-day language very soon, perhaps later this week. We plan to bring that language back to the full Commission at the September 9th business meeting.

Although no action is required at the Commission at this business meeting, I think we simply felt -- the Committee felt it is important to provide the public an opportunity to convey any remaining concerns they may have at this time.

Thus, recognizing the time of the day and recognizing the purpose of today's meeting, that is providing an opportunity for public comment, I would ask the matter be turned over to Staff, recognizing this entire issue is coming back to the Commission within just a few weeks.

And basically I'd ask Mr. Pennington to open it up solely for the opportunity of providing an opportunity for

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public comment. Perhaps a very, very brief background as to what the *ACM Manual* is and what it does.

Mr. Pennington.

MR. PENNINGTON: Thank you, Commissioner. I will make this brief.

The current *Residential Alternative Calculation Method Approval Manual*, we call it the *ACM Manual*, has been in effect since 1992. And with the changes that were made last summer in the adoption of the *1998 Building Standards*, there is a need to change it substantially to implement the decisions of that standards proceeding.

And we have been working for almost a year now to develop those changes and to get public comment and respond to public comment on those changes.

Basically, the changes are intended to provide direction to vendors of compliance software on how to implement the changes to the *Performance Standards* so their software can be approved by the Commission for use with the standards when they go into effect, we expect next April.

In addition, this project had, as an objective, to establish compliance credit for using diagnostic testing in the field and field verification to ensure quality installation of duct efficiency improvements and building envelope leakage, and to develop new mechanisms for that compliance credit.

We have developed procedures for that. And the

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procedures require that installers of duct improvements and building envelope leakage actions test and self-certify their tests results, and that there also be an independent verification process completed by HERS raters on a sample of the homes that the compliance credit has been taken for.

There are a couple of issues that were raised during the course of the proceeding I would like to bring to your attention. We debated extensively the diagnostic testing and independent verification possibilities and proposals that we now have.

The range of views are from there should be one-hundred-percent verification, independent verification in the field of diagnostic testing. That sort of establishes ones end of the spectrum. And the other end of the spectrum is represented by people who view that you could rely solely on installers testing and self-certification with no verification independently done.

The proposal is sort of in the mid-point of those range of views, and it's been discussed extensively. It's my opinion the majority of participants in the proceeding now support the proposal that's in the ACM. There are a couple of participants that kind of continue to argue the end points of the range of that comment.

Another issue that has been brought up in the proceeding is related to establishing compliance credit for

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building envelope leakage reductions.

Based on field data that was submitted by DuPont Company on their Tyvek housewrap, we proposed a compliance credit that would be a prescriptive or a default credit, that you could take for that housewrap, based solely on whether it was there or not and had met installation specifications, and you wouldn't be obligated to do diagnostic testing to get that credit for that particular approach.

Manufacturers of other types of wall installations have made the argument that a similar credit should be acceptable to their products, including rigid wall insulation and, most recently, a special application of building paper.

The Staff believes that the research that was done by DuPont is applicable to a wide range of housewrap materials, but is not applicable to the different installation practices and the different wall systems that are associated with rigid insulation or building paper or other materials that might want to get the same credit.

And the proposal in the ACM is to not extend the credit for housewraps to those other building materials but, instead, proponents of comparable credit for other materials have a separate process they can go through, called the Compliance Options Process, which the Commission has used in the past to approve compliance credit for new techniques, emerging techniques, whatever. And we could go through that process and

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do some testing of alternative wall materials to determine whether or not the same credit would be appropriate for them.

So that's our recommendation on that score.

Those are the two primary issues I wanted to bring to your attention. I'd be glad to respond to any questions.

CHAIRMAN KEESE: Thank you.

Any questions for the Committee here?

COMMISSIONER SHARPLESS: No.

COMMISSIONER LAURIE: I think we just, again, wanted to provide an opportunity for public comment at this point, recognizing there is going to be a full Commission hearing on it in a couple of weeks, Mr. Chairman.

CHAIRMAN KEESE: Okay. Mr. Wilcox.

MR. WILCOX: Chairman and Commissioners, my name is Bruce Wilcox, and I am here representing the DuPont Company.

We support the Staff's proposal for having language in the *ACM Manual* providing prescriptive credits for air-retarder wraps. As Bill Pennington described, DuPont has worked with the Staff over a period of several years now to develop a technical basis for providing credits for air-retarder systems and, as part of that process, was challenged by the Staff to do some testing to show these systems would, in fact, reduce infiltration in California houses the way California houses are built.

I carried out a set of field tests on production houses

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in Folsom which were designed to show that specifically for California houses, the impact of these housewraps, and the data that was developed showed that they did, in fact, reduce the infiltration rate in a small but significant way. And the prescriptive credit that's being proposed is based specifically on that test.

There aren't any tests with comparable data for the other systems, including foam sheathing, and I'd like to point out that, in fact, all the houses that we tested had foam sheathing and the ones that did not have housewrap actually had building paper. So I think it's appropriate for the credits to be stated the way they are and that they are based on the measured data.

As Bill pointed out, the other manufacturers have the Compliance Options Process available to them to do a comparable study. And they also are not shut out of the air-retarder application market because, in fact, houses can be tested using the performance approach to show that, in fact, they are delivering performance from whatever systems are installed.

Thank you very much. And I'd be happy to answer any questions.

CHAIRMAN KEESE: Thank you.

Do we have a question over here?

COMMISSIONER SHARPLESS: No.

CHAIRMAN KEESE: We'll save the questions for a

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couple weeks.

Did you have a comment also?

MR. GREELEY: Good afternoon. My name is David Greeley. I'm a development engineer with the Dow Chemical Company. I do tech service and development for Styrofoam insulation, which is a rigid, close-cell, foam plastic insulation board.

First of all, I'd like to say we fully support the application of a default credit to the DuPont Corporation. They did the full-scale California style field test requested by the Commission. If that is the direction that the Energy Commission wants air-barrier proponents, be they housewrap, air-tight drywall, building paper, or products similar to Dow's rigid insulation board, to go to receive the default credit, we can support this and we will conduct full-scale California testing.

Dow does not support the application of the DuPont default credit to all other wrap materials which have not conducted the same California full-scale field testing. Other materials are not similar to Tyvek in composition nor properties. Some are woven, some are not. Some are laminated, some are not. Some are pinpunched, some are not.

Tyvek is generally believed to be the Cadillac of wraps, but the current Commission wording allows all the Pintos and Mavericks of wraps to have the credit without the full-scale test.

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Why should the Dow Chemical Company and DuPont be held to a different level than other manufacturers? This is not a level playing field. And all we are looking forward is a level playing field in the California market.

Thank you.

CHAIRMAN KEESE: Thank you.

Other --

MR. PENNINGTON: Could I respond to that?

CHAIRMAN KEESE: Sure.

MR. PENNINGTON: Why don't you take a seat, David, if you have further comment.

Basically the field testing that we're doing in California homes is to test the installation practices of the material and how it performs in a whole-house installation.

There is a standard test method that is used as a laboratory test that is an eight-foot-by-eight-foot section, essentially the material only, rather than the other construction components of the house, and certainly not the size of the whole house, that we refer to as criteria for judging the air leakage of the material itself, if you will. But what the California test is getting to is the installation of that material.

It's our view that housewraps who meet this standard test, lab test procedure, will get comparable leakage through the material itself. But we're concerned about the installation

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of other kinds of materials. We think the testing that's been done by Tyvek is applicable to the other kinds of housewraps because their installation practices are very similar. And their size and all of the features that relate to their installation are similar.

The leakage through the material itself is measured by this standard lab test. And so all of housewraps that meet that standard, regardless of the variability that Mr. Greeley was speaking about, would, we think, perform comparably for the material itself. But it's the installation of that material that we think is sort of what the construction testing in California is getting at.

So we think that the Tyvek field test is applicable to the range of housewraps for those reasons. On the other hand,
--

COMMISSIONER MOORE: Can I stop you for just a second, Mr. Pennington?

MR. PENNINGTON: Sure.

COMMISSIONER MOORE: Mr. Chairman, I'm not sure this is the discussion we ought to be having today.

MR. PENNINGTON: Okay.

COMMISSIONER MOORE: I think Mr. Pennington has kind of leaped out into the discussion that we will be having in a few weeks. And we understand the point that Dow and DuPont have been making, and I'm not sure this is the place for the debate,

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today.

MR. PENNINGTON: That's fine.

CHAIRMAN KEESE: I agree.

Commissioner Laurie?

COMMISSIONER LAURIE: I agree.

CHAIRMAN KEESE: All right. The points are well taken. Staff is aware of the issue, and I'm sure we'll hear about it at the full hearing.

Thank you both for bringing this to our attention.

Under Committee Reports, Mr. Schmelzer.

MR. SCHMELZER: Good afternoon, Chairman and Commissioners. Tim Schmelzer with Governmental Affairs at the Commission.

I'm here seeking approval for a neutral-with-amendments recommendation on Senator Peace's SB 116, which proposes to have the Energy Commission implement a grant program for solar energy systems. Those grants would be limited to \$750 per system and has been tailored in a way so as not to overlap with the Energy Commission's existing grant programs.

The bill also includes a property-tax break for solar energy systems that expired a few years back, so it reinstates that. The bill proposes to be funded via the budget bill, and the budget bill has language appropriating \$1.6 million in ERPA funds to support this.

The position is based on the fact that the Commission

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would support the policy of this bill, not necessarily the funding source. The appropriation of ERPA funds were to be placed in this bill. It's actually very likely that I think we would take an opposed position on this if it were to be ERPA funding, but we're trying to separate out the issues to try to negotiate an amicable solution to this.

COMMISSIONER MOORE: Mr. Chairman, this bill came before the Renewables Committee, at which point we took a position, a very strong position actually, before. So I'm not sure where the language that indicates "neutral" came from.

We have had a policy, and I bring it up because I want to make sure that we're as consistent as we can be, over time where if there is a piece of the bill that we can't live with, that we don't say that we're neutral, we say we oppose.

And right now the bill, subject to some negotiation which is not complete, not initiated that I know of in any formal way and, as a consequence, isn't on paper, the bill right now uses ERPA funds.

And, frankly, I wouldn't want to be one of the Commissioners who took away any potential flexibility that we had for pay for our own employees or other programs that we are already committed to in the Commission. I think it would be a mistake to be neutral and be potentially unclear about this.

I would suggest that we have an opposed position, indicate why we're opposed, and that we further instruct or

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suggest -- not instruct -- that we suggest to the Governor's Office that they have a veto message in place for this, should the language remain in place.

Thank you.

VICE CHAIR ROHY: May I ask a short question, Mr. Chair?

CHAIRMAN KEESE: Sure.

VICE CHAIR ROHY: Does the current budget that is about to be signed reflect this? Tell me more about the timing of this bill vis-a-vis the budget?

MR. SCHMELZER: Okay. This bill has a section in it that says it will be implemented only upon receiving an appropriation from the Budget Act. The Budget Act, as was just passed by the Legislature, contains a \$1.6 million appropriation of ERPA funds. And we have taken measures here, actually, to oppose that. However, that is how the bill exists now.

COMMISSIONER MOORE: What measures are we taking to oppose that other than through something like this? I mean this is our most visible vehicle, is it not?

MR. SCHMELZER: The reason for the neutral position is this bill does not contain that appropriation. And it's that appropriation that we're opposed to.

COMMISSIONER MOORE: And didn't we have a position before that said that the Commission was opposed?

MR. SCHMELZER: To the use of ERPA funds, which I

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believe still stands.

COMMISSIONER MOORE: But we had an opposition. We had a position of opposition to the bill, did we not?

COMMISSIONER SHARPLESS: If I could speak to that, yes, we did. But --

COMMISSIONER MOORE: When did it get --

COMMISSIONER SHARPLESS: -- the Renewable Staff worked with, I believe, with the Peace staff. And those issues, other than funding issues that we had pointed out in our analysis, have been changed to reflect our concerns. So as a result of Staff working with Senator Peace's Office on some of these issues -- and, Mr. Schmelzer, tell me if I am mixing this bill up with another bill, because that's probably possibly, --

MR. SCHMELZER: Yes. Well, the bill --

COMMISSIONER SHARPLESS: -- but I think this is the bill where they had taken the policy amendments and the funding issue, which you say is now out of this bill and is over in the budget language, is the reason why the funding issue is the only issue left in this bill, that the question --

COMMISSIONER MOORE: But that wasn't my point. My point was I thought this came up in front of the Commission at an earlier time, and it had several items in it. And we said recommendation: Oppose.

COMMISSIONER SHARPLESS: Unless amended.

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COMMISSIONER MOORE: Well, right. But there's still a piece in here that isn't amended out.

MR. SCHMELZER: Well, the bill at the time I believe you're referring to, Commissioner Moore, the bill contained an ERPA appropriation directly in it.

COMMISSIONER MOORE: And --

MR. SCHMELZER: And now I mean -- I guess you're arguing it's the same difference, but --

COMMISSIONER MOORE: -- \$1.6 million is still an ERPA appropriation.

My question is: We took an action. We said we were opposed unless amended, which in my parlance means all the amendments that we're asking for. That hasn't happened. How did it change, that I see something in front of me that has language that says "neutral" when what we did was oppose? Where did the word "neutral" come from?

COMMISSIONER SHARPLESS: I could only -- I don't know that --

MR. RHOADS: I can take a guess.

COMMISSIONER SHARPLESS: I have seen several versions of this, Michal, since this left the Renewables Committee. I have -- and right now I can't recall, because it's too fuzzy, as to where my conversations have taken place regarding this bill. But it was my understanding that -- and maybe it happened in the Leg. Committee. I mean, quite frankly,

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I just can't remember -- that I was told the policy issues had been taken care of and the last remaining issue was the funding issue.

Now the funding issue has been taken out of this bill and is now in the budget. So whether or not -- and maybe Chairman Keese can help me out -- whether or not, based on those actions, the Leg. Committee has directed the Staff to redraft this based on actions that have happened since they went into the Renewables Committee, and perhaps we erred by not bringing back in the Renewables Committee, but I believe that, it was my understanding that, this bill had been significantly amended and that was where we came with our neutral position.

But I think an issue remains as to whether or not to oppose this bill because, without this bill, there would be no need for the appropriation over in the budget. And so I think that point is very well taken. I think that point is very well taken.

COMMISSIONER MOORE: Well, my point is simple.

Using ERPA funds for something like this is about as special interest and pork barrel as you can possibly get. This isn't good government. There is no way that we should support this under any circumstance. I don't care whether this is slight of hand of, "Oh, hold it. They made me do it. I couldn't help it. They pushed me into it because they had budget control language." Oh, B.S. This ought to be opposed

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because it's bad law. That's a bad use of those funds. We shouldn't roll over for this. This is a bad deal.

And whether it comes out of the budget control or -- whether it comes out of the budget-control language or whether it comes out of a bill, is -- anyway, I'm opposed.

VICE CHAIR ROHY: It sounds like if the money is in the budget to take it out of ERPA and if we then say, "Well, it's okay to do this," somebody will put one and one together and get two, and we've just lost \$1.6 million.

COMMISSIONER SHARPLESS: That's the argument.

CHAIRMAN KEESE: Let me explain some of the political dynamics that are going on here. We don't have, we didn't have the \$3 million that was in this bill in the ERPA budget, in ERPA funds available. We don't have the \$1.6 million. The \$1.6 million becomes available if one uses wishful thinking.

The wishful thinking is the Department of Finance would change the rules requiring us to have a five-percent surplus and reduce it to three. That frees up about \$800,000. The wishful thinking is that this budget, as passed, would have a three-percent salary increase in it instead of six. The budget actually has a six-percent salary increase with an additional three percent in January.

So there is not \$1.6 million in the budget. The Department of Finance has been unalterably opposed to this use

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of funds. And I'm sure we'll so communicate to the Governor, that there is no doubt where people stand on the use of ERPA funds for this purpose. So that issue is pretty well self-determined.

As far as the politics of looking at this issue, and I can empathize with the comments made here, when the Legislature allocates PVEA funds, some of them are generally allocated to projects the Energy Commission feels are high priority projects. Fortunately or unfortunately in the political process some of them are allocated to PVEA projects which wouldn't have shown up on our list but, nevertheless, once given them, we administer them.

I consider this somewhat the same issue. In order to get this bill signed, Senator Peace will have to make a personal deal with Governor Wilson to let him take the \$1.6 million out of our budget, over the strong opposition of the Department of Finance, that they don't exist. He would also have a problem with the bill if he added in a provision after the budget was vetoed to take more ERPA funds.

Our suggestion has been that he should, if he likes the bill, go for general funding of the measure. So I believe that politically, recognizing the political reality of where Senator Peace sits and will sit in the future, that it fully sends our message when we say "neutral with amendments."

COMMISSIONER MOORE: I don't think it says -- I

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don't think that's --

CHAIRMAN KEESE: I will mention on the issue of budget-control language, dealing with the PUC and the Oversight Board, which you're familiar with, which I distributed a copy this morning which is now totally limited to FERC and strongly impinges it on the Public Utilities Commission, I was informed last night the Public Utilities Commission has sent a letter of support for that language at Senator Peace's strong urging.

I will let you know that I have been summoned to Senator Peace's Office at 4:30 this afternoon on an issue that I am not aware of. I've just been told to be there at 4:30.

I would, for political purposes, if nothing else, strongly recommend that we stick with a "neutral with amendments."

COMMISSIONER MOORE: Well, just a response on that. I'm not prepared to support that kind of political co-dependency. I mean inserting budget-control language to get what you want out of a regulatory agency is, I mean, by the grossest use of the term, is bad law. So I'm not going to support that.

I stand on my position.

And I'll move for a --

CHAIRMAN KEESE: The fact remains that we are an entity subject to legislative direction, oversight, control --

COMMISSIONER MOORE: And independent judgment. I

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move for an opposed position.

VICE CHAIR ROHY: I will second Michal's position.

And I will do that on the basis that has been our position. And unless the bill has language that says where the funding is coming from, other than our funds, I'm not going to support it.

COMMISSIONER SHARPLESS: Call for the question.

CHAIRMAN KEESE: Call for the question. We have a motion and a second.

All in favor?

VICE CHAIR ROHY: Aye.

COMMISSIONER MOORE: Aye.

CHAIRMAN KEESE: Opposed?

COMMISSIONER SHARPLESS: No.

CHAIRMAN KEESE: No.

COMMISSIONER LAURIE: No.

CHAIRMAN KEESE: Defeated --

(Motion denied to change the "neutral with amendments" to "oppose" for Senator Peace's SB 116, proposing the Energy Commission implement a grant program for solar energy systems.)

COMMISSIONER SHARPLESS: I'll make the motion to support the neutral with -- do we have "neutral with amendments" or is it just "neutral" neutral?

MR. SCHMELZER: "With amendments." The amendments are technical in nature.

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COMMISSIONER SHARPLESS: Okay. I'll support the motion to make the position "neutral with amendments."

And I would just like to say with this motion that I strongly agree with Michal's position in terms of the fact that this bill should not be funded by the ERPA account. But given the fact this is still fluid negotiation, I believe we need to give the Chair a little bit more flexibility in this particular instance.

There's times to play your cards and they're times to hold your cards, and I think this is one of the times to hold the cards. I'd like to give the Chair a little bit more flexibility. That's what my motion is based on.

CHAIRMAN KEESE: We have a motion. I'll second it.

VICE CHAIR ROHY: Just to comment. If it comes out of Staff salary, I want to make sure that everyone understands that I have opposed this.

COMMISSIONER LAURIE: And I just want to offer additional comment as well.

Sometimes I get paranoid about the processes that we follow. I find it unfortunate that we're dealing with a process question here. We have not formally adopted a legislative protocol, but I know there has been a draft protocol floating around that everybody commented on, and we should be sticking to that.

And I think the sticking point on that issue is what

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authority is given to the Policy Committee. In this case I'm assuming it's Renewables, and how much of that is subject to override by the Legislation Committee. And I think protocols pretty much indicate we're all practical. And unless impossible, the Policy Committee has an appropriate degree of input and influence.

And, frankly, the only reason I oppose Commissioner Moore's motion and the reason I intend to support Commissioner Sharpless' motion is because I'm the only Member who is not on either one of those committees and thus does not have the same degree of personal involvement as the other parties and therefore feels somewhat uneducated on the issue and have to rely on the majority view of what folks feel is best for this Commission on this issue.

I'm sitting here realizing that my response makes absolutely no sense because I think it's inconsistent.

COMMISSIONER SHARPLESS: You're food-deprived.

VICE CHAIR ROHY: A sugar deficiency.

COMMISSIONER LAURIE: Yes. So perhaps I'll just abstain and see where you are. So go ahead and call for the vote.

CHAIRMAN KEESE: All in favor?

COMMISSIONER SHARPLESS: Aye.

CHAIRMAN KEESE: Aye.

Opposed?

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COMMISSIONER MOORE: No.

VICE CHAIR ROHY: No.

COMMISSIONER LAURIE: And Commissioner Laurie abstains. What's the current position on the bill?

CHAIRMAN KEESE: Two to two.

COMMISSIONER SHARPLESS: It's a tie.

MR. SCHMELZER: We have never --

COMMISSIONER MOORE: Bob's asking for the current position of the Commission.

MR. SCHMELZER: We haven't formally adopted a position on 116 ever.

COMMISSIONER MOORE: Now, see, that's very curious to me because I thought --

MR. SCHMELZER: We have discussed it. It was only amended, I think, maybe a month or two ago to be an Energy Commission program.

COMMISSIONER MOORE: Do we not have a Commission position on 116 at all? I thought we did.

CHAIRMAN KEESE: The process -- the --

MR. RHOADS: What was the date we made the neutral decision?

MR. SCHMELZER: Well, that's just been recently -- I've been working with actually the Renewable Committee stuff and putting this analysis together. And basically when the issue of funding for 116 became bifurcated, became a Budget Act

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thing and not an actual appropriation from the bill, that got us thinking that, well, maybe we can.

And that, coupled with the fact that they made policy amendments in 116 to satisfy our policy concerns with the bill, that it would be appropriate to move forward with a neutral position on this and work through the Department of Finance on the ERPA appropriation that's in the Budget Act.

MR. RHOADS: So what is the Commission's current position on the bill?

COMMISSIONER SHARPLESS: No position.

MR. SCHMELZER: There is no position on this bill.

COMMISSIONER SHARPLESS: I will take a new motion and make a motion saying that we have absolutely no position on this bill. We have no analysis, no thoughts, no opinions.

Do I have a second for a "no" position?

In essence, that's what we have if we have a tie.

COMMISSIONER LAURIE: Certainly there is a responsibility all the Commissioners' part, including myself. And I really find an inconsistency in my own position. Give me the timing on this bill.

MR. SCHMELZER: The bill is currently in the suspense file in the Assembly Appropriations Suspense File awaiting outcome on the budget. It will probably be decided by Senator Peace what to do after a likely veto of that ERPA appropriation.

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COMMISSIONER LAURIE: Okay. So give me a timing as to hours or days. What I'm asking for --

MR. SCHMELZER: A week, probably.

COMMISSIONER LAURIE: -- is there additional time for individual Commissioner input into a decisionmaking process beyond this hour?

MR. SCHMELZER: I would expect the bill to be brought up next Tuesday in Assembly Appropriations. It hasn't been scheduled yet, but that would be consistent with their normal schedule. And that should be time for Senator Peace to react on whatever decision is made on the budget by the Governor.

CHAIRMAN KEESE: Commissioner Laurie, I think the process we go through is the Policy Committee makes recommendations which the Legislative Committee considers seriously and tries to implement. Then after those two steps, it is brought before the Commission for adoption of a position recognizing and placing before you the recommendations of the Policy Committee and the recommendations of the Legislative Committee. The Legislative Committee does not just override policy decisions and change the positions, but they bring to you a recommended position.

COMMISSIONER LAURIE: So in this case the Policy Committee says A and the Legislative Committee says B?

CHAIRMAN KEESE: Well, --

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COMMISSIONER SHARPLESS: That's the point I've been trying to make. A happened many moons ago and then Staff worked with Senator Peace's committee. Staff. The policy issues have been taken care of. Marwan, et al., worked with -- and Tim -- worked with the Staff. The remaining issue is the fiscal issue.

The fiscal issue has been removed from this bill. This bill could be funded by any revenue source. However, there is a tie in the budget-control language right now that says that this bill will be funded by the ERPA account, but the money is not in the bill.

So the question before you is: Is Steve Peace using this as a negotiation point with the Governor to find other sources of funding, or will the Governor veto this bill if, in fact, there is a tie to the ERPA account because there are inadequate funds at the Commission.

So what you want to do basically is you want to foreclose negotiation opportunities between the Chair of this Committee, the Governor's Office and Steve Peace.

COMMISSIONER LAURIE: No, that is not what I desire to do.

COMMISSIONER SHARPLESS: No. I am saying if, in fact, you put an oppose, then the Chair is bound by an oppose regardless of the revenue source in this bill.

COMMISSIONER LAURIE: Okay. And have we -- if we can safely -- have we in some manner communicated objection to

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the funding?

MR. SCHMELZER: Yes.

CHAIRMAN KEESE: We have, yes. The communication regarding the funding has been almost on a daily basis with Senator Peace's Office, in which they -- and we have remained extremely firm through many machinations of attempting to get different people to say different things. We have also remained firm with the Governor's Office and the Department of Finance, who essentially instructed that this would be opposed.

MR. SCHMELZER: And --

CHAIRMAN KEESE: There is no funding in the bill. It's just meant to be funded with budget language. If the budget language is vetoed, this bill does not have funding.

MR. SCHMELZER: Right. And Senator Peace will be forced to find some other funding alternative.

Just so that you know, we do make the statement in the recommendation that the Energy Commission is opposed to the appropriation of ERPA funds to support this program. So that should be very clear to everyone.

I know Senator Peace cannot possibly be confused about that issue.

COMMISSIONER LAURIE: Can the recommendation be worded so that it's clear that we would be taking an opposed position on the bill with ERPA funding?

MR. SCHMELZER: I think that's embodied in stating

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the Commission is opposed to the appropriation of ERPA funds for this program. That's in the recommendation right now.

COMMISSIONER LAURIE: Well, I appreciate the Commission's patience. If Commissioner Sharpless wishes to restate her motion, I would reconsider.

CHAIRMAN KEESE: Commissioner Sharpless.

COMMISSIONER SHARPLESS: Is that required?

COMMISSIONER MOORE: Actually I think, Bob, you can simply -- since you abstained, you can change your vote.

COMMISSIONER LAURIE: Okay. Well, then --

CHAIRMAN KEESE: We didn't really call -- announce the vote yet, so if you want to --

COMMISSIONER LAURIE: Okay. Then I change my vote to an "aye" on the motion taking a neutral position.

CHAIRMAN KEESE: That motion is adopted three to two.

(Motion carried by a three-to-two vote to adopt the recommendation for a "neutral with amendments" position on Senator Peace's SB 116.)

CHAIRMAN KEESE: Any further business to come before the Commission?

Mr. Rhoads? Mr. Chamberlain?

We're going to have a very brief Executive Session, just the five of us.

MR. CHAMBERLAIN: You had an item that you called me

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up to your office this morning on that you were going to -- shall I simply distribute that?

CHAIRMAN KEESE: We're not going to -- yes, I would. Yes, I would.

Under Committee Action, or whatever, I just wish to bring to the Commission's attention an item that we have dealt with before, but I am trying to expedite here.

We have dealt with the issue of NERC and NERO, National Reliability Mandatory Standards. The Western Grid, through CRESPI, has communicated to NERC two principles.

One, that there should be deference at least to the standards adopted in the Western Interconnection.

And, number two, that there should be public involvement in the governance process.

NERC at their July 9-10 meeting accepted the first one, that there would be deference. They shortly thereafter distributed mock-up legislation for comment that did not have that in it and did not have governance issues in it.

There is, through discussions in the West, there has been interest and a request that California reiterate those two points again, that is deference and governance, by the close of the filing date, which I think is either Friday or Monday.

MR. CHAMBERLAIN: The 17th, right.

CHAIRMAN KEESE: The 17th, Monday.

That the last time that this issue came up, we wrote a

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letter that you are aware of, that the Public Utilities Commission asked to sign on, and the Oversight Board then wrote a concurring letter saying they concur with our position.

My suggestion is that this last draft which, as I see incorporates our earlier letter that Mr. Chamberlain has put together or something very close, would be sent under the joint signatures of the Energy Commission, the PUC and the Oversight Board. And these other parties have not seen this document yet. It's in front of you.

Essentially, Mr. Chamberlain, we are making the identical, same proposals. And we are also saying, I believe, that acceptance of these will probably be necessary if they're going to have successful federal legislation.

MR. CHAMBERLAIN: Yes. The top page of the package I gave you is the proposed comments you would send on to the Public Utilities Commission and the Oversight Board for their consideration.

The other three pages are the previous letters those agencies sent to NERC in May.

CHAIRMAN KEESE: And we would propose to attach them to our filing?

MR. CHAMBERLAIN: Right.

CHAIRMAN KEESE: There is no change in policy here. I present it for your -- if everybody's okay with it. That's what we'll plan to try to do this afternoon.

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COMMISSIONER MOORE: All of my comments' backgrounds have been --

CHAIRMAN KEESE: Okay.

Thank you. We will then recess into -- does the Public Advisor have something to add?

MS. HARRIS: Yes. My name is Sandra Harris. I'm with the Hearing Office. However, today I am here on behalf of the Public Advisor's Office and the Public Advisor's Office has nothing to report today.

CHAIRMAN KEESE: Thank you.

MS. HARRIS: You're very welcome.

CHAIRMAN KEESE: Then we're going to recess into a very brief Executive Session with the five Commissioners. And other than that, this meeting is adjourned.

(Whereupon, the Business Meeting was adjourned into Executive Session at 1:07 o'clock p.m.)

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CERTIFICATE OF REPORTER

I, **GEORGE PALMER**, a duly-commissioned Electronic Reporter of **Palmer Reporting Services**, do hereby declare and certify under penalty of perjury that I have recorded the foregoing **BUSINESS MEETING**, which was held and taken at the **STATE of CALIFORNIA, CALIFORNIA ENERGY COMMISSION**, in Sacramento, California on the **12th day of August 1998**.

I also declare and certify under penalty of perjury that the aforementioned transcript was transcribed by Susan Palmer, a Certified Reporter and Transcriber by the American Association of Electronic Reporters and Transcribers, Number 00124, and myself and that same was proofed by Nancy Palmer, AAERT Certificate Number 00121; and that the foregoing pages constitute a true and accurate transcription of the aforementioned meeting.

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

Dated this **13th day of August 1998** at Manteca, California.

GEORGE PALMER

ELECTRONIC REPORTER

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