STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION

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BUSINESS MEETING

1516 NINTH STREET

FIRST FLOOR HEARING ROOM

SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 4, 1983

10:40 A.M.

Reported by: Patricia A. Petrilla

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1 COMMISSIONERS PRESENT

2 Russell L. Schweickart, Commissioner

3 Karen K. Edson, Commissioner

4 Geoffrey D. Commons, Commissioner

5 STAFF PRESENT

6 John Geesman, Executive Director

7 William M. Chamberlain, General Counsel

8 Mark Urban

9 Gary Fay

10 Eileen Baumgardner

11 Gary Walker

12 John Johansen

13 Steve Burger

14 Luree Stetson

15 Ross Deter

16 Karen Mathies, Secretary

17 EX OFFICIO

18 Bill Foley

19 PUBLIC ADVISER'S OFFICE

20 Ernesto Perez

21 ALSO PRESENT

22 Jim Prosser, Spa/Pool Industry Council

23 Janice Hess, Advisory Committee for Energy Conservation

24 Doris Specht, City of Stockton

25 Roger Johnson, LADWP

1 ALSO PRESENT (Con't.)

2 Michael Gardner, Southern California Edison

3 William M. Smith, Individual

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I N D E X

		Page
Proceedings		1
Agenda Item 1 -	Commission Consideration and Possible Certification of Stockton City Ord. No. 3634-C.S., sets minim standards for solar domestic water and space heating systems in residential buildings and solar pool and spa water heating systems.	
	John Geesman - Presentation	
	Eileen Baumgardner - Presentation	1
	Jim Prosser, Spa/Pool Industry Council	4
	Janice Hess, Advisory Committee for Energy Conservation	7
	Commission Order	9
Agenda Item 2 -	Under Separate Cover	
Agenda Item 3 -	Notice of Receipt of an Application for a Small Power Plant Exemption from Tosco Corporation.	
	John Geesman - Presentation	9
	Mark Urban - Presentation	10
	Gary Walker - Presentation	10
	Commission Order	12
Agenda Item 4 -	Commission Consideration and Approval of the final report to the Governor and Legislature describing the Commission's research and development programs and making recommendations on California's R&D activities.	
	John Geesman - Presentation	12
	John Johansen - Presentation	12
	Commissioner Commons - Presentation	13
	Roger Johnson, LADWP	17
	Mike Gardner, SCE	17
	Ernesto Perez, Public Adviser's Office	18
	Commission Order	19
Agenda Item 5 -	Contract with Bonneville Power Administration, $35,000 reimbursement; to provide legal assistance relating to development and execution of long- and short-term energy sales contracts.	
	William M. Chamberlain - Presentation	19
	Steve Burger - Presentation	23
	John Geesman - Presentation	23
	Mike Gardner, SCE	24
	Commission Order	38

INDEX (Con't.)

		Page
Agenda Item 6 -	Contract with Teale Data Center, $32,000; to provide EDP services required under the Commission's Fuel Efficient Traffic Signal Management Program.	
	Commission Order	38
Agenda Item 7 -	Consent Calendar	
	b. Commission Approval of City of Gardena's request to reduce traffic signal management grant.	
	Commissioner Edson - Presentation	38
	Commission Order	39
	a.1., 2. and 3.	
	Commission Order	39
	a.4. - pulled from calendar	38
Agenda Item 8 -	Approval of Minutes	
	Commission Order	39
Agenda Item 10 -	Briefing on Staff Interventions in CPUC Proceedings - None	40
Agenda Item 11 -	General Counsel's Report - None	40
Agenda Item 12 -	Executive Director's Report	
	John Geesman - Presentation	40
Agenda Item 13 -	Public Comment	
	William M. Smith, Individual	41
Agenda Item 9 -	Commission Policy Committees' Report	
	Discussion of Implementation of AB 2948 - Felando	
	Commissioner Commons - Presentation	50
	Other Legislative Bills	
	Luree Stetson - Presentation	51
	SB 5 - Montoya	51
	Commission Order	66
	SB 1054 - Montoya & AB 163 - Goggin	66
	Commission Order	71
	Commission Order	72
	AB 1752 - Johnson	74
	Commission Order	76
	AB 1820 - Condit	76
	Commission Order	79
	AB 1718 - Leonard	79
Adjournment		81
Reporter's Certificate		82

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

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3 COMMISSIONER SCHWEICKART: All right. The
4 business meeting will come to order, and let's begin with
5 Item No. 1.

6 EXECUTIVE DIRECTOR GEESMAN: Item No. 1 is a
7 local ordinance we're recommending approval on. Eileen
8 Baumgardner is here from the Conservation Division.

9 COMMISSIONER SCHWEICKART: For our planning
10 purposes, are there other people here to testify on Item
11 No. 1? Yes, all right. Could I have a showing of hands,
12 are there any other people here? All right, thank you.

13 MS. BAUMGARDNER: There are also people here from
14 the City of Stockton.

15 COMMISSIONER SCHWEICKART: All right. Thank you
16 very much.

17 MS. BAUMGARDNER: On March 11th, the City of
18 Stockton submitted Ordinance No. 3634-C.S. for Commission
19 certification as required by the Warren-Alquist Act. The
20 ordinance establishes minimum regulations for installation
21 of solar space and water heating systems in the City of
22 Stockton.

23 The ordinance does not mandate solar, but rather
24 is designed to establish standards aimed at protecting
25 Stockton residents who do decide to install solar water

heating, space conditioning, or pool and spa heating systems. The ordinance addresses collector certification, sizing, orientation, labeling, warranties, and consumer information disclosure.

The Commission must certify local energy ordinances which affect new buildings, will result in a reduction in energy consumption equal to or greater than that resulting from the state's building standards. Of the items addressed in Stockton's ordinance, the minimum sizing requirements have the predominant effect on energy consumption.

Based on an analysis of the ordinance in the Title 24 standards for Zone 12, the zone in which Stockton is located, staff has determined that the city's sizing requirements will save at least as much energy as the Title 24 requirements if the point system, or computer approach are used, and save more energy if the -- than the Title 24 requirements if the packages are used for compliance.

The solar requirement for Title 24 packages in Zone 12 is 9,394 kBtu per year for all sizes of single family homes. In Stockton, the minimum requirement for a one or two-bedroom home would be 11,680 kBtu's per year, increasing with the number of bedrooms.

As staff estimates, that as much as 75 percent of the new housing will be constructed in accordance with the

1 packages, the Stockton ordinance will result in a reduction
2 of energy consumption for domestic water heating over the
3 Title 24 requirements. No minimum sizing requirements are
4 contained in Title 24 for active solar space conditioning,
5 or for solar pool or spa heating, and since the ordinance
6 does not require solar for these purposes, differences in
7 consumption for these systems were not calculated.
8 Stockton has submitted the materials necessary
9 for certification of its local ordinance. The Commission's
10 responsibility is to certify that the ordinance will result
11 in a reduction in energy consumption equal to or greater
12 than that resulting from Title 24 requirements.
13 Based on the staff's finding that the ordinance
14 will result in energy consumption equal to or less than
15 that under Title 24, staff recommends the certification of
16 Stockton Ordinance 3634-C.S.
17 COMMISSIONER SCHWEICKART: All right. Are there
18 any Commission question for Ms. Baumgardner? I have one,
19 let me just shoot that one out. My understanding is that
20 this ordinance does not adopt Title 24 building standards
21 early --
22 MS. BAUMGARDNER: No.
23 COMMISSIONER SCHWEICKART: It applies only to the
24 sizing of solar units when and where they are installed.
25 MS. BAUMGARDNER: Right, and it does not mandate

1 solar, yes.

2 COMMISSIONER SCHWEICKART: Yes, I understand that.
3 But it does not, as Roseville, or Davis, or others, it does
4 not implement Title 24, or mandate that.

5 MS. BAUMGARDNER: No, it doesn't.

6 COMMISSIONER SCHWEICKART: I see. All right,
7 are there any other Commissioner questions for Eileen?
8 All right. Were there others to testify before the
9 Commission on the subject?

10 MR. PROSSER: Mr. Chairman and members of the
11 Commission, my name is Jim Prosser, and I'm representing the
12 Spa/Pool Industry Council. I'd like to say first off that
13 the Council is not necessarily opposed to merits of the
14 Stockton ordinance. We are opposed, however, to the
15 procedural compliance of Stockton, here, and do not believe
16 that they have complied with the requirements of Public
17 Resources Code 24 -- 25402.1(f)(2), in that they have not
18 filed any basis of their determination that the changes
19 which they propose in this ordinance from Title 24 are
20 cost-effective.

21 A review of the submittal, I can only find one
22 reference to cost-effectiveness and that's in a March 11th
23 letter from the City Manager of Stockton which he states
24 that the cost-effectiveness of the ordinance was considered
25 during the adoption process. As adopted, the ordinance

1 contains orientation requirements and a prohibition of
2 electrical backup systems, thus making the ordinance cost-
3 effective.
4 I don't think this really amounts to the basis of
5 their determination that the ordinance would be cost-
6 effective. I would note that the ordinance itself contains
7 findings and none of those findings address cost-effectiveness.
8 I understand there's some question that the Commission had
9 previously decided that they don't want to try to second-
10 guess a local agency's determination of cost-effectiveness.
11 But I would submit here that they have not
12 complied with the Public Resources Code by submitting any
13 documentation which amounts to their basis for their
14 determination. How can you look at the submittal and say,
15 well, are they right, or are they wrong. It's not a
16 question of second-guessing, it's a question of outright
17 noncompliance.
18 We feel that in order to have an adequate basis on
19 which to review it that they should make some assumptions,
20 should have some cost-effectiveness, you know, figuring,
21 determination. It's obvious that under this ordinance, the
22 panel -- solar panels will have to be larger, and there is
23 no indication of what additional cost is involved there, or
24 what the benefit will be from those larger panel.
25 We'd ask on the procedural basis that the City of

1 Stockton has not complied with the Public Resources Code to
2 not certify the ordinance at this time. Thank you.
3 COMMISSIONER SCHWEICKART: All right. Are there
4 any questions? Ms. Baumgardner, would you care to respond
5 to the presentation that in fact there is no basis for
6 cost-effectiveness that was --
7 EXECUTIVE DIRECTOR GEESMAN: I think I may be
8 best equipped from several years of experience with this
9 particular issue to respond. We have a difference of
10 opinion with Mr. Prosser in terms of how the requirement
11 is to be applied. We have not gotten into the business of
12 second-guessing local jurisdiction assumptions on these
13 calculations. That's been a matter of Commission policy
14 for some number of years now, and would consider the letter
15 that Mr. Prosser mentioned to be sufficient to meet that
16 requirement for a basis.
17 COMMISSIONER SCHWEICKART: Let me ask if counsel
18 would read for the Commission's advisement, the wording
19 that's applicable here in the statute.
20 MR. URBAN: There are two requirements. The first,
21 which is the one that's at issue -- well, the one that's
22 not is that the standards will require the diminution of
23 energy consumption levels, and that the Energy Commission
24 make a finding that it does.
25 The other is that the county or city files "the

1 basis of its determination that the standards are cost-
2 effective." You have to file it with the Commission. So
3 the issue is whether you think that that, as a matter of
4 fact, that paragraph meets a minimum requirement for the
5 filing of the basis of its determination that the standards
6 are cost-effective, and that's a question of fact, I think,
7 for the Commissioners.
8 COMMISSIONER SCHWEICKART: All right. Are there
9 any further questions for Mr. Prosser? Were there any
10 other people who wanted to address the Commission on the
11 matter?
12 MS. HESS: My name is Janice Hess, and I was the
13 Chair of the Citizens Advisory Committee that recommended
14 the ordinance to the City of Stockton. My main purpose in
15 speaking to you is to let you know that this Committee was
16 composed of 25 people, a broad spectrum of the community,
17 and the input that went to the City Council was representa-
18 tive of the community.
19 They felt the need was there, primarily from a
20 consumer standpoint, and that was the intent of the ordinance.
21 I have Doris Specht who is city staff. If you have any
22 questions, we're more than willing to speak to those.
23 COMMISSIONER SCHWEICKART: All right. I think the
24 issue here is the basis upon which the cost-effectiveness
25 was determined by the local jurisdiction, in this case, the

1 City of Stockton, and if you could add anything to the
2 written submittal from the City Manager, I think that
3 would certainly be helpful in the Commission's deliberations.
4 MS. HESS: We really don't have anything further
5 to add.
6 COMMISSIONER SCHWEICKART: All right. So the
7 basis of our judgment will be the letter or the submittal
8 before us. Any questions?
9 COMMISSIONER EDSON: I would argue that we approve
10 this ordinance. As I understand it, it is an ordinance
11 which really goes to orientation and sizing requirements
12 which are generally consistent with other regulations of
13 the state, such as the state's tax credit regulations. It's
14 not as if there is a requirement that solar be installed
15 which, of course, would impose significant new costs on
16 people who otherwise might not have any kind of heating
17 system.
18 So I'm satisfied with the basis of the city's
19 determination.
20 COMMISSIONER SCHWEICKART: All right. Well, on
21 the basis that there is here no mandate which would, in
22 fact, cause any additional expenditure of money, but that
23 that is clearly left to the individual builder or homeowner,
24 it would seem to me that there is a -- in combination with
25 the submittal, referring to the cost-effectiveness

1 considerations that were given by City Council in adopting
2 the ordinance, it would seem to me appropriate to adopt the
3 -- or to certify the ordinance, and I would move the
4 resolution prepared for the Commission.
5 COMMISSIONER EDSON: I'd second that.
6 COMMISSIONER SCHWEICKART: And without objection --
7 is there any objection to adoption? All right. Without
8 objection, then, we'll show unanimous approval of the
9 Commission.
10 COMMISSIONER EDSON: I'd just like to note that
11 the -- as I know the City of Stockton is aware, and I hope
12 the pool and spa industry is also aware, the Commission is
13 moving forward with the development of installation standards
14 that would eventually be imposed statewide, and I'd like to
15 think that the industry representatives are aware of that,
16 and participating in that CALBO and ICBO development process.
17 (Agenda Item 2, under separate cover.)
18 COMMISSIONER SCHWEICKART: We have a request for a
19 five minute break here.
20 (Brief recess.)
21 COMMISSIONER SCHWEICKART: I'd like to start the
22 hearing again, and we'll go to Item No. 3. Item No. 3, is
23 Mr. Walker here, ready?
24 EXECUTIVE DIRECTOR GEESMAN: We're basically
25 seeking a Committee. There's no data adequacy requirement

1 that's in front of you, it's just our request that you
2 designate a committee.
3 COMMISSIONER SCHWEICKART: All right. The resolu-
4 tion before us then would -- excuse me, I turned to the
5 wrong pages -- there is no resolution. All right, we have
6 a notice of receipt of a small power --
7 MR. URBAN: You can do this by minute order.
8 COMMISSIONER SCHWEICKART: -- plant exemption.
9 I take it the Commission does not need to take any action
10 in terms of accepting it, or anything of that kind?
11 MR. URBAN: No. You just need to designate who
12 the Commissioners are for the Committee because that's now
13 the requirement, and that can be just indicated by a minute
14 order in the minutes of the meeting.
15 COMMISSIONER SCHWEICKART: All right, fine. I
16 think we certainly will not take that action today to so
17 designate the Committee, but the Commission will assume the
18 action to designate a Committee. Do we have a timing issue
19 on this?
20 COMMISSIONER EDSON: We have 135 days --
21 MR. WALKER: The regulations specify that a
22 decision will be rendered on the application within 135 days,
23 or as long as it is required to gather the information
24 necessary to make a decision.
25 COMMISSIONER SCHWEICKART: All right. So the

1 Commission should then on an expedited basis identify and
2 empower such a Committee?
3 MR. WALKER: Yes.
4 COMMISSIONER SCHWEICKART: And we will do that,
5 then, all right, and the minutes will reflect that.
6 EXECUTIVE DIRECTOR GEESMAN: I have a --
7 MR. URBAN: Well, you need to designate the
8 Committee by name, so presumably this matter is being --
9 COMMISSIONER SCHWEICKART: And I'm saying that
10 will be done, but not today.
11 MR. URBAN: So it's continued two weeks?
12 COMMISSIONER EDSON: You mean names, call it the
13 small power plant exception --
14 MR. URBAN: No, no, the names of the members of
15 the Committee have to be designated by the Commission acting
16 at a business meeting.
17 COMMISSIONER SCHWEICKART: Fine.
18 EXECUTIVE DIRECTOR GEESMAN: I have received a
19 recommendation from the Chairman, which I assumed was in
20 your backup books, as to who that Committee should be.
21 COMMISSIONER SCHWEICKART: I for one am not
22 prepared to vote on specific names of Committee members
23 today, having only today become aware of the fact that that
24 was the desire. So, I don't know if other Commissioners
25 would support that.

1 COMMISSIONER EDSON: Well, I think it was clear
2 from the agenda package that we needed to name a Committee.
3 COMMISSIONER SCHWEICKART: Are you prepared to
4 move on --
5 COMMISSIONER EDSON: I think that we should
6 continue this item and take a look at this recommendation.
7 COMMISSIONER SCHWEICKART: Fine. Item 4.
8 EXECUTIVE DIRECTOR GEESMAN: This is your
9 consideration and approval of the R&D Report. My under-
10 standing was that John Johansen was going to be making a
11 presentation of the report to you. Mr. Johansen informs
12 me that Commissioner Commons was going to make that
13 presentation.
14 COMMISSIONER SCHWEICKART: I'm sorry, John, you're
15 not coming through. I don't know if your microphone is off
16 or what.
17 EXECUTIVE DIRECTOR GEESMAN: Maybe just as well.
18 This is the R&D Report, and this is John Johansen.
19 MR. JOHANSEN: Okay. The Committee is forwarding
20 for the Commission approval of the R&D Report to be
21 forwarded to the Governor and the Legislature, and essen-
22 tially we're asking the Commission that they sign off on
23 this report, put a letter of transmittal in front of it.
24 COMMISSIONER SCHWEICKART: All right. Let me defer
25 to the Presiding Member of the Committee for any comments he

1 may have. I think the resolution is very straightforward,
2 and would ask us to transmit the report to the Governor
3 and the Legislature.
4 COMMISSIONER COMMONS: Mr. Johansen?
5 MR. JOHANSEN: On comments?
6 COMMISSIONER COMMONS: Okay. Would you like first
7 for the Committee to make its recommended changes in the
8 report based on comments, or do you want to hear the
9 comments from the public, first, Mr. Chairman?
10 COMMISSIONER SCHWEICKART: Well, I defer to the
11 Presiding Member how you would like to bring the resolution
12 before the Commission. I basically defer to your request
13 here.
14 COMMISSIONER COMMONS: All right. Let me first,
15 in reviewing the second draft, taking into consideration some
16 of the comments that we've received, what I'd like to do
17 first, before we receive comments, is to make recommendations
18 for changes which are acceptable to the Presiding Member,
19 when we make a motion to accept the report.
20 On page 2, on the bottom, in the next to the last
21 paragraph, to eliminate the sentence, "where gaps remain,
22 the cost and benefits," et cetera, be deleted. In the
23 bottom of that page, the last paragraph, that the first
24 sentence, "The effectiveness of integration and leverage
25 is illustrated by the Commission's Wind Assessment Program,"

1 be eliminated, and that a connecting sentence, starting with
2 "For example," be incorporated.
3 In that same paragraph, it says, "The planning
4 process," add the word "the" and change "has sought" to
5 "seeks".
6 COMMISSIONER EDSON: Do you have an errata,
7 Commissioner Commons?
8 COMMISSIONER COMMONS: No. Oh, yeah, I guess I
9 do. On page 15, under the first circle, "thus the Public
10 Utility Commission controls," insert the words "investor
11 owned" before "utility R&D budgets". And under the second
12 dot, again it says --
13 COMMISSIONER SCHWEICKART: Commissioner Commons,
14 excuse me, you're moving a little more rapidly than we
15 can follow. If you would once again say that last page.
16 COMMISSIONER COMMONS: This would be on page 15.
17 COMMISSIONER SCHWEICKART: All right, and again --
18 COMMISSIONER COMMONS: On the right-hand side of
19 the page, under the -- the last sentence under the first
20 circle, it says, "Thus, the Public Utilities Commission
21 controls utility R&D budgets", insert the word "investor
22 owned utility R&D budgets". And in the next circle, the
23 same insert.
24 In that same paragraph, the same insert where it
25 says, "merely the utilities judgments," again the "investor

1 owned". Then in the next dot under the conclusions, the
2 first one states, "The State Legislature and the Governor
3 have a clear interest in utility R&D programs funded by
4 ratepayers." Change that to read, "The State Legislature
5 and the Governor have a clear interest in energy R&D
6 programs."
7 At the bottom of that page, there is the word
8 "formulate", the understanding of the Presiding Member as
9 to the word "formulate" is that formulate does not mean
10 coordinate, it rather means to put together, but not in a
11 formal sense, like in a rulemaking proceeding.
12 COMMISSIONER SCHWEICKART: Is there are change,
13 or are you just clarifying what you --
14 COMMISSIONER COMMONS: I'm just clarifying that
15 particular word.
16 The last conclusion on page 16, again, after
17 "to ensure that utility", insert "investor owned", which is
18 part of that same set of changes.
19 Moving to another page, on page 99 of the report.
20 On the second paragraph under "market development and
21 commercialization", to eliminate the last two lines of that
22 paragraph, "or directly selling the energy to large
23 commercial or industrial users."
24 On the same page in the first paragraph, within
25 the box, to change the word "interconnection standards" to

1 "interconnection guidelines" which is about the eighth line
2 down; and to eliminate in the next sentence -- next line the
3 word, "model", develop a "wheeling handbook" not a "model
4 wheeling handbook".
5 Those are, I believe, the end of the changes
6 recommended by the Presiding Member. At this time, I'd
7 like to request that the Chairman call for public comments.
8 COMMISSIONER EDSON: Commissioner Commons, could
9 you summarize what you think the impact of these changes
10 will be?
11 MR. JOHANSEN: I might be able to summarize them
12 if you --
13 COMMISSIONER COMMONS: The primary changes to --
14 are technical, and to clarify an error that the PUC does
15 not regulate all utilities, just investor owned utilities.
16 In terms of -- there are no substantive changes as far as
17 the Presiding Member is concerned, except on the recommenda-
18 tion, by having energy rather than utility, energy is
19 generic and covers all areas, and we're not restricting the
20 Legislature or the Governor to programs funded by ratepayers,
21 but clearly the state has interest in all R&D programs and
22 how they effect state programs. So it's making it broader
23 rather than narrower.
24 COMMISSIONER SCHWEICKART: All right. If there
25 are no further questions, then let's move on to public

1 comment. We have, I believe two persons indicating a
2 desire to comment, Mr. Roger Johnson, and Mr. Mike Gardner,
3 on deck.
4 MR. JOHNSON: Good morning, Commissioners. For
5 the record, my name is Roger Johnson and I'm with the Los
6 Angeles Department of Water and Power.
7 First off, we'd like to congratulate the
8 Committee on putting out a -- what we think is a very fine
9 report on the Commission's R&D programs. Primarily, the
10 comments that we had were clarification in nature, trying
11 to be a little more specific where we thought specificity
12 was needed, and trying to generalize where we thought a
13 more general nature was appropriate.
14 The effort that the Committee has seen our
15 comments, and has incorporated them into what has transpired
16 before us. We really don't have any additional comments
17 right now, other than the fact that those that are before
18 you have been incorporated into the Presiding Member's
19 changes.
20 COMMISSIONER SCHWEICKART: All right, fine. We
21 appreciate your submittal of written comments, then. Mr.
22 Gardner?
23 MR. GARDNER: Commissioners, Mike Gardner with
24 Southern California Edison. I just wanted to take this
25 opportunity to compliment the Development Division staff on

1 preparation of this report. I personally have followed
2 each of the Commission's R&D reports since the Commission
3 was established, and I think this is by far the best of the
4 reports that the Commission has produced. I think it's
5 an excellent document, and I would urge you to adopt it.
6 Thank you.
7 COMMISSIONER SCHWEICKART: Thank you.
8 Is there any further comment or testimony for the
9 Commission?
10 MR. PEREZ: Commissioner Schweickart?
11 COMMISSIONER SCHWEICKART: Yes?
12 MR. PEREZ: I don't know if we have Mr. Jim
13 Cassie in the audience, do we? But I did receive a call
14 from Ms. Pat Fleming from San Diego Gas and electric this
15 morning, he's apparently in transit, and will be delivering
16 copies of their statement related to this item sometime
17 today. Apparently he hasn't been able to arrive yet.
18 COMMISSIONER SCHWEICKART: Well, I presume we're --
19 MR. PEREZ: Just noting that for the record.
20 COMMISSIONER SCHWEICKART: We have an SDG&E --
21 COMMISSIONER EDSON: I think we have a letter from
22 SDG&E dated yesterday.
23 COMMISSIONER SCHWEICKART: Absent any further
24 comment, then, I would move the resolution. Is there a
25 second?

1 COMMISSIONER COMMONS: Second.

2 COMMISSIONER SCHWEICKART: And if there's no
3 objection, we'll adopt the resolution transmitting the
4 report as amended with unanimous approval of the Commission.

5 Yes, Commissioner Commons?

6 COMMISSIONER COMMONS: For the record, I just
7 want to thank Commissioner Gandara, who is not here, who
8 was the Presiding Member, for the excellent effort he did
9 in making this report what it is.

10 COMMISSIONER SCHWEICKART: All right. Let's
11 move on to Item 5, Mr. Chamberlain?

12 MR. CHAMBERLAIN: Yes, Commissioner Schweickart.
13 The purpose of this item, as the Commission is well aware,
14 the Commission has been involved for quite a number of years
15 now in the situation in the northwest, the developing
16 situation of there being more surplus power in the northwest
17 than people hoped for a few years ago.

18 As you know, our relationship with the Bonneville
19 Power Administration has been rocky at times, but in
20 recent months, has taken a turn for the better in that
21 Bonneville appears to have accepted a number of the
22 recommendations that we've made in the last two rate cases,
23 and in particular, is very serious about attempting to
24 market surplus power to California.

25 In the most recent rate case proposal, several

1 hundred average megawatts of surplus energy were made
2 available at a relatively attractive rate. So there is
3 substantial prospect of negotiations occurring between
4 California utilities and the Bonneville Power Administration.
5 Now, at times in the past, these negotiations have
6 had difficulties with both sides either not understanding
7 what the other side was saying, or perhaps making statements
8 that for lack of knowledge, were causing a breakdown of
9 negotiations.
10 The Commission has not been involved in those
11 discussions and the purpose of this contract is to provide
12 assistance to Bonneville, and to provide the Commission an
13 opportunity to be more fully apprised of what is going on
14 in those negotiations over the next couple of years.
15 The purpose of the contract is to provide a
16 Commission attorney to Bonneville for a period of up to
17 two years during the course of negotiations between
18 Bonneville and California utilities, to assist in that
19 effort and hopefully to bring about a resolution that will
20 greater carry out the policies that the Commission has been
21 advocating now for quite a number of years.
22 COMMISSIONER SCHWEICKART: All right. Are there
23 any questions or comments, or questions for Mr. Chamberlain
24 regarding the proposed contract? Yes, Commissioner Commons?
25 COMMISSIONER COMMONS: Mr. Chamberlain, can you

1 give me a little history as to how this arose?

2 MR. CHAMBERLAIN: Well, as I indicated, the

3 general problem has arisen over time as -- or I should say

4 the general opportunity has arisen over time as the surplus

5 power in the northwest has grown with their recognition

6 that previous estimates of tremendous growth rates were

7 incorrect, and therefore, now they're projecting much more

8 reasonable growth rates in the northwest.

9 Therefore, they are now ready, very ready to

10 market surplus power. At the same time, the Commission in

11 the past had taken a very, at times had to take a confrontive

12 position with BPA. We're involved in litigation with them

13 on a number of matters, and I believe that over the last

14 few months with BPA indicating this reasonableness, or this

15 level of reasonableness in moving toward the direction that

16 the Commission had been urging, it was felt that some --

17 COMMISSIONER COMMONS: Let me be specific. This

18 contract, is the initiative coming from BPA or from the

19 Commission, the contracting?

20 MR. CHAMBERLAIN: I believe it came -- it arose

21 in mutual discussions between the two agencies. I'm not

22 sure I could answer your question in terms of whose idea

23 it was at first. We had discussions with the general

24 counsel's office at BPA.

25 COMMISSIONER SCHWEICKART: Let me respond to a

1 certain extent, since I've had a tangential involvement
2 since the principal involved has been my adviser for a bit,
3 and clearly, we've had interaction, Commissioner Commons,
4 at many different levels, both the leadership of the two
5 organizations involved, as well as the legal staffs of the
6 two organizations involved, and it's become quite apparent
7 over the years that there is clearly mutual benefit to both
8 the Pacific Northwest and California citizens with improved
9 -- both improved relationships, and in particular, improved
10 understanding and cooperation between the two agencies in --
11 from time to time, let me say, in those various discussions
12 and proceedings.
13 Mr. Burger has become known by both sides to be a
14 reasonable and competent attorney who has exhibited a
15 considerable interest in these issues, and who in the
16 opinion of the legal -- the general counsel of BPA, could
17 facilitate improved understanding as these discussions and
18 negotiations move forward.
19 I think as general counsel has indicated, this
20 has been one of those concepts which has grown up on both
21 sides, and recognized as advantageous to both the Pacific
22 Northwest and California in terms of a person familiar with
23 the circumstances who could constructively add to the
24 current improvement in relations. So I think it's really a
25 mutual item.

1 COMMISSIONER COMMONS: Well, if we were to vote
2 to approve this contract, would I be correct in the assump-
3 tion that the contract is also acceptable to BPA, and they
4 are in essence requesting us to approve it?
5 MR. CHAMBERLAIN: Yes. That's my understanding,
6 is that BPA has put together the papers that it requires,
7 in fact, you have them before you, they're on U.S.
8 Department of Energy, Bonneville Power Administration forms
9 in your packet.
10 COMMISSIONER SCHWEICKART: Yeah. The particular
11 statement of work, and other items before us, were developed,
12 to my understanding, by the general counsel of Bonneville
13 Power Administration.
14 MR. CHAMBERLAIN: That's correct.
15 COMMISSIONER SCHWEICKART: That's correct, is it
16 not, Mr. Burger?
17 MR. BURGER: The chief deputy general counsel at
18 Bonneville and the deputy who is in charge for the legal
19 office of power services issues.
20 EXECUTIVE DIRECTOR GEESMAN: Our personnel unit
21 has also been in contact with their personnel unit in
22 working out some of the technical terms of the agreement.
23 COMMISSIONER SCHWEICKART: Were there other
24 questions before we move to comments?
25 COMMISSIONER EDSON: Yes. What further steps are

1 required before this contract would be considered final?
2 Are there further approvals required here in the State of
3 California?
4 MR. BURGER: My understanding is that due to a
5 quirk in nonconsonant bureauracies, what would otherwise
6 be an interagency personnel agreement handled strictly
7 between the agencies involved, must be handled adminis-
8 tratively as a contract. Because it's a contract, it has
9 to obtain a freeze exemption from the Resources Agency, and
T.3 10 a sign-off from the Department of General Services.
11 COMMISSIONER EDSON: Do we have any indication of
12 their attitude toward this contract?
13 MR. BURGER: Speaking on my behalf, I have no
14 indication of their inclinations.
15 COMMISSIONER SCHWEICKART: All right. Let's take
16 public comment. Mr. Gardner?
17 MR. GARDNER: Mr. Chairman, members of the
18 Commission, Mike Gardner representing Southern California
19 Edison. I am here this morning specifically at the request
20 of Glen Bjorklund, Vice President of Systems Development
21 with Southern California Edison, and also representing
22 PGandE.
23 We are significantly concerned by this proposed
24 contract. We have been, for some time now, involved in
25 negotiations with Bonneville Power Administration for both

1 short and long-term purchases of power. It was our
2 understanding that the Energy Commission's role was to be
3 one of support and cooperation, and we frankly do not see
4 this contract as one of support and cooperation, we see it
5 in something of a different light.
6 We have had discussions as recently as yesterday
7 with BPA's senior management, Ed Sankowitz (phonetic) who
8 I believe is the Deputy Administrator, told Edison personnel
9 yesterday that while he was aware of the contract in general,
10 he was not aware of the scope of work, and that he would not
11 support the scope of work.
12 It was his understanding that the attorney from
13 the Energy Commission was to assist with an understaffing
14 condition in the BPA legal department, but that the attorney
15 would not be involved in any way with negotiations with
16 California utilities for power sales.
17 There are several items in the proposed scope of
18 work that would indicate that it is the intention of the
19 contract for the attorney to be directly involved in
20 negotiations, a couple of short quotes are from page 1 of
21 the attachment to the business meeting, "enable the
22 Commission to directly participate in the development and
23 execution of such contracts."
24 COMMISSIONER EDSON: Are you reading from the work
25 statement that is attached to the contract, or from something

1 else?

2 MR. GARDNER: Commissioner Edson, that one was

3 from the blue cover sheet prepared by the Energy Commission

4 staff and signed by Commissioner Schweickart.

5 COMMISSIONER EDSON: So that's part of the agenda

6 package but not part of the contract?

7 MR. GARDNER: That's correct. Similar references

8 in the contract itself would be under scope of work,

9 Section 1.2, page 1 of Attachment 2. "The attorney provided

10 by the contractor", which is the Energy Commission, "will

11 contact representatives of California utilities and state

12 agencies to inquire, or provide information related to the

13 possible sale of energy to California utilities."

14 It is our understanding that BPA's senior

15 management was not aware of that intent, and does not

16 support that intent. We would ask the Commission to not

17 take action on this contract today, but to try to straighten

18 out the potential misunderstanding, take the matter up at

19 a time when the Chairman of this Commission, who is the

20 Governor's chief energy adviser, can be present for

21 consideration of the contract, and participate in the

22 discussion concerning the contract.

23 COMMISSIONER EDSON: Is there something in

24 particular about the Commission's policies that have been

25 put forth in terms of northwest power purchases that SCE

1 is opposed to? I guess my difficulty is what makes you
2 think we are going to thwart the state's interest?
3 MR. GARDNER: Well, in particular, our ongoing
4 negotiations with BPA, which were progressing extremely
5 well recently, have cooled somewhat, at about the same time
6 that this contract became known. I'm not saying that there
7 is necessarily a connection there, we've not been told that
8 by BPA, we also have not been told that there is no
9 connection.
10 COMMISSIONER EDSON: Is there someplace where the
11 state's interests and SCE's interests differ?
12 MR. GARDNER: We hope not, but there have been
13 statements and actions that cause us to wonder. There have
14 been statements on the part of Commission staff, and the
15 Commissioners themselves regarding the cents per kilowatt-
16 hour that California utilities would be willing to pay for
17 surplus power. Those numbers are not always consistent with
18 the numbers that have been discussed in the negotiations.
19 We find ourselves being put in the position of the
20 state attempting to do the industry's work, it appears.
21 COMMISSIONER EDSON: I think I'm still a little
22 puzzled about where Edison's interests and the state's
23 interests diverge.
24 MR. GARDNER: I'm not sure that they do, but I
25 don't believe that this contract will further the interests

1 of either.

2 COMMISSIONER SCHWEICKART: Mr. Gardner, are you
3 suggesting that Mr. Burger, with his experience, would not
4 add to the basic understanding within Bonneville/California
5 procedure, regulations and process, or general energy
6 situation?

7 MR. GARDNER: I think that perhaps Mr. Burger
8 could do that. I certainly, and Edison certainly does not
9 wish to impugne Mr. Burger's abilities or character in any
10 way.

11 COMMISSIONER SCHWEICKART: I think it's difficult
12 to find another -- other support, frankly, for what you're
13 saying, absent some identification of what it is that you
14 feel is counter to Edison, and if you're speaking for
15 PGandE, PGandE's interests, or where that differs from the
16 state interest.

17 It seems to me that in some sense what you're
18 saying is somehow you perceive that you're better off, and
19 that the state, since you're appealing to us, the ratepayers
20 of the state are better off if Bonneville is not aided by
21 the experience of Mr. Burger in terms of his familiarity
22 with energy issues, and policies and procedures here in the
23 State of California.

24 MR. GARDNER: Well, Mr. Chairman, my point is that
25 the deputy administrator of BPA has told us that he was not

1 familiar with the proposed scope of work.

2 COMMISSIONER SCHWEICKART: Are you representing

3 the deputy administrator of BPA, Mr. Gardner?

4 MR. GARDNER: I am representing that the deputy

5 administrator of BPA told Edison yesterday that he was not

6 familiar with the scope of work, and that he did not support

7 the scope of work, and he gave us permission to use his name.

8 COMMISSIONER EDSON: Well, he also has telephones

9 at his disposal, and telegrams at his disposal, and to date

10 we've -- I've certainly received nothing, I don't know about

11 the other Commissioners.

12 COMMISSIONER SCHWEICKART: I haven't either.

13 COMMISSIONER EDSON: I have another question, it

14 really goes to the timing of your concerns. I think this

15 item was originally noticed several business meetings ago.

16 I think the -- was this material not distributed in that

17 agenda package as well?

18 EXECUTIVE DIRECTOR GEESMAN: I believe that is

19 correct. The Chairman had asked, I believe, for the agenda

20 of the last meeting, that this specific item not be formally

21 agendaed because he wanted an opportunity to discuss it with

22 other Commissioners first, and I know that created a time

23 concern on the part of BPA.

24 So, I'd raise that to your attention. There is

25 some sense of urgency about the timing on this. You've also

1 got to take into account the time that will be expended in
2 obtaining any freeze exemptions as well. So that your
3 action today is not necessarily the final step on this
4 contract.
5 COMMISSIONER EDSON: Well, I guess I just want to
6 note that this item has been distributed and known of for
7 some time. I'm a little surprised that we're now, for the
8 first time, hearing of Edison's concerns.
9 MR. GARDNER: Commissioner, it may very well have
10 been previously distributed. It had not come to my attention,
11 or the Edison Company's attention prior to receiving the
12 present backup package late last week.
13 COMMISSIONER EDSON: Well, I believe it was in the
14 backup package several business meetings ago, is that not
15 the case?
16 EXECUTIVE DIRECTOR GEESMAN: I think you may be
17 incorrect there.
18 COMMISSIONER EDSON: All right, I apologize.
19 EXECUTIVE DIRECTOR GEESMAN: I think the Chairman
20 made his request to me before we had mailed out an agenda
21 for that earlier meeting.
22 COMMISSIONER SCHWEICKART: Commissioner Commons?
23 Oh, excuse me, Commissioner Edson?
24 COMMISSIONER EDSON: No, I just had one more
25 question. Is it possible, given the time constraints that

1 we're facing, is it possible subsequent to approval of a
2 contract like this, that the contract be amended?
3 MR. CHAMBERLAIN: I'm sorry, I didn't hear the
4 last half of your sentence, subsequent to the approval --
5 COMMISSIONER EDSON: Well, as I understand Mr.
6 Geesman's comments, we are operating under some time
7 constraints. In the event that the contract was approved
8 today, and these problems that Mr. Gardner suggests BPA
9 has with the contract are brought to the Commission's
10 attention, would there be some subsequent opportunity to
11 amend the contract? Is there anything to preclude that
12 from happening?
13 MR. CHAMBERLAIN: No, there isn't, and in fact,
14 the contract, by its own terms provides that either side
15 can terminate the contract upon 30 days written notice of
16 intent. So to the extent that the problems that Mr. Gardner
17 raises, in fact, exist, I would expect that BPA will in
18 fact not actually execute the contract, even though they
19 appear to have offered it at this time.
20 COMMISSIONER SCHWEICKART: And presumably, Mr.
21 Chamberlain, by legal process, if amendment of the contract
22 lies within that provision as a less dramatic action, that
23 would also be possible, that is, amendment short of
24 cancellation?
25 MR. CHAMBERLAIN: Certainly.

1 COMMISSIONER SCHWEICKART: Commissioner Commons?
2 COMMISSIONER COMMONS: Well, I think there are two
3 elements in the contract that we're looking at here, one is
4 to improve relations and coordination between BPA and the
5 State of California, and to assist BPA in understanding the
6 State of California's interest and the legal processes of
7 the State of California.
8 The second is an issue that is raised by Mr.
9 Gardner as to the role of a member of the Energy Commission
10 in negotiating with utilities. To any extent that there's
11 any inference in the statement of work, which I don't see
12 in the statement of work, that Mr. Burger would be partici-
13 pating in negotiations, I would think that would be a
14 conflict of interest and not appropriate to the California
15 Energy Commission.
16 To the extent that there's language on the blue
17 sheet that might infer that, my understanding, that the
18 motion does not incorporate the language on the blue sheet
19 in terms of the purpose, and I am clearly not in support of
20 Mr. Burger participating in negotiations with California
21 utilities, I don't think that is appropriate.
22 However, in terms of reading the scope of work,
23 or the statement of work that is specifically part of the
24 contract, if I were to draft it, I may have, I think from
25 the California Energy Commission's perspective, and it

1 wasn't drafted by us, and so maybe that's why that language
2 is not there, as to specifically exclude Mr. Burger from
3 said participation in negotiations.
4 I'm wondering if that is part of our activity,
5 what the attitude of Southern California Edison would be,
6 because I understand their viewpoint or comment on that
7 second part of the matter.
8 MR. GARDNER: Commissioner, that is certainly part
9 of our concern. I believe you're correct that the statement
10 of work attached to the contract does not indicate the same
11 activities as does the statement of work attached to the
12 backup package.
13 However, the inconsistency between the two
14 documents certainly tends to raise the question as to what
15 the Commission's intent actually is.
16 COMMISSIONER SCHWEICKART: Mr. Gardner, let's
17 resolve that. I'll move this contract, and clarify that
18 the intent of the Commission is entirely consistent with the
19 statement of work contained within that contract, which is
20 then legally binding.
21 COMMISSIONER COMMONS: Mr. Chairman, before I
22 second that, would you also include that it is your
23 understanding of the statement of work that Mr. Burger
24 shall not participate in negotiations with California
25 utilities?

1 COMMISSIONER SCHWEICKART: Commissioner Commons,
2 I would not oppose here, it is my -- I am saying that that
3 is the case, but I would not propose here to amend, or
4 attempt amending the statement of work which has, in fact,
5 been discussed at considerable length with Bonneville and
6 the wording worked out with elaborate discussion.
7 Mr. Burger, could you clarify your understanding
8 of that statement of work, and the way in which it is
9 interpreted by Bonneville?
10 MR. BURGER: My discussions have, as I noted
11 earlier, been with Mr. Harvey Spigal, who is the chief
12 deputy general counsel at Bonneville Power Administration
13 and the chief lawyer reporting to the deputy administrator
14 referred to by Mr. Gardner, Ed Sankowitz (phonetic).
15 The scope of work discussed is exactly as written.
16 I proposed the idea to Mr. Spigal that it will be an issue,
17 at least I thought, in my opinion, it would be an issue in
18 California to ensure that California, as a state, receives
19 the benefit of the expenditures that will be made by the
20 State of California to pay part of my salary during the
21 term of the contract; and that to best ensure that the
22 state receive the benefit, that I would like to represent
23 to the Commission that I would be in a position to not
24 participate directly, but observe negotiations between the
25 California utilities and BPA, and was given authorization by

1 Mr. Spigal to make that representation to the Commission
2 which I did in the form of the issue memo that covers the
3 contract.
4 COMMISSIONER SCHWEICKART: And so the answer, then,
5 is that you will not be participating in the -- you will
6 not be negotiating the contracts, or directly involved in
7 negotiating the contracts.
8 MR. BURGER: No.
9 COMMISSIONER SCHWEICKART: You may be an observer
10 to that process.
11 MR. BURGER: I will not be a negotiator or
12 directly participating in the negotiations.
13 COMMISSIONER SCHWEICKART: All right, we have a
14 motion, is there a second?
15 MR. GARDNER: Mr. Chairman, could I ask a question?
16 COMMISSIONER SCHWEICKART: Yes, Mr. Gardner.
17 MR. GARDNER: I wondered if by observe, Mr.
18 Burger meant, you know, physically sit in the room where
19 people are attempting to negotiate a contract, and watch
20 and listen to what is being said, and what's being offered
21 by the different parties? If that's the case, I think that
22 that would be a significant damper to negotiations.
23 COMMISSIONER SCHWEICKART: How does Mr. Burger
24 become so powerful, Mr. Gardner?
25 MR. GARDNER: Mr. Burger is --

1 COMMISSIONER SCHWEICKART: He's got a beard, and
2 he --
3 MR. GARDNER: Mr. Schweickart, I used to have a
4 beard also, if I recall correctly, you did also.
5 COMMISSIONER SCHWEICKART: Were you that powerful?
6 You're just observing --
7 MR. GARDNER: My point is that Mr. Burger would
8 be representing, presumably, at that point, two agencies.
9 Generally speaking, negotiations, contract negotiations
10 work best when the parties themselves, and only the parties
11 are involved. Certainly you've been involved in negotiations
12 on things, and if you had a third party sitting and watching
13 and listening, regardless of how neutral that party was
14 supposed to be, I think you would feel somewhat hampered
15 by that.
16 I think that Edison would object strenuously to
17 having the actual negotiations observed by anyone. This
18 is a business arrangement.
19 COMMISSIONER SCHWEICKART: Including one of their
20 own employees?
21 MR. GARDNER: One of Edison's employees? One of
22 Edison's employees would be --
23 COMMISSIONER SCHWEICKART: No, one of BPA's
24 employees.
25 MR. GARDNER: If that person was solely representing

1 BPA, no. I don't believe so. If that person was also
2 reporting to the Energy Commission, yes, I do believe so.
3 Or if they were reporting to any other agency of government
4 or some private party.
5 COMMISSIONER SCHWEICKART: This takes us back a
6 bit to Commissioner Edson's comments, but it seems to me
7 that there is a very clear and explicit perception on the
8 part of the California utilities that the California Energy
9 Commission is somehow in cahoots with the Pacific
10 Northwest against the interests of the ratepayers in
11 California. It's difficult to draw any other conclusion
12 from what it is you're saying.
13 MR. GARDNER: I wouldn't wish to imply that. We
14 are concerned that the Energy Commission is not aware of all
15 of our business concerns, that the Energy Commission does
16 not have the business experience and expertise.
17 COMMISSIONER SCHWEICKART: All right. Let me
18 ask, is there a second?
19 COMMISSIONER EDSON: I'll second the motion.
20 COMMISSIONER SCHWEICKART: All right.
21 COMMISSIONER COMMONS: I'd like to move to amend
22 the motion.
23 COMMISSIONER SCHWEICKART: Commissioner Commons?
24 COMMISSIONER COMMONS: I'd like to move to amend
25 the motion to adopt the contract as stated, and that the

1 Commission directs that Mr. Burger shall not directly
2 participate in negotiations. That statement is not part of
3 the contract, or an amendment to the contract, it's rather
4 our Commission direction to Mr. Burger, and that should be,
5 shall not directly participate in negotiations with
6 California utilities.
7 COMMISSIONER SCHWEICKART: I consider that a
8 friendly amendment. Without objection, we'll unanimously
9 pass the -- adopt the motion.
10 Item 6, I'll move Item 6. Is there a second?
11 COMMISSIONER COMMONS: Second.
12 COMMISSIONER SCHWEICKART: Without objection.
13 Item 7, there is a request to remove Item 7 b.
14 from the consent calendar to bring it directly before the
15 Commission, and I'll defer to Commissioner Edson to present
16 that.
17 EXECUTIVE DIRECTOR GEESMAN: I should also
18 indicate that Item a.4. has been pulled.
19 COMMISSIONER SCHWEICKART: All right. Item a.4.
20 has been removed, and we'll deal first with Item 7 b.
21 directly.
22 COMMISSIONER EDSON: Item 7 b. is pulled not
23 because it's controversial, but because as a contract, I
24 think it was thought best that it come before the Commission
25 for an actual vote of the Commission. As you know, from

1 reading the agenda package, the City of Gardena is unable
2 to use the full amount of the original award, traffic
3 signal timing award made by the Commission. This takes the
4 funds that are remaining and gives them to the next eligible
5 city, which in this case is the City of Redding.
6 I would move the item.
7 COMMISSIONER SCHWEICKART: Second? Without
8 objection, the approval of -- the item is adopted, and this
9 is a contract?
10 COMMISSIONER EDSON: Yes. It's a change to
11 the City of Gardena contract, and a new contract with the
12 City of Redding, is that correctly stated?
13 COMMISSIONER SCHWEICKART: I'll move the consent
14 calendar as amended, which then retains items a.1., 2. and 3.
15 Without objection, we'll adopt the consent calendar.
16 Are there any minutes? Yes, we have the minutes
17 of February 9th, and I would move the minutes. Without
18 objection we'll approve the minutes.
19 Any Commission Policy Committee reports? John,
20 do we have the legislation, Legislative Policy Committee
21 Reports?
22 EXECUTIVE DIRECTOR GEESMAN: I have a memo which
23 I believe went to all of you, dated May 2nd, from the
24 Chairman, the Presiding Member of the Government Relations
25 Committee containing recommendations on particular bills.

1 COMMISSIONER SCHWEICKART: I believe that the
2 Commission may wish to discuss these prior to any delibera-
3 tion on them. I believe there are some questions about these
4 particular bills which are suggested, and I have some
5 questions about omissions from this list, which you may
6 want to advise Ms. Stetson that I find a need for explanation
7 why the residential building standards bills are not
8 included in the package for Commission position today.
9 EXECUTIVE DIRECTOR GEESMAN: My understanding is
10 that the Committee --
11 COMMISSIONER SCHWEICKART: I would propose we
12 put this over until after lunch.
13 EXECUTIVE DIRECTOR GEESMAN: Okay.
14 COMMISSIONER SCHWEICKART: All right. We may
15 be able to dispose of other items here. Is there a General
16 Counsel Report on --
17 MR. URBAN: We have no report.
18 COMMISSIONER SCHWEICKART: Okay. Either in the
19 PUC proceedings or General Counsel's Report?
20 MR. URBAN: Nothing.
21 COMMISSIONER SCHWEICKART: All right, is there
22 any Executive Director's Report?
23 EXECUTIVE DIRECTOR GEESMAN: The story in the
24 "Sacramento Bee" this morning by Ted Bell on the disruption
25 in flow of oil because of the Coalinga earthquake, we had

1 that information yesterday. One thing not contained, and
2 the story was -- the indication from Getty, they expect the
3 pipeline to resume operation within a couple of days, don't
4 anticipate a problem with respect to the supply of crude
5 oil to the Bay Area refineries. That's all I had.
6 COMMISSIONER SCHWEICKART: All right. Let me
7 suggest that we have one person who indicated a desire to
8 address the Commission for five minutes, and I would
9 suggest that we dispose of that so that the individual does
10 not have to stay around until after we resume. Mr. William
11 Smith, I believe it's William Smith.
12 MR. SMITH: Right, William Michael Smith, that's
13 probably as common as you're going to get.
14 I've spent the last eight years of my statistics
15 education, I'm educated at Cal State Hayward, they're
16 supposedly number two to Chicago University in statistics
17 because of the professors that are using the same books that
18 their professors wrote, that's for the world, now, and
19 that's a pretty good educational base there.
20 I've taken that to the street, and being from San
21 Leandro, that's the only city in the country to grow
22 industrially every year for the last 30, 35 years. They have
23 taken small businesses, and it's gone down smaller and
24 smaller from the large corporation structures.
25 I intend to do 10 operating subdivisions under the

1 mother corporation, and the first company is about to hit
2 the street with products, it will be conservation rather than
3 solar, and it will be insulation -- insulating thermal
4 windows, rather. The window right now is infiltration and
5 it has problems with its R-value, it's only a standard of
6 one. If you have a double window, you have an R-value of
7 about two.
8 Now, my thermal window will allow the physics,
9 the chemistry, the engineering problems to be solved, and
10 the production problems, and materials are solved to allow
11 an R-value addition of approximately six. Now, in reducing
12 this to practice, I'm given the tax credit situation, and
13 I've spent the past two days channeling around my old
14 associates here at the Commission and the Capitol, and what
15 have us, politically.
16 Now, my outlook on the solar and conservation tax
17 credit bills is based upon statistics. The consumer is being
18 educated. I don't intend to educate the consumer, I intend
19 to share by having a commodity item. And by having a
20 commodity item, and having 10 advancements in evolving the
21 technology, I will not have competition from the large
22 corporations, or the small corporations, they won't be
23 able to replicate what I've accomplished.
24 You know, these things are all statistically
25 sound, and my being a source of knowledge, and channeling

1 to the people, such as Lawrence, at Lawrence-Berkeley, and
2 the physicists, and the engineers in the government, and
3 the chemists, I've been able to solve the materials problem,
4 which is a classic Harvard case study. It takes eight years
5 to duplicate an industry that's already established, such
6 as the utilities.
7 Now, I am doing essentially 10 classic Harvard
8 case studies, because I'm going to have 10 operating
9 subdivisions addressing all the thermal energy end uses.
10 Now, with the first operating division having the passive
11 solar effect of heating something behind glazing, with a
12 greenhouse affect, I have material which is exclusive to
13 me, and I have people to manufacture the material, I have
14 people to manufacture end-use components to get myself
15 started, so I can do my own products, and the people I'm
16 going to have manufacture are the largest in the world.
17 They happen to be in this country, and the marketplace for
18 the products happens to be here.
19 The tax credits allow a -- to me 40 percent extra
20 mark-up on my products. The consumer is getting a return
21 on their investments, or they're getting a payback, and
22 there's many different analyses, but the proper analysis
23 for the consumer is return on investment.
24 With the products that I'm going to place on the
25 marketplace, the consumer will get between a 6 and 10 time

1 return, minimum, for each and every product, or else it
2 won't go on the marketplace. Now, this will determine the
3 return to me. Now, I can charge a pretty healthy sum if
4 there's an open marketplace, such as the thermal windows
5 on the commercial buildings, which doesn't happen to be part
6 of the tax bill, so I'll have to lobby that.
7 But if you look at the situation of economics,
8 and the approach to the bills here, the bills are written
9 for the manufacturers so that they can have a marginally
10 cost-effective system, which is inflationary, not with
11 inflation, but with the cost of fuel inflation. That will
12 raise the cost of their solar systems.
13 My sister is in Carmichael here, she broke into
14 solar energy five months ago, and at Christmas she bragged
15 how she had set a monthly sales record with 1,000 employees
16 and this number one outfit that sells solar systems is
17 number one for their sales persons, and you have a push
18 sales.
19 Now, I'm going to have poll sales, because the
20 people are going to be knowledgeable about what they're
21 doing, and it's going to be a commodity because it's going
22 to be addressable to the masses, because everybody but
23 everybody is going to be able to afford these systems for
24 what they use and their energy use.
25 Now, my sister just happened to make $10,000 in

her second month and set a monthly sales record for the company for one month. Now that's push sales, she walks in and does a classic cold call, which is what -- somebody walks in and hands you a turkey, okay, and you either kick them out --

COMMISSIONER SCHWEICKART: Mr. Smith --

MR. SMITH: I'll try and confine my remarks.

COMMISSIONER SCHWEICKART: Yes. You now have spoken for seven minuts, and if you could kind of wrap up what it is you wanted to --

MR. SMITH: My purpose in solar energy is to be a big business promoter. This will cause my affiliations to become a billion dollar association, a billion dollar affiliation, a billion dollar corporation, and I expect to do it in record time since the energy use is there, it's the decade of the 80's, and it's conservation technologies, which is what solar is, it's a conservation technology.

Now, with the approach to the statistics, I have harped, and I have pleaded, and consulted free to the different institutions for the last five years or so. The knowledge base that I have is justifiable once I have products on the market.

Now, in order to establish that marketplace, I'm given a tax credit bill which looks at the marginal cost-effectiveness which is inflationary. I can use the mark-up,

1 I can use the money to get myself going, but I don't need,
2 but I can use it. Now -- and it's also structured so I
3 can leverage the economics which will cause things to hurry
4 up, which is fine and dandy for all the other manufacturers,
5 but if they cut out things like the hot tub and spa cover,
6 and the pool cover, then the other manufacturers are hurting,
7 because they've got things on the market that kill children,
8 they have a bubble cover. Now I can't lobby here, I've
9 got to go to the federal.
10 You have to have a safety, not a safe item. They're
11 circumventing the law, and they're given a license to kill.
12 Now I must undermine all the knowledge that's being put down
13 here. Now, I'm deinstitutionalized. Now, this is an
14 institutional thing, having a tax credit. I don't need an
15 institution.
16 However, I am using, I'm exploiting every type of
17 institution that's been involved which has been necessary.
18 Now, statistically, I should succeed. Now, with the
19 statistical data base that I've tried to establish with the
20 Federal Building Energy Performance Standards, the SAFE
21 BIDCOE, the Public Utility Commission programs, the SRCC,
22 everybody who's involved, they have to have statistics on
23 the life of the materials.
24 When the materials problem is solved, I will do --
25 I will have tests done to show that my materials will last

1 longer, and thus, justify my economical opinion. Now, the
2 PGandE is going to look at my systems, Lawrence-Berkeley
3 Laboratory is going to look at my systems, I'm associated with
4 the people who wrote the computer programs that do modeling
5 and they will rewrite the terms into the algorithms that
6 will model my systems, and show that they're economically
7 better, and these systems will have no problem going onto
8 the marketplace, and the knowledge will filter to the Energy
9 Commission.
10 But there's still no statistical comparison, no
11 data base, and for the SAFE BIDCOE to honor my little
12 products that each and every one will go to BIDCOE for a
13 quarter of a million dollars of leveraging, which will fit
14 fine and dandy, but when I look at the bill, it's not
15 written for the people. The people are not being educated
16 properly.
17 I'm not going to go out and educate the people,
18 I'm going to poke them in the side.
19 COMMISSIONER COMMONS: Do you have a specific
20 recommendation for the Commission? All the information you
21 have is interesting, but what are you recommending that we do?
22 MR. SMITH: The Public Adviser suggested that I
23 ask in the Committee report--they're researching, all the
24 programs was approved. Okay. I spoke to Michael DeAngelis
25 before I came down, he said he knew the gentleman at the

1 Solar Energy Research Institute that has -- now this is --
2 you'd have to destroy all the materials to determine the
3 life, to get a projected life.
4 COMMISSIONER COMMONS: May I suggest, I'm the
5 Presiding Member of that Committee. Why don't we get
6 together outside of the Commission meeting, and maybe I
7 can assist you in what your needs are.
8 MR. SMITH: Okay, I wanted --
9 COMMISSIONER SCHWEICKART: All right. Mr. Smith,
10 please.
11 MR. SMITH: Fine.
12 COMMISSIONER SCHWEICKART: Thank you very much.
13 The Commission is adjourned for lunch, we'll resume at
14 2:00 p.m. Commissioner Commons is requesting an executive
15 session. What's your preference, immediately, or do you
16 want a delay?
17 COMMISSIONER COMMONS: I'd like to have --
18 COMMISSIONER SCHWEICKART: No, I'm saying do you
19 want it now, or do you want it at 1:00 o'clock, say, or
20 1:30.
21 COMMISSIONER COMMONS: At the Chairman's request,
22 at the Chairman's time designation, just the three
23 Commissioners.
24 MR. URBAN: Well, you do have to have a secretary
25 to take minutes.

1 COMMISSIONER COMMONS: And a secretary.

2 MR. URBAN: And I believe you also have to state

3 the basis, in general terms, of the executive session for

4 the record.

5 COMMISSIONER SCHWEICKART: It's a personnel matter.

6 COMMISSIONER COMMONS: Personnel.

7 COMMISSIONER SCHWEICKART: Let me suggest, if

8 we're to resume at 2:00 o'clock, would 1:30 be appropriate?

9 COMMISSIONER COMMONS: Fine.

10 COMMISSIONER SCHWEICKART: All right, thank you.

11 1:30 in my office.

12 (Thereupon the morning session of the business

13 meeting of the California Energy Resources Conservation and

14 Development Commission was recessed for lunch at 12:40 p.m.)

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1 AFTERNOON SESSION

2 --o0o--

3 COMMISSIONER SCHWEICKART: All right. Let's
4 reconvene. Commissioner Commons, you've got two minutes.
5 COMMISSIONER COMMONS: Yes. The inserted report
6 from the Sitings Procedure Committee --
7 COMMISSIONER SCHWEICKART: With your leave, could
8 I just take something in order that -- the Commission met
9 in executive session on personnel matters, and discussed
10 the process by which the Commission would move forward
11 toward Executive Director selection at the appropriate time.
12 Excuse me.
13 COMMISSIONER COMMONS: The Felando bill, AB 2948
14 effective January 1983 amended Section 25522 of the Public
15 Resource Code so that the Commission is now required to
16 take specific actions. The Siting Procedure Committee
17 plans a rulemaking proceeding to amend the Commission's
18 siting regulations affected by the bill, and as the
19 Presiding Member of the Committee, we will prepare an
20 order instituting a rulemaking procedure pursuant to
21 Section 122 of the regulations, and move that it be adopted
22 by the Commission.
23 In doing so, what we are going to try to do is
24 to combine two or three items at the same time so that we
25 don't have a rulemaking proceeding for different items, and

1 the purpose of bringing this before the Commission is to
2 put on public record that we are moving forward to implement
3 the regulations of the Felando bill, thank you.
4 COMMISSIONER SCHWEICKART: Thank you. The last
5 item, then, is the legislative -- the bills that we have
6 before us through the Government Relations Committee, and
7 was Luree going to be here?
8 EXECUTIVE DIRECTOR GEESMAN: She was going to
9 join us, and I actually expected her to be here by now. She
10 was aware that you were reconvening at 2:00.
11 SECRETARY MATHIES: I'll get her.
12 COMMISSIONER SCHWEICKART: Yeah. John, she's
13 probably pulling some materials on building standards bills,
14 but I think if her staff could continue -- there we go.
15 MS. STETSON: Good afternoon. I think you have a
16 packet of bills in front of you, and I understand there
17 will be one other additional bill being added, AB 163, and
18 I have copies of the bill now to hand out, and we'll be
19 having copies of testimony that Ted Rauh presented in the
20 Assembly Natural Resources Committee that are being run off
21 and that will be down shortly to be distributed to you.
22 Before that comes down, I thought we could take
23 up SB 5, which is Senator Montoya's bill that allows a local
24 applicant to come before the Energy Commission for siting of
25 any type of power plant under 50 megawatts, or any nonthermal

1 project over 50.

2 The bill is being amended, and just to give you an
3 update on the analyses that was attached, the Senator is
4 now thinking of instead of limiting it to cogeneration to
5 keep it as is and allow the local governments the option
6 of passing an ordinance as to whether they want to come
7 before the Commission, or have local applicants come to
8 them for siting of different types of power projects.

9 His feeling is that that would eliminate the
10 opposition from the League of California Cities and their
11 concern being local control. Originally, the League wanted
12 the local applicant to go to the local jurisdiction and
13 if there were any problems, the Energy Commission could then
14 hear an appeal by the applicant.

15 We indicated that we would not look forward to that,
16 and would rather see a bifurcation and the applicant saying
17 that he either goes to the local level or comes to the
18 Energy Commission.

19 COMMISSIONER EDSON: I actually have a problem
20 with that position. How has that position been transmitted?

21 MS. STETSON: I'm sorry?

22 COMMISSIONER EDSON: I don't -- you said that we've
23 indicated that we don't like the League's suggestion?

24 MS. STETSON: Well, the Government Relations
25 Committee and the staff have come up with some amendments to

1 the bill, and there was concern by staff that we would
2 therefore be the final arbitrator on controversial decisions
3 and that that would not be the most appropriate position for
4 the Commission. I think Mr. Deter is here and probably
5 could address that issue.
6 COMMISSIONER COMMONS: I have a question. Are we
7 negotiating on a bill prior to the Commission's having a
8 position?
9 MS. STETSON: No. We've indicated to the author
10 that -- well, this is a unique situation. The author was
11 concerned about the City of Rosemead's situation in which
12 the California Federal Savings and Loan was putting in a
13 cogeneration project of 3 megawatts, and after some concern
14 and some requirements made by the local city council of
15 Cal Federal, Senator Montoya became interested in the project,
16 as Senator -- excuse me, asked Commissioner Gandara to come
17 down to a council meeting.
18 I believe staff went down and basically explained
19 how the technology works, didn't take a particular position,
20 but just explained the impacts of cogeneration projects and
21 so forth.
22 The Senator then was told that the city had
23 turned down the application. He was concerned that cogenera-
24 tion is not being sited, or could be delayed by arbitrary
25 decisions of local government that don't really understand

1 alternative energy, and that there must be a better approach.
2 He asked me if we had any ideas on that. I had
3 given him language that was in AB -- excuse me, in 1981
4 Biennial Report that basically said that -- and I think it
5 spells it out in your analysis, that the Commission should
6 look at the siting of alternative energies. If you see on
7 the bottom of page 2, the Legislature should examine which
8 nonthermal electricity sources, or electric facilities less
9 than 50 megawatts would benefit from a consolidated
10 expedited state siting authority, and provide applicants
11 with that option in appropriate cases.
12 Now, without conferring with us, he stuck that in
13 as a bill, and so that's basically how we got to where we
14 are today. We've been working with him, since there are
15 some problems with the League on the issue of local control,
16 since the original language had come from us, we have sat
17 down and tried to explain to him both sides of the story
18 from a local government's perspective, and also from our
19 perspective.
20 We have not negotiated any amendments to the bill
21 at this point. He has indicated to us that he would like
22 to sit us down and the League down and work out these
23 differences.
24 COMMISSIONER EDSON: Well, I would point out that
25 the latest BR, BR-IV, backed away from the 1981 recommendation.

1 In fact, the latest BR would imply that the Commission is
2 fairly skeptical of that alternative. I have some problems
3 with the bill as it's currently drafted in that I think
4 allowing applicants to essentially comparison shop between
5 regulators is not particularly good public policy.
6 The League -- I'm surprised at the League's
7 suggestion which is similar to a housing appeals board that
8 has been proposed at various times in recent years, that
9 they have always opposed strenuously. The bill analysis,
10 which by the way, I thought was quite thorough and well done,
11 lists out a series of different options that have been
12 talked about at various times.
13 One, of course, is the proposal that's put forward
14 in SB 5, coupled with a requirement that local governments
15 to compile detailed lists in advance, or essentially adopt
16 local ordinances governing what kind of information would
17 have to be provided.
18 A second alternative is one that, as I understand
19 the analysis, has been proposed by the staff, which would
20 be for the Commission to establish an aggressive permit
21 assistance unit within the staff. The advantage of that
22 being that the cost implications for the state, and the
23 staffing implications for the Commission are much less.
24 A third approach is the one offered by the League
25 of Cities, having the Commission as the final arbitrator, so to

1 speak; and the last approach, which I think is what the
2 Committee is recommending, I personally think involves the
3 worst components of all the previous three. It combines
4 the comparison shopping with the very limited technical
5 assistance unit, one that I fear would not be sufficient
6 to provide the kind of assistance that's really most needed.
7 This fifth alternative that you outlined that the
8 Senator is considering, is interesting. I hadn't thought
9 of that possibility, the possibility of allowing locals,
10 essentially, to trigger the option of applicants going to
11 the Commission.
12 MS. STETSON: We had not thought of that either.
13 We had thought about the local siting assistance to make
14 this a more encompassing bill, and allow us to help the
15 locals that don't want to come to the Commission, because
16 that was part of the problem with Rosemead, that the local,
17 as I understand it, the local employees with the city, didn't
18 really understand the process, and EIR's and so forth, and
19 I think our staff was informally explaining to them some of
20 the problems. But some of the paperwork had been messed up.
21 But what we were trying to do was to -- and let
22 me tell you that the Senator has switched back and forth as
23 to whether he wants this to apply to all technologies or
24 just cogeneration. As it stands now, it would be all
25 technologies, with the locals being able to pass an ordinance

1 as to whether they would want applicants to come to the
2 Commission or go to them, but --
3 COMMISSIONER COMMONS: What is the timing on this
4 bill?
5 MS. STETSON: This bill is on the floor.
6 COMMISSIONER COMMONS: Of the Senate?
7 MS. STETSON: Of the Senate.
8 COMMISSIONER COMMONS: Do we have time -- do we
9 have two weeks?
10 MS. STETSON: I don't know when the Senator wants
11 to take it up. He would like to amend it before it goes
12 to the Assembly, and work out the problems with the League
13 and any concerns we may have.
14 COMMISSIONER COMMONS: I would like to solicit
15 by actually noticing, I think this is a very significant
16 bill in terms of the Commission and should not be handled
17 without actually soliciting, and maybe even making it an
18 agenda item, and solicit opinions from both utilities,
19 cogeneration, third party applicants, and municipalities.
20 MS. STETSON: Well, if you'll notice on the analysis
21 the Municipal Utility Association supports this, SMUD
22 supports this, the other utilities I don't believe have
23 taken official positions, but they don't oppose the concept.
24 I don't know where third party producers would be.
25 The basic amendments that we were recommending

1 were things that were worked out with staff and the
2 Government Relations Committee, a minimum 1 megawatt
3 limitation, so we would not get involved in residential,
4 merely commercial, industrial, larger projects. An escrow
5 account which would take care of staffing problems that
6 would occur, since we wouldn't know how many applicants
7 would be coming to us versus the local governments, the
8 concept of an escrow account set up at finance, and then
9 as local applicants came in, finance could reimburse us for
10 that.
11 Also as a means of justifying our locational
12 analyses work, that was the other concept.
13 COMMISSIONER EDSON: All of that assumes that
14 the Commission will take a position supporting, actually
15 having siting jurisdiction over these small projects.
16 MS. STETSON: Correct.
17 COMMISSIONER COMMONS: Was the Committee unanimous
18 in its opinion?
19 MS. STETSON: I believe so.
20 COMMISSIONER COMMONS: In the Government Relations
21 Committee?
22 MR. URBAN: They didn't vote, as I recall. There
23 was no voiced dissent.
24 MS. STETSON: There was no voiced dissent.
25 MR. URBAN: But there were -- some of the concerns

1 that are being raised now were raised both ways in the
2 discussion.
3 COMMISSIONER EDSON: I guess it also surprises
4 me that we would oppose what the League of Cities is
5 suggesting because it undermines local control. I mean, I --
6 COMMISSIONER SCHWEICKART: But the whole -- I mean
7 I'm a little puzzled by this whole thing, because notwith-
8 standing the change in the last BR, the initial issue here
9 was that developers of these projects, below the 50 megawatt
10 limit, were still subject, essentially, to the basic problem
11 that existed prior to the establishment of the Energy
12 Commission, namely, 20, 30, 40 permits being required for
13 a project to go forward.
14 So that the whole concept initially in BR-III,
15 and perhaps as far back as BR-II, circled around, in fact,
16 the ability of an applicant for a power plant to avoid
17 exactly that, to avoid local government, specifically, and
18 the necessity for a whole set of permits.
19 So putting it now at the option of local government,
20 it seems to me totally muddies the water in terms of the
21 basic concept. Furthermore, as I understand it at least,
22 there are overlapping local permitting agencies outside of
23 the one-stop shopping concept here at the Commission, where
24 one would have to say, which local government, or which
25 entity does the city give away to the Commission, and retain

1 to itself, a water district's authority to permit, or
2 things of that kind.
3 So it seems to me to be rather internally
4 inconsistent, and I'm a bit confused about the whole matter,
5 and how it's gotten to this point.
6 COMMISSIONER EDSON: Well, Commissioner Schweickart,
7 I would argue that you have oversimplified the origins of
8 the Warren-Alquist Act. It was not simply because local
9 governments had created roadblocks to the development of
10 power plants, or that it was a complicated process.
11 COMMISSIONER SCHWEICKART: I would suggest that
12 is the total rationale for the existence of the Warren-
13 Alquist Act. The idea of one-stop shopping, I think --
14 COMMISSIONER EDSON: Well, I think coupling to
15 the -- what we fear is that insufficient electricity would
16 be available in California.
17 COMMISSIONER COMMONS: One point that might be
18 helpful is if we were to take the position that is set here,
19 I think the Commission should have the ability on the small
20 power plants to refuse jurisdiction, and to require the
21 applicant to go through the local jurisdiction.
22 If in the Commission's opinion the primary
23 questions at hand are really very much affected by a
24 particular local municipality, and that's it. Particularly
25 if we're talking about some of the very small ones, they

1 might just be a local issue, and I think that's an issue
2 that should be discussed. I'm not sure where I would stand
3 on it, but I think it's -- to say that we have to do it,
4 I think we should consider whether or not we have the
5 ability to have someone go through a local jurisdiction,
6 which is an in-between position.
7 COMMISSIONER SCHWEICKART: Let me ask this. What's
8 the Commission's desire? It seems to me we've got enough
9 questions, I can't imagine three of us coming down with a
10 single position at this time.
11 COMMISSIONER EDSON: I have a question of staff.
12 COMMISSIONER COMMONS: I'd like to hear some of
13 the people that are here, if they have something to state.
14 There are some utility people here and others.
15 COMMISSIONER SCHWEICKART: All right, Let me
16 get Commissioner Edson's question from staff, and then we'll
17 hear from any other parties.
18 COMMISSIONER EDSON: Well, I think the concerns
19 that -- my concern about this idea all along has been that
20 although there are a few isolated instances that have come
21 to our attention, the projects that have not moved forward,
22 like the Rosemead project, I'm not aware that it's a
23 widespread problem.
24 I would back -- so I'm interested in hearing
25 whether there is evidence of other problems, first of all.

1 MR. DETER: No, there's not. As a matter of fact,
2 that's one of the reasons why BR-IV was changed from the
3 analysis in BR-III. The recommendation in BR-IV was that
4 the staff should do a study to find out whether or not there
5 were widespread problems, and then what the solution would
6 be for the problems identified, because the solutions for
7 different technologies could differ, depending upon the
8 problems identified, because there's a dramatic difference
9 between a 3 megawatt cogeneration facility in Rosemead and
10 a 49 megawatt geothermal power plant in wherever, or a large
11 wind farm.
12 Staff's original analysis of SB 5 and position was
13 that the Commission should not try to usurp jurisdiction
14 from the local government, but that it should develop, or
15 take a look at the existing siting process in the local
16 city and county government, and if there were problems
17 associated with that siting process, in other words, if
18 the developers were -- or if the counties were ratcheting
19 developers, and unduly extending the process, then the
20 Commission should pass legislation which would streamline
21 the process, and make it much more difficult, make the
22 process more certain.
23 That in conjunction with that, that we should
24 develop a permit assistance function to work with the
25 counties and work with developers. There's many counties in

1 California. There's 58 counties in California. Many of
2 those counties have a very small staff, know nothing about
3 energy facilities, and so forth, and may wish to have us
4 help them, but where they would still retain the ultimate
5 decision.
6 Our concern at the beginning was that, as
7 Commissioner Commons points out, there's many decisions that
8 will be made that are really local decisions, and really,
9 the state should not step in to make those decisions. So,
10 that's what our position was.
11 The Committee had a discussion, and came up with
12 the recommendation that you see before you now.
13 COMMISSIONER COMMONS: Where are we going to get
14 the money for the technical assistance, and if a local
15 jurisdiction wants to do its siting, shouldn't they --
16 shouldn't it pay its own way?
17 MR. DETER: Well, the local jurisdiction which
18 does siting now, does pay its own way.
19 COMMISSIONER SCHWEICKART: Well, they levy fees.
20 MR. DETER: They have fees, and to a comment that
21 Commissioner Schweickart made earlier, the agency that has
22 the primary lead in siting facilities in the local government
23 are the land use agencies. It's essentially a land use
24 permit, and they're the ones that have the local -- for both
25 in cities and counties. The water, the building, et cetera,

1 is secondary permits.

2 As far as fees are concerned for a permit assis-
3 tance function, I would argue that it's a logical use for
4 our special account funds to have a permit assistance
5 function because that is getting on-line more renewable
6 resources, and alternative technologies that the Committee
7 by policy, in its Biennial Report, recommends that the
8 developers and the utilities get electricity from.

9 So it seems to me that that's a logical and a
10 good use of those funds, because those come from the
11 ratepayers of all the citizens of California, and if it's
12 good for the general ratepayers, then it seems to me it's
13 a logical use of those funds.

14 COMMISSIONER EDSON: I actually am comfortable
15 with the initial staff recommendation which is that the
16 -- because there is not evidence of widespread problems,
17 that by suggesting that the bill be amended to have the
18 Commission establish a technical assistance unit here at
19 the Commission, we've actually accomplished two things.

20 We will be in a position to provide assistance
21 where it is needed, and also be aware of if problems actually
22 exist out there, because we'll have people devoted to that
23 function. We, of course, would need staffing and funding
24 to do that.

25 MS. STETSON: I had indicated that to the author,

1 that we were looking at that issue, and again, his concern
2 is trying to solve the problems at the local level, as he
3 sees them, and his belief is that if the Energy Commission
4 had more of a oversight authority over local decisions, that
5 we could have resolved the Rosemead issue.
6 Now, mind you, he's changed his position several
7 times, but he's been fairly strong on trying to solve the
8 issue of local city councils, or city governments, not --
9 COMMISSIONER EDSON: Well, if we establish a
10 state regulatory process every time there was a local
11 permitting problem, we'd have pretty bloated bureaucracies
12 around here.
13 COMMISSIONER SCHWEICKART: I'd ask, is there any
14 other comment on this point? All right. I think it's
15 unlikely that we're going to have a single position here,
16 but frankly, I think this issue of Energy Commission
17 jurisdiction in this matter is so muddy that my own
18 recommendation would be to go neutral on this bill, and as
19 it evolves, it may come back with some specific things,
20 but I think that provides maximum flexibility, and frankly,
21 I think it's an issue which we may not be terribly helpful
22 in taking a hard position on.
23 COMMISSIONER EDSON: I wouldn't take any position
24 now, we're better off taking no position and continuing
25 this to the next business meeting.

1 COMMISSIONER COMMONS: That's what I was going to --
2 I'd like to move we continue this to the next business
3 meeting.
4 COMMISSIONER SCHWEICKART: Second. Without
5 objection, we're on to the next one.
6 MS. STETSON: SB 1054 --
7 COMMISSIONER SCHWEICKART: Let me just make a
8 statement here, Luree. It is my position and, again, my
9 understanding that the position of Commissioners Gandara
10 and the Chairman, both of whom are absent, that the
11 Commission opposes, or that they oppose, and I oppose, the
12 -- any bill which extends, or eliminates, or reopens the
13 residential building standards as a general statement.
14 Clearly, one of the problems that we had, not
15 with this particular bill, but with the Goggin bill, is the
16 very late and rapid formulation of the bill, perhaps not
17 even being in print the day it's brought before the
18 Committee, and therefore, the Commission with its timing
19 cannot, in fact, take a formal position.
20 I talked, then, with Commissioner Gandara and the
21 Chairman, and it is my understanding that they both support
22 a Commission position in principle, which then would allow,
23 with a bill number change, or another late bill, or a spot
24 bill being picked up, or whatever, a formal Commission
25 position on any bill which has those characteristics.

1 With that in mind, I would recommend opposition to
2 SB 1054, but further, I would move opposition of the
3 Commission to any bill which does extend or delay, or
4 require extension or delay of the residential building
5 standards implementation.
6 COMMISSIONER EDSON: I'd second that.
7 COMMISSIONER SCHWEICKART: Commissioner Commons?
8 COMMISSIONER COMMONS: The Chairman asked me to
9 provide a courtesy vote for him on the specific bill, or
10 set of bills. He had not discussed with me as to any
11 general extension, and I'd like to ask a question before I
12 -- before we vote, because you've added a second item to
13 your statement.
14 My understanding is, and I'm not on the Standards
15 Committee, is that the Committee is in negotiation with the
16 builders on trying to make some modifications to make the
17 existing standards more workable through the industry, and
18 that the Chairman's, and Commissioner Gandara also
19 discussed this with me, objection to these bills was based
20 primarily on that we were currently in negotiation with the
21 industry in good faith, and that it would be inappropriate
22 at this time, while we are working on this negotiating
23 process, to resolve some problems, to take any action in
24 the Legislature that might turn out to be counterproductive.
25 COMMISSIONER SCHWEICKART: Commissioner Commons, I

1 would respond to that with a slight variation on your
2 description, that is, the opposition to delay of the
3 standards, and opposition to any specific bills which
4 embody a delay is not because we are working with the
5 industry, it is because the standards were adopted back in
6 1981 -- was it '81 or '82?
7 EXECUTIVE DIRECTOR GEESMAN: '81.
8 COMMISSIONER SCHWEICKART: '81. That they had
9 been developed through three years of -- two and a half to
10 three years of work prior to that, and literally many
11 dozen hearings around the state, and that they were at the
12 last minute against the recommendations of many people
13 delayed again last year as a final one-time thing.
14 The work that we are currently doing with the
15 industry to address their implementation problems in
16 implementing the standards is independent of that, and the
17 Commission's position is that the standards should go into
18 effect as -- actually, I should be a little bit careful.
19 The standards are actually in effect. That they
20 become fully mandatory on June 15th of this year, as they
21 are currently scheduled to do without further delay.
22 COMMISSIONER COMMONS: My question is -- I
23 understand your position, but I'm trying to -- the Chairman
24 made a request to me, and he didn't cover the second part
25 of your resolution with me, and what I'm trying to understand

1 from you, is in your discussions with the Chairman, since
2 you are on the Committee together, or have discussed this
3 matter, did he indicate to you that no matter how we
4 resolve or don't resolve our differences with the industry
5 on the modifications, that he would be in support of
6 opposing any and all bills that would extend the deadline,
7 or otherwise on the building standards, or was he just in
8 opposition to the bills?
9 I'm just trying to understand what his position
10 was so I vote the way you understand, and since it was not
11 covered with me.
12 COMMISSIONER SCHWEICKART: I want to try to
13 carefully state what my understanding was. I believe that
14 the Chairman's position is that he opposes any bill which
15 delays the implementation of the building standards. We
16 did discuss that. We've definitely discussed specific
17 bills which are -- this and the Goggin bill, and others
18 which were moving last week, and which have ended up in
19 various traps and pits and slowdowns, or whatever, and
20 there's no question that he opposes on that basis those
21 bills.
22 I cannot state explicitly that I know he would
23 support, because I don't think I actually discussed it in
24 explicit terms, do you mean by your support of what I'm
25 proposing that you will.

1 COMMISSIONER COMMONS: Would you --
2 COMMISSIONER SCHWEICKART: But I must say
3 generally that it is my understanding. In terms of
4 Commissioner Gandara, it is very explicit and clear, because
5 we had a much more extended discussion than I did with the
6 Chairman.
7 COMMISSIONER COMMONS: All right, Commissioner
8 Gandara expressed his opinion to me, but he specifically
9 stated that he did not ask for me to give a courtesy vote.
10 Would it be possible that we vote on the four bills, and
11 that we withhold the other part of your resolution until
12 the other Commissioners are there?
13 COMMISSIONER SCHWEICKART: Commissioner Commons,
14 I need not point out that it is whatever you are comfortable
15 with, because you are in the driver's seat, as we always
16 end up with, when we have three people, any one person is it.
17 So, let me say if you are comfortable only in voting for,
18 or in casting a vote in support of, or in opposition, in
19 this case, to specific bills, then I will so move.
20 COMMISSIONER COMMONS: Well, if you break the
21 resolution in two parts, you may accomplish both your
22 purposes.
23 COMMISSIONER SCHWEICKART: All right. Let me move
24 then opposition to AB -- I moved here, SB 1054, and Luree,
25 what is the designation of the Goggin Bill?

1 MS. STETSON: AB 163.
2 COMMISSIONER SCHWEICKART: AB 163, and let me
3 just make that motion, and I presume the second --
4 COMMISSIONER EDSON: The second stands.
5 COMMISSIONER SCHWEICKART: The second stands,
6 and then without opposition, the Commission then formally
7 opposes those two bills.
8 I will now move that the Commission oppose any
9 bills which extend or delay the implementation of the
10 residential building standards.
11 COMMISSIONER COMMONS: Can you limit that to this
12 legislative session or something like that? You mean
13 forever and ever and ever, or --
14 COMMISSIONER SCHWEICKART: Well, again, let me
15 say that my motion stands. Let's discuss --
16 COMMISSIONER EDSON: We can't bind any future
17 Commission.
18 COMMISSIONER SCHWEICKART: Not only can we not
19 bind any future Commission, but in fact, with that position,
20 it is only relevant in this particular session.
21 COMMISSIONER COMMONS: Good, if we want to change
22 our opinion we have a right to do so at some future
23 Commission meeting.
24 COMMISSIONER EDSON: Right.
25 COMMISSIONER COMMONS: So I have no opposition, and

1 I'm voting for myself here, it should be noted, not on
2 behalf of the Chairman.
3 COMMISSIONER SCHWEICKART: All right, then the
4 Commission's position is so registered.
5 MS. STETSON: And just to add to that, the
6 current bills that extend or delay building standards are
7 AB 163, AB 1276 by Assemblyman Wyman.
8 COMMISSIONER EDSON: 12 what? I'm sorry.
9 MS. STETSON: 1276. AB 1697 by Assemblyman
10 McClintock, and SB 891 which was by Senator Greene and
11 died in Committee two weeks ago. There are a series of
12 what we call spot bills that could be amended to extend or
13 delay and we will monitor those carefully, and when they
14 are amended either to extend or delay the standards, we
15 will duly notify.
16 COMMISSIONER EDSON: Would you agree that AB 163
17 appears to be the primary vehicle right now?
18 MS. STETSON: From the Assembly, yes. There's
19 nothing primarily from the Senate that's moving right now.
20 COMMISSIONER SCHWEICKART: All right. Luree, let
21 me ask whether you anticipate, then, in response to
22 legislative questions, or in a hearing, or any other forum
23 that you can see, do you see now any ambiguity in terms of
24 being able to respond what the Commission's formal position
25 is?

1 MS. STETSON: No, we have a formal approved
2 Commission position.
3 COMMISSIONER SCHWEICKART: All right.
4 EXECUTIVE DIRECTOR GEESMAN: I have a question.
5 COMMISSIONER SCHWEICKART: Yes.
6 EXECUTIVE DIRECTOR GEESMAN: For purposes of
7 determining statements I make in the Legislature, does this
8 indicate that you've taken a formal position which you
9 would expect me to convey?
10 COMMISSIONER SCHWEICKART: Yes, this is the
11 Commission's position.
12 COMMISSIONER COMMONS: I think based on our
13 previous resolution, if you are referring to that --
14 EXECUTIVE DIRECTOR GEESMAN: Yes.
15 COMMISSIONER COMMONS: It's not a question of
16 we're expecting you to say, or not expecting you to say,
17 but you have a right to say.
18 COMMISSIONER SCHWEICKART: No, I'm expecting him
19 to say.
20 COMMISSIONER COMMONS: That's a matter probably
21 between the Chairman or the Presiding Member and the
22 Executive Director. I don't think the Commission can say.
23 COMMISSIONER SCHWEICKART: All right. Well, let
24 me just say that the -- as I recall having been in the seat
25 for a while, that the statute directs the Chairman to direct

1 the Executive Director, or the Public Adviser, and the staff
2 in keeping with the policies of the Commission which have
3 just been stated to the opposition to delay of the building
4 standards.
5 All right, let's move on to --
6 COMMISSIONER COMMONS: I have a question on this
7 testimony of Ted Rauh before you proceed to the next bill.
8 COMMISSIONER SCHWEICKART: All right. I do want
9 to move on, because I have to literally be out of here by
10 3:00 o'clock. I have critical calls before I --
11 COMMISSIONER COMMONS: Okay. Let me discuss this
12 with John outside of the Commission meeting.
13 COMMISSIONER SCHWEICKART: I appreciate that.
14 1752?
15 MS. STETSON: AB 1752 is by Assemblyman Ross
16 Johnson, and it automatically abolishes most state agencies
17 according to a specified time table. The bill that he had
18 introduced in 1981, but was never taken up by Legislative
19 Policy Committees, for the Resources Agency, in which the
20 Energy Commission is included, we would have to be abolished
21 by June of 1987, unless we could prove to the Joint
22 Legislative Audit Committee, and policy committees in the
23 Legislature as to why we are necessary.
24 One of the issues that was raised was the cost of
25 having a complete review process established in such a

1 detailed manner as this bill. It was pointed out the
2 State of Colorado recently had spent over $200,000 on a
3 sunset program which resulted in a savings of $6,000 and --
4 COMMISSIONER SCHWEICKART: I'll bet it was the
5 bureaucrats who did the accounting.
6 MS. STETSON: And the Government Relations
7 Committee position is to oppose on a 1-0 vote to oppose.
8 COMMISSIONER COMMONS: I have a question. Have
9 there ever been any bills introduced into the Legislature
10 to abolish the Commission?
11 (Laughter)
12 MS. STETSON: Yes, as a matter of fact, there have
13 been.
14 COMMISSIONER COMMONS: Does the Legislature not
15 have the ability to abolish the Commission when they see
16 that it no longer serves the purpose that it was originally
17 created?
18 MS. STETSON: That's correct. The staff feels
19 that there are numerous ways of going about the same
20 process. The budget process, for example, allows the
21 Legislature authority to eliminate programs, departments,
22 or agencies that aren't functioning as they see fit. The
23 Governor has reorganization authority that he can invoke
24 when necessary, and there have been several bills to -- as
25 you pointed out, to look at reorganizing the Energy

1 Commission. So it is a power that they currently have.
2 COMMISSIONER COMMONS: Does the bill include a
3 method whereby the state could site power plants if there
4 were no Energy Commission?
5 MS. STETSON: No, it doesn't deal to the Energy
6 Commission specifically, it just talks about the process
7 that would be established. We would have to submit to the
8 Joint Legislative Audit Committee and to the Energy Policy
9 Committees our rationale for why we were necessary.
10 COMMISSIONER COMMONS: It sounds to me like we're
11 talking about, almost like creating another agency, another
12 bureaucratic maze, and it would be a real way to hold up
13 development of energy projects in the state that were in the
14 best interests of the state, and that we have other ways of
15 handling the problems if they occur.
16 So, I move we oppose.
17 COMMISSIONER EDSON: Second.
18 COMMISSIONER SCHWEICKART: Without objection,
19 register an opposition to 1752. 1820?
20 MS. STETSON: Yes. The last bill is AB 1820 by
21 Assemblyman Condit which would codify an executive order
22 outlining the process by which agencies can appeal decisions
23 made by the Office of Administrative Law.
24 Assemblyman Condit believes that the Governor's
25 office doesn't give enough adequate notice to OAL, and OAL

1 a chance to respond to different petitions that are made of
2 the Governor to overturn OAL rulings, and the Assemblyman
3 would like to codify a specific process for this.
4 We recommend a support with an amendment that
5 would state that the OAL must reimburse any agency for
6 expenses incurred, if that agency won in an overruling,
7 and the reason for that is that all agencies pay money to
8 OAL for any review they do currently, so if the agency
9 won, we think it is only fair that OAL would then reimburse
10 the agency for the trouble the agency went through.
11 COMMISSIONER COMMONS: I move we adopt the
12 Committee position.
13 COMMISSIONER EDSON: I second that.
14 COMMISSIONER SCHWEICKART: Let me ask a question
15 about it, however. Luree, the executive order, if it's the
16 one I'm thinking of, and maybe Mark can speak to this, the
17 executive -- oh, I see, it's right here.
18 As I recall, the executive order provides the
19 authority for override of emergency regulation only.
20 MR. URBAN: No, it's all regulations. As a matter
21 of fact, it doesn't deal with emergency ones because there
22 was some question under an earlier version of the Adminis-
23 trative Procedure Act as to whether emergency regulations
24 were even subject to the Governor's override.
25 COMMISSIONER SCHWEICKART: Mark, I --

1 MR. URBAN: This was the one we used for the --
2 I think it was the appliance standards.
3 COMMISSIONER SCHWEICKART: I'm sorry, but my
4 recollection is rather specific, and it was a somewhat
5 ironic situation where one could not -- an agency could not
6 appeal to the Governor's office to override a normal --
7 MR. URBAN: No, it was the other way around that
8 was ironic. It was you could appeal to override a normal
9 one, but not an emergency one, that was the case that involved
10 the change in the welfare laws, where the state needed to
11 save several million dollars, made the changes in the
12 welfare regulations, they did it on an emergency basis.
13 OAL knocked it out, they appealed to the Governor, and then
14 the court said that the Governor had no authority to
15 override it.
16 COMMISSIONER SCHWEICKART: All right. I stand
17 corrected on that. So this then does not change the
18 ability of the Governor's office, or appeal to the Governor
19 to override OAL, except -- that is, it does not provide
20 any additional authority for override on the part of the
21 Governor. It retains only the normal OAL procedures --
22 MR. URBAN: It establishes the statutory procedure
23 for the Governor's consideration of this. It doesn't have
24 any substantive value.
25 COMMISSIONER SCHWEICKART: All right. I would

support the motion before us, but frankly, I would recommend a further amendment to ensure that there is an override possibility on the emergency decisions, also, which are generally more timely.

MR. URBAN: Yes, that's already been done by statute after that go around a couple of years ago, the Legislature took care of that, so now they can do both. The case you're thinking about occurred a couple of years ago.

COMMISSIONER SCHWEICKART: All right. That's all right with me. Without objection then, we support the -- I'm sorry?

COMMISSIONER COMMONS: Are you going to technically pull back your amendment?

COMMISSIONER SCHWEICKART: It was not an amendment, I just suggested that that be further considered.

So, then, without objection, we support the bill with amendment.

MS. STETSON: Those were the only bills that were on the agenda for today.

COMMISSIONER EDSON: I have a question about one of your consent bills.

MS. STETSON: Okay.

COMMISSIONER EDSON: AB 1718 by Assemblyman Leonard, prescriptive versus performance.

1 COMMISSIONER SCHWEICKART: You're bringing
2 something else up?
3 COMMISSIONER EDSON: This is here, this bill.
4 COMMISSIONER SCHWEICKART: Okay. I have a choice,
5 I either step out, in which case we don't have a quorum, or
6 I call for about a ten minute break.
7 COMMISSIONER EDSON: This takes 30 seconds, I
8 think it's a very quick one.
9 COMMISSIONER SCHWEICKART: Could you tell him if
10 he can hold for 30 seconds?
11 COMMISSIONER EDSON: Senator Neilson carried
12 legislation several years ago in this same area, and our
13 legal office reviewed it and suggested amendments. I don't
14 think the bill was ever enacted, but this sounds like a
15 very similar piece of legislation. Was that looked at?
16 MS. STETSON: I don't believe my staff looked at
17 any former Neilsen bill. However, the legal office was
18 involved in review of this bill.
19 COMMISSIONER EDSON: Okay, that's fine.
20 MR. URBAN: One thing that's confusing to me is
21 that the recommendation, in that we've reviewed was a
22 neutral if amended, and this one down here is a neutral.
23 Does that mean the amendments have already been made in the
24 bill that had to do with substitution of agency judgments,
25 that sort of thing?

1 MS. STETSON: That's a good point.
2 COMMISSIONER SCHWEICKART: Let me ask, is there
3 any further Commission action, or can this be dealt with
4 separate from the Commission?
5 COMMISSIONER COMMONS: One other thing --
6 COMMISSIONER SCHWEICKART: Yes. Commissioner
7 Commons reminds me that the executive session today is
8 continued to --
9 COMMISSIONER COMMONS: 9:00 o'clock Thursday.
10 COMMISSIONER SCHWEICKART: -- 9:00 o'clock on
11 Thursday.
12 COMMISSIONER EDSON: A week from tomorrow.
13 COMMISSIONER SCHWEICKART: A week from tomorrow.
14 All right. The meeting stands adjourned.
15 (Thereupon the business meeting of the California
16 Energy Resources Conservation and Development Commission was
17 adjourned at 2:55 p.m.)
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REPORTER'S CERTIFICATE

I, PATRICIA A. PETRILLA, an electronic court reporter, do hereby certify under penalty of perjury:

That I am a disinterested person herein; that the foregoing hearing of the California Energy Resources Conservation and Development Commission was reported by me, Patricia A. Petrilla, an electronic court reporter, and thereafter transcribed into typewriting.

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

I have hereunto set my hand this 12th day of May, 1983.

Patricia A. Petrilla

PATRICIA A. PETRILLA