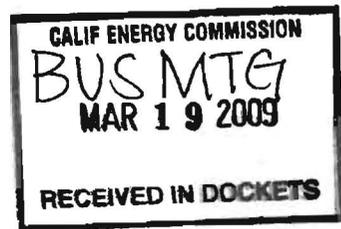


BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

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



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

WEDNESDAY, MARCH 11, 2009

10:06 A.M.

**ORIGINAL**

Reported by:  
Peter Petty  
Contract Number: 150-07-001

COMMISSIONERS PRESENT

Karen Douglas, Chairperson

James D. Boyd, Vice Chairperson

Arthur Rosenfeld

Jeffrey D. Byron

Julia A. Levin

STAFF PRESENT

Claudia Chandler, for Executive Director Jones

William Chamberlain, Chief Counsel

Harriet Kallemeyn, Secretariat

Eileen Allen

Guido Franco

Linda Spiegel

Ken Koyama

Rob Hudler

Sylvia Bender

Galen Lemei

Gordon Schremp

PUBLIC ADVISER

Elena Miller, Public Adviser

ALSO PRESENT

Christopher Ellison, Attorney  
Ellison, Schneider and Harris

ALSO PRESENT

Timothy Patrick Dillon, Attorney  
Law Offices of Timothy P. Dillon  
representing California Consumers of Motorfuel

George A. Zelcs, Attorney  
Korein Tillery Attorneys at Law  
California Motorfuel Consumers

Jay McKeeman  
California Independent Oil Marketers Association

Kurt E. Floren  
Agricultural Commissioner/Weights and Measures  
County of Los Angeles

Judy Dugan  
The Foundation for Taxpayer and Consumer Rights

Carl Boyett  
Boyett Petroleum  
Society of Independent Gasoline Marketers of  
America

Edmund E. Williams  
Department of Food and Agriculture/Division of  
Measurement Standards  
State of California

Ross Anderson (via teleconference)  
Department of Weights and Measures  
State of New York

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

2 10:06 a.m.

3 ASSOCIATE MEMBER BOYD: Good morning.

4 Welcome to the March 11th business meeting of the  
5 California Energy Commission.6 Chairman Karen Douglas is not here at  
7 the moment, but she is going to be joining us  
8 later for her first appearance in public since  
9 becoming a new mother of a beautiful little  
10 daughter, who she's brought to the office a couple  
11 times. So she'll be joining us later, but she  
12 wanted me to get the meeting started.

13 So, please join me in the pledge.

14 (Whereupon, the Pledge of Allegiance was  
15 recited in unison.)16 VICE CHAIRPERSON BOYD: I welcome new  
17 Commissioner Levin to her second meeting. This  
18 time she has a voice. And for those of you who  
19 were here last time, she had laryngitis and could  
20 almost not speak. And as for one who had  
21 laryngitis, myself, several weeks ago, and the CEC  
22 cold which won't let go, I've got a husky voice  
23 today.24 Would you like to make any remarks that  
25 you were not able to make as a new Commissioner

1 last meeting?

2 COMMISSIONER LEVIN: No, thank you.

3 (Laughter.)

4 VICE CHAIRPERSON BOYD: Very well done.

5 I'd like to welcome Commissioner Rosenfeld back  
6 from his trip to China and India. We're glad to  
7 see you back, and hope you had a fruitful trip,  
8 Art.

9 COMMISSIONER ROSENFELD: I did, and  
10 thank you.

11 VICE CHAIRPERSON BOYD: All right.  
12 There are no revisions to the agenda for me to  
13 announce, so we can move into the first agenda  
14 item, which is the consent calendar.

15 COMMISSIONER ROSENFELD: I move the  
16 consent calendar.

17 COMMISSIONER BYRON: Second.

18 VICE CHAIRPERSON BOYD: There's a motion  
19 and a second.

20 All in favor?

21 (Ayes.)

22 VICE CHAIRPERSON BOYD: Any opposed?

23 None. It's approved four to nothing, thank you.

24 Item number 2, San Joaquin Solar 1 and 2  
25 Power project. Possible approval of the Executive

1 Director's data adequacy recommendation for this  
2 hybrid project. And possible appointment of a  
3 siting committee, should we get a recommendation  
4 of data adequacy.

5 And so I will turn it over to Eileen  
6 Allen.

7 MS. ALLEN: Good morning. I'm Eileen  
8 Allen; I'm the siting compliance office manager.  
9 With respect to this item, which is continued from  
10 two weeks previously, staff received a letter from  
11 the San Joaquin Valley Air Pollution Control  
12 District on Wednesday, March 4th, stating that the  
13 project information is now complete, enabling the  
14 air district staff to start its analysis.

15 This was the only missing item. Staff  
16 now recommends that the Commission deem the AFC,  
17 in combination with the previously filed AFC  
18 supplement material, adequate.

19 Staff is also requesting that you  
20 appoint a committee.

21 VICE CHAIRPERSON BOYD: Thank you. Do  
22 the Commissioners have any questions? Otherwise  
23 we'll ask for the representative of the applicant  
24 if he'd like to make a presentation or say a few  
25 words? No questions. Please.

1           MR. ELLISON: Thank you, Commissioner  
2 Boyd. Christopher Ellison, Ellison, Schneider and  
3 Harris on behalf of the applicant. I simply want  
4 to say two things.

5           First of all, thank you to the  
6 Commission for helping us resolve the issue with  
7 the APCD. And secondly, in anticipation, thank  
8 you for expeditiously setting a committee and  
9 setting a early site visit and preliminary hearing  
10 date. We appreciate that very much.

11           This is an interesting project. It's a  
12 solar thermal, biomass cogeneration project that  
13 is also using recycled water that would otherwise  
14 not have a home. And we look forward to  
15 discussing it with the committee on April 7th,  
16 which we understand, will be the date.

17           Thank you very much.

18           VICE CHAIRPERSON BOYD: Thank you, Mr.  
19 Ellison. Good to see you again, Chris, been a  
20 long time.

21           All right, any questions or comments  
22 from the Committee, or is there a motion to  
23 approve the data adequacy finding of the staff?

24           COMMISSIONER BYRON: This looks like a  
25 very interesting project, reading the application.

1 I think we may see more of these kind of hybrid  
2 projects in the future. So I'm inclined to move  
3 it for approval.

4 COMMISSIONER LEVIN: Second it.

5 VICE CHAIRPERSON BOYD: There's a motion  
6 and a second that we approve.

7 All in favor?

8 (Ayes.)

9 VICE CHAIRPERSON BOYD: Opposed? None.  
10 It is approved four to nothing, so you have your  
11 finding of data adequacy.

12 In that event I have to move on to item  
13 b. of number 2, the appointment of a siting  
14 committee for the San Joaquin project. And I have  
15 a recommendation of a committee to present to my  
16 fellow Commissioners.

17 Commissioner Levin as the Presiding  
18 Member, and it says here Commissioner Boyd is the  
19 Associate. We usually don't volunteer, but  
20 nonetheless. Actually I found it such a  
21 fascinating project, and as one of the godfathers  
22 of biomass, I actually volunteered for this  
23 project, even though I've got ten other projects.

24 So, in any event, that's a  
25 recommendation. Is there a nomination --

1                   COMMISSIONER ROSENFELD: I move the  
2 appointments.

3                   COMMISSIONER BYRON: Second.

4                   VICE CHAIRPERSON BOYD: There's a motion  
5 and a second to approve the committee.

6                   All in favor?

7                   (Ayes.)

8                   VICE CHAIRPERSON BOYD: Opposed? We  
9 have a committee and you have a project.

10                  COMMISSIONER LEVIN: We're looking  
11 forward to working with you. And thank you to the  
12 staff.

13                  VICE CHAIRPERSON BOYD: Item number 3,  
14 Rand Corporation. Possible approval of agreement  
15 number PIR-08-002 for a competitive grant of  
16 \$199,491 to Rand Corporation to develop and  
17 implement flexible and robust water management  
18 climate adaptation strategies for the El Dorado  
19 and with the El Dorado Irrigation District. Mr.  
20 Franco.

21                  MR. FRANCO: Good morning,  
22 Commissioners. Welcome to Commissioner Levin.  
23 Last year the Energy Commission released a request  
24 for proposals on six research topics. One of the  
25 research topics have to do with studies on

1 adaptation of the local and the regional levels.

2 The request for proposal required the  
3 proponents to demonstrate a strong link with local  
4 and regional agencies with the goal of producing  
5 research results that would actually be of use for  
6 resource management in California.

7 Rand Corporation proposed a study in  
8 cooperation with El Dorado Irrigation District.  
9 They would be using a water system model to be  
10 enhanced for study by other funding for the PIER  
11 program.

12 They will be using multiple climates and  
13 areas. As Commissioner Boyd said, it will be  
14 looking for robust adaptation studies for the El  
15 Dorado Irrigation District.

16 And as part of this work the model would  
17 be further enhanced to make sure they'll be able  
18 to capture the potential effects of forest fires  
19 on hydrology.

20 One of the -- among the several options  
21 that they will be investigating we can find one,  
22 looking, for example, of the storing of treated  
23 wastewater for eventual re-use, includes water use  
24 efficiency. And a water storage option within  
25 upstream hydropower operator.

1           22           I respectfully request approval of this  
2 grant with Rand Corporation. I'm ready to answer  
3 any questions that you may have.

4                   VICE CHAIRPERSON BOYD: Thank you, Mr.  
5 Franco. Any questions from Commissioners?  
6 Comments? No.

7                   Do we have a motion?

8                   COMMISSIONER BYRON: I would like to  
9 move the item for approval.

10                   COMMISSIONER ROSENFELD: Second.

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

13                   All in favor?

14                   (Ayes.)

15                   VICE CHAIRPERSON BOYD: Any opposed?  
16 Hearing none, it's approved four to nothing.  
17 Thank you, Mr. Franco.

18                   Item 4 on our agenda, Facet Decision  
19 Systems, Inc. Possible approval of contract  
20 number 500-08-030 for \$510,010. Sometimes the  
21 accuracy befuddles me. With Facet Decisions  
22 Systems, Inc., to validate the siting decision  
23 tool known as planning alternative corridors for  
24 transmission, or PACT.

25                   The project will use the California

1 desert natural communities conservation plan  
2 process as the validation test.

3 MS. SPIEGEL: I'm over here.

4 VICE CHAIRPERSON BOYD: Oh, Linda, I'm  
5 sorry. Linda Spiegel will be presenting. I was  
6 looking at the table and there's nobody there.

7 MS. SPIEGEL: For this project, to  
8 describe it it's a lot easier to use visuals. So,  
9 this is for approval to demonstrate a web-based  
10 decision support tool that PIER has developed  
11 called PACT, planning alternative corridors for  
12 transmission.

13 It was developed for transmission, but  
14 it can be used for energy, any energy footprint  
15 that you have in mind, whether it be a generation  
16 site or substation or what-have-you.

17 So, just to give you a quick background.  
18 Back in 2006 the PIER program, with support from  
19 the facility siting division, as well, and input  
20 from both the siting and the transmission group  
21 here in PIER, sponsored research with Southern  
22 California Edison to develop this model. And  
23 Facet was the subcontractor, and basically the  
24 engineers of this model.

25 And the purpose, shown here, is to

1 develop decision support software that's web-based  
2 software, that evaluates and also communicates a  
3 CEQA alternative analysis.

4 Many of you that work on the siting  
5 cases know that if you have a case before you, you  
6 also have to look at alternative sites to make  
7 sure that, in fact, you're choosing the preferred  
8 alternative that has the least impacts. So this  
9 helps with that alternative site analysis.

10 So, what the PACT does is as the  
11 planning folks, say at a utility or here at the  
12 Commission, or the PUC, they will identify the  
13 routes, in this case, for transmission line  
14 corridors. And then the PACT model helps, with  
15 input from technical people, the PACT model helps  
16 evaluate and communicate the various impacts and  
17 tradeoffs of each alternative.

18 This was actually in response to the 04  
19 IEPR that basically said we needed a process to  
20 engage early stakeholders involved in transmission  
21 line planning and permitting in order to help  
22 facilitate permitting transmission lines.

23 So, again, one of the values of this  
24 project is that it communicates the results. So,  
25 again, I thought it was easier to show you visuals

1 here than to try to describe what this does.

2 So the first step would be, for example,  
3 somebody, whether it's the utilities or other PUC  
4 or whoever, identifies their routes, their various  
5 routes. And the segments that might make up the  
6 routes could be those alternatives. And it's  
7 graphically shown here, it's mapped.

8 Then the technical people collect all  
9 the data that they need. And when I'm talking  
10 technical people I mean those people that are  
11 often involved in a CEQA analysis. So we have  
12 technical people for biology, for visual, for  
13 community, engineering, all those types of  
14 technical areas that would be involved in a CEQA  
15 analysis as in our siting division upstairs.

16 So they collect it and they load the  
17 data into the PACT model. And then what the PACT  
18 model does is it takes that information and it  
19 spits it out in a manner that's very user-  
20 friendly. And, again, the idea here is that it's  
21 going to communicate to a wide variety of  
22 stakeholders what the results of that analysis  
23 are.

24 If you see here, these, for example, are  
25 various segments of a transmission line route.

1       These segments, in some combination, can make up  
2       the routes. And those are shown here.

3               These different colored bars are the  
4       various technical areas. For example, this might  
5       be community, this might be biology, I'm not sure  
6       exactly what it is, but this might be engineering.

7               So, you can look at across-the-board how  
8       these compare by route. Not only by the total  
9       impact, which in this case this has the most  
10      impact of all these, but by technical area.

11              So, in this case, if you look at the  
12      purple, this one has a little more impact for say,  
13      if this is biology, than this one does. So it  
14      allows you to look at it cumulatively and by  
15      route.

16              And then you can drill down even further  
17      on this and look at what makes up each of those  
18      technical areas. How did they get to that result.

19              In other words, for biology there's  
20      going to be wetlands and endangered species, and  
21      what-have-you. And so this is just to show you an  
22      idea of the types of graphics and displays that  
23      the PACT will show you.

24              It has information in text, and it has  
25      the various graphics. And, again, the idea is

1 that it can help communicate to stakeholders the  
2 evaluation.

3 And then it also tells you what was  
4 behind everything. All the documentation of where  
5 this information came from, and all the  
6 assumptions are readily available.

7 And then another feature that's pretty  
8 cool here is for corridor planning. If you look  
9 at these two blue dots, day, right there and right  
10 there. You want to make a line between them.  
11 What's the best line between, to connect those two  
12 dots?

13 The technical people define what is  
14 important. Let's just say you have to avoid  
15 natural parks or something.

16 So, then, it'll crunch out all that  
17 information of what you decided was important.  
18 And this light blue area shows between those two  
19 points that has the least amount of impacts.

20 And then you can refine that even  
21 further if you want. And the, the light blue area  
22 again shows even more defined what's the best  
23 route.

24 So this particular project that's before  
25 you today is to validate the PACT. We have tested

1 it hypothetically and we want to use a real  
2 project.

3 As many of you are aware, there's the  
4 desert natural communities conservation plan  
5 coming up by executive order S-1408. We're going  
6 to use that process to validate the PACT.

7 And so Facet has been at work with the  
8 California Department of Fish and Game in siting  
9 -- CEC siting staff on that process. And use the  
10 NCCP to help define areas of conservation and  
11 areas best suited for renewable developments.

12 So they'll be inputting data. Then the  
13 staff will be validating the outputs. And then  
14 Facet will go back and refine the model as  
15 necessary.

16 So, with that, I'm here to answer any  
17 questions.

18 VICE CHAIRPERSON BOYD: Question. If  
19 the model is validated in this instance as a  
20 result of this effort, and this is an effort using  
21 a NCCP, as we say in the natural resources area,  
22 will this approach work in other areas where  
23 perhaps there is not an NCCP?

24 I ask that because of the huge workload  
25 facing this agency with regard to renewable

1 development in areas like this, and the concern  
2 for transmission. And the desire that we move as  
3 expeditiously as possible in the future, so on and  
4 so forth.

5 MS. SPIEGEL: Yes. Actually it was  
6 designed without the NCCP in mind. It was  
7 designed for transmission line siting. And,  
8 again, it can be used for any -- the transmission  
9 line is the corridor, but it can be used for any  
10 footprint, whether it's polygon or linear or what.

11 The NCCP just provided a very complex  
12 opportunity for us to test the NCCP. And it's  
13 going to have a lot of technical area  
14 complications. It's going to have a lot of  
15 stakeholders involved. So, to us, it was an ideal  
16 situation for us to test it.

17 But it can be used in any siting project  
18 upstairs.

19 VICE CHAIRPERSON BOYD: Thank you. Any  
20 questions from Commissioners?

21 COMMISSIONER LEVIN: Just have a  
22 question --

23 VICE CHAIRPERSON BOYD: Commissioner  
24 Levin.

25 COMMISSIONER LEVIN: -- about the

1 budget. I mean it looks like an incredibly  
2 valuable tool. You can imagine a lot of  
3 applications for it.

4 But for the budget, is the funding -- it  
5 seems less a validation than actually a pilot run  
6 basically. So is it to gather the data and input  
7 it to create the maps? What is it actually  
8 covering in terms of this project?

9 MS. SPIEGEL: The budget that's before  
10 you now is for Facet's time to run the model and  
11 provide the outputs, and then refine the model.

12 There's another contract we have with  
13 Fish and Game that is going to be collecting the  
14 data to input into the model. Plus we'll be  
15 working with the siting staff upstairs.

16 COMMISSIONER LEVIN: Okay, thanks.

17 COMMISSIONER BYRON: Mr. Vice Chair?

18 VICE CHAIRPERSON BOYD: Yes,  
19 Commissioner Byron.

20 COMMISSIONER BYRON: I first became  
21 aware of this model or this evaluation technique  
22 as the Chairman of the PIER's transmission  
23 research advisory committee. And I was very  
24 impressed with it when I saw the first  
25 presentation.

1           I'm interested because it's a tool and a  
2 project that communicates in a transparent, and I  
3 think, tries to quantify a way to assist in  
4 transmission siting issues. So I'm very keen on  
5 this project and the potential application here.

6           I think it's an excellent example of the  
7 real time applicability of the PIER research.  
8 We're going to see some close coordination between  
9 this Commission, with the Department of Fish and  
10 Game and many of the stakeholders who are going to  
11 be involved in completing what we hope will be a  
12 natural community conservation plan for  
13 renewables.

14           So, this is a key part of that because  
15 it involves the public, quantifies, allows them to  
16 see how complex this process is. Makes them feel  
17 a part of it.

18           So, I'm very much in favor of this. I  
19 thank Ms. Spiegel for coming up, once again, to my  
20 office to brief me a couple days ago on this.

21           I would like to move this item for  
22 approval.

23           VICE CHAIRPERSON BOYD: There's a  
24 motion.

25           COMMISSIONER ROSENFELD: Second.

1 VICE CHAIRPERSON BOYD: And a second.

2 All in favor?

3 (Ayes.)

4 VICE CHAIRPERSON BOYD: Opposed?

5 Hearing none, it's approved four to nothing.

6 Thank you, Ms. Spiegel.

7 COMMISSIONER BYRON: This is another

8 example of we need the results from --

9 VICE CHAIRPERSON BOYD: Yesterday.

10 COMMISSIONER BYRON: -- the PIER work

11 yesterday. And so I think this is another one of

12 those projects.

13 VICE CHAIRPERSON BOYD: I wish the staff

14 well and speed.

15 All right, item number 5. University of

16 California at Davis. Possible approval of

17 contract 500-08-017 for \$3,014,727 with the

18 Regents of the University of California at Davis

19 to fund four renewable energy collaboratives in

20 biomass, geothermal, solar and wind energy. This

21 three-year collaborative umbrella agreement will

22 focus on over-arching and specific Public Interest

23 Energy Research objectives. Mr. Koyama.

24 MR. KOYAMA: Thank you, Commissioners.

25 Good morning. I'm Ken Koyama; I'm with the energy

1 research development division.

2 We are asking for approval of this \$3  
3 million contract with UC Davis funding four  
4 renewable energy collaboratives and a renewable  
5 integration team.

6 The teams, as you mentioned, are  
7 geothermal, wind, biomass and solar. And each  
8 collaborative will include stakeholders from other  
9 agencies, utilities, renewable energy companies,  
10 university faculty and environmental groups.

11 The teams are charged with developing an  
12 assessment of their respective energy  
13 technologies, resource assessments, addressing  
14 barriers to their technologies, recommending  
15 research and development and also just lately  
16 taking advantage of some of the economic stimulus  
17 program money that might come their way.

18 In addition, each team will hold annual  
19 major meetings that include presentations on the  
20 latest research and technology advancements. Past  
21 meetings have been really well attended.

22 If you've looked at the \$3 million it  
23 actually breaks down to about \$300,000 per  
24 collaborative per year. So we request your  
25 approval of this agreement. Thank you.

1           VICE CHAIRPERSON BOYD: Thank you, Mr.  
2 Koyama. Any questions, comments from any of my  
3 fellow Commissioners? I would just comment, as  
4 one who's visited some of these centers of  
5 excellence, and/or utilized the outputs, they're  
6 everything you say they are. They've been  
7 extremely beneficial and helpful to our programs  
8 here, and thus to the people of California.

9           So, I'm glad to see that we're  
10 continuing this relationship.

11           COMMISSIONER ROSENFELD: I move the  
12 item.

13           VICE CHAIRPERSON BOYD: Motion.

14           COMMISSIONER LEVIN: Second it.

15           VICE CHAIRPERSON BOYD: And a second.

16           All in favor?

17           (Ayes.)

18           VICE CHAIRPERSON BOYD: Opposed? None.  
19 It's approved four to nothing.

20           MR. KOYAMA: Thank you.

21           VICE CHAIRPERSON BOYD: Thank you, Mr.  
22 Koyama.

23           Item number 6, CALRES 2008. Possible  
24 approval of CALRES 2008 as the public domain  
25 computer program for demonstrating compliance for

1 newly constructed buildings with the 2008 low-rise  
2 residential building energy efficiency standards.

3 Mr. Hudler.

4 MR. HUDLER: Good morning,  
5 Commissioners. My name is Rob Hudler with the  
6 building standards office. Staff is requesting  
7 the Commissioners to consider and possibly approve  
8 the CALRES 2008 program as the public domain  
9 compliance software for compliance with the 2008  
10 residential building standards.

11 Staff has reviewed all of the  
12 alternative calculation method tests for new  
13 construction and have found that the program, in  
14 fact, does meet those requirements in passing all  
15 those tests.

16 The program results will also be used as  
17 a reference tool for checking private vendor  
18 programs to be sure that they also comply with  
19 requirements of the alternative calculation  
20 method.

21 At this point in time the program will  
22 be used for incentive for doing compliance with  
23 new construction buildings. We will be working  
24 with the contractors subsequently to add on the  
25 modeling rules for additions and alterations.

1           As part of that effort we will set up a  
2           database of the users to get feedback from them so  
3           that we can take any comments from those users to  
4           assure that the program is, you know, modified  
5           correctly.

6           And obviously we will also use that  
7           database to be sure that they all get updated  
8           versions of the program.

9           And with that I'm available for any  
10          questions.

11          VICE CHAIRPERSON BOYD: Thank you. Any  
12          questions or comments from the Commissioners? Is  
13          there a motion?

14          COMMISSIONER ROSENFELD: I move the  
15          item.

16          COMMISSIONER BYRON: Second.

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

19          All in favor?

20          (Ayes.)

21          VICE CHAIRPERSON BOYD: Opposed? None.  
22          It's approved four to nothing. Thank you very  
23          much.

24          MR. HUDLER: Thank you.

25          VICE CHAIRPERSON BOYD: Item number 7,

1 revised demand forecast. Possible adoption of  
2 draft staff revised demand forecast for 2010 peak  
3 demand. This forecast will be used by the  
4 California Independent System Operator use for its  
5 2010 local area capacity requirement study. Ms.  
6 Bender.

7 MS. BENDER: Good morning,  
8 Commissioners. The Energy Commission peak demand  
9 forecasts are a key input into the California ISO  
10 and CPUC resource adequacy process. A year-ahead  
11 forecast is needed in resource adequacy to  
12 determine both local area and system capacity  
13 needs.

14 The system forecasts, which are  
15 individual monthly utility forecasts for each  
16 utility area and load-serving entity need to be  
17 completed each June, while the local area forecast  
18 is needed several months earlier.

19 The ISO uses the CEC peak demand  
20 forecast to determine local capacity requirements.  
21 That's the minimum amount of resource that must be  
22 available within each area identified as having  
23 local reliability problems, also known as load  
24 pockets.

25 Our most recent Energy Commission ten-

1 year demand forecast was prepared for the 2007  
2 IEPR. The ISO required a 2010 demand forecast for  
3 local area analysis too early to use our  
4 forthcoming April revised forecast.

5 With the dramatic worsening of economic  
6 conditions in the last few months, concern arose  
7 that the 2007 IEPR forecast could now be over-  
8 estimating demand for 2010.

9 Because we want to avoid a large  
10 disconnect between the assumptions the California  
11 ISO uses to determine its local capacity  
12 requirements, and the forthcoming forecast that  
13 will drive the system requirements, the Energy  
14 Commission Staff evaluated our 2007 IEPR forecast  
15 against current loads and economic projections to  
16 address whether the upcoming April forecast is  
17 likely to be significantly different for 2010.

18 Staff concluded that for the SCE area  
19 the revised forecast for 2010 is likely to be  
20 significantly lower than the previously adopted  
21 2007 IEPR forecast.

22 Economic projections show that SCE is  
23 expected to experience the largest effects of the  
24 current economic downturn.

25 Therefore, for use in the ISO local

1 capacity requirement study staff recommends a  
2 reduced forecast for SCE by 700 megawatts, with no  
3 changes to the forecast for San Diego Gas and  
4 Electric or Pacific Gas and Electric.

5 Given the current economic uncertainty,  
6 staff's assessment is that the proposed forecast  
7 represents a reasonable assessment of expected  
8 demand.

9 SCE argued that economic conditions have  
10 continued to worsen, and the recession will be  
11 prolonged. They recommended a forecast, in their  
12 comments to us, of more than 1000 megawatts below  
13 the staff recommendation.

14 Adopting the staff forecast, we believe,  
15 provides greater certainty that sufficient  
16 resources in the SCE load pockets will be under  
17 contract and available to the California ISO  
18 without the need for backup procurement.

19 History has shown that California demand  
20 can grow quickly coming out of a recession.  
21 Lowering the forecast to SCE's recommendation  
22 would reduce the forecast to the level of  
23 estimated 2006/2007 demand under average  
24 temperatures.

25 In the event of an economic recovery by

1 mid-2010 the California ISO could easily be short  
2 the local capacity needed to meet reliability  
3 criteria.

4 Adoption of this 2010 annual peak demand  
5 estimate will establish the forecast for the ISO  
6 local area reliability study. These revisions are  
7 for near-term purposes only, and do not imply any  
8 changes to the previous 2007 IEPR-adopted ten-year  
9 forecast.

10 I'll answer any questions that you might  
11 have.

12 CHAIRPERSON DOUGLAS: There appear to be  
13 no questions. Is there anyone in the audience who  
14 would like to speak on this item? Very good.

15 COMMISSIONER BYRON: Well, good. Ms.  
16 Bender, if I may, I'm just shocked that you didn't  
17 foresee the economic downturn.

18 (Laughter.)

19 COMMISSIONER BYRON: Of course, we  
20 reviewed this very carefully in the Electricity  
21 and Natural Gas Committee. And as we also noted  
22 from the review, the other investor-owned  
23 utilities have experienced the same economic  
24 downturn, but we do have concurrence from them on  
25 our forecast, as well.

1           So, I think the staff has done a very  
2 thoughtful analysis of this, and I believe we've  
3 made some minor revisions based upon input from  
4 Southern California Edison to the forecast.

5           But I think the staff's also done an  
6 objective and prudent thing in the forecast  
7 they've recommended. So, given that, I think this  
8 is the, as best we can determine at this point in  
9 making the forecast for the ISO on data resource  
10 adequacy.

11           I would move the item for approval.

12           CHAIRPERSON DOUGLAS: Is there a second?

13           VICE CHAIRPERSON BOYD: I'll second the  
14 item.

15           CHAIRPERSON DOUGLAS: All in favor?

16           (Ayes.)

17           MS. BENDER: Thank you.

18           CHAIRPERSON DOUGLAS: Item 8. Item 8 is  
19 the AB-868 fuel delivery temperature study.  
20 Possible adoption of the fuel delivery temperature  
21 study committee report mandated by Assembly Bill  
22 868.

23           Before we begin, I'd like to note that  
24 there have been some very serious allegations of  
25 conflict of interest against one of our

1 Commissioners, and also allegations against the  
2 integrity of the process that we've all been  
3 developing this report.

4 We take this issue very seriously, and  
5 we have been taking it very seriously. We've  
6 taken a number of steps to begin to address the  
7 issue. We have produced records back -- if I have  
8 it correctly -- back to February of 2008 related  
9 to Commissioner Boyd's participation in the  
10 process of development of this report. We found  
11 an earlier one that was -- in any case, back to  
12 February of 2008.

13 We have also asked our chief counsel to  
14 look into the conflict of interest issue. And so  
15 before we begin I'd like to ask Bill Chamberlain  
16 to make some remarks about his advice to us on  
17 this point.

18 MR. CHAMBERLAIN: Thank you, Madam  
19 Chairman. California's Political Reform Act  
20 carefully defines the circumstances in which  
21 public officials are required to recuse themselves  
22 from participation in governmental decision.

23 As you know, the Act requires regular  
24 public disclosure of financial interests and  
25 there's an eight-step analytic process that is

1 used to determine when the prohibition against  
2 participation is in effect, and when it is not.

3 At the Energy Commission we carefully  
4 monitor situations in which the Political Reform  
5 Act could require a commissioner not to  
6 participate. And Commissioner Boyd and I have  
7 discussed the effect of his wife's employment by  
8 the Western States Petroleum Association a number  
9 of times.

10 In most cases I have found that while he  
11 clearly has a financial interest in WSPA, by  
12 virtue of his community property interest in her  
13 salary, few, if any, of the decisions of the  
14 Energy Commission could, with reasonable  
15 foreseeability - which is the test - have a  
16 material financial effect on WSPA.

17 That is the case in the Commission's  
18 consideration of the fuel temperature study  
19 directed by AB-868.

20 It's important to note that while the  
21 AB-868 report could conceivably have a material  
22 financial effect on one or more of WSPA's members,  
23 based on the threshold of material financial  
24 effect in the regulations of the Fair Political  
25 Practices Commission, Commissioner Boyd does not

1 have a financial interest in any of those members.

2 In addition, the majority of WSPA's  
3 members appear to have no interest at all in this  
4 decision since they tend to be upstream businesses  
5 that produce, transport or refine oil, but do not  
6 have retail sales operations in California.

7 Some WSPA members do not have any  
8 California operations at all. And the few members  
9 that do appear to have an interest in this  
10 decision, such as Chevron, BP, or Valero, are such  
11 large multinational companies that it's  
12 inconceivable that the impact on them from any  
13 regulation the California Legislature might impose  
14 as a result of this report, would be so great that  
15 they would go out of business or withdraw from  
16 WSPA, thus affecting the finances of WSPA.

17 Based on these facts I have advised  
18 Commissioner Boyd that he does not have a conflict  
19 of interest based on his wife's employment by this  
20 nonprofit trade association just because it  
21 represents the oil industry, as a whole, and thus  
22 may appear to the public to be potentially  
23 interested in this decision.

24 And, in fact, while it is not relevant  
25 to the legal question of Commissioner Boyd's

1 ability to participate, WSPA has not taken any  
2 position on this particular decision.

3 When one of the stakeholders in the  
4 proceeding raised the issue of Commissioner Boyd's  
5 alleged conflict of interest, I sought an opinion  
6 of the Fair Political Practices Commission to  
7 insure that I have not erred in advising  
8 Commissioner Boyd that he could participate in  
9 this decision.

10 The FPFC has issued an advice letter  
11 agreeing with my analysis. I have thus again  
12 advised Commissioner Boyd that he may vote on the  
13 matter today.

14 CHAIRPERSON DOUGLAS: Thank you, Mr.  
15 Chamberlain. I'd like to make a few more remarks  
16 before we turn to staff to begin the presentation  
17 on the report.

18 First, while as our chief counsel has  
19 advised me, this is not strictly relevant to the  
20 conflict of interest question, legal question,  
21 it's very important to me to express, and it is  
22 important as I describe our process, to say that  
23 Commissioner Boyd has served the State of  
24 California with tremendous dedication and  
25 integrity and effectiveness for over forty years

1 at the Air Resources Board, Resources Agency, here  
2 at the Energy Commission.

3 He has compiled a record of achievements  
4 that have benefitted Californians very very  
5 significantly. It's a record that any public  
6 official would be tremendously proud of.  
7 Including as ARB Executive Director, initiating  
8 and implementing the low emission vehicle -- zero  
9 emission vehicle program regulations.

10 The California cleaner burning gasoline  
11 and cleaner burning diesel fuel regulations,  
12 which, as an aside, were bitterly opposed by the  
13 oil industry and ultimately cost them nearly  
14 \$5 billion. And significantly cleaned the air in  
15 California. Phase one and phase two gasoline  
16 vapor recovery programs. And much much more.

17 At the Energy Commission he's been a  
18 leading advocate for reducing our dependence on  
19 petroleum. And as the Associate Member of the  
20 Transportation Committee, I think he's had the  
21 opportunity to bend my ear more than others on the  
22 importance of this topic. But he does not let it  
23 rest.

24 And he has been a dogged advocate for  
25 reducing our use of oil in the state of

1 California, not only today, when that is a popular  
2 topic and well intertwined with our climate change  
3 goals, but also in years when this topic was a  
4 little less on the front, and had very few  
5 advocates as passionate and determined as  
6 Commissioner Boyd.

7 So I want to say, first of all, that I  
8 do not believe there's any base of fact to --  
9 truth to these allegations. And were I concerned  
10 in any way, we would not be holding this -- we  
11 would not be hearing this item today. I'm not  
12 concerned.

13 I think it would be helpful at this  
14 point for me to describe our process. Because  
15 some groups who do not participate in it as  
16 regularly as others, may not know exactly how the  
17 Energy Commission actually works.

18 We have two types of proceedings at the  
19 Energy Commission, quasi-judicial proceedings, and  
20 quasi-legislative proceedings.

21 In the quasi-judicial proceedings, which  
22 are enforcement actions and siting cases, the  
23 Commissioners sit in an almost judicial role, with  
24 the staff as advocates and interested parties  
25 opposing or putting their view forward, as well.

1           The ex parte rule applies.  
2           Commissioners in a quasi-judicial proceeding do  
3           not meet with staff outside of a public forum. We  
4           do not meet with other interested parties. And we  
5           ultimately adjudicate the items based solely on  
6           information in the public record.

7           Quasi-legislative proceedings are done  
8           quite differently. And this report is a quasi --  
9           was done as part of a quasi-legislative  
10          proceeding.

11          It's a fact-finding, it includes fact  
12          finding technical reports, policy analysis, really  
13          the bulk of the work that the Commission does is  
14          with our quasi-legislative hat on.

15          In a quasi-legislative proceeding the  
16          staff works for the Commission. We work very  
17          closely with staff. We meet with staff early,  
18          often and continuously on reports and matters of  
19          importance, high importance to us. We meet with  
20          stakeholders.

21          In this proceeding I did meet with  
22          members of the oil industry; I met with the  
23          plaintiff's attorneys, who are pursuing a class  
24          action lawsuit. I typically will meet with any  
25          stakeholders who knock on the door and really want

1 to meet.

2 We also have public workshops. We had,  
3 in this case, three staff workshops and one  
4 committee workshop.

5 The Legislature asks for this report to  
6 be given to them by the Commission. And we, as  
7 Commissioners, who vote on the report and put our  
8 names on the report. And we do have, as one might  
9 expect, a significant interest in insuring that  
10 the report is something that we want to, in fact,  
11 advocate and defend at the Legislature.

12 In this case, the Legislature asked us,  
13 and I have a copy of AB-868 with me, they asked us  
14 to conduct a cost/benefit analysis of putting the  
15 temperature control devices, mandating them within  
16 the state. And they asked us to give them policy  
17 recommendations for how they might approach this  
18 issue. We have done that in this report.

19 At 4:00 or so last night we got a letter  
20 from Consumer Watchdog asking us to hold this  
21 issue over and not hear it, based on some concerns  
22 that were raised from the emails that we turned  
23 over as part of the public information request.

24 I wanted to address two issues that were  
25 raised in that letter as an explanation for why we

1 are proceeding and hearing this item today.

2 First of all, the letter makes the  
3 assertion that the economist who we met with,  
4 let's see -- Richard -- Robert Topel, was an agent  
5 of WSPA. And a number of conclusions in that  
6 letter flow from that premise. He was not an  
7 agent of WSPA. And I wanted to set the record  
8 straight on that.

9 Secondly, and most importantly, the  
10 letter asserts that the Committee changed or  
11 reversed the staff recommendation on conclusion of  
12 the report. And that's what I really wanted to  
13 address.

14 There was a draft in late November  
15 before the staff report was published where staff  
16 expressed, and I don't know if staff still holds  
17 this opinion or not, but expressed the opinion  
18 that even though the cost of requiring automatic  
19 temperature control in gasoline dispensers  
20 outweigh the benefits, that the additional cost  
21 was slight. And it was still worth mandating  
22 these devices, even though the cost outweigh the  
23 benefits. Because the difference between cost and  
24 benefits was not tremendously significant when you  
25 look at it on a per-gallon basis over the 20-year

1 life of the devices.

2 I was the one who actually noticed that  
3 and raised concerns with Commissioner Boyd. I  
4 don't know if you remember, Commissioner. But  
5 from my perspective, that was an opinion, it was a  
6 potentially reasonable opinion. I think if you  
7 were to survey Californians and ask them, are you  
8 willing to pay a penny or a fraction of a penny  
9 per gallon in order to insure that temperature  
10 variation does not therefore lead to any variation  
11 in the energy content of the gallons of fuel that  
12 you get every time you purchase, there would be  
13 some consumers who would say yes, we're willing to  
14 pay. There would be others who would say no, not  
15 willing to pay.

16 And from my perspective we didn't have  
17 the others in the record, nor had we developed the  
18 analysis to affirmatively conclude that  
19 Californians wanted to bear any net cost in order  
20 to have these devices mandated.

21 For that reason, what the Committee  
22 ultimately directed staff to do, and what I think  
23 was quite in response to the Legislature's  
24 request, was to evaluate the considerations the  
25 Legislature should bear in mind in looking at a

1 number of different courses of action.

2 One is to go ahead and mandate the  
3 automatic temperature control devices, and we  
4 suggested two areas of further research that would  
5 help the Legislature, could help the Legislature  
6 in determining whether this is a policy that  
7 Californians actually want.

8 One was a focus group and a survey type  
9 approach where we really ask people who don't have  
10 a stake in this issue and are not parties to any  
11 dispute over this issue, are you willing to pay  
12 for this. When we explain this issue to you, does  
13 it make sense, do you want -- would you be willing  
14 to pay any additional increment to have these  
15 devices installed.

16 And the second recommendation for  
17 further research that the report proposes is that  
18 there could potentially be more refined surveying  
19 and analysis on temperature variability between  
20 competing stations. Because, in my mind, as I  
21 look at the evidence, to the extent there is a  
22 concern, that's where the concern is. And it's an  
23 area where more data could be helpful.

24 We also outlined the possibility of a  
25 phase-in of these devices. So that rather than

1 requiring industry to go out and in a short  
2 timeframe install them everywhere, we require that  
3 every time there is an upgrade or a new pump, put  
4 in the new pump for the upgrade to be ATC  
5 compliant.

6 That significantly reduces the cost of  
7 the policy. It does not make the policy cede the  
8 benefits, according to our cost/benefit analysis.

9 And then the other option that the  
10 report lays out is, of course, to do nothing based  
11 on the fact that our analysis shows a net cost to  
12 consumers if this policy is pursued.

13 So, I lay this out in advance because I  
14 wanted the stakeholders to know that we did  
15 consider all of these options. We are making  
16 recommendations to the Legislature; we are not  
17 determining this. We're not making the decision.  
18 It's the Legislature that asked us for  
19 recommendations, and it's the Legislature that  
20 will decide ultimately whether to pursue this  
21 issue further.

22 So, with that introduction, please.

23 MR. CHAMBERLAIN: Just for  
24 clarification, Commissioner Douglas, I believe you  
25 said that the second option, to phase in, would

1 not make the costs exceed the benefits. I think  
2 you meant the benefits exceed the costs.

3 CHAIRPERSON DOUGLAS: I'm sorry, I did  
4 mean that. Even with a phase in, which  
5 significantly reduces the labor costs and other  
6 costs of installation, the costs of even a phase  
7 in would exceed the benefits according to our  
8 analysis.

9 That said, it does reduce the cost of  
10 the policy. It is an approach the Legislature  
11 might choose to take.

12 With that, I would like to ask Gordon  
13 Schremp, who has worked diligently on this report  
14 for quite a long time, and produced a very strong  
15 analysis, to please present your report.

16 MR. SCHREMP: Thank you, Madam Chairman,  
17 for covering all my slides. That makes my job  
18 much easier.

19 Before we get going I would like to --  
20 staff would like to propose a modest revision to  
21 the existing errata sheet that was issued on March  
22 5th. It would essentially be inserting the word  
23 possible in six different locations in that  
24 document. And I will bring copies around for all  
25 of you to see.

1                   COMMISSIONER BYRON: Mr. Schremp, there  
2 are some copies up here at the dais. Are these  
3 the new errata or the old ones?

4                   MR. SCHREMP: Yes, Commissioner, this  
5 would be the revised errata that staff is  
6 proposing for your consideration here this  
7 morning.

8                   (Pause.)

9                   MR. SCHREMP: I apologize to the  
10 individuals who are on the phone listening to the  
11 webcast. They obviously do not have a hard copy  
12 of what we have just distributed. And I would be  
13 happy to walk through the exact locations in that  
14 document where we propose inserting the word  
15 possible, if that's okay with the Chairman and the  
16 Commissioners.

17                   CHAIRPERSON DOUGLAS: Please.

18                   MR. SCHREMP: Okay. For those of you on  
19 the phone and here in the audience, on the first  
20 page of the errata sheet, the last item, we're  
21 proposing inserting the word possible before the  
22 word value in the second line of the last  
23 paragraph. So it would read, "consider whether  
24 the possible value of increased fairness, accuracy  
25 and consistency" et cetera.

1           On page 2 of the errata, the second  
2           item. We propose inserting the word possible  
3           before the word value in the first line of the  
4           second paragraph to read, "the possible value of  
5           increased fairness, accuracy, consistency."

6           Then if you would please refer to page 4  
7           of the errata sheet. We are proposing to insert  
8           the word possible in two different locations in  
9           the first full paragraph under page 76.

10           So the third-to-last line would read  
11           "possible consumer benefit." And the second-to-  
12           last line would read "valuable insight into this  
13           possible and variable consumer benefit."

14           The final two locations in the errata  
15           sheet would be on the final page, 6. The first  
16           item under page 112, the second line, we are  
17           proposing inserting the word possible before  
18           consumer, to read, "the nature of this possible  
19           consumer benefit."

20           And then on the next item on that same  
21           page, page 116 in the document, we propose to  
22           insert the word possible before value on the  
23           second line, so it would read "possible value of  
24           increased fairness, accuracy and consistency."

25           So this is the modest change we are

1 proposing. The reason staff is proposing this  
2 modest change is that, as Chairman Douglas pointed  
3 out, we, staff, has not valued increased fairness,  
4 accuracy and consistency. We don't have a value  
5 for this. And therefore, to state that there is a  
6 value, or it could be interpreted that there is a  
7 value, is jumping to a conclusion that we don't  
8 have empirical evidence to support. So that is  
9 why staff, at this late date, is proposing the  
10 insertion of this word in six different locations.

11 CHAIRPERSON DOUGLAS: Thank you.

12 MR. SCHREMP: Now, if you'd like, I'd be  
13 happy to go through a few slides I have to provide  
14 some additional context.

15 Some of this material has already been  
16 covered, but I just want to briefly summarize some  
17 of the basics of the report and the study.

18 The Legislature did require us to look  
19 at both a status quo, a statewide reference  
20 temperature, something similar to what was done in  
21 Hawaii. Or regional reference temperatures. And  
22 the final requirement that temperature  
23 compensation devices at retail.

24 We were required to conduct a  
25 cost/benefit analysis, hold public hearings. We

1 also convened a number of stakeholders, 26 of  
2 them, in the form of an advisory group. They were  
3 an extremely valuable resource. Their expertise  
4 in this area and the information they provided to  
5 the record was very valuable to staff in  
6 developing the study.

7 There were five meetings, public  
8 meetings. Three of them were staff workshops.  
9 One Committee workshop most recently on December  
10 9. And an advisory group meeting open to the  
11 public that was held in April.

12 We have received in excess of 40  
13 submissions of information, most of which are in  
14 the docket or located on our website, available to  
15 the public.

16 Simply put, the hot fuel issue is just  
17 acknowledging the fact that liquids expand and  
18 contract. Gasoline and diesel are liquids,  
19 obviously. As you warm them they would expand and  
20 occupy more space as measured in cubic inches.

21 For gasoline it's about every 15 degrees  
22 Fahrenheit you expand it by about 1 percent in  
23 volume.

24 And the issue, I think, that many  
25 consumers have raised, as well, in the warmer

1 states such as California, where our fuel is  
2 warmer than the reference standard of 60 degrees  
3 Fahrenheit, it's about 71 for gasoline and 73 for  
4 diesel fuel year-round, that the expanded gallon  
5 would contain inherently less energy, because it's  
6 still 231 cubic inches being sold at retail.

7 At wholesale the gallons sold are  
8 referred to as net or standard gallons, meaning  
9 231 cubic inches at exactly 60 degrees Fahrenheit.  
10 At retail it's different. The transaction is 231  
11 cubic inches regardless of temperature, warmer  
12 than 60, colder than 60.

13 The adjustment made at wholesale is to  
14 essentially adjust the price or the total cost  
15 paid for the load by determining, calculating the  
16 number of net gallons. They load the truck in  
17 gross gallons, calculate the net, net price, and  
18 that's what's paid.

19 At retail there is currently no similar  
20 compensation adjustment of price by any equipment.  
21 And the equipment that would be installed for  
22 temperature compensation, if that were to proceed,  
23 would operate in the fashion -- it would modify  
24 the amount of liquids being dispensed, based on  
25 the temperature. Warmer than 60, slightly larger

1 number of cubic inches per every gallon dispensed.  
2 Cooler than 60, fewer than 231 cubic inches. So  
3 that's the adjustment. It's different at retail  
4 if that were to be pursued.

5 There are two areas of benefits we  
6 examined. The first one that gets an awful lot of  
7 attention and press play is if the change was  
8 made, consumers would receive in warmer states  
9 such as California, slightly larger gallons.

10 Well, we've calculated what that would  
11 have been over the study period and put a value  
12 behind that based on what the existing prices were  
13 at the time. And for gasoline and diesel, that's  
14 about 437 million. Well, that seems like a very  
15 large benefit.

16 But the important next question to ask  
17 yourself is well, I, as a consumer, would receive  
18 the benefit if the equipment had been installed,  
19 would I retain that benefit without paying a  
20 higher price. Would the retailer actually know  
21 they're selling -- they would know they're selling  
22 fewer units, and would they compensate to adjust  
23 by raising the price commensurate an equivalent  
24 level.

25 We believe that would be the case in the

1 long run, so that they would maintain  
2 profitability.

3 Another type of benefit examined is  
4 providing additional information to retail  
5 consumers that they currently do not possess. And  
6 that is when you poll an intersection and see, as  
7 an example, equivalent prices across the street,  
8 are they really equivalent because is there a  
9 difference in temperature at one location versus  
10 another. So they're not really apples and apples.

11 But in a post-ATC world where you would  
12 poll through an intersection and see equivalent  
13 prices, you would know that temperature has  
14 already been adjusted, taken into account in the  
15 pricing because of how the equipment operates.

16 So, looking -- doing some econometric  
17 analysis we have determined that there is a  
18 benefit for consumers being able to make better  
19 decisions. But the benefit is rather modest,  
20 \$258,000 per year. So this is the analysis we  
21 performed to quantify the benefits.

22 On the cost side of the ledger there are  
23 two main areas of cost. One is for the initial  
24 purchase of the equipment and installation. The  
25 other is a recurring cost after you've purchased

1 the equipment. And that would be for those new  
2 stations that would have to purchase a ATC-  
3 compliant dispenser. More expensive because it  
4 has more components. As well as increased  
5 inspection fees. A little bit more time to  
6 inspect and calibrate ATC-rated devices. So these  
7 costs are in excess of 100 to 127 million  
8 initially, and 7 to 21 per year.

9 Now, as Chairman Douglas pointed out,  
10 the suggestion for consideration in the  
11 Legislature of a gradual phase in, if they were to  
12 move in that direction, does save a significant  
13 amount of money off of the initial installation  
14 cost. And that's primarily the avoidance of the  
15 labor expense.

16 The components would be assembled in the  
17 factory already, as part of the creation of the  
18 fuel dispenser. So that does have significant  
19 savings.

20 And then if you look at all of these  
21 costs, both initial and recurring, over a 10- to  
22 15-year time period, which businesses typically  
23 will look at for paybacks, life of the equipment,  
24 et cetera, and you put them in terms of cents per  
25 gallon, they are between 8 and 1800ths of a cent

1 per gallon, and that's a combination of both  
2 gasoline and diesel all together. And as I point  
3 out, we assume this would be spread out over 10 to  
4 15 years.

5 So now that we've quantified the  
6 benefits, quantified the costs, in the cost/  
7 benefit analysis you compare the two to see which  
8 one outweighs the other.

9 Well, in this case the cost, under all  
10 of the various scenarios we examined, were greater  
11 than the benefits. So, in other words, a net cost  
12 to society. And when we talk about society we  
13 mean both motor consumers, motorists, as well as  
14 retail station operators, people that would both  
15 incur and expect to see increased expenses,  
16 benefits.

17 But, however, as was pointed out by the  
18 Chairman earlier, the increased fairness, the  
19 valuation of that, has not been quantified. We  
20 did not do that as part of the analysis.

21 So of the primary recommendations, and  
22 just to point out that in the slides these are not  
23 exactly word for word, the report has the word-  
24 for-word versions, the first primary  
25 recommendation if the only criterion to, you know,

1        assessing the merit of mandatory ATC, is whether  
2        or not it's on the plus or the minus side of that  
3        cost/benefit analysis, well, this is on the minus  
4        side and therefore that should not be pursued if  
5        that's the only criterion.

6                    However, if the Legislature does  
7        consider, does elect to consider other factors  
8        such as increased fairness, accuracy and  
9        consistency, the possible value, and you don't see  
10       the word possible here, but that would be inserted  
11       if the Commission agrees to that. That's another  
12       set of factors they may consider in doing this.  
13       But as was pointed out repeatedly, we have not  
14       quantified that value.

15                   The Legislature may also consider, and  
16       this has to do with the phasing in a mandatory  
17       setting, if they were to pursue this option, and  
18       as was noted earlier, the gradual phase-in is less  
19       expensive. But it does take a little bit longer  
20       period of time to incorporate.

21                   Now, with regard to the ability of  
22       industry to install these devices of their own  
23       volition, just well, I'd like to install an ATC-  
24       ready device in my station.

25                   There has been a number of stakeholders

1 have come forth and argued on both sides of this  
2 voluntary permissive capability in California  
3 that, yes, you can do that. It's currently legal.  
4 And the others have argued, no, you can't, it is  
5 illegal. You could not do that.

6 And our last report characterizes this  
7 as being in dispute. So, one of the primary  
8 recommendations for legislators to consider is a  
9 clarification of either the existing statute, to  
10 clarify yea or nay. Or for them to direct the  
11 Division of Measurement Standards to come up with  
12 additional rules and regulation and guidelines for  
13 those entities that may wish to move forward in a  
14 voluntary manner, if, in fact, that is permissible  
15 in California.

16 The final recommendation has to do with,  
17 as I refer to, the Hawaii example of modifying the  
18 dispenser so that they're permanently distributing  
19 slightly larger sized gallons.

20 The report concludes that this would not  
21 successfully address temperature compensation  
22 issues at retail. And so therefore it is not  
23 recommended that that type of temperature  
24 compensation approach be pursued in California.

25 My final slide is the two areas of

1 further research that Commissioner Douglas has  
2 already covered, and that has to do with the  
3 valuation of -- possible valuation of increased  
4 fairness, accuracy and consistency, as well as the  
5 price transparency assumptions about what type of  
6 temperature differences may exist at any one point  
7 in time, at any one, I guess, sphere of  
8 competition, if you will. A four-way intersection  
9 that has four stations that a consumer would get  
10 to select from.

11 We do not have data on temperature  
12 simultaneously in those types of circumstances.  
13 So that is why it's recommended as an area of  
14 further research.

15 That concludes my slides. And I would  
16 be happy to take any questions at this time.

17 CHAIRPERSON DOUGLAS: Thank you, Gordon.  
18 Are there questions?

19 VICE CHAIRPERSON BOYD: I have one  
20 question, Gordon. Thank you for your  
21 presentation.

22 My question is about the distribution of  
23 the service stations or fueling dispensers in this  
24 day and age. That it's been indicated that were  
25 the Legislature to choose to not, to do nothing,

1       that, you know, the -- I have to say it this  
2       way -- the oil industry would be saved a lot of  
3       money.

4                 On the other hand, if the Legislature  
5       chose to require this, it would cost them a lot of  
6       money.

7                 And yet, when I look in the record of  
8       our many many workshops and in the docket, and  
9       public information made available during the  
10      course of this more-than-year-long process, I see  
11      that it's people like the National Association of  
12      Convenience Stores, the American Truck Stop and  
13      Travel Plaza, the Petroleum Marketers Association,  
14      the Society of Independent Gasoline Marketers, the  
15      California Independent Oil Marketers, who seem,  
16      from all the testimony, to be the most aggrieved  
17      parties. And they still don't agree with our  
18      errata, I notice.

19                And in public data I see, published by  
20      the National Association of Convenience Stores, I  
21      see a statement that I would trust you and your  
22      staff might be familiar with, that less than 3  
23      percent of the 115,000 convenience stores selling  
24      motor fuel are owned and operated by one of the  
25      big five oil companies.

1                   And further, that convenience stores  
2                   sell more than 80 percent of all the gasoline  
3                   purchased in the United States. And that these  
4                   five largest companies referenced own and operate  
5                   about 2140 retail stations in the United States  
6                   versus an inventory of 162,000 retail stations in  
7                   the United States. Plus the big box people like  
8                   Costco, Walmart and grocery chains and what-have-  
9                   you.

10                   Does this comport with your  
11                   understanding of the distribution at the consumer  
12                   level of gasoline?

13                   MR. SCHREMP: Yes, it does, Commissioner  
14                   Boyd. The stations retailing of gasoline has  
15                   changed significantly in the industry over the  
16                   last 10 to 20 years.

17                   The days of pulling in and having an  
18                   attendant come and wipe your windshield and check  
19                   your air pressure are nearly nonexistent. And  
20                   there isn't really --

21                   VICE CHAIRPERSON BOYD: What do you mean  
22                   nearly?

23                   MR. SCHREMP: Yeah. And as you  
24                   mentioned, the 80 percent of the gasoline is sold  
25                   by convenience stores. That allows those

1 marketers to have multiple revenue streams to help  
2 maintain a profitable business venture.

3 And further, there is -- you're right,  
4 the major oil companies are removing themselves  
5 from ownership and operation of retail stations,  
6 nationally and in California. The trend continues  
7 to decline. And most recently three major oil  
8 companies making public announcements that they  
9 will be divested of all company-owned and -  
10 operated outlets within two years.

11 And so the trend is to move away from  
12 that. But for the consumer, they look and they  
13 see a branded station and say, well, company-owned  
14 and -operated. True branded, yes, it's branded.  
15 But that's usually a lessee, a franchisee  
16 situation. Not a company-owned and -operated  
17 station, as you mention that are going away, and  
18 are very small population now.

19 And a final point, the National  
20 Association of Convenience Stores operators  
21 provides information to the extent that most of  
22 the stations in the United States are sole  
23 ownership. Meaning one person, one station, at  
24 nearly 60,000 locations.

25 So in this case, those are the kinds of

1 people who would be expected to use their own  
2 savings, or have to finance and purchase the  
3 equipment if temperature compensation were to be  
4 mandated.

5 And so that's why it's falling onto  
6 those types of individuals predominately, and not  
7 really the company-owned and -operated concept.  
8 And so I think that's an accurate  
9 characterization, Commissioner Boyd.

10 VICE CHAIRPERSON BOYD: Thank you.

11 CHAIRPERSON DOUGLAS: Other questions  
12 from the Commissioners? Very good.

13 We'll now go to public comment, in that  
14 case. And the first blue card I have is from  
15 Timothy P. Dillon representing California  
16 Consumers.

17 MR. DILLON: Good morning,  
18 Commissioners. I am Timothy Dillon, and I am one  
19 of the lawyers for the putative class of  
20 California Consumers of Motorfuel. And I'm from  
21 Laguna Beach, California.

22 CHAIRPERSON DOUGLAS: Let me say, I'm  
23 sorry, in order to try and follow it. I forgot to  
24 say that, you know, we typically ask the public to  
25 limit their comments to about five minutes.

1           Given the high level of interest in this  
2           topic, I think we're relaxing that a bit. And so  
3           going a bit over five minutes is fine. But please  
4           be succinct, if you can.

5           And secondly, as a request, to the  
6           extent that you know that you're covering ground  
7           that other speakers are also addressing, it would  
8           be much appreciated if commenters could coordinate  
9           on their comments. And in that way, provide a  
10          little more depth and avoid repetition, if at all  
11          possible.

12          I'm sorry to interrupt you. Please  
13          proceed.

14          MR. DILLON: No, I -- I will try, but I  
15          haven't coordinated with anyone.

16          CHAIRPERSON DOUGLAS: I understand.  
17          You're the first speaker, and the coordination  
18          request came as you are already at the podium. So  
19          I didn't expect that you.

20          MR. DILLON: But I will try and  
21          anticipate.

22          CHAIRPERSON DOUGLAS: Very good.

23          MR. DILLON: Thank you to the Commission  
24          and the Commissioners for all their time, and  
25          thank you to the staff.

1           We did receive an errata sheet I believe  
2           last Thursday or Friday. And on behalf of  
3           Consumers, we submitted on Monday a proposed  
4           errata sheet to the Commissioners and to staff.

5           And it may look like a lot of changes,  
6           but it comes down to two basic policy issues that  
7           I'd like to just briefly go over and just chat  
8           very briefly about the background. We have  
9           submitted written materials that cover most of  
10          this ground.

11          But the two issues are the benefit to  
12          consumers in California through temperature  
13          compensation, and whether ATC is now permitted to  
14          be used in California.

15          And as to the benefit to consumers,  
16          there's been economists who have come in and said,  
17          you know, there's no benefit. There will be a  
18          uniform, across-the-board, simultaneous increase  
19          in the price.

20          And I think that someone who is not  
21          interested, is not a lawyer in the class action,  
22          and does not represent oil interests, said it  
23          best. And that's the agricultural commissioner  
24          for the County of Los Angeles, who is here and  
25          will speak, and I assume will cover the same

1 thing, so I'll be brief.

2 But what Mr. Floren said, and this is  
3 the person in Los Angeles, 25 percent of the motor  
4 fuel that is consumed in our state is consumed in  
5 his county in Los Angeles. He has 2000 gas  
6 stations and he has 56,000 pumps that dispense  
7 motor fuel. And it's his responsibility to  
8 accurately measure the motor fuel so that there's  
9 transparency and he can fulfill his mission of  
10 providing uniformity in our commerce in our state  
11 so that there's fairness that occurs in the  
12 marketplace.

13 And what Mr. Floren said, and I'm  
14 referencing the 438 million, which is the  
15 difference that ATC would make each year to  
16 consumers of California, he said, opponents of ATC  
17 will argue that this value, which is the 438  
18 million each year, is presented in error. As it  
19 is presumed that cost savings to retailers, fuel  
20 actually not delivered, because the fuel expands,  
21 is reflected in the per-gallon prices offered to  
22 consumers. And that therefore, did not incur the  
23 actual expense. Facts supporting such a  
24 presumption, though, have not been presented or  
25 documented in any way by the opponents.

1           And that's a disinterested person who's  
2           responsible for measuring 25 percent of the motor  
3           fuel delivered in our state. That is not me.  
4           That is not a lawyer for consumers saying that.  
5           That is a disinterested distinguished public  
6           servant saying that.

7           And to the extent there is not 100  
8           percent pass through of the costs, the benefits to  
9           consumers are immediate and quite substantial.

10           There is, assuming a 75 percent pass  
11           through, and 25 percent is not passed through,  
12           there's almost \$1 billion over the next ten years.  
13           If there's a 50 percent pass through, it's \$2.1  
14           billion. And to the extent there's only a 25  
15           percent pass through, there's \$3.2 billion in  
16           savings to consumer in California over the next  
17           ten years.

18           Significantly, the workshop materials  
19           that were handed out in June here of last year  
20           showed no pass through of increased costs of the  
21           reduced margin to consumers. The workshop  
22           materials that were disseminated by the staff of  
23           this Commission gave an example of two counties,  
24           Alameda and Fresno, which showed roughly a \$10  
25           million, per year after the first year, continuing

1 forever, for those two counties which are small  
2 users relative, of motor fuel, to southern  
3 California. Where in five counties, 55 percent of  
4 the motor fuel is used.

5 And if you extrapolate those from  
6 Alameda and Fresno, you get the 438 million. So  
7 significantly the staff did not see the pass  
8 through, the decreased margin, whatever it is  
9 called. And then obviously the methodology was  
10 materially changed on that issue.

11 And as to the benefit, I would say, in  
12 Canada where they use half as much motor fuel each  
13 year as we do in California, half as much in the  
14 whole country as we use in our state, the same  
15 people who are against motor fuel -- against the  
16 ATC voluntarily went to the expense of going  
17 through and equipping their pumps with temperature  
18 compensation because the temperature is colder  
19 there.

20 So what they did in Canada is they  
21 expanded the gallon so they wouldn't lose money.  
22 And the one area where they didn't do it is in  
23 Vancouver where coincidentally the temperature is  
24 right about 60 degrees. So it wasn't worth it to  
25 them. Where it matters to them, they do it. And

1 where they will lose economically, they fight it  
2 like they're fighting this.

3 And this is so important for California  
4 consumers that we have transparency, that we have  
5 openness. And that there is a lot of money  
6 involved here, and that is why this room --  
7 there's been this intensity. That's why there  
8 were tv cameras out this morning. That's why the  
9 press is here. That's why everyone is here.  
10 That's why the oil industry is upset. That's why  
11 the retailers are upset. Because this is  
12 economic. And that's why I am here, because this  
13 is economic on behalf of consumers.

14 And the point that was made about who  
15 owns the retail stations in California should be  
16 clarified. Because the latest that I have seen on  
17 that issue is Borenstein, you know, the university  
18 in Berkeley, he has a 2005 report where he says  
19 roughly there were 10 percent company-owned and  
20 company-operated by majors in California in 2005.  
21 And this is retail prices and compensation in the  
22 gasoline industry.

23 And we all acknowledge there's been a  
24 change in the ownership structure. But what he  
25 says that 10 percent is double the volume.

1       Because they keep the best gas stations, the more  
2       profitable ones for themselves, which makes sense.  
3       They got the best corners in our state for  
4       themselves.

5               So you can say it's a small number of  
6       stations, but the volume is more than the  
7       stations. So you have to be careful between the  
8       number of the stations and the volume of the motor  
9       fuel sold by those stations.

10              And furthermore, there are relationships  
11       where the major oil company owns the station and  
12       leases it. And according to a table in Mr.  
13       Borenstein's report, in 2002 -- and again, this is  
14       old data -- those were 31 percent of the stations.

15              And it's important to understand the way  
16       that economic relationship works between the major  
17       oil company and the lessee. It's a landlord/  
18       tenant relationship where the rent is based on, in  
19       part, the margin they make on the motor fuels  
20       sales and what they sell in the convenience store.

21              So, to try to divorce the major oil  
22       companies from this cannot be done. We also,  
23       everyone knows, have six major oil companies who  
24       are refining 90 percent of the motor fuel that's  
25       sold in our state. We are like an island here, in

1 terms of how the crude oil comes in, where it's  
2 refined at three places in our state, and then  
3 virtually all of it is sold in our state. And  
4 that is concentrated in six multinational large  
5 conglomerates who control the distribution of the  
6 motor fuel in our state. That's a fact.

7 And then to say that they're divorced  
8 from where that goes to and how the price of that  
9 is set is contrary to reality. Because even at  
10 the independents, they control the wholesale  
11 price.

12 And everyone knows there's a margin  
13 that's going to be made by everyone through the  
14 chain. And the refiners are controlling it, being  
15 the price of motor fuel, through their control of  
16 the refineries.

17 I mean that's just how you explain up  
18 and down the state the price rising and falling  
19 uniformly. It just is.

20 So, in terms of the benefit, the benefit  
21 is very significant to consumers and it is  
22 completely unrealistic. And as Mr. Floren said in  
23 writing, very eloquently, there is no evidence in  
24 this record that there is 100 percent pass through  
25 to consumers immediately and instantly.

1                   And even if you have as little as a 25  
2           percent non-pass through, the benefits, the  
3           economic benefits are huge. There are also  
4           important benefits in terms of transparency,  
5           fairness, how we conduct commerce, which the  
6           agricultural commissioner for San Diego joined in  
7           Mr. Floren's comments. In San Diego they sell the  
8           second-most motor fuel in our state.

9                   So you have the people that actually are  
10          at the level of insuring fairness in transaction  
11          involving motor fuel strongly, strongly coming  
12          here on an airplane from Los Angeles to make the  
13          case that this should occur.

14                  And what I am saying, there should be,  
15          at a minimum, a fair and balanced report which  
16          would indicate a range of possibilities, depending  
17          on the percent of recapture, which is the reality  
18          of what is going to occur. Nothing is all or  
19          nothing that occurs in life. It's just not all or  
20          nothing. And to say there's an immediate full  
21          pass through, and so therefore we have no, you  
22          know, a flat benefit, is -- there's no evidence in  
23          the record for that conclusion -- on which that  
24          conclusion can be predicated.

25                  As to permissive use, there are two

1 things that the Department of Agriculture did.

2 CHAIRPERSON DOUGLAS: You're approaching  
3 15 minutes just as --

4 MR. DILLON: I'm winding down, thank  
5 you. And I apologize.

6 The Department of Agriculture, in 2007,  
7 approved an ATC device for use in commerce at  
8 retail pumps in California as meeting all the  
9 requirements of the Business and Professions Code.

10 They also reported to the National  
11 Institute of Standards and Tolerances in a  
12 national survey they did on ATC in 2007 that ATC  
13 at retail stations in California was permitted.  
14 And that is a public survey. There's a box  
15 checked where it says permissive use lawful in  
16 California.

17 In the January 2009 -- strike that -- in  
18 the November 26th staff formal report, which has  
19 been circulated, in two places it concluded ATC is  
20 now permitted in California because it's not  
21 specifically prohibited. They said that in the  
22 beginning, introduction, and they said that at the  
23 back end in the summary of the recommendations.  
24 That ATC is now legal in California.

25 And then what occurred is the oil

1 companies came in with their litigation counsel at  
2 the last time we were here, and they filed papers  
3 and they said everything that it was not  
4 permitted, because that doesn't help them in the  
5 lawsuit.

6 And then for whatever reason, the report  
7 then was changed to alter, again, what we think is  
8 reality of what the Department of Agriculture has  
9 done. They approved an ATC device and they  
10 responded to a survey that ATC was permitted in  
11 California.

12 Now, the AB-868 did not ask for whether  
13 ATC was permitted, so we respectfully say that  
14 that is outside of this. And that in the report  
15 it should be included what the Department of  
16 Agriculture has done with respect to ATC.

17 We've submitted these comments. I know  
18 I've gone over my time. And I do have a host of  
19 changes that we did submit on Monday, detailed in  
20 a proposed errata sheet, basically centered on  
21 these two policy points.

22 Thank you.

23 CHAIRPERSON DOUGLAS: Thank you. Brief  
24 comment on the permissive issue. The Legislature,  
25 as was noted, did not ask us to opine on this

1 issue. We do not, ourselves, determine whether  
2 these devices are permitted or not. And it was  
3 our judgment that our opinion on that matter was  
4 not what we were asked to provide the Legislature.  
5 This is an issue that can be settled either by the  
6 Legislature or in court, if it goes there. But  
7 it's just not an issue in which this Commission  
8 has the power or has been asked to dispose of.

9 So that's the reason why we note that  
10 there is controversy on the subject, so that the  
11 Legislature is aware that there is dispute on the  
12 subject. And if they choose to take action, they  
13 are informed and they're able to do so.

14 Mr. Schremp, I know that a number of  
15 these issues, really all of these issues, I think,  
16 have been raised in either the three staff  
17 workshops or the Committee workshop that was held.

18 Would you like -- can you address some  
19 of the points that were raised. I know there were  
20 a large number of points raised.

21 MR. SCHREMP: Yes, Madam Chairman  
22 Douglas, I'd be happy to address some of those  
23 points.

24 You're right, a lot of these issues have  
25 been raised by multiple stakeholders most recently

1 in the process of our 14, 16 months work on this  
2 study.

3 One of the points I'd like to address  
4 made by Mr. Dillon was the June workshop materials  
5 where we show benefits and show the cost, and in  
6 those slides for those two counties selected. The  
7 benefits far exceeded those costs as shown.

8 But he's right, in materials it doesn't  
9 say anything else. But in my comments during  
10 those proceedings I said there are three parts to  
11 our macro analysis.

12 And one is to determine, try to quantify  
13 what the costs would be that would be incurred by  
14 the business. And then what the sort of what's in  
15 play here. How the size of the gallon would  
16 change. And would consumers retain the benefit of  
17 the larger gallon, and not pay any more for it.

18 So I said the third step is to determine  
19 what would happen, what we believe would happen to  
20 retail prices as a consequence of the installation  
21 and activation of ATC devices at retail.

22 So that third point, that third part of  
23 the process, we did not have a slide for it. But  
24 in my oral comments I said that is what we will be  
25 addressing when we come out with a draft report,

1       which we did in November.

2               So, I apologize that I evidently created  
3       a bad impression by not including a slide  
4       explicitly for materials detailing what that third  
5       step would be. And instead expecting people to go  
6       to the transcript, which is not a reasonable  
7       expectation. Obviously they're going to go and  
8       get a copy of the presentation if they were not  
9       there.

10              So, that's my fault. But that's why  
11       there apparently seems to be a major change. For  
12       staff it wasn't a major change. We had not yet  
13       convened internally and discussed among ourselves  
14       how we thought the retail station operators would  
15       react.

16              And we did have meetings with retail  
17       station owners and operators, and they talked  
18       internal about how they conduct their business.  
19       They talked material on how they tried to -- how  
20       they recover costs, how they react to new  
21       regulations, and how they attempt to remain  
22       profitable.

23              So, in our discussions I think in the  
24       errata sheet that was issued, on page 5, I  
25       apologize for reading from it, but I don't want to

1 misstate. I think there's a sentence in there,  
2 the very last paragraph, that states: The Energy  
3 Commission acknowledges uncertainty in this  
4 regard, but finds that the balance of evidence  
5 points to complete or near-complete pass through  
6 of ATC-related costs from retail station owners to  
7 consumers.

8 We understand the hypothetical  
9 constructs that Mr. Dillon and others have put  
10 forth, that the industry, in the long run, will  
11 only be partially successful. And depending on  
12 what you define as partial, you can then go  
13 through an exercise and value what the potential  
14 benefit would be for consumers.

15 Staff believes that the industry is  
16 profitable and will continue to be profitable. So  
17 we would have to therefore agree to this sort of  
18 hypothetical situation, that the industry would  
19 collectively be permanently less profitable.

20 And then we would further extend that to  
21 any other regulation. Let's say it's enhanced  
22 vapor recovery, one of the most recent costs of  
23 the retail station industry that they're having to  
24 deal with. There's an expectation that that, too,  
25 will be passed through in aggregate by the

1 industry.

2 Will some stations potentially close?

3 Yes. Will new entrants come into the marketplace?

4 Yes. But in aggregate we expect to see this as a  
5 profitable industry moving forward.

6 So we would have to alter sort of our  
7 basic econometric interpretation of how the market  
8 does function, how it would function in the long  
9 run.

10 So would it be precise and exact for  
11 every single load of fuel? No. We're not saying  
12 that. But we're saying in aggregate, in the long  
13 run, it will work out to be a complete pass  
14 through.

15 CHAIRPERSON DOUGLAS: Thank you. Are  
16 there other questions by Commissioners?

17 COMMISSIONER BYRON: None.

18 CHAIRPERSON DOUGLAS: The next --

19 MS. LEMEI: Madam Chair, if you don't  
20 mind.

21 CHAIRPERSON DOUGLAS: Please.

22 MS. LEMEI: I just wanted to briefly  
23 address one point that I believe Mr. -- was it?  
24 Ray --

25 MR. DILLON: Dillon.

1 MS. LEMEI: -- Mr. Dillon, I'm sorry.

2 My apologies.

3 He referred to the approval of the  
4 Department of Food and Agriculture of the device.  
5 And I just want to direct the Commission's  
6 attention to a particular footnote in the body of  
7 our report, which is actually referred to in the  
8 errata, as well.

9 And that is footnote number 86 on page  
10 89. And I believe that this is a reference to the  
11 action taken by the Department of Food and  
12 Agriculture. And I just wanted to direct the  
13 Commission's attention to that, that that is  
14 acknowledged in the report, if I'm correct that  
15 that's what Dillon was referring to.

16 CHAIRPERSON DOUGLAS: Thank you. The  
17 next --

18 COMMISSIONER LEVIN: Madam Chair, --

19 CHAIRPERSON DOUGLAS: Oh, please.

20 COMMISSIONER LEVIN: -- I just had a  
21 question of the previous speaker.

22 CHAIRPERSON DOUGLAS: Please.

23 COMMISSIONER LEVIN: Mr. Dillon, as a  
24 newcomer to the Commission I have to apologize.  
25 I've not been able to read all the background

1 materials. I have read the full report carefully  
2 and been briefed.

3 It would be helpful for me, at least, as  
4 a newcomer to the Commission, to know from you and  
5 actually from other speakers who represent  
6 consumer groups, how many members to you  
7 represent? And are they members of an  
8 organization or members of a litigation class? It  
9 would be helpful to me to put this in context.

10 MR. DILLON: I am counsel for a class  
11 of, putative class of consumers of motor fuel in  
12 California, which would be people who purchase  
13 motor fuel in California.

14 And so putative would mean it's not been  
15 certified by the court yet. So, we are putatively  
16 representing consumers. I'm not affiliated with  
17 any consumer group or anyone. I'm here to try to  
18 advance what I think the interests of consumers  
19 are in California, if that is responsive.

20 COMMISSIONER LEVIN: Okay, thank you.  
21 That's very helpful. It's just I assume much of  
22 this is in the public comments because I haven't  
23 had time to catch up on all of them yet. It's  
24 just helpful for me to understand who is  
25 representing a litigation class, who is

1 representing a public interest organization.

2 So, if you could each clarify that. I  
3 apologize for making you do it, but it's helpful  
4 for us -- or at least for me.

5 MR. DILLON: Thank you.

6 CHAIRPERSON DOUGLAS: Thank you.

7 The next speaker, or the next card I  
8 have is from George Zelcs of California Motorfuel  
9 Consumers.

10 MR. ZELCS: Good morning, Commissioners.  
11 Most of the comments that I was going to make have  
12 been made by Mr. Dillon. So, with the interest in  
13 coordinating and saving time I'll pass on my  
14 request to speak.

15 CHAIRPERSON DOUGLAS: Thank you.

16 Jay McKeeman of CIOMA.

17 (Pause.)

18 MR. McKEEMAN: I am Jay McKeeman; I'm  
19 with the California Independent Oil Marketers  
20 Association. We're a trade association  
21 representing fuel distributors in retail marketers  
22 in the state. We represent approximately 400  
23 members, about 200 of which are actively engaged  
24 in petroleum distribution and retailing in the  
25 state.

1           We are small oil, little oil. Most of  
2           our members are owned and operated by families, 20  
3           to 40 employees is kind of the common business  
4           size. We are small businesses trying to stay  
5           profitable in a state that presents us tremendous  
6           difficulties in doing so.

7           I am angry, I am disappointed, and I'm  
8           ashamed today. CIOMA spent the better part of two  
9           years diligently working on this issue. We helped  
10          get the legislation approved because there was no  
11          objective dialogue on this issue.

12          We felt the Energy Commission provided  
13          our best chance, the nation's best chance, to come  
14          up with an objective, thorough and analytical  
15          report on this issue.

16          I thought that we were in good shape  
17          until Thursday. On Thursday evening, Thursday  
18          evening after business was closed in this state,  
19          on a furlough Friday when employees were not  
20          available for discussion the next day, we received  
21          an errata sheet.

22          This is not an errata sheet. An errata  
23          sheet makes grammatical and typographical changes  
24          to a report. This makes substantive changes to  
25          this report.

1           Apparently they were the persuasion of  
2           one party. As distributed to you, a post or a  
3           printout from a blog from Judy Dugan, dated May  
4           4th, that indicates the type of changes that are  
5           being made in the errata sheet. That suggests to  
6           me that somebody had an inside ability to persuade  
7           the Commission to make big changes to a report at  
8           the very last minute and try to blow it by us.  
9           That is not acceptable.

10           And that does not comport favorably with  
11           my impression of the Commission in being an  
12           objective and fair and above-board organization.

13           I'd like to note the previous two  
14           speakers have not had one word to say during the  
15           legislation or the many meetings that we've had on  
16           this.

17           I'm just very very disappointed that  
18           we're having to argue about an errata sheet that  
19           makes big changes in the report, without adequate  
20           debate. And I'm certainly not suggesting that we  
21           go back to square one on this.

22           It just infuriates me that we have gone  
23           through two years of hard work and dedication and  
24           commitment to an open process, and we get faced  
25           with a piece of junk, in my humble opinion.

1           I suggest that the Commission adopt the  
2 report as presented to them, without the errata  
3 sheet. That is the fair thing to do. We can  
4 dance on the head of pins for years on this. In  
5 fact, maybe we just get all the trial attorneys in  
6 here and have them argue these issues out.  
7 Because that's the whole new way that you're ever  
8 going to hear the silence -- can hear the silence  
9 then.

10           It's not right. This errata sheet is  
11 not an errata sheet. It is change to the tone and  
12 substance of the report. The report, as  
13 presented, is something that we -- we don't agree  
14 with. We sent in letters that say you haven't  
15 gone near far enough in showing the costs.

16           So, yes, there's disagreement on both  
17 sides. But we did not attempt to change this  
18 report in a suspicious manner.

19           So I suggest that the Commission has the  
20 opportunity to maintain their reputation as a fair  
21 and above-board and objective commission by  
22 adopting the report without any changes today.

23           Thank you.

24           CHAIRPERSON DOUGLAS: Questions from  
25 Commissioners?

1                   COMMISSIONER BYRON:  Actually a question  
2                   for counsel.  Mr. Chamberlain, do we normally  
3                   provide errata on reports that we approve before  
4                   this Commission, and can you describe briefly how  
5                   we go about doing that?

6                   MR. CHAMBERLAIN:  Yes.  There are  
7                   changes that are often made, as Chairman Douglas  
8                   indicated, this is in the nature of a quasi-  
9                   legislative process.  And as you know, if you  
10                  attend a legislative hearing, changes occur right  
11                  up to the very end.  The debate goes on.  The  
12                  debate can extend right up to the day of the  
13                  hearing and during the hearing, itself.

14                  And any party that comes here today and  
15                  suggests specific changes to this report, it's not  
16                  set in concrete at any point until the Commission  
17                  closes the hearing and votes on the matter.

18                  Now, he's probably right that the term  
19                  errata, according to the dictionary definition,  
20                  would tend to suggest that it's only  
21                  nonsubstantive changes that are being made.  So,  
22                  perhaps it's a misnomer, but it's not improper.

23                  CHAIRPERSON DOUGLAS:  Mr. McKeeman, I  
24                  appreciate your participation in this process over  
25                  these two years.  We all do.  And we very much

1 appreciate your being here today and expressing  
2 your views, both about the report and about the  
3 errata.

4 In my view the errata do not  
5 substantively change the report. What they  
6 attempt to do is to, I would say, better reflect  
7 the record and the views that were expressed in  
8 the record. But they do not change the  
9 conclusions of the report.

10 The one staff-recommended change, which  
11 was adding the word possible before fairness in  
12 that one section was made in part, I believe,  
13 because after the fact, staff realized that this  
14 actually could be interpreted as a substantive  
15 change. It wasn't mean to be.

16 And so the insertion of the word  
17 possible, I hope, and I believe, brings us back to  
18 better clarifying the language of that provision  
19 without substantively changing what we had meant  
20 to say.

21 I hear you that you disappointed. I'm  
22 glad you are here, despite your disappointment, to  
23 be part of this process, and to express your views  
24 in this forum.

25 Is there anything else you'd like to say

1 before I go on to the next blue card?

2 MR. McKEEMAN: I mean -- now that I've  
3 vented I feel better, I guess.

4 (Laughter.)

5 MR. McKEEMAN: I do commend the staff  
6 for doing a good job. They've done a commendable  
7 job of putting the information together. And in  
8 listening to a multitude of witnesses and  
9 participants in this process.

10 And, yes, the report's changed over  
11 time. I would hope it changes over time as they  
12 get more input and more information that helps  
13 them make an objective analysis.

14 And I think the report, by itself,  
15 stands on its own, as a very good piece of work.  
16 I get very nervous when trial lawyers are making  
17 suggestions on how to change your report. And for  
18 that reason, I think the errata sheet is not  
19 appropriate.

20 CHAIRPERSON DOUGLAS: I appreciate that.  
21 You know, everybody in our quasi-legislative  
22 process is allowed to ask and advocate and cajole  
23 and pressure and use any other method really  
24 legally at their disposal to affect our report.

25 And that being said, we hear your

1 concerns. Thank you.

2 Next blue card is Kurt Floren  
3 representing the Los Angeles County Department of  
4 Agriculture, Rural Commissioner/Weights and  
5 Measures.

6 MR. FLOREN: Too long a title. Good  
7 morning, Madam Chair and Commissioners. First,  
8 let me say I've commiserated with no one, but I  
9 will take the advice and not repeat what I've  
10 already been quoted on.

11 At any rate I am Kurt Floren. I'm the  
12 Agricultural Commissioner and Director of Weights  
13 and Measures for the County of Los Angeles. And  
14 I, too, want to first offer my appreciation and  
15 commendation for the work of the CEC and staff on  
16 this whole study.

17 While the findings are a bit  
18 disappointing in terms of a strong recommendation,  
19 I must tell you that I'm not surprised. I said  
20 very early on in this whole process that if there  
21 is expectation that there will be findings that  
22 there are millions of dollars that will end up in  
23 someone's pockets, you're not going to get that  
24 from this study.

25 I anticipated that there would be

1 assumptions that costs would be passed on, and  
2 that the prices charged for gasoline would likely  
3 be raised to try to maintain profit margins.

4 Now, the problem with assumptions is, of  
5 course, that one can't prove that they will  
6 happen, and one can't prove that they won't.

7 So I wish today to provide a commonsense  
8 argument rather than splitting hairs over costs  
9 and assumptions about who will and won't, or who  
10 can and can't pass on costs or raise prices.

11 As it's been said, I oversee the weights  
12 and measures program for the largest county in the  
13 United States. I've been an inspector,  
14 supervisor, a manager, and now an administrator  
15 for going on 24 years. So I hope that that gives  
16 me some credibility for my comments.

17 Weights and measures is about equity.  
18 And equity equals fairness. That's an equal  
19 adjustment or distribution. It's not about  
20 shifting benefits or unduly benefitting one side  
21 or the other.

22 Now I fear that the outset was a lot of  
23 discussion about fraud and deception and cheating  
24 and what-have-you, that the goal here would be to  
25 identify those millions of dollars that consumers

1 would reap. Or that they would not spend under a  
2 system with automated temperature compensation.

3 And feared that the goal here might be  
4 to guarantee that each consumer would receive  
5 those immediate savings. And I fear that it was  
6 the focus on that role that led to what we see as  
7 the conclusions in this report. That the net  
8 benefit to society, as it's stated, is somewhere  
9 around zero.

10 And there's always a risk when we talk  
11 -- when we deal in averages and spreading effects  
12 over all transactions. And I recognize that the  
13 goal here was to conduct a cost/benefit analysis,  
14 how costs compare with returns, and that there was  
15 a deep desire to quantify those actual benefits.

16 But every time that's done the work tends to  
17 go to averages.

18 And I also feared that we would get lost  
19 in the minutiae of the operations of a retail gas  
20 station, issues regarding convenience stores and  
21 price point and all these other things that have  
22 been discussed. And think that that, too, is what  
23 has led to some of these conclusions.

24 So, for a minute I'd like to deviate  
25 from some of that minutiae and look at some

1 parallels in the world. We're all consumers. We  
2 all understand that we each want to get what we  
3 pay for.

4 Now, weights and measures regulators,  
5 some of the things that we do, for instance,  
6 package inspection, it involves a random selection  
7 of packages. And as we test them for content to  
8 make sure that if it says a pound it has a pound.  
9 We do average errors together.

10 But a simple average is not the  
11 benchmark in that case. Why? Well, for instance,  
12 if you take 12 samples and they're all labeled one  
13 pound. If half of them weighed a half pound heavy  
14 and half of them weighed a half pound light, when  
15 you average that together you're average is zero.  
16 So that would seem that everything should pass.

17 But that's not fair to the individual  
18 who purchases one of those packages and only gets  
19 half of what he believes he paid for.

20 So within that system we have maximum  
21 allowable variances, minus deviations that we set  
22 limits on, because there's a interest in  
23 protecting the individual consumer.

24 We do scanner inspections, checking  
25 prices in stores to make sure that what's being

1 charged at the checkstand is what's being  
2 advertised. Most prices are accurate. And with  
3 that knowledge does that mean that there's no need  
4 for inspection? Opponents to that process argue  
5 that hey, there's overcharges and there are  
6 undercharges. And in the long run everything  
7 balances out.

8 But the truth is somebody who gets  
9 overcharged buying pantyhose really doesn't care  
10 that someone else got undercharged buying a garden  
11 hose. It may even out in the long run, but it  
12 doesn't even out for that individual. So every  
13 overcharge is a violation and we pursue  
14 prosecution of that.

15 Now, we can argue averages all over the  
16 place. Most people don't get mugged or assaulted  
17 or become victims of major crime, so is there no  
18 need for a police department. Most don't get food  
19 poisoning, so is there no need for the FDA, for  
20 the food safety inspection service, for health  
21 departments? No, because we care about the  
22 effects upon individuals.

23 So to get back to weights and measures  
24 we look at devices. We test devices for accuracy  
25 and we hold them to very specific tolerances. And

1 one could argue that with standard deviations and  
2 routine drifting of adjustments, that there's  
3 really no need to set performance standards. On  
4 average, over time things are going to balance  
5 out. And so on average, things are accurate to  
6 the masses. But we don't do that because  
7 individuals deserve what they pay for, and within  
8 reasonable standards.

9 And I believe that's what we're here  
10 talking about, what is a reasonable standard. So,  
11 first we look at the cost. And at the first  
12 glimpse it seems daunting, \$127 million. And it  
13 appears unreasonable, particularly when we look at  
14 this conclusion that determine a dead weight loss  
15 down to only a quarter million, \$250,000.

16 That calculation is probably way over my  
17 head, trying to figure out how we got there. But  
18 I believe it's based on an awful lot of  
19 assumptions.

20 But conclusions regarding very minimal  
21 savings and limits to benefits comes from  
22 spreading that data over the entirety of all  
23 transactions. And I fear ignores that potential  
24 impact to individual consumers.

25 Now, in a static world where no one

1 leaves his neighborhood, he always buys from two  
2 or three stations that happen to be right across  
3 the street from each other, some of this may hold  
4 up. And I emphasize may.

5 But that's not real life in a state  
6 where folks commute for long distances, many visit  
7 from out of the area. We have web sites and radio  
8 stations out there who advertise the lowest price  
9 of fuel in wide areas, and encourage consumers to  
10 travel across town to get those better prices.

11 And that goes outside of what many in  
12 the industry will define as a quote, market area,  
13 end quote.

14 Secondly, I want to urge us not to lose  
15 sight of some of the information that's in the  
16 report including averages. The report points out  
17 an average temperature in Riverside County of 89.6  
18 degrees. That translates to just under a 2  
19 percent expansion in fuel.

20 Tulare County, 90.7 degrees. That's  
21 just over 2 percent expansion of fuel. And then  
22 Fresno County, 92 degrees is the average  
23 temperature, over 2 percent again.

24 Weights and measures agencies in this  
25 state have about 150 inspectors in the field

1       expending about 60,000 hours every year holding  
2       these dispensers to an accuracy tolerance of about  
3       one-half of one degree.

4               So to disregard a 2 percent variance in  
5       these cases, four times what we're holding these  
6       pumps to, simply mocks those efforts that we go to  
7       every single day to insure the accuracy of these  
8       devices.

9               The report, in terms of costs, has been  
10       amended to show these costs amortized over 10 to  
11       15 years. There's even references to 20 years  
12       there. And now that demonstrates that the cost of  
13       implementing this would be a few hundredths of a  
14       cent over those many years.

15               But, of course, it has an alternative or  
16       a side effect of creating a perception that these  
17       costs are going to plague consumers and plague the  
18       industry for 20 years trying to pass all of this  
19       through.

20               And I'd like to refer back to the  
21       earlier calculation that showed a total cost of  
22       passing the entirety of the entirety of this  
23       through for seven-tenths of a penny per gallon in  
24       a single year would pay for the installation,  
25       based on the Commission's report.

1           The reality is the cost to do away with  
2 these uncertainties for consumers, and retailers  
3 alike, in trying to deal with shrinkage that they  
4 see at their stations, can be funded for less than  
5 a penny per gallon in a single year.

6           And lastly, real life scenarios  
7 disappear, of course, when you start speaking in  
8 generalities and averages. And while there  
9 haven't been specific examples, evidence here  
10 shown, presenting this, one cannot ignore logic.

11           The reality is there are different  
12 circumstances at different stations that may, in  
13 fact, be within the same market area, no matter  
14 how one defines that.

15           Consider a station that has storage  
16 tanks directly beneath the pumps. And their  
17 competition across the street has storage tanks 50  
18 feet away, so the piping is run right underneath  
19 the asphalt for 50 feet.

20           In the summer heat that station with 50  
21 feet of piping is going to have hotter fuel than  
22 the competition. In the winter cold that same  
23 station is going to have colder fuel than that  
24 competition right across the street from it.

25           That's just reality. Or that's the logic, at

1 least.

2 If ATC is not in use, and the industry  
3 is to be believed that pricing occurs principally  
4 through dealers simply walking out to the street,  
5 looking left and right at their competition and  
6 setting the price, which has been said in the  
7 workshops here, with equal or close pricing  
8 between those competitors, value comparison is  
9 simply impossible without taking into  
10 consideration the temperature variances that  
11 occur.

12 The study has been very valuable, yet  
13 the assumptions regarding the full pass through of  
14 costs and the future per-gallon pricing increases  
15 that would be anticipated by dealers to maintain  
16 these profit levels, that necessarily, as I said,  
17 computes to a zero gain. That's simple math and  
18 it doesn't require an extravagant study to get  
19 there.

20 But logic and commonsense say otherwise.  
21 ATC removes the unknowns. ATC provides at an  
22 acceptable cost, even if you pass all those costs  
23 through, a more equitable means for retail fuel  
24 sales providing the same protections to consumers  
25 and competitors that right now is found throughout

1 the entire rest of the wholesale distribution  
2 chain.

3 So I would suggest to you that  
4 commonsense says that at less than a penny a  
5 gallon in a single year to fix this problem, and  
6 only hundredths of a cent per gallon for evermore  
7 thereafter, that there should be a recommendation  
8 to the Legislature for the implementation of ATC.

9 That's my prepared comment. And if I  
10 can make two quick comments about the errata here.  
11 On page 3 of the revised errata, dealing with page  
12 74, the last line there says, the Energy  
13 Commission acknowledges uncertainty in this  
14 regard, and this is dealing with recovering the  
15 ATC costs, it acknowledges uncertainty in this  
16 regard, but finds that the balance of evidence  
17 points to complete or near-complete pass through  
18 of ATC-related costs.

19 I would challenge the term evidence. I  
20 don't know how one can have evidence of future  
21 actions. And I heard Mr. Schremp use the term  
22 likely hypotheticals. So I would respectfully  
23 suggest that in place of evidence, likely  
24 hypotheticals be inserted.

25 Secondly, on page 5, dealing with page

1 105, first line, currently no retail station owner  
2 has chosen to install and operate ATC-ready  
3 dispensers in California. I would also suggest,  
4 just from personal knowledge and comments from  
5 colleagues, chosen has implications, I think.

6 And there have, indeed, been operators  
7 who have expressed interest and questioned about  
8 their ability to install ATC devices. So, for  
9 accuracy's sake, I would suggest that rather than  
10 stating no one has chosen, to strike chosen and  
11 say taken action to install. Which would be they  
12 have not physically installed it, but it's not a  
13 matter of choice there, that there's necessarily a  
14 choice against the use of ATC.

15 So with that, I appreciate your time.

16 CHAIRPERSON DOUGLAS: Questions from  
17 Commissioners? I just have a brief comment. It  
18 seems to me that the issues that you raised, both  
19 the question of fuel temperature variability  
20 between competing stations and the question of  
21 consumers willingness to pay to reduce that  
22 variability, those are the specific two topics  
23 that we identified as subjects for potential  
24 further research, should the Legislature want that  
25 done.

1                   So I wanted to acknowledge that those  
2                   issues are acknowledged in the report as areas  
3                   that the Legislature may choose to do more work or  
4                   have somebody do more work analysis on it.

5                   Thank you for your participation and for  
6                   being here today.

7                   MR. FLOREN: Thank you.

8                   COMMISSIONER BYRON: Yes, Mr. Floren,  
9                   thanks for being here on behalf of your -- the  
10                  residents of Los Angeles County.

11                  MR. FLOREN: I appreciate that, thank  
12                  you.

13                  COMMISSIONER LEVIN: Mr. Floren, I'm  
14                  sorry, your last suggestion -- this is the lawyer  
15                  in me, I apologize --

16                  MR. FLOREN: Quite all right.

17                  COMMISSIONER LEVIN: The language you're  
18                  suggesting I think actually is more of a problem  
19                  given the situation that you've described where  
20                  there has been interest expressed or inquiries  
21                  made. To say there's been no action taken implies  
22                  there's been zero interest.

23                  So would it meet your concern better  
24                  just to take out chosen to and say no one has  
25                  installed or operated?

1           MR. FLOREN: That would absolutely be  
2 accurate, and I think you're correct in that.

3           COMMISSIONER LEVIN: Okay.

4           CHAIRPERSON DOUGLAS: Thank you.

5           MR. FLOREN: Thank you.

6           CHAIRPERSON DOUGLAS: Next card I have  
7 is from Judy Dugan, Consumer Watchdog.

8           MS. DUGAN: Thank you for taking the  
9 time today to listen to so many variable opinions.

10           One thing I'd like to say is that, first  
11 of all, Consumer Watchdog has no economic stake in  
12 the outcome of these deliberations. We are purely  
13 a consumer advocacy group. We have no axe to  
14 grind beyond consumer fairness. So I just want to  
15 make that clear, we have no economic stake and no  
16 legal stake in the outcome. We are not the party  
17 to any legal action.

18           I would go along and just say ditto to  
19 everything that Kurt Floren has said. And what  
20 Mr. Floren has said is that there is an absolute  
21 value to fairness and transparency in commercial  
22 transactions. It's the aim of regulation to  
23 achieve fairness, transparency and consistency in  
24 commercial transaction. It is not variable, and  
25 you can't say that it only has a possibility of

1 value. These have value that is the basis for  
2 regulatory bodies, such as the Division of  
3 Measurement Standards, such as the state  
4 agricultural weights and measures leaders.

5 So I would like to request first that  
6 the word possible that was inserted in all these  
7 cases on the errata be deleted. This is not a  
8 matter of doubt, the fairness, transparency and  
9 consistency have value. To call it just a  
10 possible value is to denigrate the work of  
11 regulators and the people who try to keep the  
12 world of commerce fair.

13 The other thing I'd like to address is  
14 our statement of a perceived conflict of interest.  
15 First I would like to ask the chief counsel is we  
16 would -- this is the first we've heard of this  
17 action, and could we please have copies of your  
18 statement to the FPPC and the FPPC's response to  
19 you. I'd like to request those documents.

20 And I'd also like to say on that  
21 argument that if the only -- if conflict can only  
22 be found in terms of certain economic harm,  
23 including going out of business, on the part of  
24 the other party, then no one with ties to a  
25 lobbying business could ever be found in conflict.

1  
2           This is not a matter of an industrial  
3 business, or a business with consumer sales. To  
4 say that economic harm must be involved misses the  
5 point that the lobbying business, which is such a  
6 big part of the economy in this city, is one of  
7 reputation and one of representation, not of an  
8 individual entity that has something to sell.

9           The job of the Western States Petroleum  
10 Association is not to have a life of its own, but  
11 to effectively represent the interests of its  
12 members before regulatory, legislative bodies,  
13 including this one.

14           So to say that since there is no  
15 material financial effect on WSPA from this  
16 proceeding is to treat WSPA like General Motors,  
17 which it is not. It is a lobbying organization  
18 and this rule does not get at what the conflict  
19 is.

20           I have no grudge against Mr. Boyd or  
21 anyone else here. I believe that you all see  
22 yourselves as doing work independently and fairly  
23 in all cases.

24           But the point of a conflict of interest  
25 is perception, and the fact that actions can be

1 taken in a case of conflict that are not even seen  
2 internally by the person who is in conflict at  
3 that time.

4 And for instance, to say that Mr. Topel  
5 is not an agent of WSPA or was not an agent of  
6 WSPA, may be technically correct. But he is  
7 described in this August 12th email as the person  
8 expressing WSPA's econometric interpretation of  
9 the ATC issue for the California market.

10 This, to any ordinary reader, would make  
11 one believe that Mr. Topel is representing, in  
12 some way, WSPA. He is expressing their  
13 econometric interpretation.

14 The first the public knew of Mr. Topel's  
15 existence was his January 9th co-authored report  
16 with Mr. Murphy that was put into the record at  
17 that time. But the bases of the CEC's final  
18 report seems to follow largely along the lines of  
19 that argument.

20 Even at the time that Mr. Topel met  
21 privately with some of the Commissioners and some  
22 of the staff, there were expressions of having  
23 that -- that his analysis ought to be tested  
24 independently. Perhaps looked over by someone  
25 else. Send it to UC Berkeley, send it to the

1 Petersen Institute at UCLA. That there should be  
2 some outside look at this. And as far as we can  
3 tell from the documents that were released, this  
4 was never done.

5 We would hope that you would delay your  
6 vote because we feel that the conflict issue has  
7 not been contemplated completely. That the  
8 evidence of meetings with people from -- Valero is  
9 certainly the oil industry. Valero is not an  
10 individual gas station, so it's of the industry --  
11 is involved in this.

12 The meeting with Mr. Topel, who came  
13 introduced as a person representing the interests  
14 of the Western States Petroleum Association, we  
15 believe that this is still a live issue and we  
16 would like to see the documents that were  
17 submitted and received on this issue.

18 We have no personal interest in this,  
19 but we want government that is open, transparent  
20 and fair. And we want consumers to have a fair  
21 deal.

22 Mr. Floren has shown us that fairness  
23 and transparency and consistency are actual  
24 values. They are not possible values. And we ask  
25 that those words be stricken from the errata.

1           And we ask that this vote be delayed  
2           until the conflict issue could be better resolved.  
3           We object to what appears to be an undue level of  
4           influence by industry players on this proceeding.

5           CHAIRPERSON DOUGLAS: Ms. Dugan, thank  
6           you for your participation in this process and  
7           your comments.

8           I wanted to comment briefly before  
9           asking Mr. Chamberlain to respond to your  
10          questions, and then seeing if other Commissioners  
11          have questions.

12          I went through the pile of emails that  
13          we released. There was an email that referred to  
14          this group as WSPA. That reference was incorrect;  
15          they were not WSPA. They certainly were oil  
16          companies, and in fact, somewhat to my  
17          embarrassment, my email that was released  
18          referring to this group called them the oilies,  
19          which is a term that is occasionally bandied about  
20          by people in Sacramento, including Commissioners.

21          And so there's no question that he was  
22          representing oil industry players.

23          As I've said before, and I will say it  
24          again, we will listen to the arguments of oil  
25          companies. We will listen to the arguments of

1 trial attorneys. In the end this is about making  
2 your case in our process.

3 And, you know, I firmly believe that our  
4 staff listened to everybody, as did the  
5 Commissioners. And the technical work in the  
6 report is sound, and it was based on public record  
7 and evidence that was presented to us.

8 MS. DUGAN: May I ask if you did seek  
9 any evaluation of Mr. Topel's econometric  
10 analysis?

11 CHAIRPERSON DOUGLAS: We did not,  
12 ultimately, I believe, contract for outside  
13 evaluation. We thought about it, but we are two  
14 months behind in providing this report to the  
15 Legislature. And at the time I think we believed  
16 that it would be too much of a delay to do it.

17 Not anticipating this would be two  
18 months behind. I think if we knew we would be two  
19 months behind we might have had time to do it.

20 But we also have, as I said before,  
21 significant staff expertise on this issue. We do  
22 not incorporate anyone's views wholesale without  
23 that screening.

24 Mr. Chamberlain, would you please  
25 address the questions.

1           MR. CHAMBERLAIN: Yes, I will have to  
2 take under advisement Ms. Dugan's request. I can  
3 tell you that I have no objection, myself, to  
4 sharing with her either my question to the FPPC or  
5 their response. But I believe I do need to check  
6 with them and be sure that they agree with me that  
7 that is completely a public document.

8           CHAIRPERSON DOUGLAS: Please do, and if  
9 they agree with you please do share it.

10          MR. CHAMBERLAIN: Yes.

11          CHAIRPERSON DOUGLAS: And in terms of  
12 the legal standard for conflict of interest, maybe  
13 it would help if you articulated that again for  
14 the benefit of everybody, including Ms. Dugan.

15          MR. CHAMBERLAIN: Well, you know, there  
16 are different values that we looked at. Obviously  
17 we want open, transparent government. We also  
18 want the best possible, the most experienced  
19 decisionmakers to participate in decisions when  
20 they can.

21                 And the reason that the Fair Political  
22 Practices, or the Political Reform Act established  
23 the Fair Political Practices Commission and gave  
24 them authority to define in great detail in their  
25 regulations the kinds of decisions that officials

1 should not participate in, because they have a  
2 financial interest that could be materially  
3 affected, I believe was to serve both of those  
4 interests.

5 If you were to simply say anytime anyone  
6 looks at a situation, any man on the street looks  
7 at a situation and says, gee, that doesn't look  
8 right to me, that you would immediately disqualify  
9 the official from participating, you would  
10 probably err too far on the side of disqualifying  
11 people who you would need to -- you would need  
12 their experience to come to bear on those  
13 decisions.

14 And so I have tried very carefully to  
15 follow the law here. And I believe Commissioner  
16 Boyd has, as well.

17 CHAIRPERSON DOUGLAS: Thank you. Are  
18 there any questions from Commissioners?

19 COMMISSIONER BYRON: No.

20 CHAIRPERSON DOUGLAS: Very good. The  
21 next card is from Carl Boyett of SIGMA.

22 MR. BOYETT: Madam Commissioner and  
23 Commissioners, as president of SIGMA, and SIGMA is  
24 a national trade association representing  
25 marketers that sell about 30, 35 percent of the

1 gasoline and motor fuel sold in the U.S. And it's  
2 basically America's leading fuel marketers.

3 As president of SIGMA we're opposed to  
4 the adoption of this errata, if it is an errata.  
5 And if it isn't an errata, then we're probably not  
6 opposed to it.

7 But we think it substantively changed  
8 the meaning --

9 CHAIRPERSON DOUGLAS: I heard the word  
10 opposed. Is that what I should take away from  
11 that comment?

12 MR. BOYETT: Well, that's what I was  
13 sent here to say, so since it maybe isn't a  
14 technical errata, then I don't know what we are.

15 CHAIRPERSON DOUGLAS: Whatever it is,  
16 you're opposed to it, is that correct?

17 MR. BOYETT: Right. But anyway,  
18 changing hats, I'm also a member of Gordon's  
19 advisory group, and I want to compliment the  
20 staff. I think they've spent a lot of time, and  
21 the Commissioners, too, working on this. It's an  
22 extremely difficult issue.

23 But I'd like to point out a few things.  
24 One is that the retailers of this state are under  
25 tremendous pressure right now. Many of them have

1 stations that they paid a lot more money for than  
2 they're worth right now. They're having a lot of  
3 difficulty getting loans.

4 We have a law that's supposed to go into  
5 effect on April 1st called enhanced vapor  
6 recovery. Personally, as CEO of Boyett Petroleum,  
7 we supply about 250 dealers throughout the state.  
8 We're meeting daily with them as to how many of  
9 them have complied with this law. Because we're  
10 concerned about their viability.

11 We think, at this point, about 40  
12 percent of them have complied with the law. And  
13 it's about \$50,000 a station.

14 And, you know, we talked about spreading  
15 this out over 10 or 15 years. They can't do that  
16 because they can't borrow the money. Many of them  
17 went to their banks a year ago and were assured  
18 that they could borrow the money to do this. Now  
19 their stations are not worth what they paid for  
20 them, or what the loans are. And so they're  
21 really having trouble coming up with the money to  
22 do this.

23 And to make matters worse, next year  
24 they have another thing to comply with called  
25 instation diagnostics. Instation diagnostics is

1 basically a computer system to determine whether  
2 their vapor recovery system is working properly,  
3 and to record any upsets. And that's another  
4 \$30,000 to \$50,000. And it may involve buying new  
5 pumps.

6 And if that's not enough, Bank of  
7 America and Visa and MasterCard are putting on  
8 them the requirements to comply with something  
9 called PCI. And that is payment card interchange.  
10 And it's new equipment to process credit cards at  
11 the pumps that is less subject to tampering, that  
12 is more reliable. And this may involve buying new  
13 pumps wholesale for a lot of them.

14 So to think that they can spread all  
15 these things over 10 or 15 years, and then if you  
16 pile on ATC on top of this, I think we're going to  
17 see a tremendous number of them just go out of  
18 business.

19 I think we're going to see a lot of  
20 banks owning service stations. It's going to be a  
21 real sad thing.

22 In industry, an economist named Phil  
23 Verlager, who's fairly well known, said that we  
24 saw a 5 percent decline in the sales of gasoline  
25 nationwide last year. He expects another 5

1 percent this year. And another 5 percent the next  
2 year.

3 We have about 10,000 stations in the  
4 state. If you take that 15 percent, that probably  
5 means we have 15 percent too many stations. If  
6 you pile all these expenses on them, we're liable  
7 to have a number of 1500 to 2000 go out of  
8 business. That may sound ridiculous, but it's  
9 certainly possible in this economy.

10 The other problem with the enhanced  
11 vapor recovery is, as a supplier to these  
12 stations, we've talked to a number of counties and  
13 the Air Resources Board. The Air Resources Board  
14 has no intention of enforcing this. So, we have  
15 40 percent of the people that have already spent  
16 the \$50,000 a station.

17 They don't know whether they're going to  
18 fine it. We've talked to a number of counties.  
19 We talked to Calaveras County the other day. They  
20 have 33 stations in the county. They say they're  
21 not going to do anything. They're afraid that --  
22 they don't want stations to go out of business  
23 because many towns only have one station. So  
24 they're going to go around and ask them to do it.

25 But if we're piling on regulations that

1 the government's not willing to enforce that they  
2 actually be done, then it just penalizes the  
3 people who do them.

4 You know, I don't know what's going to  
5 happen. It's not right to put on regulations that  
6 there's no expectation that the business will  
7 follow through and adopt.

8 Commissioner Floren from Los Angeles  
9 mentioned one of the possibilities of temperatures  
10 being different is that if the tank was underneath  
11 the pumps it might be a different situation than  
12 if the tank was out in the sun.

13 I would like to submit to you that in  
14 reality, if a station has a canopy, which 99  
15 percent of the stations have, they also have  
16 footings. And therefore they can't have tanks  
17 under the pumps. So the tanks have to be put away  
18 from the pumps and out in the sun. That's just  
19 the way it is. They have to be installed out away  
20 from the buildings and the canopies so that they  
21 can be replaced if they need to be, or worked on.  
22 They can't be directly under the pumps.

23 There might be one or two cases that way  
24 with no canopies where there's no footings.

25 I think that's most of my comments.

1                   CHAIRPERSON DOUGLAS: Thank you.

2                   Questions? Thank you very much.

3                   I have one more blue card and two  
4                   commenters who, if they hung in there, will be on  
5                   the phone. The last person in the room is Edmund  
6                   Williams, Director of the Division of Measurement  
7                   Standards.

8                   MR. WILLIAMS: Madam Chairman, thank you  
9                   for the opportunity to address the Commission  
10                  today. On behalf of the staff of the California  
11                  Division of Measurement Standards, I would like to  
12                  take this opportunity to applaud the work done by  
13                  the staff of the California Energy Commission to  
14                  develop and produce this report.

15                  The Division of Measurement Standards  
16                  has remained neutral on most issues related to the  
17                  installation of temperature compensation at retail  
18                  stations in California.

19                  Weights and Measures officials are  
20                  always in favor of accuracy, transparent value  
21                  comparison for consumers when they purchase  
22                  competing products.

23                  But we also understand that accuracy has  
24                  to fit within the framework of affordability for  
25                  both the retailer and for the consumer.

1           Questions have been raised regarding  
2           whether or not temperature-compensating devices  
3           can legally be installed on a voluntary basis in  
4           California. This issue is still under legal  
5           review.

6           We believe there are adequate measures  
7           in place to provide for testing and regulation of  
8           temperature-compensating devices, should they be  
9           installed at retail.

10          However, additional regulations should  
11          be adopted to address specific requests for method  
12          of sale, advertising and device specifications.

13          The Division of Measurement Standards is  
14          prepared to develop those regulations if the  
15          California Legislature directs us to do so.

16          That concludes my comments. I thank you  
17          for the opportunity to make them today.

18          CHAIRPERSON DOUGLAS: Thank you very  
19          much. Questions?

20          Is there anybody else in the room who  
21          did not provide a blue card, but who would like to  
22          make a comment at this time?

23          Very well, then we'll go to the  
24          commenters by phone, beginning with Ron (sic)  
25          Anderson.

1                   MR. ANDERSON: Madam Chairman, this is  
2                   Ross Anderson --

3                   CHAIRPERSON DOUGLAS: Oh, I'm sorry  
4                   about that. Ross Anderson, please.

5                   MR. ANDERSON: That's all right. Thank  
6                   you very much for the opportunity to speak this  
7                   morning, or probably this afternoon, I'm sorry.

8                   My name is Ross Anderson and I'm the  
9                   Director of Weights and Measures for New York  
10                  State Department of Agriculture. I've been  
11                  involved in this issue for over 30 years. And it  
12                  was my great pleasure to serve on the advisory  
13                  group for the Commission study.

14                  It is, in my view, the best study, thus  
15                  far, on the subject. And even though you reached  
16                  the important objective conclusions, there are  
17                  important shortcomings.

18                  I believe the report lacks a baseline.  
19                  If we are to assess the benefit of changing the  
20                  present system, we need to understand how well  
21                  that system is working now.

22                  While I believe the Commission Staff  
23                  already has that baseline in their minds, and that  
24                  baseline is necessary to deduce that there are no  
25                  hot fuel profits, it is not described in

1 sufficient detail in the report.

2 Without the benefit of that baseline the  
3 reader of the report is unlikely to understand why  
4 the Commission reached the conclusions it did. I  
5 believe the report lacks an explanation of how  
6 either of the alternatives will improve the  
7 marketplace.

8 There are people that believe that it  
9 will make an unfair market. Even though we've  
10 been discussing it at the NCWM for nine years, I'm  
11 still unable to picture what will be different.  
12 How will we know that we have this increased  
13 fairness? Can we measure it? Well, neither  
14 Hawaii nor Canada ever tried.

15 I believe the report failed to answer  
16 important questions raised in the executive  
17 summary about why retailers don't use ATC now.  
18 I've provided written testimony to the docket on  
19 four reasons why. But the report just glosses  
20 over this question.

21 In a (inaudible) the report suggests  
22 that retailers won't use ATC unless forced to by  
23 legislation or regulations. I counter that the  
24 objective conclusions of the study indicate it  
25 simply doesn't pay for anyone. And, of course,

1 the retailers think it's against the law.

2 I'd like to break at this point from my  
3 written submission and answer a couple questions  
4 about those first three deficiencies. Because  
5 that's exactly why Mr. Dillon is confused of his  
6 interpretation or the meaning of the report.

7 Recovery of this \$436 million is a total  
8 mistaken explanation. If I buy something that  
9 costs \$1 a quart and I sell it in pints, at the  
10 point I switched from quarts to pints there is an  
11 immediate cost change. It's not separate; it's  
12 not something that's it's a win of the retailer  
13 whether he's going to recover this or not. It's  
14 an immediate cost change because the value of that  
15 tankerload of fuel he buys can be valued in gross  
16 gallons or in net gallons.

17 And I have tried to show, and I think  
18 others tried to show to the Commission that the  
19 conversion from net to gross that occurs on the  
20 bill of lading immediately changes the price.  
21 There is no question of whether it's 100 percent  
22 or 50 percent. It's 100 percent right then, right  
23 there. And it's not only accurate, it's  
24 documented.

25 That's why the tax department has not

1 had any interest in this study. Because they know  
2 that except for bootlegging and things like that,  
3 illegal activities, all the rest of the activities  
4 are out there on paper for everybody to see.

5 Now, going back to my comments, there is  
6 a fourth gap in the report. And it deals with the  
7 dead weight loss. And basically I provided  
8 testimony to the docket that universally through  
9 New York gas stations are losing inventory.

10 Losing inventory is tending to rise and  
11 shown to be directly related to temperature  
12 changes. And I urge the Commission to look at the  
13 inventory records of stations in hot parts of  
14 California, in cold parts of California.

15 Yesterday I received data from ten large  
16 truckstops. These locations, with underground  
17 storage tanks, reported diesel sales 120 million  
18 gross gallons, with inventory losses of 114,000  
19 gross gallons. That's 0.09 percent in losses over  
20 a year.

21 That represents an average sales  
22 temperature that is 2 degrees colder than the fuel  
23 they purchased.

24 Now, my concern is risk. I believe in  
25 this report. I think it's a very good report.

1 But if California stations lose inventory then the  
2 dead weight losses should really be a minus number  
3 showing a benefit to consumers.

4 And ATC technology will remove that  
5 benefit from consumers and help retailers manage  
6 their inventory better at consumer cost. What are  
7 the implications of that? Maybe this is a good  
8 thing for retailers, but they're not doing it  
9 because it's not cost effective.

10 So all I would ask is that the  
11 Commission validate some of the assumptions about  
12 temperature.

13 As (inaudible) I know that we can never  
14 eliminate variation. And after a certain point  
15 improvement in measurement becomes a cost with no  
16 benefit. That's the science. Thus the principles  
17 that we work from require you consider cost when  
18 setting tolerances. And we seek to put the most  
19 practical measurement in the marketplace, not  
20 necessarily the most accurate.

21 Your report has answered a lot of the  
22 important questions, and could be even better if  
23 you fill in those few gaps.

24 But overall, please look at (inaudible).  
25 And I would like to thank the great state of

1 California for conducting this. Thank you.

2 CHAIRPERSON DOUGLAS: Well, thank you.  
3 And thank you for participating in our process  
4 from the great state of New York, if I heard you  
5 correctly.

6 MR. ANDERSON: Thank you.

7 CHAIRPERSON DOUGLAS: The last person  
8 who was holding on the phone did not make it to  
9 this moment; he has disconnected. So that's the  
10 end of public comment.

11 At this point I'd like to ask  
12 Commissioner Boyd, as the Presiding Member of the  
13 Transportation Committee, if he has any comments  
14 he'd like to make.

15 VICE CHAIRPERSON BOYD: Well,  
16 unfortunately I do. I really regret that someone  
17 has chosen to pull elements of my personal life  
18 into proceedings, and that all of you and the  
19 staff have had to invest valuable time and effort  
20 dealing with the issue.

21 Let me just say, as Mr. Chamberlain said  
22 early on, I've been guided by advice from our  
23 legal counsel on matters of this nature since my  
24 arrival here seven-plus-some-odd years ago.

25 And frankly, I take great umbrage with

1 the allegations that I would try to influence the  
2 outcome of staff's work to advantage any party.  
3 It's an insult to me, personally. And frankly, I  
4 believe, to the Commission of which I'm a member.

5 The idea that I or any Commissioner  
6 could alter an outcome to benefit a private party  
7 or any organization with us having both a  
8 Commission Committee process, and full Commission  
9 oversight is unrealistic, if frankly, not  
10 outrageous.

11 Now, specifically to a couple of other  
12 points. I hate to bring this up and my wife will  
13 kill me, but she's been dragged through this, as  
14 well.

15 There's no question she's an employee of  
16 WSPA, a fact known to almost everybody, or maybe  
17 everybody in this room. As you've already heard  
18 multiple times, WSPA is not a party to this  
19 proceeding in any way, shape or form. The record  
20 shows that.

21 No testimony. No appearances. No  
22 written submittals. No one representing or  
23 working for them appeared or participated, and  
24 perhaps an unfortunate reference in somebody's  
25 email to the fact that they were, when they

1 weren't.

2 As we all look at our emails I think we  
3 see unfortunate references that we might have made  
4 in those emails. And I'm sure some of us will be  
5 careful with our email going forward.

6 I hate to say this, I don't want to  
7 engage in, you know, in a uncivilized brawl with  
8 the Consumer Watchdog. I've been in government  
9 far too long. I've read too much Mark Twain to  
10 know what I'm up against.

11 But, in their documents my wife was  
12 referred to correctly once in the beginning as the  
13 chief operating officer. Then from that point  
14 forward a lobbyist. Finally, as the chief  
15 lobbyist. And ultimately as internationally known  
16 lobbyist.

17 My wife has been a registered, quote,  
18 lobbyist in California. The term lobbyist is  
19 something that can be interpreted many ways. I  
20 think the state law interprets it in a little more  
21 positive way than most everyone else does. And it  
22 has taken on a slippery, slimy connotations.

23 As alleged by these folks, my wife did  
24 not cancel her lobby registration on the day the  
25 they filed their complaint letter, as they stated.

1 And in this manner characterized, quote, her  
2 sudden resignation of her formal lobby role. It's  
3 just evidence of the inherent legal conflict of  
4 her job.

5 As I said, she was a registered  
6 lobbyist, because in this state there's a rule  
7 that says if anybody appears before the  
8 Legislature or any state agency aggregating more  
9 than one-third of their time in that, they have to  
10 register as a quote, lobbyist.

11 My wife, last year, and her employers  
12 looked at her record for all her years, realized  
13 she didn't even come close to that threshold.  
14 She's never, I believe, appeared here. She  
15 doesn't lobby the Legislature because they have a  
16 lobbying firm and they preclude that.

17 So last December, in recognition of the  
18 fact she's never met the criteria, she requested  
19 delisting through the law firm that handles their  
20 affairs. This is a six-month process in this  
21 state to get delisted. So it, like conflict of  
22 interest, it runs through a lengthy process.

23 And by an unfortunate twist of fate, the  
24 law firm handling her delisting requested finally,  
25 and filed the papers, to begin the process to

1 delist her on the infamous date referenced by the  
2 group in question.

3 So, I think there's been a -- well, let  
4 me just say I don't feel people have done their  
5 homework correctly. And there's been a lot of  
6 connecting on unrelated data in an attempt to  
7 create some kind of conspiracy theory bordering on  
8 playing fast and loose with the facts.

9 And I will just mention one fact that I  
10 noticed in the letter that arrived late last  
11 night. And that was the fact that an exchange of  
12 emails was put together where I made -- I had an  
13 email that made some pretty strong comments to the  
14 staff. That email was predicated upon the  
15 discussion the Commissioner referenced before, as  
16 we, as the Committee, reviewed the report.

17 And it was the eleventh hour and 59th  
18 minute, and, you know, that references provided to  
19 and comments provided to staff didn't seem to be  
20 being followed.

21 And let me say just here, the role of a  
22 senior manager and a policy manager is to see that  
23 information that products reports issued by one's  
24 organization are accurate, truthful, unbiased,  
25 supported by the facts. And we also are teachers,

1 tutors and what-have-you, of our employees as they  
2 work their way up through the ranks.

3 So, yes, we want to make sure -- there  
4 are vultures on both sides of every issue, and we  
5 want to make sure what we say is supported by all  
6 the above so that somebody can't leap on it  
7 unnecessarily and make the points. So, the  
8 purpose of my email was to make that particular  
9 point.

10 Now, this group has alleged that the  
11 following email in this string was a response by a  
12 staff member, and said, frankly, that we've made  
13 all the changes that you wanted, et cetera, et  
14 cetera. That makes for really interesting  
15 reading, but if somebody had done their homework  
16 they'd see that perhaps the second email had  
17 nothing to do with the first email. The addressee  
18 might have been completely different.

19 And in fact, the email used to reinforce  
20 that I maybe unilaterally directed staff to do  
21 something has a time stamp in it of 1:00 in the  
22 afternoon. The email that I allegedly gave  
23 directions to staff on, and emails are copied to  
24 many people, has a time stamp of almost 4:00 in  
25 the afternoon. There's absolutely no connection

1 between those emails, but the connection was made.

2 And I'm through with my uncivilized  
3 brawl because this is just replete with mistakes  
4 and references to actions taken by many staff  
5 members and by myself. I think that's just  
6 terribly tragic.

7 And I don't know, perhaps some people  
8 are looking to use our report, which is a forward-  
9 looking report looking at where we might go in the  
10 future to continue to pursue grievances that  
11 occurred in the past.

12 And it's a different mix now and in the  
13 future than it was in the past. Our job is to  
14 deal with the report looking forward.

15 I think the staff has done a commendable  
16 job. I've sat through several of the workshops.  
17 I've watched the argument between our lawyers and  
18 other lawyers as to whether or not the law was  
19 clear on voluntary or not. And I agree with the  
20 Chairman that the idea -- we weren't even asked to  
21 resolve that, so we put it, you know, off the  
22 table.

23 The other facts are pretty much as they  
24 have been presented by the staff. And I am  
25 comfortable with everything I've heard the staff

1 present today. And I'm comfortable with the role  
2 I play and the role I will hopefully continue to  
3 play here at the Commission.

4 Enough said.

5 CHAIRPERSON DOUGLAS: I'll make a brief  
6 comment and then ask if other Commissioners have  
7 comments, as well. First, on the conflict of  
8 interest allegations, and then second on the  
9 substance.

10 On the conflict of interest allegations  
11 it is hard and unpleasant to have to deal with  
12 these issues for any public official. At the same  
13 time it's, as Commissioner Boyd noted, as well, or  
14 better than everyone -- anyone, in some way par  
15 for the course there are open as well as because  
16 we, as part of our system in maintaining the  
17 integrity of our system, we should produce emails  
18 and demonstrate how our process works, where  
19 needed, and where there is concern about how we  
20 have proceeded.

21 I hope that between what the staff has  
22 been able to produce and the emails that we have  
23 produced and the description of our process today,  
24 and the FPPC letter, and Commissioner Boyd's  
25 further clarification of some points or

1       allegations that were made, that we have basically  
2       put this issue to rest.

3               But I also want to emphasize that should  
4       questions of this nature come up again, it's in  
5       our interest and it's absolutely our job to answer  
6       them directly, as we have striven to do so in this  
7       case.

8               Common policy. I've heard from a number  
9       of speakers a request that we further analyze  
10      this, or further analyze that, or look into  
11      certain issues more, or maybe hold another  
12      workshop, or maybe hold off the vote and consider  
13      this issue more.

14              I just want to say that, in my opinion,  
15      after three workshops at the staff level, a  
16      committee workshop and very considerable  
17      Commissioner attention to this issue, I never in  
18      my life thought I would know so much about hot  
19      fuels and fuel dispensers and retail gasoline  
20      providers and so on as I have had the opportunity  
21      and obligation to learn through this process.

22              I think we have thoroughly vetted this  
23      issue and we have provided the Legislature with  
24      enough information for the Legislature to decide  
25      if, in their view, it's in the interest of the

1 people of California that we, or anybody else,  
2 continue this work.

3 We will transmit this report to the  
4 Legislature as soon as humanly possible, given  
5 that we are late. And we wish them happy reading  
6 and the best of luck in deciding what they would  
7 like to do with this issue.

8 It's not an easy issue. It's  
9 technically complex. It requires fairly detailed  
10 understanding of the market and the industry and  
11 so on. And so we've done our best, and I think  
12 we've done a good job of giving them what they  
13 need to know to decide where to go next with this  
14 issue.

15 And I think that's all that I would like  
16 to say at this point. I've probably said enough  
17 and more than enough through the course of this  
18 item.

19 Would other Commissioners like to speak?

20 COMMISSIONER LEVIN: Thank you. I would  
21 like to respond to a few comments, and thank you  
22 all for your time. I know this has been long, so  
23 I'll try to be brief. And I actually don't have  
24 that much voice. Better than two weeks ago, but  
25 it's still not full back, back to full steam.

1           First I want to start by thanking staff,  
2           and especially the gentleman from New York, if  
3           you're still on the phone. Thank you very much.  
4           It was very helpful to have your input in the  
5           process, and today, as well.

6           To those of you that are public interest  
7           lawyers, I want to say that I have been a public  
8           interest lawyer for nearly two decades,  
9           representing the environmental community. I am  
10          almost certain I have had more dealings in  
11          opposition to the oil industry than the consumer  
12          groups in the room. Maybe not, but probably.

13          My first lawsuit as an attorney was  
14          against an oil company in Alaska. And I've had  
15          many policy issues I've worked on since then.  
16          Virtually always on the opposite side from the oil  
17          industry.

18          Having said that, for more than a decade  
19          I've worked with now-Commissioner Boyd and many of  
20          his previous roles. And in every instance, many  
21          of which, again, involved the oil industry,  
22          whether it was the zero emission vehicle rule,  
23          moving clean school buses away from petroleum to  
24          natural gas, the California Climate Registry. I  
25          could go on and on with issues I've worked on with

1 now-Commissioner Boyd where there was zero  
2 question of his integrity, of his interest in  
3 fulfilling a law and protecting the public  
4 interest.

5           There was no doubt in my mind or anyone  
6 else in the environmental community with whom I  
7 worked, that he was executing his job in the way  
8 that was best for the public interest and  
9 representative of the laws that we have in the  
10 state of California. And I cannot say that  
11 strongly enough.

12           I am shocked, as a public interest  
13 lawyer, coming to the Commission, I'm only in my  
14 third week, to hear these allegations against  
15 someone that, at the risk of further damaging its  
16 reputation, I can say I always considered him an  
17 environmentalist, in contradiction to many of the  
18 interests of the oil industry.

19           And I'm sorry, Jim, if I just did you  
20 more damage than all the previous allegations.

21           VICE CHAIRPERSON BOYD: No, I always  
22 considered myself an environmentalist. I'm  
23 flattered, thank yo.

24           COMMISSIONER LEVIN: So, while I  
25 certainly defer to our own attorney and to the

1 FPPC for the legal definition of conflict of  
2 interest, and what qualifies and what doesn't, I  
3 also have to say from a very practical standpoint  
4 I have never seen evidence of it in Commissioner  
5 Boyd. I simply cannot say that strongly enough or  
6 often enough.

7 And to the representatives (inaudible) I  
8 absolutely agree with you in terms of the  
9 importance of transparency and fairness. I do  
10 agree with our Chairwoman that the Commission has  
11 behaved in a transparent manner, and we certainly  
12 intend to continue to do so.

13 One of the recommendations you made to  
14 take out possible at the bottom of page 1 I don't  
15 think is about government transparency and  
16 fairness. It's about the transparency and  
17 accuracy of fuel measurement.

18 And I think what we've heard loud and  
19 clear from the state of New York and the state of  
20 California's experts on weights and measurements  
21 is it's not at all clear that the recommendation  
22 from some of the consumer groups here, the ATCs  
23 really benefit the transparency and accuracy of  
24 the measurements.

25 And that is ultimately what we have to

1       decide, is whether there is enough value to pursue  
2       this or not.

3               And on that, sort of my final comment is  
4       we all need to step back here. And, again, I say  
5       this as a public interest lawyer, the public  
6       interest, I think, very clearly and very squarely  
7       falls into enormous issues right now. Crises that  
8       California's facing. And that's the economic  
9       crisis and the climate crisis.

10              When I read this report, as an  
11       environmentalist, and now as a Commissioner, my  
12       reaction was this doesn't really help either. We  
13       need to be looking at job creation and stimulating  
14       and helping our economy to recover in the short  
15       term.

16              In the longer term we absolutely have to  
17       address the climate crisis. And there are  
18       hundreds of things that we could do that would  
19       benefit either the economy, the economic recovery,  
20       or the climate crisis more than this potential  
21       policy change.

22              So while it may have marginal benefit,  
23       may, it just seems so small in comparison to all  
24       the other far more important things that we, as a  
25       Commission, and we, as a state, need to pursue.

1           So, Mr. Dillon and other public interest  
2 lawyers, I really urge you to reconsider what are  
3 the most important public interests here. Rome is  
4 burning, the Titanic is sinking. Whatever  
5 metaphor you want to use, this just does not seem  
6 like the highest and best use of the state of  
7 California at this moment.

8           Actually I said -- I do have one other,  
9 I'm sorry. And that is what we really need to do,  
10 both to help our economy and to address the  
11 climate crisis, is to move toward cleaner fuels,  
12 low carbon, eventually noncarbon fuels, maybe no  
13 liquid fuels whatsoever, at some point in the  
14 future.

15           So, again, this seems like almost a step  
16 backwards. Why are we dealing at the margins here  
17 on a petroleum issue when what we really need to  
18 focus on is moving toward a clean energy future.

19           So I would urge all of us to step back  
20 and look at the broader public interests here and  
21 move forward, which I think the staff has done an  
22 excellent job in the report in trying to help us  
23 do.

24           CHAIRPERSON DOUGLAS: Commissioner  
25 Byron.

1                   COMMISSIONER BYRON: Thank you. I think  
2 we have a very good new Commissioner. I'd like to  
3 take a moment to say something that should have  
4 been said maybe two hours ago. Madam Chairman,  
5 welcome back.

6                   (Laughter.)

7                   CHAIRPERSON DOUGLAS: Thank you.

8                   COMMISSIONER BYRON: I'll keep my  
9 comments brief. As a Commissioner, I should say  
10 Vice Chairman Boyd's accomplishments, I would hope  
11 to accomplish a fraction of his accomplishments  
12 and successes in his service to the citizens of  
13 the state.

14                   And it would seem, Commissioner, that  
15 occasionally there are those that want to impugn  
16 the integrity of Commissioners. And also, by  
17 association, this Commission, I'd like to remind  
18 the public that we are independent commissioners.  
19 And we each work and reach our own conclusions  
20 independent of each other.

21                   I've meet with staff. I've read all the  
22 material on this item. I will be making my  
23 decision on this item, in fact, I have made my  
24 decision, as an independent member of this  
25 Commission.

1                   Now, in the interests of full  
2 disclosure, I should probably, given the  
3 discussions today, reveal briefly that one of my  
4 favorite uncles was a small business owner and  
5 owned a gas station.

6                   Of course, he would have had to bear the  
7 expense of ATC, and perhaps I could have  
8 benefitted from that had he not had to bear that  
9 expense. Unfortunately, I'll save everybody a lot  
10 of time. He's no longer with us. And, in fact,  
11 I'm not in his will.

12                   So, I just think it gets a bit silly  
13 after awhile. But I realized, as we were  
14 listening to some of these comments, that there's  
15 no end to how far this could go.

16                   I'll be brief. Now, to the merits of  
17 the report and the decision today, it's called hot  
18 fuel, it's called the hot fuel issue. But there  
19 seems to be a lot of hot air and big dollars  
20 around this topic.

21                   I am heartened by the fact that  
22 California's the only state that has done a study  
23 on this subject. I appreciate the comments of all  
24 of those here today that were commenting on the  
25 prospect -- the content of the report.

1           I believe the report reflects accurate  
2           and objective findings and conclusions. And I  
3           applaud the Legislature for, once again, seeking  
4           fact-based information in order to make their  
5           decisions. I believe we have given them just that  
6           in this report.

7           And I just would like to finish by  
8           saying thank you to the staff. I think you've  
9           done a great job in its preparation and putting it  
10          through a very public and transparent process in  
11          its review.

12          I would support this item.

13          CHAIRPERSON DOUGLAS: Any more comments?  
14          I realize I neglected to also thank the staff.  
15          And seeing firsthand how diligently and thoroughly  
16          and hard Gordon and others have worked on this  
17          report. And it has not been an easy -- it's come  
18          to us at a time that, as Commissioner Levin  
19          referred to, our plate is overflowing with very  
20          difficult and interesting and important issues  
21          such as how we spend the some \$300 million in  
22          stimulus money that's coming directly to the  
23          Energy Commission, to create jobs and stimulate  
24          the economy. And advance our clean energy and  
25          environmental and energy security mandate here at

1 the Energy Commission.

2 How we successfully compete for the very  
3 very significant amounts of funding that's in  
4 competitive pots from the stimulus package, over  
5 \$60 billion, if I'm remembering the number  
6 correctly, and that's a charge that from the  
7 Governor's Office on down to the Commission,  
8 actually rather directly to me, has been placed on  
9 us. As in find a way to get organized and get  
10 California competitive in looking at how we go  
11 after some of these funds to benefit the state.

12 Our AB-32 goals, the Air Resources Board  
13 is depending very heavily on the Energy Commission  
14 to find ways to meet our energy efficiency and  
15 renewable goals. And that's a cornerstone of the  
16 scoping plan.

17 We face challenges in, as Commissioner  
18 Byron and I, on our siting committee work, know  
19 very well, siting renewable energy projects. And  
20 we have to find a way to advance and accelerate  
21 siting, while meeting the state's conservation  
22 goals and that's yet another challenge on our  
23 plates.

24 So, we -- the Legislature asked us to do  
25 this report. We have done it. We have put our

1 best effort into it. We've put very good staff on  
2 it. They produced a good product.

3 But, frankly, I think many, if not all  
4 of us, look forward to sending this to the  
5 Legislature and picking up some of these other  
6 items that are also on our plates, and are of very  
7 paramount importance to us and to the state of  
8 California.

9 That said, I don't want to minimize in  
10 any way the importance of this issue to the  
11 parties in the room. We are very aware that this  
12 is an issue on which people feel passionate. And  
13 we have worked quite hard to hear both sides out,  
14 and to do a technically sound product, and to  
15 provide balanced policy recommendations. I think  
16 we've done that.

17 With that, there are no further  
18 comments. Is there a motion on this item?

19 COMMISSIONER BYRON: I'd be glad to move  
20 the item, item 8, for approval.

21 COMMISSIONER ROSENFELD: I second it.

22 CHAIRPERSON DOUGLAS: All in favor?

23 (Ayes.)

24 CHAIRPERSON DOUGLAS: Thank you, the  
25 item passes five-zero.

1           MR. CHAMBERLAIN: Madam Chairman, could  
2 I just clarify that the motion, I assume, was to  
3 move the item with the errata that staff had --  
4 the document that the staff perhaps misnomered as  
5 an errata --

6           COMMISSIONER BYRON: Correct, thank you.

7           MR. CHAMBERLAIN: -- but nevertheless,  
8 corrections to the --

9           CHAIRPERSON DOUGLAS: As the staff  
10 presented it to us today.

11          COMMISSIONER BYRON: Correct.

12          CHAIRPERSON DOUGLAS: Do we need to  
13 repeat the motion in order -- as a clarification?

14          MR. CHAMBERLAIN: I think the  
15 clarification is fine, as long as there are no  
16 objections to it.

17          CHAIRPERSON DOUGLAS: Objections? No  
18 objections.

19          Next item 9, minutes. Possible approval  
20 of February 25th business meeting minutes. I will  
21 be abstaining from this item.

22          VICE CHAIRPERSON BOYD: I'll move  
23 approval, and either Commissioner Byron or Levin  
24 will have to second, because it's only the three  
25 of us.

1 COMMISSIONER ROSENFELD: I abstain.

2 COMMISSIONER BYRON: Move approval.

3 CHAIRPERSON DOUGLAS: All in favor?

4 (Ayes.)

5 CHAIRPERSON DOUGLAS: That measure

6 passes three in favor with two abstentions.

7 COMMISSIONER BYRON: I'd just point, as  
8 I was reading those the other night, weren't the  
9 previous business meeting minutes also -- we were  
10 not able to approve them at the last meeting?

11 COMMISSIONER LEVIN: There wasn't a  
12 quorum of Commissioners --

13 (Parties speaking simultaneously.)

14 COMMISSIONER BYRON: Perhaps we have  
15 that quorum now.

16 VICE CHAIRPERSON BOYD: But the item's  
17 not noticed, so --

18 COMMISSIONER BYRON: Okay. All right.

19 CHAIRPERSON DOUGLAS: All right, we'll  
20 do that, we'll notice it -- duly notice it and do  
21 it in the next business meeting in that case.

22 Item 10, Commission Committee  
23 presentations and discussion.

24 VICE CHAIRPERSON BOYD: Can I really  
25 quickly mention one item --

1                   CHAIRPERSON DOUGLAS: Yes.

2                   VICE CHAIRPERSON BOYD: -- just for your  
3 information. In less than an hour I will be  
4 representing the Commission at the public meeting,  
5 first 2009 public meeting of the state's climate  
6 action team. And as your representative, and as  
7 chair of the subgroup on climate research, and  
8 overseeing the chapter that they've done on  
9 climate research, will be making a presentation  
10 there, as will others, other sections of the soon-  
11 to-be-issued 2009 report of the climate action  
12 team.

13                   CHAIRPERSON DOUGLAS: Thank you. Item  
14 11, Chief Counsel's report.

15                   MR. CHAMBERLAIN: Yes, Madam Chairman,  
16 were it not past 1:00 I would have attempted to  
17 describe to you some of the interesting meetings  
18 that I had with the western interconnection  
19 regional advisory body with member of the Federal  
20 Energy Regulatory Commission and DOE.

21                   I will put that into a written report  
22 and send it to all of you.

23                   CHAIRPERSON DOUGLAS: Thank you.

24                   COMMISSIONER BYRON: Thank you,  
25 counselor, and I would -- I'm sorry, chief

1       counsel. I would also be interested in meetings  
2       and discussing that with you privately if we're  
3       not able to get to it till the next business  
4       meeting.

5               CHAIRPERSON DOUGLAS: On to the  
6       Executive Director's report.

7               MS. CHANDLER: Chairman, I was wondering  
8       if you were going to speak on the -- point out on  
9       the OII, the siting committee? Were you going to  
10      do a readout on that committee?

11              CHAIRPERSON DOUGLAS: We -- let's do a  
12      brief presentation -- actually planned on doing a  
13      fuller presentation at the next business meeting.

14              MS. CHANDLER: Okay.

15              COMMISSIONER BYRON: I would suggest we  
16      pass, since there's no urgency on the issue, that  
17      we hold it until the next business meeting.

18              CHAIRPERSON DOUGLAS: I strongly support  
19      that suggestion, thank you.

20              Executive Director's report, anything  
21      else?

22              MS. CHANDLER: No, I do not have  
23      anything else.

24              CHAIRPERSON DOUGLAS: On to the  
25      Legislative Director's report. There's no

1 legislative director here now. The room has  
2 emptied considerably.

3 Public Adviser's report.

4 PUBLIC ADVISER MILLER: Just two quick  
5 announcements. Thursday evening we have the Vaca  
6 Station site visit and informational hearing. I  
7 just want to put that out.

8 And also now that San Joaquin is data  
9 adequate, I think we've got a tentative date the  
10 first week of April for that site visit and  
11 informational hearing. I just wanted to let it be  
12 known that I will plan on being at that event, as  
13 well.

14 That's all I have, thank you.

15 CHAIRPERSON DOUGLAS: Thank you.  
16 Finally, public comment. I do not see any members  
17 of the public left.

18 On the phone?

19 Very well, in that case the business  
20 meeting's adjourned.

21 (Whereupon, at 1:05 p.m., the business  
22 meeting was adjourned.)

23 --oOo--

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 18th day of March, 2009.



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PETER PETTY