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STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION  
JUN 8 1984  
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BUSINESS MEETING

1516 NINTH STREET  
1st FLOOR HEARING ROOM  
SACRAMENTO, CALIFORNIA

THURSDAY, MAY 31, 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

STAFF PRESENT

Randall M. Ward, Executive Director  
William Chamberlain, General Counsel  
Jon Blee  
Ted Rauh  
Manuel Alvarez  
Gary Fay  
Leon Vann  
Tim Olson  
Carol Chesbrough  
Michael Smith  
Dale Bosley  
Michael McCormack  
Bill Pennington  
Bruce Maeda  
Ray Tuvell  
Dennis Fukumoto  
Thom Kelly  
Chris Elms  
Lorri Gervais, Secretary

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PUBLIC ADVISOR'S OFFICE

Ernesto Perez

ALSO PRESENT

Kim Kilkenny, Construction Industry Federation

Michael J. Burke, DiGiorgio Development Corporation

Bud Sheble, California Conservation Corps

Pat Conroy, Caltrans

Walt Hagen, Caltrans

BARON GRASSBARK FOUNDATION

85% COTTON



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P R O C E E D I N G S

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3 CHAIRMAN IMBRECHT: Okay. Will the meeting please  
4 come to order. I'm sure Commissioner Commons will be with  
5 us shortly and Commissioner Schweickart will be back  
6 shortly as well.

7 I guess to continue our tradition, and I was  
8 going to ask Commissioner Commons to do this, but I'll  
9 ask the Vice Chairman, Commissioner Gandara, would you  
10 please lead us in the flag salute.

11 (Pledge of Allegiance.)

12 CHAIRMAN IMBRECHT: Okay. The first item on the  
13 agenda today is Commission consideration and possible  
14 approval of an interpretation of building standards. San  
15 Diego County has requested the Executive Director to  
16 interpret the term "site preparation and construction" in  
17 Title 24. The Executive Director's interpretation is  
18 now before the Commission for ratification. Mr. Ward?

19 EXECUTIVE DIRECTOR WARD: Yes. Jon Blees from  
20 the General Counsel's Office has worked on this and it is  
21 fairly technical, and I'll let him explain it.

22 MR. BLEES: Thank you, and good morning. My name  
23 is Jonathan Blees, I'm an attorney at the Energy Commission.  
24 As Chairman Imbrecht just pointed out, this issue does  
25 involve the interpretation of the phrase "actual site

1 preparation and construction" which appears both in the  
2 Commission's regulations, in the building standards in  
3 Section 2-5302 and in the Warren-Alquist Act itself, in  
4 Section 25402.1(f).

5           Basically, the question involves under what  
6 circumstances, when a person has taken some action regarding  
7 a residential or a nonresidential building before the  
8 effective date of changes in building standards, must those  
9 changes be complied with.

10           The Warren-Alquist Act establishes three different  
11 ways that a builder may be exempt from changes in the  
12 standards. First, if the builder has applied for a building  
13 permit before the effective date of changes in the standards,  
14 then those changes do not have to be complied with. That's  
15 established by Section 25402(a) of the Warren-Alquist Act.

16           The second means is if the builder has commenced  
17 "actual site preparation and construction on a building  
18 before the effective date of the standards." That exemption  
19 is in Section 25402.1(f).

20           Finally, the builder may get a discretionary  
21 exemption from the Energy Commission if this Commission  
22 finds that compliance with changes in the standards would  
23 be impossible without substantial delays and increases in  
24 construction costs, and if we also find that the builder  
25 has expended substantial funds in good faith on planning,

1 design, architecture or engineering and that those expendi-  
2 tures occurred before the adoption date of the standards,  
3 then the Commission may grant an exemption.

4 That provision is found in Section 25402.1(g) of  
5 the standards.

6 The issue before us today concerns number two,  
7 the exemption for commencement of actual site preparation  
8 and construction on a building before the effective date of  
9 the standards.

10 In conjunction with the legal office, the  
11 Executive Director has determined that the phrase "actual  
12 site preparation and construction" should be interpreted  
13 to mean any construction activity undertaken in reliance  
14 upon a foundation or building permit.

15 That interpretation, along with the rationale  
16 for it is in your backup package for Agenda Item No. 1.

17 In contrast, there has been an alternative  
18 interpretation put forward by a building industry group.  
19 That interpretation suggests, although it's not entirely  
20 clearly exactly what they are proposing, that any activity  
21 related to a project site, such as grading the site, or  
22 even putting in streets and sewers fro a multi-family or  
23 multi-building development should qualify a building or  
24 presumably an entire subdivision for an exemption.

25 In the staff's view, the Executive Director's

1 interpretation has three virtues that are not shared by  
2 the alternative interpretation put forward by the building  
3 industry group.

4           First, the Executive Director's interpretation  
5 is fair in two different ways. It does provide an  
6 exemption for those who are likely to face hardship if  
7 compliance is required. That is, a person who has under-  
8 taken construction activity in reliance upon a foundation  
9 or a building permit may well find it to be a hardship if  
10 compliance with changes in the standards is required.

11           On the other hand, the Executive Director's  
12 interpretation would avoid loopholes for noncompliance  
13 where there would be no hardship. The alternative inter-  
14 pretation would allow noncompliance even where there would  
15 be no hardship in so doing -- excuse me, even where there  
16 would be no hardship in compliance.

17           Second, the Executive Director's interpretation  
18 reflects a long-standing regulation that was adopted by  
19 the Energy Commission as far back as 1977. In other words,  
20 the definition of construction activity undertaken in  
21 reliance upon a foundation or building permit existed in  
22 the Energy Commission's regulations themselves from 1977  
23 until 1982.

24           That definition existed in the regulations for  
25 five years without any challenge to it, and without any

1 problem that the Energy Commission was made aware of.

2           Finally, the Executive Director's interpretation  
3 provides an easily verifiable mark, or test for determining  
4 in what circumstances compliance is required. As you know,  
5 the Commission's building standards are enforced and  
6 applied by local building officials, and in our view, in  
7 the Executive Director's interpretation, provides them with  
8 an easily usable tool.

9           In the original Warren-Alquist Act, there were  
10 no provisions for exemptions from the building standards,  
11 and in 1977, the Legislature added Section 25402.1 which  
12 created two exemption procedures or grandfather clauses:  
13 the discretionary exemption that can be granted by the Energy  
14 Commission and the exemption for actual site preparation and  
15 construction.

16           The rationale for all such exemption procedures  
17 or grandfather clauses is fairness. Where a designer or  
18 builder has relied on existing law in good faith, and  
19 where compliance with a new law would cause substantial  
20 hardship, there's a general legal principle that says that  
21 person should not have to comply with the new law, and that  
22 is exactly what the Executive Director's interpretation  
23 attempts to do.

24           Again, the interpretation focuses upon construction  
25 activity undertaken in reliance on a foundation or building

1 permit. Now, unlike an application for a grading permit,  
2 which simply allows a builder or contractor to do general  
3 work on a site, such as clearing the land, or grading, or  
4 putting in streets and sewers, an application for a  
5 foundation or building permit normally requires a builder  
6 to disclose what the structural type of the building will  
7 be and its orientation and configuration.

8           Once those matters are determined, the structure,  
9 the orientation and the configuration of the building, it  
10 may well be a hardship for the builder to have to comply with  
11 any changes in the Energy Commission's energy efficiency  
12 building standards.

13           Those building standards do, in some instances,  
14 contain requirements that would affect the structural type  
15 of the building and its orientation and configuration.  
16 Therefore, under the Executive Director's interpretation,  
17 such a person would be exempt from the standards.

18           However, a builder who has undertaken only  
19 preparatory work on the general site, but not anything  
20 related to the building itself, would not face any increased  
21 cost or difficulty of complying with changes in the  
22 standards, and therefore, should not be entitled to an  
23 exemption.

24           The alternative interpretation put forward by the  
25 building industry group would create a large and unnecessary

1 loophole. Any so-called site work, and I repeat that it is  
2 not exactly clear what this alternative interpretation  
3 would allow as a qualification for an interpretation. But  
4 any work such as running a bulldozer over some property,  
5 no matter how long ago would, under that alternative  
6 interpretation, qualify for an exemption.

7 In your backup package, we give an example of  
8 how this alternative interpretation would create a loophole  
9 and would be unfair. A builder could initiate some site  
10 preparatory work on a given lot, such as grading the lot  
11 or putting in the sewer, and then discontinue work on the  
12 project for many years, during which time the Energy  
13 Commission could adopt new or changes to building standards.

14 Years later, that builder could obtain building  
15 permits to complete the project. Under the building  
16 industry group interpretation, that person would not have  
17 to comply with the new standards, even though compliance  
18 would not involve any hardship whatsoever.

19 However, on an adjacent lot, or a lot across the  
20 street, another builder could be building exactly the same  
21 building, but that builder would have to comply with the  
22 standards simply because that builder had not, 5 or 10 years  
23 ago, done something simple like running a bulldozer over  
24 the property. That result is unfair and it's unnecessary.

25 It also creates unfairness to people who buy

1 houses. People buying the houses constructed by the first  
2 builder, the one who did not have to comply with the  
3 standards would not get the protection and the benefits of  
4 energy efficient houses, even though the houses might  
5 otherwise look virtually the same.

6 Now, as I understand it, the alternative inter-  
7 pretation suggested by the building industry group which  
8 you will hear in a moment, relies heavily on a parsing of  
9 the phrase "actual site preparation and construction" itself.  
10 They will argue that that phrase should be interpreted as  
11 meaning actual site preparation and actual site construction.  
12 So that the only construction activity required is on the  
13 site itself.

14 However, that phrase -- reading the phrase in that  
15 way takes it out of context of the statute. What the  
16 statute exempts is not sites but buildings. The statute  
17 says that the building standards shall apply only to new  
18 residential and nonresidential buildings on which actual  
19 site preparation and construction have not commenced before  
20 the effective date of the standards.

21 In other words, the statute looks at buildings.  
22 If you have commenced actual site preparation and construc-  
23 tion on a building, then you are exempt from building  
24 standards or changes in the building standards. The  
25 Executive Director's interpretation reflects that focus, it

1 reflects a previously existing and long-standing interpre-  
2 tation, excuse me, regulation, adopted by the Commission  
3 and it's fair and workable. Therefore, we recommend that  
4 you approve it. Thank you.

5 CHAIRMAN IMBRECHT: Thank you very much. Let  
6 me just ask, then, for a little bit more of a summary. So  
7 you're saying that some actual construction on the building  
8 itself is, in effect, the threshold.

9 MR. BLEES: Or on the foundation of the building.

10 CHAIRMAN IMBRECHT: On the foundation, so the  
11 slab has been poured, any kind of work of that nature would  
12 fall within the interpretation, if there has been no actual  
13 -- let me ask you this. What if water lines and so forth  
14 have been run to the slab, but say concrete has not been  
15 poured. What happens there?

16 MR. BLEES: Under the interpretation, that would  
17 depend on whether or not that activity, the running of the  
18 lines was actually undertaken in reliance on a foundation  
19 permit. The key is, do you have a foundation permit, and  
20 did you undertake work in reliance on that permit. Did  
21 you undertake work that was authorized by that permit.

22 CHAIRMAN IMBRECHT: Okay. I think I'll reserve  
23 further questions until later. Any other members of the  
24 Commission have questions? All right, fine.

25 First we have Mr. Kim Kilkeny representing the

1 Construction Industry Federation. Mr. Kilkenny?

2 MR. KILKENNY: Chairman, Commission members, my  
3 name is Kim Kilkenny, I represent the Construction Industry  
4 Federation of San Diego, with offices at 438 Camino Del  
5 Rio South in San Diego.

6 I call your attention to a letter from the  
7 California Building Industry Association of May 19th, I  
8 believe it has been previously delivered to you. My  
9 remarks will follow closely what is outlined in that  
10 correspondence.

11 I think that it is important to offer at the  
12 outset a note to the effect that neither my organization,  
13 nor any other building organization, to my knowledge, has  
14 offered any specific alternative interpretation to which  
15 your staff referred in their introductory remarks.

16 We are not suggesting that if you run a bulldozer  
17 over a parcel 10 years prior, that today you are somehow  
18 exempt from the energy standards. We do suggest that the  
19 language, actual site preparation and construction means  
20 something, and we're most willing to work with local  
21 officials and this organization to figure out what that  
22 language means.

23 I think it is important to start from the very  
24 premise upon which your staff presentation started, and that  
25 is a recognition that the Warren-Alquist Act does offer

1 three types of exemptions. Two of those we have agreement  
2 on what they mean.

3 The first exemption is that of if you have  
4 applied for a building permit prior to the effective date  
5 of the standards, you are exempt from the law. If you have  
6 applied for a building permit, you need not worry about the  
7 law.

8 The second exemption is the application that you've  
9 heard several times over the last several months, I call it  
10 the soft-cost exemption, it's in Section 25402.1(g), and  
11 it is a discretionary exemption if an applicant has expended  
12 sums of money in reliance upon the existing law for soft  
13 costs, architect, design, planning, and if you determine  
14 that it is a hardship to require that applicant to conform  
15 with the new standards, then an exemption may be granted  
16 by this body.

17 I understand that you have done so regularly in  
18 the past, and I have heard nothing but praise in the manner  
19 in which your staff and this Commission have handled this  
20 exemption process. So those are the first two kinds of  
21 exemptions, a building permit exemption, and what I call  
22 the soft-cost exemption, the planning exemption, if you  
23 spend monies and create a hardship.

24 The third exemption is the subject of this  
25 meeting, and as staff has indicated, the law says the

1 standards do not apply if actual site preparation and  
2 construction have commenced prior to the effective date of  
3 the standards, July '82.

4           The staff proposal before you is suggested that  
5 what that language means is construction pursuant to or  
6 in reliance on the issuance of a foundation or a building  
7 permit. It is our position that that interpretation does  
8 not make sense, because that interpretation means that that  
9 exemption, that specific subdivision in the state law is  
10 identical to the first exemption, the building permit.

11           What staff is suggesting to you is that the  
12 State Legislature is saying in effect that if you apply for  
13 a building permit prior to July '82, the law does not affect  
14 you. However, if you pursue construction pursuant to that  
15 building permit, you are exempt from the law that doesn't  
16 affect you. Obviously, that is nonsense.

17           Obviously, the language, actual site preparation  
18 and construction means something. I am not prepared to say  
19 exactly what that means, but I think that it is implicit  
20 that it means something beyond the soft costs. Something  
21 beyond spending money for planning, design, and architecture,  
22 what have you, and something short of actually pulling the  
23 the building permit for the residential dwelling you're  
24 going to build.

25           We think that that is a reasonable provision in the

1 state law, because as I am sure you are aware, many projects  
2 are of such a nature that huge sums of money are spent  
3 beyond the soft costs on drainage control, on and off site  
4 sewer, on and off site utilities, roads, grading of -- not  
5 running a bulldozer over a site, but rather, moving  
6 hundreds of thousands of yards of dirt and creating pads,  
7 all that hard construction goes on before pulling the  
8 building permit for the actual residential dwelling.

9 We submit that that does create a hardship, that  
10 it is a reliance to the detriment of the builder in good  
11 faith, and that the Legislature designed this exemption to  
12 apply to that fact situation.

13 Now, if we want to be preposterous, we can  
14 suggest that that exemption means running a bulldozer across  
15 the lot, and thereafter, you never have to comply. We are  
16 not advocating that at all, but we suggest that a criteria  
17 can be designed by this organization, by local governments,  
18 to specifically state those types of hard construction  
19 costs, those type of hard construction -- the building --  
20 excuse me, permit activity, short of a building permit,  
21 that if you've gone through those hoops, you are entitled  
22 as a matter of right according to state law to an exemption.

23 Just a couple -- that is our position. We don't  
24 offer an alternative interpretation, we do offer the language  
25 of the law.

1 I think what the staff in their analysis has done,  
2 has described to you the justification for the building  
3 permit exemption. The justification for the building  
4 permit exemption doesn't need justifying, it's obvious in  
5 the law, but secondly, it makes all the sense in the world.

6 If you've pulled a building permit, and you're  
7 building a structure, it is completely unfair to change the  
8 rules in the middle of the stream. We agree with that  
9 entirely. But that's not the issue. Staff does not need  
10 to justify that exemption because that's not the exemption  
11 we're talking about.

12 They are suggesting perhaps what the legislation  
13 should be. Perhaps that the use of the word site prepara-  
14 tion and construction in the legislation is not good  
15 language. That may or may not be the case. But that is the  
16 language of the law. It does have meaning, and we submit  
17 that it is in everyone's best interests that we define  
18 what that meaning is.

19 Staff has suggested --

20 CHAIRMAN IMBRECHT: Let me just ask on that point,  
21 you're suggesting that this Commission define what that is?

22 MR. KILKENNY: Well, the language of the law  
23 provides that that exemption is an exemption as a matter  
24 of right to be granted by local jurisdictions, not by this  
25 Commission. Local jurisdictions that we have worked with,

1 and I've only worked with one, San Diego County, when we  
2 presented them with our case, they said yes, what does that  
3 mean, though, and we began discussions with them to figure  
4 out what actual site preparation and construction means.

5 They turned, as the next step, to this organiza-  
6 tion for help, because it would be desirable to have some  
7 kind of consistent understanding of what that language means.  
8 So I think yes, it was desirable that this organization  
9 offer some guidance to local jurisdictions as to what that  
10 language means, but I don't think it's necessary.

11 As I read the law, the local governments have the  
12 ability to grant the exemption as a matter of right, and  
13 it's their authority to do so according to the state law.

14 CHAIRMAN IMBRECHT: Well, I guess I'm a little  
15 confused by your position, because on the one hand you're  
16 suggesting that we don't have the authority to interpret  
17 pursuant to the Director's position, and then on the other  
18 hand, it seems to me, in effect, you are conceding that  
19 we should offer an interpretation, and that strikes me as  
20 a little bit contradictory.

21 I'd also have to say that in terms of your  
22 argument, and I'm trying very hard to understand your  
23 position, because I try generally to be sympathetic on  
24 these things, but I must say as well, that I see another  
25 logical inconsistency, because the -- quite candidly, the

1 exemptions that we typically grant that are based upon the  
2 first criteria, namely compliance, would be impossible  
3 without a substantial cost and significant expenses,  
4 et cetera, typically take into account the considerations  
5 of site preparation as those which you just enunciated,  
6 including grading, and sewers, and roads, and so forth,  
7 and pad location, and how that may impact upon the ability  
8 to affect home orientation to comply with the standards and  
9 all those kinds of considerations.

10           So while I sort of understand your argument that  
11 there is some similarity between three and two with  
12 respect to the staff's interpretation, it seems to me that  
13 there's some similarity between three and one with respect  
14 to your explanation, and I won't characterize it as an  
15 interpretation, I'm a little bit at a loss to try to -- as  
16 I say, in understanding your position.

17           One other consideration is, am I not correct in  
18 assuming that there is a distinction between a building  
19 permit and a pad permit, or foundation permit?

20           MR. KILKENNY: All local jurisdictions do it  
21 differently. The jurisdictions that I am primarily familiar  
22 with, those in San Diego County, it is unusual -- generally  
23 speaking foundation permits are not issued, are not required.  
24 Foundation permits don't exist.

25           CHAIRMAN IMBRECHT: Well, let me ask you this.

1 What happens -- I think we all recognize that when there  
2 was a real downturn in the home buying market, there were  
3 many subdivisions where builders poured the slab, and then  
4 in effect walked away from the site for 18 months or two  
5 years before actually erecting the building.

6 Now, are you suggesting that the building permit  
7 that they pulled to pour that slab did -- was an open-ended  
8 building permit? Don't they typically expire after --

9 MR. KILKENNY: After a year.

10 CHAIRMAN IMBRECHT: That's right, where there  
11 hasn't been commencement to proceed with the construction.

12 MR. KILKENNY: Yeah. What you're suggesting --  
13 the fact pattern that you're suggesting is highly unusual,  
14 and to my knowledge, I have not seen it, at least in San  
15 Diego County, and my experience may be limited. Builders  
16 don't pour slabs, and then walk away from the project as a  
17 general rule.

18 They get their construction loan prior to  
19 commencement of the construction, which operates for a  
20 certain period of time, and they're committed to the  
21 project. So it is very difficult --

22 CHAIRMAN IMBRECHT: Let me -- I have to in all  
23 honesty differ with you on that. They're committed to the  
24 project, but that's based upon whether or not they have an  
25 expectation that they can sell all of those units. I mean,

1 it's simply -- so far as I'm concerned, a matter of fact  
2 that that occurred throughout California, I mean, mere  
3 observation demonstrates that, not just here in Sacramento,  
4 but in my home area of Ventura County, which has similar  
5 housing kinds of considerations like just in San Diego  
6 County.

7 Commissioner Commons?

8 COMMISSIONER COMMONS: Yeah. I have some  
9 questions, but I first want to respond to the question  
10 you're asking, and come back to my questions when you've  
11 finished.

12 It's very typical in the building industry that  
13 the person who owns the land will develop the land for a  
14 builder, and you'll go and take out a grading permit, which  
15 may be done 1, 5, or even 10 years prior to the time that  
16 the land is developed, and so you'll actually do a portion  
17 of your off-sites under one ownership, and that's a special  
18 permit for doing your grading.

19 At the same time, if you've gone in for a zoning  
20 application, you may have filed a map, and the particular  
21 municipality may require you to do a certain amount of  
22 off-site work at the time you do that, and so you may have  
23 put in a certain amount of your sewers, your utilities, and  
24 in some cases, done your pads all under permits, but this  
25 is prior to the time that you've done any work on foundation.

1           Then the project may be sold ready to build at the  
2 foundation site. It's more often the case, like he is  
3 referring to, and it's unusual, and that's where you have a  
4 financial market that reacts in a very unpredictable manner  
5 like we had a few years ago, where someone actually goes and  
6 pours the foundation.

7           The intent when you go and pour the foundation is  
8 you now have your permanent financing from your -- you have  
9 your construction financing from your savings and loan,  
10 you've paid your fees, and so it's an unusual circumstance  
11 at the time you pour your foundation that you don't go ahead  
12 and construct.

13           That doesn't mean it doesn't occur, but the other  
14 is much more typical where there has been substantial off-  
15 site work that has been done by the land developer, and  
16 there may be a substantial period of time between a builder  
17 going in then and actually constructing homes.

18           CHAIRMAN IMBRECHT: I understand what you're  
19 saying, but I think when we're dealing with an issue of this  
20 nature, I think we have to take into consideration exigencies  
21 that we do know occur, and from personal observation  
22 throughout California, I saw subdivisions that had slabs  
23 poured two years ago where the building was simply not  
24 erected because of the fact that the market went very, very  
25 soft.

1           COMMISSIONER COMMONS: There just weren't  
2 builders who stopped it.

3           CHAIRMAN IMBRECHT: That's right. They were  
4 smart builders, and they didn't commit further at that  
5 juncture. In any case, any questions on this side of the  
6 dais? Commissioner Gandara?

7           COMMISSIONER GANDARA: Yes. Who or what is the  
8 Construction Industry Federation and what is your relation-  
9 ship with CBIA. I have not heard of your group before.

10          MR. KILKENNY: The Construction Industry Federation  
11 is a local organization, local to San Diego County. We  
12 represent the three major building organizations within  
13 San Diego County, the Building Industry Association,  
14 Associated General Contractors, and the Engineers and  
15 General Contractors Association.

16                 We are affiliated with CBIA and we work closely  
17 with them on state issues, but we primarily deal with local  
18 issues in the San Diego region.

19          COMMISSIONER GANDARA: One additional question.  
20 Were you involved, and were you following as part of your  
21 organization, or as a member of these other organizations,  
22 the new residential building standards proposal, adoption,  
23 and so forth?

24          MR. KILKENNY: The recent ones?

25          COMMISSIONER GANDARA: Yes.

1 MR. KILKENNY: We're very much familiar with  
2 those, and --

3 COMMISSIONER GANDARA: Now, if you recall then  
4 that this Commission in trying to be responsive to CBIA  
5 in fact changed a number of times, you know, the issue of  
6 whether we would include, or exclude specifically from the  
7 regulations the issue that is before us right now.

8 I believe that CBIA who at that time was  
9 representing the construction industry has reversed itself  
10 several times on this matter. You know, what certainty  
11 does the Commission have that -- in reliance upon what you  
12 assert to be the industry position now, that there would  
13 be any more stability in the point of view?

14 MR. KILKENNY: I'm afraid I'm at a loss to comment  
15 on the activities of CBIA before this Commission. I just  
16 am not knowledgeable.

17 CHAIRMAN IMBRECHT: Let me ask one other question.  
18 Is this a real problem? I mean, as a practical matter,  
19 this Commission has liberally construed the first definition  
20 of exemption, and I'm --

21 MR. KILKENNY: I think you've hit on a very  
22 important point. It is a problem, but it is not a problem  
23 that affects thousands and thousands of builders. Our  
24 organization represents 1,200 builders, from freeway  
25 builders down to remodelers, and in my discussions over the

1 last several months with those folks, I have found two  
2 projects within the San Diego region that would, from my  
3 interpretation, fall within this exemption.

4 CHAIRMAN IMBRECHT: Have they sought to apply for  
5 an exemption from the --

6 MR. KILKENNY: One has, one has not.

7 CHAIRMAN IMBRECHT: And what -- I think you  
8 indicated in your remarks earlier that your understanding  
9 is that people have been satisfied with how the exemption  
10 process has been handled here at the Commission, and I guess  
11 I would ask, would you consider advising the builder that  
12 had not applied for an exemption to try that remedy first?

13 MR. KILKENNY: That builder is represented here  
14 by a separate individual, so I can let them respond.

15 CHAIRMAN IMBRECHT: All right. I'll save that  
16 question in that case. Commissioner Commons, did you have  
17 some more?

18 COMMISSIONER COMMONS: Well, you're touching on  
19 one of the questions, and since we have one of the builders  
20 here, I'll hold that question until then.

21 CHAIRMAN IMBRECHT: All right.

22 COMMISSIONER COMMONS: I have one other question,  
23 though. The language does say, if we were to look at it  
24 from your interpretation part, that it requires both site  
25 preparation and construction, and can you make the distinction

1 as to where you feel site preparation stops. For example,  
2 putting in roads, is that site preparation, pads would be  
3 site preparation, grading would be site preparation. Where  
4 do you make the distinction between what is construction and  
5 what is site preparation. Is bringing in sewerage considered  
6 construction? Is putting in your sidewalks, or paving --  
7 let's say you're required to widen the road because the  
8 city requires you to do so. How do you interpret what is  
9 meant by construction?

10 MR. KILKENNY: Well, again, my experience is  
11 filtered by the local experience in San Diego County, and  
12 I was looking at their permit process, but we are talking  
13 about the initial biological -- under preparation, this  
14 concept, initial biological work, grubbing of the site,  
15 that work done attendant to what is known as a minor grading  
16 permit within that jurisdiction, those kinds of initial  
17 works.

18 The construction itself would be the more substan-  
19 tial work, and that involves laying of the utilities,  
20 grading for the roads, construction of the off-site drainage,  
21 construction of self-contained sewers --

22 COMMISSIONER COMMONS: Well, excuse me, off-site  
23 drainage, that to me is like site preparation.

24 MR. KILKENNY: I agree wholeheartedly that the  
25 language is not the best that could be used, and the terms

1 blur, but the concept combined, I think, is identical to  
2 what you're talking about, is that you have to do this  
3 amount of hard cost work. The off-site drainage, self-  
4 contained sewer plants, that's typical of many projects in  
5 San Diego County, grading for the roads, laying out of the  
6 pads, that level of on-site hard work immediately prior to  
7 application for the building permit.

8           COMMISSIONER COMMONS: See, I'm about to embark  
9 on a project myself, and we have two parts to it. One, we  
10 haven't even filed a plot map, and since we're going ahead  
11 on one part of the project, and going into actual construction,  
12 we've made a decision, partially due to city pressure, to  
13 do some of our off-site work when we haven't even decided  
14 what we're going to construct, it's commercial, not  
15 residential, but it doesn't matter, it could be the same --  
16 I could have been doing a different project.

17           We may end up selling off the piece where we've  
18 done the off-site work, and I think the function or the  
19 purpose of the exemption is where someone has, you know,  
20 gone to some significant expense based on a plot map and  
21 architectural work, and some soft work that's been combined,  
22 and the problem I'm having with your presentation is to  
23 make the distinction between someone like myself who decides  
24 to prepare the land and make it available for a developer  
25 who may put on -- may decide to go with condominium units,

1 or may decide to go with apartment units, and has done some  
2 of that off-site work as distinct from someone who has  
3 really expended monies, even though they have not pulled  
4 the permit, as you're talking about, but they've expended  
5 monies in reliance on a particular set of designs that are  
6 going through approval, and they may be awaiting their  
7 construction financing, and that's what you haven't  
8 addressed.

9 I think one of those things that we would have  
10 to look at is if there isn't a -- when you say to me that  
11 you don't have a proposal, one of the things is we have to  
12 have some way of handling the problems that is understand-  
13 able, and you know, right away able for people to follow.

14 So it makes me uncomfortable if we don't have  
15 something specific to look at in terms of a definition.  
16 At least staff has proposed what is yes, a narrow definition,  
17 but it's one that is very understandable.

18 MR. KILKENNY: Yeah. With respect to the  
19 definition, the two projects that in my mind qualified for  
20 this type of exemption in San Diego County were highly  
21 unusual projects in that they both were being built out  
22 pursuant to a specific plan. So they had to go through an  
23 incredible planning and construction process long before  
24 they pulled the building permit.

25 CHAIRMAN IMBRECHT: I think to move this discussion

1 along, it might be useful to hear from the representative  
2 of that builder that's involved, and we could get a better  
3 understanding of what the problem might be.

4 COMMISSIONER SCHWEICKART: Excuse me, Mr.  
5 Chairman, I'd like to ask --

6 CHAIRMAN IMBRECHT: Yes. I'm sorry, Commissioner  
7 Schweickart.

8 COMMISSIONER SCHWEICKART: Unless you prefer, I'd  
9 be happy to recall this --

10 CHAIRMAN IMBRECHT: No, go ahead, that's fine.

11 COMMISSIONER SCHWEICKART: I take it that CIF  
12 represents not only builders who have land currently  
13 prepared and have done work, and would be interested in this,  
14 but also people who have yet to do work. You're not acting  
15 only to represent one-half.

16 Could you state the basis on which you feel, as a  
17 formal position of CIF, that equity is presented where we  
18 have, perhaps adjoining parcels of land, on one of which  
19 whatever minimum you feel is appropriate in terms of site  
20 preparation has been done, and on the other, where nothing  
21 has been done, and both of them will begin building next  
22 year at the same time, and one follows one set of regulations  
23 and the other the other in actually constructing or  
24 designing the houses that go on there?

25 MR. KILKENNY: Yeah.

1           CHAIRMAN IMBRECHT: And consequently the sale  
2 price, and market penetration.

3           COMMISSIONER SCHWEICKART: Competitiveness and  
4 equity, and the whole thing.

5           MR. KILKENNY: Yeah. The equity is that which  
6 is attendant to any new regulation, and that is, you have  
7 to draw the line that prior to this date, the law applies.  
8 Prior to -- or subsequent, there's new standards applying,  
9 and that the Legislature did that in this language.

10           So to the extent that there's any inequity, it  
11 is not that which is being proposed or advocated by the  
12 building industry, it's the nature of the business of  
13 regulation.

14           COMMISSIONER SCHWEICKART: All right. So, then,  
15 you're saying, it's essentially a matter of definition, and  
16 what you're trying to do is clarify the definition?

17           MR. KILKENNY: Recognize that actual site prepara-  
18 tion and construction has some meaning other than the  
19 issuance of a building permit, yes.

20           COMMISSIONER SCHWEICKART: All right. Then it  
21 seems to me we come down to some fairly mechanical things,  
22 namely, the basis for the definitions, and I'd like to  
23 review just briefly for the Commission the fact that this  
24 terminology was used in the building standards early on.  
25 It included not just the use of the words site preparation

1 and construction, but also -- and Jon, please keep me  
2 correct here if I'm straying, but also it included within the  
3 codes at that time a definition in the definition section  
4 which stated what site construction and preparation was  
5 so that there would not be ambiguity.

6 That language which existed in the code without  
7 challenge at that time was exactly what was proposed in the  
8 definition that was sent last to the Building Standards  
9 Commission, namely, construction -- whatever the words are,  
10 pursuant to foundation or a building permit.

11 MR. KILKENNY: Building permit.

12 COMMISSIONER SCHWEICKART: Now, subsequently, when  
13 we revised the building regulations, we dropped the words,  
14 within the standards, related to site construction and  
15 preparation and I believe at that point introduced the  
16 exemption processes, which in some sense substituted for it,  
17 or implemented that through these other mechanisms.

18 At that point, since we no longer use the words  
19 site preparation and construction, there was no longer a  
20 need for a definition either. So it became moot and was  
21 removed. Now, CBIA came to us then and asked us to  
22 specifically put back in the words, "site preparation and  
23 construction".

24 In our process, formal process a year and a half  
25 ago, or something about that time, we did that, and since

1 we put the term back in, then duly adopted a definition  
2 which spelled out what that was so that again there would  
3 not be ambiguity and uncertainty among local building  
4 officials, or builders, or anyone else, and we used exactly  
5 the same words which had already existed in the building  
6 standards earlier.

7           That was submitted to the Building Standards  
8 Commission, and the Building Standards Commission, illegally  
9 I may add, by not explaining their action in any way to the  
10 Commission, dropped the definition, but left the words,  
11 "site preparation and construction" in the standard itself.

12           Now, that's the brief sequence of events, and I  
13 would like to ask since you admitted, or acknowledged that  
14 you were tracking these proceedings, did you take a  
15 position with the Building Standards Commission, or did you  
16 support this dropping of the definition which would have  
17 handled the ambiguity which you now address us on?

18           MR. KILKENNY: The organization I represent was not  
19 involved in that. I am knowledgeable of it because of  
20 conversations with CBIA. The Building Standards Commission  
21 rejected that definition for many of the same reasons that  
22 are being brought up today, is my understanding.

23           COMMISSIONER SCHWEICKART: Is that why it was in  
24 their jurisdiction?

25           MR. KILKENNY: I don't pretend to be an expert

1 on the procedural aspects of their jurisdictions or if they  
2 followed their own guidelines with respect to notice and  
3 explanation for their conduct.

4 COMMISSIONER COMMONS: Could we ask legal counsel  
5 on that question?

6 MR. BLEES: Yeah. There are two points about that.  
7 One, the State Building Standards Commission did not and  
8 has never stated the reasons why it rejected the definition.  
9 Number two, the State Building Standards Commission is  
10 authorized to disapprove Energy Commission building  
11 standards only on very narrow grounds. Basically, they  
12 have to find that there is no evidence whatsoever in our  
13 record to support what we did.

14 COMMISSIONER SCHWEICKART: Or if we acted  
15 arbitrarily and capriciously.

16 MR. BLEES: Exactly.

17 CHAIRMAN IMBRECHT: Have we made an attempt to  
18 seek clarification from them?

19 MR. BLEES: We did not.

20 CHAIRMAN IMBRECHT: I would like to suggest that  
21 an appropriate letter from the General Counsel be sent to  
22 their counterpart, or your -- if they have a general  
23 counsel, or to their Executive Director seeking such  
24 explanation. I think that that's the minimum that we should  
25 request from them.

1 MR. BLEES: We will do that.

2 CHAIRMAN IMBRECHT: And next, I understand your  
3 point very clearly, and now I think we can move on to the  
4 next witness.

5 MR. KILKENNY: Thank you.

6 CHAIRMAN IMBRECHT: One final thing, let me just  
7 ask you, Mr. Kilkenney, are you an attorney?

8 MR. KILKENNY: No, sir.

9 MR. CHAMBERLAIN: Mr. Chairman, there is one  
10 clarification. Mr. Chandley was involved in that, and he  
11 indicates that he did send a letter at the time requesting  
12 an explanation of the various items that were granted. The  
13 explanation came back but did not refer to this particular  
14 change. We will proceed to --

15 CHAIRMAN IMBRECHT: All right, fine. I think  
16 that that's something we ought to seek clarification on.  
17 Let me just say that -- and I thank our General Counsel  
18 for recalling this precise phrase to me, but in law school,  
19 I recall many occasions being instructed that statutes  
20 were entitled to an interpretation with a plain meaning  
21 of words.

22 It just seems to me, as I read this statute, that  
23 if it meant site preparation and site construction it would  
24 say that. Because there are two phrases here, site  
25 preparation and construction, to me, the plain meaning

1 suggests some construction on the building itself, however  
2 minimal, but some construction nevertheless, and I guess  
3 I'm finding it hard to be persuaded.

4 In any case, let me call upon Mr. Michael Burke  
5 representing Di -- I'm sorry, I can't -- DiGiorgio.

6 MR. BURKE: DiGiorgio Development Corporation.

7 CHAIRMAN IMBRECHT: Thank you.

8 MR. BURKE: My name is Michael Burke. My address  
9 is One Ecker Building, San Francisco, California. As noted,  
10 I represent DiGiorgio Development Corporation.

11 A little over a year ago, as noted over the  
12 objection of the CBIA, this Commission did adopt a  
13 definition as a proposed building standard that would have  
14 defined actual site preparation and construction to mean  
15 any construction activity undertaken in reliance on a  
16 foundation or building permit.

17 CBIA, CIF, and DiGiorgio take the position that  
18 this definition would have gutted the Public Resources Code,  
19 Section 25402.1(f) of any purpose or meaning.

20 As noted, the State Building Standards Commission  
21 upheld the integrity of the exemption granted under  
22 Section 25402.1(f) by rejecting the proposed definition.  
23 Once again, today, you're being asked to define the term,  
24 "actual site preparation and construction" to mean any  
25 construction activity undertaken in reliance on a foundation

1 or building permit, only this time you are being asked to  
2 do so in the guise of an interpretation of a building  
3 standard.

4           Again, we submit, the proposed interpretation  
5 would gut Public Resources Code Section 25402.1(f) of any  
6 purpose or meaning.

7           The analysis in support of the proposed inter-  
8 pretation of staff's memorandum of May 16, 1984, is a  
9 virtual carbon copy of the March 1, 1983 staff memorandum  
10 which was flatly rejected by the Building Standards  
11 Commission. We respectfully submit that you too should  
12 reject this analysis, and refuse to approve the proposed  
13 interpretation.

14           We are not asking you to avoid the issue. We are  
15 not asking you to forget about it if it's something that  
16 you feel needs to be addressed. We are merely asking you  
17 to reject this proposed interpretation for the reasons that  
18 have been expressed, and for the reasons that I will shortly  
19 express, and I will try to answer some of the questions that  
20 you've asked, please bear with me.

21           I may be suffering from a case of terminal death  
22 here. I've gotten myself out of a death bed and come  
23 running in here today. I've tried to remember your questions.  
24 I probably won't. If you would be kind enough to ask them  
25 again, if I fail to address them, I would very much

1 appreciate it.

2           We've talked about the State Building Standards  
3 Commission and the narrow criteria that they must apply if  
4 they're going to reject a proposed building standard. It's  
5 true that one criteria is the arbitrary and capricious  
6 criteria, which is that there was no factual foundation  
7 for a proposed standard, but that's not the only one, and  
8 I don't think that was the criteria they used in connection  
9 with your proposed definition.

10           Another criteria that the State Building Standards  
11 Commission must consider by law in deciding whether to  
12 approve a proposed building standard, is whether the  
13 proposed standard exceeds the authority conferred upon the  
14 adopting agency by the enabling legislation.

15           Now, we agree with the CBIA letter of May 29,  
16 1984. The proposed interpretation is an attempt to  
17 rewrite the statutory scheme to deprive builders of one of  
18 the exemptions expressly granted by the Legislature.

19           To gut Section 25402.1(f) of any purpose or  
20 meaning would exceed the authority conferred upon this  
21 Commission by the Legislature. That's the thrust of the  
22 argument being made by us, by CIF, and by CBIA.

23           Under the staff interpretation, a building would  
24 be exempt from new energy conservation standards only if  
25 actual construction and reliance upon a building permit or

1 foundation permit had commenced prior to the effective  
2 date of the new standards. Even though Section 25402.1(f)  
3 refers to site construction, and I'll get to that question  
4 later, rather than building construction, and makes no  
5 reference to a permit of any kind, let alone a foundation  
6 permit or a building permit.

7           However, as we saw earlier on the wall, Section  
8 25402(a), the section which establishes the compliance  
9 requirement, only requires that a building comply with the  
10 energy standards in effect on the date the application for  
11 a building permit is filed.

12           The builder is exempt from changes which occur  
13 after the application for the building permit is filed,  
14 even if actual construction and reliance upon the permit  
15 does not begin until after the new standards have become  
16 effective.

17           Under the staff interpretation, Section 25402.1(f)  
18 would have no independent purpose or meaning. It would be  
19 mere surplusage to Section 25402(a). Indeed, under staff's  
20 interpretation, the exemption provision, the express  
21 provision providing a statutory exemption as a right would  
22 place a greater burden on builders than the compliance  
23 requirements of Section 25402(a). That ladies and gentlemen  
24 would be a first in the history of statutory construction.

25           Not only would a builder have to have applied for

1 a building permit prior to the change in standards, he  
2 would have to have commenced actual construction in reliance  
3 on that building permit, a much greater burden that 25402(a)  
4 imposes.

5           Now, we must assume that the Legislature intended  
6 each separate section within the statutory scheme to have  
7 independent meaning and purpose. If Section 25402.1(f) is  
8 to have any meaning at all, it must apply to construction  
9 activity that occurs prior to the date the application for  
10 the building permit is filed.

11           In a multi-unit residential project, site  
12 construction such as roads, water, sewer, drainage, gas,  
13 telephone, electricity, would normally begin well before  
14 the developer applies for permits for the individual  
15 residential structures.

16           By the way, and in the hopes of avoiding some  
17 confusion, it should be noted that a foundation permit, as  
18 distinct from a building permit, does not exist in many, if  
19 not most jurisdictions, and in those jurisdictions which do  
20 issue foundation permits, they are akin to preliminary  
21 building permits.

22           We're really talking about one in the same,  
23 foundation permit, building permit. In most jurisdictions  
24 we only have building permits.

25           The logic employed by the Legislature in setting

1 up this statutory scheme is apparent. Section 25402(a)  
2 protects those builders who would apply for building permits  
3 prior to the effective date of the new standards. Section  
4 25402.1(g) provides potential relief to builders who have  
5 not commenced any construction activity whatsoever prior  
6 to the effective date, but who had expended substantial  
7 funds on planning, designing, architecture, or engineering  
8 prior to the date of adoption of the new standards.

9 Under (g), your discretionary exemption, there is  
10 no requirement for any construction whatsoever. It is a  
11 design type exemption. It is discretionary on your part,  
12 I concur in the applause for you and your staff in applying  
13 that exemption.

14 But I will note, because we all know it to be  
15 true, that that exemption, for those who are entitled to it,  
16 takes time, and does cost money.

17 Section 25402.1(f), then, where does it fit? It  
18 protects the builders who are in the middle. Those who in  
19 addition to expending substantial funds on planning and  
20 design have also expended substantial additional sums on  
21 actual site preparation and construction prior to the  
22 effective date, but who had not filed for building permits  
23 for some, or maybe for all of the residential structures  
24 prior to the effective date.

25 Now, whether we deem it wise, whether you deem it

1 wise, whether staff deems it wise, the fact is, we have to  
2 accept the statute as it reads.

3           Though I don't think more need be said, I would  
4 like to take a few moments to dispute two of the assumptions  
5 which appear to underlie staff's desire to rewrite the  
6 statute, and if those assumptions were universally valid,  
7 I would be more sympathetic to the staff position.

8           Staff assumes that a change in the energy standards  
9 after commencement of the development process could not  
10 constitute a hardship for a builder until such time as he  
11 has commenced actual construction of each individual  
12 residential structure in reliance upon a building permit.

13           Now, anyone familiar with the development business  
14 will tell you that this is simply not true. By the time a  
15 builder commences overall site construction, he has not  
16 only prepared a project budget based on previously permissible  
17 building standards, he has also committed substantial  
18 capital and incurred substantial debt on the basis of that  
19 budget.

20           The type and quality of site improvements are  
21 based on that budget. The concessions the builder has  
22 made to the local government in exchange for his approvals  
23 are based on that budget. Product types have been designed  
24 to meet specific markets so as to recover costs and provide  
25 a reasonable return.

1           To delay a project, or to increase construction  
2 costs, or both, after the builder has committed substantial  
3 time and money beyond that required for planning, designing,  
4 architecture, engineering and site preparation would  
5 unfairly reduce the developer's return, or perhaps render  
6 the project economically unfeasible.

7           There is no doubt that the new standards would  
8 greatly increase cost. The question was asked, how do you  
9 measure the equities between a developer who has incurred  
10 the costs for site construction on one site in reliance  
11 upon older standards, versus the fellow who buys the lot  
12 next door and wants to construct residential units on that  
13 lot? The answer is partly the answer that Mr. Kilkeny  
14 gave you. A line has to be drawn somewhere and the  
15 Legislature has drawn it.

16           There is a further answer. The individual who  
17 bought the initial lot, who designed his products, who  
18 agreed to subdivision map concessions, who agreed to the  
19 price he would pay for the lot, who agreed to his financing  
20 terms, did so on the basis of a project budget that assumed  
21 certain costs of construction, and those costs were based  
22 on the assumption that existing energy standards and other  
23 building standards would apply.

24           That individual is in a different situation from  
25 the individual who buys the lot, or who owns the lot and

1 then makes a decision to go forward. He knows what his  
2 costs are going to be. He can budget, he can make an  
3 election as to how he wants to go and what market he wants  
4 to serve.

5 As I stated, it would be unfair, and it would  
6 constitute a hardship to change the rules of the game in the  
7 middle of the game on a developer who has incurred  
8 substantial costs for site construction prior to a change  
9 in the rules.

10 To avoid this unfairness, the Legislature adopted  
11 Section 25402.1(f). In order to construe Section 25402.1(f)  
12 so as to limit the exemption to individual buildings on  
13 which construction had commenced pursuant to a building  
14 permit, one would have to assume that the Legislature  
15 intended to place a building at risk for the full amount  
16 of a building's pro rata share of all off-site costs until  
17 such time as the builder had incurred additional costs for  
18 the foundation, or other nonbuilding on-site construction  
19 such as sewer and water laterals, even though the building's  
20 pro rata share of off-site construction costs would  
21 probably exceed the nonbuilding on-site construction costs.

22 Staff has given us a hypothetical loophole that  
23 I suppose is an extreme on one end. I'll take advantage of  
24 that opening and provide you one on the other. Under staff's  
25 assumption, a builder could have completed all of the off-site

1 grading, sewer, water, telephone, electricity and roads  
2 necessary to serve all of the buildings within an entire  
3 multi-unit project, and yet would not be entitled to an  
4 exemption for any building on which construction had not  
5 commenced pursuant to a building permit, even the last  
6 building, even though the statute speaks in terms of the  
7 commencement of site construction.

8 I submit that such an assumption would violate  
9 the spirit of fairness that prompted adoption of Section  
10 25402.1(f).

11 CHAIRMAN IMBRECHT: Excuse me. Where does the  
12 statute speak to site construction? It says site preparation  
13 and construction.

14 MR. BURKE: The phrase -- let me read you the  
15 statute. I don't know whether you have it before you.

16 CHAIRMAN IMBRECHT: I've got a copy right here.

17 MR. BLEES: I'll put it up on the viewgraph.

18 CHAIRMAN IMBRECHT: It reads "Subdivisions (a)  
19 and (b) of Section 25402 and this section shall apply only  
20 to new residential and nonresidential buildings in which  
21 actual site preparation and construction have not commenced",  
22 et cetera.

23 MR. BURKE: Right. And your question is, or your  
24 preliminary conclusion is that construction must refer to  
25 some construction on the building itself, otherwise --

1 CHAIRMAN IMBRECHT: I'm asking you. You said the  
2 statute said site construction, I'm just asking you to  
3 reference me to that actual language. I don't see it myself.

4 MR. BURKE: The statute should be read site  
5 preparation and site construction rather than site  
6 preparation and building construction. It's unclear -- it  
7 can be argued that it's unclear either way, because the  
8 word that construction modifies doesn't appear right before  
9 the word construction.

10 Therefore, you have to review the statute to  
11 determine how it should be construed. I submit that it  
12 means site construction for the following reasons: In the  
13 first place if site -- if building construction were  
14 required in order to qualify for that exemption, the use of  
15 the word site preparation and construction would be super-  
16 fluous because you cannot build -- you cannot begin to  
17 build or construct a building -- begin -- excuse me, this  
18 is one of the problems of my illness is that I lose my voice.

19 That you cannot begin to construct the building  
20 until you have conducted some site preparation so it would  
21 be a superfluous use of the word.

22 Secondly, you cannot begin to construct a building  
23 until you have pulled a building permit. You would not need  
24 the exemption in Subsection (f) under those circumstances,  
25 because you would be exempt under 25402(a). It's the same

1 argument we've been making in response to this point that  
2 we've been making in response to others. Subsection (f)  
3 has to have an independent meaning. You can't begin to  
4 construct a building without a building permit. If you've  
5 applied for your building permit before the effective date,  
6 you don't need the exemption.

7           So it has to refer to some construction other than  
8 building construction. The only construction it can refer  
9 to is site construction. Well, if that's the case, why  
10 did the Legislature put in site preparation and site  
11 construction, wasn't that silly. I don't think so, because  
12 I think that the Legislature was sympathetic to the idea  
13 that a hardship required more than mere site preparation,  
14 more than grubbing, more than clearing and fencing the  
15 land, more than environmental stuff, perhaps more than  
16 gross grading.

17           It required site construction too. The Legislature  
18 wanted to see hard dollars come out of the developer's  
19 pocket and go into the ground before it was prepared to  
20 confer a hardship exemption as a right. In order to make  
21 it clear that site construction involved more than mere  
22 site preparation, it used both terms.

23           Those are terms that are understood in the building  
24 industry, that are understood by local building officials,  
25 and it underscores the fact that for the exemption you must

1 have both site preparation and site construction. So, for  
2 those reasons, we believe the word construction means site  
3 construction. It would be nonsense if it referred to  
4 building construction.

5 I've unfortunately -- the last point I want to  
6 make is that staff indicates that in order to provide a  
7 mechanism that is enforceable by local governments, it's  
8 necessary to have a rather simplistic approach that's  
9 based on a foundation or a building permit so that we draw  
10 a bright line, and the reason for that bright line is to  
11 close any loophole that the unscrupulous might want to take  
12 advantage of.

13 Unfortunately, by drawing the bright line in the  
14 area of a building permit, or a foundation permit, one, you  
15 turn the statute on its head, and two, you catch up -- in  
16 that loophole, you put a noose around the neck of those  
17 who in fact have incurred a hardship and deserve that  
18 exemption.

19 I don't believe it's impossible for a local  
20 jurisdiction to draft an ordinance that defines these terms  
21 and that assures that there will be no abuse. In fact,  
22 because we are involved in a project in San Diego, and  
23 because this issue is of concern to San Diego County, and  
24 to the CIF, the local building industry group down there,  
25 we have been working with the county and have come up with a

1 proposed ordinance that we thing does, in fact, comply with  
2 the statute, doesn't deny a builder of any exemption to  
3 which he's entitled, but at the same time, prevents abuses.

4           It provides for site construction, and ties it  
5 into some sort of a governmental permit, but not necessarily  
6 a foundation permit, or a building permit, that makes it  
7 verifiable. A hardship exemption, much like a building  
8 permit, can be abandoned over time. It provides for  
9 amortization of the hardship exemption if the building  
10 permit isn't pulled within a certain amount of time.

11           It excludes lots that are developed for the purpose  
12 of resale. Somebody builds an improved building site. As  
13 we read the hardship exemption, it's designed to relieve  
14 builders who incur site construction costs for the purpose  
15 of building residential structures.

16           It doesn't apply to clients of mine to go out and  
17 put up improved lots, and then sell those lots, and then  
18 somebody else comes in and designs the house. That person  
19 comes in, buys the lot, knows they have to comply with the  
20 new regulations. It probably wouldn't apply to the  
21 situation that Mr. Commons has described, because the  
22 improvements that he put in were not put in for the purpose  
23 of constructing residential structures, but rather for the  
24 purpose of improving -- of constructing an improved lot or  
25 subdivision for sale.

1           Also, we're dealing with a limited number of  
2 projects that will qualify only up to the period of July  
3 1982. That's the issue that underlies the request for the  
4 interpretation from San Mateo County.

5           The other thing that our ordinance includes is a  
6 disclosure requirement. It would require a builder to  
7 disclose those current energy standards which have been met  
8 in the new building, and those which have not been met, so  
9 that the buyer wouldn't run the risk of assuming because  
10 it's a new building, it complies.

11           These things can be dealt with, and they can be  
12 dealt with at the local level, and we can avoid the  
13 compliance problems, and we can avoid the abuse problems.

14           CHAIRMAN IMBRECHT: Don't you think it would be  
15 preferable to do that on a statewide statutory basis so  
16 you had consistent interpretation amongst the counties?

17           MR. BURKE: I agree with you, and I agree with the  
18 CBIA letter which is that there is an ambiguity in the  
19 statute. I wouldn't have been paid the sums I've been  
20 paid to understand the statute and to try to convince you  
21 that I'm right if it were crystal clear.

22           CHAIRMAN IMBRECHT: I'm curious if Di -- I can't  
23 pronounce it, I'm very sorry.

24           MR. BURKE: DiGiorgio.

25           CHAIRMAN IMBRECHT: DiGiorgio, if they might not

1 have spent less to simply apply for an exemption under the  
2 first provision here before the Commission and be underway  
3 with their project by now.

4 MR. BURKE: I've asked DiGiorgio that question and  
5 the answer is no, for this reason: they have a project in  
6 which they incurred incredibly large finance sums for a  
7 project-wide infrastructure. They're involved in an ongoing  
8 building program. They have a specific product type. They  
9 have crews in place.

10 They want to pull permits. If they were to stop  
11 everything now and come to the Commission for an exemption,  
12 it would take them a lot of time, and it would increase the  
13 cost of construction for their product, and it would affect  
14 the bottom-line, and it could, in fact, threaten the  
15 project.

16 Now, we have addressed this question, and we have  
17 a real hardship here, and we feel that we are entitled, as  
18 a matter of right, to this exemption. Because we understand  
19 that there are some ambiguities in the statute, we have  
20 worked very hard with San Diego County, with the local  
21 building people, to come up with an ordinance that prevents  
22 the abuses, yet recognizes the hardships.

23 I agree with the CBIA, I agree with you, that  
24 this is a matter that should be addressed by the Legislature  
25 and it should be resolved. In the interim, what we are

1 saying is that you do not have the authority to rewrite  
2 the statute and limit an exemption that exists in the  
3 manner that's currently being proposed by your staff.

4 We will work with you, the CIF will work with  
5 you. We will work with you now in terms of coming up with  
6 some model ordinances that local jurisdictions might like to  
7 use. I think we could do that, and I think we could succeed.

8 CHAIRMAN IMBRECHT: Commissioner Commons?

9 COMMISSIONER COMMONS: I think you're trying to  
10 construe some language that I've never heard by builders,  
11 developers, or used. I've never heard the term, "site  
12 construction" when it's not used in terms of putting up a  
13 building. If someone talks about off-sites, which is  
14 really what we're talking about, the language that's used  
15 is you put in your off-sites, or you construct your off-sites.

16 No one ever uses the term "site construction" for  
17 paving, for putting in roads, this is a whole new piece of  
18 language that you've come up with that I've never heard,  
19 and I've been around building for a long time.

20 You're also suggesting that there's the concept  
21 that if someone has really been put under hardship, which  
22 is a matter that we determine in an exemption process, that  
23 that is something that someone comes before us, and gets  
24 a hearing on, and has, in each individual case you look at it  
25 to determine if someone's been hurt or not been hurt in

1 order to grant someone an exemption.

2 But here we would have a case where someone may  
3 have done some site preparation, and what you're saying,  
4 site construction, without ever contemplating going ahead,  
5 and that's a person that automatically would be given an  
6 exemption.

7 This would be a very torturous way, I think, of  
8 trying to interpret what's being said. I've just never  
9 heard this term, site construction. It's always been  
10 used, and I think the common parlance is off-site construction,  
11 putting in of your off-sites. No one ever talks about  
12 site construction.

13 When you talk about site preparation, what you're  
14 talking about is we're going to get prepared for building,  
15 which is your site preparation, which will often include  
16 your off-sites, and then go into construction, which is  
17 putting up your building.

18 So, I think you really come up with a concept  
19 which may be in the interest of your client, because he's  
20 expended a certain set of funds, and we would be creating,  
21 I think, a much greater confusion to do what you're  
22 suggesting.

23 Rather, the clear reading of the legislation  
24 suggestions that where a client such as yours has gone into  
25 economic hardship, there is an exemption process, where he

1 hasn't gone into construction, which is appropriate and  
2 fair to bring before the Commission.

3 MR. BURKE: My client has gone into construction,  
4 and we're dealing with two different exemptions. We're  
5 dealing with an exemption as a right granted by the  
6 Legislature in a situation where construction has commenced,  
7 and we're talking about another exemption which is a  
8 discretionary exemption in the Commission for situations  
9 where construction has not commenced. It's an apples and  
10 oranges situation.

11 What it basically comes down to is --

12 CHAIRMAN IMBRECHT: That's not accurate. That  
13 is -- I can tell you without fear of contradiction that  
14 many of the exemptions which we've branded have been  
15 predicated upon the very type of infrastructure construction  
16 actually having commenced that you're describing, and --

17 MR. BURKE: Let me qualify that statement and  
18 say --

19 CHAIRMAN IMBRECHT: -- many, many subdivisions  
20 that have been granted exemptions have been based upon  
21 roads being installed, or substantial site -- it's not  
22 just design costs that have triggered those exemptions.  
23 There's a wide variety of other circumstances.

24 In fact, we've got, I think, a pretty good  
25 yardstick that's been used fairly consistently. How long

1 have you been conscious of this problem?

2 MR. BURKE: I've been conscious of this problem  
3 since about December of '83.

4 CHAIRMAN IMBRECHT: You know that the typical  
5 turnaround time on exemptions is 30 to 45 days?

6 MR. BURKE: I wasn't aware of that.

7 CHAIRMAN IMBRECHT: When you said that it would  
8 take your client a great deal of time to comply, you've  
9 taken a great deal more time by seeking this remedy, frankly,  
10 as I see it, and I'm -- just have to say that as a practical  
11 matter, I think you probably could have contacted the  
12 Commission and worked with us a lot earlier and achieved  
13 exactly the results that you're seeking today without this  
14 approach. But --

15 MR. BURKE: But if I could bring us back, I think,  
16 to the issue that's before us, which is whether there's a  
17 statutory exemption and if so, what does it mean. If it  
18 means what staff says it means, and that's what -- you're  
19 being asked to approve a specific interpretation that's been  
20 presented by the Executive Director.

21 If the statute means what the -- if that particular  
22 exemption means what the Executive Director says it means,  
23 that section has no independent meaning, no independent  
24 purpose, it's rendered utter nonsense.

25 CHAIRMAN IMBRECHT: Commissioner Schweickart on

1 that point.

2 COMMISSIONER SCHWEICKART: Pardon me, I recognize  
3 that you represent DiGiorgio, I missed your name though.

4 MR. BURKE: Oh, I'm sorry, Michael Burke, B-u-r-k-e.

5 COMMISSIONER SCHWEICKART: Mr. Burke, okay.

6 Mr. Burke, I take it from what you've been saying that  
7 you're familiar with construction not just in San Diego,  
8 but around the state, is that correct?

9 MR. BURKE: Yes, sir.

10 COMMISSIONER SCHWEICKART: Do you represent  
11 builders, or do you build yourself in areas --

12 MR. BURKE: No, I wish I could build myself. I  
13 haven't earned enough money yet to get into the business  
14 where I can take those sorts of risks. I represent some  
15 builders -- my practice is a broad real estate practice.  
16 I represent some builders, but I am not a construction  
17 lawyer.

18 COMMISSIONER SCHWEICKART: All right. But you're  
19 familiar with codes and practices around the state in the  
20 building industry.

21 MR. BURKE: Yes, sir.

22 COMMISSIONER SCHWEICKART: And I take it in that  
23 process you're familiar with the permitting process in  
24 various jurisdictions?

25 MR. BURKE: Yes, sir.

1           COMMISSIONER SCHWEICKART: All right. Is there  
2 such a thing as a foundation permit in some jurisdictions?

3           MR. BURKE: Yes, sir.

4           COMMISSIONER SCHWEICKART: And does that take the  
5 place of, in all of those jurisdictions, a building permit,  
6 or is it issued separately and prior to a building permit?

7           MR. BURKE: I believe it's issued separately and  
8 prior to, and it would vary from jurisdiction to jurisdiction.

9           COMMISSIONER SCHWEICKART: Okay, that's certainly  
10 our understanding in many jurisdictions. All right. To the  
11 extent, then, that that is the case, would not the wording  
12 of the statute absent the definition which we see up on the  
13 board there, in fact create some confusion in areas where  
14 foundation permits are, in fact, a regular practice.

15           That is, a building permit has, in fact, not been  
16 issued and therefore, Section (a) would not apply. Therefore,  
17 it would seem to me that there is, in fact, a real effect,  
18 in those jurisdictions where foundation permits do exist,  
19 is that not correct?

20           MR. BURKE: That is so, yes.

21           COMMISSIONER SCHWEICKART: All right. You are  
22 aware, I think, from your earlier statements, that the  
23 Energy Commission did, in fact, discuss this issue, or in  
24 fact it was presented to it, and there was considerable  
25 debate on that, is that correct?

1 MR. BURKE: I'm sorry?

2 COMMISSIONER SCHWEICKART: Well, were you present  
3 or aware of the consideration of this matter before the  
4 Commission in its adoption process in the adoption of  
5 amendments of the building code?

6 MR. BURKE: That went to the State Building  
7 Standards Commission? Is that --

8 COMMISSIONER SCHWEICKART: That subsequently  
9 went to the State Building Standards Commission.

10 MR. BURKE: No, I wasn't. I wasn't aware of --  
11 I had never read the section at that time. This is my  
12 initial adventure in Section 25402 and 25402.1(f).

13 COMMISSIONER SCHWEICKART: I see. Well, then in  
14 preparing to come here today, it's certain that you must  
15 have researched the fact that this is a matter that was  
16 before the Commission.

17 MR. BURKE: Yes, I did. I did the best that I  
18 could to research it.

19 COMMISSIONER SCHWEICKART: All right. Well, then,  
20 if you availed yourself of the transcript, you're aware that  
21 there was considerable discussion on all of the matters  
22 that you brought before us today in that process, is that  
23 not correct?

24 MR. BURKE: I didn't have the transcript, I had  
25 the staff memorandum, and that was all that I had.

1           COMMISSIONER SCHWEICKART: I see. All right,  
2 well then I'll just have to inform you that in fact, all  
3 of these matters were, in fact, discussed at some length,  
4 considerable length before the Committee, and then  
5 subsequently the Commission at the time we adopted the  
6 amendments to the regulations.

7           You made reference in some of your earlier comments  
8 to a bright line. I take it you mean by that, a clear  
9 definition, that is, some clear statement of what something  
10 means, is that what you mean by a bright line?

11          MR. BURKE: Yes, that would be a bright line, yes.

12          COMMISSIONER SCHWEICKART: All right. Would you  
13 argue that the definition which -- whether you like it or  
14 not, or agree with it or not, would you argue that that is  
15 a dim line up there on the board?

16          MR. BURKE: That the line in the statute itself  
17 is a dim line?

18          COMMISSIONER SCHWEICKART: No, that the line --  
19 okay, that's the statute, I'm thinking of the regulation  
20 referred to, and the wording related to the definition  
21 which was --

22          MR. BURKE: As far as the statute goes, I'm not  
23 sure I want to characterize it as a dim line, but it's  
24 certainly not a bright line.

25          COMMISSIONER SCHWEICKART: Well, I would quite

1 concur. You wouldn't be here if the statute itself were a  
2 bright line.

3 MR. BURKE: Right.

4 COMMISSIONER SCHWEICKART: You in fact have  
5 agreed that we're looking for, in essence, a definition of  
6 what in fact is meant there, I mean, that's your whole case.

7 MR. BURKE: Yes. No, I'm --

8 COMMISSIONER SCHWEICKART: All right. Would you  
9 argue that the regulation, whether or not you agree with it,  
10 is a dim line, that is that construction -- any construction  
11 activity undertaken in reliance on a foundation or building  
12 permit?

13 MR. BURKE: That's clear.

14 COMMISSIONER SCHWEICKART: All right. So then,  
15 what we're really talking about is the particular bright  
16 line, not just having a bright line.

17 MR. BURKE: Absolutely. The position that we've  
18 tried to stake out, and that perhaps has been somewhat  
19 lost in some debates as to what an appropriate definition  
20 would be is simply that the interpretation now being  
21 presented is not supportable because it renders the  
22 exemption that's being defined meaningless.

23 COMMISSIONER SCHWEICKART: All right. Except  
24 that I think we've just established with your concurrence,  
25 that foundation permits prior to the issuance of building

1 permits, in fact, do exist, and therefore, the particular  
2 matter at issue here in fact does really have some real  
3 relevance to builders who happen to build in those jurisdic-  
4 tions, and who may very well have put in a foundation on a  
5 particular and very specific house, defining orientation,  
6 size, shape and many other things absent a building permit,  
7 and who find immediate relief with this provision without  
8 having to go through the exemption process, is that not  
9 correct?

10 MR. BURKE: That would be correct.

11 COMMISSIONER SCHWEICKART: Okay. So in terms of  
12 relevance of the statute, and the fact that it's not  
13 simply redundant with (a), I think that is established, and  
14 was clearly in the mind of the Commission at the time,  
15 knowing that we had, and having discussion on the record  
16 of the existence of foundation permits. That was, in fact,  
17 a very real matter before us.

18 Now, earlier you stated that in order to achieve  
19 let me say site construction to -- by your definition, we  
20 don't find it in the wording here, but if we take your  
21 words, site construction, that one would have had to, and  
22 your particular client has, in fact, expended considerable  
23 sums of money in reaching that point.

24 MR. BURKE: Yes, sir.

25 COMMISSIONER SCHWEICKART: All right. And so

1 you're acknowledging that the exemption, in fact, is a  
2 legitimate opportunity only that were this -- were your  
3 interpretation operative at this time, your client would  
4 not have to pursue the exemption process which may in fact  
5 require some time and effort.

6 MR. BURKE: Yes, sir.

7 COMMISSIONER SCHWEICKART: All right. Finally,  
8 there's another matter I want to dispose of, and I think I  
9 have to -- well, you are a lawyer, pardon me. So there  
10 must --

11 MR. BURKE: You're a very effective lawyer too,  
12 if I may say so.

13 COMMISSIONER SCHWEICKART: Five years of training,  
14 you know, it's really --

15 (Laughter)

16 COMMISSIONER SCHWEICKART: What is the --

17 CHAIRMAN IMBRECHT: He constantly tells us he's  
18 not a lawyer, but --

19 (Laughter)

20 COMMISSIONER SCHWEICKART: Is not one of the  
21 fundamental purposes of regulations to interpret and clarify  
22 statutes?

23 MR. BURKE: Yes, provided the regulation is  
24 consistent with the statutory framework.

25 COMMISSIONER SCHWEICKART: All right. And is

1 there a legislative history in California?

2 MR. BURKE: Yes, sir.

3 COMMISSIONER SCHWEICKART: There is?

4 MR. BURKE: Oh, I'm sorry, no, there isn't a  
5 legislative history in California.

6 COMMISSIONER SCHWEICKART: All right. So then we  
7 go by the plain reading of the statute in terms of guidance  
8 as to what was intended.

9 MR. BURKE: Yes.

10 COMMISSIONER SCHWEICKART: All right. And would  
11 you argue that the -- whether you agree with the judgment  
12 or not, would you argue that the definition in the regula-  
13 tions which sit up on the board there, interpreting that  
14 section of statute to which you refer is not, in fact, an  
15 example of that type of regulatory clarification of statute?

16 MR. BURKE: I would disagree that it is because  
17 I believe it is inconsistent with the clear meaning of the  
18 statute.

19 COMMISSIONER SCHWEICKART: All right, fine. So  
20 then we're simply down to a question of what is -- would  
21 you argue that the Energy Commission does not have a  
22 responsibility, let alone authority, to in fact interpret  
23 statute by regulation?

24 MR. BURKE: I would think that you would have the  
25 authority and the responsibility to do that, yes.

1           COMMISSIONER SCHWEICKART: All right, and that  
2 authority, which we can certainly make lots of reference  
3 to --

4           MR. BURKE: By the way, that obviously is subject  
5 to the panoply of other state laws that require certain  
6 matters to be submitted to the State Building Standards  
7 Commission. I don't want to confer blanket authority on  
8 you. I really don't have that power.

9           COMMISSIONER SCHWEICKART: Oh, certainly,  
10 absolutely. Well, I appreciate that. But within that  
11 authority, and we can talk about what the State Building  
12 Standards Commission then is as well, but that's a somewhat  
13 separate issue. In those areas where the Commission does  
14 have responsibility and authority to issue and adopt  
15 regulations pursuant to statutes, does it not also have  
16 the responsibility to interpret regulation upon request?

17           MR. BURKE: Yes, it does.

18           COMMISSIONER SCHWEICKART: Okay.

19           MR. BURKE: But we are not --

20           COMMISSIONER SCHWEICKART: So then the actions of  
21 the Commission procedurally are correct. The difference is  
22 the judgment that has been applied.

23           MR. BURKE: Well, no, it's two things. One, you're  
24 being asked to interpret not a regulation, but a statute.  
25 The memorandum talks in terms of an interpretation of a

1 regulation. The regulation repeats the statute. You're  
2 being asked to interpret a statutory provision.

3 Now, you don't have the responsibility to approve  
4 the interpretation your Executive Director came up with.  
5 You do have an obligation to come up with an interpretation  
6 that is consistent with the statute.

7 COMMISSIONER SCHWEICKART: All right, then, let  
8 me turn to our counsel to then seek his opinion on that  
9 particular matter.

10 MR. BLEES: What's the question?

11 COMMISSIONER SCHWEICKART: The question is what  
12 is our authority to -- let me back up slightly, because I  
13 do want confirmation of that -- the authority to adopt  
14 regulations in this area, number one. Number two, what is  
15 the authority under which this matter is being brought  
16 before us today to approve the Executive Director's  
17 interpretation?

18 MR. BLEES: The authority to adopt regulations is  
19 given in the Warren-Alquist Act, Section 25402(a) and (b)  
20 and in Section 25218. The former is the section that tells  
21 us to adopt building standards. The latter is the section  
22 that tells us to adopt regulations to carry out the intent  
23 of the Act.

24 Our authority to interpret is twofold. One,  
25 administrative agencies have been interpreting the statutes

1 under which they operate for decades, and the courts have  
2 uniformly given great deference to interpretations granted  
3 by administrative agencies.

4 Second, our regulations themselves create this  
5 mechanism for interpretations and dissemination of inter-  
6 pretations by the Executive Director and concurrence by  
7 the Commission. That's in Section 1407 of Title 20, and  
8 of course, that regulation which has been in existence for  
9 many years has been approved at least once, and perhaps  
10 more than once by the Office of Administrative Law.

11 COMMISSIONER SCHWEICKART: All right. So I guess  
12 my point then is that in all cases it would appear as though  
13 the issues which are raised come down to one fundamental  
14 thing, and that is a difference in opinion on the appropriate  
15 interpretation.

16 CHAIRMAN IMBRECHT: What the plain meaning of  
17 the words are.

18 COMMISSIONER SCHWEICKART: Yes, right. Basically  
19 what the plain meaning of the words are, and the way in  
20 which they're interpreted. So, I will hold further comment.

21 MR. BURKE: I will -- that is in fact true. I'm  
22 not going to respond to the comment about the authority to  
23 interpret regulations and statutes. I have some minor  
24 disagreements, but they have nothing to do with what's  
25 before you today. Yes, indeed, you are doing what you should

1 do when you receive a request such as this, which is to  
2 consider whether the interpretation presented to you by  
3 the Executive Director is correct.

4 Our position is that you don't have the authority,  
5 rather the CBIA position, which we have adopted, is that you  
6 do not have the authority to adopt the interpretation  
7 suggested by the Executive Director because that interpre-  
8 tation is not consistent with the statute. Your authority  
9 comes from the statute. That interpretation is contrary  
10 to the statute. That's the gist of the argument that's  
11 being made.

12 CHAIRMAN IMBRECHT: I understand that, I think  
13 we all do, and I think the issue is clearly before us, is  
14 there -- and I don't believe there are any other questions  
15 for Mr. Burke.

16 MR. BURKE: Thank you for your consideration and  
17 time.

18 CHAIRMAN IMBRECHT: Thank you very much for your  
19 presentation, and I'll offer a comment in just a moment.  
20 Is there any other member of the public who wishes to  
21 testify on this matter? Do I hear a motion?

22 COMMISSIONER SCHWEICKART: Yes, Mr. Chairman, I  
23 will move approval of the Executive Director's interpretation  
24 and further move that the General Counsel -- Office of  
25 General Counsel be directed to pursue the matter of the

1 deletion of the definition with the State Building Standards  
2 Commission.

3 CHAIRMAN IMBRECHT: I don't think we need that as  
4 a motion. I think I'll -- I've already offered that as a  
5 direction to the General Counsel, and --

6 COMMISSIONER SCHWEICKART: I'd be happy to withdraw  
7 it upon your direction.

8 CHAIRMAN IMBRECHT: -- I think I made that clear  
9 a moment ago. So we have a motion, do I hear a second?  
10 Seconded by Commissioner Commons that we approve the  
11 interpretation of the Executive Director. Is there  
12 discussion by members of the Commission? Commissioner  
13 Commons?

14 COMMISSIONER COMMONS: I just want to state that I  
15 think the position earlier enunciated by our Chairman as  
16 to what is really inferred to here as to construction is  
17 what we're discussing, and if we were to adopt the position  
18 that was presented, we would actually create substantial  
19 havoc in the field, and that was not the intent of the  
20 Legislature.

21 That the definition of the terms, as I've  
22 previously discussed, that are presented, really are not  
23 words that are used by industry, and I concur with the  
24 Chairman's earlier stated position as to what is really  
25 meant and intended here.

1           CHAIRMAN IMBRECHT: Okay. Just in summary, I  
2 would say that it really comes down fundamentally to a  
3 difference of viewpoint as to what the plain meaning of  
4 the words within the statute actually are, and I believe  
5 that the interpretation of the Executive Director and the  
6 staff is a justifiable interpretation, quite candidly, and  
7 I would just suggest to Mr. Burke that -- urge you to work  
8 with the staff in terms of seeking an exemption.

9           We don't want to impose unnecessary hardships upon  
10 any business concerns in the state, and I just would say  
11 that I regret that that remedy hasn't been sought, even  
12 perhaps concurrently with this particular remedy, because  
13 I think you'd find yourself with a positive result for your  
14 client under those circumstances.

15           Is there objection to a unanimous roll call?  
16 Hearing none, ayes 5, noes none, the motion is adopted, and  
17 the Executive Director's interpretation is ratified.

18           As a matter of courtesy to one of our sister  
19 agencies who have been most cooperative with us, and great  
20 assistance to us, I'd like to turn to Item No. 4 which is  
21 Commission consideration and possible approval of a  
22 memorandum of understanding between the California Energy  
23 Commission and the California Conservation Corps to provide  
24 Corps members staffing for the solar and conservation hotline  
25 from July of this year through June of 1985.

1 I would also like to recognize the presence in  
2 our audience of the Director of the California Conservation  
3 Corps, and Bud, welcome to the Commission, and we're  
4 delighted to have you here with us.

5 Mr. Rauh, are you presenting this item?

6 MR. RAUH: Chairman Imbrecht, I'm just sitting  
7 in for the Executive Director who was called away on a  
8 budget item, but I would like to introduce Mr. Manuel  
9 Alvarez to present the item, and also ask Mr. Sheble to  
10 come forward as well to join in the presentation.

11 CHAIRMAN IMBRECHT: Bud, would you like to join  
12 us at the table?

13 MR. ALVAREZ: Good morning. The item today is a  
14 memorandum of understanding between the California Energy  
15 Commission and the California Conservation Corps. The  
16 agreement will provide for two person years of effort to  
17 staff the conservation and solar hotline.

18 The service, as you know, provides a needed  
19 information service to many Californians. For example,  
20 between the months of January and April, Corps members  
21 responded to nearly 7,000 requests for information. That  
22 amounts to nearly 80 phone calls a day.

23 The Commission in return for this service will  
24 provide the needed technical and job training needed to  
25 improve the individual development and employment opportunities

1 for these individuals.

2 I personally believe that the individuals who have  
3 been on staff at the solar hotline have provided some  
4 information that is critical to many Californians. They've  
5 approached this job with enthusiasm and personal commitment.  
6 At this time, I would like to briefly introduce them to you,  
7 who are current members.

8 They are Trudy Cowen, Steve Lussier, and Sabrina  
9 Lockridge, and three additional members that we had  
10 previously are Sharon Bartnick, Tracy Hanks and Misty Foster.  
11 The staff respectfully requests approval of this memorandum  
12 of understanding.

13 CHAIRMAN IMBRECHT: Thank you. Mr. Sheble, do  
14 you have any comments you would like to --

15 MR. SHEBLE: Yeah. I would like to state that  
16 I am very supportive of this concept, and I wanted to be  
17 here today just to state that. There may be two positions  
18 available in this, but by rotating a half a dozen Corps  
19 members through this program, it's a tremendous experience  
20 for these Corps members.

21 They're from our Placer Energy Center, and they're  
22 generally doing hands-on solar installation work, but this  
23 gives them the opportunity to see the business side of  
24 things, and the private sector involvement, and half of our  
25 mission, aside from doing public service conservation work,

1 half of our mission in our department is to provide a  
2 growing development experience for Corps members, for young  
3 people who serve in the Corps.

4 I just want to again emphasize how important we  
5 think this is, and this is an example that we can use for  
6 maybe seeking out other opportunities for our Corps  
7 members to have this kind of an experience, and I want to  
8 thank you.

9 CHAIRMAN IMBRECHT: I think speaking on behalf of  
10 the Commission that we all join in expressing our apprecia-  
11 tion to you and to the Corps, and certainly to the Corps  
12 members that have been personally involved in this. I've  
13 heard nothing but very, very positive reviews about  
14 personal performance and dedication to the job, and I hope  
15 that we can find other opportunities for additional  
16 interaction.

17 I think there are other circumstances here at the  
18 Commission where we can provide a mutually beneficial  
19 experience, both for the members and also for the energy  
20 community which we, of course, are charged to serve.

21 So with that, I'll ask if there is a motion to  
22 approve the memorandum of understanding.

23 COMMISSIONER SCHWEICKART: So moved.

24 CHAIRMAN IMBRECHT: Moved by Commissioner  
25 Schweickart, seconded by Commissioner Gandara. Any objections

1 to a unanimous roll call? Hearing none, ayes 5, noes none,  
2 thank you very much for joining us today.

3 MR. PEREZ: Chairman Imbrecht, if I could add a  
4 public comment, I'm sorry. I distributed to each of the  
5 Commissioners a statement that has been reproduced that the  
6 division did receive a strong statement of appreciation  
7 from a member of the public for the service that's being  
8 provided as a result of the Corps. The member is in  
9 attendance, and I would like to add the comments of my  
10 office to that, which is that the only complaint we  
11 consistently receive with respect to the hotline is that  
12 the number is occasionally busy, which to me is verification  
13 that they're taking care of business.

14 So if there's no objection, I would like to add  
15 this written representation of that compliment to the  
16 transcript as if read.

17 CHAIRMAN IMBRECHT: We certainly will do so,  
18 that's further indication of a positive response to this  
19 kind of cooperation. I have to say that I think this is  
20 maybe even something that the Governor and some of our  
21 friends in the Department of Finance that talk about  
22 efficiencies in government, it might be something we can  
23 jointly present to them. Okay. Always looking for a few  
24 places to point out where we do achieve some of the results  
25 that they were seeking.

CALIFORNIA ENERGY COMMISSION  
1515 NINTH STREET  
SACRAMENTO, CALIFORNIA 95814

May 20, 1984

Sundial, Consumer Info Svc.  
California Energy Commission  
1516 9th Street  
Sacramento, CA 95814

Dear Sirs:

My husband and I want to express our appreciation for the information you sent us on building a swimming pool solar heater. Someone in your office spent time and effort to reproduce the information we needed, and then mailed it promptly.

We are not only very grateful, but also very surprised. We have found that most government agencies are reluctant even to do their jobs, let along anything extra. Yet someone at your office went above and beyond the call of duty. That is so gratifying to us and helps restore a bit of faith in the state.

Thanks again. You are marvelous and probably unique.

Sincerely,

*Original signed*

Helen Higgins.

1 CHAIRMAN IMBRECHT: Okay. Let's turn now to  
2 Item No. 2 on the agenda. Let me announce as well that we  
3 will take the luncheon recess from 12:00 until 1:30 today.  
4 In addition, we will be holding an executive session at  
5 the conclusion of today's business meeting.

6 The second item on the agenda is Commission  
7 consideration and possible adoption and designation of an  
8 advisory task force to assist the Commission's Conservation  
9 Program Committee in developing a plan for achieving cost-  
10 effective conservation from appliances. Commissioner  
11 Commons, do you want to make this presentation?

12 COMMISSIONER COMMONS: Yes. The Appliance  
13 Committee is bringing before you a proposal to have an  
14 advisory committee, and we hope that we have followed the  
15 format that has been adopted by the Commission in doing so.

16 The purposes of the advisory committee are to  
17 assist the Committee in following through on the recommenda-  
18 tions of this Commission and the directions given to the  
19 Committee concerning looking at ways of achieving energy  
20 conservation from appliances in such areas as labeling,  
21 information program, and incentives, and trying to look at  
22 various ways that we can have energy efficiency from our  
23 appliance programs.

24 In terms of trying to put together the advisory  
25 committee, what we've tried to do is to include balance

1 ranging from the people who of course would represent the  
2 manufacturers, the distributors and the retailers to  
3 people in various communities that are affected by energy  
4 and of course to include some of our utility representation  
5 since the incentive programs are very important to them in  
6 their working with the Public Utilities Commission.

7           What I think I'd like to do is to read out the  
8 organizations that we're suggesting that would be members  
9 of the advisory committee, and to note that in the case of  
10 two organizations, AHAM and ARI which are the refrigerator  
11 and air conditioning manufacturers respectively, that the  
12 Committee intends to have probably two members rather than  
13 one member representing them in order to give fair balance  
14 to the manufacturers with different perspectives, and who  
15 are obviously affected by the proceedings that we have  
16 before us on related petitions.

17           The organizations we're suggesting are the  
18 Natural Resources Defense Council, the Sierra Club, the  
19 Pasadena Urban Coalition, the California Retailers  
20 Association, the California Manufacturers Association, the  
21 California Building Industry Association, the California  
22 Sheet Metal and Air Conditioning Contractors Association,  
23 the Association of Home Appliance Manufacturers, the Air  
24 Conditioning and Refrigeration Institute, the Gas Appliance  
25 Manufacturers Association, the International Electrical

1 Union, Pacific Gas and Electric Company, Southern California  
2 Edison Company, a representative from the Senate Public  
3 Utilities and Energy Committee, and an energy adviser/  
4 coordinator from local government.

5 COMMISSIONER GANDARA: Excuse me, Commissioner  
6 Commons. Do you have something more current than what's  
7 in my agenda package?

8 CHAIRMAN IMBRECHT: Yeah, you obviously have  
9 added some organizations.

10 COMMISSIONER COMMONS: I asked that this be  
11 distributed to all Commissioners, that list, it has not been?

12 CHAIRMAN IMBRECHT: I see it. It's on the white,  
13 the next page down, yeah, I see it. If I may offer a --  
14 excuse me, are you finished?

15 COMMISSIONER COMMONS: And the duration of the  
16 task force is proposed through June 1985. So it's  
17 essentially a one year task force.

18 CHAIRMAN IMBRECHT: Just a couple of questions.  
19 Could you explain the Pasadena Urban Coalition as a -- why  
20 that particular city versus any other in California?

21 COMMISSIONER COMMONS: One of the purposes, and  
22 when we look at some of the appliance programs, one of the  
23 problems we've had is on the nonparticipant test, and low  
24 and moderate income households, particularly on the air  
25 conditioners, the issue has been raised as to do incentive

1 programs benefit.

2           What we wanted to try to do is have some minority  
3 representation. The Pasadena Urban Coalition has done a  
4 lot of work in terms of energy conservation in the San  
5 Gabriel Valley and I knew of someone in that who was  
6 interested in appliances specifically and was willing to  
7 spend some time with us.

8           CHAIRMAN IMBRECHT: Two other quick comments.  
9 Just if we are going to include a staff representative  
10 from the Senate Committee, I can only offer a little advice  
11 that there is a great deal of -- I think it would be wise,  
12 let me put it that way, and judicious to likewise include  
13 a representative or at least extend an invitation to the  
14 appropriate Assembly Committee as well. I recall those  
15 situations being --

16           COMMISSIONER COMMONS: No objection to doing so.

17           CHAIRMAN IMBRECHT: And lastly I would just  
18 suggest that one of the public there should be a public  
19 utility representative, either LADWP or SMUD, or one of  
20 the -- it just seems to me that because our jurisdiction  
21 extends over the broad range of utilities in the state,  
22 we ought to have more of them --

23           COMMISSIONER COMMONS: Okay. I would like to  
24 suggest that that be a SMUD representative because potentially  
25 the energy adviser/coordinator from local government very

1 possibly would be from Los Angeles, and so that would do  
2 that -- then I would suggest that we have a SMUD representative.

3 CHAIRMAN IMBRECHT: All right, that's fine. Any  
4 further comments?

5 COMMISSIONER COMMONS: I would add those two,  
6 then, as part of the proposal.

7 COMMISSIONER GANDARA: I noticed an absence of a  
8 consumer organization and I was wondering whether you  
9 would include an organization like TURN, or CALFER, or  
10 UCAN?

11 COMMISSIONER COMMONS: I have no objection. I  
12 thought we had, through the Natural Resources Defense  
13 Council, or the Urban Coalition someone representing labor,  
14 we had significant participation. But --

15 COMMISSIONER GANDARA: I would only note that  
16 UCAN, CALFER and TURN have all been quite active in  
17 representation before the Public Utilities Commission in a  
18 number of matters, and that none of these groups I think  
19 have been so active with respect to the public consumer  
20 point of view.

21 COMMISSIONER COMMONS: Are any of those from the  
22 San Diego area? We're short in terms of the task force  
23 representation out of San Diego, and I would tend towards  
24 someone from San Diego if we were to have a consumer group.

25 COMMISSIONER GANDARA: UCAN.

1 CHAIRMAN IMBRECHT: I think the point is well  
2 taken, and I think we can defer that to the discretion of  
3 the Committee to choose an appropriate consumer group.

4 COMMISSIONER COMMONS: All right, then let's add--  
5 we would be adding three groups, one of them the Assembly,  
6 one from a public utility, and one from a consumer group,  
7 and I'd incorporate that.

8 EXECUTIVE DIRECTOR WARD: Commissioner Commons,  
9 I might also raise the issue based on the interest of the  
10 Public Utilities Commission that you might want to consider  
11 including someone from the Conservation Division.

12 CHAIRMAN IMBRECHT: You're going to have a small  
13 Congress here to work with.

14 COMMISSIONER COMMONS: Yeah. It was my hope that  
15 the Public Utilities Commission and ourselves would be  
16 working together and they would be assisting both  
17 Commissions and they wouldn't be a member of the group, but  
18 they would be working with us like we've been doing in  
19 some of our cohearing processes.

20 EXECUTIVE DIRECTOR WARD: I just raised the  
21 issue.

22 COMMISSIONER COMMONS: I sort of look at them as  
23 a partner in this.

24 CHAIRMAN IMBRECHT: If we can produce a concensus  
25 out of this group, I will be very impressed.

1 (Laughter)

2 CHAIRMAN IMBRECHT: Okay. There's a motion by  
3 Commissioner Commons, second by Commissioner Gandara --

4 COMMISSIONER GANDARA: What was the response to  
5 the PUC representative?

6 COMMISSIONER COMMONS: I had not made a response.

7 CHAIRMAN IMBRECHT: Do you think that's a well  
8 taken suggestion?

9 COMMISSIONER GANDARA: I think it's a good  
10 suggestion from the Executive Director.

11 CHAIRMAN IMBRECHT: I think it is as well.

12 COMMISSIONER COMMONS: I certainly have no  
13 objection.

14 CHAIRMAN IMBRECHT: All right, fine. Then we'll  
15 add those four -- I think what we're really talking about --

16 COMMISSIONER COMMONS: Do I still have to get a  
17 concensus --

18 CHAIRMAN IMBRECHT: What you're really talking  
19 about is you're extending an invitation to each of these  
20 groups, if they choose to participate or not is their own  
21 decision. All right. Moved by Commissioner Commons,  
22 seconded by Commissioner Gandara. Does anyone wish to be  
23 heard on this matter? Is there objection to a unanimous  
24 roll call? Hearing none, ayes 5, noes none, the motion is  
25 adopted.

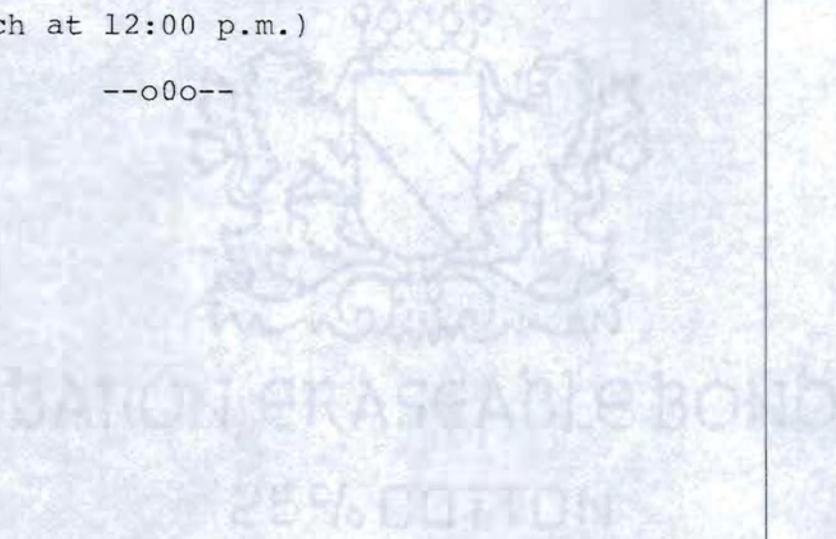
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COMMISSIONER SCHWEICKART: And good luck.

CHAIRMAN IMBRECHT: Yes. We'll now take our recess, and reconvene at 1:30.

(Thereupon the business meeting of the California Energy Resources Conservation and Development Commission was recessed for lunch at 12:00 p.m.)

--o0o--



AFTERNOON SESSION

--o0o--

1  
2  
3 COMMISSIONER GANDARA: I'll call the meeting back  
4 to order. As I understand it, we're on Item No. 3. Do we  
5 have a presentation prepared? From the General Counsel,  
6 you were directed to prepare an OIH. Are you presenting  
7 the item?

8 MR. CHAMBERLAIN: Mr. Fay will present the item.

9 MR. FAY: Yes, Commissioner, an OIH has been  
10 prepared and it's in your packet under Item 3. The OIH  
11 authorizes the -- well, it's an order instituting rulemaking  
12 and would authorize the Committee to commence rulemaking  
13 in response to Dr. Poppendiek's petition to consider  
14 re-examining the quality standards for foil insulation, and  
15 any other insulation quality standards that the Committee  
16 deems appropriate.

17 COMMISSIONER GANDARA: Is there anybody who wishes  
18 to comment on this? Any -- is Mr. Poppendiek here, or --

19 MR. PEREZ: No. Vice Chairman Gandara, Dr.  
20 Poppendiek did submit a position in writing which is included  
21 in your backup package for Item 3, essentially stating that  
22 he understood that today the Commission would be considering  
23 the OIR, and on the assumption that it was routine, he did  
24 not attend.

25 COMMISSIONER GANDARA: Okay. Is there anybody else

1 who wishes to address this item? Then it's before the  
2 Commission for discussion. Commissioner Schweickart?

3 COMMISSIONER SCHWEICKART: Yes, Mr. Chairman.  
4 The issue before us today is one which gives me a great  
5 deal of concern, not from the standpoint of the substance  
6 of the issue, I think we dealt with that at some length  
7 in the previous two business meetings, and the result of  
8 which was granting the petition that Dr. Poppendiek  
9 submitted.

10 The concern picks up again from the discussion on  
11 the last business meeting when we granted the petition in  
12 -- pursuant to my question of adequate resources, both staff  
13 and money, I think in this particular case, more staff than  
14 the contract dollars, in order to in fact accomplish not  
15 just this, but much of the work that we have in this area.

16 We find ourselves in a position in essence of  
17 having to choose between allocation of limited resources,  
18 namely a quarter of a person year and \$45,000 total to the  
19 insulation standards program, to enforcement efforts to  
20 ensure the protection of public safety or to staff efforts  
21 to respond to industry requests of this kind, and in fact,  
22 other activities as well, which are currently not being  
23 accomplished.

24 So that -- an in this instance, I prefer to take  
25 off my Committee hat. I think I would prefer to defer to

1 Commissioner Crowley to speak for herself on this matter,  
2 but speaking as an individual, and presiding member of the  
3 Committee, I frankly cannot support going ahead with this  
4 OIR since we do not, in fact, have the resources available  
5 to do all of the work, and in my estimation, and having  
6 given this considerable thought, place much higher on the  
7 Commission's priorities the protection of public health and  
8 safety.

9           It would therefore be my recommendation, and in  
10 order to put something on the table, I would move to deny  
11 without prejudice the order presented to us today. I would  
12 see resurrecting the order at any such time in the future,  
13 including either supplementing of our resources, or action  
14 by the Legislature and the Governor in this cycle which  
15 might divert some resources in this area to resurrecting  
16 this OIH at a later time, but we are clearly here without  
17 the resources to do the job.

18           My own particular orientation is that when we  
19 know we cannot and will not act on this petition, though  
20 we have approved it, that we should so state and state  
21 the reasons. I think to do less than that would be frankly  
22 deceptive and in the end serve the public less well if we  
23 were to adopt an OIH, and then, in fact, not be able to act  
24 on it either.

25           So it's not an easy choice, but my own motion here

1 reflects my desire to in some sense be honest about where  
2 the Commission stands, that we do not have the resources  
3 to do it, that it is lower on the priority list than other  
4 obligations with the limited resources we have, and  
5 therefore, without prejudice, to deny the order.

6 EXECUTIVE DIRECTOR WARD: Commissioner, if I  
7 might comment, I certainly am sympathetic to the comments  
8 that you made, and think they're fair. As I indicated,  
9 when this issue was discussed previously at the last  
10 business meeting, I too did not see it as being time  
11 sensitive and felt that it was something that we could  
12 deal with in terms of the 84/85 work plan.

13 So with that, we might want to -- or I would  
14 suggest that you add to the two previous stipulations that  
15 you cited, the potential for seeing available resources  
16 develop in the 84/85 work plan when we as a Commission go  
17 over that, and to the extent that that's mutually agreeable  
18 among Commissioners, that that be considered a third element  
19 that would potentially resurrect this issue.

20 COMMISSIONER SCHWEICKART: All right. I would  
21 add that, I think, to the background for the motion to ask  
22 the staff to bring this back to our attention following the  
23 development and deliberation on the 84/85 work plans by the  
24 Commission.

25 EXECUTIVE DIRECTOR WARD: And staff would concur

1 with your suggestion.

2 COMMISSIONER GANDARA: Commissioner Crowley?

3 COMMISSIONER CROWLEY: I'd like to second  
4 Commissioner Schweickart's motion, but ask that instead  
5 of just having staff bring that back after the development  
6 of their work plans, if that could be directed to them to  
7 be considered during their contemplation of work plans.

8 COMMISSIONER SCHWEICKART: I think the general  
9 sense of it would be that this, and I'm sure other matters,  
10 should be addressed by the staff in developing the 84/85  
11 work plans, and specifically call it to the attention of  
12 the Commission as a pending item when the work plans are  
13 presented to us.

14 COMMISSIONER GANDARA: Let me just ask a procedural  
15 question here, Commissioner Schweickart. You made a motion  
16 to deny the OIH from -- and Commissioner Crowley seconded it.  
17 From a practical matter, the OIH will not be adopted unless  
18 it has an affirmative three votes. You know, it seems to  
19 me that the issue is dead with the direction that you have  
20 given the staff. So do we really need to proceed any  
21 further with the vote on that?

22 COMMISSIONER SCHWEICKART: I would see it that it  
23 could be handled either way, frankly. In some sense I would  
24 opt with the Commission's concurrence to an affirmative, or  
25 a positive action denying without prejudice the OIR that has

1 been prepared. I frankly would defer to counsel in terms of  
2 any preference on that, but it would seem as though either  
3 would be in order.

4 COMMISSIONER GANDARA: Commissioner Commons?

5 COMMISSIONER COMMONS: What would happen if we  
6 were to postpone this item for 60 days as we're doing our  
7 work plans, would that accomplish your objective? Could  
8 we do so?

9 COMMISSIONER SCHWEICKART: Well, I think in effect  
10 it is the same thing since we would, by this action, be  
11 directing the Executive Director to bring it to our attention  
12 at the time of the work plans. Again, my own preference  
13 here, Commissioner Commons is one which reflects in some  
14 sense what I -- without trying to make it a big deal, I  
15 nevertheless see a sort of honesty in government.

16 I mean we clearly have a responsibility to do this.  
17 We also clearly have inadequate resources to do it, and it  
18 seems to me than rather than not speak to it, or to act on  
19 it affirmatively, but then not in fact follow through in  
20 the action, all of those actions, though they would have  
21 the same effect, are less than being forthcoming.

22 I mean, I think we, by taking a specific action  
23 to deny this, and stating that plainly, we provide a clearer  
24 signal that for example, the BCP's which have been put in  
25 earlier, the various efforts to enhance our ability to deal

1 with our obligations were real and that we are clearly  
2 stating here an inability to proceed with this matter.

3 Other actions, though, effectively result in  
4 having the same result, I think are less clear and honest  
5 a statement, and that's what I'm --

6 COMMISSIONER GANDARA: Okay, let's do the  
7 following, then, Commissioner Schweickart. Would you  
8 restate your motion so that everybody will be clear of  
9 what the motion is, and --

10 COMMISSIONER SCHWEICKART: All right. Let me  
11 separate the motion from, let me say, the direction of  
12 staff, and the motion then would be to deny without  
13 prejudice the order instituting rulemaking prepared for  
14 us today.

15 COMMISSIONER GANDARA: Okay, seconded by  
16 Commissioner Crowley. Is there any further discussion?  
17 Commissioner Commons?

18 COMMISSIONER COMMONS: I'm going to support the  
19 motion, because I think when we have Committees that have  
20 been asked by the Commission to look into these type of  
21 matters, that unless there's a strong reason otherwise,  
22 that we should support the working of the Committees and  
23 the judgment that the Committees have come up with after  
24 studying the matter in depth.

25 COMMISSIONER GANDARA: Then if there is no further

1 discussion, then the motion to deny the OIH without  
2 prejudice is adopted unanimously. The staff has the  
3 further direction that was elaborated during the discussion.

4 MR. PEREZ: Vice Chairman Gandara?

5 COMMISSIONER GANDARA: Yes?

6 MR. PEREZ: As Public Adviser, I would like to  
7 invite the direction of the Commission over the next few  
8 weeks to establish pursuant to Commissioner Schweickart's  
9 comments about the resource situation, specific objectives  
10 and reasonable standards that the public can identify in  
11 order to evaluate its methods of approaching the Commission  
12 under the rulemaking proceedings in our regulations.

13 I currently have, in addition to Dr. Poppendiek,  
14 three other members of the public who are proceeding to  
15 obtain my advice on how to approach the Commission for a  
16 variety of rulemaking changes, amendments, revisions and  
17 additions.

18 So it's incumbent upon the Commission to be able  
19 to state to the public at large, these are our standards,  
20 this is our status, and this is our plan, all of this being  
21 contingent upon what happens to us at the Legislature and  
22 the Governor's office.

23 But I do anticipate that you will have some  
24 parties from the public approaching you soon with essentially  
25 the same request in hand, and I expect the same standard to

1 them.

2           COMMISSIONER GANDARA: I understand the request,  
3 and it seems to be a reasonable one. On the other hand,  
4 it also appears to be one that could not be easily set forth  
5 ahead of time, and I would say that for the moment, that  
6 perhaps we should take them on a case-by-case basis and  
7 with the review that is going to be undertaken, you know,  
8 at least during this work plan process, because frankly,  
9 I think that that's what we're headed to, kind of a case-by-  
10 case addressing of the resources, vis-a-vis the petitions,  
11 as opposed to some kind of general rule at this time.

12           MR. PEREZ: Well, this would be amenable to the  
13 General Counsel's evaluation, but perhaps if we were able  
14 to tell the public at large that for the next 60 days all  
15 petitions for rulemaking changes will be considered during  
16 our work plan process, at least that's a direct, specific  
17 and simple answer. I'm just throwing that out.

18           COMMISSIONER SCHWEICKART: Mr. Perez, let me try  
19 and state, because I quite concur with Commissioner Gandara.  
20 I don't -- I think it would be extremely difficult to come  
21 out with some written general policy, but what I would  
22 like to do to help you is to state very concisely and  
23 clearly my own policy here, namely, and based on the  
24 discussion over the last two business meetings, a petition  
25 presented to me as a Commissioner, I will dispose of on the

1 grounds of its substantive validity as an issue which the  
2 Commission should take on, based entirely on its substance.

3           The matter then to proceed on to rulemaking, and  
4 follow-on action, I see an inability to separate from the  
5 resources available to the Commission. So at the level of  
6 action, namely, adoption of a rulemaking order and the  
7 action pursuant thereto, I bring the resource realities  
8 into play.

9           Now, that's about all I can -- I mean, that I  
10 think is a clear statement of the way in which I would look  
11 at it, and I would not suggest that that's the way others  
12 look at it, but I think that at least from my own point of  
13 view then, people with petitions in various areas would  
14 have to have some information as to whether in a particular  
15 substantive area there are resources within the Commission  
16 or not.

17           I mean, in this area, with a quarter of a person  
18 year, clearly, we are rather seriously limited. So, there --  
19 it is not without some available information to the public.

20           MR. PEREZ: I understand what the Commissioners  
21 are saying. My advice remains the same, and that is that  
22 it would behoove the Commission's operations to be able to  
23 identify specific objective standards by which to explain  
24 to the public at large the bases upon which it will be  
25 evaluating petitions for rulemaking proceedings, and I offer

1 that in a constructive light.

2 COMMISSIONER GANDARA: We'll take your comments  
3 under advisement for now, but I think we have a long agenda  
4 and I think we need to move on.

5 We've disposed of this item, then, can we  
6 proceed with Item No. 6 is it -- Item No. 5, a proposed  
7 contract with Impell Corporation?

8 EXECUTIVE DIRECTOR WARD: Yes. Vice Chairman  
9 Gandara, Item No. 5 is a contract with Impell Corporation.  
10 We have the Development Division, Leon Vann and Tim Olson  
11 prepared to discuss this specific issue. There's also a  
12 handout that simplifies the specific segments of that  
13 contract and the dollars associated with those segments  
14 so that you don't have to thumb through the contract itself.

15 This was subject to a competitive bid process,  
16 and I understand has been reviewed by the Policy Committee  
17 and conferred in by the Policy Committee, and with that,  
18 Leon Vann.

19 MR. OLSON: The purpose of this contract is to  
20 provide technical assistance to local governments interested  
21 in developing or in implementing their own projects through  
22 third party financing, and the intent is to select both  
23 conservation and alternative energy projects through an  
24 application process.

25 The contract offers, and you can look through the

1 handout, assistance tailored to meet the varying needs of  
2 the local governments, including local governments interested  
3 in developing their own projects, yet not knowing their  
4 project opportunities.

5           In this category, we typically have a lot of  
6 rural counties and cities without planning staff. It also  
7 is aimed at local governments that have specific projects  
8 or sites in mind but need expertise to evaluate its  
9 technical and economic merits; and the majority of the  
10 contract is aimed at local governments that have prepared  
11 some feasibility analysis for a project yet have not  
12 determined their financing options.

13           The contract is a culmination of efforts begun  
14 over a year ago. In March of 1983, the Commission  
15 recommended this concept to the Legislature as part of the  
16 first round of the PVEA funding, and again in August 1983,  
17 the Commission approved the DOE proposal, which spelled out  
18 how we were going to use the money.

19           The RFP for this contract was released in  
20 December of 1983. We received somewhere close to 400 firms  
21 that requested the full RFP, 69 proposals were received,  
22 and we held interviews with 11 finalists and made the  
23 final selection as shown in the contract.

24           We selected Impell Corporation and also selected  
25 every single subcontractor that will work for them. Some of

1 them were in Impell's original proposal, and the idea was  
2 to give not only a prime and a team of subcontractors the  
3 potential to compete, but also independent subcontractors.

4 If you have any questions, I'm here to answer  
5 them. We also have an Impell Corporation representative to  
6 answer questions.

7 COMMISSIONER GANDARA: Let me ask if there are  
8 any questions of staff by the Commission? Commissioner  
9 Commons?

10 COMMISSIONER COMMONS: Two questions. I note on  
11 your summary sheet that they have been acquired by Combustion  
12 Engineering?

13 MR. OLSON: Inc.

14 COMMISSIONER COMMONS: Is there any conflict of  
15 interest in terms of cogeneration or other projects that the  
16 company is involved in that could affect the work there?

17 MR. OLSON: Not that I know of. We put in the  
18 contract that the contractor working for us cannot compete  
19 at the local government level in bidding on a project that  
20 we select under this proposal, this program.

21 COMMISSIONER COMMONS: Is the same provision in  
22 the subcontractors --

23 MR. OLSON: Yes, yes.

24 COMMISSIONER COMMONS: All right. And the other  
25 is, I noticed in the work statement that you had a section

1 on fuels policy and work. Is that work going to be done  
2 by the prime, since I did not notice a subcontractor doing  
3 that work.

4 MR. OLSON: I'm sorry. I'm not familiar with --  
5 what area are you talking about?

6 COMMISSIONER COMMONS: I'll have to find it in  
7 the contract and come back as with the Chairman. G,  
8 synthetic fuels on A.3.

9 MR. OLSON: Oh, you're asking why we don't have a  
10 synthetic fuels subcontractor listed here?

11 COMMISSIONER COMMONS: Well, I'm trying to find  
12 out who's going to be doing that work.

13 MR. OLSON: I think what we've -- in our proposal  
14 process, and reviewing the proposals from the contractors,  
15 one of the things that was missing from the three groups  
16 that proposed as subcontractors is that they did not  
17 discuss their ability to do end use -- synthetic fuels  
18 end use applications. They were more oriented toward  
19 production of methanol, or ethanol and we felt that that  
20 was a major downfall for each proposal, so we did not  
21 select a contractor.

22 We also, in our surveys with the local governments,  
23 we found very few examples, or little interest from local  
24 governments, and getting involved in a synthetic fuels  
25 project. It's not likely that we will have one proposed.

1 If we do see a need for that, we will do a very short  
2 streamline competitive bid to hire a contractor.

3 COMMISSIONER COMMONS: All right, because you  
4 show as the contents of the report a very large chapter on  
5 energy assessment, and are you saying you're downplaying  
6 this in terms of the contract, that whole chapter, or just  
7 the portion on synthetic fuels?

8 MR. OLSON: That's an all inclusive list there.  
9 If the project -- in that task, we expect the project to  
10 be identified at that point, a wind project, or a  
11 cogeneration project, and so the subcontractor will only  
12 look at the appropriate areas addressing that technology.  
13 They will not be looking at wind resources, geothermal  
14 resources, small hydro.

15 The earlier task, initial screenings, is an  
16 overall rough cut analysis of all types of options that  
17 could include synthetic fuels, and that will be done by the  
18 prime contractor, that work.

19 COMMISSIONER COMMONS: Is there any local  
20 matching funds, or what involvement is local government,  
21 what portion of the cost is local government picking up  
22 in this?

23 MR. OLSON: In many cases, they will be  
24 contributing in-kind services from their staff. One of the  
25 major intents of this program is to -- if we go through one

1 project with a local government, and they have four or five  
2 opportunities to train their staff in the financing  
3 techniques and putting together the RFP's, evaluating the  
4 bids, negotiating the contract so that they learn that and  
5 they will not need our assistance on any future contracts.

6 So there is a need for someone at the local  
7 government to provide information or assistance at their  
8 end.

9 COMMISSIONER COMMONS: Are you suggesting that  
10 where a local government has already entered into a  
11 contract or done a project analysis that we won't be  
12 providing assistance to those municipalities?

13 MR. OLSON: Not necessarily. We are --

14 COMMISSIONER COMMONS: Then I don't understand  
15 your previous statement.

16 MR. OLSON: There are instances where local  
17 governments have already contracted out work to do a  
18 feasibility analysis. We will accept. We will be looking  
19 at those types of proposals as part of our program. We  
20 also will be providing the frontend technical analysis  
21 to some local governments who have not done that and lead  
22 them through the sequence of the initial screening, the  
23 technical -- evaluating the technical merits, and then  
24 setting up the financing arrangements.

25 COMMISSIONER COMMONS: Well, it's always been my

1 experience in dealing with government, they take things  
2 much more seriously when they put up some dollars, and the  
3 best screening device is money, and if someone has devoted  
4 money and second to that screening device has devoted time,  
5 we do have a local government representative on our  
6 Commission, I guess I'd be interested in her viewpoint from  
7 that perspective.

8 One way of trying to get something for what we're  
9 doing is to have local government show interest, which is  
10 by making some type of investment. Otherwise, anyone would  
11 want to do a freebee, why not.

12 MR. VANN: During the actual selection of projects  
13 for this technical support, that will be one of the criteria  
14 that's used to select those projects is what commitment  
15 has the local jurisdiction provided toward developing a  
16 project already.

17 COMMISSIONER COMMONS: Well, is it part of the  
18 contract that there would be some local match, or some  
19 local investment before we do this unless there was --

20 MR. VANN: This contract was for the technical  
21 service itself. The projects that we select under this  
22 program, the local government projects, we will go through  
23 a project evaluation. They will actually submit a proposal  
24 to us to evaluate and one of the selection criteria will  
25 be what kind of local commitment has there been to the

1 project, or will there be in the future.

2 COMMISSIONER COMMONS: Well, one of my problems  
3 with some of our point systems where we say that's one of  
4 the criteria, you may come up pretty good on some criteria,  
5 but I'd just like on a cost-effectiveness analysis, we may  
6 have a whole bunch of criteria, but still the basic one  
7 when we're working with the utility, is it good for the  
8 ratepayers of that utility.

9 You start adding up these points, and you sometimes  
10 have all these factors that can go into an evaluation, and  
11 you never answer the basic one, and in order to get in the  
12 ball game, are you going to put up something. I'd like to  
13 know if staff feels that there is a reason that we should  
14 be providing this technical support, which I fully support,  
15 but I want to make sure we get dollars, and benefits, and  
16 do those projects that are most likely to, you know, actual  
17 go to construction, and where our assistance is needed and  
18 wanted.

19 Are there instances where we may want to fund a  
20 project where there isn't a local match. I'm interested in  
21 staff's viewpoint here.

22 MR. VANN: On some project areas, direct local  
23 match, in answer to your question, there may be. In some  
24 areas of the state, the local government staffs are  
25 insufficient to even do the preliminary analysis on the

1 opportunities available to them. One of the tasks in this  
2 contract is a service that our contractor can provide to do  
3 an assessment of what the opportunities actually are in  
4 that local jurisdiction. In that case, I would be surprised  
5 if the local government contributed much more than in-kind  
6 services from staff.

7           COMMISSIONER COMMONS: Well, you know, dollars,  
8 if a municipality can't put up the dollars, or isn't  
9 interested enough to put up dollars to match these very  
10 small contracts, what reason should we have hope that they  
11 would put up the dollars to do the project. If you're  
12 not willing to do your feasibility work, if someone else  
13 is picking up half the dollars, what belief or hope do you  
14 have that someone is going to put up a dollar until the  
15 project looks good.

16           I mean, you're only going to do projects that are  
17 in the financial interest of the community.

18           MR. VANN: There is no sure thing, Commissioner,  
19 you know, there is no way for us to guarantee that the  
20 project will go forward.

21           COMMISSIONER COMMONS: Well, I'm not hunting for  
22 a sure thing, but I know if something certainly increases  
23 the batting average if someone puts some dollars up, a  
24 city council, or county commission will watch it a heck of  
25 a lot harder and be -- will select projects much more

1 carefully than if it's a free ride.

2 EXECUTIVE DIRECTOR WARD: Commissioner, I might  
3 add that this is --

4 COMMISSIONER GANDARA: I believe that -- excuse  
5 me, Commissioner Crowley wished to respond to one of your  
6 earlier questions.

7 COMMISSIONER COMMONS: Oh, good.

8 COMMISSIONER CROWLEY: You made a comment  
9 regarding local government, and I think it would be safe  
10 to say that in most situations a commitment of staff time  
11 is a financial commitment on the part of local government,  
12 because of their limited resources, it represents a diversion  
13 from other staff commitments, so that it can indeed be  
14 called a monetary commitment.

15 In addition, I believe there was some value  
16 attached to staff, municipality or county staff being made  
17 aware of how to proceed in some of the projects. So, is  
18 that correct that it was an opportunity for them to learn  
19 how to --

20 MR. OLSON: Yes.

21 MR. VANN: Yes.

22 COMMISSIONER CROWLEY: -- handle this sort of  
23 thing, and I think you would find that they would feel a  
24 staff commitment was indeed financial commitment.

25 EXECUTIVE DIRECTOR WARD: I think that's an

1 important point. To the extent that you're going to sell  
2 a local jurisdiction something, my experience in local  
3 government is they typically involve staff and in-kind  
4 services in a variety of community-related projects, because  
5 if someone is going to tell them how they're supposed to  
6 be doing something, they ought to be involved in the  
7 process so they can understand it.

8           Secondly, I might add that the energy advisers  
9 that are involved with local government substantially,  
10 statewide and throughout the league, are well aware of the  
11 potential distribution of significantly more amounts of  
12 Petroleum Violation Escrow Account money than we've seen  
13 this year, and to the extent that they avail themselves of  
14 that and are productive municipalities in utilizing these  
15 monies and making them effectively utilized, then I would  
16 think that's some incentive to -- for future receipt of  
17 additional funds.

18           COMMISSIONER COMMONS: Where are these criteria  
19 that you mentioned? Are they going to come before the  
20 Commission in the selection of projects, not the application  
21 of the criteria to each project, but the criteria themselves,  
22 have they been developed, and do we expend any funds on the  
23 contractor prior to a project having passed those criteria?

24           MR. OLSON: No, the criteria have not been  
25 developed yet, they have not --

1 MR. VANN: And they will probably be taken before  
2 the Policy Committee was our intent, as well as the project  
3 selection.

4 COMMISSIONER COMMONS: Hasn't it generally been  
5 our -- I think on all loans, haven't we always brought the  
6 criteria on geothermal or biomass, we've always brought  
7 them, I think, before the full Commission, if I'm not  
8 mistaken.

9 MR. VANN: Loans is -- that is correct for loans,  
10 but not for technical support. Usually the technical  
11 support, in the early days was -- that selection was made  
12 by the division and in more recent times, we bring significant  
13 items up before the Policy Committee for technical support.

14 COMMISSIONER COMMONS: Well, I don't want to take  
15 too long on this, it's just my personal opinion that to the  
16 Policy Committee is I accept Commissioner Crowley's  
17 interpretation that matching funds should include staff  
18 time as well as capital, and I personally would not be  
19 very supportive, except under unusual circumstances, of  
20 our doing projects where there wasn't a match which could  
21 include staff time, which could include in-kind services.

22 But a free lunch, unless we say we don't have  
23 enough good projects, I don't see a reason to do that at  
24 this time.

25 MR. VANN: We would agree.

1           COMMISSIONER GANDARA: Are there any other  
2 Commissioner comments for staff, questions?

3           MR. VANN: I would like just a couple of cleanup  
4 items on the contract. On page 3, item 1, there is a typo,  
5 this -- it's the last paragraph under item 1. It reads,  
6 if no notice is received. This refers to authorization  
7 for the contractor to proceed with work. If there is no  
8 notice received, meaning by the CEC contract manager, the  
9 prime contractor may proceed with the work and expend the  
10 additional cost.

11           The typo is that should read, the prime contractor  
12 may not proceed with the work and expend additional costs,  
13 that's to make it clear that the contractor does not  
14 proceed until the CEC contract manager authorizes the work  
15 to proceed.

16           COMMISSIONER SCHWEICKART: Well, Leon, take a  
17 look at the next sentence, because the next sentence would  
18 tend to support the way it's written now and you may want  
19 to do some revision there.

20           MR. VANN: Eliminate the second sentence. One  
21 other contract clause that has been suggested by the  
22 General Counsel's Office and has the support of staff deals  
23 with arbitration in case of a disagreement amongst the  
24 prime contractor and subcontractors over payment, and the  
25 other item deals with any changes to the work statement and

1 Carol is here to address those items.

2 MS. CHESBROUGH: The first change that we're  
3 proposing is to the modification clause which is in your  
4 package, page 5, item no. 17. The additions that could be  
5 useful on that clause read as follows: modifications to  
6 the exhibit shall be in writing and signed by the CEC  
7 contract manager and the prime contractor after approval  
8 by the applicable CEC committee.

9 This clause was inserted because of the -- some of  
10 the uncertainty that's still left with regards to the work  
11 statement, and exactly how many projects are going to  
12 receive in each project area. If this clause is inserted  
13 at this time, and the parties agree to it, it would allow  
14 flexibility in order to modify the work statement at a  
15 future time to include changes.

16 If there's no questions about that one, the other  
17 clause which unfortunately is not included in your package  
18 because I understand the additional contract terms are not  
19 routinely made a part of your package, appears in the dispute  
20 section of the additional contract terms.

21 If I might explain, the additional contract terms  
22 are generally added to every contract that the Energy  
23 Commission does. These are boilerplate terms for the most  
24 part which are adjusted depending on which particular  
25 contractor it is, a private contractor or a state contractor.

1           In this particular instance, we're required by  
2 law to have a dispute section in the additional contract  
3 terms. We have a dispute section which provides for one  
4 avenue of resolutions of grievances or disputes. This  
5 avenue brings it through a Commission route.

6           What I'm proposing is to add another section  
7 which would allow binding arbitration as one of the  
8 alternative mandatory procedures that a contractor and  
9 the Commission could select to resolve any grievances or  
10 disputes. I have that in writing here. If you'd like me  
11 to read it to you or just summarize it, I can.

12           What it says is that if both parties agree to  
13 arbitration, it will be a binding arbitration. Each party  
14 gets a certain time limit to select an expert in the  
15 field as a panelist, then these two expert panelists select  
16 a third panelist. Within 30 days, they set a hearing time  
17 for an informal hearing, much like the hearings that are  
18 held at General Services right now regarding bid protests.

19           After the hearing, the decision is written within  
20 30 days, the parties share equally in the cost. It's  
21 optional. Those are the two proposals that I would suggest  
22 inserting for the protection of the Commission on the one  
23 hand with the arbitration, and also for flexibility on the  
24 other hand for the modification clause.

25           CHAIRMAN IMBRECHT: Okay, thank you. Are there

1 questions from members of the Commission?

2 COMMISSIONER SCHWEICKART: I guess I'd like to  
3 understand, Carol, why, since this has been boilerplate,  
4 is there something that we've run into where this would  
5 provide a better resolution, or what's the background here?

6 MS. CHESBROUGH: The background is that this is a  
7 recent addition based on the legislation from January 1,  
8 1983. Also, on a practical level, the only avenue for a  
9 contractor to go to right now is if he or she is dissatisfied  
10 with the resolution of a particular grievance or dispute  
11 at the Commission level is to go to the Board of Control,  
12 or -- and then after that to court.

13 That's a very unsatisfactory route, because what  
14 the Board of Control normally does in a contract situation  
15 is defer. So you wait and wait to get on a Board of Control  
16 calendar, they say it's too complicated, we're not going to  
17 handle it, so we'll deny it, then the contractor goes out  
18 and goes to court on it.

19 It's really not a very good way of solving a  
20 problem. It's not very time expeditious, and the Board of  
21 Control doesn't offer suggestions or say this party should  
22 do one, two, three, and the other party should do this. It  
23 just sort of puts you at loggerheads and leaves you there.

24 I see arbitration as being one way to get around  
25 that difficulty. Also, it's become increasingly more

1 popular with not only the courts, but most of the members of  
2 the bar because it's a lot less expensive than litigation,  
3 it would be nice to have another avenue to go instead of  
4 litigation. It would keep the contracts alive, and also  
5 hopefully keep the parties working together.

T.5 6 COMMISSIONER SCHWEICKART: Well, I -- in a matter  
7 of this kind, I frankly defer to both your judgment and the  
8 judgment of other contracting agencies in the state in  
9 terms of what appears to be appropriate. It would seem as  
10 though one could make an argument that with this option it  
11 almost encourages people to go into this avenue which -- it  
12 would be difficult for me to judge on the whole whether that  
13 would add or reduce the time to get work done.

14 MS. CHESBROUGH: I think it would reduce it. I  
15 think what would prevent it from being exercised very  
16 frequently is the fact that it is expensive, and both  
17 parties would share equally in the expense. Whereas, if  
18 you use the Commission route for dispute resolution, it  
19 doesn't cost anything, with the staff time and other  
20 overhead expenses like that, but it's not where you have to  
21 hire people, hire a court reporter, and go through that  
22 level of formality.

23 There's two ways, and it's up to the parties to  
24 agree on which way they would go. It is mandatory that we  
25 do include a procedure for dispute resolution within our

1 contracts, and both parties would have to agree to the  
2 method that they would select. Theoretically, I don't know  
3 how it would work in practice, the more serious of claims  
4 obviously might be appropriate for binding arbitration,  
5 whereas if it was less serious, it would just be going up  
6 through the Commission, starting at the staff level, and it  
7 works its way up to the Executive Director, to the Commission  
8 for a decision.

9 CHAIRMAN IMBRECHT: Okay, fine. Any further  
10 questions? Commissioner Commons?

11 COMMISSIONER COMMONS: I have not for Carol, but  
12 for the staff. Why do the fees range from zero to 15  
13 percent from subcontractor to subcontractor?

14 MR. OLSON: That's --

15 COMMISSIONER COMMONS: And some of them seem to  
16 be 10 percent, and I see a university at zero, I might  
17 understand that, but I see one as low as four percent and  
18 some others at 15 percent.

19 MR. OLSON: You'll also notice that the overhead  
20 and general administrative charges also vary, and I think  
21 the short answer to that is they put different things in  
22 their G&A and overhead and most of these groups, if you  
23 added them up, they tend to be pretty much the same at the  
24 bottom line.

25 COMMISSIONER COMMONS: In relationship to your

1 last statement, I think it would be helpful if your  
2 portrayed the information in the same way for each  
3 contractor. In some instances you've shown the labor  
4 charges, in other instances you've shown the charges  
5 including the general and administrative, so it's very  
6 difficult to really, unless I had my calculator present to  
7 try to do it.

8 Which way you present I don't maybe have a  
9 feeling on, but I think it should be done the same way so  
10 at least we can see it.

11 MR. OLSON: Yeah, I think that's probably one  
12 thing we should put into our contracts policy is that there's  
13 a standard way of reporting fees, and G&A and overhead.

14 CHAIRMAN IMBRECHT: Okay, further questions? Do  
15 I hear a motion? I'll move adoption of the contract, is  
16 there a second?

17 COMMISSIONER SCHWEICKART: Second.

18 CHAIRMAN IMBRECHT: Seconded by Commissioner  
19 Schweickart. Is there any member of the public that wishes  
20 to be heard on this matter? Further questions? Is there  
21 objection to a unanimous roll call? Hearing none, ayes 5,  
22 noes none, the motion is adopted.

23 At the request of the Executive Director, we'll  
24 now move to Item No. 7 and come back to 6 a little bit  
25 later, and that's a contract for \$280,000 for the Berkeley

1 Group, Incorporated to provide technical assistance to  
2 public and private developers in support of the Commission's  
3 geothermal, wind and photovoltaic programs. Mr. Ward?

4 EXECUTIVE DIRECTOR WARD: Yes, Mr. Chairman. This  
5 contract, although it's been part of the Commission's work  
6 plan since the beginning of the 83/84 fiscal year, at the  
7 time the original RFP's were evaluated and a selection was  
8 made, there was a protest.

9 As a result of that protest, the Department of  
10 General Services requested that, or required that we go  
11 back and reissue an RFP. That RFP was reissued. A totally  
12 different evaluation committee was put together, and the  
13 same contractor was ultimately selected. It was extremely  
14 close on the rankings. It was subsequently appealed again  
15 to the Department of General Services, and that appeal was  
16 denied, so you now have the contract before you for the  
17 first time, since the issue has been resolved.

18 If you have any questions, we have Michael Smith  
19 from the Development Division to answer any process  
20 questions about the rankings and scorings.

21 CHAIRMAN IMBRECHT: Commissioner Commons?

22 COMMISSIONER COMMONS: My understanding on this  
23 that the review panel, Mr. Ward, included members outside  
24 of the Commission as well as inside?

25 EXECUTIVE DIRECTOR WARD: That's correct, I think

1 Mike Smith can comment on that.

2 COMMISSIONER COMMONS: And that the people not  
3 within the Commission, their evaluation is the same as the  
4 overall evaluation or recommendation to the Commission?

5 MR. SMITH: That's correct.

6 CHAIRMAN IMBRECHT: Okay. Any further questions?  
7 Any member of the public wish to comment on this matter?  
8 All right, moved by Commissioner Schweickart, seconded by  
9 Commissioner Commons, is there objection to a unanimous  
10 roll call? Hearing none, ayes 5, noes none, the motion is  
11 carried.

12 Item No. 8 is a contract for \$12,075 with United  
13 States Testing for fire safety tests of insulation materials  
14 used in California to determine the flame spread and smoke  
15 development ratings et cetera.

16 COMMISSIONER SCHWEICKART: Mr. Chairman, let me  
17 suggest we take 8 and 9 together at least in terms of the  
18 presentation. We may need a separate vote.

19 CHAIRMAN IMBRECHT: All right, fine. Item 9, a  
20 similar contract for \$12,075 with Underwriters Laboratories,  
21 again to conduct fire safety tests for flame tests and  
22 smoke development ratings. I think most of the members of  
23 the Commission are relatively familiar with this issue. Is  
24 there any member that wishes a full presentation on this, or  
25 can we proceed?

1 COMMISSIONER SCHWEICKART: I'll move them.

2 CHAIRMAN IMBRECHT: Moved by Commissioner  
3 Schweickart, seconded by Commissioner Gandara. Is there  
4 any member of the public that wishes to be heard on Items  
5 8 and 9. We'll take them, I think we can handle them both  
6 with one motion. The motion is to adopt both contracts.  
7 Is there objection to a unanimous roll call? Hearing none,  
8 ayes 5, noes none, the motion is carried.

9 Item 10 is a time extension amendment to a  
10 contract with the Regents of the University of California  
11 to augment the budget by \$57,987 to extend the provision  
12 of services by the Institute of Transportation Studies for  
13 training and technical assistance to local grant agencies  
14 under the third cycle of the Fuel Efficient Traffic Signal  
15 Management Program.

16 Mr. Ward?

17 EXECUTIVE DIRECTOR WARD: Yes, Mr. Chairman,  
18 Items 10 and 11 relate to the transportation element that  
19 was transferred to the Department of Transportation. Pat  
20 Conroy is here from the department to explain -- I believe  
21 the second, Item No. 11 \$500,000 is the additional PVEA  
22 that I think the Commission is already familiar with that  
23 went to the Department of Transportation. Mr. Conroy has  
24 some handouts also that he's making available.

25 MR. CONROY: Commissioners, last March, \$491,000

1 in federal Petroleum Violation Escrow Account funds  
2 previously allocated for other energy programs were  
3 redirected to this program. In addition, \$94,000 became  
4 available from unexpended funds in the program's original  
5 support contracts, and the withdrawal of some five second  
6 cycle grant cities from the program.

7 A total of \$585,000, therefore, came available  
8 during the current fiscal year, or at the end of the current  
9 fiscal year to conduct a special third grant cycle.

10 As you know, the Fuel Efficient Traffic Signal  
11 Management Program consists of three basic elements:  
12 grants to local governments through a competitive application  
13 process to finance signal timing optimization efforts;  
14 training of their traffic engineering personnel in the  
15 principles of fuel efficient signal management, and the  
16 use of available computer tools for this purpose; and  
17 finally, technical assistance for grant project staff  
18 throughout the development and implementation of optimized  
19 timing plans.

20 Staff requests Commission approval of the two  
21 agenda items necessary to provide these three elements for  
22 the third cycle. Agenda Item No. 10 is a \$57,987 contract  
23 amendment and time extension which will allow the University  
24 of California to continue to provide the services of the  
25 Institute of Transportation Studies.

1           The Institute has delivered training and technical  
2 assistance in the first two grant cycles, and would continue  
3 to do so in the third cycle. Both training and technical  
4 assistance will follow the basic approaches which have  
5 worked well in previous cycles, but at the generally lower  
6 level which our experience has indicated is necessary.

7           In addition to the training and technical support,  
8 this contract amendment will provide funds for ITS to prepare  
9 an evaluation report of the results of the third cycle, and  
10 a program summary report which will include an analysis of  
11 current program structure and recommendations for future  
12 direction. This should prove extremely valuable to Caltrans  
13 as it takes over full responsibility for the program.

14           Walt Hagen is here from the Division of  
15 Transportation Operations at Caltrans and he wishes to  
16 address Agenda Item No. 10. Would the Commission want to  
17 hear from him now, or after we cover the grant recommendations?

18           CHAIRMAN IMBRECHT: I think we'll take 10 right  
19 now, that would be fine, again, I think we're fairly  
20 familiar with these programs.

21           MR. HAGEN: Okay. I'm Chief of the Office of  
22 System Operations in Caltrans, and on the -- and in behalf  
23 of Caltrans, I would like to urge that you do approve the  
24 contract to the University of California to provide the  
25 evaluation of the FETSM program.

1           As you know, the FETSM, the Fuel Efficient  
2 Traffic Signal Management Program, does provide some  
3 staggering benefits for the amount of investment that we  
4 put into that, and in fact, in the \$4.3 million expenditure  
5 that we will have by the completion of the third cycle, we  
6 anticipate to save 40 million gallons of fuel over a three  
7 year period. This figures out to an 11 to 1 benefit to cost  
8 ratio based on fuel savings alone.

9           In addition to that, we anticipate a savings of  
10 \$150 million in vehicle time and wear and tear on the  
11 vehicles.

12           Specifically, the University of California  
13 contract will provide for specialized training to local  
14 agencies, also, technical consultation to the local agencies  
15 by university staff and use of the computer, and assistance  
16 in use of the university computer programs on that.

17           Finally, and very important to us, is an evaluation  
18 of the third cycle program, and also a summary report of the  
19 entire three cycles. We see this as providing an important  
20 bridge between this phase of this program as it winds down,  
21 and also, what we anticipate will hopefully be future  
22 funding for a continuing program, and we are aggressively  
23 pursuing that funding.

24           I'd be happy to answer any questions on that.

25           COMMISSIONER GANDARA: Commissioner Commons?

1           COMMISSIONER COMMONS: Yeah, there's one other  
2 benefit that I think is very important on some of our  
3 really clogged arterial roads where congestion has been  
4 most serious. The traffic flow, like Caltrans has so  
5 successfully demonstrated on the freeways actually increases  
6 capacity and may reduce some of our highway construction  
7 funds because the capacity of the road network is increased  
8 due to the traffic signalization, and I would think that  
9 could be identified as another benefit.

10           This program has been very successful, and you  
11 can clearly see when you drive through our areas where we  
12 have traffic signalization and where we don't.

13           MR. HAGEN: I think that's a very good point, and  
14 in fact, as we -- in some of our more congested areas, like  
15 in Los Angeles, as we're getting more and more into the  
16 ramp metering program, we will be shifting some additional  
17 traffic on to the arterials, and that's an important element.

18           COMMISSIONER GANDARA: Are there any other  
19 questions? Does anybody else wish to speak to this item?

20           COMMISSIONER COMMONS: I have one other question.

21           COMMISSIONER GANDARA: Commissioner Commons?

22           COMMISSIONER COMMONS: Could you, for the benefit  
23 of the Commission, give a little more information as to  
24 where you see the financial future of this program going,  
25 and where Caltrans is looking at the level of funding that

1 will occur, and what the status of the budget is here?  
2 As you enumerated the -- I think the cost/benefit was 11 to 1  
3 you said, just on fuel savings, excluding all the other  
4 very significant benefits.

5 MR. HAGEN: That's correct.

6 COMMISSIONER COMMONS: Is there money in the  
7 Caltrans budget for 84/85, what is the status here?

8 MR. HAGEN: Well, basically, as far as the future  
9 funding, we don't have anything in the budget. What we're  
10 anticipating is to try to secure approval for use of the  
11 future PVEA funding that would be available for local  
12 agencies.

13 COMMISSIONER COMMONS: Did Caltrans submit a  
14 request as part of their budget this year for this program?  
15 Was this included in the budget of Caltrans?

16 MR. HAGEN: We have budgeted in the 83/4, and  
17 I don't believe we have anything in 84/5.

18 MR. CONROY: In 84/5, the staff to run the  
19 present effort, the first three cycles, that support will  
20 be there. We're not looking to future grant funding until  
21 85/86, and right now the most likely funding source would  
22 be PVEA. So we don't anticipate an 84/85 cycle. This one  
23 year period, this particular -- this third cycle will carry  
24 us through in projects through 84/85 fiscal year, and also  
25 give us some time to look at program design, and look at

1 options for expanding the program. So 85/86 is really our  
2 target year now for the next funding cycle.

3 COMMISSIONER COMMONS: But that's out of PVEA  
4 money rather than out of normal sources. I'm not sure if  
5 there is any program that would run a cost/benefit ratio  
6 as much as 11 to 1 when I look at some of the transportation  
7 proposals that we're funding. I've been a long-term both  
8 highway and transit supporter, and I'm wondering why it's  
9 not included in the Caltrans budget if we have such an  
10 enormously positive cost/benefit ratio. How did this  
11 get excluded or --

12 MR. HAGEN: Well, I wouldn't say it's entirely  
13 excluded. It's not identified in the budget, but we're  
14 talking about -- I think there's two different things. One  
15 is, if we talk about the state highway system, and we do  
16 have a lot of state arterials that run through urban areas,  
17 we do have a program to constantly monitor and time the  
18 signals that we have in operation.

19 In the program that we're talking about here,  
20 though, is we're talking strictly about local agencies at  
21 this point in time, and it's really not an identified item  
22 where we're making funding available to local agencies out  
23 of the Caltrans budget.

24 COMMISSIONER COMMONS: I'd like to make a  
25 recommendation to the Chairman. What I'd like to do is ask

1 that the Intergovernmental Affairs Committee take a look  
2 at this program, where it is within state government,  
3 because it seems to be one of the major fuel saving programs  
4 that has been as cost-effective as any this Commission has  
5 undertaken, and ask the Intergovernmental Affairs Committee  
6 to look at the security of funding sources, not just relying  
7 exclusively on PVEA money, which as we all know may or may  
8 not come in and is a rather sporadic source, and ask the  
9 Committee to take a look at this.

10 CHAIRMAN IMBRECHT: That's fine. I'd be happy  
11 to do so. I would just mention that as you're well aware,  
12 the PVEA funding, you know, is funding that was authorized  
13 for the Energy Commission, and we in turn in this cooperative  
14 arrangement with Caltrans have them conduct the actual  
15 hardware implementation of the program.

16 As I think I mentioned to you last evening, and  
17 I believe I've mentioned to the other Commissioners, that we  
18 I think have the prospect in the next fiscal year for  
19 substantially greater funding latitude with respect to our  
20 surcharge, and I would suggest that during the transition  
21 period between the time that we anticipate the new PVEA  
22 funds coming in, which I'm sure this program is a likely  
23 candidate for funding for, that this may be an appropriate  
24 utilization of some of that additional money that would be  
25 freed up in terms of our surcharge by virtue of moving

1 other state agencies off of a surcharge, off of a surcharge  
2 funding account. So that's one option, it seems to me, of  
3 dealing with this.

4 COMMISSIONER COMMONS: Well, what I was thinking  
5 of is -- and of course, we're not the Transportation  
6 Commission, but maintenance and making work are existing  
7 in that work, always should be given priority, and if we  
8 can get our existing system functioning so we may not have  
9 to go to the enormous capital expenses, and as anyone in  
10 transportation knows, when we have to tear down homes and  
11 go through eminent domain, the great expense, and this  
12 particular program may actually be an enormous cost saving  
13 program for Caltrans.

14 The reliance exclusively on PVEA funding rather  
15 than looking at transportation related money, where we  
16 have a gas tax, I think there's lots of sources that should  
17 be done. I'd like to just ask your Committee to take a  
18 look at that.

19 CHAIRMAN IMBRECHT: I'll take a look at that.  
20 Having been very heavily involved in the gas tax issues  
21 that Mr. Ward in his previous life was heavily involved in  
22 those efforts as well, I can tell you that the demands upon  
23 those funds are enormous, even with the increase that was  
24 provided by the Legislature a couple of years ago, but I'll  
25 be happy to do so. I appreciate your point.

1           COMMISSIONER COMMONS: An 11 to 1 benefit/cost  
2 ratio is a -- I'd love to find a government program that  
3 really does that.

4           CHAIRMAN IMBRECHT: That's one I think we ought  
5 to talk about a little bit too, publicly for that reason.  
6 Okay, fine. I think the item is pretty clear to us. Is  
7 there any further Commission questions? Is there any  
8 concern about the grant proposals as well? Do I hear a  
9 motion on the two items cumulatively?

10           COMMISSIONER COMMONS: So moved.

11           CHAIRMAN IMBRECHT: Moved by Commissioner  
12 Commons, seconded by Commissioner Crowley, you'd like to  
13 have your name on the record, that we adopt Items 10 and 11  
14 as proposed. Is there -- does any member of the public  
15 wish to be heard on these items? Is there objection to a  
16 unanimous roll call? Hearing none, ayes 5, noes none.  
17 Items 10 and 11 are adopted. Thank you very much.

18           Let's see, Item 12 is a contract with Teale Data  
19 for \$50,000 to provide sufficient funds for the remainder  
20 of the fiscal year to meet the data processing needs.

21           MR. BOSLEY: We're requesting an increase of the  
22 existing Teale contract from \$300,000 to \$350,000. To give  
23 you a little bit of background, the original work plan  
24 allocation was \$555,000 for this year. At that time, at  
25 the beginning of the year, we decided to leave the option

1 open to using the money for that purpose, or other purposes  
2 we may need it for, so we only encumbered initially  
3 \$300,000 of that amount. It now appears as though we need  
4 \$350,000 for the full year, and that's the amount we're  
5 requesting here.

6 CHAIRMAN IMBRECHT: Okay, fine. That's pretty  
7 clear cut. Is there a question? Commissioner Commons?

8 COMMISSIONER COMMONS: In discussions with staff,  
9 the issue has been raised, if there are ways that we could  
10 use minicomputers both to increase the efficiency of the  
11 staff and also to saif mainload computer time. I don't  
12 want to get into that issue today, but I'd like when we go  
13 through our work plan budget allocations, to have some  
14 report back if there are ways that we can be more cost-  
15 effective here.

16 MR. BOSLEY: I believe that some staff within the  
17 ASG business services side are addressing that issue to  
18 some extent.

19 COMMISSIONER COMMONS: Yeah. I'm thinking  
20 particularly of the Conservation Division where we have  
21 had real staff problems in terms of sufficient staff, and  
22 this might be a way of increasing the effectiveness of that  
23 staff, increasing productivity.

24 CHAIRMAN IMBRECHT: Okay, fine. Any member of the  
25 public wish to be heard on this item? Do I hear a motion?

1 Moved by myself, seconded by Commissioner Schweickart. Is  
2 there objection to a unanimous roll call? Hearing none  
3 ayes 5, noes none, the item is adopted.

4 We're doing quite well. Item 13, time extension  
5 amendment to the contract with CIC Research, Inc. to  
6 extend the contract by two months and augment the budget  
7 by \$4,466 to address newly identified issues. Mr. McCormack.

8 MR. McCORMACK: Mr. Chairman and Commissioners,  
9 we're asking here for an extension, time extension as well  
10 as an augmentation of the existing contract that we have  
11 with our expert atmospheric chemist Katherine Wilson, to  
12 look at some additional issues which were brought up at a  
13 meeting that we had earlier this year with Ford Motor  
14 Company here at the Commission.

15 These are three specific issues that are pretty  
16 technical in nature, but we didn't have them in the original  
17 scope, they weren't included in the original scope, and  
18 we're now asking to increase the manhour effort to cover  
19 those items.

20 It's rather minor, it involves about 84 hours  
21 additional senior scientist time. It increases the  
22 contract up to about \$9,800 from its original \$5,340.

23 CHAIRMAN IMBRECHT: I think that's pretty clear  
24 cut. Are there any questions on this basically environ-  
25 mental analysis for the methanol programs? I'll -- excuse

1 me, Commissioner Schweickart?

2 COMMISSIONER SCHWEICKART: Yeah. What have we  
3 gotten from this contract to date? Do we have output on  
4 the existing contract, Mike, that we have confidence in  
5 in terms of the product, or --

6 MR. McCORMACK: Yes, we do. One of the first  
7 tasks that she was going to do, which is complete at this  
8 time, was to review an industry sponsored study on air  
9 quality in the South Coast Air Basin using the systems  
10 application air shed model. She did review that work  
11 already, sent her comments off to the sponsors of that work,  
12 sent us a copy as well.

13 She did -- as far as we're concerned, she did  
14 a very good analysis of that, and will be doing another  
15 analysis of the final report that is generated by SAI and  
16 Santa Clara University who undertook that report -- undertook  
17 that study.

18 All of that will be going into -- if you note down  
19 here at the bottom of the page, all of this work that she's  
20 doing for us, including these interim deliverables, will  
21 eventually go into updating this report that's called a  
22 current state of knowledge of air quality impact for  
23 methanol fueled vehicles.

24 COMMISSIONER SCHWEICKART: What is our intent in  
25 terms of publication of that report? Is that part of the

1 contract, or is that going to end up being a report to us,  
2 is publication a major presentation -- part of the contract?

3 MR. McCORMACK: It is going to be a report  
4 submitted to us, and we had planned on publishing that  
5 report and making it available to anyone who would want it.

6 CHAIRMAN IMBRECHT: I suspect this is ultimately  
7 an item that would be a potential for additional delivery  
8 to academic symposiums and that type of thing dealing with  
9 these issues.

10 MR. McCORMACK: Yes.

11 CHAIRMAN IMBRECHT: Okay.

12 COMMISSIONER SCHWEICKART: I guess what I'd like  
13 to do is encourage some thinking about -- and I would  
14 frankly prefer to see it as part of the obligations under  
15 the contract, to prepare the work in a form suitable for  
16 publication in a magazine such as "Science" or "Scientific  
17 American" or other professional, or semi-professional  
18 journals of that kind where it gets some wide distribution.

19 One of the objections I have to the work we've  
20 done in this program is that we tend to be very proud of  
21 it. It doesn't tend to get out all that much into the  
22 area of public knowledge. Katherine Wilson certainly has  
23 the credentials, I think, for performing that kind of work,  
24 and I think it may be more a matter of attention to the  
25 form in which it's developed than anything else. But I'd

1 like to suggest that that be considered as part of it.

2 MR. McCORMACK: Certainly. And just for your  
3 own information, Katherine Wilson and I did author a paper  
4 which was presented at the Sixth International Symposium,  
5 precisely on this review of the JPL Cal Tech work, so that's  
6 a start at exactly that thing.

7 CHAIRMAN IMBRECHT: Well, I'd say it was a very  
8 good presentation as well.

9 COMMISSIONER SCHWEICKART: This is the Sixth  
10 International Symposium on --

11 MR. McCORMACK: Alcohol fuels technology. That  
12 was held last week up in Ottawa.

13 COMMISSIONER SCHWEICKART: Now that we've got  
14 the clatter taken care of, let's head for the congregation.

15 MR. McCORMACK: I agree.

16 CHAIRMAN IMBRECHT: I think I agree with  
17 Commissioner Schweickart's suggestion, it's a very good  
18 idea. Okay. With that suggestion, I'll take that as a  
19 motion, moved by Commissioner Schweickart, I'll second it,  
20 seconded by myself, is there -- does anyone wish to be  
21 heard on this matter? Is there objection to unanimous  
22 roll call?

23 COMMISSIONER GANDARA: I'll object, you can record  
24 me as a no.

25 CHAIRMAN IMBRECHT: Okay. Ayes 4, noes 1,

1 Commissioner Gandara voting no, the motion is carried.

2           Item 14, no cost time extension to the contract  
3 with AREA, Incorporated, to enable the Commission to  
4 complete the analysis necessary to develop improved standards  
5 for retail stores, including grocery and restaurants.  
6 Mr. Ward?

7           EXECUTIVE DIRECTOR WARD: Yes, Mr. Chairman,  
8 Bill Pennington and Bruce Maeda are available on both  
9 Items 14 and 15. They're both no cost time extensions. I  
10 don't believe there is any controversy, and they have both  
11 been through Policy Committees.

12           MR. PENNINGTON: Bruce is going to just summarize  
13 Item 14.

14           MR. MAEDA: Basically, the contract is an  
15 extension of the existing contract with AREA, Incorporated  
16 to provide technical analysis for the -- in support of the  
17 nonresidential building standards development project. In  
18 part because of delays with the office standards, and  
19 delays due to staff reductions, the contractor was not  
20 able to complete all of the original analysis originally  
21 outlined for the past fiscal year.

22           In addition, because of commitments to the  
23 industry to complete work on retail and restaurant  
24 occupancies for the residential standards, we are proposing  
25 extending the contract to cover that, and we've made some

1 slight changes in the economic analysis proposed to be done  
2 to reflect past experience with the economic analysis and  
3 to simplify the procedure for evaluating cost-effectiveness  
4 of the nonresidential standards.

5 CHAIRMAN IMBRECHT: Commissioner Commons?

6 COMMISSIONER COMMONS: How long was this contract  
7 initially?

8 MR. PENNINGTON: This was a one year contract.

9 COMMISSIONER COMMONS: I could understand a three  
10 month extension of 25 percent. It's difficult to understand  
11 a nine month extension. The items that were mentioned here  
12 that caused delays, it's like we've done in one year three  
13 months of work.

14 MR. PENNINGTON: Perhaps Commissioner Schweickart  
15 could speak to that. I think we've accomplished quite a  
16 bit. This -- we've basically covered about half of the  
17 planned work under this contract, that was in a time when  
18 our staffing was reduced from 13 to 3. We have approxi-  
19 mately half of the funds left unexpended on this.

20 COMMISSIONER SCHEICKART: Frankly, I'm not sure  
21 what I can contribute. The program has dramatically changed  
22 since the time this contract was written, slowing down the  
23 process dramatically, and shifting the work from one area  
24 of nonresidential building to others which have now assumed  
25 a priority position.

1           COMMISSIONER COMMONS: Could you be specific from  
2 one to the --

3           COMMISSIONER SCHWEICKART: Well, Bill could lay  
4 out the nature of the original contract. We now are  
5 focusing the work on retail and restaurant to coincide  
6 with our own priorities and our agreement with industry to  
7 complete those two types as the highest priority after  
8 office buildings.

9           In addition, we have shifted from some of the  
10 economic -- the detailed economic analysis that was done  
11 earlier on office buildings, and picking up from the  
12 knowledge that we gained there, so that we can essentially  
13 shift more toward the technical analysis which we need  
14 additional support in, and less on the economic where we  
15 have learned a great deal, and can essentially draw  
16 conclusions from earlier work.

17           That's a fairly rough statement, but I think it  
18 reflects the reality.

19           COMMISSIONER COMMONS: Well, do you see a need to  
20 have this -- is this work going to take nine additional  
21 months?

22           COMMISSIONER SCHWEICKART: Well, the way things  
23 are going, it could take 18 additional months. I hope it  
24 only takes nine additional months.

25           COMMISSIONER COMMONS: Is there a reason -- we

1 have three building types that we're doing here?

2 COMMISSIONER SCHWEICKART: Two.

3 COMMISSIONER COMMONS: Two? We used to have  
4 three. I thought when we originally did this we had three.

5 MR. PENNINGTON: Well, basically, we are  
6 addressing grocery stores as a subcategory of retail, and  
7 have been working with the Retailers Association who believe  
8 that that is a subcategory of retail with somewhat different  
9 operating assumptions, but not dramatically different from  
10 other retail stores. So if you look at it from that  
11 standpoint, it's three.

12 COMMISSIONER COMMONS: Are we going down the same  
13 pace on all three building types, or should we finish one  
14 building type and go to the next one?

15 MR. PENNINGTON: Well, there is a sequencing.  
16 We're well along on the retail category. We will be  
17 picking up the grocery category as we proceed with that,  
18 and addressing restaurants, probably beginning about mid-  
19 fiscal year, and that's based on a planning for the  
20 expenditure of the baseline manpower in this program that  
21 was assumed in the budget proposal.

22 COMMISSIONER COMMONS: Well, when do you expect  
23 to come before the Commission on each of these three types?

24 MR. PENNINGTON: Well, this contract is to assist  
25 with the analysis for these building categories. We intend

1 to finish the analysis for retail with grocery as a subset  
2 by approximately mid-year, and we'll be coming before the  
3 Commission on a --

4 COMMISSIONER COMMONS: By mid-year, does that  
5 mean July?

6 MR. PENNINGTON: Mid-fiscal year. Around the end  
7 of the calendar year, and the proposed standards, based on  
8 that analysis, would come forward sometime between January  
9 and the end of the fiscal year.

10 In terms of restaurants, we will be finishing the  
11 analysis around the end of this coming fiscal year, and  
12 proposed standards based on that analysis probably will  
13 come before the Commission, three, four, five months after  
14 that.

15 COMMISSIONER COMMONS: What is causing the  
16 substantial delay? Is it the contract who is causing the  
17 delay, or it seems very, very much behind schedule from  
18 what we had heard a year ago.

19 MR. PENNINGTON: Well, this is on schedule based  
20 on work plan adjustments that have been approved. At mid-  
21 year of this year, at the end of the third quarter, the  
22 delays are due to really having very limited staff resources  
23 to conduct this work.

24 COMMISSIONER COMMONS: I don't see -- you know,  
25 one of the things that we've been looking at is using

1 consultants more significantly, and this was one of those  
2 experiments, and I could understand that your staff doesn't  
3 have the resources, but I can't see why the consultant  
4 should be so far behind because you have the funds, and I  
5 don't see why the consultant isn't able to proceed.

6 I'm still confused. I don't feel I have an  
7 understanding of what's happening here.

8 MR. MAEDA: Well, in part, their timing is  
9 somewhat dependent on our timing as well. They have done  
10 their work on a timely basis, when it was delivered to them,  
11 however, we have to establish meetings to interact with  
12 industry, and we have to also review their analysis which  
13 takes more time, obviously. But they have proceeded  
14 quite satisfactorily in terms of the timing of their work  
15 to date.

16 COMMISSIONER SCHWEICKART: Commissioner Commons,  
17 to a certain extent, this is a tasking contract where the  
18 workload on the contractor is based upon the progress of  
19 the development of the standards here at the Commission.  
20 So as things have slowed down here, the contractor has  
21 had fewer assignments, or assignments at a lower rate than  
22 was originally anticipated. It's not that the contractor  
23 has in any way held up the work.

24 COMMISSIONER COMMONS: Well, maybe this is another  
25 one of those items for our work plan. If we have a quarter

1 on insulation, and we've gone from 13 to 3 here, when we  
2 do these things, if they take three years instead of one  
3 year, it just ends up -- any time your elapsed time starts  
4 going for a long period of time, it ends up costing more  
5 resources, not productive.

6 A lot of the things that you arrive at early on  
7 get changed before the time you finish the process, and  
8 it sounds to me like you're understaffed in this area  
9 substantially, and we have a serious problem that the  
10 Budget Committee should look at, or we should do something  
11 about, because I can't believe a 9 month delay on a 12  
12 month contract.

13 MR. PENNINGTON: Well, there has been quite a bit  
14 of effort to have adequate resources restored to this  
15 program through budget change proposals, and March change  
16 proposals that were approved by this Commission that were  
17 not approved by the Department of Finance.

18 In addition to that, there is currently  
19 legislative agreement on augmentation to this program that  
20 is pending that has the support of the building industry  
21 who are intending to advocate to the Governor to increase  
22 these resources.

23 Meanwhile, we have a commitment that we made when  
24 the office standards were adopted, to pursue counterpart  
25 standards with similar benefits as the office standards for

1 other building categories that are commonly combined with  
2 office buildings in mixed use spaces. You know, this  
3 contract will help us proceed on that commitment.

4 COMMISSIONER COMMONS: Let me ask you this, what  
5 if we were to put all our emphasis on the retail stores  
6 now, and I remember this discussion a year ago where I was  
7 a minority of one saying we couldn't do all three, and that  
8 we should try to complete something.

9 EXECUTIVE DIRECTOR WARD: Commissioner, I've got  
10 a bit of a concern that I'll just indicate based on my  
11 representation of the issue to the Legislature, it was  
12 done on the basis that we were going to have one set of  
13 standards for office buildings, and a different set for  
14 other building types, and the motivation for the  
15 Legislature to give us the resources to develop the  
16 standards for the other building types was the consistency,  
17 and really, under the auspices of regulatory reform.

18 So if we were to do something on an incremental  
19 basis as opposed to all three, I think that would be in  
20 conflict with what I represented to the Legislature, and  
21 what I felt was the direction of the Commission.

22 COMMISSIONER COMMONS: Well, is staff working --  
23 how much of staff time is on retail versus restaurants?

24 MR. PENNINGTON: Right now we are addressing  
25 the retail occupancy category and we're not working on

1 restaurants at this moment. We intend to address  
2 restaurants once we have made progress on retail to the  
3 point where we have a proposal in draft form, and --

4 COMMISSIONER COMMONS: Well, we're running into  
5 this same problem on appliances, and what we did is, with  
6 the Commission agreement, we bifurcated the process. When  
7 we have limited staff, we try to do one thing, and when we  
8 finish that, we try to do the next.

9 MR. PENNINGTON: That is the process that we're  
10 pursuing.

11 COMMISSIONER COMMONS: Are you going to finish  
12 retail before you do restaurant, staff?

13 MR. PENNINGTON: We will -- hopefully, as we near  
14 the end of retail, we will be in a process of writing up  
15 the conclusions on retail in the form of regulations, and  
16 that will take less than all three of the staff that we  
17 have. At that point, we will divert whatever resources we  
18 can divert to initiate the restaurant work.

19 Similarly, I'm going to be doing work early on  
20 in the fiscal year, encouraging the restaurant association  
21 to come in and participate actively with us, and I expect  
22 that the Policy Committee also will be working along those  
23 lines. So there is a sequencing and a phasing process that  
24 is going on here.

25 COMMISSIONER COMMONS: Well, I'm going to make a

1 motion to amend even though it probably won't be accepted.

2 CHAIRMAN IMBRECHT: All right, motion is in order.

3 COMMISSIONER COMMONS: Well, I guess someone has  
4 to make the main motion, I'll just try an amendment to it.  
5 I'll make the motion that we extend the contract for six  
6 months.

7 CHAIRMAN IMBRECHT: Is there a second?

8 COMMISSIONER GANDARA: I'll second it.

9 CHAIRMAN IMBRECHT: Seconded by Commissioner  
10 Gandara. Discussion? Anyone wish to be heard on the item?

11 COMMISSIONER GANDARA: Yeah, let me ask a question.  
12 One of the things that I don't quite understand is that as  
13 I read the backup material, it seems to indicate that a  
14 lot of this work is being downscoped, and you're going to  
15 be relying on industry input, or industry advice, I suppose,  
16 industry analysis, is that -- you're going through that as  
17 well?

18 MR. PENNINGTON: Yes. We have done a considerable  
19 amount of work, both on this contract, and a previous  
20 contract working on similar work that did a very comprehen-  
21 sive analysis of measures, their cost-effectiveness, their  
22 ranking and so forth for office buildings, and we think  
23 that that body of work is going to be very much transferrable  
24 to these other building categories, and our expectation is  
25 that we will emphasize in the remainder of the work on these

1 categories, developing compliance alternatives within the  
2 standards and checking to make sure that the cost-  
3 effectiveness findings we made earlier for office buildings  
4 hold for these new buildings.

5 COMMISSIONER GANDARA: I guess my question is  
6 a lot more simpler. What I read on page 2, it says, a  
7 major refinement to the project that is reflected in this  
8 proposed contract extension is to rely more heavily on  
9 the advice of the industry, and to reduce the degree to  
10 which the contract analyzes the cost-effectiveness of  
11 individual measures.

12 Okay. Now, when I read that, I guess the  
13 question that arises in my mind is, is the advice of the  
14 industry include analysis that contains the cost-effectiveness  
15 of individual measures, or are you saying that you are  
16 no longer going to be looking at cost-effectiveness of  
17 individual measures, and you don't care about analyzing  
18 it because the advice of the industry will substitute for  
19 that, or --

20 MR. PENNINGTON: It's our intention not to repeat  
21 the whole comprehensive analysis that's been done for office  
22 buildings in terms of cost-effectiveness, and instead be in  
23 a situation where we're checking whether or not similar  
24 findings are relevant to retail and to restaurants.

25 COMMISSIONER GANDARA: How will you know if you

1 don't do the analysis?

2 MR. PENNINGTON: Well, we will be doing analysis.  
3 Basically, we looked at early on, approximately 100  
4 conservation measures.

5 COMMISSIONER GANDARA: To be extrapolated from  
6 previous analyses?

7 MR. PENNINGTON: Yes.

8 MR. MAEDA: Let me address that a little bit.

9 COMMISSIONER GANDARA: What was in that plan to  
10 begin with, I don't understand that.

11 MR. PENNINGTON: I believe it was planned. We're  
12 getting into the ability to actually use that experience  
13 and apply it to these categories, and we have more  
14 specific information about how that can be done than we  
15 had a year ago, but in general, that was our intent to  
16 have the office analysis serve as a model for the rest,  
17 and to extrapolate from that to the extent that we could.

18 COMMISSIONER GANDARA: Okay.

19 MR. MAEDA: In addition, in many cases, decisions  
20 with regards to whether or not measures were considered  
21 were done on the basis of other constraints developed as  
22 goals during the process of the Committee, including the  
23 practicality of installation, aesthetic values in a sense,  
24 or environmental quality values, for example 30 percent  
25 glazing in office buildings was not done on the basis of

1 cost-effectiveness, but it was established as the necessary  
2 minimum for preserving the quality of office buildings.

3 So the idea here is to look at the cost-  
4 effectiveness of a much more limited range of energy  
5 conservation measures, and perhaps select new measures  
6 that might be appropriate to new occupancy types, rather  
7 than to evaluate the whole universe of energy conservation  
8 measures for every occupancy type.

9 COMMISSIONER GANDARA: Well, in that regard, on  
10 page 3 it says, funds previously allocated to benefit/cost  
11 analysis no longer necessary. Staff now plans to rely on  
12 industry advice, establish proposed standards measures, and  
13 later on, six months of analysis work is expected to be  
14 done as a result of industry concensus. There will be  
15 less need to attend meetings to present analysis results.

16 I guess I get the whole feeling that what you're  
17 doing is you're asking the industry what standards to you  
18 want and we'll write those in. So the question that I  
19 then have is why do we need a contract at all.

20 MR. PENNINGTON: Well, we do intend to work with  
21 a smaller group of industry people who have been working  
22 with us on this project who will be doing specific analysis  
23 and make specific recommendations to staff, and to the  
24 Committee on particular aspects of the standards.

25 We will be doing a checking analysis to make sure

1 that those recommendations are reasonable and to check the  
2 cost-effectiveness. Basically, we think that the --  
3 generally, the same measures will be cost-effective for  
4 retail buildings and restaurants as for office buildings.  
5 However, there may be some few measures that are  
6 specifically applicable to these new categories that we  
7 will have to check out, and we'll have to do some  
8 sensitivity analysis to find out what their appropriate  
9 ranking is and redo the cost-effectiveness.

10 COMMISSIONER GANDARA: Let me just ask a final  
11 question of the Committee. Commissioner Schweickart, I  
12 know that in the past you've expressed considerable  
13 concern as to whether -- when do we continue to pursue a  
14 course of action that, you know, is so substantially  
15 truncated that it may not be productive, and when do we  
16 kind of admit that -- you know, where we are is, in fact,  
17 where we ought to quit.

18 Does this proposal here, is this a Committee  
19 proposal, and therefore reflect the -- sort of the best  
20 salvaging job we can do here, or -- I mean, I guess I'm  
21 asking whether the Committee is in concurrence with the  
22 proposal.

23 COMMISSIONER SCHWEICKART: Yes. Let me say first  
24 of all that I share other Commissioners' concerns expressed  
25 here. I've made my own statements on the record on this,

1 expressing some of my doubts on our work here. At the same  
2 time we are looking at -- Randy, you may be able to correct  
3 this, but I think it's something like three and a half or  
4 four people from both houses of the Legislature in terms of  
5 an increment in our staff, and the Craven bill on one side,  
6 and I forget how many PY's that amounts to but --

7 MR. PENNINGTON: Five.

8 COMMISSIONER SCHWEICKART: Five?

9 MR. PENNINGTON: Right.

10 COMMISSIONER SCHWEICKART: So that we have  
11 somewhere between four and nine, say, additional PY's which  
12 we may find coming out of the Legislature in the budget  
13 bill. Now, whether or not that is signed or blue lined  
14 by the Governor is a matter of some conjecture at this  
15 point.

16 Nevertheless, if we're moving ahead, which we  
17 certainly can do without any question with the supplement  
18 in this area, then I think this contract is certainly of  
19 real need in order to accomplish that work. I think if we  
20 see no increment in our staff here, and this contract were  
21 coming up after such blue lining, then I frankly might  
22 oppose the contract in its entirety and bring the money  
23 back into the Commission.

24 But at this point, facing the contract this  
25 fiscal year, frankly, I recommend going ahead with it.

1 There's only one question that I would see, and that  
2 relates to Commissioner Commons' six months versus nine  
3 months, and I guess I'd like to understand whether -- I  
4 see no sense in coming back with it at some future point.

5 I think that the real question there, and one,  
6 Bill, which I'd like you to speak to, is whether the -- if  
7 we see an increment, let's say, of the four people in the  
8 budget proposal, whether that would allow a speed up of the  
9 work in both areas, or all three of you prefer to separate  
10 out grocery, to be completed this calendar year, or whether  
11 it would go to the end of the fiscal year, even under those  
12 circumstances.

13 I mean, it seems to me that there's no sense,  
14 frankly, Commissioner Commons, in accelerating the work of  
15 the contractor in six months if, in fact, under any  
16 circumstance, it takes the staff a year to get the work  
17 done. Certainly, it is not useful to the Commission to  
18 have the technical and economic analysis support work not  
19 available toward the end of the process which is when we  
20 have often found it most valuable to be able to task area  
21 to do work as we're coming down to the end game.

22 So I appreciate, I think, the thrust of what  
23 you're suggesting, but frankly, it's at that end point that  
24 one needs to assure that we have the ability to task the  
25 contractor.

1           COMMISSIONER COMMONS: Well, let me explain why  
2 I made the motion, because it really fits in with your  
3 statement.

4           COMMISSIONER GANDARA: Could I ask a question  
5 first, since I asked your question --

6           COMMISSIONER COMMONS: Please.

7           COMMISSIONER GANDARA: And it's related to that,  
8 but I think it's something you said that fits in-between  
9 the two things. One is do we have to obligate this before  
10 the end of the fiscal year?

11          COMMISSIONER SCHWEICKART: That I can't answer.

12          MR. PENNINGTON: Yes. This is this year's  
13 funding. A decision has to be made on it at least by  
14 June 30th for us to have the authority to transfer this  
15 money into the additional year.

16          COMMISSIONER GANDARA: Okay. Let me now ask an  
17 additional question. Looking at this extension in a  
18 slightly different way, would it be worthwhile instead to  
19 in fact do the contract's augmentation and extension  
20 conditioned upon the appropriate budget outcome as one  
21 alternative, and therefore, we could proceed with it. If  
22 that contingency does not occur, then, you know, this  
23 contract is null and void.

24                 A second alternative would be that we do a  
25 contract extension and augmentation for two months, and

1 wait and see what the budget augmentation looks like, and  
2 if it comes through, then in two months, it comes back and  
3 we extend it for the additional seven months.

4 CHAIRMAN IMBRECHT: I think that's an open  
5 question, though, whether or not we can do that.

6 COMMISSIONER GANDARA: Well, that's what I'm  
7 asking, is whether those two alternatives are doable.

8 CHAIRMAN IMBRECHT: Do you know the answer to  
9 that, Bill, or should we --

10 MR. PENNINGTON: No, I don't.

11 CHAIRMAN IMBRECHT: Mr. Chamberlain, let me ask  
12 you a question. In terms of extension of the contract  
13 before the end of this fiscal year, if -- let's just say  
14 hypothetically we extended it six months pursuant to  
15 Commissioner Commons' motion, and then subsequently wanted  
16 to extend it an additional three months. Would we be  
17 precluded from doing so because we would be dealing with  
18 funds from an expired fiscal year?

19 EXECUTIVE DIRECTOR WARD: No.

20 MR. CHAMBERLAIN: I don't know the answer to that  
21 question.

22 CHAIRMAN IMBRECHT: Mr. Ward?

23 EXECUTIVE DIRECTOR WARD: As long as the money  
24 is available -- it depends on the first time the money  
25 was appropriated, okay, so that's the question you need to

1 ask, and when was the money appropriated for this contract  
2 originally, how long was it to be made available.

3 CHAIRMAN IBMRECHT: What --

4 EXECUTIVE DIRECTOR WARD: So, if by contract,  
5 then, I guess the other question is that if by contract  
6 the contract time period stipulates the amount of time  
7 that the money would be available, in other words, you're  
8 contracting for an 18 or 24 month period, I don't see any  
9 problem with extending the contract.

10 CHAIRMAN IMBRECHT: Let me ask a question, Mr.  
11 Pennington -- excuse me, Commissioner Gandara, are you  
12 finished?

13 COMMISSIONER GANDARA: Yes. Well, the second  
14 part of my question was not so much directed at the issue  
15 of trying to complete the work in six months, that is,  
16 accelerate it, but the idea of say approving the contract  
17 contingent upon review in two months to see whether we  
18 wished to in fact terminate it at that point in time.

19 We have an unusual situation here, and I don't  
20 see why we can't write such a contract term in there, that  
21 included in what we're talking about is that the work in  
22 this area is contingent upon some kind of action.

23 EXECUTIVE DIRECTOR WARD: Yeah, I understand what  
24 you're saying, but I think the contracts are subject to  
25 30 day cancellation anyway. I think we have that ability

1 on both sides. Isn't that a boilerplate that's included  
2 included in all our contracts.

3 MR. PENNINGTON: Yes, that's correct.

4 EXECUTIVE DIRECTOR WARD: So, if the Commission  
5 decided that it wanted to exercise that authority on this  
6 contract, I see no reason why it couldn't do it.

7 CHAIRMAN IMBRECHT: Let me try to focus on one --  
8 is that --

9 COMMISSIONER GANDARA: Yes, that was important  
10 because I, frankly, you know, think that there is a middle  
11 ground between the concerns expressed here, and that is that  
12 we go ahead and approve the contract with a direction  
13 given to the staff that should the budget augmentation  
14 not come through that it be recalendared, you know, for  
15 Commissioner reconsideration.

16 EXECUTIVE DIRECTOR WARD: Again, as with the  
17 order to institute hearings, I think it's another issue  
18 that we can deal with on the 84/85 work plan concurrently.

19 CHAIRMAN IMBRECHT: That's exactly what I was  
20 going to suggest, and one of the other questions that I  
21 wanted to ask Mr. Pennington, my conversations with Mr.  
22 Rauh, I have asked him on a number of occasions as to the  
23 progress of this program, and the real issue, as I see it,  
24 Commissioner Commons and Commissioner Gandara, is, you know,  
25 are we in a position, however delayed we may be at this

1 juncture, are we in a position to meet our commitment to  
2 the building industry, and to CALBO and others that was  
3 made at the time that we adopted the office building  
4 standards, namely, that we would adopt the remaining  
5 pieces by January 1, 1987.

6 MR. PENNINGTON: Right.

7 CHAIRMAN IMBRECHT: I guess I'm asking --

8 MR. PENNINGTON: I believe that with the resources  
9 that we have, even 3 PY, that we can achieve that.

10 CHAIRMAN IMBRECHT: Okay. That's exactly what  
11 Mr. Rauh has represented to me as well, so I guess I  
12 question what is the basis of the concern, I don't quite  
13 understand it. It seems to me that was the deadline we  
14 set for ourselves, if we can meet that deadline, what's  
15 the concern?

16 COMMISSIONER GANDARA: I'll tell you what my  
17 concern is, and that's the use of alternative resources.  
18 I mean, I think that what we want to do is meet the  
19 deadline by January 1st, '87, that we can do it with half  
20 a PY, if we just ask the industry what do you want, we  
21 write it in, we give it to them.

22 So I don't think, you know, I don't think we  
23 need to use up 3 PY to come up with something, and if what  
24 I'm seeing here is the fact that we're going to be expending  
25 resources and time, that is financial resources, and

1 peoples time and continue to massage something that's  
2 basically going to be, you know, what the industry proposes,  
3 we'll take. Well, then why -- don't do it, let's put  
4 those people to work on something else, we can find  
5 something else, take the industry proposal, like we'll  
6 be taking -- you know, like we did the solar installation  
7 standards and --

8 EXECUTIVE DIRECTOR WARD: Well, Commissioner,  
9 maybe we ought to wait to bring this contract until we  
10 are secure in our budget so we don't upset the industry,  
11 maybe that's the way of proceeding.

12 COMMISSIONER GANDARA: That's my point. Not that  
13 I think that -- or think that we should not meet that  
14 obligation, the question is, how do we meet it, and assuming  
15 we can meet the obligation, the question is, do we do it  
16 with some degree of analytical underpinnings with respect  
17 to what we'll be proposing.

18 COMMISSIONER COMMONS: I'd like to answer your  
19 question, Mr. Chairman --

20 CHAIRMAN IMBRECHT: Certainly.

21 COMMISSIONER COMMONS: -- and also address what  
22 Commissioner Schweickart -- because I think the two are  
23 tied together, and the reason I made the motion.

24 We had this conversation roughly a year ago, and  
25 it was an issue as to the number of building types that we

1 thought we could handle when we had our resources, and at  
2 that time, I expressed my serious concern as to the number  
3 of building types we could handle judiciously. If we give  
4 this extension, and this comes to the Commission towards the  
5 end of next fiscal year, let's put it in the March to June  
6 time frame, that would be roughly for two building types,  
7 21 to 24 months that it's taken to do this.

8 We have left, by that date that you're talking  
9 about, approximately 30 months. If it takes us 21 to 24  
10 months to do two building types, I cannot concur, or even  
11 come close to concurring with Mr. Pennington's statement  
12 that we could do the other six, or other five in --

13 CHAIRMAN IMBRECHT: That was not the commitment  
14 made.

15 COMMISSIONER COMMONS: The commitment was to --

16 CHAIRMAN IMBRECHT: The commitment was to complete  
17 the related building types to the office buildings by  
18 January 1 of '87, and that entails retail and --

19 MR. PENNINGTON: Restaurants.

20 CHAIRMAN IMBRECHT: And restaurants.

21 COMMISSIONER COMMONS: Just those three, now  
22 that's not all building types.

23 CHAIRMAN IMBRECHT: Absolutely not, that was the  
24 extent of our agreement, and that's why I don't understand  
25 the concern.

1           COMMISSIONER COMMONS: Okay. I stand corrected  
2 on that. Then after you finish this part of the conversa-  
3 tion, I'll go back to Commissioner Schweickart's --

4           CHAIRMAN IMBRECHT: Well, I'm finished, I mean,  
5 I've made my point. I -- maybe that was -- that  
6 misunderstanding was the reason we were in effect talking  
7 of other than --

8           COMMISSIONER COMMONS: My -- the reason for the  
9 six months is my feeling on this is since we have to make  
10 the allocation of the funds now, prior to the time we know  
11 whether or not we have the resources, I wanted to go ahead  
12 and make the resource allocation. If we get the resources  
13 that we are expected to receive, certainly we should be  
14 able in a six month time frame, to do the effort that we  
15 are talking about, that's half the contract period that  
16 we originally had talked about, and we've already spent a  
17 year in this effort.

18           If it turns out that we don't get the funds, I  
19 would be of the opinion of Commissioner Gandara that we're  
20 just dragging our feet and we're not doing something, it's  
21 better not to expend the money and just curtail the effort  
22 and cease and desist, and I want to have that, you know, at  
23 some point in time, we have to stop.

24           My feeling is on a one year contract, a six  
25 month extension is a very major extension of time, longer

1 than I would normally accede to, and I understand that  
2 we have this funding request, and if this funding request  
3 goes through, it's more than a doubling of our staff, and  
4 if we have a doubling of our staff, there should be no  
5 reason why we shouldn't be able to finish a one year  
6 contract in six more months.

7 CHAIRMAN IMBRECHT: Well, the only other final  
8 point I will make is I haven't heard any showing that there  
9 will be a lack of analytical evaluation. The fact that  
10 there's a solicitation of suggestions from industry does  
11 not demonstrate to me on space that there will be no  
12 analytical -- and if you want to cite something there, I'd  
13 appreciate having you call it to my attention.

14 COMMISSIONER COMMONS: Well, I've listened to the  
15 staff or half an hour and have not really gotten an  
16 understanding yet to --

17 CHAIRMAN IMBRECHT: Well, this is more a  
18 question of Commissioner Gandara, but --

19 COMMISSIONER GANDARA: Well, as I read the  
20 proposal, you know, what is involved here is not mere  
21 solicitation, but a curtailment of what had been planned  
22 by staff in their own analytical effort, and to rely, in  
23 their words, to rely more heavily on the advice of the  
24 industry to reduce the degree to which you do cost-  
25 effectiveness analysis of individual measures, and then

1 following on the other pages is that to reallocate funds  
2 from the benefit/cost analysis, to establish measure  
3 ranking for the life cycle cost curves now -- to rely on  
4 industry advice to establish proposed standards measures.

5 I mean, I have no problem with relying on industry  
6 advice. I'm having more problems with the idea that our  
7 own analytical effort is reduced somewhat and may not be --

8 CHAIRMAN IMBRECHT: But there is a foundation,  
9 I think to quote that one sentence out of context does a  
10 little bit of a misservice to the staff. They say, "During  
11 the development of the office standards, it has been clear  
12 that an exhaustive analysis of cost-effectiveness of  
13 alternative energy -- alternative efficiency measures are  
14 unnecessary." Then they say -- and the next sentence  
15 states the reason for that.

16 "Cost-effective analysis to a large extent confirm  
17 the judgment of industry experts advising the project."  
18 I guess what the implication there is, is that there's been  
19 a high degree of correlation between that independent  
20 analysis, and the judgment of the industry experts, and as  
21 a consequence, they're suggesting that it is unnecessary to  
22 expend the funds to the same degree on those issues.

23 COMMISSIONER GANDARA: Let me just say that we  
24 all -- I concur that there are other words, but I don't  
25 know that this is making the best out of a bad situation,

1 but let me just say I'm just reflecting my own history and  
2 knowledge of this project having started in June of 1981,  
3 having read many very similar statements about how things  
4 are going to get better, or how we've learned more, and  
5 so forth and so on, to the point where at least my credibility  
6 in this process is considerably reduced.

7 CHAIRMAN IMBRECHT: Okay, that's understandable.  
8 I'm just --

9 COMMISSIONER SCHWEICKART: Mr. Chairman, let me  
10 try to address this. I'd like to both support and separate  
11 myself from parts of Commissioner Gandara's expressed  
12 concerns. I share his concern with the subject discussion  
13 between the two of you, that is, that although I have, and  
14 this project has relied a great deal on input from industry,  
15 we have done so, and I believe it is appropriate to do  
16 so only in the case where we have an independent analytic  
17 capability which in essence, if you will, keeps everybody  
18 honest.

19 That is, where we have a clear analytic capability  
20 and a strong and unchallenged one in terms of no outside,  
21 or no vested interests, no specialized interests looking  
22 at things only from the point of view of the public  
23 benefit.

24 Now, I support Commissioner Gandara's concern  
25 that we are at the current time quite marginal in that area,

1 to the point where I am only marginally, frankly, supporting  
2 this program. Now, that, I would say, is separate from the  
3 contract before us, the work that we have before us. That  
4 is, I believe that from the work that has gone on, there is  
5 a body of experience in terms of the economic analysis of  
6 many of the measures which may be included in these  
7 additional building types which has allowed and supported  
8 a shifting of emphasis in the contract so that I believe  
9 that the concern which Commissioner Gandara expresses is  
10 somewhat different from and separate from the issue of the  
11 contract per se, and I support the shifting of priorities  
12 within the contract, and for that matter, I don't find  
13 six months versus nine months of any particular use for us  
14 one way or the other.

15 I do support the idea that if we do not get  
16 augmentation in the budget that this matter should come  
17 back before us in terms of whether the Commission's  
18 desire would be to recapture these monies if, in fact, it  
19 is deemed in the wisdom of the Commission that the overall  
20 project itself cannot reasonably go ahead.

21 But that I would suggest is more a matter of what  
22 individual Commissioners are prepared to vote on, let me  
23 say, or support, or make judgments on, on a set of  
24 standards which may, in effect, be presented to us by  
25 industry for concurrence or nonconcurrence.

1 I, frankly, feel very awkward about having an  
2 industry concensus presented to us, in essence, as a set  
3 of viable standards, but that, I would suggest, is a matter  
4 of the votes of individual Commissioners at that time. But  
5 I think that we can very reasonably re-examine this contract  
6 whether we vote for it for a nine month extension, or a six  
7 month, or whatever, subsequent to the budget action.

8 COMMISSIONER GANDARA: Let me say that I seconded  
9 the motion for purposes of discussion, and having  
10 articulated those concerns, that I don't think we need to  
11 spend more time on it. I think if it's a judgment of the  
12 Committee that's working closest with this, that this is the  
13 best we can do, let's proceed with that.

14 CHAIRMAN IMBRECHT: My inclination is to go  
15 with the judgment of the Committee, recognizing that  
16 Commissioner Schweickart is skeptical on the issues that he  
17 has raised, and it's obviously within his discretion to  
18 return this matter for future consideration by the  
19 Commission at an appropriate time.

20 MR. PENNINGTON: I think one piece of information --

21 CHAIRMAN IMBRECHT: Is that acceptable with you,  
22 Commissioner Commons, or do you still want to proceed with  
23 your motion, let me ask you that?

24 COMMISSIONER COMMONS: Well, I'd like to explore  
25 one other alternative before we drop it, before I answer

1 your question.

2 CHAIRMAN IMBRECHT: We've really spent a lot of  
3 time on this issue, but go ahead.

4 COMMISSIONER COMMONS: This is one of the  
5 weightier issues that --

6 CHAIRMAN IMBRECHT: This comes off of Committee  
7 Report time, Commissioner Commons.

8 COMMISSIONER COMMONS: I have the airplane to  
9 catch.

10 (Laughter)

11 COMMISSIONER COMMONS: What about if we were to  
12 address that issue today, Commissioner Schweickart, if we  
13 made the nine month extension, and we made a provision that  
14 we terminate -- we give 30 days notice if we don't get the  
15 funds at this time, and if someone wanted to reconsider it  
16 can always be brought back to the Commission.

17 But if we don't have the staffing, and we're not  
18 proceeding, I see no reason not to address it and take care  
19 of it today.

20 CHAIRMAN IMBRECHT: I ask once again, and I don't  
21 mean to be impatient, but what is the showing that we don't  
22 have staffing to accomplish this task? The direct testimony  
23 from the individual in charge of this program within the  
24 Conservation Division is we can accomplish the tasks that  
25 we committed to the industry well in advance of January 1,

1 1987.

2 I might add as well that, you know, I recognize  
3 the concerns about proper analytical evaluation. Again, I  
4 would call to your attention that I believe we have the  
5 opportunity for substantial augmentations in our consulting  
6 contracts in the 85/86 fiscal year.

7 To the extent that it is the will of the Commission,  
8 it would be my expectation that we can certainly achieve  
9 those funds and utilize them for independent evaluation of  
10 whatever industry collectively proposes to us in the way of  
11 standards, and I've got to believe that there are  
12 institutions that are in a position to provide some of that  
13 cost/benefit analysis that Commissioner Gandara justifiably  
14 argues as being important.

15 So it just is hard for me to see why it's  
16 necessary to take an action today, contingent upon something  
17 that may happen, or may not happen in the next 30 days  
18 that I don't think is definitive of the issue.

19 COMMISSIONER COMMONS: Because I think that gives  
20 -- well, let me defer to Commissioner Schweickart.

21 COMMISSIONER SCHWEICKART: Yeah, Commissioner  
22 Commons, I would not support that action. I think there  
23 may be some legal question about it, in any case, but I  
24 would not support it from the Committee perspective,  
25 principally because I think that if we do not see any

1 augmentation of resources in this area, I would frankly  
2 want to immediately direct the Committee to a complete  
3 review of not just nonresidential building standards, but  
4 frankly, a review of the building programs in their  
5 entirety.

6 We already have a list as long as your arm of  
7 things that we should be doing and are not. I think what  
8 we would be obligated to do if we get no augmentation of  
9 resources is to look very thoroughly at all of the tasks  
10 which -- to which we are obligated by statute, as well as  
11 in honoring obligations to industry, frankly, where they're  
12 not currently being served by the Commission to -- and then  
13 present that to the Commission in terms of what we would  
14 see as the priorities and the allocation of staff resources.

15 CHAIRMAN IMBRECHT: I would agree with you.

16 COMMISSIONER SCHWEICKART: That may necessitate  
17 the coup de grace to the nonres building program, and it  
18 may possibly not if Mr. Pennington's dogged good faith  
19 prevails in such review. But I think that the Committee  
20 would want to review the overall obligations of the  
21 Commission in this area with the resources we have after  
22 the Governor signs the final budget.

23 CHAIRMAN IMBRECHT: I would also urge that in the  
24 context of that review, in the event that the augmentation  
25 does not occur, and I'm not prejudging that in the slightest

1 because you know exactly what my activities have been on  
2 that, but I would just also urge that an evaluation be made  
3 by staff of other alternatives by which we can achieve that  
4 ultimate result.

5 I thought it was kind of ironic, I'm arguing very  
6 hard for standard adoption and so forth, and look forward  
7 to that, but -- that's a little humorous aside. But in  
8 any case -- you brought me around, Arturo.

9 In any case, some of the -- and I would urge that  
10 we look at, as well, the questions of what can be done in  
11 the way of outside evaluation of the character that you  
12 think is appropriate in the judgment of the Committee. I  
13 do think that there are some opportunities in that context,  
14 and as I mentioned to you as well, I believe that there is  
15 some flexibility built into our existing, our anticipated  
16 funding levels of contract dollars, and a variety of the  
17 programs in the budget for this coming fiscal year.

18 So I think we've got a little bit of room to move  
19 is what I'm suggesting.

20 COMMISSIONER SCHWEICKART: And we'd be happy  
21 to account for that, if that evaluation becomes necessary.

22 CHAIRMAN IMBRECHT: That's not always necessary  
23 to be done with PY, I think there are other ways to achieve  
24 some of these things is what I'm saying. If you don't  
25 think there's enough cost/benefit analysis in this contract,

1 maybe we need a different contract with an independent  
2 group to evaluate the results that comes out of this. I  
3 don't know, I'm just --

4 COMMISSIONER COMMONS: Commissioner Crowley, is  
5 your position the same as Commissioner Schweickart's, in  
6 other words, is the Committee unanimous on this?

7 COMMISSIONER CROWLEY: Yes.

8 COMMISSIONER COMMONS: All right. Following  
9 what I was saying earlier when we have a Committee that I  
10 think has spent time on it, my tendency is to support the  
11 Committee, and so I would consider it -- I would withdraw  
12 my motion and make it for nine months.

13 CHAIRMAN IMBRECHT: All right, fine. Then  
14 seconded by Commissioner Gandara?

15 COMMISSIONER GANDARA: I'm not sure.

16 CHAIRMAN IMBRECHT: Spear the thing. Okay, fine.  
17 Is there objection to a unanimous roll call for a nine  
18 month extension? Hearing none, ayes 5, noes none, the  
19 motion is granted.

20 Don't tell me another no cost time extension.  
21 Okay, Item 15.

22 EXECUTIVE DIRECTOR WARD: I was about to say, I'm  
23 worried this is another no cost time extension.

24 CHAIRMAN IMBRECHT: Berkeley Solar Group to  
25 produce certain Data General programs for the CEC computer.

1 Who's going to take this one?

2 EXECUTIVE DIRECTOR WARD: Bruce Maeda can explain,  
3 from the Conservation Division.

4 MR. MAEDA: This is a contract, as mentioned,  
5 for the Berkeley Solar Group to create programs for the  
6 Data General Computer, primarily to interface a variety of  
7 already existing programs to allow them to be used on the  
8 Data General Computer, and also to update, for example, the  
9 DOE program, which is used to do the evaluation on the  
10 nonresidential building standards.

11 However, the updates of that program come from  
12 another governmental agency, or governmental contractor,  
13 in this case, Lawrence-Berkeley Laboratories, and there  
14 have been significant delays in versions of DOE 2 that have  
15 been put out over the course of the years, many years, and  
16 it was anticipated that they would be coming out under a  
17 certain schedule.

18 This schedule has not been met, and so in order  
19 to receive full value from this contract, we propose  
20 extending the contract so that the additional versions of  
21 DOE can be put up so that interfaces can be created --  
22 computer programming interfaces can be created between the  
23 DOE program and various financial and other economic  
24 analysis programs to facilitate and make it more possible  
25 for staff to do more extensive economic analysis which it

1 is not currently able to do, including analysis that the  
2 contractor would be doing up until the time that these  
3 programs get developed, to some extent, but not all of  
4 that analysis.

5 In addition, to do other programs to increase the  
6 productivity of staff during this time, which were not --  
7 would facilitate the nonresidential standards project.

8 MR. PENNINGTON: I would just add to that that  
9 basically, the purpose of this contract is to provide on  
10 our computer system here updated versions of DOE 2.1 as  
11 they become available from LBL, and we use that for the  
12 nonres program, we also use it for a variety of other  
13 kinds of analysis, Assessments Division makes use of that  
14 program, other conservation programs make use of updates  
15 of DOE 2.

16 So basically, this is keeping current with DOE 2  
17 on our computer system.

18 CHAIRMAN IMBRECHT: Commissioner Commons?

19 COMMISSIONER COMMONS: This is a one year  
20 extension on a one year contract?

21 MR. MAEDA: That is true. Again, the primary --  
22 it is a contingency contract, based upon the availability  
23 of other programs, and the work essentially doesn't proceed  
24 unless LBL releases versions of the program, or unless  
25 other work is finished by other contractors, for example.

1           CHAIRMAN IMBRECHT: So you're saying in effect  
2 that in order for the Berkeley Group to translate programs  
3 from DOE into our computer language, it is necessary for  
4 them obviously to receive that program first. We have  
5 not received the programs -- they have not received the  
6 programs from DOE, therefore, they have been prohibited or  
7 inhibited from accomplishing the tasks in the contract.

8           Therefore, this extension is generated by no  
9 fault attributable to Commission staff or our contractor.  
10 Is that an accurate summary?

11          MR. MAEDA: That's correct.

12          CHAIRMAN IMBRECHT: That's what I was trying to  
13 say a moment ago.

14          COMMISSIONER COMMONS: Well, was this a sole source  
15 contract?

16          MR. MAEDA: Yes, it is.

17          COMMISSIONER COMMONS: And who is doing the work  
18 for DOE? DOE doesn't design this --

19          MR. MAEDA: It's done through Lawrence-Berkeley  
20 Laboratories --

21          CHAIRMAN IMBRECHT: Which is an arm of DOE.

22          COMMISSIONER COMMONS: So it's done by the same  
23 contractor?

24          MR. MAEDA: No, it's not. This is Berkeley  
25 Solar Group which is a private agency. Lawrence-Berkeley

1 Laboratory is an independent national laboratory through  
2 the universities.

3 COMMISSIONER COMMONS: So you're saying that  
4 Lawrence-Berkeley Laboratory is over a year late in their  
5 work?

6 MR. MAEDA: That's true.

7 COMMISSIONER COMMONS: We just entered into a  
8 contract with them, too, didn't we.

9 MR. PENNINGTON: Well, basically, this is an  
10 ongoing developmental process that they have on the DOE 2.1  
11 program, and they put out Consolidated Data Corporation  
12 versions of DOE 2.1 updates. Berkeley Solar Group has a  
13 Data General Computer. They get the updates from LBL on  
14 the CDC version and translate that into a Data General  
15 version and there aren't any other contractors that have  
16 the identically same equipment that we do and have this  
17 interest to make available DOE 2.1 programs.

18 COMMISSIONER COMMONS: This delay, what impacts  
19 is it going to have on the Commission from an operating  
20 policy? Is Assessments Division going to fall behind? Is  
21 Conservation Division going to fall behind?

22 MR. PENNINGTON: Well, we factor in these  
23 improvements in DOE 2 when they become available and when  
24 they do become available, the building industry and others  
25 recognize that the state of the art has been improved, and

1 it's important for us to go to that level. Before they're  
2 available, there's no pressure for the Commission to change  
3 its analytical approach. But as soon as they become  
4 available, there's pressure, okay.

5 COMMISSIONER COMMONS: Well, what makes you believe  
6 that we'll finish this in a year now, not six months, not  
7 two years. Have you talked with LBL or --

8 MR. MAEDA: Well, there's no guarantee that the  
9 contract funds will be totally expended. They are  
10 essentially contingency funds. If these programs are not  
11 released, they will not be expended, and the contract,  
12 in essence, won't necessarily be completed.

13 However, if they do become available, it will  
14 allow them to be put up on our machine on a timely basis.  
15 It allows us to keep current with the program as it  
16 becomes available, but it does not guarantee that the  
17 programs will become available themselves.

18 COMMISSIONER COMMONS: And just one last question.  
19 With this extension, they're not saying that they have to  
20 up their labor rates, or make any changes, they'll still  
21 do the same job under the same terms?

22 MR. MAEDA: That's correct.

23 MR. PENNINGTON: That's correct.

24 COMMISSIONER COMMONS: Okay.

25 CHAIRMAN IMBRECHT: Okay. Any further comment on

1 this matter? Moved by Commissioner Schweickart, seconded  
2 by Commissioner Crowley. Is there objection to a unanimous  
3 roll call? Hearing none, ayes 4, noes none, the motion is  
4 carried.

5 Item 16, no cost time extension to contract with  
6 Port Costa Materials Company, a project of the Biomass  
7 Demonstration Program. Well, Conservation is off the hot  
8 seat.

9 EXECUTIVE DIRECTOR WARD: Yes. Mr. Chairman, I  
10 think this is going to be a little bit easier. It's similar  
11 to numerous biomass demonstration program contracts where  
12 we need additional shake-down time, and there is a bit of  
13 a change in this, and I'll let Ray Tuvell from the  
14 Development Division explain it.

T.7 15 MR. TUVELL: Very simply put, the contractor in  
16 this project changed hands, as a result, their engineering  
17 staff changed hands, they came in with a better design that  
18 we think is going to have a better chance of achieving the  
19 overall objectives of the project.

20 They need additional time to do that. As a  
21 result, this matter has been before the Policy Committee  
22 and has reached their concurrence. We fully support it.  
23 There is no increase in dollar amount in the contract.

24 COMMISSIONER CROWLEY: Mr. Chairman, the Policy  
25 Committee membership both approves this.

1 CHAIRMAN IMBRECHT: Thank you very much.

2 Questions or comments?

3 COMMISSIONER COMMONS: One question.

4 CHAIRMAN IMBRECHT: Commissioner Commons?

5 COMMISSIONER COMMONS: Payback of state monies  
6 was originally August 31st, 1983?

7 MR. TUVELL: I believe that's the case.

8 COMMISSIONER COMMONS: And I don't see in this --  
9 I don't see in the documentation here, payback now is  
10 going to be November 30th, 1985?

11 MR. TUVELL: Yes.

12 COMMISSIONER COMMONS: It's three months after --  
13 why are we extending the time of the payback?

14 MR. TUVELL: We're extending the entire contract.

15 COMMISSIONER COMMONS: Yeah, but it used to be  
16 performance determination -- from performance determination  
17 to payback was 45 days, now you've changed it to 90, is  
18 there a reason for that?

19 MR. TUVELL: No reason in --

20 COMMISSIONER COMMONS: It's a small point, but  
21 if it's an automatic extension, I don't know why you've  
22 suddenly changed that.

23 MR. TUVELL: Well, let me clarify something. It's  
24 a no cost time extension, and we have changed a number of  
25 the dates to better reflect their anticipated dates of

1 achieving different milestones.

2 COMMISSIONER COMMONS: I just don't understand  
3 why you went from 45 days for Task 6 performance determina-  
4 tion to payback of state monies, which it was originally,  
5 up to now, 90 days.

6 MR. TUVELL: In one case we're certainly making  
7 it consistent with our other contracts so that there's  
8 nothing irregular in terms of something being done  
9 differently here than in other contracts.

10 COMMISSIONER COMMONS: Okay.

11 CHAIRMAN IMBRECHT: Commissioner Commons did  
12 ask a specific question, and I don't think he's gotten an  
13 answer.

14 MR. TUVELL: Why are we extending it?

15 CHAIRMAN IMBRECHT: Why are you doing it, that's  
16 right.

17 MR. TUVELL: No particular reason, other than  
18 it does provide them the same length of time that we do  
19 provide other contractors in regards to the time after the  
20 performance has been completed until the contract ends.

21 COMMISSIONER COMMONS: I'll move acceptance but  
22 with a 45 day period.

23 CHAIRMAN IMBRECHT: I'll second it. Is there  
24 objection to a unanimous roll call? Hearing none, ayes 4,  
25 noes none.

1 EXECUTIVE DIRECTOR WARD: Mr. Chairman, we need  
2 to return to Item No. 6.

3 CHAIRMAN IMBRECHT: Oh, pardon me. Let me just  
4 do the consent calendar, this is Commission approval of  
5 the annual report to the Legislature on the Biomass  
6 Demonstration Program, the fourth report on status and  
7 progress of the biomass, et cetera. Is there objection to  
8 adoption of the consent calendar? I will move, Commissioner  
9 Crowley seconds. Is there objection? Hearing none, ayes 4,  
10 noes none.

11 Turning now to Item No. 6 -- I'm going to announce  
12 as well that Commissioner Gandara will be back at 4:30 at  
13 which time we will begin the Executive Session.

14 Item No. 6, contract, \$325,000 with Envirosphere  
15 Company to provide technical support to the Biomass  
16 Demonstration Program. Mr. Ward?

17 EXECUTIVE DIRECTOR WARD: Mr. Chairman, this is  
18 an ongoing contract. As I understand it, the original  
19 \$650,000 available for this contract was requested to be  
20 divided in half, and then we scheduled the second half  
21 for late in this fiscal year, which is before you today.

22 So this is the second half of the contract, it's  
23 technical support that we use on all the Biomass Demonstra-  
24 tion Programs. Ray Tuvell can answer any questions you  
25 might have.

1 MR. TUVELL: This contract was RFP'd. At the  
2 time we RFP'd it in order to minimize staff time necessary  
3 for doing the RFP, we spread it over a two year time period.  
4 We came to the Commission back in November of last year  
5 requesting approval for the entire time period, contingent  
6 on getting money for 84/85 fiscal year.

7 At that time, you requested we split that up, and  
8 we did. We're now back requesting approval for the 85/ --  
9 84/85 fiscal year, again, contingent on approval of the  
10 money in the Governor's budget. We have been to the Policy  
11 Committee on this matter and received their approval.

12 CHAIRMAN IMBRECHT: Any questions? Moved by  
13 Commissioner Crowley, seconded by Commissioner Schweickart.  
14 Is there objection to a unanimous roll call? Hearing none,  
15 ayes 4, noes none. The motion is adopted.

16 Turning now to approval of the minutes. Is there  
17 objection to approval of the minutes as contained within  
18 the agenda binder? Without objection, the minutes will be  
19 approved as presented.

20 COMMISSIONER COMMONS: Mr. Chairman?

21 CHAIRMAN IMBRECHT: Yes.

22 COMMISSIONER COMMONS: In the last few meetings  
23 we've had the calendar for the next business meeting as  
24 part of that.

25 CHAIRMAN IMBRECHT: That's something we didn't

1 ask the Public Adviser. Mr. Perez?

2 EXECUTIVE DIRECTOR WARD: My understanding is --  
3 Mr. Perez is indicating that we won't have it, because we've  
4 got another week --

5 CHAIRMAN IMBRECHT: That's right too. In this  
6 instance, we've got more than the statutory time period for  
7 notice. Let me suggest this. I will direct the staff to  
8 circulate that to the full Commission because of the strange  
9 date of today's meeting.

10 Okay. Let's see, Commission Policy Committee  
11 Reports. Commissioner Commons, are you prepared to proceed?

12 COMMISSIONER COMMONS: No, I can start, but  
13 we're awaiting Thom Kelly to do the oral presentation.

14 CHAIRMAN IMBRECHT: Does anyone else have a  
15 Policy Committee Report that they can handle?

16 COMMISSIONER CROWLEY: I have a legislative  
17 report.

18 CHAIRMAN IMBRECHT: Okay, why don't we take that,  
19 Commissioner Crowley.

20 COMMISSIONER CROWLEY: Five items were considered  
21 by the Legislative Committee, they're in your folder, 19.  
22 The first item, geothermal leasing bill, Hauser AB 2867.

23 COMMISSIONER COMMONS: Excuse me, I don't have a 19.

24 COMMISSIONER CROWLEY: Okay. Do you have the  
25 Legislative Policy Committee's Report?

1           COMMISSIONER COMMONS: The last item in my book  
2 is Item 18.

3           COMMISSIONER CROWLEY: What's the pleasure of  
4 the Chair, do you want this deferred until we have--

5           CHAIRMAN IMBRECHT: Secretary, do you have  
6 additional copies?

7           SECRETARY GERVAIS: Of the Legislative --

8           CHAIRMAN IMBRECHT: Item 19 -- here we go.

9           COMMISSIONER COMMONS: Thank you.

10          COMMISSIONER CROWLEY: AB 2867, Hauser, geothermal  
11 leasing, the recommendation by the Committee was to  
12 support this motion -- pardon me, this bill.

13          MR. FUKUMOTO: This is basically a cleanup bill  
14 from a bill from last year that was going to give monies  
15 over to the State Teachers Retirement System, which  
16 inadvertently took our geothermal funds as well. So the  
17 cleanup bill now returns it back to us.

18          COMMISSIONER CROWLEY: And is an urgency bill.

19          MR. FUKUMOTO: And there is an urgency statute  
20 for that purpose.

21          CHAIRMAN IMBRECHT: That is pretty clean. Benefit  
22 sharing of state facilities, I understand that was one  
23 that they discussed a long time ago.

24          COMMISSIONER CROWLEY: That too was recommended  
25 to support to allow the institution itself to participate

1 in energy project savings.

2 CHAIRMAN IMBRECHT: This has been, as I speak,  
3 has been a long outstanding hole in the incentives necessary  
4 to ensure that we get cooperation, particularly from the  
5 UC and CSUC system which have the worst record, I might add,  
6 of conservation of any state institutions.

7 COMMISSIONER CROWLEY: And our position was to  
8 support this.

9 This third item was AB 3452, the Goggin bill.  
10 This is a Public Utilities Commission natural gas forecast.  
11 Our recommendation was support if amended, and we have  
12 included the amendments. The CEC includes such natural  
13 gas forecasts in the Biennial Report, and the PUC staff  
14 is to no longer duplicate, or not duplicate the CEC staff  
15 work in this area.

16 MR. FUKUMOTO: The bill at this time is a spot  
17 bill and we just wanted to clarify with the author of the  
18 bill, what his intent was, and to notify on that, the  
19 CEC currently does these things, and that the PUC is  
20 incorporated, then we would be glad to provide them with  
21 the information and the work that we've already done in  
22 this area.

23 COMMISSIONER CROWLEY: The final bill is AB 3692  
24 by Costa, small hydro, and this was a bill that our  
25 recommendation at this state, with the language of the bill,

1 as it presently is is that Assemblyman Costa not continue  
2 forward with this.

3 CHAIRMAN IMBRECHT: It's Costa.

4 COMMISSIONER CROWLEY: Pardon me.

5 CHAIRMAN IMBRECHT: Okay. I understand the  
6 reasons for that.

7 COMMISSIONER CROWLEY: Then we had one item on  
8 our consent calendar which was AB 2932, the Goggin bill on  
9 outer continental shelf oil development, and our recommenda-  
10 tion was neutral.

11 CHAIRMAN IMBRECHT: Fine. Commissioner Crowley  
12 moves and --

13 COMMISSIONER COMMONS: I haven't finished reading,  
14 since I just got this --

15 CHAIRMAN IMBRECHT: I'm just getting a motion on  
16 the table. Commissioner Crowley moves, Commissioner  
17 Gandara is not present, so I will second the recommendations  
18 of the Legislative Committee.

19 (Pause)

20 CHAIRMAN IMBRECHT: Are you focusing on any  
21 particular bill? I think these are all frankly pretty  
22 noncontroversial.

23 COMMISSIONER COMMONS: Okay. I'm all right on the  
24 first two. I'd like to ask a question, Thom Kelly, have  
25 you reviewed the Terry Goggin bill on natural gas pricing?

1 I noticed that the staff recommendation was to oppose, and  
2 the Committee recommendation is otherwise.

3 CHAIRMAN IMBRECHT: That's a reflection of  
4 Commissioner Gandara's view, isn't it?

5 COMMISSIONER CROWLEY: Yes.

6 CHAIRMAN IMBRECHT: Commissioner Gandara is  
7 pretty knowledgeable on that subject.

8 COMMISSIONER COMMONS: I'd like to understand why  
9 staff was opposed, and why the Committee supports to try  
10 to get a better understanding on this one.

11 MR. KELLY: Staff was opposed to the language  
12 that's currently in because we do -- we prepare a forecast  
13 anyway, and it seemed to be duplicating unnecessarily state  
14 effort in forecasting, since we need it as a part of our  
15 total energy forecast, we forecast gas as a component of  
16 the determination -- in support of determination of our  
17 electricity demand needs, and oil needs, we have to do it.

18 So, since we have to do it anyway, we already  
19 do it, why require the PUC to do it also. On that basis,  
20 we suggested that we oppose it.

21 MR. FUKUMOTO: We were going to take a position  
22 of getting clarification from the author because the bill  
23 merely states that the PUC is to incorporate the natural  
24 gas price forecast into their findings, and if they're  
25 simply going to incorporate, and we already do it, that was

1 the reason for us to seek clarification and to let them  
2 know that we already do these types of things, and we'd be  
3 glad to make such forecasts available to them for their  
4 incorporation.

5 COMMISSIONER COMMONS: Mr. Chairman, it seems  
6 that the staff position is more consistent with your  
7 testimony at this time, and it may be premature to support  
8 the bill the way it's currently written.

9 CHAIRMAN IMBRECHT: We're not supporting it  
10 as currently written, if you look, the recommendation is  
11 support if amended.

12 COMMISSIONER COMMONS: And what is the if amended?

13 CHAIRMAN IMBRECHT: Just what Dennis enunciated  
14 in the last 30 seconds.

15 MR. FUKUMOTO: That we would let them know that  
16 we currently already do such forecasts, that if the PUC  
17 is to incorporate the forecasts into their work, then we  
18 would be glad to make our forecasts available to them for  
19 their incorporation.

20 COMMISSIONER COMMONS: So the position of this  
21 Commission would not be requiring the PUC to make 5, 12,  
22 and 20 year forecasts.

23 MR. FUKUMOTO: Right. Yeah, we would let them  
24 know that we already do this, it would be duplicative for  
25 them to do so, that we will be glad to provide it and work

1 with them so that they can incorporate it into their work.

2 COMMISSIONER COMMONS: That's acceptable to you,  
3 Thom?

4 MR. KELLY: Yes, sir.

5 COMMISSIONER COMMONS: Then I have no problem  
6 on that one. I haven't read the last one.

7 COMMISSIONER SCHWEICKART: Does somebody have  
8 wording on those amendments?

9 COMMISSIONER CROWLEY: Pardon me?

10 COMMISSIONER SCHWEICKART: Did I hear that we have  
11 wording on those amendments?

12 COMMISSIONER CROWLEY: Well, I don't have it with  
13 me, Dennis, did you have wording -- the language --

14 MR. FUKUMOTO: We were going to work with the  
15 author to get clarification. Chris?

16 MR. ELMS: As I understood the Committee's  
17 direction, I'll be drafting a letter to Assemblyman Goggin  
18 outlining our concerns about the bill. The Committee's  
19 direction was that we not write a letter to the Legislature,  
20 or the Committee at this time, but simply to the author  
21 because the author has claimed that this is, in fact, a  
22 spot bill, however, it's now gone through two committees  
23 as a spot bill.

24 COMMISSIONER CROWLEY: My question was, do you  
25 have the text of your letter with the --

1 MR. ELMS: No.

2 COMMISSIONER CROWLEY: Thank you.

3 MR. ELMS: No, I wanted to wait to see what the  
4 final disposition of the Commission was on this.

5 COMMISSIONER COMMONS: I would like to request a  
6 copy of that before it goes out, because the way the bill  
7 is currently written, I would oppose it. The way it was  
8 stated to be amended, that would be consistent with your  
9 testimony.

10 COMMISSIONER CROWLEY: Yes.

11 CHAIRMAN IMBRECHT: I think we do that pretty  
12 consistently where we take a position on legislation where  
13 we oppose unless amended, or -- actually, let me suggest  
14 this. Why don't we change this recommendation to oppose  
15 unless amended, I think that's a little clear way to say it.

16 COMMISSIONER CROWLEY: Fine, that I'm sure would  
17 be --

18 COMMISSIONER COMMONS: In this instance, I think  
19 it's --

20 CHAIRMAN IMBRECHT: Oppose unless amended, and  
21 enunciate the exact reasons that we just mentioned.

22 COMMISSIONER CROWLEY: I think, as I recall, at  
23 the meeting, the reason we chose support if, rather than  
24 oppose unless is because we would be dealing with the  
25 author, and we felt that that was more appropriate language,

1 but we go through this every time, you know, and so whatever.

2 CHAIRMAN IMBRECHT: Yeah.

3 MR. ELMS: We discussed I think almost literally  
4 every possible position on the spectrum on this one,  
5 decided that a support if amended would be a less combative  
6 approach to the bill.

7 CHAIRMAN IMBRECHT: Are we dealing with a former  
8 Commissioner on this?

9 COMMISSIONER COMMONS: Yes, that's what I was  
10 thinking. I prefer your approach, Mr. Chairman.

11 MR. FUKUMOTO: I'm sure he would understand our  
12 situation.

13 COMMISSIONER CROWLEY: So you would prefer oppose  
14 unless --

15 CHAIRMAN IMBRECHT: That's right.

16 COMMISSIONER CROWLEY: Fine, that I'm sure  
17 would be --

18 CHAIRMAN IMBRECHT: So without objection, the  
19 motion with the consent of the author of the motion will  
20 be amended to reflect that change. Is there objection to  
21 a unanimous roll call?

22 COMMISSIONER COMMONS: I haven't read the last  
23 one, I'm up to the last one.

24 CHAIRMAN IMBRECHT: You know, it's --

25 COMMISSIONER COMMONS: I did not get this, Mr.

1 Chairman, I'm sorry.

2 CHAIRMAN IMBRECHT: Okay, fine.

3 COMMISSIONER COMMONS: I thought I did four fairly  
4 fast.

5 CHAIRMAN IMBRECHT: Okay. While you're doing it,  
6 I would --

7 COMMISSIONER COMMONS: I have no objection if  
8 you want to -- while I'm reading this if you want to --

9 CHAIRMAN IMBRECHT: Any further Committee reports?

10 COMMISSIONER SCHWEICKART: Yes. Let me just make  
11 an announcement from the Insulation -- well for the  
12 Buildings Committee but with regard to insulation matters.

13 Confronted with, to put it in fairly dramatic  
14 terms, our limited authority in assuring the public safety  
15 on insulation quality, and in particular inflammability,  
16 where we have the ability to decertify, or do nothing, in  
17 essence, the Committee opted in creative style to design  
18 an intermediate position, namely, to inform all of the  
19 manufacturers of cellulose insulation material that they  
20 -- of their performance, the results of testing of their  
21 insulation materials, and then to inform the community of  
22 buyers of those materials, whether they be utilities, or  
23 RCS programs, or insulation contractors, or whoever, that  
24 each of the manufacturers has been notified of their complete  
25 test results, and they may want to contact their manufacturer

1 for access to those -- to that performance record.

2 But that way we are not releasing testing results  
3 publicly as was recommended to us by the Attorney General  
4 in general state practice, while at the same time we have  
5 provided the direct information to the manufacturers, and  
6 have informed the rest of the world, or will be informing  
7 the rest of the world of the availability of that at their  
8 manufacturer.

9 So those then, who care to provide confidence in  
10 their products to their customers by showing them the  
11 results of the Commission's testing may do so, and those  
12 who do not, have that option, and whatever consequences may  
13 result from that.

14 So that has become an intermediate action that  
15 we've taken to help inform the marketplace while not  
16 violating general state practice.

17 CHAIRMAN IMBRECHT: Good.

18 MR. PEREZ: Chairman Imbrecht?

19 CHAIRMAN IMBRECHT: Yes?

20 MR. PEREZ: There's an additional side in this  
21 area which goes towards protecting already certified and  
22 acceptable products in the business arena. Specifically,  
23 TIMCO has asked whether the Commission might be available  
24 and disposed towards clarifying which of its products are  
25 still marketable, and not questioned at all by Commission

1 review.

2           What I have informed their staff to do is to  
3 prepare a checklist of those materials that they would like  
4 so described by Commission announcement at which point I  
5 would bring it up to the full Commission for consideration.  
6 It's kind of the other side of the coin where we do  
7 decertify products because we find that they fail to meet  
8 state standards, there is a rolling impact that some  
9 manufacturers may be experiencing, which in their mind  
10 could be clarified greatly by the Commission's willingness  
11 to take an affirmative statement as to those products which  
12 are approved.

13           CHAIRMAN IMBRECHT: I think that's an appropriate  
14 action.

15           MR. PEREZ: So I'll continue moving in that  
16 direction without taking any specific action, unless I  
17 hear some strong sentiment against it.

18           COMMISSIONER SCHWEICKART: Well, let me make sure  
19 I understand exactly what we're after here. It's basically  
20 a statement of all currently certified products of TIMCO  
21 to them?

22           MR. PEREZ: Right, a Commission reached statement  
23 and notification to the list that we have notified of their  
24 decertified products.

25           COMMISSIONER SCHWEICKART: Okay, now that's a

1 somewhat different issue.

2 MR. PEREZ: Well, the situation they're getting  
3 into, and this is based only on one phone conversation, is  
4 having to go through an explanation as to what products  
5 are still certifiable and salable in their market, and  
6 then being able to verify that. So what they're suggesting  
7 is the possibility that the Commission announce to those  
8 same lists that these products have not been reviewed by  
9 the Energy Commission, and have not been decertified by  
10 any of our actions.

11 COMMISSIONER SCHWEICKART: Okay. Well, let me  
12 suggest here, Mr. Chairman, that there are several  
13 dimensions to this particular issue.

14 CHAIRMAN IMBRECHT: I understand, I'm going to  
15 withdraw my endorsement of it, now that I understand what  
16 you're suggesting. I would just say that I don't think  
17 we have any obligation to expend public funds to do public  
18 relations work, in effect, on behalf of --

19 MR. PEREZ: Well --

20 CHAIRMAN IMBRECHT: Hear me out just for a moment.

21 MR. PEREZ: Okay.

22 CHAIRMAN IMBRECHT: I do think it's entirely  
23 appropriate that we provide them with a letter, or something  
24 of that nature, or a statement that indicates which products  
25 are still available for sale. To the extent that they want

1 to disseminate that to their retailers, and contracts, and  
2 so forth, that's their own discretionary decision. I  
3 appreciate that competitive things are going on out there.  
4 I've heard something about this as well, but I -- if we  
5 get into a position of that nature, and I can see a  
6 situation where we're going to be sending out an awful lot  
7 of mail at substantial potential expense, and I see a  
8 precedential consideration here.

9 MR. PEREZ: And I'm not making a recommendation  
10 in my capacity at this point in which direction to go. What  
11 would be the --

12 CHAIRMAN IMBRECHT: You're in accord with that,  
13 I assume.

14 COMMISSIONER SCHWEICKART: I am, and let me point  
15 out, Mr. Chairman, that there is one additional dimension --

16 CHAIRMAN IMBRECHT: I misunderstood how this was  
17 first --

18 COMMISSIONER SCHWEICKART: Yes. An additional  
19 dimension which has come to my attention, namely that there  
20 are products which have not been decertified and which, in  
21 fact, were never certified as insulation which TIMCO is  
22 interested in, and has been, frankly, making claims which  
23 come close to, in my view, triggering legal response on  
24 our part.

25 So that I feel that it's important that in any

1 such correspondence, that we indicate those things which  
2 are certified by the Commission, which are currently  
3 certified by the Commission, and only those. There is  
4 some marginally -- well, I think there is some questionable  
5 use by TIMCO of statements by our staff that they have --  
6 that we have not decertified a product which they refer to  
7 as ML-2 cap sheet, which is not an insulation product, and  
8 they have been advertising, or informing people that the  
9 Commission approves that product for sale, and we are in  
10 fact entirely silent on it.

11           It is not a product which we have any authority  
12 over, or any review of, and have never tested it or  
13 anything. So there's some -- we have to be very careful,  
14 I think, about how we do this, keeping with the principle  
15 you stated, but then perhaps being sensitive a bit beyond  
16 that.

17           CHAIRMAN IMBRECHT: All right, fine. We'll await  
18 the recommendation of your Committee. Let me make one  
19 brief announcement myself. This is not directly related  
20 to Committees, but I thought you might be interested in  
21 some of the progress on Northwest Power Issues.

22           At lunch today, we had senior executives from  
23 Pacific Gas and Electric, Southern California Edison,  
24 Western Area Power Administration, and the CPA and SMUD,  
25 I believe that was it. Western Area Power Administration

1 has announced the results of a study on upgrade of their  
2 Cottonwood line which is an AC line of an upgrade between  
3 1,000 and 1,600 megawatts for a cost of approximately  
4 \$220 million, no new right-of-way acquisition, et cetera.  
5 Very extremely encouraging, and the mechanism was established  
6 basically, for full cooperation from our investor owned  
7 and publicly owned utilities with a commitment made by  
8 those senior executives, and I think they're in a position  
9 to make it, for the first time, to try to resolve some of  
10 the long-standing issues that have separated the publics  
11 and the privates.

12 I find this very encouraging news, and I felt  
13 like sharing it with you because I think we're extremely  
14 close now to seeing some ink on a document within the  
15 next couple of months dealing with a major power purchase  
16 for California.

17 I might say, there's tremendous system reliability  
18 advantages of this option as well, since it would be a  
19 third AC line, not within the existing corridors of the  
20 other two, and it also improves the reliability of the DC  
21 upgrade, which Southern California Edison and LADWP have  
22 announced as a joint project coming down through Nevada.

23 Commissioner Commons I know has a substantial  
24 Committee report on electricity report. So that we can  
25 close out the rest of our agenda, and be in the position to

1 move to executive session, let me just try to do the last  
2 couple of items, and then I'll return to you if that's  
3 acceptable.

4 COMMISSIONER COMMONS: It might take only 30  
5 seconds on the legislation to finish that.

6 CHAIRMAN IMBRECHT: Oh, I'm sorry, I forgot  
7 completely.

8 COMMISSIONER COMMONS: Because you have a motion  
9 on the floor.

10 CHAIRMAN IMBRECHT: I'm sorry.

11 COMMISSIONER COMMONS: Was the Committee  
12 recommendation on the hydro that we drop the bill?

13 COMMISSIONER CROWLEY: That's correct.

14 COMMISSIONER COMMONS: I have no further  
15 questions then.

16 CHAIRMAN IMBRECHT: All right, fine. Is there  
17 objection to a unanimous roll call on the motion as  
18 amended, the motion on the Legislative Committee Report,  
19 Item 19, hearing none, ayes 4, noes none. The motion is  
20 adopted.

21 Is there a General Counsel Report?

22 MR. CHAMBERLAIN: Yes. Just one informational  
23 item, Mr. Chairman, in addition to the short item I have  
24 for closed session. One week ago, the California Supreme  
25 Court notified us that they wished to have reargument in

1 the case of County of Sonoma versus the Energy Commission  
2 and PGandE. This is the Geysers 16 transmission line case  
3 which we argued almost two years ago in the California  
4 Supreme Court, and has been held not under submission, but  
5 in some sort of abeyance.

6 CHAIRMAN IMBRECHT: This is the issue as to who  
7 has jurisdiction over the siting in that transmission line?

8 MR. CHAMBERLAIN: The principal issue is probably  
9 the question of whether the Legislature had the authority  
10 to grant the Supreme Court exclusive jurisdiction to review  
11 siting decisions of the Energy Commission. No, this does  
12 not have to do with who has jurisdiction to site the line,  
13 that isn't in dispute in this case.

14 But this case involves Sonoma County's challenge  
15 to our decision to grant permission for that power line to  
16 go forward, and as a principal issue that they raised,  
17 they tried to seek review in the Superior Court. They  
18 recognized that the statute specifically says that if they  
19 had to seek review in the Supreme Court, so they filed  
20 simultaneously in the Supreme Court, and then immediately  
21 moved to dismiss their own case in the Supreme Court on  
22 grounds of lack of jurisdiction.

23 The Supreme Court originally issued a stay against  
24 construction of the line, but two years ago we managed to  
25 get that removed a few days later, and then they heard oral

1 argument on this jurisdictional question, and as I say,  
2 they have simply held it in abeyance since then.

3 At the time, there were a number of justices  
4 who were either leaving the court, or recused themselves  
5 for one reason or another, and we had several pro tem  
6 justices. One possibility is that the -- it appears now  
7 that the full court, with some new justices, will be able  
8 to hear the matter. So that may be the reason.

9 The argument is scheduled for Monday morning.

10 CHAIRMAN IMBRECHT: Doesn't the California  
11 Constitution provide us, as the U.S. Constitution, that the  
12 legislative body has the authority to establish the  
13 jurisdiction of the various courts? That's the check that  
14 completes the circle or the loop, if you will?

15 MR. CHAMBERLAIN: Well, there is --

16 CHAIRMAN IMBRECHT: I'm surprised that there  
17 would be any substantial issue there. I know that's the  
18 case with respect to Congress' relationship with the U.S.  
19 Supreme Court.

20 MR. CHAMBERLAIN: Yes. I think it might be  
21 easiest -- well, basically, there was a case back in 1913  
22 that indicated that the only reason that the Legislature's  
23 grant of original jurisdiction to the Supreme Court of  
24 review of PUC decisions was valid was because there was a  
25 specific provision in the constitution that established the

1 PUC and gave the Legislature plenary authority to establish  
2 powers of the PUC, notwithstanding other provisions of the  
3 Constitution.

4 Since then -- that was dicta in that case, and  
5 since then, that dicta has been substantiall erroded by  
6 a number of other cases. But the theory is, in fact,  
7 separation of powers, and it is in fact that no -- that  
8 the Legislature has no authority to trod upon, or limit  
9 the jurisdiction of a Superior Court unless the Constitution  
10 specifically grants it that authority.

11 Now, with respect to quite a number of different  
12 agencies, the courts have allowed direct review of statutes.  
13 They've never stricken one down, but this was apparently  
14 a fairly -- I mean, the Legislature did think about this,  
15 or Leg Counsel thought about it at the time the statute  
16 was put in. There was some question about it, so within  
17 our own Act, we have a provision that says if that turns  
18 out to be unconstitutional, then there are certain  
19 provisions for review under the Superior Courts that  
20 limit the amount of review that can occur there.

21 CHAIRMAN IMBRECHT: Very interesting. Okay,  
22 thank you. Executive Director's Report?

23 EXECUTIVE DIRECTOR WARD: Well, I'm pleased to  
24 announce that the deficiency bill has passed off the floor  
25 of the Senate, so it's going to be on the Governor's desk.

1 I just signed a request for the Executive Order to give us  
2 our deficiency from that bill so -- hurray.

3 Yesterday I testified on AB 3316 carried for the  
4 Commission by Assemblywoman Gwen Moore, the telecommunications  
5 bill in Ways and Means. It escaped Ways and Means somewhat  
6 narrowly after they gave a former consultant a bit of a  
7 hard time in front of that Committee. But everything went  
8 generally fairly well.

9 The -- let's see, the number of the bill, I  
10 believe it's SB 2225, is Rosenthal R&D bill was put over  
11 until next week, and I understand that there was some  
12 degree of confusion. He was supposed to have waited until  
13 he had his proponents there, including the Commission, and  
14 his consultant called us at about 8:45, and evidently the  
15 Senator had taken it up, really, without anyone being there,  
16 and was having a difficult time.

17 There were some absentees, and so it ended up  
18 getting put over until next week. It was on call all day.

19 CHAIRMAN IMBRECHT: What is the subject matter of  
20 that bill?

21 EXECUTIVE DIRECTOR WARD: It was the Senator  
22 Rosenthal research and development bill, the \$10 million  
23 bill. My concern is that if we lose that bill in the  
24 Senate, we may have a very difficult time with the Naylor  
25 bill in the Senate, and so I'm equally as concerned about

1 the Rosenthal bill as well as the Naylor bill, and there  
2 may be some opportunity to inject our concern about that  
3 to various members of the Senate between now and the next  
4 time Senate Finance meets, and I'll let you know exactly  
5 what the state of affairs is early next week on that.

6 CHAIRMAN IMBRECHT: All right, fine. I spent  
7 some time with Senator Alquist this weekend, so if you want  
8 me to raise it, I will.

9 EXECUTIVE DIRECTOR WARD: Okay, I think that might  
10 be a good idea.

11 The next issue on the schedule for the work plan,  
12 the planning process associated with 84/85 work plan as  
13 well as the 85/86 budget development will be to you next  
14 week. The time line for that -- we're going to try to  
15 combine the fourth quarter review with the work plan. I  
16 think that makes some degree of sense, and I don't think  
17 anyone will have any real serious surprises just having  
18 finished the third quarter review.

19 I think that's about it.

20 CHAIRMAN IMBRECHT: For the record, let me just  
21 mention to Commissioner Schweickart that one of my former  
22 colleagues suggested during the consideration of the  
23 telecommunications bill that this was an effort on my  
24 part to expand empire, and while I, of course, support the  
25 concept, I want the record to show that this was an idea

1 originated by Commissioner Schweickart, and I'll tell you  
2 who that was privately.

3 Is there -- that's the extent of your report.  
4 Is there any member of the public who wishes to comment to  
5 the Commission? Hearing none, Commissioner Commons, we'll  
6 return to you for your Electricity Committee Report.

7 COMMISSIONER COMMONS: First, two short announce-  
8 ments. The Appliance Committee will be having a joint  
9 workshop with the Public Utilities Commission on incentive  
10 programs with Commissioner Grimes representing the Public  
11 Utilities Commission and that will be in San Francisco  
12 on July 9th, and everyone is welcome to attend that, and  
13 we are preparing for that with the utilities and the  
14 industry would have a workshop on June the 8th in Los  
15 Angeles to have the manufacturers and the utilities sit  
16 down and work together in terms of how we can come up with  
17 some incentive programs, and the PUC will also be working  
18 with us at that workshop.

19 Then the Energy Commission is going to be  
20 cosponsoring with the Air Resources Board in the South  
21 Coast Air Basin, Commissioner Imbrecht and myself will  
22 be representing our Commission for the R&D Committee on a  
23 methanol workshop, and that will be on June 29th.

24 On the Electricity Report, the Warren-Alquist  
25 Act specifies that March 15th is the date that the demand

1 and -- the demand forecast and resource plans of the  
2 utilities must be submitted to the Energy Commission. I  
3 have sent a letter to all the utilities specifying that if  
4 we do not receive the information by June 1st, that the  
5 Committee may not consider information from the utilities  
6 in the process.

7 I received a telephone call today from Southern  
8 California Edison stating that they have completed the  
9 information and asking whether or not they should hand  
10 deliver it on Friday, and asking whether it would be  
11 sufficient if they were to hand deliver it on Monday when  
12 they had to be otherwise here, and I felt that was within  
13 the general intent of the letter. So that would be  
14 acceptable.

15 What I want to do, though, today, is ask Thom  
16 Kelly to give a status report on where we stand for the  
17 Commission on the receipt of information and the action  
18 I'm asking the Commission only today is that the Committee  
19 come back to you subsequently in terms of getting an  
20 understanding of what impact this could have on the  
21 Electricity Report, and potentially on the Biennial Report.

22 To give a little background, we made major  
23 modifications to the submittals of the utilities to both  
24 simplify the process and to work with the utilities in  
25 terms of information that one met the following criteria

1 when it was needed by the Commission, second it would be  
2 used by the Commission in the forecasting procedure, third  
3 it was statutorily within our mandate, and fourth, it was  
4 cost-effective to get this information.

5 This resulted in a significant reduction in the  
6 paperwork imposed upon the utilities and I think it's  
7 very sadening to note that 45 days roughly have elapsed,  
8 and as you'll hear from the report, that we certainly  
9 don't have compliance from the -- all five utilities  
10 despite the very major reductions in terms of the paperwork  
11 that we requested from the utilities.

12 What I'd like to do, though, is ask Thom to  
13 present a status report as to where we are on the submittals  
14 and where he expects us to be, and then we'll later come  
15 back in terms of what impacts this could have.

16 MR. KELLY: The sheets you're getting have three  
17 main components. The first is our project status report  
18 summary of the status of utility submittals, the second  
19 two pages represents the hearing schedule that we have  
20 established associated with the time table already developed  
21 by the Committee, utilities and staff, and the third is a  
22 schematic view of major milestones in this hearing or  
23 utility, or staff presentation and Committee decisions.

24 The first page has quite a lot of information on  
25 it, but I can summarize it for you in saying that on the

1 right-hand side, you will see a list of those participants  
2 who have already submitted their requirements, supply and  
3 demand side, Anaheim, Burbank, Glendale, Pasadena, Modesto.

4 Also not on that list, on the right, but is hidden  
5 over in the left buried with the others, is San Diego,  
6 whose information is in. San Diego's demand technical  
7 documentation came in this afternoon, so they are in  
8 compliance.

9 The other utilities, or parties, including DWR,  
10 none has completed all of the information. There's still  
11 outstanding components from each utility. PGandE still  
12 owes us a resource plan, and that's not due until June 1st,  
13 under prior agreements with Committee.

14 LADWP owes us a supply plan also. We understand  
15 from the staff that it has been completed. It has been  
16 completed according to the forms given, but it is now  
17 awaiting their front office final approval before it  
18 gets transmitted to us. So it may or may not get here  
19 June 1, which is tomorrow.

20 COMMISSIONER COMMONS: Excuse me, on LADWP, I  
21 was told on March 15th, it was at the printers.

22 MR. KELLY: We have some informal indications of  
23 what their resource plans are, and they've provided that,  
24 but it's not sufficient information for us to be able to  
25 go through in detail and start working, performing the

1 staff analysis.

2 Commissioner Commons already covered the SCE  
3 submittals, that's both for demand and supply forms. SMUD  
4 still owes us a resource plan and I understand that they  
5 are -- the Board, that is, is going to consider that  
6 resource plan tonight. So it's our estimate that it  
7 probably will not get in tomorrow if there are any changes  
8 to it at all.

9 DWR, through conversations earlier this week with  
10 their analyst preparing these, Gian Hargan, the name may be  
11 familiar to some of you Commissioners who have been around  
12 for a while, a former Energy Commission employee and  
13 resource planner. They have indicated that they are going  
14 to try to make June 1st. they think that they will get  
15 management approval to get it through. If not, it will be  
16 in early next week, they expect.

17 That's the status. We had -- there were a few  
18 exceptions, but in general, we expected the utilities to  
19 turn in the demand forms and the resource plans quite a  
20 bit earlier during the year, and our work plan, and our  
21 whole in fact schedule, the hearing schedule, turn to the  
22 second page, assumed that they would.

23 What's happening now is even today, we're not  
24 sure that all the other information will come in even on  
25 Monday, and to the extent it doesn't come in, that may

1 jeopardize our schedule. We're trying to honor the  
2 schedule. Commissioner Commons has impressed on us the  
3 need to try to honor that schedule as much as possible, and  
4 it just -- it depends -- we may have options down the road  
5 of extending the schedule that we have, or skipping some  
6 components that may not be as critical, there may not be  
7 as much disagreement among staff, utilities and other parties,  
8 and we won't actually know that until we see the resource  
9 plans and know what the issues are.

10 So we can't actually tell what the impact will be  
11 on the schedule until we've had a chance to see what the  
12 plans are, and have them take a look at what our forecasts  
13 and our analyses show. We'll be working on that during the  
14 next few weeks as the resource plans and forecasts come in,  
15 and then we can adjust or not adjust this last schematic  
16 based on that information.

17 CHAIRMAN IMBRECHT: May I ask what justification  
18 do the utilities provide for these delays?

19 MR. KELLY: Management approval in one case,  
20 probably lasting for 60 days or more, reproduction problems,  
21 I say that with a smirk, but I know for a fact that our  
22 Energy Commission reports have been delayed in reproduction  
23 much longer than that, usually long before the deadlines  
24 though, so we manage to meet the deadlines, as we intend  
25 to meet the June 1st deadline tomorrow, but they vary.

1           CHAIRMAN IMBRECHT: But I guess my question, I  
2 mean, reproduction, that doesn't -- these things don't have  
3 to be printed up formally for them to submit them to us,  
4 do they?

5           MR. KELLY: In some cases the utilities do that,  
6 yes, the send --

7           CHAIRMAN IMBRECHT: Well, they may do that, but  
8 couldn't they submit to us a typed version, and then when  
9 they have it in a printed form --

10          MR. KELLY: Well, they've chosen not to do that.

11          CHAIRMAN IMBRECHT: Have we requested it?

12          MR. KELLY: We've requested it, and in some cases,  
13 the utilities have provided us sort of unofficial copies,  
14 but they haven't provided sufficient numbers and --

15          CHAIRMAN IMBRECHT: Do we have any remedies for a  
16 violation of law?

17          COMMISSIONER COMMONS: Yes.

18          CHAIRMAN IMBRECHT: Okay, Commissioner Commons?

19          COMMISSIONER COMMONS: What apparently has started  
20 getting the information is when the letter was sent out  
21 under my signature saying we may not consider information  
22 unless it's submitted by June 1st. Now we're starting to  
23 get information from two of the major utilities, one has  
24 come in today and one is coming in on Monday, or submitting,  
25 and we do have legal remedies which our legal counsel could

1 address, but the one that seems, at least without going to  
2 a court to have some impact, is whether or not the  
3 Committee would consider information if it's not submitted  
4 timely.

5           One of the reasons I wanted to raise this was  
6 I know you, Mr. Chairman, have, you know, gone to the  
7 Legislature and stated that you will have a document at a  
8 certain time, and you've also gone to the administration.  
9 I'm very concerned that we're able to meet your needs in  
10 terms of putting together the BR Report in terms of having  
11 the Electricity Report meet the schedule.

12           So I try to keep the full Commission informed  
13 at every step of the way.

14           CHAIRMAN IMBRECHT: Okay. It seems to me there  
15 is some flex in this schedule, and I appreciate the  
16 information. I guess I would ask to be periodically  
17 apprised of the situation, but my guess is that the  
18 Electricity Report were adopted even as late as the third  
19 week in March, something of that nature, we could probably  
20 still meet the May 1 deadline under the revised BR schedule.

21           Okay, anything further?

22           COMMISSIONER COMMONS: That's it.

23           CHAIRMAN IMBRECHT: Right on schedule. Well,  
24 unfortunately, Commissioner Gandara is not back. We have  
25 an item of the General Counsel for executive session, so

1 I think we'll adjourn to executive session at this juncture.  
2 We've taken care of the public agenda, and then we have a  
3 personnel matter for executive session as well.

4 (Off the record discussion.)

5 CHAIRMAN IMBRECHT: Let's reconvene in my office  
6 at -- what time do you have to leave Commissioner Commons?

7 COMMISSIONER COMMONS: I have a 5:15 plane.

8 CHAIRMAN IMBRECHT: Can you possibly take a  
9 slightly later plane?

10 COMMISSIONER COMMONS: There is another flight  
11 at 8:00 o'clock and I have a dinner engagement.

12 (Off the record discussion.)

13 CHAIRMAN IMBRECHT: The meeting is adjourned for  
14 for executive session, and will adjourn upon conclusion of  
15 the executive session.

16 (Thereupon the business meeting of the California  
17 Energy Resources Conservation and Development Commission  
18 was adjourned at 4:40 p.m.)

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REPORTER'S CERTIFICATE

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2  
3 THIS IS TO CERTIFY that I, Patricia A. Petrilla,  
4 Reporter, have duly reported the foregoing proceedings  
5 which were had and taken in Sacramento, California, on  
6 Thursday, May 31, 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 8th day of June, 1984.  
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