

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
Business Meeting)
_____)

| | |
|----------------|-------------|
| DOCKET | |
| BUS MTG | |
| DATE | SEP 24 2008 |
| RECD. | OCT 07 2008 |

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

WEDNESDAY, SEPTEMBER 24, 2008

10:04 A.M.

ORIGINAL

Reported by:
Peter Petty
150-07-001

COMMISSIONERS PRESENT

James D. Boyd, Vice Chairperson

Arthur H. Rosenfeld

Jeffrey D. Byron

Karen Douglas

STAFF and CONTRACTORS PRESENT

Melissa Jones, Executive Director

William Chamberlain, for Chief Counsel

Chris Marxen, for Legislative Director

Harriet Kallemeyn, Secretariat

Mike Monasmith

Mike Gravely

Devorah Eden

Kevin Bell

Linda Spiegel

Pramod Kulkarni

Marla Mueller

Gary Yowell

Jason Orta

Gabriel Herrera

Gary Fay

Lisa DeCarlo

John Kessler

PUBLIC ADVISER

Elena Miller

ALSO PRESENT

Jonathan A. Sacks
Mirant Corporation

Scott Galati, Attorney
Galati and Blek, LLP

Manuel Alvarez
Southern California Edison Company

Diane Fellman
Florida Power and Light Energy

Julee Malinowski-Ball
Public Policy Advocates
California Biomass Energy Alliance

Robert Sarvey
Californians for Renewable Energy

Rick Martin (via teleconference)
NC Air Quality Management District

Rob Simpson

Greg Lamberg
Radback Energy

Barry Luboviski
Building and Construction Trades

Matt Maloon
International Brotherhood of Electrical Workers

J.V. McCarthy

Greggory L. Wheatland, Attorney
Ellison, Schneider and Harris, LLP
on behalf of Calpine Corporation

Richard L. Thomas
Calpine Corporation

I N D E X

| | Page |
|--|------|
| Proceedings | 1 |
| Items | 1 |
| 1 Consent Calendar | 2 |
| 2 Willow Pass Generating Station (Moved to 10/8 meeting) | 1 |
| 3 Marsh Landing Generating Station | 3 |
| 4 Palmdale Hybrid Power Project (Moved to 10/8 meeting) | 1 |
| 5 Humboldt Bay Repower Project | 58 |
| 6 Russell City Energy Center | 97 |
| 7 City and County of San Francisco | 9 |
| 8 Sacramento Municipal Utility District | 14 |
| 9 California Department of Fish and Game | 16 |
| 10 U.S. Department of Energy | 24 |
| 11 U.S. Department of Energy - Pacific Northwest National Laboratory (Moved to 10/8 meeting) | 1 |
| 12 University of California Davis (Moved to 10/8 meeting) | 1 |
| 13 University of California Santa Barbara, Bren School of Environmental Science and Management (Moved to 10/8 meeting) | 1 |
| 14 Altostratus, Inc. | 32 |
| 15 University of California Energy Institute (Moved to 10/8 meeting) | 1 |
| 16 Robert Bosch Corporation | 35 |
| 17 Existing Renewable Facilities Program Guidebook | 36 |

I N D E X

| | Page |
|--|------|
| Items - continued | |
| 18 Minutes | 139 |
| 19 Commission Committee Presentations/ Discussion | 139 |
| 20 Chief Counsel's Report | 141 |
| 21 Executive Director's Report | 141 |
| 22 Legislative Director's Report | 142 |
| 23 Public Adviser's Report | 144 |
| 24 Public Comment | 146 |
| Adjournment | 146 |
| Certificate of Reporter | 147 |

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

2

3

10:04 a.m.

4

VICE CHAIRPERSON BOYD: Good morning,

5

everybody. I'd like to welcome you to the

6

September 24th business meeting of the Energy

7

Commission. And now would you all join us in the

8

Pledge of Allegiance.

9

(Whereupon the Pledge of Allegiance was

10

recited in unison.)

11

VICE CHAIRPERSON BOYD: Chairman

12

Pfannenstiel is out of the state on business, so

13

you get the Vice Chairman this time.

14

COMMISSIONER BYRON: But I think that's

15

why everybody's here, is they heard that you were

16

chairing today.

17

VICE CHAIRPERSON BOYD: Okay, first I

18

would like to discuss some agenda modifications,

19

changes, what-have-you. First, item 2, the Willow

20

Pass Generating Station, and item 4, the Palmdale

21

Hybrid Power Project, both have been moved to the

22

October 8th business meeting of the Commission.

23

Second, I would like to point out that

24

agenda items 11, 12, 13 and 15 are going to be

25

delayed, yet again, till the next business meeting

1 of the Commission on the 8th because the subject
2 matter that they address and their funding is the
3 subject of legislation that is yet to be resolved.
4 And we will defer action until such time as it is
5 resolved.

6 And since I heard this morning the
7 Governor has till next Tuesday to resolve all
8 legislation, the items perhaps then can be
9 considered after we take into account his actions
10 on legislation.

11 Third, items 5 and 6, I am going to move
12 to be the last two major items on the agenda
13 today, behind the printed agenda item 17, but
14 because of all the reductions and eliminations I
15 just mentioned, they're certainly about six or
16 seven items ahead of that.

17 The reason for that is they are going to
18 be fairly substantial items in terms of
19 discussion. And the other items are far less
20 substantial and we can resolved them, I think,
21 reasonably quickly and let the individuals,
22 including the staff, funded by ratepayers and
23 taxpayers, get back to work. And we'll deal with
24 the two major items.

25 So, with that, item 1, of course, is the

1 consent calendar.

2 COMMISSIONER ROSENFELD: I move the
3 consent calendar.

4 COMMISSIONER BYRON: Second.

5 VICE CHAIRPERSON BOYD: All in favor?

6 (Ayes.)

7 VICE CHAIRPERSON BOYD: Consent calendar
8 is approved four to nothing.

9 So now we move to item number 3, Marsh
10 Landing Generating Station.

11 MR. MONASMITH: Good morning,
12 Commissioners. I'm Mike Monasmith, Project
13 Manager in the energy facility siting division.

14 On May 30, 2008, the Marsh Landing
15 Generating Station application for certification
16 AFC was submitted and staff determined during the
17 initial data adequacy review that it did not meet
18 all requirements for the 12-month process.

19 Specifically the AFC was deficient in six of 23
20 areas.

21 Staff has subsequently reviewed the
22 supplemental information formally submitted on
23 September 19, 2008, including a complete third-
24 party system impact study, and believes that the
25 AFC now meets the requirements in all six of the

1 previously deficient technical disciplines.

2 Staff has determined that the AFC, with
3 the supplement, now contains all the information
4 required by California Code of Regulations, Title
5 20, section 1704, including appendix B, for the
6 12-month AFC process.

7 Marsh Landing would be a 930 megawatt,
8 dry-cooled, natural-gas-fired power plant
9 consisting of four separate power blocks. It will
10 be located on a 27-acre redeveloped industrial
11 site adjacent to Mirant's existing Contra Costa
12 Power Plant just north of the City of Antioch.

13 If approved, construction and startup of
14 the new power generation facility is expected to
15 take approximately 33 months at a cost of \$800
16 million.

17 Staff respectfully requests the
18 Commission find AFC data adequate and appoint a
19 Committee. Thank you.

20 VICE CHAIRPERSON BOYD: Thank you.
21 Applicant?

22 MR. SACKS: Commissioners, good morning.
23 My name is Jonathan Sacks; I'm a Director of
24 Business Development and Transactions for Mirant
25 Corporation. And I manage Mirant's new power

1 plant developments in the western U.S.

2 And I'm pleased to be appearing before
3 you again in regards to the Mirant Marsh Landing
4 data adequacy finding before the Commission.

5 First, I would like to thank Mike
6 Monasmith and the rest of the Commission Staff for
7 their diligence in completing the data adequacy
8 review of the Marsh Landing application.

9 I would also like to individually
10 recognize the assistance and guidance of Mark
11 Hesters, who was especially helpful in working
12 with us and our consultant to develop an electric
13 transmission system impact study that provides the
14 information that the Commission needs to evaluate
15 the project's potential impacts.

16 As you will recall, we were asked to
17 provide a system impact study prepared by a third-
18 party consultant in lieu of the Ca-ISO system
19 impact study because the Ca-ISO process has been
20 temporarily suspended as part of the ongoing
21 generator interconnection reform process.

22 Our consultant study is complete and has
23 been provided to staff for their review. While
24 performing this study delayed the timing of our
25 data adequacy finding, we believe that this has

1 been time well spent. We are hopeful that having
2 a completed study at this stage in the process
3 will help accelerate the analysis and ultimate
4 approval of our project.

5 Secondly, I would be remiss if I didn't
6 note the status of Mirant's other application
7 pending before the Commission, the Willow Pass
8 Generating Station. We are currently finalizing
9 the requested electric transmission impact study
10 for that facility, and we expect to return for
11 that facility's data adequacy hearing at the next
12 Commission business meeting.

13 Finally, please know that Mirant Marsh
14 Landing is dedicated to this process, and we will
15 continue to do everything we can to assist staff
16 and the Commission with the review of this
17 project.

18 We look forward to working with you to
19 complete our certification process as
20 expeditiously as possible. Thank you for your
21 consideration.

22 VICE CHAIRPERSON BOYD: Thank you.
23 Commissioners, any questions of staff or
24 applicant?

25 COMMISSIONER BYRON: None.

1 VICE CHAIRPERSON BOYD: Is there a
2 motion?

3 COMMISSIONER DOUGLAS: I move approval.

4 COMMISSIONER BYRON: Second.

5 VICE CHAIRPERSON BOYD: It's been moved
6 and seconded.

7 All in favor?

8 (Ayes.)

9 VICE CHAIRPERSON BOYD: Approved four to
10 nothing. Thank you for that timely presentation
11 and the resolution, I guess, of the issues that
12 faced us last time.

13 I have now the responsibility to appoint
14 a siting committee for the Marsh Landing project.
15 The public doesn't know we draw straws, but you'll
16 understand when I finish this sentence. That
17 Committee will consist of Commissioner Boyd as
18 Presiding Member, and Commissioner Douglas as
19 Associate.

20 You rarely hear the speaker nominate
21 themselves, but anyway, do I have a motion
22 approving that siting committee?

23 COMMISSIONER ROSENFELD: I so move.

24 COMMISSIONER BYRON: Well, and I second
25 it.

1 (Laughter.)

2 COMMISSIONER BYRON: If I may,
3 Commissioner, you know, I don't know if this has
4 gone on before I was here, as well, but there's a
5 lot of humor around this like we bounce a tennis
6 ball around on who gets nominated. And there's no
7 doubt that our plates are very full; there's a
8 great number of siting cases before the
9 Commission.

10 But we take these very seriously, and I
11 don't want to give the impression to the public
12 that we do not. But, I second the nomination
13 because I think it's an excellent committee for
14 this particular case.

15 (Laughter.)

16 VICE CHAIRPERSON BOYD: All in favor?

17 (Ayes.)

18 VICE CHAIRPERSON BOYD: All right, we
19 have a siting committee. And I appreciate your
20 comment about our rather humorless lives and the
21 need for injecting some humor once in awhile.

22 I apologize for the phone and I didn't
23 mean it to ring. But I hate these things, but
24 there is a nuclear power plant drill going on
25 today, and I have to be on the line and alerted.

1 So, hopefully it won't happen again.

2 The next item is item number 7, City and
3 County of San Francisco. And while staff and
4 applicants are coming to the table I'm going to
5 bring up a housekeeping item.

6 I think most people here know the
7 process and procedure, but I just want to remind
8 you, anyone who wishes to testify or present to
9 the Commission on any item needs to fill out a
10 blue card, as we call them. These are available
11 on the table in the foyer there, and from our
12 representative of the Public Adviser's Office.
13 And I don't see a representative -- oh, there she
14 is. You're hiding behind a -- in any event, if
15 you want to testify on some future item today, if
16 you would fill out a card, give it to the Public
17 Adviser. She will see that it gets up here to the
18 dais and it will afford me the opportunity to
19 appropriately call on you.

20 Okay, with that beside, we have item
21 number 7, the City and County of San Francisco.

22 MS. EDEN: Good morning, Commissioners.
23 I'm Devorah Eden with the buildings and appliances
24 office.

25 Under Title 24, part 1, section 10-106,

1 cities and counties may adopt and enforce their
2 own local energy efficiency standards. What is
3 required is that the city or county file with the
4 Energy Commission the basis of their determination
5 that the standards are cost effective. And then
6 the Energy Commission then finds that the
7 standards will require the diminution of energy
8 consumption levels permitted by the rules and
9 regulations adopted pursuant to those sections.

10 The Energy Commission Staff reviewed the
11 application from the City and County of San
12 Francisco and determined that the proposed local
13 standards contained the required filings
14 containing the basis of their determination that
15 those standards are cost effective. And further
16 finds that the proposed standards are more
17 stringent than the 2005 building energy efficiency
18 standards.

19 The proposed ordinance requires that
20 newly constructed, single family and multifamily
21 residential buildings meet varying point goals of
22 the green point rated system by specified dates.
23 And further, the newly constructed mid-size and
24 large commercial buildings need to meet varying
25 lead point goals and meet certification levels.

1 And, again, these vary by square footable and by
2 specified dates.

3 They intend to educate and train their
4 building department staff to actively enforce
5 compliance with the existing standards, as well as
6 the new ones. And further understand that will
7 only be effective until June 30, 2009, at which
8 point they intend to resubmit revised standards
9 with the 2008 building energy efficiency
10 standards.

11 So we're requesting that the Commission
12 approve the local ordinance. And I'm happy to
13 answer any questions.

14 VICE CHAIRPERSON BOYD: Any questions?

15 COMMISSIONER ROSENFELD: A comment. I
16 think this is just wonderful, and of course, is a
17 pioneer and a pilot project for advancing Title 24
18 at the next cycle. And we are very indebted to
19 those few cities in California who do apply to go
20 out there ahead of the rest of the herd.

21 So, with pleasure, I move this item.

22 VICE CHAIRPERSON BOYD: Other questions?

23 COMMISSIONER DOUGLAS: Comment. I think
24 this, I'm very pleased to see this item. The
25 state loading order calls for us to focus on

1 efficiency first and green building standards are
2 a great way to do that.

3 Even the beginning thresholds in the
4 early years the San Francisco ordinance calls for
5 more and exceeds the standards that were
6 established in the state green building standards,
7 which in the state standards, which were adopted
8 by the Building Standards Commission, were
9 explicitly meant to be a floor, and explicitly
10 encourage local governments to step up and do
11 more.

12 So, I'm very pleased to see that San
13 Francisco has done that, and look forward to
14 seeing many more of these.

15 VICE CHAIRPERSON BOYD: Mr.
16 Commissioner.

17 COMMISSIONER BYRON: Thank you. You've
18 briefed me before on a couple of these, and we
19 didn't have opportunity prior to this particular
20 item. I have a question.

21 Maybe this assessment has been done and
22 I just missed it, but do we have an idea of how
23 much savings, or is there an estimate of the kind
24 of energy savings that may be involved, say, over
25 the next X number of years as a result of this?

1 Because this is a big deal. We haven't had a city
2 quite this large come in with one of these.

3 MS. EDEN: That's true. The green point
4 rated system generally requires 15 percent beyond
5 Title 24. And similarly, with the lead for new
6 construction, they start at 14 percent more
7 efficient than Title 24, with additional points
8 for incremental 2 percent beyond that. And they
9 also give points for generation onsite.

10 So it's new constructions, so it's from
11 here on out and --

12 COMMISSIONER BYRON: And remodeling, I
13 see, as well, right?

14 MS. EDEN: Yes, and major remodeling.
15 That's true.

16 COMMISSIONER BYRON: Well, I join my
17 Commissioners, as well. This is a big deal, I
18 think, and am glad to see the City of San
19 Francisco do this.

20 VICE CHAIRPERSON BOYD: I'll just add my
21 congratulations to the city and welcome them to
22 the list, and seek a second to the motion of
23 Commissioner Rosenfeld.

24 COMMISSIONER DOUGLAS: I'm pleased to
25 second this.

1 VICE CHAIRPERSON BOYD: Thank you.

2 Moved and seconded.

3 All in favor?

4 (Ayes.)

5 VICE CHAIRPERSON BOYD: Moved

6 unanimously. Thank you, Ms. Eden.

7 Item number 8, Sacramento Municipal
8 Utility District, possible approval of contract
9 500-08-009 for \$1,586,290 with SMUD for the first
10 phase of research to explore the installation of a
11 microgrid smart grid at SMUD corporate
12 headquarters. Good morning.

13 MR. GRAVELY: Good morning,
14 Commissioners. I'm Mike Gravely from the R&D
15 division of the Commission here. And I'm here to
16 request your approval for this contract with
17 Sacramento Municipal Utility District.

18 This particular research effort is a
19 follow-on effort to a project that was done with
20 American Electric Power and Lawrence Berkeley Lab
21 where we developed new grid interconnect
22 technology, fast-switch technology, solid-state
23 technology to replace mechanical technology.

24 The demonstration at SMUD will allow us
25 to connect this system on a grid, and a real-world

1 environment to switch in and switch out
2 renewables, storage and combined heat and power.
3 And the purpose of this switch is to allow this
4 transfer without causing any disruptions on the
5 grid. So it's a follow-on demonstration from a
6 project we did in a laboratory environment, it's a
7 field environment, even though it will be there
8 actually right as you go down highway 50 to see
9 that.

10 And so it is important for us to
11 validate these technologies as they go through
12 their commercial phase.

13 I would like to point out that in
14 addition to the PIER funding, SMUD is providing
15 just under \$1.4 million in cofunding for this
16 project.

17 And also the request today is for a two-
18 phase effort. We will come back to the Commission
19 for approval once the initial design and the
20 sequence is completed, but the request for funding
21 is for the full project. Both phases are in this
22 money that we're asking for today.

23 I'll be glad to answer any questions I
24 can, going forward.

25 VICE CHAIRPERSON BOYD: Questions?

1 COMMISSIONER BYRON: Comment.

2 VICE CHAIRPERSON BOYD: comments?

3 COMMISSIONER ROSENFELD: It sounds
4 great. I move it.

5 COMMISSIONER BYRON: And I --

6 VICE CHAIRPERSON BOYD: Comment,
7 Commissioner Byron?

8 COMMISSIONER BYRON: And I will second
9 it. And I think this is another great example of
10 well-designed research, highly leveraged funding.
11 I'm very pleased to see this project and glad to
12 support it.

13 VICE CHAIRPERSON BOYD: I'd like to add
14 my sentiments to the same. I think Commissioner
15 Byron and I, in particular, are anxious for
16 anything that continues to knock down barriers to
17 distributed generation, cogeneration, what-have-
18 you.

19 So there's been a motion and a second.

20 All in favor?

21 (Ayes.)

22 MR. GRAVELY: Thank you.

23 VICE CHAIRPERSON BOYD: Carries
24 unanimously. Thank you, Mr. Gravely.

25 Item number 9, California Department of

1 Fish and Game. Possible approval of an
2 interagency agreement number 500-08-010 for
3 \$2,997,955 with the Department of Fish and Game to
4 demonstrate and validate an environmental analysis
5 tool for renewable energy siting. Good morning.

6 MS. SPIEGEL: Good morning. I'm Linda
7 Spiegel; I'm with the research and development
8 division.

9 The project with Fish and Game is to
10 validate a siting decision support tool developed
11 from an earlier contract with Southern California
12 Edison and a subcontractor called FACET. The tool
13 is called PACT, and it's an application similar to
14 say an Excel, for example, that type of
15 application that allows utility planners and
16 regulators to input data used to conduct an
17 environmental analysis to evaluate the impacts of
18 alternative sites, such as alternative sites for,
19 say, transmission line routes or generation
20 facilities.

21 The environmental analysis is equivalent
22 to CEQA, so the data includes inputs, for example,
23 biology, cultural resources, visual, engineering
24 and so forth.

25 The environmental analysis is displayed

1 graphically in a manner that visually illustrates
2 the CEQA evaluation and allows the user to see and
3 compare the relative impacts of the alternative
4 sites or lines.

5 For example, it has bar graphs that show
6 all the cumulative impacts of all the technical
7 areas I just mentioned for each site. Or it can
8 show you the environmental impacts of one
9 technical area, such as biological resources.

10 It'll also drill down and show you the criteria
11 used for biological resources such as wetlands and
12 endangered species for each line. So it's a very
13 visual graphic display and an educational tool, as
14 well.

15 The objective of the tool is to, again,
16 not just evaluate, but clearly communicate the
17 evaluation to a variety of stakeholders, including
18 the technical team, decisionmakers and members of
19 the public who may be interested. That's why it's
20 called a decision support tool.

21 The PACT has been alpha tested using
22 hypothetical transmission line route test cases,
23 and using technical teams to input data and
24 validate outputs. But it has not been used yet in
25 a real-world case.

1 California Department of Fish and Game
2 is currently conducting a large-scale conservation
3 plan in the California desert to facilitate siting
4 of new renewable resources. The idea of this plan
5 is to look at where renewable developments could
6 be done, and where conservation areas should be
7 done.

8 So, we feel that this is a perfect
9 opportunity to test and validate the tool.
10 Ultimately I will also be coming to you with
11 another contract for FACET, who is the engineers
12 of the tool. Because they will be helping -- they
13 will be assisting Fish and Game and CEC in, of
14 course, validating this.

15 So, with that I'll answer any questions.

16 VICE CHAIRPERSON BOYD: Any questions?
17 We have one witness, so you can hold back your
18 motion. But, any questions of staff?

19 COMMISSIONER DOUGLAS: i have a comment.

20 VICE CHAIRPERSON BOYD: Or comment,
21 question.

22 COMMISSIONER DOUGLAS: I'd like to start
23 by thanking Linda and Martha Krebs and others in
24 the PIER program who helped work on this. I think
25 this is a tremendously important project. It's a

1 great opportunity to test the PACT tool which has
2 the potential to greatly improve our communication
3 with the public on these large-scale siting and
4 planning efforts.

5 And secondly, the particular use to
6 which it's going to be put keys in very closely
7 with Energy Commission priorities and
8 Administration priorities which are to definitely
9 facilitate the development of renewable energy in
10 the desert. And also to do it as part of a more
11 comprehensive review and planning effort that
12 allows us to achieve our conservation goals and
13 our renewable energy goals.

14 So, I'm very pleased to see this move
15 forward, and would like to thank you for your work
16 on it.

17 VICE CHAIRPERSON BOYD: Thank you. Any
18 other comments or questions?

19 COMMISSIONER BYRON: I will reserve my
20 comment until after we hear from the additional
21 speaker.

22 VICE CHAIRPERSON BOYD: Okay. I have
23 one request to speak here, Mr. Scott Galati.

24 MR. GALATI: Commissioners, thank you
25 very much. We're in favor, on behalf of my firm

1 we're in favor of this kind of approach. Would
2 urge you to engage in an interdisciplinary
3 approach to this. Also to let renewable energy
4 developers participate to the extent possible.

5 Let me give you a reason why.

6 Oftentimes renewable energy developers have their
7 own tools which they're using to try to select
8 sites that are likely to be successful in the
9 permitting process.

10 As you have heard me, I'll go ahead and
11 say it, harp many many times, probably with a much
12 more whiny voice than now, we need to get some
13 guidance and direction now. We have people trying
14 to develop renewable energy sites at this very
15 moment, trying to make good decisions. This is a
16 really good step in the right direction.

17 Please include the renewable energy
18 developers in this. We can learn in parallel. We
19 don't have to wait for this to be completed for us
20 then to respond.

21 So to the extent that you can encourage
22 this kind of open dialogue, we really appreciate
23 it; and we think it will be helpful.

24 But we are very much in favor of this
25 kind of approach.

1 VICE CHAIRPERSON BOYD: Well, thank you
2 for your support. And I think your suggestion is
3 an excellent suggestion. And I'm sure Ms.
4 Spiegel, in working with Fish and Game and our
5 siting folks, will take that into account.

6 I think it's an excellent idea to have
7 multidisciplined cross-sector groups of people
8 working on complex issues like this. And I'd also
9 agree, you know, I don't think it's our intent to
10 wait till this project is done to do any siting.
11 So we have to learn by doing. Thank you.

12 COMMISSIONER ROSENFELD: I move item 9.

13 VICE CHAIRPERSON BOYD: Thank you,
14 Scott.

15 All right, no further public testimony.
16 There's a motion for item 9.

17 COMMISSIONER DOUGLAS: Just a comment.

18 VICE CHAIRPERSON BOYD: Ah, there's a
19 comment --

20 COMMISSIONER BYRON: Ms. Spiegel, would
21 you like to respond to that comment from Mr.
22 Galati?

23 MS. SPIEGEL: Sure. The conservation
24 effort is, it's a stakeholder process, a
25 stakeholder consensus process, and it will involve

1 developers, it will involve the county, you know,
2 the local government. It will involve the
3 conservation groups. It will involve the
4 regulators and the technical Fish and Game Staff.
5 That is part of the conservation planning process.
6 And I think it's completely appropriate to have
7 the renewable developers involved all the way.

8 COMMISSIONER BYRON: Thank you very
9 much. I have the pleasure of chairing our
10 transmission research advisory committee in the
11 PIER program. And we have utility executive
12 involvement; we have renewable, sector of the
13 renewable industry, Department of Energy.

14 We've got some good representation in
15 there. And I've seen presentations on this
16 particular tool, software tool a number of times.
17 This is another great example of direct
18 applicability of PIER research that we're going to
19 be using. We were testing it now.

20 So I think we've got not only a good
21 tool, but it's also there's a good consensus
22 process that's being built around its use. And I
23 think it's going to be very effective as an
24 objective way of helping to do some siting there.

25 So I join my fellow Commissioners in

1 supporting this research and would be glad to
2 second it.

3 VICE CHAIRPERSON BOYD: Thank you,
4 Commissioner Byron. And thank you for your
5 question and your comments. It brought out what I
6 anticipated but neglected to ask the staff, that I
7 anticipated they were into the collaborative
8 approach. So I'm glad to hear Ms. Spiegel's
9 response.

10 There's been a motion and a second.

11 All in favor?

12 (Ayes.)

13 VICE CHAIRPERSON BOYD: Carries, four to
14 nothing. Thank you very much.

15 Item number 10, U.S. Department of
16 Energy, possible approval of a memorandum of
17 understanding number 500-08-011 with the U.S.
18 Department of Energy for collaboration on
19 electricity energy storage projects. Mr.
20 Kulkarni.

21 MR. KULKARNI: Good morning,
22 Commissioners. My name is Pramod Kulkarni. I'm
23 with the energy research development division.

24 And the staff is requesting approval of
25 a memorandum of understanding, MOU for short, with

1 the U.S. Department of Energy. This MOU is for
2 electricity energy storage for working
3 collaboratively and for in cooperation with DOE in
4 managing storage programs.

5 Under this MOU, DOE has helped us in the
6 past, and will continue to help through project
7 feasibility analysis, technology assessment,
8 provide guidance on technology availability; and
9 most importantly, monitoring of projects which the
10 Commission has funded for energy storage. That's
11 a third-party independent evaluation which is
12 quite important for us.

13 In return, the Energy Commission helps
14 DOE with their annual peer review of the old
15 program; it provides an access to the Energy
16 Commission-funded energy storage projects for
17 technology monitoring and testing. And, of
18 course, it provides California-specific
19 information, which they, in turn, use to
20 commercialize their own energy storage
21 technologies developed under DOE's own RD&D
22 programs. So it's a mutual benefit.

23 And we had a similar MOU in place since
24 2003, and it expired in 2008. And in those five
25 years the Commission has benefitted rather

1 handsomely from the assistance from DOE. To date,
2 there are something like \$1.2 million to our
3 technology assessment and monitoring the projects
4 which we have funded.

5 For example, right now we have 13
6 projects, energy storage projects. Out of that,
7 five or six of them are being monitored by DOE's
8 experts, all through national labs.

9 So the staff requests that this MOU be
10 approved by the Commission. And I would like to
11 answer any of the questions you might have in this
12 regards.

13 VICE CHAIRPERSON BOYD: Comments or
14 questions? Commissioner Byron.

15 COMMISSIONER BYRON: Mr. Kulkarni, in
16 the writeup it indicates the PIER program has
17 funded or committed close to \$10 million for its
18 electricity energy storage.

19 What kind of leverage do we have with
20 the Department of Energy in this MOU?

21 MR. KULKARNI: Okay. DOE does not
22 contribute directly to this projects, but they do
23 indirectly contribute. For example, every project
24 which we enter into contract with, we make a
25 requirement that DOE be allowed to do the

1 instrumentation for what the best plan for that
2 particular monitoring for a period of three years.

3 That's something we -- money doesn't
4 direct them to us, but goes to the project. And
5 that has benefitted a lot when we take a project
6 or utility or to Cal-ISO for implementation. This
7 third-party -- really benefits us. So that's the
8 kind of leverage we get.

9 Also it gets leverage, for example, is
10 that when we support a particular project
11 technology, there are eight or nine different
12 storage technologies. We possibly don't have
13 expertise over the area. But they do have much
14 broader set up assets in this project area. So
15 they do deploy either national labs or their own
16 experts in providing (inaudible). That's the kind
17 of leverage which we do get.

18 Sometimes it can be monetized, as I
19 said. \$1 million -- sometimes it's not monetized
20 as yet, but since we do get that benefit, there's
21 tremendously more than what we have enlisted
22 ourselves in.

23 COMMISSIONER BYRON: Well, I'm certainly
24 going to support this MOU. I don't think
25 everybody appreciates how important energy storage

1 is as a potential solution to integrating
2 renewables on the grid right now. We tend to want
3 to firm everything up with dispatchable resources
4 in the way of natural gas peaking units.

5 And so energy storage is one of those
6 holy grails that we'd certainly like to solve.
7 And it may or may not be a long way away, we know
8 that it's extremely expensive at this point.

9 And I congratulate you on your
10 initiative to leverage our funding and our efforts
11 with the Department of Energy. So I certainly
12 support this MOU.

13 MR. KULKARNI: I looked at it, I do co-
14 manage this with Mike Gravely, who is sitting
15 behind me, this entire energy storage program,
16 so --

17 COMMISSIONER BYRON: You don't need to
18 share with Mr. Gravely; he gets enough credit for
19 all the good work he does.

20 (Laughter.)

21 MR. KULKARNI: We know that, thanks.

22 VICE CHAIRPERSON BOYD: Pramod, I have
23 -- well, I share the same thoughts of Commissioner
24 Byron. And in furtherance of recognition of how
25 important electricity energy storage is to

1 renewables, and the fact we spend \$10 million, and
2 you mentioned we have 13 projects underway at the
3 present time, and the fact there's a large
4 audience here for a change, to learn with us.

5 Can you give me just a thumbnail sketch
6 of how promising you think this area is becoming?
7 When might we see light at the end of the tunnel?
8 Or do you see light at the end of the tunnel?

9 Because it's extremely critical to, you
10 know, the changes that we see we need in the
11 California electricity system, and from
12 renewables, of course.

13 MR. KULKARNI: As Commissioner Byron
14 said, it (inaudible) of the grid, electricity grid
15 from customers out at the meter to the generation
16 site to distribution and then transmission.

17 And so some of -- and there are multiple
18 technologies for multiple applications. Some of
19 them are already finding their way in the market
20 now. And what's more pleasing is there's the
21 private sector -- for example, in the area of
22 ancillary resources and providing basic control
23 for the grid.

24 Right now that's being done by natural
25 gas-fired turbines. Now there's a company that's

1 providing something using a low battery, or --
2 battery. And they're trying to establish a
3 protocol with ISO, start selling into the market
4 fairly soon.

5 So coming back to the question, some
6 applications are just around the corner, and some
7 will take awhile to build up. It's a function of
8 economics, it's a function of how comfortable
9 people are with the technology. But our sense is
10 that two or three applications which have
11 ancillary services which are now being entered
12 into in commercial phase, same with the people of
13 management. We have very sharp peak, and some of
14 the -- of some other technologies are available on
15 the customer side of the meter for managing that.

16 And lastly, at distribution level,
17 there's some east coast utilities which are
18 already deploying that at their own expense
19 without any DOE assistance. Americans, I think,
20 AEP, American Electric Power. They deployed three
21 batteries, each about 67 megawatts for four to
22 five hours, developing the assets.

23 So some of the technologies are coming
24 in the market on their own, and some are a little
25 bit away.

1 VICE CHAIRPERSON BOYD: Thank you. As
2 we try to explain the value of and the successes
3 of our Public Interest Energy Research program, I
4 think this is something that belongs on that list.
5 So, thank you very much.

6 Any other questions or comments?

7 COMMISSIONER BYRON: I'll move the item.

8 COMMISSIONER ROSENFELD: I'll second it.

9 VICE CHAIRPERSON BOYD: There's a motion
10 and a second.

11 All in favor?

12 (Ayes.)

13 MR. KULKARNI: Thank you.

14 VICE CHAIRPERSON BOYD: Thank you,
15 Approved unanimously.

16 Agenda item number 11, U.S. Department
17 of Energy Pacific Northwest National Laboratory.
18 Possible approval of contract 500-08-013 with --

19 COMMISSIONER BYRON: Commissioner, are
20 you holding that item, or is --

21 VICE CHAIRPERSON BOYD: Oh, --

22 COMMISSIONER ROSENFELD: You were going
23 to skip to 14.

24 VICE CHAIRPERSON BOYD: I apologize; I
25 didn't read my own notes here. Thank you. I've

1 got so many notes on this page I can't read them
2 anymore.

3 Okay, item number 14, Altostratus, Inc.
4 Possible approval of contract 500-08-007 with
5 Altostratus, Inc., for \$200,000 to conduct
6 modeling and analysis to predict the air quality
7 and electricity impacts of potential urban heat
8 island mitigation strategies. And I'm glad the
9 agenda finally got heat correct.

10 MS. MUELLER: Good morning, I'm Marla
11 Mueller with the PIER environmental program.

12 The purpose of the project before you
13 today with Altostratus for \$200,000 is to expand
14 the previous heat island research funded by the
15 PIER program.

16 The urban heat island mitigation can
17 lower urban air temperatures, reducing peak
18 electricity demand and lowering air pollution
19 levels. However, no method currently exists for
20 assessing emission equivalents for heat island
21 strategies that is quantifiable and enforceable
22 for use in state implementation plans.

23 In addition, the earlier PIER-funded
24 heat island research indicated that heat island
25 strategies could be more valuable during average

1 summer conditions.

2 Modeling a series of realistic
3 strategies over a range of summertime conditions
4 is needed to predict benefits in a manner for use
5 in state implementation plans.

6 Also the broad time scale is needed, as
7 air regulatory agencies move toward seasonal
8 evaluations of strategies to meet the eight-hour
9 ozone standard.

10 This project would conduct modeling and
11 analysis of the air quality and electricity
12 impacts of potential heat island mitigation
13 strategies for multiple summer episodes and
14 conditions to better predict overall impacts from
15 introducing these mitigation strategies.

16 The multi-episodic simulation results
17 would then be used to provide a detailed analysis
18 of the conversion of simulated ozone changes into
19 emissions equivalents.

20 The last task of this project would
21 address the issue of large-scale implementation of
22 urban solar systems. It is not known how large-
23 scale solar systems in urban areas may impact the
24 heat island effect. This study will perform an
25 initial assessment of the various interaction

1 pathways for determining if there are impacts.

2 Thank you, and I'd be happy to answer
3 your questions.

4 VICE CHAIRPERSON BOYD: Comments,
5 questions?

6 COMMISSIONER ROSENFELD: I just want to
7 say, having followed heat islands for I guess 20
8 years, it's been well known forever that you can
9 cool -- let's take the Los Angeles Basin -- you
10 can cool it something like 7 degrees Fahrenheit if
11 you go in for a program of white roofs and cool
12 pavements and planting of shade trees.

13 This reduces smog directly, because smog
14 is terribly temperature-dependent. But it's been
15 difficult to do the modeling. The South Coast Air
16 Quality Management District thinks in terms of
17 reduction of feedstocks for smog, NOx and a lot of
18 organics.

19 And they have very good models for how
20 much ozone is reduced if you reduce -- if you
21 offset a ton of NOx, for example. When it comes
22 to the effect by reducing the temperature, it's
23 more sophisticated and it requires modeling. And
24 it requires modeling, as Marla has pointed out,
25 for the whole season because it's a health effect.

1 And it's been very difficult to convince
2 them that this is the way to go and we need better
3 modeling, and I think this is the answer to a long
4 sort of prayer. So I think it's a wonderful
5 project. And I move it.

6 COMMISSIONER DOUGLAS: Second.

7 VICE CHAIRPERSON BOYD: There's a motion
8 and a second.

9 All in favor?

10 (Ayes.)

11 MS. MUELLER: Thank you.

12 VICE CHAIRPERSON BOYD: Approved
13 unanimously. Thank you, Marla.

14 All right, item number 16, Robert Bosch
15 Corporation. Possible approval of memorandum of
16 understanding 600-08-002 with Robert Bosch
17 Corporation for the no-cost loan of light-duty,
18 clean-diesel vehicles to the Energy Commission to
19 assess new diesel technology. Mr. Yowell.

20 MR. YOWELL: Good morning,
21 Commissioners. My name's Gary Yowell. I'm with
22 the emerging fuels office.

23 We are seeking concurrence or approval
24 for the MOU with Robert Bosch for the loan of
25 light-duty diesel vehicles. These vehicles will

1 be all equipped with the latest state of the art
2 emission controls; all have diesel -- filters, be
3 ultra clean, actually as clean as gasoline on
4 particulate matter, believe it or not. And have
5 about 35, 45 percent fuel economy than gasoline
6 counterparts. And they'll be available for staff
7 and Commissioners' use.

8 VICE CHAIRPERSON BOYD: Is that a bribe?

9 No, --

10 MR. YOWELL: Yeah, --

11 (Laughter.)

12 VICE CHAIRPERSON BOYD: Is that it, Mr.

13 Yowell?

14 MR. YOWELL: That'll be all.

15 VICE CHAIRPERSON BOYD: Comments,

16 questions from the Commissioners?

17 COMMISSIONER ROSENFELD: Sounds great; I

18 move it.

19 COMMISSIONER BYRON: Second.

20 VICE CHAIRPERSON BOYD: There's a motion

21 and second.

22 All in favor?

23 (Ayes.)

24 VICE CHAIRPERSON BOYD: Thank you,

25 approved unanimously.

1 All right, agenda item number 17,
2 existing renewable facilities program guidebook.
3 Possible adoption of the Committee draft, Existing
4 Renewable Facilities Program Guidebook. Mr. Orta.

5 MR. ORTA: Good morning, Commissioners.
6 My name is Jason Orta and I am the technical lead
7 for the existing renewable facilities program.

8 I am submitting for approval today the
9 existing renewable facilities program guidebook.
10 The existing renewable facilities program provides
11 funding in the form of production incentives to
12 biomass and solar thermal electric facilities for
13 each kilowatt hour of eligible electricity
14 generated.

15 In 2007 this program paid \$18.1 million
16 for over 3300 gigawatt hours of biomass and solar
17 thermal electric generation by these facilities.

18 In 2007 this program was modified in
19 response to Senate Bill 1250. SB-1250 required
20 that the facilities submit additional financial
21 information in order to qualify for funding.
22 However, facilities in the program informed staff
23 of some of the difficulties in participating in
24 the program.

25 So staff recommended that the guidebook

1 be changed to allow for a more user-friendly
2 program that still comports with statutory
3 requirements. Staff has worked with
4 representatives from these facilities on ideas to
5 efficiently utilize program funds so that the
6 state could derive the benefits that these
7 facilities provide by remaining online.

8 Staff had received some very helpful and
9 thoughtful input from the biomass and solar
10 thermal facilities in two public workshops. The
11 Renewables Committee held a workshop in December
12 2007 to seek public input on staff's proposed
13 changes to the guidebook, and to provide
14 stakeholders with an opportunity to present their
15 own proposals for implementing this program.

16 Another workshop was held, a staff
17 workshop was held on June 12, 2008, which
18 discussed some additional proposed changes.

19 Staff subsequently revised the guidebook
20 to incorporate public comment as directed by the
21 Renewables Committee. And these revisions were
22 prepared based after a careful review of the
23 comments submitted from facilities.

24 The proposed guidebook revisions
25 simplified implementation of the program by basing

1 production incentives on the contract terms,
2 energy price and technology of each facility.

3 Additionally the process is made more
4 transparent by providing target prices and
5 production incentive caps for eligible facilities
6 in the guidebook. Facilities eligible for payment
7 are placed in one of five tiers. Those tiers are
8 based on the facility's resource type, average
9 annual energy price and utility power purchase
10 contract under which the generation is sold.

11 Additionally, this guidebook
12 incorporates modifications to the program from
13 Senate Bill 1036 of 2007. This statute changed
14 the program's allocation of funds from the
15 renewable resources trust fund from 10 to 20
16 percent of the funds collected for the renewable
17 energy program effective January 2008.

18 With these revised changes that aimed to
19 simplify the program and make it more transparent
20 I recommend approval for this guidebook.

21 Additionally I am here to respond to any other
22 questions and comments that may be made on the
23 guidebook.

24 VICE CHAIRPERSON BOYD: Thank you, Mr.
25 Orta. I have a request for three speakers, but

1 first I'd like to ask the Commissioners if they
2 have any questions of the staff.

3 Okay. First witness, Manuel Alvarez,
4 Southern California Edison.

5 MR. ALVAREZ: Good morning,
6 Commissioners. I sent you a letter yesterday that
7 I think each of you received, and the Executive
8 Director, and the staff. It's actually just a
9 couple of points in summarizing that letter I'd
10 like to bring up. And a couple of questions that
11 we're raising.

12 We don't have any problem with the
13 Energy Commission creating its tier process. We
14 think that's actually legitimate under the statute
15 of that requirement. What we're raising a
16 question about is the tier pricing that is set.
17 And I guess what we were hoping for, that there
18 would be some uniformity in that particular
19 pricing scheme. But we see differences there and
20 we just don't understand why those pricings were
21 determined. So we're kind of curious about that.

22 And as we look at the legislation, the
23 cutting across the differences was with respect to
24 technology, the biomass and the -- not across
25 utility sectors, or the utility service areas. So

1 that's one of our questions.

2 The other issue we brought to your
3 attention in the letter was a place where we were
4 raising an issue on the eligibility of a biomass
5 project that uses some fossil fuels to help the
6 facility, itself.

7 We were looking for a home for that
8 particular issue, and we thought the guidebook
9 would be a place for that. But we understand that
10 may or may not be appropriate, so I'll let the
11 staff address that issue.

12 But it's an item that we think that the
13 eligibility of a biomass program for the RPS
14 requirement should be eligible if it uses up to
15 its 25 percent fossil fuel provisions that are
16 allowed under PURPA.

17 Thank you.

18 VICE CHAIRPERSON BOYD: Thank you.

19 Staff, would you like to respond?

20 MR. ORTA: Absolutely. To respond to
21 Southern California Edison's first point, the
22 target prices and production incentive caps listed
23 in the guidebook were determined by information
24 that was submitted by each facility to the staff
25 last year in doing program applications for last

1 year. And also in discussions of putting together
2 the guidebook we used a lot of that individual
3 information, which includes fuel cost information
4 and proposed capital improvements by each
5 facility.

6 And we also found that since a lot of
7 these facilities receive a very similar type of
8 contract, we felt that based on that information
9 submitted that it was appropriate to group them
10 into different tiers.

11 The law requires us annually to collect
12 various types of financial information, previous
13 federal and state tax credits, along with an idea
14 of how much they need in production incentives to
15 continue operating or to stay online.

16 With this guidebook we would still
17 collect that information every year and review it.
18 So the information is still being collected. And
19 what we have in there is based on information that
20 was submitted to us, not just in funding
21 applications, but also in the public workshops
22 that I mentioned.

23 And on the second point, the Energy
24 Commission, as you know, is tasked with the
25 responsibility of verifying procurement for the

1 renewable portfolio standard. And what Manuel is
2 referring to is that there is, right now, a
3 question on some of the eligibility of the
4 generation of one of the power plants that
5 participates in this program.

6 And so our recommendation there is that
7 the guidebook not -- that this is not the correct
8 guidebook to discuss that issue, because the
9 renewable portfolio standard has its own
10 guidebook. And it also references this type of
11 issue, if a participating facility uses, you know,
12 their fossil fuel use and how that's counted
13 towards eligible generation.

14 MR. HERRERA: Yeah, good morning,
15 Commissioners. Gabe Herrera with the Energy
16 Commission's legal office. If I can just chime in
17 and add a couple points to what Mr. Orta has just
18 said. Hopefully you heard that, the mike wasn't
19 on.

20 On the first point the law does require
21 that the Commission gather a number of data from
22 applicants from this program so that it can
23 evaluate a facility's specific need for funding.

24 The whole idea is to make these
25 facilities self-sufficient by the end of 2011.

1 And towards that end what the Energy Commission
2 does is gather this information, evaluates need.

3 What's been presented as guideline
4 changes are a series of tiers that established
5 targets and incentive caps based upon staff's
6 evaluation of what these facilities need.

7 It just so happens that based on
8 information that has been submitted by these
9 facilities, the facilities in PG&E's service
10 territory, for example, may need more funding to
11 stay operational than those in Edison's. Hence
12 the disparity between what a facility in Edison's
13 service territory might receive relative to what a
14 facility in PG&E's service territory may receive.

15 On Mr. Alvarez' second point, the
16 Commission has authority, with respect to the RPS,
17 to establish the de minimis level of nonrenewable
18 fuels that a renewable facility may use, the
19 amount of fossil fuels they may use, and still be
20 eligible. And the Commission has done that, and
21 has identified those de minimis levels in the RPS
22 eligibility guidebook.

23 The levels are 2 percent for a new
24 facility; 25 percent for an existing QF facility,
25 the type of facilities Mr. Alvarez is speaking of.

1 And with respect to the existing account there's
2 an additional limitation which says that if you
3 want to qualify for funding under this program,
4 you have to limit your fossil fuel to 5 percent.

5 So, while this facility may still be
6 able to use 25 percent to qualify for the RPS, it
7 wants funding for this program it's got to limit
8 its fossil fuel to 5 percent. That 5 percent
9 number was determined based on input from the
10 California Biomass Energy Alliance, CBEA, back in
11 2007. They specifically indicated that these
12 existing facilities could operate with less than 5
13 percent fossil fuel.

14 So, that's where the number came from.

15 VICE CHAIRPERSON BOYD: Thank you.

16 MR. ALVAREZ: Just one final point that
17 I'd just like to bring up. I think we all, you
18 know, understand the complexities of the evolving
19 renewable program. As we look forward to either a
20 33 percent standard, or possibly a 50 percent
21 standard, depending on what happens this November,
22 I think the Commission should take note of the
23 complexities that are involved in that program and
24 perhaps think of addressing an overall issue of
25 renewable -- I hate to use the word reform, but at

1 least kind of a new start as we kind of account
2 for renewables and the various programs in which
3 they evolved over the last six or seven years.
4 And come to some uniformity at some point.

5 Thank you.

6 VICE CHAIRPERSON BOYD: I won't
7 reference creative bookkeeping. They've done too
8 much of that in Sacramento --

9 MR. ALVAREZ: I think there's been too
10 much of that in the country.

11 (Laughter.)

12 VICE CHAIRPERSON BOYD: Thank you,
13 Manuel.

14 COMMISSIONER BYRON: Before you leave,
15 Mr. Alvarez, if I may. I didn't get the benefit
16 of seeing your letter. It came in -- I waited and
17 waited --

18 MR. ALVAREZ: Late yesterday.

19 COMMISSIONER BYRON: -- and waited and,
20 of course, I never saw the letter. I apologize.
21 But I'm glad that you did come forward and I just
22 want to make sure I understand.

23 When we get these eleventh hour-kind of
24 inputs, it's difficult to digest them, Mr.
25 Alvarez. Did you get an opportunity to

1 participate in the earlier workshops?

2 MR. ALVAREZ: We knew about the workshop
3 but we actually didn't, so actually I apologize
4 for that. It wasn't until the eleventh hour that
5 we focused on that particular issue, and then
6 wanted to at least raise it.

7 We understand, and I'll accept that
8 responsibility for not coming forward during the
9 June time period.

10 COMMISSIONER BYRON: All right. Well,
11 of course, and we're always interested in what our
12 investor-owned utilities get spun up about, and
13 clearly this caught your interest for some reason
14 at the end. And I want to make sure that I
15 understand it.

16 Is it primarily the differential between
17 the service territories that concerns your
18 company?

19 MR. ALVAREZ: Yes, primarily the
20 differential by the service areas in terms of that
21 price. We're only talking three-tenths of a cent,
22 so it's not a great issue. But there is this
23 drive for uniformity in a lot of the programs, so
24 we want to kind of bring those issues to your
25 attention whenever we can, and whenever they

1 surface.

2 And if we missed this one early, I
3 apologize for that, but you do have the authority
4 under the Act for that discretionary decision.
5 And it was mostly discussion with the generators,
6 themselves.

7 COMMISSIONER ROSENFELD: But I gather
8 for three tenths of a cent you're not going to
9 slit your throat?

10 MR. ALVAREZ: No.

11 (Laughter.)

12 COMMISSIONER ROSENFELD: Thanks.

13 VICE CHAIRPERSON BOYD: Thank you,
14 Manuel. Always in recognition of the long-
15 standing love affair with the QFs of California, I
16 appreciate --

17 MR. ORTA: Commissioner, I'd like to, if
18 I may, make one more point. It'll, you know,
19 provide more information on the comments.

20 VICE CHAIRPERSON BOYD: Please do.

21 MR. ORTA: Most of the biomass
22 facilities that participate in the program sell to
23 PG&E. There's one biomass facility that sells to
24 Southern California Edison.

25 VICE CHAIRPERSON BOYD: Thank you.

1 COMMISSIONER DOUGLAS: Commissioner, I
2 just have a brief comment. The Renewables
3 Committee has reviewed this closely, and the staff
4 has done a very thorough facility-level analysis
5 that forms the basis for the division into tiers
6 and carrying out the intent of the legislation.

7 Staff has also done two public
8 workshops, one of which I participated in. And we
9 made every effort to air this issue very
10 thoroughly.

11 So, I support this item, and I'd like to
12 move it.

13 COMMISSIONER BYRON: I'll second.

14 VICE CHAIRPERSON BOYD: Well, if you'll
15 table those motions and seconds, there's still two
16 more speakers --

17 COMMISSIONER DOUGLAS: Oh, absolutely.

18 VICE CHAIRPERSON BOYD: -- to hear from.
19 Diane Fellman, FPL Energy.

20 MS. FELLMAN: Good morning. I'm Diane
21 Fellman; I'm Director of West Region Regulatory
22 Affairs for FPL Energy.

23 We are very appreciative of the staff's
24 work on this. We wanted to support the proposed
25 changes. And I did want to mention that the staff

1 has worked really hard to balance the every-
2 dwindling funds for the existing renewables. And
3 as you just mentioned, Commissioner Boyd, these
4 are mostly the -- these are all QFs, I think, at
5 this point. And some might have become EWGs, but
6 these are your vintage, your historical
7 renewables.

8 And this program is designed to support
9 the continued operation of them. But there's also
10 an element that has been recognized in this latest
11 version, and it applies to our company.

12 Our company is the half-owner, because
13 of the QF restrictions, but complete operator of
14 the Solar Energy Generating Stations, the SEGS,
15 the 310 megawatts of solar thermal in the Mojave
16 Desert. There's two other SEGS facilities that
17 are as part of this program, as well.

18 And what we have done is we have put in
19 \$70 million in investment to completely retune
20 SEGS 3 through 9, which will mean that the output
21 to the RPS will increase -- will not degrade,
22 because these are getting on 20-, 25-year-old
23 facilities. And our output was degrading, which
24 we will find in -- I can't speak for the biomass
25 facilities, but any plant, after time, needs to

1 have capital investment.

2 But we also increased our output by 25
3 percent. So that's the equivalent of 90
4 megawatts, about 90 megawatts of solar coming into
5 the RPS under our existing contract with Edison.

6 So I wanted to bring that to the
7 Commission's attention, because we end up in --
8 what tier are we in, 4?

9 MR. ORTA: Yes, you're --

10 MS. FELLMAN: -- Edison?

11 MR. ORTA: Yeah, tier 4.

12 MS. FELLMAN: But the orphan, I don't
13 know, is Mr. -- is Eric here?

14 MR. ORTA: Eric Wells?

15 MS. FELLMAN: Yes.

16 MR. ORTA: I have not seen him.

17 MS. FELLMAN: But he's an orphan
18 contract, so he's in tier 1. And what the staff
19 really tried to do with these tiers is adjust the
20 production incentive. And, again, we only get
21 paid this when we actually deliver the energy.
22 This isn't a tax credit; this isn't something that
23 will incent us to continue to deliver. It does
24 incent us to continue, but it's paid upon delivery
25 to the system. And we have to show our invoices

1 in order to get the money.

2 So it's developed based on the
3 individual pricing. And because there were so-
4 called orphan QF contracts, some of you may
5 remember those, because there were fixed prices in
6 Edison and PG&E, the staff looked at that and
7 actually created tiers to address each type of
8 contract that's out there.

9 And it seems complicated, but it
10 actually simplified how we were getting paid.
11 Because otherwise there was one price for
12 everybody, and that meant that it was sort of a
13 food-fight about, you know, who submitted their
14 invoices first.

15 So this was really a step forward in
16 terms of the program. And I also wanted to
17 underscore that the existing renewable fleet,
18 which is about, depending on who you talk to, 6000
19 to 7000 megawatts installed in California, is an
20 essential part of the RPS. And with some of the
21 reform legislation that's been proposed, some of
22 the programs, there's a focus on new renewables.
23 But we need to remember that this is the backbone
24 of our system in terms of moving to climate
25 change. And we don't want to lose these

1 projects. And this program is one piece of
2 that preservation.

3 So, I'm happy to answer any questions.

4 VICE CHAIRPERSON BOYD: Thank you. And
5 I'd like to commend you folks for repowering. I'd
6 like to see a lot more repowering of these vintage
7 facilities, as you call them.

8 Any comments or questions from up here?
9 Seeing none, thank you very much.

10 MS. FELLMAN: Thank you.

11 VICE CHAIRPERSON BOYD: Jason, any
12 comments?

13 MR. ORTA: No, sir.

14 VICE CHAIRPERSON BOYD: Okay. Last
15 speaker, Julee Malinowski-Ball, California Biomass
16 Energy Alliance.

17 MS. MALINOWSKI-BALL: Commissioners,
18 Staff, Julee Malinowski-Ball representing the
19 California Biomass Energy Alliance. I'm here to
20 support the guidebook today.

21 I want to say thank you, thank you for
22 listening to our comments. You were very
23 responsive. The guidebook, for us, wasn't working
24 for us last year. You heard what we had to say.
25 You made the appropriate changes.

1 The law doesn't state that -- the
2 guidebook is consistent with the law -- it doesn't
3 state, though, it has to be fair, but you have
4 created a guidebook that is fair, across the
5 territories, across the technologies, across the
6 regions to accommodate each individual facility's
7 needs in a manner that we support.

8 Thank you very much. I want to thank
9 Ms. Fellman for her comments reminding everybody,
10 as I have the chance to remind everybody when I
11 can, that the biomass and solar thermal facilities
12 are the backbone, are the RPS base. You can't
13 move forward to 33 percent until you make sure --
14 not until, but you have to make sure that the base
15 is stable, and then you can grow from there.

16 This bill -- this guidebook, though, and
17 these funds are really just sticking your finger
18 in a dike for this industry. The next step is
19 actually looking at the contracts again, looking
20 at the fixed prices, looking to see if the 1
21 percent inflationary adjustment is appropriate in
22 these market conditions. And we think that that's
23 where we need to go next.

24 And when this program is over with we
25 get to exactly where we need to be, and that is a

1 self-sustaining industry.

2 Thank you very much.

3 VICE CHAIRPERSON BOYD: Thank you. Any
4 comments, questions? Julee -- Gabe, you have a --

5 MR. HERRERA: Just before you vote on
6 this I need to make some comments for the
7 record --

8 VICE CHAIRPERSON BOYD: All right.

9 MR. HERRERA: -- concerning the
10 California --

11 VICE CHAIRPERSON BOYD: I need to ask
12 Julee a question first.

13 MR. HERRERA: Okay.

14 VICE CHAIRPERSON BOYD: Your views of
15 the potential for repowering some of your clients'
16 facilities?

17 MS. MALINOWSKI-BALL: You know, it
18 actually is possible with the infusion of cash.
19 And the only way I think that's going to happen is
20 under different contract structures. Or, for
21 example, if a facility is sold to a larger
22 corporation that can put that kind of money in
23 that.

24 I say that the existing owners and the
25 existing contracts don't allow for any major

1 retooling, such as what's going on over at the
2 SEGS. I can say that with some level of
3 confidence.

4 VICE CHAIRPERSON BOYD: Okay, thank you.
5 Thank you very much.

6 That was the last witness, so back to
7 the motion --

8 COMMISSIONER DOUGLAS: All right, I'll
9 move approval of this item.

10 COMMISSIONER BYRON: Second.

11 VICE CHAIRPERSON BOYD: There's a motion
12 and a second.

13 All in favor?

14 MR. HERRERA: Commissioners, --

15 (Parties speaking simultaneously.)

16 VICE CHAIRPERSON BOYD: Gabe, I went --

17 MR. HERRERA: -- I still need to make
18 some comments on the record.

19 VICE CHAIRPERSON BOYD: -- forgot you,
20 again, so.

21 COMMISSIONER DOUGLAS: One more time.

22 MR. HERRERA: Can I go now?

23 VICE CHAIRPERSON BOYD: Okay.

24 MR. HERRERA: Thanks.

25 VICE CHAIRPERSON BOYD: I'm trying to

1 keep Commissioner Douglas from ever making her
2 motion.

3 (Laughter.)

4 MR. HERRERA: When the Commission
5 proposes guideline changes like these that have
6 been proposed for the existing renewable facility
7 program, the legal office takes a look at the
8 guidelines and evaluates whether the adoption of
9 those guideline revisions constitute a project
10 under the California Environmental Quality Act.
11 And if so, they're subject to environmental review
12 under CECEQA.

13 In this case these guideline revisions,
14 the Commission's adoption is not a project under
15 CEQA because the guideline revisions fall within
16 the list of excluded activities specifically in
17 Title 14, California Code of Regulations, section
18 15378, subdivision (b)(2) and (b)(4), in that the
19 activities relate to general policy and procedure
20 making.

21 In addition, the adoption of the
22 guideline revisions is exempt from CEQA under what
23 is commonly referred to as the commonsense
24 exception, again pursuant to Title 14, California
25 Code of Regulations, section 15061(b)(3). And

1 that section indicates that CEQA only applies to
2 projects that have a significant effect on the
3 environment, which is defined in the Public
4 Resources Code section 21068, as being a
5 substantial adverse change in the environment.

6 So, in this case, the good news is the
7 adoption doesn't constitute a project.

8 VICE CHAIRPERSON BOYD: Thank you, Mr.
9 Herrera. You've trained me well over the years,
10 but I still forget you there for a moment.

11 Seeing no other activity in the
12 audience, Commissioner Douglas.

13 COMMISSIONER DOUGLAS: I will try again.
14 I'll move approval of this item.

15 COMMISSIONER BYRON: Second.

16 VICE CHAIRPERSON BOYD: There's a motion
17 and a second.

18 All in favor?

19 (Ayes.)

20 VICE CHAIRPERSON BOYD: The motion
21 carries, four to nothing. Item approved. Thank
22 you, all.

23 All right. We will now move to agenda
24 item number 5, the Humboldt Bay Repower project.
25 Possible adoption of the August 15, 2008,

1 Presiding Member's Proposed Decision and errata
2 for the Humboldt Bay Repower project. Ladies and
3 gentlemen.

4 MR. FAY: Thank you, Commissioner. The
5 Committee responsible for considering the Humboldt
6 Bay Repowering project's application for
7 certification is offering for Commission
8 consideration the Presiding Member's Proposed
9 Decision. And that was issued August 18th of this
10 year.

11 It's based exclusively on the record
12 established during the certification proceeding.
13 And that record is summarized in the PMPD.

14 The Committee also prepared and served
15 the errata, which you referred to, and that was
16 based on comments filed by parties in this case.

17 The PMPD contains the Commission's
18 rationale in determining that the Humboldt Bay
19 Repowering project, or Humboldt Bay project,
20 complies with all applicable LORS and will impose
21 no significant impacts on the environment. And
22 subject to the conditions of certification
23 contained in the PMPD, should be licensed for
24 construction and operation.

25 The project, just in brief summary, will

1 be located on 5.4 acres within a 143-acre parcel
2 that is now occupied by the existing PG&E Humboldt
3 Bay Power Plant. And it's located just south of
4 the City of Eureka.

5 The proposed project is a load-following
6 plant made up of 10 natural gas-fired Wartsila
7 16.3 megawatt reciprocating engine generator sets.
8 As in the kind of engine that would run a marine
9 ship, or very similar to that. With a combined
10 nominal generating capacity of 163 megawatts.

11 However, it is a dual-fuel facility that
12 is also capable of running on CARB-certified
13 diesel. The diesel operations would insure
14 that -- would only be carried out due to local
15 area reliability needs, during emergencies or
16 during natural gas curtailments due to cold
17 weather.

18 The new project is a replacement of the
19 105 megawatt, 50-year-old units 1 and 2. And, as
20 well, two 15 megawatt mobile emergency power
21 plants, or MEPS, that are currently operating at
22 the site.

23 The new project will represent
24 approximately 33 percent efficiency increase
25 compared to existing units 1 and 2.

1 The project will tie into the existing
2 switchyard on the site, and use existing
3 infrastructure for natural gas, potable water and
4 sanitation. It will also use a closed-loop air-
5 cooling system similar to a car radiator type
6 system. And dramatically reduce any use of once-
7 through cooling water that is currently going on
8 at the site.

9 The PMPD also found that the proposed
10 project will reduce NOx emissions compared to the
11 existing facility. Reduce CO2 emissions; lower
12 the visual profile of the existing power plant;
13 and respond to load changes.

14 The Committee has been conducting this
15 procedure since the project was found data
16 adequate in November of '06. Extensive workshops
17 were held, numerous workshops, involving many
18 agencies, including the local air district, the
19 California Air Resources Board, the USEPA and that
20 was just on air quality and public health. And
21 then, of course, the Coastal Commission and Fish
22 and Game and U.S. Fish and Wildlife were involved,
23 as well.

24 All the challenges in the project were
25 vetted through all these regulatory agencies in

1 public workshops.

2 And what came out of this was a revision
3 of the project that addressed all the concerns and
4 was found by this collection of agencies, and then
5 later by the Committee, to address all the
6 applicable LORS and to reduce all the potential
7 environmental impacts to below a level of
8 significance.

9 In particular, I want to compliment the
10 staff and applicant for the hard work that they
11 did at the last minute, in fact the eve of the
12 evidentiary hearing. They were working into the
13 evening hammering out the few remaining issues and
14 reached resolution before the matter went before
15 the Committee.

16 We did have comments. The staff and
17 applicant filed comments on September 10th in
18 response to the PMPD. And those are reflected in
19 the Committee's errata.

20 No expression of concern was expressed
21 from any local residents. However, on the evening
22 of the last day of the comment period we received
23 comment letters from Rob Simpson of Hayward and
24 from the Californians for Renewable Energy, or
25 CARE, based on Soquel.

1 And be able to answer any questions you
2 may have.

3 VICE CHAIRPERSON BOYD: Thank you, Mr.
4 Fay. Questions, comments from the dais? I have
5 three witness requests. Thank you.

6 I'm going to take these in the order in
7 which I received them. Robert Sarvey of CARE.

8 MR. SARVEY: Good morning. Thank you,
9 Commissioners, for your time, as usual. I'm here
10 to answer any questions you may have about CARE's
11 comment letter. But my comments that I'm
12 delivering here are my own personal comments.

13 I would like to have heavily
14 participated in this proceeding, but I was over
15 having fun in Hayward with Commissioner Byron. So
16 I didn't really have the time to run up to
17 Humboldt and deal with these issues. So --

18 COMMISSIONER BYRON: Well, that's too
19 bad. I was able to get up to Humboldt.

20 (Laughter.)

21 MR. SARVEY: I bet you would have liked
22 to have me there, too.

23 But like I said, I'm here to answer any
24 questions that you have about their comment
25 letter. But I'd like to give some comments of my

1 own.

2 And I want to start with this project's
3 particulate matter impact. It has a diesel
4 particulate matter impact of 65 mcg/cubic meter,
5 which is unheard of in the Energy Commission's
6 siting process.

7 And I know staff did originally
8 recommend against certification of this project in
9 the PSA because of the health impacts. And when
10 you look at 65 mcg/cubic meter, you know, the
11 state standard is 50 mcg/cubic meter. So, we're
12 talking a project that has a particulate matter
13 impact of 133 percent of the state standard. So
14 that's a health impact.

15 MR. SPEAKER: Yes.

16 MR. SARVEY: Now, the mitigation that is
17 being provided for this health impact is the
18 cessation of NOx emissions from the existing
19 Humboldt Power Plant. And I continue to have
20 major concerns about taking a pollutant with
21 regional impacts and offsetting a local impact,
22 particularly as high as this one, 65 mcg/cubic
23 meter. And I believe that's something that, you
24 know, there needs to be some sort of discussion on
25 that, how we can have a single project violate the

1 state standard and somehow all we provide is a
2 regional mitigation program for it.

3 My second issue is this project's
4 fenceline lies within 600 feet of the fenceline of
5 the South Bay Elementary School there in Humboldt.
6 And it's my belief that the Commission is required
7 to follow all laws, ordinances, regulations and
8 standards.

9 And the California Health and Safety
10 Code, section 42301.6 requires notification of the
11 parents, the teachers and the administrators of
12 that school. And that hasn't happened. And I
13 think that's a travesty. And I think that should
14 happen before this project is approved.

15 The permit that you're approving today
16 also allows the existing Humboldt facility to run
17 for 180 days. And this is a violation of the
18 North Coast Air Quality Management District's rule
19 8.8, which states: Where a new or modified
20 stationary source is in whole or part a
21 replacement for an existing stationary source on
22 the same property, the APCO may allow a maximum, a
23 maximum of 90 days as a startup period for
24 simultaneous operation of the existing stationary
25 source and a new source or replacement.

1 So, once again, I believe the Commission
2 is responsible to assure the public that all laws,
3 ordinances, regulations and standards are
4 followed. And even though these are the Air
5 District's laws, this is -- you're required to
6 certify when you say, yes, I approve this project,
7 that it's following all the laws of the State of
8 California. And in this case it's not following
9 two laws that I've pointed out.

10 You know, I've got some other concerns
11 that really aren't related to the Commission's
12 authority, so I'm not going to go into those. But
13 I really would like to hear a discussion of how we
14 can use regional mitigation to offset a project
15 that has a 65 mcg/cubic meter diesel impact and a
16 38 mcg/cubic meter natural gas impact. And I
17 believe that should be the focus of this
18 discussion today.

19 And if you have any questions I'll be
20 here. And I thank you for your time.

21 VICE CHAIRPERSON BOYD: Commissioner
22 Byron.

23 COMMISSIONER BYRON: Mr. Sarvey, thank
24 you for being here. I was a little bit confused,
25 if I could ask, again the representation. We have

1 a letter from CARE --

2 MR. SARVEY: Um-hum.

3 COMMISSIONER BYRON: -- then you said
4 you were representing yourself as an individual,
5 is that correct?

6 MR. SARVEY: The comments that I
7 provided here were my comments as an individual.
8 But CARE could not attend and I got a call and
9 they asked me to, you know, if you had any
10 questions about their comments, which I reviewed.
11 I saw Mr. Galati's response to the comments this
12 morning that I hadn't seen previously. So I'm
13 prepared to answer any questions you have about
14 their comments, as well.

15 COMMISSIONER BYRON: So you're here
16 representing yourself as an individual and CARE?

17 MR. SARVEY: And CARE, yes, Californians
18 for Renewable Energy.

19 COMMISSIONER BYRON: Could you give me a
20 little description about CARE, because I'm not
21 familiar with --

22 MR. SARVEY: Californians for Renewable
23 Energy --

24 COMMISSIONER BYRON: And the
25 constituency that they represent?

1 MR. SARVEY: They're based in Soquel.
2 We basically represent, you know, low-income,
3 minority residents. But they also represent
4 communities that have absolutely no representation
5 at all, which is the case in the Humboldt case.

6 And when they see a large environmental
7 impact they like to comment. And that was the
8 nature of their letter.

9 COMMISSIONER BYRON: So are you telling
10 me that CARE is representing the community in
11 Humboldt?

12 MR. SARVEY: CARE is representing some
13 interests of a couple of members in Humboldt,
14 yeah.

15 COMMISSIONER BYRON: Okay. I'd like to
16 ask if the staff could respond to some of the
17 things that you just mentioned, the notification
18 aspect of the school that's 600 feet fence-to-
19 fence from the plant site. And also this 180-day
20 run on an old plant versus the 90-day.

21 MS. DeCARLO: Sure. Thank you,
22 Commissioners. Lisa DeCarlo, Energy Commission
23 Staff Counsel.

24 I just want to note, also, that the
25 North Coast Unified Air Quality Management

1 District is on the line and is available to answer
2 questions, as well.

3 COMMISSIONER BYRON: Good.

4 VICE CHAIRPERSON BOYD: Let me ask you,
5 Ms. DeCarlo, is that Mr. Birdsall?

6 MS. DeCARLO: Brewster Birdsall is
7 actually our air quality analyst.

8 VICE CHAIRPERSON BOYD: Okay, he's a --

9 MS. DeCARLO: I believe it's Jason Davis
10 and Rick Martin from the Air Quality Management
11 District.

12 VICE CHAIRPERSON BOYD: Thank you.

13 MS. DeCARLO: With regard to the
14 noticing requirement under the Public Health and
15 Safety Code, that actually does not apply under
16 this project. That only is triggered where the
17 source is within 1000 feet of a school boundary.

18 And the AFC identifies the distance
19 between the proposed project and the school as
20 being 3663 feet.

21 COMMISSIONER BYRON: Can you explain the
22 discrepancy in the measurements Mr. Sarvey has?

23 MS. DeCARLO: I do not know the basis
24 for Mr. Sarvey's number, frankly.

25 COMMISSIONER ROSENFELD: Well, Sarvey

1 said fence-to-fence. And I didn't understand
2 that, either. I didn't understand why that was
3 relevant. It seems like the distance from the
4 source to the school is what matters.

5 MR. SARVEY: The information is
6 contained in the FDOC. It says that the
7 facility's fenceline is 600 feet from the school's
8 fenceline. I believe that's always been the
9 interpretation for notice under the California
10 Health and Safety Act section there.

11 I've never heard a point source being
12 described as the distance to the school boundary,
13 and that being used as an exclusion to not notify
14 the school.

15 MS. DeCARLO: The exact -- I'm sorry.

16 MR. SARVEY: I'm sorry, go ahead, Lisa.

17 MS. DeCARLO: The exact language in the
18 code actually references source. And that has
19 always been interpreted as the stack, itself. And
20 so that's what was analyzed.

21 COMMISSIONER BYRON: And it's my
22 recollection it's a rather large site, and that
23 may be why the fence distance is so much closer to
24 the school.

25 MS. DeCARLO: Correct. And I don't know

1 the exact points that the AFC references for the
2 3663 feet; however, the modeling that we did was
3 definitely from the stack, itself, to the school
4 buildings. And that was over 2100 feet. So
5 that's nowhere near the 1000 feet required to
6 trigger the Public Health Code.

7 COMMISSIONER BYRON: Now, on the second
8 issue with regard to the 180-day overlap of the
9 run time of the old plant versus 90-day allowance?

10 MS. DeCARLO: That's a new issue that we
11 haven't heard before. There is an allowance for
12 180 days commissioning for the proposed project.
13 Perhaps that's something the District might be
14 able to speak to about regarding their rules.

15 I just want to add one more thing
16 regarding the notification. We did insure that
17 the parents of all the children attending the
18 elementary school were notified about the project.
19 So even though it wasn't required under the code,
20 we did insure that there was sufficient
21 notification.

22 COMMISSIONER BYRON: Good, thank you.

23 VICE CHAIRPERSON BOYD: Was that an
24 activity of the Public Adviser's Office or the
25 staff?

1 MR. KESSLER: It was a joint effort,
2 Chairman, --

3 VICE CHAIRPERSON BOYD: Thank you.

4 MR. KESSLER: -- with PG&E and our PAO.

5 MS. DeCARLO: And would you like me to
6 address the PM10 impact that Mr. Sarvey
7 referenced?

8 That actually -- he's taking the number
9 from a table that staff produced in the FSA. And
10 that was an extreme worst case scenario that does
11 not take into consideration the benefits of
12 shutting down the existing plant. Nor does it
13 take into consideration several conditions that
14 are included in the PMPD to insure limited
15 operation in diesel mode.

16 So, the project, as proposed, and as
17 conditioned in the PMPD, will insure that there
18 are no significant impacts. And that the PM10
19 emissions are sufficiently reduced.

20 VICE CHAIRPERSON BOYD: Commissioner
21 Byron, any other questions?

22 COMMISSIONER BYRON: Well, we have Mr.
23 Davis and Mr. Martin, I believe, on from the Air
24 District. Could they perhaps address the last
25 item I mentioned?

1 VICE CHAIRPERSON BOYD: By all means.

2 COMMISSIONER BYRON: I'm sorry, actually
3 the item that Mr. Sarvey brought up. I'm just
4 looking to see if we can get an answer to his
5 concern.

6 SECRETARIAT KALLEMEYN: Commissioner
7 Boyd, we do have Mr. Davis and Mr. Martin on the
8 phone line. They have not indicated a wish to
9 comment. But, their phone lines are open if you
10 wish to address them.

11 VICE CHAIRPERSON BOYD: Mr. Davis, Mr.
12 Martin, are you there?

13 Well, I guess we're not going to get
14 your request answered.

15 MR. MARTIN: Hello?

16 VICE CHAIRPERSON BOYD: Hello.

17 MR. MARTIN: This is Rick Martin with
18 the North Coast Air District. Can you hear me all
19 right?

20 VICE CHAIRPERSON BOYD: Yes, we can.
21 Can you respond to the questions that have been
22 raised?

23 MR. MARTIN: Specifically concerning the
24 90-day period?

25 VICE CHAIRPERSON BOYD: Correct.

1 MR. MARTIN: Yeah, it's my understanding
2 that the units will be phased in over time, and
3 that's how they're actually identified in the
4 permit that was issued by the District. And there
5 shouldn't be any specific time period which
6 overlaps more than 90 days during startup.

7 COMMISSIONER BYRON: Can you explain why
8 it's necessary to have that overlap?

9 MR. MARTIN: You can't eliminate
10 complete power to the north coast until you get
11 the units started up. So, if you were to shut
12 down the old unit immediately and not have any
13 power at all until you start up the new units,
14 there would be any electricity for the north
15 coast. And that can't happen.

16 COMMISSIONER BYRON: Thank you. I don't
17 know what else to say, Mr. Sarvey. We appreciate
18 your comments, but I can tell you that I feel very
19 satisfied that the staff and the applicant have
20 addressed the concerns that you raised.

21 I'd just like to get one maybe final
22 sense from you whether or not you're satisfied
23 with these answers.

24 MR. SARVEY: Well, I'm certainly not
25 satisfied using a regional mitigation scheme to

1 try to offset this sizeable particulate matter
2 impact. And it's a reoccurring thing that's going
3 on here in the Energy Commission. And I'd like to
4 see it resolved because, you know, eliminating NOx
5 to offset a direct particulate matter impact
6 that's a local impact, it's not a regional impact.

7 So I think that's a failure in this
8 decision and other decisions, as well. And, you
9 know, that's my personal feeling.

10 As far as District rule 8.8, I think you
11 heard from the District they're not complying with
12 District rule 8.8. They have 90 days in the PMPD,
13 allows 180 days. So I feel that's a violation of
14 District rule 8.8. But I certainly thank you for
15 listening to me.

16 COMMISSIONER BYRON: Thank you for
17 coming. You know, before you leave, if I could,
18 Commissioner, just turn to the applicant, if they
19 wanted to add anything that might help shed some
20 light on this.

21 MR. GALATI: Yes, we'll certainly answer
22 the questions to the best of our ability. The 90-
23 day rule was just raised for the first time now.
24 And Mr. Martin described that right. These are
25 individual air permits for individual units. And

1 those units are going to be phased in over time.
2 So there shouldn't be a problem with the 90-day
3 rule.

4 But more than that, I'd like to address
5 you about the concept of Mr. Sarvey and CARE
6 coming in at the last minute and not having the
7 benefit of participating. And what's more
8 frustrating is Mr. Sarvey -- I've known Mr. Sarvey
9 for three or four years, involved in several cases
10 with Mr. Sarvey. And I've known Mike Boyd for
11 even longer.

12 They know how to participate in the
13 Energy Commission process. They know how
14 accessible your website is. They chose not to
15 participate; and last minute raised technical
16 issues of an evidentiary nature that we should not
17 be discussing at this time.

18 We certainly can, because we're not
19 hiding any answers. But I personally find it
20 extremely frustrating when we scheduled workshops
21 that took two and three months to get all of the
22 agencies onboard, talk about BACT, talk about the
23 NOx to PM10 offset ratio.

24 And we had open dialogue and
25 discussions. To lob it in last minute as if that

1 hard work was not done, I think, is disrespectful
2 to this process. And somebody, and I'm looking at
3 you for, should tell them not to do this anymore.
4 They should participate or forego their ability to
5 participate.

6 Now, I'll get to the questions. Thanks
7 for hearing my rant.

8 COMMISSIONER BYRON: Well, you know, we
9 do allow last-minute input, including last-minute
10 input from investor-owned utilities.

11 (Laughter.)

12 COMMISSIONER BYRON: And we certainly
13 want to make sure that the public has plenty of
14 opportunity to comment. But I do agree with you,
15 I think there has been a great deal of effort
16 that's been put into this project on behalf of the
17 applicant and the staff. And I do want to
18 acknowledge your comment.

19 You certainly have made every effort to
20 resolve all the issues, and certainly this
21 Commissioner has been satisfied with the end
22 result.

23 But, go ahead, see if you can add some
24 additional clarification.

25 MR. GALATI: It is disingenuous to

1 discuss an impact without discussing mitigation.
2 So the idea that the impact is high and therefore
3 that, in and of itself, is something that should
4 bar this Commission from acting.

5 The rest of the story is that the offset
6 requirements are high. The rest of the story is
7 that the old plant emits more than the new plant.
8 And so the idea that this particulate matter,
9 specifically when running on diesel, is an impact
10 to the school, we all know that we worked very
11 very hard on that very specific issue of what were
12 the public health impacts of diesel particulate
13 matter.

14 We explored feasible mitigation options.
15 We explored alternative options. We eventually
16 took a reduction in the amount of diesel
17 operations that would be below any public health
18 threshold.

19 So it is one thing to point out a
20 particular piece of evidence, but it's also
21 disingenuous to not discuss the rest of the
22 evidence. And the rest of the evidence is very
23 clear here, that the project will not have a
24 public health impact. The project will have all
25 the benefits that are outlined in the PMPD.

1 And I don't know if you want me to
2 address the rest of CARE's comments, but since Mr.
3 Sarvey, we certainly can, when questioned.

4 But those are the only two comments that
5 I heard the very specific issue about NOx being
6 regional versus the PM10, I would implore you that
7 the California Air Resources Board was heavily
8 involved in determining that offset ratio. They
9 are the experts.

10 USEPA was part of that. Did not object.
11 The District was part of that. Energy Commission
12 Staff was part of that. And eventually an offset
13 ratio was selected that was appropriate for this
14 project.

15 COMMISSIONER BYRON: Mr. Sarvey, last
16 word.

17 MR. SARVEY: Thank you. Well, now that
18 I've been thoroughly chastised by Mr. Galati I'd
19 like to respond to some of the comments that he's
20 made.

21 I've been discussing this project with
22 staff for probably six months. Staff members
23 aren't here, but, no, I didn't intervene and I
24 didn't participate. I explained before, I was
25 working in Hayward. I also have a full-time job,

1 so, you know, Mr. Galati doesn't like me coming in
2 at the last minute and exercising our rights as a
3 member of the public. And I think that's
4 inappropriate.

5 But PG&E, in general, advertised this
6 particular project in the Humboldt area as a major
7 reduction. They never said that particulate
8 matter emissions from the existing plant are
9 around 30 tons and the new plants around 150.
10 Never mentioned that anywhere to anybody.

11 And then PG&E would like to say that
12 they're very green, green company. Well, you look
13 at this plant, this is the dirtiest plant that's
14 ever been permitted by the CEC. So, you know, we
15 can throw accusations back and forth. I don't
16 think that's what this forum is all about. I
17 didn't come here to do that. But, thank you for
18 your time.

19 VICE CHAIRPERSON BOYD: Thank you, Mr.
20 Sarvey.

21 I have one other card, since Mr.
22 Birdsall's been established as a staff resource.
23 Rob Simpson.

24 MR. SIMPSON: Good morning. I'm Rob
25 Simpson. Thank you for this opportunity to speak.

1 The reason I got involved in this
2 project is that I started taking a look at these
3 PSD permits. And I understand that your rule
4 1744.5, it bases your determinations on the air
5 district's determinations.

6 So it looks like what's supposed to
7 happen is the air district is supposed to go
8 through their process, their public notice
9 process, their public participation process, and
10 their review process. 1744.5 references the new
11 source review, applicable district's regulations.

12 And then you build your process on that
13 process. So the underlying notice that's supposed
14 to come from this air district, which is the only
15 notice that comes out about air quality. You have
16 your workshop notices, you have your notices, but
17 there's no notice that tells you the effect on the
18 air quality except the notice that the district is
19 supposed to provide pursuant their SIP.

20 Now, their SIP rule says, the notice
21 shall include the preliminary determination,
22 present the expected additional and cumulative
23 increment consumption, and provide opportunity for
24 public hearing.

25 Now, there is no notice that references

1 a PSD permit. So they've never noticed the PSD
2 permit. The notice that they provided has nothing
3 about the increment consumption.

4 I did find reference to the increment
5 consumption in your staff assessment. And it
6 shows this particulate matter for PM10 will be 275
7 percent of normal. The impact from the project,
8 alone, will be 65.2 UGMs. That's in the diesel
9 mode. In the cleaner natural gas mode you have
10 216 percent of normal.

11 So the only notice that the people of
12 Humboldt received about air quality was a press
13 release from PG&E. The press release from PG&E
14 says that this project will be 35 percent more
15 efficient with 90 percent fewer air emissions. So
16 that's what the people have based their lack of
17 participation on, is PG&E saying that this thing
18 will be 90 percent cleaner than your last project.

19 So everybody stepped back and said, oh,
20 good, the Energy Commission's going to take care
21 of us. PG&E's going to do what they said they did
22 in their public notice.

23 But when you look in your proposed
24 decision, you have the graph right here. Air
25 quality table 10. It shows the reactive organic

1 compounds, the reduction from the other plant is
2 23.4 tons a year. Well, that's great, except that
3 the new plant is going to put out 190.9 tons a
4 year.

5 The reduction on particulate matter is
6 24.9 tons a year. But the new plant will put out
7 119.8 tons. That's 88 tons more than the existing
8 plant.

9 The people are a lot better off with the
10 existing plant. And the comparison of this plant,
11 basically what you're approving here are ten
12 Soviet ship engines to be parked on the coast of
13 Humboldt. That's what these engines are usually
14 used for.

15 Comparing that to modern facilities like
16 the one that's being proposed in San Francisco
17 right now will put out a fraction, will put out
18 less than the existing plant on the particulate
19 matter. The San Francisco plant, I think, is
20 about 20 tons a year of particulate matter, as
21 opposed to the 120 tons a year that you have here.

22 So, your process was broken before it
23 started. You've built your hearings, you've built
24 this case on false notice from PG&E, and lack of
25 notice from the air district.

1 And this is identical to the issues that
2 we just prevailed with the EPA in the PSD case
3 with Russell City Energy Center.

4 And in the remand order they say it a
5 lot clearer than I can say it, inherent in Mr.
6 Simpson's argument is the proposition that the
7 district's notice and outreach under 124.10 were
8 so defective that these defects rippled through
9 the permitting process handicapping participation
10 necessary for standing. And by consequence,
11 precluding satisfaction of the other procedural
12 thresholds for board review, such as preserving
13 issues review and the timely filing of petition
14 for review.

15 So, without this starting gun, without
16 you telling people or somebody telling people, the
17 air district telling people that this is going to
18 have an effect on air quality, you don't have the
19 basis to build this package.

20 Now, I know you review the air
21 district's work. You go over everything. But
22 nobody's gone over these notices. I don't see any
23 review of the air district's notices. And this is
24 obviously not the first air district that has had
25 this issue.

1 In Hayward you were perplexed that the
2 600 megawatt facility had virtually no public
3 participation. Then a month later the small
4 facility had a huge amount of public
5 participation. And the reason is the public found
6 out, not through the noticing, but the public
7 found out about these processes and rang the bell,
8 themselves.

9 In this case that hasn't happened yet.
10 The public up there doesn't know that this plant
11 will actually increase emissions. So I think that
12 this needs to go to the Air District. The Air
13 District needs to do their proper public notice,
14 notice the PSD permit, notice the increase in
15 pollutants before this process is licensed.

16 VICE CHAIRPERSON BOYD: Thank you, Mr.
17 Simpson. Questions, comments?

18 COMMISSIONER BYRON: Before I ask any
19 questions, staff, do you care to respond to any of
20 this?

21 MS. DeCARLO: Yes. The PDOC was, in
22 fact, properly noticed. The air district's rule
23 220 was superseded by rule 110, with which the air
24 district currently complies. And that simply
25 requires a notice to be published in a newspaper

1 of general circulation in the district indicating
2 a preliminary decision is available, how it can be
3 obtained. And inviting written comment for a 30-
4 day period.

5 And as included in CARE's comments, they
6 included the actual notice. It meets all those
7 requirements, and was filed within the ten-day
8 time limit. So that has been satisfied.

9 Mr. Simpson's reference to the EAB
10 decision in Russell City is inappropriate, because
11 that does not apply. It's a different situation.
12 The Russell City Air District was, I believe, an
13 EPA delegated district.

14 This district, North Coast Unified Air
15 Quality Management District, is actually SIP-
16 approved PSD program, which means EAB does not
17 have jurisdiction over any concerns with regard to
18 the actions of the air district. Nor does 40CFR
19 section 12410 apply, which are the strict noticing
20 requirements involved in the Russell City
21 decision.

22 Because it is a SIP-approved PSD
23 program, it basically transforms it, in our
24 opinion, into a state permit in which case
25 ultimately our state process applies and our

1 noticing requirements apply.

2 And so, both the Energy Commission's
3 noticing requirements have been complied with in
4 this instance, as well as the Air District's own
5 noticing requirements.

6 In addition, we identified the PDOC in
7 our PSA, our PSA notice. It's thoroughly reviewed
8 in the preliminary staff assessment, as well as
9 the FDOC is thoroughly reviewed in our final staff
10 assessment.

11 So we believe all parties, all members
12 of the public had proper, sufficient notice to be
13 made aware of the permitting process that was
14 being undertaken for the HBRP.

15 COMMISSIONER BYRON: I still have one
16 question. Mr. Simpson, I believe you indicated
17 early on you were representing yourself here
18 today?

19 MR. SIMPSON: Yes.

20 COMMISSIONER BYRON: You're not
21 representing any members of the community up in
22 Humboldt as CARE indicated they were?

23 MR. SIMPSON: That's correct.

24 COMMISSIONER BYRON: I did a little
25 Google check on the map. You're a little more

1 than 600 feet fence-to-fence. I believe you're
2 about 250 miles downwind from this power plant.

3 MR. SIMPSON: Yes.

4 COMMISSIONER BYRON: And I was going to
5 ask you why you were here today, but I think I
6 have a much better understanding of that now. I
7 don't have any further questions for you. I hope
8 you feel you had your opportunity to speak here.

9 MR. SIMPSON: The rules -- if I may
10 respond? The rules you reference, I'm referencing
11 the SIP rules, themselves.

12 COMMISSIONER BYRON: Mr. Simpson, of
13 course we'd like to hear from you, but the time
14 has come and gone, before I let Mr. Galati loose,
15 we've had the opportunity to discuss all these
16 things before. So, please go ahead and respond,
17 but we're satisfied that your concerns have been
18 addressed. So, go ahead.

19 MR. SIMPSON: Well, with no notice of
20 the effects on air quality, the public hasn't been
21 offered the opportunity to participate in this
22 proceeding.

23 VICE CHAIRPERSON BOYD: So basically
24 you're saying the local Air District has been
25 derelict in its duties to its own citizens?

1 That's your allegation?

2 MR. SIMPSON: Yes. And your reliance on
3 their determination of compliance is flawed
4 because they didn't provide the notice that's
5 required. The notice was required -- they had
6 another notice requirement for their --

7 VICE CHAIRPERSON BOYD: You heard our
8 legal counsel's analysis of the situation, which
9 doesn't agree with your statement right here. So,
10 in any event, --

11 MR. SIMPSON: All I'm referencing is the
12 SIP rules. The SIP rules are what they agreed
13 with the EPA, and it's supposed to be based on
14 these EPA rules.

15 So, if your thought is that it's okay to
16 go through this entire licensing process and never
17 tell anybody that there's going to be an effect on
18 air quality, then there's something not working
19 here.

20 VICE CHAIRPERSON BOYD: Well, that's
21 your opinion.

22 MR. SIMPSON: And that's what the SIP
23 says.

24 VICE CHAIRPERSON BOYD: Thank you.

25 MR. SIMPSON: Thank you.

1 VICE CHAIRPERSON BOYD: Mr. Galati.

2 MR. GALATI: Thank you. And I got my
3 rant out, and that's only because I have a special
4 love/hate relationship with Mr. Sarvey. I haven't
5 developed such a relationship with Mr. Simpson
6 yet, so --

7 (Laughter.)

8 MR. GALATI: -- I'm going to get right
9 to the point. We agree with staff's
10 interpretation of the legality of the notice.

11 But I wanted to point out a couple of
12 things that are above and beyond the idea that no
13 notice was given. This project was heavily
14 noticed, including a very special notice outside
15 normal Energy Commission boundaries, which was
16 when it was identified that the potential impacts
17 could be on the Humboldt Hill region, staff
18 engaged with PG&E and the Public Adviser's Office
19 in actually notifying everybody who lives on
20 Humboldt Hill, who would not have normally gotten
21 notice throughout the Energy Commission process.

22 Actually that noticing procedure got
23 some people to come to a air quality workshop that
24 was then continued and had additional discussions
25 where many of the same people came, where these

1 issues of air quality was discussed in detail.

2 In addition, prior to that, PG&E had
3 done quite a bit of public outreach and had an
4 open house at the project site before we even
5 filed. Had about 600 or people or so show up.
6 And I think it was about 600, am I overstating it?
7 And had a tour of the plant; showed them where the
8 new plant was going to be. And so tried to elicit
9 public participation.

10 One of the other things that I'll say
11 that we didn't address before on the particular
12 school. We did have representatives of the school
13 participate in the workshops. Like said, we had
14 people who live in and around Humboldt Hill, whose
15 kids went to that school, participate.

16 And lastly, the principal of that school
17 sits on the Citizen Advisory Committee for the
18 existing plant.

19 So any insinuation that the lack of
20 public participation at the very end had anything
21 to do with notice, I think with that lack of
22 public participation at the evidentiary hearing
23 was due to the fact that PG&E was responsive to
24 public concerns, staff was responsive to public
25 concerns. There was full vetting of all of these

1 issues over this almost two-year process.

2 And it culminated how it should, which
3 was not 150 people coming to an evidentiary
4 hearing screaming that they had not been heard.
5 This was a success. And the lack of participation
6 was not in any way, shape or form indicative of a
7 failure of notice.

8 COMMISSIONER BYRON: Vice Chairman?

9 VICE CHAIRPERSON BOYD: Yes,
10 Commissioner Byron.

11 COMMISSIONER BYRON: Mr. Galati reminded
12 me when we went up for the initial site visit in,
13 I believe, December of 06, I visited with some
14 friends who -- close friends, they live in
15 Humboldt. And the wife of my friend actually
16 works at the local NBC affiliate.

17 So, after we had breakfast she had a
18 news team come out. And I remember they
19 interviewed Commissioner Geesman and put it on the
20 local news that night, as well.

21 So I think there was a great deal of
22 notification that did take place early on. And
23 these kinds of technicalities that may or may not
24 be correct really don't represent the extent to
25 which the public was aware of this project.

1 VICE CHAIRPERSON BOYD: Okay. One last
2 question of staff. Any further comment by the
3 staff?

4 MS. DeCARLO: No comment.

5 VICE CHAIRPERSON BOYD: All right,
6 Commissioners, we have before us a proposed
7 Member's Decision and an errata thereto. And
8 we've heard the testimony of the day. What is
9 your desire?

10 COMMISSIONER BYRON: Vice Chairman, I
11 move Commission adoption of the Presiding Member's
12 Proposed Decision, the Commission errata, which is
13 dated September 24, 2008. And I would also direct
14 the Hearing Officer to make any minor edits that
15 necessarily reflect the Commission's discussions
16 here today, although I'm not sure that there are
17 any.

18 VICE CHAIRPERSON BOYD: Thank you.
19 There's been a motion. Is there a second?

20 COMMISSIONER ROSENFELD: Second.

21 VICE CHAIRPERSON BOYD: There's been a
22 motion and a second.

23 All in favor?

24 (Ayes.)

25 VICE CHAIRPERSON BOYD: Opposed?

1 Hearing none, that's unanimous four to nothing.

2 COMMISSIONER BYRON: Before the staff
3 leaves, if I may, I would like to thank the staff
4 for a very thorough evaluation on this project.
5 It is unfortunate that it took as long as it did.
6 I think there was a great deal of education that
7 took place, let's just say north of here.

8 And I'd also like to thank our Chief
9 Hearing Officer. We had the benefit of having the
10 top man on this particular case.

11 The applicant, I think, deserves a great
12 deal of credit, too. You hung in there with us;
13 you were very responsive. And as Mr. Fay
14 indicated, even towards the end, late-night
15 efforts to make sure that we closed out all issues
16 and the concessions that were made to our staff's
17 concerns, I think were excellent.

18 As I recall, in fact, both of you are
19 contractors, so I should say work for PG&E. Is
20 there a member of PG&E here today? No. So you're
21 representing them.

22 As I recall, if I have it correct, this
23 is the first application by PG&E before this
24 Commission in 25 years, is that correct?

25 MR. LAMBERG: That Is correct.

1 COMMISSIONER BYRON: Well, I'm glad to
2 see you hung in there. You did a very good job.
3 And we hope to see more applications from PG&E
4 inside the procurement process.

5 (Laughter.)

6 COMMISSIONER BYRON: I think that would
7 be very good -- very good --

8 VICE CHAIRPERSON BOYD: You were dancing
9 delicately there, Commissioner.

10 COMMISSIONER BYRON: Well, I wish there
11 were some employees of PG&E here to hear that.
12 But Mr. Galati's here. Go ahead, Mr. Galati.

13 MR. GALATI: You certainly will see more
14 applications from PG&E. And we just hope that
15 we're not here telling a bad story about why we
16 had to file such applications. So I can tell you
17 that the Humboldt project is a great project. It
18 is very important to the people of Humboldt. And
19 we appreciate what the Commission's done here.
20 And Mr. Lambert would like to say a few words.

21 MR. LAMBERG: Yeah, it has been a long
22 and toilsome journey. And I think on behalf of
23 PG&E we just want to recognize some people who
24 really put forth a tremendous effort on this
25 project, and offer our thanks.

1 Our thanks to Commissioner Byron and
2 Commissioner Douglas. Our thanks to Hearing
3 Officer Gary Fay. Our thanks to former
4 Commissioner John Geesman. Our thanks to the
5 entire CEC Staff, especially John Kessler, Lisa
6 DeCarlo, and a very special mention of Dr. Alvin
7 Greenberg, who was tremendously influential in
8 helping us to work through some of the issues
9 facing us on this project.

10 Humboldt County Supervisor Jimmy Smith;
11 Rick Martin and Jason Davis at the North Coast
12 Unified Air Quality Management District; Tom
13 Luster at the California Coastal Commission; David
14 Boyd at the Redwood Coast Energy Authority; Jeff
15 Leonard of the City of Eureka; Dave Vurshock of
16 the Humboldt County Board of Realtors; Humboldt
17 State University; and all the citizens in Humboldt
18 County who participated very heavily in these
19 proceedings, brought their issues to us and had
20 the patience to sit there late into the evenings
21 as the applicant and staff worked through those
22 issues.

23 Thank you.

24 COMMISSIONER BYRON: Commissioner Boyd,
25 I know we've permitted a number of power plant

1 applications that have not been built. I have
2 little doubt that this one will be built.

3 VICE CHAIRPERSON BOYD: Well, I
4 understand that it's kind of an electricity island
5 up there, and we have an old decrepit plant that
6 needs to be updated. So I think I share your
7 confidence.

8 Thank you, everybody. And I agree,
9 thanks to the staff and all involved. It was a
10 long reading to understand this case completely,
11 but rewarding.

12 MS. DeCARLO: Thank you.

13 VICE CHAIRPERSON BOYD: All right, next
14 agenda item number 6, Russell City Energy Center.
15 Consideration of two petitions for reconsideration
16 asking the Commission to change its decision of
17 July 30, 2008, in which the Commission extended
18 the deadline to begin construction of the project.

19 Now, in light of the unusual nature of
20 this particular agenda item, I think what I want
21 to do is receive an introduction to this item, but
22 in reality, since we have a petition here, I would
23 like to hear first presentations by the
24 petitioners.

25 And then hear all the public comment in

1 support of the petitioners. And then have
2 response by staff and the Russell City applicant
3 representatives, and any public comment in support
4 of that particular position.

5 And then allow the petitioners, and only
6 the petitioners, an opportunity for rebuttal. And
7 with that, I would like to first ask if our legal
8 staff or our staff would like to make any
9 introductory remarks just to introduce the
10 petitions we received. But then I want to hear
11 from the petitioner immediately thereafter as to
12 the basis for their petition.

13 This is an unusual situation, it
14 requires an unusual approach.

15 MR. BELL: Yes, thank you for this
16 opportunity. Kevin Bell, Staff Counsel. It seems
17 that I keep getting the unusual opportunities.

18 The Russell City Energy Center is a 600
19 megawatt, natural gas fired, combined cycle
20 facility located in Hayward. The facility was
21 originally certified in September of 2002. A
22 major amendment was filed in November of 2006
23 that, amongst other things, moved the project 1300
24 feet from its original location.

25 That amendment was approved following a

1 comprehensive environmental review and exhaustive
2 public hearings. And became final on October 2,
3 2007.

4 In May of this year the project owner
5 filed a petition to extend the deadline to
6 commence construction for this project. In the
7 petition the project owner stated that they had
8 not been able to complete financing for the
9 project or start construction by the then-set
10 deadline of September 10, 2008, because of outside
11 factors that were out of control of the project
12 owner.

13 Primarily the then-pending appeal that
14 had been filed by Mr. Rob Simpson with the
15 Environmental Appeals Board of the United States
16 Environmental Protection Agency regarding the
17 project's federal air permit.

18 The matter was heard on July 30th here
19 before the Commission in a regularly scheduled
20 business meeting. Staff noted the factors that
21 were outside of control of the project owner, that
22 included the appeal filed by Mr. Simpson, had
23 prevented the project owner from commencing
24 construction.

25 Staff concluded that petition showed

1 good cause to extend that deadline to commence
2 construction.

3 The staff had received comments from
4 several individuals, including Mr. Simpson, that
5 were opposed to the granting of that extension.

6 However, none of the comments received
7 refuted any of the project owner's
8 representations. And those comments were directed
9 primarily at either reopening the underlying case
10 that had already been decided by this Commission,
11 and that had already withstood an appeal before
12 the California Supreme Court, or were an attempt
13 to somehow tie in the separate federal process
14 involving the EAB appeal to our licensing process.

15 The Commission granted the petitioner's
16 petition to extend the deadline to commence
17 construction finding that good cause did exist to
18 grant that petition.

19 The matter before the Commission today
20 involves a petition for reconsideration filed
21 under California Code of Regulations, Title 20,
22 section 1720.

23 And today's matter is narrow in scope.
24 This section that has been filed under for
25 reconsideration requires that the petition that's

1 been filed either show new evidence that despite
2 the diligence of the moving party, could not have
3 been produced during the evidentiary hearings on
4 the case.

5 And I do have to add that the
6 evidentiary hearings we're talking about are not
7 the underlying matter, itself, but the July 30th
8 business meeting. Or it has to show an error in
9 fact or change or error in law. And that is the
10 narrow scope for today's proceeding.

11 VICE CHAIRPERSON BOYD: All right, thank
12 you. Mr. Simpson, you are the petitioner. You
13 and CARE and CARE and you are the two petitions we
14 have before us, so you are the locus of all of
15 interest.

16 MR. SIMPSON: Thank you. I'd like to
17 start by confirming that you've taken notice of
18 the EAB decision.

19 VICE CHAIRPERSON BOYD: We're aware of
20 it; we have it.

21 COMMISSIONER BYRON: This is not an
22 evidentiary hearing or anything.

23 VICE CHAIRPERSON BOYD: Right.

24 MR. BELL: It is not.

25 MR. SIMPSON: Okay. I made an

1 application to intervene into this process. I
2 responded to a notice that said this process would
3 be proceeding pursuant to 1769 of your rules.
4 1769 is your basis for good cause for the
5 applicant's request for an extension.

6 The notice went out and it said respond
7 to 1769. We the public responded to 1769. And
8 when we got to the hearing they decided that 1769
9 is not how they're going to proceed with this
10 procedure.

11 It appears that every extension that
12 I've found on your record has been processed
13 subject to 1769. Now, if there's special rules
14 for Mr. Wheatland I understand. I would just like
15 to be able to find them. To use the basis that
16 good cause for this extension is because they
17 asked for an extension, that's all your good cause
18 is at this point. Because they didn't add
19 anything to their request, except we need an
20 extension because we don't have the money and
21 there's an appeal pending.

22 Now, we lost the appeal. Now the basis
23 for the extension is that they lost this appeal
24 with the EAB. So, if good cause for an extension
25 is because they're in violation of the Clean Air

1 Act, then something's backwards there, too. The
2 EAB remand is good cause for revocation of this
3 permit, not an extension of the permit.

4 When considering intervention is it
5 necessary for me to be an intervenor to make this
6 petition. It goes back to this same very core of
7 this proceeding, that it's built on a lack of
8 notice. And that has been determined by the EPA
9 that this notice didn't occur. This notice didn't
10 occur for our county officials; this notice didn't
11 occur for the people of Hayward, so we were
12 precluded from participating in this action.

13 Now, again, you've built this procedure
14 on the air district's determination of compliance
15 which is a part of this permit. The PDOC and the
16 FDOC are a part of the permit that has been
17 remanded. And the way that the Environmental
18 Appeals Board refers to this is this is not just
19 remanded for this notice issue, this permit is
20 remanded in its entirety, which means that
21 dependence on this FDOC or PDOC, their
22 determination of compliance, is not something you
23 can rely on anymore.

24 The district is in the process of
25 redoing these things. But how they get them onto

1 your record, because your determination of
2 compliance is supposed to be after the public
3 notice. If the public isn't notified, then you
4 can't get there. And that's what's been
5 determined by the EPA.

6 Now, part of the issue with this last
7 hearing is that my papers were lost by the CEC,
8 docket unit or whoever you want to say. My
9 petition for intervention was lost; most of my
10 thousand members of the public who signed onto the
11 petition were lost. There were a number of
12 petitions from the County of Alameda, which
13 apparently wasn't lost. And other entities that
14 didn't get to participate in this process because
15 the notice didn't happen.

16 That's why you've had the county come
17 back and say, wait, you didn't tell us. Because
18 they didn't get the notice they were supposed to
19 get, which was supposed to be before your process.

20 So to disintegrate this process and say,
21 oh, we're going to let them do the PSD later or
22 some other time, when that was supposed to be the
23 basis for your decisions here, it doesn't fit into
24 the time periods that are required.

25 So what we're looking for is this

1 extension to be processed pursuant to 1769 like
2 every other extension has been done.

3 Mr. Wheatland continues to rely on the
4 license and air permit that's not there in his
5 statement here. The PSD permit is the new source
6 review; it is part of the air district's
7 permitting process. And to not have that factor
8 gives you not the information that you need to
9 extend this license.

10 The notice issues in this case are
11 really just the tip of the iceberg. What didn't
12 happen in here was an update of the Endangered
13 Species Act determination that was required.

14 Your 2001 procedure included a section
15 7, beginning of an evaluation at least. And it
16 demonstrated that the noise effect from this would
17 affect the adjacent endangered species. This one
18 side of the fence is this power plant. On the
19 other side is federally protected endangered
20 species.

21 Now, when they moved the project they
22 didn't re-evaluate the noise effect of this
23 project. And the effect will be higher than they
24 said in the original proceeding that would affect
25 the endangered species.

1 My contention is that they didn't show
2 good cause for an extension. And that good cause,
3 your determination of good cause is within your
4 1769 regulation.

5 Thank you.

6 VICE CHAIRPERSON BOYD: Thank you, Mr.
7 Simpson. Thank you. No further questions.

8 I'm now going to call on -- I have four
9 requests to speak from four folks in the
10 audience -- one gentleman may or may not be here
11 yet -- who are all, in effect, supporting the
12 petitioner's request. So we're going to hear from
13 those folks.

14 And let's keep this focused on the
15 petition and the allegations in the petition.
16 Let's not retry the entire siting case.

17 Mr. Sarvey, you're next up. And I'm
18 taking the cards in the order I got them, so the
19 fact that you --

20 MR. SARVEY: Thank you, again,
21 Commissioner, for the opportunity --

22 VICE CHAIRPERSON BOYD: -- you must have
23 been very timely in all your blue card
24 submissions.

25 MR. SARVEY: I was here early. I

1 personally submitted comments on this extension
2 request, as a member of the public, not a party.

3 And I reviewed the July 30th transcript,
4 and I didn't see that my comments were addressed.
5 And I don't know if maybe my comments were lost, I
6 don't know.

7 But there seems to be a problem, and I
8 think there's a need for some rulemaking here on
9 the extension process. Because in this particular
10 instance this project -- on two impacts are 226.8
11 mcg/cubic meter and the background concentrations
12 are 143 mcg/cubic meter. Which leads this project
13 to violate on two standard.

14 Commissioner Byron and I dealt with this
15 in the East Shore proceeding. And what was
16 required was that the applicant come forward and
17 present new modeling to show that this project
18 would comply with the new NO2 standard. And this
19 is not happening here now.

20 If you compare this to the East Altamont
21 extension that was just granted, the way it was
22 going to go down was you were going to grant the
23 extension and there was going to be an amendment.
24 And they were going to clarify these issues. And
25 I understood that process.

1 But in this particular extension the
2 amendment's already occurred. So, this
3 significant impact, violation of the state NO2
4 standard, is not addressed in any way, shape or
5 form. So, that's probably a procedural issue, but
6 like I said, this came up in a project that was
7 3000 feet away from this project, the East Shore
8 project, the exact same issue. And it was dealt
9 with. And we came to, you know, an agreement on
10 it, or at least a decision was made.

11 But, you know, it looks to me like
12 there's a problem with the extension process,
13 itself. And perhaps an opportunity for some
14 rulemaking here to clarify exactly how the
15 Commission is going to process extensions from
16 here on in.

17 And that's the final --

18 VICE CHAIRPERSON BOYD: Questions from
19 the dais? Thank you, Mr. Sarvey.

20 Barry Luboviski. Oh, boy, I may have
21 butchered that one.

22 MR. LUBOVISKI: Commissioners, thank you
23 for the opportunity to appear here. I'm going to
24 speak first as an individual, and then as the
25 Secretary-Treasurer of the Building Trades.

1 As an individual, I've got to admit that
2 the petitioners have a significant weight behind
3 their concerns. And I've got to agree with them
4 as an individual, absolutely.

5 So I think that the solution is to shut
6 down every power plant in the state. Because they
7 all have some level of pollution. There's a
8 difficulty in that argument for Russell City
9 because it is such a clean plant. But let's shut
10 them all down and use the moral authority of this
11 Commission also to shut down the freeways and the
12 streets because cars are extremely polluting.

13 We need to shut off natural gas. We're
14 going to have one last problem that I have not
15 figured out how to address. And that is when
16 there are no automobiles or no power, no gas,
17 people are going to start using open fires, which
18 are extremely polluting. And I don't know how we
19 get a handle on that.

20 So, as an individual, that's where I
21 think we ought to go. Let's go right back to
22 nature with everything.

23 Now, speaking as Secretary-Treasurer of
24 the Building Trades Council, I'm really incensed
25 with this because I think a lot of people have

1 been un-needlessly and unfairly frightened and
2 scared with plants that have come forward not in
3 some kind of secret venue, but have come forward
4 addressing what many of us have forgotten, and
5 that was the power crisis, and what that led to in
6 our state early on.

7 the Building Trades Council fully
8 supports the Russell City Energy Center. We think
9 it's not only responsible, but in its design and
10 effect, significantly reduces potential emissions.
11 It's in an industrial area. It's adjacent to a
12 wastewater treatment plant and will be using the
13 water from that facility.

14 This 600 megawatt facility will supply
15 the additional electrical needs for the East Bay.
16 As Secretary-Treasurer for the Building Trades,
17 our Council represents 28 local unions,
18 approximately 40,000 working men and women who
19 work in the industry. Many of them who live in
20 Hayward and in the surrounding communities.

21 We feel that it's necessary to have a
22 responsible process. We think that Russell City
23 has gone through exactly that process. The city
24 council in Hayward originally supported this
25 project and approved the project. So Russell City

1 is not some secret venue that's come through
2 unnoticed. It went to the city council; it went
3 to the community; it attempts to address real
4 needs in our community in a responsible way.

5 We support the project for that reason.
6 We think it's responsible. We think it's located,
7 as it is, away from immediate flight path of the
8 airport. They can't raise that argument, although
9 I've heard it in the past on the other facility.
10 We think that we should proceed.

11 Let me then also talk about some of the
12 other realities. Unemployment in California is
13 fast approaching 8 percent. I personally believe
14 that not only have we been in a recession, but as
15 we're hearing increasingly this could be the worst
16 recession or depression that we've had since the
17 30s.

18 One of the things that's needed in our
19 society, we're all looking at the Dow Jones. What
20 we need to be looking at is the union halls and
21 the hiring halls and our working men and women
22 going to work and because when they go to work and
23 their expenditures of money are part of the
24 sustenance that our communities need. They spend
25 their dollars in their local communities. They

1 help generate good jobs. And that's what we need
2 in our society.

3 The Russell City Energy project provides
4 good union jobs, which means that workers will go
5 to work. And when they get off work in the
6 evening they will know that they have not only the
7 salary to sustain them, but pensions and health
8 care and the other necessary economic
9 sustainabilities that are unique to union
10 construction workers increasingly and
11 unfortunately.

12 We think that this project helps the
13 community by generating those jobs and putting
14 those dollars there. We think that the petition
15 to deny the extension has no merit in terms of
16 common sense. Now, maybe that's not a technical
17 issue, but this project needs to be built. It has
18 every reason to go forward and we fully support
19 it. Thank you.

20 VICE CHAIRPERSON BOYD: Thank you. I
21 have violated my own instructions to the audience
22 here a little bit by interpreting the request to
23 speak from yourself and perhaps two other people
24 as in support of the petition. But obviously you
25 weren't in support of the petition.

1 And what I had said was that I was going
2 to allow the petitioner and any of their
3 supporters to make their case. And then afford
4 the staff and the applicant anything they'd like
5 to say. And then hear from people who support the
6 applicant, or in other words, oppose the petition.

7 I need to ask Mr. Maloon and Mr.
8 McCarthy if you are opposing the petition, or
9 supporting the petition?

10 MR. MALOON: I'm Mr. Maloon; I would
11 oppose the petition.

12 VICE CHAIRPERSON BOYD: All right. Mr.
13 McCarthy probably isn't here. He said his train
14 might be late.

15 COMMISSIONER BYRON: No, he's here.

16 VICE CHAIRPERSON BOYD: Oh, I'm sorry.

17 MR. MCCARTHY: Since when wasn't I here?
18 Were you going to exclude me before I have a
19 chance to answer, sir? Thank you.

20 I am here --

21 COMMISSIONER BYRON: Please come to the
22 podium --

23 VICE CHAIRPERSON BOYD: Wait, wait,
24 wait, wait, wait. Are you in support or in
25 opposition to the petition? I'm just trying to

1 sort things out, I'm not excluding anybody.

2 MR. McCARTHY: I'm supporting the
3 Hayward Area Planning Association's involvement in
4 these petitions. They are largely --

5 THE REPORTER: Please come to the
6 microphone, if you could. Thank you.

7 MR. McCARTHY: They are --

8 VICE CHAIRPERSON BOYD: I just need a
9 yes or no, you are in support or not of the
10 petition. If you are in support --

11 MR. McCARTHY: I'm a supporter of --

12 VICE CHAIRPERSON BOYD: Will you let me
13 finish? If you are in support of the petition I'm
14 going to hear from you now because that's the
15 procedure I laid out. And everybody has marked
16 their cards in a way that's hard to interpret what
17 they mean by this, which is why I interrupted this
18 proceeding.

19 Because I had said we'll hear from all
20 the supporters of the petition first; then we'll
21 hear from those who are in opposition. And I
22 interpreted the last speaker incorrectly, but his
23 statement's on the record.

24 So I would like you now to make your
25 presentation. There was no intention to exclude

1 you. I was trying to straighten out the process
2 and procedure.

3 MR. McCARTHY: It's my understanding
4 that Mr. Simpson came here partly representing the
5 Hayward Area Planning Association. Okay. I have
6 an addendum that is related to their environmental
7 concerns.

8 And first of all, with regards to the
9 construction trades or the lobby addendum to the
10 applicant, my question here would be is your
11 personal residence safely out of range. Thank
12 you.

13 Where CEC Staff is concerned, I've
14 already enjoyed having my public comment for the
15 July 30th meeting safely shuffled out of range,
16 which I will reply to later.

17 As land use planning is a subject of
18 broad environmental concerns on the part of the
19 Hayward Area Planning Association, disaster
20 management resources are also shockingly also a
21 legitimate environmental issue.

22 The Hayward Airport is a disaster
23 management resource which we'll find out about
24 when the next big one takes place on the Hayward
25 Fault Line, which is due, by the way.

1 In spite of the myopic perspective
2 expressed through the CEC and its counsel, Mr.
3 Bell, I have two requests. First, in hard copy
4 reply, please, does Mr. Bell, Counsel for CEC,
5 propose that he speaks unilaterally for CEC Staff
6 per the July --

7 VICE CHAIRPERSON BOYD: You're getting
8 way off the subject of the petition here.

9 MR. MCCARTHY: -- 30th staff reply
10 concerning this issue to issues against the -- to
11 issues that were presented against the Russell
12 City EC.

13 Second item, in hard copy reply, please,
14 does the CEC propose that the exclusion or
15 dismissal of the Caltrans aeronautic testimony
16 from the acting chief of aeronautics, Gary Cathey,
17 denying to his face his place in testimony by
18 Commissioner Geesman, does the CEC propose that
19 that's proper procedure.

20 That's all I have to say. Thank you.

21 VICE CHAIRPERSON BOYD: Mr. McCarthy,
22 you're totally out of order. Your statements are
23 not relevant to the petition at all. But this is
24 a public forum and we allow the public an
25 opportunity.

1 Now I was going to offer the staff and
2 the applicant an opportunity to make any further
3 comments they want to make. And then we'll have
4 Mr. Maloon, who has indicated his position.

5 MR. BELL: Thank you, Commissioner. I
6 would note that we've heard nothing here today
7 that would fall under Title 20, section 1720, and
8 the burden that's borne by the petitioner in this
9 case.

10 We've heard no new evidence that despite
11 his due diligence could not have been produced
12 during the evidentiary hearing.

13 There's been no error in fact or error
14 in law, in fact.

15 What we have here seems to be a core
16 misunderstanding from the petitioner, and possibly
17 from other folks involved, about the difference
18 between our licensing process and the air permit
19 that was -- I'm sorry, the PSD that was originally
20 granted through the Bay Area Air Quality
21 Management District, standing in the shoes of the
22 EPA.

23 There's a fundamental misunderstanding
24 about the differences between these two
25 organizations, which is why we're here on this.

1 We have heard a lot of talk about
2 factors that were already considered in the
3 underlying licensing proceeding. In fact, when
4 the initial notice of receipt went out, yes, it
5 did cite 1769. But had any interested party
6 looked at the application that had been -- the
7 petition that had been filed by Mr. Wheatland in
8 this matter, you would have seen that it was filed
9 under 1720.3, correctly.

10 Staff received 17 comments after our
11 notice of receipt from various persons, including
12 Mr. Simpson. Yet none of those really spoke to
13 1769. The comments that we received dealt with,
14 again, subject matter that had already been
15 decided in the underlying licensing proceeding,
16 itself, and in the amendment proceedings.

17 Staff, on July 17th, sent out a letter
18 to all of the individuals that we received
19 comments from, including Mr. Simpson, directing
20 them to 1720.3. So had these individuals actually
21 read our Russell City's original petition to
22 extend the deadline to commence construction, had
23 they taken a look at our letter that we sent them
24 on July 17th, clarifying that we're not reopening
25 the underlying proceedings, they would have been

1 directed to the correct code section.

2 They had plenty of notice. They did not
3 walk in here the day of the business meeting and
4 find out that something was sprung on them by
5 surprise. That didn't happen.

6 We've heard nothing new here today.
7 There has been no error in fact, or change or
8 error in law. And there's been no evidence
9 presented that could not otherwise have been
10 presented at the July 30th business meeting.

11 I know staff and the Commissioners were
12 aware, painfully aware of the EAB appeal. And
13 it's not the subject matter of that appeal which
14 was before the Commission on that day, before
15 Russell City's petition to extend the deadline to
16 commence construction. It was the fact that that
17 appeal had been filed which was germane to those
18 proceedings.

19 And having not met his burden under
20 1720.3 the Commission should deny Mr. Simpson's
21 petition for reconsideration.

22 VICE CHAIRPERSON BOYD: Thank you.
23 Applicant?

24 MR. WHEATLAND: Thank you. I'm Gregg
25 Wheatland; I'm the attorney for the project owner.

1 I know you've read our pleadings. I
2 won't repeat what we put in there. But I would
3 like to take a minute and talk about a couple of
4 issues. This is the first time that there's been
5 a request for reconsideration of this type of
6 order, and it's an opportunity for the Commission
7 to clarify the procedures that should be followed.

8 First of all, not all orders of the
9 Commission are subject to reconsideration. Only
10 those orders and decisions relating to
11 applications for certification, the AFC process.

12 The statutory provisions regarding
13 reconsideration, section 25530, in chapter 6 of
14 the Warren Alquist Act, are set forth under the
15 topic power facility and site certification. And
16 it's that set of decisions that are subject to
17 reconsideration.

18 I mention this because Mr. Simpson
19 argues, in a filing on September 19th, that this
20 particular matter is not a siting case. If that
21 is true, if this is not a siting case, as Mr.
22 Simpson alleges, but is something else like a
23 compliance matter, then he cannot avail himself of
24 the provisions for reconsideration under section
25 25530.

1 Assuming, though, for the sake of
2 argument, that this is an order that's subject to
3 reconsideration, the next question is whether Mr.
4 Simpson and CARE are parties to this proceeding.

5 Because section 25530 and rule 1720
6 could not be more clear that reconsideration of an
7 order or decision may be made by any party. And,
8 indeed, neither of them are parties to this
9 proceeding.

10 I think Mr. Simpson recognized this by
11 his attempt to file a petition to intervene. The
12 problem, however, is that the Commission rules are
13 also very clear that if a person files a petition
14 to intervene in a siting case, they must serve the
15 applicant. And I can tell you that we were never
16 served by the petition to intervene. And I even
17 pointed this out at the last hearing and still did
18 not receive a copy. So we have not yet received
19 this petition to intervene, we have not been
20 served. They have not made a timely intervention,
21 they are not a party. And we would argue they are
22 not subject to reconsideration.

23 COMMISSIONER BYRON: Well, even though
24 you may not have been notified, we're glad that
25 you're here, certainly.

1 MR. WHEATLAND: Yeah, and I am, too.

2 (Laughter.)

3 MR. WHEATLAND: That gives you the easy
4 way to decide this if you want to decide on a
5 procedural basis.

6 If you want to weigh into the merits on
7 this, there's just a couple things that I'd like
8 to talk about. Mr. Bell is absolutely correct
9 that the standard for a petition for
10 reconsideration is whether there's new evidence
11 pertaining to the matter that is being
12 reconsidered. Or whether there's an alleged error
13 of fact or law pertaining to that matter.

14 And the matter here is the question of
15 good cause, whether or not we have made a showing
16 for good cause for extension of our license. And
17 we explained to you last time that there is a PSD
18 permit that must be issued before we commence
19 construction. The PSD permit was remanded to the
20 District.

21 The basis of the remand has nothing to
22 do with anything we, as the applicant, did. The
23 basis of the remand is that the District made an
24 error in the way they noticed the PSD permit. So
25 due to circumstances outside the control of the

1 applicant, there is a delay in our ability to
2 commence construction until we obtain the PSD
3 permit.

4 Now, Mr. Simpson doesn't talk about
5 those issues really. What he's concerned about
6 are a couple things, and I'll just go over those
7 very briefly.

8 One, he states that this is the first
9 proceeding in which the Commission has looked at
10 this under 1720.3 rather than 1769. That's
11 clearly incorrect. The Commission's order 07-
12 1219-4 and docket 02-AFC-2 for the Salton Sea
13 Geothermal Unit, granted a three-year extension
14 citing section 1720.3. That decision was issued
15 on December 19, 2007.

16 The second thing that Mr. Simpson talks
17 about is the Endangered Species Act. Well, that
18 all may be interesting, but it's not relevant to
19 the question of good cause. It would have been
20 relevant to our original application, but that
21 matter has now been final. The amendment is now
22 final. The Supreme Court has ruled on these
23 issues. And this motion for reconsideration
24 should not be an excuse to raise these issues once
25 again.

1 Mr. Simpson even tried to raise the
2 Endangered Species Act before the Environmental
3 Appeals Board when he was talking about the PSD
4 permit. And they also instructed him that that's
5 not an issue within the jurisdiction of EPA or the
6 Environmental Appeals Board.

7 And finally, Mr. Simpson talks about the
8 EAB decision as saying that the, and I quote here,
9 "this proceeding is built on lack of notice."

10 Well, the EAB decision didn't address the
11 Commission's process and notice. It didn't
12 address the process that the District uses under
13 the authority of state law for the state permits.

14 The EAB decision is limited strictly to
15 the PSD permit, and a violation of a federal rule
16 regarding who was entitled to receive notice.
17 They determined that some people that should have
18 been sent a copy of the notice of the PSD permit
19 were not. And they remanded the District to go
20 back and redo the process consistent with the
21 federal rules.

22 Once that process is completed, and if
23 the PSD is issued, then we will be able to proceed
24 with our project.

25 If you have any questions I'd be happy

1 to address those questions.

2 VICE CHAIRPERSON BOYD: Any questions of
3 staff or applicant?

4 COMMISSIONER BYRON: I just want to make
5 sure I understand. Mr. Wheatland, are you looking
6 for this Commission to make some clarifications at
7 this time?

8 MR. WHEATLAND: Well, just in ruling on
9 the petitions for reconsideration, you may wish to
10 determine, on a procedural basis, whether it's a
11 matter that you even are able to entertain under
12 the statute. That's the clarification that I was
13 referring to.

14 COMMISSIONER BYRON: Maybe Mr. Bell
15 would like to respond.

16 MR. BELL: Well, this is a subject
17 matter that staff chose not to address. There are
18 some substantive issues that could be reached.
19 Procedurally, I thank Mr. Wheatland for his
20 research in this area, and his position.

21 But I think it's more effective for
22 these proceedings to look at the actual substance
23 of the current petition instead of deciding on
24 procedural issues. Because right now there is no
25 substance.

1 MR. WHEATLAND: And if I may add, to be
2 clear, we would appreciate a ruling on either
3 basis, on substantive or procedural, whichever the
4 Commission deems to be most appropriate.

5 MR. BELL: Staff has taken the position
6 to be as inclusive in our process as possible.
7 That's the basis for us not asking for a decision
8 just based on procedural grounds.

9 COMMISSIONER BYRON: When Commissioner
10 Boyd asks for it, we'll be prepared to make a
11 motion.

12 VICE CHAIRPERSON BOYD: Thank you. No
13 further questions.

14 As I indicated, Mr. Matt Maloon of the
15 International Brotherhood of Electrical Workers is
16 here, as I interpret it, in opposition to the
17 petition, in support of the staff and the
18 applicant.

19 MR. MALOON: Yes, you're correct.

20 VICE CHAIRPERSON BOYD: Thank you.

21 MR. MALOON: Good afternoon and thank
22 you for the opportunity to speak on this subject.
23 My name is Matt Maloon, and I represent the
24 International Brotherhood of Electrical Workers,
25 Local 595 in Alameda County.

1 We oppose this petition to reconsider
2 the extension and support the construction of the
3 Russell City Energy Center. This petition appears
4 to us to be a delaying tactic to prevent the
5 construction of a project that has been thoroughly
6 vetted through a number of agencies for a number
7 of years.

8 We support this project for a number of
9 reasons. Obviously for our members we look
10 forward to a number of jobs for the construction
11 of this facility. Moreover, part of the training
12 process for our apprenticeship is on-the-job
13 training. And so we look forward to our
14 apprentices learning the trade on this project.

15 Beyond that we feel this site is well
16 chosen. It's near a source of recycled water,
17 natural gas lines and electrical transmission
18 substation.

19 Continued growth in the State of
20 California demands an ever-increasing supply of
21 electricity. We believe that failure to keep up
22 with this demand will hamper the economy of the
23 state and is a disservice to all California
24 residents.

25 Our members and their families live in

1 this area where the Russell City Energy Center is
2 going to be built. We, too, are concerned about
3 the quality of the environment in this area. The
4 Building Trades welcome and train for the
5 construction of alternate energy generating
6 sources. However, there is no silver bullet to
7 answer all of our energy needs.

8 We understand that older, more polluting
9 generating facilities must be replaced by new,
10 more fuel efficient power plants. The
11 construction of this facility can lead to a net
12 improvement in Bay Area air quality.

13 This project has been thoroughly
14 reviewed by numerous agencies. We believe now is
15 the time to move forward with the construction of
16 this project.

17 Thank you.

18 VICE CHAIRPERSON BOYD: Thank you. Any
19 questions?

20 All right, as I indicated at the
21 beginning of this, the last word will go to the
22 petitioner, Mr. Simpson.

23 MR. SIMPSON: Thank you. The syllabus
24 of the EAB decision reads: The PSD proceedings
25 that are subject of this case are embedded in a

1 larger California certification or licensing
2 process for power plants conducted by the
3 California Energy Commission."

4 In their remand order on page 36 it
5 says: For example, it appears that the CEC's
6 outreach efforts did not satisfy the obligation to
7 inform the chief executives of the county where
8 the major stationary source is located. With
9 respect to the RCEC project in this regard the
10 District has not disputed the assertion by Gail
11 Steele of the Alameda County Board of Supervisors,
12 whose jurisdiction includes Hayward, she did not
13 receive the notice of the PSD."

14 Now, that's why you received the
15 county's application for intervention late.
16 That's why the county didn't get involved, because
17 they didn't get this notice that was supposed to
18 be the basis of our participation in this
19 proceeding.

20 The Salton Sea project also referenced
21 1769 in its decision. So, these, while their
22 authority to ask for this extension is contained
23 in 1720, I think it is, the basis for your
24 determination of good cause is, again, based in
25 1769. Without that information you don't have a

1 basis to see that this thing continues to comply
2 with state or federal law.

3 That's what your basis for an extension
4 should be, does this thing continue to comply.
5 Otherwise, we're looking at these obsolete
6 facilities, like this one, continuing to be
7 licensed, continuing to be extended, purely on the
8 basis that they don't have the money or that they
9 lost on appeal of the permit.

10 Thank you.

11 VICE CHAIRPERSON BOYD: Thank you, Mr.
12 Simpson.

13 Commissioners, you've heard the
14 petitioner, you've heard the staff and the
15 applicant, you've heard members of the audience
16 speak in support of the petitioner, you've heard
17 members of the audience speak in opposition to the
18 petitioner.

19 We have before us the petition. What is
20 your pleasure?

21 Excuse me. I would add that some of the
22 issues that have been discussed today we may well
23 choose to include in the ultimate order that
24 reflects the decision of this body. And it
25 doesn't have to be discussed in our dialogue at

1 the moment.

2 Commissioner Byron, you --

3 COMMISSIONER BYRON: If I may.

4 VICE CHAIRPERSON BOYD: -- you were
5 first out of the gate.

6 COMMISSIONER BYRON: Sure. I agree with
7 counsel, staff counsel. Really, we've got no new
8 evidence here today. Except I did learn something
9 new from Mr. -- I should say I was reminded of
10 something by Mr. Luboviski and Mr. Maloon when we
11 started talking about jobs there. I was reminded,
12 as of yesterday, we're now being paid for our work
13 here at the Commission.

14 (Laughter.)

15 COMMISSIONER BYRON: As a result of the
16 Governor signing the budget.

17 VICE CHAIRPERSON BOYD: Don't spend it
18 all yet; I haven't seen it.

19 COMMISSIONER BYRON: I would like to
20 make a motion, if I may. Actually, counsel has
21 prepared a rather extensive motion in response to
22 the petition and I'll just read the conclusion
23 because I think it summarizes.

24 The petitions present no new evidence,
25 nor do they demonstrate that there was an error in

1 fact or law. Or that there has been a change in
2 applicable law. Therefore the petitions lack
3 merit under our regulation, California Code of
4 Regs, Title 20 and 1720(a), and they should be
5 denied.

6 That's my motion.

7 VICE CHAIRPERSON BOYD: There's a
8 motion. Is there a second?

9 COMMISSIONER DOUGLAS: Second.

10 VICE CHAIRPERSON BOYD: There's a motion
11 and second to deny the petition.

12 All in favor?

13 (Ayes.)

14 VICE CHAIRPERSON BOYD: The motion
15 carries four to nothing. Thank you, everybody.

16 All right, back to the agenda. Item --

17 COMMISSIONER BYRON: If I may add a
18 final comment, because the applicant is here at
19 the table. What I think is much more substantive
20 in nature.

21 Mr. Wheatland, who is seated there with
22 you. You have not introduced him.

23 MR. WHEATLAND: Oh, I'm sorry.

24 MR. THOMAS: Thank you. My name is Rick
25 Thomas; I'm Vice President of Project Development

1 for Calpine, and here representing Russell City
2 Energy Center. The owners of the Center are
3 Calpine and General Electric Energy Financial
4 Services.

5 COMMISSIONER BYRON: Thank you for being
6 here. This has gone on a long time. I know
7 everybody's eager to eat lunch, but I think this
8 is important.

9 Just a little bit historically as to
10 what's going on, because it precedes my
11 involvement here at the Commission. But this
12 Commission permitted this power plant a long time
13 ago. And then we went through a major license
14 amendment because, as I understand it, Calpine
15 received a power purchase agreement, or had a
16 positive response to a request for offer from our
17 local investor-owned utility.

18 And we are quite concerned about the
19 resources that are spent at this agency. A great
20 deal of resources have been spent on the part of
21 this agency and your company, as well, in keeping
22 this permit going.

23 I was hoping that you might be able to
24 give us some indication today as to how that power
25 purchase agreement is proceeding, whether or not

1 this plant, indeed, will be built.

2 MR. THOMAS: The power purchase
3 agreement was amended, and it was executed by both
4 Calpine and Russell City -- I mean by PG&E and
5 Russell City Energy Center, and has been filed
6 with the Public Utilities Commission. The filing
7 was dated, I believe, September 10th.

8 There is a public process and
9 potentially hearings in early December. And the
10 decision from the PUC is scheduled for January
11 29th. And so with that approval, and getting the
12 re-noticing of the PSD portion of our air permit
13 proceeding from the District, which we anticipate
14 within the next week or so, we'll start the public
15 notice process that by early 2009 we'll have all
16 these permits and approvals wrapped up and be able
17 to begin arranging financing and start
18 construction.

19 There was a reference here to we don't
20 have the money. Well, without a permit or
21 approved contract, there's no one going to lend to
22 this project. And once we have those things in
23 place, you know, we do have a number of banks who
24 have financed a number of projects for Calpine
25 that are lined up to provide us with the necessary

1 financing to complete the project.

2 And Calpine and General Electric are
3 both fully behind this project and support it. So
4 our intention is once we get the approvals in
5 place, which we expect in early '09, this project
6 will then be in construction. And the target date
7 for completion is the summer of 2012.

8 COMMISSIONER BYRON: Okay. I appreciate
9 the response, and I don't mean to put you on the
10 spot. This Commission's very concerned about the
11 way the procurement process has been proceeding,
12 before the Public Utilities Commission, there's a
13 recent application on the part of Pacific Gas and
14 Electric to acquire and build a power plant
15 outside that procurement process.

16 And the concern is the chilling effect
17 that that might have on current activities and
18 future activities around procurement.

19 So I just really wanted to get a sense
20 from you as to whether or not -- and I understand
21 that a proposed decision may have come out on that
22 application in just the last 24 hours or so,
23 denying PG&E's request.

24 So I just wanted to ask directly and on
25 the record here if you had anything that you also

1 wanted to say with regard to that procurement
2 process.

3 MR. THOMAS: Well, to directly answer
4 your question, we participated in PG&E's long-term
5 procurement 2004. We were awarded short-listed on
6 the project. We worked for almost two years to
7 get a contract signed which was signed and
8 executed in November 2006, which was the basis
9 for, at that point we started our amendment
10 process with the CEC and with the Air District.

11 And that contract was approved, along
12 with a number of other projects, including Colusa
13 and East Shore and Bullard Avenue and the Starwood
14 project, and Panoche and the Humboldt Bay project,
15 were all approved as part of that 2200 megawatt
16 package that was approved back in 2006 by the
17 Commission -- by the Public Utilities Commission.

18 As you're aware, some of those projects
19 are no longer going through the siting process.
20 Our project has been delayed by two years because
21 of the -- primarily because of the air permit
22 appeals that have taken place.

23 When we went to PG&E we said we have a
24 viable project. The company is fully behind it.
25 We already have our prime moving equipment. The

1 combustion turbines and steam turbine generator
2 are in the possession of Russell City Energy
3 Company. They came from Calpine's inventory. We
4 were at the final stages of our permitting process
5 and PG&E and Calpine and Russell City sat down and
6 re-negotiated the contract.

7 So, the original contract was awarded in
8 a competitive procurement as part of that seven-
9 project package that was approved.

10 And our amendment is now -- we've
11 restructured the contracts so we could achieve a
12 later COD date. And there's been some other
13 changes in the contract that PG&E's applied for.
14 So we fully expect that since it was approved the
15 first go-round in 2004, it'll be approved again.

16 And what's, sitting here, ironic to me
17 is that this whole process started with a 2004 RFO
18 process solicitation. And now we're talking about
19 a plant that will be in service in 2012. We're
20 talking about an eight-year process, which boggles
21 my mind, and probably yours, also.

22 And let me add one thing. I wanted to
23 add a personal note that I really appreciate and
24 thank the staff and the Commissioners, themselves,
25 for being what I would call persistent and

1 diligent in helping us and supporting and going
2 thorough analysis and vetting all the issues. But
3 it has taken a lot of persistence on your part to
4 weather through these challenges.

5 COMMISSIONER BYRON: Thank you, Mr.
6 Thomas. One last comment, if I may. Because the
7 procurement process proceeds in a somewhat
8 secretive, behind-closed-door proceeding, and
9 we're not privy to what goes on there, I
10 appreciate your candor. And just want to make
11 sure that you understand this Commission is very
12 interested in making sure that these plants are
13 built and that the utilities do follow up in a
14 sincere manner in getting these power purchase
15 agreements in place.

16 I share your appreciation for the
17 staff's efforts, as well. It's been a long
18 process. I think I speak for all Commissioners
19 when I say we hope that we're done with the
20 permitting aspects of the Russell City Energy
21 Center.

22 (Laughter.)

23 VICE CHAIRPERSON BOYD: Thank you,
24 Commissioner Byron. Thank you, applicant.

25 Now, if we may move in the agenda to

1 agenda item number 18, the minutes of the
2 September 10th meeting. And I'll accept a motion
3 in a moment because I would like to call out a
4 correction.

5 On page 3, item number 8, which talks of
6 Altostratus, maybe we can finally change heal
7 island into heat island in the record. So, I
8 believe that word is heat island, not heal island.

9 With that correction, I'm quiet.

10 COMMISSIONER ROSENFELD: Since it's got
11 to do with heat islands, I'll happily move the
12 minutes and that from an h-e-a-t.

13 VICE CHAIRPERSON BOYD: There's a
14 motion.

15 COMMISSIONER BYRON: Second.

16 VICE CHAIRPERSON BOYD: There's a
17 second.

18 All in favor?

19 (Ayes.)

20 VICE CHAIRPERSON BOYD: Minutes
21 approved. Item number 19, any Commission
22 Committee presentations or discussions?
23 Commissioner Byron.

24 COMMISSIONER BYRON: A short one, if I
25 may. I think it's important. You may all be

1 aware there is an ad hoc committee here at the
2 Energy Commission on the greenhouse gas reduction.
3 The Chairman is the Presiding Member and I am the
4 Associate.

5 Seeing as she's not here today I thought
6 I'd remind my fellow Commissioners that we,
7 indeed, since our last business meeting did get
8 out a joint recommendation with the Public
9 Utilities Commission on greenhouse gas reduction
10 for the electricity sector to the Air Resources
11 Board.

12 And we're seeking public comment on
13 that. I don't have all the dates. I'm sure
14 there's someone here that could remind us, if it's
15 necessary. But this is a truly important
16 recommendation, and we will be having a special
17 business meeting on October 16th, I believe, at
18 2:00 p.m.

19 The PUC will be having a meeting that
20 morning, and they will consider that
21 recommendation. And we will do the same in the
22 afternoon.

23 VICE CHAIRPERSON BOYD: Thank you. Yes,
24 I think all Commissioners, to varying degrees, had
25 a role in this issue, as it was. Kind of a major

1 new piece of real estate for us.

2 But climate change has been a long-held
3 programmatic issue for this agency. And we note
4 that the California Climate Action Team program
5 and the scoping document relied very heavily on
6 the electricity sector to contribute significantly
7 to the reduction of greenhouse gases.

8 EXECUTIVE DIRECTOR JONES: And I've
9 looked through my notes. October 2nd is when
10 comments are due; reply comments are due on
11 October 9th.

12 COMMISSIONER BYRON: Thank you.

13 VICE CHAIRPERSON BOYD: Thank you. Any
14 other Commission Committee reports?

15 Hearing none, it's Chief Counsel report.

16 CHIEF COUNSEL CHAMBERLAIN: I have no
17 report today, Mr. Chairman.

18 VICE CHAIRPERSON BOYD: And you need no
19 executive session, I take it?

20 CHIEF COUNSEL CHAMBERLAIN: No.

21 VICE CHAIRPERSON BOYD: Thank you.
22 Executive Director's report.

23 EXECUTIVE DIRECTOR JONES: I have
24 nothing to report this morning.

25 VICE CHAIRPERSON BOYD: Leg Director's

1 report. Certainly something's going on finally?

2 MR. MARXEN: Well, yes, the budget was
3 signed. Good afternoon, Commissioners. The
4 budget was signed yesterday; that's the big news.

5 I've asked my team to monitor the
6 trailer bills, there are approximately two dozen
7 of them. It appears as though he's acted on --
8 the Governor has acted on a couple of them.

9 It also appears that at this point he
10 has not acted on any of the enrolled bills, which
11 were being delivered to him as late as yesterday
12 afternoon from the --

13 VICE CHAIRPERSON BOYD: And correct --
14 as I heard this morning, he has till next Tuesday
15 to move all --

16 MR. MARXEN: That's --

17 VICE CHAIRPERSON BOYD: -- these bills.
18 And he committed himself to meet his deadline.

19 MR. MARXEN: That's absolutely correct.

20 VICE CHAIRPERSON BOYD: So, be a long
21 weekend for you leg folks, once again, I trust.

22 Trailer bills, if I'm not mistaken there
23 is a trailer bill that takes pure money and
24 appropriates it to the community college
25 organization. However, I'm informed that it's not

1 a reduction of our current year budget, but from
2 the fund, itself?

3 MR. MARXEN: That's absolutely correct.
4 And that was one of the trailer bills that he
5 acted on.

6 COMMISSIONER ROSENFELD: I didn't hear
7 you. It was one of the trailer bills that?

8 MR. MARXEN: That he approved. He
9 approved that section of the trailer bill pursuant
10 to the conference committee hearing that happened
11 in spring -- in June --

12 VICE CHAIRPERSON BOYD: Timely per the
13 process.

14 MR. MARXEN: So, so far, there are no
15 surprises in our budget and no information on any
16 of our bills, either.

17 VICE CHAIRPERSON BOYD: Okay, therefore
18 the PIER program is now contributing to workforce
19 training via the community college system.

20 MR. MARXEN: That's correct.

21 VICE CHAIRPERSON BOYD: Thank you.
22 Anything else?

23 MR. MARXEN: No, that's it.

24 VICE CHAIRPERSON BOYD: Public Adviser's
25 report.

1 PUBLIC ADVISER MILLER: Just one item to
2 bring to your attention. We have a new Public
3 Adviser's Office pamphlet, and I have some in the
4 back if you'd like to bring them back to your
5 office.

6 It's something I'm proud of. It's the
7 first thing we've produced for outreach. We
8 brought them down to Chula Vista last week, and I
9 think that for anybody who wants our help, in
10 light of the meeting that we had today, there
11 certainly are some individuals that don't need my
12 help or don't desire my help, but there are others
13 in the communities throughout California, I think,
14 that can certainly help to get some basic
15 information about our process.

16 And that's what this is intending to do,
17 is to introduce them to the Public Adviser's
18 Office and to strongly encourage that they go to
19 our website, and to call my office if they have
20 any questions.

21 So this is just our first effort to get
22 some basic information out to the public about
23 what we can do.

24 VICE CHAIRPERSON BOYD: Good, that
25 sounds very positive. And I'm reflecting on

1 recent siting cases, public hearings and what-
2 have-you. Those venues offer us a good
3 opportunity to educate a certain segment of the
4 population just on the whole energy subject in
5 California.

6 I'm grateful for the amount of public
7 testimony I've seen; I'm alarmed somewhat by the
8 lack of total understanding of the California
9 energy picture. And that would be a good forum
10 for us to provide other easily read documents
11 about energy in California, and from whence it
12 comes. And all the issues and so on and so forth.

13 Thank you for the --

14 PUBLIC ADVISER MILLER: Thank you, --

15 VICE CHAIRPERSON BOYD: -- first
16 contribution.

17 PUBLIC ADVISER MILLER: -- and a brief
18 response. We do plan on having a larger
19 publication that will be more encompassing.

20 I would also like to see something about
21 conservation. I'm noticing that there are some
22 activists that are in opposition to power plants,
23 but they are also making public comments about
24 their concern about conservation. And so I'm
25 seeing this cross-over of interest. And so in our

1 next publication we will try to address those
2 issues, as well.

3 I wanted to thank most importantly the
4 staff person that we had help us with the graphics
5 on this. His name is Michael Wilson. I'm
6 thoroughly impressed by him, and I want to give
7 him kudos for his help. This was a collaboration
8 of many people in the Commission, and to them I'm
9 very thankful.

10 VICE CHAIRPERSON BOYD: Well, thank you.
11 And congratulations.

12 All right, public comment. There is no
13 public.

14 Well, if there are no other items to
15 bring before this body, this meeting stands
16 adjourned.

17 (Whereupon, at 12:50 p.m., the business
18 meeting was adjourned.)

19 --o0o--

20

21

22

23

24

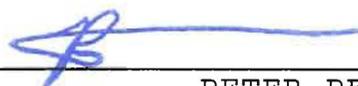
25

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 6th day of October, 2008.



PETER PETTY