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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION

APR 5 1985

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BUSINESS MEETING

1516 Ninth Street
1st Floor Hearing Room
Sacramento, California

WEDNESDAY, MARCH 6, 1985
10:15 AM

REPORTED BY:

DAWN LOFTON

COMMISSIONERS PRESENT

Charles R. Imbrecht, Chairman
Barbara Crowley, Vice Chairman
Geoffrey D. Commons, Commissioner
Arturo Gandara, Vice Chairman
Warren D. Noteware, Commissioner

EX-OFFICIO

Bill Foley

GENERAL COUNSEL

Bill Chamberlain

PUBLIC ADVISER'S OFFICE

Ernesto Perez

STAFF PRESENT

Randall M. Ward, Executive Director
William Chamberlain, General Counsel
William Pennington
Nancy Deller
Michael Smith
Scott Matthews
Ross Deter
Dennis Fukumato
Richard A. Donaldson
Ted Rauh
Thom Kelly
Lorri Gervais, Secretary

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ALSO PRESENT

- Gordon E. Davis, representing Pacific Thermonetics, Inc.
- Richard Pagne, Crockett Power Plant Committee
- Edward Denton, Crockett Improvement Association
- Jay Gunkelman, Spectral Data Systems
- Douglas Tubb, Crockett
- Ruth Blakeney, Crockett Power Plant Committee
- Mary B. Moutinho, Crockett Citizens
- Mark D. Dellinger, County of Lake

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P R O C E E D I N G S

--oOo--

1 CHAIRMAN IMBRECHT: Okay, we'll call the
2 meeting to order. I'd like to begin today's session by
3 extending, obviously, a warm welcome on behalf of, not
4 only the members of the Commission, but I'm sure on
5 behalf of the entire staff of the Commission to
6 Commissioner Warren "Doug" Noteware, appointed by
7 Governor Deukmejian. I believe on Monday afternoon, he
8 was sworn into office yesterday morning. We're
9 delighted to have you with us Doug and we'd ask that
10 your first official responsibility, if you like to make
11 any remarks you're certainly welcomed as well. But
12 first, I'd like to ask you to lead us in a flag salute.

13 (FLAG SALUTE)

14 COMMISSIONER NOTEWARE: Thank you.

15 CHAIRMAN IMBRECHT: Commissioner Noteware.

16 COMMISSIONER NOTEWARE: Thank you. My only
17 comment is that I'm very proud and honored to be a part
18 of this team and I'm anxious to shoulder my share of
19 the load. I'll look forward to getting a lot better
20 acquainted with not only the other Commissioners and
21 members of the Staff, but all of the people who are
22 involved in the work that the Commission does. So, my
23 door will be open and again, I look forward to getting
24
25

1 to know all of you better. Thank you.

2 CHAIRMAN IMBRECHT: Thank you very much.
3 I'll just note for the record as well that Commissioner
4 Crowley was named Vice Chairman, succeeding
5 Commissioner Gandara. And I would just say, Arturo,
6 it's been a pleasure to work with you as Vice Chair for
7 the past two years and continue to welcome your input
8 and guidance to the Commission.

9 COMMISSIONER GANDARA: That's not enough. I
10 want a resolution.

11 (LAUGHTER)

12 CHAIRMAN IMBRECHT: You have to wait a couple
13 years. Alright, a couple of housekeeping items. Items
14 2 and 3 have been continued until March 20.

15 COMMISSIONER COMMONS: I object, Mr.
16 Chairman.

17 CHAIRMAN IMBRECHT: On what grounds?

18 COMMISSIONER COMMONS: I object on the fact
19 that the procedures that this Commission has followed
20 in terms of if an item is to be pulled from the agenda,
21 the Commissioners are to receive in writing a statement
22 as to why. And second, this item has been before us
23 five times and it has been postponed each and every
24 time. I do not think that it's fair to the public for
25 participation. And I think it's irresponsible on our

1 part, on the Commission. And if we were to postpone it
2 again, I would object to it being postponed til the
3 20th; I would only accept postponement if it was to a
4 time certain when they are prepared and ready to come
5 forward. We have a situation here with other
6 applicants are coming in for data hearings, and there
7 is no way that people should be asked to come up here
8 five different times only to find out that the item is
9 postponed.

10 CHAIRMAN IMBRECHT: Well, I guess that
11 assumes the fact...

12 COMMISSIONER COMMONS: I have no objection...

13 CHAIRMAN IMBRECHT: ...the fact in evidence.
14 I'm not sure that anyone has come up here. I would
15 note that I have a memorandum in my agenda book dated
16 the 27th of February, which obviously is better than a
17 week's previous notice requesting that Items 2 and 3 be
18 postponed and also providing a statement of reason as
19 you indicated which suggests that a supplemental data
20 submission by the applicant would not be received by
21 staff to provide them adequate time to review the
22 application and its supplements and provide a
23 recommendation to us in time for this business meeting.

24 COMMISSIONER COMMONS: Have you received the
25 supplemental data?

1 EXECUTIVE DIRECTOR WARD: My understanding is
2 we have not.

3 COMMISSIONER COMMONS: Alright, then I would
4 object to it being postponed until the 20th. It should
5 not be calendared until we are prepared to be able to
6 go forward. I have no objection of it not being heard
7 today; but, I do object to this continual process of
8 putting an item off when we are not certain that we'll
9 be ready to go forward.

10 CHAIRMAN IMBRECHT: Well, I believe that the
11 interested parties have been notified. But I would
12 just suggest to you, Mr. Ward, that before the agenda
13 is brought to my office tomorrow afternoon, the Siting
14 Division be asked for a clear determination as to
15 whether or not they are ready to make a recommendation
16 whether it's on the 20th or not. And only under those
17 circumstances should it be calendared.

18 EXECUTIVE DIRECTOR WARD: I've been assured
19 that the applicant will be providing us information
20 today or, at the latest, tomorrow early; and would
21 request that it be allowed to continue until the next
22 meeting.

23 CHAIRMAN IMBRECHT: I'll wait and make that
24 judgment based upon what you can offer to my office by
25 close of business tomorrow when I have to sign the

1 agenda. Okay?

2 COMMISSIONER GANDARA: Mr. Chairman,
3 Commissioner Commons made a second point and that is,
4 that we, because of problems that we ran into in the
5 past, we all were supposed to get a notification of
6 cancellation of items and I don't have anything in my
7 calendar for Items 2 or 3.

8 CHAIRMAN IMBRECHT: It's a memorandum
9 addressed to all of us. All I would suggest since your
10 office puts together your notebook, maybe they
11 misplaced it.

12 COMMISSIONER GANDARA: It might be in my
13 office, Mr. Chairman, but let me say that it's usual
14 practice for the Secretariat to check the agenda
15 packages of all the Commissioners to make sure we have
16 the material.

17 VICE CHAIRMAN CROWLEY: Commissioner, mine
18 was at the end of my agenda on the first page, to your
19 left. In there -- was where mine was.

20 CHAIRMAN IMBRECHT: Okay, well I suggest we
21 check them. I have just noticed that if this memorandum
22 were dated yesterday, I would think the arguments would
23 be a little better taken. But it is February 27th, so
24 it's an 8-day notice.

25 COMMISSIONER GANDARA: Well, all I'm saying

1 Mr. Chairman is that clearly we should all be
2 undertaking our responsibilities to make sure we have
3 the materials. And all I'm saying is, my office
4 generally does this and maybe there was a slipup
5 somewhere. But in concert with the Secretariat, this is
6 usually checked. We've had problems like this before.
7 So we should just re-affirm that we're going to do
8 that.

9 CHAIRMAN IMBRECHT: Self-evident. Mr. Perez,
10 did you have a comment?

11 HEARING ADVISER PEREZ: Thank you, Chairman
12 Imbrecht. I just do want to be recorded on the record
13 as agreeing in principle with the statements made by
14 Commissioner Commons, but at the same time indicate to
15 the Commission that I believe I have been in direct
16 contact with interested parties on the Irwindale
17 filing. To my knowledge, all have been informed as to
18 the changes by phone on a regular basis. So, in this
19 particular case, I would not see the principle as
20 calling for any kind of measure as proposed by
21 Commissioner Commons.

22 CHAIRMAN IMBRECHT: I note that your office
23 was also in receipt or was one of the addressees in the
24 memorandum. Did you receive it in a timely fashion to
25 make those notifications?

1 HEARING ADVISER PEREZ: Yes.

2

3 CHAIRMAN IMBRECHT: Commissioner Commons.

4 COMMISSIONER COMMONS: Mr. Chairman, since
5 we'd be hearing the item possibly at the next meeting,
6 I believe we have a vacancy on the Siting Committee
7 that we should also agendize for that business meeting.

8 CHAIRMAN IMBRECHT: Frankly, it'd been my
9 intention but only the fact that Commissioner Noteware
10 just arrived yesterday. I'd contemplated agendizing
11 several housekeeping items like that, for March 20th.
12 In fairness to Commissioner Noteware, it seemed to me
13 he needed some reasonable opportunity to play himself
14 with jurisdiction of the Commission and Committee
15 responsibilities and that type of thing, before we
16 realistically could ask him to indicate his preferences
17 to us.

18 COMMISSIONER COMMONS: I was thinking of that
19 one Committee which is in operation, specifically when
20 we have a vacancy.

21 CHAIRMAN IMBRECHT: Okay. Alright, and as I
22 indicated as well, Item #5 has similarly in the same
23 memorandum, been removed from the agenda. Is that
24 going to be re-agendized?

25 COMMISSIONER GANDARA: No. Mr. Ward?

1 EXECUTIVE DIRECTOR WARD: It's not my
2 understanding.

3
4 CHAIRMAN IMBRECHT: Okay, the first item to
5 come before us is the Potential Granting or Denial of a
6 petition for rulemaking filed by M. E. Bryson, American
7 Air Comfort Company, to amend Section 2-5303 of the
8 energy conservation standards for new buildings
9 regarding design conditions and calculation of energy
10 consumption. The petitioner requests that the
11 requirements referenced in ASHRAE publication, SPCDX:
12 Climatic Data for Region X, Arizona, California, Hawaii
13 and Nevada 1982, be changed because they were too
14 restrictive for Climate Zones 6, 8, and 9 and result in
15 undersized cooling systems. Mr. Ward.

16 EXECUTIVE DIRECTOR WARD: Thank you, Mr.
17 Chairman. This petition was received by one specific
18 developer in Southern California. It certainly does
19 have broader ramifications in terms of its effect on
20 the total industry. Bill Pennington from the
21 Conservation Division is prepared to outline the
22 staff's recommendation.

23 MR. PENNINGTON: As you said in your
24 introduction, the petition requests that the design
25 temperatures for air conditioning be changed in the

1 standards to reference a different set of design
2 temperatures in the ASHRAE reference document than what
3 the standards require at this point. We, in reviewing
4 this petition looked at that matter thoroughly,
5 reviewed the basis for why that set of design
6 temperatures was chosen in the original residential
7 building standards proceeding. I also talked to a
8 number of parties who had some insight into the
9 appropriateness of our assumptions and whether or not
10 they should be changed.

11 We talked in particular to the building
12 official in Beverly Hills where this contractor does
13 business and we were told that other contractors in
14 that area were not having problems with the standards
15 as they are currently addressed, and that there really
16 didn't seem to be a problem to fix. We also talked to
17 the Sheetmetal and Air Conditioning Contractors'
18 National Association, both the current technical
19 director and the technical director that was involved
20 during the process of developing the residential
21 building standards.

22 In addition to that, I met yesterday with
23 their Technical Committee and had a discussion of this
24 item. The clear consensus from that contact is that
25 other air conditioning contractors in the State believe

1 that the approach that we have in the standards is the
2 appropriate one, and would be against change to that.

3 We have contacted the author of the guide
4 that's used for the design conditions, and he was quite
5 concerned with any possibility of changing the
6 reference. He thinks that the reference is appropriate.
7 There is a periodic update of this information that
8 ASHRAE conducts and he, in particular, recommended that
9 if the petitioner has a concern with the date and the
10 ASHRAE guide, that it would be clearly preferable and
11 desirable for that person to participate in the ASHRAE
12 update and enter any input that he might have towards
13 possibly changing the next version of this directory.

14 But at this point, he felt that the data that
15 was presented in the directory was quite adequate,
16 appropriate, was consistent with the data that they
17 have on weather conditions by location.

18 We have received in addition to that three or
19 four letters from ASHRAE members who used this guide
20 that strongly recommended that we do not change the
21 reference; and for sure that we should not abandon the
22 concept of referencing this guide as the source of
23 information and, instead, create our own data point to
24 be referenced by the standards.

25 So based on all that information, staff

1 recommends that the petition be denied.

2 CHAIRMAN IMBRECHT: Alright, fine. Is the
3 petitioner present? Have we had any representations
4 for the petitioner?

5 MR. PENNINGTON: Mr. Chairman, I called Mr.
6 Bryson this morning at his office. There was no answer
7 there. I assumed maybe he was in transit or was not in
8 his office.

9 CHAIRMAN IMBRECHT: Has there been any
10 contact with him during the pendency of this action?

11 MR. PENNINGTON: I talked to him on a couple
12 different occasions and told him about the date; told
13 him that he needs to be here. It's not obligatory that
14 he be here; but I told him what staff's conclusions
15 were on this and if he wanted to argue against those,
16 he should be here. And I thought he would be here.

17 CHAIRMAN IMBRECHT: Did he indicate he
18 continued to contest the issue?

19 MR. PENNINGTON: Yes, he did.

20 CHAIRMAN IMBRECHT: Commissioner Commons.

21 COMMISSIONER COMMONS: Mr. Chairman, I'm just
22 wondering, given the weather conditions, if there may
23 have been some possibility of there being weather
24 problems and we should hold the item for a final vote
25 for now as a courtesy?

1 CHAIRMAN IMBRECHT: Yeah, I think that that's
2 a reasonable request.

3 VICE CHAIRMAN CROWLEY: Should we continue
4 it?

5 CHAIRMAN IMBRECHT: No, I don't think we need
6 to continue to the next business meeting. My
7 suggestion would be that we simply put this item over
8 for the time being. We've had the staff presentation,
9 and will return to it as the last item before us prior
10 to adjournment and see if we have an opportunity to
11 hear him. I'm a little reluctant to take action in his
12 absence, if he did still to protest the issue.

13 Alright, thank you. We'll move on to Item
14 #4, which is Commission Consideration and Possible
15 Approval of projects recommended for funding under the
16 Geothermal Grant Program for Local Governments. Mr.
17 Ward.

18 EXECUTIVE DIRECTOR WARD: Thank you, Mr.
19 Chairman. I believe the Loans and Grants Committee is
20 extremely with the process that the staff went through
21 in selecting the specific projects for award under the
22 Geothermal Grant Program. There are a couple of minor
23 changes that Nancy Deller from the Development Division
24 will outline those and talk about the process and
25 answer any questions that you might have.

1 MS. DELLER: I think you've already gotten
2 the changes in your backup packages, on what the
3 Committee ended up approving. So, I don't think
4 there's anything to tell you there beyond what you
5 already have. As you know, we are required to give the
6 Legislature our recommendations for the GRDA funding by
7 April 1st which is why it's coming to you now, so it
8 can be included in our Budget proposal for 1985-86.
9 And if you have any questions about any of the projects
10 or like us to walk through them, Mike Smith can do that
11 for you.

12 CHAIRMAN IMBRECHT: Are there questions from
13 members of the Commission? It's fairly straight-
14 forward, I assume that the Loans and Grants Committee
15 has reviewed this?

16 COMMISSIONER GANDARA: The Loans and Grants
17 Committee did review this. There were some last-minute
18 changes of a minor nature that were indicated, I think,
19 to Commissioner Crowley on Monday and communicated to
20 me this morning. I don't see any problem with. My
21 understanding is that you didn't either. Is that
22 correct?

23 VICE CHAIRMAN CROWLEY: No, I didn't.

24 CHAIRMAN IMBRECHT: Alright, fine. Mr. Mark
25 Dellinger, representing the County of Lake. Please

1 come forward. State your name for the record, please.

2 MR. DELLINGER: My name is Mark Dellinger,
3 Geothermal Coordinator, County of Lake. First, I'd
4 like to say that I really appreciate staff's time that
5 was spent on the three proposals you have in front of
6 you that were submitted by Lake County. The one, the
7 Micrometeorological Assessment Program submitted by Air
8 Pollution Control District, the Planning Department's
9 of the Geothermal and Resource Element as part of the
10 General Plan, and then the Pomo Dam Project. It's my
11 understanding that staff had recommended funding for
12 the first two that I mentioned and not recommended
13 funding for the last one.

14 The only point that I wish to make perhaps,
15 two points. On Pomo Dam, is that I chair an AB 1905
16 Screening Committee for monies that are dispersed from
17 the County. That Pomo Dam Project, we consider to be
18 the top priority for funding based on input from the
19 County's Water Plant Committee, and some other
20 information that we've gotten from industry
21 representatives.

22 The other point being that since it was a top
23 priority, it was funded in the amount of \$10,000.
24 And then there was another \$10,000 submitted from the
25 Water Plant Committee themselves, and so, that creates

1 a correction. What would be needed then is not the
2 \$55,000 asked for, but \$45,000 asked for. And, I'm
3 also available for any questions if you have those and
4 I appreciate your letting me make these comments.

5 CHAIRMAN IMBRECHT: Ms. Deller, does this
6 proposal expend all of the monies in the account?

7 MS. DELLER: No it does not.

8 CHAIRMAN IMBRECHT: What's the balance?

9 MS. DELLER: Five hundred and Eighty Four
10 Thousand Dollars. But it should be noted that we had,
11 well, there are \$2.2 million that we estimate will be
12 in the account for this next fiscal year. One Hundred
13 Thousand of that will go into technical assistance
14 which is provided by the statute that set up GRDA. So,
15 there's \$2.1 million available for projects. We
16 approved a total of \$1.5 million through our Technical
17 Advisory Committee which is composed of staff in our
18 division, Siting Division, and then outside people from
19 the Geothermal Resources Council. There's a Sierra
20 Club representative, and the Division of Mines and
21 Geology has a member on the Committee also.

22 The estimates for GRDA are that. They're
23 estimates. They are what we expect to come in during
24 1985-86. There was a bill put in the Legislature
25 several years ago that authorizes us to expend what we

1 estimate will come in. There has been some concern on
2 the part of Department of Finance that they raised
3 during the last budget go-round about whether or not we
4 should have a buffer set aside in case our estimates do
5 not prove to be the actual numbers, so we don't get
6 into a situation of obligating more money than we have
7 to spend. We have talked to Finance about this number.
8 And, they originally indicated that they would like to
9 see around a million dollar number but that this number
10 would be probably satisfactory to them also. They've
11 indicated that they may be willing to write a letter to
12 that effect.

13 CHAIRMAN IMBRECHT: A million dollars as a
14 buffer? In other words, 45% of the total fund?

15 MS. DELLER: That's what they initially
16 indicated.

17 CHAIRMAN IMBRECHT: I thought that in our
18 discussions overall with Budget and Finance we agreed
19 to fund account balances as they as a prudent reserve
20 of 2 3/4 percent which would be something in the
21 neighborhood of \$50,000 rather than \$500,000.

22 MS. DELLER: Apparently there had been
23 discussions at one point of \$60,000, and then in
24 discussions that Mr. Dale Bosley had with them, they
25 raised a million dollar figure and he told them that we

1 actually had \$500,000 left this year. And, they said
2 that that would probably be an appropriate number.

3 EXECUTIVE DIRECTOR WARD: My sense is, Mr.
4 Chairman, that unlike some of the other revenue
5 projections that are handled by the Department of
6 Finance, that they consider this a bit more speculative
7 and subject to some degree of fluctuation, and so are
8 trying to air on the side of conservatism. But, I
9 certainly sense that based on Ms. Deller's indication
10 that Finance is willing to write a letter, that the
11 million and a half proposed expenditure is proven that
12 that is certainly grounds for the Commission taking
13 action on these specific projects.

14 CHAIRMAN IMBRECHT: Do you have a comment on
15 this proposal for the Geotechnical work for the dam?

16 MR. SMITH: Yes I'd like to address that
17 Commissioner. When we reviewed the applicant's final
18 application, there were certain areas where the
19 Technical Advisory Committee had concern. In
20 particular, there was a large interest from the
21 agricultural sector to see the dam completed or to see
22 work begun on the dam, as well as interest from Lake
23 County in terms of having domestic water supplies
24 available.

25 Now those issues in and of themselves are

1 indeed noble; however, they are not geothermal related
2 and the application did not address their relationship
3 to geothermal development. The only issue that they
4 did relate in the final application to the impacts or
5 the need for the dam because of geothermal development,
6 was that the developers were interested in having a
7 supply of water for injection. And, it was the feeling
8 of the Technical Advisory Committee that if that was
9 the only issue that related to geothermal development,
10 in terms of the need for the project, that the
11 developers should be the ones to finance the initial
12 investigations.

13 CHAIRMAN IMBRECHT: Sounds reasonable to me.
14 Commissioner Commons.

15 COMMISSIONER COMMONS: Yes. I have a number
16 of questions and statements on this. I do not see a
17 copy of the scoring for the different projects. So,
18 it's very difficult for me. All I have is your
19 recommendation as to the amount of funding, and I have
20 no scoring criteria. So I do not feel capable of
21 making a decision on this issue since we haven't been
22 given sufficient information in order to make an
23 assessment as to whether or not one project deserves
24 funding at one level or at another level.

25 And, of course, it would be very difficult

1 and unfair, I think, to give that to me now and for
2 people who have spent a lot of time in developing these
3 projects to make a snap judgment in the middle of the
4 business meeting. That's my first concern.

5 I believe we discussed this at the last go
6 around and in the, I think all of you are aware, I have
7 been concerned that we have leverage whenever we use
8 State funds. That the primary basis that I can say
9 that someone's serious about funding a project or going
10 forward on a project is if we find that the local
11 agency is putting up dollars, because most likely
12 successful, particularly on the planning and mitigation
13 areas is if other people wanted to put up dollars and
14 it's just not a handout from us. It tells me that this
15 is locally an area of concern.

16 I'm not sure I want to go so far as to be a
17 stickler saying that for some of our counties that, in
18 all instances, that they have to match us dollar for
19 dollar. But, I don't think it's fair when I see Sonoma
20 County matching dollar for dollar on a sedimentation
21 basin for the Geysers, and you have other projects
22 listed where one-third, one-sixth, very low match.
23 And, I don't think this is reasonable use of our State
24 funds and that we have negotiated as well as we can in
25 terms of using these funds to obtain, from the State's

1 perspective, limiting the amount of investment that's
2 necessary in order to see that the work goes forward.
3 And so, I'm going to ask that we separate out those
4 projects that don't have what I consider an adequate
5 match.

6 MS. DELLER: Can I make a point on that?

7 COMMISSIONER COMMONS: Of course.

8 MS. DELLER: It should be noted that the
9 statute does not require that they make a match. It is
10 a criteria for selecting projects; but, the bigger
11 issue is really that many of these counties do not get
12 back County of Origin monies from Geothermal Leasing.
13 The one that you just mentioned does get money back and
14 is in a position to be able to put more money into
15 projects. So, perhaps, some counties, you do not get
16 County of Origin monies from Geothermal Leasing.
17 That's the only point.

18 COMMISSIONER COMMONS: I'm even more
19 concerned on the last category when we're talking about
20 development. And, a number of these projects are
21 actually commercial projects, or commercial related.
22 And I look at Project No. 15, a Greenhouse Commercial
23 Park. I would like to support a Greenhouse Commercial
24 Park, but why are we putting up, not only 50% of the
25 funds, why are we putting up 80% of the funds?

1 We're going to have before us later on in the
2 year, we're going to be talking about using Naylor
3 projects and we're going to be talking about leveraging
4 our funds by 4 and 5 to 1, 10 to 1. And, here we're
5 talking about leveraging our funds by less than 1 to 1.
6 I think that the Legislature has indicated to us that
7 they want to see us leverage their dollars and this, to
8 me, does not show any indication of leverage. I would
9 want to know for those projects, where we're not
10 leveraging them, I'd want to have substantial
11 information in detail to justify these as R&D
12 expenditures, which is essentially what they are, and
13 that they would not occur without our providing this
14 support. I don't think that we have sufficient
15 information to go forward on this list of 20 projects
16 for all of the various reasons that I've enumerated.

17 Now, if there are some that the staff feel
18 are essential or necessary to be funded today and that
19 they scored very highly on the criteria, I would have
20 no objections of taking a limited set. Otherwise, I
21 would vote against this and with strong protest.

22 MR. SMITH: Commissioner, I would like to add
23 one note. All of these projects that have been
24 recommended for funding have met the minimum 80-point
25 requirement that was implemented into the program at

1 your insistence. I would find it very difficult to
2 identify those projects above 80 that have attained 80
3 points or more. I would find it very difficult to
4 ferret out the ones that should move forward right now
5 and the ones that should be held over.

6 EXECUTIVE DIRECTOR WARD: Commissioner, I
7 think it might be helpful to talk about the basic
8 process a little bit and what occurs with the Technical
9 Advisory Committee and the policy oversight of the
10 Policy Committee and the Loans & Grants Committee on
11 this.

12 But, there is a specific process that we go
13 through that has been approved by the Commission for
14 assigning point values to these various projects. And,
15 I suspect, that if you have some concerns about
16 specific elements of match and percentage of match to
17 the total project, that that's more properly addressed
18 in the context of the policy, that the Technical
19 Advisory group would be adhering to, is to go through
20 the process. The Loans & Grants Committee may want to
21 comment on that as well. But, that would certainly be
22 my impression.

23 COMMISSIONER COMMONS: I'm saying, Mr. Ward,
24 that if this item were to come back with the
25 information that we have always requested, that we have

1 an understanding as to how we arrived at the solution,
2 or the recommendation. The backup information does not
3 give a Commissioner, I feel, any basis of casting a
4 vote for or against a particular project, other than
5 looking at what appears to be varying standards in
6 terms of match versus request. There is no other
7 information contained in my information packet to say
8 that I should vote for a particular project or vote
9 against a particular project. So, I have no basis
10 other than trust.

11 EXECUTIVE DIRECTOR WARD: From staff's
12 perspective, I believe that we've followed the policy
13 guidelines that have been established by the
14 Commission. And, in terms of information, the Policy
15 Committee has reviewed that information and the
16 Technical Advisory Group has used that guideline in
17 developing the projects before you. I suspect, that,
18 by virtue of using a Technical Advisory Group for
19 establishing rankings of various projects, that that is
20 one of the reasons, one of the reasons for that is to
21 maintain an arms legs relationship between the
22 Commission and the actual involvement and selection of
23 these projects that are thus for allocation by the
24 Commission.

25 CHAIRMAN IMBRECHT: Trust is not necessarily

1 a concept that is out of favor in my view, and
2 sometimes absent information that suggest there is
3 reason not to provide some trust. It's not
4 unreasonable to do that when you have staff that is
5 simply ignoring our criteria. Commissioner Gandara did
6 you want to...

7 COMMISSIONER GANDARA: If I may, just one
8 slight correction. To the best of my recollection, the
9 Committee did not review these scoring criteria. The
10 Committee didn't ask for it either. Let me indicate
11 several things. One that for the Committee review, the
12 Committee sort of felt comfortable within the
13 guidelines the Committee has given the staff. And, one
14 of the principal ones is, let's not give away all the
15 money just because it's there. So, we ask the staff to
16 kind of take a strict scrutiny, and they have done
17 that, notwithstanding, as you see there is some carry
18 over money.

19 On a second part, perhaps it's a bit unfair
20 and an oversight on my part, but since I've been
21 familiar with the Geothermal Development Program from
22 the very beginning and have suggested guidelines over
23 the three grounds that we've had, perhaps I felt, or at
24 least, that I was comfortable with the decisions that
25 were made. Commissioner Commons does make one point,

1 however, that I think is a good point. That, perhaps
2 we out to establish as a policy (this has come up not
3 just with respect to this program but with respect to
4 other programs) how much information do the
5 Commissioners have to make a decision.

6 I don't take ill at all his suggestion that
7 he needs certain information. He has to apply his
8 independent judgment and I think he's entitled to that
9 if he wants that. I regret that it's not here, simply
10 because perhaps we ought to just establish a policy of
11 having more complete data.

12 In this case, since it was reviewed by the
13 Committee and we didn't ask for them, let me just take
14 the responsibility for that. But, perhaps we ought to
15 establish for the fuure that we ought to have a more
16 complete set of information for those Commissioners who
17 wish to, in fact, have that information available to
18 them. I agree with your statement. I don't think
19 there's no reason, in which we don't accept the staff
20 recommendation here. But, on the other hand, I don't
21 believe that Commissioner Commons half trusts me, I
22 think he's entitled to come to that judgment by
23 himself. So I would caution with one thing here, that
24 these recommendations do have to be in to the
25 legislature by April 1st, so that if we don't approve

1 them now, we have to have some recommendations at least
2 by the next Business Meeting.

3 The second thing is to the extent that some
4 of the policy oversight here has been external,
5 including this Technical Advisory Committee, the fact
6 that the Legislature reviews it once it leaves our
7 hands. I'm confident by the fact that I think that we
8 have sufficient information, but, again, I don't think
9 Commissioner Commons is necessarily raising the issue
10 with just this item, but, a more general question. I
11 think with respect to that that maybe, in the future,
12 let's just have the scoring criteria that people want,
13 Commissioner Commons would you be satisfied with that?

14 CHAIRMAN IMBRECHT: I think that's
15 reasonable.

16 COMMISSIONER GANDARA: Commissioner Commons,
17 would that be a satisfactory resolution to you?

18 COMMISSIONER COMMONS: Well, it would help.
19 I would like to first request that we separate the vote
20 and vote on all items but 11, 15 and 19. And, I'd like
21 to request that those three items be held over,
22 particularly in light of what you say, that it causes
23 no problems if we vote on those items on the next
24 Business Meeting, rather than on this Business Meeting,
25 that it causes this no harm and would allow us to at

1 least look at those three.

2 CHAIRMAN IMBRECHT: Commissioner Gandara, the
3 motion was your prerogative as Presiding Member of the
4 Committee.

5 COMMISSIONER GANDARA: Let me ask the staff,
6 does that present any problem? The next Business
7 Meeting is when, the...

8 MR. DELLINGER: Twentieth.

9 COMMISSIONER GANDARA: That gives you 11
10 working days, 11 days by the calendar.

11 MS. DELLER: To get it into shape to get
12 it to the Legislature?

13 COMMISSIONER COMMONS: Eleven -- you had
14 recommended zero and the only two you had recommended
15 funding. So, the only ones that would be held on that
16 basis would be those three.

17 MS. DELLER: Right.

18 MR. SMITH: I don't think if we limit it to
19 those three and the Commission provides staff-specific
20 instructions or direction as to the kind of information
21 that you're looking for, it might not pose a problem.
22 But, please keep in mind that this package has to be at
23 the legislature by April 1st.

24 CHAIRMAN IMBRECHT: That would allow you to
25 prepare the materials on the bulk of the items. Are

1 you prepared to make a motion?

2 COMMISSIONER GANDARA: Why don't I move this
3 item with incorporating on Commissioner Commons request
4 to postpone action until the next Business Meeting on
5 items 11, was it 12?

6 CHAIRMAN IMBRECHT: 15 and 19.

7 COMMISSIONER GANDARA: 15.

8 CHAIRMAN IMBRECHT: And 19.

9 COMMISSIONER GANDARA: And 19.

10 VICE CHAIRMAN CROWLEY: I would second that.

11

12 CHAIRMAN IMBRECHT: Seconded by Commissioner
13 Crowley. Is there further discussion? Is there
14 objection to unanimous roll call? Hearing none, ayes
15 5, noes, none. The motion is carried. All items but
16 11, 15, and 19 are approved as recommended by staff.

17 MS. DELLER: So, what you would like is a
18 scoring criteria and the scores on this?

19 COMMISSIONER GANDARA: Why dont you meet with
20 Commissioner Commons, and/or his staff and ascertain
21 what information he would like and meet with him.

22 COMMISSIONER COMMONS: Essentially meet
23 with...

24 CHAIRMAN IMBRECHT: That's fairly
25 appropriate. Item 6 is Consent Calendar which is the

1 Wind Performance Reporting for use in the Wind Project
2 Performance Reporting System. Any member of the
3 Commission that wishes this item be taken up? I will
4 move, Commissioner Crowley seconded that we approve the
5 Consent Calendar. Is there objection? Hearing none,
6 ayes 5, noes none. The Consent Calendar is approved
7 as proposed.

8 We turn now to the other substantive items
9 that are before us. Let me just inquire as well, is
10 there a representative of M.E. Bryson, American Air
11 Comfort Company present as yet?

12 Alright, now turn to items 12. I think we
13 should go to Crockett first, let's turn to Item 13
14 which is Commission Consideration of Possible
15 Acceptance or Non-acceptance of the Application for
16 Certification for the Crockett Cogeneration Project. I
17 think this item is pretty clearly before us in terms of
18 where we are from a status standpoint. I think
19 Commissioner Gandara and I attempted to bring you up to
20 speed as to what occurred at the last Business Meeting.
21 And, I think to some extent, it's your prerogative as
22 to the depth of information that you wish to be
23 presented at this point and time.

24 COMMISSIONER GANDARA: Mr. Chairman, let me
25 say that, first of all, I think it's up to the

1 Commission to decide how we proceed with this. But,
2 let me indicate to you that I took your recommendation
3 to heart and also, the fact that it was reported to me
4 that there was some expectation on the part of
5 petitioners, or the applicant, as well as the Crockett
6 citizens that I read the transcript of the last
7 Business Meeting which I think it's really appropriate
8 given the kind of interest that we've had in this case.

9 Regrettably, since we did not receive a copy
10 of the transcript on Monday, this past Monday, at about
11 4:30, 4:45, we called to see if we could get a copy
12 since I was going to be out of town on Tuesday, that's
13 yesterday. We were informed that there was a copy of
14 the transcript available. They would not release it to
15 my office. The Secretariat or Docket's Unit, I don't
16 know exactly who called, but it was reported that there
17 was only one copy -- a copy could not be made, would
18 not be released to me. My office, therefore, was not
19 able to obtain a copy until the following day,
20 yesterday. And, as a result, I've had no reasonable
21 opportunity to review the transcript.

22 I, frankly, feel uncomfortable taking a
23 position on this matter today. If the Commission
24 wishes to proceed and move to this issue, that's fine
25 by me. Maybe I would be enlightened by any discussion

1 that might be held. But, I see that there would be a
2 great point to have presentations for my benefit. I
3 Commissioner Noteware and I are in the same position
4 with respect to the last Business Meeting.
5 Commissioner Noteware has to, in essence, also acquaint
6 himself with the last two transcripts of the two
7 previous meetings where this was discussed. So, that
8 from my point of view, I would defer to what the rest
9 of the Commissioners feel they can move to a decision
10 on this. I myself don't think that I could comfortably
11 make a decision given that I have not been able to
12 review the transcript.

13 CHAIRMAN IMBRECHT: The other alternative
14 would simply be to call all the witnesses and allow
15 them to make their presentations today for both your
16 benefit and Commissioner Noteware's benefit. Yes
17 Commissioner?

18 COMMISSIONER GANDARA: That would be fine Mr.
19 Chairman. But, I guess the point that I'm making is
20 that I'm not sure that that would substitute for
21 considerable deliberation and discussion that was held
22 last time. I mean, I would appreciate today's
23 discussion as well as incorporate that with the
24 transcript of the last Business Meeting. But, I'm open
25 to that as well.

1 CHAIRMAN IMBRECHT: Okay, well, Commissioner
2 Commons you were the, I guess, swing vote at the last
3 meeting and deferred to Commissioner Gandara as
4 Presiding Member of the case. Do you have any comments
5 at this juncture?

6 COMMISSIONER COMMONS: One thing I would like
7 before I comment, is one of my concerns is the concern
8 I raised on Irwindale. In this case it's been real
9 that we have had to have people come before us a number
10 of times and it's a significant drive...

11 CHAIRMAN IMBRECHT: That's exactly correct.
12 That's the reason I...

13 COMMISSIONER COMMONS: I would like to know,
14 from both the proponents and opponents, how they would
15 feel if this were held over an additional time, just on
16 that very limited issue. It is difficult for people to
17 keep coming up here.

18 CHAIRMAN IMBRECHT: Well, we can certainly
19 solicit any input that people want to offer on that.
20 What my recollection is is that the applicant objected
21 to the delay to today's meeting. So, I think that is a
22 fairly self-evident position, unless the applicant
23 wishes to amend that. I don't know, frankly, what the
24 position of the opponents is as to further delay.

25 COMMISSIONER COMMONS: If you wanted a

1 tenancy as to fairness, in terms of trying to make this
2 procedure work in a fair manner and, I don't know if
3 it's the legal propriety or what it is. If we ask that
4 it was intended to be fair and my tendency on fairness,
5 would be to have the clock start from today and accept.
6 That would be, I think, fair. I'm concerned that there
7 are going to be data problems throughout this
8 proceedings and twelve months is going to be very
9 difficult. But, I'm open at this point. I have not an
10 affixed opinion.

11 CHAIRMAN IMBRECHT: My personal inclination
12 is that we've extended this and deferred decision an
13 adequate number of times, and it's time to fish or cut
14 bait at today's hearing. I'm certainly prepared to do
15 so. I don't know how the other members of the
16 Commission feel from that perspective, but I do think
17 that we have an obligation to render decisions, as
18 opposed to simply being a debating forum as well where
19 we continually push back what are difficult decisions.

20 It is my suggestion that we vote up or down
21 staff's recommendation today. And, if it is voted
22 down, in fairness to the applicant, then there is a
23 process by which they are given distinct guidance as to
24 further information they should submit. And, if it's
25 voted up, obviously the consequences are obvious.

1 That's a fairly redundant statement, but that's where
2 it stands. I also would inquire whether we have legal
3 authority to change acceptance dates, or whether, in
4 essence, we are driven by when the last submission
5 under our regulations as provided by the applicant?

6 MR. CHAMBERLAIN: It's actually under the
7 statute, Mr. Chairman. No, we cannot change what a
8 statute directs in that regard.

9 CHAIRMAN IMBRECHT: So, in that case the
10 acceptance would relate back to February 15th which was
11 the last document filed by the applicant.

12 COMMISSIONER COMMONS: Mr. Chairman, I
13 believe if all parties agree, we've had this discussion
14 previously, that a party may waive that and that it's a
15 legal right of the applicant to have that. It's also a
16 legal right of the applicant to accept a modification.

17 CHAIRMAN IMBRECHT: I think that's an
18 accurate statement. Commissioner Gandara.

19 COMMISSIONER GANDARA: Mr. Chairman, let me
20 indicate that I think it's more complicated than that.
21 It's not from the time when the applicant last filed a
22 document. If we recall, the last document the
23 applicant filed, maybe the second to the last document,
24 was in fact a very critical document which was the
25 attestation, that the AFC was as it was represented to

1 be.

2 Now I think a legal case can be made that
3 until the time that that was made that we didn't have
4 an AFC before us. That, basically what we had up to
5 then was a very complex pre-filing workshop at the
6 Commission level. So I think, in addition to whether
7 the applicant wishes to waive that or not, I think that
8 the issue and argument can be made whether in fact we
9 are complying with the regulations and/or statute.
10 Because, if the AFC requirements includes that then, in
11 essence, we have no AFC until that was in. If so,
12 then, from that time within 45 days, we need a staff
13 recommendation. That's why at the Business Meeting
14 where this was discussed or where that deficiency was
15 noted, I suggested that, in fact, that procedure be
16 followed and that the staff at that time proceed as if
17 anew, come up, have a workshop and the citizens who
18 were sitting there would be included in the workshop.

19 And then we would then have, essentially,
20 start procedurally with a clean slate. I don't raise
21 that to be argumentative, I only raise it to point out
22 that we are going to adhere to one part of the statute
23 but not to others. And, that it's arguable, you know
24 really where we've been in this case.

25 CHAIRMAN IMBRECHT: Mr. Chamberlain, do you

1 have any comments on the issue raised by Commissioner
2 Gandara?

3 MR. CHAMBERLAIN: Well, as I recall,
4 Commissioner Gandara pointed out two meetings ago that
5 that was a possible interpretation. I have to agree,
6 it's a possible interpretation. It's not the one that
7 I would choose because I don't believe that the
8 attestation, while I do consider it to be an important
9 part of the AFC, I would not view submissions that
10 occurred prior to that date as basically not being an
11 AFC simply because the attestation wasn't included.
12 But, as I say, that is a permissible interpretation.

13 CHAIRMAN IMBRECHT: Commissioner Commons, did
14 you have something further? Well, I think I would
15 generally agree with your interpretation. I think
16 there's a point of common sense weighing here as well
17 that's required in some of these proceedings. But my
18 guess is that it's unlikely that a court would find the
19 proceedings deficient based upon the lack of another
20 workshop being held. The fact is that, in essence
21 you've got a staff recommendation within 45 days to the
22 question.

23 I'm not sure what, as a practical matter the
24 result, in terms of new information, by any additional
25 workshops at this juncture. I'm not sure that I see

1 that as prescriptive as opposed to more advisory in
2 terms of the way we conduct our proceedings.

3 COMMISSIONER GANDARA: Mr. Chairman, I was
4 not arguing that point in order for that point to
5 prevail. I was only eliciting to the response that
6 Mr. Chamberlain did provide that it was permissive,
7 and, in fact, that the Commission had several options
8 before it.

9 CHAIRMAN IMBRECHT: Sure. I appreciate that.
10 Alright, well, I guess, from a practical matter, and my
11 inclination at this juncture is to simply call the
12 witnesses that wish to make presentations and again ask
13 the applicant for their presentation.

14 COMMISSIONER COMMONS: I would like to ask
15 our new Commissioner if he has had adequate time to
16 review the record on this matter?

17 COMMISSIONER NOTEWARE: During the last eve,
18 I have studied what has been available to me.
19 Particularly, I have tried to endeavor to understand
20 the downsides of whichever action we might take this
21 morning. I think it would be most helpful, in my case,
22 to hear the presentation from staff, and then, also
23 hear the input from people who have come that wish to
24 speak to us this morning.

25 CHAIRMAN IMBRECHT: Okay, any comments from

1 Commissioner Commons?

2 COMMISSIONER COMMONS: My tendency, Mr.
3 Chairman is that if you remember at the last Business
4 Meeting, we had only a short time between these two
5 Business Meetings, and that this had been a scheduled-
6 unscheduled Business Meeting. And, the reason that I
7 didn't want to go through it, primarily, was that the
8 Presiding Member was not there and needed to have an
9 opportunity. And, it has been my belief that you try
10 issues in cases and you don't try a case in terms of
11 doing data adequacy.

12 I'm leaning in your direction, but, we do
13 have a new Commissioner, we do have an unusual
14 situation on the transcript and let's go forward and
15 hear witnesses. But I think, we, as Commissioners have
16 delayed quite a bit on this one. Not all of our fault,
17 there have been some problems, I think in getting the
18 information to us. I think one could make an argument
19 that today is the day to make a decision.

20 VICE CHAIRMAN CROWLEY: May I ask a question?

21 CHAIRMAN IMBRECHT: Commissioner Crowley. VICE

22 CHAIRMAN CROWLEY: I would like to ask if there will be
23 a point in time at which we may consider the material
24 presented to us to be complete upon which to make some
25 evaluation. We keep having a running series of new

1 information, and I think all of this is important and
2 needs to be considered. But, I'm not sure it is all
3 data adequacy, per se...

4 CHAIRMAN IMBRECHT: I believe we set some
5 ground rules for the last hearing on that very issue.

6 VICE CHAIRMAN CROWLEY: Could we have those
7 reiterated?

8 CHAIRMAN IMBRECHT: Well, If I recall
9 correctly, the ground rules were that the issues would
10 be limited to those raised in the August 15th and
11 January 8th letters that we made reference to with some
12 repetition, plus additional issues raised by
13 Commissioners in the hearings that occurred prior to
14 the direction to both applicant and opposition that
15 occurred in advance of the meeting that was held
16 Monday. And that was, that there was to be a
17 summarization of those issues. That document was filed
18 by the opposition where they fairly delineated, I
19 believe 15 separate issues. And, it's my
20 recommendation that that be the record upon which we,
21 and the extent of any issues we consider in the course
22 of the decision today.

23 VICE CHAIRMAN CROWLEY: I appreciate that
24 and I appreciate it being spelled out. Thank you.

25 CHAIRMAN IMBRECHT: Okay. I don't believe,

1 let me just indicate, it's necessary to go to a staff
2 presentation. Staff's position has not changed for six
3 weeks. It is to recommend acceptance of the AFC.
4 Unless you need additional details Commissioner
5 Gandara, I think that our position has been relatively
6 unambiguous for some length of time. So, I would
7 suggest that we go to opposition and then ask applicant
8 to respond and provide the opposition any rebuttal
9 they care to offer, as we did the last time. So, Ruth
10 Blakeney first. Would you like to come forward?

11 MR. PAGNE: Mr. Imbrecht, we've changed the
12 ...

13 CHAIRMAN IMBRECHT: Sure, I was just taking
14 these in the order. Why don't you tell me the order
15 you'd like the witnesses called.

16 MR. PAGNE: Myself, Edward Denton, Ruth
17 Blakeney and Jay Gunkelman.

18 CHAIRMAN IMBRECHT: And, Mr. Tubb and Marian
19 Moutinho. You still wish to be called or not?
20 Alright, Richard Pagne.

21 MR. PAGNE: Thank you sir. Commissioners,
22 we've handed out another letter today which is
23 essentially a reiteration and a synopsis of the points
24 that we've been making the last two visits up here.
25 What we're asking is that, of course, you require PTI,

1 Pacific Thermonetics to submit all the data required
2 under Title 20. I'll give you an opportunity to read
3 through the first two pages, if you will.

4 Our reading of Title 20, -- as a background,
5 you adopted our January 8th letter and concerns as your
6 qualitative data concerns and you asked the applicant
7 to respond to those concerns. We've gone through the
8 process last week, and we're going through the process
9 again of indicating where we feel that there is no data
10 or inadequate on the six items which are listed below.
11 We have reviewed Title 20, and the criteria that Title
12 20 indicates is that in Section 1704, it states: "The
13 Application for Certification shall contain all of the
14 information required by Appendix B of this Article."

15 We've indicated that the law states that they
16 contain all of that information. Mr. Matthews, I
17 believe his name was, who is your Program Manager,
18 spoke that the staff has a floor criteria, to look at
19 to whether or not something should be considered in
20 data adequacy. It's not a regulation and it's not law.
21 It's apparently something that's been adopted by
22 practice. One of the staff criteria is that it be
23 required by law. Title 20 is the law that governs what
24 has to be required, and the six items that we've listed
25 at the bottom are not in the application, either not

1 there, or there in an inadequate basis, and are
2 mandated by Title 20.

3 We've provided on Pages 3 and 4 of our
4 submittal today, summary of the Administrative Code
5 Title 20, which states particularly that the
6 Application For Certification shall contain all of the
7 information required by Appendix B of this Article. It
8 states that as a matter of law, just as Title 20
9 indicates that they have to have an Application For
10 Certification verified by the officer of the
11 Corporation that's making the application.

12 It's our position that these items that we're
13 listing, these six items, are required as as a matter
14 of law. Now, the six items which are missing are
15 listed below and my particular interest, at this point
16 in the presentation, is the seismic hazards to the
17 plant created by the nearby bulk storage bins. Last
18 week in our information that we passed out, we provided
19 you with a diagram of the bulk storage bins in relation
20 to the plant. I think it was page 4 of our submittal.
21 Now, you can appreciate, having Chairman appreciate
22 having gone down there and taken a look at the site and
23 that these bulk bins do tower over the site of the
24 project. As is indicated in our information, the
25 applicant stated in his recent submittals that they're

1 moving the plant apparently 10 feet closer to those
2 bins from where they were even on that diagram. The
3 diagram that we presented to you is right out of the
4 AFC, I think it's Chapter 4. The project is being
5 moved 10 feet closer. But, even if it wasn't, the bulk
6 bins tower above the project.

7 The Title 20 Section, which is pertinent,
8 refers to it's Appendix B, paragraph E which refers to
9 paragraph A and says that, "in a section entitled
10 'Safety and Reliability', the notice shall contain a
11 report which describes the seismic and other hazards
12 and man-made hazards associated with each of the
13 proposed sites, which discusses the degree to which the
14 hazards can cause secondary hazards at the facility,
15 such as structural collapse; and, discusses the
16 alternative levels of design being considered to
17 safeguard safe and reliable operation in light of the
18 hazards".

19 It goes on further in Appendix A, in that
20 section to state that "the report should describe
21 special design features being considered to protect
22 against seismic and other potential natural hazards and
23 indicate the relative degree of safety from the hazards
24 that can be achieved by the design features being
25 considered."

1 The applicant has indicated that they do not
2 have that information. They say that they can get that
3 information, they say in their last submittal, that
4 they can provide information concerning the involvement
5 of those bins in a seismic event, if necessary. They
6 don't talk about the seismic stability of the bulk
7 bins. They don't talk about what is going to,
8 undoubtedly, and from a common sense standpoint, have
9 to be done to make those structurally and seismically
10 sound. The bins themselves, phenomenally, there's 10
11 bins there. Each bin contains 10,000 tons of sugar and
12 that calculates, it's phenomenal. It calculates out to
13 20,000,000 pounds. Each one of the bins, that are 10
14 in a row, towering over the project, which has an 8-
15 inch gasline supplied to it, it towers over the hot
16 steam recovery generators, it towers over the cooling
17 tower and, to a lesser extent, is involved with the
18 switching yard.

19 The bins were built in the late '40s. Any
20 structural things you've seen on those bins, from the
21 pictures that have been handed out and, from what
22 you've seen in the Application For Certification,
23 anything that you see there that's structural, is
24 holding the roof up. The bins are essentially 10 tin
25 cans sitting on a concrete slab with 20,000,000 tons of

1 sugar pounds of sugar in each one.

2 And, this is a significant item. I mean,
3 this is significant. Without the seismic stability of
4 the bins, you don't have a site because if these things
5 go over, you're going to have a heck of a castastrophe
6 there, potentially. Title 20 says that it's important
7 that we have this information. It says, provided, in a
8 section called "Safety and Reliability" it's not
9 there. At the last meeting, there was further
10 discussion thatthere was no information containing the
11 actual design of the retaining wall and the actual
12 design of the building.

13 I believe it was Chairman Imbrecht who
14 indicated that his inclination was to make the
15 application data adequate and then turn around and have
16 a data request to essentially, provide the information
17 that we feel, should be provided up front. And, which
18 Title 20 indicates should be provided up front. I
19 think that perhaps, in reading the Felando Bill, this
20 could be considered somewhat of a conditional
21 acceptance of the application, because items which are
22 necessary and mandated by Title 20, are being put over
23 to a 60-day period, which I believe, was the timeframe
24 bandied about, beyond the date of acceptance, and the
25 information would have to come in within that time.

1 What we're maintaining is that, such a thing
2 may be a conditional acceptance and, the other thing is
3 that, by putting a 60-day time period on it, if that
4 were the fact, the normal process whereby the applicant
5 would go out and prepare a report and do what's
6 necessary to comply with that Title 20 Section, would
7 be condensed, or perhaps expanded to a 60-day time
8 period. We feel that the approach is that, and it's a
9 common sense approach, is that the information has to
10 be up front at least in those areas, plus the one that
11 we've brought forth here. But, critically speaking and
12 common sensically speaking, not to make a pun on Mr.
13 Commons' name, the retaining wall, the building and
14 seismic stability of the bins are critically important
15 and are mandated by Title 20. They're mandated by law
16 and we feel that we need to have that information up
17 front and, that the Commission should make those part
18 of a data adequacy request.

19 And I realize that the applicant, in its last
20 submission, I believe it was the 15th, said that they
21 didn't feel that they had to respond or provide new
22 data concerning our data adequacy items which were
23 adopted at least informally by yourselves, as your data
24 adequacy concerns from January 8th. They indicated in
25 their submission that because it wasn't in writing,

1 that they didn't have to repond with new data.

2 My reading of Title 20 indicates that that's
3 correct, they didn't have to repond to those. What
4 we're asking in which the ultimate position will be
5 here, or, what we're hoping the ultimate position will
6 be here, is that you order that the information is data
7 inadequate, that the application's data inadequate,
8 and, that the items which we feel are missing, will be
9 adopted as your data adequacy items and concerns, and
10 reduce to writing and, indicate to them as you did in
11 your August 14th letter that we need to have this
12 information before we can consider the application data
13 complete.

14 It has to be reduced to writing and,
15 obviously the writing is in the form of your order.
16 But, what I also want to reiterate here is that the 6
17 items which we list which we feel are extremely
18 critical are part of our January 8th data adequacy
19 concerns which you adopted. And, we have judicially
20 held ourselves to not bring forth any additional items
21 other than what was in the January 8th letter. We've
22 stated that all the way through here. And, these items
23 were in January 8th; they have not been addressed and
24 we feel that because in fact that you did adopt those
25 as your concerns, I believe the transcripts indicate

1 that, until that information is forthcoming, the AFC is
2 data inadequate. And, I think that that's what has to
3 be done here today. So, that's essentially my
4 position.

5 CHAIRMAN IMBRECHT: I understand that pretty
6 clearly. Mr. Chamberlain, let me inquire both as to
7 the necessity of full compliance of the regulations,
8 but, also I believe the contention of the applicant
9 and/or staff, (I'm not sure if I'm accurate of
10 including staff or not) was that the requirement of
11 seismic data relates to the facility itself as opposed
12 to, adjacent or neighboring facilities. Do you have
13 any comments on either of those issues?

14 MR. CHAMBERLAIN: Well, I'd have to let staff
15 speak for themselves and probably the applicant too.
16 But, I would simply point out to you that, it's that
17 very kind of issue, I think, that is addressed by
18 Section 1709 of our regulations, which directs the
19 Executive Director and, presumably, indicates the
20 Commission will also be following this kind of a
21 standard to determine whether the document
22 substantially comply with Section 1704. That has been
23 the test that been used in every one of these cases
24 since that regulation was adopted. And, I think it's
25 those kinds of ambiguities that are resolved in that

1 way. MR. PAGNE: Mr. Imbrecht if I may. Appendix
2 A, Section F indicates, it says, "a report shall
3 describe the seismic, other natural hazards and man-
4 made hazards associated with each of the proposed
5 sites." It states right there, these are man-made
6 hazards. Something which is man-made prior to or in
7 conjunction with the site. And, I think that, you know
8 without getting anyone upset, I don't even want to use
9 the word "upset." As we indicated last time, we feel
10 that perhaps this is an item that the staff missed.
11 But, it is a critical item. You've been there, you've
12 seen those bins. It's a critical item and should have
13 been addressed in the initial data request, it wasn't

14 CHAIRMAN IMBRECHT: I would draw a
15 distinction between the word "shall describe the
16 hazard" as opposed to "necessarily providing a full
17 seismic evaluation of the hazard" prior to acceptance
18 of the application.

19 MR. PAGNE: Well, it indicates the report, I
20 mean we're subject to interpretation again I guess.

21 CHAIRMAN IMBRECHT: Then what it comes down
22 to is a question of testing substantial compliance as
23 opposed to compliance, dotted "i" and crossed "t".
24 Trying to reasonable in my evaluation of both the
25 regulations and also, your points.

1 MR. PAGNE: I understand that.

2 CHAIRMAN IMBRECHT: And, I again compliment
3 you on the quality of your presentation. You raised a
4 selling point without question. The, let me just note
5 to you that the proposed action, and I floated this
6 trial balloon at the meeting a week and half ago, that
7 obviously, didn't float too high. It was not a
8 conditional acceptance, I want to make that clear.

9 MR. PAGNE: I understand that.

10 CHAIRMAN IMBRECHT: But, it was in essence,
11 the Commission exercising the discretion and
12 jurisdiction of the Presiding Member only to accelerate
13 the process by which a data request would be formally
14 served on the applicant. And, what I was suggesting at
15 the time was that we accept the application as
16 substantially complete recognizing, however, for full
17 determination of these issues and adjudication of the
18 issues, it was going to be necessary in the course of
19 the consideration of the application, to have further
20 information. And the sooner that was provided to all
21 parties, the better it would operate from a due process
22 standpoint in the interest of all parties which was the
23 reason I suggested that we not only accept, but, at the
24 same time, make specific data request on the applicant
25 but, could begin to run immediately. I suggested that

1 obviously, to some extent it was an effort to
2 compromise positions and, as I also recognize the
3 times, frequently compromises aren't acceptable to
4 either side. Sometimes from my perspective, at least,
5 it is a test of good compromise.

6 MR. MATTHEWS: Chairman Imbrecht if I may
7 make a comment. I'm Scott Matthews, I'm a Siting
8 Program Manager. I want to briefly go over what our
9 criteria are because it was misunderstood. What we do
10 is we ask the technical people to review an application
11 and then, if we find that it's deficient we develop a
12 list of deficiencies.

13 In order for a particular item to get on to
14 that list of deficiencies, it has to pass four
15 criteria. It has to meet all four of these criteria,
16 not just one of them. One of the criteria is that
17 there is a valid legal reference. We may want
18 something because we think it's important to the case
19 that isn't contemplated in the regulations, and will
20 have to wait until the discovery phase before we get
21 that. The other criteria are that, it involves a
22 significant issue that we need the information up front
23 in order to review the project, guarantee a review of
24 the project on time, and if we have enough information
25 to understand the project. So, in a nutshell, our

1 criteria is that we have enough information to
2 understand the project and review and to guarantee that
3 we can review the project within the 12-month time
4 period and the basis of our recommendations.

5 CHAIRMAN IMBRECHT: Okay, thank you. Any
6 further questions for Mr. Pagne? Thank you very much.
7 Mr. Denton.

8 MR. DENTON: Thank you. First issue I'd like
9 to discuss just briefly is a letter submitted, dated
10 February 15th, to the CEC by the attorneys for the
11 applicant. I'd like specifically like to address the
12 conclusion in that letter. I'd like to read you
13 something in there that I would like to personally
14 address because it's kind of bothered me for some time.
15 And, I'll read you my concern. And that is, "project
16 opponents are attempting to use the filing process to
17 delay the project. The certification process was not
18 created for this purpose. At this point, before formal
19 proceedings have begun, opponents are free to make
20 unfounded allegations concerning the accuracy of the
21 applicant's data, without giving the applicant any
22 advance notice whatsoever of these allegations. The
23 applicant does not have the opportunity to cross-
24 examine opponents to expose their assumptions and
25 qualifications."

1 Naturally, I would like to take exception to
2 that. We're not here to delay the project and, we're
3 here as citizens. In fact, probably there's been a
4 greater burden on us lately, I think, than the
5 applicant. We've got to give up time from the office;
6 we've got to take cuts in pay; we have to spend
7 evenings and weekends reviewing the volumes of
8 documents that have been created already. And, I
9 personally have a problem and that is, in speaking
10 about these three issues that Rich just spoke about, I
11 have a concern that if it's accepted as data adequate
12 today, then it's conceivable that the Commission may
13 make a data request for these three items we're talking
14 about, and they're going to be coming down within a 12-
15 month period.

16 Also, I think that there are going to be
17 other data requests. We've been basically caged so
18 far, in addressing ourselves to data adequacy issues.
19 But, there are many other issues that we're concerned
20 about. And there are many other items that we want to
21 see information on, and we want to look at. And, I'm
22 personally concerned because I'm worried about my
23 ability in the next 12 months to get all of this
24 information, read it, and try to make something of it.
25 Already, my daughter is against the power plant, not

1 because of what it might do to her town, but because of
2 what it's doing to me. And, it's just going to get
3 worse.

4 I think our request in regarding the
5 retaining wall, the engineering drawings for the main
6 building, and the bulk sugar bins are something that
7 can be done in 30 to 60 days. I too agree, that they
8 should be provided prior to acceptance of data
9 adequacy. I have, myself, have done seismic analysis
10 of structures. I have an idea what's involved. And,
11 quite frankly, I don't think it's so great that it
12 couldn't be provided before data adequacy is granted.

13 What we would look for would be a report very
14 similar to the geotechnical report for the plant. This
15 report would include a review of the original contract
16 documents from the construction of the bins in the late
17 1940s, and I believe they are available from the C&H, a
18 survey of the bins based on visual analysis to indicate
19 any deviations from the original contract documents and
20 note subsequent modifications, structural calculations
21 based on current codes analyzing the main seismic
22 resisting structural members, and establishment of
23 design parameters for any corrective structural work
24 required to bring the bins up to current code.

25 I can assume that if it's not provided as a

1 data adequacy issue, that they can do this analysis and
2 provide all the structural work necessary within 12
3 months, but I can't guarantee it, based on my
4 professional experience because I really don't know to
5 the extent, that structural analysis is going to have
6 to be done, structural design work is going to have to
7 be done for those bins. And, I'm concerned about that.

8 CHAIRMAN IMBRECHT: Let me indicate to you
9 the ordinary resolution of that kind of an issue in a
10 siting case. If the Presiding Member and other member
11 of the Committee who has jurisdiction, come as the
12 conclusion that information is essential in order to
13 produce a decision which would be sustainable to
14 collateral attack in the course of the law that would
15 review the decision of the Commission, they can make
16 that judgment very clear to the applicant.

17 And, the applicant then, in essence, has an
18 option -- either to stipulate to an extension of time,
19 so that there is adequate information in the record of
20 the preceeding to justify decision and produce decision
21 that is indeed sustainable or is likely to be
22 sustained. Or, in the alternative, they can agree to
23 an extension of time in order to insure that
24 information is available. It puts the applicant in a
25 difficult position but, in essence, what they are faced

1 with is the decision of whether or not they want to
2 enforce the decision from the Commission which is
3 unlikely to be sustained in the judgment of the
4 Commission, which obviously serves the applicant no
5 purpose because, they have a hollowed victory, or
6 perhaps a recommendation that the application be denied
7 because of inadequate information.

8 I would just note for example, that is
9 precisely the procedural posture in which the case that
10 I'm presiding over finds itself in right now. We are
11 nearing 16 months rather than a year, in terms of
12 consideration and will take at least 18 months before a
13 final decision, and the applicant conceded time based
14 upon their own conclusion after, obviously, some strong
15 statements from my part from the dias that they would
16 face of either getting an inadequate decision or a
17 denial, unless they stipulated to an extension of time.
18 I guess you could contend that perhaps that stipulation
19 was not without some duress applied from the Chair.
20 But, it was realistic I think in terms of evaluating
21 their options and what is frankly, in their interest.

22 I would suggest that same kind of
23 circumstance would likely occur in this case to the
24 extent that you are able to convince the Presiding
25 Member that this information would be essential to a

1 clean decision. I apologize, I'm a little hoarse
2 today, as I have a bit of a sore throat.

3 MR. DENTON: I suppose in listening to
4 what you're saying, I think what I'm saying is, that if
5 we had this survey done prior to acceptance, we might
6 not have to even have to face the issue later on of
7 having to extend it for a structural analysis or
8 structural design work for these bins.

9 Another issue I'd like to talk about the
10 retaining wall. What I would expect to see again,
11 based on Rich's discussion on what we feel Title 20
12 requires, would be a planned elevation or section or
13 probably all three, showing the full extent of the
14 retaining wall.

15 To date, we don't even have a plan that shows
16 us the full extent of the retaining wall, the length.
17 We have no indication of footing size, wall thickness,
18 intermediate structural supports, strong backs or
19 deadmen penetraing the hill. We feel these items would
20 be included if you did a preliminary design. A
21 preliminary design would have to be done by a
22 structural engineer. At present, the only engineer to
23 provide any input has been a soil engineer, and all
24 that has been provided has been design parameters.
25 Again, we feel the retaining wall's a critical

1 structure and as such, should have preliminary
2 structural design.

3 Rich briefly discussed the building. Just
4 adding to what he said. We don't have anything that
5 give us a location of the structural members, the
6 construction of these structural member, the concrete
7 steel, what they're made out of, the spacing of these
8 members, the materials of the exterior wall, the size
9 and extent of the foundation members, nor a more
10 detailed plan of the building. If we did have what I
11 just mentioned, we would have what the industry
12 considers standard preliminary design. And, we feel
13 that that's what should be expected for data adequacy.
14 That's all I have.

15 CHAIRMAN IMBRECHT: Are there any questions?
16 Thank you very much. Ruth Blakeney.

17 MS. BLAKENEY: We missed you last week
18 Commissioner Gandora. Commissioner Crowley said are we
19 going to keep introducing new things and, I did last
20 week. I didn't come here especially to bring these.
21 One of the donations I've made to this cause is had my
22 car blow up, delivering papers up here, so you had in
23 Sacramento for 6 days and I collected it's body.

24 And, also, left you a newspaper with a story
25 from the San Francisco Chronicle, July 26, 1984. This

1 was in response to Commissioner Commons bringing up his
2 concern at the hearing last week about cancer is
3 Crockett special or what. And, I'm really quite
4 grateful to Mr. Commons because I've gotten an uncommon
5 education about where I live. I mean this proces has
6 made me aware of things that I never knew before. I
7 did bring up today the original study, and it isn't
8 just a cancer study, it's study on all the major causes
9 of mortality. We discovered that Crockett is right in
10 the petrochemical belt. We have a 38 percent higher
11 death rate of all major causes, including cancer, than
12 the rest of the County that isn't in this belt. This
13 includes Rodeo, Crockett, Martinez, Pittsburg -- it's
14 all along the shoreline. And so, you could have other
15 studies and perhaps, argue about it. You might say
16 people smoke too much who live in these towns, or all
17 that. But, the death rates are inconvartible, 38%
18 higher, they're all right there in the Department of
19 Public Health, whom I've had a lot of conversations
20 with this week. Again, Commissioner Crowley, these are
21 not new things.

22 In the January 23rd meeting, Chairman
23 Imbrecht suggested zoning was the only thing that he
24 would be interested in talking about other than the
25 January 8th letter, and, right from the get-go,

1 Commissioner Commons has expressed interest in
2 environmental. These two things happen to go very much
3 together because, in my discussions with the Planning
4 Department, they have stated that they would be totally
5 unwilling to hold hearings for the re-zoning of this
6 residential part of the land where you're trying to
7 site this plant until an Environmental Impact Report
8 or, its equivalent is provided them. That's because of
9 this, and because we've got too much of this you know,
10 we ruining our shoreline here.

11 I gave you another little printout about the
12 Carquinez Shoreline Committee. We've got two things
13 going along our shorelines. We've got movements like
14 this to bring more industry, more pollution, dump more
15 into the Bays and then movements like this that are
16 trying to save the shoreline, trying to make some
17 parks, trying to preserve what we have. I have a
18 feeling Chairman Imbrecht, when you finally came down
19 and visited us, that you looked around and saw what a
20 crummy little town, sitting in giant factory.

21 CHAIRMAN IMBRECHT: Don't put words into my
22 mouth.

23 MS. BLAKENEY: No, but it is true, it is a
24 great big factory, and a lot of our residences are
25 right across from it. But, it doesn't mean we want to

1 make it crummier, we've got to stop somewhere. I'd
2 like to go back a little to talk about why Crockett is
3 why it is.

4 It has been a C&H town up until 15 years,
5 they've been extremely paternalistic with us. They use
6 do everything for us. They use to hire a 11 gardeners,
7 that took care of downtown. They spent tons of money
8 on the citizens, we use to have a beautiful recreation
9 center and all kinds of things, all paid for by Big
10 Daddy. They made a decision a little over 15 years ago
11 to stop all that. They have totally disinvolved
12 themselves with the town, spend no more money on it,
13 and they've said we're on this side of railroad and
14 you're on the other.

15 It's taken a few years for us to gain the
16 consciousness of a town and realize that if anything is
17 going to be done there, we're going to have to do it.
18 We are seriously handicapped by the fact that we're an
19 unincorporated town, and the rules now or you've got to
20 have 10,000 population to incorporate. So, this means
21 that we'd have to join with another community. C&H has
22 opposed our incorporation and will continue to. In
23 other words, we have no vote, we have very little that
24 passes as government. The Crockett Improvement
25 Association, which I'm representing here, is one of our

1 forums of government. The Lion's Club is one of them
2 and such like, and the Chamber of Commerce, where we
3 have no government. We are beginning to emerge as a
4 town, to get a consciousness as a town. As a matter of
5 fact, you're probably helping us, we have a common
6 enemy now. I know that a few months ago, I was the
7 most...

8 CHAIRMAN IMBRECHT: You mean the applicant's
9 helping you.

10 MS. BLAKENEY: we haven't quite figured that
11 out. (LAUGHTER) At any rate, we're...

12 CHAIRMAN IMBRECHT: We're from Sacramento,
13 we're here to help.

14 MS. BLAKENEY: We are an odd town in a lot of
15 ways. We have only 1100 homes there. Over half of
16 them, the people were born and raised in them. And, I
17 don't think that you could say that anywhere else in
18 California Over half of those homes, they were born and
19 raised, right there. Any rate, we have these
20 considerations, we are becoming conscious here.

21 But, this whole thing about environment and
22 the fact, that you're siting part of this project on
23 what is now residential land, are intricately connected
24 since Planning is unwilling to even start hearings on
25 this, unless they get from the State, because they said

1 it's much too much of a burden to put on the applicant,
2 to ask them to provide an EIR or its equivalent.

3 Last night, I was at a meeting of the
4 Crockett Improvement Association, and I was directed as
5 a member of the Planning Council, to bring back
6 together those 16 members, that put the Master Plan
7 together, plus the Planning Council. We're going to
8 undo the indication there of this being heavy
9 industrial. This will either be clarified in writing,
10 by the Planning Department, that all that was ever
11 intended there, was a parking lot and storage. Or, we
12 will go before the Board of Supervisors and alter the
13 Master Plan, one way or another. You've already
14 received a direction from the Planning Department that
15 in indicating as heavy industrially, had never any
16 intention of anything like this being built there. So,
17 we know this from the get-go. Because this Commission
18 has never, historically, denied an application once
19 its's been declared data adequate, we have had to
20 assume that data adequacy has great weight. And, that
21 after that, it's almost rubber stamped, because,
22 historically, you have never turned down one
23 application. This is why we're here, because we're
24 terrified of being rubber stamped and just having a
25 kiss-off day in court for the public. We consider that

1 this is an absolutely wrong-headed place to be placing
2 this, and I cannot see why it makes any sense to call
3 this data adequate until the environmental and the
4 zoning questions are cleared up. They take a long time
5 to do if they are done properly unless you are going to
6 step in and force everybody to do it. I mean, I really
7 think that ...

8 CHAIRMAN IMBRECHT: Let me just say something
9 about the record for the Commission relative to denial
10 or acceptance of applications. This may be a
11 controversial statement; I'll see if I can wade into it
12 and say it with the proper amount of detachment. I
13 think that, at least, there is one school of thought
14 that the Commission, at times in the past, undertook a
15 course of action that is not too dissimilar from that
16 which has been ascribed to the Coastal Commission, on
17 occasion. That is, approving an application but
18 attaching substantial conditions to a certificate to a
19 point that the applicant, to put it kindly, has lost
20 interest in pursuing the project.

21 From my perspective, it probably would have
22 been a little cleaner and straightforward for the
23 Commission simply to have denied those applications
24 where it was pretty clear that the Commission was not
25 inclined to see the project go forward. There are a

1 couple of very notable applications in terms of
2 exceedingly great public controversies that were
3 generated over decisions. One of them involving a
4 major nuclear facility in the State, while filed
5 technically, there was approval of the application. As
6 a practical matter of the conditions attached to that
7 approval, spelled the doom of the projects, I think are
8 impractical in a way of describing it. I just think
9 that a more clear understanding ...

10 COMMISSIONER GANDARA: The Legislature is
11 doing it, not the Commission ...

12 CHAIRMAN IMBRECHT: The Legislature, alright.

13 MS. BLAKENEY: I would like a point of
14 information. You said that you are required, by law,
15 to finish this process in twelve months, to consider
16 the data?

17 CHAIRMAN IMBRECHT: Well, we are required.
18 Once in accepting the application and to render a
19 decision in twelve months ...

20 MS. BLAKENEY: My question is can you render
21 it sooner than twelve months? I know you have no
22 experience at all in denying one, but I mean if you
23 should ...

24 CHAIRMAN IMBRECHT: No, we are certainly
25 entitled by law to render a decision in less than

1 twelve months, although as a practical matter that I
2 think ...

3 MS. BLAKENEY: Suppose, for example, you were
4 to finish the study on Need, that I understand you are
5 involved in, and you have to need for this plant.
6 Could you render a decision on that basis sooner than
7 twelve months?

8 CHAIRMAN IMBRECHT: It is theoretically
9 possible, yes. Commissioner Commons.

10 COMMISSIONER COMMONS: As a practical matter,
11 since I am involved in some cases where we have tried
12 to see if we could do better than twelve months, I
13 think the practical answer is to come out with a
14 positive 'yes' on a case is going to take a minimum of
15 eleven months and very close to twelve to really bring
16 a case out. It is always possible that you'll have a
17 negative decision that will come out earlier. Most
18 often, historically, that has occurred because an
19 applicant has withdrawn the project based on
20 information that comes out within the proceeding. They
21 could have a withdrawal, a negative action by a
22 Commission, but the process in order to protect the
23 public, requires pretty much the full period of time.

24 MS. BLAKENEY: For a 'yes'. But for a 'no',
25 it really doesn't?

1 CHAIRMAN IMBRECHT: That's right. When you
2 take into consideration the various waiting periods,
3 filing requirements at various stages of the
4 proceeding. I think one time, I had the staff
5 calculate for me the minimum consideration time to be
6 about 10½ months--maybe 11. But that's accelerating
7 everything to the maximum of ten months. Then it would
8 only occur, obviously, under circumstances where you
9 have a project that was embraced by the community where
10 it was being built and it was motherhood and apple pie.

11 COMMISSIONER COMMONS: There's one other
12 comment I wanted to make. You have at least four--and
13 I can't speak for Commissioner Gandara, because he was
14 here before myself. But, we have not had a
15 controversial case decided by the Commission since four
16 of the Commissioners are sitting on the Commission, and
17 I wouldn't want to predict how the existing Commission
18 would respond in terms of accepting or rejecting a case
19 based on the actions of people who are no longer a part
20 of the Commission.

21 My assessment of my peers in office, unless
22 Commissioner Noteware might say, that it's my voice
23 that all of the Commissioners who sit and listen to a
24 case and vote based on their record and what is
25 presented in evidence in a case. So my viewpoint, for

1 example, of data adequacy is not the trying of the
2 case. I feel very strongly about that. I don't want
3 to see cases come in where we can't meet our 12-month
4 guideline where you just have someone come in and put
5 forth a shoddy data package. It's my belief that the
6 case is tried during that 12-month period and that's
7 why you have a Committee. The Commission makes its
8 value decision on a project and doesn't express those
9 value decisions in a data adequacy--it has no
10 relevance. The only issue in a data adequacy is do you
11 have sufficient data, substantial compliance, in order
12 to go forth, not do I like a particular aspect of it,
13 or is it a good project or a bad project. We are not
14 trying that. I can't say that's the viewpoint of the
15 other Commissioners, but I wouldn't want to predict on
16 this Commission the voting patterns on previous cases
17 by other Commissioners.

18 CHAIRMAN IMBRECHT: What I was trying to say
19 earlier is that it's always possible to render a
20 decision in twelve months, but the burden of proof
21 rests with the applicant. So, if you come to the 12-
22 month belt, and the burden of proof has not been met
23 but the applicant insists on a decision, then that in
24 essence, dictates what the decision will be. We will
25 know the decision. That's the way I would connect

1 myself as Presiding Member...

2 MS. BLAKENEY: What if we insist on a
3 decision. Don't we have a right to have this process
4 come to a conclusion, too? I mean it's involving us
5 financially, physically and mentally and an extremely
6 burdensome way. We are interested in having a 'no'
7 decision rendered as early as possible. Thank you.

8 (LAUGHTER)

9 COMMISSIONER COMMONS: Mr. Chairman?

10 CHAIRMAN IMBRECHT: Thank you. Commissioner
11 Commons. Commissioner Gandara, did you have anything?

12 COMMISSIONER GANDARA: Well, since we're
13 being chatty and chummy, I thought I'd add mine. I
14 think it's unlikely that anybody can tell you when a
15 decision would be rendered in this or any other case,
16 because the current situation of the Commission is
17 fairly difficult with staffing. So for this reason, I
18 think much too much has been made as to when the clock
19 starts ticking, whether it starts ticking now,
20 yesterday, the day before. I think too much is made of
21 the idea that we have to get going because we have to
22 make a final decision in twelve months.

23 At the rate things are going right now, we do
24 have at least one case that's delayed that might delay
25 all the other cases. I think the decision is going to

1 have to be made by the Commissioners as to whether, in
2 fact, all cases will be delayed for that when we have a
3 staff meeting. I don't wish to reiterate all the
4 problems that we may have in this area, but suffice it
5 to say that I think that both the applicant and the
6 staff have to be fairly borne by us at this point in
7 time that the twelve months that is being talked about
8 is a statutory deadline, which frankly, I think the
9 Commission is going to have difficulty meeting a number
10 of its cases.

11 So, I think that's a goal that we set and a
12 goal has rarely been exceeded. On one occasion that I
13 can remember. Well, one occasion was two weeks another
14 occasion was a fairly complex case, but I think that's
15 in the interest of all parties -- applicants and
16 potential intervenors as well as the Commission to
17 complete these cases as quickly and rapidly as
18 possible. That's taking everybody's due process rights
19 into consideration and everything. I think that as of
20 this moment in time, I don't think anybody can tell,
21 either the applicant or the Crockett citizens, when
22 it's likely that this case will be concluded.

23 CHAIRMAN IMBRECHT: Alright, fine. Jay
24 Gunkelman, please.

25 MR. GUNKELMAN: I find this to be a rather

1 interesting case and I'm sure you do to. Some
2 interesting precedents have been set to date. I see a
3 few eyebrows raised on that. In fact, it is my
4 understanding that due to the early involvement of the
5 Crockett people in this particular project, other
6 projects have kind of stood back and certain other
7 projects have even cleaned up their filings. I suspect
8 your staff may have reviewed Title 20.

9 I think the precedence is an interesting
10 thing to look at at this point. Taking a real quick
11 look at what the Commission has avoided as a precedent,
12 one of these items is not moving the application's
13 acceptance or rejection, hearing to Crockett. It would
14 have made it a lot easier for us. However, I can
15 understand your position on that. Since precedent is
16 such an interesting item in this particular case, I
17 would take a good, close look at the data adequacy
18 start date that's being talked about at this point.
19 Perhaps, February 15th, the date of verification under
20 penalty of perjury, in all likelihood would be the date
21 at this point.

22 At the same time, that may not be the date of
23 adequacy date. Should the Commission make a request
24 for a substantial item of data such as the retaining
25 wall which was a substantial retaining wall, or the

1 bulk bins. I am not talking crossed "t" dotted "i"
2 here, I am talking major missing data. There is a
3 significant possibility that the Felando Bill may enter
4 in at that point. I would suggest very careful
5 consideration by the Commission of this possibility.

6 It would be my suggestion that since we have
7 asked for information in our January 8th letter, since
8 the Commission did accept that as their concerns for
9 data adequacy, and since obviously there are
10 substantial pieces of data missing at this point, in
11 light of the possible precedent here, and especially in
12 light of the fact that you've got a whole line of AFC's
13 waiting to descend on your staff. You are already
14 involved in a litigation over whether your staff can
15 handle things or whether someone else can handle
16 things. I would suggest taking a very close look at
17 your decision today. It's my contention that since
18 there are significant data items not present, that
19 rather than making a conditional data adequacy, whether
20 you call it by that name or not, it's a conditional
21 data adequacy. It's granting data adequacy and you are
22 still asking for more data which was not adequately
23 submitted. Call it what you wish ...

24 CHAIRMAN IMBRECHT: I really have to make
25 exception to that.

1 MR. GUNKELMUN: I expect that you probably
2 would.

3 CHAIRMAN IMBRECHT: I want to make my point
4 extremely clear because it is important for you to
5 recognize that in the conduct of any proceeding, there
6 is enormous amounts of information that are required of
7 the applicant in the course of that proceeding. I
8 would not characterize the suggestion I made a week and
9 one half ago, or even if it were to continue today, as
10 being in any way distinguished from the conduct of
11 other proceedings, in that sense. Therefore, ...

12 MR. GUNKELMUN: I would still suggest that
13 you take a very close look at what you are doing today.
14 I would personally suggest that since data is still
15 outstanding and it isn't minor data, that supposedly
16 they can submit it within thirty to sixty days by their
17 own admission, at this point. That data inadequacy be
18 your decision, in order not to establish a precedent
19 that in the future this long line of AFC's -- some
20 cogen and some not, I'm sure.

21 I've not come to you with basically inept
22 applications. I've been in school settings for an
23 extended period of my life as many people have, and I
24 have seen a lot of term papers. I have seen a lot of
25 term papers that went to the instructor and before they

1 actually submitted them, they asked them, "Here, take a
2 look at this, what do you think of this term paper?"
3 The instructor looks at it and says, "Well, you've got
4 a lot of things wrong with this, you had better submit
5 an Addendum" essentially. Here, I think what you've
6 got in front of you is the worst term papers I could
7 imagine. If I were Pacific Thermonetics, I would take
8 a very close look at my consultants and my legal staff.
9 I think a very, very shoddy job has been done by the
10 applicant and their agents. I would suggest that the
11 precedence that you are establish today be that you
12 demand quality submissions. Thank you.

13 CHAIRMAN IMBRECHT: May I ask you to clarify
14 what you are referring to in terms of the Felando Bill?

15 MR. GUNKELMUN: Well, perhaps your legal
16 staff, (I'm no lawyer) should comment on that. It's my
17 understanding that it may have significant impact on
18 the data adequacy date. Something to the effect that
19 if data of substance is submitted later, that the 12-
20 month process doesn't really get rolling at the point
21 in time that you make your decision. It may make your
22 acceptance process invalid, from my understanding.
23 Again, I am not a lawyer. I am just suggesting that
24 you take a very close look at that.

25 CHAIRMAN IMBRECHT: Mr. Chamberlain, do you

1 want to enlighten us on this, are you familiar with
2 this legislation?

3 MR. CHAMBERLAIN: Well, in the regulations
4 prior to the Felando Bill, there was a procedure for
5 accepting a notice or application as of the date of
6 filing on condition that the applicant correct certain
7 deficiencies within a specified time. If the applicant
8 didn't correct the deficiencies within a specified
9 time, the practice was that the data of acceptance
10 would then be continued on a day-to-day basis until
11 those deficiencies were corrected. When the Felando
12 Bill was passed, it was our interpretation that since
13 it provided that the Commission would determine that
14 the application was complete, in which the application
15 would be deemed filed on the date the determination was
16 made.

17 CHAIRMAN IMBRECHT: What section of our
18 statute is that on?

19 MR. CHAMBERLAIN: This is Section 25522.
20 This was an amendment to that section. This section
21 had existed but when the Felando Bill, basically the
22 second paragraph was added which placed with the
23 Commission the determination whether or not the
24 application was complete.

25 It stated in rather unambiguous terms that if

1 the Commission determined that the application was
2 incomplete, the Commission had to specify, in writing,
3 those portions that were incomplete and indicate the
4 manner in which they could be made complete and it
5 would be deemed filed then as of the date the
6 Commission received that additional information.

7 As I understand it, the decision before you
8 today is whether the application is complete. I
9 believe it's fair for the Commission to continue to
10 utilize its criteria under Section 1709, that means
11 substantial compliance with the informational
12 requirements and its regulations, or alternatively that
13 it is not complete. If you decide it is complete, I
14 believe it is within the Commission's discretion,
15 however, to recognize that there are certain additional
16 critical data not necessary for substantial compliance,
17 but nonetheless, important in the proceeding and to
18 make a Commission-ordered data request as you've
19 suggested.

20 CHAIRMAN IMBRECHT: Or as an alternative,
21 simply wait if the opponents wanted to further delay
22 the request for such information. In essence, there
23 are other processes by which information, of course the
24 proceeding can be pursued. Any party, and I would
25 assume, as I indicated at the last meeting, petitions

1 for intervention would be speedily processed by
2 Committee of Jurisdiction, which case, a party then is
3 given a right under our regulations to request
4 information of other parties and assuming the Presiding
5 Member grants such a request, that in turn, that
6 information would be generated in that fashion. Or the
7 Presiding Member, through his or her own motion,
8 similar make data requests, or the staff may make data
9 requests, et cetera. All that I was suggesting, by
10 virtue of the process that I had proposed at the
11 meeting one and one-half weeks ago, was to accelerate
12 that process to attempt to respond to the concerns that
13 the information would not be received in a timely
14 fashion. But, I certainly, particularly with the
15 presence of the Presiding Member of the Committee,
16 don't presume to intrude on that jurisdiction at this
17 juncture. Commissioner Commons.

18 COMMISSIONER COMMONS: Mr. Chairman,
19 essentially, we wouldn't be having a problem here under
20 the old ground rules because I think we would have been
21 pretty much unanimous in having a conditional
22 acceptance and having some items of data that would
23 have to come in. What's happened is it's made it more
24 difficult to start a case because we don't have that
25 avenue available. So, we are essentially having to

1 make a decision as to complete-not complete,
2 substantial compliance without having the essentially,
3 easy opportunity of saying, "Gee, we have most of the
4 information, we don't disagree..."

5 CHAIRMAN IMBRECHT: The easy opportunity
6 didn't work too easy either.

7 COMMISSIONER COMMONS: What happened is it
8 then became a process that every case that came before
9 the Commission having conditional acceptances and the
10 list started getting longer, longer and longer. So,
11 what it's done is it's made the process of data
12 adequacy more difficult, I guess, to the applicant. In
13 a sense, it's to protect the applicant because once the
14 clock starts, there are twelve months and you can't go
15 through filling out the forms and getting the
16 information to start the process. That's what, I
17 think, what has caused the problems here in terms of
18 this particular procedure.

19 CHAIRMAN IMBRECHT: I would propose that we
20 complete the witnesses and see if we can't reach a
21 decision for breaking for lunch and attempt to do that
22 by 12:30 p.m. Next, Mr. Tubb.

23 MR. TUBB: Good morning. My name is Douglas
24 Tubb. After mention of lunch, no one is going to
25 listen to me so I will make it very brief. I would

1 like to welcome the new Commissioner because, like you,
2 I am a neophyte here. Although I feel like I know all
3 of you intimately because I have read all of your
4 statements and the various transcripts. I have spent
5 hundreds of hours going to meetings. Likewise, I am
6 threatened with divorce like some of the other
7 gentlemen here from their wives going to meetings.

8 I want to address the new Commissioner and
9 not only welcome him to the position, but remind him of
10 the tremendous honor that he has capping a very long
11 career as engineer and other Commissions but also the
12 tremendous responsibility which he will bear, not only
13 on this issue, but on others in the future. I think
14 this issue should be kind of an instruction point for
15 you as a new member, as a neophyte like myself here. I
16 think one of the first things to look at is the fact
17 that in the case of the Crockett Power Plant
18 Cogeneration Plant, as it has been called but is not,
19 you must remember that the Commission has an incredible
20 responsibility because the townspeople, the County, the
21 local politicians, the people in the other counties
22 like, Solano County, other cities like Benecia and
23 Vallejo -- have no say in this. It is in your hands.
24 Our health, our destiny, our property values are in
25 your hands. This smokestack that they are proposing to

1 build will be 200 feet high, which would mean on a day
2 with very little wind, the smoke would go directly into
3 a lot of people's living rooms. Fortunately for me, I
4 live below that. I am in what is called the highly
5 impacted area even by Pacific Thermonetics'
6 designation. I can throw a baseball and hit this power
7 plant in several places, cooling towers, the main thing-
8 -you name it, I have a pretty good arm but still I live
9 very close.

10 I want you to know that you have a particular
11 responsibility. We've gone to the County. The
12 supervisors, the Planning Commission, all the various
13 people are against it. The townspeople are against it.
14 When we had the meeting on the 19th of September, only
15 a few days after we found out about this, thanks to
16 Mary, she is our Rosa Parks of Crockett, she blew the
17 whistle and we found out about this. Within a very
18 short time, we had every single adult in Crockett who
19 could hobble to the meeting and they were outraged, as
20 Mr. Perez could probably tell you. This was the 19th
21 of September. We knew nothing about this, okay.
22 Recently, Mr. Perez suggested that we call the Energy
23 Commission to have the meeting held in Crockett so that
24 the townspeople could come and partake. Within one
25 day, we had over 250 people, I believe, calling. That

1 represents over one-fourth of every single adult in
2 Crockett over the age of 18. I suggest that this
3 represents a firm commitment on the part of the
4 townspeople. We do not want this.

5 You asked what's this got to do with data
6 adequacy. Well, we will get to that. I'm coming
7 around to that. The point is you have a tremendous
8 responsibility and you may say well, it's like prison
9 and we have to put them somewhere. But I think the
10 responsibility is very important to a project like this
11 that is 30 feet from houses. This is not out in the
12 boonies somewhere, this is across the street from our
13 houses. I think when you look to see if the data is
14 adequate, I think you have a very important
15 responsibility.

16 I think you also have a responsibility to
17 taxpayers because the staff here is obviously
18 overworked. They have not had time to look into many
19 different things, particulars and details. They say
20 they want to have a substantial "compliance", which
21 means they didn't have time to really look through
22 everything and they want to accept it. I think that
23 the data, to be adequate, is something, would be saving
24 the taxpayers a lot of money in staff time, a lot of
25 your time, a lot of our time before taking off work to

1 come here. We love to come to Sacramento, but we
2 usually go to Old Town, we don't come here. This is my
3 first trip here. So, I think it's very important for
4 you to look through the details as well as the general
5 picture. The general picture of need, water,
6 resources, the pollution, the cancer, I think, is not
7 addressed. I, myself, had three operations for cancer--
8 -malignant cancer--many people have in our town.

9 Fortunately, just for historic purposes, the
10 Selby Plant which was built years ago by the Mayor of
11 San Francisco before the turn of the century, to refine
12 originally gold from the gold dust hills, but led was
13 just around the bend from Crockett and all of that
14 pollution was so bad that in 1914, it killed horses in
15 Benecia--that is documented. The people in Crockett
16 have a higher cancer risk because of years of exposure
17 to the Selby Plant, the C&H Plant, and in more recent
18 times, the Petro Chemical Plant. As we mentioned here,
19 many people in Crockett have been there for two-three
20 generations. So I think the point is that when you
21 consider the data, you should consider very carefully
22 whether it is indeed adequate. We feel the information
23 should be up front. Thank you.

24 CHAIRMAN IMBRECHT: Thank you, very much.
25 Mary Moutinho.

1 MS. MOUTINHO: My name is Mary Moutinho. I
2 live at 515 Morine, just across the street from where
3 they plan to build this power plant. I am very, very
4 concerned. I have lived there for 46 years and I am
5 not only concerned for myself, but I am concerned for
6 the babies being born today and growing in Crockett. I
7 am told that more than 50 percent of the people who die
8 in Crockett is from Cancer. I feel this is very
9 serious and almost everyone you talk to in Crockett,
10 everyone is opposed to this power plant. We already
11 have too much pollution as it is, and I don't think we
12 need any more. Thank you.

13 CHAIRMAN IMBRECHT: Okay. To represent the
14 applicant, please step forward. Before you begin your
15 testimony, I would like to ask a couple of questions on
16 a tangentially related matter. Can you tell me what,
17 if any, relationship AMFAC has with C&H?

18 MR. DAVIS: Well, C&H. First, for the
19 record, my name is Gordon Davis and I am the attorney
20 for the applicant.

21 CHAIRMAN IMBRECHT: Thank you, go ahead.

22 MR. DAVIS: C&H is an agricultural co-op
23 which is owned by a group of sugar growers in the
24 Islands. For the moment, I have forgotten who all of
25 those growers are and whether AMFAC is one of those or

1 not, I just do not know.

2 CHAIRMAN IMBRECHT: Let me just state for the
3 record so it's clear that I am aware of the concern and
4 have also taken appropriate steps. I am sure that
5 there is no problem, but in December of 1983, I
6 attended a Business Environmental Government Leaders
7 Conference in Hawaii. The one with the Lieutenant
8 Governor of the State and various members of the
9 administration, the Director of Food and Agriculture,
10 et cetera, and members of the California Legislature.

11 I made five presentations to that seminar.
12 My expenses were paid for by AMFAC, which was the host
13 or sponsor of the Conference. I did disclose fully the
14 acceptance monies for those expenses in my 1984 Fair
15 Political Practices Commission, Financial Interest
16 Disclosure Statement, as a matter of public record.
17 Something in excess of a year, I would guess. I have
18 asked our General Counsel to review those circumstances
19 and inform me of whether there is any potential
20 conflict of interest associated with that. I would
21 just note that my own reading of the statute, even the
22 reason I made inquiries, I am personally not aware of
23 any direct ownership relationship between C&H and
24 AMFAC. If one exists, I would appreciate being
25 informed of it.

1 Secondly, even were that to be the case and
2 were such a trip have to occurred, more contemporaneous
3 from a time standpont with this decision, it is
4 nonetheless not clear to me what that relationship
5 might be in respect to Pacific Thermonetics, which is
6 the applicant here for the project and the relationship
7 with C&H, which I understand to be a contractee with
8 Pacific Thermonetics to receive steam from the
9 cogeneration facility.

10 All of that notwithstanding, my own reading
11 of the conflict for statutes indicates that receipt of
12 a gift, I believe in excess of \$250, must occur within
13 a year of any decision that would affect the interest.
14 I personally don't, and I am not suggesting that there
15 would be any material impact on AMFAC as a result of
16 this decision. But in any case, the acceptance was for
17 more than a year, which has actually been about 14 or
18 15 months. Despite of all that, I want it stated
19 clearly on the record that I am conscious of the
20 concern and I certainly want to bend over backwards to
21 ensure that there is no violation in any respect as to
22 the law.

23 As a consequence, I have asked our General
24 Counsel to review the circumstances and indicate to me
25 whether or not he perceives it to be a potential for a

1 conflict of interest. I think that's probably the best
2 way to state it. It is my understanding Mr.
3 Chamberlain, if you want to comment on this, at this
4 point in time, feel free to do so ...

5 MR. CHAMBERLAIN: Well, I think you have laid
6 it out completely and my conclusion was particularly
7 with respect to the 12-month timeframe. AMFAC is not,
8 at this time, represent a source of income to you,
9 therefore, even if AMFAC were, in some way involved in
10 the case, there would be no conflict of interest in
11 your making or participating with a decision in the
12 matter.

13 CHAIRMAN IMBRECHT: Thank you. I would
14 appreciate if you would pursue the other lines of
15 inquiry that I indicated because I think they are
16 relevant and ones which, in the future, may become
17 relevant to other siting cases. Now, if you would
18 please proceed with your testimony.

19 MR. DAVIS: Thank you, Mr. Chairman,
20 Preliminarily, I would like to note that during the
21 whole process that we have been preparing the AFC and
22 the supplemental information that has been furnished in
23 response to inquiries, we have been doing our best to
24 adhere to the standards which we understood were those
25 by which our application would be judged. As

1 COMmission Counsel has noted, the regulations do refer
2 to substantial compliance. The Crockett group here
3 emphasized the wording of Appendix A or Appendix B that
4 says, "All of the following information should be
5 furnished." But, the overriding standard that we were
6 advised to follow was whether in judging--whether we
7 had furnished adequate data, whether we meet the
8 standard of substantial compliance.

9 Our consultants have discussed specific data
10 and specific types of information to be furnished with
11 the staff, from time-to-time, and followed the advice
12 we were given as to what needed to be furnished. The
13 initial decision by this Commission last August that
14 the application was incomplete was accompanied by a
15 list of deficiencies as required by the statute. I
16 believe that there is no significant question.

17 We have complied substantially in responding
18 to those items that were in that August 14th deficiency
19 list. The issues more recently have arisen with
20 respect to the letter of January 8 by the Crockett
21 Group. They insist here that this Commission has
22 adopted that list of additional deficiencies as those
23 to which we must respond. The transcript of the
24 hearing before last will clearly reflect that it was
25 the direction that we were to follow was to either

1 respond to those items by providing the information or
2 showing why we need not respond to them in order to
3 meet the standard of substantial compliance. We have
4 attempted to do that, both in our written responses and
5 in our oral responses.

6 I will compliment the people from Crockett in
7 their diligence and the manner in which they have
8 sincerely attempted to respond to the issues with
9 regard to data adequacy. There have been times when
10 they necessarily yielded, I'm sure, to the temptation
11 to get the merits of the case in the long run, rather
12 than to address the issues of data adequacy and it's
13 tempting to us to attempt to respond on the merits to
14 some of those things. But, we don't want to take that
15 time.

16 I note that at our last meeting, I addressd
17 some 14 items, I or the consultants with me--addressed
18 some 14 items that were in their last letter, which
19 they thought that our responses were inadequate. This
20 time, their letter of the 4th of March narrows it down
21 to 6 items. I appreciate their really focusing on
22 those items, rather than continuing to belabor things
23 that we have responded to before. I don't want, now,
24 to attempt to repeat everything that was said at our
25 last meeting, but I would like to address, very

1 briefly, some of the misinterpretations that we believe
2 or other items with respect to the six items that they
3 do have in their March 4 letter.

4 With regard to the sugar bins, there are
5 exchanges that have occurred between the Crockett
6 spokesman and members of the Commission, I think fairly
7 characterize where we stand, as well, that the
8 condition of the sugar bins existed when we began our
9 study, the seismic reports that we have submitted show
10 clearly the risks that are there on the site and the
11 standards to which the project must be built. In terms
12 of substantial adequacy, if there are data that the
13 Commission or the Committee that is assigned to handle
14 the matter believes are necessary, we can surely
15 provide those additional data with respect to what
16 would happen to the plant if the bins were to fall
17 over. There is a question of whether they will, in
18 fact, fall over.

19 But, in any event, one of the things that has
20 frustrated us in dealing with the problems before the
21 Commission now and in responding to data adequacy
22 issues, is that there is a substantial penalty to the
23 applicant in submitting new data as new questions are
24 asked. The time to run will be deferred to the date of
25 his latest submission of information or data in

1 response, as opposed to argument on whether the data
2 previously submitted is adequate. It's, therefore,
3 been a bit of a problem with us in terms of wanting to
4 get this process started so that we can get into formal
5 proceedings, formal data requests and specific
6 definitions of what information is to be provided and
7 get into the formal conferences and sort of schedule
8 the proceedings--not be peripherally attacked or having
9 to respond to things that are not formal hearing
10 process. With that in mind, while we may have been
11 doing some work all along, that might help to satisfy
12 some of the concerns raised by the Crockett people, we
13 felt that we were not in a position to submit it, for
14 fear that we would run the risk of delaying the
15 commencement of the time to which that formal process
16 would get started and our twelve months begin to run.

17 I am not saying that we have a complete
18 answer right now ready to give you with regard to the
19 questions they've raised with regards to the sugar
20 bins. But, I am saying that we have analyzed that
21 situation and what is required to respond in the depth
22 of which they seem to want and, as we indicated in our
23 letter of February 15, we are prepared to do a study as
24 part of the data adequacy process. We don't feel, in
25 terms of the criteria cited by the staff, for judging

1 data adequacy, that we are jeopardizing, in any way,
2 the hearing process or the consideration of this
3 Commission in getting the job done in the time
4 required.

5 I think that is a comment that is applicable
6 to nearly all of their items in their letter of March
7 4th, except I would like to add that several times they
8 have indicated that they wanted a design of something,
9 such as the retaining wall, when the language, when
10 they quote in the appendices it requires submission of
11 these data, a description of the design, not the line
12 drawings. It doesn't say that we have to have line
13 drawings, a set of blueprints, if you will, of the
14 retaining wall. It says a description of a design. As
15 I indicated last time, there is an extremely detailed
16 description of the design requirements in the
17 geological report that goes to that retaining wall. It
18 is almost a scriminer-type job to apply those criteria
19 toward providing the drawings that are necessary to do
20 it.

21 Another of the items which they have not
22 discussed today, but was in their letter of March 4, is
23 the Potential Human Health Impact Resulting From
24 Beryllium Emissions in Stack Gas. As I indicated last
25 time, the studies we did submit on Beryllium impacts on

1 human health showed that the emission levels that our
2 plant would emit are below the threshold levels which
3 human health is a concern. We, therefore, did not go
4 forward with any additional studies as to what the
5 health impact would be on the levels that we
6 contemplated. The regulations that they site in
7 Appendix B require a description of adverse impacts on
8 the environment which would result. Tthat's the word
9 in the regulation 'would', not could conceivably under
10 all kinds of hypothetical circumstances. I am not
11 saying that we shouldn't, in part of the data discovery
12 process, or during the hearings perhaps, be required to
13 do additional work that would then analyze what might
14 occur under certain other conditions other than those
15 which we expected to actually operate. But, in terms
16 of substantial compliance, it seems to us to be
17 unnecessarily burdensome to delay this process of
18 getting the show on the road, so to speak.

19 I think that is, in general, the type of
20 response that we would make to all of their
21 indications. We have attempted to do the job the
22 regulations require. We are prepared to go forward to
23 do everything we can to satisfy the concerns of the
24 community. We believe if we get the process going in
25 the formal manner, that we will best serve both

1 ourselves and the community and this Commission to
2 start that process so that we can really resolve the
3 questions of whether the community should or should not
4 have the benefits of this project. Thank you.

5 CHAIRMAN IMBRECHT: Questions? Commissioner
6 Commons.

7 COMMISSIONER COMMONS: Yes. You addressed
8 Items, specifically, 1, 2, 3 and 4. Could you also
9 please address 5 and 6?

10 MR. DAVIS: The last time we were here, our
11 consultant, Mr. Ritter, described the nature of the
12 biological survey which PGand E had conducted and his
13 own staff's review of that survey. I am not intimately
14 familiar with the details of that ...

15 COMMISSIONER COMMONS: Okay, let me be very
16 specific. It will come out in the discussion. There
17 is an issue in my mind as to substantial compliance
18 which is in the words used in the regulations versus
19 language in the Felando Bill which says complete. What
20 I am trying to do is to look at each of these six
21 issues in light of all the regulations.

22 Second, in light of the statute. What was
23 very interesting to me is how you were addressing the
24 first four items as to whether they were complete. You
25 were making the distinction between description of the

1 designs versus doing the design itself. So, we would
2 be arguing with that, in essence, you have completed
3 the work that was necessary as far as data adequacy is
4 concerned. Subsequently, in the proceedings, there may
5 be no requirements in terms of the design but for data
6 adequacy, your argument there is that you are complete.

7 MR. DAVIS: Yes, sir.

8 COMMISSIONER COMMONS: Alright. What I
9 wanted to do is to follow through that framework on
10 Items 5 and 6 and then I will come back to 1.

11 MR. DAVIS: As I indicated, there is a study
12 that has been submitted that described the biological
13 survey and the supplemental analysis and review that
14 was done by our consultants, I am not familiar with the
15 details of those studies and I can't really defend
16 those specifically. Our consultant was unable to be
17 here today to respond further.

18 COMMISSIONER COMMONS: But, I believe his
19 testimony, at the previous hearing was, in terms of
20 data adequacy, his position is that that was complete
21 in terms of that which was needed for data adequacy.

22 MR. DAVIS: I'm sure it was and my associate
23 here has referred me to the transcript of our last
24 hearing in which he indicated that they conducted this
25 survey at three different times of the year and looked

1 for species of concern and found none. Then he went on
2 to describe the additional work that Woodward-Clyde did
3 to supplement and verify the work that was done,
4 including their field surveys during the Spring, the
5 Fall and the Winter, to check those habitat areas. His
6 position was that it was data adequate.

7 COMMISSIONER COMMONS: Than, could you
8 address No. 6, Impacts of Water and Sewer Construction?

9 MR. DAVIS: On the Water and Sewer
10 Construction, we are in a position of noting generally
11 what types of sources they will be and where they will
12 have to be constructed. I believe there is information
13 in the AFC with respect to that. The things that the
14 community has been asking, I believe, details the
15 potential for the length of time that there would have
16 to be closure of streets, if at all, and I'm not sure
17 if those kinds of information are available at this
18 time.

19 COMMISSIONER COMMONS: Can you relate that,
20 though, to what is required in the law in terms of the
21 application, itself? There are some issues that are
22 not required at the time of the application, come out
23 within the proceeding. What I'm trying to ascertain
24 here is is the information that you have provided
25 complete in erms of that which you require under the

1 statute that you submitted?

2 MR. DAVIS: We believe that it is, yes.

3 COMMISSIONER COMMONS: Alright, let me go
4 back to Item 1 and I will ask that question to staff,
5 subsequently. Your statement on Item 1 is you felt it
6 was in substantial compliance but yet, you did make the
7 statement that you did not feel that you had all of the
8 information and data on the seismic ...

9 MR. DAVIS: It depends on how much you want.
10 There was a question on ambiguity and the regulations
11 as to exactly what type of seismic data and hazard
12 information we should respond to. With that ambiguity,
13 we thought we were responding to the types of things we
14 should have responded to with respect to the impacts on
15 the plant itself. The seismic hazards that would be
16 related to it. The question of the sugar bins that
17 were existing there--existing situation, and we did not
18 address in the data there, the exact seismic conditions
19 underlying those bins.

20 COMMISSIONER COMMONS: Alright, I do believe
21 the language does include facilities that surround the
22 transmission and the power plant itself. In the law,
23 itself, I think it does--it does not suggest that just
24 an arrow It does seem to include all those--maybe Bill
25 could read the specific language.

1 CHAIRMAN IMBRECHT: I don't think it's within
2 the law, I think it's in the Appendix of the
3 regulations, to my recollection. Do you want to give
4 us a reference, Mr. Page?

5 MR. PAGNE: Yes, Appendix A, Appendix B,
6 Paragraph E refers to what should be required and it's
7 a report which is described in Appendix A, Paragraph F
8 in a section titled, "Safety and Reliability".

9 COMMISSIONER COMMONS: I'd first like to know
10 the section pertaining to the Warren-Alquist and look
11 at the basic wall, first.

12 MR. CHAMBERLAIN: Relating to which?

13 CHAIRMAN IMBRECHT: I don't think there is a
14 section relating to Warren-Alquist that specifies that.

15 MR. PAGNE: Excuse me, Section 1704 indicates
16 what the basic...

17 COMMISSIONER COMMONS: I believe that Section
18 1704 is correct. Section 1704 does talk about storage
19 sites, switch yards, waste disposal sites and all other
20 structures for improvements which are pertinent to the
21 power plant and transmission lines.

22 MR. DAVIS: Yes, and the ambiguity there was
23 the structures that are pertinent to the power plant
24 and these sugar bins have no relationship to the power
25 plant at all. They are part of the whole C&H

1 operation. It was our understanding that we should do
2 the study with respect to what we were going to do and
3 the rest was there.

4 COMMISSIONER COMMONS: So, the question is
5 what is the meaning of the pertinent and your feeling
6 was that the storage bins were not pertinent?

7 MR. DAVIS: Not a pertinent in a sense that
8 we should have to respond to that before we determined
9 that there was substantial compliance and data
10 adequacy.

11 CHAIRMAN IMBRECHT: Okay, further questions?
12 Well, since we have already reached 12:30 p.m., it is
13 my suggestion that we reconvene at 1:30 p.m. and
14 immediately take Mr. Pagne or Mr. Denton. Do you want
15 to act as spokesman for your group, Mr. Pagne? We'll
16 take your comments, then we'll move the discussion as
17 it is. Thank you very much. We'll stand to recess
18 until 1:30.

19 (Thereupon the business meeting of the full
20 California Energy Resources Conservation and
21 Development Commission was adjourned for a luncheon
22 recess at 12:30 p.m.)

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AFTERNOON SESSION

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4 CHAIRMAN IMBRECHT: Okay, we'll reconvene the
5 meeting. Mr. Pagne, I believe that you were next in
6 making any response against the opposition.

7 MR. PAGNE: Thank you, sir. In our closing
8 comments, I would like to indicate that Mr. Davis said
9 that they have addressed a lot of the issues and that
10 some of the things are not there. But from a
11 substantial standpoint, they have made themselves data
12 adequate. I would just like to reiterate, in terms of
13 the bulk storage bins, the reference to the law. I
14 think Mr. Commons, who might not have the benefit of
15 this discussion at this point-- ...

16 CHAIRMAN IMBRECHT: He was here a moment ago
17 ...

18 MR. PAGNE: The Appendix A, Paragraph F
19 indicates specifically a report which describes the
20 seismic, other natural hazards and--this is quoting,
21 we've got it in bold emphasis on our statement--manmade
22 hazards associated with each of the proposed sites.
23 It's clear to me, not only as an attorney but as a
24 citizen and as a person who is versed with the English
25 language, that manmade hazards associated with each of
the proposed sites, definitely has to do with

1 the proposed sites, definitely has to do with things
2 such as storage bins. It is a manmade hazard. I
3 looked up appurtenant in Webster's Dictionary at
4 lunchtime because appurtenant to me means. Well, I
5 looked up appurtenant and it means "in relating to--an
6 accessory", so perhaps you have to say that appurtenant
7 wise, the bulk storage bins are not appurtenant to the
8 proposed facility.

9 However, the bulk bins are specifically and
10 clearly manmade hazards which are associated with each
11 of the proposed sites. That's where -- I'm not trying
12 to say is that it was appurtenant to it other than I if
13 you want to look at appurtenant and taking it further
14 saying that it is something next to it. But, it is a
15 manmade hazard associated with each of the proposed
16 sites. As something for the Commission to hang the law
17 onto in terms of data adequacy on that issue, it is
18 clearly there. The other aspect is Mr. Davis said that
19 we are reading the law in terms of the wall and
20 building indicating that a description of the design is
21 all that was necessary. Well, referring back to your
22 order, which was filed September 10, 1984, wherein you
23 adopted the staff's recommendation and list of data
24 deficiencies as to those items that made it data
25 deficient in the section which is attached to your

1 order and which we received a copy of when Chris Tooker
2 submitted the staff's response on the 15th.

3 Under Structural Engineering, Item 12 says,
4 "Information necessary to make application conform
5 with regulations. Item 12, Preliminary Engineering
6 Drawings (Planned Evaluation Section, etc.) which shows
7 the basic structural system including basic geometric
8 data, lateral force resisting systems and preliminary
9 element size should be provided--or shall be provided".
10 That's No. 12 in the Information Necessary to Make
11 Application Conform with Regulations.

12 In terms of Beryllium. They made statements
13 in the Second Addendum which says that they are using a
14 report from 1968 and looking at one from 1958, which
15 talks about the effects on plant life. It specifically
16 says plant life. Well, there is nothing there to do
17 with the fauna. We've got jackrabbits, we've got fish
18 and we've got human beings living right there. There
19 is nothing talking about the effects of Beryllium on
20 humans. That's what I'm concerned about. I'm not
21 concerned about my azaleas and begonias. I am
22 concerned about the effect on me, my children and the
23 rest of the people in my town. There is nothing there
24 dealing with human beings.

25 In the biological survey, lip service has

1 been given to the fact that PGand E always disclaims
2 their reports this way. Well a disclaimer by PGandE
3 says basically and actually on its face, this report is
4 outdated. It says this report is outdated, so then
5 it's not timely, it's not adequate. The staff has
6 said, 'well at least we now it's rung a bell now and we
7 need to have that information and will look into it
8 further.' But, an adequate biological report is not
9 one that is dated. It's one that is upfront and is
10 current.

11 Pat Ritter, last week from Woodward-Clyde,
12 and I believe Mr. Davais reiterated or talked about it
13 a little today said that Woodward-Clyde has looked at
14 the biological survey and they reviewed it.
15 Apparently, from their information, they had someone go
16 out on November 24 or November 14, 1984 to see if
17 anything was out there. But, in fact, the months of
18 December, January, February, March, April and one-half
19 of May are missing. They are not there. Also, looking
20 at the Table of Contents--looking at the first pages of
21 the Table of Contents, it refers to certain sections--
22 those sections are not there. There is a map that is
23 missing and there are other pages that are indicated in
24 the Table of Contents as being there, but are not. On
25 that fact, and the fact that 5½ months is missing, the

1 biological survey is inadequate.

2 I don't know if I should reiterate for Mr.
3 Commons about the fact of the bulk sugar storage bins.
4 You were asking about appurtenant and whether or not
5 there were required by law. Appurtenant, under the
6 dictionary indicates that it's something which is an
7 appliance or connected with the facility. However,
8 under the appropriate Appendix F in Title 20 which
9 mandates the report, it indicates manmade hazards
10 associated with each of the proposed sites. The
11 logical conclusion by any way you look at it is that
12 the bulk sugar storage bins, potentially are a manmade
13 hazard associated with the site.

14 That's all we have today. We appreciate your
15 attention and we feel that based on these items that we
16 have called to your attention, you have to find the
17 thing data inadequate until we have got--we, meaning
18 ourselves, the staff and the CEC, has those things
19 upfront. We would hope that you would accept our
20 concerns and make those part of your written order, at
21 this time. We need the information to adequately
22 review it and to bring up the other items and to
23 present ourselves with a good case. I think the public
24 and the people, including your staff, need that
25 information. Thank you.

1 CHAIRMAN IMBRECHT: Thank you very much. Are
2 there any questions from members of the Commissioners.

3 COMMISSIONER GANDARA: In your summary just
4 now--you didn't mention your last item here which is
5 the Impacts of Water and Sewer CONstruction on
6 Community Access and Services, and ...

7 MR. PAGNE: I made a mistake ...

8 COMMISSIONER GANDARA: I didn't hear much
9 respects in that earlier. I guess my question would be
10 how did you come to this conclusion that there is a
11 data inadequacy because I assumed that under the under
12 the relevant part of the regulation, that the staff
13 solicited comments from the other agencies and in
14 particular, the State Water Resources Control Board,
15 did they? I'm curious as to how that....

16 MR. PAGNE: Okay Appendix B-C-1 says that, "A
17 detailed description of the design construction and
18 operation of the facilities, specifically including the
19 power generation cooling, water supply treatment, waste
20 handling and control, pollution control, fuel handling,
21 and safety emergency auxiliary systems." This is what
22 it would cover based on the references that were
23 included on your 8/14 Data Deficiency List as to where
24 those impacts should be.

25 We feel that the information is inadequate in

1 that a review of the data will indicate that they say
2 that they have talked to EBMUD. EBMUD says they can't
3 provide them with the 2.55 million gallons of water.
4 They did that somewhere back in July. They are saying
5 that they need to run probably two new mains through
6 town, and then in terms of water and pollution control,
7 they make a statement that they are going to have to
8 control the the Crockett Valona Sanitary District to see
9 if they can use the facilities for water treatment.
10 However, C&H indicates that that plant is probably at
11 capacity and would prefer a direct dumping of the
12 effluent. That, in a nutshell, is the information
13 that is provided in terms of the Impacts of the Water
14 and Sewer Construction on Community Access and Service.
15 Services meaning specifically our water supply and the
16 treatment facility under the bridge there in town.

17 So, that's where we have attached our hat on
18 that and we don't feel that there is an indication as to
19 specifically what they are going to be doing -- whether
20 or not there is capacity, whether or not they are going
21 to do a direct dumping and be in violation. If there
22 is any regulatory agency that is going to be concerned
23 about that, and I feel that's why we added that to our
24 list.

25 CHAIRMAN IMBRECHT: Further questions? Thank

1 you very much. Is there any other party that wishes to
2 be heard on this matter, or any public comment?

3 Alright, without objection, I am going to suggest we
4 close this portion of the proceeding and then turn to
5 Commission discussion. Yes, Commissioner Noteware.

6 COMMISSIONER NOTEWARE: Mr. Chairman, as the
7 new kid on the block, I probably don't know enough not
8 to stick my neck out. I would like to comment that
9 these six points that are raised in this letter are
10 certainly appropriate and, in my opinion, very
11 important. As a matter of fact, I can think of others
12 too that must be considered.

13 But, during the procedure, there is bound to
14 be a period, I guess you call it the discovery phase,
15 during which things that are brought up are considered.
16 It strikes me that that's an appropriate time to
17 consider the various issues, including the
18 environmental concerns and others that must be
19 considered.

20 I would like to respond to Mr. Tubb's
21 comments about my responsibility. I certainly agree
22 that it is a heavy responsibility and yet I also feel
23 that I have a responsibility to make a decision. I
24 think, since what we are talking about today is not
25 whether or not this is good or appropriate project.

1 Certainly, I don't want to be construed as giving it
2 any blessing or anything at this time. It's merely to
3 start the clock running. I am inclined to feel that
4 it's time to get on with it. That's the only comment I
5 wish to make.

6 CHAIRMAN IMBRECHT: Thank you. Further
7 Commissioner comment? Commissioner Commons.

8 COMMISSIONER COMMONS: I have listened to the
9 testimony and I have read the Executive Director's
10 Report and I would be close to your position but I have
11 come up with a different answer. Specifically, I do
12 find that the Executive Director is correct and that
13 there have been, I think, substantial compliance and
14 this project should get on the road. I think the six
15 issues that are identified by the applicant and the two
16 I have been most concerned about ...

17 CHAIRMAN IMBRECHT: By the opponents ...

18 COMMISSIONER COMMONS: Excuse me, by the
19 opponents. The two that I have been most concerned
20 about are the health impacts of this project and
21 whether or not there has been a complete application
22 submitted in this area and the biological information.
23 The problem we have here is, I think there is
24 substantial compliance, but the Legislature went back
25 and changed the law. We had a procedure in this

1 Commission whereby if the Executive Director found
2 substantial compliance, we could then have a
3 Conditional Acceptance. In debate of the type we are
4 discussing today would then come back to the Commission
5 or to the Committee and would be able to have the case
6 proceed. We don't have a right, as Commissioners, to
7 change the law to meet our own particular preferences.
8 I believe that this Commission does not have the right
9 to override the Legislature. Our regulations are not
10 supremacist, it's the Warren-Alquist Act that is
11 supreme. In this case here, clearly we have
12 regulations that have been overridden by the
13 Legislature. I do not agree with our Legal Counsel.

14 I read the Executive Director's Report and
15 it's not responsive to the law that we have upon which
16 to act; essentially, it is based on whether or not
17 there is substantial compliance. It suggests that
18 there are four tests as to whether or not an item is
19 complete or the data is in. One of those tests is do
20 we get this data within a 12-month period? Well,
21 clearly that suggests that if we get the data within a
22 12-month period, even though the data is not in. In
23 other words, the data is not complete, that that's
24 substantial compliance and the project can go forward.
25 That is an illegal criteria under the law.

1 We do not have a report from our Executive
2 Director or staff that meets the criteria that are set
3 up by the law because the law is very specific. It
4 says an application is complete or it's not complete.
5 We don't have a recommendation from the Executive
6 Director. In fact, we have procedures that are used by
7 the Commission that are specifically not in accord with
8 what the law is. For my recommendation to the
9 Commission ...

10 CHAIRMAN IMBRECHT: Can you site the
11 regulation you refer to?

12 COMMISSIONER COMMONS: It's not the
13 regulation, it's the law. Section 25522, "The
14 Commission shall determine, within 45 days after
15 receipt of the application, whether the application is
16 complete. If the Commission determines that the
17 application is complete, the application shall be
18 deemed filed for the purpose of this section, so forth
19 and so on".

20 The criteria that has been used I actually
21 believe were reasonable. I think Conditional
22 Acceptance, once you have found substantial compliance
23 is a much preferred procedure. I think the laws that
24 are set up here allows for technical situations that
25 can be handled in cases not to be addressed. But I

1 Commons raises is a fair one for debate. We have
2 advised you, in the past, that certain portions of
3 Section 1709, in our view, are inconsistent with the
4 law as amended by the Felando Bill. One of those
5 provisions was the provision allowing the Executive
6 Director to accept the notice or application without
7 even bringing it to the Commission. The Felando Bill
8 very clearly indicates that it is the Commission that
9 has to make the determination. So we found that
10 portion of the regulation to be inconsistent and could
11 no longer be considered law.

12 Similarly, the conditional acceptance
13 provision seemed inconsistent with the provision of the
14 new law that required the Commission to determine
15 whether or not the application was complete rather than-
16 -and that the date would relate to the date that the
17 Commission made that determination rather than under
18 the conditional acceptance procedure, allowing it to
19 relate back to the original filing by the applicant.

20 But, the issue that Commissioner Commons is
21 raising is whether or not the provision of Section
22 1709, that essentially interprets the determination of
23 completeness to be one of substantial compliance is
24 also invalid. As I say, I can see an argument being
25 made to that effect that if the Legislature had meant

1 believe the procedure for correcting that is not to
2 make, what I consider, an illegal decision that can be
3 challengeable in Court, but for us, as a Commission, to
4 go back to Mr. Felando and to the Legislature to get
5 these different parties that would come before us and
6 modify the law and the way the law feels it should be
7 modified, is you don't have an unlimited conditional
8 acceptance procedure.

9 That's what we were trying to address or what
10 was tried to be addressed in that proceeding. The
11 Commission must first find substantial compliance and
12 after they have found substantial compliance, there are
13 some areas that still need to be complete that are
14 small. That's where you could have a conditional
15 acceptance procedure and that would be permitted. We
16 do not have, as a Commission, before us a
17 recommendation. We have a procedure that was followed
18 by the staff that is not in accord with the law and so
19 I don't think we have the legal right or justification
20 to act on this matter today.

21 MR. CHAMBERLAIN: Mr. Chairman, may I address
22 this?

23 CHAIRMAN IMBRECHT: Yes, I was going to ask
24 you, Mr. Chamberlain, to address it.

25 MR. CHAMBERLAIN: The issue that Commissioner

1 to say substantially complete, they would have said
2 substantially complete and they did not, they said
3 complete and I believe that is the argument he is
4 making. I believe an alternative argument and the one
5 that I believe is correct is that the Legislature was
6 addressing a process that had been in effect for a
7 number of years and the criteria of substantial
8 completeness was one that had been in use for quite
9 some time. The Legislature did not clearly reverse
10 that as it did clearly reverse the other matters that I
11 mentioned.

12 Therefore, I believe it's fair to assume that
13 the Legislature did not intend to reverse that because
14 they could have clearly reversed it as they did with
15 those other matters. Therefore, I believe that the
16 Commission would be entitled today to adopt a
17 regulation interpreting this provision. That is, what
18 does it mean to determine that the application is
19 complete. An application has literally hundreds of
20 pieces of information and data within it. The question
21 is whether every conceivable piece of information that
22 could be included in an application within the many
23 provisions of Section 25520, that outline in general
24 the contents of an application and the provisions of
25 our regulations, the appendices that outline in some

1 more particular, the provisions of an application.
2 Given all of the ambiguities in those matters, the
3 Commission could consider that, on occasion, one or two
4 items may not have been included that could have been
5 included. But nonetheless, the document is complete
6 within the meaning of the term substantial compliance.
7 I believe the Commission is entitled to make that
8 interpretation; therefore, I do not believe that that
9 portion of the regulation is invalid.

10 CHAIRMAN IMBRECHT: Commissioner Gandara.

11 COMMISSIONER GANDARA: I will take exception
12 with the one comment that the counselor indicated and
13 that is what he said it seems clear that because the
14 Legislature, it think it's a reasonable rule of
15 legislative intent or analysis in the law that is very
16 difficult to speculate why the Legislature does things.
17 It's far, far more dangerous to speculate why it
18 doesn't do things. So, particularly to say that it's
19 clear that I think exaggerates a certainty of the
20 interpretation being offered here.

21 The second thing that's confusing a little
22 bit, and I would like clarification from counsel, is
23 that he indicates that if one accepts the first premise
24 which I'm not sure that I would, but I would accept the
25 arguendo that it was clear that it didn't intend to set

1 that. Then he went on however to say that the
2 regulation would report, he said the Commission could
3 adopt the regulation today, and I guess that raises the
4 issue that I must be some doubt in your mind whether
5 the regulation is enforced if one could adopt such a
6 regulation today and therefore are we making a decision
7 in advance of a valid regulation before us, that is is
8 that what we need -- regulations to keep them at
9 -- this ambiguity, whether it was appropriate in fact
10 to presume a regulation. Or, are we making a
11 regulation by the action?

12 MR. CHAMBERLAIN: No, the regulation is in
13 effect. The question is whether the statute that was
14 enacted in 1982....

15 COMMISSIONER GANDARA: Which part of the
16 regulation, Mr. Chamberlain? You just indicated
17 earlier that part of the regulation was overruled by
18 the law -- that part which the Executive Director makes
19 a determination. Now you're saying another part of the
20 regulation is in force.

21 MR. CHAMBERLAIN: What I'm saying is that the
22 portions of the regulation that were clearly overruled
23 by the statute can no longer be operative. They're
24 still on the books, but it would be wrong for us...

25 COMMISSIONER GANDARA: Okay, but is there a

1 question of judgment of what is clearly overruled?
2 Because I think Commissioner Commons is making the
3 comment to him that it's clear that the other sections
4 were also likewise overruled.

5 MR. CHAMBERLAIN: Well, perhaps that's a bad
6 term to use. What I'm saying is that there is no doubt
7 whatsoever that when the regulation says the Executive
8 Director can accep this on his own and the statute says
9 the Commission has to accept it, there is certainly no
10 doubt in my mind that there's an inconsistency there.
11 There is doubt in my mind that there is necessarily an
12 inconsistency between the language saying the
13 Commission must determine whether the application is
14 complete, and the language of a regulation that uses
15 the term substantially complies with the information
16 requirements to interpret that requirement. They
17 aren't necessarily inconsistent, I don't believe.

18 COMMISSIONER GANDARA: So in your view, you
19 believe that when the Legislature said that the
20 application is complete and incomplete, you're
21 indicating that the Legislature left it up to the
22 discretion of the Commission to define complete, and in
23 the absence of any further action, the complete is
24 defined the way it was in the regulation before it was
25 effected?

1 MR. CHAMBERLAIN: I believe that's a fair
2 interpretation, yes.

3 COMMISSIONER GANDARA: That's your
4 interpretation?

5 MR. CHAMBERLAIN: Yes.

6 PUBLIC ADVISER PEREZ: Chairman Imbrecht, I'm
7 trying to get some clarification for my own
8 understanding because I concurred with the General
9 Counsel's analysis in response to Commissioner Commons'
10 question, right up to his last sentence which he said
11 in effect that 1709 is compatible (these are my words,
12 not his) with the Felando Bill as it modifies our
13 current Public Resources Code Section 25522, which was
14 amended by statutes in 1982. All of the attorneys in
15 the Energy Commission who have been indoctrinated by
16 the procedures of OAL have learned we've been required
17 to include in our regulatory notes of each regulation
18 what the reference statutorily is for the particular
19 regulation that we produce. 1709, in particular, which
20 was amended as recently as 1983, does not represent
21 itself as interpreting to any extent the provisions of
22 Public Resources Code Section 25522. I do not know the
23 answer as to what regulation does interpret 25522, but
24 OAL's standards seem to suggest to me that that is not
25 the one.

1 MR. CHAMBERLAIN: The reference that is made
2 in that regulation is the 25520, which is the section
3 of the statute that defines the contents of an
4 application. So, the fact that we did not reference,
5 and at the time this particular regulation made its
6 last pass-through the Commission, the Felando Bill was
7 not on the books yet, or the portion of Section 25522
8 that we're talking about was not on the books yet.

9 But, I guess I would continue to maintain
10 that there is a reasonable argument that the
11 Legislature knew and did not specifically disapprove of
12 the Commission's prior interpretation of what it means
13 to have an application be complete.

14 CHAIRMAN IMBRECHT: Commissioner Commons.
15 Let's move forward.

16 COMMISSIONER COMMONS: Alright, as we go
17 forward on the issue, one of the things that was clear
18 is the Legislature wanted decisions to be made by the
19 Commission rather than by the Executive Director. The
20 report that we have before us has the following four
21 criteria. And you suggest to me a reasonable person
22 who would think that these four criteria represent
23 completeness. And I would like to read two of them.
24 First of all, data is missing which is specifically
25 required by law or regulation. That to me would be the

1 prevailing question as to whether or not something is
2 complete. And the other three criteria, all of which
3 must be met in order to not find data adequacy are also
4 used by staff.

5 The second criteria you have to meet is data
6 is missing which is necessary to resolve a significant
7 issue in the case, or is needed to make a fundamental
8 finding. There's no suggestion in the legislation,
9 which would be easy to do, that it has to be
10 significant data; rather it says complete.

11 Third is, data in sufficient detail is
12 missing which is needed in order to understand the
13 project and to make a preliminary recommendation.
14 Again, the Legislature clearly doesn't get to that.

15 But the fourth one, goes even more to the
16 essence of the problem. And it really goes to the
17 question that you raised as to when do you make the
18 decision in the case or on the data adequacy? Data is
19 missing which would preclude the project to be reviewed
20 on time. Data is not complete. If you have a
21 conditional acceptance procedure which the Legislature
22 said we shall not longer have, that's when you use
23 conditional acceptance in order to accept this data
24 coming in at a subsequent point in time. Something is
25 not complete when it's missing. So, that's in direct

1 contradiction, not in general contradiction to what the
2 Legislature is saying.

3 MR. MATTHEWS: Can I make a comment? I
4 authored those criteria and the reason I put the
5 criteria together in the first place was the Commission
6 asked us in the previous data adequacy to review what
7 we meant by substantial compliance because it had never
8 been clearly specified before. And that's the test we
9 used to determine what substantial compliance means,
10 when we mean substantial compliance with regulations.

11 CHAIRMAN IMBRECHT: Obviously, it's time to
12 wade in here. My recollection is, after reviewing and
13 maybe staff can confirm or deny this, but the Felando
14 Bill was an Energy Commission-sponsored piece of
15 legislation to correct in statute what had become a
16 developed policy here at the Commission, an enunciated
17 position of the Commission that it wished to make the
18 acceptance decisions rather than having the Executive
19 Director make those decisions, or his delegatee
20 reviewing the applications to determine and therefore
21 make a recommendation to the Commission as to whether
22 or not there was substantial compliance with a
23 requirement that an application be complete.

24 I have listened to this discussion about what
25 is meant by this statute. To the best of my knowledge,

1 the language here has been drafted in our house and I'm
2 not cognizant nor have a memory of the Legislature
3 changing the recommendation that was made to
4 Assemblyman Felando when he agreed to carry this bill
5 at our request which, I think, further obviates any
6 suggestions, however, that there is legislative intent
7 to overrule or overturn the adopted policy that the
8 Commission had in place as to the method by which
9 applications would be considered other than for the
10 salient change that this Legislation enacted and that
11 was that the Commission itself would be fundamentally
12 and ultimately responsible for the decision to accept or
13 reject, rather than the Executive Director.

14 The other mechanical aspects of the
15 consideration of an application indeed remained in
16 place, and, I think that the easiest presumption to
17 make here versus many of those which have been
18 speculated as to is that, had we, as a Commission
19 desired to make further modifications of our existing
20 processes, that we would have so included those
21 suggestions in proposed drafts in legislation submitted
22 to Assemblyman Felando. The reason I was initially
23 blank when the references were made to the Felando
24 legislation is that, because it was such a
25 noncontroversial measure as it progressed through the

1 Legislature because it was characterized as simply a
2 technical revision of the Energy Commission's operating
3 statute to bring that statute in compliance with the
4 Commission's own adoptive practices, to insure that
5 there was accountability to the Commission itself
6 rather than simply through an appointee of the
7 Commission in terms of acceptance of an application. I
8 was initially, not comprehending what was being said
9 with respect to the Felando legislation. As this
10 discussion progressed, my recollection of the series of
11 events that lead to the statutory change as similarly,
12 been recollected and is quite clear.

13 With all of that, and frankly, I don't even
14 think that would be necessary but with all of that, I
15 believe it is, we've all used the phrases "quite
16 clear," and because of the strength of conviction of
17 your comments, Commissioner Commons, I think it's very
18 appropriate and almost essential that I make it quite
19 clear in contrast, that I believe existing case law and
20 my recollection of regulatory administrative law in
21 this area, is such that Commission's absent specific
22 prohibition to the contrary very much enjoy the
23 latitude to my very reasonable interpretation which our
24 General Counsel has likewise found to be very
25 reasonable, that substantial compliance is an

1 appropriate test if the Commission chose to adopt it as
2 to what constitutes completeness. Complete is indeed a
3 word of art and is subject to rational and reasonable
4 interpretation under the broad powers granted the
5 Commission to carry out the purposes of its statute.

6 The question, if you were to take the liberal
7 definition of complete to the degree, it seems to me
8 you are inclined to do, then we come down to the
9 fundamental issues of how extreme do you pursue such a
10 policy? And, there obviously, are extremes to which
11 this kind of concept can be taken. The suggestion to
12 me therefore, is that there is an expectation for the
13 Commission of this nature should exercise some
14 rational, reasonable, and I believe defensible,
15 judgment, in terms of interpreting the statute absent,
16 clear direction from the Legislature to the contrary
17 and, particularly in light of what I believe to be an
18 accurate enunciation of the history behind the
19 statutory change.

20 Now, then at the same time, if I had not
21 persuaded you, you obviously, are entitled to and
22 should cast your vote based on your own personal
23 interpretation, I happen to believe the interpretation,
24 I've enunciated is not unreasonable, but it is the
25 persuasive one. All of that notwithstanding, we then,

1 still, must confront the issue which Commissioner
2 Noteware has expressed to some extent. But, let's
3 confront the issue in a perspective of if you accept
4 the General Counsel's and my concurrence in that
5 interpretation, or whatever permutations you,
6 Commissioner Gandara added to which I think were
7 salient, whether or not there has been substantial
8 compliance and what the intention of the Commission is.
9 I would be interested in hearing any thoughts you might
10 care to contribute.

11 COMMISSIONER GANDARA: Well, I think, as you
12 indicate, we probably need to move on with this. I
13 just, since part of the role that I serve here now, is
14 sort of historical, let me provide you with what I
15 consider to kind of very interesting position and
16 policy reversal by the staff in this area.

17 A few years ago, the Commission in the BR2
18 developed something called a Contingency Siting. It
19 was never very much beloved by staff, and we actually
20 received an application from Southern California Edison
21 for a Contingency Siting for a facility. What there
22 ensued, was a very complicated case, that went on for,
23 it must have been several years because it preceded me,
24 and then it died with me when I issued ER4 and the
25 issue was basically the following, and that is that

1 staff insisted that you could proceed with a siting
2 application because there were no regulations that
3 implemented the Contingency Siting concept. And
4 Commissioner Varanini was presiding over the case and
5 was just as adamant in indicating that he felt that the
6 case could be conducted and concluded without
7 regulations.

8 So, as is the prerogative of the staff and
9 any party in any case to appeal interim decisions of
10 the Committee to the full Commission, this case was
11 appealed to the full Commission many times. And,
12 always, the arguments came to the same issue. But the
13 staff was insisting that you could not conduct a siting
14 case without regulations having preceded the case
15 itself, where there were rules of conduct of the case.
16 And, what then happened is that during the Electricity
17 Report, the staff offered up again, being consistent
18 with their policy, the proposal that Contingency Siting
19 be put to a restful end.

20 And in exchange for that, the staff would
21 develop instead, emergency siting regulations in case
22 we ever had to site a plant under emergency conditions
23 which the Contingency Siting expected to have done.
24 And, that the Commission would also develop regulations
25 to update the NOI's. The latter two issues you may be

1 familiar with, because I've been raising them for the
2 two years that you've been on the Commission, but it's
3 a promise that's never been kept by the staff to the
4 utility or the applicants. I know that the Siting
5 Committee has been looking at that and it's not among
6 the list of their higher priorities. And so, I'm not
7 under any expectations that that will be fulfilled.

8 But, in any case, Contingency Siting as a
9 policy died then, and that application was denied by
10 the Commission in the end, that is the only denial of a
11 power plant the Commission has ever made.

12 Today, what we find in this initial reversal
13 is that there's something that's not in dispute here.
14 That the Felando Bill is law. That the Felando Bill as
15 law, currently is not implemented by our regulations.
16 So, we're in the same situation. We have no
17 regulations to process. And, yet we have had a
18 reversal here by the staff, as I see it any case, that
19 says 'yes we can proceed with the siting application
20 even though we don't have the regulations that relate
21 to the law.' Whereas before, it was that we didn't
22 have regulations that related to a policy. So, it's
23 not my point here to argue one way or the other,
24 because I think that the merits of these issue may be
25 different, but I frankly am always entranced by these

1 procedural aspects.

2 CHAIRMAN IMBRECHT: You have an institutional
3 memory and you always point them out with consistency
4 as well.

5 COMMISSIONER GANDARA: Because I do believe
6 that they do govern the rules of conduct of the case
7 and our behavior. Again, I just offer that for the
8 Commissioners' historical files rather than anything
9 else. So, anyway, the whole point is that there is a
10 history as to whether we act with or without
11 regulations, how the Commission has conducted in the
12 past.

13 CHAIRMAN IMBRECHT: Do you have a conclusion
14 or recommendation as to this entire matter you'd care
15 to address?

16 COMMISSIONER GANDARA: No, I don't have any
17 recommendations. I indicated before, I have not had
18 the opportunity to review the entire record and I think
19 due to various parties, while I respect the rights of
20 everybody to decide that for themselves as to the
21 relevancy of that. I don't feel comfortable not haven
22 reviewed the discussions that were held at the last
23 Business Meeting, both by the applicant and by the
24 citizens of Crockett. I consider that critical
25 proceeding because frankly, that was the proceeding at

1 which, for the first time the kind of point, counter-
2 point kind of response or merger of the issues was
3 brought back before the Commission. So I don't feel
4 comfortable, for myself, participating in that though I
5 pass no judgment on anybody who wishes to made a
6 decision today.

7 CHAIRMAN IMBRECHT: I think that in essence,
8 the six points were kind of distillation of remaining
9 areas of controversy or, lack of stipulation that there
10 was some, there was initially a list of 15 I think
11 there were some, I may be mistaken.

12 COMMISSIONER GANDARA: Again, the reason I'm
13 choosing not participate in this is because, again, at
14 least for me it would basically, based on hearsay,
15 because at least the information that I had as of the
16 last meeting was that there were initially a least of
17 33 concerns that the citizens had and those were
18 distilled to a list of 14 concerns. And, today, there
19 are now six concerns and, so again, with all these
20 changing concerns and numbers and emphasis, it's fairly
21 difficult for me to, I think, really emphasize one or
22 the other.

23 CHAIRMAN IMBRECHT: Okay, Commission Commons.

24 COMMISSIONER COMMONS: Yes, I'd like to
25 address. I think you've spoken where you are, so I'd

1 like to try to convince the two Commissioners that I
2 don't think have addressed what their position is and
3 then I'm going to make a motion. If I understand
4 Commissioner Noteware, that you were one that who is a
5 very concerned about process and procedures and that
6 the ground rules be clear and applied equally to
7 everyone. I know from the year of working with
8 Commissioner Crowley, including last week when I tried
9 to put an item on an agenda, that she has always been
10 concerned with due process. It's very important that
11 the Commission have rules and that they are applied
12 equally to all parties.

13 I think it would be a very sad day for this
14 Commission to suddenly put itself in the place of the
15 Legislature and start looking at ways of in direct
16 contradiction, and look at the criteria that we have in
17 front of us. Data is missing which would preclude the
18 project to be reviewed on time which is not just an
19 interpretation, it's an exact contradiction to what is
20 complete, that we would take an action of such liberal
21 interpretation of what a law means to do that which we
22 would like to do. I would agree with you, that if you
23 looked at substantial compliance and didn't apply those
24 four criteria, because that's the way the law ought to
25 be. But, that's not the way the law is unless you want

1 to do that which is, I don't think is appropriate as a
2 Commission. I don't think we have a report, even based
3 on substantial compliance with these four criteria,
4 that addresses the issue of substantial compliance in
5 relationship to the law that occurred subsequent to the
6 time of that regulation. If you have that regulation
7 and you say, well, we can interpret what is
8 completeness and it's missing an "i" or we don't have
9 "t" that is crossed or, there is some very minor
10 technical piece of information where they haven't put
11 in the design of an outstructure or something like
12 that. That's not what the issue is.

13 The issue is there's data that's not here,
14 that reasonably could be done within the case, and
15 that's the way we've always done things in the past
16 here, where we had conditional acceptance. And we've
17 allowed that type of information and data to come in.
18 But they changed the law, said it had to be complete.
19 And, we don't have a report from the Executive Director
20 based even on substantial compliance. We have four
21 criteria that were used by the Executive Director, which
22 is not substantial compliance. It's whether or not we
23 can do this case and get data that is missing in a
24 timely fashion. And, that's not related to the law
25 that was changed, that's not a liberal interpretation,

1 record, that you are expressing your interpretation of
2 the law. I happen to differ with that interpretation
3 of the law, and I absolutely do not believe that you've
4 made a case that a criteria used by staff are in
5 contradiction much less even, out of sync with what the
6 law is. I was listening very carefully for a
7 foundation for those arguments, or statement, very
8 broad generalizations. And, I simply did not hear it,
9 beyond what I believe to be your interpretation and
10 reading of the legal implication of the word complete.
11 And, I would further note that it is my personal view
12 that the reason that we find ourselves in this bind, is
13 that you, in essence, made these arguments. As when we
14 submitted this legislation to Mr. Felando, that, rather
15 than saying substantially comply, we happen to use the
16 word of art, complete, and I think with the expectation
17 that we would continue to apply the existing tests or
18 criteria. I certainly don't recall any member of the
19 Commission including yourself, who was a member of the
20 Commission during this period, to raise the questions
21 associated with whether or not this was an appropriate
22 test or not.

23 In any case, I believe that the General
24 Counsel's interpretation is a rational one. I've
25 reached that same conclusion independently and had not

1 frankly, discussed this matter in advance of today's
2 meeting. The motion is before us, is there further
3 discussion? Alright, I'll ask the secretary to call
4 the roll, an aye vote returns the report to the
5 Executive Director; a no vote leaves the matter before
6 the Commission.

7 COMMISSIONER COMMONS: Okay, I have a point
8 of order. What is the basis on which we have the order
9 of the Roll Call. I thought we had a procedure
10 established as to which Commissioner goes first?

11 CHAIRMAN IMBRECHT: Yes, the procedure was
12 alphabetized Roll Call with the Vice Chair and Chair
13 being last being the last votes cast. And that's the
14 same order that we've been using in the past.

15 COMMISSIONER COMMONS: Yes.

16 CHAIRMAN IMBRECHT: Commissioner Commons,
17 aye.

18 MS. GERVAIS: Commissioner Gandara

19 COMMISSIONER GANDARA: Aye

20 MS. GERVAIS: Commissioner Noteware

21 COMMISSIONER NOTEWARE: No

22 MS. GERVAIS: Vice Chairman Crowley

23 VICE CHAIRMAN CROWLEY: No

24 MS. GERVAIS: Chairman Imbrecht

25 CHAIRMAN IMBRECHT: No

1 CHAIRMAN IMBRECHT: Motion is defeated.
2 Further motions to come before the Commission? I would
3 move acceptance of the application, or I should say,
4 what's the proper -- do I want to say acceptance of the
5 application or acceptance of the Executive Director's
6 recommendation? Or is there a distinction?

7 MR. CHAMBERLAIN: I would say that you would
8 move that the Commission determine that the application
9 is complete as of February 15th.

10 CHAIRMAN IMBRECHT: Alright, so moved. Is
11 there a second. Seconded by Commissioner Crowley. I
12 would like to inquire, Commissioner Gandara, if it
13 would be your intention in the event the Commission
14 were to accept the application; or would desire to make
15 any of these data requests, I would certainly urge you
16 to do so as expeditiously as possible.

17 COMMISSIONER GANDARA: If the Commission
18 accepts the application, I would have a preference for
19 the jurisdiction then to be turned over to the
20 Committee as it has with all applications.

21 CHAIRMAN IMBRECHT: That's why I'm addressing
22 the question.

23 COMMISSIONER GANDARA: And we will in the due
24 course of the schedule, make whatever requests will be
25 made to the Committee. I should note that we have had

1 pending and I've made the point time and time again.
2 But let me just say it again, that, as far as I'm
3 concerned, and I believe that is the position that we
4 have maintained consistently, that there's been a
5 designated Committee, but there's been no Committee
6 until there's acceptance.

7 And, as a result, I believe I have seen on
8 the docket numerous petitions for intervention, which
9 would then, I think, would be the first order of
10 business would be to review those, and where those who
11 have to grant them. And, that I believe that the data
12 requests then, should for the Commission to then
13 consider basically the data request then would be
14 coming forth from the parties, who are now the burdens
15 of service will be a place on all parties, and so forth
16 and so on.

17 CHAIRMAN IMBRECHT: I guess I would like to
18 strongly recommend to you that, the items that remain
19 in dispute and the items that you might want even to
20 make the motion of your own for date of submittals by
21 the applicant, or maybe I should say that I think the
22 applicant had better understand the need to get moving
23 on those topics.

24 COMMISSIONER GANDARA: Every committee and
25 every presiding member has their own style for conduct

1 of a case. My preference would be basically, that the
2 Committee sets as adjudicator to dispose of motions and
3 counter-motions made by the parties in the case. And
4 should there be a void, certainly in what the Committee
5 would feel would be an unnecessary item, then that is
6 the appropriate time for the Committee.

7 CHAIRMAN IMBRECHT: Commissioner Commons.

8 COMMISSIONER COMMONS: Yes, I just want to
9 make some comments for the record as to the motions. I
10 would have to assume that your motion as to being
11 complete, was within your interpretation of the Warren
12 Alquist Law in our regulations and that that is
13 essentially.

14 CHAIRMAN IMBRECHT: In our General Counsel.

15 COMMISSIONER COMMONS: And the General
16 Counsel's, and that essentially includes the four
17 criteria and the existing regulation, which talks about
18 substantial compliance.

19 CHAIRMAN IMBRECHT: I'm not going to accept
20 that. I'll simply say that I agree with the General
21 Counsel's interpretation and, as a consequence, I
22 accepted the motion which he suggested.

23 COMMISSIONER COMMONS: Oh, I don't want to go
24 into a long...

25 CHAIRMAN IMBRECHT: Don't read any other

1 implications, including legal judgments into my
2 statements. You make your own statements and I'll make
3 mine.

4 COMMISSIONER COMMONS: Well, if we're
5 discussing the motion as to substantial compliance
6 based on the Executive Director's report in the four
7 criteria, I would have one set of comments. If we're
8 discussing as to whether or not this application is
9 complete, I have a lot of comments that I'd want to do,
10 if we're talking about it in terms of my
11 interpretation. I would not have to go through that
12 long discussion, if I understood what your motion was,
13 and, so I guess I would have...

14 CHAIRMAN IMBRECHT: My motion, let me just
15 clarify. My motion was, as stated by Mr. Chamberlain,
16 and it was that the Commission find that the
17 application is complete as of February 15th 1985. And,
18 as I indicated to you, that is the extent of my motion.
19 I'm not choosing at this point to offer any other
20 particular legal interpretation.

21 COMMISSIONER COMMONS: Point of
22 information. What is the, and I'll ask of legal
23 council, to please define for me the word "complete",
24 as in this motion.

25 MR. CHAMBERLIAN: It is my understanding that

1 the motion contemplates the meaning of "complete" that
2 the Commission has used in all other proceedings which
3 is the one defined in Section 1709, that being that the
4 documents substantially complies with the data
5 requirements in the regulations.

6 COMMISSIONER COMMONS: Is that the motion
7 that is before us?

8 CHAIRMAN IMBRECHT: The motion before us is
9 clear on its face.

10 COMMISSIONER GANDARA: Mr. Chairman, point of
11 information. Again, I don't want to prolong this, but
12 again, because I'm going to be presiding the case I do
13 have some concerns of the procedural soundness of what
14 we're doing. I believe it is the general rule of
15 administrative decision making, that a basis has to be
16 stated for the agency's decision, and I think that's
17 what Commissioner Commons is asking for. He's saying,
18 there is a proposed decision, what is the basis for
19 that decision? And usually the findings, I take to be
20 the substantial compliance that Mr. Chamberlain
21 referred to. But, is the basis then, the criteria or
22 not? I know you offer it just terms of, that this is
23 closely scrutinized case, and that if it's not clear in
24 the record what the basis for decision is, we're just
25 inviting more concern.

1 MR. CHAMBERLAIN: Mr. Chairman, while I could
2 agree that certainly an administrative decision which
3 is a final decision, has to contain findings and
4 conclusions of law, and lay out in tremendous detail,
5 the rationale for that decision, this is first of many
6 interlocutory decisions that the Commission will make
7 relating to one power plant siting proceeding. And, I
8 know of no rule of law that says that every single one
9 of those, which are not reviewable in court, has to
10 contain that same level of detail in terms of laying
11 out the rationale of basis. I think we had an
12 extensive discussion of the regulations, the statute,
13 and I just don't believe there's any further
14 requirement for clarification.

15 CHAIRMAN IMBRECHT: Commissioner Gandara.

16 COMMISSIONER GANDARA: Mr. Chamberlain, are
17 you saying that the Commissions' decision on adequacy
18 is not reviewable in court?

19 MR. CHAMBERLAIN: I'm saying it is not
20 reviewable in and of itself. It is reviewable ...

21 COMMISSIONER GANDARA: That's not the
22 question I'm asking. The question that I'm asking is
23 assuming the following scenario that we conduct a case
24 for 12 months, it's returned to Commission, the
25 Commission makes a decision and the agreed party files,

1 according to our statute, for judicial review, are you
2 saying that the Commission's decision on data adequacy
3 is not reviewable by a court and that we don't have
4 state that now because that's not the decision to
5 brought back by the Committee, is going to made a
6 decision in part, not on the data adequacy, which is
7 made by the full Commission? This is the only time the
8 Commission is going to state forth its reason for data
9 adequacy, unless this Commission, at some future time,
10 12 months from now, is going to sit down and define
11 that or potentially petition the U.F. Court?

12 MR. CHAMBERLAIN: The only context in which
13 this decision is reviewable would be in the context of
14 a final decision on the power plant in which a person
15 opposing the power plant were to successfully contend,
16 in light of the 12 months or more proceeding that took
17 place thereafter that this decision prejudiced their
18 right to have a reasonable opportunity to be heard
19 before the Commission.

20 COMMISSIONER GANDARA: So, do you think it
21 better policy or not to define what the Commissions'
22 basis is for data adequacy then? Would you rather
23 leave it vague?

24 MR. CHAMBERLAIN: I don't believe it is
25 vague.

1 CHAIRMAN IMBRECHT: I think it's quite clear
2 that the motion implies acceptance of the criteria as
3 substantial compliance.

4 COMMISSIONER GANDARA: The four criteria?

5 CHAIRMAN IMBRECHT: Beyond that, I find that
6 it substantially complies and I'll make that statement
7 from my perspective and based upon the review of the
8 information presented to us in these hearings, it's my
9 conclusion that there's substantial compliance.
10 Commissioner Commons.

11 COMMISSIONER COMMONS: Alright. On that
12 understanding as to what we're meaning, I do have, in
13 order to vote on the motion in that sense, because it's
14 a different motion than I had before. There are two
15 separate issues. There's a separate issue as to
16 substantial compliance and there's a separate issue as
17 to whether or not this is property before us. We've
18 addressed the one issue, we disagree; now, there's a
19 second issue as to is it complete in the reference of
20 substantial compliance? And, I'd like the opportunity
21 to ask one or two questions of staff on that issue.

22 CHAIRMAN IMBRECHT: Alright, fine.

23 COMMISSIONER COMMONS: Looking at the four
24 criteria. Are there any items that, if you had not had
25 the fourth criteria, which data is missing, which would

1 preclude the project to be reviewed on time, will you
2 have had a different conclusion?

3 MR. MATTHEWS: If you changed our criteria,
4 let me rephrase the question so I'm little more
5 comfortable answering it. If you changed our criteria
6 so that we only had thee criteria, that had to be
7 required by rule and regulation that had to be a
8 significant issue, and I forget the question now
9 myself.

10 COMMISSIONER COMMONS: Data in sufficient
11 detail.

12 MR. MATTHEWS: Yeah, it was insufficient
13 detail, I understand the project. We would, yeah, what
14 you're going to do when you minimize criteria is it
15 makes our recommendation more and more firm. So, yeah,
16 oh, I guess that's not your, but, yes, we would still
17 make the same recommendation that it substantially
18 complies.

19 COMMISSIONER COMMONS: Alright, well, it's my
20 opinion Mr. Chamberlain, I'm going to vote in suport of
21 the motion of substantial compliance because I believe
22 that the application is in substantial compliance. I
23 obviously disagaree as to whether that will allow us to
24 have data adequacy. But, if you ask, and I guess I
25 want to make sure I understand the motion so that I can

1 vote.

2 CHAIRMAN IMBRECHT: It never ceases to amaze
3 me...

4 COMMISSIONER COMMONS: You talk about
5 substantial compliance because that's an issue. I
6 would find that this is substantial compliance. I
7 don't think it's properly enforced. I separate the
8 issue.

9 CHAIRMAN IMBRECHT: I'm sure that your
10 comments will be cited and what legal challenges are
11 made of it.

12 COMMISSIONER COMMONS: Can you repeat the
13 motion please? I want to make sure I understand it,
14 that's why I'm asking these questions. Can you say it
15 once again, the motion?

16 CHAIRMAN IMBRECHT: My motion is that we find
17 that the application is complete and that it is
18 predicated upon the General Counsel's interpretation
19 that complete is constituted by substantial compliance
20 as defined in our regulations.

21 COMMISSIONER COMMONS: Okay.

22 CHAIRMAN IMBRECHT: Okay, is there further
23 discussion? Hearing none. Is there objection to
24 unanimous roll call? I hear objection, would you
25 please call the roll?

1 MS. GERVAIS: Commissioner Commons
2 COMMISSIONER COMMONS: Aye
3 MS. GERVAIS: Commissioner Gandara
4 COMMISSIONER GANDARA: Abstain
5 MS. GERVAIS: Commissioner Noteware
6 COMMISSIONER NOTEWARE: Aye
7 MS. GERVAIS: Vice-Chairman Crowley
8 VICE-CHAIRMAN CROWLEY: Aye
9 MS. GERVAIS: Chairman Imbrecht
10 CHAIRMAN IMBRECHT: Aye
11 CHAIRMAN IMBRECHT: Ayes 4, 1 abstention, the
12 motion is carried. The application is accepted.
13 Commissioner Commons.
14 COMMISSIONER COMMONS: I've asked that the
15 constitution of the Committee be placed on the agenda
16 as we had discussed at the previous hearing.
17 CHAIRMAN IMBRECHT: It's my intention to do
18 so, I guess where we're at at this point is
19 Commissioner Gandara only assigned. Oh, I'm sorry, you
20 were assigned as well as a second member. I understand
21 your point, it's a valid one and we'll take it up at
22 the next hearing.
23 COMMISSIONER GANDARA: I'd be pleased to be
24 referred to, anybody who's interested.
25 CHAIRMAN IMBRECHT: We were not talking about

1 changing the Presiding Member. Okay, before moving off
2 this item, I just want to reiterate to all of the
3 concerned parties that my decision, personally I
4 suspect, which is probably true of the other members of
5 the Commission, can absolutely in no way should be
6 interpreted as a judgment as to the overall merits of
7 this project.

8 If you have any viewpoint about our effort to
9 try to conduct the last few weeks of proceedings in as
10 fair a fashion as possible, I hope you will take that
11 as assurance as well, that, the remainder of this
12 proceedings will be conducted in a similar fashion.
13 And I, in turn, fundamentally to the basic point I
14 tried to make throughout this, that the burden of proof
15 rest with the applicant to demonstrate that this
16 project is necessary and can be built, etc...that it
17 complies with our regulations and laws which are
18 designed to protect both public health and public
19 safety and environmental considerations, etc. Would
20 anyone else wish to add to that? Commissioner Gandara?

21 COMMISSIONER GANDARA: Point of information,
22 Mr. Chairman. I don't know how to phrase it, but, when
23 does the Commission to the members who voted, when does
24 the Commission consider the acceptance that have taken
25 place? Is it February 15th?

1 CHAIRMAN IMBRECHT: My motion included
2 February 15th, yes.

3 COMMISSIONER GANDARA: I'm sorry, I wasn't
4 clear.

5 CHAIRMAN IMBRECHT: And, that is the date of
6 the attestation and the last document filed by the
7 applicant. Yes, Mr. Pagne.

8 MR. PAGNE: Chairman Imbrecht, we have a
9 great deal of concern about meetings being held in
10 Crockett. We understand that there will be an
11 informational hearing within 45 days of today's date.
12 I think that's the time, forty-five days of the 15th.
13 So, that means we'll have it pretty quickly. And, that
14 will have to be ...

15 CHAIRMAN IMBRECHT: These questions now
16 should be addressed to Commissioner Gandara, he is the
17 Presiding Committee Member with jurisdiction over this.

18 COMMISSIONER GANDARA: There is no regulatory
19 requirement for an information meeting with any
20 particular time for an AFC. It is by tradition held
21 within 45 days. The NOI regulation says within 45
22 days.

23 MR. PAGNE: But, we would ask that if at all
24 possible, as many hearings as possible be held at
25 Crockett so that we can have public input and that we

1 obviate the necessity to come up here so frequently.

2 Thank you.

3 CHAIRMAN IMBRECHT: The matter of
4 Commissioner Gandara will be taken into consideration.
5 Okay.

6 The next item to come before the Commission
7 is Item No. 12 which is Commission Consideration and
8 Possible Approval of Commission Cosponsor conference on
9 Energy Strategy for Decisionmakers: Demand Side
10 Planning for the 1990's. Commissioner Commons, are you
11 prepared to address this item now, or is someone else?

12 COMMISSIONER COMMONS: Since we discussed it
13 at the previous Business Meeting I would, rather than
14 make a motion first, I'd like to give the opportunity
15 to other Commissioners to ask any questions that they
16 would like to have on the back-up package. I want to
17 apologize for the backup package coming in as of
18 yesterday. But we were trying to, you and I, if you
19 remember, were in hearings during most of the last
20 days, and I was only able to get this information
21 yesterday. It was the first day I had been at the
22 Commission.

23 CHAIRMAN IMBRECHT: Okay. Questions or
24 comments? Would you like to make a motion?

25 COMMISSIONER COMMONS: So moved.

1 CHAIRMAN IMBRECHT: It's been moved by
2 Commissioner Commons that we cosponsor a Conference on
3 Energy Stategy for Decisionmakers, Demand Side Planning
4 for the 1990's. Is there a second?

5 COMMISSIONER NOTEWARE: I'll second.

6 CHAIRMAN IMBRECHT: Seconded by Commissioner
7 Noteware. Motion is properly before us. Is there
8 discussion? Commissioner Gandara.

9 COMMISSIONER GANDARA: I hadn't heard about
10 this conference before, except since I was at the last
11 Business Meeting. Is this the same issue that was up?

12 CHAIRMAN IMBRECHT: That's right.

13 COMMISSIONER GANDARA: Well in any case, I've
14 been advocating that we do something like this for 2½
15 years now.

16 CHAIRMAN IMBRECHT: That's with a lot of
17 these ideas. Every once in awhile they evolve to the
18 top and we decide on it.

19 COMMISSIONER GANDARA: That's right, that's
20 right. I was just claiming support for finding some
21 initiation that we do this. And, I think it's
22 appropriate that we, as a State energy agency raise the
23 visibility of the agency and with the kind of liberties
24 we have here to do what I think has by default gone to
25 sometimes other sector groups. I would hope, however,

1 that since it does involve the Commission, I would
2 think some reallocation of funds, as well as staff
3 time, that it is coordinated so that it becomes part of
4 the Commission's activity as with the PUC conference
5 they hold every year..

6 CHAIRMAN IMBRECHT: We have some other ideas
7 for something like that on a larger scale.
8 Commissioner.

9 COMMISSIONER COMMONS: One thing that I
10 should make clear is (INAUDIBLE DUE TO EXDRANEOUS
11 NOISE).

12 CHAIRMAN IMBRECHT: That's not necessary for
13 the reporting so why don't you go ahead.

14 COMMISSIONER COMMONS: One thing that I
15 should make clear is that the orientation of this is
16 not all sectors. We are primarily looking at the large
17 commercial and industrial users of electricity. And,
18 so, we're really targeting in on a specific group, and
19 the hope is that at this conference, it will be
20 primary decision makers from some of our larger
21 institutions that will be in attendance, and it will be
22 aimed and directed at that.

23 There is one session which will include a
24 panel, and there, the attempt is going to be to bring
25 the utilities and some of these larger users together

1 so there can be a blank interchange. And, the purpose
2 of the conference is essentially to see if we can come
3 up with ways that the utilities and some of these users
4 can sit down in terms of a cooperative effort and
5 accomplish some of these goals in a cooperative way.

6 CHAIRMAN IMBRECHT: Okay, I'm prepared to
7 support the motion. I would hope that it would be
8 understood though that we're not locking in this
9 particular, this was a concept paper only I take it,
10 and that you are subject to further input and
11 suggestions about how the conference will be
12 structured.

13 COMMISSIONER COMMONS: Yes, you'll note that
14 everything is proposed. There are five different
15 participants and no one party has a decision.

16 CHAIRMAN IMBRECHT: There's no need to get
17 into it right now. I would indicate, without
18 objection, that it's a motion to support and cosponsor
19 such a conference, not the precise outlines that is
20 before us.

21 Okay, is there objection? Does anyone else
22 wish to be heard on this item? Is there objection to
23 unanimous roll call? Hearing none. Ayes 5, noes none.
24 Motion is carried. I believe all we have left before
25 us are approval of the minutes as before us. Is there

1 objection? That's item number 7.

2 COMMISSIONER NOTEWARE: Mr. Chairman, since I
3 wasn't here I would abstain from that one.

4 CHAIRMAN IMBRECHT: I understand. Hearing
5 none, the minutes are approved as before us. Next we
6 have Commission Policy Committee's Report. Are there
7 any?

8 VICE CHAIRMAN CROWLEY: We have a legislative
9 report, Mr. Chairman.

10 CHAIRMAN IMBRECHT: Excuse me. Commissioner
11 Crowley.

12 VICE CHAIRMAN CROWLEY: ...which is somewhat
13 confused, shall I say, in that we do not have a uniform
14 position among the members of the Committee for the
15 five items as you have in your agenda. We have AB 475.
16 Our recommendation is no position because we feel that
17 this is really not our balleyweg. However, we do have
18 suggestions for amendments regarding the computer
19 models that the CEC uses that the CPUC has for its
20 work. Then, the AB 477, we have two suggestions: one
21 to oppose and one to support. So, I think it possibly
22 would be better if we looked at these one at a time.

23 CHAIRMAN IMBRECHT: Alright, fine. Why don't
24 we take the others. Are there others that you have
25 unanimous positions on?

1 VICE CHAIRMAN CROWLEY: No. That's our
2 problem.

3 CHAIRMAN IMBRECHT: All of the other four you
4 have a different?

5 VICE CHAIRMAN CROWLEY : Right.

6 CHAIRMAN IMBRECHT: Okay, well, we'll take
7 them one at a time.

8 VICE CHAIRMAN CROWLEY: Okay. AB 4, there's
9 no position, and I don't think really requires. We're
10 watching that one.

11 CHAIRMAN IMBRECHT: Is there any member that
12 wishes the Commission to take a position on AB 475?

13 MR. FUKUMOTO: We need to get specific
14 direction from the Commissioners to proceed with
15 communicating with the author our concerns. The
16 problem is that there is a possibility that the
17 Commission's computer models might be drawn into these
18 regulations. So, we want to suggest a language
19 something along the lines.

20 CHAIRMAN IMBRECHT: Alright, I'll just offer
21 that as staff direction. Without objection, you're so
22 directed.

23 MR. FUKUMOTO: Thank you.

24 CHAIRMAN IMBRECHT: And, you'll report back
25 to us as to whether or not there implications that

1 affect the Commission and its work.

2 MR. FUKUMOTO: Correct.

3 CHAIRMAN IMBRECHT: Alright, AB 477.

4 VICE CHAIRMAN CROWLEY: AB 477. This
5 involves the PUC. I suggested that we oppose this
6 because I thought it was their bill and also, SB 4,
7 which was just introduced last year and became law, has
8 not been in practice long enough to get some kind of a
9 reading as to whether we need to change it already.
10 Commissioner Gandara recommended that we recommended
11 that we support this with amendment. Do you want to
12 comment Commissioner?

13 COMMISSIONER GANDARA: Yes, first of all, the
14 Commission has in the past taken positions in support
15 of Intervenor Funding. And, in particular, I guess we
16 were expecting, there were a number of bills before the
17 Legislative Committee rate form. And I believe, there
18 were various things floating around. One was the
19 creation of public advisor, the creation of a CUB.
20 Another one was the Intervenor Funding. A third one
21 was the creation of a super ALJ. Another one was the
22 creation of a greater access, or greater reforming to
23 PUC procedures to the APA, or to some of the
24 regulations that may propose decisions available early
25 on to all parties, and so forth.

1 And, in any case, the historical position of
2 the Commission was to support a triant of essentially,
3 a public advisor, intervenor funding, and reformed
4 procedures. And the Commissions position on that was,
5 basically, in preference to the other proposals of a
6 CUB for the Citizen Utility Board. In any case, my
7 feeling is that I think that there is a public advisor
8 at the PUC now, which they did on their own motion.
9 And, I think that's good. I don't know where they are
10 with respect to reformance of their decisions and
11 making decisions of the ALJ available ahead of time, or
12 with sufficient time for review and so forth. But,
13 this proposal for Intervenor Funding is the second one
14 of those three elements that I would support.

15 The proposed amendment that I would suggest,
16 however, is that I think it would be self serving to
17 just be recommending such a policy for another agency,
18 and I think we ought to look at our own. And that,
19 frankly, I think that such a policy ought to apply to
20 us here as well. There was a proposal for an amendment
21 by, I believe, the Hearing Advisor, to include
22 reimbursement for cases, siting cases of the Energy
23 Commission that required a Certificate of Public
24 Convenience and Necessity. But, since many of our
25 siting cases, in fact, are not cases by investor-owned

1 utilities, they would never go forth with such
2 reimbursement. So, I think as a matter of policy it
3 would be preferable just to have a general report for
4 Intervenor Funding in both agencies. So, that's my
5 amendment.

6 CHAIRMAN IMBRECHT: I will just indicate that
7 it seems to me that, in essence, what occurred a year
8 ago is that the portion of that previous Commission
9 policy was, in deed, adopted by the Legislature.
10 Namely, Intervenor Funding. But, after the culmination
11 of the case rather than advancing it, I find that, in
12 the analysis, that the concerns expressed by the
13 General Counsel are extremely salient ones. And, I
14 think that the fact that I am personally conscious of
15 the flood of interest which Intervenor Funding has been
16 debated over the years in the Legislature, and the fact
17 that legislation was passed and signed last year,
18 suggests to me that the issue has been addressed in
19 their term from their perspective.

20 I would similarly agree that it would be
21 appropriate to allow SB 4 and the post case, Intervenor
22 Funding considerations be provided an opportunity to be
23 analyzed in terms of their effectiveness. I'm not
24 convinced they'll represent a chilling effect for
25 serious intervenors, and I do think that there is a

1 real prospect that you provide before the fact funding
2 that the concern expressed for the General Counsel, in
3 deed, might likely arise, including the one about
4 recovering money that was erroneously granted after the
5 fact.

6 COMMISSIONER GANDARA: How do you feel about
7 Intervenor Funding after the fact for the Energy
8 Commission which SB 4 doesn't address?

9 CHAIRMAN IMBRECHT: I don't know. I'm open
10 to a discussion about it. But, I'm not sure I want to
11 entertain that right at the moment. I'd like to think
12 about it.

13 COMMISSIONER GANDARA: Well, let me propose
14 it as an alternative amendment. And, if your concern
15 would be that SB 4 hasn't been given a chance to work
16 with the PUC, let me propose that it has an amendment
17 that we convey to the author that, in fact, we need to
18 let that work at the PUC, but that there is an issue
19 here that we ought to have a similar application at the
20 Energy Commission so that we can also, essentially,
21 have the same responsibilities and opportunities with
22 respect to intervenor.

23 VICE CHAIRMAN CROWLEY: So, you're saying
24 then...

25 CHAIRMAN IMBRECHT: Simply conform SB 4 to...

1 VICE-CHAIRMAN CROWLEY: to the Energy
2 Commission.

3 CHAIRMAN IMBRECHT: Commissioner Commons.

4 COMMISSIONER COMMONS: Yeah, I would be in
5 accord with the latter idea. And, I would be, in
6 moving in the direction of you Mr. Chairman and the
7 Presiding Member on the first. Whether or not there
8 should be Intervenor Funding before or after, even
9 though I would tend to agree with you on a policy
10 basis, I don't think it's appropriate, and I prefer
11 Commissioner Crowley's approach that it's appropriate
12 for us to, within the PUC arena, to say how they should
13 or should not fund for intervenor. I don't think it's
14 our jurisdiction and I would prefer for us not to be
15 involved in that question. I am interested, though,
16 and I think it's only appropriate that the two
17 Commissions be treated in a similar fashion.

18 One of my concerns, and I've said this
19 before, is that we have two sources of funding, in
20 terms of this Commission. And, it all comes from a
21 rate fare. We get funding as a Commission from the
22 mill, and then utilities come before us with legitimate
23 business and it's very important for them to do so.
24 Essentially, that cost is passed back to the ratepayer.
25 Well, there really isn't no rate fare representation

1 before us. And, it's not fair.

2 I'm concerned, on the other hand, as you all
3 know that I don't like to open Pandora's boxes and
4 expend a lot of monies. So, I would tend, if it were
5 to be looked at by this Commission after the fact, as a
6 more conservative approach. But, it would certainly
7 ensure, I think, more effective and fairer
8 participation. So, I would be leaning in that latter
9 direction possibly in a limited way, in terms of
10 introduction of the concept within the Commission.
11 But, I don't think we should take a position as to how
12 it should operate at the PUC, but, rather should be
13 concerned with ourselves.

14 CHAIRMAN IMBRECHT: Let me just respond
15 directly to the question, Commissioner Gandara. I am
16 open to the idea. I would prefer not to, the more I
17 press today, I simply would abstain, but, prefer not to
18 be pressed into a decision on that today. I would like
19 to ask this item, that concept you're suggesting, be
20 referred back to either staff or to the Legislative
21 Committee, and some analysis of the appropriate places
22 within our statute that Intervenor Funding might, or,
23 should be granted, and what the dollar implications of
24 such might be would at least be vis-a-vis a balanced
25 interest to all of the affected parties. I just don't

1 feel I've got enough information before me,
2 conceptually. I'm, generally, I would say supportive.
3 I would like to see a further report on it.

4 COMMISSIONER GANDARA: Why don't we put it
5 over until the next Business Meeting?

6 VICE CHAIRMAN CROWLEY: Or do you want the
7 Legislative Committee to develop?

8 CHAIRMAN IMBRECHT: Either, that would be
9 fine with me. VICE CHAIRMAN CROWLEY: And, how do you
10 want us to deal with AB 477?

11 COMMISSIONER GANDARA: Just no position?

12 CHAIRMAN IMBRECHT: I would suggest no
13 position.

14 VICE CHAIRMAN CROWLEY: That'll be fine.

15 CHAIRMAN IMBRECHT: Is there objection to
16 that?

17 VICE CHAIRMAN CROWLEY: On SB 80 Boatwright,
18 it has changed because of amendments on the 20th.
19 Dennis, will you bring us up to date on that please.

20 MR. FUKUMOTO: The basic amendment that was
21 amended in the February 20th minutes was to allow a 2¢
22 per gallon income tax credit for production in
23 California in lieu of the sales tax exemption. What
24 that does is complicate the amount to the subsidy for
25 the tax agencies because there's no way to tell when

1 they collect the sales tax whether or not the person
2 who is producing it is going to, in the following year,
3 apply for the 2¢ per gallon income tax credit because
4 it's collected at a different point and time. I think
5 this just creates an added burden for the taxing
6 agencies and creates a greater opportunity for
7 misrepresentation regarding the tax. We have a current
8 position of opposed. The Bill has also been amended
9 since our analysis. The most recent amendment removes
10 the requirement that the Legislative Analyst conduct an
11 analysis of the economic impact of this sales tax
12 exemption.

13 VICE CHAIRMAN CROWLEY: The opposed position,
14 squares with our previous positions on the previous
15 bills by Senator Boatwright in the same arena.
16 However, the second member has another recommendation.
17 If you want to elucidate on that.

18 CHAIRMAN IMBRECHT: Commissioner Gandara.

19 COMMISSIONER GANDARA: I'll be glad to. If
20 you look at the sheet on this, it is current written
21 information by staff to oppose, and the Commission
22 opposed it earlier this year, it opposed last year, it
23 opposed it the year before that. And, so, when I
24 consider why we're even taking a position on this
25 because it seems to be mainly a fiscal bill. And, I

1 ask myself well what's the energy effect?

2 So, we went back to where this originally
3 came up in 1982 or 1983. Essentially, that there was,
4 the methanol program was starting and our staff had
5 concluded that methanol was not the way to go, that it
6 was the way to go. And, it just seemed to me that,
7 historically, that there was a concern expressed then
8 that there was not, well, there was concerned expressed
9 over potential competition to the methanol alternative.
10 And, when we look at it now, we have our fleet in
11 place, the price of oil has stabilized, it has been
12 dropping. It's not clear to me that either ethynol or
13 methanol propose any potential threat as alternative
14 fuels to gasoline.

15 But, in any case, it seems to me, that SB 80
16 really, I mean, the analysis here doesn't address the
17 real energy issue other than kind of a foreign policy
18 that we shouldn't want California dollars to go to
19 other countires, or something, or State. And, it's a
20 position that I don't think we have a consistent basis
21 on. As I understood from hearsay, was that, with
22 respect at least to IBM computer equipment, that we're
23 willing to send dollars to IBM in New York, rather than
24 to Apple in California. In any case, I'm not quite so
25 certain of why we're concerned if methanol goes to

1 IOWA. But, in any case, I just thought it's a fiscal
2 bill. I don't feel strong about it one way or the
3 other. It just seems to me, why take a position if
4 it's not really something that affects energy.

5 VICE CHAIRMAN CROWLEY: Okay, what's the
6 pleasure of the Commission. Whatever you'all suggest
7 is fine with me.

8 CHAIRMAN IMBRECHT: Well, the only other
9 thing that I would add to what Commissioner Gandara
10 said is that my recollection is that one of the
11 considerations was that if you assume a finite dollar
12 funding support level for alternative fuels, and based
13 upon Commission conclusions, and so forth. I think you
14 might want to stick around for this conversation Mr.
15 Gunkelmun, if you're looking to leave.

16 There's a question about whether the
17 Commission should oppose subsidies, that it was
18 inappropriate for us to, having taken a policy position
19 as preferred with the fuel alternative, diluting
20 potential support for those programs by virtue of what
21 it would cost the General Fund to approve this subsidy.
22 I think further the viewpoint that this would make
23 ethynol artificially competitive with or superior in a
24 straight fiscal competition with methaol, despite the
25 fact that it's a less preferable fuel for a variety of

1 reasons. That's my recollection of rationale, at
2 least. I personally see no reason to change...

3 COMMISSIONER COMMONS: Why are we taking a
4 position?

5 CHAIRMAN IMBRECHT: What?

6 COMMISSIONER COMMONS: Don't we already have
7 outstanding policy? Why is this before us?

8 COMMISSIONER GANDARA: Amendments.

9 CHAIRMAN IMBRECHT: They were amendments.
10 Let me ask this question. Is there anyone who wishes
11 to offer a motion to change the Commission's position?
12 Hearing none.

13 VICE CHAIRMAN CROWLEY: Final Bill, Senate
14 Bill 243, the Pressly Bill, excuse me.

15 Q What was the motion?

16 CHAIRMAN IMBRECHT: There was no motion
17 changing the existing position so the existing position
18 stands.

19 VICE-CHAIRMAN CROWLEY: There were low-income
20 conservation tax credits allowed previously, and then
21 the fundign for that was removed. And, so, the present
22 bill puts back funding for it and makes money available
23 for people who had previously filed for this who at
24 that time were not given their money. And, it seemed
25 to me appropriate in a number of reasons, equity one of

1 them, and encouragement to these people who did provide
2 this energy conservation that they get some of what
3 they at the time understood they were to get in a way
4 of a credit refund. The second member recommended no
5 position. Do you want to speak to that?

6 COMMISSIONER GANDARA: Again, Mr. Chairman,
7 this is just a fiscal bill and the passage of this bill
8 won't save anymore energy. It won't change any
9 particular energy policy. In any case, I think the
10 issue is new, since I have before me a March 1st letter
11 from you to Mr. Boatwright indicating that the
12 Commission supports SB 243.

13 CHAIRMAN IMBRECHT: I'm just looking at that
14 myself Commissioner Gandara. I'm wondering how this
15 happened. Has this gone out?

16 MR. FUKUMOTO: Yes it has.

17 CHAIRMAN IMBRECHT: When was this presented
18 to me?

19 MR. FUKUMOTO: Because we got three
20 Commissioners to approve the position of supporting
21 this bill.

22 VICE CHAIRMAN CROWLEY: Because the Committee
23 Meeting was set.

24 MR. FUKUMOTO: Because we needed a position
25 if we were going to present it before the hearing which

1 is being held today.

2 COMMISSIONER COMMONS: The appropriate
3 procedure then is to bring it back to the full
4 Committee.

5 CHAIRMAN IMBRECHT: Or ratification. So it's
6 before us for ratification? Alright fine.

7 COMMISSIONER GANDARA: Again, I don't want to
8 make too much of the bill, but I think the procedural
9 thing here, maybe going to the Commission was put
10 before us previously. And, I'm not quite certain
11 whether we're not the party from what I thought was
12 established procedure. In the past such letters has
13 indicated that a majority of California INAUDIBLE

14 And, secondly, my understanding of the
15 procedure was that when there was a difference in
16 Policy Committee that such differences would be noted
17 to all of the members of the Commission and an
18 opportunity would be afforded for an advisor of the
19 Commissioner who was not in agreement to be there in
20 attendance when the staff was seeking the third vote,
21 to both convey that there was a difference and also
22 convey an argument one way or the other. Now, are we
23 departing from that policy now?

24 MR. FUKUMOTO: No, we are not departing from
25 that policy. It is my understanding that that is

1 exactly what had happened, and we had continued that.
2 Both Commissioner Imbrecht's advisor and Commissioner
3 Commons' advisor were present at the meeting when your
4 positions were presented. And, I assume that that
5 would be the same thing as having...

6 COMMISSIONER GANDARA: Well, my understanding
7 was that you or staff were going to be soliciting
8 position from the Commission, not the Commissioners'
9 advisors; and that the adviser of the Commission who
10 disagreed with the position of the presiding member
11 would be given an opportunity to present those
12 arguments -- that in any case you would convey that
13 there was a difference to the Commission, but that the
14 advisor would be presented an opportunity to convey
15 that and/or the Commission would be notified so that
16 you might have an opportunity to convey that
17 disagreement to the other Commissioners.

18 MR. FUKAMOTO: Right.

19 COMMISSIONER GANDARA: I was not informed of
20 any such solicitation of a third vote, nor was my
21 adviser asked to participate.

22 MR. FUKAMOTO: That was the discussion after
23 or at the Legislative Committee meeting.

24 COMMISSIONER GANDARA: Yes, I understand that
25 as a procedure. I'm not disputing the procedure. What

1 I'm saying is I was not notified first of all, who the
2 third Commissioner was; I was not notified of when such
3 an argument was made, I was not notified nor was my
4 advisor provided an opportunity to the best of my
5 knowledge...

6 MR. FUKAMOTO: I notified your advisor of
7 what was going on, who the third vote was, and gave
8 him at least 24 hours notice of the letter that it was
9 going out in the form it was going out in.

10 COMMISSIONER GANDARA: I'll have to talk to
11 my office then. I appreciate your calling to my
12 attention the shortcomings of my office.

13 CHAIRMAN IMBRECHT: Okay, Commissioner
14 Commons.

15 COMMISSIONER COMMONS: Two comments. One is,
16 it was presented to me in the viewpoints of most
17 Commissioners were presented pretty much as they were
18 stated today. I do have another concern here though
19 which is more general. And that is, what happens when
20 we are divided as a Commission? The letter states that
21 a majority supports, a minority opposes and both
22 arguments are presented? Or will we inundate the
23 Legislature with five separate letters from five
24 separate Commissioners? I don't know exactly what our
25 policy is.

1 CHAIRMAN IMBRECHT: I'll state it as it has
2 always been the two years that I've been here. The
3 letter goes on behalf of the Commission from the
4 Chairman's office which indicates the position of the
5 Commission as enunciated by a majority vote. It does
6 not represent minority viewpoints and on those
7 occasions, when my own position has been distinguished,
8 I never made any reference to that fact in those
9 letters. I simply administerial, in terms of
10 relaying to the appropriate members of the Legislature
11 what the Commission's position is.

12 I would simply say that to the extent that
13 individual Commissioners are especially exercised and
14 they care to take advantage of their First Amendment
15 rights, that's where we ought to leave it. If you want
16 to say something separately to the Legislature, that's
17 your prerogative, it seems to me.

18 COMMISSIONER COMMONS: Let me look at the
19 procedure and take it under consideration. And if I
20 have an issue, I'll bring it to the Legislative
21 Committee. I just wanted to understand what the
22 existing procedure was.

23 CHAIRMAN IMBRECHT: That's what it was, when
24 I became Chairman. Okay. Commissioner Noteware.

25 COMMISSIONER NOTEWARE: I guess I would like

1 to make sure that I understand Commissioner Gandara's
2 position more clearly. Maybe I'm naive, but it would
3 seem that with the incentives that would be built in
4 here, that there could be a significant saving in
5 energy because of the financial advantage to the low-
6 income people. But you say it's purely a fiscal thing
7 and you don't anticipate that there would be much
8 savings in the way of energy?

9 COMMISSIONER GANDARA: It's a reimbursement
10 for past savings...

11 CHAIRMAN IMBRECHT: which have already
12 occurred.

13 MR. NOTEWARE: Okay.

14 CHAIRMAN IMBRECHT: The issue really here is
15 whether or not these people made these investments in
16 good faith and anticipation that they would enjoy the
17 benefits of the tax credit. And as a result of the
18 fiscal crisis in 1982, when the General Fund was
19 imbalanced, just about every discretionary expenditure
20 as well as special funds, etc. that could be tapped
21 were tapped by the Legislature and the Governor, I
22 might add to mitigate the total impact of the General
23 Fund. This was one of those programs suspended as not
24 being sufficiently high priority vis-a-vis a tax
25 increase or further General Fund reductions.

1 I guess my arguments in terms of the energy
2 conservation aspects of it are to the extent to which
3 we would anticipate and expect future response to tax
4 credit incentives and other such incentives, is partly
5 a reflection of the historical willingness of the State
6 to stand by its commitments. In fact, without this, if
7 you can make an argument that perhaps it keeps your
8 response that such incentive programs might not be as
9 grave in some communities, including low-income
10 communities that might be particularly skeptical about
11 the Governor standing behind this. That's the reason I
12 would support this.

13 COMMISSIONER NOTEWARE: Thank you.

14 CHAIRMAN IMBRECHT: Okay, then what we have
15 before us is the last item and....

16 COMMISSIONER COMMONS: Oh, we didn't vote on
17 this.

18 CHAIRMAN IMBRECHT: I'm just one. I'm on the
19 last item right now, so I was about to say that
20 Commissioner Crowley moves

21 VICE CHAIRMAN CROWLEY: Moves to ratify the
22 letter and support of SB 243.

23 CHAIRMAN IMBRECHT: Commissioner Commons
24 seconds. Aside from Commissioner Gandara, is there
25 objection?

1 COMMISSIONER NOTEWARE: I think I'll abstain
2 on this one.

3 CHAIRMAN IMBRECHT: Alright fine. Please
4 call the roll.

5 MS. GERVAIS: Commissioner Commons

6 COMMISSIONER COMMONS: Aye

7 MS. GERVAIS: Commissioner Gandara:

8 COMMISSIONER GANDARA: Abstain.

9 MS. GERVAIS: Commissioner Noteware

10 COMMISSIONER NOTEWARE: Abstain.

11 MS. GERVAIS: Vice Chairman Crowley

12 VICE CHAIRMAN CROWLEY: Aye

13 MS. GERVAIS: Chairman Imbrecht

14 CHAIRMAN IMBRECHT: Aye.

15 CHAIRMAN IMBRECHT: Ayes, 3; noes, none; 2
16 abstentions. The motion is carried and the letter is
17 ratified. Alright, are there further Commission Policy
18 Reports? Commissioner Gandara.

19 COMMISSIONER GANDARA: Not exactly a
20 Commission Policy Report, but I would just like to
21 inform the Commission that the last meeting of the
22 SFICA Board, which occurred unfortunately at the same
23 time we had the business meeting, the Commission's
24 representative was elected Chair for it. So that
25 results in, I believe for the first time, both

1 representation on the Executive Committee as well as an
2 officer of the organization.

3 CHAIRMAN IMBRECHT: I think the Commission
4 extends congratulations to Commissioner Gandara for
5 your election as Chairman of the Board.

6 VICE CHAIRMAN CROWLEY: Do I hear a
7 resolution?

8 CHAIRMAN IMBRECHT: That's two in one day.
9 On behalf of the Biennial Report Committee, I'll just
10 indicate that I have already mentioned this to you in a
11 memorandum, but we have scheduled each of the BR
12 Committee hearings as full Commission hearings in the
13 event and to ensure that all members of the Commission
14 can participate in a formal fashion. I would like to
15 strongly encourage each the three of you that are not
16 members of the Committee, we need your input and I
17 would say expeditiously. We are nearing the end of the
18 entire process. I would personally greatly appreciate
19 the ability to anticipate concerns that you might have
20 prior to bringing the document to the full Commission.
21 I think one of the best ways to ensure that's the case
22 is your attendance at some or all of the hearings. I
23 think we have put together an interesting agenda and
24 itinerary that take us to all the population centers
25 throughout California, ensures that we are discussing

1 issues that are timely and of interest to the
2 communities in which we will be meeting.

3 In addition, we have endeavored to draw to
4 these hearings recognized experts in their fields from
5 throughout the State and outside of our borders as
6 well. In many instances, there will be an opportunity
7 to meet on a social basis and exchange views with some
8 of these individuals privately which is useful as well.

9 Several of the hosting institutions have
10 similarly offered and since I just learned as a result
11 of the poll with Commissioner Gandara, conducted that I
12 am still the minority around here -- four Stanford and
13 one Occidental. I don't know. It's fairly
14 intimidating, but we will....

15 VICE CHAIRMAN CROWLEY: Watch it.

16 CHAIRMAN IMBRECHT: (LAUGHTER) I don't know,
17 but we will be holding one of our BR hearings at
18 Stanford, and several senior members and their faculty
19 have invited us to join them for some private
20 discussions.

21 VICE CHAIRMAN CROWLEY: That's T-r-e-s-i-d-d-
22 e-r.

23 CHAIRMAN IMBRECHT: I'm not sure I caught
24 that, but....at any rate, I really encourage you to
25 join with us and participate in those proceedings. So

1 once we move towards the adoption dates at the end of
2 April, we're all cognizant in forming the direction
3 we're taking. Commissioner Commons.

4 COMMISSIONER COMMONS: Yes, the Siting
5 Committee Report, which I guess is unusual in our
6 Commission. But, an issue's that have come up in our
7 Siting Committee which I think I ought to address to
8 the full Commission as it proceeds. It could affect
9 other siting cases.

10 If I go too far, Mr. Chamberlain, gavel. The
11 question is related to Need Determination. I wrote a
12 memo to our Legal Counsel as to as we conduct our
13 various proceedings on need determination, does the BR4
14 or ER5 prevail? And the response I received from Legal
15 Counsel which is docketed, so that's obviously public
16 information, was essentially since BR4 is the existing
17 policy of the Commission, that the hearing should be
18 conducted on that basis. At the time that case comes
19 before the Commission, there's been a substantial
20 change, then that should be taken into consideration by
21 the Presiding Member of the Committee and that would be
22 an issue in the acceptance. Is that a correct statement
23 or summary of your position? I want to make sure I
24 have it straight.

25 MR. CHAMBERLAIN: Before I answer that, could

1 I ask are you seeking some Commission action here?
2 Because if you are, we probably should put something on
3 the agenda for this.

4 COMMISSIONER COMMONS: No, I'm not seeking
5 Commission action at this time. What I'm doing is
6 informing...

7 CHAIRMAN IMBRECHT: Forming counsel's
8 opinion.

9 COMMISSIONER COMMONS: And also informing as
10 to the direction that I am contemplating going on
11 Coldwater. I think the Presiding Members are going in
12 different directions on siting cases. It's appropriate
13 before you take such a step to bring it before the full
14 Commission. I believe the rights of a Presiding Member
15 in a siting case are circumscribed and I have a
16 responsibility of bringing forth an action that may be
17 inconsistent with the

18 CHAIRMAN IMBRECHT: Let's hear what
19 Commissioner Gandara...

20 COMMISSIONER GANDARA: Mr. Chamberlain is a
21 little bit gun shy after today. That's okay.

22 COMMISSIONER COMMONS: Before Mr. Gandara
23 goes, I just want to make sure I got the statement
24 correct as to Mr. Chamberlain's response.

25 MR. CHAMBERLAIN: It's clear.

1 CHAIRMAN IMBRECHT: Is that an accurate
2 recitation of your opinion rendered, Commissioner
3 Gandara?

4 COMMISSIONER GANDARA: Well, it's a very
5 brief recitation of a three-page single opinion, but it
6 sounds fairly accurate.

7 (LAUGHTER)

8 CHAIRMAN IMBRECHT: All the legal caveats....
9 that's the bottom line.

10 COMMISSIONER COMMONS: Sometimes the
11 Commissioners.....

12 EXECUTIVE DIRECTOR WARD: Mr. Chairman, we
13 still have Item #1 that was left open.

14 CHAIRMAN IMBRECHT: Yeah, it's not problem.
15 Let's complete this. Commissioner Gandara.

16 COMMISSIONER GANDARA: I was just going to
17 say that it seems that this issue's covered in the
18 regulation and that it states right in there that the
19 need determination is based on the last adopted
20 forecast. So, that's where we're at. However, I think
21 it's useful to bring the issue up because I think there
22 has been a source of confusion on the staff, and it is
23 useful for the Commission to perhaps give some
24 direction to the staff here, and I'm speaking
25 specifically with one case in Gilroy in which there was

1 a workshop held last week sometime, and as is the case
2 with the workshops, the Committee is not there. It's
3 between staff and the applicant. I do have a concern
4 because it was reported to me that, and accurately (I
5 don't know that that's the case), but it was reported
6 to me that the major focus of the discussion was
7 because the Committee had noticed a schedule that
8 indicated evidentiary hearings for a period of time
9 before the next forecast adoption will occur. And
10 also, it had indicated that the Committee was also
11 going to have a second Prehearing Conference to see if
12 there was any need for a review of the need
13 determination as a result of the adopted forecast.

14 I think it has been over-interpreted to mean
15 the Committee is going to be conducting its need
16 determination on the new forecast. I believe that at
17 least what should be stated right now, and I'm in a
18 position to having to issue a clarifying order for
19 something that I didn't say to begin with, but that in
20 fact, the first evidentiary hearings will be held under
21 the regulations and will include a need determination
22 analysis according to the existing adopted forecast.

23 That second Prehearing Conference would be
24 for the purposes of reviewing again that particular
25 evidence that's been offered as to whether it needs to

1 be changed or not. So, we often have cases on
2 different schedules and I think it is useful to bring
3 up so that at least that maybe if that's consensus from
4 the Commission, I think it ought to be articulated. I
5 think with the problems we're having with staffing
6 there is both an inclination, a natural one and one
7 that I would share to not expend unnecessary time if
8 one is going to be looking at need determination based
9 on the new forecast. But, I'm not quite so sure we can
10 count on that.

11 In a unrelated matter, I've noted a memo to
12 the ER/BR Committee, that according to your schedule
13 which was set forth much later than the commitment I
14 made last November, I would be unable to attend the
15 hearing at which the adoption of the forecast is
16 scheduled. Again, this Committee has taken a slightly
17 different route in that it has scheduled three critical
18 hearings: 1), the adoption of the forecast; 2) the
19 adoption of the ER; and 3) the adoption of the BR.

20 Previously the adoption of the forecast and
21 the ER were one of te same. I can't attend the
22 adoption of the ER and BR.

23 CHAIRMAN IMBRECHT: I've seen your
24 memorandum. We have not had a chance to discuss it
25 toward an appropriate rsoultion. We will certainly

1 make every effort to accommodate it. At least, that's
2 my intention. Commissioner Commons, do you want to
3 address that?

4 COMMISSIONER COMMONS: Let me go on with my
5 Committee Report. That's what I'm trying to do. I
6 hadn't finished. My concern is that by law when we had
7 a case that's brought before us that we have to find
8 need and it has to be under the adopted forecast. Now,
9 presuming and I know the Chairman and myself, are
10 intending to bring before the Commission, whether we
11 get three votes in the Commission, we're unable to make
12 a decision. We will find out on that date.

13 But we're intending to bring before the
14 Commission by May....

15 CHAIRMAN IMBRECHT: I hope to find well in
16 advance of that date before I bring anything forward.

17 COMMISSIONER COMMONS: Well, I believe it's
18 the intent of the Committee and the Commission to meet
19 our deadline of May 1st. That would mean that any
20 cases that occurred after May 1st...

21 CHAIRMAN IMBRECHT: Cited...

22 COMMISSIONER COMMONS: Cited after May 1st
23 would have to meet the need determination based on the
24 Commission-adopted forecast as of that date.

25 Personally, if there had been a hearing and

1 it had been on a previously adopted forecast, and there
2 had not been a subsequent hearing with full
3 participation where there was a need determination
4 issue, would not be able to vote for such a case
5 because I would not think it was properly before the
6 Commission. The procedure that I'm looking at and I've
7 not issued a memorandum. I wanted to bring it before
8 the Commission, not for a vote or decision, but if
9 anyone had any viewpoints, was that when we have these
10 cases, the hearings are occurring prior to the date of
11 adoption, but the siting decision will be after, that we
12 actually do the need determination under both the BR4
13 as the currently-adopted Commission policy, and also
14 raise it as to whether or not there're any differences
15 under the Draft ER, or is there's any change in that so
16 there'd be properly heard hearings on both.

17 CHAIRMAN IMBRECHT: I don't think we need to
18 spend a lot of time on this. I would just say that I
19 think a combination of your statement and Commissioner
20 Gandara's is the most rational way to handle it.
21 That's certainly the way I'd be willing to move
22 similarly. And I think that his idea of another
23 Prehearing Conference after the adoption of a new
24 forecast where there's an opportunity for parties with
25 new process considerations to argue whether or not

1 there's been a material change in the outcome of the
2 need issue for that particular case based upon any
3 changes that may have occurred in the forecast would
4 accommodate that. And that provides you an opportunity
5 then to provide you an evidentiary record and also
6 ensure that all parties have an opportunity to...

7 COMMISSIONER COMMONS: Depends on where you
8 are in your schedule. What I'm trying to encourage the
9 Commissioners is not to have your schedule lost,
10 because it's very important for us to make our 12-
11 month schedule by the fact that the adopted forecast
12 may change.

13 CHAIRMAN IMBRECHT: Okay, further Commission
14 Committee Reports? Alright. Let's see -- General
15 Counsel Report.

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

18 CHAIRMAN IMBRECHT: Okay, thank you very
19 much. Executive Director?

20 EXECUTIVE DIRECTOR WARD: Yes, Mr. Chairman,
21 it might be wise to go back to Item #1, the....

22 CHAIRMAN IMBRECHT: Oh, I'm sorry. I had
23 been informed by the Public Adviser's office that the
24 petitioner wishes to withdraw.

25 EXECUTIVE DIRECTOR WARD: That's correct.

1 CHAIRMAN IMBRECHT: We'll review the staff
2 recommendation, and if he chooses to pursue the
3 petition, we'll so notify the Public Adviser's office.
4 Also, I'm informed the Deputy General Counsel has
5 reviewed it, and find no objections with withdrawal.
6 So, without objection, we will accept withdrawal. That
7 disposes of Item #1. Now, the Executive Director's
8 Report.

9 EXECUTIVE DIRECTOR WARD: Yes, Mr. Chairman,
10 we have a Second Quarter Review that I think we've been
11 trying to get to for a couple of three weeks. I
12 recognize today's hearing has taken a little longer
13 than we all anticipated. This information has been
14 available to Commissioners and their staffs, but for
15 Commissioner Noteware for a period of I believe, three
16 or four weeks -- Different reiterations of it,
17 compendium of the final decisions of the Budget
18 Committee are reflected in document that I believe your
19 office received last Wednesday.

20 My sense is that the Executive Office at this
21 point in time has spent time discussing specific
22 concerns and resource allocation issues with individual
23 Commissioners and I'm aware of a couple specifically
24 that still remain. Commissioner Gandara and I had been
25 discussing one that's ongoing, and I think we both have

1 a good understanding of that and I believe resolution
2 is likely within the next week or so. Commissioner
3 Commons has a concern that I share as well, and he and
4 I have been working together. That concern is really in
5 the context of specific personnel, and I would be
6 reluctant to discuss the specifics of that. It has to
7 do with Conservation Report and the allocation of a
8 resource to assist the division in the Executive Office
9 and the Committee in the production of that report. I
10 would anticipate resolution in the short term of that
11 as well.

12 What I think would be helpful is for the
13 Chief of Administrative Services, Mr. Donaldson, to
14 give you a brief overview of the budget, the remaining
15 resources in general. And then a general status report
16 on some of the items that had been of concern to you
17 and the past contract status, affirmative action, and
18 the management reporting system. With that, unless
19 there's any questions...

20 CHAIRMAN IMBRECHT: Let me just indicate for
21 Commissioner Noteware's benefit, I don't know if the
22 Water Resources Board utilizes the same procedures, but
23 basically after the adoption of the budget, signature
24 by the Governor, we then generate a work plan which
25 allocates our personnel down to tenths of a PY. And

1 then in turn on a quarterly basis, first reviewed by
2 the Budget Committee, which in the past has been
3 composed of the Chair and Vice Chair. Then the
4 Commission is presented a full review of what the staff
5 has been up to for the last three months, and whether
6 that work complies with the work plan that was
7 originally adopted; then modifications might be
8 appropriate. That's where we're at today. Mr.
9 Donaldson.

10 MR. DONALDSON: Thank you, Mr. Chairman,
11 members. To give you some background on the
12 presentation today, we presented the Budget Committee
13 material to the Commissioners as well on February 1 and
14 what you have in your book today represents a synopsis
15 of that material as adopted by the Budget Committee.
16 And very briefly, we're going to go through the items.
17 You have had an opportunity to take a look at the data
18 and what we prefer to do. After my brief presentation,
19 we'll simply ask if you have any questions on the
20 material that's been presented to you. the first item
21 that we have today is the '84-'85 Budget Report. We
22 give you a brief presentation every quarter to simply
23 let you know where we are and how we stand with regard
24 to expenditures. We anticipate at the half year mark
25 that we will finish in the black in both the personal

1 services item and operating expenses and equipment.

2 And as the data shows in your book, within
3 the operating expenses and equipment there are some
4 changes that is, if this were the end of the year, we
5 would have to make some adjustments. But right now, we
6 don't anticipate making any adjustments because they're
7 fairly minor. We have no major items at this time to
8 present to you with regard to the 84-85 budget, and we
9 will apprise you at the third quarter if, in fact,
10 anything pops up that you should be aware of.

11 The next item that we have regarding the
12 overall item that relates to all the divisions in the
13 Commission as well is Affirmative Action. We are
14 pleased again in this second quarter to present to you
15 the statistics we've had of our professional hires.
16 We've had 87 percent from under-represented groups and
17 85 percent of the total Commission hires in that
18 quarter were from affirmative action groups as well.
19 That would give us a total for the year overall, of
20 affirmative action hires of about 77 percent of all of
21 our hires.

22 We have one item that we'd ask your
23 ratification on and I'll call your attention to the
24 Quarterly Review package that's in the book. I would
25 ask you to look at the Contract Status Report and

1 ratify the recommendation of the Budget Committee that
2 those two contract items, one from Assessments Division
3 and one from Conservation Division, that we make that
4 switch for the contract items. That's Attachment 2 of
5 the Second Quarter Review that's in your book. Any
6 questions?

7 EXECUTIVE DIRECTOR WARD: I'll mention while
8 you're looking that up. Two other things quickly. We
9 have been scheduled, I was told today, for Ways and
10 Means Resources Subcommittee on Tuesday afternoon of
11 next week. And then the Envirosphere contract that has
12 gone through various iterations, primarily bureaucratic
13 processes between the Attorney General and the State
14 Personnel Board in clarifying exactly what the
15 Personnel Board and Executive Officers' authority and
16 Board's authority was. So, this isn't the only board
17 or commission that has some of those questions about
18 internal processes.

19 I believe that it has been resolved and that
20 the Executive Officer or Board will be making a
21 determination on that contract today. He informed me
22 of that this morning and is supposed to call me. I've
23 been checking with my office periodically for a return
24 phone call that I haven't received as of yet. But I
25 will let all of you know as soon as it is received.

1 CHAIRMAN IMBRECHT: Commissioner Commons.

2 COMMISSIONER COMMONS: I have four areas of
3 concern or five. Let me talk about the first area
4 because I think it's the largest. We have the unusual
5 circumstance this year that we're completing a
6 Electricity Report on a two-year cycle and the next
7 cycle is going to be one year. Normally, there's no
8 reason to expect any difference in the amount of work
9 required to do this one than previously. And we're
10 going to run into a very severe problem in that
11 division in getting out the next Electricity Report.
12 It may not be fair to characterize it as one year, but
13 it's 18 months. But the way the schedule unfolds, the
14 Draft Report has to be gotten out within that 12-month
15 timeframe.

16 EXECUTIVE DIRECTOR WARD: I'm aware of that
17 Commissioner and I share your concern as well.

18 COMMISSIONER COMMONS: And I do not believe
19 that the Budget Committee has yet seriously looked at
20 this issue, but if we wait in terms of next August,
21 when we reallocate within the Commission, we are going
22 to have one of the most severe crunches that this
23 Commission has found in a one-year unusual
24 circumstance. I want everyone to be aware of it
25 because it's going to have enormous impacts if we wait

1 until August and not resolved. That's the major issue I
2 wanted to bring to bear. Would not suggest any change
3 in terms of the Quarterly Report this time, but to
4 request that the Executive Office take a hard look with
5 the Assessments Division and then appropriately present
6 it through the Budget Committee for the study because
7 we are not going to be able to do business as normal
8 and accomplish all of that. Then, going into the
9 Second Quarter Report itself, in terms of some of my
10 areas of concern.

11 The first item is 3440, Conservation
12 Quantification Technology. We had a lot of discussion
13 on this; at the time the Commission duly voted. There
14 was some opposition, and again the Commission's wish
15 was and continues to be reported in this area. The
16 (INAUDIBLE) being shifted to work on the Rental
17 Program, I do not know. I do not feel it's
18 appropriate. I don't know how you address it. For
19 some reason, some of the areas which I have particular
20 concern, it just seems that I have a battle; we have a
21 close vote and the wishes of the minority prevail in
22 terms of what actually transpires. If it's anything
23 that we ought to be doing in the area of conservation,
24 is understanding how small businesses and businesses in
25 the State are moving and what the technology potentials

1 are. It's working with our own business community. We
2 don't address the issue. The forecasts are incorrect
3 because we failed to look at it. We're a high
4 technology State and there may be some fundamental
5 disagreements as to the issue we have generically on
6 the generation side, we have I don't know how many
7 people in the division. We have a lot of people
8 looking at the generation side, and I can't get one PY
9 to look at the Conservation technology. I want to
10 state my frustration.

11 I don't know what the Budget Committee's
12 recommendations are for solving it. I bring it up
13 every quarter. If it's the majority wish of this
14 Commission that we should terminate this activity, then
15 let's do it that way. But not through the backdoor.
16 And as far as I know, this is the policy of the
17 Commission that we do this.

18 Second item, 4003. We've had -- it's not
19 just the Conservation Report. It's the Load Management
20 and the Conservation. Here we have 27 percent or 29
21 percent expenditures in the area. I brought this to
22 the attention of the Budget Committee in the First
23 Quarterly Report. They said this would be addressed.
24 Here we are in the Second Quarterly Report and we're
25 essentially in March, three months lapsed into the

1 year. Again, the wishes of this Commission are
2 accorded; the minority viewpoint. We went through an
3 extensive hearing as to how many people would be re-
4 allocated from load management to work on building
5 standards. There was a vote of the Commission, we made
6 a decision we're not implementing the vote. I know the
7 Executive Director had wanted to move more people from
8 load management to buildings. One of the reasons that
9 we have high costs of electricity in the State is we
10 have a declining load factor...

11 EXECUTIVE DIRECTOR WARD: Commissioner, I
12 would in fairness, take issue with that and
13 characterize it more as a direction from the Commission
14 as to what the highest priority conservation program
15 was. And, at the time, in fact I made the specific
16 request of the Commission to get an assessment of that
17 priority and buildings were indicated to me to be the
18 highest priority and it was simply in searching for
19 options to make resources available to meet what I
20 perceive to be the Commission's policy. That various
21 options were solicited to the Commission. Now I
22 understand your position on load management and I think
23 you and I have very clear concerns about load
24 management as well. So I think it's unfair to
25 characterize that I have a policy axe to grind on load

1 management in general. I certainly do understand...

2 COMMISSIONER COMMONS: We had a specific vote
3 on that reallocation and it was never presented at any
4 time that we were going to have a 70 percent re-
5 direction of this activity. There was one
6 recommendation of 40 percent. We voted and approved
7 with 20 percent. Now here, we're faced with a 70
8 percent. I don't know of the legal action I should
9 take, or what I should do in terms of resolving where
10 we have a clear policy that is in direct confrontation
11 of a policy adopted by the Commission. And there has
12 been no movement toward any resolution of the issue.
13 This is not an issue I am pulling as any surprise. I
14 have stated it to the Budget Committee, I have stated
15 it to the Executive Director's office, I have asked for
16 a report as to its resolution. I was told that I would
17 be given some information prior to coming to the
18 Business Meeting today. I have not.

19 If we were talking about the 83 percent or 76
20 percent, and we're off by 15 or 20 percent, that's.....

21 CHAIRMAN IMBRECHT: What number are you
22 referring to?

23 COMMISSIONER COMMONS: I'm looking at 4003
24 and 4421. Now I want the Commission to recognize that
25 the Conservation Division currently is staffed at six

1 over the allocated level that was initially proposed.
2 If we're looking at the Assessments Division, I
3 recognize that there are significant vacancies in that
4 division and some of the problems that we have related
5 to that division are caused by vacancies. However, the
6 Conservation Division, you do not have that situation.
7 We are actually staffed in that division and we are
8 overstaffed. Now, I agree with the Executive Director
9 that there are part of a cause or problem of matters
10 that should not be discussed within the Business
11 Meeting that relate to personnel considerations. We're
12 looking at something if we were at a 70 or 80 percent
13 level, I would accept the Executive Director's
14 recommendation. This is not the first time this has
15 come before you. Every time we have Quarterly Review,
16 we bring it back and nothing happens -- it gets worse.

17 CHAIRMAN IMBRECHT: Now, let's get the facts
18 straight here. First, in terms of conservation and
19 quantification, I think you misread the statement which
20 was there before you since you don't have the breakouts
21 by PY allocation.

22 There was one PY, I believe that has been
23 utilized if I'm reading this correct. And there was
24 additional PY that has not been used. Is that accurate
25 or not?

1 EXECUTIVE DIRECTOR WARD: Are you talking
2 about CQ, Conservation Quantification? I think that's
3 the Assessments Division.

4 MR. RAUH: The first one, the 3340, is the
5 GTA Program, and it's not resources and utilities
6 systems, which is the largest part of the resources...

7 CHAIRMAN IMBRECHT: How much actually has
8 been utilized?

9 MR. RAUH: In Utility Systems, we have
10 expended about 40, 42 or 45 percent of the resources
11 budgeted. The Commission's initial work plan budgeted
12 7.6 PY to do three major task areas -- residential load
13 management and conservation, commercial and CACS, and
14 conservation quantification, Electricity Report,
15 Biennial Report, and Conservation Report. At the point
16 of six months, or the turn of the fiscal year, we'd
17 spent 3.2 PY.

18 CHAIRMAN IMBRECHT: Okay. Well, let's take
19 care of that one.

20 COMMISSIONER COMMONS: The first one on
21 Conservation Quantification on 3440. That is an
22 Assessment Division issue, not a consideration with the
23 Conservation Division.

24 CHAIRMAN IMBRECHT: How much actually has
25 been expended there?

1 MR. KELLY: One percent. It was our
2 understanding with our discussions with the Committee
3 that the work would be done for Conservation Technology
4 on the Commercial Status Report instead since that was
5 deemed to be more appropriate.

6 COMMISSIONER COMMONS: Well, the statement in
7 here is that the staff has been re-directed to work on
8 the Rental Program.

9 MR. KELLY: That has nothing to do with 3440.

10 CHAIRMAN IMBRECHT: That's now what I recall
11 coming out of our discussion... I see what's here
12 before you.

13 COMMISSIONER COMMONS: Well, Mr. Chairman,
14 what I'd really like to suggest is, I have significant
15 problems and they're primarily dealing with the
16 Conservation Division. We don't have to take action in
17 terms of adopting or not adopting a Quarterly Report.
18 What I would like to do is to have the opportunity
19 to....

20 CHAIRMAN IMBRECHT: You've highlighted a
21 concern. The other point is, I'll just note to you you
22 see where the diversion has occurred with respect to
23 conservation and load management. It's occurred with
24 respect to another activity which you're involved and
25 there is....

1 COMMISSIONER COMMONS: Well, that's not
2 correct. I would like to have the opportunity to meet
3 with the Executive Director, with the Division Chief,
4 and bring this matter back at the next business
5 meeting.

6 CHAIRMAN IMBRECHT: Fine. You don't need my
7 permission to do that.

8 COMMISSIONER COMMONS: Well, I'm asking for
9 your permission to do that, rather than going into it
10 today.

11 CHAIRMAN IMBRECHT: Actually, is this a
12 precedent?

13 (LAUGHTER)

14 CHAIRMAN IMBRECHT: No, I'm not implying to
15 you, just Commissioner Commons. I'll take that as a
16 precedent. You have my permission. Alright, anything
17 further on the Quarterly Report? Commissioner Gandara.

18 COMMISSIONER GANDARA: I guess as a result of
19 that, what we're doing is giving feedback to the
20 Executive Office. I have a couple of comments. I
21 guess we got started with this was the Division Chief
22 requesting approval of the re-direction. Is that
23 correct? We still haven't done that? You were
24 requesting approval of redirection.

25 CHAIRMAN IMBRECHT: We dropped that. That's

1 over with because, remember, we had a report that
2 Finance did not feel that was necessary. So, we decided
3 not to go forward with that March change, and it's not
4 an issue for us here in terms of the Quarterly Report.

5 EXECUTIVE DIRECTOR WARD: That doesn't affect
6 what we're doing.

7 COMMISSIONER GANDARA: Fine. Well, in any
8 case, my issues were ... I just wanted to make sure I
9 didn't get ahead of whatever it was on the schedule.
10 As the Executive Director reported, we have had ongoing
11 discussions with respect to some issues in the Fuels
12 Office. They're getting involved slowly, so I don't
13 wish to take more time with particulars. But let me say
14 that I have confidence that they'll be resolved. I
15 just want to note for the Commission and to hold that
16 there are some concerns that I have with respect to the
17 Fuels Committee's responsibilities in that area.
18 Related to that is a second comment that I noticed from
19 the Contract Listing that the Financial Analysis
20 Contract is scheduled --- a bid to be expected, was it
21 4-9-85? I guess one of the concerns that I have is,
22 has that date slipped? Or, are we still accepting? Is
23 there an expected date? And if it is, I haven't seen
24 any formulation of what the proposal is, and that would
25 leave very little time for RFPs to come in. And, yet

1 even with that 4/9 bid date, it has an expected
2 Commission approval date of 6/12. It allows for almost
3 no slippage with respect to that schedule for
4 Commission consideration.

5 EXECUTIVE DIRECTOR: This is financial
6 analysis within the Development Division?

7 COMMISSIONER GANDARA: Well, something dated
8 851. Bids due 4/9/85; planned for the 6/12 Business
9 Meeting. And I guess what I'm saying is I see no slack
10 in that schedule and it's already 3/6. My question is,
11 if that's it and that's still a realistic thing and I
12 guess my concern is, again, this is an item that was an
13 element of the resolution of the re-direct from last
14 year....

15 EXECUTIVE DIRECTOR WARD: Commissioner, I
16 would assume at this point that given the reiterations,
17 that this contract report has gone through the
18 familiarity that the division chiefs have with it, that
19 anything indicated on here would be true. It would be
20 due the 9th of April; and I haven't been informed of
21 anything to the contrary. Mr. Kelly from the division
22 can probably add more to it than I can.

23 COMMISSIONER GANDARA: Do you still expect
24 bids in on 4/9?

25 MR. KELLY: I do not know. Right now, the

1 4/9 date got sent up in the air when we just ran into a
2 clerical machine overload, and we just weren't able to
3 process it as fast as we wanted to in every case in the
4 Commission. So, we took it on ourselves to put it on
5 the machines and we had it in typing. My understanding
6 was it came out of typing on Monday of this week to
7 finish our review process. That was the only... that
8 and the contract changes were the only things that had
9 to be made to it.

10 COMMISSIONER GANDARA: Fine. I took Mr.
11 Chairman's request that we pursue that off line.
12 That's fine by me. I just wanted to know if there is a
13 concern here. Another question, I note that there is
14 an asterisk by the item, \$50,000 entitled "Interagency
15 Staff".

16 EXECUTIVE DIRECTOR WARD: I believe,
17 Commissioner, that was approved at the previous
18 Quarterly Review. That was to give the Executive
19 Office some flexibility in potentially using the
20 Interagency Personnel Act, which allows for various
21 public agencies to hire between agencies of the federal
22 government, local government and universities,
23 potentially. And it was designed as a release valve for
24 the Executive Office to bring some additional help in
25 there. I would like to get some of your specific

1 thoughts on that. You and I have talked about it
2 generally, and I've given you some of my thoughts on
3 it. I think I'll be able to give you in the next 30
4 days an assessment of what direction that's headed.

5 COMMISSIONER GANDARA: Okay, that would be
6 fine by me. I was just confused by this reference
7 because I had seen something I think on the calendar
8 previously at the Commission and the Commission had not
9 approved it. I didn't know if it were the same item or
10 a different item.

11 EXECUTIVE DIRECTOR WARD: No, this was
12 specifically approved last quarter.

13 COMMISSIONER GANDARA: The last item that I
14 have really is more a question of the DR Committee,
15 which I believe has an affect on your budgeting. It
16 may or may not, but I wrote a memo to the BR/ER
17 Committee some time ago recommending in response to
18 their earlier memo of suggestions on the conduct of the
19 BR hearings, I recommended that the previous Presiding
20 Members of past BRs be contacted as expert witnesses so
21 that they could devote time and energy as they would
22 under that situation rather than a volunteer basis,
23 where they would then be expert witnesses before the BR
24 Committee. And I'm pleased to hear Commissioner
25 Imbrecht indicate that notice of the Commission as a

1 whole. I think it would be very, very important to get
2 their viewpoints of policy that they have evolved and
3 changed over time. Now I don't know what those amounts
4 might be, I don't know what your Expert Witness Fund
5 looks like, but if we're talking.... Pardon?

6 COMMISSIONER COMMONS: Are we allowed to
7 legally contract?

8 COMMISSIONER GANDARA: I don't know. I would
9 hope not, but I think that if we are allowed to, that
10 that has a budget impact. I don't know whether that's
11 included here. Does the current budget?

12 CHAIRMAN IMBRECHT: I have to tell you in all
13 candor, I don't recall seeing a memorandum. I have a
14 special filing system for BR-related items, unless it's
15 really a matter of first impression. I don't know
16 what's happened that it's descript my office in this
17 case, but I have no recollection, nor have I seen such
18 a memorandum.

19 EXECUTIVE DIRECTOR WARD: Why don't we do
20 this. If, in fact, it is a recommendation of the BR
21 Committee that we go forward with that, then we'll do
22 our best to find....

23 CHAIRMAN IMBRECHT: I think we've got some
24 additional funds for expert witnesses.

25 COMMISSIONER GANDARA: I will then revise the

1 memo to that effect.

2 CHAIRMAN IMBRECHT: I will pursue it and take
3 it into consideration.

4 COMMISSIONER GANDARA: Okay, fine.

5 CHAIRMAN IMBRECHT: Okay. You have your
6 bite.

7 COMMISSIONER COMMONS: This is a different
8 section. I was talking about the personnel.

9 CHAIRMAN IMBRECHT: Alright, last point, then
10 we're going to close the meeting.

11 COMMISSIONER COMMONS: The contractor
12 assignments which are apparently a part of the Second
13 Quarterly Report. It looks like almost all the cases
14 are being assigned out under contract -- all the new
15 ones. Is that correct? Which ones are staying in-
16 house?

17 EXECUTIVE DIRECTOR WARD: I think Ross can
18 speak to that. As you'll recall, Commissioner, I don't
19 think it's an accurate characterization to say that
20 they are being assigned out. Specific elements of each
21 case where it relates to technical work that can be
22 done is being handled by the contractor. But, with
23 specific oversight and management review within the
24 division. So, we still, regardless of which case it
25 is....

1 CHAIRMAN IMBRECHT: We retain a Commission
2 staffer as project manager.

3 EXECUTIVE DIRECTOR WARD: That's correct.

4 MR. DETER: That's correct in all situations.
5 Plus, management also keeps involved with it.

6 COMMISSIONER COMMONS: I had some serious
7 concerns and they're in two areas. One is, it looks
8 like we're shifting our management style to being
9 managers and supervisors over cases; and contracting
10 out all technical areas. So, the direction of the
11 Commission in this area was that we were going to use
12 contractors to handle overflow work. And this does not
13 read out as overflow work, rather it reads out as a
14 shift in terms of operational procedure. Second, let
15 me first address that issue then I'll come back to this
16 second. I see one, two, three, four, five, six of the
17 siting cases that are coming through the Commission
18 where we are looking at contracting out all technical
19 areas. That to me does not suggest an overflow
20 activity, but a major shift in policy.

21 I thought we were talking about on the
22 overload, maybe two or three cases that we would be
23 doing this, but not a total shift in terms of overall
24 policy.

25 MR. DETER: Well, it depends upon how many

1 applications we get and how much staff we have on how
2 much we have to assign to a contractor. If we get a
3 few cases in house, then we don't have to assign any to
4 a contractor; and we won't have a contractor do any
5 work at all.

6 If we get all the cases that we thought were
7 going to come in at the time the schedule's put
8 together, then we evaluated how much our staff could do
9 and gave or assigned to the contractor that work that
10 the staff couldn't do. Now, you'll notice of those six
11 applications, two of those are small power plant
12 exemptions. One of the reasons we did that was because
13 the staff's work on those cases to prepare a negative
14 declaration required pursuant to CEQA. That is a very
15 common document that everybody in the consulting
16 industry knows what it is. Therefore, we felt would
17 require relatively small amount of management on our
18 part to have them develop that kind of work. Our
19 criteria in assigning these other cases was as Randy
20 had stated earlier, is that we specifically identified
21 what our staff could do and in some areas where we have
22 vacancies, we obviously had to assign that work to a
23 contract that we've got a vacancy. And we added up the
24 amount of work we could do, added up the amount of work
25 we had to give to a contractor, and this is what it

1 came out to be.

2 COMMISSIONER COMMONS: Well, I just want to
3 state for the record, and I'm going to track it that I
4 object to what appears to be a shift in terms of our
5 operational procedure. It looks like we're becoming
6 managers of technical contractors doing the cases
7 rather than using the contractors to handle a peakload
8 situation.

9 Now, my second area is I'm particularly
10 concerned in Irwindale which would represent the first
11 MSW case that would come before the Commission. Where
12 we have an area that's new, it's important that we
13 develop expertise so that we're able to handle future
14 cases that come before the Commission. It appears that
15 we're contracting out a significant portion of the
16 technical work that is required in this area and I'm
17 concerned on that case that we would do that.

18 MR. DETER: It may very well be that the
19 staff can handle more of these technical issues than
20 what we indicated. You have to keep in mind the fact
21 that the package you have was put together on February
22 1st. There's been a tremendous change in what's going
23 on between February 1st and March 1st. As you know,
24 even almost on a weekly basis.

25 So at the time that Irwindale is accepted by

1 the Commission, then we will sit down and evaluate what
2 our work is for all these cases, and make assignments
3 to the Irwindale Project for these categories.

4 COMMISSIONER COMMONS: Well, I think it's
5 very important where MSW is, potentially significant
6 energy resource for the Commission. It does raise
7 issues that have never been before the Commission that
8 it is important that we develop the technical expertise
9 and be fully involved in this and this would be one of
10 the cases where I would have a low priority of
11 subcontracting out. I would agree with you in terms
12 of...

13 CHAIRMAN IMBRECHT: Geoff, let's try to move
14 along here. I mean, state your point. These are
15 things that you can convey to staff privately, and it
16 seems to me it's not necessary to hold this thing on
17 the record in front of...

18 COMMISSIONER COMMONS: Alright, how do we
19 arrive at this decision? Do you want me to agendize
20 this and put it on the agenda how we allocate
21 contractor assignments? What would you like?

22 CHAIRMAN IMBRECHT: You can deal with that
23 level of detail that you are so driven to get involved
24 with, then obviously it's a choice that you can make.
25 But I would reiterate at least my point, and that is

1 that we have an Executive Director as a management
2 structure, et cetera. These decisions are not taken
3 lightly. They are balanced in terms of all the
4 considerations that we have to deal with, including
5 external prerogatives. I'm not 100 percent happy with
6 the prospect of the extent to which we have to rely
7 upon contracting out. It's a reality we have to deal
8 with. We have to make the best of it. I'm just going
9 to suggest to you that we do have full Commission
10 oversight. I don't think that it, in anyway reflects a
11 change in policy that this is a Commission management
12 of contracts. It still is a Commission decision, and
13 individual presiding members of the cases in question,
14 I think, are really the ones to raise these issues if
15 they have concerns as to the level and quality of work.
16 We might be pleasantly surprised as well as to the
17 quality of work that would be submitted under these
18 circumstances. It represents, to an extent, an
19 experiment but I certainly wouldn't characterize it as
20 the climactic type of event that you're suggesting.

21 COMMISSIONER COMMONS: Well, I would assume
22 that you would share my concern where there may be a
23 number of cases in a particular technology coming
24 before us that we develop the in-house capability of
25 addressing that. We have no guarantee in future years

1 that we will receive contracting assistance and then
2 would be left with a void where we could have cases
3 without the technical capability of being able to
4 address the issues that are raised.

5 CHAIRMAN IMBRECHT: Suffice to say, I mean I
6 move before a Budget Committee recommendation which was
7 approved at the last business meeting relative to the
8 March change that actually goes after additional staff
9 beyond what we currently have, with full recognition of
10 how difficult that could be within the context of the
11 Administration that's still funding priorities. So, I
12 think that action on my part speaks for itself as to my
13 own concerns in this area. But all the amount of
14 breastfeeding and hammering in the interim isn't going
15 to change the reality of which we have to deal with the
16 cases that are before us. And, that's why I get a
17 little frustrated about re-hashing these same issues
18 repeatedly.

19 COMMISSIONER COMMONS: Well, I didn't think
20 we were re-hashing.

21 CHAIRMAN IMBRECHT: It seems to me I've heard
22 you express these viewpoints on a number of occasions.

23 COMMISSIONER COMMONS: I have never expressed
24 the veiwpoint before. I voted for both the
25 recommendations that we discussed. I think it was the

1 deciding vote casting in support of your position. I
2 did not raise these issues. It's the first time I've
3 seen the allocation.

4 COMMISSIONER GANDARA: Excuse me. Could I
5 ask the question a slightly different way, Commissioner
6 Commons, with your leave since you have the floor?

7 COMMISSIONER COMMONS: Sure.

8 CHAIRMAN IMBRECHT: Commissioner Gandara.

9 COMMISSIONER GANDARA: I don't think that we
10 can come to a resolution today. Okay? On the other
11 hand, I don't know whether the appropriate thing to do
12 is to calendar it for a Commission decision or whether
13 to decide it some other way. But, there are some
14 issues facing us that we are going to have to decide as
15 a Commission. And I think that the subject that we're
16 discussing here and that is, if you look at the list of
17 cases and the comments that are made by the staff here,
18 "additional resources required; behind schedule; so
19 forth and so on."

20 One of the issues we're going to have to face
21 is whether we are going to consciously address which
22 cases we'll accept a delay on, and therefore the
23 Commission will suspend those or just choose to be late
24 in which cases we're going to say "these are deserving
25 of staff time to go ahead." Now, we can just kind of

1 let it go, and we'll be sort of scrambling for
2 resources here and there, and it may not be the best
3 way to handle it. But I think absent a conscious
4 decision, that's going to happen to us and we'll
5 probably get into this discussion more and more.

6 So, that's the first issue that I see. That
7 we have to put up....

8 CHAIRMAN IMBRECHT: I think that's a correct
9 identification. I think we might come to that point,
10 you're absolutely right.

11 COMMISSIONER GANDARA: The second issue which
12 I'll articulate for less art belief, but much more
13 directly I think is with Attachment 4, and that is,
14 which Committee's got the second team? It's not fair
15 who's the first team or who's the second team, but
16 different Commissioners have different opinions about
17 that and in some cases, all technical areas are
18 contracted, and in other cases some areas.

19 I think the staff is doing as good a job as
20 they possibly can do in trying to look at what areas
21 seem to be most important within certain cases and
22 assigned to staff and so forth. I'm not suggesting
23 that the staff could do a better job than what they've
24 done. I'm saying we, as Commissioners, are probably
25 going to have to decide whether we wish to sort of let

1 this occur on a case-by-case basis, or whether we're
2 also going to make a decision as a Commission as to the
3 allocation of these resources.

4 Now, again, I'm not indicating a preference
5 one way or the other, but I do believe in certain areas
6 in certain cases, that the experience of the staff
7 might be preferable building of electricity in the
8 staff is an appropriate policy and concern, but I would
9 think we'd emphasize those right now. So I would like
10 to move ahead if we could to closure. But I do think
11 that this can't go away. We do have to think about the
12 framework we're going to address this in, and what
13 timeframe.

14 CHAIRMAN IMBRECHT: Let me just indicate to
15 you that as a result of the discussion with the Budget
16 Committee meeting, I think you heard me make some
17 representations. I have addressed communications to
18 both the Director of Finance and to the Chief Staff of
19 the Governor, calling very clearly the question I might
20 say, in blunt direct terms -- the ones that we face;
21 and in particular its implications for cases on file
22 and expect to be filed, what the financial
23 considerations are associated with delays with respect
24 to those cases, likely political overtones associated
25 with that as well.

1 I have since had a subsequent personal
2 conservation on that issue, and have particularly
3 called in question the frustrations we've experienced
4 with respect to getting the Envirosphere approved and
5 moving. And, what alternatives we deem appropriate in
6 the event that contract for some reason is not capable
7 of being moved. And I have been assured cooperation
8 and a quick response to that in consideration. So, in
9 the event that nothing does happen, or nothing
10 satisfactory, then I think we clearly have to face the
11 questions that you're raising and I think it would be
12 appropriate at that juncture for the Commission to
13 establish some rational policy as to the order which
14 cases are considered and how the resources are
15 allocated.

16 COMMISSIONER GANDARA: Again, Mr. Chairman, I
17 accept fully that you're doing everything in your power
18 and I believe you are, to resolve the situation with
19 respect to the external agencies. What I'm concerned
20 about is that the decisions are being made even as we
21 await that resolution. To be specific, at the Need
22 Determination hearing for GPPL last Monday, there was a
23 motion to reorder the testimony or to re-schedule
24 testimony, I believe. I was informed that you had made
25 a motion, and in the process of granting that motion,

1 the issue was raised as to what staff would be put to
2 work on what cases, and you indicated that you thought
3 thought it policy that since GPPL was the first case we
4 got in, that that should have priority among the staff.
5 Now, I don't want to dipute that, I don't want to argue
6 with that, but let me say that it's an issue like that
7 that if we don't resolve it among Commissioners as to
8 which case in fact has priority, either because it's
9 first or because it's the most complex, because it's
10 most deserving of the staff -- I feel that each
11 Commissioner will wind up saying that their case is
12 important for some reason or the other.

13 CHAIRMAN IMBRECHT: It was a slightly
14 different statement and so you don't know what it was
15 exactly. I think that what I stated was that those
16 cases which have been delayed the longest would be
17 those that would get a rational consideration in terms
18 of staff resources.

19 COMMISSIONER GANDARA: That's what I think
20 needs to be discussed because I would use a different
21 triage. I would say that if some cases are already
22 being delayed, let's not delay the rest of them for
23 those. Okay? I would say that let's make sure that
24 the cases that are not in trouble don't get into
25 trouble in terms of the schedule, and let's do our best

1 effort to bring the other ones in alignment with that.
2 But, I don't want to impose that on anybody else
3 either. I just think that we need to resolve it, and it
4 may be that you would be the appropriate one and may be
5 that some other view which we're not considering here
6 may be appropriate.

7 CHAIRMAN IMBRECHT: I think I also said
8 something for "at the time, for the time being, it
9 seemed appropriate to follow that approach." I agree
10 with you, it has to be confronted and, to the extent
11 that the timing of when it has to be confronted is
12 largely a reflection of whether or not we get any
13 resolution on the other matters. Commissioner Commons.

14 COMMISSIONER COMMONS: I have a case that I'm
15 trying to bring before the Commission in June, and it's
16 very much affected by the issue and doesn't wait for
17 two or three months deliberation.

18 CHAIRMAN IMBRECHT: I'm trying to bring GPPL
19 before the Commission in June as well. And it
20 similarly is not easy. That's why I'm very conscious
21 of this problem.

22 COMMISSIONER COMMONS: Well, I would like to
23 see the Budget Committee take a look at the question.
24 I'd just state that the Budget Committee, absent any
25 other criteria that someone could come up with, it

1 would be better. My suggested criteria would be the
2 first one scheduled for decision by the Commission
3 should get precedent, then the second one, third,
4 fourth. Whatever is scheduled to come before the
5 Commission for the vote, that's the one we should give
6 precedent. I could think of exceptions, criteria and
7 other things that would make someone come up with it to
8 amend it, but absent any other criteria...

9 CHAIRMAN IMBRECHT: I generally expect that
10 it ought to be simple to that nature as well.

11 COMMISSIONER COMMONS: That's the way it's
12 got to be heard....

13 CHAIRMAN IMBRECHT: Okay, is there public
14 comment? Staff left. Hearing no further business
15 before the Commission, we stand adjourned.

16 (Thereupon the business meeting of the full
17 California Energy Resources Conservation and
18 Development Commission was adjourned at 4:20 p.m.)

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REPORTER'S CERTIFICATE

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3 THIS IS TO CERTIFY that I, Dawn Lofton,
4 Reporter, have duly reported the foregoing proceedings
5 which were had and taken in Sacramento, California, on
6 Wednesday, March 6, 1985, and the foregoing pages
7 constitute a true, complete and accurate transcription
8 of the aforementioned proceedings.

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

12
13
14 
15 Reporter

16 Dated this 4th day of April, 1985.
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