

STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION

NOV 23 1985

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BUSINESS MEETING

1516 Ninth Street  
First Floor Hearing Room  
Sacramento, California

Wednesday, November 13, 1985

10:00 O'Clock A.M.

Reported by:

Madonna M. Kushen

**K. & T. RECORDING**  
**MADONNA KUSHEN**  
**EDYTHE TANNER**  
7712 GARDEN GATE 969-4182  
CITRUS HEIGHTS, CA 95610

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** Bill Chamberlain
- 9** Kent Smith
- 10** Lloyd Dillon
- 11** Bob Strand
- 12** Karen Griffin
- 13** Greg Newhouse
- 14** Valerie Hall
- 15** Darrel Woo
- 16** Bob Chittenden
- 17** Dick Ratliff
- 18** Steven Cohn
- 19** Arlene Ichien
- 20** John Chandley
- 21** Chris Tooker
- 22** Bill Pennington
- 23** Mike Sloss
- 24** Scott Mathews
- 25** Gary Fay
- Lorri Gervais, Secretary

PUBLIC ADVISER'S OFFICE

1  
2 Ernesto Perez

3 Gary Heath

4 ALSO PRESENT

5 Dian Grueneich, Pacific Thermonetics

6 Mike Gardner, Southern Sierra Energy Company

7 Jan Schori, SMUD

8 Richard Spitler, City of Clear Lake

9 Peter Baumgartner, PGandE

10 Steve Tabor, PAG

11 Steve Geringer, California Farm Bureau

12 Allan Thompson, Basic American Foods

13 James Leahy, Basic American Foods

14 Larry Asera, Solarize

15 Glen West, PGandE

16 Mike Leite, SDG&E

17 Michael Neils, PAG, IES

18 Hyman Kaplan, IES

19 Giovanna Adimari, Novitas, Inc.

20 Stuart Beavers, CMACN

21 Lorn Soderstrom, California Retailers Association

22 Jim Abrams, California Hotel and Motel Association

23 Charles Eley, California Council, AIA

24 Steve Taylor, ASHRAE

25 Richard Esgate, CALBO

ALSO PRESENT (CONTINUED)

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Jim Glander, CALBO  
David Goldstein, NRDC  
Robert Watson, NRDC  
Mauricio Flores, IMB  
Bill Houston, CBIA

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P R O C E E D I N G S

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1  
2  
3 COMMISSIONER CROWLEY: Good morning, ladies  
4 and gentlemen. I'd like to call to order the Wednesday,  
5 November 13th meeting, and ask, please, that you rise for  
6 the salute to the flag.

7 Commissioner Gandara, will you lead the salute?

8 COMMISSIONER GANDARA: I pledge allegiance to  
9 the flag of the United States of America, and to the  
10 Republic for which it stands, one nation, under God, indi-  
11 visible, with liberty and justice for all.

12 COMMISSIONER CROWLEY: Our first item on the  
13 agenda is Commission Consideration and Possible Adoption  
14 of Committee recommendations on the reallocation of up to  
15 \$200,000 in Federal Solar Energy and Energy Conservation  
16 Bank funds to the City of San Jose and to Southern  
17 California Edison Company.

18 These funds may be used only for an existing  
19 Energy Bank program. If not reallocated, they will be  
20 reclaimed by the U.S. Department of Housing and Urban  
21 Development.

22 Commissioner Gandara, you chair the Committee?

23 COMMISSIONER GANDARA: Yes. For the Commission's  
24 information, let me indicate where we are. This is the  
25 -- involves Cycle 2 of the Energy Bank Funds, the Solar

1 Energy Bank, which come to the Commission from the  
2 Department of Housing and Urban Development.

3 As you may recall, the Commission allocated these  
4 funds by a previous Commission action. What is involved  
5 here is funds that have come back to the Commission because  
6 there were some projects that were not able to expend the  
7 funds by the required time.

8 In that instance, if these funds are not expended,  
9 they then revert back to the Federal Treasury, so the issue  
10 before us is whether we wish to allow that or whether we  
11 wish to reallocate those funds to projects that have pre-  
12 viously been deemed worthy and acceptable by the Commission.

13 Now, an additional element of this is that during  
14 the initial allocation many of these programs or projects  
15 requested amounts beyond that which the Commission was  
16 able to fund. The Commission, however, at that point in  
17 time wished to spread or to broaden the number of recipi-  
18 ents, so it chose to do that, rather than to give funds  
19 -- give as many funds as were requested to each of the  
20 programs.

21 The issue before us is that we have approximately  
22 \$200,000 to reallocate. It is not clear what the precise  
23 amount will be, and, therefore, the description that you  
24 have before you is -- is perhaps a bit more specific than  
25 what the Committee is requesting.

1           The -- if you read the resolution, then it really  
2 gives you a better description of what the Commission is  
3 requesting, but I believe there has to be an amendment  
4 or a correction to the resolution, since it does not  
5 include the City of Sacramento.

6           Was that your intent?

7           MS. GRIFFIN: We already have that authority.  
8 We received the authority to reallocate to the City of  
9 Sacramento at the May 29, '85 Business Meeting, so this  
10 is just for the other two.

11           COMMISSIONER GANDARA: Okay. So, in any case,  
12 what we have here before us is -- is essentially the  
13 Committee is requesting authorization from the Commission  
14 to reallocate whatever funds are turned back from the  
15 Solar Energy Bank to reallocate it to programs or projects  
16 that have already received funds, and in the interest of  
17 time, so that we do not lose any of these funds, and so  
18 that merit-worthy projects that requested more funds than  
19 we were able to give them will be able to be given some  
20 of these additional funds, we are requesting you approve  
21 the resolution.

22           As Ms. Griffin indicated, we have previously  
23 approved such a resolution for the City of Sacramento,  
24 so what the Committee is requesting is that you give us  
25 the authority to allocate any remainder of the funds to

1 the City of San Jose, Southern California Edison, and  
2 Sacramento Housing Authority.

3 In the interest of time, I would urge the  
4 Commission to -- given the agenda that we have today, that  
5 this has been thoroughly reviewed by the Loans and Grants  
6 Committee, and this is the way that we have actually  
7 handled Cycle 1 previously, and is likely the way we are  
8 going to handle Cycle 3 --

9 CHAIRMAN IMBRECHT: Can I take that as a motion?

10 COMMISSIONER GANDARA: I would so move.

11 COMMISSIONER CROWLEY: Second.

12 CHAIRMAN IMBRECHT: I have a motion and a second.

13 Is -- does anyone else wish to be heard on this item?

14 All right. Is there objection to a unanimous  
15 roll call?

16 Hearing none, "Aye's" five, "No's" none. The  
17 motion is carried.

18 Commissioner Crowley, did you make any of the  
19 housekeeping announcements before we began, about timing  
20 on certain items?

21 COMMISSIONER CROWLEY: No, I did not.

22 CHAIRMAN IMBRECHT: Thank you. Let me apologize  
23 for my tardiness. I had a physician's appointment this  
24 morning, and I just concluded that.

25 For housekeeping purposes, at the request of

1 Commissioner Commons, Item No. 11 will be taken up after  
2 the luncheon recess, as well as the GPPL reconsideration  
3 item, because of an unfortunate miscommunication about  
4 timing, and I understand that some of the parties won't  
5 be here until after the luncheon recess. Those two items  
6 will be taken up this afternoon.

7 Short of that, we will try to proceed through  
8 the -- excuse me.

9 MR. HEATH: Mr. Chairman --

10 CHAIRMAN IMBRECHT: Yes. Mr. Heath?

11 MR. HEATH We had a request from SDG&E to move  
12 Item No. 3 to the afternoon session. They are in transit  
13 right now.

14 CHAIRMAN IMBRECHT: Item No. 3?

15 MR. HEATH: That's correct.

16 COMMISSIONER CROWLEY: And that was one requested  
17 by Commissioner Gandara to be heard today.

18 CHAIRMAN IMBRECHT: Yeah. I understand that.  
19 I was trying to understand what interest they --

20 MR. HEATH: I think they wanted to hear the item.  
21 They did not want to actually present any comments on the  
22 item.

23 COMMISSIONER COMMONS: They were up here last  
24 week, Chuck, discussing it.

25 CHAIRMAN IMBRECHT: Pardon me?

1 COMMISSIONER COMMONS: They were up here mid-  
2 meeting with various Commissioners discussing it.

3 CHAIRMAN IMBRECHT: All right. Fine. Well,  
4 I guess we can accede to that, too. I don't -- all right,  
5 fine.

6 Then in that case -- let's see. Items 3, 11 and  
7 13 will be taken up after the luncheon recess. I hope  
8 that doesn't cause any inconvenience for those of you that  
9 are here. Otherwise, we'll try to move through the agenda  
10 in a serial fashion.

11 The second item to come before us is Consideration  
12 and Possible Adoption of a Commission Order amending the  
13 Pacific Gas and Electric Geysers Unit 21 Decision. The  
14 proposed order would amend Decision Requirement No. 27  
15 to delay the construction of a continuous turbidity and  
16 electrical conductivity monitoring station to coincide  
17 with the start of site preparation.

18 Mr. Smith.

19 MR. SMITH: The staff of the Environmetnal  
20 Division will handle this item.

21 MR. DILLON: My name is Lloyd Dillon. I'm the  
22 Compliance Project Manager for Geysers Unit 21.

23 PGandE petitioned to amend the original instal-  
24 lation date for this continuous water quality monitoring  
25 station on Alder Creek from the October 1, 1985 date to

1 a date to coincide with start of construction. The station  
2 is to monitor construction-related impacts on Alder Creek.  
3 Through staff coordination, all parties agreed to an  
4 installation date 15 days prior to the start of site pre-  
5 paration, and all parties now recommend approval of that  
6 order.

7 CHAIRMAN IMBRECHT: Excuse me, Mr. Smith. I  
8 was distracted there for a moment.

9 MR. SMITH: Yes. Basically, the staff position  
10 here, as presented by Mr. Lloyd Dillon of the Siting  
11 Environmental Division, was to recommend concurrence.

12 CHAIRMAN IMBRECHT: Okay. Fine.  
13 Commissioner Crowley.

14 COMMISSIONER CROWLEY: Mr. Chairman, this order  
15 amending squares with the original decision that was pro-  
16 posed by the Committee, and is simply a structural time  
17 change for the purpose of squaring it with reality.

18 CHAIRMAN IMBRECHT: All right.

19 COMMISSIONER CROWLEY: And I would move the adop-  
20 tion of the Commission order.

21 CHAIRMAN IMBRECHT: All right. Moved by  
22 Commissioner Crowley.

23 COMMISSIONER NOTEWARE: I second it.

24 CHAIRMAN IMBRECHT: Seconded by Commissioner  
25 Noteware that the amendment to the order be approved, and,

1 Mr. Baumgartner, do you wish to be heard on this item?

2 MR. BAUMGARTNER: I have no comment.

3 CHAIRMAN IMBRECHT: I take it you're in agree-  
4 ment with this.

5 MR. BAUMGARTNER: I'm in agreement with it. If  
6 there are any questions, I'm here to answer questions.

7 CHAIRMAN IMBRECHT: I see. Fine. Thank you.

8 Does anyone else wish to be heard on this item?

9 Is there objection to a unanimous roll call?

10 Hearing none, "Aye's" five, "No's" none. The  
11 motion is carried.

12 We will attempt, if we can, to get down to the  
13 Gilroy case before the luncheon recess. I'm going to try  
14 to move through these others. I think we might be able  
15 to move fairly rapidly.

16 Item 4 is an Amendment to a Contract with the  
17 Envirosphere Company to add \$50,000 for the period of  
18 November 14th, '85, through June 30th, '86, to provide  
19 legal assistance required to meet peak workload require-  
20 ments related to review of power plant siting cases.

21 Mr. Smith.

22 MR. SMITH: Yes. I believe General Counsel's  
23 Office was going to address this. This would basically  
24 allow the Commission to retain the legal services we need  
25 for support on siting cases.

1 CHAIRMAN IMBRECHT: Mr. Chamberlain?

2 MR. CHAMBERLAIN: Yes. Mr. Chairman, this is  
3 a minor amendmenbt to the Envirosphere contract that allows  
4 Envirosphere to subcontract to attorneys that we would  
5 choose to assist the staff.

6 CHAIRMAN IMBRECHT: Does anyone wish to be heard  
7 on this item?

8 Moved by Commissioner Gandara, seconded by  
9 Commissioner Crowley, that we approve the amendment to  
10 the contract.

11 Is there objection to a unanimous roll call?

12 Hearing none, "Aye's" five, "No's" none. The  
13 motion is carried.

14 Item 5 is Commission Consideration and Possible  
15 Adoption on Pacific Thermonetics, Incorporated's, petition  
16 for a hearing on the Commission's likely-to-be-available  
17 estimate for gas-fired cogeneration.

18 Mr. Smith.

19 COMMISSIONER GANDARA: Mr. Chairman?

20 CHAIRMAN IMBRECHT: Yes. Commissioner Gandara.

21 COMMISSIONER GANDARA: A point of order. Again,  
22 because we have a very full day, I didn't receive these  
23 documents till this morning. I don't know whether they  
24 came in after 3:00 o'clock yesterday afternoon. The peti-  
25 tioners document seems to be quite ample, and there's a

1 shorter staff response.

2 But, frankly, in similar situations before, I'm  
3 really not predisposed toward making a decision on some-  
4 thing as serious as this matter without getting these docu-  
5 ments with sufficient time for review.

6 I do note that the applicant's petition is dated  
7 November 6th with a proof of service list dated November  
8 6th, and I don't know why we haven't gotten it before then,  
9 but I don't have any objection to, you know, hearing what  
10 the issues are about, but I really don't want to -- at  
11 least for myself, I -- I don't think that I've had adequate  
12 opportunity to review these material.

13 COMMISSIONER COMMONS: Point of order.

14 CHAIRMAN IMBRECHT: Commissioner Commons.

15 COMMISSIONER COMMONS: Well, first you have one  
16 point you have to rule on.

17 CHAIRMAN IMBRECHT: Well, I've understood  
18 Commissioner Gandara's statement. I'll turn to yours next.

19 COMMISSIONER COMMONS: All right. The way this  
20 is noticed in the agenda is that the hearing on likely-to-  
21 be-available estimate, while the petition is relating to  
22 a different matter as to where you are located in escrow,  
23 and they do not appear to be one and the same item, we  
24 do have an Item No. 14, which deals with assignment to  
25 escrow for Crockett, which also includes the IBM and the

1 Spreckles, and I believe the Commission had directed the  
2 Policy Review Committees to bring back to the Commission  
3 the three cases.

4 I think it's appropriate that they all be dis-  
5 cussed in terms of escrow at the same time in the agenda.

6 CHAIRMAN IMBRECHT: I tend to agree with that,  
7 but let's hear from the Petitioner, just as a matter of  
8 courtesy.

9 Dian, do you want to speak to this, please?

10 MS. GRUENEICH: Yes. My name is Dian Grueneich,  
11 and I am the attorney for the applicant, Pacific  
12 Thermonetics, Inc., who is the applicant for the Crockett  
13 Cogeneration Project.

14 As the Commission has noted, we have filed the  
15 petition for the Crockett Project to be assigned to the  
16 specified reserved need test, and our petition is filed  
17 in accordance with the Commission's October 4th order  
18 assigning need tests to certain projects.

19 We would prefer, if we could, to dispose of this  
20 matter at this time. We do believe that the notice on  
21 the agenda is sufficient, but if the Commission believes  
22 that it's necessary to consider all the matters at the  
23 same time, we would not object, but we think this is really  
24 separate from the other two matters.

25 As far as the concern that Commissioner Gandara

1 raised, we did -- I don't know what happened with the mail.  
2 We did put it in the mail to everyone on the 6th, and I  
3 personally delivered copies here at the Commission last  
4 Thursday, although I didn't deliver them to each of the  
5 Commissioners individually. I did give them to the Hearing  
6 Adviser and to the Staff Counsel and to the staff.

7           And I checked with the Docket Office, and it  
8 was received unfortunately in the mail only yesterday after-  
9 noon.

10           What we are requesting is not that the substance  
11 of the petition be heard today, that both the staff and  
12 the Committee have recommended that the Commission grant  
13 us an evidentiary hearing as anticipated in the October  
14 4th order, and that the evidentiary hearing in fact not  
15 be held today, but be held on November 27th at the next  
16 Commission business meeting.

17           We have attached to our petition testimony by  
18 David Marcus, because the Commission's October 4th order  
19 requested that we make a prima facie case when we actually  
20 filed the petition so that the Commission could see that  
21 if we were successful it would allow us to actually change  
22 into the specified reserved need test, but the staff at  
23 this time has not filed any testimony, and so, as I said,  
24 we are willing to abide by the Committee's recommendation  
25 and the staff's recommendation as well that this matter

1 be heard on November 27th.

2 CHAIRMAN IMBRECHT: November 27th.

3 MS. GRUENEICH: The action that we do request  
4 today, however, is that a determination be made, in essence,  
5 that we have met the threshold burden of filing a prima  
6 facie case, and that we do be allowed to proceed on the  
7 27th.

8 CHAIRMAN IMBRECHT: Commissioner Noteware, you  
9 have a proposed course of action for us. Would you like  
10 to --

11 COMMISSIONER NOTEWARE: Yes, Mr. Chairman.

12 CHAIRMAN IMBRECHT: -- to speak to that?

13 COMMISSIONER NOTEWARE: You have just received  
14 a copy of an order that was prepared, and the significant  
15 point here is in Item 2 on the second page.

16 The Committee concurs with the staff that a hear-  
17 ing on the merits of the PTI petition should be held  
18 before the full Commission at the regularly scheduled busi-  
19 ness meeting on November 27, 1985, and I would make that  
20 in the form of a motion.

21 CHAIRMAN IMBRECHT: I don't think, frankly,  
22 Commissioner Noteware, that we need a motion on that. I'm  
23 not sure that any action is necessary, other than to simply  
24 calendar this. We don't have to accept a petition. I  
25 don't believe there's formal requirement for that. I do

1 not --

2 COMMISSIONER NOTEWARE: Very well.

3 CHAIRMAN IMBRECHT: Mr. Chamberlain, is there  
4 any action that we need to take on this, other than simply  
5 calendaring it for the next business meeting?

6 MR. CHAMBERLAIN: Well, Mr. Chairman, I believe  
7 your order of October 4th does contemplate that if persons  
8 wish to -- to challenge the LTBA numbers, they should do  
9 so by petition.

10 CHAIRMAN IMBRECHT: Um-hum.

11 MR. CHAMBERLAIN: And so it might be best to  
12 go ahead and grant the petition for the purpose of schedul-  
13 ing the evidentiary hearing that would be required.

14 CHAIRMAN IMBRECHT: Grant the petition or accept  
15 the petition?

16 MR. CHAMBERLAIN: Well, accept the petition.

17 CHAIRMAN IMBRECHT: All right. Fine. I'm not  
18 sure it's necessary, but I'll accept Commissioner Noteware's  
19 motion.

20 Commissioner Gandara, do you want to second that,  
21 to simply --

22 COMMISSIONER GANDARA: Well, I just have a ques-  
23 tion.

24 CHAIRMAN IMBRECHT: -- to simply accept the  
25 petition, but hear it on its merits on the 27th?

1 COMMISSIONER GANDARA: Well, I --

2 CHAIRMAN IMBRECHT: Commissioner Gandara.

3 COMMISSIONER GANDARA: Yes. My question is why  
4 is this before the Commission and not before the Committee?

5 MS. GRUENEICH: The October 4th order specified  
6 that we were to file a petition before the full Commission,  
7 and then it states that, upon receiving a petition, the  
8 Commission will schedule -- schedule a hearing if it feels  
9 that we have made a prima facie case, but the order speci-  
10 fied us to file it before the full Commission. That's  
11 why we've done that.

12 MR. CHAMBERLAIN: Yes. Actually, I believe you  
13 -- you're probably right, Mr. Chairman. I'm reading from  
14 the order. The final paragraph of the order says, "Upon  
15 receiving a petition, the Commission will either schedule  
16 a hearing to take evidence relating to the challenged  
17 factual determinations, or assign the hearing to a  
18 committee.

19 COMMISSIONER GANDARA: Is this specifically for  
20 the -- for the Crockett, or are we handling all LTBA issues  
21 before the Commission, since I know there are committees  
22 that are dealing with LTBA issues?

23 CHAIRMAN IMBRECHT: No. It was if -- if the  
24 -- if a petitioner chose to challenge the manner in which  
25 we handled LTBA at the October 4th meeting -- was the

1 meeting on the 4th?

2 MR. CHAMBERLAIN: No. It was actually the  
3 September 4th meeting.

4 CHAIRMAN IMBRECHT: September 4th.

5 MR. CHAMBERLAIN: And that was referring back  
6 to the LTBA numbers that were assumed in the Electricity  
7 Report.

8 CHAIRMAN IMBRECHT: Right. And we have an option  
9 either to hear it as a full Commission, or to refer it  
10 to the Committee, as indicated from my order.

11 MR. CHAMBERLAIN: Well, refer it to a committee  
12 for hearing --

13 CHAIRMAN IMBRECHT: Uh-huh.

14 MR. CHAMBERLAIN: -- and then to bring back to  
15 the Commission for a recommendation.

16 CHAIRMAN IMBRECHT: For full action.

17 MR. CHAMBERLAIN: But recall that any change  
18 to the LTBA numbers could affect more than just one case.  
19 That's a -- that's a very generic question.

20 COMMISSIONER GANDARA: Okay. Well --

21 CHAIRMAN IMBRECHT: Ms. Ichien?

22 MS. ICHIEN: My name is Arlene Ichien. I'm the  
23 staff counsel in the Crockett proceeding.

24 The staff yesterday filed written comments in  
25 response to PTI's petition challenging LTBA. The staff

1 believes that, based on the October 4th order assigning  
2 need test, the Commission today must consider two things.  
3 First, whether or not PTI's petition makes a prima facie  
4 case that would qualify it for the specified reserved need  
5 test, and the staff in its written comments indicates that  
6 it believes the prima facie case has been made; that is,  
7 that unless the facts alleged in the petition are not dis-  
8 proved through additional evidence or as a matter of policy,  
9 that the case is a clearable one for qualifying Crockett  
10 for the specified reserved need test.

11           The second item the Commission must consider,  
12 based on its October 4th order, is then if the petition  
13 does make a prima facie case, to schedule a hearing either  
14 before the full Commission or a committee.

15           The staff recommends that the Commission schedule  
16 an evidentiary hearing on the 27th before the full  
17 Commission, primarily because the issues raised in PTI's  
18 petition concern issues of both fact and policy.

19           As an example, one of the points that the  
20 petitioner brings out is the possibility that the Commission  
21 has included in the category of gas-fired cogeneration plants  
22 that are in fact not gas-fired. Now, that's an issue of  
23 fact that needs to be determined.

24           However, as a matter of policy, the Commission  
25 may decide that it will permit nongas-fired plants to be

1 considered LTBA for purposes for displacing part of the  
2 reserved need for gas-fired cogeneration.

3 Because of the mixture of issues regarding fact  
4 and policy, and because a decision regarding PTI's chal-  
5 lenge on LTBA could affect other applicants with applica-  
6 tions in-house, the staff suggests -- recommends that a  
7 hearing before the full Commission be scheduled, as opposed  
8 to a hearing before a committee.

9 COMMISSIONER GANDARA: That still doesn't answer  
10 my question. My question is that we have a lot of other  
11 cases that are dealing with LTBA. Is the intent here that  
12 the November 27th hearing is going to be dispositive of  
13 all the cases in regard to LTBA, or is there -- is there  
14 a motion for consolidation of all the LTBA issues of all  
15 the cases, or is this a de facto consolidation? Why is  
16 this not before the Committee? That -- that's my interest.

17 And I appreciate referring back to the order,  
18 but again, with all due respect, I know part of that order  
19 is wrong anyway, and specifically, you know, I don't under-  
20 stand how that came about, but maybe we need to review  
21 as to whether the order is accurate or not.

22 And it may be with respect to this particular  
23 request, but -- but I would like to know before at least  
24 I would vote to hear this before the full Commission whether  
25 in fact the full Commission is the appropriate forum for

1 this, or whether it ought to be in a committee, or whether  
2 we ought to consolidate all the other LTBA hearings, or  
3 whether we hear it before the full Commission and the other  
4 committees continue to hear LTBA, and if they do, then,  
5 what is the status of that and does that have implications  
6 for Crockett.

7 MS. ICHIEN: Well --

8 COMMISSIONER COMMONS: Point of information,  
9 Mr. Chairman.

10 CHAIRMAN IMBRECHT: Why don't we let Commissioner  
11 Gandara's questions be answered first on this.

12 COMMISSIONER COMMONS: Well, it's referring to --

13 CHAIRMAN IMBRECHT: All right.

14 COMMISSIONER COMMONS: -- a point of information.

15 CHAIRMAN IMBRECHT: Fine. State your point.

16 COMMISSIONER COMMONS: Commissioner Gandara,  
17 you mentioned that there was part of that order that was  
18 wrong. Could you clarify that, please?

19 COMMISSIONER GANDARA: The part that -- that  
20 stated that Crockett was put in the unspecified reserved  
21 category. That part of the order is wrong. The Commission  
22 did not decide that. The Commission decided that there  
23 were three cases that still had time to be heard by the  
24 Committee. I don't remember all of them. The Watson  
25 facility was one of them.

1           The Commission decided there were three cases  
2 for which the time for the Committee to get back to the  
3 Commission was way beyond what was indicated in the ER  
4 for those cases we made a decision. That was the Sycamore,  
5 Gilroy and I forget the other one, and that the three cases  
6 in the middle were remanded to the committees for deter-  
7 mination.

8           And I was not aware that the Crockett was put  
9 in the unspecified reserved category until I read the order  
10 for a hearing on the Spreckles project. That was -- I  
11 must say that a draft copy of the order was provided to  
12 me, but the final order was -- did go out before I had  
13 a chance to review it, but that's the part of the order  
14 that does not reflect what the Commission decided.

15           CHAIRMAN IMBRECHT: Mr. Cohn?

16           COMMISSIONER COMMONS: I'd like to argue that  
17 at an appropriate time, but I'll wait.

18           MR. COHN: Yes. Thank you. My name is Steve  
19 Cohn. I am the Hearing Officer on the Crockett proceed-  
20 ing.

21           In response to Commissioner Gandara's comments,  
22 I think that the Commission's granting the petition in  
23 terms of granting a hearing on the petition will help to  
24 clarify the point that you have just raised. In fact,  
25 they are raising the issue of whether they should be

1 assigned to the specified reserved need test, rather than  
2 the unspecified.

3 So I think however the Commission rules on that  
4 petition, that will dispose of the issue that you have  
5 raised. As to why --

6 CHAIRMAN IMBRECHT: Well, let me ask you a ques-  
7 tion. I mean do you dispute Commissioner Gandara's inter-  
8 pretation of the events of that meeting, or --

9 MR. COHN: I -- I don't want to take a position  
10 on that, because I --

11 CHAIRMAN IMBRECHT: Do you feel that the  
12 Commission's --

13 MR. COHN: -- I did not hear the meeting. I  
14 was not present for the entire meeting, and all I can go  
15 by is the order that was signed.

16 But my point is that this will be disposed of  
17 in considering the petition that's before you, so if you  
18 hear that on November 27th, you'll clarify one way or  
19 another which tests should be assigned to the Crockett  
20 proceeding.

21 I think that perhaps one good reason for having  
22 the hearing before the full Commission, rather than the  
23 Committee, to go ahead and dispose of that in one hearing  
24 and not conduct a separate committee hearing and then a  
25 full Commission hearing, and I think that was largely the

1 reason that the Committee asked that this be heard before  
2 the full Commission at the next meeting.

3           Moreover, we have not had any other petitions  
4 that I am aware of to date on the LTBA issue. Now, perhaps  
5 if someone does file in the next few days it would be  
6 possible to consolidate that petition with this one, but  
7 to date we have no such petition to consolidate.

8           CHAIRMAN IMBRECHT: Commissioner Commons.

9           COMMISSIONER COMMONS: Yes. First of all, I  
10 do dispute Commissioner Gandara's statement, with speci-  
11 fically included within the unspecified reserved need  
12 in the motion.

13           In fact, I believe, Mr. Chairman, at the end  
14 we -- you made the clarification that this would be without  
15 bias to Crockett, that they could bring it back, and it  
16 could be heard again, and they would have a right to peti-  
17 tion.

18           The other two cases that were remanded to commit-  
19 tee had requested that they not be assigned, but the motion,  
20 if one were to review the transcript, I think the proper  
21 way to look at it would be to look at the transcript in  
22 this instance.

23           CHAIRMAN IMBRECHT: I'm going to suggest that  
24 we --

25           COMMISSIONER COMMONS: I have one other thing,

1 Mr. Chairman --

2 CHAIRMAN IMBRECHT: Well, let me suggest that,  
3 in order to move along in the agenda, we clarify this.  
4 I'm going to direct staff to go back and review the tran-  
5 script, and let's resolve this question once and for all  
6 as to the accuracy of the order.

7 This should not be a debatable issue. It ought  
8 to be something that's either there or not, and I think  
9 we ought to take this up after we can resolve that issue.  
10 So let me suggest, and I hope you can bear with us and  
11 be patient, but let's put this item over briefly until  
12 we have someone take a look at that for us.

13 COMMISSIONER COMMONS: Well, I do want to make  
14 a --

15 CHAIRMAN IMBRECHT: And, Mr. Chamberlain or  
16 Mr. Cohn, if you could see to it that someone could take  
17 care of that for us, A.S.A.P.

18 COMMISSIONER COMMONS: All right.

19 CHAIRMAN IMBRECHT: Okay?

20 COMMISSIONER COMMONS: I do have one further  
21 comment on the item before we put a --

22 CHAIRMAN IMBRECHT: Why don't you wait until  
23 we bring it back up for action. Well, go ahead, if you  
24 want to.

25 COMMISSIONER COMMONS: It's short. If we were

1 to have the hearing before the Commission, which I tend  
2 to think would be appropriate, I would like to request  
3 that it not be on a normally-scheduled business day,  
4 because this item would take at least half the day, and  
5 it would be a special -- a special business meeting.

6 CHAIRMAN IMBRECHT: We'll take care of that in  
7 due course. I'm going to put this item over briefly, and  
8 Mr. Cohn or someone will take care of that for us.

9 MR. CHAMBERLAIN: Mr. Chairman, John Chandley  
10 is the one who put this order together, and I'm sure that  
11 he could provide you that answer. We'll -- we'll relay  
12 the question to him and get him down here as quickly as  
13 we can.

14 CHAIRMAN IMBRECHT: All right. The other thing  
15 I would be interested in is a clear statement from you  
16 as to what, if any, action is required by us today, whether  
17 we need to take a motion to accept the petition, or whether  
18 in fact we can simply calendar this in the normal course  
19 of business.

20 I'm not sure, frankly, why we need to take any  
21 action other than simply calendaring.

22 MR. CHAMBERLAIN: I think I tend to agree with  
23 you.

24 CHAIRMAN IMBRECHT: And I'm not really sure why  
25 this item is on the agenda today.

1           Okay. The next item is Commission consideration  
2 and possible acceptance of the Midway-Sunset Cogeneration  
3 project Application for Certification. The application  
4 was originally submitted in August by Sun Cogeneration  
5 Company and Southern Sierra Energy Company. The appli-  
6 cants propose to construct cogeneration facilities at oil  
7 recovery operations in Kern County, approximately 40 miles  
8 southwest of Bakersfield.

9           Mr. Smith.

10           MR. SMITH: Yes. The staff position will be  
11 presented by Greg Newhouse and Valerie Hall of our Siting  
12 Environmental Division.

13           Valerie?

14           MS. HALL: Good morning, Commissioners. We have  
15 the Midway-Sunset Cogeneration Project before the Commission  
16 today for possible acceptance.

17           If you will recall, the --

18           COMMISSIONER GANDARA: You need to speak up,  
19 Miss Hall.

20           MS. HALL: Certainly.

21           COMMISSIONER GANDARA: There are people in the  
22 back raising their ears.

23           MS. HALL: If you will recall, on August 28th  
24 the application was originally submitted to the Commission  
25 for the data adequacy review. At the October 2nd Business

1 Meeting, the application was withdrawn and resubmitted  
2 by the applicant prior to any Commission action. At that  
3 time we began a new 45-day period for data adequacy. We  
4 have received not only, of course, the application itself,  
5 but we have received I believe six supplements to that  
6 application. The last of those supplements arrived yester-  
7 day.

8 Our review of the application and the supplements,  
9 except for the later supplements which arrived yesterday,  
10 brings staff to continue to recommend that the application  
11 not be accepted due to data deficiencies.

12 You received in your agenda back-up package a  
13 copy of our recommendation, which included a lengthy list  
14 of deficiencies. That original recommendation is dated  
15 November 1, 1985.

16 Since that time, between November 1 and today,  
17 we have had a chance to review two more of the supplements  
18 and have found that there are a few of the technical areas  
19 which we originally found to be deficient, which we now  
20 feel are adequate.

21 Cleared from that November 1 deficiency list  
22 are the technical areas of reliability, engineering geology,  
23 civil engineering, noise, cultural resources, socioeconomics  
24 and transportation. We still have on our deficiency list  
25 the technical areas of plant electrical, transmission

1 engineering, biology, health --

2 CHAIRMAN IMBRECHT: Slow down, so we -- excuse  
3 me. Could you slow down so we can make notes here?

4 MS. HALL: I'm sorry.

5 CHAIRMAN IMBRECHT: Could you refer to the list  
6 of -- of deficiencies, perchance, help us find these?

7 MS. HALL: I'm sorry?

8 COMMISSIONER COMMONS: See pages 1 through 5,  
9 Chuck. They're the ones outstanding on the new submittal.

10 CHAIRMAN IMBRECHT: Plant electrical. All right.

11 MS. HALL: Okay. The areas in which -- that  
12 are still deficient are plant electrical, transmission  
13 engineering --

14 CHAIRMAN IMBRECHT: Okay.

15 MS. HALL: -- biology, health, air quality, need,  
16 transmission system evaluation, and structural engineering.

17 Because of the deficiencies that still exist  
18 in these technical areas, we continue to recommend that  
19 the application not be accepted into the 12-month review  
20 process.

21 There are some particular difficulties in the  
22 area of biology, air quality, and the transmission engineer-  
23 ing and transmission system evaluation technical areas.  
24 There are, of course, deficiencies in all the other areas  
25 I mentioned, but I think these -- these areas reflect some

1 of the greater difficulties that we have with the applica-  
2 tion.

3 In the area of biology, we have a -- we have  
4 a problem in that there are surveys that need to be conduc-  
5 ted for endangered and threatened species that have not  
6 been conducted fully and cannot be conducted until the  
7 late spring, due to that's when the animals are all active  
8 and can be surveyed, so we have a -- a major difficulty  
9 in this area for accepting this application.

10 CHAIRMAN IMBRECHT: So you are saying, in essence,  
11 that that could not be completed until this spring?

12 MS. HALL: Those surveys could not be completed,  
13 or could not be conducted until spring, and the survey  
14 results may not be available until a month or so beyond  
15 the survey. That would place --

16 CHAIRMAN IMBRECHT: Is the practical effect of  
17 your recommendation, then, that we not accept this applica-  
18 tion until that time?

19 MS. HALL: Yes. That we cannot accept it until  
20 we -- until we have the information that is necessary for  
21 staff to conduct its analysis. That is a -- that is a major  
22 area that we need to -- we need information, and we cannot  
23 even begin our analysis without that.

24 We have confirmation from federal agencies  
25 involved that they agree that the surveys must be done for

1 these endangered species, and that the surveys can be --  
2 or must be done in the spring, more than likely the month  
3 of May when the weather is warm enough to bring out the  
4 animals.

5 MR. NEWHOUSE: If I might add to that -- Greg  
6 Newhouse, Citing Program Manager.

7 The only exception to that would be if all the  
8 other data were in fact provided and that the biological  
9 information were forthcoming in such a manner that it would  
10 still allow us to do our analysis within the framework  
11 that is specified by our regulations for completing the  
12 case on a one-year basis.

13 MS. HALL: If the application were accepted in  
14 the near future, the time at which those surveys would  
15 be conducted in May would place those surveys at a time  
16 when staff would be doing its final staff analysis, so  
17 that the information that we would need to do our preli-  
18 minary staff analysis would not in fact be in-house, and  
19 would not -- and they may not be in in time for us to  
20 do the final staff analysis.

21 CHAIRMAN IMBRECHT: Okay. Let's hear from the  
22 applicant.

23 Mr. Gardner?

24 COMMISSIONER GANDARA: Mr. Chairman, point of  
25 order.

1           CHAIRMAN IMBRECHT: Commissioner Gandara.

2           COMMISSIONER GANDARA: I would like for us to  
3 set some guidelines as to how we're going to proceed with  
4 this. As is my usual plea in these cases, I don't want  
5 to get into a case -- a technical-issue by technical-issue  
6 negotiation as to whether it's adequate or not.

7           I think we should vote the staff recommendation  
8 up or down as a whole, and I think that's an expeditious  
9 way of doing it. I think the staff has been doing an honest  
10 effort in these matters, and I know we've kind of got into  
11 this issue-by-issue analysis, which has wound up becoming  
12 a negotiation in the past, and I -- I don't think it's  
13 been helpful to anybody.

14           CHAIRMAN IMBRECHT: Okay. Well, let's hear  
15 general comments from the applicant first, and then we'll  
16 see where we are.

17           Mr. Gardner.

18           MR. GARDNER: Thank you, Mr. Chairman. Mike  
19 Gardner representing the applicant.

20           If I might, I'd like to start with the response  
21 to Commissioner Gandara's comment. While I agree that  
22 voting the staff's list of deficiencies as they perceive  
23 them up or down is certainly efficient, I don't think it  
24 is fair to the applicant.

25           Your regulations specify that if the Commission

1 rejects an application that the Commission will specify  
2 a list of inadequacies. I believe the Commission owes  
3 an applicant some thought as to everything on that list,  
4 rather than just taking staff's word for it, any more than  
5 you should just take the applicant's word that it's ade-  
6 quate.

7 I think staff has identified their list as they  
8 see it. We have, through a series of workshops and meetings  
9 with staff and, as they pointed out, additional submittals,  
10 substantially reduced the list of inadequacies as staff  
11 views it.

12 There are I think three areas that I would par-  
13 ticularly like to bring to your attention today. The first  
14 is do the -- in a simple order, the issue of need. The  
15 only thing that staff is asking for from the applicant  
16 that has not been provided is a copy of the power purchase  
17 contract.

18 Because the Commission is scheduled to consider  
19 in another siting case whether power purchase contracts  
20 do in fact have to be provided to allow staff to conduct  
21 its need analysis on the 27th, we would ask that that be  
22 stricken from this list, and we will abide by the  
23 Commission's decision in that other case.

24 If the Commission decides that contracts are  
25 in fact required, we will submit the contract. The contract

1 does exist. It can be provided. It can be put in the  
2 mail within a day of the Commission's decision. That is  
3 scheduled for the 27th, so we would ask you not to consider  
4 that data adequacy in this case, but make your decision  
5 where you do have the opportunity to consider the broad  
6 issue of the necessity for release of what applicants tend  
7 to view as private documents, and we will abide by the  
8 Commission's decision on that.

9 I think the second major area of concern to us  
10 is obviously the biological surveys that staff believes  
11 need to be conducted.

12 As staff pointed out, that would in effect delay  
13 starting consideration of this application until sometime  
14 mid-next year.

15 I would like to give you just a little bit of  
16 history on where we sit with the surveys that have been  
17 conducted to date. We did do a spring survey of the plant  
18 site itself. That is the only part of the facility where  
19 we do not have a great deal of flexibility in where  
20 physically project facilities will be located. We know  
21 precisely what is there. We know that the species of con-  
22 cern are in fact there.

23 We have done surveys this summer of the -- summer  
24 and fall of the transmission line, and I think there really  
25 are two -- two areas where there is some concern on ths

1 transmission line. We have identified that in fact there  
2 are kit fox, a protected species, along the transmission  
3 line. No one disputes that.

4 We believe that there are blunt-nosed leopard  
5 lizards, another protected species, along the transmission  
6 line. That is a species that can only be identified during  
7 the periods of the year when it is out and active. That  
8 tends to be spring and summer. Although we did not find  
9 any blunt-nosed leopard lizards, we believe in fact they  
10 are there, and we believe that, because we propose to  
11 parallel an existing transmission line, we propose to use  
12 the access road for that existing transmission line, that  
13 there will not be impacts to the leopard lizard.

14 Apparently leopard lizards occupy a burrow  
15 in the ground. There are some distinctive characteristics  
16 to those burrows, so that a -- a trained person can iden-  
17 tify which burrows are in fact occupied by leopard  
18 lizards.

19 We believe that we can locate the transmission  
20 towers and the stub access roads from the existing access  
21 road over to the new access road site in such a manner  
22 so as to avoid impacting the leopard lizard burrows.

23 There also are some annual plant species of con-  
24 cern. Those can only be found in the springtime because  
25 they have died and blown away or been eaten by grazing

1 cattle, or otherwise become unidentifiable.

2 We agree that probably some of those plants also  
3 exist along the transmission line route, and again we  
4 believe that we can site the transmission towers and the  
5 access roads such that none of the plants will be physically  
6 destroyed.

7 There is also a concern about the seeds from  
8 the plants. If you destroy the seeds, then you prevent  
9 the plant obviously from coming up next year.

10 Really the areas of concern in biology are with  
11 somewhat mobile species. We have the -- the kit fox, an  
12 animal that does move around. It occupies a series of  
13 burrows. It does not necessarily stay in a single burrow  
14 semi-indefinitely. It can abandon a burrow for a period  
15 of time and then come back to it. Again, a kit fox burrow  
16 is something that is, to a person with the proper training,  
17 fairly readily identifiable. We believe that we can avoid  
18 direct impacts to kit fox burrows on the transmission line.

19 It is not so significant where precisely the  
20 kit fox or the blunt-nosed leopard lizard or the various  
21 annual plants are today, because that is probably not where  
22 they will be when we start construction. What we're  
23 worried about is where are they when we start construction,  
24 so that we can avoid an impact to the species, which is,  
25 after all, what everybody really wants to try to achieve.

1           We do plan to do the spring survey to better  
2 identify where some of the species that we have not yet  
3 been able to tie down exactly are. We will do those this  
4 spring. Again, I don't think that from a species protec-  
5 tion viewpoint that probably that is adequate. What you  
6 need is a survey just prior to construction.. For plants'  
7 and animals that can only be identified in the springtime,  
8 it has to be the spring season just prior to construction.  
9 For other plants and animals that can be identified virtu-  
10 ally year-round, it could be even closer to the start of  
11 construction than the previous spring.

12           So, we -- we disagree with staff that it is neces-  
13 sary to do additional surveys before we can even begin  
14 the process. It's essentially a requirement to waste time  
15 and effort if you impose that on us. You will delay the  
16 filing, and it will not give any better protection to the  
17 species, because where they are this spring is not where  
18 they will be when we start construction.

19           We are in full agreement that the species need  
20 to be protected. What we really think is appropriate is  
21 to develop, during the course of your regulatory process,  
22 a viable mitigation program to protect those species.  
23 That's what we would like to do.

24           In the area of structural engineering, as staff  
25 pointed out, they have not had an opportunity to review

1 our filing of yesterday. I certainly cannot blame them  
2 for that. We believe that that filing will alleviate the  
3 staff's concerns sufficiently to allow them to recommend  
4 that the area of structural engineering is -- is now ade-  
5 quate to begin the proceeding.

6 Health and air quality are basically related.  
7 We think that we have provided again the information the  
8 staff was looking for. They simply have not had the oppor-  
9 tunity to look at yesterday's filing.

10 The transmission system information is one that  
11 I think you all are getting to be quite familiar with.  
12 It's a difficulty in getting from the serving utility  
13 responses to the questions that the Commission staff would  
14 like to have answered.

15 In your action on the Sander AFC, I believe a  
16 month ago, you indicated, as I heard it, that an agreement  
17 between the applicant and the serving utility that speci-  
18 fies what data the utility will provide, in what time frame,  
19 could as a minimum serve as the data adequacy level.

20 We would like some clarification of what was  
21 meant by that. We think we could provide that kind of  
22 agreement.

23 CHAIRMAN IMBRECHT: Do you think that's an  
24 analogous situation, Mr. Gardner, to the --

25 MR. GARDNER: Yes, it is. The applicant has

1 made two requests of Southern California Edison Company  
2 for responses to the questions that staff has asked.  
3 There was a response from Edison that addressed some of  
4 the questions staff asked for, or staff had asked. That  
5 was docketed, and it did take care of some of staff's con-  
6 cerns, certainly not all.

7 The applicant has not had a response from Edison  
8 on the other requests, and as soon as I finish all this  
9 I'll put on my Edison hat and give you an answer.

10 CHAIRMAN IMBRECHT: Well, do you mail the letter  
11 by handing it from your left and to your right hand, or  
12 what?

13 MR. GARDNER: I --

14 CHAIRMAN IMBRECHT: I -- I guess I'm a little  
15 skeptical about why we shouldn't pierce the corporate veil,  
16 if you will, just a tad on this one.

17 MR. GARDNER: Okay. I --

18 CHAIRMAN IMBRECHT: I don't -- I don't see the  
19 two as really analogous situations.

20 MR. GARDNER: I can give you two answers, or  
21 two pieces of the same answer.

22 I right now am representing the applicant. As  
23 you know, I normally or other times represent the Edison  
24 Company. Just so everybody is -- is perfectly clear on  
25 this, my travel expenses and my salary are being paid for

1 by the applicant in this proceeding today. It is not  
2 Southern California Edison ratepayer money.

3 On the Edison side, there is an Edison subsidiary,  
4 the Southern Sierra Energy Company, a wholly-owned but  
5 legally-separate entity from the Edison Company, which  
6 is a 50 percent owner of this project. I think we have  
7 made that clear in the filing of responses to data requests.

8 Edison as an entity is not and does not wish  
9 to be a participant in this proceeding itself. I --

10 (Laughter.)

11 CHAIRMAN IMBRECHT: Pardon me. I'm very sorry.  
12 That was not responding to anything you said, Mr. Gardner.  
13 It was a rhetorical suggestion from my seat-mate here,  
14 but --

15 MR. GARDNER: Okay. I don't know how better  
16 to answer you, Mr. Chairman.

17 CHAIRMAN IMBRECHT: I frankly -- I mean I appreci-  
18 ate all of those -- those technicalities, et cetera. I  
19 mean the bottom line is Edison is paying half your salary  
20 today since they are half of the applicant; right? And  
21 it just seems to me that there is a very different situ-  
22 ation that exists where you've got a utility that is in  
23 a position to provide that information, and it is a major  
24 player as an applicant, an independent developer.

25 I frankly don't find that to be an adequate

1 excuse, if you will, as to why this information can't be  
2 provided. In fact, it ought to facilitate, rather than  
3 impede, whereas with the Sander situation it's a very  
4 different circumstance, it seems to me.

5 MR. GARDNER: Well, yes and no, Mr. Chairman.  
6 I think there is a real issue here which I --

7 CHAIRMAN IMBRECHT: You're asking us in essence  
8 to ignore the reality of the situation, it seems to me,  
9 and I -- and I personally am not prepared to do that.

10 MR. GARDNER: Edison is extremely concerned that  
11 they do everything possible to treat all qualifying facili-  
12 ties equitable and fairly.

13 As you know, there are cases before this  
14 Commission in the Edison service area in which Edison is  
15 not a participant through a subsidiary or otherwise, and  
16 there are cases where Edison through a subsidiary is a  
17 participant.

18 It simply wouldn't be fair if Edison played  
19 favorites for those where there is any kind of equity owner-  
20 ship, and I think the company is being extremely careful  
21 not to do that.

22 There's some real questions, Mr. Chairman, as  
23 to how the interface between this Commission and the Public  
24 Utilities Commission on transmission issues need to be  
25 dealt with. I have not reviewed it. I understand that

1 there was some correspondence between Commissioner Gandara  
2 and PUC President Vial on another case before you.

3 As I understand it, Mr. Vial indicated that he  
4 felt there were some transmission issues that were covered  
5 by a recent PUC ruling which this Commission shouldn't  
6 worry about. I don't think I can say more about that with-  
7 out having reviewed the actual documents.

8 I do know that there is a recent PUC order indi-  
9 cating how the PUC believes any modifications to the  
10 utility system beyond the first point of interconnection  
11 ought to be treated. Basically, it says those are a system  
12 upgrade, and that is a ratepayer expense.

13 I think your staff has some disagreements with  
14 that, but nonetheless that is what the PUC has ruled.

15 We have no argument whatsoever that this  
16 Commission has responsibility under CEQA to look at the  
17 environmental effects of any modifications to a utility's  
18 transmission system beyond the first point of interconnec-  
19 tion caused by a qualifying facility. We don't dispute  
20 that at all.

21 Edison I believe has indicated in this project  
22 that there will not have to be any modifications to their  
23 system beyond the first point of interconnection. Some  
24 of staff's questions go to proving that.

25 I think Edison has some reticence to justifying

1 their views of their own transmission system to the Energy  
2 Commission staff. I think that's where some of it comes  
3 from. It's not limited to this case.

4 I think it's an issue, Mr. Chairman, that perhaps  
5 the Commission needs to deal with in something of a generic  
6 sense. I believe that there are similar views in at least  
7 one other utility in California. I'm not sure about others,  
8 but it does affect all of the cases where you have a quali-  
9 fying facility.

10 CHAIRMAN IMBRECHT: Well, let me see if I under-  
11 stand that last one. So you are in essence telling us  
12 that you don't believe that we have a responsibility to  
13 look at the impact upon system reliability by virtue of  
14 inclusion of a qualifying facility in your system. Is  
15 that the bottom line?

16 MR. GARDNER: I don't think it's real clear,  
17 Mr. Chairman. Certainly you can -- I can read the Warren-  
18 Alquist Act to say that you certainly can do that.

19 CHAIRMAN IMBRECHT: Do you think there's a public  
20 policy reason why we should?

21 MR. GARDNER: I think if the PUC is doing it,  
22 this Commission should not do the same thing.

23 CHAIRMAN IMBRECHT: In what format or proceeding  
24 does the PUC do that? By approving a standard offer con-  
25 tract formula?

1 MR. GARDNER: I think that's a portion of it.  
2 It's been dealt with in other portions of the OIR-2 proceed-  
3 ing. Perhaps Mr. Foley could assist us by naming the  
4 recent PUC order dealing with the -- the transmission sys-  
5 tem. I'm sorry, I cannot remember the -- the order number.

6 MR. FOLEY: Well, I'm afraid I can't give you  
7 the order number, Mr. Gardner. There has been a PUC deci-  
8 sion on the subject, although my recollection is that it  
9 dealt only with PGandE.

10 MR. GARDNER: It was my understanding, Mr. Foley,  
11 that it was not limited to PGandE. I have not reviewed  
12 the filing itself, though.

13 MR. FOLEY: It could be. I'm not -- we have  
14 had two investigations in process, one dealing with the  
15 transmission line bottlenecks and problems of PGandE, and  
16 another one that was I believe generic, and it's possible  
17 t order that you are speaking to was issued in the generic  
18 one, but I'm -- I'm not sure. I can check if it's impor-  
19 tant.

20 CHAIRMAN IMBRECHT: What kind of process does  
21 that contemplate, Mr. Gardner, in your view, as to anybody  
22 taking a look at these issues, vis-a-vis a specific  
23 facility?

24 MR. GARDNER: Any time a utility regulated by  
25 the Public Utilities Commission wants to build a

1 transmission facility of 200 kv or larger, they must file  
2 an application before the Public Utilities Commission.  
3 It's a GO-131 application.

4 I think for modifications, system upgrades, that  
5 is the place that the State should look at overall reli-  
6 ability. If the utility tells this Commission that its  
7 system can handle the power output of a facility without  
8 modifying their transmission system, I see no reason that  
9 this Commission should attempt to second-guess them or  
10 that the Commission staff, which certainly has enough work  
11 to do as it is, needs to try to get involved in doing any  
12 kind of detailed analysis of whether the utility is correct  
13 in interpreting its own system or not.

14 COMMISSIONER GANDARA: Mr. Gardner, one problem  
15 here is that if you proceed that way, I mean we're talking  
16 about possible addition in this area of cogeneration  
17 facilities around 1200 megawatts, sometimes as much as  
18 2100 megawatts, and I have yet to hear any suggestions  
19 from any utility that in fact that the transmission system  
20 is inadequate to handle that, and we go on a case-by-case  
21 basis like this without looking at this issue.

22 There are one or two things that are possibili-  
23 ties. One, that in fact the transmission system is not  
24 adequate and needs to be reviewed. The second thing is  
25 that it is, and you overbuilt it or oversized it, and

1 somebody has been paying for that for years and years,  
2 and there is a responsibility, it seems to me, on the  
3 part of this Commission, to make a determination as to which  
4 one has been the case.

5 In the case of the latter one, certainly then  
6 there's no problem with system integration, but I think  
7 there's an issue, then, with respect to some of the repre-  
8 sentations that are made on many other aspects of the  
9 application. Okay?

10 With respect to the former, if that's the case,  
11 then we've got a problem, and we just can't keep on adding  
12 plant by plant pretending there's no transmission-wide  
13 problem, so I mean I -- I think that the idea that all  
14 we need to do is take the utility's assurances that in  
15 fact that's okay, then we'll be okay. It's something that  
16 I think would forego the responsibilities of this  
17 Commission.

18 MR. GARDNER: I guess I would ask how an appli-  
19 cant, even though a portion of that applicant may be a  
20 subsidiary utility, can make the utility answer a question  
21 that it doesn't want to answer, when the utility is not  
22 a party to the proceeding.

23 I mean strictly as the applicant, how can we  
24 get the information that your staff is asking for?

25 COMMISSIONER GANDARA: That's an interesting

1 question if you were -- half of you were not the same as  
2 the utility. I mean, now, that would present a different  
3 case, as the Chairman has indicated.

4 CHAIRMAN IMBRECHT: Completely different.

5 COMMISSIONER GANDARA: But it seems to me that  
6 because half of you is the utility, you may have a respon-  
7 sibility beyond that which another applicant could say  
8 they have done their best and they can do no further. I  
9 don't think that you can say that you have done your best  
10 and you can do no further when there is a financial  
11 interest of half of your applicant in this proceeding.

12 MR. GARDNER: It is, however, a separate and  
13 distinct company. You're right, it is wholly-owned --

14 CHAIRMAN IMBRECHT: Let me ask you a question.  
15 Let me ask you a question, Mr. Gardner.

16 If the Edison Company itself were the proponent  
17 of this project, do you feel that there would be an adequate  
18 justification for the Commission to ask for this informa-  
19 tion?

20 MR. GARDNER: I think I might still have some  
21 difficulty with the level of proof that the staff is asking  
22 for.

23 CHAIRMAN IMBRECHT: All right.

24 MR. GARDNER: The staff is asking for things  
25 that --

1           CHAIRMAN IMBRECHT: But in terms of general issue,  
2 though, the general issue of asking for this information,  
3 and --

4           MR. GARDNER: No. And I don't think -- I --

5           CHAIRMAN IMBRECHT: -- and have we done this  
6 in the past when Edison has been an applicant?

7           MR. GARDNER: I don't think so before this  
8 Commission, Mr. Chairman, but I --

9           CHAIRMAN IMBRECHT: Well, let me put it this  
10 way.

11          MR. GARDNER: Yeah.

12          CHAIRMAN IMBRECHT: With respect to other utili-  
13 ties, I know we have.

14          MR. GARDNER: Okay.

15          CHAIRMAN IMBRECHT: And I guess what I would  
16 posit to you is that in essence, if we were to waive that  
17 under these circumstances, we would be inviting, it seems  
18 to me, people who try to avoid that burden by setting up  
19 subsidiary companies, the thing that caused the chuckle  
20 from me, and the question about the holding company diver-  
21 sification issues that the PUC is looking at, and I mean  
22 in essence inviting more spin-offs of that nature to in  
23 essence circumvent what would be a burden imposed upon  
24 the utility.

25                 I am not terribly persuaded by this line of

1 reasoning, I must tell you.

2 MR. GARDNER: No, I think you're right, that  
3 you have the authority and the responsibility to ask whether  
4 the transmission system is able to take the facility.  
5 Where I think the line should be drawn is in the level  
6 of the investigation of the response.

7 The utility operates the system, has operated  
8 the system for a hundred years. This Commission, jointly  
9 with the Public Utilities Commission, did a substantial  
10 investigation of the overall reliability of power genera-  
11 tion and delivery systems not more than a couple of years  
12 ago and concluded that generally the systems are quite  
13 reliable.

14 At some point I think --

15 CHAIRMAN IMBRECHT: Do you believe that the  
16 burgeoning number of qualifying facilities, small and large,  
17 suggests any change in circumstances or facts that may  
18 suggest a reconsideration of some of those concerns?

19 MR. GARDNER: Really, I don't think so,  
20 Mr. Chairman, because this Commission is going to approve  
21 only so many megawatts, no matter where they come from.  
22 Now, demand is -- is whatever it is, and facilities will  
23 be built to meet that demand. Whether they are built by  
24 qualifying facilities or the utilities doesn't make any  
25 difference.

1           CHAIRMAN IMBRECHT: But the bottom line is you  
2 don't have control over where all the facilities are being  
3 built anymore. It's an entirely new ball game, it's a  
4 new world, and I must tell you that when you wear your  
5 other hat or at least other representatives of the Edison  
6 Company have expressed grave concerns to me about those  
7 very issues.

8           The fact that you must sign a contract with a  
9 qualifying facility doesn't -- doesn't allow you to dictate  
10 along which line, et cetera. You have a limited amount  
11 of control over the whole issue of dispatchability, et  
12 cetera, also has raised a lot of quesitons from other repre-  
13 sentatives of the Edison Company who have spoken to me  
14 about these concerns.

15           MR. GARDNER: I know that you've heard those.  
16 I don't believe, Mr. Chairman, that you have heard any  
17 complaints about transmission system from the Edison Company,  
18 though.

19           CHAIRMAN IMBRECHT: Okay. Commissioner Commons.

20           COMMISSIONER COMMONS: Yes. Mr. Chairman, I  
21 would like to move the staff recommendation with the follow-  
22 ing modifications.

23           CHAIRMAN IMBRECHT: All right. Fine.

24           COMMISSIONER COMMONS: Deletion of the section  
25

1 on need, 1704(a)(2), specifically, a copy of the power  
2 purchase agreement, and deletion of biology, Appendix E,  
3 I-1 and Appendix B, I-4.

4 COMMISSIONER NOTEWARE: I like that. I would  
5 second that motion.

6 CHAIRMAN IMBRECHT: Seconded by Commissioner  
7 Noteware. The motion is properly before us, and I frankly  
8 was headed in that general direction.

9 As I understood you correctly, and I just want  
10 to clarify this for the benefit of everyone, your general  
11 viewpoint is that you have submitted sufficient information  
12 to satisfy the staff's concerns on issues such as health,  
13 air quality, structural --

14 MR. GARDNER: Yes. I think --

15 CHAIRMAN IMBRECHT: -- structural engineering,  
16 and plant electrical. Is that correct?

17 MR. GARDNER: Yes. I think the only areas --

18 CHAIRMAN IMBRECHT: So if we were to adopt the  
19 list, then -- and if you satisfy those concerns, there  
20 should not be a --

21 MR. GARDNER: Yeah. I think those concerns would  
22 be taken care of. It would still leave us with the --

23 CHAIRMAN IMBRECHT: What's outstanding --

24 MR. GARDNER: -- the transmission question.

25 CHAIRMAN IMBRECHT: And -- okay. I understand.

1 That's one we've just been debating. I'm not frankly per-  
2 suaded by the debates, to be honest with you. I don't  
3 know how the other members of the Commission feel, but  
4 we'll move on that point.

5 Does anyone else wish to be heard? Mr. Smith?  
6 Mr. Newhouse?

7 MR. NEWHOUSE: Yes. If the staff may comment  
8 on that motion, I believe that the staff would be willing  
9 to, in terms of the contract, see what the Commission's  
10 full ruling is on the Sycamore case.

11 However, in the area of biology, it presents  
12 a substantial problem for us, and we suspect also for the  
13 Committee that will be assigned to this case, that we would  
14 not be able to guarantee that we could do our analysis  
15 on a timely basis in the project.

16 Again, what we are looking toward in terms of  
17 their commitments is data coming from the applicant in  
18 the area of biology, roughly in June or July. That would  
19 be the time at which staff would be submitting its FSA,  
20 if we are going on this schedule, and again we would only  
21 see delay in that area, which could be a fairly significant  
22 area, in terms of the other agencies involved as well,  
23 U.S. Fisheries and Wildlife Service, and the Department  
24 of Fish and Game.

25 One of the things that we would suggest might

1 be considered in the area of biology is that, while a delay  
2 in the case would not have to take place until June or  
3 July, for example, if we knew that we could get that infor-  
4 mation during the discovery period, which would be in the  
5 first three months of the case, we might have a different  
6 approach, again, provided all the other information was  
7 there.

8           An example of that might be again, if the infor-  
9 mation was going to come in -- if the application, excuse  
10 me, was, say, filed February or March, when we knew in  
11 the first two months or three months of the process we  
12 will be getting that data, you might be in a different  
13 situation in terms of staff being able to do a timely  
14 analysis in the case.

15           Along with that, if you were to go ahead with  
16 that approach, staff would suggest that the applicant have  
17 workshops, or we have workshops with the applicant, to  
18 insure that the methodology they used in their surveys  
19 and the approach they used in their surveys would in fact  
20 make those surveys complete to the extent that we would  
21 not have to then review their analysis that they have sub-  
22 mitted and require additional data requests in the process.

23           CHAIRMAN IMBRECHT: That's acceptable to you,  
24 I assume?

25           MR. GARDNER: We will be glad to work with the

1 staff in the surveys.

2 CHAIRMAN IMBRECHT: I think -- I think it would  
3 also --

4 MR. GARDNER: I'm sorry.

5 CHAIRMAN IMBRECHT: -- be almost a stipulated  
6 point, that if in the event that there is a problem in  
7 terms of timely submittal of the biology data at that  
8 point, that it's almost inevitably going to cause a delay  
9 in the case, and --

10 MR. GARDNER: I think, Mr. Chairman, my only  
11 response to that would be staff I think is looking at their  
12 analysis telling you -- or telling the Committee and ulti-  
13 mately the full Commission, that there are precisely 14  
14 leopard lizard burrows and 19 kit fox borrows, of which  
15 seven appear to be presently or recently active.

16 I don't think that's what the Commission needs  
17 to worry about. What the Commission needs to worry about  
18 is what is the mitigation plan that is going to prevent  
19 impacts to the blunt-nosed leopard lizards and kit foxes,  
20 regardless of whether they are still in the same spot as  
21 they were this coming spring.

22 CHAIRMAN IMBRECHT: Okay. Does anyone else wish  
23 to be heard on this item?

24 MR. FAY: Mr. Chairman --

25 CHAIRMAN IMBRECHT: Yes.

1           MR. FAY: Just one more comment from staff. I  
2 think it's very important that the Commission appreciate  
3 that what we're dealing with here are federally protected  
4 species, and the -- since they are listed species, if the  
5 record shows that there is likely to be any impact on these,  
6 there may be no mitigation for some of these impacts, and  
7 that would completely jeopardize the project, or possibly  
8 cause a major redesign of the project.

9           To move forward as the applicant proposes takes  
10 a great risk that at some very late point in the process,  
11 both in our process and presumably in their continuing  
12 design process, there would be required by federal law  
13 a radical change.

14           So our position is that this is information that  
15 needs to be learned at the beginning of the licensing  
16 process, not at the end.

17           MR. NEWHOUSE: I think, if I may add, without  
18 belaboring the point --

19           CHAIRMAN IMBRECHT: Um-hum.

20           MR. NEWHOUSE: -- we, too, agree with the  
21 applicant that we would like to have mitigation plans and  
22 develop those through the process, but we clearly cannot  
23 do that if we don't know what exists in some detail to  
24 be able to work with the applicant and the agencies  
25 involved to develop those mitigation plans during the

1 process and be timely within our regulations.

2 CHAIRMAN IMBRECHT: Commissioner Commons.

3 COMMISSIONER COMMONS: Yes. The reason I made  
4 the motion, I think the applicant is aware of the risk  
5 concerning this particular item and is willing to take  
6 that risk.

7 I don't think it's appropriate for this  
8 Commission to, where you have only an opportunity once  
9 a year to conduct a survey, to hold an applicant in terms  
10 of going forward waiting for that survey. At the same time  
11 the applicant is aware of the risk, and I think it's an  
12 item that the to-be-assigned committee can appropriately  
13 consider and handle.

14 CHAIRMAN IMBRECHT: I agree with that assessment.  
15 Commissioner Gandara?

16 COMMISSIONER GANDARA: I might make a -- just  
17 a comment. One, with respect to the motion, the motion  
18 with respect to the need issue, while it has a good intent,  
19 I think it fails to recognize what will be before the  
20 Commission at the next business meeting.

21 What will be before the Commission is that the  
22 Commission can vote to -- affirmatively to sustain the  
23 Presiding Member's ruling. The Commission can vote affir-  
24 matively to overrule the Presiding Member's ruling, or  
25 the Commission can choose to do nothing, in which case

1 the Presiding Member's ruling will be upheld.

2           The relevance that has to the way the motion  
3 was stated is that the -- it was stated that the applicant  
4 will abide by the decision of the Commission. If it con-  
5 templates an affirmative decision, then I think that places  
6 a greater burden on the Commission than it does on the  
7 applicant to prove its point.

8           The better phrasing of the -- of the motion would  
9 be that the information will be considered deficient and  
10 required unless the Commission decides otherwise.

11           Okay. The -- well, with that change, with that  
12 explanation, notwithstanding whether that change is made  
13 or not, I will still vote against the motion, and the reason  
14 I will vote against the motion is because we have here  
15 a clear staff determination of what is needed to make this  
16 application adequate.

17           And I would note that half of this applicant  
18 is also a half of the applicant in another proceeding in  
19 this same area, and again without prejudice to the appli-  
20 cant, I would just advise the future committee, as you  
21 are contemplating who is going to volunterr and step for-  
22 ward, that this half of this applicant who is a project  
23 manager, who is staffed and provided by Edison employees,  
24 regardless of who they are paid by, that in fact it's  
25 proved to be most difficult for the committee presiding

1 over the other case, and difficult in exactly the same  
2 areas that are before you today.

3           So that let no committee here be said not to  
4 have been forewarned that what you are asking for is an  
5 assuredness of a late decision, because the -- and an  
6 unwillingness for the applicant to acknowledge its respon-  
7 sibilities in -- in trying to adhere to a schedule, and  
8 I say that without any prejudice toward the applicant in  
9 the other case, but simply it's a statement of fact.

10           And what will be before you at the next business  
11 meeting is again an example of that. It's -- certainly  
12 I recognize the complete exercise of the rights of the  
13 applicant, but somehow the contemplation of a 12-month  
14 schedule does not include the contemplation of the exercise  
15 of each one of its rights in all the aspects of what is  
16 considered to be data adequacy.

17           MR. FAY: Staff has a question of clarification  
18 regarding Commissioner Commons' motion. The Sycamore --  
19 the motion in the Sycamore case which was referred to will,  
20 if the Committee is upheld, require production of a con-  
21 tract for power purchase in the post hearing phase of --  
22 or during the hearings of the Sycamore case.

23           What staff has recommended to the Commission  
24 is that the power purchase contract for the Midway-Sunset  
25 case be delivered before the AFC is accepted as filed.

1 We don't want any misunderstanding that if the applicant  
2 agrees to, quote, abide by the Sycamore decision, that  
3 they decide in the 11th month of the Midway-Sunset case  
4 to deliver the contract.

5 CHAIRMAN IMBRECHT: Mr. Gardner, do you want  
6 to clarify your intention in that regard?

7 COMMISSIONER GANDARA: There's -- let me clarify  
8 something else, Mr. Chairman, before you respond,  
9 Mr. Gardner.

10 The issue before the Commission again is not  
11 simply the one of the power purchase contract for need,  
12 as has been characterized. There are two documents at  
13 stake. One is the interconnection agreement, and there's  
14 some confusion as to whether the -- there are two separate  
15 documents or whether the interconnection agreement is an  
16 appendix to the power purchase contract.

17 That is relevant, because the issue is not simply  
18 one of need. It's also one of the transmission system  
19 analyses. Okay.

20 CHAIRMAN IMBRECHT: Okay. Mr. Gardner.

21 MR. GARDNER: Mr. Chairman, the applicant would  
22 provide the power purchase agreement sufficiently -- well,  
23 we would provide it within, say -- yeah, two weeks of the  
24 Commission's decision, and we would recognize that if the  
25 Commission did not act that is in effect a decision.

1           CHAIRMAN IMBRECHT: Fine. We'll take that as  
2 a stipulation, that the applicant -- and assuming the  
3 motion is successful -- will abide with whatever the dis-  
4 position is of the power purchase agreement issue in the  
5 Sycamore case, and will provide in a timely fashion, i.e.,  
6 at the outset of this proceeding, and for the record I'm  
7 going to note that Mr. Gardner is nodding in the assent,  
8 and if you want to confirm that --

9           MR. GARDNER: That is correct.

10          CHAIRMAN IMBRECHT: -- you agree with that. Thank  
11 you.

12          All right. Anyone else wish to be heard on this  
13 item?

14          Okay. Further discussion by members of the  
15 Commission? I assume that contemplates and takes care  
16 of the problem you had with respect to the need issue,  
17 and I also understand your perspective generally, so I'll  
18 ask the Secretary to please call the roll.

19          MS. GERVAIS: Commissioner Commons?

20          COMMISSIONER COMMONS: Aye.

21          MS. GERVAIS: Commissioner Gandara?

22          COMMISSIONER GANDARA: No.

23          MS. GERVAIS: Commissioner Noteware?

24          COMMISSIONER NOTEWARE: Aye.

25          MS. GERVAIS: Vice-Chair Crowley?

1 COMMISSIONER CROWLEY: Aye.

2 MS. GERVAIS: Chairman Imbrecht?

3 CHAIRMAN IMBRECHT: Aye. "Aye's" four, "No's"  
4 one. The motion is carried. The application is found  
5 to be deficient, and the list of deficiencies adopted by  
6 the Commission as specified in the motion are those which  
7 will be the required information for the applicant to pro-  
8 vide, and it will relate back -- the date of acceptance  
9 will relate back to the last date upon which that informa-  
10 tion is provided.

11 MR. GARDNER: Thank you, Mr. Chairman, and  
12 Commissioners.

13 CHAIRMAN IMBRECHT: Okay. And with that, Item 7  
14 is moot until that occurs, and so there is no reason to  
15 make a Committee assignment until after the application  
16 has been accepted.

17 Item 8 is Commission consideration and possible  
18 adoption -- just a moment, excuse me.

19 (Short pause.)

20 CHAIRMAN IMBRECHT: I think we can hear the  
21 Gilroy AFC before the luncheon recess, and so I'm going  
22 to exercise the prerogative of the Chair and turn to Item  
23 No. 12, which is Commission hearing to receive comments  
24 and recommendations from the parties and from interested  
25 agencies and members of the public on the Proposed Decision

1 for the Gilroy Application for Certification, and to con-  
2 sider adopting the proposed decision as the final decision,  
3 including possible alternative language offered as comments  
4 on the Proposed Decision.

5 Commissioner Gandara.

6 COMMISSIONER GANDARA: Thank you very much,  
7 Mr. Chairman.

8 What is scheduled before you today is the pro-  
9 posed Committee decision on the Gilroy case. Let me indi-  
10 cate that a hearing was held as late as yesterday to  
11 receive any final comments on the draft decision. The  
12 results of that hearing is an errata to the Gilroy AFC  
13 proposed decision that should be before you.

14 That errata contains eight items, and you can  
15 see that those items are mainly items having to do with  
16 some editorial corrections and/or clarifications. In all  
17 instances there was agreement between the staff, the  
18 Committee, and the applicant.

19 Suffice it to say --

20 COMMISSIONER COMMONS: I don't think I have those.  
21 Are they in our book?

22 COMMISSIONER GANDARA: Why don't I give you my  
23 copy, Commissioner Commons. I think that to -- to sum-  
24 marize the case for the Commission, this case originally  
25 came before the Commission as a cogeneration case that,

1 because of the timing involved, was the first case subject  
2 to the new ER-5/BR-5 proceeding.

3 The Committee has done its best to implement  
4 elements of that particular proceeding. The Commission  
5 assigned Gilroy to the specified reserved need test, which  
6 is what was in fact applied.

7 The situation in the Northern California area  
8 where this case was -- where this facility was to be sited,  
9 as you may recall, did not have a need for a baseload  
10 facility which it would have operated as as a result during  
11 the proceeding because of the application of the particu-  
12 lar conditions. The applicant undertook a provision which  
13 made the plant to some extent load-following.

14 I mention that to you because in receiving com-  
15 ments from the various sources -- I know that Commissioner  
16 Commons probably will have a comment on that. There has  
17 been no disagreement on the proposed decision, except,  
18 as I indicated before, some reservations by Commissioner  
19 Commons which he may perhaps best explain to you.

20 There were two intervenors in this case. Again,  
21 we received no adverse comments from the proposed decision  
22 from those intervenors. I do not know whether they are  
23 present or not. One was an adjacent food processing  
24 facility, Gentry Foods, and another one was the Air Quality  
25 District, which was not an active intervenor but I think

1 wanted to prseerve its opportunities and did so, but their  
2 concerns were met.

3           The only other aspect of this case that might  
4 be of interest to you, as you know I requested that the  
5 public -- I mean the Hearing Advisor to be available to  
6 brief you on any aspects of the case you might be interested  
7 in.

8           There was an active participation in several  
9 hearings by an interested citizen, and Mr. Hugh Montgomery  
10 and his concerns are noted through -- in the decision.  
11 However, his particular concerns were not accepted by the  
12 Committee, nor were they -- should I say they were rejected  
13 by the staff's analysis.

14           I do not know whether Mr. Montgomery will be  
15 here or not to make any comments in that regard, but I  
16 do note that to you.

17           I believe that really -- that's the essence of  
18 the case. I think what the Committee would request of  
19 you is that you make a decision on this case today, and  
20 that beyond that that you grant the Committee very limited  
21 editorial opportunities in case a page is missing or a  
22 line is missing, and so forth, but nothing that we propose  
23 to change having to do with the substantive matters of  
24 the case.

25           CHAIRMAN IMBRECHT: Thank you.

1           Mr. Thompson, may I inquire, the errata sheet  
2 provided by the Committee, does that encompass the entirety  
3 of the technical issues raised in your filing of -- let  
4 me see what the date is here -- November 3rd?

5           MR. THOMPSON: Yes, Mr. Chairman. Applicant  
6 has reviewed the errara sheet this morning, and we believe  
7 that it encompasses all of our concerns, and makes the  
8 decision complete.

9           CHAIRMAN IMBRECHT: All right. Fine. Then I'm  
10 going to take Commissioner Gandara's presentation as a  
11 motion to adopt the proposed decision.

12           Do I hear a second?

13           COMMISSIONER CROWLEY: Second.

14           CHAIRMAN IMBRECHT: Seconded by Commissioner  
15 Crowley.

16           Is there further discussion? Commissioner Commons,  
17 do you wish to be heard on this, or --

18           COMMISSIONER COMMONS: Mr. Chairman, when the  
19 vote comes, I would like to be recorded as concurring,  
20 but have leave on the question of the load-following to  
21 write a separate concurring opinion, and I don't want to  
22 belabor the Commission with the discussion at the time.

23           CHAIRMAN IMBRECHT: All right. Fine. That's  
24 your prerogative as a member of the Committee to file con-  
25 ccurring or dissenting opinions. There's no problem, and

1 it doesn't require our leave, so --

2 COMMISSIONER GANDARA: Might I ask Commissioner  
3 Commons when the Committee might expect that to incorporate  
4 in the decision and to --

5 CHAIRMAN IMBRECHT: We generally ask for two  
6 weeks?

7 COMMISSIONER COMMONS: That's correct.

8 CHAIRMAN IMBRECHT: Within 14 days of -- I think  
9 that's -- will operate as standard procedure in the future  
10 for either dissents or concurrences.

11 All right. Fine. Does anyone else --  
12 Mr. Thompson, then you are in agreement with the proposed  
13 decision?

14 MR. THOMPSON: Yes, we are.

15 CHAIRMAN IMBRECHT: All right. Anyone else?

16 COMMISSIONER COMMONS: I have one question.

17 CHAIRMAN IMBRECHT: Commissioner Commons.

18 COMMISSIONER COMMONS: What is the number of  
19 gigawatt hours that this project would generate during  
20 the course of a year?

21 MR. THOMPSON: I don't know, Commissioner Commons.  
22 We can put our handle on that. It would change, or the  
23 probability that the number will change substantially year  
24 to year in the first ten years of operation, due to our  
25 load-following agreement with PGandE. I think the record

1 -- somewhere in the record there is a gigawatt-hour number  
2 which reflects a baseload scenario, possibly less a thou-  
3 sand hours of effective curtailment.

4 If it's acceptable, I would like to dig that  
5 out of the voluminous record and relay that to you later.

6 COMMISSIONER COMMONS: That would be fine for  
7 the -- if you do or do not exercise -- PGandE does or  
8 does not exercise their option on the load-following, I  
9 would like to have that information. Thank you.

10 CHAIRMAN IMBRECHT: Okay. Fine. Does anyone  
11 else wish to be heard on this item?

12 Is there objection to a unanimous roll call?

13 Hearing none, "Aye's" five, "No's" none. The  
14 decision is adopted.

15 Congratulations, Commissioner Gandara, and  
16 Mr. Thompson, and others from Gilroy, congratulations as  
17 well.

18 MR. THOMPSON: Thank you very much.

19 Mr. Chairman, I might take two seconds and add  
20 our thanks and gratitude to the Committee and the staff,  
21 and I would like to single out Mr. Darrel Woo and all the  
22 witnesses who worked very, very hard bringing this deci-  
23 sion to your attention here today.

24 The length of the proceeding encompassed a change  
25 in the Electricity Report. There were numerous other changes

1 throughout the proceeding, and I want to bring Gilroy Foods'  
2 appreciation to the attention of this Commission.

3 CHAIRMAN IMBRECHT: Thank you very much. That's  
4 most appreciated, I know the members of our staff, as well  
5 as the Committee members that presided over your case,  
6 very much appreciate that. Thank you.

7 MR. THOMPSON: Thank you.

8 CHAIRMAN IMBRECHT: All right.

9 MR. CHANDLEY: Mr. Chairman, I would just note  
10 that staff is prepared to address the question that was  
11 raised on Item 5, Pacific Thermonetics, at the pleasure  
12 of the Commission.

13 CHAIRMAN IMBRECHT: All right. Fine. Why don't  
14 we return to Item 5, in that case, and I'll ask you to  
15 dispose of that before luncheon.

16 For the record, Item 5 is Consideration and  
17 Possible Action on Pacific Thermonetics' petition for a  
18 hearing on the Commission's likely-to-be-available estimate  
19 for gas-fired cogeneration.

20 MR. CHANDLEY: Mr. Chairman, you asked us to  
21 review the transcript to find out if there is a definitive  
22 answer to the question of whether Crockett was assigned  
23 to unspecified reserved need.

24 The answer is I think there are two possible  
25 interpretations of the transcript. I think it's perfectly

1 understandable that Commissioner Gandara would come to  
2 the conclusion that it was not assigned. It's also, I  
3 believe -- it was my judgment, after having read the  
4 transcript twice on that -- precisely on that issue, that  
5 technically what the Commission did was to assign it to  
6 the unspecified reserved need, with a caveat -- and that's  
7 your word -- with the caveat that they could come back  
8 and challenge LTBA and be assigned at a later date.

9           However, there is other -- there are other  
10 explanations of what the Commission did either before the  
11 motion was adopted and after the motion was adopted, try-  
12 ing to explain what we did, which would support  
13 Commissioner Gandara's view as well.

14           I think where we are is that it -- given the  
15 procedural posture, is that it really doesn't make much  
16 difference, since the matter will be before you, and the  
17 ultimate question to be decided at the next stage is  
18 whether they will or will not be assigned to that.

19           I'm not sure whether it's worth your while to  
20 spend any further time trying to devine what you did. I  
21 mean there are literally a couple of dozen different  
22 references which will line up some on one side, some on  
23 the other, and some of them not clearly either way.

24           I'm hoping not to have to read the transcript  
25 references.

1           CHAIRMAN IMBRECHT: I recall the caveat, and  
2 that's my recollection of the circumstances, that --

3           COMMISSIONER GANDARA: Mr. Chairman --

4           CHAIRMAN IMBRECHT: Commissioner Gandara.

5           COMMISSIONER GANDARA: I think that the main  
6 point is worthwhile to -- to pursue, and that is that,  
7 notwithstanding what was decided, that we can proceed  
8 independently on this issue.

9           But the point I wish to make is the same point  
10 that I made at the time that this issue was before us,  
11 that it was very clear what the actions were that we were  
12 taking, notwithstanding that there can be a different inter-  
13 pretation.

14           But you may recall that I urged the Commission  
15 not to get into the issue of having to issue an order.  
16 Remember, there were various questions regarding the word-  
17 ing, and so forth, because I knew invariably it would  
18 get us to interpretations of the order, which is where  
19 we are.

20           And so I think we can proceed, and I know that  
21 Mr. Chandley made a very sincere effort at trying to devine  
22 the Commission's intention. I know that's a challenge  
23 for anybody, you know.

24           You know, the point that I wish to make here  
25 is that, as we proceed, that we perhaps look back, not

1 at the order or those kinds of documents of somehow  
2 inviolate statements of what the Commission intended or  
3 not, because I think that sometimes, as in the present  
4 case, it's not clear, but that we proceed with what we  
5 think we ought to be doing at that particular moment.

6 It still doesn't leave answered, you know, what  
7 the effect would be of a Commission decision on LTBA,  
8 whether that would supersede all the LTBA discussions  
9 before committees, okay, and whether we -- we should be,  
10 as a matter of due process, consolidating all those LTBA  
11 issues, and then providing all parties an opportunity to  
12 do that, because -- or are we going to restrict the LTBA  
13 determinations solely to this applicant.

14 CHAIRMAN IMBRECHT: Well, each other applicant  
15 has the same prerogative that this applicant has exercised  
16 is the point, and I think we discussed that issue of con-  
17 solidation when we dealt with this matter.

18 Commissioner Commons.

19 COMMISSIONER COMMONS: Yes. Mr. Chairman, I  
20 think there are two issues related to LTBA. The first  
21 issue is what is the appropriate number of LTBA in terms  
22 of our assigning an escrow, and that is the issue that's  
23 being raised in this petition.

24 There's a second issue of LTBA within a siting  
25 case. After you have been assigned a particular escrow,

1 someone can still come in, and it's a rebuttable presump-  
2 tion as to what LTBA is, and I think we should separate  
3 out, at least, in terms of -- that this is only for an  
4 escrow matter that we're discussing the LTBA.

5 CHAIRMAN IMBRECHT: Okay. Well, we have a pro-  
6 posed -- I'm told that there is no objection to in essence  
7 accepting the petition. I don't think any formal action  
8 is required, and I would just indicate that we will notice  
9 this for hearing on the substance at the November 27th  
10 meeting, unless I hear objection from members of the  
11 Commission.

12 COMMISSIONER COMMONS: I object.

13 CHAIRMAN IMBRECHT: Commissioner Commons, state  
14 your objection.

15 COMMISSIONER COMMONS: Yes. We only have I  
16 believe two business meetings between now and the end of  
17 the year, and if we are going to reopen the discussion  
18 of LTBA, my estimate of the time requirement for that hear-  
19 ing would be four hours, and so I would like to request  
20 that we not use a regularly scheduled business meeting  
21 for that item.

22 CHAIRMAN IMBRECHT: Well, I'm not sure that it's  
23 going to take four hours to resolve an LTBA issue revolving  
24 around a single case, but that's something we can deal  
25 with as we take a look at the agenda, and I'm not frankly

1 aware of what the -- at this juncture what the workload  
2 is for the November 27th meeting, and if it's possible  
3 to accommodate it on that day I think we ought to try and  
4 do it on that day. If not, we'll have to schedule a  
5 separate hearing.

6 COMMISSIONER COMMONS: All right.

7 CHAIRMAN IMBRECHT: That's --

8 COMMISSIONER COMMONS: We also have no committee  
9 that is assigned to work with staff in terms of the issues  
10 that need to be raised prior to that time, and I have  
11 a number of issues that I would like staff to address in  
12 terms of coming back to the Commission on the issue.

13 I don't think it's fair to the applicant or other  
14 parties to raise those issues as late as the 27th, and  
15 I would like to ask your direction as to how you would  
16 like me to raise those issues and how you would like to  
17 have the staff proceed, and how you protect other parties  
18 in terms of due process.

19 CHAIRMAN IMBRECHT: I think the appropriate way  
20 is for you to raise that to the Committee.

21 Who is the second member, Commissioner Gandara?  
22 You're the second member on this?

23 Yes. I think that they are the Committee that  
24 has jurisdiction over directing staff relative to this,  
25 and I think you ought to bring it to the Committee's

1 attention. I think that's really the appropriate way to  
2 handle it.

3 COMMISSIONER GANDARA: Well, the --

4 CHAIRMAN IMBRECHT: We all agreed -- we all agree  
5 that the Committees would provide the policy direction  
6 to staff where their jurisdiction is appropriate, and --

7 COMMISSIONER GANDARA: Mr. Chairman?

8 CHAIRMAN IMBRECHT: Yes.

9 COMMISSIONER COMMONS: Well --

10 CHAIRMAN IMBRECHT: Commissioner Gandara.

11 COMMISSIONER GANDARA: If I might, just -- since  
12 the petition is before the full Commission and not before  
13 the Committee, it does seem that it would be appropriate  
14 for any Commissioner to forward --

15 CHAIRMAN IMBRECHT: All right. Fine.

16 COMMISSIONER GANDARA: -- any issues, as long  
17 as it's docketed.

18 CHAIRMAN IMBRECHT: Fine.

19 COMMISSIONER GANDARA: Because I don't -- you  
20 know, I think that to the extent --

21 CHAIRMAN IMBRECHT: That's fair.

22 COMMISSIONER GANDARA: -- that we're dealing  
23 with the issue of the -- of the independent party status,  
24 that the questions that any Commissioner wishes to be  
25 answered that might not be answered from the staff response

1 in our application should be --

2 CHAIRMAN IMBRECHT: That's fair. Why don't you  
3 just simply --

4 COMMISSIONER GANDARA: -- forwarded and docketed.

5 CHAIRMAN IMBRECHT: -- commit to writing a memo-  
6 randum to staff and docket it for appropriate notice to  
7 other parties.

8 COMMISSIONER COMMONS: All right. What I --  
9 what I'll do is, I don't look at this issue as a Crockett  
10 issue. I look at it as an LTBA issue affecting all cases.

11 CHAIRMAN IMBRECHT: I know you do.

12 COMMISSIONER COMMONS: But for purposes of notice,  
13 so everyone will have this -- you have to have some way  
14 of noticing it, do we have a docket for this item coming  
15 before us on the Commission, or should I use the Crockett  
16 docket --

17 CHAIRMAN IMBRECHT: I'd use the Crockett docket.

18 MR. COHN: Mr. Chairman --

19 COMMISSIONER COMMONS: Will be done.

20 CHAIRMAN IMBRECHT: Yes, Mr. Cohn.

21 MR. COHN: As Hearing Officer to the Crockett  
22 Committee, my intent on this item would be to serve notice  
23 that this hearing is going to take place --

24 CHAIRMAN IMBRECHT: Are they moving a house by  
25 the Commission or something?

1 MR. COHN: I'm sorry.

2 CHAIRMAN IMBRECHT: It feels like a train just  
3 went by.

4 COMMISSIONER CROWLEY: You can't feel it.

5 COMMISSIONER COMMONS: Your words are reverbera-  
6 ting in the hall, Steve.

7 CHAIRMAN IMBRECHT: The light rail has not been  
8 installed yet, but --

9 MR. COHN: I'll just speak loudly without a  
10 microphone.

11 It would be my intent to serve notice of this  
12 hearing on not only the parties to the Crockett proceeding,  
13 but to the service list for other siting cases that might  
14 be potentially affected, so that any potentially interested  
15 person would have notice of this hearing, and I intend  
16 to do that, obviously, within the ten-day notice require-  
17 ment.

18 My suggestion would be that, if any Commissioner  
19 wants to add some questions in there that should be answered,  
20 the Committee will decide whether they want to put that  
21 in the notice, and then if it's not incorporated in the  
22 notice that Commissioner can go ahead and write up a  
23 separate request, but I think it should be filed within  
24 -- no later than ten days prior to the hearing.

25 COMMISSIONER COMMONS: Please contact my office

1 tomorrow, if you would, please.

2 CHAIRMAN IMBRECHT: Okay. Thank you very much.  
3 That will take care of this item.

4 We'll see if we can't squeeze a couple more in  
5 here before the luncheon break.

6 COMMISSIONER COMMONS: Do you want to try LTBA  
7 on --

8 CHAIRMAN IMBRECHT: No.

9 COMMISSIONER COMMONS: -- since it's related,  
10 on iBM?

11 CHAIRMAN IMBRECHT: Let's move on to the next  
12 acceptance, over objection.

13 COMMISSIONER COMMONS: What about No. 4? Did  
14 you do No. 4? Did we skip it?

15 COMMISSIONER CROWLEY: We did 4.

16 CHAIRMAN IMBRECHT: Yes. No. 3.

17 COMMISSIONER COMMONS: We did 4?

18 CHAIRMAN IMBRECHT: Yeah, we're -- I'm all --  
19 let's turn to Item No. 9, then, and that's Consideration and  
20 Possible Acceptance of the American 1 Cogeneration Project  
21 Application for Certification.

22 MR. CHAMBERLAIN: Mr. Chairman, did you want  
23 to skip Item 8? I think it's very short. You can --

24 CHAIRMAN IMBRECHT: Oh, I'm sorry. I'd already  
25 crossed -- pardon me.

1           Item 8 is Consideration and Possible Adoption of  
2 Amendments to Power Plant Siting Regulations. This matter  
3 was originally heard on September 18th and subsequently  
4 on October 16th. The proposed amendments which were not  
5 adopted at those meetings will be considered again, either  
6 unchanged or with revisions that are consistent with the  
7 original Notice of Proposed Action.

8           Commissioner Commons, do you want to lead off  
9 on this item?

10           COMMISSIONER COMMONS: I would like to move the  
11 item, Mr. Chairman.

12           CHAIRMAN IMBRECHT: Moved by Commissioner Commons.

13           COMMISSIONER GANDARA: Excuse me. Which item?

14           CHAIRMAN IMBRECHT: Eight.

15           COMMISSIONER CROWLEY: Eight.

16           COMMISSIONER GANDARA: There are two options.

17 If you are moving Option 2, I have no problem.

18           COMMISSIONER COMMONS: Option 2.

19           COMMISSIONER GANDARA: Second it.

20           CHAIRMAN IMBRECHT: Okay. Option 2 is seconded  
21 by Commissioner Gandara.

22           Okay. Fine. Does anyone wish to be heard on  
23 this item?

24           Mr. Heath.

25           MR. HEATH: We have received a letter from the

1 Sierra Club this morning on behalf of the Sierra Club and  
2 -- as well as Friends of Cobb Mountain. They are urging  
3 the Commission to adopt Option No. 2.

4 CHAIRMAN IMBRECHT: okay. Fine. Thank you.

5 Does anyone else wish to be heard on this item?

6 Is there objection to the unanimous roll call?

7 Hearing none, "Aye's" five, "No's" none. The  
8 motion is adopted.

9 The next item is Item 9, Consideration and  
10 Possible Acceptance of the American 1 Cogeneration Project  
11 Application for Certification submitted on September 20,  
12 1985, by Basic American Foods. The proposed facility will  
13 produce steam for use in Basic Foods' processing plant  
14 in Monterey County, and electricity for sale to the Pacific  
15 Gas and Electric. This was continued from October 30th,  
16 and it's frankly appropriate that it comes up on the heels  
17 of the Gilroy case.

18 Mr. Smith.

19 MR. SMITH: Yes, Mr. Chairman --

20 COMMISSIONER GANDARA: Mr. Chairman, point of  
21 information.

22 CHAIRMAN IMBRECHT: Yes.

23 COMMISSIONER GANDARA: I just want to make sure  
24 I have the correct material before me. What I have before  
25 me as Item 9 listed are data deficiencies in the American 1

1 AFC, and then I have material from the October 21st meet-  
2 ing. I don't have any more recent update or staff recom-  
3 mendations. Am I missing something, or --

4 MS. HALL: Most likely not.

5 COMMISSIONER GANDARA: Okay. Then why don't  
6 we proceed.

7 CHAIRMAN IMBRECHT: Okay. Mr. Smith.

8 MR. SMITH: Okay. Valerie Hall and Greg Newhouse  
9 again from the Siting Environmental Division will present  
10 the staff's position.

11 MS. HALL: The American 1 AFC was submitted to  
12 the Commission on September 20th, 1985. It was heard at  
13 the October 30th Business Meeting, at which time the  
14 Commission voted to not accept the application due to  
15 a -- data deficiencies that were included with the back-up  
16 package for that time.

17 The Commissioners requested that the application  
18 be brought back before the next business meeting so that  
19 staff would have a chance to review the latest supplements  
20 to the application that were submitted in a time frame  
21 which did not allow us to review them for the October 30  
22 Business Meeting.

23 So we have now had a chance to review those  
24 supplements, and the staff still feels that the application  
25 has a number of deficiencies, and -- let me see if I can

1 get to the right one here. Excuse me.

2 The application we feel still has data deficien-  
3 cies in the area of transmission safety and nuisance,  
4 plant electrical, transmission engineering, transmission  
5 system evaluation, reliability, health, air quality, and  
6 structural engineering.

7 There are some technical areas which have been  
8 cleared as a result of staff's review of the final supple-  
9 ments. Biological resources is now adequate, land use  
10 is now adequate, engineering geology is now adequate --

11 COMMISSIONER GANDARA: Excuse me, Ms. Hall. You  
12 are modifying the document dated November 13th, Item No. 9?

13 MS. HALL: The document dated November 13th?

14 COMMISSIONER GANDARA: Yes. I have a list of  
15 dated deficiencies. It's -- I have dated deficiencies  
16 in the American 1 AFC. There is a date October 21, 1985.  
17 Above that there is a tab which has been added, Item No. 9,  
18 November 13, 1985.

19 MS. HALL: That's correct.

20 COMMISSIONER GANDARA: And so you just mentioned  
21 -- of the ones you just mentioned, engineering geology  
22 is on that list, which you say is not adequate.

23 MS. HALL: Yes.

24 COMMISSIONER GANDARA: Okay.

25 MS. HALL: Because of the remaining data

1 deficiencies, staff has -- continues to recommend that  
2 the application not be accepted at this time.

3           The applicant and staff are still working on  
4 a lot of the information. There is an area of air quality  
5 with information about the best available control tech-  
6 nologies, which staff feels there is a number of pieces  
7 of information that are missing from the application, and  
8 that is one of our major areas of deficiency.

9           Structural engineering has a number of areas  
10 that we feel still need to be cleared in order to bring  
11 that area up to an adequate area.

12           Transmission safety and -- excuse me -- trans-  
13 mission engineering, I'm sorry, and transmission system  
14 evaluation both have a number of questions which we feel  
15 still need to be answered prior to staff being able to  
16 look at these areas and feel that they are adequate.  
17 There is, in the transmission engineering and transmission  
18 system evaluation area, a lot of information that the  
19 applicant needs to get from the utility, PGandE, prior  
20 to being able to submit the information to us so that we  
21 can look at it and see if that is the information that  
22 we need.

23           The applicant has in fact attempted to get some  
24 of the information from PGandE and has not at this time,  
25 so we do have a similar situation in this application in

1 which there is information that is necessary from the  
2 utility in order to complete the adequacy of this applica-  
3 tion.

4 COMMISSIONER CROWLEY: Do you have any questions  
5 of Ms. Hall?

6 Then does the applicant have comment?

7 MR. THOMPSON: Yes, I do, Commissioner Crowley.

8 Applicant, Basic American Foods and the  
9 American 1 Cogeneration facility, is very disappointed  
10 in the apparent lack of progress that we're making toward  
11 data adequacy.

12 The applicant has spent in excess of a million  
13 dollars to develop the project to date. We seem to be  
14 shooting at a moving target, and the arrows in our quiver  
15 are often owned by PGandE or -- or someone else.

16 At the risk of burdening the Commission with  
17 a process that is a little lengthy, I would ask that the  
18 staff go through the deficiency list that is attached to  
19 today's agenda, and -- because we believe that there are  
20 some that we have agreed among ourselves and the staff  
21 that should come off that list.

22 And I think it is our position that after those  
23 come off the list, and I think reliability is one that  
24 we addressed here two weeks ago that I think should have  
25 come off at that time -- after we have addressed those

1 issues, I think what the Commission will see is that the  
2 four areas that cover transmission line, transmission line  
3 safety and nuisance, plant electrical, transmission  
4 engineering and transmission system evaluation, are almost  
5 entirely dependent upon material that has to be provided  
6 by PGandE.

7 Not only do we have no control over the submis-  
8 sion of this material from PGandE, we have no control over  
9 whether or not it would be deemed to be adequate by the  
10 staff.

11 The other areas that were mentioned, health and  
12 air quality, we believe that the information that the staff  
13 is requesting in these two areas is more properly addressed  
14 in the discovery phase. We believe that air quality issues  
15 involve not only the staff of this Commission but the  
16 Monterey Bay Unified Air Pollution Control District.

17 Determinations of best available control tech-  
18 nology we believe should be looked at in the discovery  
19 phase and, as an aside, we -- we have heard other staff  
20 -- staff members of the Commission tell us the same thing,  
21 so we're a little confused on that one.

22 Structural engineering, you've heard our struc-  
23 tural engineering litany before, and I suspect you've heard  
24 it from other applicants as well. Other than to say that  
25 we are attempting to meet as many of the structural

1 engineering items that we can without spending so much  
2 money that the project becomes infeasible, but that we  
3 think that there are other problems, for instance staffing.  
4 There apparently is one Commission staff member who has  
5 responsibility for structural, and this individual is a  
6 part-time employee who has responsibility for looking at  
7 the myriad number of cases before you, and we think that  
8 that burden is substantially great, that we as applicants  
9 have a great deal of difficulty making any headway in that  
10 area.

11           Anyway, to go back to my original request, if  
12 it pleases the Commission, I would like to have the staff  
13 go through and X out those items that we believe and the  
14 staff believes have been deleted from the list.

15           MS. HALL: I'd be happy to do that, if you'd  
16 like.

17           COMMISSIONER CROWLEY: Ms. Hall, then you are going  
18 to take the document called at the top Item 9 and go through  
19 that?

20           MS. HALL: Yes.

21           COMMISSIONER CROWLEY: Thank you.

22           MS. HALL: The document is noted -- is dated  
23 Deficiencies in the American 1 AFC. On the first page,  
24 transmission line safety and nuisance, there are no correc-  
25 tions to be made.

1           On the second page, plant electrical engineering,  
2 Item 1, which says, "Plesae provide a short-circuit con-  
3 tribution from utility," that may now be stricken.

4           The rest of that page remains as it is.

5           MR. THOMPSON: I believe the engineering geology  
6 is in the bottom of that. I didn't realize you had covered  
7 that before, but if -- maybe to make the record straight,  
8 you ought to --

9           MS. HALL: Engineering geology -- yes, thank you.  
10 Engineering geology is now adequate. There is only one  
11 question for that.

12           COMMISSIONER CROWLEY: Thank you.

13           MS. HALL: Transmission engineering --

14           COMMISSIONER COMMONS: Excuse me, Mr. Chairman.

15           CHAIRMAN IMBRECHT: Commissioner Commons.

16           COMMISSIONER COMMONS: I really object to this  
17 procedure. I mean we should have something before us that  
18 is what is being recommended, and I would like you to hold  
19 this item until later in the day when we have a correct  
20 and proper version before us so we are able to focus on  
21 what we're supposed to look at.

22           We have seven pages of material, and I would  
23 like to have --

24           CHAIRMAN IMBRECHT: We have 16 pages of material.

25           COMMISSIONER COMMONS: -- or 16 pages of material,

1 and I do not think it's appropriate for the Commission  
2 to go through and say what -- what is in and what is out.  
3 We should have a --

4 CHAIRMAN IMBRECHT: That's something that can  
5 be done over the luncheon recess.

6 MS. HALL: Possibly, yes.

7 At the last Business Meeting, it was requested  
8 that we come back here and verbally only tell you what  
9 had been changed, that there would not be enough time  
10 between the last Business Meeting and this meeting to make  
11 a clean copy to have the review.

12 It was also requested that the applicant and  
13 the staff have a workshop between the last Business Meeting  
14 and this meeting, which was done yesterday the entire day.

15 CHAIRMAN IMBRECHT: I understand that, but I  
16 think that Commissioner Commons' request is reasonable,  
17 and basically all that would be required is for you to  
18 put an asterisk or something of that nature by each of  
19 the items that would remain on your --

20 MS. HALL: We can --

21 CHAIRMAN IMBRECHT: -- proposed list of defici-  
22 encies.

23 MS. HALL: We can certainly do that and bring  
24 that back before you.

25 COMMISSIONER CROWLEY: It seemed to me appropriate

1 to get -- that we could get this done as promptly if we  
2 just went ahead and did it, as we could discussing it and  
3 then bringing it back.

4 CHAIRMAN IMBRECHT: All right. Fine. Let's  
5 run through it very quickly. Sentiment is not with you,  
6 Commissioner Commons, so we'll bow to the rule of the  
7 majority, so please continue and --

8 MS. HALL: On page 3, transmission engineering,  
9 Item 1, which is "Identify the capacity of the 60 kv line,"  
10 is now adequate.

11 Item 2 is now adequate.

12 Item 3, "Provide a transmission line schedule  
13 for engineering, procurement and construction," is adequate.

14 CHAIRMAN IMBRECHT: I'm sorry. Which item is that?  
15 This is on page 3 or on page --

16 COMMISSIONER GANDARA: Page 3.

17 MS. HALL: It should be on page 3, for -- on  
18 Item 3.

19 CHAIRMAN IMBRECHT: I see. I see. Fine. Pardon  
20 me. It's there. Pardon me. Okay.

21 MS. HALL: The next item in that area which is  
22 adequate is I believe No. 7, which is "Anticipated service  
23 life of the transmission line and termination facilities."

24 CHAIRMAN IMBRECHT: Okay.

25 MS. HALL: The following question, No. 8, which

1 says, "Provide the generation and transmission reliability  
2 criteria," that first sentence is now adequate.

3 The remainder of that which states, "Identify  
4 any common-mode failure/reliability implications and pro-  
5 vide the backup assumptions," remains as deficient.

6 COMMISSIONER GANDARA: What page are you on?

7 CHAIRMAN IMBRECHT: Page 4.

8 COMMISSIONER GANDARA: Okay. No. 8?

9 CHAIRMAN IMBRECHT: Just the first sentence of  
10 it.

11 MS. HALL: On page No. 5, Transmission System  
12 Evaluation, the very first one, 1-A, it says, "Provide read-  
13 able and one-line engineering drawings," it should be --  
14 it should read, "Provide one-line engineering drawings."  
15 The "readable and" should be stricken.

16 On Part B, the final sentence of that, which  
17 states, "Discuss the transmission system planning criteria  
18 used for selecting a single rather than a double circuit  
19 line," should be stricken.

20 Page 6, Item No. 4 of Transmission System  
21 Evaluation states, "Provide a copy of interconnect agree-  
22 ment and power sales agreement." The words "and power  
23 sales agreement" should be stricken.

24 CHAIRMAN IMBRECHT: So they have provided the  
25 power sales agreement.

1 MS. HALL: That is correct.

2 MR. THOMPSON: That was part of our initial fil-  
3 ing, Mr. Commissioner.

4 CHAIRMAN IMBRECHT: Thank you.

5 MS. HALL: On page No. 7, which is also part  
6 of --

7 CHAIRMAN IMBRECHT: Mr. Gardner, did you hear  
8 that?

9 (Laughter.)

10 MS. HALL: Page 7, which is the continuation  
11 of Transmission System Evaluation, Item 6, which states,  
12 "The cost of supplying energy and capacity at the first  
13 point of interconnection or bus bar," should be stricken.

14 CHAIRMAN IMBRECHT: Okay.

15 MS. HALL: Let's see. On page 14, Biological  
16 Resources, there is one item there, "Provide map showing  
17 biological habitat, types of, along transmission line," should  
18 be stricken.

19 The following question, which is in the area  
20 of land use, a map showing existing and proposed land uses,  
21 that entire paragraph should be stricken.

22 In Air Quality on page 15, Item No. 1, "Provide  
23 all assumptions, rationale and calculations to derive  
24 emission levels for all pollutants from the turbine, utility  
25 offset credits, auxiliary boiler and emission reductions,"

1 should be stricken.

2 Item 2 on that same -- just below that, "Provide  
3 ambient air monitoring data," should be stricken, that  
4 entire sentence.

5 No. 3 should be stricken, the entire sentence.

6 On the following page, No. 16, page No. 16, Item  
7 No. 5, the first several lines need to be stricken. They  
8 are "Fumigation modeling results when the cogeneration  
9 facility is consuming, one, natural gas, and, two, low-  
10 sulfur fuel for one-hour sulfur dioxide, nitrogen dioxide  
11 and carbon monoxide is required." That sentence should  
12 be stricken. The rest of it remains on the list.

13 Item No. 7, we have a correction to it. It's  
14 a discussion of how the prohibition rules -- the word  
15 "prohibition" should be inserted -- apply to the proposed  
16 project. That remains as a data deficiency item, and is  
17 just a clarification of which rule.

18 No. 8, which is the discussion of the backed  
19 requirements of the District, Rule 4.1 should be provided.  
20 That first sentence should be stricken. The remainder  
21 of No. 8 remains on the deficiency list.

22 On page 17, Supporting information -- excuse  
23 me. No. 11, "Supporting information required on emission  
24 offsets," et cetera, that entire No. 11 should be stricken.

25 And the -- the attached matrix for the structural

1 engineering information remains as you see it.

2 CHAIRMAN IMBRECHT: Okay. Fine. Now, then,  
3 Mr. Thompson?

4 MR. THOMPSON: Thank you very much. We agree  
5 with all of those. The one area that I would like to  
6 revisit is reliability.

7 We would like to make a pitch for all of them,  
8 because we believe that we are adequate. We think that  
9 -- actually, we thought we were adequate two weeks ago  
10 when we came in front of the Commission the first time,  
11 and we believe that the amount of data that we have sub-  
12 mitted and the staff has been able to review since that  
13 time should put us over the edge.

14 I may want to say as an aside, I suspect that  
15 other applicants are in a similar position as we are in,  
16 not having much of an idea at all as to when, if ever,  
17 data adequacy would be reached. I think if the applicant  
18 were to fill in all the boxes in the structural engineering  
19 matrix and provide all of the information in air quality,  
20 in the transmission areas to the extent and depth that  
21 staff requires, I think the project is dead, and I suspect  
22 that most projects that are lining up in the queue would  
23 also die.

24 Given the needs assessment, maybe that's what  
25 the Commission wants. This applicant at least has spent

1 a million dollars in a good-faith effort that we think  
2 now fulfills the requirement of substantial compliance,  
3 with the information requirements.

4 I would like to address the transmission areas  
5 first. The -- as you have just seen, the staff went through  
6 these areas, and of the four areas, all of the information  
7 that remains, virtually all, is going to be provided,  
8 we hope, by PGandE.

9 PGandE has been very responsive to our requests  
10 in the past, has provided information to us, which we in  
11 turn have provided to the Commission on the date that PGandE  
12 has said that they would provide it. They are working  
13 on the special facilities agreement and the data that under-  
14 lines the determination of what will be contained in that  
15 agreement, and has promised that to us in mid-December.

16 We have no reason to believe that that date will  
17 not be met. However, our hands are truly tied in this  
18 regard, because there is virtually nothing that the  
19 applicant can do to fulfill these data requests without  
20 PGandE's help.

21 I may want to -- let me add another thing about  
22 the transmission line. This is a three-mile line that  
23 will leave the plant and travel on a railroad right-of-way  
24 where another transmission line is on the opposite side  
25 of the railroad right-of-way across the tracks. It's

1 really not substantial. There's -- the open ground, the  
2 small amount of open ground that the line does cover is  
3 -- is ground that has been under cultivation for quite  
4 some time. It's not open natural land.

5 And it's applicant's position that, given the  
6 nature of the transmission line, the three miles, the  
7 insignificant impacts that we anticipate from it, the  
8 material that's already been provided by PGandE and PGandE's  
9 promise that the other material attendant to the special  
10 facilities agreement will be provided in mid-December,  
11 should make those four areas data-adequate.

12 CHAIRMAN IMBRECHT: Anything further, Mr. Thompson?

13 MR. THOMPSON: Going on from the transmission  
14 areas, reliability is an area that we discussed with the  
15 Commission two weeks ago. That concerns the -- it appears  
16 on page 8 of the material that we have been addressing.  
17 It concerns the long-term natural gas contract from PGandE  
18 or another entity.

19 I believe -- at least applicant left the meeting  
20 two weeks ago with the understanding that we were data-  
21 adequate, and -- in this area, and that we had the further  
22 obligation to provide a natural gas contract within 30  
23 days following the close of the PUC -- or the final deci-  
24 sion of the California Public Utilities Commission on the  
25 wheeling case, or within six months of acceptance, whichever

1 was first.

2           It may have fallen between the cracks. We thought  
3 we were adequate on this one.

4           MS. HALL: Staff realizes that the Commission  
5 did make a stipulation for that. Staff did not, however,  
6 feel that that removed it from the data deficiency list.  
7 It just had that extra stipulation placed upon it.

8           MR. THOMPSON: Do you see the trouble,  
9 Mr. Commissioner? It's still on the list, and we cannot  
10 possibly provide it in six months. This is one of the  
11 -- I think this highlights the problems that applicants  
12 have in looking at the list of deficiencies and not know-  
13 ing how much or all of the deficiencies need to be satis-  
14 factorily addressed before data adequacy is deemed here.

15           In the area of structural engineering, we have  
16 I think --

17           CHAIRMAN IMBRECHT: I understand your point.  
18 I would just note for you that I think we did make a deci-  
19 sion on that. I think it ought to be reflected in the  
20 written copy that's presented to them ultimately.

21           MS. HALL: That the Commission wishes to have  
22 that stricken from the data deficiency list?

23           CHAIRMAN IMBRECHT: No, that the stipulation  
24 or the decision we made at the last Business Meeting rela-  
25 tive to the six-month period, they actually would be

1 required to submit that, that some parenthetical statement  
2 or something of that nature be added to the written docu-  
3 ment to insure clarity in the position, from the perspec-  
4 tive of the applicant.

5 COMMISSIONER GANDARA: Thank you, Mr. Commissioner.

6 The area of structural engineering, we had none  
7 of them stricken today. We believe that we have gone about  
8 as far as we can go in providing site-specific information  
9 without -- without committing ourselves to vendors, without  
10 making those vendor commitments, which, as all of you  
11 realize, are very expensive to get out of once you've made  
12 them.

13 They would bind us to a specific vendor well  
14 in advance of the time when those commitments should be  
15 made, well in advance of the time when the plant configura-  
16 tion really is worked out with the staff.

17 Not only the vendor commitments would cost a  
18 lot of money, but the gathering of the information to  
19 the depth and extent seemingly required by staff would --  
20 would be an enormous task involving a lot of time and a  
21 tremendous amount of money, the value of which we think  
22 would be minimal or negligible, given the fact that, once  
23 the staff begins its review of an applicant's material  
24 and application, the plants tend to change the configura-  
25 tion somewhat.

1           The staff and applicant work together on items  
2 such as seismic design criteria and other items which are  
3 crucial to the development of the specific data, especially  
4 in structural engineering. That's I think the reason why  
5 we're continuing to look at it, but we are very reluctant  
6 to make vendor commitments and to develop information that  
7 we don't think would be of any use to the project once  
8 developed.

9           CHAIRMAN IMBRECHT: I thought we discussed this  
10 item two weeks ago as well, in the perspective that what  
11 the staff was requesting was not the final structural  
12 engineering, but preliminary. Is that an accurate reflec-  
13 tion --

14           MS. HALL: That is my recollection as well.

15           MR. THOMPSON: The last area is --

16           CHAIRMAN IMBRECHT: Well, Mr. Thompson, did you  
17 hear what I just said?

18           MR. THOMPSON: Pardon me?

19           CHAIRMAN IMBRECHT: Did you hear what I just  
20 said? I said it was my impression that we discussed this  
21 at the last meeting as well, and that there was a clear  
22 distinction drawn -- I think you raised the same point at  
23 that point in time, and the distinction was drawn that  
24 it was preliminary as opposed to final, and I really  
25 haven't heard a response as to why --

1 MR. THOMPSON: Yes. If I may --

2 CHAIRMAN IMBRECHT: I thought two weeks ago that  
3 you in essence acknowledged that that would be possible.

4 MR. THOMPSON: Keep in mind, Mr. Chairman Imbrecht,  
5 that this is a lawyer talking, not an engineer, and if  
6 I may, I'll hand this over to the engineer. This is  
7 Mr. Leahy with Basic American Foods.

8 MR. LEAHY: Thank you, Allan.

9 To respond a little bit further, Mr. Chairman,  
10 there have been discussions in the ensuing two weeks  
11 between ourselves and staff, and to give an illustrative  
12 example, we did reach agreement on how the project would  
13 consider structural loads, or specifically which loads  
14 would be considered, how they would be considered in com-  
15 bination.

16 Where we stopped making progress was when staff  
17 was looking for specific values. We could not achieve,  
18 we could not arrive at specific values that were meaningful  
19 without knowing specific -- the equipment weights, and  
20 an awful lot of very detailed engineering to determine  
21 the actual values.

22 We are certainly willing to and have committed  
23 in our methodology -- I am not a civil engineer. I cannot  
24 go into a great deal of detail, but it is clear from this  
25 to me that in this area, and to -- to some extent, for

1 comparative information that has been requested for BACT,  
2 that staff is asking us to proceed beyond what we consider  
3 to be preliminary engineering into the procurement phase.  
4 It's something that we don't feel we can do.

5 MS. HALL: I don't believe staff is asking for  
6 procurement information. We are asking for preliminary  
7 design information, the same type of information that has  
8 been asked of other applicants.

9 As a matter of comparison, the Midway-Sunset  
10 application has in fact provided the very type of infor-  
11 mation that we are seeking from this applicant, as we do  
12 from all applicants.

13 MR. THOMPSON: That may well be, and there may  
14 be circumstances there that are somewhat different. If  
15 -- I don't know if that plant, for instance, is a replica-  
16 tion or a duplication of a similar plant where you essen-  
17 tially have as-built drawings to come in and have Commission  
18 approval given.

19 We do think, also, that there is a difference  
20 and a distinction to be drawn between plants that are --  
21 well, I won't go any farther. I -- I'm not the one to  
22 discuss conceptual versus preliminary engineering. I sus-  
23 pect that it's -- these are labels or handles that are  
24 placed -- concepts that people use, but that the actual  
25 engineering is an ongoing process, and you slide from one

1 area into the other, and in some areas we may be in pre-  
2 liminary and some conceptual, depending on how you put  
3 your handles.

4 CHAIRMAN IMBRECHT: Commissioner Gandara?

5 COMMISSIONER GANDARA: Mr. Chairman, I'd like  
6 to move the item. It does seem to me that the staff is  
7 using a common yardstick for these applications, notwith-  
8 standing a few tugs and pulls here and there, but that  
9 it also seems clear to me that that yardstick is not an  
10 over-rigorous one, as is evidenced by the numerous data  
11 requests and data problems we still have in the siting  
12 cases that we do get.

13 So I would be more concerned than I normally  
14 would be if in fact somehow we -- we're using a yardstick  
15 such that when we got into -- into the actual processing  
16 of the case, you know, in fact things proceeded very  
17 smoothly, that might be an indication to me that perhaps  
18 there is a lot of up-front information that could be  
19 obtained during the process in the case, but that isn't  
20 the case.

21 I mean what I'm using as a -- as the base of  
22 information is the fact that, by the yardstick the staff  
23 is using, that we still are entering these cases with sub-  
24 stantial problems of the -- of necessary information for  
25 the Committee to be able to decide some of these issues,

1 so that, as regretful as it may seem to the applicant,  
2 we -- we are getting into a situation where I don't  
3 believe we can be making exceptions for circumstances as  
4 to what the commitments of time and/or money the applicant  
5 has made, because again, depending on the applicant, a  
6 particular commitment may be burdensome to one and not  
7 to another, and how do we ever adjust for that.

8 I think it's -- we're really getting into an area  
9 where we have no way of really making a very reasonable  
10 decision there.

11 CHAIRMAN IMBRECHT: I guess we've got that  
12 motion.

13 One of the things, Mr. Thompson -- I mean I look  
14 at the list on structural engineering, and I'm -- I don't  
15 want to err in either direction about being overly rigorous  
16 or providing an insufficient amount of information, but  
17 I -- it's hard for me to believe that you go over the  
18 project without doing some preliminary design of the nature  
19 that is contemplated in some of these item descriptions.  
20 How in the world do you even come up with a cost estimate  
21 of what this project is going to cost and what the economics  
22 are for your client to go forward with it, unless much  
23 of this has been done in the preliminary sense. You cer-  
24 tainly must have some idea of the type of equipment that  
25 goes into the plant and certainly a range of what the

1 weights and loads, and so forth, what that's going to  
2 encompass, and what type of building you have to construct  
3 in order to accommodate that.

4 MR. THOMPSON: Well, I think that's correct,  
5 and I think all that has been done and has been submitted.  
6 This deficiency list doesn't reflect areas where the  
7 record is vacant. The deficiency list reflects areas where  
8 we have submitted substantial data and information, but  
9 that the staff thinks it is inadequate, wanting more data  
10 and information, and we have submitted information to give  
11 us a very close cost estimate, we believe.

12 But as all of us are aware, as you go through  
13 this process with this Commission, cost estimates change,  
14 as does engineering.

15 We have gotten to the point we believe where  
16 our next step in most if not all of the areas would require  
17 such specific vendor information that to get that informa-  
18 tion a commitment to the vendor may be required.

19 I do want to emphasize that we think we have  
20 filled in the matrix box, that the blank spaces do not  
21 reflect areas that are vacant in our AFC.

22 CHAIRMAN IMBRECHT: Okay. Is there a second  
23 to Commissioner Gandara's motion?

24 COMMISSIONER CROWLEY: Second the motion.

25 CHAIRMAN IMBRECHT: Seconded by Commissioner

1 Crowley. The motion is properly before us, and that is  
2 to --

3 COMMISSIONER CROWLEY: Accept --

4 CHAIRMAN IMBRECHT: No, to refuse acceptance --

5 COMMISSIONER CROWLEY: Accept the list of defici-  
6 encies.

7 CHAIRMAN IMBRECHT: -- accept the list of defici-  
8 encies, with the modification to the reliability item that  
9 we have --

10 COMMISSIONER CROWLEY: I think that's the way  
11 it was put.

12 CHAIRMAN IMBRECHT: -- already enunciated.

13 Further discussion.

14 COMMISSIONER NOTEWARE: Mr. Chairman --

15 CHAIRMAN IMBRECHT: Commissioner Noteware?

16 COMMISSIONER NOTEWARE: Yes. Mr. Chairman, I  
17 think we're all a little uncomfortable here because this  
18 same issue comes before us so often. I can see the need  
19 for sort of a generic clearing of this somehow, so that  
20 I think we -- we should convey to staff perhaps a little  
21 more specifically exactly what -- what we expect in the  
22 way of data adequacy, so that we won't be constantly asked  
23 to be making exceptions.

24 And I'm wondering if it might not be an appro-  
25 priate subject for a -- perhaps a hearing.

1           CHAIRMAN IMBRECHT: The Siting Committee perhaps  
2 to even consider it.

3           COMMISSIONER NOTEWARE: The Siting Committee,  
4 yeah.

5           CHAIRMAN IMBRECHT: I think that would be appro-  
6 priate.

7           I think the staff, also, just for a point of  
8 information, I -- take the Gilroy case, for example. What  
9 sort of structural engineering information had been sub-  
10 mitted there prior to acceptance? Does anyone have a  
11 recollection of that?

12           MR. CHITTENDEN: Excuse me. Could you repeat  
13 the question, please?

14           CHAIRMAN IMBRECHT: What's -- compare this case  
15 to Gilroy, in terms of submittal at this point in time.  
16 I mean since we're talking about in essence a competitive  
17 project.

18           MR. CHITTENDEN: Well, this case, number one,  
19 is basically a duplicate of Gilroy, but the information  
20 -- from what we can see, it's basically a duplicate. It's  
21 the same AE firm involved, Bechtel, so, number one, they  
22 are certainly familiar with the process, having gone through  
23 it before.

24           CHAIRMAN IMBRECHT: Did we have the structural  
25 engineering information that's being requested here?

1           MR. CHITTENDEN: We did not reach data adequacy  
2 on structural engineering at the time the thing was --  
3 the AFC was accepted, because there was substantial com-  
4 pliance in the other areas, and that area was still defi-  
5 cient, so it met the decision of overall adequacy by the  
6 Executive Director.

7           We developed part -- only part of the data that  
8 we would normally do in an AFC in the case and, as  
9 Commissioner Gandara can probably acknowledge, there are  
10 some extra loops in the compliance program of the proposed  
11 decision which take into account and require the applicant  
12 to file the preliminary information that we would normally  
13 see in an AFC prior to the submission of the final design,  
14 so, to answer your question, no, it never really did reach  
15 data adequacy, even through the discovery portion of the  
16 case.

17           One other comment I would like to make on that  
18 particular thing is Gilroy is being fast-tracked, and the  
19 final design was to start per the documents submitted in  
20 the case. Final design was to start on that plant the  
21 day after the decision, which would be tomorrow, assuming  
22 the decision -- the final decision is approved today.

23           So it would seem that possibly a lot of that  
24 information could be forthcoming in the future, but I really  
25 have no way to tie that in between the two plants, other

1 than a common AE firm.

2 CHAIRMAN IMBRECHT: I guess the -- finally, I  
3 would just say, Mr. Thompson, I -- I mean I -- it still  
4 seems to me that there are a substantial number of other  
5 areas beyond structural engineering that remain on this  
6 list and, as a consequence, I would think that, even absent  
7 that, you're not going to have a recommendation of sub-  
8 stantial compliance.

9 MR. THOMPSON: I have no more arrows in my quiver,  
10 Mr. Commissioner.

11 CHAIRMAN IMBRECHT: You've got one under your  
12 belt for the day. That's maybe enough.

13 Okay. Is there further discussion?

14 Is there objection to a unanimous roll call?

15 Hearing none, "Aye's" five, "No's" none. The  
16 motion is adopted. The application is refused acceptance.  
17 The deficiency list with the modifications as noted becomes  
18 the list of the Commission.

19 All right. We will stand in recess until 1:30,  
20 as we do still have a substantial agenda ahead of us.  
21 We'll come back and take up Item 3, and then let's hope  
22 we won't take too long, and then we'll move on to Items  
23 11 and 13.

24 Item 10 is obviously moot at this juncture,  
25 because the application was not accepted.



AFTERNOON SESSION

---o0o---

1:45 P.M.

1  
2  
3 CHAIRMAN IMBRECHT: Okay. We'll call the meet-  
4 ing back to order.

5 We'll turn to Item No. 3 on the agenda, which  
6 is Commission Consideration and Possible Adoption of an  
7 Order Instituting Rulemaking for the Energy Technology  
8 Research, Development and Demonstration Program. California  
9 Public Resources Code Section 25680, et. seq., directs  
10 the Commission to carry out financing of energy research,  
11 demonstration, or development projects.

12 Commissioner Gandara, I believe this is your  
13 item.

14 COMMISSIONER GANDARA: Yes. Thank you very much,  
15 Mr. Chairman.

16 Let me direct my comments to the Commission,  
17 and I think that we can probably dispose of this matter  
18 rather quickly one way or the other, but with all respect  
19 to the Presiding Member of the Committee, there is a dif-  
20 ference of opinion with respect as to how to proceed with  
21 the implementation of what we call the Naylor Program,  
22 since it was the program that provided the funds for this  
23 program, as to whether we should proceed to develop rules  
24 and regulations similar to the GRDA program and schools  
25 and hospitals program, or whether we should proceed without

1 those regulations to implement the program.

2           The issue before you can be complicated by many  
3 other things, but let me state specifically what I think  
4 is before us and what is not before us.

5           What is not before us is the Commission decision  
6 whether we shall proceed with regulations or without regu-  
7 lations. The issue before us is whether we do proceed  
8 with an Order Instituting Rulemaking, so that at some  
9 future time the Commission will have both options before  
10 it, the opportunity to proceed with regulations if that  
11 is to be the case, and the opportunity to decline that  
12 particular effort.

13           All it does is direct the Committee to develop  
14 that option for the Commission. In doing so, it leaves  
15 the Committee with considerable flexibility.

16           There is something else that is not before us that  
17 also needs to be clarified, and the issue really is not  
18 whether to proceed again with regulations or without regu-  
19 lations. If we do not eventually move to adopt regulations,  
20 we still are obligated to proceed under the direction of  
21 the SAM, the State Administrative Manual.

22           The issue that is really before us is whether  
23 we want to preserve an option at some future time to imple-  
24 ment this program with regulations of our own that we can  
25 modify as we feel we need to be responsive to the

1 participants in the program.

2           The issue before us is the -- has often been  
3 distilled to one of timing. That is that, while the --  
4 there may be some feelings that the regulations are appro-  
5 priate, that we do not have the time to develop these regu-  
6 lations in the time frame that the Commission might desire  
7 to implement the program.

8           With respect to that, I would also like to indi-  
9 cate to the Commission that that really is not an issue,  
10 as far as I'm concerned, because if we look at the time  
11 frame for the implementation of this program, that these  
12 funds under the contract approach would be encumbered  
13 around mid-June, with the Commission approval of the projects  
14 around the first week of May.

15           With that kind of schedule, the Commission could  
16 proceed on an Order Instituting Rulemaking in which the  
17 Commission could adopt regulations if it wanted to in the  
18 first Business Meeting in March, release its applications,  
19 and come back, have a staff evaluation of the applications  
20 by the end of May, and a Commission adoption by the  
21 beginning of June.

22           So, under both options, were the Commission to  
23 decide today to proceed with an Order Instituting Rulemaking,  
24 we would preserve the same time frame for both.

25           I do not wish to mislead the Commission in any

1 way. It is my view and I would argue that if the  
2 Commission did adopt the Order Instituting Rulemaking today  
3 that, absent a considerable showing during the rulemaking  
4 process that the regulations, one, were not wanted, not  
5 needed or not useful for this program, that I would think  
6 that we are under some legal obligation to do so.

7           There is a dispute about that, a difference of  
8 opinion between me and the General Counsel in that matter,  
9 so that I think that what is left is really for the  
10 Commission to decide on its own how it wishes to proceed  
11 in this program, and rather than this coming up sometime  
12 in the future when we would not have the option and in  
13 fact we would have some actual projects before us or some  
14 RFP proposals that we might have to be ruling on or judging,  
15 I thought it best to -- before we lost more time, to in  
16 fact bring it to the Commission's attention.

17           It is my feeling, as I told you before, that  
18 the choice is not with or without regulations, that we  
19 do have to operate under some system. The choice is  
20 whether we want to operate under the SAM Manual, the State  
21 Administrative Manual, over which we have little control,  
22 and in terms of any changes, or whether we wish to adopt  
23 our own regulations over which we have considerable dis-  
24 cretion.

25           The second issue, again, as I mentioned before,

1 is one in which we are not committing today to have regu-  
2 lations for the program. What we are committing is to  
3 investigate and to hold forth that option for some future  
4 decision, according to at least what I would expect. That  
5 would be around the first business meeting in March.

6 That really is the essence of the issue, and  
7 perhaps to have a Commission discussion, Mr. Chairman,  
8 I would so move the Order Instituting Rulemaking.

9 CHAIRMAN IMBRECHT: Is there a second?

10 COMMISSIONER COMMONS: Second.

11 CHAIRMAN IMBRECHT: Seconded by Commissioner  
12 Commons. The motion is properly before us.

13 Speaking to the motion, and Commissioner Gandara  
14 has conceded, as he indicated, a difference of opinion  
15 between the two of us as the members of the Committee, on  
16 jurisdiction over this program.

17 I would just note for you that Commissioner Gandara  
18 did seek a counsel's opinion on this, and in contrast to  
19 the opinion that we received on the GRDA issue, which  
20 recommended regulations because the GRDA program had gone  
21 for a number of grant cycles, and that in fact the guide-  
22 lines by which we were operating had in essence become  
23 standard rules of application, that it was counsel's view  
24 that it was appropriate to adopt regulations under those  
25 circumstances, and I acceded to that judgment.

1           In this instance, the counsel's opinion finds  
2 on a number of grounds a substantially different resolution  
3 of the issue, and in essence concludes that in the embryonic  
4 stages of a program it is not necessary to promulgate  
5 regulations but, rather, that that's an opportunity for  
6 us to in essence undertake a program -- and I don't want  
7 to use the phrase necessarily "trial by error," but at  
8 the same time be able to understand what the impact is and  
9 insure that we are able to move the program along in a  
10 timely fashion.

11           I feel quite strongly about this. I think it  
12 is a question of timing, and I also feel strongly that  
13 there is an expectation, both from the Legislature and  
14 from the Executive Branch, as a result of their support  
15 of and passage of this program and augmentation to our  
16 budget, that we move forward in an expeditious fashion.

17           It is not my contemplation that a majority of  
18 the funds be committed during the first funding cycle.  
19 In fact, I think that's highly unlikely under any circum-  
20 stances, and obviously that's a discretionary decision  
21 for the Commission at a future point in time.

22           I also do expect that at some juncture, and that  
23 may be after the first grant cycle, it might be after a  
24 second or perhaps third, that it would be appropriate to  
25 move to regulations. I do not believe that it is either

1 appropriate or necessary to institute a rulemaking proceed-  
2 ing at this point in time.

3           To begin with, that requires an additional  
4 commitment to staff resources, and I think all of us are  
5 fully aware of the very difficult allocation process that  
6 we have all had to go through to deal with the program  
7 obviously we currently have.

8           As a practical matter, what this would do, if  
9 we were to in essence make a decision to only proceed with  
10 the program with regulations, is to insure that there would  
11 be no grant cycles actually completed until roughly the  
12 end of this current fiscal year, perhaps even slightly  
13 into the coming fiscal year, and I would just note for  
14 you that we have a pending budget change proposal as well  
15 that bears upon this issue.

16           My own judgment is that the Legislature and the  
17 Executive Branch expect us to begin this program -- in  
18 fact, they probably expected us to begin this program per-  
19 haps by the time we're at right now, but certainly early  
20 in the calendar year of 1986 at the outside, and for all  
21 of those reasons I think it is unnecessary and inappropriate  
22 at this juncture to move in that direction.

23           I think that we ought to have some added discre-  
24 tion in terms of fashioning the program. I want to just  
25 reiterate that any funding decision obviously requires

1 the commitment of the majority of the members of the  
2 Commission. It's not something that can be done by the  
3 Committee, and that's obviously the case with respect to  
4 all of our programs.

5 I want to suggest to you that an Order Instituting  
6 Rulemaking I think creates a certain level of expectation,  
7 and while I understand and I might say that this is a  
8 little fresh characterization from Commissioner Gandara,  
9 at least from my perspective, that -- that simply adopting  
10 this order would not insure that we would have to go for-  
11 ward with regulations. The fact of the matter is that,  
12 even by the enunciation of the time frame he mentioned,  
13 that we would face this issue in March, that I think begs  
14 the question as to our ability to move forward expeditiously  
15 with the initial grant cycles and some of the efforts that  
16 we have all been involved with to try to work in a coopera-  
17 tive fashion with the University of California in some  
18 of its external branches, as well as other private sector  
19 concerns.

20 For all of those reasons, I do not believe it  
21 would be appropriate to institute rulemaking at this junc-  
22 ture. I do think that at some point after we have had  
23 a chance to evaluate the initial cycles of the program,  
24 and in addition build a case for what I believe all of  
25 us consider to be the justification for additional funding

1 in this area, that it would be at that juncture the appro-  
2 priate time to proceed with the rulemaking.

3 I believe that's consistent with the advice that  
4 was rendered to Commissioner Gandara from the General  
5 Counsel, and I might emphasize to you advice which was  
6 not sought by myself but by Commissioner Gandara in this  
7 case, and I was frankly unaware that that solicitation  
8 had even been made, and I would emphasize, therefore, that  
9 I had absolutely no involvement, consultation, et cetera,  
10 whatsoever, involved in the rendering of that judgment by  
11 the General Counsel to Commissioner Gandara, which he sub-  
12 sequently authorized the counsel to distribute to the other  
13 members of the Commission.

14 So, for that reason, I would oppose the motion  
15 to institute rulemaking at this point in time, but I want  
16 to emphasize we have opened the prospect of that, and I  
17 would even say the certainty of that at some point in the  
18 future after we have gone through the, as I characterized  
19 earlier, the embryonic stages of this program.

20 I also would just mention for the benefit of  
21 the other members of the Commission that staff has already  
22 undertaken a very extensive process, held I believe two  
23 workshops, and distributed a large amount of information  
24 to interested parties in the general public, and we are  
25 prepared to go forward at this point in time in implementing

1 the program.

2 If we step back to this process, obviously it's  
3 going to delay the program, depending upon your perspective,  
4 either a moderate or a substantial period of time, and  
5 I think that largely is the issue, and it does reflect,  
6 as we both indicated, a difference of opinion within the  
7 Research and Development Committee, and, therefore, it's  
8 properly before the Commission for guidance.

9 Commissioner Commons.

10 COMMISSIONER COMMONS: I have a couple of ques-  
11 tions. You mentioned the staff has had some workshops,  
12 and that they are ready to implement the program?

13 CHAIRMAN IMBRECHT: That's correct.

14 COMMISSIONER COMMONS: Have -- are there any  
15 criteria or -- nothing has come before the Commission in  
16 terms of if we were not to adopt regulations, as to how  
17 this program would operate.

18 CHAIRMAN IMBRECHT: Well, let me back up and  
19 say that -- that the staff is prepared to bring before  
20 the Commission, as a result of the workshops that have  
21 been held, those proposals. They have not been brought  
22 forward at this juncture because of the difference of  
23 opinion as to the necessity to move to regulations. This  
24 obviously is a threshold question, and there was no point  
25 in scheduling for the agenda a Commission consideration

1 of those guidelines in implementing criteria until we had  
2 dealt with this threshold question.

3           Once that's behind us, and frankly it would be  
4 my intention that if -- if this issue is resolved consis-  
5 tent with my perspective today, that we would timely  
6 schedule that perhaps for the next business meeting, or  
7 certainly for the one immediately thereafter.

8           MR. CHAMBERLAIN: Mr. Chairman, if I could --

9           COMMISSIONER COMMONS: Excuse me one second,  
10 Mr Chamberlain.

11           MR. CHAMBERLAIN: I'm sorry.

12           COMMISSIONER COMMONS: The workshops, were they  
13 in terms of projects or in terms of what the guidelines  
14 ought to be?

15           CHAIRMAN IMBRECHT: They were in terms of the  
16 guidelines and the general criteria and approach to imple-  
17 menting the program, as well as opportunity for potential  
18 program participants to express their concerns about a  
19 number of issues associated with it, including the whole  
20 question of proprietary rights.

21           If in fact the inventor, for example, were to  
22 make -- seek funding from the Commission, would there be  
23 a requirement that the ultimate result of that research  
24 would become a matter of public domain, or whether it would  
25 be some retention of proprietary development rights, et

1 cetera.

2 Now, those issues I want to emphasize to you  
3 have not been resolved in any sense. Those are properly  
4 issues for the Commission to consider, but that was the  
5 general tenor of those discussions in those workshops.

6 COMMISSIONER COMMONS: Could you or General  
7 Counsel, or both of you --

8 CHAIRMAN IMBRECHT: I might say those were staff  
9 workshops as well. I -- no member of the Commission atten-  
10 ded. I believe my staff was represented there, and I think  
11 Commissioner Gandara's was as well.

12 COMMISSIONER COMMONS: I would like you and  
13 General Counsel, if you would, to give me -- and you've  
14 done part of that, as to the benefits of going one direc-  
15 tion versus the other, and also the down side of going  
16 one direction versus the other.

17 Are there any exposures to -- I understand one  
18 benefit of going your approach would be that we might save  
19 some staff time, and I think also six months of calendar  
20 time. Are there any projects or any things that we could  
21 or could not do under one approach versus the other? Is  
22 there any exposure to the Commission one way versus the  
23 other way that is either greater or less? Is there any  
24 exposure to any of the applicants who are working with  
25 us any greater or less?

1 I'm trying to get an --

2 CHAIRMAN IMBRECHT: I don't think it affects  
3 -- I mean not applicants in the context of siting cases.  
4 There is no relationship.

5 COMMISSIONER COMMONS: No, applicants in terms  
6 of individuals seeking --

7 CHAIRMAN IMBRECHT: We don't -- we don't know  
8 who the applicants will be at this juncture, because we  
9 have not gone forward with the program. There has obviously  
10 been a wide scale of interest ranging from utilities to  
11 a wide range of private concerns, as well as -- and indivi-  
12 duals, as well as, as I indicated earlier, some of the  
13 research arms of the University of California, which we  
14 have -- I think we have all had mutual discussions about  
15 trying to better coordinate with.

16 COMMISSIONER COMMONS: No. I'm just trying to  
17 understand in my own mind what are, on the one side, the  
18 benefits, and on the other side the possible down side  
19 of going under --

20 CHAIRMAN IMBRECHT: Mr. Chamberlain, do you want  
21 to try that?

22 COMMISSIONER COMMONS: -- rulemaking, versus  
23 going under a regulation.

24 MR. CHAMBERLAIN: Yes. Let me clarify first  
25 that the guidelines and criteria that the staff have

1 developed in the workshops will be incorporated into a  
2 request for proposals.

3           The statute requires that this program be imple-  
4 mented through requests for proposals, and it's my under-  
5 standing that that request for proposals will be brought  
6 to the Commission for its concurrence before it's sent  
7 out.

8           CHAIRMAN IMBRECHT: After the Committee considera-  
9 tion, then we'll come forward with a recommendation, as  
10 is the case in most of the programs like this.

11           MR. CHAMBERLAIN: Right. That deals with the  
12 substantive criteria for the standards -- I'm sorry, for  
13 the program, and that could be done either through RFP  
14 or through regulations.

15           It is possible, although it's difficult to  
16 envision it right now because we have so little experience  
17 with the program -- it is possible that we might have --  
18 it is very difficult to think of what substantive criteria  
19 we could accomplish through regulations that we couldn't  
20 accomplish through an RFP.

21           The only question would be whether it's proper  
22 to do so, and our analysis, at least -- at least in the  
23 early cycles, is that it is proper to do so.

24           In terms of the procedures, that's -- that's the  
25 other side, and that's where, without regulations, we have

1 to follow the State Administrative Manual. There may be  
2 some procedures that would be advantageous for us to use  
3 that the State Administrative Manual might not allow,  
4 and by adopting regulations we might be able to -- to use  
5 those procedures, but I haven't yet identified any that  
6 I think are going to be seriously compromising, in terms  
7 of carrying out the program, but that's one of the things  
8 that we would look into as we began to develop regulations.

9 CHAIRMAN IMBRECHT: Anything further, Commissioner  
10 Commons?

11 COMMISSIONER COMMONS: Well, the -- somehow the  
12 Legislature and others -- there have to be reasons why  
13 they have often pushed us in terms of regulations versus  
14 rulemaking. On the one hand, rulemaking gives us I think  
15 some greater flexibility, and I don't -- I don't feel com-  
16 fortable with the answer that I've received that I have  
17 a good understanding of the up sides and the down sides.

18 CHAIRMAN IMBRECHT: I think you are using terms  
19 not quite appropriately. Rulemaking is the preliminary  
20 step to achieve regulations. You are talking about whether  
21 we use guidelines versus a rulemaking/regulation process,  
22 I think, if I read you correctly, if I understood what  
23 you were saying.

24 COMMISSIONER COMMONS: Yeah. I'm trying to find  
25 out what the exposure of the Commission --

1 CHAIRMAN IMBRECHT: Well, let me ask you --

2 COMMISSIONER GANDARA: If I might --

3 CHAIRMAN IMBRECHT: The bottom line is the ques-  
4 tion of whether or not the General Counsel feels that a  
5 going forward with the program, absent regulations, is  
6 a defensible position and a sustainable position if there  
7 were an independent challenge, and the judgment, as I  
8 understood it, entered in the counsel's position was that,  
9 yes, in fact that was the case.

10 COMMISSIONER GANDARA: Mr. Chairman, if I might,  
11 because I think --

12 CHAIRMAN IMBRECHT: Commissioner Gandara.

13 COMMISSIONER GANDARA: -- I think one of the  
14 key questions is the -- is the characterization of General  
15 Counsel's opinion. Okay? And so that we don't prolong  
16 this, rather than respond to that issue only, let me respond  
17 to the new issues that have come up, and so we can expedite  
18 this process.

19 I first want to address several questions that  
20 Commissioner Commons asked, and by way of that kind of stat-  
21 ing perhaps what some of the pros and cons or ups and downs  
22 are.

23 In terms of the saving of time, Commissioner  
24 Commons, you made the indication that you understood that  
25 one proposal versus the other would cost six months time

1 in implementation. That is inaccurate. Okay.

2           What in fact my opening comment indicated is  
3 that under the current contract, what is called the contract  
4 approach or the guidelines approach, the Commission is  
5 not scheduled to approve the projects until the first week  
6 in May, and the project would in fact not be encumbered  
7 until around mid-June.

8           Okay. Under the rulemaking option, if we --  
9 if we do give due consideration for all the comment periods  
10 and everything that's required, that the Commission could  
11 adopt regulations by the first business meeting in March,  
12 we could have the funds encumbered or Commission decision  
13 on that by the beginning of June as well.

14           So there is no difference in that. Where there  
15 might be a difference would be if in fact we did move to  
16 the first business meeting in March and the Commission  
17 decided not to adopt regulations, then it's not clear to  
18 me that it would necessarily take longer than to do the  
19 guidelines, if that was the Commission decision, because  
20 we cannot presume that some of this other work would not  
21 have been useful for that, so I don't think really there  
22 is a difference in time.

23           But beyond that, I'd like to state that there  
24 is no legislative deadline other than the three-year limi-  
25 tation on this particular program, so we -- I am not aware

1 of any deadline or anything that is moving this particu-  
2 larly to completion by this fiscal year.

3           Nonetheless, I'm not interested in holding onto  
4 programs as long as possible, but the point I want to make  
5 is that there really is not this issue. Now, what is an  
6 issue that asks about the staff time? I do concede that  
7 it would save some staff resources, in that some attorneys  
8 would not have to be working on developing proposed regu-  
9 lations, responding to OAL requirements, and so forth.  
10 Staff would not have to be responding to committees in  
11 terms of hearings, so there would be that staff time. I  
12 do want to emphasize that.

13           The second issue that I want to respond to is  
14 the issue of the General Counsel's opinion. What General  
15 Counsel's opinion said specifically is that if the  
16 Commission wanted to, that if it characterized these con-  
17 tracts or -- or characterized our relationship with the  
18 successful bidders as service contracts, that arguably  
19 we would not have to follow regulations.

20           Now, this is a very complex matter that actually  
21 goes back and predates anybody's presence on the Commission  
22 except my own, because back then, in those dark days, we  
23 should call them, when the changes to the APA were promul-  
24 gated, the basic rule that was to be followed was if there  
25 is a rule of standard application or -- or general

1 applicability, then that should be put in the form of  
2 regulation.

3           You asked what the down side is. I do believe  
4 that whether this program is embryonic or not is irrelevant.  
5 What we are talking about is the application of a standard  
6 rule of general applicability, and that that should be  
7 embodied in regulations, so what is the risk? Is there  
8 a legal risk?

9           I do believe that there is perhaps a legal risk  
10 that an unsuccessful bidder or an unsuccessful applicant  
11 would in fact be unhappy with the situation and say, well,  
12 this should have been a regulation.

13           It was my understanding, unless things have  
14 changed, that the staff was in fact proceeding toward the  
15 development of a manual that would be the guidelines. The  
16 manual, you know, would in fact contain those guidelines,  
17 and that would be a rule of general applicability.

18           Okay. The General Counsel's opinion that is  
19 being referred to said that there could be a possible con-  
20 struction or defense, or whatever you might call it, option,  
21 of entitling these arrangements service contracts, thereby  
22 they would not have to undergo the -- or have the APA  
23 requirement applied to it.

24           And I should say that, in and of itself, that  
25 is a considerable restriction of flexibility and goes in

1 the opposite direction of what ironically the regulations  
2 could provide us, which is more flexibility, because when  
3 you title something a service contract, now what you need  
4 to do is have greater specificity with respect to the  
5 product that is to be delivered, and with respect to the  
6 actual terms and conditions of that contract.

7           So what that means now is that you're going to  
8 have far, far greater specificity in an R&D program, so  
9 that I would even ask whether it would be even possible  
10 to in fact come up with guidelines that are broad enough  
11 to encompass the range of five or six different technolo-  
12 gies, so that I consider a down side risk myself, of having  
13 to -- to fit these contracts or these arrangements or --  
14 or shall we call them responses to the RFPs under the  
15 rubric of service contract.

16           So I wish to make that point, because it's not  
17 as clear as the General Counsel is saying, that we don't  
18 need regulations for this, and we don't need them, that  
19 we're going to characterize them as service contracts.  
20 That, in and of itself, is going to be a limitation, and  
21 then frankly I -- I would have to say that, though I give  
22 the General Counsel's opinion great weight, there has been  
23 an inconstancy about this particular matter that, as I  
24 mentioned, has a history perhaps prior to people arriving  
25 in the Commission, of various Commissioners taking their

1 seats on the Commission, that there was a point in time  
2 when the General Counsel advised us that all these programs  
3 should be under regulations. That's why the Schools and  
4 Hospitals Programs Regulations were developed.

5 The GRDA Program regulations were not developed  
6 only because -- until recently, only because at the time  
7 we went through a severe budget crunch in which there had  
8 to be prioritization of what was required.

9 And then I would finally argue that -- that a  
10 program is likely to need specificity, you know, probably  
11 most in its embryonic stage, rather than two or three  
12 years down the line. Okay. It does seem to me that again,  
13 I argued the point that I don't -- that I think that that  
14 issue is a bit irrelevant, but when we have our own regu-  
15 lations we can modify them once a year, or as soon --  
16 actually, not even once a year. I say once a year because  
17 that's about the time that we get some feedback.

18 We could even do that sooner. We modified the  
19 Schools and Hospitals Regulations. We modified our other  
20 regulations.

21 We have control over our own situation a lot  
22 more than if we have to operate under the State Administra-  
23 tive Manual, and then one area in which you are particu-  
24 larly interested, Commission Commons, is that in the  
25 past you have been very strongly supportive of trying to

1 get the best bargain for the state, the most leveraging.  
2 Okay.

3 Under the regulations concept we can input in  
4 our regulations the best and final offer concept, in which  
5 case, when you get down to four or five good bidders for  
6 a project, you can have a best and final offer, in which  
7 case you can get the best deal for the state.

8 It's my understanding, and I may be wrong, that  
9 under the State Administrative Manual, that once you've  
10 started that process, that we are prohibited from having  
11 those kinds of negotiations with the respondents to those  
12 proposals.

13 So I think there are a whole lot of reasons why  
14 to go this way. One, I think legally we are at less risk  
15 because in my judgment, you know, we are required to have  
16 regulations. Okay.

17 Secondly, even if it could be arguable that we  
18 don't have to have those regulations, it does seem to me  
19 that having to fit this program and every one of its con-  
20 tracts into this peg of a service contract is going to  
21 be a limitation in and of itself.

22 And then, lastly, that we should want our own  
23 particular regulations to be responsive to the needs that  
24 we see out there, far more than we would under the SAM  
25 manual, notwithstanding the guidelines that would perhaps

1 put a veneer on that, but ultimately the SAM manual would  
2 be controlling.

3 CHAIRMAN IMBRECHT: Okay. Hopefully not to pro-  
4 long this too much, but I'm going to just give a quick  
5 response to this. It's obviously a debate largely between  
6 Commissioner Gandara and myself.

7 I just would note a couple of things. First  
8 off, the counsel who prepared this opinion is the counsel  
9 that we hired away from the Office of Administrative Law,  
10 and frankly he probably brings to the Commission a greater  
11 understanding of what the requirements are, vis-a-vis  
12 regulation or no regulation, than any other member of our  
13 counsel's office, and I think that some weight should be  
14 attached to that fact as well.

15 The question of timing, I would just note for  
16 you that the Development Division staff has referenced  
17 us repeatedly that we are talking a six-month delay, as  
18 you correctly referenced, Commissioner Commons, by moving  
19 to the regulation approach, and I'm not sure how you have  
20 constructed your calendar, Commissioner Gandara, but the  
21 bottom line is that, even assuming that the regulation  
22 process were to move along smoothly without any hitches,  
23 and I think we've all seen how difficult that is in most  
24 instances, that -- and were we to adopt regulations on  
25 or about the first of March, we would still then have to

1 be in a solicitation process. It's a little hard for me  
2 to see how, under any consideration of due process or fair-  
3 ness we're going to be in a position to award contracts  
4 around the first of June, or -- or grants or loans at that  
5 point in time, with such a short period for solicitation,  
6 consideration by the Committee, recommendations to the  
7 full Commission, et cetera.

8 I frankly think that's a highly unrealistic  
9 reflection of what the true time constraints are.

10 In terms of whether it's a standard rule of  
11 applicability, my own judgment -- and as we all know  
12 attorneys can differ on these viewpoints, and it's a classic  
13 illustration of that between Commissioner Gandara and  
14 myself right now, but my own judgment is that you don't  
15 have a standard rule of applicability until after it has  
16 been applied and applied consistently.

17 And the difference in the counsel's opinion on  
18 the GRDA program is that in fact we did have guidelines  
19 that had been applied consistently and had in essence  
20 become standard rules of applicability, and it was there-  
21 fore necessary to move to regulations to reflect that  
22 reality.

23 Finally, in terms of legal risk, even with that  
24 representation by the counsel, I would just note for you  
25 the GRDA program had been in place for I believe three

1 years, perhaps longer, and there had never been a chal-  
2 lenge to any of those decisions, and as we all know the  
3 competition for those funds is keen, and comes from a lot  
4 of entities that probably have at their disposal greater  
5 legal resources than many others that might deal with the  
6 Commission.

7 I'm talking about local governments, et cetera,  
8 which have standing counsel within their staffs, et cetera,  
9 and yet none of them saw fit to challenge on the basis  
10 of bias or any other consideration of the manner in which  
11 the Commission had handled the GRDA program.

12 So, as a practical matter, even the regulations'  
13 response to GRDA was responding to a potential that had  
14 never become a reality.

15 For all those reasons, and because I think timing  
16 -- and I do believe we do have some additional flexibility  
17 before we lock ourselves in regulations, that I think this  
18 is the preferable approach.

19 I hope that largely summarizes the issue. If  
20 anyone wishes to be heard on this item, please indicate.

21 COMMISSIONER GANDARA: Just one final comment,  
22 factual correction, Mr. Chairman. With respect to one  
23 of the arguments that you hinged the rule of standard  
24 applicability on, it would be incorrect the way that you  
25 described it.

1           First of all, I think you used an example that  
2 the GRDA program had in fact been in operation for several  
3 cycles before we established regulations. That is correct.  
4 However, at the time that the decision had to be made on  
5 the GRDA program, okay, in fact before the Commission made  
6 its commitments to the first GRDA cycle, we received the  
7 General Counsel's opinion that those were rules of standard  
8 applicability.

9           The decision before the Commission then was  
10 exactly the same one that is before us now. Should we  
11 interrupt that program after there had been solicitations,  
12 but before there had been an award, in order to institute  
13 this new APA requirement.

14           The point that I'm trying to make is that we  
15 -- that the counsel's opinion has been somewhat inconstant  
16 in this area because at that point in time we received  
17 indications and advice from General Counsel that there  
18 was -- that from their point of view that the GRDA program  
19 should have been embodied in regulations before the award  
20 of the first grants.

21           Okay. It was not after we had established the  
22 three cycles or two cycles or even one cycle.

23           CHAIRMAN IMBRECHT: Okay. Do you want to --  
24 I've got to respond briefly to that and say that my recol-  
25 lection is that all state agencies, when the Office of

1 Administrative Law was created, they were responding in  
2 an exceedingly conservative fashion relative to those broad  
3 issues, and were not yet fully cognizant of how OAL was  
4 going to be interpreting their own responsibilities, et  
5 cetera, and I just would emphasize again that we have an  
6 opinion that was prepared by an alumnus of that office.  
7 I think we have all had some respect for her work in other  
8 areas here at the Commission, and we now have a track  
9 record to know how OAL interprets its responsibilities,  
10 and I frankly think that we've got the necessary informa-  
11 tion.

12 Okay. I think -- Commissioner Commons.

13 COMMISSIONER COMMONS: I might ask some ques-  
14 tions, because my mind was not made up on the issue, and  
15 I would now like to state what my opinion is.

16 Last November I was the Presiding Member of this  
17 Committee, and I went at that time to you, Chuck, and to  
18 you, Arturo, both requesting permission to go forward and  
19 develop regulations. At that time we had not thought of  
20 the alternative of doing rulemaking.

21 I received neither one of your support in terms  
22 of being able to proceed.

23 Since March, I believe, Mr. Chairman, you have  
24 been the Presiding Member of this Committee, and if we  
25 had gone forward with regulations at that time they would

1 be in place.

2           This issue has been -- and we passed this  
3 legislation almost a year and a half ago, and I spent a  
4 year and a half on this Commission trying to get this pro-  
5 gram through the Legislature and tried to go forward, and  
6 I made some personal commitments, and I'm concerned about  
7 some of the statements that I've heard here today, which  
8 -- you know, the concept that it may be giving us greater  
9 flexibility.

10           Loan and grant programs of this type, which was  
11 a bipartisan effort on behalf of the Legislature, I think  
12 it's very important that the criteria be specific, that  
13 the cost to the State be kept down, and that the regula-  
14 tions approach -- the whole idea that this was sold on  
15 was that we were going to bring in outsiders, and that  
16 they were going to play a major effort in terms of bringing  
17 what are the R&D needs of the State, and that the decision-  
18 making process would not -- was not going to emphasize  
19 our Commission, our staff, and ourselves.

20           Well, the whole RFP process is essentially set  
21 up in such a way that it would really be difficult to bring  
22 in those outsiders in through an effective participation  
23 network, because there are different experts in different  
24 areas, you're going to have to sit down and listen to all  
25 of the particular proposals. We never really get effective

1 outside participation.

2           The whole -- the whole concept that this was  
3 proposed and was not fought against by the utility indus-  
4 try, by the engineering community, by the R&D community,  
5 was their essential belief that they were going to be a  
6 major part of this process, and that these were not monies  
7 that were going to be spent at this Commission but, rather,  
8 this was going to be a process to help fund work that was  
9 essentially going to be done by the private sector and  
10 by the research community, with us giving some of our  
11 efforts.

12           We're setting up --

13           CHAIRMAN IMBRECHT: I agree with all that.

14           COMMISSIONER COMMONS: We're setting up a process  
15 where the risk of our achieving it is being questioned.  
16 I'm concerned in a few areas.

17           First of all, we have increased exposure to law-  
18 suits. Even if I agree with Mr. Chamberlain, there is  
19 not a question that we don't have increased exposure.

20           Second of all, I am very concerned about the  
21 State Administrative Manual, which really only allows  
22 us to purchase services and not products, and in the R&D  
23 area we may want to purchase refrigerators, we may want  
24 to purchase a load management device. We may be twisting  
25 the concept of the acquisition of a service, and preclude

1 ourselves from opportunities that were contemplated under  
2 the Naylor bill.

3 And I just think --

4 CHAIRMAN IMBRECHT: Commissioner Commons, before  
5 you go any further, I just want to make it clear, you need  
6 to have a clear understanding of the State Administrative  
7 Manual. It doesn't limit us to the purchase of services.

8 COMMISSIONER COMMONS: Are we allowed to --

9 CHAIRMAN IMBRECHT: If you think that's the case,  
10 then how in the world are we able to buy all kinds of  
11 products for the Commission? I mean, we operate under  
12 these things on a regular general course of business here  
13 at the Commission.

14 These are administrative overlays, vis-a-vis  
15 all state expenditures, and, you know, I don't think you  
16 should go down the path of mischaracterizing any limita-  
17 tions. There are none of that nature.

18 COMMISSIONER COMMONS: Well, my understanding  
19 of the State Administrative Manual is that in a regulatory  
20 process, we set up regulations, we can make acquisitions,  
21 we can purchase certain items, and we can do things with  
22 a greater flexibility than we can if we go under the State  
23 Administrative Manual.

24 Now, I think Mr. Chamberlain addressed it and  
25 said, yes, he's not sure of which situations could or

1 could not fit into that. All of the different types of  
2 proposals that might come before us, he's not even aware  
3 of what they are, so it's very hypothetical and difficult  
4 for him to consider the alternatives.

5           It reduces our flexibility in terms of carrying  
6 out the intentions of the Naylor bill, but my main con-  
7 cern is it comes back to living up to the original commit-  
8 ment that we made to the Legislature, we made to the  
9 Governor, and we made to industry, that the primary decision-  
10 making process is not going to be one where you have a  
11 small group of people who are basically staffpersons, which  
12 you have an RFP. Rather, it was going to be to bring in  
13 the people who really have a lot of that expertise, and  
14 they were going to participate, and lead the way in terms  
15 of which way we go, and we just never end up having that  
16 when we do an RFP.

17           CHAIRMAN IMBRECHT: Well, let me suggest to you  
18 there is nothing in the regulations that -- or the concept  
19 of the regulations that guarantees any of that. I want  
20 to assure you that my understanding is exactly as is yours,  
21 and, frankly, the contemplation and the whole purpose of  
22 some of the trips that all of us have made in the last  
23 12 months, vis-a-vis this issue, et cetera, have been to  
24 engage in that very solicitation, not at a staff level  
25 but at Commissioner level.

1           I very much agree with you, and I would only  
2 offer one comment to you, and I frankly assumed that  
3 Commissioner Gandara would agree with this irrespective  
4 of the resolution of this issue, and that is that I see the  
5 program, because of its visibility, because of that biparti-  
6 san support for the criteria, et cetera, that you referenced,  
7 as a program that will have the utmost of hands-on  
8 Commission-level consideration and decision-making, in  
9 terms of any recommendations that are brought to the  
10 Commission.

11           I do not contemplate, quite candidly, delegating  
12 this to some type of staff committee in terms of going  
13 over the proposals that are submitted to the Commission  
14 as a result of the RFP process. I consider that to be  
15 the prerogative of the R&D committee, and then in turn  
16 the full Commission.

17           COMMISSIONER COMMONS: Well, I guess you missed  
18 my point, Mr. Chairman. It was my point, it wasn't sup-  
19 posed to be us and it wasn't supposed to be our staff,  
20 that we were looking at bringing in people from industry,  
21 from the research and development community --

22           CHAIRMAN IMBRECHT: Well, that --

23           COMMISSIONER COMMONS: -- and that they were  
24 going to be major participants in identifying the areas  
25 of need and helping to bring the proposals together.

1           CHAIRMAN IMBRECHT: That's really up to the  
2 Committee to try to elicit that kind of collegial infor-  
3 mation process. I don't recall anything in the bill that  
4 delegated to some kind of separate quasi body the ability  
5 to dispense these funds. That's obviously a discretionary  
6 decision that the Legislature gave the Commission by  
7 appropriating the funds to us, and I think that's very  
8 implicit and also a reflection of our public resopnsibili-  
9 ties.

10           But I don't really want to prolong this. We've  
11 got a lot of other items on the agenda. I think we under-  
12 stand the position, so let me just inquire one more time,  
13 does anyone else wish to be heard on this item?

14           Okay. Absent that, Commissioner Gandara -- oh,  
15 yes. Sure. Certainly. Yes.

16           MR. ASERA: Yes. Mr. Chairman, members of the  
17 Commission, my name is Larry Asera, and I guess I would  
18 refer to Commissioner Commons' interest about the private  
19 sector being interested in it.

20           We've been following this process through both  
21 the handbook and the workshops, and I thought I'd just  
22 -- although I don't know really where you're coming from  
23 in this rulemaking issue, I do know from the private sector  
24 a very pragmatic issue is that there are private-sector  
25 people gearing up for what they think is a schedule that's

1 coming through with an RFP that would be out this month,  
2 and with an award that's scheduled around March or April,  
3 I believe, in the workshops, and our only interest, if  
4 I could speak at least on one portion of the private  
5 industry, is that the process not be held up, whether rule-  
6 making is applied or not, that perhaps there's a position  
7 here that would allow the schedule to keep going the way  
8 it's going, because at least one part of the program, the  
9 grants program, where we as private industry are putting  
10 up anywhere from 50 to 80 percent of the capital and hard-  
11 ware, we would be exposed, because we have to make those  
12 decisions now in terms of R&D efforts, particularly one  
13 of the criteria of the program is innovative, you know,  
14 R&D type of research.

15           And some of the manufacturers are gearing up  
16 based upon a schedule that we would hope would follow the  
17 schedule that's in that handbook. That handbook I would  
18 hope can be used as -- I don't know, either a substitute  
19 or a functional equivalent of whatever requires you to  
20 render this as a rulemaking -- or complying with rulemaking.

21           As the private sector, I'm just bringing that  
22 pragmatic approach. You're asking the up side and down  
23 side.

24           The up side, we would hope that process continues  
25 with that schedule so that meaningful projects can be

1 put in place and those commitments, the two-thirds or 50  
2 percent commitment, is not jeopardized, because they have  
3 to be made now, and also that perhaps the -- the schedule  
4 of the RFP going out, I don't know if that process, as  
5 someone mentioned here, one of the Commissioners, is it's  
6 30, 60, 90 days. Sometimes that does take a while, but  
7 hopefully there's enough substance in the workshop and  
8 the handbook now to define whatever criteria you need to  
9 say that it meets your rulemaking criteria.

10 And I would like to just at least bring that  
11 out, because we had an interest from the private sector  
12 in continuing that process and not impeding that schedule.

13 CHAIRMAN IMBRECHT: Thank you.

14 Commissioner Commons.

15 COMMISSIONER COMMONS: I would like to try one  
16 compromise, Mr. Chairman.

17 I think your concern -- and I understand it,  
18 and, you know, you and I have spent a lot of time on this  
19 issue together -- is to get this first round through, and  
20 the compromise I would like to propose is to go forth with  
21 your plan on the first round, and at the same time we allow  
22 this OIH to go through, but it would not affect the first  
23 round.

24 The decision as to whether or not we would have  
25 a set of regulations would not be made now. Again, it

1 would be brought back to the Commission in March, but no  
2 matter which way we went on that issue, at the next business  
3 meeting you, the Committee, would come to us with an  
4 implementation procedure for this first round, and we  
5 would hold of the other decision until March.

6 CHAIRMAN IMBRECHT: Commissioner Commons, as  
7 I tried to indicate, that very much is an option, and from  
8 my perspective we will seriously consider that. Frankly,  
9 if we find that the first round operates smoothly and with-  
10 out glitches, then it would be my expectation to propose  
11 as a Committee recommendation that we go forward with an  
12 OIH.

13 I also mention to you as well that under those  
14 circumstances we can then also accommodate our work plan  
15 dilemmas that we have in terms of staff. You heard  
16 Commissioner Gandara concede that there was a staff work-  
17 load issue involved here as well.

18 I just want to stress to you that we spent a  
19 tremendous amount of time trying to figure out how to  
20 squeeze the last drop of lemon juice out of that lemon,  
21 and it's very difficult, and you are well aware of that,  
22 and there are some items you have some interest in, and  
23 other Commissioners do as well, that are also impacted  
24 by a decision at this point in time.

25 I frankly fully contemplate that this program

1 will ultimately be embodied in regulations. I think that  
2 is something that we can approach after we see what our  
3 history is for the first round, and then further accomplish  
4 it in the context of the work plans, presumably for the  
5 fourth quarter or the beginning of the next fiscal year,  
6 but I want to just make it very clear that I'm not in any  
7 way precluding that.

8 I just don't think that we ought to institute  
9 a rulemaking at this juncture until we've gone through  
10 that process, and I -- just what I would say is, in concept  
11 I agree with what you are suggesting is a middle ground,  
12 and frankly that's my own position, but I don't think we  
13 accomplish that by instituting rulemaking today.

14 So with that --

15 COMMISSIONER COMMONS: I tried.

16 CHAIRMAN IMBRECHT: Okay. With that, I would  
17 like to suggest we go to a roll call.

18 COMMISSIONER GANDARA: Could I have a last com-  
19 ment, Mr. Chairman, before we do that?

20 CHAIRMAN IMBRECHT: Well, you had first, and  
21 I had last, and I thought we would make it even, but go  
22 ahead.

23 COMMISSIONER GANDARA: Well, no, because you  
24 introduced a new issue, Mr. Chairman. I'll only respond  
25 to the new issue --

1 CHAIRMAN IMBRECHT: All right. What's that?

2 COMMISSIONER GANDARA: -- and it's been clear  
3 here that the discussion has -- by the Commission has been  
4 by the attorney members of the Commission, and it also  
5 seems clear that this issue will be decided by the non-  
6 attorney members of the Commission, and in that regard  
7 I think I would at least like to address the last point  
8 you made in which you at least called upon the weight  
9 or credibility to be given to the attorney who rendered  
10 this decision as having come from the Office of  
11 Administrative Law and, therefore, to some degree I sup-  
12 pose suggesting that a great weight, short of infalli-  
13 bility be given to that opinion.

14 Let me say that I do not impune in any way the  
15 opinion of any attorney. I recognize that without such  
16 healthy differences we might have less of a future to look  
17 to, but at the same time let me also tell you --

18 CHAIRMAN IMBRECHT: How do we keep 90,000 of  
19 us employed, for God's sake?

20 COMMISSIONER GANDARA: -- that this opinion was  
21 also prepared within the first several months of that  
22 attorney joining our particular agency and, therefore,  
23 a lack of familiarity perhaps with our other programs  
24 might also have some bearing to -- on the particular weight  
25 given to it.

1           And in addition to that, I think the most impor-  
2 tant thing is that this -- that the nonmember attorneys  
3 of the Commission should also remember that if this  
4 Commission ever just took the position of folding our hands  
5 every time the Office of Administrative Law spoke, that  
6 in fact we would not have any of our appliance regulations  
7 in effect, since there was also that agency who ordered  
8 the famous issue of Order to Show Cause as to why we should  
9 retain any of our appliance regulations.

10           And, of course, we have taken issue with OAL  
11 a number of times, and have in fact won, so that notwith-  
12 standing, that was the only issue that I wanted to address,  
13 which was --

14           CHAIRMAN IMBRECHT: Okay. That's fair.

15           COMMISSIONER GANDARA: -- a new element that  
16 you addressed, and with that I do think we can move to  
17 a roll call.

18           CHAIRMAN IMBRECHT: Okay. With that -- I have  
19 no rejoinder to that.

20           Okay. Commissioner Gandara is asking for an  
21 "Aye" vote and I'm asking for a "No" vote.

22           Lorri, would you please call the roll.

23           MS. GERVAIS: Commissioner Commons?

24           COMMISSIONER COMMONS: Aye.

25           MS. GERVAIS: Commissioner Gandara?

1 MS. GERVAIS: Commissioner Noteware?

2 COMMISSIONER NOTEWARE: No.

3 MS. GERVAIS: Vice-Chair Crowley?

4 COMMISSIONER CROWLEY: No.

5 MS. GERVAIS: Chairman Imbrecht?

6 CHAIRMAN IMBRECHT: No. "Aye's" two, "No's"  
7 three. The motion is defeated. The rulemaking is not  
8 instituted. We will proceed with the grant cycles as  
9 originally enunciated, after approval by the Commission,  
10 and the Committee will expeditiously notice for Commission  
11 consideration all the attendant considerations associated  
12 with moving the program forward.

13 COMMISSIONER COMMONS: Yes. Just one comment,  
14 Mr. Chairman.

15 When that comes forward as an implementation,  
16 I will be paying particular attention to, in the decision-  
17 making process, the involvement of the research and  
18 development community --

19 CHAIRMAN IMBRECHT: Fine.

20 COMMISSIONER COMMONS: -- the utility industry,  
21 and the private sector.

22 CHAIRMAN IMBRECHT: I guarantee you will be  
23 satisfied. At this juncture they have been consulted in  
24 great depth and will continue to be so.

25 COMMISSIONER COMMONS: In the decision-making

1 process as to which projects go forward.

2 CHAIRMAN IMBRECHT: Fine. Okay.

3 All right. Now, I am also going to exercise  
4 the discretion of the Chair, and also the request of  
5 several members of the Commission, I think we ought to  
6 turn to Item 13 before we go to the Building Standards  
7 issues. I think that is going to take a substantial period  
8 of time, and moreover that we can allow some people to  
9 excuse themselves, so we are going to turn to Item 13,  
10 which is Consideration of the Substantive Merits of the  
11 Joint Owners' Petition for Reconsideration of the Final  
12 Commission Decision on the Geothermal Public Power Line.  
13 The Joint Owners seek revision to Condition 1 on page 151  
14 of the Final Decision regarding the submission of trans-  
15 mission system reinforcement/mitigation studies.

16 Now, let me just indicate --

17 COMMISSIONER COMMONS: Mr. Chairman.

18 CHAIRMAN IMBRECHT: Commissioner Commons.

19 COMMISSIONER COMMONS: Point of order, or a  
20 motion to override.

21 We did request that we set the Retail Building  
22 Standards at 1:30, and I think you so ordered this morning,  
23 and I have no certainty this last item which was ten  
24 minutes took an hour, and --

25 CHAIRMAN IMBRECHT: You asked all the questions.

1           COMMISSIONER COMMONS: Well, at least on the  
2 item that you're calling I won't be asking any questions,  
3 but I request, since we have a large number of parties,  
4 we did call this item for 1:30 specifically, that we stay  
5 in the order of our calendar, and I'm prepared to make  
6 a motion to that effect if you don't grant the courtesy  
7 that you had offerd this morning.

8           CHAIRMAN IMBRECHT: Well, Commissioner Commons,  
9 I was responding to the request by other members of the  
10 Commission that I turn to Item 13, the reasons that I  
11 enunciated, and my guess is that we will be able to deal  
12 with this in a reasonably expeditious fashion.

13           The other item is scheduled for two hours and  
14 is the last remaining major substantive item before us  
15 for the day, and --

16           COMMISSIONER COMMONS: We have the IBM --

17           CHAIRMAN IMBRECHT: I'm sorry. We have that  
18 one as well, but I -- in any case, if you want to put it  
19 to a motion that's fine. I will just tell you that I tried  
20 to consult with our colleagues, and I was only reflecting  
21 that judgment prior to your arrival here for the afternoon  
22 session.

23           And because of the fact that we dealt with this  
24 issue to some extent the last time around, I thought per-  
25 haps we might be able to move it a little more quickly,

1 whereas the Building Standards issue is a matter of impres-  
2 sion for all of us, those of us that have not been involved  
3 with it.

4           So, I mean, we can do an informal poll and you  
5 can make a motion, but --

6           COMMISSIONER COMMONS: Well, why don't we do  
7 an informal poll.

8           CHAIRMAN IMBRECHT: Commisiosner Gandara, what  
9 is your -- do you want to stay with --

10          COMMISSIONER GANDARA: I don't care.

11          CHAIRMAN IMBRECHT: You don't care now?

12          COMMISSIONER GANDARA: Whatever you want to do  
13 is fine.

14          CHAIRMAN IMBRECHT: Well, I would rather stay  
15 with 13 and try to finish it off, but if you want to make  
16 a motion, fine.

17          COMMISSIONER COMMONS: I said I'd go by an infor-  
18 mal poll.

19          CHAIRMAN IMBRECHT: Okay. May I have the judg-  
20 ments?

21          COMMISSIONER NOTEWARE: Yeah. I disagree. I  
22 would like to move on to the Building Standards.

23          CHAIRMAN IMBRECHT: All right. So much for my  
24 consultation.

25                 Commissioner Crowley?

1 COMMISSIONER CROWLEY: It doesn't matter to me.

2 CHAIRMAN IMBRECHT: It doesn't matter to you.

3 All right.

4 COMMISSIONER COMMONS: Two to one. That's an  
5 informal poll.

6 (Laughter.)

7 CHAIRMAN IMBRECHT: I thought I was responding  
8 to a request from another member of the Commission, so  
9 I'll leave it at that.

10 All right. We'll turn to Item No. 11. I apolo-  
11 gize, Ms. Schori, and Item 11 is Consideration and Possible  
12 Adoption of Proposed Building Standards for Retail and  
13 Wholesale Buildings. The Commission has proposed amend-  
14 ments to its efficiency standards for retail and wholesale  
15 stores, excluding grocery stores. The proposed amendments  
16 were published and distributed for public comment on August  
17 23, 1985, et cetera.

18 Commissioner Commons.

19 MR. GERINGER: Commissioners, may I ask a ques-  
20 tion as to approximately what time you propose Item 13  
21 will come on?

22 COMMISSIONER CROWLEY: At the end of Item 11.

23 MR. GERINGER: At the end of Item 11, and that's  
24 good for approximately two hours?

25 COMMISSIONER COMMONS: I'd say between 90 minutes

1 and 120 minutes.

2 MR. GERINGER: I'm going to have to take leave,  
3 and I'll request that I could file written comments on  
4 Item 13, then.

5 CHAIRMAN IMBRECHT: Excuse me? I'm sorry. Pardon  
6 me. I was --

7 MR. GERINGER: I'm sorry. I'm trying to deter-  
8 mine approximately when Item 13 would come on -- on the  
9 schedule.

10 CHAIRMAN IMBRECHT: Good question at this junc-  
11 ture, and --

12 MR. GERINGER: And I'm unable to -- it's my under-  
13 standing, according to Commissioner Commons, to be approxi-  
14 mately 90 minutes or more. I will be unable to attend  
15 at that time, and I would request that I could file my  
16 comments in writing, and I will have them here tomorrow.

17 CHAIRMAN IMBRECHT: That's fine.

18 MR. GERINGER: Thank you.

19 CHAIRMAN IMBRECHT: Yes. We'll certainly accept  
20 that. I apologize to you, Mr. Geringer. I do think that  
21 we could accommodate some others by taking this item up  
22 first, but -- okay.

23 Now, where did Commissioner Commons go? I don't  
24 believe this.

25 COMMISSIONER CROWLEY: I don't know where he is.

1 CHAIRMAN IMBRECHT: It's his item and he has  
2 to lead off on it, and -- okay.

3 COMMISSIONER NOTEWARE: I'll change my informal  
4 vote. Let's go to 13.

5 CHAIRMAN IMBRECHT: Let's go to 13. All right.

6 COMMISSIONER CROWLEY: Okay.

7 CHAIRMAN IMBRECHT: Ladies and gentlemen, we're  
8 going to go to 13, and that's the way it goes, and I  
9 apologize again, but I'm not going to put up with this  
10 much longer.

11 Item 13 is the Consideration of Substantive  
12 Merits on GPPL, and --

13 COMMISSIONER CROWLEY: Did Mr. Geringer leave?

14 CHAIRMAN IMBRECHT: I just -- Mr. Geringer hasn't  
15 left. He'll have an opportunity to testify. Perhaps some-  
16 body might want to try to grab him on his way out the door.

17 Let me just stress for the members of the  
18 Commission that we in essence granted the motion to recon-  
19 sider this item purely as a procedural courtesy to insure  
20 that we could move forward on this matter today, and so  
21 now we are going to listen to substantive discussion, but  
22 at the same time there should be no reflection that --  
23 that that courtesy granting of reconsideration was defini-  
24 tive of the issue, and we'll take that up when we come  
25 to action on this item.

1 Ms. Schori.

2 MS. SCHORI: Thank you. We do appreciate your  
3 willingness from the last business meeting to put this  
4 item on today's agenda, especially in light of your lengthy  
5 agenda and other problems you have to deal with.

6 I'm Jan Schori, and I'm the attorney for the  
7 Joint Owners in the GPPL proceeding, and with me today  
8 I have the members of the Joint Owners' Management  
9 Committee. John Rivera from SMUD is the Chairman of the  
10 Management Committee. Ken McKinney is from the Modesto  
11 Irrigation District. John McGuire is here from the City  
12 of Santa Clara, and Roger Fontes is here from the Northern  
13 California Power Agency.

14 We believe that today we are asking you to resolve  
15 a fairly simple issue. The question presented by our  
16 Petition for Reconsideration is whether or not the final  
17 system study results, which is the analysis, the final  
18 analysis of the impact of the GPPL on the transmission  
19 system grid, should be filed with the AFC or at some point  
20 later in time.

21 When I use the word "final" in this context,  
22 I mean the identification of the optimum preferred trans-  
23 mission system mitigation reinforcement and an economic  
24 evaluation of that optimum solution.

25 The system studies have become the critical

1 path item for filing the AFC for the Joint Owners.

2 Why are the Joint Owners asking you to reconsider  
3 your earlier decision? Fundamentally, we are asking you  
4 to reconsider because we are being squeezed and we need  
5 some help.

6 The Joint Owners are municipalities, publicly  
7 owned, governed by elected officials. The voters in the  
8 Joint Owners' service area have chosen to own their own  
9 electric facilities and, more than that, the electorate  
10 has chosen to own more than simply the distribution system.  
11 They have chosen to own generation facilities, particularly  
12 geothermal generation facilities and, as we all know,  
13 generation requires transmission.

14 There are two ways to get transmission. You  
15 either own it yourself or you rent it from someone else.  
16 The problem that we face in The Geysers is that the exist-  
17 ing transmission system is a monopoly, and I think it can  
18 be recognized as a general rule that a negotiation with  
19 a monopolist is, per se, not a true negotiation, since  
20 the monopolist holds all the cards.

21 The question for the Joint Owners becomes whether  
22 the Joint Owners' municipally-owned generation can economi-  
23 cally survive.

24 We note that regulatory agencies of government  
25 are required to consider competition and the antitrust

1 laws as a factor in their decision-making process, and  
2 that is why we are here today. We think that there are  
3 some new facts which are relevant to your consideration  
4 of our petition.

5 PGandE now says the transmission is available,  
6 but in their brief they have left unanswered several criti-  
7 cal questions. They do not tell you how long it is avail-  
8 able. They do not tell you how much is available, nor  
9 do they tell you how much it will cost to obtain it. They  
10 do not tell you what other requirements they are insisting  
11 upon as a condition of obtaining such service.

12 PGandE in its brief indicates that they do want  
13 a new GPPL -- a new line built out of The Geysers, but  
14 not until PGandE says so, and only if it goes where PGandE  
15 wants it to go. Why does PGandE take this position?  
16 Millions of dollars are at stake in wheeling and upgrades  
17 on the transmission system.

18 The wheeling offer, and I put that in quotes,  
19 that PGandE has made to the Joint Owners is unprecedented  
20 and unacceptable. We do not know if anything acceptable  
21 can be negotiated, although this is the Joint Owners'  
22 preference.

23 While the Joint Owners favor interutility coopera-  
24 tion and do intend to work in good faith to negotiate an  
25 acceptable agreement with PGandE, PGandE's record in this

1 area is not sterling, and I would refer the Commission  
2 to the findings that were made in the E-Quad-7 case at  
3 the Federal Energy Regulatory Commission.

4 If the Joint Owners are not able to negotiate  
5 an acceptable solution with PGandE, the Joint Owners will  
6 be forced to pursue legal remedies to enforce PGandE's  
7 Stanislaus commitment. I wish to make it clear that the  
8 Joint Owners do believe that the Stanislaus commitments  
9 are enforceable.

10 The question that we are raising in our petition  
11 for reconsideration, which in our view is not inconsistent  
12 with anything that we have said in this case or in the  
13 CPPA case, is that there is no precedent for trying to  
14 enforce the Stanislaus commitments, and because of that  
15 there is a question as to the timeliness of the remedy  
16 that can be obtained through either FERC or through the  
17 Nuclear Regulatory Commission when attempting to enforce  
18 those commitments.

19 This Commission should probably ask PGandE  
20 whether PGandE thinks that the Stanislaus commitments  
21 require PGandE to wheel for the Joint Owners under the  
22 present circumstances. They did not respond to that issue  
23 in their brief.

24 Now, why are all of these issues relevant to  
25 the question that we have before you today? The Joint

1 Owners are seeking to keep the GPPL project moving. We  
2 wish to retain it as a viable option for providing trans-  
3 mission for our projects in The Geysers.

4 The transmission system evaluation requirement,  
5 Condition 1 at page 151 of the NOI decision, pretty much  
6 forecloses us from meeting our on-line date for the Cold  
7 Water Creek Project, and in essence eliminates our ability  
8 to provide our own transmission and forces us to go to  
9 the rent alternative, as I characterized it earlier.

10 Any additional time extension that the Commission  
11 would be willing to consider will help us. We think that  
12 the staff's data needs can be accommodated without having  
13 to file the final system studies results at the time of  
14 the AFC filing.

15 We note that with respect to certain other areas  
16 which have been decided upon in the NOI, specifically  
17 botany and some of the archeological topics, or the cul-  
18 tural topics, excuse me, the staff did agree to permit  
19 us to file final results of those studies 90 days after  
20 the AFC was filed.

21 We have attached to our response to the comments  
22 on the staff and PGandE briefs a copy of the staff's  
23 internal working time schedule, and we think that there  
24 is some room for movement on the part of the staff and  
25 the Commission with respect to the issue that we are facing,

1 or that we are raising today, because it does indicate  
2 that the staff is not required to submit its preliminary  
3 analysis to its project manager until the process is 141  
4 days underway.

5           So we think that there should be some room for  
6 movement on the part of the staff that will not hamper the  
7 staff's ability to perform their analysis, and nonetheless  
8 will enable us to continue to maintain our schedule in  
9 the hopes of bringing this project on-line in time to meet  
10 the needs of Cold Water Creek.

11           We think there are certain equitable considera-  
12 tions that the Commission should keep in mind. There are  
13 no regulations that require these kinds of studies to be  
14 filed as part of the AFC. This is a requirement that was  
15 developed late into the AFC process -- into the NOI process,  
16 excuse me, and because of that the Joint Owners simply  
17 were not able to commence these studies in sufficient time  
18 to be able to maintain our existing schedule.

19           We think that the reasons that we have offered  
20 in our written filings and today are good and sufficient  
21 reasons for allowing some flexibility, some accommodation  
22 on the filing of that final result of the system study,  
23 namely, the identification of the optimum transmission  
24 system solution.

25           Nonetheless, in order to grant this petition

1 today, you are not required to agree with the Joint Owners  
2 on any of the arguments that we have made. We are simply  
3 asking that you reevaluate the timing, the staff's data  
4 needs timing requirements, and determine whether or not  
5 there is any room for movement there.

6 We think that there should be, and we think that  
7 the reasons that we are offering are sufficient to indicate  
8 that it would be reasonable for this Commission to reevalu-  
9 ate transmission system evaluation Requirement No. 1.

10 I would be happy to respond to any questions.  
11 We would like to reserve some response time if we could,  
12 if other people wish to comment on our petition.

13 CHAIRMAN IMBRECHT: All right. Fine. Thank  
14 you. I assume Commissioner Gandara has one or two for  
15 you, but we'll reserve that to a later point.

16 Any other questions at this juncture?

17 Thank you, Ms. Schori.

18 Mr. Richard Spitler representing the City of  
19 Clear Lake.

20 MR. SPITLER: Thank you for giving me the oppor-  
21 tunity to speak before you today. I represent the City  
22 of Clear Lake, which is in Lake County. The City of Clear  
23 Lake is opposed to the Joint Owners' request and supports  
24 the CEC staff's position, that is the petition for recon-  
25 sideration should be denied.

1           We feel that there is no new evidence which is  
2 being presented which wasn't already discussed at the public  
3 hearings during the NOI process.

4           The Commission has already decided the matter.  
5 The Joint Owners received a compromise position. Even  
6 though the Vaca-Dixon route was determined to be superior,  
7 they were given a choice to go to Williams North or Vaca-  
8 Dixon. They made it clear that they intend to go to  
9 Williams North.

10           I think the -- the requirement to have the  
11 cooperative transmission system reinforcement study is  
12 a good one. I think it will provide a lot of evidence  
13 prior to the final AFC filing that will save the ratepayers  
14 a lot of money and possibly prevent thousands of acres  
15 of environment being impacted.

16           The Joint Owners got what they wanted in the  
17 NOI process. They got an out to go to the Williams North,  
18 even though it's an inferior route. Now they want to go  
19 one step further and forego completion of this study which  
20 would mandate a cooperation with PGandE, and they want  
21 to move ahead to their ultimate destination, which is  
22 Williams North.

23           I think it would be a good idea for this  
24 Commission to present or mandate a forum in which the two,  
25 PGandE and Joint Owners, were forced to talk about an

1 alternative which could save a lot of money and it would  
2 save impact to the environment.

3 Are there any questions?

4 CHAIRMAN IMBRECHT: Questions?

5 Thank you.

6 MR. SPITLER: Thank you.

7 CHAIRMAN IMBRECHT: Peter Baumgartner from  
8 Pacific Gas and Electric.

9 MR. BAUMGARTNER: Thank you, Mr. Chairman.

10 For the record, my name is Peter Baumgartner  
11 representing Pacific Gas and Electric Company here today.

12 PGandE is in opposition to the Joint Owners'  
13 petition for reconsideration. Let me make clear one point  
14 which may have escaped the Commission in the Joint Owners'  
15 earlier remarks -- counsel's earlier remarks.

16 PGandE is in favor of the construction of this  
17 line. We have been in favor of it, and we intervened  
18 primarily to lend our expertise and our support for the  
19 construction of an additional line out of The Geysers.  
20 GPPL is that line. We believe that it is needed and it  
21 should be built. That is not an issue.

22 In the Joint Owners' response to comments on  
23 the petition, the statement is made on page 1 that these  
24 studies, which are the issue here today, are the critical  
25 path item for the timing of the AFC filing. PGandE goes

1 farther than that.

2           There is one critical issue in the GPL case,  
3 and that is where it's going to terminate. If you don't  
4 know -- if the Committee does not make that decision first,  
5 it is unable to grapple with the precise line routings,  
6 the environmental issues, economic issues, and many other  
7 issues which are mandated in the AFC process, so there  
8 -- following the NOI process there were two alternatives  
9 proposed.

10           In order to select from among these alternatives  
11 the best alternative for this line, these studies are  
12 absolutely essential. Now, what are you going to get from  
13 the studies? You are going to get an exposition of  
14 economic -- primarily economic and electrical engineering  
15 facts.

16           There will also be an accompanying analysis,  
17 undoubtedly, but the staff will have comments on that.  
18 We expect to have some comments on that, and in order to  
19 provide the essential time element for the consideration  
20 of this issue, which is the threshold issue, the issue  
21 that the Committee must confront first to determine where  
22 this termination is going to be, these studies have got  
23 to be completed before the AFC is filed.

24           My evaluation of the Joint Owners' response is  
25 that everything else in their response is totally

1 irrelevant to that central fact. The Committee and ultimately the Commission has the decision to make these determinations, and it should allow itself the best -- the best amount of time and the best information right up front in the AFC filing which can be made available so that the decision is the right one.

7 Thank you.

8 CHAIRMAN IMBRECHT: Mr. Baumgartner, let me ask you something. Do you believe that it is the prerogative of the Commission Committee or the Commission, were Pacific Gas and Electric Company the applicant, to -- and if we were to simply juxtapose you into the current circumstances, for us to choose which of the routes that you cared to file on? That seems to be the essence of what you are arguing.

16 MR. BAUMGARTNER: I think that the choice as to what route is filed is up to the applicant. The applicant always has the initial choice.

19 CHAIRMAN IMBRECHT: Um-hum.

20 MR. BAUMGARTNER: However --

21 CHAIRMAN IMBRECHT: And then they bear the burden --

23 MR. BAUMGARTNER: -- it is the duty of the Commission to evaluate the impacts on the state as a whole of that choice, as well as the environmental alternatives.

1 Under CEQA, economics are a part of the environmental  
2 impact, the human impact. Consequently, the Committee  
3 and the Commission are in a somewhat difficult situation,  
4 in that it has to accept the filing of the applicant, but  
5 it -- it can respond by requiring that the applicant come  
6 forward with evidence sufficient to establish the prima  
7 facie case and to answer the opposition or the comments  
8 of staff and of the interested and intervening parties.

9 CHAIRMAN IMBRECHT: Well, you seem to suggest  
10 somehow that was a threshold determination for the  
11 Committee or the Commission, as opposed to the prerogative  
12 reserved to the applicant, and if you recall the thrust  
13 of the Committee's decision relative to approving the NOI,  
14 both of the termination points that you've made reference  
15 to was that, as to the Williams termination, that there  
16 were environmental benefits to that option, as compared  
17 to the other two that were under consideration, and as  
18 to the Vaca-Dixon termination there were system operating  
19 considerations, line losses, et cetera, benefits, and as  
20 a consequence the Committee and the Commission at that  
21 point in time chose not to decide between the two, but  
22 reflected the fact that there were, as a practical matter,  
23 substantive arguments that could be raised as to the bene-  
24 fits of each of them, and yet each were found to be suf-  
25 ficiently acceptable to allow the applicant the option

1 to go forward.

2           It just seems to me -- I would caution you about  
3 stating a position that may come back and bite PGandE  
4 again in the future if you take the viewpoint that some-  
5 how the Commission ought to juxtapose its judgment for  
6 that of the applicant.

7           MR. BAUMGARTNER: In Pittsburg 8 and 9, PGandE  
8 filed a preferred site plan, and only one site plan, as  
9 a matter of fact, and when it became obvious that the  
10 Committee was unable and unwilling to accept that, when  
11 there were obvious alternatives, the Committee allowed  
12 PGandE to develop the alternatives, and it was one of the  
13 alternatives that was acutally approved.

14           I think that it's the applicant's duty to come  
15 forward with the affirmative case, but I don't think the  
16 Commission's hands are tied to the extent where it simply  
17 must accept that in the face of evidence that -- overwhelm-  
18 ing evidence which may be presented by these studies. I  
19 don't know what the studies will show, but assuming that  
20 they showed that the applicant's alternative was not the  
21 best alternative in the judgment of the Energy Commission,  
22 I don't believe the Energy Commission's hands are tied  
23 to the extent that the Commission would be required to  
24 accept the applicant's alternative, or simply to turn it  
25 down without proposing or -- or suggesting that the

1 applicant could cure the defect by making a counter-  
2 proposal.

3 CHAIRMAN IMBRECHT: Well, I think that's a state-  
4 ment of somewhat the obvious. I mean that's -- I mean  
5 that's obviously a discretionary decision at that point  
6 in time, and it really would depend upon the willingness  
7 of the applicant to stipulate to an extension of time,  
8 et cetera.

9 But if the applicant chose to go forward with  
10 its own proposal, they were either looking at an up or  
11 down decision, it seems to me, if they wanted that deci-  
12 sion to occur within the 12-month time frame, but in any  
13 case I just was a little surprised that -- at the thrust  
14 of your argument that somehow the Committee or the  
15 Commission ought to make that threshold decision, which  
16 is contrary to my understanding of how the utilities  
17 generally, both public and private, have viewed the role  
18 of the Commission in these proceedings.

19 It will be interesting transcript reading I'm  
20 sure in the future, perhaps cite it somewhere.

21 Okay. Further questions for Mr. Baumgartner?

22 All right. Thank you very much.

23 Mr. Geringer, representing the California Farm  
24 Bureau Federation.

25 MR. GERINGER: I would like to thank the

1 Commission for this opportunity to address you today on  
2 the motion for reconsideration, and let me say that I  
3 represent the California Farm Bureau Federation, and also  
4 the County of Colusa.

5 I would put forth our position is the same as  
6 it always has been. We are not opposed to the project.  
7 We are just looking to see whether the project is needed  
8 and, if so, we would like to have the project placed where  
9 it would have the least detrimental effect on agriculture.

10 In listening to Ms. Schori's arguments earlier,  
11 I believe it started from an underlying assumption, which  
12 I believe is an improper assumption, and that is that the  
13 GPPL will be built. At this point in time we do not know  
14 whether it will be built or not. That is what the AFC  
15 process is for.

16 Ms. Schori stated that at the present time the  
17 outlet lines are a monopoly controlled by PGandE, that  
18 PGandE has come forward and said that they will provide  
19 firm transmission at least through 1991, but, of course,  
20 had not said how long it will be, whether it will be --  
21 how much it will cost and how much of it will be there.

22 The question or I guess really the answer to  
23 that is, so what? If GPPL is not built we are in a no  
24 different situation, or Joint Owners is in no different  
25 situation as they are now, with a delay which would require

1 them to put forth all the information.

2 Secondly, getting back to the arguments that  
3 were filed originally by the Joint Owners in the motion  
4 for reconsideration, there were a few points that were  
5 raised. First of all, that there is no firm transmission  
6 for Unit NCPA No. 3.

7 During the NOI proceedings we went over this  
8 point. NCPA No. 3 was built after NCPA No. 2, which was  
9 also built without firm transmission. The unit was cer-  
10 tified. The NCPA knew they did not have firm transmission,  
11 and went ahead with a business judgment to build the unit.  
12 There is no problem with that, but they went ahead knowing  
13 they did not have firm transmission.

14 For CCPA Units 1 and 2, that same problem arose  
15 in its certification, and then those members of CCPA 1  
16 and 2 in fact said that they are not -- they do not need  
17 GPPL, that there could be another alternative which would  
18 be hooking a tap line into the present PGandE system, so  
19 those two arguments do not stand up on reconsideration.

20 Further, there was an urgency question that was  
21 raised in the motion for reconsideration, that we can't  
22 put CCPA 1 and 2 and also firm transmission for NCPA on  
23 line in the present time unless we can proceed as fast  
24 as possible.

25 That urgency is gone. We know that we have firm

1 transmission and capacity for those units on the PGandE  
2 system through 1991, and in fact we may have it longer,  
3 depending upon whether PGandE lets its schedule slip for  
4 their future geothermal projects.

5           The real thrust and the real question here is  
6 do we assume that GPPL will be built. If it's shown in  
7 the AFC that the GPPL is not needed at the present time,  
8 then Joint Owners are in no different situation than they  
9 are at the present time.

10           I would like to also point out that the complaint  
11 is a complaint of a delay in the process, not being able  
12 to file as soon as possible. The Joint Owners themselves  
13 have stated that it would take approximately eight to ten  
14 months to perform the studies that have been required as  
15 the condition.

16           In a letter by Joint Owners under the signature  
17 of Mr. Jim Bemis on July 9, 1984, he set out a schedule  
18 in which the final report would be done in approximately  
19 eight to ten months. We are already four months into that  
20 ten-month period, so now what we are talking about is only  
21 a six-month delay from this period of time, at least by  
22 the Joint Owners' estimation in July of this year.

23           One of the last and kind of complexing problems  
24 is the issue of contractual agreements between PGandE and  
25 the Joint Owners, and what I see developing is the

1 Commission being drawn into the parties' contractual prob-  
2 lems, and it is our position that that is not where the  
3 Commission should be, that contractual obligations or  
4 commitments should be worked out by the parties without  
5 the interference or the mandate of the Commission.

6 And lastly, and probably most important, what  
7 the Joint Owners are requesting through a reconsideration  
8 is for us not to have full and complete knowledge at the  
9 beginning of the process. They are simply asking that  
10 we accept part of the knowledge now and part of the know-  
11 ledge six months before the case is over.

12 I submit to you the proper way that we should  
13 do it is, as the Commission has ruled in their final deci-  
14 sion, and that is let the public, let the parties, let  
15 everyone know what the game is, and let's take it from  
16 Day One.

17 Thank you for your time. If you have any ques-  
18 tions, I would be happy to respond.

19 CHAIRMAN IMBRECHT: Okay. Thank you.

20 Questions?

21 MR. GERINGER: Thank you.

22 CHAIRMAN IMBRECHT: All right. Does anyone else  
23 wish to be heard on this item?

24 That concludes the testimony. I'm at a little  
25 bit of a loss --

1 MR. RATLIFF: Commissioner, I would be glad to  
2 speak for staff on this item.

3 CHAIRMAN IMBRECHT: Pardon me. Excuse me,  
4 Mr. Ratliff. I apologize. Thank you, Commissioner Noteware.

5 MR. RATLIFF: Dick Ratliff speaking for staff.

6 The staff opposes the Joint Owners' petition  
7 for four fundamental reasons. The first reason is that  
8 there is nothing new in this petition. There are no new  
9 arguments of fact or of law that have not been discussed  
10 at length before this Commission.

11 All of these issues were addressed in one form  
12 or another in the Committee hearings held last spring,  
13 and in addition to that they have been argued extensively  
14 before this full Commission in two hearings that I think  
15 you probably remember.

16 So in the staff's view this petition should never  
17 have been granted for hearing.

18 The second reason the staff opposes this petition  
19 is because what the Joint Owners are proposing is a change  
20 that will effectively deprive the Commission of any indepen-  
21 dent analysis by the staff on one of the case's most criti-  
22 cal issues, that being the issue of transmission system  
23 evaluation.

24 The Joint Owners are proposing to file only pre-  
25 liminary studies at the outset of the proceeding, and

1 then sometime in the middle of the proceeding, sometime  
2 -- sometime six months prior to the end of the proceeding,  
3 are proposing to file what are called the complete studies  
4 which actually show what they are proposing in terms of  
5 transmission system mitigation and rebuilding.

6           What this essentially does is to leave staff  
7 with a matter of weeks to try to put together an under-  
8 standing of some very complex and voluminous information  
9 on -- on the proposal that the Joint Owners are making  
10 for the rebuilding of their system. Normally they would  
11 have seven months to do this. There would be a data  
12 adequacy period, a period for workshops, there would be  
13 a possibility of doing further discovery.

14           All of these possibilities will be eliminated  
15 if the Joint Owners' proposal is adopted at this time,  
16 so we propose that the Commission deserves a complete staff  
17 analysis on this point, and that if it wants to have that  
18 analysis, if it wants an independent staff analysis, it  
19 should insist that the complete studies are filed.

20           The preliminary studies basically scope out the  
21 problem. They tell you what -- if you have an overload  
22 on a given line, what kinds of alternatives you might be  
23 able to use to address that problem, but they don't tell  
24 you what alternative is best. They don't tell you what  
25 transmission losses are in most cases, and they only give

1 you very crude cost estimates, so we feel that the pre-  
2 liminary results, although they are important for the staff  
3 in terms of understanding what the Joint Owners' proposal  
4 is, are simply not adequate for the staff to do the kind  
5 of analysis that the Commission needs. It will be the  
6 complete studies that will provide that kind of informa-  
7 tion.

8           The third reason we oppose this -- this petition  
9 is that the real rush for filing an incomplete AFC is not  
10 actual need for the line, but the contractual relations  
11 between PGandE and the Joint Owners. That was stated in  
12 their petition for reconsideration, that was stated in  
13 their filing that they filed on Friday, and I believe it's  
14 been stated here today. We don't feel that that's a proper  
15 basis for the Commission to change its decision.

16           In the decision the Commission stated that con-  
17 tractual obligations were not to be the basis for a need  
18 determination. We think that was a sound judgment, and  
19 we want -- we hope that the Commission would adhere to  
20 it. We can only imagine what kind of harm might be created  
21 if need determinations begin to be made according to an  
22 applicant's contractual needs.

23           Our fourth reason for opposing this petition per-  
24 tains to -- had to do with whether or not this AFC deci-  
25 sion will comply with the Environmental Quality Act. As

1 you know, the -- the Energy Commission siting process is  
2 described as a CEQA equivalent. We are required to do  
3 an analysis which encompasses all of kinds of environmental  
4 issues that would be in an EIR, should we have done an  
5 EIR. Although we no longer do the EIR, we have to address  
6 all of the environmental issues in a complete manner that  
7 the EIR would, were it done in its place.

8           As the adopted decision states, and states cor-  
9 rectly, no complete analysis was done of the transmission  
10 system mitigation measures which will be required in the  
11 GPPL project. That is to say when the GPPL project con-  
12 nects with Williams, there will be a lot of secondary  
13 effects throughout the rest of the transmission system.  
14 In some cases this will require the rebuilding of lines.  
15 In other cases it will require new lines altogether.

16           The NOI did not address the environmental effects  
17 which would be associated with these additional mitigation  
18 measures and rebuilding of the existing system which neces-  
19 sarily will follow.

20           The decision states, and correctly, that these  
21 issues must be addressed in the AFC if the AFC decision  
22 is to satisfy CEQA. The problem that arises is that you  
23 can't address those issues in the AFC if you don't know  
24 what the project is, and we aren't going to know what the  
25 project is until we get the complete studies. You cannot

1 tell what environmental mitigation is necessary or what  
2 the environmental impacts are until you know what mitigation  
3 and what rebuilding and what new lines aer going to be  
4 built downstream.

5           So, again, we feel like it's extremely important  
6 to the legal integrity of this process that all the infor-  
7 mation be provided up front. If there is not that kind  
8 of information, there will be no possibility of the staff  
9 doing the kind of environmental analysis which is required  
10 by CEQA, and we think that the decision would be legally  
11 vulnerable on those grounds as well.

12           So for all of these reasons, we ask that this  
13 decision remain as it is and not be changed according to  
14 the petition.

15           At this time I would like to allow Chris Tooker,  
16 the project manager, to briefly explain why it is that  
17 staff cannot, six months from the end of the proceeding,  
18 be given the complete studies.

19           MR. TOOKER: Thank you, Dick.

20           As Dick said, my name is Chris Tooker, the  
21 Commission's staff project manager for review of the GPPL  
22 Project. I would like to spend a few minutes with you  
23 first going over our typical AFC schedule, and then discus-  
24 sing some of the comments which the applicant has made  
25 regarding the ability of staff to accommodate their

1 requested six-month delay.

2           If you look at the handout I've given you, on  
3 the left is a typical AFC schedule which staff follows,  
4 and for the most part it corresponds to the item attached  
5 to the applicant's recent brief. Although that schedule  
6 is a little more lengthy because it was one formulated  
7 in 1982, and since then we have tightened up somewhat,  
8 a matter of a few days here and there on our time lines,  
9 but in essence we feel that the time lines, even in that  
10 schedule, reflect our basic needs.

11           What I would like to point out is that the --  
12 the first major milestone in our process is the completion  
13 of our staff analysis. Now, you can see that's at day  
14 -- roughly Day 125. That's based on a fairly lengthy  
15 discovery process, a series of workshops held to discuss  
16 data requests and responses, and a period of time for the  
17 public and other parties to become involved in the issue  
18 resolution process.

19           That is when staff does the majority of its  
20 analysis, and when I as project manager receive their analy-  
21 sis it's based on a review and analysis of all of the infor-  
22 mation which is supposed to be in the application at the  
23 time of filing, so that we are required to look at final  
24 information to be able to do that analysis.

25           Once the PSA is distributed for review, we hold

1 workshops with the applicant and other parties to go over  
2 our finding to discuss remaining issues and to try to  
3 resolve them and, if necessary, to revise the positions  
4 which we have taken in our PSA.

5 Both of those periods are very important. First,  
6 the discovery and analysis, and secondly the issue resolu-  
7 tion process which leads into the prehearing conference,  
8 and the Committee's involvement in trying to identify those  
9 issues which still need resolution.

10 If you look on the right side of the page and  
11 you see a schedule which puts in the filing of the final  
12 study results on transmission system engineering at 180  
13 days, and what you will notice is that that 180 days  
14 would be a mere ten days before the prehearing conference  
15 in a normal 12-month schedule. It would only give us a  
16 period of approximately six weeks to complete our final  
17 testimony without any discovery period of any significance,  
18 and without the luxury of having had interchanges and work-  
19 shops with the applicant, and the beginning of hearings  
20 would be a mere 50 days or so following the receipt of  
21 that data.

22 You are talking here about an issue that is very  
23 complex and is, I believe, one of the central issues under-  
24 lying this case.

25 If you were to provide us with 165 days which

1 we need for our analysis, you would see that we wouldn't  
2 even have distributed our preliminary testimony, that's  
3 the PSA, until Day 360, so at the end of 12 months we would  
4 have completed our analysis, and the Commission at that  
5 point would be in no way prepared to render a decision  
6 on the project.

7           With respect to the areas of botanical resources  
8 and cultural resources, I would like to point out that  
9 during the NOI we, as staff and I would say the applicant,  
10 were both very diligent in reviewing botanical and cultural  
11 resources in the corridors proposed and evaluating the  
12 potential for impact, and in coming together in workshops  
13 and discussing appropriate evaluation procedures and miti-  
14 gation measures, to both identify impacts and to address  
15 their mitigation.

16           In the area of botanical resources, we believe  
17 that even if the applicant had made a filing in late summer  
18 that they would have had the bulk of their data already  
19 available to provide to us, and the amount of data left  
20 unfiled would have been fairly insignificant, perhaps ten  
21 or 15 percent of their total data base, to finish up on  
22 critical survey areas.

23           In the cultural resources area we have already  
24 discussed and agreed on appropriate survey methods which  
25 the applicant has agreed to carry out. We have identified

1 the range of potential mitigation measures that are avail-  
2 able, and the applicant agreed in their filing to both  
3 make a preliminary identification of sensitive areas, as  
4 well as to outline potential mitigation measures.

5           So in both of those areas we have the advantage  
6 of having evaluated them in the NOI, and further we have  
7 the advantage of having a lot of data already available  
8 for filing in the application, so we feel that -- that  
9 given the relative simplicity of both of those issue areas  
10 and the amount of data already available to file, that  
11 those are fundamentally different issue areas for resolu-  
12 tion or for analysis than the very complex area of trans-  
13 mission system evaluation.

14           So, in sort, I would just like to leave you with  
15 a very clear picture of what it means to staff and what  
16 it means to the Committee and the Commission if we were  
17 to accommodate the applicant's proposal for filing of the  
18 final system studies approximately 180 days into the 12-  
19 month process.

20           If there are any questions, I would be glad to  
21 answer them.

22           CHAIRMAN IMBRECHT: Any questions for Mr. Tucker?  
23 Barbara?

24           COMMISSIONER CROWLEY: No questions.

25           CHAIRMAN IMBRECHT: Okay. Thank you very much.

1 Ms. Schori or Mr. Fontes, do you have something  
2 to conclude with?

3 MR. FONTES: My name is Roger Fontes. I'm the  
4 planning manager for the Northern California Power Agency.  
5 I appreciate the opportunity to speak to the Commission  
6 today.

7 I am very disappointed that Commissioner Gandara  
8 and Commissioner Commons are unable to sit thorough this.  
9 I understand that both of those individual Commissioners  
10 had considerable concerns when the motion to override the  
11 Committee recommendation on this matter came before the  
12 full Commission, in a meeting I was not in attendance at.  
13 I apologize for that, but certainly Commissioners Gandara  
14 and Commons, raising the questions they did, I think led  
15 to the Commission action which we are asking you to reverse  
16 today, so I guess the fact --

17 CHAIRMAN IMBRECHT: We're endeavoring to -- we  
18 are endeavoring to find them.

19 MR. FONTES: And the fact that they're not here,  
20 perhaps suggests that they are not willing to reconsider  
21 their decision. I understand Commissioner Commons feels  
22 he's got an ex parte problem. I assure you that there  
23 has been none, as I also assured the rest of the  
24 Commissioners that what we get into today probably here  
25 will expose the reasons for ex parte rules, because the

1 Warren-Alquist Act really looks for kind of regulatory  
2 life in a fishbowl.

3 And I'm going to talk to you about antitrust  
4 with PGandE in public so that you will reconsider your  
5 decision, and it's very relevant to our survival.

6 The basic issue, as I see it, before this group  
7 is can the public and municipal utilities in California  
8 plan, license, build, own and operate a major high-voltage  
9 transmission line. The answer to that question is cate-  
10 gorically yes, of course we can.

11 We have our statutory responsibilities, we are  
12 ratepayer owned, and have the authority to do what we are  
13 about to do.

14 There's another underlying issue here today which  
15 is delay versus action. The parties that argue delay have  
16 different benefits in mind, but their goal is singular.  
17 That is to prevent the applicants from bringing forward  
18 an application for certification in a timely manner, and  
19 to move forward with the transmission line that we  
20 desperately need to maintain our ratepayer equity and over  
21 \$5 million in capital investment.

22 There's no question that five to six hundred  
23 megawatts of new transmission is needed by the public  
24 applicants and CPA units existing and planned, SMUD, CCPA,  
25 other facilities.

1 PGandE has said take all the time you want, don't  
2 worry about these problems, we will graciously provide  
3 wheeling till 1991, we will relieve NCPA and Santa Clara  
4 of their milestone benchmark dates. There is a proviso  
5 there that's very important that everybody has to be  
6 underlined and read. That is if you sign this agreement,  
7 the agreement that's been offered to us, you have heard  
8 in our filed testimony that it is unacceptable.

9 We know when playing Monopoly with PGandE that  
10 you have to not only read the lines but read extensively  
11 between the lines. We have done that with the agreement  
12 they have proposed to us. It's unfortunate that the nature  
13 of the starting point for negotiations is so far from the  
14 mark and so unacceptable to the public applicants.

15 PGandE's ability to provide transmission to us  
16 can be unilaterally withdrawn upon 12 months notice. That  
17 is unacceptable to us.

18 There is an idemnification in the PGandE offer  
19 that is so onerous, I had my lawyer communicate with me  
20 in writing as to our ability to execute it as a public  
21 agency. I would like to read into the record a part of  
22 his letter.

23 "PGandE has conditioned interim transmission  
24 service on the inclusion in any agreement of an  
25 indemnity to PGandE against losses in connection

1 with future geothermal plants..."

2 in the following broad language. I won't read the language.

3 "The liability which NCPA would assume under

4 this condition cannot be defined. It proposes

5 that NCPA would make PGandE whole for the adverse

6 results of proceedings by PGandE before any and

7 all public bodies, which NCPA as a nonparty

8 would have no ability to affect, especially as to

9 future PGandE geothermal power plants.

10 "NCPA is an outsider, has no participation

11 or knowledge."

12 I want to emphasize this last sentence.

13 "Entering into such an agreement would repre-

14 sent a state of desperation for NCPA and any other

15 contracting party to which no public or private

16 agency should be driven."

17 That's one of 17 points in the agreement proposed

18 by PGandE.

19 CHAIRMAN IMBRECHT: Since you're quoting from

20 a document, you ought to reference who rendered that

21 opinion.

22 MR. FONTES: Oh. This is provided by Bruce

23 McDonough, a local law firm, McDonough, Holland & Allen.

24 CHAIRMAN IMBRECHT: Is there a date on that docu-

25 ment as well?

1 MR. FONTES: Yes. November the 8th.

2 CHAIRMAN IMBRECHT: And that's a letter addressed  
3 to you?

4 MR. FONTES: It is.

5 CHAIRMAN IMBRECHT: Thank you.

6 MR. FONTES: That's one provision of 17 provi-  
7 sions I believe in the offer PGandE has made to us to  
8 relieve us of our milestone obligations.

9 Another item -- I'm only going to deal with two  
10 of the 17. It would take far too long, and the arena  
11 for those kinds of arguments are in the Washington, D.C.  
12 area, not in the state's capital, but in the matter of  
13 transmission losses, our contract with PGandE now, which  
14 is on file with FERC, regulated by FERC and approved --  
15 approved by FERC, has loss factors to five decimal points  
16 of accuracy, 12 years to negotiate that contract, including  
17 the fifth decimal point.

18 It's acceptable. They are not great loss factors,  
19 but they are acceptable.

20 PGandE's proposal would inceaase that loss factor  
21 by five times, would yield \$2 million in additional revenue  
22 to PGandE over a period of one year, just in the recalcu-  
23 lation of loss factors. We don't think that's fair. We  
24 agree with our attorney. We think that would be an act  
25 of desperation.

1 PGandE's offer is in fact a nonoffer. What  
2 PGandE will do I don't know. PGandE is a big company,  
3 it's a gas company, it's an electric company, it owns the  
4 rights as pertain -- what they will decide to do after  
5 this hearing today and this decision I don't know, but  
6 I know that we have a problem, and I'm here to hope that  
7 you will reconsider what has been done and get us out of  
8 this bind.

9 We need to get on with constructing our line.  
10 We do not know what will be decided. We will provide the  
11 information necessary for your staff to fully assess the  
12 project. I believe that the Joint Appilcant is offering  
13 what the staff was willing to accept prior to the  
14 Commission's vote but, as I have heard said, some person-  
15 alities have gotten involved, and what have you. Maybe  
16 there are compromises off the table, but I certainly think  
17 that the applicant is prepared to offer what is necessary  
18 to assess our application.

19 We do want you to consider, however, the anti-  
20 trust implications of what you do. Contrary to  
21 Mr. Geringer's comments today, there is a very good case  
22 in California law. It's called the Northern California  
23 Power Agency v. the California Public Utilities Commission.  
24 It deals with regulatory -- state regulatory agencies tak-  
25 ing into consideration antitrust issues. It's a mandate,

1 the turn of a decision from the State Supreme Court order-  
2 ing it back to the PUC to do just that. It overlooked  
3 to do that.

4 So we believe that antitrust considerations in  
5 our relationship with the other wholesale utilities we  
6 deal with are relevant for your consideration.

7 If you force upon us this delay and require that  
8 we do this optimal plan, continue to do transmission  
9 analysis ad infinitum on an endless and endless basis,  
10 and continue negotiations in the same vein, the only party  
11 that will benefit, certainly economically, will be PGandE,  
12 at least to the tune of our \$2 million a year, plus the  
13 potential loss of \$24 million a year in possible capacity  
14 charges.

15 This is the antitrust consideration I would like  
16 you to evaluate. PGandE will literally hold the exclusive  
17 ability to reach agreement and will be the party that bene-  
18 fits if agreement is not reached. As has been mentioned  
19 here at least by our side today, the record is not sterling  
20 in this area. It so happens that the Quad-7 case is also  
21 an NCPA action.

22 I think it's very dangerous to set a precedent  
23 whereby NCPA and the Joint Applicants are required to  
24 negotiate a contract with PGandE in mitigation of trans-  
25 mission impacts that are first of all more properly

1 adjudicated at FERC -- that's the Federal Energy Regulatory  
2 Commission -- and will lead to a result that is equitable  
3 for all the parties as wholesale power suppliers around  
4 the state.

5 Thank you.

6 CHAIRMAN IMBRECHT: Okay. Thank you.

7 Questions? Commissioner Noteware.

8 COMMISSIONER NOTEWARE: Yes. Mr. Fontes, when  
9 this was before us before, it seemed somehow simpler. It  
10 was more -- my impression was that there were -- it was  
11 necessary for the PGandE to complete an analysis before  
12 the staff would have everything they need to make a recom-  
13 mendation.

14 And you mentioned this analysis was going on  
15 and on in a kind of an endless vein. Do I gather from  
16 that, then, that it's behind schedule, that PGandE is not  
17 performing the way we had anticipated they would?

18 MR. FONTES: Well, first of all, the -- PGandE  
19 did make an offer to the Joint Owners to conduct transmis-  
20 sion studies, but because those studies could not be con-  
21 ducted in a timely manner the Joint Owners have taken it  
22 upon themselves to start initiating and will complete those  
23 studies, so they are ongoing.

24 COMMISSIONER NOTEWARE: Then --

25 MR. FONTES: The --

1                   COMMISSIONER NOTEWARE: Excuse me. Then the  
2 PGandE is not performing the studies? Is someone else  
3 now?

4                   MR. FONTES: Yes. The staff of the utilities  
5 involved with the Joint Owners, NCPA, Santa Clara, SMUD,  
6 MID. We have transmission planning staff, we have the  
7 capability to do it. We're doing the studies ourselves.  
8 One of the reasons we can guarantee that we will have the  
9 information available at the Committee meetings.

10                   I am -- I'm cautioned to mention that our studies  
11 are not done exclusively in isolation. We are working  
12 with the transmission planning staffs of both PGandE and  
13 the Western Area Power Administration. That's something  
14 we haven't mentioned at all, is Western, which in connecting  
15 at Williams is a federal termination. That's an issue  
16 that has to be worked out, and we didn't stress today,  
17 because we haven't had them in the case.

18                   You notice they have been absent from the case  
19 because they -- they deal with these issues on a regular  
20 basis and don't go to state bodies for adjudication.

21                   CHAIRMAN IMBRECHT: Well, I'm at a little bit  
22 of a loss as to how to proceed at this juncture with the  
23 absence of our two colleagues for the following reason.  
24 I think it's abundantly clear from the viewpoints that  
25 I expressed during the original consideration of this

1 matter what my own judgment on it is, and while I fully  
2 appreciate the difficulties that our staff might face,  
3 I also recall that during the hearing they did indicate  
4 at the time that this other approach was something that  
5 was theoretically acceptable to them, though it would in  
6 fact create substantial burdens.

7           And I think we also discussed at that time the re-  
8 flection that the delay by the applicant in providing the  
9 study out to the six-month period after the instigation  
10 of the AFC would in fact create the high likelihood that  
11 there would be some delay in the final conclusion of the  
12 proceeding, and I think that the schedule that has been  
13 presented to us is a fairly good illustration of that,  
14 although I must say I don't think that schedule precludes  
15 categorically the ability to deal with this within a 12-  
16 month period.

17           Nonetheless, and though I would think that from  
18 a technical standpoint, since I believe that ultimately  
19 I voted for the decision, but lost on the question of the  
20 amendment to the proposed decision, though I voted for  
21 the -- and, Mr. Chamberlain, you might help me on this --  
22 that I would be able to go forward for reconsideration.

23           Nonetheless, I feel a little constrained,  
24 because it's clear that I opposed the action of the  
25 Commission that was taken two months ago, I believe it

1 is, and I still feel that the original proposed Committee  
2 decision was the appropriate balancing of all the considera-  
3 tions, including those which you have heard enunciated  
4 here today, which I didn't bother to burden the Commission  
5 with at that juncture.

6 I look at some of the statements, I must say  
7 that my understanding -- and I think that the understand-  
8 ing that I think members of the Commission have, at least  
9 at the time, in terms of the representations made by  
10 Pacific Gas and Electric relative to that they are willing  
11 to extend the agreements, did not contemplate some of these  
12 new terms and conditions that are being represented to  
13 us today as, in essence, being demanded of the Joint Owners,  
14 and I don't know whether any representative of PGandE wants  
15 to respond to this, but I frankly feel that -- that there  
16 is a substantial issue here and a substantial burden that  
17 PGandE has to bear on this.

18 If you are asking us to delay, and if you are  
19 asking that this case be held based upon the representation  
20 that you are willing to provide continued wheeling to the  
21 Joint Applicants, that did not contemplate profound changes  
22 in conditions, at least I don't believe that that was in  
23 any way implied or even suggested when those representations  
24 were made to the Commission.

25 And so I am -- I have to say even more troubled

1 than I was at that time, by virtue of the direction these  
2 -- this proceeding has taken. Now, I don't know whether  
3 in fact a member of PGandE wants to respond to those con-  
4 cerns or respond to the points that Joint Owners have made  
5 here, but I think that they are welcome. It's entirely  
6 your call.

7 Absent that, I will just continue to indicate  
8 that I am prepared to make the change in the decision and  
9 reflect what was the original Committee's proposed deci-  
10 sion at that time.

11 I don't really know where we stand in terms of  
12 the other members of the Commission.

13 Mr. West, do you want to respond?

14 MR. WEST: Yes. Mr. Chairman, I am very sorry,  
15 I -- I could hear that you had some concerns. The acoustics  
16 are very bad back there, and perhaps I'm carrying a little  
17 cold or something, but I would appreciate it if you could  
18 restate what your concerns are as to these matters.

19 CHAIRMAN IMBRECHT: Well, I believe that one  
20 of the things that led the Commission to ultimately over-  
21 rule the Committee's proposed decision relative to this  
22 particular issue, there was a representation, and I don't  
23 recall whether it was made by yourself or other represen-  
24 tatives of PGandE that in fact you were prepared to extend  
25 your existing agreements and continue to provide

1 transmission service to the various projects that the Joint  
2 Owners own in The Geysers area.

3 At that time I don't recall any suggestion that  
4 there was going to be any profound change in terms or con-  
5 ditions associated with such an offer, and yet the repre-  
6 sentations made to us today are that in fact that has been  
7 the bargaining position of Pacific Gas and Electric, and  
8 frankly I'm curious as to how that squares with the  
9 representations that were made to us.

10 MR. WEST: Mr. Chairman, no representation to  
11 that effect was made at that time by me or any PGandE  
12 witness here or involved in the case. What we were saying  
13 at that time was that we had limited transmission, very  
14 limited transmission. We were faced with risks if we did  
15 extend transmission service to particularly the Cold Water  
16 Creek plant.

17 We did observe that under the existing contract,  
18 if I recall, and I think a copy of it is on file as part  
19 of the evidence in this case, that NCPA does have trans-  
20 mission service for its Unit 3. It also has transmission  
21 service, firm long-term service for its Unit 2. Trans-  
22 mission service for Unit 3 has some benchmarks or con-  
23 tingencies, and that is meeting a certain benchmark schedule  
24 for building the GPPL.

25 As we have mentioned in our response to the

1 Joint Applicant's motion, PGandE is willing to negotiate  
2 and to extend those benchmarks as far as Unit 3 is con-  
3 cerned.

4 As to the Cold Water Creek unit, the Chairman  
5 and the Committee will recall that I appeared before this  
6 Committee in the Cold Water Creek proceeding and explained  
7 in detail, quite some detail, the risks that PGandE per-  
8 ceived in extending transmission service to Cold Water  
9 Creek.

10 At that time we urged that the Committee not  
11 change the proposed decision, if I -- pardon me if I have  
12 my terminology wrong here, and conditioning the construc-  
13 tion of Cold Water Creek upon obtaining firm transmission  
14 service.

15 The Committee in its wisdom elected to remove  
16 those restrictions from the Committee's decision in  
17 authorizing Cold Water Creek to go forward.

18 The owners of Cold Water Creek decided to go  
19 forward, despite the fact they did not have transmission  
20 service. Now those same owners, a couple of them, in  
21 a different guise, wearing a different hat, are appearing  
22 before this Commission and are asking for relief from  
23 their own folly. That's what it amounts to.

24 This Commission in its decision, and I think  
25 very wisely, decided that the staff and all the people

1 involved in this proceeding should have the right to have  
2 the transmission studies given to them adequately in advance  
3 to prepare for the hearings in this matter.

4           The Joint Applicants that are involved in the  
5 Cold Water Creek proceeding, as well as I believe the one  
6 that isn't, if my figure is right at the moment, are now  
7 asking for relief from their own decision to go ahead and  
8 build Cold Water Creek, despite the fact they had every  
9 contract right to back out or at least delay construction  
10 of that unit.

11           Now, as far as terms and conditions under which  
12 PGandE is offering interim transmission service, short-term  
13 firm transmission service, as I explained in that other  
14 proceeding PGandE does face risks. We do have contracts  
15 with steam suppliers that obligate us to go forward and  
16 to build geothermal units as those steam suppliers develop  
17 steam.

18           We have risks, however, on the other side of  
19 the house, in that once one begins transmission service  
20 under the -- the view of the Federal Power Act that the  
21 Federal Power Commission takes, there is -- there is no  
22 certainty that the Federal Power Commission will authorize  
23 you to stop transmission service, regardless of what your  
24 contract says.

25           Faced with that, and faced with the practical

1 difficulty, that Cold Water Creek is being built, notwith-  
2 standing our objection to it in the first place. We did  
3 what we have to do, and we offered, for the sake of  
4 clarification of this proceeding, for the sake of giving  
5 everybody space, to determine what is necessary by way  
6 of adequate transmission. We did offer to give short-term  
7 firm transmission service.

8           Now, two terms have been complained about by  
9 the representative from NCPA. One of them is indemnity.  
10 As I have pointed out, PGandE perceives that it has risks.  
11 If we extend the short-term transmission service to the  
12 Joint Owners, we are exposing ourselves to these risks.  
13 We do not see why we should. We're not doing this for  
14 our benefit, we're doing this to benefit them. If anybody  
15 is to bear any risk, why shouldn't they bear a risk, or  
16 why shouldn't they undertake that risk?

17           If that is a risk that no governmental agency  
18 in good conscience can undertake, well, I can suggest that  
19 they made that same mistake when they began building Cold  
20 Water Creek.

21           By the same token, they complain about transmis-  
22 sion losses. Well, in the first place, I suggest to you  
23 there is not one shred of evidence before this Committee  
24 as to what those transmission losses would be, not one  
25 shred of evidence. We have the say-so of one particular

1 person who spoke before you.

2           Secondly, what we did propose was incremental  
3 transmission losses. Namely, we have a transmission system  
4 which we built for the benefit of the PGandE ratepapers.  
5 Somebody else wants to impose themselves on that system,  
6 and we are willing to let them get on that system in order  
7 to help them out in the short term.

8           Why shouldn't they bear any incremental losses  
9 involved? Why should we stiff our own ratepayers and ask  
10 them to bear the increment? These lines are fairly well  
11 loaded. If another unit comes on, the losses are going  
12 to increase on those lines. Why should our -- why should  
13 we ask our customers to bear those particular losses?

14           Mr. Chairman, do I -- have I answered your con-  
15 cerns?

16           I might also add one additional thing.

17           CHAIRMAN IMBRECHT: You're right. The --

18           MR. WEST: It said that we are a monopoly up  
19 in that area, and that this should be taken into considera-  
20 tion. A case was cited in the -- in the Joint Owners'  
21 brief. I would suggest that if one looks at that case,  
22 you will see that on remand to the CPUC, its Decision 79402,  
23 the Commission, the CPUC did undertake to make findings  
24 of fact and conclusios of law on the NCPA's contention  
25 that PGandE was monopolizing matters up at The Gsysers,

1 and the CPUC categorically found to the contrary.

2 Obviously when one -- one owner does have the  
3 only transmission out of the area, yes, a certain degree  
4 of monopoly does exist. That's the nature of the utility  
5 business.

6 I would suggest to you that every one of the  
7 Joint Owners is a monopoly in its own area, and I will  
8 remind you that monopoly is not bad. Monopolization is  
9 bad, but the monopolization is not an issue in this case  
10 and hasn't been raised as an issue in this case.

11 Mr. Chairman?

12 CHAIRMAN IMBRECHT: Thank you.

13 MR. WEST: Thank you.

14 CHAIRMAN IMBRECHT: Commissioner Noteware.

15 COMMISSIONER NOTEWARE: Yes. I have a question  
16 for Mr. Tooker of the staff.

17 Chris, on your -- comparing the two schedules,  
18 your typical schedule, you indicate 125 days between the  
19 acceptance of the AFC and the staff analysis being com-  
20 pleted ordinarily, but under the proposed schedule it's  
21 160 days between the filing of the final study results  
22 and the staff analysis.

23 Is the reason for the extra time in there due  
24 to the hearings, and so forth, that are going on concur-  
25 rently?

1           MR. TOOKER: No. The reason for the extra time,  
2 the 160 days was the time that our planning -- that our  
3 staff, engineering staff felt was necessary to evaluate  
4 the final study results and prepare -- have the workshops  
5 and prepare their testimony, and for us to review it through  
6 management.

7           I don't want to give you the feeling here that  
8 one or two -- that this is precise down to one or two or  
9 even five days this way or that. We're trying to give  
10 you a ballpark estimate here of what we see the problems  
11 being.

12           COMMISSIONER NOTEWARE: Yes, but there's a dif-  
13 ference of 35 days, and it intuitively would seem that  
14 the time could be compressed, if you were trying to --  
15 to cooperate in an accelerated schedule over a portion  
16 of the -- of the study results here.

17           MR. TOOKER: I'll say again, this is based on  
18 what we felt we would need in terms of time to do the  
19 analysis. Even if you did reduce it by that -- that time  
20 period, we still end up at 12 months far from a decision  
21 point in this case.

22           CHAIRMAN IMBRECHT: Commissioner Noteware, let  
23 me just -- our hearing -- or my hearing adviser on this case  
24 refreshed my memory of some of the options that we were  
25 considering a few months ago, and I thought it might be

1 helpful to you.

2           Actually, I misstated where I was at that point  
3 in time, and further also where the staff was at at that  
4 point in time.

5           The actual preliminary decision by the Committee,  
6 the final report of the Committee, I should say, required  
7 the applicant to provide preliminary results at the time  
8 of filing of the AFC, and then there was further language  
9 that indicated that if the final results of that study  
10 were not forthcoming that there was a recognition -- let's  
11 see -- that they accept the potential consequences for  
12 future delays resulting from an untimely filing of this  
13 information, et cetera.

14           Staff proposed just prior to that meeting, there  
15 were actually four options before us, the one that was  
16 posed by Commissioner Gandara, which is the one that was  
17 ultimately adopted, one proposed by Mr. Geringer, and then  
18 finally there was another alternative proposed by our staff,  
19 and that read as follows:

20           "As part of the AFC filing, the Joint Owners  
21 shall provide the preliminary results of the coopera-  
22 tive transmission system reinforcement mitigation  
23 study currently being undertaken in concert with  
24 the Western Area Power Administration and Pacific  
25 Gas and Electric. The Joint Owners shall provide

1 the final study results within 90 days after AFC  
2 acceptance. If such final results are not forth-  
3 coming, a day-for-day extension in the schedule  
4 shall result."

5 And I guess in essence, I would return -- I recall  
6 now correctly that that was the position that I had adopted  
7 at the point in time that the matter was before us, and  
8 would suggest that under those circumstances the time line  
9 that was provided to us by staff at this juncture would  
10 insure that the final results would occur at the 90-day  
11 period, or that the entire one-year process would be  
12 delayed on a day-for-day basis in response to that, which  
13 would insure that at a minimum the Commission staff would  
14 have 155 days prior to the beginning of hearings on this  
15 issue in order to prepare.

16 COMMISSIONER CROWLEY: A hundred and fifty-five?

17 CHAIRMAN IMBRECHT: That's correct, 155 days.  
18 Hearings begin at Day 245, and so the practical effect  
19 of that option would be that the final results would be  
20 in 90 days after the AFC acceptance, or from a relative  
21 standpoint, if they didn't come in at 90 days, it would  
22 be a rolling time period backwards from that point in time,  
23 and would still insure a minimum of 155 days prior to hear-  
24 ings on that particular issue.

25 It is conceivable that hearings could go forward

1 on other issues within the case, but relative to the  
2 reinforcement mitigation issues, there would be at least  
3 155 days.

4 And let me just turn either to you, Mr. Ratliff  
5 or Mr. Tooker, and just ask you if that remains a position  
6 that would be acceptable to the staff.

7 MR. RATLIFF: Mr. Chairman, if I may, the --  
8 I just wanted to point out that 155 days is somewhat  
9 diminished by the fact that the first 45 days is the data  
10 adequacy period of the -- of the filing, so you lose 45  
11 days up front quite often.

12 And secondarily, in a realistic sense, you lose  
13 time on the other end in terms of the time that the Hearing  
14 Adviser takes to write his decision, and -- and the two  
15 hearings that the Commission holds before the decision  
16 becomes final, so I think it's important to keep in mind  
17 that this schedule is, I don't know, a little bit distorted,  
18 I think, and not entirely accurate, so I think you probably  
19 would -- we would end up having less than a hundred days.

20 Secondarily, I would like to say that the staff  
21 offered the compromise proposal in an attempt I think,  
22 and it was a very strained attempt, to try to reach com-  
23 promise.

24 CHAIRMAN IMBRECHT: I recognize that.

25 MR. RATLIFF: That compromise was flatly rejected

1 by both the Joint Owners and the staff, and -- and the  
2 Commission, and as far as we're concerned it's no longer  
3 on the table. The Commission has --

4 CHAIRMAN IMBRECHT: Well, not from the staff's  
5 perspective. I may put it back on the table, if I found  
6 -- and I'm doing so right now.

7 Commissioner Noteware.

8 COMMISSIONER NOTEWARE: I could use about a five-  
9 minute recess. Would that be agreeable?

10 CHAIRMAN IMBRECHT: I believe so. That would  
11 be acceptable. We'll take a five-minute recess. Thank  
12 you.

13 (Short recess.)

14 CHAIRMAN IMBRECHT: Okay. Let's call the meeting  
15 back to order.

16 We have been unsuccessful in -- I'm asking you  
17 to please take your seat, and if you want to continue to  
18 converse could you take those conversations outside the  
19 room, please. Those of you in the back of the room, if  
20 you want to continue to -- excuse me.

21 If you want to continue to talk, take the conver-  
22 sations out of the hearing room, please. I'm speaking  
23 directly to the two of you who are back there still speak-  
24 ing. Okay.

25 All right. So we'll return to the item. I think

1 we have heard this in fairly extensive detail. May I ask  
2 what the Commission's pleasure is at this juncture?

3 Commissioner Noteware.

4 COMMISSIONER NOTEWARE: Mr. Chairman, thank you  
5 for the recess. That helped.

6 I would like to return to what was known as  
7 Version 4 from our previous hearing, which was somewhat of  
8 a compromise position. Although the staff indicates that  
9 that's no longer their suggested compromise, I feel that  
10 it is a workable situation, and I would like to read it  
11 if I may.

12 "As part of the AFC filing, the Joint Owners  
13 shall provide the preliminary results of the  
14 cooperative transmission system reinforcement  
15 mitigation study currently being undertake in  
16 concert with WAPA and PGandE. The Joint Owners  
17 shall provide the final study results within 90  
18 days after AFC acceptance. If such final results  
19 are not forthcoming, a day-for-day extension in  
20 the schedule shall result."

21 Now, I am aware that this is far short of what  
22 the Joint Owners are requesting at this time, and it's not  
23 what the staff would like to see either, but I am proposing  
24 that. I'll put that in the form of a motion.

25 COMMISSIONER CROWLEY: It's a perfect compromise.

1 Neither party is satisfied. I'll second that.

2 CHAIRMAN IMBRECHT: All right. Fine. The motion  
3 is properly before us.

4 I recall there may be some question about our  
5 ability to impose that upon an applicant. I would just  
6 like to ask, for the record, were that the decision of  
7 the Commisison, would the applicant stipulate to those  
8 terms.

9 MS. SCHORI: Yes.

10 CHAIRMAN IMBRECHT: All right. Fine. Is there  
11 further discussion?

12 Mr. Geringer.

13 MR. GERINGER: I would like to raise one concern,  
14 and that is the terminology from the acceptance of the  
15 AFC. That then puts it beyond a -- or potentially could  
16 put it beyond a 90-day period.

17 I would -- if the Commission is so inclined to  
18 reconsider and change to a different position, I would  
19 request that you would change the language to "filing of  
20 the AFC," so that we know it's a 90-day certain period  
21 that the final studies will be in, rather than the accep-  
22 tance which, as you know, in situations such as Crockett  
23 and other proceedings, can take a significant period of  
24 time before the AFC is accepted.

25 CHAIRMAN IMBRECHT: Well, I don't understand

1 essentially, because the bottom line is that the process  
2 doesn't begin until the AFC is accepted.

3 MR. GERINGER: Well, I --

4 CHAIRMAN IMBRECHT: And that actually provides  
5 even a greater guarantee, it seems to me, to --

6 MR. GERINGER: Well, as stated before, you know,  
7 we -- we believe this is a self-inflicted wound by the  
8 Joint Owners that they are now trying to correct, and we  
9 simply would like to have the full information as soon  
10 as possible, and as soon as possible would be in the actual  
11 filing of the AFC.

12 Secondary would be 90 days following the filing  
13 of the AFC. The provision that you are contemplating now  
14 is 90 days following the acceptance of the AFC. If the  
15 data can be provided 90 days -- I mean our position is  
16 simply that the data should be provided upon the filing.  
17 I mean it's necessary, it's important to all aspects, and  
18 if a compromise needs to be done I think that 90 days  
19 from the filing of the AFC would be a reasonable compro-  
20 mise, rather than 90 days from the acceptance of the AFC.

21 CHAIRMAN IMBRECHT: Okay. I understand your  
22 point. I am not persuaded.

23 COMMISSIONER NOTEWARE: I am not persuaded  
24 either.

25 CHAIRMAN IMBRECHT: All right. Fine.

1           COMMISSIONER NOTEWARE: We'll stick with accep-  
2 tance.

3           CHAIRMAN IMBRECHT: Okay. Further discussion?  
4 Does anyone else wish to be heard on this item?

5           For the record, we have made every effort to  
6 locate Commissioner Gandara. I did believe he wished to  
7 be heard on this item, but I believe we have a responsi-  
8 bility to go forward and complete our agenda.

9           And with that, I will ask if there is objection  
10 to the unanimous roll call.

11           Hearing none, "Aye's" three, "No's" none. And,  
12 of course, record the three "Aye" votes with two absences,  
13 and the motion is carried. The decision is modified pur-  
14 suant to language enunciated by Commissioner Noteware.

15           All right. Thank you.

16           Now, then, is -- can Commissioner Commons be  
17 found? I mean I -- I find this unbelievable.

18           Okay. The --

19           COMMISSIONER NOTEWARE: Mr. Chairman, I think  
20 Mr. Pennington could probably make the presentation.

21           CHAIRMAN IMBRECHT: Fine.

22           COMMISSIONER CROWLEY: Okay.

23           CHAIRMAN IMBRECHT: Thank you. With that, thank  
24 you very much, Commissioner Noteware.

25           You are the second member of the Committee as

1 well.

2 COMMISSIONER NOTEWARE: Yes.

3 CHAIRMAN IMBRECHT: So we'll rely upon you as  
4 well.

5 All right. Now we'll turn to Item No. 11, which  
6 is Commission consideration and Possible Adoption of  
7 Proposed Building Standards for Retail and Wholesale  
8 Buildings. The Commission has proposed amendments to its  
9 efficiency standards for retail and wholesale stores,  
10 excluding grocery stores. The proposed amendments were  
11 published and distributed for public comment on August  
12 23, 1985.

13 Mr. Smith, do you have any opening remarks, or  
14 shall we turn to Mr. Pennington?

15 MR. SMITH: No. Let's hear from Bill Pennington  
16 of the Commission's Conservation Division.

17 CHAIRMAN IMBRECHT: Oh, I'm sorry. Commissioner  
18 Commons is present. Do you wish to make any statements  
19 on behalf of the Committee, Commissioner Commons?

20 COMMISSIONER COMMONS: I think, given the hour  
21 that we're at, Mr. Chairman, why don't we proceed with  
22 the staff report.

23 MR. PENNINGTON: Thank you, Commissioners.

24 There is a presentation document that was given  
25 to you to put into your agenda binders. For the sake of

1 the hour, I intend to go through this extremely quickly.  
2 I would like to have this entered as an exhibit into the  
3 formal record of this proceeding.

4 In general, the staff has been working care-  
5 fully with the building industry, in particular with the  
6 California Retailers Association, with the Illuminating  
7 Engineering Society, with the National Resources Defense  
8 Council, and with the Professional Advisory Group as a  
9 whole, for the last two years to develop energy efficiency  
10 standards for retail buildings and wholesale buildings  
11 that are comparable to the standards that the Commission  
12 adopted for office buildings in January of 1984.

13 We have had a very effective cooperative process  
14 in working out differences of opinion about what those  
15 standards ought to say. We have a set of standards before  
16 you that will save a considerable amount of energy, are  
17 in the format of the office standards, and have the sup-  
18 port of all aspects of the building industry that have  
19 participated in this proceeding.

20 We found that these standards are very cost-  
21 effective. For a typical building we estimated that they  
22 would save on the order of \$600,000 over the building's  
23 life, and we have identified an initial cost reduction  
24 associated with these standards.

25 Certainly that might vary from building to

1 building, but it's true that buildings can come in at zero  
2 cost or reduced cost using the design techniques that are  
3 embodied in the standards.

4 We estimate that these standards will save  
5 approximately 250 megawatts of capacity in the year 2004.

6 We put out 45-day language on the standard back  
7 in the summer and held a committee hearing in September  
8 to receive final industry comments. We responded to those  
9 comments. The Committee was instrumental in reaching clo-  
10 sure on a variety of detailed items that were at issue  
11 as a result of that meeting. In particular, the Committee  
12 stressed the fair treatment of small business in these  
13 standards, and there were some amendments to effectively  
14 make sure that the standards were fair for small stores,  
15 as well as for large stores.

16 There also is a provision in these standards  
17 that is particularly innovative. In the past the Building  
18 Standards have not recognized in any way the benefits of  
19 thermal storage, and under this set of standards there is  
20 an approach that exempts the energy associated with getting  
21 energy into and out of thermal storage, and essentially  
22 exempts that from compliance with the energy budget and,  
23 therefore, creates an incentive for thermal storage sys-  
24 tems.

25 There were several comments that were received

1 that were judged to be outside of the scope of the notice  
2 of proposed action and, therefore, were not acted upon in  
3 making this final proposal today, and staff finds that  
4 several of those comments have merit and should be con-  
5 sidered, and recommends that -- that those areas be con-  
6 sidered in a subsequent proceeding after these standards  
7 are adopted.

8           In particular, the significant issues we see  
9 that need to be further considered are a request by  
10 Commissioner Commons to incorporate peak-load shifting  
11 into the nonresidential building standards, a request by  
12 the California Council of the American Institute of  
13 Architects to revise the HVAC power indices that were  
14 established for office buildings, the request by the repre-  
15 sentative of ASHRAE on the Professional Advisory Group  
16 to revise some of the detailed language associated with  
17 HVAC controls for all nonresidential buildings, a request  
18 from the Natural Resources Defense Council to incorporate  
19 higher equipment efficiencies that would be consistent  
20 with ASHRAE Standard 90.1 when that's finally adopted by  
21 ASHRAE, and a request from Novitas, Incorporated, to con-  
22 sider revisions to the lighting control credits for occu-  
23 pancy sensors in some applications, particularly warehouse  
24 spaces, that would relate to all nonresidential buildings.

25           The staff judged that these recommendations were

1 outside the scope of the Notice of Proposed Action that  
2 was being put forward for retail buildings but, as I said,  
3 we think there is merit in those suggestions, and we recom-  
4 mend that the Commission take those up in a following pro-  
5 ceeding.

6 That's the extent of the presentation I wanted  
7 to make.

8 CHAIRMAN IMBRECHT: Mr. Pennington, let me just  
9 ask you, what is in your judgment the outstanding contro-  
10 veries, or what are they, if there are?

11 MR. PENNINGTON: I believe that there is no sig-  
12 nificant controversy associated with the proposed regula-  
13 tions themselves. I think there is a concern on the part  
14 of the building industry that the Commission carry through  
15 with the implementation of these standards, that design  
16 manuals, that training be conducted effectively and promptly,  
17 that standards for other building categories, other non-  
18 residential building categories get expedited and get  
19 finished up.

20 This has been a several-year project up to this  
21 point. We really hit the two major energy-using building  
22 categories. We've probably hit the most difficult two  
23 building categories to reach consensus on, so there's a  
24 desire on the part of the building industry to finish the  
25 project as quickly as we can, and a desire that the

1 Commission commit to doing that.

2 Perhaps at this point we should go to the  
3 Chairman of the Professional Advisory Group.

4 CHAIRMAN IMBRECHT: Okay. Mr. Tabor? Welcome  
5 back. We haven't seen you for a while.

6 MR. TABOR: Thank you, sir.

7 My name is Steve Tabor. I'm the Chairman of  
8 the Professional Advisory Group to the California Energy  
9 Commission. I will also speak briefly, in view of the  
10 hour.

11 The Professional Advisory Group, as you know,  
12 represents the construction industry and includes repre-  
13 sentatives of professional organizations which basically  
14 cover the length and breadth of the industry.

15 The Professional Advisory Group has worked closely  
16 with the staff over the last several months in developing  
17 the new standards for office buildings and retail build-  
18 ings, and we have been very gratified to see that the  
19 standards revisions process has evolved into one of coopera-  
20 tion and concensus.

21 The retail standards which you are considering  
22 today enjoy the support and/or the acceptance of virtually  
23 the entire construction industry and, therefore, deserve  
24 no more detailed comment.

25 There is one issue, however, on which this

1 consensus and cooperation which all concerned have care-  
2 fully cultivated is in danger of falling apart, and that  
3 is the issue of the implementation of the standards. The  
4 Commission has evolved into an extraordinarily effective  
5 organization in the development of the standards, but from  
6 the industry's point of view the -- with all due respect,  
7 your record in administering and supporting the standards  
8 has not been satisfactory to us.

9 We have in many regards felt abandoned a little  
10 bit in the effort, which we also see as a cooperative one,  
11 in the effort of making the standards -- putting the stan-  
12 dards into practice in the actual process of producing  
13 buildings.

14 Therefore, to that effect, the -- several members  
15 of the Professional Advisory Group, several organizations  
16 within the PAG, have over the last few days been develop-  
17 ing a position paper which I would like to present to you  
18 today. This position paper is -- the organizations signa-  
19 tory to this position paper include at the present time  
20 the California Council of the American Institute of  
21 Architects, the California Building Industry Association,  
22 the California Masonry Association of California and Nevada,  
23 the California Retailers Association, the California Hotel-  
24 Motel Association, the International Association of  
25 Lighting Designers, the International -- I'm sorry, the

1 Illuminating Engineers Society, the Natural Resources  
2 Defense Council, and the representative from ASHRAE, the  
3 American Society of Heating, Refrigeration and Air  
4 Conditioning Engineers.

5 Now, we also have support in principle for our  
6 position paper from the Association of General Contractors.

7 This position paper, I would like to underscore,  
8 is one which we are proposing you include as an amendment  
9 to the adoption order, so it is something we would like  
10 to see adopted this evening as official Commission policy.

11 If you will permit me to read this, it is fairly  
12 brief. Item -- there are five items on which we request  
13 that you -- that you revise -- amend the adoption order  
14 you are considering this evening.

15 The first is the Energy Conservation Manual,  
16 commonly known as the Design Manual.

17 The Commission is required by the Public  
18 Resources Code Section 25402.1 to produce an Energy  
19 Conservation Manual to aid builders, designers and building  
20 officials in complying with and enforcing its energy build-  
21 ing standards.

22 The Commission directs the Committee to oversee  
23 the preparation of amendments to the 1985 Office Buildings  
24 Energy Efficiency Manual to include the new retail stan-  
25 dards. An updated manual shall be submitted to the

1 Commission for certification and publication within eight  
2 months of this adoption date.

3 Item No. 2, Compliance Tools. PRC Section  
4 25402.1 requires the Commission to provide a public domain  
5 computer program for utilizing the performance approach  
6 to compliance with the building standards. The public  
7 domain programs are those used during the development of  
8 the energy standards, DOE2.1A and QUICKLITE to model day-  
9 lighting.

10 The Commission directs the Committee to develop  
11 procedures to certify other calculation methods proposed  
12 for certification under Title 20, Section 1409, for use  
13 with the 1985 office building standards and the new retail  
14 standards performance approach. The Committee shall pre-  
15 sent a proposed certification procedure to the Commission  
16 within four months of this adoption date.

17 The Commission has developed a simplified calcu-  
18 lation procedure for use with the 1985 office building  
19 standards. The Commission directs the Committee to update  
20 the simplified calculation procedure for the new retail  
21 standards within eight months of this adoption date.

22 Item No. 3, Training and Assistance. PRC Section  
23 25402.1 requires the Commission to provide training and  
24 assistance to the building officials who enforce the energy  
25 standards. The 1985 office standards and the new retail

1 standards differ significantly from the current ones and  
2 will require retraining of local building officials  
3 throughout the state.

4 The Commission directs the staff with overview  
5 from the Committee to develop and make available training  
6 programs and materials to be used by all segments of the  
7 building industry for the 1985 office building standards  
8 within six months of this adoption date, and for the new  
9 retail standards within 12 months of this adoption date.

10 Excuse me, ma'am. Would you give a copy of this  
11 to the Commissioners, please? Thank you.

12 Item No. 4, Completion of Standards Development.  
13 The Commission has as its clear policy to complete the  
14 development of the nonresidential --

15 CHAIRMAN IMBRECHT: We need a copy for each of  
16 us, not just -- do you have a copy for each of us? Do  
17 you have a copy for each of us?

18 Pardon me. Excuse me, Steve.

19 MR. TABOR: Yes, sir.

20 The Commission has as its clear policy to com-  
21 plete the development of the nonresidential standards for  
22 all occupancies and to phase out the 1978 nonresidential  
23 standards in their entirety.

24 The Commission directs the Committee and staff  
25 to make it a first priority to complete the standards

1 development work for all nonresidential occupancies.  
2 Further, the Committee is directed to propose standards  
3 for adoption to the Commission for the remaining B-2 occu-  
4 pancies, as defined in the Uniform Building Code, within  
5 eight months of this adoption date, and for all occupancies  
6 within 20 months of this adoption date.

7           And Item No. 5 -- E, on your document, Clean-up  
8 of the Adopted Standards. The Commission recognizes that  
9 a principal reason for phasing implementation of the 1985  
10 office building standards and the new retail standards  
11 is to identify and correct problems and errors that are  
12 discovered before the new standards become mandatory.  
13 Members of the building industry have already called such  
14 problems and errors to the attention of the Committee and  
15 staff with regard to the 1985 office building standards.

16           The Commission, therefore, directs the Committee  
17 to initiate a hearing procedure within two months to correct  
18 problems and errors brought to its attention by the building  
19 industry, and to recommend revisions to the full Commission  
20 for adoption within six months of this adoption date for  
21 incorporation in the next supplement to the State Building  
22 Code.

23           That concludes the proposed amendment to the  
24 adoption order. I do want to stress prior to closing that  
25 the industry has -- as I mentioned before, is very

1 gratified to see the way that standards have been developed,  
2 and is very pleased to be working in cooperation with the  
3 Commission, and we hope to be able to continue to do so  
4 in the implementation of these standards.

5 Thank you.

6 CHAIRMAN IMBRECHT: Commissioner Commons.

7 COMMISSIONER COMMONS: Mr. Tabor, just one short  
8 comment. The Committee appreciates the support of the  
9 industry group and is in full concurrence with your five  
10 points. When we get to a discussion of the amendment to  
11 the motion, we will discuss with the remainder of the  
12 Commissioners the workload implications.

13 There are some, but it does not make sense for  
14 this state to go forward with an industry that is of such  
15 great importance to the state, propose a standard, and  
16 then not work with the industry, with the architects, the  
17 engineers, the developers, in terms of helping them so  
18 that they can utilize it -- and, excuse me, also the  
19 building officials.

20 All we're going to do is strain relationships  
21 that -- and many of us here forget that there have been  
22 strained relationships with this industry in the past,  
23 and there may be some people in this room who feel that  
24 there is a new positive environment, but everybody outside  
25 of this room only remembers the strain and the stress,

1 and that's not being overcome if we're not doing what you  
2 are talking about here, and I think what you brought forth  
3 to us today is really the perspective of the different  
4 members of all of your organizations and their concerns,  
5 and we're not feeling it up here.

6 MR. TABOR: If I may speak to the workload issue,  
7 we feel that these are -- that these are doable goals. We  
8 have been working closely with the staff over the last  
9 several months, and we firmly believe that these goals  
10 can be met.

11 I want to make it very clear that we stand ready  
12 to support in any way that we can and work very hard, as  
13 we have done, to complete the standards work on the remain-  
14 ing occupancy types.

15 The reason that we feel that the remaining occu-  
16 pancy types can be telescoped, as we have proposed, is  
17 because we think that with office buildings and retail  
18 buildings you have saved 80 or 90 percent of the energy  
19 which it would be possible to save anyway, and the remain-  
20 ing standards really can be adopted almost by consensus  
21 and still be consistent with the office standards and  
22 retail store standards which you now have completed work  
23 on.

24 CHAIRMAN IMBRECHT: Mr. Smith, have you had a  
25 chance to reflect upon this, vis-a-vis our work plan?

1           MR. SMITH: No, we have not. From the staff's  
2 standpoint, there certainly is -- is no uncertainty about  
3 the importance of the work that's laid out in terms of  
4 administering and implementing the standards. We would  
5 recommend, though, that we not build into the action today  
6 specific time frames, because we do need a chance to take  
7 a look at the resource implications.

8           COMMISSIONER COMMONS: I believe every item that  
9 is identified in here, other than the completion of the  
10 standards development, is part of the approved adopted  
11 work plan of the Commission.

12           MR. SMITH: I understand that there is at least  
13 a portion --

14           MR. PENNINGTON: Yes. This is basically a two-  
15 year time frame, so that there is no adopted work plan  
16 for the next fiscal year, so --

17           CHAIRMAN IMBRECHT: That's exactly what my point  
18 was going to be. How can that be possible?

19           COMMISSIONER COMMONS: No, I said except for.

20           CHAIRMAN IMBRECHT: Well, there's a number of  
21 these that are -- there's some of them that are -- that  
22 are beyond the -- the eight-month items alone are beyond  
23 the conclusion of this fiscal year. The 12-month items  
24 and the 20-month items are obviously beyond, and that even  
25 contemplates and assumes a budgetary level, and personnel

1 allocations, et cetera, that are facts not yet in evidence.  
2 The Governor has yet to even introduce his budget for the  
3 '86-7 fiscal year, much less providing an opportunity for  
4 the Legislature to reflect upon it as well, so I would  
5 even suggest that making these commitments is literally  
6 beyond our appropriate jurisdiction or control, and yet  
7 at the same time I also share the complete concurrence  
8 that we have to move forward with these matters expedi-  
9 tiously, and I frankly think that we have attempted to  
10 do so.

11           But I think it's relatively unprecedented to  
12 build into an order, on the adoption of any regulations,  
13 this kind of dictate, and I, while amenable to the intent,  
14 am frankly very reluctant, and I might say as well that  
15 the appropriate method by which we consider the implica-  
16 tions of the allocation of our staff is through the budget  
17 and management committee of the Commission, and then ulti-  
18 mately, in a consideration by the Commission generally,  
19 as to our total work plan needs.

20           And I just want to stress to people that there  
21 is a broad range of responsibilities, many of which have  
22 time considerations that are dictated by statute and by  
23 external events that literally provide us with no discre-  
24 tion whatsoever, and one of the outstanding issues that  
25 faces this Commission in the '86-7 budget year discussions,

1 and I might add which is far from resolved at this junc-  
2 ture, although we are doing everything possible to insure  
3 that it is satisfactorily resolved, is the entire question  
4 of insuring that we have adequate staff to deal with what  
5 is certainly one of our principal obligations, and that  
6 is the siting and certification of new energy facilities  
7 in the state.

8           In the event that our staff allocations were  
9 compromised for the '86-7 fiscal year -- and I don't want  
10 to leave anyone with the suggestion that that's likely  
11 to occur, but I want to also stress that it remains a  
12 possibility, however theoretical, that we have to take  
13 into consideration, then it would seem to me that the  
14 Commission is going to be faced with some difficult dilemmas  
15 in terms of allocating existing staff into the siting divi-  
16 sion in order to carry out those responsibilities.

17           So I -- I appreciate the intent by which this  
18 is brought forward, but I will just signal personally that  
19 I am not inclined to amend the order to reflect these kinds  
20 of time dictates to the Commission or to the future  
21 Commission as well, and I also would add that I would think  
22 that a little high range of other parties would have a  
23 clear interest in this matter, vis-a-vis the impact upon  
24 workload that they consider important to their organiza-  
25 tions and their jurisdictions as well. This was not even

1 something that was appropriately noticed as a consideration,  
2 and I would think other parties might have some interest  
3 in expressing their own concerns or asking that similar  
4 mandates in essence be made to insure that there were staff  
5 allocations for workload or considerations that are impor-  
6 tant to them.

7 This is literally a matter of first impression  
8 for all of us, with the exception of Commissioner Commons,  
9 obviously.

10 I am open to any response on this, but that's  
11 generally where I'm standing on it.

12 Commissioner Commons.

13 COMMISSIONER COMMONS: Well, Mr. Chairman, I'm  
14 going to make one statement, and then I'll allow the rest  
15 of the industry to go forward here.

16 This is equivalent to five SPPE's, and we made  
17 a statement that we were going to treat conservation in  
18 the same way as any supply resource. I don't know how  
19 many people we're allocating to different areas, but I  
20 suggest that the budget and management committee can maybe  
21 take a look at the number of megawatts and gigawatt hours  
22 and the cost implications, in terms of our allocations.

23 But this is not only equivalent to five SPPE's.  
24 You're talking about an industry that has generally a three-  
25 year lead time. The primary growth sector of this state

1 is related to this industry. The support base for the  
2 state relates to this industry. They have come in an  
3 extremely cooperative framework, and when you hear from  
4 the retailers this has been just totally -- now, we either  
5 should stop the standards, go back to the imperfect stan-  
6 dards of 1977, or we should develop the resources so that  
7 it can be fairly and efficiently implemented all the way  
8 across the state with the thousands and thousands of  
9 people that this will impact, and recognize that it's  
10 equivalent to building a very major power facility in the  
11 state, and will have long-term consequences, both in terms  
12 of energy, megawatts, and -- and cost to this industry.

13           CHAIRMAN IMBRECHT: Commissioner Commons, I don't  
14 dispute any of those points, and I want to also stress,  
15 and I hope that the tone of my comments did not come  
16 across as too harsh, is I very much do appreciate the  
17 cooperation, and I particularly appreciate the work and  
18 effort that the Advisory Group has put into this, and  
19 just the mere fact that you can come to us with a set of  
20 proposed standards with apparently no appreciable contro-  
21 versy associated with the standards themselves is a dis-  
22 tinction that is well worth noting, and extending compli-  
23 ments on it.

24           But I guess the point that I was trying to make  
25 is I don't believe in the contemplation of adoption of

1 standards that this is the appropriate or even fair forum  
2 under which the kind of decisions that we are talking about  
3 here, that have impacts across the broad range of  
4 Commission programs, or at least potential, and it might  
5 be possible for us to accommodate a fair amount of this,  
6 but it's going to take some time to reflect upon it, and  
7 -- and insure that there aren't negative consequences to  
8 other programs of the Commission where there are similar  
9 constituencies and, I might add, similar priorities from  
10 their perspective.

11 COMMISSIONER COMMONS: Well, the --

12 CHAIRMAN IMBRECHT: And I doubt very much if  
13 a lot of other people out there had any suggestion, by  
14 virtue of the notice that's on the agenda here, that this  
15 kind of approach would be a contemplated action by the  
16 Commission today. It is literally unprecedented, as far  
17 as I'm aware.

18 COMMISSIONER COMMONS: Well, you have essentially  
19 said to the retail industry, if we adopt this, that this  
20 standard is going to go into place in two years. They  
21 are really on a three-year cycle for planning, and it's  
22 unfair to ask them to support the standard, unless they  
23 know that they are going to have the items relating at  
24 least to the retail as part of this order carried forward  
25 so that there can be compliance, that there can be the

1 compliance, that there can be the information, and there  
2 can be the training so it can be implemented.

3           Otherwise, if I were a retailer I wouldn't support  
4 it, because it has to -- it has to be a two-way bargain  
5 here. It has to be --

6           CHAIRMAN IMBRECHT: Well --

7           COMMISSIONER COMMONS: You know, you can't just  
8 pass the standard and then say, well, industry, maybe we'll  
9 deliver, but we have our own set of problems, and maybe  
10 we won't.

11           CHAIRMAN IMBRECHT: Commissioner Commons, I don't  
12 accept any of that characterization, and I guess I would  
13 respond to you that if in fact that's your position, then  
14 I would suggest we put this item over and provide an oppor-  
15 tunity for us to reconcile these requests with the entire  
16 workload of the Commission, and we'll take up the entire  
17 question of adoption of standards and people's relative  
18 positions on it at a subsequent meeting.

19           COMMISSIONER COMMONS: Well, I'm --

20           CHAIRMAN IMBRECHT: I mean if ever there has  
21 been an instance or an issue of last-minute presentation,  
22 something with broad implications to us, this is a classic  
23 example of it. At no time have you signaled to me, and  
24 I don't believe to other members of the Commission, that  
25 you contemplated coming forward with something of this

1 nature or supporting it.

2 COMMISSIONER COMMONS: Well, I'll get to the  
3 specifics after you have heard from the industry. You  
4 are not going to hear some large, grandiose numbers, in  
5 terms of what is required to be implemented, so --

6 MR. TABOR: Mr. Chairman, let me clarify one  
7 thing. This is an initiative which comes strictly from ,  
8 the industry. Commissioner Commons -- it was presented  
9 to Commissioner Commons while he was standing out in front  
10 an hour -- in the last hour, and I would also like to  
11 ask the other members of the Professional Advisory Group  
12 who are here today to speak to this matter.

13 I think you will find that the priorities  
14 expressed in these are heartfelt by everyone in the industry.  
15 Thank you very much.

16 CHAIRMAN IMBRECHT: I guess I would ask -- and  
17 I mean I don't want to cut off anybody's ability to speak,  
18 but you in essence read a statement signed by a variety  
19 of interests, and if there is simply going to be a reitera-  
20 tion of those positions, I -- I mean I very much stipulate  
21 to the fact that people feel strngly about this, and that  
22 people feel a real necessity to see these items carried  
23 forward.

24 What I am simply saying to you is that I think  
25 it would be highly imprudent and highly irresponsible for

1 us to adopt the standards and amend the order to reflect  
2 these kinds of time dictates without an adequate opportunity  
3 on our part to try to reconcile it with the overall work-  
4 load considerations of the Commission. I don't think that  
5 is going to be possible this afternoon. I can't even fore-  
6 see a circumstance under how that could be accomplished.

7           And -- and I just want to reiterate as well that  
8 when you have a finite number of staff people in any public  
9 institution, and moreover where we don't set our own  
10 budgetary priorities in any exclusive sense, we in essence  
11 put forward proposals and they are then acted upon by two  
12 other largely independent review processes, the -- first  
13 the Executive Branch, and then subsequently the Legislature,  
14 that there are many statutory mandates upon us and a wide  
15 range of other responsibilities, and if you take from one  
16 place -- or if you give to one place, you have to take  
17 from someplace else.

18           And I am quite confident that the people that  
19 would be taken from would also want to be heard before  
20 we make these kinds of decisions, and what I'm saying is  
21 that what's noticed here, et cetera, does not give warning  
22 to other affected members of the public in other indus-  
23 tries that are also regulated or driven by Commission actions  
24 and programs, give them an opporutnity to say that -- or  
25 express their concerns about the respective priorities

1 of the Commission.

2 That's all I'm saying, and I guess that where  
3 I stand is that I'm prepared to go forward with the stan-  
4 dards and deal with any of the substantive issues there,  
5 but in terms of making dictates that impact work plan,  
6 I think it only appropriate that we have an opportunity  
7 to go back and take a look at what our allocations are  
8 and what our anticipated -- and that's the best I can say  
9 they would be -- anticipated allocations are for '86-7.  
10 I don't see any other rational or responsible way to handle  
11 this matter.

12 MR. TABOR: Well, then I would submit it to your  
13 wisdom, as long as we have a chance to make it clear how  
14 important this is to us --

15 CHAIRMAN IMBRECHT: That's fine.

16 MR. TABOR: -- and how important it is that it's  
17 -- that it's clear Commission policy that the implementation  
18 effort get the resources that it requires, and then per-  
19 haps there is a -- a more appropriate way to deliver that  
20 assurance to the industry.

21 The reason that this has come forward, Mr. Chairman,  
22 is that the concensus which we have so carefully built  
23 around the retail standards and the office building stan-  
24 dards over the last several years is -- I think it is --  
25 it provides great benefits to all concerned, the industry

1 and the public sector here, and I think it's in danger  
2 of being eroded if the proper implementation -- if  
3 adequate resources are not applied to implementation.

4 We -- it is our understanding that all of the  
5 matters here, except for the last dependent phrase in para-  
6 graph D., and the last dependent phrase in paragraph C.,  
7 are compatible with this year's work plan. That is our  
8 understanding. Forgive me if I'm misinformed in that  
9 regard, and so perhaps there is some intermediate way in  
10 which the -- the comfort factor that we are seeking could  
11 be provided.

12 In any case, thank you very much.

13 CHAIRMAN IMBRECHT: Thank you, Mr. Tabor.

14 Again, I don't want to in any way overcome the  
15 gratitude that we have for the cooperative effort you have  
16 demonstrated on this, but I also think you need to under-  
17 stand clearly what the other burdens and implications are  
18 for the Commission.

19 All right. Mr. Smith or Mr. Sloss, are either  
20 of you in a position to comment even generally on this,  
21 or --

22 MR. SLOSS: I don't think so. I think it's been  
23 well stated from -- for the record, Mike Sloss of the  
24 Conservation Division.

25 We also understand the importance of the orderly

1 implementation of the standards, and within our work plan  
2 for the remainder of this year, and to the extent we need  
3 to for next year, to concentrate on the priority and attempt  
4 to -- to comply with the wishes that have been expressed  
5 today.

6 MR. SMITH: And certainly during our work plan  
7 review that's going on now as part of the -- the quarterly  
8 review, we'll be taking a look at the resources that are  
9 allocated and the ability to deliver these, but there isn't  
10 any way to address that this afternoon.

11 CHAIRMAN IMBRECHT: All right. Let me run down  
12 my list here and see what else.

13 Mr. Mike Leite or -- I'm not sure how to pro-  
14 nounce that correctly.

15 MR. LEITE: Mr. Chairman, my name is Mike Leite.  
16 I'm employed by San Diego Gas & Electric as an engineer.  
17 I am also the regional vice-president for the Illuminating  
18 Engineering Society, and also a director of that society,  
19 so today I am representing both groups.

20 In the first capacity, I am a member of the  
21 Regional Energy Committee for the South Pacific Coast Region  
22 of the Society, and in the second I do represent SDG&E.

23 In the first area, I would like to give you a  
24 little background on our Regional Energy Committee. It  
25 was established in February of 1980 to track issues related

1 to energy and lighting in the state of California.

2 In 1982, our then regional vice-president  
3 became a member of your Professional Advisory Group which  
4 supports the staff. At that time the members of the com-  
5 mittee were placed at the disposal of the staff to assist  
6 and provide technical input in developing lighting-related  
7 matters before you, and this liaison has continued up to  
8 date.

9 Now, in supporting the staff of the Commission,  
10 we have worked within the following framework. First,  
11 the standard-setting process, as far as we are concerned,  
12 is mandated by law. The current standards have been ren-  
13 dered obsolete by advances in technology, that any new  
14 standard must result in more conservation than is being  
15 achieved under the current standard and our present  
16 California design practice.

17 Any new standard should allow for sufficient  
18 flexibility to the designer to provide proper lighting  
19 in special situations as well as for routine designs.

20 The normal process for our committee has been  
21 to hold regular meetings in conjunction with the quarterly  
22 Regional Executive Committee meetings of the Society, and  
23 then additional working sessions as necessary to handle  
24 the technical issues that came up.

25 We have also held meetings with several other

1 interested parties in this process.

2 With respect to the matter before us today, the  
3 Committee has provided technical input and support within  
4 the following constraints.

5 We feel that the recommendations for retail occu-  
6 panies must fit within the framework of the previously  
7 adopted revisions to the office lighting standards, so  
8 adoption of a new standard for retail would only confuse  
9 the situation.

10 We also felt that the model and the standard  
11 must be in agreement with the illumination requirements  
12 and design practices set forth in the IES Recommended  
13 Practice for Merchandise Lighting. At the time of the  
14 original work the committee worked with a draft of that  
15 recommended practice, and that practice has now subse-  
16 quently been adopted in August of this year by the  
17 Society.

18 The committee was able to develop a model which  
19 was based on the tasks identified in the recommended prac-  
20 tice. It also was tied to the power budget scheme that  
21 was approved for the office lighting standards that we  
22 adopted last year.

23 The model was tested against a large number of  
24 existing and proposed structures, and it proved to be a  
25 reliable indicator of the required power budget required

1 for retail spaces. The model was then used as the basis  
2 of a set of proposed lighting power budget allowances  
3 developed by the Energy Commission staff.

4 These values were then tested against several  
5 types of retail structures, including a set provided by  
6 the California Retailers Association. Following that review  
7 the committee made recommendations for adjustments to the  
8 proposed values. These recommendations have been accepted.

9 In attempting to achieve a concensus, the staff  
10 has made some further adjustments to the lighting standards  
11 proposed for retail occupancies. The committee has  
12 accepted them on the basis that the compromise does not  
13 adversely weaken the standard or compromise its technical  
14 foundation.

15 Those areas are the budget values related to  
16 valance lighting and the area allocation for feature dis-  
17 play lighting. These values are within the values that  
18 would be predicted by the model.

19 So, in summary, our committee feels that the  
20 technical basis for the model and the use of the design  
21 procedures found in the IES Recommended Practice for  
22 Merchandising Lighting are a reasonable method for the  
23 development of the power budgets for retail spaces. We  
24 feel that a competent lighting designer can design good  
25 lighting systems within the proposed standard, that advances

1 in lighting equipment and control technology currently  
2 being introduced will give designers added flexibility  
3 to provide quality lighting, and that the present staff  
4 proposal is consistent with our model and the technical  
5 input that has been provided.

6 I would go on to say -- I would like to para-  
7 phrase just a few things just in the interest of time.

8 A final consideration I think really relates  
9 to the effective date for the proposed revisions, and I  
10 think the groups for which I speak don't have a set posi-  
11 tion in this matter. However, from the standpoint of  
12 enforcement and design consistency it would be my recom-  
13 mendation that the effective date for these changes be  
14 coincident for both office standards -- the office stan-  
15 dards that you have previously adopted, and the retail  
16 spaces.

17 I think that was the intent when we adopted the  
18 office standards in providing an added time for implemen-  
19 tations.

20 For your reference, and it will be in the record,  
21 I provided a list of the members of our committee, and  
22 I can say that they do represent a full spectrum of the  
23 lighting designers and engineers in the area of retail  
24 lighting, as well as some manufacturers and the utility  
25 industry.

1           We are glad to have had input from the California  
2 Retailers Association in the form of comments and test  
3 examples for the validation of the model, and we feel that  
4 the proposed revisions will allow high quality lighting,  
5 as well as promote energy efficiency.

6           There are two other people here with me that  
7 will provide some of the technical background. I have  
8 Mike Neils, who is the Society's liaison to the State of  
9 California, as well as our member on the Professional  
10 Advisory Group, and I have Mr. Hyman Kaplan who is the  
11 chairman of the Society's Merchandising Lighting Committee,  
12 and also a member of our Energy Committee, who have sup-  
13 ported the development of this proposed standard.

14           So I think what I would like to do now -- ques-  
15 tion?

16           COMMISSIONER CROWLEY: Mr. Pennington.

17           MR. PENNINGTON: Yes. I just wanted to ask a  
18 question for clarification. What date do you think would  
19 be appropriate for the retail standards to go into effect?

20           MR. LEITE: Personally, I would feel the sooner  
21 the better, and the reason is that most people wait until  
22 the day before implementation to read the standards in  
23 the first place.

24           We went through this with a lighting-related  
25 ordinance in San Diego, which is now going into effect,

1 and nobody even looked at it during the entire adoption  
2 process, the six-month period since it was adopted, and  
3 now that it is in force they are all looking at it.

4 I believe the -- the key to it is having time  
5 to notice it and make sure people know that six months is  
6 not unreasonable, and the office lighting one becomes  
7 mandatory in 1987. I think that's not unreasonable for  
8 this one, given that it has the same foundation and the  
9 same function in terms of the administrative process as  
10 the office one.

11 So I could live with that. I'm sure that others  
12 may have some other problems with that, but I think, from  
13 my area of design, 1987 would not be unreasonable, were  
14 it to be adopted today and were all of the follow-ups that  
15 we need to get the backup material on the street provided.  
16 I think the key to it is to get the material out there  
17 so people can see it, realizing that a lot of fast track  
18 buildings are done with a very, very tight time frame,  
19 but my guess is that those buildings are done with a lot  
20 of the concerns of the standard already built in, so we  
21 are not -- we're not creating a big change. The serious  
22 designers are probably well within this guideline that  
23 we are looking at right now.

24 So, I don't see the problem there. The big thing  
25 that is going to change is the documentation, and that

1 is probably the only -- the only serious problem that I  
2 would consider.

3 COMMISSIONER CROWLEY: Mr. Pennington, do you  
4 have any comments on those proposed dates?

5 MR. PENNINGTON: No, I was -- I was just curious  
6 to know -- I didn't think his statement was clear. He  
7 was saying that he would suggest that the office standards  
8 and the retail standards go into effect at the same time,  
9 and I wanted to know what date he thought that that should  
10 be.

11 COMMISSIONER CROWLEY: And you have no comment  
12 on that date that he is --

13 MR. PENNINGTON: Right.

14 COMMISSIONER CROWLEY: Yes.

15 MR. LEITE: That I should say is my individual  
16 feeling, and I'm certain that there are others that have  
17 similar reasoning, and perhaps different reasoning in this  
18 matter.

19 COMMISSIONER CROWLEY: And you would like to  
20 have Mr. Neils and Mr. Kaplan succeed you here at the --

21 MR. LEITE: If possible. I think that would  
22 give the spectrum of our comments. I don't think they  
23 have a great deal of time that they are going to require,  
24 I think just a few moments for each of them.

25 COMMISSIONER CROWLEY: Thank you, Mr. Leite.

1 CHAIRMAN IMBRECHT: All right. Fine.

2 MR. LEITE: Thank you.

3 CHAIRMAN IMBRECHT: Thank you. Mr. Neils,  
4 Mr. Kaplan, do you want to come forward together perhaps?

5 Mr. Pennington, what does this order currently  
6 contemplate in terms of effective date for the retail?

7 MR. PENNINGTON: January 1, 1988, for retail  
8 standards.

9 CHAIRMAN IMBRECHT: Or one year later than the  
10 office.

11 MR. PENNINGTON: Right.

12 CHAIRMAN IMBRECHT: And optional, like the office  
13 prior to that point?

14 MR. PENNINGTON: As soon as we can get it in  
15 the State Building Code.

16 CHAIRMAN IMBRECHT: Fine.

17 Yes, sir.

18 MR. NEILS: Thank you. My name is Mike Neils.  
19 I am currently the IES representative to the PAG and the  
20 State of California in any matter that the IES chooses  
21 to have me represent them, the Energy Commission being  
22 the only place where I've been asked to do anything. I'm  
23 pleased to be here today once again.

24 In view of the time frame that we have left today,  
25 I want to just make my comments very brief and state that

1 we have been at this process for a number of years now,  
2 coming at it from the standpoint that we are concerned  
3 about the technical basis for the regulation that it satis-  
4 fies the needs of the people in spaces to do their work.

5 We have also had the position that if you are  
6 going to regulate any lighting that all of the lighting  
7 ought to be regulated, and at that point we came to logger-  
8 heads with the California Retailers Association, and I  
9 should say at this point that in my view we have actually  
10 worked out that -- that problem, and I think that's a very  
11 significant task that has been accomplished.

12 We simply started out with this process in saying  
13 that there should be a simplified method, that it should  
14 be adequate to handle a significant number of occupancies,  
15 that there should be significant flexibility in the stan-  
16 dards and provide alternate methods to calculate the  
17 requirements for lighting, power and energy, and that there  
18 should be some recognition of controls in the lighting  
19 system for saving energy, and that those should be accom-  
20 modated, and the standards do allow for all of those things  
21 to occur.

22 So we are in support of the standards. We are  
23 also in support of the PAG's position paper on getting  
24 this thing accomplished in a relatively reasonable period  
25 of time, since we really have come to it as a volunteer

1 effort, which I think is really somewhat different than  
2 some of the other people that come to you. We're not  
3 necessarily grinding any axe here. What we are doing is  
4 we are simply trying to provide our technical expertise  
5 and our practical expertise to give you some guidance as  
6 to what the standards ought to say and how they ought to  
7 be implemented.

8           And any effort that you can make to implement  
9 the standards in a timely fashion would be most helpful.  
10 Thank you.

11           MR. KAPLAN: Thank you. My name is Hyman Kaplan,  
12 K.S. Engineering. I am also the representative of the  
13 International Association of Lighting Designers to the  
14 PAG, and I am the chairman of the Merchandise Lighting  
15 Committee of the Illuminating Engineering Society.

16           I came -- I first came before this group as a  
17 thorn in the side of the staff on the office practice.  
18 I now find that this practice, this portion, the retail  
19 and wholesale portion that is put together, very closely  
20 is compatible with the latest issue, the July 1985 issue  
21 of the Recommended Practice for Merchandise Lighting, by  
22 the Illuminating Engineering Society, and I have taken  
23 the time from my staff as a professional engineer to review  
24 projects we have done and numerous projects that the CRA  
25 gave us as examples, and find that approximately 50 percent

1 of the projects will comply with the standards in the very  
2 simplified watts-per-square-foot method, that the --  
3 approximately another 48 or a total of 98 percent of the  
4 projects that I saw comply with the -- either the simpli-  
5 fied method or the alternative method that is allowed under  
6 the new regulation.

7           The final two percent of special buildings will  
8 have to make some minor adjustments in their design to  
9 comply, but I think these can be made readily and easily  
10 to make an entire package of all retail establishments  
11 in the state of California very energy-efficient.

12           I thank the CRA for working with us, and I really  
13 feel that this project -- this proposal can go ahead with  
14 all due haste. Thank you.

15           CHAIRMAN IMBRECHT: Thank you very much.

16           Giovanna Adimari? Did I come reasonably close  
17 on that?

18           MS. ADIMARI: Very good.

19           CHAIRMAN IMBRECHT: That's about one for three  
20 today, but --

21           MS. ADIMARI: Commissioners, at the September  
22 20th meeting of your committee on the proposed standards  
23 for retail and wholesale stores, we asked that under  
24 Table 253-T, Adjustment Factors for Special Lighting  
25 Controls, that the Committee, number one, add a separate

1 category of storage and warehouse under applicable build-  
2 ing space. It is not clarified in the existing statement.

3 Two, we have asked that the power savings adjust-  
4 ment factor be given an increased credit amount based on  
5 previous findings, stating that the savings in storage  
6 and warehouse applications are usually 70 to 80 percent  
7 in lighting alone. This does not include reduced air con-  
8 ditioning costs.

9 In response, your committee asked that we submit  
10 backup data to support our request. This has been done.  
11 The information we submitted included savings of 70 to  
12 80 percent using occupancy sensors in storage and warehouse  
13 areas.

14 With that change -- with that, we feel that the  
15 change can be made with confidence, allowing a power savings  
16 adjustment factor of at least 50 percent.

17 We understand that you are engaged in the con-  
18 tinuing review of these standards, and our purpose in being  
19 here today is to stress the importance of incorporating  
20 these changes at the next proceeding.

21 CHAIRMAN IMBRECHT: All right. Thank you.

22 MS. ADIMARI: Thank you.

23 CHAIRMAN IMBRECHT: Mr. Pennington, will you  
24 insure that that gets --

25 MR. PENNINGTON: Yes. I think that the

1 recommendations that Novitas, Incorporated, has made demand  
2 consideration, and she has now supplied the data, so I  
3 think that at the next proceeding we can address this.

4 CHAIRMAN IMBRECHT: Fine.

5 MS. ADIMARI: Thank you.

6 CHAIRMAN IMBRECHT: Thank you very much.

7 Stu Beavers? Good afternoon.

8 MR. BEAVERS: Stu Beavers with the Concrete  
9 Masonry Association of California and Nevada.

10 We were part of the group that are in favor of  
11 this amendment, and I understand the problem as you explain  
12 it with the amendment.

13 I would only say that one of the reasons that  
14 it's so critical to us is that in the original nonresidential  
15 standards, the mass wall industries did not have the amount  
16 of research and the amount of information available that  
17 has been developed in the meantime and has been incorpora-  
18 ted into, first, the office standards, and now will be  
19 recognized in the residential standards, which we do sup-  
20 port -- or the retail standards, which we do support.

21 However, in 1984, early in '84 we realized --  
22 or it appeared that the process was going slowly, and we  
23 approached the chairman of the Committee at that time,  
24 who is no longer with the Commission, with the idea of  
25 submitting a petition to change the existing standard,

1 since it had taken some two or three years to get the office  
2 standards developed, and if that went on with occupancy  
3 type after occupancy type it would be a long time before  
4 mass walls were ever recognized as state of the -- at the  
5 point of state of the art.

6 So it is terribly important to us that some effort  
7 be made to have that happen. If it requires a petition  
8 which is sort of -- perhaps not the best way to go, because  
9 then that takes staff time from completing the -- the  
10 other occupancies -- you know, you're been a rock and a hard  
11 spot.

12 CHAIRMAN IMBRECHT: Sure.

13 MR. BEAVERS: But it's terribly important to  
14 us, and it seems to us, with the experience that we have  
15 had working with the Professional Advisory Group, and the  
16 experience we have had working with staff, that through  
17 the concensus process it would be a much simpler job to  
18 complete the occupancies than certainly anything we have  
19 been through to this point with offices and retail. So  
20 we --

21 CHAIRMAN IMBRECHT: Mr. Beavers, I --

22 MR. BEAVERS: We strongly support adopting the  
23 retail regulation, and we strongly support the amendment  
24 as it was presented.

25 CHAIRMAN IMBRECHT: Mr. Beavers, let me just

1 respond to you and just say that when we adopted the office  
2 standards we made a commitment at that point in time, in  
3 essence a contingency, if you will, but the mandatory  
4 implementation of those would only go forward if the  
5 related building types were completed by that point in  
6 time, and we are certainly endeavoring to do that, and  
7 that leaves us one remaining category of significance to  
8 be completed in this coming year.

9 Now, I am not stressing -- or suggesting to you  
10 in any sense that's the limitation. We frankly intend  
11 to go forward and complete all the building types, and  
12 my guess is we probably won't be too far off from the  
13 schedule that is being enunciated.

14 But as I did indicate as well, it's important  
15 for us to try to reconcile that with the overall responsi-  
16 bilities of the Commission.

17 Were you able to hear that, everyone?

18 COMMISSIONER CROWLEY: No.

19 CHAIRMAN IMBRECHT: I'm sorry. Pardon me.

20 What I said is that when we adopted the office  
21 standards we made a commitment at that point in time that  
22 we would in fact complete the other related building  
23 classes prior to the mandatory implementation date of  
24 January 1, '87, and obviously the retail piece of it is  
25 the next big brick in that building, if you will. The

1 other pieces are smaller. We think that we are on schedule  
2 to complete that.

3 I realize that there are other implementation  
4 tools that have to go along with it as well, but I just  
5 want to assure you that, as far as I'm aware, there is  
6 a unanimous concensus on the Commission to proceed as  
7 expeditiously as possible, within the external constraints  
8 that I have already discussed, and I don't want to leave  
9 anyone with the impression whatsoever, by virtue of my  
10 earlier comments, that there is any backing away from that  
11 earlier commitment. There is none.

12 Commissioner Commons.

13 COMMISSIONER COMMONS: Mr. Chairman, I believe  
14 you made a personal commitment to industry at the time  
15 that the office building standards were adopted. I also  
16 made a motion, which was not seconded at that time, but  
17 the Commission did not officially, or unofficially, make  
18 any such commitment. I think it was one more of yourself  
19 than myself that --

20 CHAIRMAN IMBRECHT: I understood at the time  
21 that, by making that statement, and without objection,  
22 that I was speaking on behalf of the Commission, and I  
23 frankly think that our colleagues -- Commissioner Noteware  
24 obviously was not present, but I know that Commissioner  
25 Schweickart at the time had that understanding, and I

1 think Commissioner Gandara did as well, but I -- whether  
2 that was the case or not, the bottom line is we have been  
3 endeavoring to move through this process.

4 We realize the retail piece of it was the other  
5 large complex piece of it, and frankly it is our intention  
6 to complete all the building classes, and as close to the  
7 schedule that you have outlined as possible. I just don't  
8 believe that it's appropriate, as I have already discussed,  
9 in terms of how we handle an order and direction to the  
10 Committees without taking into consideration the other  
11 implications, and I'm not going to beat that horse to  
12 death. I've got my point across on that one.

13 Anything further?

14 COMMISSIONER COMMONS: I'll come back on it.

15 CHAIRMAN IMBRECHT: I'm sure you will.

16 Okay. Thank you, Mr. Beavers.

17 MR. BEAVERS: Thank you.

18 COMMISSIONER COMMONS: I was very quiet on the  
19 previous item.

20 CHAIRMAN IMBRECHT: Yes, you were.

21 Mr. Soderstrom.

22 MR. SODERSTROM: My name is Lorn Soderstrom,  
23 representing Carter-Hawley-Hale and the California Retailers  
24 Association.

25 The California Retailers Association has been

1 actively involved as a member on the Professional Advisory  
2 Group to the California Energy Commission for approxi-  
3 mately four years.

4           Those that have actively assisted me in represent-  
5 ing the retail industry in this process have been Mr. John  
6 Haviland, formerly of Ralph's Grocery Company and now of  
7 Robinson's Department Stores, which is a division of  
8 Associated Dry Goods.

9           The second person is Mr. Larry Chase of Bullock's  
10 Department Stores, which is a division of Federated  
11 Department Stores.

12           I'd like to also recognize that Commissioner  
13 Commons, with Commissioner Noteware's support, has been  
14 instrumental in developing an environment during these  
15 proceedings that has encouraged creativity and flexibility  
16 in writing these standards.

17           Also, I would like to recognize the Commission  
18 staff for their sensitivity and receptiveness to the  
19 retail industry concerns.

20           The California Retailers Association supports  
21 the nonresidential building standards as presented and  
22 encourages the Commission to adopt those standards. The  
23 standards are restrictive, and yet have design flexi-  
24 bility, and are workable. However, we do need the support  
25 programs, which include industry education, compliance

1 and design manuals, to those standards.

2 At this point I would recommend that the stan-  
3 dards become effective only when the mechanics of implemen-  
4 tation are in fact assured to be sufficient to support  
5 those standards.

6 And that concludes my remarks.

7 CHAIRMAN IMBRECHT: Commissioner Commons.

8 COMMISSIONER COMMONS: Yes. Lorn, thank you  
9 for the staff for the kind words.

10 Their schedule is in here, particularly on Items  
11 A, B and C, which really affect the heart of the retail  
12 standards in terms of implementation. If these dates were  
13 not met, would you like the standards, or do you think  
14 it would be advisable that the standards be delayed one  
15 year?

16 MR. SODERSTROM: I totally agree. We need the  
17 support documentation to limit the standards, without having  
18 chaos in our industry. Our time frame for planning a new  
19 -- a new store and shopping centers require something in  
20 the neighborhood of a three-year lead time, and so it's  
21 important that we have the information at hand to implement  
22 the standards.

23 COMMISSIONER COMMONS: I just want to make it  
24 clear, then, that you would prefer for us not to vote in  
25 the standard today if we do not have these dates assured.

1 MR. SODERSTROM: That's right.

2 COMMISSIONER COMMONS: Thank you.

3 CHAIRMAN IMBRECHT: Thank you.

4 Mr. Abrams?

5 MR. ABRAMS: Thank you, Mr. Chairman. My name  
6 is Jim Abrams. I am general counsel for the California  
7 Hotel and Motel Association, and I have represented that  
8 Association on the Professional Advisory Group since this  
9 particular proceeding was undertaken some years ago.

10 We also support the substance of these particular  
11 retail and wholesale standards. We, among the Retailing  
12 Association and its members, and people in the retailing  
13 industry, were particularly concerned about the smaller  
14 retail establishments, which is the general type of estab-  
15 lishment found in a hotel or motel environment, and we  
16 wish to commend the staff for their efforts to be very  
17 flexible in recognizing the needs of those unique retailing  
18 establishments, and we feel that these particular standards  
19 do in fact meet the needs of those establishments, and  
20 on that basis we would ask that they be -- be adopted as  
21 presented.

22 CHAIRMAN IMBRECHT: Thank you very much.

23 Mr. Eley?

24 MR. ELEY: Thank you, Mr. Chairman.

25 I am Charles Eley representing the California

1 Council of the American Institute of Architects.

2 We have no major technical objections to the  
3 retail standards. We do, as Steve indicated, want a com-  
4 mitment from the Commission that the standards will be  
5 implemented and supported once adopted.

6 Personally, I am flexible about some of the  
7 terms. There is a precedent for including dates, and  
8 adoption orders. There were some dates in the adoption  
9 order for the 1985 office building standards to certify  
10 and publish a design manual within six months of the  
11 adoption date at that time. The manual was certified  
12 within eight months, fairly close, but it wasn't published  
13 until just last week.

14 And that is part of the reason I think that we  
15 are looking for a commitment.

16 We understand the -- the position that we are  
17 putting you in, and I apologize for not bringing these  
18 issues to you sooner. We did discuss them some with --  
19 with staff, and so forth.

20 Our members in California number some 7,000  
21 architects. We are among the first that will have to deal  
22 with these standards. As has been indicated, many retail  
23 projects have a -- have a long time line, and the standards  
24 become effective at the date of building permit application,  
25 which means that it's possible that a project that is now

1 on the boards might be having to comply with these new  
2 standards at some point.

3 So it's very important that the Energy Design  
4 Manual, that the training programs and the compliance tools,  
5 and that the office building standards be cleaned up.

6 I would recommend that if the Commission is not  
7 able to make these commitments at this point that adoption  
8 of the retail standards be postponed until -- until they  
9 are -- until you are able to consider the workload and  
10 make such a commitment.

11 Many of our members have been quite frustrated  
12 at times at the inadequacy of the Commission in supporting  
13 the standards once adopted, and getting manuals out in  
14 a timely way, and so forth, so I will conclude my comments  
15 with those remarks, unless there's questions.

16 CHAIRMAN IMBRECHT: Okay. Thank you.

17 Mr. Taylor?

18 MR. TAYLOR: My name is Steve Taylor, and I am  
19 a liaison representing the American Society of Heating,  
20 Refrigeration and Air Conditioning Engineers to the PAG.

21 In general, I'm in support of the standards  
22 before you. However, I am also fully in support of the  
23 amendment proposed by Steve Tabor, Chairman of the PAG.  
24 The last item that was mentioned regarding the correction  
25 of errors that are in the current wording is also especially

1 important to me and other ASHRAE members, because many  
2 or most of those errors affect the HVAC industry.

3 I have outlined a lot of these errors in corres-  
4 pondence and meetings with Bruce Maeda of the staff, and  
5 I would like in fact to enter my September 17th letter  
6 to Bruce to be on the record --

7 CHAIRMAN IMBRECHT: All right. Fine.

8 MR. TAYLOR: -- so that these items do get con-  
9 sidered, and specifically.

10 Further, it's extremely likely that more errors  
11 will be discovered as the standards are tested and applied  
12 to real buildings during this optional compliance period,  
13 and I'm concerned that the staff respond very promptly  
14 to these errors and not wait as long as we have waited  
15 for some kind of reaction to errors that have been pointed  
16 out.

17 We are also concerned that, without date commit-  
18 ments in the development of training and compliance tools  
19 and correcting errors that were outlined in the PAG amend-  
20 ment, that these will not be produced in a timely manner  
21 and in a manner that's sufficient for our ASHRAE members  
22 and the members of the HVAC design community to react to  
23 the standards, and I urge you to reconsider that PAG amend-  
24 ment.

25 I would also reiterate Charles Eley's position,

1 that we wouldn't be in support of the -- adopting these  
2 retail standards until the funds and the funding of the  
3 training materials development, and updates and corrections,  
4 be considered and resolved.

5 CHAIRMAN IMBRECHT: Thank you.

6 Mr. Esgate?

7 MR. ESGATE: Mr. Chairman, members of the  
8 Commission, I am Richard Esgate. I'm a building official  
9 and member of the CALBO board of directors.

10 Excuse me. I have a cold today.

11 I am speaking on behalf of the CALBO board of  
12 directors, and on behalf of the CALBO Energy Advisory  
13 Committee.

14 CALBO -- or the California Building Officials  
15 are the local government officials responsible for the  
16 enforcement of the energy standards, and we do have limited  
17 resources. Our position on the retail sales is the same  
18 position we took on the office standards.

19 We request that your Commission not adopt the  
20 retail and wholesale building standards until the standards  
21 for all of the B-2 and A occupancies are ready for implemen-  
22 tation. To continue to piecemeal regulations and require  
23 us to use two totally different standards for very similar  
24 buildings is really a nightmare for the building officials.

25 We also request that the standards not be

1 implemented on a voluntary basis. This requires the local  
2 enforcement body to be enforcing two sets of very complex  
3 standards for the same occupancies.

4 We believe that the December 1984 report that  
5 was addressed to you from Housing and Community Development,  
6 their monitoring report, identified that there was declin-  
7 ing compliance and enforcement of the energy standards,  
8 and we feel this is still true.

9 We also agree with the HCD conclusion that the  
10 decline is being caused by the unnecessary complexities  
11 of the standards.

12 We feel that the proposed retail standards and  
13 the piecemeal approach proposed for implementation is another  
14 step to further complicate the already far too complex  
15 process.

16 We respectfully request that your Commission  
17 restrain from implementing standards on an occupancy-by-  
18 occupancy basis. Local building departments cannot reason-  
19 ably implement the standards in this manner.

20 Thank you.

21 CHAIRMAN IMBRECHT: Okay. Questions?

22 Thank you very much.

23 Mr. Glander?

24 MR. GLANDER: Thank you, Mr. Chairman and  
25 Commissioners. My name is Jim Glander. I'm chief building

1 inspector for Butte County. I am here representing the  
2 CALBO Energy Advisory Committee. I want to echo many of  
3 the same things that the previous speaker just said.  
4 However, I want to speak in a little different light, and  
5 that's from the point of view of the small building depart-  
6 ments.

7           Your regulations, as Dick just told you, and  
8 I'm sure you are aware, are very technical in nature, and  
9 they are complex, and they are going to require a tremen-  
10 dous amount of documentation and recordkeeping on the --  
11 on behalf of the building departments.

12           Most building departments are not staffed to  
13 do this type of thing. We don't have the facilities to  
14 keep these kinds of records, and it's kind of interesting,  
15 Mr. Chairman, that the State has budgetary problems, too,  
16 because certainly we have that at the local level, and  
17 our boards of supervisors and city councils are not very  
18 receptive to providing additional building inspectors,  
19 let alone plan checkers, even though we can raise fees,  
20 in quotes, to pay that cost.

21           So we have a real problem from the enforcement  
22 standpoint. The present regulations, as Dick indicated to  
23 you, are not being enforced to the degree that your  
24 Commission has intended, and certainly not to the degree  
25 that we would like to. We don't have the staff and we

1 don't have the resources, and we feel that the additional  
2 regulations, although they may be simpler for the design  
3 profession, will be much more complicated for us, and so  
4 we see a real problem in implementation and enforcement,  
5 and although I did not come here knowing of the Professional  
6 Advisory Group's recommendation to you, I think you should  
7 take a long, hard look at that, and I would also encourage  
8 that you not implement new regulations until at least that  
9 is done.

10 Thank you.

11 CHAIRMAN IMBRECHT: Thank you very much.

12 Mr. Goldstein. Welcome back.

13 MR. GOLDSTEIN: Thank you, Mr. Chairman. Members  
14 of the Commission, Mr. Chairman, thank you for the oppor-  
15 tunity to speak. My name is David Goldstein of the Natural  
16 Resources Defense Council. With me is Robert Watson, a  
17 research associate at NRDC.

18 I am a representative on the Professional Advisory  
19 Group, and also serve on the Illuminating Engineering  
20 Society's Energy Management Committee and the ASHRAE  
21 committee that has just released Draft Standard 90.1.

22 The standard you have before you today is a com-  
23 promise worked out by staff, with the assistance of the  
24 Professional Advisory Group, after several years of hard  
25 effort. It is not a state-of-the-art conservation standard.

1 It incorporates some modest but still significant energy  
2 conservation goals, and we urge its adoption.

3 NRDC has commented extensively on earlier drafts,  
4 and I'll just summarize some of the key points that I think  
5 are important to keep in mind in considering this standard.  
6 First, the Committee is taking an important step, as the  
7 IES people I think have pointed out previously, in regu-  
8 lating all lighting in the building, rather than just the  
9 permanently-installed lighting, and we applaud this.

10 We have described in our testimony some more  
11 ambitious standards that could still satisfy IES require-  
12 ments and criteria and save more energy.

13 We have noted that the Northwest Power Planning  
14 Council has standards that are significantly more demanding  
15 in their energy conservation stringency that are being  
16 enforced today in the City of Tacoma and in other places  
17 in the Northwest.

18 Because this standard is so modest in its require-  
19 ments, we believe that it should be made effective January  
20 1st, 1987, rather than 1988 as proposed in the documents.  
21 Our reasoning for this harks back to the discussion on  
22 the effectiveness date of the office standard. At that  
23 point a significant portion of the PAG, perhaps the  
24 majority, recommended immediate adoption of the office  
25 standard.

1           There was a wide concensus that, in terms of  
2 the lead time to construct a building, in terms of the  
3 time it took to reeducate the design professionals, that  
4 a one-year lead time was sufficient, provided that six  
5 months of that one year also saw the compliance tools,  
6 such as the conservation manuals, out there in the public.

7           The reason for a three-month implementation period  
8 was solely to get the other occupancy groups on track so  
9 that a mixed-use building wouldn't be confronted with com-  
10 plying one part of it with one set of regulations, and  
11 another part with another set of regulations.

12           We believe that the promulgation of the retail  
13 standards would solve 99 percent of this problem. That  
14 is, the most significant mixed-use buildings are those  
15 that combine office occupancies and retail occupancies. The  
16 extent to which the other occupancies would mix in with  
17 office and retail is minor, and special exceptions could  
18 be provided if that turned out to be a problem.

19           We think in terms of the energy conservation  
20 potential to be gained in terms of the reinforcement of  
21 the office standard, which could save 50 megawatts in its  
22 first year of implementation, that it's important to stick  
23 with the original resolve to have the standards implemented  
24 in January of 1987.

25           I would also note that if the schedule proposed

1 in the joint PAG position regarding compliance materials  
2 and implementation is followed, and I believe that could  
3 be followed within the existing plans that the Commission  
4 staff has, the deadlines, as far as lead time of the build-  
5 ing, would be met and there would be no significant problem  
6 in enforcing that uniform compliance date for the two major  
7 sectors of nonresidential construction.

8 I would also point out that there is available  
9 to the Commission an exemptions procedure that can be  
10 applied in hardship cases should any individual buildings  
11 or particular class of buildings be found to have hardships  
12 in complying with the '87 date, as that date actually  
13 nears, so a decision to adopt effective '87 today would  
14 not be irrevocable if problems came up in the future, but  
15 we believe that that would be the most effective way --  
16 yes?

17 CHAIRMAN IMBRECHT: We went through that with  
18 the residential, as you recall. We had quite a few peti-  
19 tions that were time-consuming, as well, but go ahead.  
20 I'm sorry. I'm not sure I want to invite a lot of exemp-  
21 tion petitions.

22 MR. GOLDSTEIN: I don't think that would happen.  
23 I'm simply saying there is an administrative means for  
24 dealing with that eventuality --

25 CHAIRMAN IMBRECHT: I understand.

1 MR. GOLDSTEIN: -- in the unlikely event that  
2 it would occur.

3 I would also point out, we -- we don't take any  
4 position as far as what form the Commission's commitment  
5 to the implementation schedule should take. We are signa-  
6 tory on the PAG position, and we believe strongly that  
7 the Commission should take those steps within the time  
8 frame, although we don't have as strong feelings about  
9 what specific written form that commitment takes.

10 I point out in the -- in analyzing the  
11 Commission's budget, if you tried to look at the effec-  
12 tiveness in accomplishing the goal of secure energy supply  
13 and least-cost energy for California, megawatts per per-  
14 sonnel year, you would probably find that this is the most  
15 effective thing you could be doing in a budget-constrained  
16 situation.

17 You have thousands of megawatts that are depend-  
18 ing on building standards for their realization. You have  
19 the political problems which turns into an enforceability  
20 problem, should the construction industry find the stan-  
21 dards to be burdensome.

22 The standards, as written, should not have any  
23 problems, and the only thing that could turn this great  
24 consensus situation into an adversarial one is if the  
25 technical support for the standards is not up to industry's

1 needs and creates perceived problems of unfairness that  
2 I think would be unnecessary if sufficient resources were  
3 devoted to support of the standards.

4           So, in any event, I don't think very much reallo-  
5 cation of effort would be needed to meet that schedule,  
6 if any. What I believe the industry is really looking  
7 for is insurance that these deadlines will be met, or  
8 reason to feel comfortable that they would be met, rather  
9 than significant reallocation of priorities.

10           I would also mention, concerning the adoption,  
11 we have two technical issues, one of which was discussed  
12 with staff, both of which are in the written materials,  
13 that we hope could be handled, in terms of editorial clari-  
14 fication of the standards, in a couple of areas. One of  
15 them in fact could probably be handled through the  
16 Compliance Manual. The other is a rewording of a footnote  
17 to the lighting table, so I hope that you will consider  
18 those.

19           COMMISSIONER COMMONS: Could you address that  
20 latter one -- or Mr. Pennington -- as to the footnote,  
21 please?

22           MR. GOLDSTEIN: Yes. The rewording refers to  
23 Footnote 2 of Table 2-53U, which proposes deleting a sen-  
24 tence. The senence proposed to be deleted is:

25           "Power allotments for general lighting in

1           the same area shall not exceed two watts per  
2           square foot."

3           There's two reasons that that's proposed to  
4 happen. First is that in some cases there is an explicit  
5 category for general background lighting in retail areas  
6 that does exceed two watts per square foot.

7           MR. PENNINGTON: Excuse me. This is page 37,  
8 if you are trying to find it. Okay? Sorry.

9           MR. GOLDSTEIN: And the second one, which staff  
10 informed me more recently, is that they are concerned that  
11 leaving the number two watts per square foot in the note  
12 causes the reader to assume, as a default, that two watts  
13 is the correct value.

14           We have suggested wording that clarifies what  
15 staff's intention is as to how their wording would be  
16 enforced, namely, that general lighting would conform to  
17 the table, and we proposed the wording that would accom-  
18 plish that. That is to say restore the last sentence and  
19 have it read as follows:

20           "Power allotments for general lighting in  
21           the same area shall not exceed the appropriate  
22           level provided in this table."

23           I believe that's an editorial change, one of  
24 clarification, and wouldn't require any additional noticing.

25           COMMISSIONER COMMONS: That was my next question

1 of legal counsel, if that's a change that we have the  
2 authority today to incorporate, or would it require a 15-  
3 day notice.

4 MR. RATLIFF: Yes. I discussed this with  
5 Mr. Berryman last night, and after we discussed it it was  
6 clear to me that this was not a change in the regulation  
7 itself, or in any substantive requirement. It was a  
8 clarification which would not require any additional  
9 noticing or language.

10 COMMISSIONER COMMONS: Mr. Chairman, I think  
11 you should also ask if there would be any party here pre-  
12 sent that would object to the change.

13 CHAIRMAN IMBRECHT: Fine. Is there any party  
14 present that objects?

15 MR. PENNINGTON: Staff concurs with this proposal.

16 CHAIRMAN IMBRECHT: Pardon me?

17 MR. PENNINGTON: Staff concurs with this.

18 CHAIRMAN IMBRECHT: All right. Fine. Okay.

19 Does that complete your testimony, Mr. Goldstein?

20 MR. GOLDSTEIN: Yes, it does. Thank you very  
21 much.

22 CHAIRMAN IMBRECHT: Thank you very much.

23 That completes the -- does anyone else wish to  
24 be heard on this item?

25 Mr. Houston. You of all people should know to

1 fill out a card.

2 MR. HOUSTON: I was actually hoping, in the  
3 interest of time, that I wouldn't have to say anything,  
4 but for the record I am Bill Houston with the California  
5 Building Industry Association.

6 We, too, were a party to the recommended amend-  
7 ment to the adoption order today. I would just like to  
8 make I guess three points right now. The first is that  
9 we, too, have no technical complaints with the standards  
10 as proposed.

11 Our concern, clearly, like many of the others,  
12 has to do with what happens next, which leads to my second  
13 point. I would like to remind the Commission that nearly  
14 two years ago the Commission adopted the office building  
15 standards, and just last week we got the published design  
16 manual to go along with that, and we still do not have  
17 the training materials.

18 We only have a two-year lead on the retail stan-  
19 dards. If we follow the only model that we have seen so  
20 far, we're going to be in the same situation with the  
21 standards just a few months from being mandatory.

22 The third point I want to make is that by post-  
23 poning your adoption today, to give the staff and the  
24 executive office the opportunity to look at the impacts  
25 on the work plan, or perhaps to come up with an alternative

1 to what has been proposed by the PAG, that it does not  
2 create any sort of problem with either publishing or in  
3 terms of energy conservation.

4           The standards cannot be used on a voluntary basis  
5 until they are published by the State Building Standards  
6 Commission. The best information I have now is that that  
7 clearly will not happen before July of next year, and  
8 likely would not happen before the end of the calendar  
9 year next year.

10           So I think we have an opportunity to move cau-  
11 tiously and prudently, and I would recommend to the  
12 Commission that you take that action.

13           CHAIRMAN IMBRECHT: Thank you very much, and  
14 I was going to make that same recommendation, and suggest  
15 that the appropriate way to handle this is to schedule  
16 this for the next Budget Committee meeting, and ask the  
17 Executive Office and the Acting Conservation Division Chief  
18 in concert to report to the Budget Committee at that point  
19 in time which of these proposals, in terms of time, can  
20 be accommodated and which cannot, or hopefully perhaps  
21 they all could be.

22           In any case, that we notice this item for our  
23 next business meeting on November 27th, I believe it is,  
24 and that in turn we attempt to resolve the matter at that  
25 juncture, but at that point in time I might emphasize,

1 as well, I don't think it would be necessary for all of  
2 you to return to Sacramento, if that poses a burden for  
3 you. In the event that we have major differences or dis-  
4 crepancies with the proposal from the PAG, we would  
5 endeavor to communicate that to Mr. Tabor. If we think  
6 there are minor modifications, et cetera, that can be  
7 worked out, perhaps he might be able to speak on your  
8 behalf, in which case we can go forward and resolve this  
9 matter.

10 Is that a satisfactory resolution to the members  
11 of the Commission?

12 Commissioner Commons.

13 COMMISSIONER COMMONS: Well, a few comments,  
14 Mr. Chairman.

15 First is that the Commission would not have the  
16 ability to make any substantive change in two weeks. If  
17 we wanted to make any changes, they would have to be  
18 either 15-day or 45-day notices, so all parties are pro-  
19 tected in the sense that the order that is before us, in  
20 terms of the standard itself, could not be changed at that  
21 time.

22 Second --

23 CHAIRMAN IMBRECHT: Well, let me ask you this.  
24 I guess the clear question is will we -- Mr. Ratliff, do  
25 we have to notice this proposed amendment? The PAG's

1 proposed amendment?

2 MR. RATLIFF: The things that have to be noticed  
3 are changes, substantive changes in the regulations them-  
4 selves.

5 CHAIRMAN IMBRECHT: Themselves. I see.

6 MR. RATLIFF: My understanding is what you are  
7 talking about is the adoption order. Is that correct?

8 CHAIRMAN IMBRECHT: That's correct.

9 MR. RATLIFF: Which pertains to future --

10 CHAIRMAN IMBRECHT: And we're talking about the  
11 proposed amendment that dictates the specific time periods,  
12 and I don't see why that is dependent upon 15 or 45 days  
13 notice.

14 COMMISSIONER COMMONS: No, no, but I was referring  
15 to the standard itself, not the -- just the adoption order.  
16 I was trying to separate the two. We would have the  
17 ability to amend the adoption order, but we would not have  
18 the ability to amend the standard.

19 CHAIRMAN IMBRECHT: Right.

20 COMMISSIONER COMMONS: All right. Second, on  
21 the dates, where we have eight months, I would like to  
22 propose that the Budget Committee look at the date of June  
23 30, 1985, so that's a difference of two weeks. We stay  
24 within the current fiscal year from a work plan basis.

25 COMMISSIONER CROWLEY: Would you buy '86?

1           COMMISSIONER COMMONS: I would accept '86. That  
2 sounds -- well, let me think about that one.

3           (Laughter.)

4           CHAIRMAN IMBRECHT: Commissioner Commons, these  
5 are the kinds of things you can communicate to us, and  
6 we don't have to take up business meeting time on.  
7 Honestly, I mean we've still got another long item. If  
8 the resolution I just suggested is adequate to you, then  
9 I think we ought to take and move on and try to complete  
10 our agenda.

11           You can communicate to Commissioner Crowley and  
12 to myself personally or through your adviser any of the  
13 other items, because we will obviously consider the PAG's  
14 proposal, and we will consider our own staff's response  
15 to it, and obviously anything that a member of the  
16 Commission cares to raise as well, and try to reconcile  
17 this, and then provide the kind of assurance that the  
18 industry I think justifiably needs.

19           I frankly also want to inquire about a few of  
20 the delays that occurred relative to these other items,  
21 and I don't frankly think that now is the proper forum  
22 for that, or even the place to expend time on that, but  
23 I would like to know why we did slip on some of these other  
24 schedules as well.

25           COMMISSIONER COMMONS: Well, I had one --

1 Mr. Chairman, I had --

2 CHAIRMAN IMBRECHT: Okay. One final one.

3 COMMISSIONER COMMONS: No, I --

4 CHAIRMAN IMBRECHT: One last bite of the apple,  
5 and then we're going to move on.

6 COMMISSIONER COMMONS: All right. I will not  
7 respond to that comment.

8 In terms of the -- Mr. Ratliff, in terms of the  
9 tying in of the proposed order to the standard itself,  
10 you know, the Commission could adopt an order, and then  
11 for some reason or another not meet that order, and the  
12 standard would still go into effect, and so in effect the  
13 industry did not receive the notice that they have requested.

14 Is there a way that we can tie the implementation  
15 date of the standard with the completion date of the order  
16 that we -- that we end up adopting? In other words, if  
17 we slip for three months, can we include a slippage in  
18 the standard by three months?

19 MR. RATLIFF: Well, I think it depends on what  
20 you are referring to. I think if it's -- if you're chang-  
21 ing the effective date, that could only be done, I would  
22 argue, by 45-day language.

23 On the other hand, there is one exception to  
24 that, and that is if we fail to produce an energy conser-  
25 vation manual by a date certain, the standards cannot go

1 into effect until six months after the production of that  
2 document by operation of law, so that condition, that  
3 commitment is statutory, so there would be a day-to-day  
4 delay for each day that we fail to produce the Energy  
5 Conservation Manual revisions.

6           Otherwise, I would think that we would need to  
7 notice any change in the adoption -- in the effective date  
8 of the standards.

9           COMMISSIONER COMMONS: Well, my understanding  
10 was that changes that did not make it more stringent and  
11 were minor, which this might be a month or two delay, are  
12 15-day notices, not 45-day notices. I'm --

13           MR. RATLIFF: Well, the statutory provision I  
14 think you are referring to is whether or not changes in  
15 the standards themselves are sufficiently related to the  
16 original language published in the notice. That is the  
17 statutory test for what can be changed in 15-day language.  
18 Here we are not referring to a substantive provision of  
19 the standard itself, but to the effective date which in  
20 times past has alternately either been published in the  
21 regulation itself or in a footnote to the adoption table  
22 of the regulation, as it's published in the State Building  
23 Code.

24           We have always put in our adoption orders the  
25 effective date of standards. We have never changed those

1 effective dates, that I can remember. Currently the effective  
2 date is determined by a footnote to the adoption table  
3 in the State Building Code.

4 COMMISSIONER COMMONS: Well, the --

5 MR. RATLIFF: To change that we would have to  
6 in some way change the Commission's direction to the State  
7 Building -- the State Building Standards Commission.

8 COMMISSIONER COMMONS: All right. Well, the  
9 Committee took the original NOPA and extended the implemen-  
10 tation date by one year, not feeling that the six-month  
11 period was adequate, and extended it so it would be roughly  
12 18 months.

13 CHAIRMAN IMBRECHT: Isn't this a matter that  
14 you can consult with General Counsel's office on, rather  
15 than consuming business meeting time?

16 COMMISSIONER COMMONS: Well, no, because it --  
17 a 15-day notice would mean that we could not hear it at  
18 the next business meeting if we tied the two together.

19 CHAIRMAN IMBRECHT: I understand. That's the  
20 prerogative of the -- you're the presiding member of the  
21 Committee. You've got the option of bringing this forward  
22 to us, and if you want to make modifications that will  
23 reflect upon the implications of making those modifications,  
24 vis-a-vis the timing, that's your discretionary call.

25 COMMISSIONER COMMONS: I would prefer to do this

1 in a public forum, because there may be other parties who  
2 would be concerned as to whether the two items should be  
3 tied or not, and I think that's of major import to the  
4 industry that we are addressing.

5 CHAIRMAN IMBRECHT: Which two items?

6 COMMISSIONER COMMONS: If we tie the adoption  
7 order to the standard itself on its implementation date.  
8 I consider that a substantive issue and one of import to  
9 the industry that we are addressing.

10 And if we adopt -- if we were to adopt the adop-  
11 tion order, we're not required to implement that adoption  
12 order, and the standard would still go into effect no  
13 matter how well we had complied with our own ruling, and  
14 I think it's a substantive issue that the industry has  
15 a right for us to address as to whether or not the two  
16 items should be tied.

17 CHAIRMAN IMBRECHT: Well, they weren't request-  
18 ing that. If you wanted to put further teeth in this,  
19 that is obviously an option that you can bring forward,  
20 and that's your discretionary call, Commissioner Commons,  
21 or any other member of the Commission.

22 I fail to see why it's something that has to  
23 consume further business meeting time at this point. We  
24 will either take this item up two weeks from now or we  
25 will take it up four weeks from now, depending upon what

1 your call is, vis-a-vis whether or not you want to put  
2 that extra hammer into the --

3 COMMISSIONER COMMONS: Well, then --

4 CHAIRMAN IMBRECHT: -- or attempt to put that  
5 extra hammer in.

6 COMMISSIONER COMMONS: I guess what I would then  
7 say to members of the industry is that they should contact  
8 the Committee's offices if they have an opinion on that  
9 particular issue, and we'll address that prior to the next  
10 business meeting.

11 CHAIRMAN IMBRECHT: Okay. Thank you, and I  
12 appreciate your patience in staying with us throughout  
13 the day, and I'm sorry that we couldn't take action on  
14 this, but we'll try to deal with it as expeditiously as  
15 possible.

16 All right. The next item to come before us is  
17 Item 14, which is Commission Consideration and Possible  
18 Action on recommendations from the siting committees regard-  
19 ing the assignment of the remaining specified reserved  
20 need for gas-fired cogeneration or unspecified reserved  
21 need to the following projects currently before the  
22 Commission, the Crockett Cogeneration; American Technology,  
23 Incorporated, Spreckles Small Power Plant Exemption case;  
24 and the IBM Small Power Plant Exemption.

25 Mr. Smith.

1           MR. SMITH: Yes. Mr. Scott Mathews from the  
2 Commission's Siting Division has some initial comments,  
3 something I don't --

4           MR. MATHEWS: Perhaps I can summarize where we  
5 are, seeing as we are working with three different projects.

6           In the Crockett case, this morning you accepted  
7 a petition to examine possible changes in LTBA that may  
8 affect their being escrowed into specified or unspecified  
9 reserved need.

10           The staff has held a position that the 43 mega-  
11 watts that remained in specified reserved need after the  
12 October 4th order -- the September 4th business meeting,  
13 should be allocated to Crockett, based on our belief that  
14 those allocations ought to be made on a first-come, first-  
15 serve basis.

16           The next project is the IBM project where the  
17 Committee has made a proposal that the project be allo-  
18 cated unspecified reserved need, assuming that you agree  
19 with the Committee's proposal that the load match provi-  
20 sions of the unspecified reserved need test be used on  
21 the basis of an economic interpretation of load-matching  
22 rather than a physical interpretation. Staff's position  
23 is that we concur that IBM ought to be allocated to  
24 unspecified reserved need.

25           But we think it's premature to judge how that

1 unspecified reserved need test should be interpreted to  
2 the self-generation issues that the IBM applicant has  
3 raised.

4           What we propose to do is to have a staff-  
5 sponsored workshop, tentatively reschedule that for the  
6 26th of November, to sit down with the applicant and other  
7 interested parties to discuss the applicability of the  
8 ER-5 test to IBM, and then comment to the Committee on  
9 December 6th as their order has proposed on -- on both  
10 their proposal and alternative ways that that ER-5 could  
11 be interpreted for this particular project.

12           Finally, there is the Spreckles case. Spreckles,  
13 if you will recall, on September 4th, we had a disagreement  
14 with the applicant about their filing date. The Committee  
15 has proposed an order that makes an interpretation that  
16 they in fact made an adequate filing -- and I forget the  
17 date, but it precedes the IBM filing. Even though they  
18 requested that we not distribute that filing, they believe  
19 that that date should be the controlling date, and staff's  
20 view of that is that that is an acceptable interpretation,  
21 and that would make their filing date February 19th, which  
22 would precede the filing date of IBM.

23           The Spreckles applicant has proposed that they  
24 be allocated the 43 megawatts that may or may not remain,  
25 depending upon what happens to the LTBA on the -- in the

1 Crockett case, on the basis that they have better environ-  
2 mental benefits and economic benefits than IBM. We con-  
3 tinue with our position that it ought to be first-come,  
4 first-serve, and that the 43 megawatts, or whatever the  
5 remainder happens to be, ought to go to the Crockett, and  
6 you should have in your package, then, two orders from  
7 the IBM committee, an order from the Spreckles committee,  
8 a response from the IBM applicant, a response from the  
9 Spreckles applicant, and I believe that's all, but that  
10 would be the entirety of the paperwork on all of these  
11 projects.

12 Do you have any questions, or can I repeat some  
13 of that? It is rather complicated in that we have three  
14 projects remanded to the Commission for escrow determina-  
15 tion at the same time.

16 CHAIRMAN IMBRECHT: I think I'm reasonably clear.  
17 Any questions from members of the Commission?

18 All right. Fine. Commissioner Commons.

19 COMMISSIONER COMMONS: You made a statement that  
20 we continue our first-in, first-out policy?

21 MR. MATHEWS: No. My statement is that the  
22 staff's view is -- continues to be that the method of allo-  
23 cation ought to be on a first-come, first-serve basis.  
24 I don't believe the Commission has made a formal interpre-  
25 tation.

1           COMMISSIONER COMMONS: Is there any time that  
2 the staff could see an exception to following such a policy?

3           MR. MATHEWS: No.

4           COMMISSIONER COMMONS: Is there any time that  
5 following such a policy may not be in the public interest?

6           MR. MATHEWS: I don't know. I don't know how  
7 one would determine that.

8           COMMISSIONER CROWLEY: Commissioner Commons,  
9 you are saying for assigning the need test only, you're  
10 saying -- you are asking that.

11          COMMISSIONER COMMONS: That's correct.

12          That's all the questions I have.

13          CHAIRMAN IMBRECHT: Okay. Fine.

14          All right. Who would like to be heard on this  
15 item? I don't have any cards. Does anyone wish to be  
16 heard?

17          Yes, sir. Please come forward.

18          MR. FLORES: My name is Mauricio Flores. I'm  
19 an attorney with the law firm of Pillsbury, Madison &  
20 Sutro. I represent IBM.

21          I think the Committee's recommendation with  
22 respect to the IBM project represents some considerable  
23 progress. It recognizes the unique aspects and the unique  
24 policy issues raised by the question of self-generation,  
25 and it makes I think a very thoughtful attempt to deal

1 with the issues raised.

2 I'm not in a position to buy off and agree with  
3 the approach suggested by the -- by the Committee. Neither  
4 is the staff, but I think the issues raised there are  
5 serious ones, and they deserve to be addressed, so we would  
6 propose to go forward and address those issues without  
7 waiving any of the legal or policy arguments which we have  
8 raised before the Committee.

9 I think the Committee takes the point of view  
10 that they would rather avoid reaching a broad-ranging legal  
11 and policy issue if it is not absolutely necessary, and  
12 we agree, so I think it represents some progress, and we  
13 would like to go forward.

14 I can't -- I cannot refrain from pointing out  
15 that it has been since -- I think it's April 5 or 4 that  
16 the application was filed, and I should tell you that IBM  
17 is very concerned about the delay. It's causing some dif-  
18 ficulty within the corporation, so there is a need to move  
19 forward as quickly as possible.

20 CHAIRMAN IMBRECHT: Thank you very much.

21 Does anyone else wish to be heard on this item?

22 MR. RATLIFF: Yes, Commissioner.

23 CHAIRMAN IMBRECHT: Mr. Ratliff.

24 MR. RATLIFF: This is -- I'm Dick Ratliff. I  
25 have been asked to stand in for Dave Mundstock to represent

1 staff today on this issue, and I guess the main thing that  
2 I would like to say is that we would like to join in the  
3 IBM request to have staff-sponsored workshops so we can  
4 begin to have I think more productive discussions of the  
5 IBM project and self-generation, and how it should be  
6 treated.

7 We have only been able to address this thus far  
8 in a hearing context, and it has been frustrating I think  
9 for everyone involved, so we would ask to be allowed to  
10 go ahead and have staff workshops in these cases.

11 We have made that request in the past, and I  
12 believe IBM has as well. They have certainly now made  
13 that request in their latest filing, and we would like  
14 the Commission to see that those workshops are held.

15 COMMISSIONER COMMONS: Well, that request would  
16 not be granted.

17 CHAIRMAN IMBRECHT: Why?

18 COMMISSIONER COMMONS: Well, first of all, I  
19 don't think it's in order at this time, but if it is --  
20 if it is in order, we'll discuss it.

21 CHAIRMAN IMBRECHT: Well, you know, we could  
22 force either the staff or IBM to come back with a defici-  
23 ency direction from the Commission to overrule an order  
24 of a committee member, and they have obviously got that  
25 option under our regulations, or we can get on with it

1 now, but we have already heard expressions of concern about  
2 delay. If we force them to do that, it's just going to  
3 be another delay.

4 COMMISSIONER COMMONS: The delay is caused by  
5 the staff in having such a workshop. The Committee has  
6 pushed at every possible instance to get this Commission  
7 to proceed. It wanted to proceed and was ready to proceed  
8 on this project --

9 CHAIRMAN IMBRECHT: Well, why does a workshop --

10 COMMISSIONER COMMONS: -- weeks and months ago.

11 CHAIRMAN IMBRECHT: Why does a staff workshop  
12 enter that?

13 COMMISSIONER COMMONS: The Commission order of  
14 September -- of September, which the Committee was willing,  
15 ready and able to go earlier than that, required all three  
16 cases to be ready. The reason it's here today is it was  
17 not ready to go because of having to include all three  
18 cases until today.

19 If you have staff workshops in this area, the  
20 staff is not in support of the Committee recommendation.  
21 It will require the Committee holding -- the staff holding  
22 workshops and the Committee redoing and reholding the work-  
23 shops. It will only result in delay.

24 MR. MATHEWS: Excuse me, if I may interject.  
25 It's -- the applicant has requested that the Committee

1 schedule a staff workshop in their filing in response to  
2 your order, Commissioner Commons.

3 In addition, we propose to have that workshop  
4 in a timely fashion such that we may be able to respond  
5 on December 6th, as your order contemplates responding,  
6 so I don't see that there would be any delay by a staff  
7 workshop at this time.

8 COMMISSIONER COMMONS: Well, Mr. Chairman, if  
9 either the staff or IBM would like to submit a petition,  
10 I think that would be the appropriate way to handle the  
11 issue. If you would like to go into the details, I think  
12 that is properly -- should be properly noticed, and we  
13 should have a file in front of us, and we should review  
14 it.

15 And I think I may be at the point that if we  
16 want to pursue this we may have to have the Committee,  
17 or at least the Presiding Member of the Committee may  
18 request a change in who the staff counsel is so that we  
19 don't have unnecessary confrontations and delay in the  
20 case.

21 CHAIRMAN IMBRECHT: Okay. It's apparent you  
22 feel strongly about it. I think under those circumstances  
23 that the petition process is the appropriate way if either  
24 staff or the applicant feels aggrieved by the Committee  
25 decision to appeal it to the full Commission.

1 I'm sorry to have to say that, but I don't see  
2 any other way to handle it.

3 MR. RATLIFF: Well, Mr. Chairman, I might only  
4 add that it --

5 CHAIRMAN IMBRECHT: Frankly, I'm not inclined  
6 to set a precedent at this juncture of --

7 MR. RATLIFF: The longer we're prevented from  
8 meeting with the applicant to have more productive dis-  
9 cussions, I think it's going to be that much longer that  
10 it will be before the staff is able to constructively  
11 evaluate the current proposal.

12 And I might also add that we are not in opposi-  
13 tion to the Committee's proposal.

14 COMMISSIONER COMMONS: The Committee has no  
15 objection of holding either committee hearings or committee  
16 workshops on the item. In fact, I met with the Hearing  
17 Adviser today to schedule them as per IBM's request prior  
18 to the December 6th date.

19 Now, the only issue at stake is, is the  
20 Committee to meet and this be a Committee workshop or  
21 hearing, or is the staff to in this case proceed with IBM  
22 independently, and since we are forging into areas that  
23 this Commission has never covered before, it's at least  
24 my viewpoint that the way we can most expeditiously handle  
25 this is that we hold a workshop on the matter prior to

1 the time that the briefs are submitted, and that it be  
2 a committee workshop, not a staff workshop.

3 MR. FLORES: I -- we didn't mean to trigger any  
4 controversy in our request for a staff workshop. We --  
5 the hearings I thought were rather confrontational, and  
6 my thought in talking to the staff was perhaps that could  
7 be avoided in the future.

8 We're happy to, if Commissioner Commons feels  
9 it's more productive to have a discussion on the record  
10 with the Committee present, we're happy to do that. We  
11 have no particular -- we're happy to do it that way. I  
12 would just like to do it as soon as possible.

13 We -- in our request we said let's -- let's have  
14 the workshop as soon as we can, certainly before December  
15 6th when comments are due on the Committee's proposal,  
16 and I would say the same thing for a Committee hearing.  
17 If that's the way the Committee wants to do it, let's --  
18 let's do it before the 6th.

19 CHAIRMAN IMBRECHT: Let's get on with it.

20 MR. FLORES: Yeah.

21 CHAIRMAN IMBRECHT: Okay. I --

22 COMMISSIONER COMMONS: A point of information.

23 CHAIRMAN IMBRECHT: Commissioner Commons, I mean  
24 I'm just not aware of a situation in the past where any  
25 committee has refused a staff workshop. I mean is that --

1           COMMISSIONER COMMONS: Well, when you're in an  
2 area, Mr. Chairman --

3           CHAIRMAN IMBRECHT: -- wouldn't we try to  
4 encourage communication rather than inhibit it?

5           COMMISSIONER COMMONS: Well, when you're in an  
6 area where you are essentially forging new policy, because  
7 this is an issue that has never been addressed by the  
8 Commission, it's not really covered in the Electricity  
9 Report, it may be appropriate for two Commissioners to  
10 be present to hear the discussion rather than an attempt  
11 of the staff to try to negotiate and establish Commission  
12 policy.

13           If we were talking about areas that --

14           CHAIRMAN IMBRECHT: Obviously if you disagree  
15 with the outcome of any of those discussions, it's the  
16 Commission that makes the decision, not the staff.

17           COMMISSIONER COMMONS: I know, but then what  
18 we would do is we have to go back and rehear, and we put  
19 IBM through the frustration of maybe trying to have to  
20 jump through two sets of hoops rather than trying to get  
21 thorough one set of hoops.

22           CHAIRMAN IMBRECHT: Well, let me leave it this  
23 way. The petition process is available to any party to  
24 the proceeding, including staff or applicant, and at the  
25 same time, Commissioner Commons, I just urge you to try

1 to hold whatever kind of workshop, and however you want  
2 to characterize it, and do it as expeditiously as possible.

3 COMMISSIONER COMMONS: I do have one point of  
4 information, Mr. Chairman.

5 Can I officially identify a date for such a  
6 workshop here, since all parties are present,  
7 Mr. Chamberlain?

8 MR. CHAMBERLAIN: I think a notice should be  
9 sent out and put in the docket, but I -- I don't see any  
10 problem with your identifying the data.

11 COMMISSIONER COMMONS: All right. I would like  
12 to identify, then, the 26th of November, 10:00 a.m., at  
13 the Commission, if that's suitable to Commissioner  
14 Noteware's schedule.

15 CHAIRMAN IMBRECHT: I can't --

16 COMMISSIONER NOTEWARE: Yes.

17 CHAIRMAN IMBRECHT: Okay. Fine. We can work  
18 this out another time. All right.

19 MR. FLORES: That's fine with IBM.

20 CHAIRMAN IMBRECHT: That's fine. Okay. Good.  
21 All right. Does anyone else wish to be heard  
22 on these items?

23 Okay. What's the pleasure of the Commission?

24 COMMISSIONER COMMONS: Mr. Chairman, I think  
25 we -- maybe, since there are three separate cases, take

1 them a case at a time on terms of the motions.

2 CHAIRMAN IMBRECHT: Well, if there's no disagree-  
3 ment, I don't see why we need to -- I'm going to move the  
4 adoption of all three orders as --

5 MR. MATHEWS: There is a disagreement. It's  
6 rather complicated, and so I went through all of it, but  
7 I'll go back over --

8 CHAIRMAN IMBRECHT: All right. We'll go through  
9 one at a time, then.

10 I would move that we adopt the Spreckles order,  
11 as proposed by Commissioners Noteware and Gandara. Is  
12 there a second?

13 COMMISSIONER NOTEWARE: I'll second it.

14 CHAIRMAN IMBRECHT: Seconded by Commissioner  
15 Noteware. Is there discussion? Is that an item you want  
16 to be heard on, Mr. Mathews?

17 MR. MATHEWS: No. We agree with that item.

18 CHAIRMAN IMBRECHT: Is there objection to a  
19 unanimous roll call?

20 Hearing none, "Aye's" four, "No's" none. The  
21 motion is carried.

22 Now I'll move the adoption of the IBM Small  
23 Power Plant Exemption Order. Is there a second?

24 COMMISSIONER COMMONS: Second.

25 CHAIRMAN IMBRECHT: Seconded by Commissioner

1 Commons. Is there discussion?

2 Mr. Mathews.

3 MR. MATHEWS: This is the -- this is the item  
4 we have a concern with because of the way the order is  
5 characterized. If the Commission adopts the order, it  
6 therefore, the way I read the order, agrees with the  
7 Committee that the load-following condition of the unspeci-  
8 fied reserved need test should be based on an economical  
9 rather than a physical interpretation of what load-match  
10 means.

11 I'm not totally clear what that -- what economic  
12 versus physical means in that context at this point. Our  
13 view is that the Committee ought to proceed and examine  
14 the applicability of the unspecified reserved need test  
15 and alternatives to it, and has made a good step toward  
16 that in its proposed order, but the Commission shouldn't  
17 make a preliminary decision prematurely that it ought to  
18 be economic rather than physical, or any other way of  
19 making that interpretation, until all the parties had a  
20 chance to respond to the Committee's proposal.

21 CHAIRMAN IMBRECHT: Commissioner Crowley.

22 COMMISSIONER CROWLEY: Because this is a -- kind  
23 of a separate area of concern involving self-generation,  
24 and so on, I'm wondering if it would be appropriate to  
25 replace in that page 6, first -- second full sentence,

1 the final word, "on an economic rather than a physical  
2 basis," the language which I will complete the sentence  
3 with.

4 "Therefore, the load-following condition  
5 would have to be met taking into account utility  
6 system load servicing, including the concept of  
7 economic load-following."

8 I think perhaps if that sort of language were  
9 included and involving an analysis of the system, this  
10 perhaps would include a study of when IBM's facility is  
11 providing as-available energy, and also when the system  
12 is inoperative and PGandE is providing backup generation,  
13 perhaps giving us a more clear picture of the ramifica-  
14 tions of the self-generation project.

15 CHAIRMAN IMBRECHT: Is that acceptable to you,  
16 Commissioner Commons?

17 COMMISSIONER COMMONS: I would like to hear the  
18 wording again, please.

19 COMMISSIONER CROWLEY: The wording would be,  
20 the deletion having been made and the substitute wording  
21 included in the full sentence, the full sentence would  
22 read --

23 COMMISSIONER COMMONS: What deletion?

24 COMMISSIONER CROWLEY: We woud delete "on an  
25 economic rather than a physical basis" at the end of the

1 second complete sentence on page 6. The full sentence,  
2 including the new language, would read as follows:

3 "Therefore, the load-following condition  
4 would have to be met taking into account utility  
5 system load servicing, including the concept of  
6 economic load-following."

7 COMMISSIONER COMMONS: "...taking into account  
8 utility..."

9 COMMISSIONER CROWLEY: "...system load servicing,  
10 including the concept of economic load-following."

11 COMMISSIONER COMMONS: "...taking into account  
12 utility system load-following..." "...load servicing..."

13 All right.

14 Now, could you tell me what it means?

15 COMMISSIONER CROWLEY: Oh, well, what it means  
16 is that it I believe fits the inquiry that needs to be  
17 made in a self-generation project, including both the  
18 ramifications of IBM providing as-available energy, and  
19 PGandE providing back-up generation, given each situation  
20 of the facility.

21 CHAIRMAN IMBRECHT: It doesn't preclude the  
22 physical basis evaluation --

23 COMMISSIONER CROWLEY: No.

24 CHAIRMAN IMBRECHT: -- but also allows for the  
25 economic.

1           COMMISSIONER CROWLEY: Indeed, and a more defi-  
2           nitional economic --

3           COMMISSIONER COMMONS: I have -- if Doug has  
4           no objection, I have no objection.

5           CHAIRMAN IMBRECHT: Fine. I made the motion,  
6           and I consider that a friendly amendment as the seconder,  
7           that's not to say hostile --

8           COMMISSIONER CROWLEY: Yes.

9           CHAIRMAN IMBRECHT: -- so the amendment will  
10          be incorporated within the motion.

11          Further discussion? Is there objection to the  
12          unanimous roll call?

13          Hearing none, "Aye's" three, "No's" none --  
14          "Aye's" four, "No's" none. The motion is carried.

15          The last one is I will move the adoption of the --

16          MR. MATHEWS: You don't have an order in front  
17          of you for Crockett.

18          CHAIRMAN IMBRECHT: I don't have one, do I?  
19          I was just lumping through here, and I ran out of them.

20          Spreckles, IBM --

21          MR. MATHEWS: I don't know if one -- if you need  
22          to take any action on Crockett, given that we are going  
23          to hear LTBA discussions on the 27th, and if at that point  
24          you can make an extra allocation at the end of your  
25          determination on how that gets resolved.

1 CHAIRMAN IMBRECHT: I agree with that.

2 COMMISSIONER NOTEWARE: That's right, Scott.

3 It would be inappropriate to do it today.

4 CHAIRMAN IMBRECHT: Absolutely. Fine.

5 Okay. We completed Item 14 in less than two  
6 hours. What do you know.

7 Is there objection to the minutes as presented?

8 Hearing none, approved as presented.

9 Are there Policy Committee reports?

10 Hearing none, General Counsel's report.

11 MR. CHAMBERLAIN: I have nothing today.

12 CHAIRMAN IMBRECHT: Executive Director's Report.

13 MR. SMITH: Very briefly, without going through  
14 a full staff report on the quarterly review, which is con-  
15 tinuing at this point, the Executive Office is in the final  
16 stage of interviews for the Public Information Office and  
17 Chief of Governmental Affairs. We expect that those inter-  
18 views will be completed this week. The Executive Director  
19 expects to be in touch with you to discuss the appointments  
20 next week.

21 CHAIRMAN IMBRECHT: Fine. I want to just back  
22 up to the Policy -- or the Committee reports for just a  
23 moment. I had a chance to talk with a number of you rela-  
24 tive to the resolution of the contracts issue for the  
25 Commission, and you will be pleased to learn that the

1 Department of Finance did agree to our proposal of approxi-  
2 mately \$8.3 million for contracts for the '86-7 fiscal  
3 year, which is an increase of about \$2.5 million over the  
4 current year, and that is being viewed as the base for  
5 us as well, which will be very useful in the future. It's  
6 a reflection of the very fine work that Mr. Smith and  
7 others in our -- Mr. Donaldson, and others in our budget  
8 operation, and I hope that they are all appropriately  
9 commended for those efforts.

10 Does any member of the public wish to address  
11 the Commission on any issue?

12 Mr. Foley, you've had your chance. I'm being  
13 facetious. It's been a long day.

14 Hearing none, we stand in adjournment, and we  
15 will see you in two weeks.

16 COMMISSIONER CROWLEY: And no meeting tomorrow.

17 CHAIRMAN IMBRECHT: No meeting tomorrow. That's  
18 correct.

19 (Thereupon, the Business Meeting of the  
20 California Energy Resources Conservation and Development  
21 Commission was adjourned at 6:05 p.m.)

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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 13th day of November 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