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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION
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BUSINESS MEETING

1516 NINTH STREET
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SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 16, 1984
10:15 A.M.

Reported by: Patricia A. Petrilla

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COMMISSIONERS PRESENT

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

EX OFFICIO

- Bill Foley

STAFF PRESENT

- Randall M. Ward, Executive Director
- William Chamberlain, General Counsel
- Dave Mundstock
- Scott Matthews
- Terry O'Brien
- Gary Fay
- Ray Tuvell
- Jim Kelly
- Karen Griffin
- Jeri Fontes
- John Chandley
- Leon Vann
- Rick Donaldson
- Dennis Fukumoto
- Lorri Gervais, Secretary

PUBLIC ADVISOR'S OFFICE

Ernesto Perez

Gary Heath

ALSO PRESENT

Jan Schori, Attorney for CCPA No. 1

Heinz Poppendiek, Geoscience Limited

Norm Wada, Pacific Gas and Electric Company

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P R O C E E D I N G S

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3 CHAIRMAN IMBRECHT: We'll call the meeting to
4 order. I apologize for the delay. We were awaiting the
5 presentation of a resolution which we'll take up later
6 as it becomes available.

7 At the suggestion of Commissioner Crowley, and
8 with the assent of the remainder of the Commission, we have
9 decided to institute a bit of a new tradition here at the
10 Commission, let's begin our meetings with a salute to the
11 flag. So, I'd like to suggest we all rise, and I'll ask
12 Commissioner Crowley to lead us in the pledge of allegiance.

13 (Pledge of Allegiance.)

14 CHAIRMAN IMBRECHT: Thank you. I'd also like
15 to suggest at this time that we take a brief moment of
16 silence in respect to the passing of one of the original
17 members of the California Energy Commission, and former
18 Speaker of the Assembly, Robert Moretti, this past Saturday.

19 (Moment of Silence.)

20 CHAIRMAN IMBRECHT: Thank you. There will be a
21 resolution presented to the Commission shortly commemorating
22 Commissioner Moretti's service to the Commission, to the
23 people of the state, and extending condolences to his
24 family. We'll take that up when it's available.

25 The first item before us today on our agenda is

1 Commission consideration and possible adoption or non-
2 acceptance of the Application for Certification for the
3 CCPA first unit, Coldwater Creek Geothermal Power Plant.
4 Mr. Ward?

5 EXECUTIVE DIRECTOR WARD: Yes, Mr. Chairman.
6 Scott Matthews and Terry O'Brien from the Siting Division
7 are prepared to discuss the AFC.

8 MR. MATTHEWS: We have -- Mr. Ward has signed a
9 letter accepting the document as substantially in compliance
10 with Title 20, Subchapter 5, Section 1704 in Appendix C,
11 and that the application should be formally filed and
12 docketed as of April 16th, 1984, and we're here in case
13 there's any questions about that.

14 CHAIRMAN IMBRECHT: Are there any questions from
15 members of the Commission? Commissioner Gandara?

16 COMMISSIONER GANDARA: I just have a procedural
17 question. Now, as I read the regulations, 1709(d), it
18 says, "except as provided in Sections (b)(1) and (e), the
19 Commission shall act within 10 days of the recommendation
20 of the Executive Director, and shall order one of the
21 following:"

22 One of the following then includes the four
23 possible actions, one of which is that the notice or
24 application be docketed and accepted as of the date of the
25 filing. Do we require a formal motion, then, that we in

1 fact docket and accept this as of the date of the filing?

2 CHAIRMAN IMBRECHT: Mr. Chamberlain, do you have
3 an opinion on that?

4 MR. CHAMBERLAIN: The regulation actually doesn't
5 specifically require the Commission to act on this. The
6 regulation allows the Executive Director to accept the
7 application on his own. It's my understanding that the
8 Executive Director's intent, in bringing the matter before
9 you, was to inform you in advance of his action, that he
10 intended to accept it, and give you the opportunity, should
11 anyone comment on that intention, to indicate your feelings
12 as to whether that was appropriate or not.

13 So I don't believe there's any motion really
14 required.

15 COMMISSIONER GANDARA: Well, the reason I asked
16 the question is because, you know, AB 1111 did make some
17 changes in this area, and as I read it, Section (b) is
18 in reference to general siting applications. Section (c)
19 specifically refers to geothermal applications, of which
20 this is one.

21 So therefore, I would assume that Section (b)
22 is inoperative and Section (b) is the one that you referred
23 to, so Section (c) is the one that becomes operative for
24 geothermal applications and it does say that the Commission
25 shall act on the Executive Director's recommendations.

1 So for a geothermal application, this at this
2 point in time is a recommendation that needs to be acted
3 in one of the four ways indicated in Subsection (d). I
4 have no problems with the acceptance of it, I just want to
5 make sure that we are on procedurally correct grounds.

6 MR. CHAMBERLAIN: Well, perhaps that would be the
7 most cautious way to proceed.

8 COMMISSIONER GANDARA: I would move that we
9 affirm the Executive Director's recommendation.

10 CHAIRMAN IMBRECHT: Fine, do I hear a second?
11 I'll second it to put the matter before us. So you would
12 agree with Commissioner Gandara's interpretation?

13 MR. CHAMBERLAIN: Well, it's a possible inter-
14 pretation, I haven't studied it carefully. Subsection (d)
15 -- I see, Subsection (d) says except as provided in
16 Subsection (b)(1) and (e), that's a reasonable interpretation,
17 yes.

18 CHAIRMAN IMBRECHT: Any questions from members of
19 the Commission? Commissioner Schweickart?

20 COMMISSIONER SCHWEICKART: I had a question which
21 related to the second paragraph in the letter from Mr. Ward
22 to Mr. Ravera, namely, the nature of the inadequacies. As
23 I understand it, we are entering into, or would be entering
24 into here a 12 month process, 12 month AFC, is that correct?
25 And what the nature of the inadequacies in biological,

1 structural, and socioeconomic areas are, and whether there
2 is any sense that we may not obtain adequate information
3 in a timely way to allow that expedited process to be
4 completed.

5 MR. MATTHEWS: In forming our recommendation,
6 that's the prime consideration, is that we will have
7 sufficient information in order to complete the analysis
8 within the 12 month time frame, and we met with the
9 applicant to discuss the inadequacies. We had a longer
10 list to start with, they provided quite a bit before we
11 made the recommendation.

12 The few things that are out do not preclude us
13 from making a determination that it is, in fact, in sub-
14 stantial compliance with the regulations, and that we
15 believe that we can get the information we need in order
16 to complete the 12 month time frame.

17 COMMISSIONER SCHWEICKART: I apologize for not
18 having the regulations, or getting into them, but do we not
19 have in these instances a conditional acceptance as an
20 option? Is that one of our options, Bill, or does that
21 apply outside of the 12 month geothermal AFC's?

22 MR. CHAMBERLAIN: No, I believe the statute does
23 permit the Commission to make a conditional acceptance
24 under this.

25 COMMISSIONER GANDARA: Just to clarify,

1 Subsection (d)(3) permits a conditional acceptance that
2 says that the necessary data will be filed by a certain
3 time, the time can be specified, and if the data is filed
4 by that time, then the original filing of the application
5 relates back to the original filing date, so there is no
6 loss in time.

7 But we have conditionally accepted, you know,
8 previous applications, I think Occidental was one.

9 COMMISSIONER SCHWEICKART: Right. Well, I raise
10 the issue, I will not be part of the proceeding, nor will
11 I be here when this is voted on, unless someone really
12 expedites the devil out of this one, but nevertheless,
13 having some experience in this, I'm curious as to whether
14 the nature of the inadequacies are such that a conditional
15 acceptance was thought to be inappropriate here, or whether
16 it was considered and rejected at all, or whether it was
17 just overlooked.

18 CHAIRMAN IMBRECHT: Would you care to respond to
19 that?

20 MR. MATTHEWS: Yeah. My belief is that a
21 conditional acceptance is not an option for a geothermal
22 case, and that in the reading of the regulations, it says
23 that, and I can recall the letter now, it says that except
24 in the geothermal case, the Executive Director shall decide
25 whether to accept, or recommend to accept or reject, and

1 conditional acceptance was not one of the choices. Whereas,
2 in a nongeothermal case, you could conditionally accept.
3 Nevertheless --

4 COMMISSIONER SCHWEICKART: Let me turn to our
5 General Counsel, then --

6 MR. CHAMBERLAIN: Let me clarify. The term
7 conditional acceptance, I think, has taken on a meaning
8 here at the Commission that Arturo just indicated, that is
9 that you might accept it conditionally upon it coming in
10 by a certain date, and if it did, if they cured the defect,
11 then the date of filing would still relate back to the
12 original date of filing.

13 Section 25540.1, however, makes the rules
14 different by statute for these kinds -- for geothermal
15 cases, and it indicates upon the applicant's filing with the
16 Commission, to make the notice or application complete,
17 such notice or application shall be deemed accepted by the
18 Commission on the date of such subsequent filing.

19 So our regulations cannot -- don't have the
20 power to change what is specifically in the statute in
21 that regard.

22 COMMISSIONER SCHWEICKART: So then what you're
23 saying is if we find that there is inadequate data, then
24 when that data is submitted we date the application.

25 MR. CHAMBERLAIN: That's when the 12 month clock

1 starts.

2 COMMISSIONER SCHWEICKART: So then in this case --
3 I don't want to interpret for you, but have you then
4 interpreted that the data missing is not such that you
5 would recommend a later -- a submission, and later start-up
6 on this project?

7 MR. MATTHEWS: Correct. We've determined that
8 the information we have is in substantial compliance, so
9 even if we had a conditional acceptance option, we wouldn't
10 have opted for that.

11 COMMISSIONER SCHWEICKART: All right.

12 MR. MATTHEWS: We only would have opted -- if
13 it was not in substantial compliance, we would have
14 recommended rejection.

15 CHAIRMAN IMBRECHT: Okay. There's a motion and
16 a second before the Commission. Commissioner Commons?

17 COMMISSIONER COMMONS: Yeah. I'm not going to
18 support the motion, and the reason for it is that the
19 Executive Director on the information that was submitted
20 on the April 16th had determined that that was not a
21 substantial -- that the data was inadequate as of that time.

22 The most important was very significant information
23 to really make a complete application was submitted on
24 May the 3rd. One of the options listed in our regulation
25 is that we can -- may I see the regulations please for a

1 moment -- is the fourth option available to us is that in
2 the case of an incomplete geothermal notice of application,
3 the notice or application may be accepted as of the date on
4 which the applicant filed the additional information
5 necessary to make the application complete.

6 In this instance, the Executive Director has
7 stated that May 3rd is when that other information that
8 was significant which allowed it to be brought to the
9 Commission had come in. In this case, I think the
10 differential of two weeks is not a major matter, but it's
11 a question of precedent that could be established whereby
12 an applicant could come in with a substantially incomplete
13 application, and I think I'd want to make the distinction
14 between whether it is some biological data which staff
15 says would not delay the process if it came in later, and
16 the information that is contained in the Executive Director's
17 recommendation, that he was not willing to act favorably
18 until that other data came in on May 3rd.

19 So my position would be that we should accept
20 this as of the May 3rd date when the information came in,
21 not back date it to the April 16th, so I will not support
22 the motion.

23 COMMISSIONER SCHWEICKART: Are you amending?

24 COMMISSIONER COMMONS: I would move to amend, I
25 guess.

1 CHAIRMAN IMBRECHT: Is there a second?

2 COMMISSIONER SCHWEICKART: I'll second the
3 amendment to amend the motion, pursuant to section whatever,
4 that the application be accepted on the 3rd of May -- as of
5 the 3rd of May.

6 CHAIRMAN IMBRECHT: Okay. I think it probably
7 would be appropriate to hear from the Applicant at this
8 juncture, and find out whether that would be an acceptable
9 resolution of this issue or not. Good morning.

10 MS. SCHORI: Good morning. My name is Jan Schori,
11 I'm the attorney for CCPA No. 1, and the only thing I would
12 like to bring to the Commission's attention is that there
13 is a very short construction schedule in the Geysers. If
14 you delay this so that there is a two week delay in the
15 time period for approval, it is going to impact our
16 construction schedule, and cut down somewhat on the amount
17 of time that we have to commence construction next year,
18 provided the AFC is approved at that time.

19 So it is of concern to us. We were not aware
20 that the Commission would be considering this type of
21 action this morning, so I cannot bring in -- I don't have
22 anything here to indicate which contracts are impacted and
23 that sort of thing.

24 We are going to make every effort to supply the
25 staff with whatever additional information that they

1 require from us. We have been doing that in the intervening
2 weeks since we've filed, and so we would prefer, of course,
3 that you accept the application as of the date that it was
4 filed.

5 CHAIRMAN IMBRECHT: Commissioner Commons.

6 COMMISSIONER COMMONS: Yeah. As the Presiding
7 Member on the siting decision, if there is a way we can
8 complete this application in 9 or 10 months, it's my
9 intent to move it as rapidly as possible. The only reason
10 I'm recommending the change in the date is I think
11 practically speaking, we should give notice to people who
12 submit applications that they should -- that the date that
13 an application technically starts is when we have a
14 reasonably complete application, and in this instance, the
15 Executive Director's statement is that that application was
16 complete as of May 3rd.

17 MS. SCHORI: I'm heartened by your reference to
18 a 9 or 10 month decision. We'll do everything we can to
19 accomplish that.

20 COMMISSIONER COMMONS: The motion will have
21 nothing to do with how fast we attempt to process this.

22 CHAIRMAN IMBRECHT: Your Hearing Officer will
23 have a talk with you after this meeting, I'm sure,
24 Commissioner Commons.

25 (Laughter)

1 CHAIRMAN IMBRECHT: Commissioner Gandara?

2 COMMISSIONER GANDARA: If I might, I can consider
3 that a friendly motion, and just to add to the discussion,
4 let me just relate a bit of history, at least, and the
5 reason I have concern about this is I have a direct
6 experience in which the first siting case I had was a
7 geothermal siting case, and I was assigned to it after it
8 had been accepted, and there were data inadequacies, and
9 the particular applicant had other geothermal power plants,
10 they were also constructing, or had undertaken, which had
11 already been approved, and that the -- at the time of the
12 acceptance, that there were indications that the inadequate
13 data would be filed by a certain time.

14 It wasn't, and then we proceeded to the prehearing
15 conference where we set up another time, another date in
16 which that data would be submitted, and again, it wasn't.
17 So basically what happened then is that the burden then
18 fell on the Committee to try and meet a hearing schedule,
19 and yet the Committee had no control whatsoever over the
20 data that was coming in, short of, I guess, in essence,
21 suspending the proceedings, and that's the way into that
22 point, which I prefer that it not be the case.

23 So the result of it is that I strongly urge the
24 applicant to consider its best interests in providing the
25 data, and they did, and we were able to complete that

1 application in one month less than statutory time with the
2 cooperation of the staff and the applicant.

3 So it is possible to, in fact, you know, wind
4 up with a substantially shorter schedule, despite some of
5 these problems. I say that so you don't feel unnecessarily
6 concerned about it.

7 At the same time, I do think that it is important,
8 you know, for the Committee not to be concerned about the
9 -- you know, or the Commission to be concerned about when
10 it starts the clock ticking on these matters.

11 CHAIRMAN IMBRECHT: Thank you. I have only one
12 question I think that both Commissioner Commons and
13 Commissioner Gandara made some good points. I do have some
14 concern, though, about the adequacy of notice or expected
15 action today to the Applicant, a question of simple
16 considerations of due process.

17 The question I would have is in the event that the
18 Applicant subsequent -- if we were to pass the motion that
19 is now before us as amended, and if the Applicant chose
20 subsequently, or felt it had compelling reasons to argue
21 that that date be moved back to the April 16th frame,
22 is there any procedure by which they could ask that this
23 matter be reconsidered by the Commission?

24 I'm offering that only as a hypothetical, they
25 may decide not to exercise that option, but --

1 MR. CHAMBERLAIN: Yes, I believe they can under
2 Section 25530, which allows petitions for reconsideration
3 of any decision or order under the siting chapter, so I
4 would assume that this is an order of the Commission.

5 CHAIRMAN IMBRECHT: Fine. Then with that
6 proviso and understanding, I will support the motion by
7 virtue of that question inform you of your rights, if you
8 choose to pursue them.

9 MS. SCHORI: Thank you.

10 CHAIRMAN IMBRECHT: Is there any further
11 discussion? Is there any member of the public that wishes
12 to be heard on this item? Is there objection to a unanimous
13 roll call on the motion as amended? Hearing none, ayes 5,
14 noes none, the motion is adopted, May 3rd being the date
15 of acceptance for the application.

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

T.3 17 CHAIRMAN IMBRECHT: As you're doing that, I'm
18 going to set this item aside very briefly and turn to the
19 resolution that I made reference to at the beginning of our
20 meeting. This is a resolution that I'll make the motion on.

21 The resolution would read that, "This resolution
22 commemorates the achievements and the memory of former
23 Commissioner Robert Moretti.

24 "Whereas, Robert Moretti was one of the first
25 Commissioners appointed to the California Energy Commission;

1 "Whereas, he was instrumental in developing
2 public policy in the initial stages of the formation of the
3 Commission;

4 "Whereas, he brought a background of strong
5 bipartisan interests in developing that policy;

6 "Whereas, he demonstrated intense interest in
7 ensuring an adequate supply of energy for the State of
8 California;

9 "Whereas, as a member of the Commission he pursued
10 an active role in the development and availability of
11 energy for California;

12 "Whereas, he worked vigorously towards ensuring
13 the state's demand for energy did not exceed supply;

14 "Be it therefore resolved that the California
15 Energy Commission by unanimous vote hereby commemorates
16 Robert Moretti as a founding member, and gratefully
17 acknowledges his contributions and dedication to the
18 Commission and the State of California;

19 "Be it further resolved that the California
20 Energy Commission and its staff extends condolences to
21 Robert Moretti's wife, children, parents, and sister upon
22 their loss."

23 I'm going to add another paragraph, "And be it
24 further resolved that the California Energy Commission
25 transmit a suitably prepared copy of this Resolution to the

1 members of his surviving family."

2 COMMISSIONER COMMONS: Mr. Chairman, why don't
3 you so move.

4 CHAIRMAN IMBRECHT: I did make the motion, is
5 there a second?

6 COMMISSIONER GANDARA: Second.

7 CHAIRMAN IMBRECHT: Seconded by Vice Chairman
8 Gandara. Is there objection to unanimous roll call?
9 Hearing none, that will be the order. I'll ask Secretariat
10 to prepare the resolution as directed.

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

12 CHAIRMAN IMBRECHT: Since I believe Item No. 3
13 principally entails members of the staff of the Commission,
14 and since I am going to have to leave shortly, I think the
15 next major item that we should consider is Item No. 4,
16 consideration of the petition for rulemaking filed by
17 Geoscience Limited to amend the Commission testing require-
18 ments for foil insulating material.

19 Alternately, the Commission may consider an
20 interpretation of the subject matter offered by General
21 Counsel, pursuant to the Administrative Code. Mr. Ward?
22 We're on Item 4, ladies and gentlemen.

23 EXECUTIVE DIRECTOR WARD: Yes. Pursuant to the
24 Commission's direction at the last business meeting, the
25 Public Adviser has assisted representatives of Geoscience,

1 they've been sitting down and talking about some of the
2 concerns they had, and actually the question of what their
3 original submittal to the Commission meant, in terms of
4 whether it was a variance or interpretation, or whatever.

5 Subsequent to that, legal counsel, general
6 counsel has reviewed the findings, and I believe is
7 prepared to give you a sense of that.

8 CHAIRMAN IMBRECHT: May I just get some rough
9 idea of how long you would estimate this item would take?
10 Has there been any --

11 EXECUTIVE DIRECTOR WARD: I would defer to
12 Mr. Chamberlain?

13 CHAIRMAN IMBRECHT: Mr. Chamberlain, has there
14 been any reference --

15 MR. CHAMBERLAIN: Well, I'm not sure. I mean, I
16 can tell you what I have to say in a very short time, but
17 I'm just not sure how much the petitioner may want to say
18 after that.

19 EXECUTIVE DIRECTOR WARD: The Public Adviser is
20 indicating about an hour.

21 MR. PEREZ: I would say minimally.

22 CHAIRMAN IMBRECHT: Minimum of an hour. Okay.
23 In that case, it really doesn't make any sense to proceed
24 at this point. I assume everyone wants to take a lunch
25 recess.

1 COMMISSIONER GANDARA: I'd just like -- if we're
2 going to do that, I just have an informational question, and
3 I don't know whether anything can be done about it by the
4 time we reconvene, and that is that I don't see a specific
5 staff recommendation for a petition for rulemaking, and
6 is that the case or not, and I guess I'm getting a little
7 bit concerned that more items come up with no particular
8 staff recommendation in an area that's fairly complex, and
9 in this -- we had this before us last time.

10 Is that the case, we don't have a staff
11 recommendation, nor -- can we come up with one?

12 EXECUTIVE DIRECTOR WARD: It's actually a legal
13 interpretation here more than it is a staff recommendation,
14 Commissioner, and that's why I'm deferring to counsel.

15 CHAIRMAN IMBRECHT: I think the recommendation
16 would come from the General Counsel's office, is my
17 understanding of the item, and that it is -- my understanding
18 is General Counsel's ruling is that the substantive issues
19 are not properly before us, and I think there's something
20 to that extent, but --

21 MR. CHAMBERLAIN: At the last business meeting,
22 the staff had suggested denying the petition, and we have
23 had a number of -- and you gave us direction to go back and
24 determine whether this could be handled by regulation, or
25 whether it had to be done by petition for rulemaking, and

1 we discussed with the applicant whether he could meet --
2 you know, assuming that it could not be done by interpreta-
3 tion, or that we did not agree with his proposed interpreta-
4 tion, we of course would discuss with him whether he could
5 still petition for rulemaking, and we indicated that he
6 would have to show not only that he had a process for
7 testing these materials that would be as good as the one
8 that is prescribed in the regulations, but also that there
9 was some public interest in changing it to allow his process.

10 The staff, and particularly Gary Fay of my office,
11 and Ray Hillier have discussed this in detail with him, and
12 it's my sense that they feel that he has some valid points
13 to make. We have -- I don't know whether they've developed
14 a recommendation on the petition for rulemaking, but it is
15 my interpretation that this cannot be handled simply by
16 interpretation.

17 The provisions of the regulation involved that
18 indicate, for example, that the test frame that the material
19 is to be put in is to be a 2 x 6 test frame, Mr. Poppendiek
20 contends that it should be a 2 x 4 test frame for 2 x 4
21 material. It should be a 2 x 10 test frame for larger
22 material. That's a reasonable assertion on his part, but
23 it's not something that we can address by interpretation
24 because the regulations are very --

25 CHAIRMAN IMBRECHT: Because the regulations are

1 very specific as to what --

2 MR. CHAMBERLAIN: Specifically say 2 x 6, that's
3 right. Another similar consideration was that the tempera-
4 ture, I guess within the test frame had to be kept at 75
5 degrees, plus or minus 2 degrees, and Dr. Poppendiek
6 contends that that -- that plus or minus 2 degrees is very
7 difficult, if not impossible to achieve, and is unnecessary,
8 that plus or minus 5 degrees would make more sense.

9 That's not something that I can address to you,
10 because it's very specific in the regulations, what is
11 required now.

12 CHAIRMAN IMBRECHT: Let me see again, since I
13 have some familiarity or briefing on this matter, see if I
14 can try to move this along for the benefit of the Commission.

15 If we were to accept the General Counsel's
16 interpretation that an interpretation action by the
17 Commission would exceed our discretionary interpretation of
18 the regulations because of their specificity, then the
19 ultimate remedy available to us to address Mr. Poppendiek's
20 concerns would be to institute a rulemaking proceeding.

21 I guess the next question I would ask is if we
22 take that first step, accept the General Counsel's
23 recommendation relative to our ability to interpret the
24 existing regulations, does staff have a position on the
25 question of whether or not we should institute a rulemaking

1 proceeding to address Dr. Poppendiek's concerns?

2 EXECUTIVE DIRECTOR WARD: I believe that we
3 could support that.

4 CHAIRMAN IMBRECHT: Dr. Poppendiek, is that a
5 satisfactory remedy to your concerns?

6 DR. POPPENDIEK: No, I would like very much to
7 proceed on the basis of the agreement that we made at the
8 last meeting where the matters that I would like to have
9 discussed would be put under the heading of interpretations,
10 and I would very much like to, in a short period of time,
11 I will not try to take a long time period, but I would like
12 to go ahead with that original agreement that was made,
13 relating the interpretation route, and I would like to make
14 some remarks about that, following the agenda that I laid
15 out in my letter to you on May the 15th.

16 MR. CHAMBERLAIN: I'm not sure what agreement
17 Dr. Poppendiek is referring to, but --

18 CHAIRMAN IMBRECHT: Yes. My recollection of our
19 agreement at the last meeting was that we would direct
20 staff to work with you and assist you in preparing the
21 proper method by which your concerns could adequately be
22 addressed by the Commission, and I think we specifically
23 directed the Public Adviser's Office to be the lead in that
24 effort.

25 Maybe I could ask Mr. Perez what your perspective

1 is on General Counsel's recommendation. Do you believe
2 that we can interpret the existing regulations as
3 Mr. Poppendiek is requesting, or do you believe that the
4 proper remedy is an order instituting rulemaking?

5 MR. PEREZ: I don't believe that we continued this
6 item in order to address that issue, per se. Instead, the
7 agreement that I am familiar with was to provide a two week
8 delay to provide the General Counsel with an opportunity to
9 determine whether or not a remedy satisfactory to Dr.
10 Poppendiek was available through Section 1565 of the
11 Administrative Code.

12 Apparently the General Counsel has made a
13 determination that such remedy is not available under that
14 authority. There is a question which I do not know the
15 answer to, as to whether or not the General Counsel's
16 interpretational decision is subject to review by the
17 full Commission.

18 If the answer to that is yes, then I would presume
19 that Dr. Poppendiek's request, that you examine the inter-
20 pretation rendered by the General Counsel, as properly
21 before you this morning as the result of the alternative
22 noticing of this item for today.

23 CHAIRMAN IMBRECHT: It seems to me that the
24 essence of the issue on the question of the recommendation
25 of General Counsel on this issue is -- would be limited to a

1 discussion of legal circumstances involved with that
2 particular regulation as opposed to the substantive issue.
3 In other words, Dr. Poppendiek, if you have specific
4 contentions you'd like to raise as to why the counsel's
5 interpretation is legally infirm, I think that would be
6 appropriate, and at that point, I think the Commission then
7 should either accept or reject General Counsel's recommended
8 interpretation.

9 Is that acceptable to the members of the
10 Commission? All right. Dr. Poppendiek, do you wish to
11 address his legal interpretation?

12 DR. POPPENDIEK: Well, I could start, and then --
13 I have a question.

14 CHAIRMAN IMBRECHT: I guess the real issue is
15 why do you believe that we can interpret regulations that
16 say that the test should occur with a 2 x 6 test frame,
17 interpret that to mean 2 x 4 or 2 x 10, or whatever other
18 size.

19 DR. POPPENDIEK: Well, can I address that question?

20 CHAIRMAN IMBRECHT: Yes, that specific question.

21 DR. POPPENDIEK: All right. I have prepared a
22 letter, a cover letter to a document which contains
23 technical information which bears on the question, and I
24 won't refer to it again, except that I hope the Commissioners
25 have had an opportunity to read that and look at the

1 information there, the specific parts that are so itemized
2 in the covering letter, because I think those items play a
3 role in helping to answer the question that I would like
4 you to consider.

5 On May 9th, a meeting was held as was suggested
6 by you, Mr. Chairman, and there was a two and a half hour
7 period during which I presented to the Commission legal
8 staff and technical staff, my arguments about the reasons
9 for our interpretations, hoping that that would also be
10 the Commission's interpretations.

11 In other words, I was following the interpretations
12 route. There were a number of items. One had to do with
13 the temperature level affect, that is, if the temperature
14 of the test panel was not 75 degrees Fahrenheit, plus or
15 minus 2 degrees, that was the question.

16 I pointed out that it is difficult to make all --
17 both requirements of Delta t and temperature level to be
18 within tight limits, and this is not expected in ASTM and
19 ASHRAE type testing. So I made some points on that. I
20 further indicated that we did not follow the practice that
21 the Butler/MRI lab follows of prorating the measurements
22 that you do get to fall within the Delta t range.

23 We felt that that couldn't be done because that
24 violates ASTM and NVLAP guidelines. So I merely made the
25 point to the group that, let's see what happens if you have

1 a 5 degree temperature difference in the data. What does
2 that do to the accuracy of the R-value. We did it by two
3 methods.

4 One method utilized the mathematical model in
5 our ASHRAE paper, the invited ASHRAE paper, and we found
6 that a 5 degree Fahrenheit difference from that mathematical
7 model which is backed up by our own experiments gave an
8 error in the R-value of six-tenths of one percent.

9 We also took the Bureau of Standards data and
10 their -- their experimental data and for a 5 degree
11 Fahrenheit temperature difference in the mean data, that
12 gave an error in the R-value of seven-tenths of a percent.

13 CHAIRMAN IMBRECHT: Excuse me, Dr. Poppendiek,
14 let me try to return to the specific question, because it
15 appears to me that the staff has suggested that there are
16 merits to your arguments relative to the 5 degree differential
17 versus the two that's specified in our regulations,
18 relative to the appropriate test frame size and so forth.

19 In fact, they have stipulated to those facts, and
20 so I return to my original question, can you site something
21 either in our statute, or our regulations that gives us the
22 power to discretionarily interpret those regulations when
23 they are as specific as they are.

24 DR. POPPENDIEK: All right, I will do that.

25 CHAIRMAN IMBRECHT: And Mr. Heath is obviously

1 there to assist you if --

2 DR. POPPENDIEK: Yes. I will do that. Could I,
3 before I do it, say limit me to two minutes --

4 CHAIRMAN IMBRECHT: I honestly am trying to
5 accommodate you by sitting here participating in this
6 decision, and I would like you very much to address the
7 legal question, because everybody agrees that there are
8 merits to your substantive arguments, we stipulate to that
9 fact, okay, and I mean, frankly, that's -- I think you should
10 be very proud of the fact that you've demonstrated to
11 apparently the satisfaction of the staff that there's a
12 significant question as to the substantive arguments that
13 you're arguing.

14 COMMISSIONER COMMONS: Well, I don't think the
15 Commission has stipulated to that.

16 CHAIRMAN IMBRECHT: That's fair, the Commission
17 has not, but the staff has, in any case, the parties that
18 would contest this issue have, and so -- you know, my guess
19 is that the Commission would be willing to consider the
20 option of instituting the rulemaking to address your
21 specific concerns.

22 The only issue that remains as a consequence, then,
23 would be the question of what authority we have to broadly
24 interpret the existing regulations.

25 DR. POPPENDIEK: All right.

1 (Whispered discussions.)

2 DR. POPPENDIEK: I would like to make the claim
3 that the Energy Commission, and specifically the General
4 Counsel, has previously allowed an interpretation to be
5 made in systems where the test panel was not the six inch
6 depth test panel, and that being a specific example, and
7 I'd like to go into details on that. In other words, I --

8 CHAIRMAN IMBRECHT: What you're suggesting then
9 is the inconsistent application of existing regulations.

10 DR. POPPENDIEK: That's right, plus -- but I'm
11 not challenging that, I'm saying that that makes my claim
12 that there can be the interpretation route used here in
13 acting on my technical defense, which the legal staff and
14 the technical staff have concurred with prior to Mr.
15 Chamberlain's --

16 CHAIRMAN IMBRECHT: They have not concurred with,
17 however, the ability of the Commission to interpret
18 regulations broadly.

19 DR. POPPENDIEK: That's correct.

20 CHAIRMAN IMBRECHT: They've concurred with the
21 substance of what you have argued.

22 DR. POPPENDIEK: That's correct.

23 CHAIRMAN IMBRECHT: Is Dr. Poppendiek's suggestion
24 accurate, that there have been inconsistent interpretations
25 here, or --

1 MR. CHAMBERLAIN: Not that I am aware of. I have
2 never interpreted these regulations under Section 1565, no
3 one has ever requested me to do so. Now, the staff may, in
4 its role, in enforcing the regulations, have without --
5 with or without concurrence with someone in my office, and
6 not to my knowledge, may have done something that
7 Dr. Poppendiek may fairly interpret as inconsistent with --

8 CHAIRMAN IMBRECHT: Let me ask you a subsequent
9 question. In the event that that were the case, would that
10 change your opinion as to our ability to --

11 MR. CHAMBERLAIN: No.

12 CHAIRMAN IMBRECHT: -- now broadly interpret?

13 MR. CHAMBERLAIN: No.

14 CHAIRMAN IMBRECHT: So the essence of that -- well,
15 you understand, I think.

16 I think what I should ask is the will of the
17 remainder of the Commission on this issue. Are you inclined
18 to accept the General Counsel's recommended interpretation
19 as to our discretion here? Commissioner Schweickart?

20 COMMISSIONER SCHWEICKART: Yes, sir. I am
21 probably somewhat more familiar with the specifics here
22 than most of the Commissioners, so I can anticipate some
23 of the argument. I frankly concur entirely with Mr.
24 Chamberlain's assessment of our ability to interpret, and
25 I am willing to support that, though I also concur that there

1 are legitimate questions raised by Dr. Poppendiek pursuant
2 to the specifics of our regulations, but that is a
3 separate issue.

4 CHAIRMAN IMBRECHT: Commissioner Gandara?

5 COMMISSIONER GANDARA: I concur with, you know,
6 with Mr. Chamberlain's interpretation that if the test
7 procedure is specific enough that we are not provided
8 discretion for any other interpretation, that I think that
9 we're bound by that, as have been other parties.

10 If, on the other hand, the staff feels in their
11 evaluation of the merits of the argument that there may be
12 some reason to undertake a review or a changing of regula-
13 tions without prejudging the issue one way or the other,
14 then that's focused, and I think that we can then move
15 to whether we shall accept the staff's recommendation of
16 instituting an OIR.

17 CHAIRMAN IMBRECHT: Okay. Is there objection --
18 let me ask further, just a moment, is there objection on
19 the Commission to accepting the General Counsel's
20 recommended interpretation of our ability to interpret the
21 regulations? Hearing none, then I guess we will accept
22 that recommendation, and that is a ruling of the Commission,
23 without objection.

24 Then the next issue before us is whether or not
25 we should grant the petition to institute a rulemaking to

1 address the substantive issues raised by Dr. Poppendiek.

2 Do I hear a motion?

3 COMMISSIONER CROWLEY: May I ask a question?

4 CHAIRMAN IMBRECHT: Yes.

5 COMMISSIONER CROWLEY: I understand counsel's
6 recommendation on that is slightly different, that --

7 CHAIRMAN IMBRECHT: My understanding is that
8 you would recommend that we grant the petition, is that
9 correct?

10 MR. CHAMBERLAIN: Well, I believe that's the
11 staff position.

12 CHAIRMAN IMBRECHT: That would be the staff
13 recommendation.

14 COMMISSIONER CROWLEY: Okay.

15 COMMISSIONER SCHWEICKART: Mr. Chairman, could I
16 be heard on that?

17 CHAIRMAN IMBRECHT: Certainly.

18 COMMISSIONER SCHWEICKART: I would point out that
19 we do not have before us an OIR, and so moving an order
20 instituting rulemaking, I think is perhaps inappropriate.
21 I think directing that an OIR be prepared may be more
22 appropriate, and at least let me say, I think that's the
23 appropriate item to discuss at this point, rather than
24 moving a nonexistent OIR.

25 COMMISSIONER CROWLEY: And also, as I understand it,

1 there was some concern that a petition by Geoscience would
2 need a statement by them of their justification for asking
3 for a reopening, is that correct?

4 MR. CHAMBERLAIN: Well, I believe we've received
5 that statement of their justification, orally in any case,
6 and I would concur with Commissioner Schweickart's view
7 that what we're really doing here is to act on their
8 petition for rulemaking, and you can direct us to come back
9 with an OIR at the next meeting.

10 CHAIRMAN IMBRECHT: That the motion would be to
11 grant the petition if such a motion were appropriate. Okay,
12 any further questions? Commissioner Gandara?

13 COMMISSIONER GANDARA: Just one further question.
14 You know, since we have gone through this before, there are
15 procedures for what should be in a petition, content, and
16 so forth, all that, has that been adequately met?

17 MR. CHAMBERLAIN: Yes.

18 COMMISSIONER GANDARA: Okay, fine. Then is
19 there any objection to --

20 COMMISSIONER SCHWEICKART: Yes, I do have -- I
21 want to raise some issues here which I have a great deal
22 of concern about in being able to respond to this issue,
23 and I frankly am at a loss as to how to deal with them, or
24 what to recommend to the Commission.

25 I would point out that we now have, absent this

1 action, I think something like two and a half to three
2 person years of effort ongoing committed within the
3 Commission on insulation quality. We currently have one-
4 quarter of a person year allocated to this task. I believe
5 that stays the same in the FY 84-85 budget, but if our
6 funding drops even more than it is now, this would add --
7 I'm not sure if we have an estimate for the overall
8 requirements for this OIR, but let me point out, absent
9 Dr. Poppendiek's petition, we also have a draft, or has it
10 been formally submitted yet to the Commission, we have a
11 draft of another petition coming in from Mr. Tom Campbell
12 on some of our regulations.

13 The reality that we're facing, however, is that
14 we have no resources to deal with this, if we grant this
15 petition, or for that matter, Mr. Campbell's petition, we
16 are quite frankly being openly dishonest. We have no way
17 of conducting such a proceeding, and we are either -- we
18 are right now boxed into a situation where we either make
19 a rather feeble attempt at protecting the public safety,
20 or holding proceedings, and foregoing public safety even
21 more than we are at this moment.

22 That is the dilemma that the Committee faces in
23 looking at this situation right now. So while I support
24 the -- not just the right, but the appropriateness,
25 frankly, of accepting a petition from Dr. Poppendiek, and

1 frankly, from Mr. Campbell as well, though that one is not
2 before us, for opening up a rulemaking in this proceeding,
3 I see no realistic way in which that can be done, without
4 frankly jeopardizing public safety in that process.

5 Now, I don't know what the Commission does with
6 that, but there we are.

7 COMMISSIONER GANDARA: Let me tell you what I'd
8 do with it. It's generally been my position that we rule
9 on the merits of petitions, and that if we have enough
10 petitions that require additional resources, we make that
11 known to those who are in control of the resources via
12 whatever mechanism that has been the case.

13 I would not like to get into the situation of
14 evaluating whether or not we should accept the petition or
15 not based on whether we have the resources or not. I assume
16 that since in previous situations like this, the staff has
17 expressed its concerns as to whether there's adequate
18 staffing or not in accepting petitions, that in this instance
19 they have evaluated that, and there are mechanisms for
20 providing the adequate staffing, is that the case, Mr. Ward?

21 EXECUTIVE DIRECTOR WARD: No, I have to concur
22 with Commissioner Schweickart. I mean, it is a serious
23 problem that he's intimately familiar with. I mean, the
24 staff's sense is that we agree with the merit, we had a
25 problem with the interpretation issue, and that problem was --

1 is exacerbated by counsel's recommendation on the issue,
2 which I don't take issue with, but it would have provided a
3 short and sweet solution to the problem, had it not been
4 that direction.

5 I guess my other comment would be that I think
6 that it would take a very small amount of time to accomplish
7 this. We have spent a good deal of time at the staff
8 level, legal counsel, Public Adviser, with Mr. Poppendiek
9 and gone over the sum and substance of these issues. So
10 I don't think, technically, it would take an awful lot of
11 staff time.

12 We do have a hearing process that would occur
13 under this kind of a rulemaking, and then bringing it back
14 before the full Commission. My guess it would be, based
15 on my quick discussion with staff, is that it would be
16 substantially counsel's efforts rather than staff efforts
17 on this rulemaking.

18 COMMISSIONER GANDARA: Let me ask an additional
19 question. It seems to me, as was pointed out earlier,
20 what we have before us is not an approval of an OIR or an
21 OIH, what we have before us is a -- well, we don't even
22 have it yet, because we don't have a motion, but I presume
23 that the issue before us is a Commission decision to approve
24 an OIR to be presented to us in the future, is that correct?

25 COMMISSIONER SCHWEICKART: Well, to accept the

1 petition which would necessitate the preparation of an OIR.

2 COMMISSIONER GANDARA: To accept the petition,
3 okay. Now, it would seem to me that if the preparation of
4 the OIR, that these matters can be taken into account,
5 both with respect to the different proceedings, the
6 schedule, and so forth, and that that is within the
7 discretion of the Committee, given the priorities that they
8 may place, or the discretion, I presume the OIR to be
9 approved by the Commission, then, as would be modified by
10 the Commission, by the time the Commission approves the OIR.

11 So I think all those matters can best be dealt
12 with in the actual consideration of the OIR that would be
13 back before us. For now, I guess we're dealing with whether
14 we accept the petition or not. If, you know, you can find
15 it in your mind to separate those two issues, I think we
16 can move ahead, and deal with the other issue at the time
17 of the adoption of the OIR.

18 Commissioner Commons?

19 COMMISSIONER COMMONS: Well, Commissioner
20 Schweickart's position, in a sense, though, doesn't put us
21 in a dilemma, because we can accept a petition, or establish
22 an OIR, subject to our being granted funding to accomplish
23 same, because we are not the ones who make the ultimate
24 decision as to what our activities are.

25 We're given a certain amount of resources which

1 have been allocated, and just like local government, if the
2 state wants to impose a program upon them, then the rule is
3 there has to be funding for that. We can make our wish,
4 state that we feel the petition has merits, and recommend
5 that we follow it, provided that we have the resources to
6 do so.

7 But unless someone were to suggest as part of this
8 petition where we would take resources, which we found out
9 at our last business meeting, that's pretty much impossible
10 to do, I feel that we should not hold out to a petitioner
11 false hopes if we don't have the resources to address a
12 properly brought question.

13 COMMISSIONER GANDARA: Okay. Well, any other
14 comments, then?

15 DR. POPPENDIEK: I'd like to make another comment.

16 COMMISSIONER GANDARA: Excuse me, Mr. Poppendiek,
17 let me see if we have any -- if we have exhausted
18 Commissioner comments. Commissioner Schweickart?

19 COMMISSIONER SCHWEICKART: Yes, Commissioner
20 Gandara, I -- I mean this is a dilemma which I don't -- it's
21 one of those things where I see no solution, frankly, that
22 lies within the power of the Commission. Nevertheless, in
23 thinking further, as you and Commissioner Commons have
24 discussed the issue, I believe it is not inappropriate
25 for the Commission to grant the petition for rulemaking.

1 However, I find myself in the awkward position
2 downstream of being in a position of not being part of a
3 charade. I do not accept being part of a charade, and will
4 not, and I think my question is, at what point do I call
5 a spade a spade. Is it at this point, or is it when we have
6 an OIR prepared, before us, or after the Commission accepts
7 an OIR and I resign from the Committee, or something.

8 But at some point, I have to say as a responsible
9 citizen, with some obligations to public safety here, among
10 other things, where do I stand up and be counted on the
11 dilemma that the Commission --

12 COMMISSIONER GANDARA: Let me suggest a time for
13 that.

14 COMMISSIONER SCHWEICKART: I welcome that.

15 COMMISSIONER GANDARA: It should not be now. It
16 should not be when we adopt the OIR at the wish of the
17 Commissioner, it should not be at the time that you, you
18 know, initiate -- it should be at the time at which you
19 have scheduled, or have attempted to schedule a workshop or a
20 hearing and the resources are not there for you to do it.

21 It would seem to me, that's the appropriate time.

22 COMMISSIONER SCHWEICKART: Well, I can do that
23 right now on the building standards.

24 COMMISSIONER GANDARA: Well, we have another
25 issue before us. We can deal with the one before us --

1 EXECUTIVE DIRECTOR WARD: Commissioner, I might
2 raise another issue in response to Commissioner Schweickart's
3 concern. I think Commissioner Schweickart's concern is
4 comparing two sides of the insulation issue, the side that's
5 associated with Mr. Poppendiek, and this OIR, and the other
6 side that relates to health and safety.

7 I think fairly, it should be stated, that I don't
8 consider this to be time sensitive, and although I think
9 we need to make a thoughtful effort to proceed as
10 expeditiously as possible, it's certainly not as time
11 sensitive as the health and safety issues.

12 Furthermore, the option for Mr. Poppendiek, or
13 anyone else doing this kind of testing is to comply with
14 the existing law during the time period between now and
15 the rulemaking. So if that helps you at all, I would offer
16 that as a comment.

17 COMMISSIONER GANDARA: Thank you Mr. Ward.

18 MR. PEREZ: Vice Chairman Gandara, I'd like to
19 make a comment of advice to the Commission, and that is that
20 any petitioner who appears before you under Section 1221
21 may reasonably be held to the standards specified therein,
22 none of which include participation in what essentially
23 appears to me to be a budget hearing, but which I completely
24 sympathize with, and use to get issues in on my own office.

25 But in fairness to this petitioner, you should

1 evaluate the petition on the grounds of Section 1221, thumbs
2 up, thumbs down, or sideways, as the case may be, and
3 proceed with the matter at hand.

4 COMMISSIONER GANDARA: I agree with you, Mr.
5 Perez. Let me make a ruling, unless I'm challenged here.
6 I think we should move on this, as we did with Mr. Poppen-
7 diek in asking him to limit his comments to the interpreta-
8 tion of the General Counsel, I think that -- let's limit
9 further comments on this matter as to whether or not we
10 should accept or deny the petition on the merits of the
11 petition.

12 Now, Mr. Poppendiek, do you have any comments on
13 that?

14 DR. POPPENDIEK: Yes, could I make -- I'll try to
15 keep it under a minute. I agree with Mr. Schweickart, you
16 are in a dilemma, but I think you've put yourself in the
17 dilemma by not looking at the regulations carefully, and
18 recognizing that there are a series of regulations, not
19 just the Energy Commission regulations, but there are ASTM
20 regulations, there are NVLAP regulations, and --

21 COMMISSIONER GANDARA: Mr. Poppendiek --

22 DR. POPPENDIEK: Just --

23 COMMISSIONER GANDARA: I'm sorry, Mr. Poppendiek,
24 I'm going to have to rule you out of order, because again,
25 we have very specific regulations, we have already had the

1 interpretation by General Counsel that we have to abide by
2 our regulations. The fact that there are other regulations
3 that we can look to in an OIR proceeding to modify those
4 is another matter.

5 So if you can comment as to -- in fact, let me
6 tell you what the situation is here. That you know, I
7 haven't heard a motion yet to accept your petition. I have
8 heard a disposition to do that. I would like you to speak
9 as to whether you want the OIR -- your petition accepted
10 or denied, that's the issue, if you have any comments on
11 that.

12 DR. POPPENDIEK: Could I finish one sentence?

13 COMMISSIONER GANDARA: No, sir, I'm very sorry.
14 We've spent a lot of time on this, I think everybody has
15 tried to be very accommodating, I'm trying to be very
16 accommodating, but I have -- the Commission has been sitting
17 here since 10:00 o'clock this morning who does not wish
18 to make short shrift of your particular concerns, who seems
19 to be willing to undertake an OIR to in fact give you more
20 time to give you more adequate review, and frankly, the
21 only outcome that's possible right now is to accept or deny
22 the petition.

23 So if you can speak to that, you know, do you
24 accept -- do you want to argue against acceptance, or do
25 you want to argue against denial, okay? So that I think

1 you can speak to.

2 DR. POPPENDIEK: The petition on interpretation?

3 COMMISSIONER GANDARA: No, sir, that is over and
4 done with.

5 DR. POPPENDIEK: Well, then, I make no other
6 requests.

7 COMMISSIONER GANDARA: Thank you very much. Do
8 I hear a motion?

9 COMMISSIONER SCHWEICKART: I'll move to grant the
10 petition.

11 COMMISSIONER GANDARA: Do I hear a second? I'll
12 second it. Is there objection to a unanimous roll call?

13 COMMISSIONER COMMONS: Yes.

14 COMMISSIONER GANDARA: Call the roll please.

15 COMMISSIONER COMMONS: I just want to make a
16 statement. The applicant did not request a petition, so
17 I see no reason to support the petition.

18 COMMISSIONER SCHWEICKART: Well, let me say in
19 fairness to the applicant, if you read his original letter
20 to the Commission, it does use the word petition.

21 COMMISSIONER COMMONS: It does what, please?

22 COMMISSIONER SCHWEICKART: It does say petition.
23 I don't believe Dr. Poppendiek fully appreciated what he
24 was saying when he used the word, nevertheless, the request
25 for a petition to the Commission for relief in these matters

1 was granted, and was in fact handled, it is my understanding,
2 from Mr. Chandley, in such a manner that the interpretation
3 was that this was a petition duly before the Commission.

4 COMMISSIONER GANDARA: -- I would so rule, it
5 says that he respectfully requests a hearing, and also
6 suggests the corresponding changes in CEC's regulations be
7 made, and it's clear what changes he wants, so I would
8 interpret that as a petition. Staff has an internal
9 procedure, in fact they've gone through all this, it means
10 that they've concluded that it is a petition, and so forth.

11 COMMISSIONER COMMONS: I have no objection to a
12 unanimous vote, then.

13 COMMISSIONER GANDARA: Okay. There's no objection
14 to a unanimous roll call, then. The item is approved, I
15 will direct the General Counsel to prepare in consultation
16 with the Committee and the Executive Office, an OIR to
17 be voted upon by the Commission at its next business meeting.

18 MR. CHAMBERLAIN: On the 31st of May?

19 COMMISSIONER GANDARA: Well, as soon as practical.
20 I think we've been changing business meetings, so I don't
21 know -- probably -- is there an issue of timeliness of
22 notice on the 31st?

23 MR. PEREZ: We can get it on, I've got it right
24 here.

25 COMMISSIONER GANDARA: Okay, to the 31st then.

1 Let me ask the Commission's pleasure with respect
2 to a recess for lunch, and continuance of the rest of the
3 Commission meeting. I would recommend that we recess for
4 an hour and reconvene at 2:00, is that adequate?

5 COMMISSIONER COMMONS: I just have one question of
6 information concerning the July 4th business meeting, during
7 lunch, will you consider as to when we should have that
8 since it is the first Wednesday of the month?

9 COMMISSIONER CROWLEY: I understood it was to be --

10 COMMISSIONER GANDARA: June 27th.

11 COMMISSIONER CROWLEY: -- June 27th.

12 COMMISSIONER COMMONS: We have a business meeting
13 on June 20th.

14 COMMISSIONER CROWLEY: Right, and we felt -- it
15 was felt by staff, that because of contracts, and one thing
16 and another, that it would be appropriate to fit another
17 one in on the 27th, sort of a safety net, as well as filling
18 our quota.

19 COMMISSIONER SCHWEICKART: I haven't heard that
20 one in a year.

21 COMMISSIONER COMMONS: Well, I'd like -- I have
22 a hearing scheduled in this Commission room that day.

23 COMMISSIONER GANDARA: Mr. Ward?

24 COMMISSIONER CROWLEY: You have what?

25 COMMISSIONER COMMONS: I have a hearing scheduled

1 in this Commission room that day.

2 COMMISSIONER CROWLEY: Can I sit on your lap?

3 COMMISSIONER GANDARA: Mr. Ward, the Commission
4 discussion here is with respect to the rescheduling of the
5 July 4th business meeting. We had been informed in the
6 Loans and Grants Committee that tentatively you were looking
7 at June 27th because of the volume of contracts at the last
8 meeting, shortly before the end of the fiscal year.

9 Commissioner Commons has indicated that he has a
10 conference on that date. Could I ask you just, you know,
11 what the status is of that? We ought not to blame the
12 business meeting before the new fiscal year after the
13 June 20th meeting, then, you know, would you just check
14 with all the Commissioners that they have --

15 EXECUTIVE DIRECTOR WARD: Certainly, and I don't
16 think there's any definitive date set at this point.

17 COMMISSIONER CROWLEY: Does it have to be on
18 Wednesday anyway --

19 COMMISSIONER GANDARA: No. Okay, thank you.

20 COMMISSIONER COMMONS: I'd like to set that today,
21 so we can get notices out.

22 COMMISSIONER GANDARA: Okay. Well, everybody
23 bring their calendars back after lunch.

24 (Thereupon the morning session of a business
25 meeting was adjourned for lunch at 1:00 p.m.)

--o0o--

AFTERNOON SESSION

--o0o--

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2
3 COMMISSIONER GANDARA: I'll call the Commission
4 meeting back to order. We will take Items No. 5, followed
5 by No. 8 since they deal basically with the same office,
6 and then we'll deal with Items No. 6 and 9.

7 MS. GRIFFIN: What about 3?

8 COMMISSIONER GANDARA: Yes, Ms. Griffin, that
9 one indicates it will be 45 minutes, and I was hoping that
10 we would leave that one until after that. I'm hoping it
11 will take 5 as well. Mr. Tuvell, will you go ahead.

12 MR. TUVELL: Thank you, Commissioner Gandara.
13 Good afternoon, Commissioners. Item No. 5 on your agenda
14 is a proposal to contract with Baumbach Nursery Company
15 to co-fund a biomass gasification project as part of the
16 SB 771 Biomass Demonstration Program.

17 The proposed project is to fund a gasifier that
18 will supply heat to a greenhouse operation in Lodi.
19 Essentially, the gasifier will produce gas that will then
20 be used to burn in a conventional combustion system to
21 produce water that will be transmitted to radiators, the
22 radiators then producing the heat necessary for the
23 greenhouse.

24 COMMISSIONER GANDARA: Excuse me, Mr. Tuvell.
25 Let me just ask whether Commissioners have any questions

1 or have a desire of any further elaboration on this item.
2 This item was reviewed by the Loans and Grants Committee,
3 and so I think two of us are familiar with it, unless
4 there is any particular reason to go through a full
5 exposition of it, we can expedite it. Commissioner Commons?

6 COMMISSIONER SCHWEICKART: I'm interested in
7 biomass, I'm not interested in the question of --

8 COMMISSIONER GANDARA: Any objection to a unanimous
9 roll call then? None, then the item is approved. No. 8,
10 Mr. Tuvell?

11 MR. TUVELL: No. 8 is a request for a no cost
12 time extension for Westside Farmers Cooperative Gin. The
13 reason for the no cost time extension is the very short
14 ginning season last year resulted in inadequate time to
15 operate the facility. The operation that was conducted
16 was relatively short, and some problems came up that need
17 additional time to resolve.

18 We've discussed this with the Policy Committee,
19 there was no problems with the no cost time extension at
20 the Policy Committee.

21 COMMISSIONER GANDARA: Let me ask if there are
22 any questions by Commissioners on this item? Any public
23 comment? If not, is there any objection to unanimous
24 approval? Let the record so indicate.

25 We'll move on to Item --

1 MR. TUVELL: Thank you.

2 COMMISSIONER GANDARA: Thank you, Mr. Tuvell.

3 COMMISSIONER COMMONS: I have a question, do we
4 need a formal motion on that first contract with a first
5 and a second?

6 COMMISSIONER GANDARA: Let's take them together.

7 COMMISSIONER CROWLEY: You're talking about the
8 Baumbach Nursery one?

9 COMMISSIONER GANDARA: Yes.

10 COMMISSIONER CROWLEY: I'd be happy to move the
11 contract.

12 COMMISSIONER GANDARA: Okay, I'll second it.
13 No objection, it's approved.

14 COMMISSIONER COMMONS: That's Items 5 and 8.

15 COMMISSIONER GANDARA: 5 and 8 together.

16 Item No. 6, the \$14,900 contract with CALBO. Is
17 there staff here to --

18 EXECUTIVE DIRECTOR WARD: Yes, Commissioner
19 Gandara, we have Jim Kelly from the Conservation Division
20 to answer any questions you have. I believe it's fairly
21 self-explanatory.

22 COMMISSIONER GANDARA: I agree with you. Do any
23 of the Commissioners have any questions or comments?

24 COMMISSIONER SCHWEICKART: No, I'll move it.

25 COMMISSIONER GANDARA: Seconded, objection to

1 a unanimous roll call? None, it's adopted.

2 Item No. 9. Ms. Griffin?

3 EXECUTIVE DIRECTOR WARD: Yes, Karen Griffin
4 from Conservation Division here to answer any questions.
5 I think this is consistent with other streetlight subsidy
6 programs that have been through the Commission previously.

7 COMMISSIONER GANDARA: Yes, I might add as a
8 point of information, that this is a program in which we
9 have substantially more funds available than we have
10 applicants, as well. So, it's a situation where we are
11 glad to see an applicant. Do we have a motion for approval?
12 I'll move it. Do we have a second?

13 COMMISSIONER CROWLEY: Second.

14 COMMISSIONER GANDARA: Any objections to a
15 unanimous roll call? If not, then it's approved.

16 We will move now to Item No. 3. 7 as I understand,
17 Mr. Ward, was removed from the calendar?

18 EXECUTIVE DIRECTOR WARD: That's correct. So
19 on Item No. 3, Commissioners, we have Jeri Fontes and
20 Karen Griffin from the Conservation Division to discuss
21 the California Commercial Apartment Conservation Service
22 State Plan. I believe this has been through the Policy
23 Committee. If you have any questions, or would like an
24 explanation, they'd be happy to provide it.

25 COMMISSIONER COMMONS: Let me start off on this,

1 Mr. Ward, if I may. The Commercial Apartment Conservation
2 Service, CACS program was included in the National Energy
3 Conservation Policy Act of 1978 to establish a nationwide
4 energy conservation program for small commercial and multi-
5 unit apartment buildings.

6 This will be accomplished by large gas and
7 electric utilities providing their customers with building
8 audits. The California Energy Commission is the lead
9 agency for the purpose of developing the state plan, which
10 melds the goal of Congress and the needs of California.

11 In developing the California State Plan, the
12 California Energy Commission's foremost objective was to
13 provide utilities maximum flexibility when designing their
14 respective audit programs. At the same time, it was, and
15 continues to be the Energy Commission's intent to not
16 dilute the effectiveness of existing audits, or cause
17 excessive expenditures.

18 California utilities have for many years been
19 providing commercial and multi-unit apartment audits. The
20 state plan has been written to allow recognizing of previous
21 related work that has been accomplished in California, and
22 also to integrate the existing programs smoothly into the
23 new CACS program without major modification.

24 This approach assures that utilities and the
25 Energy Commission can pursue one of the main goals of the

1 CACS program, cost-effectiveness. In terms of the plan
2 itself, what I'd like to do is turn to Jeri Fontes.

3 MS. FONTES: Hi. I'm Jeri Fontes with the
4 Conservation Division and Program Manager for CACS and we
5 are here today to ask you to adopt the final plan of the
6 CACS state plan. The California Energy Commission was
7 designated by the Governor as the lead agency for the
8 purpose of developing a statewide plan to guide utilities
9 in the implementation of the CACS program in their service
10 territory.

11 CEC has held two workshops and two formal hearings
12 during -- on the CACS Draft Plan without any major modifica-
13 tions requested by participants. The PUC held an OII
14 hearing to determine whether the cost, based on testimony
15 during the hearings, from the utilities, whether the costs
16 will be covered under the same manner as other current
17 operating expenses, and the answer was yes, and there will
18 be no significant impairment, and that there will be no
19 direct charge to the customer for CACS audits.

20 COMMISSIONER GANDARA: Thank you very much, Ms.
21 Fontes. I have before me some changes to the May 16th,
22 1984 California Plan for the Commercial and Apartment --
23 shall we incorporate this?

24 MS. GRIFFIN: Yes, sir. The changes which have
25 been distributed should be incorporated. They have been

1 distributed and are available to the public as well. As
2 you can see, they are typographical changes, with the
3 exception of the addition of Sacramento Municipal Utility
4 District has formally applied to participate under our
5 state plan, quite a change from our experience with RCS,
6 and we have an indication that other municipal utilities
7 will continue to join the state plan as we get ready to
8 forward it to DOE for approval.

9 The utilities are all here -- well, not all of
10 them, some of them are here and available to answer any
11 questions that you may have. They told me they have no
12 formal statements they wish to make.

13 COMMISSIONER GANDARA: Okay. Let me then just
14 say that what is before us is the plan as amended, or
15 incorporating the three page supplement that is dated
16 May 16th here. Let me ask, is there any comment by any
17 affected utility? Yes, sir?

18 MR. WADA: My name is Norm Wada and I'm from
19 PGandE, representing PGandE.

20 COMMISSIONER GANDARA: Your name again, sir?

21 MR. WADA: Norm Wada. I just have a few comments,
22 and one of them is regarding adding an additional measure,
23 an additional optional measure, and it's master meter
24 conversion. Pacific Gas and Electric Company believes
25 that master meter conversion, converting master meter

1 complexes to individual metering should be included as an
2 optional measure under the CACS state plan. PGandE
3 currently offers an incentive to customers who are willing
4 to convert for master meter to individual metering.

5 Moreover, the master meter conversion program
6 is integrated into our current multi-unit dwelling audit
7 program. This allows our auditors to tailor audits to the
8 individual needs and desires of each customer. Master
9 meter conversion allows tenants to have direct control over
10 their own energy usage.

11 Moreover, PGandE has justified master meter
12 conversion as cost-effective to the California Public
13 Utilities Commission. PGandE therefore urges the CEC to
14 include master meter conversion as an optional measure under
15 the CACS State Plan.

16 COMMISSIONER GANDARA: Thank you very much. I'm
17 going to ask staff to respond to that, but before I do
18 that, I want to see if there are any other comments, and
19 we can accumulate the comments, and have staff respond to
20 all of them.

21 Are there any other comments of this nature? If
22 not, Ms. Griffin, would you comment and indicate whether
23 this is --

24 COMMISSIONER COMMONS: I think he had two comments
25 he wanted to make, not one.

1 COMMISSIONER GANDARA: I'm sorry, I thought you
2 had concluded, Mr. Wada. I thought you had concluded your
3 presentation.

4 MR. WADA: I have one more, it's pretty minor,
5 it's on page 26 of the State Plan.

6 COMMISSIONER GANDARA: Okay. Why don't you
7 complete your presentation then.

8 MR. WADA: Okay. It's conversion from electric
9 to natural gas restaurant cooking appliances, and we would
10 like to expand it to include restaurants and apartments,
11 because we currently offer incentive programs that encourage
12 customers to convert to more efficient appliances.

13 COMMISSIONER GANDARA: Okay, thank you. Let me
14 ask Ms. Griffin to comment to see whether these issues
15 were brought up in the workshops or hearings, or whether
16 they're new issues, or how you might respond now, if they
17 are.

18 MS. GRIFFIN: The master meter is not a new
19 issue. I don't believe it was discussed extensively in
20 the workshops or the hearings. I think it would be
21 helpful for the Commission to realize that the optional
22 measures are something which does not need to be approved
23 by DOE. The Commission can take action on that independently
24 at any time, because those are state measures and that we
25 have 15 months from today until this plan goes into

1 operation. So if there are changes that we wish to make
2 to appliance -- to the optional measures, we have 15 months
3 to do it.

4 The reason that we are recommending that we not
5 add master meter conversions at this time is that (a) we
6 agree master meter conversions do have short-term energy
7 savings. This is a -- that there is definitely a short-
8 term reduction in electricity and gas use when a landlord
9 converts to individual meters.

10 But it appears in some recent research that
11 because of the cost of an individual meter which may be
12 from \$300 to \$1,000 per unit, we've seen that whole range
13 of numbers, that a landlord is then not interested in
14 investing additional measures, so they don't fix the shell,
15 or fix the building, because it's no longer their problem.

16 So the net result of all this is there's a
17 short-term savings to the landlord, there's a long-term
18 negative impact on the tenant's overall energy bill, and
19 what the tenant can actually achieve in terms of -- in
20 sort of managing their own energy bill.

21 Because this is recent research, and it hasn't
22 been thoroughly and effectively debated, we ask that the
23 Commission not adopt it at this time, but allow us to
24 report back to the Committee on the research and come back
25 with a recommendation sometime between now and the operational

1 date of the plan.

2 COMMISSIONER GANDARA: On the second item?

3 MS. GRIFFIN: On the second item, it is a fairly
4 minor change. It was not discussed previously. We didn't
5 recommend that it be just adopted at this time simply
6 because it tends to get into the area of fuel switching,
7 because it is conversion of electric to natural gas, an
8 area which has a lot of overtones of competition, and
9 Edison and the gas company, the overlapping gas and
10 electric utilities have not had a chance to comment on that,
11 and we wanted to get their comments before we brought the
12 item forward.

13 COMMISSIONER GANDARA: Commissioner Commons?

14 COMMISSIONER COMMONS: Part of the process is --
15 we had two workshops and hearings in Northern California
16 and in Southern California, and we encouraged, both in
17 writing and at the workshops that changes of this sort and
18 optional programs be provided, and I would have a concern
19 at this time, without giving all of the utilities who
20 participated in the design of the program, of making a
21 change without really giving notice to many of the smaller
22 and medium size utilities that are participating, and that
23 we accumulate these ideas and recommendations as Karen
24 Griffin has suggested, and allow everyone an opportunity
25 to at least get written notice of what's being proposed on

1 both of these items. I think they certainly have merit
2 and should be considered, but I would prefer not to
3 incorporate them in the plan without giving other utilities
4 an opportunity to review the suggestions.

5 COMMISSIONER GANDARA: Mr. Wada, having heard the
6 discussion, do you feel comfortable with the fact that
7 these issues are not set in concrete right now, but that
8 there will be an opportunity for them to be more fully
9 aired and yet a reasonable opportunity if they found --
10 found to be merit worthy, to be added on to the plan?

11 MR. WADA: Yes. Master meter conversion,
12 incidently, we recommended that in the last workshop that
13 was conducted by the CEC.

14 COMMISSIONER GANDARA: Okay. But the point that
15 I'm making is that, you know, there doesn't seem to be a
16 foreclosing of the opportunity to continue to address this
17 and include it, and it does seem to me that it is a
18 reasonable request by the Committee and the staff, that
19 given that what's before us here does not close off that
20 opportunity, it can be more fully aired later on.

21 So my only question to you, I mean, is there
22 some reason, or particular reason why the Commission should
23 act on your recommendation today.

24 MR. WADA: I'm unclear what the mechanism is
25 to actually get these recommendations in the plan then.

1 COMMISSIONER GANDARA: Okay, Commissioner Commons?

2 COMMISSIONER COMMONS: Well, I forgot that he did
3 raise that at the last workshop, and I guess I'd like further
4 response from staff, because this would be the only one
5 that was recommended that has not been incorporated,
6 because it's optional to the utility as to whether they
7 actually take it, and it doesn't have the gas versus
8 electricity issue as the other one does.

9 MS. FONTES: I can respond to that. We did do
10 some research since the last workshop. We're still finding
11 that there's material out there that we need to evaluate,
12 we want to check with more master meter conversion
13 manufacturers, just haven't got enough data yet.

14 MS. GRIFFIN: And I have also been trying to
15 call tenant groups around the state to get their impression
16 of the effectiveness of this measure, and its effect on
17 subsequent conservation investments. They are a difficult
18 group to identify, so we've had some trouble in tracking
19 down people who have a position on the issue.

20 COMMISSIONER COMMONS: Well, we had no utility
21 opposition to the proposal when it was submitted.

22 MR. WADA: I guess what I'm trying to say is that
23 I think the CEC should try to be consistent with what the
24 CPUC is authorizing us to -- they're authorizing this
25 program, master meter conversion, and I think that this

1 year the staff, the PUC staff even recommended that our
2 budget be increased, our proposed budget for master meter
3 conversion be increased, but it was the Commission who
4 decided to cut the budget back, but they've been supporting
5 the program strongly.

6 COMMISSIONER GANDARA: Thank you very much, Mr.
7 Wada. Let me ask, are there any Commissioner comments?

8 COMMISSIONER COMMONS: The only one other comment
9 I'd want to make is that we will be the only state, as far
10 as I know, who will have submitted their plan on time.

11 COMMISSIONER GANDARA: All right. If there are
12 no other Commissioner comments, then, do I hear a motion
13 for consideration by the Commission?

14 COMMISSIONER COMMONS: I'll move it with the
15 amendments of staff, and including the master meter
16 provision submitted by PGandE.

17 COMMISSIONER GANDARA: Is there a second to the
18 motion? There is no second to your motion, Commissioner
19 Commons. Let me second it for purposes of discussion.
20 Commissioner discussion?

21 COMMISSIONER SCHWEICKART: Well, I'm -- though
22 my intuition goes with the PGandE recommendation, I'm
23 brought up a bit short by the research which Karen indicated
24 that would indicate a counter-intuitive element to energy
25 savings by a moving away from master metering. I am frankly

1 quite surprised at that, but it seems to me it does deserve
2 a bit more of an airing than just simply including it in
3 the plan and having it go forward as something which should
4 be encouraged.

5 My concern, I would say, falls in the area of
6 simply letting Mr. Wada's recommendations go, absent some
7 direction to in fact report back to the Commission by such
8 and such a time with further -- an amendment to the plan.
9 It seems to me we could identify that, and provide Mr. Wada
10 with a very specific time frame in which these issues
11 would be dealt, and provide other utilities and interested
12 parties with due notice.

13 I would certainly support moving the plan absent
14 the inclusion of the master metering, and respond to Mr.
15 Wada by directing the staff to address that issue and bring
16 back before the Commission at some time certain recommenda-
17 tions on these two issues.

18 COMMISSIONER GANDARA: Okay.

19 COMMISSIONER CROWLEY: On the two issues?

20 COMMISSIONER SCHWEICKART: Yes, on the master
21 metering, and on the issue of gas conversion.

22 COMMISSIONER CROWLEY: Was that -- I didn't
23 understand that that was --

24 COMMISSIONER SCHWEICKART: Commissioner Commons
25 was, I think, silent to that issue. I think that Mr. Wada's

1 recommendation deserves the same treatment on both of his
2 issues.

3 MR. MUNDSTOCK: Commissioner, under the provisions
4 of the plan, the utility may simply request in writing that
5 measures be added to the optional list, and that process
6 triggers an Executive Director approval or denial,
7 automatically, which is appealable to the Commission if it
8 goes against the utility. So that this is on your page 10,
9 Section (1), and really, if PGandE wishes to add these
10 optional measures, all they have to do is implement the
11 process under the plan.

12 COMMISSIONER GANDARA: Thank you very much,
13 Mr. Mundstock, that seems to answer another part of the
14 question Mr. Wada had. It seems to shortcircuit the
15 second half of your recommendation, Commissioner Schweickart.

16 Let me say that I am in agreement with Commissioner
17 Schweickart. I think that Ms. Griffin has indicated some
18 concerns for additional research, and frankly, the direction
19 of her concerns are consistent with the direction of the
20 Loans and Grants that have been indicated with respect to
21 trying to deal a bit more with the tenant group concerns
22 so that I would be supportive as well of adopting the
23 plan as presented to us today, with Mr. Wada available to
24 take advantage on behalf of PGandE of that provision that
25 Mr. Mundstock has called to our attention.

1 Being that that's the case, there is not a
2 majority for the motion --

3 COMMISSIONER COMMONS: I'd like to withdraw the
4 motion, and provide another motion that we adopt the plan
5 as we have it with the amendments submitted by staff in
6 front of us that have been typed.

7 COMMISSIONER GANDARA: I'll second that. Are
8 there any objections to a unanimous roll call? If not,
9 then the item is adopted, thank you very much.

10 EXECUTIVE DIRECTOR WARD: Commissioner Gandara,
11 I think I would like to take an opportunity to commend the
12 staff on this. They not only delivered it on time, it is,
13 in fact, one month early, and I think due largely to the
14 credit of both Jeri Fontes and Karen Griffin, as well as
15 the Presiding Member of the Committee.

16 COMMISSIONER GANDARA: Thank you.

17 COMMISSIONER COMMONS: Mr. Ward, also, we really
18 had a lot of very good communications from the utilities,
19 particularly in the optional program measures, and in how
20 to make this plan so it was operable at the field level.
21 The utility assistance here in making this a workable
22 program has been very appreciated.

23 COMMISSIONER GANDARA: Okay. We are now on
24 Item No. 10 which is the consent calendar, there are no
25 items there, so we will skip to Item No. 11, approval of

1 the minutes. Are there any questions regarding approval
2 of the minutes?

3 If nobody has any comments, let me indicate one
4 of my own, a correction, I believe, on Item No. 4. Even
5 though the item was noticed as a \$30,000 approval, in fact,
6 what the Commission approved was something on the order
7 of around \$6,000 for that item. So if you correct that,
8 then, do I hear a motion for approval of the minutes?

9 COMMISSIONER COMMONS: Wasn't there -- I believe
10 on the minutes, I believe there was going to be something
11 on the BR Committee, under Committee Reports, that section
12 seems to not have included that.

13 COMMISSIONER GANDARA: Okay, I don't recall --
14 I believe Commissioner Schweickart -- I mean, Commissioner
15 Imbrecht indicated that the BR Committee would be bringing
16 back to the Commission an outline or a schedule for the
17 Biennial Report, is that --

18 COMMISSIONER COMMONS: I believe he mentioned
19 that the --

20 COMMISSIONER GANDARA: That is correct, because
21 I believe you commented that you hadn't seen it, and you
22 were supposed to confer. In any case, that falls under
23 Policy Committee Reports --

24 COMMISSIONER COMMONS: That would be in the
25 minutes, though.

1 COMMISSIONER GANDARA: Well, I think the question
2 then is how do you tell what the minutes ought to be. I
3 for one am not so concerned about the details of something
4 other than Commission action, final action, we do have a
5 transcript. The Presiding Member of the Biennial Report
6 Committee is not here to respond to that particular issue
7 anyway, if it's a question of where the outline is, or
8 anything like that. So I don't see what we can -- why
9 don't we separate that from the minutes, unless it's a
10 question of how detailed do we want the minutes to be.
11 Any objection to approval of the minutes? With the one
12 correction noted, then the minutes are approved.

13 Commission Policy Committee Reports? Any
14 Committees wish to make a report? None? Then we have a
15 General Counsel's report?

16 MR. CHANDLEY: No report.

17 COMMISSIONER COMMONS: On Committee Reports,
18 we do have schedules on the CFM for the demand/supply
19 hearings going through October, and on the Appliance
20 Committee, we have scheduled four hearings and workshops
21 for both the air conditioners and refrigerators.

22 On the air conditioners, if there's no objection
23 of the Commission, what we'd like to do is bifurcate the
24 process and in the first set of standards that comes before
25 the Commission that those standards be for residential

1 central air conditioners up to 65,000 Btu, and then that we
2 subsequently look at units larger than 65,000 Btu, window
3 air conditioners, and commercial air conditioners. So, we
4 will take the air conditioners in two separate -- I don't
5 want to say proceedings, because it's all part of the same
6 proceeding, but we will bring those items to the Commission
7 as a Committee separately, and that's based primarily on
8 Commission staff availability and able to proceed on a
9 timely manner. There's significant differences in
10 industries between the three sets of air conditioners.

11 COMMISSIONER GANDARA: Thank you.

12 COMMISSIONER COMMONS: One last item on the
13 Appliance Committee, we will be bringing before the
14 Commission following the guidelines that have been adopted
15 by the Commission, a recommendation for establishing an
16 advisory task force to assist us in this area which will
17 be on the next business meeting.

18 COMMISSIONER GANDARA: I notice Dr. Fukumoto
19 waving his hands back there, as we skipped over the
20 Policy Committee Reports, Commissioner Crowley, do we have
21 legislation?

22 COMMISSIONER CROWLEY: We met as a Legislative
23 Committee and discussed two bills, the Dills bill on
24 GRDA funding and the Boatwright bill on gasohol.

25 MR. FUKUMOTO: Yeah, these are two bills that we

1 took up in the Legislative Policy Committee, that we had to
2 send letters out because of Legislative Committee deadlines,
3 and the letters that we sent out are included in your
4 package along with our analyses.

5 On the first bill, the GRDA bill, we originally
6 opposed the bill because it would have expanded both the
7 types of technologies that would be eligible for loans as
8 well as the number of entities that would be eligible
9 for it.

10 Given the limited number of funds that were
11 available, we thought that it would be inappropriate to
12 expand it at that time. The bill has since been amended
13 to give the Commission flexibility to give loans as well
14 as grants in striking the other provisions. Therefore,
15 we've changed our position from opposed to support as
16 proposed to be amended.

17 The bill has since been amended to conform to
18 those proposals that they suggested, and is now out of the
19 Senate Finance Committee and on the floor of the Senate.

20 COMMISSIONER GANDARA: Okay. Any Commissioner
21 comments or questions?

22 COMMISSIONER SCHWEICKART: I have one comment
23 which is that I would prefer, and this is an old saw that
24 I guess I've mentioned a number of times, but I would
25 prefer us to say what our position is and not use euphamisms.

1 If we oppose a bill, let's say we oppose it and why, if we
2 support it, let's say so, if we want an amendment, let's
3 say we will support if this, we oppose it because of some
4 specific thing, you might say that.

5 But this thing about saying cannot support at
6 this time --

7 MR. FUKUMOTO: Okay, you're talking about SB 2332,
8 that's the other bill.

9 COMMISSIONER SCHWEICKART: Yes, but it's just a
10 particular example. We continually seem to want to sugar
11 coat something by not quite saying what we really believe,
12 and it seems to me that we don't do anyone a service by
13 doing that, including ourselves. So I would only encourage
14 the legislative staff, and the Committee, for that matter,
15 to state plainly what our position is. I have no problem
16 with the positions.

17 COMMISSIONER GANDARA: Okay. I had one comment
18 on the GRDA bill, 2102. As I read the letter, I am -- I
19 support the letter, but certainly, the analysis is -- has
20 one detail that the letter does not, and that relates to
21 the issue of eligibility being expanded to include public
22 utilities and regional planning agencies.

23 Now, we discussed this before, and I have problems
24 with the inclusion of the public utilities. I have no
25 problems with the regional planning agencies, and the

1 response to me was that -- well, the public utilities have
2 always been eligible.

3 I contend that they have not. That the legislation
4 talks about county and local governments, and combinations
5 formed thereof, which presumes special districts, even
6 though our loans and grants manual does indicate -- does
7 have language that says that municipal utilities are
8 included. I'm saying that our grants manual cannot
9 supersede the law, and that the eligibility as defined in
10 the statute does not include public utilities.

11 MR. FUKUMOTO: My understanding is that the
12 statute states any city, county, or district is eligible,
13 and --

14 COMMISSIONER GANDARA: Or combinations thereof.

15 MR. FUKUMOTO: Or combinations thereof. A public
16 utility district, as a district, would thereby qualify, by
17 being a district.

18 COMMISSIONER GANDARA: Well, I guess I don't see
19 a municipal public utility as being a district.

20 MR. FUKUMOTO: If it is formed as a district, it
21 qualifies.

22 COMMISSIONER GANDARA: So, for example, what
23 public utility is formed as a district?

24 MR. FUKUMOTO: Sacramento Municipal Utility
25 District, Los Angeles Water and Power District, they're

1 formed as districts.

2 COMMISSIONER GANDARA: Okay, that's where I have
3 problems, because Los Angeles Municipal -- Los Angeles
4 Department of Water and Power is a unit of the government
5 of the City of Los Angeles.

6 MR. FUKUMOTO: Then they qualify as a unit of the
7 city.

8 COMMISSIONER GANDARA: Well, but SMUD is not.

9 MR. FUKUMOTO: Then it qualifies as a district.

10 COMMISSIONER GANDARA: Well, see, I think we're
11 begging the question there. See, I don't see that being
12 the case or the situation here. Now, the legislation would
13 make the public utilities eligible now for all practical
14 purposes, I mean, we can debate as to whether we want that
15 or not, as opposed to what our interpretation was in the
16 past, okay.

17 MR. FUKUMOTO: All right.

18 COMMISSIONER GANDARA: Now, my feeling is, my
19 position is that public utilities, municipal or otherwise,
20 ought not to be eligible, and so therefore, that's not
21 something that I would support.

22 MR. FUKUMOTO: Okay. Then we would probably need
23 an interpretation from legal counsel as to whether or not
24 we have been interpreting correctly in the past.

25 COMMISSIONER GANDARA: We need a Commission

1 decision as to whether we want public utilities --
2 municipal public utilities to be eligible for GRDA funding,
3 that's the issue, it's not merely the issue of the legal
4 interpretation. The issue is what our legislative
5 position is going to be, or ought to be.

6 It may be that I may be the only one concerned
7 about that, but I think that we should -- it's certainly
8 something that ought to be considered. As I said before,
9 the letter, the letter does not indicate that we're
10 supporting that, but the bill analysis does. I presume
11 that the bill analysis, that's been the position that's
12 been advanced before the Legislature.

13 MR. FUKUMOTO: Yes, it is.

14 COMMISSIONER GANDARA: So to make it clear, let
15 me then just say that I would move that we -- our position
16 ought to be support if amended to exclude public utilities
17 under the eligibility position. Going once, going twice --

18 COMMISSIONER COMMONS: Well, I always second all
19 motions for purpose of discussion.

20 COMMISSIONER GANDARA: Okay, I have a second.

21 MR. FUKUMOTO: So you're supporting amendments
22 to the bill which would exclude -- specifically exclude
23 municipal utilities from eligibility from funding for GRDA.

24 COMMISSIONER GANDARA: Yes. To exclude utilities
25 whether municipal or investor owned.

1 MR. FUKUMOTO: Any utilities, municipal or --

2 COMMISSIONER COMMONS: Well, I'd like to ask the
3 staff opinion as to why they have in the past recommended
4 that we provide such funding.

5 MR. FUKUMOTO: Well, I believe they've been
6 eligible, I'm not sure if they've ever received any funding.

7 COMMISSIONER GANDARA: No public utility has
8 ever applied for funding and received funding.

9 COMMISSIONER COMMONS: Does staff have a position
10 on it?

11 MR. FUKUMOTO: The staff's position has been that
12 they have always been eligible for funding, but they've
13 just never received funding. I don't know if they have
14 any specific position as to whether they should or should
15 not be eligible.

16 COMMISSIONER COMMONS: Would a private utility not
17 be eligible?

18 MR. FUKUMOTO: They are not.

19 COMMISSIONER SCHWEICKART: Commissioner Gandara,
20 your sense is that local governments may be eligible, but
21 not municipal utilities.

22 COMMISSIONER GANDARA: That's correct, local
23 governments, county, local, or special districts such as
24 SCAG, ABAG, you know, joint power agencies, I mean, those
25 kinds of things that they get formed for these kinds of

1 purposes.

2 My major concern, and let me articulate it, is
3 that the GRDA funds are limited and we have three categories
4 of uses for the funds. We have feasibility studies, we
5 have planning, we have mitigation, and we have actual
6 hardware, and that my feeling is that the utilities that
7 are going to -- if we are going to be deemed eligible,
8 that those are likely to be applying for funding are those
9 that are likely to have some geothermal development underway.

10 That in fact, that the utility's obligation to
11 deal with that generally falls under the mitigation aspects
12 of any siting applications they might have. So that there-
13 fore, I would be concerned about there being a -- not a
14 requirement, but a condition of certification for mitigation
15 that then is ameliorated by coming to the Commission for
16 an application for funding for mitigation.

17 That's my concern. With respect to hardware, or
18 feasibility studies, I feel that it is the obligation of
19 the utility to undertake those kinds of R&D endeavors and
20 it ought to come out of their R&D budget, it ought to be an
21 obligation on their part as opposed to coming to the
22 Commission for funds to undertake R&D projects.

23 So that's my reason for not wishing to include
24 utilities in this category.

25 COMMISSIONER COMMONS: Well, isn't it also the

1 case, though, is why should one set of utilities be
2 eligible, and another set of utilities not be eligible,
3 people don't choose a home or location because of a
4 municipal or a private utility and it should either be all
5 or none.

6 COMMISSIONER GANDARA: That's correct. Is there
7 any further discussion? I see we have somebody from the
8 Development Division here now, does anybody wish to comment?

9 MR. VANN: In the past, the way we have considered
10 districts for the most part has been as special districts,
11 such as water districts, as a specific example, as being
12 eligible. We have, you know, not really targeted our
13 efforts toward utility districts. The bottom line of
14 all of this is the comments that you are making, staff
15 would have no problem whatsoever with your proposal.

16 COMMISSIONER GANDARA: Okay, any further discussion
17 or shall we have a motion before us, shall I call the roll
18 or any objection to the adoption of the position as amended?
19 No objection, so therefore, our position on SB 2102 is
20 support if amended to exclude the eligibility of public
21 utilities.

22 Then to make it clear, SB 2332, do you have a
23 recommendation of cannot support. Do we have a motion
24 for this?

25 COMMISSIONER CROWLEY: Yes, so moved.

1 COMMISSIONER GANDARA: I will second the motion.
2 Is there any discussion?

3 COMMISSIONER COMMONS: I have just a really minor
4 -- can we be consistent and say oppose?

5 COMMISSIONER CROWLEY: It wouldn't hurt a bit,
6 would it.

7 COMMISSIONER SCHWEICKART: Thank you.

8 MR. FUKUMOTO: Is that an amendment to the motion
9 or --

10 COMMISSIONER CROWLEY: The motion is to --

11 COMMISSIONER GANDARA: It appears that there is a
12 Commission concensus as well --

13 COMMISSIONER CROWLEY: The motion would be to
14 oppose 2332.

15 COMMISSIONER GANDARA: To oppose. No objection
16 to a unanimous roll call? Fine, that's where we are.

17 Any other Committee reports?

18 COMMISSIONER COMMONS: I have one question on
19 legislation. Dennis, before you leave?

20 MR. FUKUMOTO: Oh, legislation?

21 COMMISSIONER COMMONS: And Leon, I think this
22 affects you. I understand on the Naylor bill there's
23 been substantial amendment made by Assemblyman Naylor
24 which would in R&D restrict the funds in that bill to
25 loans only, and my understanding of the R&D process, as

1 undertaken by the utilities, that the provision of a loan
2 in an R&D, in a true R&D venture, is significantly different
3 and would be of a lot less help than the provision of
4 grants.

5 The concept behind this was only to provide seed
6 money, often in the neighborhood of 5 or 10 percent of a
7 total project, and if you're funding at that low of a level
8 on a project, and you're also making a loan, it would seem
9 we may be striking at the -- or raising the whole question
10 as to are we really going to be providing the utilities
11 the type of assistance to help them on some of their
12 R&D programs that we're looking for.

13 EXECUTIVE DIRECTOR WARD: Commissioner, it's my
14 understanding that the Office of Governmental Affairs is
15 working closely with Mr. Naylor's office on that issue.
16 They certainly recognize our interest in having it not be
17 strictly available for loans, and the Development Division
18 is working on some constructive ways of trying to deal
19 with your concerns.

20 I would be concerned if we were to do anything
21 at this point that might in any way inhibit Mr. Naylor's
22 pursuing this legislation, or potential administration
23 support for an R&D measure that we consider important, but
24 I assure you that we are of the same concern that you are
25 in working with Mr. Naylor on the bill.

1 COMMISSIONER COMMONS: Well, I guess the other
2 question is, would this Commission want to support an
3 approach to R&D funding that doesn't make a lot of sense,
4 which is a straight loan approach? Normally, I'd favor
5 to a loan approach on most types of programs. But one area
6 it doesn't make a lot of sense is in R&D, and I guess what
7 I'm saying is that I would seriously question, at least if
8 I would want to support in research and development,
9 which I think is vital to the state and to the industry
10 and a nonworkable approach, and if it weren't to change --

11 EXECUTIVE DIRECTOR WARD: Yes, Commissioner, I
12 certainly feel as strongly as you do, and I don't think
13 there's any disagreement with that. I would indicate that
14 the bill is still in the first house, and that I'd be
15 concerned about doing anything that might jeopardize the
16 enthusiasm that appears to be associated with not only
17 Mr. Naylor's proposal, but others, and the possibility that
18 I consider very real that we will end up with an R&D bill.

19 I think we're obviously part of the process, there
20 are bills in both houses, and I would ask that we -- at
21 least the Commission resist in taking any kind of a
22 position on this measure at this point in time that somehow
23 might negate the enthusiasm of the author.

24 COMMISSIONER COMMONS: I would just ask that at
25 the next business meeting we get a further progress report

1 on it.

2 MR. FUKUMOTO: Right. We are making every effort
3 to explain our position to Mr. Naylor on this, and it's
4 consistent with what you have expressed.

5 COMMISSIONER GANDARA: Any other Policy
6 Committee reports? So, for the second time, we're through
7 with that item.

8 Executive Director's Report?

9 EXECUTIVE DIRECTOR WARD: Yes, a couple of things.
10 I thought you might be interested in the budget status.
11 We are through our fiscal subcommittees and both houses
12 of the Legislature, literally all Department of Finance
13 letters, and everything that was originally requested by
14 the Department of Finance, via the Governor's budget, and
15 subsequent finance letters have been approved in both
16 houses of the Legislature.

17 There have been some augmentations that are in
18 different shape, depending on which house you happen to be
19 in. One of the augmentations is a Senator Craven proposal
20 that he'd been working with the building industry on, that's
21 five personnel years, \$251,000, to provide for an annual
22 review of energy conservation measures that could then be
23 included in the residential point system.

24 That is in in the Assembly, the Senate included
25 it in the amount of \$1.00, so it will be a conference issue.

1 Second issue is the nonresidential building
2 standards for the building types that we haven't yet dealt
3 with, \$813,000, 3.5 personnel years, that is in in both
4 houses, so it won't be a conference item.

5 Lassen Community College was the object of a
6 proposal by Senator Johnson for a municipal solid waste
7 demonstration project dealing with solid waste and biomass.
8 The total project was \$1.4 million. The state's contribution
9 appears to be something in excess of \$750,000. It's going
10 to be heard in the Senate before the full Finance Committee.
11 It was accepted in the Resources and Transportation
12 Subcommittee in the Assembly.

13 Our involvement in this is simply administration.
14 We happened to be selected as the most appropriate agency
15 by Senator Johnson for reasons unbeknownst to me for the
16 pass through of this money, and to handle the paperwork.
17 The Development Division appears to think that there's merit
18 in the project in providing this demonstration and training
19 facility, and if you'd like a summary of the proposal, I
20 can provide all your offices with that.

21 Secondly, there was language included in the
22 Assembly, and Commissioner Schweickart can probably speak
23 to this better than I, but the crystalization is that it
24 deals with RCS and the tax credit issue, and would continue
25 in the subsequent year, the same credit allowable measures

1 that are in this year. Is that a fair representation
2 Commissioner?

3 COMMISSIONER SCHWEICKART: Yes. What it does is
4 extend under state jurisdiction, and only in the absence
5 of passage of the Ottenger bill, extending the federal RCS
6 program, it would extend the current audit program under
7 state jurisdiction until the end of calendar year '85,
8 at which time it and the tax credit would simultaneously
9 expire, vis-a-vis a requirement of RCS audits for achieving
10 of the tax credits, or receipt of the tax credits.

11 So that's a very positive one. There is the
12 other one on the insulation --

13 EXECUTIVE DIRECTOR WARD: Insulation, yeah, I
14 was just going to mention a final one that we have been
15 working on, kind of in the last minute, but still a very
16 crucial issue dealing with insulation quality, and we're
17 attempting to get language inserted in the trailer bill to
18 give the Executive Director some authority to, I guess,
19 pull from the market and otherwise stop the sale of
20 insulation that has not met the quality control tests for
21 fire safety once the testing has been done on specific
22 insulation.

23 The process, as it now evolves, and in the case
24 of the most recent one, can take upwards of three to four
25 months --

1 COMMISSIONER SCHWEICKART: Ten, Randy.

2 EXECUTIVE DIRECTOR WARD: Ten, I'm sorry.

3 Certainly far more time consuming than I think the
4 Commission is willing to put up with, at least given the
5 magnitude of the problem that we appear to be facing right
6 now, and I should know in the next day or so whether we've
7 been successful in either house on getting that language
8 inserted, but I do know that the chairman of both of our
9 subcommittees, the Subcommittee of the full Committee of
10 Ways and Means, and Senate Finance have received draft
11 language and information that -- to brief them on the issue
12 and specific responses from Luree Stetson.

13 Next in the Executive Director's Report, we'd
14 like to wrap up the third quarter review. As we got to
15 last -- or two weeks ago, the only remaining division,
16 other than General Counsel's Office was the Conservation
17 Division, and I think in the efforts of compromise, staff
18 has worked very closely with the Commissioner's offices,
19 and I believe that either we've been able to resolve the
20 personnel year concerns, or the work efforts in Commissioner
21 Commons' case, or the issues have had another solution
22 apparent in the case of Commissioner Schweickart in the
23 nonres standards and the insulation.

24 So, I believe that Conservation, unless
25 Commissioners still have additional concerns is largely

1 resolved which would allow General Counsel being the
2 remaining issue, and I understand that General Counsel's
3 Office has been working with the various Commissioners also.

4 COMMISSIONER COMMONS: I still think we have one
5 outstanding matter on appliances that I think we're supposed
6 to get to today or tomorrow, I don't know if Mr. Rauh has
7 addressed the matter to you yet, but I don't think it
8 needs full Commission consideration. It's something we can
9 work out.

10 EXECUTIVE DIRECTOR WARD: Okay.

11 COMMISSIONER GANDARA: Okay. On to General
12 Counsel?

13 EXECUTIVE DIRECTOR WARD: Well, I think -- did
14 we -- did the Commission as a matter of process say okay,
15 we concur with what's been done on the work plan to date
16 for each division? If so, I think that we'd request that
17 that action be taken on Conservation and then move on to
18 General Counsel.

19 COMMISSIONER SCHWEICKART: Well, again, I don't
20 think there's anything else that we can do right now. I
21 mean most of it is related to future actions of the
22 Legislature.

23 COMMISSIONER GANDARA: We'll consider the work
24 plans then for the division -- Conservation Division
25 approved, then for the following quarter, which there is a

1 month and a half left.

2 EXECUTIVE DIRECTOR WARD: Well, I might also
3 mention that we're proceeding on 84-85 work plan, and we
4 might try to combine that in a single business meeting
5 schedule specifically for that event with the fourth
6 quarter review, and kind of provide a transition, and I'll
7 be getting a schedule out to Commissioner's offices some
8 time prior to the first of the month.

9 COMMISSIONER GANDARA: Thank you for raising that
10 point, because in fact, it's something I had been wondering
11 about, because I have been aware that there has been, at
12 least some familiar work in the work plans, and I guess the
13 question that I had was with respect to my Committee, I
14 know that there are at least at this point in time,
15 tentatively approved positions, or positions that have been
16 approved in both houses, and that are in the Governor's
17 budget, and yet I don't know what the work plans look like.

18 The Committee has not been involved or consulted,
19 and I think in one of those programs, I'm concerned may
20 be falling through the cracks. So at what point in time
21 will there be, you know, this kind of involvement?

22 EXECUTIVE DIRECTOR WARD: Well, as I indicated,
23 Commissioner, I haven't developed a firm schedule, and the
24 work that's been done has been very preliminary at this
25 point, and mostly, as Mr. Donaldson is indicating, it's

1 mostly process, but I would anticipate having a formal
2 schedule to all Commissioners that would involve the Budget
3 Committee, by the first of June.

4 COMMISSIONER GANDARA: Okay, good. Then what
5 that leaves outstanding then is the -- I believe the
6 issue of allocation within the General Counsel's Office?

7 EXECUTIVE DIRECTOR WARD: Yes.

8 MR. DONALDSON: If I may, Commissioners, we
9 passed out, or Lorri passed out to you, I believe, a copy
10 of the third quarterly review program. I would call your
11 attention to the middle of the document, in other words,
12 at the end of the long sheets, where you'll find General
13 Counsel had their chart of priorities.

14 General Counsel has revised that chart to update
15 it for the additional month lag that we've had. So you're
16 going to find that that chart has changed since the last
17 meeting. The chart appears in this document right after
18 small offices, and it's about right in the middle of the
19 document and it looks like this.

20 COMMISSIONER GANDARA: Okay, I have it.

21 MR. DONALDSON: So you're going to see, like I
22 might use as an example, Commissioner Schweickart at the
23 last meeting had indicated on the bottom of the chart
24 where General Counsel had indicated that they weren't
25 going to be able to pick up any of the last four items.

1 You'll now see that there has been some allocation
2 of staff in those particular items, and so Bill Chamberlain
3 is here and he can address those issues.

4 COMMISSIONER GANDARA: Okay. If you could
5 address, I think siting regulations is still -- has no
6 support staff, no staff -- I think the two issues that were
7 outstanding were the insulation quality and siting
8 regulations.

9 MR. CHAMBERLAIN: Right. The issue as I saw it
10 was that both the particular personnel involved could do
11 either of those two things. My proposal would be to assign
12 them to the insulation quality enforcement, because I
13 understand that work to be particularly critical -- time
14 critical right now, and to postpone the rulemaking on the
15 siting regulations, but I'm open to suggestions from the
16 Commission that that's the wrong allocation.

17 COMMISSIONER COMMONS: I'm Presiding Member on
18 that siting, and if Commissioner Crowley has no objection,
19 I have no objection of giving priority to the insulation.

20 COMMISSIONER CROWLEY: No, I think that's
21 appropriate.

22 COMMISSIONER GANDARA: Then I think it's resolved.
23 Then we have no further outstanding issues on the third
24 quarter review. Thank you very much. Any additional
25 items on the Executive Director's Report?

1 EXECUTIVE DIRECTOR WARD: Not unless you have
2 specific questions about something.

3 COMMISSIONER GANDARA: Any questions?

4 COMMISSIONER COMMONS: Would this be the time to
5 discuss business meetings, under the Executive Director's
6 Report?

7 COMMISSIONER GANDARA: The next business meeting.
8 We did tell Commissioner Commons that we would decide
9 when the next business meeting would be held -- not the
10 next business meeting, but the one in June, the last week
11 in June.

12 EXECUTIVE DIRECTOR WARD: The last week in June.
13 Okay. I'm certainly flexible, and I understand that the
14 Chairman is also fairly flexible.

15 COMMISSIONER GANDARA: So what days do you have
16 available the last week in June?

17 COMMISSIONER COMMONS: I'd like to suggest June
18 28th, I have a workshop on Friday.

19 COMMISSIONER CROWLEY: I do too.

20 COMMISSIONER GANDARA: On June 28th, Thursday?

21 COMMISSIONER CROWLEY: Thursday.

22 COMMISSIONER COMMONS: You have a workshop on
23 Thursday?

24 COMMISSIONER CROWLEY: No, I said I have one on
25 Friday as well, so Thursday would be a good day for me.

1 COMMISSIONER SCHWEICKART: I don't see anything
2 on my calendar on Thursday.

3 COMMISSIONER GANDARA: Okay, Thursday it is, then,
4 June 28th.

5 EXECUTIVE DIRECTOR WARD: Okay, Secretariat will
6 note it please.

7 COMMISSIONER CROWLEY: This is in lieu of the
8 4th of July.

9 COMMISSIONER GANDARA: The July 4th meeting.

10 COMMISSIONER COMMONS: I'd also like to move that
11 we have business meetings on August 16th in the morning
12 and October 4th in the morning as informational presentations
13 and discussions, the August 16th being -- concerning
14 refrigerator standards, and the October 4th concerning
15 air conditioners, and this would follow the precedent that
16 the Chairman established on informational briefings to make
17 them on a Thursday, rather than on Wednesday of the
18 business meeting.

19 COMMISSIONER GANDARA: Is there any reason to act
20 on that now? We could act on that at some subsequent
21 business meeting so that -- I mean, it just seems to me
22 that there is sufficient lead time to do that.

23 COMMISSIONER COMMONS: That allows people to set
24 notices when they're doing their calendars by formally
25 advising other Commissioners and the public, and giving

1 lead time.

2 COMMISSIONER GANDARA: Well, again, what I would
3 prefer is that -- well, my office to get in touch with
4 your office and check on those dates, because I don't --
5 I checked on June 28th, I didn't -- or that week, I didn't
6 check on those days, so I don't know whether they're good
7 or not, for me at this point in time. They probably are,
8 but I'd just as soon have some notice to check it out.

9 COMMISSIONER COMMONS: Okay. Could I ask you
10 to instruct the Executive Director to bring that matter
11 forth at our next business meeting for those two days.

12 COMMISSIONER GANDARA: Well, let me try something.
13 Why don't you check to see if the Commissioners are
14 available on those days, and then we will consider that,
15 you know, expanding or adding business meetings at the next
16 business meeting.

17 EXECUTIVE DIRECTOR WARD: What were the dates
18 again, Commissioner Commons?

19 COMMISSIONER COMMONS: The morning of August 16th,
20 which is a Thursday for refrigerators, and the morning of
21 October 4th, which is also a Thursday, for central air
22 conditioners. They are both days following a business
23 meeting.

24 EXECUTIVE DIRECTOR WARD: Okay.

25 COMMISSIONER GANDARA: We then have Item 15,

1 public comments. Any member of the public wish to comment?

2 MR. PEREZ: I have two items, Vice Chairman
3 Gandara. The first has to do with a quick review of the
4 proposed agenda for the May 31st business meeting. At this
5 time the agenda contains five items which will call for
6 Commissioner consideration and decision. Those five items
7 very briefly are an interpretation from San Diego County
8 on the Commission's building standards that is being
9 presented from the Executive Director to the full Commission
10 for approval.

11 The second major item is Commission consideration
12 of an advisory tax force to assist the Commission's
13 Conservation Programs Committee.

14 The third item is Commission consideration of
15 Dr. Poppendiek's OIR as discussed at today's business
16 meeting.

17 The fourth item is a memorandum of understanding
18 between the CEC and the California Conservation Corps for
19 continuation of the Solar and Conservation Hotlines through
20 next fiscal year.

21 The fifth item is a traffic signal grant proposal
22 to distribute monies through the CEC/Caltrans fuel efficient
23 traffic signal management program, and then you will have
24 11 contracts also scheduled for consideration at the next
25 business meeting.

1 To my knowledge, that covers everything that
2 everyone has indicated a desire to put on the next business
3 meeting. Are there any additions or corrections?

4 COMMISSIONER CROWLEY: I had a question. Is that
5 library item coming back?

6 MR. PEREZ: Let me just see.

7 EXECUTIVE DIRECTOR WARD: I'm not sure. The
8 contract, as I understand it, they had refused to sign a
9 contract that was initiated by the State of California.
10 They had their own contract and it's just my general
11 understanding that the state is generally adverse to those
12 kinds of things, and so I'm not sure whether that problem
13 is going to be solved in two weeks or not.

14 I would hope that it would be able to be solved,
15 because it appeared to me to be a meritorious kind of
16 endeavor for the library, and I know that Diana Watkins
17 was extremely hopeful that she'd be able to present it to
18 you and explain it to you.

19 COMMISSIONER CROWLEY: Thank you.

20 EXECUTIVE DIRECTOR WARD: I'll let the Public
21 Adviser know sometime before 5:00 o'clock whether that can
22 go back on the schedule or not.

23 MR. PEREZ: Any other questions on the agenda?

24 COMMISSIONER GANDARA: No? Your second item,
25 Mr. Perez?

1 MR. PEREZ: Yes. The second item is that as
2 described in the memo which I delivered to all the
3 Commissioners this morning prior to the business meeting,
4 and while it focuses on a fact specific pattern in the
5 last five working days, I provided that to you primarily
6 to understand the context in which I'm making my remarks.

7 My remarks are aimed primarily at the question of
8 Commission procedures in the contact between advisory groups
9 and staff advisory groups, and Committees. I discussed this
10 memo with both staff people in Commissioner Schweickart's
11 office, and received no information which would lead me
12 to change any of the representations contained in my May
13 16th memo.

14 But what it keys on is I'm back before the full
15 Commission with a request for a reinvigoration of commitment
16 by the full Commission to the principles of public
17 participation as described in your January resolution on
18 the procedures to effect advisory groups.

19 I think with respect to this particular item,
20 part of the cause for the Public Adviser's reaction to the
21 process is that it was not clear that the group meeting
22 with staff was in fact a properly promulgated advisory
23 committee. I will note for the benefit of the Committee
24 that it only learned about this particular meeting 48 hours
25 before the Public Adviser.

1 But it does point out the possibility that within
2 the Commission there are quasi-advisory bodies, or there
3 are informal advisory groups either communicating directly
4 to staff alone, which may be covered by your January
5 resolution, and to the extent that they are covered, I
6 would recommend that the Commission distribute copies of the
7 January resolution to each of the divisions with a specific
8 direction that the applicability of these requirements be
9 considered in each of their proceedings.

10 From my own office's standpoint, I think the
11 reason for my concern is evident in the background that
12 my Associate Public Adviser provides in the attachment
13 to my memorandum. In this specific case, she had advised
14 the staff eight months ago as to the recommended procedures
15 in how they would conduct themselves in this area.

16 It's my own knowledge that with respect to
17 proceedings in this area, as dealt with by the Commission,
18 there have been allegations by participants in proceedings
19 that items were being evaluated off the record, and without
20 consultation by affected and interested parties.

21 So it's in this context that I raise this issue
22 as one of concern, as Public Adviser to the full Commission.
23 I'm not really looking for any direction, other than a
24 confirmation that the Commission still stands by its
25 January resolution affecting advisory bodies.

1 COMMISSIONER SCHWEICKART: As the Commissioner
2 involved here, although frankly I'm not as involved as the
3 memo would imply, the concern that I have, I have no
4 problem in affirming public participation, nor have I ever,
5 to my knowledge, had any problem with that. I'm fairly well
6 a champion of it.

7 The problem that I see is an inhibiting role that
8 is played from time to time by the Public Adviser's office
9 where the staff is in some sense discouraged from meeting
10 with outside parties on matters of interest for comment on
11 draft reports, or analyses, or to get input in various
12 processes which we're involved in, and in part by viewing
13 these contacts as advisory groups, and then subject to the
14 direction of the Commission vis-a-vis advisory committees.

15 So the issue is not one of whether we endorse,
16 or at least whether I endorse, I should speak for myself,
17 public participation in the Commission process, but rather
18 whether all contact with the outside world is viewed as
19 public participation in Commission process, and therefore
20 is subject to notice and all of the rest of it.

21 I think that has a very inhibiting effect on the
22 ability of the Commission and the Commission staff to
23 properly inform itself, and relate to outside parties. So
24 the problem here then is one of definition of what is and
25 what is not an advisory committee, not do we or do we not

1 support public participation.

2 MR. PEREZ: I disagree with you entirely,
3 Commissioner Schweickart, in the characterization of the
4 issue as I have presented to the full Commission. The
5 issue that I am presenting to the full Commission is whether
6 or not it stands by its January resolution for noticing of
7 advisory meetings as described in that resolution.

8 The resolution itself does contain a sensitive
9 appreciation of the fact that there are certain kinds of
10 meetings by staff and members of the public, and affected
11 industries that will occur which are not subject to the
12 noticing requirements.

13 With respect to the theoretical description of
14 the process that you have presented here on the record, I
15 agree with you entirely. What I am trying to share with
16 the full Commission today is that in the context of the
17 Public Advisor's office, delivering eight months ago a
18 description of what we regarded as reasonable procedures
19 to be followed by staff, we find staff's conduct in this
20 particular instance unacceptable, and it was for that
21 reason that I thought it necessary to come back to the
22 full Commission to express my concern.

23 COMMISSIONER GANDARA: Let me interrupt here.
24 Was there any doubt that this meeting was considered an
25 advisory committee? Has it been referred to as an advisory

1 committee communications, is it called a task force, or --
2 I mean, is it well established? I mean, is there a
3 question of doubt as to whether we are --

4 MR. PEREZ: Yes. I think that there is a
5 legitimate question of doubt as to whether or not in fact
6 it is an advisory group. Such a discussion was held with
7 staff, staff counsel, prior to my office making a recommenda-
8 tion to cancel the meeting. But there is a legitimate
9 question of doubt as to what its legal status is.

10 COMMISSIONER GANDARA: Let me then move to
11 perhaps a -- action where we're going to vote here. I
12 think all of us are concerned about the fact that when
13 we adopt a resolution that it in fact be followed and
14 enforced.

15 In fact, one of the early considerations, since
16 I was the originator of that, was whether we ought to
17 embark on a rulemaking proceeding to make it rules and
18 regulations, or whether a resolution would suffice, and
19 we opted for the resolution simply because we felt that
20 that would have the same force as a rule or regulation, yet
21 give the flexibility that Commissioner Schweickart is
22 indicating is desirable.

23 The resolution requested that for -- you know,
24 again, do they have a definition that is also fairly broad,
25 again, task forces, advisory groups, or anything like that,

1 that were to be formed, that they go through the procedures
2 that we've indicated. But in addition, it also requested
3 any existing advisory task forces, or whatever, be brought
4 back to the Commission for approval. In this instance,
5 this is something that had existed, that should have
6 certainly been brought before the Commission it seems to me.

7 Perhaps what we need again as a more positive
8 thing, rather than evaluating the -- you know, what has
9 happened, what we need is an inventory, what are the various
10 task forces, or advisory groups that we do have, and what
11 could be considered such and what could not.

12 I think that that could be undertaken, certainly
13 to the extent that the Public Adviser is aware of what
14 task forces, advisory groups exist on the one hand, and
15 then on the other hand, perhaps by an inquiry from the
16 Executive Director of the staff, as to what task forces,
17 or advisory groups, informal or whatever, so a determination
18 can be made, you know, whether in fact we are comply with
19 this resolution or not.

20 So maybe the first order of business is to get an
21 inventory of the groups that we have, because it appears
22 that what happened here is that this is a group that has
23 met infrequently, and though there was some concerns raised
24 in the past, there was no expectation, no knowledge of it
25 by the Committee, until a few hours, or days before the

1 meeting was to be held that it was meeting, or might have
2 been in existence.

3 To some extent, it seems to me that the fault
4 was that we didn't have that kind of inventory, and we
5 didn't really know what there was, and the decision might
6 have been, you know, do we call it off now, or do we
7 proceed with whatever benefits might be gained from it,
8 but we all can differ on that judgment.

9 But it seems to me, the first place to start is
10 an inventory of those kind of standing groups, okay, and
11 then secondly, again, some judgment to be applied, and
12 within the context of the resolution, are we depending on
13 these groups for advice, you know, either to staff, to a
14 Committee, to the Commission, and then a judgment as to
15 whether they ought to go through the process that we've
16 indicated as a desired process. Mr. Chamberlain?

17 MR. CHAMBERLAIN: Well, I don't have any -- I
18 haven't read this memo, and I don't know what the circum-
19 stances are here, but just from the discussion, it occurs
20 to me that I thought that one of the purposes of that
21 resolution in January was to provide a clear bright line
22 between those kinds of advisory groups that the Commission
23 formally created and sanctioned and gave some status as an
24 advisory committee, and that other groups that the staff
25 may want to draw together itself for its own education had

1 no such sanction, but were not to be considered advisory
2 groups.

3 If, in fact, this group that the Public Adviser
4 is concerned about does have some formal sanction from the
5 Commission, then I would say that, you know, clearly, there's
6 a concern. But if it's just a group that the staff has
7 been getting together with on its own, without even involving
8 the Committee, then I wouldn't think that inventorying all
9 those kinds of groups, and possibly in some way formally
10 putting a seal of approval or something on it -- you may
11 actually get into more Public Meetings Act problems than
12 you --

13 COMMISSIONER GANDARA: Well, I disagree with you,
14 Mr. Chamberlain, because one of the -- the idea wasn't to
15 sanctify the pronouncements that come out of a Committee,
16 you know, and therefore give it some kind of Commission
17 approval, because I think that would be even a worse
18 situation that the Commission is sanctioning, you know,
19 to some extent, the output of something that it has very
20 little control over.

21 The purpose of it is, and the problems that we
22 can get into with your suggestion is in fact the same
23 problem that was raised by the Public Adviser regarding the
24 Technical Advisory Group before its first meeting. As you
25 recall, under the Nonresidential Building Standards, you

1 had a Professional Advisory Group and a Technical Advisory
2 Group. The Professional Advisory Group had been publicly
3 noticed for its meetings and so forth and so on, the
4 Technical Advisory Group, on the other hand, were just
5 five people, and they were contractors to the Commission,
6 they were all paid for their services, and shortly before
7 the first meeting of that group, the Public Advisor --
8 a different Public Adviser, I might add brought to the
9 attention of the Committee, which I was a member then, that
10 for the purposes of the Open Meetings Act, that that TAG
11 group happened to fall within those provisions, and that
12 therefore, it would be a problem if the TAG continued to
13 meet without being publicly noticed.

14 The position then would be even more clouded than
15 this one, because they are contractors to the Commission,
16 would the meeting of contractors to the Commission constitute
17 a public meeting. It was eventually resolved in the favor
18 of, in fact, erring on the side of caution, and in fact
19 publicly noticing the TAG group.

20 So it seems to me, again, to return to my shop
21 worn phrase, if one is going to swallow the elephant in
22 that case, then certainly one can swallow the horse with
23 respect to the idea that where you have a group that are
24 contractors paid for by the Commission, and have been deemed
25 and constituted and treated by the Commission as advisory

1 groups subject to the Open Meetings Act, then when we have
2 something like in this situation that would clearly fit
3 close to the act of advisory, that it fall within at least
4 the operating procedures that we have set up for ourselves.

5 So, I'm not so sure that we're going to create
6 problems by taking an inventory, because all I'm saying is
7 had we done that before, then we would have known, the
8 Committee would have known that there was an advisory group,
9 and the Committee would not have been surprised two days
10 before, and had a problem thrust on it that it had very
11 little to do with.

12 On the other hand, there have been communications,
13 at least an element of doubt, with respect to -- emanating
14 from the Public Adviser's Office as to whether this was an
15 issue or not, and apparently, I wouldn't be surprised if
16 our current Executive Director was not aware of the group
17 either.

18 So all I'm saying is we need to know what's out
19 there before we need -- before we can decide you know, what
20 is inhibiting and what isn't, what is appropriate and
21 inappropriate contact. I'm not saying that every time the
22 staff goes out to meet with three people for lunch to find
23 out something's going to be beneficial to them, that we
24 constitute that as an advisory group, that was never the
25 intent of the resolution.

1 But I do think that as in the situation that's
2 presented before us that other people who were not in
3 attendance to that meeting who feel that perhaps there is
4 some reason that there are actions being taken that they
5 would like to be a part of, or be aware of, that certainly
6 I think that, you know, we have an obligation at least to
7 be aware of that, not to resolve it one way or the other,
8 I don't know the situation precisely, but at least be
9 informed. So I don't think that I see a problem there.

10 EXECUTIVE DIRECTOR WARD: Commissioner, I'm
11 sensitive to your concern, and I think what we can do,
12 and what we should do is get a list, as you suggested, and
13 thoughtfully go through that list with the guidance of the
14 resolution that the Commission passed, and then make some
15 judgment, and bring that back, or at least give it to the
16 Commissioners to review and provide some insight into what
17 their actual intent was.

18 COMMISSIONER GANDARA: Good, thank you. This
19 will be a learning process, and we'll make mistakes as we
20 go along, but I think if we try and address the problems
21 we're better off. Any other comments here?

22 COMMISSIONER SCHWEICKART: Yes, I would like to
23 say -- suggest that in this matter, I have directed the
24 staff, when I became aware of it, I directed the staff to
25 provide a direct response to the Public Adviser's Office.

1 This was not a Committee matter. I am frankly
2 dismayed by seeing the accusation in the last paragraph
3 concerning the Commission -- Commissioner conduct which is
4 being called into question. In fact, this was not a
5 Commission or Committee called meeting. It was a staff
6 meeting with some people who, to my knowledge, are an
7 informal committee, perhaps not even a formal one, of
8 another organization, namely, Cal-SEIA, and it seems to
9 me to be quite frank about it, that in this specific
10 instance, the Public Adviser's Office is just a bit off
11 base.

12 I do concur entirely --

13 MR. PEREZ: In response to your comment,
14 Commissioner Schweickart, you well know that I weigh the
15 choice of my words extremely carefully.

16 COMMISSIONER SCHWEICKART: I do.

17 COMMISSIONER GANDARA: All right, let me take --
18 the chair here and say that perhaps we need to conduct this
19 in an outlying discussion. It's a sensitive area for
20 everybody, and I think if we leave it where we are, it
21 will be best for everybody to work more on the perspective
22 issues.

23 Okay. Any other public comment?

24 COMMISSIONER COMMONS: If I'm not mistaken, Bob
25 Moretti had a brother.

1 EXECUTIVE DIRECTOR WARD: Well, I --

2 COMMISSIONER COMMONS: It says a sister, I believe
3 he has a brother. What I'd like to do --

4 COMMISSIONER SCHWEICKART: Well, he has a
5 sister certainly, named Marie, now I don't know about a
6 brother, but --

7 EXECUTIVE DIRECTOR WARD: I think his brother
8 is deceased.

9 COMMISSIONER COMMONS: His brother is deceased,
10 okay.

11 EXECUTIVE DIRECTOR WARD: He may have another
12 one that's living, but I'm unaware of it.

13 COMMISSIONER COMMONS: Well, just to make sure,
14 I think we should verify that. I know he had a brother
15 that is deceased, I didn't know if he had another brother.

16 COMMISSIONER GANDARA: Verify it and modify the
17 resolution accordingly.

18 EXECUTIVE DIRECTOR WARD: Thank you.

19 COMMISSIONER COMMONS: I have one other public
20 comment. On the Southern California Edison load management
21 case, we have received the ALJ's report which includes a
22 fairly extensive presentation by the Public Utility
23 Commission staff.

24 What I would like to ask is that the Executive
25 Director take a look at that in relationship to our Little

1 Hoover presentation and to come back and give a report to
2 the Commission as to whether we feel that they lived up
3 in spirit to our understanding as to how they were proceeding.

4 My undersatnding is that within that document,
5 the PUC staff again raises the question of 15,000 cyclers,
6 where this Commission, after hearing their testimony, and
7 listening to it, unanimously recommended the 24,000, and
8 if it's a compliation of information or an advocacy of
9 position, I think we should get a better understanding of
10 in our working relationships how we're proceeding on what
11 was put forth as a test case, and I'd like to ask the --

12 EXECUTIVE DIRECTOR WARD: I agree Commissioner.
13 I guess the one concern that I would raise is in relation --
14 I'm not sure that we should make that review in relation
15 to the Little Hoover Commission Report, but rather in
16 relation to our memorandum of understanding, and the
17 essentially show of good faith between the two Commissions
18 to try to reach an understanding collegially as to what
19 the mechanics and practices would be in our load management
20 review.

21 I think the issue that the Commissioner is
22 raising is a serious one, of serious concern to all of us.
23 I think both Commissioner Commons and myself went through a
24 learning experience coming from a fairly naive point of
25 view, and I guess the -- at least some of the Commissioners

1 can say I told you so and they're right. But it is
2 extremely frustrating when staff can -- at another agency
3 can represent something in what, I think we would consider
4 in a much less than meaningful or analytical way, the
5 thoughtful product that we put together on load management
6 for Southern California Edison.

7 COMMISSIONER COMMONS: I raise this within the
8 context that we have two more joint proceedings that we are
9 working with the PUC, one is the OIR 2, and the second is
10 the appliance standards where we are also looking at
11 incentive programs which will require PUC participation.

12 I'm happy to say that Commissioner Grimes has
13 agreed to cohost a hearing on that particular matter on
14 July 9th, and so it will be a joint hearing by the two
15 Commissions.

16 But I think I as a Commissioner, and I think all
17 of us on the Commission should get a report from you as to
18 how you feel we're doing under, at least the one case that
19 we had, where there was a formal position of the two
20 Commissions.

21 COMMISSIONER GANDARA: I think that would be fine
22 if you would prepare an evaluation of our experience.

23 EXECUTIVE DIRECTOR WARD: I'd be glad to.

24 COMMISSIONER GANDARA: I for one would be
25 comfortable with a written memorandum to the Commission.

1 I don't see a necessity to necessarily include it in the
2 business meeting.

3 EXECUTIVE DIRECTOR WARD: Okay.

4 COMMISSIONER COMMONS: That's fine.

5 COMMISSIONER GANDARA: If there are no further
6 issues, public comments, then we're ready to adjourn. We're
7 adjourned.

8 (Thereupon the business meeting of the California
9 Energy Resources Conservation and Development Commission
10 was adjourned at 3:28 p.m.)

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1 REPORTER'S CERTIFICATE
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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 16, 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 25th day of May, 1984.
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