STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION

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BUSINESS MEETING

1516 Ninth Street

First Floor Hearing Room

Sacramento, California

Wednesday, December 11, 1985

10:00 O'Clock A.M.

Reported by: Madonna M. Kushen

K. & T. RECORDING
MADONNA KUSHEN
EDYTHE TANNER
7712 GARDEN GATE 969-4162
CITRUS HEIGHTS, CA 95610

COMMISSIONERS PRESENT

Charles R. Imbrecht, Chairman

Barbara Crowley

Geoffrey D. Commons

Warren D. Noteware

EX OFFICIO

Bill Foley

STAFF PRESENT

Randall M. Ward, Executive Director

William Chamberlain, General Counsel

Gary Fay

Chris Tooker

Kent Smith

Bill Pennington

Karen Griffin

Dorothy Dickie

Bob Stroud

Nancy Deller

Michael Batham

Michael De Angelis

Leon Vann

Karen Hough

PUBLIC ADVISOR'S OFFICE

Ernesto Perez

Gary Heath

ALSO PRESENT

David Mulliken, Signal Environmental Systems, Inc.

Frank Mazanec, Signal Environmental Systems

Dell Pereman, ARI

Jack Langmead, GAMA

Tony Hemming, Texaco Corporation

Mike Gardner, Kern River Cogeneration Project

Charlie Myers, Kern River Cogeneration Project

Alan Finning, Kern River Cogeneration Project

Peter Baumgartner, Pacific Gas and Electric

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P R O C E E D I N G S

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CHAIRMAN IMBRECHT: Good morning. Please excuse my tardiness. I would ask you to all rise and join us in the flag salute.

Mr. Foley, would you please lead us in the Pledge of Allegiance.

MR. FOLEY: I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

CHAIRMAN IMBRECHT: Thank you.

We have a few housekeeping items. We are going to take up Item No. 9 first, which is the question of acceptance of the Sander Municipal Solid Waste Management Application for Certification.

A few other housekeeping items, Items 6 and 11 on the originally published agenda will not be heard until next week, December 18th, when we are holding a special meeting to deal with ratification of today's actions.

We will also take up Item No. 1 after our luncheon recess while the staff works on a few modifications to that item.

And with that, we will turn to Item No. 9, which is Commission Consideration and Possible Acceptance of the

Sander Municipal Solid Waste Management Application for Certification, submitted by Signal Environmetal Systems, Inc., on September 3, 1985.

This AFC was determined incomplete by the Commission on October 16, 1985, and we will today consider supplemental data which was submitted by the applicant on November 14th. Mr. Ward.

EXECUTIVE DIRECTOR WARD: Thank you, Mr. Chairman, and good morning.

As you recall a letter submitted to you December 9, 1985, we still indicated there were existing data deficiencies. Bob Tooker is here to discuss that -- or Chris Tooker, excuse me, is here to discuss the remaining deficiencies. The applicant is here as well.

MR. TOOKER: Thank you. In summary, since your original determination on October 16th, the applicant has worked cooperatively with the staff in making an attempt to provide all the information necessary to correct the deficiencies in the letter you adopted -- or in the deficiency list you adopted on the 16th.

To that end, their original -- or their supplements filed on the 14th and 22nd have satisfied nine of the 14 technical areas. We had a workshop on the 26th of November discussing our findings regarding those supplements, and the applicant agreed to provide further data

in response to those five remaining areas. They have provided that data, but we have not had a chance to fully review it yet, and would be available on the 18th to make a final recommendation on the overall adequacy of the application at that time.

COMMISSIONER CROWLEY: So you are basing that on information that has already come in but has not been evaluated; is that correct? You are not -- in other words, there is not additional information --

MR. TOOKER: Correct.

COMMISSIONER CROWLEY: -- that is to come in.

MR. TOOKER: We have all the information in-house at this time. I would like to reiterate that the applicant has been very cooperative in terms of discussing with us the nature of those remaining deficiencies and in providing us with that information in a timely manner, and we have I feel worked very well together in trying to move towards developing a complete document.

COMMISSIONER CROWLEY: And you will be prepared for the meeting of the 18th.

MR. TOOKER: Correct.

COMMISSIONER CROWLEY: Is that correct? Thank you.

Does the applicant have any comment at this time?

MR. MULLIKEN: Good morning, Ms. Crowley. For

the record, David Mulliken of Latham & Watkins, legal counsel to the Signal Environmental Systems, and Frank Mazanec, project manager here, as well.

We heartily endorse the -- Mr. Tooker's statement. We feel we have made enormous progress. As you know, when we -- from the date when we originally submitted in early September, we had a workshop in which we addressed I think something like 138 deficiencies. We've whittled that down to something in the neighborhood of 50, and we came before you seeking additional guidance and clarification in mid-October, and that allowed us to focus our attention on the very few outstanding issues where there was some concern about precisely what was needed.

You spent a long time that day, and quite frankly that was time, in our judgment, extremely well spent. The direction the Commission gave us allowed both the staff and ourselves to focus on the issues, to clarify some of the ambiguities that were outstanding, and I think greatly facilitated our supplemental submittals.

We did make two submittals as Chris mentioned on the 14th and 22nd of November. It is those submittals which the staff has fully reviewed and has resulted in their concluding that nine of the 14 noted deficiencies have been resolved.

Our December 3rd -- excuse me, I guess December

4th and December 6th submittals are the two additional submittals which we believe are responsive to the remaining five items, and it's our -- it is as well our understanding that Chris is not looking for additional information, he merely needs the additional time following our submittal to review that.

We would anticipate that we would be before you a week hence with a common understanding that everything that is necessry to deem the application complete would be found in order.

And I simply want to say that the staff has been very coopertive with us. I think we have had very, very good exchange of information. The staff has been very accommodating. We actually had two workshops here following our last appearance before you. The first one, the staff came to San Diego so we could address those several nagging issues that you may recall we had been grappling with in terms of the kinds of information we could realistically expect from San Diego Gas & Electric. I think that workshop was very constructive in dealing with that.

And then we had a second workshop here on the 26th. I think this has put us in an excelllent position, and I personally feel very grateful for all the time you spent.

I think that the result of that is going to be

that we are going to end up getting over the finish line much, much quicker than we otherwise would have, and we certainly want to thank the staff for the help that they have given us here.

COMMISSIONER CROWLEY: Mr. Mazanec, do you have any comment?

MR. MAZANEC: No, I think Dave has stated that, thank you.

COMMISSIONER CROWLEY: Thank you. Thank you, Mr. Mulliken.

Mr. Chamberlain, then, this can be simply held as an open item for continuation for the 18th; is that correct?

MR. CHAMBERLAIN: That's correct.

COMMISSIONER CROWLEY: Thank you.

Any comment from Commissioners on this matter?

COMMISSIONER NOTEWARE: I appreciated hearing about the cooperative spirit between the applicant and the staff, and I hope that a year from now we'll still have that same atmosphere.

MR. MULLIKEN: Well, from our perspective, it's been a very, very constructive dialogue, and again I think that your involvement and willingness to take the time back in October to actually wrestle some of these issues to the ground with us was helpful, certainly from our

perspective and I think from the staff's as well, and I think sets us on the right course for the future.

COMMISSIONER NOTEWARE: Thank you.

COMMISSIONER CROWLEY: Thank you, gentlemen.

I'm reluctant to proceed with the main agenda items until the return of the Chair. Let me see if I have some items that might possibly be dealt with. Let's look at Item 12.a., the Consent Calendar. Is there a motion on the Consent Calendar?

COMMISSIONER COMMONS: I don't think we can take motions.

COMMISSIONER CROWLEY: We can't take motions.

COMMISSIONER COMMONS: That's my understanding.

COMMISSIONER CROWLEY: With three --

MR. CHAMBERLAIN: Perhaps it -- it would be a good idea for us to just state that this meeting is an unusual one in that --

COMMISSIONER CROWLEY: Oh, you're right.

MR. CHAMBERLAIN: The agenda --

COMMISSIONER CROWLEY: For that reason, not because of --

MR. CHAMBERLAIN: The agenda for technical reasons was not mailed out until Monday, the 2nd, and, therefore, there was not a full ten days notice. The meeting is taking place, therefore, under the understanding that we can take

public testimony and discuss items, but the Commission cannot take action on them.

COMMISSIONER CROWLEY: Thank you.

What's the pleasure of the Commission? Shall we proceed through the agenda items, or do you think it would be appropriate --

COMMISSIONER COMMONS: I would like to maybe encourage you to do -- what item number is the appliance one, Doug?

COMMISSIONER NOTEWARE: Well, that would be Item No. 7.

COMMISSIONER CROWLEY: I will choose to recess this business meeting and would appreciate it if we could have someone who could communicate to the Chair that we have done so in his absence.

(Chairman Imbrecht retunred to the Hearing Room.)

COMMISSIONER CROWLEY: We've disposed of Sander, and we will return on the 18th, and that is what we are going to do.

CHAIRMAN IMBRECHT: Thank you. My last interruption.

Okay. We will turn now to Item No. 2, which is Commission Consideration aned Possible Adoption of an Order Instituting Rulemaking to implement recent legislation by amending the regulations for the Solar Tax Credits and

the Conservation Tax Credits.

Mr. Ward.

EXECUTIVE DIRECTOR WARD: Yes. Thank you, Mr. Chairman.

As the Commissioners are aware, there were three specific pieces of legislation that changed the solar and conservation tax credits. Before you today is simply the Order to Institute Rulemaking to begin making the regulatory changes necessary to implement those pieces of legislation.

It is anticipated that proposed regulations would be to the Committee I believe mid-January, and then in front of the Commission mid-February.

CHAIRMAN IMBRECHT: All right. Fine. Does anyone wish to be heard on this item?

Do I hear a motion?

COMMISSIONER COMMONS: Mr. Chairman, I don't believe it's appropriate to have a motion today.

CHAIRMAN IMBRECHT: It's not appropriate to have a motion today? Why is that?

COMMISSIONER COMMONS: This is not a regularly-scheduled business meeting.

CHAIRMAN IMBRECHT: Hmm?

COMMISSIONER COMMONS: We did not give adequate notice for this business meeting.

CHAIRMAN IMBRECHT: Well, we can take it as an advisory action, I believe, and then --

COMMISSIONER COMMONS: All right.

CHAIRMAN IMBRECHT: -- take it up on December 18th as well. We can ask Mr. Chamberlain for an interpretation.

COMMISSIONER COMMONS: Well, I would like to ask Mr. Chamberlain -- let me make my argument, and then let him respond.

Mr. Chamberlain, I believe the reason that we are not able to have the business meeting and vote on items is that not all parties received adequate notice, and that we have not met our statutory obligations of giving notice, but in a practical sense the fact that this notice went out instead of on a Friday, went out on a Monday, and during the Christmas season, it's already been indicated to me by some parties that they did not receive this notice until Monday of this week, which would make it very difficult, obviously, to plan to be before the Commission, and I personally would find it difficult to even give an advisory position when there may be information forthcoming in a properly noticed meeting, which would change my opinion.

My understanding is there is nothing illegal about our giving an advisory position. However, it may

not be done in -- it may not be advisable for the Commission to do which they legally could do, and I would like to have your understanding as to what we can or cannot do, and if you have any advice to us.

MR. CHAMBERLAIN: Well, as I indicated earlier, the Commission cannot take formal action. I don't know of anything that prohibits individual Commissioners from expressing in one way or another what their opinion would be on a matter, although, as you say -- I mean I -- I think the Commission has to recognize that on the 18th, if there are parties who appear on an item and indicate that they have additional comments that they want considered, it is the obligation of the Commission to consider those comments and not to feel bound by any expression that they may have made today as to what their position would be.

CHAIRMAN IMBRECHT: I'm sorry. What was --

MR. CHAMBERLAIN: Oh, all right. On the 18th, when we hear these matters again, it is -- it is essential that the Commission hear any additional testimony by parties who contend that they did not have adequate notice of this meeting.

CHAIRMAN IMBRECHT: Um-hum. So we --

MR. CHAMBERLAIN: And, so, although you are not prohibited from expressing your opinion or each individual Commissioner expressing their opinion on the matter --

CHAIRMAN IMBRECHT: Well, would it be practical, then, to have a motion, take a vote today, but on the 18th, prior to a ratification vote, if any action is taken today, we make it clear that we are asking for any additional public comment or expressions of interest by any parties, and in the event that that is persuasive to change the position, then obviously the Commission can decide to take action that is contrary to that which was taken today?

MR. CHAMBERLAIN: I suppose as long as it's understood that the votes today have no legal effect until they are ratified again on the 18th --

CHAIRMAN IMBRECHT: I understand.

MR. CHAMBERLAIN: -- when persons would have that opporutnity, that would be all right.

CHAIRMAN IMBRECHT: Well, it would be my sense, then, in terms of just expediting business, that we could ask at the outset of the meeting on the 18th whether any parties wish to be heard on any of the items which were dealt with on an advisory basis at today's meeting, and in the event that any such -- or any parties indicate an interest to make a presentation that we not include that item in any omnibus ratification vote.

Would that be an appropriate way to handle it, gentlemen?

MR. CHAMBERLAIN: I believe so.

CHAIRMAN IMBRECHT: Commissioner Commons.

COMMISSIONER COMMONS: I do believe that we have one Commissioner who is not here, and since it's not a business meeting, that that Commissioner may wish to ask of different parties who are appearing before the Commission questions, or address those parties and have responses on any raw items that are before the Commission.

If it is your intent to have any motions today, my position today will be to neither vote yes, vote no, or abstain, or take any position on any of the matters that are before us. I do not think it is appropriate for me to try to formulate a policy judgment on issues until we have heard all testimony that would be before us.

CHAIRMAN IMBRECHT: Well, frankly, that's your position. I guess then the question is why we even have the meeting today, unless -- if it gets you nowhere. I mean if we're going to have to rehear everything next Wednesday, then I guess I'm wondering why I'm spending my time here with you.

COMMISSIONER COMMONS: Well, I would prefer for us to to forward. There are a number of items that -- the hearing of the testimony, I see no reason to duplicate the hearing of the testimony. All the testimony that we receive today does not have to be duplicated next week, and can be taken into consideration in our deliberations.

In fact we can have I think some good interchanges and discussions.

There's a number of the items that are here that I think actually having the discussions today may help us make better decisions by the 18th by having this today, so I would fully encourage.

I think the practicality of having an advisory motion today instead of next week, we can dispose of most of this agenda in a very short period of time. I just think it's a procedural element that -- proprietary element as to how to handle it.

CHAIRMAN IMBRECHT: Are we -- if this is an improperly or inadequately noticed meeting, are we by our presence, the four of us here in this room, violating the Open Meetings Act?

COMMISSIONER CROWLEY: Probably.

CHAIRMAN IMBRECHT: I hate to get into this quagmire, but I guess that's the obvious question.

MR. CHAMBERLAIN: I don't believe so, Mr. Chairman. The existence of this meeting was noticed a long time ago, well before ten days. However, the specific agenda was not -- did not get mailed out until Monday, the 2nd, so the -- we are in violation of the specific agenda noticing requirements, but there is a section within the Act that says:

"The notice requirement shall not preclude the acceptance of testimony at meetings, other than emergeny meetings, from members of the public, provided, however, that no action is taken by the State body at the same meeting on matters brought before the body by members of the public.

CHAIRMAN IMBRECHT: Okay. Well, I'm at a little bit of a loss as to how to proceed here.

MR. CHAMBERLAIN: Let -- let me indicate --

CHAIRMAN IMBRECHT: I don't know what the interest is of the other Commissioners.

Commissioner Crowley, Commissioner Noteware, if you want to indicate how you prefer to --

COMMISSIONER CROWLEY: You wondered why I recessed till you got back.

CHAIRMAN IMBRECHT: I'm beginning to understand that.

COMMISSIONER NOTEWARE: Well, Mr. Chairman, we have people here that have presentations to make that have come from a long way, and I --

CHAIRMAN IMBRECHT: We'll take --

COMMISSIONER NOTEWARE: I certainly want to hear them, and I'm not adverse to letting you know how I feel about certain things, and hopefully we can dispose with -- with everything except the ratification for next week

on most of these items.

CHAIRMAN IMBRECHT: All right. Well, I'm going to, in that case -- does anyone wish to be heard on Item No. 2?

I'm going to move that -- on an advisory basis, that we have indicated approval of Item No. 2. Is there a second?

COMMISSIONER NOTEWARE: I second it.

CHAIRMAN IMBRECHT: Seconded by Commissioner Noteware.

Understanding Commissioner Commons's intention to abstain, is there objection to a unanimous roll call for the remainder of us?

COMMISSIONER COMMONS: I'm not abstaining on the issue. I'm not -- not yes, not no, not abstaining.

COMMISSIONER CROWLEY: Is there another choice?

COMMISSIONER COMMONS: Since we cannot vote, Mr. Chairman --

CHAIRMAN IMBRECHT: Fine. All right. We understand yuor position.

COMMISSIONER COMMONS: Okay. Great.

CHAIRMAN IMBRECHT: And so it's "Aye's" three, "No's" none.

Item No. 3 has been moved to the Consent Calendar, and we'll take that up shortly.

Item No. 4 is Amendment to -- to a contract with Acurex Corporation to amend the work statement and to authorize the Executive Director to submit a formal grant application to the Urban Mass Transportation Administration for $1.3 million to be added to the budget of the Commission.

The addition of these funds will allow continued operation of the methanol-fueled buses through 1988, and I would guess there is probably a modification to decide now. Mr. Ward.

EXECUTIVE DIRECTOR WARD: Yes. Mr. Chairman, this is simply a mechanical procedure that allows us to receive the federal funds that, by letter dated December 10th from Ralph Stanley, the Administrator of UMTA, consists of $830,000, to continue the methanol bus demonstration program.

Mr. Smith may be able to enlighten us a little bit as to what the difference between the 1.3 and the 830,000 of actual receipt will mean, and as to whether that program will be able to be extended through 1988, or modified.

At this time I think I would have him do that.

CHAIRMAN IMBRECHT: Okay. Mr. Smith.

MR. SMITH: Let me -- I have a brief handout here I think that might be -- might be helpful.

I have to be honest in saying that we don't know why it is 830,000 and not 1.3, because we only received the letter from the UMTA Adminsitrator yesterday, so during the grant application process UMTA will tell us what items of our original grant application they are interested in doing, and which ones they are not interested in doing. We can only speculate on that at this point.

If I were to look at the budget I could add up certain items that add up to $830,000, but that would be speculation.

EXECUTIVE DIRECTOR WARD: Speculation.

MR. SMITH: So I really would --

EXECUTIVE DIRECTOR WARD: Okay.

MR. SMITH: I would prefer not to do that, and would prefer to come back to you and tell you specifically what that is. I think we might be able to determine that between now and the 18th, if that's appropriate.

EXECUTIVE DIRECTOR WARD: I -- you know, I apologize to Ken for putting him on the spot a little bit, but this was the subject of numerous phone calls between the Congressional liaison office, various members of Congress, and UMTA, to try to break loose a letter that gave us some indication, either yea or nay, as to whether we were going to receive these funds.

We had heard better than 30 days ago that the

funds were forthcoming and that there would be a confirmation, so erring on the conservative side we waited four weeks to have it come before you to the formal business meeting, and until yesterday still had not received the confirmation.

So I'm pleased that we have received the confirmation, and I think you have also heard the information Ken had on breaking that down and trying to decide what -- what UMTA is going to want out of this, and whether we have any leverage or not with the actual grant application that I understand we have to proceed with with UMTA. We'll get back to you on if there is some latitude there. Probably the Policy Committee would be the appropriate place to go.

CHAIRMAN IMBRECHT: Thank you. I think you are all to be commended for breaking this money loose, and I would ask as well that appropriate letters of appreciation be prepared for us to send on behalf of the Commission to the various individuals that assisted us in this effort.

Does anyone else wish to be heard on this matter?

Commissioner Crowley?

COMMISSIONER CROWLEY: No, thank you.

CHAIRMAN IMBRECHT: Is that a --

COMMISSIONER CROWLEY: I was going to offer a -- an advisory motion to accept the modification to the

contract.

CHAIRMAN IMBRECHT: Thank you. Moved by Commissioner Crowley.

COMMISSIONER NOTEWARE: I'll second it.

CHAIRMAN IMBRECHT: Seconded by Commissioner Noteware.

Commissioner Commons?

COMMISSIONER COMMONS: Yes. I just also wanted to state that this is consistent with the policy goals of the Biennial Report, and I'm very happy to see that we're moving forward as a state with the 30 methanol-fueled buses in the SCRTD, and I think the two programs are going to be running in tandem and assist in -- in going forward from this demonstraion to hopefully a commercial operation, and --

CHAIRMAN IMBRECHT: That's sounding --

COMMISSIONER CROWLEY: But you're not going to vote for it.

CHAIRMAN IMBRECHT: That sounds suspiciously like an "Aye" vote to me.

(Laughter.)

COMMISSIONER COMMONS: I've just been very supportive, and want to thank the Development Division, and you all, and the people that have helped us for our proceeding on this.

CHAIRMAN IMBRECHT: Okay. Commissioner Noteware.

COMMISSIONER NOTEWARE: I do have a question, looking ahead to 1987 and even 1986. Is it your understanding that the relationship with Southern California Rapid Transit District and the Riverside Transit Authority will be quite similar to what we have now with the Golden Gate Transit District in -- in our involvement and the relationship with a potential contractor, and so forth?

MR. SMITH: Actually, we won't have any direct contractual relationship with either of those projects. We will -- we will provide an advisory role, and certainly people come to us for that advice because we have more operating experience with these buses than -- than anyone else in the United States.

But the -- in the case of SCRTD, they will actually go through a standard UMTA grant request to purchase 30 methanol buses, so this actually constitutes a -- a step beyond research and demonstration. This probably could be called a precommercialization test fleet.

In the case of the Riverside Transit Authority, this project is being spearheaded by the California Air Resources Board, based on a fine that they received from General Motors Corporation, and that -- that particular work is somewhat different from what is going on at Golden Gate, in that the coaches will have -- they will take

existing diesel coaches and put methanol engines in them, as opposed to purchasing new coaches, so each of these has a -- has a place in the development spectrum, but -- but are somewhat different and not duplicative.

COMMISSIONER NOTEWARE: My reason for asking was, in fact on our own Development Division staff if there is going to be considerably more burden, but --

MR. SMITH: I think it's consistent with our public requirement to report information that we have.

COMMISSIONER NOTEWARE: Yes.

MR. SMITH: I don't think that this is going to require new people nor new expertise to -- to accommodate, you know, these future projects.

COMMISSIONER NOTEWARE: I see. Thank you.

CHAIRMAN IMBRECHT: Thank you.

Is there objection to a unanimous roll call?

Hearing none, "Aye's" three, "No's" none. The advisory motion approving the amendment to the contract is approved.

The next item is Item 5, which is a contract for $45,768 with Pacific Management Dynamics Corporation for technical assistance and monitoring for up to 60 projects funded through the California Energy Bank.

Mr. Ward.

EXECUTIVE DIRECTOR WARD: Yes. Thank you,

Mr. Chairman. This is federal funds, we're allowed to use I believe up to five percent of these federal funds for administration, of which technical assistance falls under the guise of.

Karen Griffin from the Conservation Division is here to answer any questions.

CHAIRMAN IMBRECHT: Ms. Griffin.

MS. GRIFFIN: I would like to bring a matter to the Commission's attention. There is a slight error in your agenda package in that, due to the timing of the contract, Test 5 has been deleted. Test 5 would have marketed the Energy Bank program to potential recipients of Cycle 3. As you remember, you awarded Cycle 3 last week, so that task has been deleted and the money moved into the evaluation program.

The RFP and the -- the correct RFP and the correct set of tests were presented to the Committee for their approval, and I regret any inconvenience that this error on our part in the issue memo may have caused you.

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

Moved by Commissioner Noteware as an advisory motion, and seconded by Commissioner Crowley.

Is there objection to a unanimous roll call?

Hearing none, "Aye's" there, "No's" none.

My intention is that on all these items where there is no objection, at next week's meeting we will construct a large consent calendar, if you will, to deal with these items in one blanket motion, and before taking action on that, of course, we'll inquire as to whether or not any additional member of the public wishes to be heard on any of the items, in which case we will automatically remove it from that consent calendar approach.

All right. So the next item is Item 7, which is Commission consideration and possible approval of appliance efficiency data requests for manufacturers, as required by Assembly Bill 191. That bill calls for the report of information on sales of appliances by manufacturers so that the Commission may study the effects of regulations on those sales.

Mr. Ward.

EXECUTIVE DIRECTOR WARD: Thank you, Mr. Chairman. This has been the subject of ongoing debate, as I understand it, between the Committee, appliance manufacturers, and the staff. Bill Pennington of my staff is prepared to talk about what the staff's proposal is, and it may be appropriate to have the Committee do the initial outline of what's occurred here.

COMMISSIONER NOTEWARE: No, I would suggest that we hear from MR. Pennington's presentation first.

MR. PENNINGTON: Thank you.

Assembly Bill 191 amended the Warren-Alquist Act to provide the Commission with authority to collect data on the sales of appliances which we could then use to evaluate all the Commission's appliance efficiency programs.

Specifically, the legislation stated that prior to January 1st of 1986 any appliance manufacturer doing business in the state shall provide, directly or through a trade association, information as specified by the Commission, after consultation with the manufacturers doing business in the state, and appropriate trade or industry associations, on sales of appliances so that the Commission may study the effects of regulations on these sales.

These informational requirements shall remain in effect until the information is received.

The trade or industry association may submit sales information in aggregated form in a manner that allows the Commission to carry out the purposes of the study.

The Commission shall treat any sales information of an individual manufacturer as confidential, and that information shall not be a public record.

The Commission shall not request any information that cannot be reasonably produced in the exercise of due

diligence by the manufacturer.

The staff and the Appliance Committee have been working for the past several months to specify the data that manufacturers should provide. On September 9th, the staff released a draft proposed data request to the manufacturers.

On October 29th the Committee held a Committee workshop with the manufacturers and the trade associations on that proposed draft request to get feedback from the manufacturers and to get their comment for what should be in a final submittal request.

On November 26th, the Committee sent out to the manufacturers a letter that indicated the Committee's recommendations to the Commission for what data should be submitted, and I believe that letter is part of your package.

There have been revisions to the data submission instructions that have been prepared by the Committee and were distributed to you this morning that responds to the latest comments by the manufacturers on the data request.

The major concerns that the manufacturers have had on this submission of data is, first off, that they -- they think that the Commission does not have the authority to specify future years' data, but only has the authority under this AB 191 provision to specify previous data, and the reaction of the Committee and staff to this comment

has been to recommend to the Commission that under this authority, under the AB 191 authority, we only specify data for 1984 and previous years, and that instead the Commission conduct a rulemaking proceeding to identify what data should be collected in the future for the purposes of evaluating its programs or planning its programs.

Staff feels that this future-year data is very important for designing good effective information and incentives programs, and we strongly recommend we move forward with the consideration of what data to collect in the future.

Secondly, there was a comment from manufacturers that the Commission should not require the submission of data prior to 1983 or 1984, because there were problems with manufacturers' records not being complete, problems with difficulty in collecting information historically, and whether or not that information would produce fully accurate results, and that reaction to this comment from staff and from the Committee has been that, first off, we agree that there can be more difficulty in collecting historical data than for the base year 1983-84 data, and I think that the Commission should recognize that -- that that is the case, that it may be more difficult, but we need that data to carry out the intent of the statute.

You really can't evaluate the effect of standards

without having trend data for historical years, so the recommendation on this item is that we ask the manufacturers to provide the data for previous years, but that we recognize that -- that in some cases the best they can do is provide estimates using the data that they have available to them, and we should find that acceptable. We should call for estimates based on available data, with an identification of how the manufacturers use that data, what was the source of the information, just to explain the level of accuracy that probably is there.

A third comment that manufactuers made was that -- that the data submission should be limited to consumer products that are regulated by the Department of Energy at the federal level, because that was the data that is collected on an ongoing basis by the manufactuers currently at the national level.

The staff and committee reaction to this comment is that there are other appliances, namely larger air conditioners, furnaces, water heaters, that we regulate, that make up a significant portion of the energy use in the state, and we need data on the sales of those appliances as well.

A fourth comment that was made was that the Commission should postpone the due date for submissions of data to July 1, 1985, rather than the May 31st date

that had been proposed previously, to allow manufacturers time to compile the data, and the reaction to this comment is that the due date of March 31, 1985, we feel gives time for most manufacturers to provide the information.

There was an early recommendation that if any particular manufacturer had a problem with collecting the data they could request extensions to that due date, and we think, given that provision, that we ought to go forward with a consistent due date, unless there is a specific request for an extension.

COMMISSIONER NOTEWARE: That would be 1986, I believe, instead of 1985.

MR. PENNINGTON: I'm sorry. Did I say '85?

COMMISSIONER NOTEWARE: Yes.

MR. PENNINGTON: Eighty-six is correct.

Those were the -- the principal comments and the reaction to them. In the revised Committee recommendations there is a date of January 1, 1986 by which time manufacturers should tell the Commission whether they intend to submit the information as an independent manufacturer, or as part of a trade association, and there was some confusion about what that date was in previous communications with the manufacturers. The latest version says January 1st, 1986.

The other item that is somewhat changed in this

revision is that, for refrigerator-freezers, there is an intent to collect the efficiency data, the sales data, in terms of the descriptor, kilowatt hours per year, that is the basis for our standards, in addition to the energy factor descriptor which is typically used at the national level.

So our intent is to collect it in terms of the same descriptor that we use in the standards, as well as the energy factor, which the manufacturers have proposed, and that's the extent of my comments.

CHAIRMAN IMBRECHT: Thank you.

Commissioner Noteware, on behalf of the Committee?

COMMISSIONER NOTEWARE: Some of the manufacturers' representatives are here this morning, and I think they would like to make a presentation.

CHAIRMAN IMBRECHT: Yes. All right. Fine.

Mr. Jack Langmead, I believe, representing Gama. I hope I did justice to your name, sir.

MR. LANGMEAD: That's all right. It's Jack Langmead, and I do represent Gama.

Gama is divided into several product divisions. Involved in this one are the furnace, water heater and direct heating divisions.

I would like to enter into the record of this proceeding a copy of my December 6th letter to

Commissioner Noteware, which carbon copies were submitted to the rest of the Commissioners. I'll pass that down as an entry.

(Letter included herein by request of the Public Adviser.)

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(Nothing omitted.)

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1901 North Moore Street · P.O. Box 9245 · Arlington, Virginia 22209 · 703/525-9565

Gama

50th Anniversary

December 6, 1985

The Honorable Warren D. Noteware
Commissioner
Presiding Member, Appliance
Efficiency Committee
California Energy Commission
1516 Ninth Street
Sacramento, California 95814

Dear Commissioner Noteware:

After participating in the October 29, 1985, AB-191 Data Collection Workshop on behalf of the Gas Appliance Manufacturers Association, I find your November 26, 1985 letter outlining the proposed efficiency data request surprising for the following reasons.

1. While you indicated during the Workshop that AB-191 imposes a one-time information submission requirement, your proposal contains a request for information to be supplied during both 1986 and 1987. Any manufacturer shipment data requested by the Commission subsequent to the 1986 submittal would be strictly on a voluntary basis since it is not required by AB-191. Your November 26, 1985 letter incorrectly implies that the submittal of 1986 shipment data in 1987 is required by AB-191. This important point must be corrected in the record of these proceedings.

2. During the October 29 Workshop, it was repeatedly stated that, for a great number of companies, shipment data by efficiency increment for the years preceding 1984 simply did not exist. During 1976, the U.S. Department of Energy (DOE) Efficiency Test Procedures for Furnaces and Water Heaters did not exist. The DOE Water Heater Efficiency Test Procedure was first published in late 1977 and the DOE Furnace Efficiency Test Procedure in early 1978. Once these test procedures were established, GAMA worked toward

/Continued . . .

expansion of its statistical program to collect shipment information by efficiency increment. That GAMA statistical program started on January 1, 1983 because that was the earliest time that there was a sufficient number of manufacturers who could provide this information so that meaningful results could be obtained. While estimates of historical shipment data by efficiency increment could be made by some firms, the accuracy of the estimates may vary considerably. It should be noted that, even exercising due diligence, manufacturers could not possibly refine these estimates.

3. In order to show any difference of appliance efficiency in California relative to the U.S. as a whole, it is necessary to have a fix on U.S. shipments by efficiency increment. That information exists only for residential appliances. While your November 26 letter indicates that the data request is limited to residential appliances, the forms clearly include commercial gas water heaters (those having inputs over 75,000 Btu/hr.) and could be construed as covering commercial electric water heaters and commercial sized furnaces as well.

4. Since shipment by efficiency increment data on a nationwide basis is not available for fan-type wall furnaces, gravity wall furnaces and pool heaters, the request for this information should be deleted. Even if such data were collected for California, it could not be used to verify the effect of California information and incentive programs since no comparison to the U.S. as a whole could be made. Additionally, the request for Seasonal Efficiency information for fan-type wall furnaces is inappropriate since California Appliance Efficiency Standards are based on a Steady State efficiency rather than a seasonal efficiency.

In regard to the 1984 data request, it is suggested that:

A. The data request be limited to products falling within the scope of the DOE Efficiency Test Procedures. This would make your data comparable to available U.S. appliance efficiency shipment data.

B. Separate forms for gas and electric water heaters should be provided to avoid confusion since recovery efficiency information is not needed for electric water heaters.

/Continued . . .

C. For gas water heaters, the highest two recovery efficiency categories should be 80 to 86% and over 87%. This will avoid known disclosure problems.

D. For gas furnaces, the 85 to 87% and 88 to 90% seasonal efficiency categories should be combined into a single category of 85 to 90%. Again, this will avoid disclosure. If the Commission insists on engineering estimates for earlier years, an additional category of 70% or less will have to be included.

Sincerely,

J. P. Langmead
Vice President

JPL/lsg

cc: The Honorable Charles R. Imbrecht, Chairman
The Honorable Arturo Gandara, Commissioner
The Honorable Geoffrey D. Commons, Commissioner
The Honorable Barbara Crowley, Commissioner

MR. LANGMEAD: I am curious as, did the Commissioners get a chance to read this letter prior to this hearing? Have you received it?

Well, let me go briefly through the points in that letter. Basically, the first point was -- I indicated while we did attend the workshop on this, I was quite surprised at the data request that resulted from that workshop, because a number of points raised in that workshop did not seem to be taken into account.

The staff -- my first point indicated that we thought the authority was for a one-year request. I see that the revised proposal has taken that into account.

On the second point, I indicated that during the workshop -- as a matter of fact, in 1976 efficiency -- DOE efficiency test procedures did not exist, so that there is no way to know the efficiency rating of some of the equipment made in those years. It wasn't even measured in accordance with the test procedures.

But records weren't kept in those years, and it was noted during the workshop that that data simply was not available from a great number of manufacturers. Some manufacturers could provide historical data, but a great many couldn't. Therefore, the usefulness of the data would be quite limited.

I indicated in the letter that in nineteen --

starting with 1980, Gama started and made an attempt to expand its efficiency statistical program to include shipments by efficiency increments.

We could not successfully expand our statistical program to get on a nationwide basis efficiency shipments -- shipments by efficiency increments until 1983, so requests going back beyond that year I'm sure cannot provide much useful information and will be very expensive.

The third point I made in the letter deals with how the Commission can use the information. It was indicated during the workshop, and I still believe it's true, although it was contrary to what was indicated by the staff here, I don't believe you can usefully use efficiency data comparing a benchmark of several years ago to this year to determine the effect of a California efficiency requirement, labeling procedure, or information -- or any promotional program particularly.

You're going to have to look at the shipments in California at an efficiency level compared to shipments to the U.S. as a whole. Things change constantly. Energy prices rise. The sale and shipment of more efficient equipment rise in states without standards just as well as they do in states with standards. As a matter of fact, in some cases faster.

You will never be able to just look at California

data to track changes in efficiency level from one year to the next without looking back at national data to find the effect of any California regulation. Therefore, data requests that get away from the area where you can get a fix on the efficiency shipments -- on the efficiency of shipments to the U.S. as a whole aren't going to provide useful information. They are costly to provide, provide no useful benefit.

CHAIRMAN IMBRECHT: I'm sorry. I didn't understand that last point.

MR. LANGMEAD: If you don't have efficiency data on swimming pool heater shipments as a whole, and you do have some data in California on shipments of water heaters by efficiency increment, you really -- it can't tell you how California, or by a regulation, whether it was any different from the nation as a whole.

CHAIRMAN IMBRECHT: Okay. I appreciate that.

MR. LANGMEAD: You've got to get the rest of the nation to say why was California different, or is it different.

CHAIRMAN IMBRECHT: Now, do we contemplate getting the national information?

COMMISSIONER NOTEWARE: Not specifically, as such.

CHAIRMAN IMBRECHT: Is that generally --

MR. LANGMEAD: We have -- we have offered --

CHAIRMAN IMBRECHT: Is that generally available in any published form, or --

MR. LANGMEAD: We would -- we would provide the Commission, and have agreed during the workshop, discussed providing the Commission, of the shipments of the covered products by efficiency increment on a nationwide base where we have it, and I put it in a letter prior to the workshop describing those programs, indicating where we had that data and where we didn't. We are perfectly willing to do that as an ongoing basis.

But your data requests for California ought to be limited to that where you can get a fix on the nationwide data to make it make sense.

The last point in that letter said that there is -- there are some products where California has regulations, where there is no U.S. data on shipments by efficiency increments, and that includes fan type wall furnaces, gravity wall furnaces, and pool heaters, and I think those ought to be deleted from the data request.

One final point before taking too much of your time, I -- I would like to comment on the deadline for submitting data, and you have a date of March -- it was indicated April '86 in the staff report, I think. The paper says March 31, '86, and I can tell you here and now

that I don't think it's physically possible, phyiscally possible to get that data before July 1986, and to put in a request for a date in March where it is physically impossible to get that data, and that applies to both furnaces and water heaters, it will be physically impossible to get that information from our members, compile it at Gama, and get it in to the Commission before a July date.

Thank you, and I'd be glad to answer any questions you may have.

COMMISSIONER CROWLEY: Commissioner Noteware?

COMMISSIONER NOTEWARE: I have no questions.

Thank you, Mr. Langmead.

COMMISSIONER CROWLEY: Thank you. Then I --

COMMISSIONER COMMONS: I had one -- one question.

Are you intending to be back on the 18th?

MR. LANGMEAD: I was not intending to be, but I could -- it's a long trip.

COMMISSIONER CROWLEY: Thank you.

Mr. Pereman, Did you have a presentation?

MR. PEREMAN: Ms. Chairman, Commissioenrs, my name is Dell Pereman. I'm here representing the Air Conditioning and Refrigeration Institute. I'm here on behalf of the manufacturers of central air conditioning and heat pumps that are impacted by this data request.

Before I get into any specifics on the data

request, I would like to compliment the Commissioners on the Appliance Committee that have handled this. I believe it has been handled with great reasonableness and with a definite spirit of cooperation, and I hope that they also reocgnize that the manufacturers of the central equipment also come here in the spirit of cooperation and want to give what we feel is reasonable, and that we can achieve with due diligence.

I would also, by the way, like to compliment the Commission staff, for I feel they have been very helpful.

I would like to enter into the record a letter that was sent by ARI's general counsel, Mr. John Hodges.

(Letter included herein by request of the Public Adviser.)

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(Nothing omitted.)

DEP

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312/372-2000

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617/357-0200

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JOHN A. HODGES
202/887-8038

December 5, 1985

BY FEDERAL EXPRESS

The Honorable Warren D. Noteware
Commissioner
Presiding Member, Appliance Efficiency Committee
California Energy Commission
1516 Ninth Street
Sacramento, California 95814

Dear Commissioner Noteware:

On behalf of the Air-Conditioning and Refrigeration Institute, I am hereby sending you and the other Commissioners comments on certain recommendations in your November 26 letter to "All Appliance Manufacturers." These comments are submitted so that all Commissioners will be aware of ARI's views prior to the deliberations at the Commission's December 11 business meeting. ARI intends to participate at that meeting.

(1) 1987 request for information. Your letter recommends that the Commission include a data request for manufacturers in 1987 to update efficiency information.

We emphasize that while the Commission is free to request such information and manufacturers are free to submit it on a voluntary basis, the law is quite specific that manufacturers are not obliged to do so. Section 25402(c)(4) of the Public Resources Code, as added by AB 191, provides in relevant part as follows:

> "Prior to January 1, 1986, any appliance manufacturer doing business in this state shall provide directly, or through an appropriate trade or industry association,

> information, as specified by the commission after consultation with manufacturers doing business in the state and appropriate trade or industry associations on sales of appliances so that the commission may study the effects of regulations on these sales. These informational requirements shall remain in effect until the information is received."

That the law imposes only a one-time information submission requirement is clear from the face of the statute. The information is to be provided prior to January 1, 1986, and the informational requirement terminates once the information is received by the Commission.

It bears note that at the Commission's "AB 191 Data Collection Workshop" on October 29 Commissioner Commons confirmed that this is the meaning of the statute. The Commission's own minutes of the Workshop state that Commissioner Commons said: "A one-time deal; that was the legislative intent" (page 3) and "The law is a one time thing" (page 9).

The November 26 letter does not make clear the voluntary nature of a 1987 submission of data. We therefore request that the Commission explicitly so state for the record at the December 11 business meeting, in a written response to my letter, and in any data request relating to 1987.

(2) Historical data. Your letter states that you will recommend that the Commission request historical data for 1976, 1978, 1981, and 1984. ARI strongly objects to the scope of this request.

Section 25406(c)(4) provides with respect to the data request that "[t]he commission shall not request any information that cannot be reasonably produced in the exercise of due diligence by the manufacturer." Manufacturers cannot produce the requested information in the exercise of due diligence back to 1976. This conclusion is based on ARI's experience in administering several national statistical programs and the ability of its members to gather data. Manufacturers were not even keeping information on SEER's in 1976, and they are unable readily to determine which coils were matched with which condensing systems then.

The Commission staff itself "recognizes that it may be too difficult to collect data for the 1970's." See CEC "Summary of Issues Raised in Response to the September 9th Data Request."

ARI strongly recommends that the mandatory data request relate to no earlier than 1984. Should information be requested for any earlier years, it should be on a voluntary basis only.

(3) 65,000-135,000 Btu/hr central air conditioners. Your November 26 letter states that the data request will be limited to "residential appliances." Table 1 ("Scope of Data Request) in the letter, however, indicates that data will be requested for "central air conditioners . . . 65,000-135,000 Btu/hr." The vast majority of this equipment is commercial, and the information requested is not readily available within ARI or its member companies. It would be extremely burdensome to attempt to collect this data. This conclusion is also based on ARI's experience in administering national statistical programs and the ability of its members to collect data.

In addition, as pointed out in ARI's November 1 letter to you and Commissioner Commons standards for other than residential equipment in California, for the most part mirror those adopted by ASHRAE and numerous states throughout the nation. The data request for such equipment would therefore not have the effect of determining the difference California's regulations have on sales of such equipment since such regulations do not differ from standards adopted by ASHRAE and other states.

* * *

ARI intends to further explicate its views at the Commission's December 11 business meeting.

Sincerely,

John A. Hodges

General Counsel
Air-Conditioning and
Refrigeration Institute

cc: The Honorable Charles R. Imbrecht, Chairman
The Honorable Arturo Gandara, Commissioner
The Honorable Geoffrey D. Commons, Commissioner
The Honorable Barbara Crowley, Commissioner
Mr. Joseph M. McGuire

MR. PEREMAN: It outlines our legal position on this data request as it was received in November. It essentially lays out three different issues that we have been concerned about.

One was the issue of future authority. As you know, it's ARI's position that the Commission did not achieve future authority pursuant to AB 191. That is at this time apparently not an issue, and I will not go into it any further.

The second issue is that of historial data requests. It was our position that we would be very willing to give what we could, assuming it was a reasonable request and that it could be achieved with due diligence as AB 191 requires.

I would like to quickly lay out what is involved when our manufacturers have to give this information. I'm afraid that some people have this image of a manufacturer going to his computer and punching up a number and getting everything that was shipped to California or sold in California.

Unfortunately, though, that's not the case. ARI does not have a statistics program at the state level because of the difficulties involved, nor do our individual companies.

We have extreme situations where we have a smaller

company that has certain years' invoices from across the country, stored away in warehouses in a box, in different boxes, and he has to go through those boxes to find out what was shipped to Florida, California, New York, et cetera.

He then has model numbers written onto each invoice, and after he has determined which invoices were shipped to California, he has to go back to the directories and determine what the efficiency levels of those invoices were, because they were not written onto the invoices.

After that, he's got to try and determine what was sold in California after it was shipped out here, because they have distributors that ship to, say, ten states at once, rather than simply to California, and all our manufacturers know is that they went to that distributor, and then they have to figure out whether the evaporator coil is sold with that -- with that condensing unit.

I have other manufacturers that simply provide on a mass basis to major wholesalers in this country. They simply send them up to them, and these guys distribute wherever, and they have no idea where they went.

I recite these different stories just to impress upon you that we are not trying to be unreasonable here. We simply do face some major obstacles in this request.

Be that as it may, with the historical years we filled it, given the reasonableness requirements, we

can definitely go back to 1984, considering the fact that that has just passed.

As we told the Commission, we have major, major problems with 1976 and '78. For most companies that is simply not there. Any time before '84 and after the '70s, it gets very difficult, but there is perhaps some room there to work. I can't guarantee what we would come up with, but there may be some room there.

Mr. Langmead mentioned the due date. I would also agree that that March 31st date, which was suggested by us at the workshop, dealt with giving full information for 1984.

If the request data as it presently is, again I assert that we cannot get anything for '76 or '78, I'm not sure about '81, but we definitely cannot get it by March 31st with that request, regardless.

The third issue that was laid out in our general counsel's letter deals with the 65 to 135 request. That request is for commercial equipment. We were, quite honestly, very surprised to see it, not because of anything in this letter, but simply because we originally felt, as to their companies, when this whole issue came up back in August and September, that it would be simply for residential equipment because of the thrust of the Commission's regulatory proceedings in the past.

We have extreme, extreme difficulty with 65 to 135 equipment. ARI does not have a statistics program in this area. We don't know what's out there, and our companies apparently don't either.

I would also note that we are a bit surprised in that this area of equipment has a very small impact. Of over 3,300,000 shipments in 1984 nationally, only 100,000 nationally were in the range of 65,000 to 135, and if the pattern holds true in California --

COMMISSIONER COMMONS: Can you repeat that number?

MR. PEREMAN: There were 3,308,000 shipments exactly -- precisely in 1984 nationally, and of those only 100,000 were 65 to 135, as far as we know, and if the pattern holds true in California, where California represents nine percent of the market residentially, and it, therefore, reprsents nine percent commercially, you're talking about approximately 9,000 units in 1984, versus around 285,000 residential units, so the impact in this area is very small.

The other thing I would like to note, which we were surprised at with the 65 to 135 request, is that California has an ASHRAE tie-in at that level. Your standard in the 65 to 135 area is the same as it is nationally. You're not above that nationally, and so we were surprised to see why you would want to get specific California

information there.

In conclusion, I would like to note that again we want the cooperation -- we will give you what we can reasonably get to you. We can't necessarily guarantee all the accuracy, because of the extreme difficulties of state data. Perhaps the most accurate source you could get is at the residential level, or the commercial level, asking people what they purchased, what they have in their homes on a sampling basis, but be that as it may, we will cooperate in any way we can.

I'd be happy to answer any questions.

CHAIRMAN IMBRECHT: Thank you very much.

Are there questions?

MR. PEREMAN: Thank you.

CHAIRMAN IMBRECHT: I just would note one thing, that in Commissioner Noteware's letter to the industry of November 26th, as you referenced the difficulties, for example, for the small manufacturer in going through cartons of invoices, et cetera, I note that he indicates that actually a sampling of only five to ten percent would be sufficient. Yes, I --

MR. PEREMAN: I'm sorry. I was being asked a question over here. Could you --

CHAIRMAN IMBRECHT: I said that you were telling us about the difficulties of small manufacturers, for

example --

MR. PEREMAN: Right.

CHAIRMAN IMBRECHT: -- examining cartons of invoices, and so forth.

I note in Commissioner Noteware's letter to you of November 26th, that he actually is only asking for a sampling of five to ten percent.

MR. PEREMAN: That's right.

CHAIRMAN IMBRECHT: That would seem to mitigate those difficulties fairly substantially.

MR. PEREMAN: That's correct, Chairman. I would note, number one, that that has been changed to the best of my knowledge in the most recent request that has been submitted today. The percentage figures were taken out.

Beyond that, when we first saw that, we were somewhat pleased until we sat back and thought about it, and one of the problems of '76 and '78 is that there is no data, period. Many of the people, quite honestly, only keep their data for a number of years and get rid of it, for tax purposes, or otherwise. There is simply nothing there for most of our manufacturers, so five or ten percent really doesn't help.

But beyond that, when we start thinking about it, how do you estimate what five or ten percent is without a whole? In my mind, it requires searching for the hundred

percent figure, and ten ratcheting down to five or ten percent. It -- it seems to require them to look at the whole data base anyhow.

CHAIRMAN IMBRECHT: How so?

COMMISSIONER CROWLEY: Well, how do you know what ten percent of what is unless you know what the what is?

MR. PEREMAN: I --

CHAIRMAN IMBRECHT: Well, you know what the what is. I mean you --

MR. PEREMAN: We --

CHAIRMAN IMBRECHT: You've got a hundred cartons of invoices, you take ten of them.

MR. PEREMAN: No, but those cartons are just all the states, and although they know what they sold on a national basis, they really don't know if it's sold in California until they go back and look at each invoice and total things up to find out how much is there.

COMMISSIONER CROWLEY: Unless you take ten percent of nine percent.

CHAIRMAN IMBRECHT: All right. Thank you very much.

Does anyone else wish to be heard on this item?

MR. PEREMAN: Thank you.

COMMISSIONER COMMONS: Can we ask questions?

CHAIRMAN IMBRECHT: Certainly. Commissioner Commons.

COMMISSIONER COMMONS: In '76 and '78, are you saying you have no data or you would have national data?

MR. PEREMAN: We have national data.

COMMISSIONER COMMONS: So if we were to ask for the national data back in those years, that would not constitute a problem.

MR. PEREMAN: No. Not at all. We be very happy to give it to you. ARI runs a national statistics program.

COMMISSIONER COMMONS: Thank you.

CHAIRMAN IMBRECHT: Commissioner Noteware.

COMMISSIONER NOTEWARE: Yes. I have a question for Mr. Pennington.

Bill if we were to grant the request for extending the due date until July of 1986 instead of March 31st, as it's specified now, how serious would that impact our activities?

MR. PENNINGTON: I don't think there really would be a major impact. We would be delaying analysis of this data and compilation of this data until next fiscal year, and it would not be, therefore, in our work plan to deal with during this year, so it would shuffle our work plan around, but I don't think the effect would be major.

COMMISSIONER NOTEWARE: You could still be in

compliance with the provisions of AB 191?

MR. PENNINGTON: I believe that's true.

COMMISSIONER NOTEWARE: Okay.

MR. PENNINGTON: You might want to ask the attorneys on this. I could give you my judgment.

MS. DICKIE: I have to agree with Mr. Pennington. I don't see any deadline in AB 191 for staff's review and analysis of the data.

COMMISSIONER NOTEWARE: Okay. Mr. Chairman, I have a proposal to make, then.

CHAIRMAN IMBRECHT: Commissioner Noteware.

COMMISSIONER NOTEWARE: In addition to the testimony we heard this morning, I also received a phone call and a letter from Paul Roman representing AHAM, the Association of Home Appliance Manufacturers, that told us substantially the same thing, and inasmuch as the data, specifically for 1976 and 1978, is so difficult to obtain and so questionable in its accuracy, I can see the need for having it in order to obtain a better -- a better fix on what's been accomplished by our standards, but I -- I'm satisfied that we could -- we could satisfy the provisions of AB 191 in a less perfect way if we had the data for 1981 and 1984.

There just wouldn't be as many accurate points on the graph and as many -- as good detail in our records.

I'm sure that back in those days, in addition to the national data, there must have been probably here and there a sampling, perhaps a market survey by Arthur Young, or something like that. Things like that that could be submitted to us on a voluntary basis could be quite helpful, and we would ask for those on a voluntary basis, but I -- I'm prepared to revise our order here, specifically Item No. 3, in which we are requesting data for years 1976, '78, '81 and '84, to change that by crossing out the 1976 and 1978, and adding to it a sentence something to the effect that any data for years prior to 1981 will be helpful and is requested to be submitted on a voluntary basis.

And that would include such things as -- it might be random samples, or whatever.

And then in Item No. 4, to cross out the years '76 and '78, make it read, "Data for the year 1981 may be based upon either total California sales or an estimate of total California sales, provided that the data is accompanied by a description of the estimating method employed. Data for 1984 shall be based upon either total California sales or a sample of total California sales."

And then I'm suggesting that we modify Item No. 5 to change the due date from March 31st to July 31st of 1986, and with the Commission's approval that would be what we

would provide for ratification at our next week's business meeting.

CHAIRMAN IMBRECHT: Let me just ask a question. Our standards took effect in '76. That's the base year. Wouldn't national data for '76 be useful?

COMMISSIONER NOTEWARE: Yes, indeed it would.

CHAIRMAN IMBRECHT: And I understood them to say that they had national data. I'm wondering why we don't --

MR. PEREMAN: That's correct.

COMMISSIONER NOTEWARE: ARI has national data. I think Gama does not.

Isn't that right, Mr. Langmead?

MR. LANGMEAD: That is correct. We don't -- our national data didn't start until 1983.

MR. PEREMAN: However, ARI does have national data on heat pumps and central air, and we would be very happy to provide the Commission with it.

CHAIRMAN IMBRECHT: My question is why we don't require it where it exists for 1976. That gives us the base, and the assumption would be that sales in California were roughly reflective of the national efficiency of the product pool, and that in essence would give us a starting point then to compare with the information of '81 and subsequent years.

COMMISSIONER NOTEWARE: Fine. I agree. We should require it where it does exist.

CHAIRMAN IMBRECHT: So may I suggest that in the order that is brought back to us next Wednesday that that change also be incorporated into it.

MR. PEREMAN: I'm sorry. I don't understand the --

COMMISSIONER NOTEWARE: We would be asking for ARI to be -- to submit --

CHAIRMAN IMBRECHT: Requiring --

COMMISSIONER NOTEWARE: Requiring.

CHAIRMAN IMBRECHT: -- national data for 1976.

COMMISSIONER CROWLEY: National.

MR. PEREMAN: National data?

CHAIRMAN IMBRECHT: That's correct.

COMMISSIONER NOTEWARE: That would be mandatory.

MR. PEREMAN: If I may respectfully submit, I'm not sure that AB 191 would -- that would be within the provisions of its authority to grant to the Commission, but again we have no problems whatsoever providing that to the Commission. We'd be very happy to.

COMMISSIONER NOTEWARE: Good. If you have no problems providing it, then let's don't worry whether it's within AB 191.

MR. PEREMAN: Agreed.

COMMISSIONER NOTEWARE: Good.

MS. DICKIE: Does the Commission also intend that ARI would submit data for 1978?

COMMISSIONER NOTEWARE: Only national data.

MS. DICKIE: National data for 1976 and 1978.

CHAIRMAN IMBRECHT: I don't see what good national data for 1978 does us, since there we would want to have California data to compare against '76, so we'll have to see what -- unless somebody can explain something differently to me.

My perception of it, I -- it seems to me the national data for '76 we can extrapolate as reflecting sales in California, and '78 is not going to do us any good. Okay.

All right. Fine. I don't think on this item we ought to take any action --

COMMISSIONER CROWLEY: Until we see.

CHAIRMAN IMBRECHT: -- beyond Commissioner Noteware's indication along the line as to what will be encompassed within the order that we have presented for action next Wednesday, and I'm sure this item will also elicit some further comment at that time.

COMMISSIONER NOTEWARE: Well, I was just going to suggest that I would like to hear comments from the second member of the Committee there.

CHAIRMAN IMBRECHT: Certainly.

COMMISSIONER NOTEWARE: Commissioner Commons.

CHAIRMAN IMBRECHT: Certainly. Commissioner Commons. Sure. I wasn't planning to --

COMMISSIONER COMMONS: Well, I think this would be going more in the direction that I would -- that I would feel comfortable, and I'm particularly pleased to hear the cooperative attitude from the industry. I would still have some problems.

One of the things that this order does is it essentially treats all manufacturers in a similar vein, and the ability of us to -- of the ability of the associations to obtain that data.

When you listen to ARI, and Paul Roman from AHAM is not here, but we're very much aware that in many instances they really do not know and do not have the ability to tell us what are the sales figures in California. They can tell us what is shipped into the state, but a high percentage of appliances are sold to national retailers, and they will often not disclose this information and would not provide this information to the -- to the manufacturers.

And I would have some concern of our asking manufacturers to provide us with information which, in all good faith, they would say they would provide to us, but

is not obtainable to them.

The -- I could see the Commission adopting a ratification order somewhat similar to what the Presiding Member was identifying, but I would encourage us to at least provide the Committee with an opportunity to meet with the specific manufacturers associations and see if we can reach an agreement which would include some modification of the information requirements and may also include some prospective data on a national level that we would be able to obtain, and if an agreement were able to be worked out between the association and the committee, to bring that back to the full Commission for ratification as a substitute.

We are not under 191, in my opinion, and the spirit in terms of which 191 was developed was not to ask for future information. At the same time, the intent of 191 is not to try to impose a data collection effort on the manufacturers which would cost substantial funds. It is, rather, a cooperative venture so that we can do better in designing our programs and have access to information that they already have, so that we will be more cost-effective in California in terms of the design of those programs.

And swimming pools, or the large commercial air conditioners, the information and the ability and our need

for the information is not always the same, and I think some of that detailed working with the associations would end up with our having a better long-term cooperative relationship.

CHAIRMAN IMBRECHT: Okay. I think that's the consultation that Commissioner Noteware has already been involved with, but in any case, I undertand those comments, and we'll move on to the next item.

All right. Fine. The order as proposed to be modified will be before us for adoption on December 18th.

The next item to come before us is Commission consideration and possible acceptance of a Petition to amend the Kern River cogeneration Application for Certification Decision which was submitted by Southern California Edison Company on October 9, 1985.

COMMISSIONER COMMONS: Mr. Chairman --

CHAIRMAN IMBRECHT: Commissioner Commons.

COMMISSIONER COMMONS: I have two items on this. First of all, on Placerita, which we skipped over, I just wanted to make a notification that --

CHAIRMAN IMBRECHT: Placerita has been held until December 18th. I announced that at the outset of the meeting.

COMMISSIONER COMMONS: Okay. I just wanted to note to all parties that the preliminary decision is

currently available.

On the Kern River, we do have a petition for intervention.

CHAIRMAN IMBRECHT: Excuse me. I have nothing in my agenda book on this item. Is there something --

EXECUTIVE DIRECTOR WARD: Well, I think it might be appropriate here, with the Commission's indulgence, to listen to, from a legal perspective, what the mechanics are on a proposed AFC amendment.

This was Commissioner Commons' agenda item, as I understand it, so it's not appropriately noticed as one of my staff members, because we are frankly still dealing with the Committee and weren't prepared to come forward to the full Commission and talk about the merits of this.

And also, in effect, to my understanding, it's not a petition. "Petition" is an incorrect --

CHAIRMAN IMBRECHT: Characterization.

EXECUTIVE DIRECTOR WARD: -- way to characterize this -- this item.

CHAIRMAN IMBRECHT: Commissioner Commons --

EXECUTIVE DIRECTOR WARD: I believe Gary is on his way --

CHAIRMAN IMBRECHT: Excuse me for interrupting you. I was just trying to find some information for us.

COMMISSIONER COMMONS: That's fine.

The applicant I belivee will be able to clarify why it is here before us today and why we will be having the discussion.

Before we get into the procedures and what the issues are, we do have one matter I think we need to look at, and that is the -- there has been an intervention request by Texaco in this -- on this item, and -- in that we do not have anything technically before the Commission in terms of either an AFC or any action that does not seem appropriate in terms of how you should handle an intervention. I don't think the Committee has the authority to grant an intervention --

CHAIRMAN IMBRECHT: Well, why don't we find out what it is exactly we do have before us before we go any further.

COMMISSIONER COMMONS: -- status, and --

CHAIRMAN IMBRECHT: Because I'm not sure that we even --

COMMISSIONER COMMONS: Well, I'm concerned about protecting the right of Texaco, and I just wanted to throw out as a possibility before we started the process that what the Committee would do is to provide notice to Texaco, as per the request of all hearings, all documents that any party submitted to the Commission should also be noticed to Texaco, and so that --

CHAIRMAN IMBRECHT: Well, Commissioner Commons --

COMMISSIONER CROWLEY: Well, why isn't the Commission dealing with it?

CHAIRMAN IMBRECHT: Commissioner Commons, you noticed this for action. I want to find out exactly what it is we've got before us, and I need to know --

EXECUTIVE DIRECTOR WARD: Mr. Chairman, maybe I can --

CHAIRMAN IMBRECHT: -- what the legal status of this item is for openers, and then we can move forward with any discussion on the merits.

EXECUTIVE DIRECTOR WARD: Let -- let me try to give you a general history that is not intended to slant staff's position or the applicant's position any one way or another, so if there is an incorrect generalization then I apologize for that, but the staff, as I -- my best recollection is the staff felt there were some problems with compliance under the conditions that the origial AFC was granted by the Commission.

The applicant I believe agrees that there had been some changes made, and then there is some necessity to come back to the Commission to amend those changes. That comes ---

COMMISSIONER CROWLEY: To amend the changes?

CHAIRMAN IMBRECHT: No, to amend --

EXECUTIVE DIRECTOR WARD: Excuse me. To amend the AFC. That is then the responsibility of Commissioner Commons' Compliance Committee, and he has heard essentially two issues from the applicant at this point relative to procedure.

The first is that they would like -- and Mike may be able to help me with this -- a real short-term decision by the Commission to give them the ability to proceed on their plan changes.

The second I guess is an interest on the part of the applicant in working over the next four or five months to go thruogh the formal process, environmental process, and those kinds of things necessitated by the changes that are being proposed.

COMMISSIONER COMMONS: Mr. Chairman, the issue of interim relief is an issue that has never been decided by this -- by the Commission, and the Committee requested the parties to submit briefs.

Southern California Edison has a scheduling problem whereby it would be substantially better for them if we could resolve the procedural issue this calendar year. The Committee does not have the time legally to call a hearing on the matter, and so we wanted to give them the opportunity today to present to the Commission their positions on the brief, and then the Committee, after hearing

from the other Commissioners, would come back to the Commission on the 18th with a recommendation as to how the Commission ought to proceed.

CHAIRMAN IMBRECHT: Mr. Chamberlain, what is there -- Mr. Fay, either one -- what is the appropriate procedural approach that an applicant should take for relief? Is it a petition to be filed or -- I'm sorry, whoever would like to answer that.

MR. FAY: Mr. Chairman, I'll take a stab at it. I think it's -- I think the answer is generic to any situation like this. However, we do have to answer the question in this case.

I think the Commission is well advised not to be bound by the references in the 1200 section of the regulations to petitions for rulemaking and petitions for fact-finding investigations. This is a different situation which is much mroe analogous to a compliance matter where a party holding a certification from the Commission comes back and informs us that there is a problem with a license as it is currently written, and they would like a modification or some adjustment.

Whether it's a request or a petition is more a matter of semantics, and in the past we have handled that through the Compliance Committee, so I'm not sure the Commission needs to worry too much about the procedure

of acknowledging that a petition has been filed, and that type of thing.

MR. CHAMBERLAIN: Let me also add that complicating this history is that we attempted to adopt a regulation back about three years ago dealing with petitions for modification. This was part of the siting regulations. It was in the -- it was part of the regulation cycle that we went through after the AB 1111 review of the regulations, and I've forgotten exactly what the technical problem was, but OAL found a technical noticing problem with some dozen or so of the sections that we were -- were adopting at that time, and included was this particular section, and so at that time that regulation did not go formally into our regulations.

We recently readopted it as part of the Phase I of the Siting Regulations, and I would anticipate that that regulation, although it does not address this particular question, the regulation which at least does set forward a procedure for applicants to request modification of their licenses, will go into effect within the next couple of months, I would assume, as soon as we can submit the final documents to OAL on that.

But the question that you have before you here is that, without any regulation, without anyone ever having even written down informal guidelines on it, and applicant

is -- is coming to you and saying, "We have an urgent request for a modification, we can't wait for all sides to have their say on the question, we have to have interim relief, we have to have you basically approve it while you are considering the question whether it should be approved on the -- for the long term."

CHAIRMAN IMBRECHT: Oh, so the net impact is we have no procedure for modification at this juncture.

MR. CHAMBERLAIN: What we have done --

CHAIRMAN IMBRECHT: But we have continuing jurisdiction over the license, in terms of enforcing compliance, but we have no formal procedure by which we can modify that license.

MR. CHAMBERLAIN: That's correct. However, we should -- we should recognize that we have probably processed about six or so minor modifications to licenses in the past without that regulation, and at least one major one.

MR. GARY: Which one was that?

MR. CHAMBERLAIN: The Bottle Rock case.

CHAIRMAN IMBRECHT: Okay. Well, let's hear from Mr. Gardner and find out where we stand factually in this matter.

MR. GARDNER: Thank you very much. Mike Gardner for Kern River Cogeneration Company this morning.

Our counsel have just arrived. If we could perhaps have five minutes to talk with them before we leap into this item, I would appreciate that. I think from your agenda there may be some, you know, minor things that you might be able to take up. If that would be acceptable to the Commission, we would appreciate that.

CHAIRMAN IMBRECHT: All right. Fine. Let's try to clear up the ret of the agenda then, and we'll come back to your item in about five minutes.

EXECUTIVE DIRECTOR WARD: Thank you very much.

CHAIRMAN IMBRECHT: Item 11, as I indicated, is over until the 18th.

Does anyone wish to remove an item from the Consent Calendar, and I would just note for you that what was originally noticed as Item No. 3 is also on the Consent Calendar. Those two items are consideration and possible approval of a PC energy as an approved calculation method for showing compliance with the Residential Building Energy Efficiency Standards -- I take it that's a computer program -- and also Commissioner consideration and possible approval of two methods under which gas wall furnaces may be used to show compliance with the Energy Conservation Standards for new residential buildings.

Does anyone wish to remove an item from the Consent Calendar?

Do I hear a motion?

COMMISSIONER NOTEWARE: So move.

COMMISSIONER CROWLEY: Second.

CHAIRMAN IMBRECHT: Moved by Commissioner Noteware, seconded by Commissioner Crowley, that on an advisory basis we approve this consent calendar. Is there objection to a unanimous roll call?

Hearing none, "Aye's" three, "No's" none.

Are there corrections to the minutes as presented to the Commission?

Hearing none, the minutes are approved as presented.

Are there Commission Policy Committee reports?

I think I reported two weeks ago in terms of our budget. I don't think anything has really changed since that time.

All right. General Counsel's report. Mr. Chamberlain?

MR. CHAMBERLAIN: I have nothing today, Mr. Chairman.

CHAIRMAN IMBRECHT: Okay. Mr. Ward?

COMMISSIONER COMMONS: I have a question of the General Counsel.

CHAIRMAN IMBRECHT: Excuse me. Sorry. Commissioner Commons.

COMMISSIONER COMMONS: Are we allowed to have Executive Session today?

I raise it because the noticing of the items on an agenda, Executive Session items are not normally noticed, and maybe it should be addressed to the Public Advisor's Office or yourself.

CHAIRMAN IMBRECHT: Let me ask you this. Does anyone request an Executive Session today?

COMMISSIONER COMMONS: I may wish one.

CHAIRMAN IMBRECHT: All right. I had not been informed anyone was requesting Executive Session today. I mean unless it's urgent, Commissioner Commons, why don't we just dispose of this matter by holding an Executive Session next Wednesday. I mean doesn't the question become moot if we simply wait till Wednesday?

COMMISSIONER COMMONS: Well, the problem I have with the Executive Session next Wednesday, Mr. Chairman, is we have a number of items. The Business Meeting is starting at a very late hour, and it makes it very difficult to hold Executive Sessions at 6:00 or 7:00 o'clock.

COMMISSIONER CROWLEY: Except that I have asked for one.

COMMISSIONER COMMONS: For next week.

COMMISSIONER CROWLEY: So we will have one -- I mean we are hoping to have one next week.

COMMISSIONER COMMONS: Let me ask this, then. Can we have Executive Session -- if we could have an Executive Session today, could we continue it and have it at 1:00 o'clock prior to the time of the Business Meeting, rather than subsequent?

MR. CHAMBERLAIN: Well, as I understand, the Business Meeting was scheduled at 2:00 o'clock because there were other hearings going on up until that time, but, yes, I think -- I think you could -- you could probably hold one today on the same basis that you're holding everything else.

COMMISSIONER COMMONS: No, I mean there's no notice issue as to an Executive Session, because there's no agenda item.

MR. CHAMBERLAIN: That's correct.

COMMISSIONER COMMONS: Could we have one today if we so wished?

MR. CHAMBERLAIN: It would appear that you could.

COMMISSIONER COMMONS: All right. Mr. Chairman, I would like to request that we continue Executive Session till 1:00 o'clock next Wednesday.

COMMISSIONER CROWLEY: That we what?

COMMISSIONER COMMONS: Continue it to 1:00 o'clock next Wednesday, so we do it prior to the time of the Business Meeting.

CHAIRMAN IMBRECHT: Well, you can make a request. I mean I -- I'd like to consult my own calendar, and I'm sure other members would as well. I'm sure that if there is no conflict --

COMMISSIONER COMMONS: If that would not be possible, then I would like to request an Executive Session today, because I do not think it is appropriate to hold -- start a Business Meeting at 2:00 o'clock with a full agenda and attempt to also have an Executive Session subsequent.

CHAIRMAN IMBRECHT: Well, unless you want to reopen all of these items next Wednesday, we don't really have a full agenda. We have a limited agenda for next Wednesday, but in any case -- why don't you write down for me what the subject matter is that you want to hold an Executive Session on, and we'll -- and I'll give you a judgment as to whether or not I think we ought to proceed today. Meanwhile --

COMMISSIONER COMMONS: I'm not requesting it today. I'm requesting that we hold the Executive Session next Wednesday at 1:00 o'clock, prior to the time of the Business Meeting. I'm trying to go along with your request of not doing it today.

CHAIRMAN IMBRECHT: I understand, Commissioner Commons. Then I'm going to have to consult my calendar

and I really can't give you an answer on that.

Commissioner Crowley.

COMMISSIONER CROWLEY: May I ask a question?

CHAIRMAN IMBRECHT: Sure.

COMMISSIONER CROWLEY: Well, as I understand it, what you are doing is raising the issue now so that it will be -- so that the time slot preceding the next meeting is available to us for an Executive Session. Is that correct?

COMMISSIONER COMMONS: That's correct.

CHAIRMAN IMBRECHT: Um-hum.

COMMISSIONER CROWLEY: Given that that is the purpose of this, and that really your preference is not to meet today for Executive Session, I would endorse the concept of meeting ahead of the next Business Meeting, using this mechanism, because I, too, believe that we end up in a hurried situation at the end of a longer meeting, so I would --

CHAIRMAN IMBRECHT: Assuming that the calendars can reconcile, we'll try to do it either at 1:00 or 1:30.

COMMISSIONER CROWLEY: Thank you.

CHAIRMAN IMBRECHT: All right. Mr. Ward, do you have an Executive Director's Report?

EXECUTIVE DIRECTOR WARD: We were planning on concluding the '85-86 First Quarter Review, and I believe

that the Budget Committee, we have done everything consistent with the direction of the Budget Committee, and all advisors have been involved -- other Commissioners' offices have been involved in that.

We were anticipating that it would have come up after lunch, so if there is any debate or questions related to that, I don't think there is anything new that the Commissioners' offices aren't aware of.

COMMISSIONER COMMONS: Do you have any documents you can give to us?

EXECUTIVE DIRECTOR WARD: We're going to have just a short summary of the major changes this afternoon.

CHAIRMAN IMBRECHT: Okay. We'll take that up -- I think we can probably wrap up our Business Meeting after the luncheon recess pretty quickly.

All right. I don't see Mr. Gardner, is he --

COMMISSIONER CROWLEY: They are caucusing.

CHAIRMAN IMBRECHT: He's had his five minutes, I believe.

Does any member of the public wish to address the Commission?

Okay. That disposes of Item 17.

COMMISSIONER COMMONS: Can we discuss this after lunch? Because I'll require about a -- approximately an hour on one.

CHAIRMAN IMBRECHT: If you're not going to vote for it in any case, Commissioner Commons, there may be a limit to how much we want to spend on that.

Mr. Gardner.

MR. GARDNER: Thank you, Mr. Chairman.

Let's see. I guess introductions are probably in order first.

On my left is Mr. Tony Hemming, who is counsel for the applicant.

MR. HENNING: Right.

MR. GARDNER: Yes. I'm sorry -- my -- yes. On my right is Mr. Tony Hemming who is counsel for Texaco.

On his right is Charlie Myers, Executive Director of Kern River Cogeneration Company.

On my left is Mr. Alan Finning, counsel for the Applicant, Kern River Cogeneration Company.

Mr. Ward's summary this morning was -- was fairly accurate. From our perspective we find ourselves in the position of having received certification from this Commission to build and operate a 300-megawatt cogeneration facility. We have gone forward and done that. At the time of the Commission's decision on the certification, there was not in existence a power purchase agreement between the Applicant and Southern California Edison Company. There was an agreement to sign such contract. I believe

there was a -- a commitment letter in existence, but the actual terms of the contract were not resolved at that point.

Subsequent to this Commission's certification, the contarct with Edison was signed and a second contract was signed with then Getty Oil Company. Those two contracts provided 170 megawatts of firm capacity and all associated energy to Southern California Edison Company, and up to I believe 114 megawatts to Getty to serve the load in their oil field.

Today that load is approximately 65 megawatts. Getty's forecast was that that load would increase to more than a hundred megawatts by the mid-1990s to 2000 time frame.

There was never any attempt by anyone to hide that information from the Commission. I personally raised it as a witness for the Edison Company in your Electricity Report 5 proceedings. The underlying issue is that the oil field is presently served by Pacific Gas and Electric, so there was some concern about how the -- the megawatts in I think everybody's favorite Table 4-12 should be allocated, in that a 65-megawatt load would be released from PGandE's system, and Edison would not get the full 300 megawatts that the Electricity Report was counting on for firm capacity. That was raised early last year.

As part of its compliance program, KRCC filed a number of drawings that showed the existence of a short 220-kv tap line and a substation which Getty, now Texaco, had built to accept their portion of power that they would be purchasing.

Texaco applied for and received all necessary local permits for construction of the substation and the tap line in the belief that that was not something that came under the jurisdiction of this Commission.

Your staff in the middle of this year I think began to focus on this change from what had been anticipated during the processing of the AFC and the way that the facility would like to operate now, and raised it as a compliance issue, and indicated that if the transmission line constructed by Texaco and the substation were energized that in staff's view that would be a significant noncompliance action essentially by the Applicant.

At staff's request, the Applicant met with them in an informal workshop sort of situation where it was agreed that the Applicant, even though it felt it had acted responsibly and legally, would come back before the Commission asking you to change the findings and conclusions of the AFC decision to make it consistent with the way we would like to operate the project.

We now have filed this thing that got called

a petition, and if it makes someone happy we will call it something else. I really do believe that's a matter of semantics, and I would rather we don't quibble about it. I don't think it will do any of us any good.

There are really two issues that we are asking you to address. One is somewhat longer-term, and that is the amendments to the AFC decision to make that decision consistent with the way the project is built and we would like to operate it.

We are not now operating that -- that line is not energized, the substation is not energized, and no power sales have been made to Texaco as of this date. We have -- even though the line is in and ready to go, to avoid essentially forcing your staff into a compliance enforcement action, we have willingly come before you to try to resolve the issue.

CHAIRMAN IMBRECHT: And why does our staff feel that's not in compliance again?

MR. GARDNER: I -- from my perspective, there are two primary issues that your staff sees. One is that the need analysis originally conducted for the Kern River Project anticipated that the full 300 megawatts would go to Edison. In fact, the full 300 megawatts do not go to Edison, so an incorrect need analysis was performed.

The second concern is that under a CEQA definition,

the tap line and substation would be part of the overall project that you should do an environmental review of, and there was not in fact an environmental analysis of the effects of this short transmission line and substation conducted by this Commission.

There were permits granted for those facilities by local agencies. We believe from a legal perspective there is CEQA compliance. On the other hand, we can see staff's argument, and rather than getting in an adversarial position we decided to bring it before you and see if we can't resolve it.

The problem that we have is that PGandE had been asked originally by Texaco to disconnect their service to the oil field this month. Were they to do that, that would leave the oil field without electricity, which would shut down the oil field unless we energized the line counter to your staff's desire.

In furtherance of PGand E's getting ready to disconnect service, they have removed the sole backup transformer from the sole substation that serves the oil field, so Texaco we understand has some real concern that the reliability of their electric service and their ability to keep production in the Kern River oil field up may be threatened.

That's the reason that we are asking you for

interim authorization to energize the line and substation, and sell energy and capacity to Texaco, while you are going through your detailed process of determining whether you would or would not grant those amendments to the AFC decision. If you grant the amendment, then I think everything is free and clear. If you determine not to grant the amendment, then I think the line would be out of compliance and Texaco would have to deal with PGandE.

I think what really is before you today is for you to decide, if you believe you have the authority to grant I guess the equivalent of a variance, and if you believe that you do, secondly, whether you would be willing, on the merits of this particular case, to exercise that authority.

Both staff and the Applicant have filed legal analyses discussing their view of the Commission's authority. Our view is simply that you have the authority. If you wish to exercise it there is nothing specific in the statute that says you may do it. On the other hand, there is nothing specific in the statute that says you may not do it.

Generally speaking, administrative agencies have pretty broad authority to determine how they are going to conduct their business. There is a specific section in your own statute, Section 25534, which indicates --

I'm sorry, it's not 25534 -- okay.

There is a specific section in your statute which argues for a liberal interpretation of the terms and conditions of the statute itself to further the goals and objectives of the Warren-Alquist Act. We think under that that you do have pretty broad authority to exercise this type of authority. We would ask you to do that.

I'll not try to argue staff's legal position.

I think we'd be happy to respond to any questions. We can go into much greater detail on the legal side. I believe that Texaco would like an opportunity to, on their own behalf, indicate some of their concerns.

CHAIRMAN IMBRECHT: Okay. Let's hear from Texaco, and then I also want to hear from staff.

MS. HOUGH: Karen Hough, Staff Counsel.

I think Mr. Gardner's analysis is basically correct. In order to process their application, the Commission first has to decide if it has the authority to grant interim relief, and then it has to decide that, if it does, that KRCC is entitled to interim relief.

In the brief, the Applicant has cited authority for the Commission to hear requests for interim relief, and I would like to point out at this time that those -- the statutes that they cite are quite broad and quite general, and it's not clear at all that they provide

authority to your requests for interim relief.

The statutes that they cite are Section 25500 and 25534. 255300 (sic) is the basic jurisdictional statute on siting, and 25534 discusses amendments, and I would like to point out at this time that, although 25534 provides a basis for making amendments to conditions of certification, the conditions that are listed in 25534 do not resemble at all the conditions with which KRCC is faced right now.

CHAIRMAN IMBRECHT: Okay.

MR. GARDNER: On behalf of --

CHAIRMAN IMBRECHT: Yes.

MR. FINNING: Were you finished?

MS. HOUGH: Go ahead.

MR. FINNING: Alan Finning, counsel for KRCC.

I'd like to just make a couple of points with regard to Commission authority on this matter. Of course I missed some of the discussion. I understand that that would be Regulation 1769, but to point out that that regulation, while apparently not quite yet effective for purposes of this proceeding, in and of itself, since it would provide a basis for -- through a procedure for the granting of interim relief. Necessarily, if that regulation is indeed valid, underlying that regulation must be appropriate statutory authority for this Commission to grant interim

relief.

In the absence of such a regulation applying, certainly this Commission can exercise that underlying statutory authority in response to a petition of this sort.

I would also like to point out that 25534, while it talks about such cases as significant failures to comply, or where it was seeking to have significant changes made to a decision, while KRCC has taken the position with regard to jurisdiction as to whether these facilities are subject to the Commission's jurisdiction, felt that Getty proceeded appropriately at the County level, and that, otherwise, with regard to the demand matters, that maybe these are not such significant items as to raise to this Commission.

In part, it was through the responses of staff that we came to feel that we had to make this petition, since it was being treated as -- as significant matters, and so we have brought ourselves, in the spirit of trying to expeditiously resolve these matters to the Commission, as opposed to perhaps getting into lengthy disputes with staff, and as Mr. Gardner mentioned, perhaps energizing the line and forcing staff into the position of seeking enforcement action.

And in that context it would be perhaps somewhat unfortunate if KRCC, as the applicant here today, found

itself in effect penalized for being in a good-faith cooperative position with this Commission by bringing this matter to the Commission as opposed to putting itself in an adversarial posture.

If we had taken that adversarial position, indeed today we might well have that line energized and find ourselves fighting an enforcement action.

The management committee of KRCC specifically decided not to follow that action and to come before this Commission, but it's because of a need to -- and the detriment that would be faced in the absence of having some sort of interim relief is the basis for this request today. I hold off getting into the merits, since I know that the discussion at this point is really on the question of -- of perhaps authority. I don't know if staff has any further comments on the authority issue.

MS. HOUGH: Yes, I do have further comments. I would like to point out that the recently-adopted regulation 1769 does not address the issue of interim relief. It talks about deleting or changing substantive conditions and modifying operational characteristics, but there is no mention in there of interim relief.

I would further like to point out that, while staff obviously wishes an amicable resolution of this issue, the fact that the applicant is acting in good faith does

not confer upon the Commission the authority to grant interim relief if it doesn't already have it. Good faith is not -- is not an issue unless there is the authority to grant the relief requested.

MR. FINNING: If I may make one quick response to the 1769 issue, while it does not address the time period in which a deletion or change of a substantive condition imposed by the Commission in its final decision is to be made, certainly if the Commission has the ability under this regulation to grant a permanent change, it can, pending making that decision on a permanent basis, consider a change that is for a temporary period of time, which is in effect what we are asking for here today by way of -- if it wishes to be characterized as a variance or however.

We're looking at simply a temporary determination that we can proceed in the manner in which we would wish to meet obligations that this project has, to Texaco -- now Texaco Producing, Inc., in the oil field, and that would be on a temporary basis, pending a final determination of this matter.

So I think within the umbrella of 1769 and its statutes, a temporary relief is certainly subsumed within the ability of the Commission to change the entire decision on a permanent basis.

CHAIRMAN IMBRECHT: The issue of the Texaco line and substation is one of us having jurisdiciton over the first point of interconnection.

MR. FAY: Well -- Gary Fay for the Staff.

Staff's position is that there is no issue about jurisdiction. We believe that jurisdiction exists because this is a facility related to the power plant.

EXECUTIVE DIRECTOR WARD: Neither does the Applicant in this case disagree with that as well.

CHAIRMAN IMBRECHT: That wasn't clear to me. I was trying to read between the lines in essence of the position --

MR. FINNING: I have to say --

CHAIRMAN IMBRECHT: Just a second. I understood counsel for KRCC to impliedly suggest that there was some question as to that jurisdiction. I want to know if that is your legal posture.

MR. FINNING: We have considered it all along as there being a question of the jurisdiction on this matter, but in the context of the -- of attempting to resolve this matter, despite our jurisdictional considerations and all, that there may be this question of jurisdiction.

We have been agreeable to submitting this dispute, so we're sort of in the posture of -- just from our best legal viewpoint, perhaps a feeling that there is

serious doubt as to jurisdiction over some of these matters.

CHAIRMAN IMBRECHT: On what grounds? On what grounds?

MR. GARDNER: Mr. Chairman, I think there are two ways to look at jurisdiction. In terms of the first point of interconnection argument, you need to go on farther with the definition. It's the first point of interconnection with an interconnected system.

The Texaco line and substation does not connect with anything other than the oil field. It is not part of an interconnected system, so from that perspective it was the thought that it did not come under this Commission's jurisdiction.

On the CEQA analysis, where you are obligated to do an environmental review of the entire project and those things that would not be built but for the project, I don't think there is a jurisdictional issue.

In either event, I don't believe it's something that you need to make a specific finding on. We are here and glad to have you essentially rule on the merits of the problem. I'm not sure that there is a benefit to anyone in trying to tackle the jurisdictional argument. There isn't an argument essentially. There are some reservations I think on both sides.

CHAIRMAN IMBRECHT: So you concede jurisdiction.

I want to get that -- you are conceding jurisdiction of the Commission. I just want to get that out clearly, and then I think we can move on from that point.

Okay. We are obviously caught in the horns of a dilemma here to some extent in terms of that we have clear authority, et cetera.

Yes, sir.

MR. HIMMING: On behalf of Texaco Producing, Inc. --

CHAIRMAN IMBRECHT: Yes. Pardon me.

MR. HIMMING: -- we would like to set forth two more statutes. 25216.5(a) provides in part that the Commission shall formally act to approve or disapprove applications, including specifying conditions under which approval and continuing operation of any facility shall be permitted.

That may be construed to grant the -- the jurisdiction that we are talking about here.

Also, Section 25218(e) is another one of these broad statutes that says that the Commission may take any action it deems reasonable and necessary to carry out the provisions of the Warren-Alquist Act.

CHAIRMAN IMBRECHT: I think we can reasonably -- at least from my perspective, reasonably construe that.

MR. FAY: Mr. Chairman, I would just like to

briefly respond to the concern voiced by KRCC regarding the spirit of cooperation, et cetera. Ms. Hough was not involved in the early discussions with the applicant, but the staff, when we found out about this line through -- basically through interrogatories in the Sycamore case, was preparing to file a complaint with the Commission under 25534 for a material misstatement in violation of the license if the line were to be energized.

We approached the applicant and laid out our concerns, and suggested that if they wished to take the initiative on this that it would probably be more efficient for them to move or request the Commission to amend the license and be in a more affirmative position than forcing the staff to begin an enforcement action, and we still believe that that is the case.

We appreciate the Applicant's cooperation, and we still believe that we think it will expedite processing this. However, it was only an aside during that discussion that the Applicant raised the possibility of including something in their petition about some interim relief, and we acknowledged at that time that we did not know of any authority by which the Commission could do that.

It became more central to their filing when we saw something in writing, and they are obviously very concerned about that. We think that's a completely different

issue from the question of good faith, and there is no question that they are cooperating.

However, that does not in our opinion give the Commission the authority to grant relief absent any evidentiary record for making a decision on the merits.

CHAIRMAN IMBRECHT: In any case, we can't take final action today because it was not properly noticed.

MR. CHAMBERLAIN: That's correct, Mr. Chairman. I'd just like to add a couple of comments on this.

The main concern I think you have before you now is that the extent to which the interim relief might change the status quo in a way that would make it difficult for you to ultimately act objectively on the -- on the request for a license here, or for a modification of a license, and indeed I think this -- this proceeding has demonstrated that we need to go back to our regulations and perhaps craft a regulation that would allow for interim relief where the kinds of showings that are normally made in court, you know, balance -- you know, balancing the hardships --

CHAIRMAN IMBRECHT: Sure.

MR. CHAMBERLAIN: -- between the two sides and -- and providing for a showing of likely success on the merits. We haven't really had that. It's not before you, unfortunately, because we hadn't really anticipated this

situation when we did our regulations.

But I think that whatever you decide with respect to whether you have authority or not, those are the kinds of considerations the Commission will want to look at.

CHAIRMAN IMBRECHT: The practical impact is if we grant the relief that you are asking for, and then the PGandE substation, et cetera, is dismantled, then that largely leaves the Commission with no practical alternative, absent shutting down the Texaco operation, which obviously is not something that is a very palatable option to consider.

And I guess I'm curious as to whether it would be possible for you to continue your relationship with Pacific Gas and Electric, and authorize the utilization of the new line only as a backup service in the event that there was an outage on the Pacific Gas and Electric service, which I think would --

MR. GARDNER: Two comments, if I may, Mr. Chairman.

CHAIRMAN IMBRECHT: -- be the closest we could come to preserving the instruction of the Commission.

MR. GARDNER: First, I -- KRCC would be willing to retain the PGandE substation in existence until such time as this Commission makes its decision, so I -- I think the argument that PGandE would no longer be able to provide service, while it could be a concern, I think need not

be a concern.

While I'm sure that Texaco would feel more comfortable realizing that in the event of an emergncy the cogeneration facility could provide backup power to the oil field, there are economic impacts both to Texaco and to KRCC in not energizing the line.

It's my understanding, and Mr. Hemming can probably add to it, that the payments to Pacific Gas and Electric are higher than those to Kern River Cogeneration Company would be.

Secondly, in terms only of Kern River Cogeneration Company, the contract with Edison is for 170 megawatts firm capacity, which is more valuable and consequently pays better than as-available capacity, so Kern River Cogeneration Company now is suffering something of a financial loss because they are selling the excess above 170 megawatts to Edison as available, rather than some substantial portion of that to Texaco under a firm contract, but there are some economic issues for the parties as well.

We would be glad to commit to retain the PGandE substation so in the event you ultimately ruled against the overall petition on its merits, there would still be a --

CHAIRMAN IMBRECHT: Let me -- I understand the point you're making. Let me suggest this. Since we can't

take final action today, and I understand staff counsel's concern about having an adequate evidentiary record to support any decision we might choose to take, including the granting of interim relief, perhaps we could ask you to attempt to file for our record by next Wednesday, arguments as to the justification for interim relief, based upon economic hardship, et cetera.

MR. GARDNER: We would be glad to file additional arguments. I believe that you would find --

CHAIRMAN IMBRECHT: So that there is some foundation for this action.

MS. HOUGH: In the brief that staff filed on this issue, the issue of standards for the availability of interim relief is addressed.

MR. FINNING: Excuse me. Alan Finning for KRCC again.

Within the points and authorities submitted by KRCC, we did indicate our understanding of the detriment that Texaco believes it feels it is suffering at this time, in the amount of up to $750,000 a month on differential. We did not quantify there nor note at that time the revenue impacts that KRCC is suffering We'd be glad to do that in subsequent filing.

I would also like to bring to the attention of the Commission, with regard to the adverse impacts upon

the Applicant due to the pendancy of this proceeding, and the potential that this could possibly prevent KRCC from providing the electric energy and capacity to Texaco, and Texaco receiving the capacity that's contracted for under the Power Purchase Agreement, KRCC has had to submit a notice to its lending group advising them of the pendancy of this proceeding.

And, of course, our lending group is most interested in seeing that we bring this whole matter to a prompt resolution.

We have also noted in -- I think in our papers we basically have material in there that is responsive, even if this Commission were to adopt criteria along the lines proposed by staff counsel that addresses these issues of the adverse impacts and the needs for the action. The fact that the circumstances came after the decision was rendered, the good faith of the party in that there was not a -- in effect here a bad actor trying to deceive this Commission, that type of actions going on, and finally that there would be no public detriment as a result of the granting of this interim relief, and the energizing line would not have any adverse impacts, in view of the good faith of -- as to a good-faith difference of opinion with regard to whether or not this matter needed to come before the Commission, again no attempt to deceive, that

local permits were obtained, there is no threat to integrity of this Commission's processes in having a -- some party that's been a bad actor, after being found out, coming in and seeking to have that --

CHAIRMAN IMBRECHT: Was there a CEQA analysis performed before the local permitting process?

MR. FINNING: In the local -- part of it -- I understand it is part of the local process. To what extent they got involved in that process I don't have information on. Charlie?

MR. STRAND: Mr. Chairman --

CHAIRMAN IMBRECHT: Yes.

MR. STRAND: There was no -- to our knowledge there was no CEQA analysis performed. KRCC did get permits for the transmission system from the local agency, but the agency bought the facility as part of the KRCC project in that we had done the necessary CEQA analysis.

CHAIRMAN IMBRECHT: So they assumed that we had done the --

MR. STRAND: Yes.

CHAIRMAN IMBRECHT: -- CEQA analysis.

MR. GARDNER: Mr. Chairman, my belief is that the --

CHAIRMAN IMBRECHT: Brother. This is getting more complicated as we go.

MR. GARDNER: Yeah. Well, the types of permits obtained from the local agency normally do not require a full-blown environmental document.

CHAIRMAN IMBRECHT: Um-hum.

MR. GARDNER: Staff is certainly correct. There was not an Environmental Impact Report prepared. The local agencies do comply with CEQA in issuing their permits. In actual fact, the majority of the area that was physically impacted by construction of the tap line and substation was looked at and data provided to this Commission during the processing of the original AFC. It was that area within the buffer around the power plant site that was originally looked at.

However, a specific analysis by this Commission as to the effects of the tap line or the substation were in fact not conducted.

CHAIRMAN IMBRECHT: I guess my question in that case is that -- I mean do we have problems in terms of legal compliance on this, in terms of federal environmental law as well?

MR. FAY: There -- there is --

CHAIRMAN IMBRECHT: I hate to open this can, but it looks like the more we pursue this, there are more questions.

MR. FAY: There are several levels of that

question. The first is if the local agencies were assuming that the Energy Commission had done a review and merely issued building permits, then they were mistaken in their belief that they were complying with CEQA.

In any case, the record is deficient on a cumulative impact that this line in conjunction with this plant and all other development going on down there would have in the area, and it's deficient as to secondary impacts of the plant because one of the secondary impacts was the line-related facility, so the record is deficient there.

So I think even in the light most favorable to the Applicant, CEQA has not been complied with.

The other question raised is, even looking at everything from KRCC's perspective, assuming they believed that they were complying with CEQA in building this line without informing us, nevertheless it was clear to them that their license said the sale of 300 megawatts to Southern California Edison, and it was clear to them, as soon as they reached agreement or in fact began negotaitions with at that time Getty, that some considerable portion, and as it turns out a third of the capacity of the plant would be sent to that load out in the oil field and not be sent to Edison, and the Commission was not informed at that time.

So those are additional issues. It is a -- it's

a very complicated matter.

We did want to focus today just on the interim relief, but since the Applicant raised these, we felt we had to respond.

MR. GARDNER: Mr. Chairman, excuse me.

CHAIRMAN IMBRECHT: Yes.

MR. GARDNER: Two quick clarifications. You need to understand that the line and substation were not built by KRCC. They were built by Texaco.

Second, in terms of the change in where the megawatts go and the effect that might have, keep in mind that that was under the fourth Electricity Report, which had much less rigorous tracking and tests than does the fifth Electricity Report.

My understanding of the situation at the time the fifth Electricity Report process began was that there was not a threat, essentially, that there would be more projects than there was need for, as there is today. The situation has changed. It is now something that we agree you need to consider.

It may have an impact on the need for future facilities in both Edison's and PGandE's service areas. That was why Edison raised the issue in the fifth Electricity Report proceedings that in fact Edison was not getting the full 300 megawatts, and in fact PGandE was being

relieved of an existing load.

We at that time asked the Committee to make adjustments, and the Committee, rather than make the adjustment, placed a fotonote on one of the tables indicating that adjustments would be made when Edison and PGandE came forward and asked you to do so.

CHAIRMAN IMBRECHT: I'll let you know where I stand on this, and others may want to comment, but as noted, we can't take final action today. I've got a few issues that from my own perspective need to be resolved before next Wednesday, and while I am very sympathetic to the problem that exists here, and certainly the financial impact upon the parties involved, in terms of granting interim relief, I want to be confident that I'm not violating the Environmental Quality Act of the State.

So I would say that from my own perspective that is probably a key consideration as to whether or not I -- I believe we have jurisdiction, and I think we can argue successfully, et cetera, to grant interim relief. I do believe that the broad sections of the statute that provide us the ability to take action in furtherance of the Act, et cetera, would be viewed by most courts as a -- if we were to exercise this jurisdiction on a rational extension of that premise, the environmental issue, and partly because of my awareness of some of the issues associated

with the Sycamore project, and the fact that there are, at least within that area, federally protected endangered species, et cetera, does cause me some concern, and I don't want to personally be in a position or, frankly, in terms of the full Commission, to find ourselves in the position of violating federal statute or other California law that may be controlling.

We have bent over backwards to demonstrate that we will comply with the letter of the law in terms of all environmental criteria for new power projects in the state, and irrespective of the difficult circumstances you have outlined, that is something that I think is a principle we have to maintain very steadfastly.

MR. GARDNER: That is certainly an understandable position, Mr. Chairman.

A consideration which we will put in writing for you is that whatever physical environmental impacts will occur have occurred. The facilities presently exist. They --

COMMISSIONER CROWLEY: I understand that, but --

MR. GARDNER: They have not been energized. I think a thing for this Commission --

CHAIRMAN IMBRECHT: That's a very interesting argument, Mr. Gardner, but I mean, you know, you could --

COMMISSIONER CROWLEY: Yeah. I sort of like

that, don't you?

CHAIRMAN IMBRECHT: I guess we should let other applicants go ahead and build, and then say that the impacts have already occurred. I -- you know --

MR. GARDNER: Well --

CHAIRMAN IMBRECHT: Okay. Does any other member of the Commission wish to comment on this at this point in time? I would urge all of us, if we have other outstanding concerns, to make sure that our General Counsel's Office is aware of that we can be in the position to have some answers to these questions. I've expressed mine, at least.

Commissioner Commons.

COMMISSIONER COMMONS: I just want the Commissioners to know that it is our belief that we are ex parte on this matter, and one of the reasons we -- the Committee wanted to have this discussion today is we would not have the ability to have this discussion privately and get briefed either by our staff or by the -- by the other parties, and so I think it's very appropriate that you have been asking the questions and requesting the information that you have.

CHAIRMAN IMBRECHT: I appreciate the compliment. I'm not sure I udnerstood the reference to ex parte, but I -- all right.

Anything further? Commissioner Noteware.

COMMISSIONER NOTEWARE: Mr. Chairman, as long as we are into it as deeply as we are now, I wonder if possibly representatives of PGandE have anything they would like to add.

(Laughter.)

CHAIRMAN IMBRECHT: I've watched them listening attentively, but I assume they -- they are normally not reticent or -- Mr. Baumgartner.

MR. BAUMGARNTER: For the record, my name is Peter Baumgartner, attorney for Pacific Gas and Electric Company in San Francisco.

I have only two brief comments, first to confirm an agreement between PGandE and Southern California Edison Company in connection with the preparation of the fifth Electricity Report on the transfer of the 65 megawatts, which I recall, personally recall.

The second is that any implication in any of the papers that are available in this case, that PGandE would simply pull the switch on the 1st of January, is totally incorrect. We would go on serving this load at the current A-22 rate for as long as -- as necessary, in order to permit the -- whatever has to take place.

Beyond that I have no basis for any further comment. I certainly will look into it. I was not aware

what the content of this matter was from the notice that was in the agenda, so I'm not really prepared beyond that, those comments.

Thank you for the opportunity.

COMMISSIONER NOTEWARE: Thank you, Mr. Baumgartner.

CHAIRMAN IMBRECHT: Thank you.

Anything further?

MR. FOLEY: Mr. Chairman, could I ask one question?

CHAIRMAN IMBRECHT: Yes. Certainly. Mr. Foley. Absolutely.

MR. FOLEY: I guess to Mr. Finning. This is really a PURPA question.

Can a cogenerator remain a qualifying facility under PURPA while you serve -- your intent is to serve a customer, who I guess is your parent.

MR. FINNING: Yes. There are two issues with regard to the nonutility status of the facility. First is the question under federal law, under PURPA, the project did receive its certification with regard to the sales to Southern California Edison, which are the sales for resale, and had met all the requirements there.

Under State law, under Section 218 of the Public Utilities Code, provision that a qualifying facility or independent power producer for a project of this type may

make sales to two or more other entities besides itself on immediately adjacent property, so if this is a retail sale from the Kern River project to Texaco in the oil field, it's not a sale for resale as it would be to Edison, but it's a retail sale and is exempt from utility regulation or state law under 218 of the Code, Public Utility Code.

MR. FOLEY: Right. I just -- I agree. I just wondered, though, as to your QF status under PURPA.

MR. FINNING: The PURPA --

MR. FOLEY: As I understand QF's under PURPA, your sales are to be to -- to a utility.

MR. FINNING: Well, you can make sales to a utility, because those again -- those are the sales for resale when the utility is going to then sell to the ultimate end user. I cannot recall the exact provision of PURPA at the moment that addresses the fact that retail sales and the question with regard to retail sales, a facility that is otherwise a qualifying facility can make the retail sales, since that's really a matter that's reserved for the states, and in this case the state Public Utilities Commission and the Public Utilities Code.

The fact that there would be a retail sale would not impact the qualifying facility status under PURPA.

MR. FOLEY: Do you know if there are any other QF's like this one that have been approved by FERC?

MR. FINNING: That are making --

MR. FOLEY: Making a retail sale?

MR. FINNING: Yes. There would be a number of them in industrial processes where the qualifying facility may be selling both the thermal output plus electricity to the -- in effect to the host, and then it's the excess power that's sold to the utility.

MR. FOLEY: Thank you. I learn something every day.

CHAIRMAN IMBRECHT: i'm not sure if I'm convined by all of that. That raises some interesting questions, and I would like our counsel's office to look into it a little further.

MR. FINNING: Which, on this latter point?

CHAIRMAN IMBRECHT: That's exactly right, and I would just like to see that nailed down a little bit more clearly.

MR. FINNING: We'd be glad to send it. We spent a great deal of time investigating the matter when we did our financing for opinion purposes.

CHAIRMAN IMBRECHT: It was a very interesting line of inquiry, Mr. Foley. That raises some further questions. I don't want to spend any more time on it now.

Okay. Well, I think we have sufficiently aired this. It is an interesting and thorny problem, and I would

-- as I say, I'm not unsympathetic to the difficulties, and I hope you all appreciate some of the constraints that we've got as well.

With that, I'd like to suggest we take our luncheon recess. Two o'clock, is that reasonable? Two o'clock?

MR. FAY: Mr. Chairman --

CHAIRMAN IMBRECHT: Yes.

MR. FAY: Just a qusetion. When the Commission meets again on the 18th, if you could reiterate for us exactly what kind of documents you expect from both the staff and the applicant?

CHAIRMAN IMBRECHT: Well, what I'm concerned about is if we were to grant interim -- well, speaking as an individual, I personally believe that we do have the jurisdiction to grant interim relief. I think we can construe it as such, and I think we can successfully argue those points.

If you disagree with that, then I would like to see you brief that point by next Wednesday's meeting.

Secondly, in the event that we were to decide to grant such relief, I want to be confident that we are not violating any other provisions of California or federal law, including the broad range of environmental statutes which we must comply with in terms of granting an application. Okay?

COMMISSIONER COMMONS: As the -- as the Presiding Member of the Committee, in the granting of the interim relief, I think we have the procedural question, and we also have the policy questions, and the first hurdle is do we have the authority or the ability to grant such interim relief.

The second question should be if we decided we do have the authority to grant interim relief, should there be a public hearing as to -- and any testimony, any documentation as to the basis upon which we should grant such relief.

So one issue that still is not resolved here as of today, there have been no hearings on the merit as to -- or the procedures that ought to be used in terms of should you or should you not grant the interim relief. The only question that is before us today, and it was brought by the Committee to the Commission, was whether or not we have the authority to even look at the matter.

CHAIRMAN IMBRECHT: Further questions?

MR. HEMMING: Commissioner?

CHAIRMAN IMBRECHT: Yes.

MR. HEMMING: Texaco's petition for intervention is still outstanding. Texaco petitioned to intervene in order to provide evidence that Texaco has regarding the effects of the failure of the --

CHAIRMAN IMBRECHT: Let me inquire. The original AFC, was Getty a party of interest?

MR. GARDNER: Mr. Chairman, the original AFC filing was jointly by Getty Oil Company and Southern California Edison Company. Subsequent to that, the subsidiaries were formed, and the subsidiaries formed the Kern River Cogeneration Company, but Getty was originally a co-applicant.

CHAIRMAN IMBRECHT: And did it remain a party throughout the pendancy of that proceeding?

MR. GARDNER: I -- I think you would have to say yes, since all that happened was the name changed.

CHAIRMAN IMBRECHT: Well, assuming that's the case, then I would interpret Texaco as being a successor in interest to Getty, and as such would remain a party to the proceeding.

Does anyone care to dispute that?

COMMISSIONER COMMONS: Well, yes --

CHAIRMAN IMBRECHT: I think that's a reasonable interpretation. All right.

COMMISSIONER COMMONS: Do we have at this stage of proceeding --

CHAIRMAN IMBRECHT: Well, we have continuing jurisdiction over the AFC. I am assuming that that means that those parties originally parties to that process,

in the event that we contemplated any enforcement action or any exercise of that continuing jurisdiction, we would I assume notify all the original parties to the proceeding, and I assume they remain in essence parties to -- I don't know whether you want to characterize it as proceeding, or to the particular case --

COMMISSIONER COMMONS: Without getting into the issue as to whether or not they are intervenors, I think there is no reason why they shouldn't receive the same notice and the same information as the other parties.

CHAIRMAN IMBRECHT: Well, absent objection, my interpretation stands.

Okay. We will stand in recess until 2:00 o'clock. Thank you.

(Thereupon, the morning session of the Business Meeting of the California Energy Conservatino and Development Commission was recessed at 12:40 p.m.)

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AFTERNOON SESSION

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CHAIRMAN IMBRECHT: Call the meeting back to order, and we will now take up Item No. 1, which is the Commission consideration and possible approval of a Request for Proposal for the Energy Technologies Research, Development and Demonstration Program. Public Resources Code, Section 25680, et seq. directs the Commission to make loans or provide research contract funding for the purposes of making energy technologies more efficient and cost-effective, or to develop new cost-effective alternative sources of energy.

Mr. Ward?

EXECUTIVE DIRECTOR WARD: Thank you, Mr. Chairman. Nancy Deller has been most closely associated with the Policy Committee on discussing the implementation of the Rosenthal-Naylor Act, so I will ask her to provide the briefing.

MS. DELLER: Good afternoon. I think we have briefed each of you, and we're bringing back the RFP in response to a Commission request that the RFP be reviewed by the Commission before it's sent out to solicit proposals, and we've met with each of you now I believe and provided you with some background information, and we are here to answer any questions you may have.

CHAIRMAN IMBRECHT: Maybe I should offer a couple of overview comments from the perspective of the Committee, and I just wanted to indicate that, relative to the RFP, I have consulted with Commissioner Gandara's office, and it is our recommendation that the second-tier review committee be composed of the members of the R&D Committee, or their designees, and a designate of the Executive Director out of the Executive Office.

In addition, I would like to offer a couple of overview comments that --

COMMISSIONER COMMONS: Excuse me. I have a question just on that. You said you consulted with Commissioner Gandara's office.

CHAIRMAN IMBRECHT: His Special Advisor indicated to me that that was his position.

COMMISSIONER COMMONS: My understanding from that office was that Commissioner Gandara did not understand it to be the R&D Committee because he may no longer be on that R&D Committee, and that it was going to be Commissioner Gandara, because this Commission will reorganize as of February, and you may not be a member of that Committee, he may not be a member of taht Committee, and that Commissioner Gandara -- this is again, since he's not here today, it would be hard to speak for him, but that's what I had heard.

CHAIRMAN IMBRECHT: Well, I --

COMMISSIONER COMMONS: And that the RFP that is before us today mentions your name and his name. It does not mention the R&D Committee.

CHAIRMAN IMBRECHT: Let me indicate to you, Commissioner Commons, the intent is for it to be the R&D Committee, whoever happens to be the members of that Committee, and I frankly think that's the appropriate way to handle it, and is consistent with the way we handle other Commission programs.

And that is not to prejudge in any sense who might be the members of that Committee in the coming year.

Commissioner Crowley.

COMMISSIONER CROWLEY: I had a question, Mr. Chairman.

CHAIRMAN IMBRECHT: Yes.

COMMISSIONER CROWLEY: Mr. Chamberlain, I would like to inquire if this is a Policy Committee tier of review of these RFP's, is it appropriate that the membership not be -- include someone who is not a -- one of the Policy people on the -- that particular committee?

MR. CHAMBERLAIN: The Commission has discretion to establish any membership that it wishes on this particular review committee. It is not restricted to the membership of committees or to even Commissioners or really --

as long as the people who are involved on the Committee are qualified to --

COMMISSIONER CROWLEY: I understand.

MR. CHAMBERLAIN: -- to follow through, and I would say that whoever is established on the Committee, once the review begins, those persons should follow through on the review completely from one end of the cycle to the other.

COMMISSIONER CROWLEY: Um-hum.

MR. CHAMBERLAIN: So that if the membership of the Committee changed while part of the review had already been completed, it would not be a good idea to change the membership of the Committee at that time.

CHAIRMAN IMBRECHT: I guess in a sense you could argue, then, that we are prejudging the makeup of the R&D Committee for the coming year. I don't know any other way to say it. Or not for the coming year, at least for the first six months of the coming year, through the completion of this first cycle. The practical effect of that is in order to comply with your suggestion.

COMMISSIONER CROWLEY: Well, I hear what you say, but I don't think that fits into what I was asking, or the answer that I got. My question was can -- and I thought the answer was yes.

CHAIRMAN IMBRECHT: Yes, the answer is yes.

COMMISSIONER CROWLEY: Can someone who isn't one of the five policy people be on that committee, and the answer was yes. I don't follow what that has to do with the makeup of the R&D Committee.

CHAIRMAN IMBRECHT: Let me withdraw those comments.

COMMISSIONER CROWLEY: Thank you.

CHAIRMAN IMBRECHT: Separate --

COMMISSIONER CROWLEY: I just --

CHAIRMAN IMBRECHT: Separate issue, then.

COMMISSIONER CROWLEY: Okay. I'm not comfortable with that, I might say.

CHAIRMAN IMBRECHT: With --

COMMISSIONER CROWLEY: With having someone who is not among the five Commissioners or their staff people as part of that particular committee.

CHAIRMAN IMBRECHT: Well, let me just offer a couple of analogous circumstances. The review that's done, for example, on the Schools and Hospitals Program is done by staff entirely with in essence ratification by the Committee, and then that is brought forward --

COMMISSIONER CROWLEY: Um-hum, that's correct.

CHAIRMAN IMBRECHT: -- as a Committee proposal to the full Commission. I think the practical effect is probably the same.

I don't really feel strong about it one way or the other. The premise was to try to have a conflict resolution opportunity there so that if it was deadlocked between -- you know, to try to avoid having an even-numbered review committee --

COMMISSIONER CROWLEY: Well, given that it is a point system, I don't see how there could really be a deadlock exactly, because those numbers would go then to the particular applicant number that had already been established by the tech committee --

CHAIRMAN IMBRECHT: That's a good point.

COMMISSIONER CROWLEY: -- and, therefore, there wouldn't -- it isn't exactly the same as breaking up a deadlock.

CHAIRMAN IMBRECHT: That's a good point. I'll -- I don't have any objection to that modification. I frankly believe, if I recall correctly, that the suggestion that there be a third member came from us, and it was accepted by Commissioner Gandara, but I don't think he felt strongly about it either, and I'm quite confident that if you simply limited it to the Committee itself that that would be acceptable --

COMMISSIONER CROWLEY: Okay.

CHAIRMAN IMBRECHT: -- would be acceptable to him.

In any case, the other point that I wanted to raise is that, as is the case with respect to conservation programs, when a list is brought forward to the Commission, the Commission does have the discretion obviously to accept all or a portion of that proposed list for funding.

In the event that the Commission preferred projects that rank lower than others on the list, the Commission can simply fund it down to the projects that it finds acceptable, and then direct the staff to modify the selection criteria to reflect a different policy perspective from the entire Commission.

I am informed by Mr. Vann that if that circumstance were to occur that the process could be turned around with respect to those outstanding applications which have not been acted upon in a four- to six-week period, and I ask you to confirm that and explain that process to the other members of the Commission if you would.

COMMISSIONER COMMONS: I think it's a legal question, Mr. Chairman, that you are asking, not a process question.

CHAIRMAN IMBRECHT: No, this is a process question, and it's also a reflection of, as represented to me, standard operating procedures relative to other such items that we have had before the Commission.

COMMISSIONER COMMONS: Well, I'd like also counsel

to --

CHAIRMAN IMBRECHT: You can have -- just a moment. Let me direct my question to Mr. Vann. If you want to ask counsel, that's fine.

MR. VANN: Yes. When the Commission acts on a contract, if the Commission denies the contract, the staff then, as normal standard procedure, would rerelease the RFP.

The procedures that are laid out allow us to reissue that RFP on an accelerated schedule, and in this case you take a -- instead of leaving it open for three to six months, you would allow proposals to come in over a two-week time frame, and then those proposals would begin the review process one more time, and you would reevaluate proposals for those proposals and bring those contracts or proposals before the Commission as the screening criteria.

You are also allowed to do this on a reduced mailing list. In other words, you can specify in the RFP that you are only going to rerelease to the people that have applied during the first cycle, and that because of the nature of that, the time that generally we have given in the past to people to submit new proposals has been accelerated, because our assumption is that for the most part everyone has already put together their proposal, and

all they are doing now is making modifications that would be necessary to bring the proposal up to a passing grade.

COMMISSIONER CROWLEY: And still accept those -- that we can accept part and then recirculate for the part that is not acceptable --

MR. VANN: Yes.

COMMISSIONER CROWLEY: -- as we do in our --

MR. VANN: Yes.

COMMISSIONER CROWLEY: -- some of our loans and grants.

MR. VANN: Yes. Let's assume that we brought ten projects before the Commission for approval. The Commission liked the first five, did not like six, but liked seven, eight, nine, ten.

COMMISSIONER CROWLEY: Um-hum.

MR. VANN: The process would be for the Commission to act on the first five. The staff would then reissue the RFP on an accelerated time frame, request proposals and reevaluate those proposals. If one assumes that you get those same let's say six through ten resubmitted, you would reevaluate those proposals based on any changes that we have made to the criteria, per Commission instruction, and then resubmit those proposals back to the Commission for approval --

CHAIRMAN IMBRECHT: And one further --

MR. VANN: -- or rejection.

CHAIRMAN IMBRECHT: -- for clarification of this, and perhaps Mr. Chamberlain is the right one to answer this, but it's my understanding that when considering the initial submission from the Committee to the Commission that the members of the Commission can indicate on the record that in fact they prefer seven, eight and nine; for example, and also indicate on the record what modifications in the selection criteria other members of the Commission might feel would be appropriate.

COMMISSIONER COMMONS: Mr. Chairman --

MR. CHAMBERLAIN: Yes, the -- shall I answer first?

CHAIRMAN IMBRECHT: Yes. Please go ahead.

MR. CHAMBERLAIN: the main -- the main problem that we deal with here is that we are trying in this first instance to come up with the selection criteria that we believe today will do the best job of choosing acceptable and meritorious projects.

If at the end of that process you find that it has done a good job in some cases and not such a good job in other cases, then I would think that that would be part of the learning experience the Commission expects to go through, frankly, and it would be completely appropriate for the Commission to give policy direction that in the

next cycle it wants the -- it wants those criteria to be modified.

CHAIRMAN IMBRECHT: Okay. Commissioner Commons.

COMMISSIONER COMMONS: Yes. Mr. Chairman, two problems. One is we discussed the change of criteria previously after an RFP had gone out, and the ruling we received from legal counsel is that once you have issued an RFP, no matter if the Commission doesn't like the criteria or not, that RFP is out then. That's -- based on those criteria, we have to decide.

The second is it seems to have a -- to have a system whereby if there's some policy judgments of one or two members which are different than the majority of the Commission, or in fact could be the difference of four out of the five, and let's say that was the top project or the number-two project, that all other projects that everybody in the Commission likes cannot go forward without having to go back and reissue an RFP, that has me very seriously concerned that we suddenly stop the whole system, and, of course, then the small business person has to -- if he's a small person, has to also go back and compete again.

There has to be some way not to have the whole system bogged down because of one person in the Commission having a policy viewpoint that is different than the policy

perspective of the whole Commission, which creates a situation that everything stops.

CHAIRMAN IMBRECHT: Commissioner Commons, what -- if everything stops, what would happen is that those projects would be delayed by approximately one month from being funded.

I guess I would just note for you that you are arguing a hypothetical that I think is highly unlikely. the chances in my judgment of a single member controlling or influencing this process to the extent that you are suggesting is virtually impossible by virtue of the way that you have a two-tier evaluation process set up.

It would mean in essence that one member would have to rank a single proposal exceptionally high on every count, and I think that itself on its face would appear to be -- reflect some degree of bias, and I think signal to other people what was going on.

But beyond that, the question of delay is exactly the question that we've dealt with with respect to school and hospital grants, and you yourself have been instrumental in turning down some of the proposals that have been brought forward by committee to the Commission, in which case we have funded those down to the level that you felt to be acceptable, and we've sent back for further evaluation those which were not.

COMMISSIONER COMMONS: No, we've done different than that. We have --

CHAIRMAN IMBRECHT: I find it hard to --

COMMISSIONER COMMONS: We have --

CHAIRMAN IMBRECHT: I find it hard to see any distinction.

COMMISSIONER COMMONS: We have -- I can remember one case where we approved all projects -- and excuse me if the numbers aren't correct, but numbers rated five, eight and fourteen, we held those three over, and -- and so we approved a whole bunch that were below that. Then we came back and I believe we approved two out of the three of those others, but we didn't stop all projects that were below that.

That came up about six or eight months ago where we had a long list, and we held off three of them that were high rated, and asked for additional information, and then went back and approved them.

CHAIRMAN IMBRECHT: Well, the practical matter is that resubmission is largely pro forma, and can be accomplished in a very short period of time. In any case, that is --

COMMISSIONER CROWLEY: Could I ask a question?

CHAIRMAN IMBRECHT: Sure. Commissioner Crowley.

COMMISSIONER CROWLEY: I would like to inquire

about Deevlopment Division loans. As I understand it, they are fairly totally structured through SAFRUA and established already. We haven't been modifying how we dealt with those, as I recall.

MR. VANN: That's correct.

COMMISSIONER CROWLEY: In those, can we look at two or three projects, and take one and three, and skip two?

MR. VANN: For 771?

COMMISSIONER CROWLEY: Um-hum.

MR. VANN: Yes, we can. We have something different in 771 than what we have here, and that is we have an open solicitation, if you will, on 771. In other words, the projects are allowed to come in the door at any time during the course of a year, and we evaluate those projects as they are received.

COMMISSIONER CROWLEY: Rather than at window.

MR. VANN: Yes. And the --

COMMISSIONER CROWLEY: I don't understand why that is -- it's not clear to me why you could not still have an acceptance in this framework. Is that because of the Goverment --

MR. CHAMBERLAIN: The Naylor statute specifically says --

COMMISSIONER CROWLEY: -- statute?

MR. CHAMBERLAIN: -- that the Naylor program has to be administered by RFP, and that's what puts us into this.

COMMISSIONER CROWLEY: Fine. Thank you.

CHAIRMAN IMBRECHT: Commissioner Commons.

COMMISSIONER COMMONS: I have three questions of staff.

Is the proposal before us the one that was developed by staff for the Committee?

EXECUTIVE DIRECTOR WARD: I believe the proposal before you contains an element that was discussed with the Committee relating to a Policy Evaluation Committee that would review the --

COMMISSIONER COMMONS: Can you explain to me the differences between what the staff recommended to the Committee and what I understand is to be the Committee recommendation to the Commission?

EXECUTIVE DIRECTOR WARD: I would rather have Leon or Nancy do that, who worked very closely with the Committee.

MR. VANN: Yes. There is really one difference, and that is the breaking down of the selection into a technical review and a policy review. Criteria didn't change. Some of the point scores have changed on each criteria, but that was relatively minor.

COMMISSIONER COMMONS: Okay. The second is, and this is really a two-part question, I notice in the write-up in our book there is this four-fifths provision to change the Government and the ratio of loans and grants. Is there a request before us that we make that modification, or is that just identified?

MR. VANN: No.

MS. DELLER: It's just identified. It's not a request at this point in time. We would do that once we got proposals in and knew what the amount of requests were going to be.

Are you talking about the four-fifths vote to increase the amounts for --

COMMISSIONER COMMONS: Well, in the very short write-up I have in my book, on page 2, from the Executive Director, it mentions that the Commission can reduce the amount going to government organizations and can also change the ratio of loans to grants.

MS. DELLER: We're not asking for action on that. That's just telling you what you are capable of doing.

COMMISSIONER COMMONS: Let me ask the R&D Committee. In Phase 1 is there any intent of the Committee to come back to the Commission to modify either of those provisions?

CHAIRMAN IMBRECHT: Certainly not at this point.

We'd have to make a judgment on that based upon what sort of interest we got with respect to the two sides of the program. All that was in that page 2 write-up is simply a summary of what's in the Naylor Act. That's not in any way a reflection of intent.

I just would say to you very candidly that it is my expectation that we will not be coming forward with recommendations to expend anywhere close to the bulk of these funds. My view is that we ought to proceed very cautiously with respect to this.

I personally am of the view that we should only come forward with recommendations to the Commission for those proposals which have an extremely strong foundation. As I have said from the very beginning, I see this as kind of an embryonic process, and I hope that we can learn from the first effort, and correct whatever mistakes we discover, and ultimately get to the point where we have a refined program which can then be encompassed within the regulations, so --

COMMISSIONER COMMONS: Well, my understanding is that a passing score is 60 percent?

MS. DELLER: In order to be -- to qualify to ge reviewed --

COMMISSIONER COMMONS: Well --

MS. DELLER: -- you have to get a 60 percent

score.

COMMISSIONER COMMONS: I'd like to ask counsel, would --

COMMISSIONER CROWLEY: At the technical level.

COMMISSIONER COMMONS: Would not all projects that score 60 percent or above have to be presented to the Commission?

MR. CHAMBERLAIN: They would have to be presented to the Policy Committee, which I guess would then score them and send them on to the Commission, yes. In ranked format.

COMMISSIONER COMMONS: Well, what is the criteria in the Policy Committee as to which projects go forward or not. Is it not still an overall grade of 60 percent?

MS. DELLER: I'm sorry. I didn't hear the question.

COMMISSIONER COMMONS: Is it not an overall grade of 60 percent? You have to have at least a 60 percent on the technical is my understanding --

MS. DELLER: Right.

COMMISSIONER COMMONS: -- and you have to have overall combined of technical and policy 60 percent to pass.

MS. DELLER: No.

COMMISSIONER COMMONS: No?

MS. DELLER: No. It's 60 percent of the technical.

COMMISSIONER COMMONS: All right. What is the criteria as to which projects that pass technical that the Policy Committee would be following in order to go forth to bring those projects to the Commission?

COMMISSIONER CROWLEY: Those are those items in 6-4 and following, as I understand it, policy evaluation criteria; is that right?

Okay. Then those are three pages worth, too, and then it says "becomes proposal scoring," so I would assume from the way you've got this listed that it's technical score plus policy score; is that correct?

COMMISSIONER COMMONS: Okay. What is the -- what is the basis, what is the passing score, on technical plus policy, or is there a passing score on the policy? I don't understand.

MS. DELLER: There is no passig score on the policy. The criteria or the requirements are that you receive 60 percent of the technical points. There is no percentage requirement on the policy points.

COMMISSIONER COMMONS: Mr. Chamberlain, is that legal, by being vague as to an applicant not knowing what the criteria in the Policy Committee are to bring forth to the Commission a project?

MR. CHAMBERLAIN: They are bringing all the projects back to the Commission in ranked order. In other words, if -- if a project scores 75 under technical and scores zero on policy, it's not going to rank very highly in comparison to the other projects.

COMMISSIONER COMMONS: So, in other words, all projects that receive a score of 60 or more technically have to be brought back to the full Commission.

MR. CHAMBERLAIN: I believe that's correct.

COMMISSIONER CROWLEY: In the order that the Policy Committee has assigned them.

MR. CHAMBERLAIN: That's correct.

MS. DELLER: In the order of the technical plus policy --

COMMISSIONER CROWLEY: Plus the points that the policy gave them.

COMMISSIONER COMMONS: Okay. Mr. Chairman, then I don't know the basis that you could --

CHAIRMAN IMBRECHT: And the Policy Committee can in turn recommend how far down the list there ought to be funding for those.

COMMISSIONER COMMONS: All right.

CHAIRMAN IMBRECHT: And that's -- that becomes a policy judgment for the entire Commission to make.

COMMISSIONER COMMONS: Yeah. I would think it

would be very presumptious for any of us to estimate, based on RFP's that we haven't received, as to whether or not we would have substantial projects that would justify spending all of the funds, none of the funds, or any percentage, until we actually saw the RFP's and -- I mean how -- on what basis could we say that -- on a fair and justified basis that we are going to fund three projects or 12 projects?

CHAIRMAN IMBRECHT: Who said that?

COMMISSIONER CROWLEY: We didn't.

CHAIRMAN IMBRECHT: Who said that?

COMMISSIONER COMMONS: Well, you were saying that -- you were suggesting that we are not going to put out all or any significant portions of these funds, and that would be prejudging the quality of the proposals that we might entertain.

CHAIRMAN IMBRECHT: Well, I mean -- Commissioner Commons, let me explain here, all I was trying to suggest to you is that -- that it is my personal judgment that we ought to proceed cautiously, and that from my perspective it would probably not be wise to contemplate the expenditure of the entire $6 million in the first cycle of this program.

That's the sole intent behind my statement, and if you care to argue with that, fine. That's not prejudging

from my perspective. It's really just trying to offer some suggestions about the inclination of the R&D Committee, and I'm not speaking singularly there. I am quite confident that Commissioner Gandara also shares that view, that we ought to proceed cautiously.

COMMISSIONER COMMONS: Okay. I guess you're missing where I'm coming from on the issue.

CHAIRMAN IMBRECHT: Okay.

COMMISSIONER COMMONS: Is our intent to spend one million or three million?

CHAIRMAN IMBRECHT: I don't know. I --

COMMISSIONER COMMONS: Or not more than three million, then we --

CHAIRMAN IMBRECHT: I would prefer not to try to put some cap on it or define a specific dollar sum right now. What the bottom line will be is that the Committee will in essence bring you the entire list of projects ranked both from the technical and the policy perspective, and then in turn we will also offer a recommendation, and that's all it reflects, a recommendation that we fund down through No. X, and that will I am sure be a reflection of a viewpoint of how close those projects are in terms ranking, whether there are a number of very strong ones, or there is a natural break-off point between strong and weak, which frequently occurs in this kind of evaluation

process, all those kinds of considerations.

And then it's the prerogative of the entire Commission to decide whether or not it wants to accept the committee's recommendation or modify it.

COMMISSIONER COMMONS: I would like to then go back --

CHAIRMAN IMBRECHT: Or reject it.

COMMISSIONER COMMONS: -- to where we were earlier.

Mr. Chamberlain, the statement was made that we can fund down to a certain level, and then if we didn't like the sixth project we could not fund any of those projects after that.

MR. CHAMBERLAIN: Not without sending out another RFP.

COMMISSIONER COMMONS: Yeah. Now, we have sent out -- we have had from Loans and Grants Committees where we have funded down to a certain level, not funded the next project, and then funded the projects thereafter, and then maybe have cut it off at 13.

Can you give me the legal basis as to why we could not fund Project 5, but we could fund Projects 6, 7 and 8?

MR. CHAMBERLAIN: Well, I'm not sure exactly which instances you are referring to. I mean I haven't looked into that recently, but I would -- I would guess

that the reason was because it was not under the Public Contract Code provisions dealing with consulting services contracts, that it was under some other rubric.

COMMISSIONER COMMONS: Well, let's say that --

MR. CHAMBERLAIN: For example, our Schools and Hospitals Loans Program is under a set of regulations that we have adopted here, and so we follow that --

COMMISSIONER COMMONS: I see. So it's one of the disadvantages of operating under an RFP procedure that has to follow those contract things, rather than operating under the regulations, which could give us that flexibility.

MR. CHAMBERLAIN: That's certainly one of the aspects, yes.

COMMISSIONER COMMONS: Okay. Thank you.

CHAIRMAN IMBRECHT: Which also operated initially under RFP's and then evolved into regulations, which I think is the point, but all we're suggesting -- I find it difficult to understand how this is -- is such a difficult issue to grasp or wrestle with.

I don't see anything different that's being proposed with respect to this program than has been the natural evolution of similar programs at the Energy Commission which began, not as regulations, but evolved into regulations, and in any case that issue was visited a few weeks ago and decided. That's not what's before

us now.

Are there further questions?

COMMISSIONER COMMONS: I have a --

CHAIRMAN IMBRECHT: Commissioner Commons.

COMMISSIONER COMMONS: -- a set of questions, but I'll wait until everyone else is finished with the staff.

CHAIRMAN IMBRECHT: Well, okay. Further questions of staff? Okay.

Then go ahead.

COMMISSIONER COMMONS: Mr. Ward, I have a set of 49 questions concerning the specific RFP that we have in front of us, and I would like the Executive Office to review and answer the questions so that I would have an understanding as to the legal issues, the economic issues, the procedural issues, and this is something that, as far as I know, is unique to this Commission, the proposal that we have before us.

And rather than going through them today, and since we are not going to be taking a vote on this, what I would like to do is give your staff an opportunity, and your office an opportunity, to review this and provide written response to myself, and hopefully share with the -- with other parties.

I think the questions speak for themselves, and

if there are any questions in interpretation or understanding of those I would certainly provide you with assistance.

Those are the only questions I have. I also have two alternative proposals that I would like to put on the table when it's the appropriate time to do so.

CHAIRMAN IMBRECHT: Now's the time.

EXECUTIVE DIRECTOR WARD: Commissioner Commons, from my perspective, we'd be happy to answer these questions to the best of our ability. I hope the answers are as short as the questions are.

Given the shortness of time that we do have the remainder of this week, the beginning of next week, if that's the Committee's -- or Commission's pleasure, we would be happy to do it.

COMMISSIONER COMMONS: Our office only received the Committee proposal this week, and so obviously we were not able to raise the questions, and there has been a fairly --

CHAIRMAN IMBRECHT: It was distributed last week, Commissioner Commons.

COMMISSIONER COMMONS: -- significant change from what the staff had proposed to what we have today.

COMMISSIONER COMMONS: All right. The first alternative that I would like to put forth is that we follow the staff recommendation as to criteria, but that we do

not have a separate evaluation done by staff and by a Policy Committee and, rather, we follow the format that we have normally followed in the Commission, that the staff evaluate the proposals, that the evaluation of those proposals go through the R&D Committee as per our Committee instructions that we have, and then that that committee make recommendations to the Commission as to which projects ought to be funded.

And, Mr. Ward, what I would like is, there are essentially three alternatives, and what I would like your office to do is if you could -- for the three alternatives that we would have before us, identify the advantages and disadvantages of each, and any problems that would be associated with following one mechanism or another.

An adjunct of the Chairman -- and I'm going to call it the Chairman's alternative, because I do not at this time -- have I received any indication from Commissioner Gandara's office that this is his proposal, and it may be and it may not be, but I am not aware of that at this time.

What I tried to do is to understand from some members of the Commission, and I have not received input from all, is in terms of implementing Naylor-Rosenthal, what are we looking for and what is the approach that we -- that we ought to take, and the way I would try to assess

the information that I've been able to achieve or to obtain, is that the Commission, one, feels in general that we have been too long in getting to the point we are today, and that even if we have a process that might be somewhat better than what is put forth on the table, that we should not delay going ahead, that we need to get Phase 1 underway and get projects out, and then we can evaluate that process, if we wish to, in terms of how successful it is, but any changes or any modifications that we make now should not delay the process.

Second, concerning who should be doing the evaluation, that at least in Phase 1 there's a lot of problems of our going outside of the Commission for evaluation. There are potential conflict of interest areas, and that, other than maybe having one person in case there's appeals to show that the Commission was not biased in terms of the reviews, that the primary technical review should be done by Commission staff persons.

And I'll duck the issue as to the relationship of our staff to doing the technical and the policy being done by Commissioners or others.

A third is, I think there is a general sense that -- of two areas. One is, whatever process we go forward on, it should be one that is fairly understood, is not likely to be challenged and tie up the system, so we

can get the projects going. It's not just to get contracts out, it's to allow the R&D to actually go forward that is of concern, and that the criteria and the ability to proceed are not too complicated, and things that someone who is in the research and development business would be able to come forth without having to spend a lot of time and effort and understand it's not like siting a case before the Commission.

There will be people coming in for applications of $10,000 that we don't want to set up an onerous process that is difficult to understand and difficult to get through.

All right. With that in mind, what our office did is tried to come up with, and we have a set of three slides, because I did not have copies for everyone that was here, as to a more simplified approach in terms of Phase 1, as to how we could evaluate the projects, and essentially what it said is we'll have a set of threshold criteria where a project has to come in and show that you have the financial, technical and management ability to do a project, that there is a need for the State to help finance the project, there is the ability of the project to gather the private investment, and that the project is in general agreement with the energy policies as set forth in our Biennial Report, and the project meets the

investment payback period required by legislation.

Now, you'll see the little letters on the side on the left, B, I, J, Q nad K, and they are to -- they correspond specifically with the legislation. What we did is we went back to the legislation, and they set forth criteria that you have to follow.

One of the concerns that I have with the staff criteria, for example, as you may pass and receive 60 percent, but not have the management ability to put forward the project because there's no threshold, that you don't have to be qualified on either a financial basis or a management basis. You do not have to have a need for state funding, and you could still pass the test and get on the list, and if we didn't like that project we would have to eliminate all those projects before.

I also don't particularly feel that we are capable of ranking on a scale of one to ten that one company is better managed than another, or one company is better financed to handle a particular project. I do think it's appropriate, as this Commission has often done, is to -- and I think our staff is capable of making a decision -- is do we have a financing package, does this group represent a group of technical and management people that have reasonable prospects of succeeding.

But to say that one person ranks a ten, and

another is a one, I'm not sure that we should be doing that. It also may be a bias against small business.

I'm concerned in the whole staff proposal that it is so complicated, so confusing, so overwhelming, and that the way the criteria are set forth, that we will primarily get large projects from large companies, and that it is going to be very, very difficult for a small business or R&D firm to participate.

CHAIRMAN IMBRECHT: Commissioner Commons, may I just ask one question related to that point.

COMMISSIONER COMMONS: Please. You may interject at any time.

CHAIRMAN IMBRECHT: Was this modeled after other programs here at the Commission?

MR. VANN: Yes, it was. We took the lessons we have learned in 771 and GRDA and applied those to this particular program.

CHAIRMAN IMBRECHT: Is the criteria, et cetera, that you've got outlined in the application process substantially different than 771, for example?

MR. VANN: In the overall objectives, no. We have expanded it, yes, but that's because we wanted to make sure that we were able to deal with technologies that run completely across the board. For instance, make sure that you didn't bias the results to either renewables or

to conservation or to conventional technologies where you might be improving efficiency, or something of that nature.

CHAIRMAN IMBRECHT: Aside from those modifications, though, is it substantially similar?

MR. VANN: It's essentially the same after you -- after you get beyond those points it's the same.

CHAIRMAN IMBRECHT: And have -- have we not had a fair degree of participation in 771 from small businesses, small farms, and so forth?

MR. VANN: Yes. Actually, most of the projects are small.

CHAIRMAN IMBRECHT: Commissioenr Commons, you know, I -- I guess the point I'm trying to make is that I don't believe this process has been as nefarious as seems to be the suggestion, and in fact the Committee's direction to staff was to put together an RFP that partially reflected that --

COMMISSIONER COMMONS: Excuse me, Mr. Chairman. You asked --

CHAIRMAN IMBRECHT: All right. Fine.

COMMISSIONER COMMONS: You asked for a clarification.

CHAIRMAN IMBRECHT: Okay. I'll quit.

COMMISSIONER COMMONS: I don't mind your interjecting so we can discuss an item.

CHAIRMAN IMBRECHT: I'm just -- go ahead. I'm sorry.

COMMISSIONER COMMONS: Okay. Thank you.

I've never had to -- I've written a lot of RFP's for big companies and medium-sized companies, some of them in the hundreds of millions of dollars range.

I have never seen a check list that had as many points as actually are allocated here, and which is as vague as the criteria that are allocated here. Sometimes we give a weight of five, and there are three lines as to what you give the weight of five for. It's not even clear in reading the criteria that the staff has, is do you get points for being large or being small, if there is a great need for the project or a little need for the project.

I would have grave difficulty as someone trying to write an RFP as to even understanding how someone is going to grade the criteria that you have before you in -- in the package.

I think that can in part be handled by further describing it, but let me go on with what I've proposed.

What I'm trying to do is to make it so that if someone were to come in they would have an idea if they were going to be successful or unsuccessful, and to remove a lot of the subjectivity, and there's a hundred-point

score, the evaluation criteria are pulled directly from the legislation, and they are also related back to the process that has been used in the Loans and Grants Committee for different projects.

And the first one was Energy Efficiency and Security, and when I've put forth ten points you can understand, just like the staff put forth five points or 15 points, these are just suggested, and they -- obviously the staff or the committee or the Commission could adopt a different number of points. I just tried to make it so it would add up to a hundred points.

Could you go to the next slide, please.

And you have a second test on innovation and technology transfer, which has been something very important to the Commission.

The third was feasibility and risk, and the fourth was the potential of the project for reducing adverse environmental impacts, and the fifth were the economic and financial factors.

I think it's hard to read from there because the type is small so those who want to look at it in detail, we'll try to make a copy available.

May we go to page 3, please.

And the sixth was the leverage or matching contribution.

In addition to the hundred points, in trying to follow the guidelines set up by the Legislature, we made available 15 possible bonus points. One was for small businesses. A second was for minority businesses, and third were for local governments up until we get the ten percent of the available funds allocated to local governments within the criteria.

So I would like to put that forth as -- as the third alternative, Mr. Ward.

The first part of the package relates to -- it could relate to either the Chairman's proposal or to the alternative criteria, and it's looking at where this program ought to go in the future, and in talking with people from industry when we went before the Legislature to obtain the funding, one of the real concerns of private industry as to the ability of this Commission to discern where the need for R&D funds and the appropriate levels of funding in various areas.

And it is my belief that we should have an advisory committee that would sit and work with the R&D Committee and try to establish the areas where we have the greatest needs for research and development, and then, similar to the concept that had been developed in terms of reserved need, that we then allocate and set aside a certain amount of the funding level to programs that would

be aimed at targeting those programs.

In one case it may be a fairly narrow area in load management, and in another area we may want to set aside a higher percentage, because we decide that waste energy is a very important concern in California, and that this would be an appropriate area for us to do significant work.

And that the -- this advisory committee, though, would only help in setting up a reserve concept level which would not utilize all of the funds, but a portion of the funds, and so the projects then would be competing to try to get into areas where we have the greatest need.

We could either follow the Chairman's process of evaluating, or any other criteria that we would want in terms of implementing that. The two parts of this proposal, in other words, are not necesesarily linked.

The problem of putting the advisory people on projects is often these are the persons that have good ideas for projects themselves, and it would put them into a situation where I think they would have a conflict of interest.

You could say, well, if you're saying which areas we should be expending monies, that the same problem could occur, but when you are talking about broad areas like waste energy or load management in that allocation, unless

the legal counsel thinks that that would also be a conflict of interest, I don't think it would pose the same difficulty.

They also clearly would not be the decision-makers. They would be giving advice to the R&D Committee, who would bring a recommendation to the full Commission.

The last alternative that I would like to posit is, if we have to have a Policy Review Committee, we have a Technical Committee that consists of I believe -- how many members is it, seven or eight -- that there be two adjustments made. One is the highest and lowest rating be dropped on each project so that we don't have strong biases for or against a project included, and second is that the Policy Review Committee be expanded to at least five members so that the policies do not represent a minority of the Commission viewpoints.

I will not support, I think that's very clear, in its present form a Policy Committee in the form that it is today, with only two persons dictating how we are going to be expending -- expending our funds. I think that is highly inappropriate for the Commission. I am willing to change my mind if someone is able to present an arguemnt as to why that is the best way that we should go forward at this time, but it appears to me that there are, in the answers to the questions I've put forward,

significant legal problems that it's going to cause the Commission, political considerations, and that anyone who is a loser under the process is going to cry unfair, and that the whole Commission could be -- be hurt very severely by putting politics in the way of review.

When I looked at the criteria that we specified as to what are policy and what are technical, I actually tried to reverse it, and the ones that we called policy actually seemed to me to be technical as much as the ones that were called technical were policy.

To me policy is do we want to put more money into diversity of fuel, or do we want to put more money in conservation and load management than in geothermal. The policy items that are identified require a substantial degree of technical sophistication and knowledge, and to me were not policy areas.

That was essentially giving to two persons within the Commission the ability to put a lot of points for or against certain projects.

But in any event, what I would like to do is to allow the staff to evaluate the three alternatives and to put forth for the Commission the concept if we do have to go through a policy that it not be a two-person Policy Committee where the Commission does not have in reality the ability to override a committee, because essentially

it has to reject lots of projects that it would like, would cause substantial delay in the process which I see no one wanting to do, and that if we did have to go that way we look at having something more similar.

I would prefer that the Commission, of course, allow the staff to do the job that they have done best, which is to evaluate them, use the Technical Committees of the Commission to make recommendations, back to the full Commission, and then the Commission act upon the recommendations of the staff and the Committee, a process that has worked very well since I have been on the Commission.

Thank you.

CHAIRMAN IMBRECHT: Okay. I've seen your position. I'm going to respond on one point. I don't know where you come up with the conclusion of politics and how it is involved in this, because it certainly is not, and I am not persuaded that there is any distinction here, vis-a-vis other Policy Committee oversight of programs within their responsibility.

But in any case, that's your perspective, I understand it. I am wondering, is this last paragraph of your memorandum to Commissioner Gandara and I still operative?

COMMISSIONER COMMONS: Which paragraph is that?

CHAIRMAN IMBRECHT: "Recognizing the Committee's

desire to allocate first-year funds in a timely manner, I would not object to having these objections incorporated with the second-year implementation of the program."

COMMISSIONER COMMONS: That's correct. What I'm saying is --

CHAIRMAN IMBRECHT: So you are in essence --

COMMISSIONER COMMONS: I'm saying that I would like to go --

CHAIRMAN IMBRECHT: -- providing this to us for future --

COMMISSIONER COMMONS: I would like us to go forward with one of these three versions, with the criteria, with no other changes essentially to what we have, so that when we meet next week, we make a decision, and we can get the RFP out then, and I don't want to see any major changes in the process.

It's my reading of the --

CHAIRMAN IMBRECHT: Well, the decision -- let me just indicate to you, Commissioner Commons, that technically no formal action of the Commission is required with respect to this issue. It is brought before the Commission for review as a result of the personal commitment I made several weeks ago that it would be brought forward for review.

In order to meet the Contract Register

requirements of the Department of General Services, we must indicate to staff today whether in fact the RFP should be issued pursuant to the time frame that is outlined within it or not, and as a consequence today we in essence have to give staff direction.

It's not a question of adoption of an RFP in a technically formal sense, because ordinarily that is not the case, and it is only before us, as I say, as a matter of courtesy to provide an additional level of review by the full Commission.

COMMISSIONER COMMONS: Mr. Chairman, were you adopting criteria, and were the other Commissioner, who is a member of the Committee, whose understanding is clearly that this was being brought back, since you made a -- a promise to the Commission that it would be brought back, I do not believe we have the authority to act, and I think it is all of our understanding here today that this was not a business meeting and that we were not acting on any of the items that are before us.

CHAIRMAN IMBRECHT: Okay. Well, you and I have a difference of opinion on that issue, and the timeliness, the reason that it was necessary to hear this matter today is because of the time considerations that I just mentioned to you, and the practical issue is whether in fact there is a majority of the Commission that is prepared to

support the direction of the staff, to go ahead and issue the RFP as it's before us, and with all the appropriate caveats, et cetera, that were stated in some of the opening comments.

And I obviously am recommending such an action, and I take it that you object to that decision, and I'll ask if there is further objection and absent that --

COMMISSIONER COMMONS: Well, I first --

CHAIRMAN IMBRECHT: -- that will be my direction to the staff.

COMMISSIONER COMMONS: All right. Well, first of all, I have a point of order.

Mr. Chamberlain, do we have the ability to direct staff within the context of this meeting?

MR. CHAMBERLAIN: The Chairman has the ability under the statute to direct staff in accordance with the policies of the Commission, so it's really a matter of the Chairman's sense of whether he is acting within the policies of the Commisison.

COMMISSIONER COMMONS: All right. So he does not need a business meeting to direct staff.

MR. CHAMBERLAIN: That's correct.

CHAIRMAN IMBRECHT: All right. Do we have -- we don't have the ability in the context of this meeting to override him, do we?

MR. CHAMBERLAIN: That's correct.

CHAIRMAN IMBRECHT: However, Commissioner Commons, I want to assure you that if I had any indication that I did not enjoy the support of a majority of the Commission I would not exercise the statutory authority which I have, and that has always been the case, whether it be in the context of a business meeting or not.

And as you are well aware, I frequently poll members of the Commission relative to issues of this nature, et cetera, and whenever there is a suggestion that there is either questions or a lack of concensus from a majority, the direction is not given, pure and simple.

COMMISSIONER COMMONS: All right. Well --

CHAIRMAN IMBRECHT: I ask people what they think I ought to do --

COMMISSIONER COMMONS: Well --

CHAIRMAN IMBRECHT: -- in many instances, and that's in essence what I'm doing now, and I can do it here in the business meeting --

COMMISSIONER COMMONS: Well, I think we should --

CHAIRMAN IMBRECHT: -- in this -- in this forum, or we could do it individually.

COMMISSIONER COMMONS: All right. I think the first question that we would like to ask is there may be Commissioners, amongst them myself, who have said that

I would not like to see a delay in implementation, and if you are saying that -- and legal counsel is saying that we do have the ability to go forward on this because it's an RFP, despite your premise -- let's put that aside for a second, because I still think our primary concern would be to implement the legislation and try to move forward, because that's my understanding of where other Commissioners are.

So I'm going to put that aside for a second.

I still think we have now three alternatives before us. Of course, we haven't had the evaluation of the Executive Office and have not had the opportunity, despite my personal request to you to meet on this matter at the last business meeting, and I have repeated that to your office twice subsequent, and we only got your revised proposal you say at the end of last week. I was unhappily in a hearing in Los Angeles on Monday, and so I received a copy of this proposal on the RFP on Tuesday, and I'll try to do a workmanship job of getting something out.

And I also had a Placerita decision which also had to be gotten out today, but be that as it may, let us -- why don't we find out what the sense of the Commission is. I would have to say that my alternative to being before us an even less amount of time would be too complicated

to do, but the one thing we could wrestle with is if we should follow the staff approach, which is to have one technical committee review the whole process, and then it go to the R&D Committee and back to the Commission, or if we should have it -- or if we should have it as you outlined, and --

CHAIRMAN IMBRECHT: Okay. Commissioner Commons, I --

COMMISSIONER COMMONS: -- why don't we find out where they --

CHAIRMAN IMBRECHT: I'm trying to put that to the Commission.

COMMISSIONER COMMONS: Fine.

CHAIRMAN IMBRECHT: Five or more minutes ago, and I'm asking is there objection to me directing staff to issue the RFP as it is before us.

I assume that you object.

COMMISSIONER COMMONS: That's correct.

CHAIRMAN IMBRECHT: And I'm asking if there is further objection.

All right. I hear no further objection, and as a consequence, therefore, that is my direction.

COMMISSIONER COMMONS: All right. I would --

CHAIRMAN IMBRECHT: The RFP should be issued as before us, and I wanted to say to you as well,

Commissioner Commons, that you have done obviously a thoughtful job on this. You've spent a lot of time on it, and I want to assure you that everything that you have here will be considered as this program evolves, and as you indicate in this last paragraph, you don't -- I assume this is still operative -- object to the suggestion as being incorporated in the -- the second rendition or issuance of RFP's in this process, and I can assure you that that will be the case.

I think that there are frankly a couple of items here which do merit some further consideration, including threshold criteria, and we'll take a look at that and try to incorporate it next time around.

COMMISSIONER COMMONS: All right. My understanding is, Mr. Chamberlain, that this item is still on the agenda for the 18th; is that not correct? We have not taken or cannot take any action, and I request that it not be pulled.

MR. CHAMBERLAIN: I'm sorry. I don't understand that.

COMMISSIONER COMMONS: All right.

MR. CHAMBERLAIN: That sounded like three statements.

COMMISSIONER COMMONS: All that the Chairman has done, which he has the power to do at any time of the

day, is he has given a direction to the Commission staff to go forward with this RFP. All right. I am --

CHAIRMAN IMBRECHT: Your proper remedy, Commissioner Commons, as is always the case --

COMMISSIONER COMMONS: Excuse me. I'm -- I have asked the legal counsel --

CHAIRMAN IMBRECHT: Well, I --

COMMISSIONER COMMONS: -- not you, Mr. Chairman.

CHAIRMAN IMBRECHT: Okay.

COMMISSIONER COMMONS: That this item is properly noticed and is on the agenda for the business meeting on the 18th, and I would like to see that this item not be pulled, and I am asking you if that is correct.

MR. CHAMBERLAIN: Well, it's my understanding that it's currently on the agenda for the 18th as well. Whether it will be pulled I guess is a matter for the Commission to decide.

COMMISSIONER COMMONS: All right. If I make a request that it not be pulled, does anyone have an ability to pull it? That's what I'm trying to ascertain.

CHAIRMAN IMBRECHT: The majority of the Commission, but --

COMMISSIONER COMMONS: At the next Commission meeting I think they would have a right to say we don't want to hear it.

CHAIRMAN IMBRECHT: Commissioner Commons, let me try, please -- let me answer your question.

COMMISSIONER COMMONS: I'm asking a question of legal counsel, please.

CHAIRMAN IMBRECHT: I don't care. I'm going to answer the question for you.

The proper remedy, as is always the case with respect to the exercise of the Chairman's direction of staff, is to in essence override that direction by making a motion and changing the policy of the Commission, and the appropriate motion at the next business meeting would be to say, "I move that the Commission withdraw -- not support the RFP, or that the policy of the Commission not be to have an RFP that encompasses the elements that are included therein," and if you have three votes, therefore, I am precluded from offering direction to the staff, because I would have to withdraw my direction that has been issued to that point in time, because it would be inconsistent with Commission policy.

And that is always the case. You've got three votes, you can overrule the Chairman's direction, and that is the appropriate remedy.

COMMISSIONER COMMONS: I thank you for your opinion. Now I would like to ask the question of the legal counsel.

This item has been properly noticed for the meeting of the 11th. The meeting of the 11th has been continued to the 18th. Is this item properly before us on the 18th?

MR. CHAMBERLAIN: Yes.

CHAIRMAN IMBRECHT: All right. How could it be pulled?

MR. CHAMBERLAIN: We just -- we just discussed that. The Commission could decide not to hear it in accordance with the Rules of Parliamentary Procedure.

COMMISSIONER COMMONS: How would that be done?

MR. CHAMBERLAIN: It could be done through a motion to lay on the table, a motion to limit or -- to limit debate or -- there's one more -- postpone indefinitely.

CHAIRMAN IMBRECHT: Commissioner Commons, the issue has been decided. I don't know -- well --

MR. CHAMBERLAIN: I can't seem to find the other one, but there's one more.

COMMISSIONER COMMONS: Fine. None of those are the ones that the Chairman identified. In other words, this item is before us, and if the Commission wishes to act or not act it would be up to the procedures that we wish to follow on that day.

Thank you.

CHAIRMAN IMBRECHT: I don't understand that.

In any case, that item is taken care of, and the direction is as stated.

Now, then, I guess we have the work plans, and that's the last remaining item.

EXECUTIVE DIRECTOR WARD: Let me ask a question. I -- I said that the staff would be happy to answer the questions posed by Commissioner Commons here. I don't want to put on a black-and-white striped shirt here on this thing, and I'm not sure what the purpose of these questions exactly is, Commissioner Commons. I have not been through all 49 of them.

I am going to presume that many of these questions have been answered by the Policy Committee already and that your office was represented in those meetings, and that in some cases these answers may not have been to your satisfaction.

COMMISSIONER COMMONS: That's an incorrect presumption.

EXECUTIVE DIRECTOR WARD: Okay.

COMMISSIONER COMMONS: The Policy Committee, most of the issues that relate here -- in fact, none of the issues that relate here or raised in the Policy Committees are answered to the satisfaction of our office. I am concerned -- maybe we should talk about this in Executive Session, if you'd like, if you would like to

have an Executive Session.

Many of the answers to these questions could involve potential litigation, and if the Chairman would like to go into Execuive Session to discuss it, well, my request to you remains as to the questions.

I do not feel it would be necessary, given the fact that there were three Commissioners who are -- who find it acceptable to go in this direction, for you to evaluate the alternative proposal that I have put forth. I think that could be looked at more in the framework of Phase 2 as to how we should go, and it's given as a courtesy from our office.

I do think that the questions that are raised, particularly some of the legal issues that are raised in these questions, and the serious damage that could be done to this Commission, where we haven't had a full hearing on the matter, we haven't -- we haven't even had the second member of the Committee, who has been presumably involved in this participation, and it --

EXECUTIVE DIRECTOR WARD: Okay. Well, then, it appears that you are giving me some --

COMMISSIONER COMMONS: I wish I could be so successful in moving a siting regulation that's rather innocuous through the Commission.

EXECUTIVE DIRECTOR WARD: No, I understand. It

appears you're giving me some direction here, and also giving me some indication of legal concerns that are raised in the context of the question or directly by the question, and so I assume that's also giving me the latitude to have the General Counsel respond, where I don't feel --

COMMISSIONER COMMONS: Oh, certainly. When I give it to you, it's the same in the sense of giving it to you and General Counsel.

CHAIRMAN IMBRECHT: Okay. Are we finished?

Now we'll return to the work plans. Mr. Ward?

EXECUTIVE DIRECTOR WARD: Yes. I believe that the Budget Committee met yesterday afternoon. The issues that had remained open were some issues in the Assessments Division. But for that, I believe all concerns that had been expressed in the context of the First Quarter Review by each Commissioner's office had been solved, and there is a summary sheet that we'll be passing out in just a couple of minutes when my staff gets here that will give you an assessment of what changes occurred there.

As I indicated, I don't think there's anything new here. Your --

COMMISSIONER COMMONS: The assessments changes, you do not show what the deletions are, nor do you show what the deletions are within the Development Division.

EXECUTIVE DIRECTOR WARD: The -- in the -- the

Assessments Division, that is largely the proposal that was before the Budget Committee probably five or six weeks ago that deferred generic technology assessments work to free up positions in the systems office to work on need analysis.

COMMISSIONER COMMONS: All right. So we will not be, for the second CFM in a row, doing conservation and load management generic technology assessment.

EXECUTIVE DIRECTOR WARD: We are deferring much of what was anticipated in the work plan in generic technology assessments, that's correct.

COMMISSIONER COMMONS: All right. I really, Randy -- when you show a reallocation, I really do not feel comfortable when you show a reallocation without showing what's been deleted and what's been added.

MR. SMITH: Well, we have the -- the additional detail, and that was included in the package that was distributed to each Commissioner's office as part of the Budget Committee's agenda. Our expectation or hope this afternoon would be that, having given each Commissioner's office the opportunity to have that material and have their advisor's participate at the Budget Committee meetings, that we wouldn't be going through a great deal of detail. We --

COMMISSIONER COMMONS: The problem with the

Budget Committee meeting, Mr. Smith, is it's been set three times and changed three times, and it's been a moving target. It's very difficult to --

MR. SMITH: No, I believe it's -- for the last month has been set at a fixed time. It's Tuesday at 3:00 o'clock, the day before the business meeting, and yesterday afternoon was when this additional information was provided.

I'd be happy to sit down with you and go over the detail, if you would like to.

COMMISSIONER COMMONS: All right. I'd --

MR. SMITH: Or your staff.

COMMISSIONER COMMONS: I don't need to take the time of the business meeting. I would like to know what has been deleted.

MR. SMITH: Sure.

EXECUTIVE DIRECTOR WARD: Yes, we'd be happy to give you that detail, or point it out on the package, Commissioner.

COMMISSIONER COMMONS: What's been deleted in the Development Division?

EXECUTIVE DIRECTOR WARD: My understanding in the Development Division is that there has been no specific work deleted. There were positions being held for salary savings in the Development Division that we are going to

transfer to Conservation, and we are going to have to make our salary savings elsewhere.

MR. SMITH: The bulk of those salary savings were already generated in the first part of the fiscal year within the Development Division because of excess vacancies.

COMMISSIONER COMMONS: And in the Conservation Division we just reached an agreement with the PAG, and are these people or are these vacancies?

MR. SMITH: They are vacancies. I understand that there is at least one candidate that can be brought onboard very quickly, and I -- if you would like to hear more about the recruiting plan, I would ask Mike Sloss to help us with that.

The conservation work plan, in addition, has also been adjusted to be consistent with the Commission's action I believe at the last meeting to incorporate the amendments to the Building Standards, and that was also part of the package distributed yesterday and the discussion at Budget Committee.

COMMISSIONER COMMONS: And the out-of-state power work is -- is that to take into account the Southwest?

EXECUTIVE DIRECTOR WARD: Yes, I believe it is. This is -- and actually this is just an informational sentence.

CHAIRMAN IMBRECHT: That's right. That is not a change to the work plan.

MR. SMITH: Yeah. This is an affirmation that the staff will be allocated for that.

CHAIRMAN IMBRECHT: You have raised some concerns, Commissioner Commons, as you frequently do, about whether the work plan accurately reflects warm bodies, and this is an affirmation that in fact warm bodies will be allocated.

COMMISSIONER COMMONS: I assume that then is the case -- well, never mind.

CHAIRMAN IMBRECHT: Okay. Thank you.

Any further questions or comments?

All right. In that case, I believe that completes our agenda, and we will stand in recess, or adjournment. See you next week.

(Thereupon, the business meeting of the California Energy Resources Conservation and Development Commission was adjourned at 3:35 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 11th day of December 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 intereted in the outcome of said hearing.

Madonna M. Kushen

Madonna M. Kushen, Reporter