

Commissioners Present (*Via Phone)

Robert B. Weisenmiller, Chair
Karen Douglas
Andrew McAllister
Carla Peterman

Staff Present:

Rob Oglesby, Executive Director
Michael Levy, Chief Counsel
Jennifer Jennings, Public Advisor
Harriet Kallemeyn, Secretariat
Pippin Brehler, Legal Counsel
Kirsten Driscoll, Staff Counsel
Dick Ratliff, Staff Counsel
David Ware
Pat Perez

	<u>Item No.</u>
Sekita Grant	2
Sarah Taheri	3
Martha Brook	4 & 5
Mazi Shirakh	4 & 5
Patrick Saxton	4 & 5
Pippin Brehler	4 & 5
Gary Flamm	4 & 5
Joe Loyer	4 & 5
Payam Bozorgchami	4 & 5
Paul Kramer	6
Mark Hutchinson	7
Dale Chisum	8
Donald Coe	9
Hieu Nguyen	10 & 11
Eric Van Winkle	12 & 13
Larry Rillera	14
Andre Freeman	15
Haile Bucaneg	16
Mike Kane	17
Avtar Bining	18

Also Present: (* Via WebEx/Phone)

Interested Parties

Public Comment:

Justin Malan, Distributed Wind Energy Association
Larry Hamilton
*Joe Guasti, Wind Turbine Owner/Dealer
*Michael Bergey, Bergey Windpower
Bob Raymer, California Building Industry Association
Mike Hodgson, ConSol
Noah Horowitz, Natural Resources Defense Council
Helene Hardy Pierce, GAF
Mike Gabel, CABEC
John Martin, International Association of Lighting
Designers, IALD
Valerie Winn, PG&E
Josh Rosa, California Association of Sheet Metal and Air-
Conditioning Contractors National Association, CAL-SMACCNA
Eric DeVito, on behalf of Cardinal Glass Industries
Jerry Desmond, Jr., Plumbing Manufacturers International, PMI
Lisa Hoyos, Blue Green Alliance
Dr. Bill Callahan, Associated Roofing Contractors of
the Bay Area Counties
Peter Hart, Esq., LeClairRyan, on behalf of ARMA
Louis Wilde, Gnarus Advisors
John Arent, Architectural Energy Corporation
Adrian Salas, Sempra Energy Utilities
Eduardo Martinez, Carter Wetch & Associates
Matt Kerns, Building Codes Assistance Project
Tom Garcia, CALBO Energy Committee, representing
California Building Official Organization
Robert Lucas, Carrier Corp., UTC
David Dias, Sheet Metal Workers Local 104 and Western
State Sheet Metal Workers
Manuel Alvarez, Southern California Edison
*Mark Nowak, Steel Framing Alliance
*Patrick Splitt, ApTech
Mike Fischer, Polyiso Insulation Manufacturers Association
*George Nesbitt, CalHERS
*Frank Stanonik, Air-Conditioning, Heating, and
Refrigeration Institute, AHRI
*Aniruddha Roy, Air-Conditioning, Heating, and
Refrigeration Institute (AHRI)
Daniel Mark Dodd, CR Energy, Parent Co. of SacPort Biofuels
Matt Horton, Propel Biofuels
Mike Lewis, Pearson Fuels, San Diego

John A. McKinsey, Esq., Counsel for Carlsbad Energy Center
Also Present: (* Via WebEx) (Continued)

George L. Piantka, NRG West
Matt Hall, Mayor, City of Carlsbad
Ron Ball, Staff, City Attorney, City of Carlsbad and
General Counsel to (former) Redevelopment Agency
Alan Thompson, Esq.
Ralph Faust, Esq.
Will Rostov, Center for Biological Diversity
*Julie Baker, Power of Vision
*Kerry Siekmann, on behalf of Terrimar Power of Vision
*Robert Sarvey, Member of the Public
*Arnold Roe, Powervision
*Steven Moore, San Diego Control District
Joe Garuba, City of Carlsbad, Project Manager

I N D E X

ITEM	Page
1. CONSENT CALENDAR.	10
a. EHLERT BUSINESS GROUP. Possible approval of Amendment 1 to Contract 170-09-002 with Ehlert Business Group for a one-year no-cost time extension for hearing reporter services, including changes to update contract terms. (ERPA funding.)	
b. HYDROLOGIC RESEARCH CENTER. Possible approval of Amendment 1 to Contract 500-08-033 with Hydrologic Research Center for a six-month no-cost time extension. (PIER electricity funding.)	
c. BENNINGFIELD GROUP. Possible approval of Amendment 1 to Agreement PIR-08-016 with Benningfield Group for a one-year no-cost time extension to 6-28-13. (PIER electricity funding.)	
d. ELECTRIC VEHICLES INTERNATIONAL. Possible approval of Amendment 2 to Agreement ARV-09-017 with Electric Vehicles International (EVI). (ARFVTP funding.)	
e. LEYDEN ENERGY, INC. Possible approval of Amendment 1 to grant agreement ARV-10-015 with Leyden Energy, Inc. (ARFVTP funding.)	
2. ENERGY COMMISSION COMMITTEE APPOINTMENTS. Possible approval of appointments to the Energy Commission's Standing Committees and Siting Case Committees.	24
3. EMERGING RENEWABLES PROGRAM GUIDEBOOK. Possible adoption of proposed revisions to the Emerging Renewables Program Guidebook, Twelfth Edition.	11
4. 2013 BUILDING ENERGY EFFICIENCY STANDARDS - INITIAL STUDY AND NEGATIVE DECLARATION. Possible adoption of the proposed and supplemental Initial Study and Negative Declaration for the 2013 update to the Building Energy Efficiency Standards for Residential and Nonresidential Buildings, Title 4,	25

California Code of Regulations, Parts 1, 6 and 11.
I N D E X

	Page
ITEM	
5. 2013 BUILDING ENERGY EFFICIENCY STANDARDS. Possible adoption, following publication of proposed changes and 15-day language comment period, of proposed 2013 update to the Building Energy Efficiency Standards for Residential and Nonresidential Buildings in the California Code of Regulations, Title 24, Part 6, associated administrative regulations in Part 1 (collectively also known as the California Energy Code), associated reference appendices, alternative calculation method approval manuals, and portions of the Green Building Code, Part 11 (also known as CalGreen), of the California Building Code.	25
CARLSBAD ENERGY CENTER WILL NOT BE HEARD BEFORE 1 P.M.	
6. CARLSBAD ENERGY CENTER (07-AFC-6). Possible adoption of the Revised Presiding Member's Proposed Decision on the Carlsbad Energy Center, and possible revisions thereto.	196
7. SYMSOFT SOLUTIONS, LLC. Possible approval of Purchase Order 11-409.00-016 for \$489,680 to SymSoft Solutions, LLC to provide expertise to implement web based electronic filing and case management systems for document and records management in support of the Energy Commission's activities. (ERPA funding.)	143
8. CYBER COMMUNICATIONS, INC. Possible approval of Purchase Order 11-409.00-017 for \$135,000 to Cyber Communications, Inc. to provide the necessary expertise to perform an independent Information Technology (IT) Security Assessment of the Energy Commission IT environment. (ERPA funding.)	144
9. GAS TECHNOLOGY INSTITUTE. Possible approval of Agreement ARV-11-029 for a grant of \$4,562,532 to Institute of Gas Technology dba Gas Technology Institute. (ARFVTP funding.)	146

I N D E X

	Page
ITEM	
10. SPRINGBOARD BIODIESEL, LLC. Possible approval of Agreement ARV-11-016 for a grant of \$758,200 to Springboard Biodiesel, LLC to develop and build a pilot biodiesel production facility in Chico, California. (ARFVTP funding.)	149
11. SACPORT BIOFUELS CORPORATION. Possible approval of Agreement ARV-11-019 for a grant of \$5 million to SacPort Biofuels Corporation. (ARFVTP funding.)	154
12. CALSTART, INC. Possible approval of Agreement ARV-11-014 for a grant of \$14,469,304 to CalStart, Inc., to demonstrate nine different types of vehicles included in the California CLEAN truck program. (ARFVTP funding.)	161
13. WHOLE ENERGY PACIFICA LLC. Possible approval of Agreement ARV-11-026 for a grant of \$125,274 to Whole Energy Pacifica LLC to design, build, and install a skidmounted inline, proportional biodiesel-diesel blending system at an existing biodiesel terminal in Richmond, California. (ARFVTP funding.)	166
14. PROPEL BIOFUELS, INC. Possible approval of Agreement ARV-11-024 for a grant of \$10.1 million to Propel Biofuels, Inc. to cost share the installation of new E85 (ethanol) fueling stations. (ARFVTP funding.)	168
15. ALTERNATIVE AND RENEWABLE FUEL AND VEHICLE TECHNOLOGY BUYDOWN INCENTIVE RESERVATIONS. Possible approval of a total of \$16,000 in vehicle buy-down incentive reservations. (ARFVT funding).	187
a. Reynolds Buick - GMC (OEM - GMC) (BDIR-11-43), in the amount of \$16,000 for the buy-down of two natural gas vehicles of 8,501 to 14,000 pounds gross vehicle weight.	

I N D E X

ITEM	Page
16. SONOMA VALLEY HEALTH CARE DISTRICT. Possible approval of Agreement 003-11-ECF for a loan of \$1,065,097 to Sonoma Valley Health Care for energy efficiency projects at the Sonoma Valley Hospital. (ECAA funding.)	189
17. ALTEX TECHNOLOGIES CORPORATION. Possible approval of Agreement PIR-11-027 for a grant of \$731,770 to Altex Technologies Corporation to develop and demonstrate an innovative heat-driven cooling system for a tri-generation energy system technology. (PIER natural gas funding.)	191
18. MAXWELL TECHNOLOGIES. Possible approval of Agreement PIR-11-031 for a grant of \$1,392,464 to Maxwell Technologies to demonstrate the use of interfacing solar arrays with ultracapacitors as a means of energy storage to stabilize solar power output. (PIER electricity funding.)	193
19. Minutes: Possible approval of the May 9, 2012, Business Meeting Minutes.	298
20. Lead Commissioner or Presiding Member Reports.	298
21. Chief Counsel's Report:	299
a. In the Matter of U.S. Department of Energy (High Level Waste Repository), (Atomic Safety Licensing Board, CAB-04, 63-001-HLW);	
b. Public Utilities Commission of California (Federal Energy Regulatory Commission, Docket No. EL10-64-000); and Southern California Edison Company, et al. (Federal Energy Regulatory Commission, Docket No. EL10-66-000);	
c. BNSF Railway Company v. US Department of Interior, California Energy Commission (U.S. District Court Central District of California-	

Riverside, CV 10-10057 SVW (PJWx));
I N D E X

	Page
ITEM	
21. Chief Counsel's Report: (Continued)	299
d. Richard Latteri v. Energy Resources, Conservation and Development Commission, et al. (Sacramento County Superior Court, 34- 2011-99985);	
e. Communities for a Better Environment, Robert Sarvey v. California Public Utilities Commission, Energy Resources Conservation and Development Commission, Real Parties in Interest, Pacific Gas and Electric Company, Contra Costa Generating Station, LLC (California Supreme Court, S194079);	
f. Rick Tyler, et al v. Governor of California, Edmund G. Brown, Jr., et al. (Alameda County Superior Court, RG12619687);	
g. California Unions for Reliable Energy v. Energy Resources Conservation and Development Commission, Real Parties in Interest Ormat Nevada, Inc., ORNI 18 LLC, and ORNI 19 LLC (Alameda County Superior Court, RG 12610669).	
22. Executive Director's Report.	299
23. Public Adviser's Report.	299
24. Public Comment	299
Adjournment	299
Certificate of Reporter	300

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
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19
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P R O C E E D I N G S

MAY 31, 2012

9:10 a.m.

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

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

Good morning. We're going to have a busy day.
In terms of the agenda, as we indicated, Carlsbad will
not be heard before 1:00. In the morning, we'll have a
lot on the Appliance -- the Efficiency Standards. And
for the other contract items, if anyone wants to get a
heads up from the Public Advisor on when -- Jennifer is
in the back of the room -- when your item is coming up,
she'll be happy to give you a call or text you on it, but
at this point, I can't say I understand too much what the
exact schedule will be. So anyway, with that, welcome.

Let's start with the Consent Calendar. I have
one correction which is on Item 1(e), Leyden Energy, LLC,
that's actually Leyden Energy, Inc. is the correct name,
so that should be corrected in two lines there. Again,
that's Leyden Energy, Inc. and not LLC. So with that, do
I have a motion?

COMMISSIONER DOUGLAS: So with that, I'll move
the consent calendar with the correction read by the
Chair.

1 COMMISSIONER PETERMAN: I'll second.

2 CHAIRMAN WEISENMILLER: All those in favor?

3 (Ayes.) This item passes unanimously.

4 Okay, let's go to Item 2. I'm looking for
5 Sekita -- or Kevin. Let's flip to Item 3 first, and then
6 we'll come back to 2.

7 MS. TEHARI: Good morning, Chair and
8 Commissioners. My name is Sarah Tehari and I work in the
9 Renewable Energy Office. Today, I'm seeking approval of
10 revisions to the Emerging Renewables Program Guidebook,
11 Twelfth Edition. The Emerging Renewables Program, or
12 ERP, provides incentives for installing renewable fuel
13 cell and small wind generating systems in specified
14 Investor-Owned utility territories.

15 I'd like to provide a little bit of background
16 on the ERP first, as I think it would be helpful in the
17 decision making process. In March 2011, the Energy
18 Commission suspended the Emerging Renewables Program for
19 approximately eight months. In November, 2011, the
20 suspension was lifted after the Energy Commission adopted
21 revisions to the ERP Guidebook. These revisions are set
22 forth in the Twelfth Edition of the Guidebook and require
23 wind turbine manufacturers to obtain third party
24 performance certifications of their turbines in order for
25 the turbines to be eligible to participate in the

1 program. This requirement resulted in a significant
2 decrease in the number of eligible turbines under the
3 ERP.

4 The Twelfth Edition of the Guidebook also
5 established a schedule for declining the incentive level
6 for small wind turbines. Under that schedule, the
7 incentive level for small wind turbines was set at \$3.00
8 per watt for the first 10 kilowatts of insulation and
9 \$1.50 per watt for increments between 10 and 30 kilowatts
10 through May 7, 2012. After May 7, 2012, the incentive
11 for the first 10 kilowatts decline from \$3.00 per watt to
12 \$2.50 per watt.

13 Staff has monitored small wind industry
14 activity and has been in correspondence with the entities
15 that issue the required certifications for wind turbines.
16 Based on staff's review and on comments received by
17 industry stakeholders, it appears that, for many wind
18 turbine manufacturers, the testing and certification
19 process is taking longer than previously anticipated.
20 Staff also acknowledges that the eight-month suspension
21 may have affected some of the turbine manufacturers and
22 retailers that participate in the ERP.

23 As a result, staff is recommending that the
24 Twelfth Edition of the ERP Guidebook be revised so that
25 the time period in which the higher \$3.00 per watt

1 incentive level is available is extended until November
2 9, 2012. On November 9, 2012, the incentive level will
3 decline to \$2.50 per watt for the first 10 kilowatts for
4 small wind turbines. An extension until this date would
5 result in the \$3.00 per watt incentive level being
6 available for small wind turbines for one year since the
7 ERP suspension was lifted.

8 It is staff's understanding that, by November
9 2012, there may be between five to 10 additional wind
10 turbines certified and thus likely eligible to
11 participate in the ERP. Extending the \$3.00 per watt
12 incentive level will potentially provide an opportunity
13 for these turbines to participate in the ERP and thereby
14 boost program participation and industry growth.
15 Currently, there is approximately \$9 million available
16 for providing incentives for small wind systems under the
17 ERP.

18 This concludes my presentation. If you have
19 any questions, I am happy to address them. Thank you.

20 CHAIRMAN WEISENMILLER: Thank you.

21 Commissioners, any questions or comments? We do have
22 some public comments, too.

23 COMMISSIONER PETERMAN: I will offer a comment,
24 but let's hear the public comment first.

25 CHAIRMAN WEISENMILLER: Okay, fine. Justin

1 Malan.

2 MR. MALAN: Good morning, Commissioners.
3 Justin Malan on behalf of the Distributed Wind Energy
4 Association. Thank you very much for having us here and
5 thank you very much for putting this on the agenda again
6 and affording the small wind industry another opportunity
7 to get started again.

8 I think we concur completely with your staff
9 comments and your analysis here, and we did submit
10 formally our comments and proposals to you last week, so
11 hopefully the Commissioner's, you'll have those.

12 And just to very quickly reiterate what your
13 staff said, the fiasco with Dyocore already set the
14 industry back, and we want to commend the Commission for
15 handling that so well. We believe now what we've done in
16 the State of California is establish that the program
17 that now is robust, it's going to ensure that we don't
18 have these fly by night operators take advantage of these
19 incentives, and that your verifiable small wind operators
20 and installers will, in fact, be able to get the support
21 they need.

22 We do want to stress the importance of
23 extending the rebates. We, of course, asked for three
24 and a half bucks, but we'll settle on three if that's
25 what you want to offer. But we do want to commend you

1 and thank you for offering that, and very much support
2 that because it's absolutely essential that we keep the
3 momentum going. As you understand, not only the
4 recession, but the Dyocore setback, the fact that we need
5 certification now, which we fully support, and just the
6 difficulty in competing with solar, has made it difficult
7 for us to get our foothold back in California. So we
8 certainly support that.

9 We also want to just stress this time that we
10 have been very supportive of moving to a production-based
11 rebate, we want to work with you on that. And also, we
12 have introduced a third concept, which isn't really up
13 for discussion today, but we want to just put it out in
14 the open, and that is other states are considering the
15 notion of bringing the local governments into this and
16 sharing some of the incentives with them because, as you
17 are fully aware, permitting these small systems is a
18 major obstacle, it's not necessarily your problem, but
19 it's collectively our problem. And to the extent that we
20 can bring local governments into the mix and feel part of
21 this, we feel it will help us inject some life into the
22 industry, as well. So thank you again for this
23 opportunity, we fully support your proposal.

24 CHAIRMAN WEISENMILLER: Okay, thank you. I
25 think we have one other public commenter in the room,

1 Larry Hamilton?

2 MR. HAMILTON: Thank you, Honorable Commission,
3 CEC Renewable Program staff. Number 1, I'm also very
4 thankful, I'm a small business retailer who got crushed
5 by the eight to nine-month delay in the program which
6 also it took away some of the confidence within the
7 customer base that we had laid out, so it set us back
8 quite a ways. And to regain that confidence, and be able
9 to make this thing what it really should be over a period
10 of time, and to help reach the goals of the Governor,
11 once again, I agree with what they are saying and I'm
12 very thankful for it.

13 I also believe that the Distribution Wind
14 Association has provided a very informative information
15 packet, which also it sits back on other states that have
16 already put this in place and it's working, and the funds
17 are there, and there's just not that many of these that
18 are being done at this point of time in order to get that
19 momentum rolling, I believe the funds are there, and if
20 we follow a performance-based -- it will make a
21 tremendous amount of difference. And what I would like
22 to bring up about that is that, if you put a 10 kilowatt
23 system in Sacramento, it's going to put out maybe 5,000
24 kilowatt hours a year at the most; if you put it in
25 Dixon, California, you're going to be putting out 22 to

1 24 kilowatt hours -- or 1,000 hours
2 -- in a period of time throughout the year.

3 So what I'm trying to say is that, if it's
4 based on performance, you're getting for the money that's
5 going out to the program, it's going to the right place.
6 To me, it doesn't seem fair to give the same amount of
7 incentive to somebody in Sacramento that puts a wind
8 turbine up, that it's not going to perform compared to
9 somebody that's going to be in a high wind area that's
10 going to perform very well. And the other states are
11 following that, and it just makes sense. Nobody would
12 give an incentive to a solar system that is in the shade;
13 it doesn't perform.

14 So I'm hoping that you -- everybody that is
15 concerned takes a good look at this bit of information
16 and take it under consideration. Thank you very much.

17 CHAIRMAN WEISENMILLER: Okay, thank you. We
18 have two more comments from the phone. Joe Guasti.

19 MR. GUASTI: Good morning, everyone,
20 Commissioners, and everyone. We appreciate all the hard
21 work you guys are doing. My comment is very simple. I
22 have proposed that we increase it only three percent more
23 than it was before, which would be the \$3.50. Now,
24 here's why I say it that way. For example, the Bergey
25 Wind System was getting \$30,000, and we're able to make

1 the market move at that price point; however, at this
2 amount, it's very difficult --

3 CHAIRMAN WEISENMILLER: So you're breaking up
4 on us.

5 MR. GUASTI: Oh, okay. I haven't moved, how
6 about there? Can you hear me now?

7 CHAIRMAN WEISENMILLER: Yes, we can hear you
8 now.

9 MR. GUASTI: Okay. We've installed
10 approximately, well, last time we checked, it was about
11 47 percent of the installed small wind capacity in the
12 State of California, and we're very well aware of what
13 the incentives are doing, and we appreciate that you guys
14 are offering them (indiscernible).

15 CHAIRMAN WEISENMILLER: Sorry, we're losing you
16 again.

17 MR. GUASTI: Yes, I don't know why that's doing
18 that. My signal is fine. I'm sorry, but -- anyway, the
19 point is very simple, that we need to have it above the
20 \$30,000 amount in order to move the market, it's been
21 proven twice already, and so if you guys could do it at
22 the \$3.50, it would make the Bergey Wind Turbine System
23 received approximately three percent more than
24 (indiscernible).

25 CHAIRMAN WEISENMILLER: Okay, thank you. Let's

1 go on to the next speaker, Mr. Bergey.

2 MR. BERGEY: Thank you. Can you hear me?

3 CHAIRMAN WEISENMILLER: Yes.

4 MR. BERGEY: Okay. I'm on the phone, so
5 hopefully it will be a little bit clearer. I would like
6 to echo the thanks to the Commission and particularly
7 Commissioner Peterman for the leadership to improve the
8 Guidelines and to make the California program once again
9 the best crafted incentive program in the country.

10 Just a few points. We fully support the
11 Distributed Wind Energy Association recommendation to go
12 to \$3.50 a watt. And we have seen the effect of the
13 recession and the mortgage situation, particularly in
14 some of the more active small wind market areas in
15 California, and that gives a reluctance to spend on big
16 ticket items. I'll point out that the market disruptions
17 occurred over three years as the CEC eligible turbine
18 list went from 14 to 182 turbines over three years, it's
19 now back down to four and, as more certifications come
20 in, that will expand out giving more consumer choice.
21 But consumers are getting quality products that they can
22 believe in and will perform now, and that's great.

23 The cessation of the program, of course, had a
24 damaging effect on the market infrastructure. And then,
25 although we fully support going to the standardization of

1 ratings at 11 meters per second so that turbines are
2 rated on an apples to apples basis, it did mean for many
3 of the popular models a reduction in the absolute value
4 of the rebate offered.

5 So the \$3.50 a watt, we think, is the number
6 that would move the market without over-incentivizing.
7 And I would just point out that the Energy Trust of
8 Oregon has just raised their rebate for very similar
9 reasons, and that the \$3.50 a watt would be in line with
10 rebates that are being offered in other states such as
11 Oregon, New Jersey, and New York.

12 And then, finally, I'll just put in a plug for
13 the wind friendly communities, I know it's not really on
14 the agenda, but we do think that there's a way that the
15 Commission could do an innovative program that would
16 really bring the cities and counties into the effort to
17 increase the use of distributed generation with small
18 wind systems throughout the state. So we hope that that
19 will get some careful consideration.

20 And I'll just close again by expressing our
21 appreciation to the staff and to the Commissioners for
22 your support of the small wind industry and our customers
23 in California.

24 CHAIRMAN WEISENMILLER: Thank you.

25 Commissioners, any questions or comments?

1 COMMISSIONER PETERMAN: I'll offer a couple
2 comments. First, thank you to everyone who provided
3 public comment, and for the small wind industry for
4 continuing to communicate with us and talk to us about
5 their market conditions and the needs. We're looking
6 forward to continuing to work with you.

7 I've considered this issue, Commissioners, and
8 I'm supportive of staff's recommendation. We're
9 continuously trying to make this a program that is
10 robust, competitive, opportunities for consumer choice,
11 with quality products, and allowing more time at the
12 higher incentive for more systems to be certified; I
13 think it's important in terms of achieving that goal. So
14 I strongly support this proposal.

15 COMMISSIONER MCALLISTER: I want to echo what
16 Commissioner Peterman said and also just make a couple of
17 observations, relatively new to the Commission, but
18 pretty familiar with the small scale wind industry and
19 Mr. Bergey's products and other products that are out
20 there in the marketplace, and I have a lot of respect for
21 the folks in this marketplace. From the local government
22 on up, it's sometimes a difficult commodity.

23 I would definitely echo the issues around local
24 permitting, it's very distinct from the solar industry in
25 a lot of ways because each system is unique and you have

1 to look at the wind regime and that performance issues
2 are a little harder to grapple with. But it does -- just
3 the bigger point that I want to make is that -- while
4 policy in this realm of small- scale distributed
5 generation does drive the marketplace, that's the reality
6 we live in, it depends on very professionalized, very
7 high-quality service from the industry and that's
8 something that a regulator has a hard time making happen,
9 I mean, the regulator can't make that happen, it has to
10 largely come from industry. And so this is just an
11 example, it's very clear that, you know, one bad apple
12 can kind of make life difficult for all of us, and the
13 self-policing of the Distributed Wind Energy Association
14 is an essential counterpart to making sure that the
15 industry's reputation and brand supports the overall
16 mission of both the industry itself, so it can thrive,
17 and also the State's policies to get the clean energy.

18 So it's great to have this resolved, I fully
19 support the resolution we've come to, really thank staff
20 for all their effort here, and I think we can move on and
21 look at some of the other substantive issues that are
22 being brought up. So, thank you very much, everybody.

23 COMMISSIONER PETERMAN: Thank you for your
24 comments, Commissioner. Glad to have you interested and
25 familiar with this space, as well. Okay, so if there are

1 no other comments, then I will move Item 3.

2 MR. HERRERA: Commissioner Peterman, Gabe
3 Herrera with the Commission's Legal Office, I could just
4 offer some comments on the record --

5 COMMISSIONER PETERMAN: Oh, please, of course.

6 MR. HERRERA: -- concerning the California
7 Environmental Quality Act. When the Commission considers
8 these Guideline revisions, or I should say, revisions of
9 this type, the Legal Office takes a look at those
10 revisions to see if the revisions itself and the adoption
11 constitutes a project under CEQA. In this case, the
12 Legal Office has determined that this is not a project
13 under CEQA because the Guideline adoption falls within
14 the list of excluded activities under Title 14 of the
15 California Code of Federal Regulation, Section
16 15378(B)(2) and (B)(4), and that the activity relates to
17 general policy and procedure making, and the creation of
18 governmental funding mechanisms which do not involve any
19 commitment to any specific project which may result in a
20 potentially significant physical impact on the
21 environment. Thanks.

22 COMMISSIONER PETERMAN: Thank you. With that,
23 I will move Item 3.

24 COMMISSIONER MCALLISTER: Second.

25 CHAIRMAN WEISENMILLER: All those in favor?

1 (Ayes.) Item 3 passes unanimously.

2 Let's go on to Item 4. Okay, Sekita, let's do
3 Item 2.

4 Item 2. Energy Commission Committee
5 Appointments.

6 MS. GRANT: Good morning, Commissioners, Chair.
7 I'm Sekita Grant, Advisor to Chair Weisenmiller and I'm
8 presenting on Item 2, Energy Commission Committee
9 Appointments, and the possible approval of appointments
10 to the Energy Commission Standing Committees and Siting
11 Case Committees.

12 Today I would like to propose the following
13 changes be made to the Committee assignments. The first
14 one is Hydrogen Energy California Committee. I propose
15 adding Commissioner McAllister as an Associate Member on
16 that Committee. And the second proposed change would be
17 to the Quail Brush -- I'm sorry?

18 CHAIRMAN WEISENMILLER: We also have to add
19 Commissioner Douglas as the Presiding Member on that
20 Committee.

21 MS. GRANT: Okay, I'm sorry, and adding
22 Commissioner Douglas as the Presiding Member. Okay, so
23 that is for the first one. The second one would be for
24 Quail Brush, which would be to change the Associate
25 Member from Commissioner Peterman to Commissioner

1 McAllister, and I believe Commissioner Douglas will
2 remain as the Presiding Member on that Committee.

3 CHAIRMAN WEISENMILLER: That is correct. So,
4 Commissioners, let's first vote on the Hydrogen Energy.

5 COMMISSIONER PETERMAN: Since I'm not on either
6 committee, I will move the -- how does --

7 CHAIRMAN WEISENMILLER: Hydrogen Energy.

8 COMMISSIONER PETERMAN: I will move Hydrogen
9 Energy Committee.

10 COMMISSIONER DOUGLAS: Second.

11 CHAIRMAN WEISENMILLER: All those in favor?

12 (Ayes.) The item passes unanimously. Let's go
13 on to the next item, Quail Brush, the substitution.

14 COMMISSIONER PETERMAN: I will move Quail Brush
15 substitution.

16 COMMISSIONER MCALLISTER: I will second.

17 CHAIRMAN WEISENMILLER: All those in favor?

18 (Ayes.) That passes unanimously. Thank you,
19 Sekita. So now we'll go on to Item 4.

20 So this item is the 2013 Building Energy
21 Efficiency Standards - Initial Study And Negative
22 Declaration. Joe Loyer.

23 MS. BROOK: So what we would like to do is ask
24 for four and five to be heard together, and then if you
25 could just vote in the order that it is presented on the

1 agenda?

2 CHAIRMAN WEISENMILLER: That's fine, we'll do
3 that. So we will also take up Item 5, which is the 2013
4 Building Energy Efficiency Standards, and that's Martha
5 Brook.

6 MS. BROOK: Good morning, Commissioners. We
7 have a group of us presenting this morning on the 2013
8 Building Standards and I need to grab that mouse so we
9 can -- I'm Martha Brook, I'm a Mechanical Engineer with
10 the Building Standards Office, and Mazi and Patrick, if
11 you could introduce yourself?

12 MR. SHIRAKH: I'm Mazi Shirakh, Senior
13 Mechanical Engineer, one of the Project Managers for the
14 2013 Standards.

15 MR. SAXTON: Patrick Saxton, an Electrical
16 Engineer.

17 MR. BREHLER: Good morning, Commissioners.
18 Pippin Brehler, Senior Staff Counsel with the Commission.

19 MR. FLAMM: Gary Flamm, Supervisor of Building
20 Standards Development Unit.

21 MR. LOYER: Joe Loyer, California Energy
22 Commission.

23 MS. BROOK: Great, thank you. So this morning
24 what we're going to do is just give you a brief
25 background about the Building Energy Efficiency

1 Standards, and then introduce the highlights of the 2013
2 Standards Update that we are requesting adoption for
3 today.

4 So the benefits of Building Energy Efficiency
5 Standards are many, they improve the productivity of
6 businesses and that sort of aggregates up to states and
7 nations, and we'll demonstrate that in the next slide.

8 Standards reduce the need for future power
9 plants by reducing air pollution. They reduce
10 greenhouse gas emissions, and they preserve land, water,
11 and wildlife habitat, all because we are reducing the
12 need for future power plants. It also improves energy
13 system reliability by reducing peak demand, the large
14 part of peak demand is due to residential and commercial
15 building energy use in the state, so any efficiency
16 actions that reduce that demand at certain times of the
17 year play a big impact on energy system reliability.

18 They also create green jobs. We encourage and
19 incent quality in construction, proper equipment
20 installations, and field verifications, all of those are
21 green jobs in the state. And they also spur technology
22 innovation and market adoption of new technologies. And
23 I think all of you know how well placed California is in
24 that sort of technology innovation curve.

25 This is just an example of how a state like

1 California and the nation actually has seen an increase
2 in productivity measured in energy use per GDP; so, the
3 fact that we've gotten more efficient over time, that
4 vertical line on the chart is basically the 1970 oil
5 crisis that the nation experienced and the effect of that
6 -- this isn't just due to Building Efficiency Standards,
7 it's basically all efficiency that's happened by mileage
8 standards for transportation, building and appliance
9 standards, all of this sort of took off and was really
10 motivated by the oil crisis in the '70s, and you can see
11 in this slide that we've gotten a lot better, not only
12 through Standards, but also market efficiencies, we do
13 more with less. And that is one of the arguments for
14 continually improving efficiency standards.

15 So just a highlight of the standards that we'll
16 be requesting adoption today, the highlights of the
17 energy savings impacts from the 2013 Standards Update.
18 After 30 years of construction under these standards, if
19 we did nothing else to improve the building efficiency,
20 these standards would save the energy and emissions
21 equivalent to 1.7 million homes, also 40 million iPads,
22 just to get a frame of reference, what's 40 million
23 iPads? If you stacked them pancake style, it would be
24 over 560 miles high, and so -- it's a huge huge number of
25 consumer electronics just, again, to get a perspective,

1 and it's also equivalent to six large gas-fired power
2 plants.

3 So the Energy Efficiency Standards also provide
4 benefits to the consumer: they reduce energy bills, they
5 improve comfort in indoor air quality, they reduce
6 construction defects, and they increase property value.
7 So, on average, home values increased \$20.00 for every
8 \$1.00 reduction in energy bills. In the 2013 Standards,
9 we've estimated that when financed through a mortgage,
10 the incremental first costs are paid back through energy
11 savings in less than two years.

12 This is just an example of how Standards over
13 time significantly reduce home energy use, so this is a
14 typical energy use for each Standards Update in
15 California starting from the '70s, and it's prototypical,
16 this isn't going to be exactly the same in every place in
17 the state, but overall for a moderate climate in Northern
18 California, you know, we've seen this type of reduction
19 starting in the '70s and all the way through 2013. Very
20 very serious reductions in the part of the energy that a
21 home uses that we regulate under Title 24.

22 So just a little bit of background about the
23 mandate that we have here at the Commission to develop
24 Standards. We do have a legislative mandate to do so.
25 The scope of our Standards development is Building Design

1 and Construction Standards. Any project that requires a
2 building permit, newly constructed buildings, and
3 existing building additions, alterations, and for
4 nonresidential buildings, repairs, all falls into the
5 scope of the Building Efficiency Standards. It covers
6 residential and nonresidential building occupancy types
7 and building energy system and components that we are
8 regulating today include heating, cooling and
9 ventilation, indoor lighting, outdoor lighting, and
10 signs, water heating, and some process energy systems.

11 We're also required to prove that the building
12 efficiency standards are cost-effective over the lifetime
13 of the building, and we use the net present value of
14 energy savings, construction costs, and maintenance costs
15 over the assumed life of the buildings to justify our
16 Standards Updates.

17 This slide just illustrates that California is
18 unique in the amount of attention that we pay to climate
19 diversity and we do this by segmenting the state into 16
20 climate zones for Title 24 consideration and what this
21 does is it really focuses our efforts on climate specific
22 designs and it encourages builders, designers,
23 architects, to think about climate specific designs, and
24 that's an excellent thing to do, especially as we drive
25 towards our very aggressive energy policy goals in the

1 state.

2 The other thing that it does is that we
3 deliberately pay attention to the weather data that we
4 use in our development exercise, as well as our
5 Compliance Software really captures a statewide
6 coincident peak event, so that we're actually looking at
7 not just how air-conditioning or lighting affects a
8 building in a specific climate, but also how it impacts
9 the whole statewide electricity system. And we actually
10 value that in the way that we define the metric for our
11 Building Energy Efficiency Standards.

12 So the policy drivers for the 2013 Standards
13 Update include getting to Zero Net Energy for newly
14 constructed buildings. We have a state goal that newly
15 constructed homes will be Zero Net Energy by 2020 and we
16 have an energy policy goal in the state that newly
17 constructed commercial buildings will be Zero Net Energy
18 by 2030. We also have a policy goal, a longstanding
19 goal, that energy efficiency be placed first in the
20 loading order when deciding on resource needs for the
21 state, and also a global goal to reduce greenhouse gas
22 emissions, and the state's contribution to that is an
23 important policy goal.

24 And below this is just a list of all the
25 relevant recent policy documents that embrace these

1 goals. The AB 32 California Global Warming Solutions
2 Act, starting in 2006, Integrated Energy Policy Reports,
3 Energy Action Plan, the Scoping Plan that came out of the
4 AB 32 effort, California's Long Term Energy Efficiency
5 Strategic Plan in 2008, Governor Brown's Clean Energy
6 Jobs Plan and Clean Energy Future Initiative in 2010, and
7 then Governor Brown's most recent Executive Order also
8 encourages Zero Net Energy and really focusing on high
9 levels of energy efficiency in existing buildings.

10 So on to the 2013 Standards. This was a huge
11 effort that we've been working on for three years or
12 more, and it's been a very collaborative effort and a
13 very successful collaborative effort. The investor-owned
14 utilities spent Public Goods Funds within their Statewide
15 Codes and Standards Program to develop over 70 Codes and
16 Standards Enhancement Initiatives, basically studies that
17 did the technical defense for each of the measures that
18 we're bringing forward today and it goes through all of
19 the due diligence to look at constructability,
20 affordability, energy savings, both technical and market
21 issues with the technologies, a huge amount of work that
22 really allowed us to get a lot more measures considered
23 for this update, and I think you'll be able to see when
24 you think about those 40 million iPads that, you know, a
25 large part of that is because of this collaborative

1 effort that we were able to undertake.

2 So along with the case studies, they also
3 hosted 70 stakeholder meetings before staff started our
4 pre-rulemaking, we were already vetting with industry and
5 other market actors these technologies and talking about
6 issues, and so it was basically a whole preliminary
7 stakeholder process before we ever started our pre-
8 rulemaking activities, so that was very successful.

9 We also have a strong collaboration with PIER,
10 the Energy Commission's R&D Program, Standards of all
11 sorts, are a market connection for research and
12 development programs, and PIER and the Building Standards
13 have a great relationship in terms of working together to
14 identify technologies that are ready for Standards
15 implementation.

16 So among the things that we've done and
17 integrated into the 2013 Standards that PIER funded, or
18 the weather data updates, the Residential HVAC and Water
19 Heating Technical Studies, lighting controls,
20 ventilation, improved acceptance tests for nonresidential
21 buildings, HVAC economizers, and the nonresidential
22 Compliance Software, parts of all of those were funded
23 with PIER efforts. And then staff, ourselves, has done a
24 comprehensive public process with the Standards Update.
25 We've held 15 workshops and received over 280 comments --

1 probably 300 by today, that was yesterday's count -- so a
2 large number of docketed comments have come in and we've
3 done our best to respond to.

4 So now we're going to just give you highlights
5 of the specific to the 2013 Update, what is included, and
6 we're going to ask staff that shepherded the measures to
7 talk about each of these.

8 MR. SHIRAKH: So, Mazi Shirakh. Martha
9 described the goals of the 2013 Standards and we're
10 estimating that, on the residential sector for single-
11 family homes, the savings are on the order of about 25
12 percent over the current 2008 Standards, which is the
13 largest savings we've ever achieved historically.

14 And so the next few slides are going to
15 describe how we actually achieve these measures for both
16 Residential and Nonresidential Standards. The savings
17 are on the order of 2.3 gigawatt hours per year, or about
18 1 million therms per year, equivalent to about 35
19 megawatts for the first year; and single-family 25
20 percent; multi-family about 14 percent better than the
21 existing Standards. Next slide, please.

22 So the actual measures that are going to help
23 us achieve these savings, the first and foremost are the
24 better windows U-Factor and SHGC, Solar Heat Gain
25 Coefficient. A big improvement in this area, SHGC, we're

1 proposing a factor of .25 and, for U-Factor, .32. And
2 these are windows that are very effective in eliminating
3 the infrared and the ultraviolet energy of the sun, while
4 actually keeping most of the visible light through the
5 windows, so you have well lit buildings, and one of our
6 more significant measures for this time around.

7 The second bullet refers to more wall
8 insulation in all climate zones. Basically we are
9 recommending the same R-15 cavity installation and R-4
10 continuous insulation, all 16 Climate Zones, very
11 effective, especially when you combine this with the
12 continuous insulation. The nice thing about continuous
13 insulation is that they're not broken up by framing
14 members, they're continuous, they provide an air barrier,
15 and we think that's a very good measure, and the fact
16 that it's the same in all 16 Climate Zones makes
17 compliance simpler. Next, please.

18 The first bullet refers to mandatory HVAC and
19 Air Distribution Insulation Testing. Air-conditioners,
20 you know, we always hear about SEER 15, 16, EER, those
21 are all good, but if these systems are not installed
22 properly, they're not going to achieve the savings that
23 are supposed to, and the occupants are not going to get
24 the comfort or realize the savings. With this round of
25 Standards, we're actually moving in that direction to

1 ensure that these systems are installed properly. We're
2 requiring that all ducts, as mandatory measures, have to
3 be sealed in our climate zones, that's a good thing from
4 an enforcement perspective, you know, there are no
5 tradeoffs; if you have ducts, it has to be sealed.

6 We're also requiring that the systems must be
7 tested to ensure proper airflow and fan watt draw, and
8 we're also requiring prescriptively that all the systems
9 must go through a refrigerant charge and verification
10 process. And all these measures that I described must be
11 third-party verified. So very important, kind of result
12 in comfort, peak savings, energy savings, and help the
13 state and the consumer.

14 The second bullet refers to ventilative
15 cooling, that's commonly known as whole house fans. In
16 our cooling climate zones, very effective in reducing
17 air-conditioning load. When you combine this with the
18 other measures that I've described, improved windows and
19 improved insulation, it is very likely that most of the
20 times the homes can actually coast through the day
21 without ever turning on their air, unless we get into a
22 heat storm situation. So we think this is one of our
23 better measures. Next, please.

24 One of the challenges in the Standards has
25 always been compliance and enforcement with additions and

1 alterations. New construction is typically easier.
2 Existing homes present more of a challenge and we worked
3 very hard with the CABEC members, Mike Gabel who is in
4 the audience, and others, to rewrite the rules for
5 additions and alterations compliance. And I think we've
6 succeeded; time will tell. These would impact both the
7 prescriptive compliance and performance compliance. We
8 worked with the Building Departments to simplify the
9 compliance process for a relatively small addition, 300
10 square feet or less, and alterations that do not require
11 HERS verified measure to have very simple compliance
12 process. And these cover, again, alterations in existing
13 homes, additions, and a more complicated existing plus
14 addition and plus alterations.

15 And the other measure, this is a mandatory
16 measure, this is the hot water piping requirement, and
17 for the first time we're requiring that all hot water
18 pipes that are 3/4 inch and larger be insulated. We
19 think this is going to actually cause a shift in the way
20 plumbing is done in homes. We've been working with the
21 builders, monitoring how this is going to be implemented,
22 and you know, we think this is going to cause shorter
23 runs, smaller diameter pipes, and which result in both
24 water savings and energy savings. Next, please.

25 Patrick?

1 MR. SAXTON: The solar-ready roof requirements
2 are intended to get building designers to consider the
3 possibility of solar earlier in the design stage, it does
4 this by providing an area on the roof that is
5 penetration-free and free of self-shading from other
6 objects on the building, and this allows an occupant to
7 choose to install a solar energy system in the future
8 because their building does not preclude that many
9 existing buildings just simply don't have an area on
10 their roof that's compatible with future solar.

11 The requirement is a 250-square-foot roof
12 reservation for single-family homes that are in
13 developments of 10 or more homes, but also applies to
14 low-rise multi-family buildings. There are several
15 exceptions, primarily if someone actually installs a
16 solar electric or a solar thermal system. There's also
17 an exception for sites that are significantly shaded
18 naturally. There's an ability for single-family homes to
19 reduce the area of that solar zone by installing certain
20 equipment, and one of those things is a demand response
21 enabled thermostat. And that's also an exception which
22 would allow there to be no solar zone with an
23 installation of that demand response capable thermostat
24 and all high efficacy lighting, which would be primarily
25 fluorescent and LED. And for the first time in the

1 Building Standards, there will be a credit available when
2 a solar electric system is actually installed. That will
3 be in Climate Zones 9 through 15, and the specific rules
4 around that will be developed when we discuss the
5 performance method algorithms in the ACM development.

6 MS. BROOK: Okay, moving on to the
7 Nonresidential portion of the Standards. Again, very
8 significant energy savings, we're estimating 30 percent
9 more energy efficient than the current standards, and
10 large trunks of energy savings, 372 gigawatt hours per
11 year, 6.7 million therms per year, and 84 megawatts. And
12 then this pie chart just demonstrates our current
13 estimate of the breakout between newly constructed
14 savings and those savings that will come from alterations
15 and you'll see a significant portion, about 30 percent,
16 we think, are coming from existing buildings, which is
17 great and also a very significant part, due to the new
18 process energy systems that we're regulating for the
19 first time, which we'll talk about soon. Gary.

20 MR. FLAMM: The first lighting measure that is
21 very significant is multi-level lighting control changes
22 to the requirement. The Standards have long required
23 multi-level lighting controls to allow occupants to
24 occupy a room with no light, 100 percent of light, and
25 something in between. And studies have proven that this

1 really saves energy because people use those controls.
2 So what's changed in this next round in the 2013
3 Standards, what we're proposing, is a increased
4 granularity of those controls. So instead of one control
5 about in the middle, we're requiring three controls in
6 the middle for linear fluorescent technologies,
7 incandescent, and LED technologies will have to be
8 dimmable. This is expected to save a lot of energy, it's
9 going to enable daylight, harvesting is going to enable
10 demand responsive harvesting in a very non-obstructive
11 way, so the occupants won't even know this is going on
12 often. So it's a very significant energy savings for the
13 lighting measure. Next slide, please.

14 The next lighting measure that's going to save
15 a significant amount of energy is toward existing
16 buildings. For a long time, we have required that
17 existing buildings have to be brought up to certain
18 aspects of the lighting measures when 50 percent or more
19 of the luminaires are altered. And ASHRAE 90.1 changed
20 that down to 10 percent. So consistent with ASHRAE 90.1,
21 we are proposing to change the 2013 Standards that, when
22 somebody changes 10 percent of the luminaires in the
23 room, they have to meet current certain aspects of the
24 lighting regulations.

25 Also, for alterations, if somebody changes

1 ballasts, or changes the type of luminaire, basically
2 does a gut rehab of an existing fixture, they will have
3 to meet the current standards. So we carefully crafted
4 the language so that we didn't get in the way of routine
5 maintenance, but if somebody is doing a comprehensive
6 change-out of lamps and ballasts, or putting in new LED
7 retrofit kits, they have to meet the current Standards.
8 So this is significant in that there are twice as many
9 square feet of alterations as there are newly constructed
10 square feet of building every year, so this is a really a
11 significant impact into saving the state energy. And
12 alterations occur between eight to 15 years, depending on
13 the functionality of the space, and this is estimated to
14 save \$40 million in energy every year.

15 MR. SHIRAKH: So continuing with nonresidential
16 measures, Gary just described the multi-level controls,
17 and that control actually feeds right into the first
18 bullet, the daylighting, that 30 percent that Martha
19 described, the savings, a good chunk of it actually comes
20 between the synergy between the multi-level controls and
21 the new windows that we are proposing for these random
22 standards and the daylighting requirements. And, you
23 know, with the interaction between these three and top
24 lighting, the sky lighting, there will be a very smooth
25 transition of the lighting levels that the occupant is

1 actually noticing, plenty of daylighting coming into the
2 building, and displacing the electric lighting. So
3 that's what that first bullet is all about. The visual
4 transmittance requirements for the windows, this is a big
5 improvement this round of standards; I worked with the
6 stakeholders long and hard on this one, and we think we
7 landed in a place that it's going to save the state
8 energy wide, providing flexibility for designers and
9 architects. And we increased the skylighting
10 requirements also as a big part of this round of
11 standards.

12 Higher cool roof reflectance, we are proposing
13 this sort of reflectance to go up from existing .55 to
14 .63. And envelope sealing, this is the first time we're
15 actually requiring it for nonresidential buildings to
16 make sure there is not excessive amounts of infiltration
17 in the buildings.

18 MS. BROOK: Okay, so on the nonresidential HVAC
19 side of things, we have a lot of work that we've done on
20 Economizers and fan speed controls for more and smaller
21 equipment. We have prescriptive requirements for
22 increased chiller efficiencies, and more options for
23 occupancy-based shutoff control. So in summary, more
24 HVAC equipment will use outside air for cooling, which is
25 a good thing in California climates, and more HVAC

1 equipment can adjust speed to meet the variable needs of
2 spaces, and reduces energy use to heat and cool
3 unoccupied spaces.

4 We also have a large water savings measure for
5 nonresidential cooling towers that controls the maximum
6 water use by requiring overflow alarms for water in the
7 tower. It includes efficient drift eliminators and water
8 flow meters, and we expect that this one measure will
9 save 33 million gallons of water a year, equivalent to
10 600,000 closed wash loads.

11 MR. SAXTON: Occupant-controlled smart
12 thermostats empower occupants to more easily control
13 their HVAC systems to improve comfort and reduce
14 operating costs, and these devices have typical setback
15 thermostat capabilities, but add in communications and
16 demand response capabilities. Those additional functions
17 can be built into the device, or are upgradeable with
18 modular components. The occupant remains in control of
19 the device, they can disable the communications if they
20 desire, it more easily enables enrollment in the DR
21 service or program by not having to change out the
22 equipment controls.

23 MS. BROOK: Okay, on to process energy systems.
24 We have current requirements in the 2008 Standards for
25 refrigerated warehouses; we've updated those requirements

1 in the Standards and looked at adding infiltration
2 barriers and more efficiency requirements for condensers
3 and evaporators. We also have new supermarket
4 refrigeration requirements and these touch on efficiency
5 requirements for all the large refrigeration components,
6 compressor systems, evaporators, condensers, and it
7 includes controls for the lighting and refrigerated
8 cases. And the total of all these sort of refrigeration
9 measures should save the state over \$60 million a year in
10 energy savings.

11 To continue on with process energy systems, for
12 the first time in the 2013 Standards, all of these
13 process energy systems have efficiency requirements, so
14 new requirements for data center cooling, basically
15 taking advantage of Economizers, again, to use outdoor
16 air for cooling at every opportunity possible. And
17 commercial kitchen exhaust, basically just design
18 requirements to make sure you're using the makeup air and
19 transfer air efficiently in the kitchen exhaust systems,
20 and the sort of basic oxygen trim control type of
21 efficiency requirements for process and commercial
22 boilers, compressed air system, efficiency requirements
23 to make sure you have the right kind of trim capacity and
24 storage for compressed air systems to enhance efficiency,
25 laboratory exhaust design and also parking garage

1 ventilation, so you're not running large ventilation fans
2 when there's no plans for the garage to be occupied.

3 MR. SAXTON: The Nonresidential Solar Ready
4 Requirements are conceptually the same as the
5 Residential, to consider the possibility of a solar
6 energy system at the design of the building, so that
7 future solar is not precluded by the layout and
8 orientation of the building. The requirements apply to
9 high-rise multi-family buildings and hotel/motel
10 buildings, which are 10 stories or fewer, and to
11 nonresidential buildings, three stories or fewer. There
12 are exceptions that include the installation of an actual
13 solar electric or solar thermal system, and also for
14 sites that are significantly shaded.

15 MS. BROOK: That concludes our summary. What
16 we would like to address at this time is what of our
17 proposal we're recommending adoption of, and so just to
18 remind you and the audience, on Tuesday the Commission
19 noticed that staff would be withdrawing its
20 recommendation to adopt three distinct sections of the
21 15-day language. The first is that staff is withdrawing
22 the recommendation to adopt Part 11, the Voluntary
23 Efficiency Standards that go into the Green Building
24 section of the California Building Code. And staff
25 received some meritorious comments late in the process

1 and we really would like to take the opportunity to
2 address those comments, and we also really felt like we
3 wanted more time internally, also, to develop the Reach
4 Standard proposal more thoroughly, and what we're
5 planning to do is to come back to you for a separate
6 adoption of Part 11 in the coming months.

7 Second, the staff is withdrawing its
8 recommendation to adopt the new requirements for showers
9 in the mandatory section of Part 6 and, again, we
10 received comments that we thought had merit late in the
11 process and did not have the ability to address those
12 comments in the 15-day comment period, and this, along
13 with the one-inch hot water piping for residential hot
14 water systems, we had a proposed limit on the one-inch
15 hot water piping limit, this and the shower requirements
16 are both -- because they save both energy and water, we
17 have a requirement to work with our sister agency, the
18 Department of Housing and Community Development, to
19 develop requirements that go into the Building Code that
20 specifically address this water efficiency component of
21 piping systems, and we did some work with HCD, but we
22 feel like we could do more work with them to really
23 develop a comprehensive set of recommendations in this
24 area, and so that is why we're withdrawing our
25 recommendation at this time.

1 So that said, we have developed Errata for the
2 remaining 15-day language and what we're recommending is
3 that the Commission adopt that 15-day language with the
4 Errata, but not until you hear from Joe, who is going to
5 talk to us about the initial study on the environmental
6 impacts of the proposed standards.

7 MR. LOYER: Joe Loyer, California Energy
8 Commission. Staff independently created an initial Study
9 Negative Declaration and Supplemental Report, which
10 concluded that potential environmental impacts associated
11 with the 2013 Standards are less than significant. The
12 study was released for comment on March 26th, 2012, and
13 48 days later on May 15th.

14 The study was submitted to the Statewide
15 Clearinghouse and distributed to nine State agencies. A
16 Notice of Intent was published in six newspapers
17 throughout California and mailed to 58 County Clerks, as
18 well as about 10,000 individuals. There were no comments
19 received from any State agency or the public. Therefore,
20 there is no substantial evidence in light of the whole
21 record that adopting the Proposed 2013 Standards will
22 have a significant effect on the environment.

23 MS. BROOK: That concludes our presentation and
24 I guess what we're asking now is to go in order of the
25 agenda and take Joe's item for the Initial Study, and

1 then separately have comments on the 2013 Standards.

2 CHAIRMAN WEISENMILLER: Good. I think in terms
3 of public comments, at this stage it appears all the
4 comments are dealing with Item 5, so first let me ask, is
5 there anyone who wants to comment on Item 4, which is the
6 Initial Study and Negative Declaration? Either in the
7 room or on the phone. So, if not, let's go on to
8 comments on Item 5. Bob Raymer.

9 MR. RAYMER: Thank you, Mr. Chairman and
10 Commissioners. I'm Bob Raymer, Senior Engineer with the
11 California Building Industry Association. And in light
12 of recent changes made to the Proposed Standards, CBI has
13 removed its opposition and we will now be supporting
14 adoption of this regulatory package.

15 In response to concerns earlier raised by CBIA
16 regarding design and cost impact issues, the CEC has
17 removed roof deck insulation and third party insulation
18 measures from the Package A Budget Calculation features.
19 In addition, the CEC has shifted the proposed wall design
20 in Package A from 2 X 6 Construction back to the standard
21 2 X 4 Construction. While all three of these
22 items will still remain available to industry for use as
23 compliance options, this set of changes to Package A
24 features has the effect of reducing compliance costs
25 throughout the Central Valley Region by approximately

1 \$2,800. But even with these modifications, the
2 regulatory package before you today will still result in
3 the single greatest increase in stringency and cost of
4 any Update to the Standards in the CEC's 35-year history.
5 While it would have been our preference for the CEC to
6 have foregone any change during this three-year cycle, we
7 understand that was not an option.

8 We recognize and appreciate the Commission's
9 desire to create balance between the goals for increasing
10 energy efficiency, along with the extremely difficult
11 economic conditions confronting California's housing
12 industry today. So in that spirit of cooperation, CBIA
13 will be supporting the adoption of the 15-day language as
14 it relates to Part 6 and associated administrative
15 regulations in Part 1, which is collectively known as the
16 California Energy Code.

17 And in particular, CBIA would also like to
18 extend a special note of thanks to the CEC staff,
19 especially Mazi Shirakh, Martha Brook, and Patrick
20 Saxton, not only for their patience, but for their
21 efforts to help address CBI's individual technical
22 concerns, and especially for working with CBI in an
23 effort to identify the overall compliance costs
24 associated with the Proposed Standards. Looking forward,
25 Mike Hodgson, I believe, will be making some comments on

1 the ACM measures.

2 We're strongly in support of staff efforts to
3 include some manner of compliance options related to PV
4 installation and reduction of plug load, particularly
5 with high efficiency lighting, over the next one to two
6 years, education and training. With the downturn in the
7 economy, we've lost about 80 percent of our workforce;
8 the same thing has happened with local government. The
9 building official offices throughout the state in our 500
10 jurisdictions have seen their staff just slashed, in some
11 cases by over 90 percent. That creates a huge problem as
12 we move forward. There's going to have to be ongoing
13 field-based training for probably the next 10 years, but
14 this is a particularly significant problem now.

15 The availability of certified Compliance
16 Software is also an issue. We know the CEC understands
17 this full well, given the last update to the standards,
18 and we would hope that we could have certified software
19 available nine to 12 months prior to the effective date
20 of the Standards. Simplification of compliance
21 documentation, we strongly support the comments that
22 CALBO has been making and probably will make today again.

23 Looking down, in terms of long term priorities
24 for the next four years, plug load and its impact on Zero
25 Net Energy, that is a huge issue. If we're going to get

1 the cost of Zero Net Energy down, we need to aggressively
2 attack plug load and other items not covered by the
3 Energy Efficiency Standards.

4 And, please, as we go forward developing the
5 2017 and 2020 Standards, we need to maintain a reasonable
6 level of compliance options. As we move items over from
7 the option side to the mandatory side, we need to
8 backfill that with compliance options so we can maintain
9 flexibility with the Standards and also get in touch with
10 what's coming down the road in terms of mandates.

11 And with that, we'd like to work with you in
12 trying to get home appraisers to include the value of the
13 energy efficiency as they make this, this is a Federal
14 and State effort, we look forward to working with you
15 strongly on this. Thank you for your time and patience.

16 CHAIRMAN WEISENMILLER: Thank you. Mike
17 Hodgson.

18 MR. HODGSON: Good morning, Commissioners and
19 Chair Weisenmiller. I'm Mike Hodgson from ConSol
20 representing CBIA. I'd also like to express support for
21 the standards and make a quick sidebar complimenting
22 Commissioner Douglas on her longstanding tolerance of
23 this process, as well as staff, especially Mazi, Martha,
24 Patrick, and I'd like to add Gary to that, for all their
25 assistance and clarifications. It's been a long haul and

1 they've been not only tolerant, but technically quite
2 savvy, so we think we have the best resolution so far.

3 I would like to make two quick comments. With
4 this very stringent standard being enacted, and with our
5 constantly changing Codes, it's very important for
6 building officials and builders to understand the Code
7 well, and the explanation of that Code is the Residential
8 Manual, and we would like to pledge our support, CBIA's
9 support, in the developing of that manual. But there are
10 some very significant issues that need to be clarified; a
11 couple of them were covered today and I'll just go
12 lightly into them. One example that we're looking at is
13 we need to have our mechanical systems perform properly,
14 and a suggestion by staff and the Code is actually to
15 enlarge those HVAC returns. And we need assistance to
16 say, "How do we do that? Where does it go? How do we
17 plumb them correctly?" Etc. And we've been working on
18 that, but we still don't have clear guidance.

19 Another is Patrick was bringing up solar ready
20 roofs, one of his favorite topics, and we have new
21 requirements for attic ventilation with whole-house fans,
22 we also have new urban wild land interface standards
23 coming into effect, and the interaction of those three
24 regulations are going to be fairly complex, and we're
25 going to need good explanations and diagrams to explain

1 that to not only builders, but also building officials
2 for enforcement.

3 My second request, Bob has already covered, but
4 I'm going to ask a little bit deeper, and that is on
5 software. We always need to be prepared, and hopefully
6 the building industry will return some time in the State
7 of California and we have new projects; that means we
8 need Compliance Software. We've been talking about a
9 nine to 10-month lead time before the Standards become
10 effective so that we have software that we can use, we
11 can test, we can drive, and we can understand how our
12 buildings will be built. CBIA would like to request
13 actually a proposed timeline for that software
14 availability, and we would like to work with you to meet
15 that timeline. Thank you for your time and your input.

16 COMMISSIONER WEISENMILLER: Thank you.

17 COMMISSIONER DOUGLAS: If I could, I would just
18 like to ask -- it looked like Mazi was ready to speak on
19 the timeline question.

20 MR. SHIRAKH: Actually, I was going to say we'll
21 be more than happy to work with Mike and the builders and
22 the building officials on the development of the language
23 for the Compliance Manual. I think that would be very
24 useful.

25 COMMISSIONER DOUGLAS: All right, thank you.

1 MS. BROOK: And on the software timeline, we
2 can definitely get that. We have had preliminary
3 timelines and we can update that and work with industry
4 to make sure that they're participating all the way
5 along. We do anticipate our first public workshop on
6 software to be in the July timeframe -- this July. So I
7 think we're also committed to the nine to 12-month
8 preview of the software before the implementation date.

9 MR. HODGSON: Thank you.

10 CHAIRMAN WEISENMILLER: Great. Thank you.
11 Noah Horowitz.

12 MR. HOROWITZ: Good morning, Commissioners,
13 staff, and other stakeholders. My name is Noah Horowitz
14 and I'm a Senior Scientist with NRDC, the Natural
15 Resources Defense Council. I'm here today to express our
16 support for the latest proposal and to urge prompt
17 adoption. The current proposal already reflects numerous
18 conceptions and we want to make sure that we don't lose
19 any additional energy savings. I want to make a few
20 additional quick points, the first is around Acceptance
21 Testing. As we heard earlier, there are a lot of
22 complicated systems that are being put in our buildings,
23 and we need to make sure they're installed properly and
24 working properly. And the key part of that is to have a
25 qualified person inspect them and this is called

1 "Acceptance Testing."

2 The missing piece in the Code now is who is
3 qualified or eligible to do that testing -- what
4 training, what certification do they need? We understand
5 there is a parallel proceeding, which we support, and we
6 urge the CEC to finalize that on a timely basis, as well.
7 We provided some written comments on that on a potential
8 way to move forward on that.

9 In terms of the 15-day language, the low-rise
10 multi-family buildings, that's the biggest or fastest
11 growing part of the residential building stock and we
12 need to make sure we do a good job there. The Code
13 provides 14 percent savings, which isn't as large as the
14 savings we got in the other sectors, so we encourage the
15 CEC to make sure this is a priority in the follow-up
16 rulemakings.

17 Also, I'd like to acknowledge the important
18 role played by the Investor-Owned Utilities, many of them
19 who are here in the audience, and their consultants.
20 They prepared numerous proposals, many of their
21 spreadsheets around the 50th iteration that I saw, and
22 there are probably many on that, so thank you for all
23 your time and effort there. And that concludes my
24 comments for today. Thank you.

25 CHAIRMAN WEISENMILLER: Helene Pierce, GAF.

1 MS. PIERCE: Good morning, Commissioners.
2 Thank you for this opportunity to provide comments to the
3 Proposed 2013 Energy Efficiency Standards, Title 24 Part
4 6. My name is Helene Hardy Pierce, and I'm Vice
5 President of Technical Services for GAF. GAF is the
6 largest roofing manufacturer in North America. We also
7 are a California manufacturer with multiple plant
8 locations that employ over 300 Californians, and a
9 manufacturer with a multiplicity of products that meet
10 the proposed standards and the properties that you'll
11 find in Title 24, Part 6, for roofing materials.

12 Over the past year, CEC staff has been
13 developing the revisions to this, and there's been a lot
14 of back and forth with the roofing industry, and a lot of
15 the input from the roofing industry has been taken into
16 consideration. And so our industry has been providing
17 some -- a lot of comments and some is evident in the 15-
18 day language.

19 I'd like to express concern with the cost
20 justification that has been used to justify these changes
21 to roofing property requirements for low slope,
22 nonresidential roofing materials. Staff has expressed
23 that they believe the AEC's, their consultant, cost
24 justification is representative of the market and takes
25 into consideration geographic differences, and is

1 supportive of the range of roofing products. Just one
2 example of where I would beg to differ with that position
3 is that, in fact, the AEC study actually states within it
4 that APP modified bitumen products are not often used in
5 California -- not often used? Well, the reality is
6 regarding this product segment is that over 100 million
7 square feet of that product were installed in 2011,
8 alone. And that's twice the amount of SPS modified
9 products. And so, as a manufacturer with an APP plant in
10 the state, you might understand why I would call that
11 into question.

12 Secondly, the AEC study either does not account
13 for the cost to maintain radiative properties, or it does
14 so incorrectly. This issue of the need to keep a roof
15 surface clean has not been addressed and, in fact,
16 routinely has been just kind of pushed aside or
17 conveniently ignored.

18 The State of California does have many
19 different climates, several of which are Coastal. To
20 exemplify this issue of cleaning, consider the condensate
21 accumulation in coastal areas where, at night time, fog
22 rolls in, it condenses on exterior surfaces, typically
23 horizontal surfaces, including roofs, and then that
24 condensation includes particulate matter. And it remains
25 until you get rainfall. And for those areas that don't

1 have extensive rainfall, particularly coastal areas, then
2 a lot of time it remains until the rainy season.
3 Proposed within the 15-day language is an increase from a
4 0.55 to 0.63 reflectivity. Well, with that type of
5 accumulation of dirt on a roof, a three-year aged
6 radiative property measured from a weathering farm is not
7 indicative of in situ type situations that roofs
8 routinely see.

9 And so the science for this Code change ignores
10 the reality that, in order for a roofing material to
11 maintain its radiative properties, it may have to receive
12 routine cleaning for which, of course, there is a
13 significant cost --

14 CHAIRMAN WEISENMILLER: You have to wrap up
15 now.

16 MS. HARDY PIERCE: Yep, I'm almost done.

17 CHAIRMAN WEISENMILLER: Thanks.

18 MS. HARDY PIERCE: A final objection to the
19 cost justification is that the costs are also not
20 representative of maintenance outside of routine
21 cleaning, such as re-roofing costs and coating costs.

22 There are several reasons, therefore, that I
23 believe the cost justification for proposed changes is
24 greatly flawed and does not provide confirmation that
25 these changes made the statutory requirements to make

1 them to the Energy Efficiency Standards. Thank you very
2 much.

3 CHAIRMAN WEISENMILLER: Thank you.

4 COMMISSIONER DOUGLAS: If I could ask Mazi,
5 maybe, or Mazi to respond to some of the concerns raised
6 in the cost --

7 MR. SHIRAKH: I will try to respond to some of
8 the points. Helene mentioned that this process started
9 about a year ago, June of last year, here in this room,
10 and our proposal has evolved significantly since then
11 because of interaction with ARMA and other folks. You
12 know, we started out by requiring a solar reflectance of
13 .70, and thermal emittance of .85, and no insulation
14 tradeoff, that's how it started last year in this room.
15 And Helene and others provided a lot of comments and the
16 result of that, you know, we actually dropped our
17 requirement for the .85 thermal reflectance back to an
18 existing .75.

19 I think it was Helene herself who suggested
20 that we should have some kind of an insulation tradeoff
21 in exchange for thermal reflectance, and I think they
22 correctly pointed out that there will be some roofing
23 products that will not meet the .63 reflectance, so the
24 solution was to actually have a little additional
25 insulation in exchange for a lower reflectance. We

1 initially offered this for existing roofs and then they
2 commented that, you know, we should extend this to newly
3 constructed buildings so we actually have that as a
4 prescriptive alternative; a helpful comment, you know, we
5 responded. The solar reflectance was .70, we actually
6 modified that three times. First, we dropped to .67,
7 then .65, and now we settled at .63; again, a lot of back
8 and forth.

9 The issue of cost has been an ongoing debate
10 between us and ARMA and the members, it started out,
11 again, about a year ago. Then, in September of -- I
12 think it was September 12, 2011 -- you know, we had
13 another meeting in Hearing Room B, the focus of that was
14 cost, we worked with ARMA, we developed -- actually, we
15 used their instruments as survey instruments that they
16 had developed to go out and get costs. And during this
17 time, we were hoping that not only we would get
18 additional costs, that ARMA would help us collect
19 additional costs, we used their survey and went out, we
20 did find it a bit difficult to get the responses, but we
21 did manage to get 12 or 13 responses, which covers most -
22 - or, I think, all of the roofing products that are being
23 installed in the state. It does represent the geographic
24 diversity of the state from north to south, different
25 cities, and we were hoping that ARMA would also help us

1 with collecting more data and, to the best of knowledge,
2 that hasn't happened.

3 But what is true is that, you know, we do have
4 these costs in every single point that we have, the data
5 that we have shows that cool roof technologies are cost-
6 effective, and even though there's a diversity of ranges
7 within the costs that we got, they all point to the same
8 thing. And we do not have any information -- opposing
9 information -- that our analysis is incorrect, we have
10 not information from anyone that shows that, you know,
11 even one, that we're not proposing something that is not
12 cost-effective.

13 On the question of maintaining the radiative
14 properties that Helene just mentioned, we use the
15 industry standard, the CRRC has a three-year age
16 reflectance value that we are using, basically they are
17 assuming that this product is going to be out there for
18 three years, exposed to the elements -- rain, wind, dust,
19 leaves, whatever -- and that's the reflectance we're
20 using. Now, if the industry feels that these numbers are
21 not correct, they should be working with CRRC to address
22 that. With what we are using is using a nationally
23 recognized value as we do with air-conditioning, we use
24 ASHRAE, and in lighting, we use IES, fenestration, we use
25 NFRC, we're using the exact same process. And, you know,

1 we feel those numbers are representative and our
2 contractors actually did go through a lot of extent to
3 include all the parameters that go into cost-
4 effectiveness, you know, we used the same cost-
5 effectiveness methodology, the lifecycle cost, net
6 present value, that takes into consideration an hourly
7 stimulation of the building's internal loads, it takes
8 into consideration the energy benefits, the TDV, the
9 multiplier for all the hours of the year, and the
10 discount rates and so forth, and so, you know, we've
11 demonstrated that in many cases they're widely cost-
12 effective in some climate zones.

13 So with that, I think that I'll recommend
14 adoption of the Standards.

15 COMMISSIONER PETERMAN: I'll just add -- thank
16 you for that explanation, I had some follow-up questions,
17 as well, but you've addressed them in your comments.
18 Thanks.

19 CHAIRMAN WEISENMILLER: Great. Mike Gabel,
20 CABEC.

21 MR. GABEL: Good morning, Commissioners, and
22 Chair Weisenmiller. My name is Mike Gabel and I'm
23 representing the California Association of Building
24 Energy Consultants, also known as CABEC today. I just
25 wanted to come up to say that we fully support the

1 Commission's adoption of the 2013 Building Energy
2 Efficiency Standards, as an enormous, important and cost-
3 effective step towards reducing building energy use,
4 energy cost, and greenhouse gas emissions. We'd like to
5 thank the CEC staff, their consultants, and the many
6 stakeholders for working very hard to research and help
7 craft the new energy standards. And we would especially
8 like to express appreciation to Mazi Shirakh, Martha
9 Brook, Gary Flamm, Nelson Pena, and Pat Saxton and other
10 staff for carefully reviewing and, in many cases,
11 incorporating detailed recommendations from proven Code
12 language submitted by CABEC members. In particular, as
13 Mazi mentioned, the Residential and Non-residential
14 Alterations addition language is a significant
15 improvement over current Code, and is a result of
16 hundreds of hours of intense effort by staff and CABEC
17 members and others.

18 Finally, we'd like to look forward to providing
19 technical review of the new compliance manuals, the new
20 forms, and the other supporting documents before the
21 publication. And I'll echo what Mike Hodgson said, we're
22 also looking forward to the Compliance Software, as well,
23 and hopefully that will proceed on a reasonable
24 timeframe.

25 We also want to mention we're preparing a new

1 examination for a Certified Energy Analyst, it will be
2 part of the new Standards, and it's also important that
3 the Energy Commission documents and software be ready in
4 time for us to develop that examination in time for the
5 Standards. That's all I have to say. Thanks very much,
6 and good luck.

7 CHAIRMAN WEISENMILLER: Thank you. John
8 Woestman.

9 MR. WOESTMAN: Thank you. Good morning. John
10 Woestman with Extruded Polystyrene Foam Association.
11 Very very brief comments and I submitted mostly technical
12 opportunities for improvement on the docket yesterday. I
13 noticed the discussion here won't get into any detail, so
14 I don't intend to do that, but I did suggest some further
15 modifications to the language and which I know is very
16 late to do that, or past time to do that, but it would
17 help improve the language of the Code. So if it's an
18 opportunity to incorporate that at some time, that would
19 be great. Thank you.

20 CHAIRMAN WEISENMILLER: Thank you.

21 COMMISSIONER DOUGLAS: Would it be helpful,
22 Commissioners, if the staff just gave a brief summary of
23 the comment and their thoughts regarding the comment at
24 this point? Go ahead.

25 MS. BROOK: So, Payam, we need you for the

1 spray foam.

2 MR. BOZORGCHAMI: Hi. This is Payam with
3 California Energy Commission. The comments that I --
4 actually I received right before the Commission hearing
5 today, they were mainly clarifications which we can deal
6 with in blueprints and the blueprints being the questions
7 and answers that we submit electronically to the folks
8 out in the industry, and also we can do some
9 clarifications in the Residential and Nonresidential
10 Manual. It's more of an understanding of what's being
11 defined in our definitions. And in our Joint Appendices,
12 there is a request to add more columns to describe more
13 continuous insulation, we are in the process of
14 developing a computer program that does assembly
15 calculations, and we're calling it -- as of now, it's
16 called Easy Frame 2013, that does simulation for modeling
17 envelope related materials.

18 COMMISSIONER DOUGLAS: All right, well, thank
19 you for that clarification and obviously look forward to
20 hearing about your further work on this topic and
21 addressing the clarifications requested.

22 CHAIRMAN WEISENMILLER: That's good. Okay,
23 John Martin.

24 MR. MARTIN: Good morning, Commissioners. My
25 name is John Martin. I am Public Policy Representative

1 of the International Association of Lighting Designers,
2 the IALD. The IALD is the leading global organization of
3 architectural lighting designers. Our members design and
4 specify lighting in projects of all sorts, always with an
5 eye to lighting quality, which we define as the optimum
6 balance among human factors, environmental and
7 engineering considerations, and architectural issues.

8 We are pleased to be able to speak in support
9 of your adoption of the Proposed 2013 Building Energy
10 Efficiency Standards under Title 24. The process of
11 developing these standards has been transparent, public,
12 and thoughtful. Your staff, especially Mr. Gary Flamm
13 and his colleagues, has been a delight to work with,
14 especially for a group that is new to the process such as
15 IALD. That's not to say that they aren't perfect, they
16 didn't accept without question each and every one of your
17 suggestions.

18 [Laughter]

19 Seriously, we have found that our voice has
20 been heard and welcomed throughout the process, and we
21 are confident of our welcome to participate in future
22 Code improvement efforts. We look forward to continuing
23 our partnership with your staff and other stakeholders in
24 this process. As lighting experts, our members
25 understand that continued reduction of Lighting Power

1 Densities, or LPDs, is not a useful path to reducing
2 energy use. The expanded attention to daylighting and
3 lighting controls exemplified in the 2013 Standards will
4 help to redirect the attention of Code authorities across
5 the United States toward the value of using the sun and
6 our brains to help light our buildings, rather than
7 marching down a path literally towards darkness.

8 We look forward to helping the process of
9 interpreting and applying these Standards in ways that
10 improve California, and we thank you for your time and
11 attention.

12 CHAIRMAN WEISENMILLER: Thank you. Valerie
13 Winn.

14 MS. WINN: Good morning, Chair and
15 Commissioners. Valerie Winn with PG&E. I just wanted to
16 take this opportunity to express PG&E's support for
17 adoption of the 2013 Codes and Standards. There's been a
18 lot of work by a lot of people in this room in putting
19 those together, and there's always room for tweaks here
20 and there, but we certainly feel that what's been
21 proposed for adoption is an appropriate balancing of the
22 interests, and we look forward to working with the team
23 on the 2016 Codes and Standards, which will be coming up
24 soon enough. I have to say, the idea of 50 stakeholder
25 meetings and 15 workshops is a little daunting, it's

1 almost as bad as the IEPR. But, anyway, thank you, and
2 we do support adoption as presented today. Thank you.

3 CHAIRMAN WEISENMILLER: Thank you. Josh Rosa.

4 MR. ROSA: Thank you, Mr. Chair and
5 Commissioners. I'm Josh Rosa here on behalf of CAL-
6 SMACCNA, the California Association of Sheet Metal and
7 Air-Conditioning Contractors National Association.

8 I want to start by saying we support the
9 overall package. There's one section that we are
10 requesting to withdraw. I want to thank staff for being
11 extremely accessible and very helpful throughout this
12 entire process. We've been kind of going back and forth
13 with them for many many months and they've been really
14 outstanding.

15 Our one issue is with the section relating to
16 commercial kitchen ventilation, short circuit hoods, and
17 transfer air in Section 140.9(B), page 260. One of the -
18 - we look at it in two revisions, there's a short circuit
19 hoods and the transfer air. With regard to short circuit
20 hoods, the revision would prohibit the replacement air
21 introduced directly into the hood cavity of kitchen
22 exhaust hoods from exceeding 10 percent of the hood
23 exhaust flow rate. This effectively bans short circuit
24 hoods. What we get from staff is the concern that short
25 circuit hoods over-exhaust, it uses more energy than is

1 necessary, which we believe is possibly sometimes the
2 case; however, in other kitchen environments, short
3 circuit hoods are an appropriate way for contractors and
4 kitchen designers to avoid over-exhaust and actually save
5 on energy. They're not used very often. Sometimes you
6 hear it's one or two percent of cases where short circuit
7 hoods are used, and we actually think this infrequency of
8 the use is one of the indications of the level of
9 discretion that contractors and designers often use in
10 applying them. The other indication, and the one that we
11 rely on a little bit more, is our own contractors in the
12 field who do this kind of work for many different types
13 of restaurants, and have found that short circuit hoods
14 are sometimes very useful and just add to the toolbox,
15 and the flexibility for quality contractors to apply them
16 when necessary.

17 CAL-SMAACNA has found that they're good at
18 minimizing energy costs that result from over-exhausting
19 transfer air in some kitchen environments, they avoid the
20 potential grease build-up that results from over-exhaust,
21 and at times can provide superior efficiency by
22 minimizing removal of conditioned makeup air; in fact,
23 numerous models commonly used in a today's market have
24 been shown in test to supply up to 70 to 80 percent non-
25 conditioned makeup air internally into the hood capture

1 area.

2 CAL-SMACCNA understands that staff has done a
3 study, the study doubled the exhaust of short circuit
4 hoods relative to non-short circuit hoods as a baseline
5 for the study. And that's not always the experience of
6 our contractors in the field that the exhaust is
7 necessarily double every time you use the short circuit
8 hood. So for those few kitchens that are appropriate for
9 short circuit hoods, we believe the contractors should be
10 allowed to continue to use them and quality contractors
11 and designers can tell the difference, so we don't see
12 the justification to restrict the flexibility.

13 The other issue is transfer air. This is the
14 proposal to essentially use the conditioned air in the
15 dining area of a restaurant to try to offset the cooling
16 load in the preparation area of the restaurant.
17 Previously, the practice has been very very small amounts
18 of transfer air coming from dining to preparation to
19 straight pressurization, so the odor doesn't come out
20 through the cooking area into the dining room. Usually,
21 it's typically used at around five percent, and that's
22 what ASHRAE Standards currently advance. What this
23 proposal does is it uses the transfer air for a different
24 reason, and that reason is, like I mentioned, to offset
25 the cooling load, it's a larger amount of transfer air.

1 The concern of CAL-SMACCNA and our contractors who work
2 in kitchen environments is that this is going to upset
3 the balance between the two environments.

4 CHAIRMAN WEISENMILLER: We need you to wrap
5 things up.

6 MR. ROSA: Oh, my God. Okay. Well, with that,
7 I think I've -- and we've submitted written comments that
8 go into even more detail than that, but I just, again,
9 want to thank staff for their attention and help with
10 this process. Thank you so much.

11 CHAIRMAN WEISENMILLER: Okay, thank you.

12 COMMISSIONER DOUGLAS: Thank you. Let me ask -
13 - I know that, Martha, you've had a lot of exchange on
14 this topic -- let me ask for your thoughts on the short
15 circuit hoods --

16 MS. BROOK: Yeah, okay, so on both the transfer
17 air and the short circuit hoods, the first response is
18 that these are consistent with the Proposed -- the
19 National ASHRAE Standard, so designers are going to have
20 to start thinking about things differently across the
21 nation for kitchen exhaust design, and we're not doing
22 anything different, we're actually deliberately trying to
23 be consistent with that national standard. And then the
24 second point that I'd like to make that I think is really
25 important to Josh's concerns about flexibility is that,

1 what we've established are prescriptive requirements,
2 they're not mandatory requirements. That means that it
3 sets the Energy Budget and, if you want to use the
4 prescriptive path of compliance, you can certainly do
5 that and follow our rules for how you would do that, but
6 it also allows you to use our performance compliance path
7 and put short circuit hoods in if you want, but our
8 Compliance Software would then calculate what we estimate
9 to be the energy penalty of that, and you could make up
10 that difference in any way, not just with kitchen exhaust
11 design, but anything else that's going into the building
12 project that you're getting compliance on. So the fact
13 that it's a prescriptive requirement, I think, is key to
14 keeping the flexibility if you absolutely have to use a
15 short circuit hood above 10 percent for a specific
16 kitchen design, you can do that and comply with our
17 Standard through the performance approach, and that's how
18 we've encouraged other applicants to think about the
19 flexibility that they need to get their building to
20 comply with our Standards.

21 COMMISSIONER DOUGLAS: Martha, one more
22 question. If somebody thought that the energy penalty
23 that we were applying to short circuit hoods, or any
24 other measure, was not correct, what would they do? What
25 process would they follow?

1 MS. BROOK: So what we need to do is encourage
2 Josh and his members to participate with us in the
3 Compliance Software workshops where we'll be discussing
4 the rules for modeling each of the elements that go into
5 the Compliance Software performance approach, and that's
6 where we'll be establishing those rules. And actually,
7 the Commission approves that ACM Reference Manual, so
8 there's still a lot of public process left where they
9 could participate in workshop to help establish the rules
10 and also provide comments, you know, come back to a
11 meeting like this and talk about either support for the
12 method that we're implementing the performance approach
13 with.

14 COMMISSIONER DOUGLAS: Great, and so they would
15 also have the ability to bring data --

16 MS. BROOK: Yes.

17 COMMISSIONER DOUGLAS: -- that would show
18 demonstrating performance of short circuit hoods under
19 certain circumstances.

20 MS. BROOK: Absolutely, yes.

21 COMMISSIONER DOUGLAS: Okay, thank you.

22 CHAIRMAN WEISENMILLER: Thank you. Eric
23 DeVito.

24 MR. DEVITO: Thank you. Eric DeVito on behalf
25 of Cardinal Glass Industries. Cardinal Glass is one of

1 the national leaders in coatings and insulated glass
2 technologies, has plants across the country, including
3 two right here in California. We are thankful and
4 appreciative of being involved in this process for quite
5 a while. We participated in workshops, we participated
6 in the 45-day language, we've participated with staff,
7 and we commend staff on the very open process, we
8 believe, and we have routinely and consistently supported
9 the new Standards, and we do so today. And we urge your
10 adoption of them. We think it's a great step forward,
11 particularly with respect to our product, we're
12 commenting on the Windows Standards, the staff obviously
13 highlighted those as some big benefits and new steps
14 forwards in the Standards; we agree. The U-Factors and
15 the SHGCs and the VT requirements that are now being
16 implemented are pushing the state to the best available
17 technology, it's widely available. And addressing some
18 of CBIA's concerns about increased cost, well, this is
19 actually one of those measures that you're going to get
20 the best available technology, but not really at much of
21 an additional cost at all. California has always been a
22 leader in Low-E glazing, you've required it for years,
23 what you're doing right now is you're really just
24 tweaking it so you're using the right Low-E glazing, the
25 one that combines the best of low solar gain with high

1 visible light. So you're getting the best of all worlds
2 -- heating energy savings, cooling energy savings, and
3 lighting energy savings, because of the high visible
4 light, and that's why we fully support these standards.

5 We have submitted numerous comments and
6 suggestions to staff, many of them have been
7 incorporated, but many of them we did agree to disagree,
8 and that's common with this process, other people have
9 mentioned it, too, but, again, we believe the overall
10 steps forward are tremendous and that's why we support
11 it. We've put a new set of comments on record just
12 yesterday to the docket and, really, that was just again
13 to reiterate our support and, 2) somewhat of a checklist,
14 hopefully in the next Standards Update there's some items
15 that we talked about we think maybe should come out of
16 the next Standards, maybe they're temporary measures,
17 particularly with the VT equation, so we just wanted to
18 document that and hopefully the next go-round we'll
19 certainly be here and involved and remind staff that we
20 think that should come right back out, but again, we
21 fully support it. And lastly, again mindful of the
22 economy and the issues that CBIA mentioned, you know,
23 particularly the window provisions, it will help jobs in
24 California. Cardinal's plant in Galt, just 30 minutes
25 down the road, manufacturers this coating that's going to

1 be required, the plant has capacity and certainly would
2 ramp up production to meet the new needs of the
3 Standards, and that means good quality jobs for
4 California. So we commend and support and look forward
5 to continuing to work here in California. Thank you.

6 CHAIRMAN WEISENMILLER: Thank you. Jerry
7 Desmond, Jr.

8 MR. DESMOND: Good morning, Commissioners,
9 Jerry Desmond, Jr. on behalf of Plumbing Manufacturers
10 International, PMI, the International Association, 28
11 members, manufacture probably 80 percent of the plumbing
12 products sold in California. We're here specifically on
13 Section 110.3(C)(7) on the showerhead issue. We had
14 identified some issues with the draft language and
15 appreciate having had the opportunity to provide our
16 thoughts and comments and suggestions to the staff before
17 this hearing, and we support the inclusion of that
18 provision on the Errata sheet, as discussed previously.
19 I wanted to make sure we came forward and expressed our
20 appreciation for the dialogue we've had and look forward
21 to future dialogues as you address plumbing products and
22 fixtures within the context of your activities. Thank
23 you.

24 CHAIRMAN WEISENMILLER: Great, thank you. Lisa
25 Hoyos.

1 MS. HOYOS: Good morning, Commissioners and
2 staff. My name is Lisa Hoyos and I'm the California
3 Director of the Blue Green Alliance. We are a national
4 organization of eight major labor unions and for big
5 environmental groups, including NRDC, Sierra Club, and
6 Union of Concerned Scientists.

7 We're here to express our strong support of the
8 proposed Building Energy Efficiency Standards and urge
9 that you adopt them today. And we also, as Noah Horowitz
10 said earlier, urge you to finalize your parallel
11 proceeding on Acceptance Testing so that the issue is
12 heard at the Building Standards Commission as soon as
13 possible. Being the Blue Green Alliance, our support for
14 these Standards is rooted in both blue and green, and on
15 the green side, given that roughly a third of
16 California's GHG emissions come from buildings, we
17 believe these Standards are essential in helping us meet
18 our AB 32 goals, which we're deeply committed to. Also,
19 these Building Code Standards will create thousands of
20 new jobs and will help maintain quality jobs in the
21 building and construction sector. We have two
22 areas where we'd like to see additional focus in the next
23 Code cycle. On the Residential side, the energy savings
24 numbers in the 15-day language are lower than those
25 proposed by the CEC in the 45-day language, and are much

1 lower, actually, than some of the proposals discussed in
2 the proceeding, so we would agree with our environmental
3 and labor partners that we need to be resolute about
4 staying on target to meet our 2020 Zero Net Energy goals.

5 On the issue of Code Enforcement, several of
6 our labor partners have repeatedly underscored the need
7 for expanded and improved Code Enforcement to ensure that
8 our energy efficiency goals are realized in practice, and
9 we'd like to work with you on this.

10 In closing, we'd like to thank you for your
11 leadership in energy efficiency and for ensuring that
12 California continues to lead the way for the rest of the
13 country in innovation, in energy efficiency job creation,
14 and in climate protection. Thank you very much.

15 CHAIRMAN WEISENMILLER: Thank you. Dr. William
16 Callahan.

17 DR. CALLAHAN: Good morning, Commissioners,
18 staff. I'm Bill Callahan, I'm the Executive Director of
19 Associated Roofing Contractors of the Bay Area Counties.
20 We got to know each other pretty well back in March, some
21 of us. I was up here many many times with a lot of
22 concerns, but mostly revolving around one theme that Bob
23 Raymer mentioned earlier in the proceeding, and that is
24 contractors in the field dealing in the real world need
25 flexibility, they need tools, they need options, and my

1 biggest concern was a simplified tradeoff table that
2 dealt with above-roof deck insulation and seemed to limit
3 the ability of contractors to look below the roof deck to
4 substitute insulation for reflectivity. And we were
5 concerned about the elimination of the overall envelope
6 energy approach as a compliance option. We have found
7 that useful in the current Code cycle. And I'm pleased
8 to say that jumping up and down all those times, I was
9 listened to. And Mazi and I shook hands on a deal and
10 the deal came through. And right after the hearing on
11 March 12th, the staff told us that they were going to
12 keep the overall envelope energy approach, they were
13 going to move it to a different section to the
14 Nonresidential Alternative Calculation Method, but it's
15 still going to be there for us to use and that's a good
16 thing. They also committed to make a user-friendly, and
17 free, tradeoff tool available on their website, and we
18 welcomed that, as well. And then, when the 15-day
19 language came out a couple of weeks ago, there was a new
20 tradeoff table, 141.0(B), that was based on U-Factors
21 rather than R-Values, and that was intended to address
22 our concerns. And that was a welcome development, but
23 when I took it out for a test drive and started running
24 some of the numbers, it didn't work all that well and it
25 produced some anomalous results, which I immediately

1 brought to Payam's attention, and then on practically a
2 moment's notice, working with Payam and John Arent and
3 Mr. McHugh, we were able to build some new tools and fix
4 some -- correct some errors in that table so that you now
5 have an Errata version of that table that works well, and
6 it satisfies our concerns, and it gives my contractors
7 the flexibility they need -- and they do need it because
8 my Union contractors deal with hard jobs, not with simple
9 ones.

10 So at this point, my only remaining concern is
11 making sure in the enforcement level that there's an
12 understanding of how this new table -B and the minimum
13 insulation table -C, work together and, on our WebEx last
14 week staff made a commitment to work with me and get me
15 involved in writing the Compliance Manuals so we can
16 explain how this works to the regulated community and to
17 the enforcement community. I accept that invitation and
18 I look forward to working with them on that. So we
19 support the new Standards as they apply to roofing
20 contractors. Thank you.

21 MR. SHIRAKH: Thank you, Bill.

22 CHAIRMAN WEISENMILLER: Thank you. Staff, any
23 comment?

24 MR. SHIRAKH: As Bill suggested, you know,
25 there were some unresolved issues during the March

1 meeting and he had some concerns about the tradeoffs and
2 the removal of the overall tradeoff approach, and
3 immediately after the meeting staff engaged him and, as
4 you mentioned, we are going to bring back a form of the
5 overall tradeoff approach in the Compliance Manuals. We
6 are working with the software vendors to actually have a
7 simple interface for using the performance approach for
8 roofing tradeoffs, and we will also work with them to
9 address some of his concerns related to the U-Factors and
10 the R-Values. So with those, we're happy to see that
11 Bill is now supporting the Standards.

12 MS. BROOK: And I would just add that we will
13 be depending and have gotten a commitment from the
14 Investor-Owned Utilities to help us with that overall
15 envelope approach, which is important because our
16 resources for a Compliance Software are extremely
17 limited, so to add the functionality that we've agreed to
18 provide, we will need that help from the Investor-Owned
19 Utilities.

20 CHAIRMAN WEISENMILLER: Great. Peter Hart,
21 ARMA.

22 MR. HART: Good morning, Commissioners. My
23 name is Peter Hart and I'm an attorney with LeClairRyan
24 in San Francisco. I've been asked to appear this morning
25 on behalf of the Asphalt Roofing Manufacturers

1 Association, together with Mr. Louis Wilde, I will be
2 presenting ARMA's position that the California Energy
3 Commission should defer adoption of the new Cool Roof
4 Reflectance Values proposed for the 2013 Building Energy
5 Efficiency Standards.

6 The Proposed Standards do not have adequate
7 support in the record. The foundation for much of the
8 Commission's proposal comes from a study prepared on
9 CEC's behalf that was intended to quantify the costs and
10 benefits of the new Standards. As Mr. Wilde will
11 explain, that study was completely inadequate to identify
12 the cost savings and benefits that would be obtained from
13 adopting these new Standards. Very small response rates
14 make it all but impossible to project the impact of these
15 new Regulations on the possible energy savings expected
16 throughout California.

17 The proposed adoption of these Regulations has
18 been done in a manner that has denied the industry and
19 ARMA, in particular, the opportunity to work with staff
20 to obtain meaningful information on the new Regulations,
21 and for which the Commission would have ARMA's support.
22 This has occurred despite ARMA's repeated request to work
23 with staff to identify a meaningful way to obtain key
24 data to provide a foundation for which scientifically
25 supported Regulations can be derived.

1 Correspondence from ARMA and other interested
2 parties has demonstrated that the foundation for the
3 proposed regulations is flawed and that further studies
4 of the costs and benefits of the Proposed Regulation
5 should be undertaken. Please see correspondence from
6 ARMA and other interested parties dated October 12th,
7 2011. ARMA and other interested parties have repeatedly
8 suggested that the current Regulation should be continued
9 and that a new study be undertaken from which both the
10 industry and the Commission can obtain accurate data on
11 which any w Regulations should be based. This would not
12 be an easy task, but one which all interested parties can
13 and will support.

14 Adopting the present proposals would send a
15 very bad signal to business and to other interested
16 parties in California. The only conclusion that could be
17 drawn from continuing down this present path is that the
18 Commission is not willing or interested to take the
19 interests of consumers and businesses into consideration
20 when mandating changes in Regulations. This would be in
21 direct contravention to the enabling legislation for the
22 Commission, which states that the Standards adopted or
23 revised shall consider the impact on housing costs, total
24 statewide costs and benefits of the Standard over its
25 lifetime, economic impact on California businesses, and

1 alternative approaches and their associated costs. And
2 I'm referencing California Public Resources Code Section
3 25402.

4 CHAIRMAN WEISENMILLER: Okay, so would you
5 please wrap it up?

6 MR. HART: I'm sorry?

7 CHAIRMAN WEISENMILLER: Would you wrap up your
8 comments?

9 MR. HART: Almost. ARMA does not believe that
10 the Commission has adequate information to be able to
11 consider most of these matters, proceeding with so little
12 information to justify these new Regulations is
13 arbitrary, capricious, and without proper foundation.
14 ARMA urges the Commission to defer adoption of these
15 Regulations and to work with business to obtain
16 meaningful data from which new Standards can be adopted.
17 Thank you.

18 CHAIRMAN WEISENMILLER: Thank you. Let's hear
19 from Louis Wilde -- again, ARMA.

20 MR. WILDE: Good morning, Commissioners and
21 staff. My name is Louis Wilde. I'm a Director at Gnarus
22 Advisors. I have a Bachelor's Degree in Mathematics from
23 the University of Iowa and a PhD in Economics from the
24 University of Rochester. I was on the faculty of the
25 California Institute of Technology in Pasadena for 16

1 years. I've been a full time consultant for the past 20
2 years. Among my areas of expertise are sample design and
3 statistical analysis.

4 I was asked by the Asphalt Roofing
5 Manufacturers Association to review and comment on a
6 report prepared by Architectural Energy Corporation
7 called *Nonresidential Cool Roof Summary*, dated February
8 8, 2012. The AEC report discusses the results of various
9 surveys intended to identify certain potential cost
10 increases associated with the proposed 2013 Building
11 Energy Efficiency Requirements. I've provided detailed
12 comments to the AEC report in a letter to Commissioner
13 Douglas dated May 4, 2012. My purpose here is to provide
14 a statement of my primary opinion and the bases for it.
15 Specifically, it's my opinion that the AEC report is
16 seriously deficient in several respects and cannot be
17 relied upon for estimates of the cost increases that will
18 result from the proposed standards. In particular, much
19 of the data discussed in the AEC report are irrelevant to
20 the reported cost estimates, and there is no assurance
21 that the data is representative. In fact, there are
22 indications in the AEC report that it may not be
23 representative and, in the event [sic], the reported cost
24 estimates have no statistical validity.

25 Now, I have three bases for them, I don't have

1 enough time to read them out in detail, so I'm going to
2 summarize them for you -- I'm going to sort of read from
3 the text I wrote -- the first -- essentially, the first
4 problem is that, in fact, four different sources were
5 used to gather this information, an email survey of
6 contractors, a phone survey of contractors, another
7 survey of unspecified type of distributors, and
8 information from a single manufacturer. When you boil
9 all this information down, in fact, for the six roof type
10 categories considered, in two cases, a single data point
11 was used for the cost estimates. In one case, it came
12 from the manufacturer, in another case it came from the
13 contractor phone survey, but only one contractor
14 responded, so it's a single data point to project costs
15 for the entire state.

16 The other four cost categories relied largely
17 on what turned out to be a distributor survey, and we
18 have almost no information on that survey. The
19 individual responses are not shown, there were only 11
20 distributors contacted, and it's impossible to ascertain
21 who responded to which roof-type categories, it could
22 have been all 11, it could have been one. So there's a
23 problem there.

24 The other -- quickly -- a couple of other
25 problems, if you look in detail at the report, there are

1 suggestions that there were some inconsistencies and some
2 indication that the costs are understated. If you look
3 at the summarized costs and then you look at the
4 individual responses that were made available by the
5 contractors, they look higher than the summarized costs.
6 So it's not clear why the summarized costs are so much
7 lower. Also, there's a table of costs for the
8 contractors and a similar table of summarized costs for
9 distributors. Oddly enough, in three of the categories
10 the incremental cost estimates are identical. The odds
11 of that happening by chance have to be near zero, so I'm
12 not -- it's not clear why those two cost estimate tables
13 turned out to have the same cost estimates when they
14 supposedly came from independent random samples of
15 different groups.

16 And lastly, just want to reiterate that, from a
17 statistical point of view, trying to project costs based
18 on these surveys requires that there be a carefully
19 crafted survey with a reasonably large sample size and a
20 transparent and relatively sophisticated statistical
21 analysis attached to it. That hasn't been done here.
22 You cannot project costs based on a single observation;
23 in fact, even 11 observations would be statistically
24 inadequate to project those costs for a population as
25 large as at issue here in California. So just to --

1 CHAIRMAN WEISENMILLER: So in conclusion?

2 MR. WILDE: -- my conclusion, then, is that
3 this existing report fails to support the conclusion that
4 the economic benefits of the Proposed Standards outweigh
5 the costs. It's lacking in transparency with respect to
6 key data, distributor costs, and there are indications
7 that it understates actual costs. In my opinion, a more
8 carefully crafted survey is needed with a much larger
9 sample size and a more transparent and sophisticated
10 statistical analysis. Thank you.

11 CHAIRMAN WEISENMILLER: Okay, thank you.
12 Staff, any comments?

13 MR. SHIRAKH: Yes --

14 COMMISSIONER DOUGLAS: Actually, Mazi, you
15 know, I'll make a brief comment and then I'll see what
16 staff wants to add. We talked a bit about this earlier
17 with the earlier speaker, and Mazi went into some detail
18 about the methodology and some of the steps that staff
19 took. You know, I just wanted to say as a framing
20 comment that the Energy Commission has a strong tradition
21 and practice and preference for working closely with
22 industry for deriving consensus proposals that move the
23 ball forward, but that are respectful and accommodating
24 of the difficulties that industry may face with what
25 we're asking them to do. And I think that,

1 Commissioners, you will hear generally, and have been
2 hearing from a number of speakers, about that process in
3 various ways and resolution of issues. In this case,
4 staff has worked very closely, or tried to work very
5 closely with industry, for more than a year on this
6 proposal and has developed good data, generally based on
7 the sorts of information that we use in many other
8 measures, as well. We've got long term studies of the
9 performance of roofing materials at issue, we've got
10 collected data on cost in this case, every single data
11 point that we have collected has shown the proposal that
12 we're putting forward is cost-effective. Despite
13 the sorts of arguments that you have just heard, the
14 industry has not come forward with a single contradictory
15 data point, not one. And so, given that we're sitting
16 here with what I believe to be a strong basis for moving
17 forward and that we have worked very hard to try to get
18 additional data, and we've been very open to getting
19 additional data and haven't gotten any contradictory
20 information, I strongly believe that we are on solid
21 ground to go forward and we should go forward, and that
22 we should continue to work with the industry because this
23 issue of reflectivity of roofs, particularly flat roofs
24 in the industrial and commercial sector, where we tend to
25 see a lot of potential for heat gain, and this is a very

1 important measure, and this is a measure that Art
2 Rosenfeld, who presided over the Commission's Energy
3 Efficiency efforts for two terms and had tremendous
4 breakthroughs in his career as a Commissioner, and also
5 before that, and also now, continuing, this is a measure
6 that Art Rosenfeld pioneered and championed and believes
7 is very important. So I think that, despite the fact
8 that we have reached what appears to be an impasse with
9 the industry at this point, you know, I think we've got
10 very strong grounds for going forward. I think we need to
11 continue to work with them, or try to work with them
12 because this is not an issue that's going to go away,
13 this is an issue that we're going to continue to have to
14 work on, so I want to ask that the representatives of
15 industry who spoke today, and your colleagues who are not
16 here, or may not be here, may be listening on the phone,
17 we'll see later, you know, work with us, find ways to
18 constructively engage, give us data, if you give us
19 contradictory data, if you give us evidence that does not
20 support the arguments that we are advancing, we will look
21 at that, we will take it into account, we will adjust our
22 assumptions and adjust our understanding of the issue if
23 the evidence calls for that. But that's what we need to
24 move this process, we need evidence. We need information
25 that we can analyze. And it is more helpful, far more

1 helpful to give us evidence than it is to poke at the
2 evidence that we do have -- the poking is helpful, it
3 allows us to put what we have in context, it's important
4 to bring forward questions about what we have, but what
5 is compelling to us is when you're able to bring forward
6 information that potentially could contradict, undermine,
7 cause us to call into question, the conclusions that
8 we're reaching from the evidence we have in the record.
9 And we have worked really hard -- we spent a lot of time
10 on this issue. I did review the letter that was
11 addressed to me, I pulled staff in immediately, we went
12 through again -- let's talk again about all the evidence
13 that we gathered on this issue, let's make sure that
14 we're comfortable and, quite frankly, I am. So I wanted
15 to make these framing comments. You know, Mazi, you
16 don't need to repeat yourself, you have talked about --
17 but if the last two commenters raised issues that you did
18 not address before, please feel free.

19 MR. SHIRAKH: Just briefly, again, to allege
20 that we don't respond to industry goes contrary to
21 everything we've heard today, working with stakeholders,
22 even with ARMA and, again, we have engaged them over the
23 year and we have substantially changed our proposal. And
24 if we agree to disagree, it doesn't mean we didn't listen
25 to them. On the question of feasibility study, again, we

1 have used the state-of-art tools at our disposal, energy
2 plus-based simulation engines, hourly simulations based
3 on real buildings, rules in our ACM Manuals, we're using,
4 I know widely accepted lifecycle costing methodology and
5 TDV factors and multiplier, things that we're using for
6 all the other measures is all summarized in a case report
7 over 100 pages long, with a lot of detail in it. We
8 haven't seen anything to the contrary that challenges the
9 basis of those standards. And on the question of costs
10 and the statistical significance, I will let -- the
11 counsel will probably respond to that, but statistically
12 significant is not a measure that, you know, any
13 rulemaking body in the State Government, certainly not
14 this one, uses it; you know, we use our best available
15 data, we make our best attempt to collect data, we have
16 asked ARMA to give us data. Public record is very clear
17 on that, transcripts, they have offered to help, yet we
18 have not seen a single data point, so they are
19 criticizing our methodology without actually providing
20 any evidence that our costs are not cost-effective, the
21 numbers that we have come up with.

22 So, again, taken in balance, I think we have
23 listened to them, responded to them, we have a proposal
24 that is feasible, cost-effective. I think one of the
25 members of ARMA previously mentioned that over 70 percent

1 of the products that are rated on the Cool Roof rating
2 Council already meet these requirements without any
3 insulation tradeoff. So, with that, you know, I would
4 suggest the Commission adopt the Proposed Standards.
5 Thank you.

6 COMMISSIONER PETERMAN: I'll just add a comment
7 or two. First of all, Commissioner Douglas, thank you
8 for your framing of this issue and just generally the
9 discussion about the value for data, how data is gotten,
10 and the efforts to work with industry to get that data.
11 You know, I think, I'll agree that more data is always
12 good, but sounds like staff has taken advantage of the
13 best available data. And also, I appreciate your
14 commitment to continuing to work with industry as more
15 data becomes available and it's a positive thing that all
16 the data you found so far is supportive of the
17 conclusions that you've brought to our attention. And,
18 again, these are Standards that continually evolve, but
19 your rationale and approach makes sense to me.

20 COMMISSIONER DOUGLAS: Thank you, Commissioner
21 Peterman. And I will emphasize, we mentioned this, and
22 the former speaker, as well, on this topic, you know, we
23 do allow an insulation tradeoff, so no products are being
24 kept out of the market, it's just that, for the products
25 that don't have the required reflectivity there's a small

1 additional insulation requirement to make up for the
2 benefit. Let me ask Pippin, our legal counsel, do you
3 have anything to add on this point?

4 MR. BREHLER: Just to clarify for the
5 Commissioners that the data that is in the record is the
6 kind on which people rely in making important decisions.
7 As you mentioned yourself, we don't have any
8 contradictory data. The comprehensive weight of the
9 evidence in the record provides substantial evidence in
10 light of the whole record to support your conclusion if
11 you were to go forward with this. I would also note that
12 that record also includes responses from the consultants
13 that developed these studies to the comment letters that
14 were submitted by Gnarus Consulting and ARMA.

15 COMMISSIONER DOUGLAS: Thank you.

16 CHAIRMAN WEISENMILLER: Thank you. John Arent.

17 MR. ARENT: Yes, hi. My name is John Arent.

18 I'm a mechanical engineer for AEC, who helped work on, or
19 did a large portion of the cost study. I think most
20 issues have been addressed already. I just want to
21 mention that we did collect data from different regions
22 of the state, including San Jose, San Francisco,
23 Sacramento, Fresno, L.A., San Diego, etc., so we don't
24 have a whole lot of data, that's quite obvious, and we're
25 not debating that point, but the data that we do have, we

1 feel like we've collected via the best possible means, as
2 well as collecting data from distributors in order to get
3 the true costs of the product differences between the
4 products.

5 And I'd also like to address one of Helene's
6 comments, well, maybe two, the comment on the roofs
7 getting dirty, I think that's an issue that deserves some
8 study, but as far as the comment, the cost for recoating
9 and reroofing, we do our cost benefit analysis based on a
10 15-year measure life, and for the recoating, when we're
11 comparing an initial requirement of no requirements and
12 going to a cool roof, that we incorporated a cost of re-
13 coating which we estimated at \$1.22 per square foot
14 present value at seven, eight years down the line. And
15 it's still cost-effective when going from a requirement
16 of no cool roof, but when going from a requirement of an
17 age reflectance of .55, which is the current requirement,
18 up to .63, we didn't deem that there was any additional
19 cost to recoat, as opposed to using the more highly
20 reflective product. I think most of the rest of the
21 comments have been addressed. Thank you.

22 CHAIRMAN WEISENMILLER: Thank you. Adrian
23 Salas, Sempra.

24 MR. SALAS: Good morning, Commissioners and
25 Commission staff. My name is Adrian Salas from the

1 Sempra Energy Utilities, and I'd like to read a letter on
2 behalf of Tamara Rasberry, who could not attend today, to
3 be included into the record in support of the 2013
4 Building Energy Efficiency Standards. It reads as
5 follows: "Dear Commissioners, the Sempra Energy
6 Utilities appreciates the opportunity to comment in
7 support of the 2013 Building Energy Efficiency Standards.
8 The Proposed 2013 Building Energy Efficiency Standards,
9 Title 24, Parts 6, 1 and 11 Energy Savings Projections
10 indicate the new Standards will save large amounts of
11 energy, both electricity and natural gas, reducing
12 statewide annual electricity consumption by approximately
13 464 gigawatt hours per year, electric peak demand by 139
14 megawatts, and natural gas consumption by 11 million
15 therms per year. To facilitate the savings projections,
16 the Proposed Standards encourage future solar electric
17 and thermal systems, improve residential building
18 envelopes, improve lighting and lighting controls, add
19 building commissioning, add requirements for process
20 loads, most notably data centers, expand Acceptance
21 Testing and data collection, and establish Reach Codes
22 for Green building. We would like to thank the
23 Commission and the Commission staff for their work on the
24 proposed rulemaking. Sincerely, Tamara Rasberry."
25 That's all I have. Thank you.

1 CHAIRMAN WEISENMILLER: Thank you. Eduardo
2 Martinez.

3 MR. MARTINEZ: Good morning, Commissioners and
4 staff. My name is Eduardo Martinez. I'm a Legislative
5 Advocate with Carter Wetch & Associates and I'm making
6 some just brief comments today on behalf of the
7 California State Pipe Trades Council, the California
8 State Association of Electrical Workers, and the Western
9 States Council of Sheet Metal Workers.

10 On behalf of the California State Pipe Trades
11 Council and the Western States Council of Sheet Metal
12 Workers, we are in support of this Title 24 update with
13 the understanding that a proposal to strengthen
14 Acceptance Testing requirements for HVAC systems will be
15 developed on a parallel track by the end of the year.

16 Similarly, on behalf of the California State
17 Association of Electrical Workers, we support this update
18 with the understanding that a proposal to strengthen
19 requirements for advanced lighting controls is being
20 developed and will be completed by the end of the year.
21 Thank you for all your hard work on this, and we support
22 the update.

23 COMMISSIONER DOUGLAS: Thank you. Thanks for
24 being here and, of course, we do plan to work on that
25 proceeding and to move it by the end of the year. You

1 know, it will be a stakeholder process, we've had a
2 number of stakeholders express interest, so we'll have to
3 work intensively on it with many of you.

4 CHAIRMAN WEISENMILLER: Okay. Matt Kerns,
5 Kings.

6 MR. KERNS: Good morning, Commissioners and
7 staff. My name is Matt Kerns. I'm here with the
8 Building Codes Assistance Project to speak in support of
9 the 2013 Standards. The Building Codes Assistance
10 Project is a program of the Alliance to Save Energy and
11 we work on the advancements of Building Energy Efficiency
12 Codes across the country. We believe that this is a
13 smart common sense evolution of the Code, it is cost-
14 effective in the context of a mortgage transaction. As
15 Martha mentioned, the payback to the consumer is in a
16 very short time, just two years. In fact, by our
17 calculations, the homeowner will actually see a profit of
18 \$804.00 in five years. So, in short, this Code, it keeps
19 money in the pocket of California residents.

20 Finally, adopting this Code keeps California
21 not only a leader, but ahead of other Codes being adopted
22 in states across the nation. Many states are actually
23 adopting the 2012 IECC, the most recent and most
24 efficient energy efficiency Building Code. These states
25 include Maryland, Illinois, D.C., Rhodes Island,

1 Massachusetts, and also jurisdictions such as Phoenix.
2 The 2013 Building Energy Efficiency Standards is, in
3 fact, 10 percent more efficient than the 2012 IECC. By
4 adopting this Code, California will remain a leader in
5 building energy efficiency. Thank you very much.

6 CHAIRMAN WEISENMILLER: Thank you. Tom Garcia.

7 MR. GARCIA: Good morning, Commissioners, CEC
8 staff, and people attending, my name is Tom Garcia. I'm
9 the Chair of the CALBO Energy Committee, representing
10 California Building Official Organization. First, I'd
11 like to thank the staff for working so hard over the past
12 two years and, also, I think, the Investor-Owned
13 Utilities for starting their process early and vetting
14 the case studies, that was very helpful, a lot of work.
15 The California Building Officials appreciates the fact
16 that you've listened to our concerns, as well as
17 everybody else's. This is a process that has to be a
18 bipartisan effort, and so we support the standards as
19 they are to be adopted. We do have concerns, still,
20 about Acceptance Testing and forms, in general, and
21 believe that there's a lot of work that needs to be done
22 to reduce the size and number of the forms to consolidate
23 where possible and to be more concise and to put a good
24 effort into making form work something that contractors,
25 designers, and building departments can understand and

1 work for. And with that, thank you for your time.

2 CHAIRMAN WEISENMILLER: Thank you. Robert
3 Lucas, UTC.

4 MR. LUCAS: Thank you. My name is Bob Lucas.
5 I represent Carrier Corporation, which is a subsidiary of
6 UTC. And as most of you are probably aware, Carrier
7 Corporation is the largest manufacturer of space
8 conditioning appliances in the world. And we have been
9 working with the Commission in a very cooperative manner
10 over the last 30 years since the inception of Appliance
11 Energy Efficiency Standards and Building Energy
12 Efficiency Standards, and our perspective on the Building
13 Energy Efficiency Standards is that, where they touch
14 upon appliance functionality, that we get the juncture
15 correct where we can, in this particular proceeding,
16 Carrier has been operating through AHRI, but when the 15-
17 day language came out, it did perform a rather detailed
18 review of that language for those points where there
19 could be inflections. And we're still finalizing these
20 comments, in other words, the comments have been made,
21 but they haven't been formally approved yet, but I have
22 looked at the draft and I can tell you that, for the most
23 part, we think that these comments might be able to fit
24 into the Non-substantive Technical Errata that you might
25 publish, and let me describe for you the nature of some

1 of these types of comments. For example, they note that
2 there are multiple definitions of the same term. I would
3 suggest that one of those multiple definitions be
4 stricken. Some of the definitions are incomplete, which
5 could lead to potential misleading information. There
6 are at some points multiple expressions of requirements
7 in different sections that could be consolidated into a
8 single section so that you don't keep repeating yourself,
9 there are some incorrect footnotes as it applies to
10 appliances, there are some incorrect references to
11 appliance certification programs and procedures that we'd
12 like to see if we could address, and there may be others
13 that might fall outside of the technical non-substantive
14 discussions, or the framework for your Errata, and if
15 that is the case, then we would like to ask that we be
16 able to bring these items forward in any supplemental
17 regulation that might affect the Building Code. As you
18 just mentioned, there might yet be a supplemental
19 regulation forthcoming, maybe this year, perhaps that
20 might be a vehicle. But Carrier wouldn't be making these
21 comments if there weren't some basis for the comments
22 and, in fact, the basis for the comments is in the way
23 the Regulation is drafted, not necessarily in the thought
24 behind it, or to challenge any of the conclusions you're
25 making, and building structure itself, again, it's the

1 relationship between the Building Standards and
2 Appliances that we have an interest in. So, thank you
3 very much and appreciate your taking these comments.

4 COMMISSIONER DOUGLAS: Martha or others, can
5 anybody please give us your thoughts on the comments
6 raised by Carrier?

7 MS. BROOK: So what we heard there, it did
8 sound like it potentially would fall into the Errata
9 category, and we understand from Pippin that we have the
10 opportunity to come back with you, with additional Errata
11 that are obviously non-substantive, for your approval and
12 adoption. We really don't know yet what else they will
13 be commenting on, that it may be substantive, everything
14 we sort of have guessed at, you know, we think that we're
15 in a good spot on, so, really, we don't know what to
16 expect with those additional things that they're still
17 reviewing.

18 COMMISSIONER MCALLISTER: So I actually want to
19 ask staff a question, and partly it's for my own
20 information, but I think it might be useful for the whole
21 room. Could you describe the process of the development
22 of the Compliance Manuals and kind of the timeline and
23 sort of the stakeholder process that, you know, a lot of
24 people have said looking forward to working with you on
25 implementation, I'm going to be working with Karen on the

1 implementation, or this will get passed off to me, I
2 think, as the Lead here, so for the implementation. So I
3 want to just have everybody on the same page with respect
4 to what the process is going forward and -- I see some
5 snickering over there
6 -- and I think it would be useful for people to hear how
7 different comments and opinions can be incorporated from
8 here on out, after adoption, but as the rubber is kind of
9 hitting the road, so thanks for that.

10 MS. BROOK: What staff have done historically
11 and what we'll continue to do is basically, starting next
12 week, you know, we will probably take tomorrow off, but
13 starting next week we'll start on the Compliance Manuals
14 and maybe what would be the most helpful is if we
15 actually explicitly established a schedule for that and a
16 check-in point so that people have a little bit more
17 understanding of the development process. And we can
18 certainly do that along with the Compliance Software, we
19 can establish a timeline and let people understand that
20 there are times that they could check in. And we will be
21 working continuously and, as we get to each topic, we'll
22 be working with the stakeholders that have been
23 participating with us, and any others that want to
24 participate with us, to establish the information that is
25 included in those manuals.

1 I think, Commissioner, that you're coming in at
2 really just the right time to get the full perspective on
3 the efficiency; in fact, not a moment too soon, to get
4 the full perspective on the efficiency process because
5 you've got the opportunity now to engage with staff and
6 the stakeholders and track the compliance and the
7 implementation phase of this Standards round, and at the
8 same time, before we know it, you know, we'll be engaged
9 in the next Update. And, in addition, there's the
10 Acceptance Testing Proceeding, and there's also a
11 considerable amount of work at sister agencies, at HCD,
12 and the Building Standards Commission, which will be a
13 really great perspective to go through that now and
14 really have that experience, as well, going into the next
15 Standards cycle.

16 COMMISSIONER MCALLISTER: Thanks for that,
17 Commissioner Douglas. I'm very heartened with the vast
18 majority of the comments here that really reaffirm that
19 the process working together with stakeholders is
20 working, so I thank staff and all the stakeholders for
21 that. And, you know, I come from probably even more of
22 an industry, or sort of on-the-ground perspective on a
23 lot of these things, and I think implementation is all
24 about -- it's all at the details, it's all about trust,
25 it's all about sort of building that relationship that is

1 going to enable everybody to really give it their best
2 effort and make them feel good about that. So I think,
3 as we go through each iteration and each proceeding, we
4 can really take the stakeholders and listen and, again,
5 we might not always agree, but I think we're all -- if we
6 can agree that we're all headed in the same general
7 direction, to meet California's policy goals and improve
8 our environment, and make that in a cost-effective
9 technically sound way, then I think that in and of itself
10 produces a very solid result. And that's kind of what
11 this process ought to be in its best form. So I'm
12 committed to that and look forward to working with staff
13 and all of you in the room on that. So thank you.

14 COMMISSIONER DOUGLAS: I think Mazi might have
15 --

16 MR. SHIRAKH: Martha is correct, on Compliance
17 Manuals, I am taking tomorrow off.

18 [Laughter]

19 We will come back next week. We are planning to finalize
20 this by the end of the year. We're going to work with
21 our consultants, staff, the case consultants, to update
22 the material. We've been working very closely with key
23 stakeholders to write the material for the Compliance
24 Manuals. We will have at least two or three
25 opportunities for public-at-large to review the material

1 that's going to go into the Standards, pretty much follow
2 the 2008 process, we think it worked well and we've been
3 following that. And hopefully by the end of this year,
4 you know, we will have that wrapped up.

5 COMMISSIONER DOUGLAS: So, Mazi, can you commit
6 to taking the weekend off, too?

7 MR. SHIRAKH: Yes, I will. I'm going surfing.

8 COMMISSIONER DOUGLAS: Going surfing, that's
9 great.

10 MR. BREHLER: And, Commissioner McAllister,
11 just for your benefit, another one of the peculiarities
12 of the rulemaking process for these Building Standards is
13 that these Compliance Manuals are specifically called out
14 in Section 254, 2.1 of the Warren-Alquist Act, that they
15 trail the adoption and they provide that kind of
16 additional information and guidance for the regulated
17 community.

18 CHAIRMAN WEISENMILLER: So, David Dias.

19 MR. DIAS: Thank you, Commission, for letting
20 me speak. I'm David Dias with Sheet Metal Workers Local
21 104 and Western State Sheet Metal Workers. I just want
22 to comment on that we are in favor of the 2013 Proposed
23 Building Efficiency Standards, and we look forward to
24 working with you on Acceptance Testing, and I guess
25 that's a big issue right here, so I'm hoping that will

1 happen in the near future. Thank you.

2 COMMISSIONER DOUGLAS: Thank you. Thanks for
3 being here. Manny Alvarez, Southern California Edison.

4 MR. ALVAREZ: Good morning, Commissioners.
5 Manuel Alvarez, Southern California Edison. I just want
6 to express our support for the Standards and ask the
7 Commission to go forward. I think what you heard this
8 morning, I want to remind the Commission that we are in a
9 cycle, we are not at a dead end, so the Building
10 Standards are a living process and activity, so we'll
11 have a chance to deal with some of the issues that are
12 left open on this particular area in the future.

13 The Commission has always considered itself a
14 leader in this area, and I think these Standards actually
15 show that coming forward, and I want to reinforce that
16 the Commission and the Warren-Alquist Act asks you to
17 balance interests, concerns, and I think you've done that
18 in these particular Standards. So, again, I would ask
19 for your support and move forward. So that presents my
20 final comment. I do want to bring up one issue with the
21 risk of kind of raising some concerns, and you heard some
22 of it today, and actually you heard quite a bit of it
23 today, on the compliance program and the software,
24 perhaps the Commission, it's time for you to reconsider.
25 I mean, California has gone a long way in software

1 development, computing capability, and perhaps the
2 Commissioners, at your level, will need to kind of
3 reconsider how you're going to deal with these compliance
4 issues going forward as you look into the next decade.
5 There's been a lot of progress since my programming days
6 in college, and software development and application
7 development is something the state has also developed
8 fairly extensively and perhaps it's time to start
9 thinking how you apply them in this building area. And
10 with that, I'll conclude.

11 COMMISSIONER DOUGLAS: Thank you, Manny. I
12 think that's a really good suggestion that Commissioner
13 McAllister will be delighted to follow-up with you on and
14 I agree with you, that the range of even generation of
15 kind of software that we use here in different
16 applications is sort of astounding, and something that
17 you wouldn't necessarily know coming in, and so just to
18 make sure that we are able to take advantage of the best
19 tools available to make compliance and implementation of
20 the Standards as pain-free as possible for everybody is
21 something that we should always be checking in on.

22 MR. ALVAREZ: Thank you.

23 COMMISSIONER DOUGLAS: All right. Great, so
24 now we've got Mark Nowak with the something Framing
25 Alliance. Mark Nowak, are you on the phone?

1 MR. NOWAK: Yeah, I'm here. Can you hear me?

2 COMMISSIONER DOUGLAS: Yes, we can.

3 MR. NOWAK: Okay, yeah. It's Mark Nowak with
4 the Steel Framing Alliance. And our members are steel
5 mill producers and the people that then take their
6 products and roll studs and joists and other members that
7 go into buildings. And I've submitted three comments and
8 two of them, I think, are being addressed either through
9 the Errata and in consultation with the staff. The one I
10 wanted to comment on was a recommendation that the
11 Commission, if they adopt this language, that they defer
12 the adoption of the mandatory U-Factors in Section
13 120.7(B)(1) and 120.7(B)(5) because of their impact on
14 the performance approach. Basically, the U-Factors in
15 there mandate continuous insulation unless you happen to
16 be using wood, and we know that introduces a bias; that's
17 not -- the major point that we want to make here is that
18 there are better ways to reach the same performance that
19 is required in the Standard Reference Design, but when
20 you mandate something specific that requires not only
21 cavity insulation, but continuous insulation on top of
22 that, you're really taking away the flexibility and the
23 incentive to use the performance option, which is
24 something we've always supported and think it's a great
25 way to try to build a high performing building. But what

1 you're going to do here is take away that flexibility and
2 you're also going to take off the table options that
3 people have that are better, that give you higher
4 performing building at less cost than simply mandating
5 something like continuous insulation on all buildings.
6 It also introduces, once you get above about an inch of
7 some plastic insulation, you start getting into issues
8 with constructability, attachment of sidings, and even
9 some of the fire safety issues where additional testing
10 is required. So we'd like to be able to see a Code that
11 emphasizes the performance approach, but that maintains
12 flexibility, and we don't believe that having these
13 mandatory U-Factors will do that.

14 COMMISSIONER DOUGLAS: Thank you for those
15 comments. Mazi, do you have any response?

16 MR. SHIRAKH: So this came kind of late. I'm
17 going to ask Dave Ware to respond to this comment.

18 MR. WARE: Dave Ware, Commission staff. The
19 Standards rely on a number of measures, many of those
20 related to the envelope, and certainly staff has -- the
21 tradition of the revisions of the Standards relied on
22 mandatory measures to set a minimum baseline. What the
23 Standards do not do is rely on the least common
24 denominator to set those standards upon. So, in the
25 context of what the Standards tried to do for 2013, is

1 allow as much flexibility as we can that is
2 representative of the largest segment of construction in
3 the market, and we allow other buildings to comply
4 through the performance approach, and that's what we've
5 done, I believe, in this case. It is a U-Value, but two
6 issues were being illustrated by the comments by the
7 gentleman on the phone, one was the requirement for
8 continuous insulation, and the other was the requirement
9 for a U-Value. Well, the energy element is not the
10 continuous insulation, the energy element is the U-Value,
11 the energy that is of benefit is the value of the overall
12 assembly U-Value, and that's what we've specified. So we
13 recognize that, for some assembly types that might be set
14 at a higher level, that is, the lower the U-Value, the
15 better the assembly, but those items can be traded and
16 novel, innovative systems can be incorporated into
17 building compliance by using the U-Value and by using the
18 performance software that has traditionally been used.
19 So staff's feeling is that this item is accommodated,
20 it's nothing different than necessarily what's been
21 allowed in previous years; yes, the stringency of the
22 assembly itself has increased because it has been shown
23 to be cost-effective and useful for meeting State
24 mandates. Thank you.

25 MR. SHIRAKH: Just to add briefly to that. You

1 know, in the Standards, in general, when we specify U-
2 Factor, it means we are specifying at performance level;
3 how they meet that U-Factor is up to them, we're not
4 really specifying you have to use this kind of insulation
5 or that kind of continuous insulation. It's the
6 performance level that we specify. Prescriptively, we
7 may have some recommendation, but when they use
8 performance, they can meet that any way they want, and
9 that is true for residential assemblies, nonresidential,
10 roofs, any assembly.

11 COMMISSIONER DOUGLAS: Thank you.

12 CHAIRMAN WEISENMILLER: Patrick Splitt.

13 ApTech.

14 MR. SPLITT: Hi. I guess it's still good
15 morning. This is Pat Splitt from ApTech. I just want to
16 quickly say that I'm in general support of the new
17 Regulations and basically I'd just like to say I concur
18 with Mike Gabel's comments earlier, and I'll just make
19 those mine, too, so to get that over with. But just a
20 few days ago, I discovered something that somehow I
21 overlooked all these years, and it's in the
22 Nonresidential Commissioning requirements, something came
23 up called the Design Review, which is defined as "an
24 additional review of construction documents that cease to
25 improve compliance with existing Title 24 Regulations, to

1 encourage adoption of best practices and design, and to
2 encourage designs that are constructible and maintainable
3 is an opportunity for an experienced design engineer to
4 look at a project with a fresh perspective in an effort
5 to catch missing or unclear design of information and to
6 suggest design enhancements. Well, this is basically
7 mandating that, on top of the fact that you've just
8 adopted or moved over from the Green Code to the Energy
9 Code the Commissioning requirements that in most cases
10 are going to require another person on the team called a
11 "Commissioning Agent," that there be another person that
12 comes in after people have been working on this project
13 for maybe over a year, to look over their shoulders when
14 he has no idea what they've been discussing and start
15 critiquing it. And nobody is required to do anything
16 with this critique except listen to it and fill out some
17 forms, so I propose some changes that I sent to the
18 docket, that basically keeps everything in the
19 Commissioning section, and keeps the new sections that
20 would be part of what a design team would look at early
21 on, requirements for a design review checklist, and a
22 design review compliance form, but just takes out the
23 requirement that this has to be done by a third party who
24 is unfamiliar with the project, and especially a third
25 party who is a licensed engineer. To require a licensed

1 engineer that might be a mechanical engineer to come in
2 and critique and examine and analyze the designs of
3 electrical engineers, daylighting design, not only is
4 stupid, it's illegal, it's a violation of the Professions
5 Code. He can't do that, it's not his area of expertise.
6 You're requiring somebody to break the law. So, I think
7 that if we just take out this requirement for this
8 specific person, and especially that they be a licensed
9 engineer, leave all the requirements in there and try to
10 get this design team, the integrated design goal that all
11 the utilities are trying to shoot for, get the team to do
12 the work, everything -- all the goals that you want to
13 accomplish will be accomplished. Just requiring somebody
14 out of the blue to come in at the last moment and review
15 these things -- in my area, small town Santa Cruz, if
16 there's a mechanical design and they have to bring a
17 third party independent mechanical engineer in, all these
18 companies around here, engineering firms, are one-man
19 companies, you're going to have to go to somebody that is
20 this guy's competitor. And you're basically mandating
21 him to criticize his competitor, well, great, he'll do
22 that.

23 CHAIRMAN WEISENMILLER: Okay, you have to wrap
24 up now. One last comment.

25 MR. SPLITT: Well, just I think what I proposed

1 will help get compliance, it won't be a deterrent and
2 mess things up, and if you don't remove this requirement,
3 I'm sure somebody along the way is either going to get a
4 lawsuit initiated, or some ordinary person might even
5 initiate an emergency rulemaking to get this changed, and
6 then you can completely forget about January of 2014.

7 CHAIRMAN WEISENMILLER: Okay, thank you.

8 COMMISSIONER DOUGLAS: Let me ask staff.

9 Martha?

10 MS. BROOK: Yeah, so the design review
11 requirements that Pat is commenting on are just a
12 different component of building commissioning, they're
13 not anything new or extraneous, they're actually -- what
14 we did when we were considering building commissioning
15 and integrating building commissioning into Part 6 was
16 look at what is not already in the Building Code. And
17 what was in the Building Code in Part 11, and is
18 currently in the Building Code in Part 11, were the back
19 end of commissioning, basically Acceptance Testing,
20 Functional Testing, you know, and also identifying the
21 Builders/Owners Requirements. But what was missing out
22 of that whole sequences of commissioning are this design
23 review component, and what our case study documents -- is
24 there an echo?

25 CHAIRPERSON WEISENMILLER: I was wondering if

1 that middle mic was live.

2 MS. BROOK: Oh, okay, so our case study that
3 defends the design review requirement really looks at
4 what is typically missed in Commissioning, that is caught
5 if you do a design review included in your Commissioning
6 process, and what you'll see are that there are these key
7 things that it's too late if you wait and check later,
8 and so I think Pat was misunderstanding the intent when
9 he was saying that they would come in at the last minute
10 and do this extraneous review. The whole idea is that
11 this is done early, it's done at the earliest stages of
12 design, and at the construction document state of design.
13 And the other thing about the third party review is
14 that's only required for the large buildings and the ones
15 with complex mechanical systems. So typical buildings
16 with non-complex, or basically, you know, simple
17 mechanical systems can be part of the design team that
18 provides that review. So we've actually staged the
19 design review requirements based on stakeholder
20 discussions, based on the size and complexity of the
21 project. And, again, this is very typical of a complete
22 Commissioning process, and all of the documents that we
23 relied on to develop the requirements are Commissioning
24 Standards across the nation, ASHRAE's Commissioning
25 Standards, and other references that actually, I think,

1 support what we've ended up with.

2 COMMISSIONER DOUGLAS: I'll just add,
3 Commissioners, that this measure is part of a general
4 effort that you see sprinkled in different places in this
5 Update, to increasingly incentivize or require energy
6 efficiency to be considered at the design stage because,
7 as we think about achieving Zero Net Energy on buildings
8 in the future, one of the important changes that has to
9 occur in order for that to be a reality is that energy
10 efficiency is increasingly going to have to be a
11 consideration earlier and earlier in the design process,
12 and so this requirement is an element of that, and I
13 think it will be helpful in catching early enough in the
14 process for the issue to be resolved, without undue
15 expense and hassle, issues that can be pretty easily
16 fixed.

17 MS. BROOK: And the other thing I would suggest
18 is that we can actually make a concerted effort in the
19 Nonresidential Compliance Manual to sort of lay out the
20 steps that sort of integrate what may be in two or three
21 places in the Code, but integrate the Commissioning
22 process in the Compliance Manual to explain when each
23 requirement in the design process would be implemented.

24 COMMISSIONER PETERMAN: Commissioner Douglas,
25 and Martha, pardon, I didn't get the full answer partly

1 with the echo and just being less familiar with the
2 topic, so I just wanted to just ask a follow-up question
3 just relating to the copy of the docket submission that
4 we received. So, am I understanding correctly that it
5 doesn't require necessarily someone from outside of the
6 initial design team?

7 MS. BROOK: It depends on the size of the
8 project, the size and complexity of the project.

9 COMMISSIONER PETERMAN: So, for a less complex,
10 a smaller project, it can be someone in the design team -
11 -

12 MS. BROOK: Part of the design team, that's
13 right.

14 COMMISSIONER PETERMAN: But who is the
15 Mechanical Engineer?

16 MS. BROOK: An engineer, it doesn't have to be
17 a Mechanical, but a licensed engineer. And again, those
18 are based on basically standard practice for
19 Commissioning providers, either requirements of a
20 Commissioning provider, or highly recommended
21 requirements for a Commissioning Provider to be a
22 licensed engineer.

23 COMMISSIONER PETERMAN: And just regarding the
24 second point in the email about the correct date on the
25 referenced standard?

1 MS. BROOK: So, I'm sorry, I'm unfamiliar with

2 --

3 COMMISSIONER DOUGLAS: Mr. Splitt submitted or
4 docketed an email about the --

5 MS. BROOK: Oh, the incorrect reference?

6 COMMISSIONER DOUGLAS: -- Appendix 1A.

7 MS. BROOK: Right, so that's something that we
8 could deal with in an Errata.

9 COMMISSIONER PETERMAN: Okay, thank you for
10 that clarification. That's helpful to me.

11 CHAIRMAN WEISENMILLER: Thank you. Mike
12 Fischer.

13 MR. FISCHER: Thank you to the Commissioners
14 and staff and stakeholders. Mike Fischer, and I'm
15 representing the Polyiso Insulation Manufacturers
16 Association. I appreciate the last minute blue card. I
17 have to stand in rebuttal to something I heard. For the
18 record, it came from Mr. Nowak from the Steel Framing
19 Alliance, and I know Mazi spoke a little bit about some
20 of the comments, but I wanted to address just a couple of
21 points. Continuous insulation has become the
22 prescriptive baseline for Codes across the country. I
23 live in New York State, and we actually have those
24 requirements going back to the 2009 Code, when it was
25 adopted in New York. And the Building Standards

1 Commission in New York State actually included attachment
2 charts and tables that are available, that were submitted
3 through the Foam Sheathing Coalition to the New York
4 State Building Codes Standards. So the concerns that
5 were raised about attachment are simply unfounded. You
6 can go to Foamsheathing.org and download all kinds of
7 attachment information for all kinds of claddings,
8 including absorptive claddings and heavier claddings,
9 that's point one.

10 Point two, the issue that was thrown out about
11 fire performance, all of the foam sheathing applications
12 that are part of the continuous insulation prescriptions
13 comply with all pertinent Fire Codes in the Building
14 Standards Commission. So, for someone to throw that out
15 there as if that somehow is a scare word that should be
16 used in your deliberations, I want to suggest that
17 whatever action you take today, that should not even be
18 in the forefront. You have a responsibility for energy
19 and you should act accordingly. We have friends in the
20 California Office of the State Fire Marshal that deal
21 with these issues, as well as the Building Standards
22 Commission.

23 The final point I will make is that the benefit
24 of continuous insulation, particularly as installed on
25 the exterior of the envelope, even though the California

1 Code explicitly allows interior and exterior, the benefit
2 of doing continuous insulation on the exterior is even
3 more important when you look at conductive framing like
4 steel framing, so I would suggest that hopefully we'll
5 get past those comments and appreciate the opportunity to
6 put this on the record. Thank you very much.

7 CHAIRMAN WEISENMILLER: Great --

8 MR. SHIRAKH: If I may add, I think he's
9 correct that continuous insulation is a very effective
10 way of insulating a building because it's not broken up
11 by framing members, it does protect against thermal
12 bridging, and even though our prescriptive standards
13 sometimes is based on that, we do not require it. Again,
14 it's a performance level that people can choose other
15 means of complying if they don't want to use continuous
16 insulation.

17 CHAIRMAN WEISENMILLER: Thank you. George
18 Nesbitt.

19 MR. NESBITT: Yes, George Nesbitt. This is the
20 first Code update process I have been part of and I
21 wanted to say the initial effort at the IOUs kind of
22 escaped me, so I got in late on that starting early last
23 year, and I want to say it's been a lot of meetings, it's
24 been a lot of reading, a lot of comments, a lot of trips
25 to Davis and Sacramento, yet also a lot of fun.

1 Definitely, my suggestions, other people's
2 suggestions, have been listened to, although I also want
3 to say there's a lot of good little suggestions that
4 clarify things, still things that actually get violated
5 routinely, there's a lot of suggestions that have kind of
6 been left on the table that are very minor, would not be
7 hard to do.

8 I am a little worried on the multi-family.
9 Multi-family is weird, especially when you go to high-
10 rise, if you take the same building model at low-rise,
11 and then high-rise, it will go from a heating dominated
12 building to a cooling dominated building, plus in high-
13 rise, you don't have the option of any compliance
14 credits, and of course, with the water heating rules
15 getting really cranked down on multi-family, I think we
16 may see a major impact there. I also -- and I don't know
17 how many of these issues can be dealt with through the
18 Manuals and the ACM Manuals and Compliance Software.

19 The other last point I want to make is, since
20 we do have the goal of Net Zero by 2020, I think it's
21 important that the Reach Code, or if it's the HERS Rating
22 System where we have defined Net Zero Energy, and I just
23 want to say that I am the rater for single-family new
24 homes in California to be certified Net Zero Energy
25 today, to pass a house project in San Jose, and there is

1 an open house Saturday afternoon at 1 Sky Homes Cottle
2 project, and it also happens to be a passive house
3 project. So I look forward to 2017, although it's so far
4 away.

5 MS. BROOK: George, this is Martha.
6 Congratulations, that's awesome. And I know that we're
7 going to have some representation there on Saturday, so
8 that's a great event.

9 MR. NESBITT: Yeah, minus 10 -- don't know if
10 any of the utilities are going to be there.

11 CHAIRMAN WEISENMILLER: Okay, well, thank you.
12 So -- okay, Commissioners, any questions or comments now
13 that we've heard all the parties?

14 COMMISSIONER DOUGLAS: Let me see if any of my
15 colleagues have questions. I've got a few comments.

16 COMMISSIONER PETERMAN: I just have a short
17 comment and I'm sure my fellow Commissioners will have
18 more extensive ones considering they're more engaged,
19 their engagement on this issue.

20 I would just say, thank you very much for all
21 the public comments and the staff presentations. Being
22 that I'm not Lead Commissioner on Energy Efficiency, I've
23 had less engagement with all the stakeholders, and so
24 I've found this meeting really valuable, and just in
25 terms of getting a comprehensive set of some of the

1 comments.

2 That being said, thank you very much to staff
3 for continuously briefing me on these Standards and
4 keeping me updated in the ever evolving process, and also
5 thank you to the stakeholders who have reached out to me,
6 even though I'm not a lead on it, to give me their
7 insight, in particular, the Building Association has been
8 very vigilant in meeting with me and keeping me aware of
9 some of their concerns and their issues and the progress
10 that you've made. You know, obviously this was a
11 collective effort, just evidenced by the number of staff
12 who have presented the material here today.

13 And thank you to Commissioner Douglas, in
14 particular, for her engagement on this, you know, in
15 terms of your responses, I can tell that you've thought
16 about all of these issues and all the issues that have
17 been raised, it was nice to see that staff had a
18 response, and had been in dialogue, and so
19 congratulations on this Herculean lift and I'm supportive
20 of this and look forward to your comments.

21 COMMISSIONER MCALLISTER: Yeah, I'm also very
22 excited to sort of, you know, now that I've gotten a toe
23 or two wet, to really jump in to this going forward on
24 the implementation side, a lot of confidence in staff, I
25 mean, you guys have done a great job. And in particular,

1 I just want to invite stakeholders who have expressed
2 some dissatisfaction, or some issues with the result of
3 all this work, to get in earlier and to actually provide
4 substantive comment, and this is not an adversarial
5 process, it definitely doesn't have to be that way, and
6 you know, to the extent that we're all headed in a
7 generally similar direction, this dialogue is only a good
8 thing. So if it doesn't happen, then that's sort of
9 saying something else. So I think, as we work on the
10 details of getting this update implemented, we're going
11 to learn a lot, we're going to be able to use that
12 experience in very concrete ways to improve further the
13 next time around. And that institutional learning, and
14 the professional learning that we all go through, is
15 really what keeps California vital and ahead of the pack
16 here. So I think we need to see that long term vision as
17 a good thing and, to the extent that it enables new
18 businesses, new technologies, and all the things that
19 we're so concerned about, jobs, etc., in California, we
20 need to take that long term. And we know we're going
21 there because we have to get to Zero Energy eventually
22 here
23 -- actually, not even eventually, in 2020, it's not that
24 far off. So each little incremental learning is huge and
25 it's part of a bigger puzzle, so we only have a couple

1 more updates until we have to be there, so I am taking
2 this very seriously and I know that all of you are, as
3 well. So looking forward to really rolling up our
4 sleeves and making it happen. So, thank you. I support
5 this Update, obviously and look forward to moving ahead.

6 CHAIRMAN WEISENMILLER: Yeah, I was going to
7 say, I think one of the hallmarks of this institution has
8 been, over the decades, its work in the Building and
9 Appliance Standards and, I mean, it's been a consistent
10 effort, when we look at the energy intensity in
11 California being driven down, it's been driven down by
12 that, I mean, over the 30 years there are a lot of trends
13 and energy policies that flittered in and out of people's
14 minds, but staying focused on this and trying to get the
15 buildings built correctly from the start, and smartly
16 from the start, is one of the key things this institution
17 does and does well.

18 Obviously, it's important not just to adopt
19 them, but to get them out in the field. So having said
20 that, I think it's very very important that we focus on
21 the compliance, and we focus on the training and the
22 education part, and make sure people have the tools so we
23 can translate the vision we have into our buildings.

24 And certainly, I appreciate the enormous effort of
25 the staff, you know, this has dwarfed some of our IEPRs

1 in terms of number of workshops, which is saying a lot,
2 but certainly appreciate all the stakeholder involvement.
3 And again, certainly we appreciate the efforts to work
4 out with the Building industry, something that reflects
5 the temper of the times, you know, that since our last
6 Standards, it's been a tough time in housing, and we felt
7 that we had to make some adjustments or accommodations
8 there, but certainly appreciate the work of our utility
9 partners, the environmental partners, and the building
10 industry, it's been one of those things that really takes
11 a whole village of people to pull this off, and it would
12 take a lot more work to actually make it happen.

13 Obviously, on the cool roofs concern, you know,
14 having probably one of the few people in this building
15 who have ever testified at FERC on regression stuff and
16 statistics, I understand the tool, but, again, this is
17 not -- we can't tolerate an industry hiding the ball, you
18 know, this is a collaborative process, we certainly
19 welcome your participation. As a scientist sitting in
20 Art Rosenfeld's chair at the Commission, I understand the
21 need for cool roofs, and we certainly would look forward
22 to the industry collaborating with us in a positive
23 fashion, but, again, you know, let's move on. We know
24 where the future is going in the energy area, and there
25 are some products that are very energy efficient, which

1 we're trying to encourage, and some that are less so.
2 And we're trying to work out accommodations where people
3 can still use those products, but they do have energy
4 consequences and, you know, we need to keep -- when you
5 look at what this means to us in terms of greenhouse gas
6 savings, in terms of energy savings, in terms of dollar
7 savings, this is a monumental day for California; it's
8 time to move forward.

9 COMMISSIONER PETERMAN: And Commissioner
10 Douglas, may I just make one more comment? Since the
11 Chair mentioned the IEPR, I was going to perhaps mention
12 this in the Commissioner Update at the end, but then no
13 one is usually around, and so I'm going to take the
14 advantage of having the energy efficiency crowd here.
15 You know, as part of the IEPR, we're developing a
16 Renewable Strategic Plan, and we had a workshop on May
17 30th on job opportunities in the Renewables Sector, and
18 we had a panel that talked a lot about workforce
19 development and training, and a couple people mentioned
20 workforce issues here today, and we had great
21 representation and good dialogue amongst the community
22 colleges and different practitioners, and even though the
23 focus was on renewables, there was a lot of discussion
24 about workforce training and energy efficiency, as well.
25 I think some good ideas came up during that panel and,

1 so, the Strategic Plan will be providing some
2 recommendations around this space for renewables, but if
3 you are engaged in energy efficiency workforce and job
4 training, I suggest checking out the transcript from that
5 hearing, which was on Tuesday, the 30th and looking
6 particularly at the second panel because I think there
7 were some good ideas that came out that would be great to
8 translate to the energy efficiency space, as well.

9 CHAIRMAN WEISENMILLER: We've had one last
10 comment and I will -- and this is very very late, but in
11 the interest of public participation, I will take it.
12 Mr. Frank Stanonik. But, again, in the future please be
13 more timely. And please be brief.

14 MR. STANONIK: Hello?

15 CHAIRMAN WEISENMILLER: Yes.

16 MR. STANONIK: I'm sorry, I didn't recognize,
17 though, that you were talking to me. This is Frank
18 Stanonik with AHRI, and we actually were in the queue to
19 put some comments in, and I'm not sure how it happened,
20 but we didn't get recognized or acknowledged. In any
21 event, trying to be brief since you folks want to go to
22 lunch. We did submit some comments on this process and a
23 couple things I just wanted to point out, that
24 unfortunately weren't resolved.

25 In the requirements for commercial boilers,

1 there's a definition that's now been added for commercial
2 boilers that essentially says any boiler in a commercial
3 application is a commercial boiler. That essentially is
4 inconsistent and possibly in violation of Federal
5 Regulations in terms of how they define boilers, and
6 actually inconsistent with the California Appliance
7 Efficiency Regulations relative to defining products, so
8 I think that needs to be addressed. And although there
9 have been some changes in the actual requirements added
10 for commercial boilers, we're still not certain that it's
11 really, as far as commercial space heating boilers, is
12 really a cost-effective measure, but I guess it's kind of
13 done.

14 The other issue that is something, I think,
15 again needs to be fixed is that, for the requirements for
16 new installations of gas water heaters in residential
17 buildings, one of the requirements is the gas line has to
18 be sized to handle 200,000 Btus, and we put in a comment
19 that if, in the new installation, someone already
20 installed a high efficiency gas storage water heater,
21 electric condensing water heater, they would possibly
22 have a product that only had 100,000 Btus, and it's
23 already high efficiency, and it is at that point a little
24 unnecessary to require that the line be sized for 200,000
25 Btus in anticipation of a future installed efficient

1 water heater. So those are a couple things that just
2 really we're a little surprised that they weren't
3 addressed.

4 COMMISSIONER DOUGLAS: Martha.

5 MR. STANONIK: One more comment.

6 COMMISSIONER DOUGLAS: Oh, I'm sorry. Go
7 ahead.

8 MR. ROY: Just a couple of comments with
9 respect to the design requirements for quantities of
10 outdoor air. We submitted some comments yesterday with
11 respect to, you know, the 189.1 having a 15 percent
12 requirement and that being a green standard, and the
13 percentage as specified in the Standard, the California
14 Standard, is 10 percent, so we submitted those comments
15 and we would request staff to look into that.

16 Also, the warranty requirements for
17 economizers, we suggested some clarification of the
18 language for that, as well as the wet bulb criteria,
19 which was kind of not required because the Standard
20 doesn't talk about the wet bulb requirements and the
21 economizers, so we submitted the comments to the docket
22 folder. We would appreciate it if staff could look at
23 those comments and get back to us.

24 MS. BROOK: Hi, Frank and Aniruddha, this is
25 Martha.

1 MR. STANONIK: Hi, Martha.

2 MS. BROOK: So, Frank, first of all, the
3 commercial boiler definition has been fixed, it was
4 supposed to be in 15-day language, there was a problem
5 with our editing process, so it's in the Errata. So --

6 MR. STANONIK: Oh, well, I missed the Errata,
7 and then so forget that one, okay.

8 MS. BROOK: No, that's completely
9 understandable, and our apologies for not getting it into
10 15-day language, because we did discuss it and I know you
11 thought we were going to address that, and we intended
12 to. So I apologize for that. On the water heater
13 requirements, we're basically just saying that we -- at
14 the point of new construction, it's the incremental cost
15 is negligible to put in the additional sizing
16 requirements for the most efficient water heater, and so
17 that's basically why we stuck with those requirements,
18 the 200,000 Btu requirement will work for all high
19 efficiency water heaters, whereas the 100,000 won't work
20 for all types of high efficiency water heaters, so that's
21 why we left those requirements as is and are recommending
22 those.

23 Aniruddha, for the outdoor air requirements, we
24 actually aren't increasing any stringency there, we've
25 always had these outdoor -- the comment is about the

1 accuracy of the measurement of outdoor air flow -- we've
2 always had that accuracy requirement in our Acceptance
3 Tests, we've just been explicit this time about moving it
4 into our Standards because we think it actually clarifies
5 that requirement and makes it very very explicit that
6 that's the requirement that you'll actually be tested to
7 in the Acceptance Tests. And our understanding is that
8 there are also some proposals in ASHRAE, in the Green
9 Building Standard that you referenced, to move to a 10
10 percent --

11 COMMISSIONER DOUGLAS: All right, thank you,
12 Martha. So, thank you, I think you addressed the points
13 raised in public comment.

14 MR. BREHLER: Excuse me, Commissioner Douglas,
15 and if I could just add, as Martha mentioned, the Errata
16 is -- as you think about these -- you have a Proposed
17 Order before you that's also been posted to the website
18 and it's available at the back of the room, and it
19 encompasses both the Standards, the Errata, the Negative
20 Declaration, and attempted to consider the discussion
21 today and would direct the Executive Director and staff
22 to take further steps to finalize completion if you
23 should decide to adopt these today.

24 COMMISSIONER DOUGLAS: Right, and actually I've
25 got in my hands the Proposed Order and the Errata, as I

1 attempt to formulate a motion, but we're not quite at
2 that point, so I'll wait until we get there and maybe you
3 can help me.

4 So I've got a number of comments to make, most
5 of which I think I will save until after we take action
6 on these items. I hope there's not a stampede out of the
7 room after we take action because there are a few people
8 I want to thank and there are some comments, in general,
9 that I have. And I will just say, as a lead up to the
10 vote on this item that, as has been noted many times, the
11 Standards are a product of over two years of really
12 intense work. And as you see from this discussion, it's
13 been a process of collaboration and gathering evidence,
14 and reviewing evidence, and comparing analyses, and
15 talking and respectfully disagreeing, and then coming
16 back and talking some more, and working to find ways to
17 actually reach agreement and understanding on how to
18 proceed. And it's a deliberative process, it's very
19 transparent, it's very rigorous, it's very open to
20 stakeholders, and it's very data driven. And
21 stakeholders have been really really helpful in bringing
22 information and bringing attention to detail, and asking
23 questions and really helping make sure that we get this
24 right.

25 The package that is before the Commission today

1 is also a carefully balanced package, it's a package that
2 puts forward and proposes the greatest incremental
3 increase in efficiency savings of any package we've
4 considered at the Commission, but it also very much
5 recognizes the state of the housing market and industry
6 right now, that we've got a long ways to go before the
7 industry gets back to kind of what they would consider a
8 more normal trajectory of home building and we were very
9 careful to make sure that we reduced costs where
10 possible, that we make compliance simpler, more possible.
11 So you know, the package that we have before us does
12 that.

13 And of course, in improving energy efficiency
14 of the buildings that are built in California, we're
15 saving people money, we're helping them be more
16 comfortable where they live and work, and we are helping
17 the state avoid the need for new power plants that would
18 otherwise be needed to supply demand. And as the lead
19 Commissioner on power plant siting, and with no prospect
20 in sight of being relieved of that one -- and I'm kidding
21 because I enjoy that work immensely and I'm actually
22 really looking forward to being able to go back and focus
23 much more on it than this Building Standards Update has
24 allowed me to do, you know, nevertheless, at every
25 opportunity to reduce the need for power plants, you

1 know, the Commission has jumped, and will jump, and needs
2 to jump, to save our state the cost of that
3 infrastructure and the unnecessary environmental impacts
4 of that infrastructure.

5 So, by adopting this package today, the Energy
6 Commission will take a really important step forward.
7 We're continuing, as the Chair said, a legacy that is
8 nearly 35 years long, that has saved Californians between
9 our Building Standards and our Appliance Standards about
10 \$66 billion in avoided costs that has, in greenhouse gas
11 terms, in light of California's climate policies, taken
12 about \$37 million cars off the road. This is a huge
13 legacy of achievement in the state, it's a marathon, not
14 a spring, it's something that we do and we come back and
15 we do again, and we get a little bit better, and a little
16 bit further each time. And the relationships that we
17 have with our stakeholders are long term relationships
18 and we're working with people who have, you know, we're
19 working with some people who are new in our process and
20 we're working with a lot of people who have worked with
21 us for a long time, so with that, I will save the rest of
22 my comments.

23 So first, I will move approval of Item 4, the
24 Initial Study and Negative Declaration.

25 COMMISSIONER MCALLISTER: I'll second.

1 CHAIRMAN WEISENMILLER: All those in favor?

2 (Ayes.) Item 4 passes unanimously.

3 COMMISSIONER DOUGLAS: Thank you. And for Item
4 5, let me just ask counsel, we've got an adoption order,
5 we've got the Errata, and the 45- and 15-day language.
6 How do I best formulate a motion that captures everything
7 I need to?

8 MR. BREHLER: I think the opening paragraph of
9 the Proposed Order would suit that, which describes the
10 15-day language and then, as revised, pursuant to your
11 decisions today to adopt the Errata.

12 COMMISSIONER DOUGLAS: All right. So --

13 MR. BREHLER: Dated today.

14 COMMISSIONER DOUGLAS: All right. So then, I
15 will move that we adopt additions and amendments to our
16 Energy and Water Efficiency Standards for Buildings
17 applying to Residential and Nonresidential, High-Rise
18 Residential, and Hotel and Motel Buildings, the Standards
19 that are in Part 6, also known as California Energy Code
20 and Associated Administrative Regulations in Part 1 of
21 Title 24 of the California Code of Regulations. Pippin,
22 you use a lot of words here, but I will read them all --

23 MR. LEVY: You can -- pardon me, Commissioner,
24 you can just move to adopt the Proposed Order adopting
25 the Proposed Regulations.

1 COMMISSIONER DOUGLAS: There you go, all right,
2 even better.

3 All right. So I will move to adopt the
4 Proposed Order adopting the Regulations and Negative
5 Declaration.

6 COMMISSIONER MCALLISTER: All right, I will
7 second.

8 CHAIRMAN WEISENMILLER: Okay. All those in
9 favor?

10 (Ayes.) This item also passes unanimously.
11 Congratulations.

12 COMMISSIONER DOUGLAS: Thank you.

13 [Applause]

14 COMMISSIONER DOUGLAS: All right, and with
15 that, if you'll indulge me, I want to just take a step
16 back and personally thank, first of all, the members of
17 the Standards staff for their -- and the Legal Office
18 -- for their incredibly hard work on this package and,
19 you know, when my office sent an inquiry around to make
20 sure we listed every single person that I should list,
21 and we got back the response, you know, "Please don't
22 read off any names because it's a team effort, and if you
23 just say the 'Standards Team,' we'll know what you mean,
24 and it's all of us," so that's what I'm doing, but I just
25 want to say really appreciate your work, your commitment,

1 your professionalism, and your expertise which reflects
2 exceptionally well on the Commission, so thank you.

3 I also want to thank, again, our stakeholders
4 from the utilities -- the utilities who supported this
5 work, and the consultant teams who have put in just
6 endless hours of technical work supporting the standards,
7 to the building industry which has engaged constructively
8 and persistently, and very professionally throughout the
9 entire process and has worked out issue after issue after
10 issue with us, the advocates, the NRDC, Blue Green
11 Alliance, and others have brought a tremendous amount of
12 benefit and help to the process, the installers, some of
13 the Unions we've worked with, contractors, manufacturers,
14 you know, really stepped up and really helped us make the
15 proposal better. The attention to detail that people
16 bring to this process, I mean, it takes a lot of time to
17 participate in this process, it's 70 workshops, even
18 before you start the pre-rulemaking, and there are more
19 workshops and there are hearings, and there are meetings,
20 and you know, I might give Bill Callahan the attention to
21 detail award for assistant advocacy on his one item, but
22 I don't know if I should because there are so many people
23 who have brought that level of attention to detail into
24 this process. And CALBO, I was so pleased to see CALBO
25 here today supporting the Standards. Early, early, early

1 in the process, when I was the very new Lead Commissioner
2 for Efficiency, because I didn't start out on the
3 Efficiency assignment when I started out on the
4 Commission, Tom Garcia asked for a meeting with me and we
5 sat down and we talked, and we talked about the
6 importance and the role of the local building officials
7 as really the front line of Code Enforcement, and all the
8 ways that we could make their job easier, but sometimes
9 don't, and at the end of that process, you know, I
10 thanked him and got his card and found staff at some
11 point, after some long frazzling meeting, and said, you
12 know, "I met with Tom Garcia and I think it would be
13 really great if you guys could try to make him a little
14 happier." And you know, long story short, after every
15 once in a while I would ask and they'd say, "Oh, yes,
16 yes, we're working with them, we're talking to him, you
17 know, we're doing this, we're doing that," and it's
18 really great to see at the end of the day that we've been
19 able to probably certainly not go all the way to making
20 their lives easy in enforcing the Standards, but go some
21 significant portion of the way to addressing concerns,
22 and that's a partnership that's really important to the
23 Commission and that we need to strengthen and continue to
24 work on. As staff will probably tell you, that's very
25 often my response when somebody comes in and sees me with

1 an issue, and it's like, "Okay, well, why don't you work
2 with them and see if you can work that out?" And I know,
3 of course, that sometimes you can't, but many many many
4 times we have proven that we can. So that's been really
5 helpful.

6 And I think, finally, on kind of a personal
7 note, as I hand the baton over to Commissioner
8 McAllister, I just want to say that it has been an
9 extreme privilege and pleasure to work with the Standards
10 Team and to lead our Efficiency efforts for the time that
11 I have, and it's a great operation, it's one of the most
12 important things that the Energy Commission does, it's
13 one of the core parts of our legacy, and so it's
14 tremendous fun. Commissioner McAllister will do
15 extremely well, he is so well suited for this role, and I
16 will support him as much as I can, and I will also turn
17 my attention to some badly neglected items that I'm
18 responsible for, and that need to move forward. So, you
19 know, I'll just suggest to stakeholders, you know, get to
20 know him, I'll be engaged, I'll be interested, but he's
21 going to really bring it to the next level, I think. So
22 good luck with that. And thank you.

23 COMMISSIONER MCALLISTER: Yeah, congratulations,
24 Commissioner Douglas. I mean, you can tell how much
25 people appreciate your dedication to this, I mean, a

1 really amazing job. And so, and I'm very excited and
2 humbled to sort of step into this process. My feet may
3 be bigger than yours, but my shoes aren't, I don't think.
4 And I think there's so much more to do, I mean, it's a
5 continuously evolving process, it's something that there
6 really is no choice that we have to push it forward and
7 really look for all those opportunities and it's much
8 better to do it collaboratively and in an informed way
9 than the alternatives. So I'm really looking forward to
10 getting to know all of you better. I would definitely
11 invite the stakeholders to introduce yourselves and we
12 can set up meetings inside the Commission, outside the
13 Commission, you know, I'm open to lots of -- I'm sure
14 there's a protocol, but I'm open to really anything that
15 works. So anyway, looking very much forward to it and I
16 think that's really the substance of what I have to say.
17 Thanks.

18 COMMISSIONER PETERMAN: I am just going to say,
19 since I'm not the ones who will have these meetings, that
20 being a new Commissioner, Commissioner McAllister, you
21 might encourage -- there's so many stakeholders, maybe
22 they'll come in pairs, or triplets, and brief you,
23 otherwise I think you'll be meeting all day. But I think
24 you've just demonstrated your open door policy, which is
25 great.

1 CHAIRMAN WEISENMILLER: Again, thanks everyone.
2 Actually, sort of reflecting, obviously our first
3 Standards were adopted under the leadership of Ron
4 Doctor, so I think again certainly all this is part of
5 Ron's legacy. Anyway, thanks again and, as I say, let's
6 go out now and implement these. And certainly, take a
7 weekend off for the Building Standards staff.

8 Okay, I'm going to try to cover quickly some
9 contract items and then we'll take a break and come back
10 for Carlsbad.

11 Okay, so let's deal with Item 7. Mark.

12 MR. HUTCHINSON: Good afternoon, Commissioners.
13 Mark Hutchinson, Deputy Director for Administration. The
14 item before you is a Purchase Order agreement with
15 SymSoft in the amount of \$489,680, to assist the Energy
16 Commission with the design, development, implementation,
17 testing and documentation for an electronic filing
18 document management system.

19 The goal of the project is to increase the ease
20 of submitting documents and reducing transaction costs
21 for parties participating in and commenting on CEC
22 proceedings, and allow for inventorying, cataloging, and
23 easy retrieval of filed documents. The project term will
24 be from June 2012 through July 2013. And I'm available
25 to answer any questions.

1 CHAIRPERSON WEISENMILLER: Commissioners, any
2 questions or comments?

3 COMMISSIONER PETERMAN: This sounds like a good
4 project and anything we can do to make it easier to
5 participate and manage that process, I'm supportive of.
6 Okay, any other comments? I move Item 7.

7 COMMISSIONER MCALLISTER: Second.

8 CHAIRMAN WEISENMILLER: All those in favor?

9 (Ayes.) We're going to hold this item open for
10 a second, hold it open for Commissioner Douglas. Let's
11 go on to the next item, Item 8.

12 MR. CHISUM: Good morning, my name is Dale
13 Chisum. I'm from the Information Technology Services
14 Branch. I'm seeking your approval for the Commission to
15 enter into agreement with Cyber Communications for
16 \$135,000 to provide the necessary expertise to perform an
17 independent IT security assessment of the Energy
18 Commission's IT environment. The IT environment includes
19 the IT infrastructure and the practices used to create,
20 deliver, operate, secure, maintain, and support the IT
21 infrastructure. These services will be used to conduct a
22 security assessment at the Energy Commission's IT
23 environment, provide a gap analysis identifying the gaps
24 between the Energy Commission's current IT environment
25 and industry, State and Federal policy standards and

1 requirements, conduct vulnerability testing on Energy
2 Commission's IT infrastructure, produce a written IT
3 security assessment and security plan, and assist with
4 implementing identified quick wins in prior
5 recommendations. At this time, I would be happy to
6 answer any questions.

7 CHAIRMAN WEISENMILLER: Okay, Commissioners,
8 any questions or comments?

9 COMMISSIONER MCALLISTER: I have a comment. So
10 given all the migration that I understand recently
11 happened here and everything, I think this is a very
12 timely and good thing, and I'll just say I won't ask to
13 put Skype on my machine anymore. So --

14 COMMISSIONER PETERMAN: And I was just
15 wondering, is this something that other agencies are
16 doing, as well?

17 MR. CHISUM: This is a State policy requirement
18 and this just helps us to identify our gaps and to meet
19 our requirements.

20 COMMISSIONER PETERMAN: Well, then, with that,
21 I'll move Item 8.

22 COMMISSIONER MCALLISTER: I'll second.

23 CHAIRMAN WEISENMILLER: All those in favor on
24 Item 8?

25 (Ayes.) This item passes unanimously.

1 Commissioner Douglas, we held Item 7 open for you.

2 COMMISSIONER DOUGLAS: Thank you. So I also
3 approve Item 7.

4 CHAIRMAN WEISENMILLER: Great. Let's go to
5 Item 9.

6 MR. COE: Item 9. My name is Donald Coe. I'm
7 with the Energy Fuels and Technology Office. And I'm
8 here to present to you approval of Agreement ARV-11-029
9 for the amount of \$4,562,532. The Gas Technology
10 Institute will conduct a vehicle demonstration with two
11 sub-grantees, U.S. Hybrid, which will demonstrate
12 liquefied natural gas plug-in hybrid heavy-duty dredge
13 truck, and Clean Air Power, which will demonstrate a
14 natural gas version of the Navistar MaxxForce natural gas
15 engine.

16 GTI, in partnership with the U.S. Hybrid
17 Corporation, proposes to demonstrate three plug-in hybrid
18 trucks, dredge trucks, over a two-year demonstration
19 project in the South Coast Air Basin. These plug-in
20 hybrid trucks are intended to demonstrate short term
21 commercialization and production potential and to
22 illustrate the selected vehicle technology's potential to
23 reduce greenhouse gas emissions and petroleum use. The
24 plug-in hybrid dredge truck will reduce fuel usage by
25 50,000 gallons of diesel fuel per vehicle, and lower the

1 operational cost of \$132,000 and will result in a
2 greenhouse gas emissions by 600 tons. This goes into
3 detail, the dredge trucks are used to transfer cargo
4 containers between ports and warehouses or logistics
5 yards.

6 Dredge trucks often queue for long periods of
7 time during loading and unloading. During this time, the
8 trucks are idle, the engine is continuously running with
9 the accompanying emissions being produced. The plug-in
10 hybrid dredge truck will operate in battery electric mode
11 while idling. Once the battery charge is reduced to a
12 low level, or the truck has to move to any significant
13 distance, the internal combustion engine will turn on and
14 the vehicle will operate using liquefied natural gas.

15 GTI in partnership with Clean Air Power will
16 demonstrate a natural gas version of the Navistar
17 MaxxForce 13 engine. This demonstration will fill a
18 crucial niche in natural gas engine production
19 availability and will enhance commercial viability and
20 market acceptance. This engine reduces well-to-wheels
21 greenhouse gas reductions by nearly 15 percent over a
22 diesel. Thank you for your time and consideration.

23 CHAIRMAN WEISENMILLER: Thank you.
24 Commissioners, any questions or comments?

25 MS. DRISKALL: Chairman Weisenmiller, if I may?

1 CHAIRMAN WEISENMILLER: Yes, sure. Please.

2 MS. DRISCOLL: Thank you. I'm Kristin Driscoll
3 from the Energy Commission's Chief Counsel's Office. The
4 Chief Counsel's Office reviews all proposed grant awards
5 under AB 118 to identify whether any further review under
6 the California Environmental Quality Act is necessary.
7 We usually include this in the materials before you, but
8 we left it out for this one. So based on our review of
9 this project, and further due diligence, we recommend
10 that, if you approve this award, you include a finding
11 that the project is exempt from further review under CEQA
12 Guidelines Section 15061(B)(3).

13 COMMISSIONER PETERMAN: As Lead Commissioner on
14 Transportation, I'll just note that I'm familiar with
15 this item and that I'm supportive of it, particularly
16 looking for demonstration opportunities in the heavy duty
17 vehicle space are important and it's an area where we
18 need to make continued progress, and so I would recommend
19 this for adoption for approval. So if there are no other
20 comments, I will move Item 6 -- I'm sorry, I'll move Item
21 9, I'm not moving Item 6, I'm moving Item 9.

22 CHAIRMAN WEISENMILLER: Okay, all those in
23 favor?

24 (Ayes.) Item 9 passes.

25 COMMISSIONER DOUGLAS: Commissioner McAllister

1 has seconded it.

2 COMMISSIONER PETERMAN: So I moved it, let's
3 just do this again for the record. I move Item 9, Gas
4 Technology Institute --

5 CHAIRMAN WEISENMILLER: Plus the environmental.

6 COMMISSIONER PETERMAN: Plus the environmental
7 Negative Declaration.

8 MS. DRISCOLL: Finding of exemption.

9 COMMISSIONER PETERMAN: Okay, let's start
10 again. This Energy efficiency has got us all worked up
11 here. I move Item 9 and the finding of exemption.

12 COMMISSIONER MCALLISTER: I'll second.

13 CHAIRMAN WESEINMILER: Now, all in favor?

14 (Ayes.) This item passes unanimously.

15 Okay, let's go on to Item 10, which is
16 Springboard Diesel, LLC. Possible approval of Agreement
17 ARV-11-016 for a grant of \$758,200, and this is ARFVTP
18 funding. And Hieu?

19 MR. NGUYEN: Good afternoon, Chairman and
20 Commissioners. My name is Hieu Nguyen, I am the AB 118
21 Technical Lead for this project, and I'm with the
22 Emerging Fuels and Technology Office in the Division of
23 Fuels and Transportation. I'm here today to ask for the
24 approval of a grant for \$758,200 in ARFVT program funds
25 to Springboard Biodiesel.

1 The goal of this project is to prove the
2 commercial viability of a low cost, small scaled, easily
3 deployed biodiesel production facility using
4 Springboard's Biodiesel's closed local loop system that
5 will produce up to 350,000 gallons a year of biodiesel
6 from multiple feedstocks, including chicken fed, beef
7 tallow, and used cooking oil. Springboard Biodiesel
8 plans to develop, build, test, and operate a pilot small
9 scale production and fueling facility in Chico,
10 California.

11 The rural regions of Northern California
12 currently lacks any biodiesel fueling stations, making it
13 more difficult for Northern California residents and
14 businesses to use biodiesel. This project will respond
15 to Chico's need and it will produce renewable biodiesel
16 fuel by Springboard Biodiesel's system. Springboard will
17 test the fuel and sell it locally within a 20-mile
18 radius.

19 One proven in Chico, these Springboard systems
20 can be deployed in rural distressed areas where feedstock
21 is rarely available. The deployed Springboard systems
22 will enable the creation of a broad network of low cost
23 biodiesel processing centers that are able to turn
24 multiple low cost local feedstock options into biodiesel
25 for consumption locally. This deployment will accelerate

1 the use of biodiesel throughout California, create new
2 jobs, and ensure biodiesel prices stay competitive with
3 petroleum-based diesel, while significantly reducing
4 particulate emissions and reducing greenhouse gasses by
5 87 percent below the diesel baseline.

6 This project will result in a total of 12 jobs,
7 of the 12 jobs, three to six for each biodiesel
8 production site. These jobs are permanent and
9 specialized in the daily management and operation of the
10 biodiesel facility. Springboard anticipates bring in
11 production by the fourth quarter of 2012, licensed and
12 certified by first quarter of 2013, and building new
13 Springboard systems by fourth quarter of 2013. Staff
14 requests the Commission support approval of Agenda Item
15 10 for a grant agreement with Springboard Biodiesel in
16 the amount of \$758,200. This concludes my presentation.

17 CHAIRMAN WEISENMILLER: Thank you. Does anyone
18 have any questions or comments?

19 COMMISSIONER PETERMAN: If there's no other
20 questions or comments, Commissioners, I'm supportive of
21 this project, I think it's a precursor to having a
22 broader geographic distribution of biodiesel production
23 and usage, as well as utilization of more diverse waste
24 feedstocks, so I recommend this for approval. So I will
25 move Item 10.

1 COMMISSIONER MCALLISTER: I just wanted to also
2 make a quick comment. I mean, this item and the next
3 item sort of demonstrate -- I know we're on Item 10, but
4 we have some different feedstocks, different markets,
5 different kind of business models, but similar quantity
6 of biodiesel being produced by these two, and there's a
7 need for all of this stuff; diversity is what protects us
8 and lets us figure out what works, and go to these
9 different niches and do what's right in each case. So I
10 will second.

11 CHAIRMAN WEISENMILLER: Great. All those in
12 favor?

13 (Ayes.) This items also passed unanimously.
14 Let's take a break now for lunch and restart in an hour
15 or so, that will be 1:35.

16 COMMISSIONER PETERMAN: Before we take the
17 break, Chairman, may I just ask, when we return, what
18 item will be taking up? I ask the question because I see
19 there's some people in the audience who are here for some
20 of the, for example, Items 11 on, and just wondering if
21 we will take those up, or can take those up, before we
22 take up 6, potentially.

23 CHAIRMAN WEISENMILLER: Yeah, I was just
24 looking. Jennifer, in terms of what you told the
25 Carlsbad folks, I was trying to figure out if we have

1 them more at like 2:00ish?

2 COMMISSIONER PETERMAN: Yeah, I think we could
3 probably take up the rest of the items on the agenda in a
4 relatively short time period, but I don't know what the
5 conversation has been to date.

6 MS. JENNINGS: I simply told them it would not
7 happen before 1:00, but I'm sure they will be here at
8 1:00. I would be happy to call staff people who are
9 waiting, I don't know if any other items involve members
10 of the public.

11 CHAIRMAN WEISENMILLER: And the other question
12 is whether any of the members of the public have asked
13 you to give them a heads up on these remaining items.

14 MS. JENNINGS: No.

15 CHAIRMAN WEISENMILLER: No, okay. So why don't
16 we start with Item 11 when we come back and we'll cover
17 the rest of the contracts, so through 18, and then we'll
18 pick up item 6.

19 MS. JENNINGS: So would it be fair to tell the
20 Carlsbad people 2:00?

21 CHAIRMAN WEISENMILLER: Two o'clock, maybe
22 2:15, yeah. Two o'clock.

23 MS. JENNINGS: Okay, thank you.

24 COMMISSIONER PETERMAN: So what time are we
25 back?

1 CHAIRMAN WEISENMILLER: So we will be back an
2 hour from now, so why don't we say 1:35?

3 COMMISSIONER PETERMAN: Okay, great. Thank
4 you.

5 (Recess at 12:38 p.m.)

6 (Reconvene at 1:43 p.m.)

7 CHAIRMAN WEISENMILLER: Good afternoon. Let's
8 start the business meeting. Our next item is 11, SacPort
9 Biofuels Corporation, possible approval of Agreement ARV-
10 11-019 for a grant of \$5 million to SacPort Biofuels
11 Corporation.

12 MR. NGUYEN: My name is Hieu Nguyen, I am the
13 AB 118 Technical Lead for this project. I'm here today
14 to ask for approval of a grant for \$5 million to SacPort
15 Biofuels Corporation. SacPort Biofuels plans to develop,
16 build, validate, and test a pilot renewable diesel
17 facility at the Port of West Sacramento.

18 The project will demonstrate biomass to liquid
19 diesel production from a local renewable green waste
20 feedstock. The primary feedstock for this project will
21 be waste-based biomass, but this project can also
22 accommodate other types of feedstocks such as mixed green
23 waste, railroad ties, construction and demolition waste,
24 that would otherwise end up in a landfill.

25 This project will use a gasification system

1 which converts waste and recovers energy economically
2 and, on a larger scale than other conversion
3 technologies. By contrast, current methods for producing
4 renewable diesel from waste can be expensive, energy
5 intensive, and can produce emissions and odors.
6 California is ready for a waste to diesel fuel solution
7 that is cost-effective, energy efficient, and
8 environmentally friendly. This biomass diesel will
9 reduce greenhouse gas emissions by 138 percent when
10 compared to U.S. average for low sulfur diesel, virtually
11 eliminates sulfur oxide emissions and substantially
12 reduces particulate matter and smog-forming NO_x.

13 SacPort biomass diesel production will reach
14 commercial scale in 2014 and plans to produce 365,000
15 gallons of biomass diesel at full capacity by 2018. This
16 project will create 20 permanent jobs and an additional
17 30 during the construction phase in the City of West
18 Sacramento, which has an unemployment rate of 18 percent
19 with 16 percent of the population living under the
20 poverty level in 2010.

21 Staff requests the Commission support of
22 approval of this project. This concludes my
23 presentation, and I have representatives from SacPort
24 Biofuels here in the audience to answer any further
25 questions.

1 CHAIRPERSON WEISENMILLER: Please, why don't
2 you step up to the podium?

3 MR. DODD: Good afternoon. I'm Daniel Mark
4 Dodd, V.P. of Engineering for CR Energy, the parent
5 company of SacPort Biofuels.

6 CHAIRMAN WEISENMILLER: Great. Thanks for
7 being here. Commissioners, do you have any questions or
8 comments?

9 MS. DRISCOLL: Chairman Weisenmiller, if I may?

10 CHAIRMAN WEISENMILLER: Yes, go ahead.

11 MS. DRISCOLL: The Energy Commission's --
12 sorry, this is Kirstin Driscoll with the Chief Counsel's
13 Office -- we reviewed this project also for CEQA
14 compliance in this case. What City of West Sacramento as
15 the Lead Agency certified an Environmental Impact Report
16 in 2009 for a project to expand the facility for a
17 petroleum terminal; the Sacramento Yolo Port Commission
18 later approved an addendum to this EIR for the specific
19 project that is before you today. The EIR identified
20 significant impacts to air quality, noise, wastewater
21 treatment, soil and geology, hazardous materials, water
22 quality and hydrology, biological resources, cultural
23 resources, and greenhouse gas emissions. But with the
24 mitigation incorporated by the City of West Sacramento,
25 all of those impacts were brought down to a less than

1 significant level; however, there are still significant
2 and unmitigated impacts to exposure to risk of flood and
3 to traffic increases, those are cumulative impacts in
4 2025, due to general development in the area. These
5 impacts do apply to almost any project that is put into
6 the City of West Sacramento, and nonetheless they are
7 significant and unmitigatable. As a result we recommend
8 that you adopt a statement of overriding considerations
9 for this project based on the benefits that Hieu
10 presented in this report, and make the following CEQA
11 findings for this project which are before you, and which
12 I can read into the record if that's okay.

13 The findings are that the City of West
14 Sacramento as the lead agency that prepared and certified
15 an Environmental Impact Report in 2009 for petroleum and
16 pipeline terminal at the Port of West Sacramento, that
17 the Sacramento Yolo Port Commission subsequently prepared
18 an addendum to the EIR for a Clean Fuels Facility that is
19 before you today, that the mitigation measures
20 incorporated in the EIR and Addendum will mitigate most
21 environmental impacts to less than significant levels,
22 and that these mitigation measures are within the
23 jurisdiction of the lead agencies, that there will still
24 be significant and unmitigated impacts due to exposure to
25 risk of flood, cumulative traffic impacts in 2025 along

1 I80 and cumulative traffic impacts in 2025 on the
2 intersection near the Port, that there are no feasible
3 mitigation measures within our jurisdiction or the
4 jurisdiction of the lead agency to mitigate these impacts
5 to less than significant levels, that the project
6 nonetheless has specific economic, legal, social
7 technological, and environmental benefits, and that these
8 benefits outweigh the significant unmitigatable impacts
9 of the project.

10 CHAIRMAN WEISENMILLER: Thank you.

11 Commissioners, any questions or comments for staff or
12 this gentleman?

13 COMMISSIONER PETERMAN: No, no questions. I am
14 supportive of this project, again, for the opportunity to
15 use a waste source for biofuel production. I thank Ms.
16 Driscoll for the explanation for our rationale for an
17 override and in this case I am supportive in this
18 particular case, but appreciate the analysis, the legal
19 analysis that was provided. I don't know if my fellow
20 Commissioners have additional questions or comments, but
21 please --

22 COMMISSIONER MCALLISTER: I just had a question
23 about process, actually. Since you're the engineer,
24 hopefully you can answer this.

25 MR. DODD: Possibly.

1 COMMISSIONER MCALLISTER: So you are
2 identifying individual -- or particular waste streams, I
3 imagine. Could you sort of describe the process? And I
4 notice by the end of year one, your goal is to have three
5 identifiable waste streams that you've sort of worked
6 through the system, and could you talk about the process
7 a little bit and why it's unique?

8 MR. DODD: Sure. It's based on a gasification,
9 so it's the conversion of solid materials in the absence
10 of a strong presence of oxygen, so we inject steam and
11 oxygen in the base of a refractory line vessel that
12 converts the solid materials into what they call a
13 syngas, which is primarily carbon monoxide and hydrogen.
14 Those -- our process effectively puts -- CR Energy is the
15 proprietor of that technology, the gasification; this
16 pilot projects looks to incorporate it with Fischer-
17 Tropsh, which is an old technology that was developed
18 back in the 1930's by Germans that, effectively over a
19 catalyst converts the carbon monoxide and the hydrogen
20 into short chain hydrocarbons, and it's just a case of
21 controlling the reaction so that you actually end up with
22 the diesel fraction, rather than a wax or a methane. But
23 it creates incredibly clean short chain hydrocarbons in
24 the diesel fraction range. There is almost zero sulfur
25 in this end product, there are no heavy metals, there are

1 no aromatic hydrocarbons, so the diesel itself is
2 incredibly clean.

3 The feedstocks we're been focusing on locally,
4 we've been working with the City of West Sacramento and
5 the County of West Sacramento, we've got a lot of
6 contaminated green waste, there's a lot of on-street
7 collection of green waste, but unfortunately in some
8 areas it becomes contaminated with various different
9 products and that unfortunately means it has to go to a
10 landfill and can't go through the standard composting
11 process, so that is one of the feedstocks we've
12 identified; they've got about 50 tons a day on average,
13 it depends on the season, all this contaminated green
14 waste.

15 Another of the feedstocks we're looking at is
16 construction and demolition wood, and that would be
17 sourced from the County of Sacramento, of their -- I
18 think they have a collection station just south of
19 McClellan Park, and then the majority of the feedstocks
20 are all organic-based, is our main focus.

21 COMMISSIONER MCALLISTER: Great. Thank you.

22 MR. DODD: Okay.

23 COMMISSIONER PETERMAN: Well, if there are no
24 other questions, then I guess a clarification question.
25 In terms of moving this item, do I also need to

1 separately acknowledge the override?

2 MR. LEVY: No, you don't.

3 COMMISSIONER PETERMAN: Okay. So I move Item
4 11.

5 COMMISSIONER MCALLISTER: Second.

6 MR. LEVY: And just to clarify that, you don't
7 need a separate vote on the override, but you need to
8 approve the statement of overriding consideration, which
9 is part of moving Item 11 because that was all part of
10 the staff recommendation.

11 COMMISSIONER PETERMAN: Thank you. I will move
12 Item 11 and everything in it.

13 COMMISSIONER MCALLISTER: Second.

14 CHAIRMAN WEISENMILLER: All those in favor?

15 (Ayes.) Item 11 passes unanimously.

16 MR. DODD: Thank you very much, Commissioners
17 and the CEC staff, thank you.

18 CHAIRMAN WEISENMILLER: Thank you. Let's go on
19 to Item 12. For those of you here for 6, we're going to
20 cover some contract stuff which will take us up through
21 Item 18, we think it's about 20 minutes, but we're never
22 quite sure, and then we'll get back to that. Certainly,
23 if anyone wants to step outside, Public Advisor can text
24 to notify you as we get there, but we're close.

25 So, CalStart, Inc. Possible approval of

1 Agreement ARV-11-014 for a grant of \$14,469,304 to
2 CalStart. This is ARFVTP funding. And Eric Van Winkle.

3 MR. VAN WINKLE: Yes. Good afternoon,
4 Commissioners. My name is Eric Van Winkle and I am a
5 staff member in the Emerging Fuels and Technology Office.
6 I'm here to ask for your approval of a grant award in the
7 amount of \$14,469,304 in ARFVTP funds to fund the project
8 which CalStart proposed and submitted in response to
9 grant solicitation PON-10-603, which was titled "Advanced
10 Medium- and Heavy-Duty Vehicle Technologies Pre-
11 Commercial Demonstrations." CalStart and their project
12 partners have assembled a portfolio of nine high impact
13 on and off road near commercial projects which will be
14 demonstrated in California's highest need air basins.
15 Vehicle performance, fuel savings, petroleum reduction,
16 and emission reduction benefits will be assessed for 29
17 demonstration vehicles, which will prove their technical
18 and market viability prior to commercial production
19 launch and provide data to justify future vehicle
20 acquisitions.

21 Starting with the on road projects, Electric
22 Vehicles International will build five medium-duty range
23 extended electric vehicle shuttle buses, with 45-mile all
24 electric range, and with an onboard gasoline generator to
25 charge batteries for use in extended range situations.

1 These vehicles will be demonstrated in the Bay Area,
2 South Coast, and San Diego Air Basins. Motiv Power
3 Systems will build four medium-duty battery electric
4 trucks with 100-mile electric range, three will be
5 demonstrated as shuttle buses in the Bay Area and one
6 will be demonstrated as a work truck in Bakersfield and
7 the San Joaquin Valley Air Basin.

8 Proterra, Inc. will build two heavy-duty fast
9 charge all electric transit buses, which will be put in
10 service in Stockton in the San Joaquin Valley.

11 The San Francisco Airport Commission will
12 demonstrate one hydrogen fuel cell transit bus, which
13 will be used to transport passengers and employees from
14 remote parking to the terminals, and will be demonstrated
15 entirely at San Francisco International in the Bay Area
16 Air Basin.

17 Odyne Systems will build four diesel plug-in
18 hybrid electric heavy-duty work trucks, and will also
19 establish a local installation assembly facility in
20 Stockton. Their vehicles will be demonstrated in the Bay
21 Area and South Coast Air Basins.

22 Transportation Power, Inc. will build two Class
23 8 trucks with battery electric drive systems. These will
24 be put into drayage service, transporting shipping
25 containers at the Ports of Los Angeles and Long Beach and

1 South Coast Air Basin.

2 Continuing with off road projects, Caterpillar,
3 Inc. will build four large size 36-ton class hybrid
4 excavators, which they will demonstrate with major
5 construction companies in the Bay Area and San Joaquin
6 Valley Air Basins. Caterpillar has a second project
7 which will build five electric diesel hybrid mini 5-ton
8 excavators, which they will demonstrate with a major
9 utility company in the San Joaquin Valley and Bay Area
10 Air Basins.

11 Volvo Technology of America, Inc. will build
12 two plug-in hybrid electric medium-sized wheel loaders,
13 which will be demonstrated in landfill operations at two
14 waste management locations in the Bay Area and South
15 Coast Air Basins.

16 The estimated annual benefits from these 29
17 demonstration vehicles include savings of 121,000 gallons
18 of diesel fuel, reduction of 1,700 tons of CO₂ emissions,
19 elimination of 1,920 pounds of diesel particulate matter,
20 and at the same time during the demonstration creating 45
21 short-term jobs -- engineers, fabricators, assemblers,
22 mechanics, service technicians, salespeople, and
23 supervisors, with the potential to expand to more than
24 600 permanent jobs with technology acceptance and
25 commercial production. That concludes my presentation

1 and I would be happy to answer any questions.

2 MS. DRISCOLL: Thank you, Chair Weisenmiller.
3 Again, I apologize for not having this in the materials
4 before you, but based on our review of this project and
5 further due diligence, we recommend including a finding
6 that the project is exempt from further environmental
7 review under CEQA, under CEQA Guidelines Section
8 15061(B)(3).

9 CHAIRMAN WEISENMILLER: Thank you.
10 Commissioners, any questions or comments?

11 COMMISSIONER PETERMAN: I'll just make a
12 comment or two. There has been broad and diverse
13 stakeholder support for funding in this category of the
14 AB 118 Program, the Medium- and Heavy-Duty Demonstration.
15 Through the course of our numerous public stakeholder
16 meetings for the AB 118 plan, we had a number of parties
17 talk about the real need in this area, particularly at
18 this time, and the opportunities, and especially the need
19 in the southern part of the state. And so I am
20 supportive of this project, which will provide
21 demonstration vehicles throughout the state, and
22 especially in the South Coast Region. This is also one
23 of the few categories in the Investment Plan that
24 increased in overall funding in the 2013 cycle relative
25 where it initially started out, and so I'm supportive of

1 CalStart's work and collaboration with its various
2 partners in this area.

3 So those are my general comments, welcome any
4 from anyone else. Okay, so with that, thank you very
5 much for the presentation. With that, I will move Item
6 12.

7 COMMISSIONER DOUGLAS: Second.

8 CHAIRMAN WEISENMILLER: All those in favor?

9 (Ayes.) Item 12 passes unanimously.

10 Item 13. Whole Energy Pacifica LLC. Possible
11 approval of Agreement ARV-11-026 for a grant of \$125,274.
12 And this is ARFVTP funding. Eric Van Winkle again.

13 MR. VAN WINKLE: Yes. For the record, Eric Van
14 Winkle with the Emerging Fuels and Technologies Office,
15 asking for your approval of a Grant Award for \$125,274 in
16 ARFVTP funds to Whole Energy Pacifica for their project
17 proposal which was submitted in response to Grant
18 Solicitation PON-11-602 titled Alternative Fuels
19 Infrastructure Electric, Natural Gas, Propane, E85, and
20 Diesel Substitutes Terminals.

21 This project is a biodiesel inline blending
22 rack which will be installed in an existing Whole Energy
23 Pacifica blending rack facility located near major oil
24 refineries in Richmond, and markets biodiesel to
25 wholesale distributors in the Bay Area and beyond.

1 Basically, an inline blender is a nozzle within
2 a nozzle, each one connected to separate tanks containing
3 the fuels to be blended. An electronic meter controls
4 this instream blending, which will ensure an accurate and
5 uniform biodiesel-diesel blend through an entire tanker
6 load. This precise proportional blending capability will
7 expand acceptance and adoption of biodiesel substitutes
8 in the Bay Area by addressing warranty blend limit
9 concerns of diesel vehicle and equipment operators.
10 Whole Energy Pacifica estimates that this capability will
11 triple their sale volume of biodiesel substitutes to over
12 one million gallons annually, representing a
13 corresponding decrease in diesel fuel. And that
14 concludes my presentation. I'll answer any questions if
15 you have any.

16 COMMISSIONER PETERMAN: Again, I think another
17 good contract utilizing AB 118 funds, in addition to
18 supporting alternative vehicles. Like in the last item,
19 we need to also support alternative fuels, and I'm
20 supportive of this project. If there are no other
21 comments, I will move Item 13.

22 COMMISSIONER DOUGLAS: I'll second, and I just
23 want to say that it's really great to see these 118
24 projects move forward.

25 COMMISSIONER PETERMAN: Great.

1 CHAIRMAN WEISENMILLER: Okay. All those in
2 favor?

3 (Ayes.) Item 13 passed unanimously.

4 Item 14. Propel Biofuels, Inc. Possible
5 approval of agreement ARV-11-024 for a grant of \$10.1
6 million to Propel Biofuels, Inc. This is ARFVTP funding,
7 and Larry Rillera.

8 MR. RILLERA: Good morning, Chairman and
9 Commissioners. My name is Larry Rillera. I'm with the
10 Division of Fuels and Transportation. Staff seeks your
11 approval for ARV-11-024, a \$10.1 million grant to Propel
12 Biofuels. Propel will design, build and operate 101 new
13 E85 at its Ethanol stations, at existing gas stations
14 located throughout the state.

15 On February 8th, 2012, the Energy Commission
16 issued Solicitation No. PON-11-602 titled Alternative
17 Fuels Infrastructure, Electric, Natural Gas, Propane,
18 E85, and Diesel Substitutes. Approximately \$10.1 million
19 in funding was made available.

20 Propel has conducted extensive market analysis
21 to determine the best locations for E85 stations.
22 Analysis includes census demographic data, alternative
23 fuel vehicle registration data, socioeconomic data,
24 vehicle traffic pattern analysis, and customer research.
25 Propel projects include an education and outreach

1 component to increase public awareness around alternative
2 fuels. Today, staff recommends that the Commission
3 provide funding to Propel that will increase the total
4 number of publicly accessible E85 stations funded by the
5 Commission. This concludes my presentation and will
6 respond to any comments. Staff will note that Matt
7 Horton, CEO of Propel Biofuels, is also here.

8 CHAIRMAN WEISENMILLER: Okay, Matt, do you want
9 to step up to the podium? Thank you. Any comments,
10 Commissioners, or questions?

11 COMMISSONER PETERMAN: And comments, Mr.
12 Horton?

13 MR. HORTON: I would just like to say on behalf
14 of the Propel team, you know, the more than 10,000
15 California customers that we have today that are buying
16 these fuels, that we really appreciate the California
17 Energy Commission's continuing support of our program to
18 bring these fuels to consumers all across the state, and
19 I just want to highlight a couple of things if I might.

20 I've highlighted in the past the critical
21 nature for public private partnerships in this area, and
22 grants like this have enabled our company to bring a
23 significant amount of matching private capital to the
24 table to be able to deploy this infrastructure, so,
25 again, I thank the Commission for the ongoing support.

1 COMMISSIONER PETERMAN: Thank you and, Mr.
2 Horton, you and I spoke at the AB 118 last meeting, the
3 stakeholder meeting, and asked the question about AB 118
4 funding has provided support in the past to Propel to
5 build some stations and all of those are not complete,
6 and I was wondering if you could just speak to the
7 reasons why you have not yet built all the stations and
8 what your expectations and plans are around those.

9 MR. HORTON: Yeah, absolutely. As I think I
10 mentioned in the past, 2011 was a challenging year for
11 the industry, generally. We all saw the uncertainty in
12 the market around the expiration of the V-Tech tax credit
13 that really froze up financing in our marketplace and we
14 had sources of financing withdrawn, so we had to put our
15 development schedule on hold for most of last year.
16 Having said that, again, really happy to announce that we
17 are within the next 10 days doing a first close on our
18 \$20 million next equity round, I've also got another \$10
19 million of debt capital ready to come in behind that, so
20 we've got the capital in place now. I have, as of about
21 two months ago, our development team has been very
22 active, reactivating the permits we already had, working
23 on new ones, so our development program is underway, we
24 did have a great opening of our most recent station just
25 a couple weeks ago, which is really a sign of things,

1 important things to come for the company.

2 COMMISSIONER PETERMAN: Thank you. Well, we do
3 expect to see real and measurable progress with those
4 stations, so I would ask you to continue to work with
5 staff and provide me with more information and
6 documentation around when we would expect to see those
7 stations built. I will ask staff to determine, you know,
8 the frequency of those updates, but I'd like to get a
9 report back on a regular basis on how those stations are
10 developing. And as you all are familiar with, probably,
11 the way the 118 program works is that we provide funding
12 in arrears, so that if the stations are not built, then I
13 will talk to staff about how to further use that money in
14 different solicitations.

15 MR. HORTON: Certainly.

16 COMMISSIONER PETERMAN: Thank you.

17 CHAIRMAN WEISENMILLER: Thank you. I think we
18 also have another speaker, Mike Lewis.

19 MR. LEWIS: Good afternoon. My name is Mike
20 Lewis. I'm with Pearson Fuels out of San Diego. I came
21 up for this today. We have built the E85 stations in
22 California for a long time. We built the first E85
23 station back in 2003, and since then we built 12 others,
24 so we have 13 E85 stations around the state, and we
25 distribute a lot of E85 outside of those stations. In

1 the interest of full disclosure, we did apply for this
2 grant and did not get it this round.

3 I would like to say that I have nothing bad to
4 say about Propel, they're a very good company, Matt and
5 Esther, they're just high class, good people. I've done
6 a lot of business with Propel in the past, and I hope to
7 do a lot of business with Propel in the future. It was
8 two summers ago that this Commission awarded Propel \$5
9 million to build 85 stations, and it's almost two years
10 later, and as you alluded to, they have not been built;
11 in fact, 13 of them have been built. So if you don't
12 give them anymore money today, they already have the
13 funding from you to build 72 more stations that have to
14 be built somewhere in the next year and a half or so.
15 Now, on top of that, keep in mind that that was the
16 entire budget for the 2008 and 2009 program years, they
17 got 100 percent. And if you award this money to them
18 today, you're also giving them 100 percent of the budget
19 for 2010 and 2011. Now, my understanding is that it's a
20 seven-year program, so you're going to give them four
21 years of 100 percent of budget for four years. Now, next
22 year's budget is only \$1.5 million, so if you give it all
23 to them and they didn't get any of next year's, they've
24 still got 90 percent of five years' worth.

25 We've been doing this a long time and I'm

1 concerned about the direction of this program. I mean,
2 one of the ideas behind AB 118 was to leapfrog the
3 industry forward and encourage competition, and I think
4 that it's important to not even give the impression of
5 favoritism or the argument that somebody could say that
6 you're creating a one fuel source provider. Look at it
7 this way, with this funding, they will foresee the
8 funding for 186 stations, and there are a lot of other
9 people that have applied for this funding, I mean, I've
10 applied for 67 stations, and it just does not seem on the
11 surface reasonable to think that their 186th station is
12 better than my first station, or anyone else's first
13 station out there, as well.

14 I understand there's a scoring criteria and the
15 staff will probably rightly tell you that this is the
16 scoring criteria, and this is how it was scored, and I
17 don't know what the results are because of the issue with
18 the Phased -- Round one and Round two scoring having to
19 do with CEQA, so no one else knows what their scores
20 were, if they even passed the bar, or are even eligible.
21 But if the scoring criteria create a company that gets
22 funding for 186 stations and no one else gets any, then
23 maybe there's something wrong with the scoring criteria.
24 This is not one grant that you're giving them, there were
25 10 proposals, there were at least 11 proposals for this

1 grant money, they got the top 10 proposals, and I would
2 ask you to consider other things in the scoring criteria,
3 if not thing time, next time, things like track record,
4 things like performing on the grants that you already
5 have, efficiency of the funding. I know there were
6 proposals that asked for less than \$100,000. I also
7 recognize that there is a need to encumber the funds
8 soon, but my understanding is that applies to 2010
9 funding. So even if you gave them \$5.1 million today,
10 that would be all of the funding for 2008, 2009, 2010,
11 and that's enough for 135 stations so far, and you could
12 spend a little bit of time, look at the other \$5 million,
13 and revisit the scoring criteria and see if there's any
14 other way to look at it to promote some of these other
15 aspects of the AB 118 program. I appreciate you giving
16 me the opportunity to speak.

17 CHAIRMAN WEISENMILLER: Thank you.

18 COMMISSIONER PETERMAN: Mr. Lewis, first of
19 all, thank you for coming from San Diego and being with
20 us today, and thank you for the outreach you've done
21 regarding your concerns. Before I offer a comment or two
22 in response to you, I'm going to turn to staff and see
23 what comments they have to the points, the issues you've
24 raised.

25 MR. PEREZ: Thank you, Commissioner, and thank

1 you, Mr. Lewis, in particular, for being here, also one
2 of our very exiting partners in the State of California
3 with the E85 and the tremendous work he has done down in
4 San Diego, as well as elsewhere in the state. With
5 respect to the solicitation, because it is an open
6 solicitation, it's not been closed yet, and we still have
7 another round, I can't comment specifically on any
8 aspects of that current solicitation, except to note that
9 we will be issuing an additional Notice of Proposed
10 Awards soon, but I cannot comment on that as the scoring
11 is underway. So that's exciting for those who have not
12 received funding to date, that there's still that
13 opportunity out there.

14 Regarding criteria for future solicitations, we
15 will certainly take that into consideration as we develop
16 the next solicitation with respect to the track record,
17 efficiency of funding, we do appreciate that input that
18 Mr. Lewis has noted, and we'll take that into account in
19 the development of our future solicitations, and
20 certainly invite Mr. Lewis back to the public workshops
21 where we'll be discussing that criteria in the
22 development of the future solicitations.

23 COMMISSIONER PETERMAN: I know you can't
24 comment on the current open solicitation which we're
25 referencing today, but do you want to comment on the past

1 closed solicitations which were the initial 70 plus
2 stations?

3 MR. PEREZ: Certainly. We pretty much concur
4 with Mr. Lewis' assessment regarding the progress to date
5 on the Propel sites. We did make a number of awards in
6 the previous solicitations, I know that to date Propel
7 Fuels, there are 10 stations that have been completed
8 under the \$1 million grant that we previously awarded,
9 and then there was also the Department of General
10 Services, Propel, that was also combined with an ARRA
11 award for 75 stations. The progress on that has not been
12 as rapid as we had hoped, I think, in light of some of
13 the uncertainty that was out there in the market with
14 respect to the V-Tech, that dampened the entire market
15 out there, as well, as we moved to the end of 2011, what
16 was going to happen with the Ethanol import tariff, too,
17 so there was a tremendous amount of uncertainty, and I
18 think that dampened some of the investor interest in
19 projects like this. But those issues have been resolved
20 and we are certainly interested in working with our
21 recipients to accelerate that funding, to make sure that
22 it is put to proper use quickly since much of this money,
23 we have a liquidation deadline out in 2013, so we're not
24 far away from that. So we're going to be pushing for
25 that. As we developed future solicitations, one of the

1 things that we'll be evaluating and taking into
2 consideration is the pace of development, and the ability
3 to shift funds if we're not making progress in a timely
4 fashion, too. And I think we'll certainly include
5 language in future solicitations to encourage and impress
6 upon recipients that we're going to be spending that
7 money quicker, rather than later, so that we can capture
8 the many benefits that we're after under this program,
9 such as greenhouse gas reduction and petroleum
10 displacement, as well as the stimulation of economic
11 development and job growth. So we also -- we do share
12 Mr. Lewis' concerns here, and we will be working
13 aggressively with Propel, so we've already met with them
14 a number of times with respect to accelerating the
15 construction of these projects.

16 COMMISSIONER PETERMAN: In terms of
17 solicitation design and the criteria, previous
18 solicitations, and this one that is outstanding, was
19 there an opportunity for stakeholder input on criteria?

20 MR. PEREZ: Yes, there was. We held public
21 workshops, we also held sessions we call Question and
22 Answer Sessions, inviting public input to help us shape
23 this solicitation, as well as to assist Applicants in
24 developing stronger proposals as they considered
25 submitting applications.

1 COMMISSIONER PETERMAN: Thank you. Mr. Lewis,
2 I take your observations and concerns very seriously.
3 And I will say that these have all been competitive
4 solicitations, as you've noted, and Propel was the winner
5 of those solicitations. I recognize -- acknowledge your
6 comment about perhaps a need to look at other criteria as
7 a part of a scoring criteria, and I encourage staff to do
8 that going forward. As I said to Mr. Horton, we want to
9 make sure that these stations are built, that we see real
10 progress, and I have the expectation of even more
11 reporting from Propel than we normally have from awardees
12 to staff, regular communication, and if we're not seeing
13 these projects built, as mentioned, the money has not
14 been especially spent because we pay in arrears. And so
15 if these stations are not built, then we will be using
16 the funding for future solicitations. I would ask that
17 you be patient as we wait for this solicitation to close;
18 after that solicitation is closed, there is a debriefing
19 process you can go through with staff in terms of the
20 selection process, and also feel free to contact my
21 office for a follow-up meeting after that, as well. So,
22 thank you.

23 MR. LEWIS: Can I say one more thing?

24 COMMISSIONER PETERMAN: Please.

25 MR. LEWIS: Regarding the open solicitation,

1 there is the Round 1 and the Round 2, Round 1 was -- the
2 amount of money in that pot was entirely funded through
3 Round 1, so there is no Round 2. So unless they put more
4 funding into this solicitation from next year's budget,
5 then for this category, it's my understanding is, it's
6 done. And the urgency to encumber the money, again, I
7 don't think it applies to 2011, and I don't know what the
8 down side is to waiting on 2011 and only funding that for
9 135 stations -- 136 stations instead of 186 stations.

10 MR. PEREZ: So let me comment. We also
11 understand that, in terms of the previous solicitation,
12 and the money that was made available through '10-'11,
13 '11-'12 Fiscal Years, has been expended through the
14 Notice of Proposed Awards that was recently issued;
15 however, we built into this what we call "head room" to
16 provide greater flexibility to fund exciting projects as
17 we move forward, and thanks to the Commission at the
18 earlier business meeting we did adopt the Investment Plan
19 for the 2012-2013 plan, which allocates up to \$1.5
20 million for E85 infrastructure that we can tap into once
21 we have a State budget in place and approved, so there's
22 an opportunity there, I just wanted to share that.

23 COMMISSIONER PETERMAN: I'll turn to my fellow
24 Commissioners for -- you must have maybe questions and
25 comments, before I'll offer any final comments of my own.

1 COMMISSIONER MCALLISTER: Great. So, thanks,
2 thanks for coming up, Mike. Let's see, I guess I wanted,
3 on the Propel, I want to concur with what Commissioner
4 Peterman said about the need for monitoring. I'm
5 wondering if their need for monitoring the Propel sort of
6 advanced -- the progress on getting the stations built --
7 I'm wondering if there could be explicit milestones for
8 that along the way and periodically throughout the
9 implementation period, such that it doesn't all end up
10 being kind of frantically at the end, so that's it's
11 actually steady progress. You know, Commissioner
12 Peterman is the Lead Commissioner here, so I don't -- I'm
13 not going to direct that to happen or anything, but I
14 think that might be a good idea to really give some rigor
15 to this process, and so that the marketplace generally
16 can have some predictability about whether or not there's
17 going to be funding available, and if another
18 solicitation or different uses are needed, that those can
19 happen in a timely fashion.

20 MR. PEREZ: We support that recommendation and
21 we'll work with the recipients to ensure that we develop
22 firmer milestones on that, and we'll try to include that
23 in the regular progress reports that we provide to you,
24 as we move forward. So thank you for that input.

25 COMMISSIONER DOUGLAS: So I just wanted to say,

1 you know, I have also just been watching this issue
2 unfold and looking at communications that I've gotten on
3 it. And so I want to thank you for coming here, Mr.
4 Lewis, I think that it's incredibly important that, when
5 you have a concern like the concern you're raising, that
6 you engage with the Commission and come here and talk to
7 us and raise the concern to us, and you know, not be
8 discouraged and go home, and we really want -- you know,
9 I think we need to be constantly vigilant to make sure
10 that we're getting the results we want out of our
11 solicitations, the on-the-ground results, and also we
12 need to be constantly vigilant to make sure that our
13 approach in this very challenging field of trying to use
14 a relatively small amount of state money to support the
15 development, deployment, commercialization, of
16 alternative fuel and transportation technologies, we've
17 got to be constantly vigilant that we do this in a way
18 that supports a vibrant and competitive industry and does
19 not get ossified into one approach, or one assumption
20 about what will work. You know, I know that there's a
21 lot of stakeholder process, I know from personal
22 experience that the Investment Plan process is a place
23 where issues like this are very much discussed in detail,
24 and different perspectives come to us. But the rubber
25 really hits the road with the solicitation criteria and

1 that's where all of the policy input and the kind of
2 broad-based understanding that we have is translated into
3 a nut and bolts criteria that influence, that determine
4 who will win, and who does not win in these
5 solicitations. And so, you know, I think that -- I
6 appreciate you being here, appreciation you raising the
7 concern, I think it underscores for me the importance of
8 making sure that we are correctly translating intention
9 into criteria and that we keep going with the iterative
10 process of assessing, did something work? Do we need to
11 do something differently? I don't, you know, from the
12 record that I've reviewed and the materials here, you
13 know, it seems to me that, you know, I certainly
14 understand the argument for promoting the E85 stations, I
15 think that's the sort of thing that is very meritorious
16 to support. I want to make sure that we're doing it as
17 we go forward in the right way, and I am concerned about
18 the difference between the number of stations that should
19 be on the ground, and the number of stations that
20 currently are due to the past grants. So this is
21 something that we should hopefully see some very great
22 improvement on.

23 COMMISSIONER PETERMAN: Commissioner McAllister
24 and Commissioner Douglas, thank you for your comments and
25 particularly Commissioner Douglas, I couldn't agree more

1 with making sure that our outcomes of our solicitations
2 are in line with our intent initially in the criteria,
3 and I'll also just add that the concern, in particular
4 for me, is the fact that stations haven't been built,
5 more so than the fact that the funding went to Propel,
6 because the -- or a single company -- because, in terms
7 of the objectives for the 118 program, the very specific
8 environmental objectives such as reducing petroleum
9 dependency, greenhouse gas reduction, etc., it's not
10 explicitly a certain number of market players in this
11 space, although competition can further technology roll-
12 out on some of our goals, so to the extent that the
13 stations can meet the goals of the AB 118 program, that
14 is the most important criteria, but they're not going to
15 meet those goals if they're not being built. And so,
16 again, you're hearing a strong sense of concern from the
17 dais here about having those projects built, I'll be
18 happy to report back to my fellow Commissioners at future
19 business meetings about some of the progress reports I'm
20 getting, and the more we can foster competition, great,
21 but we have to remember again the overall objectives of
22 the 118 program. So we'll continue to be in
23 communication with you, Mr. Lewis, on this, as well.

24 MR. LEWIS: Can I say one more thing?

25 COMMISSIONER DOUGLAS: You can, I'll say --

1 I'll use the Commissioner's prerogative and I'll say one
2 more thing first, and then I'll let you have even the
3 last word -- no, no, Commissioner Peterman will take the
4 last word, I'll let you have the second to the last word.
5 I just want to say that I agree that our first priority
6 is to achieve the goals of the Legislature laid out for
7 us in these programs. I just want to note that,
8 particularly in these deployment and commercialization,
9 you know, on that side of the market, we need to be
10 careful to use this power in such a way that we're not
11 picking winners when winners don't need to be picked, you
12 know, with the amount of State -- with the influence that
13 these programs have. And so we do need to be mindful of
14 that as we achieve the goals of this program and, with
15 that, please Mr. Lewis.

16 MR. LEWIS: Thank you. My last point is, and I
17 don't understand the intricacies of all of the financing,
18 but my understanding is, as you had mentioned, there
19 isn't any language in this current solicitation that says
20 you can pull the funds to other projects. If on these
21 grants from two years ago, if for some reason they fail
22 to continue to perform, then that funding is no longer
23 useable in the AB 118 program. And if this funding, this
24 \$10.1 million is awarded, and it is delayed, and they are
25 not built, then that funding is not going to be used in

1 AB 118 program. That's kind of a question and I'm not
2 sure, but if that's the case, then you're going to lock
3 up \$10.1 million again for the next few years, it can't
4 be used for other things. Why not lock up \$5.1 million?
5 That's my last word.

6 MR. PEREZ: Okay, in terms of funding, if we
7 threw out a hypothetical, let's say, on say the '11-'12
8 funding, just to try to respond to your question clearly,
9 what would happen is, if we didn't utilize that money, it
10 would revert back to the AB 118 account and then would
11 have to be reauthorized in terms of its use by the
12 Legislature, but it would return to the AB 118 account.
13 So we would simply go back and request reauthorization,
14 so that would be the --

15 MR. LEWIS: Yeah, but it would be tied up for
16 three years or something like that?

17 MR. PEREZ: No, not necessarily.

18 MR. LEWIS: Two or three years -- I mean, if
19 the whole grant went to the end and wasn't performed on,
20 it could be tied up for two or three years?

21 MR. PEREZ: Well, it depends on the timing of
22 when that happened; if it was at the end of the
23 encumbrance period, then we would lose the funding.
24 Hopefully that's helpful in giving you the context, so...
25 I think having milestones in place, a good tracking

1 system, that we would avoid getting to that step is my
2 hope as we move forward, so that we could move the money,
3 reallocate in a quicker fashion, would be the ideal
4 situation.

5 COMMISSIONER PETERMAN: And I have just a final
6 follow-up question for Mr. Horton, actually.

7 MR. LEWIS: Thank you.

8 COMMISSIONER PETERMAN: Thank you. You know,
9 just to get on the record --

10 MR. HORTON: Yes.

11 COMMISSIONER PETERMAN: -- is your expectation
12 to build all of these stations?

13 MR. HORTON: Absolutely.

14 COMMISSIONER PETERMAN: And if so, what is your
15 proposed timeline?

16 MR. HORTON: Certainly and, you know, I perhaps
17 should have given a more full picture beforehand of
18 what's really going on, we currently have approximately
19 140 contracted stations where we have signed station
20 contracts, we've been working on over the last year.
21 Again, with this capital round, \$30 million of private
22 capital coming in, we are now in a position to begin
23 aggressively building. You will not find that kind of
24 capital in the marketplace ready to back a team and a set
25 of projects in this category. So I know that, you know,

1 certainly we have not performed as we had hoped in terms
2 of the number of stations delivered, we've opened, again,
3 our 27th station just recently. Having said that,
4 though, you know, in terms of ability to deliver going
5 forward, I think the markets are speaking as to where
6 private capital has confidence, and we're certainly very
7 confident that, with the funding that we're now closing
8 on, we are going to be able to complete all of these
9 grants in a very timely manner.

10 COMMISSIONER PETERMAN: Thank you for that
11 additional information.

12 MR. HORTON: You bet.

13 COMMISSIONER PETERMAN: Commissioners,
14 obviously I've raised some of the concerns and
15 reservations that I have on the issue, in general, but
16 that being said, I'm still supportive of approving this
17 solicitation and continuing to monitor the progress, and
18 welcome any additional thoughts or comments you have.

19 Once again, noting the concern from a number of
20 Commissioners on the dais, I will move Item 14.

21 COMMISSIONER DOUGLAS: Second.

22 CHAIRMAN WEISENMILLER: All those in favor?

23 (Ayes.) Item 14 passed unanimously.

24 Item 15. Alternative Renewable Fuel and
25 Vehicle Technology Buy-Down Incentive Reservations.

1 Possible approval of a total of \$16,000 for vehicle buy-
2 downs. Andre Freeman, this is ARFVT funding.

3 MR. FREEMAN: Good afternoon, Commissioners.

4 My name is Andre Freeman from the Emerging Fuels and
5 Transportation Office. Today I'll be seeking approval of
6 the fourth batch of incentive reservations for the Natural
7 Gas and Propane Vehicle Buy-Down Program. As you can
8 see, we're rounding up this program. This batch of
9 reservations represents two natural gas vehicles for
10 \$16,000. Including the reservations pending before you
11 today, the 2012 Buy-Down Program will support the
12 purchase of more than 600 vehicles, including 500 natural
13 gas and 100 propane vehicles.

14 I would like to thank you for your
15 consideration of this item and I'm available for any
16 questions you may have.

17 CHAIRMAN WEISENMILLER: Thank you.

18 Commissioners, any questions or comments?

19 COMMISSIONER PETERMAN: I would just comment,
20 this is another example of the successful buy-down
21 program we have in the AB 118 program, and I'm supportive
22 of this. So I will move Item 15.

23 COMMISSIONER MCALLISTER: Second.

24 CHAIRMAN WEISENMILLER: All those in favor on
25 item 15?

1 (Ayes.) Item 15 passes unanimously. Thank
2 you.

3 MR. FREEMAN: Thank you.

4 COMMISSIONER PETERMAN: I just want to say a
5 quick thanks to the Transportation Division staff, the AB
6 118 staff, in particular, we've just gone through a
7 number of different types of items related to that
8 program, I think it demonstrates the diversity of fuels
9 and vehicles that we're continuing to fund, and staff
10 efforts to get the money encumbered and spent in a timely
11 manner. So, thank you.

12 CHAIRMAN WEISENMILLER: Great. Item 16.
13 Sonoma Valley Health Care District. Possible approval of
14 Agreement 003-11-ECF for a loan of \$1,065,097 to Sonoma
15 Valley Health Care, and this is ECAA funding. Haile.

16 MR. BUCANEG: Good afternoon, Chairman,
17 Commissioners. My name is Haile Bucaneg, and I'm with
18 the Special Projects Office. Sonoma Valley Health Care
19 District is currently in the process of upgrading the
20 Sonoma Valley Hospital facility. This \$1,065,097 loan
21 will be used for energy efficiency measures included in
22 the upgrade process.

23 The energy efficiency measures will apply to an
24 existing hospital facility, as well as in the
25 construction of a new hospital wing. The energy

1 efficiency measures include upgrading to efficient HVAC
2 equipment, efficient domestic hot water equipment,
3 efficient sterilizing equipment, building envelope, and
4 lighting systems.

5 The total energy savings for these projects are
6 approximately 285,000 kilowatt hours and 49,000 therms,
7 which will result in greenhouse gas reductions of 390
8 tons. This will also result in an annual energy cost
9 savings of approximately \$96,800, and the simple payback
10 on the requested loan amount will be 11 years. At this
11 time, I would be happy to answer any questions you have.

12 CHAIRMAN WEISENMILLER: Thank you.

13 Commissioners, questions, comments?

14 COMMISSIONER MCALLISTER: I just have a
15 comment. Having mostly until very recently been out
16 there in the marketplace doing energy efficient stuff,
17 and working with lots of local jurisdictions, and school
18 districts, etc., I know how great this program is. This
19 loan program is terrific. And it's not free money, it
20 actually has to be paid back, it's a convenient interest
21 rate, it's just really what the marketplace needs and I
22 know that there's a lot of appreciation throughout the
23 state for it. And I'm very supportive of this and other
24 projects from this fund.

25 MR. BUCANEG: It could also be noted that

1 Sonoma Valley Health Care District has appreciated this
2 program. They previously took out a loan under our ECAA
3 ARRA program which was completed and they finished the
4 project in March of this year, so this is the second loan
5 they're coming up for.

6 COMMISSIONER MCALLISTER: So I will go ahead
7 and make a motion to approve Item 16.

8 COMMISSIONER DOUGLAS: Second.

9 CHAIRMAN WEISENMILLER: All those in favor?

10 (Ayes.) Item 16 passes unanimously.

11 Item 17. Altex Technologies Corporation.

12 Possible approval of Agreement PIR-11-027 for a grant of
13 \$731,770 to Altex Technologies Corporation. This is PIER
14 Natural Gas Funding. Mike Kane.

15 MR. KANE: Thank you. I'm Mike Kane with the
16 Energy Generation Research Office. I'm seeking approval
17 for the tri-Generation energy system technology project
18 with Altex Technologies Corporation for the amount of
19 \$731,770 for which Altex will be providing an additional
20 matching contribution totaling \$185,000.

21 The purpose of this project is to develop a
22 combined cooling, heating and power system, also known as
23 CCHP, that uses steam jet refrigeration to expand
24 capacity of an existing microturbine-based combined heat
25 and power flat form, to also support cooling loads and

1 process heat isn't needed. The project approach is to
2 develop a preliminary system design and model of steam
3 jet performance when integrated with its boiler burner
4 and microturbine-based CCHP platform, to demonstrate a
5 subscale steam jet system at its lab facilities in
6 Sunnyvale, California, to validate the performance
7 models, and to incorporate the lessons learned from this
8 subscale demonstration to design a full-scale CCHP
9 system, and predict its technical and economic
10 performance parameters.

11 The key technical objective for the project is
12 to verify that CCHP efficiencies of 82 percent are
13 attainable, while meeting all applicable Air Resources
14 Board Emissions Standards. The key economic objective is
15 to achieve a payback of less than two years for a fully
16 integrated tri-generation energy system retrofit. This
17 project was recommended for funding in the Revised Notice
18 of Proposed Awards dated April 6, 2012 for the Hybrid
19 Generation and Fuel Flexible Distributed Generation
20 Combined Heat and Power Grant Solicitation.

21 The purpose of this solicitation is to fund
22 research, development and demonstration projects that
23 advance the science and technology and market penetration
24 of grid connected DG and CHP and diversified
25 applications, and to include emerging technologies such

1 as energy storage and fuel flexibility.

2 And this project supports the Governor's Clean
3 Energy Jobs Plan that calls for increased deployment of
4 Combined Heat and Power for Electricity Generation. I
5 would be happy to answer any questions you may have.
6 Thank you.

7 CHAIRMAN WEISENMILLER: Thank you.
8 Commissioners, any questions or comments?

9 COMMISSIONER PETERMAN: It sounds like -- it is
10 a good project and sounds like it, as well. I will move
11 Item 17.

12 COMMISSIONER MCALLISTER: I will second.

13 CHAIRMAN WEISENMILLER: All those in favor?

14 (Ayes.) Item 17 has been approved unanimously.

15 Item 18. Maxwell Technologies. Possible
16 approval of Agreement PIR-11-031 for a grant of
17 \$1,392,464 to Maxwell Technologies. This is PIER
18 electricity funding. Avtar.

19 MR. BINING: Good afternoon. My name is Avtar
20 Bining. I manage the Energy Storage Program and the
21 American Recovery and Reinvestment Act Projects on Smart
22 Grid and Energy Storage at the Energy Commission.

23 This project resulted from a competitive
24 solicitation of the 2011 Emerging Technology
25 Demonstration Grant Program. Under this Agreement,

1 Maxwell Technologies will install and demonstrate
2 ultracapacitors at two sites for the purpose of improving
3 the solar power for stability. First, Maxwell will
4 demonstrate ultracapacitors at a 28-kilowatt
5 concentrating photovoltaic site at the University of
6 California at San Diego campus.

7 The lessons learned from this demonstration
8 will be applied to a larger ultracapacitor demonstration
9 at the 250 kilowatt portion of a concentrating
10 photovoltaic site in Newberry Springs, California.

11 Ultracapacitors have larger energy storage
12 capability than conventional capacitors. This allows
13 them to function effectively as energy storage devices.
14 Ultracapacitors have undergone vast improvements in their
15 capabilities and cost productions based on the experience
16 gained from their applications in vehicles. This
17 demonstration is important for showing to stakeholders
18 that ultracapacitors can serve as cost-effective energy
19 storage devices for intermittent and variable renewable
20 generation on a commercial scale. Stable and reliable
21 renewable power generation will enable California to
22 achieve its 2020 Renewable Portfolio Standard and
23 greenhouse gas reduction goals, as well as garner 12,000
24 megawatts of distribution generation goal.

25 The benefits of this demonstration includes

1 stabilized, clean and renewable power output, reduced
2 need for utility power regulation, reduced cost of
3 electricity to utilities and ratepayers, and improved
4 reliability of utility services.

5 Maxwell Technologies will receive approximately
6 \$1.4 million of Public Interest Energy Research
7 Electricity funds and will provide \$434,000 in match
8 funds for these demonstrations. The term of this
9 agreement is about 36 months.

10 I request approval of this agreement and I will
11 be happy to answer questions. Thank you.

12 CHAIRMAN WEISENMILLER: Thank you.
13 Commissioners, any questions or comments on this one?
14 This obviously went through me as the R&D Lead
15 Commissioner. It's a good project.

16 COMMISSIONER MCALLISTER: Right. I'll talk to
17 you about it, then. No, it's good. I'll -- go ahead.
18 I'll move to approve Item 18.

19 COMMISSIONER DOUGLAS: Second.

20 CHAIRMAN WEISENMILLER: All those in favor?

21 (Ayes.) Item 18 passed unanimously. Let's go
22 back to Item 6. Carlsbad. Let's take a three-minute
23 stretch break while everyone moves around.

24 (Recess at 2:40 p.m.)

25 (Reconvene at 2:48 p.m.)

1 CHAIRMAN WEISENMILLER: Good afternoon. Let's
2 go back in session. Let's take up Item 6, which is the
3 Carlsbad Energy Center, 07-AFC-6. Paul Kramer.

4 HEARING OFFICER KRAMER: Good afternoon,
5 Chairman Weisenmiller and Commissioners. I'm Paul
6 Kramer, the Hearing Officer for the Carlsbad Energy
7 Center Project. The CECP is an approximately 540
8 megawatt combined cycle fast start power plant proposed
9 to be located on the inland portion of the existing
10 Encina Power Plant site in the City of Carlsbad. The
11 existing facility, that is the Encina facility, contains
12 five steam generators of 1950's, three of those are
13 1950's, and two of 1970's vintage, in a 200-foot tall
14 building, and they share a 400-foot exhaust stack. They
15 use ocean water for cooling, which is what we call "once-
16 through cooling" in our parlance. Total output from the
17 plant is approximately 950 megawatts. Units 1 through 3
18 total about 320 megawatts and they would cease operation
19 when this new project is completed, if it's approved and
20 constructed. Units 4 and 5 total approximately 630
21 megawatts, and they would continue to remain operational,
22 no matter what your action is today, until they are no
23 longer needed for grid reliability.

24 The new project would, instead of once-through
25 cooling, it would use air cooling with a closed loop

1 steam system. But even that kind of system needs the
2 occasional injection of water to replenish it because
3 some of the water escapes. And there are two possible
4 sources for that water, one is reverse osmosis treated
5 sea water, which would be drawn from the existing
6 plumbing for the once-through cooling system for the
7 Encina plant, and if Encina were to completely shut down,
8 this project would continue to use that cooling system,
9 but it draws much less water than the Encina plant does
10 currently, and the Decision contains an analysis of
11 whether or not that draw would cause any environmental
12 impacts, for instance, to marine species, and concludes
13 that it would not. The other option is reclaimed water,
14 but that appears to be currently unavailable. But the
15 proposed permit would allow the Applicant to go either
16 direction. The operation of the new plant is limited by
17 conditions to no more than 4,100 hours annually.

18 The Committee conducted several sets of
19 evidentiary hearings on this project in early 2010, and
20 again in 2011 on two different occasions. Eleven months
21 ago, the Committee presented a Proposed Decision to the
22 Commission for approval and the Commission sent it back
23 to the Committee for further work. On three topics that
24 the Commission listed, they were the impact of three new
25 proposed projects that were proposed to receive Power

1 Purchase Agreements from SDG&E, the impacts on our
2 Cumulative Impact Analyses, and Alternatives Analyses,
3 and then, in its Proposed Decision, the Commission had
4 Proposed Conditions Land-2 and Land-3, which were to
5 cause this Applicant to begin to plan for and get permits
6 for the demolition of the Encina equipment, that 200-foot
7 building and 400-foot exhaust stack, among other things,
8 but as they came later in the process, it was thought
9 appropriate to conduct an analysis of any potential
10 impacts that might occur from the activities that would
11 result from complying with Conditions Land-2 and Land-3.

12 And then, finally, the Commission asked the
13 Committee to look into grid reliability issues that were
14 raised by some comments that the California ISO made
15 during a hearing on June 30th, 2011, about 11 months ago,
16 at your Business Meeting, in fact.

17 Now, the Committee was granted discretion to
18 add additional issues they thought could benefit from
19 additional testimony, and we did come up with three; one
20 was about the fact that the Federal PSD Permit had not
21 yet been issued for the project, and whether that
22 required, for instance, the Commission to wait for the
23 outcome of that process, and then the City in September
24 and October of 2011 adopted amendments to its Land Use
25 Regulations, and so we needed to consider evidence about

1 the impact of those changes. And then, because it looked
2 like the possibility of overrides would be on the table,
3 we offered the parties the opportunity to provide
4 additional evidence on that topic, either in support of
5 overriding impacts that could not be mitigated, or
6 inconsistencies with LORS.

7 Again, there were further hearings in December
8 2011, and then the parties briefed some of the issues and
9 the Committee prepared and issued a Revised Presiding
10 Member's Proposed Decision on March 28th of this year.
11 There followed a public comment period and we proposed
12 further revisions to the Revised PMPD in response to the
13 significant comments that we received, and that was
14 published on May 16.

15 This morning, we issued some Errata that all of
16 these documents, except for the Revised PMPD, which is
17 too large to duplicate in numbers, are on the table
18 outside the hearing room for people who want to pick up
19 some of those, along with a couple documents I'll mention
20 in a minute from the City.

21 The Proposed Decision finds that the proposed
22 project would be consistent with all laws, ordinances,
23 regulations, and standards, except the City General Plan
24 and Zoning Regulations, and a requirement in the City's
25 Redevelopment Area Plan that a power plant, if approved

1 in this vicinity provided what they call extraordinary
2 benefits, in other words, something beyond the norm. And
3 then also a height limitation in the City's Regulations,
4 that the project would be higher than that limit, which
5 as I recall is 35 feet.

6 In addition, while the Decision and the
7 Committee believe that the Coastal Act is complied with
8 in this case, there was enough disagreement, as
9 characterized in the Proposed Decision as vociferous, on
10 that point, that the Committee decided it was prudent to
11 recommend that you override any inconsistencies with the
12 Coastal Act that might be found, for instance, a court
13 decided that they didn't agree with our assessment of
14 that point. And then finally, there is a provision in
15 the State Fire Code that the City argues gives the local
16 Fire Officials the basically unfettered right to increase
17 development standards; in this case the argument is over
18 whether the fire access roads should be 28 feet, as
19 proposed by the Committee after hearing from both the
20 City, staff, and the Applicant's experts, or should it
21 be, as the City would desire, 50 feet wide. So what we
22 are proposing that the Commission do is override that
23 State Fire Code Provision basically just giving the local
24 fire officials the unfettered right to make that change
25 in the standards.

1 We are not saying that 28 foot roads would be
2 unsafe, quite to the contrary. We're saying that that is
3 a reasonable width, given all the circumstances that
4 apply to this particular parcel. We're simply overriding
5 this provision that appears to let somebody else make
6 that decision, rather than the Commission.

7 The land use inconsistencies, because of the
8 way CEQA works with land use, the land use topic, it can
9 be considered to be also environmental impacts under
10 CEQA, and so we have called that out as an impact and
11 we're recommending that you override that. We would
12 note, however, that there were no actual impacts found
13 from this project, there were no visual impacts, no
14 impacts to species, no public health impacts, no air
15 quality impacts, so some might characterize that as, in
16 effect, a paper impact; it exists only because the
17 planning document says that this particular parcel should
18 not have a power plant on it.

19 Among the benefits -- and this is not an
20 exhaustive list, the Committee recommends you find
21 justify the override of the LORS inconsistencies and the
22 environmental impacts -- are that this project will
23 further redevelopment of the existing Encina Plant, it
24 provides additional generation in the area. The
25 California ISO has told us that, in a sub-area, they call

1 it the Encina Sub-Area, there must be 20 to 50 megawatts
2 of generation to support the reliability of the grid. If
3 all of the Encina generators were shut down, there would
4 be no such generation unless this project is approved and
5 brought on line. And what we've done in the Proposed
6 Decision is, with Conditions Land-2 and Land-3, require
7 that the Applicant begin to plan for and get permits to
8 tear down the Encina facilities and, on an annual basis,
9 ask the ISO for permission to be able to retire the
10 remaining Units 4 and 5 because they will be needed,
11 quite possibly, even after this project is constructed
12 for a period of time until more generation is added in
13 the area to make up for the continue deficit that this
14 project only partially satisfies.

15 And when Encina is closed, there is a very
16 desirable State benefit, and that is the elimination of
17 the once-through cooling system because, as you know, the
18 State Water Quality Control Board is required to force
19 these facilities to modify their cooling systems, to
20 either vastly reduce the amount of water they take in, or
21 replace that with something else that doesn't use ocean
22 water, and closing Encina would help achieve that goal
23 for this particular power plant location.

24 Also, using this Encina site, which is
25 currently developed with old oil storage tanks that are

1 no longer needed because the Encina facility no longer
2 burns oil as a backup fuel supply, we would be developing
3 an existing power generation site that has all the
4 infrastructure there, fuel, transmission lines to take
5 the power out to the customers, rather than putting a
6 power plant in some new undeveloped site where a
7 different set of people will experience the power plant
8 in their neighborhood.

9 The issues you're likely to hear today are
10 about fire safety and service. The City in their
11 comments on the Revised PMPD first said that they were
12 thinking about deciding to refuse to provide fire service
13 to this project because of their concerns about safety
14 issues. They have since, on Tuesday morning of this
15 week, adopted an ordinance saying that they will be
16 secondary fire service providers on an incident-by-
17 incident basis. Yesterday, the City filed a request that
18 you take official notice of their ordinance, and I
19 recommend that you do so, but in addition to that
20 ordinance I recommend that you take official notice of
21 the Agenda backup materials that were sent to the City
22 Council for their consideration in adopting that
23 ordinance. Copies of both the City Motion and the Agenda
24 backup materials were provided to you during the break.

25 You may also hear about conformance with the

1 Coastal Act policies. The Decision, especially with the
2 revisions, explains that this project is consistent with
3 the policies of the Act, which, kind of like any General
4 Plan you might find, they have policies that tug each
5 other and go in different directions, but there are clear
6 policies in there that suggest that confining developing
7 to existing industrial sites is preferred. There was a
8 lot of argument among the parties about whether or not
9 this project is coastal dependent, which means in essence
10 whether it has to be on the coast in order to be able to
11 operate. We do not believe that coastal dependency is
12 required here, but also, we point out that because the
13 project needs to get it's cooling makeup water from the
14 desalinization plant that needs to be drawing from the
15 ocean, that there is a very good argument that it is
16 coastal dependent, it just doesn't matter. If this
17 project had visual impacts, or biological impacts, then
18 there might be some argument about whether it's
19 consistent with the basic policies of the Act, but in
20 fact, it does not.

21 And then, on the issue of the PSD or Prevention
22 of Significant Deterioration Permit, it's been argued
23 that the Commission needs to wait either for the Federal
24 Government to act to issue that permit, or at least be
25 further along in its analysis, before it can act on this

1 permit. A recent development there is that the San Diego
2 Air Pollution Control District has begun the process of
3 incorporating PSD requirements into the State
4 Implementation Plan, but all they have done to our
5 knowledge is adopted local rules, but then they have to
6 submit that, I believe, to the State, and certainly to
7 the Federal Government, to be approved to be inserted
8 into the State Implementation Plan. So for the moment,
9 the Permit remains a Federal Permit and we don't think
10 that we need to wait until it is decided in order for you
11 to act on this permit. There is a requirement that we
12 added to the effect that the project cannot begin
13 construction until the PSD is resolved, and we also have
14 evidence and made findings that it is very unlikely that
15 anything that will come out of the PSD permit process
16 would cause either the design or any of our conditions
17 that have been imposed for other air quality reasons to
18 require amendments. So, again, we recommend that you go
19 forward and don't wait for further progress on the PSD
20 Permit issue.

21 And then finally, you're likely to hear from
22 the Center for Biological Diversity about our greenhouse
23 gas analysis. I don't believe there was anything new
24 since you last heard about this June of last year. It
25 appears to be simply a -- I don't know if you can call it

1 an agreement to disagree, but it is certainly a
2 fundamental disagreement about the paradigm that we
3 should apply in analyzing greenhouse gases. What we've
4 done is asked about what the total system greenhouse gas
5 emissions will be when this project comes on line, and
6 because -- if one generator starts up, another is going
7 to have to not generate, the system just doesn't ask for
8 infinite amounts of electricity and say, "We'll take it,"
9 generation has to match load. So because this project
10 would be so much more efficient than the other generators
11 in the San Diego area, if it runs a less efficient or, to
12 put it another way, a more significant greenhouse gas
13 emitter, will not run, so the total emissions from the
14 system will be reduced when this project runs, and
15 therefore we find that that is a good result for
16 greenhouse gases, and there's nothing to have to override
17 there, or otherwise worry about.

18 While I've never been quite clear what the
19 Center wanted us to use as an alternative and analytical
20 method, it seems to be that they'd like this project to
21 be viewed in a vacuum, as though it was just going to
22 come on line and run at the maximum, and without regard
23 for what the other parts of the system would have to do.
24 And, again, we just don't think that's realistic.

25 The documents before you are the Revised PMPD,

1 Revisions to the PMPD; today's Errata, which makes minor
2 changes, none of which haven't been telegraphed by either
3 the earlier revisions or a comment made by another party;
4 we have a Revised Proposed Adoption Order; we have the
5 City Motion to take official notice of their Ordinance
6 adopted on Tuesday morning regarding fire service and the
7 City Agenda packet that relates to that Ordinance.

8 If you act to approve this project, we expect
9 that the effective date -- the Order would be docketed
10 tomorrow, and that would be the effective date of the
11 Order, and we would start the time periods for requesting
12 reconsideration of your decision, as well as Judicial
13 review of your decision. At some later time, my office
14 would, pursuant to that order, prepare a compilation so
15 all the changes would be reflected in one document, but
16 that would be extraneous to the running of the time
17 limit, and when that is released because of scheduling
18 issues, probably a couple weeks, that would not change
19 the time limits to request reconsideration or to file a
20 judicial challenge.

21 In closing, the Committee recommends approval
22 of the Adoption Order that is before you. If there are
23 any further amendments that you need to make today, we've
24 set up the Adoption Order so that it has -- right now
25 it's a blank Attachment A -- we recommend that you give

1 us direction, the Chief Counsel and I, and we will take a
2 few minutes to prepare an Attachment A that is no longer
3 blank, and bring that back to you so that everyone can
4 look at it and make sure it is what you wanted, and then
5 you could take final action. With that, I'm open to any
6 questions.

7 CHAIRMAN WEISENMILLER: Thank you.

8 COMMISSIONER DOUGLAS: I think it would be
9 helpful to hear from the parties unless you do have
10 questions.

11 CHAIRMAN WEISENMILLER: Let's start with the
12 Applicant.

13 MR. MCKINSEY: Thank you, Commissioners. My
14 name is John McKinsey, Counsel for the Applicant. Also
15 with me is George Piantka, he is the Environmental
16 Director for NRG West and Project Manager for this
17 project, and we both would like to say a few things and
18 we'll begin with Mr. Piantka.

19 MR. PIANTKA: Good afternoon, Chair
20 Weisenmiller, Commissioners Douglas, Peterman, and
21 McAllister, Hearing Officer Kramer, Energy Commission
22 staff, and the parties to the Carlsbad Energy Center
23 proceeding. As John mentioned, I'm George Piantka,
24 Environmental Director of NRG's West Region and the
25 Project Manager for the Carlsbad Energy Center

1 Application for Certification. I'm speaking on behalf of
2 Carlsbad Energy Center, LLC.

3 NRG is the parent company of Carlsbad Energy
4 Center, LLC and is also the largest solar developer in
5 the country with approximately 2,000 megawatts operating
6 or in development. We also own solar energy -- I'm sorry
7 -- wind energy resources and through our subsidiary,
8 eVgo, we are investing in electrical vehicle
9 infrastructure in portions of the U.S. to support EV
10 adoption.

11 I wish to thank the Energy Commission staff and
12 the Committee for your dedication to this project, your
13 careful thorough analysis has led us to today's proposed
14 adoption. The process has been meaningful and has
15 advanced many significant project qualities. Carlsbad
16 Energy Center is a better project today in an already
17 good project that was presented several years ago in the
18 AFC.

19 We are pleased through the Revised Presiding
20 Member's Proposed Decision and the Errata's that the
21 Committee has recognized the significant benefits of the
22 558 megawatt Carlsbad Energy Center Project. I'd like to
23 run through some of those benefits. CECP is a rapid
24 response generation delivering approximately 60 percent
25 of its energy to the grid in as little as 10 minutes.

1 CECP is clean and efficient, combined cycle generation
2 with a greenhouse gas emission rate well below the
3 proposed Federal Standard. CECP is an ideal and
4 efficient way to locally support the integration of
5 renewable energy resources in the San Diego - Imperial
6 Valley and to help ensure the reliability to the local
7 San Diego area. CECP supports California's 33 percent
8 RPS goals. CECP is air-cooled, eliminating the use of
9 225 million gallons per day of ocean water for cooling
10 purposes, consistent with the State's OTC policy. CECP
11 replaces aging energy infrastructure leading to the
12 direct retirement of Encina's oldest steam boilers, Units
13 1, 2, and 3.

14 CECP paves the way for the retirement of Units
15 4 and 5, when allowed, and the demolition of existing
16 Encina power generation structures, facilitating
17 redevelopment west of the tracks. CECP will have reduced
18 visibility through its construction in the recessed tank
19 farms, tank farm basins. CECP is the same technology as
20 El Segundo Energy Center, which was adopted by the CEC in
21 2010, and it's in its second year of construction. El
22 Segundo Energy Center is scheduled to be on line the
23 summer of 2013.

24 Above all, CECP is safe. As with all NRG
25 plants, CECP will have trained personnel to address fire

1 and other casualty loss, as first responders. Per prior
2 applicant testimony, CECP will be designed with fire
3 protection systems to automatically extinguish any fire
4 before any external response is needed. On behalf of
5 NRG, I want to thank you for the opportunity to speak.
6 We respectfully request your adoption of the Carlsbad
7 Energy Center project today, as presented.

8 CHAIRMAN WEISENMILLER: Thank you. Staff, any
9 comments?

10 MR. MCKINSEY: Commissioner, there was one
11 additional note I wanted to make if it is all right, on
12 behalf of the Applicant. I think the Hearing Officer
13 correctly noted most of what you're going to hear about
14 today, and it's worth noting that the Applicant is in
15 complete agreement with all the elements of the Decision
16 and both the Errata's, the one issued again this morning.
17 There is one other issue you may hear brought up and
18 that's the question of the need for the project, and this
19 is another one of the topics that has been pushed around
20 quite a bit and there's been some motions in the last few
21 months regarding testimony and various pieces of
22 evidence, and much like the other issues, we find the
23 Decision, a document to have done a tremendously good and
24 documented and noted job of tackling that issue, and for
25 those reasons we're completely comfortable, not only with

1 the project that the Decision would approve, but also
2 with the legal sufficiency and adequacy of the document.

3 CHAIRMAN WEISENMILLER: Thank you. Staff.

4 MR. RATLIFF: Dick Ratliff, Staff Counsel.
5 Commissioners, this has been a very difficult and long
6 proceeding, and staff has found itself, and I think the
7 Commission as an institution finds itself, in the middle
8 of a historical antagonism between the City of Carlsbad
9 and the Encina Power Station. That antagonism has, I
10 think, been very unfortunate inasmuch as it makes it very
11 difficult to objectively analyze the benefits and
12 environmental impacts of this project. In addition, it
13 has created -- added to the unprecedented length of this
14 process.

15 The City of Carlsbad and the Interveners in
16 this project, we on the staff have great respect for; we
17 think in many ways they have been the models of effective
18 intervention, and it has been at times, I think, painful
19 for some of us to disagree with the City and its allied
20 Interveners. But we do disagree with them very
21 fundamentally on the issues in this case. We, as staff,
22 have included that the project complies with all of the
23 applicable laws, ordinances, regulations and standards
24 that are applicable to this project, with the exception
25 of the recently induced non-conformity created by the

1 City's amendment of its local ordinances. Likewise, we
2 believe that there are no significant impacts that have
3 not been mitigated by the Conditions of Certification
4 that we forward to you, so we believe that it complies
5 with LORS and does not have significant impacts.

6 In addition, we think that this project has
7 significant value and benefits. It closes Units 1, 2, 3,
8 which are boiler generators that were built in the
9 1950's; it will, I think, create the likelihood or the
10 possibility, at least, that the State will meet its once-
11 through cooling policy goals of early closure; and in
12 addition to that, it is exactly the kind of project that
13 the ISO is saying is needed by the State of California to
14 have flexible fast ramping generation that is valuable
15 for integration of renewables that we are adding to our
16 system, and in prodigious quantities these days.

17 So for all of these reasons, staff has
18 recommended the licensing of this project and supports
19 the override that the Commission proposes to do of the
20 City's Ordinances, and likewise proposes the override of
21 the Coastal Act to the extent that there may be any
22 nonconformity, although staff has testified at length the
23 reasons that it believes that there is no nonconformity
24 with the Coastal Act.

25 Finally, I have to address one somewhat small

1 issue, but an issue just in terms of the correctness of
2 the Revisions document and the Errata to it. At page 1,
3 going on to page 2 of that document, there is discussion
4 of the Prevention of Significant Deterioration Permit.
5 The Errata actually addresses this correctly on page 3
6 that there remains an incorrect statement on page 1,
7 going on to page 2 --

8 COMMISSIONER MCALLISTER: Could I -- you're
9 referring to today's Errata, correct?

10 MR. RATLIFF: Today's Errata, yes, which states
11 that the San Diego Air Pollution Control District has not
12 adopted PSD provisions for their local rules, and the
13 fact of the matter is they have quite recently done so.
14 So I would suggest that that statement be corrected.
15 There are many ways that it could be done. If you would
16 prefer, I would just do it in writing, but if you want, I
17 will read it for the record, how it might be corrected --
18 at your choice.

19 CHAIRMAN WEISENMILLER: Please read it for the
20 record.

21 MR. RATLIFF: The third sentence of the
22 paragraph that begins on page 1, beginning with the San
23 Diego Air Pollution Control District, APCD, would read as
24 follows: "The San Diego Air Pollution Control District,
25 APCD, the agency that would normally issue any permit

1 absent the Energy Commission's preemptive statute...," "has
2 not" would be stricken, "...has adopted requirements for
3 its State Implementation Plan regarding the Federal PSD
4 provisions..." and the additional language here would be:
5 "..., but has not yet applied for, nor obtained EPA
6 approval to include those provisions in the State
7 Implementation Plan." With those changes, I think that
8 would be a correct statement.

9 CHAIRMAN WEISENMILLER: Okay, thank you. Could
10 you provide a copy of the written statement to the
11 Hearing Officer?

12 MR. RATLIFF: Yes. Those conclude staff's
13 comments.

14 CHAIRMAN WEISENMILLER: Okay, the City of
15 Carlsbad.

16 MAYOR HALL: Good afternoon. I had quite a few
17 prepared remarks, but just after listening to the last
18 few comments, I'd like to start out by first thanking
19 each of you. For me, it seems like it was just yesterday
20 that we started down this path, and today we each know
21 one another by our first names. The word "antagonism"
22 was just used. If I or our staff has ever been
23 antagonistic, then I wish to apologize. When I look at
24 NRG, they are a worthwhile company, they produce power
25 and they do it in a very efficient manner. We as a city

1 represent 108,000 people and we try to do that through
2 our land use and other means. And today, what this is
3 really about, it's not about right or wrong, it's about
4 two different visions, 1) the vision of power and their
5 ability to create power, the other is the vision of
6 Carlsbad in trying to protect what is the most valuable
7 resource to the City of Carlsbad and to the State of
8 California, and that is our local coastal area. And
9 that's what this is really about.

10 The question is, is that the best place to
11 generate power for the future? No one can look
12 themselves in the eye and say this is where this has to
13 be built. We're building power facilities all over this
14 region, most of which are in industrial parks today, and
15 this facility could be built there also. What I would
16 just like to say, this is about vision, it's about each
17 of us positioning ourselves for a later day when this
18 thing will be settled, one way or another, through some
19 sort of negotiation. What we're trying to do today is to
20 make sure that we're involved with a process that we are
21 either appointed, or elected to do. And at the end of
22 the day, we can each look one another in the eye, shake
23 one another's hands, and say we followed the letter of
24 the law. And I think at this moment in time, there are
25 one or more boxes that we haven't checked, meaning we

1 haven't followed clear, procedures through this whole
2 hearing process and my staff is going to articulate some
3 of those. But I think we owe it to one another, so when
4 I have to go back and say, "Guess what? Perhaps we
5 didn't win today," I can look everybody in the eye and
6 say, "But we got a fair hearing." I cannot say that at
7 this moment in time.

8 The other thing that I think is very important
9 is safety. To every one of us here today, safety is job
10 one, whether it's Sacramento, a County or a City, safety
11 is number one, whether it's your employees, our
12 firefighters, or our citizens, we have to provide a safe
13 environment. And one of the things that has been
14 stressful to us is the configuration of how this plant is
15 being built, it is in a very tight or constrained area.
16 So as you sit there on the dais, 28 feet is about where
17 these gentlemen here are sitting, that's the width of the
18 access road. When an apparatus pulls into the area, when
19 it's fully operational, it takes us 15 feet. Now, keep
20 in mind where you're sitting, it's a piece of equipment
21 that's several stories high. There is no toaster fire
22 when something like this has a bad day, and you could
23 only look to Escondido where it was simply a small
24 incident, where it burned for a day and a half. And
25 think about that. When we ask for 50 feet? That's that

1 post right there. So when you think about that and
2 people going down into a pit 30 feet deep, with a 15 foot
3 wall to their back, and you're asking them to perform
4 safety, I don't think I would do that.

5 The other thing is, when you look at the safety
6 of this site, and I appreciate the fact that they're
7 going to be the first responders, the other thing that is
8 very unique is I-5 is 75 feet away. From where you're
9 sitting, that's probably just beyond that wall right
10 there, so any kind of smoke, or any kind of thing
11 billowing out of this facility, I-5 will start to slow,
12 probably within 15 minutes, it will come to a halt,
13 within 30 minutes, Carlsbad and all the surrounding areas
14 will be locked in place as people dive off at Palomar
15 Canyon, Tamarack, and Elm Street. That's not southbound,
16 that's no northbound, that's both directions. Within an
17 hour, that represents literally miles, so not only are
18 you talking about the safety of this facility, a bad day,
19 you're talking about the whole surrounding community,
20 we're going to be frozen in place. So when we talk about
21 safety and we're reacting to some of your Errata sheets
22 from 15 days ago, that's why this is so important to us.
23 So we're here today to represent the City of Carlsbad, we
24 are not antagonistic, we're here to try and represent
25 fact. And I truly appreciate NRG, I would like to say

1 I'm a personal friend of Bill Hoffman and Randy Hiccock.
2 So with that, I'm going to introduce our next speaker,
3 which is Ron Ball.

4 MR. BALL: Thank you. For the record, that was
5 our Mayor, Matt Hall. And it's nice to see you again,
6 Chairman Weisenmiller, and Commissioner Peterman,
7 Commissioner Douglas and, to us, new Commissioner
8 McAllister. And I know, as you've been pouring over the
9 cold record, and there's been 30, probably 40,000 pages,
10 you've been waiting for this moment to attach a name to
11 that face, so when you look down and you see, oh,
12 comments by Ron Ball, that's me. I'm the City Attorney
13 for the City of Carlsbad, and the General Counsel for the
14 Redevelopment Agency. As you know, the Redevelopment
15 Agency has been dissolved and we are now the successor
16 agency, that is, the City is the successor agency to the
17 former Redevelopment Agency. And that's how we've
18 submitted our pleadings.

19 And thank you very much, I know you haven't
20 made a final ruling on our Request for Official Notice,
21 we feel it's akin to a Mandatory Judicial Notice, as it
22 would be in a court proceeding, and so our recommendation
23 is that you do do that. That will require an Amendment
24 to your Final Decision, of course, because that's not
25 even referred to in the Decision, and so that is a LORS,

1 that is a local law, and you need to in your Final
2 Decision address that local law, and either comply with
3 it or not. And then you have to make the findings and
4 adjust your Decision to override that.

5 With me today and really throughout the
6 proceedings, which have been on for the last five years,
7 is my co-counsel and special outside counsel, Alan
8 Thompson, Attorney Thompson is well known to the
9 Commission, he's been practicing before it for the last
10 three decades. Also with me is Attorney Ralph Faust.
11 Ralph Faust was the former General Counsel to the
12 California Coastal Commission for over two decades, and
13 then really our project team leader is Joe Garuba, he is
14 a Manager in the City of Carlsbad, and he's testified and
15 argued throughout these five years of proceedings. And
16 then, finally, Mr. Bob Therkelson, who is well known to
17 this Commission, too, I believe, because he was the
18 former Director and worked here for 30 years. They will
19 all be addressing the Commission and pointing out what we
20 feel are real serious errors, legal errors that today is
21 the day you need to correct them. And at the end of
22 these proceedings, we'll be asking for relief. And the
23 relief that we'll be asking for is either that the
24 Commission retain jurisdiction and fix this Decision up,
25 right here, not today necessarily, but retain

1 jurisdiction and fix the Decision to accommodate the
2 things that we will point out as legal frailties, or the
3 preferred approach is to remand it to the committee and
4 have the committee take whatever steps are necessary to
5 come back with a legally adequate recommendation that
6 this Commission can adopt.

7 Now, I wanted to turn the microphone over to
8 Mr. Thompson, but, really before I do, I wanted to just
9 summarize what we feel are some of the inadequacies in
10 the recommendation Decision before you. And, really, we
11 have tried earnestly for the last five years to persuade
12 the Committee to listen to us, recognize our concerns,
13 and really meet and talk with us so that the proposal
14 which was made in 2007 would be different and acceptable.
15 That's really the requirement for the meet and consult,
16 as contained in the law, in the Warren-Alquist Act. But
17 over these five years, this proposed plan has not moved
18 one inch, not one inch to the south, one inch to the
19 north, one inch to the east, or one inch to the west.
20 You would think, after five years of expressing our
21 concerns, we would be able to move the plant one inch.
22 And forgive the hackneyed expression, but it's kind of
23 like the irresistible force vs. the immovable object, and
24 that object is the power plant, and it has not moved.
25 And I think primarily that's due to the inability, or

1 maybe not the inability, but the reluctance, and I don't
2 understand why it's the reluctance, to follow the statute
3 that says, "If there is an inconsistency with a local
4 law, then the Commission will meet with the governing
5 body to try and resolve any inconsistency." In an
6 attempt to resolve any inconsistency. The record is
7 devoid of any attempt to meet with the local governing
8 body over any inconsistencies. Now, there have been
9 discussions over five years, but none of them have been
10 after the Commission has determined that there's an
11 inconsistency -- after the Commission has determined
12 there has been an inconsistency; then, that triggers your
13 statutory duty, to meet and confer in an attempt to
14 resolve that inconsistency. And I'm a positive person,
15 I'm an optimist, and I believe some of those
16 inconsistencies would be eliminated if the Commission
17 engages in its statutory duty.

18 The Committee, in our opinion, has failed to --
19 well, it has obtained -- failed to obtain a Coastal
20 Commission Report. I mean, we looked through the record,
21 and whether it's 30,000 or 40,000 pages, you will not
22 find a Coastal Commission Report in it, it's clear.
23 Okay, do you have a statutory duty to do that? I believe
24 you do. And I've submitted a number of letters to that
25 effect. You do not have a Coastal Commission action, you

1 do not have a Coastal Commission report, you have some
2 letters from the Executive Director of the Coastal
3 Commission, but you do not have a Coastal Commission
4 Report. So how can this Commission possibly override a
5 non-existent Coastal Commission Report? So we hope
6 you'll be able to answer that, and maybe you'll be able
7 to address that in a revised Decision. Our suggestion,
8 as I've said earlier, is to remand it.

9 There is in a number of your Decisions a
10 recognition of the power of -- of your paramount
11 jurisdictional power, but also the power of the local
12 LORS, and that's been a tension, as far as I can see over
13 the past 35 years of the Energy Commission's existence.
14 And that number of El Segundo and Morrow Bay Decisions by
15 this very Commission determined that it would not make a
16 final decision as to interpreting the flurry, as I say,
17 of legal arguments that went on and, instead, that
18 resulted in a Memorandum of Understanding between the
19 California Coastal Commission and the California Energy
20 Commission. That MOA requires a report from the
21 California Coastal Commission. So not only does the law
22 require a report, in my opinion, but the MOA between this
23 Commission and the Coastal Commission requires such a
24 report, also. There is not one word in those 30,000 or
25 40,000 pages that indicates the MOA was followed. It's

1 not been rescinded, there's not been any action by the
2 Coastal Commission, there's certainly not been any action
3 by this Commission that would require that report, and we
4 feel that's a fatal fundamental flaw.

5 I'm going to turn the microphone over to
6 Attorney Thompson now to address the coastlines and the
7 Fire Code.

8 CHAIRMAN WEISENMILLER: Okay, so the question
9 is how many of your people do you have to speak? We'd
10 like to --

11 MR. BALL: The ones I introduced, so Mr.
12 Thompson and Mr. Faust.

13 CHAIRMAN WEISENMILLER: Okay, and if each of
14 them could keep within three minutes, that would be good.
15 We're trying not to be repetitive today, but certainly
16 give you a chance to present your case.

17 MR. BALL: I think you'll find their testimony
18 exciting and stimulating and not repetitive of anything
19 I've said. Thank you.

20 CHAIRMAN WEISENMILLER: Thank you.

21 MR. THOMPSON: Good afternoon. My name is Alan
22 Thompson and I don't know if I can do this in three
23 minutes, Mr. Chair --

24 CHAIRMAN WEISENMILLER: I've assumed you've
25 filed written documents, so you don't have to repeat

1 what's in the written documents, but try to summarize it,
2 please.

3 MR. THOMPSON: Uh, okay. Mr. Faust will talk
4 about the Coastal Act and I will come back and talk about
5 the Fire Code. I did have some specific issues that we
6 had that I wanted to bring up, however, if I'm really
7 restricted to three minutes, let me discuss really a
8 couple of the major ones. In fact, let me just go to
9 Fire.

10 We are very concerned with the delegation of
11 this authority, the fire authority, to an entity other
12 than the local Fire Chief, whom under California law
13 5.2.2 of the Fire Code has been given the discretion to,
14 in large access areas based upon local conditions. The
15 reaction of the City to the May 15 Errata where the
16 Energy Commission claims that it was the local fire
17 authority and would handle first response was to clarify
18 for the City that that was the recognition, that this
19 Commission had made that determination. I think a brief
20 look at what would happen if a fire similar to Palomar
21 occurred at this site, 911 calls would come in, which
22 would immediately go to the local fire department. I
23 don't know how you're going to handle that, I don't know
24 whether the Energy Commission will be taking the 911
25 calls, or somebody else that you designate; 2) in Palomar

1 there was coordination between the San Diego Police
2 Department, the Escondido Fire Department, and Hazardous
3 Materials; again, I take it the Energy Commission would
4 be handling that coordination.

5 Finally, there were some 20 pieces of apparatus
6 that showed up according to a Memorandum of -- Joint
7 Operating Agreements between entities. That may not work
8 in this case because of the location of the CECP will
9 prevent other trucks from arriving after a certain amount
10 of time, and I think those Memorandum of Understanding
11 are based upon a comfort level of the training that Fire
12 Department personnel and the Fire Department equipment
13 being compatible, and I suspect you may not have that in
14 this case, and I'm down to zero, so let me say on a
15 personal note that, after four and a half years, I
16 wouldn't have hoped to have more than three minutes to
17 discuss what I personally believe are significant errors
18 in this Proposed Decision, but thank you.

19 MR. FAUST: Good afternoon. My name is Ralph
20 Faust. I'm an Attorney in Bayside, California here on
21 behalf of the City of Carlsbad. As was noted earlier, I
22 spent many years as the Chief Counsel of the California
23 Coastal Commission, and I come here to talk to you about
24 Coastal issues. I'll try to be as quick as I can. The
25 record, I think, is clear that there isn't any

1 evidentiary basis for you to find that this project is
2 fully consistent with the Coastal Act, which is what
3 would be required. In that circumstance, there's a
4 provision in the Coastal Act, Section 30260, which allows
5 for an override for Coastal dependent industrial
6 facilities, there's been a lot of briefing back and forth
7 about this. But as I think the record also is clear,
8 when you look at the standard in the Coastal Act for what
9 a Coastal Dependent Industrial Facility is, this does not
10 meet it, this is not a Coastal Dependent Industrial
11 Facility.

12 So what are you left with? The real problem
13 here is that there's never been an actual analysis by the
14 Energy Commission of the Coastal impacts, and there are
15 many fingers to point, perhaps, as to why that occurred,
16 certainly part of it is the Coastal Commission did not
17 submit its report. But nonetheless, that analysis has
18 never occurred. What has happened is that the Energy
19 Commission has conducted an analysis pursuant to CEQA,
20 but the standard of review for CEQA, what is actually
21 looked at, the Standard against which the evidence is
22 weighed, is different than the standard for the Coastal
23 Act. And unless that analysis is completed, you can't
24 really make a valid determination as to whether or not
25 there is a consistency.

1 You all know about Section 30413 in the
2 legislative mandate to conduct a review of coastal
3 impacts. That didn't occur here for budgetary reasons.
4 The only report was submitted by the City of Carlsbad.
5 What you have here -- also, there was an MOU out -- I'll
6 just skate past that because the Energy Commission didn't
7 pursue into the MOU, complete the Coastal analysis
8 either. Now, even if you'd gotten, even if there's no
9 report from the Coastal Commission, this does not
10 eliminate the requirement for the Energy Commission to
11 conduct a Coastal analysis. The Legislature has said
12 there's certain impacts you need to look at, there's a
13 certain standard you need to take into account, and that
14 hasn't been done. The Energy Commission has done an
15 analysis based on CEQA, but this isn't the same. If you
16 want to compare it on visual impacts, for example,
17 compare your CEQA checklist with Section 30251 of the
18 Coastal Act, they're different standards.

19 The Hearing Officer earlier testified that
20 under his analysis, there were no marine impacts,
21 amazing, no marine impacts from withdrawals of water from
22 the lagoon. Compare that to the 1990 letter that the
23 Coastal Commission submitted with respect to a different
24 proposal facility at this location. [Reading] "Marin
25 Impacts are a huge enormous difficult."

1 Now, what the revised Presiding Member's
2 Proposed Decision proposes to do is to override these in
3 a kind of blanket fashion, "Well, if there are any
4 inconsistencies with the Coastal Act, we'll override
5 them." What I submit to you is that you can't do that,
6 that that really is against your law, and this is why.
7 If you do a blanket override of inconsistencies that you
8 haven't even identified, what do you have? What legal
9 basis are you operating under when you do that? You have
10 to identify what the inconsistencies are in order to
11 override them. It's not enough to simply say, "Oh, we'll
12 throw these out. They're not really worth paying
13 attention to. Do whatever they are, it's fine, we know
14 this is the right thing to do." You need to, at least,
15 as the Legislature mandated, look at those impacts, do
16 the coastal analysis that was required, and until you do
17 that, I don't think you can properly proceed. I think
18 that to do it in this way just eviscerates the whole
19 point of there being a Coastal review, a review of
20 Coastal impacts. And really, the whole point of your
21 override, now, I know my time is up, I would ask for more
22 time, but I will say briefly just what I was going to
23 talk about next, and if you want to ask questions about
24 it, I am happy to talk about it, there is a citation in
25 the Proposed Decision, the Revised Proposal Decision, to

1 a Coastal Commission Decision in an Oxnard matter. This
2 matter, it's suggested in there in some way, that this
3 somehow makes it okay that the Coastal Commission looks
4 at projects like this and says, "Oh, yeah, they're fine."
5 That's just not the case in any respect, it's not -- the
6 Oxnard proposal was less than a tenth of the size of this
7 proposal, it's a little peaker plant, it has nothing like
8 the same impacts, visual or otherwise. More important,
9 perhaps, the standard of review that was utilized for
10 that case is different than the standard of review of
11 Coastal impacts that is presented before you. When the
12 Commission looks at an appeal and there's a Certified
13 LCP, they review it according to the Certified LCP, and
14 that's what the Commission did in the Oxnard case, they
15 looked at it and said, "This proposal is consistent with
16 the Certified Local Coastal Plant." That's not what's
17 before you today. What's before you today is a review of
18 Chapter 3 impacts, and if you look at the difference,
19 again, on visual, for example, compare what the LCP said
20 in the Oxnard matter with Section 30251 of the Coastal
21 Act, and you'll see that the standards are different.
22 And to say that the Coastal Commission found something
23 consistent with the LCP in Oxnard, therefore, this
24 project is consistent with the Coastal Act is just to
25 entirely misread that Decision. So for both of those

1 reasons, I think that the thing that you need to do is to
2 remand this back to the Committee and ask them to conduct
3 a complete examination of the Coastal impacts, based upon
4 the standards in the Coastal Act. Thank you very much,
5 and if you have any questions, I'd be very happy to
6 answer them for you.

7 CHAIRMAN WEISENMILLER: Thank you.

8 Commissioner?

9 COMMISSIONER PETERMAN: I don't have a
10 question, I just did want to say something, though, as
11 we're just having this discussion because a couple of the
12 presenters so far have mentioned the time. I just wanted
13 to, as a public member, I'm really cognizant of the fact
14 of making sure we have opportunity for people to just
15 talk and express their views, but I do want to say that
16 we have heard these issues all before in the sense that
17 we have discussed the PMPD, and I appreciated that
18 discussion, and we had a much longer discussion at that
19 Business Meeting, and there was also a series of
20 Evidentiary Hearings and Status Conferences, etc., on
21 this case. So those who have not been participating in
22 these forums, I do want to say that these are not new
23 issues to the Commission, to the Commissioners, we have
24 been reviewing the revised documents, and so being
25 cognizant of the time, it's more recognition that there's

1 a lot to cover, and that these are all issues that we
2 have heard and been briefed on extensively before. So I
3 just wanted to make that statement.

4 CHAIRMAN WEISENMILLER: Thank you.

5 MR. BALL: Mr. Chairman, can I just make a
6 concluding remark?

7 CHAIRMAN WEISENMILLER: Sure.

8 MR. BALL: Thank you very much. You know,
9 there's lots of issues, we couldn't cover them all in
10 respect of your time, of course, but we do want to remind
11 the Commission, we've asked for the fee schedule to
12 include the development impact fees, and that's what the
13 Regulations say, that's not however what the Proposed
14 Decision says, the Proposed Decision talks about
15 processing fees. We want the development impact fees and
16 I assume that we will read the Decision consistent with
17 the Regulation and we will obtain development impact
18 fees. And we didn't discuss the Coastal rail trails in
19 the record and the Commission is well aware that we're
20 opposed to that condition.

21 So, in conclusion, we feel that the best remedy
22 is to remand this to the Committee, and the second best
23 alternative is to retain jurisdiction and work on a
24 better Decision. A third and not preferred approach, is
25 to adopt the Decision that is before you today, but with

1 the those frailties that would not withstand Judicial
2 scrutiny. Thank you.

3 CHAIRMAN WEISENMILLER: Thank you. Terrimar
4 Association.

5 MS. JENNINGS: Chairman Weisenmiller, we do
6 have a Mr. Rostov for Center for Biological Diversity
7 here in the room to speak. He's an Intervener also.

8 CHAIRMAN WEISENMILLER: Sure, go ahead.

9 MR. ROSTOV: Good afternoon. Thank you. My
10 name is Will Rostov. I represent the Center for
11 Biological Diversity. I'm going to keep my comments
12 relatively short. We've submitted many rounds of
13 briefing evidence, and extensive cites to records, and so
14 our positions are well known. And Mr. Kramer actually
15 highlighted what we were going to talk about. So I will
16 touch on two, instead of three issues, as well, in the
17 interest of time.

18 So I want to touch on the failure to comply
19 with the Warren-Alquist Act and inadequacy for review for
20 greenhouse gases. One, the first issue, the only way the
21 Commission can approve the project is to not follow its
22 own enabling statute. The Warren-Alquist Act requires
23 the Commission analyzes all air laws, including
24 prevention of significant deterioration, PSD, which is a
25 Federal requirement. The Act does not allow the

1 Commission to pick and choose what to analyze, but this
2 is what has been done in the PMPD. The Errata applies a
3 different standard of analysis because the Permit is a
4 Federal Permit vs. a State Permit, a distinction not
5 found in the statute. The Energy Commission's review is
6 categorically different than what it does for other air
7 laws. Staff extensively review their -- their air part
8 of many decisions of the Air District with its
9 preliminary determination of compliance process and the
10 FDOC. Here, the Applicant has not even stated that the
11 permit process -- has not even started the permit process
12 with EPA, has not filed an application, or even taken a
13 position on whether PSD applies. So based on an
14 inadequate record, the Errata argues that the decision
15 will comply with the PSD for two reasons, both of which I
16 want to address. One, it argues that the Applicant will
17 eventually need a PSD permit because it's Federal law.
18 Although this is true, it doesn't relieve the Commission
19 of its duty to do its own analysis. The Errata also
20 finds, and I'll quote this, "that all the evidence
21 persuasively indicates that the CECP will have no
22 difficult complying with PSD requirements." And it cites
23 to testimony, but the cited testimony provides no
24 analysis, just simply opinions based on an inadequate
25 record. For example, the Errata relies on the testimony

1 of Gary Rubenstein, he is one of the Applicant witnesses
2 who is sitting over here, he says that he believes the
3 project will comply with PSD, but he's the same person
4 who testified that the Applicant would not even take a
5 position on whether PSD applies. Staff's witness, Mr.
6 Walters, expects the project will meet BACT, yet Mr.
7 Walters did not review a PSD permit application, or a
8 draft permit from EPA, and he didn't even review other
9 greenhouse gas permits that EPA had issued.

10 So what we're saying is Applicant simply did
11 not provide the Commission with enough information to
12 review and to make a compliance decision. And
13 additionally, neither witness supports the Errata's
14 conclusions because a PSD analysis is by definition done
15 on a case-by-case basis, there's no template here. Here,
16 the PSD permit will involve permitting for greenhouse
17 gases, and as the Commission knows, this is a relatively
18 new requirement. So this adds to the speculation that
19 the Decision is being based on in the record.

20 And the P -- the Errata's reliance on a PSD
21 Permit from another case, with a different project, a
22 different power plant, does not substitute for the
23 analysis here. Essentially, the Errata's analysis does
24 not withstand scrutiny and, to Mr. Kramer's point
25 earlier, our argument has been from the start that there

1 is just not enough evidence in the record to make this
2 compliance finding. You know, the Applicant at least had
3 to do an application and I think they had to do a draft
4 permit, but the fact that the Applicant didn't do any of
5 that and you're just having staff and Applicant's witness
6 pontificate about potential PSD requirements, it doesn't
7 meet the standards of the Warren-Alquist Act.

8 I want to move to the second issue which the
9 Center, also, as everybody knows, fundamentally disagrees
10 with the Commission's CEQA analysis regarding greenhouse
11 gases. With this decision and others, the Commission
12 adopted a generic CEQA analysis for greenhouse gas
13 emissions. In essence, any new fossil fuel source that
14 is more efficient than the current system gets a pass on
15 CEQA, it can't have a significant environmental impact
16 stemming from its greenhouse gas emissions. This
17 approach allows a whole class of fossil fuel power plants
18 to be permitted. The PMPD recognizes that at some point
19 there could be a limit, a future limit on the number of
20 plants the Commission will permit because of greenhouse
21 gas concerns. But an analysis that has been adopted by
22 this Commission provides no mechanism to determine when
23 that limit is. Our position is that limits are a past,
24 that when would we get there.

25 We believe that the Commission has taken the

1 state in the wrong direction by permitting them
2 intentionally and potentially locking in new fossil fuel
3 infrastructure. We need to de-carbonize the system. New
4 generators of greenhouse gas emissions -- this one is
5 going to produce approximately, I think, 840,000 tons --
6 should be considered a significant impact under CEQA and
7 analyzed as such.

8 Hearing Officer Kramer also made a point
9 earlier that -- trying to find out about our position --
10 and our position is that, since under the efficiency
11 theory put forward by the Commission you cannot prove
12 that there's any displacement, you have to count all the
13 emissions that are coming out of this plant, and then do
14 a CEQA analysis, and then determine -- well, first
15 determine if it's significant, and then do the rest of
16 the CEQA analysis, which would be to consider
17 alternatives and mitigations. Just a couple more points.
18 The PMPD claims that the project would be beneficial
19 because it will provide for renewable integration; this
20 is a generic analysis, as well. We don't know how much
21 new capacity is needed for renewable integration, if any,
22 in San Diego. There's no showing that a 540 megawatt
23 power plant is a number that you need for renewable
24 integration. And there is no analysis if the power
25 plants already there are doing the job that is needed.

1 I also want to point out, the PMPD just goes too far
2 because it also claims credit for greenhouse gas
3 reductions for the building of renewable projects. That
4 is happening because of State law, not because of this
5 project or any potential for renewable integration. You
6 know, just taking a step back, the siting procedure, you
7 know, to me is this grand opportunity for the Commission
8 to analyze whether a specific plant fits into the energy
9 system, you know, what are the alternatives? Is this the
10 best place to site it? Here, this is one plant, let's do
11 the analysis and see if it fits in the system and what
12 its effects are. But unfortunately, with respect to
13 greenhouse gas emissions, the Commission has adopted an
14 efficiency theory that Mr. Kramer explained, that
15 presumes the Commission's answer, the answer is this, new
16 combined cycle power plants in California that are new
17 sources of greenhouse gases will not have a significant
18 effect on the environment from greenhouse gas emissions.
19 We adamantly disagree, as you know. And more
20 importantly, we believe it's contrary to CEQA.

21 So in sum, oh, I'd just like to say, based on
22 everything we've submitted, which is a lot, as you know,
23 and as well as all the significant points and submissions
24 of the other Interveners, we urge the Commission to
25 reject the PMPD. It's time to end this. So thank you

1 for your time and consideration.

2 CHAIRMAN WEISENMILLER: Sure, thank you. In
3 terms of, is there any representative of CURE, either in
4 the room or on the phone? Okay, Power of Vision, again,
5 anyone either in the room or on the phone?

6 MS. BAKER: We're on the phone, sir.

7 CHAIRMAN WEISENMILLER: Thank you. Go ahead.

8 MS. BAKER: Oh, yes. Julie Baker representing
9 Power of Vision. As you may know, Power of Vision is a
10 citizen-based group that represents over 2,300 citizens
11 in Carlsbad and the North County Region that have
12 adamantly opposed the siting of this power plant in this
13 location. One of the things that Power of Vision is
14 concerned about in your issuing the overrides, the
15 Warren-Alquist Act says that you must determine that the
16 facilities required for public convenience and necessity
17 and there are not more prudent and feasible means of
18 achieving public convenience and necessity.

19 Mr. Kramer introduced the project at the
20 beginning of this item and said that part of the reason
21 that the overrides have been overridden, if you will,
22 LORS have been overridden, is that ISO says there needs
23 to be 20 to 50 megawatts generated in the Encina area.
24 And it seems to us that 20 to 50 megawatts is not enough
25 of a burden to grant an override for four different areas

1 of LORS violations. And at this time, that's all Power
2 of Vision has to say about -- we've submitted many many
3 many documents, but our main concern is that 20 to 50
4 megawatts does not meet the test, the level necessary, in
5 order to grant these overrides, and there are more
6 prudent and feasible ways of meeting this. For example,
7 SDG&E, we've talked about this over and over again, has
8 not signed a contract with NRG for this power output,
9 obviously they are not concerned about the 20 to 50
10 megawatts of generation that needs to be in the Encina
11 area, so it is a puzzle to Power of Vision and the
12 citizens of Carlsbad why you're issuing overrides for
13 such a paltry amount of electrical generation in this
14 area. Power of Vision would ask that you deny the
15 revised PMPD and say no to this project and, as Mr.
16 Rostov put it so eloquently, end this now.

17 I would like to say that I have Kerry Siekmann
18 who represents Terrimar also here on the line with me.
19 Thank you, sir.

20 CHAIRMAN WEISENMILLER: Great, thank you. Then
21 Kerry Seekman, do you want to go forward? At this point,
22 I'm marching through the Interveners in the case, so go
23 ahead.

24 MS. SEEKMAN: Thank you very much and good
25 afternoon. And welcome, Commissioner McAllister for the

1 first time, and then Commissioner Douglas, Weisenmiller,
2 and Peterman. As you know, we've been at this for four
3 and a half years, and I just want to say that these
4 delays have been caused by many things, including a year
5 and a half the CEC spent on solar, and the cutbacks due
6 to recession, and the delays requested at various times
7 by all the parties, including NRG and the CEC. So this
8 is not just an Intervener thing that it's taken so long,
9 it's been created by all parties. So I want you to know
10 that, today, I paid for a ticket to come to Sacramento,
11 but with the excessive number of overrides, I expected
12 that our efforts today would be for naught since you've
13 decided to make four overrides, and now it looks like
14 there's going to possibly be a fifth one. It's clear the
15 CECP violates the Coastal Act, the Fire Code, our LORS,
16 the Agua Hedionda LORS, CEQA. I believe it's the most
17 overrides that the CEC has ever made. And these
18 overrides are due to a speculative report from CAISO?
19 And possibly a speculative issue, maybe, about San
20 Onofre? Think about it. After it all settles down, do
21 you want to leave Carlsbad with a public safety
22 nightmare, a hazard for the next 40 years that violates
23 LORS, Coastal, CEQA, to put 20 to 50 megawatts in our
24 City, when the City of Carlsbad has already told you that
25 they would take care of that particular need. Please

1 listen to the City, and the listen to our Fire Captain.
2 You may approve this plant, but remember, this will
3 always be your legacy, approving a plant that's going to
4 be dangerous to public health and safety, to our fire
5 department, to people, the ridership along the I-5, to my
6 neighborhood? Is this what you want for your legacy?
7 The stick -- the City of Carlsbad with the monolithic
8 blighted structure that will be left on the coastline to
9 rot because there is nothing about NRG putting any kind
10 of money towards the removal of Encina, there's
11 absolutely no contract with SDG&E, this will put a huge
12 economic damper on our city and the new plant will still
13 use -- it will still cause the effects of once-through
14 cooling. NRG stated that, whether or not the CECP is
15 built, they're still planning on shutting down Units 1,
16 2, and 3, so do you want to make these overrides your
17 legacy for a plant that hasn't even applied to the EPA
18 for a PSD? I want to make sure you understand that, even
19 as of now, they have not applied to the EPA. Tell me how
20 they could be on line by 2013 when usually this is a two-
21 year process, and that process has not even begun. So,
22 do you want to make at least four overrides when they
23 don't even appear to be serious about this power plant?
24 There is no -- they haven't been offered a contract with
25 SDG&E, they still have yet to go to the PUC, so do you

1 really want to make at least four overrides for this
2 contentious, dangerous project based on a speculative
3 report? This is your last chance to make the right
4 decision. Thank you.

5 CHAIRMAN WEISENMILLER: Okay, thank you. Rob
6 Simpson, are you on the line? Okay, I'm first starting
7 out -- I think the last two potential Interveners are
8 either CURE or Rob Simpson? Otherwise, I think we have
9 more public comment. Mr. Sarvey, go ahead.

10 MR. SARVEY: Oh, thank you, Commissioner. In
11 this Decision, the Commission proposes to override the
12 Fire Code and declare the onsite power plant personnel as
13 first responders and the Carlsbad Fire Department as
14 second responders. And I've been hearing for the last 12
15 years at the CEC that natural gas-fired power plants have
16 a low probability of fire response needs. Tuesday, at
17 the Tracy Power Plant, those first responders with their
18 fire extinguishers were inadequate, and Tracy Rural Fire
19 Department had to be called in to put out the fire.
20 Significant damage was incurred to one of the intake
21 structures. This damage places the current construction
22 schedule in jeopardy and the Tracy Plant is required to
23 be in operation soon, or be in violation of their Power
24 Purchase Agreement. It turns out that the fire hydrants
25 at the site had not been activated. Construction should

1 never commence until adequate fire protection is in
2 place. The Energy Commission Worker Safety and Fire
3 Protection Conditions of Certification have been
4 inadequate for years and continue to be inadequate. I've
5 urged this Commission in every proceeding I've been in
6 since 2001 to improve them. Imagine the damage to the
7 Tracy Power Plant and the nearby industrial facilities if
8 Tracy Fire decided, as secondary responders, they had
9 more important duties and failed to respond?

10 With the Carlsbad Fire Department refusing to
11 respond, you will not be able to get any insurance
12 company to underwrite this power plant. When you place
13 your judgment ahead of the first responders, you're
14 taking personal liability for the safety of the workers,
15 the fire department personnel, and the public. The
16 health and safety of the public is your responsibility
17 and your decision to override the Fire Chief has far
18 reaching implications. Additionally, your alternatives
19 analysis is defective. As you state, 50 megawatts of
20 local capacity is necessary for local capacity
21 requirements. You have not considered a 50 megawatt
22 project at the current site, or a transmission upgrade as
23 an alternative. Both a 50 megawatt plant and a
24 transmission upgrade would not violate the City of
25 Carlsbad LORS. And for the record, I want to say that

1 limiting the City of Carlsbad, or any of the Interveners
2 to three minutes to present their arguments is an abuse
3 of discretion. I note the Applicant was not verbally
4 limited to three minutes, this has not been a fair
5 hearing, and it denies the Constitutional rights of the
6 Interveners. And I would like you to correct that
7 situation. Thank you very much.

8 CHAIRMAN WEISENMILLER: Thank you. Arnold Roe.

9 MR. ROE: And I won't try to present any verbal
10 legal arguments in the case, however, I would urge the
11 Commission to recognize that what you have before you is
12 a grievously flawed document, full of internal
13 inconsistencies, probably the worst document that's come
14 out of the Commission in its entire history. I mean, even
15 this morning in opening the meeting, Hearing Officer
16 Kramer highlighted -- maybe not being aware of it --
17 highlighted some of the inconsistencies. Just one
18 example was he said that the need for 20 to 50 megawatts
19 of local power need, but that was predicated on Units 4
20 and 5 not being in operation; however, he then went on to
21 say that Unit 4 and 5 will continue to operate into the
22 indefinite future. The report is full of such
23 inconsistencies. And you would think you would take
24 enough pride in your work to want to certainly correct
25 those internal inconsistencies in the document. The

1 other major drawback of the document that's been alluded
2 to by many of the other speakers is the failure to
3 adequately examine and look at the various legal
4 requirements, but instead to simply make bold judgments
5 that such and such is the case, without providing any
6 supporting evidence for these judgments, nothing that any
7 of the Interveners or other interested parties could
8 contest to because they're simply judgments.

9 And the last point that bothers me as a
10 concerned citizen is how this Commission could encourage
11 the expenditure for a 558 megawatt power plant when only
12 a smaller amount of energy is actually needed in that
13 particular area load cell. So I urge the Committee to,
14 if not to outright deny the application, at least for
15 their own sense of honor, to revise the document so that
16 it is internally consistent. Thank you.

17 CHAIRMAN WEISENMILLER: Thank you. Steven
18 Moore.

19 MR. MOORE: I don't have any comments at this
20 time.

21 CHAIRMAN WEISENMILLER: Okay, again, in terms
22 of the Interveners, either CURE or Rob Simpson, any
23 comments? Anymore public comment? Commissioner?

24 COMMISSIONER DOUGLAS: So I wanted to make a
25 suggestion. I realize -- and I'll look at our Chief

1 Counsel as I say this -- that a number of issues have
2 been raised and, of course, as Commissioner Peterman very
3 accurately noted, most of them have been raised
4 exhaustively through the process and before this body as
5 a body once, as well, and have been briefed, and so on.
6 But if it would benefit the Commission to have a
7 deliberation in closed session, that's an option
8 available to us.

9 MR. LEVY: It's certainly available to you.
10 Before you do that, you might want to see if staff wants
11 to offer a response to anything they've heard, as well.

12 COMMISSIONER DOUGLAS: That's a good point. We
13 can offer that to staff. Go ahead.

14 COMMISSIONER MCALLISTER: Let me just suggest,
15 I think there have been a number of people who seem not
16 to quite have it clear, I believe, about the 20 to 50
17 megawatts and what the baseline for that 20 to 50
18 megawatts is, and what the sort of context for that
19 actually is, so I would suggest that be one of the points
20 that you describe more fully.

21 CHAIRMAN WEISENMILLER: Actually, one second,
22 let's start with Paul Kramer and then go to staff.

23 HEARING OFFICER KRAMER: Okay, answering that
24 specific question, I believe that was Dr. Arnold Roe who
25 spoke most recently, I think he's confusing the local and

1 regional needs. There is a local need in an area called
2 the Encina Sub-Area, and that testimony established does
3 not include, for instance, any of the three Power
4 Purchase Agreement plants that SDG&E is proposing to
5 contract with, and in that area, there is a 20 to 50
6 megawatt -- there will be a continuing local need for 20
7 to 50 megawatts. The difference is the load of the
8 Poseidon Desalinization Plant that the City has approved,
9 and I believe is going to start construction pretty soon,
10 although I'm not absolutely sure on that.

11 So, in the local area, the need is 20 to 50
12 megawatts. But there's also a regional need throughout
13 San Diego, and the testimony was that, even if the three
14 PPAs come online, and even if this Carlsbad plant joins
15 them in generating, that the regional need will still be
16 somewhat greater than the sum of all that, and for that
17 reason, until additional generation is provided by one
18 means or another, additional capacity, it may be that
19 Units 4 and 5 at Encina have to continue to operate.
20 But, again, in Land-2 and 3, we've asked the Applicant to
21 ask on an annual basis and report back to the Commission,
22 but ask every year for permission to shut those units
23 down, it just may take a while. You know, the
24 electricity system is very complicated. But what we do
25 understand is that the three PPA plants won't meet the

1 local need, and we're already counting them in deciding
2 that we need more even than the Carlsbad plant to meet
3 the regional needs. It will take me a while if I go down
4 all the other comments, but would you like me to do so?

5 CHAIRMAN WEISENMILLER: Yes.

6 HEARING OFFICER KRAMER: Okay --

7 CHAIRMAN WEISENMILLER: Actually, why don't you
8 hold on for one second. Steven Moore did say that he did
9 want to provide comments, so Mr. Moore, why don't you
10 provide comments now?

11 MR. MOORE: I actually said I did not want to
12 provide comments right now.

13 CHAIRMAN WEISENMILLER: Okay, I'm sorry. So
14 there was a misunderstanding. So, Mr. Kramer, could you
15 go forward?

16 COMMISSIONER MCALLISTER: Mr. Kramer, I just
17 wanted to ask, so I think we just need to be really clear
18 about the 20 to 50 megawatts, and that's on top of what
19 locally? So is that assuming that either the existing
20 Encina plant continues, or that we're talking about the
21 new plant, the Carlsbad Plant plus Units 4 and 5? Or
22 what is that 20 to 50 megawatts on top of?

23 HEARING OFFICER KRAMER: Well, as I understand
24 it, the Encina plant is the only generator in the local
25 sub-area, right now. So if you were only trying to meet

1 the local sub-area need, you might be able to shut down
2 Encina if Carlsbad went on line, but that wouldn't answer
3 the regional question. Does that answer your question?

4 COMMISSIONER MCALLISTER: Thank you, yeah.
5 Okay, on the question of alternatives, actually, I'm
6 going to work my way back up the notes, it was suggested
7 that we -- I wasn't able to write fast enough -- Mr.
8 Sarvey suggested that we had not considered either a 50
9 megawatt plant or something else as alternatives. Does
10 anybody recall what his second...?

11 COMMISSIONER MCALLISTER: I think he said 50
12 megawatts plus transmission --

13 HEARING OFFICER KRAMER: Oh, transmission
14 upgrade, okay, right. The Decision did address both of
15 those, perhaps not to his satisfaction, but in the
16 Alternatives Analysis, we -- from taking the evidence
17 that related to the other plants, basically on the 50
18 megawatt plant, it concluded that, yes, that could
19 happen, but because the larger, the 540 megawatt plant,
20 didn't have any environmental impacts, there was really
21 -- there was no environmental impact problem to solve by
22 reducing its size, and if we reduced its size, then we
23 are in effect wasting some of the capacity that that site
24 has to be a generator. So a peaker plant in that
25 location was not preferred to the proposed Carlsbad

1 plant. Does that -- did that make sense? Okay.

2 Transmission was also addressed and, again,
3 while that's one option to deal with the local need, it
4 does not deal with the regional needs and, again, a plant
5 that has no environmental impacts at, you know, an
6 existing site was preferred to that because it's actual
7 generation. Transmission upgrade still means that at
8 some place electrons have to be generated, and that would
9 result in impacts we can only speculate about in probably
10 other portions of the county. So we did address both of
11 those, at least in my opinion we did.

12 I really wouldn't want to comment on the fire
13 at the Tracy plant without knowing what happened there.
14 I'll just point out that we have worker safety
15 conditions, the same ones that apply to every project
16 that we require from the Applicant prior to starting
17 construction, a fire protection plan for the construction
18 phase and then, prior to operations, a similar plan for
19 the operational phase. We don't have the details at this
20 point, but we do have a requirement and those
21 requirements will have to be satisfied.

22 Whether you want to override this project
23 because it hasn't applied for its PSD and doesn't have
24 the PPA, that's a policy decision for you to make and I
25 don't think you need my help with that.

1 The requirement that we analyze all LORS,
2 including Federal LORS, to quote, says the decision has
3 to discuss the conformity of the project with those LORS.
4 It doesn't say we have to have the permit, or the
5 Applicant has to have the permit in hand. We did discuss
6 the conformity and, based on the evidence, although some
7 of the parties obviously don't think it's convincing
8 enough or adequate, we found that it is likely that the
9 project will obtain its PSD Permit, meet the PSD
10 requirements, and that those requirements are not likely
11 to cause any changes in the project or in the conditions
12 that we've imposed to meet other air quality laws.

13 And we'll just agree to disagree with Mr.
14 Rostov on our methodology for the greenhouse gas
15 analysis, at least that's the recommendation.

16 On Mr. Ball's comment about Socio. 1, we were
17 presented with two alternative versions, one by the
18 Applicant, and that's the condition that requires a
19 payment of local development fees, in essence, and one
20 from the staff, and I believe I based this condition,
21 Socio. 1, more on the Applicant's language, but if you'd
22 like you could ask the Applicant if it is satisfied with
23 the language that the City proposed in their comments on
24 the Revised PMPD and, if they do, we could certainly
25 substitute that.

1 COMMISSIONER DOUGLAS: Yeah, Applicant, if you
2 could respond to that question?

3 MR. MCKINSEY: The proposal by the City was --
4 it wasn't the exact language, but specifically they asked
5 that the condition include impact fees. The condition as
6 it is written now covers -- its wording is fairly precise
7 and it says fees for services that the City provides as
8 part of this, that they would otherwise have been
9 compensated for. There isn't really a standard that I'd
10 ever seen that the Socio. condition, when it shows up,
11 it's usually because a local jurisdiction asked for it,
12 and a lot of times the conditions that are agreed to are
13 agreed to by Applicants simply out of a nicety because
14 it's not a major concern. The Applicant does object to
15 the reference to trying to change it to say "impact fees"
16 simply because it gets into an ambiguity over what the
17 Applicant really thinks looks like attacks, and so the
18 language right now ensures that the City is made whole
19 for costs and services, but doesn't turn this into what
20 would be a windfall potential for the City to get
21 compensation for something that, again, doesn't produce
22 anything. And I would note that, in the decision to not
23 provide fire service as a first responder, or at all,
24 that's usually the only role that a City is left to have
25 in a project when the City is usually left as the first

1 responder. And so, essentially the cost to the City of
2 this project -- and Cities don't always understand that
3 -- but because the Energy Commission keeps that
4 jurisdiction and regulates and monitors the project and
5 does all the services that the City would provide,
6 there's really no necessity to modify the condition any
7 further, and we're satisfied with it as it was proposed
8 by the Committee.

9 HEARING OFFICER KRAMER: I'll have to say,
10 though, that in my mind I understood that impact fees
11 that would normally apply to development, for instance,
12 if they have road fees, capital improvement programs for
13 facilities that the development would enjoy, that -- I
14 did not mean -- I did not interpret it to exclude those.

15 CHAIRMAN WEISENMILLER: Please clarify what you
16 meant there.

17 MR. BALL: Yes, sir, thank you very much. You
18 know, I brought this up, I guess, several times during
19 the proceedings and I was assured that the City would
20 receive its normal development impact fees, and so we put
21 in our fee schedule, so there shouldn't be any ambiguity
22 about what fees are normal development impact fees. The
23 Commission's Regulations state that the project will pay
24 normal development impact fees. That is, in our case,
25 the public facilities fee, the traffic impact fee, the

1 planned local area drainage fees, there's probably a list
2 that is in the record, that's what we meant, not the
3 processing fees because we understand that most of the
4 processing will not be done by the City. We have some
5 review and comment responsibility as a result of the
6 proposed conditions, but those proposed conditions
7 eliminate normal processing fees, that is, when we have
8 to process a Permit Application. But there will be
9 development impacts as a result of construction of a 540
10 megawatt plant, and the City charges all developers in
11 its jurisdiction development impact fee. So I'm very
12 shocked, in fact, I'm surprised and shocked, that the
13 Applicant would take this position at this late date,
14 that we are not entitled to development impact fees. I
15 think your own Regulations say that we're entitled to
16 normal development impact fees, and I respectfully
17 request that that be included in the Decision if the
18 Commission does so -- if the Commission does issue a
19 Decision.

20 MR. MCKINSEY: And, Ron, if you could stay for
21 a second, the condition that we proposed actually
22 included the statement that didn't make it in, it said,
23 "Such fees may include school impact fees, or other local
24 jurisdictional fees." And that language would be
25 acceptable. And if it needed to have a few additional

1 "such's" as well, but we weren't attempting to avoid
2 that, but there's, I think, a three percent -- and you
3 probably know the name -- I'm trying to find it in my
4 notes real fast --

5 MR. BALL: Do you want me to help you out?

6 MR. MCKINSEY: Yeah.

7 MR. BALL: It's a 3.5 percent public facilities
8 fee. That's one fee. There is a traffic impact fee,
9 there's a planned local area drainage fee, there's
10 probably other fees. We don't represent the school
11 district, and that's not what we're asking for, we're
12 asking for normal development impact fees as a result of
13 development. If this were subject to the City's
14 jurisdiction, you would have not only the processing
15 fees, but you would have development impact fees, so
16 we're disregarding most of the processing fees and we're
17 seeking, and we should be assured, of obtaining normal
18 development impact fees. We've submitted that schedule.

19 MR. MCKINSEY: If I could ask one more question,
20 Ron. In your filing, you asked for also a license tax on
21 new construction imposed by Carlsbad Municipal Code
22 Section 509030 --

23 MR. BALL: Yes and --

24 MR. MCKINSEY: -- is that a license tax, as
25 well?

1 MR. BALL: Not necessarily because the way that
2 license tax is structured, is that a credit is given
3 against an Applicant who pays the PFF, so there is no
4 construction license tax due if the public facilities fee
5 is paid voluntarily. If there's not, then the tax is
6 triggered and the development, then, would be subject to
7 the tax.

8 CHAIRMAN WEISENMILLER: Now, in terms of the
9 fire issue, is there anything in your normal fees that
10 would cover the cost of fire protection?

11 MR. BALL: No, we do not have any fire impact
12 fees.

13 CHAIRMAN WEISENMILLER: Okay. Would it be
14 possible for both of you to work out the precise language
15 on this issue? Ron and the Applicant and staff?

16 MR. BALL: Today?

17 CHAIRMAN WEISENMILLER: Today, yeah.

18 MR. BALL: I think if someone could find --
19 we've submitted a fee schedule and I think we would just
20 have to locate it, it's acceptable in knowledge and we
21 would be satisfied if we would incorporate that fee
22 schedule into your final Decision, so that could be done
23 today, yes.

24 CHAIRMAN WEISENMILLER: Yeah, anyway, I want to
25 encourage the Applicant, you, and the staff to try to pin

1 that down.

2 MR. MCKINSEY: Commissioner Weisenmiller, I
3 think that the way that the condition is written, it's
4 not written to provide a set schedule, that's one of the
5 approaches that the Commission has taken in the past
6 that, you know, a specific party asks for a specific -- I
7 think the way that this condition is written is it places
8 the burden on, first, the Applicant to submit what they
9 think are the correct fees, and then it provides an
10 opportunity for the City to say, "Yep, you got them all,"
11 or not, and then the Compliance Project Manager makes the
12 decision to approve that. And so, to me, the question is
13 simply what language to put in there to make it clear
14 what category of fees should be on that list, so that the
15 Compliance Project Manager knows. And we're talking
16 about one or two words, I think. And, Mr. Ball, you may
17 be able to suggest those words right now.

18 MR. BALL: Well, I'm really, first of all, I
19 don't think this is the Applicant's decision, I think
20 it's the Commission's decision.

21 CHAIRMAN WEISENMILLER: Sure.

22 MR. BALL: You have asked the Applicant's
23 opinion and he's --

24 CHAIRMAN WEISENMILLER: I've asked his opinion
25 and I've asked your opinion and I've asked --

1 MR. BALL: And I'm not in control, either, it's
2 the Commission that's in control, and your Regulations
3 say that we're entitled to normal development impact
4 fees. We've given you a list of normal development
5 impact fees, we'll be happy to work with the Applicant to
6 come up with that list and read it into the record if
7 that will be of assistance to the Commission.

8 CHAIRMAN WEISENMILLER: Well, obviously, and
9 part of the -- encouraging it -- I was hoping at least in
10 this one area you two could agree and reach a settlement
11 on it and we won't have to.

12 MR. BALL: I hope you're correct, Mr. Chairman.

13 CHAIRMAN WEISENMILLER: Right.

14 MR. BALL: Thank you.

15 HEARING OFFICER KRAMER: Okay, then moving --
16 almost finished, I think, well, let's see, the Oxnard
17 case, Mr. Faust suggested it was improperly applied, and
18 in the Decision, it was used to illustrate the point that
19 you do not have to be a Coastal dependent use in order to
20 be approved in the Coast zone, nothing more than that, in
21 essence.

22 As to the blanket override, we have identified
23 the inconsistencies by a reference to the areas in which
24 the City has alleged that we were inconsistent and, as I
25 understood them, they were visual impacts and potential

1 impacts on marine biological species, both of which we
2 found not to be the case here. He described the marine
3 impacts as huge, but the Decision cited to some studies
4 that were provided in the Applicant's testimony to the
5 effect that they were -- I don't recall the percentage,
6 but a relatively small percentage of the species that
7 would be in the impacted water would be affected because,
8 when the project is drawing water on its own, and not
9 just taking the water that's already drawn and been
10 through the Encina cooling system, that's a much lower
11 water draw. And the evidence suggests that the impacts
12 were not significant.

13 We asked for briefing on the question of
14 whether the CEQA Standards of Significance applied, or
15 were similar to those for determining Coastal Act
16 consistency and I do not recall anybody specifically
17 addressing that in any convincing way to suggest that the
18 two standards are not functionally the same.

19 I don't have an answer for Mr. Thompson's
20 question about who would take 911 calls, perhaps the
21 staff does. And his other question, I wrote down as,
22 "What do you do if too many fire trucks show up?" Well,
23 I would let staff also address that, but it may be that
24 not everybody has to drive down into the recessed area
25 where the power plant is because there are too many of

1 them, perhaps, have arrived. But I'll leave it to staff
2 if they have an opinion about whether, or the Applicant
3 for that matter, whether that would affect the fire
4 safety.

5 We discussed in the original PMPD, carried over
6 into the Revised, whether we needed a Coastal Commission
7 report and, in fact, it is optional for Applications for
8 Certification. It does appear to be mandatory for
9 Notices of Intention, but this is not one of those
10 proceedings.

11 Given that the City just recently, well, last
12 year after having the benefit of reviewing our Proposed
13 Decision that's found the project consistent with the
14 previous version of its zoning and other regulations, and
15 after that they amended their regulations to specifically
16 make this project inconsistent, it is hard to believe
17 that those problems are going to be solved by further
18 consultation. And the Proposed Decision has a specific
19 finding that doing so would be futile. And I think
20 that's it.

21 CHAIRMAN WEISENMILLER: Okay, staff.

22 MR. RATLIFF: Commissioners, as you might
23 expect, a lot of things have been said and I could say a
24 lot of things about the things that have been said. I
25 don't want to go over issues that perhaps don't need to

1 be addressed, but I do want to answer any specific
2 questions that you have. Having said that, I'll pick a
3 couple of things that I think deserved to be addressed in
4 the case that they do create questions in your mind that
5 I would like to dispel.

6 The first one has to do with comments from CBD
7 that apparently the only way you can know that Federal
8 law is going to be consistent with this project for the
9 Prevention of Significant Deterioration Permit, is for
10 the Applicant to get a PSD Permit, a process which, if it
11 is obtained from the Federal Government, can take years
12 before the permit is final. We've never imposed that
13 kind of requirement on anyone, nor would it make sense to
14 do so. And those Federal laws are going to be enforced
15 by EPA in any case, so the project has to comply with
16 EPA, but with PSD. Secondly, it's worth mentioning,
17 and this was in the testimony, every project we have ever
18 licensed that required a PSD Permit, had no difficulty
19 obtaining one. California NSR requirements are so
20 stringent that the additional requirements for PSD are
21 not difficult to meet, so if in fact what is required in
22 CBD's view is a prediction of compliance, it's quite
23 reasonable to say, yes, it's very likely, almost certain,
24 that any project that we would license would also receive
25 a PSD Permit.

1 One of the things that I think was missing in
2 CBD's discussion of -- and also in Mr. Kramer's
3 discussion -- of compliance with AB 32 and with the issue
4 of CEQA compliance regarding greenhouse gases, is that 1)
5 as soon as this plant comes on line, if it ever does,
6 when it operates it will immediately reduce greenhouse
7 gas emissions from the current baseline because it will
8 displace less efficient plants. That's not a theory,
9 that is an operating principle of the system that has
10 been testified to by numerous people in this case.
11 Secondly, this project, like all other gas-fired
12 plants, is subject to AB 32 provisions requiring
13 allocations or offsets. It will participate in that
14 program despite the fact that it actually reduces
15 greenhouse gases, it will actually have to buy
16 allocations or offsets for the gases that it emits.
17 These are two very strong bases for finding that it
18 complies with CEQA.

19 Regarding the Coastal Act issue, the staff
20 testified that the project complies with the provisions
21 in Chapter 3 of the Coastal Act, which are the
22 substantive provisions and includes such provisions as
23 rather generalized requirements regarding whether or not
24 the project would be consistent with coastal views, and
25 similar values. And we did an elaborate analyses

1 regarding visual impacts. The only two things that were
2 mentioned by Mr. Faust were visual impacts, which we
3 analyzed at great length, and secondarily marine impacts,
4 both of which, by the way, were certainly with regard to
5 marine impacts were actually improved quite a bit by the
6 project because they reduce once-through cooling and
7 withdrawals from the Hedionda Lagoon. So that isn't
8 basically an impact which is detrimental, it is a fact of
9 this project that is positive. Regarding visual impacts,
10 to the extent that this project enables the shutdown of
11 the existing facility, it will improve the visual scene,
12 as well, ultimately because when the old facility is
13 finally closed with all five units shut down, the
14 provisions in this, the Conditions of Certification here
15 require that there be the removal of existing old
16 facility, and that would be a great visual improvement,
17 certainly.

18 Regarding Mr. Ball's discussion about the
19 necessity for meeting and conferring on inconsistency,
20 the staff has been meeting and conferring with the City
21 for five years on consistency either informally through
22 discussions with the City before they became Interveners,
23 or after the City became an Intervener in workshops, and
24 we believe that that, in fact, satisfies this
25 requirement. Any suggestion that it is the Commission,

1 itself, that has to perform this process is, I think,
2 entirely unworkable and nonsensical.

3 If there are other things that you would like
4 me to address, please tell me.

5 COMMISSIONER PETERMAN: Mr. Ratliff, I just
6 want to follow-up on Mr. Kramer's -- I think he punted,
7 if you will, the answer about some of the fire response
8 to staff. Did I miss you respond to that? About how
9 answers the 911 calls and all that?

10 MR. RATLIFF: I have no idea what the question
11 was, I'm sorry.

12 COMMISSIONER PETERMAN: So, I mean, I can
13 summarize it, but counsel is looking like he may, so
14 please go ahead.

15 MR. LEVY: I was just going to say it sounded a
16 little bit -- the suggestion in the ordinance that's been
17 put before you, that somehow the Energy Commission is the
18 first responder and would take fire calls seemed a little
19 bit, respectfully, glib. I don't think they actually
20 intend that the CEC is going to be answering the 911
21 calls. I don't know mechanically how it works when you
22 dial 911 down there, but we do have testimony on the
23 first response. It's going to be in effect at the
24 facility.

25 MR. GARUBA: Well, Commissioners, I'd like to

1 clarify that last statement. My name is Joe Garuba, I'm
2 the Project Manager for the City and I'm also the
3 Municipal Property Manager for this project. Based on
4 the recent revisions that came out in the Commission's
5 documents and the Committee's documents, which put the
6 Energy Commission in the first responder position, that
7 our counsel clarified, we absolutely would transfer the
8 911 calls, and the way that happens is there's actually
9 two different groups -- I'm going to just make a leap and
10 say that your staff is unfamiliar with the way a fire
11 service is delivered in San Diego, and there is a
12 coalition of agencies that work together in a boundary
13 drop scenario, they have a mutual dispatch center, so a
14 call comes into our police station, we route it to the
15 mutual dispatch center and, now, based on the most recent
16 ordinance, it will come up on our fire maps, which are
17 electronic, which says, "We are not responsible for this
18 site," and then there will be a number that we will punch
19 in, that will dispatch it to whomever you want us to
20 dispatch it to, and then that call will go. At that
21 point, it then becomes not our responsibility. If we're
22 called on a mutual aid backup, we absolutely would look
23 forward to trying to figure out what that is. Obviously,
24 there are requirements for mutual aid agreements, but
25 that's not a primary response, so that's not a primary

1 response for emergency services, both medical and fire.

2 That is your responsibility.

3 COMMISSIONER PETERMAN: Thank you. Just in
4 terms of the number issues that are being raised, but
5 particularly the public safety ones are very important to
6 me and, so, when comments are made, glibly or not, I just
7 wanted to make sure that we were all on the same
8 understanding about the responsibility, etc., so that was
9 beneficial for me. Thank you.

10 COMMISSIONER DOUGLAS: So, I guess we have a
11 couple of options. If Commissioners feel as though
12 there's an interest in deliberation, I'm very open to it,
13 I'm also very open -- oh, excuse me, Mr. --

14 MR. BALL: Thank you. I was going to ask the
15 Chairman if it's all right to have about one minute worth
16 of comments in response to the staff's comments and the
17 Applicant's comments.

18 CHAIRMAN WEISENMILLER: That would be okay.
19 Obviously, we're trying not to go back around, but that
20 would be good. Go ahead, please.

21 MR. BALL: I believe that staff
22 mischaracterized many of the conditions, unfortunately,
23 so let me just leave that there. But what I do take
24 exception to, and I hope this Commission will also, is a
25 mischaracterization of the law. And whether it's

1 nonsensical or whether it's unworkable, it's still the
2 law, and I can't change it, and you can't change it. And
3 so in Section 25523 of the Act, Section (D)(1), it
4 states, "If the Commission finds that there is a
5 noncompliance with the...", I'm editing this a little bit,
6 "...noncompliance with the local ordinance, it shall...",
7 there's no futility exception in there, there's no non-
8 sensical exception, there's no unworkable exception, it
9 says, "It shall consult and meet with the local
10 governmental agency concerned in an attempt to correct or
11 eliminate the noncompliance." That's the law. And your
12 staff can't change that, and it cannot characterize it as
13 being nonsensical. It's unfortunate that that has gotten
14 to this level, but the Commission needs to apply that law
15 and it needs to do so in a way that's triggered when the
16 Commission makes an overriding finding, not five years
17 ago, not four years ago, not three years ago, not two
18 years ago, but today. If the Commission makes a finding
19 that there's a noncompliance with the local law, which is
20 making five of them today, then it needs to look at this
21 section and comply with it.

22 CHAIRMAN WEISENMILLER: Thank you.

23 MR. BALL: Thank you.

24 CHAIRMAN WEISENMILLER: Jennifer.

25 MS. JENNINGS: Chair, if I could ask for your

1 indulgence and allow Ms. Seekman, who represents citizens
2 down in the local area, she has been involved in this
3 project as an Intervener for over four years, she just
4 wants to make a brief comment. Unfortunately, only one of
5 the Commissioners has been down to Carlsbad to see the --

6 CHAIRMAN WEISENMILLER: I think she already
7 spoke.

8 MS. JENNINGS: She did, but everybody else has
9 spoken since and she wants just a brief remark.

10 CHAIRMAN WEISENMILLER: Again, if it's a one
11 minute, but we're not going to go back around
12 sequentially through everyone. So go ahead.

13 MS. JENNINGS: Thank you.

14 CHAIRMAN WEISENMILLER: Sure.

15 MS. SEEKMAN: Thank you. Commissioners, hello?

16 CHAIRMAN WEISENMILLER: Yes, go ahead.

17 MS. SEEKMAN: Hi, it is less than a minute. I
18 just wanted to clarify something about the future needs,
19 the future 20 to 50 megawatt local need is based on the
20 full shutdown of Encina, but the shutdown of 4 and 5 are
21 not part of this project, and it's very important that
22 the Commission understand that. And then, also, the
23 regional future need is based on the full shutdown of
24 Encina, but Units 4 and 5 are not part of this project,
25 the shutdown of 4 and 5. So those future needs that

1 they're talking about, 20 to 50 megawatt and that
2 involves the other three projects, both are all based on
3 the shutdown of 4 and 5, and that is not part of this
4 project. Thank you.

5 CHAIRMAN WEISENMILLER: Okay, thank you.
6 Commissioners, let's go into closed session and we'll be
7 back.

8 (Closed Session at 4:45 p.m.)

9 (Reconvene at 6:05 p.m.)

10 CHAIRMAN WEISENMILLER: Mr. Kramer is here, so
11 we're going to go back on the record.

12 COMMISSIONER DOUGLAS: So I thought that I
13 would say a few words as we report out from the closed
14 session. First of all, I wanted to say that we do want
15 to take official notice of the new Carlsbad Ordinance and
16 the accompanying staff report with the Ordinance, so we
17 will add these materials to our record and the materials
18 can be referred to by parties. Secondly, I wanted to
19 just go through some of my thoughts and maybe once or
20 twice ask our counsel a question.

21 First of all, I want to say that, while a
22 number of parties raised legal issues on the record, and
23 pointed out what they viewed to be legal inadequacies in
24 the document, I come away from hearing all of that
25 satisfied, from my point of view, that I don't agree with

1 those arguments, and I think the document is sufficient
2 for the Commission to take action. I wanted to ask Mike
3 Levy if you could elaborate on the meet and consult
4 issue, in particular.

5 MR. LEVY: Yes, I'll be happy to do that,
6 Commissioners, thank you. For everybody's reference,
7 25523 specifies that the Commission shall meet and
8 confer, or more precisely, if the Commission finds that
9 there is noncompliance with a LORS, it shall consult and
10 meet with the State, local, or regional governmental
11 agency concerned, to attempt to correct or eliminate the
12 noncompliance. We've done a word search of the Warren-
13 Alquist Act and, for everybody's reference, the word
14 "Commission" occurs 1,404 times in the entire Act, yet
15 the word "staff" only appears 24 times, and some of those
16 instances aren't even referring to our staff, they're
17 referring to other staff. The word "Commission" in
18 Section 25104 is defined as the State Energy Resources
19 Conservation and Development Commission, which of course
20 includes the staff, and when your staff acts as your
21 Delegatee, your staff acts in your lieu and stead for you
22 and on your behalf, and essentially it is the act of the
23 Commission. If you were to read every instance in the
24 Warren-Alquist Act of the word "Commission" to mean the
25 Commissioners sitting, themselves, as a public body, as

1 Mr. Ratliff points out, it would be a nonsensical result,
2 it would mean that three of you would have to notice a
3 Bagley Keene meeting to walk across the street and file
4 your Notice of Decision with the Resources Agency under
5 CEQA, as just one example. Your staff, as part of our
6 process, serves you, your advocacy staff, and they are
7 the ones who have done the meet and confers, as noted,
8 for the past four and a half years on this matter. I
9 would just want to clarify one of the findings, Finding
10 11 on page 8.1-32, which talks about the futility of
11 consulting further with the City because of the fact that
12 the LORS override is necessary because of the City's
13 subsequent actions. I would want to just add the word
14 "further" in the finding to clarify that your knowledge,
15 of course, that your staff is the entity that is doing
16 the consultation on your behalf, and so it would read --
17 did you do that already? I beg your pardon, it's already
18 there. Thank you, Mr. Kramer. So I don't think that's
19 not a cognizable, it's not an appropriate argument.

20 COMMISSIONER DOUGLAS: Thank you, Mr. Levy.
21 Let me next ask Applicant and the City if they were able
22 to reach any common understanding on the fee language.

23 MR. MCKINSEY: I'm sure I can speak for Mr.
24 Ball and say we did not.

25 CHAIRMAN WEISENMILLER: Did you talk?

1 MR. MCKINSEY: We did, but we certainly
2 disagree.

3 CHAIRMAN WEISENMILLER: Okay.

4 COMMISSIONER DOUGLAS: Okay, thank you. So
5 coming back to some of the higher level issues here --

6 MR. BALL: We did find two things, we found the
7 fee schedule and we found the Commission Regulation that
8 talks about fees, that's 1715. And Mr. McKinsey and I
9 disagree on the interpretation of that condition.

10 COMMISSIONER DOUGLAS: Okay. So to clarify,
11 let's just dig into this issue a little bit further. So,
12 Mr. McKinsey, from your perspective, is the language
13 that's in the current Revised PMP accurate? Is there any
14 clarification that you suggest? And I'll ask the same
15 thing of the City.

16 MR. MCKINSEY: No, we feel that the current
17 version of Socio. 1 in the Proposed Decision is accurate
18 and conforms to the requirements of Section 1715 for
19 reimbursement.

20 COMMISSIONER DOUGLAS: All right. Does the
21 City have any additional points they'd like to make on
22 this?

23 MR. BALL: Yes, Commissioner Douglas, I think
24 where we disagree is the interpretation of this section,
25 let's see, it's section 1715(a)(1)(A), which says, it

1 begins with "costs eligible for reimbursement," and so
2 Mr. McKinsey can speak for himself, but as I understand
3 this, it's reimbursement and the development impact fees
4 aren't necessarily reimbursement, they're imposed on the
5 privilege of development, and then they are expanded to
6 defray or defray the impact of the development, so, for
7 example, a stormwater fee, or a planned local drainage
8 fee, it's collected and then put into a special fund, and
9 then you use that special fund that's used to build a
10 facility, a storm drain facility, or a drainage facility,
11 that will offset the impacts of that development. They
12 are routinely imposed in every City in California,
13 including Carlsbad. So, in (A) it says, "Permit Fees,
14 including traffic impact fees, drainage fees, park in
15 lieu fees, sewer fees, public facilities fees, and the
16 like." So we're content with that language, I guess, but
17 we would rather have the specific fee schedule so there's
18 no disagreements over what the phrase means and the like.
19 Thank you.

20 COMMISSIONER DOUGLAS: Thank you. Staff, do
21 you have anything to add?

22 MR. RATLIFF: No.

23 MR. MCKINSEY: And the difference in our
24 position, and the reason that Mr. Ball may disagree, is
25 that I find that the title in Section 1715 is Title

1 Reimbursement, Subsection (A) is Reimbursement, and (i)
2 is Reimbursement of Agencies, and at the end of that, so
3 it says Reimbursement, Reimbursement, Reimbursement," and
4 in that (i) it explains reimbursement of agencies for
5 costs incurred, and then it gives two categories of
6 examples of such things that could be reimbursed, and to
7 put it really simply, lurking on that fee schedule that
8 Mr. Ball would like to have put in there is the
9 equivalent of a tax, it's a three percent on the base
10 price of the facility, or thereabouts, so it's millions
11 upon millions of dollars that I think they would hope, by
12 having that fee schedule in there, would now have to be
13 paid, and they would not have to show that it actually
14 reflected any actual costs that they incurred, that they
15 would have to be reimbursed for. It's possible that it
16 might be paid, but the way the condition is right now, it
17 simply says that the Applicant can have -- the Project
18 Owner has to reimburse for all costs incurred, period.
19 And for services rendered. And so it meets the
20 requirements of 1715, and it leaves it very open and
21 probably for disagreement in the future, but it conforms
22 to the requirements, but it might create a situation in
23 the future where the City is insisting they deserve
24 reimbursement for something and we may be here before you
25 trying to defend whether or not that has to be paid.

1 MR. LEVY: So under 1715, I basically agree
2 with what the Applicant just said -- under 1715, it
3 basically specifies "local agencies shall be reimbursed
4 for costs incurred, in accordance with actual services
5 performed by the local agency, provided that the local
6 agency follows the procedures set forth in this section."
7 Socio. 1 specifies that they shall be reimbursed for the
8 actual services performed, but the Regulation specifies a
9 process for determining what's actually been incurred and
10 what services have actually been performed, it does not
11 need to be articulated in this proceeding now, or in the
12 Order any more than Socio. 1 already specifies.

13 COMMISSIONER DOUGLAS: Okay, thank you. I'm
14 satisfied on this question. If other Commissioners have
15 questions, of course, they may go back to it. So I think
16 I'm going to take a step back now and make a few more
17 high level comments about where I'm coming from on this
18 project.

19 As the participants in this case, the parties
20 know very well, I stepped onto this case actually a
21 little bit after the Commission remanded the Decision
22 back to the Committee to expand the record on a few
23 issues, and I have in the course of time become quite
24 familiar with, you know, we went to the community twice,
25 we listened to pretty exhaustive testimony that was very

1 far ranging on the issue. I certainly had a lot of
2 interaction with the City, the Mayor came to at least one
3 of the hearings and workshops that we had down there, we
4 had the PMPD hearing, and we had an evidentiary hearing,
5 if not both of them, and the City was certainly very
6 active, as were other parties in both of those
7 proceedings in Carlsbad. And I think that what we really
8 have here, and I think the City said this in their
9 opening comments, is a case where the local jurisdiction,
10 for reasons that, you know, I'm not going to particularly
11 sit here and criticize, for reason that to it are
12 compelling, does not want to see this power plant built
13 at the site that is proposed. And I think that we have
14 seen a pattern of actions on the part of the City that
15 I'm not going to criticize, but that to me accentuate and
16 underscore very much that that's the case. And I could
17 almost identify or talk about any number of issues when I
18 talk about this, but I could talk about the width of the
19 access road, where in March of 2009, the Fire Chief wrote
20 a letter suggesting that the road should be a minimum of
21 24 feet, and then a little under a year later, in
22 February 2010, testified that 50 feet minimum, 50 feet
23 wide was minimum because he doubled 24 and added two.
24 And of course, changes to testimony are permissible in
25 our process and people can come in and say, "Well, I

1 reconsidered on the basis of something compelling," "I
2 changed my mind is this is what the compelling evidence
3 on which I changed my mind is." And we don't really see
4 that in that case.

5 And you know, just on another example, of
6 course there are the LORS issues, we had a City
7 Resolution in August of 2008 opposing the power plant,
8 October of 2009, City adopted an emergency ordinance to
9 prohibit its expansion, or siting there in the Coastal
10 Zone, and that expired. Later, the City adopted an
11 Amendment to the General Plan and Zoning Ordinance and
12 Precise Development Plan, and seeing a specific plan,
13 making the CECP nonconforming, and of course, the
14 ordinance that we just took notice of, enacted on Tuesday
15 of this week, is another manifestation of the City's
16 desire to not have the power plant permitted and built in
17 Carlsbad, and I'm not going to sit here and criticize
18 that, I'm not going to -- I'm not going to impugn any
19 negative motivation to that, I'm just going to say that,
20 from our perspective where we sit, or at least where I'll
21 start with me, where I sit, I think the Warren-Alquist
22 Act is here and the Energy Commission exists because the
23 provision of reliable electricity to Californians is such
24 a compelling State interest and such a compelling
25 interest of the people of California, everywhere, and the

1 Energy Commission is given an authority that we do not
2 exercise lightly and, in fact, we rarely exercise at all,
3 to override LORS, to override other State laws where
4 necessary when we make certain findings, and that
5 authority exists in the service of this compelling
6 interest to provide reliable electricity to Californians.
7 And of course, the Energy Commission does many things
8 other than site power plants; for several hours this
9 morning, we debated and ultimately approved the Title 24
10 Building Standards Update, we just approved the most
11 aggressive update, the biggest incremental improvement in
12 energy efficiency for new buildings that we've ever done.
13 We have renewable energy programs, we are working very
14 hard on RPS, Renewable Portfolio Standard implementation,
15 we're working very hard on permitting and planning for
16 large-scale renewable energy.

17 In the context of what the Energy Commission is
18 engaged in with other State agencies, we are engaged in a
19 real effort to reduce the greenhouse gas intensity of our
20 electricity system, to increase efficiency, to repower,
21 or retire the aging natural gas fleet, of which the
22 Encina Power Plant is a prime example, uses once-through
23 cooling, it's a substantial visual impact on the
24 community, it's not efficient, particularly compared to
25 modern power plants such as the CECP, which is before us

1 today. And the CECP brings some of the fast start
2 flexible capability in a load center, in a place where
3 the electrical system is currently built around
4 containing generation. There's a local need, there's a
5 regional need and, of course, as far as we're able to go
6 with the Renewable Portfolio Standard, and efficiency,
7 and distributed generation, and all the other tools that
8 we have available to us, in some ways -- the further
9 we're able to go with some of these tools -- the more
10 important it's going to be to have flexible generation in
11 load centers. And that's not to say, as Will Rostov who
12 I've worked with on climate issues for a long time, it's
13 not to say that if one power plant is good, two is
14 better, and I agree with you that one power plant being
15 important does not mean that two is better, and three is
16 better yet. However, in this case, under the facts that
17 we have analyzed in this proceeding, I think that the
18 plant will provide many benefits, some local, some
19 regional, and some in service of achieving State policy
20 goals. So it is not, I want to emphasize, lightly that I
21 put forward a Proposed Decision with overrides in it and
22 suggested to my colleagues that they override local LORS,
23 and it's not without sympathy that I look at the City and
24 understand their very clear and articulable and
25 articulated desire not to have this project approved.

1 Nevertheless, my recommendation to the Commission is that
2 we act on this Decision today and that we approve the
3 project. And I think that, if there are additional
4 questions, you know, or if I have any additional
5 questions, I'll be happy to pipe up later. I think it
6 would be good to hear my colleagues speak, and also the
7 Hearing Officer distributed a proposed revision of the
8 adoption order, so I don't know if, Mike, you suggest
9 that we talk about that first? Or if we hear from all of
10 the Commissioners?

11 MR. LEVY: Just to note, there's one
12 typographical error in the handout, there should be --
13 the word "not" is missing, so perhaps Mr. Kramer could
14 read the correction.

15 HEARING OFFICER KRAMER: Yeah, that's in the
16 new finding 13, which is shown in red. And let's see,
17 the sixth line of that paragraph says, "Under CEQA,
18 because it does...," and you should insert the word "not"
19 "...result in a new significant environmental impact from
20 the project. I was typing quickly.

21 CHAIRMAN WEISENMILLER: I was going to say, why
22 don't we go around the dais and then as we move forward.
23 Andrew?

24 COMMISSIONER MCALLISTER: As the Junior member
25 of the Energy Commission, this was my first siting case

1 and it's actually obviously very interesting, but also
2 somewhat difficult having most recently come from San
3 Diego, and having worked with a lot of folks in Carlsbad,
4 including some of the folks that are here. And knowing
5 what a lot of good stuff that city has done on the energy
6 efficiency front, for sure, on the renewables front, how
7 they have done planning at the municipal level very
8 admirably and very capably for years -- for decades,
9 really.

10 And I think that's illustrative, you know, my
11 own career has been the same way, some power engineering
12 and larger-scale issues, but really a passion and a lot
13 of effort for energy efficiency, particularly, and
14 renewable energy and distributed renewable, and the
15 loading order in California includes all of that. In
16 fact, energy efficiency is number one in the loading
17 order.

18 If we really are -- if this future that we
19 envision is many fewer power plants, then we actually --
20 we have a lot of work to do to get people to use less
21 energy, and over time we'll get there and we'll work hard
22 to get there. Energy efficiency and sort of all these
23 new technologies, and storage, and distributed
24 generation, and highly efficient natural gas technology
25 are all part of the solution, and there are more

1 solutions coming up every day.

2 But we are where we are today and, while our
3 per capita electricity consumption has stayed flat for a
4 long time, our absolute quantity of energy consumption
5 throughout the state still continues to rise; we need to
6 change that, but we also -- we can't let the perfect be
7 getting in the way of the good. And from my perspective,
8 getting rid of the -- now, I know we're not doing that
9 completely, or the new plant here that is on the table
10 would not allow the Encina plant to go away completely,
11 but that is absolutely, I think, my own hope and I think
12 probably that of everybody in the room. And as I compare
13 technologies of the new and the old, visual impacts, even
14 the particular part of the site that's being impacted,
15 the footprint, and the fact that there's all this
16 existing infrastructure right there that doesn't have to
17 be built as it would in another site, this clearly is a
18 very unique -- I mean, every power plant, every siting
19 application, is unique. And this one is unique and has
20 sort of a -- I think it's a step in the right direction
21 relative to what's there today and I definitely hope to
22 pass by on the 5, or on the beach in Carlsbad, and one
23 day not see that 400 foot stack there, and I think most,
24 if not all the citizens of Carlsbad feel the same way.

25 So these are difficult choices and by

1 permitting a plant on that site, I and we are in no way
2 saying, if that's what happens, in no way saying that
3 energy efficiency, or distributed generation, or any of
4 these other goals are any less valid; in fact, it sort of
5 makes me want to roll up my sleeves more and say, you
6 know, we've got to do a better job, you know, having as
7 few of these kinds of decisions to make as we possibly
8 can.

9 Having said all that, you know, a 540 megawatt
10 power plant is not a trivial thing. And I think,
11 listening to the community members, very passionately,
12 you know, made clear that they do not want this new power
13 plant, and they want to get rid of Encina, potentially,
14 as obviously, on a personal level, you can't sort of not
15 take that to heart at some level. So having said all
16 that, you know, these decisions -- California does need
17 to repower, to maintain its electricity system, to have
18 reliable electricity, is something that we are charged
19 with doing. And there's a transition that we're in the
20 middle of that isn't done yet, and a sort of incremental
21 improvement to highly efficient combined cycle is a step
22 in the right direction. So I'm going to concur with my
23 colleague, Commissioner Douglas, on this decision.

24 COMMISSIONER PETERMAN: Good evening, everyone.
25 I am in full agreement with Commissioner Douglas and

1 Commissioner McAllister's statements, so I'll keep my
2 statements brief in the interest of time. Very few
3 people, if at all, want a power plant in their city and I
4 respect that, and I agree that is why we have the Energy
5 Commission and the Warren-Alquist Act to have a body that
6 is able to look at the larger state issues and the needs
7 of its citizens, including those in Carlsbad, as there
8 are power plants we have permitted and supported in other
9 parts of the state that are providing services in support
10 to that area, as well.

11 I appreciate the City's long-term engagement on
12 this issue, as well as the citizen groups. I do think
13 this is a plant that is needed; we are concerned with
14 reliability, particularly in areas where there is high
15 load, and seeing that load increase with the addition of
16 the desalinization plant.

17 And, you know, particularly I want to comment
18 on the public involvement and the public process, you
19 know, as the public member, I'm particularly sensitive to
20 those concerns that are raised by the community groups
21 and I want to make it very clear that we have been
22 listening, you know, this is a proceeding where
23 originally it was brought to the full Commission, and
24 then it was sent back to the Committee for a number of
25 issues, and so that gave myself as a Commissioner not

1 involved directly in the case another opportunity to go
2 back and look at the facts. I have been hearing about
3 the amount of public showing and support and interest in
4 this project in terms of local meetings, and so that made
5 me pay even closer attention to the record. And I do
6 think this is an improvement over what is currently
7 there. I also support getting rid of the existing plant
8 and, although it's not a part of that proceeding, I think
9 you will hear that come up from all of us.

10 I also respect the role of our sister agencies,
11 the Coastal Commission, the California ISO, the PUC and
12 their decision making power, and the information they've
13 shared with us. We need to make our decision based on
14 the record, and based on the record; I do think this is
15 the right decision to approve this project. One of the
16 Interveners commented about what our legacy will be and I
17 think we want to leave the legacy of improvement; we're
18 not going to get it perfect, but I think this is a step
19 in the right direction, and we still need to continue to
20 invest in our energy efficiency and our clean resources
21 so that communities are not faced with this challenge,
22 and the State is not faced with the challenge, of having
23 to site facilities that are considered less favorable by
24 the local community. So, again, thank you for engaging
25 in our process. And I am supportive of the Lead

1 Commissioner's Proposed Decision.

2 CHAIRMAN WEISENMILLER: Yeah, first, I
3 certainly want to thank the City of Carlsbad,
4 particularly the Mayor for coming today. And you know,
5 you commented that you were looking for a fair hearing
6 and we really have tried to do that, it may not be the
7 outcome you're looking for, but we have weighed the
8 evidence and, ultimately, you know, this agency was set
9 up in the middle '70s, '74, by Charlie Warren and Al
10 Alquist, and we have sort of a dual role, one of those
11 roles -- Al Alquist was very determined that the State
12 have a one-stop siting agency, and was very concerned at
13 the hodge-podge that was occurring at the local level,
14 frankly, and at the same time really pushed us and built
15 in very strong standards for us to do Building Appliance
16 Standards, you know, very strongly committed to energy
17 efficiency. And Charlie Warren was the other part of
18 that DNA that sort of established the agency, and he
19 wanted a very public process, you know, we were the first
20 agency to have a Public Advisor, you know, I mean, our
21 siting process specifies -- before us, there were power
22 plants that were approved without a public hearing,
23 period, you know, at the PUC. And so a very detailed
24 process and a requirement that the Commissioners attend
25 the hearings, basically really a public process, but also

1 he was very concerned about environmental protection, he
2 was certainly the father of CEQA, father of the Coastal
3 Protection Act, I mean, just every landmark environmental
4 measure in California in the '70s, you know, Charlie
5 wrote. And so we had that combination, a one-stop
6 siting, very public process, and also one where we have
7 an independent staff to really look at the projects and
8 try to figure out how to make that the best footprint
9 possible for the environment. And so that combination is
10 rare, I would have to say I'm in the unique position --
11 Charlie, when this place was founded, the Commissioner he
12 had appointed here was Ron Doctor, and my first time in
13 the public service at the Energy Commission, I was Ron's
14 Advisor, so when I was appointed, I had a nice note from
15 Ron telling me that, you know, I had a lot to live up to
16 since I was sort of directly connected to Charlie Warren
17 and what this place is supposed to do.

18 So, again, I take very seriously that we have
19 to look at the environmental impacts, and have a very
20 public process. And certainly, as part of that, and I
21 know all of us would like to reach out to the city and
22 work in a collaborative way, dealing with some of the
23 energy efficiency and renewable issues, but today what we
24 have in front of us -- and to talk about a couple of
25 things there, on the greenhouse gas part, I mean, my

1 motivation for coming back into public service was
2 fundamentally dealing with the twin challenges of the
3 climate change and dealing with jobs in California. And
4 I think this is part of the approach for us to deal with
5 climate change, greenhouse gas, by putting more efficient
6 plants there, we're going to reduce fossil fuel
7 consumption that enables us to really have the
8 renewables, and also reduces the fossil fuel we use. So
9 I think it's a key part of our greenhouse gas strategy.

10 And I know, I certainly respect the Center on
11 this, these -- but I would say, for 30 years my career
12 has been to really understand independently the power
13 systems, you know, and how they operate. I had the honor
14 of being selected by the Bankruptcy Court in New York
15 City as an expert on the power systems, certainly the
16 banks generally refer to me for power market assessments
17 for tens of billions of dollars, so I can tell you how
18 the system operates. And literally, you put this unit
19 in, it's going to displace something else, and the
20 reliability constraints in how this is going to operate,
21 but it's going to replace something that is less
22 efficient, so that's going to be part of an approach on
23 greenhouse gas. I'll admit, as you push the units in, at
24 some point, you know, there will be issues, but I'm
25 pretty comfortable at this point we're not at that level.

1 And I would note, you know, one of the things
2 that is sort of certainly looming in the background, and
3 one of the things I spent a lot of time on recently, is
4 San Onofre, and the unit is down, you know, we are doing
5 contingency planning now for a summer without San Onofre,
6 you know, I've testified before the Legislature on that,
7 certainly, I don't know if the City attended the event
8 that Mike Niggly had with Steve Berberich down in San
9 Diego, on what the implications are, but they're serious,
10 that's the bottom line. And frankly, the more I did into
11 the San Onofre question, the more I'm convinced we need a
12 plan, either for a long term -- well, which was said in
13 the last IEPR -- first, if you look at the fleet of
14 nuclear plants in the country, about 40 percent of them
15 have had outages for a year or more, some of them for as
16 long as 10 years. So, you know, San Onofre is a very
17 unique situation in terms of the transmission grid and
18 the generation there. So, you know, it's crazy we
19 haven't had a plan in place to backstop that if it's out
20 for a year and, frankly, we need a plan if it's not
21 realized, or, frankly, if it doesn't come back from its
22 current problems.

23 And in that context, you know, if you look at
24 it, it turns out that the location of power plants really
25 matter, and bottom line is we need power plants close to

1 where San Onofre is, which means either Orange County or
2 North San Diego. And so this is a prime location. What
3 we found is, without San Onofre, it really reduces
4 substantially the amount of power that can be imported
5 into San Diego from the Los Angeles Basin. And that has
6 really substantial reliability and benefits impacts,
7 that's why we've had to relicense -- restart Huntington
8 Beach 4 and 5, which again we thought we shut down,
9 everyone was sure it was gone, and we've just had to
10 scramble phenomenally to get that back on line to
11 basically keep the lights on in San Diego. I mean, it was
12 a real -- and that area, as I said, it's not just a
13 megawatt, but it influences the number of megawatts that
14 you can import into San Diego. In a way, it's sort of a
15 multiplier effect.

16 So, again, I don't know where the San Onofre
17 situation is going to bounce through, but this location
18 could be critical to us. And I know it's going to take a
19 long time before this thing is built and stuff like that,
20 but you know, as we start thinking about what happens if
21 San Onofre is not relicensed, we need to think about
22 power plants in that Orange County, North San Diego area,
23 and I'm afraid it's better to have them where existing
24 plants are than to try to do Greenfield development.

25 So for all those reasons, I think I support,

1 certainly, the Proposed Decision, I think we should go
2 forward today and, again, certainly appreciate all the
3 public participation, I think it's led to a much stronger
4 project than what was originally proposed. But, again, I
5 think it's time to move on.

6 COMMISSIONER DOUGLAS: So, thank you, Chairman
7 Weisenmiller and colleagues. Just because I'm thinking
8 of it, I'll add that, while we did not conduct
9 evidentiary, real discussion on San Onofre, there was
10 some discussion of it in the proceeding, and I wanted to
11 mention that one issue Will Rostov raised, or one
12 question he raised in the PMPD Hearing was pertaining to
13 our greenhouse gas analysis, you know, net -- what if
14 Carlsbad actually displaces San Onofre, rather than a
15 natural gas plant? Is that a hole in the greenhouse gas
16 analysis? I just wanted to say, you know, as we reflect
17 on that question, as we reflect on the current situation
18 with San Onofre, you know, I don't think it is a problem
19 on the greenhouse gas now, as I see us reopening
20 Huntington Beach Units that we thought were down, I hope
21 we don't see a bunch of diesel generators down there
22 somewhere on flatbed trucks, but, you know, we will
23 before the lights go out, and so I think that -- and the
24 Chair can speak to this better than I can, but I think
25 that you might want to.

1 CHAIRMAN WEISENMILLER: No, I mean, no, in
2 fact, I mean, certainly everything I know at this point
3 is that plants are running much more in San Diego with
4 San Onofre out, all the gas plants are including it,
5 basically anything that can be ran is ran, and as
6 Chairman -- excuse me -- Commissioner Douglas pointed
7 out, I mean, at this point, SDG&E even has a proposal
8 which they're calling Demand Response, but basically
9 where they would fire all the backup utility generators
10 to keep the lights on. So, I mean -- and similarly, they
11 have a proposal pending at the PUC to go to the Indian
12 Casinos which, as you know, are not regulated by the San
13 Diego or APCD and, again, to run those units up to their
14 legal limits and, again, with the backup utility
15 generators which are much much much much much dirtier
16 than this plant would ever be, they're talking about
17 running those up to the permanent levels, and conceivably
18 bringing in barges, perhaps gas-fired barges. But,
19 again, it's, you know, a couple thousand megawatts is a
20 big chunk of load to -- big chunk of generation to lose,
21 particularly when you built the transmission system
22 around the presumption that that's going to be providing
23 power. And so, again, when we started the exercise, we
24 -- the Governor's Office, myself, the CAISO, and the PUC
25 -- to come up with a plan for this summer, we weren't

1 sure we needed it, and at this stage, certainly, oh,
2 there's no expectation San Onofre is going to be up this
3 summer, period. So, again, we need -- and, again, I'm
4 not sure we can count on it being up next summer. So,
5 you know, we talked about values, but one of the real
6 values is, you know, again, we learned in the early part
7 of this decade, we need to have a reliable power system
8 or, you know, there are real consequences for all of our
9 citizens and the quality of our lives.

10 COMMISSIONER DOUGLAS: Okay. All right, so I
11 think if there are no further questions or
12 clarifications, I'm ready to make a motion on this and,
13 so, I'll just ask for help and clarification. Should I
14 just move adoption of the Commission Adoption Order as
15 modified with the addition of the word "not?"

16 MR. LEVY: Well, let's be precise, the Revised
17 Proposed Commission Adoption Order, which was circulated
18 by Mr. Kramer this afternoon, about 6:00 this evening,
19 with the addition of the word "not" and with the language
20 added to Attachment A, which memorializes Mr. Ratliff's
21 earlier clarification about the status of the PSD
22 regulatory process vis a vis the SIP.

23 COMMISSIONER DOUGLAS: Okay.

24 HEARING OFFICER KRAMER: Well, okay, then, now
25 that you've mentioned one part of Attachment A, it's not

1 clear to me if the second part, which is to modify the
2 Condition Socio. 1 or not would also be included, but it
3 is on there. So do you want to modify Condition Socio. 1
4 as --

5 COMMISSIONER DOUGLAS: It sounded to me from
6 what the City and the Applicant said that the existing
7 language in the Revised PMPD is the correct language to
8 move forward with.

9 MR. LEVY: Correction. The City didn't say
10 that, the Applicant did, and I endorsed it.

11 COMMISSIONER DOUGLAS: The City did not exactly
12 say that, but the City -- the City is now going to say
13 what they said.

14 MR. BALL: Yes, Commissioner Douglas, the City
15 did not concur with that and we disagree strongly with
16 the interpretation that your Chief Counsel has made and
17 the Applicant. Development impact fees are exerted and
18 imposed on the privilege of development, and the
19 regulation is clear that, but for this paramount
20 jurisdiction of the Commission, normal and customary
21 development impact fees would be imposed. So we -- if
22 that doesn't come out in this Decision, and this is
23 adopted, we assign that as error because it's, in my
24 opinion, clearly error. Thank you.

25 COMMISSIONER DOUGLAS: Okay, thank you. So

1 thank you for that clarification. So I'm just looking at
2 our Chief Counsel and my Hearing Officer.

3 CHAIRMAN WEISENMILLER: Yeah, but I think part
4 of what we're frankly struggling with, is the City has
5 tried a number of different ways to basically kill the
6 project, and so I think we don't want to write the
7 language here in a way that somehow gives you another
8 quiver of error. I mean, again, we respect trying to
9 make sure that you're made whole and get benefits from
10 this, but not --

11 MAYOR HALL: Respectfully, if I could?

12 CHAIRMAN WEISENMILLER: Sure.

13 MAYOR HALL: The fees that we're asking for is
14 what everyone pays, everyone. If you write in what
15 you're doing, then you're specifically, I think, giving
16 them an exemption as to what others have paid. And we
17 have not raised any fee specifically towards them, nor
18 will we.

19 COMMISSIONER DOUGLAS: I think, so the language
20 in the Revised PMPD that we put forward requires full
21 repayment of any costs incurred by the City --

22 MR. LEVY: But Socio. 1, as originally stated,
23 not in the new language, requires the Project Owner to
24 pay the fees, the costs incurred, it's in Socio. 1 in the
25 Revisions to the Revised Presiding Member's Proposed

1 Decision, and it's consistent with the Regulation, and
2 the Regulation in 1715 specifies the process for
3 obtaining the reimbursement of the fee, and I don't think
4 you need anything more than what is already in Socio. 1
5 as stated in the Revisions to the Revised Presiding
6 Member's Proposed Decision. I would recommend not
7 including the new language at the bottom of Attachment A.

8 COMMISSIONER DOUGLAS: Okay --

9 COMMISSIONER PETERMAN: Just a clarifying
10 question to make sure I understand. Does that language
11 preclude the collection of that fee? No, right?

12 MR. LEVY: The language in the Modified
13 Proposed Condition Socio. 1 would specify components of
14 how and when the fees would be requested and calculated
15 by requesting a fee schedule and verification at a time
16 certain. The process articulated in 1715 already
17 specifies a process for collecting the fees, so this is
18 unnecessary and an effort by Mr. Kramer to accommodate
19 the City's wishes, but the process is already in
20 existence, and since we haven't vetted the pieces of the
21 new process, I would recommend just going with the
22 original Socio. 1 and our Regulations to deal with the
23 circumstance.

24 HEARING OFFICER KRAMER: That's fine with me.

25 COMMISSIONER DOUGLAS: Okay. I agree with

1 that, as well. So, I will move that we adopt the Revised
2 Proposed Commission Adoption Order that Mr. Kramer
3 circulated at about 6:00 today, without the proposed
4 modification to Socio. 1 in this language, and with the
5 clarification that the word "not" is inserted -- help me,
6 which paragraph?

7 MR. LEVY: In Finding 13, which is --

8 COMMISSIONER DOUGLAS: In Finding 13, Line 6
9 that it will not result in a new significant
10 environmental impact.

11 COMMISSIONER PETERMAN: I'll second.

12 CHAIRMAN WEISENMILLER: All those in favor?

13 (Ayes.) This also passes unanimously. Thank
14 you.

15 Okay, so Item 19. Minutes. Possible approval
16 of the May 9th, 2012 Business Meeting Minutes.

17 COMMISSIONER DOUGLAS: Move approval.

18 COMMISSIONER PETERMAN: Second.

19 CHAIRMAN WEISENMILLER: All those in favor?

20 (Ayes.)

21 Item 20. Lead Commissioner and Presiding
22 Member Reports.

23 COMMISSIONER PETERMAN: I'll just take an
24 opportunity to remind everyone we have two IEPR Workshops
25 in the next, you know, two weeks. We have one on

1 Financing and R&D for Renewables on the 6th, and we have
2 one on Integration issues on the 11th, and we also have
3 one on June 22nd with the IEPR in L.A. on Reliability
4 issues, which is pertinent to the discussion we were just
5 having.

6 CHAIRMAN WEISENMILLER: Right.

7 COMMISSIONER DOUGLAS: I have nothing to report
8 that I can recall at the moment.

9 COMMISSIONER MCALLISTER: Oh, sorry. No, I
10 have nothing to report.

11 CHAIRMAN WEISENMILLER: You know, obviously the
12 San Onofre stuff continues to bubble on. Item 21. Chief
13 Counsel's Report.

14 MR. LEVY: I have no report, thank you.

15 CHAIRMAN WEISENMILLER: Item 22. Executive
16 Director Report.

17 MR. OGLESBY: Nothing that won't wait.

18 CHAIRMAN WEISENMILLER: Item 23, Public
19 Advisor.

20 MS. JENNINGS: I have nothing to report.

21 CHAIRMAN WEISENMILLER: Are there any public
22 comments? This meeting is adjourned.

23 (Whereupon, at 6:50 p.m., the business meeting was
24 adjourned.)

25