BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Business Meeting)
)
_____)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 2, 2006

10:01 A.M.

Reported by:
Peter Petty
Contract No. 150-04-001

COMMISSIONERS PRESENT

John L. Geesman, Acting Chairperson

Arthur Rosenfeld

Jeffrey D. Byron

STAFF and CONSULTANTS PRESENT

Scott Matthews, for Executive Director

William Chamberlain, Chief Counsel

Madeleine Meade

Rasa Keanini

Prab Sethi

Guido Franco

Tony Goncalves

David Rubens

Gary Fay

Arlene Ichien

ALSO PRESENT

Lynne Brown
Californians for Renewable Energy
(via teleconference)

Les Guliasi
Pacific Gas and Electric Company

Emilio "Gene" Varanini, Special Counsel
California Power Authority

Robert Sarvey, Intervenor

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P R O C E E D I N G S

10:01 a.m.

ACTING CHAIRPERSON GEESMAN: If you'll please join me in the Pledge of Allegiance.

(Whereupon the Pledge of Allegiance was recited in unison.)

ACTING CHAIRPERSON GEESMAN: Before we get started I have an announcement I received from the United States Department of Energy yesterday announcing the first recipient of the Jeffrey A. Johnson Award for Excellence in the Advancement of Building Energy Codes and Performance, given to none other than our own Bill Pennington, Manager of the Buildings and Appliances Office.

He was presented with the award during a plenary session yesterday at the national workshop on state building energy codes being held in Denver.

Bill hasn't come back yet. But I did want to share with all of you that he has been designated the first recipient of this national award. And as you know, since 1979 he's been a real spearhead of the building standards that have brought quite a bit of acclaim to the Commission from all around the world.

COMMISSIONER ROSENFELD: I just want to say he really deserves that. I've never seen anybody who works so effectively and so hard, and has so many admirers.

ACTING CHAIRPERSON GEESMAN: Why don't we take up, then, the consent calendar.

COMMISSIONER ROSENFELD: I move the consent calendar.

COMMISSIONER BYRON: I second.

ACTING CHAIRPERSON GEESMAN: Consent calendar has been moved and seconded.

All in favor?

(Ayes.)

ACTING CHAIRPERSON GEESMAN: I should indicate that item 9 is going to be put over, as will item 11, the approval of our minutes, because I was not at the July 19th meeting, I'm unable to vote for the approval of the minutes. So we'll simply take that up at our next meeting.

Item 2, Clean Energy Stats Alliance. Possible approval of contract 400-06-002 for $240,000 for a three-year renewal of the Energy Commission's membership in the Clean Energy States Alliance.

MS. MEADE: Good morning; I'm Madeleine

Meade with the renewable energy program. The item before you deals with the Clean Energy States Alliance membership which presently consists of 18 state-level clean energy funds in 14 states.

States that are involved in CESA run the gamut of a variety of states in the northeast, Massachusetts, New York, Connecticut, Pennsylvania, Rhode Island and New Jersey. And in the midwest, Ohio, Minnesota, Wisconsin and Illinois. As well as here in the west, Washington, Oregon, California, Arizona and New Mexico is in a trial period for one year.

CESA provides its members the opportunity to share best practices, lessons learned and participate in collective problem solving; focus toward effectively implementing their various clean energy programs.

CESA is managed by the Clean Energy Group, a nonprofit organization, and has been in existence since early 2003.

It's important to realize that CESA functions as more than simply a membership, because at its heart they are a technical consultant to the state clean energy funds.

The majority of CESA's activities

involve joint projects. These involve activities to find solutions to key cross-cutting problems that many state members face, such as development of the solar PV market, wind facility siting, RPS implementation, biomass development, public education, climate change and other projects.

CESA efforts of particular benefit to the Energy Commission have been CASE studies on PV cost trends in California; analysis of the implications of new federal tax credits on solar programs; programmatic experience and recommendations on supporting solar PV in residential new construction.

They also developed a report providing the Energy Commission with practical strategies to increase the use of solar PV in affordable housing. CESA is presently assisting the Energy Commission in a state collaborative to develop California statewide guidelines for reducing the impacts on wildlife from wind energy development.

Ultimately membership in CESA provides the Energy Commission with opportunities to exchange information with other member funds, participate in biannual meetings, and monthly update conference calls, serve on CESA committees,

influence proposed joint project work, guide targeted assistance for program challenges facing California.

The Energy Commission has already received Department of General Services' approval to execute a multiyear contract because we are receiving a reduced rate for this three-year contract. And we have also received approval from the Budget Management Committee for the membership as part of this fiscal year's workplans.

So, if you have any questions I'm happy to answer them.

ACTING CHAIRPERSON GEESMAN: Are there questions?

COMMISSIONER ROSENFELD: I'm ready to move it.

ACTING CHAIRPERSON GEESMAN: It's been moved.

COMMISSIONER BYRON: Second.

ACTING CHAIRPERSON GEESMAN: Moved and seconded.

All those in favor please say aye.

(Ayes.)

MS. MEADE: Thank you.

ACTING CHAIRPERSON GEESMAN: Thank you,

Madeleine.

Item 3, the Western Electricity Coordinating Council. Possible approval of contract 400-06-003 for $2,202,750 to the Western Electricity Coordinating Council to establish a fund administration operations of WREGIS from July 2006 through March 2011. Rasa.

MS. KEANINI: Good morning, Commissioners. I am Rasa Keanini with the renewable energy office.

The item before you for adoption is approval of a contract between the Energy Commission and the Western Electricity Coordinating Council. The Western Renewable Energy Generation Information System is a renewable energy tracking system being developed by the California Energy Commission in conjunction with WECC, the Western Electricity Coordinating Council, and the Western Governors Association.

There are two main components. One is a software portion, which is to modify a renewable energy registry and tracking system. And the other is the administrative operations of WREGIS.

This contract deals with the latter, which is setting up the infrastructure of WREGIS

at WECC for the administrative operations.

The contract is for four years and nine months. We anticipate nine months for the development of the administrative infrastructure at WECC, three years of operations with a one-year close-out period.

The total amount of the contract is $2,202, -- I'm totally flubbing that, but it's $2.2 million. The contract is funded using the renewable resource trust fund. And we anticipate having the contract in place by September after both parties have signed, pending approval today.

Are there any questions?

ACTING CHAIRPERSON GEESMAN: Questions for Rasa?

COMMISSIONER ROSENFELD: I move it.

COMMISSIONER BYRON: Second.

ACTING CHAIRPERSON GEESMAN: Moved and seconded.

All in favor?

(Ayes.)

MS. KEANINI: Thank you, Commissioners.

ACTING CHAIRPERSON GEESMAN: Thank you, Rasa.

COMMISSIONER ROSENFELD: I'm so happy to

have you round $2 million -- to $2.2 million.

(Laughter.)

MR. CHAMBERLAIN: Mr. Chairman.

ACTING CHAIRPERSON GEESMAN: Mr. Chamberlain.

MR. CHAMBERLAIN: I'd just like to say that Kate Zocchetti and Michael Heintz made excellent presentations to the WECC Board last week to get approval of this there.

ACTING CHAIRPERSON GEESMAN: And was it unanimously approved?

MR. CHAMBERLAIN: Not quite. There was one Board Member who voted no, and one abstained. And I didn't vote because I work for you.

ACTING CHAIRPERSON GEESMAN: Well, thank you for that effort, anyway. One opposed and one abstention is not that bad. And hopefully it harbors a very good future relationship between the state and WECC on something that I think will have considerable importance all around the west.

Item 4, EDTEK, Inc. Possible approval of contract 500-06-003 for $500,000 to EDTEK, Inc. to develop and demonstrate the long-term feasibility of operating a solar combined heat and power system. Prab.

MR. SETHI: My name is Prab Sethi. The proposed solar combined heat and power project is next phase of a previous PIER-funded project. The focus is the development and demonstration of a beta prototype solar combined heat and power system which consists of solar parabolic dishes that produce hot water and electricity.

Fifteen of these subsystems will be installed, field tested and monitored for one year for water heating at California State University San Diego campus, to confirm the long-term operational reliability for commercial applications.

The project is for $500,000, and is expected to be completed in three years. This system can be used in supermarkets, hospitals, restaurants and food processing plants for supply of hot water and electricity.

The Energy Commission Staff is requesting that the solar combined heat and power project may be approved for funding for PIER natural gas program, which addresses cost effective renewable alternatives for gas-fueled water heating in industrial and commercial processes.

Any questions?

ACTING CHAIRPERSON GEESMAN: Are there questions for Prab?

COMMISSIONER ROSENFELD: I move the item.

COMMISSIONER BYRON: I second it.

ACTING CHAIRPERSON GEESMAN: It's been moved and seconded.

All in favor?

(Ayes.)

ACTING CHAIRPERSON GEESMAN: Thank you, Prab.

MR. SETHI: Thank you very much.

ACTING CHAIRPERSON GEESMAN: Item 5, U.S. Department of Energy, Lawrence Berkeley National Lab. Possible approval of contract 500-06-005 for $550,000 with Lawrence Berkeley National Laboratory to estimate the potential energy savings in the residential, commercial and industrial sectors in California under different socioeconomic scenarios. Guido.

MR. FRANCO: Yes, good morning, Commissioners. My name is Guido Franco. I'm the Technical Project Manager in the Public Interest Energy Research program, working on climate

change.

I'm here to ask you for approval of a research project with Lawrence Berkeley National Lab designed to estimate a long-term saving potentials in California, energy savings potential in California, under different socioeconomic scenarios.

The work would be based on past energy efficiency potential studies, which will be enhanced in several ways. First, the study will have a longer time horizon as required by climate change studies. We try to emphasize what is possible in the next 20 years.

Second, (indiscernible) will be developed. We try to incorporate the observed trend of lower cost with the increased penetration of a given technology in what is known as learning by doing.

Third, the new methods that will be developed as part of this project will be both standard engineering type of energy efficiency estimates with econometric methods. Trying to produce a more robust estimates of long-term energy efficiency potentials in California.

This work will be highly coordinated

with Bill Pennington and Sylvia Bender here at the Commission. With respect to, I mean they become an integral part of our project.

Finally, the results of the study will be directly applicable to future studies dealing with options available to California to substantially reduce greenhouse gas emissions to comply with the targets adopted by the Governor in his June 1, 2005 executive order.

I'm ready to answer any questions; and Dr. Allen Sanstad is also here if there are any questions.

ACTING CHAIRPERSON GEESMAN: Are there questions for Guido? Jeff.

COMMISSIONER BYRON: I would just like to thank you both for spending some time with me yesterday morning to give me the background and answer all my questions on this. Allen, thanks for making another trip here today.

ACTING CHAIRPERSON GEESMAN: Is there a motion?

COMMISSIONER ROSENFELD: I move the item.

COMMISSIONER BYRON: I second.

ACTING CHAIRPERSON GEESMAN: Been moved

and seconded.

All in favor?

(Ayes.)

ACTING CHAIRPERSON GEESMAN: My mistake. I believe we have Lynne Brown on the line representing CARE. Mr. Brown.

MR. BROWN: Yeah.

ACTING CHAIRPERSON GEESMAN: Did you care to address us on this contract item?

MR. BROWN: No, that's not our item.

ACTING CHAIRPERSON GEESMAN: Okay. You want to talk to us, I think, on item 10, the San Francisco Electric Reliability project?

MR. BROWN: Yeah.

ACTING CHAIRPERSON GEESMAN: Okay. I will call on you then when we get to that item on the agenda.

MR. BROWN: Thank you.

ACTING CHAIRPERSON GEESMAN: Thank you. Item 6, U.S. Department of Energy, Lawrence Berkeley National Laboratory. Possible approval of contract 500-06-006 for $660,000 with Lawrence Berkeley National Laboratory to study the feasibility of using measurements of ambient concentrations of methane, nitrous oxide and other

nonCO2 greenhouse gases in California to estimate the accuracy of existing GHG inventories and track emission trends in the future. Guido.

MR. FRANCO: Yes, again, my name is Guido Franco. The emission estimates on nonCO2 greenhouse gases in California, actually around the world, are highly uncertain.

For this reason we commissioned a roadmap of research (indiscernible) to UC Berkeley to find out what such would be needed to reduce this uncertainty.

Following their recommendation we're funding research project designed to improve the method used to estimate emissions for some key sources in California, such as landfills and dairy farms.

However, the UC Berkeley team also recommended to measure ambient concentrations of these gases to see if these measurements are in agreement with what will be expected from values reported in existing inventories.

Under this project Lawrence Berkeley National Laboratory will measure the concentrations of nonCO2 gases in two or three communication towers in California. And use that

trajectories to estimate the origin of the air masses reaching the towers.

With this information they will be able to estimate how well the emissions inventories from the areas contributing to the measured concentrations compare with the measured concentrations in the towers.

In theory it may be possible to determine if current estimates are relatively accurate or if large errors are present.

At the end of this project we will have a determination of the feasibility of these type of measurements to track emissions in California, and a plan for a more expansive network of monitoring stations if this study is successful.

And with that I'm ready to answer to any questions that you may have.

ACTING CHAIRPERSON GEESMAN: Are there questions for Guido?

COMMISSIONER ROSENFELD: I'm ready to move the item.

COMMISSIONER BYRON: I second it.

ACTING CHAIRPERSON GEESMAN: It's been moved and seconded.

All in favor?

(Ayes.)

ACTING CHAIRPERSON GEESMAN: Thank you, Guido.

Item 7, the reallocation of SB-90 program funds. Possible approval of reallocation of $45,058,246 to the emerging renewables program from various renewable energy program funding sources, including unused SB-90 funds, Tier 2 existing renewable facilities program funds, customer credit account funds, interest earnings on the renewable resources trust fund, and voluntary contributions. Tony.

MR. GONCALVES: Thank you, Commissioners. My name is Tony Goncalves with the renewable energy program.

The emerging renewables program is designed to reduce the capital cost of installing emerging renewable systems used for onsite use by providing rebates that are scheduled to decline periodically.

Historically when one of these drops occurs we get a large influx of additional applications. In fact, here when the rebate dropped by 20 cents on July 1st, we saw a increase in applications of approximately eight times what

we would normally see in a regular month.

We are currently authorized to spend funds that are to be collected through the end of this year. And we have come to you in the past over the past couple years and requested reallocation of funds to the emerging to insure a smooth continuous program.

Additionally, the Legislature, in 2004, in AB-135, authorized the emerging program to expend $60 million in funds that are due to be collected from 2007 through 2011.

Before you today we are requesting that approximately $45 million be reallocated to the emerging program. Without this reallocation the emerging program will not have sufficient funds to provide rebates through the end of this year.

The funds we are seeking to reallocate are from several different sources, as follows: $15,123,000 from existing, SB-90 existing funds; $23,600,000 from existing renewable resource account tier two, which is wind technologies, which have not received any funding for approximately three years and are not expected to do so between now and the end of the year.

$6 million in interest earnings.

$315,829 from the customer credit account, which was closed out a couple of years, and this transfer will zero out the account. And finally, $19,417 from voluntary contributions.

I'd be glad to answer any questions you might have.

ACTING CHAIRPERSON GEESMAN: Are there questions for Tony?

COMMISSIONER BYRON: Just a comment, if I may. Tony, I'm so glad to see that we anticipate these funds running out so that these programs continue in a timely way. So I'm definitely very pleased to see this.

MR. GONCALVES: Thank you.

ACTING CHAIRPERSON GEESMAN: I have a card from Les Guliasi, PG&E.

MR. GULIASI: Thank you, Commissioner Geesman, Commissioners. I'm here to speak in support of this reallocation of funds. We participated actively in the workshops that you held and subsequently submitted written comments when you were considering the renewable energy investment plan some months ago.

We made basically two points in our comments, both verbally here at the workshop, and

then subsequently in our written comments.

The first point we made was we asked that you not subtract from the funds available for supplemental energy payments. To the extent that they may be needed in the future, we wanted to insure that those funds would be available when needed. Given that that program is still in its infancy.

And the second point we made was that we asked you to maintain administrative flexibility to reallocate funds if conditions warranted. And I see today that you're actually exercising that discretion.

We support the solar initiative. We think that it's important to insure that the program continue without disruptions. Customers are depending on these funds to participate actively in this program.

We look forward to working with the Energy Commission as your program evolves. PG&E is very strongly interested in participating in the program with you. We would like to administer the program. We believe we have the right kind of marketing expertise. We have the right kind of contacts with customers. And we think we can do a

good job of folding in this program with our existing portfolio of energy efficiency programs.

So, again, we're very eager to work with you and participate actively in this program and support today's action.

Thank you.

ACTING CHAIRPERSON GEESMAN: Well, thank you for your comments. I would add to your litany, you also have the right scale to accomplish the ambitious objectives that the Governor and the Commission have set for the solar program.

Is there a motion?

COMMISSIONER ROSENFELD: I feel like I'm -- Chairman Geesman really should move this, but I guess he can't, so with pleasure I move this item.

COMMISSIONER BYRON: And I second it.

ACTING CHAIRPERSON GEESMAN: Moved and seconded.

All in favor?

(Ayes.)

ACTING CHAIRPERSON GEESMAN: Okay, item 8. City of West Covina. Possible approval of a loan of $1,278,000 to the City of West Covina to

operate a central heating plant that serves the City Hall, Police Department and Communications Center; and to retrofit traffic lights with light-emitting diodes. David.

MR. RUBENS: Good morning, Commissioners. My name is David Rubens and I'm with the public programs office.

The City is requesting this loan to improve energy efficiency of its facility, and to resolve some operating problems with its central plant heating.

These projects will reduce the City's annual energy costs by 30 percent.

The staff has reviewed these projects and determined that they meet the requirements of the Energy Conservation Assistance Act program. The Energy Efficiency Committee has approved the loan request of $1,278,000 to the City.

Staff recommends approval of this loan. I'll be happy to answer any questions.

ACTING CHAIRPERSON GEESMAN: Are there questions for David?

COMMISSIONER ROSENFELD: My only question is why did it take the City of West Covina so long to get around to putting in LED

traffic lights.

MR. RUBENS: The City of West Covina has LED traffic lights installed; these are for the pedestrians, the --

COMMISSIONER ROSENFELD: Oh, these --

MR. RUBENS: -- Title 24 calls 2006 January 1 to convert. And so with the energies that they're saving for the pedestrian-enhanced walk, this project will be able to be completed.

COMMISSIONER ROSENFELD: That's great. I move it.

COMMISSIONER BYRON: And I second it.

ACTING CHAIRPERSON GEESMAN: It's been moved and seconded.

All in favor?

(Ayes.)

ACTING CHAIRPERSON GEESMAN: Thanks, David.

MR. RUBENS: Thank you.

ACTING CHAIRPERSON GEESMAN: That brings us to item 10, the San Francisco Electric Reliability project, docket 04-AFC-01. Commission review of the Intervenors' appeals and Committee rulings in the proceeding.

I'm go to ask Gary Fay to walk us

through these multiple items. And then I believe it's his desire that we take each one up individually.

MR. FAY: Thank you, Commissioner Geesman. Yes, and I propose that two of them be consolidated, but I'll make that clear as we go along.

Item 10 has listed five separate subparts. The first, item 10(a) is a July 10, 2006 appeal of the Committee ruling denying Intervenor Californians for Renewable Energy, Inc., CARE, its request for reconsideration seeking the admission into evidence of a January 12, 2004 transcript from the CPUC hearing on the Jefferson-Martin 230 kV transmission line.

By way of background, and this will take a little while, I'm going to go through the various volley and return of filings.

At the evidentiary hearing in the San Francisco Electric Reliability project case that occurred on April 27, 2006, applicant, San Francisco, objected to CARE's initial attempt to introduce into evidence the transcript of the PUC hearing held on January 12, 2004.

The PUC evidentiary hearing was on the

certificate of public convenience and necessity authorizing the construction of Jefferson-Martin 230 kV transmission project.

CARE was not present at the Energy Commission evidentiary hearing to respond to applicant's objection. And therefore, the Committee took the admissibility question under submission at that time.

Then on May 11, 2006, CARE filed a request for subpoena on Manho Yeung of PG&E. Mr. Yeung was a PG&E witness at the January 12th PUC hearing. The Committee denied CARE's subpoena request on May 17th.

At the May 31, 2006 Energy Commission evidentiary hearing on the San Francisco project, CARE again attempted to introduce the CPUC transcript as an attachment to witness testimony on the topic of alternatives. And, again, applicant objected.

In response to the Hearing Officer's ruling that the CPUC transcript be marked for identification only, as exhibit 59, and not be admitted into evidence Mike Boyd of CARE stated, and I quote, "That would be fine." Unquote.

Nevertheless, on June 5 CARE filed a

request for reconsideration and clarification of the ruling denying admission of exhibit 59. Applicant filed a response on June 6th.

On July 6th, the Committee did reconsider its prior ruling and found that the prior testimony of Manho Yeung, given at the January 12, 2004 CPUC hearing, is not only inadmissible hearsay, but is immaterial and irrelevant to the matter that was being heard by the Energy Commission. Therefore, the transcript of the prior testimony contained in exhibit 59 is inadmissible. And it remains marked for identification only.

On July 10th CARE petitioned the full Commission to review the Committee's ruling. And on that same day, applicant, the City and County of San Francisco, filed a response.

You may want to take comments and then I believe --

ACTING CHAIRPERSON GEESMAN: Why don't we do that.

MR. FAY: -- you have motion and --

ACTING CHAIRPERSON GEESMAN: Mr. Brown, are you still on the phone?

MR. BROWN: Yes, Commissioner.

ACTING CHAIRPERSON GEESMAN: The microphone is yours.

MR. BROWN: I am Lynne Brown; I reside at 24 Harbor Road in Bayview Hunter's Point, San Francisco. I'm not a lawyer, but a lawyer may have been involved in preparing these motions to strike. I am the Vice President of the Board of Directors of CARE. Therefore, anything I say only serves to supplement any motion to strike, not change or replace in any way.

I have asked Martin Homec to be available on the phone if you need him, if you have any questions for him.

I participated before in the California Public Utilities Commission as a member of CARE to support the approval of the Jefferson-Martin transmission 230 kV transmission project in return for PG&E's agreement to shut down the Bay View Hunter's Point Power Plant in my low-income community of color.

This was a good deal because the power plant has been shut down without any air pollution emissions from the plant. Now the applicant, CCSF, was a party in that proceeding, application 02-09-043, and they were not -- they are now

claiming they supported this project instead of seeking a delay of the project's construction, as I remember.

That there is no value to this evidence, as staff claims. Then what harm is caused to the parties to accept the evidence, other than to prejudice me against -- prejudice me because I am poor and black and live in a low-income community of color. Enough to propose a project to breathe its emissions.

CARE asked the full Commissioners to review the ruling regarding CARE request for reconsideration, dated July 6, 2006. The issue is the denial of admission into evidence of the transcript from the California Public Utilities proceeding regarding CARE's goal of closing power plants in residential neighborhoods in the City and County of San Francisco.

This ruling was contrary to the -- state law, to an accepted practices for the use of prior testimony in administrative proceeding involving the same parties and the same issue.

CARE asked the Commissioners to reverse the July 6, 2006 ruling denying CARE's introduction of the transcript of PG&E's Mr. Yeung

into the record as evidence in this case.

This evidence is material to CARE's case. It is denial of due process in the equal protection law to allow applicants to present its case and denying CARE to make its presentation.

CARE represents the residents who will not do well, have to live next to the proposed power plant while the Energy Commission and staff of the CFC -- CCSF do not.

Thank you.

ACTING CHAIRPERSON GEESMAN: Thank you, Mr. Brown. Does the staff have any comment to make on this item?

MS. ICHIEN: Good morning, Commissioners. I'm Arlene Ichien here on behalf of staff. Staff agrees with the Committee ruling that the testimony from the CPUC case is immaterial and irrelevant in this proceeding.

And the Committee, in making its ruling, was well within its discretion conferred upon it under the regulations of the Energy Commission, under which the Presiding Member of the Committee has the same powers as the Chairman of the Commission in conducting proceedings, in conducting hearings including ruling on the

admissibility of evidence.

There's no dispute here that the testimony from the CPUC case is hearsay. And CARE's witness, Mr. Homec, referred to the transcript for the purpose of identifying a claim that was made by the PG&E witness that if the Jefferson-Martin transmission project were completed, there would be no need for generation in San Francisco.

With respect to that Mr. Homec does not testify, based on his filed written testimony, as to the accuracy of that statement. Only that he agrees with it.

Under the Commission's regulations, section 1212, hearsay is allowed for the purpose to supplement or explain other evidence. Here Mr. Homec's testimony that he agrees with the conclusion is not in need of further explanation by accepting into this record the CPUC transcript. I think Mr. Homec's testimony is clear and speaks for itself with respect to his agreement with that conclusion.

In addition, Mr. Brown referred to the fact that San Francisco was a party in the CPUC case, and had the same -- or was dealing with the

same issue as in this case. And, in fact, that's not quite accurate. Because the need for the proposed San Francisco facility is not an issue that the Commission must make a decision on in this case.

And so, even if the testimony were admitted into the record, it would go to an issue that is not material for purposes of the Commission's decision.

We don't believe that the testimony falls within or meet the criteria for any of the exceptions that would allow for the admission of hearsay evidence into a civil action. And the staff believes that the Commission should allow the Committee's ruling to stand. That it did not result in any prejudice or violation of due process rights.

ACTING CHAIRPERSON GEESMAN: Thank you. Does the applicant wish to make a comment?

MR. VARANINI: Thank you, Mr. Chairman. I'm Gene Varanini; I'm with the DRP program; we're counsel to the City and County of San Francisco. And I'm representing them here today.

We agree wholeheartedly with the Committee's decision. We filed numerous moving

papers that lay out our perspective on this matter. And we support the staff's analysis, as well.

But I think one of the things that was raised this morning is that in some sense the intervenors believe that the SFERP proceeding and Jefferson-Martin proceedings have the same issues. And as we pointed out in our moving papers, nothing could be further from the truth.

In the Jefferson-Martin proceeding our position and our focus was on advancing the interest of putting that transmission line into operation; getting it funded and built. And so our perspective in that proceeding really had nothing to do with SFERP. And we have no mutual interest in terms of understanding that any party in that proceeding was attempting to litigate a later-filed CEC proceeding before the PUC.

So in that sense they were not the same issues; we didn't have the same perspective. And for that reason we think that the hearsay rule and the lack of exceptions to the hearsay rule are perfectly correct. And we believe that the full Commission should support its Committee and affirm the Committee's decision.

ACTING CHAIRPERSON GEESMAN: Thank you. Now, Mr. Fay, I believe the Committee asked you to prepare a motion which the Committee would like to see the Commission adopt. Could you read that into the record?

MR. FAY: Yes. The recommended language for a motion on item 10(a) is that the Commission finds that the testimony of Manho Yeung, appearing on the January 12, 2004 transcript at the CPUC hearing concerning the Jefferson-Martin 230 kV transmission line, is not relevant to the May 31, 2006 Energy Commission evidentiary hearing on alternatives for the San Francisco Electric Reliability project AFC. And that the Commission hereby affirms the Committee's July 6, 2006 ruling on the matter.

ACTING CHAIRPERSON GEESMAN: Thank you. Is there any discussion or questions the Commission wishes to ask? Is there a motion on the matter?

COMMISSIONER BYRON: Mr. Commissioner, I move the Committee's recommendation.

ACTING CHAIRPERSON GEESMAN: Is there a second?

COMMISSIONER ROSENFELD: Second.

ACTING CHAIRPERSON GEESMAN: All in favor?

(Ayes.)

ACTING CHAIRPERSON GEESMAN: Thank you. We'll go now to item 10(b). Mr. Fay.

MR. FAY: Thank you. Item 10(b) is the July 10, 2006 appeal by CARE of the Committee's ruling denying the joint motion of Intervenors CARE and Sarvey -- actually the appeal is from both parties -- denying the motion of CARE and Sarvey to exclude applicant's opening brief.

And the background is as follows: At the close of the May 31, 2006 evidentiary hearing at the Energy Commission, the Hearing Officer directed the parties to file opening briefs by close of business on June 26th, and to file reply briefs on July 10th.

On June 26th applicant filed its opening brief at 5:53, 53 minutes after the close of business. Less than three hours later Intervenors CARE and Sarvey filed a joint motion to entirely exclude applicant's opening brief. At the same time both CARE and Sarvey failed to serve their own respective opening briefs on counsel for applicant. This was a violation of the

Committee's requirements in the orders granting Sarvey's, and later CARE's, petitions to intervene in this case granted on June 22, 2004, and July 9, 2004, respectively.

I'll just add that the failure to file apparently had to do with a typographical error in misaddressing the email to applicant's counsel. However, this was kind of a rare mistake. These parties had previously filed correctly and filed correctly thereafter. In other words, there was no excuse for this.

On July 5, 2006, the Committee denied Intervenors' joint motion stating that Intervenors' failure to properly serve their opening briefs on applicant eliminated any equitable argument based on applicant's untimely filing, and noting that the remedy Intervenors sought was entirely disproportionate to the inconvenience caused other parties.

On July 10th Intervenors appealed the matter to the full Commission.

ACTING CHAIRPERSON GEESMAN: Mr. Brown, do you wish to address us on this item?

MR. BROWN: Yes, I do, Commissioners.

ACTING CHAIRPERSON GEESMAN: Go right

ahead.

MR. BROWN: I'm a black man and I have six kids and I live in public housing near the proposed site. There's no dispute that CARE has a financial hardship, and therefore the Commission dockets office will prepare the proof of service and will serve CARE's documents and POS on the parties to this application.

So what else, then? The Committee, and possibly at you discretion today, you are prejudice against me because I'm poor and black. Why else would the Committee blame CARE for the docket stamp error as a reason to allow the applicant's clearly untimely opening brief as part of the record on which you will make your decision without even a request to date a file out of time.

The Committee wrongly stated that CARE did not serve its brief on applicant. CARE has filed a petition to intervene with financial hardship with the Commissioner, which was granted on July 9, 2004. And so is excused from serving all parties.

The Committee grants financial hardship status. Petitioner may email its filings to those on the proof of service list with email addresses

indicated, but must provide proper copies to others. In addition, petitioner shall provide an email copy to and a paper copy of all the filings to the Commissioner's docket unit staff through the docket unit and other appropriate entities shall insure petitioner's filings are timely distributed.

CARE did serve its brief on the Commission's docket office according to the Commission's regulation. Even though not required by the regulation, CARE did electronically send is brief to applicant's attorney, to the address that the Commission's docket provides to CARE pursuant to the Commission's regulations.

However, the docket office provided the wrong email address. CARE complied with the Commission's regulations as required by law, and should not be penalized for it. This is clear violation of CARE's due process and equal protection of the law, protection as specific by the Constitution of California and the United States.

CARE asks the full Commission to review and rescind the July 6, 2006 Committee ruling regarding joint motion of CARE and Sarvey to

strike opening brief of applicant.

Thank you.

ACTING CHAIRPERSON GEESMAN: Thank you, Mr. Brown. Is Mr. Sarvey on the line? I don't see him in the audience, either, so I'll assume that he is not represented here today.

Does the staff wish to make a comment?

MS. ICHIEN: Yes, Commissioners. I think in this instance the Intervenors are trying to make a mountain out of a grain of sand in moving to strike an opening brief, the applicant's opening brief, that was electronically 53 minutes late.

As a practical matter, the Intervenors ended up receiving the applicant's opening brief one day, conceivably two or more days, earlier than they otherwise would have, had the applicant chosen to mail its opening brief, which it had the right to do, based on proof of service instructions dated July 5, 2006 from the Committee.

And so as a result of having received the applicant's opening brief the evening of the day it was due there was no prejudice or due process violations that occurred.

And the Committee's ruling, again was well within its discretion to make, given the powers that are conferred upon the Presiding Member under the Commission's regulations.

And I think ultimately it benefits the record in this case to have all of the arguments, the final arguments from all of the parties, so that the Committee and the Commission can make as well-informed a decision and as well-founded a decision as possible in this case.

So, again the staff believes that the Commission should allow the Committee's ruling to stand, allowing the opening brief of the applicant to remain in the record.

ACTING CHAIRPERSON GEESMAN: Thank you. Does the applicant have anything to say?

MR. VARANINI: Yes, Mr. Chairman. We acknowledged to the Committee that we were 53 minutes late. We apologized for that. There was a glitch in our system. We got the document out as quickly as possible. And we have indicated in our moving papers that we feel that having our brief stricken is certainly both Draconian and inappropriate, given that delay.

As well, we note that in one set of

ruling papers there's an inference that we had 53 minutes to see the filings from the Intervenors and to restructure our brief. And I think it's important to note that we didn't get their brief or any of their moving papers so that we weren't able to engage in any chicanery during the 53-minute glitch.

And I think it's certainly appropriate that the Committee's decision, and given the level of the error on our part, and the significance of the action which the Intervenors propose. So we support the Committee's decision.

ACTING CHAIRPERSON GEESMAN: Thank you. Now, Mr. Fay, would you read the Committee's recommended motion into the record?

MR. FAY: Yes, I will. But if I may, Mr. Chairman, just one correction. Mr. Brown apparently is mistaken as to the meaning of the Committee's order granting CARE's petition to intervene.

That order, and I think it's recent conduct of all siting committees, in an effort to limit the range of the hardship status so that it didn't prejudice other parties. So even parties with hardship status must file directly on all

other parties. And if those parties have an email address, they must use that email address and file directly. They can't merely file with the docket office and then expect the staff at the Energy Commission's Docket Office to quickly serve all the other parties. That puts the burden in the wrong place.

In addition, as to the error in the address for the applicant's attorney, there is an official proof of service that is online and in the docket, and placed out before the world. And it's maintained throughout a case in all of our siting cases. Parties are responsible to use that. If they happen to pick up a typographical error from someplace else in the process, that doesn't forgive them from properly serving all the parties.

I think that's an important point to make, because I think it would undermine our process if parties could essentially blame somebody else for their error in making a proper service.

Now, I'll read the proposed language For item 10(b): The Committee finds that Intervenors CARE and Sarvey failed to properly

serve their opening briefs on applicant, and now seek to entirely strike applicant's untimely filed opening brief, a remedy which is both inequitable and entirely disproportionate to the inconvenience Intervenors have experienced. Therefore, Intervenors appeal is denied, and the Commission hereby affirms the Committee's July 5, 2006 ruling on the matter.

ACTING CHAIRPERSON GEESMAN: Is there discussion or question that the Commission would like to engage in?

Is there a motion?

COMMISSIONER BYRON: Mr. Commissioner, I move the Committee's recommendation for item 10(b).

ACTING CHAIRPERSON GEESMAN: Is there a second?

COMMISSIONER ROSENFELD: Second.

ACTING CHAIRPERSON GEESMAN: All in favor?

(Ayes.)

ACTING CHAIRPERSON GEESMAN: Thank you. Let's move on then to item 10(c). And I believe, Mr. Fay, you wanted to consolidate this with 10(d), as well?

MR. FAY: Yes, with the Commission's indulgence I think we can combined item 10(c) and 10(d). They both resulted from a motion by CARE. The 10(c) is the Committee's referral to the full Commission of a ruling which denied CARE's motion to strike staff's reply brief; and item (d) is the Committee's referral to the full Commission of the Committee's ruling denying CARE's motion to strike applicant's reply brief.

And the background is as follows: On July 11, 2006, staff filed its reply brief 24 hours late. Staff also filed a request to file its late brief.

July 12th CARE filed a motion to strike the reply briefs of the CEC Staff and applicant.

July 13th the Committee's ruling was issued, which allowed staff's late-filed brief, but granted all other parties eight days to file an additional response.

July 17th the Committee ruling denied CARE's motion to strike both reply briefs and referred it to the full Commission. And on July 20th Sarvey and CARE each filed a third round brief benefitting from the Committee's ruling.

I should point out that CARE's argument

that in addition to the staff's reply brief being struck, that applicant's reply brief also be struck was on CARE's theory that since the Commission had not yet ruled on striking applicant's opening brief, that therefore applicant's reply brief should also be struck. And that argument was not supported by the Committee.

ACTING CHAIRPERSON GEESMAN: Thank you, Mr. Fay. Mr. Brown, do you care to address us on this?

MR. BROWN: What about the applicant's motion to file out of time? I mean they had opportunity to file out of time, but they didn't even file that.

ACTING CHAIRPERSON GEESMAN: Do you have any other comments on items 10(c) or (d), Mr. Brown?

MR. BROWN: Once again, why else would the Commission allow -- Committee allow the Commission Staff to file its reply brief, as part of the record on which we will make your decision, a day late. And allow the applicant to file a reply brief when the Committee know that applicant's opening brief untimely, what else than

the Committee and possibly at the discretion today. You are prejudiced against me because I'm poor and black.

Our motion is to strike the CEC Staff reply brief for the staff's failure to file within the due date of July the 10th. And the motion to strike the applicant's reply for their failure to file their opening brief with the specific CEC closing business on the June the 26th, 2006, as directed by the Hearing Officer.

The applicant failed to include, as with its opening brief, a motion to file out of time. The applicant filed its opening brief after 5:00 p.m. Despite this undisputed fact, the Committee denied CARE's opening -- CARE's motion to strike the applicant's opening brief. And allowing the applicant to file an opening brief, the Committee set a precedent that it is okay for parties who support the project's approval. And the applicant, and the Commission Staff, for example, to ignore the Commission's regulations and flaunt the orders of the Hearing Officer and file their pleadings whenever they please at the sole discretion. And therefore as a direct result of this prejudicial action, the Commission Staff

filed its reply brief out of time.

The CEC Staff, by filing this reply brief a day late, was provided 24 hours to consider CARE's reply brief, and then file its reply brief and the response to CARE's reply brief.

To offer CARE an opportunity to respond at a later date is of no benefit to CARE, because the CEC Staff already has an unfair advantage over CARE in that it can apparently file its brief whenever it pleases, which sets a bad precedent for the Commissioners siting cases in the future that CARE may participate in.

In light of the fact that CARE -- that CEC Staff is fully aware of the improper action taken by the applicant in filing their opening brief, and the Hearing Officer's threat of sanctions for filing, the Commissioners -- for violating the Commission's regulation. And it would be improper for the Committee to allow the Commission Staff to file their reply brief then a day late.

Therefore, we hereby move to strike the reply brief of the CEC Staff filed on July the 11th. To do otherwise will demonstrate prejudice

against CARE and its members who are predominately low-income people of color, residents impacted in the community of Bay View Hunter's Point in San Francisco. A violation of due process and equal protection.

Thank you.

ACTING CHAIRPERSON GEESMAN: Thank you, Mr. Brown. Does the staff have any comment?

MS. ICHIEN: Yes, Commissioners. With respect to the staff's late-filed reply brief I regret the oversight of having filed what had already been an already written reply brief, written by the staff counsel in this case, before he left in early July for his summer trip.

In staff's request for leave to file the brief, the reply brief that day after it was officially due, staff also suggested to the Committee that should it accept the staff's reply brief, it offered an opportunity to the other parties to file an additional response. And the Committee so ruled.

And, again, such a ruling is well within the discretion of the Presiding Member to make under the regulations of the Commission.

Mr. Brown referred to the staff as

having violated a Commission regulation for its late filing of the reply brief. But, in fact, it was a noncompliance with a Committee directive that was given at the end of the March 31, 2006 evidentiary hearing. And, again, the Committee's directive is well within the Presiding Member's purview to schedule events such as briefing by the parties as the Committee sees fit. And to accept and to make rulings on the acceptability of filings that may happen to be late.

In this case the Intervenors, in fact, did file an additional response on July 21, when it was due. And so did take advantage of the additional opportunity to file an additional response to the staff's reply brief.

Again, there was no prejudice or violation of due process rights. And, in fact, an additional opportunity afforded the Intervenors, which they did take advantage of in this case.

So the staff believes the Commission should allow the Committee's ruling to stand, and allow the record to remain with all of the parties' final arguments in their briefs.

Thank you.

ACTING CHAIRPERSON GEESMAN: Does the

applicant have a comment?

MR. VARANINI: Yes, Mr. Chairman. We're puzzled that there was a motion to strike our reply brief which was timely filed. We don't understand that, and we certainly support the Committee's ruling on that matter.

In terms of the staff's late filing and their other moving papers, we'd note that the Committee, in exercising its prerogatives, granted the Intervenors almost two more weeks to respond and to provide a sur-reply brief to the record which they did so thoroughly and diligently.

So we think to the extent there was any implication from a one-day late filing that the Committee, in exercising its discretion, certainly returned and restored all equities to all parties. And we support the Committee's ruling.

ACTING CHAIRPERSON GEESMAN: Mr. Fay, would you read into the record the Committee's recommended motion?

MR. FAY: Certainly. For items 10(c) and 10(d) the Committee recommends the following motion: The Committee's ruling, which gave Intervenors a third round of briefing, has equitably compensated Intervenors for any

prejudice they may have experienced by staff's untimely filing of its reply brief.

CARE's motion to strike applicant's reply brief is completely without merit. Therefore, the prior ruling of the Committee to allow staff's and applicant's reply briefs, and to deny CARE's motion is affirmed.

ACTING CHAIRPERSON GEESMAN: Are there questions or any discussion the Commission would like to engage in?

Is there a motion?

COMMISSIONER BYRON: Mr. Commissioner, I move the Committee's recommended motion on agenda items 10(c) and (d).

COMMISSIONER ROSENFELD: Second.

ACTING CHAIRPERSON GEESMAN: All in favor?

(Ayes.)

ACTING CHAIRPERSON GEESMAN: Thank you. Now, Mr. Fay, to 10(e).

MR. FAY: 10(e) is the Committee's referral to the full Commission of a ruling denying Intervenor Sarvey's request for a Committee conference.

On July 13th Intervenor Sarvey filed a

request for a Committee conference, urging that things were out of control and it was essential to have such a conference. The Committee denied that, but did refer the matter to the full Commission to take place today at this opportunity here. And that Committee ruling was issued on July 17th.

And it was part of the same motion that denied CARE's motion to strike both the reply briefs.

We have no recommended language. the Committee only recommends that the Commission entertain any concerns Mr. Sarvey may have.

ACTING CHAIRPERSON GEESMAN: Can I ask again, is Mr. Sarvey on the phone? And I don't see him in the audience, so this matter, I presume, would die if the Commission chooses not to -- excuse me, Mr. Sarvey?

MR. SARVEY: Thank you, Commissioner Geesman. I had no intention of appealing this to the full Commission. That was done by the Committee. I apologize for wasting valuable business meeting time on this issue.

Basically I'm satisfied with the remedy provided by the Committee for staff's late filing.

I believe that applicant still should be required to file for leave to file late. That's pretty much procedure, and the applicant should be required to do such.

And I also object to the fact that my opening brief is being characterized as not being served on the applicant's attorney because if you look on the July 5, 2006 docketing of it by dockets, they admit the applicant's attorney had failed to provide the correct email address. So I don't see how that falls onto the Intervenors, myself or CARE.

And that's all I have to say. I apologize once again; never intended this to go before the full Commission. Thank you.

ACTING CHAIRPERSON GEESMAN: Thank you for your comments, Mr. Sarvey.

Mr. Fay, as I understand it then, item 10(e) is now moot.

MR. FAY: I believe that's correct.

ACTING CHAIRPERSON GEESMAN: Well, I think that disposes of the matter entirely.

MR. FAY: It does.

ACTING CHAIRPERSON GEESMAN: Thank you for helping us through it.

MR. FAY: Okay. Thank you.

ACTING CHAIRPERSON GEESMAN: We'll now go to item 12, Commission Committee presentations. Do we have any? Doesn't appear so.

Item 13, the Chief Counsel's report.

MR. CHAMBERLAIN: Yes, Mr. Chairman, I have reported to you on a number of occasions about the Supreme Court matter in the ARI versus Energy Commission matter. That matter has now made its way back to the Ninth Circuit. And the mandate from the Ninth Circuit has made its way to the District Court.

The District Court has set a status conference on September -- maybe it's August 28th, I'm not sure. In any case, August 31st, I'm not sure. But a status conference has been set in the near future. We anticipate that this should be a formality, but we will keep you informed if there are any surprises.

ACTING CHAIRPERSON GEESMAN: Questions? Thanks, Bill.

Executive Director's report, item 14.

MR. MATTHEWS: The Executive Director is on personal business and will be back on August 14th. And I'm looking forward to his return.

(Laughter.)

ACTING CHAIRPERSON GEESMAN: Item 15, Legislative Director's report. I don't see the Leg Staff.

Item 16, Public Adviser's report. No Public Adviser's report.

Item 17, public comment. Is there any public comment?

Very well, we'll be adjourned. Thank you very much.

(Whereupon, at 11:05 a.m., the business meeting was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of August, 2006.