

CALIF. ENERGY COMMISSION

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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

BUSINESS MEETING

1516 NINTH STREET
1st FLOOR HEARING ROOM
SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 16, 1983

10:15 A.M.

Reported by: Patricia A. Petrilla

Video/Audio Recording Services, Inc.
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(916) 452-2653

BARON ERAFCABLE BOND

COMMISSIONERS PRESENT

- 1
- 2 Charles R. Imbrecht, Chairman
- 3 Arturo Gandara, Vice Chairman
- 4 Russell L. Schweickart, Commissioner
- 5 Karen K. Edson, Commissioner
- 6 Geoffrey D. Commons, Commissioner

EX OFFICIO

- 7
- 8 Bill Foley

STAFF PRESENT

- 9
- 10 Randall M. Ward, Executive Director
- 11 John Chandley
- 12 Ron Kukulka
- 13 Leon Vann
- 14 Red Rauh
- 15 R. Michael Martin
- 16 John Wilson
- 17 Karen Griffin
- 18 Ray Tuvell
- 19 Claudia Barker
- 20 Luree Stetson
- 21 Linda Greule, Secretary

PUBLIC ADVISER'S OFFICE

- 22
- 23 Ernesto Perez
- 24
- 25

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P R O C E E D I N G S

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3 CHAIRMAN IMBRECHT: I'd ask everyone to take
4 their seats please, and we'll call the meeting to order.

5 (Agenda Item No. 1 under separate cover.)

6 COMMISSIONER GANDARA: Mr. Chairman?

7 CHAIRMAN IMBRECHT: Yes?

8 COMMISSIONER GANDARA: I'd like to request a
9 change in the order of the materials in the business meeting
10 today. We've been engaged in this quarterly review process,
11 and this work plan issue is still -- is not fully resolved,
12 and I'm concerned that some of the items on the agenda
13 would have an effect on that work plan.

14 So I would propose that we address the issue of
15 the work plan quarterly review first, and approval of that.
16 I don't know whether that would actually fall under the
17 Executive Director's Report, that would mean moving Item
18 No. 9 up.

19 CHAIRMAN IMBRECHT: That's where it's --

20 EXECUTIVE DIRECTOR WARD: That's correct. What
21 I would like to do is have an opportunity to get my -- the
22 division chiefs here. I tentatively schedule 11:00 o'clock,
23 that would be the time we would get to the Executive
24 Director's Report.

25 CHAIRMAN IMBRECHT: Is that acceptable?

1 COMMISSIONER GANDARA: A five minute break, 10
2 minute break?

3 EXECUTIVE DIRECTOR WARD: Yeah, that would be, I
4 think --

5 COMMISSIONER GANDARA: That would be fine.

6 CHAIRMAN IMBRECHT: Okay. You really don't believe
7 we can move to any of the other issues absent that?

8 COMMISSIONER GANDARA: No.

9 CHAIRMAN IMBRECHT: Okay. Well, I think we'll
10 take a brief recess and ask you to --

11 EXECUTIVE DIRECTOR WARD: Thank you.

12 CHAIRMAN IMBRECHT: -- bring the divisions chiefs
13 here.

14 (Brief recess.)

15 CHAIRMAN IMBRECHT: Okay. We'll call the meeting
16 back to order.

17 (Agenda Item No. 9 under separate cover.)

18 (Thereupon the morning session of the business
19 meeting of the California Energy Resources Conservation and
20 Development Commission was recessed for lunch at 12:48 p.m.)

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1 application and the staff recommends that this be discussed
2 at the committee hearing at the same time.

3 CHAIRMAN IMBRECHT: Is there concern of any member
4 of the Commission to the recommendation of staff?

5 COMMISSIONER SCHWEICKART: Let me indicate that
6 they are moving ahead with the first hearing on the amendments
7 to the building standards for submittal to the Building
8 Standards Commission and it's my understanding, Mr.
9 Chairman, we are incorporating this at least in draft at
10 this point, into the notice. Is that correct?

11 MR. CHANDLEY: I will do so if this petition is
12 granted.

13 COMMISSIONER SCHWEICKART: All right, I would move
14 that we grant the petition.

15 CHAIRMAN IMBRECHT: Okay. Moved by Commissioner
16 Schweickart. Seconded by Commissioner Gandara.

17 COMMISSIONER GANDARA: I have one question.

18 CHAIRMAN IMBRECHT: Sure.

19 COMMISSIONER GANDARA: Mr. Martin, since you work
20 both in appliances and I take it in residential building
21 standards, when you work on petitions of this nature is your
22 time charged to appliances or to residential building
23 standards?

24 MR. MARTIN: I'm not sure my time after 5:00
25 o'clock is charged to anybody this evening. I don't have

1 overtime charged. But it's my understanding that this
2 particular contract once I have got it past this stage, it
3 will be handled by different staff members. But it would be
4 part of buildings if I do have the task of continuing with
5 this.

6 COMMISSIONER GANDARA: So it shows up in resi-
7 dential building standards time sheets somewhere?

8 MR. MARTIN: It will do if this is assigned to me.
9 I suspect it won't be but that would be the case, yes sir.

10 COMMISSIONER GANDARA: Okay. From the time you
11 start working on these things.

12 MR. MARTIN: I have a blank time sheet. I'll make
13 a point of doing it that way, yes.

14 CHAIRMAN IMBRECHT: No one ever suggests that
15 you're not tenacious, Commissioner Gandara. Okay. Is there
16 objection to the unanimous roll call and adoption of the
17 petition for the rule making by Williams Furnace Company?

18 Hearing none, that will be the order.

19 COMMISSIONER GANDARA: You want to see somebody
20 that's persistent, wait till you meet Mr. Skafte.

21 (laughter)

22 CHAIRMAN IMBRECHT: Mr. who?

23 COMMISSIONER GANDARA: Skafte from Williams
24 Furnace.

25 MR. MARTIN: He's a nice guy too.

1 CHAIRMAN IMBRECHT: Thank you, Mr. Martin.
2 Now we'll turn to Item 4 which is the contract with the
3 University of California and analyze data on the energy
4 performance and cost-effectiveness of California buildings
5 and any result.

6 MR. WILSON: The goal of this contract is to
7 collect and evaluate actual data on energy use in several
8 different building types. The work will be done at the
9 University campuses at Berkeley and Riverside in conjunction
10 with LBL at Berkeley.

11 LBL has for many years been collecting data world-
12 wide on actual building performance and California has
13 tended to be rather under represented in that effort and so
14 in June LBL got a contract from the UC Institute to begin
15 work on a California specific data base and what they're
16 looking at now is a retrofit measures installed in state
17 buildings as well as collecting information on new energy
18 efficient homes that are already built.

19 CHAIRMAN IMBRECHT: Are there questions from the
20 Commission?

21 COMMISSIONER GANDARA: Yes.

22 CHAIRMAN IMBRECHT: Commissioner Gandara.

23 COMMISSIONER GANDARA: Mr. Wilson, where do the
24 funds for this contract come from? I mean were these part
25 of what was submitted in our budget or are these redirected

1 funds or do they come from PVEA, where -- I don't recall
2 this item being as one of the proposed contracts unless
3 my memory serves me wrong.

4 MR. WILSON: I think Karen Griffin knows the
5 budget specifics better than I.

6 MS. GRIFFIN: Do you want to do it?

7 MR. WILSON: No, go ahead, Karen.

8 MS. GRIFFIN: This is part of a building standards
9 contract that was in the budget and was approved and is the
10 work plan. It came in as a larger item and this is a sub-
11 component of that contract.

12 COMMISSIONER GANDARA: What was that item? How
13 large was it?

14 MR. RAUH: I think it was originally \$100,000.

15 COMMISSIONER GANDARA: And the purpose of it at
16 that time as we best knew?

17 MR. RAUH: I don't have that with me. I can go
18 upstairs and get it.

19 MS. GRIFFIN: It's building standards computer
20 analysis, wasn't it?

21 MR. RAUH: Yes, I believe so. It's part and
22 parcel of the material we -- the contract prioritization
23 that we submitted had this as a breakdown under the first
24 allocation approved in August and it's been subsequently
25 represented in the priority list that was presented to the

1 Commissioners as part of this budget or work plan review
2 process.

3 COMMISSIONER GANDARA: And will this collect
4 information on residential or nonresidential primarily, or
5 both equally, or how is that?

6 MR. RAUH: Well there is a 700 building sample of
7 new residential construction which will be included in the
8 BECA sample and not only will those be analyzed and entered
9 into their data base, but then they'll be able to go forward
10 to try to collect specific metered data on those homes and
11 therefore be able to ascertain the actual energy savings due
12 to the conservation features installed.

13 The other portion of the analysis will be on
14 public facilities that are retrofitted.

15 COMMISSIONER GANDARA: When you say analysis, I
16 just when I read the work statement I see more data collection
17 as opposed to analysis. Is there, you know, is there going
18 to be something that comes out of this that says that we can
19 say "X" about residential buildings and "X" about non-
20 residential buildings?

21 MR. WILSON: They will be analyzing the information
22 to try to correlate what conservation measures have been
23 installed and what the change in energy use was and then
24 also if they have information on the cost of those measures,
25 try to evaluate the cost effectiveness of it, of the

1 measures.

2 MR. RAUH: Task 3 describes the report they will
3 produce, which will include the assessment of the measures
4 analyzed and their performance and the cost effectiveness of
5 the building samples, compared with their national data base.

6 COMMISSIONER GANDARA: The other question that I
7 had is, as I read this, this is going to collect data on
8 pre-1983 Title 24, I mean pre-1983 standards and none of this
9 will be applicable to the new residential building standards?

10 MR. WILSON: If they find buildings that meet the
11 proposed office building standards and they can get infor-
12 mation on it, they will be looking at those buildings as
13 well. They're basically looking --

14 COMMISSIONER GANDARA: But the commercial
15 standards haven't been proposed -- or have been proposed.
16 They haven't been approved yet, right?

17 MR. RAUH: That's correct. Yes, the nonresidential
18 buildings that will not be looking at -- well, they'll be
19 looking at all buildings that have been built and those
20 buildings will be the full range of complying with Title 24
21 as it currently exists, up to high efficient new construction
22 and that's the range of the buildings. They won't be able
23 -- they won't test against the office standard because as
24 you point out, it's not in effect right now.

25 COMMISSIONER GANDARA: So again, what about the

1 residential part? Again, it's not the new residential
2 building standards information that we collected, right?

3 MR. WILSON: The residential portion of what we
4 will be funding with this contract will be homes that meet
5 the previous Title 24 standards because it's the HCD data
6 that goes back several years. LBL is also looking at, under
7 a separate contract, homes that do meet the new residential
8 building standards and that were built previous to the
9 effective date of those standards.

10 COMMISSIONER GANDARA: Is that a contract with us?

11 MR. WILSON: No. The funding comes from the UC
12 Institute and I suspect that money comes from DOE, but it's
13 not related to the CEC.

14 COMMISSIONER GANDARA: I guess my question would
15 be, why are we funding work to collect data on pre-1983
16 buildings as opposed to what might be more informationally
17 useful to us such as that which meets our standards already,
18 the ones that have been adopted and presumably there's
19 construction going on in that?

20 MR. RAUH: Well, the basic data exists and of
21 course there is a record on these homes. They have been
22 operated by people for a year or two years or more. So
23 there will be a full billing history which can be compared
24 for cost effectiveness base. It's assumed that within this
25 range of buildings some will be high efficient buildings

1 that may meet or exceed our standards. But none of them
2 would have been required to meet or exceed our standards.

3 COMMISSIONER GANDARA: Well, again I guess I'm --
4 perhaps I'm asking questions about the timing of the contract
5 and the inclusion of the data base. It seems to me to be
6 not clear what the apportionment is between the commercial
7 data that will be collected and the residential data that
8 will be collected. But in either case, they both seem to
9 be oriented toward past building criteria. Not ones that
10 we -- you know, particular in the residential area. Those
11 had already been adopted and most of the controversies
12 that I'm familiar with have to do with whether in fact the
13 1983 residential building standards will perform according to
14 the way that we expect them to. And so I guess my question
15 would be do we want to embark on a contract that will address
16 the issue of whether the old standards, I mean we're one
17 standard behind. I guess that's really my question.

18 MS. GRIFFIN: Sir, there's a great deal of con-
19 troversy about whether individual conservation measures,
20 taken collectively, do in fact achieve the savings which
21 engineering and economic analysis assert that they do.
22 That's the whole value of the BECA data base is that it gives
23 well metered, well analyzed for individual measures that
24 have actually happened, been built and then can be observed
25 in a combination of measures. So it's quite possible that

1 from the data from existing buildings we can apply that to
2 our new buildings. But certainly for the retrofit area or
3 for any kind of the existing residential market, a verifi-
4 cation of what we are actually achieving or not achieving
5 I think is absolutely essential and will improve the
6 quality of our forecast as well.

7 COMMISSIONER GANDARA: But didn't we get that data
8 from the Energy Commission contract with Cal State?

9 MS. GRIFFIN: No. Not this kind of detailed
10 metered data.

11 COMMISSIONER GANDARA: Well, why not? What's the
12 difference? We did have a contract with Cal State in which
13 they did collect a lot of data on a lot of homes and, in
14 fact, I think one of the persons working on that is now on
15 staff, and I also know that there is a substantial data
16 base based on the National Bureau of Standards work on the
17 homes that they'd built, that they in fact have metered data
18 over a period of years, and that was a publication I guess
19 came out about six months ago. I don't see that referred to
20 in the literature search.

21 I'm merely questioning why if it's old buildings
22 that there seems to be substantial data in that area, we
23 have to have a project which tests -- which is collecting
24 data on various conservation measures and so forth. I'm
25 trying to distinguish this from other data and the thing that

1 would make the difference to me would be if it is post-1983
2 residential buildings or buildings built to that, or the,
3 you know, buildings built to the new commercial standard
4 whenever that comes out. But I have some concerns as to
5 whether we're not just collecting data on an area where there
6 might already be available data. I don't understand the
7 distinction.

8 MS. GRIFFIN: But there is not available data.
9 This is the best national source that there is, the Cal
10 BECA data, and they include everybody's metered data. All
11 over the country people are contributing to Cal BECA whatever
12 they've got. In addition, Canada contributes, you know,
13 what they've got.

14 COMMISSIONER GANDARA: If it's the best national
15 source, how come they don't have data on California?

16 MS. GRIFFIN: Because nobody has ever paid to
17 collect it. That's why. Everybody else has paid to put
18 things in and we never have.

19 COMMISSIONER GANDARA: So there's been an effort
20 going on by Berkeley I guess on a national level that has
21 omitted California in this data base?

22 MR. RAUH: Well, there are some California homes
23 in there, in their overall national sample. But we as an
24 entity and I don't -- I'm not aware of any utility efforts
25 or anyone else who has collected specific data of this type,

1 have paid or provided that data to LBL to be inserted in the
2 same format with this national data base.

3 COMMISSIONER GANDARA: I don't have any further
4 questions then.

5 COMMISSIONER COMMONS: It's surprising to me that
6 a lot of the states that are not nearly as energy conscious
7 as our own have actually contributed that money. That would
8 just seem hard to believe that that would have been the case.

9 MR. RAUH: Well, I'm not trying to represent that
10 there is a large swelling of states out there that have paid
11 large sums of money to build this data base. But I am trying
12 to represent as --

13 COMMISSIONER COMMONS: Well, why is this state
14 being asked to pay while maybe other states have not?

15 MR. RAUH: Well, we have some of the most
16 aggressive regulations in this state and we have quite a
17 concern about whether the performance of the homes that meet
18 our initial building standards and those that will meet our
19 new building standards are going to deliver metered energy
20 savings as we project they will.

21 COMMISSIONER COMMONS: Who is paying for the data
22 that's been collected nationwide?

23 MS. GRIFFIN: BPA, TVA, whoever had it. LBL
24 essentially goes out on fishing expeditions and says,
25 "Listen, we want to put it together. Have you got anything?"

1 Is there any place that we can fit into what you're doing?"
2 And so a number of individual organizations and places around
3 the country have.

4 COMMISSIONER GANDARA: Have they come to us before?

5 MR. RAUH: Oh, they came to us when, last year?

6 MS. GRIFFIN: This -- well, it's been brought up,
7 Cal BECA?

8 MR. RAUH: Yes, Cal BECA came up.

9 MS. GRIFFIN: In Santa Cruz.

10 EXECUTIVE DIRECTOR WARD: Well, I'm not sure that
11 I like the analogy that they --

12 COMMISSIONER COMMONS: If we didn't contribute the
13 money, would this study occur?

14 MR. WILSON: Pardon me?

15 COMMISSIONER COMMONS: If we don't contribute the
16 money, will this study occur?

17 MS. GRIFFIN: No.

18 MR. WILSON: Not on these specific data types.

19 MR. RAUH: Not on these, no.

20 COMMISSIONER COMMONS: Okay.

21 COMMISSIONER SCHWEICKART: Let me a make a comment.

22 CHAIRMAN IMBRECHT: Let's try to --

23 COMMISSIONER SCHWEICKART: I haven't joined in
24 this thing, but I think -- let me say I think provided this
25 is properly directed, and I am a little bit concerned about

1 the direction it might take left -- LBL left to their own
2 devices, frankly, and I think it does need to be managed
3 rather tightly to insure that the data that is gathered and
4 subsequently made available to us, in fact serves California
5 needs. I think partly LBL can be faulted for not including
6 a bigger data base on California in the past or seeking one.

7 Nevertheless, it seems to me that we are con-
8 tinually in an issue here somewhat like the data on sales
9 of appliances and how that's affected the actual performance
10 et cetera, we are in a somewhat data sparse area and it has
11 been a continual issue in building standards whether in fact
12 the savings are really there.

13 Now we have had lots of builders come forward
14 volunteering to build homes and measure the data and provide
15 it to us and I think that this, the opportunity here to
16 obtain quality data on a fairly uniform basis and with
17 reasonable analysis, is something which is going to be very
18 valuable both in terms of future standards, whether or not
19 they are justified in determining that, as well as a
20 legitimate assessment of the future demand from the existing
21 building stock and the effect of the new standards as it
22 goes into effect. So I support it but I'm concerned that
23 in fact we ride herd on LBL because they tend to run off
24 and do what they want.

25 CHAIRMAN IMBRECHT: Okay. I think that we have

1 discussed this one enough as well and it's time to put it to
2 the vote.

3 COMMISSIONER EDSON: I do have one question.

4 CHAIRMAN IMBRECHT: Commissioner Edson.

5 COMMISSIONER EDSON: Is this to be made into a
6 home labeling program?

7 MS. GRIFFIN: Certainly the data that we develop
8 in this project will feed into our decision at the end of
9 next year about whether we want to go forward with a state-
10 wide home labeling program.

11 COMMISSIONER COMMONS: I have a few questions.
12 Where in the work plan does this fall in what area?

13 MS. GRIFFIN: It's listed under buidling energy
14 use, which is in the local residential. It's in my office
15 in local residential. It is a project which is jointly
16 shared between myself and Mr. Pennington because of the over-
17 lapping data that is involved.

18 COMMISSIONER COMMONS: What is the manpower
19 requirement?

20 MS. GRIFFIN: I'm not carrying a work plan around.
21 It's point one or something. It's very small.

22 COMMISSIONER COMMONS: Is it budgeted within what
23 we have done today?

24 MS. GRIFFIN: Yes it's budgeted within what we
25 have done today.

1 COMMISSIONER COMMONS: I know John Wilson has
2 been overallocated by about a factor of two because your
3 division is very very short on economist. Is he going to be
4 involved in this project?

5 MR. RAUH: He is currently the contract manager.
6 As you point out, he is a resource that I think all five of
7 you have asked for an arm, leg, or more of.

8 COMMISSIONER COMMONS: Frankly, that's probably my
9 largest concern if --

10 CHAIRMAN IMBRECHT: I asked for him.

11 MR. RAUH: Indirectly perhaps.

12 CHAIRMAN IMBRECHT: Okay. Let's close on this
13 issue.

14 COMMISSIONER GANDARA: Well, I'd just like to make
15 the last comment that assuming that this contract worked
16 perfect and the data were wonderful and we were supposed to
17 analyze perfectly, we would have the conclusion that the
18 1977 building standards were indeed very useful and did,
19 in fact, reduce energy perhaps in the order of 50% as we
20 have claimed. But that doesn't address any of the current
21 issues about the current building performance. So that's
22 my last comment.

23 COMMISSIONER EDSON: But that isn't going to
24 resolve the retrofit issue.

25 COMMISSIONER SCHWEICKART: Excuse me, that's --

1 CHAIRMAN IMBRECHT: That's not what they said.

2 COMMISSIONER SCHWEICKART: Look at the top of page
3 A-2. There's a certain hidden bullet there.

4 COMMISSIONER COMMONS: Did this contract at all
5 address the issue that's been constantly raised as to what
6 extent do the standards result in the energy savings and
7 to what extent does price or the market?

8 MR. WILSON: This might be evaluating what caused
9 the conservation measure to be installed, whether it be a
10 utility program or would the person puts the measures in
11 without an audit.

12 COMMISSIONER COMMONS: So really if we get all that
13 data, all it will tell us as to what are the amount of savings
14 that have occurred without any idea as to the attributions
15 if it is a result of the building standards, result of in-
16 crease in oil prices or a result of the utility program.

17 MR. WILSON: That would be a different and much
18 more expanded effort than what this contract will do. That
19 would involve, to answer your kind of question, going out
20 and not only finding out what is in the home, but then going
21 to the home owner and asking him, you know, why he did those
22 things.

23 COMMISSIONER SCHWEICKART: Mr. Commons, this goes
24 around and takes cars and measures what their miles per
25 gallon is and compares them with what the rating is on the

1 back window. That's what it does in houses.

2 CHAIRMAN IMBRECHT: All right.

3 COMMISSIONER EDSON: I move the contract.

4 CHAIRMAN IMBRECHT: We already have a motion and
5 second.

6 COMMISSIONER EDSON: Oh, sorry.

7 CHAIRMAN IMBRECHT: And so is there objection to
8 unanimous roll call?

9 COMMISSIONER GANDARA: Yes, I'll object to that.
10 I'll vote against the contract.

11 CHAIRMAN IMBRECHT: All right, Commissioner
12 Gandara votes no. Any other? Not. Four ayes. One no.
13 The contract is approved.

14 The next item --

15 COMMISSIONER COMMONS: Mr. Chairman, this next
16 item will take in my estimation approximate an hour. I
17 would either like to postpone it to the next meeting or to
18 take the other items on the agenda first.

19 COMMISSIONER EDSON: I move the contract. I don't
20 see any reason to --

21 CHAIRMAN IMBRECHT: Pardon me?

22 COMMISSIONER EDSON: I don't see any reason to
23 delay this contract. I think that it's a contract that is --

24 CHAIRMAN IMBRECHT: Well --

25 COMMISSIONER EDSON: I also don't see any reason

1 to spend an hour on it.

2 CHAIRMAN IMBRECHT: Nor do I.

3 COMMISSIONER SCHWEICKART: Nor do I.

4 CHAIRMAN IMBRECHT: And I am simply not going to
5 do that and I've tried very hard to be generous in every
6 respect to allow people to make their points --

7 COMMISSIONER SCHWEICKART: I second Commissioner
8 Edson's motion.

9 CHAIRMAN IMBRECHT: -- and give them an opportunity
10 but I think that we should take it up and try to resolve the
11 issue.

12 COMMISSIONER COMMONS: All right then, let's have
13 discussion.

14 CHAIRMAN IMBRECHT: Okay. The next item is a
15 contract with Envirosphere for \$625,000 to provide technical
16 support to the Biomass Conversion Demonstration Program,
17 funded under SB 771.

18 EXECUTIVE DIRECTOR WARD: Ray Tuvell, here from Development
19 Division. Essentially it's a \$325,000 contract which is
20 part one of a two part contract of a total of \$625,000. The
21 remaining three hundred would be subject to approval in the
22 '84-85 budget. So you have \$325,000 approved in the current
23 year before you today.

24 What we would like to do is only have one RFP
25 process for the total amount. In other words, contingent

1 upon the budget approval for '84-85 we wouldn't have to go
2 through another RFP process again on this contract. So, the
3 approval is for \$325,000 but we would like RFP authority for
4 the whole project, \$625,000.

5 COMMISSIONER EDSON: Well, wait. Doesn't that
6 essentially mean you'd be back in '84-85 with an extension
7 or --

8 EXECUTIVE DIRECTOR WARD: That's correct.

9 COMMISSIONER EDSON: So the approval today is
10 essentially approval for the full amount.

11 MR. TUVELL: There is actually -- there's two ways
12 you can go. You can go ahead and give approval for the
13 entire \$625,000. Okay. Or you could not approve for the
14 entire amount but approve the contract and we would come
15 back with an amendment later. Okay.

16 The situation that you're dealing with is what we
17 would try to do is establish a new mechanism to try to
18 expedite these contracts and this is the first of it. The
19 first one that you're going to see. We have been working
20 with the contracts office to do others this way. By
21 eliminating an RFP process for a continuous program such
22 as this, we're saving on the order of probably 2 PY's that
23 are used to put these contracts together from RFP stage
24 though Commission meeting and so we're trying to --

25 COMMISSIONER COMMONS: You're saying every contract

1 that comes to this Commission requires 2 PY's. If we have
2 30 contracts that's 60 PY's?

3 MR. TUVELL: No, I'm not saying that.

4 EXECUTIVE DIRECTOR WARD: He's saying the process
5 associated with the Biomass Conversion Demonstration Program
6 would involve substantially more PY's if we had to go through
7 two RFP processes. This is in the interests of both economy
8 and efficiency.

9 COMMISSIONER SCHWEICKART: Let me -- I'd like to
10 understand some of the legal ramifications of that. If we
11 end up with a 50% cut in our contracts budget next year, I
12 think the Commission needs the option of reviewing the
13 program at that point and cutting back.

14 EXECUTIVE DIRECTOR WARD: You would have that
15 option. Just by virtue of the fact of us going through an
16 RFP program does not commit us to a contract. In fact, there
17 are any number of instances in the past two or three years --

18 COMMISSIONER SCHWEICKART: What's the promissory
19 indication to the institution that --

20 CHAIRMAN IMBRECHT: None because there is caveat
21 language ordinarily.

22 EXECUTIVE DIRECTOR WARD: Exactly.

23 CHAIRMAN IMBRECHT: Included within the RFP that
24 indicates that it is contingent upon subsequent funding at
25 a later process.

1 MR. TUVELL: Yes, that's correct.

2 COMMISSIONER SCHWEICKART: So in essence we would
3 be approving \$325,000 of the only thing we do, commit,
4 which is the money we've got now.

5 EXECUTIVE DIRECTOR WARD: That's right.

6 COMMISSIONER SCHWEICKART: And we would indicating
7 there would be a sole source contract if any contract is
8 extended for next year.

9 COMMISSIONER EDSON: We're committing to the
10 contractor to just ---

11 COMMISSIONER SCHWEICKART: We're committing to the
12 contractor.

13 MR. TUVELL: You're committing to this contractor,
14 right. Subject of the money being available and he under-
15 stands that. It's in the contract.

16 EXECUTIVE DIRECTOR WARD: And frankly, you know,
17 we're not hard and fast but we think that it's a fairly
18 decent option here.

19 COMMISSION COMMONS: Well, there has to be a legal
20 way of doing this where at the period of time where you
21 receive the funding and we have the ability to assess the
22 contractor performance to find out if we're satisfied with
23 the direction that we're going, and at the same time follow
24 the directive that you would like to see us do. That if the
25 Commission so wants to that it can --

1 EXECUTIVE DIRECTOR WARD: The contract provides
2 for that, Commissioner.

3 COMMISSIONER COMMONS: -- not go out with the RFP
4 and so I don't think you have to incorporate it in the
5 contract. We can accomplish your efficiency objectives
6 without putting us in the situation of keeping our options
7 open as to whether or not we wish to do that. I think on
8 the one hand it would make sense to try to be efficient,
9 but on the other hand I think it's in our interests where
10 the contractor has not done the work --

11 MR. TUVELL: We are simply not forgiving any
12 options whatsoever by going this route. We could terminate
13 this contract with this company at any point in time due to
14 nonperformance.

15 COMMISSIONER COMMONS: Due to nonperformance.

16 MR. TUVELL: And that is --

17 COMMISSIONER COMMONS: That's a very difficult
18 thing often to demonstrate or prove and it may be that the
19 Commission no longer wishes to go that direction or with that
20 contractor. There are many reasons that the Commission may
21 want to change its mind in this area.

22 I think there's one thing to say that if the
23 Commission so wishes next year, given the budget, that we
24 would like to be able to proceed without an RFP and there's
25 another thing to provide us with the ability if we don't

1 wish to proceed that we don't have to. That doesn't mean
2 putting in there language concerning it's contingent upon
3 our getting the budget. Because that removes our option for
4 further review.

5 CHAIRMAN IMBRECHT: Okay.

6 MR. VANN: That is a condition in the contract.
7 We have to bring the amendment before the full Commission
8 and if the Commission does not approve it, that in fact
9 terminates that contract.

10 COMMISSIONER COMMONS: It depends on how it's
11 worded as to what our legal options are.

12 COMMISSIONER EDSON: I think Mr. Vann is saying
13 that it's worded in a way that gives us full flexibility.

14 COMMISSIONER COMMONS: What is the wording?
15 Rather than speculate, what does it say?

16 MR. TUVELL: I don't have the contract before me.

17 COMMISSIONER GANDARA: It's paragraph 11.

18 COMMISSIONER EDSON: The difficulty would be that
19 in the event the staff comes before us with a proposed
20 amendment to the contract and we reject that and want to go
21 out for an RFP, we're talking about having a period of
22 several months where there are no technical services avail-
23 able. I think what the staff is asking for now is some
24 tentative indication of whether or not we are going to be --
25 we think we will be willing to proceed with -- under the RFP

1 process that is culminating here today.

2 COMMISSIONER COMMONS: All right. Well, the
3 paragraph that Commissioner Gandara has shown does not show
4 that it restricts the contingency to budget funds. So in
5 essence, we would be allocating funds, my interpretation
6 of this would be, for the full two year period and there
7 would not be the review or the ability of the Commission to
8 review and I would find that language unsatisfactory as to
9 the second phase.

10 EXECUTIVE DIRECTOR WARD: Well, I don't -- let
11 me ask counsel here.

12 COMMISSIONER COMMONS: Yes, I'd like to ask legal
13 counsel his interpretation.

14 EXECUTIVE DIRECTOR WARD: Well, let me phrase it
15 and see if we can resolve the issue. Can it be subject to
16 allocation, subsequent allocation by the Commission, is that
17 John a fair way to put an addendum in the contract?

18 MR. CHANDLEY: Yeah, I don't want to write the
19 contract right here but if that's your intent, I think we
20 can put in the appropriate language.

21 CHAIRMAN IMBRECHT: All right, fine. Okay, so
22 directed.

23 COMMISSIONER GANDARA: Let me see if I understand
24 the process. The process is we're voting today on a contract
25 for \$325,000 in which you're declaring the intention now to

1 come back before the Commission at the start of the next
2 fiscal year with an amended contract and extension of the
3 contract and an augmentation for the rest of the amounts,
4 contingent upon funding by the -- well, contingent upon
5 funding. I'm not sure who --

6 CHAIRMAN IMBRECHT: The Legislature and the
7 Governor.

8 COMMISSIONER GANDARA: Okay. So what we're
9 basically now doing is adding a section that says "and
10 also subsequent to Commission allocation." So that the
11 contractor wouldn't feel that if we had received only
12 three hundred twenty -- three hundred thousand dollars for
13 contracts that he had the priority on that. Is that right?

14 MR. VANN: With one minor exception. The contract
15 probably will not require extension. We are making it long
16 enough so that we will need the augmentation or the -- yes,
17 the augmentation to the contract. But the timeframe for the
18 contract is long enough to carry us through the following
19 fiscal year. So the extension would not be a part of an
20 amendment.

21 COMMISSIONER GANDARA: Just an augmentation. Okay.

22 COMMISSIONER COMMONS: Before you get into the
23 contract itself, one of the things that concerns me is just
24 the notice element of it. The notice doesn't reflect what
25 the contract is. A significant portion of this contract is

1 for public relations, communications, operating work shops.
2 In fact, it's larger than any of the other contracts that
3 we voted on today, is the amount of the money that's been
4 allocated to that function and it doesn't show up in here.
5 Also giving individual corporations analysis as to whether
6 or not they are able to take tax credits. This is not part
7 of the notice. I'm very concerned as to the notice that was
8 given on this contract if it relates to different elements
9 that are proposed in the contract.

10 I know that when I read the notice and then looked
11 at the contract, the two did not correspond at all and when
12 I looked at the contract it looked like it was a pretty good
13 idea. When I started looking at the contract I had very
14 serious concerns.

15 MR. CHANDLEY: Are you asking whether I think the
16 notice is adequate?

17 COMMISSIONER COMMONS: Well, I'm asking you two
18 questions. One, do you think the notice is legally adequate
19 and, second, do you think the notice, even if it were
20 adequate, is desirable the way it's written or misleading?

21 MR. CHANDLEY: I don't have any opinion on the
22 second question. I think it's legally adequate. There is
23 more than sufficient information here in the notice about
24 the nature of the contract to put people on their guard or
25 on notice that the kinds of things that are in the contract

1 to be considered.

2 I don't expect a notice to be a verbatim copy of
3 the contract or the agenda item, nor even a detailed list
4 of all of the generic categories that might be involved in
5 it. I think that's unnecessary and I don't know of any
6 cases that would require us to do that.

7 COMMISSIONER COMMONS: Well, if you look at the
8 areas in the contract, the ones that are accounted for in the
9 notice are really not very substantial, compared to the way
10 the dollars are actually allocated in the contract. I was
11 totally misled.

12 MR. CHANDLEY: I don't necessarily disagree with
13 your judgment but I don't think that results in a legal
14 deficiency.

15 COMMISSIONER COMMONS: All right then I guess the
16 next question is, before we get into the content of the
17 contract, is there a jurisdiction dispute as to which
18 committee this contract would relate to. I was on the
19 Grants and Loans Committee I believe last February or March
20 and projects requiring technical assistance under SB 771
21 at that time did not flow through that committee. Clearly
22 all the projects that are envisioned here are development
23 division projects with the primary reason for us doing them
24 is research and development.

25 Some of these projects relate to fuel and I think

1 there could be an issue in relationship to whether or not
2 these are R&D or fuels or should be joint. But before we
3 go further on the contract, because it gets up to the
4 procedure as to whether or not there was adequate review as
5 to which committee this contract should have been assigned,
6 or if there was even any doubt as to where it should be
7 assigned or should have been assigned, I think we should get
8 into it to find out whether or not we followed our own
9 procedures in terms of review.

10 COMMISSIONER EDSON: I'd like to comment on that.
11 As you point out, Commissioner Commons, in the past 771
12 contracts were not under the jurisdiction of any committee.
13 It's my understanding that the staff at this stage is pro-
14 posing to bring those before the Loans and Grants Committee
15 in the future. I should also note that the staff con-
16 sulted with me on this contract and discussed it with me
17 sometime ago and also consulted on the jurisdiction question
18 and I apologize for not having discussed it with you. It
19 may be that in the future this contract should go to either
20 the R&D Committee or the Fuels Committee, but I think
21 certainly the staff made a sincere effort to consult with
22 an appropriate policy committee and did so and I certainly
23 don't think that the fact that in your judgment they may
24 have chosen the inappropriate committee, is reason not to
25 move forward today.

1 COMMISSIONER SCHWEICKART: I think it's entirely
2 inappropriate for us to be criticizing the staff for who
3 they chose to bring this to. I mean this exemplifies my
4 whole point about this, what I consider to be a ridiculous
5 Balkanization and splitting up of every jot and tittle in
6 the Commission and somebody owns it and it has to come to
7 them and all that kind of Mickey Mouse. We have before the
8 full Commission here a contract. I would suggest we get on
9 with the business of deciding whether or not we support
10 going ahead with this contract given the work that accomplishes
11 a policy all of us support.

12 COMMISSIONER COMMONS: Well, I can see us going on
13 with that discussion. I would also though like to find out
14 what our mechanism of resolving a dispute as to if we were
15 to do the contract or who is overseeing the work in the
16 Biomass Demonstration Projects, as to are they meeting the
17 objectives? Are they on target? How are we proceeding?

18 When I look at the work plan today, we do have
19 people who are allocated to that work. I know the R&D
20 Committee has spent significant time in trying to look at
21 those projects and I think there is a question which maybe
22 should not hold up whether or not we act on the contract
23 today as to whether or not the staff went to the appropriate
24 committee, and I'm not making that request. But I'm saying
25 we should know as to where the Biomass program lies in terms

1 of which committee and that should be resolved.

2 COMMISSIONER EDSON: I'm sure the staff would
3 appreciate resolution of that.

4 COMMISSIONER COMMONS: And I think the Executive
5 Director has said, not me, that this is a Commission
6 decision.

7 COMMISSIONER SCHWEICKART: I agree and I don't
8 think it's part of this decision that's before us at the
9 moment.

10 CHAIRMAN IMBRECHT: Nor is it an agenda item and
11 not having thought through any of the ramifications of that,
12 I wouldn't be prepared to act on that currently. I would
13 say generally speaking that when the staff has a dilemma
14 that they should consult with the Executive Director and,
15 I'll try walking on ice with this one, and with the Chair
16 as to what is the appropriate committee to turn to. I think
17 at some point there's got to be some delegation of responsi-
18 bility in terms of making some of these judgment calls and
19 we cannot continue to operate with all five of us partici-
20 pating in every one of these kinds of decisions in a public
21 medium I have been in, in terms of having an efficient
22 administration of the Commission. So I'm not even sure
23 what is the appropriate committee to consider that issue
24 at this point.

25 COMMISSIONER COMMONS: Oh, clearly it's the

1 Administrative and Budget Committee.

2 CHAIRMAN IMBRECHT: All right. It's the Adminis-
3 trative and Budget. Fine. Then I'll assign it to the
4 Administrative and Budget Committee and we will report back
5 within one month as to appropriate policy.

6 COMMISSIONER GANDARA: Since it's an orphan, let me
7 suggest something, Mr. Chairman. When I first came to the
8 Commission, I think -- I noticed Commissioner Commons'
9 interest and concern similarly over this area. I think that
10 at that time I had suggested an Agricultural Committee,
11 believe it or not. Agricultural and Energy, and I should
12 say that the staff had also at some point in time considered
13 that and had pursued that initiative. I think I recall dis-
14 cussing it with Commissioner Edson as well. She also felt
15 that that might be appropriate. I should say that we didn't
16 have three votes for an Agricultural and Energy Committee
17 and so it never came about but it's not for --

18 COMMISSIONER SCHWEICKART: I want Air and Space.

19 COMMISSIONER GANDARA: I vote not to be on that one.
20 But in any case, it never came about. I should say that it's
21 not for want of there trying to be some resolution of it and
22 I have some other questions in the contract I'd like to get
23 to soon. But you know, I -- you know if there's no harm done
24 by proceeding or there's no harm done by deferring, I'm
25 indifferent as to that. But I would think that clearly

1 you know there ought to be a more thoughtful resolution than
2 just, you know, taking it under the wing of some committee
3 just so that we can move on.

4 CHAIRMAN IMBRECHT: I agree and that's why I'm
5 going to assign this question to the Budget and Administrative
6 Committee and we will report back within two business
7 meetings and recommend a procedure how to deal with these
8 matters.

9 COMMISSIONER GANDARA: Okay.

10 CHAIRMAN IMBRECHT: Now then, I am going to make an
11 effort to rule that we are going to resolve this issue and
12 take it up or down for a vote by 6:00 o'clock.

13 COMMISSIONER COMMONS: All right. Well, I would
14 suggest, Mr. Chairman, we spent approximately 30 minutes on
15 a \$40,000 contract.

16 CHAIRMAN IMBRECHT: That wasn't my choice either.

17 COMMISSIONER COMMONS: And we spent on two tenths
18 of a PY I don't know how many minutes and I guess four votes
19 is the Robert's Rules of Order. We can stop anything at
20 any point in time. But I have major substantive issues
21 which I have --

22 CHAIRMAN IMBRECHT: Three.

23 COMMISSIONER COMMONS: Four.

24 COMMISSIONER SCHWEICKART: It's three.

25 COMMISSIONER COMMONS: If a Commissioner in order --

1 I checked with Mr. Chamberlain before I came here today, not
2 on this item, but in case we were having problems in another
3 area. As to if you wanted to stop a Commissioner in terms
4 of presenting information and to close, that it requires a
5 two-thirds vote, not a majority vote. So if there were one
6 Commissioner who wanted to abstain, then it would be three
7 out of four and if it were five people voting, it would be
8 four out of five. But it's not a majority that can --

9 COMMISSIONER SCHWEICKART: Robert's Rules can be
10 suspended by a simple majority of the body.

11 CHAIRMAN IMBRECHT: That's right. There's always
12 ways to get around this.

13 COMMISSIONER COMMONS: Well, I would like -- and
14 we do have legal counsel here as to how you proceed on that
15 but I did check with Mr. Chamberlain on this particular
16 issue.

17 CHAIRMAN IMBRECHT: How much time -- do you still
18 continue to estimate that it's going to take you an hour to
19 consider this?

20 COMMISSIONER COMMONS: Well, I do have some sub-
21 stantive issues in the contract that I'd like to get into.
22 My problems on the contract are not procedural but are
23 substantive and this is the largest contract that we have
24 had before in some time and --

25 COMMISSIONER SCHWEICKART: Number one, problem?

1 COMMISSIONER COMMONS: Yes, so I'd like to --

2 COMMISSIONER SCHWEICKART: Okay, let's do it.

3 COMMISSIONER COMMONS: I'd like to get into the
4 issues but I'd like to let Mr. Tuvell now present the
5 contract before I raise the issues.

6 COMMISSIONER EDSON: Let's just get into the
7 questions.

8 CHAIRMAN IMBRECHT: Oh no, no, no, no.

9 COMMISSIONER COMMONS: Just get into the issues.

10 CHAIRMAN IMBRECHT: No, no, no. Raise your
11 concerns and let's deal with it.

12 COMMISSIONER COMMONS: All right. The first issue
13 relates to the work plan. Today we heard in the work plan
14 that the Biomass office is substantially understaffed. That
15 they are lacking in technical capabilities and that this
16 may cause a problem in providing technical assistance to
17 some of the various projects.

18 We further heard that there are 19 projects that
19 are before them and there was an inference that some of
20 these projects are having problems and some of them may be
21 cancelled. What I'd like to have an understanding of is
22 what is the type of technical assistance that the projects
23 are requiring? What is the loss of technical skills that
24 we have? How does it relate to the technical skills in this
25 contract and where do we stand?

1 MR. TUVELL: There are six projects right now that
2 have major technical problems associated with operation
3 shakedown phases of the projects. I'll go through them one
4 at a time for you.

5 Superior Farming Company, where we have over
6 \$2 million in a \$9 million project, has some major problems
7 dealing with combustion air fuel ratio. They are not
8 meeting the designed output of the facility. They are
9 operating at a lower output. The economics of the project
10 aren't working out and there is a major disagreement among
11 the manufacturers of the equipment as to whose fault -- who
12 is at fault here. There is a finger pointing contest. They
13 want somebody to come in and help resolve the problems.
14 We're the third party who can come in and do that and since
15 we have money on the line here, that if the project isn't
16 resolved, it is not only money lost to Superior Farms but
17 it's money lost to the State as long as it is allowed to
18 continue. In fact, we have calculated on the order of
19 \$2,800 a day in lost revenue to that facility as long as this
20 problem is allowed to continue.

21 COMMISSIONER COMMONS: What is the amount of
22 technical engineering skills by you and -- by you I mean by
23 the CEC and by our consultant that's going to be required to,
24 either up or down on the problems in this area.

25 MR. TUVELL: Ninety-five percent of the work is

1 required by outside technical experts, primarily because of
2 the need for equipment to do heat balance tests for the
3 facility. We simply do not have such equipment or capability
4 or expertise in doing that and by doing --

5 COMMISSIONER COMMONS: Are we going to be buying
6 that in this contract?

7 MR. TUVELL: Excuse me.

8 COMMISSIONER COMMONS: Are we going to be buying
9 that capability in this contract?

10 MR. TUVELL: We are hiring consultants who have
11 that ability and the equipment necessary to solve those
12 problems.

13 COMMISSIONER COMMONS: All right and where in this
14 contract does that come out, that type of technical skill?

15 MR. TUVELL: Project management assistance.

16 COMMISSIONER COMMONS: All right and do you have an
17 estimate as the amount of project management assistance for
18 that particular project that's going to be required?

19 MR. TUVELL: Depending the severity of the problem,
20 we're estimating that the cost will be between -- somewhere
21 between ten and twenty thousand dollars.

22 COMMISSIONER COMMONS: Okay. What I'm basically
23 looking for and in order to get an understanding of this
24 contract is basically how you intend -- because this is what
25 I have not seen, is if we have 19 projects and our job is

1 to see that we're able to go ahead, and this is the only
2 ability we have to provide that technical assistance to it,
3 is to see a match of those 19 projects, their technical
4 deficiencies and the contract work that we're doing here,
5 plus our resources, and this is the item that is lacking
6 in the presentation that I see in terms of do we have the
7 dollar assistance to do our job and is it allocated in this
8 contract? So that I can say as a Commissioner I am pro-
9 viding the appropriate level of technical assistance.

10 MR. TUVELL: On an annual --

11 COMMISSIONER COMMONS: And that's the backup which
12 is the gut of this contract that I don't see.

13 MR. TUVELL: On an annual --

14 COMMISSIONER COMMONS: And I don't know if I want
15 to take -- I think the Chairman has asked that I not try
16 to take the full hour, but if we were to go through each of
17 those six contracts and break it out into each of the areas,
18 that's the information that I'm seeking that I don't see
19 before me, and if we had had time to get together, that's
20 what I would have asked that you bring before the Commission
21 because that's the only basis on which I can make a decision.
22 Is this an appropriate allocation of the resources? Are we
23 able to get the job done of those 19 applicants, six of whom
24 are having serious difficulty?

25 MR. TUVELL: On an annual basis we propose to the

1 Commission the amount of money we think will be projected
2 to be necessary to provide technical support to the projects
3 that are in our program. We proposed \$325,000. We feel
4 very comfortable with that amount of money we can solve the
5 problems that we anticipate at the present time. I'm sure
6 that if we were not able to solve the problems and projects
7 started to fail, you will have project proponents knocking
8 on your door asking about why the staff failed.

9 COMMISSIONER COMMONS: Yes but I want to know that
10 before I vote on a contract as to where we are and this is
11 one of the biggest projects that this Commission has and
12 this division has and I have not seen a budget which shows
13 what is the work that is required and how this \$325,000 is
14 allocated to the projects in terms of solving their problems
15 and I am very fearful that you're going to come back to this
16 Commission in the next three months or six months and we're
17 going to have problems with some of these applicants because
18 we have not had the appropriate type of technical assistance,
19 the appropriate -- or the appropriate level of technical
20 assistance to solve the problems and it is further exasper-
21 ated in that when you did go through the effort in making
22 those estimates is you had a different manpower and staffing
23 level and today you've presented us with strong statements
24 as to your loss of staff and particularly the technical
25 expertise in staff which may exasperate this problem.

1 MR. VANN: Commissioner, we have had this -- a
2 similar contract to this in the Biomass program since 1980,
3 early 1980. The operating history on the technical support
4 would show, since we have not come to the Commission and
5 asked for any augmentations, nor have we had money left in
6 the pot at the end of each fiscal year, that our estimates
7 on what is required for this program have been fairly
8 accurate over the last three years.

9 In addition, it is a little difficult to project
10 precisely what amount of funds is going to be spent on each
11 individual project because at the time that the contract is
12 actually put together we do not know on some of the projects
13 what the start up and test problems are going to be. We
14 started out at over \$500,000 for technical assistance. That
15 was the first contract that came before the Commission
16 several years ago. We have since found that we spend
17 approximately \$300,000 per year on technical assistance for
18 these projects.

19 COMMISSIONER COMMONS: How many projects have we
20 complete in this area in Biomass?

21 MR. TUVELL: At what stage?

22 COMMISSIONER COMMONS: Are completed in the
23 Commission, no longer --

24 MR. TUVELL: Completed and paid us back?

25 COMMISSIONER COMMONS: Completed. They are

1 operating --

2 MR. TUVELL: Two.

3 COMMISSIONER COMMONS: They are operating facilities.

4 MR. TUVELL: Approximately 11, 11 of the total.

5 CHAIRMAN IMBRECHT: Let me ask a question. Is there
6 a time necessity on this contract?

7 MR. TUVELL: The time problem is that with the six
8 projects that we have technical problems with, it's costing
9 money every day until those problems are solved. We've
10 estimated that those projects are losing on the order of
11 \$16,000 a day total, while these problems are left un-
12 resolved.

13 COMMISSIONER COMMONS: Let me get to the --

14 CHAIRMAN IMBRECHT: So if we were to put this over
15 for two weeks then we would be looking at an expenditure of
16 \$300,000.

17 COMMISSIONER SCHWEICKART: Well, are they not under
18 contract now?

19 MR. TUVELL: It's not an expenditure on our part.
20 It's the fact that they have lost that money.

21 COMMISSIONER SCHWEICKART: Are they not under
22 contract right now?

23 MR. TUVELL: Yes they are.

24 COMMISSIONER EDSON: But we have no more money, is
25 that correct?

1 MR. VANN: That's correct.

2 MR. TUVELL: There is no more tax support to help
3 them out.

4 MR. VANN: We only had funds to carry us through
5 the end of the fiscal year and we actually managed to operate
6 until sometime in August and now we're doing -- really there
7 is essentially no funds left in the contract and we're doing
8 basically just minor clean up work.

9 COMMISSIONER SCHWEICKART: So it is literally a
10 one -- a day for day slip.

11 COMMISSIONER COMMONS: Let me tell you what my
12 problem is then, I have proposed the solution to the division
13 but they are adamantly in opposition. First of all, I think
14 it's important that we provide the technical assistance
15 and I am not in concurrence with the division because I
16 don't think we have adequate information and I have seen
17 other information today that raises that question even
18 further that this is the appropriate level of funding.

19 There's an item in there, Task 6, on public infor-
20 mation, dissemination and development.

21 CHAIRMAN IMBRECHT: But what is your proposed
22 compromise?

23 COMMISSIONER COMMONS: That's what I'm getting to,
24 and it is a \$65,000 item which has absolutely nothing to do
25 with technical assistance. Now I would like to hold that

1 item and to authorize all of the technical assistance money
2 for the project and I won't even fight the tax credit work
3 which I believe is inappropriate for this Commission to do
4 for an individual contractor, but hold \$65,000 in abeyance
5 for technical assistance work and to come back at a later
6 point in time before the Commission on that \$65,000.

7 COMMISSIONER GANDARA: Mr. Chairman, may I make
8 a suggestion here?

9 CHAIRMAN IMBRECHT: Commissioner Gandara.

10 COMMISSIONER GANDARA: If I understand the process
11 here, even if we were to approve this contract today, it
12 would still have to -- you know, the money that they're
13 suggesting is being lost on a day-to-day basis would only
14 be recovered if the contractor believed in good faith that
15 everything would work out with all the contract agencies and
16 so forth. So that I think that in operating in that good
17 faith, I don't see a substantial problem with this contract.
18 I think that there are some questions that I sense from
19 Commissioner Commons and while we all may disagree with what's
20 perhaps the -- at least the extent of his concern, I wouldn't
21 like to question the sincerity of the depth of his concern
22 and I'd like to inquire whether really we can save everybody
23 a lot of trouble by perhaps removing this discussion to some
24 more private briefings and acting on this item next time
25 around.

1 COMMISSIONER EDSON: I dissent from that. I really
2 think we ought to go forward with this and resolve any
3 concerns we can right now. I don't see any reason to delay
4 it. In fact, just because there are control agency approvals
5 -- I mean those are downstream as well from any action by
6 the Commission. So --

7 COMMISSIONER GANDARA: But what I'm saying is we
8 approve it to date, that's not an infusion of money for the
9 contractor that now all of sudden means that there's not
10 going to be these loss of funds. What I'm trying to do here
11 is I think we're in not a very entirely agreeable situation
12 that I think it's in the best interests for everybody to
13 try to resolve in some other way.

14 COMMISSIONER COMMONS: Well --

15 COMMISSIONER SCHWEICKART: May I ask a couple of
16 critical questions here. We have had them under
17 contract prior to this have we not? We've had them for
18 a year or two?

19 MR. TUVELL: Four years.

20 COMMISSIONER SCHWEICKART: Four years. Do we have
21 any indication of either incompetence or are we in any way
22 displeased with the work that they have done to date?

23 MR. TUVELL: Quite to the contrary. They have
24 performed better than many of the contractors we have ever
25 had.

1 COMMISSIONER SCHWEICKART: Have there been any
2 changes in their management structure or technical staff
3 which would indicate that their performance is about to
4 change?

5 MR. TUVELL: Not at all. In fact, they brought on
6 some better people at our request.

7 COMMISSIONER SCHWEICKART: All right. Is there
8 any obligation of these funds, as I take it -- as I under-
9 stand it, they bill us on a -- what do you call it, as they
10 commit technical staff they --

11 CHAIRMAN IMBRECHT: As needed.

12 COMMISSIONER SCHWEICKART: -- bill us, they draw
13 down --

14 MR. TUVELL: That's right.

15 COMMISSIONER SCHWEICKART: -- approved contract
16 funds. Right?

17 MR. TUVELL: That's correct.

18 COMMISSIONER SCHWEICKART: As I understand it,
19 Commissioner Commons' concern is either, and I'm not sure
20 which it is, that there is too much money in this or too
21 little money. I'm not sure which the concern is, but in any
22 case as I understand it, no matter what we approve, they
23 draw that down on an as required basis determined by our
24 contract manager where they should focus their attention.
25 Is that correct?

1 MR. TUVELL: That's correct. We direct all of their
2 activities.

3 COMMISSIONER COMMONS: Now that's where the problem
4 is, Commissioner Schweickart. We are only allowed a ten
5 percent latitude in terms of the contract elements as to
6 where they can expend the funds. I have been told by staff
7 Task 1, we're not doing anything. We're not issuing any
8 more contracts. We have no funds. That would mean that
9 Task 1 and Task 2 are not very relevant. Task 6 is certainly
10 one, if we have six projects that are in serious trouble,
11 we're actually contracting to do brochures on projects which
12 may fail. I have serious questions as to the nature of the
13 work and the allocation where we have the technical problems
14 that I feel we do, of allocating sixty some thousand dollars
15 out of \$325,000 into promotional work. Now that doesn't
16 mean that if given time to look at it and review it that I
17 might change my mind. Certainly today I would be voting
18 against such an allocation.

19 COMMISSIONER EDSON: I would like to comment on that
20 particular item if I might. In fact, in past years the
21 Commission has criticized the staff because they put its
22 efficient effort into the area of public information and
23 dissemination, in particular in this program. Some of this
24 stems from what Commissioner Gandara was citing as an
25 interest in having -- one of the reasons that the Commission

1 was interested in having an Ag Committee of some sort
2 established, was that there was the feeling that in fact
3 the Commission was not doing adequate out-reach work in
4 that sector. I don't think that the \$65,000 expenditure
5 here should be compared to the \$325,000 technical assistance
6 work. We should be looking at the total amount of money
7 that has been authorized to be spent on these projects,
8 which is what, \$10 million?

9 MR. TUVELL: \$10 million of State money.

10 COMMISSIONER EDSON: So I think that the concern
11 there is really very misplaced.

12 CHAIRMAN IMBRECHT: In fact if I've done my home-
13 work right, my understanding of the premise behind develop-
14 ment division projects, is to take a technology through the
15 commercialization stage. If you don't make an attempt to
16 penetrate the potential marketplace, then obviously you
17 have failed on that basic premise of the development division
18 projects and we can demonstrate to ourselves that these
19 technologies work. But if other farmers and ranchers aren't
20 conscious of that performance it is, frankly, a black hole
21 to borrow a phrase used earlier.

22 COMMISSIONER COMMONS: Well, it doesn't help if
23 you go and promote projects that have failed.

24 CHAIRMAN IMBRECHT: Who is suggesting that?

25 COMMISSIONER COMMONS: Well, if we don't have the

1 adequate technical assistance, we're allocating 50 percent
2 of our dollars to providing the technical assistance, which
3 is the key part of making these projects work. If an
4 engineering firm were doing this, you'd probably have 90
5 percent of the monies allocated to the technical assistance,
6 not 50 percent. I have not been shown any information. In
7 fact, I'm more concerned than when we started the discussion
8 as to whether or not we do have adequate resources to pro-
9 vide the technical assistance to make these projects go.

10 COMMISSIONER SCHWEICKART: If not, I presume the --

11 COMMISSIONER COMMONS: Excuse me, let me --

12 COMMISSIONER SCHWEICKART: -- staff is going to
13 come back to us, Commissioner Commons, with more than
14 \$300,000 at the time this money is expended, if more
15 technical assistance is required.

16 COMMISSIONER COMMONS: Yes, except that's the --

17 COMMISSIONER SCHWEICKART: What is the down
18 side of getting these people to work so that we don't have
19 people out there who have been, in fact, in good faith
20 working with us, continuing to lose money on a day-by-day
21 basis?

22 COMMISSIONER GANDARA: Could we explore what the
23 cost is of a delay? I still don't understand that.

24 COMMISSIONER COMMONS: I still would like to go on
25 and I will answer your question in due time.

1 CHAIRMAN IMBRECHT: I want to just say, if the
2 contractor draws down on these funds as well, we can go
3 ahead and advertise this RFP in its current context and I
4 presume that you can have conversation with them, suggest
5 that there are continued concerns in the Commission as to
6 justification for that particular element and that there
7 not be any accelerated effort to expend that \$65,000 portion
8 in the near term, until after you have had a chance --

9 MR. TUVELL: We could come back with a contract
10 amendment to the Commission, asking that that money be re-
11 allocated.

12 CHAIRMAN IMBRECHT: And kick that money over to
13 technical assistance if that's necessary.

14 MR. TUVELL: That's correct. The other point --

15 COMMISSIONER COMMONS: We could also hold that
16 money in abeyance today and approve the contract.

17 CHAIRMAN IMBRECHT: Yes.

18 COMMISSIONER COMMONS: And hold that \$65,000 and
19 make a determination at some time when there's --

20 CHAIRMAN IMBRECHT: And then put out two RFP's
21 and expend additional --

22 COMMISSIONER COMMONS: No. No, we can --

23 MR. TUVELL: I think it's important to point out as
24 to the question of whether or not there is sufficient money
25 for technical support as to the project assistance, to a

1 large degree we're able to leverage what money that we do
2 have, to get money out of other project proponents and
3 manufacturers of equipment. So it's a cooperative effort of
4 spending money to solve these problems. We feel very con-
5 fident that the amount that we're requesting will be
6 sufficient to solve the problems over the timeframe we have
7 proposed.

8 COMMISSIONER COMMONS: Let me go to Task No. 1,
9 project selection and contract negotiation.

10 COMMISSIONER GANDARA: Might I -- excuse me.

11 CHAIRMAN IMBRECHT: All right.

12 COMMISSIONER COMMONS: Excuse me. No, I have the
13 floor and I'd like to finish my line of questioning until
14 I give up the floor.

15 CHAIRMAN IMBRECHT: Commissioner --

16 COMMISSIONER COMMONS: Thank you. Task No. 1 --

17 CHAIRMAN IMBRECHT: Take a shot at it. Commissioner
18 Schweickart.

19 COMMISSIONER SCHWEICKART: Yes, I move the question.

20 CHAIRMAN IMBRECHT: That's a privileged motion.

21 Is there a second?

22 COMMISSIONER EDSON: Second.

23 COMMISSIONER COMMONS: Okay. Point of order.

24 CHAIRMAN IMBRECHT: State your point.

25 COMMISSIONER COMMONS: Legal counsel, when a

1 Commissioner is talking, can the Chairman allow another
2 Commissioner to take the floor?

3 MR. CHANDLEY: I'm going to have to defer to the
4 counsel and Chairman who is so authorized to preside over
5 the meetings.

6 CHAIRMAN IMBRECHT: Well, I guess --

7 COMMISSIONER COMMONS: There is Robert's Rules of
8 Order and I would request the legal counsel to answer the
9 ruling.

10 MR. CHANDLEY: I do not know the answer.

11 COMMISSIONER COMMONS: Do you have a Robert's
12 Rules of Order?

13 CHAIRMAN IMBRECHT: Let me try to address this
14 question, Commissioner Commons.

15 COMMISSIONER COMMONS: This is the first attempt
16 I have heard --

17 CHAIRMAN IMBRECHT: A motion to move the previous
18 question is a privileged motion that interrupts any debate
19 underway in --

20 COMMISSIONER COMMONS: There has been no motion
21 on the floor.

22 CHAIRMAN IMBRECHT: There is a motion that was made
23 by Commissioner Schweickart, and whenever --

24 COMMISSIONER COMMONS: I am saying that that motion
25 was out of order in that it interrupted a Commissioner in a

1 discussion.

2 CHAIRMAN IMBRECHT: If that indeed were the case,
3 then it would allow an individual Commissioner to filibuster
4 endlessly and prevent another Commissioner from ever offering
5 such a motion.

6 COMMISSIONER COMMONS: No, there is -- I suggested
7 to you before we started the discussion --

8 CHAIRMAN IMBRECHT: That it required -- you were --

9 COMMISSIONER COMMONS: -- that I had discussed
10 with the Chairman -- I had discussed with the legal counsel
11 to this Commission --

12 CHAIRMAN IMBRECHT: It requires a two-thirds vote,
13 you are correct.

14 COMMISSIONER COMMONS: -- and it requires a two-
15 thirds vote to stop a Commissioner.

16 CHAIRMAN IMBRECHT: You are correct.

17 COMMISSIONER COMMONS: And you have the ability --

18 COMMISSIONER GANDARA: Could I arbitrate?

19 CHAIRMAN IMBRECHT: Commissioner Gandara.

20 COMMISSIONER COMMONS: You have the ability to do
21 that.

22 COMMISSIONER GANDARA: Yes. I'd like to return to
23 a phrase Commissioner Schweickart once used. He said there's
24 a big elephant right around the room here and we're trying
25 very hard not to recognize it and so let me address the

1 question directly now. It seems very clear to me. It's
2 very evident that for reasons that may be very sound to
3 Commissioner Commons, and perhaps very unsound to the rest
4 of us, or whatever, that he felt that there was a procedural
5 absence here that wasn't done very well and he did something
6 that is not very unusual, which is to request as a courtesy
7 that the item be postponed. It is something that other
8 Commissioner have asked for. It has been granted. It is
9 something that I think is often not all that unusual. I
10 think we have a situation here where, though there are some
11 substantive concerns with the contracts, I think there are
12 some issues that can be resolved. But I think the basic
13 question that I think that we are not dealing or facing with,
14 is one that has perhaps been an offended sense as to whether
15 there has been a courteous response to a courteous request.

16 Now to me the issue really is whether to -- after
17 having gone through a long day that I think has fairly
18 contentious at times and has put us all on edge, that it's
19 not surprising to me that there would be perhaps the same
20 trajectory on some other issues that we should receive
21 closure. But that's why I asked before and I ask again,
22 you know, that there is no doubt in my mind that if we want
23 to proceed with this thing and we want to use whatever
24 authorities, we can probably get into greater debates but
25 that this contract would go ahead and be approved. I only

1 ask whether it's in the interest of whatever Commission
2 harmony may be left that it's really worth it to us to over-
3 look that basic request that was made originally and whether,
4 in fact, it's all that difficult for everybody to accommo-
5 date it.

6 Now in my request as to what the cost was, it was
7 indicated it was a \$16,000 a day cost. My question would
8 be I think that we should focus on that. I think there is
9 a question of wills here about, you know, will we do
10 something we don't want to do and I think that's on both
11 sides. Trying to get beyond that, I think my question would
12 be, is it costing us? Who is it costing? If the contract --
13 is the contractor saying he is unwilling to do any more
14 work until he gets absolute assurance it's approved? If
15 it's progress payments, he is expending work anyway, you know
16 in anticipation that these will go through control agencies.
17 If he is not, and I think that's another issue, I mean those
18 are -- that's what I'm trying to address here.

19 CHAIRMAN IMBRECHT: Well --

20 COMMISSIONER SCHWEICKART: Commissioner Gandara,
21 that whole process moves two weeks regardless of what the
22 concerns are -- considerations are about the control agencies.

23 COMMISSIONER GANDARA: I don't know that and I
24 don't think anybody can assure that. I don't know whether,
25 in fact, the process takes four weeks.

1 CHAIRMAN IMBRECHT: As you suggested to me a
2 moment ago, Commissioner Gandara, I was fully prepared to
3 put the matter over on that basis, absent some persuasive
4 reason as to why we should move. I thought that it was a
5 fairly persuasive suggestion that we are -- whether it be
6 \$16,000 or \$10,000 a day in a course of a mere two week
7 delay, we will have in effect expended by omission something
8 close to the total sum that's at issue here in the first
9 place.

10 COMMISSIONER GANDARA: But that's my question.
11 Would we have expended 14 times \$16,000?

12 MR. TUVELL: No, it's the project proponents.

13 COMMISSIONER GANDARA: The project proponents
14 would have expended 14 times \$16,000. Now that is because
15 of an absence of our approval of this contract. How does
16 that relate to that?

17 MR. TUVELL: Failure for the technical problems
18 that have been identified to be resolved.

19 COMMISSIONER GANDARA: Okay. How does it relate
20 that if we didn't approve this contract that would occur?

21 MR. TUVELL: Because in the cases that we're
22 talking about we're dealing with a number of different
23 situations where they have failed to resolve the problems.

24 COMMISSIONER GANDARA: Okay. What --

25 MR. TUVELL: For example, in the case of Superior

1 Farms, there is a dispute as to whose got the problem and
2 who is liable to spend the money to solve it.

3 COMMISSIONER GANDARA: Okay. I guess my question
4 is, if we approve this contract today does that mean you
5 could call up somebody from Envirosphere and say, "Get
6 down there tomorrow." And he would be down there tomorrow
7 and they would solve the problem over the next two weeks?
8 Or if --

9 MR. TUVELL: Only at his own risk and I'm not going
10 to suggest that to him, given the freeze.

11 COMMISSIONER EDSON: So they would --

12 MR. TUVELL: But if it gets through the freeze,
13 he will be able to do it sooner than if you delay this
14 matter.

15 COMMISSIONER GANDARA: Okay. Well, I guess that's
16 my question. Now let's assume that we approve it now.

17 MR. TUVELL: Yes.

18 COMMISSIONER GANDARA: And let's assume that we
19 approve it two weeks from now.

20 MR. TUVELL: Right. If it would --

21 COMMISSIONER GANDARA: Okay. Are you saying that
22 the time between when it's approved and the time it gets
23 through the freeze will be the same under both circumstances?

24 MR. TUVELL: Yes.

25 COMMISSIONER GANDARA: Now why is that?

1 COMMISSIONER COMMONS: Okay. I suggest to you,
2 because I will write a very nasty letter if we try to put
3 this thing through. You're going to have real trouble
4 getting it through the freeze.

5 COMMISSIONER EDSON: Oh, Commissioner Commons --

6 COMMISSIONER COMMONS: Because any time -- any
7 time that we try to handle an item and there is an attempt
8 by the Commission to not even discuss the relevant factual
9 material which is the clear intent here, as to whether or
10 not -- we haven't gone through Task 1, Task 2, Task 3, Task
11 5, Task 6, and I think those are relevant and if there is
12 an attempt to halt me, I think we've probably moved away
13 from the legal question that the Chairman has raised.

14 COMMISSIONER GANDARA: I had the floor, Mr.
15 Chairman. I don't know if I had it properly, but I had the
16 floor. Okay.

17 CHAIRMAN IMBRECHT: Yes, you have the floor.

18 COMMISSIONER GANDARA: Now my question is, why is
19 it that we know with such great certainty how long it takes
20 to get something through the freeze. I could conceive of
21 the following scenario --

22 MR. TUVELL: We don't have to know.

23 COMMISSIONER GANDARA: Wait, excuse me. Let me
24 finish. I could conceive the following scenario, that we
25 could approve it today and under one set of circumstances

1 it could take three months or two months. Another scenario,
2 we could approve it two weeks from now, it could take two
3 weeks less or two weeks more. How is it that we are saying
4 with such certainty right now that we can project from the
5 approval of the contract as to when it gets through the
6 freeze?

7 CHAIRMAN IMBRECHT: The question -- let me try to
8 answer that. As whether it's going to get through the
9 freeze, obviously it is going to require my intervention
10 on the matter with the Department of Finance and based upon
11 staff representations which I trust and I believe we all
12 have an obligation to give them the benefit of the doubt,
13 there is a substantial dollar figure at risk for even a few
14 day delay and it would be my intention, assuming that this
15 item is approved, whether it be now or two weeks from now,
16 that I will be on the telephone the next day trying to move
17 this thing through the process expeditiously as possible.
18 Now I can make that call tomorrow or I can make that call
19 two weeks from tomorrow and it seems to me that based upon
20 representations of dollars at risk for others that have
21 relied upon us, that there is a fairly persuasive reason
22 as to why we should try to resolve this issue.

23 COMMISSIONER COMMONS: The only issue that's out-
24 standing, Mr. Chairman, is a \$65,000 promotional issue,
25 which causes absolutely no cost to any of the parties.

1 CHAIRMAN IMBRECHT: Well, let's take that issue up,
2 Commissioner Commons, and let's vote on it and determine
3 whether or not you are speaking for yourself or you have
4 support elsewhere in the Commission and then put it behind
5 us and move on to consideration of the overall contract.

6 COMMISSIONER COMMONS: Now this --

7 CHAIRMAN IMBRECHT: If that's the only issue that
8 concerns you, I think we can resolve it.

9 COMMISSIONER COMMONS: No, that's not the only
10 issue that concerns me. I'm saying that's the only issue
11 that addresses why there is an urgency. If we eliminate
12 that issue and vote on the rest of the contract, there is
13 certainly no urgency of addressing that issue today and the
14 only reason you're saying that we should try to push this
15 through is that there is a cost to outside contractors.
16 There is no cost to outside contractors on this \$65,000 item,
17 and I'm perfectly willing --

18 CHAIRMAN IMBRECHT: That is perhaps a point well
19 taken. Let me just ask what are the staff implications?
20 Does that mean we have to do a separate RFP? What does
21 that mean?

22 MR. TUVELL: I'm --

23 MR. WARD: No.

24 MR. TUVELL: I'm not certain.

25 CHAIRMAN IMBRECHT: Suppose we were to take that

1 item out?

2 MR. VANN: The \$65,000 it would be the same as the
3 other \$300,000. We would have to come before you with a
4 proposed amendment to the contract, an augmentation to do
5 that task.

6 COMMISSIONER COMMONS: We certainly have --

7 CHAIRMAN IMBRECHT: What problem does that cause
8 you?

9 MR. VANN: It's additional, you know, work to
10 prepare the package and amend the contract and so on and so
11 forth.

12 MR. TUVELL: At least that makes it internal --

13 COMMISSIONER COMMONS: If someone were to tell me
14 that we don't have the legal ability to amend a contract and
15 it's come before us and if we did not like Item 1 or Item 4
16 or wanted to make an amendment to Item 5, then why are we
17 bringing contracts before us?

18 CHAIRMAN IMBRECHT: Well, let me just suggest that
19 you frame your amendment in the form of a motion and let's
20 proceed from there and see what happens.

21 COMMISSIONER COMMONS: Subject to my not losing
22 the floor, I would be willing to do that.

23 CHAIRMAN IMBRECHT: Let me just indicate that under
24 Robert's Rules there are certain privileged questions that
25 require the Chair to recognize any other member, whether it

1 is in the midst of another member's possession of the floor
2 or not and I will pursue that practice just as is the case
3 in the Legislature and as is authorized under Robert's
4 Rules. That depends upon whether or not another member
5 desires to raise a privileged question.

6 COMMISSIONER COMMONS: Well, if you -- a privileged
7 question does not include the making of a motion on a
8 contract. If you were to adopt that procedure, I suggest
9 to you --

10 CHAIRMAN IMBRECHT: A privileged question is
11 something like moving the previous question or --

12 COMMISSIONER COMMONS: We don't have a motion before
13 us, Mr. Chairman.

14 CHAIRMAN IMBRECHT: -- a suspension of the rules or
15 other --

16 COMMISSIONER COMMONS: We do not have a motion on
17 the floor. The calling of the question would be a
18 privileged question.

19 COMMISSIONER EDSON: We have two motions.

20 COMMISSIONER SCHWEICKART: The main motion is on
21 the floor, sir.

22 COMMISSIONER COMMONS: No, the main motion is the
23 one that I have called the point of order on.

24 COMMISSIONER SCHWEICKART: Negative.

25 COMMISSIONER COMMONS: And I had the floor.

1 COMMISSIONER EDSON: I made a motion initially to
2 approve the contract.

3 COMMISSIONER SCHWEICKART: The main motion was
4 Commissioner Edson's.

5 COMMISSIONER COMMONS: That was interrupting me
6 while I had the floor.

7 COMMISSIONER EDSON: You said --

8 COMMISSIONER SCHWEICKART: No, sir.

9 CHAIRMAN IMBRECHT: No, this was at the beginning --

10 COMMISSIONER SCHWEICKART: It was at the outset of
11 the very issue.

12 CHAIRMAN IMBRECHT: -- of the discussion.

13 COMMISSIONER SCHWEICKART: That's right.

14 COMMISSIONER EDSON: And it was seconded by
15 Commissioner Schweickart.

16 COMMISSIONER SCHWEICKART: Right.

17 COMMISSIONER COMMONS: Well, if we want to get into
18 a legal hassle and attempt to do that because that's what
19 we will do as to the legality of the action of the
20 Commission which would make it even more risky as to the
21 action that you're taking, I'm willing --

22 COMMISSIONER EDSON: Well, the transcript will
23 reflect what was said.

24 COMMISSIONER COMMONS: I am also willing to take
25 that step. I think that is only appropriate that when we

1 have a contract that we go through and discuss the issues.
2 This is the first time since I've been on the Commission
3 since you've been Chairman where we have had a problem as
4 to discussion -- discussing the issues that are involved in
5 a particular item.

6 Now I note that we have spent 30 minutes --

7 CHAIRMAN IMBRECHT: Question.

8 COMMISSIONER COMMONS: -- talking about procedure
9 and we probably would have -- and I had suggested to you it
10 takes an hour. We would have been finished probably by now
11 if we had gone on to it.

12 COMMISSIONER SCHWEICKART: Mr. Commons, would you
13 yield, sir? Would you yield, Commissioner Commons?

14 COMMISSIONER COMMONS: Would I yield?

15 COMMISSIONER SCHWEICKART: Yes.

16 COMMISSIONER COMMONS: If I can have the floor back.

17 COMMISSIONER SCHWEICKART: You may certainly have
18 it back if you are yielding to me. I would like to --

19 CHAIRMAN IMBRECHT: That's my call. Excuse me.
20 Go ahead, Commissioner Schweickart.

21 COMMISSIONER SCHWEICKART: All right. I would like
22 to amend the motion to approve the contract for whatever,
23 \$325,000 minus \$65,000 and strike Task 6. Outside of that
24 motion I would propose the Chairman direct the staff to
25 bring Task 6 back to us as an amendment at a subsequent

1 business meeting. An amendment to this contract to, after
2 proper review, to include that item on the business, subse-
3 quent to this meeting.

4 CHAIRMAN IMBRECHT: Is there a second?

5 COMMISSIONER COMMONS: I will second that.

6 CHAIRMAN IMBRECHT: Okay. It has been moved and
7 seconded to delete item or Task 6, reducing the total value
8 of the contract to \$260,000, encompassing the other tasks
9 enumerated. Is there a discussion on the amendment to the
10 motion? Is there an objection to the unanimous roll call?

11 COMMISSIONER EDSON: Yes.

12 COMMISSIONER SCHWEICKART: Yes.

13 CHAIRMAN IMBRECHT: Will the secretary please call
14 the roll.

15 COMMISSIONER COMMONS: Well, I do have one --

16 CHAIRMAN IMBRECHT: Well, we're in the middle of a
17 roll call.

18 COMMISSIONER EDSON: Commissioner --

19 CHAIRMAN IMBRECHT: I asked if you wanted to dis-
20 cuss it and I moved on to --

21 COMMISSIONER COMMONS: I raised my hand I thought
22 precipitously.

23 MS. GREULE: Commissioner Commons.

24 COMMISSIONER COMMONS: Aye.

25 MS. GREULE: Commissioner Edson.

1 COMMISSIONER EDSON: No.

2 MS. GREULE: Commissioner Schweickart.

3 COMMISSIONER SCHWEICKART: Aye.

4 MS. GREULE: Commissioner Gandara.

5 COMMISSIONER GANDARA: I abstain.

6 MS. GREULE: Chairman Imbrecht.

7 CHAIRMAN IMBRECHT: Aye. The amendment is --

8 COMMISSIONER COMMONS: Mr. Chairman.

9 CHAIRMAN IMBRECHT: -- carried. Just a moment.

10 I'm announcing --

11 COMMISSIONER COMMONS: That's only the amendment?

12 CHAIRMAN IMBRECHT: I'm announcing the results of

13 the vote. The amendment is carried. The main motion now

14 before us reflects a contract proposal of \$260,000.

15 COMMISSIONER SCHWEICKART: Move the question.

16 CHAIRMAN IMBRECHT: It has -- the previous question

17 has been moved. Is there a second?

18 COMMISSIONER EDSON: Second.

19 COMMISSIONER COMMONS: Okay. Objection and

20 request --

21 CHAIRMAN IMBRECHT: It has been moved and seconded

22 and --

23 COMMISSIONER COMMONS: -- a roll call vote on the

24 motion on --

25 CHAIRMAN IMBRECHT: I certainly --

1 COMMISSIONER COMMONS: -- on the question of the
2 question.

3 CHAIRMAN IMBRECHT: I certainly intended to do that,
4 Commissioner Commons and there may be no delay in the
5 consideration of the previous question motion. I just
6 reviewed Robert's Rules myself. We can ask counsel to
7 verify that if you care to. So the secretary will --

8 COMMISSIONER EDSON: Excuse me, are we voting on
9 the contract?

10 CHAIRMAN IMBRECHT: No, we are voting on the
11 previous question. If the motion for the previous
12 question, which does require a two-thirds vote, passes,
13 we then move directly to a vote on the main motion before
14 us. If it fails we reopen discussion. Secretary please
15 call the roll.

16 MS. GREULE: Commissioner Commons.

17 COMMISSIONER COMMONS: No.

18 MS. GREULE: Commissioner Edson.

19 COMMISSIONER EDSON: Aye.

20 MS. GREULE: Commissioner Schweickart.

21 COMMISSIONER SCHWEICKART: Aye.

22 MS. GREULE: Commissioner Gandara.

23 COMMISSIONER GANDARA: Abstain.

24 MS. GREULE: Chairman Imbrecht.

25 CHAIRMAN IMBRECHT: Aye. The motion fails for lack

1 of a two-thirds vote. Okay.

2 COMMISSIONER COMMONS: Against my interests, I have
3 to be honest. An abstention is the same as not being
4 present and you have a two-thirds vote. We have three or
5 four. It's not in my interests, but it's true.

6 CHAIRMAN IMBRECHT: Well, thank you. I appreciate
7 your forthcoming nature. John, do you want to verify that
8 for us? Do you have the Rules handy?

9 MR. CHANDLEY: It will take a few moments, please.

10 COMMISSIONER COMMONS: I will change my vote so
11 we don't hold up the time because I have checked with legal
12 counsel. So I will vote aye.

13 CHAIRMAN IMBRECHT: Okay. Let me know about that
14 in the future, I'd be interested.

15 The motion on the previous question passes and the
16 main motion is now before us as to whether or not we
17 approve the contract with Envirosphere for \$260,000. Is
18 there objection to unanimous roll call?

19 COMMISSIONER COMMONS: Yes.

20 CHAIRMAN IMBRECHT: Okay. Secretary please call
21 the roll.

22 MS. GREULE: Commissioner Commons.

23 COMMISSIONER COMMONS: Abstain.

24 MS. GREULE: Commissioner Edson.

25 COMMISSIONER EDSON: Aye.

1 MS. GREULE: Commissioner Schweickart.

2 COMMISSIONER SCHWEICKART: Aye.

3 MS. GREULE: Commissioner Gandara.

4 COMMISSIONER GANDARA: Abstain.

5 MS. GREULE: Chairman Imbrecht.

6 CHAIRMAN IMBRECHT: Aye. The motion is carried, three
7 to nothing.

8 COMMISSIONER COMMONS: I'd like to make a note for
9 the record that I consider this a very dismal situation for
10 the Commission and follows many of the items that I think
11 have been setting a pattern recently where we are making
12 decisions without discussion. At least here it was before
13 the Commission and I would like to ask that the Administra-
14 tive Committee review the actions of this in terms of how
15 we can not have these types of situations reoccur.

16 CHAIRMAN IMBRECHT: I concur with that. I say
17 ultimately that we all have I think some responsibility to
18 take into consideration other people's time. That's the
19 only comment that I would make.

20 COMMISSIONER COMMONS: I would note for the record
21 that I made a request in writing to the Chairman as soon as
22 I knew about this contract coming before us.

23 CHAIRMAN IMBRECHT: That's correct and I --

24 COMMISSIONER COMMONS: To ask that this item not
25 be placed before us today and I have discussed the item with

1 the Development Division and with the Executive Office and
2 I think I have raised serious questions which were not
3 adequately discussed and I do intend to follow up with the
4 Department of Finance as to the issues that have been raised
5 which have not been answered. I will hold up sending such
6 a letter, provided the Chairman doesn't follow up on this,
7 if I get an answer to my main question, which is showing the
8 technical budget and that we have sufficient technical
9 resources to provide the assistance to the 19 projects.
10 That's my main concern.

11 CHAIRMAN IMBRECHT: All right, fine. That's no
12 scur and I would acknowledge that and I just would indicate
13 that in response to your request, I discussed the matter
14 with the other Commissioners and it was their desire to
15 proceed for the reasons indicated by staff earlier in the
16 discussion. All right.

17 COMMISSIONER GANDARA: May I inquire what was
18 approved, 325 or 260?

19 CHAIRMAN IMBRECHT: \$260,000 was approved.

20 COMMISSIONER SCHWEICKART: Absent Task 6.

21 CHAIRMAN IMBRECHT: Is there objection to adoption
22 of the minutes of the previous --

23 COMMISSIONER GANDARA: There are no minutes.

24 CHAIRMAN IMBRECHT: Oh, we do not have them.

25 All right. That will have to be considered at the next

1 meeting. Put that over, Item 6.

2 My understanding is there is no necessity to pro-
3 ceed on the Government Relations Committee report today.
4 There is no urgency on that and in the interests of time,
5 I would suggest we put that over if there is no urgency,
6 unless someone cares to --

7 COMMISSIONER COMMONS: We have been requested by
8 Senator Rosenthal to respond within three weeks and this is
9 the third week, on two questions that were asked of me in
10 the public hearing. My statement to him at the time was
11 that I would attempt to secure a Commission's position on
12 the two questions and that I thought they raised policy
13 questions that I did not feel that I should speak on behalf
14 of the Commission.

15 His statement to me was that he would prefer that,
16 but if I were not able to get a Commission's position, then
17 to provide him my own. So if we were to delay the two items
18 concerning the Commission's position, I would feel personally
19 that I would have to respond because that's what I told him.

20 MS. STETSON: Let me just add something to what
21 Commissioner Commons has told you already, which is that
22 Commissioner Commons asked Senator Rosenthal if three weeks'
23 response was adequate and Senator Rosenthal indicated that
24 would be fine. But when I asked Senator Rosenthal when he
25 planned on introducing the legislation in December, he said

1 that was true and the recommendations could come over in the
2 beginning of December. Commissioner Commons would like
3 to follow through and have the Commission look at these
4 questions and at his request, it went before the GR Committee
5 last week and Commissioner Gandara reviewed the questions
6 and made some modifications. What you have before you are
7 the two questions as modified by the Commission. I don't
8 believe that Senator Rosenthal would be adverse to us
9 responding after taking up this issue at the next business
10 meeting, but it's your prerogative.

11 You've had a long day and that's the only reason
12 why I mention this.

13 COMMISSIONER GANDARA: Yes, well, while the other
14 Commissioners are reading the item, let me indicate that
15 there are two areas in which this doesn't reflect some of
16 our discussion.

17 MS. STETSON: Well and let me say a couple of things.
18 One is I was out of town yesterday and had no analysts
19 in my office.

20 COMMISSIONER GANDARA: It's not a serious thing.
21 I'm just going to propose some modifications.

22 MS. STETSON: No, but let me -- okay. Let me say
23 one thing though. On the low interest revolving loan fund,
24 I believe that item that you have in your packet is adequate.
25 In the R&D expenditure question, which is what was thoroughly

1 discussed at the business meeting, the staff put together
2 some additional background information and outstanding
3 issues which we felt were important. Those were not in-
4 cluded in the background paper that you got in your packet.
5 What was handed out to you was the revised one with some
6 outstanding issues in it.

7 COMMISSIONER COMMONS: Excuse me, Luree. I'm the
8 only one who has a problem here because I did make the
9 personal commitment.

10 MS. STETSON: Right.

11 COMMISSIONER COMMONS: And I think what you do say
12 is correct. If you were to make the request on my behalf
13 to the Senator, he seems to be a fairly understanding
14 person, and saying that it was the desire to put it through
15 the Intergovernmental Affairs Committee and to give a
16 careful review and analysis and that the Commission requests
17 that we be able to deliver an opinion two weeks subsequent.

18 CHAIRMAN IMBRECHT: I'll follow up on that too.
19 I should.

20 COMMISSIONER COMMONS: And I think then that would
21 take care of my concerns, so long as there was someone
22 responding on that basis.

23 MS. STETSON: That would also give you more time
24 to review the background paper with the outstanding issues
25 because we really haven't gone over that.

1 CHAIRMAN IMBRECHT: Okay. Item over.

2 COMMISSIONER GANDARA: Well, the Government
3 Relations Committee is going to review this again?

4 CHAIRMAN IMBRECHT: Yes, that's correct. Okay
5 are there any other Commission policy committee reports
6 that are essential to be made today?

7 COMMISSIONER COMMONS: One very small one on the
8 Road Management Committee. Commissioner Grimes requested
9 that we hold over the economic assumptions workshop on
10 the SCE case from December 16, until January, and that the
11 PUC does not have the staff availability during this month
12 to participate and apparently I think they would like to
13 wait until after SCE formally files their rates so that it
14 can be a workshop that would be jointly sponsored by the
15 two Commissions.

16 CHAIRMAN IMBRECHT: Fine, thank you. Further
17 reports? Hearing none, General Counsel.

18 MR. CHANDLEY: No report.

19 CHAIRMAN IMBRECHT: Nothing. Executive Director,
20 anything further?

21 EXECUTIVE DIRECTOR WARD: Just quickly. Ted Rauh
22 has an issue that was briefly discussed relating to our
23 involvement with LADWP in an issue and he's got a timing
24 problem that he feels compelled to discuss.

25 CHAIRMAN IMBRECHT: Okay.

1 MR. RAUH: Right. All I wanted to do was indicate
2 the importance of the Governmental Relations Committee
3 making a decision on this issue. Your action today was to
4 direct the decision for a budget exercise in this effort to
5 that Committee. We have to file our testimony by the first
6 of December, which means if we're going to do any work at
7 all, we've got to begin by the first of next week.

8 CHAIRMAN IMBRECHT: Okay.

9 MR. RAUH: I have a memo describing it which I
10 think now has been delivered to the Committee members.

11 COMMISSIONER SCHWEICKART: Could I ask something?
12 Is there enough knowledge of this on the Commission that
13 anyone feels we ought to enter into something like this?

14 MS. STETSON: This was something that was brought
15 up at the last Government Relations meeting I believe, or
16 the tail end of the budget meeting and I believe it was
17 going to be brought up at the next Government Relations
18 meeting which is set for November 28th.

19 COMMISSIONER COMMONS: I really feel we should be
20 very careful. We're treading on very, very soft soil here
21 and to try to act in a very short period of time without
22 coming back to the Commission in what is going to be a very
23 controversial matter in Los Angeles, and I think within the
24 Commission itself. It is one where I think we should pass.

25 CHAIRMAN IMBRECHT: Let me -- let's give Mr. Rauh

1 an opportunity to present it to the Government Relations
2 Committee and we will make a commitment that we will not
3 proceed or give direction to the staff to take any action
4 without first consulting the remainder of the Commission
5 and insuring that there is at least majority support for
6 such action.

7 COMMISSIONER COMMONS: We do have existing
8 Commission policy in the area.

9 CHAIRMAN IMBRECHT: All right. Fine. Okay.
10 Message heard and received. We will attempt to get a
11 Government Relations Committee together for the early part
12 of next week, Monday or so, if that's acceptable to
13 Commissioner Gandara.

14 All right, further reports.

15 COMMISSIONER GANDARA: No. Mr. Chairman, there
16 is another item in the Executive Director's report regarding
17 the petition process. I have a question related to that.
18 I don't know whether you want to deal with it today, but
19 you know if we're going to deal with it later, I would at
20 least like some indication that some of the procedures
21 outlined here are being held in abeyance until we do address
22 the issue.

23 EXECUTIVE DIRECTOR WARD: This is really a
24 procedural matter related to petitions designed to try to
25 make the process flow a little better. Frankly, this has

1 just been stimulated by a couple of internal problems.

2 COMMISSIONER GANDARA: Well, if we're going to get
3 into it, you know, my questions are very short. I don't
4 think that we would take a long time. Basically I applaud
5 the effort here and I think overall it is very good. It is
6 something that Commissioner Edson and I spent a lot of time
7 with respective committees and we have dealt with before
8 as to how a petition should be dealt with and this clarifies
9 it very well. I think it's a big step in the right direction.
10 The only problem that I have is with respect to paragraph
11 one, with respect to guidelines that recognize the
12 petition, and I'm concerned because we are in a situation
13 where we have a shortage of staff and so forth and in any
14 case I'm concerned that paragraph one is in fact not
15 consistent with our regulations. It basically indicates
16 that a petition need not be labeled a petition, not even
17 mention the word and any written request for the Commission
18 to exercise its power to adopt, amend or repeal regulations
19 may be an adequate petition. There is an example given
20 later on and yet section 1221 of the regulations is very
21 specific about what should be included in the petition.

22 As I indicated in my opening comment, that I think
23 that this is a very important step forward in clarifying
24 the whole process and I feel very comfortable with what
25 has been developed, but for the fact that the broadness of

1 paragraph one basically puts us in a situation of accepting
2 comments, what is something actually almost like a comment,
3 as a petition.

4 The -- if you look at the section with respect to
5 -- now I can't find it. There is a section here that has
6 to do with the opportunity to comment and actually paragraph
7 one is more descriptive of a comment and not so much a
8 petition, so that I would think that what you would want
9 to add very first of all in paragraph one is a slightly
10 more -- is a description of a petition that is closer to
11 the regulations section 1221. In addition to the fact that
12 maybe what you need to do is actually call the petitioner
13 and find out whether he is filing a petition and not assume
14 that he is submitting a petition simply because he writes a
15 letter. That would be my comment here. Basically have
16 conformance of the administrative memorandum with the
17 section 1221.

18 CHAIRMAN IMBRECHT: Why don't we -- there is not
19 an urgency on this. We can adopt this procedure at the
20 next meeting and any additional concerns you've got --

21 COMMISSIONER COMMONS: Well, I don't think we've
22 had it noticed so -- or had adequate time to look at it.

23 CHAIRMAN IMBRECHT: Fine. So why don't we -- I
24 would suggest that the staff consult with the Commissioners
25 and solicit their input. I know this is obviously a

1 rhetorical question, but is there any member of the public
2 who wishes to address that?

3 MR. PEREZ: One case it's not rhetorical,
4 Chairman Imbrecht.

5 I want to advise all the Commissioners that I have
6 taken the liberty of scheduling for the November 30th
7 business meeting, after talking with the Executive Office
8 and the Chairman, an information presentation by the
9 municipalities participating in the Geyers Public Power Line
10 Project. The backup packages should be in your offices by
11 tomorrow afternoon and then thereafter I will be available
12 to all of you to answer detail questions and find out any
13 additional information you want.

14 The emphasis is that this is pre-NOI filing but
15 they have a coincidence of all their consultants and
16 municipalities being in town on that day and they did want
17 to make a presentation to you for informational purposes.

18 CHAIRMAN IMBRECHT: I'm going to offer one final
19 direction to staff and that is that I think that we need
20 to re-emphasize to Commission staff generally that all
21 materials related to agenda items should be in the
22 Commissioners' offices at the close of business on the
23 Monday preceding the business meeting in question to insure
24 a minimum of one full working day of review and we slide on
25 that and it tends to produce a situation where we spin our

1 wheels here in these meetings unnecessarily. I think that
2 such a memorandum might be helpful. Okay.

3 COMMISSIONER GANDARA: One last caveat. I'm very
4 sorry. I don't mean to prolong this, but I think these are
5 issues coming up that the Commission as a whole needs to be
6 aware of. I was asked to, by the Public Adviser's Office,
7 to meet with the group from the Geysers area, as Commissioner
8 Edson earlier indicated and I was concerned both as to
9 whether there might not be any impropriety in that, given
10 that there might be a case file on Geysers 21, and I was
11 assured that it's not clear, these people are intervenors,
12 and so forth and so on.

13 In my review of section 1216 of ex parte contacts,
14 I felt comfortable with the idea that there was no im-
15 propriety in meeting with such a group. However, in my
16 discussion with the group they did state that they were
17 meeting later on. I don't know which staff and I'd like
18 to point out that section 1216 does say that members of the
19 Commission, including those members of the Commission staff
20 that have been involved or are likely to be involved as
21 principals in case management, or who have participated or
22 are likely to participate in the preparation of presentation
23 of staff testimony, documentary evidence, or cross-
24 examination, et cetera, so that I don't know whether there
25 was any member of staff that's likely to fit that situation.

1 But again, I raise that as an issue because, well I don't
2 think we have any desire to choke off any communication
3 between any concerned parties, but the whole intent of the
4 idea was in fact the expectation of the filing of Geysers 21
5 and concerns over that. So I think that should be carefully
6 reviewed by the staff, that ex parte prohibition.

7 CHAIRMAN IMBRECHT: Okay. The meeting is adjourned.

8 (Thereupon the business meeting before the
9 California Energy Resources Conservation and Development
10 Commission was adjourned at 6:45 p.m.)
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REPORTER'S CERTIFICATE

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THIS IS TO CERTIFY that I, Patricia A. Petrilla, Reporter, have duly reported the foregoing proceedings which were had and taken in Sacramento, California, on Wednesday, November 16, 1983, and that the foregoing pages constitute a true, complete and accurate transcription of the aforementioned proceedings.

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.

Patricia A. Petrilla

Reporter

Dated this 21st day of November, 1983.