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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

CALIF. ENERGY COMMISSION

FEB 1 1985

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BUSINESS MEETING

**1516 Ninth Street
1st Floor Hearing Room
Sacramento, California**

**WEDNESDAY, JANUARY 23, 1985
10:20 AM**

REPORTED BY:

MICKEY BOLAN

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COMMISSIONERS PRESENT

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

EX-OFFICIO

- Bill Foley

GENERAL COUNSEL

- Bill Chamberlain

PUBLIC ADVISER'S OFFICE

- Ernesto Perez

STAFF PRESENT

- Randall M. Ward, Executive Director
- Kathy Weinheimer, Office of General Counsel
- Chris Tooker, Siting & Environmental Division
- Wendell Bakken, Conservation Division
- Scott Matthews, Siting & Environmental Division
- Robert Therkelson, Siting & Environmental Division
- Ross Deter, Siting & Environmental Division
- Sarah Michael, Commissioner Offices
- Kevin Smith, Development Division
- Nancy Peller
- Connie Tatlock, Administrative Services
- Lorri Gervais, Secretary

ALSO PRESENT

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- James D. Samis, Pacific Thermonetics, Inc.
- Jean Melious, Attorney representing Pacific Thermonetics
- Patrick Ritter, Woodward-Clyde Consultants
- Stephen Nelson, Crockett Power Plant Committee
- Edward Denton, Crockett Improvement Association
- Richard Pagni, Crockett Power Plant Committee
- Ruth Blakeney, Crockett Improvement Association
- Pam Puckett Pagni, Crockett Committee to Stop the Power Plant
- Walter Lewis, Crockett Seniors
- Allen Brasesco, Crockett Improvement Association
- Vern Valencia, Crocker Improvement Association
- David Tong, Oakland Tribune
- Ray Tessler, Contra Costa Times
- Robert D. Stallings, California State Employees' Association
- Chris Voight, Association of Staff, Administrative and Financial Employees (SAFE)
- Dennis Alexander, Professional Engineers in California Government (PECG)

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CHAIRMAN IMBRECHT: Good morning. I'm sure Commissioner Commons will be joining us shortly. Mr. Schweickart, would you like to lead us in the flag salute?

(Pledge of Allegiance)

CHAIRMAN IMBRECHT: Thank you very much. Alright, a few housekeeping announcements before we move to the substantive part of our meeting. The first item on our agenda is an Order Instituting Rulemaking to institute a peak wattage standard for air conditioners, has been removed from the agenda as requested. And Item #5 has also been removed. I believe that issue has been resolved because of the fact that's the issue Commissioner Commons had expressed some concern about and that we have directed the Lawrence Berkeley Lab to comment more extensively on the RCS Management Center proposal which we had expressed concern about. So those two items have been removed from the agenda. And pending an opportunity to discuss the item with fellow Commissioner members, I'm going to take Item #3 up later in today's session.

(AGENDA ITEM #2 - Under Separate Cover)

1 CHAIRMAN IMBRECHT: Item #4 - Consideration
2 and Possible Adoption of a resolution setting the dates
3 of regular Commission Business Meetings in 1985. In
4 essence it adopts Commissioner Commons' recommendation
5 of Mr. Gandara's terms of every other week's meeting
6 schedule.

7 COMMISSIONER CROWLEY: Mr. Chairman.

8 CHAIRMAN IMBRECHT: Yes, Commissioner
9 Crowley.

10 COMMISSIONER CROWLEY: In conjunction with
11 that we have an Agenda material deadline for 1985,
12 including a packet which involves a time which certain
13 materials are to be cleared at a subsequent date. And,
14 I have seen this piece of materials for other years
15 and, I guess my question is are we... is this involved
16 (INAUDIBLE)?

17 CHAIRMAN IMBRECHT: I believe all we have
18 noticed for the agenda is the actual setting for the
19 hearing dates.

20 COMMISSIONER CROWLEY: Well, this material is
21 in our agenda...

22 CHAIRMAN IMBRECHT: But, ...I think the
23 appropriate way, excuse me, the appropriate way to
24 handle that would be direction of staff as to...

25 MR. WARD: Commissioner, this is an issue

1 obviously that you and I have discussed and I totally
2 concur that any back-up material should be available by
3 close of business on Wednesday to the Commissioners'
4 offices.

5 Obviously, there going to be extenuating
6 circumstances, materials emulating from a Policy
7 committee that may not be meeting until Thursday or
8 Friday or even a subsequent Monday. So, it's difficult
9 for staff to have total control over items that are
10 under the jurisdiction of a Policy Committee. But,
11 what we will try to do in every instance is be
12 responsive and let you know what is occurring and why
13 there is not back-up material there and then get it to
14 you at the earliest possible date.

15 COMMISSIONER CROWLEY: Oh, I appreciate that.
16 I'm not exactly sure of the appropriate date because it
17 seems to me in some cases they are significantly far
18 ahead of the game. However, I hate to get my hopes up.
19 So, if indeed we do intend to aim for this I'd be
20 grateful. Otherwise, I'd rather not, like I said, get
21 my hopes up.

22 CHAIRMAN IMBRECHT: Well, I think we need to
23 intend to aim. I think as we just saw illustrated,
24 especially with the Crockett item, occasionally
25 external circumstances occur for, in this example,

1 submission of data by the applicants the day before. I
2 guess we could take a hard position that that item
3 would automatically go over under those circumstances.

4 It seems to me that we probably need to
5 exercise a little bit of flexibility and discretion.
6 But, in terms of our staff materials and that type of
7 thing. But, for extenuating circumstances, I think we
8 ought to hold the discussion.

9 MR. WARD: I believe, Mr. Chairman, that's
10 generally been the practice. If staff is preparing
11 some exclusive, anything relative to a Policy Committee
12 or another Commissioner's...

13 CHAIRMAN IMBRECHT: Nonetheless, there still
14 seems to be a recurring pattern of these things
15 occurring. I think that everybody on the Commission
16 sure has concern about that. Commissioner Commons.

17 COMMISSIONER COMMONS: Yes. Thank you, Mr.
18 Chairman. I sent a note to the Executive Office. I'm
19 sorry that they did not include my comments. This item
20 has been raised, I think, by Commissioner Gandara and
21 myself now for a number of months. And, one of the
22 reasons is the schedules to try to avoid conflicts.

23 There are two dates are proposed here where
24 it would create substantial hardship on myself to
25 attend those meetings. On February 20th I am scheduled

1 as a guest speaker at a major conference. I don't if
2 it could be changed. It would not be fair to the
3 people, I think, who have organized it. I believe the
4 day before you are scheduled to speak at the
5 (INAUDIBLE) conference. Yours is on a Tuessay. Mine
6 happens to be on a Wednesday. On April 3rd...

7 CHAIRMAN IMBRECHT: I'm trying to check it
8 out...

9 COMMISSIONER COMMONS: April 3rd, this is the
10 Easter vacation week and I've paid for and will lose
11 twenty-five percent and have not the ability to spend
12 that week with my family. And, I've already scheduled
13 and made reservations not to be at the Commission and
14 to take my vacation during that period. And, I'd like
15 the courtesy of the other members of the Commission of
16 not scheduling meeting dates on days when the
17 Commission, at the time we make that schedule, already
18 could not be there.

19 My recommendation is that we have the next
20 business meeting on February 6th and then we go three
21 weeks to the next business meeting. And, then we go
22 two weeks hence.

23 COMMISSIONER GANDARA: What's wrong with
24 February 21st?

25 COMMISSIONER COMMONS: I have hearings

1 scheduled, which we have rescheduled on February 21st
2 and 22nd which I have rescheduled already once on heat
3 pumps.

4 COMMISSIONER CROWLEY: Don't we have meetings
5 we just---?

6 COMMISSIONER GANDARA: Well, you'd be...the
7 rest of the Commission could adopt a schedule knowing
8 that a Commissioner would not be able to attend and I
9 would think that is not appropriate. That would be my
10 recommendation. And, I did notify the Executive Office
11 of the dates that I had scheduled in conflict part of
12 the time that they put together this notice as per your
13 request that the Executive Office do this. So, they
14 were aware and they didn't write.

15 CHAIRMAN IMBRECHT: Let me just indicate that
16 February as it turns out does pose a problem for myself
17 as well. But, it's been my general inclination,
18 practice I should say, when all members of the
19 Commission for whatever reason are unable to be in
20 attendance that I simply exercise discretion. The
21 regulations provide me in not agendizing controversial
22 items. And to also certainly acquiesce to the request
23 of any Commissioner that an item be put over that they
24 choose to concern -- to express a concern about or
25 joint as an issue. Would that resolve your concerns to

1 some extent?

2 COMMISSIONER COMMONS: Well, I have an
3 alternative. I have an alternative proposal which is
4 that all meetings starting February 20th be pushed back
5 one week. And, I have one period where we have three
6 weeks between meetings. And that actually is not a bad
7 period because we have an awful lot of ER hearings
8 during that month and... With a new commissioner coming
9 on board, I don't think it hurts the Commission to
10 have three weeks between that meeting...

11 COMMISSIONER CROWLEY: You're saying move to
12 the 27th and then have after that every other--?

13 COMMISSIONER COMMONS: Every two weeks.

14 CHAIRMAN IMBRECHT: That means readjusting.
15 So, then that takes care of your April 3rd problem
16 also.

17 COMMISSIONER COMMONS: That takes care of
18 both.

19 COMMISSIONER CROWLEY: It doesn't matter to
20 me. All I want to do is to establish some sort of
21 format so we have some idea more than the meeting
22 previously that there is going...

23 COMMISSIONER COMMONS: Clearly, I concur with
24 you because of the problem...

25 CHAIRMAN IMBRECHT: The difficulty of doing

1 that right now is that either that or we just put the
2 sign over because before I walked down here today.
3 Well, I'll explain why. Before I walked down here, I
4 had already reviewed my calendar. I can tell you that
5 there's only one day and that's February 20th. Current
6 commitments represent a problem. I can't make that
7 same statement to you if all the rest of the schedule
8 moves back a week. I would have to go back and review
9 my calendar again. He certainly can understand that.

10 So, it's either that or I would suggest we
11 adopt this schedule absent the February 20th date. In
12 terms of taking a vacation, we've all missed meetings
13 when we take a vacation from one time to another, it's

14 ---

15 COMMISSIONER COMMONS: I would not schedule a
16 vacation at a time we had a business meeting. I had to
17 -- and if we had to --

18 COMMISSIONER CROWLEY: It had been on the
19 first and third, so I wasn't aware that that would be a
20 problem.

21 COMMISSIONER COMMONS: And I think Easter
22 week is a good time to spend with your family. And if
23 there was a way not to schedule a business meeting that
24 week, that would be my preference. And there's two
25 weeks; and two meetings in a two-month period and the

1 April meetings are fairly important because that's when
2 we will be bringing the ER and the DR before the
3 Commission.

4 CHAIRMAN IMBRECHT: If we were to adopt this
5 schedule, absent both of those dates and on the 6th
6 find alternate dates for them or just scrub the
7 meetings completely, that would give us a chance to go
8 upstairs and consult later on this afternoon or
9 tomorrow.

10 COMMISSIONER COMMONS: Well, what I would
11 like to suggest is before we end today that we take a
12 ten-minute break and let every Commissioner check his
13 schedule.

14 CHAIRMAN IMBRECHT: Commissioner Commons, I'm
15 advised that we have substantial controversy remaining
16 on several items associated with our calendar. As you
17 are aware, there's a commitment that we've made this
18 evening and so forth, so I don't know if we're going to
19 have much chance to take any more recesses today. And
20 I'm not trying to be short with you or anything, I'm
21 just ---

22 COMMISSIONER COMMONS: Or ask your secretary
23 to bring your calendar down because --- I'll make a
24 motion on the alternative. You might want to bolt me
25 down after the meeting; that's your prerogative.

1 CHAIRMAN IMBRECHT: There's really no need to
2 push ---

3 COMMISSIONER COMMONS: I did ask the
4 Executive Office. I did put it in writing. I do not
5 know what further steps I could have taken, Mr.
6 Chairman, than I did. I made it very clear that I had
7 a problem on the case.

8 CHAIRMAN IMBRECHT: I understand. I can see
9 your point about Easter week, frankly.

10 COMMISSIONER GANDARA: I don't have a big
11 scheduling problem. Nobody wants to hear me speak, but
12 if you do move it from the 17th to the 25th, it does
13 conflict with the one thing that I do have scheduled
14 ----

15 (LAUGHTER)

16 CHAIRMAN IMBRECHT: That's what I was afraid
17 of. Exactly ---

18 COMMISSIONER GANDARA: So that I would prefer
19 if we --- Why don't we adopt all the dates here absent
20 the two dates that Commissioner Commons cannot be here
21 and then that gives us time to see if we want to
22 schedule in between there, but ---

23 CHAIRMAN IMBRECHT: By me on February 6th.

24 COMMISSIONER GANDARA: As I understand it
25 Commissioner Commons, you really don't care about

1 slipping all the dates, you just care about not ---

2 COMMISSIONER COMMONS: I have no objection to
3 that recommendation.

4 CHAIRMAN IMBRECHT: I will move and
5 Commissioner Gandara will second, I presume, that we
6 adopt the schedule that's before us, absent February
7 20th and April 3rd. Does anyone wish to be heard on
8 this item?

9 COMMISSIONER COMMONS: Yes.

10 (LAUGHTER)

11 CHAIRMAN IMBRECHT: I'm going to put you in
12 the category of public comment. So without objection,
13 Ayes: 5; Noes: None. That will be the order.

14 COMMISSIONER COMMONS: Now, is there
15 direction to find alternate dates?

16 CHAIRMAN IMBRECHT: Yes, the direction and we
17 will agendize for the next meeting alternate dates for
18 those two meetings.

19 Now, the next item before us is Item 6 which
20 is a Contract for \$2,328,000, with Envirosphere Company
21 for the period of February 6, 1985 through June 30,
22 1986, to provide technical assistance required to meet
23 peak workload requirements related to the review of
24 proposed power plant projects. Mr. Ward.

25 MR. WARD: Yes, thank you Mr. Chairman. Item

1 #6, I think, is generally a familiar item although the
2 specific company may not be. This was an issue
3 discussed in the budget deliberations of the full
4 Commission. It has been discussed with the Budget
5 Committee on numerous occasions. As the item
6 indicates, it's a request for contract services to
7 assist the Siting & Environmental Division as well as
8 the Legal Division, in handling of various
9 extraordinary peak workloads that we're experiencing in
10 that division at this point in time.

11 Both Ross Deter and Bob Terkelson from the
12 Siting & Environmental Division are available to answer
13 any questions or specifically outline the text of the
14 contract for you.

15 MR. THERKELSON: Commissioners, good
16 afternoon. I'm Bob Therkelson from the Siting &
17 Environmental Division. As you recall last July, the
18 Commission approved a budget augmentation request that
19 went forward to the Department of Finance for the power
20 plant siting program. That request was specifically
21 based upon a five-year forecast of the Commission's
22 resource needs to do power plant siting. And our
23 estimate was we would require somewhere in the
24 neighborhood of 50 to 80 positions to do the workload
25 over that period. The request was approved by the

1 Department of Finance and the Governor's Office on the
2 order of 12.5 limited term positions which brought the
3 Commission up to a level of 51.4 positions. They also
4 approved \$1.5 million in contract funds for use in peak
5 workload siting during Fiscal Year 84-85.

6 We have gone through a contractor selection
7 process for that \$1.4 million of those contract monies,
8 and have selected the firm of Envirosphere, teamed up
9 with EBASCO to conduct a complete range of engineering
10 and environmental services to the Commission to work on
11 power plant siting cases. That today is what we are
12 asking you to do is approve the contract: 1) for \$1.4
13 million during this fiscal year to help us with our
14 peak workload problem and 2) also to approve \$1.0
15 million additional for FY 85-86. This additional \$1.0
16 million would be used to complete the services that
17 EBASCO begins in this fiscal year and to handle some
18 additional cases.

19 The \$1.0 million request for next year is a
20 preliminary approval, if you will, because that exact
21 amount is commensurate upon the March change evaluation
22 that we will be going through in a few months during
23 which case then which time the Commission will re-
24 evaluate our siting workload and determine exactly the
25 resource level that we will need to perform the work

1 for next year. At that time, we will be coming before
2 the Commission for a March change request. Then, we'll
3 go over to the Department of Finance to be considered
4 in their budget process. If the amount of the contract
5 is to be changed from the \$1.0 million that we're
6 requesting for FY 85-86 today, we will then come
7 forward with a separate Contract Amendment package to
8 you at the time that the amount is changed.

9 If the contract is approved today, given the
10 expedient response of the control agencies, we should
11 be able to begin the contract and get the contract on
12 board to help us with siting cases starting the first
13 part of February. If you have any questions about the
14 contract, the contractor, or anything else, I'd be
15 happy to answer those.

16 CHAIRMAN IMBRECHT: I will ask you to respond
17 to the peak workload issue at some later date before we
18 conclude this item. Commissioner Commons.

19 COMMISSIONER COMMONS: I have discussed this
20 matter with Ross Deter and I've discussed it with the
21 Executive Director and he thought it was appropriate
22 because of potential litigation that we have an
23 executive session on the issue.

24 CHAIRMAN IMBRECHT: I'm going to suggest that
25 we take testimony first, then briefly recess for an

1 executive session on the item; then come back to that
2 juncture. I think that's probably a better way to
3 handle it. We will have an executive session before
4 moving to resolution of the issue.

5 COMMISSIONER COMMONS: One of the problems I
6 have is I'm not sure that --- I would at least like to
7 after the time we had executive session, retain the
8 privilege of calling back people to testify to our
9 questions.

10 CHAIRMAN IMBRECHT: Absolutely. No question
11 about that. I just think it would better to frame the
12 issue for all of us before we go to executive session.
13 I think probably it would be appropriate to withhold a
14 substantive contract; our comment, excuse me, as to the
15 issue until after that executive session. Is that
16 okay?

17 COMMISSIONER GANDARA: I just have a question
18 for the staff.

19 CHAIRMAN IMBRECHT: Yes.

20 COMMISSIONER GANDARA: Now or later is fine
21 with me. I just had a question. It's my understanding
22 that with the proposal you will thereby encumber all
23 remaining funds that have been authorized, plus
24 potential future funds. And I know that early on, you
25 did want to retain some flexibility and you had a

1 contract with the Cal State Foundation. What has been
2 your experience with that and are you -- I guess by
3 your proposed action here, you have made a decision not
4 to continue with that? You do not wish to have any
5 flexibility in that; I know in diversifying your
6 portfolio doesn't seem to be ---

7 MR. DETER: We have about \$75,000
8 -- somewhere between \$50,000 - \$75,000 at last count
9 that's unencumbered from our budget allocation for this
10 year. The \$100,000 that we contracted with the
11 University system, of that, we have identified about
12 \$68,000 primarily for hiring students for assistance in
13 several different projects. We have been successful in
14 identifying about three professional engineering people
15 to help to testify in some engineering stuff. That's
16 about it. Based on our experience with that contract,
17 I would suspect that contract will not exceed \$100,000
18 in the future.

19 I think it's good for assistance in some
20 areas, but it's not been all that successful in
21 identifying professional level staff for working in
22 siting cases.

23 COMMISSIONER GANDARA: Do you anticipate a
24 continuing need for that level of support though?

25 MR. DETER: Right now, I'd say yes because

1 they are useful in a number of different areas to hire
2 students. For example, biological students and various
3 other areas.

4 CHAIRMAN IMBRECHT: Okay. Speaking in
5 opposition of the contract is Mr. Chris Voight.

6 MR. VOIGHT: Good afternoon. My name is
7 Chris Voight, and I represent the Association of Staff,
8 Administrative and Financial Employees (SAFE). We
9 represent employees in Bargaining Unit 1, which again,
10 are affected by the proposal; the contracting out
11 proposal before you today.

12 COMMISSIONER GANDARA: Excuse me, what is
13 Bargaining Unit 1?

14 MR. VOIGHT: It's one of twenty Bargaining
15 Units in State services. It's made up of admini-
16 strative employees, staff services support employees,
17 accountants, auditors. The same employees that would
18 be providing some of the support services to this
19 project.

20 COMMISSIONER GANDARA: So it's a category of
21 your members that includes a membership beyond Energy
22 Commission? Or it's across State services?

23 MR. VOIGHT: Yes, across departmental lines
24 throughout State services.

25 COMMISSIONER GANDARA: And some of those

1 classifications also happen to be also in the Energy
2 Commission?

3 MR. VOIGHT: Yes, there's about 24,000
4 employees in the Bargaining Unit, a small portion of
5 which are in the Energy Commission.

6 I would like to say first that I really
7 haven't had enough time to adequately review all the
8 aspects of this proposal, but the concept is not new.
9 We are involved in this same issue in other departments
10 and I will have some general comments as well as some
11 specific comments.

12 SAFE is opposed to the contracting out of
13 work normally done by State workers for several
14 reasons: 1) this work of course has traditionally been
15 done by state workers, although as I understand it, in
16 some instances some work has been contracted out. This
17 is really a first for the Energy Commission -- work of
18 this nature has never been contracted out before. That
19 is my understanding; 2) I'd like to say that state
20 workers are generally more familiar with the types of
21 guidelines that site selection will be made by under
22 this proposal. I think that the Energy Commission, by
23 contracting out the work to an independent contractor,
24 loses control over how the work is done and how site
25 selection information is prepared. Also generally, the

1 Merit System was created in part to ensure that an
2 impartial workforce conducts the work that the
3 taxpayers demand in this State and that by letting that
4 work get out to private contractors is an infringement
5 on the principle of merit in the Merit System of State
6 service. Again, contractors are less accountable,
7 although there will be some guidelines, I assume, in
8 the contract on how the work is conducted by its very
9 nature, there's less control by this department and
10 there is a legality question here.

11 As you may or may not know, there are several
12 lawsuits pending against the concept of contracting
13 out. We, ourselves, have a lawsuit pending against the
14 Employment Development Department where the work of
15 auditors, which has traditionally been done by State
16 workers has been contracted out to private consulting
17 firms, CPA firms. We think it's illegal; we don't
18 think it's in the best interest of the taxpayers, and
19 we don't think that the Legislature approves of it.
20 Resolution of that lawsuit has yet to be made.

21 In addition to these comments, I did read
22 over very briefly the proposal prepared by staff. And
23 it seems to me that in every respect, the best
24 alternative before you is to hire the additional
25 permanent staff. It's at least three times cheaper,

1 you retain control over the work product, you know who
2 is doing the work; there's no unknown quantity, and it
3 seems to me that to contract this work out to an
4 independent contractor is perhaps meeting the political
5 goals of the administration, but doesn't meet the
6 immediate needs of this department.

7 We all know that Governor Deukmejian has
8 promised a reduction in the workforce of 5,000
9 personnel years during his first term. And, while this
10 might assist him in meeting those goals, it certainly
11 is not the cheapest alternative available. One of the
12 things we've demanded from departments that insist on
13 contracting out, is proof that it's cheaper. We have
14 yet to see that in any of those departments and here,
15 your own staff has said that it's more expensive. So
16 this work can and should be done by permanent CEC
17 staff. That is the extent of my comments. Thank you.

18 CHAIRMAN IMBRECHT: Mr. Bob Stallings.

19 MR. STALLINGS: Good afternoon. I'm Bob
20 Stallings, a staff member of the California State
21 Employees' Association (CSEA). I'm here today on
22 behalf of 14,000 members of our Fiscal Management and
23 Staff Services Bargaining Unit. We are the exclusive
24 representative. By a vote of those people, we
25 represent about 52% of the people who were eligible to

1 vote in that election. My comments are going to be
2 brief because our position and our concerns are
3 reflected in a letter dated January 22nd, and hand
4 delivered to your Executive Director, Mr. Ward.

5 Because you may have not had the opportunity to review
6 the letter though, let me just state the highlights of
7 that transmission. First of all, this Union recognizes
8 the Government Code that the law provides for
9 contracting out on a limited basis where cost savings
10 can be shown.

11 COMMISSIONER GANDARA: Excuse me, sir. Let
12 me interrupt you. I just want to get this clear in my
13 mind. Are you with the previous gentleman, or are
14 there two separate ---?

15 MR. STALLINGS: No, this is a different
16 organization -- the California State Employees'
17 Association.

18 COMMISSIONER GANDARA: Okay.

19 CHAIRMAN IMBRECHT: Let me understand. There
20 are two different organizations that seek the right to
21 represent Bargaining Unit 1, is that?

22 MR. STALLINGS: No, sir. We are the elected
23 representative of people in that bargaining unit.

24 CHAIRMAN IMBRECHT: Right; then the other
25 one?

1 MR. STALLINGS: Mr. Voight's organization is
2 a new organization; they are competitors of CSEA.

3 CHAIRMAN IMBRECHT: That's the point. I
4 misstated it, but that's the point I was trying to get
5 across. Thank you.

6 COMMISSIONER COMMONS: What's the title of
7 the previous organization?

8 COMMISSIONER CROWLEY: Association of Staff,
9 Administrative Management Personnel.

10 COMMISSIONER COMMONS: Okay, thank you.
11 Please go ahead.

12 MR. STALLINGS: Again I was talking about the
13 recognition the Union has for the State to contract out
14 work where cost savings accrue to the State, or when
15 the services that are required are so specialized that
16 they are not available under State Service.

17 There is a classification within your
18 Commission within the State Civil Service -- the Energy
19 Facilities Siting Planner -- that was established by
20 the State Personnel Board to perform the very function
21 that's being contracted out, or that you are
22 considering being contracted out in this meeting.
23 Because that exists, this union maintains that a
24 contract of this nature is patently illegally.

25 And the argument of peak workload is not

1 cogent in this instance because of a court finding of
2 State Compensation Insurance Fund vs. Riley, where the
3 court found that the true test is not whether the
4 person is an independent contractor or an employee, but
5 whether the services contracted for, whether temporary
6 or permanent, are of such a nature that they could be
7 performed by one selected under the provision of Civil
8 Service. If the service could be so performed, then in
9 our opinion it is mandatory of one such appointing
10 power to proceed in accordance with the provisions of
11 the Constitution and the statute above summarized.

12 So the fact that there may be peak workload
13 is not relevant in this matter. The fact is that that
14 job is currently being done by State employees, by
15 facility planners. It traditionally has been performed
16 as such, and there's no condition in the court that
17 finds it because it is of a temporary nature that that
18 is anyway relevant. I would like to point out to the
19 Commission further that Government Code, Section 19132
20 provides that the State Personnel Board will, upon the
21 request of an employee organization, review any
22 contract that may be proposed.

23 Further that Public Contract Code 10337
24 provides that when an employer organization requests
25 such an investigation, the contract is invalid until

1 the State Personnel Board completes its review. So we
2 bring that to your attention and for your consi-
3 deration.

4 MR. CHAMBERLAIN: Excuse me, sir. Could you
5 give me a citation to the case that you mentioned?

6 CHAIRMAN IMBRECHT: Yes, it's here in the
7 letter to Mr. Ward. It's 9 Cal. 2nd 126, 1937. Thank
8 you. Mr. Dennis Alexander.

9 MR. ALEXANDER: Good afternoon, my name is
10 Dennis Alexander. I'm representing the Professional
11 Engineers in California Government (PECG). I'm here to
12 communicate some of the concerns raised by the CEC
13 staff and brought to our attention regarding this
14 contract proposal.

15 The contract before you appears to be the
16 first of many to come and as such is a disservice to
17 the Commission, the State, the State's taxpayers and
18 ratepayers, the Siting Division staff, and we believe,
19 arguably, illegal. The Budget Change Proposal for
20 Fiscal Year 1985-86 identifies an average workload for
21 the Siting Division as 69 persons with -- I've heard
22 the figure of 12.5; the information I have here is 10.5
23 limited term positions. By the way, I want to qualify
24 some of the comments I'm making today because as
25 earlier statements were made, we just received this

1 information last night as to what the Budget Change
2 Proposal was that was being produced.

3 PEEG earlier had requested this information
4 and had not received it until, like I said, last night.
5 Based on the January 1985 Filing Forecast, the
6 Commission may not be able to adequately process its
7 cases because it does not have enough permanent staff,
8 and instead, anticipates relying on a contractor for
9 more than 50 percent of the Commission's work. Three
10 Commission units are now planning contracting over 50
11 percent of their work. The staff's with contracting
12 staff's independent analysis indicates a cost to the
13 taxpayers and ratepayers of two to five times what the
14 CEC staff could do the same work for.

15 Contracting for public services which could
16 be performed by civil servants is a violation of the
17 California Constitution and the Civil Service laws and
18 it seems unlikely that both the public and the
19 Legislature will approve this once the facts are known.

20 There is a clear need for additional
21 permanent CEC employees. Contracting for an exorbitant
22 percentage of staff resources will eliminate, or at
23 least, reduce promotional opportunities and could
24 establish a precedent of utilizing private contractors
25 to replace Civil Service employees. If the contract is

1 approved, the Technical Siting staff will be
2 responsible for reviewing contractor analysis for
3 quality, completeness, and conformance with the
4 division in Commission Policy. Siting staff may be
5 coordinating so much of the contractor personnel that
6 they will not be performing the technical analysis
7 themselves, and may be working beyond the scope of
8 their duty statements. Employees may be performing
9 Team Leader or supervisory work without compensatory
10 pay, which again is a violation of the Civil Services
11 laws and rules.

12 It's ironic that at a time when the State
13 Engineers' salaries are 25 to 30 percent below public
14 and private sectors' that this contract proposes to pay
15 123% overhead rate in subcontract for two to five times
16 what normal costs would be and yield an inferior
17 product. Coupled with this cost factor, your staff has
18 provided additional difficulties with the contracting
19 with the consultant. In referring to a memo that was
20 produced by Mr. Ross Deter of your staff, and Page 5 of
21 that particular memo -- I think it was dated the 24th
22 of August -- it indicates that ...and these are some of
23 the concerns they had with the master contract. It
24 says it is much more difficult to manage a consultant
25 than a staff. The result could be less timely

1 regulatory products of lower quality and will require
2 more project management by staff. The review process
3 carried out by the CEC staff requires: 1) a clear
4 understanding of the laws and regulations which guide
5 the process; 2) expertise in a large number of
6 technical areas; 3) extensive staff -- legal and
7 management review of products; and 4) flexibility to
8 respond to changing demands of the case schedule.

9 Even though most consultants have the
10 necessary technical disciplines, few if any, are
11 knowledgeable of the Siting laws, regulations and
12 process. Contractors who are knowledgeable frequently
13 work for utilities and consultants which would limit
14 their availability because of conflicts of interest.
15 Any contractor employee would require considerable
16 direction from staff and staff review of products.
17 Contractors would need to be available continuously
18 during the 12-month review process to carry out all
19 tasks required as part of the process. And the figure
20 that they used again is that consulting work will be
21 required twice as much in cost as those done by State
22 employees.

23 There was a question raised earlier by one of
24 your staff members of our organization as to whether we
25 had filed any sort of legal challenge to this matter,

1 and we have not to this point. What I'm asking is for
2 the Commission to disapprove this contract at this
3 time, give us an opportunity to meet with your staff
4 which I think they have an obligation to do under our
5 current contracts and memorandums of understanding, and
6 give us an opportunity to work with you and the
7 Department of Finance in the resolution of this
8 problem. If you have any questions, I'd be ready to---

9 CHAIRMAN IMBRECHT: I think there may be
10 questions after the executive session. Let me just ask
11 only one. I'd like a further clarification of who is,
12 in fact, the rep -- CSEA is the elected representative
13 of Bargaining Unit 1, or yourselves?

14 MR. ALEXANDER: Well, I'm a representative
15 for Unit 9 which is the Engineering Unit. I'd rather
16 let CSEA or the SAFE representative answer that
17 question.

18 COMMISSIONER GANDARA: Just an informational
19 question. Now the other two gentlemen were
20 representing bargaining units of categories of
21 employees of which we have some, but they were across
22 State services. Now are you representing today a
23 category like that that fits many or Energy Commission
24 people who belong your unit or---?

25 MR. ALEXANDER: Yes sir, the Engineering

1 staff.

2 COMMISSIONER GANDARA: At the Commission?

3 MR. ALEXANDER: At the Commission.

4 COMMISSIONER GANDARA: Okay, you indicated in
5 your comments that there were plans for similar
6 contracts for at least three divisions? I thought I
7 heard you say something like that.

8 MR. ALEXANDER: That was in the information
9 that was given to me by some of your staff. I'm sorry
10 I can't be more specific about it at this point.

11 COMMISSIONER GANDARA: Okay, one other
12 question then. How would you distinguish or do you,
13 between this contract, and say contracts that we have
14 had, I think similarly for services like the Technical
15 Services Support contract within the Development
16 Division or with Impel or the CSAC contracts? Where
17 does one draw the line?

18 MR. ALEXANDER: It's my understanding that
19 the contracts that were let previously were for
20 technical expertise of some nature. It wasn't the
21 siting work that was; that is normally done by your
22 State employees here. This was just a specific
23 technical expert witness, I think, is the word that
24 I've heard.

25 CHAIRMAN IMBRECHT: Okay, we'll recess in the

1 executive session.

2 MR. WARD: Mr. Chairman, let me interrupt for
3 just a second. There may not be a need for executive
4 session. I would point out that the issues raised here
5 in deference to the employee organizations that are
6 representing themselves are appropriately raised in
7 front of other administrative bodies in the State and
8 not before you today. The issue before you today is
9 certainly is just the specifically contract, the
10 selection process, the amount and those kinds of
11 things. And I would just simply ask that that be the
12 issue that we address versus the question of legality
13 that we certainly don't want to get into a debate to
14 here today based on any potential future litigation.

15 CHAIRMAN IMBRECHT: Commissioner Commons.
16 I'm going to just caution you before you say anything
17 that if you want to get into any legality, we will meet
18 in executive session. If you defer to the Executive
19 Director's --

20 COMMISSIONER COMMONS: I think I'm okay in
21 what I'm going to say.

22 CHAIRMAN IMBRECHT: Okay. The die is cast.
23 (LAUGHTER)

24 COMMISSIONER COMMONS: Why don't we just go
25 to executive session.

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(LAUGHTER)

COMMISSIONER COMMONS: I knew I was okay.

CHAIRMAN IMBRECHT: We will take a brief recess.

(Thereupon the business meeting of the California Energy and Resources Conservation and Development Commission was adjourned for a fifteen minute recess period at 3:05 p.m.)

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AFTERNOON SESSION

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CHAIRMAN IMBRECHT: I'll call the meeting.

Now I will open it to members of the Commission for any questions they may care to address either to staff or representatives of various employee organizations who have testified. Are there questions?

COMMISSIONER GANDARA: I have questions of the staff.

CHAIRMAN IMBRECHT: Okay, to whom would you like to address them?

COMMISSIONER GANDARA: Mr. Tooker, is that right? Mr. Therkelson. Sorry. Mr. Tooker was this morning. Let me find my questions here. I should say Mr. Chairman that, to some extent, whether or not I ask these questions now would to some extent, be dependent upon whether we make a decision today or not. Otherwise they could be handled off line and we could have some; award some time here. But I do have some questions. Here I am.

The concern that I would like to get some responses to is that in the process -- selection process you indicated that you used, in essence I think was quite fair and open and all that. At the same time, the kind of conclusion you reach at the end is

1 that you sort of really had no choice. There was
2 really one contractor left period. But that's okay
3 because he would probably would've won the contract on
4 technical and cost merits. Okay. So by accepting
5 that, nevertheless, it did seem to me that we did have
6 a situation where there was very limited choice open to
7 you.

8 The questions that I had that I haven't
9 gotten full answers to, and I think it's just a
10 function of time that we have not had enough time to
11 cycle through the responses and obtain that
12 information, is a concern I have over the independence
13 of the information that the Committee -- that the
14 Commission eventually -- but the Committee would be
15 receiving during the siting process. And the questions
16 that my staff relate to you that I got some partial
17 answers to had to do with questions as to who was the
18 contractor. And I had been informed when the
19 contractor (Envirosphere), was selected that it was a
20 subsidiary of EBASCO. And now I'm familiar with EBASCO
21 as a major architectural-engineering firm for a number
22 of utility construction endeavors and that the next
23 question was, was there any conflict of interest which
24 I think you guys properly covered in your bidding
25 conference and so forth.

1 And that the response was, I guess, they currently had
2 no conflict of interest on anything being constructed
3 in California, that there was something that they were
4 involved in but they were not going to continue to be
5 involved in the IBM Cogeneration Plant. But the most
6 recent information I do have is that they are
7 contracted to SCE in San Onofre, is that correct?

8 MR. THERKELSON: According to the information
9 that I received yesterday, one of the divisions of
10 EBASCO has a contract with Southern California Edison
11 to provide two items: to provide some design
12 modifications to the San Onofre project and to provide
13 a demineralization water system for the San Onofre
14 project.

15 COMMISSIONER GANDARA: Okay, the other
16 question that I had that I have absolutely no
17 information on is EBASCO, I guess, is totally owned by
18 Insearch Corporation and again, I was looking to see
19 what corporate involvement Insearch Corporation would
20 have in other kinds of utility vendor-type situations.
21 and I guess there was not sufficient time to get a
22 response to that. But my question is, given the
23 importance of this particular matter whether in fact
24 you do need more time to get more information because
25 to me for a contract of not just of this magnitude, but

1 is sort of important because of the independent
2 information that is to be given to the Commission, I
3 would feel more comfortable knowing a lot more about
4 the various corporate relationships and their project
5 commitments not just to projects in California, but to
6 projects outside of California in which California
7 utilities might be or might not be involved. And again
8 this is not to say that that in itself is any kind of
9 point. But to some extent, I think we have a
10 responsibility to look and see if there's any potential
11 conflict of interest, not just from the organizational
12 point of view, but from the individual employment or
13 utilization of these services.

14 I notice that many of the individuals that
15 are listed in the contract will be working 30 percent
16 of the time, or 40 percent, some 70 percent -- rarely
17 anybody 100 percent. So the result is that I don't
18 know how you are determining that particular situation.
19 I don't know that there are any conflicts. There may
20 not be any, but again my inquiry is more toward the
21 nature of do we know the entire relationship, and the
22 potential conflicts of interest not just with EBASCO,
23 Envirosphere, Insearch and the other projects that they
24 might be involved in? At some point, you really have
25 to draw the line; you can get remote. I recognize

1 that. It's just that I don't seem to have at least
2 enough information at this point in time to be able to
3 make a judgment on that. I don't know whether you're
4 prepared to provide any more information today or not?

5 MR. THERKELSON: No, we know the conflict of
6 interest that EBASCO has -- that Envirosphere has, and
7 as you properly characterize it, the only project that
8 we will potentially be involved with that they had done
9 some feasibility analysis on was IBM small power plant
10 and they have discontinued any further contractual
11 negotiations with the IBM applicant on that and would
12 not be doing any further work for them under contract.

13 We are also aware -- have reviewed all the
14 technical staff both that Envirosphere has and EBASCO
15 has, that would be assigned to the project and know
16 that there is no conflict of interest. They have as I
17 indicated before, gone through EBASCO's portfolio as
18 far as what they're working on and there's no conflict
19 of interest with that one exception that they have that
20 contract on SCE on San Onofre project. They have not
21 done any search on what Insearch's contracts and
22 projects involved are; they've only looked at their own
23 firm and since they're a division of EBASCO, they've
24 looked at EBASCO's. They have not looked at what I
25 assume is the parent corporation, Insearch, to see what

1 kind of relationships. They are doing that right now
2 and won't have that; don't have that completed by this
3 time.

4 COMMISSIONER GANDARA: The next question I
5 had is for your own staff, can you tell me how deeply
6 into your staff from division chief, deputy, office
7 manager, so forth -- does an employee of the Energy
8 Commission have to fill out an FPPC Statement regarding
9 conflict of interest?

10 MR. THERKELSON: I believe it's only down to
11 the office manager level.

12 COMMISSIONER GANDARA: The Office Manager.
13 Will there be work at the office manager level that
14 would be performed by the individuals in this contract?

15 MR. DETER: I'm not clear what you mean.
16 Would they be serving in lieu of an office manager from
17 our division?

18 COMMISSIONER GANDARA: Well, I guess the
19 question that I'm asking is we're going to be
20 contracting for a lot of work. I would imagine in some
21 cases or some siting cases that a lot of it would be
22 performed by people certainly under contractual
23 supervision of the Energy Commission and then through
24 some project manager at Envirosphere. And what I would
25 like to know is whether we have the same kind of

1 disclosure requirements that are transmitted through
2 the result of being contracted with the Energy
3 Commission on people who would be of comparable levels
4 of responsibility in providing that information?

5 MR. DETER: No, the level of personnel in
6 Envirosphere that would be working for us will be the
7 equivalent of the Associate level. There may be a
8 couple of equivalent Senior people; but our Senior
9 people and office managers will perform the quality
10 control work on all the work that the contractor does.
11 So there won't be anybody in the Envirosphere that will
12 be performing the same functions as our office
13 management people do.

14 COMMISSIONER GANDARA: I understand the
15 guarantee of the quality of work. I guess the question
16 I have is with respect to the degree of the disclosure
17 of conflicts of interest which are required upon some
18 of our staff. It would seem to me that one could make
19 an argument both ways. But I'm trying to explore at
20 least in this line of questioning, the independence of
21 the information and presumably what I would like is
22 some degree of independence and freedom from potential
23 conflicts of interest not just at the subsidiary level,
24 but the corporate level, holding company level but
25 probably more important, at the level of which we're

1 going to be provided information. If somebody's going
2 to be working 30 percent of the time on this contract,
3 as the other 40-60 percent free from such conflicts of
4 interest. I don't know. Maybe it will, maybe it
5 won't. I don't know. I'm just wondering whether you
6 feel that's a problem that needs to be addressed,
7 whether it's something you hadn't thought of, or
8 whether--?

9 MR. DETER: I think the Conflict of Interest
10 Statement is more of a legal question. I guess I would
11 defer to Bill to answer that, but I filled out one of
12 the Conflict of Interest Statements -- it generally
13 goes to my interest, my financial interest, etc. in
14 other companies, presumably because I'm a decisionmaker
15 and am making recommendations to the Commission
16 regarding siting of projects for energy companies. The
17 positions that we're hiring under this contract are
18 essentially technical positions, and are not management
19 or decisionmaking-type positions. I understand your
20 concern about conflict of interest, but as far as the
21 statement is concerned, I guess I'd have to go to Bill.

22 MR. CHAMBERLAIN: I would say that according
23 to my own knowledge, the contract does not require a
24 similar type of disclosure for every employee at that
25 level; however, from my understanding, much of the work

1 that we're talking about would be expert witnesses
2 appearing before the committees and giving
3 recommendations. And given that they would be subject
4 to cross-examination and that there would be data
5 requests, any party that wish to explore that issue
6 would have the opportunity to do so.

7 CHAIRMAN IMBRECHT: Further questions?
8 Commissioner Commons.

9 COMMISSIONER COMMONS: Mr. Deter, we are
10 under a case at a 12-month timeline. What happens if a
11 contractor is late or causes us to be late in a case?
12 What are the contract provisions that you've
13 incorporated herein?

14 MR. DETER: Well, the contract will be
15 written for us on a schedule. If the contractor does
16 not perform, we have the option of firing the
17 contractor and picking up the work ourselves.

18 COMMISSIONER COMMONS: I would not consider
19 that satisfactory given a 12-month timeline because
20 there's no way that we could in the middle of that
21 contract, exercise that prerogative and still meet the
22 12-month deadline that, by law, we must follow.

23 MR. DETER: Well, we -- pardon -- We could
24 withhold payment. That doesn't necessarily get to your
25 point either, although it is an option in the contract.

1 The contractor will be working for us under schedule.
2 As you know, the committee identifies the schedule. We
3 will be able to give the contractor information
4 beforehand and ask him to meet those schedules. I
5 guess I can't tell you that there's any guarantee that
6 either my staff or the contractor staff will always
7 meet those schedules. I mean, we do everything we
8 possibly can to do that. We institute proper
9 management controls within the division. I have got
10 -- I overview what the office managers do and the
11 seniors, and so forth and so on.

12 So we normally know when there may be a
13 problem with schedule before we get to the point to
14 where we're not going to deliver. And in that case, we
15 go to the committee and say we've got a problem; here's
16 these conflicts; we're not going to deliver; we're
17 basically at your mercy. What do we do? Or, we can re-
18 prioritize other work to come up with a delivery of
19 that particular case. But many times that, obviously
20 as you know, conflicts with other power plant siting
21 cases that are in the Commission. So it's a matter of
22 juggling the work of the Commission and it will be
23 juggling of the work for the contractor. The
24 contractor has assured to us, and it's one of the
25 criteria in choosing this contractor that they would

1 meet the schedules. And I -- that's my statement. If
2 you have anything in mind specifically that we could
3 do, we would certainly entertain it.

4 MR. THERKELSON: One of the things we will be
5 doing, we will maintain our project management control
6 over every project, whether our staff does it or the
7 contractor does it. We will be maintaining close
8 communication with the contractor in terms of their
9 supervisory staff to make sure that they are on
10 schedule, that they know what the schedules are, the
11 products are, and we'll have intermediate milestones to
12 make sure that they are on track.

13 We also will be having our staff, not only
14 working with them in a training capacity, but also in a
15 quality control capacity. So again, we have check not
16 only where they are, but the quality of their work that
17 is going to be done and delivered on time. So internal
18 management procedures I think will take care of most of
19 your concerns.

20 COMMISSIONER COMMONS: I'll restate, I do not
21 find that provision satisfactory and in normal
22 contracting proceedings where time is of essence, there
23 are a number of ways of accomplishing that objective
24 which I won't enter into. But let me go to Page 3---

25 CHAIRMAN IMBRECHT: Can you give us a couple

1 examples of what those are?

2 COMMISSIONER COMMONS: Well, in contracting
3 there's a bonus for being on time and there's a penalty
4 for being late. Now withholding just means ---

5 MR. DETER: I've never seen a State contract
6 like that.

7 COMMISSIONER COMMONS: Withholding of funds
8 is whether -- a question as to performance and being
9 --- how they work for a consulting firm, I have
10 participated in these types of discussions where there
11 are a lot of changes and circumstances that occur. And
12 it's very difficult situation for a contractor or
13 consultant. And having been on the other side of the
14 fence most of my life, I'm very sensitive to their
15 -- I'm also very sensitive to argue a need problem
16 where we have a timeline to follow and, unless you make
17 that clear as part of the contract---

18 CHAIRMAN IMBRECHT: Let's make an inquiry
19 because I'm not familiar with bonuses being provided to
20 State contracts; penalties, yes. But, Mr. Chamberlain
21 is that something we have the ability to? --- Because
22 that could be used to get the public---

23 MR. CHAMBERLAIN: I don't think I could give
24 you a definitive answer today. My sense is no, you
25 can't, you probably would not be allowed by control

1 agencies to pay a bonus. You could include a
2 liquidated damages clause or penalty clause of some
3 sort, but of course the difficulty then, becomes
4 proving whose fault it was.

5 COMMISSIONER COMMONS: Alright let me go on
6 here. On Page 3, you list those projects which we
7 based our need for this year. Could you give us an
8 update as to which ones of these are likely to occur by
9 June 30th?

10 MR. DETER: Yes, IBM. We've been told that
11 IBM will come in in February as a small power plant
12 exemption. Gilroy Foods is here; was accepted in
13 September of '84. Sander MSW, our latest information
14 is that will be submitted to us in May of '85.
15 Irwindale Project is in the process of meeting their
16 data adequacy obligation at the present time.

17 CHAIRMAN IMBRECHT: I've been informed that
18 they will deliver it on Friday.

19 MR. DETER: Yes, in fact I just got a copy of
20 the addendum. I believe that will be heard by the full
21 Commission on February 6, 1985. The Argus Project is
22 anticipated to come to us in May of '85. We've been
23 told by the applicant. The Sycamore Cogeneration
24 Project in Kern County was accepted on January 9th.
25 The San Francisco Municipal Solid Waste Project is

1 anticipated to come in in June of '85. The Geysers
2 Building Power Line as you know is ongoing at the
3 present time. Cold Water Creek Geysers are both
4 ongoing. Crockett was considered today by the
5 Commission. The San Ardo Cogeneration Project should
6 be struck, both 1 and 2 should be struck and you can
7 replace those with a Salinas Project which will be a
8 small power plant exemption which we have been told we
9 will receive in February of '85. We will have another
10 project we will call the Spreckles Project, also a
11 small power plant exemption for February of '85,
12 Thermally Enhanced Oil Recovery (TEOR) Cogeneration #1
13 Kern County has been replaced by the Bakersfield
14 Thermal Enhanced Oil Recovery Cogeneration Project. We
15 have been told that we will receive that in May of '85;
16 we were told that last Friday as a matter of fact. The
17 last Thermal Enhanced Oil Recovery Cogeneration #2 Kern
18 County can be struck and that is being replaced by a
19 project called the Champlin Project -- that's an oil
20 refinery in the Los Angeles area; and we've been told
21 we would receive that in May of '85. And one
22 additional project we've heard about-- that will be for
23 Long Beach Thermal Enhanced Oil Recovery Project.
24 We've been told that would become an application in
25 April of '85. That is the most current information.

1 COMMISSIONER COMMONS: The last one was May
2 of '85?

3 MR. DETER: April of '85.

4 COMMISSIONER COMMONS: Maybe the Executive
5 Director can help me a little bit here. We went to
6 -- this Commission took an action and made a budget
7 request for a certain number of people; then Finance
8 came back and offered us a certain number of people and
9 a certain number of dollars. Now, did we ever take an
10 action as a Commission on that? What is the -- has
11 that ever -- I know we made a recommendation and it
12 went to Finance and it just came back to us. Did it
13 ever come before the Commission or this is just the set
14 of rules that we're living under?

15 MR. WARD: I don't believe that that specific
16 issue came before the full Commission. Obviously a
17 general issue of siting ---

18 CHAIRMAN IMBRECHT: I made a report to the
19 Commission as to the action that Finance was
20 recommending to the appropriate legislative Budget
21 Committees with respect to our request as Presiding
22 Member of the Budget Committee. Basically what
23 happened was we did make a request to Finance. Finance
24 ultimately disposed of that request by virtue of, as
25 you indicated, as responding as I would recall in

1 excess of 50 percent of our PY request.

2 COMMISSIONER COMMONS: This Commission then
3 has never taken an action to say that we would like to
4 contract out \$1.6 million or incorporated that in the
5 budget that we made a recommendation for. This is
6 something that's before us for the first time?

7 CHAIRMAN IMBRECHT: Well, my recollection ---

8 COMMISSIONER COMMONS: I'm trying to trace
9 back.

10 CHAIRMAN IMBRECHT: My recollection is that
11 our proposal that we submitted to Finance offered in
12 essence options. We said this is what we need in the
13 way of PY, and/or a combination of contract dollars.
14 And Finance ultimately in essence accepted a portion of
15 each request. As has been accurately represented, we
16 try to represent to them the ups and downs of both sets
17 of approaches. And one of the things we made very
18 clear was that contract dollars alone were absolutely
19 inappropriate, a point Mr. Deter made very strongly in
20 a memorandum since it was essential that we had
21 adequate staff to manage any contract services that
22 would be provided. And we would not, the Commission
23 would not, find it acceptable to have a situation where
24 this service were being provided exclusively through
25 the contract process without oversight by the Control

1 Staff.

2 MR. DETER: In the '84-'85 BCP we did
3 propose, the Commission proposed, to the Department of
4 Finance to have -- we requested additional positions as
5 well as \$2.0 million in contract funds. That basically
6 initiated the discussions with the Department of
7 Finance which resulted in the 12.5 limited term
8 positions and the \$1.5 million.

9 COMMISSIONER COMMONS: That's my recollection
10 is that we made a request both for funds and for people
11 and I was trying to-- I think it's important to trace
12 that this Commission has taken some action; some
13 initiative previously on this issue and that there is
14 some record. I just wanted to bring that out.

15 MR. DETER: I believe Commissioner, it's
16 always been subject to discussions in quarterly review
17 and certainly contract status during the quarterly
18 review discussions. It's also been a subject included
19 on the Monthly Reports that you receive on the
20 allocations.

21 COMMISSIONER COMMONS: I have some discussion
22 items, but I'll wait until we get to that phase of the
23 discussion.

24 CHAIRMAN IMBRECHT: Okay, further questions
25 or comments? Commissioner Gandara.

1 COMMISSIONER GANDARA: One further question.
2 Since we originally had I think \$1.4 million available,
3 then this contract is that in the anticipated \$1.4
4 million roughly? Is there any, what is the necessity
5 of doing that?

6 MR. DETER: Of the additional \$1.0 million?

7 COMMISSIONER GANDARA: Right. Why are we
8 making a decision on future funds? Why don't we just
9 deal with what we have?

10 MR. DETER: We -- our contract for this
11 contract fiscal year is we have \$1.328 million for this
12 fiscal year. In lieu of and the funds for this
13 contract are for personal services funds; therefore,
14 they cannot be carried over from year to year. So the
15 funds will expire on June 30, 1985. In order to make
16 this into an 18-month contract instead of essentially
17 4½ or 5 month contract, we've put in what we thought
18 would be the best estimate for the amount of dollars we
19 would need in fiscal 85-86 and our wild guess at that
20 time was \$1.0 million. That probably will change based
21 upon the most current predictions.

22 This Commission will have two more oppor-
23 tunities to decide whether or not we need \$1.0 million
24 in 85-86. First of all, we will be putting together
25 our estimate of our needs for 85-86 as a part of the

1 March change process. At that time we will recommend
2 to you a contract dollar -- it may be more, it may be
3 less. Then, if that contract dollar is different than
4 the \$1.0 million, we will then have to come back and
5 amend this contract.

6 Now, from an administrative standpoint, I
7 don't know if it would be favorable in this contract to
8 just limit in terms of the contract to the \$1.328
9 million at this time and have a clause in here that
10 says the project, the contract will be augmented
11 depending upon whatever our needs are and the
12 Commission will make that decision in its budget or
13 when the Legislature approves the budget for 85-86.
14 That was the intent of us putting that figure into
15 this. It was essentially an administrative intent; it
16 was not meant to set in concrete the amount of dollars
17 for the next fiscal year.

18 MR. WARD: I also might add that given the
19 time constraint associated with the process, what it
20 would mean if it was excluded would be another timely
21 RFP process, time-consuming RFP process that we would
22 have to go through on once again.

23 MR. DETER: There is a clause that would be
24 put in the contract that is on Page 3 of the contract
25 number. It says "...however funding for services

1 rendered beyond June 30, 1985 shall be subject to the
2 appropriation/availability of funds for that purpose in
3 the 1985-86 budget. In the event such funds are not so
4 available, Commission shall have no further liability
5 with regard thereto." So it seems to me --

6 COMMISSIONER GANDARA: But if they were to be
7 available, we'd be obligated?

8 MR. DETER: Yes.

9 CHAIRMAN IMBRECHT: Any further questions?
10 Any further questions of those that testified to us
11 earlier?

12 COMMISSIONER GANDARA: Is there anybody from
13 Envirosphere? Or EBASCO, or Insearch?

14 MR. DETER: No.

15 MR. CHAMBERLAIN: Mr. Chairman, just one
16 statement. The Commission's Contract Officer informs
17 me that she believes that State Contract Law would
18 allow the Commission to adopt either a bonus clause or
19 a penalty clause, but that we could not withhold
20 payment for lack of performance or for late performance
21 unless we did have such a clause in the contract.

22 CHAIRMAN IMBRECHT: And we currently do not
23 have such a clause?

24 MR. CHAMBERLAIN: I believe, is that correct?

25 MR. DETER: We don't have a clause for

1 penalty?

2 MR. CHAMBERLAIN: Right?

3 MR. DETER: No, not to my knowledge we
4 don't. The clause we have in the contract is the cost
5 of the stage shall be deducted -- Okay -- In the event
6 of such termination, the State may terminate the
7 agreement due payment. In the event of such
8 termination, the State may proceed with the work in any
9 manner deemed proper by the State. The cost to the
10 State may be deducted from any sum due to the contract
11 under this agreement, and the balance of any shall be
12 paid to the contractor upon demand.

13 MR. CHAMBERLAIN: That's simply a termination
14 clause.

15 COMMISSIONER CROWLEY: I understand F to have
16 the sense of --- Part F of the contract to have some
17 sense of ---

18 MR. DETER: F says CEC shall retain from each
19 invoice an amount equal to 10 percent of that invoice
20 and the aggregate of that invoice is reflecting
21 progress payments shall not exceed 90 percent. Such
22 amount will be retained by the CEC and released to the
23 contractor only upon our approval that the contract
24 work has been satisfactorily completed, all
25 deliverables have been received and the final report

1 has been received and accepted. That's a 10 percent
2 penalty clause as it appears.

3 COMMISSIONER COMMONS: I would argue against
4 that in a court of law I believe, and maybe legal
5 counsel, rather than myself should argue this. If I
6 were able to substantiate that I had done work in good
7 faith on this, this is not a contract for a specific
8 number of dollars but rather it's for work performed
9 that I would receive payment on this and the time where
10 the question comes up is when, in a siting case, you've
11 got into some very difficult issues which required the
12 putting forth of greater effort than you expected; the
13 contractor is working in good faith, but does not meet
14 the timeline and there's no timeline element included
15 within that provision. It rather relates to whether or
16 not they have done work which is, have people actually
17 been assigned to do that tasks you were qualified and
18 are they doing satisfactory work? A separate provision
19 is normally incorporated for our time.

20 MR. DETER: Can I clarify one further comment
21 Commissioner Gandara made? Is it -- this contract is a
22 work-as-needed contract. It may be that we won't
23 extend some of the contract funds in this year. If we
24 did have a million dollars set up for next year as part
25 of this contract, then if the work didn't come in, then

1 those funds wouldn't be expended. Secondly, we do have
2 a provision in this contract, like in all contracts,
3 that we can cancel a contract on 30 days' notice.

4 CHAIRMAN IMBRECHT: Okay. Further questions
5 and discussion? I want to ask staff a couple questions
6 to get into the record. Is it your knowledge Mr.
7 Deter, in the past, has your division staffing been
8 reduced as a result of concerns enunciated in the
9 Legislature and by the Legislative Analyst because of
10 the fluctuating requirements or the fluctuating demands
11 within the siting process?

12 MR. DETER: Yes. The division reached it's
13 peak number of people in 1979 and I think that peak
14 number was something like 140 people to do the siting,
15 permit assistance for this Siting Program. It has been
16 steadily declining since that time because the workload
17 has not been coming in. At the present time, we're
18 down to 54 positions which is permanent positions, and
19 it's for a limited number of term positions in this
20 program. So essentially, the number of staff resources
21 in this program is half of what it was in 1979 and
22 that's based on---

23 CHAIRMAN IMBRECHT: This period now, which is
24 limited, though they're limited term, but still full-
25 time employees first upswing during that time period.

1 MR. DETER: That's correct.

2 CHAIRMAN IMBRECHT: This is a perspective; I
3 think it's important to note that has been taken by the
4 Department of Finance consistently in respect to the
5 changes in administration relative to the nature of the
6 workload the Commission faces.

7 MR. DETER: There's always been a big debate
8 over workload because it's extremely difficult as you
9 know to identify the exact date the applications will
10 in fact be accepted by the Commission to work on;
11 therefore, our workload is very tenuous.

12 CHAIRMAN IMBRECHT: I would just note for my
13 own perspective, that from consideration for other
14 issues and not being able to definitively predict in
15 the future what the workload will be, that's a
16 consideration relative to cost as one that's relative
17 to look at the long-term implications of that in
18 permanent staff as opposed to approaching these issues
19 from different perspective. And it's simply a simple
20 comparison of hourly wages for a one-year contract, for
21 example, compared to wages of State employees for that
22 same year cost in benefits is not an accurate cost
23 comparison as to whether in fact such a proposal would
24 save money or cost money. I would conceive that it is
25 possible that such a proposal might ultimately cost

1 more in the event that the workload is maintained over
2 a long or substantial period of time. It is just as
3 conceivable from my perspective. The opposite might be
4 the case.

5 Further, as we begin to reconcile adopted
6 demand forecast for the Commission vis-a-vis siting,
7 and the recognition most of us have, increased demand
8 has certainly moderated substantially from the time
9 that the Commission was first conceived, that indeed it
10 is not unlikely in the not long-range foreseeable
11 future that we may actually run up against demand vis-a-
12 vis siting requests. So that there are other
13 considerations beyond simply what applications are
14 brought to our front door in terms of what the workload
15 may be and that is whether or not in fact the
16 Commission comes to the conclusion that some point in
17 the future that we have already approved or there is in
18 the process construction of adequate facilities to meet
19 the energy needs of the citizens of our state.

20 I guess that's the point that was made in
21 your memorandum to the Executive Office on the civil
22 service considerations if I accurately interpret it.

23 MR. DETER: Yes, I believe he was quoting a
24 memorandum of August 27th, which ended up into a
25 memorandum called the Section 27 Notification, signed

1 by the Executive Director on August 31st.

2

3 CHAIRMAN IMBRECHT: In this case, I'm
4 actually referencing the January 23rd memorandum to the
5 Executive Office where you note the civil Service
6 considerations, fluctuating peak workloads makes it
7 inefficient to hire permanent civil service employees
8 working intermittent on term projects.

9 MR. DETER: Yes, that essentially recaps what
10 we said in our PCP.

11 CHAIRMAN IMBRECHT: Right, right I
12 understand. I mention that only because I want to
13 underscore that I'm not insensitive and I'm sure others
14 on the Commission are not insensitive to the points
15 which the employee group representatives have raised,
16 but from my own perspective at least, we have taken
17 those issues, or you have taken those issues into
18 consideration to bring this contract forward to us for
19 consideration.

20 And I would also just note that had the
21 Commission not taken the position in support of
22 additional staff for these obligations and had we not
23 vociferously and strongly lobbied such a position with
24 the Department of Finance, I believe the concerns that
25 the employer organizations have expressed, I could

1 better appreciate in terms of long-term implications
2 for our staff, but I certainly have no intention of
3 proceeding under a circumstance that would allow us to
4 undercut the staff of the Commission or compromise our
5 ability to exercise independent judgment and compromise
6 the promotional options for the people here at the
7 staff and trade that for outside consulting dollars.
8 Rather I think that the dual-pronged approach of
9 additional staff and additional contract dollars to
10 respond to the peak workload issue here reflects a
11 understanding of a broad range of concerns which were
12 expressed earlier in today's meeting. That's all I
13 really have to say about the issue. Okay, is there any
14 further discussion?

15 COMMISSIONER COMMONS: Do you want comments
16 or do you want a motion first?

17 CHAIRMAN IMBRECHT: I'll take a motion if you
18 like.

19 COMMISSIONER COMMONS: I'll see if I can get
20 a second. I move that we approve \$1.328 million in
21 1984-85 and \$1.0 million in 1985-86 for a contract
22 total not to exceed \$1.328 million and that there be a
23 provision added to this contract concerning timeliness.

24 CHAIRMAN IMBRECHT: Did you actually -- I
25 heard you -- I'm probably prepared to second that. I

1 just want to understand the motion. It seems to me you
2 said \$1.328 million and then \$1.0 million and then you
3 ended up with a total of \$1.328 million---

4 COMMISSIONER COMMONS: Not to exceed one;
5 that's correct.

6 CHAIRMAN IMBRECHT: Not to exceed 2.2--

7 COMMISSIONER CROWLEY: No.

8 COMMISSIONER COMMONS: Not to exceed 1.328.

9 COMMISSIONER CROWLEY: As I understand your
10 motion, you are allowing both amounts because of it
11 crossing into another fiscal year, but you don't want
12 the total expenditure to exceed more than your initial
13 amount, is that accurate?

14 COMMISSIONER COMMONS: That's correct.

15 CHAIRMAN IMBRECHT: I'm glad you understand
16 that better than I. I'm still confused. I add up to
17 two approvals that you're suggesting a motion as to
18 being 2.328. Wait -- let me explain---

19 COMMISSIONER CROWLEY: There is a chance that
20 we cannot expend the total 1.328 in this fiscal year.
21 That being the case, we have \$1.0 million in next
22 fiscal year to allow us to have some money to reach the
23 1.328. Having done so, then we do not expend an
24 additional. If we spend the whole 1.328 this year,
25 which is unlikely, then no more, none will be spent

1 next year. If we spend ---

2 COMMISSIONER COMMONS: Let me withdraw the
3 motion and explain to you my position.

4 CHAIRMAN IMBRECHT: Why don't we totally
5 restate the whole motion?

6 COMMISSIONER COMMONS: Here's where I'm at on
7 the issue. I feel that this Commission discussed this
8 issue last August and September and felt that we had a
9 true peaking problem that was occurring. I have just
10 now asked our division chief, and I think he confirms
11 that we still have the peaking problem and there has
12 not been a change of circumstances from where we were.
13 We then reached an agreement with Finance rather than
14 using the \$2.0 million we received partial funding and
15 we also recieved partial people.

16 And I think we should go along with the
17 agreement that we had reached with the Department of
18 Finance which is in line with the \$1,328,000. Now,
19 staff and I have discussed this with them; has also
20 incorporated the concept of an additional million
21 dollars. I'm looking at that additional million
22 dollars in case, as Commissioner Crowley said, we do
23 not expend these funds this year.

24 I am very concerned and will oppose the
25 addition of the other one million dollars because then

1 I go on the side of the argument that had been made by
2 the representative that this is not a peaking problem,
3 rather this is a trend that we have initiated and that
4 we expect to see siting cases coming in for the next
5 several years and we haven't gotten into this and there
6 has been no hearing or discussion before the Commission
7 as to how many years that this would go forth. I don't
8 want to re-raise that issue now, cause I don't think
9 this is --

10 CHAIRMAN IMBRECHT: That's why I don't
11 understand why you included that million in the motion.
12 Wouldn't it be cleaner just to make a simple motion to
13 approve \$1.328 million?

14 COMMISSIONER COMMONS: My understanding is
15 that if we do that and we don't expend the funds this
16 year, and they don't rollover, then we have to start
17 the process over. So what I wanted to do is make sure
18 that if some of these siting cases don't come in on
19 time, that we have the ability to expend the full
20 amount of money no matter when these proposals come in
21 because our timeline is going to run and I don't want
22 to get caught in July with suddenly having to work with
23 Finance for two months.

24 CHAIRMAN IMBRECHT: Why don't you try.

25 MR. DETER: Our agreement with the Department

1 of Finance was 12.5 limited term positions for the
2 remainder of 84-85, and 12.5 limited term positions for
3 85-86. As far as the contract dollars, the agreement
4 was we would get one half million dollars in 84-85 and
5 we would present to them our current estimate of what
6 the needs would be in 85-86 as a part of the March
7 change process for the 85-86 Budget.

8 CHAIRMAN IMBRECHT: A similar amount of money
9 had been set aside in the Energy Resources Program
10 account.

11 MR. DETER: For 85-86.

12 CHAIRMAN IMBRECHT: And that would be an
13 issue to come before the Commission subsequent. So,
14 let me ask you this, Mr. Deter. Would it not solve all
15 of this by rather than even playing with that extra
16 million dollar issue right now to simply approve the
17 contract for \$1.328 million and that covers the money
18 past the end of this fiscal year, but would allowed to
19 be spent?

20 MR. DETER: No, we cannot roll the funds
21 over.

22 CHAIRMAN IMBRECHT: Sure, once the contract
23 is let you can, absolutely.

24 MR. DETER: This is Connie Tatlock, the
25 contract manager.

1 MS. TATLOCK: There are a couple things going
2 on. There's the amount which you're going to establish
3 as the limit to the contract; and then there's the
4 funds which you use and which fiscal year they come
5 from to meet that amount not to exceed. If you choose
6 to make the amount not to exceed \$1.328 million and we
7 spend \$1.0 million in 84-85, we could encumber \$328,000
8 in 85-86. So there's the funding and then---

9 CHAIRMAN IMBRECHT: When the contract is
10 executed and then we have up to three years to expend
11 it. Yes, that is correct. This is an area that I have
12 some familiarity with. We have many projects in the
13 Development Division that have more than one fiscal
14 year life and the contract is let at the beginning of
15 the project and it's appropriated in that fiscal year,
16 but some of the funds were expended in subsequent
17 fiscal years.

18 The next issue for us then would come as we
19 as a Commission adopt our recommendation to the
20 Department of Finance for the March change process. We
21 would then decide what, if any, of the \$1.5 million
22 that was set aside in the ERDO account which you'll
23 find as a part of a \$7.1 million surplus in the ERPA
24 account that's clearly delineated in the budget package
25 I sent to you and all members of the Commission. What

1 portion of that we deem appropriate to recommend to the
2 Department of Finance, zero or 1.5 be included in the
3 March change process. Then we can debate furtherance
4 of these issues then.

5 COMMISSIONER COMMONS: What are the cases
6 coming in next year? All the ---

7 CHAIRMAN IMBRECHT: The timeline and so forth
8 that we presented to the Department of Finance said in
9 essence that we have a bubble of cases here -- a peak
10 caseload situation that ran roughly from the Fall of
11 '84 through the end of the '85/'86 fiscal year and as a
12 consequence, the total negotiated response was that we
13 would get, I think we ultimately asked for 21 PY; we
14 got 12.5; and an appropriate amount of contract dollars
15 we got and agreed that those were for a limited term
16 for more than one fiscal year through the end of 85-86
17 and the two sums of money.

18 So there's really no necessity to make this
19 for \$2,328,000 right now.

20 COMMISSIONER COMMONS: Let me try my motion
21 then, Mr. Chairman.

22 CHAIRMAN IMBRECHT: So the motion would just
23 be a very simple one to simply approve a contract---

24 COMMISSIONER COMMONS: \$1.328 million with
25 the provision of a clause concerning timeliness.

1 CHAIRMAN IMBRECHT: Alright, I'll second that
2 motion.

3 COMMISSIONER COMMONS: I like the discussion.
4 I think this is an appropriate action on behalf of the
5 Commission for two or three reasons. One is, we have
6 already approved projects that are underway which we do
7 not have staffing for and this Commission has accepted.
8 I don't think we have the ability, given the limited
9 period of time, with a 12-month clock already running,
10 to go out hire, train and bring in under civil service
11 procedure adequate staff and in the cases that are
12 already in the house that have been approved by this
13 Commission and are coming forth before the Commission.

14 Second is, in order to, within the 12-month
15 timeframe which is our promise to the Legislature, I
16 don't feel we could make that 12-month timeline if we
17 didn't have staff currently available. I think our
18 first responsibility is to the siting of the cases, and
19 looking at would we be saving money to the State of
20 California where you have this type of time pressure, I
21 think the use of a contractor is clearly in the State
22 interest because there is substantial start-up time
23 costs of bringing in new employees and we are looking
24 at this in terms of a workload peak problem that we had
25 identified earlier in the year. It is clearly

1 occurring and that I think this is the most cost-
2 effective way for this Commission to proceed.

3 I do not look at this as a continuing
4 situation and if it were to be a continuing situation,
5 we would probably then have the ability to plan around
6 it, but we don't have to answer that question today. I
7 think our primary obligation is to those cases that we
8 have approved are coming forth, and then make sure we
9 do a professional job within those twelve months. I
10 think this is the only avenue open to this Commission
11 in order to do that.

12 MR. DETER: After talking to a contract
13 person, may I suggest the Commission may want to
14 approve the \$1.328 million for this fiscal year and
15 direct us to enter into a contract for that amount and
16 then direct us to say subject in the contract subject
17 augmentation next year depending upon the workload
18 requirements next year and leave it at that. Would
19 that be satisfactory to the Commission? And the
20 contract would be written for now through June of '86,
21 which would avoid us having to go out for another RFP.

22 MR. WARD: That would be subject to
23 Commission ---

24 MR. DETER: Right.

25 CHAIRMAN IMBRECHT: Is that acceptable to

1 you, Commissioner Commons? I think it doesn't achieve
2 every point that you've been expressing but it does
3 avoid another whole RFP process.

4 COMMISSIONER COMMONS: I just want to add I
5 feel we're on very good -- with the 1.328, I'm sure
6 we're on strong legal grounds. I want to ask legal
7 counsel if he would have any problems with the addition
8 of that language?

9 MR. CHAMBERLAIN: I'm sorry I was talking to
10 Commissioner Schweickart. I'm not sure what language
11 you were alluding to---

12 COMMISSIONER COMMONS: If we were to have the
13 motion, would it affect the legality of the contract in
14 your opinion, if we were to allow ourselves to augment
15 that contract at a subsequent date?

16 MR. CHAMBERLAIN: No.

17 COMMISSIONER COMMONS: Then I have no
18 objections.

19 CHAIRMAN IMBRECHT: Fine. Well without
20 objection, we'll take that as your motion and I'll
21 second it. Alright, further discussion? Yes sir.
22 Commissioner Schweickart.

23 COMMISSIONER SCHWEICKART: With your leave,
24 Mr. Chairman, I would like to make a brief statement
25 and then have a vote; my vote registered.

1 CHAIRMAN IMBRECHT: Of course, I could have
2 your vote registered and ---

3 COMMISSIONER SCHWEICKART: Well, I will then
4 depart frankly. To me, there are many things implicit
5 in this argument. I look at Ross and I feel sorry for
6 the very difficult task that Ross has had as head of
7 this division and others have had before him because of
8 the very wide discrepancy between anticipated demands
9 for resources and the actual demands which have
10 manifest which in the past have generally been over-
11 estimated and underrealized in terms of demand and may,
12 at this point, be underestimated and over-realized in
13 terms of demand. It's an extremely difficult task and
14 as you Mr. Chairman, have pointed out, there have been
15 from time to time various penalties suffered by the
16 Commission in the form of legislative actions as a
17 result of let me say, a difference between anticipation
18 and reality.

19 CHAIRMAN IMBRECHT: I think I might have even
20 participated in it.

21 COMMISSIONER SCHWEICKART: As a matter of
22 fact, I think you did. And it's clearly understandable
23 ---

24 CHAIRMAN IMBRECHT: But there certainly was
25 not as much knowledge in the situation----

1 (LAUGHTER)

2 COMMISSIONER SCHWEICKART: As you have now.
3 But certainly it is a difficult area from a number of
4 points of view and particularly from Ross' point of
5 view in terms of managing the situation.

6 In terms of the substance before us today, it
7 breaks into a number of areas -- legal and from my own
8 point of view -- matters of principle. Generally
9 speaking those two are -- come together fairly often,
10 which makes me happy but they don't always. And I
11 would suggest that while one can anticipate or guess at
12 the intent of law, certainly in this instance,
13 arguments could be made on either case and I frankly do
14 not find that to be the overriding principle at stake
15 for me.

16 What is, it seems to me, at stake is on the
17 one hand an operational issue namely that when we have
18 a substantial amount of work in a siting case and
19 siting cases have a way of getting quite contentious,
20 that we in essence open ourselves and the public and
21 applicants up to one additional variable. Namely,
22 questions of conflict of interest and motivation and
23 things of that kind which, were we dealing with State
24 employees, we would either not be facing at all or
25 certainly have greater control over. It then means we

1 present if we move ahead with this motion in my view,
2 an additional potential for contention and litigation
3 at the end of our siting cases.

4 For me, more important is the matter of
5 principle here. That we should in fact be meeting the
6 requirements of law in this instance, with the use of
7 civil servants. It is quite clear that the demands
8 that we have on us cannot be met with the staff which
9 is available to us, and it is also clear that the
10 administration, perhaps, the Legislature, the
11 Department of Finance in fact have directed us in
12 essence to substitute money in contractors for what,
13 heretofore has been done by civil servants. It's my
14 view that that is inappropriate. And I recognize in
15 registering my vote here in just a second in opposition
16 to the motion, that it leaves us should that prevail,
17 with an inability in fact to meet our obligations under
18 law, namely siting of power plants which we have good
19 reason in this instance -- Someone says we have also in
20 the past -- In this instance I think will happen is
21 they will come in and exceed dramatically, our
22 capability.

23 Nevertheless that has been the judgment of
24 the Legislature and the Governor. And in many, many
25 areas in the Warren Alquist Act, we are not today

1 meeting the law. I believe that the principle of
 2 independence of analysis in issues of this kind,
 3 critical to the public, are more important than the
 4 issue of moving ahead at this time at all cost in this
 5 instance by acquiescing to moving ahead with a
 6 contractor. So as a matter of principle, I oppose the
 7 action presented to us and which should be before us in a
 8 motion and I'd like to have my vote registered in the
 9 negative on this one.

10 CHAIRMAN IMBRECHT: Certainly. Okay, further
 11 comments? Commissioner Gandara.

12 COMMISSIONER GANDARA: Yes, I'd like to
 13 propose a substitute motion that we postpone action on
 14 this item until we receive additional pieces of
 15 information which I believe we don't have today: 1) I
 16 asked a lot of questions regarding the potential
 17 conflict of interest of the contractor, the corporate
 18 structure, and the relationship to all the various
 19 operating units and am considerably disappointed that I
 20 raised these questions actually last week and we don't
 21 have a representative from the contractor and/or his
 22 holding company to answer those questions.

23 In any case, I don't feel I have sufficient
 24 information to move ahead in that area. Secondly, it
 25 has been raised today and for the first time at least

1 with me, with very little notice this concern from two
2 employee organizations here and without indicating
3 whether they're well-founded or not, it does seem to me
4 that the Commission would be well served if it did
5 request a legal opinion from our counsel that would at
6 least give us some assessment of the legal risks that
7 we're undertaking here. Because it does us no good to
8 proceed with this contract if we're ultimately going to
9 be challenged and it's going to hold up the thing
10 anyway. I don't think we'd lose any time, we might
11 gain some additional information. I know that you have
12 a government code and Commissioner Commons was reading
13 over here. We have one copy; I have not had a chance
14 to look at it either -- we all have to form our
15 judgment on that. But I would offere a substitute
16 motion that we postpone decision on this until we get
17 additional information in those two areas and in any
18 case that's my feeling.

19 CHAIRMAN IMBRECHT: Is there another second?
20 Hearing none, the substitute motion dies for a lack of
21 a second. Mr. Chamberlain do you have any general
22 feeling as to the concerns of Commissioner Gandara as
23 expressed?

24 MR. CHAMBERLAIN: Are we referring out of
25 conflict of interest or the other, or both?

1 CHAIRMAN IMBRECHT: Both, really.

2 COMMISSIONER GANDARA: Well, Mr. Chamberlain
3 let me -- I think you can go ahead and respond to the
4 conflict of interest, but with respect to the second
5 matter--

6 CHAIRMAN IMBRECHT: Would you re-state what
7 the second matter is?

8 COMMISSIONER GANDARA: The second matter had
9 to do with legal opinion from our counsel having to do
10 with the legal risks and an assessment of the
11 likelihood of this contract is going to proceed. I
12 don't want Mr. Chamberlain to respond to that now--

13 CHAIRMAN IMBRECHT: Oh, you mean in the
14 context of the employee group challenge?

15 COMMISSIONER GANDARA: Yes, because I would
16 expect that to be delivered to the Commissioners as a
17 confidential memorandum of decision.

18 CHAIRMAN IMBRECHT: I'm sorry, I don't---

19 COMMISSIONER GANDARA: But I do think it's
20 necessary information.

21 MR. CHAMBERLAIN: With respect to conflicts
22 of interest, our office was involved with the division
23 in attempting to structure the RFP and we sent out even
24 additional letters even after the RFP attempting to
25 clarify conflicts of interest provisions. One of the

1 reasons that we had such a low turnout on the contract
2 was because the conflict of interest provisions
3 discouraged and disqualified so many possible
4 contractors who had involvement with other utilities,
5 but we had defined it to try and be very stringent in
6 terms of the kind of things that this contractor could
7 be working on. He couldn't be working on anything
8 having to do with a utility, obviously before this
9 Commission; he couldn't work on matters -- if he was
10 working on a matter that was outside the jurisdiction
11 of the Commission -- say for PG&E, their hydro project
12 -- that would disqualify him from working on any PG&E
13 projects here at the Commission as well.

14 And we sent out, as I say, both the original
15 RFP as structured and then a clarification was sent out
16 mostly from the perspective of trying to tell people
17 that it wasn't impossible to comply with these conflict
18 of interest provision which most of them felt
19 apparently it was even with the clarification.
20 However, we only got these two or three submittals.

21 So we have taken quite a bit of effort at
22 least accompanying -- a company basis to require them
23 to submit to us their current status and the contract
24 does provide that, should that status change, they have
25 to tell us. Now, as I understood your question,

1 earlier, it related to specific individuals and what
2 their holdings might be--whether you might have some
3 employee of the contractor who had a lot of PG&E stock
4 or something like that.

5 COMMISSIONER GANDARA: It was a broader
6 question. I mean, it had to do with the subsidiary and
7 company. Basically, I don't know anything about
8 Envirosphere, except that it's now a holding unit of
9 ABASCO; we don't know anything about them except
10 they're owned by Insearch. We don't know much about
11 them. And my concerns, again, may be not a well-
12 founded one, but I'd like to know more about that. So
13 it's not just with respect to the employee. And also
14 to give you, frankly, some breathing space and time to
15 be able to reflect upon this with greater consideration
16 rather than just ask for an opinion right now.

17 I do feel this area is very difficult, but I
18 also do feel somewhat different standards of review
19 have been applied to different kinds of conflict of
20 interest issues particularly when they have to do with
21 the vendor. I don't want to get into specifics, but I
22 could.

23 MR. CHAMBERLAIN: It's very clear that
24 different standards are applied in different contracts
25 because there are different kinds of concerns and

1 considerations you might have. Here, we're dealing
2 with a situation in which a contractor is specifically
3 being hired to try and influence decisions this
4 Commission would make on a police basis, and therefore
5 I think we were more stringent than we normally would
6 have been.

7 COMMISSIONER GANDARA: I don't know, Mr.
8 Chamberlain. Maybe my concern is not one that's shared
9 very much by anyone else, but as general counsel, do
10 you feel comfortable advising this Commission that this
11 situation is free of any potential conflict of interest
12 knowing the situation as vague as it is?

13 MR. CHAMBERLAIN: Unfortunately, the attorney
14 who was most heavily involved in reviewing both the
15 RFP, the language, the clarification that went out and
16 the submittals that came back in is Arlene Ichien;
17 she's up in Portland this week---

18 CHAIRMAN IMBRECHT: I would try and suggest a
19 way we may resolve your concerns because again, I think
20 we all want to act with a matter of prudence. I am not
21 prepared to second your motion, or substitute for a re-
22 offer; I recommend that others may do so but I would
23 suggest that in going forward in the event the contract
24 was approved pursuant to the motion made by
25 Commissioner Commons, that I would be prepared directly

1 to general counsel to send a letter requesting
2 information relative to the concerns expressed by
3 Commissioner Gandara and that the contract not be
4 executed by our Contract Manager until we have had a
5 satisfactory receipt from the recipient of the
6 contract; and that you advise the members of the
7 Commission appropriately in your judgment that --- What
8 I'm trying to do is avoid constantly to re-agendize all
9 of these items and in essence re-hearing the same
10 issues. And at the same time a bit of a carrot, if you
11 will, for the contractor that the sooner they respond
12 to these concerns in a satisfactory fashion, the sooner
13 they're going to get a contract with a signature on it.
14 Does that sound like an appropriate way?

15 COMMISSIONER GANDARA: That sounds
16 appropriate, I will abstain.

17 CHAIRMAN IMBRECHT: If there's no further
18 discussion to be heard on this -- Commissioner
19 Schweickart -- he asked to be recorded. I'm going to
20 state; he ask to abstain on motion, so let me indicate
21 that: Ayes: 3; Commissioners Commons, Crowley and
22 myself, aye. Commissioner Schweickart, no.
23 Commissioner Gandara, in abstention; and I'm going to
24 ask general counsel to send the appropriate
25 communication out to the concerns expressed on the

1 matter of conflict of interest to the contractor.
2 That's the extent of direction to you.

3 MR. CHAMBERLAIN: Could I ask Commissioner
4 Gandara would you be available tomorrow to sit down and
5 discuss exactly what those concerns are?

6 CHAIRMAN IMBRECHT: Commit that the contract
7 is approved pursuant to the motion. I'm going to
8 return quickly to Item #3. I've had some consultation
9 on this and I'm going to offer a motion with the
10 following considerations.

11 Commissioner Commons and myself are heavily
12 committed in the next few months relative to already
13 existing siting workload and ER/BR hearings.
14 Commissioner Crowley has siting cases as does
15 Commissioner Gandara. I would like to offer a motion
16 that we designate Commissioner Gandara as the Second
17 Member of the Sycamore Cogeneration Project AFC with
18 the intention absent extreme objections from whomever
19 the new Commissioner is, that that individual be
20 designated as the Presiding Member. That will allow
21 Commissioner Gandara to initiate in a timely fashion
22 the opening informational hearing as to what is
23 required. So if the applicants are not compromised
24 from the time perspective. At the same time there is a
25 reasonably fair distribution of workload amongst the

1 five members of the Commission when that commission
2 appointment is made.

3 I'm also advised in some respects that the
4 Sycamore case, considering the probable level of
5 complexity involved with the inappropriate introductory
6 siting case for a new Commissioner to cut their teeth
7 on -- his or her.

8 COMMISSIONER GANDARA: I was similarly
9 advised of Crockett.

10 (LAUGHTER)

11 CHAIRMAN IMBRECHT: Well, we have to pull our
12 pace so that's the way it goes. Do I hear a second on
13 the motion? Seconded by Commissioner Gandara. Anyone
14 wish to be heard? Is there objection to a unanimous
15 roll call? Hearing none, Ayes: 4; Noes: None. The
16 motion is adopted. Commissioner Gandara is the Second
17 Member of the Sycamore Committee.

18 Item #7 before us is an Amendment to augment
19 an existing contract for \$150,000 by an additional
20 \$50,000 for legal services related to Marquez Power
21 issues. Briefly stated, Commissioner Gandara and I as
22 members of the Budget Committee have been overseeing
23 this contract. Pardon me-- the Governmental Committee
24 as members of that committee, in overseeing this
25 contract, we have received billings to date that

1 represent approximately the two thirds of the initial sum
2 of \$150,000 which was allocated to that portion of the
3 contract. As you may recall, we did hold in abeyance
4 additional dollars that were appropriately budgeted for
5 this to review the performance of the contractor to date
6 and I believe it is our consensus and recommendation that
7 the performance has been more than adequate and, therefore,
8 the contract should be honored.

9 So I will move, Commissioner Gandara seconds.
10 Does anyone wish to be heard on this item? Is there
11 objection to a unanimous roll call? Hearing none: Ayes:
12 4; Noes: none. The motion is carried.

13 The next item before is a contract for \$26,676
14 with Marquez/Hardy Design for graphics and photography
15 layout to be incorporated into the Commission's 1985
16 Biennial Report. The contractor will also script and
17 produce a 25-minute slide presentation of the highlights
18 of the report, which will be available to the Legislature,
19 business, industry -- I would say -- environmental, and
20 other interested groups.

21 This is an item that I've asked -- well, Sarah,
22 perhaps, you can give you a further delineation, if
23 necessary. Just suffice to say that, as Presiding Member
24 of the Biennial Report Committee, I've had discussions, I
25 believe, with each of you as to efforts to expand the

1 penetration of information we generate in the BR and to
2 format in the fashion that is most readable, etc., and
3 finally, to do it in a fashion that does our best, at
4 least, to ensure that we have no printing time problems
5 visa vis the State printer's office. And, we have been
6 assured that they will accept and there are not objections
7 to us submitting to them, in essence, camera-ready copy.
8 And, I don't believe there are any objections from employee
9 groups and so forth as to this approach that we've had
10 discussions about.

11 There was a Review Committee that reviewed a
12 number of firms that competed for this. So, I will move.
13 Commissioner Commons, would you second this, Second Member?

14 COMMISSIONER COMMONS: I'll second it; but, I'm
15 going to make an amendment.

16 CHAIRMAN IMBRECHT: Well, why don't you tell me
17 what your amendment is so we can get the motion out straight,
18 because we....

19 COMMISSIONER COMMONS: Just in case we want to
20 spend a little bit on the ER, I'd like to include that.
21 We may end up wanting a cover or do something that we
22 haven't discussed.

23 CHAIRMAN IMBRECHT: I'll make sure you get a
24 cover. Don't worry.

25 COMMISSIONER COMMONS: But, I just would like

1 to make sure that...

2 CHAIRMAN IMBRECHT: We've got some other monies.

3 COMMISSIONER COMMONS: ...that we're not
4 disallowed from using in ER?

5 CHAIRMAN IMBRECHT: In fact, the original
6 intention -- I'm sure we're not -- the original intention
7 here was to alternately, in all of the report to the
8 Commission for each BR cycle, generate consistent graphics
9 and so forth. So that it's clear that they are all companion
10 documents.

11 COMMISSIONER COMMONS: Because the way this
12 reads, it's just exclusive -- it's exclusive to the BR.
13 I, at this time, haven't given thought to it. But, I think
14 we should have the flexibility as a Committee.

15 CHAIRMAN IMBRECHT: I have no objection on that.
16 I'll accept that as a friendly amendment. Is there anyone
17 who wishes to be heard on this item?

18 COMMISSIONER GANDARA: I just have....

19 CHAIRMAN IMBRECHT: Commissioner Gandara.

20 MR. WARD: Mr. Chairman, are we dealing with
21 Items 8 and 9?

22 CHAIRMAN IMBRECHT: We're on eight right now.

23 COMMISSIONER GANDARA: I just have one question.
24 It's not terribly important. I'm just curious. Was there
25 any discussion of: rather than a 25-minute slide

1 presentation, having a video presentation?

2 MS. MICHAEL: Yes, there was.

3 COMMISSIONER GANDARA: Videos are hot.

4 CHAIRMAN IMBRECHT: I know. They're also
5 expensive.

6 MS. MICHAEL: They're very hot. But, many service
7 clubs and audiences that we want to see the -- be exposed
8 to the Biennial Report or the California Energy Report do
9 not have the facilities. So, that's basically....

10 CHAIRMAN IMBRECHT: In addition, you may recall
11 that we have some other funds from earlier motion on my
12 part....

13 COMMISSIONER GANDARA: I seem to recall that.

14 (LAUGHTER)

15 CHAIRMAN IMBRECHT: And, we are continuing to
16 explore cooperative arrangements with various public
17 broadcasting operations that can provide us the technical
18 producing options to do a video of the nature you're
19 considering. I certainly support it.

20 COMMISSIONER COMMONS: I feel like I'm on the
21 Tournament of Roses on a committee.

22 CHAIRMAN IMBRECHT: Without objection -- if
23 there's no one else who wishes to be heard -- objection.
24 Ayes: 4; Noes: none. The contract's approved.

25 The next item is a companion that's basically

1 to -- a contract for \$9,671, with Anthony Bothwell, to
2 edit the Commission's '85 Biennial Report. The contractor
3 will edit an initial black and white edition of the adoption
4 by the Commission and submittal to the Governor and
5 Legislature, and then, in turn, provide further editing
6 for the final full-color edition, which will -- is scheduled
7 to be available by August 1, 1983. Once again, a review
8 committee reviewed writing and editing examples of a
9 variety of submittals. Mr. Bothwell has, just from my
10 perspective, a very impressive history and background in
11 writing on energy issues; and, I have to say that, after
12 reviewing some of the things he's written myself, he has
13 an ability to translate technical issues into readable
14 prose for the consumption of average citizens of our state,
15 including members of the Legislature. I will move.
16 Commissioner Commons second. Questions? Anyone wish to
17 be heard on this? Mr. Bothwell is present. Mr. Bothwell,
18 you want to indicate your presence? Is there objection
19 to unanimous roll call? Hearing none, Ayes: 4; Noes: none.
20 The contract is approved.

21 Okay, next item. Item 10 is a contract with the
22 County Supervisor's Association to augment the existing
23 contract by \$20,000 from our '84/85 fiscal Year funds.
24 These funds become available due to savings in other CEC
25 contract areas. This will allocate these funds to a number

1 of additional specific tasks to analyze solar tax
2 incentives.

3 Commissioner Crowley, do you want to speak to
4 this?

5 COMMISSIONER CROWLEY: No. I have no other
6 thought than is indeed appropriate with what they will ask
7 to....

8 CHAIRMAN IMBRECHT: Alright. I just indicated
9 that the Tax Credit Policy Committee, I'm informed, which
10 is composed of Commisioners Crowley and Schweickart have
11 reviewed and support this proposed contract.

12 COMMISSIONER CROWLEY: Yes. This is a committee-
13 supported proposal.

14 COMMISSIONER GANDARA: Can I....

15 CHAIRMAN IMBRECHT: Commissioner Gandara.

16 COMMISSIONER GANDARA: I'd just like to ask this
17 question. Maybe I got lost in the committee structure,
18 here. Is this the addendum to the Seaside Contract?

19 CHAIRMAN IMBRECHT: Yes.

20 MS. DELLER: Right. The 40,000 that we brought
21 before the Rules and Regs Committee.

22 COMMISSIONER GANDARA: Was not the Seaside
23 contract being overseen by the Budget Committee? Or, was
24 that delegated?

25 MS. DELLER: Well, why don't I let Kevin talk

1 to you about that.

2 MR. SMITH: This is an augmentation of \$20,000
3 to the existing work that's approved in that contract
4 that's now budgeted at \$40,000. So, if it would be a total
5 work, looking at the financial incentives analysis and tax
6 credit issues of \$60,000, it was our understanding that
7 because of the possible split between two different
8 committees that it was your desire to have this reviewed
9 by the Tax Credit Committee.

10 COMMISSIONER GANDARA: Yeah. I have no problems.
11 I'm comfortable with that. I just know that this particular
12 contract has come up before....

13 MS. DELLER: Well, I believe the item....

14 COMMISSIONER GANDARA: ...the Budget Committee,
15 the Loans & Grants Committee....

16 MS. DELLER: Right. I think the item that you're
17 thinking of was in the original Seaside contract. There
18 was an item in there on PURPA and that one project was
19 brought to the Budget Committee because of the concern for
20 the P proposals. I don't recall this part being brought
21 back to the Budget Committee. We did take it -- the 40,000
22 contract work -- to Loans & Grants and to Tax Credit into
23 being directed to work with the Tax Credit Committee only.

24 COMMISSIONER GANDARA: Right. Well, as I said
25 before, it's no big thing. But, my recollection was that

1 all the subcontracts were to come back before the Committee.

2 CHAIRMAN IMBRECHT: It's no big thing and we
3 want to get out of here by 5:00, so let's move on. Moved
4 by Commissioner Crowley. Seconded by Commissioner Gandara
5 (since it's no big thing).

6 COMMISSIONER GANDARA: Fine. Let's move on.

7 (LAUGHTER)

8 CHAIRMAN IMBRECHT: We approve the contract as
9 presented. Does anyone else wish to be heard?

10 COMMISSIONER GANDARA: Want to make sure we have
11 it in the right cubby hole.

12 CHAIRMAN IMBRECHT: Having no objection to
13 unanimous roll call, hearing none -- Ayes: 4; Noes: none.
14 The contract's approved.

15 Next item is #11 - Commission consideration and
16 possible adoption of a resolution authorizing grants of
17 \$452,000 to ten applicants through the Siting and Permits
18 Assistance Grant program. These grants will provide
19 assistance to local governments to expedite energy project
20 siting through general plan and zoning modifications and/or
21 cumulative and environmental impact analysis -- a mouthful.

22 Who wishes to make presentations on this?

23 COMMISSIONER GANDARA: Mr. Chairman, let me just
24 say on behalf of the Committee that, this has come before
25 Loans & Grants Committee -- Commissioner Crowley and I,

1 and that the staff has with, I think, considerable
2 anticipation and forward notice, kept the Committee fully
3 informed. I think it's been a process that's worked very
4 well. The staff is to be commended for the way that they
5 worked on this and some recent questions that arose have
6 already been settled with respect -- with a discussion
7 with the Executive Director. As a result of that the
8 Committee....

9 CHAIRMAN IMBRECHT: Moved by Commissioner
10 Gandara. Seconded by Commissioner Crowley that the
11 contract is presented -- pardon me -- the grants as proposed
12 be approved. Does anyone else wish to be heard on this
13 item? Commissioner Commons.

14 COMMISSIONER COMMONS: I just want to state to
15 the Siting Division that I was happy to see a broad-based
16 committee, for once, on a review panel.

17 CHAIRMAN IMBRECHT: Alright fine. No further
18 comments. Objection to unanimous roll call? Hearing none
19 -- Ayes: 4; Noes: none. The grants are approved.

20 Next item is consideration and possible approval
21 of eight loans to local governments to convert their
22 streetlight to high efficiency lamps. The total amount
23 of the request is \$2,303, 078 for the conversion of 9,049
24 streetlights. I've already counted them all, but...in any
25 case.

1 This is also Loans & Grants, I believe.
2 Commissioner Gandara, are you prepared to make a motion
3 here?

4 COMMISSIONER GANDARA: Right. This has been,
5 again, before the Committee. The schools or the -- I'm
6 sorry -- the Lights Program, which this is one, is one
7 that is in the groove more or less for its procedure and
8 that, as you may recall, the available funds in this area
9 have been under-utilized in the past. And so, the Committee
10 has given strong direction to the staff to have an
11 aggressive outreach program in bringing in new participants
12 as well as resolving an issue as to whether the conversion
13 of wiring would also be available for funding. It turns
14 out that that has been resolved. I mention that only
15 because you see some payback here that are higher than
16 ones. And, the reason for that is because it has to do
17 with the wiring conversion. The Committee was anxious to,
18 in fact, encourage the conversion so we would, then, have
19 some lamps to install. And so, we would be, you know, so
20 we did accept those paybacks which are, you know, at the
21 surface is not competitive. But still, the situation is
22 that this Program is under-funded and we do need to continue
23 to do the good work. The estimate is that there are fifty
24 percent of the lights that are available for conversion
25 or could be converted, are still not converted. And, part

1 of the reason is because it deals with some of this more
2 difficult wiring issue or rewiring issue.

3 So, again, it's a slightly larger embrace than
4 programs had in the past, but, I think a necessary one.
5 And, because of the under-utilization in the past, there
6 may exist a possibility that there may not be as strong
7 support for this program as there has been in the past.
8 So, we're anxious to encourage the use as much as we can.

9 CHAIRMAN IMBRECHT: And we will do so. Moved
10 my Commissioner Gandara. Seconded by Commissioner Crowley
11 that these grants, as proposed, be approved. Does anyone
12 else wish to be heard on this item? Commissioner Commons.

13 COMMISSIONER COMMONS: Yes, I'd like to ask
14 for....

15 CHAIRMAN IMBRECHT: Way out on South Pasadena.
16 I know.

17 COMMISSIONER COMMONS: I'd like to have quick
18 roll call. I, as you know, don't vote for payback periods
19 as long as this.

20 CHAIRMAN IMBRECHT: Okay. Does anyone else wish
21 to be recorded on the negative on this item?

22 COMMISSIONER COMMONS: I don't want to be
23 recorded on all items. I only want to be recorded on the
24 negative for some of the cities, because -- and I'd like
25 it -- because, I think it's a very poor precedent for this

1 Commission to allocate funds in a payback as long as we're
2 talking about here. And, I think it's -- we're talking
3 now, not about \$100,000. We're talking about many millions
4 of dollars. And, I thought we had criteria and I'm not
5 even sure how these passed the criteria when we have payback
6 periods of 8.7 in nine years.

7 CHAIRMAN IMBRECHT: Do you wish to be recorded
8 as a "no" on the 8.7 and a 9.06?

9 COMMISSIONER COMMONS: I'd like to find out how
10 these even became eligible as to projects for funding.

11 MR. BAKKEN: Commissioner, the loan program
12 allows loans to be made with paybacks up to 11 years. So,
13 these are well within the legal limitation.

14 COMMISSIONER COMMONS: What are the number of
15 years these streetlights are good for.

16 MR. BAKKEN: The lamp itself?

17 COMMISSIONER COMMONS: (Nods -- Yes.)

18 MR. BAKKEN: Should be about five years. The
19 fixture, the ballast and what have you would be on the
20 order of 10 to 15.

21 COMMISSIONER COMMONS: So, we're having payback
22 periods that extend longer than the life of the -- of the
23 facility?

24 MR. BAKKEN: The lamp, itself, is only a small
25 portion of the funding.

1 COMMISSIONER COMMONS: Well, but even with the
2 ballast -- if it's ten years and you have payback periods
3 of 8.7 and 9.06, I can't see how we should be supporting
4 those. I generally believe on projects of ten years in
5 duration that our payback periods should be no more than
6 five.

7 MR. BAKKEN: Well, as Commissioner Gandara had
8 mentioned, some of these are converting from what they
9 call 'series circuits' to parallel or multiple circuits.
10 And, there's more than just an energy conservation ethic
11 here. We're changing from an antiquated system that they
12 can no longer get parts for -- transformers in particular
13 -- to one that modernized. Several of these systems that
14 we're looking here were installed in the 20s and 30s. And,
15 Newport Beach, as one, they mentioned that their downtown
16 lighting system was out for a period of at least a week
17 while they were waiting to get transformers. And, so we're
18 not....

19 COMMISSIONER COMMONS: Newport Beach meets my
20 criteria. It's under five. So, I'm satisfied with that one.

21 MR. BAKKEN: I'm saying, in general, for some
22 of these lighting conversions or these wiring conversions.

23 CHAIRMAN IMBRECHT: Okay. We have a motion
24 before us.

25 COMMISSIONER COMMONS: I'll make a motion to

1 amend.

2 CHAIRMAN IMBRECHT: Well, just -- you want to....

3 COMMISSIONER CROWLEY: Divide the question....

4 CHAIRMAN IMBRECHT: You want to vote 'no' on
5 -- divide the question? Yes. Thank you.

6 COMMISSIONER COMMONS: Alright. Can I make a
7 motion to divide the question on those that are less than
8 five and those that are less than six and all others? For
9 those that are less than five....

10 CHAIRMAN IMBRECHT: So, you mean the one that's
11 6.01 you want in...?

12 COMMISSIONER COMMONS: Well, I'll include that
13 in less than five. Let me -- I'll make it simple. I would
14 like to divide the question with all projects other than
15 City of Corona and City of Coachella.

16 CHAIRMAN IMBRECHT: That's fine. Alright without
17 objection, that division will be allowed. On the remainder
18 of the main motion, is there objection to unanimous roll
19 call? Hearing none -- Ayes: 4; Noes: none.

20 Now, with respect to the remainder of the
21 question which is Corona and Coachella, any other
22 Commissioner other than Commissioner Commons who wish to
23 be recorded as 'no?' Okay.

24 Secretary, please record Commissioner Commons
25 as 'no.'

1 COMMISSIONER COMMONS: I'll get a second vote
2 someday on these expenditures.

3 CHAIRMAN IMBRECHT: Commissioners Gandara,
4 Crowley and myself as ayes. Ayes: 3; Noes: 1. The
5 remainder of the motion is approved. Is there objection
6 to minutes as presented?

7 COMMISSIONER COMMONS: I have a question on the
8 minutes. On the organizations and individuals that were
9 before, I would just like to ask that the Secretariat
10 review them. Because, for some reason, I remember other
11 organizations presenting in support and I believe, also,
12 that the Public Adviser identified organizations in
13 support. And, I think when they....

14 CHAIRMAN IMBRECHT: Alright. Let's put this one
15 over to the next Business Meeting.

16 Next -- the minutes of the December 14th business
17 meeting -- Lorri, if you'd take a look at that -- the
18 concerns of Commissioner Commons.

19 As to the December 19th meeting, do I hear
20 objections for approval as presented? Hearing none
21 -- approved as presented.

22 Are there Policy Committee reports?

23 COMMISSIONER COMMONS: The Appliance Committee
24 has a Policy Committee Report that they'd like to make in
25 Executive Session to continue litigation.

1 CHAIRMAN IMBRECHT: Today?

2 COMMISSIONER COMMONS: I think we can do it
3 quickly. But, I think it's appropriate that it be done.

4 CHAIRMAN IMBRECHT: Alright. I believe, our
5 report, in essence, was included within those contracts.
6 I'm not going to.... Oh, you have a memorandum that you'll
7 all be receiving -- I signed it this morning -- that
8 outlines a proposed meeting schedule for the BR. I think
9 some of your advisers were involved and I think it's fairly
10 creative that we, of course, encourage any suggestions to
11 care to offer. And, as indicated both Commissioner Commons
12 and I, though these are BR Committee hearing, invite the
13 participation of all members of the Commission.

14 COMMISSIONER COMMONS: We have one other item
15 from Appliance Committee. In the SCE rate case, they held
16 over the incentives on refrigerators. There's been a
17 discussion from the PUC to our staff as to whether or not
18 we would provide supporting testimony. We do have, as
19 part of our work plan, intervened. We have funds allocated
20 for intervention and I believe in the adoption of our
21 petition we said we wanted to support looking at programs
22 such as Incentives. And, I discussed it with Southern
23 California Edison. They have no objection. And so, the
24 Committee will pursue this unless the Commission were to
25 direct us otherwise. But, I think it's appropriate to

1 bring it before the Commission before we proceed.

2 CHAIRMAN IMBRECHT: I don't believe there are
3 any objections? Okay.

4 Alright. General Counsel.

5 MR. WARD: Two quick items. I believe most
6 Commissioners have been briefed on the BR and the revision
7 of the final outline and the issue papers associated with
8 the BR. If you haven't, you will be shortly. Mr. Nix, the
9 BR Project Manager, has been directed to provide that
10 presentation to all Commissioners.

11 Secondly, Commissioner Commons and myself
12 -- just a point of information -- spoke to the Institute
13 of Heating and Air Conditioning companies or contractors
14 last week in Burbank and Commissioner Commons was noting
15 to me this afternoon that they generally were extremely
16 receptive to what -- the action the Commission had taken
17 on air conditioner standards and was, I think, concurred
18 in the timeframe under which they were -- the action was
19 taken allowing manufacturers to plan and were, primarily,
20 very laudable about the Commission's activities in
21 providing a directory to them and being responsive to them
22 out of the Conservation Division office that handles that
23 work. Very receptive.

24 CHAIRMAN IMBRECHT: Okay. Does any member of
25 the public wish to address the Commission? We will recess

1 to Executive Session at which point we will stand adjourned.

2 Thank you.

3 (The Commission then retired into the Executive
4 Session. At the conclusion of the Executive Session, the
5 business meeting of the California Energy Resources
6 Conservation and Development Commission was adjourned at
7 5:30 p.m.)

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REPORTER'S CERTIFICATE

THIS IS TO CERTIFY that I, Mickey Bolan, Reporter, have duly revised the transcript of the foregoing proceedings which were had and taken in Sacramento, California, on Wednesday, January 23, 1985, and that the foregoing pages constitute a true, complete and accurate transcription of the aforementioned proceedings.

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

Mickey Bolan

Reporter

Dated this 30th day of January, 1985.