

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION

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BUSINESS MEETING

1516 Ninth Street
First Floor Hearing Room
Sacramento, California

Wednesday, October 16, 1985

10:00 O'Clock A.M.

Reported By:

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COMMISSIONERS PRESENT

- 1
- 2 Charles R. Imbrecht, Chairman
- 3 Barbara Crowley
- 4 Geoffrey D. Commons
- 5 Arturo Gandara
- 6 Warren D. Noteware

STAFF PRESENT

- 7
- 8 Randall M. Ward, Executive Director
- 9 Bill Foley
- 10 Ross Deter
- 11 Bill Chamberlain
- 12 Mike Sloss
- 13 Ted Rauh
- 14 Dorothy Dickey
- 15 Chris Tooker
- 16 Rick Tyler
- 17 Bob Haussler
- 18 Obed Oboemelam
- 19 John Chandley
- 20 Bob Therkelson
- 21 Roger Johnson
- 22 Tom Beyer
- 23 Greg Wheatland

PUBLIC ADVISER

- 24
- 25 Gary C. Heath

ALSO PRESENT

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David Mulliken, Signal Environmental Systems, Inc.
Chris Garrett, Signal Environmental Systems, Inc.
Debra Marsh, PRC Engineering
Nicole Clay, Sander Authority, City and County of San Diego
Michael Gardner, Southern California Edison Company
Peter Baumgartner, Pacific Gas and Electric Company

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CHAIRMAN IMBRECHT: Call the meeting to order.

Please rise and join us in the flag salute.

Commissioner Noteware, would you please lead us in the Pledge of Allegiance.

(Whereupon, Commissioner Noteware led the parties and the audience in the Pledge of Allegiance.)

CHAIRMAN IMBRECHT: All right. Good morning.

One housekeeping item, in deference to one of the parties that wishes to appear on Item No. 1, which is the consideration of possible adoption of modification to the Cool Water Coal Gasification Project AFC decision, and that is the San Bernardino Air Pollution Control District, I understand they cannot be in attendance until after the luncheon recess, and so we will take that item up at the conclusion of our luncheon recess.

As a consequence, then, the first item to come before the Commission today is Item No. 2, which is Commission consideration and possible acceptance of the Sander Municipal Solid Waste Project Application for Certification. This AFC was filed on September 3, 1985, by Signal Environmental Systems, Incorporated. The Commission will consider the recommendation of the Executive Director regarding the adequacy of data which has been

1 submitted.

2 Mr. Ward, would you like to present that recom-
3 mendation to the Commission, please?

4 EXECUTIVE DIRECTOR WARD: Yes. Thank you,
5 Mr. Chairman, and good morning, Commissioners.

6 The letter that you've received on the 8th of
7 October from me indicates that we have found the data to
8 be insufficient to begin the siting process for the Sander
9 application.

10 Chris Tooker and Dorothy Dickey are both avail-
11 able to discuss the specific elements of that recommenda-
12 tion. I should also point out that the Applicant has sub-
13 mitted some information this morning, Signal Environmental
14 Systems, Incorporated, which specifically outline some
15 of the issues that they feel are relevant to a discussion
16 of data adequacies, so I would recommend that the
17 Applicant be allowed to come forward and discuss some of
18 those issues prior to the staff's presentation.

19 I would also point out that the staff has not
20 had a chance to review Signal Environmental Systems' most
21 recent submittal. We just received it this morning.

22 COMMISSIONER CROWLEY: But you are suggesting
23 that they make their presentation before staff presenta-
24 tion?

25 EXECUTIVE DIRECTOR WARD: That -- in other words,

1 I'm not in a position to be able to give you a summary
2 in the context of our presentation as to what Signal finds
3 applicable or not applicable to our recommendations, and
4 they may be in a better position to do that at this point,
5 but --

6 COMMISSIONER CROWLEY: I have a letter here dated
7 October 2nd, to Mr. Thomas Page, from Mr. Frank Mazanec;
8 is that correct? And also a submittal on the proposed
9 California Energy Commission decision on completeness of
10 standard, which was submitted by Signal Environmental
11 Systems, and those are the two documents that I've received.
12 Is that your data that you've turned over to us this morn-
13 ing?

14 MR. MULLIKEN: Ms. Crowley, for the record, I'm
15 David Mulliken. I'm the head of the Environmental Law
16 Group in the San Diego office of Latham & Watkins. We're
17 representing Signal Environmental Systems.

18 With me this morning, my colleague Chris Garrett,
19 also in our office, and Nickie Clay, who is the Project
20 Director at Sander.

21 The information that was submitted this morning
22 that you have in front of you consisted of the proposed
23 -- the proposed CEC decision on the completeness of our
24 application. What that really is is an attempt -- as I
25 think Mr. Ward has correctly identified, is really an

1 attempt on our part to narrow the issues and to obtain
2 guidance from you within the short time that we have avail-
3 able here this morning.

4 The letter to SDG&E from Mr. Mazanec is relevant
5 to the topics that are really addressed more comprehen-
6 sively in the proposed CEC decision that I think provides
7 probably a helpful framework for discussing the issues,
8 and I certainly concur with Mr. Ward that if we focus our
9 attention on that maybe it will narrow the issues that
10 you need to deal with.

11 EXECUTIVE DIRECTOR WARD: I think what's appro-
12 priately called out here, Commissioner, is that they recog-
13 nize -- and correct me if I'm wrong -- they recognize that
14 that their application is not sufficient at this point
15 in time, due to some factors that are largely beyond their
16 control and appear to be interpreting our regulations to
17 allow a conditional acceptance, so I think that's the foun-
18 dation under which they are presenting their argument
19 today.

20 COMMISSIONER CROWLEY: I beg your pardon, sir,
21 but would you tell me your name again?

22 MR. MULLIKEN: Yes, ma'am. My name is David
23 Mulliken.

24 COMMISSIONER CROWLEY: Thank you. Then,
25 Mr. Mulliken, if you would proceed and give your

1 presentation at this time.

2 MR. MULLIKEN: Thank you very much, Ms. Crowley.

3 If I might, I think it would be very helpful
4 for the Commission, since this is the first opportunity
5 we have had to address you on this project, I think it
6 would be helpful, before we launch into the discussion
7 of the data adequacy, if we could have Nickie Clay spend
8 a few minutes offering some of the background in this
9 project that I think is very helpful for you, because I
10 think in some respects this project is really sui generis.
11 It started as a municipal project, as I think you know.
12 I think what probably may not be known to the Commission,
13 because indeed we were not before you until an upsizing
14 decision relatively late in the project history resulted
15 in it coming before -- coming within your jurisdiction,
16 and I think there is some background, and again we appreci-
17 ate the time limitations you've got, but I think that
18 Nickie could offer some very helpful background here that
19 may set the stage for what we're going to discuss, if that's
20 agreeable to you.

21 COMMISSIONER CROWLEY: Yes. It would be indeed.

22 MR. MULLIKEN: Thank you.

23 MS. CLAY: Thank you very much, Dave. I want
24 to clearly indicate that I am here today representing the
25 City of San Diego and the County of San Diego, and I'm

1 an employee of the City and County of San Diego.

2 What I'd like to do today is give you a little
3 bit of background on the project. As David pointed out
4 to you, it has been around a while, and give you some of
5 that perspective.

6 I'd also like to discuss with you a little bit
7 the City and County's role in this project, and then also
8 I would like to urge your conditional acceptance of the
9 application.

10 In terms of background, the project was first
11 conceived in 1977. The City of San Diego was faced with
12 the closing of its major landfill, was going to be going
13 into another landfill, but realized that was really the
14 end of their landfill capacity at the City of San Diego,
15 so a joint task force between the City of San Diego and
16 the County of San Diego was established in 1977.

17 It was more than just a task force in name. A
18 good deal of commitment in terms of funds and staff have
19 been, since 1977, put towards a -- in a direction of find-
20 ing some sort of a solution to this garbage crisis, which
21 I don't know if you have been -- heard about before, but
22 as you review more of these waste energy projects I think
23 you will hear more about this garbage crisis that most
24 urban centers in California are facing.

25 We put together a team of really eight consultants.

1 We hired the Mider Corporation, which is a technical
2 consultant out of the East Coast. We hired both Recon,
3 who is a local environmental firm, and ESA out of San
4 Francisco to do our environmental work. We hired Merrill
5 Lynch to be our financial consultants, and then the
6 Ecology Center as our recycling consultant, so we put
7 together a team of experts, then developed a request for
8 qualifications and request for proposals for firms to come
9 in and do waste energy in San Diego.

10 The goals we looked at through this whole process
11 -- really, it was very simple. We were looking for some-
12 thing that was technically sound. We wanted to make sure
13 the plant was going to work. We didn't want to build some-
14 thing and have it not work, so we wanted it to be tech-
15 nically sound. It had to be environmentally sensitive.

16 One of the things we were doing is we were going
17 outside of California and a lot of these firms were just
18 not aware of California regulations, so we did quite a
19 bit in both these documents in terms of exactly what
20 California regulations were and what they were going to
21 need to meet environmentally.

22 And then the third thing we really stressed was,
23 of course, it had to be economically viable, because the
24 City and County had to be able to afford it, so those
25 were the three kind of pervasive goals you had throughout

1 this planning process and throughout the bid documents.

2 The City and County, after extensive evaluation
3 we had three different review panels, lots of citizen
4 input, did select Signal Environmental Systems to own,
5 operate and build a waste energy facility in San Diego.

6 I think what I'm trying to kind of paint with
7 this very brief overview is the fact that this project
8 is not lightly conceived or it's not something we've put
9 together in three months. It's something I think that
10 both the City and County, both at a staff and elected
11 official level, have spent a good deal of time thinking
12 about and putting together and evaluating.

13 In terms of the role that the City and County
14 will continue to play in this project, the number one thing
15 we do, and a lot of times people laugh about that, is we
16 are going to supply the garbage. We will be supplying
17 about 2,250 tons per day of garbage.

18 The plant is proposed to be located at the
19 Miramar landfill, the City's only remaining landfill, which
20 receives about 4,000 tons of garbage a day, so we feel
21 we have that well in hand from our perspective.

22 We will also be the owner of the site. Signal
23 Resco will be the owner of the facility, but the City and
24 County will continue to own the underlying site. That
25 keeps us involved in your process, of course, because we

1 have a federally listed endangered species on the site,
2 which the City and County, together with the Navy, will
3 be mitigating.

4 And also the City and County, even though we
5 are no longer really involved in the permitting process
6 that's now in your corner, the City and County are respon-
7 sible for figuring out someplace to put that garbage down
8 once we've picked it up, because this always seems to be
9 the concern out in the community, is we'd like to see the
10 garbage picked up every week, but it's our responsibility
11 as the City and County to put it down, so that's really
12 kind of our third involvement in this project.

13 The action to date that the City and County have
14 taken on this project is that in March of this year the
15 City Council on a nine-zero vote approved in concept, pend-
16 ing your environmental review, the business and the finan-
17 cial aspects of this, the technical and the financial
18 aspects, and are really awaiting your review of the
19 environmental aspects of it.

20 So, just in closing today, I would say that I
21 do urge your conditional acceptance of this application.
22 We're anxious to -- to see your environmental analysis,
23 and to this point in time really think that it -- it seems
24 to be very, very thorough, and we also appreciate the
25 extensive public information program that you have started

1 in San Diego.

2 So with that I'll turn it over to Dave.

3 MR. MULLIKEN: Thank you, Nickie.

4 It seems to me that in order to frame the issue
5 this morning we can understand that we're approaching this
6 I think from a somewhat different perspective than the
7 staff is.

8 As the Commission itself well knows, the issue
9 that you are being asked to deal with today is not the
10 question of whether or not this project ought to be approved,
11 whether or not a permit ultimately ought to be issued for
12 it, but the only issue that you're dealing with is the
13 question of whether or not the material that's been sub-
14 mitted constitutes an adequate data submittal in order
15 for you to accept the AFC and to commence review and proces-
16 sing.

17 Nickie may not have emphasized to the extent
18 that she might have otherwise the importance of that
19 process commencing quickly. Indeed, the City and the
20 County are prepared to respect the pre-emption of permit-
21 ting jurisdiction that occurs as a result of the upsizing
22 of this project.

23 By the same token, they are the ones in a very
24 practical sense who deal with this project as it's going
25 to get built. They are the ones who will live with it

1 when it's in the community, and so they are very much
2 dependent on you to do the environmental analysis that
3 the -- that your pre-emptive process contemplates your
4 doing it and doing that quickly, and while it's fair to
5 say that they are respecting the jurisdictional allocation
6 of responsibility here, that they are literally waiting
7 with bated breath to get the benefits of environmental
8 analysis, which in a more traditional process they would
9 be, of course, doing themselves through the -- through
10 the CEQA process.

11 So therein lies a major reason for their desire
12 to see this process move forward quickly, and I think the
13 basic pitch we want to make to you today is this. Please
14 keep in mind what it is you're being asked to determine,
15 and that's the question of whether or not the data that's
16 there is adequate to allow the review and analysis process
17 to start.

18 The issue for you to decide today is not the
19 question of whether or not all of the environmental
20 analyses and presumptive choices that ultimately must be
21 made by you have been made correctly or incorrectly; to
22 merely look at the narrow question of whether or not the
23 data is adequate.

24 Now, the staff recommendation is that the appli-
25 cation not be accepted because the data submittal is deemed

1 inadequate.

2 Our suggestion to you is that we take a different
3 approach to it, and that is to recognize the application
4 as being conditionally acceptable and to conditionally
5 accept it subject to the condition that certain deficiencies
6 be responded to within a time certain, and I think that
7 that approach is one that is appropriate to the nature of the
8 material that's been submitted to you, and to put that
9 in its proper perspective.

10 That's what Signal submitted a couple of months
11 ago, for volumes of material. That four volumes of material
12 in turn was built upon the years and years of analysis
13 that the municipality itself had done before we started.

14 This four-volume submittal engendered a response
15 by the staff that, depending on who was counting it, maybe
16 there were something like 138 identified deficiencies.
17 We then had a workshop, I guess about a month ago, and
18 in that workshop we really tried to parse out our respec-
19 tive perceptions of those -- of those hundred-odd defici-
20 encies.

21 And what we ended up with I think was a common
22 understanding as to the fact that those deficiencies them-
23 selves could be categorized in several different ways.
24 First of all, there were certain areas where I think there
25 was agreement between the applicant and the staff that

1 additional material was required.

2 There was an additional area where data was
3 sought by the staff that we think a fair reading of the
4 -- of the legal standards applicable to the data would
5 have said it's not really adequate, it may be helpful,
6 it may be informative, but it is above the minimum neces-
7 sary to satisfy the legal standard, but again, without
8 -- because our major objective here is to be forthcoming
9 with all the information that's available and relevant
10 to the project, and to move the analysis forward as
11 quickly as possible, that we didn't see that it serves
12 anyone's interest to fight about whether it's legally
13 required or not, that we simply want to -- the information
14 is there, it's accessible, let's -- let's get that into
15 the process.

16 But then there were some more troublesome cate-
17 gories of information. First, categories of information
18 where we were being asked to provide information that was
19 really within the domain of other organizations, either
20 the entities that we're going to deal with, i.e. San Diego
21 Gas & Electric, or in some cases information that was within
22 the domain of other agencies that have been involved in
23 this project before this time.

24 Again, by way of example, the Department of
25 Health Services, and there we felt that indeed that both

1 a legal and a practical approach to the problem suggests
2 that our application not be deemed inadequate, because
3 that information that is within the domain or control of
4 those other agencies is not included in the application.

5 Another area that I think was a little more
6 troublesome was in areas where the staff was searching
7 for information which arguably might address issues outside
8 of the CEC jurisdiction, and we didn't want to be the --
9 frankly, the arbiter of jurisdictional disputes or differ-
10 ing perceptiosn of jurisdiction between the CEC staff and
11 the staff of the Public Utilities Commission, but we at
12 least wanted you to be sensitive to it and to give us the
13 kind of direction we feel we need.

14 I guess --

15 CHAIRMAN IMBRECHT: Can you be specific with
16 respect to those areas?

17 MR. MULLIKEN: Well, yes, sir, Mr. Imbrecht,
18 and I thought -- and I apologize. I may be belaboring
19 the point here, but I thought if I could set the framework
20 and the -- and the proposal we have before you today, I
21 think we'll fit pretty neatly --

22 CHAIRMAN IMBRECHT: All right. Fine.

23 MR. MULLIKEN: -- within those pigeonholes, if
24 you'll bear with me for a moment.

25 The other area that was somewhat troublesome

1 for us, and we're going to be seeking your guidance this
2 morning, is areas where I think a fair reading would cause
3 you to conclude that the data itself is adequate, but our
4 consulting team may have taken a different approach to
5 the analysis of that data and has developed different inter-
6 pretive methodologies for dealing with that data than the
7 methodologies which the staff itself might prefer, and
8 it's our belief that in the choice of those alternative
9 methodologies the staff may have confused the question
10 of data adequacy with the question which you all ultimately
11 will have to resolve, and that's what's -- what's the right
12 answer that you derive once you've looked at all this data.

13 Finally, some areas where we just simply felt
14 indeed we've given you the information more than -- more
15 than adequately, but the staff either hadn't, because of
16 either an organizational shortcoming in our presentation
17 of data, or because of the shortness of time available
18 to staff in looking at this massive submittal, that the
19 staff may have simply overlooked some data that we had
20 submitted.

21 Out of that framework, what we tried to do for
22 you today is to take -- well, and I should say probably
23 one more step in the process. We had our workshop, and
24 frankly I think the workshop was very helpful to all of
25 us. We -- and I think what it resulted in, in Mr. Ward's

1 submittal to you today, was a reduction in that list of
2 deficiencies from some hundred-odd down to I think, by
3 our count at least, 48.

4 Now, of the 48 deficiencies, we have got a little
5 three-page submittal here for you that we -- that contem-
6 plates a conditional acceptance, and it really reflects
7 our proposed resolution of those remaining 48 deficiencies,
8 and of those 48 deficiencies, 38 of them, our position
9 is I think very simple and very straightforward. The
10 information either is indeed relevant and should be pro-
11 vided to you, and we will, or the information falls in
12 that second pigeonhole I described of it may or may not
13 be legally relevant to the determination of minimum
14 adequacy requirements, but we're going to give it to you
15 anyhow.

16 And those 38 items, regardless of which pigeon-
17 hole they fall into, are noncontroversial. We understand
18 what the staff wants. We've had a sufficient dialogue
19 with the staff that they are not going to present a problem,
20 and that information we're going to make available to the
21 staff by the 24th of October, so that really leaves us
22 with ten deficiencies to deal with, and those ten defici-
23 encies I think are grouped collectively into those other
24 three pigeonholes, and now maybe, Chairman Imbrecht, I'm
25 going to come to answer a question that you have been

1 patiently waiting for an answer on, and that's -- give
2 me some examples.

3 Well, if I might --

4 COMMISSIONER GANDARA: Excuse me, Mr. Mulliken.
5 Could I interrupt you before you do that?

6 MR. MULLIKEN: Yes, sir, Mr. Gandara.

7 COMMISSIONER GANDARA: Your response, as you
8 have indicated, you know, goes forth by Data Deficiency
9 No. 1 through No. -- the information that I have here,
10 the staff memo dated October 3rd, with the list of defici-
11 encies, does not have numbers attached to those deficien-
12 cies. Are you --

13 MR. MULLIKEN: I'm --

14 COMMISSIONER GANDARA: Did you take these defici-
15 encies and number them yourself, and is that what you --

16 MR. MULLIKEN: Mr. Gandara, we did, and I -- and
17 I apologize, because we realized that the numbering system
18 we've used is one that we've just sort of overlaid on the
19 staffing, but I think as we walk through it I can probably
20 correlate them for you, if --

21 COMMISSIONER GANDARA: Okay. I would appreciate
22 that.

23 MR. MULLIKEN: -- if you would like. Yeah. That
24 we -- I've got some margin notes here that hopefully are
25 helpful on the point.

1 That -- let me ask you to start with No. 5 on
2 our submittal here. It's the Paragraph No. 5, and we call
3 it Data Deficiency No. 2, Demand Conformance. Mr. Gandara,
4 you will find that so-called data deficiency, that's at
5 page 1 of the staff report, and it's the -- it's really
6 the second item under that category of demand conformance.

7 CHAIRMAN IMBRECHT: Appendix BB-1?

8 MR. MULLIKEN: Yes, sir.

9 CHAIRMAN IMBRECHT: Appendix AB-4?

10 MR. MULLIKEN: Yes, sir, Mr. Imbrecht.

11 The requirement itself is stated as electrical
12 supplies which are likely to be available, including
13 transfer capabilities from outside the service area, and
14 a summary of facilities operated or proposed within the
15 service area.

16 As you can see from the staff report there, the
17 indication as to what information is needed is identify
18 power transfer capabilities from outside the SDG&E service
19 area, identify all power facilities operating or proposed
20 for operation within the SDG&E service area, at the proposed
21 time the project identified in the application is to begin
22 operating.

23 Now, Mr. Imbrecht, I think on that issue, that's
24 probably an example of an area which in our judgment falls
25 into one of two categories. Number one is information

1 that quite frankly isn't within our domain. SDG&E is,
2 as you know, our -- the exclusive public utility in San
3 Diego providing power to its customers. It does so under
4 a specific charge from the Public Utilities Commission,
5 and it was a highly regulated entity. It's got responsi-
6 bilities to meet customer demands there. It knows what
7 its system is, it knows where it's getting backup power,
8 it knows where it's getting its standby power. We're not
9 in the business of second-guessing. It's what it does
10 to deal with marginal power requirements, where it's
11 wheeling requirements are being involved, and so forth.

12 We're delighted to ask SDG&E to tender that
13 information. I don't think by any fair construction of
14 the process that you envision here that the absence of
15 that information could be deemed a data inadequacy in our
16 submittal. I don't -- that may be information which is
17 very helpful to the CEC staff to have in understanding
18 as it goes through the analysis of our application. and
19 ultimately positions itself to make recommendations to
20 you, but I think it's quite clear that it's with outside
21 our domain, and so our -- and our suggestion and what we
22 envision there in Item No. 5 is that we would -- to the
23 extent we have any control over that process at all, that
24 we would satisfy that requirement by submitting a letter
25 to SDG&E, a letter similar to the one that Ms. Crowley

1 has already referred to, which is relevant really to
2 another item, but we would submit that letter to SDG&E
3 and ask them to address their response directly to the
4 staff.

5 I'm a little sensitive about the jurisdictional
6 issue there. I mean I think -- from one perspective, at
7 least, I think a fair answer to that whole question is
8 SDG&E has an obligation to its customers to supply their
9 needs.

10 A question asked of us in the workshop was, well,
11 what if the assumptions that SDG&E is making about its
12 ability to provide standby power to you or backup power
13 in the event that you go offline, what if they have over-
14 committed themselves and are therefore unable to provide
15 existing customer demands because they are fulfilling
16 standby power requirements for you, I think that's an
17 interesting issue.

18 I assume that SDG&E clearly understands its
19 statutory mandate in the Public Utilities Code to provide
20 power to its customers. The extent to which it's relevant
21 to this application I really feel hopelessly outclassed
22 on dealing with that issue, and I just don't think it's
23 relevant to the question of whether or not our submittal
24 is adequate at this juncture.

25 So I really want to encourage us to deal with

1 that issue by our merely tendering that request, or really
2 just being a conduit for that request, to SDG&E with the
3 contemplation that the information will be forthcoming
4 in whatever form they are able to provide it to the CEC,
5 and our process can move forward.

6 I think the same can be said, if I could take
7 it out of order here, if I might ask you to refer to what
8 we have numbered as paragraph 12 on page 2 of -- of our
9 proposed decision to you.

10 It's -- our Item 12 there, which is called the
11 -- refers to a data deficiency that, Mr. Gandara, we have
12 numbered as Item 15, Waste. You would find that discussion
13 of that deficiency at page 5 of your staff report, under
14 the category of Waste, and it's right there at the top
15 of the page.

16 The requirement is characterized as a detailed
17 description and discussion of any significant adverse
18 impacts on human health, including assumptions, methodo-
19 logies and studies, and the -- I think it's important to
20 read what the Information Needed section says there.

21 "Substantiate the statement that the project
22 ash residues have been classified as non-
23 hazardous by the California Department of Health
24 Services..."

25 Our substantiation for that is clearly not a

1 question of data adequacy. Our substantiation for that
2 is embodied entirely in a letter which DOHS has addressed
3 to us, a letter which is now codified under the Campbell
4 bill last year, SB-2292. The DOHS determined our ash
5 residue to be nonhazardous.

6 So therein lies the ultimate substantiation for
7 that position. Now, to the extent that DOHS undertook
8 its own analytical processes that the DOHS applied an
9 analytical methodology in reaching that determination,
10 my suggestion to the staff is, as it was in the workshop,
11 that they talk with their colleagues across the street
12 and get that information.

13 They can do that a lot more easily than I can.
14 I didn't get to sit in on the deliberations that prompted
15 the DOHS to determine that the ash residue was nonhazardous.
16 The -- all the information relied upon by DOHS, DOHS's
17 analytical methodology in reaching its conclusion that
18 the ash residue was nonhazardous, are all sitting there
19 right across the street for easy access by your staff,
20 and my substantiation of that issue is the letter we've
21 got that is included in the application which says your
22 waste has been determined by DOHS to be nonhazardous.

23 So, there again, it seems to me, I'm sort of
24 in a Catch 22 here, that that information is available
25 from another agency, to the extent that it's own thought

1 processes are embodied in it, there it is. It can be
2 easily obtained and may well be relevant to the -- to the
3 review and processing of our application, but the applica-
4 tion -- to say that the application itself does not contain
5 sufficient data to be deemed adequate for acceptance and
6 commencement of that review process is really confusing,
7 I think the fundamental issue that you've got to deal with
8 here.

9 I apologize for taking that one out of sequence,
10 but it seems to me they both kind of fall in the same
11 pigeonhole there, be it SDG&E or DOHS. In either event,
12 they are the ones who can provide such information as
13 relevant.

14 If we go back to the first page of our proposed
15 decision here, Items 6, 7 and 8 deal with the question
16 of our -- the data adequacy of our application concerning
17 the biologic analysis, the biologic survey and analysis
18 that was done, and the correlation with the staff report
19 there, Mr. Gandara, on our Item 6, which is -- which we
20 have numbered Data Deficiency No. 3, that would correlate
21 to page 1 of the staff attachment, and the first item
22 under Biology there. I guess that's about halfway down
23 the page on that first page there.

24 And the correlations for our Items 7 and 8 there
25 would be the Data Deficiency No. 4. That would be the

1 second item under Biology, and then the third item under
2 Biology, over on the second page of the staff report.

3 If I can take a minute on that again, I think
4 it makes a point that we're trying to make generally here.
5 If we weren't before CEC and we were doing our own EIR
6 process, and we had to deal with a biologic -- the environ-
7 mental consequences on biology of a project like this,
8 what would we do?

9 Well, we would be proceeding under CEQA, and
10 we would really undertake a three-step process. We would
11 gather data, and once we had completed gathering that data
12 we would then analyze it to try to determine out of that
13 data base which, if any -- what, if any, significant
14 impacts on biologic resources would result from our project
15 proposal, and once we had identified the -- what we deemed
16 to be the significant environmental impacts from the project,
17 for those significant impacts and those alone we would
18 then formulate proposed mitigation measures to mitigate
19 the significant impacts.

20 Now, if we were doing the preparation of the
21 draft Environmental Impact Report under contract, and then
22 we tendered that to the municipal agency we were dealing
23 with, the municipal agency would then sit down, and they
24 might well disagree with us on our analysis of which of
25 the project impacts might be properly deemed significant

1 impacts.

2 And if they disagreed with us on that, then
3 undoubtedly they might disagree with us as well as to what,
4 if any, mitigation measures needed to be addressed to deal
5 with those significant impacts, but clearly those latter
6 two functions, that is disagreeing with our analysis of
7 what did and didn't constitute a significant impact, and
8 then formulating mitigation measures, is -- that's analysis,
9 that's interpretation, and ultimately may embody a dif-
10 ference of opinion, but it doesn't go the question of the
11 adequacy of the data that forms that analysis.

12 Now, the staff may well disagree with the signifi-
13 cance determinations that we've made in our application.
14 They may well then conclude that they would want to look
15 at further mitigation measures, but that doesn't bear on
16 the question of whether or not the data we've provided
17 the biologic survey information we've provided, gives
18 sufficient data to allow the review of the application
19 to go forward.

20 And on that one in particular, I think I feel
21 quite strongly that it's just -- all we need to do is to
22 look at the Information Needed section of the staff report,
23 and compare it with our application. I'm not going to
24 ask you to read four volumes today, but I have taken the
25 liberty of copying a few pages, and if Chris can just

1 distribute them for you I think it will simplify your
2 sorting through four volumes of material, and I don't even
3 pretend to want to ask you to -- to read those few pages
4 that are there, but I do think it's helpful for you if
5 you will simply leaf through them.

6 That is simply a copy of the biologic assessment
7 information that's contained in our report, and you start
8 looking, for example, at what the staff believes to be
9 an informational inadequacy, and they -- as you look here,
10 you see, for example, provide detailed results of on-site
11 wildlife surveys. Wildlife information in the -- in the
12 document provided inadequate consideration of wildlife
13 species. Include literature surveys.

14 Well, you'll find literature surveys there.
15 Historical data, you'll find historical data there. Field
16 methods, we've got a section right in there if you'll leaf
17 through it describing field methods. Analysis of habitat,
18 you'll find a section that's talking about exactly that
19 issue.

20 Results of field survey, again that -- results
21 of field survey are right in there, and qualifications
22 of investigators, it's -- it's right there. As I say,
23 you can just -- I think you can leaf through it, and you'll
24 see the categorical headings there and the discussion,
25 and I guess I -- on that score, really, I ask only that

1 you judge for yourself whether or not the information that
2 is there is adequate to provide the basis for doing the
3 analysis that's necessary.

4 I'm not asking you to -- to agree or disagree
5 with our analysis of which impacts, if any, might be sig-
6 nificant. I'm not asking you to agree or disagree with
7 which, if any, of those impacts would then in turn require
8 mitigation measure. That's an issue to be resolved at
9 the time that you're deciding whether or not to grant the
10 permit.

11 It's not an issue that needs to be resolved in
12 determining whether or not the data submittal is adequate
13 in order to allow the application to be accepted.

14 On the second page of our proposed decision to
15 you under what we've got as Item 9, there the data defi-
16 ciency we've numbered as No. 6, it correlates with page 2
17 of the staff reports, and that's the first item under Air
18 Quality there at page 2 of the -- of the staff report,
19 and I would like to ask -- in fact I think we can probably
20 productively deal with both No. 9 and No. 10 at the same
21 time.

22 The data deficiency we have numbered No. 8 under
23 Air Quality correlates with the third item on page 2 of
24 Air Quality, and, Chris, why don't you -- why don't you
25 go ahead and tackle that one. I think it's --

1 MR. GARRETT: I'll try to be very brief.

2 CHAIRMAN IMBRECHT: Pardon me. Would you state
3 your name for the record and affiliation?

4 MR. GARRETT: Christopher Garrett. I'm also
5 with Latham & Watkins in San Diego --

6 CHAIRMAN IMBRECHT: All right. Fine. Thank
7 you very much.

8 MR. GARRETT: -- representing Signal Environmental
9 Systems.

10 Item No. 9 there, which is the Air Quality, the
11 first item, this -- the application that we have submitted
12 contains a comprehensive list or statement of what we
13 believe the emissions from our facility will be. That
14 statement of emissions is backed up by a -- a document
15 that was prepared by Rust Engineering -- is that right
16 -- and the -- let's see, the -- that's in Appendix I. We
17 have a separate document of 50-some pages labeled Emission
18 Factor Support Documentation.

19 In that document the Rust Engineering Firm which
20 prepared that for us looked to I believe five different
21 sources of information about the emissions from our facility.
22 One of those sources of information was a report put
23 together by the Air Resources Board. Another source of
24 information was I believe some literature put together
25 by environmental professionals who had surveyed the field,

1 and one of the five items was information from Signal's
2 Westchester County facility in New York and the emissions
3 from that facility.

4 And the emissions from that facility were pre-
5 sented in the backup document.

6 What the staff is asking here, and I believe
7 it is information that will be relevant to considering
8 our application, is the specific source test data which
9 gives specific constraints for how that data was collected
10 from the Westchester facility. We're going to provide
11 that. We hope to be able to provide that by October 24th.
12 Our only point here is that we don't see that it's rele-
13 vant to determining whether our application for the San
14 Diego facility is adequate, that we be required in an
15 initial submittal to provide all of the information about
16 all of the source tests that have been conducted at
17 another Signal facility in another state.

18 We don't have any problem with providing that
19 information. We're going to request that it be designated
20 as confidential. We will provide it, but we just don't
21 quite understand the philosophy that would require infor-
22 mation about another facility as a condition for deeming
23 our application adequate, where we have otherwise presented
24 extensive documentation and support based on a number of
25 different factors for our emissions estimates in our initial

1 application.

2 The second item, Item No. 10, which is the --
3 also on page 2 under Air Quality, the third item that's
4 listed, that can be dealt with specifically. We simply
5 don't believe that enrichment of small particulates with
6 trace elements and organic compounds is a significant
7 adverse impact on the project.

8 The staff might disagree with that. I think
9 that's going to be one of the issues that we'll consider
10 in the -- in the substantive hearings on this -- on this
11 matter. As an initial application and a test for whether
12 our initial application is complete, it should suffice
13 for us to say we don't believe it's a significant impact,
14 and if the staff would desire further information on that
15 in the proceedings we'd be glad to provide that, but at
16 the moment it appears just to be simply a request for
17 scientific information. It's not related to any of the
18 significant impacts that we've identified in our applica-
19 tion.

20 I'll go ahead, too, I think to Item No. 11, which
21 deals with data -- what we call Data Deficiency 12, which
22 is on page 3, Air Quality, Item 7, and then on page 4,
23 under Health, the first two items, what we call Data
24 Deficiencies 13 and 14.

25 The Energy Commission staff's data deficiencies

1 refer to a letter from the San Diego Air Pollution Control
2 District.

3 As an overview, I think I can simply state all
4 of these deficiencies appear to us to either again relate
5 to requesting specific information about Signal's
6 Westchester facility, which we're happy to provide later
7 on in the process, or they question or disagree with
8 methodology which Signal used in preparing a risk assess-
9 ment for this project.

10 I'm not sure how many of you are familiar with
11 the concept of a risk assessment to start with. I know
12 that Commissioner Crowley is perhaps familiar with it from
13 the Irwindale proceedings.

14 It's not a specific item that's required by the
15 San Diego Air Pollution Control District rules and regula-
16 tions. It's not a specific item that's required by the
17 Energy Commission regulations. However, in talking with
18 staff before we submitted our application, it became clear
19 to us that they would like us to do a risk assessment of
20 potential health effects from suspected carcinogens that
21 might be in emissions from our facility.

22 We put together a risk assessment using a method-
23 ology we believed is appropriate. It's I believe Appendix
24 M -- is that right -- N. It's about -- I'd say about a
25 hundred pages. It utilizes a number of different sources,

1 cites to a variety of literature to substantiate its
2 methodology and conclusions.

3 A number of these items -- and I think the best
4 way to deal with this in the short period of time we have
5 is just to read from one of the items which the staff has
6 concluded our application is incomplete, and that would
7 be Item No. 7 in the San Diego Air Pollution Control
8 District letter, which is at the very end of your materials.
9 It's on page 2 of that letter, Item No. 7, and it says,
10 basically, that our application is incomplete because of
11 the failure of the risk assessment to justify why the
12 method used to determine the 2,3,7,8, TCDD toxic equivalents
13 of PCDD and PCDF was not that specified by the California
14 Department of Health Services.

15 I think just reading through that, that's clear
16 that what's there is not -- not so much a statement that
17 raw data about the project wasn't provided but, rather,
18 a disagreement about methodology. That's -- that I think
19 is an important disagreement, and that's something that
20 we should deal with in the substantive proceedings on this
21 application.

22 As an initial application, certainly your regula-
23 tions don't specifically provide, nor do I think you can
24 imply, that one of the items is to justify why one method
25 versus another was used in estimating a toxic equivalent

1 or toxic effect of certain types of emissions from the
2 facility.

3 On that specific item, just -- just to deal with
4 it, we did in fact provide justification. We cited to
5 a study that was done by EPA which used these precise
6 toxic equivalents, and we provided scientific justifica-
7 tion for why that particular method was worthwhile over
8 another.

9 There wasn't a long three- or four-page argument
10 favoring one methodology over another, but again I think
11 that's illustrative of the other items that talk about
12 the failure of the risk assessment to address one item
13 or another.

14 Those are all items which we believe can be safely
15 left to the substantive proceedings on this matter or
16 responses to information requests. Since the San Diego
17 Air Pollution Control District regulations and the Energy
18 Commission regulations don't specifically require a risk
19 assessment, don't specifically state what methodology should
20 be used in that risk assessment, our application should
21 be deemed complete if we provide such a risk assessment,
22 provide the methodology that we use, provide scientific
23 sources for the methodology. We should be deemed complete,
24 even though the staff may disagree with some of the conclu-
25 sions that we've reached or some of the methodology we've

1 used, and even though the staff might like later on in
2 the process a justification why we chose one particular
3 methodology over another.

4 MR. MULLIKEN: All right. You've been generous
5 with your time, and I'm going to dispose of the last two
6 items very quickly here. What we've got listed as Item
7 13 on page 2. The staff is asking us to -- or is indica-
8 ting a deficiency which correlates to a discussion in page
9 6 of the staff report under the -- which is the -- and
10 the fourth item under Engineering and Geology.

11 The staff apparently believes that we may have
12 omitted to discuss relevant legal requirements, and they
13 -- they use as examples Uniform Building Code, and so forth.
14 I think on that one it's just -- it's pretty simple to
15 resolve that. We identified all the legal requirements
16 that we -- that we considered relevant to the project.
17 The staff has not identified any relevant legal requirement
18 that they believe we've omitted.

19 What they are asking us to do I guess is to shoot
20 in a barrel and predict which legal requirements we think
21 may not be relevant to the project. I guess my short
22 answer to that is the staff has a specific statutory issue
23 or a particular body of regulation which it considers we
24 have not addressed that we should have, and they want to
25 tell us what that is, we'd be delighted to deal with it,

1 but right now, to the best of our knowledge, we've dealt
2 with the -- with the relevant regulations, and all the
3 ones that are specifically referenced as examples in the
4 staff discussion we have discussed.

5 And then the last item is on page -- is on Item
6 14, over on page 3 of our proposed decision. That is kind
7 of -- I think that sort of falls out of our previous dis-
8 cussion about the extent to which we're dependent on SDG&E
9 providing information.

10 Ms. Crowley, the letter that -- that we have
11 already given a copy to, that you had alluded to in your
12 earlier questioning, is -- is our suggested response to
13 that item. There again, that's something that's not within
14 our control, and it seems to us the logical approach to
15 take is that we've made the request to SDG&E, now they
16 are going to respond in due course. It ought not to be
17 deemed a data inadequacy in our submittal.

18 MR. GARRETT: We've provided in our submittal
19 a copy of the preliminary interconnection study that was
20 done by San Diego Gas & Electric, and I think you'll see
21 from the materials that we have requested that San Diego
22 Gas & Electric provide all the additional information that's
23 needed for the transmission lines, the design, the informa-
24 tion that the staff needs for analyzing transmission lines.

25 We're not suggesting that the staff doesn't need

1 this information to analyze our project. What we are ask-
2 ing on this particular type of project, where we evidence
3 a commitment to obtain that information from someone else
4 who has to give it to us, and we make efforts to obtain
5 that in a timely fashion, that you accept our initial
6 application, conditionally accept it as complete, and start
7 the process and allow us to get this information. In fact,
8 what we would like to do perhaps on this issue and on the
9 other issue dealing with SDG&E is -- is try and have some
10 workshop, once the procedure starts, to deal specifically
11 with this issue, where we can get the information directly
12 from San Diego Gas & Electric.

13 CHAIRMAN IMBRECHT: Have those requests been
14 filed?

15 MR. GARRETT: No. At this time we don't have
16 a complete application. We thought it was perhaps preli-
17 minary to be requesting that staff workshops be held on
18 particular issues.

19 CHAIRMAN IMBRECHT: Well, let me -- I think you
20 misunderstood. Have you made those requests of San Diego
21 Gas & Electric in each of these instances?

22 MR. MULLIKEN: Oh, yes, I'm sorry. Chairman
23 Imbrecht, we -- the letter that you have in front of you
24 constitutes our request with respect to Item 14, and it
25 constitutes a pretty extensive response by SDG&E. If

1 you will look there a couple of pages back, behind the
2 SDG&E letter, you will see what they did basically was
3 take the initial staff deficiencies that were discussed
4 in our workshop, laid that out in a grid there, and then
5 provided responses to it of their own, and so -- so that's
6 now in the record, and I think that substantially deals with
7 that problem. To the extent that there's more informa-
8 tion that may be forthcoming from SDG&E, I think the place
9 to look for it is from them.

10 I -- maybe I ought to just -- let me conclude
11 this by explaining why I took you what may seem to be a
12 somewhat tortuous exercise here.

13 CHAIRMAN IMBRECHT: While you're doing that,
14 maybe you could return to that initial question that I
15 asked that you raised some suggestion that there was a
16 matter of jurisdictional issues between us and the PUC,
17 vis-a-vis requests made by the staff.

18 I don't recall you having touched upon that in
19 your presentation.

20 MR. MULLIKEN: I'm sorry, Mr. Imbrecht. I think
21 I may have alluded to that one in our early -- in the early
22 going when Ms. Crowley was asking some questions here.

23 I -- the extent to which ultimately the staff
24 of the CEC might conclude that our project ought not to
25 be permitted, or may be more relevant to this step of the

1 proceeding, that our application ought to be deemed
2 inadequate because of insufficient data, to explain --
3 or to substantiate how SDG&E in fact intends to provide
4 standby power to its customers or standby power to us,
5 and the extent to which by, in providing standby power
6 to us, it's going to leave itself exposed and, therefore,
7 incapable of meeting existing customer demand.

8 I'm not sure as to the extent to which that
9 really constitutes a question that lies primarily, if not
10 exclusively, within the jurisdiction of the Public Utilities
11 Commission, that if indeed there is a perception that San
12 Diego Gas & Electric is not meeting its -- its statutory
13 requirement on the public utilities -- under the Public
14 Utilities Code to provide power to the customers who are
15 statutorily entitled to -- to demand it, and it's not --
16 or it's -- if it's doing it now, that it may not be able
17 to do it in the future because it's going to extend a
18 standby power commitment to us. It occurs to me that that
19 may be getting out onto the fuzzy edge where, regardless
20 of what the proper resolution of that jurisdictional con-
21 troversy is, there's really no way that the applicant here
22 is in a position to -- to illuminate that issue.

23 I think that's really what I had in mind.

24 CHAIRMAN IMBRECHT: Short of making a similar
25 request to San Diego Gas & Electric, as you have done on

1 some of these other points.

2 MR. MILLIKEN: Yes, sir, we certainly are. And
3 I guess what we're really saying is to leave it to them
4 to --

5 CHAIRMAN IMBRECHT: I have to say, from my recol-
6 lection, in terms of all the various cases that we've con-
7 sidered, that I don't recall this issue having been raised
8 before by any third-party applicants.

9 MR. MULLIKEN: Well --

10 CHAIRMAN IMBRECHT: I don't know. Commissioner
11 Gandara, you might, with your institutional memory, assist
12 me on that, but it seemed to me this goes to a fundamental
13 issue of system reliability.

14 MR. MULLIKEN: Well, and that's why, Chairman
15 Imbrecht, we had proposed in our -- under our paragraph
16 5 to simply resolve it by you directing us to make a formal
17 request of SDG&E that they address that issue, and that
18 they respond to the staff, but I'm very uncomfortable with
19 the applicant being encumbered with the responsibility
20 for insuring the adequacy of that response.

21 I'm not in the business of running -- Tom Page
22 is in the business of running his company. I'm not, and
23 I -- I don't pretend to fathom all of the ways in which
24 he is dealing with meeting his statutory obligations under
25 the Public Utilities Code to serve his customer base. I

1 think he ought to be addressing that, and to the extent
2 he is -- that he can answer it, his utility staff can
3 answer it directly to your staff, terrific.

4 I just -- I'm in a hopeless situation, I think,
5 if my application can't be deemed adequate until he has
6 responded to something that's within his domain and con-
7 trol; and do so in a way that -- that satisfies the staff
8 here.

9 CHAIRMAN IMBRECHT: Well, even for purposes of
10 argument, if I were to accept that discussion, I am still
11 puzzled by the reference to jurisdiction. It's just a
12 regulatory agency, and I -- as I say, to my recollection,
13 that is a unique issue being raised.

14 MR. MULLIKEN: Well, and indeed --

15 CHAIRMAN IMBRECHT: Commissioner Gandara, can
16 you help me on that?

17 COMMISSIONER GANDARA: Well, I --

18 CHAIRMAN IMBRECHT: Is that something you've
19 heard before?

20 COMMISSIONER GANDARA: I think the staff might
21 have a clarification before I comment, but I do have a
22 number of questions of a general nature that I'd like to
23 get to a little bit later, and one of them is somewhat
24 related to this area.

25 CHAIRMAN IMBRECHT: All right.

1 MR. GARRETT: If I might add, this item comes
2 out of Appendix A, which deals with the Notice of Intention
3 Process. It's incorporated by reference into Appendix B.
4 When I read it, it appeared to me to just simply be a set
5 of regulations written exclusively for the NOI process
6 that really didn't apply to an AFC process by a third-party
7 energy producer. It was written with the assumption that
8 the applicant would be a regulated public utility and,
9 therefore, would have access to the information.

10 So, rather than presenting a jurisdictional issue,
11 I think it simply could be analyzed in terms of a set of
12 regulations which aren't quite applicable to this type
13 of application, and that appear to inadvertently apply
14 through the complicated mechanism of Appendix A and
15 Appendix B.

16 MR. MULLIKEN: And to conclude what we had to
17 say to you, again with apologies for taking you through
18 this, I think we felt that indeed there is a great benefit
19 to us in this.

20 We have assembled a team of technical experts,
21 including the resources of PRC Engineering, Rust Engineering,
22 Woodward-Clyde, Signal Research Center, Recon Engineering
23 and several independent consultants with unique qualifica-
24 tions in the various areas we had to address to be respon-
25 sive to your regulatory requirements.

1 We had the better part of 50 people working on
2 this project, working under the direction of Debra Marsh,
3 who is here with us this morning, and is really the project
4 manager from PRC. We feel that we -- we've addressed these
5 issues in good faith, but Debra's job was really a three-
6 fold job in putting that material together.

7 It was to compile adequate informtion, to do
8 substantive impact analysis, and then do mitigation --
9 discussion of mitigation measures, and while the document
10 itself had to embody all three of those issues, the issue
11 today goes only to the first question, and that's the
12 adequacy of the data.

13 It doesn't go to the second and third issues
14 of whether or not staff agrees with the substantive impact
15 analysis and whether or not it agrees that the mitigation
16 measures are appropraite. That's for a later day, and
17 the reason that we went through this is because I think
18 there is indeed some significant confusion on that point
19 in the minds of the staff and, rather than our merely
20 trying to respond to the staff on this point and not
21 involve you in the process, I felt that by whittling it
22 down as much as possible, that we could get helpful direc-
23 tion from you, rather than our continuing to be potentially
24 at loggerheads with the staff, because the staff had one
25 view of what was required, and maybe we had a different

1 view, and that's really -- it was with that in mind that
2 we thought, great, let's look at how much progress we've
3 made.

4 We appreciate that, and the staff input has been
5 enormously helpful to us, and we -- and frankly we're
6 encouraged that -- that based on the dialogue that's
7 occurred so far, that this can be a very constructive
8 exercise for all of us, and we started out with this massive
9 number, and now we're down to a few, but rather than leave
10 it for us to continue to debate on what may be a futile
11 exercise, we felt that by suggesting this approach to you,
12 it gave you an opportunity at this juncture to interject
13 and give us some direction on these issues.

14 CHAIRMAN IMBRECHT: Well, that's appropriate,
15 because fundamentally, when -- whether an application
16 is accepted or not, if it's not accepted and there is listed
17 data inadequacy, it ultimately becomes the Commission's
18 adopted list.

19 MR. MULLIKEN: So, thank you for your patience
20 and attention in listening to us.

21 CHAIRMAN IMBRECHT: You're quite welcome. We
22 may return for some questions. Mr. Deter or Mr. Ward,
23 who wants to respond?

24 Pardon me. Commissioner Gandara, do you wish
25 to ask some questions?

1 COMMISSIONER GANDARA: Yes. I have a few ques-
2 tions for you, Mr. Mulliken.

3 MR. MULLIKEN: Yes, sir.

4 COMMISSIONER GANDARA: I have a number of ques-
5 tions that I'll reserve till after the staff responds,
6 because they may answer some of those, but the questions
7 that I have are more of a general nature that are not
8 likely to be involved in that exchange, but I do appreci-
9 ate your -- your taking the time to go through the issues,
10 because I think it's a very good explanation in a complex
11 area of what issues are before us.

12 The first question I had is that there were a
13 number of references to the history of the project. The
14 representative from the -- either the City or the County
15 of San Diego went through some of that, and I'm not quite
16 so sure whether there are some -- there can be some clari-
17 fication provided by -- by pursuing a few things in this
18 area, so let me just go back.

19 The applicant is -- is Signal Environmental
20 Systems. That's correct?

21 MR. MULLIKEN: Yes, sir.

22 CHAIRMAN IMBRECHT: And you are retained by the
23 applicant, and you're representing Signal, and not the
24 City or the County of San Diego.

25 MR. MULLIKEN: Yes, sir. That is correct.

1 COMMISSIONER GANDARA: Okay. Since there were
2 references made to the team of experts and/or the depth
3 of work that was invested by the City and/or the County
4 before the project was upgraded, and I believe that you
5 yourself indicated that that upgrade -- upsizing, let's
6 put it that way, was recent.

7 Is there an issue with respect to the relevance
8 of the data that might have been collected earlier when
9 the -- before the project was upsized, to this particular
10 project? That is, are some of the references here to
11 surveys taken for the smaller project? I mean is that
12 an issue here?

13 MR. MULLIKEN: I'm going to ask for Debra's help
14 on that, because, quite frankly, I think you -- you heard
15 correctly what Nickie Clay said. I mean long before Signal
16 was the applicant on this project, this was envisioned
17 as a municipal project. The City and the County got
18 together, they creaed a Joint Powers Authority called
19 Sander. They were going to do this as a municipal project.
20 They were going to use, you know, tax-exempt financing,
21 and it was going to be their project, and they were just
22 going to get a contractor to build it for them.

23 And at that juncture I think they were envisioning
24 a -- a sizing on the project that wouldn't have brought
25 it within your jurisdiction. They retained a whole bevy

1 of consultants that Nickie referred to here, and they had
2 all but completed a classic EIR under -- under the CEQA
3 process.

4 As the transactional structuring of the project
5 changed and Signal stepped into a different position, and
6 we upsized the project, in many respects we were duplica-
7 ting effort that had been undertaken, in whole or in part,
8 by consultants that were working at Nickie's direction,
9 and Debra Marsh and her team of consultants that were
10 brought on by Signal then had the benefit of that material,
11 and maybe it's -- it occurs to me that -- if I'm being
12 responsive to your question, I think maybe it would be
13 helpful for Debra to explain to you how she used that
14 material.

15 COMMISSIONER GANDARA: Yes, that would be helpful.

16 Now, Ms. Marsh, now, are you an employee of
17 Signal? Are you a consultant for Signal?

18 MS. MARSH: No, I am a consultant. I am an
19 employee of PRC Engineering in San Diego, and we have been
20 retained by Signal to produce the application for certi-
21 fication.

22 COMMISSIONER GANDARA: Okay. You are, then,
23 the project managers --

24 MS. MARSH: That is correct.

25 COMMISSIONER GANDARA: For this facility.

1 MS. MARSH: That is correct.

2 COMMISSIONER GANDARA: If you would then proceed
3 with respect to my --

4 MS. MARSH: Certainly. Thank you very much.

5 COMMISSIONER GANDARA: -- initial question of
6 what -- if there are any issues before us for which a con-
7 tention might be that they were prepared for an earlier
8 project that might in fact not be this one.

9 MS. MARSH: Thank you.

10 At the initiation of our effort, we had hoped
11 that in fact much of the preexisting data would be useful
12 in our analysis. As we got into both your regulations
13 and a better understanding of the consequences of the up-
14 sized project, it became clear that those -- most of those
15 previous studies were useful background, but did not form
16 the basis for the analysis that we did.

17 In all cases we collected new data. We had new
18 meetings with, for example, the Air Pollution Control
19 District, the Environmental Protection Agency, your staff,
20 and cited that previous information basically in the
21 literature survey sense, but did not use it as the funda-
22 mental basis.

23 There were a couple -- another reason for that
24 was our client's desire to have -- have the knowledge of
25 where the conclusions came from and a knowledge of the

1 analysis process, so we are not I don't believe in any
2 case arguing that we're relying on previous data, and in
3 the case of the biological survey we used it in a litera-
4 ture survey sense. It was -- that previous survey was
5 conducted at a different season, so we feel that this
6 broadens our -- our perspective and our data that we have
7 in the report, but we did not rely on it, and I don't
8 believe it's an issue in this case.

9 COMMISSIONER GANDARA: Okay. And is --

10 MR. MULLIKEN: Yeah. I -- I think that correctly
11 states it. I don't believe that the -- the staff has not
12 identified as a deficiency any concern about our reliance
13 on that information.

14 I think where it fits into the mosaic of this
15 -- of this whole effort is that, as it started out as a
16 municipal project, it was perceived as being within the
17 primary jurisdiction of those municipalities. They under-
18 took that environmental analysis, as I know you would expect,
19 with the level of visibility -- visibility of this kind
20 of project and its implications for the community. The
21 community was obviously pressing the decisionmakers to
22 understand, in a structure framework, the environmental
23 consequences of the project.

24 We thought that's where the project was going.
25 Now, because of your pre-emptive jurisdiction, you're taking

1 over that function, so what we have really done is, I think
2 by the local -- by the work that was done at the local
3 level, we simply whetted the appetite of the local folks
4 to know what the answers would be, but in terms of a data
5 adequacy question, I don't think there's a problem there.

6 COMMISSIONER GANDARA: Let me then ask a few
7 additional questions, now. The involvement, then, of the
8 City and the County at this point in time is mainly as
9 a seller of the waste to Signal?

10 MR. MULLIKEN: I think again, and Nickie can
11 correct me if I'm wrong, but I think, really, in two funda-
12 mental respects, as the seller of the waste and as the
13 owner of the land on which the project will be located,
14 and that is a very important issue, because that land
15 ownership --

16 COMMISSIONER GANDARA: I understand.

17 MR. MULLIKEN: -- goes into this land swap issue
18 with the -- with the Navy, and the whole question of miti-
19 gation of impacts associated with that, where we -- where
20 we interface with the federal NEPA environmental review
21 process.

22 COMMISSIONER GANDARA: Then, next, the -- again,
23 the representative from the City indicated that they had
24 very carefully selected the consultants and, in particular,
25 were interested in a proven technology, one that in fact

1 was not a risky project, and so forth.

2 Can you tell me, and reference has been made
3 to a Westchester project, and other projects I guess of
4 Signal. Can you tell me whether there -- how many projects,
5 waste energy projects, has Signal built? Have they all
6 been run successfully? Have they had any concerns or
7 problems expressed with them?

8 I think this goes to the issue of the -- of what
9 you're asking us to consider, which is to some degree the
10 weight and credibility of the fact that you in fact have
11 addressed these problems and need to get started.

12 MR. MULLIKEN: Let me ask Nickie Clay, the
13 project manager from -- the project director at Sander
14 to talk about the first issue there.

15 MS. CLAY: Thank you very much. That is defi-
16 nitely something that as a, you know, a community, both
17 the City and the County were very interested in, was being
18 able to go out and kind of touch and feel and get some
19 operating experience. We were looking at this, and there
20 were a couple of firms that did have plants online, not
21 all of them in the United States, but they did have opera-
22 ting facilities.

23 The firm we selected, Signal Environmental
24 Systems, has five plants that are operating today in the
25 United States. There's a plant in the Tampa Florida area

1 called the Pinellas Plant, that has been online and opera-
2 ting for about two years. That plant is the same mass-
3 burn technology. It is operated by Signal Environmental
4 Systems.

5 They also -- the plant that's been online the
6 longest, and I probably should have started there, is the
7 plant in Saugus, Massachusetts. It's about 1500 tons a
8 day. It's a little bit smaller than the plant we're plan-
9 ning on putting in San Diego. It's been online since the
10 mid-70s, and in fact they like to say that they have never
11 turned away a ton of garbage at that plant and, of course,
12 from a local perspective, that's a very impressive number,
13 because we like to think we've got a reliable solution
14 there.

15 There is also the plant in Baltimore, Maryland,
16 which has been online about a year now. That plant is
17 the same size as the plant planned for San Diego, and is
18 owned and operated by Signal Environmental Systems.

19 Then there is the plant in Westchester, which
20 has been online about the same amount of time. Again
21 it's the same -- it's up by the Hudson River. It is the
22 same size as the plant planned for San Diego.

23 And then the last facility, the facility that's
24 come online most recently, is in North Andover, Massachusetts.
25 It is again a smaller plant. It is about 12 to 15 hundred

1 tons a day, and it is just going through the commercial
2 start-up now.

3 So at the point in time we selected this firm,
4 we felt that they had a proven track record, and that was
5 something that was very important to the community, even
6 though Signal Environmental System is taking the busienss
7 risks and the performance risks on this. Our need, our
8 bottom line is we need to get rid of that garbage, and
9 we need to do it in an efficient and economical and
10 environmentally safe way.

11 So we were looking for a track record out there,
12 and we -- we feel comfortable, and so did our selection
13 panels that there was a track record there.

14 COMMISSIONER GANDARA: And these plants have
15 not had any environmental problems? They have been opera-
16 ting to design, to capacity levels, and so forth? I
17 mean --

18 MS. CLAY: I will certainly put it on a very
19 -- I'll let Debra give you the technical answer. We took
20 a tour with a number of city officials and toured some
21 of these plants, and the Deputy City Manager of the City
22 of San Diego, it got to be kind of an old saw, he would
23 say every time -- that was the first hing he'd say is,
24 "Have you ever had any environmental problems?"

25 And the answer from the plant operators and the

1 different citizens and people he would talk to was always,
2 "No, we have not."

3 So, Debra, you may want to give some more tech-
4 nical information about that, but that's a layman's per-
5 spective of that.

6 MS. MARSH: I would just like to add that all
7 of these plants are permitted under public agencies such
8 as yourselves and, as such, they are subject to specific
9 permit requirements with regard to the whole range of issues,
10 enviromental issues, performance, et cetera, and they are
11 continuing to operate under those permits and to satisfy
12 those regulations.

13 I think that our application contains quite a
14 bit of information about reliability, on an overall sense
15 as well as on a piece of equipment by piece of equipment
16 basis, and also discusses reaction to -- to various types
17 of contingencies which may occur in the plant, so that
18 they are very well prepared to be a -- a very useful and
19 appreciative part of the community.

20 COMMISSIONER GANDARA: Okay. Let me take off
21 on one of your questions there, which is a question I had
22 for you, Mr. Mulliken, since you indicated that all --
23 most of these plants or all have been permitted under very
24 similar agencies. I'm not quite aware of any other similar
25 institution like this one --

1 MS. MARSH: Well, they --

2 COMMISSIONER GANDARA: -- but, you know, the
3 -- be that as it may, my question goes more to -- to some
4 degree, I guess your characterization of our process,
5 Mr. Mulliken, and I'm not quite so certain that part of
6 the problem we may have here may be perhaps a -- a percep-
7 tion of what our role is, and this gets to Chairman
8 Imbrecht's question earlier, and that is that when you
9 began your presentation you basically referred to the change
10 and the upsizing producing a change with respect to our
11 review of the environmental process.

12 You have emphasized, you know, our responsibi-
13 bilities as a CEQA equivalent, and then most recently again
14 you indicate the jurisdictional aspect of the Commission
15 as that which would be related to CEQA conformance, and
16 I guess to some extent I -- I am -- I begin to sense that
17 if you view the process here as merely one of the environ-
18 mental impact review and CEQA conformance, and that that
19 is the principal thing that occurred, you know, the change,
20 then I think it leads to the confusion that perhaps was
21 earlier, in that we do have a supply planning aspect of
22 it, or supply balancing.

23 And so that leads to the issues of the reliability,
24 the interconnection, and so forth, so I guess my question
25 is do you -- do you truly see us more as basically

1 providing environmental review, or do you fully appreciate
2 the broader aspects of the -- of the planning? Because
3 even though we are the CEQA equivalent, in terms of our
4 process, that it is beyond a doubt that we have -- cer-
5 tainly our process requires much more than minimal CEQA
6 compliance.

7 MR. MULLIKEN: Yes, sir. And I -- if anything
8 we have said today suggests that we have any different
9 understanding than that, then I apologize. We -- let's
10 make sure, I guess, what we do understand.

11 We understand that you have a clear mandate under
12 statute to deal with a range of issues. We also understand
13 that, by virtue of the sizing of our project, that the
14 Legislature has chosen to give you pre-emptive jurisdic-
15 tion over a variety of issues which, in the ordinary course
16 of events, would be dealt with by the local agencies or,
17 in some cases, state agencies other than yourself; that
18 if we were under a 50-megawatt project we would be dealing
19 with air issues with the San Diego APCD and, secondarily,
20 with the Air Resources Board and the EPA.

21 We would be dealing directly with the Waste Board.
22 We would be dealing directly with local agencies with land
23 use permitting authority, that all of those multiple array
24 of jurisdictional functions are drawn together in your
25 process, and stand side by side with your independent

1 jurisdictional mandate, and that within the framework of
2 your embracing not only jurisdiction that's generic to
3 your Commission but jurisdiction that is derivative of
4 that exercised by local and state agencies, that you have
5 a very pervasive responsibility under your functional
6 equivalency process to discharge the statutory mandate
7 that CEQA would directly place on those agencies that
8 otherwise we would be dealing with.

9 And I don't mean to understate the importance
10 of the CEQA process. I think the CEQA process or its
11 functional equivalent is very important to you, and I think
12 it serves as a very helpful vehicle for embracing the
13 decisionmaking process you have to deal with, but if we
14 -- if we suggested or if our remarks left you with the
15 impression that we think all you're doing is just func-
16 tioning as a super environmental review agency, absolutely
17 not.

18 COMMISSIONER GANDARA: I just want to make that
19 clear, because, you know, the other thing that occurred
20 in that upsizing is that we here have a different concern
21 that you would not have been facing in that, which is the
22 supply and system requirements.

23 That leads me to my final two questions here
24 which goes to essentially the essence of your position
25 or proposal today. There are a number of deficiencies

1 which you are committing to providing by October 24th for
2 this conditional acceptance.

3 There are a number of deficiencies for which
4 you indicate that you cannot provide, because they are
5 in the hands of other agencies, and then there are a number
6 of deficiencies that fall in the third category which you
7 say you have already provided, and it is a question of
8 interpretation as to whether it meets sufficiently the
9 requirements to move ahead.

10 I have I guess one question with respect to that
11 category of questions which you feel is in the hands of
12 another agency, and that is the -- our process basically
13 provides the burden on the applicant to provide the infor-
14 mation, and you have indicated that in this case it would
15 be in some other agencies, and that we -- the staff could
16 get it, and so forth.

17 The experience -- and not always, but often,
18 has been with conditional acceptances that the promises
19 that are made at that time are for various reasons, usually
20 good reasons, but certainly unforeseen reasons, not pro-
21 vided, which leads to a problem in fact in processing.

22 What would you expect if the information were
23 not forthcoming? We -- again the applicant is not SDG&E,
24 the applicant is not DHS. What if the required information
25 is not forthcoming? Where would that place us in our

1 situation, and what would -- what would you be committing
2 to as a result of that?

3 MR. MULLIKEN: Well, let me -- maybe I'll work
4 backwards through that. What we're committing to is to
5 do whatever we can to help in facilitating their responding
6 directly to the staff.

7 What we would expect would happen would be really
8 two things. We would expect and hope for a direct dialogue
9 between your staff and those agencies, since those agencies
10 are the ones who are the possessors of that information.
11 What -- if that dialogue did not in a timely fashion lead
12 to a satisfactory resolution of staff concerns, we would
13 then expect that under your regulations you would -- you
14 would suspend the proceedings if deficiencies had failed
15 to be corrected through this -- through the process of
16 dialogue that would occur there, as your regulations speci-
17 fically contemplate.

18 I mean I -- I know I don't need to tell you.
19 What we are proposing here is nothing novel or new. It's
20 exactly a process your regulations envision, and that is
21 that you would conditionally accept it with the understand-
22 ing that information would be provided, and if you didn't
23 like the informational submittal you obviously retain a
24 jurisdiction to suspend proceedings.

25 And we're not trying to counsel you to deviate

1 from that approach. We're merely trying to underscore
2 from our perspective the urgency of moving forward to
3 underscore what we feel is the importance of establishing
4 direct dialogue with those agencies which are in a posi-
5 tion, or other entities which are in a position to provide
6 this information.

7 And in doing that, we're not trying to -- to
8 shift the burden that we bear as the applicant for satis-
9 fying the data adequacy requirement. I think we're merely
10 trying to suggest that we believe that -- that we have
11 done that subject to your retaining the jurisdiction to
12 feel that at a point in time here shortly following this
13 that we -- that the job has not been done right.

14 MR. GARRETT: If I might just add to that, clearly
15 one of the findings you've got to make to certify our
16 project is that there's -- that we conform to the need
17 that's set forth in the Biennial Report and the Electricity
18 Report that you've adopted, and if the Commission is not
19 satisfied at the conclusion of our proceedings that we
20 meet those need requirements, because they don't have
21 information from us or from San Diego Gas & Electric, or
22 they are concerned about system reliability, we run the
23 very real risk of having our application denied.

24 It's not really a question of whether the infor-
25 mation is relevant to your proceeding or the issues are

1 relevant to your proceeding, but whether, as an initial
2 application from a third party energy producer, rather
3 than a public utility, you should require them to do the
4 analysis of -- as this states here, analyze power transfer
5 capabilities from outside the SDG&E service system.

6 We are perfectly prepared to meet the require-
7 ments that are in the Public Resources Code on applica-
8 tions, which state that, you know, we've got to have a
9 statement of need providing information showing compati-
10 bility of the proposed facility with the most recent
11 Electricity Report issued by the Commission.

12 We have that in our application, and I don't
13 think staff has quarreled that we have met that test of
14 need and shown that under the Electricity Report.

15 As you may know from other projects that are
16 before you, the question of when you get into that how
17 much you can rely upon the Electricity Report, whether
18 it needs to be relitigated in the context of particular
19 proceedings, may be a very real one, but it's one that
20 I suggest you deal with after you decide whether an initial
21 application is complete.

22 COMMISSIONER GANDARA: The last question here
23 is, you've indicated I guess a sense of urgency about
24 getting started, getting something underway even if it's
25 conditionally accepted, and to that extent the date that

1 you suggest, October 24th, is eight days away from us,
2 and the next Commission meeting is October 30th. Well,
3 we meet every two weeks.

4 I guess my next question to you is what is the
5 urgency of those intervening eight days or 14 days, given
6 that there are a number -- if you promise to deliver the
7 data; most of this data by October 24th, that certainly
8 affords us an opporutnity to see, you know, what it is
9 that's provided there.

10 That certainly will not address the issue of
11 two of the categories, which is the ones where you
12 actually have some differences as to whether the data is
13 sufficiently already there and, secondly, the one which
14 you feel is not within your -- your hands.

15 But absent that, I guess, what is the detrimental
16 effect of not acting on this today and providing you an
17 opportunity to provide as much additional information as
18 is considered deficient by the staff?

19 MR. GARRETT: I guess it's not so much detrimental
20 affect as our belief that our application is complete,
21 and we would like the Commission, given the substantial
22 showing that we've made to get a complete application
23 on file, to conditionally accept it with our written assur-
24 rances, as your applications provide, that the information
25 on these 38 items that we're not arguing about will be

1 supplied by October 24th.

2 We picked October 24th because that is the day
3 when we believe we can have all that information submitted
4 to the Commission, and that's the day that we think the
5 clock should start running on that point. That's when
6 we think the analysis can start.

7 As Mr. Mulliken mentioned, if for some reason
8 what we submit on the 24th is not adequate, your own regu-
9 lations give you the power to suspend the running of the
10 proceedings until we make up with that deficiency, but
11 we think we're in a different position than somebody who
12 is simply coming in and saying we're missing part of our
13 application, we want to start over again.

14 We think we made a good-faith attempt to meet
15 all the requirements, and we think this is the best way
16 to resolve the proceedings in this case.

17 If the Commission today adopts the order that
18 we have proposed, for us that resolves the issue on the
19 other ten items as well. Then we know that we can satisfy
20 those ten items in our submittal on the 24th as well, and
21 what we're asking for is your guidance as to those ten
22 items if this order is adopted as we proposed. Then we
23 will have a complete application as to those ten items
24 and as to the 38 other items when we submit the data on
25 the 24th.

1 COMMISSIONER GANDARA: Okay. Thank you very
2 much. I have no further questions.

3 COMMISSIONER CROWLEY: Are there any other ques-
4 tions from another Commissioner to the applicant?

5 Hearing none, then if, Mr. Ward, you would care
6 to begin the staff presentation?

7 EXECUTIVE DIRECTOR WARD: Thank you, Commissioner
8 Crowley. I would just make a couple of comments generally
9 before Chris Tooker attempts to rebut all of these.

10 I think as you are all aware, we don't attempt
11 to prioritize these in terms of importance. This is the
12 laundry list.

13 So Mr. Mulliken was able to go through here and
14 to some extent pick and choose some of the ones that he
15 felt were more relevant to making his case than -- than
16 others.

17 I would also point out that the Air Quality --
18 or the local Air Pollution Control District had raised
19 30 issues of which they categorized as major in the letter
20 that you have received, so I would say that if we're look-
21 ing at a numerical issue as having some significance here
22 in terms of the total number of deficiencies, it's 38 plus
23 the number of air quality issues relative to the letter
24 from the APCD.

25 I'm also a little bit perplexed here that if

1 the project is so unanimously supported by the City and
2 County that they have some fear of potential cooperation
3 with the utility serving that area, and I suspect that
4 that wouldn't be the case, and I think that fear is some-
5 thing that could be easily alleviated.

6 COMMISSIONER GANDARA: Before we start with the
7 staff comment, I would just like to note something, since
8 we have commented on this in the past, that's with respect
9 to the timeliness of the staff providing information to
10 the Commission.

11 The notice indicated here that -- the September
12 25th notice indicated that the recommendation would go
13 to the Executive Director on October 2nd. By letter dated
14 October 3rd, the Executive Director issued his recommenda-
15 tion, and though my office received it a few days later,
16 that this is to my memory the earliest that we have gotten
17 an advance list of deficiencies so that the Commission could
18 accurately consider it.

19 And I did provide him an opportunity to look
20 at that and compare it, so I do appreciate the staff
21 responsiveness from where we were a few meetings and
22 months ago.

23 CHAIRMAN IMBRECHT: I think we all second that.
24 The message was obviously sent and delivered, and it's
25 appreciated that we should make that response.

1 MR. TOOKER: Thank you. My name is Chris Tooker,
2 the Energy Commission's project manager for review of the
3 Sander application. Continuing in the positive light that
4 Commissioner Gandara has posed here, I would like to say
5 that, in contrast to the applicant's rather lengthy presen-
6 tation, we believe that they have made a significant
7 effort in trying to put together information on a very
8 complex project, and that in fact, although four volumes
9 may appear to be somewhat impressive from a visual
10 standpoint, the complexity of the project is such and our
11 experience would demand that we make sure that at the
12 outset we identify a significant data base to be provided
13 for us to do an analysis, and for other agencies and the
14 public to be able to review the project, so we in no way
15 belittle the efforts of the applicant as made to date.

16 They have gone through and identified a number
17 of areas in which we apparently have some disagreement
18 over. Before I get into addressing those, I would like
19 to review briefly the process we have pursued to this
20 point.

21 Previous to receiving the filing of the document
22 on the 3rd, and realizing the complexity of the project,
23 we did meet with and discuss the project and the history
24 of the project with the City and County of San Diego, with
25 the U.S. Navy in terms of their potential involvement,

1 and we did meet with the Air District and with the
2 Department of Health Services, and the Air Resources Board,
3 to discuss issues -- generic issues related to this project
4 and other projects that we have seen or will see, in pre-
5 paration for doing the analysis, and identified basic data
6 needs.

7 So we have made a special effort in this case
8 to be prepared for this case, and to understand the scope
9 of data needed to make a responsible -- to do an analysis
10 and make a responsible recommendation on the project.

11 And also, from the perspective of our current
12 workload, we had to make sure that we had sufficient data
13 to be able to permit our resources and accomplish our
14 analysis in a timely manner, so we have, as I said, met
15 with other agencies, we have received comment and recom-
16 mentations from the Air Board and from the Air District
17 that are very detailed and do support our position, and
18 the Air Board's letter also references indirectly the --
19 the support of the Department of Health Services in the
20 position that we have taken, in that they require certain
21 data before they can proceed.

22 And I believe it is relevant to point out here
23 that the Air Board and the Department of Health Services
24 have an agreement which basically requires that the Air
25 Board determine whether sufficient data is available for

1 a project -- in a project for DOHS to begin their review
2 on matters relating to risk assessments, and so forth.

3 There has been extensive coordination between
4 the agencies relevant to beginning a review of this project,
5 and we do appreciate the cooperation and support that we
6 have received from those agencies.

7 After doing our initial review and staff com-
8 pleting its findings, we did hold a workshop. It was a
9 very productive workshop, and of the 15 areas that we iden-
10 tified as deficient, we found, upon re-examination of the
11 document, that the area of reliability specifically in
12 fact was -- was sufficient, and we eliminated that from
13 our list and had the remaining 14 areas.

14 I am prepared at this time, if you would like,
15 to go through in a detailed level and offer rebuttal to
16 the comments made by the applicant, and I do have staff
17 availale to discuss those matters in detail, if you would
18 like to do that.

19 One matter I would like to address, however,
20 first, which has not been raised directly by the applicant
21 but has been raised indirectly by the Commission, has to
22 do with the discussion of alternatives in the project,
23 in the proposal. The matter was raised earlier as to the
24 significance or the relevance of data generated earlier
25 by the Sander Agency or the City and County of San Diego.

1 One of the findings we have made in our list
2 of deficiencies is that in fact the requirement of an
3 alternatives discussion, as called forth by Section 1765(c)
4 of our regulations, points out that in a project of this
5 type there should be a lengthy discussion of potential
6 alternative sites and/or technologies that would be avail-
7 able to mitigate expected significant impacts, and there
8 are a number of impacts which are identified or may be
9 likely to be assumed to be significant from this project.

10 However, the alternative section provided in
11 the application, in the area of site selection, is more
12 really of a historic rendition of the process of looking
13 for a site, and it does not call out the specific environ-
14 mental criteria to avoid significant impacts.

15 And the section on technologies is kind of a
16 boilerplate listing of the characteristics of various
17 technology options and does not point out their benefits
18 or disadvantages in terms of any -- any environmental miti-
19 gation.

20 There is a significant amount of work to be done
21 there. I just wanted to make sure that I addressed that
22 item because of the scope and importance of that item in
23 the overall project evaluation process.

24 With that, I would be ready to provide specific
25 responses at your request.

1 CHAIRMAN IMBRECHT: Commissioner Gandara, do
2 you want to take it up?

3 COMMISSIONER GANDARA: Yes. Again, would you
4 address the issue that was raised earlier as to whether
5 your request with respect to the interconnection, transmis-
6 sion interconnection, are in fact -- are they similar to
7 or different from other reviews that you have made of
8 AFCs, and then, secondly, again, would you comment on the
9 history that we have had with respect to getting data on
10 the interconnection in our various applications?

11 I would like to get a sense, and I think Chairman
12 Imbrecht raised the issue earlier.

13 I have some recollection of some cases, but I
14 don't have the broad panoramic view, and I prefer to hear
15 your -- your comment on the history of the cases before
16 -- and check against my recollection.

17 CHAIRMAN IMBRECHT: With your permission, may
18 I just slightly refine that. Have we requested and have
19 we received similar information from other third-party
20 applicants in other utility service areas?

21 MR. TOOKER: With respect to the first point,
22 we have requested identical information on previous cases.
23 With respect to the second question, how much we have
24 received, I don't feel that I can respond to this point
25 in any detail, but we are consistent in the information

1 that we believe should be provided in this application
2 with previous applications that we have reviewed.

3 CHAIRMAN IMBRECHT: Are you able to answer that,
4 Mr. Deter?

5 MR. DETER: I think that the three most recent
6 cases we're talking about at South Belridge, Midway
7 Sunset and this case, and as Chris has stated our request
8 has been identical in all three cases, or at least as
9 identical as we've been able to get it. We still are
10 refining exactly what it is that we want in this area,
11 but we want to -- we're doing everything possible to make
12 it consistent in all three cases.

13 We have not received a data submittal for those
14 other projects to this point.

15 CHAIRMAN IMBRECHT: We have not.

16 MR. DETER: No. Not to my knowledge we have
17 not, but those are -- as you recall, those are only a --
18 the oldest is a month old at this point. Midway Sunset
19 was two weeks ago, and South Belridge I believe was on
20 the Commission agenda a month ago.

21 CHAIRMAN IMBRECHT: So that alone would not con-
22 stitute lack of substantial compliance.

23 MR. DETER: If this data was not sufficient or
24 not included?

25 CHAIRMAN IMBRECHT: Not included --

1 MR. DETER: Well, we --

2 CHAIRMAN IMBRECHT: -- prior to the acceptance
3 of the application.

4 MR. DETER: We think that it would probably con-
5 stitute not substantial compliance with the regulations,
6 particularly since if this is an issue.

7 CHAIRMAN IMBRECHT: The omission of this data
8 by itself would not constitute substantial compliance?

9 MR. DETER: If this data were missing from the
10 application, we would probably recommend that it not be
11 accepted, if this were an issue in the case.

12 COMMISSIONER GANDARA: Would the provision of
13 this kind of data in, say, some previous cases -- as I
14 recall some of the ones that had interconnection aspects
15 of it, Geysers 16 and CPA, and so forth, though they were
16 not third-party, would they have alleviated or -- you know,
17 the problems that were faced later on by those cases? Is
18 this similar, or is this some other issue?

19 MR. DETER: It seems -- yeah. It seems to me
20 that the data that's submitted by the utilities in those
21 utility applications, it was a similar issue. The question
22 is, is this particular project going to have an adverse
23 impact on the system of the utility that they're connect-
24 ing to and, therefore, is that adverse impact going to
25 be passed on to the ratepayers. I mean that's one of the

1 major questions, pass the first point of interconnection
2 to the first point of interconnection for which we have
3 jurisdiction.

4 We have to make a determination and evaluation
5 for the Commission as to the reliability and -- the relia-
6 bility of the system up to that first point of interconnec-
7 tion: Beyond the first point of interconnection we are
8 evaluating whether or not that will have an adverse impact
9 on the utility system and, secondly, what likely environ-
10 mental impacts would occur from any upgrades to the system
11 beyond that first point of interconnection, so those are
12 the two basic issues we're looking at.

13 We have always looked at those issues in utility
14 cases before we got into third-party applications as well,
15 and I -- the applicant has made the statement, under one
16 of his jurisdiction things, that they are in a quandry
17 because the data is in the hands of San Diego Gas &
18 Electric.

19 I understand their quandry, although, as you
20 made a point earlier in your questions, it seems to me
21 that the Warren-Alquist Act puts the burden of proof on
22 the applicant to prove his application, not the Commission,
23 so we are in a -- sort of a Catch 22 position here of do
24 we accept an incomplete application just because this data
25 is in the hands of another agency or another party. It

1 seems to me that it's a burden of the applicant to get
2 that data before they come in and file with the Commission,
3 or at least that's certainly a policy question this
4 Commission needs to address.

5 CHAIRMAN IMBRECHT: What I'm trying to nail down,
6 I'm concerned about, as we apply these tests in all the
7 cases coming in, again we have an even-handed application
8 of the same standard, that --

9 MR. DETER: As even-handed and as consistent
10 as --

11 CHAIRMAN IMBRECHT: What I want to understand
12 is whether or not in fact we have accepted applications
13 from third-party applicants in the past without this state-
14 ment.

15 EXECUTIVE DIRECTOR WARD: One of the --

16 CHAIRMAN IMBRECHT: Or perhaps a better question,
17 not whether we've accepted it, but, rather, whether there's
18 been a recommendation for acceptance or denial without --

19 EXECUTIVE DIRECTOR WARD: One of the things that
20 I think is important to point out while they are still
21 debating your question is that, you know, San Diego Gas
22 and Electric has not refused to provide this information.
23 I think that would be a major issue confronting the
24 Commission, if in fact the applicant said that they had
25 a refusal, or there had gone -- it had been a protracted

1 enough question and answer process to where the result
2 was a refusal to give that information, and I don't hear
3 that before you today.

4 These letters, the most recent letters are still
5 dated the 1st of this month to SDG&E.

6 MR. DETER: Back to your question earlier about
7 have we requested all this data from previous applications,
8 I think we were consistent in getting this information
9 from the utility applicants when they came in before us.
10 The first generation of QF projects that came in recently
11 were the Sycamore and Omar projects. The Omar project,
12 I think we got the bulk of the information we needed for
13 transmission system evaluation. The Sycamore project,
14 I think we got the majority of the information there, too,
15 although probably not as much as we are asking for right
16 now.

17 The Watson project came in about three or four
18 months ago, I believe. That project we did not ask for
19 the same level of information, and I think, as a result
20 of that project, we recognize the fact that we needed to
21 have the information at the beginning of the case rather
22 than asking for it through data interrogatories during
23 the case.

24 And as a great part of our experience in the
25 Watson case, we have sat down and said, okay, exactly

1 what information do we need at the beginning of the case,
2 and as a result our requests in the last three applications
3 have been consistent that we do need the information at
4 the beginning of the case.

5 But to answer your question on the Watson project,
6 we didn't ask for this level of information, and we
7 regretted it.

8 CHAIRMAN IMBRECHT: Crockett and Gilroy and
9 Irwindale, and so forth?

10 MR. DETER: Crockett and Gilroy, yes, we did
11 get that information from them.

12 CHAIRMAN IMBRECHT: How about Irwindale?

13 MR. DETER: Yes, we did.

14 CHAIRMAN IMBRECHT: We have this information
15 on Irwindale?

16 MR. DETER: Yes. Now, this -- this area, because,
17 because it's -- because obviously the QFs are different
18 than the utilities, is in the process of we're refining
19 what we want in this area, and we -- we are being as consis-
20 tent as we -- as we can possibly be, I think. I mean we're
21 taking each case and evaluating our requests for this par-
22 ticular case against the previous cases to make sure we
23 haven't changed our standards.

24 CHAIRMAN IMBRECHT: I sense that the applicant
25 wants to take issue with that representation.

1 MR. MULLIKEN: Yeah. PRC did the application
2 for Irwindale. They -- they can probably speak pretty
3 persuasively to the issue.

4 MS. MARSH: Yes. We were involved in the
5 Irwindale application, and felt very strongly that the
6 Sander application was far more thorough in terms of the
7 submittal with regard to the transmission line.

8 We have a preliminary interconnect study in here.
9 We have the single-line diagrams. We have alternative
10 transmission routes, and it's our opinion, having seen
11 some of the data requests that have come through on that
12 project, that some of the same information -- I don't
13 have anything right here that I can pull out. Some of
14 the same information that is being requested of us for
15 adequacy is being requested of that project perhaps in
16 the data request phase.

17 So that's kind of why our -- we expressed a con-
18 cern.

19 MR. MULLIKEN: I apologize. I didn't mean to
20 interrupt in the staff presentation here, but it occurs
21 to me that our solution I think is a perfect one here.
22 Indeed, it's clear, listening to this discussion, that
23 you have got a -- you are evolving a standard of what you
24 want here, that it is your sense that you want more than
25 you've gotten in the past, but I think the staff itself

1 is making pretty clear you have not consistently gotten
2 in the past what you've gotten here.

3 We don't want to stand in your way of gathering
4 information. We're delighted to cooperate in that process.
5 It's just we've got a fundamental dilemma in getting the
6 process started.

7 We're not trying to conclude the process, we're
8 not trying to resolve all the issues here. We're trying
9 to have the application accepted, and I think our solution
10 of a -- of putting the burden on us under this conditional
11 acceptance concept to make those requests with you reserving
12 the jurisdiction, if you're not satisfied that the utility's
13 responses are sufficient is probably -- is a perfect
14 bridge.

15 CHAIRMAN IMBRECHT: I'm not -- I'm not trying
16 to hold the staff or the Commission to the standard that
17 existed a year ago, but we've had an awful lot of these
18 issues before us during this calendar year, and I, as I
19 say, am trying to discern whether in fact we're producing
20 an even-handed equitable approach.

21 I think that there is some -- I think that from
22 a -- if not a technical due process standpoint, at least
23 from an equitable due process perspective, you are
24 entitled to some degree of predictability in, assuming that
25 you follow other cases in the same general time frame

1 that you are making your application.

2 MR. MULLIKEN: And I appreciate that, and that's
3 why I thought maybe our solution was a -- and that's why
4 I thought maybe our solution was a bridge, really, to
5 respect the -- the evolving nature of what you're doing
6 here, Mr. Imbrecht, that you -- you know, you do want more,
7 and by the same token this is -- I mean you're not getting
8 it -- I guess what we're saying is don't make us give it
9 -- don't make us get everything out of them that may or
10 may not be forthcoming as a prerequisite to at least having
11 the application accepted.

12 Correspondingly, we appreciate the concern
13 apparently reflecting on Watson here, that you didn't want
14 to have to rely solely on the data interrogatories after
15 the process has started, so maybe this is kind of a bridge
16 between those two, where --

17 CHAIRMAN IMBRECHT: Commissioner Gandara?

18 COMMISSIONER GANDARA: I still have some more
19 questions.

20 CHAIRMAN IMBRECHT: I understand. I didn't --

21 COMMISSIONER GANDARA: But that's okay. I don't
22 want to --

23 CHAIRMAN IMBRECHT: I just wanted to clarify
24 these points.

25 COMMISSIONER GANDARA: Yes. Just a comment.

1 I might add that, as Commissioner Imbrecht indicated, that
2 while I think we are concerned with some procedural fair-
3 ness and due process, that I think the question for the
4 Commission is whether -- you know, if we change something
5 that we did before, or if the staff recommendation changes
6 something, whether it is substantially deviated from that
7 as to constitute unfairness, and at least I might add that
8 the applicants, as well as the staff, and as well as the
9 Commission, takes guidance from its previous decisions,
10 and I should note that for that particular purpose that
11 the Irwindale acceptance was, to say the least -- the
12 Commission wrestled with it for a long time, and it finally
13 was accepted with a three-two vote, so I would not want
14 to point to it as a precedent with respect to this data
15 adequacy phase.

16 MR. MULLIKEN: Yeah, I appreciate your point
17 on that, and that's what -- really, we were trying to avoid
18 the tough question for you, was to suggest this -- this
19 kind of midpoint between the two alternatives that you
20 have used in the past, one being to use the data interroga-
21 tories after acceptance, the alternative being just to
22 freeze the acceptance process.

23 We thought if you could do this under this con-
24 ditional format this might nicely suit this thing without
25 having to wrestle with those tough questions until you

1 see what the utility gives you.

2 COMMISSIONER GANDARA: The second question I
3 had was in the second -- the same category as this issue
4 of the interconnection which you felt was in the hands
5 of another agency. Now, I want to turn to the second issue,
6 which is the Department of Health Services Issue. I guess
7 it's your paragraph 12.

8 MR. MULLIKEN: Um-hum.

9 COMMISSIONER GANDARA: And you have indicated
10 here that the -- you feel that the applicants provide a
11 copy of the California Department of Health Services
12 determination. I guess I'm -- I would like the staff
13 response in this area, because I guess my understanding
14 of the DHS process is that the way they are dealing with
15 these applications is that they are not really looking
16 at them critically, but sort of are issuing letters that
17 are sort of interim or conditional, or something, and --
18 and maybe that's in the process of changing, but I would
19 like to at least get the staff response in this particular
20 area.

21 MR. TOOKER: Commissioner Gandara, your question
22 is --

23 COMMISSIONER GANDARA: The question is regarding
24 your paragraph 12, which I think deals with the -- what
25 they have identified as the response to your Deficiency 15,

1 which is the -- to substantiate the statement that project
2 ash revenues have been classified, so I guess it does deal
3 with the classification issue, which I understand is in flux,
4 or may not be in flux, but I just want your response to
5 that.

6 This is again the second issue in this category
7 of being in the hands of another department.

8 MR. TYLER: My name is Rick Tyler. I'm with
9 the Environmental and Siting staff.

10 And the primary issue here was that the applicant
11 made a determination or made a statement that the ash from
12 this facility will be nonhazardous, based upon the informa-
13 tion -- or the testing done by the Department of Health
14 Services.

15 This data -- this testing was done back in 1981,
16 according to the letter, and we are not certain at this
17 time whether it complies with current requirements. Addi-
18 tionally, we do not know what testing was done and no
19 substantiation was made.

20 COMMISSIONER GANDARA: This is September '81,
21 did you say?

22 MR. TYLER: That's -- I'm not sure of the exact
23 date. I believe it was in 1981.

24 COMMISSIONER GANDARA: Okay.

25 MR. TYLER: Eight-two. I'm sorry, 1982.

1 COMMISSIONER GANDARA: Now, it's my understand-
2 ing that the current requirement of DHS is that they --
3 for a preliminary letter they would accept for analysis
4 some ash residue from a similar facility, or a facility,
5 with the expectation that it would be descriptive of the
6 garbage -- excuse me, the solid waste that would be
7 burned, and secondly, I think there is an issue as to
8 whether they would require a bench test of some garbage
9 there.

10 Can you clarify what -- whether -- what the status
11 is of that issue, and then I guess in response to the --
12 the applicant might want to respond as to where that residue
13 came from, and -- and, you know, in fact whether it's
14 current.

15 MR. ODOEMELAM: My name is Obed Odoemelam. I'm
16 with the Siting and Environmental staff.

17 COMMISSIONER GANDARA: Would you speak up, sir?
18 I can't hear you.

19 MR. ODOEMELAM: Oh. My name is Obed Odoemelam.
20 I'm with the Siting and Environmental Division staff.

21 Now, with respect to the classification as to
22 the hazardous nature of the residue, the Department of
23 Health Services sometimes allows the applicant to conduct
24 bench tests of -- after the test they are allowed -- they
25 warn them that later on when the project comes online they

1 will be able to go back and test.

2 What we don't know at this time from the appli-
3 cant is whether they submitted a sample to the Department
4 of Health Services, what kinds of tests were conducted.
5 They have two kinds of tests. They have the -- what is
6 called the Double ET test, which is essentially a case
7 of determining the concentrations of different metals in
8 the ash.

9 And they also have a fish bioassay test. We
10 have -- this test -- the letter they have submitted to
11 us was done in 1982. That's when this test was conducted,
12 and since then the Health Services has revised its testing
13 method, and it's now different from that of the EPA.

14 So what we want to find out from the applicant
15 is if the test -- if the letter that they have submitted
16 to us has any -- still bears out the accuracy of the tests
17 that are required now by the Department of Health Services.

18 COMMISSIONER GANDARA: It's a fairly factual
19 matter, Mr. Mulliken, then.

20 MR. MULLIKEN: Yeah, but guess who made -- guess
21 who signed the letter. I didn't. I wish I had, then I
22 -- then it would have been within my control.

23 But I think we're confusing a couple of things
24 here, and I -- and I don't mean to focus our exclusive
25 attentions on -- on state legislation, but I think it's

1 helpful for us in this case.

2 We don't have a preliminary determination from
3 DOHS here. We have a final determination, and this final
4 determination and several similar final determinations
5 that were made by DOHS were then codified specifically
6 as not being subject to the evolving test procedures which
7 Obed'is describing here.

8 They were codified last year in the Campbell
9 bill, SB-2292 I believe, and there it -- the statute could
10 not be more clear. There are a category of determinations
11 that DOHS made that were final with respect to resource
12 recovery projects.

13 There was an additional undertaking that DOHS
14 envisioned for developing new testing procedures for
15 requests similar to ours that may be made in the future,
16 and the statute draws a bright-line distinction between
17 final determinations and determinations that may be made
18 in the future.

19 So, on that issue at least, I think that I just
20 -- I don't want us to lose sight of the fact that there
21 was a final determination made here that -- Signal was not
22 the one who made that determination. DOHS was.

23 COMMISSIONER GANDARA: I appreciate your view.
24 We now have a legal question.

25 CHAIRMAN IMBRECHT: Yes. Staff counsel?

1 COMMISSIONER GANDARA: So, I guess the question
2 I have now is, was the grandfathering of these final deter-
3 minations for a more limited purpose, or was it for the
4 purpose -- was it for the purpose of our process, and
5 in fact are we bound by that?

6 I can understand your legal point of view,
7 Mr. Mulliken, although I -- I do have to express some con-
8 cern from a policy point of view.

9 MR. GARRETT: It's not so much a legal point
10 of view. The point, Commissioenr, is that for purposes
11 of our initial application, we presented a final determina-
12 tion from the Department of Health Services.

13 A number of the issues which have been identified
14 I think are very important ones and ones that we are going
15 to have to address in the substantive hearings on this
16 project, and ones which I think the staff needs to include
17 in their independent environmental evaluation of this
18 project.

19 The short answer to your question is, no, I think
20 that the staff, in terms of categorizing this as hazardous
21 or nonhazardous, is probably bound to follow this classifi-
22 cation.

23 As to the health effects, regardless of what
24 you call it, the Commission has to consider those health
25 effects, but we're only raising this issue, not to get

1 into the specifics of the issue of who's right or who's
2 wrong on it, but simply to say we presented a final deter-
3 mination from the Department of Health Services that our
4 ash was not hazardous.

5 As an initial application, that should be ruled
6 adequate. We plan on submitting on the 24th, and there-
7 after, information on all those issues.

8 CHAIRMAN IMBRECHT: I think we understand --
9 we understand your perspective as to the legal issues
10 involved. We were asking for a similar judgment from --

11 MR. GARRETT: Sure.

12 MR. ODOEMELAM: Excuse me, Commissioner. There
13 was something I would add on that.

14 From the time that the tests were presumably
15 conducted, to this time, there are certain things that
16 have been discovered. For instance, the dioxin problem.
17 We don't know if that problem was addressed in that test,
18 the test that was -- that the applicant has alluded to.
19 We want an indication of what -- of what tests -- how this
20 test was conducted at the time, and how they are relevant
21 to the processes that are specified by the Department of
22 Health Services at this time.

23 So there are things that we are beginning to
24 find out -- they are finding that the ash has dioxins,
25 depending on the location, so we want to know how that

1 is relevant to the tests that they reported to us.

2 MR. TYLER: I think staff should also add that
3 we have asked only for the information from the applicant
4 that they have supplied to the Department of Health
5 Services, so the information that we are requesting is in
6 the hands of the applicant and not in the hands of the
7 Department of Health Services.

8 CHAIRMAN IMBRECHT: Ms. Dickey, have you reviewed
9 the impact of the Campbell bill, and do you have a judgment
10 on that?

11 MS. CIKEY: I have not yet reviewed the authority
12 that they are citing. I believe that this is the first
13 time that they have mentioned it, so I am unprepared to
14 discuss that at this time.

15 COMMISSIONER GANDARA: Let me then just ask an
16 additional question. Again I -- I don't want to presume
17 that I know exactly the process, but I would like anybody
18 to comment who knows a bit more about it, but we -- there
19 was a very good Solid Waste Management conference that
20 was put together by the staff last week, and I happened
21 to have been there for the presentation by the representa-
22 tive from the Department of Health Services, and the pro-
23 cedure that he described for the issuance of these pre-
24 liminary letters do not seem to me to be so burdensome
25 as to -- that they could be unmet.

1 And as I recall it, he indicated that an appli-
2 cant could in fact obtain a residue sample from some other
3 waste project, and that they would accept it for purposes
4 -- they would accept the analysis of its composition for
5 purposes of a preliminary letter, but that that prelimi-
6 nary letter would be conditioned upon a testing of the
7 final -- of the actual composition or residue of the
8 project as soon as it got started, and so forth, so it
9 would be a reclassification.

10 Now, the reason I'm dwelling on this question
11 is because, again, the committee in Irwindale is wrestling
12 with an issue of a -- of whether a bench testing of the
13 actual potential waste stream ought to be required, so
14 again, in the interest of getting the necessary information
15 up front, I -- I do have to say that -- at least my under-
16 standing of what was presented by DHS is that that does
17 not seem to be such a burdensome requirement that one
18 should have to -- as long as one is admitting to the fact
19 that one is going to have to deal with these issues anyway,
20 that it should be overlooked with respect to DHS.

21 CHAIRMAN IMBRECHT: Do you have a copy of the
22 Campbell bill? Could you bring that forward for us to
23 take a look at very quickly.

24 MR. MULLIKEN: I don't know if I've got a copy
25 of the Campbell bill in hand. I referenced it in our

1 workshop proceeding, and it was on the books a year ago,
2 but I -- again, Chairman Imbrecht, I -- I don't want us
3 to lose sight of what the issue is, and I think we're --
4 I don't think we're questioning the relevance of the
5 information. I think what we're questioning is the timing
6 of its submittal, and the question of whether or not our
7 application ought to be deemed accepted for filing without
8 it.

9 And my suggestion is -- first of all, Irwindale
10 doesn't have the same final determination letter we do,
11 number one. Number two, again, I must stress that the
12 determination was made by DOHS. The information --

13 CHAIRMAN IMBRECHT: Okay. I -- we understand
14 your points very clearly, and I'm only trying to move this
15 along, because we have been dealing with it extensively,
16 and I -- I don't want to cut you off, but what I am going
17 to suggest, regarding the tests that we try to apply here,
18 is whether in fact we have an adequate amount of informa-
19 tion in order to conduct the proceeding within the statu-
20 tory time period of one year.

21 That's the only issue. That's really the funda-
22 mental foundation behind that substantial compliance test
23 which the Commission adopted this spring, or I should say
24 reiterated this spring.

25 And as a consequence, we have to be very cautious

1 and conscious of that. I understand your concern. You've
2 been working on this project for a very long period of
3 time. At the same time, we want to make sure we can ful-
4 fill our statutory obligations. That's all it boils down
5 to.

6 And we've got a variety of issues here, and we
7 are trying to sort them out for you.

8 MR. MULLIKEN: As two simple solutions, can I
9 suggest, number one, it's a -- I would like to encourage
10 you to take a look at this letter which is in the applica-
11 tion. It's short, it's quick reading, number one.

12 Number two, you're right. The burden is on us
13 to -- or you need substantial information, and the staff
14 says substantiate the statement that the project ash resi-
15 dues have been classified as nonhazardous, and so my sub-
16 stantiation for that is a final determination letter from
17 DOHS.

18 I confess I am perplexed as to why the staff
19 hasn't just called up DOHS and says -- and asked them to
20 simply disgorge whatever is in their files so that they
21 have it for their benefit, but I am distressed that, where
22 we have met the precise words of the so-called information
23 need here in the application, and the final letter is there,
24 which I do think you ought to read, why it is that the
25 application would not be deemed complete, because there

1 may be additional information that DOHS could shed on the
2 subject. That's my only concern.

3 CHAIRMAN IMBRECHT: You say this test was con-
4 ducted in 1982. Was that with respect to a residue sample
5 that you submitted in '82?

6 MR. MULLIKEN: It's with respect to a residue
7 sample which was submitted through I guess the Sander
8 authority at that time.

9 Is that right, Nickie? You were the ones who
10 tendered the information.

11 MS. CLAY: I have provided Debra with the
12 material we submitted to DOHS, and I believe that is going
13 to be part of the 38 items or part of the information that
14 is going to be submitted by October 24th, and that does
15 go through basically what you just described.

16 In other words, DOHS was in the midst at that
17 point of time in kind of coming up with it. We provided
18 them with what at that point in time they were requesting.
19 They then provided us with that letter so that was the
20 process we went through. We were one of the early projects
21 that went through that. It's a project process much as
22 you described it.

23 COMMISSIONER GANDARA: Why don't I ask additional
24 questions of the staff, while we can perhaps have time
25 to read this, if I might, Mr. Chairman. I think there

1 are two other quick questions that I would like to have
2 addressed.

3 Mr. Deter, or whoever might be the most appro-
4 priate person, there were a number of issues -- deficiency
5 areas, let's call them that, that the applicant indicated
6 that they could submit or overcome those deficiencies by
7 October 24th.

8 Okay. With respect to those, do you have any
9 reason to believe that that schedule could not be met,
10 that in fact, again to review at least my categorization
11 of the issues in dispute, there are some -- there are two
12 that they claim to be in the hands of other agencies, there
13 are some which they feel are already submitted, the biologi-
14 cal area, and then there are a whole list in which they
15 acknowledge a deficiency or accept at least a characteri-
16 zation and will promise to deliver all that data by
17 October 24th.

18 Is it feasible and reasonable for the Commission
19 to expect that that is indeed a date that can be met to
20 the satisfaction of the staff?

21 MR. TOOKER: Let me address that, Commissioner
22 Gandara. There are some items which I believe may require
23 more time than that, specifically in the area of biological
24 resources. There is some question as to the adequacy of
25 the surveys they have conducted.

1 COMMISSIONER GANDARA: Okay. I don't want to
2 address the biological resources, because that's the next
3 question I have, so I want to address all the -- all the
4 categories except the biological resources, and except
5 the DHS, and except the transmission interconnection.
6 Okay.

7 MR. TOOKER: Well, at this point I have no way
8 of knowing whether or not, for instance, SDG&E is going
9 to be able to provide the information that they are asking
10 for here. It's difficult for me to say whether that time
11 frame is appropriate.

12 COMMISSIONER GANDARA: Okay. Well, perhaps I
13 misunderstand something, or I'm not communicating properly.

14 Mr. Mulliken, you are shaking your head.

15 MR. MULLIKEN: Yeah. No, I think I -- I believe
16 that the question you are asking is with respect to these
17 38 items that we -- that in our view are not controversial,
18 but we're going to make a supplemental -- a supplemental sub-
19 mittal, is it reasonable to expect we can do it within
20 that period of time I think is the question you are asking
21 staff.

22 COMMISSIONER GANDARA: Yes.

23 MR. MULLIKEN: And it seems to me, excluded from
24 that question is the issue of whether or not the SDG&E
25 response would come within that time frame. We had not

1 envisioned that.

2 What we had envisioned was you would obligate
3 us to make that request of SDG&E, and we've made one of
4 the two requests, and the other one we will make momen-
5 tarily if you concur that that is a reasonable approach.

6 COMMISSIONER GANDARA: I see. So that request
7 was embodied within your 38, and the satisfaction would
8 be your having made the request, rather than the data.

9 MR. MULLIKEN: No, I'm going to -- we're going
10 to -- we've got 38 items we're going to give you some more
11 data. Then there's ten items left, and of the ten items,
12 two of those ten are making requests to SDG&E to tender
13 data to the staff.

14 MS. MARSH: And I -- if I could point out, we
15 had begun work on the 38 items as soon as the request was
16 given to us. We began gathering, collecting data,
17 gathering references, and that kind of thing, as soon as
18 the data requests were given to us, so it's not like we're
19 starting tomorrow on 38 items.

20 COMMISSIONER GANDARA: I understand that, but
21 I guess I -- let me see. What I understand to be the case
22 is that it would be the degree of the responses at issue.

23 MR. MULLIKEN: Yeah.

24 COMMISSIONER GANDARA: Okay. Fine.

25 MR. MULLIKEN: I don't believe we -- we're not

1 in a position and we have not suggested in Item 5 of our
2 proposed decision that SDG&E could respond to your staff
3 by the 24th of October.

4 COMMISSIONER GANDARA: Let me then ask the last
5 -- my last question of the staff.

6 Turning now to the biological area, okay, now,
7 all the questions in the biological area seem to be --
8 the issue seems to be very clearly joined there. The
9 applicant says they feel that what they submitted is
10 adequate. You say that it is not adequate, so could I
11 get somebody to address the biological question?

12 Why is it that you feel the data is inadequate?

13 MR. TOOKER: Yes. Just a moment.

14 MR. HAUSSLER: I'm Bob Haussler, Environmental
15 Office.

16 In the area of biology there are a number of
17 concerns. Those concerns deal with state-protected and
18 federal-protected species.

19 The surveys done to date are identified in the
20 applicant's submittal indicating that there are species
21 on site that are federal-listed species. There are also
22 species both near the site and on the site that are likely
23 -- that we expect occur.

24 Some of the surveys that would indicate whether
25 these species for certain are present have not been

1 conducted and would need to be conducted this next spring.
2 These species involve some reptiles, plants, as well as
3 a bird specie, and so to date we don't have adequate infor-
4 mation to characterize the impacts on the site, impacts
5 associated with operating at the site, that are adjacent
6 to the site, nor do we have information that fully indi-
7 cates what mitigation would be necessary to offset impacts
8 once they are identified.

9 In a nutshell, that's what we have to date.

10 CHAIRMAN IMBRECHT: And you're saying that infor-
11 mation will be produced as a result of studies this coming
12 spring?

13 MR. HAUSSLER: That's correct.

14 COMMISSIONER GANDARA: So, is the position, then,
15 of the office that, in essence, the application would be
16 considered inadequate until a survey for which we would
17 have to wait for next spring is conducted?

18 MR. HAUSSLER: That's correct.

19 COMMISSIONER GANDARA: And if all the other data
20 requests were met and that were the only outstanding
21 request, that would still be your position?

22 MR. HAUSSLER: That's correct.

23 CHAIRMAN IMBRECHT: Would that be sufficient,
24 Mr. Deter, to trigger a --

25 MR. DETER: I guess I --

1 CHAIRMAN IMBRECHT: -- a recommendation of
2 denial?

3 MR. DETER: I would like to get to that point
4 before I made that final conclusion, but I think that we
5 could then bring that application back before the Commission,
6 and I think it becomes in a sense a policy question at
7 that time, whether or not you want to accept an applica-
8 tion that's complete in every other category, with the
9 exception of this, and you might want to make some special
10 reservation or some special condition for them saying,
11 okay, we'll accept it as long as you agree to do the survey
12 study in the spring and submit the data to us at that point
13 in time, and if you don't do that kind of information,
14 then you concur with the suspension of your siting, some-
15 thing to that effect.

16 But at this point in time we've got a whole num-
17 ber of areas that are inadequate. I think I would like
18 to judge the application once they get everything else
19 completed.

20 COMMISSIONER GANDARA: One last question, then.
21 This is the last question.

22 By the spring, what do you mean, what month,
23 roughly speaking?

24 MR. HAUSSLER: For the plant species, April.
25 Later in the spring for surveys for the reptiles.

1 COMMISSIONER GANDARA: May?

2 MR. HAUSSLER: And -- pardon?

3 COMMISSIONER GANDARA: May?

4 MR. HAUSSLER: May, dependent upon the year,
5 would be likely a satisfactory time frame.

6 COMMISSIONER GANDARA: Okay. So the survey is
7 done; how fast can it be reported, and how quickly can
8 it be analyzed? I'm -- the question I have is how -- how
9 soon after the survey will we be ready to move to eviden-
10 tiary hearings?

11 MR. HAUSSLER: In our experience, usually about
12 three months, depending upon the species.

13 COMMISSIONER GANDARA: So the consequence of
14 that is that if we accepted this application, even condi-
15 tionally now, or let's say we accepted it for soem reason,
16 you know, all this data was met, and we accepted it, say,
17 in November, that we would not be ready for evidentiary
18 hearings should the Commission agree with the necessity
19 of this data till around the summer of next year, which
20 would essenitlaly push the evidentiary hearings -- push
21 the evidentiary hearings, which are normally held between
22 the third -- actually the sixth to the ninth month, you
23 know, almost close to the conclusion period, so I mean
24 I think that does present a scheduling problem.

25 MR. GARRETT: If we might just interrupt for

1 a second, I think there's a fundamental mistake or funda-
2 mental misimpression here.

3 We did a spring survey. We did a survey last
4 April. If you'll look on the material that's handed out
5 here, on page 10.5-5 and 10.5-6, there's -- which is in
6 the material that we handed out to you, which is from our
7 initial application, there is a description of the six
8 different site visits that took place in April and May,
9 the very times that the staff is saying the survey needs
10 to take place.

11 I don't think you need to worry about timing
12 of evidentiary hearings. All of that information is
13 reported right here in our initial application.

14 COMMISSIONER GANDARA: I appreciate that. Can
15 the staff then tell me, then, why that spring survey is
16 not adequate, which must be your conclusion.

17 MR. HAUSSLER: Well, the plant survey conducted
18 did not include the early flowering period for a state-
19 listed species, which is myosaurus minimus, and that
20 species is likely to occur in vernal pools both onsite
21 and adjacent to the site.

22 CHAIRMAN IMBRECHT: So they simply omitted one
23 of the species that is on the list of protected species?

24 MR. HAUSSLER: That's correct, and our belief
25 would be that it would likely change if it's present,

1 and we would like to see that documentation provided. If
2 it's present it certainly would change the mitigation
3 requirements, and, therefore, any plans submitted, and
4 the suitability of -- of the project itself, in terms of --

5 CHAIRMAN IMBRECHT: Is that the only species
6 in question?

7 MR. HAUSSLER: That's the only species we know
8 of for certain that is likely to be a problem.

9 CHAIRMAN IMBRECHT: So it is your judgment that
10 what they did submit covered all other listed species.

11 MR. HAUSSLER: In our judgment, to date, from
12 what we know, yes. However, that only includes plant
13 species, and information in the document did not adequately,
14 at least to date, provide information on a state-endangered
15 bird species, and there are also reptile species of special
16 concern that need to be addressed as well.

17 COMMISSIONER GANDARA: So you are saying that
18 the spring survey was deficient in those two additional
19 areas, apart -- which is animal, birds, or reptiles and
20 birds?

21 MR. HAUSSLER: Correct.

22 MR. GARRETT: If I might just interrupt again,
23 I think there's another fundamental mistake.

24 Our survey, our biologist surveyed every possible
25 plant, animal, reptile, or mineral species that could be

1 found on that site, and I think the number of species that
2 he found were -- is it 140, 145 species -- that's listed
3 on that page of our survey. He did not find the species
4 that are being referred to by the staff. It's not that
5 the survey was somehow -- he didn't go out and look for
6 those species. They weren't found on our site.

7 We take the position that that survey, which
8 included five complete site visits, was adequate, would
9 have found those species, and when the staff says that
10 the survey was deficient, the only thing I can understand
11 when they say that is that somehow either our biologist
12 wasn't trained properly and he missed it, which I think
13 more goes to the substantive merits of our application
14 than what we submitted.

15 We submitted what we believe is the most complete
16 and accurate biological survey of every possible species
17 that could be on that site, and we -- we've submitted that
18 in good faith.

19 The staff may disagree, and I think that's --
20 that's for the evidentiary hearings.

21 MR. HAUSSLER: Yeah, but --

22 COMMISSIONER GANDARA: Okay. Let me ask one
23 question. I think the staff did say that the time period
24 during -- at least with respect to the plant species --
25 did say that -- that the surveys were not done during the

1 time that in fact you would have been likely to have found
2 them.

3 MR. GARRETT: I'll let Debra answer that, but
4 I would say initially that they said that the survey should
5 take place in May of next year, if I understood right, when
6 the survey needs -- they believe needs to take place.
7 That's exactly when our survey took place.

8 MS. MARSH: I would also like to point out that
9 in the Executive Director's letter there is no mention
10 of this additional spring survey.

11 And secondly, with regard to the little mouse-
12 tails, we have done additional research, because we knew
13 that this was a concern. We have found erbarium specimens
14 of this plant in bloom which were collected in May. We
15 have consulted with other local field biologists, all the
16 other firms. They have provided evidence that this par-
17 ticular species has been identified during the time period
18 that we were out there. We will be happy to provide a
19 statement to that effect.

20 But, you know, both -- both statements, one that
21 we probably would have found -- we likely would have found
22 it with the exhaustive study that was done out there, and,
23 secondly, the spring survey is not mentioned in this --
24 in this letter.

25 MR. MULLIKEN: I thought we had resolved that

1 at the workshop, and I assumed that's why that was no
2 longer an issue in the Executive Director's report, so
3 I'm at a little bit of a loss to understand why Mr. Haussler
4 is now reintroducing it when the Executive Director's
5 deficiency letter to you doesn't address it.

6 COMMISSIONER GANDARA: I appreciate that. I
7 don't want to get too much into the merits. I'm just try-
8 ing to understand the dimensions of the problem here.

9 The last question then is, the geographical
10 range of the habitat of either of these -- well, the
11 earlier testimony indicated that the this plant would be
12 located on the actual disposal site -- adjacent to the
13 disposal site. Okay.

14 The actual acreage or territory that would be
15 affected by this, are you talking about a survey on that
16 site, or are you talking about surveys on adjacent areas
17 that would be affected by the construction, and so forth
18 and so on, and, if so, what percentage of that area, if
19 you can estimate it, that would be affected, affects the
20 -- what percentage is it of the potential -- I don't know
21 if you could call it habitat or area in which this species
22 that you are concerned about would be blooming and/or liv-
23 ing?

24 Are we talking about affecting one acre out of
25 a range of the entire Southern California area? Are we

1 talking about one acre of very localized habitat?

2 MR. HAUSSLER: My knowledge is somewhat limited,
3 or the botanist isn't here. However, my understanding
4 is that it's a fairly limited area in which this plant
5 occurs. There have been significant impacts upon avail-
6 able habitat for this species throughout the county, and
7 the remaining habitat is severely limited in the area of
8 this project.

9 The area of effect on the project site is fairly
10 small because the plant is limited to vernal pools.

11 CHAIRMAN IMBRECHT: Limited to which?

12 MR. HAUSSLER: The plant is limited to vernal
13 pools, which are --

14 CHAIRMAN IMBRECHT: Vernal pools.

15 MR. HAUSSLER: Correct. Those are pools which
16 are a naturally-occurring basin which contain runoff water
17 from a localized area, and enable species of various kinds
18 of plants and animals to survive from year to year just
19 on a short period of staying wet from usually rains
20 occurring in the springtime.

21 MS. MARSH: I would like to just clarify a couple
22 of points. Number one, in your question, Mr. Imbrecht,
23 you asked -- you inquired as to whether this was a species
24 off-site that would be affected by construction. I would
25 like to simply point out that we have included in the

1 application a very clear statement that there will be no
2 off-site impacts due to construction, because the entire
3 site will be fenced.

4 These staging areas are located totally on-site
5 and, therefore, we are avoiding impacts to any known
6 resources off the site.

7 With regard to this particular plant, we searched
8 the area extremely thoroughly over a two-month period.
9 This was in addition to a previous thorough biological
10 survey done by the Sander Authority's biologist in
11 September. We did not find the particular plant in ques-
12 tion. We believe that it would have been obvious had it
13 been there.

14 We believe that we have identified correctly
15 the significant impacts in our application, and that if
16 the staff disagrees with that assessment of significance,
17 that's an item for discussion during the data request
18 phase of your permit processing, so that we do not feel
19 that our biological survey is in any way inadequate.

20 With regard to the wildlife issue, going through
21 the items in the Executive Director's letter with regard
22 to the wildlife survey, the methodology, the qualifica-
23 tions of investigators, that type of information is all
24 in this document here, and we did not find the particular
25 bird in question after a very exhaustive analysis, so

1 we do not feel that the adequacy is in question at this
2 point.

3 MR. HAUSSLER: May I speak to that particular
4 item briefly?

5 CHAIRMAN IMBRECHT: All right. Then I've got
6 a question from Commissioner Commons, and then we're going
7 to take a recess and come back and conclude this issue
8 immediately upon the adjournment -- or reconvening. Excuse
9 me.

10 MR. HAUSSLER: Staff's evaluation -- excuse me.
11 Staff's evaluation of the submittal, in particularly the
12 area of plants as well as the area of birds, was that,
13 first of all, the applicant did not provide adequate back-
14 ground information on the type of surveys they did. They
15 have indicated they have done exhaustive surveys. They
16 addressed concerns for least Bell's Vireo, which is a state-
17 endangered bird species, that while habitat appeared suit-
18 able onsite, they didn't find any.

19 They didn't indicate whether they actually looked
20 for them, but they didn't find any during the process of
21 doing any biological evaluation on-site. For an endangered
22 species, that clearly is passed off as a cursory evaluation
23 in our view, and we feel that they should have provided
24 and should have conducted specific surveys for this species
25 if suitable habitat exists on site.

1 The fact that this species and another plant
2 species on the site and on the border of the site of the
3 significant concern to us when we're moving forward, and
4 should we accept this project at this time, are moving
5 forward with a situation where there could be added
6 endangered or protected species to the ones we already
7 know exist there that impacts are occurring to, and while
8 we're moving forward considering mitigation for these
9 species, there could be additional species that come under
10 consideration that are of significant concern, and cer-
11 tainly changes the suitability of this project in the con-
12 text of the proposal and the context of the other species
13 involved in the significance of the loss of the habitat
14 proposed for this project.

15 And if we move forward and find there are a sig-
16 nificant number of more species involved, and we think
17 so at this time, or the impacts could be greater, and if
18 we get down the line, say, four, five, ten months and find
19 that the significance is much greater than we believe now,
20 we may have a different viewpoint on the project suitability
21 from a biological standpoint.

22 CHAIRMAN IMBRECHT: If I understand correctly,
23 the project is to be built on 43 acres, two parcels, and
24 what percentage of that 43 acres will be actually utilized?
25 I mean is all of it going to be used when you take into

1 consideration --

2 MS. MARSH: I would say -- I would have to say
3 that for the most part during construction much of it will
4 be utilized for staging areas, et cetera, because it was
5 desired to keep all the construction staging on-site, so
6 in terms of the western parcel, where most of the vernal
7 -- where all the vernal pools -- the eastern on-site parcel
8 where the vernal pools are located, it likely would be
9 -- they would be entirely disturbed, which we have reflected
10 in our impact analysis.

11 It's somewhat more questionable in terms of the
12 eastern portion of the property --

13 CHAIRMAN IMBRECHT: Can they be restored?

14 MS. MARSH: Pardon me?

15 CHAIRMAN IMBRECHT: Can they be restored?

16 MS. MARSH: Can they be restored on-site?

17 CHAIRMAN IMBRECHT: Yes. After construction.

18 MS. MARSH: We have --

19 MS. CLAY: We will -- the City of San Diego is
20 the property owner. We will be purchasing off-site vernal
21 pools which we will be preserving, and we are in the
22 process -- as described in the application, thank you,
23 Chris, and we will be -- we are in the process of acquiring
24 those vernal pools at this point in time.

25 There is a process, just interestingly enough,

1 for restoration. It is something that Fish and Wildlife
2 and everybody is looking at, but it is not an approved
3 mitigation at this point in time, so we are purchasing
4 off-site.

5 CHAIRMAN IMBRECHT: Okay. Commissioner Commons.

6 All right. I think we are still a bit away from
7 a resolution of this. I'm going to suggest we recess until
8 1:30. The Commission will meet in Executive Session and
9 consider a personnel matter for I would hope less than
10 ten minutes. I don't believe there are any other items
11 for Executive Session today.

12 COMMISSIONER GANDARA: Mr. Chairman, I -- I am --
13 I want to reserve the opportunity to perhaps return to
14 Executive Session on a legal item. I'm not quite certain
15 whether we need to, but I -- I don't know whether we have
16 one bite at the Executive Session today, or -- and, if
17 so, I don't know whether you want to perhaps postpone the
18 Executive Session till later, or --

19 CHAIRMAN IMBRECHT: No. Out of courtesy to
20 Commissioner Crowley, I'm going to ask you this much.

21 All right. We'll stand in recess till 1:30.

22 (Whereupon, the morning session of the business
23 meeting of the California Energy Resources Conservation
24 and Development Commission was recessed for lunch at 12:35
25 p.m.)

AFTERNOON SESSION

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

5 I hope we're close to the point where we can
6 try to resolve Item No. 1 and go on to the remainder of
7 the long agenda that still faces us.

8 I think that it is important, and perhaps we
9 should have noted this earlier, and I will ask
10 Mr. Chamberlain to reiterate this point, but it should
11 be stated that, while our regulations do contemplate or
12 enunciate a process that is characterized as conditional
13 acceptance, we have an unfortunate dilemma in the circum-
14 stance, and that is that there was additional statutory
15 guidance provided by the Legislature that took effect
16 January 1 of this year, I believe 1983, a couple of years
17 ago.

18 Unfortunately we have not amended our regulations
19 to be consistent with that statutory guidance, and I believe
20 it is the judgment of our general counsel that the condi-
21 tional acceptance option is no longer one which is avail-
22 able to the Commission as a result of the Felando Bill
23 that's dictated the appropriate standard for the acceptance
24 of an application.

25 At the same time, however, I think we have managed

1 to find in essence the practical equivalent, by virtue
2 of the manner in which we have treated some other cases,
3 but, Mr. Chamberlain, if you would like to elaborate on
4 that, that might help focus our discussion of it.

5 MR. CHAMBERLAIN: Yes. Section 25522 indicates
6 that the Commission shall determine within 45 days after
7 it receives the application whether the application is
8 complete, so this is the last meeting that you would have
9 before the 45 days runs on this particular application.
10 You will have to determine today whether the application
11 is complete, and our regulations do indicate that that
12 means whether it is substantially in compliance with the
13 appendix -- the appendices.

14 If you determine that it is not complete, the
15 Commission must specify in writing the parts of the appli-
16 cation which are incomplete and indicate the manner in
17 which it can be made adequate, and then if you determine
18 that it is not complete and you specify those provisions
19 in which it is not complete, the application is deemed
20 filed on the date when the Commission receives the addi-
21 tional data which the Commission determines is sufficient
22 to make the application complete.

23 So at some later time you will make a later
24 determination that additional data has been received, that
25 it does make it complete, and the application would then

1 be deemed filed on the date that that data was actually
2 received by the Commission.

3 CHAIRMAN IMBRECHT: Okay. The practical impact
4 of that, as indicated, in essence allows the applicant,
5 by virtue of any list of data inadequacies that are adopted
6 by the Commission to largely control their own fate by
7 virtue of the time in which they supply the information
8 as requested by the Commission.

9 MR. CHAMBERLAIN: Right. But the time clock
10 does not begin to run --

11 CHAIRMAN IMBRECHT: The one-year time clock,
12 that's right.

13 MR. CHAMBERLAIN: The one-year time clock does
14 not begin to run until the Commission determines that indeed
15 all of the items that it has specified have been satisfied,
16 and in that case the time clock runs from the date that
17 they were in fact -- the data was submitted that led to
18 that satisfactory determination.

19 CHAIRMAN IMBRECHT: Commissioner Commons.

20 COMMISSIONER COMMONS: Yes. Just to refresh
21 the Commission, and also the parties, we had before us
22 a few weeks ago a change in the data regulations for this
23 particular section, and there was one question as to whether
24 it applied to an NOI or just an AFC, and this was an item
25 that the Commission requested we take back, but we will

1 have back an amended section to this to reflect the
2 Felando Bill before the end of the year.

3 And I apologize to the applicants of thinking
4 that the conditional acceptance procedure still could be
5 utilized, but the Felando Bill did make that possibility
6 no longer available to us.

7 CHAIRMAN IMBRECHT: Before we proceed any further,
8 I also should inquire whether there is any other indivi-
9 dual present that wishes to address the Commission on the
10 issue pending before us.

11 Mr. Heath, has your office received indication
12 of any other parties that wish to comment on this?

13 MR. HEATH: No. No parties have come forward
14 at this time.

15 CHAIRMAN IMBRECHT: Parties or individuals.

16 MR. HEATH: Or individuals.

17 CHAIRMAN IMBRECHT: All right. Fine.

18 All right. What is the pleasure of the Commission?
19 Commissioner Commons.

20 COMMISSIONER COMMONS: Well, despite the long
21 discussion that we had this morning, Mr. Chairman, I think
22 the applicant was hoping that we would go forward with
23 their approach on a conditional acceptance, and the issue
24 as to each of the specific items turns out to be more sig-
25 nificant to them if we cannot follow the conditional

1 acceptance approach.

2 For example, the one species of plant, if we
3 were to adopt that as part of the list, could delay this
4 project until April, May or June, and I think -- I would
5 like to ask them if they would like, you know, 30 minutes,
6 and then let's go on to the conservation report to take
7 this into consideration, to see which items would really
8 hurt them if we were to follow this other approach,
9 rather than adopting a list without giving them a few
10 minutes to consider this.

11 CHAIRMAN IMBRECHT: Mr. Mulliken?

12 MR. MULLIKEN: Yes, sir. Thank you. Chairman
13 Imbrecht, so that I might respond to Mr. Commons' question,
14 I think the short answer is the ten items. The -- I guess
15 the case I would make to you is that, regardless of the
16 framework in which we deal with the issue here, and I
17 understand Mr. Chamberlain's position to be embodied in
18 the new regulations that you have before you, but my
19 recollection is those are not yet approved by OAL. There-
20 fore, they would not yet have the force and effect of law,
21 no matter -- no matter I think --

22 CHAIRMAN IMBRECHT: The point is -- the point
23 is, though, that a statutory change has rendered our
24 existing regulations, vis-a-vis conditional acceptance,
25 moot.

1 MR. MULLIKEN: Yeah, but I -- if I understand
2 it, that's a 1982 amendment that became effective January
3 1, 1983, and I -- you have had regulations in force for
4 over two and a half years, since the effective date of
5 that statutory provision, and I think it's -- the statute
6 itself is by no means clear. It's an interpretation I
7 think Mr. Chamberlain is using to propose new regs. I
8 think you can get us to the same point, Mr. Imbrecht, and
9 I -- here is what I would like to suggest.

10 If you are going to conclude today that the
11 application is inadequate and that there are certain defi-
12 ciencies that need to be satisfied in order for it to be
13 complete, so as you have I think correctly characterized,
14 we can really be the masters of our own fates on this,
15 and render it complete by simply tendering that additional
16 information. Then the charge ought to be that it's incom-
17 plete with respect to the 38 items that we have already
18 said -- the 38 that we have said we are going to include,
19 and then what it leaves for resolution is the ten items,
20 and I guess we would simply be really inverting the process.
21 That is we would ask you to look at the ten items identi-
22 fied in paragraphs 5 through 15 of our proposed order,
23 and to agree with us that on those ten items the applica-
24 tion, as presently tendered to you, is adequate.

25 Am I --

1 CHAIRMAN IMBRECHT: I understand your point.
2 Commissioner Gandara, do you understand where
3 we're at now?

4 COMMISSIONER GANDARA: No, sir, I don't.

5 CHAIRMAN IMBRECHT: Basically, Mr. Chamberlain
6 has advised us, as I'm sure you're familiar, that the
7 Felando Bill rendered moot the portion of our regulations
8 that contemplates a conditional acceptance and, as a con-
9 sequence, we are then focusing upon the applicant's request
10 that we would adopt as if we were to deny acceptance of
11 the application today, their request is that we would
12 accept 38 items which they have stipulated to as data
13 inadequacies, and upon the -- their filing with the
14 Commission a response to those 38 items, that that would
15 then trigger the acceptance.

16 I suspect the staff will take issue with that.
17 There remain ten outstanding items that are enumerated
18 in the applicant's proposed order, Items 5 through 14,
19 which remain the outstanding issues, and I would suggest
20 that perhaps we go through those quickly and determine
21 whether in fact we were to add those to the list or not.

22 As Commissioner Commons pointed out, and I think
23 correctly, that were we to accept the list of all 48 items,
24 that the biological assessments that we were discussing
25 just prior to our recess would in essence suggest this

1 application could not be accepted until the completion
2 of those spring studies, and I guess that's one of the
3 issues we would want to weigh as to whether or not that
4 is an acceptable or onerous burden to impose upon the
5 applicant.

6 COMMISSIONER GANDARA: If I might restate it
7 to see if I understand it, are you saying that we are
8 estopped from considering the issue with respect to the
9 hazardous waste classification with respect to acceptance
10 of this?

11 CHAIRMAN IMBRECHT: No, I didn't say that.

12 COMMISSIONER GANDARA: No. Okay.

13 MR. CHAMBERLAIN: No. All I said was that the
14 Felando Bill prevented us from granting a conditional accep-
15 tance that would relate back to the day that they origi-
16 nally filed this application.

17 COMMISSIONER GANDARA: Oh, I see. I see. This
18 is another issue. Okay.

19 CHAIRMAN IMBRECHT: That's right.

20 COMMISSIONER GANDARA: Okay. And this is the
21 Campbell Bill you were talking about, or some other kind
22 of bill on the classification --

23 CHAIRMAN IMBRECHT: Yes. Completely separate.

24 MR. MULLIKEN: Yeah. Now, what -- yeah. What
25 Mr. Chamberlain is referring to is a three-and-a-half-year-

1 old piece of legislation.

2 CHAIRMAN IMBRECHT: Mr. Tooker, do you want
3 to --

4 MR. TOOKER: Yes. At this point I would like
5 to clarify something, which I think would make your delibera-
6 tions a little easier.

7 In our review of the application and in the work-
8 shop we did discuss our concerns regarding the plant sur-
9 veys. Subsequent to our workshop, we did determine on
10 management review that we would drop from the requirements
11 the need for an additional plant survey for data adequacy
12 purposes.

13 We did not drop from our requirement on the list
14 the need for a more clearly defined wildlife survey, so
15 I just want to restate, we are not --

16 COMMISSIONER COMMONS: Which item is that,
17 Mr. Tooker?

18 MR. TOOKER: Hmm?

19 COMMISSIONER COMMONS: Since we have these ten
20 items, which number are you saying you're dropping?

21 CHAIRMAN IMBRECHT: Five through 14 of their
22 list are the ones that we'll focus on.

23 MR. TOOKER: I'm a little confused, as I think
24 a number of people are, as to the numbering of items and
25 their relevant. My point is, with respect to the plant

1 survey, as we called out under -- as discussed under
2 biology, as you will note by looking at our deficiency
3 list, the plant survey item is not included. That was
4 an intentional move on our part because they did provide
5 a survey, even though there was some question as to the
6 -- to the length of it, but we made a determination that
7 the crucial thing in biology was the absence of a clearly
8 defined methodology for -- as the basis for their find-
9 ings on wildlife resources.

10 We still do need to have provided to us an
11 adequate description of a wildlife survey if it was con-
12 ducted, what the findings were, what the methodologies
13 were that were used, and the qualifications of the persons
14 conducting that survey.

15 So I'm trying to make things a little easier
16 here by eliminating the discussion of the plant survey
17 as data adequacy.

18 COMMISSIONER COMMONS: Let me try a question.

19 CHAIRMAN IMBRECHT: All right. Commissioner
20 Commons.

21 COMMISSIONER COMMONS: Mr. Tooker, when you look
22 at No. 5 and 14 on their list, from substantial compliance,
23 does that meet our criteria, in your opinion?

24 MR. TOOKER: We have included that information
25 as being necessary for a complete filing, and we believe

1 that it is necessary for a substantial compliance which
2 is consistent with the position that we have taken in other
3 projects.

4 COMMISSIONER COMMONS: All right. Let me try
5 another one. I just want to see if there's any areas that
6 we agree.

7 Items 6, 7 and 8, which are the biology --

8 MR. DETER: Okay. I could address that by saying
9 we included in the Executive Director's letter we believe
10 is necessary for substantial compliance at the time we
11 put together that letter.

12 COMMISSIONER COMMONS: All right. Let me ask
13 -- try this. Is there any item that you have there that
14 would result in an onerous burden to the applicant or
15 something that they are not able to comply with within
16 the next, say, 30 to 45 days?

17 MR. DETER: Well, I think you need to address
18 that to the applicant. However, he has -- he has made
19 a statement that some of the information you must get from
20 San Diego Gas & Electric in their service area, and I would
21 expect their response to be that they can't get that infor-
22 mation in 30 to 45 days.

23 We took a quick look at their letter that they
24 got from San Diego Gas & Electric, and it would appear
25 that that information is not going to be forthcoming, but

1 I think that should be addressed to them rather than us.

2 COMMISSIONER COMMONS: Let me throw it back to
3 you, Mr. Chairman. What I would like to suggest is that
4 we try to identify the disputed items which cannot be
5 timely obtained, rather than going through each and every
6 one of the individual items.

7 CHAIRMAN IMBRECHT: And I think that I can I
8 hope summarize it adequately.

9 MR. MULLIKEN: Okay. I was going to say,
10 Mr. Commons and Chairman Imbrecht, I might be able to
11 facilitate that somewhat where there maybe is a -- maybe
12 if I can just take a brief moment.

13 I would suggest as a resolution of this that,
14 first of all, there's no dispute on the 38 items. They
15 are going to be submitted.

16 MR. DETER: I don't know what the 38 items are.
17 It's real unclear to me as to what --

18 MR. MULLIKEN: That's real easy, Mr. Deter.

19 CHAIRMAN IMBRECHT: Okay. Well, let's -- I
20 think --

21 MR. MULLIKEN: That's very easy. There's 48
22 items on your list, and we have identified and we have
23 numbered them. I'm sorry you didn't. We have numbered
24 ten of those 48, take the other 38, and that's it. I'm
25 sorry. I don't mean to -- I'm trying to --

1 CHAIRMAN IMBRECHT: The ones that remain at issue,
2 Mr. Deter, are Items 5 through 14. They are in essence
3 stipulating that the 38 items do constitute data inadequacy,
4 and --

5 MR. MULLIKEN: Right.

6 MR. DETER: Do their Items 5 through 14 charac-
7 terize on a point-by-point or paragraph-by-paragraph basis
8 the items we identified in the letter and, if so, how
9 do they -- I don't -- I don't understand their numbering
10 system.

11 COMMISSIONER CROWLEY: I agree. I don't see
12 this -- I have a list of 14 here, and I don't get ten
13 for --

14 MR. MULLIKEN: Now, Ms. Crowley, the ten -- if
15 you recall, the ten start at -- if you will look at para-
16 graph 5 of our proposed decision, from there through para-
17 graph numbered 14, those are the ten items that we believe
18 that we do not share the staff view as to the nature of
19 the deficiency.

20 And what I was going to propose to Mr. Imbrecht
21 is, Items No. 5 and 14, I don't care whether you deem them
22 a deficiency or not, but if you are going to deem them
23 a deficiency, then all I want from you is a direction that
24 the deficiency can be satisfied by the applicant making
25 a timely request to SDG&E for the submittal of that data

1 directly to the CEC staff. That takes care of 5 and 14.

2 Six, 7 and 8 I suggest the resolution is -- again
3 I'm -- I think you can make the case that those three items,
4 the application is satisfactory as it exists, but Debra
5 Marsh tells me that, to the extent there is any question
6 about an adequate description of the wildlife survey --
7 the wildlife survey, that is, that she can accommodate
8 that within the material that we anticipated submitting
9 by the 24th of October.

10 So if we can dispose of those three items by
11 saying that they are a deficiency only insofar as a further
12 description of the wildlife survey is required, whammo,
13 I think that's three more out of the way.

14 CHAIRMAN IMBRECHT: Okay. Let's just take that
15 in order. Mr. Tooker or Mr. Deter? Is that --

16 MR. DETER: If they can -- if they can satisfy
17 that requirement by October 24th with additional informa-
18 tion, which would make it complete, we would certainly
19 be happy to review that information and make a recommenda-
20 tion back to the Commission as to its completeness.

21 They have made a statement in the application
22 that they have done a biological -- a wildlife survey,
23 but they haven't included the assumptions and methodologies
24 that they used to do that. They asked us to take it on
25 faith.

1 I think that is fairly easy information to
2 include, and I'm sure that they could include that by the
3 24th, but once we get it we need to evaluate it, we need
4 to have time to evaluate it and get it back to the
5 Commission.

6 COMMISSIONER COMMONS: I don't hear a dispute
7 on this item.

8 COMMISSIONER GANDARA: Mr. Chairman --

9 CHAIRMAN IMBRECHT: Well, I'm not sure where
10 the 24th comes into play.

11 MR. DETER: They identified the 24th as the date
12 at which they were going to give us all this additional
13 information to make their application complete.

14 CHAIRMAN IMBRECHT: I understand, and if upon
15 your evaluation of that information relative to Items 6,
16 7, and 8, Methodology, et cetera --

17 MR. DETER: Right.

18 CHAIRMAN IMBRECHT: -- if you determine that
19 that in fact is satisfactory --

20 MR. DETER: Right.

21 CHAIRMAN IMBRECHT: -- then with respect to those
22 three items, the 24th would become the date of acceptance,
23 if that's when they file it.

24 MR. DETER: That's correct. That's correct.

25 CHAIRMAN IMBRECHT: I understand. That's not

1 a question of you having to come back with a recommenda-
2 tion.

3 MR. DETER: Well, presumably we have to come
4 back to report to the Commission --

5 CHAIRMAN IMBRECHT: Yes. That's correct.

6 MR. DETER: -- that in fact these items are
7 complete and these are not.

8 CHAIRMAN IMBRECHT: I understand, but it would
9 relate back to the 24th. That's correct.

10 MR. DETER: Right. Yes.

11 CHAIRMAN IMBRECHT: Or whatever day they file
12 it on.

13 MR. DETER: If it's -- as I understand it, if
14 this application is turned down today, then the date that
15 the 12-month clock starts is the date that they submit
16 all the -- the last bit of information necessary to make
17 the application complete.

18 CHAIRMAN IMBRECHT: That's correct.

19 MR. DETER: If that is on the 24th --

20 CHAIRMAN IMBRECHT: And then when the Commission
21 accepts it, we relate back to that last date.

22 MR. MULLIKEN: That's exactly right, and that's
23 what I was trying to get at, Chairman Imbrecht, was that
24 you say, for example, with respect to those SDG&E items,
25 we make the request, that -- that does it. We'll give

1 them a copy of that letter on these biologic items, we
2 specify that those three items are accommodated by our sub-
3 mittal of an adequate description of the wildlife survey.
4 We'll submit that on the 24th, and then it's going to
5 relate back to that point in time. But I think at least
6 we needed your direction --

7 CHAIRMAN IMBRECHT: Okay. Let's just take the
8 transmission issue. Speaking as an individual, and only
9 for advice to my fellow Commissioners, I don't -- I per-
10 sonally would not be satisfied with simply a letter being
11 filed that you have made a request to San Diego Gas &
12 Electric for that.

13 I think I would want at a minimum both a letter
14 and a response from San Diego that commits to supplying
15 that information.

16 MR. MULLIKEN: Well, could I ask you, then, for
17 guidance.

18 MS. DICKEY; I would like to address that issue,
19 please.

20 CHAIRMAN IMBRECHT: Just a moment. Let's hear --

21 MR. MULLIKEN: On that -- because we're kind
22 of grouping together there, Mr. Imbrecht --

23 CHAIRMAN IMBRECHT: That's 5 and 14.

24 MR. MULLIKEN: Five and 14, yes, sir. You have
25 in front of you an SDG&E response on No. 14. Maybe that's

1 a helpful framework to give us guidance as to whether or
2 not that -- in your perception that's adequate. Our posi-
3 tion I think is clear. That's adequate, and if a similar
4 approach is responsive on Item 5, then maybe we don't have
5 a controversy there.

6 COMMISSIONER GANDARA: Mr. Chairman --

7 CHAIRMAN IMBRECHT: Yes. Commissioner Gandara.

8 COMMISSIONER GANDARA: If I might suggest a
9 procedure here, I don't wish to interrupt the Commission's
10 deliberation of this issue, but this is the part that I
11 guess I have always expressed some concern that the
12 Commission as a whole is in a difficult situation to begin
13 essentially negotiating item by item a long list of defici-
14 encies, and that -- and my initial questions on the subject
15 material was to separate them into three categories to
16 try and get a feeling for whether, using a reasonable per-
17 son standard, whether the staff had a reasonable basis
18 for their conclusions.

19 And if there was something clearly erroneous
20 or clearly a problem, or something that offended my sense
21 of due process or fairness, I'm certainly prepared to --
22 to override that and begin perhaps the more detailed
23 examination, but again the -- the three categories that
24 -- that I looked at was the -- the first issue that had
25 to do with the -- the information expected from SDG&E,

1 and the DHS.

2 Now, we went into those at length, and it does
3 seem to me that I can't take the position now or at some
4 future time that the application would be complete to
5 proceed to accept without -- without that being remedied,
6 okay. So that's my bottom line on that area.

7 With respect to the biological survey, we are
8 dealing here with some potential endangered species. There
9 are issues of fact as well that -- and questions as to
10 how much more information would be satisfactory for the
11 staff, and again that is something that I'm not prepared
12 to draw a line on.

13 And then there's the third category, which is
14 now undisputed, as -- as admittedly deficient, and which
15 would be provided by October 24th, whatever, so again,
16 in balancing the interest, I see no great harm done --
17 I actually see the list that the staff came up with as
18 a fairly short list, a narrow list, with a reasonable basis
19 for why they came up with. The way the staff has been
20 operated under their review is that if the application
21 is substantially complete, now, you know I haven't agreed
22 with that particular perspective, but accepting that, as
23 I obviously must since the Commission determined that,
24 the test of substantially complete that we have right now
25 is whether the application as a whole is substantially

1 complete.

2 We do have right now under consideration whether
3 we use the test of substantially complete on every item,
4 but that is not before us today. What's before us is the
5 application substantially complete in its entirety, and
6 if the applicant says that they can provide the additional
7 38 items, or whatever, by October 24th, and if they can
8 resolve the -- the health effects -- I mean the hazardous
9 waste classification, which I think certainly for me is
10 a precondition, and apparently you and I are in agreement
11 on the transmission aspects of it, that we certainly need
12 to have more of a commitment than what we have today.

13 Then I think what you're dealing with is an appli-
14 cation that may perhaps now hinge only on the issue of
15 whether the biological data keeps it from being substantially
16 complete as a whole.

17 Now, rather than deal with that now, I would
18 rather see whether in fact all this other data can be sub-
19 mitted, and at that point in time, you know, then I think
20 we have a much narrower issue as to whether we have a sub-
21 stantially complete application, if this is the only out-
22 standing data, then I think we can focus on whether in fact
23 the data or methodology, and so forth, can be provided.
24 If in fact that's all that needs to be provided, and it
25 can be requested by the staff, then that would fall out

1 of contention.

2 So the two options are, one, for us to accept
3 the staff recommendations as substantially -- as our own
4 recommendations, so that we essentially give the applicant
5 this list of deficiencies.

6 The other option is to -- would be the option
7 of the applicant to consider their application withdrawn
8 and refiled when they have these items.

9 Now, for myself, I'm a little bit indifferent
10 to that, but frankly, you know, we have gone through this
11 whole issue of trying to get some consistency from the
12 staff with respect to review. We have had some very diffi-
13 cult times on data adequacy with other applications. It
14 appears that they are converging on what is necessary for
15 substantially complete, and it is something that's evolving
16 because of the nature of QF applications, but that for
17 myself I would not -- I would prefer just to deal with
18 it, just float it up or down, rather than to begin this
19 painful item-by-item negotiation, and thereby perhaps give
20 an unfortunate signal to the staff that -- in their review
21 that, you know, that there is more merit to one particular
22 claim than another and, therefore, we can expect to get
23 into this in every case, or that, secondly, that we, again
24 in the gamesmanship, that you come in with a long list,
25 you can wind up with a shorter list, if that's what you're

1 going to get into.

2 I -- I really think that -- that looking at the
3 deficiencies, I don't think that they're large. I don't
4 think there's a big hurdle there. I realize that the
5 applicant is concerned and nervous about going on ahead,
6 but I think the absence of a few critical items frankly,
7 you know, is going to be what will dictate the pace of
8 this and the decision on this.

9 So that I -- I for one, at least if the
10 Commission is prepared, I'm -- I don't see any problem
11 with accepting this list of deficiencies, and let's give
12 the signal to the staff that this seems to be a reasonable
13 review standard. Let's give a signal to the applicant
14 that it doesn't appear that they are insurmountable, if
15 indeed we're getting to the point where we're negotiating
16 this or that.

17 And so I think we save us a lot of time if we
18 kind of do a cost-benefit analysis of -- of what we're
19 doing here, I think it's better if we do resolve it, and
20 then move on.

21 CHAIRMAN IMBRECHT: Well, I attempted to try
22 to discern some of the numbers in the Commission order,
23 and I'm not sure there was necessarily consensus on that
24 point. I think there was some indication that there was
25 some movement towards the conditional acceptance, absent

1 the fact that it's not legally possible, at least one num-
2 ber.

3 I think we're very close to a resolution. I
4 personally think we can resolve this very quickly in the
5 next few minutes if we try to march through these things,
6 but I'll be open to the judgment of other Commissioners.

7 COMMISSIONER COMMONS: Well, I would still like
8 to, Mr. Chairman, pursue what you were attempting to do,
9 which I had raised, to --

10 CHAIRMAN IMBRECHT: I think that I'm close to
11 getting it resolved, and let's just try this. And I'm
12 going to enunciate a couple of things and see if there's
13 objection from members of the Commission, and if not, then
14 I will go ahead and try to put this in the form of a motion.

15 It would be my intention to move that we accept
16 the staff recommendation with a few minor modifications
17 to the list of deficiencies. The modifications would be
18 as follows.

19 With respect to Items -- and working from the
20 applicant's proposed order, just because that's become
21 the document that we've used for discussion purposes, Items
22 5 and 14 depend upon San Diego Gas & Electric supplying
23 information relative to transmission operation and the
24 entire -- and the utility operation --

25 COMMISSIONER COMMONS: Mr. Chairman, before you

1 make the motion, can --

2 CHAIRMAN IMBRECHT: I'm not making a motion.
3 I'm just trying to enunciate what I would propose, and
4 if there are no objections I would make that motion. If
5 there are, we'll modify that.

6 COMMISSIONER COMMONS: Because Dorothy Dickey
7 I think had wanted to comment on that particular item.

8 CHAIRMAN IMBRECHT: She did ask to be recognized.
9 That's the last comment I'll entertain, and then I'm going
10 to go through my list.

11 MS. DICKEY: Yes. I think it might be appropriate
12 to the Commission's decision-making process to examine
13 briefly the letter that the applicant has supplied from
14 San Diego Gas & Electric.

15 There is a chart at the end of San Diego Gas
16 & Electric's letter that indicates the utility's thoughts
17 about when and if they could provide the information. In
18 numerous categories, the utility indicates that they are
19 unable to provide the information because Signal, the
20 applicant, has not yet provided them the information upon
21 which the utility can make that determination, so I think
22 that the applicant has somewhat mischaracterized San Diego
23 Gas & Electric's position with respect to their ability
24 to provide information.

25 CHAIRMAN IMBRECHT: Well, I have examined that

1 chart, and I found --

2 MS. MARSH: I think that the gist --

3 CHAIRMAN IMBRECHT: -- only two instances where
4 that's --

5 COMMISSIONER COMMONS: Well, that should be easy
6 to solve, Mr. Chairman, is you could include that -- not
7 only do they have to write a letter to San Diego, but they
8 have to provide San Diego with the necessary information,
9 so San Diego could proceed.

10 COMMISSIONER CROWLEY: No. 5 --

11 CHAIRMAN IMBRECHT: No, actually there's more
12 than that. There's one --

13 COMMISSIONER CROWLEY: No. 5, No. 12, and No. 10
14 and No. 12.

15 CHAIRMAN IMBRECHT: Okay. Let me -- let me try
16 to work through this, then.

17 With respect to Items 5 and 14, in my judgment
18 the applicant should supply the following. A request to
19 San Diego Gas & Electric for the information, a response
20 from San Diego Gas & Electric that all burdens that Signal
21 must meet to make it possible for San Diego to comply with
22 that request have in fact done that, and, third, an agree-
23 ment or a commitment as to the provision of this informa-
24 tion by San Diego Gas & Electric.

25 So what I see in the letter you've got here,

1 Mr. Mulliken, is in essence saying that we can do this,
2 here are the problems, and I don't see a final agreement
3 between you and San Diego Gas & Electric for the provision
4 of this information.

5 What I see in essence is a negotiation that's
6 in progress between you.

7 MR. MULLIKEN: That is exactly right, and that's
8 precisely what we would want to reflect, and here's the
9 dilemma.

10 CHAIRMAN IMBRECHT: Well, I certainly cannot
11 accept simply a representation from you that you have
12 initiated a negotiation and find that to satisfy data
13 adequacy.

14 MR. MULLIKEN: Mr. Imbrecht, I confess I'm sur-
15 prised on your approach to this issue, having listened
16 to the staff tell you for almost an hour about what tradi-
17 tionally they have used as standards for evaluating
18 adequacy in this area.

19 The things that SDG&E is telling us they are
20 going to be able to respond to once we've givem them data,
21 in some cases, or bring us literally to the point of having
22 working drawings to build the project.

23 Now, I don't think I need to tell you that --
24 that the approach to design, implementation, and finally
25 the operation of a project is that you deal with

1 discretionary permitting issues before you invest the money
2 to do nuts and bolts work, and I think part of the problem
3 we're having here is that staff has dramatically escalated
4 its expectations as to what it needs from us at this stage,
5 and is really pushing us beyond the point that we would
6 logically be at.

7 And I guess what it does, in my mind at least,
8 it brings us back once again to the question of what is
9 adequate for purposes of -- of having the application
10 deemed complete so the processing can commence, as contras-
11 ted to the question of what myriad of issues may ultimately
12 have to be resolved before, number one, you can grant or
13 deny the AFC, and we can ultimately build it.

14 CHAIRMAN IMBRECHT: Isn't the natural extension
15 of that point to suggest, then, that this information would
16 never be available during during the pendency of the pro-
17 ceeding?

18 MR. MULLIKEN: In some cases it may not, and
19 you are absolutely right. That's where we're taking --
20 that's where we're taking issue with the staff's signifi-
21 cantly expanded information list that they are requesting
22 of us here, and we think we are indeed confronting a
23 different dilemma.

24 And we appreciate the desire of the staff for
25 a great deal of information, and again we're trying to

1 -- to the extent that it's feasible and realistic for us
2 to accommodate it at this point in time, we're delighted
3 to do so to --

4 CHAIRMAN IMBRECHT: We've had testimony today
5 that in fact -- and I frankly recall, because we have con-
6 fronted this issue of transmission system evaluation,
7 interconnection, and all the rest of it, with respect to
8 other applications, that in fact we have had this infor-
9 mation before acceptance.

10 MR. MULLIKEN: I wish I could replay the tran-
11 script, but I've got pretty good notes. Project-by-project
12 basis. The answer you heard was you've asked for it con-
13 sistently.

14 CHAIRMAN IMBRECHT: And we have --

15 MR. MULLIKEN: And the answer you also heard
16 was that you have consistently not received it.

17 CHAIRMAN IMBRECHT: That is not my recollection
18 of what was said in the last few cases we had.

19 But, Commissioner Commons, maybe we'll get back-
20 up.

21 COMMISSIONER COMMONS: What I -- the staff has
22 a criteria that is utilized for substantial compliance,
23 and it has four elements that were in it, and it might
24 be helpful if Ross were to go over and enumerate those,
25 but in terms of meeting that substantial compliance on

1 the transmission line request, when you were to break that
2 out in terms of that information requirement, this
3 Commission has previously turned down information for hav-
4 ing working drawings.

5 We know the expense that is involved in doing
6 the working drawings, and when we're getting into this
7 level of detail, is there a certain amount of information
8 that is needed to overcome in this transmission area, the
9 substantial compliance test, which the staff after we
10 adopted this would sit down and go over with you. At the
11 same time, what the Chairman is saying, as an overall con-
12 cept, you have to get to that next hurdle of having San
13 Diego at least being willing to say, yes we will work with
14 you on that substantial compliance issue, because the
15 Commission's concern is, once we give you a target date,
16 that we have to complete that within 12 months, and we
17 don't want to put ourselves in a position that we know
18 we can't deliver because there's an impediment in your
19 way.

20 So without negotiating each of the elements
21 within that transmission line, I think the concept the
22 Chairman is laying out for those two items would -- would
23 make sense.

24 MR. MULLIKEN: And I understand what you're say-
25 ing, Mr. Commons. My only concern is this -- just as a

1 terrific example, page 1 of 1, the first place where they
2 pointed to the fact that Signal needs to define something
3 more, "Identify all conductor sizes, types, stranding,
4 and normal emergency impacity, including ambient tempera-
5 ture and conductance temperature."

6 San Diego Gas & Electric's response is not avail-
7 able at this time, and comments this data is available
8 once the scope of work has been defined by Signal.

9 I guess I want us to --

10 COMMISSIONER COMMONS: Well, but, see, we would
11 still be definining for San Diego Gas & Electric, not San
12 Diego Gas & Electric defining for you what we need for
13 substantial compliance. They may want a lot of information
14 that we don't feel that you have to have to take that next
15 step.

16 And normally working drawings would be going
17 --that's a tremendous expense. We're talking ten to one
18 over the preliminary drawings, and that's not the general
19 intent.

20 MR. MULLIKEN: Well, I -- I don't know, I mean
21 my notes here, the question of Mr. Imbrecht --

22 CHAIRMAN IMBRECHT: Well, let's just ask the
23 question again. Mr. Deter, do you want to answer that
24 question one more time?

25 MR. DETER: I think obviously this is an area

1 that our analysis and our data request has been evolving.
2 I think it became apparent in the Sycamore case that we
3 didn't get sufficient information when that application
4 was filed, because we've had a series of data requests
5 that have gone back and forth, and we finally came to the
6 point to where we are finally getting information we need
7 I think about ten or 11 months into the process, which
8 I know is putting the committee under some pressure.

9 We developed a consistent set of transmission
10 system and transmission engineering requirements as a part
11 of the Midway Sunset project, and we have been consistent
12 in the last three cases, South Belridge, Midway -- Midway
13 Sunset, and this project, in the things we are asking for.

14 I've been sitting here looking at the list of
15 information that we've needed, and it doesn't seem to me
16 that we are asking for design -- for specific design detail.
17 I think what we are asking for is preliminary planning
18 engineering data.

19 We have always been consistent in saying we don't
20 want final design, because we couldn't possibly review
21 the stacks of final design information anyhow. We don't
22 have that much staff. What we do need to identify is the
23 preliminary engineering phase that will identify the
24 criteria that they will be using in building the facility
25 and designing the facility, and I think we're being fairly

1 consistent in the information we're asking for here under
2 transmission system planning.

3 CHAIRMAN IMBRECHT: With respect to those last
4 three cases, in addition to making the request before
5 acceptance has been received?

6 MR. DETER: Pardon me?

7 CHAIRMAN IMBRECHT: You made that request you
8 say with respect to the last three cases. Has that infor-
9 mation been received before acceptance?

10 MR. DETER: No, it has not. Not to my knowledge.

11 CHAIRMAN IMBRECHT: It has not.

12 MR. DETER: We have not received the information.
13 Have we received the information from Midway Sunset, for
14 example?

15 CHAIRMAN IMBRECHT: Yes.

16 MR. DETER: No. Not to my knowledge we haven't.
17 That was like two weeks ago.

18 CHAIRMAN IMBRECHT: All I'm saying, do we have --

19 COMMISSIONER COMMONS: Those cases haven't been
20 accepted by us.

21 CHAIRMAN IMBRECHT: What I'm asking -- pardon
22 me. Let me back up.

23 MR. DETER: Oh, I'm sorry. The cases have not
24 been --

25 CHAIRMAN IMBRECHT: I'm sorry.

1 MR. DETER: The cases haven't been accepted yet,
2 if that's what you're asking for. These cases -- the
3 applications were turned down because they lacked suffici-
4 ent information to be deemed complete.

5 COMMISSIONER COMMONS: And in that turndown,
6 did we have a similar set of information --

7 MR. DETER: Yes.

8 COMMISSIONER COMMONS: -- as what you're speci-
9 fying here --

10 MR. DETER: Yes. They were as -- yes.

11 COMMISSIONER COMMONS: -- that you were asking the
12 applicant to complete.

13 MR. DETER: That's correct.

14 COMMISSIONER COMMONS: -- that we have asked
15 the applicant to complete.

16 MR. DETER: That's correct.

17 COMMISSIONER COMMONS: Thank you.

18 MR. DETER: We've been totally consistent in
19 those last three cases.

20 MR. MULLIKEN: Well, as I had understood on the
21 Midway Sunset and on the Belridge project, you had asked
22 for the same, but you're saying you hadn't got it on
23 Sycamore and Omar Canyon. Your statement was you got most,
24 but not as much on Watson. You didn't ask for as much
25 on Crockett, Gilroy and Irwindale. You've made some --

1 a statement, but we know on Irwindale you actually accepted
2 it without because they did it.

3 So that was kind of the mosaic that I was looking
4 at when I was suggesting to you that I think we've gone
5 a significant step beyond here, and we're being asked to
6 do something that is inappropriate to the stage of the
7 proceedings we're at.

8 We're not talking about building a project here.
9 We're talking about finding out whether or not you are
10 going to give us the discretionary approval so that we
11 can undertake to do that.

12 And we can -- we can just throw this back and
13 say, well, we'll see how SDG&E responds and see what we
14 do, but frankly we're just deferring a tough issue, and
15 I think we've got to find a realistic middle ground on
16 this thing that reflects not only the necessary evolution
17 in the staff's process, which we're supportive of. The
18 one thing I hope that we don't walk out of here with is
19 -- is a sense that we are trying to deprive the staff of
20 information which we think is helpful or relevant, either
21 one, to this process.

22 We're only concerned about striking a reasonable
23 balance within a time frame that responds to what we can
24 see is a clear legislative mandate that this process get
25 going, and that we not use small items to defer acceptance

1 of the application, and thereby defeating the whole legis-
2 lative purpose in trying to get this process going.

3 COMMISSIONER COMMONS: Ross, could you go over
4 what those criteria are so that the applicant is aware
5 of them? I think it's very important.

6 CHAIRMAN IMBRECHT: Well, before he does, let's
7 get a final response to this. Do you have any further
8 statements you want to make or not?

9 MR. DETER: You mean the transmission issues?

10 CHAIRMAN IMBRECHT: Yes.

11 MR. DETER: I think -- you know, I think --
12 obviously our position has been evolving recently, because
13 we're -- we're experiencing a different type of project
14 than we've been used to dealing with for the first nine
15 years of the Commission's existence, which was utility
16 power plants.

17 We're into the QF picture, and one of the quan-
18 dries that we face is they obviously don't control the
19 data that they are going to get on transmission -- on the
20 transmission systems, because the utilities do, that they
21 are going to be interconnecting in, so, you know, there's
22 certainly some sympathy there.

23 On the other hand, the regulations specifically
24 require this information as to make findings in these
25 particular areas. I think we are put in a real hard

1 position -- the Commission is put in a hard position of
2 accepting the application that's incomplete in a particu-
3 lar area in which we have to make findings, and to get
4 to Commissioner Commons' questions, one of the reasons
5 we identified the substantially complete criteria in order
6 to accept data adequacy was, is there sufficient information
7 to understand the project; two, can we identify and under-
8 stand all relevant issues and to undertake all required
9 analyses; and, three, to allow the Commission to make all
10 required findings within the statutory schedule.

11 And I'm a little concerned we won't be able to
12 make those findings within a statutory schedule if we just
13 rely upon -- if we get into the process of saying, well,
14 we'll accept it with this information inadequate, but you
15 go back to your utility and get that information from the
16 utility.

17 And in some cases I'm not sure the utilities
18 would agree to give the information in the time frame
19 we're talking about, so where does that put the Commission?

20 CHAIRMAN IMBRECHT: Their point is that some
21 of this information would be unavailable until after the
22 final design was completed.

23 MR. DETER: That's their interpretation. We
24 don't interpret it the same way, and I don't think we are
25 asking for final design information.

1 CHAIRMAN IMBRECHT: And that's not the standard
2 to which you would be holding them.

3 MR. DETER: That's not the standard for which
4 we'd be holding it. We're asking for preliminary informa-
5 tion, preliminary engineering information primarily for
6 criteria that they intend to design the project to.

7 MR. MULLIKEN: See, that's the dilemma we're
8 going to be in. You know, if we just -- if you just wipe
9 the slate clean one way or another, as Mr. Gandara is sug-
10 gesting, we're going to submit some stuff in two weeks,
11 and we're going to be back here wrestling with these issue
12 again.

13 At some point we're going to have to make a deci-
14 sion as to what constitutes substantial compliance with
15 the data adequacy requirements. I don't care about the
16 adequacy of the material in terms of impact analysis,
17 mitigation measures, and the like. That's what the one-
18 year process is all about.

19 CHAIRMAN IMBRECHT: Well, but is it your position
20 that this information can be supplied during the pendency
21 of the proceeding?

22 MR. MULLIKEN: I think some of it will naturally
23 evolve during the pendency of the proceeding as we move
24 forward in the design effort, but I think you can under-
25 stand that the folks at Signal are not going to commit

1 to a massive undertaking of expenditures if we can't even
2 get this thing far enough to get the application accepted
3 to start the processing of it. That's the dilemma we're
4 in.

5 CHAIRMAN IMBRECHT: Ms. Dickey?

6 MS. DICKEY: Staff would like to recommend that
7 if the Commission is willing to entertain the possibility
8 that the applicant be excused from supplying all the data
9 that staff believes to be necessary pursuant to our regu-
10 lations that the applicant at a minimum be required to
11 demonstrate that they have exercised due diligence in
12 obtaining that information.

13 All that the applicant has shown is is a letter
14 dated I believe October 2nd. They haev shown -- they have
15 provided no indication that they have attempted to obtain
16 this information prior to their submission of the applica-
17 tion over the preceding months, and we believe that, absent
18 that kind of demonstration, that merely relying upon a
19 letter submitted -- or I guess mailed a couple of weeks
20 ago to the utility somehow doesn't -- doesn't seem really
21 to meet that burden of exercising that diligence in obtain-
22 ing that information.

23 CHAIRMAN IMBRECHT: Well, I was in essence agree-
24 ing with that from a general standpoint, and it is my --
25 I remain convinced that at a minimum there should be some

1 response from San Diego Gas & Electric and some agreement
2 between the parties as to that which can be supplied, et
3 cetera, and a more specific enunciation of why other items
4 cannot for reasons of, I guess not legal, but just a fac-
5 tual or practical impossibility, and --

6 MR. MULLIKEN: That's the kind of guidance that
7 we need here. I mean we've got a preliminary interconnect
8 study in the application. We've got a staff report that,
9 among other things, says we haven't identified all conduc-
10 tor sizes, types and strandings, and then I pick up the
11 statute and we now have accepted the proposition that we
12 don't care about the regulations, we'll look to the enabling
13 legislation.

14 I read a statute that says, in describing the
15 contents of the application, "A description of any elec-
16 trical transmission lines, including the estimated cost
17 of the proposed electric transmission line, a map and suit-
18 able scale of the proposed routing showing details of the
19 rights-of-way in the vicinity of the settled areas, parks
20 and recreational areas, and scenic areas, and existing
21 transmission lines within a mile of the proposed route,
22 and justification for the route in a preliminary descrip-
23 tion of the effect of the proposed electric transmission
24 line on the environment, ecology, and its scenic, historic
25 and regulational values," period.

1 I contrast that to a request for conductor sizes
2 and types. I put this in the broader mosaic of where we
3 are in this process, and I have some difficulty reconciling
4 the two.

5 CHAIRMAN IMBRECHT: Are you relying -- are you
6 relying upon other regulatory direction --

7 MR. DETER: No.

8 CHAIRMAN IMBRECHT: -- for the additional infor-
9 mation?

10 MR. DETER: No. We're relying upon the regula-
11 tions as they are prepared.

12 CHAIRMAN IMBRECHT: Well, that --

13 MR. CHAMBERLAIN: The regulations are --

14 CHAIRMAN IMBRECHT: What you just read to me
15 doesn't really address the question of system reliability,
16 et cetera.

17 MR. CHAMBERLAIN: That -- he read to you from
18 the statute. He made the statement that, since we are
19 deciding that one regulation is not valid because of the
20 Felando Bill, we should throw the rest of our regulations
21 out.

22 MR. MULLIKEN: I'm not at all -- I'm sorry. I
23 just -- I'm a little impatient with this. This just --

24 CHAIRMAN IMBRECHT: Okay. I think I've heard
25 all that I need to hear from both sides at this juncture,

1 and --

2 MR. MULLIKEN: Probably more than you need to
3 hear.

4 CHAIRMAN IMBRECHT: -- with respect to this
5 particular issue, and this is a question only for my
6 colleagues on the Commission. I may slightly amend what
7 I would propose to be our motion with respect to this item,
8 and that is that we require agreement between the appli-
9 cant and San Diego Gas & Electric with respect to those
10 items which can be supplied, and a demonstration of due
11 diligence with respect to those items which cannot, and
12 a full enunciation of the reasons why there is a physical
13 impossibility of providing that information prior to accep-
14 tance.

15 COMMISSIONER COMMONS: Mr. Chairman, I -- I'm
16 confused, because there's a difference between physical
17 impossibility and -- and due diligence. This due diligence
18 is something new that's been interjected. We are still
19 bound --

20 CHAIRMAN IMBRECHT: Let me say an agreement as
21 to those items which can be supplied and, in addition,
22 a demonstration of due diligence with respect to those
23 items which they represent are impossible to supply.

24 COMMISSIONER COMMONS: Well, it's very rare that
25 you have an item that's impossible to supply. It's a

1 question as to the level of detail in how you supply it.

2 CHAIRMAN IMBRECHT: Okay. If you've got an
3 alternative, toss it out there.

4 COMMISSIONER COMMONS: I like the way you had
5 it originally, which was a request --

6 CHAIRMAN IMBRECHT: All right. Commissioner
7 Gandàra, you have an alternative, let's hear it.

8 COMMISSIONER GANDARA: Yes. My alternative,
9 as I stated before, was just to accept it as a list --
10 as one of the deficient items, and let me indicate why,
11 okay, because we are trying to put more specificity into
12 that in trying to accomodate the applicant, and with that
13 I don't have a problem.

14 However, it is not correct that this concept
15 of due diligence was just introduced, and that, therefore,
16 we now have to deal with what does due diligence mean, what
17 does impossibility mean, and so forth.

18 From the very beginning the staff said that they
19 are not trying to put the applicant in a position that
20 if SDG&E did not provide the information that this would
21 never be accepted. What the staff did say, and I remember
22 very clearly, is they said that if they had evidence that
23 SDG&E was not providing or being cooperative, or it was
24 impossible to provide it, that this was not going to be
25 something that would prohibit the application from going

1 forward.

2 What the staff has said is that up to October
3 2nd there doesn't seem to have been the sufficient infor-
4 mation and/or the intent to provide information beyond
5 that which they feel is required, so that in fact I think
6 that, while I have no objection to the way you phrased
7 your initial motion, I think it essentially restates what
8 the staff requested, and so that's why the applicant I
9 think reacted negatively to that, but I -- I think it's
10 fairly clean.

11 MR. MULLIKEN: No, I like -- I like Mr. --

12 CHAIRMAN IMBRECHT: No, I did not restate what
13 the staff requested, because what the staff requested was
14 actual provision or supplying information. What I -- what
15 I stated was something that was less than that, and that
16 was an agreement between the parties, something more
17 definitive than simply the initial stages of negotiation,
18 which is what I think you have before us here, as to the
19 fact that the information would be supplied.

20 I was trying to cut a middle ground, in all can-
21 dor, and --

22 MR. MULLIKEN: I -- if there was confusion on
23 our position --

24 COMMISSIONER GANDARA: I guess what I'm trying
25 to -- excuse me. May I --

1 MR. MULLIKEN: I'm sorry.

2 COMMISSIONER GANDARA: What I was trying to
3 indicate is that there may be some misperception here,
4 but I never got the impression that the staff was saying
5 that if the information is not supplied that in fact this
6 will always be considered deficient from the point of view
7 of the applicant.

8 What I heard the staff say is that they wished
9 to place the burden, and appropriately so, on the appli-
10 cant, and should for a good cause shown that this informa-
11 tion would not be available, that in fact they would not
12 necessarily consider this as a data deficiency.

13 I did hear them say that -- that they had not
14 -- that the applicant had not come forth indicating that
15 this information was impossible. In fact, they barely
16 started trying. So, again, this may be a semantic issue
17 here. I'm -- you know, since I happen to believe that
18 the way you phrase it correctly isn't any different from
19 what the staff intended it, I'd be glad to accept that,
20 but I'm just trying to go for some simplicity here.

21 CHAIRMAN IMBRECHT: Okay. Let me hear from any
22 other Commissioners. Commissioner Noteware, do you want
23 to comment on this so I know where we're at?

24 COMMISSIONER NOTEWARE: I concur with where you
25 are headed. I think you are on the right track. I --

1 I'm a little concerned that some of the -- some of the
2 responses from San Diego Gas & Electric to the applicant
3 do involve a degree of detail that's -- that's beyond
4 what is necessary to get the project started, for instance,
5 in addition to the wire sizes, the number of poles and
6 towers, and things like that, which I -- I agree with the
7 applicant are beyond the point that you -- you have to
8 get into before you get into the final design stages, and
9 I agree with your -- your due diligence connotation here.

10 CHAIRMAN IMBRECHT: Okay. Commissioner Crowley,
11 any comments?

12 COMMISSIONER CROWLEY: No comment.

13 CHAIRMAN IMBRECHT: Okay. Fine. Let's move on
14 to the next issue, and I'm going to move from that judgment.
15 I'll offer my motion.

16 Six, 7 and 8, I think the question of supplying
17 the methodology -- and what were the other two items --
18 methodology, assumptions and --

19 MR. DETER: Qualifications of the people con-
20 ducting the surveys.

21 CHAIRMAN IMBRECHT: All right. Fine.

22 MR. DETER: Also, along with that would be the
23 assumption that they would identify any potential impacts
24 and also any potential mitigation measures.

25 CHAIRMAN IMBRECHT: Do you stipulate to that?

1 MR. MULLIKEN: Absolutely not.

2 CHAIRMAN IMBRECHT: All right. Now we're up
3 to forty --

4 MR. MULLIKEN: We did fine on the first part.

5 CHAIRMAN IMBRECHT: We're up to 43 items that
6 we've stipulated to; right?

7 MR. MULLIKEN: Yeah.

8 CHAIRMAN IMBRECHT: Okay. All right. So that's
9 stipulated to. Forty-three items --

10 COMMISSIONER CROWLEY: No. He said absolutely
11 not.

12 MR. MULLIKEN: No. No, no. No. I'm sorry.
13 I said absolutely not. The first part was fine, and the
14 second part is where we really fall off the end of the
15 table.

16 CHAIRMAN IMBRECHT: What was the second part?

17 MR. MULLIKEN: I think what -- let me -- if I
18 can reduce from our perspective the three items there,
19 there's one deficiency, and that deficiency is a more com-
20 plete description of the wildlife survey. We'll be back
21 here again and again and again if -- if the staff is going
22 to take the position that its differing view of what's
23 a significant versus an insignificant impact necessitates
24 doing additional mitigation analysis at this juncture,
25 in order to be constituted an adequate informational

1 submittal, mitigation measures is in facts, it's analysis.

2 CHAIRMAN IMBRECHT: I've been very generous in
3 terms of allowing you to argue your points, but there's
4 limits to constant interruptions. I --

5 MR. TOOKER: Yes. The assumption in our list
6 of deficiencies here was that in fact they had not done
7 the survey, that if they did one and if they found that
8 there were species present they would have to identify
9 impacts and related mitigation measures.

10 To the extent that they show that they have done
11 a survey and there are no species identified, he's correct,
12 there would be no requirement for the follow-on impact
13 and mitigation discussion, so he -- his position is cor-
14 rect.

15 If you can assume that they have done the survey
16 and that they will provide a substantial report of that
17 fact in an appropriate manner.

18 MR. MULLIKEN: Great. If that's all there is
19 to it, I think we're in good shape.

20 CHAIRMAN IMBRECHT: That's where we're at. All
21 right. We have a stipulation as to 43 items.

22 Now, then, turning to 9 and 10, 9, 10 and 11,
23 those all go to the question of air quality. Let me see
24 if I recall the points on this.

25 This is an issue where the APCD is in agreement

1 with the staff position; is that correct?

2 MR. DETER: Correct. Basically, if I might sum-
3 marize, staff disagrees with Items 9 through 12. We do
4 not stipulate to 9 through 12.

5 CHAIRMAN IMBRECHT: Well, 9 through 11 is air
6 quality. Twelve is waste --

7 MR. DETER: Correct. Yes.

8 CHAIRMAN IMBRECHT: -- characterization. State
9 your position with respect to 9 through 11 first. We'll
10 straighten them up.

11 MR. DETER: With respect to providing the assump-
12 tions and background data for source test data, for the
13 enrichment of small particulates, and for the risk assess-
14 ment, we, the Air Resources Board and the District and
15 the Department of Health Services, with -- well, and the
16 Air District, all believe that additional information has
17 to be provided to substantiate the validity of source test
18 data to describe the small particulate emissions from the
19 facility, and to provide a reasonable level of data to
20 do a technical analysis of the risk assessment.

21 MR. MULLIKEN: Very briefly, our point was that
22 our application should be deemed complete without the
23 requirement that we submit source test data on other
24 facilities that Signal owns located elsewhere in the country.
25 We'd be glad to supply that in the regular proceedings.

1 As to the --

2 CHAIRMAN IMBRECHT: And what would be the time
3 constraints upon you supplying it prior to acceptance?

4 MR. MULLIKEN: I think it's inappropriate to
5 impose a time requirement on us to submit that particu-
6 lar --

7 CHAIRMAN IMBRECHT: I'm not imposing a time
8 requirement. I'm asking you how long it will take you
9 to supply it, if you can.

10 MR. MULLIKEN: Some of it's available right now.
11 Others of it is not available yet, and is in the process
12 of being compiled. It's an operational facility, and we
13 are using it constantly for purposes of developing data
14 and information.

15 In this particular case, Mr. Imbrecht, that was
16 the point we made in the workshop, I think we're being
17 penalized because we've developed so much of this tech-
18 nology that I think what we've done is we've piqued the
19 staff's curiosity, and we're glad to accommodate that
20 curiosity, but we're talking about data that's going to
21 take a good deal of time to assemble in some cases.

22 MR. DETER: I'd like to summarize staff's speci-
23 fic position on the source test data. To substantiate
24 their proposal, which involves some -- some statement as
25 to the level of emissions and to allow them to comply with

1 the Air District's regulations, they have referenced a
2 number of studies done by the EPA, by the Air Resources
3 Board I believe, and also they have provided data from
4 one of their existing facilities.

5 All we're saying is that for their existing
6 Westchester facility, aside from providing a table of sum-
7 mary data, they have to describe the method by which they
8 produce that data, the assumptions, and the basic raw data
9 that they used to generate that, so we can evaluate its
10 validity.

11 It's nothing more than we've asked in other
12 places where they have failed to provide adequate backup
13 assumptions, methodologies, and data.

14 MR. GARRETT: It's not backup assumptions and
15 methodology for our facility. It's -- in San Diego, it's
16 for another facility that's currently operating someplace
17 else.

18 MR. DETER: May I point out that they have used
19 that other facility as support for the types of emissions
20 that's going to come out of this project, and as long as
21 they are using the other facility, they ought to identify
22 the assumptions, et cetera, that go into the emissions
23 that come out of that other facility. It's really clear.

24 CHAIRMAN IMBRECHT: I'm really not persuaded
25 as to your point. It doesn't strike me as an onerous

1 burden, particularly when you indicate to me that some,
2 or I would assume perhaps much of this information is
3 currently available.

4 MR. MULLIKEN: Indeed. That's part of the
5 reason this -- that we've got four notebooks there. A
6 lot of it is in there. Again, that's part of the dilemma.
7 There's so much there.

8 CHAIRMAN IMBRECHT: Okay. All right. I am not
9 going to suggest a modification of those three in my
10 motion.

11 With respect to Item No. 12, it also seems to
12 me that it is a very simple issue, and without getting
13 into the question of whether our staff will call across
14 the street, and that sort of thing, again, the burden
15 rests with the applicant, and I was not persuaded, in all
16 candor, that by virtue of a request that was made by the
17 City or their authority back in 1982, that in fact that
18 should be definitive of this issue in 1985, or moving on
19 to 1986.

20 It doesn't strike me as unreasonable for you
21 to go back to the Department of Health Services and clear
22 up that ambiguity.

23 MR. MULLIKEN: Yes, Mr. Imbrecht. I think there
24 is maybe a --

25 CHAIRMAN IMBRECHT: And I think it could be done

1 very quickly as well.

2 MR. MULLIKEN: There may be a way of splitting
3 the baby on that. I -- I think that breaks the issue out.
4 We don't have any problem providing the staff with a --
5 with a copy of the data that was -- or the information
6 package that was given to DOHS when it made its determina-
7 tion. That we intended to provide that as part of the
8 material we're going to be submitting on the 24th of
9 October.

10 What isn't within our domain is whatever files
11 have been accumulated by the Department of Health Services,
12 whatever information they used, or internal analysis they
13 developed in reaching their determination, and I submit
14 to you that it's that material that your staff should be
15 requesting directly from -- from DOHS.

16 We're delighted to give you the information that
17 was -- that the City provided to DOHS in making that deter-
18 mination. That's no problem.

19 MS. DICKEY: Mr. Imbrecht --

20 CHAIRMAN IMBRECHT: Yes.

21 MS. DICKEY: Would it be appropriate for me to
22 address that?

23 CHAIRMAN IMBRECHT: Sure.

24 MS. DICKEY: On page 5 of the attachment to the
25 Executive Director's letter --

1 CHAIRMAN IMBRECHT: I'm reading that right now.

2 MS. DICKEY: -- the top paragraph, the only thing
3 that staff requested was the documentation provided to
4 DOHS in support of the determination.

5 May I suggest that the letter included in the
6 AFC from the Department of Health Services only references
7 the project. It does not give a location, it provides
8 no information to allow staff to determine whether the
9 project about which that determination was made is the
10 same as the project that is now -- the applicant proposes
11 to put before us now.

12 MR. GARRETT: I think the dispute on this has
13 gone away. We -- if what Ms. Dickey says is --

14 CHAIRMAN IMBRECHT: They are asking for what
15 you provided to them --

16 MR. GARRETT: Right.

17 CHAIRMAN IMBRECHT: -- not what DOH --

18 MR. GARRETT: That's absolutely no problem.

19 MR. MULLIKEN: Yeah. If that's it, terrific,
20 and --

21 CHAIRMAN IMBRECHT: Well, it's fairly clearly
22 written here. I --

23 MR. MULLIKEN: I'm sorry. I know you all weren't
24 in the -- in the workshop and you didn't have the benefit
25 of that discussion, but --

1 CHAIRMAN IMBRECHT: Well, we adopt as what in
2 fact we've got here in writing, and --

3 COMMISSIONER GANDARA: We've been in a workshop
4 since 12:30, is my view.

5 CHAIRMAN IMBRECHT: That's right. Since 10:00
6 o'clock.

7 All right. I'm not prepared to modify that one
8 either, and finally we come down to the question of the
9 statement as to laws, ordinances and regulations. I was
10 generally persuaded by the applicant's point on that, and
11 I don't know if -- Ms. Dickey, do you want to address that?

12 MR. DETER: Yes, Mr. Imbrecht. I don't believe
13 that that revolves around a burning issue in this case,
14 and it is something that can be cleaned up through data
15 requests, and we would feel it appropriate to do so,
16 within the context of the other issues we've discussed.

17 CHAIRMAN IMBRECHT: So you withdraw that.

18 MR. DETER: Yes.

19 CHAIRMAN IMBRECHT: All right. Fine.

20 All right. Therefore, I will move, and we'll
21 see if we've got support for a second. I will move to
22 deny the acceptance of the application, that we accept
23 the staff's recommended list of data deficiencies with
24 respect to the 38 stipulated items, as well as -- I'm sorry,
25 as well as Items 6, 7 and 8 enumerated on the proposed

1 order from the applicant, and as defined, and they can
2 check the record or transcript, as to the level of detail
3 that the staff would be requesting with respect to com-
4 pliance for those three items.

5 And I was wrong about my statement about 43.
6 That would take us to 41.

7 With respect to Items 5 and 14, which are the
8 questions of the interconnection issues with San Diego
9 Gas & Electric, that data acceptance would be triggered
10 by the provision to the Commission of an executed agreement
11 between the applicant and San Diego Gas & Electric for
12 the provision of the information requested, but not based
13 upon final design detail, rather upon preliminary -- what
14 was the proper phrase I want to use, Mr. Deter? Prelimi-
15 nary --

16 MR. DETER: Preliminary designs.

17 CHAIRMAN IMBRECHT: Preliminary design.

18 MR. DETER: Yes.

19 CHAIRMAN IMBRECHT: All right. And that in your
20 negotiations with San Diego Gas & Electric, it be stipu-
21 lated that only that which can be supplied based upon
22 preliminary design be the requirement.

23 And finally, that Item 13 be dropped from the
24 list of data deficiencies, so that would actually leave
25 intact the staff's list of data deficiencies for 44 items

1 -- 45 items, excuse me. That was 45 items. It would also
2 include Items 9, 10, 11 and 12. That's the air quality
3 issues and waste.

4 The only modifications of the staff list would
5 be with respect to the agreement as stated with San Diego
6 Gas & Electric, and the deletion of the list of other
7 statutes, ordinances, et cetera, that would impact upon
8 the project.

9 That is my motion. Commissioner Commons.

10 COMMISSIONER COMMONS: Well, I'll second it,
11 but I do have one question.

12 CHAIRMAN IMBRECHT: All right.

13 COMMISSIONER COMMONS: Has the applicant sub-
14 mitted on the transmission lines and filed their fees to
15 the Public Utilities Commission? I believe the PUC has
16 an order out that requires you to do so.

17 MR. MULLIKEN: To the best of my knowledge we
18 haven't, Mr. Commons, but I -- that's a qualified answer,
19 to the best of my knowledge. We can find that out and
20 answer that for you.

21 COMMISSIONER COMMONS: One of my concerns with
22 your motion is that that is a study that has to -- you
23 know, you have to get on the transmission line, and the
24 PUC makes that requirement, and that also includes a lot
25 of this information and data that we really need to get

1 San Diego started on their process.

2 And the way the motion is stated, there may be
3 information that they are not required to -- they may not
4 have the information ready for San Diego to proceed, and
5 that's not included in your motion. It would be helpful
6 if we had that -- that information from -- you know, if
7 you're not in line to get the power on the transmission
8 line, it doesn't help if we site the power plant, and that
9 would have this information.

10 Maybe Ross has a comment on this.

11 CHAIRMAN IMBRECHT: I'm not following that point.

12 EXECUTIVE DIRECTOR WARD: Well, I may need some
13 clarification from the general counsel's --

14 CHAIRMAN IMBRECHT: I don't think it goes to
15 our process.

16 EXECUTIVE DIRECTOR WARD: -- the general counsel
17 on this, but it may -- the issue with escrowing a certain
18 amount for transmission interconnect may have been after
19 in fact the standard offer contract that Sander has is
20 already completed, and that may have an impact as to why
21 they aren't in that administrative hurdle.

22 COMMISSIONER COMMONS: Well, let me go back to
23 your motion, Mr. Chairman. Let us say that there is infor-
24 mation that is required by SDG&E and would be required
25 under our test for substantial compliance. Does your

1 motion include that information that they would have to
2 provide to San Diego, that that has to be provided?

3 CHAIRMAN IMBRECHT: Yes, but based upon prelimi-
4 nary design rather than final design.

5 COMMISSIONER COMMONS: Okay. That's what I
6 didn't understand in the motion.

7 CHAIRMAN IMBRECHT: That's the distinction.

8 COMMISSIONER COMMONS: Then I'm all right.

9 CHAIRMAN IMBRECHT: All right. Fine. Further
10 discussion?

11 COMMISSIONER GANDARA: Might I --

12 CHAIRMAN IMBRECHT: Commissioner Gandara.

13 COMMISSIONER GANDARA: I just want some clari-
14 fication so that I can see if I understand it.

15 Your motion is essentially accepting the staff's
16 list of deficiencies, with two exceptions.

17 CHAIRMAN IMBRECHT: Three exceptions.

18 COMMISSIONER GANDARA: Okay. Let me see if I
19 can restate them. One exception is to drop Data Deficiency
20 No. 22, which is -- the applicant has labeled on their
21 list as 13.

22 CHAIRMAN IMBRECHT: The staff has stipulated
23 to that.

24 COMMISSIONER GANDARA: Okay. Fine. So that's
25 done. The second modification of the staff's recommendation

1 is that, with respect to the Data Deficiency No. 2, Demand
2 Conformance, Applicant's No. 5, that your statement of
3 it or your phrasing of it is that they --

4 CHAIRMAN IMBRECHT: That they have an executed
5 agreement with San Diego Gas & Electric for the provision
6 of the information required in Item Data Deficiency 2 and
7 Data Deficiencies 25 through 31, and that that be predi-
8 cated upon the provision of preliminary design data to
9 San Diego Gas & Electric, rather than final design.

10 COMMISSIONER GANDARA: Okay. I need a clarifica-
11 tion there. Does the motion contemplate a -- a timeliness
12 aspect to it? I mean what if there is an executed agree-
13 ment to provide it by a certain time, or what if they come
14 back and execute an agreement that they will provide it
15 by -- in the next year, or in six months from now?

16 CHAIRMAN IMBRECHT: That's a realistic question.
17 I note in this graph that was supplied by San Diego Gas
18 & Electric that you can range from 30 to 120 days, one
19 item only being 120 days.

20 If that information -- if you had an agreement
21 and you knew with certainty that San Diego Gas & Electric
22 were to supply that information within 90 days, would that
23 be acceptable from your perspective?

24 MR. DETER: Let me restate our overall position
25 on this area of transmission system engineering and

1 transmission system planning. We still stand by our ori-
2 ginal position that that information is needed to do an
3 analysis, and that it's needed in a timely manner to allow
4 us to do our analysis within the first six months of the
5 process.

6 What our lawyer was trying to say was that, short
7 of your requiring that detailed information, and knowing
8 that it would not allow us to complete our analysis, you
9 should at least require them to show good faith in having
10 tried to inquire -- acquire the information, which they
11 have not.

12 We still stand by our original position, however,
13 of needing the data --

14 CHAIRMAN IMBRECHT: Well, my motion contemplates
15 something that is substantially more than even a demon-
16 stration of good faith.

17 MR. DETER: I just wanted to make it very --

18 CHAIRMAN IMBRECHT: It's a demonstration of an
19 executed agreement, and the question is whether in fact
20 there should be any time consideration or stipulation with
21 respect to that agreement.

22 MR. DETER: Yeah. I certainly think there should.
23 In fact, that was one of the questions I was going to ask
24 for clarification.

25 CHAIRMAN IMBRECHT: It's a reasonable question.

1 I --

2 MR. DETER: Is that you need to identify some
3 time frame that you get the data, and if you get the data
4 three to six months from the time that the application
5 begins, that leaves only nine to six months left in the --

6 CHAIRMAN IMBRECHT: Well, under the schedule
7 enunciated by -- by San Diego Gas & Electric, the maximum
8 would be four months, and in most cases it would be less
9 than that, 30 or 60 days.

10 MR. DETER: If we got the information in four
11 months, we try to shoot for our preliminary staff analysis
12 to be done at six months, to a six-month point in the case,
13 I don't think that our analysis could be done for this
14 issue in a two-month time frame. I think this is an
15 extremely complex issue.

16 CHAIRMAN IMBRECHT: I understand.

17 MR. DETER: We've only got two staff in the whole
18 Commission --

19 CHAIRMAN IMBRECHT: Let me just --

20 MR. DETER: -- that knows anything about this
21 topic.

22 CHAIRMAN IMBRECHT: Let me just reiterate that
23 there's only one item here that indicates 120 days.

24 MR. DETER: Well --

25 CHAIRMAN IMBRECHT: All of the other items are

1 15, 30 days, there's one 90, a couple of 60s.

2 MR. DETER: We could -- we could start analyzing
3 the information --

4 CHAIRMAN IMBRECHT: There's actually only one
5 90 and one 120. The other --

6 MR. DETER: We could start analyzing the infor-
7 mation as it comes in, obviously.

8 CHAIRMAN IMBRECHT: Yes.

9 MR. DETER: We would analyze whatever we had.

10 CHAIRMAN IMBRECHT: Let me suggest this. An
11 executed agreement that contemplates a schedule not to
12 exceed that which is represented in the chart presented
13 by San Diego Gas and Electric, that would contemplate two
14 pieces of that information coming in after 60 days. Do
15 you follow me?

16 MR. DETER: Yeah, but do you -- I mean is it
17 -- do you have a question for me?

18 CHAIRMAN IMBRECHT: No.

19 COMMISSIONER CROWLEY: Is that satisfactory?

20 CHAIRMAN IMBRECHT: Is that satisfactory?

21 MR. DETER: Well, as I said earlier, I think
22 that the Committee needs to recognize that we -- we may
23 not be able to meet the schedule for this issue as we do
24 for the other issues, that this issue may have to be
25 delayed as a part of the case.

1 CHAIRMAN IMBRECHT: Well, I'm prepared to go
2 forward with that. Commissioner Commons.

3 COMMISSIONER COMMONS: Mr. Chairman, I don't
4 feel comfortable trying to understand schedules for trans-
5 mission lines here today. What I would like to suggest
6 is that you add the word "timely" to your motion, and that
7 -- that would be sufficient.

8 CHAIRMAN IMBRECHT: Well, I'm more comfortable
9 by saying that within the time frames contemplated for
10 each of the items enunciated in the letter from San Diego
11 Gas & Electric to the applicant, dated October 2, 1985.
12 That gives us a time certain. It makes it clearer that
13 the bulk of the information will be supplied inside of
14 60 days, and two items -- and those two items being San
15 Diego's environmental and economic dispatch procedures,
16 and interconnection alternatives --

17 COMMISSIONER COMMONS: Well, I would --

18 CHAIRMAN IMBRECHT: -- would all be provided --

19 COMMISSIONER COMMONS: I would prefer that you
20 take that -- do that as an instruction to staff as to how
21 you define "timely" in this case, and not include it as
22 part of the motion, and that in terms of not having pre-
23 cedence that we -- in following substantial compliance,
24 that the appropriate term would be "timely," but I agree
25 with you, that sounds reasonable to me, but I would prefer

1 not to be that specific without really having heard it.

2 MR. DETER: Obviously I would prefer to be
3 specific, because if you give me "timely," there's --

4 CHAIRMAN IMBRECHT: I think specificity helps
5 here, and I think it's better for the applicant to have
6 specificity. I don't think we want to be back here with
7 a debate between applicant and staff as to what consti-
8 tutes "timely."

9 So unless you want to withdraw your second, I'm
10 going to make my motion in that context.

11 All right. The second is before us. The motion
12 is properly before us, and -- do you want me to briefly
13 restate it?

14 COMMISSIONER GANDARA: Yes. No later than 60
15 days?

16 CHAIRMAN IMBRECHT: No. No later than the time
17 frames for each of the items contemplated in the letter from
18 San Diego Gas & Electric, dated October 2nd, to the appli-
19 cant. That means that all but two items listed here would
20 be provided within 60 days, many of them within 15 days.
21 Two items, one would require 90, and one would require
22 120 days. Okay?

23 COMMISSIONER GANDARA: Since -- again for clari-
24 fication, since some of these are conditional on Signal
25 providing data to SDG&E, is that --

1 CHAIRMAN IMBRECHT: And that is all contemplated.
2 The preliminary design data would have to be provided to
3 SDG&E in order for them to have an executed agreement --

4 COMMISSIONER GANDARA: Okay.

5 CHAIRMAN IMBRECHT: -- in order to achieve this.

6 COMMISSIONER GANDARA: One more question. Okay?

7 CHAIRMAN IMBRECHT: Okay.

8 COMMISSIONER GANDARA: You had indicated with
9 the exception of three items. I think this was the second
10 item. The third item?

11 CHAIRMAN IMBRECHT: Well, no, I just restated
12 this. On their list it's Items 5 and 14. If you want to
13 use their numbering system for data deficiencies, it would
14 be Data Deficiency No. 2 and Data Deficiencies Nos. 25
15 through 31.

16 COMMISSIONER GANDARA: Oh, I see. Okay. Fine.

17 MR. DETER: Could I ask a question of clarifica-
18 tion?

19 CHAIRMAN IMBRECHT: All right. One more.

20 MR. DETER: You identified on their list 5 and
21 14 deal with transmission issues. Would that correspond
22 to our list -- our list of all those items under transmis-
23 sion engineering and transmission system evaluation, which
24 is pages 8, 9, 11, 12, 13 and 14?

25 COMMISSIONER GANDARA: That was my next question.

1 In an earlier response to me there was some confusion as
2 to whether the reference to 38 items that the applicant
3 claims that they are stipulating to, that staff knows what
4 those 38 items are.

5 MR. DETER: Right.

6 COMMISSIONER GANDARA: Okay. And --

7 CHAIRMAN IMBRECHT: Items 25 to 31 begin where,
8 Mr. Mulliken, on -- in the staff document? Data Deficiencies
9 25 to 31 that you enunciate in Item 14 of your order begin
10 on what page of the staff's document?

11 MR. MULLIKEN: Yes, sir. They begin at page
12 8 and run through page 9.

13 CHAIRMAN IMBRECHT: So it's all of that which
14 is on 8 and 9?

15 MR. MULLIKEN: Let me see if I can count them
16 here to make sure we're -- yes. There's -- yeah. I think
17 four there on page 8, and three on page 9.

18 CHAIRMAN IMBRECHT: Okay.

19 MR. MULLIKEN: Yes, sir.

20 CHAIRMAN IMBRECHT: Okay. What this would
21 involve then is the second data deficiency listed under
22 Demand Conformance on page 1 of your document, which they
23 characterize as Data Deficiency No. 5 --

24 MR. MULLIKEN: Page 1 of our document.

25 CHAIRMAN IMBRECHT: Of your document. That's

1 Appendix B, subsection B-1, and Appendix A, subsection
2 B-4. Okay?

3 And then on pages 8 and 9, the entirety of the
4 items listed on pages 8 and 9 characterized as transmis-
5 sion engineering. So it's one of the two demand confor-
6 mance. They stipulated to the other one, and it's all
7 of the transmission engineering.

8 MR. DETER: That does not include the transmis-
9 sion system evaluation. They have agreed or stipulated
10 to include that information.

11 CHAIRMAN IMBRECHT: They have agreed to provide
12 that by October 24th.

13 MR. MULLIKEN: That's right. I think that was
14 Item --

15 CHAIRMAN IMBRECHT: Okay. That is the motion.
16 All right.

17 COMMISSIONER NOTEWARE: One minor correction --

18 CHAIRMAN IMBRECHT: Commissioner Noteware.

19 COMMISSIONER NOTEWARE: -- in your motion. The
20 letter that you referred to from San Diego Gas & Electric
21 is dated October 8th instead of the 2nd.

22 CHAIRMAN IMBRECHT: You're right. I'm sorry.
23 I was looking at the Signal cover. Thank you very much,
24 Commissioner Noteware. October 8th, the San Diego Gas
25 & Electric.

1 All right. Further comments or questions by
2 members of the Commission?

3 COMMISSIONER GANDARA: Just one last comment.

4 CHAIRMAN IMBRECHT: Commissioner Gandara.

5 COMMISSIONER GANDARA: Yes, I -- I just wanted
6 to comment that, as finally worked out, it does appear
7 to be in essence the staff recommendation, and that I would
8 only note that, to that extent, that we probably would
9 have -- it probably might have been more efficient having
10 resulted earlier.

11 But I wish to indicate that the staff does --
12 is moving to some consistency on these particular data
13 adequacy reviews, and while I will support the motion,
14 since it does contemplate really most of my concerns, that
15 I still do have a great concern as to whether we are per-
16 haps being a bit neurotic in -- in insisting during the
17 committee phase on expressions of concerns with respect
18 to timeliness of data, motions to compel that we get,
19 schedules that we're held to, and so forth and so on, and
20 still letting in even more horses into the gate that we
21 might not be able to control once they are in there.

22 But be that as it may, I -- I Just have that
23 reservation that we seem to show a great reluctance on
24 the insistance of the data up front, while at the same
25 time then compound our problems once we have these cases

1 in house. It's just -- it's just a bit of an inconsis-
2 tent signal on our part.

3 CHAIRMAN IMBRECHT: Okay. Well, we have differ-
4 ing viewpoints on that. I guess we'll just have to live
5 with that.

6 Is there objection to a unanimous roll call?

7 Hearing none, "Aye's" five, "No's" none. The
8 motion is carried. Commissioner Commons.

9 COMMISSIONER COMMONS: Yes. Mr. Chairman, I
10 would like to request either the Executive Director or
11 Ross, through you, Mr. Chairman, since I think it's appro-
12 priate for you to make the instructions, if they could
13 take a look at this process, and if there is a way we could
14 be more efficient in terms of having applicants come
15 before us, in terms of the issues, because I think we have
16 now been fairly consistent for eight months, but our
17 process is still laboring, and if they could see if there
18 is a way in either the workshops or putting out informa-
19 tion, and come back to us with some way we could do better.
20 I feel an applicant that's frustrated --

21 CHAIRMAN IMBRECHT: One of the --

22 COMMISSIONER COMMONS: -- certainly it's hard
23 for us.

24 CHAIRMAN IMBRECHT: One of the difficulties,
25 Commissioner Commons, is that each applicant prepares their

1 presentation differently. I will accept some of the blame
2 for today because I think what I should have done is have
3 applicant's position and staff's position juxtaposed on
4 each of the issues as we went through them, rather than
5 taking the entire applicant presentation and then the
6 entire staff presentation. I think it would have assisted
7 us in sorting it out.

8 COMMISSIONER COMMONS: Because just in this one
9 case --

10 CHAIRMAN IMBRECHT: And that will be my -- and
11 that will be my approach in the future. I -- without --

12 COMMISSIONER COMMONS: If they had known about
13 the conditional acceptance, we would have saved two and
14 a half hours this morning.

15 CHAIRMAN IMBRECHT: We have a substantial amount
16 of agenda. Let's move on. Thank you.

17 All right. That completes Item 2.

18 Item 3 is rendered moot as a consequence of this.

19 MR. DETER: Can I ask one --

20 CHAIRMAN IMBRECHT: Mr. Deter.

21 MR. DETER: I hate to make one more statement.
22 You have given us a different -- a slightly different test
23 than we used in Midway Sunset and South Belridge, and I
24 think it's only fair to those applicants that we be given
25 the permission to go back and take a look to see whether

1 or not our data adequacy requirements under those are now
2 consistent with the decision you've got here, so I would
3 like that permission from the Commission to do that.

4 CHAIRMAN IMBRECHT: I think that's --

5 MR. CHAMBERLAIN: Mr. Chairman, I --

6 COMMISSIONER COMMONS: Point of order.

7 MR. CHAMBERLAIN: I just don't think it's appro-
8 priate to be taking an action on those cases when they
9 are not before you and they haven't been properly noticed.
10 The staff can take the action today and can reflect upon
11 the Commission's will, but I don't think we can --

12 MR. DETER: I'm not asking -- I'm not asking
13 for the Commission to take an action. I'm just asking
14 -- just notifying you that what I would like to do is go
15 back and take a look at those. If we feel that they are
16 inadequate, we'll bring them back to the Commission.

17 CHAIRMAN IMBRECHT: You've got a resolution of
18 this. You're dealing with a third-party applicant, and
19 I think you ought to use your best judgment in terms of
20 applying that appropriately.

21 Item 3 is moot and will be rescheduled when this
22 item is before us once again.

23 Now, I must apologize to the people involved
24 with Item No. 1, but in deference to Commissioner Crowley,
25 who has had recent surgery, and because she's the

1 Presiding Member of the Conservation Report, I'm hopeful
2 that we might be able to deal with this in a reasonably
3 expeditious fashion.

4 Turn to Item No. 5, which is Commission
5 Consideration and Possible Adoption of the staff Prelimi-
6 nary Conservation Report, and recommendations of the
7 Conservation Programs Committee, required by the Public
8 Resources Code Section 25401.1.

9 The report presents an historical perspective
10 on California's conservation programs and outlines a
11 methodological approach for the Commission to use in
12 evaluating conservation programs. It also proposes a
13 process which the Commission Committee will consider to
14 develop the final Conservation Report and integrate it
15 into the biennial reporting cycle, that report being due
16 next fall.

17 Commissioner Crowley. I apologize for the delay
18 in this.

19 COMMISSIONER CROWLEY: Thank you, Chairman
20 Imbrecht. I would like to begin this presentation by having
21 staff make its presentation on its report, and I guess
22 Mr. Rauh and Mr. Sloss, you each are involved then in this
23 presentation.

24 MR. RAUH: That's correct.

25 CHAIRMAN IMBRECHT: Okay. Then if you would

1 like to proceed.

2 MR. SLOSS: Thank you.

3 MR. RAUH: Thank you.

4 I might just, by way of introduction, identify
5 for members of the audience that there are copies of the
6 overheads that we'll be presenting, as well as a set of
7 comments that we received from the major participants in
8 the proceeding, and a staff -- brief staff response. This
9 material has been provided to the Commissioners, and is
10 also available on the table to my right.

11 Mr. Sloss will make a presentation in response
12 to Chairman Crowley.

13 MR. SLOSS: Thank you very much.

14 COMMISSIONER GANDARA: A point of information
15 before you get started. Okay? In my materials I had some-
16 thing called -- I had a package, and in the package was
17 something entitled Staff Presentation, and I guess I
18 received another item today, which is titled Staff
19 Presentation of Preliminary Conservation Report, and it
20 seems to be slightly different. Which one should I pay
21 attention to?

22 MR. SLOSS: That one right there that you got
23 today is a package -- it's a copy of the overheads. The
24 staff presentation package you got the other day is more
25 of a summation of the verbal presentation we'll be making,

1 so I would suggest using the one you got today.

2 COMMISSIONER GANDARA: Fine. Thank you.

3 MR. SLOSS: Okay. As has been mentioned, Public
4 Resources Code Section 25401.1 requires a biennial con-
5 servation report describing conservation opportunities
6 in all the economic sectors and for all fuel types in
7 California.

8 Beginning in October of 1986, the same legisla-
9 tion requires a preliminary conservation report to be
10 adopted by the Commission on selected programs in October
11 of 1985. The purpose of the preliminary conservation report
12 is to set a historical context for California's conserva-
13 tion policies and programs, to develop a methodology to
14 be used in the evaluation of conservation programs, and
15 to provide recommendations for development of the first
16 biennial conservation report which, for purposes of nomen-
17 clature, is being entitled Conservation Report 6, in order
18 to maintain consistencies with the Electricity Report and
19 other Commission policy document cycles.

20 The staff approach to developing the preliminary
21 conservation report consisted of several steps. One, the
22 gathering of existing information on conservation program
23 achievements, program planning activities, program imple-
24 mentation and evaluation, and program planning -- program
25 evaluation for both Energy Commission programs and utility

1 programs.

2 Also, the approach consisted of developing a
3 methodology for program evaluation to be applied to all
4 sectors. The methodology is to be a planning approach
5 for carrying out Conservation Report 6 and for assisting
6 in developing the focus for Conservation Report 6.

7 In addition, the preliminary conservation report
8 includes an application of the methodology to an end use
9 as an example, and in this case the end use is residential
10 air conditioning.

11 The staff also developed examples of programs
12 that could be proposed in response to the findings of the
13 evaluation to achieve additional conservation savings.

14 During the development of the preliminary report,
15 committee workshops were held August the 15th and
16 September the 11th of 1985 to discuss issues and receive
17 comments from utilities, consumer organizations, business
18 and industry, and any other interested parties.

19 Comments were received from many sources from
20 the utility industry, PG&E, SMUD, Southern California
21 Edison, Southern California Gas, other industrial concerns
22 such as General Electric, Natural Resources Defense Council,
23 AHAM, and other types of organizations.

24 To summarize the comments received, one, there
25 was basic agreement on the methodology, but all parties

1 agreed that that methodology must be applied with great
2 care, and there needs to be careful development of front-end
3 assumptions and careful development of data before it is
4 used.

5 The commenters also provided input concerning
6 specific types of information factors that might be con-
7 sidered in an evaluation of conservation programs, such
8 as discount rates, time of use, and the development of
9 savings figures.

10 We also received comments concerning specific
11 programs or categories of programs the California Energy
12 Commission might evaluate. For example, General Electric
13 offered a different category of -- a different way of
14 categorizing programs than we had offered, basically sug-
15 gesting three categories of free market financial assistance,
16 and mandatory programs.

17 We also received input primarily from the utili-
18 ties concerning the method of evaluating cost-effectiveness
19 in which utilities suggested that production cost approaches
20 might be more useful than the existing standard practice
21 approach that's used now.

22 The second chart we have is a summary of the
23 report. That is it's the second chart in your package.
24 I'm going to skip past that and go to the key items within
25 the report.

1 The first item is a description of the evalua-
2 tion methodology. The methodology itself, as proposed,
3 contains three steps. The first is to analyze end-use
4 technologies to determine potential energy savings.
5 Secondly, to assess potential consumer acceptance of pro-
6 posed programs, including program design and marketing
7 strategies.

8 Then, the third step, to evaluate cost-effective-
9 ness of the measures, including the cost of marketing,
10 installing and operating energy-saving devices.

11 As I mentioned, the staff, after development --
12 along with developing the methodology, used the residential
13 air conditioning end use as an example of the application
14 of the methodology, and as an outline of example, programs
15 that could be proposed in response to these findings --
16 the findings of the evaluation.

17 Chart 4 in your package describes three such
18 proposed programs that could be evaluated using the
19 methodology.

20 It is the staff's view, and it's included in
21 the preliminary report, that the methodology does have
22 limitations in its application.

23 The methodology is labor-intensive. There are
24 difficulties in the measurement, because of -- in measure-
25 ment, because of fluctuated market conditions, and maybe

1 most significantly there's a lack of available -- there
2 is a lack of availability of quantitative program evaluation
3 data in all areas.

4 We particularly found it difficult to identify
5 data in areas of consumer response to certain kinds of
6 programs.

7 The limitations, however, can be remedied or
8 overcome, at least mitigated, by making early decisions
9 on the emphasis and applying the methodology. In other
10 words, establishing some priorities.

11 Also, by working closely with all policy commit-
12 tees at the Commission that are involved in other planning
13 activities, such as the Electricity Report and the
14 Biennial Fuels Report, to identify common areas of
15 interest and data, and to acquire additional data through
16 workshops, hearings or research, and the continued coordi-
17 nation with other interested parties such as the utili-
18 ties.

19 Within the report the staff recommends several
20 approaches to the development of Conservation Report 6,
21 but it became apparent to us that we needed to define the
22 internal integration, if you will, of these various docu-
23 ments, such as the Electricity Report and the Conservation
24 Report, Biennial Fuels Report.

25 The chart on page 5-11 in the report, and Chart 6

1 in your package, is a summation of the interaction of these
2 reports in terms of timing, products, and who is involved,
3 and is a key part of the document.

4 The suggested optional approaches to developing
5 Conservation Report 6 within the staff document include
6 the following. To conduct a trends analysis of key end
7 uses in electricity, natural gas and petroleum forecasts,
8 or a second option, to conduct an in-depth analysis of
9 two or three end uses. This would result in program
10 recommendations for new and existing conservation programs.

11 Thirdly, to conduct both a trends analysis
12 and in-depth program analysis, using information -- exist-
13 ing information from the forecasting process.

14 A fourth option is to focus the analysis only
15 on the reserved need increment defined in the Electricity
16 Report.

17 The staff recommendations for CR-6 are as follows.
18 To conduct a trends analysis of key end uses using infor-
19 mation from the forecast.

20 In cooperation with the Assessments Division,
21 describe reasonably-expected-to-occur, or RETO, conserva-
22 tion for all sectors, electricity, natural gas, and oil.

23 Quantify additional achievable conservation for
24 the selected end uses, and recommend program designs for
25 implementation.

1 Identify improvements or alternatives to exist-
2 ing programs, including identifying candidate programs
3 for conditional RETO and electricity.

4 Review of major utility programs and developing
5 action plans to achieve conditional retail.

6 The staff also recommends developing testimony
7 on conditional RETO for the load management order institu-
8 ting rulemaking that is now underway, and the PG&E rate
9 case.

10 After review of the staff document, the Committee
11 -- the Conservation Programs Committee submitted the
12 following recommendations in a transmittal memo which are
13 attached to the staff report.

14 One, the Committee recommends coordination again
15 with all involved committees, including the Electricity
16 Report and Fuels Committees, and addressing areas of
17 mutual concern.

18 Secondly, the staff resources be committed to
19 each area of analysis proposed in the preliminary conser-
20 vation report, rather than any one or two particular areas,
21 and that the Committee will provide direction on areas
22 to emphasize, incorporating input from other involved
23 committees.

24 In addition, the Committee identify several tasks
25 to be completed by the staff in order to address issues

1 central to conservation planning and developing the con-
2 servation report. These include identifying and evalua-
3 ting current conservation research and development efforts
4 in order to avoid duplication, and carefully focus
5 Commission actions.

6 Secondly, developing greater understanding of
7 the market operations and barriers to additional economic
8 investments of conservation and load management programs.

9 Third, review and evaluate utility conservation
10 programs and their contribution to least-cost resource
11 plans.

12 Fourthly, to investigate innovative approaches
13 to stimulating conservation through generic guidelines
14 and performance criteria, and reliance on market forces,
15 and to review the status of conservation practices in
16 transportation, and evaluate opportunities for further
17 conservation activities.

18 The Committee has also recommended the appoint-
19 ment of a project manager to assume overall responsibility
20 for the preparation of the conservation report.

21 The last chart and the final part of the presen-
22 tation is the staff is proposing to do, in response to
23 the Committee's findings.

24 COMMISSIONER GANDARA: Madam Chairman, might
25 I interrupt?

1 COMMISSIONER CROWLEY: Yes. Commissioner Gandara.

2 COMMISSIONER GANDARA: Excuse me, Mr. Sloss.

3 It might appear that, given the absence of some of the
4 people, that they are either very familiar with the
5 material, or perhaps we can move on and not take up so
6 much time with this item.

7 MR. SLOSS: If I may, I have five seconds that
8 I think is important, just in terms of responding.

9 We are going to bring to the Commission at the
10 next business meeting an OIH to institute hearings on the
11 beginning of the conservation report exercise, and that
12 I think is important to acquaint the Commission with.

13 COMMISSIONER CROWLEY: Okay. Thank you,
14 Mr. Sloss.

15 The Committee participation in this involved
16 a set of recommendations which we appended to the staff
17 report and which were to some degree gone over by the staff
18 report. We suggested that the recommendations that were
19 in the staff document not be adopted, but that we had a
20 series that we would like to have adopted, and we also
21 do not have a statement on how to proceed with what's to
22 be done under 25401.1, because those are all involved
23 things about which we have policy committees, and we have
24 the sense that the policy committees can give the weight
25 to those that they deem appropriate.

1 We believe that was our first suggestion. These
2 are all -- the Commission should commit some resources
3 to each, and the emphasis will be decided by the Committee.

4 The Executive Office shall designate a project
5 manager, and our reason for bringing this up at this time
6 is that it was to be over several divisions within the
7 Commission, and, therefore, of a different status than
8 one internal to a division, and would communicate with
9 all the relevant committees, the Executive Office, and
10 all the divisions.

11 Then we had several recommendations that were
12 policy recommendations that were spoken to in the report
13 that you gave, and are all listed in our transmittal letter.
14 We had -- it was our belief that this met the obligation
15 for the next conservation report and would allow the new
16 policy that we have brought forward of having conservation
17 a supply option, and the new era that is now at hand where
18 the -- we have more supply options. We also have continued
19 high prices and a continued need for conservation. We
20 felt this would be fitting and appropriate for this new
21 era.

22 And I would -- in order to hear from people in
23 the audience, I would move that the Commission adopt the
24 recommendation of the Conservation Committee. Are there
25 any comments from any Commissioner at this point?

1 COMMISSIONER GANDARA: Second.

2 COMMISSIONER CROWLEY: There is a second to the
3 motion. Is there any comment under the discussion by the
4 Commissioners?

5 Mr. Gardner, you had a comment.

6 COMMISSIONER GANDARA: Thank you very much,
7 Mr. Sloss. I didn't mean to interrupt you, but since we
8 were familiar, the ones here, you were present and were
9 familiar --

10 MR. SLOSS: That's fine with me.

11 COMMISSIONER GANDARA: -- I just wanted to
12 accelerate this a little bit.

13 MR. SLOSS: No problem at all.

14 COMMISSIONER CROWLEY: Mr. Gardner.

15 MR. GARDNER: Thank you, Commissioner Crowley.
16 I'll try to keep my comments extremely brief in light of
17 the way the day has progressed thus far.

18 I would like, on behalf of Southern California
19 Edison Company, to support the Committee recommendation,
20 and I would like staff to understand that that is in no
21 way reflecting our disagreement with the staff's recom-
22 mendations.

23 The thing that we like particularly about the
24 Committee recommendations is, as the Committee points out,
25 things are changing fairly rapidly. In particular, we

1 have seen some change at the Public Utilities Commissoin
2 in the types of programs that they wish to fund, and the
3 types of tests that they wish to apply in determining
4 funding.

5 We think the Committee's recommendation to not
6 adopt specific staff recommendations at this point allows
7 the flexibility to better explore what's happening in other
8 areas, and when we come up with the final conservation
9 report we could implement specific staff recommendations
10 as they may be appropriate at that time.

11 And with that, I'll be quiet and go away.

12 COMMISSIONER CROWLEY: Thank you, Mr. Gardner.

13 MR. GARDNER: Thank you.

14 COMMISSIONER CROWLEY: And Mr. Peter Baumgartner,
15 Pacific Gas and Electric Company, you asked to be heard.

16 MR. BAUMGARTNER: Thank you, Commissioner Crowley.
17 For the record, my name is Peter Baumgartner from Pacific
18 Gas and Electric Company in San Francisco.

19 We -- PGandE also concurs with the Committee
20 recommendation. We particularly are grateful for the
21 courtesy which the Committee gave us during the two work-
22 shops which were held, and we particularly commend the
23 staff in this respect for responding to the utility com-
24 ments, one of the few times I think in the few years that
25 I've been representing where the staff has responded in

1 writing, which gives us much more grist for us to think
2 about and to chew on as we proceed with this report.

3 I have one comment and concern for PGandE with
4 respect to Chapter 4, which is the air conditioning example,
5 and you can understand, with our rate case about to be
6 filed in the next few weeks with the Public Utilities
7 Commission, that we are concerned that the results of the
8 analysis presented in Chapter 4 not be taken as reflecting
9 a consensus between the staff and PGandE; whereas we don't
10 contest the analytical methods that are used, we have
11 serious concerns about some of the assumptions, and parti-
12 cularly the -- the numbers, the cost figures which go with
13 them, which we think potentially have led to a conclusion
14 which may not be as valid as it appears.

15 Consequently, I just want to make sure that the
16 Commission understands that PGandE does not accept the
17 -- the results of the analysis, which we consider to be
18 merely an example of how the methodology and analytical
19 methods would be used in specific programs, after the input
20 data was tested by discussions between PGandE, other
21 utilities, and the staff.

22 Thank you very much for your consideration.

23 COMMISSIONER CROWLEY: Appreciate your comments,
24 Mr. Baumgartner.

25 CHAIRMAN IMBRECHT: Thank you.

1 COMMISSIONER CROWLEY: I don't believe there
2 are any others.

3 CHAIRMAN IMBRECHT: Did Mr. Gardner testify?

4 COMMISSIONER CROWLEY: Yes.

5 CHAIRMAN IMBRECHT: All right. Fine. Thank
6 you.

7 All right. Commission discussion? Do we have
8 a motion before us?

9 COMMISSIONER CROWLEY: We have a motion to accept
10 the report, and the recommendation of the Committee, and
11 a second.

12 CHAIRMAN IMBRECHT: All right. Fine. Thank you.

13 Last evening I had an opportunity to discuss
14 the report with members of the conservation staff. I want
15 to just indicate that this -- I had a few suggestions
16 that I think dealt with insuring consistency throughout
17 the document, and I want to preface this -- these remarks
18 by indicating that they do not reflect any fundamental
19 disagreement, et cetera.

20 I would hope that, in terms of adoption, that
21 we might confer upon the Conservation Committee or the
22 Presiding Member's advisor, as was the case when I presided
23 over the Biennial Report, some discretion to reconcile
24 a few of these issues in terms of a final document that
25 will be transmitted to the Legislature.

1 The kinds of things in particular that I'm
2 referring to tend to be more questions of clarification
3 or ambiguity, I think, but one of the statements with
4 respect to research and development should be more limited
5 to the appliance industry, but should not reflect the
6 research and development that's necessary to look at
7 quantification of a variety of demand reduction strate-
8 gies, et cetera.

9 I understand that some of my -- some of these
10 technical or editing issues have been raised with
11 Commissioner Crowley, and that she has no problems with
12 them, and I would like to suggest for the consideration
13 of the Commission that we provide some leave or discretion
14 to the Committee to not change the content, but to recon-
15 cile what I consider to be a few of those problems which
16 I believe staff is also in accord with as well.

17 I was just wondering if anyone would have any
18 difficulty with that.

19 COMMISSIONER GANDARA: I have a question of
20 clarification.

21 CHAIRMAN IMBRECHT: Yes.

22 COMMISSIONER GANDARA: Are you recommending or
23 is your recommendation that the Commission delegate to
24 the Conservation Committee the oversight of the publica-
25 tion process of this document?

1 CHAIRMAN IMBRECHT: Yes. In essence, the same.

2 COMMISSIONER GANDARA: From cover to cover?

3 CHAIRMAN IMBRECHT: I'm not sure I understand
4 the implications of that, and realizing the precision with
5 which you deal with these issues I want to know what you
6 mean by that.

7 COMMISSIONER GANDARA: Including the cover
8 specifically is what I'm --

9 (Laughter.)

10 CHAIRMAN IMBRECHT: Including the cover.

11 COMMISSIONER CROWLEY: From, and including the
12 cover to the cover? Is that what you mean?

13 COMMISSIONER GANDARA: Yes. From cover to cover.

14 CHAIRMAN IMBRECHT: May I inquire as to what
15 you have concerns with what's here or something, or is
16 it a --

17 COMMISSIONER GANDARA: It's not -- I'm not con-
18 cerned with what's there now or what isn't there now. I'm
19 concerned with some emanations that have appeared recently
20 in our publications that have not appeared before, and
21 I'm not sure we want to address or resolve that issue here.
22 I just want to know who is in charge of cover-to-cover
23 on some of these documents.

24 CHAIRMAN IMBRECHT: Well, I'd like to --
25 Commissioner Gandara, I learned a long -- actually, I have

1 learned to my chagrin a few times that biting some of your
2 hooks without understanding exactly what you have in mind,
3 that --

4 COMMISSIONER CROWLEY: Trust us, Chuck.

5 CHAIRMAN IMBRECHT: Yeah, well, I've done that
6 in the past, and -- can you tell me what you're referring
7 to, or --

8 COMMISSIONER GANDARA: Yes. If we must get into
9 it, I -- I might be a bit premature, but I have had a long-
10 standing issue that the Commissioners be apprised of all
11 publications in progress, and somehow that has never been
12 implemented.

13 And along with that, I am sometimes surprised
14 that the accidental way I discover some of these publica-
15 tions, and recently -- in fact, you and I were going out
16 to lunch, and I -- we exited through the delivery entrance,
17 and I discoverd a June publication sitting in boxes of
18 which I had not had a copy delivered to me, but it was
19 the June publication date, of Electrical Generation
20 Technologies, I believe, or something like that. It
21 appeared to be the commercial status report by another
22 name, or something similar to that.

23 And much to my surprise, on the cover was not
24 the identification of the Commission, but clearly a
25 Commission staff report, and that would be an issue on

1 this as to -- since it is embodied, I guess, where we --
2 the motion before us is the Committee's recommendations,
3 not the Committee staff report, so I don't know how that
4 would be resolved. The Committee would have to resolve
5 that.

6 In addition to that, I discovered not the
7 Commission's -- not the Commissioners' names or attribution
8 but, rather, the Governor's name and the Secretary of
9 Resources.

10 CHAIRMAN IMBRECHT: I understand your concern.

11 COMMISSIONER GANDARA: And to my knowledge, that
12 is the first time that has appeared in a publication of
13 this Commission, and I think it raises issues of the arm's
14 length relationship that we should have with the Executive
15 Branch.

16 And, again, I don't think we need to resolve
17 it here, but that specifically is my question as to whether
18 the Conservation Committee will have cover-to-cover
19 authority.

20 CHAIRMAN IMBRECHT: Well, within the constraints
21 that exist upon all our publications, and there are con-
22 straints that are beyond the purview and the jurisdiction
23 of the Commission, and I would just note to you, and with-
24 out getting into the specifics there, that there has in
25 fact -- the Secretary of Resources I agree with you is

1 an open issue, and I have -- and I was surprised about
2 that myself.

3 But with respect to the Governor, both
4 Governor Brown and Governor Deukmejian have been enunci-
5 ated in many of our publications, and I personally feel
6 that is entirely appropriate, and I would just note for
7 you, Commissioner Gandara, that there is an interesting
8 ambiguity, which we have not sought the test at times,
9 but it does obviously appear within the Warren-Alquist
10 Act as well that we deposit within the Resources Agency,
11 and to that extent I think that we should be conscious
12 of those concerns, and that our budget process is fil-
13 tered through that process as well.

14 COMMISSIONER GANDARA: Well --

15 CHAIRMAN IMBRECHT: And I understand your concern
16 about your perspective about our relationship and roles.
17 I also think that we have some necessity to look upon the
18 pragmatics and practical relationships that we must rely
19 upon as well.

20 I know that you and I don't always agree upon
21 those issues, but that's why I wanted to make sure I under-
22 stood what you were talking about.

23 COMMISSIONER GANDARA: Well, let me say, how
24 do we go about resolving whether in fact that would be
25 appropriate or not? I think that the Commission:

1 certainly has control over its publications, and I for
2 one would vote that in fact such appearances not occur, and
3 I don't have any disrespect, and not have any recognition.
4 I don't think the recipients of our reports lack for any
5 knowledge of who the Governor is or isn't. I question
6 whether the Governor even knows about what's between the
7 sheets of these reports, and whether they would want their
8 name associated with it, but I do think that it is an issue
9 that if you want to delegate it to the Conservation
10 Committee to resolve, at least with respect to this publica-
11 tion, I have no problem.

12 If we are going -- I don't want to leave it as
13 a standing policy that has not been voted upon by the
14 Commission. Now, since it's not noticed, maybe this is
15 not the way to do it, or I don't want to get into it in
16 particular, but since we are delegating publication to
17 the --

18 CHAIRMAN IMBRECHT: I was talking about the con-
19 tent of the report, and let it go at that. I'm not talk-
20 ing about the issues that you're raising, and I am not
21 prepared to --

22 COMMISSIONER GANDARA: Well, my question, then,
23 is who has control --

24 CHAIRMAN IMBRECHT: -- delineate that.

25 COMMISSIONER GANDARA: -- of the covers of

1 reports that are issued from the Commission. I think
2 that's appropriate for me as a Commissioner to -- to inquire.

3 CHAIRMAN IMBRECHT: You certainly may, and I
4 would only suggest to you that documents that have emanated
5 from the Commission during my tenure here, and also docu-
6 ments which have been presented to me in the past, which
7 as I indicated bore the name of Governor Edmund G. Brown,
8 Jr., as well --

9 COMMISSIONER GANDARA: The only ones I'm familiar
10 with is BR-3 and BR-5.

11 CHAIRMAN IMBRECHT: And I would note for you
12 a document on wind energy, and a few others as well, and
13 all of that notwithstanding, I frankly feel that that is
14 entirely appropriate.

15 The question with respect to the Secretary of
16 Resources is one which might be subject to more debate,
17 but the long and short --

18 COMMISSIONER GANDARA: Well, again --

19 CHAIRMAN IMBRECHT: -- the long and short of
20 it is that the practical effect is that it's a publication
21 -- I don't know whether there's an Executive Order on this
22 or not, but from all state agencies, have an approval
23 process, and that -- and we see staff in full.

24 EXECUTIVE DIRECTOR WARD: Mr. Chairman, if I
25 might try to help. I --

1 CHAIRMAN IMBRECHT: I want to suggest to you
2 that those were not additions made by anyone at this --

3 EXECUTIVE DIRECTOR WARD: I'm reluctant to weigh
4 in on this, but I -- we do have a Commissioner that I think
5 is pushing one's self a little bit, and I would think,
6 in respect to the Presiding Member of this Committee, that
7 we probably ought to figure out a way to get out of this
8 gracefully.

9 The second issue is that I don't have specific
10 knowledge, but there was, Commissioner Gandara, some direc-
11 tive, and I can't recall whether that was a directive out
12 of the Resources Agency or that it was a directive from
13 the Governor's Office, that all reports and publications
14 of state agencies in the Executive Office were to have
15 the Governor's name on them.

16 Now, whether there was some exclusion or excep-
17 tion for regulatory agencies under the auspices of some
18 of the kinds of concerns you have, I don't know, but if --

19 COMMISSIONER GANDARA: Well, I'm saying that
20 we are not part of the Executive Branch.

21 EXECUTIVE DIRECTOR WARD: If there --

22 COMMISSIONER GANDARA: I don't want to dispute
23 orders given to the Executive Branch. We are not an
24 Executive Branch agency.

25 EXECUTIVE DIRECTOR WARD: Okay. If there --

1 CHAIRMAN IMBRECHT: That happens to be your judg-
2 ment, Commissioner Gandara --

3 EXECUTIVE DIRECTOR WARD: Okay. If there is
4 some --

5 CHAIRMAN IMBRECHT: -- but that is not something
6 that has ever been resolved with any clarity.

7 EXECUTIVE DIRECTOR WARD: Maybe there is some
8 way that, at least between the two members of this
9 Committee, I can give them something that more clearly
10 enunciates a definition --

11 CHAIRMAN IMBRECHT: I'm going to withdraw my
12 proposal in that case.

13 COMMISSIONER GANDARA: Well, I don't --

14 CHAIRMAN IMBRECHT: I really didn't intend to
15 open this issue, Commissioner Gandara. I think it's
16 entirely inappropriate in the context of this.

17 COMMISSIONER GANDARA: You asked me, Mr. Chairman.

18 CHAIRMAN IMBRECHT: I --

19 COMMISSIONER GANDARA: You opened it, and I don't
20 want to leave it by default the way it is, because it's
21 been changed from what it was, and I just don't accept
22 that things can be changed around here without the
23 Commission being informed of those changes ahead of time,
24 and secondly, without us having addressed these issues.

25 CHAIRMAN IMBRECHT: Commissioner Commons.

1 COMMISSIONER COMMONS: Yes, Mr. Chairman. I
2 would like to make two motions of amendments.

3 CHAIRMAN IMBRECHT: Well, we've got a main motion
4 pending before us, and now offering a --

5 COMMISSIONER COMMONS: I'm making a motion to --

6 CHAIRMAN IMBRECHT: To amend.

7 COMMISSIONER COMMONS: To amend, yes. You have
8 before you a sheet of paper to the transmittal letter to
9 do the following. Since it has not been distributed to
10 the public, should I read it, since it is relatively short?

11 CHAIRMAN IMBRECHT: Certainly.

12 COMMISSIONER COMMONS: That to insert after para-
13 graph 3 on page 1 of the transmittal letter, the following.

14 "Conservation consists of two elements,
15 reduction in the use of energy conservation,
16 redistribution of use of energy by reducing peak
17 needs and by filling troughs (demand side manage-
18 ment, also called load management). Over the
19 past two decades, as use of air conditioning has
20 increased in California, the need for electricity
21 generating capacity has increased at a faster
22 rate than need for energy. This is resulting in
23 the need to build peak power plants. The elec-
24 tricity during peak periods costs two to three
25 times the average electricity cost, and up to

1 ten times off-peak electricity costs. In order
2 to try to constrain future electricity rate
3 hikes, the conservation programs need to place
4 a greater emphasis on demand side management."

5 And the second amendment would be to page 2,
6 paragraph 2, at the end of that paragraph.

7 "However, energy prices affect the amount
8 of energy used, but not when it is used. In
9 order to make the market work for demand side
10 management, appropriate time of use rates need
11 to be implemented."

12 I have reviewed these amendments with the
13 Presiding Commissioner staff and with the Commissioner,
14 and they are acceptable to her.

15 CHAIRMAN IMBRECHT: Thank you. Is there a
16 second?

17 COMMISSIONER NOTEWARE: Yes. Knowing the impor-
18 tance of demand side management, I'll second it.

19 CHAIRMAN IMBRECHT: Okay. Then it is properly
20 before us. Is there discussion?

21 COMMISSIONER NOTEWARE: I would like to get the
22 feeling of the second member of the Committee.

23 Commissioner Gandara, do you approve of this,
24 since you have initialed the letter of transmittal?

25 COMMISSIONER GANDARA: Well, since Commissioenr

1 Crowley isn't here, and since she is the Presiding Member,
2 I would defer to her. I guess in her absence I would say
3 that this simply restates more or less what the Commission's
4 position has been, so I -- I don't have any problems with
5 it. I can't claim to represent Commissioner Crowley,
6 however.

7 COMMISSIONER NOTEWARE: Yes. I understand that
8 she has agreed to accepting it.

9 COMMISSIONER GANDARA: That's fine.

10 CHAIRMAN IMBRECHT: Is that accurate? Apparently,
11 I don't believe there is any objection.

12 Okay. You said you had another?

13 COMMISSIONER COMMONS: Well, let's first vote
14 on the one. It can't bring up two without --

15 CHAIRMAN IMBRECHT: Yes, you are absolutely right.
16 Is there objection to a unanimous -- does anyone else wish
17 to be heard on the amendment?

18 Is there objection to a unanimous roll call?

19 Hearing none, "Aye's" four, "No's" none.

20 COMMISSIONER COMMONS: All right.

21 CHAIRMAN IMBRECHT: The motion as amended is
22 now before us. Commissioner Commons.

23 COMMISSIONER COMMONS: All right. I think
24 Commissioner Crowley deserves some special recognition
25 for having done so well in a very difficult situation here,

1 and I think when someone has gone through the amount of
2 effort that she has, the final editing and putting out
3 of the report should be within the province of her
4 committee, and so I would like to move to amend that the
5 final editing of this report go back to the Conservation
6 Programs Committee, and I think you were saying it in terms
7 of editing not for content, but for --

8 CHAIRMAN IMBRECHT: Consistency.

9 COMMISSIONER COMMONS: -- for consistency. The
10 procedure similar to that which was used for the Biennial
11 Report and for the Electricity Report.

12 CHAIRMAN IMBRECHT: Is there a second?

13 COMMISSIONER NOTEWARE: I'll second that.

14 CHAIRMAN IMBRECHT: All right. Is there discus-
15 sion?

16 I assume by virtue of you being silent as to
17 the issue that Commissioner Gandara raised that --

18 COMMISSIONER COMMONS: I am trying to avoid that
19 issue, Mr. Chairman.

20 CHAIRMAN IMBRECHT: I understand.

21 COMMISSIONER COMMONS: I am putting it back to
22 the Committee, and --

23 CHAIRMAN IMBRECHT: It is not included.

24 COMMISSIONER COMMONS: -- and if they have a
25 problem they'll bring it back to us.

1 CHAIRMAN IMBRECHT: Okay. Is there objection
2 to the unanimous roll call?

3 Hearing none, "Aye's" four, "No's" none. The
4 motion is carried. The main motion is now before us as
5 amended.

6 Is there further discussion?

7 Is there objection to the unanimous roll call?

8 Hearing none, "Aye's" four, "No's" none. The
9 motion is adopted.

10 Okay. Now, we return to Item No. 1, which is
11 Consideration and Possible Adoption of an Order approving
12 an amendment to the Cool Water Coal Gasification Project
13 Decision. The proposed amendment would amend Finding 7
14 of the December 21, 1979 decision to allow the testing
15 of coal containing concentrations up to 3.5 percent sulfur
16 by weight.

17 Mr. Ward.

18 EXECUTIVE DIRECTOR WARD: Yes. Mr. Chairman,
19 I believe that some things have come up during the course
20 of today's business meeting, and Mr. Gardner can expound
21 further if my explanation isn't enough, but it's my under-
22 standing that Southern California Edison is requesting
23 that this item be removed from the agenda, and is the
24 request that might it go back on in two weeks or --

25 MR. GARDNER: Yes. What we would like to do

1 is just put this item over until the next business meeting,
2 which is I believe October 30th.

3 What has happened is we have run into some dif-
4 ferences of opinion with the local Air District. I think
5 if we take this two-week time frame, there is an excellent
6 chance that those issues can be resolved and all the
7 parties can come before you with the same recommendation,
8 so with that in mind, I would like to ask the Commission
9 to hold this over until your next business meeting.

10 I would like to emphasize that it is extremely
11 important to us that we do take action at that business
12 meeting. If we are to go forward with our proposal to
13 test these coals on the schedule we are proposing, we have
14 to order the coal on November 1st.

15 We do not feel that we are in a position to order
16 the coal until we have the authority to use it. We have
17 no -- we don't have adequate coal storage at the facility
18 to keep the three and a half percent sulfur coal and still
19 have a working supply of the lower sulfur coal, so we --
20 we need a yes or no answer from the Commission before we
21 order the coal, and it's quite important that that happen
22 on the 30th.

23 CHAIRMAN IMBRECHT: Commissioner Commons?

24 COMMISSIONER COMMONS: Well, I'll defer to
25 Commissioner Gandara.

1 CHAIRMAN IMBRECHT: Commissioner Gandara.

2 COMMISSIONER GANDARA: I have two concerns that
3 are not answered by the information provided to me. Okay.
4 One concern is that it is indicated that the sulfur con-
5 tent coal will be used in the sense that -- and the justi-
6 fication for this, that the facility is a demonstration
7 facility, it's an R&D facility and needs to experiment
8 with higher sulfur coal because of its potential appli-
9 cability to other utilities in other areas.

10 Yet absent from the information before me is
11 how long that experimentation with that 3.5 percent coal
12 is going to be, so I would want a clarification of that,
13 and/or I would prefer to have a reasonable limitation on
14 the time during which it is going to experiment with that
15 coal.

16 MR. GARDNER: We would not object to a limita-
17 tion imposed by the Commission. Our intent is to run
18 approximately 30 days on each coal. We are not looking
19 at a long-time-frame test, and we would not object to
20 reasonable limitations specified by the Commission.

21 COMMISSIONER GANDARA: Okay. Since the staff
22 recommendation didn't include that, nor did the Committee
23 recommendation, I would prefer that that be included in
24 some way, and if that were to be the case it would resolve
25 my second concern, okay, and so I don't need to articulate

1 that if you are stipulating to that.

2 MR. GARDNER: During this two-week period we
3 can work out that time frame with staff and the local Air
4 District, and hopefully bring it back to you as part of
5 the proposal.

6 COMMISSIONER GANDARA: And that's to say that
7 at all other times it would use the 2.7 percent maximum?

8 MR. GARDNER: I believe it's 2.4, but, yes,
9 sir, it would.

10 COMMISSIONER GANDARA: Point four. Okay.

11 CHAIRMAN IMBRECHT: Okay. At the request of
12 I guess the project operator, I think we'll withdraw it
13 and put this over till the 30th. Thank you.

14 Okay. Item No. 4 is Consideration and Possible
15 Designation of a Commission Committee to preside over the
16 Chevron USA, El Segundo Small Power Plant Exemption. I
17 would like to move that I be the Presiding Member, and
18 Commissioner Commons be the second member on that case.
19 Is there a second?

20 COMMISSIONER NOTEWARE: I'll second it.

21 CHAIRMAN IMBRECHT: Seconded by Commissioner
22 Noteware. Is there a discussion?

23 Does anyone wish to be heard on this item?

24 Is there objection to a unanimous roll call?

25 Hearing none, "Aye's" four, "No's" none. The

1 motion is carried.

2 Item 6 is Consideration and Possible Adoption
3 of amendments to the power plant siting regulations. This
4 matter was heard originally on September 18th. Certain
5 proposed amendments which were not adopted at that meeting
6 will be considered again, either unchanged or with revi-
7 sions that are consistent with the original Notice of
8 Proposed Action.

9 Commissioner Commons.

10 COMMISSIONER COMMONS: I'm sorry?

11 CHAIRMAN IMBRECHT: We're on Item 6, which is
12 the amendments to the power plant siting regulations.
13 You're the Presiding Member.

14 COMMISSIONER COMMONS: Oh, okay.

15 CHAIRMAN IMBRECHT: I was offering you the first
16 opportunity to speak.

17 COMMISSIONER COMMONS: All right. You have
18 before you, Mr. Chairman, a summary -- a summary from the
19 Committee on the two items. There was one item where
20 Commissioner Gandara and myself were not in agreement,
21 and there's a summary as to that -- at least it's my
22 belief that -- and I think staff counsel also advises that
23 it would be more appropriate that we go forward with the
24 recommendation the way it is being made, and so the
25 Presiding Member's recommendation is that we do adopt the

1 1706(e) and 1769 with the amendments concerning the ARB
2 as -- that they requested, and that we do not go beyond
3 that.

4 And it might be -- if there are any questions,
5 I think it would be best to address them to John Chandley.

6 CHAIRMAN IMBRECHT: Okay. Mr. Ward? Mr. Chandley?
7 Who would like to -- Mr. Chandley.

8 EXECUTIVE DIRECTOR WARD: Yes. John Chandley from
9 the General Counsel's Office is the person that most closely
10 worked with the Committee on this. I have no problem with
11 the Committee's recommendation.

12 CHAIRMAN IMBRECHT: Mr. Chandley?

13 MR. CHANDLEY: I don't have any additional com-
14 ments, Mr. Chairman. If you need any explanations of these
15 two items, I think they are fairly straightforward.

16 CHAIRMAN IMBRECHT: Commissioner Gandara?

17 COMMISSIONER GANDARA: Mr. Chairman, the dif-
18 ferences among the Committee is frankly I think a minor
19 one. It's Section 1769(a), and it relates to the portion
20 in which the "if possible resolved by the Executive
21 Director, in consultation with the appropriate Commission
22 Policy Committee."

23 My preference for that is that a recommendation
24 by the Executive Director shall be made to the Commission,
25 and I have no objections to that being calendared on

1 consent. The basic problem that I have is that I think
2 that my recommendation or my proposed solution to it is
3 in fact simpler and probably faster, as you can indicate
4 -- as you can see by the present approach of the Executive
5 Director would consult with the committee, and if the
6 committee or the Executive Director could not resolve it,
7 it's not clear what -- what that resolution would be,
8 whether the committee has to be unanimous, whether the
9 Presiding Members use the one that shall prevail, or if
10 the committee differs with the Executive Director, all
11 those things are unanswered.

12 So, frankly, what I would prefer is that they give
13 more authority to the Executive Director, that he in fact
14 make a recommendation without having to be dealing with
15 committees or Commissioners, and that that recommendation
16 be calendared for consent before the full Commission so
17 that the Commission is aware of modifications made to pre-
18 vious decisions that it has in fact issued.

19 CHAIRMAN IMBRECHT: Okay. Does anyone wish to
20 be heard on this item?

21 Mr. Heath.

22 MR. HEATH: Mr. Chairman, we have received two
23 letters today. The first one which I have just passed
24 out to you is from the Air Resources Board. I would like
25 to have that entered into the record as read.

1 We also received a letter that has just come
2 off the typewriter from the Lake County Air Pollution
3 Control District, and since I do not have copies of that
4 letter for you, since we just got it typed up, I would
5 like to have that read into the record. It's very short.
6 This is a statement from R. Reynolds regarding proposed
7 regulation changes for Docket 84-SID-1.

8 "Lake County Air Pollution Control District.

9 "The Lake County Air Pollution Control
10 District offers the following comments on pro-
11 posed regulations. We compliment Commissioner
12 Commons for his endeavor to incorporate all
13 parties' concerns, and believe that this has
14 been largely accomplished. We support the
15 majority of the proposed changes as noticed, with
16 the two exceptions.

17 "Number one. An annual review of any
18 facility sited under emergency conditions and
19 through a normal review should be completed when
20 the emergency as declared no longer exists. We
21 support the comment provided by the Bay Area
22 Air Pollution Control District.

23 "Section 1769(d) needs to be modified to
24 incorporate notice to all official parties to the
25 proceedings of all petitions received for amendment,

1 interpretation or revocation. Any decision by
2 the Executive Officer to grant a formal petition
3 for amendments, interpretation or revocation
4 should be served on all parties and appealable
5 to the full Commission.

6 "Nonsubstantial changes, minor, of no concern
7 to any party, and interpretations reasonably
8 consistent with the certification, should not
9 require a petition to be accomplished, and to
10 require such unnecessary burden onto all parties."

11 Signed, Robert L. Reynolds.

12 Those are consistent with his comments that he
13 has made at previous workshops and hearings on the matter.

14 CHAIRMAN IMBRECHT: Commissioner Commons, the
15 prerogative is yours to make a motion.

16 COMMISSIONER COMMONS: Let me first move 1706(e),
17 Mr. Chairman.

18 COMMISSIONER GANDARA: Second.

19 CHAIRMAN IMBRECHT: Okay. Moved and seconded
20 that 1706(e) be approved as proposed. Any discussion?
21 Anyone else wish to be heard on this item?

22 Any objection to a unanimous roll call?

23 Hearing none, "Aye's" four, "No's" none. The
24 motion is carried.

25 Commissioner Commons.

1 COMMISSIONER COMMONS: Let me move 1769.

2 CHAIRMAN IMBRECHT: Second. The motion is
3 properly before us. Discussion, Commissioner Gandara?

4 COMMISSIONER GANDARA: I would propose an amend-
5 ment. I would move that the Section (a), subsection (a)
6 be modified to reflect that the Executive Director shall
7 recomend to the full Commission, and the recommendation
8 shall be placed on the consent calendar.

9 CHAIRMAN IMBRECHT: Is there a second?

10 COMMISSIONER NOTEWARE: I second it.

11 CHAIRMAN IMBRECHT: Seconded by Commissioner
12 Noteware.

13 In terms of discussion, I think Commissioner
14 Commons' points in his memorandum are persuasive, and I
15 guess I -- my judgment is that it would be better to try
16 to minimize the number of items we put on our full business
17 meeting agenda rather than maximize them, and --

18 COMMISSIONER COMMONS: Mr. Chairman, I would
19 like, since we are not a full Commission, I would like
20 to request that we hold this item over to the next business
21 meeting -- excuse me, for two business meetings, because
22 Commissioner Gandara won't be present at the next one,
23 since there is clearly dispute on the item.

24 I don't think there is anything -- there is
25 nothing we have to do today on this item that requires

1 us to take the action, and --

2 CHAIRMAN IMBRECHT: Let me just inquire --

3 COMMISSIONER COMMONS: -- and she had a personal
4 medical reason not to be here, and I think it's only fair
5 for her to be present.

6 CHAIRMAN IMBRECHT: I understand. I would just
7 inquire of Commissioner Noteware if that was a courtesy
8 second, or an indication of your --

9 COMMISSIONER NOTEWARE: I think I concur with
10 Commissioner Gandara's position.

11 CHAIRMAN IMBRECHT: Okay.

12 MR. CHAMBERLAIN: Mr. Chairman, if you are going
13 to put it over for two meetings in any case, with the
14 Commission's approval we will put out alternative 15-day
15 language so that you have both versions in front of you
16 and could adopt either one.

17 CHAIRMAN IMBRECHT: That's fine.

18 COMMISSIONER COMMONS: That would --

19 CHAIRMAN IMBRECHT: All right. Fine.

20 COMMISSIONER COMMONS: That would be the intent
21 of the Committee, to have both versions.

22 CHAIRMAN IMBRECHT: All right. Fine. Put this
23 item over, and with that direction of the staff.

24 Item No. 7, Consideration and Possible Direction
25 to the 1986 Draft Electricity Report Committee to oversee

1 staff implementation of the '85 Electricity Report.

2 Mr. Ward, what is your judgment on this?

3 EXECUTIVE DIRECTOR WARD: Yes. Mr. Chairman,
4 I would just point out that we are still continuing to
5 brief Commissioners on the issue. You and the vice-chairman
6 -- chairperson, have not had an opportunity to be briefed,
7 so I think it's premature to take any specific action on
8 this until that occurs.

9 And I am open to the Committee's -- the ER-6
10 Committee's disposition of whether they want to continue
11 the item to the next business meeting or not.

12 CHAIRMAN IMBRECHT: Commissioner Noteware?

13 COMMISSIONER NOTEWARE: Yes. I would like to
14 recommend that we do continue this to the next meeting.
15 I think the briefings are valuable.

16 CHAIRMAN IMBRECHT: Is there objection?

17 Okay. We will continue that item as well.

18 The next item is a contract for \$523,000 with
19 Acurex Corporation to provide the technical expertise
20 necessary to assist the Energy Commission in evaluating
21 alternative fuels and technology for transportation and
22 and in administering its current demonstration programs.
23 Mr. Ward.

24 EXECUTIVE DIRECTOR WARD: Yes. Mr. Chairman,
25 I believe all Commissioners have received an outline of

1 this proposed contract, and I believe either your office
2 or yourselves have been briefed on this contract. The
3 purpose is threefold, to evaluate the various alternative
4 fuels and technologies for transportation, provide tech-
5 nical support to complete current demonstration programs,
6 and provide the support for the energy development report
7 analysis.

8 So it's a rather large technical support con-
9 tract that involves Acurex as the prime contractor and
10 a number of subcontractors.

11 If you have any specific questions, Leon Vann
12 from the Development Division is prepared to answer them.

13 CHAIRMAN IMBRECHT: Questions? Commissioner
14 Commons.

15 COMMISSIONER COMMONS: I just have a short state-
16 ment.

17 CHAIRMAN IMBRECHT: All right.

18 COMMISSIONER COMMONS: It's my belief that this
19 proposed contract would be implementing the recommendation
20 that we made in the BR, which is to complete and carry
21 out the programs that we currently have in-house, and that
22 with this contract that the Commission will have better
23 information to assess the program and enable us to make
24 recommendations as to what directions we ought to go sub-
25 sequently.

1 CHAIRMAN IMBRECHT: Okay. I will take that as
2 a motion.

3 COMMISSIONER COMMONS: Well, I would defer to
4 the R&D Committee to --

5 CHAIRMAN IMBRECHT: Well, I would move in that
6 case.

7 COMMISSIONER NOTEWARE: I'll second.

8 CHAIRMAN IMBRECHT: Seconded by Commissioner
9 Noteware.

10 Does anyone else wish to be heard on this item?

11 COMMISSIONER GANDARA: Mr. Chairman?

12 CHAIRMAN IMBRECHT: Yes. Commissioner Gandara.

13 COMMISSIONER GANDARA: I would like to request
14 a very quick Executive Session.

15 CHAIRMAN IMBRECHT: On this item?

16 COMMISSIONER GANDARA: Yes.

17 CHAIRMAN IMBRECHT: All right.

18 COMMISSIONER GANDARA: To disucss --

19 CHAIRMAN IMBRECHT: We will stand in recess for
20 five to ten minutes. Try to reconvene at 4:10.

21 (Whereupon, a recess was taken for purposes of
22 an Executive Session.)

23 CHAIRMAN IMBRECHT: Okay. We are back in session.
24 The motion is properly before us. Further discussion?

25 Is there objection to a unanimous roll call?

1 Hearing none, "Aye's" four, "No's" none. The
2 motion is carried. The contract is approved.

3 The next contract is for \$35,000 with the
4 Trustees of the CSU System to reduce the current \$145,000
5 -- I'm sorry. This is an amendment to our contract to
6 reduce our current \$145,000 FY 85-86 --

7 EXECUTIVE DIRECTOR WARD: The '85-6 amount of
8 145,000 --

9 CHAIRMAN IMBRECHT: This is not clear to me,
10 this notice -- pardon me?

11 EXECUTIVE DIRECTOR WARD: Yeah. We have -- we
12 have to take two actions here, as I understand it. We
13 have to formally reduce one contract to then free up the
14 funding source for a subsequent contract, so that's what
15 the intent of this item is before you.

16 As you will recall, we requested and were success-
17 ful in the budget process to obtaining \$145,000 for the
18 purpose of bringing students onboard to primarily assist
19 us in the siting process. We have identified a need there
20 of something less than the original 145,000.

21 Correspondingly, we have a \$35,000 request
22 before you to pay for a contract with -- I believe it's
23 McGeorge School of Law, to assist us in training expert
24 witnesses for siting cases, so this is primarily for your
25 Siting Divsiion staff to receive training to -- on how

1 to testify and appropriately provide evidence during the
2 course of the siting case.

3 And other than that, I don't think -- unless
4 you have any questions, I don't think there's any issues
5 here. I believe the Commissioners have been briefed on
6 this item ahead of time, and your staffs.

7 CHAIRMAN IMBRECHT: Okay. The item is before
8 us. Is there a motion moved by -- Commissioner Commons?

9 COMMISSIONER COMMONS: Well, no. I'm not making
10 the motion.

11 CHAIRMAN IMBRECHT: All right.

12 COMMISSIONER COMMONS: I'll have discussion --

13 CHAIRMAN IMBRECHT: Commissioner Commons.

14 COMMISSIONER COMMONS: Why -- why do we not need
15 these Cal State people?

16 EXECUTIVE DIRECTOR WARD: We have --

17 COMMISSIONER COMMONS: Everything I've been hear-
18 ing on the siting is that we have an overload, that we
19 have had to go out and had increases in Envirosphere,
20 and so this runs contradictory to everything I've been
21 hearing.

22 EXECUTIVE DIRECTOR WARD: I -- my reaction was
23 much the same. It's my understanding we have identified
24 a need in the current year that ceiling's at \$110,000, and
25 that we have been able to free up 35,000 for the expert

1 witness training as a result of that.

2 If that is inconsistent with anything else that's
3 going on, Bob, let me know -- or Roger.

4 MR. JOHNSON: Commissioner, my name is Roger
5 Johnson with the Siting Office. That's not inconsistent.
6 We had originally anticipated needing some expertise in
7 areas of safety and electrical engineering, and now we
8 have identified Envirosphere to better do that for us in
9 our siting cases, and so these two areas, we had origi-
10 nally proposed \$17,500 each for those two areas.

11 COMMISSIONER COMMONS: Which costs the Commission
12 more, to use Envirosphere in this area or to use Cal State?

13 EXECUTIVE DIRECTOR WARD: It probably costs more
14 to be using Envirosphere, and that's a guess on my part,
15 but I am assuming that it was the judgment of the Division,
16 Mr. Commons, that it was much more efficient and profes-
17 sionally competent to be using the Envirosphere contract
18 on these areas, so it has to do with the substance and
19 the quality of the issue, as opposed to the economic
20 cost.

21 MR. THERKELSON: Bob Therkelson, Siting Office
22 manager.

23 The other complication was we were not able to
24 obtain that expertise through the CSU contract. They did
25 not have the expertise available under the conditions that

1 we needed it. We were able to obtain that expertise under
2 the Envirosphere contract in the terms that we needed it.

3 COMMISSIONER COMMONS: Is this essentially an
4 effort to free up \$35,000 of funds for the expert witness,
5 or if we didn't approve that portion of it would we still
6 reduce this contract by 35,000?

7 MR. THERKELSON: We have already -- the Commission
8 has already taken an action on the McGeorge expert witness
9 training. That has already been taken. This money, if
10 it was not freed up and given to that, would not be used,
11 because that -- those resources, like I said, are now pro-
12 vided and have been contracted for through Envirosphere,
13 because CSU was not able to provide us that expert --

14 COMMISSIONER COMMONS: You are saying the
15 Commission has already approved the McGeorge?

16 MR. THERKELSON: Yes. They took an action some
17 time ago, I don't remember the exact business meeting
18 date, contingent upon the funding available.

19 COMMISSIONER COMMONS: Gee, I have never recol-
20 lected anything coming before us on McGeorge.

21 EXECUTIVE DIRECTOR WARD: Yes, it was,
22 Commissioner. It was before you, and we are just simply
23 identifying the funding source.

24 COMMISSIONER COMMONS: Could someone refresh
25 my memory when we took an action? I don't remember ever

1 seeing McGeorge before us on the agenda. I remember there
2 was some discussion of our hiring some contract attorneys.

3 MR. THERKELSON: It seems to me it was about
4 three weeks ago, or three business meetings ago, that it
5 was on there. It was one of the items in a group of con-
6 tracts that were approved by the Commission.

7 COMMISSIONER COMMONS: Okay. I --

8 MR. THERKELSON: It was expert witness training.

9 EXECUTIVE DIRECTOR WARD: We can -- if you want
10 the backup material, we can resubmit that to your office.
11 We'd be happy to do that, Commissioner.

12 COMMISSIONER COMMONS: All right. I have no
13 other questions.

14 CHAIRMAN IMBRECHT: Okay. Are you ready to pro-
15 ceed, Commissioner Commons?

16 COMMISSIONER COMMONS: Yes. Just register me
17 as an abstention on this one.

18 CHAIRMAN IMBRECHT: Fine.

19 COMMISSIONER NOTEWARE: I'll move for approval.

20 CHAIRMAN IMBRECHT: Moved by Commissioner
21 Noteware. I'll second.

22 Aside from Commissioner Commons' abstention,
23 is there objection to a unanimous roll call?

24 Hearing none, "Aye's" three, "No's" none.

25 Record Commissioners Noteware, Gandara and myself as "Aye"

1 votes.

2 The next item is a contract for \$13,000 with
3 Data General Corporation for training, consultation and
4 support in the use of Comprehensive Electronic Office
5 Softward. Mr. Ward.

6 EXECUTIVE DIRECTOR WARD: Yes. I think as all
7 of you are aware, we are attempting to maximize the use
8 of the Data General system, and in that context we have
9 obtained a software package referred to as the CEO package
10 that has a number of opportunities on it that Tom Beyer
11 can explain to you, but we need some training, and Data
12 General Corporation, who manufactured the computer and
13 I believe developed the software, is in the best position
14 to be able to provide that training.

15 CHAIRMAN IMBRECHT: Okay. I'll move. Is there
16 a second?

17 COMMISSIONER NOTEWARE: I'll second it.

18 CHAIRMAN IMBRECHT: Seconded by Commissioner
19 Noteware. Does anyone wish to discuss this item? I don't
20 think we need a presentation.

21 Is there any objection to a unanimous roll call?

22 Hearing none, "Aye's" four, "No's" none. The
23 contract is approved.

24 Is there objection to the approval of the minutes
25 as presented?

1 Commissioner Commons.

2 COMMISSIONER COMMONS: Yes. I believe on Item 1,
3 paragraph -- one, two, three -- 4, the Commission requested
4 the Committee to revisit those provisions that we had not
5 made motions on and to bring those items subsequently back
6 to the Commission. In fact, we had two of those items
7 before us today.

8 CHAIRMAN IMBRECHT: Yes. I agree with you.
9 Okay. We'll note that correction.

10 Further corrections?

11 The motion is approved as presentd, with those
12 modifications.

13 Policy Committee Reports. Are there any?

14 Commissioner Commons.

15 COMMISSIONER COMMONS: Yes. The Load Management
16 Committee, with the help of the utilities, is hopefully
17 sometime in December going to come up with a common speci-
18 fication of a time-of-use meter for the residential sector,
19 and we'll bring back, if this agreement is successful,
20 what -- what this agreement would represent.

21 What to myself is good about this particularly
22 is that we have been able to work out an agreement process,
23 rather than have to develop a regulation or a standard,
24 but we'll bring this back to you and notify you that we
25 are making very good progress in this area.

1 CHAIRMAN IMBRECHT: Okay. Further Policy
2 Committee reports?

3 Okay. General Counsel.

4 MR. CHAMBERLAIN: Mr. Chairman, just one brief
5 item. At the last business meeting you authorized our
6 office to file a brief on your behalf in the PUC's proceed-
7 ing involving the Geysers 21 case, and we did file that
8 brief.

9 We have just heard today that the ALJ has denied
10 the public staff's motion, thereby upholding the Commission
11 and PGandE's position on the matter.

12 CHAIRMAN IMBRECHT: Okay. Questions for the
13 General Counsel?

14 COMMISSIONER COMMONS: Unhappily, I have a ques-
15 tion, but it may be a litigation question.

16 CHAIRMAN IMBRECHT: Well, why don't you try --

17 MR. CHAMBERLAIN: I'm prepared to go into closed
18 session.

19 CHAIRMAN IMBRECHT: Why don't you try it and
20 see if it is, and then we can decide whether we want to
21 go to an Executive Session.

22 COMMISSIONER COMMONS: I'll let Commissioner
23 Gandara go first.

24 COMMISSIONER GANDARA: My question, which is
25 not a litigation question, was is there a citation to our

1 brief?

2 MR. CHAMBERLAIN: I don't know. I can find that
3 out for you. I don't know that there was a formal one,
4 but --

5 CHAIRMAN IMBRECHT: Okay.

6 COMMISSIONER COMMONS: Okay. We were going to
7 send some letters to the Public Utilities Commission --

8 CHAIRMAN IMBRECHT: That has been sent.

9 COMMISSIONER COMMONS: -- and I wanted to know
10 if we had had a response yet.

11 CHAIRMAN IMBRECHT: There has been no response
12 as yet.

13 COMMISSIONER COMMONS: Well --

14 CHAIRMAN IMBRECHT: And I am perplexed at this
15 action as well, and I must tell you that in a --

16 COMMISSIONER GANDARA: I think I would like,
17 then, to have a --

18 CHAIRMAN IMBRECHT: -- in a conversation with
19 the president of the --

20 COMMISSIONER COMMONS: I would like to have an
21 Executive Session on the matter, then.

22 CHAIRMAN IMBRECHT: All right. Why don't we
23 hold that until after our Executive Director's report and
24 the other items we've got --

25 COMMISSIONER COMMONS: Yes. At the very end.

1 Thank you.

2 CHAIRMAN IMBRECHT: -- and then we'll wrap things
3 up here.

4 Mr. Ward.

5 EXECUTIVE DIRECTOR WARD: Three items,
6 Mr. Chairman. First of all, I thought you would all be
7 interested, on the budget, we've been meeting with the
8 Department of Finance during the course of review on their
9 budget, or our budget, and I sense there is some degree
10 of frustration having to go through Energy Commission
11 contract proposals that in many cases are far more tech-
12 nical than they want to wade into.

13 So what they proposed, which I think is reason-
14 able, and we didn't have much in the way of an option other
15 than to indicate we might argue, was a baseline approach
16 to contracts where they wouldn't take on each and every
17 contract. They would simply give us a baseline amount.
18 Their proposal is to give us a baseline of that amount
19 that we had last year, plus a cost-of-living increase,
20 and then we would have to argue for that increment above
21 the baseline.

22 It's got problems, and it's got benefits, but
23 I think at least it eliminates in many cases us having
24 to argue a lot of the very small issue that are normally
25 programmatic -- normal programmatic concerns that we are

1 addressing each year in the context of our budget in the
2 form of contracts that they don't simply, by virtue of
3 understanding our program, agree with.

4 So I think it's a step in the right direction.

5 Secondly, legislation, you are all going to be
6 getting a package within the next couple of days of all
7 legislation that was signed by the Governor, some that
8 wasn't signed that we were paying attention to, just a
9 summary list with a summary narrative of that legislation.

10 Third, for the last couple of weeks I have been
11 trying to make an announcement about some energy awards,
12 and either the awards haven't been down here or something
13 else has occurred. We have ran late, and we have been
14 unable to do it.

15 As you will recall, the Department of Transportation
16 represented us in the Midwest at the Institute of
17 Transportation Engineers' annual conference, and we, in
18 conjunction with the department of Transportation, for the
19 fuel-efficient traffic signal management program, received
20 the Institute of Transportation Engineers' Transportation
21 Energy Conservation Award for 1985.

22 And I think, as you can see, it's something that
23 we should be proud of and hang in a place that's very
24 conspicuous, within probably our hearing room here.

25 CHAIRMAN IMBRECHT: Thank you. I would agree.

1 Without objection, I would suggest that it be displayed
2 perhaps in the entryway to the hearing room.

3 EXECUTIVE DIRECTOR WARD: Okay. The Residential
4 Building Standards Training Information Program has also
5 received an award at the 1985 SECP-EES Program Managers
6 Conference conducted by the Department of Energy in
7 Phoenix. The Energy Commission was awarded an Honorable
8 Mention in the best energy education information promotion
9 awards program, and it's the Best Media Class was the
10 category.

11 It was made for a color video public service
12 announcement prepared to publicize California's New
13 Residential Building Energy Efficiency Standards.

14 And that's it.

15 COMMISSIONER GANDARA: I wondered -- I often
16 wondered what happened to that contract. It was -- so
17 I am pleased to hear that it was --

18 MR. RAUH: This is what we paid for.

19 COMMISSIONER GANDARA: -- that it worked out
20 well.

21 MR. RAUH: Actually, it was used throughout the
22 state, along with a coordinated series of radio broadcasts
23 and public service messages in trade publications, finan-
24 cial journals, and I do have the award-winning video set
25 up in the entryway if any of you would like to see it

1 before you break.

2 CHAIRMAN IMBRECHT: Is it just a spot announce-
3 ment, or is it a long --

4 MR. RAUH: It's a spot announcement, 30 seconds
5 worth of commercial.

6 CHAIRMAN IMBRECHT: Is it dated in any fashion?

7 MR. RAUH: No. It's still relevant today. We
8 -- I was thinking today --

9 CHAIRMAN IMBRECHT: Why don't we --

10 MR. RAUH: -- that it might be appropriate for
11 SMUD's service territory right now.

12 CHAIRMAN IMBRECHT: Okay. Why don't we reissue
13 it?

14 MR. RAUH: We certainly can.

15 CHAIRMAN IMBRECHT: I don't see any reason why
16 it can't be rerun again.

17 Okay. Does that conclude the Executive Director's
18 Report?

19 EXECUTIVE DIRECTOR WARD: Yes, it does. Thank
20 you.

21 CHAIRMAN IMBRECHT: okay. Is there any public
22 comment?

23 I find that ironic, after we have driven every-
24 one out of the room.

25 All right. Then we stand in recess for a brief

1 Executive Session on the points that Commissioner Commons
2 has, and then we'll stand in adjournment.

3 (Thereupon, the business meeting of the
4 California Energy Resources Conservation and Development
5 Commission was adjourned at 4:30 p.m.)

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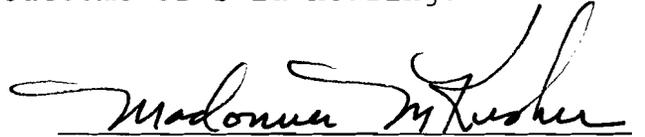
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REPORTER'S CERTIFICATE

THIS IS TO CERTIFY that I, Madonna M. Kushen, Reporter, have duly reported the foregoing proceedings which were held and taken in Sacramento, California, on Wednesday, the 16th day of October 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.



Madonna M. Kushen, Reporter