

1 STATE OF CALIFORNIA
2 ENERGY RESOURCES CONSERVATION
3 AND DEVELOPMENT COMMISSION
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CALIF. ENERGY COMMISSION

MAR 16 1984

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17 WEDNESDAY, MARCH 7, 1984

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22 Reported by:

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COMMISSIONERS PRESENT

- Charles R. Imbrecht, Chairman
- Arturo Gandara, Vice Chairman
- Russell L. Schweickart, Commissioner
- Geoffrey D. Commons, Commissioner
- Barbara Crowley, Commissioner

EX OFFICIO

- Bill Foley
- Gordon F. Snow

STAFF PRESENT

- Randall M. Ward, Executive Director
- Bill Chamberlain, General Counsel
- Kent Smith, Deputy Director
- Arlene Ichien
- R. Michael Martin
- John Chandley
- Al Deterville
- Karen Griffin
- Ted Rauh
- Luree Stetson
- Bill Pennington
- Lorri Gervais, Secretary

PUBLIC ADVISOR'S OFFICE

- Gary Heath

ALSO PRESENT

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- Hal S. Clark, Liebert Corporation
- Bob Foster, California Electrical Alliance
- Sy Gerber, California Electrical Alliance & Capri Lighting
- Tom Russo, Halo Lighting
- Bill Lahey, Juno Lighting
- David Wilkerson, Prescolite
- William Clark, Chief Electrical Inspector, City of Sacramento

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CHAIRMAN IMBRECHT: Good morning and welcome. We have a rather abbreviated agenda today, as a result that a number of items have been removed from the agenda. Items 3, 5 and 6 have all been pulled from the agenda.

The first item before us is Commission consideration and possible adoption of a petition for rulemaking by Engineered Data Environments to allow the use of ARI Standard 390-78 as an alternative test method for certifying computer room air-conditioning equipment for compliance with the Appliance Efficiency Standards.

Commissioner Schweickart?

COMMISSIONER SCHWEICKART: Mr. Chairman, I'll move the item.

CHAIRMAN IMBRECHT: All right. Do I hear a second?

COMMISSIONER COMMONS: (Show of hand.)

CHAIRMAN IMBRECHT: Second. Moved by Commissioner Schweickart, seconded by Commissioner Commons.

I understand that Mr. Clark wishes to make a presentation on the item. I don't believe there's any controversy.

Mr. Clark, would you like to come forward?

MR. CLARK: No. We have no formal statement

1 at this time.

2 CHAIRMAN IMBRECHT: All right, fine. I'm not
3 aware of any opposition to adoption of the petition.
4 Is there any member of the public who wishes to testify
5 on this item? Is there anything staff feels necessary
6 to add beyond what we have in our briefing book?

7 MR. MARTIN: No, sir. Proud to have such a
8 brief agenda item.

9 CHAIRMAN IMBRECHT: All right. Is there
10 objection to unanimous roll call?

11 Hearing none, that will be the order. Thank
12 you very much.

13 The second item before us is Commission considera-
14 tion and possible action to repeal, on an emergency basis,
15 section 2-5352(o) of the residential building standards,
16 Title 24, Chapter 2-53 of the California Administrative
17 Code. That section requires residential builders to
18 use IC-type fixtures whenever recessed lighting is
19 installed in an insulated ceiling.

20 Commissioner Schweickart?

21 COMMISSIONER SCHWEICKART: Thank you, Mr. Chairman.

22 I'd like to make a few opening remarks on this
23 item, since it is, frankly, somewhat confused. What
24 I'd like to attempt here is to straighten out some of
25 that confusion, if that's possible. I'd like to do that

1 by calling to the Commissioner's attention and perhaps
2 people who are here to address the item today, that there
3 are two parallel or two ongoing processes, two separate
4 processes dealing with various elements of this same
5 question.

6 The one process, the one that we are not involved
7 in today, is a petition which the Commission accepted
8 sometime ago by CEA, calling for an amendment to the
9 Residential Building Standards regarding the current
10 requirement for the use of IC fixtures in insulated space.

11 The Committee met on the 19th of January and
12 heard initial comments on that proposal. Those comments
13 included both energy matters and what I would describe
14 as industry construction matters, or marketplace matters,
15 considerations, related to the current Title 24 requirement
16 for the use of IC fixtures in these applications.

17 The Committee will continue meeting on that
18 petition and will bring a recommendation to the full
19 Commission a couple months from now, related to amendments,
20 proposed amendments to the Residential Building Standards.
21 They would then be duly submitted to the Building Standards
22 Commission and presumably incorporated into Title 24
23 no earlier than January 1985. That matter continues
24 independent of what we do today.

25 Now, at the same time, we have a separate matter

1 before us today, which is an emergency action of the
2 Commission to repeal an action taken last year by the
3 Commission which required the use of IC fixtures in
4 insulated ceilings. And the item before us today is
5 an emergency action to repeal that action, fundamentally
6 not on a basis of an energy issue but rather on the basis
7 of a threat, if you will, to the general welfare, which
8 is one of the several grounds for emergency action by
9 the Commission, in terms of building standards.

10 Now, what I would like to do then is just to
11 assure that the Commission understands what it is that's
12 before us today and what it is not; and, unfortunately,
13 there was an earlier report which many of you may have
14 read as the current backup material in the books, which
15 appears to present, in fact, it doesn't appear to, but
16 presented two options: One is an emergency repeal, and
17 the other would be, in essence, a request to the Building
18 Standards Commission. That background material is out
19 of date, and, John, let me ask: Has the revised backup
20 material been circulated? There has not been any, as
21 I recall.

22 MR. CHANDLEY: That's correct, it has not.

23 COMMISSIONER SCHWEICKART: All right. So,
24 let me then update the Commission.

25 In a meeting with the Building Standards

1 Commission last week, it was made clear by the Building
2 Standards Commission that if they are to take any action
3 at this time to essentially not publish -- let me set
4 a context.

5 After the action last year of the Commission,
6 which was fundamentally a proceeding to incorporate on
7 an emergency basis the provisions of AB 163, at the same
8 time other amendments to the building standards were
9 proposed to the Commission and being dealt with within
10 the same set of hearings, and decisions were made by
11 the Committee and the Commission which adopted a number
12 of amendments to the building standards. Those were
13 all submitted, since we were moving ahead with the AB 163
14 provisions on an emergency basis, in order to get those
15 published immediately in Title 24. The other amendments
16 were also submitted along with those. One of those
17 additional matters was this issue of the IC fixtures.

18 It was not in any way an emergency action at
19 the time; that is, in and of itself, the action taken
20 last year by the Commission on this matter was done in
21 what I would call a normal process; that is, it would
22 have been a normal amendment to Title 24, subsequent
23 to Commission action.

24 However, since AB 163 had to be submitted and
25 action taken on an emergency basis, the other actions

1 of the Commission were submitted simultaneous and they
2 were then incorporated at the same time by the Building
3 Standards Commission. And, subsequently, a supplement
4 to Title 24 was published on -- somewhere around December,
5 wasn't it, John? I don't have that date here.

6 MR. CHANDLEY: That's correct.

7 COMMISSIONER SCHWEICKART: But I believe it
8 was December. In order to facilitate in the industry,
9 being provisions of 163, and have them published.

10 Now, I emphasize then that the initial action
11 on the IC fixtures was not in any way taken on an emergency
12 basis, but was simply coincidental with emergency actions
13 being taken and, therefore, was published.

14 We are at this point, then, facing a Building
15 Standards Commission who are about to publish the long-
16 awaited revision to Title 24, in general. It was originally
17 expected a year ago January. That is to come out now
18 within the next month or so. And, therefore, the legal
19 status, if you will, at the Building Standards Commission
20 is that they would publish this requirement on the IC
21 fixtures, or it has already been published in supplement
22 form and it would now be incorporated in the total issu-
23 ance of Title 24.

24 However, if the Commission today acts on an
25 emergency basis to repeal that provision, there is still

1 time and, in fact, it will essentially be the last action
2 that the Building Standards Commission can take prior
3 to publishing Title 24. So, that if the Commission then were
4 to act today to repeal the IC fixture provision, Title 24
5 would be published and distributed in a matter of weeks
6 now and we would be essentially back to where we were
7 prior to the Commission's actions last August.

8 Now, the action then today does not, in essence,
9 deal with energy. The issue before us today is in the
10 judgment of the Commission: Whether or not to repeal
11 provisions before us in Title 24 on the grounds, in our
12 judgment, that substantial harm to the industry is
13 occurring, thereby creating a threat to public peace,
14 health and safety, or the general welfare if the IC fixture
15 amendments adopted last year were to stand. And that
16 is the matter before us.

17 As I say, independent of the action today,
18 the substantive matter of the energy considerations related
19 to IC fixtures and non-IC fixtures will continue to be
20 dealt with, and the Commission will once again be faced
21 with that issue at the conclusion of the Committee's
22 proceeding.

23 I think with that, let me just call your
24 attention to an order prepared by counsel, repealing
25 this provision and making a finding of emergency. Do --

1 all Commissioners do have that, John, as I understand
2 it?

3 MR. CHANDLER: No, I have --

4 CHAIRMAN IMBRECHT: No, I do not have it.

5 COMMISSIONER SCHWEICKART: All right. Why
6 don't we pass those out so that the Commission can refer
7 to them.

8 MR. CHANDLEY: Yes. It was my intent,
9 Commissioner, to hold these. There are certain proposed
10 findings in there which I am anticipating, but I think
11 handing those out right now might prejudge the issue.

12 COMMISSIONER SCHWEICKART: All right.

13 CHAIRMAN IMBRECHT: I understand.

14 MR. CHANDLEY: My suggestion is that you take
15 the evidence --

16 CHAIRMAN IMBRECHT: Let's start. We have a
17 lot of people that want to offer testimony.

18 MR. CHANDLEY: -- and then if this is still
19 appropriate, I would hand it out at that time.

20 COMMISSIONER SCHWEICKART: Let me just say
21 then that there is an order prepared, again, as John
22 said, anticipating certain arguments that we know are
23 going to be made, and should the Commission then find
24 justification in the arguments to so order, that order
25 is prepared. The alternative, and the only other

1 alternative essentially before us, is to take no action
2 based on testimony today, in which case the provisions
3 which are currently in force and effect would continue
4 until at least January '85.

5 CHAIRMAN IMBRECHT: Okay, fine. I think the
6 issue is square before us.

7 Mr. Chandley, do you have anything you wish
8 to add?

9 MR. CHANDLEY: Yes. One correction. Commissioner
10 Schweickart indicated that he believed that if you acted
11 today to repeal the standard there would still be time
12 for that standard to be removed from the next annual
13 edition of Part 2 of Title 24; in fact, it has already
14 gone to print, and there was a debate about whether the
15 Building Standards Commission executive officers should
16 also anticipate a repeal and pull it out before that.
17 He elected, I think quite rightly, not to do so. So
18 that it's already gone to print and if you were to repeal
19 the standard today on an emergency basis and the Building
20 Standards Commission were to concur in your action, either
21 one or both agencies would have to put out a notice to
22 the effect that the standard has been repealed, supplemental
23 notice.

24 CHAIRMAN IMBRECHT: May I inquire: Are you
25 absolutely convinced Mr. Worsley has no discretion

1 relevant to that issue and if there were intercessions
2 with the state printer, that could not be corrected?

3 MR. CHANDLEY: I offered --

4 CHAIRMAN IMBRECHT: Or an errata sheet, as
5 Commissioner Crowley suggested.

6 MR. CHANDLEY: I offered Mr. Worsley two options,
7 he was in a very difficult position; again, he was trying
8 to anticipate what his commission might do, even before
9 we had acted. He had one option, which was to go ahead
10 and pull it out of the proofs, out of the galleys, and
11 then, if he was mistaken, to send out a notice afterward,
12 saying that, "No, we made a mistake, the standards are
13 still in effect." Or he could have allowed the thing
14 to go into print, and if the standards are repealed and
15 that repeal is approved, we could have sent out a notice --

16 CHAIRMAN IMBRECHT: Mr. Chandley, do you know
17 for a fact that those galleys have actually gone to press
18 or is it --

19 MR. CHANDLEY: I've had conflicting information
20 on that, I can't give you a definite answer. My
21 understanding is the train has left the station, but
22 after today's action, I can still check on that.

23 CHAIRMAN IMBRECHT: We will obviously have
24 to pursue that to the extent that we can, and I would
25 just, again, without prejudging, depending upon the

1 testimony that's provided to us and the action that the
2 Commission determines to take, I will be happy to try
3 to intercede with appropriate authorities at other levels
4 of the administration to try to get that stopped.

5 MR. CHANDLEY: Let me just say that this standard
6 surprised a lot of people now, but everyone is quite
7 focused on it. The networks that are informed people
8 are pretty well established now, and that whatever we
9 do and the Building Standards Commission does will be
10 made known, I believe, almost immediately.

11 CHAIRMAN IMBRECHT: I understand.

12 MR. CHANDLEY: And, so, simply sending out
13 a supplemental notice will not be -- I think will be
14 adequate.

15 CHAIRMAN IMBRECHT: We'll deal with that in
16 due course.

17 Let's turn to those that wish to offer testimony.
18 Let me inquire of Mr. Foster. Do you and Mr. Gerber
19 want to make a joint presentation or --

20 MR. FOSTER: That's correct.

21 CHAIRMAN IMBRECHT: Fine. Then, I'll call
22 on Mr. Robert Foster and Mr. Sy Gerber, please.

23 Would you please identify yourselves for the
24 record and state your occupation as well?

25 MR. FOSTER: Thank you, Mr. Chairman, and

1 members. My name is Robert Foster, I am representing
2 the California Electrical Alliance. With me today is
3 the president of the California Electrical Alliance,
4 Mr. Sy Gerber.

5 I might add that we today are speaking not only
6 on behalf of the Alliance but also on behalf of
7 manufacturers of recessed lighting for residential use,
8 manufacturers which would include Halo Lighting, Capri
9 Lighting, Progress Lighting, Thomas Lighting, Liteolier,
10 Prescolite, Scoville, and Marco; and I would add that
11 that represents approximately 95 percent of the recessed
12 lighting sold in the country for residential use.

13 I think Commissioner Schweickart accurately
14 and briefly outlined the progress of this issue to date.
15 I would only add that we would like to take responsibility,
16 in large part, for basically missing the item when it
17 was adopted in August of last year. It slipped through
18 the cracks, if you will, we did not see it. We can
19 understand that, on the basis of the information provided,
20 why the Commission took the action it did. As Commissioner
21 Schweickart pointed out, it was no real emergency but
22 was included in the effort to publish the changes, the
23 legislative changes to the Residential Building Standards,
24 and since there was no industry opposition at the time,
25 it's understandable that it would be included as such.

1 However, subsequent to its adoption, the industry
2 discovered what impact it would have on the lighting
3 industry in California, what impact it would have on
4 jobs, on lost inventory, et cetera. And unlike other
5 appliance standards, where there is a pipeline provision,
6 if you will, to deplete inventory, this emergency carried
7 no such provision. And what we are left with today is
8 a situation where construction is progressing in California,
9 it is progressing at an increasing rate. In the normal
10 course of affairs, thermally protected fixtures would
11 be installed and approved, and I might add have been
12 installed and a number of jobs have been "red tagged,"
13 if you will, by local building inspectors.

14 The industry is faced, and I think Mr. Gerber
15 will soon tell you in detail what we're faced with, but
16 it is faced with a massive problem of inventory that
17 is already installed, inventory that may be returned
18 and unsalable, and a loss of jobs for California
19 manufacturers on either inventory that will be returned
20 or orders that will be canceled.

21 It is a serious problem, one that involves
22 tens of thousands of dollars, numerous jobs, and basically
23 the waste of very good and useful equipment, equipment
24 that has functioned well for years and meets all safety
25 standards and other standards that are required by the

1 National Electric Code and has been used in California
2 for some time. It will also reduce the choice of
3 California consumers, basically limiting the kinds of
4 fixtures they can use and the kinds of applications
5 those fixtures will have.

6 If I may, now I'd like to have Mr. Gerber
7 elaborate on some of the really severe problems that
8 this -- if the action is not taken today, the impact
9 on the industry will be substantial indeed.

10 CHAIRMAN IMBRECHT: Thank you.

11 Mr. Gerber?

12 MR. GERBER: Thank you, Bob.

13 There are many distributors right now holding
14 orders pending today's decision. There are many distri-
15 butors also who wish to return material, and because
16 we are telling these distributors that possibly some
17 action will be taken today, they're holding onto their
18 present material.

19 I have a list of some of the manufacturers,
20 and, of course, we're not all represented like we were
21 last time, we didn't think it was necessary to have every-
22 body come in from all over. I have some of the areas
23 that have given us a lot of problems because of this
24 regulation. I'm going to duplicate the areas with the
25 manufacturer.

1 Representing Marco, San Bernardino County,
2 Victorville. Victorville has gone all IC, they absolutely
3 will not take any variances whatsoever.

4 Sacramento has been holding up jobs that they
5 have finally released.

6 The City of Industry and Alhambra, Litolier.
7 Contra Costa County. LA County. LA City. Stockton
8 has absolutely gone all IC.

9 When I say an area has gone all IC, even with
10 the coordination and cooperation of your Commission in
11 explaining what has been going on, these areas still
12 are red tagging and staying with this law, with this
13 regulation.

14 My own company, Capri, in Santa Maria, we had
15 over 1,000 fixtures held for a particular job for weeks,
16 until a final decision had finally been made. I'm very,
17 very gratified to report the decision was to be allowed
18 to keep the fixtures on the job, but it did take weeks
19 of desperation on both the contractor, distributor and
20 Capri's part as to what the final outcome of this would be.

21 West Los Angeles --

22 COMMISSIONER SCHWEICKART: Mr. Chairman, could
23 I interject something here?

24 CHAIRMAN IMBRECHT: Certainly.
25

1 COMMISSIONER SCHWEICKART: I want to make sure
2 that the Commission is not confused here.

3 The law right now requires IC fixtures in
4 insulated space, and it is entirely appropriate, in fact,
5 it would be illegal if local building officials at this
6 time were not requiring IC fixtures in insulated space.

7 So that your point, Mr. Gerber, certainly
8 indicates that there are people who are taking the law
9 seriously, but I don't think there should be an indication
10 here to the Commission that somehow something inappropriate
11 is happening out there. It may be disruptive, and I
12 think that's a point which I -- I think you're trying
13 to make. But I don't want to get that confused with
14 the idea that somehow local officials are prejudging
15 what the law is or something. They are actually applying
16 the law; in many cases, in fact, they are not applying
17 the law, and I would call the Commission's attention
18 to the fact that there has been some confusing information
19 put out by manufacturers on both sides of this issue,
20 essentially making statements about what the Energy
21 Commission may or may not do, or may or may not have met.

22 CHAIRMAN IMBRECHT: I understand your point.
23 I think it's well-taken, Commissioner Schweickart. I
24 just would indicate that it's a demonstration to me that
25 sometimes our local building officials can be especially

1 efficient in enforcing our regulations, and, to that
2 extent, I guess we should offer some applause, since
3 we've had an awful lot of concerns registered about their
4 inability to indeed enforce some of our regulations.

5 In any case, I don't really think that any
6 of this exchange is particularly relevant if you would
7 like to particularly focus on the impact upon individual
8 manufacturers and disruption of your industry.

9 MR. FOSTER: One note, Mr. Chairman, if I may,
10 taking Commissioner Schweickart's lead. I think he is
11 quite right: It is the law today and it will be enforced
12 at the local level.

13 I might add that the impact on the industry
14 would be probably five or six times greater had not a
15 number of local officials granted variances, pending
16 action by the Commission. The Commission has been very
17 helpful in explaining what's been going on, and at their
18 discretion, they have granted variances pending today's
19 action.

20 Absent those variances, this would be five
21 or six times greater. We'd have inventory stacked up
22 all over the place.

23 CHAIRMAN IMBRECHT: I understand. Okay.

24 MR. GERBER: Thank you for explaining that, Bob.

25 In no way have we tried to precede a decision

1 here today.

2 I can keep on going to Victorville, Hisperia,
3 Malibu, Santa Monica, all these various -- San Francisco
4 Bay Area, Bakersfield, Santa Barbara, Ventura, San Diego,
5 all of these areas have certainly been extremely
6 cooperative to the regulation.

7 All I -- I have to close by saying that if
8 something isn't done today, whether it -- in a positive
9 action, that the industry will be in a tremendous, tremen-
10 dous problem. Thank you very much.

11 CHAIRMAN IMBRECHT: Okay, thank you very much.

12 Any questions for either Mr. Foster or Mr. Gerber?
13 Mr. Chandley?

14 MR. CHANDLEY: There was additional evidence
15 presented at the Committee hearing and perhaps the
16 representatives might like to summarize some of the comments
17 made by the manufacturers about the proportion of IC
18 versus non-IC fixtures in the market, where you see that
19 market heading, so the Commission would have some idea
20 of whether we're talking about a small part of the market
21 or a large part of the market, or whatever.

22 Could you address that?

23 MR. GERBER: Yes. I would say that the State
24 of California proportionately, I know our sales
25 proportionately in the State of California are extremely

1 insignificant in our total sales because of climatic
2 conditions, they're really not that popular here.

3 MR. FOSTER: IC is not popular.

4 MR. GERBER: IC is not popular, that's right.

5 MR. FOSTER: I think we submitted figures at
6 the hearing, the Committee hearing last time, I think
7 the thermally protected fixture, the one that is no longer
8 to be installed, represented approximately 75 percent
9 of California's use of recessed lighting, and I think
10 that figure is still correct today. Or would be correct
11 today, absent the regulation.

12 CHAIRMAN IMBRECHT: Commissioner Schweickart.

13 COMMISSIONER SCHWEICKART: Mr. Chairman, let
14 me try to add a couple of things here.

15 First of all, the Committee has not technically
16 heard this matter before the Commission today; that is,
17 we heard testimony on the CEA petition to amend the regula-
18 tions, but the Committee does not come before the
19 Commission today with a recommendation on the action
20 before us, in that it was not -- the issue of emergency
21 action and the basis for that was not the subject which
22 was noticed for the Committee and is not appropriate
23 for the Committee action.

24 Now, on the other hand, Mr. Gerber and, let me
25 just say, a very large number of people from the industry,

1 nevertheless testified before the Committee in that hearing
2 on the disruption-in-industry issue. And although --
3 let me try and characterize that testimony, which, in
4 some sense, is not fair, but if I can come to a bottom
5 line, let me say it was essentially uniform, save for
6 perhaps one exception, in terms of claims of disruption
7 in the industry. The details of that disruption, that
8 is, the specific nature of the disruption, which we
9 questioned at that time, ran a rather wide gamut from,
10 I would say, things which were fairly convincing, that
11 there is disruption going on, to others where I would
12 say it was simply confusing.

13 But the Committee does not have a recommendation
14 to that. Mr. Gerber, I think the Commission today would
15 be informed of it if you would describe the -- and I'm
16 going back now to my recollection of the earlier hearing,
17 if you would describe for the Commission, since all
18 manufacturers, just about all manufacturers do have both
19 IC and non-IC lines, what the nature of the disruption
20 is should this action stand, should the current regulation
21 stay in effect. Number one.

22 Number two, I would again call to the
23 Commission's attention the fact that, that regardless
24 of how strictly the current statute or the current
25 regulations are applied, there is no ban on non-IC fixtures.

1 There is a ban only in their application in insulated
2 ceilings. In, let me say, the first floor of a two-
3 floor house, there is -- their use is in no way affected.
4 It is affected in those applications where the fixture
5 would project into insulated space; therefore, all one-
6 story houses and on the upper floors of two-story houses,
7 and that sort of thing.

8 But I think it should be made clear that there
9 is -- that inventory will continue to be used --

10 CHAIRMAN IMBRECHT: There's still some market
11 for it.

12 COMMISSIONER SCHWEICKART: There is certainly
13 a market and it's not clear, frankly, the degree to which
14 the total market is affected by the current provisions.

15 But, Mr. Gerber, if you would describe just
16 a bit the issues of limited selection that you went into
17 before, I think it's appropriate to summarize why it
18 is that there's going to be a disruption there.

19 MR. GERBER: All right.

20 COMMISSIONER SCHWEICKART: Not just a claim
21 that there is, but --

22 MR. GERBER: Well, number one, the limited
23 selection of the fixture is definitely a problem. I
24 stand, I think that the number that we all came to a
25 conclusion of, that we were knocking out about 75 percent

1 of the selection of the people of California and knocking
2 out 75 percent of our type of fixture that we manufacture
3 if this were to continue on, if the regulation were to
4 continue on. I included low voltage, I included architec-
5 tural type of fixtures, I included various types of wall
6 washes, which is a -- many, many times a dramatic part
7 of our architectural structure here in California.

8 The subject was brought up also of energy
9 conservation of low voltage. It also, I know, has been
10 brought up that a few manufacturers have come out with
11 spottingly a fixture or two which is IC. I spoke to
12 one of the manufacturers this morning and they did come
13 out with a 25-watt IC fixture, which is so limited in
14 its scope of usage.

15 So, the low-voltage aspect of IC is extremely
16 limited due to the heat participation going up instead
17 of down. The low-voltage lamp does not throw heat into
18 the room, it throws heat up through the fixture; so,
19 therefore, it's application for IC would be greatly limited
20 without protection.

21 Two-story house, one-story house: The habits
22 of contractors is they only want to order one kind of
23 fixture. I mean, if you try to break habits, if the
24 IC fixture were needed and if it was a two-story house
25 that was going up, the contractor absolutely would not

1 sit there and split his order. He would contain that
2 house up and he would keep it consistent with one fixture,
3 and many, many times with one type of trim.

4 As far as the markets are concerned, the
5 residential and the commercial market, you say there
6 would be a lot of usage for the thermal. The type of
7 fixtures that you're talking about are not widely used
8 commercially, they are spottingly used but not widely
9 used. The greater part of the fixture that we're talking
10 about today, I would say that 60 to 70 percent of that
11 fixture is used residentially.

12 If you take a look at commercial, you take
13 a look at offices, hotels, if you take a look at the
14 shopping centers, very, very few of that type of fixture
15 is used in this application. So, therefore, stopping
16 this application into residences would be a definite
17 negative to the industry.

18 CHAIRMAN IMBRECHT: Okay, thank you very much.
19 Commission Gandara, proceed with the question
20 you wished to raise.

21 VICE CHAIRMAN GANDARA: I believe you said
22 we were going to hear from someone else.

23 CHAIRMAN IMBRECHT: Fine. In that case, is
24 there any -- Mr. Foster, do you wish to add something?

25 MR. FOSTER: Excuse me. Commissioner Imbrecht,

1 I have also Mr. Tom Russo, from Halo Lighting, who happens
2 to be the largest manufacturer of recessed lighting,
3 and he, I think, has some additional information relative
4 to limited number of trims available on IC lighting and
5 why it would exclude a great deal, a number of usages
6 we have in California now. If he may --

7 CHAIRMAN IMBRECHT: Fine. I was about to call
8 upon him, so why don't we ask him to come forward.

9 Thank you, Mr. Gerber.

10 MR. GERBER: Thank you.

11 CHAIRMAN IMBRECHT: Mr. Russo?

12 MR. RUSSO: Good morning. In addition to what
13 Sy told you --

14 CHAIRMAN IMBRECHT: Would you identify yourself
15 for the record, please?

16 MR. RUSSO: Yes. I'm Tom Russo, I'm engineering
17 manager at Halo Lighting.

18 The non-IC fixture cannot simply be replaced
19 in many cases by a type IC. For an example, the lamp
20 wattages and trim variations that are available with
21 the non-IC fixture can go upwards to 150 watts. The
22 90 -- over 90 percent of the IC fixtures available are
23 40 watts maximum, with a few reflector lamp exceptions
24 up to 75 watts.

25 So, the designer or the homeowner, the person

1 who needs a 150-watt fixture or a 100-watt fixture cannot
2 simply go and replace it with a 40-watt IC.

3 So, we're talking possibly, it may be even
4 eliminating the recessed fixture in particular. I think
5 what's even a more serious problem, is you just don't
6 have the availability, the number of variable trims that
7 exist with the non-IC in the IC-type product. I think
8 we're talking as opposed to 25 or 30 trim variances,
9 and lamp combinations even double that number for the non-IC,
10 and it can dwindle down to perhaps a half a dozen in
11 many cases for the IC fixtures. So you could see where
12 the availability to the public is extremely limited by
13 the IC fixture.

14 I would also like to add that, as Bob stated,
15 we are the largest recessed fixture manufacturer. We
16 have a factory, our main office is in the Midwest, near
17 Chicago. We have one other factory and that factory
18 is dedicated to the West Coast, particularly California,
19 it's located in the Los Angeles area. The existence
20 of that factory, as well as the people that are employed
21 there are mainly due to the production of the product
22 that would be eliminated by the -- or that is currently
23 eliminated by the Title 24 amendment. The volume of
24 fixtures that are --

25 CHAIRMAN IMBRECHT: Commissioner Schweickart

1 has eliminated in insulated ceiling applications, all
2 right -- Commissioner Schweickart was about to correct
3 you on that basis, and I'll do it for him. Okay.

4 MR. RUSSO: Okay, right.

5 CHAIRMAN IMBRECHT: Please continue. We under-
6 stand your point.

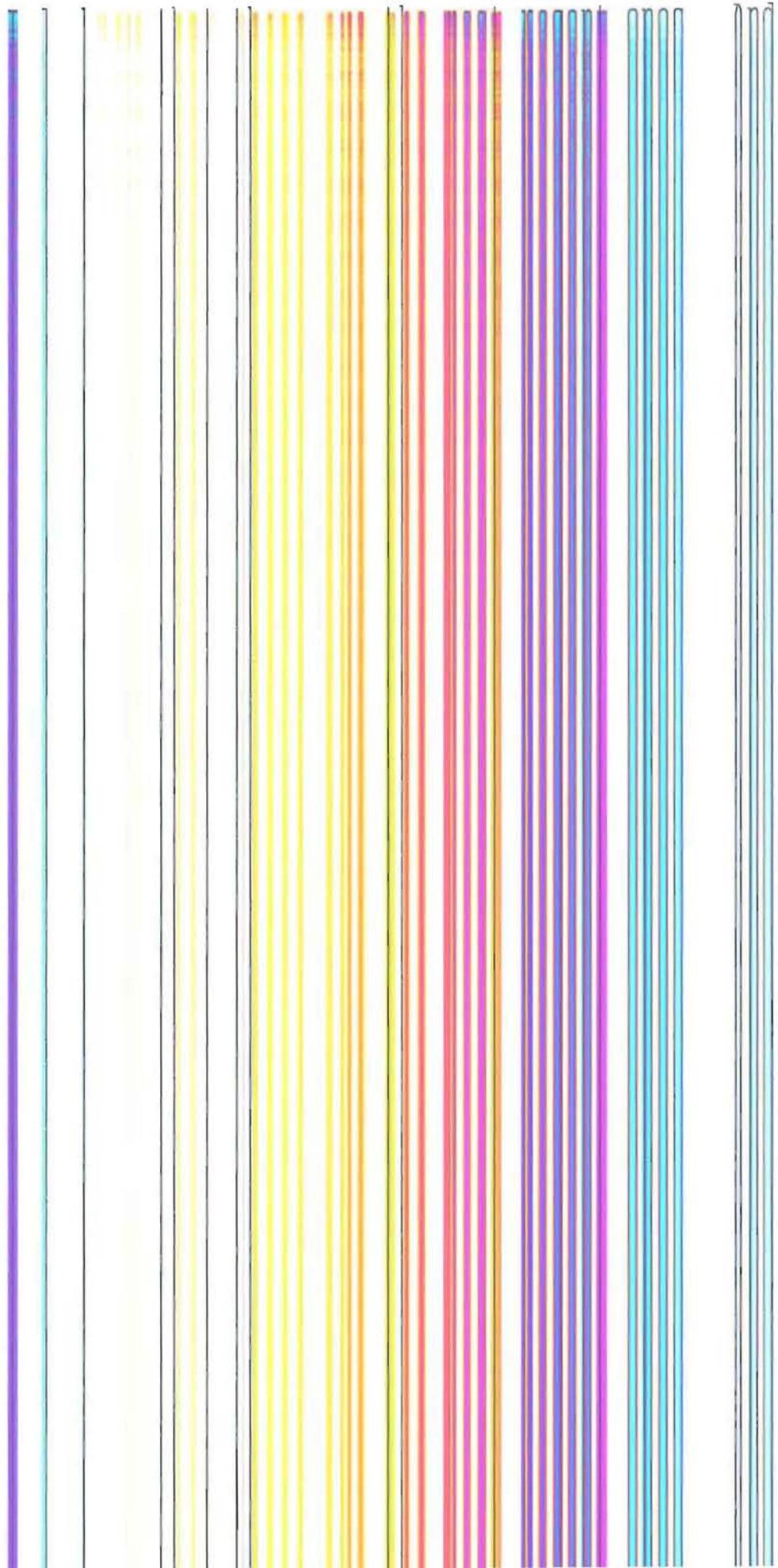
7 MR. RUSSO: I'm sorry. Okay.

8 CHAIRMAN IMBRECHT: Be technically correct.

9 MR. RUSSO: It's a great percentage and I think
10 I would have to be kidding everyone here if I could pin-
11 point the percentage of that fixture that's going into
12 that type of ceiling, which then is outlined by the Title
13 24 amendment. But I can only say that we would not,
14 we certainly cannot keep the same staff today to produce
15 that product when it would certainly be eliminated by
16 some level should this change go forward.

17 And, in addition, we have the most recent
18 occurrences, I believe, are Victorville, mainly San
19 Bernardino County, Riverside, Palm Desert, where fixtures
20 of this type have actually had to be removed from the
21 ceiling. These fixtures, the cost of removing them
22 practically outweighs the initial investment in the product
23 to begin with. They certainly are not in very good condi-
24 tion, they cannot be used elsewhere, it wouldn't even
25 be cost-effective to try to move those fixtures to other

1 areas. I don't have evidence how much that is occurring;



1 areas. I don't have evidence how much that is occurring;
2 I do know that those are the most recent ones. And,
3 in the interest of keeping the customer happy, the
4 distributors happy, many times these are just replaced
5 without being reported to the factory.

6 So, I don't know what the level is but I can
7 say that we are definitely being affected by it and we
8 can only hope that it will not get worse in the future.

9 CHAIRMAN IMBRECHT: Okay. Thank you very much.

10 MR. RUSSO: Thank you.

11 CHAIRMAN IMBRECHT: Next, let's call upon,
12 let's join this issue and try to resolve it, Mr. Bill
13 Lahey, representing Juno Lighting.

14 MR. LAHEY: Bill Lahey, with Juno.

15 Basically, what I would like to do is submit
16 to the record a letter which I supplied to several of
17 the Commissioners a couple days ago.

18 CHAIRMAN IMBRECHT: The letter dated March 2?

19 MR. LAHEY: Yes.

20 CHAIRMAN IMBRECHT: Yes, we do have that in
21 our agenda packages and we will accept that for the record.

22 MR. LAHEY: Okay. Since there were four points
23 in the letter, three of which I guess will be addressed
24 at future hearings with regards to energy loss, low-
25 voltage lighting and void area per fixture, I would just

1 like to summarize Juno's position with regards to the
2 supply and availability of IC-rated fixtures.

3 It is our understanding that the focus of the
4 decision would be based on the distributor's inventory
5 problems, the electrical distributors. All the manu-
6 facturers speaking here today and the ones not represented
7 here today or not speaking today do supply recessed
8 incandescent fixtures, both IC and no-IC, in 49 other
9 states. So, I would assume, certainly, if they're large,
10 viable manufacturers, that there is a market for non-IC-
11 rated fixtures.

12 Also, as we stated, the focus of the code is
13 insulated residential ceilings only in the State of
14 California. Our figures indicate total recessed
15 incandescent sales, 50 percent are commercial, 50 percent
16 are residential. From that, there's a breakdown at
17 insulated areas and noninsulated areas. As we indicated,
18 Juno sales, not as a result of this code, but Juno's
19 sales, since the introduction of IC, which is going on
20 two years ago, two and a half years ago, are about 75
21 percent IC products in insulated ceilings. Those are
22 Juno's figures.

23 Just one final comment, and I think most of
24 the Commissioners are aware of it. IC-rated products
25 are available in higher wattage fixtures, 100-watt hour

1 and par lamps, wide selection of trims, one unit, for
2 instance, will take up to 22 different rim selections;
3 a variety of different apertures, different sizes--
4 granted, those are available right now from one manu-
5 facturer, Juno, and another one has recently introduced
6 it who is a CEA member. So, it is limited to a few
7 manufacturers; however, there is a wide selection
8 available to the consumer.

9 CHAIRMAN IMBRECHT: All right. Any questions
10 of Mr. Lahey? Commissioner Schweickert?

11 COMMISSIONER SCHWEICKART: Yes. Mr. Lahey,
12 I want to make sure I understood what you said. I take
13 it that the part that you did not -- the bottom line
14 you didn't draw was that of your installations in
15 insulated vis-a-vis noninsulated ceiling applications,
16 that it's 75 percent of your installations go into
17 insulated ceilings and 25 into noninsulated; is that
18 what you said?

19 MR. LAHEY: Well, we sell, 75 percent of our
20 residential type, recessed incandescent fixtures are
21 sold as an IC type or sold as the IC type. Now, we're --

22 COMMISSIONER SCHWEICKART: Okay. So, the 75
23 percent residential sales is IC versus non-IC?

24 MR. LAHEY: Right.

25 COMMISSIONER SCHWEICKART: All right. Now,

1 you confused it because you put two things in there.
2 You also said something about going into insulated
3 ceilings. Do you have a breakdown on what percentage
4 of your fixtures, whether IC or non-IC, go into insulated
5 versus noninsulated ceilings?

6 MR. LAHEY: Nothing that we could say is a
7 hard and fast fact.

8 COMMISSIONER SCHWEICKART: All right.

9 MR. LAHEY: It would strictly be a guess, and --

10 COMMISSIONER SCHWEICKART: All right. So,
11 what you gave us then was a breakdown between IC and
12 non-IC, not insulated versus noninsulated ceilings?

13 MR. LAHEY: Correct.

14 CHAIRMAN IMBRECHT: That's correct. Okay.
15 Commissioner Gandara.

16 VICE CHAIRMAN GANDARA: Just one question.
17 In the letter that I received, the second-to-last para-
18 graph, second-to-last sentence indicates that you don't
19 believe in mandating the use of one or the other type
20 of product. That is to say, you are saying you are
21 indifferent as to the outcome of this particular issue?

22 MR. LAHEY: Our position, and I think the position
23 of the industry, in general, is that there is a control
24 within our industry, UL and the National Electric Code,
25 and, in general, we do not believe that outside parties

1 should further restrict or make their own statement on
2 what type of recessed incandescent products should be
3 installed. That's our position.

4 What the Commission's responsibility is, you
5 certainly know, and that may coincide or go along with
6 our position and it may be in conflict with our position.

7 VICE CHAIRMAN GANDARA: And your position is
8 that you're indifferent as to the outcome.

9 MR. LAHEY: The outcome to this hearing today?

10 VICE CHAIRMAN GANDARA: Yes.

11 MR. LAHEY: If there's an establishment of
12 major disruption within the industry and, quite honestly,
13 we have not seen that yet, but if there is that establish-
14 ment, then absolutely. We don't want to see the lighting
15 industry disrupted. But I think if that's established,
16 then the outcome is indifferent to us.

17 CHAIRMAN IMBRECHT: Okay.

18 COMMISSIONER SCHWEICKART: What is your opinion?
19 What is your recommendation, Mr. Lahey? Do you recommend
20 that the Commission adopts this order repealing the current
21 requirement, or that we do not repeal?

22 MR. LAHEY: Well, there's been a lot of
23 conversation about the disruption with regards to the
24 manufacturers. We do not see that disruption with regards
25 to the manufacturers.

1 With our distributors, and, granted, we do
2 not sell all lighting distributors, by any means, in
3 the State of California, we do not see that disruption.

4 So, if the decision is strictly based on is
5 there a disruption today in the State of California with
6 regards to the lighting industry on the distribution
7 level, that has not been established. So, if that's
8 the criterion, then no, it's not been met.

9 CHAIRMAN IMBRECHT: Okay. Thank you very much.

10 Next, I'd like to call upon David Wilkerson,
11 representing Prescolite.

12 MR. WILKERSON: Thank you, Mr. Chairman. David
13 Wilkerson, with Prescolite, in San Leandro, California.

14 I think one thing I'd like to mention here is
15 something that Mr. Gerber brought up a moment ago; that is
16 the -- I think not so much the actual disruption that's
17 being caused right now, but the potential disruption
18 that will occur as this regulation becomes more and more
19 enforced as variances are no longer granted.

20 Secondly, the potential for disruption in the
21 industry caused by the efforts that must be made on the
22 industry's part to comply in the State of California,
23 our company in San Leandro manufactures one line of IC-
24 type recessed fixtures, it's a limited line, the maximum
25 wattage that we can supply is a 75-watt trim. It's rather

1 a narrow line compared to the rest of our line. And,
2 once again, I think we're consistent in supplying possibly
3 25 percent of the recessed fixtures going into residential
4 applications, or IC, the rest, the other 75 percent,
5 at this time all over the country, not just in California,
6 are thermally protected fixtures.

7 For us in California to make the engineering
8 effort to provide a large line or an expanded line of
9 IC trims would be -- the effort would be so great as
10 to cause -- well, a total disruption in our effort to
11 supply fixtures elsewhere. In the State of California,
12 there would be a potential for losing jobs in our San
13 Leandro facility. We have encountered problems where
14 we are, in fact, not making sales; we're not necessarily
15 losing sales, but we're not making sales because of this
16 regulation.

17 So, I think the disruption issue is very real.

18 Another thing that Mr. Gerber brought up was
19 changing a contractor's habits. As he mentioned, a con-
20 tractor is going to buy one type of fixture. The basis
21 behind this, possibly, is the fact that when we're talking
22 about an insulated ceiling, we're talking about a ceiling
23 that has the potential for being insulated, not just
24 going back to a two-story house, for instance, a
25 condominium project, where floors definitely are not

1 insulated, but there are portions of those buildings
2 that have the potential to be insulated. And I think
3 this is just a small part of our problem, in that we
4 must supply a fixture that is suitable in a ceiling that
5 has the potential to be insulated. It's not a clear-cut
6 issue of insulated ceiling versus noninsulated ceilings
7 or what portion of a building is insulated versus what
8 portion of the building is not insulated; there is a
9 potential for insulation that we must deal with. This
10 is -- I think this is part of the disruption or part
11 of the -- the disruption in our engineering effort that
12 we must deal with.

13 CHAIRMAN IMBRECHT: All right. Thank you.
14 I think we understand your point, sir.

15 Any questions for Mr. Wilkerson? Thank you
16 very much.

17 Let me address a question to counsel. Beyond
18 just the issue of disruption to the industry, it would
19 seem to me that one of the, from my perspective, one
20 of the key issues is whether or not it was appropriate
21 for this regulation to be adopted as an emergency regula-
22 tion. One of the fundamental concepts, both with respect
23 to the statutory and regulatory promulgation of restrictions
24 on our citizenry, is to provide notice, absent some justi-
25 fication for emergency action to protect the health and

1 safety or welfare of the citizens of the state. And
2 would we not have adequate grounds to repeal this
3 regulation purely on the basis that there was no showing
4 or finding to justify its implementation on an emergency
5 basis?

6 MR. CHANDLEY: Well, let me address that in
7 a couple of parts. First of all, there was full notice
8 provided on this. Normally, in an emergency proceeding --

9 CHAIRMAN IMBRECHT: I mean notice in the context
10 of once adopted, a period of time prior to actual implementa-
11 tion or effect upon the citizenry of the state. That
12 is true with respect to statutes that are adopted and
13 it's true with respect to most regulations, and that
14 is the notice that I'm talking about, as opposed to having
15 a regulation take effect immediately, where there is
16 no justification for that urgency.

17 MR. CHANDLEY: I understand your question.
18 I think you need to keep in mind that in about seven
19 days that issue would be moot, because the Building
20 Standards Commission is scheduled to publish its regular,
21 nonemergency supplement to Part 2 of Title 24; and, so,
22 the action we took in the beginning, which was, in terms
23 of the notice provided, entirely legal, if we had not
24 asked for emergency concurrence by the Building Standards
25 Commission, the standard would be going into effect next

1 week. So, you'd still be faced with the same issue.

2 Whether one would want to cite the absence
3 of an original necessity as a reason for repealing it
4 on an emergency basis, I understand the logic of that
5 argument and I think it's valid. I would be uncomfortable
6 in putting that in a finding of emergency and then asking
7 someone else to concur in it. But it's certainly an
8 argument that I would be willing to make, if you chose
9 to make it.

10 CHAIRMAN IMBRECHT: To me, it's a fairly persua-
11 sive argument, in all sincerity. And, again, based,
12 frankly, upon -- the reasons for those protections are
13 predicated upon some fundamental concepts of fairness
14 and due process and so forth, absent a demonstration
15 of the health, safety and welfare of the citizenry is
16 not in jeopardy on an emergency basis. And I, frankly,
17 am not even sure why we were going through the machinations
18 of trying to establish impact upon the industry, in all
19 sincerity, and nor, I would say, from my own perspective,
20 in terms of rendering a decision on this issue, do I --
21 am I limiting my judgment to that consideration alone.

22 MR. CHANDLEY: Well, let me address your point.
23 I think there is a need to take testimony on this precisely
24 because even if we had acted on a nonemergency basis,
25 the standard would be going into effect next week by

1 publication, so you would still be faced with the need,
2 if you believed the evidence presented about the disruption,
3 a need to have that standard repealed.

4 CHAIRMAN IMBRECHT: I understand your point.

5 All right --

6 COMMISSIONER SCHWEICKART: John, may I --

7 CHAIRMAN IMBRECHT: I'm sorry. If you'd like
8 to go ahead, I -- Commissioner Snow would like to ask
9 a question.

10 DR. SNOW: Yes. I'd just like to ask the
11 question: As I understand emergency regulations, there's
12 a time limit established beyond which the thing is no
13 longer effective; is that true in this case?

14 MR. CHANDLEY: Yes, it is, Dr. Snow.

15 DR. SNOW: That's only to give you a chance
16 for a public hearing.

17 MR. CHANDLEY: That's correct. According to
18 the Administrative Procedures Act and Government Code,
19 an emergency regulation, once adopted, can only remain
20 in effect for 120 days, unless during that period, within
21 that 120 days, the agency fully complies with the notice
22 and requirements of the Administrative Procedures Act.
23 We are, in fact, in a rulemaking proceeding in which
24 all of those procedures are being met and will be met,
25 and it's my judgment they will be met within the 120 days.

1 So, if the Commission were to repeal this on
2 an emergency basis, and then within the next four months
3 fully comply with the Administrative Procedures Act
4 noticing requirements, that repeal would become permanent.

5 CHAIRMAN IMBRECHT: Okay. Thank you very much.
6 Commissioner Schweickart?

7 COMMISSIONER SCHWEICKART: Yes. The question
8 that arises in a number of regulations where there is
9 associated with those regulations the promulgation of
10 a delay time before applicability or enforcement, or
11 enforceability, whatever, for a number of reasons, one
12 among them being inventory clearings, et cetera, where
13 does that authority lie, John, and is there any option
14 in terms of the Commission at this time where such
15 recommendations would have any -- provide any options
16 for relief here?

17 In most -- let me just say for the
18 Commission's edification, that I -- while I hear what
19 the Chairman has to say, the fact of the matter is that
20 we have many amendments, in fact, I would say the vast
21 majority of amendments proposed for Commission adoption
22 to the Residential and, for that matter, Nonresidential
23 Building Standards or Appliance Standards, or anything
24 else, the desire is to have immediate effect when they're
25 published. So that, in essence, we are being asked,

1 in some cases, for two different things. One, you know,
2 you'd make an amendment, we want it right away, and in
3 this instance the desire is to make an amendment but
4 we want a lot of time.

5 So -- but my question is: Are there any options
6 there, John, and where does that authority lie, here
7 or at the Building Standards Commission?

8 MR. CHANDLEY: I can answer part of your question
9 in open session. The Building Standards Commission has
10 taken a position that they have the unilateral authority
11 to decide when a standard becomes -- goes into effect
12 after it has been published. We, of course, do not agree
13 with that view. My reading of the statute, I think it's
14 very clear that a standard goes into effect upon publica-
15 tion. The Building Standards Commission has taken the
16 position that no standard goes into effect until six
17 months after publication, but, by mutual agreement, in
18 order to avoid a legal dispute between us, they have
19 acknowledged the fact that our statute has a very specific
20 provision dealing with the effective date of new standards
21 and they have allowed that to control.

22 COMMISSIONER SCHWEICKART: And, John, I think --

23 MR. CHANDLEY: At least so far they have.

24 COMMISSIONER SCHWEICKART: Yes. The interpreta-
25 tion then is that an amendment to a standard, absent any

1 other specific language, becomes effective on publication?

2 MR. CHANDLEY: That's correct.

3 COMMISSIONER SCHWEICKART: I see. And since,
4 in this instance, we made no such statement regarding
5 this matter when it was forwarded to the Building Standards
6 Commission or when the Commission adopted it, along with
7 the AB 163, that at the time they published it, it became
8 effective, and is today effective.

9 MR. CHANDLEY: Well, the original adoption
10 order on that whole set of standards, which included
11 AB 163 materials, was that the standards be adopted on
12 an emergency basis, they be approved on an emergency
13 basis and that they be published in an emergency supplement;
14 and that is, in fact, what happened.

15 CHAIRMAN IMBRECHT: We have one -- excuse me,
16 Commissioner Gandara. We have one further individual
17 who wishes to testify, Mr. William Clark, representing
18 the -- we have at least one additional. Mr. Clark.

19 MR. CLARK: My name is William Clark, I'm chief
20 electrical inspector for the City of Sacramento.

21 We've talked about the IC fixture. And complying
22 with the National Electrical Code, Article 410-65, it
23 indicates that IC fixture or a thermal-protected fixture
24 could be used in insulated ceilings.

25 Well, since the Commission's last meeting,

1 we've been throughout the area in Sacramento and checking
2 the various fixtures that were going up and just seeing
3 some of the problems that we've been confronted with.

4 I'm also a member of the International Associa-
5 tion of Electrical Inspectors, and we had our monthly
6 meeting, it was this Monday, in Stockton, and we discussed
7 this issue with several inspectors in the Sacramento
8 Valley. And one of the biggest problems that they're
9 having with the thermal-protected fixture, this is what
10 the manufacturers are saying should be an alternative
11 to the IC fixture, is that that thermal protector that
12 projects out of the junction box is in an area where
13 they feel that it will be picking up the heat that would
14 be generated by the -- or the entrapment of heat by
15 insulation that would be covering the junction box, as
16 well as the fixture.

17 But in some of the installations, when they're
18 putting the batten-type of insulation in, that that batten
19 insulation sometimes has a tendency just to be put or
20 shoved up against the fixture on the side opposite where
21 the sensor is. The sensor does not detect the entrapment
22 of heat, but the fixture itself is being entrapped. So,
23 we have a possible fire hazard there, similar to over-
24 lamping of an IC fixture, which was brought up.

25 Also, in confined spaces, this thermal protector

1 projects out from the fixture, and in some cases that
2 has been jammed up against the joists and it's giving
3 possible false readings, and also some of the electricians
4 have removed that and put it in an upright, vertical
5 position instead of the one that was designed, the position
6 that was designed and tested by UL.

7 So, that fixture is not a suitable alternative to the IC
8 fixture. I'm saying there's problems with everything,
9 and we find that the thermal protector, we, as inspectors,
10 are going to have problems with this, with it, as well
11 as the IC.

12 But getting to the IC fixture, for instance,
13 contractors, making a statement that contractors are
14 used to doing a certain thing and to change is a problem.
15 Well, contractors are used to continually changing. The
16 National Electrical Code changes every three years, new
17 codes come out that they have to adjust to. There are
18 new products on the market continuously. So, they are
19 continually adjusting to changes.

20 Manufacturers are providing IC fixtures that
21 are down-watt rated and not actually changing the fixtures
22 by actually fabricating new fixtures. These are the
23 fixtures, the IC fixtures that we are having problems
24 in the field with, and these IC fixtures, the labeling
25 on them, I feel, is not adequate, this is something that

1 we could address to UL by indicating this is an IC fixture.
2 As a matter of fact, on one of the manufacturer's labels
3 you cannot see the IC rating on the fixture until you
4 get up close to it.

5 CHAIRMAN IMBRECHT: Excuse me. Could you attempt
6 to relate your testimony to the issue before us, whether
7 or not we should repeal on an emergency basis this
8 particular regulation?

9 MR. CLARK: Okay.

10 CHAIRMAN IMBRECHT: I think to some extent
11 you're addressing issues that will be handled in subsequent
12 hearings of the relevant committee of the Commission.

13 MR. CLARK: Very well. Okay. Okay, sir.

14 The fixtures, the IC fixtures that -- it has
15 been indicated to us that we're having problems with,
16 we feel in the inspection department that that is the
17 fixture that we should go with, because there is less
18 trouble as far as the inspection department to inspect,
19 and we're not concerned about the insulation.

20 Now, one thing I'd like to bring up is --

21 CHAIRMAN IMBRECHT: Did I understand that your
22 ultimate position, then, on the action before us, do
23 you support repeal or oppose repeal?

24 MR. CLARK: Yeah, we oppose the repeal. In
25 other words, we support the emergency action that indicated

1 that IC fixtures would be --

2 CHAIRMAN IMBRECHT: Support retention of the
3 regulation --

4 MR. CLARK: That is correct.

5 CHAIRMAN IMBRECHT: -- as it currently exists.

6 MR. CLARK: That is correct, yes.

7 CHAIRMAN IMBRECHT: Thank you very much. Was
8 there something else you wished to add?

9 MR CLARK: Yeah. I'd like to just bring up
10 one point --

11 VICE CHAIRMAN GANDARA: On the basis of public
12 safety?

13 CHAIRMAN IMBRECHT: Yes, Commissioner Gandara.
14 On what basis, are you making that argument on the basis
15 of public safety or ease of inspection, or what?

16 MR. CLARK: Yes, that's the key thing when
17 I initially addressed the Commission, was the fact that
18 in the City of Sacramento, we have had several fires
19 from nonprotected fixtures, and we feel that with the
20 Energy Commission approving the IC fixtures, this will
21 start a new era of fixtures being installed in ceilings
22 where insultation would be put in at this time or even
23 at a later date and this is the main problem: Fixtures
24 were installed without any protection; now they're being --
25 insulated ceilings are being installed because of

1 environment requirements and we are having various fires.

2 And our position is, that we feel that IC fixtures
3 installed that will serve this purpose, because the
4 maintainance of the fixtures are not required over many,
5 many years, it's just a problem of the so-called overlapping
6 that there is concern about.

7 But a lot of manufacturers are -- there are
8 some manufacturers that are addressing that and some
9 manufacturers that are less vocal are tooling up for
10 this.

11 So, our concern is that the IC fixture be used.

12 Now, one thing that I'd like to bring up about
13 the various types of fixtures--that was the architecture
14 fixture, the low-voltage fixture--that it seems like
15 it would be a problem for them to address this issue.
16 In the commercial installation of recessed fixtures,
17 there is a requirement that when you have rated ceilings,
18 meaning that you have like a one-hour rated ceiling,
19 the Uniform Building Code requires those fixtures to
20 be boxed in so as to maintain the one-hour rating of
21 the ceiling.

22 Well, in the City of Sacramento, manufacturers
23 that are not able to provide an IC fixture because of
24 hardships or whatever the problem is, or contractors
25 buying thermal-protected fixtures and not knowing that

1 IC fixtures are required, having them installed instead
2 of having them remove them, we have suggested that they
3 provide a box enclosure for that fixture and, in turn,
4 can insulate over the box and still comply with the energy
5 standards but not have to use an IC fixture, because
6 they are overstocked with this type of fixture or whatever.
7 This appears to be working out well in the City of
8 Sacramento. It's an additional hardship on the contractor
9 because it would have cost him much less if he went out
10 and bought an IC fixture, but since he has the thermal-
11 protected fixture, we were allowing him to do. We're
12 meeting your requirements by maintaining that insulated
13 ceiling, as well as meeting our requirements.

14 CHAIRMAN IMBRECHT: Okay. Thank you very much.
15 I just wanted to, I think, offer one bit of a correction,
16 and that is: that the problem related to retrofitting
17 of insulation in ceilings subsequent to the installation
18 of the lighting fixtures is largely moot because of the
19 current Residential Building Standards adopted by the
20 Commission and now in place, which have the practical
21 effect of all new homes constructed in California today
22 are having insulation of the ceiling installed at the
23 time of construction as opposed to subsequent, as is
24 the case in housing stock 15 or 20 years ago. I just
25 wanted to make that clarification.

1 It is, I suppose, conceivable in the point
2 system that somebody could trade off and get away without
3 ceiling insulation, but I think that would be highly
4 unlikely.

5 MR. CLARK: Thank you, sir.

6 CHAIRMAN IMBRECHT: Okay. Thank you very much.

7 I think the issue is now before us. Mr. Chandley,
8 are you prepared now to present the order to us?

9 MR. CHANDLEY: Yes.

10 VICE CHAIRMAN GANDARA: While he's doing that,
11 could I ask a question?

12 CHAIRMAN IMBRECHT: Yes, sure. Commissioner
13 Gandara.

14 VICE CHAIRMAN GANDARA: I appreciate Commissioner
15 Schweickart's further clarification of what is and what
16 isn't before us. He did clarify it but it confused me
17 with respect to some other issues. And that is, you
18 did say along the way that the Committee had no recommenda-
19 tion, and I don't know whether that was at the time you
20 made the statement or now, but I guess since these are
21 complicated matters and I, for one, rely upon the
22 Committee system to gather evidence on these issues and
23 to, if possible, make a recommendation to us, I was a
24 bit confused as to -- because it was my understanding,
25 apparently erroneously, that this item had been calendared

1 at the direction of the Committee. It was my understanding
2 that the recommendation was essentially the Committee
3 recommendation that was on the -- and your clarification
4 indicates that's not the case.

5 Perhaps you're not the person to address it
6 to, but how did this item get calendared and, given that
7 this is an issue that probably would have benefited from
8 the gathering of evidence other than either testimonials
9 or hearsay or on characterization, how did it come before
10 us today, given you have another proceeding?

11 CHAIRMAN IMBRECHT: Commissioner Schweickart?

12 COMMISSIONER SCHWEICKART: Yes. You raise
13 a number of issues, Commissioner Gandara, which -- and,
14 unfortunately, in this item nothing is simple.

15 The item before us today is here because of
16 the Committee's request that it be placed on the agenda
17 for the full Commission on an ASAP basis. The intention
18 of the Committee in so doing was, frankly, to act, let
19 me say to decide whether that's to act to repeal or to
20 take no action, but, in any case, to squarely deal with
21 the issue at the earliest possible time with the intention
22 of intercepting the publication of Title 24, Part 2,
23 which is about to be issued by the Building Standards
24 Commission.

25 Once again, our intention here, we've gotten

1 in trouble time after time on this one, as a Commission
2 and a Committee, by trying to be responsive.

3 In this case, our intention was to minimize
4 further confusion on this item, while still taking account
5 of the alleged disruption of industry by hearing this
6 issue as soon as possible and attempt to clarify it by
7 having this next publication state whatever it is we
8 want.

9 Now, unfortunately, between the time it was
10 calendared and the present time, it turns out now that
11 the publication will come out on the 15th, apparently,
12 of March, with the current status published in it, and
13 that if we act today to repeal on an emergency basis
14 it will require, on the part of either one or both
15 Commissions, a notice to go out saying, essentially,
16 disregard what just came out; notwithstanding that, the
17 Commission has recommended on a repeal--on an emergency
18 basis that we repeal this provision

19 VICE CHAIRMAN GANDARA: So, the basis for the
20 original calendaring without the Committee holding hearings
21 no longer exists because it's coming out anyway, right?

22 COMMISSIONER SCHWEICKART: In essence, that
23 is correct. Given that that was -- I must say, that
24 was information for me this morning.

25 VICE CHAIRMAN GANDARA: Okay, fair enough.

1 COMMISSIONER SCHWEICKART: I hate to say.

2 VICE CHAIRMAN GANDARA: Given that that is
3 the case, is there any reason why the Committee would
4 not prefer to gather its evidence and testimony in this
5 matter in the course of the proceeding that is underway?

6 COMMISSIONER SCHWEICKART: Well, in terms of
7 the terms of the proceeding which is underway, then,
8 Commissioner Gandara, no relief would be possible were
9 that judged appropriate for the industry until the next
10 publication of the Building Standards themselves, which,
11 absent emergency finding of any kind, would be January
12 of 1985, at the earliest. Therefore, we would have a
13 situation where prior to August of last year, the issue --
14 we were silent on the issue; after August, we required
15 on an emergency basis, duly published, IC fixtures in
16 these applications; that would be supposed, in essence,
17 on the publication about to come out and would continue
18 until January of '85, at which point I would suggest
19 that perhaps going back the other way might be, at that
20 point, just as disruptive.

21 So, I think the situation is now that we either
22 act to repeal on an emergency basis based on the disruption
23 in industry that we've heard testified to today, or on
24 an energy basis on matters of, let me say, substantive
25 energy considerations that are before the Committee right

1 now, we decide to amend the regulations in 1985, let
2 me say, considering the questions of loss of energy or
3 whatever, many other factors that are being brought in
4 by all elements.

5 VICE CHAIRMAN GANDARA: Unless I misstated
6 my question, I see another alternative, which is that
7 the -- there is another option besides the one now where
8 the Building Standard Code has gone to publication and
9 it contains whatever exists without any action being
10 taken by us today, and that the next one, the next --
11 nothing could be changed until the next publication.
12 I was thinking more of the situation where you would
13 take it under -- you would take the item of an emergency
14 finding under submission as part of your proceeding,
15 and as soon as you make that determination one way or
16 the other, that you come back to the Commission and the
17 Commission can then act whenever that is done, within
18 two weeks, four weeks, six weeks, or certainly not as
19 long as 1985, and that taking that emergency action then,
20 if it so based on whatever evidence you gather, that
21 that also provides some, to me, expeditious relief without
22 having to wait till the next publication of the Building
23 Standards Code, but, at the same time, I think provides us
24 with a firmer base on which to make an emergency determina-
25 tion. Because I'm faced here with a situation where I

1 have testimony, verbal testimony given by members of
2 the industry that indicates that there is a threat to
3 the general welfare, that is, on an economic basis. And
4 on the other hand, some testimony by an inspector who
5 says that their changing it would be a threat to the
6 public safety. So, how do I weigh one against the other
7 if both have the same level of weight because of the
8 verbal aspect here?

9 And what I'm actually asking is, given that
10 we are no longer faced with this immediate sense of having
11 to make a decision today because we need to interrupt
12 the publication of the Building Standards Code that's
13 already behind us, that clearly we are now faced with
14 a bit more time than we thought we had before, and on
15 the desires of an expeditious resolution, I clearly would
16 think it would benefit from the gathering of evidence
17 and testimony in a more organized and formalized way.

18 I mean, I'm a great believer in making the
19 committee system work and using the committee system
20 to gather this evidence, and when it comes to the
21 Commission, that the Commission meetings are not those
22 activities that could have been undertaken by a
23 committee. And it may be that since we've done it, you
24 know, the Commission, as a whole, feels that it's
25 reasonable to proceed. But I, for one, sort of see

1 two different testimonies having been offered that are
2 difficult to weigh, one against the other.

3 MR. CHANDLEY: Mr. Chairman?

4 CHAIRMAN IMBRECHT: I understand. First off,
5 I wanted to indicate that on some of these issues that
6 were raised, it seems to me it would be appropriate to
7 allow some further testimony, if we want to get into
8 those issues, to insure that there's an adequate opportunity
9 to rebut claims made subsequent to earlier testimony.

10 All of that notwithstanding, the reason that
11 I raised the question as to proper grounds for ever
12 adopting this on an emergency basis, in the first place,
13 is largely because some of the considerations that you
14 enunciated in your statement, Commissioner Gandara, and
15 I, frankly, continue to feel that we would have adequate
16 grounds to provide the relief sought on that foundation
17 without addressing the issues that I agree on the basis
18 of a formal record before us appear to be relatively
19 balanced, in terms of the way we don't really have any
20 documentary evidence to determine one way or the other
21 as to particular impact or health and safety issues,
22 et certera.

23 Generally speaking, however, I continue to
24 believe that it is an imposition, an unfairness to any
25 group of citizens in this state to impose regulations

1 on an emergency basis; needed implementation, absent
2 a demonstration of that, is predicated upon a concern
3 for the health and safety or welfare of the citizens
4 of the state.

5 I would like to try to move to a resolution
6 of this issue. I'll turn to Mr. Chandley, then
7 Commissioner Commons, and see if we can't get a motion
8 before us.

9 MR. CHANDLEY: I would like to address
10 Commissioner Gandara's concerns about the absence of
11 Committee consideration.

12 I think Commissioner Schweickart's ambivalence
13 about this issue may have misled you. In fact, there
14 was a full Committee hearing devoted primarily to the
15 issue of the impact on the industry and whether it ought
16 to be repealed on an emergency basis. We sent out a
17 notice, had a public hearing on January 19. At that
18 time, Mr. Foster presented, I don't know whether it was
19 a half a dozen or more closer to dozen
20 different witnesses, all of whom addressed precisely
21 this issue.

22 That wasn't an accident that they addressed
23 it. I had sent a letter to Mr. Foster, suggesting that
24 this might well be a topic of the hearing, that he might
25 want to address that issue. I sent a copy of that letter

1 to the proponents of the original standards so that they
2 also would be have the opportunity to address that issue.
3 At that hearing they chose not to address that issue
4 specifically, although they did respond to questions,
5 but did not volunteer any other information.

6 So, I think it's inaccurate to suggest that
7 the Committee has not already heard a great deal of
8 testimony on this issue. I think if you were to send
9 this back to the Committee, what would happen is that
10 all these people who flew out from St. Louis and Chicago
11 and everywhere else, this dozen or so people, would come
12 out here and put on the same show that we had in January.

13 CHAIRMAN IMBRECHT: A question from a procedural
14 standpoint. May we adopt by reference the record of
15 the Committee hearing and, with that, provide a firmer
16 foundation to today's ruling?

17 MR. CHANDLEY: My -- it's my legal opinion
18 that that record is in front of you right now.

19 CHAIRMAN IMBRECHT: That is --

20 MR. CHANDLEY: That's why I suggested, since
21 you had not -- you had not attended that hearing, personally
22 attended that hearing, I suggested that Mr. Foster and
23 his representatives try to summarize --

24 CHAIRMAN IMBRECHT: And in fact reiterate --

25 MR. CHANDLEY: -- what in fact they presented.

1 But it was a lengthy hearing on precisely this issue.

2 VICE CHAIRMAN GANDARA: You misunderstood my
3 comment, Mr. Chandley, though I appreciate your addressing
4 it. I wasn't suggesting that the Committee had not in
5 fact held such hearings; Commissioner Schweickart made
6 that very clear at the beginning. But Commissioner
7 Schweickart made very clear what we are addressing and
8 not addressing.

9 You know, Commissioner Imbrecht anticipated
10 my question as to whether you were suggesting that we
11 incorporate by reference by the materials, and, at the
12 same time, make a finding on that, which addresses, again,
13 the other issue that I raised, which is: Should we not
14 have those findings be made by the Committee that is
15 hearing the evidence. It seems to me we wind up complying
16 with the procedural aspects by incorporating material.
17 But then making a finding without having read it or
18 reviewed it or having the recommendation of those who
19 did read it and review it puts us, I think, in a position
20 of having said that there is a record, that in fact nobody
21 has read or findings haven't been made. I think that's
22 the issue.

23 You know, I have great sympathy for people
24 who travel at great lengths, but I think it's precisely
25 so that we have -- for that reason that we have to get

1 our procedures worked out so that they travel at great
2 lengths for the right hearing, for the right purpose.

3 I'm only raising the issue as to whether, given
4 that the initial reasons as to why this matter is before
5 us today no longer exists, why we cannot have the benefit
6 of some finding by the Committee. And I'm not saying
7 that the Committee always has to find a finding; it may
8 be that the finding would be that you don't have a
9 recommendation. I'm not suggesting any deficiencies
10 in the Committee operation in this matter. I think I
11 would act in the very same way and calendar it as soon
12 as possible.

13 I am only suggesting that now, given the
14 information we've acquired today, that the Committee
15 proceedings could encompass two or three different kinds
16 of objectives: One, is there a basis for emergency
17 determination; and secondly, absent -- if there isn't,
18 then what then is the recommendation of the proceeding
19 on a nonemergency basis. Those are two different matters.

20 CHAIRMAN IMBRECHT: Okay. Commissioner Commons
21 has been waiting quite patiently.

22 COMMISSIONER COMMONS: Mr. Chairman, I agree
23 with your feeling that, you know, when we're talking
24 small business, if you get a notice in the number of
25 activities that we conduct and the number of notices

1 that someone gets, it's very, very difficult for a small-
2 business industry to always be aware of the significance
3 of something that's occurring, and when we're making
4 hundreds of decisions, sometimes thousands of decisions
5 in a residential building standard, it's easy for something
6 to slip up. And I think we have to be concerned with
7 the impact of what we do on small businesses, and particu-
8 larly in this case where I think we were inappropriate
9 in terms of establishing emergency regulation. There
10 wasn't an emergency in terms of establishing this
11 initially.

12 My problem is, that there's also not an emergency
13 in terms of the information that we have before us, because
14 of the conflicting evidence in terms of where we proceed.

15 What I would prefer to do is to take a very
16 narrow viewpoint, which is along the lines you're
17 suggesting, is if there weren't an emergency to begin
18 with and since this hasn't been published, is that we
19 suspend rather than repeal, because I don't find that
20 we can support, in my mind anyway, a repeal at this time,
21 but we suspend, send back to Committee, and follow the
22 procedures that are being suggested, and then address
23 this in the ordinary course of business.

24 CHAIRMAN IMBRECHT: Well, Mr. Chandley, is
25 that an option that is viable: to suspend a regulation?

1 MR. CHANDLEY: I can't think of any legal theory
2 under which we could do so.

3 CHAIRMAN IMBRECHT: So that is not an option,
4 it's more --

5 COMMISSIONER COMMONS: -- suspend it because
6 it was not an emergency to begin with.

7 COMMISSIONER SCHWEICKART: Well, let me remind
8 the Commission that --

9 MR. CHANDLEY: That solves the problem for
10 seven days.

11 COMMISSIONER SCHWEICKART: Right.

12 CHAIRMAN IMBRECHT: That solves -- I see. Very
13 good point. And that obviously is not going to be solving
14 the problem.

15 VICE CHAIRMAN GANDARA: We have stayed enforce-
16 ment of regulations before pending a petition. What
17 is different in this case? We are in that situation
18 precisely right now with respect to a petition in
19 Appliances.

20 MR. CHANDLEY: Well, in that situation the
21 Commission is the primary enforcement agency of the state
22 for appliance standards. For building standards, which
23 of the local building officials is the primary enforcement
24 agency and they are directed by statute to apply those
25 regulations, and I don't think the Commission really

1 has authority to direct them not to apply them.

2 CHAIRMAN IMBRECHT: Okay, fine. So, then,
3 I think the options are before us and are relatively
4 narrow.

5 Commissioner Schweickart?

6 COMMISSIONER SCHWEICKART: Yes. Let me respond
7 to Commissioner Gandara's point and some discussed by
8 Commissioner Chandley -- pardon me.

9 MR. CHANDLEY: That's all right, Mr. Chairman.

10 COMMISSIONER SCHWEICKART: And honest Freudian
11 slip, John.

12 VICE CHAIRMAN GANDARA: You finally got there,
13 John.

14 COMMISSIONER SCHWEICKART: Most of what
15 Commissioner Gandara observes is in fact accurate; that
16 is, that the motivation by the Committee to bring this
17 before the full Commission, absent Committee recommendation,
18 was, one, to be as responsive as possible, and hopefully
19 to intercept the publication of the Building Standards
20 Commission.

21 The reason that the Committee comes before
22 the Commission with no position is simply that the noticed
23 proceeding, in terms of dealing with the amendments,
24 dealt with repeal and/or modification of the standard
25 which had been adopted by the Commission last year; but

1 in fact made no mention nor in the transcript does one
2 find mention made of emergency action on the part of
3 the Commission. Therefore, it was heard in the context
4 of a normal amendment process, which, as I say, would
5 reach its fruition ultimately in terms of affecting the
6 marketplace in January 1985, according to the current
7 Building Standards Commission schedule and our own
8 proceedings.

9 Therefore, in terms of the emergency action
10 notice today, the Commission did not hear testimony on
11 that basis.

12 Now, in terms of substance, and notwithstanding
13 what I've just said, in the ongoing proceedings, industry
14 did indeed come in with wide testimony on this matter,
15 and the Committee has heard much of this information.
16 However, we did not notice emergency action and whether
17 or not there are elements of industry who have not been
18 heard from, further evidence on safety, which is also
19 a basis for emergency action, has not been heard from
20 may be the case, that is, there may be additional
21 testimony.

22 I am certainly prepared to make judgments today
23 on a combination of what exists in the record of the
24 earlier hearing and what we've heard today, but I would
25 say that we have not, absent today's hearing, per se,

1 had any public notice of emergency action on the part
2 of the Commission which would result in an immediate
3 repeal of the provisions in contention.

4 On the whole, I guess at this point my position
5 on this, is to try and state where I am, is, frankly,
6 wanting to minimize confusion and, at the same time,
7 deal fairly with, let me say, a surprised industry. I
8 think that there is some disruption in the industry.

9 Let me say that if the Commission wishes to
10 direct this back to Committee, I would appeal to the
11 Commission to provide the Committee with a statement
12 of the basis on which it would support emergency action
13 vis-a-vis the general welfare, because that is the funda-
14 mental basis being argued by industry here. And I doubt,
15 as counselor Chandley I think rightly observed, that the
16 Committee will hear much that it hasn't already heard
17 on this matter, albeit in a slightly different procedural
18 context.

19 On the other hand, let me say that the staff,
20 thin though it may be, has had no real direction from
21 either the Committee or the Commission to validate many
22 of the claims that are made by industry. We have not
23 had any independent checking of inventory levels or the
24 percentage of fixtures of one kind or another, which,
25 in fact, are still being placed in the marketplace; even

1 under the provisions, there are a number of issues where
2 we have certainly not validated things.

3 Nevertheless, if you're going to revert it
4 to Committee, I would want from the Commission some
5 indication of the basis on which it feels emergency action
6 is to be based, and the Committee will certainly then
7 come forward with a recommendation on that basis, if
8 that's the Commission's desire. Otherwise, I, as a member
9 of the Commission, but not representing the Committee,
10 am prepared to vote today, up or down.

11 CHAIRMAN IMBRECHT: Fine. Well, I would like
12 to suggest that we try to move this issue up or down
13 today, and if that does not engender a majority vote
14 of the Commission, then we consider the alternative options
15 that Commissioner Gandara has enunciated. It is my
16 personal feeling, that considering, with all of the
17 abundant confusion, the clear fact that there has been
18 a lack of -- I'm trying to search for the correct word.
19 A justification or independent validation of the energy
20 consumption issues, as well as the variety of other matters
21 that have been raised, it seems to me abundantly clear
22 that this regulation should not be in effect, pending
23 resolution of those issues.

24 And I, frankly, am prepared to support an order
25 that repeals this regulation on either of the grounds

1 that have been provided, either the grounds that
2 Mr. Chandley has provided in this draft order, or on
3 the basis that there was no emergency justification for
4 the original adoption of this regulation.

5 And on that basis, I'm going to make a motion
6 to try to move this to some resolution and suggest that
7 the order be amended with the additional justification
8 that there was inadequate basis for emergency adoption
9 of this regulation last August. And I will make that
10 motion. Do I hear a second? Pardon me?

11 COMMISSIONER CROWLEY: I'll second the motion.

12 CHAIRMAN IMBRECHT: All right.

13 COMMISSIONER SCHWEICKART: May I ask --

14 CHAIRMAN IMBRECHT: It has been moved and seconded
15 and the proposed order is now before us, moved by myself,
16 seconded by Commissioner Crowley.

17 Commissioner Commons?

18 COMMISSIONER COMMONS: Yes. Before we vote,
19 there was one piece of evidence that has real concern
20 to me, and that was the testimony concerning the health
21 and welfare introduced by the gentleman from Sacramento,
22 that if we repeal this, that there would be a potential
23 fire damage. And we never gave an opportunity to any
24 of the other petitioners to --

25 CHAIRMAN IMBRECHT: Request for the record --

26 COMMISSIONER COMMONS: -- to rebut that. And

1 that's actually an argument in terms of public health
2 and welfare as to why we have to keep that which we have
3 before us, and I'd like to reopen discussion on that
4 very limited issue.

5 CHAIRMAN IMBRECHT: I think that's a fair point.
6 I also think we have devoted an awful lot of time to
7 this issue, and so I'm going, for very limited purpose,
8 to ask one representative of Mr. Foster's, with respect
9 to Mr. Gerber or the other gentleman. Excuse me.
10 Mr. Russo, I believe.

11 MR. RUSSO: Yes. Tom Russo, again, from Halo
12 Lighting.

13 CHAIRMAN IMBRECHT: Um-hum.

14 MR. RUSSO: We're speaking of safety concern
15 here --

16 CHAIRMAN IMBRECHT: Yes.

17 MR. RUSSO: -- is that correct?

18 CHAIRMAN IMBRECHT: Yes.

19 MR. RUSSO: The product that we're discussing,
20 the IC, the non-IC, the thermally protected fixture,
21 have all been investigated by Underwriters Laboratory,
22 and possibly even other testing facilities, but mainly
23 Underwriters Laboratory, and are built in accordance
24 with the National Electrical Code, the latest National
25 Electrical Code. These products are all safe when properly

1 installed and when properly used.

2 There are many different types of thermal protec-
3 tion on the market. There are even thermally protected
4 IC fixtures.

5 But all these products, notwithstanding the
6 type of protection or the labeling, if built in accordance
7 with the Underwriters Laboratory's requirements and
8 installed according to the National Electrical Code,
9 are perfectly safe products.

10 I could go -- I could elaborate considerably
11 on the safety issue, but unless there's any specific
12 questions, I won't say any more to that effect, except
13 that we are dealing with safe products, we all are very
14 reputable manufacturers, at least we like to think so,
15 and we certainly would not intentionally put any product
16 that is unsafe on the market.

17 CHAIRMAN IMBRECHT: Mr. Gerber, do you have
18 something absolutely essential to add?

19 MR. GERBER: Yes, sir, I do.

20 CHAIRMAN IMBRECHT: All right, fine.

21 MR. GERBER: I have a rebuttal to the inspector
22 from Sacramento. He mentioned a batt type of insulation.
23 Batt type of insulation has been used for many, many
24 years, going back 30 years, 40 years, in residences,
25 before we ever knew about blown-in. A batt type of

1 insulation on a thermally protected or an IC doesn't
2 make any difference, there has not been a problem in
3 the past with any hazards with batt type of insulations.

4 What the inspector is saying, that any fixture
5 prior to April 1, 1982, was a danger. None of us con-
6 sidered it a danger, including the manufacturer who made
7 this presentation today for IC in California. So, I
8 just don't understand that comment by the inspector.

9 Also, I would like to give some statistics
10 that I believe we presented, I know we presented last
11 time, from the National Fire Protection Association.
12 The statistics are '79, '80, '81 and '82; 1982 statistics
13 for fires related to recessed lighting, they couldn't
14 even categorize it throughout, it was a statistic 200 --
15 taken in 230 cities throughout the United States. It
16 came into a category of "other." The number was eight.
17 And of the eight --

18 CHAIRMAN IMBRECHT: Eight individual fires
19 caused?

20 MR. GERBER: Eight individual fires caused
21 by --

22 CHAIRMAN IMBRECHT: Nationwide.

23 MR. GERBER: -- insulation and a recessed.
24 But it was "other," meaning that we came out, there was
25 about four or five that was actually recessed.

1 So, the actual problems of recessed lighting
2 and fires is just -- it's just not there.

3 CHAIRMAN IMBRECHT: Okay. Thank you very much.

4 It's my suggestion that these are the kinds
5 of issues that appropriately should be presented in some
6 depth in the event that the order is adopted to the Commit-
7 tee in its proceeding, and I would suggest that both
8 sides should be prepared in the event that that scenario
9 occurs, to present documentary evidence supporting
10 representations made here and at other hearings, and
11 I would suggest that that would be incumbent upon those
12 representing the electrical inspectors, as well as the
13 opposing points of view within the manufacturing
14 community.

15 Dr. Snow?

16 DR. SNOW: I was going to share with you some
17 of my experience, which has been a long time, in the
18 field of regulations, rescissions of regulations, adoption
19 of emergency regulations, and that sort of thing.

20 I'm not familiar with the devices that we're
21 talking about. I am familiar with the process, though.
22 And in order to adopt an emergency regulation, all you
23 have to do is make a finding that it's in the interest
24 of the public peace, health, welfare, this sort of thing.

25 Following that, and it becomes effective

1 immediately upon adoption, following that you can hold
2 all the hearings that you want to substantiate whether
3 you really want to rescind this regulation or you want
4 to continue with the one that you have adopted.

5 CHAIRMAN IMBRECHT: Or reinstitute it.

6 DR. SNOW: I beg your pardon?

7 CHAIRMAN IMBRECHT: And in fact reinstitute it.

8 DR. SNOW: Yes.

9 CHAIRMAN IMBRECHT: And I would make it very
10 clear to those that I would expect this issue will
11 probably be coming back to us sometime, and I do not
12 foreclose, predicated upon the evidence that is ultimately
13 provided to the Committee, that perhaps we might ultimately
14 readopt this regulation, in whole or in part. But, as
15 I stated earlier, from my perspective, the issue is
16 sufficiently clouded, that it would -- it is unjustified
17 to allow it to remain in effect, pending resolution of
18 those issues and providing a proper forum for opposing
19 interests to adequately document their respective cases.

20 DR. SNOW: I just might add that the fact that
21 you are considering an emergency regulation of this type
22 at all indicates that there's some cloud on the original
23 regulation, the one that you're trying to rescind, and
24 that, from that point of view, there may be indeed a
25 need to rehear much of the testimony that was developed

1 in the original --

2 CHAIRMAN IMBRECHT: Okay. Let's -- I'll try
3 to limit this to one final comment for Commissioner
4 Schweickart and Commissioner Gandara, and if no one else
5 wishes to speak, we'll move to a vote.

6 Commissioner Schweickart.

7 COMMISSIONER SCHWEICKART: All right. I would
8 like to address both Commissioner Commons' desire for
9 further input on the safety issue from the earlier hearing
10 and address finally the main motion before us.

11 Commissioner Commons, we had quite a bit of
12 testimony in our earlier hearing in Committee on the
13 safety issue. I -- without that representing a Committee
14 position, I would nevertheless, from my own observation,
15 say that there is justifiable and poorly documented
16 concern on the part of many local officials having
17 witnessed an increase in the rate of fires. However,
18 in my judgment, it is not in any way conclusive, in that
19 most of the observations are in older houses, where we
20 may be dealing with retrofit of insulation as opposed
21 to applications in new homes, which, by and large, is
22 what we're dealing here with this regulation.

23 In addition, there was considerable disagreement
24 in terms of the relative safety hazards of IC and non-IC,
25 both of which can clearly be misused and create safety

1 hazards.

2 It's therefore my own conclusion that the
3 information or testimony on safety on this issue is quite
4 ambiguous and in no way convincing.

5 Now, in terms of the main issue before us,
6 it is my intention to support the motion. I think, to
7 be quite frank, it is a close call. I think in our desire
8 to work with the industry and be responsive, the
9 Commission has unfortunately, perhaps somewhat innocently,
10 but nevertheless, created a great deal of confusion.
11 I think the unfortunate timing of the Building Standards
12 Commission action and our action today will further confuse
13 people. I think that is very unfortunate; nevertheless,
14 on balance, I will support this. It will, in effect,
15 put us back to the position we were prior to the action
16 last year, with every form of documentation in between
17 available to everyone. So, I think that we will have
18 to make every effort to insure that both in this
19 Commission and in the Building Standards Commission that
20 local officials are informed of what the current status
21 is, so that there is not any further confusion; and,
22 unfortunately, at the same time, we do have an ongoing
23 process where this matter will be back before us and
24 we may once again, notwithstanding action today, end
25 up with restrictions on non-IC fixtures, and I am not

1 in any way prejudging the outcome of that process.

2 CHAIRMAN IMBRECHT: I think that we can maybe
3 clarify here. Mr. Chandley just represented to me an
4 important point. By virtue -- were we to adopt this
5 order as an emergency repeal of the regulations, this
6 order as an emergency order would in itself remain in
7 effect for a period of only 120 days.

8 MR. CHANDLEY: The repeal --

9 CHAIRMAN IMBRECHT: The repeal would remain --

10 MR. CHANDLEY: -- would remain in effect.

11 CHAIRMAN IMBRECHT: That's fine.

12 MR. CHANDLEY: And once that repeal became
13 effective, which is upon publication.

14 CHAIRMAN IMBRECHT: I understand.

15 In any case, in the event that we did not take
16 subsequent action, then the regulation would return to
17 effective status at the conclusion of that 120-day period.
18 So, the practical impact of this action, though countenance,
19 in different semantics, would be to produce the suspension
20 that Commissioner Gandara had suggested, a suspension
21 with a finite period associate with it of 120 days.

22 Now, Commissioner Gandara also suggested to
23 me, and I will accept it as a friendly amendment to my
24 motion, assuming Commissioner Crowley will likewise
25 additionally second it, and that is, that we add to the

1 order a direction that this issue be appropriately
2 investigated by the Committee and that the Committee
3 make a recommendation to the Commission prior to the
4 conclusion of that 120-day period.

5 Does that adequately express your concerns?
6 So, I will accept that as an amendment, assuming --

7 COMMISSIONER CROWLEY: I will accept that,
8 except that I didn't understand that this repeal was
9 an emergency. I understood that we were repealing an
10 emergency --

11 CHAIRMAN IMBRECHT: But in order for the repeal
12 to take effect immediately --

13 COMMISSIONER CROWLEY -- but this too is an
14 emergency. Okay.

15 CHAIRMAN IMBRECHT: -- it similarly has to
16 be handled as an emergency.

17 COMMISSIONER CROWLEY: Handled in that way.
18 Thank you.

19 CHAIRMAN IMBRECHT: That's correct.

20 So Commissioner Crowley seconds that?

21 COMMISSIONER CROWLEY: Yes.

22 COMMISSIONER SCHWEICKART: I would like to
23 get some clarification, if I could, procedurally on two
24 matters here, Mr. Chairman. This is not with the substance
25 but in terms of process.

1 Number one, I am concerned that we rather care-
2 fully word and would almost prefer to see some draft
3 language on the amendment to the proposed order relating
4 to the lack of emergency in the first instance. I am
5 concerned only that we do not in any way jeopardize the
6 action taken by ourselves and the Building Standards
7 Commission at that time vis-a-vis the actual justification
8 for emergency, namely, the AB 163 matter. So I --

9 CHAIRMAN IMBRECHT: Can those be distinguished,
10 Mr. Chandley? Or --

11 MR. CHANDLEY: Yes. Our preference is not
12 to include something that explicit in this order.

13 CHAIRMAN IMBRECHT: All right, right.

14 MR. CHANDLEY: But I could --

15 CHAIRMAN IMBRECHT: In order to further this
16 issue, I will similarly withdraw that addition to the
17 order, and, again, I will assume Commissioner Crowley's
18 consent.

19 COMMISSIONER CROWLEY: Um-hum, surely.

20 CHAIRMAN IMBRECHT: So, then we have before
21 us the pure order as drafted, with the addition of the
22 direction to the Committee to investigate these issues
23 both in terms of impact on marketplace, et cetera, and
24 the availability of supply and the impact upon the
25 manufacturers, as well as the safety issues, as well

1 as the energy consumption issues, and report back to
2 the Commission with a recommendation within the 120-
3 day period. Is that acceptable with you, Commissioner
4 Schweickart?

5 COMMISSIONER CROWLEY: Yes.

6 CHAIRMAN IMBRECHT: I'm asking Commissioner
7 Schweickart as the presiding member of that Committee
8 and --

9 COMMISSIONER SCHWEICKART: That goes to the
10 issue of my second point for clarification. Number one,
11 I would like to understand the process. Then, at the end
12 or within the 120 days, we would then again be dealing
13 with a further action which would be handled as an
14 emergency, John? Or are we talking about the Energy
15 Commission drawing to a final conclusion on the amendments
16 now proposed and before us and being disposed of? I'm
17 interested in what is the action that now must be also
18 taken subsequently within the 120 days.

19 MR. CHANDLEY: More the latter than the former.
20 Here are the two scenarios. In one scenario, you continue
21 to hold Committee hearings, you conclude that the standard
22 should have been allowed to remain in effect, that you
23 don't wish to change the standard any further. We simply
24 fail to put out or decline to put out, issue a notice
25 of proposed actions required by the Administrative

1 Procedures Act, and at the end of 120 days, having failed
2 to take that action, the standard would go back into
3 effect.

4 The other scenario is, you decide that the
5 change was appropriate and, moreover, that perhaps you
6 want to make a different standard.

7 COMMISSIONER SCHWEICKART: But this specific
8 change, not changes which would deal with, in fact, what's
9 now before the Committee; that is, issues of point system
10 adjustments or things of that kind? That is, what I'm
11 asking is: Is this now something in addition which the
12 Committee would have as an additional and separate
13 responsibility, above and beyond the ongoing process?
14 Or are you saying we draw to a conclusion at the Energy
15 Commission on the ongoing process, even things like point
16 system adjustments, or whatever?

17 MR. CHANDLEY: No. The practical effect on
18 the Committee's workload is zero. I mean, for me it's
19 30 seconds on a Vydec, whether I include a paragraph
20 or do not include a paragraph.

21 CHAIRMAN IMBRECHT: That's what I like to hear.

22 COMMISSIONER SCHWEICKART: And my question
23 then goes beyond that procedurally to the point brought
24 up by Dr. Snow, and certainly a valid one, that is: Is
25 the action which supports or would continue in effect

1 the findings that we would make today on an emergency
2 basis, effectuated by the Energy Commission's decision
3 on Committee recommendation on this matter, or is it
4 the Building Standards Commission within that 120 days
5 taking final action?

6 MR. CHANDLEY: No. The beginning of the 120
7 days is the date of publication. The end of the 120
8 days is our complete compliance with the Administrative
9 Procedures Act.

10 COMMISSIONER SCHWEICKART: Our complete
11 compliance.

12 MR. CHANDLEY: Which -- yes. Which includes
13 adoption, I believe right up to the point of adoption.

14 COMMISSIONER SCHWEICKART: All right. So,
15 then to summarize the final step in this process, assuming
16 passage of the motion before us, would be the Committee
17 coming before the Commission within 120 days, essentially
18 from today, with a recommendation on the ongoing proceeding
19 and a Commission action on that.

20 MR. CHANDLEY: Yes.

21 CHAIRMAN IMBRECHT: Yes.

22 MR. CHAMBERLAIN: If I might suggest, just --

23 CHAIRMAN IMBRECHT: And would clarify this
24 in a --

25 MR. CHAMBERLAIN: To clarify that. I believe

1 the Committee probably should get back to the Commission
2 within 45 to 60 days as to whether it intends to send
3 out a notice of proposed action. Because if you intend
4 not to and you come back in 120 days, then the
5 Commission would have to take emergency action again
6 if it wanted to reverse.

7 CHAIRMAN IMBRECHT: All right. I'm going to
8 rely on your good offices to insure that the Committee
9 is appropriately understanding of all of these exigencies.

10 Having, I believe, exhausted this matter, I
11 now know more about insulated cannister fixtures than
12 I had once hoped to know, is there objection to unanimous
13 roll call?

14 Hearing none, the order is adopted five-nothing
15 and that will be the order. Thank you very much.

16 I will just indicate as well that on behalf
17 of the Commission, I will do my best to try to intercede
18 with the Building Standards Commission and those at the
19 State Printer's Office to see if there's any possible
20 way to have this language stricken from the publication
21 of the new building codes. In the event that that's
22 not possible, then we will obviously have to put out
23 notice as expeditiously as possible, and will do so.
24 Thank you very much.

25 Okay. Let's try to move to Item 4, Commission

1 consideration and possible approval of three pilot street-
2 light interest subsidiary grants from the Petroleum Viola-
3 tion Escrow Account funds provided to the Commission
4 by the legislature and the governor.

5 Is there objection to adoption as presented
6 by staff? Is there any concern? Karen, would you like
7 to make a brief presentation on this?

8 MS. GRIFFIN: Not necessarily.

9 CHAIRMAN IMBRECHT: Is there anyone that has
10 any questions on it? I think it's fairly straightforward.
11 If not, do I hear a motion?

12 VICE CHAIRMAN GANDARA: I move.

13 CHAIRMAN IMBRECHT: Moved by Commissioner Gandara,
14 seconded by Commissioner Schweickart. Objection to
15 unanimous roll call?

16 Hearing none, ayes five, nos none --

17 VICE CHAIRMAN GANDARA: Just one item --

18 CHAIRMAN IMBRECHT: -- it is adopted.

19 Commissioner Gandara.

20 VICE CHAIRMAN GANDARA: The Committee would
21 like some direction from the Commission on one issue
22 here. As you know our streetlight program has involved
23 the conversion of inefficient lights to more efficient,
24 high- or low-pressure sodium vapor lights, and I was
25 made aware only recently, just by reading an article

1 in the newspaper, that one or the other, I forget which
2 one, interferes with the spectrum of astronomical observa-
3 tion. And it's my understanding that this issue was
4 addressed when the program was started sometime about
5 three years ago, and that, insofar as the Commission
6 decided at that time, that it wished to remain indifferent,
7 really, as to one or the other, and that it preferred
8 to leave the judgment or the resolution of that to the
9 local communities.

10 There is an interference that occurs with the --
11 a particular part of the spectrum with one of these lamps.
12 Commissioner Crowley and I have discussed this matter,
13 and what I'm seeking is some Commission direction as
14 to whether they would like the Committee to address this
15 again to see if it is a problem, to see if the criteria
16 for incentivizing one or the other type of lamp ought
17 to be changed, I only raise it right now to see if the
18 Commission has any desires to readdress it, since the
19 composition of the Commission has changed considerably.

20 I really don't want to get into a huge
21 discussion today about --

22 CHAIRMAN IMBRECHT: Since I have absolutely
23 no basis upon which to make that judgment, may I ask
24 that you circulate that article or whatever information
25 you have that would allow us --

1 VICE CHAIRMAN GANDARA: We'll prepare some
2 material on the pros and cons and circulate it to the
3 Commissioners.

4 CHAIRMAN IMBRECHT: Fine, that would be useful.
5 All right. Thank you.

6 Item No. 7, which is our consent calendar,
7 consideration of a claim of exemption from residential
8 building standards filed by Valencia Corporation. Again,
9 let me begin that item by asking: Is there any member
10 of the Commission that objects to consideration of this
11 item as a consent item? Item 7.

12 VICE CHAIRMAN GANDARA: Yes, I have some questions.

13 CHAIRMAN IMBRECHT: You do have some questions,
14 all right, fine. Let's see. Is Mr. Pennington present,
15 or, Mr. Ward, are you prepared to deal with this issue?

16 MR. WARD: Mr. Pennington, from the Conservation
17 Division, is here, also John Chandley, from the Legal
18 Office.

19 CHAIRMAN IMBRECHT: I don't see either one
20 of them.

21 MR. CHAMBERLAIN: I think John went, not
22 realizing --

23 CHAIRMAN IMBRECHT: Pardon me?

24 MR. CHAMBERLAIN: I don't think John realized
25 you'd be skipping down to this one. Shall I go --

1 CHAIRMAN IMBRECHT: I'm not skipping, that's
2 the next one on the list.

3 MR. CHAMBERLAIN: Ted Rauh is prepared to --

4 CHAIRMAN IMBRECHT: Let me just ask: Commissioner
5 Gandara, do you expect you could resolve this expeditiously,
6 or will it take a few moments? If it's going to take
7 a few questions, then let's --

8 VICE CHAIRMAN GANDARA: Well, it will probably
9 take more than a minute. I think we probably should
10 take the luncheon recess.

11 CHAIRMAN IMBRECHT: All right. In that case,
12 we will recess until 1:30 for lunch and take this item
13 up at that time.

14 Let me just, to get an idea of what our workload
15 is going to be for the afternoon, Mr. Chamberlain, do
16 we have need for an executive session today?

17 MR. CHAMBERLAIN: No.

18 CHAIRMAN IMBRECHT: We do not. Do you have
19 a report?

20 MR. CHAMBERLAIN: I have a one-minute report.

21 CHAIRMAN IMBRECHT: All right. And we're going
22 to take up the quarterly review.

23 Let me suggest on the quarterly review,
24 from a procedural standpoint, rather than going through
25 it item by item, my preference would be to simply ask

1 the Commissioners if they have issues they wish to raise
2 relative to the prepared material that has been presented
3 to us, and let's try to do that. From a procedural stand-
4 point, I think that would move us through that item a
5 little more quickly as well.

6 MR. WARD: Mr. Chairman --

7 CHAIRMAN IMBRECHT: Perhaps if you're not
8 prepared, you might ask your staff to take a look at
9 that during the interim.

10 MR. WARD: The chief of Government Affairs
11 has asked that the Legislative Committee be allowed to
12 make a presentation.

13 CHAIRMAN IMBRECHT: Now?

14 MR. WARD: Now, before lunch. I would assume
15 there's some --

16 CHAIRMAN IMBRECHT: Do you have exigency over
17 the Capitol or -- well, Commissioner Schweickart had
18 a luncheon engagement and that's the reason we're trying
19 to take a luncheon recess, so -- all right, fine. Okay,
20 we'll recess until 1:30.

21 (Thereupon, the morning session of the business
22 meeting of the California Energy Resources Conservation
23 and Development Commission was recessed for lunch at
24 12:13 p.m.)

25 --o0o--

AFTERNOON SESSION

--o0o--

1
2
3 CHAIRMAN IMBRECHT: Okay, call the meeting
4 back to order. First, ask for the presentation from
5 the Legislation Committee, Commissioner Crowley.

6 COMMISSIONER CROWLEY: The Legislative Committee
7 has met, however the first bill on the agenda deals
8 with a measure that was considered before the new
9 Legislative Committee, namely Senate Bill 1016, and
10 so I'd like to defer to the previous Committee for considera-
11 tion of that.

12 MS. STETSON: If I could add something to
13 that, --

14 CHAIRMAN IMBRECHT: Thank you. As I scan
15 this -- excuse me.

16 MS. STETSON: We were asked by Senator Montoya
17 for our comments on this bill because he would like
18 to redraft the bill with all the proponents' and opponents'
19 issues. The bill is scheduled for April 2nd, before
20 a Joint Hearing of the Senate Energy and Senate B & P
21 Committee. That's tentative, but comments are already
22 in to Senator Montoya's office on the bill.

23 If you'll recall, there's a question as to
24 whether this was something that the Energy Commission
25 should focus on. It is a much larger issue, a force

1 account issue, which is between local governments and
2 general contractors. However, our original concern
3 in the original form, which we opposed, was because
4 the bill impacted utilities' conservation programs and
5 precluded them from using community-based organizations.

6 The bill has been amended to exempt CBOs,
7 but the drafting of the bill is so poor that it's not
8 clear whether utilities would be able to go out and
9 hire contractors that do have a license to do business.

10 There are some other issues I could go into,
11 but I think that generally lays the issue. I think
12 Commissioner Gandara could probably elaborate on his
13 position with the bill.

14 COMMISSIONER GANDARA: Well, let me just say,
15 for the benefit of the Commission, I concur with the
16 staff recommendation, which was to oppose the bill,
17 and it seems to me that the bill analysis that is contained
18 in the agenda package seems to be very persuasive. The
19 major reasons why I concurred with the staff recommendation
20 is that it's not clear that this legislation is needed.
21 I mean, there has been no evidence of a problem, and
22 in fact, there was a bill that was passed last year,
23 SB848, which addresses the very same issue and has not
24 had an opportunity to work at all and so I wouldn't
25 process here of adding legislation that I really think

1 is unnecessary.

2 In addition to the fact that there are problems
3 with the bill, as well, and that's provided under the
4 background section on the last page, that there are
5 several problems that would be created by the bill,
6 prohibitions by certain kinds of installers for some
7 of the programs that we've supported in the past.

8 But, my principal reason is that there's no
9 evidence of a problem. There's not a problem. Why
10 have a bill to fix a problem that may even not exist,
11 particularly in view of the fact there's another bill
12 that addresses it that hasn't had more than an adequate
13 opportunity to be in operation.

14 So, that, briefly, is my position on that.

15 CHAIRMAN IMBRECHT: Well, I advocate a neutral
16 position largely because of my -- personal involvement
17 on force account issues some years back, and I understand
18 very clearly the dramatic confrontation of interests
19 within our society that those bills raise.

20 I personally do not believe it is generally
21 relevant to us to take a position on who installs conserva-
22 tion retrofit, et cetera, although I would say that
23 from a general perspective, I probably come closer to
24 agreeing with the sentiment of this bill than necessarily
25 the specifics of it.

1 So, -- and that is that I generally think
2 that competitive bidding for all kinds of public endeavors
3 should be encouraged, and I know that's something
4 Commission Gandara generally agrees with, as well, particu-
5 larly here at the Commission. And I do think that there
6 is some essential problem ultimately in terms of using
7 exclusively either utility employees or community-based
8 organizations competing with what generally are small
9 businesses that I think should have a rightful opportunity
10 to market their services competitively. And if they
11 can't be competitive on a cost basis, they don't have
12 that option, and I hate to see them frozen out.

13 But, nonetheless, where Senator Montoya's
14 coming from on this bill, recognizing the procedural
15 difficulties associated with the bill, as well, that's
16 why I have suggested a neutral position.

17 MS. STETSON: If I might add, you suggested
18 a neutral position and making our comments known to
19 the author.

20 CHAIRMAN IMBRECHT: Precisely, absolutely.
21 Commission Commons?

22 COMMISSIONER COMMONS: Yes, I'd like to restrict
23 my comments primarily to the areas that the Conservation
24 Committee is involved in, in terms of the practical
25 impacts on some of our work. We've been holding workshops

1 throughout the state on the tax program, which is the
2 commercial equivalent to the RCS. And utilities have
3 presented their viewpoints on this and so has the contractor
4 association.

5 I would have some concern that when we go
6 out and do these audit programs, which are mandated
7 from the federal government, that some of the low-cost
8 installations that can be done, for example, wrapping
9 a water heater, installation of shower heads, low-flow
10 shower heads, that we don't have to have someone go
11 out twice in order to get that accomplished. And it's
12 not the type of thing normally that you'd go out and
13 get a bid for or go to a contractor.

14 I guess the point I would be driving at is
15 I'm not sure that the \$200 figure would be adequate.
16 I would feel more comfortable with a \$300 figure, which
17 is not a large difference, but I think it would hinder
18 having the audit programs be most cost-effective that
19 we have no choice under federal regulations ought to
20 have.

21 It removes a little bit of the flexibility
22 in the utilities, and the communities, particularly
23 for some of the municipal communities, it would have
24 too low a restriction in terms of --

25 CHAIRMAN IMBRECHT: I certainly have no

1 objection to making that part of the comments we make
2 known to the author of the bill.

3 I guess where we stand is -- so we can put
4 this issue again before us, I suppose -- motion on everyone
5 of these. I guess we'll do the rest of them jointly,
6 but this instance, I move we take a neutral position
7 on the bill and express those comments to the author.

8 MS. STETSON: With the amendment of \$200 being
9 increased to \$300--

10 CHAIRMAN IMBRECHT: That being one of the
11 comments, yes.

12 Is there a second?

13 COMMISSIONER COMMONS: I'll second that.

14 CHAIRMAN IMBRECHT: Second by Commissioner Commons.

15 Is there further discussion?

16 COMMISSIONER GANDARA: Just a final comment
17 to address a point that I didn't address in my initial
18 comments was that I don't see the issue, one, being
19 as much of restricting competition. I certainly do
20 believe that there should be competition in this area,
21 but I happen to believe, however, that the utilities
22 and CBOs and local governments ought to be able to compete,
23 as well, and what I see the bill doing is eliminating
24 them from that competition marketplace.

25 So, again, I would say that my position comes

1 from a point of view of indeed stimulating competition,
2 you know, in every sector.

3 But, I think, it's been decided.

4 CHAIRMAN IMBRECHT: Okay. Fairly clear.

5 Secretary, would you please call the roll
6 the motion?

7 SECRETARY GERVAIS: Commissioner Commons?

8 COMMISSIONER COMMONS: I'm voting yes on neutral?

9 CHAIRMAN IMBRECHT: Yes. That would be the
10 correct vote since you seconded the motion.

11 MS. STETSON: Neutral with comments.

12 CHAIRMAN IMBRECHT: Commons aye.

13 SECRETARY GERVAIS: Commissioner Crowley?

14 COMMISSIONER CROWLEY: Aye.

15 SECRETARY GERVAIS: Commissioner Schweickart?

16 COMMISSIONER SCHWEICKART: (Absent.)

17 SECRETARY GERVAIS: Commissioner Gandara?

18 COMMISSIONER GANDARA: I'm neutral on neutral.

19 CHAIRMAN IMBRECHT: Abstain?

20 SECRETARY GERVAIS: Chairman Imbrecht?

21 CHAIRMAN IMBRECHT: Aye.

22 The motion is carried three to nothing. We
23 will be neutral. That's one of our heavier decisions
24 for the day.

25 (Laughter.)

1 CHAIRMAN IMBRECHT: Commissioner Crowley,
2 would you like to continue the report.

3 COMMISSIONER CROWLEY: Chairman Imbrecht,
4 the four matters that were dealt with by the Commission --
5 pardon me -- the Committee, started with the Energy
6 Conservation Assistance Account Bill, SB1830, which
7 was a restructuring of the funding of the Energy Conserva-
8 tion Assistance Account, and actual termination of that
9 and repayment of loans.

10 The recommendation came in two parts. I opposed
11 the bill unless it was amended to require the Energy
12 Resources Program Account to be solely for the use of
13 the CEC. I had no problem with them repaying the general
14 fund for the start-up money, and then I believe
15 Commissioner Gandara had another conclusion.

16 COMMISSIONER GANDARA: If I might explain
17 my position. I believe my position is more consistent
18 with the bill analysis than the recommendation in the bill
19 analysis, which was no position, which was one of the
20 reasons I recommended opposition.

21 But, again, my thinking in this matter is
22 what the proposal here does, even as modified, is to
23 say that we think it's okay to basically restrict the
24 Energy Commission funding only to what's in the ERPA
25 Account, and that it's okay to revert these monies back.

1 I am concerned, not only that there is a maximum
2 rate at this point in time on that surcharge, and that
3 the erosion as the result of inflation over the years
4 will result in actually a constriction as to what we
5 will be able to do.

6 Even, if you look at the distribution of funds
7 right now, there is not that much that we're not receiving
8 from the surcharge, so that if we take the position
9 that we should receive our funding from that source
10 and give up the sources of other funds, then basically
11 I think we will be, every year, eroding our own particular
12 funding opportunities.

13 So, I frankly think that opposing it is the
14 best position for us to take. We have essentially estab-
15 lished a situation where we can also claim, for legitimate
16 purposes, when we have them, access to other funds,
17 and at the same time, don't necessarily exclude other
18 people from reasonably related energy opportunities for
19 funding from the ERPA account.

20 I'm not all that far from the position recommended
21 by Commissioner Crowley to oppose it unless amended
22 as well. I think that's a fall-back position, but I
23 really think that this would harm us more in the long
24 run.

25 CHAIRMAN IMBRECHT: Okay, well, let me just

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1 say I would support Commissioner Crowley's position
2 only for this reason: I don't think that her position,
3 in any way, restricts us to the ERPA funding source,
4 and certainly PVA or other special account funds, I
5 think, are entirely legitimate for us to pursue.

6 The issue in this bill is a question of repayment
7 of what was in effect the general fund -- I don't know
8 if loan is the correct word, but advance money is probably
9 a more accurate characterization of it. In any case,
10 were this bill, in any way, suggesting or limiting us
11 exclusively to ERPA funding, I would oppose it as you
12 just suggested.

13 Generally, I would like to see ERPA dedicated
14 to the Commission, as it was originally, and then moreover
15 in circumstances like PVA or ERF, in the event that
16 ERF once again becomes a viable funding source, or the
17 environmental license plate fund, et cetera. I think
18 those are, and continue to be, very legitimate funding
19 sources for us and we have to stand on our own merits
20 with other agencies.

21 COMMISSIONER GANDARA: Just one last comment
22 and I think we can just move to resolution.

23 CHAIRMAN IMBRECHT: Sure.

24 COMMISSIONER GANDARA: Because your comment
25 reminded me. The other point that I forgot to mention

1 initially is that I didn't see it as a repayment to
2 the general fund of initially appropriated funds, because
3 I don't think that there was that expectation or feeling
4 at the time of initial appropriation, and in fact, what
5 I see this more as, is augmenting the general fund for
6 reasons that don't exist anymore. I would not have
7 had the problem, say for example, last year, when we
8 were in more of a fiscally-tight situation, but I don't
9 think that we're in that situation now, so the idea
10 of reverting funds back to the general fund, as a repayment,
11 I don't see the necessity there, when, in fact, you
12 know, we are out of the fiscal crisis that we were.

13 But, anyway, I think we can move to resolution.

14 CHAIRMAN IMBRECHT: Okay, rather than taking
15 these bills up on a completely individual basis, ultimately
16 we'll have a motion for the Committee Report, which
17 will be Commissioner Crowley's, and then if you want
18 to make an amendment, that's, I think, the way to handle
19 it.

20 Commissioner Commons?

21 COMMISSIONER COMMONS: Yes. I guess my position's
22 close to Commissioner Crowley's. What I'd like, though,
23 is clarification as to why the recommendation would
24 be to repay back funds that it was never the intent
25 of the legislature and the governor, at that time, to

1 have it done that way. That, to me, is kind of ex post facto--

2 COMMISSIONER CROWLEY: I think I can answer
3 that if I could jump in here for a moment. Under the
4 original legislation that initiated the schools and
5 hospitals and street-lighting program, there were two
6 funding sources.

7 One was general fund, I believe \$20-million
8 for the schools and hospitals, and \$8-million from tidelands
9 for the street-lighting program.

10 Now, finance considers tidelands to be general
11 fund money. We do not. We look at the ERF account in
12 tidelands as an energy funding source.

13 CHAIRMAN IMBRECHT: With respect to the general
14 fund appropriate, I'm not sure that was an accurate
15 representation, though, that there was no expectation
16 of repayment.

17 COMMISSIONER CROWLEY: I don't believe there
18 was anything in the bill that specified it had to go
19 back to the general fund, but let me say, in 1991, when
20 the program expires, the money will revert to the general
21 fund.

22 COMMISSIONER COMMONS: That would be my point--

23 CHAIRMAN IMBRECHT: I have some recollection
24 there was some reversion issue to the general fund that
25 was contemplated at the time that the bill was originally

1 passed. This would, in effect, accelerate that, I guess.

2 COMMISSIONER CROWLEY: Right, for only--only
3 this particular year, \$5.5-million. Then, after that,
4 the monies would go into the ERPA account, rather than
5 the general fund. It was a one-time augmentation to
6 the general fund, that's this year, for \$5.5-million.

7 CHAIRMAN IMBRECHT: And does that mean, in
8 effect, then ERPA benefits to the tune of \$15.5-million
9 over the life of the program?

10 COMMISSIONER CROWLEY: I think it's --

11 CHAIRMAN IMBRECHT: Or, pardon me, \$14.5?

12 COMMISSIONER CROWLEY: --\$21-million, I believe,
13 taking out this \$5.5 this year to go to the general
14 fund.

15 CHAIRMAN IMBRECHT: So, ERPA would ultimately
16 benefit as a result of that--

17 COMMISSIONER CROWLEY: Right.

18 CHAIRMAN IMBRECHT: --change?

19 COMMISSIONER CROWLEY: And that's why the
20 staff made a no-position recommendation because there
21 are some added benefits that it would come back to the
22 ERPA account for further dissemination by the Commission,
23 in the budget process, however --

24 CHAIRMAN IMBRECHT: Unless -- unless finance
25 made an attempt to do this again next year.

1 COMMISSIONER CROWLEY: Right. Right.

2 On the other hand, the conservation division
3 correctly states that it will make those programs compete
4 with other Energy Commission programs. And, in addition,
5 the conservation division felt that it was not consistent
6 with the Energy Commission's position of sponsoring
7 an R&D revolving loan fund.

8 So, I just wanted to raise those two issues
9 with you.

10 COMMISSIONER COMMONS: I still have a --

11 CHAIRMAN IMBRECHT: Commissioner Commons.

12 COMMISSIONER COMMONS: Let's say that someone
13 didn't pay us back one of the loans, and so we had,
14 essentially, a bad debt. Is the way the bill written
15 that we'd be obligated for that, also?

16 COMMISSIONER CROWLEY: I don't believe so,
17 but we'd have to check with our budget expert.

18 CHAIRMAN IMBRECHT: Karen, do you want to
19 add to that?

20 MS. GRIFFIN: Bad debts only occur if their
21 energy savings does not accrue -- if energy savings
22 does not accrue, according to the original legislation,
23 the debt is forgiven.

24 COMMISSIONER COMMONS: But, the way this bill
25 is written, --

1 MS. GRIFFIN: There have never been any bad
2 debts.

3 COMMISSIONER COMMONS: No, but the way the
4 language in the bill is, from this summary, it appears
5 that we would have to repay back all monies, whether
6 or not we were repaid or not.

7 MS. GRIFFIN: No.

8 COMMISSIONER CROWLEY: No. It's repayments
9 to the ECAC.

10 COMMISSIONER COMMONS: Okay.

11 CHAIRMAN IMBRECHT: All right, we'll go on
12 to the next bill.

13 COMMISSIONER COMMONS: We didn't --

14 CHAIRMAN IMBRECHT: What I suggested is we'll
15 take this motion to adopt the Committee Report, as we
16 want to amend it --

17 COMMISSIONER COMMONS: Oh, I'd rather vote
18 on --

19 CHAIRMAN IMBRECHT: Go through all of them,
20 individually?

21 COMMISSIONER COMMONS: Sure.

22 CHAIRMAN IMBRECHT: It seems like a lot of
23 roll calls, but, in any case, Commissioner Crowley moves
24 and second that we adopt the Committee Report, as provided
25 by the Presiding Member.

1 COMMISSIONER CROWLEY: On this particular --

2 CHAIRMAN IMBRECHT: On this particular bill
3 relevant to SB1830.

4 COMMISSIONER GANDARA: You mean the Presiding
5 Member's position?

6 CHAIRMAN IMBRECHT: That's right. Typically
7 characterizes the Committee's position we put forth.

8 Motion's before us. Is there further discussion?

9 (No response.)

10 CHAIRMAN IMBRECHT: Please call the roll.

11 SECRETARY GERVAIS: Commissioner Commons?

12 COMMISSIONER COMMONS: Aye.

13 SECRETARY GERVAIS: Commissioner Crowley?

14 COMMISSIONER CROWLEY: Aye.

15 SECRETARY GERVAIS: Commissioner Schweickart?

16 Absent.

17 Commissioner Gandara?

18 COMMISSIONER GANDARA: I'll abstain.

19 SECRETARY GERVAIS: Chairman Imbrecht?

20 CHAIRMAN IMBRECHT: Aye.

21 Ayes, three; nays, none. Motion is carried.

22 COMMISSIONER CROWLEY: The next matter before
23 the Legislative Committee and the position we recommend
24 for support of AB2686, the Petroleum Industry Information
25 Reporting Act continuation till 1985.

1 CHAIRMAN IMBRECHT: Any discussion on that?
2 It's clearly straightforward.

3 Moved by Commissioner Crowley, seconded by
4 myself. Is there an objection to unanimous roll call?

5 (No response.)

6 CHAIRMAN IMBRECHT: Hearing none, that will
7 be the order.

8 COMMISSIONER CROWLEY: The next item, AB2685,
9 the selection of the California Energy Commission Chair
10 and Vice Chair. There was a divided recommendation.
11 That Chair of that Committee has no position on this
12 matter. And the second member will speak to supporting
13 the measure with amendments.

14 COMMISSIONER COMMONS: Mr. Chairman, I'd like
15 to hold this until we have a full Commission.

16 CHAIRMAN IMBRECHT: Well, -- see if we can
17 get it done right now, but if you'd like --

18 COMMISSIONER COMMONS: I mean today, but when
19 we have -- I assume Commissioner Schweickart will be
20 back.

21 CHAIRMAN IMBRECHT: I expect him to.

22 COMMISSIONER CROWLEY: Your want that -- you're
23 tabling that, then?

24 CHAIRMAN IMBRECHT: Well, he's making a request.

25 COMMISSIONER COMMONS: I'm making a request

1 of the Committee that we hold this item till we have--
2 Commissioner Schweickart was our chair, and I would
3 be interested in his viewpoint--

4 CHAIRMAN IMBRECHT: All right.

5 COMMISSIONER CROWLEY: The next item, Senate
6 bill 1673, local government energy advisory committee
7 off-shore coastal-da-ta-da-da-what is it? Tell me.
8 Help.

9 MS. STETSON: Outer continental shelf.

10 COMMISSIONER CROWLEY: --outer continental
11 shelf. The Committee recommendation was no position
12 on this matter.

13 CHAIRMAN IMBRECHT: Is there objection to
14 that recommendation?

15 (No response.)

16 CHAIRMAN IMBRECHT: I don't think we need
17 a motion if there's no objection. We'll take that as
18 the position of the Commission. All right.

19 Thank you very much. That concludes the Legis-
20 lative Report, absent that one bill.

21 COMMISSIONER COMMONS: I have one question
22 on--

23 CHAIRMAN IMBRECHT: Commissioner Commons.

24 COMMISSIONER COMMONS: --legislation.

25 Luree, at the last meeting we said we were

1 going to have a report on the status of the R&D legislation
2 and where we are on that, and --

3 MS. STETSON: All of our sponsored legislation
4 has been introduced and is in print. I believe all
5 the Commissioners got a copy of the summary statements
6 for each bill, and those packets have been distributed.

7 The bills currently are not set. I'm working
8 with Assemblyman Naylor's office to come up with specific
9 language for the RD&D revolving account. There's some
10 concern by the Assemblymen as to funding source and
11 amount.

12 I don't know what else you'd like to know.

13 COMMISSIONER COMMONS: Well --

14 MS. STETSON: The alternative loan package,
15 which Assemblyman Naylor has also introduced, is in
16 print and appears to be fairly straightforward.

17 COMMISSIONER COMMONS: Chairman, the reason
18 I'm raising this at this time is the Commission did
19 take a position as to a source on the R&D funding and
20 I'd heard that the previous Legislative Committee was
21 concerned about using those funds in the account, and
22 may have shifted their opinion on that.

23 And since we are putting out an R&D report,
24 I want to get a preliminary indication of the Commission
25 before I send out a draft report, where we may have had

1 a change in the policy perspective there.

2 MS. STETSON: We had a discussion --

3 CHAIRMAN IMBRECHT: I'm sorry, I don't recollect
4 what this is about, so --

5 MS. STETSON: We had a discussion on all our
6 sponsored legislation. Let me start over.

7 We discussed funding sources for all sponsored
8 legislation that was necessary. In that discussion,
9 we came up with various funding options for the RD&D
10 bill. We were suggesting \$10-' or \$15-million. There
11 was a discussion of getting it from the general fund,
12 from monies that are set aside by the Governor for
13 legislative proposals that are passed, tidelands money
14 that may be available if the Vasconcellos bill passes,
15 and PVA monies and so forth.

16 When the Committee discussed that, I believe,
17 if I recall properly, Chairman Imbrecht suggested that
18 we go for general fund money. I believe there was some
19 discussion of that, but the final decision was that
20 we should go for tidelands money.

21 Since that time, I talked with Commissioner Commons,
22 who indicated that if that was not acceptable to
23 Assemblyman Naylor, and Assemblyman Naylor's concerns
24 are that that may impact current projects that would
25 be funded from tidelands, that we could go for '85-86

1 tidelands money.

2 Assemblyman Naylor's staff said that that
3 may be a possibility. I have not talked to them. I'm
4 supposed to this morning. I will be over there this
5 afternoon to find out more from his staff as to what
6 funding sources he wants.

7 I've also had an indication that if the bill
8 had to be stripped of funding, that that would be all
9 right with Commissioner Commons, as long as we got the
10 authority to have the ability to do R&D with utilities
11 and private sector.

12 COMMISSIONER COMMONS: The previous Commission
13 position, if you recollect, Senator Rosenthal had asked
14 two questions on my testimony and I asked his permission
15 to bring it back to the full Commission, so we had a
16 Commission, rather than a personal viewpoint. And at
17 that time, the Commission position was that the unallocated
18 portion of the two-tenths of a mill be the source of
19 funds.

20 And, apparently there was a meeting of the
21 Legislative Committee, where you may have changed your
22 opinions as to what to do. And what I'm essentially--

23 MS. STETSON: Wait -- we did.

24 CHAIRMAN IMBRECHT: I recall--

25 COMMISSIONER COMMONS: --seeking is some direction

1 as to --

2 CHAIRMAN IMBRECHT: Sure, --

3 COMMISSIONER COMMONS: I don't want to put
4 an R&D report out that is in contradiction to --

5 CHAIRMAN IMBRECHT: Let me explain precisely.
6 I recall this now, okay.

7 The reason for the change is that, I think
8 generally speaking, and correct me if I'm incorrect
9 on this, Commissioner Gandara, but we see the overflow
10 in ERPA as an effect from that finite funding source
11 that does not meet the level of funding that I believe
12 you believe is appropriate. And, in effect, puts R&D
13 programs in competition with basic operation of the
14 Commission, itself, and broad-range more programs, from
15 that perspective to if we could be more successful in
16 either a general fund or in ERF appropriation for this
17 program, that would be preference number one. If that
18 is unsuccessful, then the fall-back position would be
19 to take the overflow within ERPA.

20 COMMISSIONER COMMONS: May I suggest, without --
21 I don't want to vote on the issue at this time, because
22 I think the situation is very fluid -- the legislature--

23 CHAIRMAN IMBRECHT: We obviously have to consult
24 with Assemblyman Naylor about this.

25 COMMISSIONER COMMONS: What I would like to

1 suggest, at least in the R&D report, that even though
2 we have a Commission position, that we don't identify
3 the source of funds. We only discuss the idea at this
4 time.

5 CHAIRMAN IMBRECHT: That's fine.

6 COMMISSIONER COMMONS: And maybe when we bring
7 the R&D report, after the first hearings, and come back,
8 we'll get into that question.

9 CHAIRMAN IMBRECHT: All right.

10 COMMISSIONER GANDARA: I would have a question
11 or a request that the R&D Committee consider in view
12 of the earlier action taken by the Commission that said
13 that we basically will not have a special fund, revolving
14 fund for the street-light -- for the conservation programs
15 and that, in fact, conservation will be competing against
16 other Commission programs according to the position
17 that we took, why should the R&D programs now be in
18 a very specialized category where they are, you know,
19 in fact, not going to be competing with the rest of
20 the ERPA funding. How can we give up general funding
21 money on the one hand, and then ask for it on the other
22 hand.

23 I don't think we need to resolve it right
24 now, but I think that we should develop a consistent
25 position on that one. Certainly make me more receptive

1 if it were consistent, than --

2 CHAIRMAN IMBRECHT: Well, see, the way I read
3 the previous action, we gave up a portion of general
4 funding in turn for which the implication being that
5 ERPA would ultimately profit to the tune of \$14.5-million
6 versus \$5.5-million.

7 In this instance, that really is not a considera-
8 tion.

9 COMMISSIONER GANDARA: No, but what we did,
10 is that money now comes out of ERPA, and any proposal
11 for this program, which has been a very good program,
12 it's been an over-subscribed program, a lot of demand
13 for this program, we now made that program compete with
14 funds for all the other programs at the Commission,
15 while at the same time, creating a very specialized
16 category for the R&D program. And, I would, you know,
17 I have no problems with R&D programs, I think it's a
18 good idea. But, I do think we're kind of being inconsistent
19 here and particularly in view of one of our more successful
20 programs.

21 CHAIRMAN IMBRECHT: Okay, I understand your
22 point.

23 Commissioner Commons?

24 COMMISSIONER COMMONS: Well, the previous
25 position of the Commission was only for those portions

1 of the funds that were unallocated, and so if we'd had
2 programs that had come in, it would be if we'd had excess
3 funds. That's as far as we had gotten. I think one
4 of the very important things about Commissioner Crowley's
5 original motion, though, is that our programs would
6 be the ones that would be looked at in terms of this
7 two-mill surcharge, rather than it being given to non-
8 energy or other programs, and that was --

9 CHAIRMAN IMBRECHT: They cannot be given to
10 nonenergy programs; can be given to --

11 COMMISSIONER COMMONS: Well, other -- other
12 agencies.

13 CHAIRMAN IMBRECHT: --other agencies, right.

14 COMMISSIONER GANDARA: Except that what you're
15 going to get is that you're going to give up the funding
16 and you're not going to get the constraint on the ERPA
17 funding. That's the problem. You can talk about pie-
18 in-the-- but, you're going to get that other constraint,
19 and you've given up the other one.

20 COMMISSIONER COMMONS: I don't want to poll --
21 at this time. I just want --

22 CHAIRMAN IMBRECHT: That's fine.

23 COMMISSIONER COMMONS: --advise and counsel.

24 CHAIRMAN IMBRECHT: All right, fine.

25 COMMISSIONER COMMONS: Thank you.

1 CHAIRMAN IMBRECHT: Since Commissioner Schweickart
2 has returned, I guess we should return to the fourth
3 bill and try to resolve that, 2685.

4 COMMISSIONER CROWLEY: AB2685 was the Goggin
5 bill concerned with the selection of the Chair and Vice
6 Chair of the Commission. The recommendations were bifurcated
7 again. The First Member's recommendation is no position.
8 This was based on several factors, one of which was,
9 as I understood, it was a spot bill and I thought we
10 should follow that and not take a position, and not
11 deal with the bill at this time.

12 The second member supported the bill with
13 amendments.

14 CHAIRMAN IMBRECHT: And we put this item over
15 for your return.

16 Commissioner Commons?

17 COMMISSIONER SCHWEICKART: Can I ask what
18 the -- has it already been discussed and I'm --

19 CHAIRMAN IMBRECHT: No, --

20 COMMISSIONER CROWLEY: Huh-huh.

21 CHAIRMAN IMBRECHT: --there's been no discussion.

22 COMMISSIONER CROWLEY: This is the opening.

23 CHAIRMAN IMBRECHT: We're just beginning.

24 COMMISSIONER COMMONS: I asked that you be
25 here since you were Chair for three and a half years.

1 COMMISSIONER GANDARA: If I might shed some light
2 on my position, it's not you, it's a position I've held
3 since I've been at the Commission, and basically my
4 position is to support the staff recommendation, with
5 the following amendment, and that is that the bill should
6 be amended to take effect February 7, 1985.

7 I say that because it would be clear by then
8 that there would be a majority of this Commission appointed
9 by the current administration, so if there would be
10 any concern over some, you know, who would be selected
11 and who would vote how, that I think that should be
12 allayed.

13 I think that basically that takes it out of
14 the realm of speculation as to what this current composition
15 of Commissioners would do, but sets very good long-
16 range policy for the Commission. I think it is generally
17 good policy for the Chairman, Presiding Member, or President
18 of any Commission or Board to be elected by his peers.

19 I think that all the proposals that I've been
20 aware of on reorganization over the years have focused,
21 I think, at bit, at times, too unnaturally in relationship
22 between the Governor and the Chairman--

23 COMMISSIONER SCHWEICKART: His or her peers.

24 COMMISSIONER GANDARA: That's right, his or
25 her peers. And that not enough attention has been focused

1 on the relationship between the Chairman and the rest
2 of the Commissioners, with the Chairperson and the rest
3 of the Commissioners.

4 (Laughter.)

5 COMMISSIONER GANDARA: Okay? But, in any
6 case, that, frankly, I think is where I am on this position.
7 I am aware of a view that, well, we really shouldn't
8 say anything about this, because this is a spot bill,
9 anyway, it's likely to be changed. It's a -- while
10 I think it's an important matter to state a public position,
11 if it is a spot-bill, it's likely to have other things
12 built in as opposed to these things taken out. That's
13 always a possibility, too.

14 In any case, I think that ought to be the
15 position of this Commission, that it ought to seek the
16 freedom to select its own Chair.

17 CHAIRMAN IMBRECHT: Further comment?

18 Commissioner Schweickart?

19 COMMISSIONER SCHWEICKART: Well, we're dealing,
20 clearly not only with relations among Commissioners
21 and the functioning of the Commission, but also the
22 relationship of the Commission and the Governor or Governess.

23 (Laughter.)

24 COMMISSIONER SCHWEICKART: I give credit to
25 the Commissioner on my right for that one.

1 CHAIRMAN IMBRECHT: I think it was Governoree,
2 but -- to my recollection --

3 (Laughter.)

4 COMMISSIONER SCHWEICKART: Well, it was --

5 CHAIRMAN IMBRECHT: Whatever. Let's not --

6 MS. STETSON: Especialy with the bill pending.

7 COMMISSIONER SCHWEICKART: My own feeling,
8 to be totally candid about this, is that frankly it's
9 one of the issues in which I believe in retrospect of
10 my own three and a half, or whatever it was, years as
11 Chairman, I frankly blew, because having lived through
12 that now, in retrospect, I believe this should have
13 been done quite awhile ago. Although, I must say, at
14 the time, I did oppose it.

15 At this point, however, I've had a little
16 more experience of issues of transition, et cetera,
17 and I think it's really quite -- one ends up with difficul-
18 ties either way. In the one case, clearly the difficulty
19 comes with a lone commissioner from a new party, if
20 there is a switch of party at a transition, and the
21 rest of the Commission, the other way, you end up with
22 a Commission and a new administration with carry-forward.

23 Either way, one ends up with a problem there.

24 Fundamentally, then, my own feeling is that
25 the -- let me say, the gradual shifting of the Commission

1 and its smooth functioning is the thing which I ultimately
2 rate highest, regardless of party or philosophy. I
3 think that's a fundamental protection for the public
4 which is to be highly valued and I frankly see that
5 I took the wrong position before.

6 I therefore support this and I think that
7 the effective date of February 1985 not only eliminates
8 any issues of residual Commission majority from the
9 previous administration, but also happens to coincide
10 with a two-year term of any one Chairman, at least that's
11 what it says in the law. -- rather -- in the past,
12 and it may not be in the future, outside of this bill.

13 Nevertheless, I think it is a good principle,
14 which I, frankly, wholeheartedly support.

15 CHAIRMAN IMBRECHT: I guess it's my turn --

16 COMMISSIONER COMMONS: I think, as Chair,
17 you should be--

18 CHAIRMAN IMBRECHT: Go ahead, be my guest.

19 COMMISSIONER COMMONS: I think as Chair, you
20 should be last, in this case.

21 CHAIRMAN IMBRECHT: All right.

22 (Laughter.)

23 COMMISSIONER SCHWEICKART: I think you ought
24 to abstain.

25 (Laughter.)

1 CHAIRMAN IMBRECHT: The breeze is blowing.

2 COMMISSIONER COMMONS: I will never have the
3 problem of being Chair. I know I would not want to
4 be a Chair, if I didn't have the support of my peers.
5 And I think if I did have the support of my peers, I
6 would probably be a better Chair, because I'd try harder
7 to work with the people I'm working with.

8 CHAIRMAN IMBRECHT: Okay, well I've reflected
9 a fair amount on this, and my general inclination has
10 been, in almost all instances that I've been in public
11 life, is that leadership -- and I generally felt this
12 in the legislature, which I find ironic, by virtue of
13 what I'm going to come down to -- conclusion of the
14 moment, but that's Committee Chairs should be chosen
15 on that same basis, as well.

16 I have some concerns of -- well, let me put
17 it this way: First off, I appreciate the fact that
18 the suggested amendments are not personally directed,
19 and it's difficult to make any comments in a completely
20 abstract sense. One I'm concerned about, abrogating
21 the power of the Governor. Secondly, I'm concerned
22 that this proposal, I believe, is contradictory with
23 the recommendations within the Hoover Commission Report,
24 which, in effect, suggests an enhanced status for the
25 Chair of the Commission, as opposed --with an administration,

1 any administration, as opposed to existing status or
2 even diminished status, and it obviously would be incon-
3 sistent for an elected chair, particularly from a transition
4 commission, to be a member of the Governor's Cabinet.

5 I think it would be, frankly, on a formal
6 basis. Would enhance ultimately the relative leverage
7 of the Commission if that status were ultimately conveyed.

8 I would also say that I have some concern,
9 I think we have substantial organizational management
10 problems today largely as a result of the Act, and distribu-
11 tion of authority is something that this institution
12 has wrestled with, from my knowledge, since its entire
13 inception. And I have some concern, in a very small
14 quasi-legislative body of five people, the kind of leveraging,
15 if you will, in effect creating a second Executive Director
16 position depending upon three votes for continuation
17 of that status, and I believe putting single individuals
18 in a position to greatly leverage ultimate direction
19 of the institution, and leadership of the institution.

20 I think it emasculates, rather than increases
21 the ability to provide some central leadership, and
22 I do believe that that is a continued problem within
23 the institutional structure of the Commission, as it
24 currently exists.

25 For all those reasons, I am disinclined to

1 support this.

2 I might say, as well, that I believe had this
3 legislation been in effect at the time of the most recent
4 administration change, and I should say publicly that
5 I applaud the decision of Commissioner Schweickart,
6 at the time, to allow the new Governor the opportunity
7 to name the Chairperson of the Commission. And I think
8 that that was, even with the major difficulties that
9 we've experienced over the last year, I think was, in
10 a very real sense, largely responsible, to some extent,
11 for mitigating some of those difficulties. I think
12 they could have been substantially greater had there
13 been a perception within this administration, and I
14 suspect that's possible in the future, as well, perception
15 that this was entirely a hostile body.

16 And I think that you see some examples of
17 other agencies likewise in a status where that has occurred
18 and I would cite in particular, both the ALRB and the
19 Coastal Commission, as examples of that.

20 I am betwixt and between, I know that the
21 position I take on this, to some extent, is contradictory
22 with a basic philosophical approach, I can only say
23 to the organization of any structure, and that is, as
24 Commissioner Commons suggested, it ought to be reflection
25 and support of one's peers.

1 But, in this instance, I will support the
2 Presiding Member's recommendation. I do also understand
3 this to be a spot bill, and I'm not sure it makes much
4 sense for us to go forward at this point in time.

5 And that's the best I can do to argue or justify
6 that position.

7 I think there are some rational arguments
8 on both sides, frankly, as to how to really manage and
9 run and provide some leadership and direction.

10 So, that is where I stand.

11 COMMISSIONER SCHWEICKART: We have the ultimate
12 solace that our opinion probably won't make a lot of
13 difference.

14 COMMISSIONER CROWLEY: Yes, probably.

15 CHAIRMAN IMBRECHT: That's precisely -- on
16 it, as well.

17 (Laughter.)

18 MS. STETSON: If I could add a comment or
19 two about the amendments before you take a vote on the
20 bill. The staff had originally recommended January 1, '86,
21 in case there's any delay in appointing another Commissioner
22 to the Commission in 1985. Commissioner Gandara had
23 suggested February 7th, because that's the 30-day time
24 period in which the Governor must appoint to the vacancy,
25 but he has had extensions in the past. I'm just pointing

1 that out--

2 CHAIRMAN IMBRECHT: In fact, each of the last
3 two appointments have been extensions.

4 MS. STETSON: Right. I'm just pointing that
5 out.

6 In addition, the Little Hoover Commission
7 recommended that the appointment not carry over into
8 a new administration, and I don't think we really addressed
9 that in our amendments. We might want to also encourage
10 that. But, I'm just raising that as an issue.

11 COMMISSIONER COMMONS: Can you clarify--

12 CHAIRMAN IMBRECHT: I don't understand what
13 you mean by that.

14 MS. STETSON: The Little Hoover Commission,
15 if I can quote, --

16 (Pause.)

17 COMMISSIONER GANDARA: The Little Hoover Commission
18 recommendation basically said that the term of a Chairman
19 should not extend beyond--

20 MS. STETSON: Right.

21 COMMISSIONER GANDARA: --the term of the Governor
22 that appointed him.

23 MS. STETSON: They specifically said the
24 Energy Commission Chairman's appointment should be co-
25 terminus with the incumbent Governor.

1 COMMISSIONER GANDARA: I would say that a wise
2 Commission is free to consider that when it votes on
3 its Chairman.

4 MS. STETSON: Okay, I'm just raising that
5 because I don't think that was really discussed--

6 CHAIRMAN IMBRECHT: Well, that doesn't give
7 me complete solace. I might say, it cuts both directions.
8 I mean, because just as easily a Democrat could be elected
9 in the next election and the tables will reverse.

10 And I would just say, from a general organiza-
11 tional standpoint, I personally believe that independent
12 regulatory agencies within this state should follow
13 the federal model, and that is true, not just of this
14 institution, but others, as well.

15 I do believe that there is a necessity for
16 some bipartisan perspective in energy development in
17 this state. And I frankly think that if I were really
18 to provide my druthers about organization, this Commission
19 would be split, statutorily, with a majority on a partisan
20 basis going to the party in power in the executive branch
21 at that given moment, so that it would always be a three/two
22 split on a partisan perspective, and the Chairperson,
23 like you find in all independent regulatory agencies
24 in Washington, is, indeed, appointed by the President,
25 and actually serves at the President's pleasure as

1 Chairperson, not as a member of the Commission, but
2 as Chairperson.

3 And I think that's appropriate. Even today,
4 I guess, as I best read the statute, I do not serve
5 at the Governor's pleasure as Chairperson. Once he
6 makes the designation, it is binding upon him for a
7 two-year period, as is the case with respect to the
8 last Chairman, as well. And I don't even necessarily
9 think that's appropriate, as well.

10 So, I don't think this is the solution to
11 a problem that's broader than that, but that's --

12 And we are then at a point where we get a
13 motion.

14 COMMISSIONER GANDARA: I'll defer to the Presiding
15 Member, but since she can't move my position, I would
16 move my position unless there's a motion she wishes
17 to put forth before the Commission first.

18 COMMISSIONER CROWLEY: Well, I --

19 CHAIRMAN IMBRECHT: I think it's the prerogative
20 of the Presiding Member to put the motion forward and
21 then if you care to offer a substitute, that's your --

22 COMMISSIONER CROWLEY: I would move that the
23 Commission have direct to no position on this AB2685.

24 CHAIRMAN IMBRECHT: I'll second that.

25 Commissioner Gandara?

1 COMMISSIONER GANDARA: ---substitute motion?

2 CHAIRMAN IMBRECHT: Yes.

3 COMMISSIONER GANDARA: I would offer a substitute
4 motion that the Commission position be to support with
5 the amendment I've indicated of February 7, 1985.

6 COMMISSIONER SCHWEICKART: Second.

7 CHAIRMAN IMBRECHT: All right. I would like
8 to just suggest that -- I mean I understand the essence
9 you're suggesting, and I would like to suggest that
10 you maybe add another two weeks or something onto that
11 date--

12 COMMISSIONER GANDARA: March 7th.

13 CHAIRMAN IMBRECHT: --for obvious reasons.

14 COMMISSIONER GANDARA: March 7, 1985.

15 CHAIRMAN IMBRECHT: Fine.

16 I assume that's still a second?

17 COMMISSIONER SCHWEICKART: I wanted -- my
18 intention would be that the first appointee of a new
19 Governor would be part of the voting block.

20 CHAIRMAN IMBRECHT: That's right. This would,
21 as a practical matter, largely insure that.

22 COMMISSIONER SCHWEICKART: All right.

23 CHAIRMAN IMBRECHT: Okay? I assume that's
24 a second by Commissioner Schweickart.

25 Further discussion?

1 (No response.)

2 CHAIRMAN IMBRECHT: Okay, let's call for roll
3 on the substitute motion which is to support with a
4 March 7th amendment date for effectiveness.

5 Please call roll.

6 SECRETARY GERVAIS: Commissioner Commons?

7 COMMISSIONER COMMONS: Aye.

8 SECRETARY GERVAIS: Commissioner Crowley?

9 COMMISSIONER CROWLEY: No.

10 SECRETARY GERVAIS: Commissioner Schweickart?

11 COMMISSIONER SCHWEICKART: Aye.

12 SECRETARY GERVAIS: Commissioner Gandara?

13 COMMISSIONER GANDARA: Aye.

14 SECRETARY GERVAIS: Chairman Imbrecht?

15 CHAIRMAN IMBRECHT: No.

16 The motion is carried, three to two. The
17 position of the Commission--

18 COMMISSIONER COMMONS: Now, we need a vote
19 on the main motion, if you recollect --

20 CHAIRMAN IMBRECHT: That is correct. I will --
21 is there objection to a substitute roll call on the
22 main motion?

23 (No response.)

24 CHAIRMAN IMBRECHT: Hearing none, ayes, three,
25 nays, two. That is the position of the Commission.

1 Okay. Once again, we have no minutes to approve.
2 And I would like to inquire once again of the Executive
3 Director, what the situation is on that, since we've
4 not had minutes for a number of meetings, and I think
5 we are substantially in arrears on approving them.

6 I won't inquire. I'll just suggest to you
7 that at the next business meeting, as we did at the
8 last, that needs to get resolved.

9 MR. WARD: I understand.

10 CHAIRMAN IMBRECHT: Are there additional --
11 oh, I'm sorry, let's then turn to Item No. 7, which
12 is the consideration of claim exemption from residential
13 building standards. Commissioner Gandara had some questions.

14 COMMISSIONER GANDARA: Yes, Mr. Chairman,
15 if I might just start off with articulating my concerns,
16 because I'm going to have to leave pretty soon, so --
17 and I asked for this item to be held over.

18 I noticed some differences between the initial
19 staff report that I was given, dated February 16, and
20 the staff report that I got yesterday, dated March 6,
21 1984.

22 And some of these inconsistencies may be typo-
23 graphical errors or they may actually be errors. I
24 don't know. But, in any case, what it did is it called
25 my attention to a comparison of the recommendation earlier

1 and now, and they do appear to be, in every instance,
2 reduced, that is, not as strict as the initial recommenda-
3 tion.

4 I then essentially developed a concern as
5 to how these recommendations are being developed. I
6 noticed them both are signed by you, Mr. Rauh, and I
7 believe, under our regulations, this is the Executive
8 Director's recommendation, so I was wondering whether
9 we could get Executive Director -- Executive Office
10 review of these recommendations, and the changes that
11 occurred as late as the date prior to the business meeting?

12 MR. RAUH: Perhaps, I -- I might just indicate,
13 as a matter of practice, that I have been signing these
14 recommendations to the Commission since we've began
15 the exemption process.

16 With this particular claim, I'd like to just
17 bring you up to date as to the differences and why there
18 is a change in the recommendations made to the Commission.

19 This Applicant originally filed in 1983, the
20 close of 1983, and --

21 COMMISSIONER GANDARA: Before you get to that,
22 Mr. Rauh, --your earlier portion, do these recommendations
23 receive Executive Office review?

24 MR. RAUH: They go through the Executive Office,
25 as is anything that's put on the agenda; that's correct.

1 COMMISSIONER GANDARA: Oh, okay, so that even the
2 one that I got yesterday at 4:30 was -- essentially met
3 with the Executive Office review, and would be the
4 Executive Office recommendation?

5 MR. WARD: I'm unaware of the process. And
6 if Mr. Rauh's indicating it's been through the Executive
7 Office, I assume it had. I have not personally reviewed--

8 COMMISSIONER GANDARA: Okay. -- proceed,
9 Mr. Rauh.

10 MR. RAUH: Yes. Let me just indicate that,
11 well, all right, let me just lay out the facts for you
12 as to why there are two different reports.

13 Initially the Applicant proposed a blanket
14 exemption for his developments covered in this document.
15 At that point, the staff developed a series of recommenda-
16 tions covering all the units in that plan development
17 in a consistent fashion with previous recommendations
18 for exemption.

19 Within the last several weeks, the Applicant
20 came to us, and in the ensuing period of time between
21 our submittal of this as an agenda item, and today,
22 came to us and altered his proposal.

23 In effect, he made an agreement which would
24 have us grant an exemption for those units completed
25 between now and June of this year, and all subsequent

1 units in the development would comply completely with
2 the building standards.

3 He also evidence information, or provided
4 information with respect to difficulties he would have
5 in complying with some of the elements of our original
6 recommendation, with respect to the ability to purchase
7 high-efficient equipment.

8 With that in mind, and with the fact that
9 he would comply entirely with the regulations for a
10 substantial part of the proposal, we altered our recommenda-
11 tion. That's what you have before you today.

12 COMMISSIONER GANDARA: Okay, that's where
13 I have some questions, because I notice that one of
14 those changes was in your earlier recommendation, you
15 were requiring a minimum SEER of 9.5 on the air conditioning,
16 and you indicated that the builder originally intended
17 to install SEER of 8.1, equipment of SEER of 8.1.

18 And yet, in your modification yesterday, that
19 builder can now, according to the information we have
20 here, install equipment of SEER of 8.0.

21 Now, why are we permitting an installation
22 of even lower than what he intended to -- now, that
23 may be a typo or it may be an inconsistency. I --

24 MR. RAUH: No, it's not a typo. The builder
25 investigated the availability of an SEER of 9.5 in his

1 local area, contacted his distributor, and found that
2 for units below three tons, he could get an SEER prior
3 to mid-summer for the quantity of the units that he's
4 proposing at an 8.9 level. For units above three tons,
5 he found that he could not get anything better than 8.0.

6 COMMISSIONER GANDARA: Even though he intended
7 originally to install 8.1?

8 MR. CHANDLEY: Let me clarify that. That's --
9 the 8.1, 8.0, that's my typing. 8.1 is what they're
10 going to install because that's what his product is.
11 8.0 is the minimum required by the standards.

12 There is no point difference in doing a calculation
13 between 8.0 and 8.1, so he has to meet the minimum standard
14 of 8.0, but, in fact, he will be installing 8.1 units.

15 COMMISSIONER GANDARA: Well, I realize that
16 no equipment can be sold that doesn't meet the standard,
17 but we do have packages that require higher -- have
18 a higher requirement. Generally, in granting these
19 exemptions, there's been a quid pro quo where things
20 can, in fact, be met, made up in one area, other areas
21 would be let go.

22 I guess my question goes to such a substantial
23 difference over a period of a few weeks of a requirement
24 of staff report that presumably is based on the information
25 that was given to you of a 9.5 ACR that drops all

1 the way down to 8.9 on some units, and then down to
2 8.0 on other units, and I guess I'm getting to be concerned
3 on exactly documentation that's provided to me, as to
4 why those changes occurred, or whether there's --

5 MR. RAUH: Well, I think --

6 COMMISSIONER GANDARA: --what involvement
7 or what basis there is for that.

8 MR. PENNINGTON: Another aspect that I would
9 add here is that we think that the loads associated
10 with these houses are likely to produce many situations
11 where less than three tons is going to be necessary.
12 So, we expect a preponderance of HVAC systems are going
13 to be below three tons, and therefore at the 8.9 level.
14 And we've asked the developer to go back and reconsider
15 his calculations for load size on that basis, with that
16 expectation.

17 COMMISSIONER GANDARA: Well, fine.

18 Mr. Chairman, I have no further questions.

19 CHAIRMAN IMBRECHT: Commissioner Gandara.

20 COMMISSIONER GANDARA: I have to leave, but
21 I wanted to raise these points, but basically I think
22 that somehow unless I'm mistaken, I think that there
23 has to be, I guess, perhaps I would suggest more Committee
24 involvement or some oversight, perhaps greater oversight
25 on some of these exemptions.

1 CHAIRMAN IMBRECHT: Let me just ask. When -- just
2 goes on the consent calendar, is that with the concurrence
3 of the Committee?

4 MR. RAUH: Well, to this point, the staff
5 has made basically a technical finding on claim of exemption
6 after having gone through the initial claims of exemption
7 at more detail with the Commission, explaining our rationale.

8 We attempt to make these exemptions on a case-
9 by-case basis, but still using the same decision criteria
10 on each one.

11 We did not have concurrence from the Applicant
12 uniformly on the original staff report that was attached
13 to this back-up material.

14 In many cases, these are consent items. On
15 an occasion, they have been a hearing item.

16 In this case, we felt that we were achieving
17 the same energy savings, perhaps more, as Mr. Pennington
18 has pointed out, because on the one hand, we were proposing
19 some modifications to an entire project in our original
20 proposal.

21 We now have the Applicant complying completely
22 with the standards for the substantial portion of that
23 project, and we're only dealing with the number of homes
24 that he will build between now and June, and for those,
25 we have relaxed our requirements somewhat, but only after

25% COTTON FIBER

1 he provided some information about the availability of
2 equipment, and in that sense, we still believe that
3 he will be installing primarily the higher efficiency
4 equipment.

5 So, from an energy standpoint, we have an
6 agreement with the builder which will allow him to go
7 forward with equipment he can purchase from his installer
8 in a timely fashion to construct these homes. Energy
9 is being saved at roughly the equivalent amount or perhaps
10 substantially more, and we've been consistent in the
11 application of our criteria.

12 But, we would be glad to review these, in
13 any fashion, the Commissioner is interested in.

14 CHAIRMAN IMBRECHT: All I'm suggesting is
15 that when something goes on the consent calendar for
16 the Commission, as a whole, it seems to me that that
17 ought to imply Committee support.

18 MR. WARD: Well, I think the --

19 CHAIRMAN IMBRECHT: And --

20 MR. WARD: --indication that Mr. Rauh is making
21 here, Mr. Chairman, is that it, in fact, is consistent
22 with other parameters on previous exemptions.

23 CHAIRMAN IMBRECHT: I appreciate that. Never-
24 theless, generally speaking, I think that probably is
25 a little better way to handle it.

1 Commissioner Commons?

2 COMMISSIONER COMMONS: Yes. I'd raise the
3 same question. I really personally don't think these
4 exemptions should be consent items, particularly this
5 one which is a very large project and very complicated.

6 Could you just, for myself, since I've --

7 CHAIRMAN IMBRECHT: Well, I want to -- I'm
8 not saying, just the distinction between -- I'm not
9 saying it shouldn't be a consent item. What I'm saying
10 is that if it goes on consent, that ought to mean implicitly
11 that the Committee is in support of adoption of it,
12 as a consent item. Absent that, you can clearly, you
13 know, conclude that there's likely to be some discussion
14 or dissent.

15 COMMISSIONER COMMONS: Could you please just
16 explain for me, since this is not an area I've had a
17 lot of experience, what are the differences between
18 what the current law is and what you're recommending,
19 and then how do you -- how does it show that -- the
20 estimate of the builder was a fairly substantial sum
21 per house, of \$2000, and I didn't see a number as to
22 what the staff recommendation is in terms of that cost,
23 vis-a-vis what the Applicant is proposing.

24 It seems that the staff recommendation looks
25 very close to what the AB163 package is, and I'm not

1 sure that there's much cost differential between the
2 two, and I just need some help here.

3 MR. CHANDLEY: I think I can answer that question.
4 Let's just look at table B at the Discovery Homes.

5 COMMISSIONER COMMONS: Table B or table A?

6 MR. CHANDLEY: Table B, just using this as
7 an example. We'll go right down the list of the staff-
8 recommended compliance and you can see the difference
9 between ABl63 and the staff-recommended compliance.

10 On the top part --

11 COMMISSIONER COMMONS: Just a second, let
12 me first get the table. I've been looking at Table A.

13 MR. CHANDLEY: It's the last one.

14 MR. PENNINGTON: It's the very last page.

15 COMMISSIONER COMMONS: All right.

16 MR. CHANDLEY: First area of quote "noncompliance"
17 we run into is the attic. The ABl63 says there has
18 to be an attic over 75 percent of the roof area.

19 They range from oh, 50 to probably 70 percent
20 in these particular models, and in order to comply with
21 that particular requirement, one would have to redesign
22 the entire roof structure, take out the cathedral ceilings,
23 that's a fairly significant change.

24 On the glazing area, ABl63 requires -- excuse
25 me, on the U-value, it requires double glazing. We

1 are essentially requiring double glazing with the exception
2 of some French doors that were planned for this project
3 and there may be one or two small atypically sized windows
4 which are somewhat more difficult to obtain, simply
5 not worth the bother here.

6 On the total area of glazing, the requirement
7 is that you not have more than 20 percent of your floor
8 area, percentage of your floor area. The average is
9 approximately in that range, so the Applicant's not
10 going to be that far off, in the first place, but if
11 you had to -- if you imposed absolute requirement that
12 it be no more than 20, on the models that are close
13 to say, 21 percent or 22, in the case of the other models
14 on table A, one would have to start taking out windows,
15 and that's a fairly significant change in a product.

16 We have the same thing on -- we have, I think,
17 substantial compliance on the shading coefficient. On
18 the thermal mass, the question here is how much of your
19 floor area is uncarpeted. And that's a function of
20 how large your kitchen is, your bathroom areas, your
21 laundry areas, if they're inside, and any entryways
22 which might be uncarpeted.

23 When you say you want more uncarpeted, you're
24 probably playing a losing game there, because this Applicant,
25 in fact, offered to leave uncarpeted certain rooms,

1 additional rooms, in order to get up to 25 percent figure
2 across the board, and our judgment on that is those
3 areas are probably carpeted by the consumer three weeks
4 later anyway, so we weren't going to take our points
5 there. We're going to get the points where they're
6 more likely to last awhile.

7 So, we didn't see any point in trying to press
8 that issue. In fact, the amount of thermal mass provided
9 by this particular project varies considerably. Some
10 of the models are over 25 percent, others are under
11 25 percent, and I suspect the average is going to be
12 pretty good.

13 We've added electrical outlet gasket plates
14 in order to pick up a few points there. They weren't --
15 they aren't required in ABl63. Gas furnace, we have
16 compliance there. On the cooling system, I think we've
17 already explained that.

18 On more than half the units there's a requirement
19 to install 8.9 SEER, the difference in points between
20 8.9 and 9.5 is not significant. There are two or three
21 points involved and I think we picked those up elsewhere.

22 And as Mr. Pennington explained, on those
23 units which are not specifically called out as requiring
24 8.9 SEER, the building is required to do a recalculation
25 of the cooling load based upon the inclusion of the

1 new conservation features. When one puts those features
2 in, he'll be able to -- he'll discover that more of
3 the units can use the smaller air conditioners which
4 are available at 8.9 and those will also have to comply.

5 And we have his agreement on that.

6 Everything else is full compliance. I might
7 add that we looked at a point system calculation of
8 the worst case analysis for each of these sets of models,
9 and in each instance, the builder's proposals and the
10 ones that we subsequently agreed with him about, improved
11 the performance of that by moving them from about 30
12 points out of compliance to within 10 points or less
13 or compliance in the worst orientation. And my familiarity
14 with how that works and how the point system is structured,
15 is that when one averages the orientations, one is very
16 close to full compliance.

17 So, we feel like we got a fairly good break
18 here, even though there are differences between this
19 set of recommendations and the previous set of recommendations.

20 Let me remind you -- let me give you some
21 numbers about the exchange in that bargain. The original
22 proposal was for 301 units. And those 301 units would
23 have been built not only this year, but over the next
24 two years.

25 So, you would have had a builder out there

1 competing in a market with under compliance for up to
2 three years.

3 What we got was half that number. Only half
4 those 300 units, 149 to be exact, are affected by this
5 exemption. All the rest will be in full compliance,
6 and so I think we came out substantially ahead in that.

7 COMMISSIONER COMMONS: Let me go back on the
8 air conditioners. I understand the attic and some of
9 the modifications which would be significant to cost,
10 but the air conditioning units system, why would that
11 be an added burden or cost to the builder? This would
12 seem to me to be just --

13 MR. CHANDLEY: In the long run, it's not a
14 problem, and that's why this builder's perfectly willing
15 to go to full compliance, in the long run, that is,
16 after June 1, 1984.

17 But, in the short run, it's the question of
18 availability of sufficient numbers of units at 9.5 and
19 that was the sticking issue. If you had to wait several
20 months for these units to be available, you're delaying
21 the product, the entire development for several months,
22 and there's a lot of bucks involved in that delay, and
23 that's precisely the kind of criterion that we're allowed
24 to look at in our statute.

25 COMMISSIONER COMMONS: I don't buy the nonavailability

1 of air conditioning units in this state.

2 MR. CHANDLEY: I didn't say they weren't available.
3 We're talking about the availability to this builder
4 on an almost immediate basis because he's got projects
5 that are ready to go. Five months from now he will
6 be receiving those units and they will be going into
7 every unit that's built.

8 CHAIRMAN IMBRECHT: Okay. Commissioner Schweickart?

9 COMMISSIONER SCHWEICKART: Well, I'll tell
10 you what. I'll wait until there's a motion.

11 CHAIRMAN IMBRECHT: All right, fine. I will
12 make a motion--

13 COMMISSIONER SCHWEICKART: I don't have any
14 particular question.

15 CHAIRMAN IMBRECHT: --I'll move that we adopt
16 the petition for exemption.

17 Is there a second?

18 COMMISSIONER CROWLEY: Second.

19 COMMISSIONER COMMONS: I have an amendment.

20 CHAIRMAN IMBRECHT: Okay. Moved by
21 Commissioner Imbrecht, seconded by Commissioner Crowley,
22 that the petition for exemption be adopted.

23 Commissioner Commons?

24 COMMISSIONER COMMONS: I'd like to move that
25 the air conditioner cooling system type be as every

1 other builder in this state has to comply with, and
2 we've not had a -- well, I'll argue it later -- that
3 the air conditioning system be the same as for the AB163
4 package, which is the same that every other builder
5 in this state has to follow.

6 CHAIRMAN IMBRECHT: Is there a second?

7 COMMISSIONER SCHWEICKART: Let me --

8 CHAIRMAN IMBRECHT: Hearing none--

9 COMMISSIONER SCHWEICKART: --at the moment,
10 second, however I think there may be a technical problem
11 with the amendment.

12 CHAIRMAN IMBRECHT: Okay, the motion--

13 COMMISSIONER SCHWEICKART: John, let me ask
14 if you would address it--

15 CHAIRMAN IMBRECHT: --made by Commissioner Commons,
16 seconded by Commissioner Schweickart.

17 Mr. Chandley?

18 MR. CHANDLEY: I think it's somewhat incorrect
19 to say that every builder in the state is required to
20 install an air conditioner at 9.5. If one were to follow
21 the AB163 package, the specific package, one would have
22 to do it. But, keep in mind that AB163 allows an equivalent
23 performance approach where one can design your own package
24 and demonstrate through the point system or another
25 approved calculation method, that you have substantially

1 identical performance. So, if one can add a series
2 of features in other areas, one could get by with sub-
3 stantially less than 9.5 SEER.

4 CHAIRMAN IMBRECHT: Question would be--

5 MR. CHANDLEY: What we've done is we've put
6 together an overall package. We have--

7 CHAIRMAN IMBRECHT: Yes, let me just ask:
8 Would it be fair to say that in some instances this
9 package exceeds the requirements of 163 and in effect,
10 would provide those trade-off points for lower efficiency?

11 MR. CHANDLEY: In some orientations, I'm fairly
12 certain that's true.

13 CHAIRMAN IMBRECHT: Mechanical. Yes.

14 COMMISSIONER COMMONS: I'm going to accept
15 Commissioner Schweickart -- I think that's an interpretation.
16 The motion is just that it be -- the amendment is just
17 that it comply with the ABL63 package air conditioner.

18 COMMISSIONER SCHWEICKART: Well, before I
19 accept your amended amendment, as the second, -- do I
20 have an opportunity to ask him a question about it?
21 In other words, --

22 CHAIRMAN IMBRECHT: No, actually, it's up
23 or down, secondly, but I'll be --

24 COMMISSIONER COMMONS: We can --

25 COMMISSIONER SCHWEICKART: All right, if we'll

1 waive that, let me just ask, Commissioner, how you
2 distinguish between that and simply denying the exemption,
3 in which case that would be the operative result, I
4 think, unless I misunderstood.

5 COMMISSIONER COMMONS: I would consider that,
6 the way I stated it.

7 In other -- that would be the way I would
8 state the motion.

9 CHAIRMAN IMBRECHT: Okay. Do I hear a second?

10 (No response.)

11 CHAIRMAN IMBRECHT: Hearing none, the amendment
12 dies for lack of a second.

13 The main motion is now before us. Is there
14 further discussion?

15 COMMISSIONER COMMONS: Yes.

16 CHAIRMAN IMBRECHT: Commissioner Commons?

17 COMMISSIONER COMMONS: Is there a way,
18 Commissioner Schweickart, that you would like to see
19 the cooling system handled, rather than the way it is
20 being proposed?

21 COMMISSIONER SCHWEICKART: Well, --

22 (Laughter.)

23 COMMISSIONER COMMONS: I just think this is
24 unfair--

25 CHAIRMAN IMBRECHT: You know, rhetorical questions

1 need not be answered.

2 (Laughter.)

3 MR. WARD: Mr. Chairman, --

4 COMMISSIONER SCHWEICKART: All right, I got
5 to come out of the closet.

6 CHAIRMAN IMBRECHT: Is this part of the AB1
7 campaign, or -- excuse me, that was probably not appropriate.
8 Excuse me.

9 Commissioner Schweickart?

10 COMMISSIONER SCHWEICKART: All right, first
11 of all, let me say that I would commend the staff in
12 the effort that they've put forward and in this case,
13 and frankly, many others. It has been of considerable
14 effort in terms of working with builders in both achieving
15 satisfaction on the builders' part, and at the same
16 time, minimizing the extent to which energy is -- or
17 the regulations are being abrogated, in the case of
18 the various exemptions that have come before us.

19 On the other hand, we adopted these regulations,
20 I believe, in June of 1981. We look at two criteria
21 which talk about compliance, the standard being impossible
22 without those substantial delays and the increases in
23 cost of construction and substantial funds had been
24 expended in good faith on planning, designing, architecture,
25 engineering, prior to the date of adoption of the

1 standards, that is, June 1981.

2 I would point out to the Commission that in
3 those two provisions, there is nothing that says that
4 a house cannot be built to this same design out into
5 1995, on those same grounds, that the house was designed
6 before, plans, in terms of orientation were done, or
7 whatever, out that far.

8 Now, in my mind, that would be an unconscionable
9 situation. I frankly find that 1984, that March of
10 1984 is more than enough time, in my own personal view,
11 for people, regardless of what investment was made back
12 prior to 1981, to adjust.

13 I, therefore, find myself in the position
14 where, on the one hand, commending the staff for the
15 effort they've done, I frankly don't have great objection
16 to this particular resolution being passed today, and
17 on the other hand, it is my very strong feeling that
18 this has got to stop, period, and absolutely.

19 It is, on the one hand, essentially the Commission,
20 if you will, and I'm using a prejudicial term, conspiring
21 with particular builders, on their particular circumstances,
22 to put them in a favorable position in a competitive
23 marketplace where their competitors are, in fact, complying
24 with the standards.

25 It encourages other people on the margin to

1 come forward to the staff to work out some accommodation,
2 because any accommodation might save them some money.

3 It puts the people who live in the houses
4 that we worked these arrangements with, in the position
5 where over the life cycle of the house, they lose. And,
6 in my view, it takes an inordinate amount of staff time
7 away from higher priorities of the Commission to the
8 overall population of the state, and I would point out
9 that the collective staff time of Mr. Pennington and
10 his people, and Mr. Chandley and the people that he
11 works with, is very valuable time, to grant and work
12 out the details on these exemptions.

13 And that, in no way, takes away from the skill
14 with which they have done this job.

15 I, therefore, since Mr. Commons is putting
16 me in the awkward position, will vote for this last
17 case, period.

18 CHAIRMAN IMBRECHT: All right.

19 COMMISSIONER SCHWEICKART: I can't --

20 CHAIRMAN IMBRECHT: The conclusion of a story
21 that I expected, but -- actually, as I read the letter,
22 let me just ask you a question, Mr. Chandley.

23 It appears to me that there are only 112 units
24 that are affected by this exemption, as opposed--

25 MR. CHANDLEY: There is a subsequent letter.

1 I don't think you've received that.

2 CHAIRMAN IMBRECHT: Subsequent to March 1?

3 MR. CHANDLEY: Yes.

4 MR. PENNINGTON: The final agreement is 149 units.

5 CHAIRMAN IMBRECHT: I see. It had originally
6 been 112, is that it?

7 COMMISSIONER CROWLEY: May I ask a question?

8 CHAIRMAN IMBRECHT: Yes, Commissioner Crowley.

9 COMMISSIONER CROWLEY: May I please know what
10 date they filed this request for an exemption?

11 MR. CHANDLEY: Their original letters are
12 dated November 30, 1983.

13 CHAIRMAN IMBRECHT: All right, Commissioner Commons.

14 COMMISSIONER COMMONS: Yes, oh, we spent a
15 lot of time this morning on one industry and although
16 this is one building tract, it's also an industry. And
17 the information that we have been given from this builder
18 to support a claim of exemption was very weak. There's
19 no break-out of what the costs are, and there's no break-
20 out of what the costs are for the particular items where
21 an exemption is being requested.

22 I think Commissioner Schweickart made it very
23 clear that if this Commission were to pass this, essentially
24 what we have done is given a political favor to a
25 particular builder in an area where price competition

1 is a major factor in the development of homes.

2 Rather than getting into the areas where we
3 had to talk about re-design, what I've tried to do is
4 focus the concentration on air conditioning units. This
5 Commission has spent endless hours on the availability
6 of air conditioning units in this state. We have had
7 formal testimony before this Commission. There are
8 a number of manufacturers; there are adequate units
9 throughout this state of all different types that comply
10 with California's regulations. We've had the testimony
11 of more than half a dozen manufacturers that they have
12 adequate supply. We've taken steps to increase the
13 supply in this state on this.

14 There's no suggestion that it'll cost more
15 to the builder. There's no support or back-up statement
16 as to why air conditioning units are going to be different
17 in an area of a relatively hot temperature zone.

18 I can see no reason to do for a builder something
19 that there is no support in the application, one unsupported
20 statement that that builder is not able to get air condition-
21 ing unit, when every other builder in this state who
22 is putting in homes, is able to obtain air conditioning
23 units that do meet the AB163 package, or whatever package
24 that they are doing. Perhaps they cost a little bit
25 less, but they will cost the homeowner who buys that

1 home, more. I think this is a farce and I think it's
2 unfair to the small builder, particularly, who does
3 not have the ability to come before this Commission,
4 and I'm going to oppose it.

5 CHAIRMAN IMBRECHT: Okay, well, I have to
6 take great exception, Commissioner Commons, to a couple
7 of the comments you made.

8 First off, I don't believe, in any circumstance,
9 this constitutes a so-called quote "political favor" close
10 quote.

11 I know of no one on the Commission, and I
12 certainly know of no one in this operation, and I don't
13 know anyone else that's doing this on that basis. I
14 believe the standards proposed by the staff on this
15 petition for exemption are identical to those imposed
16 on others.

17 I might say that the ultimate compliance that
18 has been agreed to is so close to 163, that I can't
19 imagine that there is any appreciable contrast in cost,
20 as affecting ultimate marketing decisions. I suspect
21 that the market demand for housing within that given
22 geographical jurisdiction is going to have a far more
23 profound impact upon the price charged for that house,
24 than these particular items.

25 As to the question of demonstration of impact

1 of regulations, you know, I just would suggest you look
2 at the first couple of paragraphs of the proposed order.
3 They've got an 1897 unit residential development, of
4 which better than two-thirds have already been constructed;
5 this is a development begun in 1977. And a relatively
6 small proportion of those units remaining to be constructed.
7 Obviously there were substantial infrastructure commitments
8 made and design commitments made way back. I think
9 that is almost obvious on its face, by virtue of this
10 particular type of development.

11 As to limiting these exemptions to large builders,
12 my recollection is that we have granted a couple of
13 exemptions to projects in the neighborhood of 50 homes,
14 or less than that, some months ago. Hardly provides
15 any justification for your suggestion that this is a
16 favorable treatment for a large builder, as opposed
17 to small builders.

18 My best perception is, from reviewing CBI
19 publications, is that they have made the exemption process
20 widely publicized, with respect to the entire general
21 contractor community within California. And, also,
22 that we have imposed, I think, relatively strict criteria
23 as to those projects which would generally comply, where
24 there is a demonstration of substantial economic detriment.

25 And, I would just say, finally, in response,

1 and I'm glad Commissioner Schweickart's going to vote
2 for this motion, but in response to one of the comments
3 he made about this extending out to 1995, I think by
4 virtue of the fact that they have apparently agreed
5 that one-half of the remaining units will be built to
6 full compliance with standards, that's hardly an intention
7 of this particular--

8 COMMISSIONER SCHWEICKART: With this builder.

9 CHAIRMAN IMBRECHT: With this builder--

10 COMMISSIONER SCHWEICKART: That's not my issue.

11 CHAIRMAN IMBRECHT: I understand.

12 COMMISSIONER SCHWEICKART: It's a signal that
13 we pass into the industry that if you come to the Commission,
14 we'll accommodate. And it's time to stop accommodating.
15 And it is a matter of judgment that I am indicating
16 my vote in support of this right now. It's an arbitrary
17 point when we stop, and I'm saying, right after this
18 vote, unless we keep haggling it, in which case, I'm
19 going to join Commissioner Commons.

20 CHAIRMAN IMBRECHT: In that case I'll call
21 for a --

22 (Laughter.)

23 CHAIRMAN IMBRECHT: I always try to remember
24 how to count.

25 Commissioner Commons? I'll just button my

1 lip. I had some other things to say, but that's it.

2 Commissioner Commons?

3 COMMISSIONER COMMONS: Under the exemption
4 ordinance or provision, they have to prove one of two
5 things, is that not correct? You have to either prove
6 that it's going to be -- you've already expended a
7 large sum of money or you have to -- what is the alterna-
8 tive? There are two criteria. You have to pass one
9 of the two?.

10 MR. CHANDLEY: There are two criteria, and
11 they are not in the alternative. You must meet both.

12 The first criteria is that one must have expended
13 substantial funds for designing, architecture, engineering
14 and/or planning prior to the adoption date of the standards,
15 and the second is that you must demonstrate the
16 unfeasibility or impossibility, is the term used, that
17 it's impossible to comply without substantial delays
18 and substantial cost -- increase in the cost of construc-
19 tion.

20 COMMISSIONER COMMONS: All right. Well, I'd
21 like, then, to ask staff on the cooling system, what
22 verification have you had that this request meets that
23 standard?

24 MR. PENNINGTON: We have only received the
25 statement from the developer that they contacted their

1 distributor and found that they could not meet the time-
2 frame that they were trying to pursue here, and acquire
3 the SEER 9.5 level.

4 This gives me an opportunity to comment on
5 your statement that the 9.5 is a requirement of all
6 buildings. That is not the case. The original standards
7 require an SEER of 8.0, AB163, in their package require-
8 ments, has, for this climate zone, this 9.5 SEER, but
9 staff has just gone through an extensive amount of analysis
10 to develop a point system and it's our expectation that
11 developers will trade away requirements such as this
12 where they find equipment unavailable.

13 So, --

14 COMMISSIONER COMMONS: Are you saying that --
15 the difference between 8 and 9.5 is a drastic drastic
16 difference, and, you know, I'm flexible and if it were
17 8.9 across the board, you said that the marketplace
18 would only have 8.9s; the difference between 8 and 8.9
19 is still very substantial, and my problem on this order
20 is that one area where I don't think that we have --
21 when did this come in? four months ago? six months ago?

22 MR. PENNINGTON: November 30th.

23 COMMISSIONER COMMONS: November 30th. That
24 is saying that in a period of roughly four or five months,
25 that this home builder, for 100 and some homes, was

1 not able to obtain air conditioners of above 8.0, and
2 apparently is only for a small number of those, 100
3 or so homes, that they were not able to do so.

4 And clearly I think that we have not met the
5 test, or the standard that we have passed. Perhaps
6 it's true for 9.5. I do not believe it would be true
7 for 8.9, that there's nonavailability of air conditioners
8 in the state for this number of homes.

9 CHAIRMAN IMBRECHT: I think it's important
10 to understand what the standards require, Commissioner
11 Commons, you know, what you have in 163 was a negotiated
12 package that reflected higher efficiency standards for
13 central heating and air conditioning as a trade to alleviate
14 or remove other provisions of the existing standards
15 which the building community felt were onerous.

16 And --

17 COMMISSIONER COMMONS: That's correct.

18 CHAIRMAN IMBRECHT: And, as a consequence,
19 Mr. Pennington's statement is absolutely accurate. There
20 is no across-the-board 9.5 EER standard.

21 COMMISSIONER COMMONS: But, we've already
22 had the testimony, Mr. Chairman, that --

23 CHAIRMAN IMBRECHT: SEER.

24 COMMISSIONER COMMONS: --that the only increase
25 that they are receiving over and above that which would

1 occur in the ABl63 packages on the electrical outlet,
2 and that we've given away over 20 points, excluding
3 the air conditioner, and have picked up only a few.

4 And that -- so we are in deficit--

5 CHAIRMAN IMBRECHT: I thought there was testimony
6 that also the thermal mass exceeded the percentage require-
7 ments of 163 in many of the models, and that, likewise,
8 provided additional points.

9 COMMISSIONER COMMONS: Let's just ask the
10 question and get it on the record.

11 MR. PENNINGTON: That statement is correct.

12 COMMISSIONER COMMONS: Let me ask, excluding--

13 CHAIRMAN IMBRECHT: My -- the statement I
14 just made?

15 MR. PENNINGTON: Your statement.

16 COMMISSIONER COMMONS: Excluding the air condi-
17 tioning, in the granting of this exemption, do we meet
18 the ABl63 package after trade-offs, or do we not?

19 CHAIRMAN IMBRECHT: And if not, how close
20 do we come?

21 COMMISSIONER COMMONS: That's correct.

22 MR. PENNINGTON: Probably, on an average basis,
23 probably within four or five points, is my guess. We
24 have never been able to take the time to look at every
25 unit at every site.

1 CHAIRMAN IMBRECHT: That means calculations
2 based upon orientation for every single plot.

3 MR. PENNINGTON: That's correct, so what we
4 did is we looked at the worst case orientations.

5 COMMISSIONER COMMONS: All right, I'm going
6 to try one further amendment. That the cooling system
7 meet the 8.9.

8 CHAIRMAN IMBRECHT: Is there a second?

9 (No response.)

10 CHAIRMAN IMBRECHT: Hearing none, the motion
11 dies for lack of a second.

12 I think we can now turn to the main motion.
13 I suspect we'd best call the roll.

14 Is there any further discussion? anyone else
15 wish to be heard?

16 (No response.)

17 CHAIRMAN IMBRECHT: Hearing none, please call
18 roll.

19 SECRETARY GERVAIS: Commissioner Commons?

20 COMMISSIONER COMMONS: No.

21 SECRETARY GERVAIS: Commissioner Crowley?

22 COMMISSIONER CROWLEY: Yes.

23 SECRETARY GERVAIS: Commissioner Schweickart?

24 COMMISSIONER SCHWEICKART: Yes.

25 SECRETARY GERVAIS: Commissioner Gandara?

1 COMMISSIONER GANDARA: (Absent.)

2 SECRETARY GERVAIS: Chairman Imbrecht?

3 CHAIRMAN IMBRECHT: Aye.

4 Ayes, three, nays, one. The petition for
5 exemption is adopted.

6 CHAIRMAN IMBRECHT: Okay, --

7 MR. WARD: Mr. Chairman, --

8 CHAIRMAN IMBRECHT: Yes.

9 MR. WARD: I want to mention, you know, I
10 think the staff -- and I haven't had a lot of experience
11 in the short time that I've been here with these exemptions,
12 but I think ideologically, I think the staff is probably
13 very close to Mr. Schweickart's comments, and I think
14 that as a matter of policy, if the Commission is going
15 to give us that kind of direction, I think that's helpful
16 to us. There are lots of phone calls. It's a lot of
17 pressure on the staff, in addition to the Executive
18 Office, to deal with these things on a timely basis,
19 and try to make sure that we're fair and consistent
20 with previous Commission action. So, I think the indication
21 by the Chair in this case, that we seek policy committee
22 guidance in the future would be helpful, because I appreciate
23 Commission Schweickart's commendation of the staff, --

24 CHAIRMAN IMBRECHT: I seek --

25 MR. WARD: --but, I think it's -- we specifically

1 need some policy committee direction on these, and if
2 we're going to change--

3 CHAIRMAN IMBRECHT: Time out. What I was
4 suggesting was that there be policy committee oversight
5 as to whether or not an item go on the consent calendar.

6 MR. WARD: I understand that, but I'm asking
7 for -- I think I'm asking for one step further than
8 that. I would like, --

9 CHAIRMAN IMBRECHT: I understand that --

10 MR. WARD: --if we're going to somehow change
11 the parameters of our dealing with these, --

12 CHAIRMAN IMBRECHT: Well, let me put it this
13 way: I disagree on -- I was going to say this before
14 the vote, but -- I disagree with Commissioner Schweickart's
15 perspective that we ought to say this is the last one,
16 or we're going -- my feeling --

17 COMMISSIONER SCHWEICKART: I didn't say that.

18 CHAIRMAN IMBRECHT: --is --

19 COMMISSIONER SCHWEICKART: I said it's my
20 last aye vote.

21 CHAIRMAN IMBRECHT: Your last aye vote. All
22 right, fine.

23 What I was -- my personal feeling is that
24 we ought to apply the same standard and the same test
25 to all subsequent petitions. There ought to be no benefits

1 granted to any new petitioner over and beyond those
2 which have been granted in the past.

3 I do believe we have an obligation to be even-
4 handed in our treatment of all petitions, and treat
5 them as --

6 MR. WARD: Okay, well, then --

7 CHAIRMAN IMBRECHT: --as equally as possible.
8 And the fact that a petition that may come before us
9 three weeks from now was filed a week or two after this
10 one, in my mind, should not prejudice the--

11 MR. WARD: I understand that, and even if
12 it's a matter of --

13 CHAIRMAN IMBRECHT: That's all -- That's all
14 I'm saying. Now, --

15 MR. WARD: I hear what you're saying. I --

16 CHAIRMAN IMBRECHT: --Commissioner Schweickart
17 would have a different viewpoint--

18 MR. WARD: I think even if it's a reaffirmation
19 of the existing policy and the consistency by which
20 the staff has approached these matters, I think it's
21 appropriate that we do get that reaffirmation from the
22 policy committee.

23 CHAIRMAN IMBRECHT: Okay.

24 COMMISSIONER SCHWEICKART: Well, let me just
25 try to save some time. At best, we'll have a split

1 policy committee, because I will not recommend that
2 any go on the consent calendar.

3 MR. WARD: No, I'm not talking about consent
4 calendar. The consent calendar--

5 COMMISSIONER SCHWEICKART: No, but that was
6 the Chairman's suggestion.

7 MR. WARD: -- or regular agenda --

8 CHAIRMAN IMBRECHT: Well, but we can -- can
9 get the consent calendar--

10 COMMISSIONER SCHWEICKART: What you may have
11 missed in what he was saying. It was not the policy
12 committee recommendation for or against screening, but
13 it was whether or not something ought to be on the consent
14 calendar.

15 Now, I certainly can't speak for Commissioner
16 Crowley at this point, but there will, at best, be a
17 split, in which case, by definition, it will come to
18 the main agenda.

19 MR. WARD: That's fine.

20 CHAIRMAN IMBRECHT: So, we know there will
21 be no more consent items -- so we can move forward.

22 COMMISSIONER SCHWEICKART: Right.

23 (Laughter.)

24 COMMISSIONER SCHWEICKART: Now, I would also
25 just point out, I can tell the Chairman afterward, but

1 I would also point out that in the criteria that are
2 used to grant exemption under the building standards,
3 that we're operating, that we granted this exemption,
4 there is nothing in terms of timeliness. These people
5 could have built these things five years from now and
6 all the same numbers would still be the same.

7 So, ultimately, we are talking about a judgment
8 on the part of the Commission as to whether in considering
9 all of the numbers, whether an exemption, in addition
10 to the numbers, is appropriate.

11 It comes before the Commission as an exemption,
12 not a formula which, if it's on one side of the equation
13 or some line, there's an answer yes, and on the other
14 side, no.

15 In other words, it is before us because we
16 are to exercise judgment. And the prime issue in judgment
17 on my mind here is could this builder, knowing that
18 the standards were passed in June 1981, and with much
19 delay built in, in terms of their applicability, both
20 by design and by subsequent action, in fact have accommodated
21 his development. And many other builders, in fact,
22 his competitors, have. And in my mind, it's time to
23 stop --

24 CHAIRMAN IMBRECHT: Well, you leave out one
25 final question then, is at what cost. And is that --

1 COMMISSIONER SCHWEICKART: But, at what cost--

2 CHAIRMAN IMBRECHT: -- cost --

3 COMMISSIONER SCHWEICKART: --I point out,
4 Mr. Chairman, --

5 CHAIRMAN IMBRECHT: --and is that cost implica-
6 tion reasonable to expect someone in the private sector
7 to bear, in effect, asking them or mandating them
8 to repeat activities that they have already done and
9 already expended funds for, in the contemplation of
10 a given project.

11 COMMISSIONER SCHWEICKART: Right, and many
12 of the builders--

13 CHAIRMAN IMBRECHT: And which they --

14 COMMISSIONER SCHWEICKART: --competitors to
15 these that we are giving--

16 CHAIRMAN IMBRECHT: --are forced to document.

17 COMMISSIONER SCHWEICKART: --exemptions to
18 have, in fact, absorbed that cost, given that they are,
19 in fact, well past the time that the standards go into
20 effect. That is the law and as long as we provide continuing
21 exemptions, we will find more people who really incur
22 real costs because they think they can still have an
23 exemption.

24 COMMISSIONER CROWLEY: Mr. Chairman,--

25 COMMISSIONER SCHWEICKART: So that we, we

1 actually encourage the costs, the real costs that people
2 have by giving a signal that we will continue to consider
3 exemptions.

4 CHAIRMAN IMBRECHT: Commissioner Crowley?

5 COMMISSIONER CROWLEY: Would it be possible
6 to ask Mr. Schweickart, Commissioner Schweickart, to
7 develop what he sees maybe as an appropriate time frame
8 for appeals or requests for variation of regulations
9 and deal with it as a time thing for the Committee--

10 CHAIRMAN IMBRECHT: The two of you are members
11 of the relevant Committee, and I think this is something
12 that perhaps the two of you can discuss internally within
13 the Committee.

14 COMMISSIONER CROWLEY: Okay, then let's move
15 to the Committee.

16 CHAIRMAN IMBRECHT: The only issue, in my
17 perspective, is whether the investment has been made
18 prior to the adoption of the standards. And that's
19 really one of the questions of detrimental economic
20 impact.

21 We've resolved it, and contrary to my general
22 policy, I have violated myself by talking on about the
23 issue after the vote was taken.

24 COMMISSIONER COMMONS: And I didn't say a
25 word.

1 CHAIRMAN IMBRECHT: My apologies.

2 I know you didn't. Compliments to
3 Commissioner Commons on that issue.

4 Mr. Chamberlain, do you have a report?

5 MR. CHAMBERLAIN: Just one brief item,
6 Mr. Chairman.

7 At the last meeting I distributed a copy of
8 a policy paper that has been -- I don't believe you
9 were here, Commissioner Schweickart, but I'll give you
10 another copy -- put out by the Bonneville Power Administra-
11 tion on their intertie access policy.

12 Today I'm distributing to you another copy
13 of that and in addition, proposed comments that the
14 staff proposes to have the Chair send to BPA. This
15 is to be discussed at the Intergovernmental Relations
16 Committee Friday at 11:00. So, there's opportunity
17 for you to look at the comments. They're only about
18 three double-spaced pages long, so I don't think it'll
19 be too difficult.

20 CHAIRMAN IMBRECHT: Fine. We'd ask -- other
21 Commissioners, advisers, and formally assess their view-
22 points on this proposed distribution.

23 Okay, thank you, Mr. Chamberlain.

24 Since the remaining item is basically internal
25 housekeeping, let me ask if there's any member of

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the public that wishes to address the Commission at this point?

(No response.)

CHAIRMAN IMBRECHT: Seeing none in the audience, I guess that's a moot item.

(Item No. 11 under separate cover.)

CHAIRMAN IMBRECHT: Okay, are there any further issues to come before the Commission today? 3:53, that's not too bad.

(No response.)

CHAIRMAN IMBRECHT: Hearing none, the meeting is adjourned. Thank you very much.

(Thereupon, the business meeting of the California Energy Resources Conservation and Development Commission was adjourned at 3:23 p.m.)

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REPORTER'S CERTIFICATE

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THIS IS TO CERTIFY that I, Patricia Petrilla, Reporter, have duly reported the foregoing proceedings which were held and taken in Sacramento, California, on Wednesday, March 7, 1984, 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.

Pat Petrilla

Patricia Petrilla, Reporter

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