

COMMISSIONERS PRESENT

Karen Douglas, Chair

Jeffrey D. Byron

James D. Boyd

Anthony Eggert

STAFF PRESENT

Melissa Jones, Executive Director

Michael Levy, Chief Counsel

Jennifer Jennings, Public Advisor

Harriet Kallemeyn, Secretariat

Claudia Chandler

Steve Hoffmann

John A. McKinsey

Paul Kramer

John Sugar

Larry Rillera

Jennifer Allen

Renee Webster-Hawkins

Sam Lerman

Helen Lam

Devorah Eden

Angela Gould

Adel Suleiman

Lance D. Shaw

Erik Jensen

Raoul Renaud

OTHERS PRESENT

PUBLIC

Robert Sarvey

Kerry Willis

Lisa Cottle

Rob Simpson

Mike Boyd

Joseph Douglas

Brenner Munger

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35. IN ADDITION TO THE AGENDA THAT WAS DISTRIBUTED ON JUNE 17, 2010, THE COMMISSION WILL TAKE A VOTE TO CONSIDER WHETHER THERE EXISTS A NEED FOR IMMEDIATE ACTION ON THE FOLLOWING ITEM. (GOV. C. § 11125.3, SUB D. (A)(2).) IF THE COMMISSION DETERMINES THAT SUCH A NEED EXISTS, THE COMMISSION MAY CONSIDER:	16
MARSH LANDING GENERATING STATION (08-AFC-3). Possible consideration of Robert Sarvey's appeal pursuant to California Code of Regulations, Title 20, section 1207(d), of the Committee's denial of his petition to intervene in the Marsh Landing proceeding.	
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1 P R O C E E D I N G S

2 June 30, 2010

10:16 a.m.

3 CHAIRPERSON DOUGLAS: Good morning. Welcome to
4 the California Energy Commission Business Meeting of June
5 30th, 2010.

6 Please join me in the Pledge.

7 (Whereupon, the Pledge of Allegiance was
8 received in unison.)

9 CHAIRPERSON DOUGLAS: Before we begin with our
10 regular agenda, we would like to take a moment and
11 recognize Chuck Mizutani, who is, unfortunately for all of
12 us -- but also understandably -- after a very long and
13 wonderful and tremendous career at the Energy Commission,
14 retiring. And I would like to acknowledge him as one of
15 the Energy Commission's most committed public servants.

16 Today marks Chuck's last day at the Energy
17 Commission, where he has faithfully advanced our policies
18 and served the State of California since July 1st, 1976.
19 Chuck began his long career in the Siting Division as an
20 Energy Resources Specialist and Planner during the 1970s
21 and early 1980s, and from 1987 through February 2002,
22 Chuck held a number of positions as Technical Lead,
23 Supervisor, and Manager of the Renewables Office. As
24 Manager of the Renewables Office, Chuck played a key role
25 in developing strategies and programs to accelerate and

10

1 expand the use of renewable energy in California and
2 diversify renewable resources in California's electricity
3 mix. For the past eight years, Chuck has applied his
4 strong management skills and leadership experience in the
5 Fuels and Transportation Division, where he has been
6 active with planning and directing staff work on a market
7 introduction of clean and efficient alternative
8 transportation energy technologies and fuels. Chuck is
9 best known for his leadership and his ability to develop
10 effective teams and cooperative working relationships.
11 And from what I have learned in these past two years, and
12 from what I know from experience, these past two years
13 have been some of the busiest times ever at the Energy
14 Commission, and Chuck has always been there, and always
15 been ready to pitch in, and to help get the job done.

16 The Energy Commission's AB 118 program that
17 Chuck's office has led, the Economic Recovery Program, and
18 accelerated efforts to build more renewable power plants
19 and capture more efficiency benefits for the State of
20 California has been tremendously exciting and a tremendous
21 opportunity for all of us, and we were very fortunate to
22 have Chuck as one of our leaders helping us get this work
23 done.

24 Chuck, the success of the Energy Commission's
25 progressive energy policies would not have happened

1 without your important contributions in these last 35
2 years, and we will miss you, and we hope that you have a
3 wonderful and well deserved retirement. [Applause]

4 MR. MIZUTANI: Thank you very much. I am very
5 humbled. This was a surprise, but I guess one of the
6 things I would like to say is, I have really felt very
7 privileged to have been able to work here at the Energy
8 Commission for these years. I have been able to do some
9 very wonderful and interesting things, and actually got
10 paid for it. And so, I think one of the things that - I
11 think the thing that I will miss is the environment and
12 the people here at the Commission. I think every agency
13 and any organization basically has an identity and a
14 personality, and this agency definitely has a personality
15 that is loving, giving, caring, and it has a soul, and
16 that is what I will miss about it. Thank you very much.
17 [Applause]

18 CHAIRPERSON DOUGLAS: Well, thank you very much,
19 Chuck. Commissioners, one more item before we move to the
20 regular agenda. We have noticed that we will be
21 considering today whether there exists a need for
22 immediate action on an appeal of a denial of a petition
23 entered in one of our siting cases, and I would like to
24 ask Mr. Levy to provide some of the context for the
25 findings that would need to be made if we were to consider

1 this item on our agenda today.

2 MR. LEVY: Yes, thank you, Chairman and
3 Commissioners. The item is not on the agenda today, and
4 Government Code Section 11125.3 gives the Commission the
5 discretion to determine that there exists a need to take
6 immediate action and that the need for action came to the
7 attention of the state body of the Commission after the
8 Agenda was posted. If you make those findings, and it
9 must be a unanimous vote because less than all five
10 members of the Commission are here, you may add this
11 matter to the agenda, and you may hear it on the merits.
12 I think Mr. Kramer is prepared to make some introductory
13 remarks on what the item is so that you have the context
14 to decide whether immediate need exists.

15 CHAIRPERSON DOUGLAS: Thank you, Mr. Levy. Mr.
16 Kramer, please.

17 MR. KRAMER: Good morning. The evidentiary
18 hearings and pre-hearing conference in this case, this is
19 the Marsh Landing Application for Certification, are
20 scheduled for tomorrow afternoon. Mr. Sarvey petitioned
21 to intervene in the case on June 4th. His petition was
22 denied on June - I am sorry, I forgot the date, but about
23 the middle of the month - and he filed a timely appeal of
24 that. So, the reason to go forward, and that is Mr.
25 Sarvey's request, would be to decide the matter so that,

1 if it is decided that he can participate, he can
2 participate in the hearings tomorrow. You could put it
3 off until a later time, and if you decided that he was
4 entitled to participate, then we would have to re-open the
5 hearings.

6 So, I think we are at the point with the
7 Applicant, although they did file something last week
8 suggesting that it should be put off, they are here, and,
9 correct me if I am wrong, Ms. Cottle, but would you now
10 prefer to have it heard today since you are here, prepared
11 to discuss it?

12 MS. COTTLE: That is correct, given that we are
13 present today, and we are prepared, but we have no
14 objection.

15 CHAIRPERSON DOUGLAS: So, for purposes of the
16 record, the answer was yes, the Applicant supports it
17 being heard today.

18 MR. KRAMER: And that sets up, I think, the
19 question that is before you most immediately, and, of
20 course, I will have more to speak about the merits if you
21 decide to hear it today.

22 MR. LEVY: Also for the record, Commissioners,
23 the appeal, of course, was filed from last week, it was
24 after the agenda was published. The agenda was published
25 more than 10 days ago.

1 VICE CHAIR BOYD: Madam Chair, if I might, as
2 the Presiding member of the Marsh Landing case, I would
3 speak in support of the idea that we hear -- that we
4 approve hearing the appeal today, in the finding of
5 urgency being that tomorrow is the pre-hearing conference
6 for this case, and to postpone this consideration into the
7 future would provide an inconvenience, if not some form of
8 confusion with regard to the flow of the case. So, I
9 frankly do feel that there is a sense of urgency that
10 meets the test of the Code, and would therefore be
11 supportive of hearing the item out today, so that we can
12 proceed judiciously tomorrow with the case.

13 COMMISSIONER BYRON: Madam Chair, just one quick
14 question, I believe. Mr. Levy, are we aware of any
15 parties interested in this case that would not want this
16 issue heard on the agenda today?

17 MR. LEVY: I am not.

18 COMMISSIONER BYRON: Okay, thank you. Madam
19 Chair, do we need a motion to put this on the agenda?

20 CHAIRPERSON DOUGLAS: We do.

21 COMMISSIONER BYRON: I would like to move that
22 we add Item 35, Marsh Landing Generation Station, the
23 consideration of Mr. Sarvey's Appeal, to the agenda for
24 today.

25 VICE CHAIR BOYD: And I would second that

1 motion.

2 CHAIRPERSON DOUGLAS: All in favor?

3 (Ayes.)

4 That motion carries.

5 Commissioners, I would like to suggest that,
6 since everybody interested in this matter appears to be
7 here and ready, that we take up Item 35 before we move
8 into the flow of our regular agenda. Mr. Levy?

9 MR. LEVY: Just for the record, that would be a
10 unanimous vote, Chairman.

11 CHAIRPERSON DOUGLAS: Oh, thank you.

12 All right, Mr. Kramer, can you start us off with
13 the presentation of Item 35 on the merits?

14 MR. KRAMER: Okay. Mr. Sarvey, if you want to
15 come up here and sit to my right?

16 The Application was completed in this case in -
17 I believe it was about August or September of 2008, and we
18 had a site visit and informational hearing in December of
19 2008. And the analysis progressed. Ultimately, staff
20 produced a Staff Assessment, it was posted on the webpage
21 and released on April 26th of this year, and then staff had
22 a workshop on that staff assessment on May 4th. On June
23 10th, they issued a revised Staff Assessment. "Revised"
24 implies that there was more change going on than there
25 actually was. The approach the Committee is proposing to

1 take with this case is to write a decision in a more
2 efficient way, because of our workload demands, than we
3 normally would, and so the plan is to have a set of
4 findings that will be attached to the Staff Assessment, so
5 we wanted all the changes to be reflected in one re-
6 printed document, but I think it is fair to say that the
7 changes are relatively minor.

8 We had a Committee conference on May 12th where
9 we discussed whether we were ready to go to hearings and
10 the dates for the Pre-Hearing Conference and Evidentiary
11 Hearing, and that is tomorrow, July 1st, was chosen. The
12 formal Notice of those dates was given on May 26th. Our
13 Commission Regulations say that the last day to petition
14 to intervene in one of our cases is the date of the Pre-
15 Hearing Conference, or 30 days prior to the Evidentiary
16 Hearings, whichever is earlier. In this case, because the
17 two events are combined, we take 30 days from the
18 Evidentiary Hearing, and that was June 1st. Mr. Sarvey's
19 Petition was filed on June 4th, which was after that
20 deadline, and the Notice of the Hearing did specifically
21 mention the deadline for intervention was June 1st.

22 Now, our rules also allow you to petition to
23 intervene after that deadline, but you have to show good
24 cause for being late, if you will. And after Mr. Sarvey
25 filed his petition, I sent out an e-mail to him, asking

1 him to elaborate more fully on the reasons he was
2 advancing this good cause for filing late, and following
3 the receipt of his answers and objections from the staff
4 and the Applicant, a sort of objection from CURE, it was
5 an e-mail, it was not filed as a formal paper, but I think
6 it is fair to say that CURE, who was the only other
7 Intervener, also in a manner objected to Mr. Sarvey's
8 petition. All of those objections were on the ground and
9 it was late, and good cause for filing late was not shown.

10 I want to clarify one part of the Committee's
11 order denying his petition. One of the findings was that
12 his interests are "not" relevant to this proceeding, and
13 that was a typo, the word "not" somehow slipped in there.
14 We meant to say that his interests are relevant; his
15 petition was denied because it was late, basically, and he
16 did not show good cause. But he lives downwind from the
17 project and might be affected by its emissions, so we will
18 concede that point, which he raised in his request that
19 the Commission review the denial.

20 So, his appeal is now before you. The Committee
21 does not believe that he has shown good cause for a late
22 intervention, and recommends that you deny the appeal. He
23 cannot say that he was unaware of this project as he was
24 participating in related proceedings at both the Bay Area
25 Air District and the Public Utilities Commission. He is

1 an experienced participant in our processes, and is
2 charged, like any participant, whether they are new or
3 experienced, with knowing our rules, and he could have
4 intervened at any point in this case, but for some reason
5 chose to wait until the last minute and miscalculated when
6 that was. We have been finding lately that last minute
7 entries in our cases are disruptive, they are also unfair
8 to the staff and the Applicants and the other Interveners
9 who have been participating in a case, in the case of
10 staff and the Applicant from its inception and those
11 Interveners who chose not to wait until the last minute.
12 I will also note that, in this particular case, Marsh
13 Landing, we have three additional Petitions to Intervene
14 which were filed after Mr. Sarvey's petition. Rob Simpson
15 and the Local Clean Air Alliance, they filed them on June
16 21st, and they were denied on June 28th. Just yesterday
17 afternoon, Mr. Simpson filed another Petition as a
18 representative of Sierra Club California, and that
19 petition has not yet been ruled upon.

20 So, again, the Committee's recommendation is
21 that you deny the appeal, which would have the effect of
22 denying Intervener status to Mr. Sarvey. I will point out
23 that he is always, as a member of the public, free to come
24 to our hearings and submit comments, and those, of course,
25 would be considered by the Committee as public comments.

1 CHAIRPERSON DOUGLAS: Thank you, Mr. Kramer. I
2 would like to ask Mr. Sarvey, since this is your appeal,
3 to speak now and, in particular, among anything else you
4 would like to raise, please address the question of why
5 you did wait this amount of time to intervene.

6 MR. SARVEY: Certainly. Well, first of all,
7 when the notice was issued, it was issued on the 26th,
8 which was Memorial Day Weekend; so, I, like 90 percent of
9 the State of California, was on vacation. When I got
10 back, I did see the notice and I immediately intervened
11 the day I saw it. And the reason that I had appealed to
12 the Commission today was because I did not want to
13 inconvenience the Committee to have to come back later and
14 accommodate me if the Commission accepted my intervention
15 after the hearing, which is July 1st, which we heard about
16 earlier. And it seems the major issue that both staff and
17 the Applicant have with my intervention is that somehow I
18 am going to delay the proceeding, but, in fact, so far I
19 have filed my testimony according to the Committee
20 schedule, I have filed my Pre-Hearing Conference according
21 to the Committee schedule, I am ready to go tomorrow, I do
22 not intend to ask for any delays, and I think that is the
23 major harm that the applicant and the staff have brought
24 forward. Now, the reason that I had not intervened
25 previously is quite clear, and I think you heard some of

1 it earlier, I have been involved over at the California
2 Public Utilities Commission, and I have been working
3 diligently over there, intervened in this exact case
4 A090921, where we were considering RADBACKS, the Oakley
5 project, this project, the Marsh Landing project, and
6 several other small projects. So, I have been quite busy,
7 I do not have a staff, I am just a member of the public,
8 unlike the Applicant or the CEC staff, I do not have 20
9 people behind me to deal with all these proceedings. Like
10 I said, I did my best to get in, I admit, I was three days
11 late, and I am doing my best not to delay the proceeding
12 in any way, and that is why I asked for this expedited
13 hearing because, once again, I did not want to have this
14 hearing be held tomorrow and, then, on the 15th of July, or
15 whenever that hearing would be, then accept me and then
16 the Committee have to accommodate me, I did not think that
17 was fair to the Committee, the Applicant, or the staff.
18 So, I did my best and I have a list of issues, what I
19 consider good cause, I do not know if the Commission wants
20 to hear those, but they are in my petition and, quite
21 frankly, I do not see any way that I will delay the
22 proceeding in any way or cause any harm to anyone, and I
23 have outlined quite a few issues that I consider good
24 cause, number one is, if you go to the Commission's Public
25 Participation Guide, it explicitly says that intervention

1 is allowed up until the Pre-Hearing Conference, or at the
2 Pre-Hearing Conference, and I have intervened at Pre-
3 Hearing Conferences, and that has always been an
4 outstanding sort of standard for the Commission, so I
5 guess that has changed, or I had not heard about it, but
6 in the event I do get denied, that should be straightened
7 out and the public should fully know that, when that order
8 comes out, if you do not intervene, you are out, and that
9 is something the public needs to know, whether you deny my
10 request today, or grant my request. And like I said,
11 staff and the Applicant are fully aware of my issues and
12 my Pre-Hearing Conference Statement, there is nothing
13 different than what I said at the Air District, and there
14 is nothing different than what I said at the CPUC
15 proceedings, they have already claimed that they have
16 responded to my issues, so I do not see in any way that
17 they are harmed. And, you know, frankly, I have got some
18 concerns about the project and that is why I intervened.

19 CHAIRPERSON DOUGLAS: Thank you, Mr. Sarvey. I
20 think we will hear from all parties and then ask questions
21 of staff.

22 MS. WILLIS: Thank you. Good morning,
23 Commissioners. My name is Kerry Willis and I am senior
24 staff counsel representing staff in these proceedings. To
25 begin with, I have represented staff in power plant siting

1 cases for over 12 years, and I think this is only my
2 second time of opposing an Intervener petition, so we do
3 not take this position lightly, it is something that we
4 have had to consider quite seriously. However, in this
5 case, we are opposing Mr. Sarvey's petition because, first
6 of all, it was late, but more importantly, he failed to
7 show good causes as to why he filed it late. Mr. Sarvey
8 claims in his position and, again, to only have a few days
9 notice of the due date of the petition to intervene, but
10 that is just not true. This application has been in our
11 house for over two years. He could have filed his
12 petition to intervene at any point in time over the past
13 two years. A supplement, not a new ASC, as he has
14 claimed, was filed in September of 2009. Mr. Sarvey was
15 closely following these proceedings at the Air District,
16 he filed comments on time on April 30th on the Preliminary
17 Determination of Compliance, so he was well aware this
18 project was moving forward.

19 As he stated, the Applicant did respond to his
20 comments and staff did consider the comments before they
21 completed their revised Staff Assessment. Our siting
22 process aims to be public-friendly, we have held several
23 workshops over the past two years, the most recent being
24 on May 4th, following the publication of the Staff
25 Assessment on April 26th. The workshop was properly

1 noticed, yet Mr. Sarvey did not attend. One of the few
2 substantive changes in the revised Staff Assessment is in
3 regards to ammonia slip, and that is one of the issues he
4 is bringing up now. At the workshop, ammonia slip was
5 discussed at least with the Applicant, staff, and the Air
6 District, and had he attended, that would have been a
7 topic he would have been well versed in by the time - by
8 today. Staff Noticed a 30-day comment period on the Staff
9 Assessment, yet Mr. Sarvey failed to provide any comments
10 on that either. The Committee properly Noticed the staff
11 conference on May 12th, and as Mr. Kramer stated, we did
12 discuss dates, we discussed the procedure of having both
13 the pre-hearing conference and the evidentiary hearing at
14 the same time. Had Mr. Sarvey attended the status
15 conference or even inquired about it, he would have been
16 well aware of when the dates were and when the time for
17 intervention would have passed.

18 By his own admission, Mr. Sarvey is an
19 experienced Intervener in the Energy Commission's
20 proceedings, he claims to have participated in 20 cases
21 here, and, you know, I fully believe that is true, he is
22 currently on at least six electronic listservs at the
23 Commission, so he is well aware of how to get on the Marsh
24 Landing listserv, he could have done that at any point in
25 time, and received notices immediately. He also said he

1 checked the website weekly. All of our documents and
2 notices have been put on the website in a timely manner.
3 Finally, Mr. Sarvey claimed in his petition that he was
4 waiting for a document titled the Final Staff Assessment,
5 there is no requirement under Section 1747 that staff
6 title the compilation of reports required under that
7 section as a Final Staff Assessment. We stated in our
8 status reports on February 17th and on April 15th that we
9 would be filing something called a Staff Assessment, and
10 possibly a Revised Staff Assessment in order to proceed in
11 a timely manner. We also state that, in our Staff
12 Assessment, that we would not be filing a PSA and FSA in
13 this particular case.

14 As a member of the public, Mr. Sarvey can
15 participate in tomorrow's hearing fully, as I stated, both
16 the Air Quality staff and Air District representatives
17 will be available to respond to any of his concerns. He
18 stated that he does not want to delay the process, but he
19 did state in his petition that he would be expecting to
20 cross examine the Air District and the Air staff for 30
21 minutes a piece; so, that would ultimately delay some of
22 the process. Mr. Sarvey has had ample opportunity to
23 contact the Commission staff or the Public Advisor, to
24 participate in this process; instead, he chose not to
25 attend the staff workshop and discuss the issues in

1 public, he chose not to submit comments on the Staff
2 Assessment, he chose not to attend or comment at the
3 Status Conference, and he chose not to file his petition
4 to intervene on time. It is staff's position that
5 choosing not to file on time is not a showing of good
6 cause, and Mr. Sarvey's Petition to Intervene should be
7 denied.

8 CHAIRPERSON DOUGLAS: Thank you. Applicant?

9 MS. COTTLE: Thank you. My name is Lisa Cottle.
10 I represent Marsh Landing LLC, which is the Applicant
11 seeking certification for the Marsh Landing Generating
12 Station. Thank you for the opportunity to comment today.
13 The Applicant agrees with everything that Hearing Officer
14 Kramer and Ms. Willis has said, and do support the
15 Committee's Order. I think they properly concluded that
16 Mr. Sarvey had the burden to show good cause for his later
17 intervention and that no good cause was shown, and that
18 the late filed petition was therefore properly denied.
19 Mr. Sarvey has had over 20 months to intervene in our
20 siting case, not five days as he stated earlier. This
21 case has been active since September 2008. He has long
22 been aware of the proceedings since at least last fall,
23 based on his filings at the California Public Utilities
24 Commission, so if he had concerns about the project, he
25 could have intervened at any time. There also have been

1 several staff workshops in the case, including the
2 workshop on the Staff Assessment that has been discussed
3 earlier. There also was the Committee Status Conference,
4 which was Noticed, where it was clear that we were going
5 to be talking about schedule and whether the case was
6 ready to progress to committee proceedings. At the Staff
7 Workshop, as Ms. Willis explained, we did talk about the
8 few changes that the Applicant asked for, to the Staff
9 Assessment that was issued on April 26th. Ammonia slip was
10 discussed in detail. We explained why the staff's
11 proposed requirement was not feasible for the project. We
12 followed up with written comments on that issue that were
13 quite detailed and extensive. We provided cost estimates
14 for what it would take to try and meet something like
15 that. More importantly, it provided evidence that we can
16 obtain a guarantee from our vendors for that limit,
17 therefore, it is not feasible for the project and could
18 actually impair our ability to obtain financing and build
19 it. So, it was all in the record, it was discussed in
20 public, it was in our written comments, we provided
21 letters from the vendors. I think he was definitely on
22 constructive notice that that was an issue that could
23 change potentially when staff republished the revised
24 Staff Assessment.

25 He did also acknowledge that he has been

1 participating at the California Public Utilities
2 Commission, where that agency is considering whether to
3 approve the Power Purchase Agreement for Marsh Landing.
4 He also filed comments at the Air District on the
5 Preliminary Determination of Compliance. If you look at
6 those filings, he actually cites to things that we have
7 filed in the Marsh Landing CEC certification case, so he
8 was clearly reviewing the documents. If he did have
9 concerns, again, he should have participated in this
10 process, he had a lot of opportunity to do that. His
11 papers state that he was waiting for the last possible
12 moment to intervene. It seems that he miscalculated when
13 that would occur, but we agree that that is not good cause
14 for late intervention.

15 We also think it is important that parties be
16 required to comply with the rules. Public participation
17 in these proceedings should be encouraged, but parties
18 should also be obligated to file timely, and the
19 Commission's Guide to Public Participation does encourage
20 parties to intervene at the earliest possible time, not at
21 the last possible time, as was done here. And it is
22 disruptive to the process. We are hearing this tomorrow.
23 We should be preparing for that hearing and we had to come
24 in and address this, and it is disruptive to the process
25 to allow someone to intervene at this late stage.

1 Finally, we agree that he has an opportunity to be heard
2 tomorrow. Also, everything that he has raised in his
3 comments has been addressed by the Air District in its
4 Final Determination of Compliance for the project, which
5 was issued on June 25th. There is a detailed response to
6 all of Mr. Sarvey's comments in that document. Staff also
7 has addressed his comments in their Revised Staff
8 Assessment and the Applicant has addressed his issues, as
9 well. So, we do think he has been heard and his issues
10 have been listened to and considered in this proceeding.
11 So, for those reasons, we believe the Committee properly
12 denied his late filed intervention and we ask you to
13 uphold it. Thank you.

14 CHAIRPERSON DOUGLAS: Thank you. Mr. Sarvey,
15 since you have now heard what both staff and Applicant
16 have to say, is there anything that you would like to add
17 right now before we move to questions because I think
18 Commissioners may have questions?

19 MR. SARVEY: Well, I just think it is curious
20 that the Applicant objected to not having 10 days and
21 invoked the Bagley-Keene Act here, but the Notice to
22 Intervene was issued on a Tuesday, I mean, on the 26th, and
23 there was not even five days to intervene in that, so I
24 think the notice itself was defective, personally. But
25 that is just the way I feel, that if it takes 10 days to

1 get before the Commission, then we should at least have 10
2 days to intervene, but I understand what their positions
3 are and I still feel that I have showed good cause for
4 intervention. It is a longstanding Commission policy to
5 allow intervention up until the Pre-Hearing Conference,
6 there are three other - one individual and two
7 organizations - that have also petitioned to intervene, so
8 there is some public interest here. I will note there is
9 no public Intervener in this project which it states in
10 the Hearing Order, there is no member of the public that
11 has intervened. So, I think it is important to have
12 public participation at all siting cases, and I think the
13 Commission has always accommodated that. And if, in fact,
14 they are not going to accommodate my intervention, I think
15 there are some things on the Commission website that need
16 to be cleared up in terms of instructing the public when
17 the proper time or when the deadline is to intervene.
18 Thank you.

19 VICE CHAIR BOYD: Well, maybe I should defer my
20 fellow Commissioners first, but having jumped in here, I
21 apologize for my voice today, had my first and only summer
22 cold that is fighting to make me lose my voice, so it is a
23 little - the hot tea here may help a little bit. Anyway,
24 let me say, I have known Mr. Sarvey, we have known each
25 other for the better part of the eight and a half years I

1 have been here, he has always comported himself and
2 conducted himself as a gentleman, he has always been an
3 effective Intervener, and I am not happy or comfortable
4 with his situation because the Commission has always gone
5 to great lengths, historically, to facilitate public
6 participation. Frankly, I do not recall Mr. Sarvey and I
7 ever having any strong words with each other, or major
8 controversy, we may have disagreed with each other on
9 facts over time, but it has always been a most courteous
10 relationship. Therefore, I am troubled, but puzzled, and
11 do not understand, frankly, why he did not file
12 intervention much earlier, since he is an experienced
13 Intervener, particularly, Mr. Sarvey, in light of the fact
14 that you were so deeply involved at the PUC and the Bay
15 Area Air District, with this case. I am a little
16 surprised, if it is that meaningful with regard to our
17 process, that you did not rather routinely and much
18 earlier on, just filed as an Intervener. What I think you
19 probably do know is the Commission has been extremely
20 gracious in the past, you site some cases, some instances
21 and comments and actions of other Commissioners, all of
22 whom I have served with, I noted, who bend over backwards
23 to facilitate your intervention, or the intervention of
24 others. However, as serendipitously was mentioned at the
25 beginning of this meeting, as we said goodbye to a valued

1 employee, perhaps you missed that, the workload here at
2 this Commission is probably at its historic high. The
3 staff is stressed and strained, the Commissioners are
4 stressed and strained, the people of the state are, our
5 financial resources are, we frankly could not have a more
6 difficult situation to deal with, and the staff and
7 everyone else has dealt mightily and heroically with that.
8 And one of the things we encouraged was our Hearing
9 Officers in our Hearing Office to try to - and the staff -
10 to be as timely as possible on everything because we have
11 such a great caseload, and so they have been extremely
12 judicious in pushing the point about intervention -
13 deadlines for intervention, and what have you. Therefore,
14 this is why I supported the denial of your petition. It
15 is most unfortunate. I have no personal objection to your
16 involvement, it is just that, you know, I am thinking if I
17 were to file my IRS filing four days after April 15th, I
18 would get no passion from the Government. I got no
19 passion from that traffic officer several years ago when I
20 appealed the fact that I had never had a speeding ticket,
21 and I am surprised to think that I would be going faster
22 than the speed limit, but I got the ticket, I appealed it,
23 I was not successful. I would say that, never having had
24 a ticket, that he cut my fine in half, the Judge was very
25 patient there. But, nonetheless, the rules are the rules

1 and we bend over backwards, and I just think it is
2 unfortunate, perhaps tragic, that you did not file timely,
3 but I just do not think we can violate our own rules and
4 regulations, particularly at these incredibly difficult
5 times. So, as you can take from what I am saying, I
6 remain not in support, in this case, of granting you
7 Intervener status. It will be ruled, of course, by the
8 judgment of the entire Commission. Should you be denied,
9 I would still welcome you tomorrow as a member of the
10 public and, because you have earned the respect of this
11 organization, believe me, what you would have to say would
12 be taken seriously, and because you are a champion of air
13 quality, and I have been for 20 years of my life, I have
14 paid particular attention to your concerns. But, in terms
15 of the process, nonetheless, I just cannot see my way
16 clear to change my mind and support an intervention. So
17 that is my position, my fellow Commissioners.

18 COMMISSIONER EGGERT: Actually, since this is my
19 first time on this topic, I want to make sure I am clear
20 on sort of the criteria that are applied. So the two main
21 ones, as I understand it, is whether or not his concerns
22 are relevant to the case, in which you said that they
23 were, correct?

24 MR. KRAMER: Correct.

25 COMMISSIONER EGGERT: And the second is whether

1 or not there is just cause for the late filing, and I
2 think that is sort of a main criteria that we are
3 evaluating, based on the comments that have been made.

4 MR. KRAMER: It certainly turns on the good
5 cause requirement, yes.

6 COMMISSIONER EGGERT: And then, I guess
7 Commissioner Boyd's comments were very helpful, and I
8 think, just to clarify, that there will be significant
9 ample opportunity for participation as a member of the
10 public, which, again, as I think you said yourself is a
11 very important component of our hearings, and that is also
12 true?

13 MR. KRAMER: Yes. The difference is,
14 Interveners can submit evidence, expert testimony if they
15 have it, and cross examine other witnesses, versus the
16 public gets up and makes comments about their concerns
17 about the project, and they can offer the same sorts of
18 arguments that a party would. There is also a subtle
19 distinction that public comment cannot by itself support a
20 finding that the Commission could make, so it would have
21 to be supplementing some other testimony that was sworn
22 testimony, basically. But I do not know that that is
23 going to be a particularly important distinction with
24 regard to the kinds of comments that Mr. Sarvey will be
25 making. But he will not be able to ask questions of the

1 other witnesses.

2 COMMISSIONER EGGERT: Okay. All right, no
3 further questions.

4 COMMISISONER BYRON: Thank you, Madam Chair.
5 Most of my questions have been answered, I just have a
6 couple that I would like to drill down on briefly. Mr.
7 Sarvey, in his Petition to Reconsider Sites, testimony
8 from an earlier case, East Shore, where Commissioner
9 Geesman indicated that, in every other proceeding he has
10 been aware of, that we have allowed intervention prior to
11 the Pre-Hearing Conference, and I guess I would like to
12 know, is that true? And, if it is true, as you indicated,
13 what is controlling? Up to the Pre-Hearing Conference, or
14 30 days prior to the Evidentiary Hearing?

15 MR. KRAMER: Whichever is earlier, so when you
16 have the Pre-Hearing Conference, being closer to the
17 Evidentiary Hearing than 30 days, it is going to be the 30
18 days prior to the Evidentiary Hearing. Here, we have -
19 largely because we had a Committee Conference, and we
20 tested the level of interest in the case and found that
21 there were basically two parties, staff and the Applicant,
22 because CURE has decided not to participate fully at the
23 hearings, I can tell you that, I received an e-mail the
24 other day. So we basically have two parties and, in those
25 situations, in the interest of efficiency and expediency,

1 we sometimes in the past have combined the Pre-Hearing
2 Conference and the Evidentiary Hearing, so one follows the
3 other. If we came to the Pre-Hearing Conference and
4 discovered a last minute snag, we might decide to postpone
5 the Evidentiary Hearings, but the idea is that, if
6 everything is all set and ready to go as we expect it to
7 be, then we would immediately go into the Evidentiary
8 Hearings, and then we would be able to prepare our
9 decision. So, it is in this unique case where the Pre-
10 Hearing Conference is closer than 30 days to the
11 Evidentiary Hearing, that it is no longer possible under
12 that rule to wait until the Pre-Hearing Conference to
13 file.

14 COMMISSIONER BYRON: My second question is, as I
15 understand it, a revised staff assessment was issued
16 following the deadline for the Petitions to Intervene, and
17 isn't it normally the process at this Commission that the
18 public have access to all the staff documentation prior to
19 a deadline for Petition to Intervene?

20 MR. KRAMER: No. I do not think the rules
21 actually say that. That is probably an aspiration, or
22 could be. I think it is fair to say that there are some,
23 in fact, I have it on my list of things to consider when
24 we go over the rules in the future, is whether we should
25 be adjusting this deadline. My proposal would be to move

1 it further back, so people know that they have to
2 intervene earlier in the process, so that they can fully
3 participate in the march to hearings, if you will, the
4 exchange of evidence and pre-hearing conferences. But,
5 literally all our rules requires that basically a final
6 assessment be available 14 days prior to the Evidentiary
7 Hearings. And as I mentioned when I started, I think it
8 is fair to say, in this particular case, the revised staff
9 assessment is more on the order of the original staff
10 assessment, reprinted with Errata woven into it, so that
11 we have, again, to make that preparation of the decision
12 efficient, so that we have a complete single document that
13 has the final staff testimony in it, rather than having a
14 staff assessment plus an Errata document because our plan
15 is to attach a set of findings to that document, and that
16 will be the decision. It is a quicker and easier way to
17 prepare a decision. Frankly, it is probably the only way
18 that we can get a decision out in this case, given our
19 workload on the renewable cases.

20 COMMISSIONER BYRON: Well, Commissioners, I
21 think we certainly have a commitment to all interested
22 parties, foremost the public interest in these
23 proceedings, but, as Mr. Kramer indicates, we have to
24 balance an awful lot of factors in these decisions. I
25 think it is extremely important that we uphold our

1 process, schedules matter as long as they do not impinge
2 upon the public's rights. I am gratified that Mr. Sarvey
3 is very interested in this case, that he is even here
4 today, in fact, and that he is welcome to participate
5 tomorrow. And I am sure that your input will be fully
6 considered. But, Commissioners, I am prepared to go to
7 vote on this.

8 CHAIRPERSON DOUGLAS: Commissioner, maybe I will
9 make some brief comments before that. I just wanted to
10 acknowledge that I think that Commissioner Boyd is
11 correct, that the unprecedented workload that the
12 Commission is under broadly and virtually everything we
13 touch, but also specifically in siting, is affecting us,
14 and it is affecting from staff to Commissioners to many of
15 the attorneys and people who work with Applicants, and I
16 am sure it is affecting Interveners, and so there is no
17 question, and to members of the public who try to follow a
18 lot of our cases. So, there is no question that this is
19 not easy in any way for anybody. And a number of the
20 things, the steps that we are trying to take to expedite
21 processing of these cases, and expedited review of these
22 cases, without compromising the quality of that review,
23 our process changes that requires attention to follow,
24 whether it is one staff document rather than two, and I do
25 believe that Mr. Sarvey had ample notice that that was the

1 case, both in this specific case, and in others, but that
2 is certainly a change that everyone in our process, where
3 that has been adopted, have to adapt to and deal with.
4 This issue of holding the Pre-Hearing Conference and the
5 Evidentiary Hearings on the same day, in a different
6 environment it might be tempting to leave ourselves a week
7 or two, or more, in between them, just to be sure that we
8 had time and attention to devote to any surprises or any
9 issues that arose in the Pre-Hearing Conference, and then
10 flow into Evidentiary Hearings; but, in the environment in
11 which we are operating, I think it makes sense, and it is
12 consistent with the direction that certainly I have
13 provided on my siting cases, that where it makes sense,
14 and where it may work, to have a pre-hearing conference
15 and an evidentiary hearing on the same day, we go ahead
16 and schedule that. And obviously, if something comes up
17 and it is just not going to work, we always have the
18 option of rescheduling it. And it appears in this case
19 that Mr. Sarvey may have been tripped up by an expectation
20 that it is generally okay to intervene up to the
21 prehearing conference, maybe without having fully realized
22 that, when the Pre-Hearing Conference and the Evidentiary
23 Hearing are on the same day, that is different from the
24 standpoint of our own regulations, and it is also
25 different from the standpoint of what that means for a

1 case and how that affects the Applicant and the other
2 parties. So, I am also - I am on this Committee, I
3 supported the original decision to deny Mr. Sarvey's
4 intervention, and I am in support of denying his appeal,
5 but not without recognizing that the value that he has
6 brought to proceedings in the past, the value that we hope
7 he will bring to this proceeding as a member of the
8 public, and as the other committee member, I will say that
9 I, too, will pay particular attention to issues that he
10 raises, and as we carry out our responsibilities, to
11 attempt to assure myself with the record and hearing from
12 the public. Now, I should say, I do have one member of
13 the public on the phone - oh, no, let's see, I have Lisa
14 Cottle, we have already heard from Robert Sarvey, okay, so
15 you are at the table, and then I have two members of the
16 public, Rob Simpson, and Michael Boyd. Let me start with
17 Mr. Simpson on the phone.

18 MR. SIMPSON: Can you hear me okay?

19 CHAIRPERSON DOUGLAS: Yes, we can.

20 MR. SIMPSON: Okay, thank you. This proceeding,
21 it started out, apparently, as a different project. There
22 was an informational meeting with the community on
23 December 18th of 2008. At that proceeding, Hearing Office
24 Kramer informed the public that it was fair in his
25 comments of that day, if you wait for an EIR through the

1 whole thing, the whole thing will be over and you will be
2 still waiting because we do not provide anything with an
3 EIR cover. But you want to be looking at the Preliminary
4 Staff Assessment and, then, the Final Staff Assessment as
5 a substitute for an EIR in this process. Following the
6 Preliminary Staff Assessment, then the Air District will
7 issue a Final Determination of Compliance, and then the
8 staff will issue a Final Staff Assessment. Now, none of
9 these things occurred in this proceeding. You skipped the
10 Preliminary Staff Assessment, the Air District did not
11 issue a Final Determination of Compliance until after the
12 opportunity for intervention was over, so the project that
13 was proposed in 2008 is not the same project that is
14 proposed now. In 2008, it was a combined-cycle project
15 that would have had a lower greenhouse gas impact than a
16 single-cycle project that is now proposed. In the 2008
17 meeting, the Applicant indicated that the Marsh Landing
18 Generating Station, which is wholly contained in the
19 Contra Costa Power Plant site, repeated that several
20 times, and now the site seems to be identified as an
21 independent site that is not part of the existing project,
22 taking it away from the Federal permitting rules. So what
23 you have got is a project that has not been vetted in
24 public scrutiny. This project has not had the public
25 participation opportunity. In September of 2009, the

1 project was changed from the combined-cycle facility to a
2 simple-cycle facility, and there was no public information
3 about that. So, while we are waiting for the Preliminary
4 Staff Assessment and the Final Staff Assessment to occur,
5 just as the Order after that initial meeting status, the
6 Hearing Order says that there will be a PSA filed, it says
7 there will be an FSA filed, and no one has gotten none of
8 those things, and it appears that we will also be rejected
9 for intervention. So we have got some process concerns
10 with this whole thing, 1) the public does not know what is
11 going on here, and 2) we are not afforded the opportunity
12 to participate. So, what I would like to see happen is
13 that the petition to intervene is granted, that we have a
14 pre-hearing conference, we review the siting guidelines on
15 page 101 of the Public Participation Guidelines, and
16 following the pre-hearing conference, the committee will
17 prepare and serve a hearing order. Now, I do not know how
18 it is going to be [inaudible]. So we have got
19 inconsistencies between what is published as guidelines
20 for us, the public, to follow and what is going on here.
21 So, if the rules are going to change in the middle of the
22 proceeding, we would hope to get notice of that.

23 CHAIRPERSON DOUGLAS: Thank you, Mr. Simpson. I
24 see that Hearing Officer Kramer is standing at the podium.
25 I believe he would like to respond to some of what you

1 raised.

2 MR. KRAMER: Mr. Simpson has chosen to read some
3 of the documents that are on the website and not others.
4 The more recent documents, which would include the last
5 two staff status reports, telegraph that the approach was
6 changing from what was described generally at the
7 informational hearing, that there was going to be a single
8 assessment followed by a workshop, and then some kind of
9 supplemental document, which has turned out to be the
10 revised Staff Assessment. The Guidelines, I do not
11 believe, were regulatory documents, that is the Public
12 Adviser's attempt to explain our process to the public,
13 and it is true that it has changed in this case, but the
14 changed approach is allowed by our rules and would be
15 evident to people who read beyond the transcript of the
16 initial informational hearing and were truly following the
17 case, which, in my mind, is a sign of actual interest in
18 the project.

19 CHAIRPERSON DOUGLAS: Thank you, Hearing Officer
20 Kramer. Let's go to Michael Boyd of CARE, also on the
21 phone.

22 MR. BOYD: Hi, this is Mike Boyd. Can you hear
23 me?

24 CHAIRPERSON DOUGLAS: Yes.

25 MR. BOYD: Okay. I am Mike Boyd. I am the

1 President of CARE, Californians for Renewable Energy. And
2 one question I had is I missed the beginning part of this
3 item and I am just curious, what is the emergency that
4 allows you to put this on the agenda without 10 days
5 advance notice to the public? I do not follow it. What
6 is the emergency?

7 CHAIRPERSON DOUGLAS: Mr. Boyd, that was the
8 first item that we took up and I am sorry that you missed
9 it, but we had some discussion on the matter and we
10 decided to hear it because the Commission found that,
11 under the circumstances, hearing this now would enable us
12 to resolve this issue and proceed with evidentiary
13 hearing, as opposed to having the hearing compromised in
14 some way with this uncertainty. And so that was the
15 finding of the Commission, and that was the first finding
16 we had to make before this came on the agenda.

17 MR. BOYD: So you are saying there is a
18 procedural glitch that created the emergency?

19 CHAIRPERSON DOUGLAS: Mr. Boyd, it is
20 unfortunate that you were not here to speak when that item
21 was brought up because the opportunity was there.

22 MR. BOYD: Well, I am here now. I am here now,
23 and so in that regard, I would like to notice to you the
24 correct [inaudible] that violation of the Bagley-Keene
25 Act. I do not believe that is a legitimate reason to have

1 an emergency item on the agenda without proper notice. So
2 that is the first thing I would like to say. Now, the
3 other thing I would like to bring up is in regards to Mr.
4 Sarvey's intervention, is what I am hearing from staff is
5 there was a low level of interest from the public on this
6 matter, and I am looking on the docket today online and I
7 see that, not only did you deny the intervention of Mr.
8 Sarvey, but Mr. Simpson, and the Local Clean Energy
9 Alliance, and I also see that the Sierra Club is trying to
10 intervene, too, and so my question is, if you guys are
11 working for us as the public servants, why are you trying
12 to cut the public out from this process? That is what it
13 appears like you are doing, and this is just a statement,
14 and I believe that violates our right as members of the
15 public to due process of the law, and I believe that is a
16 federal violation. And I also believe that there is a
17 pattern and practice of what I call synergistic corruption
18 between the Energy Commission, the Energy Commission
19 staff, and the Applicant, to preclude the public from
20 participating. And, in fact, this is a matter for the
21 Federal District Court in another case that you guys are
22 involved in called the Gateway Generating Station. And I
23 just wanted to let you know that, yesterday, the United
24 States withdrew their consent decree, which means that
25 there is no consent decree, and PG&E is operating its

1 plant in violation of the Notice of Violation that was
2 given in September of 2009, that then the CEC subsequently
3 said it was okay for them to continue operating that
4 plant. And I believe that the synergistic corruption is
5 to aid and abet these polluters, like PG&E, and that what
6 you are doing here is just the same pattern and practices,
7 and it is the corruption. And what I would request is
8 that you send me a copy of the transcript of this meeting
9 when it becomes available and I will provide that to the
10 Judge in this Federal District Court because I think this
11 is a perfect example of just what we are talking about,
12 the CEC doing to this Judge. And that is all I have to
13 say, thank you.

14 CHAIRPERSON DOUGLAS: Thank you, Mr. Boyd. The
15 transcripts are available, and so maybe we can work with
16 the Public Advisor to ensure that you get a transcript. I
17 would like to ask Hearing Officer Kramer to speak to some
18 of the points you have raised, and our Chief Counsel, Mr.
19 Levy, to address the first issue.

20 MR. KRAMER: I wanted to make a point about
21 public participation. The public is always welcome to
22 come to our hearings and make comments. We do what we can
23 to make our hearings accessible to them remotely via the
24 telephone, but intervention, that is another level of
25 participation. That, you are treated as a full party,

1 just as a staff and the Applicant, and along with those
2 rights come expectations, and one of those is to know our
3 rules, and the second is to meet our deadlines, so it -
4 Mr. Boyd seems to be assuming that public participation
5 requires that everybody be allowed to be an Intervener and
6 we have standards, thresholds that you must meet to get
7 into the door to be an Intervener, but then, once you are
8 one, you have to follow the rules, and I think a corollary
9 is, in order to be one, you also have to follow the rules.

10 CHAIRPERSON DOUGLAS: Thank you, Hearing Officer
11 Kramer. Mr. Levy?

12 MR. LEVY: Yes, Commissioners. The Government
13 Code Section is not Subdivision (A)(1) of 11125.3 which
14 relates to emergency situations, this is Subdivision
15 (A)(2), which discusses a lesser category of need to place
16 this matter on the agenda, and the Commission fully
17 satisfied the requirements of 11125.3(A)(2) before it took
18 up this matter. The matter is properly on the agenda, and
19 the only item before you is whether to grant the appeal of
20 Mr. Sarvey's Petition to Intervene.

21 CHAIRPERSON DOUGLAS: Thank you, Mr. Levy.

22 VICE CHAIR BOYD: Well, I will, consistent with
23 my previous comments, move to deny Mr. Sarvey's petition.

24 COMMISSIONER BYRON: Madam Chair, I second.

25 CHAIRPERSON DOUGLAS: All in favor?

1 MR. LEVY: Madam Chairman, I am sorry, before
2 you vote, Commissioners, you may want to, as part of your
3 motion, or in a subsequent motion, order that the
4 Committee's Order be deemed amended to reflect that the
5 Petitioner's interests are relevant to the proceeding.

6 CHAIRPERSON DOUGLAS: Well, I think we are
7 halfway through our vote, so let's finish that, and we
8 will do a supplement -

9 VICE CHAIR BOYD: Okay, or I can withdraw my
10 motion and modify it to reflect -

11 CHAIRPERSON DOUGLAS: All right, why don't we do
12 that?

13 VICE CHAIR BOYD: -- reflect Mr. Levy's point,
14 the relevance of the issue, and that it is just a matter
15 of time, and I now will move that we deny the petition on
16 those grounds.

17 CHAIRPERSON DOUGLAS: Do we have a second?

18 COMMISSIONER BYRON: Second.

19 CHAIRPERSON DOUGLAS: All in favor?

20 (Ayes.)

21 The motion carries.

22 MR. SARVEY: Thank you, Commissioners.

23 CHAIRPERSON DOUGLAS: Thank you.

24 Item 1. Consent Calendar.

25 VICE CHAIR BOYD: Move approval.

1 COMMISSIONER BYRON: Second.

2 CHAIRPERSON DOUGLAS: All in favor?

3 (Ayes.)

4 Item 2. El Segundo Power Redevelopment Project
5 (00-AFC-14C). Possible approval of a petition to amend
6 the El Segundo Power Redevelopment Project to include new
7 state-of-the-art rapid response combined cycle (R2C2)
8 technology. Mr. Douglas. And before you begin, could we
9 do something about the static? All right, well, it is
10 hard to be comfortable with that. Let's just wait a
11 minute and see if we can resolve this static issue.

12 MR. DOUGLAS: I will just speak louder if I have
13 to.

14 CHAIRPERSON DOUGLAS: Go ahead.

15 MR. DOUGLAS: Good morning, Commissioners. My
16 name is Joseph Douglas.

17 CHAIRPERSON DOUGLAS: And right into the
18 microphone since -

19 MR. DOUGLAS: Good morning, Commissioners. My
20 name is Joseph Douglas and I am Compliance Project Manager
21 for the El Segundo Power Redevelopment Project. To my
22 left is Senior Staff Counsel, Kevin Bell. I am here to
23 present the Petition for El Segundo Energy Center to amend
24 the February 2005 Decision, and for a possible approval of
25 a change to the project from ocean once-through cooling to

1 dry cooling, and zero liquid discharge technologies. I
2 believe this is the first of the coastal plants to go to
3 dry cooling. The current El Segundo Plant is a 630-
4 megawatt combined cycle gas-fired power plant located in
5 El Segundo, California, on the Coast, just south of LAX
6 and North of Manhattan Beach. Modifications proposed for
7 the project include the use of the new and more efficient
8 state-of-the-art rapid response combined cycle technology,
9 not available during the original siting of the previous
10 permitted project. This new technology will eliminate the
11 need for once-through cooling and the need for waste water
12 discharge to the ocean. In addition, other modifications
13 proposed include modification of the plant entrance road
14 and to allow for over-sized vehicle delivery, and an
15 addition of a new off-site lay-down area. The revised
16 project would be rated at 530 megawatts.

17 The process has been a little bit lengthy and
18 they had a few delays which I will go over as soon as
19 possible, and I would like to commend staff for their
20 renewed efforts to keep this project moving.

21 On June 15th, 2007, Applicant filed a dry cooling
22 amendment and a staff analysis was published June 12th,
23 2008. On June 25th, 2008, Energy Commission staff held a
24 site visit and workshop regarding the amended petition and
25 the staff analysis. And in October of the same year, they

1 produced an addendum that addressed public comments to the
2 staff analysis. However, at the same time, the permitting
3 was delayed because a core ruling from the Superior Court
4 of Los Angeles vacated the South Coast Air Quality
5 Management District Air Emissions offset-related program,
6 so that delayed things until January of this year, in
7 which that program was reinstated. On May 18th, the Air
8 District submitted a revised permit, and then republished
9 the revised staff analysis on June 14th, and the comment
10 period was until June 29th, and we have not received any
11 comments to date.

12 Energy staff has reviewed the petition and
13 proposes revisions to the existing Conditions of
14 Certification. It is staff's opinion that, with the
15 implementation of revised conditions, the project will
16 remain in compliance with applicable laws, ordinances,
17 regulations, and standards, with no impacts to the
18 environment, nor significant adverse impacts will be had.
19 In addition, there are no new circumstances that require
20 new studies or analysis. And so, staff recommends
21 approval. And one final bit of duty is that there is a
22 small clarification to the Air Quality section that Air
23 staff would like to present. Mr. Brenner Munger.

24 MR. MUNGER: Madam Chair, Commissioners, my name
25 is Brenner Munger. I am an Air Resources Engineer in the

1 Air Quality Section at the Commission. I have prepared
2 the testimony on air quality in the revised Staff Analysis
3 for the El Segundo Power Redevelopment Project, Docket 00-
4 AFC-14C. I would like to make two corrections to that
5 testimony, both of these corrections are on page 4.1-15 of
6 my testimony. This is the portion of the testimony
7 dealing with mitigation, air quality and mitigation for
8 the proposed project is based on emission offsets with the
9 shutdown of the three boiler units, one, two, and three,
10 at the existing El Segundo Generating Station, the
11 emissions from the proposed project will be fully offset
12 as allowed under Rule 1304(A)(2) of the South Coast Air
13 Quality Management District. The changes to my testimony
14 are needed to provide the correct references to the
15 District rules providing these offsets.

16 In the first line of the last paragraph on page
17 4.1-15, the reference to South Coast Air Quality
18 Management District 1304(B)(2), should be changed to Rule
19 1304(A)(2). In line 8 of that same paragraph, the
20 reference to Rule 1315 should be deleted.

21 Senate Bill 827, which allows the District to
22 issue permits to projects subject to Rule 1304, directed
23 the District to rely on the offset tracking system used
24 prior to the adoption of Rule 1315. So, the reference to
25 Rule 1315 is incorrect. Thank you for this opportunity to

1 provide this corrected information.

2 CHAIRPERSON DOUGLAS: Thank you. Can we now
3 hear from the Applicant?

4 MR. MCKINSEY: Thank you, Chairman Douglas.
5 This is turned down a lot, isn't it? My name is John
6 McKinsey, counsel to NRG Energy, which is the parent of El
7 Segundo Energy Center, LLC, the project owner, and
8 proponent for the Petition to Amend. With me, is Steve
9 Hoffmann. He is the President of the Western Region of
10 NRG Energy, also the President of the project owner
11 entity, El Segundo Energy Center, LLC.

12 I wanted to add just a clarifying remark and,
13 then, Mr. Hoffmann wants to say a few words, and that is
14 that the amendment that is before you not only achieves
15 dry cooling, which may not be the first time from the
16 perspective of a conversion, because we have done that at
17 Gateway, and so this is probably the second iteration
18 where a proposed project - approved project - with
19 combined cycle is being converted to dry cooling. But
20 this project change does a tremendous amount of beneficial
21 things, including a new access road, the elimination of
22 the waste water discharge stream, a new technology which
23 is also going to allow the project to respond much better
24 to cyclical renewable energy in Southern California
25 Edison's load center, and then a bunch of other small

1 improvements on the site. And most of these partly were
2 brought about simply from the length of this proceeding,
3 that this project, as you might have noticed, is a 00-AFC,
4 and it took five years to get through the initial approval
5 process. And when that was completed, a lot of things
6 were out of date, and so what has essentially happened is
7 the project has been improved, refined, matched to a
8 current Power Purchase Agreement with Southern California
9 Edison, and that is going to allow it to now move forward
10 very rapidly and meet Southern California Edison's needs.
11 Steve.

12 MR. HOFFMANN: Yes, thank you. I will be brief
13 because, as Mr. Douglas pointed out, this project has been
14 on a long enough journey, which started 11 years ago. But
15 I did want to recognize and thank the Commission staff for
16 the quality of their work; because of that quality, this
17 process, although it has been a long one, and a hard one,
18 has great credibility. And I wanted to assure the
19 Commission that, with your approval, we will build a
20 project that you and California can be proud of, and that
21 we and 350 workers are very anxious to get that process
22 started. Thank you.

23 CHAIRPERSON DOUGLAS: Thank you. Commissioners.

24 COMMISSIONER BYRON: Madam Chair, if I may, just
25 a quick question, I think, of staff. As I read this

1 material, it would seem to me that, not only do these
2 changes meet our criteria, but, in many cases, exceed our
3 criteria that were applied earlier to the project.

4 MR. DOUGLAS: Correct, yes.

5 COMMISSIONER BYRON: In fact, I note that they
6 all seem to be improvements. Is that correct?

7 MR. DOUGLAS: Yes.

8 COMMISSIONER BYRON: Madam Chair, I would really
9 - thank the Siting Committee for their wisdom in not
10 setting a full committee for this particular item,
11 although it is a major - major changes, obviously. I
12 appreciate the wisdom of the committee to just go ahead
13 and proceed with this as a revision. It looks like a very
14 good project. I would like to thank the Applicant for
15 hanging in there, although we cannot know everything that
16 has gone on over the last 11 years, we do appreciate it
17 when you bring us projects that are this responsive to
18 changing policies in the State. This looks like it is a
19 very good adaptation of what has transpired over the last
20 11 years in terms of policy. And it looks like a very
21 good project. I think you know which way I will vote on
22 this.

23 VICE CHAIR BOYD: I would just like to comment,
24 as a member of the Siting Committee for this case, long
25 ago, I probably would have less grey hair if we had

1 arrived at this decision then, instead of now, but I know
2 it is a product of changing times and the ever-
3 accelerating pace of technological development, but I am
4 sure the gentlemen at the table remember the long long
5 hours in discussing once-through cooling, the
6 ramifications to Santa Monica Bay, and various approaches
7 to mitigate that issue, and what have you. So, I was
8 pleased as punch to see this modified project show up,
9 glad that they did not reincarnate a siting committee for
10 this case, and so, obviously, you know how I will vote. I
11 am very pleased to see - it is too bad it has taken so
12 long, but the net result is an extremely up-to-date, and
13 progressive, and positive for the environment and the
14 community, project. So, in any event, pleased to still be
15 here to participate in finalizing this case. I will then
16 move approval as the last standing - and I was not even a
17 member of the original siting committee, I stepped in when
18 another Commissioner stepped out, but I believe
19 Commissioner Keese and I finished this project, at least
20 we thought we did. In any event, I move approval of staff
21 recommendation.

22 COMMISSIONER BYRON: And I will second approval.

23 CHAIRPERSON DOUGLAS: All in favor?

24 (Ayes.)

25 This item is approved. Thank you.

1 COMMISSIONER BYRON: Mr. Hoffmann, since you
2 were here, were you here for the entire 11 years?

3 MR. HOFFMANN: I was a spectator for the first
4 part of it, and I am very pleased to be at the table to
5 finish it. We hope to finish what we have started.

6 COMMISSIONER BYRON: Good, gentlemen. Thank
7 you.

8 CHAIRPERSON DOUGLAS: Item 3. Energy Efficiency
9 and Conservation Block Grants. Possible approval of an
10 Energy Commission resolution to revise agreement terms to
11 pay small jurisdiction and local agency invoices based on
12 proof of costs incurred or payments made. Mr. Sugar.

13 MR. SUGAR: Madam Chairman, Commissioners, I am
14 John Sugar with the Fuels and Transportation Division.
15 Staff is requesting your approval of a change to the terms
16 of the small jurisdiction grants for the Energy Efficiency
17 and Conservation Block Grant Program. The current
18 agreements require jurisdictions and partnership leads to
19 document that they have paid for equipment or services
20 before they may request reimbursement from grant funds.
21 This requires them to carry the expenses using non-grant
22 money until they can receive our payment. For many of the
23 small jurisdictions, and for partnerships with tight
24 budgets, this constitutes a hardship and it also has the
25 effect of delaying disbursement of the grant program

1 stimulus funding. The proposal before you now is to
2 change the terms of the small jurisdiction agreements to
3 allow us to reimburse the grantees for costs incurred
4 before they have paid the invoice or invoices. The
5 Commission has used this approach for contracts and grants
6 in the past, and this change will allow the grantees to
7 use the grant money to pay for equipment and services
8 without dipping into other funds. This also has the
9 advantage of allowing us to pay invoices sooner, to get
10 moving the stimulus money out to local communities more
11 quickly. So, staff requests your approval of this change.

12 CHAIRPERSON DOUGLAS: Thank you, Mr. Sugar. And
13 it is also the case that we will be asking these Grantees
14 to ultimately provide us with proof of payment, as well.
15 Is that correct?

16 MR. SUGAR: Yes. We are working with our
17 support contractor for ARRA, Perry Smith, to determine the
18 most efficacious way to reduce risk of these payments
19 being inappropriate and, at the same time, not be
20 burdensome for either staff or for the local
21 jurisdictions.

22 COMMISSIONER EGGERT: Just to follow-up on that,
23 so the clarification is that it is subsequent to the
24 purchase or work done, but prior to the invoice?

25 MR. SUGAR: Right, prior to them having to write

1 a check, so they owe the money, they will be able to
2 invoice us, and receive funds before they actually have to
3 pay out-of-pocket.

4 COMMISSIONER EGGERT: And this could be quite
5 useful for those jurisdictions that do not have a lot of
6 cash on-hand, I would imagine?

7 MR. SUGAR: Which is quite a few of the
8 jurisdictions right now.

9 COMMISSIONER EGGERT: Yeah. It sounds like a
10 pretty good - or an improvement, I should say.

11 COMMISSIONER BYRON: Just a quick procedural
12 question. You know, we count on staff to obviously bring
13 these kinds of corrections, let's say "improvements," to
14 us for approval. I note that the resolution only requires
15 signature of the Chairman. Are we just bringing this
16 before the entire Commission in the interest of extreme
17 caution, Mr. Levy? Do you know?

18 MR. LEVY: I believe the Commission has to
19 approve it if it is for the signature of the Chairman,
20 that would be pro forma on behalf of the Commission.

21 COMMISSIONER BYRON: All right. Madam Chair, I
22 Move approval.

23 COMMISSIONER EGGERT: Second.

24 CHAIRPERSON DOUGLAS: All in favor?

25 (Ayes.)

1 That item is approved.

2 MR. SUGAR: Thank you.

3 CHAIRPERSON DOUGLAS: Thank you, Mr. Sugar.

4 Item 4. California Pollution Control Financing
5 Authority. Possible approval of Contract 600-09-019 for
6 \$34 million with the California Pollution Control
7 Financing Authority. Mr. Rillera.

8 MR. RILLERA: Chairman and Commissioners, Larry
9 Rillera with the Fuels and Transportation Division. Over
10 the past year, staff has been working with the State
11 Treasurer's Office to provide financing assistance and
12 program administration for various AB 118 project areas.
13 The Treasurer's Office would do this through the
14 California Pollution Control Financing Authority, also
15 known as CPCFA. CPCFA has a requisite authority and
16 expertise that enable eligible AB 118 Applicants to
17 participate in CPCFA's capital access program, otherwise
18 known as CalCAP. CalCAP is a type of loan guarantee
19 financing tool. AB118 funds would be used as the loan
20 guarantee financing tool for eligible participants seeking
21 direct loans through CalCAP lenders or their banks. The
22 CalCAP financing is consistent with the objectives of the
23 AB 118 program and the investment plan. Staff would ask
24 the Commission for support to approve Item 4, an inter-
25 agency agreement with the California Pollution Control

1 Financing Authority to providing financing assistance for
2 participation in the CalCAP program. \$34 million would be
3 encumbered in this inter-agency agreement.

4 VICE CHAIR BOYD: Well, my only comment is that
5 I am more than gratified to see this item on the agenda,
6 finally. I know staff has worked very very hard on this
7 and I know several Commissioners probably equally are very
8 glad to see this. It is very important to the execution
9 of the 118 program or component thereof of AB 118 program.
10 And I would just salute staff for the extremely hard work
11 they have done. We ran into all kinds of unfortunately
12 bureaucratic hurdles here and it is just a shame that the
13 State of California is so bloody process bound that it
14 takes so long to do some of these things, but they have
15 delivered, and here it is. And I am very pleased to see
16 it. This, in concert with a lot of other items today
17 relative to this program that we are yet to act on, are
18 very deserving of appropriate notoriety and I hope Ms.
19 Jones and our Public Information staff accordingly see
20 that we get some notice of the significance of some of
21 these actions. Enough said.

22 COMMISSIONER EGGERT: Actually, just to follow
23 on that, I think similarly this is excellent that we have
24 come to the final approval of this program and I would
25 note the specific purpose of this is to help facilitate

1 advanced biofuels facility and vehicle manufacturing
2 plants here in the state to create additional jobs within
3 these sectors, and certainly we have seen a significant
4 amount of interest and activity in this space. And, to
5 the extent that this program can help facilitate access to
6 capital, I think it has got tremendous potential. And I
7 also think, you know, communicating this more broadly will
8 also hopefully invite even further interest and
9 applications, and other financial institutions to partner
10 with us because I think, you know, even though this is a
11 significant amount of money, it is only sort of the tip of
12 the iceberg of what we need in terms of the investments to
13 achieve our energy and environmental goals. And I would
14 note that this does also expand our partnership with the
15 State Treasurer's Office and a number of other agencies
16 that have been actively involved in setting this up. So,
17 you know, where we can take advantage of each other's
18 areas of expertise and structure, I think that is a good
19 thing.

20 CHAIRPERSON DOUGLAS: Thank you, Commissioner
21 Eggert.

22 COMMISSIONER BYRON: Madam Chair, just a quick
23 comment. I am pleased to hear the comments from my fellow
24 Commissioners and what is behind this effort. It looks as
25 though a little thanks to the staff is in order, Mr.

1 Rillera. There is a lot of bureaucracy to overcome in
2 getting things done. I know I have characterized it in
3 the past as a treacherous unmarked path for the staff to
4 walk, to figure out how to get these contracts and efforts
5 in place - oh, and the path has land mines, too. So,
6 thank you very much.

7 VICE CHAIR BOYD: With that, I will move
8 approval of the item.

9 COMMISSIONER EGGERT: Second.

10 CHAIRPERSON DOUGLAS: All in favor?

11 (Ayes.)

12 This item is approved.

13 MR. RILLERA: Thank you.

14 CHAIRPERSON DOUGLAS: Thank you.

15 VICE CHAIR BOYD: Congratulations.

16 CHAIRPERSON DOUGLAS: Item 5. San Bernardino
17 Associated Governments. Possible approval of a grant of
18 \$9,308,000 to San Bernardino Associated Governments
19 (SANBAG) to purchase 182 heavy-duty Freightliner-M2112
20 natural gas trucks and 20 of a different kind of trucks,
21 and at that point, I will let Jennifer Allen make the
22 presentation. Ms. Allen, I note that you are presenting
23 on 11 items in a row, so -

24 MS. ALLEN: Yes, so if anybody needs to take a
25 break right now -

1 CHAIRPERSON DOUGLAS: Well, I will just assume
2 that you are prepared to go the distance, but please, be
3 concise and we will ask questions where we have them. We
4 have all had the material. And, with that, please present
5 on Item 5.

6 MS. ALLEN: And good morning, Chairman Douglas and
7 Commissioners. Well, it is still morning. Okay, the first
8 project here is approval to enter into a grant agreement with
9 San Bernardino Associated Governments and this is a grant that
10 was awarded out of PON-08-010, which was for projects that were
11 going for American Recovery and Reinvestment Act funding, and
12 San Bernardino is partnering with Ryder Trucks for this project.
13 It will deploy over 200 liquefied natural gas vehicles. The
14 Energy Commission will be funding portions of the natural gas
15 vehicles and we are requesting \$9,308,000 for that part of the
16 project. The Department of Energy has entered into an agreement
17 with San Bernardino Associated Governments for \$9,308,000 also,
18 and they will be funding the liquefied natural gas stations and,
19 then, also a portion of some of the vehicles, as well as a
20 training program for maintenance on the vehicles and some
21 facility modification to allow the vehicles to be maintained on
22 the Ryder sites. The projects will be in San Bernardino and
23 Orange County Areas, and Ryder Trucks is providing over \$17
24 million to this project. So, staff recommends approval of this
25 award.

1 COMMISSIONER BYRON: Madam Chair, I have
2 reviewed all the material on this item, as well as the similar
3 items all the way to Item 13 and I do not believe I am going to
4 have any questions on these. We are going to move a lot of
5 money here, but these all seem to be good projects. I just
6 thought I would let you know that. And I have no questions for
7 Item 5.

8 CHAIRPERSON DOUGLAS: Thank you, Commissioner Byron.
9 And I will look at the Transportation Committee, I think you
10 both may have something to say, as we are so pleased to see
11 these items reach the Business Meeting. Maybe, if you would
12 like to, obviously we can reserve item specific questions for
13 when they come up, but general comments to make now and that
14 might expedite moving -

15 VICE CHAIR BOYD: Well, I think that is a good point.
16 I will, as Chair of the Committee, 1) thank my fellow
17 Commissioner here, who will probably have something to say for
18 his work on these projects, it has been a long path, like the
19 first item we talked about, and I will just make some comments
20 that apply to all of these, vetted to death by the
21 Transportation Committee. As we worked with staff through this
22 long arduous process that State government presents us to deal
23 in these kinds of programs and projects, but, at long last, the
24 dam is spilling water and we are going to see the fruits of the
25 efforts and start realizing some of the goals and objectives of

1 the original legislation of AB 118 that provided financing
2 to this agency for these kinds of activities to address our
3 transportation fuel, our greenhouse gas, our air quality issues
4 in California, that are so tied to the Transportation sector as
5 we seek to diversify our transportation fuel sources, as we seek
6 to innovate and encourage new technology that address those
7 kinds of goals and objectives, and this and all the other
8 projects that staff has ground through, a very public
9 competitive process to bring forward to the staff today, to this
10 Commission today, and I am just very pleased that we are here
11 this day and I am able to be here this day to see this. So this
12 is but one of many extremely positive activities and it will
13 finally allow us to address many people who have been quite
14 concerned about how is this program going, coming, what have
15 you, and we now have or are beginning to establish a substantial
16 track record. And I know this will carry into the future as
17 concurrently the same committees working with the staff on the
18 next Investment Plan, and our Advisory Committee for Investment
19 Plan for future years, and we have more years in the future to
20 do this. So, enough said. Maybe Commissioner Eggert would like
21 to add a few comments, as well, I am sure.

22 COMMISSIONER EGGERT: Sure, and thank you,
23 Commissioner. And it has been a great pleasure to serve on this
24 committee with your leadership. And sort of seeing these
25 projects come to the Business Meeting is an incredible

1 accomplishment by the staff. I would note, all of these
2 projects are in the medium- and heavy-duty category, I think
3 there is one that is specifically focused on the infrastructure
4 to serve them. And in this first project, you will note the
5 significant leverage against the Federal ARRA dollars, \$9
6 million of ours to \$17 million of the Federal dollars; this is
7 part of a number of projects which I think, if I am remembering
8 the numbers correctly, just shy of about \$40 million in 118
9 dollars matched against over \$100 million of Federal ARRA
10 dollars, and so this was part of that package of successful
11 proposals. And, actually, even another more than \$100 million
12 that was made up of other non-State and non-Federal funds to
13 match against our \$40 million, so that is quite an
14 accomplishment in and of itself. And then, I think most of the
15 subsequent projects were part of a CEC PON that we have just now
16 completed, you know, scoring and awarding. And to echo
17 Commissioner Boyd's comments about the policy goals and the fact
18 that these projects are simultaneously addressing our goals for
19 greenhouse gas reduction, petroleum reduction, and especially
20 air quality, especially in the medium- and heavy-duty sector,
21 the opportunity there is quite substantial. So, we are very
22 excited to see these come before us and looking forward to the
23 votes.

24 VICE CHAIR BOYD: I will move approval of the item.

25 COMMISSIONER EGGERT: Second.

1 CHAIRPERSON DOUGLAS: All in favor?

2 (Ayes.)

3 Item 5 is approved.

4 MR. LEVY: Chairman, pardon me. Commissioners, if the
5 Commission's desire is that you may take all of these with one
6 vote, if there are not any comments, except I note on three of
7 them, staff will have a CEQA comment put into the record. It is
8 at your discretion, you may take them one at a time, certainly,
9 or you can do it as a group.

10 VICE CHAIR BOYD: Well, having acted upon this one,
11 why don't we batch the rest of them?

12 CHAIRPERSON DOUGLAS: Which are the three that have
13 CEQA comments?

14 MS. ALLEN: There are actually two, the last two
15 infrastructure.

16 CHAIRPERSON DOUGLAS: So, 14 and 15.

17 MS. ALLEN: The next nine, which were the medium- and
18 heavy-duty, I believe there are some of the project proponents
19 that are in the audience on those. I do not know if they wanted
20 to say anything.

21 VICE CHAIR BOYD: Madam Chair, could we offer a
22 substitute motion that would encompass, I guess, Items - what -
23 5, 6, 7, 8, 9, 10, 11 -

24 MS. ALLEN: Twelve and 13.

25 VICE CHAIR BOYD: -- 12 and 13? Now, did I - I was

1 asking a question here, what are the two that have the
2 CEQA?

3 MS. ALLEN: Fourteen and 15, City of Lemoore and
4 Sacramento Regional Transit District.

5 VICE CHAIR BOYD: So if I may offer a motion on five
6 through 13 for approval, otherwise we are going to be sitting
7 here offering plaudits on each and every one of them, and the
8 agenda pretty well spells out the amounts of money involved and
9 the programs involved. I appreciate Mr. Levy's suggestion, it
10 might make for a slightly shorter meeting.

11 CHAIRPERSON DOUGLAS: I am in full agreement. Do we
12 have a second?

13 COMMISSIONER BYRON: Madam Chair, a comment. The only
14 reluctance I have is that I do not want to diminish in any way
15 Ms. Allen's work in bringing these to us, these represent \$20
16 million worth of projects, and it is not just Chuck Mizutani
17 Day, obviously, it is Ms. Allen Day here at the Commission.

18 MS. ALLEN: No, I am only the spokesperson for a large
19 group of workers.

20 COMMISSIONER BYRON: A lot of people, yes, and I just
21 do not want to diminish the staff's efforts there, but I think
22 this would be expeditious so that we can get through these more
23 quickly.

24 MS. JONES: And I can assure you from Agenda review
25 that Jennifer did a wonderful job presenting all these items.

1 VICE CHAIR BOYD: So Commissioner Eggert and I
2 have worked, it seems like, almost daily with Jennifer for a
3 long long time, so -

4 MR. LEVY: And, Commissioners, if you are going to
5 take these as a group, I would recommend that you invite those
6 folks who have submitted a card.

7 CHAIRPERSON DOUGLAS: We will. So, we have a motion
8 and a second from Commissioner Eggert, is that correct? All in
9 favor?

10 (Ayes.)

11 Very good. Items 5 through 13 have just been
12 approved.

13 Now, is there anybody in the audience who is
14 associated with a grant, an awardee in Items 5 through 13, or
15 would like to make comment out of general interest on these
16 items? Very well.

17 We will move on to Item 14.

18 VICE CHAIR BOYD: I am going to have to change my
19 preference for sodas, though. I have been a Pepsi generation
20 guy for a long time, and now we have this Coca-Cola enterprise
21 proposal in here, so I will have to think twice about my
22 selections in the future.

23 COMMISSIONER EGGERT: Maybe we can invite Pepsi to
24 join the project concept in the future here.

25 MR. LEVY: Chairman, for the record, were there cards

1 on items 13 through -

2 CHAIRPERSON DOUGLAS: No, there were no cards on those
3 items.

4 MR. LEVY: Okay, thank you.

5 CHAIRPERSON DOUGLAS: Item 14. City Of Lemoore.
6 Possible approval of grant agreement ARV-09-019, awarding
7 \$200,000 to the City of Lemoore. Ms. Allen.

8 MS. ALLEN: This project, 14 and 15, were from the
9 infrastructure solicitation. And the City of Lemoore is the
10 City of Lemoore and the Lemoore Area School Transportation
11 Services, and this would be for the construction of a compressed
12 natural gas fueling station. The school districts in the area,
13 the area has very poor air quality, and there is a large
14 percentage of their student population has to use inhalers. The
15 proposal said three out of five carry an inhaler, on average,
16 and they are switching over their busses to natural gas, but we
17 are short the funds for the natural gas fueling. And they
18 received a private donation from a local business for \$465,405
19 towards the construction of the natural gas station, but they
20 were still short \$200,000. So, they came in to us with a grant
21 application. And we are proposing funding the \$200,000 to allow
22 them to put in the natural gas fueling. It will also serve the
23 City of Lemoore vehicles, as well as the school buses and, if
24 any transit, other use, requires it, they will open it up for
25 public use.

1 CHAIRPERSON DOUGLAS: Thank you, Ms. Allen. Go
2 ahead, Ms. Webster-Hawkins.

3 MS. WEBSTER-HAWKINS: Ms. Chairman and Commissioners,
4 Renee Webster-Hawkins in the Legal Office. And as was indicated
5 prior, this item, as well as Item 15, have CEQA findings that
6 staff is proposing that the Commission make. Just as background
7 for both of these items, these were projects that have already
8 been considered for approval, as well as for environmental
9 review by local jurisdictions which have served as the lead
10 agencies under the California Environmental Quality Act for the
11 City of Lemoore. It is the City of Lemoore which is acting as
12 the lead agency for Item 15. It is the Sacramento Regional
13 Transit District itself, as a public agency, that is served as a
14 lead agency. In both cases, the lead agencies found that there
15 were potentially significant environmental impacts associated
16 with the installation activities, but that any potential effects
17 would be adequately mitigated by mitigation measures that were
18 imposed by those lead agencies. Under CEQA, the California
19 Energy Commission is a responsible agency since there is a local
20 lead agency that has taken the lead on the environmental review.
21 For the City of Lemoore, the City has adopted a mitigated
22 negative declaration, and so, because of that, we have to assume
23 as a responsible agency that that document is legally adequate,
24 but we undertake our own independent analysis of the
25 environmental impacts and any mitigation required. Staff has

1 conducted that review and analysis of the Mitigated
2 Negative Declaration, and we are recommending that the
3 Commission make an independent finding that any potentially
4 significant environmental effects to the physical environment
5 from the installation activities of this project have been
6 adequately mitigated and reduce to a level of insignificant
7 through the mitigation measures required by the lead agency.
8 So, in sum, the staff is proposing that, as part of your
9 approval, that you make an independent finding to that regard.

10 CHAIRPERSON DOUGLAS: Thank you, Ms. Webster-Hawkins.
11 And did your remarks cover, then, Items 14 and 15?

12 MS. WEBSTER-HAWKINS: That is correct. In the case of
13 Item 15, there was a Mitigated Neg Dec and it has been recently
14 amended through an addendum, but all other comments are
15 applicable to that project, as well.

16 CHAIRPERSON DOUGLAS: All right, thank you.
17 Commissioners, we are on Item 14. Do we have comments,
18 questions, or a motion?

19 VICE CHAIR BOYD: Madam Chair, do we need to make a
20 separate motion with regard to the staff's recommended Negative
21 Declaration on Item 14? Or is it included in -

22 CHAIRPERSON DOUGLAS: I think it is included in the
23 record.

24 VICE CHAIR BOYD: If there is no further questions, I
25 will move approval of Item 14 and incorporating the staff's

1 findings with regard to the CEQA consequences.

2 COMMISSIONER EGGERT: I will second.

3 CHAIRPERSON DOUGLAS: All in favor?

4 (Ayes.)

5 Item 14 is approved.

6 Item 15. Sacramento Regional Transit District.

7 Possible approval of Grant Agreement ARV-09-018, awarding
8 \$500,000 to Sacramento Regional Transit District. Ms. Allen.

9 MS. ALLEN: Sacramento Regional Transit District is
10 requesting \$500,000 in grant award funding, and this is for
11 three Fast-Fill, these are compressed natural gas dispensers,
12 and this would be 1,500 standard cubic feet per minute, and this
13 will allow them to be able to fuel their 240 natural gas bus
14 fleet in about five to seven minutes per bus, so that they can
15 do all the buses within a day, within an eight-hour period. And
16 the fueling stations will also be made available to the Twin
17 Rivers Unified School District and to any neighboring transit
18 agencies that would require natural gas fueling. And they will
19 match the \$500,000 with \$4.2 million in private match. And the
20 dispensers will be at their bus maintenance facility located at
21 the McClellan Park in Sacramento. Staff recommends funding for
22 this project.

23 CHAIRPERSON DOUGLAS: Commissioners?

24 VICE CHAIR BOYD: I have no questions, and hearing
25 none, I will move approval of this item and incorporating the

1 staff's CEQA findings into that motion.

2 COMMISSIONER EGGERT: Second.

3 CHAIRPERSON DOUGLAS: All in favor?

4 (Ayes.)

5 Item 15 is approved. Thank you, Ms. Allen.

6 MS. ALLEN: Thank you.

7 CHAIRPERSON DOUGLAS: Is there any - I do not have any
8 cards, but is there any public comment on either of these Items
9 14 or 15? Very well.

10 Item 16. County Of Los Angeles Internal Services
11 Department. Possible approval of Contract 400-09-024 for \$8
12 million with the County of Los Angeles Internal Services
13 Department to provide comprehensive residential energy retrofits
14 to single family and multifamily homes in Los Angeles County.
15 Mr. Lerman.

16 MR. LERMAN: Good morning, Commissioners. This item
17 is a request for approval of an \$8 million contract using ARRA-
18 EECBG funds to provide retrofits to single-family and multiple-
19 family homes in the County of Los Angeles. The prime contractor
20 is the County of Los Angeles Internal Services Department, and
21 they will be subcontracting work to Vermeer Construction
22 Management and Bevilagua-Knight, Inc. The program will use an
23 aggressive retrofit strategy that seeks to obtain a minimum 20
24 percent energy savings, on average. Uses for ARRA funds include
25 refining marketing and outreach strategies, establishing

1 contractor scholarship for BPI and HERS trainings, and
2 developing workshops for directing stakeholders and contractors
3 into the program. The contractor seeks to spur program
4 participation through an extensive network of homeowner
5 incentives that includes PACE financing and utility rebates.
6 Workforce development strategies involve close coordination with
7 local workforce investment boards, utility training centers,
8 community college districts, and Build It Green. Residential
9 training and certification will conform to the National Home
10 Performance with Energy Star Program Guidelines, the Building
11 Performance Institute Standards, and HERS 2 Requirements.

12 The contractor estimates this program will have an
13 annual electricity savings of over 11 million kilowatt hours and
14 an annual natural gas savings of over 900,000 therms. Based on
15 these contractor estimated energy savings, this program is
16 estimated to reduce greenhouse gas emissions by over 10,000 tons
17 of carbon dioxide annually. So, I request your approval of this
18 item.

19 MS. WEBSTER-HAWKINS: Chairman Douglas, if I may also?

20 CHAIRPERSON DOUGLAS: Please.

21 MS. WEBSTER-HAWKINS: In the spirit of addressing some
22 of the items on the agenda today as a batch, items 16, 17 and 18
23 that you will be hearing from are all, as Mr. Lerman indicated,
24 funded under the EECBG Block Grant from the Department of
25 Energy, and just as a technical matter, these three items, these

1 projects have been submitted to DOE for their approval as
2 an amendment to our State Plan for that Block Grant, and staff
3 has had numerous discussions with the Program Manager at DOE
4 and, at this point, we are simply awaiting the administrative
5 approval of the amendment to the State Plan, so, if the
6 Commission was to approve these projects, we would recommend
7 that it be expressly contingent upon the approval from DOE of
8 that State Plan.

9 CHAIRPERSON DOUGLAS: Thank you, Ms. Webster-Hawkins.
10 Commissioners?

11 VICE CHAIR BOYD: Well, a question is when do we
12 expect approval by DOE of that State Plan? Do you have an idea?

13 MS. WEBSTER-HAWKINS: Based on conversations, we had
14 hoped to have it, except some vacation schedules of our Federal
15 counterparts intervened, but we expect it within a week or so.

16 VICE CHAIR BOYD: Okay, very good.

17 COMMISSIONER EGGERT: Yeah, I was just going to make a
18 quick comment. I would expect that we would get approval, given
19 sort of the nature of this project and its consistency with the
20 goals of ARRA and the EECBG Program goals. But I wanted to make
21 just a quick comment about the staff that were working on these
22 three grants, I mean, this is, I think, a tremendous
23 accomplishment in a very short period of time to work with the
24 relevant parties to come up with a very comprehensive and -
25 basically a comprehensive program that touches on a lot of the

1 elements that we are trying to establish across the state
2 with respect to retrofit activity for both commercial and
3 residential facilities and, so, again, I am just looking at some
4 of the details of this one, in particular, and the links through
5 the Workforce Investment Boards, the local economic development
6 activities, the links back to some of the infrastructure we are
7 trying to establish for 758 in relation to HERS; again, I think
8 this is just a tremendous program, and I know it is largely due
9 to the staff's working with the Applicants in these cases, in a
10 very short period of time. So I just want to commend you for
11 that effort. And unless there are further questions, I would
12 move the item.

13 CHAIRPERSON DOUGLAS: Is there a second?

14 COMMISSIONER BYRON: Madam Chair, I second it. I
15 believe, with the condition that it is dependent upon the DOE
16 approval.

17 CHAIRPERSON DOUGLAS: That is correct, thank you for
18 that contingent upon the DOE approval, thanks for that
19 clarification. All in favor?

20 (Ayes.)

21 Item 16 is approved.

22 MR. LERMAN: Thank you.

23 CHAIRPERSON DOUGLAS: Item 17. City Of Fresno.
24 Possible approval of Contract 400-09-032 for \$1,899,899 with
25 the City of Fresno to expand energy efficiency ratings in Fresno

1 and Kern counties, and to train and develop a highly
2 skilled workforce to perform home energy retrofits throughout
3 the San Joaquin Valley region. Ms. Lam.

4 MS. LAM: Yes. Good afternoon, Chairman Douglas and
5 Commissioners. I am Helen Lam from the Efficiency and
6 Renewables Division. And the item before you, it is a request
7 for the approval of an intergovernmental contract for
8 approximately \$1.9 million in the ARRA-EECBG fund to establish
9 the Fresno Regional Comprehensive Residential Retrofit Program,
10 to expand home energy audits and ratings in the Fresno and Kern
11 County Areas. The Program will provide \$39.2 million in
12 leveraged funds, \$37.5 million of which will come from
13 anticipated private financing by the participating homeowners.
14 The program will leverage the City of Fresno's existing efforts
15 in its Energy Survey Program to increase capacity in the private
16 sector to carry successful large scale deployment of residential
17 energy efficiency retrofits as a regional priority in Fresno and
18 Kern Counties. The program will retrofit 1,500 single-family
19 homes, provide training and support to develop a workforce for
20 whole homes, retrofits, and build and engage a local
21 infrastructure for building performance contractors and home
22 energy raters to provide energy audits and ratings, as well as
23 quality assurance of retrofits.

24 The Fresno retrofit program will build on the concepts
25 of HERS 2 and Home Performance Energy Star to deliver a

1 comprehensive, whole house energy efficiency to a home.
2 The program will collaborate with local workforce investment
3 boards, community colleges, and organizations receiving ARRA SEP
4 Green Jobs Training Program Grants, as well as local and
5 regional programs providing ARRA, SEP and HUD financing such as
6 PACE financing and Neighborhood Stabilization Program Energy
7 Efficiency Mortgage, and FHA 203K financing. The program will
8 collaborate with national and state comprehensive residential
9 building energy efficiency retrofit programs, including Home
10 Performance Energy Star, Building Performance Industry
11 Standards, Certification and Accreditations, and Utility Whole
12 House Retrofit Programs.

13 The City of Fresno estimates that the program will
14 create 447 jobs based on the Department of Energy's Provider
15 Formula, and save 4,460 megawatt hours of electricity, and over
16 212,000 Therms of gas savings per year. Based on these
17 estimated energy savings, the Fresno Retrofit Program is
18 expected to reduce greenhouse gas emissions by 3,206 tons of CO₂
19 equivalents annually. Therefore, I request your approval of
20 this contract with the City of Fresno.

21 CHAIRPERSON DOUGLAS: Thank you, Ms. Lam.

22 Commissioners, questions or comments?

23 COMMISSIONER BYRON: Madam Chair, I move approval of
24 Item 17 with the same condition, that it is dependent upon DOE
25 approval.

1 COMMISSIONER EGGERT: Second.

2 CHAIRPERSON DOUGLAS: All in favor?

3 (Ayes.)

4 MS. LAM: Thank you.

5 CHAIRPERSON DOUGLAS: Thank you. Item 17 is approved.

6 Item 18. County Of San Diego. Possible approval of
7 Contract 400-09-031 for \$3 million with the County of San Diego
8 to design and implement a comprehensive residential building
9 retrofit program for the San Diego region. Ms. Eden.

10 MS. EDEN: Good afternoon, good lunchtime
11 Commissioners, Madam Chairman. I am Devorah Eden with the High
12 Performance Building Standards Development Office, and this is
13 the third of the three proposed intergovernmental contracts
14 using the Energy Efficiency Conservation Block Grant funds.
15 This proposed contract with the County of San Diego is for \$3
16 million, there is a lot of leveraging of funds for this proposed
17 contract, over \$4 million for incentives to do energy audits in
18 residential and multi-family buildings, approximately \$1.5
19 million in workforce development, job development, and another
20 \$37 million estimated that would be in the form of tax credits,
21 IOU rebates from their programs, and PACE financing. The
22 proposed contract's goal is to retrofit 1,000 single-family
23 homes and 1,000 multi-family units, so they are targeting both
24 single-family and multi-family buildings. The prime contractor,
25 of course, is the County of San Diego, and subcontractors

1 include the Heshama Home Group [phonetic], who will be
2 covering the multi-family part of it, and California Center for
3 Sustainable Energy is covering the single-family portion. So,
4 in addition to the audits they intend to do and the retrofits,
5 they are also intending to launch their PACE program in the San
6 Diego Region. Their plan is to train Home Performance
7 Contractors and HERS Raters, Auditors, and Inspectors to develop
8 that workforce in the San Diego Region. They are also intending
9 to extend the HERS Phase 2 Audit Tool to include multi-family
10 low-rise and high-rise buildings, so that is an important tool
11 to be developed, that will benefit the whole State of
12 California. So, we are asking you to approve this and I am
13 happy to answer any questions.

14 CHAIRPERSON DOUGLAS: Thank you, Ms. Eden. Questions?

15 COMMISSIONER EGGERT: A couple of quick comments on
16 this one, in particular, and you had mentioned that there is the
17 targeting of multi-family units, which is one of the more
18 challenging areas for energy efficiency retrofits, so, again, we
19 will be very interested in sort of tracking the success of that
20 effort. I also note that this carries a little over - well,
21 almost \$3 million leveraged against the IOU Programs, Investor
22 Owned Utility Programs for whole house lighting, water, energy
23 programs, etc. And I think it is very important for these
24 programs to maximize that leverage against some of the existing
25 utility incentives, to really further the goals of the program

1 and achieve the maximum level of savings. So, just a
2 quick comment, and unless there are questions, I would move the
3 item with, again, the amendment that it is contingent on the DOE
4 approval.

5 VICE CHAIR BOYD: I will second the motion.

6 CHAIRPERSON DOUGLAS: All in favor?

7 (Ayes.)

8 Item 18 is approved. Thank you, Ms. Eden.

9 Item 19. County Of Sonoma. Possible approval of
10 Contract 400-09-030 for \$2,537,000 with the County of Sonoma to
11 augment and improve an existing program that provides Property-
12 Assessed Clean Energy (PACE) financing. Ms. Gould.

13 MS. GOULD: Good afternoon, Chairman and
14 Commissioners. My name is Angie Gould and I am the Municipal
15 Financing Program Lead. I am here to ask for provisional
16 approval of a contract with Sonoma County to upgrade the Sonoma
17 County Energy Independence Program, which is their existing
18 Property Assessed Clean Energy, or PACE Program. This contract
19 will be funded by American Recovery and Reinvestment Act funds
20 allocated to the Energy Commission through the U.S. Department
21 of Energy's State Energy Program, or SEP. The approximately
22 \$2.5 million in SEP funds will be used to finance an update of
23 the existing program that will include HERS 2 audits, the
24 requirement of energy efficiency upgrades as a condition of
25 financing solar, expanded marketing and online tracking and

1 reporting tool, expanded water conservation measures, and
2 a regional bonding strategy with the six-county North Coast
3 Energy Independence Program.

4 These funds will leverage a committed \$103.78 million
5 from Sonoma County agencies and a workforce investment grant, as
6 well as an additional expected \$2.67 million in utility rebates
7 and tax incentives. This program has a targeted retrofitting of
8 2,500 residential buildings and will create an estimated 1,185
9 jobs in California over the contract period, which ends March
10 31st, 2010.

11 The Sonoma County Energy Independence Program is the
12 first county-wide PACE program in the state, and is met with
13 enthusiasm and acclaim. The in-place program already has had a
14 transformative effect on economic recovery in the county through
15 documented job creation and it provides a model for efficient
16 use of governmental funds that can be adopted successfully by
17 other jurisdictions across California and the nation. The
18 requested SEP funds will enable this program to align with
19 emerging best practices for PACE programs, as well as expanding
20 water conservation and streamlining the financing and program
21 operations to increase the effectiveness of the program and the
22 benefits to program participants. So, with that, I ask that you
23 provisionally approve this contract with Sonoma County.

24 MR. LEVY: Commissioners, this contract, when Ms.
25 Gould says "provisionally," this is the last of the 401

1 contracts, and so this approval would be contingent upon
2 the outcome of the Western Riverside Council of Governments
3 litigation, which is pending currently.

4 CHAIRPERSON DOUGLAS: Thank you for that
5 clarification, Mr. Levy.

6 COMMISSIONER BYRON: A quick comment. Something is
7 going on in the County of Sonoma. I note, Ms. Gould, that you
8 state the problem is the contractor wants to move the program to
9 the next level in integrating audits technology refinancing
10 mechanisms and a more robust water element. And the fact, I
11 believe you said, it is the first of the PACE programs?

12 MS. GOULD: I am sorry, the first PACE program in the
13 state that is county-wide.

14 COMMISSIONER BYRON: And the number of jobs that are
15 being created from this, obviously a very active county
16 government. I am very pleased to see this project. Thank you
17 for bringing it to us. No questions.

18 VICE CHAIR BOYD: I would just comment that, earlier
19 this year, through the auspices of the Local Government
20 Commission, I got introduced to the folks in Sonoma County,
21 spent some time learning about their program, and what have you,
22 along with a lot of other local elected officials, and I would
23 agree, most impressive, what they are doing. And they are a
24 model for many other local governments who are indeed trying to
25 follow that model and learn lessons from Sonoma County. So, I

1 am very pleased to see us in there moving, helping them
2 move their program along because it is a model and, as it moves
3 to another level, it just means the model is modified for others
4 to follow to yet another level. So this seems like a very great
5 program. As we have indicated in the past here, PACE Programs
6 are something of extreme interest to us. So, Sonoma County is
7 leading the way and that is very positive for the future of
8 these types of activities.

9 COMMISSIONER BYRON: Madam Chair, I move Item 19 for
10 approval with the hope that we can free up the funds for this as
11 soon as possible.

12 VICE CHAIR BOYD: Provisional approval, I believe.

13 COMMISSIONER BYRON: Correct.

14 CHAIRPERSON DOUGLAS: That is right. Is there a
15 second?

16 COMMISSIONER EGGERT: Second.

17 CHAIRPERSON DOUGLAS: Second by Commissioner Eggert.

18 All in favor?

19 (Ayes.)

20 Item 19 is approved.

21 MS. GOULD: Thank you. And I believe that John Hague
22 from Sonoma County may be on the phone and wishes to comment
23 now, no? Okay, thank you.

24 CHAIRPERSON DOUGLAS: Item 20. City Of Watsonville.

25 Possible approval of Agreement 011-09-ECA for a loan of \$756,984

1 to the City of Watsonville to retrofit the city's high
2 pressure sodium street lighting system. Mr. Suleiman.

3 MR. SULEIMAN: Good morning, everyone. My name is
4 Adel Suleiman and I am with the Special Projects Office here at
5 the Commission. This loan request will provide the City of
6 Watsonville with sufficient funding to convert all of the 1,400
7 street lights from the old technology of high pressure sodium
8 lamps to the new efficient and long lasting LED lamps. Once
9 completed, this project will save the City over \$68,000 annually
10 in reduced energy costs, and hundreds of thousands of dollars
11 more in maintenance costs over the life of the project. Energy
12 consumption will also be reduced by 551,000 kilowatt hours
13 annually, which is equivalent of removing 190 tons of carbon
14 dioxide from the environment. Pollution will also be greatly
15 reduced due to the full cut-off design of the new LED fixtures.

16 The total project cost is estimated at \$892,000, in
17 which \$756,000 will be funded by this loan request form the
18 Energy Conservation Assistant Act, ECAA funds. Pacific Gas and
19 Electric, serving electricity for the City, will provide
20 approximately \$135,000 in cash incentives. This project has an
21 11-years payback and complies with all requirements of the loan
22 under the Energy Commission Loan Program funds. I am seeking
23 your approval on this loan item, and I will be happy to answer
24 any questions you might have.

25 CHAIRPERSON DOUGLAS: Thank you, Mr. Suleiman.

1 Questions or comments?

2 COMMISSIONER EGGERT: I will move the item.

3 COMMISSIONER BYRON: Second.

4 CHAIRPERSON DOUGLAS: All in favor?

5 (Ayes.)

6 Item 20 is approved. Thank you, Mr. Suleiman.

7 Item 21 has been pulled from this agenda, so - I did
8 forget to say that at the beginning of the meeting, I hope
9 nobody has been sitting here for the past -

10 MR. LEVY: Commissioners, like the previous batch,
11 Items 22 through 26 are all related items, as well, and the
12 Commission may choose to consider taking them up as a group.

13 CHAIRPERSON DOUGLAS: That is right, and my
14 understanding is that - that is definitely correct. So, why
15 don't we - Commissioners, would you like a general presentation
16 of these items, in particular, the funding source, the reason
17 for moving forward with them?

18 COMMISSIONER BYRON: Madam Chair, I have no objection.
19 I just want to again reiterate - I hope it takes nothing away
20 from Mr. Shaw in bringing these all before us today.

21 MS. JONES: He also did a very good job in his
22 presentation.

23 CHAIRPERSON DOUGLAS: Mr. Shaw, please begin - for
24 Items 22 through 26.

25 MR. SHAW: Good afternoon, Chairman Douglas,

1 Commissioners, and Audience. I am Lance D. Shaw from the
2 Efficiency and Renewable Energy Division. This afternoon, I
3 will be presenting these five items, Item 22 through 26. Each
4 of these for your consideration of your approval, they involve
5 best practices, workshops, and in some cases energy use site
6 assessments. All five are funded by a grant through U.S.
7 Department of Energy, and as part of the Energy Policy Act of
8 2005.

9 The intent in this part is to reduce the energy use
10 consumption in the industrial sector by at least 2.5 percent per
11 year between 2007 and 2016. The workshops, which are required
12 by the U.S. Department of Energy Grant, require that the
13 instructors be Best Practices Qualified Instructors. These are
14 contracts for five of them. They are, in most cases, one day
15 events, and in some cases, they are two-day events. The demand
16 for these gentlemen - they are all men - is very high nationwide
17 and in some cases worldwide, and that is the reason why we are
18 asking that the contracts run through May of 2013. We work with
19 utility partners who schedule these workshops and market them
20 through their reps to recommend people to come to these
21 workshops. They are held in places such as San Francisco,
22 Stockton, Bakersfield, San Ramon at PG&E facilities, SMUD, here
23 in Sacramento, Lodi in the case of Lodi Electric, Downey in the
24 case of Southern California Gas, and Irwindale in the case of
25 Southern California Edison. They are in five different

1 categories, pumping systems is Item 22 for \$30,000, this
2 includes the workshops, site assessment, travel - you said take
3 them together, correct? Item 23 is for fan motor systems, Item
4 24 for process heating systems, Item 25, compressed air systems,
5 Item 26 for steam systems. We request your approval, please.

6 CHAIRPERSON DOUGLAS: Thank you, Mr. Shaw, that was a
7 great presentation. Commissioners?

8 COMMISSIONER EGGERT: I really appreciate it, Mr.
9 Shaw. I guess a question, you said this extended through 2013,
10 the contracts?

11 MR. SHAW: We ask that the contracts run through 2013.
12 The reason is for scheduling. As an example for today, end of
13 the month, end of the quarter, there would be no one in the
14 workshop.

15 COMMISSIONER EGGERT: Gotcha. And is the funding for
16 these would be - would it have to be sort of regularly
17 appropriated for the purposes of -

18 MR. SHAW: We have asked that the funds be made
19 available, so they are available. This is a 100 percent
20 leverage.

21 COMMISSIONER EGGERT: Okay, excellent. And do we - I
22 mean, these look like good training activities and it sounds
23 like we are taking advantage of some of the best technical
24 trainers, as you mentioned. Do these programs sort of capture
25 from the participants - do they do sort of reviews of the

1 classes?

2 MR. SHAW: Correct. We do get performance
3 evaluations. If I may say so, these are the best of the best.
4 I have trained in industry, I have trained trainers. These guys
5 are good, 1) they have the roster of who is attending, they
6 tailor it, it is interactive, and these folks usually do not
7 take lunch, they grab a lunch and they are there to interact.
8 It is really good.

9 COMMISSIONER EGGERT: That is great. And in terms of
10 the number of folks that have been trained, or anticipated, the
11 statistics on that, is that available, as well?

12 MR. SHAW: Correct. We do get the feedback from our
13 utility hosts.

14 COMMISSIONER EGGERT: Okay, thank you.

15 MR. SHAW: It is a win-win for everybody.

16 COMMISSIONER EGGERT: No, it sounds like a great
17 activity, thank you. And I guess I will move approval unless
18 there are other question.

19 VICE CHAIR BOYD: I will second it.

20 CHAIRPERSON DOUGLAS: All in favor?

21 (Ayes.)

22 Items 22 through 26 are approved, thank you very much.

23 MR. SHAW: Thank you.

24 COMMISSIONER BYRON: Excellent presentation, Mr. Shaw.

25 MR. SHAW: Thank you.

1 CHAIRPERSON DOUGLAS: Item 27. Contractors
2 State License Board. Possible approval of Contract 400-10-001, a
3 Memorandum of Understanding (MOU) to define primary roles and
4 responsibilities of the Energy Commission and the Contractors
5 State License Board. Mr. Jensen.

6 MR. JENSEN: Thank you. Good afternoon. My name is
7 Erik Jensen, I am in the Building Standards Implementation
8 Office, and I am the Contract Manager for this project. The
9 staff of the Building Standards Implementation Office is
10 requesting approval of a Memorandum of Understanding between the
11 Energy Commission and the Contractor State License Board, or
12 CSLB.

13 The Energy Commission promotes energy efficiency by
14 adopting and publishing the Building Energy Efficiency
15 Standards, Appliance Efficiency Regulations, and Home Energy
16 Rating System Regulations. CSLB protects consumers by licensing
17 and regulating California's construction industry and has the
18 authority to discipline contractors involved in building
19 construction. Previous cooperation between the Energy
20 Commission and CSLB led to sting operations in February and
21 March, resulting in six citations and two pending citations
22 related to compliance with the Building Energy Efficiency
23 Standards.

24 The overall purpose of this MOU will be to increase
25 permitting of projects involving the standards and regulations.

1 Very generally, the Energy Commission will develop
2 informational materials intended for contractors and homeowners,
3 and CSLB will help distribute those materials. This MOU will
4 give the Energy Commission a larger voice to communicate the
5 standards and regulations through another respected agency with
6 extensive communication access to contractors, and therefore
7 ultimately to building owners, and the MOU will also support
8 CSLB's mission, which includes ensuring that construction is
9 performed in a competent and professional manner, providing
10 resolution to disputes that arise from construction activities,
11 and educating consumers to make informed choices. Therefore, we
12 request approval of the MOU.

13 CHAIRPERSON DOUGLAS: Thank you. Commissioners.

14 VICE CHAIR BOYD: No questions. I will defer to
15 Commissioner Eggert.

16 COMMISSIONER EGGERT: No questions here, and I guess I
17 would move the item unless there are -

18 VICE CHAIR BOYD: I will second it.

19 CHAIRPERSON DOUGLAS: All in favor?

20 (Ayes.)

21 Item 27 is approved. Thank you, Mr. Jensen.

22 MR. JENSEN: Thank you.

23 CHAIRPERSON DOUGLAS: Item 28. Minutes. Approval of
24 the June 23rd, 2010 Business Meeting Minutes.

25 COMMISSIONER BYRON: Move approval.

1 COMMISSIONER EGGERT: Second.

2 CHAIRPERSON DOUGLAS: All in favor?

3 (Ayes.)

4 VICE CHAIR BOYD: Abstain, being absent.

5 CHAIRPERON DOUGLAS: The Minutes are approved with
6 Commissioner Boyd abstaining.

7 Item 29. Commission Committee Presentations and
8 Discussion. Is there any discussion?

9 COMMISSIONER EGGERT: Actually, I was going to invite
10 a discussion on the process by which we withdraw, or we consider
11 withdrawal from the siting process, and actually I think I see
12 Raoul out there. So, this is something that has come up, we
13 recently received a request for a withdrawal from the
14 Application process from the San Joaquin Solar I and II, and I
15 guess normally there is - this was actually brought before the
16 Commission for a Decision, and as we were sort of discussing
17 that through this particular case, the question was posed as to
18 whether or not that is something we needed to continue because,
19 I guess, there is really - the argument for not bringing it
20 forth for a Decision is that there is really no decision, I
21 mean, we do not really have any other choice but to sort of
22 honor the request for withdrawal. I think, you know, probably
23 the one argument for continuing it, or at least having the
24 opportunity to have a discussion or provide questions about the
25 reasons for withdrawal was sort of brought forth in that

1 discussion, as well. But I wanted to just sort of pose
2 that here. I know it was discussed, as well, in the Siting
3 Committee. So I do not know if there is something you want to
4 add, Chairman?

5 CHAIRPERSON DOUGLAS: I was going to ask Hearing
6 Officer Renaud to just brief the Commission on his research as
7 to what our regulations actually say about this process.

8 MR. RENAUD: All right, thank you, that would be my
9 pleasure. In the regulations, in particular, one is 1709.8,
10 that deals with withdrawals, these would be a voluntary
11 withdrawal where an Applicant decides to pull their Application
12 for Certification. And the section simply provides that, upon
13 receipt of a duly executed Notice of Withdrawal, the presiding
14 member shall issue a written Order terminating the proceedings.
15 And in this case, that would be Commissioner Eggert, and that is
16 the end of it. The Order is to ask that the Docket Unit close
17 the docket, but continue to maintain the documents of the
18 proceeding. What apparently has been done traditionally here,
19 in addition to that procedure, was to bring the matter forward
20 to the full Commission at a Business Meeting for what has been
21 called "Ratification." And there really is not any regulatory
22 basis for that, it is quite understandable perhaps that
23 Commissioners would be interested in learning about the
24 withdrawal and the reasons for it, but that can certainly be
25 addressed in this manner, too, as part of the Siting Committee

1 Report. So, we are simply suggesting that we go back to
2 following the regulation and streamlining the process, not that
3 it happens all that often, but taking away one layer of
4 additional work, and one more form of agenda item from already
5 crowded agendas.

6 CHAIRPERSON DOUGLAS: Commissioners, Commissioner
7 Eggert brought this question to me and I thought that, clearly,
8 our regulations would permit this, and from a practical
9 standpoint, there is little that we can do once somebody has
10 chosen to withdraw from our process, it is not as if we are
11 going to make an effort to convince them from the dais to
12 withdraw their withdrawal; and, on the other hand, I did not
13 think it was appropriate to make an abrupt change in our process
14 without a public discussion and certain notice that that is how
15 it would be done, and there is also the opportunity when this is
16 noticed before us that we might have, for the full Commission to
17 interact with the Applicant, and discuss the reasons for the
18 withdrawal, which is of some benefit. Of course, the Applicant
19 need not necessarily be there since, in some cases, they might
20 not be.

21 VICE CHAIR BOYD: I, for one, appreciate your bringing
22 this issue to us, and I would certainly agree to have the full
23 Commission ratify the action, it is rather redundant, based on
24 what I hear. But, I, for one, would appreciate if maybe in the
25 form of Commission Committee Presentations or something, at

1 least the fact that something like that has occurred with
2 regard to a specific case, and just a tiny little bit about the
3 reasoning for it, would be of interest to me and perhaps other
4 Commissioners, just to know what is going on out there that has
5 affected a case, but that, you know, may have some significance
6 for other cases in the future, or may trigger in our minds a
7 thought about a need not to address the specific case, but maybe
8 something, if a problem has arisen, there may be a need, or may
9 be a desire, or it may be beneficial even to think about maybe
10 we should pursue that issue through some other action, than to
11 try to stimulate some changes. In the case of this particular
12 project, which I happened to sit with the Commissioner on, not
13 wanting to say anything that would have rendered any kind of
14 indication of how I might have voted on the case, but
15 nonetheless, since it did involve the use of biomass, and as the
16 biomass freak up here, I was kind of disappointed that any
17 project that might use California biomass has unfortunately
18 fallen by the wayside, and so I, for one, and Commissioner
19 Eggert and I have talked about we may have a desire to pursue
20 the question of whether this agency and/or the other state
21 activities involved in the subject of biomass, such as the
22 Interagency Working Groups, such as our own sponsored
23 collaborative at U.C. Davis, could contribute anything to the
24 issue with regard to helping assure supplies of material for any
25 developer in the future who might want to build a facility that

1 is going to utilize in some fashion even partially, as
2 this one would, biomass as a fuel resource. So, if we at least
3 talk about it here, it might stimulate some of that kind of
4 thought.

5 COMMISSIONER EGGERT: Right, and just to expand real
6 briefly on that, one of the reasons for the withdrawal that was
7 provided was specifically the lack of a reliable supply of
8 biomass, which is sort of, I think, more general concern that we
9 would have across a number of different policy activities here
10 within the Commission.

11 CHAIRPERSON DOUGLAS: I should have noted and had
12 neglected to, we also discussed this at some length in the
13 Siting Committee, and I do think that it could be appropriate to
14 ask Applicants who have expressed their intention to withdraw if
15 they would be interested in providing public comment at the
16 Commission, and that might provide them with an opportunity to
17 provide their perspective directly if they would like to do
18 that.

19 VICE CHAIR BOYD: And if they would choose not to make
20 a public appearance, if, as a minimum, they would like to
21 provide some written explanation that could be shared with the
22 Commission staff and Commissioners.

23 MR. RENAUD: In this case, I should tell you that I
24 spoke with Greg Wheatland this morning, he was the attorney for
25 the Applicant. And he asked that what be conveyed to you is

1 that the reasons for withdrawal were, first, the concern
2 over reliability and availability of biomass supply, and second,
3 the lack of a Power Purchase Agreement. He asked specifically
4 that I tell you that those two things led to the Applicant's
5 decision to withdraw here.

6 VICE CHAIR BOYD: The latter can be rather deadly.
7 The former is a concern - was it a concern on the part of the
8 Applicant of recognizing that they may not be able to have a
9 reliable source? Or, was it a concern, for instance, on the
10 part of our staff?

11 MR. RENAUD: Mr. Wheatland said that it was - there
12 was not clarity on how much, to what extent the reliability of
13 the supply needed to be proven. Staff obviously has to study
14 reliability, and to what extent - how much proof there needed to
15 be as to the availability of the biomass, I think, was at issue.
16 It seems to me that, if that should arise in the future, or if
17 it had been brought to the Committee's attention at this point,
18 we probably could have had some sort of a sub-proceeding where
19 parties would brief that issue and the Commission could give an
20 indication of the extent of proof it would require of the
21 reliability and availability of supply. But that did not happen
22 in this case. But, to some extent, that is a legal question,
23 though, as to how much proof would be required to establish a
24 reliable supply.

25 COMMISSIONER EGGERT: Right, so there really is

1 actually potentially two distinct issues here, one is the
2 Applicant's concern about the reliability of supply, the other
3 is that aspect as a part of the review process through the
4 Siting Committee, which I think are both very interesting
5 questions.

6 VICE CHAIR BOYD: I would note in this room a few
7 weeks ago, there was a workshop held by this agency, but in
8 conjunction with and for the Interagency Biomass Working Group,
9 and we just recently went through kind of the results of that
10 workshop, and one of the major issues that came up in that
11 workshop was a concern about supply and reliable supply, so it
12 is a problem that the industry and multiple agencies are aware
13 of, and I just hope that somehow or another we can address that
14 for the future.

15 CHAIRPERSON DOUGLAS: Mr. Levy, did you have a comment
16 on this item?

17 MR. LEVY: Yes, I did, just to support the
18 Commission's comments about the redundancy of - actually, the
19 regulation is written in the mandatory, so it is an ministerial
20 duty on behalf of the Presiding member to grant the
21 Applications, it is not just redundant, there is really nothing
22 for the Commission to do. Of course, the Commission can at any
23 time agendaize any item for discussion, including withdrawing an
24 application, and ask the Applicant or staff to come and explain
25 to the full Commission for a discussion why the application was

1 withdrawing.

2 CHAIRPERSON DOUGLAS: Thank you, Mr. Levy.

3 Commissioner Byron.

4 COMMISSIONER BYRON: Commissioner Eggert, thank you
5 for bringing this subject up. I mean, the fact that we are
6 having this prolonged discussion and getting into some of the
7 details of a specific project that has been withdrawn indicates
8 that this Commission is interested in the reasons for the
9 withdrawal. I think it is an important part of our job here to
10 understand the reasons and the implications as they affect
11 Applicants. I think the ex parte rules shelter us somewhat from
12 getting information that help us understand our process, changes
13 that may need to be made, that limit us in understanding maybe
14 implications of our own state energy policies, and what goes on
15 at the Public Utilities Commission around procurement and
16 environmental considerations, and their granting Power Purchase
17 Agreements for renewables and otherwise. So, I guess where I am
18 going with this is that it has always been my policy to meet
19 with Applicants whenever I can legally do so outside the ex
20 parte considerations. I would consider my fellow Commissioners
21 and all future Commissioners to meet with Applicants and try and
22 understand better what their limitations are. I have also met
23 with Applicants after they have withdrawn, or we have provided a
24 negative Decision with regard to their AFC, just to make sure
25 that it is clear what the problems were associated with the

1 various projects that we have conducted. So, I think it
2 is extremely important to our doing a good job, you know that we
3 are going to be accountable to both the Executive and
4 Legislative Branches of Government with regard to how well we do
5 that job.

6 VICE CHAIR BOYD: Oh, I think you make an excellent
7 point. I just want to ask Mr. Levy, my assumption is, once the
8 case is terminated, as we discussed today, by the Presiding
9 Member, there are no ex parte communication considerations, and
10 we could talk to the staff about the issue, or we could, as
11 Commissioner Byron suggested, meet with or call upon the
12 Applicant for the then terminated project to have a discussion
13 with us about, so that we might learn something from the
14 experience.

15 MR. LEVY: Certainly, you may. The ex parte
16 prohibitions are limited to pending proceedings, and after the
17 Order is issued, there is nothing pending.

18 VICE CHAIR BOYD: Thank you.

19 CHAIRPERSON DOUGLAS: Anything else in presentations
20 and discussions?

21 VICE CHAIR BOYD: Well, a little factoid that, as
22 Commissioner Eggert and I were with staff again, rigorously
23 reviewing the next in AB 118 Investment Plan yesterday,
24 Commissioner Eggert revealed some detailed staff work that he
25 had engaged in, that I failed to mention during the

1 consideration of 118, but he did some calculations
2 recently that showed that Californians spend up to \$150 million
3 a day on transportation fuel. And the 118 program is lucky to
4 have \$100 million a year to spend on its broad purposes, so any
5 leveraging that we do there is extremely significant. But the
6 investment we make is miniscule compared to the investment that
7 people in the state are making on a daily basis.

8 COMMISSIONER BYRON: I like those kind of comparisons,
9 thank you, Commissioners.

10 COMMISSIONER EGGERT: I think it was - yeah, it was
11 sort of a good representation of, I think, two items, one is
12 that the size of the market that we are trying to affect is
13 truly massive. I mean, you know, this is \$60 billion a year and
14 so, you know, our program, we really do have to think carefully
15 about leveraging that against other private investments, and I
16 think the other is that the importance to the State economy is
17 significant. I mean, this is a very very large fraction of our
18 expenditure as an economy and as one of the largest economies in
19 the world, and the vulnerability of that to fluctuations in the
20 commodity price, you know, that is just the estimate at today's
21 pump price, about \$3.00 a gallon; certainly, we know that events
22 could carry that price to higher levels, and have commensurate
23 effects to the overall state economy. So, it was an intriguing
24 comparison that just kind of came out of some quick back of the
25 envelope -

1 VICE CHAIR BOYD: Well, I thought it was an
2 interesting factoid that any one of us might need some time when
3 we are discussing somebody's desire to use the 118 program for a
4 revolving fund, for other purposes, that they would just
5 minimize our already minimal effort to try to influence this
6 huge component of the California economy. And as one who just
7 spent \$7.00 a gallon for a whole week of gasoline, Petrol in
8 Europe, although driving a less than one liter vehicle, why, it
9 is interesting to know the price variables.

10 CHAIRPERSON DOUGLAS: Anything else? We will go on.

11 Item 30. Chief Counsel's Report.

12 MR. LEVY: Yes, Commissioners, and a little bit of
13 irony given the discussion about withdrawal of applications, I
14 would just like to share something public with you about Item
15 30C on the agenda, developments that happened yesterday in the
16 Yucca Mountain proceeding. For a little bit of background, on
17 March 3rd, 2010, the United States Department of Energy filed a
18 motion to withdraw the license application for the Yucca
19 Mountain High Level Waste Repository, and the motion was
20 supported by California-Nevada, the Nuclear Regulatory
21 Commission, and the motion was opposed by the States of
22 Washington and South Carolina. On June 3rd and 4th, the Atomic
23 Safety Licensing Board heard the motion and, yesterday, I am
24 advised, they issued a Decision denying the Application for
25 Withdrawal of the Application. And I will give you a written

1 report, hopefully today, and we can discuss it at some
2 time in the future if you like, but I wanted to update you on
3 the proceeding. Apparently, the Licensing Board determined that
4 the Nuclear Waste Policy Act does not allow the Secretary to
5 withdraw the Application, given that the Act mandated the
6 application in the first place.

7 COMMISSIONER BYRON: And I note that Senator Reid has
8 also already weighed in on this issue, and it is not over yet.

9 CHAIRPERSON DOUGLAS: Absolutely. Thank you, Mr.
10 Levy.

11 Item 31. Executive Director's Report?

12 MS. JONES: I have a very brief report today. with
13 the actions that you took today, we now have encumbered 100
14 percent of the Block Grants under the ARRA funding. In
15 addition, we have encumbered 88 percent of the SEP Program. The
16 Manufacturing piece is the one outstanding piece, which we are
17 working on. And in addition, to help with the draw down on the
18 Appliance Rebate Program from ARRA, we will be looking at adding
19 additional appliances. We hope to be coming back to you soon
20 with a proposal for additional appliance rebates. Thank you.

21 CHAIRPERSON DOUGLAS: Thank you, Ms. Jones.

22 Item 32. Public Advisor's Report.

23 MS. JENNINGS: I have nothing to report. Thank you.

24 CHAIRPERSON DOUGLAS: Item 33. Is there any public
25 comment? Is there any public on the phone or the building who

1 would like to make a comment at this point? Very well, we
2 are adjourned.

3 (Whereupon, at 12:46 p.m., the business meeting was adjourned.)

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