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STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

CALIF. ENERGY COMMISSION

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BUSINESS MEETING

1516 NINTH STREET

FIRST FLOOR HEARING ROOM

SACRAMENTO, CALIFORNIA

THURSDAY, MAY 16, 1985

10:20 A.M.

Reported by: Dawn Lofton

PAPERWORKS
1330 Broadway, Suite 809
Oakland, California 94612
415/763-9164

COMMISSIONERS PRESENT

Charles R. Imbrecht, Chairman

Barbara Crowley, Vice Chair

Arturo Gandara, Commissioner

Geoffrey D. Commons, Commissioner

Warren D. Noteware, Commissioner

EX OFFICIO

William Foley

PUBLIC ADVISER'S OFFICE

Ernesto Perez

STAFF PRESENT

William Chamberlain, General Counsel

John Chandley, Staff Counsel

Ted Rauh

Scott Matthews

Susan McGowan, Ph.D.

Chris Ellison

Lorri Gervais, Secretary

OTHERS PRESENT

Michael Berk, Attorney, Miller Brewing Company

Steven A. Broilles, Attorney, Pacific Waste Management

Mark White, Pacific Waste Management

Mike Gardner, Southern California Edison Company

I N D E X

	Page
Opening Remarks by Chairman Imbrecht	239
Agenda Item 2 - Commission Consideration and Possible Acceptance of a Petition for Reconsideration filed by Miller Brewing Company regarding the CEC's acceptance of the Application for Certification (AFC) for the Irwindale resource recovery project (Dock #84-AFC-5) on March 20, 1984.	
Presentation by Petitioner - Michael Berk	239
Commission Discussion re: Procedural Matters	262
Commission Questions and Discussion	265
Presentation by Applicant - Steven A. Broilles	281
Public Adviser Perez Comments	296
Commission Questions	297
John Chandley - Comments	309
AFTERNOON SESSION	
Agenda Item 2 (Cont'd.)	
Commission Questions	312
Staff Presentation - Scott Matthews	330
Public Adviser Perez Comment	333
Commission Comments	336
John Chandley Presentation	338
Scott Matthews Presentation	347
Commission Discussion	352

I N D E X (Cont'd.)

		Page
Agenda Item 2 (Cont'd.)		
	Public Adviser Perez Comments	360
	Mike Gardner Comments	362
	Commission Comments	363
	Commission Order	371
Agenda Item 3	Commission Consideration and Possible Designation of a Second Committee member for the Irwindale Resource Recovery Project AFC.	
	Commission Discussion	390
	Commission Designation	404
Agenda Item 12	Approval of Minutes	388
Agenda Item 13	Commission Policy Committee's Report	
	Appliance Standards Committee	
	-Commissioner Noteware	378
	-Ted Rauh	378
	Commission Recommendation	387
	Budget Committee	
	-Chairman Imbrecht	404
Agenda Item 13 (Cont'd.)		
	Legislative Committee	
	-Vice Chair Crowley	408
	Overview of Recommendations	
	-Chris Ellison	410
	Commission Decisions	424,437
	Further Commission Discussion	438
Agenda Item 14	General Counsel's Report	446
Agenda Item 15	Executive Director's Report	451
Agenda Item 16	Public Comment - None	

I N D E X (Cont'd.)

		Page
Agenda Item 17	Contract for $347,439 with ADM Associates, Inc. to conduct on-site surveys of energy use characteristics of commercial buildings in the PGandE, SCE, and SMUD services areas.	
Agenda Item 18	Contract for $142,561, with Malcolm Lewis Associates/Energy Management Consultants, Inc. to conduct on-site surveys of energy use characteristics of commercial buildings in the L.A. Department of Water and Power, SDGandE service areas.	
	- Kent Smith Presentation	373
	- Dr. McGowan Comments	373
	Commission Questions	374
	Commission Adoption	377
Executive Session		
Adjournment		453
Reporter's Certificate		454

1 **P R O C E E D I N G S**

2 --oOo--

3 CHAIRMAN IMBRECHT: For the record, all
4 members of the Commission are present we have just
5 completed the flag salute led by Commissioner Crowley
6 and I will just announce that Item #9 which is the Solar
7 Energy and Energy Conservation Bank Fund Adoption
8 Committee recommendations has been pulled, and I believe
9 there's Committee and Executive Office concurrence. So,
10 that will be off our agenda today.

11 First item that we will take up is Commission
12 Consideration and Possible Acceptance of a Petition to
13 Reconsideration filed by the Miller Brewing Company
14 regarding Energy Commission's acceptance of the
15 Application for Certification for the Irwindale Resource
16 Recovery Project, which acceptance occurred on March 20,
17 1984. It is the Petitioner's contention that the AFC
18 was not complete and, therefore, should not have been
19 accepted. I'll ask the Petitioner to please come
20 forward. Please make your presentation.

21 MR. BERK: Thank you Mr. Chairman, my name is
22 Michael Berk and I represent the Millier Brewing Company
23 who has made this Motion for Reconsideration. Let me
24 first say that I welcome the opportunity to again
25 address the Commission on this Motion for

1 provide the necessary data for the interested agencies
2 to make the determination on the merits of the
3 application. Also, there are critical admissions in the
4 AFC then as of the March 20 hearing and continuing to
5 the present time. Totally aside from the analysis of
6 the adequacy and support for the data that was provided,
7 Miller has identified information required that was not
8 provided at all.
9 Referring to the deficiency list that was
10 approved by the Commission on December 5, 1984, there is
11 a failure to provide a discussion on how the project
12 will comply with each provision of the South Coast Air
13 Quality Management District New Source Review Rule.
14 There is a failure to discuss all waste related
15 significant adverse impacts, including the cumulative
16 impacts from the planned project. In fact, there are
17 other sources of emissions that were not identified, let
18 alone their impact discussed. And there was a failure
19 to discuss all measures proposed to mitigate waste-
20 related impacts. These are omissions included in the
21 Commission's Staff Deficiency Notice which Miller
22 submits was not corrected by any subsequent filings by
23 the Applicant.
24 There are further critical omissions which
25 Miller identified. A failure to provide a discussion or

1 Reconsideration and I'm hopeful that we can make amends
2 for our inability to convince the Commission of the
3 wisdom of Miller's position at the hearing on March
4 20th. I'm concerned also that I may not be as eloquent
5 as I would have been yesterday. I invite questions from
6 the Commissioners as I proceed and if issues come up, I
7 invite the Commissioners to interrupt me.
8 It is not Miller's intention to be an
9 adversary of the Commission nor its General Counsel.
10 Its interest is in the proper disposition of the AFC.
11 Miller's position on this Motion for Reconsideration as
12 to the completeness requirement of the AFC for filing is
13 what Miller believe is proper and what the law demands.
14 We do not view this issue as a partisan issue. As
15 indicated at the hearing on March 20th, this issue which
16 Miller has raised, is one in which the Commission itself
17 appears to be divided.
18 Let me address early on the statements made as
19 to Miller's alleged failure to participate in the
20 process until the hearing on the completeness of the AFC
21 on March 20th. I can't rewrite history. Miller did not
22 appear at any of the pre-hearing workshops, but I
23 believe that the issue is a red herring. Miller became
24 a party as early in the process as it believed the
25 regulations provide, and I am unaware of whether the

1 general public frequently attends pre-filing workshops
2 or other pre-application proceedings. Further the
3 Commission and other agencies have identified many
4 deficiencies in the AFC which I'm going to address in
5 terms of completeness of the AFC so that the issue I
6 think is well focused. Whether or not Miller could have
7 or did participate earlier and raise additional
8 deficencies in the AFC.
9 Our starting point is Public Resources Code
10 Section 25522 which expressly provides that an AFC shall
11 be deemed filed only after the Commission determines
12 that the AFC is complete. The Commission staff has
13 determined, in accordance with the determination of the
14 Executive Director in his letter of March 19, 1985, that
15 the AFC substantially complies with the information
16 requirements of the Administrative Code Section 2704,
17 Exhibit B. The Executive Director has also determined
18 as set forth in his March 19th letter, that the staff
19 has identified the need for the clarification and
20 additional information in all subject areas. As stated,
21 the information supplied is sufficient to commence
22 proceedings.
23 Further consideration as a starting point is
24 that the Applicant has the burden of establishing the
25 requisites for the permit, and that the Applicant must

1 an anlysis of alternative sites as expressly required by
2 Administrative Code Section 1765 C, there was a failure
3 to discuss immediate and long-term uses in the area
4 which will be affected by the facility and the
5 compatibility of those facilities with the planned
6 facility. There was a failure to address neighboring
7 land uses at all. It was also a failure, Miller submits
8 to provide a risk analysis in a final form. Indeed it's
9 still in draft form to this day. There is also a
10 failure to enumerate applicable federal agencies for
11 which the Applicant must have approval and
12 authorization. Overlying all of that, is the
13 responsibility of the Commission in the administrative
14 scheme.
15 I'm not going to presume to lecture the
16 Commission on it's role here. Suffice it to say that
17 its determination on a AFC must be directed at a
18 determination of need, protection of environmental
19 quality and assurance of public health and safety.
20 Section 1741 provides that the application proceeding
21 shall be conducted in order to accomplish the following
22 and then it lists criteria which the Commission is
23 supposed to evaluate and make a determination about with
24 respect to the AFC. The General Counsel says in his
25 brief of Page 6 that the process requires the Commission

1 to conduct a comprehensive review of virtually every
2 aspect of the proposed project.
3 Further, there are numereous references to the
4 encouragement of the participation of interested members
5 of the general public and all the application
6 proceedings, along with the interested agencies. Like
7 Miller, members of the public who believe they are
8 affected or are otherwise are interested in
9 participating in the decision-making process, are to be
10 encouraged to participate.
11 And finally, this background -- all of this
12 -- must be placed in the context of the time limitations
13 for the Commission to make a decision on the AFC. When
14 it's here, the proposed facility is to be below 100 MW,
15 the decision must be made within 12 months of the filing
16 of the AFC. Indeed in these proceedings the Commission
17 staff has prepared a proposed AFC schedule and that
18 schedule contemplates a site view and public
19 infomational hearing on June 13th, I believe. The
20 preliminary staff assessment is due to be filed on
21 November 7, 1985, just short of eight months into this
22 one-year process.
23 Next, I wanted to address these particular AFC
24 proceedings. We are now about two months into the
25 permitting process on the AFC for the Irwindale Resource

1 Recovery Facility, less than one month from the public
2 hearing. Yet, none of the items previously described as
3 missing, including a final health risk assessment, has
4 been provided. If the Commission had had an opportunity
5 to review Miller's first-round data request (and Vice
6 Chairperson Crowley is in charge of that Committee), I
7 don't know if the other members of the Commission have
8 had an opportunity to look at it, but it refers to by
9 understatement. Let me say, a large volume of data
10 which needs to be initially supplied, corrected,
11 elaborated upon or explained. I have not yet seen the
12 Commission Staff First Round Data Request, so I do not
13 know what may be in that. I assume that will not be
14 dissimilar.
15 As to Miller's first Data Request, the
16 Applicant has taken the position that Miller has the
17 burden of establishing that the information sought is
18 needed in the permitting process. It certainly appears
19 to be the case that Miller would have the burden of
20 establishing the need for discovery if formal discovery
21 proceedings are required. So, as to data that's not
22 supplied by the Applicant in the AFC, if the AFC is
23 deemed complete in the absence of complete data, then
24 the burden of listing the data, which Miller believes is
25 necessary for a complete and thoughtful determination of

1 the issue to enable the Commission and all other
2 interested agencies to decide the siting questions,
3 shifts from the Applicant to the interested agencies
4 including the Commission and to Miller.
5 We are engaged in proceedings which, because
6 I'm a lawyer, I'm going to analogize to judicial
7 proceedings, since the Commission is to make a
8 determination of issues of fact, based on information
9 provided to it by the parties. Ordinarily parties
10 present their evidence and arguments to the finder of
11 fact, a judge, a jury, or a Commission sitting as a
12 finder of fact, which then deliberates, ask any
13 questions they deem to be appropriate for further
14 understanding and clarification of the issues or for
15 further briefs and then makes a determination. In the
16 proceeding contemplated by the Commission here in
17 approving the AFC for filing for being only in
18 substantial compliance with the data requirements,
19 meaning that there is sufficient information to start,
20 the process of gathering the data necessary to make the
21 decision takes place concurrently with the decision
22 making process itself. The result is that we submit
23 everyone will always be playing catchup. And the
24 implications are that as data is later elicited, it does
25 not go through the same scrutiny as data contained in

1 the AFC.

2 If the process has proceeded beyond the point
3 where the agencies have focused on particular issues,
4 the parties may be reluctant, in effect, to go back and
5 re-analyze issues. One concern of Miller's is that a
6 SCAQMD works on a six-month timetable, not one year
7 -- and if the information that they need must await
8 responses to the data request, this data will be
9 received either very late or perhaps not at all by the
10 time determination is required to be made.

11 The proceedings may very well become dictated
12 by the schedule. As scheduled events come up, the
13 tendency will be to adhere to the schedule using the
14 data available and the time for analysis available,
15 rather than to have the data and to reschedule events
16 due to omissions and important data or insufficient time
17 for analysis. An example, we submit, we have already
18 seen in this case with respect to the First Round Data
19 Request timetable. It was scheduled in the staff's
20 schedule for May 6th; Miller received the Applicant's
21 Second Draft Risk Analysis on April 22nd, premised on
22 all new assumptions of estimated emission rates. Since
23 time did not permit a reanalysis of the risk assessment
24 before the data request had to be prepared, Miller
25 requested a postponement of the data request deadline to

1 allow a time for reanalysis of the information contained
2 in the Second Draft Risk Analysis, by its letter of
3 April 25, 1985.
4 Miller's request received no response at all
5 from the Commission, so Miller submitted its first round
6 data request in accordance with the schedule and doing
7 whatever analysis it could in a short period of time
8 remaining. I'm focusing on the health risk analysis
9 which is certainly a not insignificant area that will be
10 examined by the Commission and the other interested
11 agencies. So that's an illustration of what very well
12 could happen if we're in a situation where the schedule
13 is going to dictate how the Commission staff and other
14 agencies will proceed.
15 Third, Miller is concerned that the momentum
16 of the process will begin to carry the AFC proceedings
17 along without careful analysis. The careful analysis
18 contemplated by the Legislature in the Public Resources
19 Code and the Commission and its own regulations. In
20 essence, I'm saying that we're concerned that there's
21 going to be degradation of the review process when
22 applications are deemed filed when they are not data
23 complete. The legal arguments presented to the
24 Commission on Miller's Motion for Reconsideration,
25 should be considered in the context of what I just said.

1 Now, let me address those legal agruments.
2 The Applicant's brief addresses Miller standing as an
3 intervenor to make the motion, and based upon an
4 erroneous factual premise the General Councils brief fid
5 not even address this point and Miller believes it has
6 fully addressed this point in it's reply brief. So
7 while I may proceed here on some subjects, I'm not
8 planning to further discuss the issue of Miller standing
9 unless in response to a request of a Commissioner or in
10 response to the comment of my colleagues during this
11 hearing.
12 The General Counsel's brief is a conscientious
13 expedition of the legal issues raised in Miller's Motion
14 for Reconsideration. I want to compliment the General
15 Counsel for the thorough analysis appearing in the
16 brief. It appears to us that it represents a lot of
17 late night oil-burning and, given the pressing matters
18 before the Commission, it's a very thorough discussion
19 of the legislation history of Section 25522. But, the
20 response fails to address Miller's principal point
21 -- namely, that the language of the statute itself
22 dictates the conclusion which Miller advances.
23 When the meaning of the language used in a
24 statute is clear, the investigation into legislative
25 intent is complete. The statute says the AFC must be

1 complete in order to be filed. Whether a substantial
2 compliance standard is reasonable or not, it's not the
3 issue before the Commission and it's not the issue which
4 Miller is raising. It's what the statutory standard is
5 required to be. Beyond that, Miller submits it would be
6 unreasonable to have only a substantial compliance
7 standard in light of the Commission's tasks in these
8 permitting processes. The references in the General
9 Counsel's brief to Commissioner Schweickart's
10 correspondence to various legislators and the Governor
11 contains an explanation. O explanation is to the
12 purpose or intent of the communications, but the
13 legislative history also supports Miller's proper intent
14 indicated by the correspondence. Surely Commissioner
15 Schweickart was sensitive to the question as to what
16 data an AFC had to contain in order to be filed. It is
17 curious, therefore, that in each of the three separate
18 communications which we have seen, he used the term
19 'complete', when he could have used the term substantial
20 'compliance' if that was the criterion which he had in
21 mind.
22 No mention has yet been made in these
23 proceedings with respect to the subsequent amendment by
24 the Legislature to Public Resorces Code Section 25520,
25 the contents of the application. By a 1984 amendment,

1 the Legislature added the words "all of" before the
2 words "the following" in the provision that the
3 application shall contain all of the following.
4 Certainly an indication that the substantial compliance
5 with the information requirements would not be
6 satisfactory. Concerning the point that it has been
7 left to the Commission's discretion as to what the
8 contents of the AFC should be beyond the contents
9 specified in Section 25520, Miller does not disagree.
10 The point is that the Commission has made a
11 determination within its discretion as to what
12 information should be contained in the AFC by its
13 regulations, the Administrative Code Section 1704
14 Appendix B, and 1765 C. Presumably, the Commission
15 could amend or modify those requirements in compliance
16 with the appropriate administrative procedures. Once
17 the requirments are set forth, however, they must be
18 complied with. The Commission cannot conclude that an
19 applicant has done enough by providing most of Section
20 1, three quarters of Section 2 , some of Section 3, etc.
21 It is not Miller; I'm merely looking over the shoulder
22 of the Commission staff, saying that the AFC is
23 incomplete.
24 The Commission staff itself has concluded that
25 the AFC does not contain all the information required by

1 the Commission to be included in the AFC. The Applicant
2 has only substantially complied, meaning that sufficient
3 information has been supplied in order to start the
4 process. Miller submits that under the circumstances,
5 the AFC cannot be considered complete for filing. It
6 makes no difference whether the requirements set forth
7 are expressed in qualitative or quantitative standards.
8 The fact is that there are information requirements set
9 forth in the regulations and the staff has concluded in
10 its report to the Commission that the required
11 information has not yet been provided. Whether that's
12 viewed as a qualitative deficiency or quantitative
13 deficiency, in our minds is irrelavant.
14 I feel that I should address the staff's
15 report that I received yesterday morning conerning the
16 staff analysis of the data supplied by the Applicant.
17 I'm unable to address the merits of the report, item by
18 item because I only received it yesterday, but I believe
19 that it does not assist the Commission in the resolution
20 of Miller's Motion for Reconsideration, because, in
21 effect, it merely says that the information provided is
22 sufficient for data adequacy. The issue before the
23 Commission on this Motion for Reconsideration is what
24 that data adequacy standard should be. It appears to me
25 that the staff is saying that in determining

1 completeness, the staff is governed by the face of the
2 AFC and can't look behind the document. So that even
3 pro forma compliance with information requirements can
4 constitute substantial compliance for data adequacy.
5 The staff is indicating that it will address important
6 issues that Miller has raised in substance during the
7 proceeding. If that's so, then it may even be more
8 serious concern to Miller and to the public than
9 initially thought because the Commission, the other
10 interested agencies, Miller and members of the general
11 public must then rely on the staff for the data or
12 participate in the data request proceedings itself in
13 order to assemble the data necessary for a full and
14 deliberative decision of the merits of the application.
15 It could create coordination and scheduling problems. I
16 can anticipate situations arising because of Miller's
17 participation in the proceeding and that's without
18 respect to what other intervenors may choose to
19 participate. Along with the staff and data request and
20 participating in hearings, which is going to make the
21 orderly disposition of this matter more difficult than
22 it otherwise needs to be if the AFC were complete
23 initially and there is no assurance that Miller will
24 ever get the data that it believes is necessary for a
25 proper disposition of the issue.

1 So the fact that an Applicant hasn't
2 interposed any objection certainly cannot be viewed as
3 any factor that the Legislature may have considered when
4 it amended Section 25522. We don't buy the argument
5 that the legislative history of Section 25522 is
6 unimportant because it doesn't apply to the acceptance
7 requirements for applications such as Irwindale's,
8 although the Commission has been applying that section
9 to applications governed by Section 25540.6 as is the
10 Applicant's AFC.
11 The issue is what completeness requirement the
12 Legislature set forth for the AFC to be accepted for
13 filing. The Legislature's intent concerning the
14 applications governed by the second paragraph of Section
15 25522 would apply equally to other AFC's governed by the
16 12-month permitting process. The Commission cannot
17 selectively apply the second paragraph of 25522 to the
18 AFC for the proposed Irwindale facility for some
19 purposes and disregard it for others.
20 Finally, the argument that Miller could
21 conceivably, continuously raise data deficiencies is
22 noted that is in the jargon of "red herring". Miller
23 has not and did not have any intention of doing anythng
24 of the sort. A completeness requirement would not
25 permit that. Clearly insignificant omissions of data

1 Addressing the point that the AFC which is
2 only substantially complete, will help focus the
3 Commission on the most important issues, as argued by
4 the General Counsel. I failed to see how requiring that
5 an AFC be complete would dilute the quality of the
6 information provided and whatever interested agency is
7 reviewing the AFC to determine what issues are important
8 from their point of view. A complete application allows
9 the interested agencies, and the general public
10 including Miller, to focus on the issues important to
11 them or at least which they are given the responsibility
12 to address and decide.
13 Unfortunately, it appears that none of the
14 participants has been able to locate any helpful case
15 law precedence to assist the Commission in the
16 resolution of this issue. The Douglas vs. Janis case,
17 cited by the General Counsel at Page 8 of his brief does
18 not appear relevant, while it considers an issue of
19 substantial compliance with a statute on service of
20 process. For purposes of determining whether that
21 statute can be relied upon to ascertain when service is
22 deemed complete, that is when the document was mailed,
23 the issues are unrelated in terms of the required
24 analysis. The issue of completeness depended upon
25 whether the statute applied and the issue of whether the

1 statute applied determined upon whether there had been
2 substantial compliance, so while the words appear
3 together someplace in the case, the analysis of the
4 determination of completeness was not an analysis that
5 there be substantial compliance with the statute. Its
6 citation does indicate, however, that there is nothing
7 really on point that can be found in the case law that
8 will assist the Commission. There is no showing that
9 the Legislature was aware that the Commission was
10 applying a standard other than completeness. The
11 standard required by Section 25522 and in Commissioner
12 Schweickart's communications at the time Section 25522
13 was amended as the General Counsel suggest, indeed
14 apparently the Commission does not have a unified
15 construction of the test to be applied, let alone a
16 construction of Section 25522.
17 Miller's Memorandum of Points and Authorities
18 in support of its Motion for Reconsideration contains
19 references to various staff discussions of the data
20 adequacy requirements which indicate differences of
21 opinion on what would be required even under a
22 substantially complete test. Certainly the applicants
23 would not be expected to register any objection to a
24 substantial compliance test as more favorable to them
25 than the application of a completeness test.

1 from the AFC would not preclude a determination of
2 completeness. That is not the case here. The issue we
3 submit is whether the completeness requirement requires
4 that the AFC have sufficient data for the Commission to
5 make a determination of the issues and not merely
6 sufficient information in it for the Commission to begin
7 the determination process.
8 Addressing the General Counsel's claim that
9 Miller selectively quoted from the letter of the
10 Executive Director and SCAQMD to the Commission staff,
11 Miller did quote only portions of the letter accurately
12 reflecting the portions quoted. Whenever all of a
13 document is not quoted, one runs the risk of being
14 accused of being of selectively quoting, but I submit
15 that that clearly is not the case. The letters were
16 already before the Commission in their entirety and the
17 points for which they are quoted are accurately
18 characterized by the quotes -- the quotes were not
19 butchered. It is correct that the authors concluded
20 that the AFC should be accepted for filing. But it is
21 equally clear that that was done, and it was expressed
22 in the letters that it was based upon the substantial
23 compliance standard. That is on a misapprehension of
24 the requisite to establish data completeness required by
25 the statute.

1 Certainly, the letters were not boiler plate,
2 reminders to the applicant as the General Counsel
3 suggest, the SCAQMD letter identifies specific items
4 that are need in their application. Indeed we
5 understand that the EPA's correspondence to the
6 applicant with reference to the PSD permit process,
7 concludes in effect that there was not sufficient data
8 for them to even begin their process; and I would like
9 to furnish a copy of that communication to the
10 Commission for its information if that's acceptable. I
11 don't have it with me today.
12 CHAIRMAN IMBRECHT: What is that communication
13 again, please?
14 MR. BERK: It's from the EPA to the Applicant
15 with respect the PSD permit. I don't know if it's in
16 the Commission's file.
17 In conclusion, then, I want to remind the
18 Commission that as we sit here discussing the legal
19 issue as to what is required in an application to be
20 complete, almost two months have elapsed in the
21 permitting process commenced by the Commission's
22 acceptance of the AFC for filing. No additional data
23 has been provided since that time, other than a second
24 draft health risk assessment. The Applicant has
25 stonewalled Miller's First Data Request addressed to the

1 source material of the AFC. No ...
2 COMMISSIONER COMMONS: Sir, can you repeat tht
3 last statement?
4 MR. BERK: Yes, the Applicant has stonewalled
5 Miller's First Data Request that was the subject of a
6 hearing last week, in which my partner, Mr. Kelly
7 participated -- a Motion to Compel Compliance.
8 COMISSIONER COMMONS: I'm sorry, could you
9 expand on that point, what are you referring to
10 specifically?
11 MR. BERK: Shortly after the March 20th
12 hearing date, Miller served on the Applicant a Data
13 Request, requesting (let me delay here for the purpose
14 of accuracy). Once I find it; it's brief... "requesting
15 in Item No. 1 all notes, drafts, correspondence,
16 schedules, files, memorandum, records, reports, studies,
17 working papers, summaries, charts or other documents
18 prepared or utilized by Pacific Waste Management or any
19 employee, agent or representative thereof in connection
20 with the preparation of any of the following documents."
21 Then it list the feasibility report, the official
22 statement, the Application For Certifcation, the PSD
23 permit and the responses to the staff comments; and as a
24 second item, all written communications and written
25 memorandum of oral communications by or to Pacific Waste

1 Management which relate or refer to the proposed
2 Irwindale resource recovery facility. Now that matter
3 is currently before the Commission, but my point was
4 that Miller submits that the AFC was incomplete.
5 CHAIRMAN IMBRECHT: I think you mean it is
6 currently before the Committee. And the Committee, as I
7 understand it, has taken that matter under submission
8 has not yet ruled on the motion.
9 MR. BERK: As I understand it, there still
10 needs to be a second member of that Committee appointed
11 if these proceeding are to continue and I'm not sure
12 whether the decision of the Committee is awaiting that
13 appointment.
14 VICE CHAIR CROWLEY: But the fact is it is
15 under submission to the Committee?
16 MR. BERK: As I understand it, yes.
17 Proceeding on my points here, no workshop has been
18 scheduled for Miller's First Round Data Request which
19 was filed in accordance with the schedule, I believe on
20 May 6th. We had not as of yesterday received any First
21 Round Data Request from the Commission staff or from any
22 other interested agency in these proceedings. And a
23 public meeting is scheduled for June 13th, and as of now
24 there is only incomplete information on several areas of
25 presumably a great significance to the public including

1 the health risk analysis. These circumstances would not
2 exist had the Commission applied the requirement that
3 the AFC must be complete before it is accepted for
4 filing. Under these circumstances whether the
5 Commission and the other interested agencies brought
6 within the guise of the Commission procedures will be
7 able to diispatch their statutory responsibilities and
8 to make the deliberative judgments upon whose welfare
9 Miller and the other members of the general public must
10 rely, it's problematical.
11 If the Commission reverses its decision on the
12 Motion for Reconsideration, the significant data
13 omissions can be corrected in an orderly manner and the
14 proceeding could follow a course so that the express
15 concerns of Miller and other interested persons affected
16 by the proposed sitings, can be adequately deliberated,
17 considered and addressed. I want to thank the
18 Commission again for its patience in hearing my
19 agrument.
20 CHAIRMAN IMBRECHT: Most certainly, thank you.
21 Are there questions? Commissioner Commons.
22 COMISSIONER COMMONS: Point of procedure. My
23 understanding, Bill, this is a request for
24 reconsideration and that the only member of the
25 Commission that could make such a motion would be a

1 person who was on the affirmative side when this matter
2 was originally accepted by the Commission.
3 MR. CHAMBERLAIN: Under Robert's Rule of
4 Order, that's correct.
5 COMISSIONER COMMONS: Second is...
6 COMMISSIONER GANDARA: Excuse me, point of
7 information.
8 CHAIRMAN IMBRECHT: State your point.
9 COMMISSIONER GANDARA: I think that requires
10 some clarification because Robert's Rule of Order to
11 meet consideration is generally something that has to be
12 done either within the same day of the meeting or it has
13 to be done if it is continued with the continuance of
14 the same meeting. So that the idea there that
15 (INAUDIBLE) do not spend time within the same day,
16 surely having made a decision on that to, by having a
17 minority member raising the issue again, now it seems to
18 me that when sufficient time has elapsed since that it
19 is noncircumstances, then Robert's Rule of Order that
20 case is not applicable. When we have a motion before
21 us, that in fact is not a continuation of the previous
22 Busines Meeting or a continuation of a similar nature
23 that gave cause to that particular reconsideration.
24 MR. CHAMBERLAIN: There is a reasonable
25 agrument. I suppose it's subject to Commission

1 interpretation, really. There is a reasonable argument
2 that given that the statute specifically provides for a
3 Petition for Reconsideraton by a party as well as
4 reconsideration by the Commission on its own motion that
5 upon a Petition for Reconsideration, any member of the
6 Commission could move to grant the Petition. That not
7 being the same as basically a motion of the Commission
8 itself to reconsider, but I would have leave this to the
9 ruling of the Chair, subject to overrule by the
10 Commission.
11 CHAIRMAN IMBRECHT: I'm not prepared to rule
12 on that quite at this point. I would like to see a copy
13 of Robert's Rule, if I might before closure of the
14 proceeding and I'll offer a ruling in a moment.
15 MR. BERK. Mr. Chair, may I just address that
16 point for a second? It's my understanding that I don't
17 know that if Robert's Rule pertains to this issue. I
18 believe that the statute provides that a party may move
19 for reconsideration and that it should be decided by the
20 Commission without a Commissioner having to either... as
21 a practical reality a Commissioner would have to support
22 the Petition to get any place, but as a technical
23 procedural point of view, I believe that the statute
24 provides that a party may make that motion.
25 CHAIRMAN IMBRECHT: Well, I do not accept that

1 interpretation. I would have to suggest to you that I
2 don't believe that any person can put a motion before
3 this Commission other than a member of the Commmission.
4 My understanding of the statute and regulations is that
5 you may petition for reconsideration and then require a
6 motion and then a second member of the Commission to
7 grant that Petition. Until we have such a motion before
8 us, then we cannot take action. I would just ask, while
9 I review the appropriate sections of Robert's Rule, you
10 may be correct Commissioner Gandara in terms of Robert's
11 Rule..
12 COMMISSIONER GANDARA: I am.
13 COMISSIONER COMMONS: Let me put....
14 CHAIRMAN IMBRECHT: I'm inclined to address
15 this with members of the Commission. I frankly think
16 that we ought to consider at some future point,
17 adoption. I can't recall the name of the parliamentary
18 rules used by the Legislature which I think provide a
19 little more flexibility, but in any case, I'll offer a
20 ruling in just a minute.
21 COMISSIONER COMMONS: I'd like to note from
22 the legal counsel that if the Petitioner Request for
23 Reconsideration is made timely and whether it's properly
24 before us given Commissioner Gandara's statement that if
25 there is to be reconsideration it should be done almost

1 immediately or certainly no later than the next Business
2 Meeting.
3 MR. BERK: The statute, Section 25530
4 specifically provides for reconsideration upon the
5 Commission's own motion within thirty days of a decision
6 and upon Petition by any interested party within thirty
7 days. If a party does petition you for reconsideration,
8 then the Commission has thirty days to grant or deny
9 that Petition for Reconsideration.
10 COMISSIONER COMMONS: So the Petition is
11 properly before us.
12 MR. BERK: Yes, it is.
13 COMISSIONER COMMONS: I don't want to spend
14 our time deliberating on it if it's not properly before
15 us.
16 MR. BERK: That's correct.
17 CHAIRMAN IMBRECHT: Alright fine, it's going
18 to take me a few more moments to consider this. Are
19 there any questions for counsel?
20 COMMISSIONER GANDARA: Yes.
21 CHAIRMAN IMBRECHT: Commissioner Gandara.
22 COMMISSIONER GANDARA: Mr. Berk, let me see if
23 I understand clearly your motion before the Committee at
24 this point and time. Is it to compel data from whom,
25 from the applicant?

1 MR. BERK: No Commissioner. Our Petition is
2 for reconsideration of the Commission's determination of
3 March 20th...
4 COMMISSIONER GANDARA: I'm talking about your
5 motion before the Committee. I understand you made
6 reference to the motion before the Committee, not the
7 issue before the Commission.
8 MR. BERK: Correct. There was a motion that
9 was heard by the Committee called Intervenors Request
10 for Order Compeling Production of Documents for
11 Inspection and Copying and it was briefed and argued to
12 the Committee, I believe, last Wednesday.
13 COMMISSIONER GANDARA: And I take it that your
14 motion before the Committee was to basically to produce
15 the same information that you find inadequate in the
16 AFC?
17 MR. BERK: No, Commissioner Gandara.
18 Essentially as I view it, it requests the source
19 material for the data that was provided.
20 COMMISSIONER GANDARA: I see, I understand it
21 appears to be clear. Thank you.
22 CHAIRMAN IMBRECHT: My understanding of the
23 data request sounded like far more complete; they're
24 asking for all working documents, etc., that are used by
25 the Applicant in preparation of your application as I

1 understood the description.

2 MR. BERK: That's correct.

3 CHAIRMAN IMBRECHT: ...which can basically be

4 an order by discovery. Time motion. Commissioner

5 Commons.

6 COMMISSIONER COMMONS: Continuing on the

7 procedures, obviously when this Commission divides, no

8 one on the Commission wants to relitigate the same

9 issue. You know, after a while you have to make a

10 decision, and that decision is the one that the

11 Commission ought to follow. My understanding, Biil, for

12 a reconsideration would essentially be two bases for

13 reconsidering. One would be a Commissioner on the

14 prevailing side, for one reason or another, decides to

15 change their opinion and, essentially, request the

16 Commission to reconsider. The second basis would be if

17 a petitioner were to come forth, the basis for a

18 Commission to reconsider would be based on changes in

19 circumstances or evidence that was not brought before

20 the Commission at the time of the hearing, which may

21 result in the Commission wanting to reconsider that new

22 evidence, so to say. It is not appropriate for us to

23 reconsider when it's the same issues that were

24 outstanding that are being relitigated.

25 MR. CHAMBERLAIN: No, I would disagree with

1 that. I believe that the mere fact that a party may be
2 more eloquent a second time is enough to allow the
3 Commission to reconsider an issue. If the Commission is
4 convinced that it decided the issue incorrectly the
5 first time, the whole purpose of reconsideration is to
6 give you a second chance to correct what may have been
7 an erroneous decision. It is not limited to the need to
8 bring up any new evidence.
9 MR. BERK: Commissioner Commons may recall,
10 then, at the hearing on March 20th, the substantial
11 issue arose as to what the test for data completeness
12 was for accepting the AFC for filing. The General
13 Counsel was asked to submit an opinion on the issue.
14 Miller was invited to submit their opinion to the
15 General Counsel on the issue; and the Motion for
16 Reconsideration is premised on that. The motion would
17 not have been made had we merely been rehashing the same
18 matters that were raised on March 20th; but, we made the
19 motion with reference to those points and authorities
20 and, basically, have submitted that the test that was
21 used by the Commission was erroneous.
22 COMMISSIONER COMMONS: My next
23 question...Thank you for both of your statements. That
24 helps me. Alright. There seem to be two issues. One
25 is the issue of reconsideration as to whether or not it

1 was a complete document. And then there's a second
2 issue as to whether the substantial compliance, which
3 was the prevailing viewpoint as to whether or not that
4 substantial compliance has actually now occurred in a
5 timely vein. Can you bring me up to date as to when we
6 established the substantial compliance? What were the
7 conditions, the timelines, and the data that the
8 Applicant was required to submit and where we stand on
9 that aspect?
10 MR. CHAMBERLAIN: I'm going to let Mr.
11 Chandley handle that.
12 COMMISSIONER COMMONS: My understanding of the
13 decision that we had reached that day was that the
14 application was essentially accepted as in substantial
15 compliance, and that there were information and data
16 that it was felt by the Commission and by the staff that
17 was still needed in order to process. So that
18 information would still have to come in, in order for us
19 to meet our schedule and being able to render a decision
20 within twelve months, and to have information sufficient
21 so that we could make that schedule. Correct me if I'm
22 wrong in my statement.
23 MR. CHANDLEY: Yes, I will. I think it's
24 important not to confuse a process that runs twelve
25 months and involves a discovery period and a hearing

1 would you think that is legal for us to adopt as a
2 regulation?
3 MR. BERK: Well, my off-the-top response would
4 be sort of a finesse. It would depend upon what the
5 definition of substantial compliance meant. My
6 understanding of how the Commission's staff uses
7 substantial compliance, or how it was used at the March
8 20th hearing is that there was sufficient data to begin
9 the process. If that's the definition of substantial
10 compliance, then, I would submit that it can't be
11 equated with completeness. I believe that completeness
12 means that there is sufficient data for the Committee
13 and the Commission to make the determinations required.
14 CHAIRMAN IMBRECHT: It's very difficult for me
15 to say that. Otherwise, I would in essence suggest that
16 applicants on a bonus should submit the matter on the
17 record. There's no purpose for a year of hearings and
18 their consideration which are designed to elucidate the
19 issues in some depth. It seems to me that that is
20 contrary to any reasonable interpretation of the statute
21 as to providing an ear for consideration.
22 MR. BERK: Well, I don't mean to be
23 misunderstood that I would equate that there is
24 sufficient data to make a decision with, that being the
25 limitations on what data would be used in making a

1 process, in which substantial information (I shouldn't
2 use that term), but a lot of information comes in over
3 and above that which is required to have the application
4 complete and accepted.
5 The admissions by the staff, by the air
6 agencies, and acknowledgements by the Commissioners,
7 perhaps on the record, that they're going to want
8 additional information relate to the process of
9 discovery for which you have twelve months. And that's
10 a fairly lengthy process. We've had a lot of hand-
11 wringing about how it's going to be very difficult to
12 get things done in twelve months; but, the Commission
13 has a very good record in complying with that twelve
14 months requirement.
15 In cases where the issue becomes so involved
16 that it cannot comply with the twelve-month process, we
17 don't stop looking at the issues. We continue to try to
18 resolve the issues. So all of this hand-wringing about
19 not dealing with the issues and not being able to get
20 the right information out, I think is the real 'red
21 herring' in this case.
22 Having made the distinction between what you
23 get on discovery and what's required for the
24 application, your motion to accpet this was based upon
25 substantial compliance. But, the question is whether

1 substantial compliance is any different from
2 completeness. And we have argued, and I will argue
3 again today when I get the opportunity, there is no
4 difference between the terms, not in our regulations,
5 not in our practice, not in the case law, and not in the
6 statute.
7 So, my principal point is going to be that,
8 although you may phrase your motions on acceptance in
9 terms of substantial compliance; you are, in fact,
10 complying with a statute which calls for complete
11 application before it is accepted. And I don't think
12 that there is going to be any way that anyone could
13 successfully challenge that, given the caseload that's
14 out there, the structure of our regulations, and the
15 explanations that we can provide about the history of
16 those regulations.
17 COMMISSIONER COMMONS: Alright. Then I wanted
18 to ask the Applicant... I preside on the Siting
19 Committee, and we have a draft regulation on this issue
20 that has been put forth, and we will be going to a
21 hearing on it. That draft regulation essentially says
22 that for the purposes of data adequacy, that substantial
23 conformance or compliance and completeness are one and
24 the same in terms of the data adequacy phase of the
25 proceeding. My question I'd like to ask of you is,

1 decision. That would be the premise upon which that
2 data would be torn apart and examined and analyzed and
3 be the subject of requests for additional elaboration
4 and explanation and things of that nature, which I
5 understand the twelve-month proceedings to deal with.
6 CHAIRMAN IMBRECHT: I'm going to try to deal
7 with that procedural point now and see if we can't move
8 along here. First, let me just make an inquiry. I want
9 to double-check my memory on this. I don't know, Lorri,
10 if you're the one to answer this, but does someone have
11 the roll call of original acceptance? Commissioner
12 Gandara and I are of the general recollection that there
13 were no "No" votes.
14 COMMISSIONER GANDARA: That's correct.
15 CHAIRMAN IMBRECHT: There was one abstention
16 by Commissioner Gandara.
17 COMMISSIONER COMMONS: Well, Mr. Chairman,
18 there were two votes. There was a first vote as to
19 whether or not substantial compliance should be...
20 CHAIRMAN IMBRECHT: I understand that's a
21 procedural issue, but the question is on the acceptance
22 of the application. There were four "Aye" votes and one
23 abstention. That's the only issue of relevance in terms
24 of reconsideration. That's the action that we're
25 reconsidering.

1 Now, as a conseqence of that, this discussion
2 in a real sense is moot; but, I want to offer an
3 interpretation. I think it will be useful for us for
4 future purposes.
5 COMMISSIONER COMMONS: Thank you.
6 CHAIRMAN IMBRECHT: My reading of Robert's
7 Rules would suggest the following: That in the event
8 that there is a one-day meeting of an organization or a
9 one-day convention that, in fact, reconsideration would
10 have to be moved during the pendency of that proceeding.
11 However, there is an express exception indicating that
12 these time limitations do not apply to standing or
13 special committees; and, it would be my interpretation
14 that the Commission more appropriately should be
15 considered in that light. Therefore, it would be my
16 ruling from the Chair that there are no time limitations
17 on reconsideration. I frankly think that's a far more
18 workable approach for this Commission.
19 Secondly, my further interpretation is that in
20 terms of members that are eligible to make a motion for
21 reconsideration, it is any member on the presiding side
22 of the motion, or any member who abstained. Only
23 members who were on the losing side of the motion (that
24 does not include abstentions) are precluded from making
25 a motion for reconsideration. I think that's an

1 appropriate reading of Robert's Rules. So that would be
2 my ruling from the Chair subject, obviously, to
3 challenge by members of the Commission. I believe
4 Commissioner Gandara agrees with that.
5 COMMISSIONER COMMONS: I think we have
6 flexibility in terms of adopting a procedure here, and I
7 do not object to that being the procedure tht this
8 Commission follows.
9 MR. CHAMBERLAIN: I'd just lilke to clarify.
10 I agree with your interpretation that Robert's Rules do
11 not provide a time limit on motions to reconsider by
12 this Commission. But I would point out that the statute
13 and other case law may provide that.
14 CHAIRMAN IMBRECHT: No, I'm sorry. Well,
15 obviously, the statute or our regulations precede when
16 there is specific consideration. In terms of the
17 petition, obviously, there is a time limitation for
18 proper filings. You indicated that matter is before us.
19 In any case, my ruling is that any member of the
20 Commission on this matter is entitled to make the
21 appropriate motion.
22 COMMISSIONER GANDARA: The only additional
23 clarification I would make, Mr. Chairman, is at the end
24 whether the Commission is equivalent to a standing
25 committee or not. I would accept the ruling as you

1 defined it; I have no problems with that. But, I would
2 also note that under our statute that Robert's Rules of
3 Order can be waived at any time by a majority of the
4 Commission.
5 CHAIRMAN IMBRECHT: Sure.
6 COMMISSIONER GANDARA: And, in addition to
7 that, any decision made contrary to Robert's Rules of
8 Order is not invalid.
9 CHAIRMAN IMBRECHT: I understand.
10 COMMISSIONER GANDARA: So that's the Great
11 Escape Law.
12 CHAIRMAN IMBRECHT: Believe me, in my former
13 life, whenever the rules of the Assembly got in the way,
14 they were simply waived by the majority. So, I'm well-
15 accustomed to those actions.
16 COMMISSIONER GANDARA: I'm getting accustomed
17 to it myself.
18 CHAIRMAN IMBRECHT: Okay, fine. Our
19 recollection of the vote has been confirmed by the
20 Secretary. Commissioner Gandara abstained; the other
21 members of the Commission were in support of the motion
22 to accept the AFC. Alright.
23 MR. BERK: Mr. Chair, I don't know where we
24 are with this discussion on the proceudre; but let me,
25 again, refer to the statute itself, which I believe

1 covers this issue of a petition filed by a party. It
2 says that the Commission may order a reconsideration of
3 all or part of a decision or order on its own motion,
4 which is what I understand that the Chairman is
5 discussing with the other Commissioners, or on petition
6 of any party. And then, later on in that section it
7 says the Commission shall order or deny reconsideration
8 on a petition, therefore, within 30 days after the
9 petition is filed. The way I read that statute is the
10 Commission is required to render an order either
11 granting or denying the petition, whether or not a
12 motion is made by a Commissioner.
13 CHAIRMAN IMBRECHT: Well, I think that the
14 lack of a motion is dispositive of the matter, frankly.
15 MR. BERK: I would agree.
16 CHAIRMAN IMBRECHT: Alright. Okay, let's
17 proceed. Are there any further questions for the
18 Petitioner's attorney? Alright, thank you very much.
19 Next we'll hear from....
20 COMMISSIONER COMMONS: Are there any changes,
21 or circumstances or issues that we did not have before
22 us at the time we made our decision that has occurred or
23 transpired that you think should affect our decision?
24 MR. BERK: I reiterated towards the conclusion
25 of my discussion what has not transpired during the two

1 months since the March 20th hearing date. But with
2 reference to the March 20th hearing date, we haven't
3 uncovered or discovered something that we should have
4 known or didn't or that the Commission should have known
5 or didn't, to my knowledge. The changed circumstance
6 has been that two months have passed and, essentially,
7 nothing much has happened.
8 COMMISSIONER GANDARA: There is new
9 information presented in your brief, Mr. Berk.
10 MR. BERK: Pardon me?
11 COMMISSIONER GANDARA: There is new
12 information in your brief regarding legislative history
13 that was not before the Commission at the time this
14 decision was made.
15 MR. BERK: Yes. We have presented the legal
16 argument. But in terms of any facts that the Commission
17 didn't have, I can't point to any at this point.
18 COMMISSIONER COMMONS: In terms of due
19 process, forgetting the legal point that you have
20 raised; there's still a due process question as to
21 within the siting process. Is it your viewpoint that
22 Miller can have a fair hearing on its point of view
23 within the siting proceedings? And, that you have your
24 rights fully protected in terms of the ability to
25 petition the Committee and eventually the Commission if

1 ability to come back to the Commission if you feel
2 aggrieved as the project unfolds.
3 MR. BERK: Is the Commissioner requesting a
4 response to that?
5 COMMISSIONER COMMONS: Yes. My main concern
6 is that all parties have due process within the siting
7 proceedings.
8 MR. BERK: Well, my main concern is that the
9 issue get resolved correctly and whether or not due
10 process is the limitation on that I'm not quite sure. I
11 think that you can have due process and yet not have an
12 opportunity to fully deliberate and consider the issues
13 that should be addressed in making the correct decision.
14 VICE CHAIR CROWLEY: Alright, are there any
15 other questions for Mr. Berk? Have you completed your
16 presentation, Mr. Berk?
17 MR. BERK: Yes. Thank you.
18 VICE CHAIR CROWLEY: Thank you. Attorneys for
19 the Applicant?
20 MR. BROILLES: My name is Steven A. Broilles.
21 I'm an attorney with the law firm of Richards, Watson,
22 Dreyfuss & Gershon, but I'm appearing on behalf of the
23 applicant, Pacific Waste Management. I'd like to begin
24 first by thanking the General Counsel for their
25 excellent analysis of the relevant code sections and

1 you feel that there is not sufficient information in
2 order for the Commission to render a decision? Do you
3 feel that even though you disagree with the action that
4 the Commission has taken, do your feel that you still
5 will have due process within the overall siting process?
6 MR. BERK: I'm really not prepared to address
7 the implications of that question. I think it would
8 depend upon what happens during the proceeding, and that
9 is sort of the gist of our discussion here, is that it
10 ought not to depend upon those things. Everybody ought
11 to be ready to go, in a sense, when the application is
12 filed; rather than having whether we have a chance to
13 analyze data, comment on it. Whether that happens or
14 not depends upon how cooperative the Applicant is and
15 how readily the intervenors or the Committee can require
16 the Applicant to furnish data.
17 COMMISSIONER GANDARA: Okay, but aren't your
18 rights protected in that if you find that that
19 information is not forthcoming, you have the right which
20 you've already exercised to petition the Committee and
21 ask the Committee to provide, have them order that that
22 information be provided; and that if you're still
23 unhappy, you have the right to come back to the
24 Commission as part of the overall siting process,
25 requesting relief from the Commission?

1 MR. BERK: Yes, but time is passing all during
2 those processes; and while we talk about a twelve-month
3 period for a final determination, at least it seems to
4 me, who hasn't been involved in this process for any
5 great length of time, that you have a preliminary staff
6 assessment that occurs eight months into the process.
7 That's a pretty important event. So, I mean, we're
8 talking about two months into the process now and not
9 having received any more data.
10 COMMISSIONER COMMONS: The burden in the
11 process is on the Applicant. And if they have not
12 provided the information that's necessary, then the
13 project is not turned down, in essence; if there's not
14 sufficient information for the Commission to make an
15 affirmative finding on it. So, essentially, the
16 Commission then would not proceed and accept an AFC, if
17 the data is not forthcoming. If the Applicant is having
18 a problem putting together that data, the Applicant
19 always has the right to request an extension; and the
20 Commission has a right to go along with that extension
21 if it's been justified as part of the process.
22 But, I think my point is that you do have the
23 due process issue, which I think is the most important
24 issue in terms of the siting procedure. You have
25 protections within the Committee structure and your

1 regulations thereof that are pertinent to the petition
2 by Miller Brewing. I'd also like to thank the
3 Commission staff for their detailed, factual response in
4 acknowledging the work of the General Counsel and the
5 staff. We appreciate the work was not done to aid
6 Pacific Waste Management, the applicant, in these
7 proceedings; but to defend the integrity of the
8 Commission's AFC process from procedural abuse.
9 Miller is asking this Commission to reopen two
10 of its past decisions. The March 20, 1985 decision to
11 accept the AFC application as supplemented; and the
12 December 5, 1984 decision affirming the staff's list of
13 deficiencies contained in the original application,
14 which lists, if supplemented, would then in the staff's
15 opinion form a complete application.
16 Both of these decisions pre-date Miller's
17 intervention into these proceedings. The delay and
18 waste of manpower Miller has caused this Commission and
19 its staff alone, reaffirm the underlying wisdom
20 contained in Section 1712A of the Commission's
21 regulations. The portion I'm making reference to is as
22 follows: "No person who becomes a party shall be
23 permitted to reopen matters dealt with in the proceeding
24 prior to the time when such person became a party
25 without a showing of good cause."

1 By entertaining such a petition, however, the
2 Commission interjects a great deal of uncertainty into
3 these proceedings over the date the application is
4 deemed to have been filed. The application filing date
5 is significant for purposes that go beyond just these
6 proceedings. I'm talking about the need for offsets, to
7 offset the air quality emissions of this project.
8 The filing date defines the end of a 90-day
9 period during which equipment shut-downs will be
10 eligible under EPA regulations and the regulations of
11 the South Coast Air Quality Management District,
12 regulations which define when project air pollution
13 emissions can be purchased. Emissions that occur within
14 that 90-day window, which is defined by the approval and
15 acceptance of the application for the AFC, are eligible
16 for purchase for emission offsets.
17 I'm in the process right now of trying to
18 acquire those emission offsets, and I really can't
19 conclude any negotiations until we settle that is this
20 going to be the filing date for this period.
21 Consequently, I cannot firmly lock up those emission
22 offsets; and they're free to be purchased by somebody
23 else. So it puts us at a great disadvantage in trying
24 to obtain offsets for this project while this matter is
25 still pending.

1 COMMISSIONER COMMONS: I don't understand.
2 Can you clarify it?
3 MR. BROILLES: Emission offsets in the South
4 Coast District, when you're putting in a new project,
5 the projected emissions from the new project must be
6 completely mitigated by purchasing emission offsets or
7 by controlling existing sources within the South Coast
8 District by reducing the emissions by a factor of
9 greater than one-to-one.
10 If you're purchasing offsets from equipment
11 that has been taken out of service, i.e., shutdown
12 emission offsets, Region 9 of the EPA and the South
13 Coast District will not allow shutdown emissions which
14 pre-date by more than 90 days the application filing
15 date to be eligible or used...
16 COMMISSIONER COMMONS: The application filing
17 date is referring to the date that we accept, or the
18 date that you submit an application to us?
19 MR. BROILLES: Okay. It's not the date that
20 we submit an application to you. The code section says
21 the date you accept is deemed the filing date.
22 COMMISSIONER COMMONS: The date we accept, I
23 see. So the date of our acceptance...
24 MR. BROILLES: Then becomes the filing date.
25 COMMISSIONER COMMONS: Okay, I understand now.

1 MR. BROILLES: ...And the hunting period that
2 we have is 90 days back from that and any point forward.
3 So any shutdowns that occur within that 90 days
4 potentially are eligible to us to purchase. Now, if you
5 float that 90 days, I never know when it starts or what
6 projects I can go to or approach to purchase emission
7 offsets credits. We can never firm up the deals;
8 therefore, they never go through. I can never conclude
9 the offsets. Potentially then, theoretically, there are
10 available overcontrol emissions; but those practically
11 don't exist in the South Coast Air Basin. So we cannot
12 go forward with this project until this issue is
13 resolved as to what is the filing date. So while it's
14 up in the air, we're pretty well stopped on that one
15 front. So this is an important issue.
16 The burning substantive issue that Miller has
17 pressed on this Commission in its petition, is the
18 legality of Section 1704. This regulation equates a
19 "complete" application with one "substantially
20 complete". The same criteria is appliled by the courts
21 in measuring performance under construction contracts.
22 It is a matter calling for the exercise of reasoned
23 judgement to insist upon a dogmatic intolerance to
24 trivial imperfections, as Miller's alledged standard
25 would require, exhorts form over substance and would

1 defeat the advantages of the one-stop permitting, which
2 is one of the objectives of this Commission under the
3 Warren-Alquist Act. There is no purpose to be served by
4 a twelve-month application review period if the
5 Commission is going to insist that applicants file the
6 final documents. This is what Miller would have this
7 Commission do.
8 The definition of "completed", contained in
9 Black's Law Dictioniary, which is a standard reference
10 for lawyers in interpreting words and phrases, is as
11 follows: "Finished; nothing substantial remaining to be
12 done." Miller argues that the Commission's imminently
13 reasonable interpretation of the statutory term
14 "complete" has been preempted by a 1982 statutory
15 amendment redefining the date a project is deemed filed.
16 This, however, was not the intended result of
17 the legislation. The Legislative Counsel's digest
18 states the substance of the 1982 Amendment. Just read
19 it. It reads as follows: "This bill would require the
20 Commission to issue its written decision on the
21 application for certification of the site within twelve
22 months if it is filed within one year of the
23 Commission's approval of the notice of intent to file an
24 application for certification. The bill would provide
25 for determination as to when an application would be

1 considered filed for purposes of these provisions."
2 There is nothing in there to indicate that
3 they're redefining the criteria. And we presume the
4 Legislature reads the regulations and has knowledge of
5 what the practices in regulations of this Commission
6 are. I do not propose to answer point-by-point every
7 issue raised by Miller in attacking the factual basis
8 for this Commission's March 20th decision. This has
9 been adequately addressed by the staff. It is the
10 policy and purpose of this Commission to encourage
11 responsible public participation in its proceedings. We
12 urge you, however, to be vigilent against those who
13 would overburden and abuse the process in order to delay
14 and frustrate completion of the permitting procedures.
15 For two and a half years, I was district
16 counsel for the South Coast Air Quality Management
17 District. During that time, that agency considered the
18 application of SOHIO for an oil pipeline and terminal in
19 the Port of Long Beach. I learned firsthand how to kill
20 a project. On the very day the district issued a permit
21 to construct SOHIO, the company announced it was
22 abandoning the project.
23 There is one other way that the permitting
24 process can be abused; and this method, however,
25 requires the active participation of the Commission, by

"NOI-AFC Practice and Procedure", page 31 contained this information: "Interrogatories, form 4. Depositions, form 5. Requests for production of documents and requests for admissions may be undertaken only with leave of the presiding member." So before you can make a request for production, and that's what they served us with, you must seek leave from the presiding member.

I don't know if this has been formally blessed by this Commission, but this is at least the information that we recieved from the Public Advisers; and, if we've misinterpreted it, I think they can correct us. I am available for questions.

VICE CHAIR CROWLEY: Commissioner Commons.

COMMISSIONER COMMONS: Yes, I'd like to state that I strenuously object to some of your characterizations. I believe both you and the petitioner are responsible attorneys and are coming forth before the Commission in an honest and legitimate fashion; and that this Commission was obviously divided on this issue intially. And to suggest that either your opposing counsel or this Commission, if they were to take an action that would not be in agreement with your position, would be casting aspersions as to the overall credibility of the Commission, I find totally unreasonable as a statement on its face. And if all

1 acting in such a manner so as to never make a final
2 decision; that is, to consistently review or entertain
3 appeals of its decisions and thereby nothing is ever
4 finally determined. The net effect is to destroy the
5 credibility of the Commission as a decision-making body.
6 Miller, by its Petition for Reconsideration, has
7 extended an invitation to this Commission to follow
8 either or both of these routes towards subversion of the
9 AFC process. We submit that the broader views that are
10 raised by Miller's petition are the integrity of the AFC
11 process and the credibility of this Commission as a
12 decision-making body.
13 Before I conclude my remarks, I would like to
14 touch on something else which is ostensibly not the
15 subject of this hearing, but has been raised in
16 discussions; and that concerns the data requests that
17 Miller has submitted to the Applicant. These data
18 requests were received by us and, indeed, mailed out
19 prior to the time that Miller became a party to these
20 proceedings and had any rights to make data requests.
21 What they have, and counsel has read into the record the
22 requests, what they have requested is a production of
23 documents.
24 Going to a document prepared by the Public
25 Adviser's Office, listed as revised July 1984, entitled,

1 parties who came before the Commission were to say, "If
2 you don't accept or agree with our position, then the
3 overall integrity of this organization or this
4 Commission is lacking". I just feel that that is not
5 said in the spirit in terms either the way you've
6 presented your case at the previous hearings or in terms
7 of Miller coming before us.
8 Now, I'd like to ask Mr. Chamberlain. One of
9 the statements that Miller was not appropriately a
10 party. My understanding is that we do not grant
11 intervenor status until after a case has been accepted
12 by this Commission under data adequacy. Is there a
13 distinction, then, in terms of whether or not one is
14 appropriately a party in the sense that it was being
15 referred to here before data adequacy and after data
16 adequacy, since we don't grant intervenor status?
17 MR. CHAMBERLAIN: I'm not sure what the term
18 "appropriately a party" really means. We do not, as a
19 matter of tradition, grant intervenor status until after-
20 -I think you are correct in that statement, until after
21 the application has been accepted ....
22 COMMISSIONER GANDARA: You're incorrect, Mr.
23 Chamberlain. Intervenor status was granted prior to the
24 acceptance.
25 VICE CHAIR CROWLEY: Correct.

1 MR. CHAMBERLAIN: But, I believe that the
2 current practice of the Commission is that we are not
3 granting intervenor status now until after data
4 acceptance.
5 VICE CHAIR CROWLEY: Starting when?
6 COMMISSIONER COMMONS: I do not believe that
7 any projects that have been accepted by this Commission
8 during the current calendar year, any intervenor status
9 has been granted by this Commission. Someone should
10 refresh my memory, but we had a discussion on this last
11 year, and I believe you, Commissioner Gandara, were the
12 one to have actually raised the issue. I believe that
13 we felt that we should not grant intervenor status until
14 such time as the Commission accepts the case. So,
15 essentially, until the time that there has been data
16 acceptance, there hasn't been any litigation and no
17 essential decisions have been made by this Commission or
18 by anyone as to the case at hand. I think the portion
19 of the testimony here that Miller was not appropriately
20 before us, is not correct. The only time that that
21 issue would rise or occur is that Miller is essentially
22 put on notice that there is a case before the Commission
23 when we accept the application and the 12-month clock
24 begins to start, because there are essentialy no
25 decisions that have been made until that time. So,

1 Miller is appropriately before us at any point in time
2 that they enter into the proceedings until we accept the
3 application.
4 MR. CHAMBERLAIN: I think that's correct. The
5 Commission holds a hearing on Data Adequacy, and while
6 it may or may not have, at that point accepted official
7 intervenors into the case as parties, the Commission has
8 never rejected or held inappropriate, comments by any
9 party who was interested in the case, at that point.
10 COMMISSIONER COMMONS: Thank you. Now, going
11 back, you did not answer and I don't want you to answer
12 each and every one of the points that were raised by
13 Miller. But, they did make one statement which I
14 thought was also very strong, and I'm not sure it's
15 supportable. But, I would like to have your response.
16 They stated at the recent hearing that they had made a
17 request for information and data, and I think the word
18 used was that the applicant "stonewalled" that. Could
19 you provide information as to what you intend to do with
20 the information request?
21 MR. BROILLES: First of all, let me go to your
22 earlier comments. I think I was misunderstood and if my
23 comments gave you offense and the rest of the members of
24 the Commission, I do apologize for that. I don't think,
25 though, that my comments were as you represented them to

1 be.

2 Our issue on another point is not to the

3 appropriateness of the status accorded Miller in these

4 proceedings. We do not challenge their status as

5 intervenors on this. As to the other point, the one

6 that you have now addressed to me and that is the Data

7 Request, we currently have two Data Requests that have

8 been submitted to us from Miller. The one is the

9 earlier one that has been brought up and portions of

10 which were read into the record. The other one is

11 approximately 150 pages, which we're in the process of

12 working on.

13 As I tried to point out, the initial Data

14 Request was not a Data Request as such; it was called

15 for the production of documents, and we read the

16 document I quoted to you, as provided by the Public

17 Adviser, it appears that only after leave has been

18 granted by a Presiding Member, cannot request for

19 productions of documents be sustained. That is pending

20 right now before the Committee and we will eventually

21 have a decision by the Committee and will abide by it.

22 COMMISSIONER COMMONS: Well, it sounds like a

23 legal question, Mr. Chamberlain. What is the rule of

24 the Commission on this issue?

25 CHAIRMAN IMBRECHT: Well, may I try this

1 before Mr. Chamberlain responds? There is a specific
2 provision for parties in any of our siting proceedings
3 to make Data Requests which, in essence, are a form of
4 discovery, if you will. But, just in the case of
5 discovery where a judgment is ruled upon the
6 reasonableness of this request, such is the case with
7 respect to the Committee ruling on it. A mere fact that
8 a Data Request has been filed doesn't convey any
9 particular prematurity of correctness to that Data
10 Request or as the scope of it, etc. You can ask for
11 anything. It's a question of whether it's a reasonable
12 expectation, and I don't want to presume to get into the
13 merits of this particular Data Request, because I think
14 it's appropriate within the jurisdiction of the
15 Committee.
16 COMMISSIONER COMMONS: Well, but the issue
17 that was put before us was the Applicant is saying the
18 only party who could make a Data Request was the
19 Presiding Member. So, ...
20 MR. BROILLES: No, I think to the extent that
21 that's the reading of that document, that's not correct.
22 Under our regulations, parties can make Data Requests
23 and then if they are not responded to, the appropriate
24 thing to do is to petition the Committee or move the
25 Committee to compel answers to those Data Requests.

1 There is not, as I understand it, a procedure that
2 requires a party to seek the Committee's permission to
3 send a Data Request in the first instance, and to the
4 extent that there may be a document floating around that
5 is not consistent with these regulations, that's
6 unfortunate.
7 COMMISSIONER COMMONS: Well then, the
8 characterization of stonewalling, although the term is
9 strong, may not be that incorrect here, and that the
10 Applicant essentially has said, "I will provide none of
11 the information except that information which is ordered
12 by the Committee".
13 MR. BROILLES: I don't believe that's
14 accurate.
15 COMMISSIONER COMMONS: Alright, I'd like it
16 corrected. Thank you.
17 MR. BROILLES: Okay, what we are doing is
18 relying upon Page 31 of a document put out by the Public
19 Adviser's office. Your counsel has just said that this
20 document is inaccurate. That's hardly stonewalling to
21 rely upon a document put out by the Public Adviser's
22 office. If we were misadvised by the Public Adviser's
23 office, I guess we'll be set straight very soon. Now,
24 with respect to this specific Data Request, the staff
25 has also participated in those proceedings, and they

1 have indicated, that portions of that Data Request are
2 so broad as to be beyond the jurisdiction of this
3 Commission. So, it was basically a (INAUDIBLE) type of
4 Data Request.
5 PUBLIC ADVISER PEREZ: Chairman Imbrecht?
6 CHAIRMAN IMBRECHT: Yes, Mr. Perez.
7 PUBLIC ADVISER PEREZ: Let me just clarify for
8 the benefit of the Commission, something that I didn't
9 think was necessary to say, but which I believe the
10 representative of Pacific Waste Management will agree,
11 that in the sequence of legal standards regarding
12 attorneys' conduct before the Commission, clearly the
13 enabling statute, the properly promulgated regulations
14 of the Commission, and the specific decisions by the
15 full Commission, on a case-by-case basis, will supercede
16 any advice provided by the Public Adviser. Certainly,
17 this decision today is dependent upon what happens to be
18 at Page 31 of my guide. It was drawn up much in advance
19 of this particular issue and not in contemplation of
20 these parties. So, within that context, it should be
21 qualified.CHAIRMAN IMBRECHT: Alright, fine thank you.
22 I'd just add that my experience, Commissioner Commons,
23 in siting cases, it's very frequent for Data Requests to
24 be made by a multitude of parties. That certainly has
25 been the case in GPPL. It's also fair to say that the

1 Applicant, on a number of occasions, has resisted
2 compliance with the Data Requests because they felt it
3 was overly broad or whatever, and they ultimately
4 brought it to the Committee for a full argument to be
5 heard from both parties. It seems to me that's the--I
6 really see as completely analogous to a discovery
7 procedure and civil proceeding.
8 COMMISSIONER COMMONS: Well, I think the
9 difference, Mr. Chairman--I don't want to spend much
10 time on the issue. If there are 150 pages of Data
11 Requests, there might be 75 that an Applicant considers
12 broad or not reasonable, and would ask for a hearing on
13 those. I would assume in 150 pages, there are some
14 items that an Applicant would consider reasonable and so
15 it wouldn't be a blanket withholding of information. It
16 was only because of the total blanket of the approach
17 that I was concerned.
18 CHAIRMAN IMBRECHT: I see, okay, let's move
19 on. Alright, any further questions?
20 MR. BROILLES: Well, you are confusing several
21 items. One is the initial Data Request that is before
22 the Committee, and the second one is the Data Request
23 that has 150 pages attached to it. Now, it should be
24 noted that what this Data Request is seeking is all
25 written communication. The one that's before the

1 Committee and written memoranda of oral communications
2 by or to Pacific Waste ....
3 CHAIRMAN IMBRECHT: It's a typical boilerplate
4 discovery request.
5 MR. BROILLES: Yes, it also includes the
6 employee personnel records and everything else in the
7 world.
8 CHAIRMAN IMBRECHT: Of course, I understand
9 that, and I really don't think it's an issue; it's all
10 that relevant here; however, how people want to
11 characterize it, stonewalling and so forth, that's
12 basically it as far as I'm concerned, by Counsel. The
13 bottom line is that in some instances when parties are,
14 in effect, served with boilerplates, I think very
15 typically in these proceedings. There is a blanket
16 resistance that by virtue of the fact that it was not a
17 sufficiently specific Data Request, that there.... It
18 is hard for me to see how that's an issue for this
19 matter.
20 MR. BROILLES: We have not filed a response
21 and we don't intend to object to everything in the 150
22 pages. Some of it is relevant and some of it we can
23 answer and respond to, some of it we can't, some of it
24 we think is unreasonable. That's going to be sorted out
25 as, you know....

1 CHAIRMAN IMBRECHT: Commissioner Gandara?
2 COMMISSIONER GANDARA: Yes, I have several
3 questions. Again, getting back to specific Data
4 Requests, somehow I missed it, but up until the last
5 discussion here, I didn't know that there were two.
6 Could you distinguish the two data requests for me?
7 MR. BROILLES: One is two pages and one is 150
8 plus pages.
9 COMMISSIONER GANDARA: Okay, which one is the
10 one before the Committee?
11 MR. BROILLES: Two, the two page one. It's
12 the one that has two requests, the very broad type of
13 Data Request. That's the one before the Committee. The
14 one that is 150 pages long is very specific, very
15 detailed as to information, and that's the one we are in
16 the process of trying to respond to.
17 COMMISSIONER GANDARA: Okay, which one was
18 first in time?
19 MR. BROILLES: The first in time was the two
20 page one. The very broad, direct type questions.
21 COMMISSIONER GANDARA: Okay, so the first one
22 that was before the Committee, the two page one, the
23 Committee has taken under consideration. The second one
24 has not been before the Committee?
25 MR. BROILLES: We haven't even had a chance to

1 MR. BROILLES: No, you can go after the filing
2 up until the date you open and start your equipment.
3 COMMISSIONER GANDARA: I see, so you can hunt
4 from 90 days prior to filing to ....
5 MR. BROILLES: Until you start up.
6 COMMISSIONER GANDARA: Okay, now ....
7 MR. BROILLES: But, you see the way the thing
8 is going to work is South Coast district has to give you
9 some indication about whether we are going to comply
10 within six months into the process. So, the big issue
11 is are we going to come up with emission offsets. So,
12 we've got to have concluded something. We've either got
13 to have a piece of equipment that we are going to take
14 down so that we can tell them these are going to be our
15 offsets, we've got firm contracts.
16 COMMISSIONER GANDARA: I understand that now.
17 MR. BROILLES: So, theoretically, the window
18 runs all the way until the project starts, but because
19 of the way the procedure works and because the sign-off
20 by South Coast is required, we are going to have give
21 them something in six months.
22 COMMISSIONER GANDARA: Okay. Although the
23 POC's, sometimes are negative but, in any case, let me
24 ask you an additional question. Let's assume that the
25 Commission does not override the previous decision, and

1 respond to it. We are still within the time period.
2 COMMISSIONER GANDARA: Let me ask you a
3 question on another matter that you raised during the
4 presentation on the filing date. You indicated that the
5 uncertainty, at least before the Commission would re-
6 consider its previous decision created some problems for
7 you with respect to purchasing the offset credit. Let
8 me see if I understand this correctly. The application
9 filing date that you mentioned was the application
10 filing date to this Commission, not the EPA?
11 MR. BROILLES: That's right.
12 COMMISSIONER GANDARA: So, that other than
13 that precedent, the EPA requires some filing or ....
14 MR. BROILLES: What it is is when you file for
15 a project, you have a window that goes back 90 days
16 prior to the final date under the EPA regulations, the
17 Emission Offset Trading Policy, as it is interpreted by
18 Region 9 in the South Coast district, within which time
19 equipment that is shut down, can be purchased and used
20 as offsets. If it goes back 91 days, 120 days, it is
21 not eligible for use in that project. So, you do not
22 file, you're for the South Coast district procedures, so
23 there won't be a filing with them. What is the
24 application filing date, then, becomes the application
25 filing date for this Commission, and the statute 25522

1 says that it's a date that you accept the application,
2 that's the filing date. So, March 20th, go back 90
3 days, and that's the period of time within which all
4 equipment that was shut down in the South Coast Air
5 Basin is eligible for consideration as emission offsets
6 for this project.
7 COMMISSIONER GANDARA: Okay, I thought I heard
8 you say something like backwards and forwards ....
9 MR. BROILLES: Okay, what happens is suppose
10 you take the action today and you reconsider and you
11 decide that, no, we are not going to accept for filing.
12 During this period of time, I am negotiating. I am not
13 concluding any agreements during this period of time
14 because this issue is pending. If you go back and you
15 say we are going to have more data submission, and this
16 is not going to be deemed complete, there is no point in
17 me even going out and approaching people about
18 purchasing emission offsets. Once again, if you
19 establish a date, then I've got wind of within I can
20 start to negotiate.
21 COMMISSIONER GANDARA: Okay, let me understand
22 this. The EPA rules say that you have to go hunt among
23 those sources that have been shutdown or available 90
24 days prior to the filing, okay. It is not any day after
25 the filing, which is that window. Is that it?

1 you have signed a contract for the net purpose of offset
2 credit that was dated March 1st within the 90-day period
3 set forth. And now the Commission comes forth here, it
4 does override its previous decision. What would have
5 happened to that contract?
6 MR. BROILLES: All those contracts that I have
7 seen tentative language to indicate that the
8 responsibility for validating the emission offset credit
9 rests with the source that's shutting down. What
10 happens after that, in terms of our permit and our
11 permit procedure, the risk of loss is on us. So, we
12 would be required to complete that transaction to
13 acquire emission offsets that we couldn't use.
14 COMMISSIONER GANDARA: I am asking a simpler
15 question.
16 MR. BROILLES: Okay.
17 COMMISSIONER GANDARA: If you had indeed
18 concluded a particular transaction and right now, you
19 had half the offsets you needed, you were well on your
20 way. Then, the Commission decided that the previous
21 decision was not correct and decided the other way
22 today. What happens to that 50% credit? They are not
23 overruled, they are not overturned, or what?
24 MR. BROILLES: We still have them, but they
25 may not be usable for this project unless they fall

1 within that 90-day window. The question would be does
2 the Commission, in a sufficient period of time, accept
3 the application. If not, then we cannot use these
4 emission offsets on this project. We may have spent
5 project money, and these are bond funds, and it will
6 never serve a benefit to this project.
7 COMMISSIONER GANDARA: So, let me just clarify
8 again. If the Commission had a made a decision March 20
9 and then let's say, for some reason or another, you have
10 signed up 50 percent of the credit, and on the 91st day
11 after March 20th, we were acting in this petition, then
12 we decided to change our minds, then all those offset
13 credits that you had obtained prior to those 90 days,
14 would not be usable for this project?
15 MR. BROILLES: If they are the result of
16 shutting down equipment, you are correct, they wouldn't
17 be usable in this project.
18 COMMISSIONER GANDARA: But then, you hold them
19 so what, you can sell them or what?
20 MR. BROILLES: We can sell them if we can find
21 some other project that those shutdowns occur within
22 their window.
23 COMMISSIONER GANDARA: I see, okay. But, you
24 still have possessory interest in them?
25 MR. BROILLES: Yes. But, they may be of

1 little or no value. The longer period of time you go,
2 the older they become, the less relevant they are to any
3 current projects.
4 COMMISSIONER GANDARA: So, to the extent that
5 there has been some uncertainty or it has been your own
6 judgment that you did not want to take the risk. That,
7 in fact, this 90-day window would expire, it's not so
8 much relevant to the possessory interest, but the risk
9 is that there is declining value, in your mind, a
10 declining market for these credits the older they get?
11 MR. BROILLES: Not that. It's the only monies
12 that I have to spend are bond funds which are to go to
13 serve this project. If I buy emission offset credits
14 which don't serve this project, I haven't spent the
15 project money according to the requirements.
16 COMMISSIONER GANDARA: I see. Let me see if I
17 misunderstood something. Nonetheless, at least my
18 understanding of the South Coast Air Quality Management
19 District areas is that these things are like gold. They
20 are problems with a considerable market for them.
21 MR. BROILLES: The market exists if you have
22 some other projects you can sell them to. But, to the
23 extent that you have others coming on, your price is
24 constantly going down, whether you get far enough back
25 in time and there is nobody out there who wants to buy

1 them.

2 COMMISSIONER GANDARA: I understand. Let me

3 then ask you another question, since you mentioned that

4 you previously worked with ARB?

5 MR. BROILLES: No, South Coast District.

6 COMMISSIONER GANDARA: Perhaps this is a

7 question I'd like Counsel to address, as well, because

8 one of your contentions in your brief has to do with the

9 issue of when the petitioner became a party to reference

10 is more with respect to an intervenor. We had some

11 exchange on that already, but I want to .... but the

12 area that I am interested in is the only one I have only

13 recently become sensitive to, and that is, when I first

14 came to this Commission, our cases usually involved two

15 documents -- one was Environmental Impact Statement and

16 the other was a Commission decision. About a year after

17 I came to the Commission, maybe two years, we dispensed

18 with environmental impact statement; and we were granted

19 --I don't know by whom -- but something called

20 Functional Equivalency Status.

21 Now, as I understand that, we no longer had to

22 prepare an Environmental Impact Statement because our

23 process and procedures were considered equivalent in

24 providing interested parties and the public with the

25 same rights (I imagine) they would have under CEQA.

1 Now, where I am confused and given your expertise, I'd
2 appreciate your response, as well as staff or anybody
3 else who could clarify it for me, is since we are now
4 functionally equivalent, under the old CEQA rules, did I
5 have to become an intervenor in order to have an
6 applicant particular proposal provide me with
7 information or provide data for my understanding of the
8 process?
9 MR. BROILLES: Okay, let me take a crack at it
10 and you can correct me. I think you are mixing apples
11 and oranges. Under the CEQA process, you produce a
12 document. It's a Draft EIR. The public comments to
13 that and then you respond to the draft document. Then,
14 timelines are attached as to when certain events are
15 supposed to occur. When you become functionally
16 equivalent, it is my understanding, you dispense with
17 the timeline, but everything else in substance in CEQA
18 remains the same, including the right of public comment.
19 CEQA is designed to produce an Environmental
20 Impact Report which, in and of itself, is an
21 informational document upon which decisions are made.
22 Whoever is making the decision reads it, certifies that
23 they have read it, and it's available for the public.
24 It's available for the public in the draft form to make
25 comments upon and it's available after it's finalized

1 for the public to read and gain insight into it. This
2 is different from according somebody the status of an
3 intervenor. An intervenor has more rights, other than
4 just to offer public comment along the way to a Draft
5 EIR. This is to cross-examine witnesses to obtain data
6 and things like that. These are not present under CEQA,
7 otherwise.
8 COMMISSIONER GANDARA: What level of
9 participation--let me just ask the final question here
10 because I do appreciate your comments here. What level
11 of participation were accorded to the parties or persons
12 under CEQA review? The reason I'm asking is that I'm
13 looking for some general rule of application or some
14 clarification of the problems we've had more so in
15 recent cases which has been that some parties have been
16 more sophisticated than others, in the past, generally
17 our process didn't get the requests for any
18 participation until the application was accepted. In
19 some cases, we haven't had participation and timely
20 decisions -- in come cases we have requested
21 participation even before that in the pre-filing
22 workshops. I guess I'm just trying to use the
23 circumstances that we have before us and perhaps clarify
24 what really occurred with respect to the transition from
25 CEQA to Functional Equivalency in our process and

1 whether as a result of that, an interested party; I
2 won't call them intervenors -- a party had either more
3 say rights incurred upon him, and in some cases were
4 more restrictive. I don't even know, at this point in
5 time if it's fully relevant. But, it does seem to me
6 that CEQA as was described by Mr. Broilles, seems to be
7 more concerned about the comments upon the Environmental
8 Impact Report. Whereas, our process here seems to be
9 more focused on participation prior to the issuance of
10 the final decision. Can somebody enlighten me on that?
11 MR. CHANDLEY: I wrote all the regulations
12 which made the Commission's siting regulations, not the
13 functional equivalent, but a certified regulatory
14 program. That program is approved by statute by the
15 Resources Agency. The regulations were written in 1979
16 pursuant to SB 2003 which is, I recall maybe a Homedahl
17 bill. I don't recall which Senator carried the bill.
18 There is no relationship between the level of
19 participation, either in the environmental review
20 process or in any other aspect of the proceeding, which
21 was affected one way or another by the change from the
22 EIR process to the Certified Regulatory Program. No
23 change at all.
24 COMMISSIONER GANDARA: So, does that tell me,
25 then, that with respect to this issue of whether CEQA

1 affords any greater opportunity to develop earlier or
2 later in the process?
3 MR. CHANDLEY: No, I don't think there's any
4 change in that.
5 MR. MATTHEWS: I can explain what happened and
6 why I believe we've seen more participation in Data
7 Adequacy, is that the Felando Bill changed our
8 procedures. It changed the timelines, such that we used
9 to determine if an Executive Director determined that it
10 was acceptable, he could do so within 20 days. Whereas,
11 now the full Commission here is within 45 days after a
12 determination or recommendation by the Executive
13 Director, which you see around Page 30. I think that
14 gives people that are interested in the proceeding a
15 little more time to get involved than the timeline
16 before.
17 VICE CHAIR CROWLEY: Do you have other
18 questions of Mr. Broilles?
19 COMMISSIONER GANDARA: No.
20 VICE CHAIR CROWLEY: Are there other questions
21 for Mr. Broilles? Then, that being the case, if you
22 have completed your presentation, I'll recess this
23 meeting until 1:30 p.m., and at that time we will hear
24 from staff on this matter.
25 /

(Whereupon the morning session of the business meeting of the California Energy Resources Conservation and Development Commission was adjourned for a luncheon recess at 12:10 p.m.)

--oOo--

1 **AFTERNOON SESSION**

2 --oOo--

3 CHAIRMAN IMBRECHT: Okay, let's call the
4 meeting back to order. Mr. Matthews.
5 COMMISSIONER GANDARA: Commissioner, if I may.
6 I was pondering some of the responses over the lunch
7 period and I would like to recall the applicant.
8 CHAIRMAN IMBRECHT: Do you want a recall?
9 Sure.
10 COMMISSIONER GANDARA: Yes, I would like to
11 recall the Applicant.
12 CHAIRMAN IMBRECHT: Certainly.
13 VICE CHAIR CROWLEY: Mr. Broilles?
14 CHAIRMAN IMBRECHT: Mr. Broilles, would you
15 please come forward?
16 COMMISSIONER GANDARA: Mr. Broilles, I was
17 most interested in this issue that we were discussing
18 shortly before lunch, which was the issue of the filing
19 of an application for your purposes, that is, the 90 day
20 period focus where you state there's a window; or you
21 begin to negotiate.... Again, with respect to the
22 application filing, I believe that you stated or that
23 it's stated in exchange with Commissioner Commons, what
24 that meant was the Commission acceptance of the
25 application as opposed to your filing with the

1 that EPA has put out in regulatory form. Then, it
2 measures the applications and permits that are issued by
3 the local district to see if they are consistent with
4 the federal requirements. If they are inconsistent,
5 then EPA can take reinforcement action, because it is
6 not consistent with the approved State Implementation
7 Plan. So, it's kind of a reiterative process. The
8 South Coast saying what does the EPA want and Region 9
9 says that we want it this way before we will approve
10 your permit program. If not, the applicant is required
11 to go to EPA to get the permit.
12 COMMISSIONER GANDARA: So, the EPA has total
13 view that they determine, either through administrative
14 notice or some other means that for applications over 50
15 megawatts, it is the acceptance by the Energy Commission
16 that's considered the filing date?
17 MR. BROILLES: No. I don't have any letter or
18 any interpretation with respect to the Energy
19 Commission. I have it with respect to other projects,
20 where the EPA said that if it pre-dates by more than 90
21 days, we are not going to accept that as being adequate.
22 COMMISSIONER GANDARA: I see. Well, then, I
23 guess are you telling me, then, that it is your own
24 decision to define the application filing date as the
25 date of acceptance?

1 Commission. Is the EPA so clear with respect to
2 California requirement, or is there such a well-known
3 normal equivalence to other states that the filing of an
4 application means acceptance by whatever regulatory body
5 is considering it?
6 MR. BROILLES: My recollection of the
7 guidelines is EPA will take whatever the agency says is
8 the filing date. In South Coast, originally it started
9 out that filing the application, putting a piece of
10 paper, paying the fee did it in terms of regulations you
11 were under and things like that. Subsequently, they
12 found that they were getting a lot of applications that
13 had the name on it, were paying the fee, name of a
14 project, and little more than that. So, they said, okay
15 we are going to review these applications, see if they
16 filled in all the blanks. It then became determination
17 of adequacy. Now you've got a specific regulation which
18 ....
19 COMMISSIONER GANDARA: Excuse me, so it's the
20 EPA that has essentially told; or it's essentially the
21 South Coast Air Quality Management District that has
22 told EPA....
23 MR. BROILLES: Oh, no. It is essentially EPA
24 that has, because it's required to be in the State
25 Implementation Plan. So it is a general requirement

1 MR. BROILLES: No, I am taking the specific
2 language that as added in 1982. The last sentence of
3 Section 25522, "The application shall be deemed filed on
4 the date when the Commission receives the additional
5 data, which the Commission determines is sufficient to
6 make the application complete". So, if for your own
7 rules and purposes, an application is deemed filed upon
8 completed, you have an incomplete or no application
9 prior to that.
10 COMMISSIONER GANDARA: I understand that. I
11 am trying to determine, Mr. Broilles, who has control of
12 defining the application filing date for the purposes of
13 EPA for defining this window. Now you tell me there is
14 such definition that you would say our statute would
15 lead you tell EPA this is what you consider to be our
16 application filing date, that's what I gather from what
17 you told me.
18 MR. BROILLES: Yes.
19 COMMISSIONER GANDARA: I see, so it is your
20 own determination that this is the applicant's filing.
21 Your recommending that ....
22 MR. BROILLES: You are the permitting
23 authority.
24 COMMISSIONER GANDARA: Actually, you are
25 suggesting that EPA -- what would EPA say if the

1 application filing date isn't there?
2 MR. BROILLES: Okay, if you are dealing with a
3 permit that is dealing with the South Coast District,
4 it's when the permit application is deemed complete for
5 obtaining a permit to construct from South Coast
6 District.
7 COMMISSIONER GANDARA: With the authorities and
8 compliance?
9 MR. MATTHEWS: Yes. That would be the
10 application filing date, and that would then be when you
11 start measuring ....
12 COMMISSIONER GANDARA: Mr. Matthews is shaking
13 his head.
14 MR. MATTHEWS: No, I just think that you had a
15 miscommunication. If the Energy Commission didn't have
16 jurisdiction over this case, the Air District would;
17 that the application would start when the District
18 determined that the air application was complete, and
19 there wouldn't be a determination of compliance. It
20 would an authority to construct that they ultimately
21 give and the start date when they went to their Data
22 Adequacy.
23 COMMISSIONER GANDARA: Okay, I guess what I
24 want to ascertain is then since we have jurisdiction
25 over this plan, then EPA can have no other

1 interpretation than to consider the application filing
2 date that is being referred to as being that which is
3 the date the Commission accepts the application?
4 MR. MATTHEWS: I'm not a lawyer. My
5 interpretation would be that the EPA would have to look
6 at our rules and make their own determinations, and I
7 don't think they have done so. You have to wait until
8 EPA actually made a ruling, which would probably occur
9 after ....
10 COMMISSIONER GANDARA: Le me just state that
11 what I heard earlier, with some degree of certainty that
12 the application filing date was ..... that this
13 Commission decision was real critical because this
14 Commission decision applied to the application filing
15 date.
16 MR. BROILLES: I think that is correct under
17 the statute.
18 COMMISSIONER GANDARA: I know what the statute
19 says. I guess what I'm getting at is whether EPA,
20 therefore, takes our statute and says, "For all power
21 plant applications over 50 megawatts, we will consider
22 the application filing date as that date which the
23 Commission accepts the AFC or the NOI. I don't know. I
24 guess the AFC, at this point....
25 MR. MATTHEWS: It would be the AFC, but I

1 don't believe EPA has made such a rule.

2 COMMISSIONER GANDARA: Okay, then it's an open
3 question, then. I guess that's the thing that I was
4 trying to get at because what's been set forty with some
5 degree of certainty, is that our decision period is very
6 critical to that is because it defines it. What I seem
7 to be hearing, while it's a good point to define. I
8 understand it may not be a good point in defining the
9 application filing date; that in fact, there is nothing
10 that EPA has said, at this point in time, that which you
11 will be held to mark 90 days, herein which you can
12 define as offsets. Therefore, the degree of risk or
13 the degree at stake is not as great as was originally
14 suggested.

15 MR. BROILLES: Well, if they are consistent
16 with their past interpretations, then they would select
17 this as the date. If they wish to be inconsistent, I
18 suppose that's EPA's prerogative, but it doesn't usually
19 happen.

20 COMMISSIONER GANDARA: Okay, because in past
21 interpretations, you mean in past applications by this
22 Commission?

23 MR. BROILLES: No, in past applications where
24 they have originated in the South Coast District and
25 other districts throughout the state.

1 COMMISSIONER GANDARA: In past cases, before
2 this Commission, since we have had other cases that have
3 dealt with these air quality issues and, in the past
4 Energy Commission cases, what has EPA used as an
5 application filing date?
6 MR. MATTHEWS: I don't believe there is any
7 precedence on that. There has not been a case like
8 that.
9 COMMISSIONER GANDARA: There is no case, okay.
10 MR. MATTHEWS: It only arises when you are
11 looking for third party offsets. If the Applicant has
12 sufficient offsets on-site, they are always there, they
13 will always be there; the date is not that important.
14 COMMISSIONER GANDARA: Okay, I understand
15 that. One additional question is that it does seem to
16 me that the pool of offset credits that you can look for
17 is defined by this 90 day window--not a 90 day window,
18 but starting 90 days prior to the time of this
19 application filing date. How did you, as an Applicant,
20 come to know which offsets are on the market? Does the
21 air quality district maintain a file or is there
22 something equivalent to a project index? How could I
23 define what offsets I can go purchase, who identifies
24 them for me?
25 MR. BROILLES: They do maintain a registration

1 system, but that isn't the way you find out. Those are
2 already established emission reduction credits. The way
3 you find out is there are some brokers who are out there
4 who will broker these -- Airex for one, and you contact
5 them, and the procedures they use to contact people, I
6 don't know.
7 COMMISSIONER GANDARA: I see.
8 MR. WHITE: Mr. Gandara, my name is Mark White
9 with Pacific Waste Management. What we had done is we
10 got the list of all the permits that the district has
11 for the emissions we needed offsets for, and we called
12 everybody.
13 COMMISSIONER GANDARA: I see. Now, the reason
14 I have persisted is that I want to understand how this
15 works because I had this thought over lunch, and it ran
16 along with (INAUDIBLE) not that it's something that is
17 this probable, or in fact, (INAUDIBLE), but whether it's
18 possible. That is, if I have an inventory of the market
19 of offset credits that is the sources that are being
20 shut down or equivalent to being shut down that I can
21 buy, and therefore, to some extent, if I wish to be as
22 astute about it as possible, in the busines sense, that
23 by the time by filing of an application (INAUDIBLE)
24 would come at a time when there would be a maximum
25 number of offsets available to me or at least some that

1 are more desirable to me than others for some other
2 reason. Therefore, it would seem to me that throughout
3 the year, I don't know, the supply would be consistent.
4 Or, maybe sometime throughout the year, the supply could
5 be greater in some areas, or less. In any case, the
6 possibility may exist that I may time the filing of my
7 application such that it may correspond more to the
8 market availability of the offset credits. Therefore,
9 to some degree, to meet that availability, I might come
10 back or go to the present time or whatever, perhaps some
11 Data Adequacy meeting. I'm not suggesting that that's
12 the case, but in any case, because we are so time
13 restricted in this 12 month time period, it does raise
14 the possibility that, in fact, you mentioned that
15 earlier a possible concern over a manipulation of the
16 system, whether, in fact, there is also that possibility
17 that an applicant not (INAUDIBLE) could possibly delay
18 filing his application, not so much with respect to Data
19 Adequacy, but more with respect to the availability of
20 market to offset credits. Is that possible?
21 MR. BROILLES: It's impossible. You don't
22 know when companies are going to go down until it is
23 just prior to that. This is one of the last things that
24 they are concerned with, is the sale of emission offset
25 credits. So, I mean, what you are talking about is

1 publicly shutting down and putting people out of work,
2 in most circumstances.
3 COMMISSIONER GANDARA: No, I'm talking about
4 ....
5 MR. BROILLES: No, this how you generate ....
6 COMOMISSIONER GANDARA: If my window is 90
7 days before ....
8 MR. BROILLES: Okay, this is how you generate
9 emission offset credits, if somebody goes out of
10 business. How do you know, if you are out and you want
11 to start a project, who's going out of business? Not
12 only that, the farther away from your site and facility
13 that the shutdown equipment is, the greater has to be
14 your ratio of purchasing offsets, up to a maximum of
15 1.5:1, so what you (INAUDIBLE) is a situatin of a
16 perfect world where we know what is going down, when it
17 is going down, and the location of it. The only way you
18 do that is if you have some kind of a controlling
19 interest in that entity. In which case, you didn't have
20 to purchase a third party offset, anyhow.
21 COMMISSIONER GANDARA: Let's say I'm not
22 pressing and we don't have a perfect world. All I can
23 do is just rely on what has happened and while I may not
24 be able to tell what the future looks like, I can, in
25 fact, tell what the past 90 days looked like? Right.

1 MR. BROILLES: Yes.
2 COMMISSIONER GANDARA: So, in fact, I can look
3 at the previous 90 days to find out whether those
4 preiovus 90 days are more advantageous than ....
5 MR. BROILLES: There is no source out there
6 that will tell you that, because there is no indexing of
7 that. What finally happens is a source goes down and it
8 may take up to a year or a year and one half--may go
9 faster to establish the amount of reductions that are
10 occurring of a piece of equipment going out of service.
11 It takes, usually, field usage or actual source tests to
12 establish what the two year prior history of that piece
13 of equipment that is being taken out, what it looked
14 like. So, what you buy is, you think you are getting a
15 certain amount of tonnage. You don't know until a
16 district finally says, "We'll give credit of x number".
17 Once you contact somebody and they say, "We think we've
18 got 550 tons of SOX", when the district looks at that,
19 it may be only 250. So, what you establish is the per
20 ton rate that you are going to pay and everything waits
21 until the district decides what credit is going to be
22 there. In some instances, it's gonna for a year. So,
23 you don't really have that fixed and that certainty. I
24 don't know of anyplace you can go and get a list of
25 companies that are going out of business or companies

1 that are taking equipment out of business, and even
2 then ....
3 COMMISSIONER GANDARA: You're focusing on the
4 wrong time period. I'm not focusing on the future, I'm
5 focusing on the previous time date.
6 MR. BROILLES: Okay, you're competing in that
7 for other people in the same circumstance who are
8 necessarily before the Energy Comission, but who for
9 one reason or another have a need for those emmission
10 offset credits within the South Coast Air Basin. The
11 need greatly exceed the supply. So you're bidding
12 against them.
13 COMMISSIONER GANDARA: From the time the pre-
14 filing workshops and so forth were held on this
15 particular application and from the time it was first
16 before the Commission and the time it came back to the
17 Commission, I think it was an extended period of time
18 for the hearing over and over again. I don't know how
19 long it was. Six months, three months.
20 MR. MATTHEWS: Well, the original filing was
21 October 31st, then we brought that for the initial 45
22 day review around the 7th of December, and then came
23 back for the ultimate decision on the 20th of March.
24 COMMISSIONER GANDARA: And during that time,
25 what wass the market for offset credit for...?.

1 MR. BROILLES: It really fluctuates based
2 upon what the business cycle is, you find during
3 economic downturns that you can buy a lot of emission
4 off-sets during periods of economic expansion, there's
5 not too many to be had. It's a function of going out
6 of business.
7 COMMISSIONER GANDARA: You would have to take
8 the period of downturn or what. You said that you had
9 been negotiating so, I'm curious.
10 MR. BROILLES: You have certain ones that
11 come under the market. Sometimes, it just depends on
12 what you're looking for -- where the location is.
13 Right now, there're several big ones that are going to
14 be going out of business, at least they plan to in the
15 next couple of months. So there's some activity and
16 wer are trying to purchase them.
17 COMMISSIONER GANDARA: Well in any case I
18 understand the market better. So thank you very much.
19 CHAIRMAN IMBRECHT: Okay, any further
20 questions, Mr. Broilles? Alright, thank you. Now we
21 will turn to Mr. Matthews for staff presentation.
22 MR. MATTHEWS: I would like to ask Mr.
23 Chandley if he could make his presentation first, the
24 legal issue seems much more fundamental than the
25 technical issues, then I will explain in my

1 presentation.

2 CHAIRMAN IMBRECHT: Fine, Mr. Chandley, our

3 Deputy General Counsel.

4 COMMISSIONER GANDARA: Mr. Chairman, I have

5 an objection.

6 CHAIRMAN IMBRECHT: State your point.

7 COMMISSIONER GANDARA: I have an objection to

8 the admission of the staff, actually the General

9 Counsel's tesimony on this matter. The basis for my

10 objection is the following: We have a complicated

11 situation and have always had it with respect to the

12 relationship to the General Counsel's office and the

13 Hearing Adviser's and the Counsel to the staff. In all

14 cases, not just this particular case, we usually have a

15 staff attorney assigned to represent the staff who is

16 supposed to be an independent party. We have a hearing

17 adviser assigned to assist the Committee who receives

18 input, to some extent from the staff and other parties.

19 There's been dicussions at times as to

20 whether the organization, General Counsel's office did

21 not place perhaps the whole process in a possible.... I

22 don't know if the conflict is the proper word... or an

23 improper context, because we have the General Counsel

24 supervising both the Hearing Adviser, which is supposed

25 to provide the independent advice to the Committee; and

1 have the General Counsel supervising the attorney, who
2 is in fact representing the Staff and the same General
3 Counsel is responsible for adopting for both an
4 opportunity.
5 So the question has arisen with respect to
6 whether there is an appropriate installation or where
7 the operating activity will have a cumulative in effect
8 on the conduct of one or the other advisory counsels or
9 Hearing Adviser for the legal counsel. In this case,
10 the case was accepted by the Commission. Upon
11 acceptance by the Commission, counsel was appointed to
12 the staff and Hearing Adviser to the Committee and that
13 it's been my understanding that the appropriate
14 installation that this situation of having the same
15 supervisory relationship existed that the installation
16 was provided by having intervening delegation or
17 intervening supervision under direct control and
18 authority of the General Counsel.
19 So therefore, when this case came up, I was
20 surprised to see that what we had before was a brief by
21 General Counsel and not by counsel to the staff. It is
22 my understanding that Ms. Dickey is the counsel to the
23 staff and the brief before us is by the General
24 Counsel's office, Mr. Chamberlain, who maintains a
25 supervisory relationship for both Hearing Officer and

1 the counsel. It's my understanding that at the time of
2 the Committee hearing that Mr. Wheatland was assisting
3 Ms. Dickey and therefore representing staff and I quess
4 it is my understanding to date they are repesenting
5 staff. In any case, I would expect that the response
6 to my objection would be that the General Counsel is
7 advising the Commission not; and that therefore since
8 it's the Commission's decision that it's an issue that
9 it's the General Counsel advise to the Commission. I
10 feel that in fact what we have before us is the
11 situation where we should have had the kind of legal
12 group that we got from General Counsel to have been the
13 responsibility of the staff counsel, not the General
14 Counsel's office. In any case, it does seem to me that
15 that is the first basis for my objection. The second
16 basis for my objection, in any case accepting that my
17 objection purposely would not be sustained by the
18 Commission, that in any case....
19 CHAIRMAN IMBRECHT: Today's a new day.
20 COMMISSIONER GANDARA: That in any case they
21 all seem like the last one.
22 (LAUGHTER)
23 COMMISSIONER GANDARA: In any case should
24 that not be accepted and we do consider it in fact
25 what, for purposes of argument, that this is advice

1 premised the Commission on a previous Commission's
2 decision, and that with staff, you can always see the
3 confusion here, because Mr. Matthews turns to General
4 Counsel to explain staff position.
5 In addition to that and my second objection
6 to the tone and tenor of the General Counsel's brief
7 where we preceived it is an adversial brief. It is an
8 adverserial brief. Again the the Petitioner's brief
9 and while I can make no judgement as to its
10 effectivness or anything like that, it seems to me that
11 if we are being given advice to the Commission, then it
12 should be advice that is well balanced. I don't
13 believe our counsel should be so advisarial with
14 respect to the Commission at the this point and time.
15 As you know, particularly of late, our counsel has
16 shown the great versatility and flexibility with
17 respect to things that we've gotten. So this seems to
18 me to be an unusually rigid instruction, and in any
19 case I don't think it's balanced view of what I think
20 the Commission deserves with respect to the decision
21 that we made last time.
22 So for those two reasons, I do object to
23 admission of the General Counsel's brief with respect
24 to this matter. If, in fact, it is the staff's
25 position that Mr. Matthews is asking for, perhaps that

1 should be presented by staff counsel. But, again I
2 think it is not just the minor point here; I think
3 because it is a point to be considered speaking for
4 where we are, and should have been thought of before
5 before we got to the point where're we are now.
6 MR. SMITH: If I might comment just briefly,
7 it certainly wasn't the intent that we would be asking
8 Mr. Chandley to represent the staff position, just
9 simply the sequencing we would, had planned the General
10 Counsel would have an opportunity to comment before the
11 staff comment occurred. So I know...
12 COMMISSIONER GANDARA: I appreciate your
13 trying to change that Mr. Smith, but for Mr. Matthews,
14 the fact is when he is called upon to present the fact
15 in turn towards the legal issue on behalf of the staff
16 to be presented by counsel.
17 MR. MATTHEWS: What I did was yield to the
18 General Counsel to ask that he go first rather than the
19 technical issues which I considered to be a secondary
20 concern here. It seems to me that most of the argument
21 that we got from Miller were legal arguments rather
22 than technical arguments.
23 COMMISSIONER GANDARA: Well, my objection
24 still stands.
25 CHAIRMAN IMBRECHT: My recollection of Mr.

1 Matthews' characterization is more in tune with his
2 own. We always have playback capability in our
3 transcript, if necessary. But I'm trying to understand
4 the position you say it's not appropriate for General
5 Counsel to in a sense express an opinion relative to
6 the Petition. My experience with the Commission is
7 that typically...
8 COMMISSIONER GANDARA: I didn't say that Mr.
9 Chairman.
10 CHAIRMAN IMBRECHT: I thought you just said
11 it was inappropriate to take an adversarial approach,
12 which to me...
13 COMMISSIONER GANDARA: That is different from
14 expressing an opinion to a Commission.
15 CHAIRMAN IMBRECHT: I quess I'm trying to
16 understand the distinction, my experience and
17 recollection is when we have Petitions and particularly
18 when they raise legal issues, we commonly expect an
19 opinion on the merits of those legal issues from our
20 General Counsel's office. It is hard for me to see the
21 point you are making, what the distinction is.
22 COMMISSIONER GANDARA: The point that I'm
23 making is that General Counsel was placed in a
24 potential improper position here. You may not see the
25 significance with...

1 CHAIRMAN IMBRECHT: Then explain it. Walk me
2 through it again. It's improper for what reasons
3 specifically?
4 COMMISSIONER GANDARA: For the reasons that
5 the counsel that we have here is supervising both the
6 Hearing Adviser and the counsel to the staff and that
7 by the expression of the strong language and the strong
8 approach intended here in the adversarial nature agree
9 that the counsel has expressed here that I believe that
10 we can be very sensitive to the fact that the chilling
11 effect that that can have on the comment of this case
12 by the Public Hearing Adviser and the staff members.
13 If this frankly has been raised before with respect
14 the separation of these offices. It has not come
15 before in this particular aspect before but I do think
16 this is not an idle concern.
17 CHAIRMAN IMBRECHT: Let me try a couple
18 of..... First off, it seems to me that the issue which
19 is before us is not an issue which is before the
20 Hearing Officer, nor will it ever be before the Hearing
21 Officer. The matter of reconsideration of the
22 acceptance of an application by the full Commission is
23 a matter that belongs to the full Commission, it seems
24 to me.
25 COMMISSIONER GANDARA: I'm not saying it is

1 likely to come before the Hearing Officer, but what I'm
2 saying is that the General Counsel's brief is
3 expressing an attitude and a very strong point of view
4 that frankly is not even the kind of traditional advice
5 we've gotten on one hand or the other hand. It is
6 totally one-sided and that because of that I do believe
7 that it can have a chilling effect on the comments of
8 the Hearing Adviser and, even if it doesn't, I believe
9 that the characterization could be made that it might
10 and that could pose a problem. We don't have to
11 belabor it. But I do think there is a problem here
12 that needs to be attended to.
13 CHAIRMAN IMBRECHT: As I said before, I try
14 very hard to understand the merits of the argument you
15 are trying to raise and I guess I don't see the point
16 that you're making. It's hard for me to see where the
17 conflict or even or a conflict might exist. Mr. Perez
18 if you want to comment.
19 PUBLIC ADVISER PEREZ: Yes, if I could make
20 an observation. It seems to me that staff is entitled
21 to speak for itself and if what they are saying today
22 by the absence of their staff counsel, that they are
23 not using their attorney in their presentation then
24 that constitutes whether or not staff is going to be
25 represented by its attorney in this discussion. To

1 maintain the legal position of the General Counsel vis-
2 a-vis the full Commission, Mr. Chandley is here today
3 to present that position. But so long as the
4 destinction is recognized by the parties, I think that
5 the potential prohibition suggested in our Section 1216
6 of Title 20 is avoided, if that helps.
7 MR. GARDNER: Staff will have comments
8 following General Counsel's comments....
9 CHAIRMAN IMBRECHT: I guess the other point I
10 would just make is it seems to me that the essence of
11 the Petitioner's arguments is a challenge to the
12 acceptance of the Commission or by the Commission of
13 the advice rendered to the Commission by the General
14 Counsel's office at the March 20th, I believe it was,
15 hearing. Really, this entire matter or time on it
16 seems to hinge fundamentally on that same issue that we
17 discussed at some length at that time and also voted
18 upon which was whether or not a substantial compliance
19 test was legally sound and whether that was an
20 appropriate test to be applied in terms of deciding
21 whether or not the application was "complete within the
22 meeting" within the meeting of the statute.
23 It's not even all that readily apparent to me
24 where staff comes into this in terms of the judgement,
25 because it seems to me that the only place where a

1 staff opinion, the staff that's in essence prosecuting
2 the case is approprite if the Commission did vote to
3 grant reconsideration, that is not depositive, I might
4 add from a procedural standpoint, of the question of
5 acceptance of the application. It is conceivable that
6 we could vote to grant reconsideration which would, in
7 turn, entail an opportunity for the parties to further
8 argue the specific merits of whether or not in fact the
9 application was complete or whether in fact it was
10 complete to the point of substantial compliance,
11 assuming that the Commission did not change its'
12 acceptance to the General Counsel's interpretation and
13 substantial compliance was sufficient to meet the
14 definition of completeness.
15 Frankly, I'm not sure why staff would be
16 rendering a judgment at this juncture at all unless we
17 ultimately grant the reconsideration, in which case I
18 would expect staff to once again press their judgment
19 that they expressed to us on March 20th, as evidenced
20 in the Executive Director's recommendation that the
21 application was substantially complete and that there
22 was substantial compliance with the requirements, and
23 therefore that constituted completeness.
24 That's my feeling about where we stand from
25 the procedural standpoint. I guess I would generally

1 agree with the interpretation Mr. Perez, that it is
2 appropriate for Mr. Chandley to argue on that point.
3 So what's being challenged by the Petitioner is the
4 advice given to the Commission on March 20th as to the
5 substantial compliance test which the Commission
6 accepted. So it's hard for me to see why a adversarial
7 approach, if you will, to defend their earlier position
8 is inappropriate.
9 MR. PEREZ: Mr. Chairman. One additional
10 comment, and that is perhaps if Mr. Chandley could be
11 provided an opportunity to clarify the intent of the
12 document entitled "Response of the General Counsel's
13 Office", because I believe that I'm beginning to
14 understand Commissioner Gandara's concern particularly
15 in light of the sentence commencing "....the General
16 Counsel's office statement", in the conclusion at Page
17 18 which states "We respectfully ask the Commission to
18 deny Miller's Petition for Reconsideration". That does
19 sound more like a party speaking to the full Commission
20 than the General Counsel giving the full Commission his
21 objective legal opinion. So, if Mr. Chandley can be
22 provided an opportunity to clarify it.
23 CHAIRMAN IMBRECHT: Why don't we hear from
24 Mr. Chandley?
25 COMMISSIONER GANDARA: One last comment Mr.

1 Chairman. Again, it does seem to me that most of what
2 you said addressed my first basis to my objection, the
3 second basis to my objection, of course presuming the
4 first basis would not be persuasive. The second basis
5 of my objection, of course, is as all of us are can
6 probably determine would be on the approach that the
7 information was given. I have no quarrel with the fact
8 that this brief would be the proper kind of brief that
9 would be before a court of law. In which in case, the
10 Committee's decision is being challenged upon that
11 basis.
12 The problem that I have is before the
13 Commission, which we are supposed to be given as in
14 advising... All I'm saying is that the Commission has
15 to rely soley on this brief by General Counsel to
16 educate me on the issues of which I'm to make an
17 important judgment, that I fact would not be able to do
18 so, because it's a one-sided brief. Now, if in fact
19 that presumption is not shared by all Commissioners,
20 then that's fine. We don't need to hang this up any
21 further. All I'm saying is that my expectation of
22 advice by the General Counsel, is that it gives me the
23 consideration of both arguments and then to some degree
24 a recommendation on their part as to in fact why one
25 argument would be better than the other. That is....

1 CHAIRMAN IMBRECHT: Well, let's hear from the
2 rest of the Commission. Does anyone else share Mr.
3 Gandara's concern? Alright, Commissioner Commons.
4 COMMISSIONER COMMONS: I think there are two
5 separate issues -- one is as to whether or not we got a
6 balanced presentation by legal counsel and I think
7 that's a matter ...it is not a matter that goes to
8 whether or ot we should hear the testimony. I think
9 Ernesto expressed by viewpoint is that we should not be
10 asking for the staff presentation, and having legal
11 counsel give us the advice. We should ask for to staff
12 presentation and then it's appropriate for you, Mr.
13 Chairman, to ask legal counsel to present their
14 presentation on behalf of the Commission not as staff.
15 I think the separation as to the legal.....
16 CHAIRMAN IMBRECHT: Alright, let me make that
17 fundamentally clear. At this point I'm not calling on
18 staff; I'm turning to General Counsel's office. Not
19 hearing any further objections to hearing that opinion,
20 I would like to ask Mr. Chandley to come forward.
21 MR. CHANDLEY: Thank you, Mr. Chairman. I
22 hadn't intended to really respond to this because I
23 think we've probably already spent too much time on
24 issues that had nothing to do with today's issues. But
25 nevertheless, it is important to clarify that neither

1 Bill Chamberlain nor I are here representing the staff
2 as an independent party in this matter. Secondly, as
3 Commissioner Gandara has been aware for a long time,
4 supervision of our office is divided, that once we get
5 into the adjudicatory phase of the proceeding, there
6 are separate supervisors for the staff counsel as an
7 independent party and they retain a conscious and
8 deliberate independence from the supervisors for the
9 Hearing Advisers. In my role to stay on the general
10 counsel side, I'm available to advise the Commission.
11 COMMISSIONER GANDARA: Who supervises Ms.
12 Dickey?
13 MR. CHANDLEY: With respect to this
14 particular case, who supervises Ms. Dickey? When she
15 gets into the handling of the merits of the case, she
16 is supervised by Jonathan Blees and not by me. Now
17 when the staff is functioning in the role of doing data
18 adequacy, it is not doing so as an independent party.
19 In our judgment the staff is acting as a surrogate to
20 the Commission, advising the Commission in the same
21 that a General Counsel would advise the Commission
22 about the adequacy of the document and helping the
23 Commission decide whether the document complies with
24 the statute. There is some ambiguity about that, and I
25 grant that point to you. But we try to maintain some

1 separation of that and because we thought there was
2 some ambiguity, we deliberately decided to separate the
3 issues that would be discussed by the General Counsel,
4 per se and by the staff per se.
5 It was my recommendation that Bill and I
6 address the legal issues about the legal adequacy of
7 your relying upon our interpretation in order to make
8 the judgment that you made on March 20th, and our brief
9 goes only to those legal issues. As to whether you
10 should have relied on the staff recommendation about
11 whether you think the staff recommendation was credible
12 about the adequacy of the document, the General
13 Counsel, per se, takes no position.
14 COMMISSIONER GANDARA: Who supervises Mr.
15 Blees?
16 MR. CHANDLEY: Ultimately, Bill Chamberlain
17 does. But with respect to the handling of the siting
18 cases and the merits of the staff, the arguments the
19 staff will make when it gets to the adjudicatory phase,
20 John Blees is on his own. He is not supervised by Bill
21 Chamberlain.
22 COMMISSIONER GANDARA: Who supervises the
23 Hearing Advisers?
24 MR. CHANDLEY: Mr. Chamberlain does.
25 COMMISSIONER GANDARA: You have not

1 supervised the Hearing Advisers?

2 MR. CHANDLEY: In his absence, I do. I also

3 consult with them. But I'm on "Bill Chamberlain's"

4 side of that division of supervisory responsibility.

5 CHAIRMAN IMBRECHT: Now then, why don't you

6 proceed?

7 MR. CHANDLEY: I want to make a further

8 remark about a lot of the discussion that occurred this

9 morning. There are a number of ways in which you can

10 decide this matter today. You can decide that our

11 interpretation of the law was incorrect and, therefore,

12 go back and reverse your decision or agree to

13 reconsider it. You can agree that our interpretation

14 of the law was correct, that the staff's recommendation

15 was wrong on the facts, and you could go back and

16 reconsider it on that basis. Or you could agree that

17 both of us were correct and you could uphold your

18 original decision.

19 I don't have any particular problems with

20 any of those outcomes. What I do have some concern

21 about is having you to attempt to base your decision on

22 a lot of the discussion that occurred this morning

23 because I regard it as from a legal perspective

24 completely irrelevant. I want to disassociate our

25 office from any of the characterizations that were made

1 this morning regarding the issue the Applicant is
2 stonewalling, or the issue of whether the Petitioner is
3 imposing excessive data request for reasons which have
4 nothing to do with the merit of the case. We are not
5 associating ourselves with those agruments and,
6 moreover, we believe those arguments to be completely
7 irrelevant. We hope that in making your judgment you
8 will not consider any of those factors or anything else
9 related to the data requests which are currently going
10 on in the proceeding or currently before the Committee.
11 We hope you will not rely on any of that information in
12 which to make your decision.
13 Furthermore, I must say that I have a
14 tremondous respect for Commissioner Gandara's abilities
15 as an attorney to carry witnesses down a line of
16 questioning and ultimately bring it back into the issue
17 at hand and demonstrate the relevance, but I must say
18 the entire discussion of the availability of trade-
19 offs, the impact that any decision that you might have
20 upon their loss or retaining of those trade-offs and
21 whether or not EPA knows we exist or cares, is
22 completely irrelevant to the decision you have in mind.
23 The decision you must make must be based solely upon
24 your interpretation of our statute and whether you
25 thought in applying that statute the Applicant

1 submitted sufficient information to meet the
2 requirements of the law.
3 Let me get now back to what I believe now are
4 the real issues in the case. It seems to me that we've
5 got to deal with a couple of legal issues here. The
6 first thing you have to decide is whether the
7 Commission has a valid set of regulations in front of
8 it and then, secondly, to decide whether to properly
9 applied those regulations. And to decide whether we
10 have a valid set of regulations is not particulary
11 difficult. Most of you are familiar with the fact that
12 an administrative agency has a lot of leeway; it has a
13 tremendous amount of discretion in adopting regulations
14 which it believes are reasonably necessary to carry out
15 the purposes of the statute. You have tremendous
16 leeway, authority and discretion, and the statute tells
17 you to exercise it in a liberal way.
18 Having done that, having acknowledged that,
19 you are also aware that there are many ways in which
20 you could have written your data adequacy regulations.
21 You could have used any number of terms, you could have
22 had data of appendices, that went one way some, you
23 could have had data appendices that were extremely
24 detailed, you could have data appendices that were very
25 general, you could have had no data appendices at all

1 and all of those owuld have been permissible responses
2 to our statute and your ability to adopt regulations.
3 You chose, or your predecessors did, to adopt a set of
4 regulations that are formulated in a very particular
5 way. And they require you to use a level of
6 qualitative judgment in deciding when you have enough
7 information in your applications to have the document
8 filed and begin the process.
9 Now the time you chose to express that point
10 was substantial compliance with the data appendices.
11 Substantial compliance with Section 1704 of the
12 regulations. There is no case law and there is no
13 proposition and there is indeed no agrument in front of
14 the Commission today, even from Mr. Berk, which
15 remotely suggests that you could not adopt a regulation
16 that said a document is complete when you find that it
17 substantially complies with a list of data
18 requirements. No one has challenged that proposition.
19 I want to make sure that there's no dispute about that.
20 The reason that Mr. Berk failed to answer
21 Commissioner Commons' question on that very issue
22 directly is because he is aware as I am aware that
23 there are in fact cases, case law in California
24 Appellate Courts, Supreme Courts, equating substantial
25 compliance with completeness. He knows those cases are

1 there, I know those cases are there. There's no
2 dispute on that. I've got a hand full of cases here, I
3 can run through all of them. You've got a line of
4 cases in which the courts have said completeness is
5 satisfied by substantial compliance. You've got
6 another line of cases that says substantial compliance
7 is satisfied when you have everything, meaning a
8 complete list, but satisfied them in essence. That's
9 the way our regulations are set up. You have two lines
10 of cases -- one saying completeness being substantial
11 compliance, the other saying substantial compliance
12 means completeness. Our regulations bring the two
13 together. When we adopt new regulations, we will make
14 it absolutely clear for those who still need it that
15 the two are equated. But there should never have been
16 any debate about this particular matter.
17 Now the issue that Commissioner Gandara has
18 raised is a legitimate one. And the Applicant has has
19 logged onto that argument, but it is based upon an
20 inadequate and incomplete reading of our legislative
21 history. It is quite true that the Legislature adopted
22 a statute in 1982 - the Felando Bill - setting up a
23 completeness requirement. It is also true that we have
24 not since 1982 adopted new regulations "implementing
25 the Felando Bill".

1 But what that argument misses is the fact
2 that there was already legislation back in 1978 which
3 had exactly the same wording, the same term 'complete'
4 and it applied to geothermal applications. This is a
5 bill by Assemblyman Goggen back in 1978, setting up the
6 data adequacy requirements for geothermal regulations.
7 And if you look at our current set of regulations,
8 you'll see that in 1979, a year after the Goggen Bill,
9 we implemented that completeness requirement. And you
10 can track down our regulations and you can see that we
11 acknowledged the Goggen Bill, we acknowledged and used
12 the term 'completeness', we turned the terms
13 'substantial compliance' in the same paragraph in
14 equivalent ways, interchangeably -- they are back and
15 forth, back and forth throughout that regulation. We
16 were aware of the Legislature having insisted upon
17 completeness and, yet we chose in our regulations to
18 say "completeness means substantial compliance". We
19 didn't say it that clearly, but if you look at those
20 regulations you'll find four, five sub-paragraphs of
21 Section 1709 in which the two terms are used
22 interchangeably and that's been that way since 1979.
23 Having gotten to that point, it's very clear
24 that when we got to 1982, and the got the Felando Bill,
25 it was completely unnecessary for us to go back and

1 amend our regulations to interpret or implement a
2 completeness requirement; we had already done so. The
3 regulations with respect to that issue were perfectly
4 consistent with the Felando Bill. So what we have is
5 we have a validly-adopted set of regulations. We have
6 regulations that were adopted in response to a
7 legislative requirement for completeness and therefore
8 we have a consistent set of regulations which,
9 consistent that is with Section 25522 and the Felando
10 Bill.
11 So there is no reason why any court would
12 overturn a decision that you made that was based on a
13 substantial compliance test as it is set up in the
14 regulations. So, maybe I should stop here and ask if
15 there are any questions on that point, because it seems
16 to me that is the critical issue before you.
17 CHAIRMAN IMBRECHT: Questions? Is there
18 anything further?
19 MR. CHANDLEY: I don't think I have anything
20 to say. I'll be happy to respond to any responses or
21 any further questions.
22 CHAIRMAN IMBRECHT: Very clear exposition.
23 Okay, Mr. Smith or Mr. Matthews, I understand we have
24 a little protocol...
25 MR. MATTHEWS: Yes. I wanted to briefly

1 respond to the Petition in that they use, Mililer
2 Brewing that is, uses a couple of arguments to say that
3 you should reconsider the decision in that the staff
4 made an error when it determined substantial
5 compliance. We have provided, dated May 13, a document
6 that contains three attachments: One attachment is a
7 list of data deficiencies that Miller alleged in both
8 their Petition that's before you, and Exhibit A to
9 comments of Miller Brewing read the incompleteness of
10 the Application For Certification request for
11 continuance of the hearing which they filed it on the
12 20th of March, that we received sometime after the
13 Business Meeting commenced that day and never got an
14 opportunity to adequately respond to.
15 Also attached is the December 5, 1984 letter
16 which was the recommendation to the Commission on the
17 initial determination of data adequacy that the
18 Commission adopted as its own as a list of deficiencies
19 that the applicant must comply with in order to be
20 complete. We have annotated that document to show
21 where, in the subsquent filings, the Applicant
22 satisfied that list of deficiencies. We used that list
23 to make our determination that we gave you on the 20th
24 of March. The final attachment is a xerox of the
25 appropriate appendices in the regulations that show

1 what regulations in Appendix B information requirements
2 for non-geothermal application this AFC had to comply
3 with and where in the various documents, you could find
4 those regulations complied. The information is
5 provided.
6 I did that for two purposes, one was to just
7 give you one more cross-reference. I was asked at the
8 March 20th Business Meeting, well "if you didn't use
9 substantial compliance but used completeness, would you
10 have the same determination?" We, of course, had to
11 look at it with that in mind. I did go back and look
12 at with that in mind and, if you throw out our criteria
13 which say that we need enough information to understand
14 a project, make a recommendation in all signifcant
15 issues or fundamental findings and ensure that the
16 Commission complete its review in 12 months, if you
17 throw out that requirement, all you have left is these
18 regulations, when you read through them they say things
19 like a general description on a proposed site-related
20 facility and if they're very vague, actually and it's
21 very easy to use a completeness test.
22 In fact, their October 31st filing I
23 discovered, came very close to satisfying this new
24 completeness test, if there were such a thing, and with
25 the exception of air quality, wherein we realize

1 whether the district's determination. So I was sort of
2 suprised, I guess to see that in one sense and in
3 another sense, I'm all the more convinced that by the
4 use of our criteria we are asking for much tougher data
5 adequacy requirements then if you didn't use our
6 criteria. I'm not going to go through the point-by-
7 point 'roughutation' of the Miller petition, but they
8 did bring up three points in the Petition I would like
9 to respond to because they obviously consider those
10 most important.
11 The first point they said is that they don't
12 believe that we should have asked the Applicant to rely
13 on the 1983 Electricity Report. The regulations say
14 that the document must use the most recently adopted
15 Electricity Report. Well, on October 31st, the most
16 recently adopted Electricity Report was the 1983
17 report. On December 5th, when we made our
18 recommendation it was still the 1983 report. On March
19 20th, when it came back to you, it was still the 1983
20 report and it's been that way until yesterday, when you
21 adopted the 1985 report.
22 In addition, one of our criteria is that we
23 need the information in order to resolve a substantive
24 issue. They provided enough information to respond
25 with the requirements of the regulations are, but I

1 don't think anyone could have filed on October 31st
2 enough information to resolve the issue because they
3 would have had to been able to predict what the
4 Commission was going to do on March 20, 1985.
5 The second inadequacy that Miller points to
6 as being of major concern is that the Applicant's
7 discussion of alternatives. We told the applicant in
8 an early pre-filing workshop that this was going to be
9 a concern that we wanted to make sure that they address
10 and they, in fact, did discuss ten different
11 technologies of processing the waste, they discussed 19
12 alternative sites, they gave a discussion of their
13 slight selection criteria and the discussion of the
14 opportunities and constraints of the sites and that's a
15 fairly standard way to approach the issue of
16 alternatives. They are not required by the regulations
17 to do an NOI-level of alternative analysis.
18 The final thing that Miller brought in their
19 Petition was that they sited the document for
20 inadequately discussing impact on adjoining landowners.
21 Primarily they're referring to Miller Brewing. In
22 fact, Miller Brewer is not an adjoining landowner, the
23 freeways are adjoining. But even so, the regulations
24 do not require a document to address impact on the
25 adjoining landowners. They require the document to

1 address impact on land uses and to address all the
2 significant impacts. In our view, the documents do
3 that, they do an extensive study of both land use
4 impacts and environmental impacts. That concludes my
5 presentation.
6 CHAIRMAN IMBRECHT: Fine. Questions or
7 comments? Commissioner Gandara.
8 COMMISSIONER GANDARA: Yes, the point I
9 wanted to make was that there been no discussion about
10 what this Felando Bill did, whether it intended to
11 affect the change or whether it did not intend to
12 affect the standards. There's been a lot of wrong
13 information of the kind expressing it when it first
14 came up, and whether later on, your recollection of
15 that when that bill was passed before you joined the
16 Commission.
17 CHAIRMAN IMBRECHT: I'd probably go before
18 the floor of the Assembly.
19 COMMISSIONER GANDARA: I expressed my view
20 with respect to what was meant by "completeness" and
21 whether that shift was intended. And that was the
22 language that was quoted back in one of the briefs
23 -- in the General Counsel's brief, they go back to the
24 same position that they maintained last time, with more
25 documentation about whether in fact the whole Felando

1 Bill was precisely concerned with the context of the
2 running of the clock, and not so much the completeness
3 or change. I have to note here that I still believe
4 that this is wrong. The reason I believe this is wrong
5 is because it's a change that we perceive that the
6 Felando Bill would directly be tied to decisions which
7 I was a direct participant in. And that, to some
8 extent, we have to look at the acceptability of the
9 intent was what was behind that intent. What caused
10 the position the Commission took in that particular
11 situation. I would like to take you back to the time
12 with what was occurring at the Commission, because I
13 think all the Commissioners here were involved in the
14 siting cases. We have to agree that the Commission
15 acknowledged that the siting cases had, as given then,
16 particular information. However, this information or
17 review of the adequacy or inadequacy on interpretation
18 of regulations, and to some extent, that's believed
19 that that's what was governed and not what someone in
20 the abstract would be involved in most of those cases
21 might, in fact, believed to be the case then or now.
22 In any case, to reflect what was happening
23 then, what we had at the Commission when I first
24 arrived was two cases: one was the South Geysers case
25 and the other was the Occidental Petroleum case. The

1 South Geysers case was assigned a month or maybe more,
2 after it had come to the Commission in the AFC phase.
3 That case had been accepted as data adequate. And that
4 case was assigned to me. I'm very familiar with it.
5 At the conclusion of the NOI phase, the Applicant had
6 promised which data would be forthcoming, but the data
7 was not forthcoming. At the time of the informational
8 conference, I was notified by staff we had a concern.
9 The same concern was expressed by staff that the
10 Applicant was not fulfilling the promises of the data
11 that was outstanding and that was by the Pre-Hearing
12 Conference. At that point in time, the Committee was
13 concerned about the schedule, in fact, the NOI phase.
14 The result of that was that I took an usual action. I
15 wrote a letter to the secretary of the Resources Agency
16 -- then Mr. Johnson, and cc'd all appropriate
17 personnel.
18 I told them that the case was getting
19 increasingly difficult to pursue, principally because
20 of the to pay attention to the data of the case. We had
21 been told the opinion by the hearing advisers that
22 their preoccupation had been at the same time.... and
23 my basic comment was the Applicant was not.. in this
24 particular case, they should not have filed it. If so,
25 it had been suspended or that it has in fact, the case

1 was essentially in their hands. That was the
2 experience of data inadequacy/data insufficiency. And
3 I think I termed it the same term using it, but at
4 least....
5 With respect to the Occidential case, I was
6 the second member; Commissioner Schweickart was the
7 presiding member. That particular case was accepted
8 conditional. We have to look at the two cases
9 presented before the Commission, and for those two
10 cases, the problem was the process happened to be data
11 inadequacy. At that point in time when I focused on
12 who had control...I found it was not in the hands of
13 the Commission, but in the hands of the Executive
14 Director and the hands of the staff. I found that to
15 be a concern, sufficiently so that the Felando Bill was
16 an opportunity (which I was not involved in); I don't
17 know.
18 In any case, it was an opportunity to act as
19 a deficiency regulation. I know from my discussions
20 with Commissioner Schweickart, we both discussed these
21 concerns, and the problem with them had to be not
22 nearly with the starting of the project, but a very
23 real motive behind what does it matter when the clock
24 starts. We shouldn't focus on the starting the clock,
25 we should focus on the purpose of the starting of the

1 clock. And that's because of the time you have to get
2 data. If you didn't have data, then these particular
3 schedules were not one to be tested. So, again, I
4 would note that what has been addressed by the
5 Petitioner and staff, General Counsel has been the
6 legislative....
7 And I would have to say to the Commission
8 that they would have to place considerable weight, at
9 least to be a direct participant. To perhaps be one of
10 the people who initiate and take advantage of the
11 Felando Bill for the purpose of giving the Commission
12 control. That is, when the clock starts on a case,
13 precisely for the purpose of being able to ensure that
14 we did not yet handle from any Commissioner a case
15 where you had data sufficiency. Then after that, he's
16 on his own; or she's on her own because under the
17 scheme that we work with, the staff works for the
18 Commission up until the time the case is accepted,
19 where staff becomes an independent party, along with
20 the Commission. At that point in time, the
21 Commissioner, Committee, Hearing Adviser, and then the
22 staff. Because of that, it becomes very important that
23 the data adquacy regulations -- we at the Commission no
24 longer will have the staff working on your behalf of
25 data adequacy at that time.

1 I relate the particular case history; I
2 relate the events that happened during that time so
3 that I can tell you that I cannot need anybody to put
4 words in my mouth; I know what's meant by complete, and
5 I know what was intended. What I'm saying with respect
6 to independent is, a substantial shift when the clock
7 starts, ran it by the Commission, and also with
8 respect to controls over the data adequacy.
9 I should say, Mr. Chairman, I really don't
10 want to just focus on this particular case, but in
11 fact, we are now being inundated with a lot of cases of
12 data adequacy becoming an issue, and in fact, my
13 concern with it is respect not only to this case, but
14 other cases. My articulation of it has nothing to do
15 with the merits of this particular proposal, it has to
16 do with the principle of the Commission -- and that is,
17 control at the start of the case and the level of data
18 that the staff has at the time it asks the Commission
19 to start the proceeding.
20 CHAIRMAN IMBRECHT: Commissioner Gandara, I
21 don't really disagree with any of the points that you
22 just raised. I agree with you, the Commission ought to
23 control the start-up case, etc. and there's really
24 nothing I would take issue with in your entire
25 dialogue. But frankly, I don't see how it's relevant

1 to the disposition of the matter that's before us. We
2 have been on this now, and I just have to say that
3 we've been on this for nearly five hours. I think
4 there is a limit at some point how far we are going to
5 have to debate these things. The issue before us is
6 whether or not, as I see it, the Commission wishes to
7 reverse its acceptance of the General Counsel's advice
8 to us on March 20th, the substantial compliance as a
9 test for completeness is legally sufficient. I, for
10 one am not prepared to do that because I frankly think
11 that that is a logical, common sense interpretation. I
12 agree with you that it's important that we insist that
13 there be an adequate amount of data compliance at the
14 time of acceptance to ensure that the Commission can or
15 the Committee assigned the case can adequately in
16 essence prosecute or supervise, complete the case
17 within the statutory timeframe.
18 I'm also very cognizant as well of the
19 substantial powers that are reserved to the presiding
20 member of a Siting Committee that in essence, if
21 exercised appropriately can fully control behavior of
22 the parties involved, and the applicant, and can very
23 clearly demonstrte to the applicant that failure to
24 comply with appropriate orders from the Committee will
25 subject their entire case to great jeopardy.

1 My personal attitude, quite candidly, is that
2 if an applicant has not met its burden and that means
3 supplying sufficient information, et cetera for a full
4 and complete record that substantiates any recommended
5 decision that's brought before the full Commission that
6 it's the appropriate exercise and discretion on the
7 part of that presiding member to recommend that the
8 application be denied. And that is the ultimate lever
9 that you have in terms of controlling the behavior of
10 any applicant, whether or not they supply the
11 information, etc. It seems to me that it's a question
12 of a presiding member making that point fundamentally
13 clear, however many times as necessary and also in
14 essence backing up their orders with some strength and
15 conviction, if you will.
16 In any case that's where we stand. I think
17 the issue has been fully argued and it seems to me that
18 it's now a question of whether or not we have a motion
19 to accept the Petition for Reconsideration. I want to
20 just emphasize that we first would have to do that
21 before we would then turn to the merits of whether or
22 not, in fact, there was substantial compliance, et
23 cetera. But I think the issue is squarely before the
24 Commission. Mr. Perez.
25 PUBLIC ADVISER PEREZ: Yes, Mr. Chairman.

1 CHAIRMAN IMBRECHT: I'm sorry, I do have a
2 list of some other people who want to testify before we
3 go that. I had forgotten, we've gone on for so long.
4 PUBLIC ADVISER PEREZ: I would like to offer
5 clarification that I think may assist the Commission.
6 My impression after sitting through, I think it's been
7 at least three acceptance processees in the last three
8 or four months, is that if the Commission has clarified
9 anything it is that by a majority vote, it is
10 determined that substantial compliance is the
11 definition it will use in determining whether or not a
12 filing is complete. That's over the dam, it's done and
13 finished with and parties who are dissatisfied with
14 that interpretation have particular legal remedies
15 available to them. But that part which seems to be
16 complete, and I think that that was the understanding I
17 got from the General Counsel's statement, that
18 substantial compliance is a correct definition.
19 The next thing I wanted to say is that
20 therefore it seems to me that we did have a good
21 exposition in the Crockett acceptance process as to how
22 parties can participate in disputing whether or not the
23 data submitted to satisfy that completeness requirement
24 is adequate. And we saw in the Crockett acceptance
25 over a period of about four Business Meetings, members

1 of the Crockett community appear before the Commission,
2 raise contentions on the basis of the specific
3 regulatorially designated elements of the filing that
4 the information was less than adequate.
5 So it seems to me today, then that the only
6 question being proposed by the Petition as I read it,
7 is whether or not the Energy Commission regarded the
8 information provided to it at the time it voted to
9 accept this filing, is adquate. If you have reason to
10 re-examine your determination on the factual adequacy
11 of that acceptance, it would seem to me that you would
12 proceed with an affirmative vote on a Petition to
13 Reconsideration. If not, you would not. So I hope
14 that assists in some way.
15 CHAIRMAN IMBRECHT: I tend to agree with all
16 of that as well. If the essence of the argument of the
17 Petitioner seems to me is a challenge of the Commission
18 interpretation that substantial compliance does
19 represent completeness. It's a Commission
20 interpretation and it is also an acceptance of our
21 General Counsel's office advice. I think it's
22 important that the record fairly reflect that. Mr.
23 Mike Gardner representing Southern California Edison, I
24 believe, wants to be heard on this matter. I apologize
25 for nearly forgetting you, Mike. The card was handed

1 to me a long time ago.

2 MR. GARDNER: Thank you Mr. Chairman and

3 Commissioners. I'm Mike Gardner for Southern

4 California Edison. I would like to begin by indicating

5 to you that I am not here to argue the merits of the

6 case. The Company is neither supporting nor opposing

7 the project, nor the specific issues that are raised in

8 the brief. I think this is basically a legal issue

9 that you have before you and have heard lots of legal

10 argument.

11 I think underlying that is a strong policy

12 issue that I believe it's important that the Commission

13 keep in mind and that really goes back to what is your

14 process all about. When you begin the process, it's

15 always been our view that you need to have sufficient

16 data to begin that process with reasonable expectation

17 that it can be completed by the statute, or within the

18 statutory timeframe. We have always felt that it is

19 inapproprite to require all of the data necessary to

20 make your final decision and still have a process

21 exist. There'd simply be no need for a process if all

22 the data were in the original application. It would be

23 more like a Supreme Court argument where you submit

24 briefs, sit back and the court ultimately rules. We

25 don't have the process -- the exchange from information

1 and data. I would suggest that you keep that in mind,
2 we do see the decision that you may be making now is
3 potentially precedent setting and of major import to
4 the way the Commission will deal with siting cases into
5 the future. Thank you very much I will be happy to
6 respond to any questions if you have any.
7 CHAIRMAN IMBRECHT: Thank you. That's in
8 essence a point that I made this morning in discussion
9 with the Petitioner's counsel. Alright, anyone else
10 which to be heard on this matter? Fine. Matters now
11 before the Commission. Commissioner Noteware.
12 COMMISSIONER NOTEWARE: Mr. Chairman as a
13 non-attorney situation like this where there is an
14 obvious difference of opinion regarding points of law,
15 I think I would have base my decision somewhat upon the
16 ramifications of that decision. I think your criteria
17 here that I've been considering -- one, of course, is
18 whether or not the decision will result in a situation
19 that will be fair given any either the Applicant or the
20 Intervenor an unfair advantage and I think that's the
21 consideration we must take into account.
22 The other, of course, is what Mr. Gardner has
23 pointed out as a precedent-setting ramifications of our
24 decision. I can foresee that if we were to grant this
25 Petition, it could lead to a certain amount of

1 confusion in the future or perhaps a great deal of
2 confusion and on-going situations, for instance in the
3 Crockett case where it's more a matter of perceived
4 harrassment rather than geniune concern over data
5 adaquacy. The start of a situation can be postponed on
6 and on to the point that it's unreasonable. So for
7 these reasons, I would move for the rejection of the
8 Petition for Reconsideration.
9 CHAIRMAN IMBRECHT: It may not be nececessary
10 for such a motion, but...for a second, I think I would
11 first initially see if there is a motion to accept the
12 Petition.
13 COMMISSIONER NOTEWARE: Alright fine.
14 CHAIRMAN IMBRECHT: I think that's a fair way
15 to put it for us. Commissioner Commons:
16 COMMISSIONER COMMONS: I just have a short
17 statement. First, the Siting Committee will be going
18 forward with a Notice for Proposed Rulemaking and in
19 that is a provision that would define completeness as
20 the same as substantial compliance. It's always been
21 my belief that is the appropriate way to handle this
22 and when we had the matter before us before....Well,
23 that is my belief and I also think that the Commission
24 has expressed that viewpoint as a majority viewpoint
25 and it's the responsibility of Committees to impmlement

1 the policy that has been adopted by the Commission.
2 I do not agree with you Mr. Chairman,
3 however, as to your characterization of the issue. It
4 is, and I asked the question earlier today, as to do we
5 have the legal right to utilize that definition and the
6 response by all parties to me appeared to be that we do
7 so. I do not believe, however, that we have the
8 authority as a Commission to go into rulemaking sitting
9 as a Commission. We have a procedure as to how we do
10 rulemaking. So I think the issue that was before us
11 then, and the issue that indirectly would be before us
12 today, is not what is appropriate, but what are the
13 existing regulations and rules. That gets back to the
14 legislative discussion of Commission Gandara raised and
15 the whole legislative history and the issues that have
16 been brought up very well by Mr. Chandley and
17 Commissioner Gandara.
18 So it's an interpretation as to what our
19 existing policy is. Now, my viewpoint has been here
20 rather, has normally been that we should assess what
21 that policy was in terms of what the legislative
22 history was and, it was my intrepretation then and it
23 would be today, that substantial compliance was not the
24 way the regulations read at that time and you were
25 overriden on that issue. However, I go forward two

1 additional steps. I follow what Commissioner Noteware
2 was saying is in the particular case here where is the
3 equity. I heard nothing from the Petitioner that he
4 could not have due process in this case if we were to
5 continue on, and I think the Applicant has suggested
6 that would be some potential loss of this Petition were
7 ordered. I think there is a certain point of time that
8 the Commission makes a decision and then it's the
9 responsibility of the Commission to implement that
10 decision unless there is some new evidence that has
11 been brought forward. I've heard no new evidence
12 today, no matter which side I had voted on originally,
13 that would bring me to change my opinion.
14 So I think it is the better policy of the
15 Commission today not to accept the Petition because no
16 new information has come on. I think the way we should
17 clear up the matter, because I think there is a
18 difference of opinion here is to go forward with our
19 regulations and adopt regulations making in very clear
20 that substantial compliance is the appropriate
21 procedure and we should allow the siting process to
22 handle it within the siting cases.
23 CHAIRMAN IMBRECHT: Okay, alright. What's
24 the pleasure of the Commission? Commissioner Gandara.
25 COMMISSIONER GANDARA: Mr. Chairman, I would

1 like to move that we accept the Petitioner's Request,
2 ill-fated motion nonetheless, we'll make it, because I
3 think it makes an important point. I would like to
4 address just the new comments that have made since I
5 last spoke, because I do think that in fact if there
6 are key principal to the people who made them then, in
7 fact they might be considered in their particular point
8 of view.
9 First of all, I think that at least for
10 myself, I do view the decision that we are to make here
11 today, to some extent, the first one that was set forth
12 by the Public Adviser, and which you indicated was the
13 one that you sought which is a reconsideration of what
14 tests should apply. Should the complete test variation
15 apply to the substantial compliance test or not? So I
16 might do see this as an opportunity to re-visit that.
17 However, I do also share the opinion of
18 Commissioner Commons, that I believe that the burden
19 lies with the Petitioner to change the previous
20 decision of the Commission, because I do also take that
21 very seriously and we should not be changing these
22 things back and forth. But I do think that what is at
23 stake is, in fact, quite serious. I do disagree there
24 is that there is no new information. There is, in
25 fact, new information that has been presented on the

1 part of General Counsel. The new information that they
2 have presented the language of the geothermal usage of
3 completeness. I do feel that was not brought out
4 before, however, I think that as proof of the fact that
5 it is not self-evident as to its usage and it's not
6 self-evident as to the reason why that would be ruined
7 is that it took us two decision, the Crockett decision,
8 it took us the Irwindale decision, it's taken a
9 Petition for Reconsideration, and many hours of debate
10 as you indicated to bring that aspect out. So it is
11 not so clear that what, in fact, has been proffered as
12 proof of the meaning, is in fact, what is the case.
13 The second piece of new information has been
14 brought up is the fact that additional correspondence
15 with respect to members of the Legislature between
16 Commissioner Schweickart and the various members of the
17 Legislature. That also was not brought out to my
18 recollection, the only correspondence that has
19 previously been out has been my own letter to the
20 Governor. I do believe that Commissioner Schweickart's
21 correspondence, in fact, is totally consistent with
22 mine, I therefore see that principally, again, an
23 affirmation of the earlier comments that I made as to
24 what was happening to cases at the time.
25 With respect to a third point which has been

1 expressed both by Mr. Gardner and also by you that it
2 would be not so helpful or it would be meaningless to
3 apply the interpretation of complete because indeed if
4 you have the complete application you wouldn't need a
5 process that would decide what much like the Supreme
6 Court that you have a process before you. That, I
7 think, is in fact not a correct interpretation of what
8 is at stake here. What is at stake is that the
9 application should be complete with respect to the
10 regulations that require information. The regulations
11 require a subset of information to process a case.
12 Nobody has ever said that if an application were
13 complete with respect to the regulations that you would
14 have all the information to process a case. Indeed, I
15 would contemplate that even if you were to say that the
16 information is complete or you were to complete
17 information as I see in many cases, you would probably
18 need additional data probably during the case. So I
19 think that's a bit of a red herring. I don't believe
20 that anybody here is talking about requiring a complete
21 set of information to decide a case. That's different
22 from the complete set of information to be start a
23 case.
24 The last point is that question of fairness,
25 and we have made a decision that might effect the

1 Hearing none, the motion dies for a lack of a second.
2 The Petition is thereby denied. We'll move on to the
3 next item.
4 I have to just offer just one final thing
5 though, that I think is important to clarify in terms
6 of statements about legislative intents. Since this is
7 an issue I have visited many, many times and one that
8 I'm 100 percent confident in terms of expressing.
9 There is no any statements as to legislative intent
10 made by us or anyone else are absolutely not binding,
11 or should not be viewed in any review of this
12 transcript as reflective of legislative intent.
13 The actual and appropriate interpretations
14 are that the only way legislative intent can be
15 demonstrated in California, since there is no complete
16 transcript of legislative hearings or of debate on
17 legislative floors is through a process that has been
18 approved by the Attorney General's Office,, et cetera,
19 and that requires the following steps. It requires
20 that a letter be submitted in the Journal of the
21 appropriate House that is considering the legislation
22 that states any intent or interpretation beyond that
23 which is on the face of the statute that is before the
24 House. Moreover, the author of the legislation must
25 make direct reference to that letter during the course

1 previous decision that it might in fact be unfair to
2 the Applicant. I don't think that we should
3 essentially say that we are going to start being fair
4 now and therefore disregard having been fair earlier.
5 If we were mistaken earlier then we should readily try
6 to correct that. If in fact the data was not complete,
7 then I think and we want to use that test, I think you
8 would not have rebuttal to do that. I think that in
9 the long run that it is a far better policy then to
10 continue to develop a strategy or policy trying to
11 preserve previous decisions regardless rather they were
12 right or wrong.
13 Again, that's my total summary, I note that I
14 abstained from the last vote on this matter. The
15 reason I abstained as I made clear then that the
16 Committee had not been assigned at that point and time.
17 I did not really wish given the expression of my using
18 the matter then to feel that an Applicant would be
19 prejudiced one way or the other or I could be on that
20 Committee. As it turns out, I was not assigned to that
21 Committee, I'm not likely to be assigned to this
22 Committee today so that I feel no compunction about
23 actually taking a vote, or move from my abstention. So
24 therefore, I do at least move the Petitioner's request.
25 CHAIRMAN IMBRECHT: Is there a second?

1 of a debate so that it is the knowledge of all members
2 of the House in question that are casting a vote on the
3 Bill that that interpretation is intended.
4 It's important to remember that legislative
5 intent is that, it is the collective judgment of the
6 Legislature, not the intent of the individual author.
7 And any attempt to rectify problems with legislation to
8 the submission of letters to the Journal, after the
9 fact of the debate and without the steps I just
10 mentioned have been ruled consistently invalid. I
11 think it's important to say that for obvious
12 clarification purposes. I know we try to effect these
13 things in letters and that sort of thing. It's the
14 only manner which it can be binding, however, if it is
15 as I indicated referenced in the debate and is
16 submitted in the Assembly of our Senate Journal and
17 printed concurrent with the vote.
18 Okay, the next item to come before the
19 Commission, I'm not going to turn to three quite yet.
20 We still have some discussion on that. Okay the next
21 item would be 17, which is a Contract for $347,439 ADM
22 Associates, Inc. to conduct on-site surveys of energy
23 use characteristics of commercial buildings, Pacific
24 Gas and Electric, Southern California Edison, and
25 Sacramento Utility Municipal District service areas.

1 Mr. Smith.

2 MR. SMITH: These contracts were continued
3 from May 1st to provide an opportunity for discussions
4 between staff and Commissioner Commons. Item 18 is also
5 a closely-related part of that project. I understand
6 that from the discussion yesterday, Commissioner
7 Commons, that you had a coment to make on this.

8 COMMISSIONER COMMONS: Yes, I have first a
9 question. There's a continuing set of data requirements
10 that we are making, and I believe there are only two
11 items in our budget that are still before Conference,
12 and one of those items involves a contract with SMUD and
13 San Diego. Could you clarify what that data information
14 is for?

15 MR. SMITH: The contract that will be going to
16 Conference Committee, it's a $99,000 contract that was
17 anticipated to provide data for use in the assessment
18 and conservation in the nonresidential sector. Whether
19 of not it was specifically targeted to SMUD or not, I
20 would have to rely on staff, who I think are on their
21 way.

22 COMMISSIONER COMMONS: Could we ask Dr.
23 McGowan if she could give us the distinction between the
24 two items?

25 DR. McGOWAN: For the record, my name is Susan

1 McGowan, Demand Assessment Office. There are two
2 contracts here. One covers two service territories, San
3 Diego Gas and Electric in Los Angeles Department of
4 Water and Power. The second contract covers on-site
5 commercial survey for PGandE, SMUD, and Southern
6 California Edison.
7 COMMISSIONER COMMONS: No, my question is
8 referring to the item that is currently at the
9 Legislature in Conference Committee, where we have a
10 $99,000 request for data for SMUD in San Diego. I'm
11 trying to get an understanding of the difference between
12 that data request and the information we have here.
13 DR. McGOWAN: What we're trying to get is
14 Assessor's data on commercial and industrial buildings
15 for vintage and square footage, and it is not simply
16 commercial; it is also industrial, since our industrial
17 end-use model runs off several of square footage which
18 is driven by jobs. We're trying to get a better
19 understanding of the square foot stock of industrial as
20 well as to use that information while we're getting that
21 to confirm commercial square footage for a much larger
22 population.
23 COMMISSIONER COMMONS: Alright, well, let me
24 just state for the other Commissioners my viewpoint on
25 this. I did meet with the staff. There was, and

1 remains, a difference of opinion as to the appropriate
2 allocation of the funds. I feel that the staff has come
3 up with arguments to defend their position that are
4 reasonable, even though I do not agree with them. It's
5 my personal feeling that we are overallocating in terms
6 of the amount of funds; but, that the two contracts that
7 we have before us, I look specifically at the building
8 types in San Diego and the differences in terms of our
9 estimates of the amount of cooling consumed per square
10 foot in San Diego, as we're on the factor of 3 or 4:1.
11 I would like to recommend to the Commission
12 that what we do is we adopt these contracts as is, and
13 we do not pursue the one contract that is currently
14 before the House Committee or the Legislative Committee
15 on the $99,000. Some of the information that we would
16 obtain from there is going to be developed within these
17 two contracts. I just do not feel that the data work
18 for the two smaller utilities justifies $200,000 of
19 information.
20 We will have that other data from the larger
21 utilities, and I think there's just a question of fiscal
22 prudence as to how far we ought to go. If we were back
23 at square one and we could design these contracts
24 appropriately, it's still my belief that they should
25 have been done and could have been done for $350,000;

1 but, I'm willing to support them. But I also think at
2 the same time, we should compromise with the Legislature
3 on that one item.
4 MR. SMITH: Just a brief comment. The staff
5 sense is that we would not want to change our budget
6 recommendation that the Commission approved, the
7 Department of Finance approved, and Governor approved,
8 at this point.
9 CHAIRMAN IMBRECHT: I was about to make that
10 same observations. And the Senate has approved--I
11 might add, as well. So at this juncture, after all of
12 the review that the proposal (there has been only one
13 yet, if you will), and I don't think that's something
14 that is not susceptible to being dealt with in, of
15 course, the Conference Committee. And to the extent
16 that you may have disagreements about the scope of that,
17 I would suggest that the appropriate way to handle that
18 would be internally where we might want to redefine the
19 scope of it. But, to forego an appropriation that has
20 been approved by Finance, I think would be a, well, I
21 don't know. I don't think that this is the time to be
22 doing that both in terms of the credibility of our
23 overall budget effort, in general, and...
24 COMMISSIONER COMMONS: It is very easy for us
25 to, without adopting that as an official policy (I'm not

1 suggesting that we vote on it or do so) that we
2 indicate...
3 CHAIRMAN IMBRECHT: As I said, to Assemblyman
4 Eisenberg, I'm not going to live or die on that one.
5 But, at the same time, I'm not quite ready to give up on
6 it, either. Okay, what's the pleasure of the
7 Commission. Is there a motion?
8 COMMISSIONER NOTEWARE: Yes.
9 CHAIRMAN IMBRECHT: It's been moved by
10 Commissioner Noteware, seconded by Commissioner Gandara?
11 COMMISSIONER COMMONS: I'll second it. I'm
12 not going to oppose it, I'll second it.
13 CHAIRMAN IMBRECHT: Seconded by Commissioner
14 Commons. This is just on 7 or on 17, or both?
15 COMMISSIONER NOTEWARE: Both of them.
16 CHAIRMAN IMBRECHT: Alright, fine. The motion
17 is for approval of both items, 17 and 18. Anyone else
18 who wishes to be heard on this matter? Is there
19 objection to unanimous roll call? Hearing none, ayes 5,
20 noes, none. The motion is carried; both items are
21 adopted.
22 I'm going to ask Commissioner Crowley to
23 proceed with the Committee reports and ask Commissioner
24 Commons if I might have a brief discussion.
25 VICE CHAIR CROWLEY: Policy Committee Reports.

1 Commissioner Noteware, do you have a report for your
2 committees, or do you want to give us an update on
3 progress or the lack of same?
4 COMMISSIONER NOTEWARE: Yes, thank you. I'd
5 like to call on Ted Rauh to bring us up to date on our
6 Appliance Standards Committee.
7 MR. RAUH: Thank you, Commissioner. I wanted
8 to bring to the Commission's attention some draft
9 testimony, which I apologize for just bringing to your
10 attention today. But it has, I believe, been passed out
11 to the Commission. Actually I'm here to ask for the
12 Commission to support this testimony, which would have
13 us support cost-effective incentive programs for
14 consumer purchase of efficient refrigerators and other
15 products.
16 The Commission has had a position in
17 supporting utility incentive programs for the purchase
18 of refrigerators and freezers for several years; and, in
19 the recent adoption of Refrigerator Standards, further
20 endorsed continued efforts in both consumer education
21 and in incentives.
22 We find, by looking at the recently adopted
23 Electricity Report that San Diego Gas and Electric has a
24 substantial energy need by 1996; and, a program of
25 providing incentives to substantially exceed the

1 efficiency of refrigerators and refrigerator-freezers,
2 that efficiency obtained by our standards, would further
3 contribute to reducing the need for that utility to
4 secure more expensive energy supplies.
5 So, I'm asking you here today to approve this
6 brief testimony which would support a position taken by
7 the CPUC staff of their Public Division for a $2.1
8 million allocation for incentive programs for efficient
9 equipment. And the types of equipment characterized in
10 that proposal are refrigerators and freezers, air
11 conditioners and other high-efficient consumer products.
12 There are basically three positions in the
13 case. The San Diego Gas and Electric Company has
14 proposed $1.7 million. As I said, the Public staff has
15 recommended $2.1 million. And then another arm within
16 the PUC staff has suggested $1.2 million. As you
17 recall, during the refrigerator-freezer proceeding, the
18 staff presented testimony in a joint hearing with the
19 CPUC and the Appliance Committee on a cost-effectiveness
20 for a refrigerator incentives; and, in that analysis, we
21 found that using a generic assessment of a 20 percent
22 penetration for an incentive program in a utility
23 service territory, that about 2 to 4 cents would be the
24 cost of the kilowatt hours saved by an incentive program
25 of roughly $75.00 per high-efficient refrigerator.

1 Using very conservative estimates of sales in
2 San Diego, we would find about $1.6 million required to
3 deliver a corresponding program. That leaves only a
4 slight amount of money left for other appliances. So,
5 we feel, just based on refrigerators, that it's
6 appropriate to go for the $2.1 million.
7 In as much as the fifth Biennial Report
8 suggests that the Commission will study and recommend
9 appliance efficiency incentives for air-conditioners,
10 this way there would be continuing funding in that
11 utility's rate cases over the next couple of years to
12 allow room for further recommendations from this
13 Commission in those areas. Also, since the estimate of
14 $1.6 million is based on a very conservative sales
15 estimate, and San Diego is a substantial growth area in
16 the state; if we're only off a few percent on the amount
17 of sales in San Diego, we could easily use the entire
18 $2.1 million up just for refrigerators and refrigerator-
19 freezers.
20 The staff's position then would be that you
21 approve this intervention, which would be strictly
22 limited to a recommendation on the $2.1 million; and the
23 testimony itself simply contains those statements; and
24 the attached testimony that the staff filed before the
25 Energy Commission and the Public Utilities Commission

1 back in July of 1984, which presents the generic
2 analysis of cost effectiveness for a utility incentive
3 program for refrigerators. That would be the scope and
4 entirety of the staff's testimony.
5 COMMISSIONER NOTEWARE: Mr. Rauh, what do need
6 in the way of a tangible evidence of our support here?
7 MR. RAUH: Well, typically in these kinds of
8 interventions, we simply need your approval for the
9 staff to intervene with this particular testimony, to
10 file this testimony.
11 VICE CHAIR CROWLEY: A motion for approval.
12 COMMISSIONER NOTEWARE: Then I would so move
13 for approval.
14 VICE CHAIR CROWLEY: The motion has been made
15 that this testimony be approved for presentation. Is
16 there a second to the motion?
17 COMMISSIONER NOTEWARE: Perhaps, we need our
18 other two Commissioners.
19 VICE CHAIR CROWLEY: We have a motion to
20 approve this and thus far I hear no second. I will
21 second the motion. Under the question, is there
22 discussion?
23 COMMISSIONER GANDARA: Mr. Rauh, is there some
24 (I've been trying to read this since you've been
25 talking); is there some reason why you've pursued this

1 just now?

2 MR. RAUH: Yes, it was. Basically, the staff

3 did not intend or really didn't have direction in the

4 last couple of months to pursue this kind of

5 intervention. However, we have been operating under the

6 general direction of trying to implement incentives in

7 this area. We were really just caught unaware of the

8 opportunity to intervene until Monday of this week. And

9 so, based on an informal request from CPUC staff that

10 the position of this Commission, since we're on the

11 record in a number of other proceedings, we did

12 testimony in front of that Commission on the Southern

13 California Edison case last year. I perceived it to be

14 an oversight on my part for not having brought it to the

15 Committee's attention in the past; and we quickly put

16 this together. We felt that since the Commission has

17 taken similar positions in the past, that it was not

18 necessarily a controversial area; however, I have to

19 take the responsibility for not having brought it to

20 your attention in a more timely fashion.

21 COMMISSIONER GANDARA: We have intervenor

22 status in this case at this point?

23 MR. RAUH: Yes, we do.

24 COMMISSIONER GANDARA: And this is a general

25 rate case?

1 MR. RAUH: It's a general rate case. So
2 this...
3 COMMISSIONER GANDARA: Are we intervening with
4 respect to any other points, any other issues that...?
5 MR. RAUH: No. We're intervening in load
6 management; and in that regard, you approved our
7 testimony and position two business meetings ago. And
8 that one we had followed the logical progression and
9 brought before you with full opportunity for discussion,
10 testimony that dealt with considerably more issues than
11 this limited focus, because there we both discussed an
12 amendment to an order of this Commission governing the
13 administration of their program, plus a series of other
14 points dealing with advanced research we wanted them to
15 do, as well as a position in their general rate case.
16 That intervention was brought about in part by
17 their filing a motion before you to modify your order.
18 And at the same time we chose to make recommendations
19 about their load management programs.
20 COMMISSIONER GANDARA: Is this intervention,
21 is the oversight of the intervention, under what
22 committee?
23 MR. RAUH: It's under the appliance. Well,
24 intervention I guess is, because this is a specific
25 appliance-related issue, it really would be under the

1 purview of the Appliance Committee.
2 COMMISSIONER GANDARA: And who's overseeing
3 intervention with respect to load management?
4 MR. RAUH: The Buildings and Load Management
5 Committee and the Intergovernmental Relations Committee,
6 I guess, indirectly.
7 COMMISSIONER GANDARA: Okay, my recolleciton,
8 then, I guess in general, would be overseen by some
9 committee. Let me say, I don't have a problem with the
10 intent of the substance of this; although, I have to say
11 I really haven't had time to read it to see how
12 consistent it is with the previous positions that we've
13 taken, so forth. I'm not unwilling to go ahead and
14 authorize it; but, I do believe I have a specific
15 problem here in that I do think that if we are
16 intervening before the PUC general rate case, there
17 ought to be a more coordinated way or more comprehensive
18 way of doing our intervention; and to see, indeed, what
19 other aspects of that case who can provide testimony
20 with to really implement the policy of this Commission.
21 It would seem to me that while I have no
22 problems with the intervention, but it might be a
23 missed opportunity, since we already have intervenor
24 status, in any case for coordination.
25 VICE CHAIR CROWLEY: I think that's

1 appropriate. Commissioner Noteware is on the
2 Intergovernmental Relations Committee, which according
3 to what I have read, is charged with intergovernmental
4 coordination, per se. And I'm wondering if, perhaps,
5 that tie would make it either that if we had a motion
6 with regard to this that it would include suggesting
7 that it be coordinated with that committee or whatever,
8 if that might make it more clear.
9 COMMISSIONER GANDARA: I would think that, you
10 know, I have no problems with this if it is also the
11 direction that the Committee or coupled with the motion
12 that the appropriate committee, you know, have a more
13 coordinated and comprehensive oversight of the SDG&E
14 rate case; perhaps, to report back to the Commission
15 what the opportunites are for intervention whether this
16 is going to be it or whether there will be others, so
17 that way we can kind of consider the interventions as a
18 whole, not sort of piecemeal.
19 VICE CHAIR CROWLEY: Do you want that as a
20 separate motion after we deal with this, or would you
21 prefer to have it within this motion, or would you
22 accept that as a friendly...
23 COMMISSIONER GANDARA: I see no problem with
24 that.
25 COMMISSIONER NOTEWARE: I hear you, but I

1 don't consider it as a point well taken.

2 VICE CHAIR CROWLEY: Yeah, okay. Are there

3 any other questions regarding this matter? Then, I

4 would have a question on answer #2. It's not clear to

5 me (line 2), "support funding for incentive programs

6 which promote the sales of, or funding which provides

7 the sales of"... I can't read that.

8 MR. RAUH: It certainly should be either

9 "provides for or promote the sale of". The intent is

10 that the incentive would be to stimulate purchases of

11 efficiency levels 15 percent or greater than the market

12 average.

13 VICE CHAIR CROWLEY: I understand.

14 MR. RAUH: So these ar purely for...

15 VICE CHAIR CROWLEY: ...And the funding would

16 be for a rebate for providing sales or...In other words,

17 it's the funding that provides the sales.

18 MR. RAUH: That's correct. It's a direct

19 transfer payment of $75.00.

20 VICE CHAIR CROWLEY: Can we just call it that

21 funding which provides the sales? Would that do it? In

22 other words, I couldn't read what the antecedent of

23 "provide" was, so I was having a problem with the

24 semantics.

25 MR. RAUH: Well, we could say, "for programs

1 which stimulate the sales of high-efficient appliances
2 programs".
3 VICE CHAIR CROWLEY: Okay, whatever.
4 MR. RAUH: But we will correct that problem.
5 VICE CHAIR CROWLEY: Okay, is there any other
6 question regarding this matter?
7 COMMISSIONER GANDARA: Just one. There's
8 reference in the text to Attachment A and there's
9 Appendix A. Is that one and the same?
10 MR. RAUH: That's one and the same.
11 VICE CHAIR CROWLEY: Is there any other
12 question on this matter? Are you ready for the
13 question? All those in favor of adopting the
14 motion...Aye. Opposed? Excuse me, I'm not used to,
15 this is another forum for me. Would you read the roll,
16 please?
17 MS. GERVAIS: Commissioner Commons? Absent.
18 MS. GERVAIS: Commissioner Gandara?
19 COMMISSIONER GANDARA: Aye.
20 MS. GERVAIS: Commissioner Noteware?
21 COMMISSIONER NOTEWARE: Aye.
22 MS. GERVAIS: Vice Chair Crowley?
23 VICE CHAIR CROWLEY: Aye.
24
25 VICE CHAIR CROWLEY: Thank you. Are there any

1 other Policy Committee reports? Commissioner Gandara,
2 do you have a Policy Committee Report that you would
3 care to make at this time? I have a Legislative
4 Committee report; but I would prefer, if I may, to have
5 the full Commission in attendance and would like to
6 inquire if we could move, then, to the approval of the
7 minutes?
8 COMMISSIONER NOTEWARE: I move that...
9 VICE CHAIR CROWLEY: A motion has been made by
10 Commissioner Noteware to approve the minutes as
11 presented. This would be item 12 on our agenda.
12 COMMISSIONER GANDARA: I have no minutes in my
13 package that I can find.
14 COMMISSIONER NOTEWARE: I have mine.
15 VICE CHAIR CROWLEY: I got mine. There's a
16 revised Page 2. It may be in back of that.
17 COMMISSIONER GANDARA: I don't have any
18 problems with it.
19 VICE CHAIR CROWLEY: Okay. I would second the
20 approval of the minutes. If the Commission approves,
21 who would cast a unanimous ballot among those present
22 for the approval of the minutes? Is that acceptable?
23 COMMISSIONER GANDARA: Madam Chair, I should
24 note that I have no problems voting to approve the
25 minutes. I note, by the minutes, that I was absent.

1 VICE CHAIR CROWLEY: Oh, I see. Alright,
2 then. In that case, the motion to approve the minutes
3 is accepted. I would like to ask Counsel, is it your
4 pleasure to have a closed session today?
5 MR. CHAMBERLAIN: Yes, Madam Chairman. I will
6 need a closed session today. I also have a couple of
7 items for open session just to announce.
8 VICE CHAIR CROWLEY: If you would like to take
9 those now, we may. Otherwise, we can wait until the
10 return of the other two members of the Commission.
11 MR. CHAMBERLAIN: Perhaps we should wait on
12 them.
13 VICE CHAIR CROWLEY: Okay. Then I would
14 suggest a five-minute recess at this time, please.
15 (Thereupon the afternoon session of the
16 business meeting before the California Energy Resources
17 Conservation and Development Commission was adjourned
18 for a brief recess at 3:40 p.m.)
19 --oOo--
20
21
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23
24
25

1 **AFTERNOON SESSION**

2 --oOo--

3 CHAIRMAN IMBRECHT: Okay, let's call the
4 meeting back to order. Alright, let's see. Did we
5 complete the Committee reports?
6 COMMISSIONER GANDARA: We didn't do
7 Legislation.
8 CHAIRMAN IMBRECHT: Well...
9 VICE CHAIR CROWLEY: We're waiting for the
10 full Commission before we did the Legislative.
11 CHAIRMAN IMBRECHT: Alright. Let's go back to
12 item 3. Commission Consideration and Possible
13 Designation of a Second Committee member for the
14 Irwindale Resource Recovery Project AFC. What is the
15 pleasure of the Commission?
16 COMMISSIONER COMMONS: Mr. Chairman.
17 CHAIRMAN IMBRECHT: Commissioner Commons.
18 COMMISSIONER COMMONS: Yes. I'd like to move
19 that I be the second member.
20 CHAIRMAN IMBRECHT: Is there a second?
21 Hearing none, the motion dies for lack of a second. Are
22 there other motions?
23 COMMISSIONER COMMONS: Mr. Chairman, I move
24 that you be the second member.
25 CHAIRMAN IMBRECHT: Is there a second?

1 VICE CHAIR CROWLEY: Second that.
2 CHAIRMAN IMBRECHT: Alright, the motion is
3 properly before us. Is there discussion? Commissioner
4 Commons.
5 COMMISSIONER COMMONS: Mr. Chairman, I'd like
6 to ask how many Committees does this Commission have?
7 CHAIRMAN IMBRECHT: Well, I believe we have, I
8 think we have ten standing Committees and I believe we
9 have ten cases currently in-house, more expected daily.
10 COMMISSIONER COMMONS: Is it correct that you,
11 Mr. Chairman, were involved in the structuring of the
12 proposed committee designations?
13 CHAIRMAN IMBRECHT: Commissioner Commons, I am
14 not on the witness stand.
15 COMMISSIONER COMMONS: I'm just asking you a
16 question.
17 CHAIRMAN IMBRECHT: You came forward with a
18 proposal to the Commission after...
19 COMMISSIONER COMMONS: I'm just asking you a
20 question. Now if you don't want to...
21 CHAIRMAN IMBRECHT: ...Lots of discussion, and
22 yes, that's the case, with one exception, I believe,
23 that has officially been the accepted practice of the
24 Commission. The only time that was not the case was a
25 year ago.

1 COMMISSIONER COMMONS: Alright. May I ask,
2 how many Committees are Commissioner Crowley and myself
3 on at the same time?
4 CHAIRMAN IMBRECHT: I believe one.
5 COMMISSIONER COMMONS: Can you tell me which
6 one that is?
7 CHAIRMAN IMBRECHT: I think CCPA.
8 COMMISSIONER COMMONS: And I think that
9 Committee will demise on June 26th, if I'm not mistaken.
10 CHAIRMAN IMBRECHT: I'm sorry, I missed the
11 point.
12 COMMISSIONER COMMONS: I believe that
13 Committee will demise on June 26th.
14 CHAIRMAN IMBRECHT: I'm not the presiding
15 member, so you're in a better position at that than I
16 am.
17 COMMISSIONER COMMONS: It's intended to be
18 brought together. Well, I'd like to note for the record
19 that it is my belief that Commissioner Crowley has
20 vetoed me from being on a large number of Committees
21 that I had desired, that those Committees that I had
22 requested, initially, to be on or have shown the most
23 interest, I was excluded where she was put onto them.
24 At the same time, additional Committee reassignments
25 which resulted in a total reorganization of the

1 Commission putting people into some Committees where
2 they did not have background and experience; and
3 resulting in other Commissioners being put into areas
4 where they had not as much wanted to. A good example is
5 the area of buildings. I had expressed interest in
6 being on this Committee as of last November. As you are
7 fully aware, municipal solid waste is an area that I've
8 had long-standing interest because I have technical
9 expertise, having worked in the area beforehand. I do
10 not feel like being a Black on this Commission and
11 allowing one member of this Commission to veto me from
12 serving on any Committee. It is clearly been the intent
13 of the Commission, of yourself, Mr. Chairman, of
14 Commissioner Crowley, in allowing this to happen. And
15 if the Commission so desires that you serve as the
16 Second Member of this Committee, clearly that is the
17 right of the Commission.
18 It'll be my intent, on all items concerning
19 this Committee, that I'll petition every action that is
20 taken, if I'm allowed to do so. And I will bring every
21 item on this before the full Commission. I do not think
22 there'll be due process where you have this type of
23 situation where one member of a Commission can veto
24 another. And I think this is very sad that you are
25 willing to go along with these type of actions. It

1 should have been brought out before, when we did the
2 Committee assignments. I hadn't recognized that this
3 was actually occurring. Commissioner Crowley, if she
4 has objections to me, I would suggest that my office is
5 open. I have talked to your staff and said, if you have
6 problems, you should please come and address me. That
7 has not been your wish. So I have to state on the
8 record that I totally resist what is being done.
9 The Chairman, you are involved as our
10 Chairman. You have the toughest siting case before us.
11 You're going to continue to have a lot of time elements.
12 It's going to be very difficult, I feel, for you to be
13 able to handle your full line of responsibilities, and
14 be Chairman and then also be on a very difficult siting
15 case. I reserve the right to talk further on this
16 issue, but I'd like to hear other parties' viewpoints.
17 CHAIRMAN IMBRECHT: Is there a question
18 reserving the right to talk further? Commissioner
19 Commons, a limitation of how many times everybody gets
20 to speak on the issue. Thank you. Does anyone else
21 wish to be heard on this?
22 COMMISSIONER COMMONS: Alright, I'd like to
23 move to amend the motion.
24 CHAIRMAN IMBRECHT: State your motion.
25 COMMISSIONER COMMONS: Alright, I'd like to

1 move that my name be replaced with your name as the
2 Second Member.
3 CHAIRMAN IMBRECHT: The motion has already
4 before the Commission that died for lack of a second,
5 Commissioner Commons. Is there a second? Hearing none,
6 the substitute motion dies for lack of a second. No
7 motion remains before the Commission. Further
8 discussion?
9 COMMISSIONER COMMONS: Yeah. I'm not sure
10 what I want to say, but this is obviously... Well, can
11 you explain to me, Mr. Chairman, why you are willing to
12 be second on this with your difficult time schedule and
13 the large number of Committees you're on, as to how you
14 feel you can adequately handle all of those other
15 assignments and also be on this Committee?
16 CHAIRMAN IMBRECHT: I'm not on any more
17 Committees than any other member of the Commission,
18 actually, probably less.
19 COMMISSIONER COMMONS: No, I believe you're on
20 more because you also picked up Fuels Committee at the
21 end, which made you on more...There is no Commissioner
22 on more standing committees than you are.
23 CHAIRMAN IMBRECHT: I don't think that's
24 accurate; but I, frankly, don't feel any necessity to
25 respond at this point in time.

1 COMMISSIONER COMMONS: Do you think it's fair
2 for the Applicant here...?
3 CHAIRMAN IMBRECHT: Just a moment, you asked
4 me a question.
5 COMMISSIONER COMMONS: Okay.
6 CHAIRMAN IMBRECHT: I was about to give you a
7 response. I am on one Siting Committee at this
8 juncture. I believe that Commissioner Gandara is on
9 six; Commissioner Noteware is, I believe, on three;
10 Commissioner Crowley is on three. I don't know how many
11 you're on. But, basically, at this juncture, though I
12 have, as you correctly indicated, probably the largest
13 case in terms of parties and complexity. It's obvious
14 by virtue of the anticipated workload that we've got
15 coming before us that we're all going to have to take
16 additional siting cases.
17 And, in response to your other question, about
18 all I can say to you is that it seems to me that it is
19 fairly a typical practice here that some weight be
20 accorded to express viewpoints about the Presiding
21 Member preference; and I would also go beyond that and
22 just note that theother factor, obviously, here is that
23 this is a conflict case. And the Commission will not
24 have a recommended decision before it until several
25 months after your term expires, which also seems to be a

1 point in terms of fairness both to the Applicant and
2 also to the intervening parties that they be accorded
3 some expectation of continuity in the conduct of the
4 case. That's really all I have to say and this is a
5 difficult situation. I don't pretend to you that it's
6 not and...
7 COMMISSIONER COMMONS: We've also had the
8 Commission divided on the...
9 CHAIRMAN IMBRECHT: I don't think it ought to,
10 you know, be characterized as you against me or anything
11 of that nature. That simply is not the case. If you've
12 made your motions and you haven't gotten a second, that
13 should also be fairly indicative to you of the general
14 viewpoint of the remainder of the Commission. And I
15 don't know what else I can say to you beyond that.
16 COMMISSIONER COMMONS: Well, we spent four
17 hours where Commissioner Gandara wasn't able to get a
18 second this morning. I think we can spend half an hour
19 on this, because we have..
20 CHAIRMAN IMBRECHT: Commissioner Commons. I
21 am not going to accept a filibuster on this issue.
22 That's totally unreasonable.
23 COMMISSIONER COMMONS: I am not filibustering.
24 I am raising some issues that I think are important.
25 I'm also concerned as to the fairness in the due process

1 issue where this Commission was closely divided on the
2 data acceptance; and, as to whether or not the petitions
3 that are going to be presented will be given full
4 accord, when neither of the Commissioners who were
5 concerned as to the adequacy of the data and the
6 procedures that will be followed are on the Committee
7 where the issue has been brought forth. It suggests to
8 me that there are maybe real concerns as to is this a
9 loaded Committee for a particular reason?
10 CHAIRMAN IMBRECHT: Commissioner Commons, I
11 would just note to you that the Committee does not make
12 a decision as to whether or not an AFC is approved or
13 not. It's made by the full Commission. The full
14 Commission and anyone that has concerns is, obviously,
15 entitled to overrule the decision of the Committee.
16 That doesn't strike me as unlikely that may occur
17 sometime in the next year.
18 COMMISSIONER COMMONS: The issues are not as
19 to whether or not the project is going to be approved or
20 not by the Commission. When we have a project before
21 us, there are essentially two issues. The first issue
22 is there a need; and, the second issue is, what are the
23 conditions, if any, that ought to be placed on the
24 project. It's the data information, and how we handle
25 the data in the cases that is the most essential in

1 terms of the hearing of the cases.

2 The decision of the Presiding Member has to be

3 based on the information that is put into that record.

4 And whether or not the Committee allows for certain

5 information to come in or not to come in, has the major

6 effect as to whether or not a case is heard fairly.

7 When you have the Commission that has been

8 concerned as to the type of data, and whether or not the

9 applicant and the opponent are going to be given fair

10 process. Then it raises the questions as to whether or

11 not there is an intent in this area as to given due

12 process to the applicant in the case. If this were a

13 case that had come up, and I had raised the issue as to

14 being on this case at the time that we held the hearings

15 on data adequacy, that would be one matter. But I had

16 expressed to you an interest in being on this case

17 before we had any of the discussions, before we had any

18 information as to whether or not there were data

19 adequacy problems or otherwise, which is way back in

20 November. At that time, Commissioner Crowley, who is

21 the Presiding Member of the Committee, had not expressed

22 any interest in being a member of the Committee, and

23 only later on was to become a member.

24 CHAIRMAN IMBRECHT: Okay, does that complete

25 your statement?

1 VICE CHAIR CROWLEY: Mr. Chairman.
2 CHAIRMAN IMBRECHT: Commissioner Crowley.
3 VICE CHAIR CROWLEY: I regret to have to sit
4 here and hear my fairness, my ability to consider due
5 process, my intent brought into question. I also am
6 quite distressed that this has degenerated to a personal
7 attack on me, and I think it really lowers members of
8 the Commission to reach this level. And I am perfectly
9 willing to do whatever the Commission chooses regarding
10 my chairmanship, my presiding membership of this
11 particular siting case. But I do not appreciate
12 personal attacks that are without foundation, and I'm
13 not a bit happy about sitting here listening to this
14 sort of attack.
15 COMMISSIONER NOTEWARE: Mr. Chairman, I call
16 for the previous question.
17 CHAIRMAN IMBRECHT: It's the privileged
18 motion...Mr. Chamberlain, does that require a second?
19 MR. CHAMBERLAIN: I don't believe so. I'm
20 checking. Apparently, it does.
21 CHAIRMAN IMBRECHT: Is there a second?
22 VICE CHAIR CROWLEY: Second.
23 CHAIRMAN IMBRECHT: Okay, these questions have
24 been moved and seconded. The motion is not...
25 COMMISSIONER COMMONS: Point of information.

1 CHAIRMAN IMBRECHT: The motion is not
2 debatable, but state your point.
3 COMMISSIONER COMMONS: What is the required
4 vote on a question, is it two-thirds, 60 percent or a
5 majority?
6 MR. CHAMBERLAIN: Two-thirds vote.
7 COMMISSIONER COMMONS: Two-thirds vote of
8 those members present or of those members voting?
9 CHAIRMAN IMBRECHT: Two-thirds is two-thirds.
10 MR. CHAMBERLAIN: Two-thirds of the
11 Commission.
12 CHAIRMAN IMBRECHT: It requires four votes in
13 that case. Alright, previous question. The motion is
14 before us. Will the secretary please call the roll?
15 MS. GERVAIS: Commissioner Commons?
16 COMMISSIONER COMMONS: No.
17 MS. GERVAIS: Commissioner Gandara?
18 COMMISSIONER GANDARA: I'm not involved.
19 (LAUGHTER)
20 MS. GERVAIS: Commissioner Noteware?
21 COMMISSIONER NOTEWARE: Aye.
22 MS. GERVAIS: Vice Chair Crowley?
23 VICE CHAIR CROWLEY: Aye.
24 MS. GERVAIS: Chairman Imbrecht?
25 CHAIRMAN IMBRECHT: Aye.

1 CHAIRMAN IMBRECHT: The previous question is
2 not carried.
3 COMMISSIONER COMMONS: Then, I'd like to
4 continue. This is the first time in two and a half
5 years since I've been on the Commission where we have
6 tried to halt debate by use or reference to the previous
7 question. There was no opportunity as to whether or not
8 there was any further discussion. Rather, we decided to
9 resort to parliamentary procedure.
10 Commissioner Crowley, I guess you've raised
11 objections to my statement. Is it correct or incorrect
12 that you would object of my being a Second Member on
13 this Committee?
14 VICE CHAIR CROWLEY: I don't know that that
15 has any... I would think it would be the vote of the
16 group that made that decision who was second.
17 COMMISSIONER COMMONS: Is it not true that
18 you've made statements to the Chairman that you did not
19 want me as the the Second Member?
20 VICE CHAIR CROWLEY: That's not true.
21 COMMISSIONER COMMONS: Well, if the Chairman
22 were to step aside and the Commission were to... It is
23 strange that in all the Committee reorganization, you
24 and I are not on Committees together. We are the only
25 two members of this Commission that do not serve on a

1 Committee together. And everytime that it has come
2 forward as to I wanted to be on the Conservation
3 Committee which was an area of interest to me somehow, I
4 was not allowed to get onto that Committee. It does
5 seem like a very strange situation, and I feel Black in
6 this Commission, as I say. I feel like a minority, and
7 that this Commission is expressing its viewpoint by
8 having an exclusionary policy. I think it's
9 inappropriate and I don't think this Commission should
10 do that. And it's not that the Chairman, from what I
11 can understand, the Chairman has not requested, because
12 of his very difficult schedule, that wanting to be a
13 Second Member on the Committee. It's rather to have
14 been going along with your accord, which essentially,
15 excludes myself.
16 CHAIRMAN IMBRECHT: Any further discussion?
17 Anyone else wish to be heard on this matter? I was
18 about to say is there any objection to a unanimous roll
19 call, but I get into certain cages. Secretary, would
20 you please call the roll?
21 MS. GERVAIS: Commissioner Commons?
22 COMMISSIONER COMMONS: Abstain.
23 MS. GERVAIS: Commissioner Gandara?
24 COMMISSIONER GANDARA: I'm not involved.
25 (LAUGHTER)

1 MS. GERVAIS: Commissioner Noteware?
2 COMMISSIONER NOTEWARE: Aye.
3 MS. GERVAIS: Vice Chair Crowley?
4 VICE CHAIR CROWLEY: Aye.
5 MS. GERVAIS: Chairman Imbrecht?
6 CHAIRMAN IMBRECHT: Aye.
7 CHAIRMAN IMBRECHT: Aye: 3; Noes: none.
8 COMMISSIONER COMMONS: Mr. Chairman, I'd like
9 ...
10 CHAIRMAN IMBRECHT: Just a moment. Ayes: 3;
11 Noes, none. The motion is carried. That completes
12 Item #3. The next item to come before the Commission
13 is Committee Reports.
14 VICE CHAIR CROWLEY: Mr. Chairman, you dealt
15 with a Appliance Committee, is that correct? The
16 Appliance Committee Report and we had been asking if
17 there were other Committee Reports.
18 CHAIRMAN IMBRECHT: Are there any Committee
19 Reports? Let me elaborate briefly, I hope this clearly
20 be a memorandum coming out from the Executive Office on
21 the status with regard to where we are on the budget,
22 as I mentioned to you yesterday. There are two items
23 that remain open in our budget. Both items were
24 disapproved in Assembly Sub-Committee, Ways and Means,
25 but, had been approved in the Senate Finance Committee.

1 And, therefore, are before the Budget Conference
2 Committee, One is for $99,000 for surveys of non-
3 residential, commercial industrial space in San Diego
4 and in Sacramento. And, the other is for $80,000 for a
5 study of energy efficiency and diesal truck
6 transportation.
7 There is also an open issue from the Assembly
8 side, it doesn't have to do with money, but I'm quite
9 confident it will be resolved appropriately, in terms
10 of contract and provisions for our siting workload.
11 But, the money is in the budget for both versions at
12 $1.4 million. That leaves us with a total budget, I
13 believe, of about $54.4 million. And, assuming
14 favorable action on the other two items, it will be
15 roughly $54.6 million, which, as I indicated to you
16 yesterday, is about roughly $3.0 million higher than
17 the previous highest budget of the Commission, which
18 was in 1982, I believe. Is that correct? Or, was it
19 1982, 1983. 1982/1983. And, as I said, I just want to
20 express appreciation to the staff that has given us
21 excellent support in pursuing our budget goals through
22 the Department of Finance and within the Legislature as
23 well.
24 MR. SMITH: Thank you. Those comments are
25 appreciated.

1 CHAIRMAN IMBRECHT: Commissioner Commons.
2 I'd appreciate it if you'd convey that to all the other
3 people that worked so diligently. The Briefing Package
4 that we had available for response to members of the
5 Legislature was the best that I've seen since I've been
6 at the Commission.
7 MR. SMITH: Yeah, we'll do that.
8 COMMISSIONER COMMONS: Mr. Chairman, starting
9 in last October where I brought forth, through the
10 Commission, the problems that we were having in terms
11 of staffing on Load Management. And, I brought this
12 now forth to the Commission for the past dozen Business
13 Meetings. And, at the last Business Meeting, you
14 promised me in Business Meeting before that the Budget
15 Committee would meet and you would give us a report
16 back on that.
17 MR. SMITH: I might comment just briefly.
18 Commissioner Commons and I had just discussed this
19 before we came back into session. And, we had
20 indicated that because of the priority of the Biennial
21 Report, Electricity Report activities, that the Budget
22 Committee had to be rescheduled for this Friday; and,
23 that that item would be taken up then.
24 CHAIRMAN IMBRECHT: I apologize. But, last
25 Thursday when you and I were in our long discussion on

1 the ER/BR, we had to cancel a scheduled budget meeting
2 at that time, in order to deal with what was,
3 obviously, more pressing business. It will be dealt
4 with, probably tomorrow. I think I was negligent in
5 that respect, and I apologize for it. But I hope you
6 understand the circumstances.
7 COMMISSIONER COMMONS: Let me just note
8 that, I think in this instance, that the circumstances
9 justify the action that was taken. However, this has
10 now gone on for essentially, six months.
11 CHAIRMAN IMBRECHT: Your point's well taken.
12 COMMISSIONER COMMONS: The result of it is
13 that this Commission, by failure to even look at what
14 we have done, has resulted in, in this fiscal year, we
15 will not complete what we had set forth to do in the
16 Load Management area with no vote or support of the
17 Commission on actions that were taken by the Executive
18 Office. And, despite things brought timely to the
19 Commission, and no action taken by the Commission,
20 we've essentially modified the workplan.
21 MR. SMITH: I would point out, as we had
22 commented on in an earlier Business Meeting that staff
23 has prepared a Staffing Plan for Conservation Division.
24 I know some parts of that are not satisfactory to you.
25 But, in fact, in the time that's transpired since the

1 last discussion of this portions of that Plan, in fact,
2 are implemented. And, we'll be bringing the Budget
3 Committee fully up to date on Friday.
4 COMMISSIONER COMMONS: If there've been any
5 changes, they have not been notified to my office, in
6 terms of staffing, personnel, or, activities in the
7 load management area. If anything in the past month of
8 the work in that area has dropped close to zero and
9 there's no activity going on because there's no staff
10 assigned.
11 MR. SMITH: I believe that we probably have
12 more accurate information for you than you've had up to
13 this point. We'll get that to you. But, first, we'll
14 report to the Budget Committee.
15 CHAIRMAN IMBRECHT: Okay. Further Committee
16 Reports?
17 VICE CHAIR CROWLEY: Legislative?
18 CHAIRMAN IMBRECHT: Yes, that's right.
19 VICE CHAIR CROWLEY: Mr. Chairman, we have
20 two items for your attention today. One is for
21 Legislative Bill Process, and the other is a request by
22 the Office of Governmental Affairs suggesting that
23 Consent Calendar for the Report. The Consent Calendar
24 would be used only for bills on which the Commission
25 has already taken a formal position when such bills are

1 amended, but the Legislative Policy Committee
2 recommends no change in the Commission's position.
3 They will be brought back on a Consent Calendar. And,
4 of course, if they're on a Consent Calendar, at the
5 request of any Commissioner, they can be removed for
6 discussion of the bill itself. If there is no such
7 request, then the Commission's acceptance of the Policy
8 Committee Report will be deemed in affirmation that the
9 Commission's position on the bill remains unchanged. I
10 would like to move that we institute this, at the
11 request of OGA, and with the permission of the
12 Commissioners. I would move that we institute a
13 Consent Calendar.
14 CHAIRMAN IMBRECHT: With those stated
15 conditions and provisos.
16 VICE CHAIR CROWLEY: Yes, indeed. By all
17 means.
18 CHAIRMAN IMBRECHT: Alright fine. Will the
19 other member of the Legislative second that? Is there
20 discussion? Commissioner Gandara.
21 COMMISSIONER GANDARA: Commissioner Crowley,
22 I take it that your intent, as well, with respect to
23 changes on the items on the Consent Calendar would be
24 supplied in the same form as originally was in this
25 particular case for September 1?

1 VICE CHAIR CROWLEY: That's correct. And,
2 also, this would not be implemented unless all five of
3 the Commissioners agreed to its implementation.
4 CHAIRMAN IMBRECHT: Typically with a Consent
5 Calendar, any member of the Commission can remove any
6 items on the Consent Calendar and take the items for
7 discussion.
8 VICE CHAIR CROWLEY: Indeed.
9 CHAIRMAN IMBRECHT: Commissioner Commons.
10 COMMISSIONER COMMONS: If the Commission
11 wants to do that, I would have no objection to it.
12 But, I would avail myself of the privilege of in each
13 and every instance having the item brought forward
14 anyway.
15 VICE CHAIR CROWLEY: You're saying that if
16 there were a Consent Calendar, you would remove each
17 item from the Consent Calendar?
18 COMMISSIONER COMMONS: Each and every item.
19 That's correct.
20 MR. ELLISON: In that case, Mr. Chairman, on
21 behalf of the Office of Governmental Affairs, we
22 withdraw the request.
23 CHAIRMAN IMBRECHT: If that's the case, it
24 renders the whole proposal moot.
25 VICE CHAIR CROWLEY: Then I would withdraw

1 motion. The first bill on our ...
2 COMMISSIONER COMMONS: Let me state the
3 reason for it, if I may.
4 VICE CHAIR CROWLEY: The first bill on our
5 Legislative Committee recommendation...
6 CHAIRMAN IMBRECHT: Just a moment.
7 Commissioner Commons wanted to ... Excuse me.
8 COMMISSIONER COMMONS: I have found that
9 amendments are often much more important than the bill
10 themselves. So, unless we had an opportunity to see
11 the bill, that the amendment could change the full
12 intent of the legislation.
13 CHAIRMAN IMBRECHT: Well, Commissioner
14 Commons, Commissioner Gandara just mentioned that. The
15 point is that what you have is a complete summary of
16 those amendments. So, before removing an item from
17 Consent, you would have an opportunity to avail,
18 yourself with knowing what the amendments were. And,
19 if you sought to discuss them, that would be fine.
20 VICE CHAIR CROWLEY: Let me give you an
21 example.
22 COMMISSIONER COMMONS: Well, there's another
23 reason I have a problem - the Legislative Committee
24 meets the day that my office is closed. And, so we
25 have not had the opportunity to avail ourselves of

1 participating.

2 VICE CHAIR CROWLEY: That hasn't been. What

3 day have we been meeting?

4 MR. ELLISON: During my tenure at the

5 Commission, we have begun meeting on Thursday mornings.

6 VICE CHAIR CROWLEY: We meet Thursday

7 mornings. Is your office closed? I don't know if it

8 is closed or not.

9 COMMISSIONER COMMONS: No. Our office is not

10 open on Fridays. We have two half-time people.

11 VICE CHAIR CROWLEY: Thursdays at 10:00 has

12 been our practice to meet, and this has been before you

13 were here, but also, since you've been here. As an

14 example of the Consent Calendar, Senate Bill 721, which

15 is in our previous packet, is listed as a Consent

16 Calendar item noting our position and the amendments

17 and the Legislative Committee's recommendations. And,

18 if this, you seem to indicate this in inappropriate, we

19 have withdrawn our request for a Consent Calendar.

20 The first Bill on our list, AB 174, has been

21 rewritten and will be reevaluated and resubmitted for

22 the considerations of the Committee, then, brought back

23 to the Commission. Chris, would you like to go

24 through, please, the following list?

25 MR. ELLISON: The first bill before you is AB

1 262. This is a Franchise Tax Board sponsored bill,
2 which was defeated in the Assembly Revenue and Taxation
3 Committee, but has been granted reconsideration. The
4 bill would limit taxpayers claiming 60 months
5 depreciation on solar and energy conservation equipment
6 to straight-line depreciation only. Most business
7 property, as you know, can be depreciated by either a
8 double-declining balance method, or a straight-line
9 method. Staff and the Legislative Policy Committee
10 recommend opposing this bill on the ground that solar
11 and conservation equipment should be entitled to the
12 same depreciation options as all other business
13 equipment.
14 CHAIRMAN IMBRECHT: Is there objection to the
15 Committee recommendation? Commissioner Commons.
16 COMMISSIONER COMMONS: I'd like to have an
17 understanding as to why the Assemblyman introduced the
18 bill and what the benefits of that policy was.
19 Obviously, someone thought that this was a good idea.
20 And, I'd like to have a balanced viewpoint as to the
21 reasons for and the reasons against.
22 MR. ELLISON: The Assemblyman introduced the
23 bill at the request of the Franchise Tax Board.
24 According to the Assemblyman's office, the Franchise
25 Tax Board argues that having both straight-line and

1 double-declining balance options available confuses
2 taxpayers. While that may be true, it is the opinion
3 of the Office of Governmental Affairs that it is no
4 less confusing to taxpayers to have both options
5 available with solar and conservation equipment as it
6 would be with any other equipment. And, if the
7 Franchise Tax Board believes that it's confusing
8 taxpayers, an appropriate proposal would be to limit
9 the options across the board and not just for this
10 equipment.
11 COMMISSIONER COMMONS: Who are the parties
12 that support and who oppose?
13 MR. ELLISON: On record, in the Legislature,
14 there are no supporters other than the Franchise Tax
15 Board and no opponents at this time. As I mentioned,
16 however, this bill was already defeated in the first
17 Assembly Policy Committee, but was granted
18 reconsideration.
19 CHAIRMAN IMBRECHT: I just note for the
20 record that it is a legislative courtesy to extend it
21 for reconsideration. I would guess that would probably
22 be first an amendment, rather than trying to pursue the
23 same bill.
24 COMMISSIONER COMMONS: I can't agree that it
25 would not have a fiscal impact. Clearly, the reason to

1 have double-declining balances to be able to reduce
2 your taxes in the initial years. And, so if you have,
3 if the State has the money in earlier years, then, it
4 reduces their interest payments in later years. And
5 cash flow is very, very important. So, it clearly
6 would be a fiscal affect of this bill.
7 MR. ELLISON: There is a fiscal affect of the
8 Bill. However, over the five-year depreciation period,
9 the amount of money collected is essentially the same.
10 The cash flow, as you point out, is different. With
11 double-declining balance, you collect the money more
12 more slowly from the taxpayer than you would with the
13 straight-line method.
14 CHAIRMAN IMBRECHT: Okay. further
15 discussion? Is there objection to the Committee's
16 recommendation? Hearing none, the Commission will
17 oppose AB 262. Commission Crowley, did we take up 174?
18 VICE CHAIR CROWLEY: Yes, 174 is being re-
19 written. It will be brought back and we will discuss
20 it at Committee and bring forward that discussion. It
21 is simply off calendar.
22 CHAIRMAN IMBRECHT: Alright, fine.
23 VICE CHAIR CROWLEY: The next Bill, 323, Tax
24 Credits, we have recommended a support the April 24th
25 version of, and Chris, could you give us an explication

1 of that please?

2 MR. ELLISON: This is a relatively

3 straightforward bill, Commissioners. It simply adds

4 water heater controllers to the measures that are

5 eligible for the conservation tax credit. It was

6 recently amended after Legislative Policy Committee

7 discussed the bill to allow credit for such devices in

8 all dwellings. Both the staff and the Legislative

9 Policy Committee are recomending support for this bill.

10 CHAIRMAN IMBRECHT: Is there objection to

11 Committee recommendation? Okay, that will be the

12 Commission's position.

13 VICE CHAIR CROWLEY: Bill 571 (Hannigan) is

14 another Tax Credit Bill. Our recommendation on this

15 bill is neutral. This is solar and conservation tax

16 credit allocations among partners in and out-of-state.

17 And, Chris, I'd appreciate your comments on this.

18 MR. ELLISON: This bill was intended to close

19 what the Assemblyman sees as a narrow loophole in the

20 solar and conservation tax credits. Existing law

21 permits partners in ownership of eligible measures to

22 trade Federal and State credits. This only becomes

23 important where one partner resides out of State and

24 another resides within California. In that instance,

25 the two partners can trade the Federal and State

1 credits in such a way as to increase the overall credit
2 that would be available to the property.
3 VICE CHAIR CROWLEY: The impact on
4 conservation we felt was minimal and we felt it really
5 was a Revenue Bill, as per Commissioner Gandara's
6 comments on some of the legislation. So, our
7 recommendation was neutral.
8 CHAIRMAN IMBRECHT: Commissioner Commons.
9 COMMISSIONER COMMONS: Yes, I think we should
10 be responsible and support the bill. This is a clear
11 example of a loophole whereby you can find some parties
12 who would be willing to make the investment from out of
13 State for one reason of another, and increase the tax
14 credit allocation to partners who invest within
15 California. And this is, to me, an example of the tax
16 loophole; it's the type of reason why tax credits can
17 get a poor name, and I think that the Commission should
18 be fiscally responsible here and not support this type
19 of loophole.
20 CHAIRMAN IMBRECHT: I have to tend to
21 disagree with that, Commissioner Commons. And, my
22 apologies to Commissioner Crowley in being clear to her
23 in my position on this. But, as a matter of the
24 Committee, no obligation for you to support Committee
25 recommendations. So, I think now just to retrospective

1 view would be our general agreement. Assemblyman
2 Hannigan is the Chairman of the Revenue and Taxation
3 Committee. I've been a supporter of tax
4 credits,generally, and I think is also concerned with
5 the points you made are important ones. Some of the
6 oppositions of tax credits has to do with, I would
7 characterize, as ancilliary issues associated with the
8 loophole issues and that type of thing.
9 VICE CHAIR CROWLEY: So, you're recommending
10 the motion would be then an opposed position?
11 CHAIRMAN IMBRECHT: No, no, a support.
12 VICE CHAIR CROWLEY: I mean a support.
13 Excuse me. I'm confused. Support position on this
14 matter.
15 CHAIRMAN IMBRECHT: Is there, with that as
16 amended recommendation, is there opposition to a
17 support position on AB 571?
18 COMMISSIONER GANDARA: Mr. Chairman, I would
19 like to support, just for future information, should it
20 come up again, I believe it's also consistent with and
21 meets the residential conservation and energy tax
22 credits that I believe upon the purchase of a home,
23 that if tax credit has not been taken by the developer,
24 the resident can take it, purchase it and develop it.
25 This is the same....

1 CHAIRMAN IMBRECHT: Alright, fine. We'll go
2 in support on that then. If there's not objection,
3 that will be the position of the Commission. Next is
4 AB 889.
5 MR. ELLISON: Commissioners, AB 889 is an
6 urgency measure which would require the Waste Mangement
7 Board to adopt Operation and Performance Standards for
8 Resource Recovery Projects. Arguably this measure
9 overlaps with the Commission's authority to adopt
10 certain design and performance standards for facilities
11 within its jurisdiction. However, the Commission has
12 not exercised that authority. And, the bill does not
13 preempt its ability to do so in the future. Moreover,
14 the bill requires that the Commission be consulted by
15 the Waste Management Board prior to its adoption of any
16 standards pursuant to this legislation. Accordingly,
17 the Legislative Policy Committee and the staff are
18 recommending neutral.
19 CHAIRMAN IMBRECHT: Commissioner Commons.
20 COMMISSIONER COMMONS: Yes, I think one of
21 the reasons that we called out MSW as one of our
22 proposed resources, and gave it to resource allocation,
23 was the recognition of the real problems that we're
24 having in landfill and overall in resource recovery.
25 And, if we take a neutral position, I see no reason,

1 and, there's nothing in the analysis as to why we
2 should not be supportive. It's consistent with our
3 giving, we have reserved need for these types of
4 projects. This seems to a step forward in trying to
5 solve that problem. And, I think we should be
6 supportive of it.
7 COMMISSIONER GANDARA: Mr. Chairman.
8 CHAIRMAN IMBRECHT: Commissioner Gandara.
9 COMMISSIONER GANDARA: I don't think we
10 should be neutral, but I think we should be in the
11 other direction as opposing. As indicated yesterday,
12 I'm kind of opposed to this micro-economic relation.
13 This is an updated example of that. But, beyond that,
14 as I've indicated before, I'm pleased that the
15 Commission has recognized that there is special
16 technology that exist. And, in fact, is moving along
17 in that. And the same time, it also doesn't mean that
18 it would be inequitable to saddle this industry in its
19 infancy with a set of performance and operating
20 standards that doesn't exist for any other technology.
21 We don't have that now as state of technology that
22 INAUDIBLE. We don't have it for any kind of plant.
23 And, in fact, we've even declined to set performance
24 and with respect to the wind system when we've gone
25 only as far as to say that in developing to report

1 information. But, not required for a standard. So, in
2 any case, it doesn't mean that, for several reasons.
3 One it's meant for energy. Second, it's unlikely that
4 this is an appropriate time to, in fact, do something
5 about this. Thirdly, I guess I'm concerned overall as
6 to the concept. And, lastly, I do think that it would,
7 affect, seriously affect, Commission's responsibility.
8 So, I think we could find it a friendly, or a new bill
9 or an understanding way to indicate this to the Solid
10 Waste Management Board so they don't get disturbed
11 about it.
12 CHAIRMAN IMBRECHT: It's obviously they're
13 putting this in. I see their response to this. I
14 would agree. In conversations that I've had with them,
15 and, it's a little disconcerting to me that they're
16 taking this approach, to be quite honest with you
17 because I personally believe that the appropriate
18 jurisdictional lines here are that they ought to
19 control the issue of collection and all the issues
20 associated with solid waste up to the energy plant
21 gate. I believe that it's more appropriate for this
22 Commission with its expertise, I think quite thoroughly
23 the stronger expertise on the staff level and a wide
24 variety of environmental Commissions, combustion cost
25 economics for energy products, on and on, and biomass,

1 et cetera, which is clearly consistent with that. That
2 it would just, in essence, provide a justification for
3 duplication beyond that which already exists.
4 I guess my suggestion would be that we oppose
5 unless amended and suggest amendments that would, in
6 essence, allow them to develop these standards for the
7 issues that I mentioned which I don't object to, which
8 was the appropriate consideration for safe collection
9 and all those kinds of matters. I really think that,
10 frankly, that we have an understanding on this matter
11 with the Waste Board, but the jurisdictional question of
12 all they control, in essence, waste, as I indicated to
13 the energy plant gate. And, from that point, it becomes
14 an issue like any other. In essence, they are dealing
15 with waste as a fuel and they want to insure that there
16 is adequate protection for public health and safety in
17 that context, but wants to save fuel and then be
18 converted to an energy resource and not be within our
19 jurisdiction for not just appropriate reason, but just
20 also because of just general governmental economy
21 reasons. Commissioner Commmons.
22 COMMISSIONER COMMONS: Let me try a different
23 pitch. I didn't realize, I guess, in reading this
24 proposal -- it was so short. I thought this was to
25 support development of resource recovery, not put

1 restrictions. What I'd like to suggest is that our
2 Intergovernmental Affairs Committee meet with the
3 California Waste Management Board and see if we can
4 reach some agreement prior to the time that we take a
5 position in opposition and that we come back to this at
6 the next Business Meeting.
7 CHAIRMAN IMBRECHT: I think the letter or,
8 whatever communication ought to be done in a very
9 conciliatory fashion. I met with the Chairman of the
10 Solid Waste Board on several occasions, and, also in the
11 context of discussions with, I guess then, Secretary
12 Duffy, I don't know if his resignation is effective
13 today or what. But, in any case, I thought we had an
14 understanding consistent with what I've just expressed.
15 COMMISSIONER COMMONS: Do you think there are
16 any issues that industry might have because many of
17 these projects are methane or under 50 MW as to this
18 Commission exerting its jurisdiction in the area? We're
19 talking about a sensitive problem in terms of what we
20 do. And, if we were to propose it, we ourselves do it,
21 that would also raise questions as to, I think, what
22 Commissioner Gandara has raised, even if we want to get
23 into this.
24 CHAIRMAN IMBRECHT: We would handle those
25 things in the context of.... We would with any other

1 plants where we had the authority to impose appropriate
2 conditions that would insure public health and safety
3 and all the other matters of our statute requires us to
4 be concerned about.
5 COMMISSIONER COMMONS: I would have to feel
6 that what they're looking at here is that for those
7 projects that are under 50 MW that there are not those
8 types of generalized conditions and it can be very
9 difficult for each local jurisdiction to have to go
10 through and try to come up with it. The issues are
11 broad, not narrow. And, I'm not sure we can handle it
12 off the top.
13 CHAIRMAN IMBRECHT: Okay. This has come out of
14 which Committee in the Assembly?
15 COMMISSIONER COMMONS: We have some
16 representatives of industry here who might have some
17 viewpoints.
18 CHAIRMAN IMBRECHT: That's public comment.
19 Just a moment. Mr. Ellison.
20 MR. ELLISON: I believe this bill passed the
21 Assembly of Natural Resources in the Energy Committee.
22 But, I don't have my notes in front of me, and I'd have
23 to check that.
24 CHAIRMAN IMBRECHT: Okay. Let me suggest that
25 why don't we direct Mr. Ellison to engage in discussions

1 with his counterpart, at this point, to get a better
2 understanding of what their intent is here, and do it in
3 conciliatory fashion. But, I would suggest, that they,
4 before we take this up today, Commissioner-to-
5 Commissioner kind of discourse. And I'll explain this to
6 you privately about my concern with that -- that you try
7 to convey some general concerns expressed in this
8 conversation about appropriate jurisdiction. I'm also
9 concerned. What if we chose those rules and regulations
10 in Siting cases? It is my understanding that we have
11 that authority. I mean, I think that ought to be
12 pointed out.
13 MR. CHAMBERLAIN: Unless the bill were to
14 indicate expressly that we do not have that authority.
15 MR. ELLISON: And, the bill does not make that
16 kind of expression.
17 CHAIRMAN IMBRECHT: That's why I would just,
18 this Commission, perhaps would want to point that out to
19 them as well. And, as Commissioner Commons suggested,
20 there might be situations where there're other
21 facilities outside of our jurisdiction, other
22 technologies beyond our jurisdiction, where it might be
23 appropriate to be involved in. In terms of the basic
24 MSW plants, as in one case we have before us, and
25 another two that are expected to come in. Not just the

1 future, I think we should be very careful about
2 saddling, as Commissioner Gandara indicated, pledging
3 the industry with even more regulatory constraints than
4 already exist.
5 COMMISSIONER COMMONS: I'd also like to
6 encourage him to discuss this with the L.A. County
7 Sanitation District, and with at least one private
8 developer to get their viewpoint.
9 CHAIRMAN IMBRECHT: Well, start off that
10 discussion with the Solid Waste Board. And, I might
11 add, I also think it would be appropriate, in the event
12 this gets sent to Ways and Means as coming out of the
13 bill to bring this back to the Commission, I would think
14 that it might be appropriate to express their general
15 reservations without necessarily taking a position at
16 that point.
17 MR. ELLISON: Mr. Chairman, if I may, I'd like
18 to get a brief clarification here. Is it the
19 Commission's position that the Board ought not to have
20 this authority with respect to any such facilities, or
21 only such facilities that are clearly within the
22 Commission's jurisdiction?
23 COMMISSIONER COMMONS: I thought we said we
24 wanted you to go and discuss the matter with him before
25 we make a final opinion on that issue.

1 MR. ELLISON; Yes, I know. But, I'm concerned
2 about what reservations I should be expressing.
3 CHAIRMAN IMBRECHT: Well, I kind of agree with
4 Commissioner Commons. I want to know a little better of
5 what their motivation is on this. It's not clear to me
6 what it is. I would be happy to discuss it in a quieter
7 form, if necessary.
8 COMMISSIONER COMMONS: I think Commissioner
9 Gandara's statement, at least reflected my viewpoint
10 that we have concerns that we may be putting up problems
11 on a saddling industry. I think all of the ...
12 CHAIRMAN IMBRECHT: You might point out to
13 them as called out as a preferred resource, reserve need
14 in the ER/BR, and all those kind of items. I'll give
15 you some advice on it. How about AB 1412?
16 MR. ELLISON: AB 1412 would extend to 1991 the
17 existing exemption from property tax reassessment given
18 to active solar systems. Unelss this bill is enacted,
19 those who install active solar systems after January 1st
20 of next year would have to have the new construction
21 reassessed and pay an additional property tax. This
22 disincentive to the sale of solar systems in Calfornia
23 was not intended by Proposition 13. And, the people
24 later passed Proposition 7 which specifically authorized
25 the Legislature to exempt active solar systems from such

1 reassessment. Previous legislation pursuant to
2 Proposition 7 expires at the end of this year. The
3 Legislative Policy Committee and the Staff recommend
4 support to this measure to extend the exemption to 1991.
5 COMMISSIONER COMMONS: Why did you, why 1991
6 and not 1990, 1992?
7 MR. ELLISON: I don't know how the date was
8 selected, Commissioner. I would guess, and I am
9 guessing, that they simply added five years.
10 COMMISSIONER COMMONS: One of the reasons I
11 think we should support this is that the tax credit
12 stays out. This is one of the few benefits that would
13 be left as an incentive to install solar systems. And,
14 at least you wouldn't also get a tax on top of doing the
15 improvement.
16 CHAIRMAN IMBRECHT: Yeah, I agree.
17 COMMISSIONER GANDARA: I don't understand
18 exactly.
19 CHAIRMAN IMBRECHT: I can answer this. What
20 this is is basically, under the definition of
21 Proposition 13, the promulgation legislation, et cetera,
22 which I carried, 1979/80, any additions to a new home,
23 of course, would generate a reassessment as to the value
24 of that home. And, basically, it's a further effort to
25 encourage the installation of solar above and beyond the

1 tax credits. And, in order to avoid any disincentives
2 that would occur because of the reassessment, would be a
3 high property tax, this exclusion was passed by the
4 Legislature. And, what this basically does is simply...
5 COMMISSIONER GANDARA: I see. So, ...
6 CHAIRMAN IMBRECHT; Just like if you add a
7 room onto your house, you get reassessed. If you have
8 solar, you get reassessed as well.
9 COMMISSIONER GANDARA: Are you saying that if
10 I had a solar system my property base does not increase?
11 CHAIRMAN IMBRECHT: Yes. It would not be,
12 it's not now because of existing law and this is simply
13 just an extension of that.
14 VICE CHAIR CROWLEY: You're right.
15 COMMISSIONER GANDARA: I would be opposed to
16 that then.
17 CHAIRMAN IMBRECHT: If this expires, ...
18 COMMISSIONER GANDARA: If I understand it
19 correctly, what this does is that it makes a
20 differentiation between additions to a home. All
21 additions to a home are passed, but for solar. This
22 would extend that.
23 VICE CHAIR CROWLEY: That's correct. They are
24 reassessed.
25 COMMISSIONER GANDARA: I would oppose it. I

1 think it should be, in fact, be the same as if an
2 addition to a home. In particular, in this case, where
3 the participant is the direct beneficiary of cost-
4 effectiveness of it. My position is very consistent.
5 That, while I do believe that there are circumstances
6 which a ....., I think it's been well established in
7 California. And, that I do believe that the benefits to
8 the purchaser of the home ought to benefit. I don't
9 want this to be treated, I don't want solar to be
10 treated any worst than other tax credits, I thought we
11 dealt with that when we had the kind of a decline ...
12 CHAIRMAN IMBRECHT: I just would note that one
13 other point here that I think is relevant. And, that
14 is, that this exemption originally was enacted by a vote
15 of the people in California. And, it was Proposition 7
16 on November 1980 ballot. And, the implementation
17 legislation carried by Senator Alquist in 1980, was a
18 response to the directive of the people of the State
19 that desired such an exemption.
20 COMMISSIONER GANDARA: People of the State, at
21 that time, wanted that exemption for only a certain
22 period, right?
23 MR. ELLISON: Mr. Chairman, my recollection is
24 ...
25

1 CHAIRMAN IMBRECHT: I think the legislation
2 did that.
3 MR. ELLISON: Yeah, the Proposition permitted
4 the Legislature to create the exemption. The
5 Proposition did specifically allow them to create an
6 exemption.
7 CHAIRMAN IMBRECHT: I might mention to
8 Commissioner Gandara, there were a whole bunch of other
9 exemptions as well. Installation of fire equipment and
10 fire safety equipment, sprinkler systems, that type of
11 thing, are exempted. Certain types of ... there's quite
12 a long list. I just thought I would mention that.
13 COMMISSIONER GANDARA: I would have expected
14 that, but I think that the difference here is that, I
15 think there is a strong public policy purpose in
16 exempting those, because those do not pay themselves
17 back. Those do not, basically, have any economic
18 strength.
19 CHAIRMAN IMBRECHT: Okay. I must ask, is
20 there anyone else in agreement with Commissioner
21 Gandara's position?
22 VICE CHAIR CROWLEY: Well, it's a very
23 persuasive position if you're from local government and
24 have seen an entire array of of things done to erode the
25 property tax base. However, since this too sense that

1 it's, and the money, to some degree, will be recouped
2 because of the way property taxes, property is
3 reassessed when it's sold regardless to if there is a
4 mitigating effect.
5 CHAIRMAN IMBRECHT: Commisioner Noteware.
6 COMMISSIONER NOTEWARE: Taxpayers also benefit
7 by the installation of solar on individual homes. I
8 think their benefit is more of an offset by their loss
9 of revenues that this provides. I feel, too, that since
10 we're trying to encourage the use of individuals to cut
11 down on manufactured energy, we should support this.
12 CHAIRMAN IMBRECHT: Okay. I don't hear three
13 votes.
14 COMMISSIONER GANDARA: I'm shocked to be
15 surrounded by such economic liberals....
16 CHAIRMAN IMBRECHT: I got over my shock about
17 those things long time ago. Alright, the Commission
18 then endorse the Committee recommendations and support.
19 VICE CHAIR CROWLEY: And, the Consent Calendar
20 is not such. And, so AB721, we have voted to support
21 that. It was amended per our suggestions. Mr. Ellison
22 would you like to give us more information, since staff
23 has been written up with the Consent Calendar item?
24 MR. ELLISON: Certainly. This bill, if your
25 recall, Commissioners, is the intervenor funding bill

1 for the Energy Commission. We voted to support the
2 bill, provided that it was amended pursuant to a letter
3 from the Public Advisor to Senator Rosenthal. Senator
4 Rosenthal, the author of the bill, has made that
5 amendment, at our request. In addition, however, he has
6 also made the amendments described in your backup
7 packets which do the following. They establish that the
8 money which would be paid to intervenors must come from
9 the surcharge. They limit the total amount of the
10 awards to $500,000 per year; and, they require the
11 Commission to adopt, by September 30th of next year,
12 regulations to implement the intervenor funding process.
13 CHAIRMAN IMBRECHT: Where did all that come
14 from?
15 MR. ELLISON: Utilities. Investor-owned
16 utilities. The investor-owned utilities were concerned
17 that the Commission might award intervenor's funding and
18 then seek to recover that from rates through the Public
19 Utilities Commission. That's with respect to
20 establishing the surcharge of the source of the funding.
21 I believe that the third amendment that I mentioned, the
22 adoption of regulations by September of next year, and,
23 I must confess to be speculating here, but my
24 speculation is that that was introduced at the request
25 of potential intervenors who were concerned that the

1 Commission would implement the process quickly.
2 CHAIRMAN IMBRECHT: Let me just understand
3 this. The bill still does not require us to grant
4 intervenor funding, but, this makes it permissive. Is
5 that correct?
6 MR. ELLISON: That's correct.
7 CHAIRMAN IMBRECHT: Commissioner Gandara.
8 COMMISSIONER GANDARA: Well, I'm not terribly
9 troubled except for the limitations on the award. But,
10 I would suggest a way to handle that is to take the
11 limit off, and, having corresponding amendments that
12 would allow us to adjust the surcharge.
13 CHAIRMAN IMBRECHT: I think that it is highly
14 unlikely that the Legislature is going to vest the
15 authority to adjust the surcharge. And, I certainly
16 would oppose this like this bill if there were no cap
17 like this, because I think that it is foolish to be
18 cutting off our own heads to despite our face on this
19 process aside. It's going to come down then,
20 fundamentally, to a weighing of Commission programs
21 versus intervenor funding. And, I think that's the kind
22 of situation that could cause all kinds of potential
23 problems for us. You really want to get into a
24 situation where you're going to have a room full of
25 people here arguing for that versus....?

1 COMMISSIONER COMMONS: What is their total
2 budget right now that's going through the Legislature?
3 CHAIRMAN IMBRECHT: It's about $54.6 million.
4 That's all funds; that's not ERPA. ERPA is, I believe,
5 around $30 million of that. The rest are federal funds
6 and other funding sources. I might just note for you
7 that we are getting up close to the revenue limits of
8 our... And the only thing that gives us any pause there
9 is the tacit understanding that I've been able to
10 negotiate with Finance, that in the next fiscal year
11 budget, the other agencies that are currently have a
12 straw in ERPA as well will be backed out of the funds;
13 and it will be once again as it was originally intended
14 to be; and only in the wake of a fiscal crisis there may
15 be 2 and 3 if it's overturned. It was originally
16 intended to be a dedicated funding source for the Energy
17 Commission's programs.
18 COMMISSIONER COMMONS: We're talking here
19 about, first of all, no mandatory allocation; and, we've
20 also been talking about a maximum upper limit of
21 approximately one percent of our funding.
22 CHAIRMAN IMBRECHT: Two percent.
23 COMMISSIONER COMMONS: Well, one percent of
24 $50 million.
25 CHAIRMAN IMBRECHT: Two percent. Two percent

1 of our ERPA funding.

2 COMMISSIONER COMMONS: No, but one percent of

3 our overall, I look at the overall budget. What the

4 sources are. If we have $54 million, this would be half

5 a million dollars. And that...

6 CHAIRMAN IMBRECHT: The end budget, the source

7 is a critical thing, Commissioner Commons, I'm telling

8 you.

9 COMMISSIONER COMMONS: Well, since there's no

10 requirement that we have to spend $500,000, that seems

11 to me to be a reasonable upper cap.

12 COMMISSIONER GANDARA: Given the Commission's

13 recently adopted forecast and need assessment in sales

14 can't go up until we get more evidence, am I right?.

15 CHAIRMAN IMBRECHT: What can go up?

16 COMMISSIONER GANDARA: Sales. We can keep

17 sales where they are. Circular accounts go up. But

18 that raises another thought I just...

19 COMMISSIONER COMMONS: But rates go up if

20 there is...I mean, we should advocate higher rates,

21 because we'll get more revenue?

22 CHAIRMAN IMBRECHT: Only if there are

23 increased users, not increased sales on that basis, just

24 a percentage. ERPA is not...

25 COMMISSIONER GANDARA: Percents of sales.

1 Sales would go down. Give us money with our
2 Commission.... But anyway, I was wondering, with
3 respect to third-party generation, does that mean that
4 third-party generation displaces electric utility
5 generation? We're cutting back on our ERPA accounts,
6 then?
7 VICE CHAIR CROWLEY: Yes. We're working
8 ourselves out of business.
9 CHAIRMAN IMBRECHT: You can make the same
10 argument about conservation programs.
11 COMMISSIONER COMMONS: There had been a
12 proposal earlier...
13 CHAIRMAN IMBRECHT: I really don't .... we've
14 spent enough time on this. Does anyone wish to object
15 to the Committee's recommendation? We can support...
16 COMMISSIONER NOTEWARE: We should support.
17 VICE CHAIR CROWLEY: Continuing to support.
18 CHAIRMAN IMBRECHT: Continuing to support.
19 VICE CHAIR CROWLEY: We had supported earlier.
20 CHAIRMAN IMBRECHT: If you persuaded me, I'll
21 go along with you.
22 VICE CHAIR CROWLEY: You won't like it.
23 CHAIRMAN IMBRECHT: Just like you sometimes,
24 Commissioner Gandara, say I may come back and say, "I
25 told you so"; I may come back, and I'll stay with them
or not. Now, okay. I hear no objections. We remain in

1 support of those amendments. Commissioner...I guess
2 that completes the Legislative Committee?
3 COMMISSIONER COMMONS: No, it does not, Mr.
4 Chairman.
5 CHAIRMAN IMBRECHT: Commissioner Commons.
6 COMMISSIONER COMMONS: I think we're on
7 Legislative. I requested four weeks ago, that we bring
8 back to the Commission; and I had made a mistake; and I
9 had used the term PURPA, rather than PVEA. But we
10 corrected that at the last businees meeting, and I do
11 not see any of the PVEA legislative proposals before us.
12 VICE CHAIR CROWLEY: Commissioner, may I speak
13 to that?
14 MR. CHAMBERLAIN: Commissioner, you are
15 correct. We have no PVEA bills before us. And there
16 are a number of bills which are moving in the
17 Legislature which would allocate the uncertain PVEA
18 funding. The Office of Governmental Affairs has
19 distributed to you, as well as the the rest of the
20 Commission, a summary of those bills and a summary of
21 the status of where they are in the Legislature, what
22 they do, and what the funding picture looks like.
23 COMMISSIONER COMMONS: What is the intention
24 of the Legislative Committee, are you intending to bring
25 those bills before us; or, are you not intending to

1 bring the bills before us?

2 VICE CHAIR CROWLEY: The Legislative Committee

3 has been seeking guidance as to how to deal with the

4 legislative bills. And we have asked the Executive

5 Office if they can suggest to us how this should be

6 dealt with, and we have not heard them after that.

7 CHAIRMAN IMBRECHT: Mr. Ellison, I have to

8 admit to you, I'm somewhere in my stacks here. I'm just

9 getting caught up on some of the reading. I saw your

10 memorandum. If I recall correctly, you indicated there

11 is $5.5 million that has been allocated to the state

12 recently?

13 MR. ELLISON: Well, there's $5.5 million,

14 which is currently at DOE, waiitng for a California

15 application. The Executive Office, as I understand it,

16 has been looking at this issue for some time and is...

17 CHAIRMAN IMBRECHT: Well, it's still at DOE,

18 though. I mean, it hasn't been given to the state.

19 MR. ELLISON: That's right. But unlike

20 the...One of the biggest concerns that many people,

21 including this Commission, have had in the past with

22 respect to taking positions on these bills is that the

23 funding is so uncertain. I mentioned the $5.5 million

24 only to say that that small percentage of the overall

25 potential PVEA funds appears to be reasonably certain.

1 The remaining up to, you know, $200 million plus, is
2 subject to a wide variety of contingencies.
3 MR. SMITH: I believe that $5.5 million is the
4 $5.5 that is directed to users of diesel too in
5 California. The Department of Finance has the lead in
6 putting together an allocation plan. We have, through a
7 letter from the Chairman to, I believe, it was the
8 Director of Finance, indicated our interest in aiding
9 Finance in those allocation decisions.
10 CHAIRMAN IMBRECHT: And we have had no
11 response on that. Commissioner Commons.
12 COMMISSIONER COMMONS: Mr. Chairman, I do not
13 think it's the prerogative of a Committee to withhold
14 allowing this Commission to take a position on bills by
15 not bringing them forth to the Commission. I duly made
16 my request. I recognized that I had made a mistake. In
17 terms of the description that mistake was clarified.
18 And I do not think that a Committee has the right to
19 withhold allowing a Commission to make judgment. I,
20 therefore, request that each and every PVEA bill be put
21 on the agenda for next week as a specific item, and with
22 OGA analysis.
23 CHAIRMAN IMBRECHT: I really think that...
24 VICE CHAIR CROWLEY: I have no problem with
25 that at all. What I really would like...

1 CHAIRMAN IMBRECHT: I don't think the
2 Committee has been withholding anything. They've been
3 trying to come up with a rational policy, something that
4 basically...There are a lot of bills. I don't know what
5 the total expenditure for some of those bills are, but
6 it's several hundred million dollars is my recollection.
7 VICE CHAIR CROWLEY: We have asked...
8 CHAIRMAN IMBRECHT: ...With no funding source,
9 and that funding source based upon actions that have
10 recently been taken in Washington, D.C., that
11 increasingly seems to be slipping through those
12 hundreds. But, in any case, I have no objection to
13 that, and I would agree with them.
14 VICE CHAIR CROWLEY: I think that's
15 appropriate. I would say that I don't know how many
16 bills there are, but I don't know whether the resources
17 of those OGA, if there are lots of them to deal with an
18 analysis of all of them.
19 CHAIRMAN IMBRECHT: Why don't you go with the
20 same way that we handled all other bills? Those which
21 are immediately pending in Legislative Committees, bring
22 those forward. If there are others that have not been
23 set and so forth, we can handle those at the following
24 Commission meeting, based upon your workload
25 capabilities.

1 MR. SMITH: Our resources are such that we
2 cannot bring them all to you at the next meeting. We
3 will bring them to you in the order that the Chairman
4 has described, as quickly as possible.
5 CHAIRMAN IMBRECHT: Those which have the most
6 immediate benefits. Is that appropriate to you,
7 Commissioner Commons?
8 COMMISSIONER COMMONS: That sounds reasonable.
9 CHAIRMAN IMBRECHT: Alright, fine.
10 COMMISSIONER COMMONS: Then, there is one
11 other bill that we had discussed earlier, which I
12 haven't heard from; and, I don't know if it's a bill or
13 what has happened. There was the equity issue raised on
14 third-parties, as to who should be paying the siting
15 costs. As to whether there should be an application fee
16 from QF's that come before us. And if I'm not mistaken,
17 when a utility puts an application before us, it's paid
18 in one type of way. And, the question is, is it
19 equitable that there is no fee in terms of the QF
20 project coming before us. I, myself, personally don't
21 have a position on the issue. However, I do think it is
22 an issue that had been raised by the utilities and is
23 one that we ought to address.
24 CHAIRMAN IMBRECHT: Is there a bill on this?
25 COMMISSIONER COMMONS: There had been

1 discussion that there was going to be legislation. I do
2 not know whether there has been legislation. It's an
3 issue clearly that is germaine to this Commission, and I
4 do not know what has happened to it. So I only raise
5 it.
6 MR. SMITH: I am unaware of any bill, and I
7 have gone through the bills that have been introduced
8 that pertain to the Energy Commission. I don't think
9 that that bill has been introduced as yet.
10 VICE CHAIR CROWLEY: You could ....
11 COMMISSIONER COMMONS: Well, then I'd like to
12 request that the Legislative Committee, at the
13 appropriate time, look at whether or not there is an
14 issue; and second of all, if there is an issue, if
15 there's anything that we ought to recommend concerning
16 it.
17 VICE CHAIR CROWLEY: It has been, in my
18 understanding that the Policy Committee brings forward
19 what their idea of what is appropriate legislation. And
20 so the Legislative Committee hasn't delved into that
21 because it didn't seem to me to be a function of the
22 Legislative Committee to generate legislation.
23 CHAIRMAN IMBRECHT: Frankly, Commissioner
24 Commons, I think that's an appropriate issue for your
25 Siting Committee.

1 COMMISSIONER COMMONS: I just want to say that
2 would be a....
3 CHAIRMAN IMBRECHT: If you want to propose
4 that, then it ought to come to the Legislative Committee
5 for consideration with it throughout the whole
6 Committee...
7 VICE CHAIR CROWLEY: In fact, as I recall, the
8 Legislative Committee solicited recommendations for
9 potential legislation earlier on. And so, if the Siting
10 Committee has something they'd like us to consider, we'd
11 be happy to.
12 COMMISSIONER COMMONS: I normally don't turn
13 down jurisdiction. If the Commission wants us to look
14 at it, we would. I do think that it's more related to
15 budget matters than to our siting policies.
16 CHAIRMAN IMBRECHT: You raised it. I'm not
17 suggesting you do anything with it. I don't personally
18 feel any great need to move forward on it...
19 VICE CHAIR CROWLEY: It's a blessing.
20 CHAIRMAN IMBRECHT: ...But you raised it, and,
21 you know, we're saying it is your, it's basically a
22 siting issue. I mean, to me it's a question of, you
23 know, you've got as to whether it's going to be a
24 chilling effect on QF's, and the size of facilities, and
25 all of those sorts of things; and, is it contradictory

1 with reserve need for certain types of technologies,
2 might be a further impediment, etc., etc. Then I think
3 that it's appropriate for it to be considered both by
4 Legislative and Budget Committees. If you want to come
5 forward with it, my mailbox is waiting...
6 Alright, that completes Committee reports, I
7 believe. Anything further? Approval of the minutes. I
8 just would note for you that the March 6 minutes, the
9 change relative to Load Management has been made
10 pursuant to Commissioner Commons' request. I'd ask if
11 there is objection to approval of the March 6th minutes
12 as revised. Hearing none, they are approved. Is there
13 objection to approval of the April 17 minutes?
14 COMMISSIONER NOTEWARE: We've done that.
15 VICE CHAIR CROWLEY: We did all of these.
16 CHAIRMAN IMBRECHT: You did that while I was
17 gone? Well fine, great, swell. It's done. Alright,
18 Executive Director report?
19 MR. SMITH: No, nothing further.
20 CHAIRMAN IMBRECHT: Yes, I have it. We do
21 have a need for an Executive Session. I have before me
22 as typified, but I'll see if I can deal with that.
23 Let's do the Executive Session in my office.
24 COMMISSIONER COMMONS: We have a General
25 Counsel report?

1 CHAIRMAN IMBRECHT: Pardon me?

2 COMMISSIONER COMMONS: Can we have a General
3 Counsel report, because I have a question of General
4 Counseling.

5 CHAIRMAN IMBRECHT: Yes, anything public in
6 the way of General Counsel's report?

7 MR. CHAMBERLAIN: Yes, I have two very brief
8 items. One is just to report to the Commission that as
9 of next Thursday, actually Wednesday, the Commission
10 will have to, or my office will have to have filed an
11 intervention on your behalf if you wish to intervene in
12 the proceedings before the FERC relating to the Mojave
13 Project and other competing interstate pipelines, the
14 proposals to serve the TEOR Projects.

15 We have determined that we reported this about
16 a week ago to the Intergovernmental Relations Committee,
17 and at that time, we weren't sure whether we had to have
18 a position actually available. We've determined that we
19 don't have to have a position at this point. We can
20 file a placeholder-type petition, and we would propose
21 to do that so that the Commission could evaluate over
22 the next couple of months what posiiton it would take.
23 And I would assume that we'd be working, unless you
24 direct me otherwise, that we'd be working with the Fuels
25 Policy Committee on that.

1 COMMISSIONER COMMONS: I have some questions
2 for General...You had two items.
3 MR. CHAMBERLAIN: Oh, the other item was just
4 to inform you that...
5 CHAIRMAN IMBRECHT: I'm sorry, did you want a
6 response to that first item?
7 MR. SMITH: I assume without objection that
8 you want us to go ahead with that.
9 CHAIRMAN IMBRECHT: Yeah, without objection,
10 absolutely. Okay. Next item...
11 MR. CHAMBERLAIN: The other thing is just to
12 report to you that in the FERC 7K proceeding relating to
13 the 1983 rates, we may be filing rebuttal testimony on
14 or before June 7th. We will do everything that we can
15 to get copies of that to you if we...We have just
16 received the opening testimonies, so I'm not sure
17 whether we will file anything or what it will consist
18 of. It's a very fast timeline right now; and, we'll
19 coordinate this at least with the Intergovernmental
20 Relations Committee and, if possible, get copies to all
21 Commissioners in advance. That's all I have.
22 COMMISSIONER COMMONS: Let's see. I believe
23 there are the opening hearings on the standards in Los
24 Angeles that's going to be initiating in a week or so.
25 Is that correct? Are we going to be represented?

1 MR. CHAMBERLAIN: The what?

2 COMMISSIONER COMMONS: The opening of the
3 court case on the Air Conditioning Standards, I believe,
4 the initial hearing is set for...

5 MR. CHAMBERLAIN: The Air Conditioning
6 Standards are being heard here in Sacramento.

7 COMMISSIONER COMMONS: Was it the
8 refrigerator, there was supposed to be some hearings in
9 Los Angeles coming up.

10 MR. CHAMBERLAIN: Not that I'm aware of. I am
11 not aware of any...Oh, the only hearing that there may
12 be, I understood that Natural Resources Defense Council
13 was intervening. And there may be a hearing on that in
14 Los Angeles. I don't even think that's opposed.

15 COMMISSIONER COMMONS: Alright, in our
16 standards, when will we be filing our case for the
17 exemption for the no-standard standards?

18 MR. CHAMBERLAIN: I can't give you a precise
19 date. We would anticipate doing that. We've been
20 focussing on what resources we have on the litigation
21 right now, and we would anticipate filing it sometime
22 this summer. However, we have recently gotten an order
23 from the D.C. circuit that suggests that the court may
24 be close to a decision on the question of the validity
25 of the no-standard standards. And, of course, if the no-

1 standard standards are overturned, then we don't even
2 have to invest the resources in filing that petition.
3 But, if we don't get a decision within the next few
4 weeks, we difinitely will be moving in that direction
5 this summer.
6 COMMISSIONER COMMONS: Alright. Then I have
7 two questions on process in terms of siting cases. I
8 understand that when we're doing a siting case, that the
9 presiding member can only prepare to report based on
10 evidence that has been submitted in the record, is that
11 correct?
12 MR. CHAMBERLAIN: That's correct.
13 COMMISSIONER COMMONS: Alright, what if
14 another Commissioner wants to submit evidence into a
15 record of a case on which they do not sit? What is the
16 appropriate procedure for doing so?
17 MR. CHAMBERLAIN: The Commissioner wants...
18 COMMISSIONER COMMONS: For example, let us say
19 that Commissioner Crowley wanted to introduce her
20 presiding member's report on Geyers 21 into the CCPA
21 case. What is the appropriate procedure to do on that
22 so that that case's presiding member would take that
23 testimony into consideration?
24 MR. CHAMBERLAIN: Okay, well, that's not
25 really testimony, nor is it really evidence. However,

1 that can be taken into another case by the process of
2 official notice.
3 CHAIRMAN IMBRECHT: Excuse me, Commissioner
4 Commons, these are matters that you ought to
5 appropriately direct to the General Counsel for an
6 opinion. I don't see any reason that we have to do this
7 in a public meeting?
8 COMMISSIONER COMMONS: Well, if the viewpoint
9 is that in the response to the question that General
10 Counsel feels he can do it that way, that's fine. But
11 this is an issue that...
12 CHAIRMAN IMBRECHT: I think the appropriate
13 way is for you to ask the General Counsel for his
14 opinion and then, you know, indicate what your judgment
15 is. I mean, we all ask for opinions from the General
16 Counsel's office on matters of interest to us.
17 COMMISSIONER GANDARA: If I might, I think I
18 could answer that. In our regulations there is a
19 probation for a motion to consolidate issues, either in
20 whole or in part or separate. And I think, you know,
21 that can be done or any...
22 COMMISSIONER COMMONS: That requires, though,
23 the presiding member's concurrence.
24 COMMISSIONER GANDARA: I would think that the
25 motion would before the Commission.

1 COMMISSIONER COMMONS: Before the Commission?
2 Alright, now in a case where I would like to bring
3 wherever there's been an order that has been issued by
4 the presding member, and I'd like to see it appealed to
5 the full Commission. Do I have a right to make that
6 appeal?
7 MR. CHAMBERLAIN: Yes.
8 COMMISSIONER COMMONS: Alright, now how do I
9 avail myself of that right?
10 CHAIRMAN IMBRECHT: Commissioner Commons,
11 these are certainly matters that you inquire of the
12 General Counsel at your own leisure without requiring
13 the rest of us to sit here in a public hearing. It's
14 incredible that we've been here the entire day. Can't
15 you make these inquiries? These are matters that
16 reflect your decision about how you want to perform your
17 obligations. Is that appropriate?
18 I mean, I ask opinions all the time about
19 what's the appropriate method, et cetera, to exercise my
20 remedies; and, I think that, and you've done that as
21 well; and, why can't we do that on this matter? Okay, I
22 suggest that's the way to handle it. Alright, is there
23 an Executive Director's report?
24 MR. SMITH: No, there's nothing further.
25 CHAIRMAN IMBRECHT: Alright. Is there any

1 member of the public who wishes to address the
2 Commission? Alright, there is a request for an
3 Executive Session on some matters of litigation and, I
4 believe, personnel as well. I'd like to suggest that we
5 reconvene, if this is not much of an inconvenience, at
6 5:30, in my office.
7 COMMISSIONER COMMONS: I'm on a 6:15 airplane,
8 and I think that would mean that I could not attend the
9 Executive Session, if we had such a delay.
10 VICE CHAIR CROWLEY: Certainly, my...
11 CHAIRMAN IMBRECHT: There was no intention of
12 that. How about 5:15? In any event, I've got a
13 gentlemen waiting upstairs, I know, on a very critical
14 matter; and I'll explain that all you to you later. But
15 I've tried to delay it all day long, and I wanted to see
16 if he's up there, partly. If we can start right away,
17 when we get up there, we'll start. Okay.
18 COMMISSIONER NOTEWARE: I'd like to ask, how
19 long do you think this Executive Session will last?
20 MR. CHAMBERLAIN: We'll make it as brief as I
21 possibly can. Perhaps fifteen minutes.
22 CHAIRMAN IMBRECHT: We have four items.
23 MR. SMITH: If we don't have a lot of
24 discussion, it will go quickly.
25 CHAIRMAN IMBRECHT: I think they're all fairly

succinct.

(Whereupon the afternoon session of the business meeting of the California Energy Resources Conservation and Development Commission was recessed to Executive Session and adjourned at 6:30 p.m.)

--oOo--

1 **REPORTER'S CERTIFICATE**

2 --oOo--

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 Thursday, May 16, 1985, and that 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 Dawn Lofton

15 Reporter

16 Dated this 4th day of June, 1985.

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