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STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION  
MAY 11 1984  
RECEIVED IN DOCKETS

BUSINESS MEETING

1516 NINTH STREET  
1st FLOOR HEARING ROOM  
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 2, 1984  
10:25 A.M.

Reported by: Patricia A. Petrilla

Video/Audio Recording Services, Inc.  
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ALSO PRESENT

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- Tom Knox, AHAM
- Robert Lucas, Carrier Corporation
- Michael Tiernan, ARI
- Dave Lewis, Lennox Industries
- Heinz Poppendiek, Geoscience Limited



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P R O C E E D I N G S

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3 CHAIRMAN IMBRECHT: Let's call the meeting to  
4 order. I apologize for our tardiness. We've had a  
5 variety of matters that had to be resolved before the  
6 meeting could begin this morning.

7 Commissioner Gandara will be delayed approximately  
8 one half of an hour, and so we will try to deal with the  
9 either noncontroversial, or less controversial matters on  
10 our agenda prior to his arrival today.

11 In order to accommodate those that are in  
12 attendance on Item No. 6 and recognizing the likelihood  
13 that that item can be resolved in a relatively short period  
14 of time, I'm going to use the prerogative of the Chair,  
15 and take up Item No. 6 as our first item of business today.

16 We will then proceed through the agenda as noted,  
17 with the exception of Item 2, we will hold until Commissioner  
18 Gandara is present, since that is an adjudicatory matter,  
19 where the Commission sits in a different role than under  
20 normal circumstances, and I think it's most important that  
21 all five members of the Commission be present for the  
22 entire presentation of that matter.

23 So, the first item we'll consider today is  
24 Commission consideration and possible acceptance of the  
25 application for certification for the Geysers 21 geothermal

1 power plant which was submitted on April 5th by Pacific  
2 Gas and Electric for an AFC for a proposed 120 megawatt  
3 plant in Lake County. Commissioner Crowley is the  
4 Presiding Member of the Committee assigned jurisdiction  
5 over that siting case, and I'll turn now to Commissioner  
6 Crowley.

7           COMMISSIONER CROWLEY: Thank you, Mr. Chairman.  
8 We received a communication from the Applicant in this  
9 matter and it would be my recommendation upon consideration  
10 of that, that we consider a motion to suspend, hold this  
11 matter in suspension until the June 20th meeting, and I  
12 would like to ask Mr. Shean to discuss that motion with  
13 the Commission at this time.

14           CHAIRMAN IMBRECHT: Fine. May I take that as a  
15 motion from yourself, a motion to suspend?

16           COMMISSIONER CROWLEY: Yes.

17           CHAIRMAN IMBRECHT: All right. So moved. Do  
18 I hear a second? Seconded by Commissioner Commons. The  
19 motion is properly before us. Mr. Shean is the Hearing  
20 Adviser on the case.

21           HEARING OFFICER SHEAN: Mr. Chairman and  
22 Commissioners, I have before me, and it has been entered  
23 into the docket, a May 1st letter of PGandE, requesting a  
24 suspension of the proceedings during the pendency of the  
25 data adequacy review. I've reviewed it, and essentially,

1 the terms requested by PGandE are those which had been  
2 reviewed by the Committee and found to be acceptable.

3 If I may, for the purposes of the motion of --  
4 for the Presiding Member, recite what those conditions are.  
5 We have a representative from PGandE, as well as the staff  
6 here who can then indicate if that's their will, their  
7 acquiescence in those conditions.

8 Those are that the matter that is before us  
9 today on today's business meeting calendar be continued  
10 to June 6th. That from today, through and including  
11 June 19th, that the proceedings be suspended. That all  
12 necessary data shall be served upon the Commission, all  
13 parties, and as to the air quality data, the Lake County  
14 Air Pollution Control District, and the ARB, by a means  
15 reasonably calculated to cause delivery on or before  
16 June 8th, 1984.

17 Further, that during the pendency of the suspension  
18 the staff may conduct public workshops relating to data  
19 adequacy. That the Executive Director shall prepare a  
20 recommendation regarding acceptance for consideration and  
21 action by the Commission at its June 20th business meeting.  
22 That that recommendation shall be issued on or before  
23 June 18th, 1984, and shall be served on all parties, the  
24 Lake County Air Pollution Control District, and the ARB.

25 Lastly, that if the AFC is accepted on June 20th,

1 1984, the deadline for the decision on the AFC shall be  
2 May 20th, 1985. Mr. Willoughby is here representing PGandE,  
3 and perhaps he can indicate whether or not he understands  
4 and accepts those stipulations, and a representative of  
5 the staff is here as well.

6 CHAIRMAN IMBRECHT: Yes, Mr. Willoughby.

7 MR. WILLOUGHBY: Mr. Chairman, members, I am  
8 Tom Willoughby representing Pacific Gas and Electric  
9 Company. I think Mr. Shean has accurately paraphrased the  
10 letter that our company sent to Commissioner Crowley, and  
11 these conditions are acceptable to the company and we  
12 respectfully ask that the suspension be approved.

13 CHAIRMAN IMBRECHT: All right, fine. Is there  
14 anyone that wishes to address the Commission on this matter?

15 MR. PEREZ: Chairman Imbrecht?

16 CHAIRMAN IMBRECHT: Yes, Mr. Perez.

17 MR. PEREZ: On behalf of Bob Reynolds, the Lake  
18 County Air Pollution Control District Officer, I would  
19 like to state that the air district is concerned with the  
20 adequacy, it looks forward to it being filed in a timely  
21 fashion, and considers that a critical element of whether  
22 or not PGandE is in fact able to conduct a successful  
23 certification schedule as described in its May 1 corres-  
24 pondence.

25 CHAIRMAN IMBRECHT: All right, thank you. Any

1 other member of the public wish to testify on Item No. 6?  
2 Fine. The motion is properly before us for suspension. Is  
3 there objection to a unanimous roll call? Hearing none,  
4 ayes 4 noes none. The suspension is granted pursuant to  
5 the conditions mentioned by the Hearing Officer.

6 The next item before us is Item No. 1, Commission  
7 consideration and possible adoption of a revision to  
8 Commission Order No. 84-0125-15 regarding the phasing out  
9 of the Los Angeles Department of Water and Power's  
10 residential cycling program. The revision to the original  
11 order would require the Department to negotiate in good  
12 faith with Southern California Edison for the sale of long-  
13 term capacity, and to report the status of such negotiations  
14 by October 1, 1984.

15 Commissioner Commons, do you wish to make a  
16 presentation on this?

17 COMMISSIONER COMMONS: Yes. Legal counsel has  
18 made, which you have a copy of, a modification to the  
19 order, and I'd like to ask Steve Cohn to present it please.

20 CHAIRMAN IMBRECHT: Yes, Mr. Cohn?

21 MR. COHN: Thank you. First of all, I wanted to  
22 be sure that LADWP has a copy of the revised order. There's  
23 a copy -- should be one --

24 MR. BYRD: We have seen it.

25 MR. COHN: The only difference between the order

1 that you have before you today, and the order which was  
2 presented on the day of our last business meeting on --  
3 I guess it was April 18th, was a change to paragraph 5.  
4 Instead of directing, as an order, LADWP to negotiate with  
5 Southern California Edison for the sale of long-term  
6 capacity, we have revised the ordering paragraph, pursuant  
7 to Section 25403 of the Public Resources Code, and now  
8 recommend that LADWP negotiate in good faith.

9 As required by that same section, LADWP is then  
10 required to review and consider this recommendation, and  
11 within six months after receiving the recommendation,  
12 reported to the Governor and the Legislature its actions  
13 and reasons therefore with respect to this recommendation.

14 We've also retained the provision that LADWP  
15 report to the Energy Commission the status of its negotia-  
16 tions no later than October 1, 1984. So that is the only  
17 change made to the order that was before you at the last  
18 business meeting.

19 CHAIRMAN IMBRECHT: All right, fine. Commissioner  
20 Commons, do you have any further comments? Mr. Byrd from  
21 the Department?

22 MR. BYRD: Thank you, Mr. Chairman. Good morning.  
23 My name is W. C. Byrd and I'm a representative from the Los  
24 Angeles Department of Water and Power, and I have with me  
25 here today Mr. Dennis Whitney. Mr. Whitney is our engineer

1 of supply utilization and conservation planning, and both  
2 Mr. Whitney and I are here to respond to the agenda item,  
3 and we're available for questions. We have no prepared  
4 presentation.

5 COMMISSIONER COMMONS: I'm sorry, Mr. Byrd, I  
6 didn't hear your comments, the Public Adviser was addressing  
7 me.

8 MR. BYRD: I said we are here to answer questions,  
9 we have no prepared statement.

10 MR. WHITNEY: I might point out that the  
11 Department has no objection to the amendment, although we  
12 don't really feel that it's necessary because we are in  
13 negotiations with Southern California Edison, but we have  
14 no objections to the amendment at all.

15 CHAIRMAN IMBRECHT: All right. Do I hear a  
16 motion? Moved by Commissioner Commons, seconded by  
17 Commissioner Schweickart that the revision to the Commission  
18 order be adopted. Is there anyone -- any other member of  
19 the public who wishes to testify on this item? Okay,  
20 hearing none, is there objection to a unanimous roll call?  
21 Hearing none, ayes 4, noes none, the revision is adopted.

22 We'll now turn to Item No. 5. Items 2, 3, and  
23 4, as a practical matter, should include the participation  
24 of Commissioner Gandara, if possible, and so we'll then  
25 turn to Item No. 5, which is a staff briefing and

1 Commission consideration and possible approval of the  
2 Conservation Committee's resolution which would authorize  
3 implementation of revised insulation quality testing and  
4 enforcement programs recommended by the Commission staff.  
5 Shall we begin with Commissioner Schweickart?

6 COMMISSIONER SCHWEICKART: Mr. Chairman, let me  
7 indicate for the benefit of the Commission that in  
8 reviewing a number of elements of our insulation program,  
9 and in particular, the results of testing over the past  
10 several months, the Committee requested that the staff  
11 review and revise its procedures on insulation quality  
12 testing, and present a revised program to the Commission  
13 for both information and its support in the form of the  
14 subsequent resolution.

15 So this matter was not directed by the Committee  
16 per se in terms of its substance, but rather directed the  
17 staff to review and present its proposed program of  
18 insulation quality standards testing to the Commission.

19 CHAIRMAN IMBRECHT: Fine, Mr. Ward, on behalf  
20 of the staff?

21 EXECUTIVE DIRECTOR WARD: Mr. Pennington from the  
22 Conservation Division is available to give you a little  
23 broader summary and answer any questions that you have.

24 MR. PENNINGTON: In conjunction with the Policy  
25 Committee, staff has recently become quite concerned about

1 the fact that insulation products are failing to meet  
2 Energy Commission standards and are being sold in California.  
3 The testing that we've conducted through our contract with  
4 the Bureau of Home Furnishings during this fiscal year  
5 indicate that approximately one-third of all tested  
6 products are failing to meet the Energy Commission's  
7 surface burning test.

8 Over 10 percent of tests products are failing to  
9 meet the Energy Commission's smouldering test. Approxi-  
10 mately 20 percent of the tested products are failing to  
11 meet the Energy Commission's tests for R-value. Actually,  
12 only about one-fourth of all manufacturers are consistently  
13 meeting the requirements of all tests.

14 There's also evidence that the incidence of  
15 reported fires where insulation is determined to be the  
16 material that is first ignited is on the increase. In  
17 conjunction with the Policy Committee, staff recommends  
18 approval of a revised insulation sampling and testing  
19 procedure which standardizes and expedites Commission  
20 follow-up of failed tests.

21 The key features of this revised procedure are  
22 regular periodic testing of all products, automatic increase  
23 in the frequency of testing for products that fail, and  
24 an automatic initiation of a process to consider decertifi-  
25 cation of products that fail during the increased frequency

1 period.

2 In general, we think that these procedures are  
3 necessary, that there may be a very serious public health  
4 and safety situation existing currently, and we recommend  
5 Commission adoption of these procedures.

6 CHAIRMAN IMBRECHT: The three facilities that  
7 are noted in the memorandum from the Executive Director,  
8 would they all conduct the same type of tests, or would  
9 they conduct various aspects of the total test?

10 MR. PENNINGTON: No. We need all three of these  
11 testing facilities to have a comprehensive program to  
12 cover all insulation products. We currently have a  
13 contract with the Department of Consumer Affairs, Bureau  
14 of Home Furnishings which has the capability to do testing  
15 for cellulose in particular.

16 In addition, we are proposing additional contracts  
17 that will be up on the May 16th business meeting agenda  
18 for tests -- for contracts with United States Testing, and  
19 Underwriter's Laboratories which will increase the Commis-  
20 sion's capability to test other kinds of insulation products.

21 So we feel that those two contracts are important  
22 additions to our program that currently don't exist.

23 CHAIRMAN IMBRECHT: All right, fine. Are there  
24 any further questions from staff? Any member of the public  
25 wish to testify on this matter?

1           COMMISSIONER SCHWEICKART: After that, Mr.  
2 Chairman, I would move the resolution which reflects in  
3 the "Whereas's" the current situation, and I'll read the  
4 "Resolved" clause, "that the Commission approves the  
5 staff testing and enforcement program, and authorizes the  
6 Executive Director to commence such testing and enforcement  
7 forthwith", and I will move that resolution.

8           CHAIRMAN IMBRECHT: All right, fine. Moved by  
9 Commissioner Schweickart. Do I hear a second? Seconded  
10 by Commissioner Crowley. Is there objection to a unanimous  
11 roll call to adopt the proposed testing procedures proposed  
12 by the staff of the Commission? Hearing none, ayes 5,  
13 noes none, the new test procedures are adopted as  
14 Commission policy.

15                   (Agenda Item No. 2, Under Separate Cover.)

16                   (Whereupon the morning session of the business  
17 meeting of the California Energy Resources Conservation and  
18 Development Commission was adjourned for lunch at 12:30 p.m.)

19                                   --o0o--

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AFTERNOON SESSION

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3 CHAIRMAN IMBRECHT: We will reconvene the meeting.  
4 (Agenda Item No. 2, Under Separate Cover.)

5 CHAIRMAN IMBRECHT: The next item to come before  
6 the Commission is Item No. 3, Commission --

7 MR. PEREZ: Chairman Imbrecht?

8 CHAIRMAN IMBRECHT: Yes, Mr. Perez.

9 MR. PEREZ: If I could interrupt real quickly,  
10 partly out of courtesy for PGandE's representative, we  
11 do have two comments that were received late this morning  
12 with respect to the Commission's acceptance of the  
13 suspension on Geysers Unit 21.

14 I've taken the liberty of docketing them for  
15 purposes of the record, but am not submitting them for  
16 purposes of the evidentiary consideration by the Commission.  
17 A written statement of the Lake County Air Pollution  
18 Control District's position which I paraphrased this  
19 morning, and a written statement by the Cobb Valley  
20 Residents, signed by Hamilton Hess.

21 Both documents are one page in form, and each are  
22 dated May 2nd, 1984.

23 CHAIRMAN IMBRECHT: And you ask that we are  
24 adopting them --

25 MR. PEREZ: Just noting the fact that they are

1 being put in the docket record today. They're not being  
2 offered for your reconsideration in your decision to  
3 accept the motion for suspension submitted by PGandE  
4 this morning.

5 CHAIRMAN IMBRECHT: Fine. Without objection, we  
6 will accept those documents as a part of Item No. 6 which  
7 we considered earlier.

8 Excuse me for just one moment.

9 (Pause)

10 CHAIRMAN IMBRECHT: We're going to take a 60  
11 second recess.)

12 (Brief recess.)

13 CHAIRMAN IMBRECHT: We'll call the meeting back  
14 to order. The next item before us, Commission considera-  
15 tion and possible adoption of the revision of the order  
16 instituting hearings in the matter of the amendments to the  
17 California Appliance Efficiency Standards for refrigerators,  
18 refrigerator/freezers, freezers, room air conditioners, and  
19 central air conditioners, to delete the requirement for  
20 staff to write a report which evaluates alternatives to  
21 standards for refrigerators and air conditioners.

22 Commissioner Commons?

23 COMMISSIONER COMMONS: Yes. What I'd like to  
24 do is to read what we are proposing, and then turn it back  
25 to you, Mr. Chairman, to listen to those people who came to

1 discuss the matter.

2           The Committee is proposing that we delete the  
3 third sentence on page 3, Section 5, which states "the  
4 staff shall also prepare a report for refrigerators, and  
5 another report for air conditioners which evaluate alter-  
6 natives to the proposed standards", and in place,  
7 substitute the following:

8           "Any interested person may submit proposals on  
9 how to achieve cost-effective energy conservation from  
10 appliances. The Commission directs the Committee to  
11 evaluate and consider these proposals and to recommend to  
12 the Commission, as part of the rulemaking process, a plan  
13 for achieving energy conservation from appliances."

14           CHAIRMAN IMBRECHT: Do you have a written copy of  
15 that text?

16           COMMISSIONER COMMONS: It was supposed to have  
17 been put in your books, was it not?

18           COMMISSIONER SCHWEICKART: I have it as a  
19 separate piece of paper.

20           COMMISSIONER COMMONS: It was distributed this  
21 morning by Josie to all Commissioners.

22           CHAIRMAN IMBRECHT: I don't seem to have a copy.  
23 Why don't we go ahead and proceed -- I can share --

24           COMMISSIONER CROWLEY: I did get the proposed  
25 amendments.

1 CHAIRMAN IMBRECHT: Okay, I can look at Commis-  
2 sioner Schweickart's copy, that's okay. All right, fine.  
3 Do you wish to make that in the form of a motion,  
4 Commissioner?

5 COMMISSIONER COMMONS: Yes.

6 CHAIRMAN IMBRECHT: Moved by Commissioner Commons,  
7 is there a second?

8 COMMISSIONER COMMONS: Well, isn't it appropriate  
9 that before we make a motion that we hear the discussion?

10 COMMISSIONER SCHWEICKART: For the sake of having  
11 it before us, I'll second the motion.

12 CHAIRMAN IMBRECHT: Generally speaking, this  
13 type of item, I think we do need a motion to properly  
14 frame it, and then we hear discussion, otherwise there's  
15 no point of discussion. But we do have a second now  
16 by Commissioner Schweickart. The matter is now before us.  
17 I don't believe this is an item that requires staff  
18 response at this juncture, so I guess we will call upon  
19 those interested parties that wish to offer testimony.

20 First let me recognize Mr. Jim Wolf, Vice  
21 President of Government Relations for the Trane Company.  
22 Mr. Wolf?

23 MR. WOLF: Thank you very much, Commissioner  
24 Imbrecht. I was reflecting as I was sitting there, how  
25 long it's been since I've taken this opportunity to speak

1 to the Commission, and I believe I came to the conclusion  
2 that there are two members on the Commission that I haven't  
3 had an opportunity to address on any issues in the past.  
4 So please bear with me if I might be discussing some things  
5 that would be old history, or in terms of what I consider  
6 information relevant to the issue on the industry that the  
7 other Commissioners may be well informed on.

8 I think it would be helpful on this issue in  
9 particular to state that the first item is that -- who  
10 I represent. I represent the Trane Company. We're a  
11 manufacturer of central air conditioning, furnaces, heat  
12 pumps, and package terminal air conditioners, and I wanted  
13 to address my comments today only on central air conditioning  
14 as it affects the proposal.

15 CHAIRMAN IMBRECHT: Just exactly who are the  
16 two Commissioners that you haven't addressed before?

17 MR. WOLF: I don't believe I've appeared before  
18 the Commission, sir, while you've been Chairman. I believe  
19 the last time I --

20 CHAIRMAN IMBRECHT: I find that hard to believe  
21 since I've seen a great deal of you, but --

22 (Laughter)

23 CHAIRMAN IMBRECHT: -- but you might be right.  
24 In any case, that's what I was trying to figure out.

25 MR. WOLF: I believe the last time I appeared --

1 COMMISSIONER COMMONS: It's not before you, it's  
2 not before me, it's probably one of three.

3 CHAIRMAN IMBRECHT: Please go ahead.

4 MR. WOLF: Yeah. Based on my persuasiveness  
5 in the past, I thought maybe it would be better to have a  
6 few informal meetings rather than just appearing before  
7 the Commission.

8 COMMISSIONER GANDARA: As with other things, I  
9 should note, Mr. Wolf's memory doesn't serve him correctly.  
10 He has appeared before you.

11 CHAIRMAN IMBRECHT: Yeah, I thought so as well,  
12 but --

13 COMMISSIONER SCHWEICKART: Get him while he's  
14 red.

15 MR. WOLF: Well, gee, it must have been another  
16 one of those cases when -- yeah, I'm very red.

17 I would like to address specifically the central  
18 air conditioning issue, and in the context of that, as we  
19 look at the original amendment that would delete the  
20 requirement for a report on alternatives, and then consider  
21 the new proposal that's on the floor, let me say that I  
22 have a basic difference of opinion in where the responsi-  
23 bility lies on who looks at alternatives.

24 It's our company's feeling that the responsibility  
25 lies with the agency, with the Commission that is regulating

1 our industry to evaluate alternatives, to come up with the  
2 best ways of saving energy. That after completing that  
3 evaluation, then if it's appropriate to move to a standard  
4 of minimum level of operating efficiency, then that  
5 decision has been justified by the record.

6           Apparently this motion that was offered would  
7 throw that responsibility on to the industry rather than  
8 the Commission. First of all, while I have no objection  
9 to the motion in the context of the industry doing that,  
10 I do have a difference of opinion in where the responsibility  
11 lies.

12           I want to explain why I have that difference of  
13 opinion, and why for central air conditioning I think  
14 that this study, that a study be completed, is very  
15 critical to the future of how we proceed to get energy  
16 conservation with central air conditioners.

17           First of all, I think a central air conditioner  
18 is a very unique item compared with other appliances. There  
19 are other appliances that are being regulated today that  
20 are of the same general category, but there are many that  
21 are not.

22           For example, to divide it into a couple of  
23 categories, when you look at appliances as regulated by  
24 the Commission, you have those appliances that you can buy  
25 in your appliance store, off the shelf, refrigerator, a

1 room air conditioner, for example, whereas a central air  
2 conditioner is more commonly installed by a contractor who  
3 is putting that into a system to provide a function of  
4 cooling, or providing environmental control to a building,  
5 so it becomes an integral part of a building.

6 By that very nature, then, how that product  
7 operates, what efficiency, how it performs in its energy  
8 use is determined not by the fact that it operates on  
9 electricity, and by the fact that it's an air conditioner,  
10 but by the fact that what happens inside the building, and  
11 how the building was originally designed is very critical,  
12 and that's covered very effectively by your building code  
13 standards, by the way.

14 So, I think it's important to understand that  
15 for central air conditioners, we're talking about an item  
16 that becomes part of the system in a building, and based  
17 on how many people you have in that building, what machines  
18 you have, typewriters, computers, whatever, the load --  
19 how many -- how much it runs, how much energy it uses will  
20 be affected.

21 The external environment, in other words, the  
22 climate, will have a very key effect on how often it runs  
23 and how much energy it uses, and by the fact that it's  
24 installed in a system, it's more sensitive to those  
25 items, it's more sensitive to how it's installed, and the

1 potential of energy conservation that will be derived in  
2 an appliance standard that's not part of the building code  
3 will be minimized compared -- or reduced, compared with  
4 what you would have with a refrigerator.

5 For example, with the central air conditioning,  
6 since it's already being regulated in the building standards  
7 of new construction, then as those building standards  
8 affect a central air conditioner, you're already deriving  
9 a certain amount of efficiency improvement.

10 A central air conditioner is very complex. You  
11 have all types of central air conditioners, and I won't  
12 bore you with all the details, but you have -- a typical  
13 system which is made up of two components, one outside and  
14 one inside as one type of air conditioner. There are  
15 several varieties of that, some where the inside unit is a  
16 furnace with another coil, sometimes where it's a combined  
17 package unit, all kinds of heating components that go on  
18 it, all kinds of different performance characteristics.

19 You also have a central air conditioner that's  
20 packaged like a room air conditioner, but it's much larger.  
21 So a central air conditioner is one of the most complex  
22 appliances that you're regulating, if not the most complex,  
23 and it's unique that the purchaser is not looking for how  
24 attractive it is, or how convenient it is, or whether it  
25 has an ice maker, the consumer is looking for one thing,

1 the consumer is looking for comfort. They're not too  
2 concerned about appearance.

3           Therefore, their signal back on that product in  
4 use is their utility bill. Since an air conditioner is a  
5 fairly significant energy user, it's fairly easy to provide  
6 a pricing signal to the consumer to increase prices of  
7 energy or other incentives.

8           So when you consider that relationship, and the  
9 difference in the behavior of the product compared to  
10 others in actual operation, it affects very significantly  
11 the opportunity for energy conservation. Therefore, I  
12 think it also offers a more significant opportunity to  
13 do things other than setting a minimum level of efficiency  
14 that may or may not provide as much or more energy savings,  
15 which is our goal.

16           I think it's important at this point, then, to  
17 look and see historically what has happened with central  
18 air conditioners, and to try to relate how the industry  
19 has responded to changes in the environment of that market,  
20 and based on what regulations have been in effect  
21 throughout the United States, how that regulatory environment  
22 has affected the central air conditioner.

23           If you look at the product offerings that have  
24 been available over time for central air conditioners,  
25 65,000 and below, and I apologize that I don't have a graph

1 for you. I'll be glad to provide it later. I called the  
2 office and got it off of a graph that I have, that I failed  
3 to bring to you.

4 I simply have in front of me a chart that shows  
5 on one axis the percent and on the other axis the year.  
6 What I have is information that shows that one given period  
7 of time, based on going through the ARI Directory which  
8 lists over 90 percent of the products available in the  
9 United States, what units are available for central air  
10 conditioning.

11 What you find is in the second half of 1975,  
12 if you start at the level of an 8 SEER, which is the  
13 current level which is in effect for central air conditioners  
14 in the State of California, you find the second half of  
15 '75 that there was 7 percent, that's the second half of  
16 '75, 7 percent of the units available to be purchased were  
17 8 or above.

18 The first half of '77, 15.9 percent of the units  
19 available, models listed in the directory, were above 8,  
20 8 or above. The first half of '80, 31.4; second half of  
21 '82, 73.4; and the first half of '84, 81.4. Very  
22 interesting.

23 The question becomes, okay, it's available, is  
24 it being bought. We're talking across the United States  
25 now, and what's being bought, because I do not have

1 California data, neither for our company, nor for the  
2 industry. If you look across the United States, you find,  
3 using this same type of criteria, that in 1981, 44.6  
4 percent of the air conditioners purchased were 8 or above.  
5 In 1982, 75.6. In 1983, 82.5.

6 Remarkably, if you take the 1981 data, I have  
7 the first half 1980, so this would be a little bit dated,  
8 and compare it to the 1981 shipment, in other words, what  
9 was available versus what's shipped, we're looking at 31  
10 versus 44.

11 If you look in 1982, take 1982 the second half,  
12 there was 73.6 percent available that was at that level,  
13 75.6 percent of what was purchased was purchased at that  
14 level. If you look in 1983, 81 percent of what was  
15 available was at that level, and 82.5 percent of what was  
16 purchased was purchased at that level.

17 So across the United States, it's rather  
18 interesting to me to see this direct correlation between  
19 product availability and purchase.

20 Now, the question becomes, why is that happening?  
21 Well, it's my conclusion after extensive study, and I'll  
22 be glad to provide this report, if it's something that you  
23 feel is relevant later, that the reason it's happening is  
24 the combination of several forces.

25 Number one is the product is being made available,

1 and is the most cost-effective product that can be  
2 purchased, regardless of its efficiency, that's why those  
3 levels are being -- they're being purchased. That has  
4 occurred because of several factors.

5           Number one is the price of energy has gone up,  
6 and people are more aware. Number two, there are incentive  
7 programs that are offered by utilities that have encouraged  
8 people to buy more efficient equipment than they would if  
9 they weren't available, and has encouraged people that  
10 rather than repairing an old, less efficient unit, they  
11 have bought a new, more efficient unit.

12           So we brought that old inefficient, or less  
13 efficient unit out of operation and replaced it with  
14 something that uses less energy. Plus regulations, clearly  
15 regulations have had an effect.

16           The regulations that have had the most effect are  
17 the building codes. If you look at the historical record  
18 of the implementation of building codes throughout the  
19 United States you'll find that based on ASHRAE Standard 90,  
20 building codes have been adopted in over 44 states, some  
21 derivative of that standard, either by BOCA, or some other  
22 model code, using that standard written in code form.

23           You will see that those ASHRAE standards were  
24 proposed with enough lead time that the manufacturers could  
25 anticipate what they needed. As a result, what they did

1 is they made those products available, and you look at  
2 the building code scenario, and you see that you have had  
3 the product, shipment weighted average go from 1976 of  
4 7.03 to an 8.4 today. You'll see that the building code  
5 standard has gone from 6.1 to 7.8, you're, of course, at  
6 8 in terms of your minimum appliance standard.

7 Now, truly there's been some affect by the  
8 California minimum appliance standard in California, but  
9 there's been a lot of affect in other places based on the  
10 building codes. So, it's my point, then, to say in the  
11 central air conditioning market that since over half of the  
12 products that are purchased go into new construction, and  
13 that's affected by your new construction building code,  
14 that that has been the driving force of two things: the  
15 manufacturer making the product available, and because it's  
16 available, it's been purchased.

17 My conclusion is, then, that a combination of  
18 what happens in the marketplace naturally, and can be  
19 stimulated, and the building code standard that's driving  
20 new construction, has been a positive force in energy  
21 conservation.

22 Now, my recommendations, then, are that the  
23 Commission retain an objective of evaluating alternatives  
24 for central air conditioning, and that strong consideration  
25 be given to alternatives prior to moving to prescriptive

1 standards, or minimum levels of operation of efficiency.

2 That concludes my remarks.

3 CHAIRMAN IMBRECHT: Commissioner Schweickart.

4 COMMISSIONER SCHWEICKART: Yes. I'll make my  
5 little cross of gold speech here with our old friend  
6 Mr. Wolf on the dias. I do it not simply to make a  
7 statement of my own position, but also to elicit a little  
8 more clarity on the part of the people who may want to  
9 testify or comment to us on what it is we're really saying.

10 I object very strongly, and I've expressed this  
11 explicitly to Commissioner Commons, I object very strongly  
12 to the idea of -- and the use of the word "alternatives".

13 In supporting this the first time around, it was  
14 very clear in my mind, whether or not in the record, that  
15 what we were talking about was incentives to help raise  
16 the efficiency of the upper end of the product line of  
17 appliances, in this particular instance of air conditioners  
18 and refrigerators, but frankly of anything, and I think  
19 that that's entirely appropriate, and I totally support it.

20 On the other hand, I do not consider it legitimate  
21 to refer to that as an alternative. That's an incentive  
22 which I believe we should be supportive of, and look at,  
23 and analyze, or do whatever. But the use of the word  
24 alternative opens up and clearly is being used by many  
25 people as alternative rather than, or in lieu of standards.

1 I do not support that, and I would like people  
2 to address whether that's what they mean when they talk  
3 about alternatives, and furthermore, I'd like people to --  
4 if that is not what they mean, then I would like people  
5 to use the word incentive and not alternative.

6 I would indicate that the Public Resources Code  
7 specifically requires the Commission to establish by  
8 regulation, standards for minimum levels of operating  
9 efficiency so that we have that as a statutory obligation  
10 to set minimum levels of efficiency.

11 I hope what we're talking about, all together,  
12 is in addition to that, looking at and supporting incentives  
13 to aid in lifting the overall performance, rather than  
14 simply chopping off the lower inefficient wing of the  
15 total spectrum.

16 So, if you would care to comment, Mr. Wolf.

17 MR. WOLF: I would appreciate, Commissioner, the  
18 opportunity to address that. I certainly agree with you  
19 that it's proper to look at incentives. I meant alternatives  
20 when I said alternatives, from your definition, in that I  
21 feel not necessarily in my saying that alternatives would  
22 replace standards in all cases. I said here, for central  
23 air conditioning, it is my belief that the approach you've  
24 used in the building code area where you've given some  
25 opportunity for the marketplace to work through selection of

1 options would be appropriate also in future regulations of  
2 central air conditioning, whether that option is labeling,  
3 consumer education, some kind of a target program, a  
4 minimum level of operating efficiency, an incentive by  
5 utilities, a rebate, trade-in by manufacturers, or a  
6 combination thereof of some of those, I think is yet to  
7 be decided in that we don't have a lot of history in  
8 testing these.

9 CHAIRMAN IMBRECHT: May I ask a slight clarifying  
10 question here as well. I mean, I understand what the  
11 statute says, we're required to set minimum efficiency  
12 standards. We have set minimum efficiency standards for  
13 each of these classes of appliances, and I'm wondering if  
14 you object, Commissioner Schweickart, to a suggestion that  
15 there might be an alternative to an increase, because what's  
16 really before us, as I understand it, is a proposal that  
17 we increase those standards, or those minimum standards, as  
18 opposed to whether we followed our statutory obligation  
19 to set standards in the first place.

20 I see a distinction there in the context of  
21 suggesting that there may be or should be a consideration  
22 of alternatives in lieu of increasing those minimum  
23 efficiency standards as opposed to in lieu of the standards  
24 themselves.

25 COMMISSIONER SCHWEICKART: Well, let me --

1 this is to some extent a matter of --

2 CHAIRMAN IMBRECHT: You follow the difference  
3 in my --

4 COMMISSIONER SCHWEICKART: I clearly do. It is to  
5 some extent a matter of semantics. But I think there is a  
6 a real message in the way in which these things are said.  
7 I am perfectly ready to reject a set of standards which I  
8 think is inappropriate in terms of establishing a minimum  
9 level of energy efficiency for appliances.

10 I have no problem with rejecting an inappropriate  
11 standard, and at the same time, I support the consideration  
12 by the Commission of incentives to work with the industry  
13 in raising the performance level across the board, rather  
14 than just lopping off the lower end. I think that that's  
15 something which we have probably looked too little at, and  
16 I quite agree with Jim, and what he's saying in his  
17 testimony, that we should, in fact, in some sense, that we  
18 do have that obligation.

19 It's not quite as specific, frankly, as the  
20 obligation to set minimum standards. The reality that  
21 we're dealing with -- however, let me just, in addressing  
22 your question, Mr. Chairman, when in a specific order we are  
23 talking about the -- in this context, a petition from a  
24 specific party to raise the minimum level of standards,  
25 and incentives are also of interest to the industry, I have

1 no problem with them, provided they're dealt with that way.

2           Where we use, however, in that specific context,  
3 the word "alternative", then that presumes that we cannot  
4 and will not, or it is not appropriate to do both, and I  
5 firmly reject that in my own mind.

6           So I think it -- I have no problem with dealing  
7 with standards, as standards on whether or not they are  
8 appropriate at some new level, I am totally open on that  
9 based on the record that we'll be developing, and I support  
10 looking at incentives.

11           But I do not see it as either/or, and it is  
12 impliedly either/or when one uses the word alternative.

13           CHAIRMAN IMBRECHT: Okay. Do you see it as  
14 potentially either/or without predisposing the issue by  
15 virtue of utilization of the word alternative, because I  
16 understand the --

17           COMMISSIONER SCHWEICKART: Well, my answer is no,  
18 because fundamentally, we -- let me put it this way. If  
19 we were to provide the same average energy saving through  
20 only incentives, and compare that with the average energy  
21 -- an equal energy saving through only lopping off the  
22 bottom half of the marketplace, so that the energy conse-  
23 quence is the same, there is a substantial difference in  
24 the world, because we end up with a lot of low income and  
25 poor people being stuck with very -- with low cost, and very

1 low performing appliances paying out over the life cycle,  
2 so that we end up with social and other equity issues which  
3 are not there if we combine the two.

4 So that there are substantial differences in  
5 what happens in the world, even given the same level of  
6 overall energy savings, and those are considerations which  
7 we have an obligation to look at as well.

8 COMMISSIONER GANDARA: And those lower income  
9 people paying for the incentives for the rebates for the  
10 other ratepayers who avail themselves of this.

11 COMMISSIONER SCHWEICKART: So I don't have a  
12 problem in looking at both, but I think we need to look at  
13 both in order to properly balance some of these --

14 CHAIRMAN IMBRECHT: I would just point out that  
15 incentives are not necessarily rebates in the context of  
16 what -- Commissioner Gandara, I --

17 (Pause)

18 CHAIRMAN IMBRECHT: I would just say, I would  
19 just note that it seems to me there are a variety of  
20 incentives, and for purposes of discussion, call them  
21 incentives, that are substantially different than the  
22 rebate programs that we have thought of as the only  
23 incentive or the only types of incentive programs that have  
24 existed to date.

25 I can think of a wide variety of other -- I was

1 about to say alternatives, and I caught myself.

2 (Laughter)

3 CHAIRMAN IMBRECHT: I can think of a wide variety  
4 of options, let me put it that way --

5 COMMISSIONER COMMONS: We have an alternative to  
6 an incentive.

7 MR. WOLF: Options, do you like options.

8 CHAIRMAN IMBRECHT: Of options that, you know,  
9 would not require or include a subsidy by one part of the  
10 citizenry versus another part of the citizenry. One that  
11 comes to mind is an aggressive marketing approach by all  
12 the companies where they would give out and provide some  
13 type of a trade-in allowance, or something, on all new  
14 higher efficiency items that they would be selling in the  
15 next --

16 COMMISSIONER GANDARA: I'd be happy to put a  
17 labeling program on central air conditioners.

18 MR. WOLF: Sir?

19 COMMISSIONER GANDARA: I'd be happy for a labeling  
20 program on central air conditioners.

21 MR. WOLF: We are going to have one very soon  
22 from FTC, I understand.

23 COMMISSIONER GANDARA: Good.

24 MR. WOLF: I think anything that can be done that  
25 doesn't disrupt, but rather stimulates the marketplace to

1 work effectively, certainly takes us beyond what we can  
2 do with the setting of floors.

3 CHAIRMAN IMBRECHT: You know, I like labels too.

4 COMMISSIONER GANDARA: But isn't it true right  
5 now, Mr. Wolf, that if I go buy a central air conditioner,  
6 first of all, it's unlikely that I as the consumer, end  
7 user, will buy it. I mean most of the central air  
8 conditioners are bought by, you know, builders, installers,  
9 and so forth. So I mean, there's a little barrier in the  
10 marketplace there.

11 But also, if I go buy a central air conditioner,  
12 or a central furnace, I don't see a label like I do on  
13 the refrigerators that says that this will cost me so much  
14 a year because of the complexity that you talked about,  
15 and that in fact, I would find no such information at the  
16 point of sale, that I would have to ask the salesman,  
17 you know, for the specifications of that furnace, and/or  
18 central air conditioner, and if I'm lucky, and he knows  
19 about it, he will give me a little booklet that will  
20 contain a number of complicated curves, that if I'm lucky  
21 enough to be able to understand those, I might be able  
22 to figure out some relative efficiencies for the application  
23 of that particular product.

24 That is part of the problem of the central air  
25 conditioner, you know, you have two substantial barriers to

1 the function in the marketplace there, one, the user doesn't  
2 buy it, secondly, even if he were, he's unlikely to really  
3 understand that information that's being provided to him.

4 MR. WOLF: Well, let me clarify what I think I  
5 heard you say. In half of the cases, or approximately half  
6 of the cases, I believe you're correct in saying that the  
7 ultimate user really doesn't get to be party to that input  
8 because the builder or somebody else makes that decision.  
9 That's your new construction market.

10 You've done a fairly good job of handling that  
11 in your building code area, and so, likewise, the consumer  
12 doesn't get any opportunity to optimize, based on his  
13 climatic zone, what equipment he gets. He knows he's going  
14 to get a certain level, because there's a minimum allowed,  
15 the builder makes that decision, you set a floor to ensure  
16 that your building meets a goal, and part of that goal,  
17 depending on what design path he uses will be a certain  
18 efficiency of equipment.

19 That's taken care of adequately by the building  
20 code, and we put that aside, and we have approximately half  
21 of the market. That market is the after market, the add-on  
22 to air conditioning. What happens is that's a situation  
23 where somebody is buying a unit to add to an existing  
24 building that they own, is replacing an existing unit, or  
25 replacing, or for the first time putting in a whole new

1 system.

2           Those people have a direct contact with the  
3 seller of equipment, or installing contractor/dealer. Now,  
4 where there are incentives available, one example, a  
5 utility incentive program, those will be marketed very  
6 aggressively.

7           If there were an option program available in  
8 California where I as a manufacturer could either meet  
9 your minimum level, or do something else to sell efficient  
10 equipment where possible, and where it isn't possible,  
11 maybe sell something not quite so efficient, and then prove  
12 to you that I had met your goal, then I would market that.

13           But as long as I have to meet a minimum level  
14 that's higher than everybody else's following through the  
15 country, I will market those products at that minimum level,  
16 I will not put forth any extra effort to sell the  
17 consumer beyond, you know, normal marketing, and there will  
18 not be much stimulus.

19           So my point was that these options, alternatives,  
20 incentives, whatever, that if you can do something that  
21 encourages the marketer of the products, our dealers, or  
22 the manufacturers to communicate with the consumer the  
23 very information that is highly technical that you're  
24 talking about, and you're right, it is highly technical,  
25 then the consumer will be stimulated in the marketplace

1 as he should be. He will be sold a higher level.

2 We have found where there are utility incentive  
3 programs, the cluster of the high efficient air conditioners  
4 sold in this country are where there are utility incentive  
5 programs, and that's because there's an emphasis, a  
6 communication, an education, plus a stimulus, the consumer  
7 thinks he's getting a good deal, and he is.

8 So what we need to do is to stimulate the  
9 market forces to work naturally, to get the consumer  
10 interested, to buying on a cost-effective basis, to  
11 stimulate the manufacturer to sell. Labeling, or making  
12 the information available in whatever form it is is part  
13 of that, obviously, giving the information, you've got  
14 to give the information.

15 The trouble with the central air conditioner,  
16 it's very complex. You can't go in and buy it like a  
17 refrigerator, and you look, and you get a reasonably  
18 representative number because the refrigerator runs 24  
19 hours a day, and it plugs into the wall.

20 The central air conditioner fits into a system,  
21 it doesn't operate that way, the contractor has to  
22 evaluate your building, and determine what it is, and if  
23 he doesn't do that, then you've gotten misinformation.

24 CHAIRMAN IMBRECHT: Okay. We have a number of  
25 people that need to testify on this. I think we understand

1 your point of view, Mr. Wolf.

2 MR. WOLF: Thank you very much for the opportunity,  
3 and I apologize for taking so much time, as usual, the  
4 situation is necessary for me to do that.

5 CHAIRMAN IMBRECHT: Well, even for friends, in  
6 the future we may have a difficulty with providing  
7 unlimited time.

8 COMMISSIONER COMMONS: Can you believe that he  
9 and I often have to be in the same meetings together?  
10 We've never finished early.

11 CHAIRMAN IMBRECHT: I think I have exercised very  
12 good discretion by not attending those meetings in that  
13 case.

14 (Laughter)

15 CHAIRMAN IMBRECHT: Next, Mr. Tom Knox,  
16 representing the Association of Home Appliance Manufacturers,  
17 Mr. Knox.

18 MR. KNOX: Good afternoon, Commissioners, I'll  
19 be brief. When we read the initial order which required  
20 the staff to take a lead in developing alternatives, we  
21 read it and Commissioner Schweickart in the all encompassing  
22 sense suggested by the Chairman's question, that the staff  
23 would develop a report on alternatives, the Committee and  
24 ultimately the full Commission would look at those  
25 alternatives to standards for the purpose of ascertaining

1 whether there were programs there that might be pursued in  
2 addition to an increase in standards, or in lieu of an  
3 increase in standards, and that we would, having looked at  
4 those, proceed, based on whatever the study disclosed.

5 We still think that it's the responsibility of  
6 the Commission and the Commission staff to take the lead  
7 on that. We expect to be active in the process, either  
8 way, we certainly intend to cooperate with the Committee  
9 in the event that Commissioner Commons' amendment is  
10 approved.

11 But we think it's the responsibility of the  
12 Commission staff to take the lead. I know that you have  
13 manpower problems at this point. We understand that you  
14 have more to do than the staff can handle within the time  
15 frame that you've set, and we think it's appropriate,  
16 under the circumstances, to slit the time, if that's  
17 necessary.

18 As I say, we'll cooperate, regardless of what  
19 you do today, but we oppose, we do not approve of the  
20 amendments offered by Commissioner Commons.

21 CHAIRMAN IMBRECHT: Commissioner Crowley knows  
22 that we have person power problems. Excuse me. I just  
23 want to make it clear as you paraphrase what I was  
24 suggesting by virtue of my question that I was not  
25 suggesting alternatives in lieu of existing standards, and

1 that's the one last option you didn't --

2 MR. KNOX: I'm sorry, Commissioner, nor did I mean  
3 -- I didn't mean to imply it was a possibility, and I  
4 didn't mean to imply that you were doing it. I was saying --

5 CHAIRMAN IMBRECHT: Nor do I think the original  
6 order suggested that, frankly.

7 MR. KNOX: In lieu of an increase in standards  
8 is what I meant to say, and that wasn't clear.

9 CHAIRMAN IMBRECHT: Thank you. Okay, any  
10 questions of Mr. Knox? Thank you very much.

11 MR. KNOX: Thank you Commissioners.

12 CHAIRMAN IMBRECHT: Mr. Robert Lucas representing  
13 the Carrier Corporation.

14 MR. LUCAS: Thank you for this opportunity. I've  
15 been asked to make a short statement for the record just  
16 to reiterate Carrier's position relative to standards and  
17 incentive program.

18 Carrier's position is that there is definitely  
19 a role for standards as well as for an incentive program.  
20 That standards by establishing a floor for minimum  
21 efficiency products operate immediately to influence the  
22 availability of improved efficiency products by eliminating  
23 unefficient products from the market.

24 Incentive programs operate in a slightly different  
25 fashion, and they take a little bit longer. They also can

1 be very successful, we think, in improving the availability  
2 of higher efficiency appliances in the marketplace. We  
3 think the appropriate role for the incentives is to be  
4 viewed as supplementary to the standards, and not as  
5 alternatives, as Commissioner Schweickart has stated earlier.

6 Relative to the matter at hand, Carrier is more  
7 than willing to work with industry or with the Commission,  
8 or Commission staff, or whoever is going to be working on  
9 this project. Thank you.

10 CHAIRMAN IMBRECHT: Questions for Mr. Lucas?  
11 Thank you very much.

12 MR. LUCAS: Thank you.

13 CHAIRMAN IMBRECHT: Mr. Michael Tiernan  
14 representing the Air-Conditioning and Refrigeration  
15 Institute.

16 MR. TIERNAN: Thank you, Mr. Chairman and members  
17 of the Commission. My name is Michael Tiernan. I am  
18 manager of the Government Affairs Department for the  
19 Air-Conditioning and Refrigeration Institute. ARI has  
20 appeared before you a number of times. It is the national  
21 trade association for the manufacturers of air conditioning  
22 and refrigeration systems, and their components.

23 ARI, as Mr. Wolf has mentioned, represents well  
24 over 90 percent of the manufacturers of these products.  
25 For the CEC, those products regulated are mostly central

1 air conditioners, heat pumps, and package terminal  
2 equipment.

3 Today, I would like to urge the Commission not  
4 to change the OIR that they adopted on January 11th, 1984.  
5 ARI believes that the Commission is in the best position to  
6 examine all the possible cost-effective energy conservation  
7 methods available for appliances. That would be language  
8 that could be applied either for incentives, alternatives,  
9 or options.

10 That in conjunction with any review of the  
11 existing standards, the Commission should be most interested  
12 in alternatives which would generate energy savings for  
13 the State of California. An example of the -- during the  
14 January hearing, Commissioner Commons had mentioned of  
15 situations where consumers in California may have special  
16 applications for their equipment. An example that was used  
17 was a guest cottage where a refrigerator would be unplugged  
18 for 80 percent of the time, and would only be used for  
19 very short periods of time.

20 A minimum standard which would be revised and  
21 raised would become cost-ineffective for that consumer,  
22 and in this case, an alternative incentive, or option would  
23 be most beneficial to the State of California and to that  
24 consumer.

25 ARI would also like to ask the Commission, through

1 its legal counsel, to carefully study a bill which was  
2 approved by the Governor on September 16th, 1983. This  
3 bill, AB 1718, which was sponsored by Assemblyman Leonard,  
4 amends the procedures to be followed by state agencies in  
5 adopting or revising their administrative regulations.

6 One of the changes which this bill would require  
7 agencies, is to provide a description of alternatives,  
8 incentives, or options considered by the agency, and the  
9 reasons for their rejection if they are decided that they  
10 should be rejected.

11 ARI would hope that the Commission would not  
12 drop consideration of alternatives, only to satisfy some  
13 self-imposed deadline which was informally established.  
14 There was an essential part of that order which was  
15 adopted in January that both alternatives, incentives,  
16 and options be considered with the revision, modification  
17 of the existing standards.

18 If the Commission is seriously interested in  
19 achieving energy savings, then I believe it would be  
20 imperative that the Commission take a sufficient amount of  
21 time, or an adequate amount of time to do this job right.

22 If the Commission today does decide to drop the  
23 examination of these alternatives, incentives, or options,  
24 and having a staff report, or having the California Energy  
25 Commission develop an examination of these, then ARI would

1 like to be given the opportunity to prepare such a study  
2 of alternatives which would be presented to the Conservation  
3 Committee for their evaluation and consideration as part of  
4 any recommendation that this Committee may forward to the  
5 full Commission.

6 That's the completion of my comments. I'd like  
7 to thank you for this opportunity, and I'd be happy to  
8 answer any questions that members of the Commission would  
9 have.

10 CHAIRMAN IMBRECHT: Questions for Mr. Tiernan?  
11 Commissioner Gandara?

12 COMMISSIONER GANDARA: I have a question. I'm a  
13 little bit confused by, I guess now a second member of the  
14 industry requesting additional time to perform a study of  
15 alternatives and so forth, and yet it was the information  
16 given to the Commission Committee that there was more than  
17 adequate basis, there was more than ample information on  
18 alternatives to standards or incentives, if you're going to  
19 look at it that way.

T.7 20 So that at the time that this order was adopted,  
21 it was simply for the purpose of having the staff being able  
22 to be in a position of evaluating the voluminous amounts of  
23 data that the industry said already existed regarding, you  
24 know, alternatives or incentives programs.

25 So, that I'm a little bit perplexed why there's

1 this proposal, I guess, that I've gotten for experiments  
2 to see if the markets work or don't work, or if incentives  
3 work or don't work, times to develop alternative study,  
4 and so on and so forth, when in fact, previous to the  
5 adoption of the order we kept here was that there was more  
6 than ample data on all of these matters, that simply what  
7 was needed that there be a desire at least to address it.

8 So, I'm getting a little bit of a different  
9 signal here, and I guess one of the questions I would have  
10 is where is all this data that supposedly was out there  
11 proving the success and -- of all these particular  
12 alternatives.

13 MR. TIERNAN: I would be very interested in  
14 knowing where that source of data is also. In my review  
15 of the transcript of the January hearings, I did not recall  
16 any industry spokesperson addressing this and saying that  
17 they had a store of data back at their headquarters,  
18 willing to provide it to the California Energy Commission.

19 We had been in the posture of only reacting  
20 to regulations adopted by various states, and then the  
21 federal government's activities. We have not been invited  
22 to participate in the searching for alternatives to -- as  
23 has been mentioned today, to affect the top end of the  
24 market.

25 We have really only been fighting, and going from

1 state to state addressing the bottom half of the market,  
2 and trying to be sure that we don't lop off too much of  
3 the bottom of the market, and severely impact citizens  
4 in those states.

5 COMMISSIONER GANDARA: Well, again, I would say  
6 your comments appear very different from those that have  
7 generally been stated by, in fact, representatives in your  
8 organization, and the industry before.

9 MR. TIERNAN: Well, I know before I came out,  
10 I was given a copy of the testimony that Joe McGuire of  
11 ARI presented here on January 11th, and I am absolutely  
12 positive that there was no mention of any data that ARI  
13 has. ARI has done, a year and a half ago, a survey of  
14 utility companies in this country, private, investor-owned  
15 utility companies who have incentive programs, and what  
16 was the different dimensions of those utility programs.

17 We have spoken to Commissioner Commons about that,  
18 that is something we do have, it's a little bit dated, so  
19 we would need time to contact those utility companies and  
20 find out whether or not they are continuing their program,  
21 whether they have modified their program, and whether they  
22 are planning to continue those programs.

23 But that would also take some time just the  
24 matter of logistics, and making the phone calls and  
25 contacting the individuals.

1 COMMISSIONER GANDARA: Fine, no other questions.

2 CHAIRMAN IMBRECHT: I have to say, I don't recall  
3 that being a part of the January 11th hearing either,  
4 Commissioner Gandara, but I'm sure as a matter of fact, we  
5 can check it by looking at the record.

6 MR. TIERNAN: One thing -- excuse me, Mr.  
7 Chairman.

8 CHAIRMAN IMBRECHT: So, I don't think -- unless  
9 you have something that you definitely want to add, we're  
10 running out of time today, and I would like to try to move  
11 on.

12 MR. TIERNAN: Okay.

13 CHAIRMAN IMBRECHT: Okay, thank you. Next, Mr.  
14 Dave Lewis, representing Lennox Industries.

15 MR. LEWIS: Thank you, Mr. Chairman, Commissioners,  
16 my name is Dave Lewis with Lennox Industries. We have  
17 just a couple of comments with a guarantee that we'll be  
18 shorter than Jim Wolf.

19 CHAIRMAN IMBRECHT: That's not much to guarantee.

20 MR. LEWIS: Lennox Industries is, of course, a  
21 manufacturer of heating, air conditioning and gas furnace,  
22 comfort products for the home, residential market. We  
23 have both industry-wide, the highest efficient product as  
24 well, in all three of these areas.

25 We're not a manufacturer that sells the lowest

1 of efficient products that industry has available. We  
2 believe that the innovative use of technology, and new  
3 technology in product design is important as far as  
4 maintaining a high efficiency in products available to  
5 the residential market.

6 We don't believe that there is a problem as far  
7 as standards go in -- in fact, it obviously can be  
8 documented that standards up to this point have proven  
9 to be helpful. We do believe that incentives, alternatives,  
10 options, need to be addressed, because there is a large  
11 portion of the market that is not considered when standards  
12 alone are looked at.

13 Because of this, we feel like pursuing only a  
14 prescriptive standard approach would be a detriment to the  
15 overall goal of energy savings in the energy market. We  
16 would not be in favor of having the order instituting  
17 hearings changed from what it presently reads, as addressing  
18 the staff to look into different alternatives, incentives,  
19 options that could be available.

20 One of the things that we have some deep concern  
21 about, and first of all, we'd say that we believe it's an  
22 important matter of the Commission itself, and actually not  
23 industry alone, to bear the responsibility of looking at  
24 these different options that are available.

25 We would just ask the question as to why there

1 would be a -- or why there seems to be such a rush involved  
2 in working towards a conclusion to this rulemaking. We  
3 would strongly encourage that time be given to look at all  
4 our alternatives, and not just -- I guess the feeling we  
5 get in looking at the agenda item, the way it reads, to  
6 delete the requirement for staff to write a report which  
7 evaluates alternatives to standards, it seems to us that  
8 this must mean that there is some kind of a rush involved  
9 to get through to a standard, raising the minimum standards.

10 In our viewpoint, we feel like it's for the  
11 advantage of the California consumer that all alternatives  
12 are looked at as each one of these items are -- through  
13 their hearings, each individual option is looked at and  
14 addressed. To delete now, alternatives, seems to be kind  
15 of a step backwards from the direction we're headed.

16 CHAIRMAN IMBRECHT: Okay, questions? Hearing  
17 none, at the request of Commissioner Commons, we're going  
18 to take a brief recess of about two and a half or three  
19 minutes for consultation between Commissioners, and we  
20 will return to the dias -- I will bring the gavel down  
21 no later than five minutes to 4:00.

22 (Brief recess.)

23 CHAIRMAN IMBRECHT: The meeting is called back  
24 to order. Commissioner Commons, do you have any further  
25 comments at this point? I have some questions I want to

1 ask, so it's up to you.

2 COMMISSIONER COMMONS: Go ahead.

3 CHAIRMAN IMBRECHT: Okay. Mr. Chamberlain, a  
4 couple of questions for you. Are there any time constraints  
5 on the Commission in terms of how long we have to consider  
6 an OIH?

7 MR. CHAMBERLAIN: No, I don't believe so.

8 CHAIRMAN IMBRECHT: Mr. Rauh, or Mr. Pennington,  
9 on behalf of the conservation staff, the issue as I  
10 understand it, that's before us, is not a question of our  
11 inability to do the tasks that are in the original order.  
12 The question -- the issue is whether or not there is an  
13 ability of the staff to complete those tasks within the  
14 calendar of proposed action by the Committee, is that  
15 an accurate understanding?

16 MR. RAUH: That's correct.

17 CHAIRMAN IMBRECHT: If you were to do the  
18 tasks as were originally contemplated in the order, do you  
19 have an estimate of when you could be before the  
20 Commission with the full task?

21 MR. RAUH: Yes, we've provided the Executive  
22 Director a schedule which would, in complying with the  
23 original order, have a proposal before the Commission for  
24 adoption in refrigerators and freezers by November 3rd,  
25 and a proposal for air conditioning equipment in February.

1           CHAIRMAN IMBRECHT: And that would include the  
2 alternative analysis -- the original semantics of the  
3 order are -- it says alternatives, that would include that  
4 alternative analysis.

5           MR. RAUH: That is correct.

6           CHAIRMAN IMBRECHT: Okay. Commissioner Commons,  
7 could you explain why the Committee then is proposing,  
8 since we have no legal time constraints, why the Committee  
9 is proposing to amend the order?

10          COMMISSIONER COMMONS: Yeah. There are four  
11 reasons the Committee is proposing to amend the order. The  
12 first one is after having spent a week with industry, and  
13 after hearing the testimony today, which I think is very  
14 similar to some of the responses that I received, is I  
15 think there was confusion in terms of what we were actually  
16 doing by the amendment that we set forth, and it was an  
17 amendment that I made, and I may not have explained the  
18 amendment appropriately when we adopted it, because it's  
19 a slightly different version than either addressed by you  
20 or Commissioner Schweickart.

21                 First of all, each appliance is a separate  
22 entity in itself, and the action that we take has to be  
23 pragmatic and looked at in terms of that appliance. I have  
24 heard statements made concerning that some appliances the  
25 standards are too high, and in other instances, the standards

1 are too low, that on some appliances incentive programs  
2 work, and on other appliances, incentive programs don't  
3 work.

4 I have heard also that in some instances you  
5 need standards plus incentive programs, that there are  
6 other appliances that maybe there's no reason for the  
7 Commission to have any standard.

8 The purpose of looking at this and adding the  
9 language was to try to consider in each of the cases where  
10 we ought to be going in terms of what I feel our true goal  
11 is, which is cost-effective energy conservation. At no  
12 time was I looking at the idea that an alternative was  
13 that this whole purpose or function was to look at alter-  
14 natives vis-a-vis standards.

15 Rather, what we were trying to do was find out  
16 the cost-effective way of trying to obtain energy conser-  
17 vation. If it turned out that we could not disrupt the  
18 marketplace and we could achieve the energy savings from  
19 a cost-effective way without a change in standards, with  
20 or without an incentive program, that was an open issue,  
21 and part of the overall discussion.

22 CHAIRMAN IMBRECHT: Let me say that that is  
23 exactly how I understood your motion, and why I supported  
24 it on January 11th.

25 COMMISSIONER COMMONS: All right. That's the

1 first part, and so I think the first reason is to clarify  
2 an ambiguity that I feel that exists.

3 Second is, AB 1718 does state, from Assemblyman  
4 Leonard, does establish procedures when we are looking at  
5 both prescriptive and performance standards, that the  
6 Commission has certain obligations depending on if its  
7 prescriptive or performance of looking at certain alternatives.

8 Clearly, it's within the Committee's obligation,  
9 when the Commission establishes a rulemaking order, to  
10 follow the rules and regulations of the state. In the  
11 same sense, any time that we are going in a rulemaking on  
12 standards, we have an obligation to look at the impact of  
13 proposed standards on small business. So that does not  
14 need to be spelled out in the operative language, that is  
15 assumed as part of where we are going.

16 Third is we did have a specific proposal for a  
17 budget addition, but at the time we had adopted this motion,  
18 we were most hopeful we would have the staffing capabilities.  
19 We have a total of a staff of two to look at this, and  
20 the proposal made to the Governor was to actually look at,  
21 and the language used, and which is consistent with the  
22 language that we had adopted in January, was to look at  
23 alternatives, and the Department of Finance, and the  
24 Governor effectively have vetoed that, and I personally  
25 feel that we have a problem in taking on activities, or

1 doing actions where the Governor has specifically vetoed  
2 an action that we are proposing to do.

3 I do feel that we have a responsibility to at  
4 least follow the law as set forth in Assembly Bill 1718,  
5 and to look at those alternatives. But I think that the  
6 Governor has taken an action, and we have to listen to the  
7 action that he has taken, and that is a reduction of 2 PY  
8 from what we had expected.

9 Fourth is the general way I feel that we do  
10 business. We have a resource plan. We do not tell the  
11 utility what their resource plan is. They come and propose  
12 to us what they think their resource plan ought to be, and  
13 then we evaluate. Now, that doesn't mean we are not free  
14 to comment and make suggestions, suggest things that were not  
15 a part of their resource plan.

16 But the initiative is on the part of the people  
17 that we are working with. The same thing is the case on  
18 the load management programs. A utility is the one who  
19 best works with their customers, has the most insight in  
20 terms of the types of programs that they can manage and  
21 operate and work with their customers, and it is appropriate  
22 for the initial actions in terms of describing how we can  
23 best proceed to have the utility identify those programs  
24 that they feel makes sense.

25 That doesn't inhibit our staff in terms of

1 evaluating those programs, or coming up with other ideas  
2 or comments. The same thing I feel is true here, and  
3 probably even more so, because this Commission and its  
4 staff has had very little experience in terms of marketing,  
5 and when we start looking at the programs that we're  
6 talking about, it's really customer acceptance.

7 In fact, many of the manufacturers that we hear  
8 from, they don't have that same experience because they're  
9 working with dealers and distributors, and it's really  
10 when we start talking to people like Montgomery Ward, a  
11 distributor in San Mateo, Sears-Roebuck, that we'll  
12 understand how the consumer interacts with various  
13 incentive programs to find out really what takes place in  
14 the market, and what impact it is.

15 We do not have, as far as I am concerned, in  
16 the existing appliance staff, the capability of generating  
17 programs, and understanding how those programs would  
18 interact in a very complex industry, or set of industries,  
19 that we're talking about three major industries that we  
20 are addressing, and I do not feel we have those skills.

21 So for all of those reasons was the reason that  
22 I proposed making the modifications as suggested here,  
23 that we have before us.

24 In terms of the specific language, and based on  
25 the comments of industry that we have heard today, I'd like

1 to --

2 CHAIRMAN IMBRECHT: Excuse me, I wasn't acceding  
3 the floor. I was asking you a question, so --

4 COMMISSIONER COMMONS: Okay, I'll come back then.

5 CHAIRMAN IMBRECHT: I wasn't quite --

6 COMMISSIONER COMMONS: That was a lengthy answer  
7 to a short question.

8 CHAIRMAN IMBRECHT: Yes, it was. I wasn't  
9 quite finished with the points that I was trying to make.

10 COMMISSIONER COMMONS: Fine.

11 CHAIRMAN IMBRECHT: Just to comment on your  
12 response, I frankly am not persuaded at this juncture,  
13 at least, that the -- perhaps your new suggested amendment  
14 might respond to this, but I'm not persuaded that this  
15 clarifies an ambiguity that I did not perceive existed,  
16 nor one that needs clarification.

17 I might say that the order as originally drafted,  
18 I don't think in any way precludes the kind of voluntary  
19 participation suggested by the industry, and their testimony  
20 today. In fact, I would guess that we would probably  
21 encourage that. I would certainly want our staff to  
22 encourage that kind of voluntary participation, as well as  
23 financial commitment in assisting in that effort.

24 I guess what it really boils -- and secondly,  
25 the failure of the Department of Finance, and implicitly,

1 the Governor to approve the BCP that you mentioned. I  
2 really believe cannot in any way be construed as any  
3 direction from the administration not to consider alter-  
4 natives, or options, or incentives, however you care to  
5 characterize them, in the context of standards.

6 I want to also make it clear that as I read the  
7 statute that Commissioner Schweickart noted a few moments  
8 ago, and make this clear, that I do believe we have an  
9 obligation to adopt standards, and the Commission has done  
10 so, and I am not in any way, shape, or form suggesting  
11 repeal of those standards, et cetera.

12 The law is clear, and we have an obligation to  
13 carry out that law as officers of the state. I do think,  
14 though, that in the context of adopting increases in those  
15 standards, and considering some of the subsequent legisla-  
16 tive actions with respect to considering alternatives, the  
17 Leonard bill you mentioned, and a couple of the others  
18 which I believe are in our packet, suggest to me that it  
19 would be appropriate to proceed in a deliberative fashion  
20 and have our staff oversee that effort with the cooperation  
21 of industry.

22 I guess what it really boils down to, and I'd  
23 be open to further response in this, but I'm just not  
24 persuaded that the staff's proposed schedule that calls  
25 for consideration of both the new standards, or increase in

1 standards and alternatives by November with respect to  
2 refrigerators, and by February with respect to air  
3 conditioners, is in any way an unreasonable schedule.

4 I frankly, at the time that this was considered  
5 in January, contemplated, and I recall the discussion at that  
6 time, I think, contemplated roughly that schedule. I just  
7 haven't seen any new information that suggests that there  
8 is anything unreasonable, or in any way that is going to  
9 be detrimental, et cetera to simply accepting the staff  
10 schedule, encouraging industry participation, going forward  
11 with the order as we originally passed it January 11th.

12 End of my speech, and now I'd be happy to call  
13 upon you for any further responses that you have to my  
14 questions.

15 COMMISSIONER COMMONS: Well, I think there --  
16 first of all, Commissioner Gandara who was the previous  
17 Presiding Member had established a schedule, if I'm not  
18 mistaken, at the time that we adopted this order, which  
19 is included in our packet, for June of 1984 for refrigerators  
20 and if I'm not incorrect, there has never been a schedule  
21 adopted by the Committee for air conditioners.

22 That the only schedule that we have looked at  
23 so far, and have been working towards was the schedule for  
24 June of this year for refrigerators.

25 One question that -- and so the staff schedule

1 that was mentioned was prepared in response to a question  
2 that arose in the workshop which was in Los Angeles a  
3 few weeks ago.

4 I think you raised one question, and we have  
5 one issue outstanding, and that is the staff capability  
6 of drafting and understanding the market forces at work,  
7 and actually being able to identify proposals, and the  
8 proprietariness of staff making recommendations that could  
9 cost the industry millions of dollars in terms of marketing  
10 or other types of programs.

11 I guess I'd like to ask staff, what is the  
12 experience and background of the people that we have in  
13 terms of marketing, incentive programs, and how they  
14 operate when we're talking about products in California  
15 with annual gross volume of roughly a billion dollars a  
16 year?

17 MR. RAUH: Well, I can take a stab at that. I  
18 think that the staff has a strong analytic capability of  
19 understanding the economics of those kinds of programs,  
20 and at least from a theoretical standpoint, understanding  
21 how individuals and society at large react to various  
22 kinds of incentive strategies.

23 We certainly have a very good grasp of the  
24 utility industry, and an understanding of how they have  
25 delivered incentive programs in these areas in the past, and

1 how to evaluate those programs for their effectiveness.

2 We also have had a pledge from the industry at  
3 an earlier workshop to work with both utilities and  
4 ourselves in looking at other options that would include  
5 test market approaches, driven principally by the industry  
6 itself, and we do not at this point have anyone on staff,  
7 other than academically trained -- I have a degree in  
8 marketing, but that does not make me a marketer -- to  
9 actually devise test market strategies, or look at the  
10 kind of advertising and promotional activities that might  
11 be part of an industry-based incentive program.

12 We do, however, hope that they are serious in  
13 their pledge. We are also looking to fill a vacancy in the  
14 program, and those kinds of skills are the kinds of skills  
15 that we hope to blend with the analytic skills necessary  
16 to carry out this evaluation.

17 COMMISSIONER COMMONS: The real world, or the  
18 fact of the matter is, Mr. Chairman, we had two staff, we  
19 now have one. We have one person on loan for 60 days who  
20 analytically has very excellent competence in terms of  
21 reviewing and determining the cost-effectiveness of various  
22 proposals.

23 Later on, when we have the Executive Director's  
24 report, I will be making a proposal that we augment this  
25 staff so that we have the technical competence to even, at

1 least try to evaluate, and try to work with industry in  
2 looking at some of the proposals that they may present,  
3 and seeing if they can come up with some others on their  
4 kind.

5 Of course, these are people that would be moving  
6 in here that have not been trained, and don't have the  
7 expertise in terms of marketing, program design of these  
8 types of operations.

9 CHAIRMAN IMBRECHT: I would just mention that  
10 in Committee Reports, I was going to make a Budget Committee  
11 report today. I would just note to you that at the last  
12 Budget Committee meeting, the Division Chief for  
13 Administrative Services indicated to us that there are  
14 currently scheduled within the next six weeks, I believe,  
15 roughly, examinations for each of the vacant classes here  
16 at the Commission, and that under the direction of the  
17 Executive Director, we are kind of a forced march effort  
18 to try to accelerate our efforts to fill the roughly  
19 25 vacancies, I think it is, that exist within our staff  
20 at the present time, which would obviously contemplate  
21 filling in some of those holes, and particular the one  
22 that you're making reference to, well in advance of the  
23 time frames in question.

24 COMMISSIONER COMMONS: Well, the hole we have is  
25 for an engineer, Mr. Chairman.

1 CHAIRMAN IMBRECHT: Pardon me?

2 COMMISSIONER COMMONS: The hole we have in the  
3 division which is sorely needed in order for us to carry  
4 on any of the evaluations of the various petitions that  
5 come before us is for an engineer.

6 CHAIRMAN IMBRECHT: Okay. Well, I believe we've  
7 each stated our general perspective on the situation.

8 MR. RAUH: If I can add one more plea, however.

9 CHAIRMAN IMBRECHT: Yes.

10 MR. RAUH: In maintaining the course that's  
11 stated in the order that's currently approved, clearly,  
12 we do need a strong commitment from the industry to work  
13 very closely with the staff on all of the market oriented  
14 types of alternatives that they may feel are appropriate.

15 As I indicated, there has been a proposal made  
16 to the Committee in a workshop, but we really do need  
17 specifics. We need, you know, what is it really going to  
18 cost, how many people will it really affect, and that's  
19 the only way that a comprehensive set of alternative  
20 approaches, including standards, or adjunct programs to  
21 standards could be brought before you in either of the  
22 schedules that I outlined earlier.

23 We can certainly look at the economics --

24 CHAIRMAN IMBRECHT: So you're recommending leaving  
25 the existing order in place?

1 MR. RAUH: I have proposed a standard -- rather  
2 a standards or a standards with all of these other options  
3 identified, both of them, both schedules before you. I  
4 think we would prefer to see a comprehensive evaluation  
5 being done in this area. It's a very important area.

6 I'm just making the case that for us to do a  
7 competent job, we've got to have strong analytic specific  
8 support from the industry to help on the marketing side.  
9 As Commissioner Commons has indicated, that's an area  
10 where the Commission is lacking specific technical background  
11 at this point.

12 CHAIRMAN IMBRECHT: Okay.

13 COMMISSIONER COMMONS: I have a few closing  
14 comments.

15 CHAIRMAN IMBRECHT: Commissioner Commons?

16 COMMISSIONER COMMONS: First, I'd like to have  
17 an answer to Chairman Imbrecht's question. Is staff  
18 supporting the proposed amendment, or do they prefer the  
19 order as it currently stands?

20 EXECUTIVE DIRECTOR WARD: Commissioner, I think  
21 it's a policy issue, the Commission adopt it as a matter  
22 of policy process that included a look at two elements  
23 associated with appliances and air conditioners. At the  
24 Committee's request, we gave you a menu of options associated  
25 with resource allocations that could respond to whatever

1 policy decision was made.

2 I would concur with the division chief, that  
3 I think the analytical focus needs to be directed at the  
4 industry, and we need comprehensive information, it's  
5 my understanding from Mr. Pennington and Mr. Rauh, to put  
6 this together in a meaningful way.

7 COMMISSIONER COMMONS: Well, let me repeat the  
8 question since I did not get an answer. Is the staff  
9 supporting the proposed amendment, or opposing it?

10 EXECUTIVE DIRECTOR WARD: We haven't taken a  
11 formal position on it. I have no recommendation. It's a  
12 policy issue. Again, I think it demands a comprehensive  
13 analysis. I think that certainly, the thoughtfulness that  
14 went into the original order needs to be considered in  
15 any decision that you make.

16 COMMISSIONER COMMOSN: All right, let me state  
17 what my position is. I spent about three or four hours  
18 yesterday with industry, and I thought we had hammered  
19 out something that we had agreed to. Obviously, in the  
20 case of industry, as represented by air conditioners, that's  
21 not correct.

22 I feel today that the discussions taken by the  
23 air conditioning industry in particular are primarily  
24 addressed at stalling tactics, and have not addressed the  
25 merits of the issue in terms of how we should proceed. I

1 do not feel that that is the unanimous viewpoint of the  
2 industry, but I got that feeling strongly from some of the  
3 various comments.

4 I talked this morning with Kent Anderson, and  
5 read over the language that we were proposing, and he  
6 represents AHAM, and I found that as far as AHAM was  
7 concerned, at least from one representative of that  
8 organization, they did not feel that there was an intent  
9 to change in this proposed language how we had originally  
10 intended to proceed, the one variation being that the  
11 intent here was that industry had more expertise and more  
12 knowledge in terms of various incentive programs, and that  
13 it is not inappropriate for industry to make those  
14 presentations, so long as the Commission promises to  
15 evaluate and consider these proposals.

16 I would rather not step back, because I think  
17 that it would be unwise to treat refrigerators in a  
18 different way than air conditioners. I'm very disheartened  
19 by the position of the air conditioning representatives here  
20 today, in part, and I feel that that delaying action is  
21 going to make it more difficult for us to make this  
22 proceeding go smoothly.

23 In terms of the specific language in the proposal,  
24 I'm going to move to strike the following words "as part of  
25 the rulemaking process".

1           CHAIRMAN IMBRECHT: You're going to move to  
2 strike which?

3           COMMISSIONER COMMONS: The "as part of the  
4 rulemaking process".

5           CHAIRMAN IMBRECHT: Okay, I'm sorry. Just those  
6 words, so that the second paragraph would then read, "The  
7 Commission directs the Committee to evaluate and consider  
8 these proposals and to recommend to the Commission a plan  
9 for achieving energy conservation from appliances." A  
10 plan for achieving energy --

11          COMMISSIONER CROWLEY: I'm sorry, but I'm  
12 confused, you move to strike what was labeled in the  
13 proposed amendment?

14          COMMISSIONER COMMONS: The parenthetical phrase,  
15 "as part of the rulemaking process".

16          COMMISSIONER CROWLEY: Thank you.

17          COMMISSIONER COMMONS: If there is a second, I'll  
18 explain the intent of that amendment.

19          COMMISSIONER SCHWEICKART: I'll second the --

20          CHAIRMAN IMBRECHT: Seconded by Commissioner  
21 Schweickart, Commissioner Commons.

22          COMMISSIONER COMMONS: In a rulemaking process,  
23 and when we look at what the Commission is supposed to do,  
24 the Commission is supposed to set standards, and a  
25 rulemaking process, our obligation under the law is as

1 stated in AB 1718 and concerning small business. If  
2 industry makes it difficult for us to evaluate some of  
3 these alternatives, that does not give justification for  
4 holding up a petition that has been duly filed before us  
5 for that reason solely, and not moving forward.

6 I think there is an argument that we should do  
7 things in a proper manner, and we should try to evaluate  
8 various ways of achieving cost-effective considerations.  
9 But if the purpose is to create delay, to have staff which  
10 is inadequate to write reports that they are not competent  
11 for, we will proceed, we will look at various incentive  
12 programs, we will try to work with the Public Utilities  
13 Commission, and we will proceed that way, but we will not  
14 allow that to act as part of the rulemaking process as a  
15 delay mechanism.

16 CHAIRMAN IMBRECHT: Well, on what grounds are  
17 you suggesting that's a delay mechanism?

18 COMMISSIONER COMMONS: Based on the testimony  
19 that I heard today. I feel that that aspect of this  
20 proposed amendment could be used as such. That does not  
21 mean that we would not come forward with a plan at the  
22 same time we came forward with proposed standards, either  
23 up or down.

24 But based on the comments that I heard today, I  
25 feel that it could be used as a delay mechanism, not as an

1 attempt to do a quality job.

2 CHAIRMAN IMBRECHT: Okay. Amendment to the  
3 amendment is properly before us. I guess --

4 MR. CHAMBERLAIN: Mr. Chairman?

5 CHAIRMAN IMBRECHT: Yes?

6 MR. CHAMBERLAIN: As I understand it, the maker  
7 of the motion has amended his own motion, I don't think  
8 that really requires a vote.

9 CHAIRMAN IMBRECHT: You're correct, that just  
10 dawned on me, so it's -- so actually, the amendment, as  
11 -- do you want to take a second vote on that?

12 COMMISSIONER COMMONS: Yes, I would.

13 CHAIRMAN IMBRECHT: I think that is within his  
14 prerogative, so we have a main motion, and then an  
15 amendment to that main motion before us. I would just  
16 indicate that I believe the amendment to the main motion  
17 is even further reason, that is, further backing away from  
18 the, I thought reasonably judicious response on January 11th  
19 to this entire matter, and I really don't quite understand  
20 what you're referring to, Commissioner Commons, that suggests  
21 that that be used as a delaying mechanism.

22 Even under the timetable proposed by the staff,  
23 you're looking at dealing with one-half of the appliance  
24 categories in question in November, and the other half a  
25 scant three months later, which as I stated earlier, does

1 not strike me as an unreasonable or delay oriented kind of  
2 time schedule for an issue of this consequence.

3 As a consequence, I have to oppose this amendment.  
4 Does anyone else wish to comment?

5 COMMISSIONER SCHWEICKART: Mr. Chairman, I will  
6 be supporting the amendment. I think we are clearly  
7 here in a situation which started a number of years ago  
8 when the appliance industry took a very strong initiative  
9 to reduce the Commission's appliance staff. That was done  
10 quite successfully. At that time our staff was cut in half.

11 It has now been further cut, and yet none of our  
12 obligations in the statute have been reduced in terms of  
13 the Commission's obligations. Clearly there are  
14 consequences in terms of the staff's ability to be  
15 responsive to industry desires, as well as to what is our  
16 obligation in statute as a result of those actions.

17 In this particular instance, it seems to me, with  
18 the level of staff that we have, that the Commission is  
19 faced with something of a choice that it must make, and  
20 where that choice involves a combination of statutory  
21 obligations in terms of setting minimum standards, and an  
22 adoption, or an accepted petition, formal petition filed  
23 by an outside party pursuant to that statutory obligation,  
24 and as well, an additional action, namely, one which I  
25 support in concept, namely, investigating incentives as a

1 means of improving the efficiency of appliances in the  
2 marketplace, I must opt in making a choice, with our  
3 statutory obligation, and a duly filed and accepted  
4 petition pursuant to that obligation.

5           The question is, do we have to make a choice, and  
6 ultimately, that is the judgment of the Commission.  
7 Clearly, we can have as little as a tenth of a person year  
8 available, and go from now until doomsday saying we're  
9 doing both. But I think realistically, the Commission  
10 is faced with do we move on in a reasonable way in  
11 getting this work done, or do we conduct a charade in  
12 something of the way in which we're dealing with the  
13 building standards now, where we pretend that we're moving  
14 on with the business, and in fact, we're not able to do  
15 it because of staff limitations.

16           In this particular instance, with a portion of  
17 the burden being placed on industry to come forward with  
18 some of the incentive opportunities, given our shortage of  
19 staff, so long as that is tied directly to the rulemaking  
20 per se, possible, noncooperation on the part of industry,  
21 clearly affects our ability in an orderly way to continue in  
22 a legitimate rulemaking process.

23           So whether or not that would be done by industry,  
24 it seems to me that severing them, while still maintaining  
25 an obligation to considering and presenting to the

1 Commission a plan regarding incentives, in my view, is  
2 responsible, and I would support it.

3 CHAIRMAN IMBRECHT: Well, I would just have to  
4 say that I think everything that you suggested, I simply  
5 do not see that any foundation has been suggested that a  
6 November/February schedule is unreasonable, or in any  
7 way shirks our statutory responsibilities of the OIH.

8 I frankly find no foundation in your comments  
9 to reach that conclusion. I would also add, that I think  
10 that all of these cumulative actions that are being taken  
11 just further draw the battle lines, and further produce a  
12 self-fulfilling prophecy, and that self-fulfilling prophecy  
13 is to send out a very clear signal that this is an  
14 antagonistic relationship, and if you really truly want the  
15 cooperation of industry, it seems to me that you have to  
16 also extend, in some respects, some good faith by virtue  
17 of staying with an order that was in some respects a bit  
18 of a compromise and response to some of their concerns in  
19 January, and now a double backing down from that by virtue  
20 of these two proposed changes.

21 I really profoundly question the judgment that  
22 you expressed in those comments. I mean that with due  
23 respect, but also as sincerely as I can state it.

24 Any further comments? Mr. Ward, did you want to --

25 EXECUTIVE DIRECTOR WARD: Well, one other comment,

1 and I'm a little bit confused, because the staff, and this  
2 was second-hand information that came to me via the  
3 division chief, Mr. Rauh, this morning after a discussion  
4 with the Presiding Member. There was a suggestion that we  
5 could free up some staff, and I think it was a thoughtful  
6 suggestion by Commissioner Commons in this area.

7 Ted approached me with the suggested option, and  
8 I think that's what the Commissioner was talking about  
9 addressing in the Executive Director's Report, and if the  
10 Commissioner could explain, I was certainly prepared to  
11 offer that kind of a resource transfer that had been  
12 proposed this morning, Commissioner Commons. Does that  
13 have any impact on the discussion, and that's a question.

14 COMMISSIONER COMMONS: No. Mr. Ward, the only  
15 change that's made from this -- from the original order  
16 were two, one is to clarify alternatives, what we're  
17 talking about. Second was to not have our staff without  
18 marketing expertise initiate a report, rather to do what  
19 they are best capable of, which is to evaluate and assess  
20 the cost-effectiveness, and to put together packages,  
21 looking at what is the role of standards, what is the role  
22 of a particular incentive, what works, and what doesn't  
23 work.

24 After meeting with all of the refrigerator  
25 manufacturers but one, it is my sincere belief that it would

1 not be appreciated by them for us to tell them, or suggest  
2 to them the best way to market their products, or to place  
3 incentives. It would be in their interest, and they're  
4 willing to establish the dialogue in working with us, in  
5 terms of looking at various proposals and seeing what works,  
6 and what does not work, and that involves an extended amount  
7 of dialogue between our staff and the various companies  
8 involved.

9           It is not something that you put out our report,  
10 and then you respond to. In order to adhere even to the  
11 schedule that Ted has talked about, it is going to be very,  
12 very difficult. We're talking about a very large industry,  
13 they are the major manufacturers in the states, the largest  
14 employers in states, the largest employers in various  
15 cities. This is an extremely sensitive issue, not just  
16 in California, but nationwide, and we need that staff even  
17 to do that.

18           EXECUTIVE DIRECTOR WARD: I see. Okay. Well,  
19 that answers my question, thank you.

20           CHAIRMAN IMBRECHT: Okay. I think the matter is  
21 squarely before us. Any further comments? Secretary  
22 please call the roll, first on the motion to amend the  
23 original motion, and that was to delete the words, "as  
24 part of the rulemaking process".

25           SECRETARY GERVAIS: Commissioner Commons?

1 COMMISSIONER COMMONS: Aye.

2 SECRETARY GERVAIS: Commissioner Crowley?

3 COMMISSIONER CROWLEY: No.

4 SECRETARY GERVAIS: Commissioner Schweickart?

5 COMMISSIONER SCHWEICKART: Aye.

6 SECRETARY GERVAIS: Commissioner Gandara?

7 COMMISSIONER GANDARA: Aye.

8 SECRETARY GERVAIS: Chairman Imbrecht?

9 CHAIRMAN IMBRECHT: No. The motion is carried

10 3 to 2. The main motion is now before us, any further

11 comments? Anyone wish to address the Commission on this

12 issue? Please call the roll.

13 SECRETARY GERVAIS: Commissioner Commons?

14 COMMISSIONER COMMONS: Aye.

15 SECRETARY GERVAIS: Commissioner Crowley?

16 COMMISSIONER CROWLEY: No.

17 SECRETARY GERVAIS: Commissioner Schweickart?

18 COMMISSIONER SCHWEICKART: Aye.

19 SECRETARY GERVAIS: Commissioner Gandara?

20 COMMISSIONER GANDARA: Aye.

21 SECRETARY GERVAIS: Chairman Imbrecht?

22 CHAIRMAN IMBRECHT: No. The motion is carried

23 3 to 2, the original OIH order is amended pursuant to the

24 motion.

25 Okay. The next item before us is Item No. 4,

1 consideration of a petition for rulemaking filed by  
2 Geoscience Limited to amend the Commission's testing  
3 requirements for foil insulating materials. Let's see,  
4 Mr. Ward, do you want to lead off on that, or is that a --

5 EXECUTIVE DIRECTOR WARD: Mr. Chairman --

6 COMMISSIONER SCHWEICKART: I think the staff --

7 CHAIRMAN IMBRECHT: Mr. Ward?

8 EXECUTIVE DIRECTOR WARD: Mr. Chairman, we have  
9 Bill Pennington and Ray Hillier from the Conservation  
10 Division to outline this in addition to, I assume, the  
11 proponent, a letter was received on April 9th by General  
12 Counsel, Bill Chamberlain, it's included in your package.

13 CHAIRMAN IMBRECHT: Mr. Pennington?

14 MR. PENNINGTON: Does the legal office wish to  
15 present the staff report?

16 MR. COHN: That would be fine. Once again,  
17 Steve Cohn, staff counsel. The letter from Heinz Poppendiek  
18 of Geoscience Limited is written in such a fashion that it  
19 can be interpreted in two ways. One is a request for  
20 variance from certain testing requirements in our insulation  
21 standards, and secondly as a petition for rulemaking to  
22 change certain testing requirements which are in our  
23 insulation standards.

24 The particular provisions involved all center  
25 around thermal performance testing, testing to determine the

1 R-value of aluminum foil products. In particular, there  
2 are three requirements of our regulations that Geoscience  
3 is seeking either a variance from, or a change in the  
4 regulation.

5 First, the regulations require, and I'll quote  
6 from the Section 1553(b)(2), "thermal performance shall be  
7 determined according to ANSI/ASTM C-236-66. The test  
8 panel shall consist of a panel utilizing a wood frame of  
9 2 x 6 inch construction covered with three-quarter inch  
10 plywood on both sides. The resultant thermal performance  
11 shall be based upon the insulation only."

12 The petition or request for variance would seek  
13 to allow a 2 x 4 inch testing, rather than the 2 x 6 inch  
14 testing that's specified in Subsection (b)(2).

15 Secondly, the petitioner, Geoscience, would  
16 request a change in the regulations by allowing testing  
17 with studding and limited foil spacers. To put that into  
18 English that I can understand, when you're talking about  
19 aluminum foil insulation, the R-value of aluminum foil  
20 comes not only from the aluminum foil itself, the different  
21 layers, but also from the air space contained in-between  
22 those layers.

23 Our regulations have a requirement that -- and  
24 this is under 1553(a)(1) that all samples have to be --  
25 must be representative samples, and tested at representative

1 thickness. What this means is that it should be tested in  
2 the same manner that it would actually be applied in the  
3 real world.

4 The problem with using spacers is that spacers  
5 are not used when one applies aluminum foil insulation,  
6 so therefore, it's the staff's interpretation that that's  
7 not what the regulations intend, and to do that would  
8 require a change in the regulations.

9 Thirdly, the regulations require under Section  
10 1553(a)(4), and in a draft order that's been distributed,  
11 I think there was a mistaken reference to (a)(5), but in  
12 any event, under Subsection (a)(4), there is a further  
13 requirement that the average temperature in -- when you're  
14 testing R-values between the cold surface and the hot  
15 surface has to be at least 40 degrees, and it's very  
16 specific, and it says, the average testing temperature shall  
17 be 75 plus or minus 2 degrees Fahrenheit with at least a  
18 40 degree Fahrenheit temperature difference.

19 Once again, the petitioner would like to -- or  
20 would request that that either be interpreted to allow  
21 something other than a 40 degree differential, or that  
22 the regulation be changed to allow such a variation.

23 The staff, first of all, takes the position that  
24 these particular regulatory provisions are so specific that  
25 no other interpretation, or certainly not the interpretation

1 offered by petitioner here, is really reasonable, and  
2 therefore, would require either a change in the regulation  
3 or a variance.

4 Secondly, it is staff's position that no variances  
5 are possible because the regulations do not specifically  
6 permit a variance from a particular requirement. The  
7 regulations are very specific, and nowhere do they state  
8 that a manufacturer may apply for a variance from those  
9 requirements.

10 Finally, as to the request that -- whether or not  
11 the Commission grants a variance, that the Commission should  
12 institute a rulemaking proceeding to change the regulation,  
13 staff would note in this regard that there was a rather  
14 full rulemaking record accumulated in both 1978 and 1981.

15 These very issues were considered by the  
16 Commission at that time in adopting the present language.  
17 Absent an indication from petitioner as to why we should  
18 reopen that record, we feel that it would not be a  
19 judicious use of Commission resources, limited as they are.

20 We note that the petitioner is here today, and  
21 may offer some guidance, or some light on why this change  
22 should be made. Absent, however, any such justification,  
23 we would suggest, or recommend denying the petition. If  
24 a showing can be made that there is a good reason to reopen  
25 the record, we would suggest that we not limit such a

1 rulemaking proceeding to this one request, but rather  
2 consider certain other cleanup amendments that the  
3 Committee might deem desirable.

4 With that, if there are any questions, or if  
5 there are no questions, I should say, we have nothing  
6 further.

7 COMMISSIONER GANDARA: Are there any questions  
8 by the Commission of Mr. Cohn?

9 COMMISSIONER SCHWEICKART: Yeah, I have one  
10 question. Is there any precedent for the Commission granting  
11 variances where they're not specifically called out as an  
12 option? What is the general presumption of law or  
13 regulation, Mr. Chamberlain, with regard to administrative  
14 bodies granting variances where there is no provision  
15 spelled out?

16 MR. CHAMBERLAIN: The only context in which I  
17 know of administrative bodies granting variances is normally  
18 in a zoning context. I haven't -- it's been a while since  
19 I've worked in that area, so I don't recall offhand whether  
20 that's a -- I believe that variances are statutorily  
21 provided for in that area in the Government Code. You can  
22 perhaps help me with that.

23 But I don't know of any other context in which  
24 without such statutory authorization variances should be  
25 considered.

1 COMMISSIONER SCHWEICKART: All right, is there  
2 any --

3 MR. CHAMBERLAIN: Especially since you can  
4 accomplish the same thing through a rulemaking, that's  
5 why we more or less interpreted this as a petition for  
6 rulemaking.

7 COMMISSIONER SCHWEICKART: All right. There's  
8 no precedent here at the Commission for granting variances  
9 to regulations.

10 MR. CHAMBERLAIN: Well, there has been, I believe,  
11 one situation that I can think of in which the Commission  
12 more or less indicated that it would more or less suspend  
13 any enforcement action for a period of time based on  
14 unusual circumstances that suggested that it would take  
15 time for a particular manufacturer to come into compliance  
16 with a regulation.

17 That did not have the effect of granting him a  
18 variance, it simply said that the Commission wouldn't of  
19 its own volition, take action against him.

20 COMMISSIONER SCHWEICKART: And I guess in the  
21 case of the building standards, we had specific provisions  
22 for exemptions.

23 MR. CHAMBERLAIN: That's correct.

24 COMMISSIONER SCHWEICKART: In the residential  
25 building standards, okay.

1           COMMISSIONER GANDARA: Let me, if I may, try and  
2 clarify the history of that. I have a bit of a problem  
3 here, I don't know if it's a deficiency with the preparation  
4 of my agenda materials, but I don't have the letter that  
5 is referred to --

6           COMMISSIONER SCHWEICKART: It's the yellow  
7 page right on the front there that you're looking at.

8           COMMISSIONER GANDARA: Okay. I see, okay, fine.  
9 I just --

10          COMMISSIONER SCHWEICKART: Let me say that --

11          COMMISSIONER GANDARA: -- for our agenda material.

12          COMMISSIONER SCHWEICKART: The Committee's  
13 recommendation here in terms of the order denying the  
14 petition is based upon the understanding that we do not  
15 have a basis for granting variance, and the question that  
16 the Committee had in reading the letter from Dr. Poppendiek,  
17 whether or not, in the absence of a variance, which we  
18 may not grant, that there was an intention, in fact, number  
19 one to pursue a change in the regulations and if so, what  
20 the basis of that was, that is, if there was no indication  
21 in Dr. Poppendiek's letter of having reviewed the record  
22 of development of the regulations, and finding -- and a  
23 basis on which new information should be brought before  
24 the Commission, or anything of that kind which indicated  
25 a basis for a petition for rulemaking.

1           So, absent that, the Commission -- the Committee  
2 felt that the petition at this point would have to be  
3 denied without prejudice, but specifically inviting such  
4 further carrying forward of the matter if that was the  
5 intent of Dr. Poppendiek. So, just by way of explaining  
6 what the nature of the order was.

7           COMMISSIONER GANDARA: Okay. Are there any other  
8 questions of Mr. Cohn? If not, then we can move to hear  
9 from the petitioner. Does the petitioner wish to make  
10 any comments regarding his petition?

11           DR. POPPENDIEK: I certainly do. My name is  
12 Heinz Poppendiek from Geoscience Limited, and Commissioner  
13 Schweickart makes a very good point. What was the intent  
14 of my letter, I'd like to come here to get your assistance  
15 in a matter that has developed as a result of a judgment  
16 that has been made, and therefore, could we proceed on  
17 the basis that I leave the question open to this extent.

18           See, I am not an attorney, I'm an applied  
19 physicist, and we do laboratory testing, and analysis work,  
20 et cetera, et cetera. We're accredited by the Energy  
21 Commission, by NVLAP, by ICBO, by other organizations, and  
22 what we're trying to do is to help in the general area of  
23 energy conservation by doing these kinds of functions.

24           But this is a-- this question of whether a given  
25 kind of test is allowed or not is based on, unfortunately,

1 some sophisticated background information. If it were  
2 very simple, if you could just go and look at a regulation,  
3 like I realize the legal people have to do, and then come  
4 to a quick decision, that would be easy then.

5 But there is something else here. There are some  
6 fundamental questions about what R-values mean, what their  
7 accuracies are, how they're tested, et cetera. These are  
8 the kinds of things that I tried very hard to discuss in  
9 January, and those were some of the questions and points  
10 in January that I was not allowed to present, in my opinion.

11 I'm trained in making analyses, and making  
12 measurements, and I'm not an attorney. I don't want to  
13 violate any law, but I think my record is rather good. I've  
14 made contributions in many areas. I think if you look at  
15 my resume it will speak for itself, and I want to be  
16 responsive to your needs.

17 So that is an opening statement. So, I'm going  
18 to need your help to help identify what is it that an  
19 organization like ours should request here. Should we  
20 request a variance, should we request a change in the  
21 testing procedures, et cetera.

22 Well, it's really composed of not just the  
23 technical things, but also legal things, legal questions.  
24 So I'm saying, could you please bear with me, and listen  
25 to some things that I would like to say.

1           Now, an unfortunate thing happened today. I had  
2 talked with some people in the Legislature and they thought  
3 on the basis of what I talked to them about relative to the  
4 January hearing, that I would be able to give some new  
5 information. It turns out that was wrong, and I could not  
6 do it, and I accept the judgment that I can't do that.

7           CHAIRMAN IMBRECHT: Let me just explain there,  
8 briefly, that first off, the only communication we received  
9 from anyone in the Legislature was a letter from  
10 Assemblywoman Killea.

11           DR. POPPENDIEK: You also received something  
12 from Senator Deddeh.

13           CHAIRMAN IMBRECHT: Did we? I'm sorry, I am not  
14 in receipt of such a letter, but in any case, I frankly  
15 think that they perhaps didn't understand the exact legal  
16 circumstance of that particular matter that was before us.  
17 I just want to assure you that ordinarily we very much try  
18 to be responsive to and understand the concerns of the  
19 Legislature.

20           But that particular proceeding is very tightly  
21 prescribed by the Administrative Procedure Act, and the  
22 adjudicatory process in which we're sitting there, and I  
23 will endeavor, in the event that they have further concerns,  
24 to communicate that to them, and explain what the  
25 precise circumstances were.

1 DR. POPPENDIEK: The only reason --

2 CHAIRMAN IMBRECHT: Excuse me. Commissioner  
3 Schweickart?

4 COMMISSIONER SCHWEICKART: Yes. Dr. Poppendiek,  
5 let me try and help out here. Having sat through the  
6 whole evidentiary process, I have some fairly good idea  
7 of the nature of the concern that you have, and let me  
8 suggest that the nature of the concern that you have, and  
9 while I recognize your letter attempted to address that,  
10 it happened to play into an area where we have no option  
11 in terms of variance, it's not a part of the options the  
12 Commission has.

13 An option the Commission does have is to change  
14 its regulations, which have set out the requirements for  
15 testing, either in terms of the specifications of the tests,  
16 or the conditions under which they're conducted, or things  
17 of that kind.

18 That was done in a series of formal proceedings,  
19 which much of what you have to offer should have been, and  
20 for what I know of it at the present time, may have been  
21 considered by the Commission back in 1978 and '81 --

22 CHAIRMAN IMBRECHT: '78 and '81, I believe.

23 COMMISSIONER SCHWEICKART: -- in the two sets of  
24 proceedings which specified the regulations under which  
25 insulation of this type and other types will be tested.

1           Now, it is within the Commission's jurisdiction  
2 on duly submitted petitions, and with an adequate basis  
3 supporting it, to reopen any of its regulations, and we  
4 in some sense do that on a regular basis with our regulations.

5           However, it's quite clear that the Commission must  
6 protect against having gone through a regulatory process,  
7 making decisions where clearly everyone is not happy, and  
8 coming out the back end only to immediately be faced with  
9 a petition by one of those unhappy people to reopen again,  
10 and hear it once again.

11           So that we could be tied up, as an administrative  
12 body, in a continuing series of hearings, which is clearly  
13 inappropriate, and does not serve the public interest. I'm  
14 not suggesting that's the case here, what I am suggesting  
15 is that the burden is on the petitioner to indicate to the  
16 Commission that in opening up these regulations that, in  
17 fact, is not the case.

18           That in your letter, that basis is not contained  
19 so that it is beyond my knowledge, frankly, whether or not  
20 all of these matters, whether it's 40 degrees versus 30  
21 degrees, whether it's 2 x 6 versus 2 x 4, et cetera,  
22 whether or not all of those things were, in fact, considered,  
23 and on preliminary requests of the staff, it is my  
24 understanding that much of this was a part of the rulemaking  
25 process in which the regulations which are bothering you at

1 the moment, were, in fact, established.

2 Now, all that we're suggesting here today is  
3 that in fact a petition to the Commission is the appropriate  
4 way, from what I know of your concerns, to address the  
5 Commission. However, I would suggest in consultation with  
6 the Public Adviser that you inform yourself as to an  
7 adequate basis on which the Commission may make a reasonable  
8 judgment as to whether that is appropriate.

9 DR. POPPENDIEK: No, I think your remarks are fine,  
10 that's very good, but I go back to my statement. Since I  
11 was not able to present the evidence that I wanted to  
12 present in January, in my opinion, and since today, material  
13 that I had prepared and wanted to present, that has not been  
14 allowed to go into the record, I have a little bit of a  
15 problem now, in discussing the variance, because what I  
16 had hoped was that on the basis of that information, that  
17 I could very quickly go to the question of would it be a  
18 variance, or would it be a change in the regulations.

19 So I'm saying, please bear with me, because I am  
20 at a disadvantage for that reason.

21 COMMISSIONER SCHWEICKART: Well, it would be a  
22 change in the regulations, since a variance, absent  
23 legislative action to grant the Commission authority to  
24 give variances in circumstances of this kind, we don't have  
25 as an option. So what you want to effect, as I know your

1 case, is a change in the Commission's regulations.

2 DR. POPPENDIEK: I'm not sure. You haven't yet  
3 heard my comments, and so I think it would be good if I  
4 could at least present some of that.

5 CHAIRMAN IMBRECHT: Okay. We -- I just want to  
6 mention, first off, I want you to know we all bend over  
7 backwards to listen to people who want to address the  
8 Commission, and I guess we could even take this as a public  
9 comment, for that matter, which is another item on our  
10 agenda.

11 But I think Commissioner Schweickart has  
12 adequately stated it, there is no legal basis by which we  
13 can provide a variance to the existing regulations that  
14 prescribe how we test insulation. But we can consider  
15 changes or amendments to those regulations if such a  
16 proceeding is properly filed before us.

17 The agenda item that you just sat through, just a  
18 moment ago, was in effect that very same kind of procedure.  
19 We have other regulations that establish efficiency  
20 standards for appliances. A party filed a petition for an  
21 order instituting hearings to cause us to consider changes  
22 in those appliance regulations, and that's exactly the  
23 process that we're involved in now, that we'll conclude  
24 sometime later this year.

25 That is exactly the procedural way that you

1 ought to appropriately raise this issue before the  
2 Commission, and the Public Adviser's office is there to  
3 assist you, to basically be the peoples attorney, if  
4 you will, before the Commission in helping you file the  
5 proper documents, and so forth.

6 DR. POPPENDIEK: In that case, then, I would  
7 like to make a presentation on the basis that I am  
8 requesting no variance, but I think that the material that  
9 was presented is acceptable as is.

10 CHAIRMAN IMBRECHT: Okay. Commissioner Gandara.

11 COMMISSIONER GANDARA: As I read Mr. Poppendiek's  
12 letter, he makes two requests. One, a petition for a  
13 variance, which is his choice of words, which I think was  
14 appropriately taken as a petition. Then the other one  
15 almost as an after thought, requesting corresponding  
16 changes in the regulations be made.

17 Now, that, if I were to read that, that to me  
18 would constitute a petition for a change in the rules and  
19 regulations. Now, my question is that his letter is dated  
20 April 9th, I guess received April 12th, and from my under-  
21 standing, there is an internal procedure that is supposed  
22 to identify a potential petition in which the direction is  
23 to be given to the staff of the Public Adviser to ascertain  
24 whether in fact, to get ahold of the applicant, and  
25 potential petitioner, find out whether it's a petition, if

1 it is, to be able to put it in the form and fashion as to  
2 whether we can -- so we can rule on it now.

3 I guess my question is, one, it seems to me that  
4 this didn't go through that process so why are we here  
5 at this stage without that, or if it did, you know, it  
6 tells us something else about how we can dispose of this  
7 quickly.

8 But secondly, again assuring you Mr. Poppendiek  
9 that the entire Commission here will be fully supportive  
10 of you getting assistance to adequately file a petition for  
11 rulemaking, what the Commission is concerned about is  
12 again for equity purposes of other potential petitioners  
13 and we not jump into a rulemaking without having a petition  
14 that identifies for the staff, for all parties, for the  
15 outside world as well, and given adequate notice, that there  
16 is a petition to be considered for a change in the regula-  
17 tions and the change is to be X, Y, and Z, so that any  
18 other interested party would be able to come here and either  
19 confirm -- agree with your request, or disagree with your  
20 request.

21 So that's the problem that we have right now,  
22 it's a technical problem, but it in no way is going to the  
23 point of trying to deny you an opportunity to either file  
24 a petition making that clear. So with respect to my --

25 CHAIRMAN IMBRECHT: Or to prevent your views.

1           COMMISSIONER GANDARA: With respect to my first  
2 question, you know, how did this fall between the cracks,  
3 or did it, and if it didn't then we can move on.

4           CHAIRMAN IMBRECHT: Those are questions for our  
5 staff, I might add to give this -- probably the Public  
6 Adviser's Office.

7           DR. POPPENDIEK: Well, I would like to ask this  
8 question: Can I present to you now my comments that will,  
9 in my opinion, support my contention that no variance is  
10 needed for the R-value measurements that we have made, and  
11 this is in light of the fact that the new information that --

12           CHAIRMAN IMBRECHT: And that -- okay, let me  
13 just try and understand, because I guess the only reason  
14 I'm hesitant in having you go forward is having you make,  
15 I presume, a fairly long and detailed presentation, and  
16 then us not have the ability to take any action today that  
17 would actually respond to your concern, or provide you  
18 any remedy.

19           Are you saying in effect that it is your belief  
20 that your test methods do comply with our regulations, and  
21 it's a matter of staff interpreting them inadequately?

22           DR. POPPENDIEK: Yes. In the light of what  
23 Commissioner Schweickart has said, that is how I now  
24 interpret the situation.

25           COMMISSIONER SCHWEICKART: Well, let me -- I must

1 say, I did leave out one option, Dr. Poppendiek, that is,  
2 we don't have an option for a variance, for granting a  
3 variance, we can amend our regulations. The other thing  
4 that we do in certain instances is interpret our regulations  
5 where there is ambiguity, and just what do they really say.

6 But in this instance, 2 x 6 -- we have to read  
7 the regulation, but I don't think that the issues you're  
8 raising are really matters of interpretation. You're  
9 really questioning whether our regulations are correct,  
10 are proper, whether they're set --

11 DR. POPPENDIEK: But you haven't heard my  
12 presentation.

13 CHAIRMAN IMBRECHT: I'll tell you what I'm  
14 going to do.

15 COMMISSIONER SCHWEICKART: I think we ought to  
16 hear it.

17 CHAIRMAN IMBRECHT: Yeah, just -- I'm going to  
18 just suggest that we're going to take this as public  
19 comment, and if it fits appropriately in the context of  
20 the petition, we'll restructure that later, but go ahead,  
21 and please make your presentation.

22 How long do you anticipate this will take?

23 DR. POPPENDIEK: Well, I was just going to make  
24 a comment bearing directly on your question. I will not  
25 go through the total document, because that would not be

1 fair to the time, because I had presumed this was -- already  
2 would have been presented in the earlier one, earlier  
3 session.

4 What I will do is walk through this document and  
5 stop at the most appropriate sections, and give those in  
6 more detail, and I think I can do the whole thing in a  
7 period of 20 minutes, 30 minutes.

8 CHAIRMAN IMBRECHT: Commissioner Commons?

9 COMMISSIONER COMMONS: Mr. Chairman, based on  
10 his statement that it is currently within our regulations,  
11 to me that's an appropriate not before the Commission, or  
12 the Committee, and the Committee says it is not within  
13 our regulations, and he wants to appeal to the Commission,  
14 then that would be appropriate.

15 The variance we cannot act upon, and the purpose  
16 of having Committees is so we don't go through de novo  
17 actions such as this.

18 COMMISSIONER SCHWEICKART: Excuse me, Commissioner  
19 Commons, that's not correct in this instance. If we  
20 consider that Dr. Poppendiek has filed a petition, and in  
21 some sense, that's what we're saying, we're not clear whether  
22 it is adequately supported to act on, but I think we have  
23 to assume Dr. Poppendiek has filed a petition.

24 The question is, are you addressing, Dr.  
25 Poppendiek, the basis upon which the Commission should open

1 a formal proceeding, rulemaking proceeding, to revise its  
2 current regulations.

3 DR. POPPENDIEK: No.

4 CHAIRMAN IMBRECHT: No, what then precisely --

5 COMMISSIONER SCHWEICKART: See, then, that's the  
6 problem. Because if you are not addressing the justification  
7 for a petition, then you will simply be lecturing us and  
8 taking time, but not addressing the issue before us, which  
9 is should we grant a hearing on a petition -- should we  
10 open a rulemaking process to alter our regulations.

11 In other words, have you reviewed the record of  
12 the proceedings in which the current regulations were set,  
13 and find them to be -- to come up short, and if so, that  
14 would be informative to us.

15 DR. POPPENDIEK: I think I have looked at some of  
16 the information, I haven't looked at all of the information,  
17 but that is a rather lengthy -- but that will be a long  
18 and lengthy process. We would be willing to do that, I  
19 would be willing to do that sometime in the future, but  
20 that's a long and lengthy process.

21 COMMISSIONER SCHWEICKART: But absent that, sir,  
22 I don't think we can make the decision today which you  
23 want us to make. That's the problem that we're having here.  
24 You have a lot of information you want to present to us,  
25 but it misses the action that you're asking us to take, which

1 is to establish a rulemaking to change our regulations.

2 DR. POPPENDIEK: Well, no, I think it can be --  
3 the question can still be answered, have the tests that  
4 we have performed, have those tests in essence still  
5 complied with the regulation on a broad enough basis to  
6 satisfy the regulations.

7 CHAIRMAN IMBRECHT: Well, okay, if that's the  
8 question, then I'm going to rule that that is not in order  
9 at this point in time. Let me say that I understand very  
10 clearly now what you're trying to get at, and it seems to  
11 me that you're trying to once again address the fundamental  
12 issue that was at issue this morning, or during the  
13 course of our consideration of Item No. 2.

14 If you're concerned as to whether or not the  
15 existing regulations were fairly applied -- let me ask  
16 this. Are you concerned about how the test procedures  
17 will be applied with respect to the NM class of products,  
18 or how they were applied to the --

19 DR. POPPENDIEK: Well, that's one of the  
20 questions, yes, and also how they were applied to the  
21 Roifoil.

22 CHAIRMAN IMBRECHT: You mean the products that  
23 we ruled on today, in which we --

24 DR. POPPENDIEK: No, just generally, this relates  
25 to the testing methodology, and I don't -- see, I honestly

1 don't know whether it should be a variance question or a  
2 change in --

3 CHAIRMAN IMBRECHT: There is no variance question,  
4 because that doesn't exist.

5 DR. POPPENDIEK: Right, we've already -- right.

6 CHAIRMAN IMBRECHT: Established that, right.

7 (Whispered discussion at the bench.)

8 CHAIRMAN IMBRECHT: Mr. Chandley, would it be  
9 your interpretation that what Dr. Poppendiek is alleging  
10 by his remarks would fall under Title 20, Section 1231,  
11 complaints before the Commission, or Mr. Cohn, either one?  
12 I'll just read the section to you, it says, "Any person,  
13 including Commission staff, may file a complaint or  
14 request for investigation, alleging a violation of a  
15 statute, regulation, order, program, or decision adopted,  
16 administered, or enforced by the Commission."

17 MR. CHANDLEY: I don't think this is in the  
18 nature of a complaint, it doesn't --

19 COMMISSIONER SCHWEICKART: We may have to hear  
20 Dr. Poppendiek's material in order to tell what --

21 DR. POPPENDIEK: I think so, I agree very much  
22 with that comment.

23 MR. CHANDLEY: Mr. Chairman, may I --

24 CHAIRMAN IMBRECHT: Yes.

25 MR. CHANDLEY: Yeah, we perhaps inadvertently

1 processed as a rulemaking petition through the procedures  
2 we established a few months back, and perhaps it would be  
3 useful for us to go back and take a look at that, defer it  
4 for the time being, that is, put it over to a subsequent  
5 meeting.

6 This could possibly be treated, now that I've  
7 looked at it a little more closely, as a request for an  
8 interpretation. If not, we may work with the Public Adviser  
9 and the gentleman here to redefine precisely what it is  
10 that he's asking for, and if so, to bring it back as a  
11 more appropriately drafted petition.

12 So I would ask that the Commission defer on this  
13 and give us a little bit more time to go back to this, and  
14 I'd like to apologize for having let this go through up  
15 to this point.

16 CHAIRMAN IMBRECHT: Okay. Dr. Poppendiek, would  
17 it be possible for you to come back to us on this matter?

18 DR. POPPENDIEK: I'd like to present it now.

19 COMMISSIONER CROWLEY: I don't blame him, he's  
20 been here all day, but I don't want to hear it.

21 CHAIRMAN IMBRECHT: I understand. There's really  
22 no remedy that we can offer you today, though. Presenting  
23 the information to us at this juncture really is not going  
24 to serve any purpose. You'll have to present it again in  
25 a proceeding that's properly before the Commission.

1 DR. POPPENDIEK: What kind of a proceeding would  
2 it be?

3 CHAIRMAN IMBRECHT: Well, that's what our  
4 general counsel will -- and our Public Adviser's Office  
5 will work with you personally to properly frame, to under-  
6 stand from you and spend time with you, understand exactly  
7 what it is you're requesting of the Commission in the way  
8 of relief.

9 DR. POPPENDIEK: But as I gather it, even the  
10 counsel doesn't have it clear in his mind what's involved  
11 here, and gee, it seems to me, that's his business, that's  
12 what he's paid for by the state, and it's sort of an  
13 amazing situation.

14 CHAIRMAN IMBRECHT: That is correct, and that is  
15 what he's going to try to do, and try to assist you to  
16 properly bring your concerns before the Commission.  
17 Commissioner Commission?

18 COMMISSIONER COMMONS: Chairman Imbrecht, as the  
19 Chair, I think you have the prerogative in terms of which  
20 items we hear in which order. I am personally willing to  
21 sit and hear his presentation, but only if we do it after  
22 we finish the rest of the agenda.

23 DR. POPPENDIEK: That's satisfactory with me.

24 CHAIRMAN IMBRECHT: Well, Commissioner Schweickart?

25 COMMISSIONER SCHWEICKART: Yes. I have no more

1 desire than anyone else to sit for a significant period of  
2 time through something which may be irrelevant. On the  
3 other hand, let me point out that this proceeding was  
4 noticed as consideration of a petition for rulemaking so  
5 that adequate notice was, in fact, provided of hearing a  
6 petition for rulemaking to amend our testing requirements.

7 Now, I really have no idea whether Dr. Poppendiek  
8 will be able to present to us what is necessary for us to  
9 make that judgment, but absent hearing it, I frankly won't  
10 know. It's unfortunate, frankly, that Dr. Poppendiek did  
11 not get together with our Public Adviser so that it was  
12 clear what the necessary procedures of the Commission are  
13 that we're bound by, by statute and regulation.

14 Nevertheless, I would point out that it has been  
15 properly noticed --

16 CHAIRMAN IMBRECHT: For that particular type of  
17 proceeding, that's correct.

18 COMMISSIONER SCHWEICKART: -- for a petition for  
19 rulemaking, and --

20 DR. POPPENDIEK: Well, I'd like to make a comment  
21 relative to that. You see, I objected to the turn down of  
22 our data presentation, and there was a letter that we  
23 received saying that while we -- you did not do proper  
24 testing, and so in discussing this with Mr. Hillier --

25 MR. COHN: Excuse me, let's get clear what we're

1 talking about. Are you talking about on an attempt for  
2 recertification by Timco in February?

3 DR. POPPENDIEK: It was the Timco test work, yes.

4 MR. COHN: Okay. So --

5 DR. POPPENDIEK: Let me go on, please. So I  
6 did ask for counsel by saying well, gee, what can I do. I  
7 know what the Energy Commission has accepted for Roy and  
8 Sons, and gee, I don't think that we're in any different  
9 position. I was told by Mr. Hillier that well, gee, the  
10 only way you can go is you've got to ask for a variance.

11 So really, that bothered me, but I did proceed  
12 on that basis. Maybe I didn't go to the right -- maybe I  
13 should have gone to the public --

14 CHAIRMAN IMBRECHT: Adviser.

15 DR. POPPENDIEK: But at that point, he wasn't in  
16 the picture. That is why I keep saying, I need a little  
17 help here.

18 CHAIRMAN IMBRECHT: We're trying to give it to  
19 you sir, honestly, and we're not trying to be arbitrary  
20 or capricious in the slightest, it's just not clear to  
21 any of us that we're going to be able to do anything this  
22 evening to respond to your concerns, and -- let me suggest  
23 this.

24 Let us defer action on this item temporarily. I'm  
25 going to ask the Public Adviser and his assistant counsel,

1 with you in the next 10 or 15 minutes -- now just a moment,  
2 I'm not saying that we won't hear you tonight -- counsel  
3 with you and try to understand exactly how this might  
4 properly be before us, and then I'm going to listen to the  
5 advice of the Public Adviser as to an ultimate ruling on  
6 this matter for this evening, as to whether or not we can  
7 hear it tonight, or whether it should be put over to a  
8 subsequent business meeting.

9 I think that's the most judicious response we  
10 can come up with.

11 DR. POPPENDIEK: All right.

12 CHAIRMAN IMBRECHT: Okay. Let's move on down.  
13 There's nothing on the consent calendar. Do we have  
14 minutes today? Yes. Are there any additions or corrections  
15 to the minutes before us?

16 COMMISSIONER COMMONS: I think I have some, yes.

17 MR. PEREZ: Chairman Schweickart -- that --  
18 Chairman Imbrecht.

19 CHAIRMAN IMBRECHT: Yes?

20 MR. PEREZ: Pursuant to our agreement last  
21 business meeting, I do want to -- you heard the couple of  
22 slips.

23 COMMISSIONER SCHWEICKART: What are you doing here?

24 CHAIRMAN IMBRECHT: Yeah, we just gave you a job.

25 MR. PEREZ: We've got the business meeting agenda

1 to review.

2 CHAIRMAN IMBRECHT: Under the statute, I direct  
3 that the Public Adviser -- excuse me, I'm sorry.

4 MR. PEREZ: All right. I've got the business  
5 meeting agenda for the next business meeting to review  
6 prior to close today, so --

7 CHAIRMAN IMBRECHT: All right, fine. Okay. Now,  
8 on to the minutes. Commissioner Commons?

9 COMMISSIONER COMMONS: On Item 11, I haven't seen  
10 the order on this, and is this descriptive of the action  
11 that we took? I'm looking at the minutes, Item 11. Item 9  
12 in the agenda -- I mean Item 9 in the agenda, number 11,  
13 has there been an order, I haven't seen the order.

14 SECRETARY GERVAIS: You mean the corrected order?

15 COMMISSIONER COMMONS: Yes.

16 SECRETARY GERVAIS: I believe that's what I  
17 received a copy of from dockets. You didn't receive one  
18 stamped docket?

19 COMMISSIONER COMMONS: Yeah. I'm wondering if  
20 this is sufficient in terms of the action that was taken.

21 COMMISSIONER GANDARA: You mean is this sufficient  
22 for the minutes?

23 COMMISSIONER COMMONS: For the purposes of the  
24 minutes.

25 COMMISSIONER GANDARA: Well --

1           COMMISSIONER COMMONS: My tendency would be to  
2 identify, instead of with the corrections and changes  
3 indicated during discussion, that it should address with  
4 the corrections and changes indicated within the order  
5 adopted, because the discussion can be vague, and the order  
6 adopted is specific.

7           COMMISSIONER CROWLEY: Do you want the document  
8 attached?

9           COMMISSIONER COMMONS: I'm trying to work it out.  
10 To me it is vague the way it is here, and if I were to come  
11 back later on and see what we had done, I don't feel  
12 comfortable as to what that was. But I guess if we said  
13 with the corrections and changes indicated in the order  
14 adopted --

15           COMMISSIONER GANDARA: I think what Commissioner --

16           COMMISSIONER SCHWEICKART: Well, one could not  
17 say grammatically, the motion was to adopt the order with  
18 the corrections and changes indicated in the adopted order.

19           SECRETARY GERVAIS: It refers to the order.

20           COMMISSIONER COMMONS: Just identifying it, I  
21 feel it was vague in terms of the minutes, and it was an  
22 important order of the Commission, and I didn't know the  
23 answer, I just wanted to raise it as a problem.

24           COMMISSIONER GANDARA: I think what Commissioner  
25 Commons is raising is whether there is sufficient specificity

1 in the minutes to be able to act on it, and if there isn't  
2 what the consequences would be, and I think what we decided  
3 last time around was that we have the transcripts, and --

4 EXECUTIVE DIRECTOR WARD: In fact, it was the  
5 Chairman's direction to make these minutes as brief as  
6 possible, and I noticed myself that we have five pages  
7 of minutes, and typically, they don't go over three.

8 COMMISSIONER GANDARA: Yeah.

9 COMMISSIONER CROWLEY: Well, we have the previous  
10 order, and then we have the corrected order with the  
11 corrections and changes indicated during the discussion.  
12 Would those two documents showing the subsequent changes  
13 be adequate for your purposes?

14 COMMISSIONER COMMONS: I'm not saying that this  
15 is inappropriate as it is. I just want to raise the  
16 question if someone were to come back and challenge what  
17 we finally did, if other Commissioners feel --

18 COMMISSIONER SCHWEICKART: But the record of the  
19 proceedings is contained in the transcript. The minutes  
20 are simply a summary of the actions. The transcript is  
21 the official record of the Commission's business.

22 COMMISSIONER CROWLEY: And not the minutes, the  
23 minutes are really just a table of contents of the --

24 COMMISSIONER COMMONS: The second item I had on  
25 the minutes was on SB 1884 on Garamendi under Commission

1 Policy Committee Reports, weren't there two opinions  
2 addressed --

3 COMMISSIONER CROWLEY: Where are you, sorry.

4 COMMISSIONER COMMONS: On the next page, on page 4.  
5 Was the Committee Report unanimous on that? For some  
6 reason, I remember, at least the Commission vote wasn't  
7 unanimous on that.

8 COMMISSIONER GANDARA: What was 1884, I have  
9 difficulty remembering the numbers.

10 COMMISSIONER CROWLEY: Was that the trade,  
11 foreign trade bill?

12 COMMISSIONER COMMONS: That's the one I'm  
13 referring -- I'm referring to the foreign trade bill.

14 COMMISSIONER CROWLEY: That's the one you're  
15 talking about, yeah. And I think that we split on -- I  
16 thought it should require funding for the work it would  
17 involve, and then I don't know how it came down --

18 COMMISSIONER COMMONS: We made an amendment to  
19 that motion, I think Commissioner Gandara did --

20 COMMISSIONER GANDARA: No. Well, if this is the  
21 trade export bill, my recollection is that the recommendation  
22 from the Committee was to increase the amount of funds  
23 allocated, and secondly, for the member of the Commission  
24 to be selected by the Commission. That was the recommenda-  
25 tion that came out of the Committee.

1           COMMISSIONER CROWLEY: Right, and then that was  
2 apparently accepted by the full Commission, because the  
3 letter speaking to those two points went --

4           COMMISSIONER GANDARA: I think what is causing  
5 some confusion here with Commissioner Commons is that we  
6 did vote on that, notwithstanding the unanimous Committee  
7 recommendation that the vote on that was 3 to 2. I believe  
8 that you deferred on that last item, Commissioner.

9           COMMISSIONER SCHWEICKART: I think that's right.

10          COMMISSIONER CROWLEY: Was that -- okay, okay.

11          COMMISSIONER COMMONS: So the Committee report  
12 was with the amendment, and even though the Commission  
13 report was not unanimous, is that what you're saying?

14          COMMISSIONER GANDARA: That's correct.

15          COMMISSIONER COMMONS: So the minutes are correct  
16 as stated.

17          COMMISSIONER GANDARA: Yes. I think what caused  
18 the confusion is that between the Committee recommendation  
19 and the final vote, an exercise of you know --

20          COMMISSIONER COMMONS: I have no further questions.

21          COMMISSIONER GANDARA: Do I hear a motion for  
22 approval of the minutes?

23          COMMISSIONER SCHWEICKART: I'll move.

24          COMMISSIONER GANDARA: Okay. I don't think we  
25 need a second, anybody object? Well, to be safe, can we

1 have somebody second it? Okay, I'll second it. Any  
2 objections? Fine, Item No. 9 is disposed of.

3 We have nothing on consent calendar. What is  
4 left open? Next is we have Commission Policy Committee's  
5 Reports. Do we have policy committee reports today?

6 COMMISSIONER CROWLEY: There is no report from  
7 the Legislative Policy Committee this week.

8 COMMISSIONER GANDARA: Okay. Any other Committees?

9 COMMISSIONER SCHWEICKART: Yes, and I can't think  
10 of it right now. Let Geoff go, because I --

11 COMMISSIONER GANDARA: Okay, Commissioner Commons?

12 COMMISSIONER COMMONS: From the Conservation  
13 Utility Committee concerning the Public Utility Commission's  
14 OIR 2 proceeding, the staff is in the process of preparing  
15 testimony for the next phase of the Public Utility  
16 Commission's hearings on the long-term avoided costs.

17 This phase will focus on the question of  
18 methodology. A subsequent phase will be devoted to working  
19 out the details of a standard long-term contract offer for  
20 small power and cogeneration qualified under PURPA.

21 At a prehearing conference on May 9th, the staff  
22 will ask the Public Utilities Commission to schedule the  
23 hearings so that we may have until August 31st to submit  
24 our testimony. This schedule will allow sufficient time  
25 to (1) review the relevant CFM data, (2) incorporate results

1 from the current CEC contractor, and (3) provide about  
2 30 days for internal review.

3 The staff will be preparing testimony in three  
4 major areas: (1) procedure for developing assumptions, (2)  
5 preferred methodology for converting the assumptions into  
6 relevant numerical estimates of avoided costs, and (3)  
7 procedure for implementing and providing timely updates to  
8 these avoided cost estimates in the future.

9 A key part of this staff testimony will be devoted  
10 to showing other relevant assumptions, for example, demand  
11 forecasts, fuel prices, and reserve margins that are  
12 addressed as part of our normal BR process, should be used  
13 as basic input into this PUC avoided cost process.

14 The question of how the established BR/ER process  
15 may serve to provide timely update of these assumptions  
16 will also be addressed. Because of its importance and  
17 general interest, the Committee will be holding a series  
18 of special Committee meetings over the next several months  
19 devoted entirely to this topic, which all Commissioner  
20 advisers are invited.

21 The first meeting will be held on Thursday  
22 afternoon, May 10th, and will address key policy issues.  
23 From the standpoint of the Commission, one thing that we  
24 must look at is in making our response, do we want it to  
25 be made, a response by the Commission, by the Committee, by

1 the Executive Director, or by the staff, and our main  
2 problem that we have in doing this is we have an extremely  
3 tight time constraint imposed by the Public Utilities  
4 Commission, even if they accept our deadline.

5 The reason for the August 31st date is Commissioner  
6 Grimes, whose term expires December 31st, is the presiding  
7 member at the Public Utilities Commission, and it's his  
8 intent to conclude, and it's the Public Utilities Commis-  
9 sion intent to conclude this proceeding by that date, and  
10 the latest that we have in order to participate is that  
11 time.

12 CHAIRMAN IMBRECHT: Is that Committee reports?

13 COMMISSIONER GANDARA: Yeah, Committee reports.  
14 Thank you. Mr. Chairman, I have two Committee reports on  
15 each of the Committees I preside over. I have decided it  
16 probably would be good practice insofar as I'm able to  
17 maintain this, what I'm doing is I'm providing written  
18 Committee reports, and so you should have had delivered to  
19 you already, and inserted in your packages a report from  
20 the Loans Grants and Economic Impacts Committee, and a  
21 report from the Fuels and Policy Planning Committee.

22 I don't think it's necessary to go over that  
23 unless anybody has any particular questions on those items.  
24 But you know, if not, I would say that constitutes those  
25 Committee reports for today.

1           COMMISSIONER CROWLEY:  Would they be in our  
2 packets?

3           COMMISSIONER GANDARA:  They should have been.

4           COMMISSIONER CROWLEY:  One of them I may have  
5 seen earlier, but it is not -- let me check that out.

6           COMMISSIONER GANDARA:  Okay.  I contemplated  
7 that possibility so I ask that there be extra copies made.

8           COMMISSIONER CROWLEY:  I think I have a logistical  
9 problem because of Debbie's absence, so I'm sure I have it,  
10 but I appreciate that, thank you.

11           CHAIRMAN IMBRECHT:  I likewise have two Committee  
12 reports, and given the lateness of the hour, I will try to  
13 make these succinct and fill in the detail if there is  
14 interest.  The March change letter -- are you finished  
15 Arturo, excuse me.

16           COMMISSIONER GANDARA:  Yes.

17           CHAIRMAN IMBRECHT:  Okay.  The first is with  
18 respect to the Budget Committee, and all Commissioners  
19 advisers were in attendance at a fairly long Budget  
20 Committee meeting, Commissioner Gandara and I held last  
21 week where we reviewed not only the work plan, but also  
22 the status of the March change letter, and our budget  
23 proposals pending before the Legislature.

24           The administration agreed to budget change letters  
25 totalling 4 PY, and a \$6,081,000 augmentation over the

1 Governor's budget in January of \$27 million. That represents  
2 a 22 percent increase in total funding recommended by the  
3 administration between January and March for the 84-85  
4 budget year, and I believe all of your staffs have received  
5 a detailed analysis from the Administrative Services Division  
6 as to what is constituted within those totals.

7 The Legislative Analyst took some issue with a  
8 number of those items approved by the Department of Finance,  
9 a good illustration to me about how the budget process  
10 never seems to end, but in any case, I believe that with  
11 some appropriate conversations that occurred earlier this  
12 week, we should not have any difficulty before our respective  
13 legislative subcommittees dealing with our budget.

14 The Senate Finance Subcommittee is due to hear it,  
15 I believe on Monday, now, rather than tomorrow. I don't  
16 know that we have a date for the Assembly at this juncture.

17 EXECUTIVE DIRECTOR WARD: The Assembly, I under-  
18 stood was Monday also. I thought the Senate was tomorrow  
19 upon adjournment.

20 CHAIRMAN IMBRECHT: It got changed, Luree informed  
21 me a little earlier today it was changed.

22 EXECUTIVE DIRECTOR WARD: We may have two hearings  
23 on Monday, then.

24 CHAIRMAN IMBRECHT: Okay. If that's the case,  
25 that's the case. Secondly, with respect to the Biennial

1 Report Committee, I just want to mention a few items  
2 briefly. SB 1549 which dealt with rescheduling of the  
3 Electricity Report and the Biennial Report, with the  
4 concurrence of the Legislative Committee, was redrafted to  
5 reflect a new schedule and passed out at the Senate Energy  
6 Policy Committee last week on a consent recommendation.

7 Thus, the current projection for completion of  
8 BR, or the new adoption date that we would require to  
9 submit it to the Governor would be May 1st, 1985. This  
10 date would be consistent with the Electricity Report  
11 schedule, and joint ER and BR schedules and issues are  
12 being coordinated by staff.

13 Staff has also developed illustrative outlines  
14 for the '85 document, and will be presenting those to the  
15 Committee early next week, and I think it's Tuesday and  
16 Wednesday we've got a meeting scheduled, and we will  
17 circulate an outline to all Commissioners for comment soon  
18 after that presentation to the Committee.

19 We expect to initiate work assignments before  
20 June 1 of this year with respect to that revised schedule.  
21 Commissioner Commons?

22 COMMISSIONER COMMONS: I'd appreciate knowing when  
23 that date is for that, I have not been notified.

24 CHAIRMAN IMBRECHT: I apologize for that, it's  
25 supposed to have been done, so I'll find out. I'll check

1 first thing in the morning. I don't recall the specific  
2 date myself, but it's next week in any case.

3 At this juncture, Cynthia Praul in the Executive  
4 Office has been coordinating the scheduling activities and  
5 approach to the BR development for next year, and I will  
6 be also -- I have talked informally, I believe, with most  
7 of you as to format changes, and we will be circulating  
8 a specific proposal with respect to formatting of the new  
9 BR sometime within 30 days at the outside, but I think  
10 we're down pretty much to concensus on that.

11 Okay, any other Committee reports? Hearing none,  
12 do we have a General Counsel's Report?

13 MR. CHANDLEY: No.

14 CHAIRMAN IMBRECHT: No need for executive session  
15 today?

16 MR. CHANDLEY: Let me doublecheck on that,  
17 because Mr. Chamberlain is on the phone, he'll be back in  
18 a few minutes.

19 CHAIRMAN IMBRECHT: All right, fine, Executive  
20 Director?

21 EXECUTIVE DIRECTOR WARD: A couple of things.  
22 First, just to bring you up to date on the Little Hoover  
23 Commission Report. We've responded to the 60 day request  
24 by Senator Rosenthal, and Assemblywoman Moore, Gwen Moore.  
25 We've submitted a staff draft under the signature of the

1 Chairman. The Commission now has an opportunity to revise  
2 that, take a position on the document as a Commission, and  
3 we can certainly transmit it, it would be another letter,  
4 I guess, would be a possibility. As I indicated, the  
5 full Commission was in support of the comments made in that  
6 as revised or otherwise changed. So we'll be working with  
7 you --

8 CHAIRMAN IMBRECHT: Subsequent to that, I have  
9 had reason to have some questions about some of the staff  
10 recommendations, and I do think it would be appropriate  
11 for us, maybe for the next business meeting, to try to  
12 deal with the specific recommendations.

13 I would ask that the Executive Office --

14 EXECUTIVE DIRECTOR WARD: We have at least one  
15 meeting scheduled with a Commissioner to discuss those  
16 concerns.

17 CHAIRMAN IMBRECHT: -- deal with the process that  
18 would allow for adequate review prior to that by the  
19 Commissioners, and then deal with the specific issues, so  
20 we can either accept or reject them as Commission position.

21 COMMISSIONER COMMONS: I have a comment on that.

22 CHAIRMAN IMBRECHT: Yes, Commissioner Commons?

23 COMMISSIONER COMMONS: There was a letter  
24 circulated on that, and I believe I gave to the Executive  
25 Office written comments, and my understanding is those

1 comments were not included in the letter that was sent, and  
2 I'd like to know, I'd ask the Executive Office to prepare  
3 a letter for my signature, as to my comments, and I've not  
4 heard back from them.

5 EXECUTIVE DIRECTOR WARD: The letter is on my  
6 desk, I was just simply reviewing it. It will be in your  
7 office before the close of business tomorrow, Commissioner,  
8 and I apologize for the oversight.

9 Secondly --

10 COMMISSIONER COMMONS: I had one other comment.  
11 Concerning the Commission taking a position on the staff  
12 draft, it's my personal opinion at this time that it is  
13 premature for the Commission to go beyond the -- at this  
14 stage, the original nine points that I think the Commission  
15 agreed upon in terms of submittal, and I think that it is  
16 important to -- I think it's good that the staff has a  
17 draft and report, and we should all be involved as  
18 Commissioners, but I think it would be too early to, at  
19 this time, to establish a Commission position.

20 CHAIRMAN IMBRECHT: Okay. Let me then slightly  
21 qualify that by saying that I would like to suggest that we  
22 do consider potentially rejecting some of those. That would  
23 not necessarily mean endorsing the remainder, but I think  
24 that there might be a few items that we could reach  
25 consensus on taking off the table that would perhaps

1 ameliorate concerns of our sister agency.

2 COMMISSIONER COMMONS: That would be acceptable.

3 CHAIRMAN IMBRECHT: Okay. Further --

4 EXECUTIVE DIRECTOR WARD: Secondly, I testified  
5 yesterday in front of Assembly Energy and Natural Resources  
6 on low level radioactive waste disposal. I was frankly a  
7 bit surprised that the Energy Commission was asked to be  
8 represented. We have not been an integral part of that  
9 process since 1979, and some of you may have a broader  
10 history on that than I do.

11 A fairly complex process involving the Department  
12 of Health Services, appears to be moving forward, and it  
13 was a little bit unclear as to what the specific interest  
14 of the Committee was.

15 My comments indicated that certainly we were  
16 extremely concerned about the safe disposal of low level  
17 radioactive waste, primarily because of the increases  
18 associated with utility generated radioactive waste,  
19 corresponding to San Onofre, and Diablo Canyon increases  
20 in the volume of total waste necessary for disposal in the  
21 state.

22 The hearing went fairly well. They had an expert  
23 prior -- had been with the previous administration, Carter  
24 administration, that was very knowledgeable on the issue of  
25 disposal, and then they had a representative from the State

1 of Texas, which had decided not to have any compact with  
2 another state, and had decided to handle it independently  
3 and had went through a regional selection process which  
4 was of significant interest to the Committee.

5 They appeared to be interested in our site  
6 selection process for utilities, but didn't ask me any  
7 specific questions about its adaptability for low level  
8 radioactive waste disposal sites. I was thankful for  
9 that.

10 (Laughter)

11 EXECUTIVE DIRECTOR WARD: Let's see, and thirdly,  
12 I do have an issue for executive session that was  
13 requested at the last business meeting.

14 CHAIRMAN IMBRECHT: Today?

15 EXECUTIVE DIRECTOR WARD: Yes.

16 CHAIRMAN IMBRECHT: Okay.

17 EXECUTIVE DIRECTOR WARD: It should not take over,  
18 I would say, 10 minutes.

19 CHAIRMAN IMBRECHT: Okay. Fine. Comments,  
20 questions for the Executive Director?

21 COMMISSIONER GANDARA: I don't know whether the  
22 question is premature, but we were going to get at some  
23 point in time, I thought this business meeting, a briefing  
24 on the affirmative action work?

25 EXECUTIVE DIRECTOR WARD: And that was the primary

1 reason for executive session, Commissioner.

2 COMMISSIONER GANDARA: Okay.

3 CHAIRMAN IMBRECHT: Commissioner Commons?

4 COMMISSIONER COMMONS: Is this where we're going  
5 to have the third quarterly review at this stage, or where  
6 does this -- does this come up in the Executive Director's  
7 Report?

8 EXECUTIVE DIRECTOR WARD: Yes, it would come up  
9 in the Executive Director's Report. My suggestion would be  
10 that we have executive session, and then return to that.

11 COMMISSIONER COMMONS: Okay, I just didn't want  
12 to -- I was afraid you were stopping your report, and we  
13 weren't going to come back to it.

14 CHAIRMAN IMBRECHT: Okay, fine. Now, let's ask  
15 Mr. Perez, do you have any -- also, for housekeeping purposes,  
16 Item 7 has been withdrawn from the agenda and postponed  
17 until June 6th, 1984.

18 Mr. Perez, on Item No. 4.

19 MR. PEREZ: Thank you, Chairman Imbrecht.  
20 Mr. Poppendiek who is in the audience has proposed to  
21 continue his petition for rulemaking, as noticed in today's  
22 business meeting provided it is renoticed in conjunction  
23 with a possible consideration of General Counsel's  
24 interpretation under Title 20, California Administrative  
25 Code, Section 1565, which I've discussed with the General

1 Counsel's representative.

2           What it will provide the Commission with is an  
3 alternative procedural mechanism in which to respond to  
4 Mr. Poppendiek's request at the next business meeting.

5           CHAIRMAN IMBRECHT: Is that the request for  
6 interpretation?

7           MR. PEREZ: Yes, and over the next two weeks, he  
8 will be in consultation with staff designated by the  
9 Commissioners on the viability of an interpretation approach  
10 as well as the viability of a rulemaking approach.

11           CHAIRMAN IMBRECHT: Fine. If that's acceptable  
12 to you, Dr. Poppendiek, and we want to extend our apologies  
13 for inconvenience caused you today, and also appreciate  
14 your forthcoming attitude. I'm sure that we'll be better  
15 able to address your concerns with this kind of interim  
16 consideration of exactly how we can best respond to your  
17 issues you'd care to raise before us.

18           DR. POPPENDIEK: Thank you very much.

19           COMMISSIONER SCHWEICKART: Let me just raise one  
20 question, Mr. Chandley, we have an obligation, as I recall,  
21 to act on these petitions within 30 days. That 30 days  
22 will be up before the next business meeting on the original  
23 letter by Dr. Poppendiek. Would you advise carrying  
24 through on the Committee decision, or is continuance at  
25 this point, pursuant to Mr. Perez's recommendation, adequate

1 action with regard to that obligation?

2 CHAIRMAN IMBRECHT: The petitioner can stipulate  
3 to a continuance, is that not correct?

4 MR. CHANDLEY: Yeah, that's fine.

5 COMMISSIONER SCHWEICKART: Okay, I just wanted  
6 to keep the record clean.

7 CHAIRMAN IMBRECHT: So we will treat Dr. Poppen-  
8 diek's acceptance as a stipulation of continuance until  
9 the next business meeting two weeks hence.

10 Is there any member of the public that wishes  
11 to address the Commission, Item No. 13?

12 MR. PEREZ: I've got the business meeting agenda  
13 for the next session, real quick. I'll just notify you  
14 of the items real quickly. This is for the May 16th  
15 business meeting. We have scheduled now consideration of  
16 the CCPA AFC. Number 2 will be consideration of a motion  
17 by one of the intervenors in the Geysers 21 proceeding for  
18 reconsideration of your decision today in accepting the  
19 suspension of that project.

20 Number 3 will be a Commission hearing on  
21 California's commercial and apartment conservation service  
22 state plan. Number 4 will be Mr. Poppendiek's item as  
23 just described. Number 5 will be -- 5, 6 and 7 are all  
24 contracts with Bombeck Nursery, CALBO, and On-Line  
25 Computer Library Committee project.

1           The last two items, the first is a no-cost  
2 time extension related to the West Side Farmers Cooperative  
3 Gin, and the last item is the possible approval of the  
4 streetlight interest subsidy grant, \$24,000 to the City  
5 of Banning from PVEA. Are there any other items that have  
6 not been described that you --

7           CHAIRMAN IMBRECHT: Hearing none, I have to sign  
8 that, as indicated earlier, by close of business tomorrow.  
9 If there are any Commissioners who wish to add, would you  
10 please notify me by that time.

11           Okay. I guess now we'll take a brief recess for  
12 executive session, and then come back and try to move  
13 through the quarterly review as rapidly as possible.

14           (Executive Session.)

15           (Quarterly Review Under Separate Cover.)

16           (Thereupon the business meeting of the California  
17 Energy Resources Conservation and Development Commission  
18 was adjourned at 7:15 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, May 2, 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 11th day of May, 1984.  
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