BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

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

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DATE JAN 28 2009
RECD. FEB 13 2009

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 28, 2009

10:00 A.M.

ORIGINAL

Reported by:
Ramona Cota
Contract Number: 150-07-001

COMMISSIONERS PRESENT

James D. Boyd, Vice Chair

Karen Douglas

Arthur H. Rosenfeld

STAFF PRESENT

Jared Babula

Jonathan Blees

William Chamberlain, Chief Counsel

Matt Coldwell

Michael Doughton

Melissa Jones, Executive Director

Rod Jones

Harriet Kallemeyn, Secretariat

Joel Klein

Jason Orta

PUBLIC ADVISER

Elena Miller

ALSO PRESENT

William E. Robinson, Best Best & Krieger
counsel to DFI Funding, Inc.

Jane E. Luckhardt, Downey Brand
counsel to J-Power USA

Andrew C. Welch, Competitive Power Ventures

Julee Malinowski-Ball, Public Policy Advocates,
on behalf of the California Biomass Energy
Alliance

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

2 10:05 a.m.

3 VICE CHAIRMAN BOYD: Good morning

4 everybody, welcome to the California Energy

5 Commission, the Business Meeting. Please join us

6 in the Pledge to the Flag.

7 (Whereupon the Pledge of Allegiance was

8 recited in unison.)

9 VICE CHAIRMAN BOYD: Thank you. The

10 first item of business will be to discuss changes

11 to the agenda, additions or corrections. Item

12 number 3, labeled BR Laboratories is withdrawn

13 from the agenda and will be taken up at a future

14 meeting.

15 Item number 7 is postponed/withdrawn

16 from the agenda and again will be taken up at a

17 future meeting as well as Item number 9. Item

18 number 9 has some problems. A simple correction

19 but we can't hear it so it will be at a future

20 meeting. I'm told the meeting of the 11th for

21 sure.

22 And with that then having no Consent

23 Calendar we will immediately move to items of

24 detailed business. The first item on the agenda

25 is the Orange Grove Power Plant Project.

1 Commission consideration of an appeal from the
2 Orange Grove Power Plant Project Committee's
3 denial of a Petition to Intervene filed by
4 Petitioner DFI Funding, Inc. Mr. Blees will be
5 leading that.
6 MR. BLEES: Thank you. Good morning,
7 Commissioners. The Orange Grove AFC Committee
8 denied a Petition to Intervene in the proceeding
9 by DFI Funding, Incorporated. And DFI has
10 appealed that denial to the full Commission and
11 today you will hear that appeal.
12 In addition to DFI's appeal the
13 applicant and the Commission staff submitted
14 responses to the appeal. Today it would be
15 appropriate to hear from DFI and then the
16 applicant and the staff.
17 VICE CHAIRMAN BOYD: All right, let me
18 just say for the record that Mr. Blees is
19 appearing here as the Commission's attorney on
20 this matter. All right, I presume we are going to
21 hear now from Mr. Robinson.
22 MR. ROBINSON: Yes, thank you,
23 Commission Members.
24 VICE CHAIRMAN BOYD: All right,
25 Mr. Robinson, attorney for the appellant.

1 MR. ROBINSON: My name is William
2 Robinson of Best Best and Krieger, LLP and I
3 represent the appellant/petitioner DFI Funding,
4 Inc. DFI is a lienholder of record, having been
5 and is the holder of deeds of trust securing
6 around $5 million in construction loan financing
7 and encumbering four parcels of real property
8 which are collectively referred to as the Pala Del
9 Norte properties.
10 One of those parcels is actually
11 adjoining and contiguously abuts the proposed site
12 of the power plant. What we are requesting today
13 is that the Commission reverse the decision of the
14 Siting Committee and grant DFI's Petition for
15 Intervention in, in this proceeding.
16 Although, as Commission Members may
17 gather from reading the evidentiary papers, DFI
18 did not file its petition by the deadline
19 prescribed in the administrative regulations.
20 Nonetheless the regulations allow granting of
21 Petitions to Intervene upon a showing of good
22 cause. We submit for a number of reasons that
23 ample cause existed and exists for allowing
24 intervention by my client or the circumstances
25 here.

1 First off, my client did not receive
2 either actual or constructive notice of the
3 December 19 Evidentiary Hearing until December the
4 11th. In fact we didn't receive actual or
5 constructive notice of any of the specific
6 proceedings involving the AFC proceedings here
7 until the 11th of December.
8 We were not on the applicant's service
9 list. My client is not the owner and certainly
10 information that may have been provided to the
11 owner of the underlying property was not imputed
12 to my client, not imparted to my client. In fact
13 under these somewhat unique circumstances my
14 clients and the owners have somewhat of an
15 adversarial history.
16 My client's headquarters are located up
17 here in Northern California, specifically in
18 Emeryville, and some of the gap-filling notice
19 provisions such as publication in the local
20 newspaper would not, at least not under these
21 circumstances, have provided notice to my client
22 of the specific proceedings involved.
23 Once we did learn of the hearing,
24 Commission Members, we acted swiftly. We moved
25 diligently to file a Petition to Intervene within

1 three business days after we found out about the
2 proceeding. And the fourth business day, on
3 December 17, we filed a detailed letter of comment
4 with, with the Commission.
5 Here DFI has an undeniably direct,
6 substantial and immediate interest in the
7 proceedings. This is our security. Our
8 collateral is literally, or at least a portion,
9 right next door to the proposed site. The outcome
10 of this process will undoubtedly have a direct,
11 immediate impact upon the value of our collateral,
12 use of our collateral, access to it.
13 And finally, Members of the Commission,
14 there really is and will be prejudice to the
15 process, to the existing participants, from
16 allowing my client to participate in these
17 proceedings. We have alerted the players to our
18 position and our concerns with the, with the
19 assessment via the comment letter that contains a
20 lengthy recitation of our, of our concerns and the
21 issues.
22 For those reasons under the
23 circumstances good cause exists for allowing my
24 client to intervene. If there is any doubt, any
25 discretion to be exercised here it should tip in

1 favor of allowing my client to participate in
2 these proceedings as a party, given the direct and
3 immediate interest it has. Thank you.
4 VICE CHAIRMAN BOYD: Thank you,
5 Mr. Robinson. Mr. Blees, would you want to
6 comment or would you prefer I call upon the other
7 person who has indicated a desire to speak, Jane
8 Luckhardt representing the applicant in this case.
9 MR. BLEES: It would be appropriate to
10 hear from all the parties first, thank you.
11 VICE CHAIRMAN BOYD: Thank you.
12 Ms. Luckhardt, would you like to summarize your
13 position on this.
14 MS. LUCKHARDT: Okay. I think it's
15 clear, and DFI even admitted in their presentation
16 this morning that they did not file timely in this
17 proceeding and that they are not the record owner
18 of the property. And all of the notice
19 requirements that are kept by, that are set for
20 the Commission for AFC proceedings, Application
21 for Certification proceedings, require that you
22 notice property owners. Since DFI is a lender and
23 not a record property owner they were not notified
24 and were not required to be notified.
25 And I would like to note that this

1 proceeding is not simply an Application for
2 Certification proceeding. This project started
3 out as a Small Power Plant Exemption, therefore
4 there was notice when the Small Power Plant
5 Exemption application was started here at the
6 Commission.
7 During that time there was also a
8 process with the County because under a Small
9 Power Plant Exemption it is simply an exemption
10 from Energy Commission permitting and it requires
11 that the project get a County permit. So not only
12 did the Energy Commission put out two notices, one
13 for the Small Power Plant Exemption and one for
14 the AFC, but the County also noticed all parties
15 or all record property owners and they had a sign
16 posted at the location. So I think there is no
17 dispute that the required noticing occurred, and
18 occurred in this instance multiple times.
19 I think also based upon the information
20 that we received from and the exchanges with the
21 record property owners that are included in our
22 filings, both with Tesla Gray and Ray Gray, who is
23 a partner of Prominence Partners, the other record
24 property owner for the properties in question
25 here. There was interaction between the applicant

1 and those individuals.
2 So the property owners clearly did know
3 about the project that was going forward and in
4 fact sent a letter that is included also in our
5 filings to San Diego Gas and Electric Company
6 offering to sell the property and expressing their
7 concern about the power plant. So I don't think
8 there is any question that the record property
9 owners not only were noticed appropriately but
10 were also, had actual knowledge about the
11 proceeding, about the power plant, and the process
12 that was ongoing.
13 I think it is also clear based on the
14 e-mails. We have at least one e-mail that we were
15 able to locate where DFI Funding was a CC on that
16 e-mail. And that is dated December 5, 2007. We
17 are not aware as to whether or how many other
18 e-mails the property owner may have provided to
19 DFI Funding about the project but we are aware of
20 one that went from J-Power, from Steve Thome of
21 J-Power to Ray Gray that was copied to a Steve at
22 DFI Funding. And there were a series, there's an
23 e-mail trail so it wasn't just one. The e-mail
24 started on December 3rd and then another one on
25 December 5th. And so we know that there was

1 notice of one type or another to DFI Funding as
2 early as December of 2007, over a year ago.
3 At this point we feel it is not proper
4 to allow them to intervene in this proceeding.
5 This proceeding has been a very long proceeding
6 because it started as an SPPE. We believe they
7 had adequate time to intervene and participate in
8 the process. Part of the point of having people
9 intervene early is to allow issues to be resolved
10 within the discovery process and not have it all
11 come in and show up at the hearing or at the very
12 last minute.
13 In this instance their comment letter
14 raises a whole set of issues, many of which have
15 already been resolved, that they were just unaware
16 of coming into the process late and lists a whole
17 range of issues that could have been addressed
18 during the discovery portion of this proceeding.
19 And by coming in late I think they prejudice the
20 other parties who have gone through and spent a
21 lot of time in workshops and data requests and
22 responses.
23 If they would like to participate
24 further in this process they can do so by
25 commenting on the proposed decision and appearing

1 before this Commission at the Final Decision
2 hearing or any hearing on the Presiding Member's
3 Proposed Decision.
4 At this point we feel that it would
5 prejudice the project to allow them to intervene.
6 All parties have worked extremely hard to get this
7 project on the time frame on which it's on. The
8 addition of someone who is not up to speed at this
9 point, a new intervenor who has not participated,
10 will delay the process. We find it difficult to
11 understand how it would not and so we strongly
12 oppose a granting of intervention. We believe
13 that the Committee heard this issue and considered
14 it and made a thoughtful and reasoned decision and
15 that that decision should be affirmed.
16 VICE CHAIRMAN BOYD: Thank you.
17 Mr. Blees.
18 MR. BABULA: This is Jared Babula, staff
19 counsel. I would like to just echo what the
20 applicant stated. I noted that the attorney for
21 DFI just in his own presentation said that DFI
22 wasn't an owner and they are located in Emeryville
23 and I think that really says it all. We mentioned
24 that in our brief.
25 The only other thing I would like to

1 note is during the Evidentiary Hearing the
2 Committee did allow DFI, of course, to make public
3 comments through their counsel. They were given a
4 chance to comment on the project and submit a 16
5 page letter, which the Committee required the
6 parties to then address post-Evidentiary Hearing.
7 So that will be coming due this week.
8 So other than that I have nothing
9 further to add beyond what I have already
10 submitted in the brief, thank you.
11 VICE CHAIRMAN BOYD: Thanks, Jared.
12 Mr. Blees, do you have any additional comments you
13 would like to make as our attorney now that we
14 have heard from the staff, the applicant and the
15 petitioner?
16 MR. BLEES: Thank you. I don't think
17 that anything new has been presented in any of the
18 appeal papers or what we have heard today that
19 goes beyond the basic information that was
20 presented in the original Petition to Intervene,
21 the applicant's opposition to that and the hearing
22 on this matter that the Committee held on December
23 19th.
24 Briefly to summarize what I think are
25 the most important points here: First, as both

1 the applicant and the staff have pointed out, all
2 of the notice requirements that the Commission is
3 responsible to carry out by law were met in this
4 proceeding. Notice of the filing of the AFC and
5 of the initial informational hearing was sent to
6 not only all adjacent property owners but to all
7 owners within a designated distance of the power
8 plant and linear facilities.
9 In addition DFI, although it did not
10 receive mailed notice from the Energy Commission,
11 did have actual notice of the proceeding by way of
12 its contacts with the parties who are the actual
13 landowners to whom DFI has lent money.
14 It is also important to note as, again,
15 both the staff and the applicant pointed out in
16 their papers, that DFI is not entitled to any
17 notice here. The leading case on notice by
18 administrative agencies in quasi-adjudicatory
19 proceedings is Horn v. County of Ventura. That
20 emphasizes the due process rights of property
21 owners and emphasizes that agencies are required
22 to make reasonable efforts to notify property
23 owners. Here again DFI is not an owner and the
24 Commission certainly went beyond mere
25 reasonableness in notifying all potentially

1 affected owners.

2 In fact Horn v. County of Ventura

3 suggests that the two things that the -- two of

4 the things that the Commission did here, which are

5 posting on or near the site plus mailing of notice

6 within a designated radius of a proposed

7 development is an appropriate method of notice for

8 a state agency.

9 Horn v. County of Ventura also indicates

10 that because due process is a flexible concept

11 that the burden on the agency to provide notice is

12 also a relevant factor to take into consideration.

13 Basically what DFI is suggesting is that the

14 Commission has a constitutional duty to search

15 title records for all lienholders of every parcel

16 of potentially affected property. DFI certainly

17 cites no legal authority for that proposition and

18 we are unaware of any.

19 Finally with regard to potential burden

20 on the parties. DFI has not indicated precisely

21 what action it would like the Commission to take.

22 If DFI wants to participate in all of the

23 activities that parties are entitled to such as

24 discovery, presenting witnesses, cross-examining

25 opposing witnesses, that would indeed require a

very substantial delay in the, in the proceeding. And would require all of the parties, and even non-party participants, to go back over ground that has already been plowed and perhaps to plow some new ground that DFI should have raised earlier.

If however DFI merely wants -- I shouldn't say, merely. If DFI simply wants the opportunity to make its views known it already has the opportunity to do that and it has availed itself of that opportunity. I think it was the applicant that pointed out that DFI has already submitted, I think it's a 14 or 16 page comment letter. DFI will also have the opportunity to submit comments on the upcoming Presiding Member's Proposed Decision and any revisions thereto.

So in sum I think that if DFI wants to, wants to do the things that parties do, it will cause a significant burden. If on the other hand DFI only wants to comment, as any other public participant has the opportunity to do, there is no reason to grant intervention.

So in conclusion I think there is no significant reason for overturning the Committee's decision that has been presented.

1 VICE CHAIRMAN BOYD: Thank you,
2 Mr. Blees. Now I would like to ask my fellow
3 Commissioners if they have any questions on this
4 issue, any questions of any of the parties. And I
5 guess I would particularly turn to our resident
6 commissioner attorney, Commissioner Douglas, if
7 she has any questions.
8 COMMISSIONER DOUGLAS: I have, I have
9 some comments. I would like to say first of all
10 that it is very clear to me that we have met our
11 notice requirements in this case. The Orange
12 Grove proceeding has been in the process quite a
13 long time so the opportunities for comment have
14 been there.
15 And the fact that there was actual
16 notice, the fact that the petitioner in this case
17 has, and this does not -- Our refusal to grant if
18 that is the way we move on this intervention in
19 this case because it was not timely, does not
20 foreclose participation in the process. And in
21 fact we have received comment letters and may
22 again in the future. All pretty strongly lead me
23 to support the staff position.
24 I would like to see if other
25 Commissioners have comments. And if not maybe

1 I'll make a motion at this point.
2 VICE CHAIRMAN BOYD: Commissioner
3 Rosenfeld, any questions or comments?
4 COMMISSIONER ROSENFELD: I am inclined
5 to side with the staff.
6 VICE CHAIRMAN BOYD: Thank you. I would
7 entertain a motion.
8 COMMISSIONER DOUGLAS: I would like to
9 move that we -- let's see if I -- Deny the appeal
10 of the Committee's denial of the Petition for
11 Intervention. That would be the exact action we
12 be would taking today.
13 VICE CHAIRMAN BOYD: Is there a second?
14 COMMISSIONER DOUGLAS: Supporting the
15 staff's position.
16 COMMISSIONER ROSENFELD: Second.
17 VICE CHAIRMAN BOYD: All right, we have
18 a motion and a second to deny the petition. All
19 in favor?
20 (Ayes.)
21 VICE CHAIRMAN BOYD: Thank you. We have
22 a unanimous vote of the Commissioners to deny the
23 petition. I will look to our attorney to write an
24 order so reflecting, thank you. Thank you,
25 everybody.

1 Okay, Agenda Item number 2, CPV Vaca
2 Station Power Plant. Possible approval of the
3 Executive Director's data adequacy recommendation
4 for the CPV Vaca Station Power Plant, a nominal
5 660 megawatt combined-cycle facility located on
6 land owned by the City of Vacaville at the
7 intersection of Lewis and Fry Roads within the
8 said city limits. Staff.
9 MR. DAVIS: Good morning, Commissioners.
10 I'm Rod Jones, staff project manager for the CPV
11 Vaca Station AFC.
12 VICE CHAIRMAN BOYD: Thank you,
13 Mr. Jones.
14 MR. DAVIS: Sure. On January 14, 2009
15 the Energy Commission determined that the CPV Vaca
16 Station project did not meet all the requirements
17 listed in the California Code of Regulations for
18 the 12 month process. The AFC was deficient in
19 seven of the 23 technical areas, Air Quality,
20 Cultural Resources, Land Use, Noise, Traffic and
21 Transportation, Transmission System Design and
22 Visual Resources.
23 On January 9, 2009 CPV filed an AFC Data
24 Adequacy supplemental -- Supplement, for review.
25 Staff has reviewed all of the supplemental

1 information for the previously deficient technical
2 disciplines and believes the project is now data
3 adequate.
4 Staff's evaluation of the supplement to
5 the AFC was submitted to the Executive Director
6 whose recommendation is before you. The Executive
7 Director is recommending that the Commission
8 accept the CPV Vaca Station Project AFC with the
9 supplemental information as complete and appoint a
10 siting a Siting Committee to preside over the data
11 discovery and analysis phase of the project during
12 the licensing process. Thank you.
13 VICE CHAIRMAN BOYD: Thank you. Do we a
14 witness for the applicant?
15 MR. WELCH: Yes. I'm Andy Welch, I am
16 the project manager from Competitive Power
17 Ventures. And I have nothing to add.
18 VICE CHAIRMAN BOYD: All right, we have
19 a recommendation before us.
20 COMMISSIONER DOUGLAS: I will move
21 approval of the Executive Director's data adequacy
22 recommendation.
23 COMMISSIONER ROSENFELD: Second.
24 VICE CHAIRMAN BOYD: There's a motion
25 and a second. All in favor?

1 (Ayes.)

2 VICE CHAIRMAN BOYD: The motion carries

3 three to nothing so we have approved the finding

4 of data adequacy for this project. Which means we

5 can now move to the appointment of a siting

6 committee for this application.

7 And I would like to recommend a

8 committee consisting of Commissioner Byron as the

9 lead commissioner and Commissioner Rosenfeld as

10 the associate. Do I have a motion?

11 COMMISSIONER DOUGLAS: I move approval

12 of that committee.

13 COMMISSIONER ROSENFELD: I second it.

14 VICE CHAIRMAN BOYD: There's a motion

15 and a second. All in favor?

16 (Ayes.)

17 VICE CHAIRMAN BOYD: So approved.

18 Congratulations, siting committee.

19 COMMISSIONER ROSENFELD: Thank you.

20 VICE CHAIRMAN BOYD: Commissioner Byron

21 is not here to defend himself.

22 (Laughter.)

23 VICE CHAIRMAN BOYD: Okay, thank you.

24 MR. WELCH: Thank you.

25 VICE CHAIRMAN BOYD: The next item is

1 Item number 4, Aspen Environmental Group.
2 Possible approval of a Work Authorization. Well,
3 I am going to just skip that because I believe we
4 are going to have a correction. A Work
5 Authorization for $86,081.76 under contract 400-
6 07-032 with Aspen Environmental Group.
7 MR. KLEIN: Thank you.
8 VICE CHAIRMAN BOYD: Mr. Klein.
9 MR. KLEIN: My name is Joel Klein,
10 project manager for the proposed Work
11 Authorization.
12 The correction to the number is it
13 should now be Work Authorization 1910.001.
14 VICE CHAIRMAN BOYD: Thank you.
15 MR. KLEIN: Staff is requesting approval
16 for this Work Authorization so that they can
17 update the Cost of Generation model and report
18 work done in IEPR 2007, as directed in the IEPR of
19 2007 and 2008. We are directed to repeat this
20 work and provide high and low values and capture
21 long-term trends.
22 The money allows for engineering support
23 and the data gathering and analysis of the data,
24 support in updating the model, and review of the
25 staff-generated Cost of Generation report. The

1 contractor will also attend the workshop and
2 support us in that effort.
3 The money also allows for a
4 comprehensive review of the Cost of Generation
5 models to see if we can improve our own model and
6 see why our results sometimes differ with others.
7 The contract amount is $86,081.76.
8 There is a related, supporting PIER contract 500-
9 06-014, that provides the alternative renewable
10 generation data for the report.
11 Our part of the report is the model and
12 the gas-fired generation. PIER will be providing
13 data for the model for renewable alternative
14 technology units.
15 I think that about captures it. Any
16 questions?
17 VICE CHAIRMAN BOYD: Thank you. Any
18 questions of staff?
19 COMMISSIONER ROSENFELD: How much is the
20 PIER support, in dollars? Do you happen to know?
21 MR. KLEIN: Well it was roughly $100,000
22 but I have heard that they have offered support to
23 do, to capture costs for nuclear and for IGCC,
24 integrated gas, you know, coal combined-cycle
25 units. Coal-firing combined cycle units. I think

1 that's about 40,000 more. I'm sorry, I don't have
2 those numbers exactly.
3 COMMISSIONER ROSENFELD: All right.
4 VICE CHAIRMAN BOYD: Any other
5 questions?
6 COMMISSIONER ROSENFELD: I'm ready to
7 move the item.
8 COMMISSIONER DOUGLAS: I second.
9 VICE CHAIRMAN BOYD: There's a motion
10 and a second. All in favor?
11 (Ayes.)
12 VICE CHAIRMAN BOYD: The motion carries
13 three to nothing. Thank you very much.
14 MR. KLEIN: Thank you.
15 VICE CHAIRMAN BOYD: The next item, Item
16 number 5 on our agenda, Energy Innovations Small
17 Grant Program. Possible approval of $340,000 for
18 four proposals responding to our Solicitation
19 Cycle with regard to Energy Innovations Small
20 Grant Program. Mr. Coldwell.
21 MR. COLDWELL: Good morning,
22 Commissioners. My name is Matt Coldwell and I am
23 the new Energy Commission program manager for the
24 Energy Innovations Small Grant Program.
25 The Small Grant Program's goal is to

1 conduct research that establishes the feasibility
2 of new innovative energy concepts in the energy
3 sectors of electricity, natural gas and more
4 recently transportation. The research proposals,
5 they must target one of the PIER R&D areas,
6 address a California energy problem and provide a
7 potential benefit to the California electric and
8 natural gas ratepayers.
9 The Small Grant Program is administered
10 through the San Diego State University Research
11 Foundation. Every year they release multiple
12 solicitations and every year they receive numerous
13 proposals for grant funding. The proposals go
14 through a fairly extensive vetting process and
15 ultimately are recommended by the program
16 technical review board that is put together by the
17 Research Foundation.
18 The item before you today, this first
19 item, is the product of Natural Gas Solicitation
20 07-01G. For this solicitation we received 17
21 proposals. Five of them ultimately passed the
22 initial screening and exceeded the minimum score
23 to advance to the program technical review board.
24 And of those five we are recommending approval of
25 four of them that scored high enough with the

1 review board. Of the four that we are
2 recommending one of the proposals addresses
3 natural gas energy efficiency and the other three
4 proposals address renewable energy technologies.
5 Today we recommend that the Energy
6 Commission approve these four natural gas small
7 grants for a total of $340,000. At this time I
8 would be more than happy to answer any questions.
9 VICE CHAIRMAN BOYD: Thank you. Any
10 questions, Commissioners, of the staff?
11 COMMISSIONER ROSENFELD: No.
12 VICE CHAIRMAN BOYD: No questions.
13 Do we have a motion?
14 COMMISSIONER ROSENFELD: I move the
15 item.
16 COMMISSIONER DOUGLAS: I second.
17 VICE CHAIRMAN BOYD: There's a motion
18 and second. All in favor?
19 (Ayes.)
20 VICE CHAIRMAN BOYD: It carries three to
21 nothing. Thank you very much, congratulations.
22 And I am just going to reference the
23 last item on the list to our friends in the
24 transportation division. There is a member of the
25 public who has participated actively in our review

1 committee and I would like to make sure that they
2 reference this algae biomass gasification project
3 to that gentleman who has been quite diligent in
4 his support of that concept.
5 His name is Rain. We chuckle a little
6 but -- And we chuckled the first time we were
7 introduced to this young man but he is actually
8 quite serious and quite knowledgeable and very
9 sincere in his interest in this concept. And I
10 think we should make sure that he is aware that we
11 approved this grant.
12 All right, next item, thank you.
13 MR. COLDWELL: Thank you.
14 VICE CHAIRMAN BOYD: Item number 6,
15 Energy Innovations Small Grant Program again.
16 Possible approval of $722,219 for eight proposals
17 responding to solicitations of the Energy
18 Innovations Small Grant Program. And again
19 Mr. Coldwell.
20 MR. COLDWELL: My name is still Matt
21 Coldwell, small grants program manager.
22 (Laughter.)
23 VICE CHAIRMAN BOYD: I wondered why you
24 were looking at me so anxiously.
25 MR. COLDWELL: All the goals are the

1 same. This one is an electricity solicitation.
2 Specifically it is electricity solicitation 07-03.
3 For this solicitation the San Diego State Research
4 Foundation received 69 proposals.
5 Of those 69, 19 of them ultimately
6 passed the initial screening and exceeded the
7 minimum score to advance to the technical review
8 board. The technical review board is recommending
9 that eight of these proposals that scored high
10 enough be recommended for funding.
11 Of the eight being recommended one of
12 the proposals addresses industrial, agricultural
13 and water end use efficiency, two proposals
14 address building end use efficiency, one proposal
15 addresses renewable energy technologies, three
16 proposals address environmentally preferred
17 advance generation and the last one addresses the
18 environmental area.
19 We recommend that the Commission approve
20 these eight electricity small grants for a total
21 of $722,219. And again I would be more than happy
22 to answer any questions.
23 VICE CHAIRMAN BOYD: Thank you. Any
24 questions of Mr. Coldwell?
25 COMMISSIONER ROSENFELD: I move the

1 item.

2 COMMISSIONER DOUGLAS: I second.

3 VICE CHAIRMAN BOYD: A motion and a

4 second. All in favor?

5 (Ayes.)

6 VICE CHAIRMAN BOYD: It's approved three

7 to nothing. Thank you, Mr. Coldwell.

8 MR. COLDWELL: Thank you very much.

9 VICE CHAIRMAN BOYD: The next item is

10 Item number 8, the Existing Renewable Facilities

11 Program Guidebook. Possible adoption of the

12 Committee Draft Existing Renewable Facilities

13 Program Guidebook. This Guidebook describes the

14 Energy Commission's process for awarding

15 production incentives to existing in-state

16 renewable energy generating facilities. Mr. Orta.

17 MR. ORTA: Good morning, Commissioners.

18 My name is Jason Orta and I am the project lead

19 for the Existing Renewable Facilities Program.

20 Staff is submitting for the Energy

21 Commission's approval the sixth edition of the

22 Existing Renewable Facilities Program Guidebook.

23 Assembly Bill 3048, which was authored by the

24 Assembly Committee on Utilities and Commerce,

25 amended Section 25742 of the Public Resources Code

1 to remove restrictions on biomass fuels that could
2 be used by facilities receiving production
3 incentive payments from the existing renewable
4 facilities program.
5 The proposed changes to the guidebooks,
6 to the Guidebook, also made these changes per AB
7 3048. Additionally the proposed changes would
8 also reduce reporting requirements for biomass
9 facilities participating in the Existing Renewable
10 Facilities Program.
11 Additionally, another proposed change
12 would clarify the incentive structure to
13 facilities receiving all-in pricing. Under this
14 proposal an all-in price would be treated
15 similarly to the energy prices received by other
16 facilities participating in the program.
17 Facilities receiving all-in pricing can also
18 receive payments on a time-of-use basis similar to
19 other facilities participating in the program.
20 Proposed changes also include conforming
21 changes such as removing references to the
22 competition transition charge and to the new
23 renewable resources account, which no longer
24 exists.
25 I recommend the approval of this Draft

1 Guidebook and I will answer any questions by the
2 Commissioners and by the public.
3 VICE CHAIRMAN BOYD: Thank you. I have
4 no indication of any public interest in
5 testifying. No blue cards up here, seeing no one
6 leaping to their feet. Oops, oops, oops, there is
7 someone.
8 MS. MALINOWSKI-BALL: I will actually.
9 This is Julee Malinowski-Ball of the Public Policy
10 Advocates on behalf of the California Biomass
11 Energy Alliance.
12 I would be remiss if I didn't say that
13 we do support the changes that are made in this
14 Guidebook and we appreciate, again, what the staff
15 has done to reach out to the facilities to make
16 the language work and to make sure that as many
17 facilities could participate in this program as
18 possible. We would like to say thank you and we
19 support the changes.
20 VICE CHAIRMAN BOYD: Thank you very
21 much. I'm sure the staff appreciates hearing any
22 appreciation.
23 MR. DOUGHTON: Commissioners, I have one
24 brief statement, if I may, for the record, on this
25 item.

1 VICE CHAIRMAN BOYD: Certainly.
2 MR. DOUGHTON: This is Michael Doughton,
3 senior staff counsel with the Commission's legal
4 office.
5 Just that this item is exempt from CEQA.
6 The Commission's legal office has considered the
7 application of the California Environmental
8 Quality Act or CEQA to the adoption of revisions
9 to the Existing Renewable Facilities Program
10 Guidebook.
11 And we have opined that the adoption of
12 revised guidelines is exempt from CEQA because it
13 is not a project subject to CEQA under Title 14,
14 California Code of Regulations Sections 15378(b)
15 sub 2 and 4, in that it relates to general policy
16 and procedure-making and only creates a
17 governmental funding mechanism, it does not
18 involve a commitment to specific projects.
19 Further, because it falls within the so-
20 called common sense exemption pursuant to Title
21 14, California Code of Regulations Section
22 15061(b)(3), which provides that CEQA only applies
23 to projects that have a significant effect on the
24 environment.
25 I just put that into the record as a

1 formality, thank you.
2 VICE CHAIRMAN BOYD: Thank you. And I
3 would just, before asking for questions from my
4 fellow Commissioners, is to thank Mr. Orta for not
5 only briefing me on this subject but digging a lot
6 deeper in response to a lot of questions that we
7 had on this subject since I am kind of a strong
8 advocate for biomass use and so on and so forth.
9 I am quite interested in this and grateful to see
10 this and hope to use this information as well as
11 the workings of this law to leverage some other
12 activity in this area. So thank you, Mr. Orta.
13 Now, any questions from my fellow
14 Commissioners?
15 COMMISSIONER DOUGLAS: A brief comment.
16 The Renewables Committee worked fairly extensively
17 with staff on this issue and these proposed
18 changes to the Guidebook are the culmination of
19 many, many months of going through statutory
20 language in our Guidebook and working with
21 industry stakeholders and other stakeholders on
22 better, simpler, more efficient ways of realizing
23 statutory intent and meeting the needs of the
24 industry and protecting the environment. I think
25 we are at a point where these improvements are

very important.

In the final workshop on this item there was speaker after speaker complimenting Mr. Orta and his changes. I think staff has done a very good job on this and so I strongly support it and would like to make a motion. I'll move approval of these changes.

COMMISSIONER ROSENFELD: I'll second.

VICE CHAIRMAN BOYD: Okay, there's a motion and second. All in favor?

(Ayes.)

VICE CHAIRMAN BOYD: Opposed? None. It's approved three to nothing, congratulations. And again, thank you for generating a lot of compliments to the staff with regard to handling this issue. I have been here long enough to hear times when there weren't compliments about things so thanks, Jason.

MR. ORTA: Thank you.

VICE CHAIRMAN BOYD: The next item on the agenda, Item number 10, approval of the Minutes of the January 14 meeting.

COMMISSIONER ROSENFELD: I move the Minutes of the January 14 meeting.

COMMISSIONER DOUGLAS: Second.

1 VICE CHAIRMAN BOYD: A motion and a
2 second. All in favor?
3 (Ayes.)
4 VICE CHAIRMAN BOYD: Approved three to
5 nothing.
6 Next, any Commission Committee
7 Presentations or Discussion by my fellow
8 Commissioners?
9 COMMISSIONER DOUGLAS: No.
10 VICE CHAIRMAN BOYD: And I have nothing
11 to offer so we will move to the next item, which
12 is the Chief Counsel's Report. Mr. Chamberlain.
13 MR. CHAMBERLAIN: I have no report
14 today.
15 VICE CHAIRMAN BOYD: All right,
16 Executive Director's Report. Ms. Jones.
17 MS. JONES: Good morning. I do have one
18 statement I need to put into the record. This
19 regards an item that was approved. It was a loan
20 for school districts back in November of this year
21 -- November of last year, November 5.
22 The staff would like the public record
23 to accurately reflect the name and source of the
24 loan funds for an efficiency, energy efficiency
25 loan approved at the November 5 Business Meeting.

1 The name of the approval loan recipient was listed
2 as Loomis Union Unified School District. The
3 correct name should read Loomis Union School
4 District. The source of funds identified in the
5 Business Meeting documents were the Local
6 Jurisdiction Energy Assistance account funds.
7 Staff and the legal office concur that the Energy
8 Conservation Assistance account fund should be
9 used to fund this loan as opposed to the initially
10 identified LJEA source of funds.
11 VICE CHAIRMAN BOYD: So that sets the
12 record straight, thank you. Anything else?
13 MS. JONES: And that is all I have to
14 report.
15 VICE CHAIRMAN BOYD: All right.
16 Next would be the Legislative Director's
17 Report but I see our legislative director is out
18 wandering the Legislature, I assume.
19 Public Adviser's Report.
20 MS. MILLER: Nothing to report.
21 VICE CHAIRMAN BOYD: Thank you.
22 Any public comment? I have no blue
23 cards. Anybody wishing to make a comment?
24 Seeing nothing I would mention two
25 things. First, for the remaining, limited

1 audience. This is Commissioner Douglas' last
2 meeting for awhile. I'm glad you made it through
3 the meeting. Commissioner Douglas is in a family
4 way and will give birth momentarily to a child.
5 We wish her well in that endeavor and we look
6 forward to seeing her back as soon as is
7 convenient to both her and her new offspring. So
8 good luck, Karen.
9 COMMISSIONER DOUGLAS: Well you know, if
10 I could put a little chair right here I could be
11 back fairly quickly.
12 VICE CHAIRMAN BOYD: Well, we are pretty
13 open-minded about things like that so let's see
14 what we can do.
15 Okay, the last item I wanted to mention
16 is a very brief executive session on a personnel
17 matter. It won't take very long. I suggest we
18 hold it in what is becoming our private conference
19 room, the vacant Commissioner's office. And with
20 that I'll adjourn this meeting and we will move to
21 that item. Mr. Chamberlain, you might like to
22 join us as well as Ms. Jones.
23 (Whereupon, at 10:50 a.m., the
24 Business Meeting was adjourned.)
25 --o0o--

CERTIFICATE OF REPORTER

I, RAMONA COTA, 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 February, 2009.

RAMONA COTA