

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

DOCKET	
DATE	AUG 13 2008
RECD.	AUG 26 2008

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 13, 2008

10:04 A.M.

ORIGINAL

Reported by:
Peter Petty
150-07-001

COMMISSIONERS PRESENT

Jackalyne Pfannenstiel, Chairperson

James D. Boyd, Acting Chairperson

Arthur H. Rosenfeld

Jeffrey D. Byron

Karen Douglas

STAFF and CONTRACTORS PRESENT

Melissa Jones, Executive Director

Arlene Ichien, for Chief Counsel

Chris Marxen, for Legislative Director

Harriet Kallemeyn, Secretariat

Mike Gravely

Michael Doughton

Devorah Eden

Steve Munro

Michelle Woods

Christopher Meyer

Kevin Bell

Donna Stone

PUBLIC ADVISER

Elena Miller

ALSO PRESENT

Chip Little

Mirant

ALSO PRESENT

Christine Henning
Sterling Energy Systems

John McKinsey, Attorney
Stoel Rives

Greggory Wheatland, Attorney
Jeffery D. Harris, Attorney
Ellison, Schneider and Harris, LLP

Robert Sarvey

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Items	1
1 Consent Calendar	1
2 Department of Energy Award for the West Coast Regional Carbon Sequestration (WESTCARB) Partnership, Phase III	1
3 City of Los Altos	14
4 Malburg Generating Station Project	18
5 Willow Pass Generating Station	24
6 SES Solar Two Project	30
7 El Segundo Power Redevelopment Project Transfer of Ownership	36
8 East Altamont Energy Center	42
9 Minutes	61
10 Commission Committee Presentations/ Discussion	61
11 Chief Counsel's Report	63
12 Executive Director's Report	63
13 Legislative Director's Report	64
14 Public Adviser's Report	68
15 Public Comment	71
Adjournment	72
Certificate of Reporter	73

P R O C E E D I N G S

10:04 a.m.

CHAIRPERSON PFANNENSTIEL: This is the Energy Commission biweekly business meeting. We'll begin with the Pledge of Allegiance.

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

CHAIRPERSON PFANNENSTIEL: I don't know of any changes to the published agenda. So we start with the consent calendar.

COMMISSIONER ROSENFELD: I move the consent calendar.

VICE CHAIRPERSON BOYD: Second.

CHAIRPERSON PFANNENSTIEL: In favor?

(Ayes.)

CHAIRPERSON PFANNENSTIEL: The consent calendar is approved.

Item number 2, possible acceptance of an award for \$65.6 million over ten years for the Department of Energy's National Energy Technology Lab for the WESTCARB partnership to conduct a large volume, commercial-scale carbon dioxide capture and geologic storage test near Bakersfield, California. Proposed cofunding is \$5.27 million from the Energy Commission. Good

1 morning, Mr. Gravely.

2 MR. GRAVELY: Good morning, Chairman
3 Pfannenstiel and Commissioners. I'm Mike Gravely
4 from the Energy Commission R&D division. And I
5 want to discuss today with you, and request your
6 permission, to accept the DOE grant that we
7 received for \$65.5 million over a ten-year period
8 for the large volume, carbon injection and
9 detailed assessment of new carbon dioxide
10 geological sequestration technologies in
11 California.

12 WESTCARB III, as this is being referred
13 to, is, in fact, phase three of a three-phase
14 process. We were involved in phase one and are
15 currently involved in phase two.

16 And so in phase one of the effort we
17 actually characterized regional sequestration
18 opportunities. In phase two of WESTCARB we were
19 working specifically on small-scale pilot
20 demonstrations. And in phase three there will be
21 a large-scale demonstration of the underground
22 sequestration.

23 This is a ten-year effort and it's
24 developed in basically three phases. The first
25 two to three years will be site selection and site

1 preparation.

2 There will be a defined four-year period
3 where we'll be doing underground sequestration.
4 Over that four-year period we expect to sequester
5 about a million metric tons of CO2.

6 And then the third part of that
7 technical phase will be the assessment and the
8 analysis and data analysis of how well it works,
9 and how well the underground sequestering works
10 and addressing any issues that come up from this
11 technology and this approach.

12 WESTCARB is one of seven separate
13 regional areas within the United States that DOE's
14 managing. And this particular project was a
15 proposal we submitted last June. And we were
16 awarded this grant.

17 The grant includes, as we mentioned
18 earlier, \$5.27 million in Commission match-
19 funding. That is basically built up from staff
20 time and some PIER-funded research in this area.

21 We also expect to receive approximately
22 \$20 million in match-funding from the team members
23 that are on the WESTCARB team.

24 It is noteworthy to mention that Clean
25 Energy Systems, who is putting as part of this

1 process we're using, a power plant that they're
2 installing, approximately 50 megawatt power plant.
3 That technology was actually initially
4 demonstrated in the small grant program here at
5 the Commission in 1999. It then received some
6 follow-on funding from PIER, as well as DOE and
7 private funding.

8 And so this will be a commercial
9 demonstration of a plant that's able to use
10 natural gas generation, and generates water and
11 CO2. The water is recycled back into plant
12 operations. The CO2 will be sequestered. So
13 basically also as part of this we'll see the
14 operation of a clean energy generation system.

15 That part of it is being paid for solely
16 by the vendor. None of these funds goes to that.
17 That part is being funded through commercial
18 funding.

19 We are using the underground
20 sequestration part and the equipment used to
21 capture and put the sequestering underground of
22 the CO2 as part of this grant.

23 So, in summary, we are requesting
24 permission to accept the grant. Today's effort
25 will simply accept the grant with DOE. We do

1 envision several contracts as a result of this.
2 Most of the funding will go to third-party
3 contracts or other agencies. And those will come
4 back to this Commission for approval on an
5 independent basis.

6 So today we're just accepting from DOE
7 the grant; and we're beginning to process. And
8 we'll come back to you with the specific
9 contracts. And given the fact this is a ten-year
10 effort, we envision to come back to the Commission
11 periodically with updates on how this process'
12 progress is going.

13 I'll be glad to answer any questions if
14 I can.

15 CHAIRPERSON PFANNENSTIEL: Thanks, Mike.
16 You mentioned this was one of seven DOE-funded
17 projects on carbon sequestration around the
18 country. Wasn't there some publicity recently
19 about problems with funding on the other six or
20 some of the other six?

21 MR. GRAVELY: To my knowledge, of the
22 seven -- there's seven regional areas. Six of the
23 regional areas received some level of WESTCARB III
24 funding. And one of them was not ready for it. I
25 actually --

1 COMMISSIONER ROSENFELD: Chairman
2 Pfannenstiel, I think what you read was a
3 cancellation of a contract for FutureGen, which
4 was for an actual demonstration -- it wasn't for
5 the sequestration story.

6 VICE CHAIRPERSON BOYD: That's the coal.

7 CHAIRPERSON PFANNENSTIEL: Okay, so
8 these dollars, then, are not affected by that, so
9 this is continuing?

10 COMMISSIONER ROSENFELD: That's my
11 understanding.

12 CHAIRPERSON PFANNENSTIEL: Thank you.

13 COMMISSIONER ROSENFELD: Mike, I have a
14 question. I should know this, since the Committee
15 approved this yesterday, but of the 5.3 million,
16 which you said PIER is putting in, you said it's
17 partly from staff and in-kind. But we're putting
18 some PIER cash into this?

19 MR. GRAVELY: We envision a small amount
20 of PIER project funding on areas of specific, that
21 are in relation to the WESTCARB that can be
22 considered co -- matched funding or cofunding for
23 the project.

24 So we don't envision all of the funding
25 coming from staff, but most of it will be staff.

1 COMMISSIONER ROSENFELD: Right.

2 MR. GRAVELY: We do envision some. And,
3 again, those projects would come before the R&D
4 Committee and this Committee for approval. But we
5 do envision some PIER funded research that would
6 complement the research or help answer questions
7 we need independent of these large contracts we're
8 doing for DOE.

9 COMMISSIONER ROSENFELD: There may be
10 more questions, but I'm ready to move the item.

11 CHAIRPERSON PFANNENSTIEL: I do have --
12 this is all based on taking the output from a
13 power plant yet to be built, right?

14 MR. GRAVELY: That's correct.

15 CHAIRPERSON PFANNENSTIEL: And yet this
16 power plant has not yet been sited in that area?

17 MR. GRAVELY: That is correct.

18 CHAIRPERSON PFANNENSTIEL: So if there's
19 a problem with that plant, will it simply get
20 moved elsewhere? Or does the whole project rely
21 on this specific technology or this specific plant
22 being sited at this specific location?

23 MR. GRAVELY: The project doesn't rely
24 on -- this particular proposal was submitted to
25 DOE. And so if we make a major change like

1 location and -- change, we have to go back through
2 them.

3 But, if for some reason the power plant
4 doesn't happen, or there is an issue, we are able
5 to consider other options and go back to DOE with
6 an alternative. And we've discussed this with
7 them, so they're relying on us to provide a
8 suitable alternative.

9 So, the answer to your question is my
10 understanding of this grant is it's for this
11 particular approach. It was a proposal we
12 submitted. If there are changes of substance we
13 can certainly go back to DOE and discuss it. But
14 it would not mean, in fact, that the grant would
15 be revoked or anything. It means we have to have
16 a suitable solution.

17 The ultimate goal here is the
18 underground sequestration. How we get that and do
19 it is some options we have.

20 And so when we did the original
21 analysis, when staff did the original analysis,
22 they looked at several different options on how to
23 do this. So, there are other options if something
24 were to happen to this particular power plant.

25 VICE CHAIRPERSON BOYD: I'd have to add

1 I've been to the facility, so it exists. In terms
2 of it having been the host site for pilot-scale
3 demonstrations. And what's involved is a
4 building, you know, a larger version of what's
5 been first bench-tested and then pilot-scale
6 tested over a period of years.

7 I have followed this Clean Energy System
8 technology even before it came here to the
9 Commission. And it's a Rancho Cordova-based
10 company; it's rocket science based --

11 COMMISSIONER ROSENFELD: True rocket
12 science.

13 VICE CHAIRPERSON BOYD: -- true rocket
14 science, and it's very very intriguing; and we're
15 very hopeful for it.

16 So, in terms of a building, a facility,
17 a lot of the plumbing and what-have-you, all they
18 are doing is they would install a much larger
19 version of what's been tested to date.

20 And I do know it gets into the question
21 of licensing and whatever --

22 CHAIRPERSON PFANNENSTIEL: Yeah, but my
23 point is --

24 VICE CHAIRPERSON BOYD: -- because we --
25 (Parties speaking simultaneously.)

1 VICE CHAIRPERSON BOYD: It does need,
2 well, right. That question, I know, could be
3 debated. Is it or is it not subject to. But
4 that's separate and apart from the --

5 CHAIRPERSON PFANNENSTIEL: Somebody has
6 to license it. Whether we or somebody else, --

7 VICE CHAIRPERSON BOYD: Right.

8 CHAIRPERSON PFANNENSTIEL: -- it still
9 has yet to be licensed. Was there questions?
10 Commissioner Byron?

11 COMMISSIONER BYRON: Madam Chairman,
12 just to help answer your question, I believe the
13 size of this is hovering right around 50
14 megawatts.

15 CHAIRPERSON PFANNENSTIEL: Right, so I
16 understand.

17 COMMISSIONER BYRON: And we will observe
18 our jurisdiction to permitting, if indeed it
19 exceeds 50 megawatts.

20 CHAIRPERSON PFANNENSTIEL: And so -- I
21 just wanted to make sure, to be really clear, that
22 accepting this grant does not require us to have a
23 position about whether or not to site this plant.

24 In other words, it was a completely
25 separate decision.

1 VICE CHAIRPERSON BOYD: Yeah, that's my
2 understanding, as well. I want to compliment the
3 staff and this agency for having the courage to
4 step to into this. This is a big responsibility
5 and it's fraught with all kinds of process and
6 procedural issues that will give a lot of staff,
7 and maybe some of us, heartburn as we process
8 this.

9 But the staff and the WESTCARB project
10 are well known in the climate community, but
11 particularly in the sequestration community, as a
12 very significant project. And so -- and I'm
13 prepared to second the motion of Dr. Rosenfeld,
14 because it's only appropriate that California, in
15 my opinion, you know, step out and do these kinds
16 of things.

17 CHAIRPERSON PFANNENSTIEL: Further --

18 MR. DOUGHTON: Commissioners, this is
19 Michael Doughton, Senior Staff Counsel. And jus a
20 couple comments.

21 On that last point, the Commission would
22 have to maintain two separate statuses. One as
23 the, if you will, proponent of the project, if it
24 accepts it. And then as the neutral siting
25 authority, if it has siting jurisdiction.

1 And a minor point. Although this
2 project is truly a public/private research project
3 in that there are private participants, and there
4 would be also obviously public agencies with a
5 substantial amount of funding involved. And its
6 intent is to approach commercial-scale operations.
7 It is not, itself, a commercial operation.

8 From our project, from our standpoint as
9 a Commission, it's a research project. So I just
10 wanted to make that minor clarification for the
11 record.

12 CHAIRPERSON PFANNENSTIEL: Thank you. I
13 understand that; that doesn't affect the siting
14 question, however.

15 MR. DOUGHTON: No.

16 CHAIRPERSON PFANNENSTIEL: It's
17 irrelevant to the siting. Other questions? Yes,
18 Commissioner Byron.

19 COMMISSIONER BYRON: Last week
20 Commissioner Boyd and I attended a meeting of a
21 number of utility executives from around the
22 country. And they were asked questions like, you
23 know, where do they really think we're going to be
24 successful in addressing climate change going
25 forward.

1 And they put their -- the majority of
2 them put their backing in another technology.
3 There's a great deal of skepticism around carbon
4 capture and sequestration.

5 And I think that is has the potential of
6 being an extremely important project. One way or
7 the other, with 50 to 100 coal plants being built
8 throughout the world probably every year, it's
9 important that California try and take some
10 leadership in this.

11 And whether or not we'd burn a molecule
12 of methane or a piece of carbon fuel going
13 forward, the technology has great potential for
14 export throughout the world and the United States.

15 So I think this has great potential.
16 It's an extremely important project. And I give
17 my kudos to the staff, as well. Having not been
18 here when this proposal and this work was all
19 initiated, I think it showed a great deal of
20 foresight, and I also endorse this.

21 CHAIRPERSON PFANNENSTIEL: With that,
22 further questions, further discussion?

23 It's been moved and seconded.

24 All in favor?

25 (Ayes.)

1 CHAIRPERSON PFANNENSTIEL: Thank you.

2 MR. GRAVELY: Thank you.

3 CHAIRPERSON PFANNENSTIEL: Item 3,
4 possible approval of the City of Los Altos locally
5 adopted energy standards for residential and
6 nonresidential new construction require greater
7 energy efficiency than the 2005 building energy
8 efficiency standards, effective August 25, 2008.
9 Good morning.

10 MS. EDEN: Good morning, Commissioners.
11 I'm Devorah Eden with the buildings and appliances
12 office.

13 Under Title 24, part 1, section 10-106,
14 local jurisdictions may adopt and enforce their
15 own local energy efficiency standards. And the
16 City of Los Altos submitted an application from
17 their own local ordinance. And it calls for 15
18 percent -- exceeding the current Title 24
19 standards by 15 percent for both residential and
20 nonresidential buildings new construction in their
21 jurisdiction.

22 They've provided the required documents,
23 the statement, energy ordinance results in a
24 consumption of no more energy than what is
25 permitted under the 2005 standards.

1 They prepared and submitted analyses
2 showing how the determined their energy savings.
3 And the means by which, you know, it shows that
4 it's cost effective to do so.

5 They've also been -- they have also
6 committed to continue to actively enforce the
7 existing 2005 standards in addition to their new
8 standards. And they do understand that with the
9 adoption of the 2008 standards, July 1, 2009, they
10 will have to revised and resubmit another local
11 ordinance at that time.

12 So we are requesting that the Commission
13 approve this local ordinance. Do you have any
14 questions?

15 CHAIRPERSON PFANNENSTIEL: Thank you.
16 Are there questions? All right, yes, Commissioner
17 Byron.

18 COMMISSIONER BYRON: Ms. Eden came and
19 gave me a short briefing on this. In fact, she
20 also summarized a number of the other local
21 ordinances that have come before the Commission in
22 recent years.

23 And it looks as though we now have, a
24 quick count, about a dozen, maybe 15 different
25 cities or jurisdictions, counties, that have come

1 forward representing almost 2 percent of the
2 population of the state.

3 Of course, this particular city is near
4 and dear to me because it's my home town. And I
5 believe I'm the first Commissioner whose home town
6 has now exceeded the Energy Commission's building
7 standards.

8 (Laughter.)

9 COMMISSIONER BYRON: But in all
10 seriousness, should we be publicizing this more?
11 How do the cities find out that they can even do
12 this, Ms. Eden?

13 MS. EDEN: Well, it is part of the
14 building standards. It's early in the document,
15 itself, saying that they can --

16 COMMISSIONER BYRON: So if they read it
17 they find out?

18 MS. EDEN: Hopefully their building
19 departments are reading it. I've actually
20 prepared a letter that I'm going to send out to
21 the League of Cities and League of Counties. Some
22 have been adopting voluntary ordinances that
23 they've been experimenting with. And we're
24 encouraging, you know, them to come to us to have
25 them formally adopted.

1 They also have the option of early
2 adoption of the 2008 standards, as we get closer
3 to that deadline, and we're expecting to see some
4 coming in at that time.

5 COMMISSIONER BYRON: So, you're going to
6 give them some sort of recognition then with this
7 letter to the League of Cities, you said?

8 MS. EDEN: Yes.

9 COMMISSIONER BYRON: Good. Well, that
10 may encourage others to do the same. I would take
11 great pleasure to move this item.

12 CHAIRPERSON PFANNENSTIEL: Great. I was
13 just going to say I'm really gratified that the
14 local jurisdictions are stepping up in these
15 areas. I would like to work more with the League
16 of Cities on what the local areas can do in, for
17 example, time-of-sale energy audits.

18 COMMISSIONER BYRON: Right.

19 CHAIRPERSON PFANNENSTIEL: And other
20 areas that local jurisdictions can move, where the
21 state is reluctant to do so. And I'm hoping that
22 by working with League of Cities and others of
23 their peer groups we can encourage them to do
24 this.

25 And we have certainly a good dozen who

1 are already ahead of us. So I appreciate it.

2 VICE CHAIRPERSON BOYD: For some reason
3 I'm wanting to say I'd like to see the addition of
4 Hayward on this list, but I won't say it.

5 CHAIRPERSON PFANNENSTIEL: All right.
6 It's been moved, is there a second?

7 COMMISSIONER ROSENFELD: Second.

8 CHAIRPERSON PFANNENSTIEL: All in favor?

9 (Ayes.)

10 CHAIRPERSON PFANNENSTIEL: Thank you.

11 MS. EDEN: Thank you.

12 CHAIRPERSON PFANNENSTIEL: Item 4,
13 possible approval of Bicent (California) Malburg,
14 LLC's amendment petition to increase hourly, daily
15 and annual emission limits for carbon monoxide and
16 oxides of nitrogen to reflect higher-than-expected
17 emissions during cold startups of the combustion
18 turbines.

19 MR. MUNRO: Thank you, Chairman
20 Pfannenstiel and Commissioners. My name is Steve
21 Munro; I'm the Compliance Project Manager for the
22 Malburg Generation Station project in the City of
23 Vernon.

24 It's a 134 megawatt natural-gas fired,
25 combined cycle plant in the City. Two Alston

1 natural-gas fired combustion turbines. Owned and
2 operated since early this year by Bicent
3 (California) Malburg, formerly owned by the City
4 of Vernon. It began commercial operation October
5 17, 2005.

6 This petition actually seeks to correct
7 a glitch in the original decision which placed
8 cold startup emission limits on the Alston gas
9 turbines that are not achievable with that
10 equipment.

11 And this was highlighted when we
12 approved the Roseville project with the same
13 equipment. And their cold startup limit is close
14 to what we're asking here now for Malburg.
15 Because at that point it was recognized that the
16 cold startup limit could not be achieved.

17 It had been established based on a
18 manufacturer's estimate at Malburg which turned
19 out to be incorrect.

20 So, it changes the hourly, daily and
21 annual emission limits, but the annual emission
22 limit is around 1 percent, very slight. So
23 there's no changes in the mitigation. It's not a
24 significant impact to the environment.

25 So, we're recommending that this

1 amendment be approved. And I'd be happy to take
2 your questions.

3 CHAIRPERSON PFANNENSTIEL: Are there
4 questions?

5 VICE CHAIRPERSON BOYD: Yes. The
6 position of the local air quality district, what's
7 their position on this?

8 MR. MUNRO: There is concurrence.

9 VICE CHAIRPERSON BOYD: Okay. And just
10 to continue the thought, I just don't know if
11 there's an object lesson in what's going on here
12 or not. And I do know we have done this on
13 occasion in the past, not routinely, but we've
14 done it in the past where we've changed the hourly
15 emissions requirements with concurrence of local
16 air districts.

17 Now this is just during cold start, so
18 it's not daily operations. But we're running into
19 problems in other parts of the state, particularly
20 with the dairy digester industry which we're
21 trying to incent, and local air districts who
22 predicated NOx emission limits on the promises of
23 equipment manufacturers. Only to find that the
24 equipment won't perform at that level, but the air
25 district won't back off of the level. So we have

1 run into kind a brick-wall situation on not being
2 able to -- while developers are torn right now as
3 to whether they can proceed on this.

4 We are working with Cal-EPA and a host
5 of other people to try to resolve this problem.
6 But it is a dilemma often, where without
7 experience, people take the brochure information
8 at face value, only to find that when put into
9 place the equipment doesn't perform at that level.
10 And then we have a district who's afraid of
11 allegations of back-sliding should they decide to
12 change their emission limits.

13 And it is having pretty significant
14 chilling effect on the dairy digestion generating
15 business in those areas where the digesters aren't
16 close enough to natural gas pipelines to make it
17 feasible to put the biomethane in the pipeline.
18 The other only alternative is to generate onsite
19 electricity.

20 And right now we're dead in the water on
21 that topic. So, it's being pursued.

22 But I just wanted to point it out to my
23 fellow Commissioners, it's something our siting
24 division wouldn't normally, I guess -- well, maybe
25 they would deal with it. Anyway, we have staff

1 who, particularly the proponents of the bioenergy
2 and this working with other folks on this subject,
3 has been brought to the attention of the Secretary
4 of Cal EPA and the Air Board and what-have-you to
5 try to help us resolve this.

6 Just an opportunity to mention yet
7 another issue.

8 CHAIRPERSON PFANNENSTIEL: On your
9 writeup that you provided, the reason for not
10 requiring further CO mitigation is that the
11 operator believes it can operate within the
12 limits, the monthly limits established by the
13 District, right?

14 MR. MUNRO: Correct.

15 CHAIRPERSON PFANNENSTIEL: But it just
16 said, and I think this is an error, you say the
17 City believes, I think you mean to say the
18 operator believes they can operate --

19 MR. MUNRO: Yes, because the --

20 CHAIRPERSON PFANNENSTIEL: -- within the
21 current --

22 MR. MUNRO: -- this was started when the
23 City was the owner and --

24 CHAIRPERSON PFANNENSTIEL: But it's a
25 belief. Now, we don't know because they haven't

1 yet shown that they can operate within the monthly
2 limits?

3 MR. MUNRO: We're confident that they
4 will.

5 CHAIRPERSON PFANNENSTIEL: You're
6 confident?

7 MR. MUNRO: Yes.

8 CHAIRPERSON PFANNENSTIEL: Okay.

9 MR. MUNRO: Yes. And I would say, to
10 address Commissioner Boyd's comments, that this
11 particular project would have been permitted with
12 these limits had we known this was -- so this was
13 not critical to the siting case.

14 VICE CHAIRPERSON BOYD: I'm actually
15 kind of complimenting the City's ability to
16 respond rather rapidly to the changing facts.

17 CHAIRPERSON PFANNENSTIEL: Further
18 questions, comments?

19 COMMISSIONER BYRON: We reviewed this in
20 the Siting Committee and agree with staff
21 recommendations. So I'd move the item.

22 COMMISSIONER DOUGLAS: I'll second the
23 item.

24 CHAIRPERSON PFANNENSTIEL: Further
25 discussion?

1 All in favor?

2 (Ayes.)

3 CHAIRPERSON PFANNENSTIEL: Thank you.

4 MR. MUNRO: Thank you.

5 CHAIRPERSON PFANNENSTIEL: Item 5.

6 5.a., possible approval of Executive Director's
7 data adequacy recommendation Mirant Willow Pass
8 LLC's application for certification of the Willow
9 Pass Generating Station.

10 MS. WOODS: Good morning, Commissioners.
11 My name is Michelle Woods, and I'm the Project
12 Manager for the Willow Pass Generating Station.

13 On June 30, 2008, Mirant Willow Pass LLC
14 filed an application for certification seeking
15 approval from the Energy Commission to construct
16 and operate the proposed Willow Pass Generating
17 Station.

18 The Willow Pass Generating Station would
19 be a 550 megawatt, dry-cooled, natural-gas fired,
20 electric power facility consisting of two Siemen's
21 flex plant cycle units.

22 The project would be located in the City
23 of Pittsburg in Contra Costa County within the
24 existing Pittsburg Power Plant. Power from Willow
25 Pass would be delivered to a PG&E switchyard

1 adjacent to the project site by a 230 kV
2 transmission line.

3 Natural gas for the project would be
4 delivered by a 2700-foot-long PG&E pipeline
5 connected to an existing gas transmission line
6 near the Pittsburg Power Plant Metering Station.

7 Two water pipelines, approximately five
8 miles in length, would be constructed to bring
9 recycled water from, and return processed
10 wastewater to, the Delta Diablo Sanitation
11 District Water Treatment Plant. Estimated water
12 usage would be 781 acrefeet of water per year.

13 If the project is approved, construction
14 would begin in the fall of 2009, with commercial
15 operation commencing in the summer of 2012.

16 Staff completed it's data adequacy
17 analysis and the Executive Director's
18 recommendation was filed on July 30, 2008.
19 Currently the AFC is deficient in seven areas: air
20 quality, biological resources, cultural resources,
21 paleo resources, transmission system design, soils
22 and visual resources.

23 Staff recommends that the Commission
24 approve the Executive Director's recommendation
25 and find the Willow Pass Generating Station as

1 incomplete at this time.

2 CHAIRPERSON PFANNENSTIEL: Thank you.
3 We have Chip Little from Mirant (California) who'd
4 like to speak to this item.

5 MR. LITTLE: Thank you, Madam Chairwoman
6 and Commissioners, good morning. My name is Chip
7 Little; I'm Manager of Government Affairs for
8 Mirant (California).

9 First I would like to thank Ms. Woods
10 and the rest of the Commission Staff for their
11 diligence in completing the initial review of
12 Mirant Willow Pass' application for certification
13 to the Commission.

14 Mirant Willow Pass has worked with staff
15 to address all the identified data adequacy
16 deficiencies and we hope to provide supplemental
17 information requested by staff.

18 The one outstanding item in staff's
19 request is a completed transmission impact study
20 prepared by a third-party consultant. You may
21 recall this is the same item that my colleague,
22 Jonathan Sachs discussed with you at the July 16th
23 business meeting as it related to Mirant's Marsh
24 Landing facility.

25 We understand that this study, when

1 submitted, will satisfy the transmission system
2 engineering data adequacy requirements that calls
3 for a completed system impact study or a signed
4 agreement with Cal-ISO, to perform a system impact
5 study.

6 I will note that the timing of our AFC
7 filing is unfortunate. Mirant Willow Pass filed a
8 generation interconnection request with Cal-ISO in
9 March 2008, and was actively working with Cal-ISO
10 to enter into a system impact study agreement.

11 However, during that process Cal-ISO
12 refused to deliver this system impact study
13 agreement to Mirant Willow Pass as a result of
14 their ongoing generation interconnection reform
15 process.

16 As such, we have been unable to satisfy
17 this data adequacy requirement as of now. We
18 appreciate staff's efforts to identify a study
19 that can be prepared and submitted during the
20 interim period while the Cal-ISO is reforming its
21 interconnection process.

22 Through our conversations with staff we
23 believe that an onpeak study that is appropriate,
24 a study for the type of technology, the sort of
25 nature of this facility's design, to cycle on and

1 off each day across peak loads, and any load
2 impacts related to the facility can be eliminated
3 by shutting the unit down without jeopardizing the
4 next day's dispatch.

5 Accordingly, our studies will be
6 prepared using the summer onpeak load profiles
7 provided by PG&E and the Cal-ISO. Our consultant
8 will use that data to prepare a study that meets
9 the required elements outlined in the staff's data
10 adequacy recommendation. We would ask the staff
11 will confirm this approach for the Mirant
12 projects.

13 Having reviewed the guidance presented
14 today by staff with our transmission consultants,
15 we now anticipate that it may take approximately
16 six weeks to complete the study that staff is
17 recommending. This likely means that we will not
18 be able to achieve data adequacy until late
19 September or early October.

20 Mirant Willow Pass is dedicated to this
21 process and will do everything we can to complete
22 the study as soon as possible. And we hope you'll
23 recognize that this delay has been beyond our
24 control.

25 We look forward to working with staff

1 and the Commission to complete our certification
2 process as expeditiously as possible, and we thank
3 you for your consideration.

4 CHAIRPERSON PFANNENSTIEL: Thank you,
5 Mr. Little. Other questions?

6 COMMISSIONER BYRON: One brief question,
7 if I may. It looks like we'll see you again in
8 late September or early October hopefully.

9 MR. LITTLE: Yes, sir.

10 COMMISSIONER BYRON: Do you have a --
11 were you selected as part of the recent RFO and a
12 power purchase agreement.

13 MR. LITTLE: The short list day is
14 October 21, so we won't know until that time.

15 COMMISSIONER BYRON: Okay, so this is
16 pending.

17 MR. LITTLE: Yes, sir.

18 COMMISSIONER BYRON: Pending selection.

19 MR. LITTLE: Yes, sir.

20 COMMISSIONER BYRON: Thank you.

21 CHAIRPERSON PFANNENSTIEL: Other issues,
22 questions?

23 So we have in front of us an Executive
24 Director's recommendation that to find this
25 project is, at the moment, data inadequate. Is

1 there a motion to approve that recommendation?

2 COMMISSIONER DOUGLAS: I'll move
3 approval.

4 VICE CHAIRPERSON BOYD: Second.

5 CHAIRPERSON PFANNENSTIEL: All in favor?

6 (Ayes.)

7 CHAIRPERSON PFANNENSTIEL: So we have
8 approved -- adopted the Executive Director's
9 recommendation. And you will be back shortly.
10 Thank you, all.

11 Item 6, possible approval of the
12 Executive Director's data adequacy recommendation
13 for Stirling Energy System's Solar Two, LLC's
14 application for certification of the SES Solar Two
15 project.

16 MR. MEYER: Good morning, Chair
17 Pfannenstiel and Commissioners. My name is
18 Christopher Meyer; I'll be the Project Manager for
19 staff on the SES Solar Two project.

20 You know, people may remember early in
21 the project it was referred to the Stirling
22 project, Stirling Two, a few names, but from now
23 on we'll be calling it the SES Solar Two project.

24 The proposed SES Solar Two project would
25 be a nominal 750 megawatt solar Stirling engine

1 project, and it will be comprised of approximately
2 30,000 of these suncatcher units. Each one
3 producing approximately 25 kilowatts.

4 The 6500-acre site is primarily on land
5 managed by the Bureau of Land Management. And
6 it's about 100 miles east of San Diego, 14 west of
7 El Centro. And if you're familiar, it's very
8 close to Plaster City.

9 The project will be constructed in two
10 phases. The first phase of the project will have
11 a capacity of approximately 300 megawatts. And
12 the second phase at 400 megawatts.

13 One of the reasons for the division into
14 two phases is there's existing capacity in the
15 transmission system, primarily the SDG&E Southwest
16 Power Link transmission line, to bring 300
17 megawatts into the San Diego area to serve SDG&E's
18 renewable portfolio needs.

19 The additional 400 megawatts is
20 dependent on approval by the PUC of the Sunrise
21 Power Link project. So, depending on how that
22 goes, it will affect when the second phase is
23 constructed if this project is approved by the
24 Energy Commission.

25 Staff reviewed the AFC and found it to

1 be inadequate in nine technical areas. And we
2 provided these worksheets to the applicant on July
3 30th.

4 In addition to our process, since this
5 is one of the programs that we're doing in
6 conjunction with the Bureau of Land Management
7 under the memorandum of understanding, the BLM has
8 also accepted this AFC as their plan of
9 development for their process.

10 And we've provided our data adequacy
11 recommendations to the BLM. They reviewed them
12 and just actually today they've completed, and
13 they'll be sending the applicant the final version
14 of a 27-page comment letter they have on what the
15 applicant would need to do to bring the plan of
16 development up to the standards they need to issue
17 their notice of intent.

18 Both the staff and the BLM have agreed
19 that the applicant should address both the
20 deficiencies outlined in the BLM's letter, and the
21 recommendations of staff in one supplemental AFC
22 in order to keep the process in synch. Otherwise
23 we would move ahead with our process, our
24 hearings, without the BLM being able to even issue
25 their notice of intent. And we would get out of

1 synch with the agreement, or memorandum of
2 understanding.

3 The primary issue that caused this
4 disconnect early in the process is the memorandum
5 of understanding had the assumption that the
6 applicant would provide the cultural resources
7 report to the BLM, as they will be dealing
8 primarily with the cultural resources on the
9 project, prior to the AFC coming to the Energy
10 Commission

11 Given the 6500 acre size of this site,
12 the cultural resource report was in excess of 4000
13 pages long. And actually BLM did not receive it
14 until after the AFC process. Under theirs, they
15 require review of that and acceptance of a final
16 draft before they even issue their notice of
17 intent.

18 So that -- we're trying to address that
19 issue and we've communicated this in conference
20 calls with the BLM and the applicant verbally and
21 also in writing. So, at this point my
22 understanding is the applicant is going to work
23 hard to get all of these issues addressed and file
24 it under one supplemental AFC.

25 So, at this point, staff would recommend

1 that the Commission adopt the Executive Director's
2 data inadequacy recommendations.

3 That's it. Do you have any questions?

4 CHAIRPERSON PFANNENSTIEL: Thank you,
5 Mr. Meyer. From the applicant?

6 MS. HENNING: We're just -- we
7 appreciate, you know, the -- Chris feeding the
8 information to us about this. And we just look
9 forward to working with the BLM and the CEC in
10 making this one supplemental filing so we can be
11 deemed data adequate and start the --

12 CHAIRPERSON PFANNENSTIEL: Thank you.
13 Would you identify yourself for the record,
14 please.

15 MS. HENNING: Yes, Christine Henning,
16 Stirling Energy.

17 CHAIRPERSON PFANNENSTIEL: Thank you,
18 Christine. Okay, so you will be back. When do we
19 think this might be completed?

20 MR. MEYER: I've had a couple different
21 people from both BLM and the cultural resource
22 people, and Christine might be able to answer
23 better, but we're guessing it could be up to three
24 months depending on the complexity of the report.

25 And the BLM will basically taken the

1 lead on finalizing -- or on adopting that final
2 draft report for cultural resources.

3 MS. HENNING: Actually right now we're
4 meeting with our consultants on identifying the
5 timeline for that. So, the three months is about
6 what our anticipation is. But we don't know yet
7 until we actually -- we just got it this morning,
8 so --

9 CHAIRPERSON PFANNENSTIEL: Okay.

10 MS. HENNING: -- I can't really give a
11 deadline on that.

12 CHAIRPERSON PFANNENSTIEL: So, we have a
13 Executive Director recommendation that the project
14 be found data inadequate. Is there a motion to
15 approve that recommendation?

16 COMMISSIONER BYRON: I so move.

17 COMMISSIONER DOUGLAS: Second.

18 CHAIRPERSON PFANNENSTIEL: In favor?

19 (Ayes.)

20 CHAIRPERSON PFANNENSTIEL: Thank you,
21 all.

22 MR. MEYER: Thank you very much.

23 MS. HENNING: Thank you.

24 CHAIRPERSON PFANNENSTIEL: Item 7,
25 possible approval of petition to transfer the El

1 Segundo Power Development project's assets,
2 ownership and operational control from El Segundo
3 Power II, LLC, to El Segundo Energy Center, LLC.
4 Good morning.

5 MR. BELL: Good morning, Madam Chairman,
6 Commissioners. Kevin Bell representing -- Staff
7 Counsel representing staff.

8 The El Segundo Power Redevelopment
9 project was certified on February 2, 2005. The
10 project, as certified, is a 630 megawatt, natural-
11 gas fired, combined cycle electric generating
12 facility located in El Segundo.

13 It's currently owned and operated by the
14 El Segundo Power II, LLC. The petition filed on
15 June 30th of 2008 requests approval of the change
16 of ownership and operation and control of the
17 project from El Segundo Power II, LLC, to El
18 Segundo Energy Center, LLC.

19 Both entities are wholly owned
20 subsidiaries of NRG, Incorporated. The name of
21 the project will not change. It should be noted
22 that the project owner has filed a separate
23 petition to amend this project that includes,
24 amongst other things, the reduction of the project
25 to 530 megawatts, and the replacement of once-

1 through cooling with dry cooling. That petition
2 is being processed separately from this petition
3 to change ownership.

4 The petition was reviewed and docketed
5 by the Energy Commission Staff. A statement
6 describing the change in ownership and operation
7 and control, signed under penalty of perjury, by a
8 representative of the new owner/operator of the
9 project was submitted to the Energy Commission
10 Staff for review and approval as required by Title
11 20, California Code of Regulations, section 1769,
12 subsection (b).

13 The statement affirms that the new
14 owner/operator agrees to be bound by the
15 requirements of the Energy Commission's decision
16 for the El Segundo Power Redevelopment project,
17 and understands the obligations imposed by the
18 conditions of certification.

19 A notice of receipt was mailed to the
20 project's post-certification mailing list,
21 docketed and posted by the Energy Commission
22 website for the El Segundo Power Redevelopment
23 project on July 14, 2008. No public comments were
24 received during the 14-day public review period.

25 Staff has determined that the petition

1 for change of ownership does meet the requirements
2 mandated by Title 20, section 1769(b), and
3 therefore staff recommends approval of the change
4 of ownership.

5 CHAIRPERSON PFANNENSTIEL: Thank you,
6 Mr. Bell. Any comments from the applicant to
7 this?

8 MR. MCKINSEY: Chairman Pfannenstiel, my
9 name is John McKinsey from Stoel Rives; I'm
10 Counsel for the applicant.

11 Primarily I wanted to, one, say that
12 we'd planned on having somebody here from the
13 company, but a couple of urgent matters came up at
14 one of their plants and pulled them away.

15 And the one reason we were planning on
16 being here, if there were any questions about the
17 one matter that Kevin indicated, which is kind of
18 this is a change in ownership entity, which we
19 needed slightly faster than we need to petition to
20 amend for approval.

21 And to kind of give you the overall
22 summary, that this project was approved in 2005.
23 And the construction of the project, at least what
24 we call construction, is underway. It's the
25 demolition of the old facility.

1 And as Kevin outlined, the petition to
2 amend, which is before the staff, modifies the
3 design of the project that will be built there.
4 And the core of that is to remove the use of once-
5 through cooling for the facility.

6 So, in order to facilitate the finance,
7 there's a power purchase agreement for this
8 project, that's why it's going forward. In order
9 to insure that we can timely make the transition,
10 we need to be able to start setting up the
11 financing in place, so as soon as we get the
12 petition to amend approved, hopefully, then we'll
13 be able to immediately proceed with that phase of
14 the construction.

15 CHAIRPERSON PFANNENSTIEL: Questions?
16 Commissioner Byron.

17 COMMISSIONER BYRON: Mr. McKinsey, not
18 being an attorney I can't appreciate all the
19 nuanced reasons why you have to change the name of
20 a, you know, all the ownership aspects. Can you
21 give us a sense of the purpose behind that?

22 Because there was considerable
23 discussion about this, not this particular
24 project, but about these kinds of things, in our
25 Siting Committee. And -- counsel may be able to

1 explain far better than I, there are concerns that
2 we have about making sure that the
3 responsibilities of compliance are passed on to
4 the new owner, as well; and their ability to
5 fulfill those responsibilities. I don't think
6 that's a question in this case.

7 Could you just give us a sense of why
8 these ownership changes are necessary?

9 MR. MCKINSEY: Yes. And, in fact, you
10 know, there are three kinds of changes that kind
11 of get merged together. There's a change in the
12 name of a project, which is fairly superficial.

13 There's a change in the name of an
14 entity. And in this case it's a third one which
15 is an actual change in the entity. And so you
16 could take an entity and change its name. In this
17 case it's being transferred from one limited
18 liability company to another.

19 And the reason for that is the old
20 limited liability company also acquired several
21 other assets, including a tank farm, which has a
22 lot of potential remediation issues that could
23 involve a nearby refinery.

24 And so for financial reasons, it was
25 evaluated that that entity would have at risk all

1 of that potential liability for remediation, which
2 could present an issue for the viability of the
3 construction of the power plant project. And so
4 they needed to separate those potential
5 liabilities from the construction and owning of
6 the power plant entity.

7 And that's the reason why. In other
8 words, it was done out of a necessity to provide a
9 single-purpose entity that the financiers could
10 see.

11 Related to that, though, this is also a
12 project that's been around since 2000. It used to
13 be a joint venture between Dynegy and NRG. And
14 Dynegy sold their interest in it to NRG a few
15 years ago. And so that old entity also had
16 connections to that previous structure where it
17 was a joint venture between two companies.

18 So, again, for financial reasons, and
19 this is very typical, they just needed to clean
20 that up and have a single entity to satisfy the
21 risk concerns of the financiers.

22 COMMISSIONER BYRON: Thank you.

23 CHAIRPERSON PFANNENSTIEL: Any other
24 questions? Is there a motion for approval?

25 COMMISSIONER BYRON: I'll move the item.

1 COMMISSIONER DOUGLAS: Second the item.

2 CHAIRPERSON PFANNENSTIEL: All in favor?

3 (Ayes.)

4 CHAIRPERSON PFANNENSTIEL: Thank you,
5 all.

6 Item 8, possible approval to extend the
7 deadline for commencement of construction of the
8 East Altamont Energy Center from August 19, 2008
9 to August 19, 2011. Mr. Bell, again, and we do
10 have some party who would like to speak to this
11 matter besides.

12 MR. BELL: Thank you, Madam Chairman.
13 Also joining me here at the table is Donna Stone,
14 Compliance Project Manager for the East Altamont
15 Energy Center.

16 The East Altamont Energy Center project
17 is a 1100 megawatt, natural-gas fired, combined
18 cycle power plant that is to be developed in the
19 unincorporated portion of eastern Alameda County.

20 The project was originally certified by
21 the Energy Commission on August 20, 2003. To date
22 there has been no development or construction
23 activity on this project.

24 On May 16, 2008, the project owner filed
25 a petition to extend the deadline for the

1 commencement of construction of the project. The
2 petitioner requested an extension of three years
3 from August 19, 2008, at which time the
4 certification runs, to August 19, 2011.

5 According to the petitioner the
6 extension would allow it to continue to market its
7 facility, and more importantly, compete in PG&E's
8 2008 solicitation for new capacity. And if
9 successful, the project owner would file a timely
10 petition to modify the project, as need, by the
11 power purchase agreement.

12 The deadline set by regulation is
13 otherwise five years from the effective date of
14 the Energy Commission's original decision. But an
15 applicant, before such a deadline, may request,
16 and the Commission may order, an extension for
17 good cause according to California Code of
18 Regulations, Title 20, section 1720.3.

19 The staff has reviewed the petition
20 filed by the project owner, and has no objections
21 to extending the deadline for the reasons set
22 forth in this petition.

23 But staff further concludes that there
24 are issues in four technical areas that will need
25 to be resolved prior to commencing construction.

1 The technical issues raised by staff are in air
2 quality, hazardous materials management, soil and
3 water, and transmission system engineering.

4 There have been public comments received
5 that are very similar, if not identical, issues.
6 The petitioner did not dispute or take issue with
7 the issues or recommendations in staff's June 23,
8 2008 analysis.

9 And according to that staff analysis the
10 conditions of certification will need to be
11 modified, if not added, to address change to
12 circumstances, and changes in the applicable laws,
13 ordinances, rules and standards.

14 The instant petition, however, is or has
15 been analyzed under 1720.3. The standard review
16 is whether or not good cause exists for the
17 Commission to grant the petition.

18 And staff does believe, based on the
19 representations made by the project owner, that
20 good cause does exist. However, separate from
21 that analysis, staff has identified those four
22 areas that will need to be addressed in a
23 subsequent petition before construction can
24 commence.

25 Staff is recommending that the instant

1 petition to extend the deadline to commence
2 construction be granted for two limited reasons or
3 purposes.

4 The first of those purposes is to allow
5 the project owner to continue in their
6 negotiations for a power purchase agreement, and
7 to continue developing the project.

8 But the second limited purpose would be
9 for the filing of a timely petition to amend under
10 1769(a) of the California Code of Regulations,
11 Title 20, so that the four areas that were
12 identified in staff's analysis can be addressed
13 before construction can commence.

14 CHAIRPERSON PFANNENSTIEL: Mr. Bell, I
15 just want to make sure I understand. So the good
16 cause that allows us to find that this can be
17 extended is that the project does not have a PPA,
18 and that the project needs to file a petition to
19 amend to overcome the issues that you've raised?

20 MR. BELL: Well, good cause being the
21 petitioner's willingness to, in good faith,
22 continue trying to obtain a power purchase
23 agreement. And to continue developing the
24 project.

25 As Madam Chairman knows, a lot of time

1 and energy is spent by not just the project
2 owners, but by staff and by this Commission in the
3 licensing process for these projects. Staff, of
4 course, and the Commission has an interest in
5 making sure that these projects are timely
6 developed provided that they do not cause
7 significant impact on the environment.

8 Staff -- in analyzing this, staff
9 believes that if those four areas are evaluated
10 and addressed that this project should go forward.
11 But we're not here to decide whether or not
12 additional mitigation measures need to be placed
13 on this project, or which mitigation measures this
14 Commission should order by way of the conditions
15 of certification. We're here merely to determine
16 whether or not good cause exists to extend the
17 deadline for the commencement of construction of
18 the project.

19 CHAIRPERSON PFANNENSTIEL: Other
20 questions for Mr. Bell?

21 COMMISSIONER DOUGLAS: I wanted to ask,
22 again, the question that the Chairman asked. So,
23 what I heard in your answer was that the good
24 cause for the delay and the need for an extension
25 really does tie back to the failure to obtain a

1 power purchase agreement, or were there other good
2 cause arguments that I didn't pick up?

3 MR. BELL: Well, not so much good cause
4 in the failure to obtain it, but in the project
5 owner's willingness to continue their efforts to
6 obtain one.

7 It might be a difference circumstance if
8 we had a project owner filing a petition to extend
9 the deadline for construction with an assertion
10 that, well, we might want to, someday in the
11 future, develop this project. And we might want
12 to enter into a power purchase agreement. We're
13 not hearing that from the project owner.h

14 What we've heard from the project owner
15 is that they desire to do so, and they're going to
16 take efforts to do so.

17 CHAIRPERSON PFANNENSTIEL: Maybe we'll
18 hear from Mr. Wheatland for the applicant?

19 MR. WHEATLAND: Good morning, I'm Gregg
20 Wheatland, the attorney for the petitioner. And
21 we agree completely with the staff analysis.
22 We've also reviewed the order approving the
23 extension of the deadline. And we concur in the
24 terms of that order.

25 The good cause that we're asserting is

1 our inability, despite our best efforts, over the
2 past five years to obtain a power purchase
3 agreement or a long-term contractual commitment
4 for the delivery of this power.

5 In today's market in California the
6 power purchase agreement is an essential element
7 of obtaining financing for a project. And we have
8 made our best efforts to obtain this agreement,
9 and we continue to do so. And as Mr. Bell has
10 stated, the company is actively marketing the
11 plant and hopes it will obtain a favorable
12 agreement that will allow it to go forward.

13 CHAIRPERSON PFANNENSTIEL: Any questions
14 of Mr. Wheatland?

15 Mr. Sarvey has asked to speak, Robert
16 Sarvey.

17 MR. SARVEY: Good morning,
18 Commissioners. Thank you very much for hearing me
19 here today.

20 I'd first like to ask if you have
21 received the handouts that I'd attached to my blue
22 card.

23 CHAIRPERSON PFANNENSTIEL: Pass them
24 about now.

25 (Pause.)

1 MR. SARVEY: My comments today will
2 cover two things which I believe are pertinent.
3 One is the good cause -- the Commission's
4 responsibilities under the Warren Alquist Act.

5 I see an extension as no different than
6 certifying a project, therefore we need to require
7 all elements of the Warren Alquist Act.

8 So, first thing I'd like to deal with is
9 the good cause issue. As we stated earlier,
10 section 1720 requires the applicant show good
11 cause why he's had a license for five years, he
12 still hasn't put a shovel in the ground.

13 And the applicant states in his extension
14 request that was said previously, that he needs a
15 long-term power purchase agreement.

16 Well, to me it's ironic that the
17 applicant is using lack of a power purchase
18 agreement as a good cause for this extension. And
19 you'll notice in my handout to you I gave you a
20 master power purchase agreement.

21 This master power purchase agreement was
22 executed by Calpine in the State of California on
23 April 22, 2002, to do exactly that, construct the
24 East Altamont Energy Center, as well as other
25 projects. And I'll direct you to page 8 on the

1 master power purchase agreement. And right after
2 the two construction milestone charts for Otay
3 Mesa and Metcalf, it defines that East Altamont
4 Energy Center is also to be built under this
5 master purchase power agreement.

6 Now, five years later the applicant
7 wants to use nonperformance in this contract with
8 the State of California that the ratepayers and
9 the taxpayers have paid, and Calpine has not
10 performed, the construction of East Altamont,
11 which was to begin one year after the CEC license,
12 according to the master power purchase agreement.

13 So, to me, to say now that they need a
14 master power purchase agreement to construct this
15 facility when they had one in 2002 and were
16 required, under their obligations and agreements
17 with the State of California, the DWR and the
18 ratepayers and taxpayers in the State of
19 California, to construct this facility, this is
20 abominable to use that as good cause for an
21 extension here.

22 They've already had five years with a
23 power purchase agreement, which I handed you here.
24 And I believe that there is no good cause here to
25 demonstrate. Maybe the applicant has some other

1 ideas he wants to put forward, but as far as
2 what's in his petition I see no good cause when
3 you take into consideration they previously had a
4 power purchase agreement to construct this exact
5 project.

6 As I said before, I believe that an
7 extension is no different than a certification of
8 a project. And the Energy Commission is required
9 to insure that when they certify a project that
10 the project complies with all laws, ordinances,
11 regulations and standards, and it complies with
12 CEQA. And in this case, staff has outlined for
13 you several areas where the project doesn't comply
14 with CEQA and it doesn't comply with all laws,
15 ordinances, regulations and standards.

16 And I believe that you're required to
17 make sure if you do extend a project that it does
18 comply with all the requirements of the Warren
19 Alquist Act.

20 The staff reports states that the
21 District sent the project owner a notice for fees
22 and renewals of the permit which will expire in
23 August 2007. This is their FDOC, their air permit
24 with the Bay Area Air Quality Management.

25 And the applicant allowed the authority

1 to construct to expire, despite receiving a letter
2 from the Bay Area asking for reapplication and
3 fees for the authority to construct.

4 If the applicant intended to apply for
5 an extension evidence of good faith and a good
6 cause would be a timely reapplication of the
7 authority to construct. It would not let the air
8 permit expire if it did have intentions to build
9 this facility in a timely manner.

10 Section 1752.3 of the Commission
11 regulations state that the Presiding Member's
12 Proposed Decision, and I equate an extension with
13 that, shall include findings and conclusions on
14 conformity with all applicable air quality laws,
15 including required conditions based on the
16 determination of compliance submitted by the local
17 air district. And here that compliance has
18 expired.

19 Air quality finding number 8 in the
20 Commission decision states that the project
21 employs BACT for all pollutants. According to the
22 staff report, the project no longer complies with
23 best available control technology.

24 The Commission decision and the FDOC
25 limit the project's CO emissions to 6 ppm over one

1 hour in current combined cycle BACT for CO
2 emissions to 33 percent lower than BACT.

3 The project has a 10 ppm ammonia slip.
4 Currently large combined cycles are being limited
5 to 5 ppm. And their new technologies for startup
6 and shutdown emissions for NO2 and CO, and this
7 project may be required to use those.

8 The State of California has a new NO2
9 standard of 338 mcg/cubic meter. And the
10 project's total NO2 impact is estimated at 385
11 mcg/cubic meter, as stated on page 122 of the
12 Commission's East Altamont Energy Center decision.

13 The project has the potential to violate
14 an ambient air quality standard. In my opinion
15 this would be a LORS and a CEQA violation.

16 Finding 16 in the Commission decision
17 states that the applicant's proposed ERCs with the
18 air quality mitigation agreement with the San
19 Joaquin Valley Air Pollution Control District --
20 and I'm going to stop for a minute to explain to
21 the Commissioners that weren't around at the time,
22 this project is in Alameda County, it's on the
23 border of the San Joaquin Valley Air Pollution
24 Control District. So the emission reduction
25 credits are being generated in Alameda County in

1 the Bay Area, but in fact, the impact goes almost
2 entirely into San Joaquin Valley.

3 And that's why San Joaquin Valley Air
4 Pollution Control District intervened, and San
5 Joaquin Valley Air Pollution Control District is
6 stating now that the money supplied for this AQMA,
7 this air quality mitigation agreement, are
8 inadequate now to handle the CEQA impacts they're
9 going to handle in San Joaquin County. And that's
10 what the decision relied on.

11 The decision also relied on the ERC
12 package from the Bay Area which no longer exists
13 because the applicant has robbed that ERC package,
14 moved some of those ERCs over to Russell City. So
15 they no longer have certainty in the ERC package.

16 So, to me, the project meets neither
17 LORS nor CEQA.

18 There's also another issue here. To
19 build the project three essential things are
20 needed. Land, and I've heard, and maybe the
21 applicant can confirm this, that they have not
22 renewed their agreement with the farmer on the
23 property. So they don't currently have site
24 control. I could be wrong there but that's what
25 I've heard from some of the owners of that

1 property.

2 Water. We need water. They're going to
3 use recycled water from the Mountain House
4 Community Services District. And that recycled
5 water is controlled by the San Joaquin County
6 Board of Supervisors.

7 Now, part of the handout I gave you was
8 a resolution that was passed on July 29, 2008, by
9 the San Joaquin County Board of Supervisors
10 against granting this extension. And one of the
11 main reasons was this project will use 4000
12 acrefeet of water that will be taken from the
13 County to operate the proposed plant annually.
14 And said water will be lost to farming and other
15 beneficial use. So I question whether they have
16 water.

17 And then I also -- we don't have to
18 question whether they have an air permit. I
19 understand that the Bay Area may extend it. But I
20 believe that there's some complications with
21 extending it and we'll wait for that to happen.

22 And that's all I have, thank you.

23 CHAIRPERSON PFANNENSTIEL: Thank you,
24 Mr. Sarvey. Are there questions here? Nothing.
25 Thank you.

1 MR. SARVEY: Thank you.

2 CHAIRPERSON PFANNENSTIEL: So right now
3 we're just being asked to rule on the petition for
4 extension based on the fact that there is
5 described a cause, a good cause for the extension.
6 And that if the extension is granted, then before
7 construction can commence the issues that Mr.
8 Sarvey has raised, and that frankly the staff
9 predated Mr. Sarvey's comments with raising these
10 issues need to get resolved, is that correct?

11 MR. BELL: That's correct, Madam
12 Chairman. Mr. Sarvey and other concerned members
13 of the public have filed comments, and they've
14 raised some very valid issues. But those are the
15 types of issues that will be handled in staff's
16 subsequent analysis under 1769(a) once the project
17 owner files, in a timely manner, a petition to
18 amend this project. Then staff will get a chance
19 to look at those areas.

20 CHAIRPERSON PFANNENSTIEL: Thank you.
21 Are there other questions?

22 VICE CHAIRPERSON BOYD: Yes. I'd like
23 to hear something more about this, what Mr. Sarvey
24 brought to our attention, the master power
25 purchase agreement with Calpine, which heretofore

1 hasn't been referenced.

2 While I understand that the staff's
3 recommendation for extension is predicated on
4 discussions about and new mitigation measures with
5 regard to a number of issues, this one kind of is
6 separate and apart from that. I'd like a little
7 bit of an understanding why we haven't referenced
8 that in the past, and what's the status of this
9 master power purchase agreement with Calpine.
10 Knowing full well Calpine's financial situation, I
11 still think the record needs to reflect something
12 here.

13 MR. WHEATLAND: For that I'd like to ask
14 my colleague, Mr. Harris, if he could address that
15 issue, please.

16 MR. HARRIS: Good morning. I'm actually
17 very happy to address that issue, and I'm glad you
18 asked the question because there is an implication
19 there that Calpine was somehow in breach of
20 contract. That's patently false. And any
21 suggestion to the contrary ought to leave the
22 discussion here, because it's not true.

23 The reference is to a power purchase
24 agreement that was dated, as Mr. Sarvey said.
25 That Calpine amendment is known as Calpine Two.

1 It was amended thereafter.

2 So what you have is the predecessor
3 document. That document requires delivery of
4 power from Calpine from the Los Esteros facility.
5 And Calpine has been delivering under that Calpine
6 amendment two since that time.

7 I would also note that the DWR contracts
8 that were referenced here were largely system
9 sales contracts, as well, requiring delivery of
10 power out of Calpine's fleet. Again, I think
11 that's further evidence there wasn't any breach of
12 those agreements.

13 And so I think Mr. Sarvey has brought
14 you something that is incomplete. And if you'd
15 like, we will provide you with a copy of the
16 amended contract for the record, as well.

17 MR. SARVEY: I have the amended contract
18 here, as well. It also lays out Calpine's
19 responsibility to construct the East Altamont
20 Energy Center. So, if you'd like that for the
21 record, I'd be happy to supply it.

22 CHAIRPERSON PFANNENSTIEL: Further
23 discussion?

24 So the point is that there is no
25 contract now. And the applicant is seeking to

1 reach an agreement for a power purchase agreement
2 between now and the time they would come back to
3 us with the additional amended application, is
4 that correct?

5 MR. WHEATLAND: That's correct. .

6 CHAIRPERSON PFANNENSTIEL: So there is
7 no contract now?

8 MR. WHEATLAND: There is no contract of
9 power purchase agreement with respect to the East
10 Altamont facility that we can use for the purposes
11 of obtaining financing, that's correct.

12 CHAIRPERSON PFANNENSTIEL: Thank you.
13 Commissioner Byron.

14 COMMISSIONER BYRON: Gentlemen, can you
15 tell us, are you participating with this
16 particular project in the recent PG&E request for
17 offer?

18 MR. WHEATLAND: Well, it's my
19 understanding that the PG&E's rules regarding the
20 request for offers that's currently pending does
21 not permit us to indicate which of the Calpine
22 projects that we are or are not bidding on.

23 So all I can tell you is that Calpine is
24 actively marketing its project to many sources.

25 CHAIRPERSON PFANNENSTIEL: And as we

1 heard before, that PG&E short list which you may
2 or may not be on, and this project may or may not
3 be on, will be available October 21st?

4 MR. WHEATLAND: That is our
5 understanding.

6 CHAIRPERSON PFANNENSTIEL: So, if this
7 project is on -- has bid in that and is on it,
8 we'll know it by then, is that correct?

9 MR. WHEATLAND: That's my understanding.

10 CHAIRPERSON PFANNENSTIEL: Anything
11 further?

12 COMMISSIONER DOUGLAS: Well, I just want
13 to point out, and this has been said before, but
14 staff has made it very clear that the applicant
15 will have to contact both the Bay Area and the San
16 Joaquin Valley Air Districts to insure that
17 current permits can be renewed.

18 So our acting on this extension right
19 now does not in any way prejudge that question, or
20 any of the environmental questions that have been
21 raised, and legitimately so, and definitely need
22 to be held with.

23 CHAIRPERSON PFANNENSTIEL: Thank you,
24 Commissioner Douglas, I agree with that.

25 With that understanding, is there a

1 motion to then approve the petition as filed?

2 COMMISSIONER BYRON: I approve the
3 petition. I think it's a good use of our
4 resources to continue the extension on this
5 permit.

6 COMMISSIONER DOUGLAS: I'll second that.

7 CHAIRPERSON PFANNENSTIEL: All in favor?

8 (Ayes.)

9 CHAIRPERSON PFANNENSTIEL: Thank you.

10 Then moving on to approval of minutes
11 from the July 30th business meeting.

12 VICE CHAIRPERSON BOYD: Move approval.

13 COMMISSIONER ROSENFELD: Second.

14 CHAIRPERSON PFANNENSTIEL: In favor?

15 (Ayes.)

16 CHAIRPERSON PFANNENSTIEL: I abstain.

17 COMMISSIONER BYRON: I abstain, also.

18 CHAIRPERSON PFANNENSTIEL: Commission
19 Committee presentations or discussions? Anything
20 from the Commissioners to raise?

21 VICE CHAIRPERSON BOYD: Quick item.
22 Shortly after this meeting I will be leaving for
23 the annual Board of Governors Conference. I
24 believe it's the 26th annual Board of Governors
25 Conference. Governor Schwarzenegger is President

1 of the Board of Governors this year, and is
2 hosting the annual meeting in southern California.

3 And as has probably been reported
4 before, this agency and this Commissioner, is co-
5 President of the energy worktable which was
6 created just a few years ago.

7 And has developed, again, a fairly
8 ambitious work program for the ten states that are
9 affected; six states of Mexico for states of the
10 United States.

11 And a lot of what we've done has been
12 predicated on the unilateral work, or the
13 bilateral work between this agency and border
14 states. We've actually, in the past this agency,
15 without my involvement, has aided the folks in the
16 bordering states of the United States both through
17 direct energy audits and through work with the
18 Western Governors Association. So there's quite
19 a long history.

20 There was a flurry of activity in the
21 last week about a potential MOU between Baja Norte
22 and California that was not initiated by the
23 energy work table, and is frankly unknown in -- it
24 was unknown in content to a lot of us, that I'm
25 sure will engender some discussion at this

1 meeting.

2 But, in any event, I think that we in
3 California are well prepared to deal with the
4 outcome of this meeting. And this is my second
5 tour of duty as co-President or co-Chair of the
6 energy work table. And I look forward to handing
7 this off to somebody some day in the future.

8 But, in any event, California is well
9 represented by staff and look forward to a
10 successful event, in spite of being budget-less in
11 California. I'm sure the Governor has arranged
12 quite a show for these people. He's trying to
13 outdo last year's event in Mexico, so it could
14 prove to be an interesting discussion.

15 CHAIRPERSON PFANNENSTIEL: Thanks, Jim.
16 Anything else?

17 Chief Counsel's report.

18 MS. ICHIEN: Good morning. Arlene
19 Ichien sitting in for Bill Chamberlain. Nothing
20 to report this morning.

21 CHAIRPERSON PFANNENSTIEL: That's good
22 news, thank you, Arlene.

23 Executive Director's report.

24 EXECUTIVE DIRECTOR JONES: Good morning.

25 I have nothing to report, but I would like to make

1 an introduction.

2 Chris Marxen has joined the Energy
3 Commission as Assistant Executive Director for
4 Legislative Affairs. And so I wanted to bring
5 Chris in to meet you all. And he has a quick
6 update for you.

7 CHAIRPERSON PFANNENSTIEL: Welcome, Mr.
8 Marxen.

9 MR. MARXEN: Thank you. Thank you.

10 CHAIRPERSON PFANNENSTIEL: What's going
11 on over at the Legislature?

12 MR. MARXEN: Well, a lot. I picked a
13 bad week to start this job, I tell you.

14 (Laughter.)

15 MR. MARXEN: There's a flurry of
16 activity. My staff reported to me that probably
17 the most interesting action this week was on AB-
18 1909, Hayashi, which was pulled by the author.
19 And that was the bill that was going to require
20 that the Energy Commission first hear a decision
21 about a power plant that was made by a local city,
22 the City of Hayward. So apparently it had wide
23 implications for the Energy Commission. And the
24 bill was pulled by the author late last week.

25 Other than that there are a lot of bills

1 that are in suspension. We don't know a hundred
2 percent what's going to happen to all of them.
3 But, as we find out, we'll be sure to let you all
4 know.

5 CHAIRPERSON PFANNENSTIEL: Yeah, there
6 are a number of the bills we've been following
7 that just sort of disappeared off the radar screen
8 and going into suspense.

9 Is the expectation that those are
10 probably dead for this session?

11 MR. MARXEN: Yes, but I had a mini-staff
12 meeting this morning and I asked my staff to come
13 up with what is the probability and a percent. I
14 used to be a scientist in a past life, and I deal
15 with percent a lot. And nobody could really say.
16 So, I think at this point we're trying, on certain
17 key bills, to find out, hear rumors and nobody
18 really knows what's going to come out of the
19 suspense file.

20 CHAIRPERSON PFANNENSTIEL: What's the
21 schedule? When I've heard different stories on
22 when the session will adjourn, I believe that
23 under the constitution they need to leave by the
24 end of -- the Legislature needs to adjourn by the
25 end of August.

1 But then there's the question of whether
2 they can get called back because of the budget,
3 and is it just for the budget they could get
4 called back for special session? Do you have a
5 sense of that?

6 MR. MARXEN: Well, no, they can get
7 called back for special sessions after the August
8 30th

9 There is another deadline which is
10 August 18th, which is -- that's the date that
11 committees, with rare exceptions such as rules
12 committees, are no longer able to meet.

13 So, generally speaking, although these
14 are flexible, everything should be -- that's still
15 active should be on the floor after August 18th.

16 VICE CHAIRPERSON BOYD: Do you have any
17 news beyond what I read in the morning paper about
18 the status of the budget?

19 MR. MARXEN: The most interesting thing
20 I read was Dan Walters' column this morning, which
21 to have possible whispers of a breakthrough.

22 VICE CHAIRPERSON BOYD: Right. Okay,
23 I'll live by Dan Walters continuing --

24 CHAIRPERSON PFANNENSTIEL: Anything
25 else? Thank you very much.

1 COMMISSIONER BYRON: If I may, if I may?

2 CHAIRPERSON PFANNENSTIEL: Yes, of
3 course.

4 COMMISSIONER BYRON: Mr. Marxen,
5 obviously by the questions you can tell we expect
6 you to not only know everything that's going on
7 over there at the Capitol, but also have a crystal
8 ball about the future.

9 I have a question, though, do you know,
10 did the Republicans and Democrats play their
11 baseball game Monday night?

12 MR. MARXEN: I don't know.

13 CHAIRPERSON PFANNENSTIEL: We'll get an
14 answer from the Public Adviser. Elena, you know
15 that they did not?

16 PUBLIC ADVISER MILLER: It was canceled
17 for the first time in the history of the event.

18 CHAIRPERSON PFANNENSTIEL: Not a good
19 sign.

20 PUBLIC ADVISER MILLER: -- at Raley
21 Field.

22 COMMISSIONER BYRON: Mr. Marxen,
23 welcome.

24 MR. MARXEN: Thank you.

25 CHAIRPERSON PFANNENSTIEL: Public

1 Adviser report.

2 PUBLIC ADVISER MILLER: A brief one. I
3 have raced through my first 40 days which I
4 find --

5 CHAIRPERSON PFANNENSTIEL:

6 Congratulations, you survived.

7 PUBLIC ADVISER MILLER: -- hard to
8 imagine. And so I just want to give you a brief
9 update of what we're working on.

10 I'm happy to report that Loreen McMahon
11 and I have been working to create a pamphlet
12 explaining what the Public Adviser's Office can
13 assist, or how we can assist in Energy Commission
14 proceedings. And we hope to circulate that
15 through the building soon for everybody's review.

16 CHAIRPERSON PFANNENSTIEL: And it will
17 be prepared in English and Spanish?

18 PUBLIC ADVISER MILLER: I have certain
19 aspirations of getting it into Spanish. And then
20 I would anticipate from that, other communities
21 probably letting me know that they wish it to be
22 in other language. So we will take one step at a
23 time. English will be our first, and then we'll
24 move forward --

25 COMMISSIONER BYRON: And fortunately we

1 have at least one Commissioner that can review
2 the --

3 COMMISSIONER DOUGLAS: The Spanish
4 version.

5 COMMISSIONER BYRON: -- as well.

6 PUBLIC ADVISER MILLER: Well, and I will
7 tag along on that topic and say that we've
8 interviewed in my office for the student position.
9 And we have a really strong candidate who I hope
10 to get onboard shortly. And she is also
11 bilingual. So that would make two of us in the
12 Public Adviser's Office that are bilingual. So I
13 think that's a good move in the right direction.

14 I'm working on final touches for a
15 PowerPoint presentation intended to be adapted for
16 each of our new siting cases for the informational
17 hearing and initial site visit.

18 I want to give kudos to the Hearing
19 Office. I met with them a number of weeks back
20 and so this PowerPoint will be the result of their
21 suggestion and recommendation and requests, that
22 this be something that would assist them. And so
23 I'm really pleased with that recommendation and
24 hope to get that done soon, because we certainly
25 have a number of new cases in the burner.

1 I've also assigned each of the siting
2 matters to the three of us that are working in the
3 office. And so there will be somebody specific in
4 the Public Adviser's Office to go to on every
5 siting case. And I am working with Siting. I
6 will continue to update them and to let them know.

7 And I want to add that I'm thankful to
8 Siting for keeping my office apprised of the
9 existing, newly filed and also the anticipated
10 cases. This is extremely helpful to me as I
11 implement our outreach efforts to the public, as
12 well as within the Commission. The project
13 managers have been wonderful, as have the managers
14 in Siting.

15 I've had numerous meetings with staff in
16 the building in which I've been able to kind of
17 pitch some of my thoughts and ideas. I'm
18 constantly encouraged by their enthusiasm that the
19 role of the Public Adviser's Office holds in
20 Commission proceedings. And so that has been
21 wonderful.

22 Last, I want to acknowledge on this
23 topic of the lack of a state budget, it has caused
24 us to be creative in the Public Adviser's Office
25 on how to satisfy our duties to the public, as

1 well as to the Commission.

2 We've begun to reach out on a limited
3 basis, in one instance to local groups to seek
4 their assistance and to essentially ask that they
5 help us to get the word out.

6 And in this one specific case it was to
7 Spanish-speaking population. Because we couldn't
8 get a Spanish newspaper to put an ad in with the
9 promise from us that we would pay them once the
10 budget was passed.

11 And so we had to essentially find
12 creative ways to reach that population in that
13 area.

14 We're striving to find a balance between
15 cost effectiveness and also assuring that we've
16 explored all feasible opportunities for outreach.

17 And that's it. Thank you.

18 CHAIRPERSON PFANNENSTIEL: Thank you,
19 Elena. We're delighted you're here.

20 PUBLIC ADVISER MILLER: Thank you.

21 CHAIRPERSON PFANNENSTIEL: Now I'd ask
22 for public comment, but since I don't see much --

23 VICE CHAIRPERSON BOYD: There is no
24 public --

25 CHAIRPERSON PFANNENSTIEL: -- in the way

1 of public, I guess that's it. We'll be adjourned.
2 Thank you.

3 (Whereupon, at 11:21 a.m., the business
4 meeting was adjourned.)

5 --o0o--

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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 26th day of August, 2008.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345□