

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 18, 1985

2:00 O'Clock P.M.

Reported by:

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ALSO PRESENT (CONTINUED)

- 1
- 2 Rick Miller, ARI
- 3 Charlie Myers, KRCC
- 4 Karl Luft, Texaco
- 5 Alan Fenning, KRCC
- 6 Craig Thompson, Deputy Attorney General
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3 CHAIRMAN IMBRECHT: Okay. Would the meeting  
4 please come to order. Can I ask you to all rise and join  
5 Commissioner Noteware in leading us in the flag salute.

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

10 CHAIRMAN IMBRECHT: Okay. Good afternoon. Let  
11 me just make a couple of introductory comments, since this  
12 is obviously a somewhat extraordinary session of the  
13 Commission.

14 Last week, as I'm sure most of you are aware,  
15 we had a technical noticing problem as a result of  
16 Thanksgiving holidays, and as a consequence we had general  
17 discussions of the items that were before us, and an  
18 advisory action was taken but no final action was taken,  
19 and that final action on each of these items is before  
20 us for consideration today.

21 I want to emphasize that in each instance the  
22 record will be fully open, and we invite, solicit, encourage  
23 any additional testimony above and beyond that which was  
24 heard by members of the Commission at the last meeting.

25 While at the last meeting I did suggest that

1 for those items where there apparently was no opposition  
2 that we would take those up in a collective motion. Our  
3 General Counsel suggested to me that he thought perhaps  
4 it would be better if we did take individual votes on those  
5 items, and so in deference to that advice, and without  
6 objection from members of the Commission, I would like  
7 to suggest that that be the procedure which we follow.

8 In order to try to expedite, however, our meeting  
9 today, considering the late hour, I would like to suggest  
10 that, with respect to those items where there was no  
11 apparent objection, that we try to dispose of those items  
12 first, and so I will -- Commissioner Commons.

13 COMMISSIONER COMMONS: Yes, Mr. Chairman. I  
14 just want to note on the -- on the record that I did not  
15 at the last meeting, and I do not today, think it was  
16 appropriate to take advisory positions on items without  
17 having had an opportunity in a proper business meeting  
18 to hear the testimony.

19 I recognize that all of us have open minds and  
20 have the ability to have testimony that were presented  
21 to us today to change those positions, but I think once  
22 you have stated a position it is more difficult to do so,  
23 and I just want to state that objection.

24 CHAIRMAN IMBRECHT: Okay. Fine. In any case,  
25 I am going to suggest that we deal with those items that

1 are labeled "Consent" in the margin first, and then we'll  
2 turn to the items that may require further action, and  
3 as a consequence suggest that the first item that we con-  
4 sider as listed is Item No. 2 on the agenda, which is  
5 Commission consideration and possible adoption of an Order  
6 Instituting Rulemaking to implement recent legislation  
7 by amending the regulations for the Solar Tax Credits and  
8 the Conservation Tax Credits.

9           May I inquire if anyone wishes to be heard on  
10 this item?

11           EXECUTIVE DIRECTOR WARD: Mr. Chairman --

12           CHAIRMAN IMBRECHT: Mr. Ward.

13           EXECUTIVE DIRECTOR WARD: It's my understanding  
14 on the Consent Calendar that there has been a party who  
15 is voicing some concern on formerly Item No. 3, 12.b.,  
16 noticed on consent, so it's the approval of a calculation  
17 method --

18           CHAIRMAN IMBRECHT: We're taking these -- we're  
19 taking these one at a time, Mr. Ward --

20           EXECUTIVE DIRECTOR WARD: Okay.

21           CHAIRMAN IMBRECHT: -- and we're on Item 2, not  
22 Item 3 at this point.

23           Does anyone wish to be heard on Item 2, which  
24 is the Order Instituting Rulemakeing with respect to  
25 appropriate changes in our regulations regarding the

1 legislative changes that were made in solar and conserva-  
2 tion tax credits?

3 COMMISSIONER NOTEWARE: Mr. Chairman, I move  
4 for approval.

5 CHAIRMAN IMBRECHT: Thank you. Moved by  
6 Commissioner Noteware, seconded by Commissioner Crowley.  
7 Is there objection to a unanimous roll call?

8 Hearing none, "Aye's" four, "No's" none. The  
9 motion is approved and the order instituting rulemaking  
10 is adopted.

11 The next item is Item 3, which we dealt with  
12 in an advisory consent fashion as 12.b. at the last meeting,  
13 and that's Commission Consideration and Possible Approval  
14 of two methods under which gas wall furnaces may be used  
15 to show compliance with the energy conservation standards  
16 for new residential buildings.

17 The first is a calculation method to assure the  
18 seasonal efficiency of gas wall furnaces, and the second  
19 is an alternative -- are alternative component packages  
20 A<sub>1</sub>, B<sub>1</sub> and C<sub>1</sub> which include gas wall furnaces that meet  
21 the appliance efficiency standards and are installed with-  
22 out ducts.

23 Does anyone wish to be heard on this item?

24 MR. SPLITT: Is this the time that --

25 CHAIRMAN IMBRECHT: Yes, sir. Please come forward.

1           COMMISSIONER COMMONS: Well, the other consent  
2 items, 4, 5 and 12, you are holding to --

3           CHAIRMAN IMBRECHT: I'm taking them each one  
4 at a time, rather than en masse, as I suggested. That's  
5 what I just announced a moment ago.

6           COMMISSIONER COMMONS: I just was a little con-  
7 fused that we skipped from 2 to 12.

8           CHAIRMAN IMBRECHT: Well, it's listed as 3 here,  
9 and we'll take it up now.

10          COMMISSIONER COMMONS: I gotcha.

11          CHAIRMAN IMBRECHT: Yes, sir.

12          MR. SPLITT: Okay. My name is Pat Splitt of  
13 Apptech, and I have a question about in the packages where  
14 they define the minimum heating efficiency of a system,  
15 and in the latest version of the package is the words  
16 "seasonal efficiency" got in there, which is apparently  
17 the cause of this calculation method.

18                 From all I could find out, 71 percent seasonal  
19 efficiency only has to do with forced air systems. In  
20 the past the minimum requirement for a gravity wall furnace  
21 was 70 percent thermal efficiency, and what I -- my want  
22 is to use this calculation method to generate the minimum  
23 seasonal efficiency required for a gravity wall furnace.

24                 As an example, if I took, say, a -- oh, say a  
25 20,000 Btu gravity wall furnace, if I looked in the

1 Appliance Standards, I would find out they have a 70 per-  
2 cent thermal efficiency and all the other data.

3           If I plug that into the proposed calculation  
4 method, I would discover that its seasonal efficiency was,  
5 say, 63 percent. Well, it's my understanding that that  
6 63 percent, since it's the seasonal efficiency equivalent  
7 of the minimum requirement in the Appliance Standards,  
8 this is all that system has to meet in order to meet the  
9 minimum requirement of the package.

10           The staff seems to contend that that's not true,  
11 that somewhere there is this rule written that says all  
12 heating systems have to have a minimum of 71 percent  
13 seasonal efficiency, which says that I wouldn't be able  
14 to use this little wall heater.

15           I do a lot of work in Salinas, where we're doing  
16 a little small, maybe 800-square-foot farmworker houses,  
17 where there's -- you know, they just need a very small  
18 gravity wall furnace, and if we're not allowed to put those  
19 things in it's going to really considerably increase the  
20 cost of these little houses to put in a -- a forced-air  
21 system which is going to be -- the smallest one is going  
22 to be way oversized and, therefore, very inefficient, so  
23 there should be some way of doing this.

24           They propose that I use the -- that I could use  
25 a micropass run, in which case I could model, say, the

1 63 percent seasonal efficiency that I calculated, and if  
2 the house passed, which it probably would since it's a  
3 small house, they say, well, it meets the budget, and that's  
4 all that counts, because the budget is based on 71 percent.

5 But if indeed they are saying that the law says  
6 that the minimum requirement for any gravity wall furnace  
7 to be placed in a residential building is 71 percent  
8 seasonal efficiency, then that law says it doesn't matter  
9 what I get micropass run, but it's illegal. I can't put  
10 it in.

11 It would be just like saying I -- there certainly  
12 are old furnaces around that have less than 71 percent  
13 seasonal efficiency forced air systems, and on several  
14 buildings I could model that building with a very ineffici-  
15 ent forced-air furnace, and it would comply, but I still  
16 can't put it in because the minimum appliance standards  
17 say that it's illegal.

18 So the question is what, when I look in this  
19 package, and it refers to the minimum efficiency requirement  
20 for a heating system, what is the minimum requirement?  
21 There is a legend below that refers me to the Appliance  
22 Standards.

23 CHAIRMAN IMBRECHT: Well, if somebody in staff  
24 wants to correct me, but I -- I'll take a stab at this  
25 and ask others directly, but basically the -- the floor,

1 and I'm not talking about furnace now, but the floor are  
2 the Appliance Efficiency Standards, and that is the funda-  
3 mental that must be complied with.

4           And then beyond that it's compliance with the  
5 general Residential Building Standards, but despite the  
6 fact that you might overbuild other aspects of your resi-  
7 dence and thereby be able to satisfy a model with a less  
8 efficient piece of equipment, nonetheless you still are  
9 required under the Appliance Standards to install the  
10 minimum efficiency that is specified for that particular  
11 appliance in the Appliance Standards.

12           I hope I stated that correctly. If anyone --  
13           MR. SPLITT: Well, that's my understanding, too,  
14 and --

15           CHAIRMAN IMBRECHT: -- cares to correct that,  
16 please feel free.

17           MR. SPLITT: But what I'm saying is, if indeed  
18 they are insisting that this number would now be a seasonal  
19 efficiency instead of a thermal efficiency that -- and  
20 since they have now come up with a calculation method,  
21 all I have to do is apply that calculation method to the  
22 standard, the minimum standard that's set by law in the  
23 Appliance Standards, and whatever that number comes out  
24 to be, 71 percent or 65 percent, whatever it is, that is  
25 the minimum seasonal efficiency for that particular furnace

1 that's required.

2           And in that case I can then put it in this little  
3 place.

4           EXECUTIVE DIRECTOR WARD: John Chandley from  
5 the General Counsel's Office would care to make comment.

6           MR. CHANDLEY: I think it would be helpful to  
7 identify more clearly what it is that we're talking about.  
8 Mr. Splitt is referring to a requirement which appears  
9 in the standards in those tables which list the alternative  
10 component packages, that is Packages A, B and C, and then  
11 D and E.

12           D and E you will recall are the packages from  
13 AB-163, but they primarily relate to Packages A, B and  
14 C. It's our position that nobody is using A, B and C any-  
15 more, and so whatever that says is not of particular impor-  
16 tance to anybody.

17           But those -- let's assume that people were using  
18 them and it was important.

19           MR. SPLITT: Well, they are still using D and  
20 E, though, aren't they? And doesn't the same thing apply  
21 to them?

22           MR. CHANDLEY: What --

23           MR. SPLITT: So I just, you know, don't say it's  
24 unimportant. It is important.

25           MR. CHANDLEY: Okay. What the tables say is

1 that when you come to the -- to the heating system, if  
2 you use gas there is a notation, "Seasonal Energy Efficiency  
3 Rating" -- excuse me. "Seasonal efficiency must equal,"  
4 and then you go across the table and look under each package,  
5 let's say under Package A or D, or whatever, it will say  
6 "Min," M-i-n, which is the abbreviation for "minimum,"  
7 and the footnote explains that minimum is -- is the minimum  
8 level of efficiency required by a particular section, the  
9 section which unfortunately no longer exists, it was wiped  
10 out in the -- in the update of the Nonresidential Building  
11 Standards, but at that time it referred to those regulations  
12 which lifted the -- which sort of duplicated the Appliance  
13 Efficiency Standards.

14 Now, the history behind this, and it's necessary  
15 to understand that in order to understand the problem,  
16 but the history is that when we first put together the  
17 packages in the original budgets, we assumed a central  
18 gas furnace which is measured in terms of seasonal effici-  
19 ency. We didn't assume any other kind of furnace, and  
20 the performance of a seasonal -- of a central gas furnace  
21 operating at a minimum 71 percent seasonal efficiency was  
22 cranked into that calculation in order to derive the bud-  
23 get.

24 So, in order to make any other use of an appli-  
25 ance within one of those budgets consistent with the original

1 set of assumptions, it has always been our position that  
2 the performance of that gas furnace must be the equivalent  
3 of a central gas furnace at 71 percent seasonal efficiency.  
4 That would have made it consistent with all the assumptions  
5 upon which the standards were based.

6 Now, there are in fact a different set of stan-  
7 dards -- appliance standards, not building standards, but  
8 appliance standards, depending on which kind of appliance  
9 you have, for a central gas furnace. The standard is in  
10 fact 71 percent seasonal efficiency. For a gas wall furnace,  
11 it is not measured in seasonal efficiency at all. It is  
12 measured in terms of --

13 MR. SPLITT: Thermal efficiency.

14 MR. CHANDLEY: -- thermal efficiency, and it's  
15 a different number, and up until today, up until recently  
16 there has been no way to translate thermal efficiency into  
17 seasonal efficiency, so it was almost essentially impos-  
18 sible for someone to come in and say, "I meet your stan-  
19 dard."

20 What we're proposing today is a methodology that  
21 says you can translate the measured performance of these  
22 other kinds of gas appliances, translate them into seasonal  
23 efficiency. If they meet 71 percent you may use them in  
24 the package. If they don't meet 71 percent, go ahead and  
25 use the calculation method, take whatever number you get,

1 take whatever credit you are entitled to by the fact that  
2 you are not using ductwork, there are losses thorough duct-  
3 work, and so you get -- you get credit for that, and you  
4 take the resulting performance and apply it in any one  
5 of the many performance measures, including the AB 163  
6 performance measures, the point system, all the computer  
7 calculation methods.

8           So, from our perspective, we have essentially  
9 solved that problem for all the gas furnaces. Now, we  
10 don't claim to have solved the problem for other kinds  
11 of furnaces in there, for example boilers, but for this  
12 one we figured out a way to do it, and it will make it  
13 easy and perfectly legitimate for these -- for these fur-  
14 naces to compete in the market and to get -- and to get  
15 a fair rating on their actual performance, and that's the  
16 point of this compliance method.

17           Our answer to Mr. Splitt is, (a), we think what  
18 he's proposing is inconsistent with the assumptions that  
19 have underlain the standards from the very beginning and,  
20 secondly, it's essentially relevant because there are accep-  
21 table methods by which he can use our compliance approach,  
22 and any of the performance methods, including the -- the  
23 simplistic point system, to use precisely the kinds of  
24 products that he is talking about, and show compliance.  
25 It will not be at the 71 percent performance level, it

1 will be at something else, but he is also going to be  
2 entitled to take the duct credit which will raise -- well,  
3 he was postulating, say, a 63 percent level. If you take  
4 the duct credit you are getting up close to 69 or 70, so  
5 you are very close, and so --

6 MR. SPLITT: But very close isn't 71 percent.

7 CHAIRMAN IMBRECHT: Excuse me, Mr. Splitt. Let  
8 Mr. Chandley make his points. We'll afford you more than  
9 an ample opportunity to respond.

10 MR. CHANDLEY: Well, that's correct. I mean  
11 69 is not 71. I mean that's -- that's axiomatic, but the  
12 point is you will be getting the credit to which you are  
13 entitled, which is the point of -- of coming up with this  
14 particular approach.

15 We think it's fair, because it accurately --  
16 it accurately gives each product the -- the energy perfor-  
17 mance credit to which it's entitled within a performance  
18 system.

19 CHAIRMAN IMBRECHT: These two approaches, they  
20 were reviewed by the Conservation Committee?

21 MR. CHANDLEY: Yes. We had a discussion with  
22 them and representatives of the gas industry regarding  
23 it.

24 COMMISSIONER CROWLEY: The Buildings Committee.

25 CHAIRMAN IMBRECHT: The Buildings Committee.

1 Pardon me.

2 MR. CHANDLEY: Excuse me.

3 CHAIRMAN IMBRECHT: All right. Fine. Were  
4 Mr. Splitt's concerns expressed at that time?

5 COMMISSIONER COMMONS: He did not present infor-  
6 mation to the Committee at that time.

7 MR. SPLITT: I wasn't aware of that, but I believe  
8 that some other persons also were concerned about this.  
9 They had -- I don't believe everybody was in total agree-  
10 ment with what you propose. Is that true?

11 CHAIRMAN IMBRECHT: You I think wanted to respond  
12 to some of Mr. Chandley's points?

13 MR. SPLITT: Okay. Well, the main point still  
14 is that he's saying that without this calculation method  
15 that we can't put in these gravity wall furnaces, but then  
16 he says with it we can't put in the gravity wall furnaces.  
17 The question is whether or not, when it says minimum,  
18 whether the minimum requirement for a gravity wall furnace  
19 is 71 percent seasonal efficiency, and I'm saying there  
20 is -- he's saying there is some law someplace. There is  
21 no law anywhere that says you can't put in a gas heating  
22 system in a package unless it has a 71 percent seasonal  
23 efficiency.

24 That's wrong. It just doesn't exist. It's a  
25 figment of his imagination. Now, maybe they -- back when

1 they used 71 percent, when they figured out this first  
2 building in the budget, but that -- that system was also  
3 just a backup system for a solar space heating system.  
4 That furnace would never have heated that building and  
5 met the budget without the -- the input from the solar  
6 space heating feature.

7           So you weren't modeling just the seasonal effici-  
8 ency of a furnace. You are modeling the seasonal effici-  
9 ency of a furnace when the sun was heating the solar space,  
10 and it has nothing to do with most buildings that are built  
11 now.

12           The Appliance Efficiency Standards are supposed  
13 to be the -- the indication of what appliances can or cannot  
14 legally be installed in residential buildings in the state.  
15 Now, if indeed you want to change the rules and say that  
16 for gravity wall furnaces they are too inefficient, and  
17 we want them to have a 71 percent seasonal efficiency and  
18 that's the minimum, you have to change the appliance  
19 standard. You're not doing that.

20           The appliance standard states what the minimum  
21 is. The package tells you where to look to find out what  
22 minimum means. Now we have -- and you're saying, well,  
23 there had to be seasonal efficiency. Well, you have now  
24 given me a calculation method so I can now calculate what  
25 that minimum has to be, but it's not 71 percent seasonal

1 efficiency for a gravity wall furnace. It just isn't,  
2 and if it is, even if I were to plug in the numbers in  
3 this calculation method and could show that a building  
4 would meet the budget, I can't put in anything less than  
5 71 percent seasonal efficiency, even if it does meet the  
6 budget, if indeed that's the minimum.

7 I'm saying it's not the minimum. It just isn't.  
8 Show me, in black and white, where it says anywhere that.  
9 It doesn't. You go back five, ten years. You'll never  
10 show me it. There is no universal minimum efficiency  
11 requirement of 71 percent.

12 Why is it so special where a gas has to have  
13 a 71 percent seasonal efficiency? If I put in a heat pump  
14 does it have to have a 71 percent seasonal efficienc? No.  
15 How about a radiant heating system? No. There is no magic  
16 71 percent that every system has to meet; only forced air  
17 gas systems have to meet 71 percent seasonal efficiency.  
18 If it -- show me anywhere if it says anything different.  
19 It doesn't.

20 CHAIRMAN IMBRECHT: Mr. Chandley, do you want  
21 one more stab?

22 MR. CHANDLEY: Well, we need to return to the  
23 issue. He's concerned about three packages which no one  
24 is using, but --

25 MR. SPLITT: Wait --

1 CHAIRMAN IMBRECHT: Just a minute.

2 MR. CHANDLEY: There are two sets of standards  
3 here. There are appliance standards which say that you  
4 must meet this minimum efficiency in order to be sold in  
5 this state.

6 Those standards were in the early days duplicated  
7 in the building standards which said -- which in effect  
8 said you must also meet those standards before you may  
9 be installed in a new building.

10 All right. So at that point the two standards  
11 are consistent.

12 In 1981 we came along with a new set of residen-  
13 tial standrds. The new set of residential standards says  
14 the standard for a building is that you must meet the bud-  
15 get. Merely complying with the minimum efficiencies in  
16 the appliance standards doesn't mean that you've met the  
17 budget. You must do many other things. You must insulate,  
18 you must weatherize, you must do dual panes or shading,  
19 whatever. There are a whole series of measures.

20 Now, what are the conditions under which an  
21 appliance, given a certain efficiency, would meet the build-  
22 ing standards? Well, it has to meet the budget. In order  
23 to meet the budget, you must have some heating system that  
24 gives you the performance that is equivalent -- is equiva-  
25 lent to the same kind of heating system that we assumed

1 in the calculation that showed that the package met the  
2 budget in the first place, and that equivalent performance  
3 is a -- is the same as a central gas furnace with a 71  
4 percent seasonal efficiency.

5 Now, this is the position that we have maintained  
6 for the last four years, ever since the adoption of those  
7 standards, so just because you meet the minimum appliance  
8 efficiency standards does not mean you've met the budget.  
9 There are simply other things that you must do to meet  
10 the budget.

11 So that's where I think we're becoming confused  
12 here. We are not -- I repeat not -- precluding Mr. Splitt  
13 from using the systems that he has been recommending to  
14 his clients. There are perfectly acceptable paths now  
15 which will be ratified by today's action for showing that  
16 the kinds of appliances that he's using and recommending  
17 to his clients do in fact meet the budget. That's the  
18 ultimate objective. Do you meet the budget, not whether  
19 it gets 71 percent seasonal efficiency. They will meet  
20 the budget under a reasonable set of circumstances, and  
21 those include taking credit for the absence of ductwork  
22 and taking credit for whatever other conservation measures  
23 are included in the building design.

24 So there is a pathway for him. We are not exclud-  
25 ing those products from the market. We are for the first

1 time I think legitimizing their entry into that market,  
2 something that we wish we had been able to do before, but  
3 we simply didn't have the calculation method to do it.

4 COMMISSIONER COMMONS: I think that last point,  
5 Mr. Chairman, from the Committee's perspective, was the  
6 critical one, is that our staff did not have a way to  
7 incorporate these products within a building because there  
8 was no calculation methodology, there was no way of assess-  
9 ing how it fit within the package for construction, so  
10 the attempt of the Committee was to bring the various par-  
11 ties together to see if within this proceeding we could  
12 come up with a methodology that would be acceptable to  
13 builders, to the gas, the electric appliance industry,  
14 to electric and gas utilities, so that these products could  
15 be sold and incorporated within buildings in California.

16 CHAIRMAN IMBRECHT: okay. Mr. Splitt, do you  
17 have anything further?

18 MR. SPLITT: Yes, if I can remember now all he  
19 said.

20 Well, first of all, he keeps alluding to Packages  
21 A, B and C. There are five packages, and the other two  
22 are D and E, the AB 163 packages which everybody uses.  
23 And the same --

24 CHAIRMAN IMBRECHT: Which everybody what?

25 MR. SPLITT: Which almost everybody uses these

1 packages.

2 CHAIRMAN IMBRECHT: All right.

3 MR. SPLITT: And they have the same determination  
4 of -- of minimum seasonal efficiency for a gas heating  
5 system, and my question is, he's saying we have this cal-  
6 culation method and all I have to do is show that I meet  
7 the budget, but I'm saying if they are going to insist  
8 on this 71 percent that this isn't enough, that I can --  
9 there are many buildings that I could calculate using their  
10 calculation method and using the seasonal efficiency, what-  
11 ever they want, and show that the building meets the bud-  
12 get.

13 But if indeed they are going to say that a gravity  
14 wall furnace has to have a minimum seasonal efficiency  
15 of 71 percent, I still can't put it in even though it does  
16 meet the budget, and that's the question. What is the  
17 minimum?

18 CHAIRMAN IMBRECHT: Mr. Chandley, is that accu-  
19 rate? Yes or no.

20 MR. CHANDLEY: All right. Let's assume that  
21 you've got two identical buildings and you want to follow  
22 Package D. Package D assumes, say, in a given climate  
23 zone -- it changes from climate zone to climate zone, but  
24 in a given climate zone let's assume that the minimum  
25 requirement for seasonal efficiency applies to that climate

1 zone, meaning if you put in a central gas furnace at 71  
2 percent seasonal efficiency into that package, and you  
3 have complied with the rest of the package, then -- then  
4 you have satisfied the requirements of AB 163.

5 Now, you take the equivalent performance approach.  
6 Under AB 163 you may design any other package you want pro-  
7 vided it has the same performance as Package D, so we now  
8 have the budget for Package D, let's see if we can dupli-  
9 cate that with another set -- with a different appliance.

10 Mr. Splitt then comes in with the least efficient  
11 of the kinds of appliances that he's talking about, that  
12 is the least efficient that still meets the appliance  
13 standards, and he's suggesting that its seasonal effici-  
14 ency will be -- I think he suggested around 62 or 63 per-  
15 cent. That's roughly what we think it's going to be.

16 All right. Then one takes credit for the ducts  
17 or the absence of ducts, because since you don't have duct-  
18 work you don't have losses through the ducts. There is  
19 a credit which this new -- our new calculation method allows  
20 you to take. All right.

21 So the calculation method says translate your  
22 thermal efficiency into seasonal efficiency. You get 63  
23 percent. Take credit for the absence of ductwork. You  
24 are now up to 69 -- in the range of 69 to 70 percent. All  
25 right. You are still a little bit short of meeting that,

1 but it doesn't mean you can't -- excuse me, of meeting  
2 the equivalent performance, because, remember, the other  
3 one was based on 71.

4 That doesn't mean you can't install it, that  
5 means you are going to have to do something else in that  
6 house. Why? Because your performance is not the equivalent  
7 of what AB 163 said was your standard. That is the same  
8 performance as that required in the package.

9 MR. SPLITT: All right.

10 MR. CHANDLEY: So he --

11 CHAIRMAN IMBRECHT: I understand that.

12 MR. CHANDLEY: He's absolutely correct in saying  
13 that -- that he hasn't met the budget for that, but it's  
14 not correct to say that he can't use the appliance. It  
15 just means that he's going to have to do something else --

16 MR. SPLITT: Well, that's --

17 MR. CHANDLEY: -- in addition to that. He can  
18 still use the appliance, but he -- he should also be forced  
19 to take its fairly rated energy performance value, rather  
20 than getting credit for something that it doesn't do.

21 CHAIRMAN IMBRECHT: Okay.

22 MR. SPLITT: Okay. So let me just --

23 CHAIRMAN IMBRECHT: I understand this much more  
24 clearly now.

25 MR. SPLITT: Okay. So, now, what you're saying,

1 then, is that if the budget works out, and I penalize myself  
2 because it's less efficient, but still I've made -- made  
3 it up somewhere, I took some windows out or something  
4 because of that, as long as I meet the budget, then I  
5 can put in this gravity wall furnace, even though it does  
6 not have a seasonal efficiency of 71 percent.

7 CHAIRMAN IMBRECHT: That's what he just said,  
8 yes.

9 MR. CHANDLEY: That's correct.

10 MR. SPLITT: All right. So that indeed, then,  
11 the universal 71 percent seasonal efficiency of any heating  
12 system doesn't exist. I don't have to make 71 percent.

13 MR. CHANDLEY: Yes, but I never said there was  
14 such a thing.

15 CHAIRMAN IMBRECHT: Okay.

16 MR. SPLITT: Well, regardless --

17 CHAIRMAN IMBRECHT: Assuming all that, then,  
18 I take it your --

19 MR. SPLITT: So, indeed, whatever -- whatever  
20 it is, indeed, I can then go into the appliance standards  
21 and use this calculation method, and if it's something  
22 less than 71 percent, as long as I've used the calculation  
23 method correctly, I -- I mean the requirements, then I can  
24 install it.

25 CHAIRMAN IMBRECHT: I think you've got a pretty

1 clear explanation here, and the transcript from the record  
2 certainly will be available, and you can simply look at  
3 Mr. Chandley's examples that were used and apply them to  
4 your own circumstances.

5 MR. SPLITT: Okay. Well, it's just because of  
6 the -- it would really increase the cost of these little  
7 bitty houses if I had to put a forced air system in it,  
8 and it wou seem unfair.

9 CHAIRMAN IMBRECHT: I understand.

10 COMMISSIONER CROWLEY: Yes.

11 MR. SPLITT: So I can --

12 COMMISSIONER COMMONS: The purpose I think is  
13 actually to help solve your problem, rather than the other  
14 way around.

15 MR. SPLITT: Well, if this indeed is the right  
16 interpretation, I don't have to meet 71 percent, as long  
17 as -- then that's okay.

18 CHAIRMAN IMBRECHT: Well, it's part of our record,  
19 and we are about to adopt this, and I think you, therefore,  
20 have a --

21 MR. SPLITT: All right. Thank you.

22 CHAIRMAN IMBRECHT: -- pretty clear call from us  
23 that that is our intent.

24 COMMISSIONER CROWLEY: What we think.

25 CHAIRMAN IMBRECHT: All right. I'm going to

1 assume that that's a motion from Commissioner Commons,  
2 and a second by Commissioner Noteware.

3 Does anyone else wish to be heard on this subject?

4 Is there objection to a unanimous roll call?

5 Hearing none, "Aye's" four, "No's" none.

6 The next item is Item 4, which is Amendment to  
7 Contract with Acurex Corporation to amend the work statement  
8 and to authorize the Executive Director to submit a formal  
9 grant application to the Urban Mass Transportation  
10 Administration for \$1.3 million to be added to the budget,  
11 and this will allow for the continued operation of the  
12 methanol-fueled buses through 1988.

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

14 EXECUTIVE DIRECTOR WARD: I believe, Mr. Chairman,  
15 the correct amount is 830,000.

16 CHAIRMAN IMBRECHT: I understand, but it was  
17 noticed at 1.3 million, and that's the way we have to accept  
18 it, but that doesn't create a problem, frankly, as I under-  
19 stand it.

20 All right. As Chairman of the Budget Committee,  
21 I will -- or the Presiding Member, I should say, I will  
22 move the item, and Commissioner Crowley seconds. Is there  
23 objection to the unanimous roll call?

24 Hearing none, "Aye's" four, "No's" none.

25 Item 5 is a contract for \$45,768 with Pacific

1 Manaegment Dynamics Corporation for technical assistance  
2 and monitoring for up to 60 projects funded through the  
3 California Energy Bank.

4 Does anyone wish to be heard on this item?

5 I will move, Commissioner Crowley seconds. Is  
6 there objection to a unanimous roll call?

7 Hearing none, "Aye's" four, "No's" none. The  
8 contract is approved.

9 Turning to Item 12, Commission consideration  
10 and possible approval of "PC Energy" as an approved calcu-  
11 lation method for showing compliance with the Residential  
12 Building Energy Efficiency Standards. Does anyone wish  
13 to be heard on this item?

14 COMMISSIONER NOTEWARE: I'll move for approval.

15 CHAIRMAN IMBRECHT: Okay. Moved by Commissioner  
16 Noteware, seconded by Commissioner Crowley. Is there  
17 objection to a unanimous roll call?

18 Commissioner Commons, are you in the room? Is  
19 there objection -- is he -- okay.

20 Is there objection to a unanimous roll call?

21 Hearing none, "Aye's" four, "No's" none. The  
22 motion is carried.

23 Okay. I think that takes care of each of the  
24 items that we can deal with expeditiously.

25 Let's turn then back to Item No. 1. Commissioner

1 Commons, you asked this item be back on the agenda. I  
2 think you're aware of the circumstances from last week,  
3 and I guess I would ask you what, if anything, you would  
4 -- as I indicated to you last week, the appropriate method  
5 for you to raise this in my judgment would be to make a  
6 motion that would indicate that the direction I gave to  
7 the staff was inconsistent with Commission policy, and  
8 that --

9 COMMISSIONER COMMONS: Well, we had -- I don't  
10 want to repeat the legal discussion that we had, because  
11 my assumption is that all matters that we discussed at  
12 our last-week session are still part of this one and the  
13 same record.

14 CHAIRMAN IMBRECHT: That is correct.

15 COMMISSIONER COMMONS: And so I see no reason  
16 to retrace previous ground.

17 I have on this item one point of clarification  
18 I would like to request, and I don't know if I should address  
19 it to you, Leon, or to Bill, or you, Nancy.

20 In the bill our funding I believe is \$6 million?

21 MR. VANN: That's correct.

22 COMMISSIONER COMMONS: And we are allowed to  
23 provide what percent in grants and what percent in loans?

24 MS. DELLER: Thirty percent for the contract  
25 research and 70 percent for loans, unless there is a

1 four-fifths vote by the Commission, which would make it  
2 50 percent for both.

3 CHAIRMAN IMBRECHT: All right. Let's just assume  
4 for the moment that we are on the 70-30, which is I believe  
5 where we are. Now, the maximum we can give to one project  
6 is -- is it 25 percent?

7 MS. DELLER: Yes.

8 COMMISSIONER COMMONS: All right. Can you  
9 explain to me how that 25 percent works? Is it 25 percent  
10 of the grant funds can go to one project, or 25 percent  
11 of the loan funds? That's what I'm not -- I don't quite  
12 understand.

13 MS. DELLER: Let me just ask counsel.

14 COMMISSIONER COMMONS: Let me -- let me lay the  
15 groundwork where I'm leading.

16 If 30 percent of the funds are for grants, that  
17 would be \$1.8 million, and if 25 percent of the total of  
18 \$6 million could be used for one project for grants, that  
19 to me would not be following the legislative intent, but  
20 it's my understanding or assumption that we would not grant  
21 to one project more than 25 percent of the grant monies  
22 available, and we would not lend to one company or agency  
23 or organization more than 25 percent.

24 But it was not clear from the discussion that  
25 we had last week and from the materials that I've received

1 as to the interpretation we were under, and since we were  
2 told that when an RFP comes before us we cannot modify  
3 the funding amount in the RFP, I think it's important that  
4 that be clarified.

5 MR. CHAMBERLAIN: Okay. I think -- I think the  
6 statute clarifies it pretty well, actually.

7 CHAIRMAN IMBRECHT: Can you give me the section  
8 that --

9 MR. CHAMBERLAIN: Section -- yes. Section 25687.6  
10 refers to individual projects and says not more than 25  
11 percent of the funds in the account at the commencement  
12 of each fiscal year shall be available for any individual  
13 project.

14 So of the funds in the account, \$6 million now,  
15 no more than \$1.5 million would be available for any indi-  
16 vidual project.

17 It then goes on to say, however, the Commission  
18 may make more than 25 percent of the funds available for  
19 an individual project if it determines through a four-fifths  
20 vote that the public interest and the objectives of this  
21 chapter will be better served at the higher level.

22 COMMISSIONER COMMONS: All right. Now, would  
23 that mean we could grant, under -- under the grant funds,  
24 1.5 million of the 1.8 million grant funds to a particular  
25 project?

1 MR. CHAMBERLAIN: One point --

2 CHAIRMAN IMBRECHT: The answer --

3 MR. CHAMBERLAIN: Yes.

4 CHAIRMAN IMBRECHT: I think the answer is yes.

5 MR. CHAMBERLAIN: Yes, the answer is yes.

6 CHAIRMAN IMBRECHT: This is fairly clear on its  
7 face that it is referring to the entire account.

8 COMMISSIONER COMMONS: All right.

9 CHAIRMAN IMBRECHT: But I --

10 COMMISSIONER COMMONS: Do we have -- do we have  
11 the ability as a Commission in Phase 1 to in the RFP limit  
12 the amount of funding to 25 percent of the grants monies  
13 to any one project, 25 percent of the loan monies to any  
14 one project?

15 CHAIRMAN IMBRECHT: The question is could we have  
16 done that in the RFP?

17 COMMISSIONER COMMONS: No, could we do it.

18 CHAIRMAN IMBRECHT: Well, the RFP is gone, so --

19 MS. DELLER: We state in the RFP the condition  
20 that no more than 25 percent, unless there is a four-fifths  
21 vote by the Commission.

22 COMMISSIONER COMMONS: Well, we'll come back  
23 to that issue.

24 Could we -- if we wanted to, could we do that  
25 from a --

1 MR. CHAMBERLAIN: I don't see any reason why  
2 you couldn't.

3 COMMISSIONER COMMONS: All right. Then I would  
4 like to ask that we discuss it from a policy point of view  
5 that one aspect, Mr. Chairman, because I would be con-  
6 cerned that we could receive applications for almost all  
7 of our grant monies from one application, and if such a  
8 grant were to receive a very high rating, it would be very  
9 chaotic for us in terms of how to do that, and based on  
10 your statements of last week that we intend to be conser-  
11 vative in terms of the allocation of the funds, I think  
12 one way of being conservative would not be to grant more  
13 than 25 percent of the funds to any one project, or 25  
14 percent of the loan funds.

15 CHAIRMAN IMBRECHT: Well, Commissioner Commons,  
16 let's talk a few practicalities. The practicalities are  
17 as follows. The staff was given direction by me, based  
18 upon my survey of Commissioner opinion, to insure that  
19 I was acting consistent with the majority's perspective  
20 as to the policy intent of the Commission, and that direc-  
21 tion was to notice and to issue the RFP, and that has  
22 occurred, and the only circumstance by which the modifica-  
23 tion could occur would be if that RFP were recalled. Of  
24 course, it would then open the entire question of our  
25 inability to complete a first cycle during this fiscal

1 year.

2 For that reason alone, I would oppose any modi-  
3 fication because it would require that recall, but aside  
4 from that, I would also just suggest to you that the cir-  
5 cumstances that would produce a recommendation for more  
6 than 25 percent to go to an individual project would have  
7 to be extremely compelling, because obviously a minority  
8 of the Commission could block such an effort since, as  
9 the statute clearly indicates, a four-fifths vote is  
10 required, with a specific finding that it is in the public  
11 interest as well as the furtherance of the objectives of  
12 the entire Act to make such a modification.

13 I can't personally foresee circumstances at this  
14 juncture that are likely to make this question a reality,  
15 but it's one obviously that the full Commission can revisit  
16 at the time that the Committee's recommendations are  
17 before it, for up or down consideration, and I just return  
18 to what I indicated at the opening, and that is that, as  
19 a practical matter, the only -- and I don't think any of  
20 us disagree with that policy objective.

21 You are well aware of the role I had in the  
22 passage of this legislation, et cetera. I don't think  
23 there is a clause in it that we didn't have some input  
24 on, et cetera, and we agreed to this, and the Commission  
25 supported it, et cetera, and the law itself reflects our

1 position.

2           So with all of that being said, I just return  
3 to the point that the procedural approach for you to take  
4 at this juncture is to make a motion to enunciate  
5 Commission policy that would require me to direct staff  
6 to recall the RFP. In the event that you are successful  
7 at that point, then you are in a position to argue any  
8 modifications to the RFP that you care to offer.

9           COMMISSIONER COMMONS: Well, Mr. Chairman, I'll  
10 come back to the legal issue that you are raising, which  
11 I'm trying to avoid, but that you are trying to raise.

12           CHAIRMAN IMBRECHT: Well, I'm trying --

13           COMMISSIONER COMMONS: And if you would like  
14 to, we can go into that, but what I'm --

15           CHAIRMAN IMBRECHT: I'm trying to move the meeting  
16 along is what it boils down to.

17           COMMISSIONER COMMONS: Okay. Let me go back  
18 to the policy question. The issue that's before us on  
19 a policy basis is, if we follow the interpretation that  
20 our general counsel has made without a four-fifths vote,  
21 anyone can submit an RFP for 1.5 of the 1.8 million dollars,  
22 and we do not have the ability to modify that amount, and  
23 if we decide that that amount is an unreasonable amount,  
24 all other grant projects below it on the rating are --  
25 have to be reheard, and we have to go out again and redo

1 Phase 1.

2 CHAIRMAN IMBRECHT: Which means a delay of approxi-  
3 mately one month, as heard in discussion last week, which  
4 is --

5 COMMISSIONER COMMONS: Excuse me, Mr. Chairman.  
6 I haven't --

7 CHAIRMAN IMBRECHT: -- hardly cataclysmic, but --

8 COMMISSIONER COMMONS: I haven't completed. Thank  
9 you.

10 CHAIRMAN IMBRECHT: Fine.

11 COMMISSIONER COMMONS: What I -- what I would  
12 like to say is we took an advisory action at the last busi-  
13 ness meeting and no -- it was not a business meeting, and  
14 we had no ability to take any action, but I think we have  
15 the ability at this meeting to do just like we did at that  
16 meeting, without making a modification of the RFP, and  
17 just stating to the outside world that our policy preference,  
18 in terms of how these funds should be allocated, would be  
19 that no more than 25 percent of the grant monies go to  
20 any particular project unless we evoke that four-fifths  
21 principle that's within the Act, and that the same would  
22 apply to the loan fund.

23 It does not require a modification of the RFP,  
24 it doesn't require sending something out. It just states  
25 what this Commission believes is appropriate in terms of

1 Round One, where we would not like to see, except under  
2 an extraordinary circumstance, which we still have the  
3 ability, as you properly identified, to have 80 percent  
4 or 50 percent or the great bulk of the grant funds poten-  
5 tially going to one applicant, and people would review  
6 this and would be aware of it, and in submitting of the  
7 RFP's they would still have the right, since the applica-  
8 tion is out, to do it the other way, but they would have  
9 a sense as to where this Commission is at.

10 CHAIRMAN IMBRECHT: I think the appropriate way  
11 for you to handle that is to make a motion, Commissioner  
12 Commons. You know, I am just going to stress that I think  
13 that there is more than adequate guidance at this juncture,  
14 and for that kind of recommendation to come forward to  
15 the Commission there would have to be an extraordinarily  
16 compelling case made.

17 I m not going to tell you that that's impossible,  
18 but obviously it would require that kind of compelling  
19 case in order to convince an extraordinary majority of  
20 the Commission to go forward with that kind of an action,  
21 and I frankly think that the Commission sitting in judgment  
22 at that juncture, looking at the RFP's that have -- or  
23 the proposals that are before it, and in essence seeing  
24 more than a hypothetical description of an issue, as you  
25 are offering, and I would say, frankly, from my perspective

1 there is no case for controversy at this juncture.

2 That might be the case later on, and -- and if  
3 a Commissioner cares to raise it at that juncture, I think  
4 from my perspective that's the appropriate time to do it.

5 In any case, if you care to make a motion, you  
6 ought to do it.

7 COMMISSIONER COMMONS: Well, before I make a  
8 motion, I think it's appropriate if either of the other  
9 two Commissioners want to make a comment.

10 CHAIRMAN IMBRECHT: The silence is deafening.  
11 Is there an inclination?

12 COMMISSIONER NOTEWARE: Mr. Chairman, I -- I  
13 think in principal I agree with Commissioner Commons' con-  
14 cern that we could put too many of our -- our dollars into  
15 one particular project, if -- and yet, on the other hand,  
16 I can see that 25 percent of the four hundred and fifty  
17 -- I mean 25 percent of the one million eight would be  
18 \$450,000.

19 It seems very, very unlikely that we would deter-  
20 mine that we would want to commit over 450,000 to any one  
21 project, and I would -- I would be more inclined not to  
22 encumber our rulemaking with any particular regulation,  
23 but leave it to the wisdom of the future committee that  
24 is going to be granting the funds to -- to take this into  
25 consideration when the time comes

1 CHAIRMAN IMBRECHT: Well, the committee won't  
2 be granting the funds. The Commission grants the funds.  
3 That's the only thing, and I don't want to revisit that  
4 issue.

5 COMMISSIONER NOTEWARE: Right.

6 CHAIRMAN IMBRECHT: But the committee will be  
7 making the recommendations, and it's really at the discre-  
8 tion of the Commission, but I take it that that is a sug-  
9 gestion that you don't want to take any action at this  
10 point.

11 COMMISSIONER NOTEWARE: Yes.

12 CHAIRMAN IMBRECHT: Commissioner Crowley?

13 COMMISSIONER CROWLEY: Mr. Chairman, I think  
14 it's appropriate that this has been brought to our atten-  
15 tion, though, because I think that, this being a new project  
16 and new interest in this particular Naylor money, means  
17 that we should articulate some of these policy things,  
18 rather than just be appearing to deal with it in a mechani-  
19 cal way, so I think it's very appropriate that we have  
20 gone through this and listened and discussed this sort  
21 of subject at this time.

22 CHAIRMAN IMBRECHT: Okay. Commissioner Commons,  
23 what is your pleasure?

24 COMMISSIONER COMMONS: Well, I think the impor-  
25 tance is not -- that portion of the item is not before

1 us for a motion. I raise it as a policy issue more for  
2 discussion purposes so that people who may be submitting  
3 proposals to us have a better idea as to where this  
4 Commission is so that they have a greater chance of being  
5 successful in putting forward proposals, because it is  
6 one thing to see a set of rules, and I think there's  
7 another thing to understand how this Commission may want  
8 to see these funds allocated, and it was the one item I  
9 did not feel we had discussed this week, and I think we  
10 at least had a -- a viewpoint or a statement from four  
11 Commissioners, and that may provide some guidance to appli-  
12 cants, and I think that's beneficial.

13 CHAIRMAN IMBRECHT: Good luck in reading the  
14 transcript.

15 Okay. I take it that's the conclusion of Item  
16 No. 1, and just to reiterate, in any case, based upon my  
17 consideratino of the Commission's perspective, I did direct  
18 the staff to notice and to release the RFP, and that has  
19 occurred, and so now let's go forward and implement this  
20 program.

21 Later in today's meeting I will be offering as  
22 a committee report some supplemental comments about this,  
23 I think some news that will be pleasing to each of you.

24 COMMISSIONER CROWLEY: Mr. Chairman, this is  
25 indicated to be an action item. Are you entertaining

1 a motion that we approve the requests for proposal, and  
2 ratify them today?

3 CHAIRMAN IMBRECHT: I think this was actually  
4 misnoticed.

5 COMMISSIONER CROWLEY: Is it? Fine.

6 CHAIRMAN IMBRECHT: There is no action necessary  
7 at this juncture --

8 COMMISSIONER CROWLEY: Okay.

9 CHAIRMAN IMBRECHT: -- based upon what was done  
10 at the last meeting.

11 Okay. That concludes Item No. 1, and now we  
12 will turn to Item No. 6, which is Commission consideration  
13 and possible approval of the Committee Proposed Decision  
14 recommending granting the AES Placerita, Inc., Application  
15 for a Small Power Plant Exemption.

16 Mr. Ward.

17 EXECUTIVE DIRECTOR WARD: Yes. Thank you,  
18 Mr. Chairman. It may be appropriate to have the Presiding  
19 Member of the Committee provide his summary of the  
20 Committee's recommendation.

21 The staff is in concurrence with that recommenda-  
22 tion.

23 COMMISSIONER COMMONS: Let's see. Is Garret  
24 here? Would you come forward?

25 The Committee was composed of myself as the

1 Presiding Member, and Commissioner Crowley as the second  
2 member, and the Committee was ably assisted by Susan Brown  
3 from my staff and Dave Maul from Commissioner Crowley's  
4 staff, and Garret Shean, of course, was our Hearing  
5 Adviser.

6 I do not think it's necessary for us to go through  
7 the proposed decision because it's available to all par-  
8 ties. What I would like to do, though, is turn it over  
9 to Mr. Shean, and for him to make those comments that he  
10 feels are appropriate.

11 HEARING ADVISER SHEAN: Thank you, Commissioner  
12 Commons.

13 I think it's just worth saying that the Committee  
14 and the parties got this case cranked up this fall, as  
15 some of the information concerning the environmental effects  
16 became better known, and the outlines of the manner to  
17 conduct the specified reserved need test became better  
18 known, and at that point the Committee conducted eviden-  
19 tiary hearings in November, two in November and one in  
20 December, and as a result of that we acquired the record  
21 upon which the Committee has made its recommendations,  
22 and insofar as the environmental matter, a principal element  
23 of that record was the staff's initial study leading to  
24 a negative declaration.

25 And the applicant had presented testimony with

1 regard to the environmental impacts of the project as well,  
2 and in addition to the environmental matter there was testi-  
3 mony taken from the staff and the applicant with regard  
4 to the conformity of this project to the specified reserved  
5 need test within the category of gas-fired cogeneration,  
6 and as a result of the information in the record the  
7 Committee was able to recommend the two findings that appear  
8 in the last page of the Commission decision which is avail-  
9 able for reading, which -- which findings are that this  
10 project will have no substantial adverse impact on the  
11 environment or energy resources, and that as a result of  
12 the operation of the facility that generating capacity  
13 will not be added which is substantially in excess of the  
14 adopted forecast.

15           There are several minor changes between the  
16 draft Committee-proposed decision and the Commission deci-  
17 sion which you have before you. Most of them are minor  
18 substantive matters that are not material to the outcome  
19 and in no way would have changed the ultimate recommenda-  
20 tion of the Committee.

21           I could run through those for you if you wish.  
22 The only --

23           COMMISSIONER COMMONS: I believe they are entered  
24 on the docket, Mr. Shean, and I do not think it's necessary  
25 that we go through each item, unless some party requests

clarification.

2                   CHAIRMAN IMBRECHT: I agree with that. Let me  
3 -- Former Commissioner Varanini, do you wish to be heard  
4 on this item?

5                   MR. VARANINI: I'm appearing for Placerita, and  
6 I'm with the firm of Marron, Reid & Sheehy, and I think  
7 that as of now we would like to reserve any comments we  
8 might have in order to expedite the proceeding.

9                   CHAIRMAN IMBRECHT: I observe you support the  
10 -- I presume. I should say, you support the decision.

11                   MR. VARANINI: We support the final decision,  
12 that's correct.

13                   CHAIRMAN IMBRECHT: All right. Fine. Does any-  
14 one else wish to be heard on this item?

15                   Mr. Gardner?

16                   MR. GARDNER: Thank you, Mr. Chairman. Mike  
17 Gardner representing a host of folks, Southern California  
18 Edison, the Sycamore Project, the Midway-Sunset Project,  
19 at least.

20                   While we have -- none of these parties have any  
21 difficulty with the proposed decision, we do have signifi-  
22 cant disagreement with the staff's need analysis that is  
23 embodied ultimately within the decision, and as other cases  
24 come before you we would like the opportunity to present  
25 our own need analyses and would urge you not to regard

1 necessarily the staff's need analysis in this case as --  
2 as some sort of ultimate precedent.

3 To avoid delaying this case we have not tried  
4 to come into the case and raise the issue. We certainly  
5 have no disagreement with the staff's ultimate conclusion  
6 that the Placerita project is in fact needed.

7 There are concerns as to how that might affect  
8 future projects. I would just like to let you know those  
9 concerns exist and that you will hear more about them in  
10 individual siting cases.

11 CHAIRMAN IMBRECHT: Thank you very much.

12 Anyone else wish to be heard on this item?

13 I assume, Commissioner Commons, the motion by  
14 yourself is seconded by Commissioner Crowley that the  
15 decision be approved. Is that correct, Commissioner Commons?

16 COMMISSIONER COMMONS: I would like to make three  
17 comments.

18 This is the first major project in the South  
19 Coast Air Basin that has had to follow and is incorporating  
20 the South Coast Air District Basin's new rules on catalytic  
21 converters. That is very significant for the air quality  
22 of the Basin, and I think the future of cogeneration within  
23 that Basin.

24 Second is the applicant here has really laid  
25 out a blueprint in terms of how a project should proceed

1 on working with the local community on conservation and  
2 community relations. They have worked very well with  
3 Senator Ed Davis's office in the concerns about local  
4 community, and this is one of, if not the most successful  
5 record that I've seen since I've been here on the  
6 Commission brought to us, in terms of how to work out the  
7 problems associated with setting a major power plant in  
8 an area where there are other uses.

9           And third is this project is a demonstration  
10 that you can achieve load following with a cogeneration  
11 project at least in the Southern California area.

12           CHAIRMAN IMBRECHT: Okay. Thank you. Let me  
13 just indicate, and ask for concurrence from other members  
14 of the Commission, I have been informed -- Commissioner  
15 Gandara, for the record, is presiding over a hearing of  
16 the Sycamore AFC elsewhere in the Commission's building,  
17 and he had requested the opportunity to file a concurring  
18 opinion.

19           It is advice from counsel that without having  
20 cast a vote that that would not be possible. I would like  
21 to suggest that we take a vote on the motion, hold the  
22 roll open until the conclusion of today's hearing, in order  
23 to provide an opportunity for Commissioner Gandara to join  
24 us briefly and cast that vote so that he would be in a  
25 position to file a separate but concurring opinion with

1 the decision.

2 I might indicate that I suspect it has something  
3 to do with the comments offered by Mr. Gardner, and I may  
4 want to consider joining Commissioner Gandara on that as  
5 well. Let me ask if there is any objection to us following  
6 that procedure.

7 With that, I'll ask is there objection to the  
8 unanimous roll call? Okay.

9 Hearing none, "Aye's" four, "No's" none. The  
10 roll will remain open until the adjournment of today's  
11 proceeding in order to extend the courtesy to Commissioner  
12 Gandara to cast his vote.

13 Thank you very much, and congratulations.

14 MR. GARDNER: Thank you, Mr. Chairman.

15 CHAIRMAN IMBRECHT: All right. Item No. 7 is  
16 consideration and possible approval of appliance efficiency  
17 data requests for manufacturers, as required by Assembly  
18 Bill 191. AB 191 calls for the report of information on  
19 sales of appliances by manufacturers so that the Commission  
20 may study the effects of regulations on those sales.

21 Mr. Sloss, have we resolved our difficulties?

22 MR. SLOSS: Yes, Mr. Chairman. During the dis-  
23 cussion at the meeting on December the 11th several changes  
24 were suggested and incorporated into the packages that  
25 you now have. Since that meeting the Committee and staff

1 have agreed to two -- well, a couple of other modifications,  
2 two in particular that I would like to just put on the  
3 record. They are also included currently in the package  
4 that you have.

5 First is that 1984 data for large air conditioners,  
6 that's 65,000 to 135,000 Btu per hour, and water source  
7 heat pumps can be based upon estimates rather than a  
8 sample. The operative word there is "estimates."

9 Secondly, the data will not be collected for  
10 package terminal air conditioners and package terminal  
11 heat pumps. This was not really intended from the begin-  
12 ning, but on the forms it's made explicit that we are not  
13 collecting data for those particular items.

14 And again, as discussed last week, the other  
15 changes, such as omitting the year 1978, have been removed  
16 from the packages.

17 CHAIRMAN IMBRECHT: Okay. Fine. I notice a  
18 lack of presence. I presume, then, that that resolves  
19 those concerns.

20 Let me ask, does anyone wish to be heard on this  
21 item? Yes, sir. Please come forward. Sorry. I didn't  
22 mean to prejudge the --

23 MR. MILLER: Rick Miller, and today I am represent-  
24 ing ARI, and I just have a question. Does the attached  
25 -- the attached items to the order, they are to become

1 a part of the order; is that correct? There are sheets  
2 that are labeled "General information for filling out forms,"  
3 and then Table 1?

4 CHAIRMAN IMBRECHT: Mr. Chamberlain?

5 MR. SLOSS: The order makes specific reference,  
6 I believe, to Table 1.

7 CHAIRMAN IMBRECHT: Does it incorporate by  
8 refernce? "As specified in the attached" -- yes, the  
9 answer I would say is yes.

10 MR. MILLER: Okay. Just a couple of clarifica-  
11 tions, then. On general information for filling out forms,  
12 Item No. 5, it states that manufacturers or their trade  
13 group representatives must submit information requested  
14 by March 31, 1986. In the order, this is listed as July  
15 31, 1986.

16 The second item would be on Table No. 1, under  
17 heat pumps, we feel that there should be a second category  
18 listing water source heat pumps with the data request for  
19 the year 1984. They are being included with the 65,000  
20 to 135,000 Btu, the commercial size units, and, therefore,  
21 should be so noted in Table 1.

22 Those are our only comments.

23 CHAIRMAN IMBRECHT: Any problem with that? All  
24 right. Fine. we'll take those and assume those as incor-  
25 porated in the motion.

1 MR. SLOSS: I would ask the Presiding Member  
2 of the Committee to --

3 CHAIRMAN IMBRECHT: Pardon me. Commissioner  
4 Noteware.

5 COMMISSIONER NOTEWARE: Thank you, Mr. Sloss.  
6 No, I have no problem with that either.

7 CHAIRMAN IMBRECHT: All right. Fine. I apolo-  
8 gize.

9 All right. With that, I assume a motion from  
10 Commissioner Noteware --

11 COMMISSIONER NOTEWARE: Yes.

12 CHAIRMAN IMBRECHT: -- and seconded by Commissioner  
13 Commons, that the order as presented relative to data  
14 requests from appliance manufacturers be approved. Is  
15 there -- does anyone else wish to be heard on this item?

16 Is there objection to a unanimous roll call?

17 Hearing none, "Aye's" four, "No's" none. The  
18 motion is carried.

19 (Item 8 under separate cover.)

20 CHAIRMAN IMBRECHT: All right. The next item  
21 to come before us is Commission Consideration and Possible  
22 Acceptance of the Sander Municipal Solid Waste Management  
23 Application for Certification submitted by Signal Environ-  
24 mental Systems, Inc., on September 3, 1985.

25 The AFC was determined to be incomplete by the

1 Commission on October 16, 1985. The Commission will consider  
2 supplemental data submitted by the applicant on November  
3 14, 1985, and I believe subsequent to that as well.

4 Mr. Ward, what's the current recommendation of  
5 the staff relative to this matter?

6 EXECUTIVE DIRECTOR WARD: Yes. Mr. Chairman,  
7 the current recommendation is that we accept the AFC as  
8 being data adequate.

9 Dorothy Dickey and Chris Tooker are -- have a  
10 couple of concerns that I believe the applicant also has  
11 discussed with the staff that they are prepared to discuss  
12 with the Commission relative to some areas that were iden-  
13 tified in the original Commission direction on October  
14 16th. They deal with relationship with the utility, and  
15 the submittal of information that they had to get from  
16 the utility.

17 CHAIRMAN IMBRECHT: Mr. Tooker?

18 MR. TOOKER: Yes. Thank you.

19 Subsequent to the last Business Meeting we con-  
20 cluded our analysis of information that was submitted to  
21 us on the 4th and 6th of December, and we have concluded  
22 that. with the exception of transmission system evaluation,  
23 all technical areas, including air quality, have been satis-  
24 fied.

25 That determination is based on comments provided

1 by the Air District with respect to the items that they  
2 found originally deficient.

3           We just recently have received today from the  
4 Air Board a letter identifying a number of concerns regard-  
5 ing the adequacy of the document. We have reviewed those  
6 and feel that most of those -- all of those virtually have  
7 to do with issues that would be before the Commission once  
8 the case is under review.

9           They are concerned that they have not yet received  
10 some of the technical data which is under a confidentiality  
11 review at this time, and we are -- we are trying to deal  
12 with that directly, but our review includes a review of  
13 that confidential -- or that data that is now proposed  
14 as being confidential, and we still feel that they have  
15 made an adequate filing with the exception of the area  
16 of transmission system evaluation at the time that this  
17 letter was written.

18           Subsequent to that, and as pointed out in the  
19 letter, to respond to the direction of the Commission we  
20 would require a joint agreement signed by the applicant  
21 and San Diego Gas and Electric indicating when remaining  
22 items on transmission system evaluation are to be provided.

23           I received a copy of that letter and docketed  
24 it today and have copies here for you. In addition to  
25 that, the docket has received 150 copies of the data

1 supplement that are required to make the document complete.

2 So all of the requirements spelled out in our  
3 letter of the 17th have been met.

4 COMMISSIONER CROWLEY: Mr. Tooker, you indicated  
5 that you have received the agreement from Signal and San  
6 Diego Gas and Electric; is that correct?

7 MR. TOOKER: Yes. I have a copy here that I  
8 would like to distribute to you.

9 COMMISSIONER CROWLEY: Yes. Thank you. And  
10 then could you give us an indication of when the three  
11 items will be provided according to their letter?

12 MR. TOOKER: Yes, I will.

13 CHAIRMAN IMBRECHT: Commissioner Commons.

14 COMMISSIONER COMMONS: Yes. I'd like to move  
15 we accept the Executive Director's recommendation.

16 CHAIRMAN IMBRECHT: The motion has been made  
17 to accept the recommendation to accept as completely data  
18 adequate the Sander MSW Application for Certification.

19 COMMISSIONER NOTEWARE: I second it.

20 COMMISSIONER CROWLEY: And the motion has been  
21 seconded by Commissioner Noteware.

22 Is there any objection to a unanimous ballot  
23 being cast?

24 Hearing none, that will be three "Aye's" indi-  
25 cating Commissioner -- Chair Imbrecht is absent, and

1 Commissioner Gandara is absent.

2 Did you have any comment that you would like  
3 to make, please?

4 EXECUTIVE DIRECTOR WARD: I would like to make  
5 one quick comment here. I have yet to make a decision  
6 on the issue of confidentiality for power purchase agree-  
7 ments.

8 COMMISSIONER CROWLEY: Um-hum.

9 EXECUTIVE DIRECTOR WARD: Before me today I have  
10 at least two requests. In both cases neither of the appli-  
11 cants have identified succinctly the necessity of confiden-  
12 tiality, and more specifically the necessity of confiden-  
13 tiality throughout the power purchase agreement, and also  
14 in accordance with the state law relative to confiden-  
15 tiality.

16 COMMISSIONER CROWLEY: When do you anticipate  
17 that you will --

18 EXECUTIVE DIRECTOR WARD: We have -- I still  
19 have not received responses from both utilities. I have  
20 letters that have been out to them for I guess the last  
21 eight or ten days, so I would suspect I would be receiving  
22 a response sometime by the middle of January.

23 That is -- the nature of my comment today is  
24 that the contract itself was included, as you will recall,  
25 in our data adequacy recommendation. If in fact

1 confidentiality is ultimately not granted, the applicant  
2 will have a couple of options to either concur that con-  
3 fidentiality is not granted with the staff and allow that  
4 to be subject to open evidentiary proceedings, or that  
5 they would seek to pull back that document and appeal the  
6 decision of the Executive Director.

7           In my recommendation, and just for the record  
8 today, is that if we do not have that document in one form  
9 or another, given the issue that I have just outlined,  
10 we would be going back to the Commission and saying we  
11 do not have adequate data at that point to -- to conduct  
12 the proceeding.

13           MS. DICKEY: I would like to note that Mr. Ward  
14 also has in his letter regarding the confidentiality of  
15 the power purchase agreement also made a determination  
16 that the applicant had not provided sufficient information  
17 to determine that nine other documents could be held con-  
18 fidential, and those documents were supplied by the  
19 applicant in response to the Commission's prior finding  
20 of data inadequacy.

21           So I think that the scenario that Mr. Ward has  
22 just outlined for the power purchase agreement would also  
23 be applicable to the other nine documents as well.

24           EXECUTIVE DIRECTOR WARD: Yes. Thank you.

25           MR. TOOKER: I would like to make one further

1 comment for clarification.

2 COMMISSIONER CROWLEY: Mr. Tooker.

3 MR. TOOKER: Yes. We have advised the applicant  
4 of this situation, and they are fully aware that if they  
5 were to determine to withdraw that information at some  
6 future date it would -- it would be their burden in terms  
7 of not providing an adequate data base for analysis, so  
8 they are fully aware of the situation.

9 COMMISSIONER CROWLEY: Any --

10 MR. TOOKER: One other item for the record, and  
11 with respect to the letter that I have given to you, on  
12 October 16th the Commission identified some time frame  
13 within which the applicant should provide information from  
14 San Diego Gas and Electric.

15 There is one item here, the final interconnection  
16 facilities agreement, which has a time frame I believe  
17 that goes beyond the time frame that was originally sug-  
18 gested in San Diego's letter filed in October. However,  
19 we do not believe that that is in excess of -- we believe  
20 that we would be able to live within the time frame in  
21 which that is to be provided.

22 COMMISSIONER CROWLEY: If it were timely.

23 MR. TOOKER: Yes.

24 COMMISSIONER CROWLEY: Is there any other comment?  
25 Ms. Dickie, do you have some additional comment?

1 MS. DICKEY: No.

2 COMMISSIONER CROWLEY: Anything further?

3 Then let's move to the Item 10, which is  
4 Consideration and Possible Designation of a Commission  
5 Committee to preside over the Sander Municipal Solid Waste  
6 Management AFC.

7 Would you like to wait two seconds until he sits  
8 down. Thank you.

9 CHAIRMAN IMBRECHT: Commissioenr Commons.

10 COMMISSIONER COMMONS: Yes. I would like to  
11 move that Chairman Imbrecht preside and Commissioner  
12 Noteware be the second.

13 CHAIRMAN IMBRECHT: On --

14 COMMISSIONER COMMONS: Sander.

15 CHAIRMAN IMBRECHT: Oh. Well, I had discussed  
16 -- we're on to -- I assume you have accepted the applica-  
17 tion?

18 COMMISSIONER CROWLEY: Um-hum.

19 CHAIRMAN IMBRECHT: All right. And that was  
20 on a three to nothing vote, and now we're on Item No. 10.

21 I had discussed this with Commissioner Noteware,  
22 who had indicated to me that he was prepared to accept  
23 assignment to this case, and I was going to recommend  
24 that we only assign Commissioner Noteware at this juncture,  
25 and then, depending upon whatever may occur relative to

1 membership of the Commission, and so forth, the first year  
2 that we then look at total workload assignments, et  
3 cetera, and try to reconcile it.

4 I believe we have set this precedent before by  
5 naming one member in order to initiate the initial pro-  
6 cesses to get the case underway. I frankly don't have  
7 strong objection to the other approach, but I thought this  
8 might be an appropriate one as well.

9 COMMISSIONER COMMONS: Well, let me state the  
10 reason I make the motion.

11 Commissioner Noteware has a very heavy siting  
12 case workload right now, and you have --

13 CHAIRMAN IMBRECHT: I raised that with him, and  
14 he nonetheless --

15 COMMISSIONER COMMONS: -- you have the lightest,  
16 and I know Commissioner Noteware may be interested in the  
17 MSW area and, as you can note from the motion, I wanted  
18 to see on the Commission two members who were not currently  
19 on municipal solid waste, because I don't think we should  
20 develop an expertise in an area, but all Commissioners  
21 should --

22 COMMISSIONER CROWLEY: You're not going to.

23 COMMISSIONER COMMONS: -- all Commissioners should  
24 become knowledgeable in different areas.

25 He also -- Commissioner Noteware has the

1 Electricity Report, which is going to be very heavy, and  
2 I think in the balancing the -- one case that you have,  
3 Mr. Chairman, and I have a -- a corresponding case is being  
4 withdrawn from the Commission, so you essentially have  
5 no cases on which you are presiding at this time, and --

6 CHAIRMAN IMBRECHT: That's not true. I've got  
7 El Segundo, which starts Friday.

8 COMMISSIONER COMMONS: All right. You have one  
9 case, and I think --

10 CHAIRMAN IMBRECHT: Well --

11 COMMISSIONER COMMONS: -- in the balancing of  
12 the workload, that's the reason I make the motion the way  
13 it is, the way I made it.

14 CHAIRMAN IMBRECHT: All right. I'm not going  
15 to --

16 COMMISSIONER CROWLEY: Does that suit you?

17 CHAIRMAN IMBRECHT: Sure.

18 COMMISSIONER NOTEWARE: Yes. That's --

19 COMMISSIONER CROWLEY: May I make a comment,  
20 please?

21 CHAIRMAN IMBRECHT: Sure. Commissioner Crowley.

22 COMMISSIONER CROWLEY: Could I ask that you,  
23 in the interest of simplifying the rest of our lives,  
24 become the second, and then maybe transfer it to someone  
25 else after the first of the year, because if there is no

1 second all the offices get everything.

2 CHAIRMAN IMBRECHT: Actually --

3 COMMISSIONER COMMONS: Well, my motion was that  
4 Mr. Imbrecht would be the Presiding Member --

5 CHAIRMAN IMBRECHT: That's right.

6 COMMISSIONER COMMONS: -- and Mr. Noteware would  
7 be the second.

8 COMMISSIONER CROWLEY: Well, as I --

9 CHAIRMAN IMBRECHT: For the time being, I'm  
10 elected.

11 COMMISSIONER CROWLEY: My point is I would like  
12 two people designated.

13 CHAIRMAN IMBRECHT: That's why I -- for the time  
14 being I'm willing to accept that.

15 COMMISSIONER CROWLEY: Okay.

16 CHAIRMAN IMBRECHT: We may deal with that later  
17 on, so that's fine. I'm not going to object to that motion.  
18 The motion is made by Commissioner Commons. I'll second  
19 it, myself as Presiding, Commissioner Noteware as the  
20 second member on the Sander case.

21 Is there objection to the unanimous roll call?  
22 Does anyone wish to be heard on that item?

23 Is there objection to the unanimous roll call?

24 Hearing none, "Aye's" four, "No's" none. The  
25 Committee is so designated.

1           The next item to come before us is Commission  
2 consideration and possible action on joining Attorney  
3 General Van de Camp's lawsuit with respect to the Department  
4 of Transportation's decrease of miles per gallon standards  
5 for motor vehicles.

6           Commissioner Commons.

7           COMMISSIONER COMMONS: Yes, Mr. Chairman.

8           As I think some of us are aware, my understanding  
9 is this first came to the attention of this Commission vis-  
10 a-vis the Los Angeles Times, and I brought this matter  
11 to the Executive Committee session, in that this was liti-  
12 gation, and so there was a potential for us to be involved  
13 in litigation, and there might have been matters that I  
14 was unaware of in the litigation, but I thought prior to  
15 it being brought to this Commission we should verify with  
16 our legal counsel that there were no litigation elements.

17           In the Executive Session, we -- I don't want  
18 to say what the vote was, that's not appropriate, but it  
19 was -- it's brought before us for public discussion.

20           I have three reasons that I think this should  
21 be brought before us. First is energy policy, of which  
22 cafe standards are very important. I think it's the proper  
23 province for the Energy Commission. I think this is an  
24 area that we have developed expertise, and it is appropriate  
25 for this Commission to review cafe standards from

1 California's perspective to state a position and to assess  
2 it in terms of the impact on the economy of California,  
3 and I am remiss that the Attorney General's Office did  
4 not contact us and ask what our viewpoint was, vis-a-vis  
5 this very important area.

6 The second is this Commission tends to, on major  
7 matters, I think, properly be reflective, and when we do  
8 take actions that can have significant consequence on our  
9 economy, on the business community, we do so after due  
10 notice and hearings, and I believe the action involved  
11 in this lawsuit is extremely complicated and is not one  
12 that I would be willing at this time to be able to take  
13 a position in one way or the other as to what are the rela-  
14 tive merits of the issue.

15 Where I think this Commission ought to be going,  
16 and I've expressed this to the Fuels Policy Committee  
17 beforehand on innumerable occasions, is that we should  
18 conduct hearings in this area, but not on the emphasis  
19 as to what should be done in the short term, but where  
20 are we going in the long run.

21 I think it's going to be very easy for the public  
22 to relax and not be concerned in terms of oil energy depen-  
23 dency, and the amount of oil that's involved in a one-year  
24 relaxation is not going to be significant.

25 If we're talking about what would happen over a

1 five- or ten-year period, and the amount of oil and what  
2 our capability is, I think it's certainly appropriate that  
3 this Commission do conduct hearings, and that we establish  
4 a position over the long run.

5 But I am very concerned that here is an area  
6 that I think is very properly within our province, and  
7 it's a major policy action, and we as a Commission have  
8 not been asked our viewpoint and have not stepped in, so  
9 I think it's appropriate that it come before us, we look  
10 at it today and accept testimony, and then try to estab-  
11 lish some policy direction as to where we ought to go in  
12 the future.

13 MR. CHAMBERLAIN: Mr. Chairman --

14 CHAIRMAN IMBRECHT: Yes, Mr. Chamberlain.

15 MR. CHAMBERLAIN: Pursuant to direction of the  
16 Commission, I asked Craig Thompson of the Attorney General's  
17 Office to attend this meeting in order to be able to give  
18 us a briefing on their litigation, and Craig is here and  
19 can give you that briefing now.

20 CHAIRMAN IMBRECHT: Thank you.

21 MR. THOMPSON: Okay. This is not going to take  
22 terribly long because there isn't much to say about the  
23 litigation so far, really, but I would like to tell you  
24 that I did talk to Commission staff before the lawsuit  
25 was filed. I talked to Chris Ellison, Legal Counsel Office.

1 He was of the opinion that the Commission probably would  
2 not be interested in the lawsuit sufficiently that I ought  
3 to do anything formal, so that's where it stopped, but  
4 I did talk to him before we filed the lawsuit about a week  
5 or so before we filed.

6 The -- I take it -- I would like to have some  
7 indication of about how familiar people are with the cafe  
8 standards in the first place. I can start out a little  
9 bit and tell you where this program came from, and -- if  
10 that would be useful to anyone.

11 COMMISSIONER NOTEWARE: I think we're pretty  
12 well up to speed.

13 MR. THOMPSON: This particular lawsuit came out  
14 of the fact that in the beginning of this year G.M. and  
15 Ford both asked for a relaxation of the 27.5-mile-per-  
16 gallon standard that was already in effect as their cafe  
17 requirement to 226.

18 The 27.5 was set back in 1975 by Congress in  
19 the Act, and it went into effect in 1985, and although  
20 Ford and G.M. and several other manufacturers did not in  
21 fact meet it in 1985, there were no penalties because there  
22 is a very complicated carry-back and carry-forward provision  
23 in the Act that allows you to both -- receive a credit  
24 for both excess mileage that you achieved in the past three  
25 years, and excess mileage that you propose to achieve in

1 the next three years.

2           So by calculating what they had done in the  
3 earlier '80s and hope to do in the later '80s, they managed  
4 to avoid any penalties for last year, although I've read  
5 a recent article that Ford may actually pay a fairly small  
6 amount of penalties for last year.

7           Jaguar in fact last week was the first manufac-  
8 turer ever to pay any penalties under the program.

9           As you probably know, this -- the Act does not  
10 bar the sale of any cars. It just imposes a penalty of  
11 five dollars per tenth of a mile per car that the manufac-  
12 turer fails to meet the standards, so it's -- until the  
13 end of the year you don't actually know how far you missed.

14           The National Highway Traffic Safety Administrat-  
15 tion filed their rulemaking -- the final rulemaking on  
16 October 4th. We filed our lawsuit along with petitions  
17 by the Cities of New York, Chicago, Boston and Philadelphia,  
18 a separate petition by the City of Los Angeles, and a  
19 separate petition by public citizens and some other public  
20 interest groups, such as the Center for Auto Safety, and  
21 we have just gotten a petition to intervene on the defen-  
22 dant's side by General Motors and the Automobile Importers  
23 Association, and I just received today a petition to inter-  
24 vene on our side filed by New York State, their Attorney  
25 General.

1           We have two basic points, and I have to be  
2 awfully basic, because this is one of these federal rule-  
3 makings where all you start out with is essentially a  
4 notice of appeal to the District Court -- I mean to the  
5 Circuit Court. You don't have to file a brief to start  
6 out with, you don't have to file a complaint. It's just  
7 a one-page document saying that you are seeking to review  
8 the rulemaking.

9           So we haven't seen all the record. We haven't  
10 gone into any kind of, you know, depth in looking at the  
11 cases and things, but I can tell you the two basic points.

12           First, we don't think that NHTSA correctly deter-  
13 mined that it wasn't feasible, which is the standard they  
14 had to work with, to meet the 27.5-mile-per-gallon stan-  
15 dard. I think the best evidence of that is the fact that  
16 Chrysler did meet it for the last year.

17           We think that NHTSA also misapplied and misinter-  
18 preted the evidence before it in concluding, among other  
19 things, that the need for energy conservation is not as  
20 great now as it was in 1975. That's basically one of the  
21 prongs of the feasibility test, and they said, well, we're  
22 importing a lot less oil now, and so it's not quite as  
23 critical as it was in 1975.

24           Second, and probably the main prong of our par-  
25 ticular petition, is going to be their environmental

1 analysis. They concluded that the action was not going  
2 to have any significant environmental effect and, there-  
3 fore, they didn't need to file a full environmental impact  
4 statement. Their environmental documents may be 40 pages  
5 long, and the final one is called an environmental assess-  
6 ment.

7           They admit, however, that it will cost -- that  
8 it will take approximately one and a half billion more  
9 gallons of gasoline over the lifetime of these cars, and  
10 if you translate that into California oil off the Coast,  
11 for example, that could work out to about a hundred million  
12 gallons -- I mean a hundred million barrels, excuse me,  
13 of oil, which is, depending on Interior's figures, about  
14 as much oil as is actually at issue in the moratorium pro-  
15 posal.

16           So we find it very difficult to believe that  
17 that doesn't have an environmental impact to burn that  
18 much additional oil, and they don't even discuss the issue  
19 of where this oil comes from. They -- to the extent they  
20 do, they say, well, it will probably be imported oil, so  
21 we don't have to worry about the effects, but we just  
22 don't think that's accurate.

23           Because they found that there were really no  
24 impacts to worry about, they didn't analyze any possible  
25 mitigation measures that they otherwise would have had

1 to do, for example they could have set the -- rolled back  
2 the 1986 standard to 26, and then said, well, they are  
3 going to impose increasingly strict standards in the fol-  
4 lowing years to make up for that. There's no discussion  
5 about that, and they didn't really analyze any alternatives  
6 such as -- you know, anything in between 27.5 and 26, not  
7 considered at all.

8           They also have a number of pretty obvious pro-  
9 cedural defects in the way they did their environmental  
10 documents. They didn't bother to set up the scoping ses-  
11 sion, which you are supposed to do, to allow parties to  
12 comment on what kind of things that should be considered  
13 in it. They didn't bother -- in fact, in the final rule-  
14 making, or in the Notice of Proposed Rulemaking which came  
15 out in July, all the notice says is that there is an  
16 environmental document available, period. It doesn't even  
17 say there's a comment period on it, it doesn't suggest  
18 what it is, what it's going to do for anyone, what you  
19 talk about.

20           So we are probably going to focus mainly on the  
21 National Environmental Policy Act issues. I expect public  
22 citizens and the other ones -- the other public interest  
23 groups to focus mainly on the feasibility issue.

24           There's not a whole lot else to tell you about  
25 the lawsuit from where we are right now.

1 CHAIRMAN IMBRECHT: Okay. Thank you very much.

2 Is there anything -- let me inquire. Did you  
3 examine the implications, vis-a-vis domestic content of  
4 vehicles and the relationship that that may have to the  
5 ability of domestic manufacturers to comply or to avoid --

6 MR. THOMPSON: No. We think, based on their  
7 own rulemaking, that you can -- you can determine that  
8 it was feasible. Basically, they determined it was not  
9 feasible because it was unforeseeable that people would  
10 start liking bigger cars, and that Ford and GM just  
11 stumbled into the situation of being under the standard,  
12 and --

13 CHAIRMAN IMBRECHT: Are you aware that they can  
14 avoid compliance --

15 MR. THOMPSON: Pardon me?

16 CHAIRMAN IMBRECHT: Are you aware that they can  
17 avoid compliance with the cafe standards by simply chang-  
18 ing the nature of what is characterized as their domes-  
19 tically produced fleet, i.e., export percentage of their  
20 big-car manufacturing process through Mexico --

21 MR. THOMPSON: That's right.

22 CHAIRMAN IMBRECHT: -- and Canada, and other  
23 countries, export jobs as a consequence as well, and yet  
24 continue to sell those vehicles and, from all practical  
25 perspectives in the American-purchasing public purchasing

1 a large --

2 MR. THOMPSON: Ford has threatened to do that,  
3 in fact. In fact they have already taken an action saying  
4 they are going to do it. I don't know whether it's really  
5 going to happen or not.

6 It's true that that can happen in theory. I  
7 don't know whether they are actually going to do it and  
8 what's going to happen. The fact that it's true results  
9 from a failure of perception by Congress of how this could  
10 be used. It's the only reason that that loophole exists  
11 in the law, is that when Congress was writing this law  
12 in 1975 they simply assumed that imported cars always have  
13 higher gas mileage than American cars. That's basically  
14 what their assumption was.

15 And so they -- in order to prevent --

16 CHAIRMAN IMBRECHT: Try driving a rotary Mazda.

17 MR. THOMPSON: Yeah. They were worried about  
18 forcing manufacturers overseas, and they didn't want to  
19 have General Motors and Ford and Chrysler buying a fleet  
20 of fuel-efficient Japanese cars and counting that as part  
21 of their domestic fleet and thereby avoiding penalties and,  
22 you know, exporting jobs. That's the reason that's in  
23 the law, which now Ford has figured out that it works the  
24 other way, too, and they could build more foreign cars,  
25 average them in with a smaller fleet of foreign cars that

1 they buy from someone else, and avoid penalties on the  
2 rest of their domestic fleet.

3           It seems to me that if this actually comes to  
4 pass Congress might want to look at the way the statute  
5 is written again, because the entire purpose of that pro-  
6 vision in the statute was to prevent the exportation of  
7 jobs, and that's what Ford is trying to do by taking advan-  
8 tage of it.

9           CHAIRMAN IMBRECHT: Okay. Thank you.

10           Further questions by members of the Commission?

11           All right. Does anyone else wish to be heard  
12 on this item?

13           Okay. I don't think anybody is proposing action  
14 at this point in time. Well, let me ask, is anyone pro-  
15 p ing action? I didn't -- I understood you to say in  
16 your opening remarks that that was not the case.

17           COMMISSIONER COMMONS: No. What I think we should  
18 do, Mr. Chairman, is to refer the whole area of cafe and  
19 the long-term oil matter to the Rules Policy Committee,  
20 and to encourage that committee to list the viewpoints  
21 of various persons as to where this data ought to be going,  
22 and I want to emphasize the long run rather than the short-  
23 term.

24           CHAIRMAN IMBRECHT: I agree with you.

25           Okay. I don't think there's objection to that,

1 and if -- hearing none, that will be my order, and that  
2 goes to Fuels Policy composed of Commissioner Gandara and  
3 myself.

4           Okay. That deals with the last substantive item.  
5 Are there objections to the minutes as presented?

6           Actually, I think there were none last week.  
7 I presume there are none now, and that they are approved  
8 as presented.

9           The Commission Policy Committee Reports, I would  
10 like to make a brief report on the Budget Management  
11 Committee on behalf of our BCP process.

12           I have indicated to each of you prior to this  
13 point in time where we stood relative to the approval of  
14 our contract proposals, et cetera. The fact that 8.3 of  
15 the 9.5 million which we have requested was approved, and  
16 that that represented a significant increase of approxi-  
17 mately \$3 million over the current year for that portion  
18 of our activities. I also indicated to you that there  
19 were outstanding issues relative to our BCP requesting  
20 that the 12 and a half limited-term positions in the Siting  
21 Division be made permanent positions, based upon the con-  
22 tinuing workload which we face.

23           I am happy to report to you that the Governor's  
24 Chief of Staff concurred in a meeting yesterday morning,  
25 and the Governor concurred personally yesterday afternoon,

1 and that will be reflected in his budget proposal to the  
2 Legislature.

3           In addition, there was an outstanding issue about  
4 an augmentation to the Naylor account, and I am also happy  
5 to report to you that if you listen carefully to the  
6 Governor's State of the State, you are likely to hear  
7 favorable news on that item as well, and I think that it's  
8 appropriate for him to be in a position to make that  
9 announcement, and I would just indicate to you that he  
10 will be delivering his address to the Legislature on  
11 January 9th, and his budget will be released on January  
12 10th, and I think that speech is scheduled for 5:00 p.m.,  
13 and I believe that you will all be quite happy with the  
14 announcements which he makes at that point in time.

15           In addition, I'm going to be changing hats a  
16 little bit like Mr. Gardner for a moment and putting on my  
17 hat as Presiding Member of the Fifth Biennial Report,  
18 and just indicate to you that yesterday I was invited to  
19 make a presentation to the Governor's Cabinet for approval  
20 of an Executive Order implementing the recommendation  
21 carried in the Biennial Report relative to increased  
22 deficiency investment by -- by the State of California  
23 in state institutions and buildings.

24           And I can report to you that that was unanimously  
25 approved by the Cabinet, and now awaits the Governor's

1 signature, and I'm confident that that will occur, based  
2 upon representations made by his Chief of Staff.

3 I'm trying to go through my day yesterday, and  
4 back up a little bit on the budget and just say that we  
5 will enjoy a significant increase in our budgets as a  
6 consequence of a variety of actions. Every BCP which we  
7 submitted this year, which I think is unprecedented, was  
8 approved by the Department of Finance and by the Governor.  
9 The only modifications were the slight reductions in the  
10 BCP's which I reported to each of you several weeks ago,  
11 and I think that's a reflection of the confidence that  
12 the Executive Branch has in the Commission, and the state-  
13 ment both to the members of the Commission and even I think  
14 more strongly to the staff of the Commission, the confi-  
15 dence that has been generated and the support that we are  
16 receiving.

17 We also are picking up two additional PY in  
18 Accounting and in Personnel as a consequence of those  
19 decisions. In any case, when the budget is announced for-  
20 mally on January 10th, the Commission is undoubtedly going  
21 to be in its strongest position in its history in respect  
22 to all budget and personnel issues that we have raised.

23 Further, there was discussion, and while I don't  
24 have final approval and, therefore, I don't want to go  
25 into the details at this juncture, I will just indicate

1 to you that, as the designee of Secretary Van Vleet on  
2 the Petroleum Violation Escrow Account Task Force, there  
3 were two meetings held this week, frankly on very short  
4 notice, and it is my expectation that, again assuming final  
5 approval by the Governor, that there will be line items  
6 in the budgets for at least an overall proposal for expen-  
7 ditures carried in the A pages of the budget, that will  
8 contemplate the acceptance by the State of California of  
9 the Exxon-related PVA overcharge funds. Those total approxi-  
10 mately \$202 million and are anticipated to be received  
11 in the spring of this coming year.

12           Again, I think that we should await the  
13 Governor's formal announcement, but I will just indicate  
14 to you that there is some extraordinarily good news for  
15 the Commission in the decisions that were taken forward  
16 to him by the Director of Finance yesterday.

17           A rough ratio of PVA funds similar to that which  
18 we received in smaller increments of around \$30 million,  
19 that has been distributed currently, but obviously when  
20 you are talking \$200 million the implications are dramatic  
21 for our programs.

22           I will just indicate to you that both in conser-  
23 vation and in development and in assistance to local govern-  
24 ment, agriculture and small business community, it is my  
25 expectation that we will -- the recommendation to the

1 Legislature will be that the Energy Commission receive  
2 far and away of the lion's share of the totality of the  
3 funds which are at stake.

4           There were also appropriations suggested for  
5 the Office of Economic Opportunity, and the Department  
6 of General Services, the University of California CSU  
7 System, and I believe a small one for the Department of  
8 Transportation.

9           From a percentage standpoint, my expectation  
10 is that somewhere in the neighborhood of 65 to 70 percent  
11 of the total funds are slated to ultimately be repositied  
12 here at the Energy Commission. I can assure you that the  
13 Director of the Department of Finance has been notified  
14 by me personally as to the implications that has for our  
15 personnel levels, and there is an agreement that that will  
16 be accommodated, assuming that the approval goes forward.

17           I guess all in all you can say that we had a  
18 pretty successful day at the bank yesterday, and we can  
19 look forward to a very strong, financially stable oppor-  
20 tunity to serve the people in the coming fiscal year, and  
21 to do some very creative things.

22           Many of the programs which we have advocated  
23 for some time and which we have been turned down on for  
24 two or three years have now been embodied favorably in  
25 these decisions.

1           That's the extent of my Budget Report. I would  
2 just also like to extend a special thanks to Mr. Ward,  
3 the Executive Office, Mr. Donaldson, Mr. Wallace, and all  
4 the people in the Budget and Accounting Office that assisted  
5 in putting together what has increasingly become the most  
6 professional presentation that the commission has put for-  
7 ward, and I think that the results speak for themselves,  
8 and I would like to suggest to you, Mr. Ward, that you  
9 prepare some commendations to those people to be added  
10 to their personnel files.

11           If I have no objection from the members of the  
12 Commission on that direction. Okay.

13           Any other Committee Reports?

14           All right. Executive Director Report.

15           EXECUTIVE DIRECTOR WARD: I might just add that  
16 the Section 27, which is the --

17           CHAIRMAN IMBRECHT: Oh. I forgot that one this  
18 morning.

19           EXECUTIVE DIRECTOR WARD: -- the mechanical pro-  
20 cedure that we used to augment the current year budget  
21 has been approved at the staff level at Finance and is  
22 going forward to the Director of Finance. I would not  
23 anticipate any difficulty, and we'll keep you informed  
24 as to the progress of that contract augmentation.

25           CHAIRMAN IMBRECHT: I was under the impression

1 that had been approved by the Governor as well.

2 EXECUTIVE DIRECTOR WARD: That was not my impres-  
3 sion, but I could be wrong.

4 CHAIRMAN IMBRECHT: I'm quite confident it was.  
5 I neglected to mention that the \$3 million augmentation  
6 to the existing fiscal year siting responsibilities of  
7 the Commission has been approved, and I apologize for  
8 neglecting to mention that one. I had so many to try to  
9 remember that 3 million kind of gets lost in the context  
10 of 200 million, but in any case...

11 In addition, at our suggestion, the Governor's  
12 Legal Affairs Secretary has been designated by his Chief  
13 of Staff to preside over an interagency task force to  
14 facilitate the expeditious mechanical steps for those funds  
15 to flow to the Commission by February 1st, and that will  
16 be a group composed of representatives of the Department  
17 of General Services, the Department of Finance, the State  
18 Personnel Board, and the Department of Personnel Administra-  
19 tion, and I believe the Attorney General's Office as well,  
20 and I hope that that will obviate the difficulties that  
21 we have expressed in the past mechanically on some of these  
22 items.

23 Commissioner Commons.

24 COMMISSIONER COMMONS: Yes. Could we request  
25 someone to contact Commissioner Gandara, because I think

1 we were about ready to adjourn.

2 CHAIRMAN IMBRECHT: You are absolutely correct,  
3 because we are holding the roll open for him on the  
4 Placerita case, and if he is going to come down now is  
5 the time to take a brief recess on Sycamore.

6 COMMISSIONER COMMONS: The other is --

7 CHAIRMAN IMBRECHT: Thank you, Commissioner  
8 Commons.

9 COMMISSIONER COMMONS: -- is Item 18 on our  
10 agenda?

11 CHAIRMAN IMBRECHT: I think that's become moot.

12 MR. CHAMBERLAIN: Commissioner Commons, unfor-  
13 tunately that contract has become moot through the contrac-  
14 tor having developed other business that prevents him from  
15 spending the time that he had expected to spend for us.

16 COMMISSIONER COMMONS: So this item is withdrawn?

17 MR. CHAMBERLAIN: Yes.

18 CHAIRMAN IMBRECHT: All right. General Counsel's  
19 Report.

20 MR. CHAMBERLAIN: Yes, Mr. Chairman. Simply  
21 some good news. Apparently the Department of Energy and  
22 the Department of Justice at the federal level have decided  
23 not to petition for certiorari in the case involving the  
24 no-standard standards, so that case is now final.

25 CHAIRMAN IMBRECHT: All right. Is there any

1 member of the pbulic that wishes to address the Commission?

2 Hearing none...

3 (Further remarks on Agenda Item 8 under separate  
4 cover.)

5 CHAIRMAN IMBRECHT: And I guess we can be patient  
6 here just for a moment and see if we can accommodate  
7 Commissioner Commons. If one of you would like to go,  
8 you are -- actually, why don't we just take a brief recess  
9 and I think only one of you need to stay with me. That  
10 will allow us to have a quorum when Commissioner Gandara  
11 returns, and we can close the roll on that item.

12 COMMISSIONER CROWLEY: Okay. Fine.

13 CHAIRMAN IMBRECHT: So we'll take a five-minute  
14 recess and reconvene.

15 (Short recess.)

16 CHAIRMAN IMBRECHT: We'll call the meeting back  
17 into session.

18 As I indicated, we are holding the roll open  
19 on Item No. 8, I believe it was -- let's see.

20 COMMISSIONER CROWLEY: Item 6.

21 CHAIRMAN IMBRECHT: Item No. 6, which is  
22 Commission Consideration and Possible Approval of the  
23 Committee Proposed Decision recommending granting the AES  
24 Placerita Application for a Small Power Plant Exemption.

25 As I indicated, Commissioner Gandara indicated

1 a desire to file a concurring but separate opinion on this  
2 decision.

3 For purposes of that, Commissioner Gandara, would  
4 you care to cast your vote?

5 COMMISSIONER GANDARA: Might I ask what the  
6 options are available to me first?

7 CHAIRMAN IMBRECHT: Well, it was our understand-  
8 ing that in order for you to file a concurring opinion  
9 you needed to be a record at the vote, and so that's why  
10 we held the roll open --

11 COMMISSIONER GANDARA: I appreciate --

12 CHAIRMAN IMBRECHT: -- and we were holding the  
13 roll open to extend the courtesy to you so you could file  
14 that opinion.

15 COMMISSIONER GANDARA: I appreciate the  
16 Commission's courtesy. I regret I was not able to be here  
17 earlier. I was just wondering whether procedurally we  
18 are in a situation, since we are calling the roll, we are  
19 precluded from -- I am precluded from perhaps attempting  
20 to persuade my fellow commissioners that my concurring  
21 opinion should be the majority opinion, or --

22 CHAIRMAN IMBRECHT: Well, what I always like  
23 -- as I indicated, I think I have a sense of where you  
24 are headed with the concurring opinion by virtue of some  
25 communications between our staffs.

1 I indicated when this item was before us that  
2 I was going to ask you to circle your concurring opinion  
3 to me and to the other members of the Commission, and we  
4 may choose to sign your concurring opinion as well. In  
5 the event the majority of us do, it would seem to me that  
6 would have then become the controlling opinion relative  
7 to the particular aspect of the case that you intend to  
8 address.

9 Am I correct in assuming it has to do with the  
10 need?

11 COMMISSIONER GANDARA: Yes. So people will not  
12 be in suspense, let me just indicate, then, that if that  
13 is the procedure you have indicated, that I will cast my  
14 vote as an "Aye" concurring, and that I will write my  
15 opinion and so circulate it so that people will under-  
16 stand where I'm coming from. I will indicate that I do  
17 concur with the findings of the minimal environmental  
18 impact, which is the first required finding.

19 With respect to the second element, I very much  
20 appreciate the elucidation and the amount of time, and  
21 I think the many thought-provoking ideas that are in the  
22 Committee's proposed decision, but at least with respect  
23 to my view I feel that there is a bit of an inconsistency  
24 requiring demand conformance when the statute exempts small  
25 power plants from conformance, period, and so my view

1 would be that you just need to conduct an examination of  
2 the need for the power in the service area, and to assess,  
3 and only in a gross comparison, as to whether the small  
4 power plant is going to in fact be in excess of that, and  
5 I think in no way, given the need that's indicated in  
6 the proposed decision, was 98 megawatts in excess of that,  
7 so that my concurring -- I concur with the result, but  
8 I sort of feel that this is a matter of policy, since this  
9 is the first -- I believe it is the first Small Power Plant  
10 Exemption since the new BR, that we ought to be to some  
11 extent indicating policy for other small power plant per-  
12 mitees, and that the indication at least that I would like  
13 to give is that in fact the whole intent and purpose of  
14 the statute was to expedite, to simplify, to in fact make  
15 an exemption from conformity, and that for that reason  
16 that would be what I would include.

17 I say that with all due respect to Commissioner  
18 Commons in the BR Committee's deliberations.

19 COMMISSIONER CROWLEY: Mr. Chairman --

20 CHAIRMAN IMBRECHT: Yes. Commissioner Crowley.

21 COMMISSIONER CROWLEY: I would like to inquire  
22 of counsel, there were voice votes recorded. We have not  
23 seen the submittal by Commissioner Gandara. What is --  
24 is it possible that we might, if we agreed with that, be  
25 -- continue our "Aye" vote but concur with his --

1 MR. CHAMBERLAIN: His opinion -- I mean you  
2 granted the exemption today, and his opinion could be  
3 incorporated in the decision if a majority of the  
4 Commissioners decide to sign it.

5 COMMISSIONER CROWLEY: Thank you.

6 CHAIRMAN IMBRECHT: And so what I would like  
7 to suggest, as I did earlier, is that Commissioner Gandara  
8 prepare his concurrence, circulate it to the other members  
9 of the Commission for their consideration, and the vote  
10 is five-oh on approval of the Small Power Plant Exemption,  
11 and we will consider the arguments that Commissioner  
12 Gandara makes in that context.

13 Commissioner Commons.

14 COMMISSIONER COMMONS: Well, I want to ask the  
15 question in the framework that we have other --

16 CHAIRMAN IMBRECHT: You can argue against if  
17 you want to. That's fine.

18 COMMISSIONER COMMONS: We have other Small Power  
19 Plant Exemption cases going down the road, and if we have  
20 a majority of the Commission who wants to look at them  
21 one way, I feel it's imperative as an instruction, to at  
22 least myself as the Presiding Member of one, to get an  
23 understanding of the direction of the Commission, so I do  
24 not undertake hearings and conduct -- conduct a proceeding  
25 in a different direction.

1           Let me ask my question. Is it your viewpoint  
2 that the various need tests, for example load-following  
3 or oil and gas displacement, are not relevant in a small  
4 power plant exemption case, and that the only thing that  
5 we should ask is whether or not there -- this will cause  
6 excess energy?

7           COMMISSIONER GANDARA: The question of relevancy  
8 I think is different from the question that controlled  
9 the factors of the decision. I do happen to believe that  
10 the statute overrides the issues of relevancy with respect  
11 to those particular elements, so that, as I have indicated  
12 before various points of view that I have had when we have  
13 a direct statutory direction, which seems to not be embel-  
14 lished very much and doesn't seem to be very ambiguous,  
15 and because of that I would conclude that if the statutory  
16 direction is clear and it appears to be very clear, that  
17 I see no reason why there should be -- why additional  
18 requirements of policy considerations would override that,  
19 so, in a nutshell, I think, do I believe that they are  
20 relevant for policy, yes; do I believe that policy gives  
21 weight to the statute, yes.

22           COMMISSIONER COMMONS: All right. The statute,  
23 if I'm not incorrect, does not say "shall." It says the  
24 Commission "may," and so it's discretionary.

25           I would like, since this is the first I've heard

1 of this, and I'm particularly concerned because of -- not  
2 this case, but Commissioner Noteware and myself are trying  
3 to wrap up the IBM case, and this would affect it signifi-  
4 cantly.

5 I would like to request that this item be agen-  
6 dized, not as to Placerita, but as to Commission direction  
7 on SPPE's, and that we allow any parties to come and tes-  
8 tify, and that we not necessarily take formal action, but  
9 that we may, so at least I can have some policy direction  
10 as to how we wish to interpret it.

11 I think we have two issues --

12 CHAIRMAN IMBRECHT: Commissioner Commons --

13 COMMISSIONER COMMONS: Let me -- give me one  
14 minute, Mr. Chairman.

15 CHAIRMAN IMBRECHT: Oh, all right.

16 COMMISSIONER COMMONS: I think we have two issues.  
17 The first issue is, is this a policy issue or does the  
18 statute direct us as to how we have to proceed. I think  
19 that's the first question that we must ask ourselves is,  
20 in a small power plant exemption case, does this Commission  
21 have the policy -- policy alternatives as to how we wish  
22 to proceed, and in the Placerita case we did have briefs  
23 submitted by staff and the applicant on this matter. I  
24 think that's the first issue.

25 And then the second issue is, if it is a policy

1 issue, what is the policy direction of the Commission,  
2 and I would like to request the Secretariat that this item  
3 be placed on the -- on the agenda, and that, at least for  
4 the IBM Committee and any other SPPE's, we may get some  
5 directives from the Commission.

6 CHAIRMAN IMBRECHT: I hope by delaying it till  
7 January 8th that that doesn't delay the IBM case any fur-  
8 ther. I would just like to suggest to you that I ordinarily  
9 only do deal with concurrences. I think we have suggested  
10 ten days or thereabouts, and that would provide a more  
11 expeditious resolution of this matter than waiting until  
12 January 8th.

13 So, why don't you wait and see whether in fact  
14 you get direction by virtue of --

15 COMMISSIONER COMMONS: Well, I'm requesting,  
16 Mr. Chairman, that it be --

17 CHAIRMAN IMBRECHT: All right. You've made your  
18 request. So, that's fine. We'll honor it. Okay?

19 COMMISSIONER COMMONS: In terms of your request  
20 as to whether it will delay IBM, a letter has been sent  
21 out on the IBM schedule as of today, and there will be  
22 no change in that schedule, other than possibly even to  
23 expedite it.

24 It's not possible to expedite it further, because  
25 it's supposed to come before this Commission January 22nd,

1 and unless we put it on the agenda tomorrow for the 8th,  
2 that would be the earliest date it could be heard anyway.

3 CHAIRMAN IMBRECHT: Okay.

4 MR. CHAMBERLAIN: Mr. Chairman --

5 COMMISSIONER GANDARA: If I might have one final  
6 comment --

7 CHAIRMAN IMBRECHT: Yes. Commissioner --  
8 Commissioner Gandara.

9 COMMISSIONER GANDARA: I'm very conscious of  
10 Commissioner Commons's response, and I hope that I have  
11 not offended him in any way, because I -- I do think a lot  
12 of good work has gone into much of the thinking behind  
13 the decision, but I would like to at least respond to one  
14 point, that my views on this are not new and they are not  
15 recent, that in fact I articulated them as one of the  
16 potential conflicts in the adoption of the BR 5 policy,  
17 not only with respect to SPPE's, but also with respect to  
18 cogeneration criteria, the efficiency criteria in parti-  
19 cular, where I raised the two issues, where the statute  
20 with respect to the definition of cogeneration and, secondly,  
21 with respect to SPPE's, was in an apparent different thrust  
22 from some of the concerns over the reserved need in which  
23 there was an encouragement very clearly of cogeneration,  
24 and a concern expressed in the reserved need of a neces-  
25 sary constraint.

1 I think that I have very properly given notice  
2 of almost seven or eight months of my concerns in this  
3 area, so I just wanted to add that particular element.

4 CHAIRMAN IMBRECHT: Okay. I appreciate that.  
5 I would hope we don't belabor this. I appreciate -- I  
6 personally think there is a distinction between the small  
7 power exemptions and the cogeneration issue, and we can  
8 air all of that at some future point in time. But --

9 MR. CHAMBERLAIN: Mr. Chairman --

10 CHAIRMAN IMBRECHT: Mr. Chamberlain. Let's close  
11 this item down.

12 MR. CHAMBERLAIN: Yes. Without objection, I  
13 simply want to indicate to the Commission that I, too,  
14 have something to say on the issue, and I will submit a  
15 memo to you within the next few days on it.

16 CHAIRMAN IMBRECHT: That's fine.

17 MR. VARANINI: Mr. Chairman --

18 CHAIRMAN IMBRECHT: Yes.

19 MR. VARANINI: We have a 30-day reconsideration  
20 period, and I'm just wondering, for purposes of our bond  
21 -- potential bond covenants, and other instruments, whether  
22 we would now anticipate a delay before that -- that period  
23 of reconsideration runs.

24 CHAIRMAN IMBRECHT: Well, let me just state clearly  
25 you've got votes for your exemption. We have accommodated

1 concurrences where there is a difference in the reasoning,  
2 et cetera, on a number of other issues here at the  
3 Commission. I don't see any way that should jeopardize  
4 it. I don't think there's any suggestion here that any  
5 of us are prepared to seek reconsideration.

6 MR. VARANINI: Fine. Then I would note that  
7 it's 30 days from when the -- when the decision is docketed.

8 CHAIRMAN IMBRECHT: That's correct.

9 MR. VARANINI: Thank you.

10 CHAIRMAN IMBRECHT: Thank you very much.

11 Okay. Anything else to come before the Commission?

12 Hearing none, we stand in adjournment. Thank  
13 you very much.

14 COMMISSIONER CROWLEY: Happy Holidays.

15 CHAIRMAN IMBRECHT: Happy Holidays and Merry  
16 Christmas to all, and to all on our staff as well.

17 (Whereupon, the Business Meeting of the  
18 California Energy Resources Conservation and Development  
19 Commission was adjourned at 5:15 p.m.)

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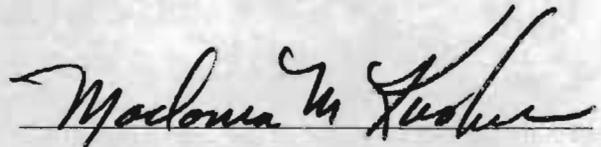
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## REPORTER'S CERTIFICATE

THIS IS TO CERTIFY that I, Madonna M. Kushen, Reporter, have duly reported the foregoing proceedings which were held and taken in Sacramento, California, on Wednesday, the 18th 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, Reporter