

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

Gary Fay, Hearing Officer

APPLICANT

Christopher Ellison
Jeffrey D. Harris
Ellison, Schneider & Harris, LLP

INTERVENORS

Robert Williams

Mike Boyd, CARE

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Opening Comments	1
Applicant's Presentation on Override Issues	3
Comments by Intervenors	
Mr. Williams	29
Mr. Boyd	37
Comments by Groups and Agencies	
Assemblywoman Rebecca Cohn	39
Supervisor Peter McHugh	46
Rick Callender San Jose-Silicon Valley NAACP	49
Trixie Johnson Clean Air	52
Earl Bouse Hanson Permanente Cement, CLECA	55
Kurt Newick Sierra Club	57
Justin Bradley Silicon Valley Manufacturing Group	61
John Redding Silicon Valley Manufacturing Group	63
Don McIntosh Advanced Micro Devices	67
Ali Amarali Cal-ISO	70
Berkeley Driessel Association for Government, Santa Clara County	73

I N D E X

	Page
Comments by Groups and Agencies (continued)	
Armon Mills Publisher, Silicon Valley Business, Inc.	78
Larry Gates Santa Clara Valley Contractors' Ass'n.	81
Questions for Applicant	83
Public Comment	
Mike Murphy	95
H.F. Sawyer California State Grange	99
Lori Williams	102
Timothy Alton	106
Issa Ajlouny	107
Jeff Wade	113
Steve Nelson	114
Adjournment	116
Certificate of Reporter	117

1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Ladies and
3 gentlemen, good evening. My name is Robert
4 Laurie. I'm a Commissioner at the California
5 Energy Commission, and Presiding Member of the
6 Committee responsible for taking the evidence on
7 the Metcalf Energy project case, and providing a
8 recommendation to the full Commission for their
9 action.

10 Joining me at the head table this
11 evening is my Hearing Officer, Gary Fay. Mr. Fay
12 has been responsible for administering the
13 Evidentiary Hearing process, which we just
14 completed earlier today.

15 The purpose of this evening's meeting is
16 twofold. The participants in the process are
17 aware that there is an issue in this case
18 regarding override. That is, the Energy
19 Commission has the power, under certain
20 constrained circumstances, to override certain
21 local and state rules. And that may be, or will
22 be, or is an issue in this case.

23 So what I've asked for tonight is a
24 general discussion from the parties as to their
25 initial thoughts regarding override criteria, and

1 general elements of the case that should be
2 examined. All the parties will go into greater
3 detail when they brief the issue in a more
4 formalistic manner.

5 The Applicant has indicated a desire to
6 make a presentation on that issue today. That
7 will take about 20 minutes or so. Mr. Williams, a
8 party Intervenor, has indicated a desire to make
9 an initial statement on the issue, and Mr.
10 Williams will take five or ten minutes or so to do
11 that. And the remaining intervening parties have
12 indicated a desire to offer their comment on this
13 general issue at the public meeting on March 23rd,
14 and that time will be permitted.

15 We also understand that there are
16 members of the public here who are either elected
17 representatives or who represent groups or
18 agencies that wish to comment, I think most at the
19 invitation of the Applicant. I don't mean to
20 indicate any -- any negative comment as to that,
21 but the purpose of these comments tonight, I
22 think, are to indicate support for the project.

23 There's a full public hearing, public
24 meeting on the 23rd, and the purpose of that
25 meeting is to allow everybody and anybody, elected

1 official, member of the community, doesn't matter,
2 who wishes to offer comment, positive or negative,
3 on the project, to do so at that time. And I will
4 be attending that meeting, and I am looking
5 forward to providing the community that
6 opportunity.

7 Any questions about our reason for being
8 here tonight?

9 So in about a half-hour or so, we will
10 be asking for public comment from the individuals
11 that the Applicant has indicated have a desire to
12 speak tonight.

13 Mr. Ellison, Mr. Harris, are you
14 prepared to proceed with your presentation at this
15 time?

16 MR. ELLISON: Yes, Commissioner, we are.

17 Commissioner Laurie, Hearing Officer
18 Fay, members of Commission Staff, and the
19 audience. My name is Chris Ellison from the law
20 firm of Ellison, Schneider and Harris, speaking on
21 behalf of the Applicant, Calpine Corporation.

22 As we understand the Committee's desire,
23 it is to hear a preliminary interpretation of the
24 standard for override, as distinct from arguing
25 the facts of this case, and how that standard

1 might be applied to them. So we're going to try
2 to be brief and confine our remarks to that
3 standard, under 25525, and what we think that
4 means.

5 I'm going to initiate the presentation
6 and discuss how we got here, briefly, and the
7 historical context of Section 25525. And that --
8 and the way that that context should be applied in
9 interpreting the meaning of the statute. Then I'm
10 going to ask Mr. Harris to address the specific
11 language of 25525 itself, as well as again, in a
12 preliminary way, make certain references to the
13 record regarding where the Committee might find
14 evidence on some of the aspects of the standard
15 that we're going to be discussing.

16 We will address all of these matters in
17 detail, of course, in the brief that we file.

18 First, let me begin by emphasizing that
19 override was certainly not Calpine's first,
20 second, or third choice for the way that this
21 proceeding should go forward.

22 PRESIDING MEMBER LAURIE: Mr. Ellison,
23 let me interrupt briefly. And, ladies and
24 gentlemen, this is being recorded tonight, so if
25 we run into any difficulty with the recordation,

1 we'll stop.

2 We should also note the Evidentiary
3 Hearing has been closed, and so witnesses are not
4 going to be sworn, there's not going to be any
5 cross examination. This is public comment and
6 argument, to the extent that one -- that the
7 parties desire to make it tonight.

8 Okay. Mr. Ellison.

9 MR. ELLISON: Thank you.

10 As I was saying, an override was
11 certainly not Calpine's first, second, or third
12 choice for the way to license this power plant.
13 Calpine's intention from the outset was to work
14 closely with the City of San Jose, and to
15 demonstrate compliance with all applicable LORS.
16 And in that regard, the city staff and Calpine
17 staff worked very hard together to resolve the
18 concerns that city staff might have. And a number
19 of changes were made to the project in order to
20 conform to the city LORS.

21 Calpine believes that in all material
22 respects, with the exception of the denial of its
23 application for the land -- necessary land use
24 changes, the project does conform. And I think
25 good evidence of that can be found in the City

1 Planning Commission's approval of the project, and
2 recommendation to the Council that Calpine's
3 application for various land use changes be
4 granted.

5 Nonetheless, the city and the Mayor made
6 a judgment not to grant that application, and
7 therefore we find ourselves here today, discussing
8 an override.

9 But I think it's important to
10 understand, and I think the record reflects that
11 that judgment by the council and by the Mayor was
12 fundamentally a political judgment. Had the
13 council and Mayor wanted to grant that
14 application, this override scenario certainly
15 could have been avoided. And there's nothing, and
16 I think the testimony in this record also supports
17 the view that had the city chosen to make those
18 changes and annex the property, that there is
19 nothing inherently incompatible with this project
20 and the city's local land use requirements.
21 There's nothing about it that would have prevented
22 the city from granting that application if, in its
23 discretion, it had chosen to do so.

24 So what this comes down to, to some
25 degree, is a question of -- as I think the city

1 itself has said in its testimony -- whether this
2 judgment is purely a local land use decision, or
3 whether there is a state interest such that the
4 Energy Commission should review that decision in
5 the context of an override.

6 First of all, as a matter of law, the
7 answer to this question is very clear. The state,
8 under Section 25500 and 25525 of the Public
9 Resources Code, does have the discretion to review
10 that judgment that the City Council made, and to
11 determine whether that judgment is in the public
12 interest as represented by the State of California
13 on behalf of all of its citizens, rather than just
14 the interests of those represented on the City
15 Council of San Jose.

16 Section 25550, as I think you know, says
17 that the Energy Commission certificate is in lieu
18 of all other state, regional, and local permits.
19 And Section 25525 is the override statute that
20 we're going to be discussing in some detail today.
21 I don't think there's any dispute in this record,
22 and I don't think there could be any dispute based
23 on a plain reading of those laws that the state
24 has reserved to itself the capability to license
25 this power plant notwithstanding the denial by the

1 City Council of the local land use changes sought
2 for this project.

3 The question then becomes, of course,
4 what is the standard by which the Commission
5 should exercise that power that has vested in the
6 state, pursuant to those laws, and what is the
7 standard that is carved out specifically in
8 Section 25525.

9 The Energy Commission history is clearly
10 to use this power very sparingly, and not to take
11 this authority lightly at all. And I think that's
12 appropriate. The Commission has only exercised
13 the override authority one time since the
14 Commission was created more than 25 years ago. I
15 think that's appropriate, the override of -- of
16 the local government's decisions, or any
17 applicable law is something that should be done
18 with careful consideration of all the
19 circumstances involved, and should not be done
20 capriciously or lightly.

21 However, it is also equally true to say
22 that the legislature would not have enacted these
23 statutes and given the Commission this authority
24 if it intended that the Energy Commission should
25 always defer and never review the local government

1 decisions involved in a power plant licensing
2 case. Standard rules of statutory construction
3 which say the legislation should not be
4 interpreted to render such legislation a
5 meaningless act make it as clear that in giving
6 the Energy Commission this authority, the
7 legislature and the governor, when signing the
8 legislation, intended that in appropriate
9 circumstances it be exercised. Calpine believes
10 that this project represents such a circumstance.

11 First of all, though, let me talk about
12 the context. Rather than talking first about
13 25525, I want to talk about the context of why
14 there is an override statute and where it came
15 from.

16 The first thing to recognize is that
17 power plant licensing is not merely a local
18 concern. The electric grid is seamless, it does
19 not recognize city or county boundaries. The
20 failure to have adequate generation or to have
21 sufficient voltage support in one part of the grid
22 can have profound effects, both in terms of price
23 and reliability, not only across county and city
24 boundaries but across state boundaries, as well.
25 California has experienced blackouts in the last

1 three or four years that resulted from electrical
2 events as far away as Idaho.

3 Secondly, the impacts of power plant
4 decisions are not merely local. The costs of
5 electricity are shared among consumers statewide.
6 The decision to not build in one location implies
7 a decision to build elsewhere, and the need to
8 weigh those alternatives and impacts. Local
9 governments do not typically plan for power
10 plants, nor do they provide electric power
11 typically, as a local government service. There
12 are some who do through municipal utilities, but
13 typically, they do not. Even where they do, the
14 impacts of those decisions are not confined simply
15 to the citizens of the local jurisdiction
16 involved.

17 And, finally, local governments
18 typically, because they do not have these
19 responsibilities, typically do not have the
20 expertise that's necessary to evaluate all the
21 complexities of electrical planning.

22 All of these principles are found not
23 just in my own opinion, but in fact in the
24 expressed intent of the legislature when they
25 created the Energy Commission in the first place.

1 If you look at Section 25001 of the Warren-Alquist
2 Act, which is the very first expression of intent
3 at the very beginning of the act, you find perhaps
4 the most succinct statement of the reason that
5 there is an important state role in these
6 decisions.

7 It states, the legislature hereby finds
8 and declares that electrical energy is essential
9 to the health, safety, and welfare of the people
10 of this state, and to the state economy. And that
11 it is the responsibility of state government to
12 ensure that a reliable supply of electrical energy
13 is maintained at a level consistent with the need
14 for such energy, for protection of public health
15 and safety, for promotion of the general welfare,
16 and for environmental quality protection.

17 Similarly, if you look at Section 25005,
18 the legislature further finds and declares that
19 prevention of delays and interruption in the
20 orderly provision of electrical energy, protection
21 of environmental values, and conservation of
22 energy resources require expanded authority and
23 technical capability within state government.

24 And finally, 25006, it is the policy of
25 the state and the intention of the legislature to

1 establish and consolidate the state's
2 responsibility for energy resources, for
3 encouraging, developing and coordinating research
4 and development into energy supply and demand
5 problems, and for regulating electrical generation
6 and related transmission facilities.

7 All of these intent provisions of the
8 statute, as well as other provisions of the
9 statute, support the view that electric power is a
10 vital concern not just at a local government
11 level, but at a state level, and that there is a
12 state interest, an important state interest, in
13 ensuring that where power plants are in the public
14 interest that they can move forward, even in the
15 circumstance where there is a local objection.

16 It is no secret that there are
17 circumstances in this state and -- and throughout
18 the nation where it is necessary for us, as
19 individuals, or even as communities, to make our
20 will consonant with the larger will, of what is in
21 the broader public interest. We do that every day
22 as individuals. We are called upon to do that as
23 cities by the state. We are called upon to do
24 that as a state by the federal government. It is
25 a basic principle of federalism in this country.

1 That is the underpinning, I think, of
2 where the override statute comes from. And you,
3 Commissioner Laurie, and the full Commission, bear
4 that important responsibility to act in the public
5 interest and in the interest of all of the
6 citizens of the State of California, as you review
7 this application.

8 Before turning it over to Mr. Harris, I
9 want to mention one other aspect of the statute,
10 in terms of its historical context. And that is,
11 as Mr. Harris will describe in more detail, 25525
12 speaks to the Commission exercising its override
13 authority unless it finds that there is a more
14 prudent and feasible alternative.

15 In the context of the intent of
16 provisions that I just read and the importance of
17 electrical energy to the state, the choice of
18 those words, prudent and feasible, is, I think,
19 significant. Prudent, in particular, is an
20 important word. Given the importance of
21 electricity to this state, to the state economy,
22 to the health and welfare of the citizens of
23 California, and particularly at a time such as
24 now, where we face such enormous challenges, I
25 won't belabor the point, I think it's obvious.

1 Anybody who's read the paper every day knows the
2 importance of electrical power to the state, not
3 only generally, but particularly at this time in
4 our history.

5 Given that circumstance, when the
6 statute calls upon the Commission to -- to weigh
7 the prudence of an alternative, in the context of
8 an override, I think the statute can reasonably be
9 interpreted to call upon the Commission to
10 consider very carefully whether in abandoning, if
11 you will, a bird in the hand, it is in fact
12 relying upon something that is prudent to be
13 relied upon. And if, when you look at an
14 alternative to Metcalf, in the context of an
15 override, I think the Commission needs to weigh a
16 number of factors that we're going to go into in a
17 moment, but in particular, I think the Commission
18 needs to weigh the reality of that alternative.

19 To abandon a proposal that has come this
20 far in the licensing process, that has a bona fide
21 applicant behind it that is prepared to move
22 forward, if the Commission believes that there is,
23 in comparing that proposal to -- to an
24 alternative, the Commission needs to weigh very
25 heavily whether that alternative is real. And in

1 particular, in this deregulated market, where you
2 have the risk of power plant development borne
3 entirely by the developer, there is no assurance,
4 unless somebody has come forward in the record and
5 demonstrated to the contrary, there is no
6 assurance that an alternative will proceed unless
7 there is, in fact, an applicant that has come
8 forward to propose that alternative.

9 Let me say that given the need for power
10 in the state right now, given the prices that are
11 being paid for power in the state right now, there
12 are a tremendous number of companies out there,
13 and individuals working for those companies,
14 scouring the state looking for power plant sites.
15 And that is not new. That has been going on for
16 at least the past three or four years. There are
17 a tremendous number of power plant applications
18 that the Commission has been reviewing and are
19 coming before the Commission in the future.

20 It should be significant, I think, in
21 that context, when the Commission looks at an
22 alternative, if none of the companies have
23 proposed anything at a particular site, I would
24 suggest to you that that should give you pause as
25 to whether it is prudent to make the assumption

1 that somebody in the future will.

2 In that context, then, let me simply say
3 that the Energy Commission, in its 25 year
4 history, has not been called upon to exercise its
5 authority in the same way that it may be called
6 upon, or probably almost certainly will be called
7 upon in this case, to exercise that authority.

8 But this is the reason that the Energy Commission
9 was created, was precisely to address this kind of
10 emergency, on these kinds of facts, and this kind
11 of circumstance. If you go back and you read
12 those statutes, and you read 25525 in the context
13 of those intent statutes, even though they were
14 written nearly 30 years ago, they speak very
15 directly to the circumstance that we face in our
16 state today.

17 With that, let me ask Mr. Harris to
18 continue.

19 MR. HARRIS: Thank you. I'm going to
20 take the opportunity now to go through the
21 specific issues of how we believe the
22 implementation of the override statute, 25525,
23 occurs. And so let's go ahead and go to slide
24 number 3. Slide it over a little, Steve.

25 This slide and the next slide kind of

1 provide an overview of how implementation of 25525
2 will work. And so let me go through the
3 discussion then, in broadest terms, and outline
4 where we're headed.

5 The override statute, as we'll call it,
6 again, 25525, provides the direction that the
7 Commission needs to -- to do the override. The
8 Commission is not required to have anything new in
9 terms of additional information gathering. The
10 information that the Commission traditionally
11 gathers in an AFC process is the same type of
12 information that the Commission needs when
13 considering override.

14 All the information required, again, for
15 the override, as for a decision, is in the Final
16 Staff Assessment, which is the Staff's testimony.
17 The Applicant's evidence, and the evidence of
18 other parties, is placed in the record.

19 The override statute essentially asks
20 the Commission to make a determination, and that
21 determination again is based upon the evidence in
22 the record. And specifically, the override
23 statute, as recently amended, provides three
24 specific issues that the Commission should
25 consider as it considers the question of override.

1 And all of those, again, are related to
2 information that can be found in the evidence that
3 is in the record.

4 Go ahead.

5 This, in obnoxiously small type, is the
6 sum and substance of 25525. It's the entire
7 provisions of law. There really are three
8 sentences here, if you can believe that. I'm
9 going to focus on the first two, and specifically
10 on the first sentence, as we go forward here. And
11 then, of course, tie those things all together.
12 I've underlined a few key terms in this statutory
13 provision. But let me -- let me go through a few
14 of those.

15 Again, unless the Commission makes a
16 determination, the Commission does have to make
17 that determination. The issue of whether the
18 facility is required for public convenience and
19 necessity is kind of the first issue that arises.
20 The word "public" there is very important, as Mr.
21 Ellison laid out at the outset here. Public is a
22 very broad sense. It means the people of the
23 State of California, or a significant subset of
24 the people of California.

25 The term "convenience and necessity",

1 again, has very broad connotations. It involves
2 essentially all the facets related to the power
3 plant. So that public convenience and necessity
4 can relate to issues such as generation,
5 reliability of supply, cost to consumers, and the
6 timely delivery of those means.

7 The last word that's underlined in that
8 sentence is the word "such" public convenience and
9 necessity". And I do think it's important to take
10 a minute and focus on -- on that terminology.
11 This is a very simple four letter word, but I
12 think in this context, it's extremely important to
13 pay attention to that, because what -- what the
14 word "such" does is tie you back to this facility
15 at this site.

16 So if you look at the language, such
17 facility, starting now on the -- on the blue, on
18 the fifth line down -- such facilities required
19 for public convenience and necessity, and that
20 there are no more reasonable and prudent --
21 prudent and feasible means of achieving such
22 public convenience and necessity. So it's not
23 just any public convenience and necessity, it's
24 the public convenience and necessity that the
25 project is -- is setting forth. And so you cannot

1 just simply substitute one definition of public
2 convenience and necessity for another.

3 So the relevant question becomes what
4 are the Commission's alternatives in meeting those
5 public needs and public convenience and necessity.

6 Let's move on to the second sentence in
7 the override statute. Go ahead, slide number 5,
8 please.

9 Let's skip ahead. Go to number 8,
10 Steve.

11 Same language. I've just highlighted
12 now some provisions in the second sentence of
13 25525.

14 This sentence is the most recent
15 amendment to the statute. Thus, when analyzing
16 the override, we need to analyze it in the context
17 of this most recent change to the statute.

18 You'll see that this sentence modifies
19 the preceding sentence, and provides some specific
20 guidance. The first three word -- or four words
21 there, in making the determination, that
22 determination, the word "determination" there,
23 refers back to the word determines, in the
24 previous sentence. And so this you can think of
25 as a subset that provides guidance to the

1 Commission on how they make the determination that
2 they're required to make for the override.

3 Parenthetically, we will be providing
4 some additional legislative history about this
5 provision and the entire act and 25525 in our --
6 in our briefs that we file later.

7 There are really three factors that are
8 set forth in this second sentence that modifies
9 the discussion of public convenience and
10 necessity. And I want to go through each of
11 those, because I think they're important. So if
12 you can take a moment and take a look at the
13 sentence.

14 In making the determination, the
15 Commission shall consider the entire record of the
16 proceeding, including, but not limited to, the
17 impacts of the facility on the environment --
18 which is the first factor I'll talk about --
19 consumer benefits -- the second factor -- and
20 electric reliability, which is the third.

21 Let's go ahead, 9.

22 Before turning to those specific three
23 factors that are enumerated, there is some
24 language immediately preceding that I -- I think
25 is really important in -- in understanding the

1 context of the issues the Commission should --
2 should consider in the determination of override.
3 And that is the phrase, "the entire record, the
4 entire record of the proceeding". It really is a
5 key phrase, because it sets the -- the bounds for
6 what the Commission considers in determining the
7 question of override.

8 The evidence that the Commission
9 considered is, of course, the testimony that's
10 submitted in the Evidentiary Hearings, which
11 closed today. That testimony is subject to cross
12 examination. The evidence is -- is more than mere
13 conjecture, it's more than simply questioning
14 other parties' evidence. It's actually the real
15 evidence that was submitted by the parties, moved
16 into the evidentiary record, and made available
17 for the Commission as -- as the foundation for the
18 decision on override.

19 The Applicant has the burden in this
20 setting of supplying real evidence, and supplying
21 that evidence into the record to support the
22 question -- to support the desired override.
23 Similarly, those who would oppose override have a
24 similar burden of coming forward with information
25 and specific evidence that they introduce into the

1 record of a specific alternative, and not just
2 some generalized notion, of a reasonably feasible
3 alternative that meets the -- the same public
4 convenience and necessity.

5 Let's go to the next one, please.

6 PRESIDING MEMBER LAURIE: Mr. Harris,
7 the entire record of the proceeding, you cite the
8 evidentiary record. Would not the entire record
9 of the proceeding include the entire hearing
10 record, which includes public comment?

11 MR. ELLISON: I think the test that --
12 that would apply there is the same test that would
13 apply when a court of law reviewing the
14 Commission's decision looks for whether there is
15 substantial evidence, quote, in the record,
16 unquote. And what that means is that yes, public
17 comment is part of that record and is to be
18 considered, but -- but is to be considered only in
19 the context of corroborating some hard evidence
20 that is in the record.

21 PRESIDING MEMBER LAURIE: I --
22 understood.

23 MR. ELLISON: In other words --

24 PRESIDING MEMBER LAURIE: The point was
25 that this slide did not make -- made reference

1 only to the evidentiary record. And the entirety
2 of the record includes the hearing record.

3 MR. ELLISON: That's understood. We
4 agree with that. That same test that we were
5 describing, however, would -- would suggest that
6 if it were merely public comment, and not
7 supported by some other evidence, there would not
8 be, applying standards of judicial review,
9 substantial evidence in the record to support a
10 decision rejecting override in favor of an
11 alternative which was merely supported by -- by
12 nothing other than public comment.

13 PRESIDING MEMBER LAURIE: Understood.

14 MR. ELLISON: The point that we are
15 making, in a nutshell, is that mere conjecture,
16 without supporting evidence in the record, is not
17 sufficient to create the kind of alternative
18 called for in the statute.

19 MR. HARRIS: Moving on now to the first
20 of the three factors that are listed in the -- the
21 override statute. The language there is impact of
22 the facility on the environment. This one is
23 actually fairly self-evident.

24 As part of the Commission's normal
25 practices and procedures, and one of the probably

1 primary responsibilities is to determine exactly
2 what the impacts of the facility are on the
3 environment. This is precisely the sort of issues
4 that are dealt with in the application, and
5 precisely the sort of issues that are dealt with
6 in the Final Staff Assessment, as well as the
7 Applicant's testimony and evidence, other parties'
8 evidence, and so that one I think is actually
9 fairly straightforward. The Commission can depend
10 on their CEQA equivalent process, their certified
11 regulatory program, to take a look at those
12 impacts. And again, that's nothing new or
13 different from the Commission typically does.

14 The second item listed in that override
15 statute deals with consumer benefits.
16 Essentially, it asks the questions, what is the
17 impact of the proposed project on consumers. And
18 I think by consumers, the statute means primarily
19 consumers of electricity, but I think it also
20 includes secondarily the impacts of the project
21 during construction and operation on both -- on
22 the local economy, the regional economy, and the
23 state economy.

24 Those consumer impacts, of course, are
25 dependent on -- in this case, on matters related

1 to supply and demand, and it's, of course, well
2 understood that in a market based system the more
3 supply you have, the more prices are likely to go
4 down.

5 And reliability also relates to that
6 certainty of supply, and in terms of consumer
7 benefits, both existing businesses that are
8 located currently, and future businesses or
9 expansion of existing businesses, are going to
10 rely upon the consumer benefits of the project.

11 Where is this information found in the
12 record that we have before us. I think primarily,
13 for this particular prong of the test, you'll find
14 that in the Socioeconomics testimony. I think
15 you'll find it in the Local System Effects
16 testimony. But not solely in those two
17 categories. You'll also find it in other relevant
18 categories.

19 The third issue is the critical question
20 of electric system reliability. And it's just as
21 it sounds, that we have a reliable and dependable
22 and adequate supply of electricity, both from a
23 statewide perspective and from a local
24 perspective. The dependability of the supply, the
25 reliability, is absolutely a prerequisite to the

1 consumer benefits that -- that we talked about
2 earlier. It's also a prerequisite, as Mr. Ellison
3 discussed, in the evidentiary -- or the history of
4 the Warren-Alquist Act. And the benefits of
5 protecting the State of California's economy, the
6 economy of the west through the interconnected
7 grid, and, by extension, the national economy.

8 Where is the information about
9 electrical system reliability in the record?
10 Again, I think you will find this primarily in the
11 Transmission System Engineering section. The
12 Local System Effects section, as well, will have a
13 lot of that detail, and other sections of the --
14 of the record will provide additional information.

15 The one last factor that I kind of want
16 to -- that I want to focus on, looking at that
17 second sentence. It carefully states, you know,
18 including but not limited to. And then it goes on
19 to list the three factors that I've just
20 discussed.

21 I think that's important, because
22 there's a general rule of statutory construction
23 that says, number one, you're not limited to those
24 three factors. And number two, other factors can
25 be considered. Those other factors, though, of

1 course, need to be of the same nature and kind as
2 those three specifically enumerated in the
3 statute.

4 So again, I think the second section of
5 -- second sentence of 25525 provides some
6 additional context and specific direction. I
7 think it also points to specific places in the
8 evidentiary record where the Commission will find
9 the evidence that it needs to make its
10 determination.

11 MR. ELLISON: And with that, we'd make
12 ourselves available for questions.

13 PRESIDING MEMBER LAURIE: Thank you, Mr.
14 Harris, Mr. Ellison. We will not ask questions at
15 this time.

16 At this time, we would ask Robert
17 Williams, party Intervenor, to make his
18 presentation. And then we will turn to members of
19 the public.

20 Ladies and gentlemen, what we have done
21 in a previous order was we issued a notice to the
22 parties indicating that we would ask those parties
23 who are active, who are participants in the case,
24 who wanted to bring forward representatives, to do
25 so tonight. And we really only obtained a list

1 from the Applicant.

2 I note that there are a couple of
3 individuals from groups who are not on that list.
4 We'll certainly provide you an opportunity to do
5 that tonight, but we will take it in order. Also,
6 members of the public who are here, who choose not
7 to wait until the 23rd, we will, as time permits,
8 get to you, as well.

9 Gentlemen, what I would ask -- well, let
10 me ask Mr. Williams. Mr. Williams, do you have
11 any problems with these folks staying up here?
12 You have a right to have the podium to yourself.

13 MR. WILLIAMS: Not at all. This is no
14 problem. We've gotten to know each other over the
15 past 18 months of --

16 PRESIDING MEMBER LAURIE: And you still
17 have no objection.

18 (Laughter.)

19 PRESIDING MEMBER LAURIE: Mr. Williams.

20 MR. WILLIAMS: Thank you, Commissioner
21 Laurie. I appreciate your courtesy. I'm honored
22 to be asked to briefly state the case for the
23 opposition.

24 Just for the audience who may not know
25 me, I have three degrees, a degree in chemical

1 engineering, a degree in nuclear engineering, and
2 an MBA. I worked ten years for GE, 20 years for
3 EPRI, the utility think tank. I am somewhat
4 embarrassed to be opposing a power plant, but I do
5 so out of conscience.

6 There -- the Applicant correctly states
7 that the rules on override were adopted many years
8 ago, but they were adopted in a completely
9 different context. At that time, the utility
10 industry was a regulated entity, regulated by the
11 California PUC. There was no opportunity for
12 price adjustments that would enrich the company,
13 and there was a great deal of regulation of the
14 siting and, indeed, the need for such facilities.
15 So there are several policy fiascos in the making
16 that I will try to briefly highlight for you in
17 the few minutes that I've been allowed here today.

18 Let me outline my brief in four key
19 points. The first is the fundamental principle of
20 fairness. It starts at the local level, but it
21 extends to the California level. The fundamental
22 principle of fairness is to allow local agencies
23 to take care of land use and land use decisions
24 within their jurisdiction.

25 Now, there are three other issues

1 categories that I don't have time to review,
2 except in very general detail. One is the whole
3 category of technical issues, and those of you who
4 see the chair where I was sitting, you see the
5 FSA, and the second volume is just the material on
6 the transmission siting issue. We have been asked
7 to try to digest 500 pages on whether or not there
8 is a condition, a more prudent and feasible
9 alternative that comes from the electric
10 transmission arena.

11 The third area is legal issues, and let
12 me tick them off and then come back to these and
13 discuss them in a little more detail.

14 One of the main legal issues is that San
15 Jose is a charter city. By being a charter city,
16 it has certain prerogatives with respect to
17 legislative entities and California government. I
18 haven't had time to properly brief this case. I
19 have spent all week donating my time freely to
20 this public hearing.

21 There are, again, four major -- or three
22 major conditions that pertained in the 1980s, when
23 the CEC was established, that do not obtain today.
24 The first is the lack of franchise. The easiest
25 example for franchise is to cite the San Francisco

1 Airport and the San Francisco Taxi Company. You
2 and I cannot jump in our car and give rides to
3 citizens on the weekend for 20 bucks, in order to
4 undercut the taxi business. In return for keeping
5 us out, the taxi company has a franchise that
6 demands that they provide service on cold
7 Wednesday evenings, when nobody wants to be at the
8 airport.

9 Now, that's a -- hopefully an
10 understandable way of explaining that under the
11 structure of deregulation, there is no obligation
12 of these people to serve. Now, there may or may
13 not be a contractual obligation, but that brings
14 me to my second point. There is no regulation of
15 the profit that the entity can charge. It would
16 be like going to the San Francisco Airport, if
17 there are no taxicabs, charging 50 bucks for a
18 taxi ride instead of 30.

19 The -- part of our problems are caused
20 by the structure that was set up by deregulation,
21 and I've heard the Applicant's appeal to the
22 infallibility of the legislature. Recognizing
23 that my friend, Rebecca Cohn, is here, and is a
24 new member of the legislature, I don't want to
25 offend her, but the -- there is a great deal of

1 improvement required to the statutes.

2 Now, the public has been sold a myth
3 that because we build more power plants, there
4 will somehow be no shortage in electric power.
5 The other side of that equation was discussed in
6 the meeting today. The Cal-ISO and the Cal-PX,
7 and various purchasing agencies, hands were tied
8 by the proscriptions in AB 1890. Initially, they
9 have not been able to make long term obligations
10 for power. Now they are forced to go into the
11 power market when there is a scarcity. So -- so
12 please don't appeal to the infallibility of the
13 legislature as a reason for adhering to the
14 override statute. Nothing could be further from
15 the case.

16 Now, there is a fiasco brewing, that's
17 best illustrated by the --

18 PRESIDING MEMBER LAURIE: Mr. Williams,
19 you're going to have to figure out -- thank you.

20 MR. WILLIAMS: There's only 14
21 percent --

22 PRESIDING MEMBER LAURIE: Excuse me,
23 sir? Back to the microphone.

24 MR. WILLIAMS: Yeah. Only 14 percent of
25 the requirement in this area is provided by local

1 generation. Now, that's a historical artifact of
2 being able to import power from the Northwest, the
3 hydro power, the hydro power of the Pacific Gas
4 and Electric hydro stations, and to bring in power
5 from the thermal generation in the south. Now we
6 see an interesting situation. There's a myriad of
7 power plants under construction. There are
8 between 10 and 15 plants in the greater Bay Area.
9 The load in the greater Bay Area is 10,000
10 megawatts, roughly one-fifth of the load of
11 California. A rule of thumb discussed in the
12 meetings today was that roughly 40 percent of that
13 load, or 4,000 megawatts, should be supplied
14 locally.

15 We are taking the steps to do that. For
16 example, even this evening, to show the congestion
17 in this area, a hearing is being held by the
18 Planning Commission on the U.S. Dataport. There
19 is a facility on that site, the CERC, which has an
20 indeterminate amount of power generation.

21 So I -- I don't have time to argue all
22 of the elements of my case. I've been asked to
23 take roughly half the time that the Applicant did,
24 and I certainly believe that is fair. But the
25 bottom line here, then, to reiterate my points, is

1 that it has not been clearly shown that there is a
2 more prudent and feasible alternative. In fact,
3 in the hearings today, it was generally agreed by
4 the Staff witnesses, although still subject to
5 argument in closing briefs, that there were four
6 alternatives that were arguably better, in the
7 sense that they were more prudent and feasible.

8 So, again, let me close by summarizing a
9 principle of fairness. This whole structure of
10 national laws, state laws, local laws, county
11 laws, has been set up to protect against the
12 tyranny of the majority. That was a book we all
13 had to read in Political Science when I took
14 Political Science in the 19 -- late 1950s.

15 So I would ask members of the
16 legislature to reconsider taking issue -- adopting
17 resolutions without any hearings on the merits of
18 the case. I would ask the County Board of
19 Supervisors to do the same thing. No hearings
20 were adopted on the merits of the case.

21 In 15 minutes, I cannot totally
22 summarize either the legal, technical, or policy
23 merits of the case, but let me tell you, this --
24 it is a tribute to the integrity of Commissioner
25 Laurie and to the other Commissioner of the Siting

1 Committee, Commissioner Keese, who is in
2 Washington testifying this week, and to Mr. Fay,
3 that they have allowed a substantial amount of
4 public comment. And I think the issues are being
5 fairly ventilated. They're being fairly
6 ventilated in a way that was intended in the
7 democratic process.

8 So I appeal to everyone to play by the
9 rules, let the Evidentiary Hearing resolve the
10 issue, and not appeal to override when a plant
11 such as Metcalf will be 600 megawatts, it will be
12 roughly three percent of the electric power on the
13 California grid by the year 2000. Mr. Tim Alton,
14 who will give public comments later, will explain
15 to you how by the year 2000, projections show
16 there will be more than adequate reserve margin.

17 So none of the tests for an override
18 have been met. But the most important test,
19 fairness and accommodation of local entities,
20 needs to be respected in this process.

21 Thank you for the opportunity to
22 comment.

23 HEARING OFFICER FAY: Mr. Williams.

24 MR. WILLIAMS: Yes, sir.

25 HEARING OFFICER FAY: The year you

1 referred to, I -- I'm not sure you meant the year
2 -- you said the year 2000. What year did you mean
3 there would be adequate supply?

4 MR. WILLIAMS: I -- excuse me. I thank
5 you for -- for offering that correction. The year
6 2003, or the year 2004, at the very latest.

7 HEARING OFFICER FAY: Okay.

8 MR. WILLIAMS: Forgive me. And thank
9 you for catching that.

10 PRESIDING MEMBER LAURIE: Thank you, Mr.
11 Williams.

12 At this time, Mr. Boyd indicated he
13 wanted to make an announcement. Mr. Boyd, you
14 wanted to make an announcement? Where'd he go?

15 Mr. Boyd is a party Intervenor in this
16 case. Yes, sir.

17 MR. BOYD: Yes, sir. Do you want me to
18 do this as a member of the public or as -- as an
19 Intervenor, or --

20 PRESIDING MEMBER LAURIE: No, sir.
21 You're speaking as an Intervenor.

22 MR. BOYD: Okay.

23 PRESIDING MEMBER LAURIE: At this point.

24 MR. BOYD: Did you -- did you get my
25 card? I'm not waiving my -- I just want to make

1 an announcement.

2 PRESIDING MEMBER LAURIE: I -- sir, I
3 called on you for the opportunity to make an
4 announcement. You indicated you wanted to make an
5 announcement.

6 MR. BOYD: Okay. That's fine. Thank
7 you.

8 Basically, I just want to let everyone
9 know from the public here, that CARE today served
10 a notice on the Committee that this meeting
11 tonight, and the meeting on the 16th, are in
12 violation of the Bately-Keene Act, because they
13 were -- we did not receive written notice ten days
14 in advance of this meeting. And I provided them a
15 copy of the envelope that it was mailed in, which
16 is marked, using the -- the bulk mailing label --
17 labeling system of the Energy Commission, as March
18 7th, seven days in advance of this meeting.

19 And therefore, we -- we would advise
20 members of the public that are interested to
21 please attend the meeting on the 23rd, because
22 that meeting is legally noticed ten days in
23 advance.

24 Thank you.

25 PRESIDING MEMBER LAURIE: Thank you, Mr.

1 Boyd.

2 Other parties, Santa Teresa, were you
3 intending to speak tonight at all? No?

4 Okay. Issa, were you planning on making
5 comment tonight?

6 MR. AJLOUNY: At the public time.

7 PRESIDING MEMBER LAURIE: Okay. Mr.
8 Scholz, are you planning on speaking tonight?
9 Okay.

10 At this time, I would like to turn it
11 over to the members of the public representatives.
12 The Applicant -- I'm sorry?

13 (Inaudible asides.)

14 PRESIDING MEMBER LAURIE: The Applicant
15 provided me with a list, and I will go through
16 that list. Should any errors be made, feel free
17 to correct me.

18 At this time I'd like to call on
19 Assemblywoman Cohn. Ma'am. Welcome.

20 ASSEMBLYWOMAN COHN: Good evening. I'm
21 Assemblywoman Rebecca Cohn, representing District
22 24.

23 First, I'd like to thank members of the
24 -- the Commission. I know we find ourselves in an
25 interesting place. There was a toast that I

1 recall that most of us have probably heard about,
2 we live -- may we live in interesting times. And
3 a second one that I recall that says, be careful
4 what you wish for.

5 None of us, including myself,
6 anticipated the magnitude of the crisis that we
7 face in California, and I want to speak a little
8 bit to that.

9 We are in the midst of a -- a very
10 profound and dramatic energy crisis. It's
11 happening on our watch, yours and mine, and it's
12 -- it's a historic chasm that we need to cross
13 here that has pretty serious impact for this
14 region, Silicon Valley, for all of California, and
15 beyond. And all eyes are on us. We in California
16 are considered trendsetters for the nation and the
17 rest of the world, and it's in that context that I
18 will speak.

19 Today, this role places us in front of
20 the world, in the front lines of the world
21 economy. And until the energy crisis, California
22 was the sixth largest economy in the world, on its
23 way to being the fifth largest economy. We
24 cannot, as a state, stand by and let the energy
25 crisis destroy the future that's in front of us.

1 And this crisis, I'm here to tell you, can bring
2 the state to its knees, not just this region.
3 Because, make no mistake, we don't -- if we don't
4 make our share of sacrifices in this region, and
5 in California, the opportunities that are there
6 for all of us and for future generations are going
7 to be at risk. If we don't accept our share of
8 responsibility everywhere in the state with regard
9 to energy, we're all going to suffer the
10 consequences, and it's not just about rolling
11 blackouts.

12 Here's the -- here's the hammer. Since
13 mid-January, the State of California, on behalf of
14 all of us, has had to spend roughly \$3.7 billion
15 out of the \$8 billion anticipated surplus, that's
16 almost half, to date. As of today, we've spent
17 three point billion dollars of that surplus to
18 keep the lights on. That's just for today's
19 power. That's just up to today. Tomorrow, we've
20 got to go back out and we've got to spend another
21 45 to \$70 million to keep the lights on for
22 tomorrow.

23 Now, I did an estimate of what that
24 means for Santa Clara County. So as from mid-
25 January to today, the state has paid \$370 million

1 to keep the lights on in Santa Clara County. We
2 can't keep doing that. And we're put in a
3 position, because the -- the state does not have
4 sufficient supply, where we're forced to do that.
5 We have to be able to keep -- keep the power on
6 for people. That's the magnitude of the crisis
7 that -- that we see, from Sacramento.

8 So I'm here to say that we all need to
9 be part of the solution. And we must reach inside
10 and find that part of us that allows us to achieve
11 success where others fail. But we've got to do it
12 together. Each of us, together. And supply is a
13 part, a big part of the solution here. We know
14 this, but I'm here to say that it's very, very
15 critical. And I know I don't need to tell you
16 that, but I'm here to say that. And it's why I'm
17 here tonight.

18 I -- I'm well aware that there are
19 elements of the community that are against this
20 particular facility, and in opposition of building
21 this Metcalf plant. And their opposition is why I
22 deliberated long and hard before I took a personal
23 public stand on this plant. But the Metcalf
24 project has had very strong and diverse support,
25 because it has the very things that we are all

1 looking for in California in the way of power
2 supply.

3 It's got stringent air quality
4 standards, it will decrease the reliance on older
5 existing plants and diesel generators. The -- the
6 location I think is ideal, in terms of being close
7 to a substation and existing transmission and --
8 so that we're not required to put additional
9 transmission towers in. It's close to the natural
10 gas pipeline. All of these are serious concerns
11 that the state is grappling with. And it -- it
12 meets those tests.

13 It also will have, and I think one of
14 the things that I haven't heard in a lot of the
15 argument that I think I need to bring forward is
16 that this kind of plant, and this particular
17 plant, will have a positive impact on the rates,
18 on the rate structure, and fit inside of still the
19 existing rate structure that we have, that we're
20 dealing with in the state. And it's already gone
21 through months and months and months of the
22 process, as -- that's set forward by -- by the
23 state. And it's, for me, and -- and others, the
24 closest solution for baseload that's ready to come
25 online.

1 And so one of the things I want to say
2 is that Silicon Valley and the San Jose region are
3 very much at risk, in terms of not having
4 sufficient supply available, and yet being serious
5 consumers of power in the state. And it's very,
6 very difficult to justify at the state level, in
7 representing this area, that we're such big
8 consumers and we don't have a source of -- of
9 supply available to us, and we have to import.
10 And that puts us at risk for a number of reasons
11 that I'm sure have already been discussed.

12 California has to increase its
13 generation supply, and Silicon Valley has to
14 increase its generation supply. I think we all
15 know that. But we need to -- we need to also, as
16 a state, look at what we're -- what we're -- what
17 message that we're sending to people in terms of
18 the kind of facilities that we're wanting to
19 encourage, and the Metcalf facility is the very
20 kind of facility that we need in this state. It's
21 the best technology available. And so that's one
22 of the factors here.

23 For all of the reasons that I've spoke
24 of, it's -- all of those reasons are reasons why
25 I've supported this project. And for these same

1 reasons, the Silicon Valley delegation in the
2 State Assembly, and myself, have co-authored an
3 Assembly Concurrent Resolution that passed
4 unanimously, and we have copies of it provided for
5 you. And it is on its -- it's on its path through
6 the Senate.

7 It got very strong -- well, it got
8 unanimous support, but it also had 45 co-authors
9 that came forward, out of -- out of that unanimous
10 vote. And it was bipartisan. It was a very, very
11 strong message. I anticipate a similar kind of
12 response from the Senate.

13 And this resolution before you asks you
14 to swiftly site and permit the construction of
15 this facility. I'm here tonight to urge you to
16 take the necessary measures under these
17 extraordinary times that we find ourselves in the
18 State of California, and use your authority to
19 site and permit the construction of the Metcalf
20 Energy Center without further delay.

21 I thank you for your time and thank you
22 for the opportunity to speak before you. And
23 thank you for the opportunity to let you know how
24 urgent this is at the state level. Every public
25 program in the State of California, from health

1 care to foster care, from transportation
2 initiatives such as BART San Jose, to funding for
3 education, are at risk because we are spending the
4 surplus at a very, very rapid rate to keep the
5 lights on. I ask for your consideration. Thank
6 you.

7 PRESIDING MEMBER LAURIE: Thank you, Ms.
8 Cohn, very much.

9 Supervisor McHugh. Evening, sir.

10 SUPERVISOR MCHUGH: Thank you. Good
11 evening. I am Pete McHugh, Santa Clara County
12 Supervisor. Thank you, I appreciate the
13 opportunity to be with you.

14 On February 27th, our Board unanimously
15 adopted a Policy Resolution in support of the
16 Metcalf Energy Center. And we at the same time
17 encouraged the California Energy Commission to
18 approve the power plant at the proposed location.
19 I have copies of the resolution that I will
20 provide after my comments.

21 I'd like to tell you briefly why I asked
22 my Board to adopt this resolution, and then I'll
23 tell you why I supported it.

24 First, although Calpine asked the city
25 to approve this plant, ten acres are within the

1 county's land use jurisdiction, so we have a
2 direct interest in the site.

3 Secondly, as Assemblyperson Cohn pointed
4 out, the economy of Santa Clara County, the state,
5 and I believe our country, is highly dependent on
6 reliable power. If we lose that power, our
7 county's economy will suffer, and then there will
8 be increased demands on the county's general fund
9 as people turn to us for assistance.

10 And as elected officials for an area
11 that covers 15 cities, and the large
12 unincorporated area, the county's board should
13 take positions on issues that impact that area,
14 not just on issues that pertain to a specific
15 city. I would point out that each of the five
16 supervisors represents a portion of the City of
17 San Jose. And I'm very proud to represent the
18 Alviso, Berryessa, and Evergreen sections.

19 The reason I supported the resolution
20 is, as the California Independent Systems Operator
21 has pointed out, San Jose is the most generation
22 deficient area in the state, and one of the areas
23 most vulnerable to outages and reliability
24 problems. And although we will not see the
25 benefits until 2005, it is a significant step in

1 solving the generation deficiency. And in light
2 of the recent energy shortage, I believe that even
3 if the South Bay region can make up the 600
4 megawatts that is proposed by smaller plants, it
5 would still be preferable to have an oversupply
6 rather than an undersupply of power.

7 The Commission Staff, in their analysis,
8 indicated that the environmental impacts are fully
9 mitigated to levels of less than significant,
10 except for land use and visual resources. And
11 although there is some dispute about its
12 methodology, the San Francisco Bay Area Air
13 Quality Management Board has determined that the
14 project complies with their rules and regulations,
15 and will not -- will not contribute to the
16 degradation of air quality in the Bay Area.

17 And finally, the power plant will
18 establish some inter-regional equity, if you will,
19 in the siting of such uses, which are called
20 locally undesirable land uses, or "LULUs". I
21 think it's time that the San Jose area and Santa
22 Clara County step up to that challenge. It's
23 being done in other areas such as Hayward, so I
24 think it's appropriate.

25 I would urge you to proceed with your

1 actions, and move forward as expeditiously as
2 possible to overrule the City of San Jose. We
3 need the power. Thank you.

4 PRESIDING MEMBER LAURIE: Thank you, Mr.
5 McHugh, very much.

6 I had never heard the term "LULUs" until
7 I started spending evenings in San Jose.

8 (Laughter.)

9 SUPERVISOR MCHUGH: If I may, Mr.
10 Laurie.

11 PRESIDING MEMBER LAURIE: Yes, sir.

12 SUPERVISOR MCHUGH: Who should I --

13 PRESIDING MEMBER LAURIE: Ms. Mendonca.
14 Thank you, sir.

15 Mr. Callender. Evening, sir.

16 MR. CALLENDER: Good evening, and thank
17 you for allowing me to speak before you tonight.
18 My name is Rick Callender, I'm president of the
19 San Jose-Silicon Valley Branch NAACP, and I'm
20 proud to appear on behalf of our 1500 members of
21 the San Jose-Silicon Valley branch of the NAACP.

22 As you might know, the San Jose-Silicon
23 Valley Branch has taken a position in supporting
24 the Metcalf Energy Center. The San Jose-Silicon
25 Valley branch is Silicon Valley's voice for the

1 political, educational, social and economic
2 equality for minority group citizens.

3 Two weeks ago I received a letter from
4 one of the opponents of the project, and in the
5 letter it said Mr. Callender, Mr. President, we
6 will hold you personally responsible when our kids
7 come down with asthma. We'll hold you personally
8 responsible. And we'll hold the NAACP responsible
9 if this project gets built in the community.

10 One of the things that the letter didn't
11 mention, apparently they didn't research what the
12 NAACP stands for. Well, we stand for
13 environmental justice. We stand for public
14 health, and making sure that there's an interest
15 in public health as it relates to African-
16 Americans. African-Americans suffer
17 disproportionately from asthma, throughout the
18 nation, more than any other ethnicity. And we
19 would've not taken any position supporting
20 something unless we believed in the benefits to
21 our community of the Metcalf Energy Center.

22 Especially in our current energy crisis,
23 we recognize the need to have power to heat our
24 homes for our children in the winter, to cool our
25 homes for our children in the summer, as a basic

1 right and a necessity for all of our families.
2 Even though it's not a constitutional right, even
3 though it's not a civil right, we see it as a
4 basic right for social fairness, and social
5 justice.

6 Low income communities already host a
7 disproportionate amount of our public
8 infrastructure that supports our community as a
9 whole. Silicon Valley, we need to step up to the
10 plate and we need to make sure that we're
11 providing for energy for the entire community. We
12 cannot expect for other communities to continue to
13 provide our fuel for this community, so we need to
14 make sure that we're prepared to step up and do
15 our part in Silicon Valley.

16 For many residents who live in Silicon
17 Valley, losing their electricity is not just an
18 annoyance. It's absolutely devastating. When
19 people on fixed incomes lose their energy, when
20 their refrigerators turn off, they have to figure
21 out what necessity they're going to go without as
22 a result of having to replace the food in the
23 refrigerator.

24 Supporting the Metcalf Energy Center is
25 not about supporting a public -- excuse me,

1 supporting a private company. As I -- as I said,
2 supporting the Metcalf Energy Center is about
3 supporting public good. This is -- this isn't
4 about a private company. This is about solving a
5 public problem. Please join the San Jose-Silicon
6 Valley Branch of the NAACP in supporting this
7 project. Please send a message to San Jose by
8 overturning and placing the Metcalf Energy Center
9 in Coyote Valley. And remember, this is a matter
10 of basic fairness and social justice.

11 PRESIDING MEMBER LAURIE: Thank you, Mr.
12 Callender, very much.

13 MR. CALLENDER: Thank you.

14 PRESIDING MEMBER LAURIE: We have a
15 representative from -- from Clean, Ms. Johnson.
16 Thank you.

17 MS. JOHNSON: Good evening, members of
18 the Commission. I'm Trixie Johnson, I'm one of
19 two primary co-chairs for Clean Air. We're a
20 totally volunteer ad hoc support group founded
21 specifically to support this plant. My co-chair,
22 lead co-chair and I both former council members
23 and vice mayors of the City of San Jose. The
24 other co-chairs of our group are all recognizable
25 community leaders from decades of service in the

1 City of San Jose.

2 We all of us visited the site. We
3 studied the issues. And then we signed on in
4 support and to lend our names to support
5 activities. As a result of some of those
6 activities, which included advertisements,
7 mailings, and other outreach activities, 26,632
8 individuals said we could use their name, and gave
9 us addresses and phone numbers to go with it, that
10 they support this plant. They are all San Jose
11 residents.

12 Just a little bit about my background
13 and how I came to this. I've been active in every
14 general plan activity in the City of San Jose
15 since the mid-seventies. Active in the '80 one,
16 which designated the industrial area and the
17 Coyote, and co-chaired the update into the mid-
18 nineties, when I was on the city council.

19 I know as much as any citizen would
20 about the planning for Coyote and the vision we
21 had for that industrial area. San Jose is a
22 housing/ranch/job poor community, in spite of what
23 is happening in the rest of Silicon Valley. We
24 have to have economic for tax base. And Coyote
25 Valley is a big part of that. I would not be here

1 supporting this development of the energy plant if
2 I thought in any way it would jeopardize San
3 Jose's ability to develop the Coyote industrial
4 area as we wish it to be.

5 I do not believe that this particular
6 plant at this particular isolated site in the
7 valley will have a negative impact upon the
8 ability of the city to develop further the high
9 end industrial campus that we envision at that
10 site. I certainly wish the city well in finding
11 other sites. I think we need those sites in
12 addition to the Calpine site. But I would tell
13 you that of the sites that have been mentioned so
14 far, some of them are going to be problematic,
15 including the one on Seventh Street that the Mayor
16 touted, which I believe carries with it very
17 serious environmental justice issues.

18 And finally, I think you need to keep in
19 mind that this state needs to send a message that
20 it is serious about increasing the generating
21 capacity in this state. Your decision is being
22 watched nationally, even internationally. And the
23 message you send is critical to our ability to
24 attract generators in an unregulated environment
25 to invest in Silicon Valley, and in California.

1 Thank you.

2 PRESIDING MEMBER LAURIE: Thank you, Ms.
3 Johnson.

4 It's also being watched at my house. My
5 wife wants me home.

6 (Laughter.)

7 PRESIDING MEMBER LAURIE: Mr. -- is it
8 Bouse? Yes, thank you. Evening, sir.

9 MR. BOUSE: Good evening. Thank you for
10 this opportunity. I'm Earl Bouse, I'm a Vice-
11 President of Manufacturing Services Permanente
12 Cement, formerly known as Kaiser Cement. We have
13 been manufacturing cement since 1939, over 60
14 years in the Santa Clara County.

15 In addition to my work at Hanson, I am
16 Chair of the California Large Energy Consumers
17 Association, CLECA, that represents all of the
18 steel and cement producers in the State of
19 California.

20 Our Bay Area urban infrastructure must
21 be rebuilt, and cement and steel are important
22 building materials for this reconstruction.

23 However, both cement and steel manufacture are
24 energy intensive, and they can only survive in
25 regional economies that have reliable and cost

1 effective electricity.

2 California simply does not have an
3 adequate supply of electricity. As major users of
4 electricity, we have made it our business to be
5 knowledgeable about this important resource. We
6 have studied both electrical generation and
7 transmission, and the truth is that we desperately
8 need the Calpine power plant at Metcalf. When you
9 heard that industry shut down this summer to avoid
10 rolling blackouts, one of those shut down
11 businesses was Hanson Cement. Interruptible
12 customers like us provided a capacity boost by
13 taking offline the equivalent of almost three
14 Metcalf Calpine plants. But even with our plants
15 shut down, the electrical grid was very close to
16 failure.

17 And I might note, on the interruptible
18 we were not one of the interruptible customers
19 that have complained. We understand the program.
20 We've been in the program for over 15 years, and
21 every time we were called on, we did shut down.

22 In the calendar year 2000, Hanson
23 Permanente Cement was interrupted 19 times, for a
24 total of 72 hours. Each of those interruptions
25 pulled 30 megawatts offline and allowed other

1 Silicon Valley businesses to operate without being
2 blacked out. Excuse me. Each interruption meant
3 that our pyro processing equipment had to be
4 reheated to about 3,000 degrees Fahrenheit before
5 product could again be produced.

6 This year, we were interrupted 20 times
7 in the first 22 days of the year. By January
8 22nd, we had gone through our entire annual
9 commitment of 100 hours to the ISO. Clearly,
10 California has reached an electrical crisis.
11 Power plants in Kern County or Las Vegas or
12 Phoenix will not solve the transmission congestion
13 problem that we have. The so-called Path 15
14 transmission line is near capacity, and we must
15 have Calpine at Metcalf for both its generation
16 and its nearness to our economic region.

17 Please do whatever you can do to move
18 this project forward as quickly as possible.
19 Thank you.

20 PRESIDING MEMBER LAURIE: Thank you, Mr.
21 Bouse, very much.

22 Sierra Club. Evening, sir.

23 MR. NEWICK: My name's Kurt Newick,
24 Chair of the Global Warming Committee of the Loma
25 Prieta chapter of the Sierra Club.

1 This project, from an environmental
2 perspective, is a net gain. And the reason is
3 that it's using combined cycle technologies that
4 displace the older currently running plants that
5 don't have those technologies. Forty percent
6 improvement of greenhouse gas emissions, one
7 hundredfold decrease. I did some calculations,
8 5.5 -- you guys already know this, but just for
9 the benefit of everyone, to add 5.5 to 83 times
10 less humidity than currently running plants in
11 Long Beach.

12 And we need -- the Sierra Club's general
13 policy on energy is to support plants with the
14 lowest transmission losses. That means having the
15 load as close to the demand as possible. I'm
16 putting solar cells on my house, so I'll be
17 generating the electricity that I use. That's the
18 -- the optimum way. Not everyone can afford that.
19 We need cheap electricity, and we need it in
20 Silicon Valley.

21 Global warming is a very serious
22 problem, and natural gas is a least carbon fuel,
23 and it's -- it's not perfect, there's no perfect
24 solutions. It does generate a lot of pollution
25 and carbon dioxide emissions, but it's better than

1 what we have right now. It's -- since MEC is
2 adjacent to the high voltage lines, it reduces the
3 need to build more lines.

4 The Sierra Club's opposed some of the
5 renewable energies because of the need to build
6 long transmission lines, which disrupt wildlife
7 corridors. And it's unacceptable to -- and it
8 also takes a lot of material goods. This is --
9 this plant right here is -- is near the
10 infrastructure needed, and we do need a local
11 plant to reduce transmission losses. Twenty
12 percent of the electricity is lost coming from
13 coal plants in the southwest. That means that 20
14 percent of electricity is simply wasted before
15 it's even used, because it has to be imported such
16 long distances. That's unacceptable from an
17 environmental perspective.

18 Calpine is willing to mitigate some of
19 the NOx emissions, and from an air pollution
20 viewpoint, the problem is cars, not clean power
21 plants. I fully believe that the people that are
22 opposing the plant on air pollution issues are
23 barking up the wrong tree. We need to buy
24 electric cars and ultra-low emission cars, reduce
25 our -- our use of highly polluting things, and

1 clean, modern power plants are the solution to
2 clean air. It's pretty obvious.

3 I mean, the plants that I'm talking
4 about that are 83 times more polluting per
5 megawatt than the Metcalf Energy Center have
6 exceeded their pollution limits last year, and
7 they had to pay millions of dollars in fines just
8 to operate to keep the lights on in California.
9 And then transport energy 400 miles to the Silicon
10 Valley, on top of that. And I don't know what the
11 transmission losses are, but it's a few percent,
12 at least.

13 I simply -- when I looked at this, I'm a
14 volunteer, I don't get paid by anyone, I was
15 skeptical. I called Calpine, I says, what are you
16 doing building a new power plant with fossil
17 fuels? What is this, I goes, all emotional. And
18 I said, why don't you do wind power. Well,
19 there's disadvantages to wind power. We need more
20 renewable energies, and that's the long term
21 solution. Solar cells, wind power, but when the
22 sun's not shining, the wind isn't blowing, we need
23 power.

24 And what our society has right now, the
25 state of the art, is combined cycle natural gas

1 plants. That's what we have. And this will, from
2 an environmental perspective, it will reduce the
3 need to generate electricity from the older plants
4 which should be retired. And the combined cycle,
5 again, it's -- it's favorable from an
6 environmental perspective.

7 PRESIDING MEMBER LAURIE: Thank you, Mr.
8 Newick.

9 Is it Mr. Derickson, from the Chamber of
10 Commerce?

11 Okay. How about Mr. Bradley. Good
12 evening, sir. Justin Bradley. Evening.

13 MR. BRADLEY: Good evening, Commissioner
14 Laurie. Thanks for the opportunity to represent
15 the Silicon Valley Manufacturing Group on this
16 important issue.

17 I am the Director of Energy Programs for
18 the Silicon Valley Manufacturing Group. We
19 represent over 190 member companies, and almost
20 300,000 employees, private sector employees here
21 in the valley, which is about one in four. And as
22 Rebecca Cohn pointed out, the country, indeed, the
23 world, looks at us for what we're doing because
24 we're such an important part of the state's, the
25 country's, and the world's economy.

1 And the figure that I've been using
2 frequently is that we're, as a local economy we're
3 105 billion strong. And so decisions we make are
4 leveraged for either success or failure, and so
5 it's a very weighty matter, indeed.

6 So what I'd like to say is that we, as a
7 group, are committed long term to maintaining the
8 -- the quality of life and increasing it here in
9 Silicon Valley for -- for employers, employees and
10 their families. And so this is a very important
11 issue for us, and we do not take it lightly. And
12 we believe this philosophy has served us well in
13 gaining broad agreement on many critical issues we
14 face collectively, including this current energy
15 crisis.

16 And so understanding that a long -- part
17 of the long term solution is to significantly
18 increase the local supply of electric power. We
19 want to point out that experts agree that a
20 significant portion of our power should come from
21 local baseload, and the figure that I've received
22 is about 40 percent or more. And at -- our
23 current level is approximately 14 percent, as it's
24 listed over here, with our current needs, we are
25 over a thousand megawatts short of that kind of

1 goal.

2 And therefore, what we see is that the
3 Metcalf Energy Center would be an essential
4 foundation for a portfolio of measures to rectify
5 this problem. So we believe in that portfolio.
6 We need baseload. We need distributed generation.
7 We need all kinds of ways to -- to lessen demand,
8 as well, and so we support this portfolio of
9 approaches, including quite a lot of conservation.

10 So with that in mind, and after careful
11 analysis of the project based on the need for
12 electricity, environmental land use
13 considerations, the manufacturing group believes
14 that the benefits of the Metcalf Energy Center far
15 outweigh the negatives for working families and
16 businesses here in Silicon Valley. And
17 consequently, we strongly support the project and
18 recommend that the California Energy Commission
19 vote to approve siting the Metcalf Energy Center
20 as soon as possible.

21 And I have a copy of our testimony and
22 our criteria and how we responded to that for your
23 submittal.

24 PRESIDING MEMBER LAURIE: Thank you very
25 much.

1 Mr. Redding. Evening, sir.

2 MR. REDDING: Good evening. My thanks
3 to Commissioner Laurie and to Mr. Fay for coming
4 to San Jose, and my thanks to Mrs. Laurie, as
5 well.

6 I am the Co-Chair of the Energy
7 Committee for the Silicon Valley Manufacturing
8 Group, and I have a Master's degree in power plant
9 engineering and an MBA from Santa Clara. And I'm
10 pleased to say tonight that the Silicon Valley
11 Manufacturing Group enthusiastically endorses the
12 Metcalf Power Plant.

13 The committee that I chair includes 35
14 energy experts from local companies. They're the
15 energy managers for the manufacturing facilities
16 in this area, and they, my committee has reviewed
17 this carefully over the course of the last --
18 well, several months, since July or August of last
19 year. Our process is not as thorough as yours,
20 but it's thorough, and we came to the conclusion,
21 with the help of environmental experts from our
22 member companies, and land use experts from our
23 companies, that this power plant would benefit not
24 only our businesses, but the common good of
25 Silicon Valley and Santa Clara County.

1 And we presented our recommendation to
2 the Manufacturing Group's Board of Directors last
3 week. This is composed of many CEOs whose names
4 you would recognize, and they enthusiastically
5 endorsed this power plant at this location.

6 Want to change hats for a minute. I'm
7 also the manager of marketing and public affairs
8 for General Electric here in San Jose. And GE
9 likewise believes this power plant would be for
10 the common good of Santa Clara County, not only
11 our business, but for the common good of the
12 community. We've been in San Jose since the
13 1940s, so we have a long term stake in our
14 community.

15 And I want to say, just as an aside,
16 that we're pleased to have Calpine as a corporate
17 citizen here in San Jose, and we're delighted that
18 they've made the commitment to San Jose, as
19 evidenced, I think, by their willingness to work
20 with the community in the design of the plant.
21 And we're pleased that they've made a commitment
22 to the State of California by entering into some
23 long term agreements at reasonable rates to help
24 us through this crisis. So General Electric is --
25 is pleased to have Calpine as a corporate

1 neighbor.

2 And lastly, I'm going to put on the hat
3 as a resident of San Jose for the last 25 years.
4 I've been an active community -- member of the
5 community. I'm the chair of the Santa Clara Parks
6 and Recreation Commission. I'm on the board of
7 several charities and youth groups. I'm a
8 candidate for local office, and I was on
9 committees that helped draft the land use portions
10 of the city's general plan.

11 And I believe this is a good location
12 for this power plant. The -- I think for me an
13 important consideration is that when the general
14 plan was written, in particular the Coyote Valley
15 master plan was written, no one had any idea that
16 we would deregulate electricity in California, and
17 that what once was provided by PG&E and Edison
18 would therefore be put into private hands. You
19 can argue whether it's right or wrong, but that's
20 the situation we have. General plans never ever
21 envisioned that. If they had, I daresay we
22 wouldn't be here tonight.

23 And so I think, with that in mind, it's
24 important to -- to realize that general plans,
25 land use decisions have not caught up with the

1 current reality. They're behind.

2 And so, again, I think with that in
3 mind, this is a good location. It's a good power
4 plant. Having studied the Metcalf Energy Center
5 as I have for the last couple of months, I know
6 how thorough your own process is, and I can say as
7 an individual, that I am comfortable putting this
8 decision into your hands. Which I think we heard
9 earlier, is the proper place to put this. And as
10 -- as a citizen of this community, as a
11 representative of General Electric, and as a
12 representative of the Silicon Valley Manufacturing
13 Group, I urge you to take the broader view and
14 approve this power plant.

15 Thank you very much.

16 PRESIDING MEMBER LAURIE: Thank you, Mr.
17 Redding, very much.

18 One thing I've benefitted from from this
19 process, learning from Mr. Williams and others,
20 power plant engineers can, if they try really
21 hard, develop a sense of humor.

22 (Laughter.)

23 PRESIDING MEMBER LAURIE: And that has
24 been a learning experience for me.

25 Mr. McIntosh. Good evening, sir.

1 MR. McINTOSH: Good evening,
2 Commissioner. Thank you very much for the
3 opportunity also to speak here tonight. I'm also
4 representing several entities, all in favor of --
5 of the Metcalf Energy Center.

6 First, I'd like to say that I'm
7 representing myself. I personally believe this is
8 an excellent idea, and something that needs to be
9 done for -- for Santa Clara Valley and San Jose.
10 Having personally been here as a resident in the
11 County of Santa Clara for 39 years, and most of
12 that time in the City of San Jose --

13 PRESIDING MEMBER LAURIE: Except if you
14 are representing yourself we wouldn't hear you
15 until the 23rd, so.

16 MR. McINTOSH: Yes. Okay.

17 (Laughter.)

18 MR. McINTOSH: So moving right along, I
19 am also representing the interest of the company
20 that I am an employee of, Advanced Micro Devices,
21 who has also weighed in in favor of the Metcalf
22 Energy Center. In fact, I have two letters,
23 copies of letters that I won't read, but would
24 like to leave with you, stating how important we
25 feel the -- this energy center is.

1 In addition, I'm also a member of the
2 Silicon Valley Manufacturing Group committees that
3 did a very thorough evaluation of this plant,
4 both the land use committee and the energy
5 committee. The Manufacturing Group did put
6 together a very thorough set of criteria
7 evaluating the need for electricity, the
8 environmental requirements, and also the land use
9 requirements. And the committees, including the
10 energy committee, voted in favor of -- of the
11 plant, based on this very thorough evaluation.

12 And when this was raised to the
13 Manufacturing Group Board of Directors, the Board
14 enthusiastically voted in favor of that, as well.
15 So I'm here to say that the Manufacturing Group
16 has weighed in in favor of this. It is an
17 essential thing for the valley to proceed with.

18 I will also say that we found that the
19 California Energy Commission process was very
20 thorough and was used by us as -- as a reference.
21 We were able to have -- have that information to
22 help us make our evaluation, and we thought it
23 made a very considered approach to this. It was
24 an important work, we feel, to evaluate the pros
25 and cons of all sides of the argument.

1 We feel, from all those various
2 directions, that this plant is very important to
3 the future of Santa Clara County and we certainly
4 encourage you move as expeditiously as possible
5 through the override process, if that's necessary,
6 to get this plant sites and online. We need it
7 very badly, very quickly.

8 PRESIDING MEMBER LAURIE: Thank you, Mr.
9 McIntosh.

10 MR. McINTOSH: Thank you.

11 PRESIDING MEMBER LAURIE: Your comments
12 are appreciated.

13 Cal-ISO. Good evening, sir.

14 MR. AMARALI: Good evening,
15 Commissioner. My name is Ali Amarali. I'm a
16 Senior Operations Engineer at California ISO.
17 And --

18 PRESIDING MEMBER LAURIE: Are -- are you
19 speaking on behalf of the entity?

20 MR. AMARALI: Yes, sir. I am.

21 I was sitting there listening to the
22 Assemblywoman, and -- and the other speakers, and
23 I have been going on and saying okay, that is a
24 point I wanted to make, this is a point I wanted
25 to make. And it seemed like everybody has pretty

1 much stolen my thunder, so I'm just going to speak
2 on the reliability benefit of having newer, more
3 reliable power plants built in California and
4 built in site in load centers such as the Bay
5 Area.

6 Bay Area is generation deficient. It is
7 so generation deficient that every power plant
8 inside Bay Area is declared reliability must run
9 by the ISO. We have a saying at the ISO, the Bay
10 Area is so generation deficient that if you go to
11 your local hardware store and buy a Honda
12 generator and crack open the box, an Armour
13 contract comes with it.

14 And so that just points to the gravity
15 of how much dependence this area has on local
16 generation. The events of June 14th, 2000, are a
17 glaring example of the dependence of Bay Area on
18 local generation. On that particular day, the
19 state was generation sufficient, but the local
20 area was deficient because we had power plants out
21 in the area. The fleet of power plant that is
22 supplying this particular area is approximately 33
23 years old. So these power plants are old, they
24 require more maintenance, they break down more
25 often, and they are down for longer periods of

1 time. Based on that, we need to build new
2 generation in the area so we can supply this area
3 in a reliable manner.

4 Going to the more global picture, from a
5 state point of view, one has to be in an advanced
6 state of denial to know that California is energy
7 deficient today. We need to build more power
8 plants for -- from the state point of view, so
9 that we can supply the growing needs. The
10 Governor of California has put out -- put in front
11 of us a very challenging goal of having --
12 building 20,000 megawatts of new power plants
13 within the next few years. That -- that goal can
14 only be met if we build more power plants that are
15 cleaner burning, and have less -- put less of an
16 impact on our state's and our nation's depleting
17 natural resources, such as natural gas. The newer
18 power plants are clean. They are more reliable,
19 and so we can rely upon them to be online when we
20 need them.

21 We find ourselves today in a very
22 challenging time, from an energy standpoint. The
23 problem that we face today can only be solved by
24 all the entities working in committed
25 collaboration and doing their share. The concept

1 of not in my back yard, should that be alive and
2 well? I think we all have a very tough time
3 meeting the challenging goal of putting in more
4 resources and becoming energy sufficient.

5 Thank you very much.

6 PRESIDING MEMBER LAURIE: Thank you,
7 sir.

8 Berkeley Driessel. Evening, sir.

9 MR. DRIESSEL: Good evening. My name is
10 Berkeley Driessel.

11 PRESIDING MEMBER LAURIE: Driessel.
12 Thank you.

13 MR. DRIESSEL: I'm the President of the
14 Association for Good Government of Santa Clara
15 County. For 26 or 7 years we have been the
16 watchdog of quality local government in this
17 county. Supervisor McHugh, Mayor Gonzales, both
18 operate under term limits which were originated by
19 discussions within our organization. We watch the
20 quality of decision making of local government
21 carefully, and we will not address this Commission
22 about the quality of the San Jose City's decision.
23 We'll directly deal with them, but we believe it
24 was flawed.

25 And I have a resolution that I don't

1 have with me, but I'll fax it to you when I get a
2 number, that we passed and presented to the Board
3 of Supervisors several weeks ago.

4 I have three things to say. First of
5 all, as a guy who loves good government, thank
6 God. I think, for the first time you guys are
7 actually coming out to local associations and
8 organizations. Thank you. You're now reaching
9 the heart of this community, the people who care
10 enough to actually come out to the meetings, do
11 things in a society where people do that less and
12 less, where we associate with each other, where we
13 volunteer our time. Our organization doesn't take
14 any money from business organizations. We live on
15 \$10 a person dues. We're all volunteers, nobody
16 gets paid a cent. We care about good government.

17 And I have to tell you, I've gone to
18 three of your meetings. And tonight, and I want
19 to make my first comment is about the procedure
20 tonight. I see impassioned and intelligent people
21 like Mr. Williams, who've been involved, and the
22 long, legalistic debate with the attorneys here,
23 we didn't need attorneys here to give us a long,
24 involved discourse on the law. Five minutes,
25 maybe, from somebody that said you had

1 jurisdiction.

2 We can speak for ourselves. That's what
3 a public hearing is about. I'm a County
4 Commissioner. Next time you do it, get the
5 lawyers off the table. The Intervenors, let them
6 -- they do that all the time. You've spent hours
7 of -- so much patience, and a little bit of humor
8 -- actually, a lot of humor, when you go that long
9 procedure. But you're talking to the people
10 tonight. When you do it next time, we don't need
11 them here to give us advice.

12 We know how to talk to you, and you
13 certainly know how to listen. Thank you --

14 PRESIDING MEMBER LAURIE:

15 Constitutionally, we've got to have lawyers, Mr.
16 Driessel.

17 (Laughter.)

18 MR. DRIESSEL: Well, they get paid by
19 the hour.

20 HEARING OFFICER FAY: The record should
21 reflect that Commissioner Laurie is a lawyer
22 member of the Energy Commission.

23 (Laughter.)

24 MR. DRIESSEL: Our General Counsel
25 couldn't be here tonight, but he will be there on

1 the 23rd to represent us as a private citizen. We
2 get legal advice, too, but -- just as a matter of
3 process, we really didn't need legal advice for
4 the public to talk to you.

5 PRESIDING MEMBER LAURIE: But I'm so an
6 officer also has civil service protection.

7 (Laughter.)

8 MR. DRIESSEL: Now I'll move on to the
9 substance.

10 I'm not -- I'm not an engineer, and I'm
11 not a physicist. We have a small board, but we
12 have one Ph.D. degree in physicist, and we have
13 one Mormon woman who's an engineer. And she did
14 her work in power, believe it or not. And they
15 reviewed this proposal, and people like me who
16 deal with public policy and look at quality of
17 government, listened to them as they went through
18 this rigorous review. We volunteers sat at seven
19 different meetings and went over the testimony of
20 the City Council, the documentation that Calpine
21 did, the testimony of the Intervenors, and -- and
22 people who objected to it. And we just came to
23 this conclusion.

24 And incidentally, as a former Airports
25 Commissioner for the county, I've heard other

1 people who didn't want airports in their area,
2 too. People have complaints for public necessity.
3 The truth is, the overwhelming evidence before
4 that council and that we reviewed dictates that
5 this is the best option.

6 Now, as a personal note, I had a heart
7 attack not long ago. What happens to you when you
8 go to Valley Med, the newest hospital in the area,
9 and you have a heart attack, is if you have the
10 energy die, they fire up those -- those temporary
11 generators. They're diesels. They're dirty as
12 hell. And you breathe that air, because it's
13 right in your area there. If those diesels fail
14 and they're doing the procedure I had, you're a
15 dead man.

16 So we're talking about life and death
17 continuity of energy supply here, and the county
18 and our hospital and health system had complaints
19 when we had the rolling blackouts that were very,
20 very serious. And that was temporary. Wait until
21 this summer.

22 So you guys are not just in the business
23 of seeing that power is supplied. You're in the
24 business of seeing -- and also the Senior Care
25 Commission of the county, that old people on

1 respirators and things in their homes and stuff,
2 that they have power, and if that power goes off,
3 they can actually die.

4 So I take this subject so seriously that
5 I'll come to this meeting, and every other darn
6 meeting I have to come to, to make the point that
7 high tech plants that generate these kind of
8 megawatts are absolutely crucial to the lives of
9 the people in this community. And our
10 organization represents people from Palo Alto to
11 Gilroy. We're a small, non-profit. We had an
12 elected official here from the county. They went
13 for it. All we can say is we need this, and we've
14 got as objective an analysis as we can do.

15 Commissioners, do your job, and then
16 we'll have to worry about the next thing, which is
17 getting water to the plant after you approve it.

18 Thank you.

19 PRESIDING MEMBER LAURIE: Thank you, Mr.
20 Driessel.

21 Armon Mills. Good evening, sir.

22 MR. MILLS: Good evening. Thank you.

23 My name is Armon Mills, and I'm the
24 Publisher of Silicon Valley Business, Inc., and
25 I'm also a Past Chair of the San Jose Silicon

1 Valley Chamber of Commerce, and currently serve on
2 numerous charity and community boards of
3 directors.

4 I'm here tonight to support the Metcalf
5 Energy Center site as proposed. I've visited the
6 Metcalf site many times over the last two years.
7 I've studied the facts. I've read the California
8 Energy Commission's Staff Report in support of the
9 project. In my opinion, the Metcalf site is the
10 very best location with its proximity to the
11 substation, and also, with the site being tucked
12 in behind a large hill the proposed site would not
13 be visible to the closest residential
14 neighborhoods.

15 I've had the opportunity to communicate
16 with many business and community leaders, and have
17 accompanied many of these individuals on a trip to
18 the site. I am pleased to share with you that
19 once business and community leaders have studied
20 the facts and observed the site, they have become
21 very supportive of the project.

22 Blackouts, rolling brownouts, energy
23 alerts, these are somewhat new terms to the people
24 of Silicon Valley, but ones that we've had to get
25 used to hearing in recent months. And while these

1 blackouts and brownouts are a major inconvenience
2 to the valley's residents and to the business
3 community, they mean much more. They represent
4 lost production, lost business, and lost revenues,
5 which most definitely could contribute to the end
6 of our economic prosperity.

7 It cannot be said too many times.
8 Reliable energy is key to the continued economic
9 growth in our area. When that reliability is
10 doubtful, as it is now, our local companies will
11 look to other areas that can and will meet their
12 energy needs, taking their business and our
13 economic growth with them.

14 It seems pretty simple, if you think
15 about it. We need more power, and at the same
16 time we have a plant in front of us to generate
17 that power. The Sierra Club, local chapters of
18 the American Lung Association, the San
19 Jose/Silicon Valley Chamber of Commerce, the
20 Silicon Valley Manufacturing Group, and the
21 California State Assembly, and several other very
22 credible organizations have given very impressive
23 endorsements to the Metcalf site.

24 Again, I am here this evening to urge
25 you to override the San Jose City Council's vote

1 and support the Metcalf Energy Center.

2 And I appreciate the opportunity to
3 speak. Thank you very much.

4 PRESIDING MEMBER LAURIE: Thank you, Mr.
5 Mills.

6 Mr. Gates. Good evening, sir.

7 MR. GATES: Good evening, fellow -- or
8 Commissioners.

9 PRESIDING MEMBER LAURIE: Bob. Bob's
10 fine.

11 MR. GATES: I'm an American Indian and I
12 have asthma, so maybe I can get that guy from --
13 back from the NCAA in here, and we can get some
14 more reasons on for why have the Metcalf Energy
15 Plant.

16 But my name is Larry Gates, and I'd like
17 to thank the Commission for giving us the
18 opportunity to speak in favor of the proposed
19 Metcalf Energy Center. I represent the Santa
20 Clara Valley Contractors' Association and the
21 South Bay Piping Industry, which translates into
22 more than 200 contractors and about \$2 billion of
23 mechanical contracting and related construction
24 work annually in Santa Clara County and beyond.

25 The trained technicians that the Santa

1 Clara Valley Contractors' Association utilizes to
2 perform this work for the -- are the plumbers and
3 fitters of Local 393, Sheet Metal Workers Local
4 104, Electricians IBEW Local 332. When combined,
5 this totals to more than 10,000 construction
6 workers, and especially their families, working in
7 our area.

8 The contractors we represent have built
9 every major facility in Silicon Valley, and the
10 success of the high tech industry has had its
11 genesis here in Santa Clara County. The high tech
12 industry's continued success is dependent upon
13 reliable energy resources. We must maintain a
14 pace with national and international markets, and
15 we can't afford to sit on the sidelines. The very
16 life of medical research and engineering
17 advancements in our valley has been successful
18 only because we've had easy access to energy at a
19 cost that has not been prohibitive.

20 Energy is vital to the economy here,
21 probably more -- more here than anywhere else in
22 the world. The time is now, and our industry
23 can't stand by and lose our markets by watching
24 businesses move out of state and abroad for lack
25 of viable energy resources.

1 The valley is -- this valley is a
2 wonderful place to live, as is evident in our
3 growth and success. We have always encouraged our
4 expansion carefully. Let's continue our
5 victories, not only in construction and
6 technology, but in planning for the future of our
7 community by building energy sources like the
8 Metcalf Energy Center.

9 In closing, I truly thank you for the
10 time and consideration, and sincerely hope that
11 you will swiftly move forward with this project.
12 Thank you very much.

13 PRESIDING MEMBER LAURIE: Thank you, Mr.
14 Gates.

15 What we will do now is Hearing Officer
16 Fay has some questions for the Applicant resulting
17 from their presentation. Then we will go back to
18 Public Comment. Okay. Mr. Fay.

19 HEARING OFFICER FAY: Mr. Ellison or Mr.
20 Harris, whoever. I just -- just had a few
21 questions regarding your override comments.

22 One is that if there is -- if the
23 Commission were to find that there is an
24 alternative that is as reasonable as the Metcalf
25 project, does that preclude the Commission from

1 overriding the land use determination of the City
2 of San Jose?

3 MR. ELLISON: The answer would be no, it
4 does not preclude the Commission from exercising
5 its override authority. The test which is
6 provided in the statute is not as reasonable; it's
7 whether there is an alternative which would, in a
8 manner that is more prudent and feasible, meet the
9 public convenience and necessity of this project.

10 HEARING OFFICER FAY: So the -- so the
11 alternative would have to exceed the benefits of
12 the Metcalf project. Is that basically your
13 approach?

14 MR. ELLISON: Yes, I believe that's --
15 that's the case. It certainly -- and to be
16 precise here, and I think it is one of the reasons
17 that we responded to the Committee's invitation to
18 address the standard, was to go through that
19 statute word by word. I think those are carefully
20 chosen words by the legislature.

21 I would add, by the way,
22 parenthetically, that the legislature did amend
23 this statute post deregulation, and so there is, I
24 don't think, any question that that statute is not
25 an anachronism from the past. We can talk about

1 that further, if you wish.

2 But returning to the -- to the point,
3 the -- in enacting that kind of statute
4 particularly, and you look at the -- at the words
5 that the legislature chose, those are carefully
6 chosen words. And I think that the phrase that's
7 used as -- in the statute, requires that the
8 alternative be more prudent and feasible means of
9 achieving such public convenience and necessity.

10 The word "more" is in that statute, and
11 I think the -- that that compels an answer to your
12 question that yes, it would have to exceed the
13 benefits of this project. And the benefits have
14 to be the benefits of this project, and not some
15 different benefit that might be provided by a
16 different project.

17 HEARING OFFICER FAY: If -- if the
18 benefits are found to be more prudent and feasible
19 for the proposed project than the alternatives, is
20 the Commission then automatically compelled to --
21 to override?

22 MR. ELLISON: I'm sorry. Could you
23 restate your question?

24 HEARING OFFICER FAY: The Commission
25 would have to find that the project is a public

1 convenience and necessity. It would then have to
2 find that there was no more prudent and feasible
3 means of meeting such public convenience and
4 necessity. If it were to find both of those
5 clauses in favor of the project, would it then be
6 compelled to make the override?

7 MR. ELLISON: Let me read the statute
8 for one moment.

9 HEARING OFFICER FAY: Or is it still
10 discretionary at that point.

11 MR. ELLISON: Let me say this. I have
12 not frankly thought much about this question, and
13 so I'm going to reserve the right to address it in
14 the brief.

15 But I will say that my preliminary
16 reaction, since you've asked for that, is that the
17 Commission would retain discretion to override or
18 not override, even where it made both of those
19 findings.

20 HEARING OFFICER FAY: And can we also
21 assume that the Commission would have the -- the
22 discretion of taking into account a wide range of
23 factors not listed in the statute. The language
24 says including but not limited to, and would you
25 agree that that leaves -- leaves it open to the

1 discretion of the Commission to -- to examine
2 things other than the environment, consumer
3 benefits, and electric system reliability?

4 MR. ELLISON: Yes, I certainly would
5 agree with that, with the caveat that the other
6 considerations, according to standard rules of
7 statutory construction, would generally be of the
8 same kind and character as those that are listed.

9 The other point that I would make is
10 that I think by specifically listing those three,
11 the legislature has called them out and suggested
12 that they are of particular concern.

13 But to -- but the answer to your
14 question is yes, the Commission has the discretion
15 to consider additional things, as well.

16 HEARING OFFICER FAY: And is it -- is
17 the threshold all or nothing on -- on the question
18 of overriding local authority and local
19 determinations, or should the Commission take into
20 account the gravity of that particular override.
21 In other words, impose its own judgment on how
22 serious the step is in overriding the local
23 jurisdiction.

24 MR. ELLISON: Again, with the caveat
25 that some of the details of this I think will be

1 in our brief, let me say that generally, I think
2 the Commission has very broad discretion in this
3 statute to consider a wide variety of factors. I
4 do not think that the Commission would be abusing
5 that discretion for it to consider the nature of
6 the non-compliance, in other words, the
7 seriousness of the override in the way that you
8 put it in your question, Mr. Fay, in deciding
9 whether to exercise its override power.

10 And let me add one other thought to
11 that. In that respect, I think it would be
12 appropriate for the Commission to consider whether
13 the particular laws at issue, the particular non-
14 compliance at issue, were laws that were developed
15 specifically with this situation, power plants, in
16 mind, or not. I think it is a more serious matter
17 for the Commission to license a facility that does
18 not comply with a statute or ordinance that was
19 intended to apply to this specific kind of
20 circumstance for power plant, than it would be to
21 override a non-compliance with a law or ordinance
22 that was not designed for this kind of
23 circumstance, and was not designed with power
24 plants in mind.

25 And in that regard, I would point out

1 that the general plan and local zoning laws that
2 are at issue in this case, local governments are
3 not required to plan for power plants or not
4 designed to deal with this kind of situation.

5 HEARING OFFICER FAY: If I recall
6 correctly, it was Mr. Redding who referred to the
7 land use decision making process following behind
8 electricity deregulation, and not having caught
9 up. Is that the type of analysis you're referring
10 to? In other words, that even though the City of
11 San Jose declined to -- to make a change, that the
12 original land use decision did not contemplate
13 this situation at all.

14 MR. ELLISON: There are two separate
15 issues, I think, in your question, and to be
16 precise I want to separate them.

17 There is the issue of whether the --
18 whether the override statute has somehow become
19 anachronistic, because of deregulation. Let me
20 set that aside. If you wish me to pursue that I
21 will.

22 What I was referring to, though, was
23 something different. And that is, there are --
24 this statute enables the Commission to override a
25 non-compliance with any non-federal applicable

1 law. That, therefore, would include, for example,
2 you could have an environmental law that was
3 specifically written with power plants in mind.
4 Or, alternatively, you might have, as we have
5 here, a situation where the general plan, local
6 zoning laws of the City of San Jose, were not.
7 You know, power plants were -- the location for a
8 power plant was not an issue at the time these
9 laws were put together. It was not required that
10 the City of San Jose find a location for a power
11 plant.

12 It's not as though the City of San Jose
13 adopted a land use plan that located the
14 appropriate location for a power plant somewhere
15 else. That's what I was referring to. At the
16 time that the City of San Jose adopted these laws,
17 they were not written for this kind of situation
18 in mind. I think that's a different circumstance,
19 and I think the Commission's allowed to take that
20 difference into account than would be the case in
21 a hypothetical where the override at issue was the
22 override of a law that was specifically
23 consciously adopted for the circumstance of a
24 power plant.

25 PRESIDING MEMBER LAURIE: Let me follow

1 up on Mr. Fay's question. And this may be
2 repetitive of Mr. Fay's question.

3 There are local laws, and then there are
4 local laws. Some of local laws are sacred to the
5 local government. And the most sacred relates to
6 a local government's land use authority, because
7 it is one of the few discretionary actions that
8 local governments still have.

9 A general plan and an ability to
10 determine one -- one's own boundaries are
11 certainly among the most vital decisions that
12 local governments made, and therefore hold that
13 right dearly.

14 I thought I heard Mr. Fay's question
15 being should we weigh the import of the local rule
16 or ordinance that we deem necessary to override,
17 comparing the general plan or annexation decision
18 to, let's say, a setback requirement, or a height
19 restriction, or some lesser rule. Should that be
20 part of our consideration?

21 MR. ELLISON: I think the commission
22 would be within its rights to take that into
23 account. But let me answer your question in a
24 slightly different way.

25 I think what the Commission is called

1 upon to do, as I discussed in my opening
2 statement, you -- you are charged with
3 representing the interest of the citizens of the
4 State of California as a whole, with respect to
5 this matter. The reasons that I read those intent
6 provisions of the statute was to make the point
7 that this is not purely a local decision.

8 This is not an issue whose impacts stop
9 at the boundary of the City of San Jose. The very
10 widespread interest that you have seen some
11 evidence of tonight, and that you have seen much
12 more evidence of over the last several months in
13 this specific case, reflects the fact that the
14 benefits of this energy center flow not only to
15 the citizens of California, but the entire western
16 interconnection. In exercising that very serious
17 responsibility that you have, and I -- and I don't
18 envy your situation, this is an important time and
19 an important decision the world is watching -- in
20 exercising that responsibility to act on behalf of
21 the interests of the citizens of the state as a
22 whole, I think you have broad discretion to
23 consider many of the things that we've talked
24 about tonight.

25 But at the end of the day, I think what

1 matters is your judgment, based on real evidence
2 in this record, of what is best for the citizens
3 of the State of California, and the local feelings
4 about which laws are important or not important
5 are something that you can take into account in
6 making that judgment. But at the end of the day,
7 that's not what's dispositive. What I think is
8 dispositive is the test that's set forth in the
9 statute measured against the interest of the state
10 as a whole.

11 PRESIDING MEMBER LAURIE: Thank you.
12 Did you have anything else, Mr. Fay?

13 HEARING OFFICER FAY: Just one more.
14 And that is, you cited the fact that once before
15 in the existence of the Commission, the Commission
16 overrode local government. The case was taken to
17 the California Supreme Court, and the California
18 Supreme Court supported the Energy Commission in
19 that case.

20 Do you believe that the Commission
21 should rely on The Geysers 16 decision for
22 guidance in handling the current situation?

23 MR. ELLISON: Well, certainly as a
24 Supreme Court decision on the very statute at
25 issue I think -- I think the Commission should --

1 HEARING OFFICER FAY: Well, not --

2 MR. ELLISON: -- look to that case.

3 HEARING OFFICER FAY: -- the Supreme
4 Court decision, but the -- but The Geysers 16
5 decision of the Energy Commission.

6 MR. ELLISON: Yes, with -- with the
7 caveat that there are some differences that --
8 yeah, the Commission obviously needs to look at
9 that case, but mindful of, you know, the different
10 set of circumstances that may exist here. But
11 certainly any precedent, and because the
12 Commission has been judicious in its exercise of
13 this power, there are not a lot of precedents
14 here.

15 But any precedent, and that is the
16 leading one within the Commission's decisions, you
17 know, you should certainly look at that, and we
18 will certainly be discussing that in our brief, as
19 I'm sure others will, as well. It's relevant.

20 HEARING OFFICER FAY: Thank you.

21 PRESIDING MEMBER LAURIE: Thank you.

22 We now have additional public comment.
23 And I will call -- if anybody who has not filled
24 out a blue card wants to speak, please fill one
25 out and give them to Ms. Mendonca. I think these

1 cards were in order before they took a trip on
2 their own.

3 Mr. Murphy. Mr. Murphy, for the record,
4 is an Intervenor in this case. Good evening, sir.

5 MR. MURPHY: Yes, I'm speaking as a
6 member of the public tonight. I reserved time to
7 comment as an Intervenor for the 23rd. Does that
8 make sense? I thought that's what we were offered
9 today.

10 PRESIDING MEMBER LAURIE: What I'm
11 trying to avoid, what we wanted to do, and
12 certainly. But what we wanted to do was provide
13 an opportunity for representatives of groups. In
14 many cases, Intervenors represent groups. Some of
15 those Intervenors indicated a desire to put their
16 comment off until the 23rd.

17 There is room for public only singular
18 person comment tonight. I would rather it not be
19 duplicative. That is, when you speak on the 23rd,
20 you can speak as a individual, as well.

21 But that -- that's fine. Why don't you
22 go ahead and offer your comments as an individual,
23 if you can somehow segregate those from your
24 position as an Intervenor.

25 MR. MURPHY; Sure. I will try to do

1 that. I may not speak at all on the 23rd. I just
2 wanted to reserve that.

3 First, my understanding of the purpose
4 of tonight's session was to review override
5 issues, and unfortunately, other than the two
6 sitting up here, I didn't hear any of that from
7 the other speakers.

8 PRESIDING MEMBER LAURIE: Yeah. In
9 fact, that -- that's not exactly correct.

10 MR. MURPHY: Okay.

11 PRESIDING MEMBER LAURIE: The purpose of
12 tonight's override discussion was to let the
13 parties discuss override. We weren't asking the
14 members of the public who represented groups to
15 necessarily speak on override at all. And so I
16 apologize for that miscommunication, if there was
17 such.

18 MR. MURPHY: Okay. And I do want to
19 speak to overrides.

20 The courts have determined that the
21 terms required for public convenience and
22 necessity, and more prudent and feasible
23 alternatives are flexible, and give agencies broad
24 discretion. Each case must be determined on its
25 own merits, considering all the applicable facts

1 and considerations.

2 I believe I heard Mr. Harris speak of a
3 burden -- he didn't use that word -- put upon the
4 opponents to this project, that we are the ones
5 supposed to find an alternative that meets or
6 exceeds the needs proposed by this project. My
7 understanding is that all burden is upon the
8 Applicant. The Applicant has the burden of proof
9 on all matters necessary to make the findings that
10 the proposed facility is required for the public
11 convenience and necessity, and that there are not
12 more prudent and feasible means of achieving such
13 public convenience and necessity. That requires
14 the evidentiary record, of course.

15 A most important point that I wanted to
16 bring up is that -- give me a moment, please.

17 HEARING OFFICER FAY: You are correct in
18 that, Mr. Murphy. The Applicant has the burden.

19 MR. MURPHY: Thank you. I thought it
20 was being implied that the opponents needed to
21 justify an alternative site in order for the
22 Commission to not override.

23 HEARING OFFICER FAY: The Applicant does
24 not have the burden of justifying an alternative
25 better than their project. They do have -- they

1 do have the burden of proving that their project
2 is -- is better, or as good as any of the other
3 alternatives.

4 MR. MURPHY: Okay. I've been informed
5 that the most important concept to understand
6 about LORS overrides is that there are no hard and
7 fast rules. The two determinations that the
8 Commission must make in order to have an override
9 have been discussed, and -- sorry, I lost my place
10 again.

11 I apologize. Give me a second.

12 HEARING OFFICER FAY: Okay. Well,
13 you're welcome to submit these comments in
14 writing, if you --

15 MR. MURPHY: I know.

16 HEARING OFFICER FAY: -- want to.

17 MR. MURPHY: I know. Okay. The
18 Commission may not license a power plant or a
19 transmission line that does not comply with LORS
20 unless the Commission determines that such
21 facility is required for public convenience and
22 necessity, and, two, that there are not more
23 prudent and feasible means of achieving public --
24 such public convenience and necessity.

25 The important point -- the most

1 important point that I want to point out is that
2 if the Commission makes these two determinations,
3 the Commission may override, but it's not required
4 to. Even if the Commission determines that the
5 facility is required for public convenience and
6 necessity, and that there are not more prudent and
7 feasible means of achieving such necessity,
8 convenience and necessity, it is not required to
9 override. That's part of Public Resources Code
10 25525. It certainly may override if it makes the
11 two determinations, but it doesn't need to do so.
12 This is according to a synopsis provided by
13 Jonathan Bles, Assistant Chief Counsel with the
14 Energy Commission.

15 Those are really the two main points
16 that I wanted to cover.

17 PRESIDING MEMBER LAURIE: Thank you,
18 sir.

19 MR. MURPHY: Thank you.

20 PRESIDING MEMBER LAURIE: We've been
21 going for two hours. Mr. Reporter, you're doing
22 okay for a while? Thank you.

23 Mr. Sawyer. Good evening, sir.

24 MR. SAWYER: Good evening.

25 PRESIDING MEMBER LAURIE: Is this your

1 Grange Hall?

2 MR. SAWYER: Yes, it is.

3 PRESIDING MEMBER LAURIE: Great job.

4 MR. SAWYER: I was about to tell you
5 that. I hope you're comfortable.

6 PRESIDING MEMBER LAURIE: Yes, great
7 job. We certainly are.

8 MR. SAWYER: This Grange Hall has been
9 here in this place since 1927. And we are
10 something like 500 yards from the proposed Metcalf
11 Energy Center.

12 I, right now, I am representing the
13 California State Grange, and in particular, the
14 Santa Clara Valley Grange group, who are eight
15 subordinate Granges, and they have unanimously
16 approved the issue of the plant in its location,
17 and all of the reasons that have been documented
18 in the exhaustive work that you have done in the
19 assessment, are a party to everybody's review of
20 the plant.

21 They know a great deal about it, because
22 we live right across the street, as I mentioned.
23 And what we're talking about is land that has been
24 there and has been abused and not used, and we're
25 not talking about the whole land that is at issue,

1 it's just a piece of it. And that piece is a
2 junkyard and probably would not be used for
3 anything else, anyway.

4 We are very anxious to see Calpine's
5 issue built there, because it will beautify the
6 issue that we hope to have here and making this
7 Grange Hall a better place, and a nicer place for
8 everybody to meet.

9 There are some 25,000 members of the
10 Grange in the State of California, and I do
11 represent the state in a deputy activity. And as
12 a person I have an engineering degree, and I
13 therefore am familiar with all of the issues that
14 have been handled, and even though I would not
15 dare to go through and calculate any of these I
16 immediately recognize that there is a -- a
17 tremendous amount of work that's gone in -- in
18 complexity and in extent, and I think that that
19 has to be considered.

20 I think also that the City of San Jose
21 is foolish in not allowing this, because there are
22 many other cities within the area. The Grange
23 goes everywhere from Palo Alto to Gilroy, and
24 those Grangers are people who understand more than
25 agriculture these days. And I really submit that

1 if we want to keep this valley, Silicon Valley,
2 because agriculture has gone from this area a long
3 time ago, and Silicon Valley is certainly
4 necessary as far as the economics and the best
5 conditions for this area now is considered. If we
6 don't provide adequate power, reliable power,
7 we're going to find these high tech companies
8 going somewhere else.

9 We therefore have written a resolution.
10 The Grange has -- I'm not going to read that, I
11 have already done so for one of the California
12 representatives, but I will leave one with you so
13 that you may see what the Grange people say.

14 PRESIDING MEMBER LAURIE: We would want
15 to get that docketed. If you could provide a copy
16 of that to Ms. Mendonca, the Public Adviser, so
17 that she can do so.

18 MR. SAWYER: I'd be delighted. And we
19 are very pleased to see you here, and we hope that
20 you can use this facility any time that you have a
21 desire to come down. Thank you.

22 PRESIDING MEMBER LAURIE: Thank you,
23 sir.

24 Ms. Williams. Good evening.

25 MS. WILLIAMS: Good evening. I'm Lori

1 Williams, and I have to admit to being somewhat
2 intimidated by this rather august group,
3 considering --

4 PRESIDING MEMBER LAURIE: Not --

5 MS. WILLIAMS: -- all of you.

6 PRESIDING MEMBER LAURIE: -- not Bob and
7 Gary. You mean these guys. These guys with suits
8 and --

9 (Laughter.)

10 MS. WILLIAMS: Yes, the ones with the
11 ties. We determined that earlier on.

12 Because I am not an engineer or a
13 scientist of any kind. However, I have lived in
14 Santa Clara Valley for 42 years, and in the home
15 that I'm presently in for 32 years. And that home
16 is about a mile from the proposed Metcalf site.

17 One of the things I want to make very
18 clear early on is that from the beginning of this
19 argument, shall we say, between Calpine and the
20 Intervenors, my attitude has not been not in my
21 back yard, but rather why have this kind of
22 industry so close to where people are. And I've
23 heard a couple of people tonight say that the
24 Metcalf site is in an isolated area. And yes,
25 it's true that that property does appear to be

1 isolated. But if the plans go through the way
2 that the land use is intended for it to, that
3 property will not be isolated at all.

4 As you know, as well as I do, there are
5 several, and in particular one Silicon Valley
6 company who would like to live there and bring its
7 20,000 employees along with it. So it would not
8 be isolated for long.

9 The other part of this is I'm not really
10 clear why we have a CEC. However, just in my
11 general knowledge of how things are done
12 politically to help people and help business, my
13 feeling is that the Commission is to be acting as
14 a buffer, perhaps, between big business and the
15 residents of the state. And with that in mind, I
16 know we've talked a lot about legal -- legalese
17 this evening, but I would hope that the Commission
18 also looks at the prudent -- what was the
19 expression -- prudent and feasible alternatives
20 insofar as the quality of life and the air quality
21 that such a plant may very well bring to this
22 area.

23 It's not clear to thousands of us who
24 live in this area that having this particular
25 technology that Calpine is proposing so close to

1 us is, in fact, safe, and that our health will be
2 considered, and -- and that we are not at risk.
3 The location is important because there is other
4 industry that that land has already been set aside
5 for, that can fill it up and clean it up. For the
6 gentleman who owns this Grange, it certainly would
7 not go unused.

8 There have been other proposals, other
9 sites proposed, rather, for the Calpine project,
10 and they are not in an area where there are 20-
11 plus thousand people who would be living so close.
12 It seems to me that one of the reasons why Calpine
13 is reluctant to go somewhere else all has to do
14 with dollars and cents. And when I weigh that
15 against our health and well-being, I feel it's up
16 to you folks, to this Commission, to look at it in
17 the most humane way, and not just the legal way.

18 Thank you.

19 PRESIDING MEMBER LAURIE: Thank you, Ms.
20 Williams.

21 Do you know this gentleman over here?

22 (Laughter.)

23 PRESIDING MEMBER LAURIE: I don't mean
24 biblically, or anything.

25 MS. WILLIAMS: This house that I was

1 talking about that I've lived in for 32 years, Mr.
2 Williams has joined me for the last 20 of those 32
3 years.

4 Let me tell you, Commissioner Laurie, I
5 am very sympathetic to your wife, because not only
6 have I missed Mr. Williams' company, but my house
7 is taken over by paper in amounts you just
8 couldn't possibly dream of.

9 PRESIDING MEMBER LAURIE: You should be
10 very proud of him. He's performed in a very
11 competent manner.

12 MS. WILLIAMS: Thank you very much. And
13 -- and having -- being a nuclear -- nuclear
14 engineer requires a great deal of humor, as well.

15 PRESIDING MEMBER LAURIE: Thank you very
16 much.

17 Mr. Alton.

18 MR. ALTON: Like many of the previous
19 speakers, I have nothing to say on override.

20 I would've liked to have welcomed them
21 here, but obviously they need to get set off early
22 for the long drive back to Silicon Valley.

23 The only thing I found interesting was
24 Trixie Johnson's comment that this project does
25 not in any way jeopardize the development of North

1 Coyote Valley, yet Cisco, who is planning to
2 develop in North Coyote Valley is an Intervenor
3 and opponent of the project. That seems to be
4 completely at odds.

5 And the Silicon Valley Manufacturing
6 Group who spoke earlier, were basically formed,
7 from what I understand, in some -- was it the
8 seventies energy crisis, yet they didn't intervene
9 on the project. And he spoke of a hundred billion
10 dollar local economy. I think all we ask -- all
11 we would ask at this point is of a -- Calpine \$10
12 million or so to just move the thing over the next
13 biggest hill, into all our unincorporated land
14 that Supervisor McHugh was talking about.

15 Thank you.

16 PRESIDING MEMBER LAURIE: Thank you,
17 sir.

18 Issa.

19 MR. AJLOUNY: Thank you, Commissioner.
20 Commissioner, I'm just going to speak as a public
21 -- as public comment. It's not going to be on the
22 override issue. Just as --

23 PRESIDING MEMBER LAURIE: I understand.

24 MR. AJLOUNY: Okay, great. I'll refer
25 my override later.

1 But Commissioner, one thing, and I think
2 as, you know, we've grown to know each other
3 through this last year and a half of hearings of
4 this whole process, I do appreciate tonight and
5 your humor, because I found that it wasn't as much
6 there during the hearings, but I know it's a
7 serious thing. And it was -- and it's very nice
8 to see that --

9 PRESIDING MEMBER LAURIE: There's really
10 been no such intent, sir.

11 MR. AJLOUNY: What's that?

12 (Laughter.)

13 PRESIDING MEMBER LAURIE: Never mind.

14 MR. AJLOUNY: You can't talk over my
15 head, you know.

16 Anyway, Commissioner, I'm very pleased
17 to know that this decision is not supposed to be
18 influenced politically, and only on the facts
19 presented in the evidentiary hearings. And I have
20 a list of facts here, and I -- I wanted the people
21 that were up here speaking to know about them.
22 And I was going to list them out, and I'll
23 probably say them real quick now, but as you can
24 see, I don't think one politician or one
25 representative that spoke in favor, maybe a few, I

1 don't know, are not here. They haven't been here
2 during the hearings, they don't know the facts.
3 Obviously, you're a wise man, and you know by the
4 way they spoke about that you got all the facts,
5 and, you know, they got all the facts and they
6 came up to a decision, as you know, five o'clock
7 this evening was the close of the hearings, so I
8 don't know how they could've known all the facts,
9 and make those decisions.

10 But facts like the ISO has stated in the
11 last couple of days that if they had a choice,
12 disregarding the time the power plant would be
13 built, because they'd all be built at the same
14 time, they would prefer the Newark Substation and
15 the Los Esteros Substation, or one of the other.
16 Those are four alternate sites. The question was
17 out of those four alternate sites and Metcalf,
18 which one would you pick. You were there,
19 Commissioner, I'm just saying it for the record.
20 Out of those five, he picked the four other ones,
21 the four alternate sites. He didn't even pick
22 Metcalf. I thought that was pretty interesting.

23 Another fact. Visual significant
24 impacts. Basically, the testimony from the
25 California Energy Commission, the Staff, has

1 testified that this power plant doesn't belong
2 here because -- it isn't because of homes nearby,
3 they even testified that -- you know, home wasn't
4 even there. It just doesn't belong here. It
5 significantly impacts this area.

6 Testimony in the last few days, the
7 soonest Metcalf would be built is the summer of
8 2003. And with an alternate site that the ISO
9 wishes, one of those four, if they got their wish,
10 it could be built for the summer of 2004. So the
11 one thing that we'd be lacking in -- in the
12 critical issue of power would really just be one
13 summer, because that's when our -- our peak is --
14 peak is.

15 Facts, Alternates 3 and 4 were
16 environmentally superior. And I wasn't going to
17 talk on override, but as I understand it, the CEQA
18 law uses the word environmentally superior, and
19 your own Staff, California Energy Commission
20 Staff, has used those words. The five professors
21 from the area, meteorologists, that have testified
22 of how the unique valley this is, and that the air
23 will be trapped and the pollution will just stay
24 here more frequently than what it would be in the
25 flatlands, and that testimony. I could go on and

1 on, and I'm not going to bore you because you know
2 these things.

3 But I just think it's amazing that what
4 you heard today were comments of people. I don't
5 think not -- not one of them have joined us during
6 the -- during these hearings.

7 And the \$3.7 billion that the state has
8 to pay, I think that's a tragedy. I think it's a
9 shame that we -- we had to spend the \$3.7 billion.
10 I think we have eight billion to spend, so we're
11 almost half there, like Rebecca Cohn has said.
12 But I would -- I would hope a person like Rebecca
13 Cohn, I think it was \$5,000 that she got from
14 Calpine for political contributions that I read in
15 the Mercury. But I would -- I would just ask
16 people like that to talk to -- talk to the
17 generators that have given them money, that are
18 the same people that are holding us hostage here
19 in California.

20 And I think if you have -- if anyone has
21 been paying attention to the media in the last few
22 weeks, the truth is coming out about how
23 politically -- or how we've been manipulated in
24 California and our rates have been risen, and I
25 think it was even a little bit talked about today

1 that summer -- wintertime is not very peak, we use
2 I think 32,000 megawatts. But we have the
3 capability of doing 42,000 megawatts with a factor
4 of broken power plants and stuff. So I really
5 find it curious why we have Stage 1, 2 and 3
6 alerts in January. I think it was January.

7 And I have one more comment here, a
8 couple more comments. Let me see. Okay.

9 And then I do appreciate the Grange Hall
10 a lot more than I did, I have to say, a year ago,
11 because it's convenient, good food here, and I
12 think it's, you know, it's nice. I mean, really.
13 And I thank Calpine for the \$15,000 to put the new
14 roof on for the Grange Hall, because it keeps the
15 water from dripping on our head. So I think
16 that's great. So I do appreciate the Grange
17 Hall's hospitality.

18 And the Sierra Club's a good
19 organization and I'm sure they're going to do very
20 well with the \$50,000 in endorsement that they
21 mentioned that they got and received from Calpine.
22 So I think it's exciting that money's being spent
23 on some good things for the community.

24 And in closing, a person like me, people
25 think what a NIMBY. You know. And at first I

1 thought NIMBY was just like a turkey. I didn't
2 realize it meant not in my back yard, to be honest
3 with you. But it's just really funny that it's
4 easy to call me a NIMBY. I tried to work on the
5 facts, as you well know, in the last, what, two --
6 two months of hearings, three months of hearings.

7 But I think you could turn it around.
8 None of these people that spoke here tonight live
9 in this area. And they feel if it's built here,
10 they don't have to worry about it in their back
11 yard. I'm here to say I don't think it should be
12 in anyone's back yard.

13 Thank you very much, Commissioner.

14 PRESIDING MEMBER LAURIE: Thank you,
15 sir. Thank you.

16 (Applause.)

17 PRESIDING MEMBER LAURIE: Mr. Wade.
18 Evening, sir.

19 MR. WADE: I was actually planning on
20 giving you some -- some of my comments on
21 override. However, I think part of my intention
22 was to provide comments to the august members of
23 the audience that were here so that they might
24 have an opportunity to see one of the
25 representatives of the opposition.

1 In light of the fact that they have all
2 left, I think I'll not take yours and the
3 remaining members' time, and defer my comments.

4 PRESIDING MEMBER LAURIE: Mr. Wade, let
5 me apologize for that, because I would've
6 preferred that, as well. I didn't see your card,
7 frankly, until we started calling on members of
8 the public. Otherwise, I would've called upon you
9 right after Mr. Williams.

10 MR. WADE: No --

11 PRESIDING MEMBER LAURIE: So I
12 apologize.

13 MR. WADE: No apology needed. Thank you
14 for the opportunity. I'll defer my detailed
15 comments for later. Thank you.

16 PRESIDING MEMBER LAURIE: Very well.
17 Thank you.

18 Anybody else? Yes, sir. Mr. Nelson.
19 Thank you.

20 MR. NELSON: I'll -- just a few brief
21 comments about the override.

22 I don't have the vast intellect of the
23 lawyers here, so some of these comments might be
24 obvious. But --

25 PRESIDING MEMBER LAURIE: Understood.

1 MR. NELSON: -- we learned that AB 1890,
2 I believe it was, removed the assessment of need
3 from the Energy Commission in terms of the siting
4 of power plants. I understand that there was some
5 sort of process in the past where the Energy
6 Commission would be more proactive in addressing
7 energy needs. And we heard that it was now left
8 up to the market to make these decisions.

9 So that's fine. That's deregulation.
10 But it would seem like now, in terms of this
11 override, at least to my mind, you will have to
12 make an assessment of need. And this is the
13 paradox, at least for me, in trying to logically
14 think through this issue.

15 I just don't know how you reconcile like
16 a market driven approach, which would imply
17 dealing with the laws, the local laws. I mean,
18 Calpine took a risk. They realized that the
19 general plan did not support a power plant. They
20 worked the political process, like we all do, and
21 they lost. And so now they come to the state and
22 say please help us. This wasn't fair, or this
23 wasn't right. We need help dealing with the local
24 land use issues.

25 And so I just -- I can't reconcile what

1 you're supposed to do now. I mean, if you really
2 don't assess the need, and now you're going to say
3 this plant is needed so we're going to override,
4 that to me just doesn't make a lot of sense.
5 Maybe that's part of the process that you're
6 supposed to figure out.

7 So I would just say if we're walking
8 into the brave new world of deregulation, they've
9 got to play by the rules. They took a risk.
10 Unfortunately, they lost. I do not think you
11 should override. Land use is a very important
12 issue for the local community, and we will
13 continue to fight.

14 Thank you.

15 PRESIDING MEMBER LAURIE: Thank you, Mr.
16 Nelson.

17 Anybody else.

18 If not, I thank you for attending, and
19 the meeting stands adjourned.

20 (Thereupon the Committee Meeting
21 was adjourned at 9:40 p.m.)

22

23

24

25

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of March, 2001.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345