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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION
AUG 24 1984
[RECEIVED IN DOCKETS]

BUSINESS MEETING

1516 NINTH STREET
1st FLOOR HEARING ROOM
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 15, 1984
10:20 A.M.

Reported by: Patricia A. Petrilla

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COMMISSIONERS PRESENT

Charles R. Imbrecht, Chairman
Russell L. Schweickart, Commissioner
Geoffrey D. Commons, Commissioner
Barbara Crowley, Commissioner

STAFF PRESENT

Kent Smith, Deputy Director
Bill Chamberlain, General Counsel
Gary Fay
Ray Hillier
Scott Matthews
Chris Tooker
David Mundstock
Lorri Gervais, Secretary

PUBLIC ADVISOR'S OFFICE

Ernesto Perez

ALSO PRESENT

Tom Campbell, Mineral Insulation Manufacturers Association
A. M. Gharemani, Reflective Insulation Manufacturers Assn.
Harold Tomin, Roy and Sons, Inc.
Michael Hartman, Resident
Bill Huston, California Building Industry Association

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 Pledge of Allegiance
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 Agenda Item 1 - Commission Consideration and Possible Acceptance of a Petition for Rulemaking filed by Mineral Insulation Manufacturers Association to amend Section 1553(b)(2) of the Commission's regulations pertaining to thermal performance standards for foil insulation.
 Ray Hillier - Staff Presentation
 Tom Campbell - Petitioner Presentation
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 Harold J. Tomin, Roy & Sons, Inc.
 Commission Questions and Discussion
 Commission Order
 Agenda Item 3 - Commission Consideration and Possible Acceptance or Nonacceptance of the AFC for the Crockett Cogeneration Project.
 Kent Smith - Presentation
 Scott Matthews - Presentation
 Chris Tooker - Presentation
 Bill Chamberlain - Legal Overview
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 Agenda Item 4 - Consent Calendar
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Agenda Item 8 - (Under Separate Cover)

Agenda Item 9 - Public Comment (None)

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CHAIRMAN IMBRECHT: Will the meeting please come to order. Commissioner Commons, would you like to lead us in the flag salute?

(Pledge of Allegiance)

CHAIRMAN IMBRECHT: Okay, good morning. The work plan items which we will be taking up, we will handle after our luncheon recess in order to accommodate members of the public who are here for the other items. The first item before the Commission today -- excuse me, let me also indicate as a housekeeping matter, that Item No. 2 at the request of the Southern California Gas Company has been postponed until our September 5th business meeting.

The first item before us Commission consideration and possible acceptance of a petition for rulemaking filed by the Mineral Insulation Manufacturers Association to amend Section 1553 Subsection (b)(2) of the Commission's regulations which pertain to thermal performance standards for aluminum foil insulation.

That's a mouthful. Mr. Smith, would you like to open?

DEPUTY DIRECTOR SMITH: I believe Mr. Ray Hillier from the Conservation Division is here to address that. Ray?

CHAIRMAN IMBRECHT: I should note for the record

1 Commissioner Gandara is ill today and will be absent during
2 the session.

3 MR. HILLIER: All right, Ray Hillier, CEC.

4 The Mineral Insulation Manufacturers Association
5 of course has petitioned us to amend our regulations to
6 determine the R-value of aluminum foil insulation, asking
7 us to update the ASTM test method to the 1980 version from
8 1966, which we adopted originally, and in essence are
9 requiring that the description of our test panel will be
10 amended to include structural members.

11 The update of the 1980 version would -- includes
12 language which says that the test panel shall consist of
13 a material which is representative of actual construction.
14 The petitioner is stating that with the inclusion of the
15 structural members within the test panel, this would
16 result in a slight devaluation of the R-values.

17 Their tests of three products with and without
18 structural members indicated that the heat flow on the
19 average would be 28 percent less for heat flow down
20 measurements, and 44 percent for heat flow up measurements
21 with aluminum foil, with the inclusion of the structural
22 members in the panel.

23 I found one instance myself where a product was
24 tested with and without structural members, and there was
25 a similar devaluation, although not as great as the

1 petitioner has found.

2 I feel that the petition has merit. It was --
3 this aspect was also included in a previous petition from
4 Geoscience which was heard on May 16th, which was accepted
5 by the Commission, and I would recommend that this
6 petition be also accepted.

7 CHAIRMAN IMBRECHT: Okay. Are there any
8 questions for Mr. Hillier? I suppose we should hear from
9 the petitioner next, is there a representative of the
10 Mineral Insulation Manufacturers Association present? Is
11 there anything you'd like to add?

12 MR. CAMPBELL: Mr. Chairman, my name is Tom
13 Campbell representing the Mineral Insulation Manufacturers
14 Association who is the petitioner.

15 I think Mr. Hillier's summary pretty well gave
16 you a good synopsis of the thrust of the petition. The
17 prescribed test method in your current regulations is
18 contrary to ASTM procedures, it's also probably somewhat
19 in violation of the FTC regulation on testing of insulation
20 materials, and we're merely asking that this issue be
21 aired, and that the test method be corrected.

22 If you have any specific questions, I'd be
23 happy to try to answer them for you.

24 CHAIRMAN IMBRECHT: Any questions from members
25 of the Commission? Okay. Is there anyone else who wishes

1 to be heard on this matter? Yes, sir, come forward.

2 MR. GHAREMANI: Members of the Commission, my
3 name is A.M. Gharemani, I'm going to present the
4 Reflective Insulation Manufacturers Association.

5 CHAIRMAN IMBRECHT: Could we ask you to speak
6 very directly into the microphone.

7 MR. GHAREMANI: Okay, can you hear me now?

8 CHAIRMAN IMBRECHT: If you'd draw it fairly close
9 to your mouth, it would be appreciated.

10 MR. GHAREMANI: I am here on behalf of the
11 members of the Reflective Insulation Manufacturers Associa-
12 tion. I am here to oppose this petition for several
13 reasons; one of them is I do not know why the Mineral
14 Insulation Manufacturers Association is petitioning here,
15 because if we are violation any of the Federal Trade
16 Commission's rules, FTC should be the one who would petition
17 this Commission, not another association.

18 ASTM has a committee on insulation and they
19 have a subcommittee on reflective insulation. Every March
20 at their annual meeting, the Committee states that they
21 do not have an adequate method for testing the reflection
22 of aluminum foil insulation.

23 The hot box test, they say, is not adequate, but
24 it has been the only thing at our disposal, and that is
25 what we have used up to now. Most of the members of the

1 subcommittee, C-16, reflective insulation members, are
2 the members are of Mineral Insulation Association. The
3 reason is because there are large members, they are a big
4 business, they are powerful, and the members of the
5 Reflective Association, we are very small, we are very
6 few, and we cannot afford to have employees paid and
7 running up and down the country trying to smear other
8 manufacturers.

9 As a matter of fact, the members of the Commission,
10 the chairman of Reflective Insulation Subcommittee of ASTM
11 is a member of the Mineral Insulation Association.

12 California Energy Commission has the model energy
13 code which was provided for the industry with the assis-
14 tance of ICBO, National Research Board and other authorized
15 authorities in this field. Why not use the field perfor-
16 mance test modular, actual constructions.

17 One of the members of our association has done
18 so in two separate occasions with amazing results.
19 Foilpleat Insulation Manufacturer, they have tested two
20 houses side-by-side, under the auspices of Southern
21 California Gas Company and Southern California Edison.

22 One was R-19 fiberglass, and the other was R-19
23 foil. The results have been 68 percent difference in the
24 savings of the gas and electricity. Members of the
25 Commission, I will give you some references, and at your

1 demand, I will provide you with all the reports that I am
2 talking about here.

3 It was mentioned that Geoscience has recommended
4 again, Foilpleat, last summer, under the auspices of ICBO,
5 they commissioned Geoscience laboratories for two actual
6 modules built by independent contractors from their --
7 model energy code, which has been approved by your
8 Commission.

9 The result has been over 30 percent of aluminum
10 foil being better than fiberglass. The problem with that
11 is here, for all these Commissions, the problem is that if
12 we want to do any performance tests, the so-called standard
13 of insulation industry is fiberglass.

14 Fortunately, or unfortunately, fiberglass is not
15 certified by ICBO or National Research Board, but the test
16 methods that the petition says is not correct for
17 aluminum foil were the same test methods that claimed R-19
18 fiberglass has been tested by the same laboratories and
19 the same methods that they are talking about, and their
20 R-19 was at best R-15 and R-16.

21 Members of the Commission, I don't know why
22 people who live in glass houses, they try to throw stones
23 at little boys walking in the streets. If Federal
24 Commission has been violated, as I mentioned before, I
25 think it's the job of the Federal Commission, not the job

1 of the competitive Mineral Association to come and petition
2 this Commission.

3 If -- members of the Commission, as I mentioned
4 before, the Reflective Insulation Association right now
5 has more than one percent of the market of insulation in
6 the country. I don't know why the owners of the 99 percent,
7 they are so scared of that one percent that they are trying
8 to lead to their complete destruction.

9 They have been very successful in doing so. The
10 members of the foil insulation manufacturers, they go
11 broke, and they go under thanks to the big brothers of
12 the Mineral Association every day of the year.

13 CHAIRMAN IMBRECHT: Excuse me, sir, but I wonder
14 if we could ask you to try to focus on the merits of the
15 petition, and whether or not the existing testing method
16 is or is not appropriate.

17 MR. GHAREMANI: This is what I'm trying to do,
18 explain --

19 COMMISSIONER SCHWEICKART: Mr. Chairman, may I
20 suggest an even finer distinction, we really here are not
21 even interested in the substance that you suggest, but
22 rather, is there any basis on which the Commission should
23 not grant hearing the petition.

24 CHAIRMAN IMBRECHT: That's right.

25 COMMISSIONER SCHWEICKART: We are not here dealing

1 with the substance of the petition which you are suggesting.

2 MR. GHAREMANI: Okay, sir.

3 CHAIRMAN IMBRECHT: But I just want to stress
4 that I mean the question of relative competitive roles and
5 so forth is really not a matter that we can take into
6 consideration.

7 MR. GHAREMANI: No, I was just trying to tell
8 you why this petition is before this Commission in the
9 first place, that's the reason, but the method of the
10 testing --

11 COMMISSIONER SCHWEICKART: The local dog catcher,
12 sir, could submit a petition.

13 MR. GHAREMANI: The method of the testing, as I
14 mentioned, the ASTM, they confess themselves that they
15 do not have an adequate testing method for reflective
16 insulation. Our recommendation to the Commission would be
17 to allow, as has been said many times, the field performance
18 test according to your model energy code, to be built
19 by independent laboratories and independent contractors.
20 That would be our solution, that is the test method, and
21 the hot box, this and that.

22 The reason is, because as they say, the proof of
23 the putting is in the second helping, and we got the
24 second helping, thank you.

25 CHAIRMAN IMBRECHT: Okay, any questions.

1 COMMISSIONER SCHWEICKART: Yes, I have one, but
2 it's actually not of the speaker, but rather, I would think
3 of staff, or perhaps Mr. Fay. Would you refresh the
4 Commission's very briefly on the nature of Geoscience's
5 petition which the Commission has already granted? Does
6 it not have a direct relation to this in terms of the
7 test methodology?

8 MR. FAY: Yes, it does have direct relation,
9 although it does not cover this issue with the specificity
10 that the MIMA petition does. But in our view, this
11 subject would come within the range of topics that would
12 be appropriate to deal with.

13 The Geoscience petition focused on three points.
14 One was concern that actual testing in a 2 x 4 configura-
15 tion was not allowed, only testing in 2 x 6, and also
16 whether or not spacers should be allowed between layers
17 of foilpleat to keep them from touching during a test,
18 and what the variation factor should in the test results
19 submitted for certification, should it be 5 percent, or
20 10 percent variation from the specifications in the regs.

21 COMMISSIONER SCHWEICKART: So in the first point,
22 to a certain extent, we are dealing with a similar issue
23 with what's being proposed by Mineral.

24 MR. FAY: That's right. What Dr. Poppendiek was
25 advocating that actual tests that are close to field

1 conditions are worth more than what we were requiring. I
2 think MIMA is getting at the same point, whether it's done
3 in the type of module that Mr. Gharemani is recommending,
4 or whether it's done according to MIMA's wishes, isn't as
5 important as the petitioned opened this subject for
6 consideration and rulemaking.

7 COMMISSIONER SCHWEICKART: Thank you.

8 MR. GHAREMANI: We completely support Dr.
9 Poppendiek's recommendations.

10 COMMISSIONER SCHWEICKART: All right, Mr.
11 Gharemani, you just raised a big question. What is it
12 about the question of 2 x 4 versus 2 x 6 testing in the
13 guarded hot box, raised by Dr. Poppendiek that permits you
14 to support that, but where, let's say intermediate studs
15 are to be included -- how -- what is it that you distinguish
16 between these two issues?

17 It seems to me what we're talking about here
18 fundamentally is the degree to which the statement in the
19 Commission's regulations that insulation should be tested
20 in -- Gary you need to help me here, but I think it's in
21 it's field deployed condition, or something, there's some
22 reference to the way in which it's used, basically, and
23 that the testing should reflect that, would seem to be
24 present in both the Poppendiek petition and the petition we
25 have before us today.

1 MR. FAY: I believe the language is representative --

2 COMMISSIONER SCHWEICKART: Representative.

3 MR. FAY: -- of actual conditions or field
4 conditions.

5 COMMISSIONER SCHWEICKART: Of actual conditions,
6 all right.

7 MR. GHAREMANI: The actual conditions is yes, we
8 completely support the actual conditions of testing under
9 the building conditions, but the petition which is before
10 the Commission is strictly, again, a hot box method of
11 testing, which is not correct in the first place, and ASTM
12 confesses that this is not the correct way of testing.

13 COMMISSIONER SCHWEICKART: Would you agree that
14 there are substantive disagreements between qualified
15 people on this matter?

16 MR. GHAREMANI: Yes, sir.

17 COMMISSIONER SCHWEICKART: All right. It seems
18 to me, Mr. Chairman, that that is exactly the basis on
19 which petitions should be granted when there are legitimate
20 differences between qualified experts on a matter of some
21 substance, and I -- the Committee is ready to recommend
22 that we grant this petition, and essentially dispose of it
23 in an identical way that we did with the Geoscience
24 petition.

25 Namely, that we acknowledge the validity of the

1 petition by granting it, and that we -- until we see
2 something happening with our staffing load, that we withhold
3 an OIH until such time as we're able to deal with it, and
4 I so move.

5 CHAIRMAN IMBRECHT: We're going to have further
6 testimony, you're coming next, don't worry, I see you.

7 COMMISSIONER SCHWEICKART: So I have a motion
8 then on the floor, Mr. Chairman.

9 CHAIRMAN IMBRECHT: All right, fine. Well, let
10 me just ask you to hold it until we hear all of the
11 testimony, and I think that fundamentally you have to
12 understand the Commission's interest, as I say, is not
13 relative to the competitive relationships and so forth,
14 but fundamentally a question of ensuring that the R-values
15 which are certified for insulation which is available in
16 the general marketplace in California are as accurate
17 as possible.

18 We have an obligation to the consuming public
19 to ensure that that's the case. So to the extent to which
20 we grant petitions to modify or improve those procedures
21 should not be looked upon as some type of competitive game
22 that exists between various elements of the same industry,
23 but rather an attempt on our part to reflect what is,
24 indeed, the state of the art relative to testing from the
25 perspective of the consumer.

1 MR. GHAREMANI: Chairman Imbrecht, our opposition
2 to this petition is for the test method prescribed, the
3 236-80 which could not qualify any of the reflective
4 insulations for testing. This is why we in command, as it
5 was in the beginning of the petition, and in Geoscience's
6 petition, to have field performance tests.

7 CHAIRMAN IMBRECHT: May I suggest that in the
8 context of the hearings that will ultimately be conducted
9 relative to both of these petitions, assuming this one
10 is granted, that that's the appropriate place to raise
11 those kinds of considerations. Thank you very much for your
12 testimony.

13 Yes, sir? It's becoming a regular trip for you
14 to come see us every two weeks.

15 MR. TOMIN: And I enjoy coming up too,
16 Commissioner. My name is Harold Tomin, and I represent
17 Roy and Sons, Inc.

18 With all due respect to the position of the
19 Chair and the Commission that competitive aspects are
20 beyond -- is a subject matter beyond the consideration of
21 the Commission in deciding whether or not to grant this
22 rulemaking petition, it's an incorrect position.

23 I was present at the initial wars that led to
24 the adoption of the section of the quality standards that
25 are under consideration today for amendment through the

1 petition process, and we were successful in impressing upon
2 Commissioner Reed that if these considerations were not
3 taken into account that in the promulgation of the quality
4 standards, and then Commissioner Reed carried that position
5 with the whole Commission in those days, that you would be
6 left with one form of insulation in the State of California,
7 and eventually in the country, and that was fiberglass
8 batts, and Rockwool batts.

9 The only way we were able to carry that day was
10 through modification by the quality standards of existing
11 test technology that did not fit products that were of
12 such small market share that specialized tests for them had
13 not been developed, simply because the demand for the
14 product was too small to support that kind of testing
15 effort.

16 That is why the quality standard under considera-
17 tion today is written the way it is written. It was a
18 compromise because nothing existed that fitted foil. There
19 are other such compromises that were made in the quality
20 standards, and there are other such compromises that have
21 been made in the interpretation in evidentiary proceedings
22 before various Committees and the Commission as a whole.

23 One that has been made that is directly applicable
24 here is the use of later versions of the test, provided a
25 showing is made that the test is substantially the same.

1 and that there is no compromise of the standards in using
2 it, and that came out in I believe the TIMCO proceeding,
3 or the Superior proceeding in which my client was a party,
4 in which there was an update of the ASTM E84 fire
5 retardancy test was allowed upon testimony that it was
6 basically just a rewording and refinement of the test
7 procedure, and that the effect on the results would be
8 minimal.

9 So there is a way of dealing with that problem
10 that is raised by the MIMA petition, and that can be done
11 through evidentiary hearings when it is called into account.

12 The second problem with the MIMA petition is the
13 absolutely erroneous assertion that somehow the California
14 standards violate the FTC standards. They just don't.
15 The FTC standards says you use the 236 test, it doesn't
16 say which version of the 236 test.

17 At the time the FTC standards were adopted, the
18 California standards at that point would have been in
19 violation, and nobody has taken the position with respect
20 to this Commission, or at the Federal Trade Commission, as
21 far as I know, that the only other insulation quality
22 standards in this country of 50 states that is the richest
23 in the world is in violation of the federal standards.

24 Now, the heart of my objection to this petition
25 really goes to two things, one of which Mr. Gharemani

1 covered, and that is that 236-80 is no more perfect for
2 foil insulation than 236-66, and that to adopt a rulemaking
3 petition that seeks a rule, a quality standard that names
4 a test that is no great advancement in assuring a perfect
5 objective measure of R-value for aluminum foil seems to me
6 to be a waste of resources.

7 I don't think Dr. Poppendiek's petition covers
8 this. He wants to be able to test in a 2 x 4 cavity, in
9 a 2 x 6 cavity, and in a 2 x 10 cavity. That issue, in
10 a sense, has already been covered with respect to oversize
11 products with respect to the E84 test through administrative
12 interpretation in an evidentiary hearing.

13 Dr. Poppendiek's petition -- and that will come
14 out in a hearing on that petition, but that issue is not
15 involved here. There's a different issue involved here,
16 and it seems to me that once you put on the agenda a
17 petition for rulemaking that requires a devotion of
18 resources, MIMA has won, because these companies don't have
19 the kind of resources, and I have told this Commission many
20 times that on behalf of my client, I would rather be doing
21 other things than participating in either the evidentiary
22 hearings that we've had, the complaint proceedings, or
23 this. To me, there are other things where the dollars
24 spent by my client could be better-- in product development,
25 for instance.

1 Mr. Gharemani has said that the only test for
2 any insulation that is truly representative is one that
3 compares in a building that -- as PGandE and Southern
4 California Gas Company have done.

5 We -- I have here two tests done by Butler and
6 evaluated and enumerated by MRI, and Commissioner Schweickart
7 knows that relationship and has passed on it that that is
8 a valid relationship, in which they got two fiberglass
9 samples from the field, an R-19 and an R-30, Owens-Corning,
10 and they did the test, the C-236 guarded hot box with --
11 in a standardized construction panel, and the differences
12 between that, and the 177, which is the basis of certifica-
13 tion of fiberglass is approximately a third.

14 After they did the C-236-80 guarded hot box
15 test in the standardized panel, they then sent the same
16 sample out to Dyna-Tech for the C-177, the static material
17 test. The static material test came out exactly as the
18 advertised R-value. The C-136-80, guarded hot box, and
19 the 236-80 guarded hot box came out a third less.

20 Now, there is an immutable scientific principal
21 for that. That is, is that the standardized construction
22 panel has its own radiation, conduction and convection
23 properties, and no matter what insulation you put into that
24 standardized panel, the properties of the panel remain
25 exactly the same.

1 So who is MIMA trying to kid here. This is the
2 most elementary logic that has been overlooked by this
3 petition. That is, if there is to be a rulemaking
4 petition, it ought to be a rulemaking petition that looks
5 into the whole R-value question again, not one that seeks
6 to upset the delicate balance of compromises that were
7 made initially.

8 There is no reason to upset that delicate balance
9 of compromises, but there may very well be reason to reopen
10 the whole question of R-value testing and adopt a pure
11 performance standard based on a very simple comparison
12 testing in a modular form.

13 So we object to the rulemaking proceeding, to the
14 rulemaking petition, because it doesn't carry us forward,
15 it carries us back to 1977, and seeks to upset a very
16 delicate balance that was drawn at that time.

17 Therefore, we oppose the petition in its present
18 form. It is not encompassed within Dr. Poppendiek's
19 petition, it opens up a whole new can of worms that is
20 aimed directly at foil, and those considerations are
21 relevant. This state will not be well served by a
22 Commission which adopts regulations that gives a monopoly
23 to one form of insulation. Thank you.

24 CHAIRMAN IMBRECHT: I have a couple of questions.
25 Your contention is that framing members should not be part

1 of the test itself.

2 MR. TOMIN: My contention is that we ought to
3 leave things the way they are unless we change the
4 interrelationships, the balance of relationships, that the
5 balance of relationships that was drawn in 1977 and 1978
6 through many, many hearings, and working with Commissioner
7 Reed, and all these same issues were known then as are
8 known now, I have seen no reason to upset that.

9 Now, there may very well be ways to get "more
10 accurate" R-value readings. But it's ironic, it seems
11 very ironic to me that the portion of the insulation
12 industry, if you can call it a homogenous market that has
13 maybe 85 to 90 percent of the insulation market in the
14 United States is the one looking for more stringent rules
15 for one that has maybe one percent of the market in the
16 United States.

17 I think inquiry into that economic fact is
18 relevant before this Commission decides to grant the
19 petition.

20 CHAIRMAN IMBRECHT: Why?

21 MR. TOMIN: Well, why aren't building officials
22 here?

23 CHAIRMAN IMBRECHT: Our job is not to set
24 standards, but ensure a relative share of the marketplace
25 for a particular segment of the industry.

1 MR. TOMIN: And that's not what we're talking
2 about. What we're talking about is access to the market-
3 place, and I think that regulatory law in the federal
4 arena, and regulatory law in the state arena says that
5 this Commission has to take into account public policy,
6 all public policy in setting this.

7 You know, the same Legislature that set up this
8 Commission and empowered you to enact the quality standards
9 also enacted a California statute called the Cartwright
10 Act which forbids monopolies in this state too.

11 So I think that's as much of the public policy,
12 and not only that, makes it a crime, and a million dollar
13 fine to violate that statute. That sets forth a
14 paramount public policy that has been continually enforced
15 in this state since the early 20th Century when it was
16 enacted.

17 CHAIRMAN IMBRECHT: How many manufacturers are
18 there of fiberglass insulation?

19 MR. TOMIN: Maybe three, four.

20 CHAIRMAN IMBRECHT: There's competitive circum-
21 stances within that -- see, I'm really not persuaded by
22 any suggestion that somehow we have to take into considera-
23 tion Cartwright, anti-trust implications, vis-a-vis
24 setting standards in terms of how we test insulation
25 materials to ensure that the public is getting accurate

1 information.

2 You know, and I might say as well, from my
3 perspective, with all due respect and deference to what
4 may have occurred up to 1977, and there may have been
5 circumstances to negotiate compromises at that time that
6 justified, but I also have to say candidly that if it
7 developed, from my perspective at least, that a given
8 form of insulation was indeed vastly superior and the
9 net impact of our regulations was such to ensure that that
10 form would be the predominant one sold to the public in
11 California.

12 I think we're carrying out our responsibilities
13 with respect to energy issues. You can take your same
14 argument and apply it to the appliance industry for example.
15 Despite the fact that we've come to the conclusion that
16 certain types of room air conditioners, for example, as a
17 practical matter, have been eliminated from the marketplace
18 in California as a consequence of our regulations, some of
19 those are manufactured by small manufacturers, should we
20 in turn amend our regulations to assure that inefficient
21 air conditioners retain a given share of the marketplace?

22 MR. TOMIN: Absolutely not, and I think that --

23 CHAIRMAN IMBRECHT: Well, isn't that what you're
24 in effect suggesting should be the premise behind the
25 decision not to seek the most effective testing approach?

1 MR. TOMIN: Absolutely not. If that's the way
2 I've been understood, then I obviously have not done my
3 job, and just let me have a minute or two more.

4 The petition before this Commission asks for an
5 adoption of the C-236-80 with tests for foil with
6 particular emphasis on the reasonably -- that the test
7 conditions reasonably reproduce installed conditions, that's
8 a paraphrase.

9 What I'm saying is that if indeed we are going to
10 look into the question, and I'm saying that because nothing
11 has changed in the compromises that have been made, and
12 this Commission has seen no powerful evidence to overthrow
13 those compromises, but I'm saying that if we're going to
14 do that, if you're going to grant a petition then let's
15 grant the petition that looks into the whole R-value
16 question of all insulation, because we've got proof right
17 here that the C-177 results in overstated R-values for
18 fiberglass batts, vis-a-vis the C-236-80 guarded hot box
19 test that they want to impose on foil.

20 So what I'm saying is if we want -- if you're
21 bent on instituting a rulemaking proceeding at all on
22 R-values, let's make it a complete one, let's give the
23 whole issue an airing. Maybe the technology today is
24 greater than it was pre-1977 so that more informed and
25 better regulations can be adopted.

1 But let's not single out one insulation when the
2 same conditions, the same exact conditions, and I'd like
3 to make these part of the administrative record too --
4 exist for the people that come in here, and asking for a
5 rulemaking proceeding, carving out foil.

6 I'm not saying let's stifle technology, and
7 let's not have regulations which deny technology, but I'm
8 saying let's apply it fairly across the board, and I hope
9 that clears it up for you Commissioner Imbrecht, because
10 I don't want special treatment, I've never come in here
11 asking for special treatment.

12 CHAIRMAN IMBRECHT: Commissioner Schweickart?

13 COMMISSIONER SCHWEICKART: Mr. Chairman, I find
14 Mr. Tomin's persuasive -- or Mr. Tomin's impassionate
15 presentation to be persuasive of at least one thing, namely
16 that the Committee has not done its job for the Commission
17 here, and I would, in fact, suggest, and I will await your
18 signal for the appropriate time for such motion, but I
19 will suggest that the Committee look further into this
20 matter.

21 I am aware, as the only remaining Commissioner
22 who served during Commissioner Reed's time of the, in fact,
23 delicate balancing act that was performed in adopting
24 regulations for this industry at that time, and I can
25 testify in concurrence with Mr. Tomin's statement that that

1 was a very emotional, hard fought, tough process to reach
2 an agreed upon set of regulations which fairly treated
3 large, small, California, non-California different
4 varieties of insulation.

5 I find it persuasive that in fact, without further
6 looking, that this petition may be going with a rifle
7 bullet into a flock of provisions within the regulations
8 which only taken as a whole provide some equity in the
9 treatment of insulation.

10 I would suggest, frankly, that were we to adopt
11 this, or accept this petition at this time, that Mr. Tomin
12 would have to have rocks in his head not to come back in
13 with his own petition to open up the whole process,
14 assuming, since he's a fairly bright person like me, that
15 he would do that, I would suggest rather, the Committee on
16 denial without prejudice of this motion -- of this
17 petition, review this matter to decide whether or not it
18 is, in fact, appropriate to open up the whole issue of
19 R-value testing in the insulation area.

20 I frankly am not prepared at all today to
21 suggest that that is or is not the case. I am not aware
22 of any great technological advances in the state of the art
23 in these industries which would, on a prima facie basis,
24 argue that that was appropriate.

25 But I think it is incumbant on us to take a look

1 at that, and not to simply, without due consideration,
2 allow specific and narrow challenging of a relatively
3 broad and well balance, or carefully balanced set of
4 regulations. If you wish, I'm prepared to make a motion.

5 CHAIRMAN IMBRECHT: Let's take it right now.

6 COMMISSIONER SCHWEICKART: All right. Well, my
7 motion, contrary to my earlier thinking on this, is to
8 deny this petition. I believe that we do have our 30-day
9 obligation to act today, is that correct Mr. Fay? All
10 right.

11 MR. FAY: Frankly, I'm not sure when the MIMA
12 petition was resubmitted, because it was submitted
13 originally some months ago, and then withdrawn by MIMA
14 to be considered at this time. That was their decision.

15 COMMISSIONER COMMONS: Could I have a point of --

16 COMMISSIONER SCHWEICKART: All right, well let
17 me say, Mr. Chairman, that we have two choices. If, in
18 fact, we are up against a 30-day clock in terms of acting
19 on submitted, duly submitted petitions, then my motion
20 would be, in fact, to deny without prejudice this petition
21 at this time, and an action to the Committee to take a
22 look at this, and review this overall matter.

23 Absent that, I would suggest that the Committee
24 could meet within the next two weeks and we could put it
25 over to the business meeting on September 5th, I believe it

1 is, and I would defer to the Public Adviser, counsel,
2 petitioner, whoever else legally we have to deal with in
3 terms of disposing of the petition.

4 CHAIRMAN IMBRECHT: Well, let me ask a question
5 of counsel. In the event that MIMA would like to see the
6 petition, as I see it here, this was filed May 22nd, and
7 then originally scheduled for the June 20th business
8 meeting, and then I believe MIMA requested it be put over
9 ultimately to today's meeting.

10 I guess my questions would be, in the event that
11 the Petitioner chose to waive time for an additional two
12 weeks, we could leave the petition pending, and that way
13 avoid a denial while the Committee examines this broader
14 issue. Is that an acceptable --

15 MR. FAY: I believe it might have to be three
16 weeks. To answer the earlier question, the MIMA petition
17 was resubmitted on July 31st, so 30 days would be the end
18 of this month. The Commission would still need additional
19 time to be able to hit the next business meeting.

20 CHAIRMAN IMBRECHT: About five extra days. So,
21 I guess we'd ask you, sir, whether you'd be inclined to waive
22 time for some finite period.

23 MR. CAMPBELL: No, Commissioner. I have no
24 problem with extending the time for an additional week
25 beyond the technical 30-day period, or whatever is required.

1 for this to dovetail with one of your regular meetings.

2 CHAIRMAN IMBRECHT: Well, the next business
3 meeting scheduled will be September 5th. Commissioner
4 Schweickart is indicating that his Committee could
5 consider this issue in advance of that, so in effect, we'd
6 be looking at a two week delay for action on this matter.

7 MR. CAMPBELL: MIMA has no objection to that
8 whatsoever. We'd welcome the opportunity to air the whole
9 subject of thermal testing. The important thing, and the
10 reason that our petition might appear to be addressing a
11 problem with a rifle bullet instead of a shotgun is that
12 it was the Commission that modified an existing ASTM
13 procedure, and because of that modification, which is
14 for foil products only, because of that modification, the
15 values that are realized from the modified test are as
16 much as 30 percent different than what they should be if
17 the test had been conducted properly.

18 So our petition is basically asking you people to
19 look into that modified test method and correct it, because
20 it is doing a great disservice to the people of the state
21 who think they're getting something that obviously isn't
22 there.

23 CHAIRMAN IMBRECHT: Okay, I understand the point.
24 Commissioner Commons?

25 COMMISSIONER COMMONS: Commissioner Schweickart,

1 do you think there is a need, perhaps, for your Committee
2 to hold a workshop and thrash out the issues, because it
3 seems there's still a lot there to look at, and it might
4 help the Commission, if that step were taken before we
5 try to make a final action, and that we may need four
6 weeks, not two weeks.

7 COMMISSIONER SCHWEICKART: Commissioner Commons,
8 to be frank about it, my preference would be for the
9 Committee to sit with the staff and review the current
10 situation, and any documents which exist in the literature
11 to make an initial judgment on whether or not it is
12 appropriate to reopen this whole area.

13 My own opinion here is that we will likely find
14 that a narrow opening of this issue is probably not
15 appropriate, absent some exceptional information, which
16 I don't know now to exist.

17 The dilemma that we face here, to a certain
18 extent, is that while in no way suggesting that this
19 instance falls into this category, we fall subject to a
20 situation wherein a set of regulations, especially one
21 which was difficult and controversial in its formulation,
22 may, on almost a nuisance basis, be continually resurrected
23 and relitigated absent any judgment being applied as to
24 whether or not there is any new information, or change of
25 circumstance, or advance in technology, which would

1 invalidate an earlier judgment of the Commission.

2 I don't believe that in fact, on first order,
3 that a public workshop is necessary to discuss that. That
4 almost circumvents the granting -- we might as well grant
5 the petition and go into workshops.

6 So I think the first order of business would be
7 for the Committee to sit with the staff, with the technical
8 staff, and to review the literature and current circumstances
9 and offer a more informed judgment to the Commission on
10 how to deal with this matter.

11 CHAIRMAN IMBRECHT: Okay. I think we can
12 resolve this. For the record, petitioner has waived time,
13 we'll refer this matter to the conservation -- what do we
14 call it, the Building Standards Committee, is that right?

15 COMMISSIONER SCHWEICKART: The Buildings
16 Conservation Committee. My only slight reservation, and
17 it is a nitpicking one, but given the history, frankly, of
18 this industry as a whole, nits often become very large,
19 and I would only ask whether there is any problem, Mr.
20 Chamberlain, with the petitioner stipulating no problem
21 with a regulatory 30-day limit in which I don't believe
22 we have any articulated options for extension.

23 MR. CHAMBERLAIN: I don't believe there's any
24 problem, because I believe the 30-day limitation is
25 directory. There's no specified indication of any relief

1 to be granted. If it's not -- in other words, the
2 petition is not automatically granted if you don't file it
3 within the 30 days.

4 COMMISSIONER SCHWEICKART: Would it, in your
5 judgment, in any way weaken any decision which were to
6 come out of the process if we were to go ahead with this
7 stipulation by Mr. Campbell?

8 MR. CHAMBERLAIN: Not at all.

9 COMMISSIONER SCHWEICKART: All right, fine.

10 CHAIRMAN IMBRECHT: All right, fine. In that
11 case, this matter will be put over to the September 5th
12 business meeting for the recommendation from the Building
13 Conservation Committee. Thank you very much.

14 Item No. 3 is consideration and possible
15 acceptance or nonacceptance of the application for
16 certification for the Crockett Cogeneration Project.
17 This is a question concerning the recommendation of the
18 Executive Director as well as comments from the Applicant
19 and other interested parties.

20 Mr. Smith?

21 DEPUTY DIRECTOR SMITH: Mr. Chairman, the
22 Executive Director was not able to accept the AFC and
23 staff is --

24 CHAIRMAN IMBRECHT: I'm sorry, I can't hear you.

25 DEPUTY DIRECTOR SMITH: The Executive Director

1 was not able to accept the AFC, and staff is available to
2 make a presentation of the findings of their review.

3 CHAIRMAN IMBRECHT: What the deficiencies are.

4 DEPUTY DIRECTOR SMITH: Right.

5 MR. MATTHEWS: Good morning. I'm Scott

6 Matthews, I'm the Regulatory Program Manager for staff.

7 With me is Chris Tooker who is the Project Manager for the
8 Crockett Cogeneration AFC.

9 We are here to request that you adopt the
10 Executive Director's recommendation not to accept the AFC
11 because it does not substantially comply with the informa-
12 tion requirements of our siting regulations. We recommend
13 that the AFC not be accepted until the missing information
14 that's identified on the attached list of the recommendation
15 has been provided.

16 All of that information is necessary for the
17 application to substantially comply with the data require-
18 ments. When all of the information has been filed by the
19 Applicant, we will review it, and the Executive Director
20 will make a recommendation concerning the acceptance of the
21 AFC. The application will be deemed filed on the date
22 when the Commission receives all of the additional data
23 necessary to accept the AFC.

24 I want to just briefly describe our process on
25 how we developed the list of deficiencies. We had the

1 technical staff review the application. They put together
2 a large list of deficiencies. We met with the Applicant
3 in a workshop, and then developed a smaller list that we
4 feel describes what it will take to make the document
5 substantially comply.

6 The criteria we used to develop this list was
7 for any given deficiency that the staff found, in order to
8 make the list, it had to have a valid legal reference, i.e.,
9 it had to be -- there had to be a reference in the
10 regulations or in law.

11 There had to be a significant issue involved, or
12 a fundamental finding had to be involved. In other words
13 there may be something that was required by the regulations
14 but is not in issue in this case because of location or
15 design.

16 Also, we -- one of our criteria was that we
17 need the information in the filing itself, rather than
18 through data requests, so that we can guarantee that we
19 can review the project on time, and that we have enough
20 information to understand the project, and to make a
21 recommendation.

22 Mr. Tooker will briefly go over the history of
23 the case to date, and the list itself.

24 MR. TOOKER: Thank you. On May 8th, we began
25 our involvement in the process to the extent that we had a

1 prefiling workshop with the Applicant, and with consultants,
2 Woodward-Clyde who were working with that Applicant, with
3 Thermonetics. At that workshop, we reviewed our AFC
4 process, both the staff's involvement in that process, and
5 the overall responsibilities and functions of the
6 Commission in reviewing the application.

7 We discussed the data content requirements for
8 filing, and we provided information to the Applicant in
9 specific technical areas. For one, we provided a detailed
10 description of the information we felt was needed in the
11 area of demand conformance and provided copies of other
12 applications which had been submitted in the past.

13 Following that, the Applicant filed their
14 application -- I should say first, we had suggested to them
15 that they might file, or submit to us a draft application
16 for us to review in prefiling, and provide comments to them.
17 However, they felt that given their schedule, that they
18 would file directly, and so on July 16th, they did file
19 the application with the Commission.

20 We then, as staff, took the document, distributed
21 it to agencies, asked for their comments, and conducted
22 our own data adequacy review, and on the 2nd of August,
23 once we had taken an initial look at it, we had a data
24 adequacy workshop.

25 At that workshop, we provided the Applicant with

1 copies of our staff data worksheets which outlined for
2 each specific technical area the deficiencies in the
3 document as reflected by a review of the requirements of
4 Appendix B for nongeothermal projects.

5 We gave -- as I said, we did give them these
6 worksheets, they took them with them so they were fully
7 aware of the scope of the information, the type of informa-
8 tion that we felt was missing and needed to be provided.

9 At that workshop, we also took comments from
10 agencies, both the Air Resources Board, and the Bay Area
11 Air District were there and we subsequently incorporated
12 into our concerns the comments of the Bay Area Air
13 District regarding information they need to complete their
14 evaluation of the project, and issue a determination of
15 compliance.

16 Following that workshop, we went over the data
17 adequacy worksheets of the technical staff and reviewed
18 other information which was provided to us during the
19 workshop and developed the attached list of deficiencies.

20 As you can tell from just hefting it, it's
21 quite extensive. There are probably 15 to 20 areas where
22 we found information to be lacking. I would like to just
23 very briefly touch on those.

24 In the first instance, in the area of demand
25 conformance, although we had provided them with direction

1 on what should be provided, the Applicant felt that he
2 wanted to write his own need section, and ended up writing
3 a section which did not focus on the requirements as
4 provided by the regulations, and so ended up with a demand
5 conformance section that was inappropriate.

6 In a related project, the Gilroy project, they
7 had responded, this being the same consultant, had
8 responded appropriately to our request, and had provided
9 an adequate need section. So we have recommended in that
10 case that the consultant Woodward and Clyde edit and
11 incorporate the Gilroy need section into the Crockett
12 application and they found no problem with that.

13 In socioeconomics, there was information missing
14 on transportation. In cultural resources, they had
15 provided archeological and historic data, but had not
16 looked at the paleontology and ethnographic aspects of the
17 area.

18 In air quality, we found the document overall to
19 be satisfactory, however, there was some information
20 missing which the air district needed to do their
21 evaluation, so we did include that in our list of
22 deficiencies.

23 Biology, the application failed to provide
24 specific information on the presence of rare and endangered
25 species, and potential impacts on those species at present,

1 as well as any proposed mitigation measures.

2 In the soils area, they had adequately treated
3 the power plant site, but had not addressed the soils
4 aspect of the transmission line. We were asking for
5 information on the types of soils along the line, and
6 potential impacts and mitigation.

7 In hydrology we found that there were problems
8 with both water supply and water quality, and they had not
9 identified what those potential impacts might be or how
10 they might be mitigated.

11 In the area of waste, we needed more information
12 on the specific wastes to be produced, and any plans for
13 management of those wastes.

14 In the area of health, we also needed a descrip-
15 tion of the toxic substances, demographic description of
16 the population, health effects, and a discussion of laws
17 in conformance with those laws.

18 In safety, we found a need for a fire protection
19 program, a worker safety, an accident and prevention
20 program, and for a listing of hazardous materials and
21 handling procedures for those materials.

22 In the area of reliability, we found an overall
23 reliability program was missing, and we needed more
24 information on equipment redundancy, quality control,
25 preventative maintenance, and seismic performance criteria.

1 In civil engineering, there was insufficient
2 information, and we needed more information -- essentially
3 there was none, we needed information describing the
4 location and siting of the project, site preparation and
5 construction plans, and scheduling of the project.

6 Engineering geology was also substantially
7 absent. We needed information on geological setting,
8 site conditions, seismic hazards, potential impacts, and
9 the seismic history of the site, as well as the map of
10 the structure, and its location with respect to geologic
11 resources.

12 In addition, we needed plan and profile drawings
13 and foundation loads to assess problems related to geologic
14 hazards. This area is tied to the next one, which is
15 structural engineering, and in that area, they essentially
16 provided nothing, and we will be requiring a very extensive
17 list of information, including design criteria, analytical
18 techniques, performance criteria, and a whole host of
19 technical information on the design of the project, the
20 forces expected, and the loads expected, et cetera.

21 The last area is transmission line. In the
22 area of transmission lines, this project is a little out
23 of phase in that they have not yet defined, or did not in
24 the AFC define the specific transmission line route to
25 be constructed, but they proposed a number of alternatives.

1 However, we need specific information on routing,
2 where the line is going to be, where it's going to inter-
3 connect, what the line itself -- how it's going to be
4 designed, what the conductor sizes are, et cetera, and
5 last of all, a discussion of how they selected that line
6 as opposed to the other six alternatives.

7 So as you can see, we have a very exhaustive
8 list of information which was not provided, and we feel
9 should be to make the document substantially comply with
10 the regulations.

11 CHAIRMAN IMBRECHT: Okay, thank you. I presume
12 that the Applicant is contesting the decision of the
13 Executive Director? No?

14 MR. TOOKER: I was informed that the Applicant
15 would not be present today, nor his consultants. They're
16 fully aware of the scope of the information missing.

17 CHAIRMAN IMBRECHT: Well, then, the real question
18 is, is there any formal action required of the Commission?
19 I mean, this is a delegated responsibility of the
20 Executive Director, and unless we choose to suggest
21 overriding that -- yes, Mr. Chamberlain.

22 MR. CHAMBERLAIN: Yes, Mr. Chairman, let me
23 review the legal situation with respect to this recommenda-
24 tion. Prior to January 1st, 1983, this situation would
25 have been fully covered by Section 1709 of our regulations,

1 which provided that the Executive Director, if he decided
2 to accept an AFC, could accept it on his own.

3 If he decided that it was deficient, he had to
4 make a recommendation to the Commission that the AFC be
5 rejected. After January 1st, 1983, however, an addition
6 was made to the statute, Section 25522, that indicated
7 that the Commission shall determine within 45 days after
8 it receives the application whether the application is
9 complete.

10 We've interpreted that section as requiring the
11 Commission to take action with respect to a nongeothermal
12 AFC. The rules are somewhat different with respect to
13 geothermal. But with respect to a nongeothermal AFC such
14 as this, it's very clear that the Commission has the
15 responsibility, that the Executive Director cannot do it
16 on his own.

17 So, he's making a recommendation to you, and I
18 would think the appropriate action would be to ratify that
19 recommendation in a resolution.

20 CHAIRMAN IMBRECHT: All right fine. Assuming
21 that there's no Applicant present to contest, I guess they
22 accept that decision and are going to be submitting
23 supplementary documents to that, understood, or --

24 MR. TOOKER: Yes, they have in fact already
25 submitted a partial supplement of information, which we

1 received only two days ago and have not had time to
2 review, but it in itself does not constitute, or is not
3 intended to constitute all of the missing information. It
4 only refers to the environmental data, and not to the
5 engineering data that will be required.

6 CHAIRMAN IMBRECHT: When does the 45 days expire?

7 MR. TOOKER: It was filed on the 16th, so it
8 would be roughly the end of August.

9 CHAIRMAN IMBRECHT: So in other words, we have
10 to take action today.

11 MR. CHAMBERLAIN: And let me clarify that if you
12 ratify the Executive Director's determination here, then
13 the 12 month time clock will begin to run from the date
14 that the last piece of information identified in his letter
15 is, in fact, submitted to the Commission. It will not
16 run from the time that the Commission determines later on
17 that that, in fact, did satisfy the letter, but rather it
18 will relate back to the date that that is submitted.

19 CHAIRMAN IMBRECHT: I see.

20 MR. CHAMBERLAIN: So this will come back to you
21 at some point when the Executive Director --

22 CHAIRMAN IMBRECHT: I understand. All right
23 fine, do I hear a motion?

24 COMMISSIONER SCHWEICKART: Yes, Mr. Chairman,
25 I'll move to -- the Commission support the recommendation

1 of the Executive Director.

2 CHAIRMAN IMBRECHT: Do I hear a second? Okay,
3 moved by Commissioner Schweickart, seconded by Commissioner
4 Crowley to ratify the recommendation of the Executive --
5 we'll take further testimony in just one moment, I'm just
6 getting an issue before us.

7 MR. HARTMAN: I realize that, but you seem to
8 have taken an action in which we have an interest, and --

9 CHAIRMAN IMBRECHT: We are just restating the
10 motion from a parliamentary standpoint, and the moment I
11 finish I'm going to ask if there is anyone that wishes to
12 be heard on the matter, okay? I'll be right with you.

13 We have a motion by Commissioner Schweickart,
14 seconded by Commissioner Crowley to ratify the recommenda-
15 tion of the Executive Director to reject the AFC as filed
16 by Crockett Cogeneration. Now, would anyone like to be
17 heard on the matter? Please come forward and state your
18 name.

19 COMMISSIONER SCHWEICKART: Bill, perhaps we
20 should review, what are the options of the Executive
21 Director here in nongeothermal cases. It is either
22 acceptance or denial, or is it conditional -- I mean, what
23 are the --

24 MR. CHAMBERLAIN: The only way that this kind of
25 an AFC can be accepted is for the information to all be

1 submitted, and the Executive Director simply makes a
2 recommendation to you whether or not you should determine
3 that all the information is there.

4 So he has made a recommendation that various
5 things that he has identified are not there. He will
6 come back to you with a recommendation when he feels that
7 they are all there, and then the 12 month clock would
8 run from when the last piece of information arrived.

9 COMMISSIONER SCHWEICKART: So you're saying that
10 the regulations are not specific about the action that can
11 be taken now.

12 MR. CHAMBERLAIN: No, because the regulation was
13 written prior to the statutory change.

14 COMMISSIONER SCHWEICKART: All right. Well, I
15 suppose that I would -- Mr. Chairman, I would move it
16 be denial without prejudice if that makes a difference.

17 CHAIRMAN IMBRECHT: What's the appropriate motion,
18 Mr. Chamberlain?

19 MR. CHAMBERLAIN: The appropriate motion is
20 to accept the Executive Director's recommendation.

21 CHAIRMAN IMBRECHT: Which is to deny.

22 MR. CHAMBERLAIN: To deny -- which is to --

23 MR. MUNDSTOCK: Technically, Mr. Chairman, it
24 would be nonacceptance and the specification of the list of
25 materials that must be provided in order to gain acceptance.

1 COMMISSIONER SCHWEICKART: Well, why don't we
2 just move to accept the Executive Director's recommendation.

3 CHAIRMAN IMBRECHT: Exactly. Moved by
4 Commissioner Schweickart, seconded by Commissioner Crowley.
5 The motion is properly before us. Now, sir, if you'd
6 please state your name for the record, and --

7 MR. HARTMAN: My name is Michael Hartman, I'm a
8 resident of 529 Loring Avenue, directly across from the
9 proposed project. I represent a group of interested
10 neighbors and residents who -- a growing group who have
11 expressed an interest in filing a petition to intervene
12 in the project as so stated, as shown in the proposal.

13 We have a number of concerns. I am concerned
14 about this present motion. Am I correct in understanding
15 that you, in accepting this motion, and recommendation,
16 at the point at which Woodward and Clyde submit the
17 information to your staff, then that proposal has been
18 accepted, is that correct, or is that incorrect?

19 CHAIRMAN IMBRECHT: No, it's not correct.

20 MR. CHAMBERLAIN: No, that's not correct. It will
21 come back to the Commission for a determination that the
22 information that they have submitted meets the requirements
23 of the Executive Director's letter.

24 MR. HARTMAN: Okay.

25 CHAIRMAN IMBRECHT: So in effect, the Executive

1 Director will be back to us with a separate and distinct
2 recommendation at some point, either to once again deny
3 acceptance, or to accept, depending upon compliance.

4 MR. HARTMAN: So let me get this straight,
5 though. There is a 30-day time clock, or I guess a 45-
6 day time clock from which you get the proposal, at which
7 point you have to accept or deny it, but I understood
8 that the 12-month time clock would start going as soon
9 as the information was received, and not at the time at
10 which the Commission would accept the proposal.

11 COMMISSIONER SCHWEICKART: If subsequently we
12 accept.

13 CHAIRMAN IMBRECHT: But just so that you would
14 understand, in the event that we were accepting today,
15 the 12-month time clock would have begun on the date that
16 the entire matter was filed.

17 MR. HARTMAN: Oh, I see.

18 MR. CHAMBERLAIN: No, that's not correct either.
19 In the first instance, the statute provides that if we were
20 recommending to you accepting the AFC, the time clock would
21 from today if you accepted it today.

22 COMMISSIONER SCHWEICKART: Mr. Chamberlain, let
23 me -- or Mr. Chairman, let me make another recommendation
24 here, though, because I pick up here a repetition, if you
25 will, of a situation that we faced earlier, and I would

1 like to recommend that you talk specifically with Mr. Perez,
2 our Public Adviser, and ensure that you're familiar with
3 the basis upon which the Commission's decision to accept
4 or reject will be made, and how your input is appropriately
5 at this phase in the project considered.

6 I would advise you to read those words carefully,
7 because what I fear is you're going to be back before us
8 when we get the next recommendation to accept the project,
9 and feel as though you're going to have -- you're not
10 going to be dealt with fairly at that time.

11 So what I want you to understand is what the
12 Executive Director's responsibilities are in considering
13 your concerns prior to the time that he brings back to the
14 Commission a recommendation on this matter.

15 CHAIRMAN IMBRECHT: Just so you know, I mean,
16 this portion of it is largely a ministerial responsibility
17 and the Executive Director in effect is simply analyzing
18 a checklist of material which must be submitted to ensure
19 that there's a complete application.

20 He's in effect saying to us by this recommendation
21 that that material that should have been submitted was
22 incomplete, and once it is complete, then we really don't
23 have discretion as to whether or not we accept a petition.
24 We must go forward with the process, but then there is a
25 full and lengthy administrative process that provides

1 multiple opportunities for you and any other citizens that
2 wish to participate, either as parties, or simply as
3 members of the public to express your concerns, or objections
4 to the project in total, or individual aspects of it.

5 MR. HARTMAN: We have a number of concerns and
6 there are elements within the report which characterize
7 the nature of our town, and they express opinion of the
8 Applicants as to the unavailability of alternate siting,
9 and mitigation of noise factors, and air quality factors
10 that we don't --

11 CHAIRMAN IMBRECHT: All of those kinds of things
12 are issues that will be a part of the proceeding to
13 consider the total application, and you'll find that as you
14 move through the proceeding, that will be broken down into
15 separate subsections, and you'll have an opportunity to
16 discuss each of those.

17 MR. HARTMAN: Then, is this not the appropriate
18 time for me to speak up in behalf of my neighbors, or --

19 CHAIRMAN IMBRECHT: No, it's really not. I'm
20 sorry --

21 COMMISSIONER SCHWEICKART: But please see
22 Mr. Perez. That's what he gets paid his high salary to do.

23 MR. HARTMAN: Okay, Mr. Perez, is this the
24 appropriate time or not the appropriate time?

25 MR. PEREZ: We can have part 2 of the 50 minute

1 meeting we had this morning prior to the business meeting
2 as soon as this adjourns.

3 MR. HARTMAN: Okay, thank you.

4 CHAIRMAN IMBRECHT: Thank you very much. Okay,
5 fine, is there objection to a unanimous roll call to
6 accept the recommendation of the Executive Director with
7 respect to the Crockett Cogeneration Project? Hearing
8 none, ayes 4, noes none, the recommendation is accepted
9 or ratified.

10 Is there objection to the consent calendar? It's
11 a fairly minor amendment to PGandE Unit 20, it has to do
12 with different ponding requirements. If not, do I hear
13 a motion on the consent calendar? Moved by Commissioner
14 Crowley, seconded by Commissioner Commons.

15 Does anyone wish to be heard on Item No. 4 which
16 is Commission consideration of the amendment to Pacific
17 Gas and Electric Geysers Unit 20 decision requiring two
18 sedimentation ponds. Okay, is there objection to a
19 unanimous roll call? Hearing none, ayes 4, noes none.

20 Any additions or deletions to the minutes as
21 prepared and presented to us? I thought there were some
22 in here -- yes, the minutes of July 18th. Without
23 objection, the minutes are approved as presented.

24 Commission Policy Committee Reports? Any need
25 to be made? Commissioner Commons?

1 COMMISSIONER COMMONS: We've had a request from a
2 group of small California manufacturers of refrigerators
3 and refrigerator components that they be allowed to have a
4 representative on the Appliance Advisory Task Force or
5 Committee, and if there is not objection from the Commission
6 we'd like to include them as one of the members.

7 CHAIRMAN IMBRECHT: Okay, anything further
8 Commissioner Commons?

9 COMMISSIONER COMMONS: I was making a request.

10 CHAIRMAN IMBRECHT: Pardon me, I'm sorry.

11 COMMISSIONER SCHWEICKART: I believe that we
12 would have to take that action consistent with the original
13 establishment of the original Advisory Committee, and the
14 membership thereof, and I'm not sure what that was, frankly.
15 It was a specific motion voted on by the Commission, is
16 that --

17 MR. CHAMBERLAIN: I think that is the contemplation
18 of the breadth of the resolution that established how we
19 would establish advisory committees, and so I would suggest
20 that be put perhaps on the consent calendar for the next
21 meeting.

22 COMMISSIONER SCHWEICKART: I think the important
23 point here is that we're consistent. I certainly have
24 no problem with the recommendation that Commissioner
25 Commons is making, but I think it may be inappropriate at

1 this point, that's my problem.

2 CHAIRMAN IMBRECHT: Does it have to be a
3 noticed agenda item to add somebody to an advisory committee?

4 MR. CHAMBERLAIN: If the Commission is taking
5 action to do it, I believe it does.

6 CHAIRMAN IMBRECHT: All right, fine. Well, I
7 believe that we do have to take action since it was
8 created and the specific membership -- so, all right, fine.
9 Let's add that item to the consent calendar for the
10 September 5th meeting. I'm sure you can go ahead and
11 inform the people that they would be participants.

12 COMMISSIONER SCHWEICKART: Mr. Chairman, the
13 Building Conservation Committee has here for your review
14 a resolution which was prepared to provide Commission
15 support principally in name for a conference being held
16 by the California Solar Industry Association. This was
17 first presented to the Committee just a short time ago
18 with the request for funds to support this conference.

19 That being fairly difficult, since it had not
20 been worked into plans, we asked the staff to look at, if
21 you will, contributions in-kind in terms of mailing
22 services and that sort of thing, to support, and that is
23 now available. Cal SEIA has asked to allow us to
24 cosponsor -- to be listed as a cosponsor of the conference.

25 Given the sensitivity that we've had in the past

1 to this, I felt it was appropriate, even though the in-kind
2 support is being provided, that we bring this before the
3 Commission, and this resolution takes that action.

4 CHAIRMAN IMBRECHT: Moved by Commissioner
5 Schweickart, seconded by Commissioner Crowley, is there
6 objection? Hearing none, ayes 4, noes none. Nice and
7 quick.

8 I believe that concludes --

9 COMMISSIONER CROWLEY: Could we speak to
10 legislation?

11 CHAIRMAN IMBRECHT: Oh, I'm sorry, certainly.

12 COMMISSIONER CROWLEY: The two members of the
13 Legislative Committee --

14 CHAIRMAN IMBRECHT: I'm shocked at what time it
15 is, we're getting finished here. Go ahead.

16 COMMISSIONER CROWLEY: -- received a communication
17 from Commissioner Commons regarding draft legislative
18 language. The Committee has not met, I would like to
19 ask Commissioner Commons if he would care to bring this
20 up at this general meeting so that it could be dealt with
21 by the Commission if it were appropriate, because of time.

22 COMMISSIONER COMMONS: The matter we're referring
23 to is we were taking a look at that petition last week,
24 there was some comments back from Assemblyman Katz as to
25 the labeling requirements on plumbing fixtures and shower

1 heads, and what we wanted to do was to try to have a
2 Commission position in support of deleting that requirement
3 for plumbing fixtures and shower heads, and I believe I
4 provided Commissioner Crowley with specific language on
5 that.

6 COMMISSIONER CROWLEY: That's correct. The
7 recommended language would be to amend Public Resources
8 Code, 25402(c)(2) as follows --

9 CHAIRMAN IMBRECHT: I'm familiar with that, I
10 have no objection to that, and I assume that no one else
11 does, it's rather clear cut, and I don't think we even
12 need a motion, hearing no objection, I think you've got
13 the support from four members of the Commission.

14 COMMISSIONER COMMONS: We probably should have
15 it as a formal motion.

16 COMMISSIONER CROWLEY: Then I would move that the
17 Commission direct the legislative office to seek this
18 language change in the Katz bill.

19 CHAIRMAN IMBRECHT: Seconded by Commissioner
20 Commons. Is there objection to a unanimous roll call,
21 hearing none, ayes 4, noes none, that is the Commission
22 position.

23 Let's see, I think perhaps we'd just briefly
24 report, Commissioner Commons and I met yesterday with
25 Senator Rosenthal, Assemblyman Naylor and have worked out

1 the remaining differences on the high technology research
2 and development bill.

3 COMMISSIONER SCHWEICKART: Is that the
4 Rosenthal/Naylor act?

5 CHAIRMAN IMBRECHT: Yes, it's Mr. Naylor's bill
6 titled Rosenthal/Naylor High Technology Energy Research
7 and Development Act of 1984, and it was a most successful
8 meeting, and we look forward to that being signed by the
9 Governor.

10 In addition, last week, I'll just give you a
11 little report on what's happening on the out-of-state
12 power, Northwest Power negotiations, the first meeting of
13 the new management committee convened under the auspices
14 of Secretary Hodel pursuant to the DOE Appropriations
15 Act which authorizes the Secretary of Energy to supervise
16 the construction of a third AC northwest intertie line,
17 it was conducted in San Francisco, and included roughly
18 20 representatives from the northwest, and a similar
19 number from California, and it was an exceedingly productive
20 positive meeting.

21 The Secretary anticipates reporting to Congress
22 by November 15th as to the actual plans, and we expect to
23 have an agreement in place by that time. He has made
24 very clear that in the event that the parties do not come
25 to a negotiated settlement on the issues of shares of the

1 new intertie, and the relationships of the existing intertie
2 that the Secretary will contemplate instituting a federal
3 rulemaking procedure to impose such a settlement upon the
4 parties, and that obviously is a fairly substantial
5 club that tended to motivate very cooperative discussions
6 during the course of the meeting.

7 We will also be in a position, Commissioner
8 Commons and I will be meeting shortly with the BR Committee
9 to have some further discussions, and we'll make a full
10 report on a BR plan at the next business meeting.

11 I have nothing further on Committee reports,
12 anything else to add?

13 All right, fine, I guess we've got time to go
14 to executive session right now. Commissioner Gandara has
15 indicated to me that the matter which he had raised in
16 executive session he will discuss with each of us
17 individually since he's absent today and does not wish
18 to be raised in executive session today, as I understand it.

19 I believe we have a couple of other executive
20 session items. Is there any member of the public that
21 wishes to offer any comment to the Commission on any
22 subject? Hearing none -- also, is there an Executive
23 Director's Report?

24 Excuse me -- Bill, do you have a comment?

25 MR. HUSTON: I think so.

1 COMMISSIONER SCHWEICKART: Mr. Chairman, let me
2 suggest that Mr. Huston may prefer to make his comment at
3 a later time, I mean, if you're going to provide that
4 option. I mean, he may not, but he may.

5 CHAIRMAN IMBRECHT: Was this in the context of
6 the work plan discussions?

7 MR. HUSTON: Yes.

8 CHAIRMAN IMBRECHT: We're going to take that
9 up right after the luncheon recess, Bill, so --

10 MR. HUSTON: And that will be about 1:00, 1:30?

11 CHAIRMAN IMBRECHT: 1:30.

12 MR. HUSTON: Thank you.

13 COMMISSIONER SCHWEICKART: And additional time
14 will be provided for public comment.

15 CHAIRMAN IMBRECHT: Certainly. Okay, any
16 Executive Director's report?

17 DEPUTY DIRECTOR SMITH: No, both of the items
18 in the Executive Director's Report we will take up at
19 1:30.

20 CHAIRMAN IMBRECHT: Fine. Commissioner Commons?

21 COMMISSIONER COMMONS: I still haven't received
22 the monthly report from the Executive Director's office.

23 DEPUTY DIRECTOR SMITH: That's being prepared
24 right now, and frankly, we are a little bit behind the
25 schedule that we had intended to adhere to, which was to

1 have those distributed at the end of the first week of
2 each month. We just frankly had a little bit of over-
3 loading.

4 COMMISSIONER COMMONS: Is this one going to
5 include a report from the Executive Director's Office,
6 because the one I received last month --

7 DEPUTY DIRECTOR SMITH: That's correct.

8 CHAIRMAN IMBRECHT: Okay. That completes our
9 agenda, we have the other items for tomorrow's session,
10 so we'll recess now. I think it's fairly quick, I assume,
11 so why don't we just go into the small conference room
12 and then come back at 1:30 for the remainder of the meeting.

13 (Thereupon the business meeting was adjourned
14 for lunch at 11:45 a.m.)

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AFTERNOON SESSION

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CHAIRMAN IMBRECHT: Okay. We'll call the meeting back to order.

(Agenda Item 8 - Under Separate Cover.)

CHAIRMAN IMBRECHT: We're adjourned.)

(Thereupon the business meeting of the California Energy Resources Conservation and Development Commission 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 Wednesday, August 15, 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 24th day of August, 1984.
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