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STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION  
APR 27 1984  
'RECEIVED IN DOCKETS'

BUSINESS MEETING

1516 NINTH STREET  
1st FLOOR HEARING ROOM  
SACRAMENTO, CALIFORNIA

Wednesday, April 18, 1984  
10:30 A.M.

Reported by: Patricia A. Petrilla

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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

STAFF PRESENT

- Randall M. Ward, Executive Director
- William Chamberlain, General Counsel
- Scott Matthews
- Manuel Alvarez
- Karen Griffin
- Leon Vann
- Luree Stetson
- Dennis Fukumoto
- Sarah Michael
- Ted Rauh
- Linda Greule, Secretary

PUBLIC ADVISOR'S OFFICE

- Ernesto Perez

ALSO PRESENT

- Edna Bruce, Housing Authority, County of Los Angeles

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BARON GRASSCABLE BONO  
BY COTTON

P R O C E E D I N G S

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3 CHAIRMAN IMBRECHT: We'll call the meeting to  
4 order, a quorum being present, and reflect that Commissioners  
5 Gandara and Commons are not in attendance at this point in  
6 time.

7 We have a relatively short agenda today, and I  
8 think we can move through it fairly quickly. There may be  
9 a need for a brief executive session as well.

10 Before turning to Item No. 1, since that requires  
11 some additional discussion with Commissioners as they  
12 become present, I'd like to turn to Item No. 2 which is the  
13 contract with the Franchise Tax Board for \$19,982 to obtain  
14 data regarding the number of solar and conservation tax  
15 credits claimed in the '82 tax year. Mr. Ward?

16 EXECUTIVE DIRECTOR WARD: Yes --

17 COMMISSIONER SCHWEICKART: I'll move the contract.

18 COMMISSIONER CROWLEY: Second.

19 CHAIRMAN IMBRECHT: Does anyone wish to be heard  
20 on Item No. 2? You don't need to provide any presentation  
21 for the record, I believe it's without controversy.

22 EXECUTIVE DIRECTOR WARD: That's fine, Mr.  
23 Chairman.

24 CHAIRMAN IMBRECHT: All right, fine. Is there  
25 an objection to a unanimous roll? Hearing none, ayes 3, noes

1 none, the motion is carried.

2           The next item is Commission consideration and  
3 possible approval of a grant for \$280,000 from the  
4 Petroleum Violation Escrow Account to three Southern  
5 California Public Housing Authorities to demonstrate the  
6 use of private financing for weatherizing apartments and  
7 for encouraging tenant participation in energy saving  
8 practices. Mr. Ward?

9           EXECUTIVE DIRECTOR WARD: Yes. Mr. Chairman,  
10 this is a grant very similar to the one previously approved  
11 by the Commission to the City and County of San Francisco.  
12 Manuel Alvarez from the Conservation Division is prepared  
13 to discuss the specifics and the process.

14           MR. ALVAREZ: Good morning. The staff is asking  
15 the Commission to request a grant from the Petroleum  
16 Violation Escrow Account. The grant was to a consortium  
17 of three Southern California Public Housing Authorities,  
18 the City of Santa Barbara, the Counties of Los Angeles and  
19 San Bernardino.

20           The Southern California Housing Public Consortium  
21 calls three public housings to participate in a program to  
22 retrofit common areas of lighting. The three public housing  
23 projects are the housing of Santa Barbara -- the City of  
24 Santa Barbara, County of San Bernardino, and the Community  
25 Development Commission of the County of Los Angeles.

1           These three public housing authorities comprise  
2 a total of 14 housing projects and accounting for some  
3 2,000 housing units. The retrofit, the energy conservation  
4 retrofit will take place in common areas of housing and  
5 include examples such as office and laundry buildings,  
6 walkways, stairways, garages. We estimate that the energy  
7 savings will be approximately 2.9 million kilowatt-hours  
8 per year, and the staff respectfully requests approval for  
9 this contract.

10           I do have two individuals in the audience, Dina  
11 Hunter from the Southern California Edison Company, and  
12 Edna Bruce who is a supervisor from the Community Development  
13 Corporation who, if the Commission requests it, could  
14 address the Commission on this item.

15           CHAIRMAN IMBRECHT: Fine. Are there any questions  
16 for Mr. Alvarez? This is Item No. 3, consideration of  
17 additional PVEA grants. Is there any member of the public --  
18 excuse me, Commissioner Schweickart.

19           COMMISSIONER SCHWEICKART: Manuel, would you go  
20 over the process by which these particular projects were  
21 selected?

22           MR. ALVAREZ: The staff prepared a public notice  
23 on the program opportunity notice, and prepared a grant  
24 application. We then noticed that application and received  
25 three applications, one from the City and County of San

1 Francisco, one that the Southern California Consortium of  
2 Southern California, and one from the City of Livermore.  
3 The staff then reviewed those proposals, and selected with  
4 the highest score, the City and County of San Francisco,  
5 and requested approval from that Commission, I believe it  
6 was the March 27th business meeting.

7           The Southern California project came in second  
8 place, and it was not until the reallocation of additional  
9 funds that were provided by the State Legislature that made  
10 this funding for this project possible. The staff then  
11 recommended to the Loans and Grants Committee that we fund  
12 a second public housing project, that being the Southern  
13 California project.

14           COMMISSIONER SCHWEICKART: Were there any changes  
15 in the Southern California -- excuse me. Were there any  
16 changes in the Southern California project between those  
17 two events, that is, were any of the concerns that led to  
18 the Southern California project coming in second changed in  
19 the resubmission?

20           MR. ALVAREZ: The only changes that were -- was  
21 the City of Oxnard was part of the initial proposal process.  
22 They ultimately decided to drop out of the project, and so  
23 there was one less entity involved. The only other change  
24 that we had involved was basically the way that money would  
25 flow into three consortiums.

1           With San Francisco, we had only one entity to deal  
2 with, and we did make funds available to that entity. In  
3 this particular case, we have three separate public  
4 housing authorities, and we needed a central focus by which  
5 to have funds from the Commission's program into the  
6 three public housing, and then divide it up there.

7           What we suggested to do, and recommended to do,  
8 in terms of the financial aspects, is to set up an escrow  
9 account with a major bank for funding from the state and  
10 the Southern California Edison Company, and the Public  
11 Housing Authority would flow into a common pool to then be  
12 divided among the three housing authorities.

13           But programmatically, and the intent of the  
14 program has remained constant.

15           COMMISSIONER SCHWEICKART: What is the selection  
16 committee, I mean, who is it that weighs the various  
17 projects?

18           MR. ALVAREZ: The individuals on staff who  
19 reviewed the projects were Harlene Barrett of the Conservation  
20 Division; Ernesto Perez, our Public Advisor; Robert Woods of  
21 our Loans and Grants Office; myself of the Conservation  
22 Division; and Terry Gray of the Conservation Division.

23           Each of those individuals reviewed the proposals,  
24 gave their ranking, their scoring on each of the proposals,  
25 and the highest score was the one that was recommended first,

1 which was the City and County of San Francisco.

2 COMMISSIONER SCHWEICKART: Have we established any  
3 minimum score for qualification for these grants?

4 EXECUTIVE DIRECTOR WARD: Under the points that  
5 are included in the package, Commissioner, you have to have  
6 60 points to pass to even be considered, and I'm not sure  
7 what the total on this project was.

8 MR. ALVAREZ: I believe the San Francisco project  
9 was 80 points, and the Southern California project was 78,  
10 79 points that they received on the average of each of the  
11 individual rankers, each of the individual staff members  
12 who ranked the project.

13 COMMISSIONER SCHWEICKART: I have no further  
14 questions, Mr. Chairman.

15 CHAIRMAN IMBRECHT: All right, thank you. Is  
16 there any member of the public who wishes to testify on  
17 this item?

18 MR. ALVAREZ: Would the Commission like to hear  
19 from the Supervisor of the Community --

20 CHAIRMAN IMBRECHT: Yes, please, would you care  
21 to identify yourself for us?

22 MS. BRUCE: Mr. Chairman, Honorable Members, my  
23 name is Edna Bruce, I'm Intergovernmental Relations Manager  
24 for the County of Los Angeles in the field of Housing and  
25 Community Development. We are very pleased that the Energy

1 Commission developed this particular mechanism which gives  
2 a means for the private sector and the public sector to  
3 work together, and particularly targeted towards the needs  
4 of low income housing.

5           We have in the County of Los Angeles 13,000 units  
6 in public housing, housing 52,000 people, and these go  
7 from, as you might know, Malibu to Pomona, Long Beach to  
8 Lancaster. We have many needs, and the needs that have not  
9 been addressed have been those of energy retrofit and energy  
10 conservation, primarily because our money, as you know,  
11 comes from HUD, and we have what is in place, called  
12 Comprehensive Improvement Assistance Program, the CIAP  
13 Program.

14           The money for those improvements which might be  
15 used for energy retrofit have priority status. The first  
16 priority is for health and safety emergency measures. The  
17 second priority is for energy, and the third priority is  
18 for comprehensive maintenance improvements.

19           However, because the money is always decreasing,  
20 there is always, unfortunately, the need for health and  
21 safety measures first. For instance, in the County of Los  
22 Angeles in 1981, we got from HUD \$3 million for the CIAP  
23 program. In '82 we got \$1.5 million, in '83 we got \$330,000,  
24 that's for all of our projects. All of that money was  
25 needed for an emergency gas line.

1           So you can see that although energy conservation  
2 is placed in writing and in their guidelines as a very high  
3 priority with HUD, there unfortunately is never enough  
4 money to effect these savings. In this particular program,  
5 we're going to be replacing in common areas, lighting in  
6 the Harbor Hills project which was put in place 40 years  
7 ago. So you see how nice it is for us to have an opportunity  
8 to effect these kinds of savings.

9           I talked with the man in Washington, I went to  
10 visit him to tell him about this project, Walter Groberg  
11 who is head of energy conservation for HUD, and he is so  
12 excited about the potential for this kind of program  
13 nationwide that he has made me promise, as soon as this is  
14 completed, and we have a contract, he wants me to send it  
15 to him in Washington, and we're going to try to do this  
16 kind of thing more often wherever we can throughout the  
17 country.

18           So we're grateful to you for giving us this  
19 opportunity, and we look forward to future opportunities  
20 to work together. Thank you very much.

21           CHAIRMAN IMBRECHT: Thank you.

22           EXECUTIVE DIRECTOR WARD: I might also mention,  
23 Mr. Chairman, that the Department of Energy is also seriously  
24 interested in these kinds of projects as evidenced by a  
25 press conference that I attended on Friday that dealt with

1 a similar type of housing in San Francisco. It was very,  
2 very interesting, and in fact, the participation of the  
3 Energy Commission was just a small percent compared with  
4 the total contribution that was being developed through  
5 public financing, ZIP loans through PGandE, and the shared  
6 savings concept was something else that was very unique.

7 CHAIRMAN IMBRECHT: Okay, fine. Do I hear a motion?  
8 I will move it, is there a second?

9 COMMISSIONER GANDARA: I'll second it.

10 CHAIRMAN IMBRECHT: Seconded by Commissioner  
11 Gandara, is there objection to a unanimous roll call?

12 COMMISSIONER COMMONS: Yes, I don't even know  
13 what we're discussing, so I'll abstain.

14 CHAIRMAN IMBRECHT: Item No. 3. In that case,  
15 ayes 4, one abstention, Commissioner Commons, the grants  
16 are approved. Thank you very much.

17 Item No. 4 is Commission consideration and  
18 possible agreement to cosponsor and fund a conference in  
19 related research for multi-family building conservation and  
20 financing. The grant proposed is for \$30,000, again from  
21 the PVEA account to the American Council for an Energy  
22 Efficient Economy for its 1984 summer study and related  
23 research. Mr. Ward?

24 EXECUTIVE DIRECTOR WARD: Yes, Mr. Chairman, since  
25 this was originally put on the agenda, there has been ongoing

1 work with the Policy Committee, and I understand you should  
2 all have a revised brief on this issue, and a revised  
3 amount of total dollars, and Karen Griffin can explain to  
4 you the process and what is going to occur.

5 MS. GRIFFIN: Thank you. When we originally put  
6 this item on the agenda, we had some misunderstandings from  
7 the direction of the Committee that we thought we had  
8 originally met all the Commission's concerns by talking to  
9 each of the Commissioners. That turned out to be not true,  
10 and in the past two loans and grants meetings, we have  
11 received additional direction about how the project ought  
12 to be focused.

13 The project which is brought before you today  
14 reflects those concerns. What we are proposing is that  
15 instead of the original conference and related research,  
16 that there would now be -- we would support a mini-  
17 conference this summer at Santa Cruz, bringing a few  
18 selected authors out to talk about their experience with  
19 rental financing. This will both help the staff in the  
20 administration of our various rental financing programs,  
21 and to develop additional proposals for the PVEA funding  
22 which we are presenting to the Governor's Task Force later  
23 in that year.

24 That budget has been reduced from an original  
25 proposal of \$20,000 to \$6,785 specifically to fund only the

1 mini-conference, and to bring four key authors out from  
2 nonprofit agencies and cities that are actually running  
3 rental financing programs.

4 We are also asking that the Commission address  
5 in concept that a winter conference be held which would be  
6 more specific to the California projects, it would be held  
7 here in Sacramento, and would combine a concept of  
8 technology transfer, innovative research, and bringing  
9 speakers from both outside of the state, and within the  
10 state here to Sacramento to talk about their experiences,  
11 and what we have learned about rental financing.

12 I'd be happy to answer any questions the Commission  
13 might have.

14 COMMISSIONER GANDARA: Are there any questions for  
15 the staff of the Commission? Commissioner Crowley?

16 COMMISSIONER CROWLEY: No thank you.

17 COMMISSIONER GANDARA: Commissioner Schweickart?

18 COMMISSIONER SCHWEICKART: No.

19 COMMISSIONER GANDARA: Are there any members of  
20 the public who wish to address this matter? If not, then  
21 at least from my point of view, I think that this you know  
22 very fairly addresses the issues that were raised by the  
23 Committee, so I would move the item.

24 COMMISSIONER CROWLEY: Second.

25 COMMISSIONER GANDARA: Is there any objection to

1 a unanimous roll call? The item is approved on a three --  
2 the vote, let's keep the roll open for Commissioner  
3 Imbrecht, and Commissioner Commons when they return.

4 Item No. 5.

5 EXECUTIVE DIRECTOR WARD: Yes, Commissioner.

6 Item No. 5 is a request for a no cost time extension to --  
7 with a contract with Farmers Cooperative Gin. Leon Vann  
8 is here from the Development Division to discuss the issue.

9 COMMISSIONER GANDARA: Mr. Vann?

10 MR. VANN: Farmers Cooperative Gin is a 1.65  
11 megawatt cogeneration facility designed to operate on  
12 cotton gin trash. We went through our start-up and shake  
13 down operations and discovered some technical problems in  
14 that operation, and have instituted some changes to mitigate  
15 those technical concerns.

16 We had a short operating season last year, did not  
17 get through the shake down after the fixes were incorporated.  
18 We are therefore requesting a one year time extension to  
19 get us through the next operating season to shake the system  
20 down.

21 COMMISSIONER GANDARA: Are there any questions for  
22 Mr. Vann from the Commission? Are there any members of the  
23 public who wish to comment? Do I hear a motion for  
24 approval of the item?

25 COMMISSIONER SCHWEICKART: I'll so move.

1           COMMISSIONER GANDARA: Second. Any objection to  
2 a unanimous roll call? None. The item is approved, we'll  
3 hold the roll open for Commissioners Imbrecht and Commons.

4           Item No. 6.

5           COMMISSIONER SCHWEICKART: I think there is no 6.

6           COMMISSIONER GANDARA: No, Item No. 6, no  
7 consent calendar. There is no Item No. 7. Is there  
8 anything --

9           EXECUTIVE DIRECTOR WARD: As you recall,  
10 Commissioner, last week -- I think we're talking about  
11 doing minutes on a 30 day -- back 30 days rather than every  
12 two weeks.

13           COMMISSIONER GANDARA: So that leaves us with  
14 Item No. 9. Is there anything under Item No. 9?

15           MR. CHAMBERLAIN: Commissioner Gandara, the only  
16 item that I have is you asked, I believe four weeks ago,  
17 about the public notice that SMUD had put out regarding a  
18 request for exemption from Section 133. I have determined  
19 what that was about.

20           There is a requirement, Section 133 requires the  
21 FDRC to gather information regarding SMUD's cost of service.  
22 Apparently SMUD does a cost of service study in connection  
23 with its ratemaking which is made public periodically, and  
24 the purpose of their request for exemption was simply to  
25 avoid having to duplicate that information in reporting to

1 FDRC. There is no controversy about this either within the  
2 community or within our staff. We feel we can get all the  
3 information.

4 COMMISSIONER GANDARA: Thank you very much. I  
5 appreciate you getting back to the Commission on that.

6 For the benefit of the Commissioners who have  
7 just returned, Item Nos. 4 and 5 were approved by all  
8 Commissioners present. The roll was held open for your  
9 consideration. On Item No. 4 what was approved was a  
10 revised staff proposal of approximately \$6,700, and on  
11 No. 5, approved as noticed.

12 CHAIRMAN IMBRECHT: All right, fine. Is there  
13 objection to -- Commissioner Commons, do you wish to be  
14 added as an aye, or --

15 COMMISSIONER COMMONS: Well, I had items I'd  
16 like to discuss on it. I have issues that I'd like to  
17 bring out on that matter. I had notified --

18 CHAIRMAN IMBRECHT: Which one in particular.

19 COMMISSIONER COMMONS: Item 4.

20 COMMISSIONER SCHWEICKART: Mr. Chairman, I'd  
21 suggest that that's inappropriate. It's already been passed.  
22 I think the roll is open for a vote yeah or ney, but unless  
23 the rest of the Commission desires to reopen it, I think  
24 it's really inappropriate at this time.

25 COMMISSIONER COMMONS: Well, in the future, I'll

1 try not to leave the Commission room at the behest of the  
2 Chairman if we're going to take actions on an item in  
3 the agenda tout de suite.

4 CHAIRMAN IMBRECHT: May I inquire, have you  
5 discussed any of your concerns, Commissioner Commons with  
6 the staff, as potentially --

7 COMMISSIONER COMMONS: Yes. I also notified the  
8 secretariat that I thought that this item would -- excuse me,  
9 I feel I'm out of order based on Commissioner Schweickart's  
10 comments.

11 CHAIRMAN IMBRECHT: No, I'm recognizing you  
12 before he -- before I rule on the issue. I just want to  
13 understand if it is possible, as Commissioner Gandara  
14 indicated, there was a revised staff recommendation, and  
15 what I'm trying to determine is whether or not that revised  
16 staff recommendation perhaps took into consideration your  
17 concerns.

18 COMMISSIONER COMMONS: Well, it certainly took  
19 into account 75 to 80 percent of them.

20 CHAIRMAN IMBRECHT: It did or did not?

21 COMMISSIONER COMMONS: It did. I mean, the  
22 dollars are down from \$30,000 to \$6,800, that's about 75  
23 percent of my concern. Why don't you just record me as a  
24 no since the role is open.

25 CHAIRMAN IMBRECHT: You can record me as an aye

1 vote on Item No. 4.

2 As to Item No. 5, you can record me as an aye  
3 vote. Commissioner Commons?

4 COMMISSIONER COMMONS: Aye.

5 CHAIRMAN IMBRECHT: All right, fine.

6 COMMISSIONER COMMONS: I do have one point of --  
7 I guess it would be a legal clarification on Item 4, even  
8 though I'm recorded as a no, that I'd like from our legal  
9 counsel.

10 CHAIRMAN IMBRECHT: May I suggest you address  
11 that question to him, and if you feel it appropriate to  
12 add it to the record after he's made a ruling, that's fine.

13 COMMISSIONER COMMONS: Off the record?

14 CHAIRMAN IMBRECHT: The item is disposed of, yes.  
15 Turning now to I believe the Executive Director's  
16 Report?

17 EXECUTIVE DIRECTOR WARD: Let's see. I'd like  
18 to inform the Commission to begin with that we have  
19 effected an MOU between the State Controller to conduct an  
20 audit for some methanol related activities, specifically  
21 associated with one of our contractors, it was an item  
22 discussed in executive session.

23 Related to Item No. 3, which I had previously  
24 mentioned, associated with the Public/Private Partnership,  
25 I attended a press conference in San Francisco on Friday,

1 and had the benefit of seeing a very interesting project  
2 in which we participated with a similar amount of money.  
3 The Department of Energy was extremely impressed, as well  
4 as Pacific Gas and Electric Company and the PUC. It was  
5 a very interested public/private partnership, and that  
6 the housing authority, PGandE, PUC, Department of Energy  
7 could work together on something that would seem to be  
8 so unanimously recognized as positive, and to the extent  
9 that it benefitted low and elderly -- low income and  
10 elderly tenants made it even more positive.

11 Last week I also addressed the California Wind  
12 Energy Association at their annual conference. They were  
13 extremely interested in our reporting system of performance  
14 requirements associated with wind development in California,  
15 and specific manufacturers and developers of wind farms and  
16 turbines, and considered it a very meaningful program.

17 I also understand that the workshop that they'd  
18 had on the previous day had been attended by about 40  
19 developers and manufacturers. So, I think as the Commission  
20 was interested in this, there seems to be a reciprocal  
21 amount of interest on the part of the Commission, and that  
22 would be about it.

23 CHAIRMAN IMBRECHT: Commissioner Commons?

24 COMMISSIONER COMMONS: Yes, Mr. Ward, our office  
25 set up the meeting of the wind energy conference, and helped

1 make the facilities available, and as the Presiding Member  
2 of the R&D Committee, can you explain how come you were  
3 invited to address the conference, and how come the  
4 Committee was not contacted, or was not made aware of what  
5 was going on?

6 EXECUTIVE DIRECTOR WARD: Well, I was unaware that  
7 it was your office that had set up the conference, and I  
8 think this was the fourth annual meeting of the California  
9 Wind Energy Association, and the Chairman had been requested,  
10 as I understand it, to be a speaker there, and simply asked  
11 me to convey remarks that were drafted by staff, and  
12 essentially related to what we were doing in wind energy,  
13 and primarily, the performance reporting system.

14 I followed that direction.

15 COMMISSIONER COMMONS: Well, when we have a  
16 Committee structure, and there is an outside request, what  
17 is the procedure in terms of -- if I'm invited to make a  
18 speech, I guess I should be addressing this to the  
19 Chairman rather than to Mr. Ward, because you explained  
20 how come you were designated.

21 I understand in talking to the wind energy people,  
22 and if you want to correct me if I'm incorrect, that when  
23 you become unavailable, they asked as to whether or not  
24 another Commissioner were available, and your statement was  
25 that you had already designated Mr. Ward to represent you.

1 CHAIRMAN IMBRECHT: Well, quite frankly, I have  
2 no recollection of any such conversation, and I might say  
3 that at the time this occurred, I had committed to  
4 addressing them, a conflict made it impossible to do so,  
5 and I asked Mr. Ward to take the assignment, and I frankly,  
6 thought that was appropriate considering the circumstances.

7 I understand your concern, and I will attempt to  
8 be more responsive to it in the future.

9 COMMISSIONER COMMONS: Well, Mr. Chairman, we had  
10 the same situation at the same conference occur last year  
11 where again you bypassed the presiding member of a  
12 committee, and the same speech and the same statement was  
13 made.

14 CHAIRMAN IMBRECHT: Well, Commissioner Commons,  
15 I'm not going to entertain this kind of conversation here,  
16 other than to tell you that if an association wishes to  
17 have you address them, I presume that they will address an  
18 invitation to you.

19 Frankly, I don't think it's appropriate for me to  
20 try to control how outside organizations determine who they  
21 want to address invitations to, and that's the extent of  
22 my comment on it, and if you have further things you wish  
23 to share with me, I would appreciate it if you would do so  
24 privately.

25 COMMISSIONER COMMONS: I have further comments on

1 the Executive Director's Report.

2 CHAIRMAN IMBRECHT: Fine.

3 COMMISSIONER COMMONS: In terms of the Executive  
4 Director's Report, and I've talked personally with you about  
5 this, I think it is helpful that you use this opportunity  
6 to bring the Commission up to date on actions that have been  
7 taken by the Executive Director since the preceding business  
8 meeting, recognizing that sometimes there are voluminous  
9 documents that you distribute, or that there is interface  
10 between your office with Committees which have resulted in  
11 actions.

12 It's not always the case that all the Commissioners  
13 have been brought up to date on what activities or actions  
14 have been taken. From a time perspective, certainly it is  
15 more efficient use of your time to be able to address all  
16 five of us in one instance, rather than have to go and talk  
17 to each Commissioner individually. Not to discourage you  
18 from having those communications, but I feel it would be  
19 helpful if you did that.

20 Also, in terms of the monthly report, I think it's  
21 appropriate that you have a written report as the Executive  
22 Director to all the Commissioners as part of that monthly  
23 report, and at least that report should cover actions  
24 taken by the Executive Office during the prior month, and  
25 also the identification of major problem areas that you

1 perceive as our Executive Director.

2 In essence, you would be reporting to us as  
3 Commissioners in the same sense as reporting to a Board of  
4 Directors, and I have felt handicapped in not understanding,  
5 or being aware of, one, actions that have been taken, and  
6 can be embarrassed, and second, not being aware of some of  
7 the problems that may be occurring, and so I'm not able,  
8 I feel, as a Commissioner to be supportive of your actions  
9 or activities, or the Commission's needs.

10 I think those two items would help in terms of  
11 making your office more functional, vis-a-vis the  
12 Commissioners' offices. I personally appreciate the time  
13 that you spend in keeping me informed, but I also recognize  
14 that our communications cover areas where we are involved  
15 in terms of Committees, and I don't get the same overall  
16 perspective that I would be seeking.

17 EXECUTIVE DIRECTOR WARD: I think that would be a  
18 beneficial procedure to follow. I think generally outside  
19 of the purview of policy committees, where I think I would  
20 have to rely on presiding members to keep other Commissioners  
21 informed, unless there was something that seemed to cross  
22 those policy committee boundaries that was profound enough  
23 to bring to the full Commission. But I certainly have no  
24 problem with giving some kind of a status report of some of  
25 the things that our office has been involved in.

1           In fact, one of the things that comes to mind is  
2 the AB 163 point system that's currently on my desk that  
3 I understand I have the legal authority to assign, and  
4 that's currently under review. I understand the point  
5 system is designed to make interpretation of AB 163 far  
6 easier.

7           I don't purport to know all the technical issues  
8 associated with that, but I think that's something the  
9 Commission would be interested in, and that's the kind of  
10 example that I can inform the Commission of.

11           CHAIRMAN IMBRECHT: Yes, Commissioner Gandara.

12           COMMISSIONER GANDARA: Might I ask that perhaps  
13 at the next business meeting that the Commission be given  
14 a briefing on the affirmative action plan, I guess it was  
15 submitted to -- per whoever, and as I understand, there's  
16 been preliminary approval of it, or whatever?

17           EXECUTIVE DIRECTOR WARD: I believe we've sent  
18 out copies of that to Commissioners.

19           COMMISSIONER GANDARA: We have?

20           EXECUTIVE DIRECTOR WARD: Yes, my understanding.

21           COMMISSIONER GANDARA: Okay. Well, I'll look  
22 for it, and if I have it, forget it.

23           EXECUTIVE DIRECTOR WARD: I'll make sure you get  
24 another copy, and would you still like a briefing, or would  
25 that memo suffice, or should I wait to hear from you?

1           COMMISSIONER GANDARA: Well, I think it would be  
2 helpful to focus the Commission on it, just have a briefing.

3           EXECUTIVE DIRECTOR WARD: Okay, fine.

4           CHAIRMAN IMBRECHT: I think that would be fine  
5 as well. Okay, fine. Anything further, Mr. Ward?

6           EXECUTIVE DIRECTOR WARD: Nothing.

7           CHAIRMAN IMBRECHT: Okay. Is there any member of  
8 the public who wishes to address the Commission on any item?

9           MR. PEREZ: Yes. I would like to address the  
10 Commission.

11          CHAIRMAN IMBRECHT: Yes, Mr. Perez?

12          MR. PEREZ: It's so rare that I use this microphone.

13                 I want to bring to the attention of the  
14 Commissioners a problem which is increasing with respect to  
15 being able to provide adequate notice to the general public  
16 of our business meetings.

17                 The problem originates, basically, as I have been  
18 able to track it down, with the lack of publicity of the  
19 Executive Director's Memo which has been in place for five  
20 or six years on how to submit items for the business meeting  
21 agenda. Basically that memo has provided a schedule  
22 whereby new items for a business meeting agenda are to be  
23 submitted the Wednesday prior to the preceding business  
24 meeting.

25                 So for the May 2nd business meeting, we would have

1 been looking at a last Wednesday deadline for the addition  
2 of an item. Today, within that hypothetical, is the  
3 deadline for changes to those items which were proposed  
4 last Wednesday.

5 In reviewing the business meeting agenda for  
6 May 2nd, I have a number of items that are being submitted  
7 at the last moment, outside this deadline schedule. Also,  
8 to be very frank with you, without adequate description of  
9 the subject matter for me to make an intelligent recommenda-  
10 tion as to which mailing list ought to be chosen.

11 I don't know how the Commission is disposed in  
12 terms of discussing this matter, but it's my intent at this  
13 point, with respect to the items that have been recommended  
14 after the deadlines that I've described, to not approve  
15 any mailing list for the May 2nd business meeting.

16 I'm open for questions on this matter.

17 CHAIRMAN IMBRECHT: Commissioner Gandara?

18 COMMISSIONER GANDARA: Mr. Perez, with respect to  
19 those items, are those items calendared by Commissioners or  
20 by the Executive Office, because I think there's generally  
21 been a different --

22 MR. PEREZ: Of the five which don't meet the  
23 standard schedule, four are Commissioner calendared items,  
24 and acknowledging the right of the Commissioners to add  
25 items to the agenda, I still have problems with three of

1 those four on the grounds of adequacy.

2           The first one has to do with reconsideration of  
3 the OIH on appliance standards. That's the entirety of  
4 the text for that item. The second one is LADWP load  
5 management (Sy Goldstone), and that's the entire text in  
6 terms of that item.

7           The third one is insulation quality standards  
8 enforcement (Barbara Jost) and that's the entire text for  
9 that item. I have two other items that have been submitted  
10 by Commissioners that I believe have adequate descriptions  
11 for them to go forward, and for me to make a recommendation  
12 as to mailing lists for.

13           They deal, the first one with a -- well, that  
14 one is not going to come up, because it's been dealt with  
15 today. The next one is Commission consideration and  
16 possible adoption of a petition for rulemaking filed by  
17 Geoscience Limited. That one is adequately descriptive  
18 for me to make a recommendation.

19           But the first three in particular that I've  
20 described to you, leave me at a loss as to what I'm supposed  
21 to recommend, and I'd like some guidance from the Commis-  
22 sioners as to how and when to make my recommendations on  
23 upcoming business meeting notices.

24           COMMISSIONER GANDARA: I have a second question.

25           MR. PEREZ: Fine.

1           COMMISSIONER GANDARA: You indicated that the  
2 action you would be taking would be not to approve a mailing  
3 list. Now, what is the consequence of that? Is the  
4 consequence of that that the item doesn't get on the agenda,  
5 or that people don't get notice of this so that the problem  
6 is worsened as opposed to the --

7           MR. PEREZ: The consequence of that is that the  
8 Commissioners take responsibility in answering inquiries  
9 from the public with respect to the adequacy of distribution  
10 of notice, because I will have already been on record  
11 saying I'm unable to make an adequate recommendation to you  
12 on that matter.

13           CHAIRMAN IMBRECHT: And therefore, would render  
14 a decision subject to attack at some subsequent point.

15           MR. PEREZ: Right. You know, if we were to look  
16 at these items within the context of the item's subject  
17 matter itself, I can tell you now that Los Angeles Department  
18 of Water and Power has already appeared before the Commission  
19 and expressed concern about the lack of adequate notice  
20 re-examining its load management plan at least once since  
21 your January adoption of their load management program.

22           I understand at the last business meeting, the  
23 General Counsel provided you with a legal opinion to the  
24 effect that the Commission's resolution signed on February  
25 2nd following that business meeting requires a Commission

1 staff investigation as a condition precedent to the  
2 Commission exercising its reserved continuing jurisdiction  
3 on that load management program.

4 So clearly, that's an item that based upon my  
5 actual knowledge of the issue, requires a more descriptive  
6 agenda item than what has been proposed.

7 CHAIRMAN IMBRECHT: And the problem is, when you  
8 receive an indication of what item is to be on the agenda,  
9 as well as the adequacy of the description, is that correct?

10 MR. PEREZ: Right. And pursuant to the Executive  
11 Director's normal processing, I received his proposed  
12 agenda this morning, which is not unusual, and then I  
13 received a last minute addition, from which I've been  
14 reading these five unexpected item.

15 That's the problem we're confronting. I just  
16 want the Commission to --

17 CHAIRMAN IMBRECHT: And that's the proposed  
18 agenda that then comes to me for signature on Thursdays.

19 MR. PEREZ: Right. If -- yeah, right.

20 CHAIRMAN IMBRECHT: Which is the final authorization  
21 for publication, et cetera.

22 MR. PEREZ: Um-hmm.

23 CHAIRMAN IMBRECHT: Mr. Ward, may I just inquire on  
24 a normal basis, what sort of deadline do you impose upon the  
25 staff for agendizing items?

1 EXECUTIVE DIRECTOR WARD: In a number of cases,  
2 I think both Commissioners and staff are trying to get  
3 simply under the wire to get something on the agenda, and  
4 I'm certainly sensitive to Ernesto's concerns.

5 As those things are submitted for the Wednesday  
6 deadline, many times they are revised, and the backup is  
7 included by Thursday or Friday at the time it's mailed out,  
8 okay. So, if in fact you did have just a one sentence  
9 oration on what the agenda item was to be about with a  
10 contact person, that could be changed by Friday.

11 I guess my suggestion here is that for the May 2nd  
12 business meeting, any of those items that are currently on  
13 the agenda, that simply the Commissioners and myself will  
14 be going back to staff saying that they have between now  
15 and Friday to substantially elaborate on the specifics of  
16 that item to give Ernesto the ability to exercise his  
17 authority on the mailing list.

18 CHAIRMAN IMBRECHT: Well, the purview that I've  
19 been operating on since I've been Chairman, which I under-  
20 stand are procedures that were in place for perhaps the  
21 entire history of the Commission, I'm not sure if that's  
22 the case, at least for some time, it's my obligation to  
23 review and authorize the agenda as of the close of business  
24 on the Thursday which represents in effect two weeks prior  
25 to the next business meeting.

1           As a practical matter, I would value the Public  
2 Adviser's opinion as to whether or not I should certify a  
3 given item by that point in time. It would seem to me that  
4 he would need adequate information to make a determination  
5 on that issue by what, the close of business on Wednesday,  
6 or is that adequate time?

7           MR. PEREZ: As is often the case, the existing  
8 procedures are totally sufficient, and by Wednesday is  
9 certainly adequate for my purposes.

10          CHAIRMAN IMBRECHT: Does that cause a problem for  
11 any member of the Commission?

12          EXECUTIVE DIRECTOR WARD: Well, you might, you  
13 need to think about one other aspect of this, and that's an  
14 item that's added during a business meeting on Wednesday  
15 that certainly couldn't be backed up until Thursday.

16          I would say under most such circumstances, Wednes-  
17 day would be -- we should try to maintain a Wednesday  
18 schedule, but there are certainly going to be exceptions  
19 to that, and I think we need to have some flexibility, but  
20 we also equally need to recognize the Public Adviser's  
21 concern.

22          CHAIRMAN IMBRECHT: Well, I mean, what I would  
23 suggest, that for those items that were added in the business  
24 meeting, the Public Adviser is in the position to question  
25 the Commission as to its intentions under those circumstances,

1 and it seems to me to lay down a pretty hard and fast rule,  
2 it's close of business Wednesday is the cutoff.

3 But anyway, Commissioner Commons, you expressed a  
4 concern, so we'll hear what that might be.

5 COMMISSIONER COMMONS: Well, as a Commissioner,  
6 we normally spend all of Wednesday in a business meeting,  
7 so if we went back from the Thursday noon to Wednesday,  
8 we have effectively cut it off at Tuesday. The delay of  
9 four weeks in hearing matters by pushing dates back, you  
10 have to counterbalance, I feel, that, vis-a-vis how much  
11 time the Public Adviser needs to review a piece of information.

12 I'm more sensitive to the adequacy of the descrip-  
13 tion that gets mailed, and sympathize with your problem, and  
14 I think we should all work to try to get things in not at  
15 the last minute, as soon as possible.

16 On the LADWP, unhappily, we had a switch in the  
17 Secretariat's office, and this was an item that was noticed  
18 four weeks ago in the business meeting that it was coming  
19 back, and it just slipped through the cracks, so it hadn't  
20 been done, and the description is being prepared by the  
21 legal office today.

22 I think there's no secret as to what the matter  
23 is. There's a draft resolution which was not properly  
24 noticed before us four weeks ago, and it would come back  
25 at this time.

T.2  
1 On the OIH, this is a matter that occurred Friday,  
2 and we have a writeup which would be available today, but  
3 I tend to prefer the Thursday noon cutoff because I think  
4 it allows us to function. But we should try to get things  
5 in as soon as possible without having anything come in at  
6 the last minute unless it's absolutely necessary.

7 CHAIRMAN IMBRECHT: Commissioner Gandara.

8 COMMISSIONER GANDARA: Yes. It appeared to me  
9 what I heard the Public Adviser's concern principally  
10 addressed to was not so much the issue of the deadline, but  
11 more the issue of the description of the possible actions  
12 to be taken by the Commission so that he and the public  
13 could get a fairly good idea as to what that's likely to be.

14 So, I don't think it's an unreasonable expectation  
15 that when we calendar items that just for purposes of being  
16 able to advise that particular reader to list the possible  
17 actions to be taken, if there's one, or more than one, or  
18 there's possibly a spectrum, but that that be listed.

19 I think that's a good general rule, really, for  
20 all those, the recommended action to be taken, or the possible  
21 action to be taken, because that really is the operative  
22 part.

23 CHAIRMAN IMBRECHT: Um-hmm. Okay. Commissioner  
24 Schweickart?

25 COMMISSIONER SCHWEICKART: I have one of the items

1 also. The dilemma we find, of course, is that many of us  
2 have our Committee meetings set up on Monday and/or Tuesday,  
3 and many of these items are at a point where until we have  
4 those Committee meetings, we don't really know whether  
5 we're prepared to go forward with some item. That's the  
6 case in point on the third of the three or four that you  
7 mentioned, on the insulation quality.

8           On the other side of that, it seems to me, Mr.  
9 Perez, that while unspoken, what you're really saying is  
10 that you would like to make sure you have an opportunity in  
11 a business meeting to object to an inadequate notice, and  
12 therefore, Thursday would not meet that requirement for you.  
13 In other words, the business meeting in which you would  
14 object is the one in which people have already been  
15 inconvenienced by not being noticed, and the item on the  
16 calendar. Did I read that correctly, or not?

17           MR. PEREZ: That's a good point which I'd be  
18 glad to add to my position.

19           COMMISSIONER SCHWEICKART: Well, it seems to me  
20 that that's also a relatively reasonable thing, given your  
21 responsibilities, and while I think in fact we do have a  
22 more expanded write-up on that item which would be available  
23 right now, I tend to think before the close of the business  
24 meeting on a Wednesday would be an appropriate time to  
25 ensure that your -- that the people you represent, let me

1 say, are protected.

2 MR. PEREZ: That's an excellent solution, I mean,  
3 satisfies my concerns.

4 COMMISSIONER SCHWEICKART: And that will put a  
5 little bind on me, but I would say that if we're going to  
6 break, have executive session, and lunch, and reconvene  
7 before we close the business meeting, you should have an  
8 expanded write-up, which I think you'll find is perfectly  
9 adequate on that item.

10 But I think there is good reason to do it before  
11 the end of the business meeting on Wednesday, otherwise  
12 Mr. Perez has no basis on which to take any action before  
13 the people are inconvenienced.

14 COMMISSIONER COMMONS: Well, if you were to do  
15 that, which I wouldn't support, I would at least like it  
16 to be prior to 9:00 o'clock on Thursday. I think the  
17 difference between close of the business meeting, and 9:00  
18 o'clock is not --

19 COMMISSIONER SCHWEICKART: No, sir, you misread  
20 me. What I'm saying is that the only place that Mr. Perez  
21 has to take action on inadequate notice is in the business  
22 meeting. It would therefore have to be prior to the close  
23 of the business meeting, not after it. Otherwise, Mr.  
24 Perez finds himself -- the next opportunity is quite  
25 literally in the business meeting where people have either

1 come without adequate notice, or perhaps not come and should  
2 be there.

3 COMMISSIONER COMMONS: All right. So if we still  
4 wanted to do something late, it would be an issue that would  
5 be before the Commission as to whether it should be on  
6 the agenda or not based on the notice write-up.

7 COMMISSIONER SCHWEICKART: Well, that's certainly  
8 true, but that's a fairly cruel way to deal with the public,  
9 since people either would or would not have traveled --

10 COMMISSIONER COMMONS: No, no, I mean, if there  
11 is an item that is not sufficiently written up, and it is  
12 presented in the business meeting that he doesn't approve  
13 it, it would still allow redress to correct that write-up,  
14 and it would be a matter for this Commission before it  
15 goes out to decide whether or not it is appropriate for it  
16 to be on the agenda.

17 COMMISSIONER SCHWEICKART: Yeah, if Mr. Perez  
18 were to raise anything, I think that's what we'll have to do.

19 COMMISSIONER COMMONS: That's fine.

20 MR. PEREZ: That's satisfactory to me.

21 COMMISSIONER COMMONS: I have no problem with that.

22 COMMISSIONER SCHWEICKART: Mr. Chairman, if I  
23 can summarize --

24 CHAIRMAN IMBRECHT: Yes, please, thank you.

25 COMMISSIONER SCHWEICKART: I think what we've

1 come to is that before the end of the business meeting,  
2 Mr. Perez should have all items for the next business  
3 meeting, and he then could exercise his judgment whether  
4 adequate notice is contained within that information.

5 CHAIRMAN IMBRECHT: And I would ask in turn that  
6 he advise me, prior to close of business on Thursday, as  
7 to whether or not he feels that he does have adequate  
8 information to provide an appropriate notice. Based on  
9 that advisement, it will govern my action as to the given  
10 agenda item.

11 COMMISSIONER COMMONS: That's quite different  
12 than what Commissioner Schweickart said.

13 COMMISSIONER SCHWEICKART: Generally speaking,  
14 Mr. Chairman --

15 CHAIRMAN IMBRECHT: That's in addition to what  
16 Commissioner Schweickart said.

17 COMMISSIONER SCHWEICKART: Well, it is, however,  
18 it does imply a certain thing, which is that the Chairman  
19 exercises individual judgment based on Mr. Perez's informa-  
20 tion on whether or not an item should be placed on the  
21 agenda. Generally speaking, the action of signing the  
22 agenda, was as far as I know, both prior to my term and  
23 during it, ministerial on the part of the Chairman.

24 CHAIRMAN IMBRECHT: Well, I was intending to  
25 operate as a ministerial function based on whether there

1 was an ability to provide adequate notice. I hardly see  
2 that as a judgmental issue on my part.

3 COMMISSIONER SCHWEICKART: Well, I think that you  
4 were not in the discussion, but that the discussion basically  
5 indicated that if Mr. Perez had a problem with it, it would  
6 -- since all materials would have to be to him prior to the  
7 end or the conclusion of the business meeting --

8 CHAIRMAN IMBRECHT: He can express it at the  
9 business meeting.

10 COMMISSIONER SCHWEICKART: That's right.

11 CHAIRMAN IMBRECHT: All right, fine.

12 COMMISSIONER SCHWEICKART: In which case, that  
13 would be the place where a judgment would be expressed.

14 COMMISSIONER GANDARA: Just a point of clarifica-  
15 tion, is your proposal that all these materials and items  
16 be in before 5:00 o'clock of that Wednesday, or before the  
17 business meeting adjourns, which could be 7:00, 8:00 --

18 COMMISSIONER SCHWEICKART: Before it adjourns,  
19 is what I'm suggesting, that Mr. Perez needs to make  
20 judgment prior to the time when we close out the business  
21 meeting, otherwise, there is no recourse for Mr. Perez.  
22 He finds himself in a position of dealing with the Chairman,  
23 the Chairman taking action, in which case, whatever the  
24 offended Commissioner is, we'd go bonkers, and we're off  
25 and running again.

1 I suggest that it's better for Mr. Perez to have  
2 an opportunity to bring it before the full Commission if  
3 there's any problem with those, so that would mean before  
4 the end of the business meeting.

5 COMMISSIONER GANDARA: Okay.

6 CHAIRMAN IMBRECHT: Thank you. I'll accept that  
7 point. The purpose of my added clarification was to ensure  
8 that there was adequate notice for any item, not to  
9 in any way constrain the ability of any Commissioner to  
10 add an item to the agenda at their own discretion.

11 I believe that completes our agenda with the  
12 exception of Item No. 1 --

13 COMMISSIONER GANDARA: No, No. 8.

14 CHAIRMAN IMBRECHT: I'm sorry, excuse me,  
15 Commissione Policy Reports. Commissioner Crowley,  
16 Legislative Report.

17 COMMISSIONER CROWLEY: The Legislative Committee  
18 at its meeting discussed six bills that are current.  
19 First, Senate Bill 1643. The Committee's recommendation was  
20 oppose unless amended, and the staff memo was adopted on  
21 the amendments.

22 COMMISSIONER COMMONS: Do you want us to discuss  
23 these as you proceed?

24 COMMISSIONER CROWLEY: Yes, if you would care to.

25 CHAIRMAN IMBRECHT: Yes, please. While I'm

1 engaged in conversation, if you could call on the  
2 Commissioners that want to speak, I'd appreciate it.

3 COMMISSIONER CROWLEY: Thank you. Are there any  
4 comments on SB 1643?

5 COMMISSIONER COMMONS: Yes. Can you explain to  
6 me the difference between the various cogeneration proposals  
7 and their impact on, one, air pollution and second on our  
8 ability to built cogeneration plants. I'm having trouble  
9 working through this in terms of what the difference of the  
10 fairly large set of bills that we're receiving on this.

11 COMMISSIONER CROWLEY: Part of the problem is,  
12 of course, in discussing this, is that they are modified  
13 as we go along in time, and so let me ask Luree to give you  
14 the current status of SB 1643, and if there are others  
15 that you have been following, to give you a sense of where  
16 they are.

17 MS. STETSON: Did you want a current status on  
18 these bills, or a current status as to what's going on in  
19 the real world with cogeneration offsets?

20 COMMISSIONER COMMONS: Well, I mean, we're taking  
21 a policy position on a fairly major topic here.

22 MS. STETSON: Right. In your analyses on 1643,  
23 I believe that you got two weeks ago, it specified the  
24 problems that have occurred with cogeneration offsets. As  
25 you know, Assemblyman Baker had a bill that allowed utility

1 offset credits for cogenerators, and that was passed to  
2 help facilitate the siting of cogeneration facilities.

3 COMMISSIONER CROWLEY: I understand the Baker  
4 bill has been significantly modified, is that correct?

5 MS. STETSON: Right. I'm talking about current  
6 law now, AB 1862 Baker of two years ago.

7 COMMISSIONER CROWLEY: Oh, I see, okay.

8 MS. STETSON: That -- there have been some  
9 problems involved with that that people didn't foresee,  
10 because a lot of the cogenerators didn't have their  
11 own facilities to provide offsets, and the local APCD's  
12 didn't feel that they had the ability to ratchet down  
13 others, or find other offsets.

14 These bills that are going through the Legislature  
15 this year are an attempt to help the local APCD's and the  
16 cogenerators to implement the intent of 1862. I might add,  
17 one other problem is that the Environmental Protection  
18 Agency has also indicated that they will not be approving  
19 state implementation plans that have to be submitted by  
20 local air pollution control districts, because the EPA  
21 feels that the offsets are not quantifiable, or justifiable.

22 So they want more concrete evidence from an APCD  
23 in their state implementation plan that these offsets will  
24 be found and provided. The current bills that are in the  
25 Legislature attempt to do that in various forms. They are

1 being amended weekly, and when the Commission looked at  
2 the two bills, AB 2718 by Assemblyman Baker, and SB 1643  
3 Ayala, the Committee thought that the Baker bill was --  
4 while not perfect, was more preferable, and supported that  
5 bill with amendments.

6 They looked at the Ayala bill and thought that  
7 that bill was more onerous, and opposed it unless amended.

8 COMMISSIONER COMMONS: More onerous in terms of  
9 generating more pollution, or more onerous on cogeneration.

10 MS. STETSON: More onerous on cogeneration. It  
11 basically eliminated offsets, nonattainment areas would  
12 not have to provide offsets at all under the original bill.  
13 Now, that bill has been amended and what you were just  
14 handed was kind of a quick and dirty on the amendments that  
15 are in your packet. There are still portions of that that  
16 we don't agree with, and the staff in the Legislative  
17 Policy Committee is suggesting that we oppose unless amended  
18 the Ayala bill.

19 Those bills will be heard Tuesday, and as I  
20 understand it, negotiations are still going on between the  
21 cogenerators and the authors, and the APCD's.

22 COMMISSIONER COMMONS: Where is the South Coast  
23 on this bill, AB 1862, what's their position?

24 MS. STETSON: They are sponsoring SB 1643, Ayala,  
25 which we're considering today. They believe that they

1 cannot provide offsets under the current law which was  
2 AB 1862, and the reason they are putting this bill in is  
3 that they say that they're being threatened by EPA, and that  
4 EPA would not approve their state implementation plan.

5 COMMISSIONER COMMONS: All right, I guess I  
6 don't understand the -- and the impact is, in the South  
7 Coast, if this bill were to pass, then a cogenerator would  
8 not have to go out and purchase an offset?

9 MR. VANN: A cogenerator would then have to go  
10 out and find his own offsets. It would virtually shut down  
11 cogeneration in that district.

12 MS. STETSON: Actually, under the current bill,  
13 it would exempt AB 1862, the utility offset credit from  
14 any APCD located in a nonattainment area, which South Coast  
15 is.

16 COMMISSIONER COMMONS: All right. So what the  
17 South Coast is saying is they're not able to go out and  
18 acquire on their own, and the impact of this bill would be  
19 to a cogenerator, would be to increase the cost, because he  
20 would have to, rather than the district would have to go  
21 out and obtain this.

22 MS. STETSON: Right.

23 COMMISSIONER COMMONS: But we have the difference  
24 between -- in the write-up it talked about dirty cogenerators  
25 and clean cogenerators, and in the South Coast Air Basin, we

1 may support cogeneration, but we certainly don't support  
2 dirty cogeneration. How is that handled in terms of the  
3 ability of a dirty cogenerator in the basin if we did not  
4 pass AB 1862. The write-up on this issue was a little fuzzy.

5 MS. STETSON: This is a discussion between the  
6 various divisions that are impacted by this. I think the  
7 Legislative Policy Committee and members can correct me  
8 if I'm wrong, felt that cogeneration actually does help  
9 solve some air quality problems, and that the bill would  
10 get to that by requiring offsets, okay, unlike 1862, where  
11 the offset has to be provided by the applicant, and if it  
12 can't be found, it has to be provided by the APCD, it would  
13 -- 1643 to a certain degree, and 2718 to a certain degree,  
14 would require the beneficiary of the cogeneration project  
15 to provide offsets and ratchet down that facility. So  
16 that's actually better than current law.

17 COMMISSIONER COMMONS: Well, do the cogenerators,  
18 are they primarily an oil or a gas burner?

19 MS. STETSON: In the South Coast area?

20 COMMISSIONER COMMONS: Yeah, is there a rule  
21 they have to go to gas when the utilities go to gas?

22 MR. VANN: I don't believe there's any rule  
23 requiring it, but I think that would be their desire.

24 COMMISSIONER COMMONS: See, the problem I have  
25 right now is in the last two years, there's just a major

1 shift to gas from oil in the South Coast Air Basin in terms  
2 of what the utilities are using, and there's a very big  
3 distinction from a public policy perspective as to burning  
4 gas or oil. So, we're displacing oil in terms of imports,  
5 but gas is our own resource.

6           The second is gas is a heck of a lot cleaner  
7 than oil. What I'm trying to understand here is, is there  
8 any way that we might be displacing gas and allowing more  
9 oil in terms of this cogeneration and what the impacts on  
10 the South Coast Air Basin's air quality is? On the one  
11 hand this Commission supports cogeneration, but on the  
12 other hand, air quality is important, and you're telling  
13 me that the South Coast District is in support of this.  
14 Does ARB have a position here?

15           MS. STETSON: The South Coast Air District is  
16 sponsoring the Ayala bill.

17           COMMISSIONER COMMONS: Well, that means from an  
18 air quality perspective, there are some people who are very  
19 concerned in that area. What is the air quality impact of  
20 this bill on the South Coast District? Maybe I should ask  
21 the Committee why they are opposing rather than supporting  
22 this, if there's a major air quality issue here?

23           COMMISSIONER CROWLEY: We were opposed to the  
24 impact that this was going to have on cogeneration, and  
25 we also didn't believe the bill, as it was proceeding, was

1 really solving the basic problem of the offsets, and  
2 nonattainment, and that equation. So we felt that our --  
3 what it concerned us about was the cogeneration.

4 COMMISSIONER SCHWEICKART: I'd like to understand  
5 something. It seems to me as though what we're looking  
6 at here is if a district reaches attainment, then they  
7 have additional work to do. In other words, if a district  
8 reaches attainment, then the APCD assumes the responsibility,  
9 according to this bill, for locating offsets for anyone who  
10 wants to put in cogeneration.

11 MS. STETSON: Right, or to --

12 COMMISSIONER SCHWEICKART: Whereas, if you  
13 maintain nonattainment, as it were, you're relieved of a  
14 burden.

15 MS. STETSON: You're relieved of implementing  
16 current law, and that was another concern that the  
17 Legislative Policy Committee and the staff had about this  
18 proposal.

19 COMMISSIONER SCHWEICKART: It seemed to me to be  
20 a perverse incentive on the part of the APCD's. I mean,  
21 why should you reach attainment when if you do, you've got  
22 an additional burden of going out and banking a whole bunch  
23 of offsets.

24 COMMISSIONER CROWLEY: There are problems, yes.

25 COMMISSIONER SCHWEICKART: It seems quite perverse,

1 while at the same time, I understand the difficulty in  
2 nonattainment areas of trying to locate and bank offsets.

3 COMMISSIONER CROWLEY: You're kind of finessing  
4 the main problem.

5 COMMISSIONER SCHWEICKART: Yeah.

6 MS. STETSON: It doesn't really address the main  
7 problem, which is the EPA's concern about quantifying these  
8 offsets. What we suggested in our letter to Assemblyman  
9 Baker which will be drafted also for this letter, is that  
10 a better way to approach the EPA problem would not be to  
11 hand off the problem to EPA and wait for them to either  
12 approve a state implementation plan, or to say that APCD's  
13 don't have to implement a plan unless they have reached  
14 attainment, would be to sit down with them, up front in  
15 their process, and find out what EPA would, or could live  
16 with, as far as quantifying offsets.

17 We think this bill addresses some of that.  
18 Actually, the Baker bill addresses some of that, but there  
19 may be a problem, unless you bring EPA in early-on, and  
20 get them to sit down.

21 There have been some meetings with EPA, and with  
22 cogenerators, and I believe with the Chairman Rosenthal, of  
23 the Senate Energy Committee to find out what they would  
24 live with. So there are negotiations going on. But to have  
25 the bill, as SB 1643 is drafted, you're correct, it's a

1 disincentive for implementing offsets for cogeneration, at  
2 least that's what the staff of the Legislative Policy  
3 Committee felt.

4 MR. VANN: Or finding offsets for anything else,  
5 I might add.

6 COMMISSIONER SCHWEICKART: Well, on the other  
7 hand, Leon, my problem with it is that in some sense what  
8 I understand the staff position to be is that the APCD's  
9 ought to be living up to the provisions of 1862, locating  
10 the offsets and cogeneration can proceed in these areas.

11 In some sense, what that encourages is  
12 irresponsibility on the part of the cogenerator. Why  
13 should they work, it's APCD's responsibility to come up  
14 with these things, and they're either going to get a waiver,  
15 or they're going to get somebody else to take care of their  
16 offsets for them.

17 It seems to me that there is clearly, also a  
18 responsibility on the part of a cogenerator to come up  
19 with their own offsets, so that I -- it's not clear to  
20 me that it goes one way or the other. There's clearly a  
21 shared responsibility in the areas of nonattainment to  
22 assure that cogeneration which is a more efficient way of  
23 using fuel for energy generation than straight production  
24 of energy on it, goes ahead, while at the same time, that  
25 you don't just come in with a turkey project, and expect

1 somebody else to take care of it, by offsetting somebody  
2 else's air pollution.

3 MR. VANN: Staff agrees with that, and 1862 does  
4 require that the cogenerator first look within, and the  
5 cogenerator must utilize BACT to qualify under 1862. So  
6 there's -- the so-called dirty cogenerator concept really  
7 is very misleading, because a cogenerator still has to  
8 incorporate the BACT.

9 MS. STETSON: I might add, that's the reason why  
10 we supported the Baker bill. The Commission agrees that  
11 there is some responsibility on behalf of the cogenerators  
12 to provide offsets, and the amendment in the Baker bill  
13 would require the cogenerator, in addition, the thermal  
14 beneficiary, to provide offsets.

15 So the person that is benefitting from the  
16 project would provide offsets.

17 COMMISSIONER SCHWEICKART: Do we have a lawyer  
18 on this issue?

19 MR. CHAMBERLAIN: Yes, Lisa Trankley is on call,  
20 do you want me to get her down here?

21 COMMISSIONER SCHWEICKART: Do you have any idea,  
22 Bill, whether there's anyone who has ever investigated the  
23 possibility of eminent domain over non-BACT air polluters?

24 MR. CHAMBERLAIN: Well, certainly not in any  
25 depth. We could --

1           COMMISSIONER SCHWEICKART: That may not be the  
2 thing to introduce at this point, but it would seem to --

3           MR. CHAMBERLAIN: What do you mean by non-BACT?

4           COMMISSIONER SCHWEICKART: Well, I mean, if I  
5 included BACT on my cogeneration plant in a nonattainment  
6 area, and I have gone out and looked for offsets, I can't  
7 get them, we're right next door to the laundry, and for  
8 whatever their reasons are, want to continue to pollute  
9 like crazy because they're already in existence, and they  
10 have the right to do so, it would seem to me that in terms  
11 of the community interest, there might be some eminent  
12 domain over air within a local jurisdiction which could be  
13 exercised there.

14           Why should they have the right to pollute while  
15 everyone else is shaping up just because they want to hold  
16 on to what they've got. I mean, I can understand the  
17 problem -- the dilemma of the APCD's. I mean, how do they  
18 bank these things when people want to hold on to their  
19 right to pollute. I mean, the whole idea of the right to  
20 pollute is kind of a crazy one which gets in the way of  
21 these areas ever reaching attainment.

22           If we're serious about attainment, why is air  
23 quality not -- does air quality not fall within the whole  
24 area of eminent domain.

25           MR. CHAMBERLAIN: Well, and the question --

1 COMMISSIONER SCHWEICKART: And then might built  
2 a freeway over it, why the hell can't you -- can't somebody  
3 clean up my pollution.

4 MR. CHAMBERLAIN: The resistance of that concept  
5 might well be that the air agencies do not want to  
6 recognize a right to pollute that you can quantify and  
7 put value on. Rather, they would like to say that eventually  
8 they can regulate that pollution out of existence when it's  
9 really necessary to do so.

10 They don't want --

11 COMMISSIONER SCHWEICKART: But they're not doing  
12 it, witness, not following through on 1862, and I don't  
13 believe they have the authority to simply claim it under  
14 current law. I guess I'm asking if we're really serious  
15 about this, why aren't we suggesting something like that.  
16 Because quite frankly, it's at an impasse here.

17 I mean, we're essentially, right now, the state  
18 is expecting the APCD's to do something which is almost  
19 impossible, and in addition, we're asking cogenerators to  
20 do something which is equally impossible. If I value my  
21 pollution, if you will, because of future expansion of  
22 plant or something, which I might want to do, or want to  
23 sell it to the highest bidder, you know, quite frankly, I  
24 can continue polluting the same way I have for years,  
25 regardless of what's going on in terms of the public interest.

1           It seems to me that that's got to be directly  
2 challenged, and what we're doing is we're essentially  
3 avoiding that issue, passing it off to the APCD's who don't  
4 have the capability of handling it, passing it off to new  
5 cogenerators who are equally powerless to cause someone  
6 to clean up, when we're dealing frankly with an issue of  
7 health, safety, and the public interest, and it's not clear  
8 to me why we don't provide some eminent domain authority.

9           MR. CHAMBERLAIN: Well, I think you're really  
10 talking about --

11           COMMISSIONER SCHWEICKART: Is it federally  
12 preempted?

13           MR. CHAMBERLAIN: Wait a minute. Is what  
14 federally preempted?

15           COMMISSIONER SCHWEICKART: Would there be some  
16 constitutional problem with the state authorizing local  
17 jurisdictions to exercise eminent domain over polluters,  
18 in terms of bringing them to whatever BACT is for their  
19 operation.

20           MR. CHAMBERLAIN: The problem is that there would  
21 be resistance within the air quality agencies to recognizing  
22 value of that pollution. I think the reason that they  
23 have not --

24           COMMISSIONER SCHWEICKART: Is that pretending  
25 that the elephant in the middle of the room doesn't exist?

1 MR. CHAMBERLAIN: The reason that they have not  
2 regulated these people down to BACT is partly political,  
3 and partly recognition of constitutional principles of  
4 existing -- you know, prior existing uses, invested rights,  
5 and -- but no one really wants to put a dollar sign on it  
6 and say, yes, if we take away that person's right to  
7 pollute, he's entitled to so many thousands of dollars of  
8 compensation, because eventually, that person, given enough  
9 lead time could be told, you know, as of five years from  
10 now, or ten years from now, you are going to have to come  
11 down to this particular level, period, as a regulatory  
12 matter, no payment, no nothing.

13 I think that the concept that you are suggesting  
14 is attractive, but it requires the air agencies to define  
15 those periods of time that are reasonable for people to  
16 be expected to come down, and then to quantify, you know,  
17 how much we should pay them for doing it earlier.

18 COMMISSIONER SCHWEICKART: I totally agree. In  
19 fact, what's happening is, those dates have advanced faster  
20 than real time, so that the 1975, or whatever it was,  
21 reaching of attainment being a mandatory requirement moved  
22 to '77, '79, '82, '85, '87, and whatever it is now. I mean,  
23 that's a fact, and it does seem to me that it may be time  
24 to reassess that.

25 Clearly, we're not -- the little ol' Energy

1 Commission isn't going to cause that to happen, but it  
2 seems to me we might want to start making a point here that  
3 in fact, this is a bit of a sham, and this idea that people  
4 are going to reach attainment somehow by fiat is politically  
5 not there.

6           But if we're really to pay for it, if we really  
7 care about it, and distribute those costs, and have it a  
8 diminishing thing, so that there's some incentive for  
9 people to get paid while the money is there, and you can  
10 discount it to the next attainment date when it does then  
11 -- becomes mandatory, and pay people for cleaning up their  
12 pollution.

13           What I'm saying is what we're doing now is  
14 totally ineffective. This bill just simply continues the  
15 same game which says, do you point the finger at the  
16 cogenerator, or do you point the finger at the local APCD.

17           COMMISSIONER CROWLEY: Would you have a recommenda-  
18 tion for our Committee for how to deal with this bill in  
19 the context of your concerns about the bigger problem?

20           COMMISSIONER SCHWEICKART: Well, I think at this  
21 point, Commissioner, I would tend to keep it, so long as  
22 BACT is required of the cogenerator. I would tend to keep  
23 it at the -- the current responsibility of where the local  
24 APCD and make some suggestion that it's time for the  
25 Legislature to reassess this whole area, because it clearly

1 is not working, and I see no reason why the public interest  
2 should not be considered every bit as much in this matter,  
3 in terms of eminent domain, exercise, as building roads,  
4 or freeways, or anything else.

5 COMMISSIONER CROWLEY: Then would your recommenda-  
6 tion be that the Leg Policy Committee take a look at the  
7 bill again in the context of your comments, and reconsider  
8 then --

9 COMMISSIONER SCHWEICKART: Well, I mean, we're  
10 dealing with next Tuesday.

11 COMMISSIONER CROWLEY: Well, what would your  
12 recommendation be?

13 COMMISSIONER SCHWEICKART: Well, to the extent  
14 that we need to take some position today, as I say, I  
15 would tend on balance, to keep the pressure on the APCD's  
16 because ultimately, I think that's where -- with greater  
17 authority, it belongs, in any case.

18 COMMISSIONER CROWLEY: So you oppose this --

19 COMMISSIONER SCHWEICKART: I would agree with  
20 the Committee recommendation opposing the relief on the  
21 APCD's.

22 COMMISSIONER CROWLEY: Then can we proceed, as  
23 far as Luree's comments go, to the Legislature, and then  
24 perhaps have you give us further input as to how you feel  
25 it --

1           COMMISSIONER SCHWEICKART: Well, I'm not sure  
2 that I can give you more than I have already, because I'm  
3 not a lawyer, but --

4           COMMISSIONER CROWLEY: Okay. Then we'll take  
5 that into consideration.

6           COMMISSIONER SCHWEICKART: -- the concept I  
7 think is one which I'd like to see us push, but I certainly  
8 can't speak for everyone.

9           CHAIRMAN IMBRECHT: For initial position to the  
10 Legislature, recognizing that there will be further steps  
11 along the way. We can always refine our comments at  
12 subsequent points in time. Commissioner Commons, would  
13 that meet with your approval?

14           COMMISSIONER COMMONS: I'd like to add one  
15 comment. I think if we were to take the position of oppose,  
16 I think there should be a two or three paragraph explanation  
17 of the problem as per Commissioner Schweickart's discussion,  
18 and a statement that we will communicate further with the  
19 Legislature on this matter.

20           CHAIRMAN IMBRECHT: I think that's reasonable.

21           COMMISSIONER CROWLEY: Yes.

22           CHAIRMAN IMBRECHT: All right, fine. So then,  
23 I think without objection, we'll accept the Committee's  
24 recommendation on that bill with the additional suggestions  
25 of Commissioner Commons and Schweickart.

1 CHAIRMAN IMBRECHT: I'm going to declare a brief  
2 recess here for some discussions relative to Item No. 1,  
3 and then we will reconvene after our conclusion of  
4 discussions between Commissioner Commons and Crowley.

5 (Recess.)

T.3 6 CHAIRMAN IMBRECHT: We can reconvene at this  
7 point in time. In order to try to sort things out quickly,  
8 I'm going to return to Item No. 1 momentarily. I will  
9 make a motion that the two committees to be created relative  
10 to the two siting cases that the Geysers 21 case be  
11 Commissioners Crowley as Presiding and Commissioner Commons  
12 as -- pardon me, Commissioner Gandara as second; and the  
13 Coldwater Creek application, Commissioner Commons as  
14 Presiding, Commissioner Crowley as second.

15 COMMISSIONER CROWLEY: Commissioner Crowley as  
16 second on that?

17 COMMISSIONER SCHWEICKART: Second.

18 CHAIRMAN IMBRECHT: Second. Is there any  
19 discussion on the motion? Is there objection to a unanimous  
20 roll call? Hearing none, that will be the order.

21 Then I'd like to ask that we return to the --  
22 yes, you're excused, the Legislative Report, and then  
23 we'll have a brief executive session at approximately  
24 12:00 o'clock, at the conclusion of the Committee Reports.

25 COMMISSIONER GANDARA: Would you proceed with the

1 Leg Policy --

2 MS. STETSON: The second bill is SB 2101 by  
3 Senator Dills that deals with wheeling for state agencies.  
4 That bill went out of the Senate Energy Committee on the  
5 10th. A letter has already gone out that the Commission  
6 unofficially supports the bill, and we ask for your eye  
7 vote on that.

8 COMMISSIONER COMMONS: You said a letter has  
9 already --

10 MS. STETSON: Right. We're trying to get an  
11 official position on this.

12 COMMISSIONER COMMONS: What was this about a  
13 letter that has already gone out?

14 MS. STETSON: A letter has gone out to Senator  
15 Dills saying that we -- the Legislative Policy Committee  
16 supports the concept of the bill. The bill is before you  
17 now to --

18 COMMISSIONER COMMONS: Who was the letter signed  
19 by?

20 MS. STETSON: The Chairman, recommending the  
21 Legislative Policy Committee's recommendation, so there  
22 are three votes for the position. I don't think there's  
23 any controversy on that. AB 2428 --

24 COMMISSIONER COMMONS: One second. Was the  
25 Committee aware of that?

1 MS. STETSON: Yes. It was a timing problem. The  
2 bill was set for a Tuesday, and Senator Dills asked us  
3 to look at the bill to see if we could support his bill.  
4 We took it up at the Legislative Policy Committee --

5 COMMISSIONER COMMONS: What is the -- can you  
6 read that letter please?

7 MS. STETSON: I don't have a copy with me, it's  
8 basically what's in the analyses.

9 COMMISSIONER COMMONS: Well, does it say the  
10 Commission supports, the Committee supports, or --

11 MS. STETSON: It says the Committee supports.

12 COMMISSIONER GANDARA: If I might review what  
13 the Commission policy has been in the past, what it was  
14 last year, and what it is this year, or what it is at least  
15 that we were doing legislative policy.

16 Prior to your joining the Commission, Commissioner  
17 Commons, the Leg Policy Committee was comprised of two  
18 Commissioners, neither of which included the Chairman, and  
19 on bills in which there was some urgency, the -- if the  
20 Committee position was unanimous, then the staff usually  
21 OGA, would walk the halls to get concurrence on the issue  
22 before we took an official position, and if that was not  
23 fully possible, then the Chairman, Commissioner Schweickart  
24 then, if he concurred, would send the letter indicating  
25 that there was a Legislative Policy Committee recommendation

1 to support -- for the position on the bill, whatever that  
2 position was.

3 Last year was the first time that we had the  
4 Chairman on the Leg Policy Committee, so it resulted in a  
5 slightly different procedure, because where you had two  
6 Commissioners in concurrence now, on a potential bill, you  
7 didn't have the same situation, so I believe last year, all  
8 bills were coming before the Commission, and in some cases  
9 there was a -- some deadlines that were missed, or some  
10 hearings that were missed because of that particular  
11 problem of having to wait for the business meeting.

12 This year, I think that it has developed back to  
13 what it used to be, but I would suggest and recommend that  
14 nonetheless, that insofar as possible, that the concurrence  
15 of all the Commissioners be sought walking the halls, and  
16 in this instance, it seems to me that the bill was also  
17 relatively solidly within Commission policy.

18 So I do not recall being informed that it had  
19 been sent. My staff might have been, I don't know, but it  
20 was not mentioned to me, but I personally don't have a  
21 problem with this bill in this particular situation.

22 COMMISSIONER COMMONS: I have no problem with the  
23 bill, I would just like, if we've taken that type of action,  
24 I think it would be appropriate to have the letter as part  
25 of our briefing package. I think that one of the reasons we

1 made the shift in the Committee was to go back to the way  
2 it was done so that we would have the ability to respond as  
3 per your needs, and so I support what's doing, and I support  
4 the bill, I just wanted to know what was occurring  
5 procedurally.

6 COMMISSIONER GANDARA: Well, in the future, let's  
7 have such letters that go out, you know, as part of the  
8 package then. Is there any problem then, with the Committee  
9 recommendation of the support on this particular bill?

10 Okay. Let me see if we can expedite this a little  
11 bit. On the AB 2428 on the Davis bill, does anybody have  
12 any problems with support -- the Committee recommendation,  
13 supporting the Committee recommendation on this?

14 COMMISSIONER SCHWEICKART: I'm so far in  
15 concurrence with everything down through number 5 and  
16 I have reviewed them.

17 CHAIRMAN IMBRECHT: Yeah, I've reviewed them as  
18 well, so fine.

19 COMMISSIONER GANDARA: So you're saying that you  
20 concur with everything through 5?

21 COMMISSIONER SCHWEICKART: So far -- no through 4.

22 COMMISSIONER GANDARA: Okay. Does anybody have  
23 any problems through Items 1 through 4, or wish to have  
24 any further explanation by the staff.

25 CHAIRMAN IMBRECHT: No.

1           COMMISSIONER GANDARA: Excuse me, I have a --  
2 Commissioner Crowley left me her notes here, and she  
3 indicates on Item No. 4, the neutral has been stricken, and  
4 it says oppose unless amended, in parentheses Dennis.  
5 Mr. Fukumoto, do you have any insight into this?

6           MR. FUKUMOTO: Well, I think Leon can address it.

7           MR. VANN: Staff in additional review of the  
8 legislation conveyed to OGA this morning that our position  
9 rather than support as indicated in your package, we would  
10 also take the position of oppose unless amended.

11           COMMISSIONER GANDARA: Okay. I thought the  
12 Committee position was oppose unless amended.

13           MS. STETSON: Right.

14           MR. VANN: Right, and we -- in the backup package,  
15 it shows the staff recommendation was neutral, and at this  
16 time we'd just like to note that our position is in  
17 concurrence with the Committee.

18           COMMISSIONER GANDARA: Well, my recollection is  
19 that the Committee supported, that staff position was  
20 oppose unless amended, so with that correction, Commissioners,  
21 the -- okay, does anybody have any problems with 2 through 4.  
22 Okay, so then the Commission position that's adopted is  
23 as recommended with that correction to Item No. 4.

24           No. 3 and No. 4 are adopted. Does anybody have  
25 any problems with No. 6? Ms. Stetson, perhaps you could be

1 going through the basic message and content of that bill  
2 while --

3 MS. STETSON: I'm refreshing my memory here. This  
4 is a bill Senator Rosenthal put in for small power producers  
5 and as I understand it, under federal tax laws, state  
6 regulated public utilities are not eligible for the same  
7 alternative energy tax credits as private investors. He's  
8 trying to solve that problem.

9 COMMISSIONER GANDARA: Again, this is within the  
10 Commission policy, I believe. The --

11 COMMISSIONER SCHWEICKART: This is No. 6?

12 COMMISSIONER GANDARA: This is No. 6. If you  
13 look at the first page of the legislative bill analysis,  
14 the existing law in the proposal, I think very concisely  
15 explains what it is. Okay, any problems with No. 6 then?  
16 Okay. The Commission position of that is recommended as a  
17 support position on 6.

18 Item No. 5. Now, perhaps we should move directly  
19 to questions on this, or would somebody like a presentation  
20 by staff?

21 CHAIRMAN IMBRECHT: Why don't we ask for questions.

22 COMMISSIONER SCHWEICKART: Well, I guess I have a  
23 number of questions on it. It would seem here that we are  
24 dealing with agricultural solar use, and relatively broadly  
25 defined to include all sorts of ancillary equipment not

1 directly related to the solar insulation itself, at a  
2 rather high level of credit, separate from all other solar  
3 credits out to 1989.

4 My own sense of it is that we're -- what we ought  
5 to be dealing with for tax credits is the development of  
6 a technology, the technologies here are either flat plate  
7 collectors or high temperature trough type collectors, or  
8 photovoltaics, or some other technology, which in my own  
9 view ought to be dealt with as a technology, not as an  
10 application, that is, if a particular part of a potential  
11 market lags, I don't believe that's a function of the tax  
12 credit, or it should not be.

13 COMMISSIONER GANDARA: Let me -- perhaps we can  
14 speed this up.

15 COMMISSIONER SCHWEICKART: So I frankly have some  
16 real problems with this being -- with supporting this bill.

17 COMMISSIONER GANDARA: Okay. Do you have any  
18 other comments? I might explain the Committee's thinking  
19 on this, as to what's developed throughout. The basic  
20 legislation would extend the tax credit for two years  
21 beyond the current expiration for these systems. In  
22 addition to that, it would expand what is available for  
23 tax credits to include the water conservation portion of  
24 it, not just the electrical generating portion.

25 Then a third part of it is that the tax credit

1 that is proposed is at a 40 percent level, which gives you  
2 the combined federal tax credit of approximately up to  
3 65 percent, although there is a question here that they  
4 don't really -- they're not fully additive, it might be  
5 slightly less than that. But the point being that it is  
6 at least, again, higher than what would be the case for  
7 the -- you know, current systems, which is I think a  
8 combined 50 percent.

9 Now, the third element of it was this 36 month  
10 depreciation for water conservation equipment. The  
11 Committee was in agreement that the water conservation  
12 equipment should not be considered as part of the equipment  
13 that is available for the tax credit, that's the first point.

14 The second point was the idea that the tax credit  
15 should be a maximum combined credit of around 50 percent.  
16 So there was agreement on that. The third point of agreement  
17 was that the tax credit should decline over time, with a  
18 feeling that --

19 COMMISSIONER SCHWEICKART: I agree with the  
20 Committee recommended schedule, let me put it that way.

21 COMMISSIONER GANDARA: Okay. And then -- the last  
22 point, however, in which there was perhaps a slight bit of  
23 difference within the Committee is that by agreeing to the  
24 extension, that in essence, we are giving preferential  
25 treatment to these systems for an additional two year period

1 beyond which the tax credits would expire, the solar tax  
2 credits would expire for all of the systems.

3           So then the question is from the point of view  
4 of public policy, do you wish to give that extension for  
5 two years. The -- you know, from my point of view, I was  
6 not quite certain that that should be the case. On the  
7 other hand, you know, within the Committee, we did discuss  
8 all positions fully, so we arrived at a compromise of the  
9 proposal you have here.

10           On the other hand, I personally don't have any  
11 problem with then, you know, not giving that preferential  
12 treatment to the agricultural equipment. Now, if we take  
13 that position, however, then we wind up with the following  
14 situation, that is essentially, the position we would be  
15 taking would be that the bill is not necessary, which  
16 frankly is not an unreasonable position, but the Committee  
17 was in fact not in agreement on that because of that  
18 particular extension.

19           But in the interests of time, and expediting what  
20 we have to do here, I again would not have any great  
21 problems. We're talking about a difference of a two year  
22 extension or not, and what you're saying, what the Committee  
23 position is.

24           COMMISSIONER SCHWEICKART: Well, I don't have a  
25 problem with the two year extension provided that it feathers

1 -- number one, that there is not discriminatory credit  
2 while all credits are in effect for the agricultural  
3 application, and that the agricultural application continue  
4 to feather down during that extension.

5 COMMISSIONER GANDARA: Okay.

6 COMMISSIONER SCHWEICKART: So, I think that if I  
7 read the Committee recommendation correctly, that is the  
8 way in which it's been set up.

9 COMMISSIONER GANDARA: Yes. The Committee  
10 recommendation would be to extend it for two years, and the  
11 credits, the total combined state and federal would be  
12 50, 50, 35, 20, and 15. That means that for our purposes,  
13 the state tax credit would go currently from 25 percent  
14 through '86, and in '87 where it would go to zero, it  
15 would be 20, and in '88 where it would have been zero, go  
16 to 15.

17 I'm sorry, in '87 and '88 it would go to 10, and  
18 -- is that correct? Do you have that sheet, the additional  
19 sheet that was passed out by Mr. Wilson at that meeting?

20 MS. STETSON: What we've done is incorporated it  
21 into this analyses.

22 COMMISSIONER GANDARA: Okay. Because what I have  
23 are my handwritten changes, and I'm not quite so sure  
24 that's --

25 COMMISSIONER SCHWEICKART: Well, the way I see it,

1 you're right, it would go to 10 in '87, and 5 in '88 in  
2 terms of the state credit.

3 COMMISSIONER GANDARA: Okay, 10 and 5.

4 MR. FUKUMOTO: No, it drops down to 10. There is  
5 a 25 percent federal tax credit which is a 10 percent  
6 investment tax credit, plus a 15 percent energy tax credit,  
7 and that 15 percent energy tax credit is what expires at  
8 the end of 1985.

9 COMMISSIONER GANDARA: Okay. Let's talk just  
10 about the state. It goes from 25, 25, 25, and then what  
11 do you have for '88 -- '87?

12 MS. STETSON: For the Committee recommendation?

13 COMMISSIONER GANDARA: Yes.

14 MS. STETSON: Ten percent.

15 COMMISSIONER GANDARA: Ten percent, and for '88?

16 MS. STETSON: Ten percent, and then zero in '89.

17 COMMISSIONER GANDARA: That's what I have in my  
18 notes. So the combined, then, is 50, 50, 35, 20, 20, 10.

19 MS. STETSON: Yeah.

20 MR. FUKUMOTO: It's in your analysis, it should  
21 be in your analysis.

22 COMMISSIONER GANDARA: Okay, fine. Well, that's  
23 the basic idea that the Committee proposed.

24 COMMISSIONER COMMONS: I guess one of the --  
25 first of all, I agree with Commissioner Schweickart, if we

1 have a solar tax credit, it should be only for those items  
2 related to solar, and should exclude the water conserving  
3 irrigation equipment, and I don't think it's appropriate  
4 for us to recommend this 36 month depreciation getting into  
5 the agricultural business as an Energy Commission.

6 I guess the issue that's in my mind is why should  
7 we at this time be extending tax credits, although I  
8 support the concept that they should be reducing, why should  
9 we be taking one very, very small area of tax credits and  
10 be extending it beyond the time that all other tax credits  
11 expire. Is that setting a precedent in terms of what we  
12 would be doing later on, or would that be removing one  
13 large area of potential supporters, the agricultural  
14 industry saying, well, we've already established a position  
15 here, and so we don't have to support the extension of the  
16 tax credits in other areas.

17 Essentially that's a political judgment, and I  
18 would be interested in the wisdom or opinion of you,  
19 Luree, and of our Chairman who has been a Legislator, as  
20 to --

21 MS. STETSON: Well, I think that this credit  
22 expired, and I think Senator Maddy is reinstating it for  
23 the agricultural industry. You know, I think as you said,  
24 it's a policy decision as to whether you want to focus on  
25 this group or not. The tax credits in the past have been

1 as narrowly focused, however, I'll remind you about  
2 swimming pool covers, and other small items that do get  
3 the credit. So even though you have an overall credit bill,  
4 you're looking at items that help particular segments of  
5 society. I think it's a judgment call.

6 COMMISSIONER COMMONS: Well, what would be our  
7 ability later on to, for example, take the solar tax credit  
8 and extend it in the same way? Is the passing of this bill  
9 going to help or hinder that effort, and it's really your  
10 judgment in terms of --

11 MS. STETSON: Yeah, I don't think there's any  
12 impact at all.

13 COMMISSIONER COMMONS: Well, would it not remove  
14 one constituency in terms of future support since they  
15 already have their extension? Let me ask our Chairman,  
16 because he probably has more insight on this issue than  
17 any of us.

18 On the extension of the tax credit, my question is,  
19 if we extend the tax credit for the agricultural industry,  
20 how do you perceive that would effect, at the expiration  
21 of the existing tax credits on solar and conservation, the  
22 ability or inability to extend those tax credits in a  
23 similar vein, which is this reducing formula that's being  
24 proposed by the Committee?

25 CHAIRMAN IMBRECHT: Well, I would certainly think

1 that it would establish a guiding precedent that would  
2 undoubtedly be a powerful argument to provide that same  
3 treatment to the remainder of the tax credits.

4 COMMISSIONER COMMONS: Do you think it would  
5 remove a major political element, or constituency, the  
6 agricultural industry from wanting to support tax credits  
7 since they already have their extension.

8 CHAIRMAN IMBRECHT: I really don't recall the  
9 agricultural industry as being heavily involved in the  
10 tax credit debate last year in all sincerity.

11 COMMISSIONER COMMONS: I can support the extension  
12 as proposed.

13 COMMISSIONER SCHWEICKART: Mr. Chairman, I'd like  
14 to suggest just -- unless there's some particular reason  
15 not to, that in '87, '88, that instead of 10, 10; 10, 5,  
16 which would provide that much smoother a ramp. It seems  
17 to me that's exactly the -- the principal is there, it  
18 would draw down less on the state, it would provide  
19 smoother feathering, and it would also be a less onerous  
20 precedent to follow in terms of extension of the rest of  
21 the credits as well.

22 COMMISSIONER COMMONS: Well, I'm not sure. If  
23 you're talking about some of these applications, the cost  
24 can be relatively small in cases, and if we go -- even at  
25 10 percent, you may find people not wanting to go through

1 the paperwork to file.

2 COMMISSIONER SCHWEICKART: Well, that's fine.  
3 That is then the industry's choice, and I think that's a  
4 -- that's the whole purpose of feathering out.

5 COMMISSIONER COMMONS: Well, I would have tended  
6 towards 15, and 10, rather than 10 and 20, if you wanted  
7 to feather it down.

8 COMMISSIONER SCHWEICKART: I don't feel strongly  
9 about it.

10 CHAIRMAN IMBRECHT: Fine. Let's go with the  
11 Committee recommendation in that case. All right. I  
12 believe that completes the Legislative Committee Report  
13 agenda.

14 MS. STETSON: However, there is a federal tax  
15 credit issue that can be handled very quickly.

16 CHAIRMAN IMBRECHT: There is a federal tax credit  
17 issue as well, would you care to commence that.

18 MS. STETSON: Sarah Michael is here to address  
19 that.

20 MS. MICHAEL: The federal tax credit extension  
21 is moving along very rapidly in Congress. Recently passed --  
22 the Senate recently passed the Senate version that's gone  
23 to Conference Committee that extends for three years the  
24 residential credit, as well as the business tax credit.

25 We have -- the Small Power Producers Office in

1 particular has been asked to seek Commission support for  
2 the tax credit extention. We've talked to the Intergovern-  
3 mental Affairs Committee, we've talked to the Tax Credit  
4 Committee, and have their support of the general concept  
5 and the extension.

6 I'm here today to urge your support, the full  
7 Commission's support of the federal tax credit extension.  
8 The Conference Committee is expected to take action in mid-  
9 May. In talking with the National Governor's Association,  
10 the American Wind Energy Association, they feel that it's  
11 critical for the Commission to be talking in particular  
12 to Congressman Pete Stark who is California's only  
13 delegation -- member on the Conference Committee, to talk  
14 to him regarding his position. He's currently not in favor  
15 of the extension.

16 There are a couple of other key California  
17 Congressional members that should be contacted, and due  
18 to the fact that the tax credit for the industries,  
19 California wind industry, the solar industry, the solar  
20 central receiver industry, is so critical, I hope that the  
21 Commission would take a position of supporting the federal  
22 tax credit extension.

23 CHAIRMAN IMBRECHT: Okay. I guess probably the  
24 better way to begin this is, is there any member here that  
25 would object to that recommendation? Commissioner Commons?

1 COMMISSIONER COMMONS: I want to ask a question.

2 CHAIRMAN IMBRECHT: Okay. I just want to note  
3 the time considerations. I have no choice but to leave here  
4 at 12:30, and so --

5 COMMISSIONER COMMONS: I have no problem if we  
6 needed an executive session first, of breaking for an  
7 executive session and coming back.

8 COMMISSIONER SCHWEICKART: Well, I think this is  
9 the last item.

10 COMMISSIONER COMMONS: Well, there's other  
11 Committee reports.

12 CHAIRMAN IMBRECHT: Fine. I understand your  
13 question.

14 COMMISSIONER COMMONS: Well, my discussion might  
15 only take one minute, so this is not a half hour.

16 CHAIRMAN IMBRECHT: Based upon track record, I'll  
17 give it a crack, but -- I'll give you two, go ahead.

18 COMMISSIONER COMMONS: There is a companion bill  
19 in Congress concerning one of the major financial impacts  
20 on construction of large power projects, and in looking at  
21 the impact of that bill, you don't have to pay income  
22 tax on funds that have been received, and it turns out that  
23 it's a tremendous boon to projects that take five or ten  
24 years to construct.

25 In looking at this bill, clearly California,

1 despite my own personal questions as to tax credits,  
2 clearly this is in benefit of California industry, business  
3 and what we're promoting, and California comes out ahead,  
4 and I'll support this.

5 But what I'd like to ask is, let's see, the  
6 federal legislation I guess is in the Legislative Committee,  
7 is that Committee look at this other bill, and bring it  
8 back in two weeks in terms of what our position ought to be  
9 on that, because I think the two work together in terms of  
10 what is the federal impact in terms of development of  
11 renewables in these areas.

12 CHAIRMAN IMBRECHT: That's a reasonable request,  
13 but that would not suggest objection to --

14 COMMISSIONER COMMONS: No, I'm saying I would  
15 support this bill, and ask you to come back and ask the  
16 Legislative Committee to come back and --

17 CHAIRMAN IMBRECHT: Does anyone else have concerns  
18 about support of the federal tax credit extension?

19 COMMISSIONER SCHWEICKART: I'll take the  
20 remaining 40 seconds I guess.

21 CHAIRMAN IMBRECHT: Go.

22 COMMISSIONER SCHWEICKART: As I expressed to Sarah,  
23 I have some concern here that the Commission speak with  
24 some consistency notwithstanding the benefit to California  
25 as a state having the federal tax credit. Nevertheless, to

1 me, the principal of dealing with tax credits not in a big  
2 blanket, but on a technology basis, and phasing out credits  
3 where appropriate is something which I feel is important  
4 to add to this. Not a simple go-go on all tax credits  
5 which shift money to California, but rather, maintain  
6 credits where credit is appropriate, in certain technologies,  
7 and I think probably, notwithstanding controversy, wind is  
8 still there, photovoltaics is certainly there, perhaps high  
9 temperature applications, but certainly flat plate solar  
10 collectors and some other areas, I believe the credits should  
11 begin phasing out.

12 So rather than a straight extension, I believe  
13 we should number one recommend a principle of phasing out  
14 credits at an appropriate time on a technology specific  
15 basis, but that in general, the credits should be extended.

16 COMMISSIONER COMMONS: Do you also agree --

17 CHAIRMAN IMBRECHT: I can support that as well,  
18 and I would suggest you incorporate those comments.

19 MS. MICHAEL: The --

20 COMMISSIONER COMMONS: Commissioner Schweickart,  
21 do you also feel that we should have some performance  
22 standards, particularly in the wind area?

23 COMMISSIONER SCHWEICKART: Commissioner Commons,  
24 this is a long-standing thing. I would not suggest that in  
25 terms of trying to get something like that into the federal

1 area. That's going to be very difficult, even in the state,  
2 to get something like that. We've been looking at it, it's  
3 a real mess, and frankly, I'm already raising a little  
4 hell of my own on that.

5 CHAIRMAN IMBRECHT: We'll deal with that as a  
6 separate issue.

7 MS. MICHAEL: Just for your information, we have --  
8 I have incorporated that concept into the letter expressing  
9 that thought that as --

10 COMMISSIONER SCHWEICKART: Okay. Well, with the  
11 Commission's permission, I would like to review that, and  
12 make sure that it states the principal.

13 CHAIRMAN IMBRECHT: All right, fine, so then  
14 without objection, as suggested by Commissioner Schweickart,  
15 the letter will be drafted to suggest a rationing down on  
16 technology specific considerations.

17 With that, we'll recess for executive session,  
18 upon the call of the Vice Chair to reconvene the meeting.

19 (Recess for executive session.)

20 CHAIRMAN IMBRECHT: Okay. We're going to  
21 reconvene. At this point, Commissioner Schweickart I guess  
22 -- I'm not sure under what agenda item this would --

23 COMMISSIONER SCHWEICKART: Well, I think it would  
24 probably come under the Budget Committee.

25 CHAIRMAN IMBRECHT: Okay.

1           COMMISSIONER GANDARA: Budget Committee, or  
2 Executive Director's Report, or --

3           CHAIRMAN IMBRECHT: Well, it's been discussed in  
4 the Budget Committee, and I don't recall there being a  
5 difference in the bottom line as to how we're handling  
6 the issue, but the issue is how the Commission's budget  
7 should be presented. I'll raise it as Presiding Member of  
8 the Budget Committee.

9           COMMISSIONER SCHWEICKART: All right. Well, the  
10 issue is as we mentioned last business meeting, the question  
11 of what budget is being, and should be presented, and it's  
12 my feeling quite strongly that the budget which should be  
13 presented, and defended before the Legislature is the  
14 Commission's budget.

15           I understand pursuant to the discussions last  
16 time that quite literally there is no authority for the  
17 Commission to direct the Chairman to present any particular  
18 budget or testimony, but I believe that we should have the  
19 Commission's budget presented.

20           As a result, I would move that we -- that the  
21 Commission direct the Executive Director to present the  
22 Commission's budget in legislative hearings.

23           CHAIRMAN IMBRECHT: Okay, the motion is before us.  
24 I suppose we can discuss it with or without a second. Who  
25 cares to express their point of view?

1 COMMISSIONER COMMONS: I'll second it.

2 CHAIRMAN IMBRECHT: Seconded by Commissioner  
3 Commons.

4 COMMISSIONER COMMONS: I'll always second a  
5 motion.

6 CHAIRMAN IMBRECHT: Okay, any further discussion?

7 COMMISSIONER COMMONS: I'll make two comments.  
8 One is, I have not, up until today, and I'm going to  
9 support it, really supported this, but my frustration with  
10 dealing with the appliance matter where we had a BCP, and  
11 we were trying to carefully review, and look at alternatives,  
12 and handle a very difficult, and controversial problem,  
13 and the fact that this is eliminated from the budget, and  
14 is going to cause a lot of heartache, I feel, to this  
15 Commission, and also an ability to do a good job in a  
16 tough area, that I think we go through and deliberate  
17 carefully.

18 The budget decisions were pretty much unanimous  
19 on the part of the Commission, and if we don't do this  
20 activity, essentially we're allowing Finance to write our  
21 budget in terms of what the presentation is. It is close,  
22 because possibly a more effective way of doing it is to  
23 negotiate on individual items with specific legislatures,  
24 and so there's the practical aspect.

25 But I do feel the Legislature has a right to know

1 from this Commission as to what are the activities,  
2 particularly where I just now felt just a major, major pinge.

3 CHAIRMAN IMBRECHT: Commissioner Gandara?

4 COMMISSIONER GANDARA: Well, my feeling is that  
5 since I went through the experience last year, that I have  
6 not supported this in the past, in light of that experience,  
7 but I have become concerned, you know, that as the Legisla-  
8 tive session developed, that we are attaching budget  
9 requests to bills, or policy bills, and particularly bills  
10 that I think, you know, would be very good bills for us to  
11 support on a policy basis, and that we ought to be dealing  
12 with the staffing in the context of the budget.

13 My concern has been, is that as we kind of, sort  
14 of build up this quest, and this quilt, this patchwork of  
15 funding, not really knowing what it's going to be, that  
16 it's very distorting to the process that we go through,  
17 and the budget process, that we consider all the trade-offs,  
18 and we consider all our mandates, and when we go through  
19 what we really want to do for the following year.

20 So I would also be supportive that there be a  
21 more direct presentation of our budget before the Legislature.

22 CHAIRMAN IMBRECHT: Candidly, I don't have any  
23 objection to it. I'll just tell you that I think that the  
24 experience of last year also gives us some indication of  
25 what the likely outcome is. I want to assure each and

1 everyone of you that every effort has been made to argue  
2 as strongly as possible, on repeated occasions, to the  
3 point that I have been chastized on a number of occasions  
4 for overpursuing remedies for adequate appeal on decisions  
5 on various items, and frankly, I think that relative to  
6 a lot of other agencies, we've done quite well in our  
7 discussions with finance and in the administration.

8 At the same time, I recognize your concern about  
9 calling these matters to the attention of the Legislature.  
10 I'm not terribly confident as to what the ultimate outcome  
11 will be, and I do express some concern about jeopardizing  
12 a -- I think a better, and more positive working relationship  
13 that has developed with the Department of Finance the last  
14 few months than existed, certainly, in the past.

15 At the same time, I presume that they will  
16 recognize that the remainder of the Commission has its  
17 own views, and is entitled to carry those forward, and I  
18 hope that they will view it from that perspective. That's  
19 the best that I can say in response.

20 COMMISSIONER SCHWEICKART: Well, I totally agree  
21 that it's not an easy issue, absolutely, but there is a  
22 clear situation where you are without it being necessarily  
23 your own doing, wearing two hats, and it is in some sense  
24 a no-win position for you, and I believe, nevertheless,  
25 that the Commission has the responsibility to ensure that

1 it's various issues which it understands are critical,  
2 are presented in an unambiguous way in terms of the overall  
3 Commission policy on these matters.

4 Geoff has recently come in contact with them, and  
5 we're seeing it in the insulation area as well. I think  
6 it's extremely important that we do have that clarity, and  
7 I understand your position, so that it is not --

8 CHAIRMAN IMBRECHT: Pardon me. I would just say  
9 that frankly, my general view on how to handle this would  
10 not be different. I really don't believe if I were only  
11 wearing one hat, frankly, but --

12 COMMISSIONER SCHWEICKART: It may not be.

13 CHAIRMAN IMBRECHT: I would just say as well that  
14 you know, I think that it is appropriate, sometimes, to  
15 highlight, with the legislative approach, some of these  
16 issues. I think it does focus a greater spotlight on them,  
17 that's why I supported that alternative remedy as well.  
18 I'd suggest that that be taken into consideration as well.

19 Beyond that, I'd suggest that we go forward with  
20 this proposal in the near-term, and suggest that subject to  
21 further response we may receive on how this is being viewed,  
22 I'd like to reserve the prerogative of returning this issue  
23 to the Commission as Presiding Member of the Budget  
24 Committee at the appropriate time.

25 With that, I will excuse myself.

1           COMMISSIONER SCHWEICKART: I take it that that's  
2 3-1, or --

3           CHAIRMAN IMBRECHT: Yes.

4           COMMISSIONER GANDARA: Record Commissioner Imbrecht  
5 as no, I guess, on that one.

6           COMMISSIONER COMMONS: And Commissioner Crowley  
7 absent.

8           COMMISSIONER GANDARA: Commissioner Crowley absent.

9           I have two items from the Loans and Grants Policy  
10 Committee Report that should not take too long. The first  
11 one is that the biomass staff came to the Loans and Grants  
12 Committee at the last meeting requesting authorization for  
13 the expenditure of approximately 3 to \$4,000, more likely  
14 three, because there's going to be some matching grants  
15 from outside organizations.

16           Those 3 to \$4,000 would come from the \$65,000  
17 that the Commission authorized that was a supplement to the  
18 technical support contract of, as you may recall, that that  
19 was approved, all but the dissemination portion. I was a  
20 bit surprised at the request, and I asked why was it before  
21 the Committee, and I was told, and I have since been given  
22 the minutes of the Wednesday, January 11th meeting, at  
23 which time when the Commission approved that \$65,000  
24 supplement, it was with a caveat that was incorporated into  
25 the motion by Commissioner Imbrecht, a caveat or a condition

1 set forth by Commissioner Schweickart that indicates -- let  
2 me read it, it says -- "Let me just say that my direction to  
3 the staff was in fact to get back to the R&D Committee for  
4 us to review the participants in this group, and to review  
5 their recommendations before we direct Envirosphere in  
6 terms of the expenditures."

7 Previous to that, Commissioner Schweickart, you  
8 had indicated -- oh, not you, but Mr. Tuvell had indicated  
9 that in a conversation with you, you were representing the  
10 position, the unanimous position of the Committee, as  
11 indicated by Commissioner Commons at that time, in which  
12 you asked them to sort of solicit the input from members of  
13 the affected groups, cotton dealers, Dairy Association,  
14 Farm Bureau, et cetera, and set up a brief meeting at which  
15 time we could discuss the activities we intend to move  
16 forward with, and get their input at that time.

17 In trying to give force to that direction, the  
18 staff has presented to the Committee a recommendation to  
19 form an advisory committee pursuant to our policy that we  
20 adopted in January, but secondly, there is some urgency  
21 regarding this particular expenditure of funds, and there is  
22 a feeling that that had to come back to the R&D Committee.

23 As you know, since that -- we've had reorganization  
24 of committees and now that area falls under loans and grants.  
25 So I am here basically requesting that if our understanding

1 is held in common on this matter, requesting that the staff  
2 be authorized to expend those 3 to \$4,000.

3 COMMISSIONER SCHWEICKART: Expending those in  
4 order to form the advisory committee?

5 COMMISSIONER GANDARA: Oh, no, I'm sorry. The  
6 purpose of the expenditure is to produce the brochures that  
7 are, you know, very similar to the ones that are --

8 COMMISSIONER SCHWEICKART: It's the outreach  
9 brochure.

10 COMMISSIONER GANDARA: It's the outreach  
11 brochure, and the purpose of it is to have it ready for  
12 some press event to be held later on. It's kind of a final  
13 brochure for some project.

14 COMMISSIONER COMMONS: I have no problem, I just  
15 want to ask a procedural question. Do we have the ability  
16 to do that today?

17 COMMISSIONER GANDARA: Well, let me indicate that  
18 from my point of view, that the -- what was directed by  
19 the Commission is that the Committee authorize these  
20 expenditures. The reason I brought it back to the  
21 Commission is simply so that you would be aware of how that  
22 recommendation is being implemented.

23 The Committee could have gone ahead yesterday and  
24 authorized it, but I felt responsible to the Commission in  
25 notifying you of a situation that, at least from my point

1 of view, I had not encountered before, so I didn't want  
2 somebody to the Committee later on, saying you're authorizing  
3 expenditures. Okay, that's all I want.

4 COMMISSIONER SCHWEICKART: Bless you.

5 COMMISSIONER COMMONS: We bless.

6 COMMISSIONER GANDARA: Fine, thank you.

7 The second item has to do with the -- an item  
8 that again was requested by the Commission as a whole  
9 several business meetings ago, which was to establish  
10 criteria for the program, or that part of the PVEA program  
11 called financial incentives in the rental sector. The --  
12 I am informed that the staff has met with you or your  
13 advisers. They have put together a recommendation on  
14 what the financial incentives criteria will be.

15 Mr. Rauh, were you passing that out? I'm not  
16 sure it's necessary to go into it in detail, but I just  
17 wanted to inform you that the Committee, in accordance with  
18 your direction, has -- is satisfied with the staff's  
19 development, and I think the staff is to be congratulated,  
20 frankly, of taking the diverse input, and coming up with  
21 some criteria that I think are pretty good criteria that  
22 take into account not only payback, but the leverage of  
23 state to private funds, that take into account the energy  
24 conservation amount, you know, not just in the formula for  
25 the payback, but in an absolute sense, and also the

1 marketing, technical and financial aspects of the project,  
2 so that from the point of view of the Committee, we're  
3 satisfied.

4           What should be coming back to you at some point  
5 in time is the total grant manual. So, unless you wish  
6 any additional information on that, we can move on to any  
7 other policy committee reports.

8           COMMISSIONER SCHWEICKART: I don't want anything.  
9 I would like to move on to one other thing.

10           COMMISSIONER GANDARA: Okay.

11           COMMISSIONER COMMONS: On Committee reports or --  
12 go ahead.

13           COMMISSIONER SCHWEICKART: All right. Before --  
14 could I -- I didn't realize Commissioner Crowley was going  
15 to be gone, but before she left, she and I discussed the  
16 issue of the Papan bill on tax credit denial of relief --  
17 I'm not quite sure how to word it. This is the whole issue  
18 related to AB 4031, Papan's bill.

19           The issue here is that the bill takes -- attempts  
20 to take action to relieve the offense if you will, or the  
21 harm done to certain taxpayers who in some cases through  
22 ignorance, and probably more cases through having been  
23 misled by auditors or others, or rather installers, or  
24 others, put tax credit -- or to put conservation measures  
25 in their homes, claimed conservation tax credits, but did

1 not have an audit that was performed prior to installation  
2 of those measures, and then were legally, by the FTB,  
3 denied their tax credits.

4 Assemblyman Papan has proposed in his bill that  
5 utilities be directed to conduct retroactive audits of these  
6 instances in order to provide some relief to those tax-  
7 payers who installed, in fact, measures which were, in fact,  
8 cost-effective, and would have met all the intentions of  
9 the law.

10 Now, the current position, apparently, of the  
11 Legislative Policy Committee was neutral on the bill, and  
12 we have discussed this in the Tax Credit Committee in  
13 considerable depth. We've had meetings with the Department  
14 of Consumer Affairs, the Attorney General's Office, the  
15 Franchise Tax Board, and the Board of Equalization on this  
16 matter, and everyone is in concurrence that this bill, and  
17 in fact, any action by the Legislature to attempt retroactive  
18 relief for what are generally understood to be in fact  
19 technical, but real violations of the provisions of law,  
20 that is, that there was no audit prior to installation of  
21 these measures, will, in fact, create greater disruption  
22 than is currently -- than currently exists, and will create  
23 whole new sets, depending upon the way in which one designs  
24 it, whole new sets of larger offended persons.

25 So there is -- in addition to drawing down

1 additional state revenues, which may in fact be a secondary  
2 issue, except under some designs, in which case everybody  
3 gets a tax credit for nothing.

4           So, it would appear as though while it not being  
5 a pleasant answer, that there is no action that could be  
6 taken that anyone has been able to devise, which will in  
7 fact provide relief without creating whole new sets of  
8 larger difficulties.

9           As a result, I would recommend that the Commission  
10 shift from a neutral position on 4031, to an oppose, perhaps  
11 a regretfully oppose, but nevertheless, an oppose.

12           COMMISSIONER GANDARA: Let me ask a question  
13 whether there is some urgency on this matter, because if  
14 my recollection serves me correctly, let me -- my -- well,  
15 I believe that the reason that the Legislative Policy  
16 Committee took a neutral position on it is because they  
17 viewed the bill as more of an issue that had to do with the  
18 Board of Equalization concerns, as opposed to the energy  
19 concerns of which it was felt that this -- Franchise Tax  
20 Board -- yeah, that's right, that it was more a Franchise  
21 Tax Board issue, and we at that time didn't seem to have  
22 the information that made it more directly an energy  
23 issue which we felt was more the province of our particular  
24 comments.

25           I haven't discussed this with Commissioner

1 Crowley, but as a member of the Committee, I would feel  
2 no hesitation whatsoever at reconsidering the issue at  
3 one of our Committee meetings, with the input from the  
4 Tax Credit Committee.

5 I think the -- in fact, the Leg Policy Committee  
6 has tried very much to get the input of the relevant  
7 policy committees prior to taking a position on the  
8 legislation, and I think had we known that you had more  
9 of a direct concern either over the energy policy aspects,  
10 or, in fact, over the tax aspects that affect that, that  
11 I think that would have been taken into consideration as  
12 well.

13 I guess what I need to know is whether it can  
14 be deferred to the next Leg Policy Committee meeting, or  
15 whether --

16 MS. STETSON: The bill is set for this Monday  
17 in the Assembly Rev and Tax Committee. However, I just  
18 want to state something for the record, that we did raise  
19 the concerns, I believe of the staff, which are very  
20 similar to Commissioner Schweickart's concerns at the LPC  
21 meeting.

22 COMMISSIONER GANDARA: Well, again, I have no  
23 problem taking guidance from the policy committees who are  
24 more directly, more closely involved with this issues, so  
25 I mean I'm -- if we can take a position on it today, I

1 would concur with your recommendation Commissioner  
2 Schweickart.

3           Again, you know, maybe we can -- if we need to  
4 do it today, we can.

5           COMMISSIONER SCHWEICKART: Well, my understanding  
6 from Commissioner Crowley before she left is that we would  
7 need further action by the Commission today, that we have  
8 the draft letter sitting here before us, I believe --

9           MS. STETSON: A letter has not gone out with  
10 the official Commission position, which was taken up at  
11 a business meeting, which I think you were absent,  
12 Commissioner Schweickart. We have not sent out a letter  
13 at this point.

14           The direction from the Legislative Policy Committee  
15 and the full Commission was to be neutral, but express our  
16 concerns and difficulties with the bill, reasons why the  
17 bill didn't address the particular issue that Assemblyman  
18 Papan is trying to get to.

19           I've talked to Assemblyman Papan's staff and have  
20 indicated that to them already. The Assembly Rev and Tax  
21 Committee knows that the bill will not work and may even  
22 be unconstitutional. They will have to come up with major  
23 revisions to that bill.

24           COMMISSIONER SCHWEICKART: There are many, many  
25 problems with it. I think it's important, however, that the

1 Commission in some sense support Assemblyman Papan, who  
2 finds himself in a fairly difficult position here by stating  
3 its opposition to it on necessary grounds, and at the same  
4 time, indicating that actions are being taken to prosecute  
5 examples of fraud where fraud can be brought before the  
6 Attorney General, and the Attorney General is at the  
7 current time investigating a number of these matters, and  
8 any way that we can indicate assistance to legislators  
9 who have constituents who are caught in this circumstance  
10 to provide information to the Attorney General for  
11 potential prosecution would be very helpful.

12 But unfortunately, in terms of any relief for  
13 the constituents, there is nothing that anyone has yet  
14 seen that could be done, which does not frankly create  
15 greater problems than the problem which already currently  
16 exists.

17 COMMISSIONER COMMONS: I have no problem with the  
18 position, but in raising another issue that maybe should  
19 go back to both the Tax Credit and the Legislative  
20 Committee, and that's the expiration of RCS.

21 COMMISSIONER SCHWEICKART: That's already -- that's  
22 being acted on now. That -- we're well underway in terms  
23 of dealing with that issue.

24 COMMISSIONER COMMONS: Is there legislation so  
25 that if it were to expire --

1           COMMISSIONER SCHWEICKART: We will be having --  
2 preparing language for dealing with the tax credits next  
3 year, yes, that's underway in the Tax Credit Committee.

4           MS. STETSON: And that will come before the  
5 Legislative Policy Committee. There is a federal bill also  
6 to extend the RCS program at the state -- excuse me, at  
7 the federal level.

8           Let me suggest that we may want to take it back.  
9 You may want to take an opposed position today, I'm not  
10 sure, but as long as we're in the Assembly Rev and Tax  
11 Committee on Monday, to express the concerns that we have  
12 with the bill. I think the Assemblyman knows that his  
13 bill will not necessarily retroactively help his  
14 constituents.

15          COMMISSIONER SCHWEICKART: We've been having  
16 weekly conversations with Sally Kipper of Assemblyman  
17 Papan's office, so he already knows in some sense our  
18 position, but I think that it's important that we not  
19 provide a big signal here by going out with a letter that  
20 says we're neutral. I think that will put him in a more  
21 difficult position, frankly.

22          MS. STETSON: That may be true, but that was  
23 the direction from the full Commission.

24          COMMISSIONER GANDARA: Well, can we have a motion?

25          COMMISSIONER SCHWEICKART: I would move that the

1 letter pursuant to AB 4031 reflect an opposed position by  
2 the Commission on that bill.

3 COMMISSIONER COMMONS: Well, for the reason that  
4 you enumerated?

5 COMMISSIONER SCHWEICKART: For the reason that  
6 I enumerated, which are in the bill, they're already there,  
7 but it just ends up saying neutral, which unfortunately,  
8 does not provide the Assemblyman much support.

9 MS. STETSON: Basically saying that we don't  
10 have a solution.

11 COMMISSIONER SCHWEICKART: And there are other  
12 amendments in the letter as well.

13 COMMISSIONER GANDARA: A first and a second.  
14 Any further discussion? Then the Commission's position on  
15 that unanimously is -- two Commissioners absent, will be  
16 opposed.

17 COMMISSIONER COMMONS: No, no.

18 COMMISSIONER SCHWEICKART: Yes.

19 COMMISSIONER COMMONS: The Commissioners absent  
20 aren't -- don't show as opposed, they're shown as not  
21 present.

22 COMMISSIONER GANDARA: That's what I indicated, I  
23 didn't say opposed, I said absent.

24 COMMISSIONER SCHWEICKART: The Commission's  
25 position recognizing the absence of two Commissioners is

1 opposed.

2 COMMISSIONER COMMONS: Oh, okay, I see, okay. I  
3 have one other piece of legislation.

4 COMMISSIONER GANDARA: Okay, Commissioner?

5 COMMISSIONER COMMONS: I understand that the  
6 Legislative Committee decided not to take up the appliance  
7 bill of Senator Rosenthal. At the Appliance Committee  
8 meeting there is one issue that still remains outstanding.

9 I got a letter from Mr. Kennedy who is, I guess,  
10 the Executive Director of the Water Resources Board, and  
11 last year when we passed the inventory clearance legislation,  
12 we required data labeling, and he has requested that on  
13 plumbing fixtures, particularly on low flow shower heads,  
14 that it has not been the practice in the industry to have  
15 the date put on the shower heads, and that we discussed it  
16 with the staff at our meeting, and I have not been able to  
17 find anyone who feels that there is a need to have the date  
18 of labeling on the plumbing fixtures.

19 What I'd like to recommend is that the Commission  
20 take a position and instruct Luree to either amend into  
21 a bill, or otherwise, to take care of this problem, because  
22 we have essentially a whole industry producing these  
23 plumbing fixtures, and they're going to be violating the  
24 law because they don't have the data of manufacture.

25 COMMISSIONER GANDARA: Well, what I would prefer

1 to do is -- I mean, I frankly react a lot better to  
2 proposals where there has been some staff analysis, or  
3 there's been an opportunity to get some input from the  
4 people who are working in the areas. I -- you know, that  
5 would be my preferred way to deal with this plumbing  
6 question issue, because I seem to recall getting letters  
7 on plumbing fixtures for the last two or three years, and  
8 every time I inquired into it, I was told that in fact,  
9 things were taken care of, that it was no problem, that  
10 there was some misinterpretation here or there.

11 So, I mean, I would prefer to do that, and it  
12 seems to me there's no urgency on this matter, is there?

13 COMMISSIONER COMMONS: Couldn't we amend it into  
14 a bill?

15 MS. STETSON: No, I also understood that the  
16 Commission was looking at the date of manufacture for all  
17 appliances in a proceeding here.

18 COMMISSIONER COMMONS: Yeah, it came up. There's  
19 no legislation I see, other than this one minor issue, and  
20 the rest of it is a policy decision by this Commission as  
21 to date of labeling, but I see no problem of giving it to  
22 the Legislative Committee, and bringing it back.

23 COMMISSIONER GANDARA: Could I ask for your staff  
24 to write up a memo on this and maybe give it to Luree, and  
25 then, you know, the staff can do whatever they do with the

1 bills before the policy committee.

2 COMMISSIONER COMMONS: Okay. I have a Committee  
3 report, and I'll finish before 1:00.

4 COMMISSIONER GANDARA: Okay, Commissioner.

5 COMMISSIONER COMMONS: On policy reports of  
6 Committees, the same concern I expressed concerning the  
7 Executive Director's report, I have in terms of Committees.  
8 I think it's important that the policy committees report  
9 as to major policy issues that are before them, or problems  
10 that are occurring, or even within the jurisdictions of the  
11 Committee decisions that are being made, so that the full  
12 Commission keeps informed as to what are the activities  
13 that are going on in policy areas.

14 I think the comment to the Executive Director  
15 in terms of the Executive Director's Report, the same  
16 applies to the policy committees, and I feel that we've  
17 been getting reasonably good Committee reports from  
18 legislation, grants and loans, and maybe not some of the  
19 other areas, particularly concerned in the Biennial Report  
20 process in terms of progress that's being made in that area.

21 In terms of Committee reports, I do want to  
22 indicate that in the appliance area, that we are running  
23 into some difficulties and given the work plan of accomplish-  
24 ing the order instituting proceedings, it will be brought  
25 back before the Commission at the next business meeting, and

1 we'll see if we can resolve it in the meantime. But we  
2 are having some problems in that area, given the existing  
3 work plan.

4 COMMISSIONER GANDARA: Let me ask a clarification,  
5 Commissioner Commons. When you raised this issue with the  
6 Executive Director, as I understood it, the resolution of  
7 it, and your request was for a written report at each  
8 business meeting. Are you asking the Commission to request  
9 of the Committees a written report, or a verbal report, or --

10 COMMISSIONER COMMONS: No, no.

11 COMMISSIONER GANDARA: I'm indifferent, I'd be  
12 glad to do that.

13 COMMISSIONER COMMONS: No, my request to the  
14 Executive Director was in his presentation at the biweekly  
15 Commission meetings that he make a verbal report, and that  
16 he give us a written monthly report as part of the staff  
17 report. I'm asking that the policy committees verbally at  
18 our business meetings give an update and identify major  
19 problem areas or decisions.

20 COMMISSIONER GANDARA: I'll be glad to do that.  
21 I've been negligent in the fuels area, but I'll be glad to  
22 do that.

23 COMMISSIONER SCHWEICKART: I'd like to consider  
24 it further. I don't have any major objection to it, but  
25 I think that we should be careful about not taking Commission

1 time on a prefunctory basis to try and report on all  
2 Committee occurrences. But I think major activities, it  
3 probably would be a good idea. I'm happy to try.

4 COMMISSIONER COMMONS: As you know, in the  
5 Appliance Committee we may have discussed 10 or 12 different  
6 items, and I'm bringing to attention I feel, the one major  
7 policy issue that the full Commission should be addressed,  
8 and the others, I feel, we can handle in the Committee and  
9 bring to the Commission at the appropriate time.

10 COMMISSIONER GANDARA: As -- according to my  
11 agenda, the only thing that's left is public comment. Is  
12 there anybody who wishes to comment from the public? Ted?

13 MR. RAUH: You want me to be a surrogate public  
14 member? I'm ready to eat lunch.

15 COMMISSIONER GANDARA: Okay. Then one last  
16 question. Do all the Commissioners want to have items in  
17 before the end of the day, have them in, or shall we  
18 recess until 5:00 o'clock for --

19 COMMISSIONER COMMONS: Well, I guess there's a  
20 question as to are we implementing that policy this week,  
21 or are we implementing it at the next Commission meeting,  
22 and I'd like to suggest as a courtesy that we implement it  
23 at the next Commission meeting, and that the Thursday noon  
24 still apply.

25 COMMISSIONER GANDARA: We're adjourned, then.

1 (Thereupon the business meeting of the California  
2 Energy Resources Conservation and Development Commission  
3 was adjourned at 1:02 p.m.)

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## 1 REPORTER'S CERTIFICATE

2  
3 THIS IS TO CERTIFY that I, Patricia A. Petrilla,  
4 Reporter, have duly reported the foregoing proceedings  
5 which were had and taken in Sacramento, California, on  
6 Wednesday, April 18, 1984, and that the foregoing pages  
7 constitute a true, complete and accurate transcription of  
8 the aforementioned proceedings.

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

12  
13 Patricia A. Petrilla

14 Reporter

15 Dated this 27th day of April, 1984.  
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