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**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

**CALIF. ENERGY COMMISSION  
AUG 15 1985  
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**BUSINESS MEETING**

**1516 NINTH STREET  
FIRST FLOOR HEARING ROOM  
SACRAMENTO, CALIFORNIA**

**WEDNESDAY, AUGUST 7, 1985  
10:25 AM**

**REPORTED BY: DAWN LOFTON**

**PAPERWORKS  
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**COMMISSIONERS PRESENT**

- Charles R. Imbrecht, Chairman
- Barbara Crowley, Vice Chair
- Arturo Gandara, Commissioner
- Warren D. Noteware, Commissioner

**EX-OFFICIO PRESENT**

- William Foley

**PUBLIC ADVISER'S OFFICE**

- Ernesto Perez

**STAFF PRESENT**

- Randall Ward, Executive Director
- Dick Ratliff, Staff Counsel
- John Chandley, Staff Counsel
- Scott Matthews
- Daniel Nix

**OTHERS PRESENT**

- Donald Britt, Basic American Foods
- Charles F. Timms, Attorney, Atlantic Richfield Company
- Michael Gardner, Southern California Edison Company
- Mark Henwood, Henwood Associates, Inc.
- Mauricio Flores, Attorney, Pillsbury Madison & Sutro

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**OTHERS PRESENT - (Continued)**

- Michael Gersick, Mobile Oil Corporation
- Janice G. Hamrin, Ph.D., Independent Energy Producers
- Michael Eaton, Independent Power Corporation
- Dian Gruenich, Attorney for Pacific Thermonetics, Inc.

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Item No. 6	Continuing Discussion of and Possible Commission Action on the Appropriate Mechanism to be Used by Commission Committees and Involved Parties in Facility Siting Cases to Implement the 1985 Electricity Report Need Assessment and Related "Escrow Account" Provisions.
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L A T E A F T E R N O O N S E S S I O N

--oOo--

1 CHAIRMAN IMBRECHT: Alright, we'll reconvene  
2 the meeting. The next item to come before us is a  
3 continuing discussion and possible Commission action  
4 -- although, I'll speak to that in a moment -- on the  
5 appropriate mechanism to be used by Commission  
6 committees and involved parties in facility siting  
7 cases to implement the 1985 Electricity Report need  
8 assessment and the related "escrow account" provisions.

9 The Commission will consider today the  
10 staff's proposed approach which was initially presented  
11 at the July 10th Business Meeting, and take public  
12 comments and may give further direction to the staff  
13 and/or adopt an order providing guidance in siting  
14 cases to Siting Committees and involved parties on  
15 methods to implement the Electricity Report.

16 I'd just like to indicate at the outset of  
17 this discussion that at the request of Commissioner  
18 Commons' office, since he is absent today. And because  
19 of the fact that obviously there will be extensive  
20 public discussion on this item, we are not intending to  
21 take final action today. Commissioner Commons has  
22 indicated that the two orders which he issued for the  
23 siting proceedings (which he is the Presiding Member  
24  
25

1 of), those two hearings will be cancelled and  
2 rescheduled after Commission action at our next  
3 Business Meeting two weeks from today. And that will  
4 avoid any inconsistent treatment of siting cases as  
5 between one another--avoid the dilemma that we found  
6 ourselves in with those order being out, and at the  
7 same time, give us an opportunity to digest the  
8 comments of the interest parties with respect to the  
9 staff proposal that's before us for consideration and  
10 made appropriate modifications as they may be  
11 necessary.

12           With that, I'd like to turn to Mr. Ward for  
13 the staff presentation.

14           MR. WARD: Thank you. Mr. Chairman, as the  
15 Commission's well aware, we've been at this for the  
16 last two or three weeks. And pursuant to Commission  
17 direction at the last meeting, a workshop was conducted  
18 on the 26th of July. The feedback from that workshop,  
19 in addition to other staff thoughts in the area, are  
20 put together in the proposal before you today. I think  
21 you're going to get some information today from  
22 applicants, currently inhouse, and future applicants as  
23 to their concerns about the process. And with that,  
24 I'll turn it over to Scott Matthews, who has been  
25 steering the staff in terms of an internal task force

1 that we have that's dealing with not only the escrow  
2 account, but the implementation of the ER V siting  
3 policy, as well.

4 MR. MATTHEWS: Thank you. I want shortly  
5 turn in over the Dan Nix, who will give us some  
6 introductory remarks; and then I will go to our  
7 recommendations. I do want to say that we are narrowly  
8 focused on this presentation to the escrow issues. And  
9 we will be coming back to the Commission on  
10 recommendations on some of the other issues that are  
11 before us that you'll be hearing about and I anticipate  
12 from the applicant. Dan will be giving a presentation  
13 on the--sort of the general overview of the ER V need  
14 determination. If I could have that first slide.

15 MR. NIX: Thank you. For the record, my name  
16 is Daniel Nix. I'm with the staff of the Energy  
17 Commission. I think it's important before getting into  
18 a lot of the subtleties of the ER V need determination  
19 process that we step back and look at what prompted  
20 this in both the Electricity Report and the Biennial  
21 Report and what some of the objectives were in these  
22 proposals.

23 The concept of boxes of allocating need,  
24 defining specific reserve needs, was motivated by the  
25 Commission's findings that we had a potential abundance

1 of supply resources. As I recall, we had estimated-  
2 -the staff--that California had approximately five to  
3 six times -- had identified five to six time -- its  
4 potential electricity supply needs. We also felt that  
5 there was (and the Commission, I believe, as well) that  
6 there was a need for the balance in our use of primary  
7 energy types. We are moving from a period in which  
8 California's electricity supply system had been  
9 dominated by use of oil and gas. During the 1970s on  
10 the order of 60%-80% of electricity in any particular  
11 year came from those two forms of energy. And we are  
12 quite familiar with what happened to rates in the State  
13 as the price of oil rose.

14 I think the concept that evolved in response  
15 to these two primary motivations can be quite simple  
16 when the details and the procedures are worked out.  
17 And I want to emphasize that it's simplifying dealing  
18 with an abundance of projects. That is really one of  
19 the criteria that we're dealing with here.

20 The tests are designed to be increasingly  
21 difficult as various need categories are satisfied.  
22 And I think that's consistent with trying to simplify  
23 the process at the outset by stating those types of  
24 resources we would like to see come into the system,  
25 but only to a level in which they don't appear to

1 disrupt the balance of resources which we would like to  
2 see. But fundamental to this is that, in order to  
3 begin a simplified process, we need to know which  
4 category projects go into -- whether we consider them  
5 to be cogeneration, biomass, solar. Some of those  
6 decisions may be quite simple.

7           But we also need to know whether they fall  
8 into categories as they are termed in the Biennial  
9 Report and the Electricity Report -- specified reserve  
10 need or unspecified reserve need. Because that  
11 determination will then, we believe, set the type of  
12 information and the extent of information that needs to  
13 be developed in the evidentiary record. By clearly  
14 stating where projects may fall, I think we can  
15 simplify the burden on the applicant in preparing the  
16 evidentiary record.

17           That leads us then to what we mean by the  
18 escrow determination. We think that that can be a  
19 rather straightforward, we hope, ministerial exercise  
20 at the beginning of any particular application in which  
21 the appropriate category is determined, which then  
22 defines the level of effort that goes into the need  
23 determination process.

24           Those are just some concluding remarks. I  
25 hope that set a context for what we're about to talk

1 about today. The objectives, then, are to set...well,  
2 keep the theme of simplification in the process here  
3 without getting bogged down in some rather complex  
4 details here. Scott.

5 MR. MATTHEWS: If I could have the next  
6 slide. The slide reorders, a little bit, our  
7 recommendations. Basically they're the same that is  
8 contained in the paper that we issued on the 1st of  
9 August, called "Escrow Issue Discussion and  
10 Recommendation."

11 The first three recommendations deal with the  
12 issue of when to make a determination of energy  
13 efficiency and the protection of the ratepayer when  
14 examining those issues and whether those issues should  
15 be examined at the escrow stage during the case or  
16 during the need analysis. First of all, we think that  
17 energy efficiency and ratepayer protection should be  
18 considered in all gas-fired cogeneration cases, not  
19 just those assigned a specified reserve need test. The  
20 thrust of that recommendation is that if you, on the  
21 alternative, decided that energy efficiency and  
22 ratepayer protection should only be considered as a pre-  
23 cursor for being allowed to take the specified reserve  
24 need test. Then the people who were not eligible for  
25 that test would not have that issue discussed. And we

1 think that those issues are fundamental and should be  
2 addressed, no matter which need test is assigned to a  
3 project.

4 We also believe that these issues should be  
5 addressed indepth at the evidentiary hearing stage of  
6 the proceeding. We do not believe that the escrow  
7 stage is sufficiently far enough into the case process  
8 to allow a good examination of those issues. We've  
9 also discovered that as we've gone along in these  
10 projects and during the discovery process and given the  
11 initial findings of staff that projects often change.  
12 So that, a project that may look relatively inefficient  
13 at the beginning of our process in fact turns out to be  
14 efficient.

15 All that leads up to the third recommendation  
16 there that the issues are not...should not be an  
17 element of escrow determinations. If the Commission  
18 decides to use the procedure that is described in the  
19 guidelines -- in the ER guidelines -- there would be a  
20 90-day period to examine whether or not these  
21 issues...to examine the resolution of these issues.  
22 And we don't believe that 90 days is sufficient, that  
23 it's going to take the full length of the case.  
24 Equally as important: it's quite difficult to  
25 determine the relative efficiency of a cogeneration

1 project. And that we believe without appropriately  
2 adopted standards or guidelines that one cannot make a  
3 determination of energy efficiency--relative energy  
4 efficiency--in such a short period of time.

5 Our fourth recommendation is that escrow  
6 determination should be a relative ministerial  
7 decision. And it should be done at the data adequacy  
8 phase. This would have the advantage that it would  
9 allow the parties the maximum length of time to analyze  
10 the need of the case; because we would know which need  
11 test applied. If the efficiency and ratepayer  
12 protection issues are taken out of the escrow  
13 determinations that are put elsewhere in the case, then  
14 the cogeneration...then the escrow decision becomes  
15 relatively simple. Our recommendation would eliminate  
16 an extra Commission and Committee hearings that are  
17 envisioned by the ER guideline.

18 I'd like to add that if the escrow  
19 determination was made at the data adequacy phase, then  
20 the Committee would still have the requirements to  
21 examine all the issues. It's not taking any  
22 fundamental, substantive issue away from the Committee.  
23 But, that story remains with the Committee. It's just  
24 simply a matter of making initial allocation.

25

1           The final three recommendations that concern  
2 how the Commission should apply the ER to those  
3 projects that were filed before the ER was adopted. We  
4 believe that it would be most equitable to apply the  
5 specified reserve need test to all those projects filed  
6 before 5/15/85. In order to do that, one would have to  
7 make an accounting reallocation by...we would propose by  
8 reducing the amount of the unspecified reserve need and  
9 make an interim reallocation to specified reserve need.  
10 Now, if one of those projects that got special  
11 treatment failed, then we would propose that the amount  
12 that was put in escrow would revert back to unspecified  
13 reserve need, rather than there being any permanent  
14 change in the specified reserve need allocation. And  
15 I'll show you some tables on how that would work, in a  
16 moment.

17           Regardless of how the Commission chooses to  
18 handle the cases that are inhouse, we believe a one-  
19 time hearing should be held to determine the escrow  
20 provisions for all the inhouse cases. Even if you  
21 don't need to worry about energy efficiency or  
22 ratepayer protection, you still need to determine the  
23 amount of megawattage a particular project is, the  
24 amount of reserve need available and the various

25

1 categories, the appropriate category that a project  
2 would fit in.

3           Finally, we -- being consistent with the rest  
4 of our recommendations -- we believe that the  
5 Commission should initiate development of gas-fire  
6 cogeneration efficiency criteria that we would be able  
7 to apply to projects. But that, this effort should be  
8 conducted outside any individual power plant siting  
9 case.

10           I reproduced some tables just for discussion  
11 purposes....

12           CHAIRMAN IMBRECHT: I take it that last one  
13 is to ensure consistency in the application of such  
14 criteria?

15           MR. MATTHEWS: Right.

16           COMMISSIONER NOTEWARE: If I might make  
17 another comment on that. We believe that the question  
18 of cogeneration efficiency is quite complex. You might  
19 arrive at different preference for efficiency,  
20 depending upon the circumstances in a particular  
21 utility service area, for example, the degree of  
22 utility, oil or gas that a particular project might be  
23 offsetting, the relative benefits from emissions  
24 reductions that you might achieve. And we are very  
25 reluctant to hastily develop these type of criteria.

1 We think it's a relatively complex question that must  
2 be carefully undertaken.

3 MR. MATTHEWS: This table shows the status  
4 unfilled reserve need as of July 1, 1985. And it  
5 differs from the numbers shown in the Electricity  
6 Report, in that we have subtracted out from the gas-  
7 fired cogeneration numbers 89 MW to account for the  
8 Commission's approval of the Tosco modifications.

9 Table 2 shows the schedule of the cases that  
10 are inhouse and shows that even if the Commission chose  
11 to adopt or implemented the guidelines/provisions that  
12 there be a 90-day Committee hearing, followed by a 120-  
13 day Commission hearing, that all the cases that were  
14 filed before the ER was adopted have exceeded the 90-  
15 day date. Most of them have exceeded the 120-day date.  
16 That table also shows what we understand should be  
17 appropriate date of acceptance for the various  
18 projects. Go to the next table.

19 This table is a slight modification from the  
20 one that's contained in our report. Just for ease of  
21 understanding, I reproduced the top headings for the  
22 biomass portion, but it shows the same information  
23 which is that, if the Commission chose to allocate the  
24 ER V policy on the basis of the date of acceptance  
25 approach or first in/first out, then Gilroy, Sycamore,

1 Placerita would be given the specified reserve need  
2 test; and all the subsequent projects would be taking  
3 their allocation from the unspecified need category  
4 and, therefore, be taking the unspecified reserve need  
5 test. Next slide, Bob.

6 Under the staff's recommendation, everything  
7 that was filed before 5/15/85 would be eligible for the  
8 specified reserve need test. And you can see what  
9 happens to the amounts there. When Watson's need  
10 analysis was done, the amount of unspecified reserve  
11 need is the same, regardless of whether you used the  
12 first in/first out approach or the reallocation of  
13 reserve need approach.

14 We believe that this approach is more  
15 equitable; in that those projects that filed before  
16 5/15/85 were unaware of the ground rules that would be  
17 applied to them. And in one instance, simply by filing  
18 a matter of two weeks earlier, they would be eligible  
19 for the specified reserve need test rather than the  
20 unspecified reserve need test.

21 In another case that I worked with the  
22 applicant on, I was aware that they were in a position  
23 where they could have filed much earlier than they, in  
24 fact, did file for reasons other than Energy  
25 Commission's processes. And had the ground rules been

1 laid out at the time, we might see a whole different  
2 ordering of those project.

3           Finally, we don't believe that that  
4 reallocation should be made for any subsequent projects  
5 pretty much with the same rules. The Watson case came  
6 in substantially after the ER was adopted. And, of  
7 course, all subsequent projects are much later than  
8 that. They clearly have to draw the line somewhere.  
9 And drawing it any later than the adoption of the ER V  
10 seems unwise.

11           The final slide is a comparison of the two  
12 tests. So, in you deliberations of which test should  
13 be applied to those pre-ER V projects, you can see the  
14 differences. They're virtually the same test with two  
15 exceptions. One is that, in the specified reserve need  
16 test you make a check to see whether or not reserve  
17 need has been established for the resource. That's not  
18 relevant to the unspecified reserve need test. And in  
19 the specified reserve need test, you have to either  
20 match load or show that the facility provides an  
21 overall benefit to the State.

22           In the unspecified reserve need test, you  
23 have to show that it follows load -- period! And also  
24 that there is need and capacity in the service area.  
25 And to the extent that the project's needed on the

1 basis of oil and gas displacement, that that oil and  
2 gas displacement will actually occur.

3 So, some projects would be able to pass  
4 either test, if you were load following and needed.  
5 And some projects that you could conceive of, at least,  
6 would be able to pass one but not the other. Are there  
7 any questions?

8 CHAIRMAN IMBRECHT: Members, any question?  
9 No. That's fine. It's very clear. Thank you. Okay.  
10 Does that complete the staff presentation?

11 MR. NIX: Yes.

12 CHAIRMAN IMBRECHT: Alright. Thank you.  
13 Alright. First, I would like to call forward, Mr.  
14 Donald Britt, Vice President, Basic American Foods.

15 MR. BRITT: Thank you. Good afternoon. My  
16 name is Donald Britt. I'm Vice President of Basic  
17 American Foods, a private company, headquartered in San  
18 Francisco. We process potatoes in Idaho, Washington,  
19 Wisconsin--and onions and garlic, here in California.  
20 I would like to make several comments related to the  
21 proposal before you.

22 As staff has told you, we intend to file an  
23 AFC later this year. I believe that it is important  
24 for you to consider the effects of the Commission's  
25 actions upon parties which may be somewhat invisible to

1 you simply because no AFC is yet in hand. Using Basic  
2 as an example, we are a vegetable processing company,  
3 in a very competitive and energy intensive processing  
4 business. We have major operations in Vacaville, King  
5 City and Hanford. We have taken significant energy  
6 conservation measures since the early '70s, which have  
7 resulted in a reduction in unit energy use of about  
8 50%. Energy costs remain, however, more than 35% of  
9 plant processing costs.

10 On Monday of this week, we announced the  
11 closing of our Vacaville plant. This closing resulted  
12 from an economic evaluation of our California  
13 operations. Four key factors made this closing  
14 necessary: slow market growth in our basic business,  
15 falling prices, dramatic energy cost increases, and the  
16 growth of foreign competitors. The company could no  
17 longer afford to maintain a major processing plant that  
18 was not being fully utilized.

19 As part of our overall program to remain an  
20 efficient producer, we view the consolidation of our  
21 operations in King City and the construction of a  
22 cogeneration facility as logical steps to ensure our  
23 company's long-term viability. The cogeneration  
24 facility appears necessary in order for us to compete  
25 effectively with Gilroy Foods, one of our major

1 competitors, who, as you're well aware, is seeking a  
2 cogeneration permit.

3           We began evaluating and planning a  
4 cogeneration facility several years ago. We have a  
5 history of using alternative energy sources, including  
6 a wood-burning boiler in another segment of our  
7 business in Idaho. We have investigated various  
8 alternatives and are now moving ahead with our AFC.

9           We must examine all alternatives; and a  
10 natural part of this process is the investigation of  
11 reducing costs to processing in locations with lower  
12 energy costs. As an example, we will be meeting next  
13 month with representatives of a potential European  
14 partner who we believe can provide low-cost energy for  
15 processing our products. This well might be a viable  
16 alternative to expanding our King City operation.

17           The current cogeneration application  
18 environment is one in which we have already committed  
19 significant manhours and dollars. It is our  
20 expectation that the application process will result in  
21 out-of-pocket costs of \$1.5 to \$2.0 million. We, as  
22 the owner/developer, will be fully at risk for these  
23 expenditures. All of this is intended to emphasize to  
24 you that we, as others, have a considerable commitment  
25 in this process which, though not very obvious to the

1 Commission, is real and we believe deserve due  
2 consideration.

3           We are concerned that having come this far,  
4 the rules appear to be changing without that  
5 consideration. Our participation in the staff workshop  
6 on escrow impressed upon us the need for careful and  
7 deliberate action in, first, defining and then  
8 resolving the problems of this process. We accept the  
9 first come/first served approach as being appropriate.  
10 However, we do not believe that individual siting cases  
11 represent the fair and proper forum for determining  
12 policy on such issues as efficiency and ratepayer  
13 protection. It appears to us that these criteria would  
14 more constructively be developed in generic proceedings  
15 outside the individual siting process. To do otherwise  
16 invites the danger of arbitrary and inconsistent  
17 results.

18           With a clear picture of the criteria under  
19 which our project will be evaluated, we could  
20 intelligently assess the risks involved in proceeding  
21 with our AFC. Without that picture, we may well find  
22 ourselves spending additional time and money on the AFC  
23 process rather than aggressively seeking other business  
24 alternatives. Thank you very much.

25

1           CHAIRMAN IMBRECHT: Thank you. If I  
2 understand that correctly, then you are in agreement  
3 with the staff recommendation for a generic proceeding  
4 on efficiency criteria?

5           MR. BRITT: Yes, very much so. And we think  
6 it's very important to do that with great speed.

7           CHAIRMAN IMBRECHT: Fine. Thank you. Are  
8 there questions or comments? Thank you very much, sir.  
9 Mr. Chuck Timms, Attorney, representing Atlantic  
10 Richfield Company.

11           MR. TIMMS: Thank you and good afternoon. My  
12 name's Chuck Timms. I represent ARCO Petroleum  
13 Products Company, which is a division of Atlantic  
14 Richfield Company.

15           For those who haven't been following our  
16 activities before the Commission, we are the applicant  
17 in the siting proceeding which is described in the  
18 staff materials as the Watson AFC. That's 385 MW  
19 cogeneration project, to be built at our Watson  
20 refinery, which is in Carson, California. Could we  
21 have the staff's tables put back on the wall?

22           MR. MATTHEWS: Which one would you like?

23           MR. TIMMS: Let's start with No. 4. I think  
24 a quick glance at this table will tell you why I'm here  
25 today.

1 (LAUGHTER)

2 We're the odd man out in the great drive to be  
3 considered under the specified reserve need test. We  
4 don't think that the way the staff has constructed  
5 this, leaving us the only ones to be judged under the  
6 unspecified test, to be fair. We don't regard it as  
7 appropriate or proper or anything else that a good  
8 Commission decision should be. And I'd like to just  
9 tell you briefly why that's our view.

10 On May 15, the Commission adopted the  
11 Electricity Report. On that day, there were 837 MW of  
12 cogeneration projects before the Commission, including  
13 I believe, the Tosco project. And I'm using numbers  
14 from the staff tables that I won't quarrel with. On  
15 the day the Commission adopted its report, it included  
16 in it what those of us who are familiar with the  
17 process like to call the 'little boxes approach,' where  
18 it designated certain numbers of megawatts to different  
19 generation sources as reserve need quantities that the  
20 Commission would give some preference to.

21 The little box for cogeneration projects  
22 bigger than 5 MW was 650. So, the Commission knew on  
23 May 15 that it was allocating less to reserve need than  
24 would accommodate all the projects then before it. In  
25 other words, it knew that it was going to leave some

1 projects to be considered under some other test. Now  
2 the staff comes forward with a recommendation on August  
3 1st that the Commission change that judgment and expand  
4 the specified need category for cogeneration, somewhat,  
5 just enough to accommodate all the projects that had  
6 been inhouse on May 15. What it basically amounts to  
7 is a substantial grandfathering exercise.

8           If the staff had done this on May 15, I think  
9 we'd have little to say. I think we would just have to  
10 conclude that we'd missed the boat, hadn't gotten in on  
11 time. But, I think that it's a little different the  
12 way it's being done now -- the fact that staff's making  
13 this recommendation in August, as opposed to in May.  
14 Consider that the rationale for the staff's approach is  
15 that the pre-Electricity Report filings--those that had  
16 been inhouse before May 15th--might have been expedited  
17 in some way, had they only known that there be this  
18 policy. Well, now they're recommending a new policy on  
19 August 1st and you can apply the very same rationale to  
20 those projects that have been filed and accepted since  
21 May 15, up until the time this policy is adopted. Had  
22 we only known that this would be the ultimate result,  
23 we might well have expedited our filing to make sure we  
24 were in the door before that magic date in the middle  
25 of May.

1           So, because we think the rationale applies  
2 equally to us, we think that we should be included in  
3 any grandfathering exercise that takes place. And that  
4 is basically what I'm here to ask you for today. We  
5 also have some concern about the efficiency and  
6 ratepayer protection aspects of the staff's proposal.  
7 But I think others have given more thought to those  
8 issues and are better suited to address them. So, I'll  
9 leave those to them.

10           CHAIRMAN IMBRECHT: Okay. I would just note,  
11 however, that we're talking about the acceptance date  
12 rather than the filing data. And, in essence, you  
13 would have had to accelerate your schedule by 2½ months  
14 rather than just two weeks. I think it's important to  
15 draw that distinction. And I would also note: I think  
16 it's kind of unfortunate in a sense the way that this  
17 table doesn't also indicate that there are three other  
18 projects which have been filed, although not accepted  
19 at this juncture, they represent an additional 373.9 MW  
20 or nearly 374 that in essence are proposed to be  
21 treated in precisely the fashion that your project  
22 would be treated.

23           And I think probably the final thing that I  
24 would just say in response is that at the time the  
25 Electricity Report was adopted, one of the principle

1 premises behind the allocation of 1,669 MW to the  
2 unspecified reserve need was in fact to build into the  
3 process ample flexibility to accommodate projects such  
4 as your own, recognizing at that time that we were  
5 likely to face, as Mr. Nix indicated, a substantially  
6 greater volume of applications than we had a forecasted  
7 need for--both our processes and those which were  
8 outside of our jurisdiction.

9           Anyone else have any questions or comments.  
10 Okay. Thank you. Mr. Gardner, representing Southern  
11 California Edison.

12           MR. GARDNER: Thank you, Mr. Chairman,  
13 Commissioners. Mike Gardner, representing Southern  
14 California Edison. I think I'd like to back up a  
15 little bit and go back to the ER/BR process when the  
16 'box' concept was first created and put out on the  
17 table for people to look at. At that time, it was  
18 suggested that it was going to result in an easier,  
19 quicker need determination for at least the majority of  
20 projects, up until some point where you started butting  
21 up against projects that essentially weren't needed for  
22 the capacity or energy.

23           We've had that policy as a major new policy  
24 that you've adopted. We've had that in effect now for  
25 almost 90 days. And we still don't know how it works.

1 I would urge you, above all, to take action as soon as  
2 you can to define for people how this is going to work.  
3 You have one project before you that you're scheduled  
4 to make a final decision on within approximately 30  
5 days. And so far as I can tell, you don't know yet for  
6 sure how you're going to evaluate need for that  
7 project.

8 I think it's time that you either make this  
9 work. Tell us how it's going to work or give  
10 consideration to somehow changing it -- maybe go back  
11 to your old need evaluation policies. But, we need to  
12 do something. There are a lot of applicants who are  
13 presently before you who are sort of dangling out  
14 there, wondering what's going to happen. There are lot  
15 of people who want to come before you and don't know  
16 precisely how to do it. And we're all waiting for some  
17 guidance.

18 I really understand your concerns about  
19 taking an action today in the absence of Commissioner  
20 Commons, who was intimately involved in putting this  
21 together. On the other hand, I think all four of you  
22 have a very clear understanding of his position of how  
23 it should go forward. So, at least it's my feeling  
24 that you could take an action today and give as much  
25 consideration to Commissioner Commons' views as you

1 would be able to at a later date if you were here to  
2 express them again. I think he expressed them rather  
3 eloquently at your last Business Meeting when you  
4 discussed this issue.

5           As you all know, cogeneration is, of course,  
6 the most pressing issue for you. Staff has identified  
7 several options for how you might go forward in  
8 implementing the box concept and allocating escrow  
9 accounts. I think Commissioner Commons raised a third  
10 on which would, essentially, be to determine, as  
11 projects come in, which account they would go into But,  
12 they would not necessarily go into the specified  
13 reserve need on a first come/first served basis. You  
14 could look at it and say this is a desirable project  
15 because it is highly efficient and has a good thermal  
16 balance and, therefore, we're assigning that to  
17 specified reserve need. And this one over here is a  
18 less desirable project because it doesn't have such a  
19 desirable thermal balance and is not quite so  
20 efficient. And so, it has to be tested under the  
21 unspecified reserve need.

22           Edison does not take a position amongst those  
23 options. I think any one of them is viable. I think  
24 you could make any one of them work. And I think no  
25 matter which one you select, they'll be somebody who

1 doesn't like it. You set yourselves up by making the  
2 decision to go forward with this new policy, to make  
3 some hard decisions in the future. And I think the  
4 time is here to make one of them.

5           With regard to staff's comments on setting up  
6 some guidelines for evaluating efficiency: first, I'm  
7 not sure that efficiency is really the only thing you  
8 want to look at or even, necessarily, the proper thing  
9 to look at. Thermal balance is certainly one thing you  
10 want to look at. It's my understanding the Commission  
11 wishes to, if not discourage, at least not specifically  
12 encourage what have come to be called 'PURPA machines'  
13 -- those projects that emphasize electricity production  
14 and sales far above and beyond what's necessary for the  
15 thermal energy that is required by the process that the  
16 project is supporting. That, I think, is really more  
17 thermal balance than efficiency.

18           If you're looking just at efficiency, you at  
19 least put yourself in the potential position of ending  
20 up penalizing projects that have, for example, more  
21 efficient emission control equipment. Most emission  
22 control equipment requires energy to operate the  
23 equipment. And that's energy that, then, is not  
24 available for either electrical use by customers or for  
25 producing thermal energy for use in whatever process

1 the project is supporting. I don't think that the  
2 Commission wants to take that sort of a position.

3 I would suggest that what you really want to  
4 look at more than a classic thermal efficiency is  
5 really the thermal balance of the project. And I think  
6 that is important. Southern California Edison would  
7 support your looking at that and specifically  
8 encouraging the more well-balanced projects and at  
9 least not specifically encouraging the so-called PURPA  
10 machines. Again, I would encourage you to take action  
11 as rapidly as you can. I would be pleased to answer  
12 any questions that any of you may have.

13 CHAIRMAN IMBRECHT: Thank you. You walked an  
14 interesting tight rope in terms of characterizing the  
15 impact of our absent colleague in terms of final  
16 decision. But, I think we have to honor that kind of a  
17 courtesy within the Commission as well. Although, I do  
18 regret, frankly, that we can't take action today  
19 because of his absence.

20 MR. GARDNER: I certainly understand that. I  
21 would encourage you to use as much influence as all of  
22 you possibly can to create a decision at the next  
23 Business Meeting.

24 VICE CHAIR CROWLEY: You're saying we can't  
25 take action today. Is that correct?

1           CHAIRMAN IMBRECHT: Well, let me say that I  
2 am open to the will of the Commission, obviously. I  
3 had attempted to accommodate a request from  
4 Commissioner Commons' office; but, obviously, if the  
5 remainder of the Commission feels otherwise, so be it,  
6 if that is the will of the Commission. And if anyone  
7 cares to come forward and suggest we take action,  
8 that's obviously your prerogative.

9           VICE CHAIR CROWLEY: Well, I would think  
10 that would be something to be dealt with after we hear  
11 all the people anyway. So, I'm not there yet.

12           CHAIRMAN IMBRECHT: Okay. Thank you, Mr.  
13 Gardner. Mr. Mark Henwood, representing Henwood  
14 Associates.

15           MR. HENWOOD: My name is Mark Henwood. I'm  
16 the President of Henwood Associates. And I'm here  
17 today on behalf of Pacific Waste Management who has  
18 submitted, before the Commission and has had it  
19 accepted, one of the AFC applications listed today in  
20 the staff presentation. The project in question was a  
21 municipal solid waste project. And it was both filed  
22 and accepted prior to the adoption of the Electricity  
23 Report.

24           Just in a general sense, I think I do have  
25 considerable appreciation for the staff's difficulties

1 in setting up an allocation procedure like this. And I  
2 would like to commend the staff for the workshop they  
3 conducted on the 26th of July and also their discussion  
4 and proposed action paper, dated August 1. Also,  
5 having been at the workshops on July 26th, I think the  
6 staff has fairly characterized what happened there.  
7 Namely, there were a lot of unresolved issues and there  
8 was a very, very wide divergence of opinion among the  
9 QF industry as what course of action to take. I also  
10 suspect that the divergence among the QF industry will  
11 not go away as time passes, and the decision will  
12 ultimately rest with the Commission on what to do.

13           Nevertheless though, I also think that the  
14 staff has laid sufficient groundwork so that the  
15 Commission can take at least some limited action on  
16 this issue now. And what I'd like to do is discuss,  
17 largely within the context of the staff's proposed  
18 actions, what I would feel is appropriate to do at this  
19 point.

20           I think that if at least certain of the  
21 staff's recommendations are adopted and with some minor  
22 modifications, many of the concerns that Pacific Waste  
23 Management has relating to the equitable treatment of  
24 the pre-ER V projects and also the need to take some  
25 sort of action on these projects would be satisfied.

1 And at the same time, the Commission could preserve for  
2 itself the ability to pursue the need policy which it's  
3 putting forth in the ER V.

4 First off, in essence, the staff is  
5 recommending what I consider relatively limited action,  
6 where they're recommending placing in escrow to meet  
7 the reserve need type of test, the projects who filed  
8 prior to ER V. And the action, I think, is very  
9 carefully qualified to be one of simply placing in  
10 escrow. And I do find that to be an appropriate action  
11 at this time.

12 I also think that that staff's recommendation  
13 to then handle the cogeneration efficiency and  
14 ratepayer protection issues in the project's  
15 evidentiary hearings also has merit. And by doing  
16 this, the Commission preserves for itself (even in  
17 light of taking some action on the escrow issue now)  
18 the ability to implement its need policy. And I'd like  
19 to add: however that need policy evolves. It is  
20 clearly not fully evolved given, for instance, example  
21 of staff's call for a generic hearing on efficiency  
22 requirements. That's one element that's clearly going  
23 to continue to evolve.

24 I also think, though, that this  
25 recommendation to deal with the cogeneration and

1 ratepayer indifference kind of issues in the actual  
2 evidentiary cases should not increase the burden on  
3 applicants. We're already in need-related evidentiary  
4 proceedings. Now, there may be some applicants who had  
5 early-accepted AFCs, who've already gone part way  
6 through this procedure. And it would seem unequitable  
7 to me for such applicants to be asked to go back and  
8 redo their work. So, a certain amount of limitation in  
9 applying those cogeneration efficiency and ratepayer  
10 difference tests should be exercised. Now, I think the  
11 basic approach that I've outlined, one, of at least  
12 escrowing the pre-ER V projects and then dealing on a  
13 case-by-case basis on the additional need test has some  
14 benefits, at least, as I understand it.

15           First off, the pre-ER V projects who filed  
16 applications will at least receive some certainty as to  
17 their treatment by the Commission. And this certainty  
18 will come in the form of at least, they will know what  
19 sort of need test they have to meet. And in Pacific  
20 Waste Management's case, we do still have uncertainty,  
21 which is very surprising. We're the only biomass  
22 project that's even been filed, much less accepted.  
23 We're pre-ER V; yet we don't really know with certainty  
24 even what sort of need test we would need. At least

25

1 this action would resolve that kind of uncertainty  
2 we're facing.

3 Also, at the same time, by doing the  
4 escrowing decisions on those projects, the Commission's  
5 not making any guarantees that these projects,  
6 regarding the ultimate results of the need test, that  
7 it will take place. And by not making any guarantees  
8 in the escrow procedure, the Commission is preserving  
9 its policy discretion to act as it sees fit.

10 Now, in addition, by essentially divorcing  
11 the pre-ER V filings from the evolving escrow process,  
12 the Commission will also gain some needed time, I  
13 think, to investigate the type of issues that were  
14 brought out on July 26th. And also, issues that have  
15 already been brought out, I assume, will continue to be  
16 brought out today.

17 The results of this investigation, at least  
18 for escrow provisions, will only effect those  
19 applicants who filed post-ER V and were subsequently,  
20 at least, aware of the general type of process that it  
21 would be subjected to. And that seems reasonably  
22 equitable. Also, by simply taking action, the  
23 Commission will fulfill the need for some action, at  
24 least, for the pre-ER V projects.

25

1           So to summarize, I'd like to just recommend  
2 that, first, the pre-ER V filings be placed in the  
3 reserve need category for escrow purposes and that the  
4 Commission takes action on this group. Secondly, I'd  
5 like to recommend that the Commission deal with the  
6 cogeneration efficiency and ratepayer protection issues  
7 for these projects in the cases themselves, provided  
8 that this does not result in, essentially, redoing work  
9 which has already been done for cases. Third, I think  
10 the Commission should further investigate the problems  
11 that they're going to hear today and they heard at the  
12 workshop on the 26th to completely work out what I  
13 think is a very complex issue. And finally, the  
14 Commission does need to take action (and I second the  
15 gentleman from Edison in this) as soon as possible;  
16 because rather than creating certainty, this whole  
17 procedure is creating a tremendous amount of  
18 uncertainty. Thank you for the opportunity.

19           VICE CHAIR CROWLEY: Any questions. Thank  
20 you. Mauricio Flores, representing IBM.

21           MR. FLORES: Good afternoon ladies and  
22 gentlemen. I'd like to thank the Commission for the  
23 deliberate approach it's adopting to the problems it  
24 faces in implementing the new procedures in the ER. I

25

1 think care is what's required. And I think that's what  
2 you're doing.

3 I attended the staff workshop on July 26th,  
4 where these problems were discussed. And I could tell  
5 you the discussions, at times, got fairly pointed. I  
6 thought the staff did a great job of standing up under  
7 some pressure of the applicants there. There were  
8 three.... I think there're three basic considerations  
9 that came out of the workshop.

10 Number one, I think there's general agreement  
11 -- at least among the applicants and I surmise among  
12 the staff -- I think that they agreed, in the testimony  
13 filed in Gilroy, that the problems of implementing  
14 these new procedures are many and their difficult. I  
15 don't know what the answer is; and I'm not going to  
16 urge one solution or the other. But, I think we can  
17 reach some agreement that they're hard. And it's going  
18 to take some time and careful thought to resolve them.  
19 Now, this raises a problem of pending business. The  
20 Commission has applicants before it; and the Commission  
21 and the staff has been very concerned about delays  
22 -- and rightfully so. But, you got a problem. On the  
23 one hand, you have difficult decisions to make; and on  
24 the other, there's the applicants pressing on you. And  
25 there's the need to get on with pending with business.

1 I think the staff's recommendation as far as  
2 the treatment of pre-ER applicants is a good way of  
3 balancing these considerations. It allows the  
4 Commission to go forward with the business on hand,  
5 without delays. And it gives the Commission and the  
6 staff sufficient time to grapple with these problems of  
7 efficiency and ratepayer impacts. What the new  
8 criteria are going to look like, if they're really  
9 going to be all that new, and where and when they're  
10 going to be implemented.

11 So, for that reason, I would urge you to  
12 adopt the staff's proposal in that regard. It's a  
13 sound, practical and fair approach.

14 With respect to what the solution is  
15 somewhere down the road for dealing with these problems  
16 of the new criteria, I would urge the Commission to  
17 look at these things and to make its deliberations in  
18 the context of a rulemaking proceeding. As a practical  
19 matter, I think that's what you need in order to have  
20 the best record possible in order to reach the best  
21 decision. It's not a good idea I think to make up your  
22 minds about how to implement these criteria on a case-  
23 by-case basis; because people are grappling with  
24 problems proposed by particular projects. That's not  
25 the best way to draft general rules. It's not fair to

1 the people who are before you in individual  
2 applications when you're trying to figure out...trying  
3 to define these new criteria.

4 And lastly, I think it's questionable as a  
5 legal matter whether you can promulgate essentially new  
6 criteria without going through rulemaking procedure. I  
7 can't give.... I'm not very definite on that subject  
8 because I do not know what these new criteria look like  
9 yet. If I had a better idea of what they were, then I  
10 could give you an opinion. But to go through  
11 rulemaking proceedings, at least gives you the option  
12 that however you decide at the end, they won't be  
13 subject to that particular procedure of challenge. You  
14 will have done it right and taken the time to do it  
15 right.

16 I have one last thought for you. And that  
17 is, as you are grappling with the problem of how to  
18 give applicants priority (the first in/first out idea),  
19 I think you ought to take into consideration that some  
20 projects that come before you are a little further down  
21 the road than others. And I'm think in particularly of  
22 those projects that have their air permits (both  
23 federal and state).

24 I represent IBM. IBM has pending before a  
25 SPP application for a 65 MW cogeneration project. The

1 purpose of the project is to help control IBM's energy  
2 cost and its manufacturing facility in San Jose and to  
3 assure, I think, more reliable source of power. Which  
4 is, because of IBM's operations down there, a critical  
5 consideration. IBM has both its air permits and has  
6 gone through the whole...a lot of permitting to get to  
7 that point and a lot of dealing with regulatory issues  
8 or the kind that the Commission grapples with. And  
9 it's been exposed to the public; and there's been a lot  
10 of comment.

11 So, we're far down the road. And I think  
12 that makes the project a lot more real, in a sense,  
13 than others that are not that far. So, when you make  
14 your priority decisions, I think somewhere along the  
15 line, that ought to be taken into account so that an  
16 SPPE project isn't treated as if it still had to go  
17 through all this review without anybody having looked  
18 at it, but has its two critical air permits. I think  
19 that should be considered.

20 So those are my comments. Do you have any  
21 questions?

22 CHAIRMAN IMBRECHT: Questions from members of  
23 the Commission? Mr. Flores, thank you very much.

24 MR. FLORES: Thank you.  
25

1                   CHAIRMAN IMBRECHT: Mr. Michael Gersick,  
2 representing Mobile Oil Corporation.

3                   MR. GERSICK: Thank you Mr. Chairman.  
4 Michael Gersick. The first paragraph of the remarks  
5 that I was going to make this afternoon were intended  
6 to make clear to the Commissioners how sticky this  
7 issue was. I'm going to.... I've already stricken, in  
8 fact, that paragraph from my prepared remarks. I think  
9 if you didn't know before, I'm sure you're getting the  
10 idea right now that the determinations that you're  
11 going to make on the escrow account are dealing with an  
12 issue which, perhaps, further complicates an already  
13 complex concept.

14                   Further, although as you indicated, I'm  
15 representing Mobile Oil today. I'm going to be  
16 audacious enough not to tell you all the dire  
17 consequences that will face an applicant who has not  
18 yet arrived but instead, going to present a policy view  
19 to this Commission which I think is perhaps most  
20 succinctly stated in this way.

21                   What interpretation of the escrow account  
22 procedures most closely comports with the policy  
23 established in the Biennial Report and in the  
24 Electricity Report? As Michael Gardner mentioned a  
25 little while ago, those documents together establish a

1 fundamentally new approach to siting. In Section 5.2  
2 of the ER, which is entitled, "Problems With the Former  
3 Demand Conformance Policy." The current significant  
4 siting concerns of this Commission are expressed. The  
5 text then states: "The former Demand Conformance  
6 Policy was not designed to solve the above problems.  
7 The former Need Determination Policy was first in/first  
8 out for preferred resources." I suggest to you that  
9 the staff's recommended procedure for allocation of  
10 reserved need preserves that former policy and short  
11 circuits a system which was conceived to promote the  
12 most suitable additions to the State's electricity  
13 generation portfolio.

14 A second feature of the basic reserve need  
15 concept, as I understood it during the BR/ER hearings  
16 and as I understand it now, is to simplify and  
17 accelerate the siting process. This was to be  
18 accomplished in the appropriate cases by waiving a full  
19 set of need conformance hearings and substituting  
20 therefor a finding that reserve need still existed for  
21 the applicant's resource type. Once that finding was  
22 made, a much simplified set of conditions, less  
23 stringent than the norm would be all that separated the  
24 applicant from a finding of need conformance. I view  
25 this as a special treatment -- a condition of preferred

1 or favored status as a conditional entitlement. It is  
2 a status to be earned by projects which most closely  
3 approximate the Commission's depiction of 'preferred,'  
4 not simply by those that happen to be nearest to the  
5 kitchen door when the dinner bell rang.

6 So in summary, you've heard a good deal of  
7 commentary today. I would just like to quickly close  
8 and offer these recommendations. I recommend and  
9 request that some qualitative screen, some threshold be  
10 established as a pre-condition of entitlement to the  
11 basic reserve need and the advantages that basic  
12 reserve need offers the applicant. If staff feels that  
13 such qualitative judgments are difficult to make within  
14 the first 90 days of a siting case, then I would  
15 suggest for consideration that the entitlement escrow  
16 be deferred until the commencement of the need  
17 conformance phase of the application. It seems to me  
18 that nothing would be lost if the applicant knew before  
19 need conformance was measured what particular test he  
20 was going to have to meet.

21 One further comment in response  
22 Recommendation No. 7, in the staff's slide presented  
23 today, I find it patently inequitable to apply  
24 efficiency criteria to some applications seeking  
25 certification under ER V and seeking the benefits that

1 a basic need allocation would provide them; while some  
2 others are granted specified reserve need advantages,  
3 irrespective of their efficiency and the benefits that  
4 they offer to the ratepayers. That concludes my  
5 statement. If you have any questions, I'd be happy to  
6 respond.

7 CHAIRMAN IMBRECHT: Thank you very much. Ms.  
8 Jan Hamerin, representing Independent Energy Producers.

9 DR. HAMRIN: Thank you very much. Good  
10 afternoon Commissioners. I appreciate the opportunity  
11 to make some comments before you today. And, as has  
12 been mentioned by several of the previous speakers, we  
13 do understand the complexity and difficulty of the  
14 issues that are facing you. I represent a number of  
15 companies who have applications before you and a number  
16 of companies who will have applications before you.  
17 So, I don't speak on behalf of any one applicant or one  
18 project or one technology, but rather looking at the  
19 dilemma facing those that are in the queue right now  
20 and the dilemma facing those to come, and hoping that  
21 we can find some orderly process out of this dilemma,  
22 rather than just continuing to spin around in circles.

23 With regard to the first issue of the escrow  
24 account procedures, again, as I've said, we have  
25 companies in our association who would have already

1 applied and others who haven't yet applied. So, it is  
2 very difficult to make a statement, except that  
3 whatever the procedure is, it needs to be  
4 administerable and understandable by everyone and as  
5 far as possible, considered to be fair.

6           It is very difficult to administer a policy  
7 if it is primarily based on a subjective criteria which  
8 isn't understood by anyone. And in the interim of  
9 deciding exactly if you are going to use something  
10 (such as was just suggested by Mr. Gersick) of  
11 separating more suitable projects from less suitable  
12 projects, at the minimum, there's a need to know what  
13 is suitable and what that means. And until such more  
14 firm definitions are decided, I do not see any way you  
15 can avoid using a first in/first out type of procedure.  
16 Simply because total subjectivity just leads to  
17 litigation and the obvious conclusion and the only  
18 place you're going to end up with: no one  
19 understanding what any of the other criteria mean.

20           I do want to make a couple of comments  
21 because I understand some of the staff's concerns and  
22 the concerns you had during the BR and the Electricity  
23 Report hearings with regard to the number of projects  
24 coming on line. But I do not think that you face a  
25 great risk in moving forward with the projects that you

1 already have inhouse with the applications that are on  
2 your desk. As you know, the Standard Offer IV, the  
3 Long-Term Standard Offer, has been suspended until a  
4 final methodology can be developed, which will probably  
5 be a year, at the minimum. So, the contracts that have  
6 already been signed are, for the most part, what you'll  
7 get. And what you will see, I think, is a very  
8 significant attrition rate of those numbers of  
9 projects.

10 So, you are not facing a situation as we  
11 thought we might be facing four months of more and more  
12 and more projects and megawatts coming on line.  
13 Instead, you're facing a situation where a specified  
14 number have signed contracts; and now, you're seeing  
15 that number be reduced. And I believe you will see  
16 them being reduced quite significantly, due to a number  
17 of other events which are and will be taking place in  
18 the next few months, including changes in tax law and  
19 other types of things.

20 So, moving ahead with the projects that you  
21 have here, I don't think represent a great risk to the  
22 ratepayer or concern that there's a lot of other  
23 projects coming in other places at that same time, and  
24 that the utilities will be facing greater and greater  
25 numbers of megawatts. I think you can proceed with

1 those inhouse and, at the same time, start looking the  
2 new policy and new directions you want to take with  
3 regard to siting additional projects.

4           With regard to energy efficiency and  
5 ratepayer protection, I can only second the staff's  
6 comments and everyone else's comments who've been up  
7 here. There are tremendous uncertainties and  
8 complexities involved in both of these issues. It is  
9 extremely uncertain -- and I would urge you to go to  
10 some kind of rulemaking procedure so that these can be  
11 aired and discussed at length so that the various  
12 opinions can be brought forward, and so that you can  
13 balance out the various questions that are included  
14 under these topics before you start using them as  
15 standards for projects.

16           To give you some examples besides those that  
17 Mr. Gardner provided from Edison, which I think were  
18 very good ones, I think you have a basic conflict  
19 between load following and efficiency. If you start  
20 telling projects that they will get preference if they  
21 can load follow and that they will get preference for  
22 being more efficient, I think those are mutually  
23 exclusive, if you're talking about a cogeneration  
24 project. Because a cogeneration project has an  
25 industrial load to meet -- a steam or heat load.

1           The only way that they can load follow and  
2 continue to meet their steam or heat load would be to  
3 size the project larger for the electricity side so  
4 that they could raise and lower the amount of  
5 electricity they're generating without affecting their  
6 industrial side. These two items are going to be in  
7 conflict. And there is a need to know exactly where  
8 the preference lies or how you're going to give  
9 priority to those considerations. Certainly, some of  
10 the issues Mr. Gardner raised with regard to efficiency  
11 and how it relates to air quality, equipment and other  
12 types of equipment are very, very important to be  
13 considered.

14           The question of ratepayer protection: What  
15 is that? What does that mean? I have not got any  
16 idea. We had never really discussed during the BR or  
17 Electricity Report hearings. It came in officially in  
18 the last couple of days with some concern expressed on  
19 the part of all of us. It appears to me, at least as  
20 far as I can understand it, to be in direct conflict  
21 with the Public Utility Commission's regulations and  
22 contract options that are available to cogenerators.  
23 And, again, I see cogenerators being in a catch-22 in  
24 following the regulations and requirements set forward  
25 by the Public Utilities Commission with regard to

1 contracting, and at the same time, trying somehow to  
2 meet this requirement which is still undefined as far  
3 ratepayer protection with regard to gas and oil prices  
4 and how the contracts relate to those.

5 I think it's extremely important that we have  
6 understandable rules and regulations that all of the  
7 applicants, both present and future understand and know  
8 how they will be judged, what the criteria are and can  
9 be prepare for that in a satisfactory manner rather  
10 than ad hoc rulemaking, and certainly not have  
11 proceedings where we set one QF against the other as  
12 the only possibility of trying to hold up everyone  
13 else's proceeding as the only way that you can possibly  
14 get in the door. I don't think it serves anyone's  
15 benefit -- utilities, the Commission or certainly not  
16 the QF industry.

17 So, I do urge you to take another look at the  
18 need criteria to give some thought and time to a  
19 proceeding where we can put information on the record  
20 and give thoughtful process to follow for this criteria  
21 for all future projects, and to move as rapidly as  
22 possible with the projects you do have inhouse so they  
23 are not unfairly penalized for being caught in-between  
24 BR IV, V, and possibly, VI (VII, VIII, IX, X). Thank  
25 you very much.

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1           CHAIRMAN IMBRECHT: Thank you. Are there  
2 questions? Commissioner Noteware.

3           COMMISSIONER NOTEWARE: Dr. Hamrin, obviously  
4 our first crisis so far as energy resources are  
5 concerned is cogeneration. And I'm wondering if your  
6 comments indicate that your crystal ball shows that  
7 because of changed tax laws and so forth that you don't  
8 anticipate that the specified need boxes are going to  
9 be met in the foreseeable future in the other  
10 categories.

11           DR. HAMRIN: No. I wasn't making that  
12 statement. My crystal ball isn't that good. I just  
13 don't think they're going to get any fuller than they  
14 are now and probably will be less full than they are  
15 now. But I am not entirely clear how those were  
16 developed with respect to the below 50 MW size limits  
17 that the Energy Commission sees. And I certainly that  
18 there are some possibilities that some technologies  
19 over which you do not have siting authority may end up  
20 doing considerably less than what's anticipated at the  
21 time that this BR and Electricity Report were being  
22 considered. So, it seems to me that can only go down  
23 and I think in some areas may go down substantially,  
24 which could change the situation for everyone

25

1           CHAIRMAN IMBRECHT: Just commenting on that,  
2 I would only note that there are really only two  
3 technologies that are substantially dependent upon the  
4 tax credits. And I assume that's what you mean in  
5 terms of the tax policy changes, as well as to some  
6 extent the question of what was allocated to  
7 conservation. But, wind and solar cumulatively were  
8 allocated about 800 MW. And those are the two, it  
9 would appear to me, that are in the greatest potential  
10 for jeopardy in terms of fulfilling the.... I'm sorry,  
11 excuse me. That's the likely to be available.  
12 Actually, the reserve need is only 300 MW for those two  
13 technologies. So in terms of the total, though there  
14 may be some softness as indicated, it's not a very  
15 large increment of the entire reserve need.

16           DR. HAMRIN: There are a number of other  
17 legislative and regulatory things going on that affect  
18 small hydro. I think that changes in accelerated  
19 depreciation allowance would affect all the  
20 technologies -- some companies possibly more than  
21 others. Certainly all the air quality issues which are  
22 not entirely resolved will affect biomass and  
23 cogeneration.

24           My main point was simply that the numbers, in  
25 my opinion, will get smaller in all of the categories.

1 They will not get larger at this point. I do not  
2 anticipate there will be a huge rush of negotiated  
3 contracts with the utilities, since the utilities are  
4 only required to negotiate in good faith and not to  
5 sign any contract that walks in the door in a non-  
6 standard form. So, I just think that you have some  
7 breathing room which may not have been foreseen in  
8 exactly the same way when you had this before you the  
9 first time.

10 CHAIRMAN IMBRECHT: I will acknowledge that.  
11 At the same time, the amount of attrition that will  
12 have to occur in order to come down just within the  
13 actual demand forecast itself, irrespective of  
14 allocations amongst the technologies, has to be very,  
15 very substantial. And the likelihood -- unless there  
16 is a tremendous change in circumstance, then I think  
17 the message that if there was anything fundamental and  
18 underlying in those documents is that for the first  
19 time in the Commission's history if not in the next  
20 year and a half, then very likely shortly thereafter  
21 -- unless for some reason in ER/BR VI we end up with a  
22 substantially larger demand forecast (I mean, there may  
23 be some reasons that that might occur) but, unless that  
24 were to occur, in fact, any type of project is going to  
25

1 be running up against the actual demand forecast at  
2 some point in time.

3           There is no way to construct the system and  
4 to in essence provide a guarantee or insurance policy  
5 for all those projects which have signed contracts,  
6 that in fact there is a demonstrable need for their  
7 development for the benefit of our utility systems, and  
8 ultimately, our ratepayers. If anything, what this  
9 does in essence is attempt to call that issue more  
10 squarely to the attention of people. And, in my own  
11 judgment, was the case a few months ago. I think a lot  
12 of developers were moving merrily down the development  
13 path, operating on the assumption, somehow, that there  
14 was not a genuine need issue with which they would be  
15 confronted at some point before the fruition of their  
16 project.

17           Okay. Anything further?

18           DR. HAMRIN: Thank you.

19           CHAIRMAN IMBRECHT: Thank you very much. Mr.  
20 Mike Eaton, representing the Independent Power  
21 Corporation.

22           MR. EATON: Mr. Chairman, members -- Mike  
23 Eaton, representing Independent Power Corporation,  
24 energy services firm, based in Oakland, California that  
25 provides consulting services to a wide range of energy

1 interests throughout the Western United States. I have  
2 a prepared statement which I will submit for the record  
3 and to you. And I will give you some highlights now.  
4 I will not read it.

5           Basically, we support key aspects of the  
6 staff approach. We commend staff for the approach  
7 they've taken, the openness and the willingness to talk  
8 and the underlying logic which we've perceived in what  
9 they've proposed. We urge your prompt action today, if  
10 at all possible, on these key aspects. We think the  
11 sooner you move to resolve these issues, the better you  
12 will be. The better off applicants and prospective  
13 applicants in this room will be.

14           We have some specific concerns about how the  
15 ratepayer risk and efficiency test will be handled.  
16 Those policies in the Electricity Report are skeletal.  
17 They are not criteria; they are not standard. They are  
18 simply statements subject to a myriad of interpre-  
19 tations--legitimate, varying definitions. And, as Mike  
20 Gardner pointed out, the cogeneration efficiency issue,  
21 in particular, is one in which I think you face a good  
22 deal...a great challenge in a rulemaking proceeding to  
23 work out. I don't see any workable, legal or fair way  
24 for you to apply those standards or attempt to apply  
25 those standards on a case-by-case basis in a siting

1 proceeding. I'll just note that staff (or at least  
2 some staff) appear to be in agreement with that  
3 position in the Gilroy hearing on Friday. Staff  
4 counsel took a very strong position against dealing  
5 with those issues in a particular siting case and  
6 elaborated on the difficulties and barriers involved in  
7 doing that.

8           Finally, I'd like to reiterate some earlier  
9 points that I've made here before about process and in  
10 so doing, echo some of the concerns expressed earlier  
11 by Mr. Britt. I think that any attempt on your parts  
12 to rigidly apply ER V policies to projects that were  
13 well advanced at the time of adoption of the ER V will  
14 raise major questions of fairness. When you adopted ER  
15 V, we were assured that it would be implemented with  
16 flexibility and assured that the need system therein  
17 was not "set in concrete." At this point, we can only  
18 plead with you and hope that this will indeed remain  
19 the case. Any questions?

20           CHAIRMAN IMBRECHT: Questions from members of  
21 the Commission? Thank you very much. We appreciate  
22 your comments. They were helpful. Alright. Dian  
23 Gruenich.

24

25

1 MS. GRUENICH: My name is Dian Gruenich; and  
2 I'm the attorney representing Pacific Thermonetics,  
3 Inc., who's the applicant in the Crockett project.

4 CHAIRMAN IMBRECHT: I got Gruenich, but  
5 not.... Dian without the "e" is....

6 MS. GRUENICH: I promise from now on it'll be  
7 phonetic spelling.

8 CHAIRMAN IMBRECHT: Thank you very much.

9 MS. GRUENICH: As I mentioned that I am here  
10 today representing Pacific Thermonetics, Inc. And, as  
11 I am sure you might surmise from looking at the staff  
12 proposal, we are in support of it with regard to their  
13 proposal that those applicants inhouse at the time that  
14 the Biennial Report was adopted would have their need  
15 determined under the specified reserve need test rather  
16 than the unspecified reserve need test or another test,  
17 that we do support that aspect of the staff's  
18 recommendations.

19 And furthermore, we are in agreement with Mr.  
20 Eaton in which he stated that, to the extent that the  
21 Commission is ready to take action today on that  
22 aspect, we are in support of it. If you feel that you  
23 are ready and able to make a determination that at  
24 least for the projects that were inhouse when the BR  
25

1 was adopted that they will be subject to the specified  
2 reserve need test, we urge you to do that.

3           There's one matter that I would like to bring  
4 up, though, that nobody has addressed yet. And that  
5 is, in the staff's recommendation for those projects  
6 that will be under the specified reserve need test they  
7 are suggesting that there be a consolidated proceeding.  
8 And the plants that would be involved in this  
9 consolidated need proceeding, there would be six of  
10 them. It would be Sycamore, Placerita, Crockett,  
11 Irwindale, IBM, and Spreckles. And at least the way  
12 that we understand the staff recommendation would be  
13 that there would be one consolidated proceeding with  
14 all of these projects inhouse.

15           We recommend that the staff not take this  
16 approach. We feel that it would be an unwieldy  
17 proceeding and that it's not necessary. When we  
18 reviewed the staff report as to why there would be this  
19 proceeding, they stated that the purpose of it was to  
20 look at the following factors: 1) the order of filing,  
21 2) the size of the facility in megawatts, 3) the amount  
22 of reserve need in applicable need categories, 4) the  
23 appropriate reserve need category for each project, and  
24 5) the appropriate need test for each project.

25

1           I wish to emphasize that the staff's proposal  
2 would be that this generic...excuse me, this  
3 consolidated proceeding would be for those projects  
4 that the Commission would already have determined were  
5 subject to the specified need test. So when we  
6 reviewed the proposal, there was not any reason to have  
7 a separate consolidated proceeding, that we already  
8 know the factors that the staff said would be done in  
9 that proceeding. That's the whole purpose of the  
10 Commission taking some action to give some certainty as  
11 to how the projects inhouse are going to be treated.

12           We think that if you both take an action for  
13 the projects inhouse and specify now what tests they're  
14 going to be subject to, yet at the same time, set up  
15 some sort of consolidated proceeding for all of these  
16 six projects to participate in, you're just going to be  
17 setting up an unwieldy, bulky process that's not  
18 needed; because you will already have specified what is  
19 the date of filing, what tests they're going to be  
20 subject to. The only matter, when I looked at it, that  
21 might not have been covered was the size of the  
22 projects in megawatts. But this isn't a matter that  
23 you would have to determine in a consolidated  
24 proceeding. Because that number would no longer affect  
25 anyone else, since you would be making the

1 determination that everyone else after the projects  
2 inhouse would be subject to the unspecified reserve  
3 need test.

4           And the size question could be looked at in  
5 the context of the need determination for each of the  
6 individual siting cases. And that's where, in fact,  
7 you have to look at it when you're considering needed  
8 alternatives. And it's such a specific matter to each  
9 project. We think it makes sense to do it in the  
10 context of each siting case and not have consolidated  
11 proceedings. So that really is the one matter that,  
12 when we reviewed the staff recommendation, where we  
13 disagreed with the staff, that we feel that we should  
14 try and have some sort of consolidated proceeding.  
15 You're trying to set up a process that is fairly  
16 straightforward and that's not going to be unwieldy.

17           We also are in full agreement with most of  
18 the people today who have testified that they recommend  
19 that to the extent that you are setting up any  
20 efficiency standards or ratepayer standards that you do  
21 this in a generic proceeding, that you do it with  
22 adequate notice to parties, that you take a look at:  
23 Is it necessary? Is it feasible? And how is it  
24 actually going to be applied? We strongly disagree  
25 that it can be done on an ad hoc basis or that it

1 should be done for any particular applicant. None of  
2 us have any notice at this time as to what those  
3 criteria might be or how they would be applied. And we  
4 join with everyone, we think, today who has urged you  
5 to try and do this in some sort of generic proceeding.  
6 Allow yourselves to get the type of information you  
7 need to really develop the type of criteria that would  
8 make sense to apply.

9           In summary today, the only last thing that I  
10 would add is, to the extent that you can give any  
11 clarification for the actual substance of the need  
12 determination -- whether it's for the specified reserve  
13 need test or the unspecified reserve need test or for,  
14 yet, another test -- we would urge you to try and give  
15 us some guidance. All of us--the applicants both  
16 inhouse, not yet inhouse--are really struggling to try  
17 and put together what is the case that we need to  
18 present to the Commission when we get down to the  
19 substance of what do we need to show to determine a  
20 need for the project. And we've been looking through  
21 the BR; we've been following the other proceedings;  
22 we've been reading the transcripts. But I think what  
23 you've sensed today is there still are a lot of  
24 questions that people have. And to the extent that you  
25

1 can give us any guidance, we certainly would appreciate  
2 it. Thank you.

3 CHAIRMAN IMBRECHT: Okay. Thank you. Any  
4 questions? Alright. That completes.... Does anyone  
5 else wish to be heard on this item? Alright. That  
6 completes our scheduled testimony. I guess the obvious  
7 question: what is the pleasure of the Commission?

8 VICE CHAIR CROWLEY: Mr. Chairman.

9 CHAIRMAN IMBRECHT: Commissioner Crowley.

10 VICE CHAIR CROWLEY: We have a communication  
11 from Commissioner Commons stating that he would like to  
12 have this measure held until his return. And he  
13 suggests the 13th; but I would think that we could not  
14 do that because it's only noticed for one purpose  
15 -- the hearing is only noticed for one.... Is that  
16 accurate?

17 CHAIRMAN IMBRECHT: The question is could be  
18 continue this matter to our....

19 VICE CHAIR CROWLEY: ...to the meeting for  
20 Tuesday.

21 CHAIRMAN IMBRECHT: Business Meeting this  
22 coming Tuesday.

23 MR. CHANDLEY: The Government Code allows you  
24 to continue a hearing to any regularly scheduled  
25 Business Meeting or to a special meeting of the

1 Commission which has already been previously noticed.  
2 That is, if the noticing for that hearing itself was  
3 adequate, you can continue a matter from this hearing  
4 to that date.

5 VICE CHAIR CROWLEY: "Adequate" does not mean  
6 that the item has to have been noticed? What do you  
7 mean by an "adequate" notice?

8 VICE CHAIR CROWLEY: You're asking the right  
9 question. And I think the answer is that you could  
10 continue it; but I would prefer that you continue this  
11 matter to a regularly scheduled Business Meeting.

12 VICE CHAIR CROWLEY: Thank you. The next  
13 point that I'd like to make about his communication is  
14 that in addition to suggesting that the item be  
15 continued until the 13th or as (INAUDIBLE) has  
16 prevailed, the next noticed meeting, it is pointed out  
17 that he is presiding at two cases and was an active  
18 participant in this. It also states his stated  
19 position on the escrow account issue is contained in  
20 the attached two Committee orders. These two Committee  
21 orders have been out a couple of days. And we have had  
22 them available to us.

23 It is also clear that he indicates in this  
24 particular notice...memo, no additional or differing  
25 points or positions or conclusions than those that have

1 otherwise been stated by him at preceding times. And I  
2 am persuaded that the importance of timeliness in our  
3 stating a position makes it appropriate to proceed.  
4 And I would like to move that staff recommendation be  
5 accepted in this matter for both AFCs and SPPEs, and  
6 with the addition that Item 7 include consideration of  
7 thermal balance.

8 CHAIRMAN IMBRECHT: Okay. Is there a second?

9 COMMISSIONER NOTEWARE: I'll second it for  
10 the purpose of discussion.

11 VICE CHAIR CROWLEY: Good.

12 CHAIRMAN IMBRECHT: Alright, fine. Thank  
13 you. I was going to offer the same. Commissioner  
14 Noteware, anything you want to add at this juncture?

15 COMMISSIONER NOTEWARE: I would like to  
16 explore the down side of delay. If it's possible, I  
17 would like to concur with Commissioner Commons' request  
18 out of courtesy. And yet, I'd like to explore the  
19 urgency a little bit more as you perceive it,  
20 Commissioner Crowley.

21 VICE CHAIR CROWLEY: It seems to me that we  
22 have the obligation when people apply for certification  
23 that they have some certainty as to what is being dealt  
24 with. And I believe that this particular area of  
25 consideration should well have been obvious as one of

1 needing clarification when the ER itself was written  
2 and was not dealt with at that time. In the meantime,  
3 we have had additional cases come in. We chose to  
4 accept the BR/ER; and I just believe we owe it to those  
5 people who are dependent on our decision-making to be  
6 decisive.

7 I think the down side is having these cases  
8 be left up in the air and having our.... I don't know.  
9 I don't know that it's exactly our credibility -- but,  
10 our integrity as decision-makers being somewhat  
11 assailed by proceeding in this fashion. And I would  
12 agree that it is important to defer to the courtesy of  
13 a fellow Commissioner. I also believe that we have  
14 several parties in the world that we also deserve a  
15 courtesy to. And that is to make up our minds how  
16 we're going to deal with them and do that. And I felt  
17 in this matter, since nothing indicated here that there  
18 would be any new information and since this is  
19 certainly not something that suddenly has become an  
20 issue, but has been an issue for some months, I feel it  
21 would be appropriate for us to proceed.

22 COMMISSIONER NOTEWARE: I see.

23 CHAIRMAN IMBRECHT: Okay. Well, I think you  
24 eloquently stated the case Commissioner Crowley. I  
25 have to say that I was obviously negligent in not

1 better consulting with my colleagues prior to  
2 suggesting at the outset that we would be amenable to  
3 Commissioner Commons' request. It probably has more to  
4 do with my previous life than anything else in terms of  
5 the...my general inclination to extend those  
6 courtesies, particularly in a small member legislative  
7 institution such as this.

8           Nonetheless, I want to just pursue this a  
9 little bit further. Mr. Chandley, you say that it's  
10 your preference that we go to a regularly scheduled  
11 Business Meeting, but you believe it would be legal for  
12 us to continue this matter until August 13th. Now,  
13 that is a fully scheduled Business Meeting. The only  
14 contrast would be that for the meeting two weeks from  
15 today, we obviously would be able to provide full  
16 notice on this item. At the same time, I would just  
17 note that since the item was noticed for today, and I  
18 would presume that the interested parties that wished  
19 to testify in this matter as evidenced by nearly a full  
20 house at 5:00, would likely be in essence  
21 constructively noticed were we to continue this until  
22 Tuesday. I just want to get it clear. Do you have any  
23 doubts? Or do you feel you need a moment to check the  
24 Government Code on this?

25

1 MR. CHANDLEY: I know what the Government  
2 Code says; and its ambiguous on this point. I'm just  
3 not sure. You'd have to sit down and think it through.  
4 That's not my primary concern.

5 If you decide that this is the route you want  
6 to go, then I would like to have it set forth in an  
7 order and have that put before you. And then I'd like  
8 to have you also consider an alternative approach which  
9 I have have not been able to discuss with the staff and  
10 I think would be unfair to present today, unless you  
11 chose to act today and needed to understand other  
12 alternatives. And, secondly, I'm concerned that the  
13 staff's proposal, partly through my inability to free-  
14 up sufficient time to work with the staff as closely as  
15 I would like to have done, staff's proposal does not  
16 fully square with the advice which I have given you by  
17 memorandum and poses, therefore, some fairly  
18 significant legal difficulties. Those I think need to  
19 be addressed before we jump into this approach. I  
20 think there may be a way to solve that and carry out  
21 the intent of the staff's approach; but it's not clear  
22 to me that we have reached that point yet.

23 At any rate, I think there is a simpler,  
24 fairer way to do this which could be explicated, but  
25

1 which needs to be discussed internally and then  
2 presented rather than, unless....

3 CHAIRMAN IMBRECHT: In the event that were  
4 case, is there a problem in doing that by the 13th?

5 MR CHANDLEY: Well, the problem with acting  
6 by the 13th is that we need some mechanism for  
7 informing the parties about what we're intending to do  
8 one way or another, or at least present them with the  
9 options.

10 MR WARD: Mr. Chairman, I think what I hear  
11 him saying is that he feels somewhat constrained by  
12 virtue of any changes that may result from some of the  
13 perspectives that he had on this and that adequate  
14 notice might not be available in time to act on the  
15 13th. I have a more fundamental question. I don't  
16 know if Commissioner Commons is going to be here next  
17 week.

18 VICE CHAIR CROWLEY: Next week?

19 MR WARD: Yes. Unless someone is certain of  
20 that, we probably ought to verify the schedule before  
21 we go on to the schedule.

22 CHAIRMAN IMBRECHT: I guess I would take it  
23 from the fact that we do have a memorandum from his  
24 office indicating that that's the request -- that it be  
25

1 held to the 13th, that it's at his peril whether or not  
2 he's here. Any....

3 MR WARD: If I can make just a point.

4 CHAIRMAN IMBRECHT: Courtesy has its  
5 limitations.

6 MR WARD: It sounds like...I'm hearing we're  
7 resolved to not acting today.

8 CHAIRMAN IMBRECHT: No. You are not hearing  
9 that. You're not hearing that at all. I'm trying to  
10 explore the options before I make up my own mind. And  
11 I think it's apparent to me that I...or perhaps....  
12 I'm not speaking for Commissioner Noteware. I don't  
13 know. I don't know what his position is at this point;  
14 but I might obviously be the swing vote. Mr. Gandara  
15 will not be back for the remainder of the meeting. And  
16 so, what you see is what you get.

17 VICE CHAIR CROWLEY: May I ask a question of  
18 procedure? May I ask you, please?

19 CHAIRMAN IMBRECHT: Yes. Commissioner  
20 Crowley.

21 VICE CHAIR CROWLEY: I understood that it was  
22 still the majority of the Commission. It would have to  
23 be all three of us?

24 CHAIRMAN IMBRECHT: That's correct. Oh,  
25 absolutely.

1 VICE CHAIR CROWLEY: Oh, I see what you mean.

2 CHAIRMAN IMBRECHT: Sure.

3 VICE CHAIR CROWLEY: Okay. Okay. I'm  
4 confused.

5 CHAIRMAN IMBRECHT: Which means any one of us  
6 represents the swing vote, in essence.

7 VICE CHAIR CROWLEY: I see what you're  
8 saying.

9 CHAIRMAN IMBRECHT: And with all that as an  
10 overlay, I'm trying to understand if we could.... My  
11 inclination, personally, would be to try to accommodate  
12 Commissioner Commons by holding this until the 13th.

13 VICE CHAIR CROWLEY: Can we do that, though?

14 MR. CHANDLEY: Let's assume for the moment  
15 that we can. And I will advise the Commission  
16 immediately after this meeting, whether there are any  
17 difficulties of that.

18 VICE CHAIR CROWLEY: Well, if that is a  
19 potentiality, then I would think that would be  
20 inappropriate. Or given what you tell me....

21 CHAIRMAN IMBRECHT: And if you advise us  
22 after the meeting that it isn't appropriate, then we're  
23 stuck with two weeks from now, which....

24 MR. CHANDLEY: Then there won't be a notice  
25 posted on the door out there.

1           VICE CHAIR CROWLEY: What persuades me is the  
2 fact that you say there's another entire piece to this  
3 puzzle that we have not been involved with.

4           CHAIRMAN IMBRECHT: Just for the purpose of  
5 those that are here, I think you need...and obviously  
6 whenever you hear a reference to a document, there has  
7 been an opinion supplied to members of the Commission.  
8 It is an attorney/client privileged opinion. I presume  
9 that that is premised upon the fact that this could  
10 involve potential litigation. I suppose the other  
11 alternative would be for us to repair briefly to an  
12 Executive Session and hear more clearly the concerns  
13 the concerns that you care to offer, Mr. Chandley.

14           MR. WARD: I suspect, Mr. Chairman....

15           CHAIRMAN IMBRECHT: But, in any case, I just  
16 received this document today or perhaps late  
17 yesterday....

18           MR. WARD: As did the staff.

19           VICE CHAIR CROWLEY: I'm not really  
20 comfortable when I hear that staff, now.... You're  
21 telling me staff didn't have this either.

22           MR. WARD: That's correct.

23           VICE CHAIR CROWLEY: And I'm not comfortable  
24 with having that piece of the puzzle not have been

25

1 available, which none.... I mean, I was not aware of  
2 that.

3 MR. WARD: Let me see if I can try to follow  
4 on what John is saying and based on, I think, what I  
5 would support in terms of uncertainty based on his  
6 issue -- and that is that we notify everyone that was  
7 on the service list today via something (formal notice)  
8 whether this is going to be off on Tuesday.

9 VICE CHAIR CROWLEY: Off on....

10 MR. WARD: Off on Tuesday. In other words,  
11 let's go with the previous position that it isn't going  
12 to be on -- continued to the next Business Meeting  
13 which is next Tuesday, unless they hear otherwise. And  
14 that's more of a convenience factor. So announce....

15 CHAIRMAN IMBRECHT: I'd rather make it just:  
16 'We will endeavor to notice people' -- period, one way  
17 or the other. And I think that we should be able to  
18 resolve this thing first thing in the morning and get  
19 something out by mail tomorrow, which presumably would  
20 get to people Saturday or Monday.

21 VICE CHAIR CROWLEY: Before the 13th.

22 CHAIRMAN IMBRECHT: That's right. Not  
23 perfect notice by any stretch of the imagine. But if,  
24 in fact, we are capable of continuing this matter to  
25 the 13th, I would suggest we proceed with that instinct

1 in mind. And futher, I would suggest the fact that I  
2 will, absent objections from members of the Commission,  
3 direct both the General Counsel's Office and the  
4 Executive Office to deal with this issue internally  
5 tomorrow and report to me if there are problems in  
6 reconciling your viewpoints.

7 Okay. Does that meet with the acceptance  
8 from members of the Commission?

9 VICE CHAIR CROWLEY: Yeah. I would defer to  
10 that.

11 COMMISSIONER NOTEWARE: Nods -- Yes.

12 CHAIRMAN IMBRECHT: Can I assume, then, that  
13 you'll withdraw your motion?

14 VICE CHAIR CROWLEY: I'd be happy to.

15 CHAIRMAN IMBRECHT: Okay. I think that....  
16 Yes, Mr. Flores.

17 MR. FLORES: I have a question for you,  
18 Mr. Chairman. I understood from your statement at the  
19 beginning of this item that Commissioner Commons would  
20 agree that the IBM escrow hearing....

21 CHAIRMAN IMBRECHT: I believe that with this,  
22 I know that that offer was contingent upon us putting  
23 this over which would have further required us to  
24 vacate those orders which would have been a further  
25 difficulty vis a vis the internal Commission courtesy

1 -- something that I have to say clearly; and I've said  
2 it privately as well. But, I personally believed we  
3 had an understanding those orders were not going to be  
4 issued prior to the Commission's resolution of this  
5 matter. And I do have some concerns that occurred. In  
6 any case, I assume by virtue of this action that those  
7 orders will be voluntarily rescinded by Commissioner  
8 Commons. And they will be re-issued immediately upon  
9 resolution of this issue by the Commission and be  
10 consistent with Commission-adopted policy.

11 MR. FLORES: Thank you, Mr. Chairman.

12 CHAIRMAN IMBRECHT: You're more than welcome.  
13 I appreciate you raising that for us so we could  
14 clarify it. Does anyone else wish to be heard on this  
15 item?

16 MR. PEREZ: Chairman Imbrecht, I would like  
17 to be heard on this item.

18 CHAIRMAN IMBRECHT: Fine.

19 MR. PEREZ: I have no idea whatsoever where  
20 the Commission is going, why it's going in that  
21 direction, for what reason it's going in that  
22 direction. I have heard statements on the record that  
23 indicate that your General Counsel has prepared a legal  
24 opinion which is not being disclosed to the general  
25 public because of an attorney/client privilege,

1 followed by a statement from the Executive Director  
2 that he has not yet reviewed his copy of the,  
3 apparently, confidential document.

4 Pursuant to my statutory responsibility of  
5 giving you my recommendations with respect to adequate  
6 noticing and procedures that will facilitate effective  
7 public participation, I strongly advise against trying  
8 to continue on a short turnaround basis to the 13th or  
9 any day close to it. I think that the best you could  
10 do would be to follow the Deputy General Counsel's  
11 initial recommendation which would be to carry over to  
12 a subsequent regular Business Meeting at the earliest.

13 I also want to say on the record that I think  
14 I owe an apology directly to Commissioner Commons;  
15 because it was originally my error with regards to my  
16 recollection of the Business Meetings of July that lead  
17 to a postponement of this matter during the late part  
18 of July and early August. But what I'm hearing here  
19 today are parties from the public talking about the  
20 possibility that if the Commission becomes more  
21 specific in enumerating its criteria, they will feel  
22 that it's incumbent upon the Commission to initiate a  
23 rulemaking proceeding; albeit six months is what a  
24 rulemaking proceeding costs you.

25

1           That leads us to even greater complexity in  
2 terms of processing the cases. To the extent that the  
3 Commission is going to exercise statutory authorities  
4 which it clearly possesses in the area of demand  
5 conformity criteria, it ought to remain at this point  
6 before the full Commission. And the public ought to  
7 have reasonable opportunities to participate, including  
8 the parties that are present today. But where we stand  
9 right now, I'm very uncomfortable with. And I did want  
10 to express that opinion before you broke.

11           CHAIRMAN IMBRECHT: Okay. Well let me just  
12 pursue that for a moment. I guess I'm curious as to  
13 how public participation is, in your view, likely to be  
14 inhibited by continuing this matter until the 13th.

15           MR. PEREZ: I have a real problem as an  
16 individual, hearing about the Deputy General Counsel  
17 preparing a legal opinion that is relevant to how and  
18 when the Commission will move forward on a question  
19 which includes a staff position on the major issue that  
20 this Commission has addressed in the last two years.  
21 In light of the fact that we have participants in the  
22 public today who represent probably close to a billion  
23 dollars worth of projects, telling you at 5:30 in the  
24 afternoon that they're concerned about the Commission's  
25

1 articulation of its siting policy in the area of demand  
2 conformity.

3           CHAIRMAN IMBRECHT: Okay. Let me try a  
4 middle...another approach. And that is that tomorrow,  
5 as members of the Commission staff were aware, one of  
6 my responsibilities is to certify the agenda for  
7 publication for the next regularly scheduled Business  
8 Meeting, two weeks from now. What I'm going to suggest  
9 is that we go forward with the procedure I just  
10 outlined in terms of attempting to resolve this matter  
11 on the 13th. But that, at the same time, we will  
12 notice this item for the Business Meeting two weeks  
13 from now to preserve all of our options. And in the  
14 event that parties are agrieved at the meeting on the  
15 13th.... I'm trying to balance this at the same time  
16 with the expressed desire, it seems to me, of all the  
17 parties that have testified, that we expedite  
18 resolution of this matter.

19           And so, in that context, if in fact there is  
20 consensus on this coming Tuesday, and if in fact the  
21 memorandum supplied by the General Counsel's Office  
22 does not produce concerns for the various individuals  
23 that would be expected to testify on Tuesday, that it  
24 might be conceivable that we could resolve this matter  
25 at that time without compromising adequate

1 opportunities for people to review in advance that  
2 which might be modified in a staff recommendation as a  
3 result of the opinion that has been supplied to us.  
4 And I'm wondering if that would alleviate any of your  
5 concerns. That would in essence preserve an  
6 opportunity for us on the 13th to choose to further  
7 delay this matter to the next Business Meeting as you  
8 appear to be recommending at this juncture.

9 MR. PEREZ: Bad facts make bad law. And in  
10 those situations, I recommend to the Commission that it  
11 return to simplicity which would be to agendize this  
12 item for the next regularly scheduled Business Meeting.

13 CHAIRMAN IMBRECHT: Okay. Members of the  
14 Commission, you've heard a suggestion from the Public  
15 Adviser. At this juncture, my direction stands, unless  
16 you care to suggest a contrary approach. And I would  
17 add to it the intention to notice this item for the  
18 regularly scheduled Business Meeting, two weeks from  
19 today. So as I indicated, both options are preserved.  
20 Does that seem appropriate to you?

21 COMMISSIONER NOTEWARE: Sounds right.

22 VICE CHAIR CROWLEY: Nods -- Yes.

23 CHAIRMAN IMBRECHT: I appreciate your  
24 suggestion, Mr. Perez, in trying to deal with both  
25 eventualities. Alright. Again, not a perfect

1 resolution. But, we'll revisit this issue on the 13th.  
2 I'm also going to suggest that, to the extent that  
3 staff and counsel are able to reconcile any differences  
4 on this issue tomorrow, that we also endeavor to  
5 include whatever documents need be included within any  
6 service to the parties that were invited for today's  
7 proceeding. Yes sir.

8 MR. FLORES: I have another request, Mr.  
9 Chairman. And that is, if the recommendations, to  
10 impart up Mr. Chandley's legal advise, I certainly  
11 wouldn't want you to just turn over an attorney/client  
12 memo -- but, if you could find some way to let us know  
13 the substance of those arguments in consideration....

14 CHAIRMAN IMBRECHT: That's in essence what I  
15 was just suggesting. That's exactly the point I was  
16 suggesting. I have to be quite candid with you, I  
17 haven't had a chance to review this memorandum. And I  
18 honestly couldn't even render a judgment at this  
19 juncture whether in fact it should be classified as an  
20 attorney/client privileged document or whether it's  
21 something that should be released. I will also  
22 endeavor to try to do that tomorrow, as well.

23 MR. FLORES: Thank you.

24 CHAIRMAN IMBRECHT: Okay. I think that  
25 concludes our consideration of Item 6.

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(Thereupon the Business Meeting of the  
California Energy Resources Conservation and  
Development Commission was adjourned at 5:45 P.M.)

**THIS CONCLUDES THE PORTION OF THE  
PROCEEDING REGARDING ITEM 6.**

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**REPORTER'S CERTIFICATE**

1  
2 THIS IS TO CERTIFY that I, Dawn Lofton, have  
3 duly reported the foregoing proceedings which were had  
4 and taken in Sacramento, California, on Wednesday,  
5 August 7, 1985, and that the foregoing pages constitute  
6 a true, complete and accurate transcription of the  
7 aforementioned proceedings.

8 I further certify that I am not of counsel or  
9 attorney for any of the parties to said hearing, nor in  
10 any way interested in the outcome of said hearing.

11  
12   
13 Reporter

14  
15 Dated this 13th day of August, 1985.  
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