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BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY COMMISSION

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

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

THURSDAY, MAY 31, 2012

9:00 A.M.

Reported by:
Kent Odell



CALIFORNIA REPORTING, LLC
52 Longwood Drive, San Rafael, California 94901 (415) 457-4417

Commissioners Present (*Via Phone)

Robert B. Weisenmiller, Chair
Karen Douglas
Andrew McAllister
Carla Peterman

Staff Present:

Rob Oglesby, Executive Director
Michael Levy, Chief Counsel
Jennifer Jennings, Public Advisor
Harriet Kallemeyn, Secretariat
Pippin Brehler, Legal Counsel
Kirsten Driscoll, Staff Counsel
Dick Ratliff, Staff Counsel
David Ware
Pat Perez

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| Sarah Taheri | 3 |
| Martha Brook | 4 & 5 |
| Mazi Shirakh | 4 & 5 |
| Patrick Saxton | 4 & 5 |
| Pippin Brehler | 4 & 5 |
| Gary Flamm | 4 & 5 |
| Joe Loyer | 4 & 5 |
| Payam Bozorgchami | 4 & 5 |
| Paul Kramer | 6 |
| Mark Hutchinson | 7 |
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Also Present: (* Via WebEx/Phone)

Interested Parties

Public Comment:

Justin Malan, Distributed Wind Energy Association
Larry Hamilton
*Joe Guasti, Wind Turbine Owner/Dealer
*Michael Bergey, Bergey Windpower
Bob Raymer, California Building Industry Association
Mike Hodgson, ConSol
Noah Horowitz, Natural Resources Defense Council
Helene Hardy Pierce, GAF
Mike Gabel, CABEC
John Martin, International Association of Lighting Designers, IALD
Valerie Winn, PG&E
Josh Rosa, California Association of Sheet Metal and Air-Conditioning Contractors National Association, CAL-SMACCNA
Eric DeVito, on behalf of Cardinal Glass Industries
Jerry Desmond, Jr., Plumbing Manufacturers International, PMI
Lisa Hoyos, Blue Green Alliance
Dr. Bill Callahan, Associated Roofing Contractors of the Bay Area Counties
Peter Hart, Esq., LeClairRyan, on behalf of ARMA
Louis Wilde, Gnarus Advisors
John Arent, Architectural Energy Corporation
Adrian Salas, Sempra Energy Utilities
Eduardo Martinez, Carter Wetch & Associates
Matt Kerns, Building Codes Assistance Project
Tom Garcia, CALBO Energy Committee, representing California Building Official Organization
Robert Lucas, Carrier Corp., UTC
David Dias, Sheet Metal Workers Local 104 and Western State Sheet Metal Workers
Manuel Alvarez, Southern California Edison
*Mark Nowak, Steel Framing Alliance
*Patrick Splitt, ApTech
Mike Fischer, Polyiso Insulation Manufacturers Association
*George Nesbitt, CalHERS
*Frank Stanonik, Air-Conditioning, Heating, and Refrigeration Institute, AHRI
*Aniruddha Roy, Air-Conditioning, Heating, and Refrigeration Institute (AHRI)
Daniel Mark Dodd, CR Energy, Parent Co. of SacPort Biofuels
Matt Horton, Propel Biofuels
Mike Lewis, Pearson Fuels, San Diego
John A. McKinsey, Esq., Counsel for Carlsbad Energy Center

Also Present: (* Via WebEx) (Continued)

George L. Piantka, NRG West
Matt Hall, Mayor, City of Carlsbad
Ron Ball, Staff, City Attorney, City of Carlsbad and
General Counsel to (former) Redevelopment Agency
Alan Thompson, Esq.
Ralph Faust, Esq.
Will Rostov, Center for Biological Diversity
*Julie Baker, Power of Vision
*Kerry Siekmann, on behalf of Terrimar Power of Vision
*Robert Sarvey, Member of the Public
*Arnold Roe, Powervision
*Steven Moore, San Diego Control District
Joe Garuba, City of Carlsbad, Project Manager

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P R O C E E D I N G S

MAY 31, 2012 9:10 a.m.

CHAIRMAN WEISENMILLER: Let's start the Business Meeting with the Pledge of Allegiance.

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

Good morning. We're going to have a busy day. In terms of the agenda, as we indicated, Carlsbad will not be heard before 1:00. In the morning, we'll have a lot on the Appliance -- the Efficiency Standards. And for the other contract items, if anyone wants to get a heads up from the Public Advisor on when -- Jennifer is in the back of the room -- when your item is coming up, she'll be happy to give you a call or text you on it, but at this point, I can't say I understand too much what the exact schedule will be. So anyway, with that, welcome.

Let's start with the Consent Calendar. I have one correction which is on Item 1(e), Leyden Energy, LLC, that's actually Leyden Energy, Inc. is the correct name, so that should be corrected in two lines there. Again, that's Leyden Energy, Inc. and not LLC. So with that, do I have a motion?

COMMISSIONER DOUGLAS: So with that, I'll move the consent calendar with the correction read by the Chair.

COMMISSIONER PETERMAN: I'll second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) This item passes unanimously.

Okay, let's go to Item 2. I'm looking for Sekita -- or Kevin. Let's flip to Item 3 first, and then we'll come back to 2.

MS. TEHARI: Good morning, Chair and Commissioners. My name is Sarah Tehari and I work in the Renewable Energy Office. Today, I'm seeking approval of revisions to the Emerging Renewables Program Guidebook, Twelfth Edition. The Emerging Renewables Program, or ERP, provides incentives for installing renewable fuel cell and small wind generating systems in specified Investor-Owned utility territories.

I'd like to provide a little bit of background on the ERP first, as I think it would be helpful in the decision making process. In March 2011, the Energy Commission suspended the Emerging Renewables Program for approximately eight months. In November, 2011, the suspension was lifted after the Energy Commission adopted revisions to the ERP Guidebook. These revisions are set forth in the Twelfth Edition of the Guidebook and require wind turbine manufacturers to obtain third party performance certifications of their turbines in order for the turbines to be eligible to participate in the

program. This requirement resulted in a significant decrease in the number of eligible turbines under the ERP.

The Twelfth Edition of the Guidebook also established a schedule for declining the incentive level for small wind turbines. Under that schedule, the incentive level for small wind turbines was set at $3.00 per watt for the first 10 kilowatts of insulation and $1.50 per watt for increments between 10 and 30 kilowatts through May 7, 2012. After May 7, 2012, the incentive for the first 10 kilowatts decline from $3.00 per watt to $2.50 per watt.

Staff has monitored small wind industry activity and has been in correspondence with the entities that issue the required certifications for wind turbines. Based on staff's review and on comments received by industry stakeholders, it appears that, for many wind turbine manufacturers, the testing and certification process is taking longer than previously anticipated. Staff also acknowledges that the eight-month suspension may have affected some of the turbine manufacturers and retailers that participate in the ERP.

As a result, staff is recommending that the Twelfth Edition of the ERP Guidebook be revised so that the time period in which the higher $3.00 per watt

incentive level is available is extended until November 9, 2012. On November 9, 2012, the incentive level will decline to $2.50 per watt for the first 10 kilowatts for small wind turbines. An extension until this date would result in the $3.00 per watt incentive level being available for small wind turbines for one year since the ERP suspension was lifted.

It is staff's understanding that, by November 2012, there may be between five to 10 additional wind turbines certified and thus likely eligible to participate in the ERP. Extending the $3.00 per watt incentive level will potentially provide an opportunity for these turbines to participate in the ERP and thereby boost program participation and industry growth. Currently, there is approximately $9 million available for providing incentives for small wind systems under the ERP.

This concludes my presentation. If you have any questions, I am happy to address them. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Commissioners, any questions or comments? We do have some public comments, too.

COMMISSIONER PETERMAN: I will offer a comment, but let's hear the public comment first.

CHAIRMAN WEISENMILLER: Okay, fine. Justin

Malan.

MR. MALAN: Good morning, Commissioners. Justin Malan on behalf of the Distributed Wind Energy Association. Thank you very much for having us here and thank you very much for putting this on the agenda again and affording the small wind industry another opportunity to get started again.

I think we concur completely with your staff comments and your analysis here, and we did submit formally our comments and proposals to you last week, so hopefully the Commissioner's, you'll have those.

And just to very quickly reiterate what your staff said, the fiasco with Dyocore already set the industry back, and we want to commend the Commission for handling that so well. We believe now what we've done in the State of California is establish that the program that now is robust, it's going to ensure that we don't have these fly by night operators take advantage of these incentives, and that your verifiable small wind operators and installers will, in fact, be able to get the support they need.

We do want to stress the importance of extending the rebates. We, of course, asked for three and a half bucks, but we'll settle on three if that's what you want to offer. But we do want to commend you

and thank you for offering that, and very much support that because it's absolutely essential that we keep the momentum going. As you understand, not only the recession, but the Dyocore setback, the fact that we need certification now, which we fully support, and just the difficulty in competing with solar, has made it difficult for us to get our foothold back in California. So we certainly support that.

We also want to just stress this time that we have been very supportive of moving to a production-based rebate, we want to work with you on that. And also, we have introduced a third concept, which isn't really up for discussion today, but we want to just put it out in the open, and that is other states are considering the notion of bringing the local governments into this and sharing some of the incentives with them because, as you are fully aware, permitting these small systems is a major obstacle, it's not necessarily your problem, but it's collectively our problem. And to the extent that we can bring local governments into the mix and feel part of this, we feel it will help us inject some life into the industry, as well. So thank you again for this opportunity, we fully support your proposal.

CHAIRMAN WEISENMILLER: Okay, thank you. I think we have one other public commenter in the room,

Larry Hamilton?

MR. HAMILTON: Thank you, Honorable Commission, CEC Renewable Program staff. Number 1, I'm also very thankful, I'm a small business retailer who got crushed by the eight to nine-month delay in the program which also it took away some of the confidence within the customer base that we had laid out, so it set us back quite a ways. And to regain that confidence, and be able to make this thing what it really should be over a period of time, and to help reach the goals of the Governor, once again, I agree with what they are saying and I'm very thankful for it.

I also believe that the Distribution Wind Association has provided a very informative information packet, which also it sits back on other states that have already put this in place and it's working, and the funds are there, and there's just not that many of these that are being done at this point of time in order to get that momentum rolling, I believe the funds are there, and if we follow a performance-based -- it will make a tremendous amount of difference. And what I would like to bring up about that is that, if you put a 10 kilowatt system in Sacramento, it's going to put out maybe 5,000 kilowatt hours a year at the most; if you put it in Dixon, California, you're going to be putting out 22 to

24 kilowatt hours -- or 1,000 hours -- in a period of time throughout the year.

So what I'm trying to say is that, if it's based on performance, you're getting for the money that's going out to the program, it's going to the right place. To me, it doesn't seem fair to give the same amount of incentive to somebody in Sacramento that puts a wind turbine up, that it's not going to perform compared to somebody that's going to be in a high wind area that's going to perform very well. And the other states are following that, and it just makes sense. Nobody would give an incentive to a solar system that is in the shade; it doesn't perform.

So I'm hoping that you -- everybody that is concerned takes a good look at this bit of information and take it under consideration. Thank you very much.

CHAIRMAN WEISENMILLER: Okay, thank you. We have two more comments from the phone. Joe Guasti.

MR. GUASTI: Good morning, everyone, Commissioners, and everyone. We appreciate all the hard work you guys are doing. My comment is very simple. I have proposed that we increase it only three percent more than it was before, which would be the $3.50. Now, here's why I say it that way. For example, the Bergey Wind System was getting $30,000, and we're able to make

the market move at that price point; however, at this amount, it's very difficult --

CHAIRMAN WEISENMILLER: So you're breaking up on us.

MR. GUASTI: Oh, okay. I haven't moved, how about there? Can you hear me now?

CHAIRMAN WEISENMILLER: Yes, we can hear you now.

MR. GUASTI: Okay. We've installed approximately, well, last time we checked, it was about 47 percent of the installed small wind capacity in the State of California, and we're very well aware of what the incentives are doing, and we appreciate that you guys are offering them (indiscernible).

CHAIRMAN WEISENMILLER: Sorry, we're losing you again.

MR. GUASTI: Yes, I don't know why that's doing that. My signal is fine. I'm sorry, but -- anyway, the point is very simple, that we need to have it above the $30,000 amount in order to move the market, it's been proven twice already, and so if you guys could do it at the $3.50, it would make the Bergey Wind Turbine System received approximately three percent more than (indiscernible).

CHAIRMAN WEISENMILLER: Okay, thank you. Let's

go on to the next speaker, Mr. Bergey.

MR. BERGEY: Thank you. Can you hear me?

CHAIRMAN WEISENMILLER: Yes.

MR. BERGEY: Okay. I'm on the phone, so hopefully it will be a little bit clearer. I would like to echo the thanks to the Commission and particularly Commissioner Peterman for the leadership to improve the Guidelines and to make the California program once again the best crafted incentive program in the country.

Just a few points. We fully support the Distributed Wind Energy Association recommendation to go to $3.50 a watt. And we have seen the effect of the recession and the mortgage situation, particularly in some of the more active small wind market areas in California, and that gives a reluctance to spend on big ticket items. I'll point out that the market disruptions occurred over three years as the CEC eligible turbine list went from 14 to 182 turbines over three years, it's now back down to four and, as more certifications come in, that will expand out giving more consumer choice. But consumers are getting quality products that they can believe in and will perform now, and that's great.

The cessation of the program, of course, had a damaging effect on the market infrastructure. And then, although we fully support going to the standardization of

ratings at 11 meters per second so that turbines are rated on an apples to apples basis, it did mean for many of the popular models a reduction in the absolute value of the rebate offered.

So the $3.50 a watt, we think, is the number that would move the market without over-incentivizing. And I would just point out that the Energy Trust of Oregon has just raised their rebate for very similar reasons, and that the $3.50 a watt would be in line with rebates that are being offered in other states such as Oregon, New Jersey, and New York.

And then, finally, I'll just put in a plug for the wind friendly communities, I know it's not really on the agenda, but we do think that there's a way that the Commission could do an innovative program that would really bring the cities and counties into the effort to increase the use of distributed generation with small wind systems throughout the state. So we hope that that will get some careful consideration.

And I'll just close again by expressing our appreciation to the staff and to the Commissioners for your support of the small wind industry and our customers in California.

CHAIRMAN WEISENMILLER: Thank you. Commissioners, any questions or comments?

COMMISSIONER PETERMAN: I'll offer a couple comments. First, thank you to everyone who provided public comment, and for the small wind industry for continuing to communicate with us and talk to us about their market conditions and the needs. We're looking forward to continuing to work with you.

I've considered this issue, Commissioners, and I'm supportive of staff's recommendation. We're continuously trying to make this a program that is robust, competitive, opportunities for consumer choice, with quality products, and allowing more time at the higher incentive for more systems to be certified; I think it's important in terms of achieving that goal. So I strongly support this proposal.

COMMISSIONER MCALLISTER: I want to echo what Commissioner Peterman said and also just make a couple of observations, relatively new to the Commission, but pretty familiar with the small scale wind industry and Mr. Bergey's products and other products that are out there in the marketplace, and I have a lot of respect for the folks in this marketplace. From the local government on up, it's sometimes a difficult commodity.

I would definitely echo the issues around local permitting, it's very distinct from the solar industry in a lot of ways because each system is unique and you have

to look at the wind regime and that performance issues are a little harder to grapple with. But it does -- just the bigger point that I want to make is that -- while policy in this realm of small- scale distributed generation does drive the marketplace, that's the reality we live in, it depends on very professionalized, very high-quality service from the industry and that's something that a regulator has a hard time making happen, I mean, the regulator can't make that happen, it has to largely come from industry. And so this is just an example, it's very clear that, you know, one bad apple can kind of make life difficult for all of us, and the self-policing of the Distributed Wind Energy Association is an essential counterpart to making sure that the industry's reputation and brand supports the overall mission of both the industry itself, so it can thrive, and also the State's policies to get the clean energy.

So it's great to have this resolved, I fully support the resolution we've come to, really thank staff for all their effort here, and I think we can move on and look at some of the other substantive issues that are being brought up. So, thank you very much, everybody.

COMMISSIONER PETERMAN: Thank you for your comments, Commissioner. Glad to have you interested and familiar with this space, as well. Okay, so if there are

no other comments, then I will move Item 3.

MR. HERRERA: Commissioner Peterman, Gabe Herrera with the Commission's Legal Office, I could just offer some comments on the record --

COMMISSIONER PETERMAN: Oh, please, of course.

MR. HERRERA: -- concerning the California Environmental Quality Act. When the Commission considers these Guideline revisions, or I should say, revisions of this type, the Legal Office takes a look at those revisions to see if the revisions itself and the adoption constitutes a project under CEQA. In this case, the Legal Office has determined that this is not a project under CEQA because the Guideline adoption falls within the list of excluded activities under Title 14 of the California Code of Federal Regulation, Section 15378(B)(2) and (B)(4), and that the activity relates to general policy and procedure making, and the creation of governmental funding mechanisms which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. Thanks.

COMMISSIONER PETERMAN: Thank you. With that, I will move Item 3.

COMMISSIONER MCALLISTER: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) Item 3 passes unanimously.

Let's go on to Item 4. Okay, Sekita, let's do Item 2.

Item 2. Energy Commission Committee Appointments.

MS. GRANT: Good morning, Commissioners, Chair. I'm Sekita Grant, Advisor to Chair Weisenmiller and I'm presenting on Item 2, Energy Commission Committee Appointments, and the possible approval of appointments to the Energy Commission Standing Committees and Siting Case Committees.

Today I would like to propose the following changes be made to the Committee assignments. The first one is Hydrogen Energy California Committee. I propose adding Commissioner McAllister as an Associate Member on that Committee. And the second proposed change would be to the Quail Brush -- I'm sorry?

CHAIRMAN WEISENMILLER: We also have to add Commissioner Douglas as the Presiding Member on that Committee.

MS. GRANT: Okay, I'm sorry, and adding Commissioner Douglas as the Presiding Member. Okay, so that is for the first one. The second one would be for Quail Brush, which would be to change the Associate Member from Commissioner Peterman to Commissioner

McAllister, and I believe Commissioner Douglas will remain as the Presiding Member on that Committee.

CHAIRMAN WEISENMILLER: That is correct. So, Commissioners, let's first vote on the Hydrogen Energy.

COMMISSIONER PETERMAN: Since I'm not on either committee, I will move the -- how does --

CHAIRMAN WEISENMILLER: Hydrogen Energy.

COMMISSIONER PETERMAN: I will move Hydrogen Energy Committee.

COMMISSIONER DOUGLAS: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) The item passes unanimously. Let's go on to the next item, Quail Brush, the substitution.

COMMISSIONER PETERMAN: I will move Quail Brush substitution.

COMMISSIONER MCALLISTER: I will second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) That passes unanimously. Thank you, Sekita. So now we'll go on to Item 4.

So this item is the 2013 Building Energy Efficiency Standards – Initial Study And Negative Declaration. Joe Loyer.

MS. BROOK: So what we would like to do is ask for four and five to be heard together, and then if you could just vote in the order that it is presented on the

agenda?

CHAIRMAN WEISENMILLER: That's fine, we'll do that. So we will also take up Item 5, which is the 2013 Building Energy Efficiency Standards, and that's Martha Brook.

MS. BROOK: Good morning, Commissioners. We have a group of us presenting this morning on the 2013 Building Standards and I need to grab that mouse so we can -- I'm Martha Brook, I'm a Mechanical Engineer with the Building Standards Office, and Mazi and Patrick, if you could introduce yourself?

MR. SHIRAKH: I'm Mazi Shirakh, Senior Mechanical Engineer, one of the Project Managers for the 2013 Standards.

MR. SAXTON: Patrick Saxton, an Electrical Engineer.

MR. BREHLER: Good morning, Commissioners. Pippin Brehler, Senior Staff Counsel with the Commission.

MR. FLAMM: Gary Flamm, Supervisor of Building Standards Development Unit.

MR. LOYER: Joe Loyer, California Energy Commission.

MS. BROOK: Great, thank you. So this morning what we're going to do is just give you a brief background about the Building Energy Efficiency

Standards, and then introduce the highlights of the 2013 Standards Update that we are requesting adoption for today.

So the benefits of Building Energy Efficiency Standards are many, they improve the productivity of businesses and that sort of aggregates up to states and nations, and we'll demonstrate that in the next slide.

Standards reduce the need for future power plants by reducing air pollution. They reduce greenhouse gas emissions, and they preserve land, water, and wildlife habitat, all because we are reducing the need for future power plants. It also improves energy system reliability by reducing peak demand, the large part of peak demand is due to residential and commercial building energy use in the state, so any efficiency actions that reduce that demand at certain times of the year play a big impact on energy system reliability.

They also create green jobs. We encourage and incent quality in construction, proper equipment installations, and field verifications, all of those are green jobs in the state. And they also spur technology innovation and market adoption of new technologies. And I think all of you know how well placed California is in that sort of technology innovation curve.

This is just an example of how a state like

California and the nation actually has seen an increase in productivity measured in energy use per GDP; so, the fact that we've gotten more efficient over time, that vertical line on the chart is basically the 1970 oil crisis that the nation experienced and the effect of that -- this isn't just due to Building Efficiency Standards, it's basically all efficiency that's happened by mileage standards for transportation, building and appliance standards, all of this sort of took off and was really motivated by the oil crisis in the '70s, and you can see in this slide that we've gotten a lot better, not only through Standards, but also market efficiencies, we do more with less. And that is one of the arguments for continually improving efficiency standards.

So just a highlight of the standards that we'll be requesting adoption today, the highlights of the energy savings impacts from the 2013 Standards Update. After 30 years of construction under these standards, if we did nothing else to improve the building efficiency, these standards would save the energy and emissions equivalent to 1.7 million homes, also 40 million iPads, just to get a frame of reference, what's 40 million iPads? If you stacked them pancake style, it would be over 560 miles high, and so -- it's a huge huge number of consumer electronics just, again, to get a perspective,

and it's also equivalent to six large gas-fired power plants.

So the Energy Efficiency Standards also provide benefits to the consumer: they reduce energy bills, they improve comfort in indoor air quality, they reduce construction defects, and they increase property value. So, on average, home values increased $20.00 for every $1.00 reduction in energy bills. In the 2013 Standards, we've estimated that when financed through a mortgage, the incremental first costs are paid back through energy savings in less than two years.

This is just an example of how Standards over time significantly reduce home energy use, so this is a typical energy use for each Standards Update in California starting from the '70s, and it's prototypical, this isn't going to be exactly the same in every place in the state, but overall for a moderate climate in Northern California, you know, we've seen this type of reduction starting in the '70s and all the way through 2013. Very very serious reductions in the part of the energy that a home uses that we regulate under Title 24.

So just a little bit of background about the mandate that we have here at the Commission to develop Standards. We do have a legislative mandate to do so. The scope of our Standards development is Building Design

and Construction Standards. Any project that requires a building permit, newly constructed buildings, and existing building additions, alterations, and for nonresidential buildings, repairs, all falls into the scope of the Building Efficiency Standards. It covers residential and nonresidential building occupancy types and building energy system and components that we are regulating today include heating, cooling and ventilation, indoor lighting, outdoor lighting, and signs, water heating, and some process energy systems.

We're also required to prove that the building efficiency standards are cost-effective over the lifetime of the building, and we use the net present value of energy savings, construction costs, and maintenance costs over the assumed life of the buildings to justify our Standards Updates.

This slide just illustrates that California is unique in the amount of attention that we pay to climate diversity and we do this by segmenting the state into 16 climate zones for Title 24 consideration and what this does is it really focuses our efforts on climate specific designs and it encourages builders, designers, architects, to think about climate specific designs, and that's an excellent thing to do, especially as we drive towards our very aggressive energy policy goals in the

state.

The other thing that it does is that we deliberately pay attention to the weather data that we use in our development exercise, as well as our Compliance Software really captures a statewide coincident peak event, so that we're actually looking at not just how air-conditioning or lighting affects a building in a specific climate, but also how it impacts the whole statewide electricity system. And we actually value that in the way that we define the metric for our Building Energy Efficiency Standards.

So the policy drivers for the 2013 Standards Update include getting to Zero Net Energy for newly constructed buildings. We have a state goal that newly constructed homes will be Zero Net Energy by 2020 and we have an energy policy goal in the state that newly constructed commercial buildings will be Zero Net Energy by 2030. We also have a policy goal, a longstanding goal, that energy efficiency be placed first in the loading order when deciding on resource needs for the state, and also a global goal to reduce greenhouse gas emissions, and the state's contribution to that is an important policy goal.

And below this is just a list of all the relevant recent policy documents that embrace these

goals. The AB 32 California Global Warming Solutions Act, starting in 2006, Integrated Energy Policy Reports, Energy Action Plan, the Scoping Plan that came out of the AB 32 effort, California's Long Term Energy Efficiency Strategic Plan in 2008, Governor Brown's Clean Energy Jobs Plan and Clean Energy Future Initiative in 2010, and then Governor Brown's most recent Executive Order also encourages Zero Net Energy and really focusing on high levels of energy efficiency in existing buildings.

So on to the 2013 Standards. This was a huge effort that we've been working on for three years or more, and it's been a very collaborative effort and a very successful collaborative effort. The investor-owned utilities spent Public Goods Funds within their Statewide Codes and Standards Program to develop over 70 Codes and Standards Enhancement Initiatives, basically studies that did the technical defense for each of the measures that we're bringing forward today and it goes through all of the due diligence to look at constructability, affordability, energy savings, both technical and market issues with the technologies, a huge amount of work that really allowed us to get a lot more measures considered for this update, and I think you'll be able to see when you think about those 40 million iPads that, you know, a large part of that is because of this collaborative

effort that we were able to undertake.

So along with the case studies, they also hosted 70 stakeholder meetings before staff started our pre-rulemaking, we were already vetting with industry and other market actors these technologies and talking about issues, and so it was basically a whole preliminary stakeholder process before we ever started our pre-rulemaking activities, so that was very successful.

We also have a strong collaboration with PIER, the Energy Commission's R&D Program, Standards of all sorts, are a market connection for research and development programs, and PIER and the Building Standards have a great relationship in terms of working together to identify technologies that are ready for Standards implementation.

So among the things that we've done and integrated into the 2013 Standards that PIER funded, or the weather data updates, the Residential HVAC and Water Heating Technical Studies, lighting controls, ventilation, improved acceptance tests for nonresidential buildings, HVAC economizers, and the nonresidential Compliance Software, parts of all of those were funded with PIER efforts. And then staff, ourselves, has done a comprehensive public process with the Standards Update. We've held 15 workshops and received over 280 comments --

probably 300 by today, that was yesterday's count -- so a large number of docketed comments have come in and we've done our best to respond to.

So now we're going to just give you highlights of the specific to the 2013 Update, what is included, and we're going to ask staff that shepherded the measures to talk about each of these.

MR. SHIRAKH: So, Mazi Shirakh. Martha described the goals of the 2013 Standards and we're estimating that, on the residential sector for single-family homes, the savings are on the order of about 25 percent over the current 2008 Standards, which is the largest savings we've ever achieved historically.

And so the next few slides are going to describe how we actually achieve these measures for both Residential and Nonresidential Standards. The savings are on the order of 2.3 gigawatt hours per year, or about 1 million therms per year, equivalent to about 35 megawatts for the first year; and single-family 25 percent; multi-family about 14 percent better than the existing Standards. Next slide, please.

So the actual measures that are going to help us achieve these savings, the first and foremost are the better windows U-Factor and SHGC, Solar Heat Gain Coefficient. A big improvement in this area, SHGC, we're

proposing a factor of .25 and, for U-Factor, .32. And these are windows that are very effective in eliminating the infrared and the ultraviolet energy of the sun, while actually keeping most of the visible light through the windows, so you have well lit buildings, and one of our more significant measures for this time around.

The second bullet refers to more wall insulation in all climate zones. Basically we are recommending the same R-15 cavity installation and R-4 continuous insulation, all 16 Climate Zones, very effective, especially when you combine this with the continuous insulation. The nice thing about continuous insulation is that they're not broken up by framing members, they're continuous, they provide an air barrier, and we think that's a very good measure, and the fact that it's the same in all 16 Climate Zones makes compliance simpler. Next, please.

The first bullet refers to mandatory HVAC and Air Distribution Insulation Testing. Air-conditioners, you know, we always hear about SEER 15, 16, EER, those are all good, but if these systems are not installed properly, they're not going to achieve the savings that are supposed to, and the occupants are not going to get the comfort or realize the savings. With this round of Standards, we're actually moving in that direction to

ensure that these systems are installed properly. We're requiring that all ducts, as mandatory measures, have to be sealed in our climate zones, that's a good thing from an enforcement perspective, you know, there are no tradeoffs; if you have ducts, it has to be sealed.

We're also requiring that the systems must be tested to ensure proper airflow and fan watt draw, and we're also requiring prescriptively that all the systems must go through a refrigerant charge and verification process. And all these measures that I described must be third-party verified. So very important, kind of result in comfort, peak savings, energy savings, and help the state and the consumer.

The second bullet refers to ventilative cooling, that's commonly known as whole house fans. In our cooling climate zones, very effective in reducing air-conditioning load. When you combine this with the other measures that I've described, improved windows and improved insulation, it is very likely that most of the times the homes can actually coast through the day without ever turning on their air, unless we get into a heat storm situation. So we think this is one of our better measures. Next, please.

One of the challenges in the Standards has always been compliance and enforcement with additions and

alterations. New construction is typically easier. Existing homes present more of a challenge and we worked very hard with the CABEC members, Mike Gabel who is in the audience, and others, to rewrite the rules for additions and alterations compliance. And I think we've succeeded; time will tell. These would impact both the prescriptive compliance and performance compliance. We worked with the Building Departments to simplify the compliance process for a relatively small addition, 300 square feet or less, and alterations that do not require HERS verified measure to have very simple compliance process. And these cover, again, alterations in existing homes, additions, and a more complicated existing plus addition and plus alterations.

And the other measure, this is a mandatory measure, this is the hot water piping requirement, and for the first time we're requiring that all hot water pipes that are 3/4 inch and larger be insulated. We think this is going to actually cause a shift in the way plumbing is done in homes. We've been working with the builders, monitoring how this is going to be implemented, and you know, we think this is going to cause shorter runs, smaller diameter pipes, and which result in both water savings and energy savings. Next, please. Patrick?

MR. SAXTON: The solar-ready roof requirements are intended to get building designers to consider the possibility of solar earlier in the design stage, it does this by providing an area on the roof that is penetration-free and free of self-shading from other objects on the building, and this allows an occupant to choose to install a solar energy system in the future because their building does not preclude that many existing buildings just simply don't have an area on their roof that's compatible with future solar.

The requirement is a 250-square-foot roof reservation for single-family homes that are in developments of 10 or more homes, but also applies to low-rise multi-family buildings. There are several exceptions, primarily if someone actually installs a solar electric or a solar thermal system. There's also an exception for sites that are significantly shaded naturally. There's an ability for single-family homes to reduce the area of that solar zone by installing certain equipment, and one of those things is a demand response enabled thermostat. And that's also an exception which would allow there to be no solar zone with an installation of that demand response capable thermostat and all high efficacy lighting, which would be primarily fluorescent and LED. And for the first time in the

Building Standards, there will be a credit available when a solar electric system is actually installed. That will be in Climate Zones 9 through 15, and the specific rules around that will be developed when we discuss the performance method algorithms in the ACM development.

MS. BROOK: Okay, moving on to the Nonresidential portion of the Standards. Again, very significant energy savings, we're estimating 30 percent more energy efficient than the current standards, and large trunks of energy savings, 372 gigawatt hours per year, 6.7 million therms per year, and 84 megawatts. And then this pie chart just demonstrates our current estimate of the breakout between newly constructed savings and those savings that will come from alterations and you'll see a significant portion, about 30 percent, we think, are coming from existing buildings, which is great and also a very significant part, due to the new process energy systems that we're regulating for the first time, which we'll talk about soon. Gary.

MR. FLAMM: The first lighting measure that is very significant is multi-level lighting control changes to the requirement. The Standards have long required multi-level lighting controls to allow occupants to occupy a room with no light, 100 percent of light, and something in between. And studies have proven that this

really saves energy because people use those controls. So what's changed in this next round in the 2013 Standards, what we're proposing, is a increased granularity of those controls. So instead of one control about in the middle, we're requiring three controls in the middle for linear fluorescent technologies, incandescent, and LED technologies will have to be dimmable. This is expected to save a lot of energy, it's going to enable daylight, harvesting is going to enable demand responsive harvesting in a very non-obstructive way, so the occupants won't even know this is going on often. So it's a very significant energy savings for the lighting measure. Next slide, please.

The next lighting measure that's going to save a significant amount of energy is toward existing buildings. For a long time, we have required that existing buildings have to be brought up to certain aspects of the lighting measures when 50 percent or more of the luminaires are altered. And ASHRAE 90.1 changed that down to 10 percent. So consistent with ASHRAE 90.1, we are proposing to change the 2013 Standards that, when somebody changes 10 percent of the luminaires in the room, they have to meet current certain aspects of the lighting regulations.

Also, for alterations, if somebody changes

ballasts, or changes the type of luminaire, basically does a gut rehab of an existing fixture, they will have to meet the current standards. So we carefully crafted the language so that we didn't get in the way of routine maintenance, but if somebody is doing a comprehensive change-out of lamps and ballasts, or putting in new LED retrofit kits, they have to meet the current Standards. So this is significant in that there are twice as many square feet of alterations as there are newly constructed square feet of building every year, so this is a really a significant impact into saving the state energy. And alterations occur between eight to 15 years, depending on the functionality of the space, and this is estimated to save $40 million in energy every year.

MR. SHIRAKH: So continuing with nonresidential measures, Gary just described the multi-level controls, and that control actually feeds right into the first bullet, the daylighting, that 30 percent that Martha described, the savings, a good chunk of it actually comes between the synergy between the multi-level controls and the new windows that we are proposing for these random standards and the daylighting requirements. And, you know, with the interaction between these three and top lighting, the sky lighting, there will be a very smooth transition of the lighting levels that the occupant is

actually noticing, plenty of daylighting coming into the building, and displacing the electric lighting. So that's what that first bullet is all about. The visual transmittance requirements for the windows, this is a big improvement this round of standards; I worked with the stakeholders long and hard on this one, and we think we landed in a place that it's going to save the state energy wide, providing flexibility for designers and architects. And we increased the skylighting requirements also as a big part of this round of standards.

Higher cool roof reflectance, we are proposing this sort of reflectance to go up from existing .55 to .63. And envelope sealing, this is the first time we're actually requiring it for nonresidential buildings to make sure there is not excessive amounts of infiltration in the buildings.

MS. BROOK: Okay, so on the nonresidential HVAC side of things, we have a lot of work that we've done on Economizers and fan speed controls for more and smaller equipment. We have prescriptive requirements for increased chiller efficiencies, and more options for occupancy-based shutoff control. So in summary, more HVAC equipment will use outside air for cooling, which is a good thing in California climates, and more HVAC

equipment can adjust speed to meet the variable needs of spaces, and reduces energy use to heat and cool unoccupied spaces.

We also have a large water savings measure for nonresidential cooling towers that controls the maximum water use by requiring overflow alarms for water in the tower. It includes efficient drift eliminators and water flow meters, and we expect that this one measure will save 33 million gallons of water a year, equivalent to 600,000 closed wash loads.

MR. SAXTON: Occupant-controlled smart thermostats empower occupants to more easily control their HVAC systems to improve comfort and reduce operating costs, and these devices have typical setback thermostat capabilities, but add in communications and demand response capabilities. Those additional functions can be built into the device, or are upgradeable with modular components. The occupant remains in control of the device, they can disable the communications if they desire, it more easily enables enrollment in the DR service or program by not having to change out the equipment controls.

MS. BROOK: Okay, on to process energy systems. We have current requirements in the 2008 Standards for refrigerated warehouses; we've updated those requirements

in the Standards and looked at adding infiltration barriers and more efficiency requirements for condensers and evaporators. We also have new supermarket refrigeration requirements and these touch on efficiency requirements for all the large refrigeration components, compressor systems, evaporators, condensers, and it includes controls for the lighting and refrigerated cases. And the total of all these sort of refrigeration measures should save the state over $60 million a year in energy savings.

To continue on with process energy systems, for the first time in the 2013 Standards, all of these process energy systems have efficiency requirements, so new requirements for data center cooling, basically taking advantage of Economizers, again, to use outdoor air for cooling at every opportunity possible. And commercial kitchen exhaust, basically just design requirements to make sure you're using the makeup air and transfer air efficiently in the kitchen exhaust systems, and the sort of basic oxygen trim control type of efficiency requirements for process and commercial boilers, compressed air system, efficiency requirements to make sure you have the right kind of trim capacity and storage for compressed air systems to enhance efficiency, laboratory exhaust design and also parking garage

ventilation, so you're not running large ventilation fans when there's no plans for the garage to be occupied.

MR. SAXTON: The Nonresidential Solar Ready Requirements are conceptually the same as the Residential, to consider the possibility of a solar energy system at the design of the building, so that future solar is not precluded by the layout and orientation of the building. The requirements apply to high-rise multi-family buildings and hotel/motel buildings, which are 10 stories or fewer, and to nonresidential buildings, three stories or fewer. There are exceptions that include the installation of an actual solar electric or solar thermal system, and also for sites that are significantly shaded.

MS. BROOK: That concludes our summary. What we would like to address at this time is what of our proposal we're recommending adoption of, and so just to remind you and the audience, on Tuesday the Commission noticed that staff would be withdrawing its recommendation to adopt three distinct sections of the 15-day language. The first is that staff is withdrawing the recommendation to adopt Part 11, the Voluntary Efficiency Standards that go into the Green Building section of the California Building Code. And staff received some meritorious comments late in the process

and we really would like to take the opportunity to address those comments, and we also really felt like we wanted more time internally, also, to develop the Reach Standard proposal more thoroughly, and what we're planning to do is to come back to you for a separate adoption of Part 11 in the coming months.

Second, the staff is withdrawing its recommendation to adopt the new requirements for showers in the mandatory section of Part 6 and, again, we received comments that we thought had merit late in the process and did not have the ability to address those comments in the 15-day comment period, and this, along with the one-inch hot water piping for residential hot water systems, we had a proposed limit on the one-inch hot water piping limit, this and the shower requirements are both -- because they save both energy and water, we have a requirement to work with our sister agency, the Department of Housing and Community Development, to develop requirements that go into the Building Code that specifically address this water efficiency component of piping systems, and we did some work with HCD, but we feel like we could do more work with them to really develop a comprehensive set of recommendations in this area, and so that is why we're withdrawing our recommendation at this time.

So that said, we have developed Errata for the remaining 15-day language and what we're recommending is that the Commission adopt that 15-day language with the Errata, but not until you hear from Joe, who is going to talk to us about the initial study on the environmental impacts of the proposed standards.

MR. LOYER: Joe Loyer, California Energy Commission. Staff independently created an initial Study Negative Declaration and Supplemental Report, which concluded that potential environmental impacts associated with the 2013 Standards are less than significant. The study was released for comment on March 26th, 2012, and 48 days later on May 15th.

The study was submitted to the Statewide Clearinghouse and distributed to nine State agencies. A Notice of Intent was published in six newspapers throughout California and mailed to 58 County Clerks, as well as about 10,000 individuals. There were no comments received from any State agency or the public. Therefore, there is no substantial evidence in light of the whole record that adopting the Proposed 2013 Standards will have a significant effect on the environment.

MS. BROOK: That concludes our presentation and I guess what we're asking now is to go in order of the agenda and take Joe's item for the Initial Study, and

then separately have comments on the 2013 Standards.

CHAIRMAN WEISENMILLER: Good. I think in terms of public comments, at this stage it appears all the comments are dealing with Item 5, so first let me ask, is there anyone who wants to comment on Item 4, which is the Initial Study and Negative Declaration? Either in the room or on the phone. So, if not, let's go on to comments on Item 5. Bob Raymer.

MR. RAYMER: Thank you, Mr. Chairman and Commissioners. I'm Bob Raymer, Senior Engineer with the California Building Industry Association. And in light of recent changes made to the Proposed Standards, CBI has removed its opposition and we will now be supporting adoption of this regulatory package.

In response to concerns earlier raised by CBIA regarding design and cost impact issues, the CEC has removed roof deck insulation and third party insulation measures from the Package A Budget Calculation features. In addition, the CEC has shifted the proposed wall design in Package A from 2 X 6 Construction back to the standard 2 X 4 Construction. While all three of these items will still remain available to industry for use as compliance options, this set of changes to Package A features has the effect of reducing compliance costs throughout the Central Valley Region by approximately

$2,800. But even with these modifications, the regulatory package before you today will still result in the single greatest increase in stringency and cost of any Update to the Standards in the CEC's 35-year history. While it would have been our preference for the CEC to have foregone any change during this three-year cycle, we understand that was not an option.

We recognize and appreciate the Commission's desire to create balance between the goals for increasing energy efficiency, along with the extremely difficult economic conditions confronting California's housing industry today. So in that spirit of cooperation, CBIA will be supporting the adoption of the 15-day language as it relates to Part 6 and associated administrative regulations in Part 1, which is collectively known as the California Energy Code.

And in particularly, CBIA would also like to extend a special note of thanks to the CEC staff, especially Mazi Shirakh, Martha Brook, and Patrick Saxton, not only for their patience, but for their efforts to help address CBI's individual technical concerns, and especially for working with CBI in an effort to identify the overall compliance costs associated with the Proposed Standards. Looking forward, Mike Hodgson, I believe, will be making some comments on

the ACM measures.

We're strongly in support of staff efforts to include some manner of compliance options related to PV installation and reduction of plug load, particularly with high efficiency lighting, over the next one to two years, education and training. With the downturn in the economy, we've lost about 80 percent of our workforce; the same thing has happened with local government. The building official offices throughout the state in our 500 jurisdictions have seen their staff just slashed, in some cases by over 90 percent. That creates a huge problem as we move forward. There's going to have to be ongoing field-based training for probably the next 10 years, but this is a particularly significant problem now.

The availability of certified Compliance Software is also an issue. We know the CEC understands this full well, given the last update to the standards, and we would hope that we could have certified software available nine to 12 months prior to the effective date of the Standards. Simplification of compliance documentation, we strongly support the comments that CALBO has been making and probably will make today again.

Looking down, in terms of long term priorities for the next four years, plug load and its impact on Zero Net Energy, that is a huge issue. If we're going to get

the cost of Zero Net Energy down, we need to aggressively attack plug load and other items not covered by the Energy Efficiency Standards.

And, please, as we go forward developing the 2017 and 2020 Standards, we need to maintain a reasonable level of compliance options. As we move items over from the option side to the mandatory side, we need to backfill that with compliance options so we can maintain flexibility with the Standards and also get in touch with what's coming down the road in terms of mandates.

And with that, we'd like to work with you in trying to get home appraisers to include the value of the energy efficiency as they make this, this is a Federal and State effort, we look forward to working with you strongly on this. Thank you for your time and patience.

CHAIRMAN WEISENMILLER: Thank you. Mike Hodgson.

MR. HODGSON: Good morning, Commissioners and Chair Weisenmiller. I'm Mike Hodgson from ConSol representing CBIA. I'd also like to express support for the standards and make a quick sidebar complimenting Commissioner Douglas on her longstanding tolerance of this process, as well as staff, especially Mazi, Martha, Patrick, and I'd like to add Gary to that, for all their assistance and clarifications. It's been a long haul and

they've been not only tolerant, but technically quite savvy, so we think we have the best resolution so far.

I would like to make two quick comments. With this very stringent standard being enacted, and with our constantly changing Codes, it's very important for building officials and builders to understand the Code well, and the explanation of that Code is the Residential Manual, and we would like to pledge our support, CBIA's support, in the developing of that manual. But there are some very significant issues that need to be clarified; a couple of them were covered today and I'll just go lightly into them. One example that we're looking at is we need to have our mechanical systems perform properly, and a suggestion by staff and the Code is actually to enlarge those HVAC returns. And we need assistance to say, "How do we do that? Where does it go? How do we plumb them correctly?" Etc. And we've been working on that, but we still don't have clear guidance.

Another is Patrick was bringing up solar ready roofs, one of his favorite topics, and we have new requirements for attic ventilation with whole-house fans, we also have new urban wild land interface standards coming into effect, and the interaction of those three regulations are going to be fairly complex, and we're going to need good explanations and diagrams to explain

that to not only builders, but also building officials for enforcement.

My second request, Bob has already covered, but I'm going to ask a little bit deeper, and that is on software. We always need to be prepared, and hopefully the building industry will return some time in the State of California and we have new projects; that means we need Compliance Software. We've been talking about a nine to 10-month lead time before the Standards become effective so that we have software that we can use, we can test, we can drive, and we can understand how our buildings will be built. CBIA would like to request actually a proposed timeline for that software availability, and we would like to work with you to meet that timeline. Thank you for your time and your input.

COMMISSIONER WEISENMILLER: Thank you.

COMMISSIONER DOUGLAS: If I could, I would just like to ask -- it looked like Mazi was ready to speak on the timeline question.

MR. SHIRAKH: Actually, I was going to say we'll be more than happy to work with Mike and the builders and the building officials on the development of the language for the Compliance Manual. I think that would be very useful.

COMMISSIONER DOUGLAS: All right, thank you.

MS. BROOK: And on the software timeline, we can definitely get that. We have had preliminary timelines and we can update that and work with industry to make sure that they're participating all the way along. We do anticipate our first public workshop on software to be in the July timeframe -- this July. So I think we're also committed to the nine to 12-month preview of the software before the implementation date.

MR. HODGSON: Thank you.

CHAIRMAN WEISENMILLER: Great. Thank you. Noah Horowitz.

MR. HOROWITZ: Good morning, Commissioners, staff, and other stakeholders. My name is Noah Horowitz and I'm a Senior Scientist with NRDC, the Natural Resources Defense Council. I'm here today to express our support for the latest proposal and to urge prompt adoption. The current proposal already reflects numerous conceptions and we want to make sure that we don't lose any additional energy savings. I want to make a few additional quick points, the first is around Acceptance Testing. As we heard earlier, there are a lot of complicated systems that are being put in our buildings, and we need to make sure they're installed properly and working properly. And the key part of that is to have a qualified person inspect them and this is called

"Acceptance Testing."

The missing piece in the Code now is who is qualified or eligible to do that testing -- what training, what certification do they need? We understand there is a parallel proceeding, which we support, and we urge the CEC to finalize that on a timely basis, as well. We provided some written comments on that on a potential way to move forward on that.

In terms of the 15-day language, the low-rise multi-family buildings, that's the biggest or fastest growing part of the residential building stock and we need to make sure we do a good job there. The Code provides 14 percent savings, which isn't as large as the savings we got in the other sectors, so we encourage the CEC to make sure this is a priority in the follow-up rulemakings.

Also, I'd like to acknowledge the important role played by the Investor-Owned Utilities, many of them who are here in the audience, and their consultants. They prepared numerous proposals, many of their spreadsheets around the 50th iteration that I saw, and there are probably many on that, so thank you for all your time and effort there. And that concludes my comments for today. Thank you.

CHAIRMAN WEISENMILLER: Helene Pierce, GAF.

MS. PIERCE: Good morning, Commissioners. Thank you for this opportunity to provide comments to the Proposed 2013 Energy Efficiency Standards, Title 24 Part 6. My name is Helene Hardy Pierce, and I'm Vice President of Technical Services for GAF. GAF is the largest roofing manufacturer in North America. We also are a California manufacturer with multiple plant locations that employ over 300 Californians, and a manufacturer with a multiplicity of products that meet the proposed standards and the properties that you'll find in Title 24, Part 6, for roofing materials.

Over the past year, CEC staff has been developing the revisions to this, and there's been a lot of back and forth with the roofing industry, and a lot of the input from the roofing industry has been taken into consideration. And so our industry has been providing some -- a lot of comments and some is evident in the 15-day language.

I'd like to express concern with the cost justification that has been used to justify these changes to roofing property requirements for low slope, nonresidential roofing materials. Staff has expressed that they believe the AEC's, their consultant, cost justification is representative of the market and takes into consideration geographic differences, and is

supportive of the range of roofing products. Just one example of where I would beg to differ with that position is that, in fact, the AEC study actually states within it that APP modified bitumen products are not often used in California -- not often used? Well, the reality is regarding this product segment is that over 100 million square feet of that product were installed in 2011, alone. And that's twice the amount of SPS modified products. And so, as a manufacturer with an APP plant in the state, you might understand why I would call that into question.

Secondly, the AEC study either does not account for the cost to maintain radiative properties, or it does so incorrectly. This issue of the need to keep a roof surface clean has not been addressed and, in fact, routinely has been just kind of pushed aside or conveniently ignored.

The State of California does have many different climates, several of which are Coastal. To exemplify this issue of cleaning, consider the condensate accumulation in coastal areas where, at night time, fog rolls in, it condenses on exterior surfaces, typically horizontal surfaces, including roofs, and then that condensation includes particulate matter. And it remains until you get rainfall. And for those areas that don't

have extensive rainfall, particularly coastal areas, then a lot of time it remains until the rainy season. Proposed within the 15-day language is an increase from a 0.55 to 0.63 reflectivity. Well, with that type of accumulation of dirt on a roof, a three-year aged radiative property measured from a weathering farm is not indicative of in situ type situations that roofs routinely see.

And so the science for this Code change ignores the reality that, in order for a roofing material to maintain its radiative properties, it may have to receive routine cleaning for which, of course, there is a significant cost --

CHAIRMAN WEISENMILLER: You have to wrap up now.

MS. HARDY PIERCE: Yep, I'm almost done.

CHAIRMAN WEISENMILLER: Thanks.

MS. HARDY PIERCE: A final objection to the cost justification is that the costs are also not representative of maintenance outside of routine cleaning, such as re-roofing costs and coating costs.

There are several reasons, therefore, that I believe the cost justification for proposed changes is greatly flawed and does not provide confirmation that these changes made the statutory requirements to make

them to the Energy Efficiency Standards. Thank you very much.

CHAIRMAN WEISENMILLER: Thank you.

COMMISSIONER DOUGLAS: If I could ask Mazi, maybe, or Mazi to respond to some of the concerns raised in the cost --

MR. SHIRAKH: I will try to respond to some of the points. Helene mentioned that this process started about a year ago, June of last year, here in this room, and our proposal has evolved significantly since then because of interaction with ARMA and other folks. You know, we started out by requiring a solar reflectance of .70, and thermal emittance of .85, and no insulation tradeoff, that's how it started last year in this room. And Helene and others provided a lot of comments and the result of that, you know, we actually dropped our requirement for the .85 thermal reflectance back to an existing .75.

I think it was Helene herself who suggested that we should have some kind of an insulation tradeoff in exchange for thermal reflectance, and I think they correctly pointed out that there will be some roofing products that will not meet the .63 reflectance, so the solution was to actually have a little additional insulation in exchange for a lower reflectance. We

initially offered this for existing roofs and then they commented that, you know, we should extend this to newly constructed buildings so we actually have that as a prescriptive alternative; a helpful comment, you know, we responded. The solar reflectance was .70, we actually modified that three times. First, we dropped to .67, then .65, and now we settled at .63; again, a lot of back and forth.

The issue of cost has been an ongoing debate between us and ARMA and the members, it started out, again, about a year ago. Then, in September of -- I think it was September 12, 2011 -- you know, we had another meeting in Hearing Room B, the focus of that was cost, we worked with ARMA, we developed -- actually, we used their instruments as survey instruments that they had developed to go out and get costs. And during this time, we were hoping that not only we would get additional costs, that ARMA would help us collect additional costs, we used their survey and went out, we did find it a bit difficult to get the responses, but we did manage to get 12 or 13 responses, which covers most -- or, I think, all of the roofing products that are being installed in the state. It does represent the geographic diversity of the state from north to south, different cities, and we were hoping that ARMA would also help us

with collecting more data and, to the best of knowledge, that hasn't happened.

But what is true is that, you know, we do have these costs in every single point that we have, the data that we have shows that cool roof technologies are cost-effective, and even though there's a diversity of ranges within the costs that we got, they all point to the same thing. And we do not have any information -- opposing information -- that our analysis is incorrect, we have not information from anyone that shows that, you know, even one, that we're not proposing something that is not cost-effective.

On the question of maintaining the radiative properties that Helene just mentioned, we use the industry standard, the CRRC has a three-year age reflectance value that we are using, basically they are assuming that this product is going to be out there for three years, exposed to the elements -- rain, wind, dust, leaves, whatever -- and that's the reflectance we're using. Now, if the industry feels that these numbers are not correct, they should be working with CRRC to address that. With what we are using is using a nationally recognized value as we do with air-conditioning, we use ASHRAE, and in lighting, we use IES, fenestration, we use NFRC, we're using the exact same process. And, you know,

we feel those numbers are representative and our contractors actually did go through a lot of extent to include all the parameters that go into cost-effectiveness, you know, we used the same cost-effectiveness methodology, the lifecycle cost, net present value, that takes into consideration an hourly stimulation of the building's internal loads, it takes into consideration the energy benefits, the TDV, the multiplier for all the hours of the year, and the discount rates and so forth, and so, you know, we've demonstrated that in many cases they're widely cost-effective in some climate zones.

So with that, I think that I'll recommend adoption of the Standards.

COMMISSIONER PETERMAN: I'll just add -- thank you for that explanation, I had some follow-up questions, as well, but you've addressed them in your comments. Thanks.

CHAIRMAN WEISENMILLER: Great. Mike Gabel, CABEC.

MR. GABEL: Good morning, Commissioners, and Chair Weisenmiller. My name is Mike Gabel and I'm representing the California Association of Building Energy Consultants, also known as CABEC today. I just wanted to come up to say that we fully support the

Commission's adoption of the 2013 Building Energy Efficiency Standards, as an enormous, important and cost-effective step towards reducing building energy use, energy cost, and greenhouse gas emissions. We'd like to thank the CEC staff, their consultants, and the many stakeholders for working very hard to research and help craft the new energy standards. And we would especially like to express appreciation to Mazi Shirakh, Martha Brook, Gary Flamm, Nelson Pena, and Pat Saxton and other staff for carefully reviewing and, in many cases, incorporating detailed recommendations from proven Code language submitted by CABEC members. In particular, as Mazi mentioned, the Residential and Non-residential Alterations addition language is a significant improvement over current Code, and is a result of hundreds of hours of intense effort by staff and CABEC members and others.

Finally, we'd like to look forward to providing technical review of the new compliance manuals, the new forms, and the other supporting documents before the publication. And I'll echo what Mike Hodgson said, we're also looking forward to the Compliance Software, as well, and hopefully that will proceed on a reasonable timeframe.

We also want to mention we're preparing a new

examination for a Certified Energy Analyst, it will be part of the new Standards, and it's also important that the Energy Commission documents and software be ready in time for us to develop that examination in time for the Standards. That's all I have to say. Thanks very much, and good luck.

CHAIRMAN WEISENMILLER: Thank you. John Woestman.

MR. WOESTMAN: Thank you. Good morning. John Woestman with Extruded Polystyrene Foam Association. Very very brief comments and I submitted mostly technical opportunities for improvement on the docket yesterday. I noticed the discussion here won't get into any detail, so I don't intend to do that, but I did suggest some further modifications to the language and which I know is very late to do that, or past time to do that, but it would help improve the language of the Code. So if it's an opportunity to incorporate that at some time, that would be great. Thank you.

CHAIRMAN WEISENMILLER: Thank you.

COMMISSIONER DOUGLAS: Would it be helpful, Commissioners, if the staff just gave a brief summary of the comment and their thoughts regarding the comment at this point? Go ahead.

MS. BROOK: So, Payam, we need you for the

spray foam.

MR. BOZORGCHAMI: Hi. This is Payam with California Energy Commission. The comments that I -- actually I received right before the Commission hearing today, they were mainly clarifications which we can deal with in blueprints and the blueprints being the questions and answers that we submit electronically to the folks out in the industry, and also we can do some clarifications in the Residential and Nonresidential Manual. It's more of an understanding of what's being defined in our definitions. And in our Joint Appendices, there is a request to add more columns to describe more continuous insulation, we are in the process of developing a computer program that does assembly calculations, and we're calling it -- as of now, it's called Easy Frame 2013, that does simulation for modeling envelope related materials.

COMMISSIONER DOUGLAS: All right, well, thank you for that clarification and obviously look forward to hearing about your further work on this topic and addressing the clarifications requested.

CHAIRMAN WEISENMILLER: That's good. Okay, John Martin.

MR. MARTIN: Good morning, Commissioners. My name is John Martin. I am Public Policy Representative

of the International Association of Lighting Designers, the IALD. The IALD is the leading global organization of architectural lighting designers. Our members design and specify lighting in projects of all sorts, always with an eye to lighting quality, which we define as the optimum balance among human factors, environmental and engineering considerations, and architectural issues.

We are pleased to be able to speak in support of your adoption of the Proposed 2013 Building Energy Efficiency Standards under Title 24. The process of developing these standards has been transparent, public, and thoughtful. Your staff, especially Mr. Gary Flamm and his colleagues, has been a delight to work with, especially for a group that is new to the process such as IALD. That's not to say that they aren't perfect, they didn't accept without question each and every one of your suggestions.

[Laughter]

Seriously, we have found that our voice has been heard and welcomed throughout the process, and we are confident of our welcome to participate in future Code improvement efforts. We look forward to continuing our partnership with your staff and other stakeholders in this process. As lighting experts, our members understand that continued reduction of Lighting Power

Densities, or LPDs, is not a useful path to reducing energy use. The expanded attention to daylighting and lighting controls exemplified in the 2013 Standards will help to redirect the attention of Code authorities across the United States toward the value of using the sun and our brains to help light our buildings, rather than marching down a path literally towards darkness.

We look forward to helping the process of interpreting and applying these Standards in ways that improve California, and we thank you for your time and attention.

CHAIRMAN WEISENMILLER: Thank you. Valerie Winn.

MS. WINN: Good morning, Chair and Commissioners. Valerie Winn with PG&E. I just wanted to take this opportunity to express PG&E's support for adoption of the 2013 Codes and Standards. There's been a lot of work by a lot of people in this room in putting those together, and there's always room for tweaks here and there, but we certainly feel that what's been proposed for adoption is an appropriate balancing of the interests, and we look forward to working with the team on the 2016 Codes and Standards, which will be coming up soon enough. I have to say, the idea of 50 stakeholder meetings and 15 workshops is a little daunting, it's

almost as bad as the IEPR. But, anyway, thank you, and we do support adoption as presented today. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Josh Rosa.

MR. ROSA: Thank you, Mr. Chair and Commissioners. I'm Josh Rosa here on behalf of CAL-SMACCNA, the California Association of Sheet Metal and Air-Conditioning Contractors National Association.

I want to start by saying we support the overall package. There's one section that we are requesting to withdraw. I want to thank staff for being extremely accessible and very helpful throughout this entire process. We've been kind of going back and forth with them for many many months and they've been really outstanding.

Our one issue is with the section relating to commercial kitchen ventilation, short circuit hoods, and transfer air in Section 140.9(B), page 260. One of the -- we look at it in two revisions, there's a short circuit hoods and the transfer air. With regard to short circuit hoods, the revision would prohibit the replacement air introduced directly into the hood cavity of kitchen exhaust hoods from exceeding 10 percent of the hood exhaust flow rate. This effectively bans short circuit hoods. What we get from staff is the concern that short circuit hoods over-exhaust, it uses more energy than is

necessary, which we believe is possibly sometimes the case; however, in other kitchen environments, short circuit hoods are an appropriate way for contractors and kitchen designers to avoid over-exhaust and actually save on energy. They're not used very often. Sometimes you hear it's one or two percent of cases where short circuit hoods are used, and we actually think this infrequency of the use is one of the indications of the level of discretion that contractors and designers often use in applying them. The other indication, and the one that we rely on a little bit more, is our own contractors in the field who do this kind of work for many different types of restaurants, and have found that short circuit hoods are sometimes very useful and just add to the toolbox, and the flexibility for quality contractors to apply them when necessary.

CAL-SMAACNA has found that they're good at minimizing energy costs that result from over-exhausting transfer air in some kitchen environments, they avoid the potential grease build-up that results from over-exhaust, and at times can provide superior efficiency by minimizing removal of conditioned makeup air; in fact, numerous models commonly used in a today's market have been shown in test to supply up to 70 to 80 percent non-conditioned makeup air internally into the hood capture

area.

CAL-SMACCNA understands that staff has done a study, the study doubled the exhaust of short circuit hoods relative to non-short circuit hoods as a baseline for the study. And that's not always the experience of our contractors in the field that the exhaust is necessarily double every time you use the short circuit hood. So for those few kitchens that are appropriate for short circuit hoods, we believe the contractors should be allowed to continue to use them and quality contractors and designers can tell the difference, so we don't see the justification to restrict the flexibility.

The other issue is transfer air. This is the proposal to essentially use the conditioned air in the dining area of a restaurant to try to offset the cooling load in the preparation area of the restaurant. Previously, the practice has been very very small amounts of transfer air coming from dining to preparation to straight pressurization, so the odor doesn't come out through the cooking area into the dining room. Usually, it's typically used at around five percent, and that's what ASHRAE Standards currently advance. What this proposal does is it uses the transfer air for a different reason, and that reason is, like I mentioned, to offset the cooling load, it's a larger amount of transfer air.

The concern of CAL-SMACCNA and our contractors who work in kitchen environments is that this is going to upset the balance between the two environments.

CHAIRMAN WEISENMILLER: We need you to wrap things up.

MR. ROSA: Oh, my God. Okay. Well, with that, I think I've -- and we've submitted written comments that go into even more detail than that, but I just, again, want to thank staff for their attention and help with this process. Thank you so much.

CHAIRMAN WEISENMILLER: Okay, thank you.

COMMISSIONER DOUGLAS: Thank you. Let me ask -- I know that, Martha, you've had a lot of exchange on this topic -- let me ask for your thoughts on the short circuit hoods --

MS. BROOK: Yeah, okay, so on both the transfer air and the short circuit hoods, the first response is that these are consistent with the Proposed -- the National ASHRAE Standard, so designers are going to have to start thinking about things differently across the nation for kitchen exhaust design, and we're not doing anything different, we're actually deliberately trying to be consistent with that national standard. And then the second point that I'd like to make that I think is really important to Josh's concerns about flexibility is that,

what we've established are prescriptive requirements, they're not mandatory requirements. That means that it sets the Energy Budget and, if you want to use the prescriptive path of compliance, you can certainly do that and follow our rules for how you would do that, but it also allows you to use our performance compliance path and put short circuit hoods in if you want, but our Compliance Software would then calculate what we estimate to be the energy penalty of that, and you could make up that difference in any way, not just with kitchen exhaust design, but anything else that's going into the building project that you're getting compliance on. So the fact that it's a prescriptive requirement, I think, is key to keeping the flexibility if you absolutely have to use a short circuit hood above 10 percent for a specific kitchen design, you can do that and comply with our Standard through the performance approach, and that's how we've encouraged other applicants to think about the flexibility that they need to get their building to comply with our Standards.

COMMISSIONER DOUGLAS: Martha, one more question. If somebody thought that the energy penalty that we were applying to short circuit hoods, or any other measure, was not correct, what would they do? What process would they follow?

MS. BROOK: So what we need to do is encourage Josh and his members to participate with us in the Compliance Software workshops where we'll be discussing the rules for modeling each of the elements that go into the Compliance Software performance approach, and that's where we'll be establishing those rules. And actually, the Commission approves that ACM Reference Manual, so there's still a lot of public process left where they could participate in workshop to help establish the rules and also provide comments, you know, come back to a meeting like this and talk about either support for the method that we're implementing the performance approach with.

COMMISSIONER DOUGLAS: Great, and so they would also have the ability to bring data --

MS. BROOK: Yes.

COMMISSIONER DOUGLAS: -- that would show demonstrating performance of short circuit hoods under certain circumstances.

MS. BROOK: Absolutely, yes.

COMMISSIONER DOUGLAS: Okay, thank you.

CHAIRMAN WEISENMILLER: Thank you. Eric DeVito.

MR. DEVITO: Thank you. Eric DeVito on behalf of Cardinal Glass Industries. Cardinal Glass is one of

the national leaders in coatings and insulated glass technologies, has plants across the country, including two right here in California. We are thankful and appreciative of being involved in this process for quite a while. We participated in workshops, we participated in the 45-day language, we've participated with staff, and we commend staff on the very open process, we believe, and we have routinely and consistently supported the new Standards, and we do so today. And we urge your adoption of them. We think it's a great step forward, particularly with respect to our product, we're commenting on the Windows Standards, the staff obviously highlighted those as some big benefits and new steps forwards in the Standards; we agree. The U-Factors and the SHGCs and the VT requirements that are now being implemented are pushing the state to the best available technology, it's widely available. And addressing some of CBIA's concerns about increased cost, well, this is actually one of those measures that you're going to get the best available technology, but not really at much of an additional cost at all. California has always been a leader in Low-E glazing, you've required it for years, what you're doing right now is you're really just tweaking it so you're using the right Low-E glazing, the one that combines the best of low solar gain with high

visible light. So you're getting the best of all worlds -- heating energy savings, cooling energy savings, and lighting energy savings, because of the high visible light, and that’s why we fully support these standards.

We have submitted numerous comments and suggestions to staff, many of them have been incorporated, but many of them we did agree to disagree, and that's common with this process, other people have mentioned it, too, but, again, we believe the overall steps forward are tremendous and that's why we support it. We've put a new set of comments on record just yesterday to the docket and, really, that was just again to reiterate our support and, 2) somewhat of a checklist, hopefully in the next Standards Update there's some items that we talked about we think maybe should come out of the next Standards, maybe they're temporary measures, particularly with the VT equation, so we just wanted to document that and hopefully the next go-round we'll certainly be here and involved and remind staff that we think that should come right back out, but again, we fully support it. And lastly, again mindful of the economy and the issues that CBIA mentioned, you know, particularly the window provisions, it will help jobs in California. Cardinal's plant in Galt, just 30 minutes down the road, manufacturers this coating that's going to

be required, the plant has capacity and certainly would ramp up production to meet the new needs of the Standards, and that means good quality jobs for California. So we commend and support and look forward to continuing to work here in California. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Jerry Desmond, Jr.

MR. DESMOND: Good morning, Commissioners, Jerry Desmond, Jr. on behalf of Plumbing Manufacturers International, PMI, the International Association, 28 members, manufacture probably 80 percent of the plumbing products sold in California. We're here specifically on Section 110.3(C)(7) on the showerhead issue. We had identified some issues with the draft language and appreciate having had the opportunity to provide our thoughts and comments and suggestions to the staff before this hearing, and we support the inclusion of that provision on the Errata sheet, as discussed previously. I wanted to make sure we came forward and expressed our appreciation for the dialogue we've had and look forward to future dialogues as you address plumbing products and fixtures within the context of your activities. Thank you.

CHAIRMAN WEISENMILLER: Great, thank you. Lisa Hoyos.

MS. HOYOS: Good morning, Commissioners and staff. My name is Lisa Hoyos and I'm the California Director of the Blue Green Alliance. We are a national organization of eight major labor unions and for big environmental groups, including NRDC, Sierra Club, and Union of Concerned Scientists.

We're here to express our strong support of the proposed Building Energy Efficiency Standards and urge that you adopt them today. And we also, as Noah Horowitz said earlier, urge you to finalize your parallel proceeding on Acceptance Testing so that the issue is heard at the Building Standards Commission as soon as possible. Being the Blue Green Alliance, our support for these Standards is rooted in both blue and green, and on the green side, given that roughly a third of California's GHG emissions come from buildings, we believe these Standards are essential in helping us meet our AB 32 goals, which we're deeply committed to. Also, these Building Code Standards will create thousands of new jobs and will help maintain quality jobs in the building and construction sector. We have two areas where we'd like to see additional focus in the next Code cycle. On the Residential side, the energy savings numbers in the 15-day language are lower than those proposed by the CEC in the 45-day language, and are much

lower, actually, than some of the proposals discussed in the proceeding, so we would agree with our environmental and labor partners that we need to be resolute about staying on target to meet our 2020 Zero Net Energy goals.

On the issue of Code Enforcement, several of our labor partners have repeatedly underscored the need for expanded and improved Code Enforcement to ensure that our energy efficiency goals are realized in practice, and we'd like to work with you on this.

In closing, we'd like to thank you for your leadership in energy efficiency and for ensuring that California continues to lead the way for the rest of the country in innovation, in energy efficiency job creation, and in climate protection. Thank you very much.

CHAIRMAN WEISENMILLER: Thank you. Dr. William Callahan.

DR. CALLAHAN: Good morning, Commissioners, staff. I'm Bill Callahan, I'm the Executive Director of Associated Roofing Contractors of the Bay Area Counties. We got to know each other pretty well back in March, some of us. I was up here many many times with a lot of concerns, but mostly revolving around one theme that Bob Raymer mentioned earlier in the proceeding, and that is contractors in the field dealing in the real world need flexibility, they need tools, they need options, and my

biggest concern was a simplified tradeoff table that dealt with above-roof deck insulation and seemed to limit the ability of contractors to look below the roof deck to substitute insulation for reflectivity. And we were concerned about the elimination of the overall envelope energy approach as a compliance option. We have found that useful in the current Code cycle. And I'm pleased to say that jumping up and down all those times, I was listened to. And Mazi and I shook hands on a deal and the deal came through. And right after the hearing on March 12th, the staff told us that they were going to keep the overall envelope energy approach, they were going to move it to a different section to the Nonresidential Alternative Calculation Method, but it's still going to be there for us to use and that's a good thing. They also committed to make a user-friendly, and free, tradeoff tool available on their website, and we welcomed that, as well. And then, when the 15-day language came out a couple of weeks ago, there was a new tradeoff table, 141.0(B), that was based on U-Factors rather than R-Values, and that was intended to address our concerns. And that was a welcome development, but when I took it out for a test drive and started running some of the numbers, it didn't work all that well and it produced some anomalous results, which I immediately

brought to Payam's attention, and then on practically a moment's notice, working with Payam and John Arent and Mr. McHugh, we were able to build some new tools and fix some -- correct some errors in that table so that you now have an Errata version of that table that works well, and it satisfies our concerns, and it gives my contractors the flexibility they need -- and they do need it because my Union contractors deal with hard jobs, not with simple ones.

So at this point, my only remaining concern is making sure in the enforcement level that there's an understanding of how this new table -B and the minimum insulation table -C, work together and, on our WebEx last week staff made a commitment to work with me and get me involved in writing the Compliance Manuals so we can explain how this works to the regulated community and to the enforcement community. I accept that invitation and I look forward to working with them on that. So we support the new Standards as they apply to roofing contractors. Thank you.

MR. SHIRAKH: Thank you, Bill.

CHAIRMAN WEISENMILLER: Thank you. Staff, any comment?

MR. SHIRAKH: As Bill suggested, you know, there were some unresolved issues during the March

meeting and he had some concerns about the tradeoffs and the removal of the overall tradeoff approach, and immediately after the meeting staff engaged him and, as you mentioned, we are going to bring back a form of the overall tradeoff approach in the Compliance Manuals. We are working with the software vendors to actually have a simple interface for using the performance approach for roofing tradeoffs, and we will also work with them to address some of his concerns related to the U-Factors and the R-Values. So with those, we're happy to see that Bill is now supporting the Standards.

MS. BROOK: And I would just add that we will be depending and have gotten a commitment from the Investor-Owned Utilities to help us with that overall envelope approach, which is important because our resources for a Compliance Software are extremely limited, so to add the functionality that we've agreed to provide, we will need that help from the Investor-Owned Utilities.

CHAIRMAN WEISENMILLER: Great. Peter Hart, ARMA.

MR. HART: Good morning, Commissioners. My name is Peter Hart and I'm an attorney with LeClairRyan in San Francisco. I've been asked to appear this morning on behalf of the Asphalt Roofing Manufacturers

Association, together with Mr. Louis Wilde, I will be presenting ARMA's position that the California Energy Commission should defer adoption of the new Cool Roof Reflectance Values proposed for the 2013 Building Energy Efficiency Standards.

The Proposed Standards do not have adequate support in the record. The foundation for much of the Commission's proposal comes from a study prepared on CEC's behalf that was intended to quantify the costs and benefits of the new Standards. As Mr. Wilde will explain, that study was completely inadequate to identify the cost savings and benefits that would be obtained from adopting these new Standards. Very small response rates make it all but impossible to project the impact of these new Regulations on the possible energy savings expected throughout California.

The proposed adoption of these Regulations has been done in a manner that has denied the industry and ARMA, in particular, the opportunity to work with staff to obtain meaningful information on the new Regulations, and for which the Commission would have ARMA's support. This has occurred despite ARMA's repeated request to work with staff to identify a meaningful way to obtain key data to provide a foundation for which scientifically supported Regulations can be derived.

Correspondence from ARMA and other interested parties has demonstrated that the foundation for the proposed regulations is flawed and that further studies of the costs and benefits of the Proposed Regulation should be undertaken. Please see correspondence from ARMA and other interested parties dated October 12th, 2011. ARMA and other interested parties have repeatedly suggested that the current Regulation should be continued and that a new study be undertaken from which both the industry and the Commission can obtain accurate data on which any w Regulations should be based. This would not be an easy task, but one which all interested parties can and will support.

Adopting the present proposals would send a very bad signal to business and to other interested parties in California. The only conclusion that could be drawn from continuing down this present path is that the Commission is not willing or interested to take the interests of consumers and businesses into consideration when mandating changes in Regulations. This would be in direct contravention to the enabling legislation for the Commission, which states that the Standards adopted or revised shall consider the impact on housing costs, total statewide costs and benefits of the Standard over its lifetime, economic impact on California businesses, and

alternative approaches and their associated costs. And I'm referencing California Public Resources Code Section 25402.

CHAIRMAN WEISENMILLER: Okay, so would you please wrap it up?

MR. HART: I'm sorry?

CHAIRMAN WEISENMILLER: Would you wrap up your comments?

MR. HART: Almost. ARMA does not believe that the Commission has adequate information to be able to consider most of these matters, proceeding with so little information to justify these new Regulations is arbitrary, capricious, and without proper foundation. ARMA urges the Commission to defer adoption of these Regulations and to work with business to obtain meaningful data from which new Standards can be adopted. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Let's hear from Louis Wilde -- again, ARMA.

MR. WILDE: Good morning, Commissioners and staff. My name is Louis Wilde. I'm a Director at Gnarus Advisors. I have a Bachelor's Degree in Mathematics from the University of Iowa and a PhD in Economics from the University of Rochester. I was on the faculty of the California Institute of Technology in Pasadena for 16

years. I've been a full time consultant for the past 20 years. Among my areas of expertise are sample design and statistical analysis.

I was asked by the Asphalt Roofing Manufacturers Association to review and comment on a report prepared by Architectural Energy Corporation called *Nonresidential Cool Roof Summary*, dated February 8, 2012. The AEC report discusses the results of various surveys intended to identify certain potential cost increases associated with the proposed 2013 Building Energy Efficiency Requirements. I've provided detailed comments to the AEC report in a letter to Commissioner Douglas dated May 4, 2012. My purpose here is to provide a statement of my primary opinion and the bases for it. Specifically, it's my opinion that the AEC report is seriously deficient in several respects and cannot be relied upon for estimates of the cost increases that will result from the proposed standards. In particular, much of the data discussed in the AEC report are irrelevant to the reported cost estimates, and there is no assurance that the data is representative. In fact, there are indications in the AEC report that it may not be representative and, in the event [sic], the reported cost estimates have no statistical validity.

Now, I have three bases for them, I don't have

enough time to read them out in detail, so I'm going to summarize them for you -- I'm going to sort of read from the text I wrote -- the first -- essentially, the first problem is that, in fact, four different sources were used to gather this information, an email survey of contractors, a phone survey of contractors, another survey of unspecified type of distributors, and information from a single manufacturer. When you boil all this information down, in fact, for the six roof type categories considered, in two cases, a single data point was used for the cost estimates. In one case, it came from the manufacturer, in another case it came from the contractor phone survey, but only one contractor responded, so it's a single data point to project costs for the entire state.

The other four cost categories relied largely on what turned out to be a distributor survey, and we have almost no information on that survey. The individual responses are not shown, there were only 11 distributors contacted, and it's impossible to ascertain who responded to which roof-type categories, it could have been all 11, it could have been one. So there's a problem there.

The other -- quickly -- a couple of other problems, if you look in detail at the report, there are

suggestions that there were some inconsistencies and some indication that the costs are understated. If you look at the summarized costs and then you look at the individual responses that were made available by the contractors, they look higher than the summarized costs. So it's not clear why the summarized costs are so much lower. Also, there's a table of costs for the contractors and a similar table of summarized costs for distributors. Oddly enough, in three of the categories the incremental cost estimates are identical. The odds of that happening by chance have to be near zero, so I'm not -- it's not clear why those two cost estimate tables turned out to have the same cost estimates when they supposedly came from independent random samples of different groups.

And lastly, just want to reiterate that, from a statistical point of view, trying to project costs based on these surveys requires that there be a carefully crafted survey with a reasonably large sample size and a transparent and relatively sophisticated statistical analysis attached to it. That hasn't been done here. You cannot project costs based on a single observation; in fact, even 11 observations would be statistically inadequate to project those costs for a population as large as at issue here in California. So just to --

CHAIRMAN WEISENMILLER: So in conclusion?

MR. WILDE: -- my conclusion, then, is that this existing report fails to support the conclusion that the economic benefits of the Proposed Standards outweigh the costs. It's lacking in transparency with respect to key data, distributor costs, and there are indications that it understates actual costs. In my opinion, a more carefully crafted survey is needed with a much larger sample size and a more transparent and sophisticated statistical analysis. Thank you.

CHAIRMAN WEISENMILLER: Okay, thank you. Staff, any comments?

MR. SHIRAKH: Yes --

COMMISSIONER DOUGLAS: Actually, Mazi, you know, I'll make a brief comment and then I'll see what staff wants to add. We talked a bit about this earlier with the earlier speaker, and Mazi went into some detail about the methodology and some of the steps that staff took. You know, I just wanted to say as a framing comment that the Energy Commission has a strong tradition and practice and preference for working closely with industry for deriving consensus proposals that move the ball forward, but that are respectful and accommodating of the difficulties that industry may face with what we're asking them to do. And I think that,

Commissioners, you will hear generally, and have been hearing from a number of speakers, about that process in various ways and resolution of issues. In this case, staff has worked very closely, or tried to work very closely with industry, for more than a year on this proposal and has developed good data, generally based on the sorts of information that we use in many other measures, as well. We've got long term studies of the performance of roofing materials at issue, we've got collected data on cost in this case, every single data point that we have collected has shown the proposal that we're putting forward is cost-effective. Despite the sorts of arguments that you have just heard, the industry has not come forward with a single contradictory data point, not one. And so, given that we're sitting here with what I believe to be a strong basis for moving forward and that we have worked very hard to try to get additional data, and we've been very open to getting additional data and haven't gotten any contradictory information, I strongly believe that we are on solid ground to go forward and we should go forward, and that we should continue to work with the industry because this issue of reflectivity of roofs, particularly flat roofs in the industrial and commercial sector, where we tend to see a lot of potential for heat gain, and this is a very

important measure, and this is a measure that Art Rosenfeld, who presided over the Commission's Energy Efficiency efforts for two terms and had tremendous breakthroughs in his career as a Commissioner, and also before that, and also now, continuing, this is a measure that Art Rosenfeld pioneered and championed and believes is very important. So I think that, despite the fact that we have reached what appears to be an impasse with the industry at this point, you know, I think we've got very strong grounds for going forward. I think we need to continue to work with them, or try to work with them because this is not an issue that's going to go away, this is an issue that we're going to continue to have to work on, so I want to ask that the representatives of industry who spoke today, and your colleagues who are not here, or may not be here, may be listening on the phone, we'll see later, you know, work with us, find ways to constructively engage, give us data, if you give us contradictory data, if you give us evidence that does not support the arguments that we are advancing, we will look at that, we will take it into account, we will adjust our assumptions and adjust our understanding of the issue if the evidence calls for that. But that's what we need to move this process, we need evidence. We need information that we can analyze. And it is more helpful, far more

helpful to give us evidence than it is to poke at the evidence that we do have -- the poking is helpful, it allows us to put what we have in context, it's important to bring forward questions about what we have, but what is compelling to us is when you're able to bring forward information that potentially could contradict, undermine, cause us to call into question, the conclusions that we're reaching from the evidence we have in the record. And we have worked really hard -- we spent a lot of time on this issue. I did review the letter that was addressed to me, I pulled staff in immediately, we went through again -- let's talk again about all the evidence that we gathered on this issue, let's make sure that we're comfortable and, quite frankly, I am. So I wanted to make these framing comments. You know, Mazi, you don't need to repeat yourself, you have talked about -- but if the last two commenters raised issues that you did not address before, please feel free.

MR. SHIRAKH: Just briefly, again, to allege that we don't respond to industry goes contrary to everything we've heard today, working with stakeholders, even with ARMA and, again, we have engaged them over the year and we have substantially changed our proposal. And if we agree to disagree, it doesn't mean we didn't listen to them. On the question of feasibility study, again, we

have used the state-of-art tools at our disposal, energy plus-based simulation engines, hourly simulations based on real buildings, rules in our ACM Manuals, we're using, I know widely accepted lifecycle costing methodology and TDV factors and multiplier, things that we're using for all the other measures is all summarized in a case report over 100 pages long, with a lot of detail in it. We haven't seen anything to the contrary that challenges the basis of those standards. And on the question of costs and the statistical significance, I will let -- the counsel will probably respond to that, but statistically significant is not a measure that, you know, any rulemaking body in the State Government, certainly not this one, uses it; you know, we use our best available data, we make our best attempt to collect data, we have asked ARMA to give us data. Public record is very clear on that, transcripts, they have offered to help, yet we have not seen a single data point, so they are criticizing our methodology without actually providing any evidence that our costs are not cost-effective, the numbers that we have come up with.

So, again, taken in balance, I think we have listened to them, responded to them, we have a proposal that is feasible, cost-effective. I think one of the members of ARMA previously mentioned that over 70 percent

of the products that are rated on the Cool Roof rating Council already meet these requirements without any insulation tradeoff. So, with that, you know, I would suggest the Commission adopt the Proposed Standards. Thank you.

COMMISSIONER PETERMAN: I'll just add a comment or two. First of all, Commissioner Douglas, thank you for your framing of this issue and just generally the discussion about the value for data, how data is gotten, and the efforts to work with industry to get that data. You know, I think, I'll agree that more data is always good, but sounds like staff has taken advantage of the best available data. And also, I appreciate your commitment to continuing to work with industry as more data becomes available and it's a positive thing that all the data you found so far is supportive of the conclusions that you've brought to our attention. And, again, these are Standards that continually evolve, but your rationale and approach makes sense to me.

COMMISSIONER DOUGLAS: Thank you, Commissioner Peterman. And I will emphasize, we mentioned this, and the former speaker, as well, on this topic, you know, we do allow an insulation tradeoff, so no products are being kept out of the market, it's just that, for the products that don’t have the required reflectivity there's a small

additional insulation requirement to make up for the benefit. Let me ask Pippin, our legal counsel, do you have anything to add on this point?

MR. BREHLER: Just to clarify for the Commissioners that the data that is in the record is the kind on which people rely in making important decisions. As you mentioned yourself, we don't have any contradictory data. The comprehensive weight of the evidence in the record provides substantial evidence in light of the whole record to support your conclusion if you were to go forward with this. I would also note that that record also includes responses from the consultants that developed these studies to the comment letters that were submitted by Gnarus Consulting and ARMA.

COMMISSIONER DOUGLAS: Thank you.

CHAIRMAN WEISENMILLER: Thank you. John Arent.

MR. ARENT: Yes, hi. My name is John Arent. I'm a mechanical engineer for AEC, who helped work on, or did a large portion of the cost study. I think most issues have been addressed already. I just want to mention that we did collect data from different regions of the state, including San Jose, San Francisco, Sacramento, Fresno, L.A., San Diego, etc., so we don't have a whole lot of data, that's quite obvious, and we're not debating that point, but the data that we do have, we

feel like we've collected via the best possible means, as well as collecting data from distributors in order to get the true costs of the product differences between the products.

And I'd also like to address one of Helene's comments, well, maybe two, the comment on the roofs getting dirty, I think that's an issue that deserves some study, but as far as the comment, the cost for recoating and reroofing, we do our cost benefit analysis based on a 15-year measure life, and for the recoating, when we're comparing an initial requirement of no requirements and going to a cool roof, that we incorporated a cost of re-coating which we estimated at $1.22 per square foot present value at seven, eight years down the line. And it's still cost-effective when going from a requirement of no cool roof, but when going from a requirement of an age reflectance of .55, which is the current requirement, up to .63, we didn't deem that there was any additional cost to recoat, as opposed to using the more highly reflective product. I think most of the rest of the comments have been addressed. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Adrian Salas, Sempra.

MR. SALAS: Good morning, Commissioners and Commission staff. My name is Adrian Salas from the

Sempra Energy Utilities, and I'd like to read a letter on behalf of Tamara Rasberry, who could not attend today, to be included into the record in support of the 2013 Building Energy Efficiency Standards. It reads as follows: "Dear Commissioners, the Sempra Energy Utilities appreciates the opportunity to comment in support of the 2013 Building Energy Efficiency Standards. The Proposed 2013 Building Energy Efficiency Standards, Title 24, Parts 6, 1 and 11 Energy Savings Projections indicate the new Standards will save large amounts of energy, both electricity and natural gas, reducing statewide annual electricity consumption by approximately 464 gigawatt hours per year, electric peak demand by 139 megawatts, and natural gas consumption by 11 million therms per year. To facilitate the savings projections, the Proposed Standards encourage future solar electric and thermal systems, improve residential building envelopes, improve lighting and lighting controls, add building commissioning, add requirements for process loads, most notably data centers, expand Acceptance Testing and data collection, and establish Reach Codes for Green building. We would like to thank the Commission and the Commission staff for their work on the proposed rulemaking. Sincerely, Tamara Rasberry." That's all I have. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Eduardo Martinez.

MR. MARTINEZ: Good morning, Commissioners and staff. My name is Eduardo Martinez. I'm a Legislative Advocate with Carter Wetch & Associates and I'm making some just brief comments today on behalf of the California State Pipe Trades Council, the California State Association of Electrical Workers, and the Western States Council of Sheet Metal Workers.

On behalf of the California State Pipe Trades Council and the Western States Council of Sheet Metal Workers, we are in support of this Title 24 update with the understanding that a proposal to strengthen Acceptance Testing requirements for HVAC systems will be developed on a parallel track by the end of the year.

Similarly, on behalf of the California State Association of Electrical Workers, we support this update with the understanding that a proposal to strengthen requirements for advanced lighting controls is being developed and will be completed by the end of the year. Thank you for all your hard work on this, and we support the update.

COMMISSIONER DOUGLAS: Thank you. Thanks for being here and, of course, we do plan to work on that proceeding and to move it by the end of the year. You

know, it will be a stakeholder process, we've had a number of stakeholders express interest, so we'll have to work intensively on it with many of you.

CHAIRMAN WEISENMILLER: Okay. Matt Kerns, Kings.

MR. KERNS: Good morning, Commissioners and staff. My name is Matt Kerns. I'm here with the Building Codes Assistance Project to speak in support of the 2013 Standards. The Building Codes Assistance Project is a program of the Alliance to Save Energy and we work on the advancements of Building Energy Efficiency Codes across the country. We believe that this is a smart common sense evolution of the Code, it is cost-effective in the context of a mortgage transaction. As Martha mentioned, the payback to the consumer is in a very short time, just two years. In fact, by our calculations, the homeowner will actually see a profit of $804.00 in five years. So, in short, this Code, it keeps money in the pocket of California residents.

Finally, adopting this Code keeps California not only a leader, but ahead of other Codes being adopted in states across the nation. Many states are actually adopting the 2012 IECC, the most recent and most efficient energy efficiency Building Code. These states include Maryland, Illinois, D.C., Rhodes Island,

Massachusetts, and also jurisdictions such as Phoenix. The 2013 Building Energy Efficiency Standards is, in fact, 10 percent more efficient than the 2012 IECC. By adopting this Code, California will remain a leader in building energy efficiency. Thank you very much.

CHAIRMAN WEISENMILLER: Thank you. Tom Garcia.

MR. GARCIA: Good morning, Commissioners, CEC staff, and people attending, my name is Tom Garcia. I'm the Chair of the CALBO Energy Committee, representing California Building Official Organization. First, I'd like to thank the staff for working so hard over the past two years and, also, I think, the Investor-Owned Utilities for starting their process early and vetting the case studies, that was very helpful, a lot of work. The California Building Officials appreciates the fact that you've listened to our concerns, as well as everybody else's. This is a process that has to be a bipartisan effort, and so we support the standards as they are to be adopted. We do have concerns, still, about Acceptance Testing and forms, in general, and believe that there's a lot of work that needs to be done to reduce the size and number of the forms to consolidate where possible and to be more concise and to put a good effort into making form work something that contractors, designers, and building departments can understand and

work for. And with that, thank you for your time.

CHAIRMAN WEISENMILLER: Thank you. Robert Lucas, UTC.

MR. LUCAS: Thank you. My name is Bob Lucas. I represent Carrier Corporation, which is a subsidiary of UTC. And as most of you are probably aware, Carrier Corporation is the largest manufacturer of space conditioning appliances in the world. And we have been working with the Commission in a very cooperative manner over the last 30 years since the inception of Appliance Energy Efficiency Standards and Building Energy Efficiency Standards, and our perspective on the Building Energy Efficiency Standards is that, where they touch upon appliance functionality, that we get the juncture correct where we can, in this particular proceeding, Carrier has been operating through AHRI, but when the 15-day language came out, it did perform a rather detailed review of that language for those points where there could be inflections. And we're still finalizing these comments, in other words, the comments have been made, but they haven't been formally approved yet, but I have looked at the draft and I can tell you that, for the most part, we think that these comments might be able to fit into the Non-substantive Technical Errata that you might publish, and let me describe for you the nature of some

of these types of comments. For example, they note that there are multiple definitions of the same term. I would suggest that one of those multiple definitions be stricken. Some of the definitions are incomplete, which could lead to potential misleading information. There are at some points multiple expressions of requirements in different sections that could be consolidated into a single section so that you don't keep repeating yourself, there are some incorrect footnotes as it applies to appliances, there are some incorrect references to appliance certification programs and procedures that we'd like to see if we could address, and there may be others that might fall outside of the technical non-substantive discussions, or the framework for your Errata, and if that is the case, then we would like to ask that we be able to bring these items forward in any supplemental regulation that might affect the Building Code. As you just mentioned, there might yet be a supplemental regulation forthcoming, maybe this year, perhaps that might be a vehicle. But Carrier wouldn't be making these comments if there weren't some basis for the comments and, in fact, the basis for the comments is in the way the Regulation is drafted, not necessarily in the thought behind it, or to challenge any of the conclusions you're making, and building structure itself, again, it's the

relationship between the Building Standards and Appliances that we have an interest in. So, thank you very much and appreciate your taking these comments.

COMMISSIONER DOUGLAS: Martha or others, can anybody please give us your thoughts on the comments raised by Carrier?

MS. BROOK: So what we heard there, it did sound like it potentially would fall into the Errata category, and we understand from Pippin that we have the opportunity to come back with you, with additional Errata that are obviously non-substantive, for your approval and adoption. We really don't know yet what else they will be commenting on, that it may be substantive, everything we sort of have guessed at, you know, we think that we're in a good spot on, so, really, we don't know what to expect with those additional things that they're still reviewing.

COMMISSIONER MCALLISTER: So I actually want to ask staff a question, and partly it's for my own information, but I think it might be useful for the whole room. Could you describe the process of the development of the Compliance Manuals and kind of the timeline and sort of the stakeholder process that, you know, a lot of people have said looking forward to working with you on implementation, I'm going to be working with Karen on the

implementation, or this will get passed off to me, I think, as the Lead here, so for the implementation. So I want to just have everybody on the same page with respect to what the process is going forward and -- I see some snickering over there

-- and I think it would be useful for people to hear how different comments and opinions can be incorporated from here on out, after adoption, but as the rubber is kind of hitting the road, so thanks for that.

MS. BROOK: What staff have done historically and what we'll continue to do is basically, starting next week, you know, we will probably take tomorrow off, but starting next week we'll start on the Compliance Manuals and maybe what would be the most helpful is if we actually explicitly established a schedule for that and a check-in point so that people have a little bit more understanding of the development process. And we can certainly do that along with the Compliance Software, we can establish a timeline and let people understand that there are times that they could check in. And we will be working continuously and, as we get to each topic, we'll be working with the stakeholders that have been participating with us, and any others that want to participate with us, to establish the information that is included in those manuals.

I think, Commissioner, that you're coming in at really just the right time to get the full perspective on the efficiency; in fact, not a moment too soon, to get the full perspective on the efficiency process because you've got the opportunity now to engage with staff and the stakeholders and track the compliance and the implementation phase of this Standards round, and at the same time, before we know it, you know, we'll be engaged in the next Update. And, in addition, there's the Acceptance Testing Proceeding, and there's also a considerable amount of work at sister agencies, at HCD, and the Building Standards Commission, which will be a really great perspective to go through that now and really have that experience, as well, going into the next Standards cycle.

COMMISSIONER MCALLISTER: Thanks for that, Commissioner Douglas. I'm very heartened with the vast majority of the comments here that really reaffirm that the process working together with stakeholders is working, so I thank staff and all the stakeholders for that. And, you know, I come from probably even more of an industry, or sort of on-the-ground perspective on a lot of these things, and I think implementation is all about -- it's all at the details, it's all about trust, it's all about sort of building that relationship that is

going to enable everybody to really give it their best effort and make them feel good about that. So I think, as we go through each iteration and each proceeding, we can really take the stakeholders and listen and, again, we might not always agree, but I think we're all -- if we can agree that we're all headed in the same general direction, to meet California's policy goals and improve our environment, and make that in a cost-effective technically sound way, then I think that in and of itself produces a very solid result. And that's kind of what this process ought to be in its best form. So I'm committed to that and look forward to working with staff and all of you in the room on that. So thank you.

COMMISSIONER DOUGLAS: I think Mazi might have --

MR. SHIRAKH: Martha is correct, on Compliance Manuals, I am taking tomorrow off.

[Laughter]

We will come back next week. We are planning to finalize this by the end of the year. We're going to work with our consultants, staff, the case consultants, to update the material. We've been working very closely with key stakeholders to write the material for the Compliance Manuals. We will have at least two or three opportunities for public-at-large to review the material

that's going to go into the Standards, pretty much follow the 2008 process, we think it worked well and we've been following that. And hopefully by the end of this year, you know, we will have that wrapped up.

COMMISSIONER DOUGLAS: So, Mazi, can you commit to taking the weekend off, too?

MR. SHIRAKH: Yes, I will. I'm going surfing.

COMMISSIONER DOUGLAS: Going surfing, that's great.

MR. BREHLER: And, Commissioner McAllister, just for your benefit, another one of the peculiarities of the rulemaking process for these Building Standards is that these Compliance Manuals are specifically called out in Section 254, 2.1 of the Warren-Alquist Act, that they trail the adoption and they provide that kind of additional information and guidance for the regulated community.

CHAIRMAN WEISENMILLER: So, David Dias.

MR. DIAS: Thank you, Commission, for letting me speak. I'm David Dias with Sheet Metal Workers Local 104 and Western State Sheet Metal Workers. I just want to comment on that we are in favor of the 2013 Proposed Building Efficiency Standards, and we look forward to working with you on Acceptance Testing, and I guess that's a big issue right here, so I'm hoping that will

happen in the near future. Thank you.

COMMISSIONER DOUGLAS: Thank you. Thanks for being here. Manny Alvarez, Southern California Edison.

MR. ALVAREZ: Good morning, Commissioners. Manuel Alvarez, Southern California Edison. I just want to express our support for the Standards and ask the Commission to go forward. I think what you heard this morning, I want to remind the Commission that we are in a cycle, we are not at a dead end, so the Building Standards are a living process and activity, so we'll have a chance to deal with some of the issues that are left open on this particular area in the future.

The Commission has always considered itself a leader in this area, and I think these Standards actually show that coming forward, and I want to reinforce that the Commission and the Warren-Alquist Act asks you to balance interests, concerns, and I think you've done that in these particular Standards. So, again, I would ask for your support and move forward. So that presents my final comment. I do want to bring up one issue with the risk of kind of raising some concerns, and you heard some of it today, and actually you heard quite a bit of it today, on the compliance program and the software, perhaps the Commission, it's time for you to reconsider. I mean, California has gone a long way in software

development, computing capability, and perhaps the Commissioners, at your level, will need to kind of reconsider how you're going to deal with these compliance issues going forward as you look into the next decade. There's been a lot of progress since my programming days in college, and software development and application development is something the state has also developed fairly extensively and perhaps it's time to start thinking how you apply them in this building area. And with that, I'll conclude.

COMMISSIONER DOUGLAS: Thank you, Manny. I think that's a really good suggestion that Commissioner McAllister will be delighted to follow-up with you on and I agree with you, that the range of even generation of kind of software that we use here in different applications is sort of astounding, and something that you wouldn't necessarily know coming in, and so just to make sure that we are able to take advantage of the best tools available to make compliance and implementation of the Standards as pain-free as possible for everybody is something that we should always be checking in on.

MR. ALVAREZ: Thank you.

COMMISSIONER DOUGLAS: All right. Great, so now we've got Mark Nowak with the something Framing Alliance. Mark Nowak, are you on the phone?

MR. NOWAK: Yeah, I'm here. Can you hear me?

COMMISSIONER DOUGLAS: Yes, we can.

MR. NOWAK: Okay, yeah. It's Mark Nowak with the Steel Framing Alliance. And our members are steel mill producers and the people that then take their products and roll studs and joists and other members that go into buildings. And I've submitted three comments and two of them, I think, are being addressed either through the Errata and in consultation with the staff. The one I wanted to comment on was a recommendation that the Commission, if they adopt this language, that they defer the adoption of the mandatory U-Factors in Section 120.7(B)(1) and 120.7(B)(5) because of their impact on the performance approach. Basically, the U-Factors in there mandate continuous insulation unless you happen to be using wood, and we know that introduces a bias; that's not -- the major point that we want to make here is that there are better ways to reach the same performance that is required in the Standard Reference Design, but when you mandate something specific that requires not only cavity insulation, but continuous insulation on top of that, you're really taking away the flexibility and the incentive to use the performance option, which is something we've always supported and think it's a great way to try to build a high performing building. But what

you're going to do here is take away that flexibility and you're also going to take off the table options that people have that are better, that give you higher performing building at less cost than simply mandating something like continuous insulation on all buildings. It also introduces, once you get above about an inch of some plastic insulation, you start getting into issues with constructability, attachment of sidings, and even some of the fire safety issues where additional testing is required. So we'd like to be able to see a Code that emphasizes the performance approach, but that maintains flexibility, and we don't believe that having these mandatory U-Factors will do that.

COMMISSIONER DOUGLAS: Thank you for those comments. Mazi, do you have any response?

MR. SHIRAKH: So this came kind of late. I'm going to ask Dave Ware to respond to this comment.

MR. WARE: Dave Ware, Commission staff. The Standards rely on a number of measures, many of those related to the envelope, and certainly staff has -- the tradition of the revisions of the Standards relied on mandatory measures to set a minimum baseline. What the Standards do not do is rely on the least common denominator to set those standards upon. So, in the context of what the Standards tried to do for 2013, is

allow as much flexibility as we can that is representative of the largest segment of construction in the market, and we allow other buildings to comply through the performance approach, and that's what we've done, I believe, in this case. It is a U-Value, but two issues were being illustrated by the comments by the gentleman on the phone, one was the requirement for continuous insulation, and the other was the requirement for a U-Value. Well, the energy element is not the continuous insulation, the energy element is the U-Value, the energy that is of benefit is the value of the overall assembly U-Value, and that's what we've specified. So we recognize that, for some assembly types that might be set at a higher level, that is, the lower the U-Value, the better the assembly, but those items can be traded and novel, innovative systems can be incorporated into building compliance by using the U-Value and by using the performance software that has traditionally been used. So staff's feeling is that this item is accommodated, it's nothing different than necessarily what's been allowed in previous years; yes, the stringency of the assembly itself has increased because it has been shown to be cost-effective and useful for meeting State mandates. Thank you.

MR. SHIRAKH: Just to add briefly to that. You

know, in the Standards, in general, when we specify U-Factor, it means we are specifying at performance level; how they meet that U-Factor is up to them, we're not really specifying you have to use this kind of insulation or that kind of continuous insulation. It's the performance level that we specify. Prescriptively, we may have some recommendation, but when they use performance, they can meet that any way they want, and that is true for residential assemblies, nonresidential, roofs, any assembly.

COMMISSIONER DOUGLAS: Thank you.

CHAIRMAN WEISENMILLER: Patrick Splitt. ApTech.

MR. SPLITT: Hi. I guess it's still good morning. This is Pat Splitt from ApTech. I just want to quickly say that I'm in general support of the new Regulations and basically I'd just like to say I concur with Mike Gabel's comments earlier, and I'll just make those mine, too, so to get that over with. But just a few days ago, I discovered something that somehow I overlooked all these years, and it's in the Nonresidential Commissioning requirements, something came up called the Design Review, which is defined as "an additional review of construction documents that cease to improve compliance with existing Title 24 Regulations, to

encourage adoption of best practices and design, and to encourage designs that are constructible and maintainable is an opportunity for an experienced design engineer to look at a project with a fresh perspective in an effort to catch missing or unclear design of information and to suggest design enhancements. Well, this is basically mandating that, on top of the fact that you've just adopted or moved over from the Green Code to the Energy Code the Commissioning requirements that in most cases are going to require another person on the team called a "Commissioning Agent," that there be another person that comes in after people have been working on this project for maybe over a year, to look over their shoulders when he has no idea what they've been discussing and start critiquing it. And nobody is required to do anything with this critique except listen to it and fill out some forms, so I propose some changes that I sent to the docket, that basically keeps everything in the Commissioning section, and keeps the new sections that would be part of what a design team would look at early on, requirements for a design review checklist, and a design review compliance form, but just takes out the requirement that this has to be done by a third party who is unfamiliar with the project, and especially a third party who is a licensed engineer. To require a licensed

engineer that might be a mechanical engineer to come in and critique and examine and analyze the designs of electrical engineers, daylighting design, not only is stupid, it's illegal, it's a violation of the Professions Code. He can't do that, it's not his area of expertise. You're requiring somebody to break the law. So, I think that if we just take out this requirement for this specific person, and especially that they be a licensed engineer, leave all the requirements in there and try to get this design team, the integrated design goal that all the utilities are trying to shoot for, get the team to do the work, everything -- all the goals that you want to accomplish will be accomplished. Just requiring somebody out of the blue to come in at the last moment and review these things -- in my area, small town Santa Cruz, if there's a mechanical design and they have to bring a third party independent mechanical engineer in, all these companies around here, engineering firms, are one-man companies, you're going to have to go to somebody that is this guy's competitor. And you're basically mandating him to criticize his competitor, well, great, he'll do that.

CHAIRMAN WEISENMILLER: Okay, you have to wrap up now. One last comment.

MR. SPLITT: Well, just I think what I proposed

will help get compliance, it won't be a deterrent and mess things up, and if you don't remove this requirement, I'm sure somebody along the way is either going to get a lawsuit initiated, or some ordinary person might even initiate an emergency rulemaking to get this changed, and then you can completely forget about January of 2014.

CHAIRMAN WEISENMILLER: Okay, thank you.

COMMISSIONER DOUGLAS: Let me ask staff. Martha?

MS. BROOK: Yeah, so the design review requirements that Pat is commenting on are just a different component of building commissioning, they're not anything new or extraneous, they're actually -- what we did when we were considering building commissioning and integrating building commissioning into Part 6 was look at what is not already in the Building Code. And what was in the Building Code in Part 11, and is currently in the Building Code in Part 11, were the back end of commissioning, basically Acceptance Testing, Functional Testing, you know, and also identifying the Builders/Owners Requirements. But what was missing out of that whole sequences of commissioning are this design review component, and what our case study documents -- is there an echo?

CHAIRPERSON WEISENMILLER: I was wondering if

that middle mic was live.

MS. BROOK: Oh, okay, so our case study that defends the design review requirement really looks at what is typically missed in Commissioning, that is caught if you do a design review included in your Commissioning process, and what you'll see are that there are these key things that it's too late if you wait and check later, and so I think Pat was misunderstanding the intent when he was saying that they would come in at the last minute and do this extraneous review. The whole idea is that this is done early, it's done at the earliest stages of design, and at the construction document state of design. And the other thing about the third party review is that's only required for the large buildings and the ones with complex mechanical systems. So typical buildings with non-complex, or basically, you know, simple mechanical systems can be part of the design team that provides that review. So we've actually staged the design review requirements based on stakeholder discussions, based on the size and complexity of the project. And, again, this is very typical of a complete Commissioning process, and all of the documents that we relied on to develop the requirements are Commissioning Standards across the nation, ASHRAE's Commissioning Standards, and other references that actually, I think,

support what we've ended up with.

COMMISSIONER DOUGLAS: I'll just add, Commissioners, that this measure is part of a general effort that you see sprinkled in different places in this Update, to increasingly incentivize or require energy efficiency to be considered at the design stage because, as we think about achieving Zero Net Energy on buildings in the future, one of the important changes that has to occur in order for that to be a reality is that energy efficiency is increasingly going to have to be a consideration earlier and earlier in the design process, and so this requirement is an element of that, and I think it will be helpful in catching early enough in the process for the issue to be resolved, without undue expense and hassle, issues that can be pretty easily fixed.

MS. BROOK: And the other thing I would suggest is that we can actually make a concerted effort in the Nonresidential Compliance Manual to sort of lay out the steps that sort of integrate what may be in two or three places in the Code, but integrate the Commissioning process in the Compliance Manual to explain when each requirement in the design process would be implemented.

COMMISSIONER PETERMAN: Commissioner Douglas, and Martha, pardon, I didn't get the full answer partly

with the echo and just being less familiar with the topic, so I just wanted to just ask a follow-up question just relating to the copy of the docket submission that we received. So, am I understanding correctly that it doesn't require necessarily someone from outside of the initial design team?

MS. BROOK: It depends on the size of the project, the size and complexity of the project.

COMMISSIONER PETERMAN: So, for a less complex, a smaller project, it can be someone in the design team - -

MS. BROOK: Part of the design team, that's right.

COMMISSIONER PETERMAN: But who is the Mechanical Engineer?

MS. BROOK: An engineer, it doesn't have to be a Mechanical, but a licensed engineer. And again, those are based on basically standard practice for Commissioning providers, either requirements of a Commissioning provider, or highly recommended requirements for a Commissioning Provider to be a licensed engineer.

COMMISSIONER PETERMAN: And just regarding the second point in the email about the correct date on the referenced standard?

MS. BROOK: So, I'm sorry, I'm unfamiliar with --

COMMISSIONER DOUGLAS: Mr. Splitt submitted or docketed an email about the --

MS. BROOK: Oh, the incorrect reference?

COMMISSIONER DOUGLAS: -- Appendix 1A.

MS. BROOK: Right, so that's something that we could deal with in an Errata.

COMMISSIONER PETERMAN: Okay, thank you for that clarification. That's helpful to me.

CHAIRMAN WEISENMILLER: Thank you. Mike Fischer.

MR. FISCHER: Thank you to the Commissioners and staff and stakeholders. Mike Fischer, and I'm representing the Polyiso Insulation Manufacturers Association. I appreciate the last minute blue card. I have to stand in rebuttal to something I heard. For the record, it came from Mr. Nowak from the Steel Framing Alliance, and I know Mazi spoke a little bit about some of the comments, but I wanted to address just a couple of points. Continuous insulation has become the prescriptive baseline for Codes across the country. I live in New York State, and we actually have those requirements going back to the 2009 Code, when it was adopted in New York. And the Building Standards

Commission in New York State actually included attachment charts and tables that are available, that were submitted through the Foam Sheathing Coalition to the New York State Building Codes Standards. So the concerns that were raised about attachment are simply unfounded. You can go to Foamsheathing.org and download all kinds of attachment information for all kinds of claddings, including absorptive claddings and heavier claddings, that's point one.

Point two, the issue that was thrown out about fire performance, all of the foam sheathing applications that are part of the continuous insulation prescriptions comply with all pertinent Fire Codes in the Building Standards Commission. So, for someone to throw that out there as if that somehow is a scare word that should be used in your deliberations, I want to suggest that whatever action you take today, that should not even be in the forefront. You have a responsibility for energy and you should act accordingly. We have friends in the California Office of the State Fire Marshal that deal with these issues, as well as the Building Standards Commission.

The final point I will make is that the benefit of continuous insulation, particularly as installed on the exterior of the envelope, even though the California

Code explicitly allows interior and exterior, the benefit of doing continuous insulation on the exterior is even more important when you look at conductive framing like steel framing, so I would suggest that hopefully we'll get past those comments and appreciate the opportunity to put this on the record. Thank you very much.

CHAIRMAN WEISENMILLER: Great --

MR. SHIRAKH: If I may add, I think he's correct that continuous insulation is a very effective way of insulating a building because it's not broken up by framing members, it does protect against thermal bridging, and even though our prescriptive standards sometimes is based on that, we do not require it. Again, it's a performance level that people can choose other means of complying if they don't want to use continuous insulation.

CHAIRMAN WEISENMILLER: Thank you. George Nesbitt.

MR. NESBITT: Yes, George Nesbitt. This is the first Code update process I have been part of and I wanted to say the initial effort at the IOUs kind of escaped me, so I got in late on that starting early last year, and I want to say it's been a lot of meetings, it's been a lot of reading, a lot of comments, a lot of trips to Davis and Sacramento, yet also a lot of fun.

Definitely, my suggestions, other people's suggestions, have been listened to, although I also want to say there's a lot of good little suggestions that clarify things, still things that actually get violated routinely, there's a lot of suggestions that have kind of been left on the table that are very minor, would not be hard to do.

I am a little worried on the multi-family. Multi-family is weird, especially when you go to high-rise, if you take the same building model at low-rise, and then high-rise, it will go from a heating dominated building to a cooling dominated building, plus in high-rise, you don't have the option of any compliance credits, and of course, with the water heating rules getting really cranked down on multi-family, I think we may see a major impact there. I also -- and I don't know how many of these issues can be dealt with through the Manuals and the ACM Manuals and Compliance Software.

The other last point I want to make is, since we do have the goal of Net Zero by 2020, I think it's important that the Reach Code, or if it's the HERS Rating System where we have defined Net Zero Energy, and I just want to say that I am the rater for single-family new homes in California to be certified Net Zero Energy today, to pass a house project in San Jose, and there is

an open house Saturday afternoon at 1 Sky Homes Cottle project, and it also happens to be a passive house project. So I look forward to 2017, although it's so far away.

MS. BROOK: George, this is Martha. Congratulations, that's awesome. And I know that we're going to have some representation there on Saturday, so that's a great event.

MR. NESBITT: Yeah, minus 10 -- don't know if any of the utilities are going to be there.

CHAIRMAN WEISENMILLER: Okay, well, thank you. So -- okay, Commissioners, any questions or comments now that we've heard all the parties?

COMMISSIONER DOUGLAS: Let me see if any of my colleagues have questions. I've got a few comments.

COMMISSIONER PETERMAN: I just have a short comment and I'm sure my fellow Commissioners will have more extensive ones considering they're more engaged, their engagement on this issue.

I would just say, thank you very much for all the public comments and the staff presentations. Being that I'm not Lead Commissioner on Energy Efficiency, I've had less engagement with all the stakeholders, and so I've found this meeting really valuable, and just in terms of getting a comprehensive set of some of the

comments.

That being said, thank you very much to staff for continuously briefing me on these Standards and keeping me updated in the ever evolving process, and also thank you to the stakeholders who have reached out to me, even though I'm not a lead on it, to give me their insight, in particular, the Building Association has been very vigilant in meeting with me and keeping me aware of some of their concerns and their issues and the progress that you've made. You know, obviously this was a collective effort, just evidenced by the number of staff who have presented the material here today.

And thank you to Commissioner Douglas, in particular, for her engagement on this, you know, in terms of your responses, I can tell that you've thought about all of these issues and all the issues that have been raised, it was nice to see that staff had a response, and had been in dialogue, and so congratulations on this Herculean lift and I'm supportive of this and look forward to your comments.

COMMISSIONER MCALLISTER: Yeah, I'm also very excited to sort of, you know, now that I've gotten a toe or two wet, to really jump in to this going forward on the implementation side, a lot of confidence in staff, I mean, you guys have done a great job. And in particular,

I just want to invite stakeholders who have expressed some dissatisfaction, or some issues with the result of all this work, to get in earlier and to actually provide substantive comment, and this is not an adversarial process, it definitely doesn't have to be that way, and you know, to the extent that we're all headed in a generally similar direction, this dialogue is only a good thing. So if it doesn't happen, then that's sort of saying something else. So I think, as we work on the details of getting this update implemented, we're going to learn a lot, we're going to be able to use that experience in very concrete ways to improve further the next time around. And that institutional learning, and the professional learning that we all go through, is really what keeps California vital and ahead of the pack here. So I think we need to see that long term vision as a good thing and, to the extent that it enables new businesses, new technologies, and all the things that we're so concerned about, jobs, etc., in California, we need to take that long term. And we know we're going there because we have to get to Zero Energy eventually here

-- actually, not even eventually, in 2020, it's not that far off. So each little incremental learning is huge and it's part of a bigger puzzle, so we only have a couple

more updates until we have to be there, so I am taking this very seriously and I know that all of you are, as well. So looking forward to really rolling up our sleeves and making it happen. So, thank you. I support this Update, obviously and look forward to moving ahead.

CHAIRMAN WEISENMILLER: Yeah, I was going to say, I think one of the hallmarks of this institution has been, over the decades, its work in the Building and Appliance Standards and, I mean, it's been a consistent effort, when we look at the energy intensity in California being driven down, it's been driven down by that, I mean, over the 30 years there are a lot of trends and energy policies that flittered in and out of people's minds, but staying focused on this and trying to get the buildings built correctly from the start, and smartly from the start, is one of the key things this institution does and does well.

Obviously, it's important not just to adopt them, but to get them out in the field. So having said that, I think it's very very important that we focus on the compliance, and we focus on the training and the education part, and make sure people have the tools so we can translate the vision we have into our buildings.

And certainly, I appreciate the enormous effort of the staff, you know, this has dwarfed some of our IEPRs

in terms of number of workshops, which is saying a lot, but certainly appreciate all the stakeholder involvement. And again, certainly we appreciate the efforts to work out with the Building industry, something that reflects the temper of the times, you know, that since our last Standards, it's been a tough time in housing, and we felt that we had to make some adjustments or accommodations there, but certainly appreciate the work of our utility partners, the environmental partners, and the building industry, it's been one of those things that really takes a whole village of people to pull this off, and it would take a lot more work to actually make it happen.

Obviously, on the cool roofs concern, you know, having probably one of the few people in this building who have ever testified at FERC on regression stuff and statistics, I understand the tool, but, again, this is not -- we can't tolerate an industry hiding the ball, you know, this is a collaborative process, we certainly welcome your participation. As a scientist sitting in Art Rosenfeld's chair at the Commission, I understand the need for cool roofs, and we certainly would look forward to the industry collaborating with us in a positive fashion, but, again, you know, let's move on. We know where the future is going in the energy area, and there are some products that are very energy efficient, which

we're trying to encourage, and some that are less so. And we're trying to work out accommodations where people can still use those products, but they do have energy consequences and, you know, we need to keep -- when you look at what this means to us in terms of greenhouse gas savings, in terms of energy savings, in terms of dollar savings, this is a monumental day for California; it's time to move forward.

COMMISSIONER PETERMAN: And Commissioner Douglas, may I just make one more comment? Since the Chair mentioned the IEPR, I was going to perhaps mention this in the Commissioner Update at the end, but then no one is usually around, and so I'm going to take the advantage of having the energy efficiency crowd here. You know, as part of the IEPR, we're developing a Renewable Strategic Plan, and we had a workshop on May 30th on job opportunities in the Renewables Sector, and we had a panel that talked a lot about workforce development and training, and a couple people mentioned workforce issues here today, and we had great representation and good dialogue amongst the community colleges and different practitioners, and even though the focus was on renewables, there was a lot of discussion about workforce training and energy efficiency, as well. I think some good ideas came up during that panel and,

so, the Strategic Plan will be providing some recommendations around this space for renewables, but if you are engaged in energy efficiency workforce and job training, I suggest checking out the transcript from that hearing, which was on Tuesday, the 30th and looking particularly at the second panel because I think there were some good ideas that came out that would be great to translate to the energy efficiency space, as well.

CHAIRMAN WEISENMILLER: We've had one last comment and I will -- and this is very very late, but in the interest of public participation, I will take it. Mr. Frank Stanonik. But, again, in the future please be more timely. And please be brief.

MR. STANONIK: Hello?

CHAIRMAN WEISENMILLER: Yes.

MR. STANONIK: I'm sorry, I didn't recognize, though, that you were talking to me. This is Frank Stanonik with AHRI, and we actually were in the queue to put some comments in, and I'm not sure how it happened, but we didn't get recognized or acknowledged. In any event, trying to be brief since you folks want to go to lunch. We did submit some comments on this process and a couple things I just wanted to point out, that unfortunately weren't resolved.

In the requirements for commercial boilers,

there's a definition that's now been added for commercial boilers that essentially says any boiler in a commercial application is a commercial boiler. That essentially is inconsistent and possibly in violation of Federal Regulations in terms of how they define boilers, and actually inconsistent with the California Appliance Efficiency Regulations relative to defining products, so I think that needs to be addressed. And although there have been some changes in the actual requirements added for commercial boilers, we're still not certain that it's really, as far as commercial space heating boilers, is really a cost-effective measure, but I guess it's kind of done.

The other issue that is something, I think, again needs to be fixed is that, for the requirements for new installations of gas water heaters in residential buildings, one of the requirements is the gas line has to be sized to handle 200,000 Btus, and we put in a comment that if, in the new installation, someone already installed a high efficiency gas storage water heater, electric condensing water heater, they would possibly have a product that only had 100,000 Btus, and it's already high efficiency, and it is at that point a little unnecessary to require that the line be sized for 200,000 Btus in anticipation of a future installed efficient

water heater. So those are a couple things that just really we're a little surprised that they weren't addressed.

COMMISSIONER DOUGLAS: Martha.

MR. STANONIK: One more comment.

COMMISSIONER DOUGLAS: Oh, I'm sorry. Go ahead.

MR. ROY: Just a couple of comments with respect to the design requirements for quantities of outdoor air. We submitted some comments yesterday with respect to, you know, the 189.1 having a 15 percent requirement and that being a green standard, and the percentage as specified in the Standard, the California Standard, is 10 percent, so we submitted those comments and we would request staff to look into that.

Also, the warranty requirements for economizers, we suggested some clarification of the language for that, as well as the wet bulb criteria, which was kind of not required because the Standard doesn’t talk about the wet bulb requirements and the economizers, so we submitted the comments to the docket folder. We would appreciate it if staff could look at those comments and get back to us.

MS. BROOK: Hi, Frank and Aniruddha, this is Martha.

MR. STANONIK: Hi, Martha.

MS. BROOK: So, Frank, first of all, the commercial boiler definition has been fixed, it was supposed to be in 15-day language, there was a problem with our editing process, so it's in the Errata. So --

MR. STANONIK: Oh, well, I missed the Errata, and then so forget that one, okay.

MS. BROOK: No, that's completely understandable, and our apologies for not getting it into 15-day language, because we did discuss it and I know you thought we were going to address that, and we intended to. So I apologize for that. On the water heater requirements, we're basically just saying that we -- at the point of new construction, it's the incremental cost is negligible to put in the additional sizing requirements for the most efficient water heater, and so that's basically why we stuck with those requirements, the 200,000 Btu requirement will work for all high efficiency water heaters, whereas the 100,000 won't work for all types of high efficiency water heaters, so that's why we left those requirements as is and are recommending those.

Aniruddha, for the outdoor air requirements, we actually aren't increasing any stringency there, we've always had these outdoor -- the comment is about the

accuracy of the measurement of outdoor air flow -- we've always had that accuracy requirement in our Acceptance Tests, we've just been explicit this time about moving it into our Standards because we think it actually clarifies that requirement and makes it very very explicit that that's the requirement that you'll actually be tested to in the Acceptance Tests. And our understanding is that there are also some proposals in ASHRAE, in the Green Building Standard that you referenced, to move to a 10 percent --

COMMISSIONER DOUGLAS: All right, thank you, Martha. So, thank you, I think you addressed the points raised in public comment.

MR. BREHLER: Excuse me, Commissioner Douglas, and if I could just add, as Martha mentioned, the Errata is -- as you think about these -- you have a Proposed Order before you that's also been posted to the website and it's available at the back of the room, and it encompasses both the Standards, the Errata, the Negative Declaration, and attempted to consider the discussion today and would direct the Executive Director and staff to take further steps to finalize completion if you should decide to adopt these today.

COMMISIONER DOUGLAS: Right, and actually I've got in my hands the Proposed Order and the Errata, as I

attempt to formulate a motion, but we're not quite at that point, so I'll wait until we get there and maybe you can help me.

So I've got a number of comments to make, most of which I think I will save until after we take action on these items. I hope there's not a stampede out of the room after we take action because there are a few people I want to thank and there are some comments, in general, that I have. And I will just say, as a lead up to the vote on this item that, as has been noted may times, the Standards are a product of over two years of really intense work. And as you see from this discussion, it's been a process of collaboration and gathering evidence, and reviewing evidence, and comparing analyses, and talking and respectfully disagreeing, and then coming back and talking some more, and working to find ways to actually reach agreement and understanding on how to proceed. And it's a deliberative process, it's very transparent, it's very rigorous, it's very open to stakeholders, and it's very data driven. And stakeholders have been really really helpful in bringing information and bringing attention to detail, and asking questions and really helping make sure that we get this right.

The package that is before the Commission today

is also a carefully balanced package, it's a package that puts forward and proposes the greatest incremental increase in efficiency savings of any package we've considered at the Commission, but it also very much recognizes the state of the housing market and industry right now, that we've got a long ways to go before the industry gets back to kind of what they would consider a more normal trajectory of home building and we were very careful to make sure that we reduced costs where possible, that we make compliance simpler, more possible. So you know, the package that we have before us does that.

And of course, in improving energy efficiency of the buildings that are built in California, we're saving people money, we're helping them be more comfortable where they live and work, and we are helping the state avoid the need for new power plants that would otherwise be needed to supply demand. And as the lead Commissioner on power plant siting, and with no prospect in sight of being relieved of that one -- and I'm kidding because I enjoy that work immensely and I'm actually really looking forward to being able to go back and focus much more on it than this Building Standards Update has allowed me to do, you know, nevertheless, at every opportunity to reduce the need for power plants, you

know, the Commission has jumped, and will jump, and needs to jump, to save our state the cost of that infrastructure and the unnecessary environmental impacts of that infrastructure.

So, by adopting this package today, the Energy Commission will take a really important step forward. We're continuing, as the Chair said, a legacy that is nearly 35 years long, that has saved Californians between our Building Standards and our Appliance Standards about $66 billion in avoided costs that has, in greenhouse gas terms, in light of California's climate policies, taken about $37 million cars off the road. This is a huge legacy of achievement in the state, it's a marathon, not a spring, it's something that we do and we come back and we do again, and we get a little bit better, and a little bit further each time. And the relationships that we have with our stakeholders are long term relationships and we're working with people who have, you know, we're working with some people who are new in our process and we're working with a lot of people who have worked with us for a long time, so with that, I will save the rest of my comments.

So first, I will move approval of Item 4, the Initial Study and Negative Declaration.

COMMISSIONER MCALLISTER: I'll second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) Item 4 passes unanimously.

COMMISSIONER DOUGLAS: Thank you. And for Item 5, let me just ask counsel, we've got an adoption order, we've got the Errata, and the 45- and 15-day language. How do I best formulate a motion that captures everything I need to?

MR. BREHLER: I think the opening paragraph of the Proposed Order would suit that, which describes the 15-day language and then, as revised, pursuant to your decisions today to adopt the Errata.

COMMISSIONER DOUGLAS: All right. So --

MR. BREHLER: Dated today.

COMMISSIONER DOUGLAS: All right. So then, I will move that we adopt additions and amendments to our Energy and Water Efficiency Standards for Buildings applying to Residential and Nonresidential, High-Rise Residential, and Hotel and Motel Buildings, the Standards that are in Part 6, also known as California Energy Code and Associated Administrative Regulations in Part 1 of Title 24 of the California Code of Regulations. Pippin, you use a lot of words here, but I will read them all --

MR. LEVY: You can -- pardon me, Commissioner, you can just move to adopt the Proposed Order adopting the Proposed Regulations.

COMMISSIONER DOUGLAS: There you go, all right, even better.

All right. So I will move to adopt the Proposed Order adopting the Regulations and Negative Declaration.

COMMISSIONER MCALLISTER: All right, I will second.

CHAIRMAN WEISENMILLER: Okay. All those in favor?

(Ayes.) This item also passes unanimously. Congratulations.

COMMISSIONER DOUGLAS: Thank you.

[Applause]

COMMISSIONER DOUGLAS: All right, and with that, if you'll indulge me, I want to just take a step back and personally thank, first of all, the members of the Standards staff for their -- and the Legal Office -- for their incredibly hard work on this package and, you know, when my office sent an inquiry around to make sure we listed every single person that I should list, and we got back the response, you know, "Please don't read off any names because it's a team effort, and if you just say the 'Standards Team,' we'll know what you mean, and it's all of us," so that's what I'm doing, but I just want to say really appreciate your work, your commitment,

your professionalism, and your expertise which reflects exceptionally well on the Commission, so thank you.

I also want to thank, again, our stakeholders from the utilities -- the utilities who supported this work, and the consultant teams who have put in just endless hours of technical work supporting the standards, to the building industry which has engaged constructively and persistently, and very professionally throughout the entire process and has worked out issue after issue after issue with us, the advocates, the NRDC, Blue Green Alliance, and others have brought a tremendous amount of benefit and help to the process, the installers, some of the Unions we've worked with, contractors, manufacturers, you know, really stepped up and really helped us make the proposal better. The attention to detail that people bring to this process, I mean, it takes a lot of time to participate in this process, it's 70 workshops, even before you start the pre-rulemaking, and there are more workshops and there are hearings, and there are meetings, and you know, I might give Bill Callahan the attention to detail award for assistant advocacy on his one item, but I don't know if I should because there are so many people who have brought that level of attention to detail into this process. And CALBO, I was so pleased to see CALBO here today supporting the Standards. Early, early, early

in the process, when I was the very new Lead Commissioner for Efficiency, because I didn't start out on the Efficiency assignment when I started out on the Commission, Tom Garcia asked for a meeting with me and we sat down and we talked, and we talked about the importance and the role of the local building officials as really the front line of Code Enforcement, and all the ways that we could make their job easier, but sometimes don't, and at the end of that process, you know, I thanked him and got his card and found staff at some point, after some long frazzling meeting, and said, you know, "I met with Tom Garcia and I think it would be really great if you guys could try to make him a little happier." And you know, long story short, after every once in a while I would ask and they'd say, "Oh, yes, yes, we're working with them, we're talking to him, you know, we're doing this, we're doing that," and it's really great to see at the end of the day that we've been able to probably certainly not go all the way to making their lives easy in enforcing the Standards, but go some significant portion of the way to addressing concerns, and that's a partnership that's really important to the Commission and that we need to strengthen and continue to work on. As staff will probably tell you, that's very often my response when somebody comes in and sees me with

an issue, and it's like, "Okay, well, why don't you work with them and see if you can work that out?" And I know, of course, that sometimes you can't, but many many many times we have proven that we can. So that's been really helpful.

And I think, finally, on kind of a personal note, as I hand the baton over to Commissioner McAllister, I just want to say that it has been an extreme privilege and pleasure to work with the Standards Team and to lead our Efficiency efforts for the time that I have, and it's a great operation, it's one of the most important things that the Energy Commission does, it's one of the core parts of our legacy, and so it's tremendous fun. Commissioner McAllister will do extremely well, he is so well suited for this role, and I will support him as much as I can, and I will also turn my attention to some badly neglected items that I'm responsible for, and that need to move forward. So, you know, I'll just suggest to stakeholders, you know, get to know him, I'll be engaged, I'll be interested, but he's going to really bring it to the next level, I think. So good luck with that. And thank you.

COMISSIONER MCALLISTER: Yeah, congratulations, Commissioner Douglas. I mean, you can tell how much people appreciate your dedication to this, I mean, a

really amazing job. And so, and I'm very excited and humbled to sort of step into this process. My feet may be bigger than yours, but my shoes aren't, I don't think. And I think there's so much more to do, I mean, it's a continuously evolving process, it's something that there really is no choice that we have to push it forward and really look for all those opportunities and it's much better to do it collaboratively and in an informed way than the alternatives. So I'm really looking forward to getting to know all of you better. I would definitely invite the stakeholders to introduce yourselves and we can set up meetings inside the Commission, outside the Commission, you know, I'm open to lots of -- I'm sure there's a protocol, but I'm open to really anything that works. So anyway, looking very much forward to it and I think that's really the substance of what I have to say. Thanks.

COMMISSIONER PETERMAN: I am just going to say, since I'm not the ones who will have these meetings, that being a new Commissioner, Commissioner McAllister, you might encourage -- there's so many stakeholders, maybe they'll come in pairs, or triplets, and brief you, otherwise I think you'll be meeting all day. But I think you've just demonstrated your open door policy, which is great.

CHAIRMAN WEISENMILLER: Again, thanks everyone. Actually, sort of reflecting, obviously our first Standards were adopted under the leadership of Ron Doctor, so I think again certainly all this is part of Ron's legacy. Anyway, thanks again and, as I say, let's go out now and implement these. And certainly, take a weekend off for the Building Standards staff.

Okay, I'm going to try to cover quickly some contract items and then we'll take a break and come back for Carlsbad.

Okay, so let's deal with Item 7. Mark.

MR. HUTCHINSON: Good afternoon, Commissioners. Mark Hutchinson, Deputy Director for Administration. The item before you is a Purchase Order agreement with SymSoft in the amount of $489,680, to assist the Energy Commission with the design, development, implementation, testing and documentation for an electronic filing document management system.

The goal of the project is to increase the ease of submitting documents and reducing transaction costs for parties participating in and commenting on CEC proceedings, and allow for inventorying, cataloging, and easy retrieval of filed documents. The project term will be from June 2012 through July 2013. And I'm available to answer any questions.

CHAIRPERSON WEISENMILLER: Commissioners, any questions or comments?

COMMISSIONER PETERMAN: This sounds like a good project and anything we can to do to make it easier to participate and manage that process, I'm supportive of. Okay, any other comments? I move Item 7.

COMMISSIONER MCALLISTER: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) We're going to hold this item open for a second, hold it open for Commissioner Douglas. Let's go on to the next item, Item 8.

MR. CHISUM: Good morning, my name is Dale Chisum. I'm from the Information Technology Services Branch. I'm seeking your approval for the Commission to enter into agreement with Cyber Communications for $135,000 to provide the necessary expertise to perform an independent IT security assessment of the Energy Commission's IT environment. The IT environment includes the IT infrastructure and the practices used to create, deliver, operate, secure, maintain, and support the IT infrastructure. These services will be used to conduct a security assessment at the Energy Commission's IT environment, provide a gap analysis identifying the gaps between the Energy Commission's current IT environment and industry, State and Federal policy standards and

requirements, conduct vulnerability testing on Energy Commission's IT infrastructure, produce a written IT security assessment and security plan, and assist with implementing identified quick wins in prior recommendations. At this time, I would be happy to answer any questions.

CHAIRMAN WEISENMILLER: Okay, Commissioners, any questions or comments?

COMMISSIONER MCALLISTER: I have a comment. So given all the migration that I understand recently happened here and everything, I think this is a very timely and good thing, and I'll just say I won't ask to put Skype on my machine anymore. So --

COMMISSIONER PETERMAN: And I was just wondering, is this something that other agencies are doing, as well?

MR. CHISUM: This is a State policy requirement and this just helps us to identify our gaps and to meet our requirements.

COMMISSIONER PETERMAN: Well, then, with that, I'll move Item 8.

COMMISSIONER MCALLISTER: I'll second.

CHAIRMAN WEISENMILLER: All those in favor on Item 8?

(Ayes.) This item passes unanimously.

Commissioner Douglas, we held Item 7 open for you.

COMMISSIONER DOUGLAS: Thank you. So I also approve Item 7.

CHAIRMAN WEISENMILLER: Great. Let's go to Item 9.

MR. COE: Item 9. My name is Donald Coe. I'm with the Energy Fuels and Technology Office. And I'm here to present to you approval of Agreement ARV-11-029 for the amount of $4,562,532. The Gas Technology Institute will conduct a vehicle demonstration with two sub-grantees, U.S. Hybrid, which will demonstrate liquefied natural gas plug-in hybrid heavy-duty dredge truck, and Clean Air Power, which will demonstrate a natural gas version of the Navistar MaxxForce natural gas engine.

GTI, in partnership with the U.S. Hybrid Corporation, proposes to demonstrate three plug-in hybrid trucks, dredge trucks, over a two-year demonstration project in the South Coast Air Basin. These plug-in hybrid trucks are intended to demonstrate short term commercialization and production potential and to illustrate the selected vehicle technology's potential to reduce greenhouse gas emissions and petroleum use. The plug-in hybrid dredge truck will reduce fuel usage by 50,000 gallons of diesel fuel per vehicle, and lower the

operational cost of $132,000 and will result in a greenhouse gas emissions by 600 tons. This goes into detail, the dredge trucks are used to transfer cargo containers between ports and warehouses or logistics yards.

Dredge trucks often queue for long periods of time during loading and unloading. During this time, the trucks are idle, the engine is continuously running with the accompanying emissions being produced. The plug-in hybrid dredge truck will operate in battery electric mode while idling. Once the battery charge is reduced to a low level, or the truck has to move to any significant distance, the internal combustion engine will turn on and the vehicle will operate using liquefied natural gas.

GTI in partnership with Clean Air Power will demonstrate a natural gas version of the Navistar MaxxForce 13 engine. This demonstration will fill a crucial niche in natural gas engine production availability and will enhance commercial viability and market acceptance. This engine reduces well-to-wheels greenhouse gas reductions by nearly 15 percent over a diesel. Thank you for your time and consideration.

CHAIRMAN WEISENMILLER: Thank you. Commissioners, any questions or comments?

MS. DRISKALL: Chairman Weisenmiller, if I may?

CHAIRMAN WEISENMILLER: Yes, sure. Please.

MS. DRISCOLL: Thank you. I'm Kristin Driscoll from the Energy Commission's Chief Counsel's Office. The Chief Counsel's Office reviews all proposed grant awards under AB 118 to identify whether any further review under the California Environmental Quality Act is necessary. We usually include this in the materials before you, but we left it out for this one. So based on our review of this project, and further due diligence, we recommend that, if you approve this award, you include a finding that the project is exempt from further review under CEQA Guidelines Section 15061(B)(3).

COMMISSIONER PETERMAN: As Lead Commissioner on Transportation, I'll just note that I'm familiar with this item and that I'm supportive of it, particularly looking for demonstration opportunities in the heavy duty vehicle space are important and it's an area where we need to make continued progress, and so I would recommend this for adoption for approval. So if there are no other comments, I will move Item 6 -- I'm sorry, I'll move Item 9, I'm not moving Item 6, I'm moving Item 9.

CHAIRMAN WEISENMILLER: Okay, all those in favor?

(Ayes.) Item 9 passes.

COMMISSIONER DOUGLAS: Commissioner McAllister

has seconded it.

COMMISSIONER PETERMAN: So I moved it, let's just do this again for the record. I move Item 9, Gas Technology Institute --

CHAIRMAN WEISENMILLER: Plus the environmental.

COMMISSIONER PETERMAN: Plus the environmental Negative Declaration.

MS. DRISCOLL: Finding of exemption.

COMMISSIONER PETERMAN: Okay, let's start again. This Energy efficiency has got us all worked up here. I move Item 9 and the finding of exemption.

COMMISSIONER MCALLISTER: I'll second.

CHAIRMAN WESEINMMILER: Now, all in favor?

(Ayes.) This item passes unanimously.

Okay, let's go on to Item 10, which is Springboard Diesel, LLC. Possible approval of Agreement ARV-11-016 for a grant of $758,200, and this is ARFVTP funding. And Hieu?

MR. NGUYEN: Good afternoon, Chairman and Commissioners. My name is Hieu Nguyen, I am the AB 118 Technical Lead for this project, and I'm with the Emerging Fuels and Technology Office in the Division of Fuels and Transportation. I'm here today to ask for the approval of a grant for $758,200 in ARFVT program funds to Springboard Biodiesel.

The goal of this project is to prove the commercial viability of a low cost, small scaled, easily deployed biodiesel production facility using Springboard's Biodiesel's closed local loop system that will produce up to 350,000 gallons a year of biodiesel from multiple feedstocks, including chicken fed, beef tallow, and used cooking oil. Springboard Biodiesel plans to develop, build, test, and operate a pilot small scale production and fueling facility in Chico, California.

The rural regions of Northern California currently lacks any biodiesel fueling stations, making it more difficult for Northern California residents and businesses to use biodiesel. This project will respond to Chico's need and it will produce renewable biodiesel fuel by Springboard Biodiesel's system. Springboard will test the fuel and sell it locally within a 20-mile radius.

One proven in Chico, these Springboard systems can be deployed in rural distressed areas where feedstock is rarely available. The deployed Springboard systems will enable the creation of a broad network of low cost biodiesel processing centers that are able to turn multiple low cost local feedstock options into biodiesel for consumption locally. This deployment will accelerate

the use of biodiesel throughout California, create new jobs, and ensure biodiesel prices stay competitive with petroleum-based diesel, while significantly reducing particulate emissions and reducing greenhouse gasses by 87 percent below the diesel baseline.

This project will result in a total of 12 jobs, of the 12 jobs, three to six for each biodiesel production site. These jobs are permanent and specialized in the daily management and operation of the biodiesel facility. Springboard anticipates bring in production by the fourth quarter of 2012, licensed and certified by first quarter of 2013, and building new Springboard systems by fourth quarter of 2013. Staff requests the Commission support approval of Agenda Item 10 for a grant agreement with Springboard Biodiesel in the amount of $758,200. This concludes my presentation.

CHAIRMAN WEISENMILLER: Thank you. Does anyone have any questions or comments?

COMMISSIONER PETERMAN: If there's no other questions or comments, Commissioners, I'm supportive of this project, I think it's a precursor to having a broader geographic distribution of biodiesel production and usage, as well as utilization of more diverse waste feedstocks, so I recommend this for approval. So I will move Item 10.

COMMISSIONER MCALLISTER: I just wanted to also make a quick comment. I mean, this item and the next item sort of demonstrate -- I know we're on Item 10, but we have some different feedstocks, different markets, different kind of business models, but similar quantity of biodiesel being produced by these two, and there's a need for all of this stuff; diversity is what protects us and lets us figure out what works, and go to these different niches and do what's right in each case. So I will second.

CHAIRMAN WEISENMILLER: Great. All those in favor?

(Ayes.) This items also passed unanimously. Let's take a break now for lunch and restart in an hour or so, that will be 1:35.

COMMISSIONER PETERMAN: Before we take the break, Chairman, may I just ask, when we return, what item will be taking up? I ask the question because I see there's some people in the audience who are here for some of the, for example, Items 11 on, and just wondering if we will take those up, or can take those up, before we take up 6, potentially.

CHAIRMAN WEISENMILLER: Yeah, I was just looking. Jennifer, in terms of what you told the Carlsbad folks, I was trying to figure out if we have

them more at like 2:00ish?

COMMISSIONER PETERMAN: Yeah, I think we could probably take up the rest of the items on the agenda in a relatively short time period, but I don't know what the conversation has been to date.

MS. JENNINGS: I simply told them it would not happen before 1:00, but I'm sure they will be here at 1:00. I would be happy to call staff people who are waiting, I don't know if any other items involve members of the public.

CHAIRMAN WEISENMILLER: And the other question is whether any of the members of the public have asked you to give them a heads up on these remaining items.

MS. JENNINGS: No.

CHAIRMAN WEISENMILLER: No, okay. So why don't we start with Item 11 when we come back and we'll cover the rest of the contracts, so through 18, and then we'll pick up item 6.

MS. JENNINGS: So would it be fair to tell the Carlsbad people 2:00?

CHAIRMAN WEISENMILLER: Two o'clock, maybe 2:15, yeah. Two o'clock.

MS. JENNINGS: Okay, thank you.

COMMISSIONER PETERMAN: So what time are we back?

CHAIRMAN WEISENMILLER: So we will be back an hour from now, so why don't we say 1:35?

COMMISSIONER PETERMAN: Okay, great. Thank you.

(Recess at 12:38 p.m.)

(Reconvene at 1:43 p.m.)

CHAIRMAN WEISENMILLER: Good afternoon. Let's start the business meeting. Our next item is 11, SacPort Biofuels Corporation, possible approval of Agreement ARV-11-019 for a grant of $5 million to SacPort Biofuels Corporation.

MR. NGUYEN: My name is Hieu Nguyen, I am the AB 118 Technical Lead for this project. I'm here today to ask for approval of a grant for $5 million to SacPort Biofuels Corporation. SacPort Biofuels plans to develop, build, validate, and test a pilot renewable diesel facility at the Port of West Sacramento.

The project will demonstrate biomass to liquid diesel production from a local renewable green waste feedstock. The primary feedstock for this project will be waste-based biomass, but this project can also accommodate other types of feedstocks such as mixed green waste, railroad ties, construction and demolition waste, that would otherwise end up in a landfill.

This project will use a gasification system

which converts waste and recovers energy economically and, on a larger scale than other conversion technologies. By contrast, current methods for producing renewable diesel from waste can be expensive, energy intensive, and can produce emissions and odors. California is ready for a waste to diesel fuel solution that is cost-effective, energy efficient, and environmentally friendly. This biomass diesel will reduce greenhouse gas emissions by 138 percent when compared to U.S. average for low sulfur diesel, virtually eliminates sulfur oxide emissions and substantially reduces particulate matter and smog-forming $NO_x$.

SacPort biomass diesel production will reach commercial scale in 2014 and plans to produce 365,000 gallons of biomass diesel at full capacity by 2018. This project will create 20 permanent jobs and an additional 30 during the construction phase in the City of West Sacramento, which has an unemployment rate of 18 percent with 16 percent of the population living under the poverty level in 2010.

Staff requests the Commission support of approval of this project. This concludes my presentation, and I have representatives from SacPort Biofuels here in the audience to answer any further questions.

CHAIRPERSON WEISENMILLER: Please, why don't you step up to the podium?

MR. DODD: Good afternoon. I'm Daniel Mark Dodd, V.P. of Engineering for CR Energy, the parent company of SacPort Biofuels.

CHAIRMAN WEISENMILLER: Great. Thanks for being here. Commissioners, do you have any questions or comments?

MS. DRISCOLL: Chairman Weisenmiller, if I may?

CHAIRMAN WEISENMILLER: Yes, go ahead.

MS. DRISCOLL: The Energy Commission's -- sorry, this is Kirstin Driscoll with the Chief Counsel's Office -- we reviewed this project also for CEQA compliance in this case. What City of West Sacramento as the Lead Agency certified an Environmental Impact Report in 2009 for a project to expend the facility for a petroleum terminal; the Sacramento Yolo Port Commission later approved an addendum to this EIR for the specific project that is before you today. The EIR identified significant impacts to air quality, noise, wastewater treatment, soil and geology, hazardous materials, water quality and hydrology, biological resources, cultural resources, and greenhouse gas emissions. But with the mitigation incorporated by the City of West Sacramento, all of those impacts were brought down to a less than

significant level; however, there are still significant and unmitigated impacts to exposure to risk of flood and to traffic increases, those are cumulative impacts in 2025, due to general development in the area. These impacts do apply to almost any project that is put into the City of West Sacramento, and nonetheless they are significant and unmitigatable. As a result we recommend that you adopt a statement of overriding considerations for this project based on the benefits that Hieu presented in this report, and make the following CEQA findings for this project which are before you, and which I can read into the record if that's okay.

The findings are that the City of West Sacramento as the lead agency that prepared and certified an Environmental Impact Report in 2009 for petroleum and pipeline terminal at the Port of West Sacramento, that the Sacramento Yolo Port Commission subsequently prepared an addendum to the EIR for a Clean Fuels Facility that is before you today, that the mitigation measures incorporated in the EIR and Addendum will mitigate most environmental impacts to less than significant levels, and that these mitigation measures are within the jurisdiction of the lead agencies, that there will still be significant and unmitigated impacts due to exposure to risk of flood, cumulative traffic impacts in 2025 along

I80 and cumulative traffic impacts in 2025 on the intersection near the Port, that there are no feasible mitigation measures within our jurisdiction or the jurisdiction of the lead agency to mitigate these impacts to less than significant levels, that the project nonetheless has specific economic, legal, social technological, and environmental benefits, and that these benefits outweigh the significant unmitigatable impacts of the project.

CHAIRMAN WEISENMILLER: Thank you. Commissioners, any questions or comments for staff or this gentleman?

COMMISSIONER PETERMAN: No, no questions. I am supportive of this project, again, for the opportunity to use a waste source for biofuel production. I thank Ms. Driscoll for the explanation for our rationale for an override and in this case I am supportive in this particular case, but appreciate the analysis, the legal analysis that was provided. I don't know if my fellow Commissioners have additional questions or comments, but please --

COMMISSIONER MCALLISTER: I just had a question about process, actually. Since you're the engineer, hopefully you can answer this.

MR. DODD: Possibly.

COMMISSIONER MCALLISTER: So you are identifying individual -- or particular waste streams, I imagine. Could you sort of describe the process? And I notice by the end of year one, your goal is to have three identifiable waste streams that you've sort of worked through the system, and could you talk about the process a little bit and why it's unique?

MR. DODD: Sure. It's based on a gasification, so it's the conversion of solid materials in the absence of a strong presence of oxygen, so we inject steam and oxygen in the base of a refractory line vessel that converts the solid materials into what they call a syngas, which is primarily carbon monoxide and hydrogen. Those -- our process effectively puts -- CR Energy is the proprietor of that technology, the gasification; this pilot projects looks to incorporate it with Fischer-Tropsch, which is an old technology that was developed back in the 1930's by Germans that, effectively over a catalyst converts the carbon monoxide and the hydrogen into short chain hydrocarbons, and it's just a case of controlling the reaction so that you actually end up with the diesel fraction, rather than a wax or a methane. But it creates incredibly clean short chain hydrocarbons in the diesel fraction range. There is almost zero sulfur in this end product, there are no heavy metals, there are

no aromatic hydrocarbons, so the diesel itself is incredibly clean.

The feedstocks we're been focusing on locally, we've been working with the City of West Sacramento and the County of West Sacramento, we've got a lot of contaminated green waste, there's a lot of on-street collection of green waste, but unfortunately in some areas it becomes contaminated with various different products and that unfortunately means it has to go to a landfill and can't go through the standard composting process, so that is one of the feedstocks we've identified; they've got about 50 tons a day on average, it depends on the season, all this contaminated green waste.

Another of the feedstocks we're looking at is construction and demolition wood, and that would be sourced from the County of Sacramento, of their -- I think they have a collection station just south of McClellan Park, and then the majority of the feedstocks are all organic-based, is our main focus.

COMMISSIONER MCALLISTER: Great. Thank you.

MR. DODD: Okay.

COMMISSIONER PETERMAN: Well, if there are no other questions, then I guess a clarification question. In terms of moving this item, do I also need to

separately acknowledge the override?

MR. LEVY: No, you don't.

COMMISSIONER PETERMAN: Okay. So I move Item 11.

COMMISSIONER MCALLISTER: Second.

MR. LEVY: And just to clarify that, you don't need a separate vote on the override, but you need to approve the statement of overriding consideration, which is part of moving Item 11 because that was all part of the staff recommendation.

COMMISSIONER PETERMAN: Thank you. I will move Item 11 and everything in it.

COMMISSIONER MCALLISTER: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) Item 11 passes unanimously.

MR. DODD: Thank you very much, Commissioners and the CEC staff, thank you.

CHAIRMAN WEISENMILLER: Thank you. Let's go on to Item 12. For those of you here for 6, we're going to cover some contract stuff which will take us up through Item 18, we think it's about 20 minutes, but we're never quite sure, and then we'll get back to that. Certainly, if anyone wants to step outside, Public Advisor can text to notify you as we get there, but we're close.

So, CalStart, Inc. Possible approval of

Agreement ARV-11-014 for a grant of $14,469,304 to CalStart. This is ARFVTP funding. And Eric Van Winkle.

MR. VAN WINKLE: Yes. Good afternoon, Commissioners. My name is Eric Van Winkle and I am a staff member in the Emerging Fuels and Technology Office. I'm here to ask for your approval of a grant award in the amount of $14,469,304 in ARFVTP funds to fund the project which CalStart proposed and submitted in response to grant solicitation PON-10-603, which was titled "Advanced Medium- and Heavy-Duty Vehicle Technologies Pre-Commercial Demonstrations." CalStart and their project partners have assembled a portfolio of nine high impact on and off road near commercial projects which will be demonstrated in California's highest need air basins. Vehicle performance, fuel savings, petroleum reduction, and emission reduction benefits will be assessed for 29 demonstration vehicles, which will prove their technical and market viability prior to commercial production launch and provide data to justify future vehicle acquisitions.

Starting with the on road projects, Electric Vehicles International will build five medium-duty range extended electric vehicle shuttle buses, with 45-mile all electric range, and with an onboard gasoline generator to charge batteries for use in extended range situations.

These vehicles will be demonstrated in the Bay Area, South Coast, and San Diego Air Basins. Motiv Power Systems will build four medium-duty battery electric trucks with 100-mile electric range, three will be demonstrated as shuttle buses in the Bay Area and one will be demonstrated as a work truck in Bakersfield and the San Joaquin Valley Air Basin.

Proterra, Inc. will build two heavy-duty fast charge all electric transit buses, which will be put in service in Stockton in the San Joaquin Valley.

The San Francisco Airport Commission will demonstrate one hydrogen fuel cell transit bus, which will be used to transport passengers and employees from remote parking to the terminals, and will be demonstrated entirely at San Francisco International in the Bay Area Air Basin.

Odyne Systems will build four diesel plug-in hybrid electric heavy-duty work trucks, and will also establish a local installation assembly facility in Stockton. Their vehicles will be demonstrated in the Bay Area and South Coast Air Basins.

Transportation Power, Inc. will build two Class 8 trucks with battery electric drive systems. These will be put into drayage service, transporting shipping containers at the Ports of Los Angeles and Long Beach and

South Coast Air Basin.

Continuing with off road projects, Caterpillar, Inc. will build four large size 36-ton class hybrid excavators, which they will demonstrate with major construction companies in the Bay Area and San Joaquin Valley Air Basins. Caterpillar has a second project which will build five electric diesel hybrid mini 5-ton excavators, which they will demonstrate with a major utility company in the San Joaquin Valley and Bay Area Air Basins.

Volvo Technology of America, Inc. will build two plug-in hybrid electric medium-sized wheel loaders, which will be demonstrated in landfill operations at two waste management locations in the Bay Area and South Coast Air Basins.

The estimated annual benefits from these 29 demonstration vehicles include savings of 121,000 gallons of diesel fuel, reduction of 1,700 tons of $CO_2$ emissions, elimination of 1,920 pounds of diesel particulate matter, and at the same time during the demonstration creating 45 short-term jobs -- engineers, fabricators, assemblers, mechanics, service technicians, salespeople, and supervisors, with the potential to expand to more than 600 permanent jobs with technology acceptance and commercial production. That concludes my presentation

and I would be happy to answer any questions.

MS. DRISCOLL: Thank you, Chair Weisenmiller. Again, I apologize for not having this in the materials before you, but based on our review of this project and further due diligence, we recommend including a finding that the project is exempt from further environmental review under CEQA, under CEQA Guidelines Section 15061(B)(3).

CHAIRMAN WEISENMILLER: Thank you. Commissioners, any questions or comments?

COMMISSIONER PETERMAN: I'll just make a comment or two. There has been broad and diverse stakeholder support for funding in this category of the AB 118 Program, the Medium- and Heavy-Duty Demonstration. Through the course of our numerous public stakeholder meetings for the AB 118 plan, we had a number of parties talk about the real need in this area, particularly at this time, and the opportunities, and especially the need in the southern part of the state. And so I am supportive of this project, which will provide demonstration vehicles throughout the state, and especially in the South Coast Region. This is also one of the few categories in the Investment Plan that increased in overall funding in the 2013 cycle relative where it initially started out, and so I'm supportive of

CalStart's work and collaboration with its various partners in this area.

So those are my general comments, welcome any from anyone else. Okay, so with that, thank you very much for the presentation. With that, I will move Item 12.

COMMISSIONER DOUGLAS: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) Item 12 passes unanimously.

Item 13. Whole Energy Pacifica LLC. Possible approval of Agreement ARV-11-026 for a grant of $125,274. And this is ARFVTP funding. Eric Van Winkle again.

MR. VAN WINKLE: Yes. For the record, Eric Van Winkle with the Emerging Fuels and Technologies Office, asking for your approval of a Grant Award for $125,274 in ARFVTP funds to Whole Energy Pacifica for their project proposal which was submitted in response to Grant Solicitation PON-11-602 titled Alternative Fuels Infrastructure Electric, Natural Gas, Propane, E85, and Diesel Substitutes Terminals.

This project is a biodiesel inline blending rack which will be installed in an existing Whole Energy Pacifica blending rack facility located near major oil refineries in Richmond, and markets biodiesel to wholesale distributors in the Bay Area and beyond.

Basically, an inline blender is a nozzle within a nozzle, each one connected to separate tanks containing the fuels to be blended. An electronic meter controls this instream blending, which will ensure an accurate and uniform biodiesel-diesel blend through an entire tanker load. This precise proportional blending capability will expand acceptance and adoption of biodiesel substitutes in the Bay Area by addressing warranty blend limit concerns of diesel vehicle and equipment operators. Whole Energy Pacifica estimates that this capability will triple their sale volume of biodiesel substitutes to over one million gallons annually, representing a corresponding decrease in diesel fuel. And that concludes my presentation. I'll answer any questions if you have any.

COMMISSIONER PETERMAN: Again, I think another good contract utilizing AB 118 funds, in addition to supporting alternative vehicles. Like in the last item, we need to also support alternative fuels, and I'm supportive of this project. If there are no other comments, I will move Item 13.

COMMISSIONER DOUGLAS: I'll second, and I just want to say that it's really great to see these 118 projects move forward.

COMMISSIONER PETERMAN: Great.

CHAIRMAN WEISENMILLER: Okay. All those in favor?

(Ayes.) Item 13 passed unanimously.

Item 14. Propel Biofuels, Inc. Possible approval of agreement ARV-11-024 for a grant of $10.1 million to Propel Biofuels, Inc. This is ARFVTP funding, and Larry Rillera.

MR. RILLERA: Good morning, Chairman and Commissioners. My name is Larry Rillera. I'm with the Division of Fuels and Transportation. Staff seeks your approval for ARV-11-024, a $10.1 million grant to Propel Biofuels. Propel will design, build and operate 101 new E85 at its Ethanol stations, at existing gas stations located throughout the state.

On February 8th, 2012, the Energy Commission issued Solicitation No. PON-11-602 titled Alternative Fuels Infrastructure, Electric, Natural Gas, Propane, E85, and Diesel Substitutes. Approximately $10.1 million in funding was made available.

Propel has conducted extensive market analysis to determine the best locations for E85 stations. Analysis includes census demographic data, alternative fuel vehicle registration data, socioeconomic data, vehicle traffic pattern analysis, and customer research. Propel projects include an education and outreach

component to increase public awareness around alternative fuels. Today, staff recommends that the Commission provide funding to Propel that will increase the total number of publicly accessible E85 stations funded by the Commission. This concludes my presentation and will respond to any comments. Staff will note that Matt Horton, CEO of Propel Biofuels, is also here.

CHAIRMAN WEISENMILLER: Okay, Matt, do you want to step up to the podium? Thank you. Any comments, Commissioners, or questions?

COMMISSONER PETERMAN: And comments, Mr. Horton?

MR. HORTON: I would just like to say on behalf of the Propel team, you know, the more than 10,000 California customers that we have today that are buying these fuels, that we really appreciate the California Energy Commission's continuing support of our program to bring these fuels to consumers all across the state, and I just want to highlight a couple of things if I might.

I've highlighted in the past the critical nature for public private partnerships in this area, and grants like this have enabled our company to bring a significant amount of matching private capital to the table to be able to deploy this infrastructure, so, again, I thank the Commission for the ongoing support.

COMMISSIONER PETERMAN: Thank you and, Mr. Horton, you and I spoke at the AB 118 last meeting, the stakeholder meeting, and asked the question about AB 118 funding has provided support in the past to Propel to build some stations and all of those are not complete, and I was wondering if you could just speak to the reasons why you have not yet built all the stations and what your expectations and plans are around those.

MR. HORTON: Yeah, absolutely. As I think I mentioned in the past, 2011 was a challenging year for the industry, generally. We all saw the uncertainty in the market around the expiration of the V-Tech tax credit that really froze up financing in our marketplace and we had sources of financing withdrawn, so we had to put our development schedule on hold for most of last year. Having said that, again, really happy to announce that we are within the next 10 days doing a first close on our $20 million next equity round, I've also got another $10 million of debt capital ready to come in behind that, so we've got the capital in place now. I have, as of about two months ago, our development team has been very active, reactivating the permits we already had, working on new ones, so our development program is underway, we did have a great opening of our most recent station just a couple weeks ago, which is really a sign of things,

important things to come for the company.

COMMISSIONER PETERMAN: Thank you. Well, we do expect to see real and measurable progress with those stations, so I would ask you to continue to work with staff and provide me with more information and documentation around when we would expect to see those stations built. I will ask staff to determine, you know, the frequency of those updates, but I'd like to get a report back on a regular basis on how those stations are developing. And as you all are familiar with, probably, the way the 118 program works is that we provide funding in arrears, so that if the stations are not built, then I will talk to staff about how to further use that money in different solicitations.

MR. HORTON: Certainly.

COMMISSIONER PETERMAN: Thank you.

CHAIRMAN WEISENMILLER: Thank you. I think we also have another speaker, Mike Lewis.

MR. LEWIS: Good afternoon. My name is Mike Lewis. I'm with Pearson Fuels out of San Diego. I came up for this today. We have built the E85 stations in California for a long time. We built the first E85 station back in 2003, and since then we built 12 others, so we have 13 E85 stations around the state, and we distribute a lot of E85 outside of those stations. In

the interest of full disclosure, we did apply for this grant and did not get it this round.

I would like to say that I have nothing bad to say about Propel, they're a very good company, Matt and Esther, they're just high class, good people. I've done a lot of business with Propel in the past, and I hope to do a lot of business with Propel in the future. It was two summers ago that this Commission awarded Propel $5 million to build 85 stations, and it's almost two years later, and as you alluded to, they have not been built; in fact, 13 of them have been built. So if you don't give them anymore money today, they already have the funding from you to build 72 more stations that have to be built somewhere in the next year and a half or so. Now, on top of that, keep in mind that that was the entire budget for the 2008 and 2009 program years, they got 100 percent. And if you award this money to them today, you're also giving them 100 percent of the budget for 2010 and 2011. Now, my understanding is that it's a seven-year program, so you're going to give them four years of 100 percent of budget for four years. Now, next year's budget is only $1.5 million, so if you give it all to them and they didn't get any of next year's, they've still got 90 percent of five years' worth.

We've been doing this a long time and I'm

concerned about the direction of this program. I mean, one of the ideas behind AB 118 was to leapfrog the industry forward and encourage competition, and I think that it's important to not even give the impression of favoritism or the argument that somebody could say that you're creating a one fuel source provider. Look at it this way, with this funding, they will foresee the funding for 186 stations, and there are a lot of other people that have applied for this funding, I mean, I've applied for 67 stations, and it just does not seem on the surface reasonable to think that their 186th station is better than my first station, or anyone else's first station out there, as well.

I understand there's a scoring criteria and the staff will probably rightly tell you that this is the scoring criteria, and this is how it was scored, and I don't know what the results are because of the issue with the Phased -- Round one and Round two scoring having to do with CEQA, so no one else knows what their scores were, if they even passed the bar, or are even eligible. But if the scoring criteria create a company that gets funding for 186 stations and no one else gets any, then maybe there's something wrong with the scoring criteria. This is not one grant that you're giving them, there were 10 proposals, there were at least 11 proposals for this

grant money, they got the top 10 proposals, and I would ask you to consider other things in the scoring criteria, if not thing time, next time, things like track record, things like performing on the grants that you already have, efficiency of the funding. I know there were proposals that asked for less than $100,000. I also recognize that there is a need to encumber the funds soon, but my understanding is that applies to 2010 funding. So even if you gave them $5.1 million today, that would be all of the funding for 2008, 2009, 2010, and that's enough for 135 stations so far, and you could spend a little bit of time, look at the other $5 million, and revisit the scoring criteria and see if there's any other way to look at it to promote some of these other aspects of the AB 118 program. I appreciate you giving me the opportunity to speak.

CHAIRMAN WEISENMILLER: Thank you.

COMMISSIONER PETERMAN: Mr. Lewis, first of all, thank you for coming from San Diego and being with us today, and thank you for the outreach you've done regarding your concerns. Before I offer a comment or two in response to you, I'm going to turn to staff and see what comments they have to the points, the issues you've raised.

MR. PEREZ: Thank you, Commissioner, and thank

you, Mr. Lewis, in particular, for being here, also one of our very exiting partners in the State of California with the E85 and the tremendous work he has done down in San Diego, as well as elsewhere in the state. With respect to the solicitation, because it is an open solicitation, it's not been closed yet, and we still have another round, I can't comment specifically on any aspects of that current solicitation, except to note that we will be issuing an additional Notice of Proposed Awards soon, but I cannot comment on that as the scoring is underway. So that's exciting for those who have not received funding to date, that there's still that opportunity out there.

Regarding criteria for future solicitations, we will certainly take that into consideration as we develop the next solicitation with respect to the track record, efficiency of funding, we do appreciate that input that Mr. Lewis has noted, and we'll take that into account in the development of our future solicitations, and certainly invite Mr. Lewis back to the public workshops where we'll be discussing that criteria in the development of the future solicitations.

COMMISSIONER PETERMAN: I know you can't comment on the current open solicitation which we're referencing today, but do you want to comment on the past

closed solicitations which were the initial 70 plus stations?

MR. PEREZ: Certainly. We pretty much concur with Mr. Lewis' assessment regarding the progress to date on the Propel sites. We did make a number of awards in the previous solicitations, I know that to date Propel Fuels, there are 10 stations that have been completed under the $1 million grant that we previously awarded, and then there was also the Department of General Services, Propel, that was also combined with an ARRA award for 75 stations. The progress on that has not been as rapid as we had hoped, I think, in light of some of the uncertainty that was out there in the market with respect to the V-Tech, that dampened the entire market out there, as well, as we moved to the end of 2011, what was going to happen with the Ethanol import tariff, too, so there was a tremendous amount of uncertainty, and I think that dampened some of the investor interest in projects like this. But those issues have been resolved and we are certainly interested in working with our recipients to accelerate that funding, to make sure that it is put to proper use quickly since much of this money, we have a liquidation deadline out in 2013, so we're not far away from that. So we're going to be pushing for that. As we developed future solicitations, one of the

things that we'll be evaluating and taking into consideration is the pace of development, and the ability to shift funds if we're not making progress in a timely fashion, too. And I think we'll certainly include language in future solicitations to encourage and impress upon recipients that we're going to be spending that money quicker, rather than later, so that we can capture the many benefits that we're after under this program, such as greenhouse gas reduction and petroleum displacement, as well as the stimulation of economic development and job growth. So we also -- we do share Mr. Lewis' concerns here, and we will be working aggressively with Propel, so we've already met with them a number of times with respect to accelerating the construction of these projects.

COMMISSIONER PETERMAN: In terms of solicitation design and the criteria, previous solicitations, and this one that is outstanding, was there an opportunity for stakeholder input on criteria?

MR. PEREZ: Yes, there was. We held public workshops, we also held sessions we call Question and Answer Sessions, inviting public input to help us shape this solicitation, as well as to assist Applicants in developing stronger proposals as they considered submitting applications.

COMMISSIONER PETERMAN: Thank you. Mr. Lewis, I take your observations and concerns very seriously. And I will say that these have all been competitive solicitations, as you've noted, and Propel was the winner of those solicitations. I recognize -- acknowledge your comment about perhaps a need to look at other criteria as a part of a scoring criteria, and I encourage staff to do that going forward. As I said to Mr. Horton, we want to make sure that these stations are built, that we see real progress, and I have the expectation of even more reporting from Propel than we normally have from awardees to staff, regular communication, and if we're not seeing these projects built, as mentioned, the money has not been especially spent because we pay in arrears. And so if these stations are not built, then we will be using the funding for future solicitations. I would ask that you be patient as we wait for this solicitation to close; after that solicitation is closed, there is a debriefing process you can go through with staff in terms of the selection process, and also feel free to contact my office for a follow-up meeting after that, as well. So, thank you.

MR. LEWIS: Can I say one more thing?

COMMISSIONER PETERMAN: Please.

MR. LEWIS: Regarding the open solicitation,

there is the Round 1 and the Round 2, Round 1 was -- the amount of money in that pot was entirely funded through Round 1, so there is no Round 2. So unless they put more funding into this solicitation from next year's budget, then for this category, it's my understanding is, it's done. And the urgency to encumber the money, again, I don't think it applies to 2011, and I don't know what the down side is to waiting on 2011 and only funding that for 135 stations -- 136 stations instead of 186 stations.

MR. PEREZ: So let me comment. We also understand that, in terms of the previous solicitation, and the money that was made available through '10-'11, '11-'12 Fiscal Years, has been expended through the Notice of Proposed Awards that was recently issued; however, we built into this what we call "head room" to provide greater flexibility to fund exciting projects as we move forward, and thanks to the Commission at the earlier business meeting we did adopt the Investment Plan for the 2012-2013 plan, which allocates up to $1.5 million for E85 infrastructure that we can tap into once we have a State budget in place and approved, so there's an opportunity there, I just wanted to share that.

COMMISSIONER PETERMAN: I'll turn to my fellow Commissioners for -- you must have maybe questions and comments, before I'll offer any final comments of my own.

COMMISSIONER MCALLISTER: Great. So, thanks, thanks for coming up, Mike. Let's see, I guess I wanted, on the Propel, I want to concur with what Commissioner Peterman said about the need for monitoring. I'm wondering if their need for monitoring the Propel sort of advanced -- the progress on getting the stations built -- I'm wondering if there could be explicit milestones for that along the way and periodically throughout the implementation period, such that it doesn't all end up being kind of frantically at the end, so that's it's actually steady progress. You know, Commissioner Peterman is the Lead Commissioner here, so I don't -- I'm not going to direct that to happen or anything, but I think that might be a good idea to really give some rigor to this process, and so that the marketplace generally can have some predictability about whether or not there's going to be funding available, and if another solicitation or different uses are needed, that those can happen in a timely fashion.

MR. PEREZ: We support that recommendation and we'll work with the recipients to ensure that we develop firmer milestones on that, and we'll try to include that in the regular progress reports that we provide to you, as we move forward. So thank you for that input.

COMMISSIONER DOUGLAS: So I just wanted to say,

you know, I have also just been watching this issue unfold and looking at communications that I've gotten on it. And so I want to thank you for coming here, Mr. Lewis, I think that it's incredibly important that, when you have a concern like the concern you're raising, that you engage with the Commission and come here and talk to us and raise the concern to us, and you know, not be discouraged and go home, and we really want -- you know, I think we need to be constantly vigilant to make sure that we're getting the results we want out of our solicitations, the on-the-ground results, and also we need to be constantly vigilant to make sure that our approach in this very challenging field of trying to use a relatively small amount of state money to support the development, deployment, commercialization, of alternative fuel and transportation technologies, we've got to be constantly vigilant that we do this in a way that supports a vibrant and competitive industry and does not get ossified into one approach, or one assumption about what will work. You know, I know that there's a lot of stakeholder process, I know from personal experience that the Investment Plan process is a place where issues like this are very much discussed in detail, and different perspectives come to us. But the rubber really hits the road with the solicitation criteria and

that's where all of the policy input and the kind of broad-based understanding that we have is translated into a nut and bolts criteria that influence, that determine who will win, and who does not win in these solicitations. And so, you know, I think that -- I appreciate you being here, appreciation you raising the concern, I think it underscores for me the importance of making sure that we are correctly translating intention into criteria and that we keep going with the iterative process of assessing, did something work? Do we need to do something differently? I don't, you know, from the record that I've reviewed and the materials here, you know, it seems to me that, you know, I certainly understand the argument for promoting the E85 stations, I think that's the sort of thing that is very meritorious to support. I want to make sure that we're doing it as we go forward in the right way, and I am concerned about the difference between the number of stations that should be on the ground, and the number of stations that currently are due to the past grants. So this is something that we should hopefully see some very great improvement on.

COMMISSIONER PETERMAN: Commissioner McAllister and Commissioner Douglas, thank you for your comments and particularly Commissioner Douglas, I couldn't agree more

with making sure that our outcomes of our solicitations are in line with our intent initially in the criteria, and I'll also just add that the concern, in particular for me, is the fact that stations haven't been built, more so than the fact that the funding went to Propel, because the -- or a single company -- because, in terms of the objectives for the 118 program, the very specific environmental objectives such as reducing petroleum dependency, greenhouse gas reduction, etc., it's not explicitly a certain number of market players in this space, although competition can further technology roll-out on some of our goals, so to the extent that the stations can meet the goals of the AB 118 program, that is the most important criteria, but they're not going to meet those goals if they're not being built. And so, again, you're hearing a strong sense of concern from the dais here about having those projects built, I'll be happy to report back to my fellow Commissioners at future business meetings about some of the progress reports I'm getting, and the more we can foster competition, great, but we have to remember again the overall objectives of the 118 program. So we'll continue to be in communication with you, Mr. Lewis, on this, as well.

MR. LEWIS: Can I say one more thing?

COMMISSIONER DOUGLAS: You can, I'll say --

I'll use the Commissioner's prerogative and I'll say one more thing first, and then I'll let you have even the last word -- no, no, Commissioner Peterman will take the last word, I'll let you have the second to the last word. I just want to say that I agree that our first priority is to achieve the goals of the Legislature laid out for us in these programs. I just want to note that, particularly in these deployment and commercialization, you know, on that side of the market, we need to be careful to use this power in such a way that we're not picking winners when winners don't need to be picked, you know, with the amount of State -- with the influence that these programs have. And so we do need to be mindful of that as we achieve the goals of this program and, with that, please Mr. Lewis.

MR. LEWIS: Thank you. My last point is, and I don't understand the intricacies of all of the financing, but my understanding is, as you had mentioned, there isn't any language in this current solicitation that says you can pull the funds to other projects. If on these grants from two years ago, if for some reason they fail to continue to perform, then that funding is no longer useable in the AB 118 program. And if this funding, this $10.1 million is awarded, and it is delayed, and they are not built, then that funding is not going to be used in

AB 118 program. That's kind of a question and I'm not sure, but if that's the case, then you're going to lock up $10.1 million again for the next few years, it can't be used for other things. Why not lock up $5.1 million? That's my last word.

MR. PEREZ: Okay, in terms of funding, if we threw out a hypothetical, let's say, on say the '11-'12 funding, just to try to respond to your question clearly, what would happen is, if we didn't utilize that money, it would revert back to the AB 118 account and then would have to be reauthorized in terms of its use by the Legislature, but it would return to the AB 118 account. So we would simply go back and request reauthorization, so that would be the --

MR. LEWIS: Yeah, but it would be tied up for three years or something like that?

MR. PEREZ: No, not necessarily.

MR. LEWIS: Two or three years -- I mean, if the whole grant went to the end and wasn't performed on, it could be tied up for two or three years?

MR. PEREZ: Well, it depends on the timing of when that happened; if it was at the end of the encumbrance period, then we would lose the funding. Hopefully that's helpful in giving you the context, so…. I think having milestones in place, a good tracking

system, that we would avoid getting to that step is my hope as we move forward, so that we could move the money, reallocate in a quicker fashion, would be the ideal situation.

COMMISSIONER PETERMAN: And I have just a final follow-up question for Mr. Horton, actually.

MR. LEWIS: Thank you.

COMMISSIONER PETERMAN: Thank you. You know, just to get on the record --

MR. HORTON: Yes.

COMMISSIONER PETERMAN: -- is your expectation to build all of these stations?

MR. HORTON: Absolutely.

COMMISSIONER PETERMAN: And if so, what is your proposed timeline?

MR. HORTON: Certainly and, you know, I perhaps should have given a more full picture beforehand of what's really going on, we currently have approximately 140 contracted stations where we have signed station contracts, we've been working on over the last year. Again, with this capital round, $30 million of private capital coming in, we are now in a position to begin aggressively building. You will not find that kind of capital in the marketplace ready to back a team and a set of projects in this category. So I know that, you know,

certainly we have not performed as we had hoped in terms of the number of stations delivered, we've opened, again, our 27th station just recently. Having said that, though, you know, in terms of ability to deliver going forward, I think the markets are speaking as to where private capital has confidence, and we're certainly very confident that, with the funding that we're now closing on, we are going to be able to complete all of these grants in a very timely manner.

COMMISSIONER PETERMAN: Thank you for that additional information.

MR. HORTON: You bet.

COMMISSIONER PETERMAN: Commissioners, obviously I've raised some of the concerns and reservations that I have on the issue, in general, but that being said, I'm still supportive of approving this solicitation and continuing to monitor the progress, and welcome any additional thoughts or comments you have.

Once again, noting the concern from a number of Commissioners on the dais, I will move Item 14.

COMMISSIONER DOUGLAS: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) Item 14 passed unanimously.

Item 15. Alternative Renewable Fuel and Vehicle Technology Buy-Down Incentive Reservations.

Possible approval of a total of $16,000 for vehicle buy-downs. Andre Freeman, this is ARFVT funding.

MR. FREEMAN: Good afternoon, Commissioners. My name is Andre Freeman from the Emerging Fuels and Transportation Office. Today I'll be seeking approval of the fourth bath of incentive reservations for the Natural Gas and Propane Vehicle Buy-Down Program. As you can see, we're rounding up this program. This batch of reservations represents two natural gas vehicles for $16,000. Including the reservations pending before you today, the 2012 Buy-Down Program will support the purchase of more than 600 vehicles, including 500 natural gas and 100 propane vehicles.

I would like to thank you for your consideration of this item and I'm available for any questions you may have.

CHAIRMAN WEISENMILLER: Thank you. Commissioners, any questions or comments?

COMMISSIONER PETERMAN: I would just comment, this is another example of the successful buy-down program we have in the AB 118 program, and I'm supportive of this. So I will move Item 15.

COMMISSIONER MCALLISTER: Second.

CHAIRMAN WEISENMILLER: All those in favor on item 15?

(Ayes.) Item 15 passes unanimously. Thank you.

MR. FREEMAN: Thank you.

COMMISSIONER PETERMAN: I just want to say a quick thanks to the Transportation Division staff, the AB 118 staff, in particular, we've just gone through a number of different types of items related to that program, I think it demonstrates the diversity of fuels and vehicles that we're continuing to fund, and staff efforts to get the money encumbered and spent in a timely manner. So, thank you.

CHAIRMAN WEISENMILLER: Great. Item 16. Sonoma Valley Health Care District. Possible approval of Agreement 003-11-ECF for a loan of $1,065,097 to Sonoma Valley Health Care, and this is ECAA funding. Haile.

MR. BUCANEG: Good afternoon, Chairman, Commissioners. My name is Haile Bucaneg, and I'm with the Special Projects Office. Sonoma Valley Health Care District is currently in the process of upgrading the Sonoma Valley Hospital facility. This $1,065,097 loan will be used for energy efficiency measures included in the upgrade process.

The energy efficiency measures will apply to an existing hospital facility, as well as in the construction of a new hospital wing. The energy

efficiency measures include upgrading to efficient HVAC equipment, efficient domestic hot water equipment, efficient sterilizing equipment, building envelope, and lighting systems.

The total energy savings for these projects are approximately 285,000 kilowatt hours and 49,000 therms, which will result in greenhouse gas reductions of 390 tons. This will also result in an annual energy cost savings of approximately $96,800, and the simple payback on the requested loan amount will be 11 years. At this time, I would be happy to answer any questions you have.

CHAIRMAN WEISENMILLER: Thank you. Commissioners, questions, comments?

COMMISSIONER MCALLISTER: I just have a comment. Having mostly until very recently been out there in the marketplace doing energy efficient stuff, and working with lots of local jurisdictions, and school districts, etc., I know how great this program is. This loan program is terrific. And it's not free money, it actually has to be paid back, it's a convenient interest rate, it's just really what the marketplace needs and I know that there's a lot of appreciation throughout the state for it. And I'm very supportive of this and other projects from this fund.

MR. BUCANEG: It could also be noted that

Sonoma Valley Health Care District has appreciated this program. They previously took out a loan under our ECAA ARRA program which was completed and they finished the project in March of this year, so this is the second loan they're coming up for.

COMMISSIONER MCALLISTER: So I will go ahead and make a motion to approve Item 16.

COMMISSIONER DOUGLAS: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) Item 16 passes unanimously.

Item 17. Altex Technologies Corporation. Possible approval of Agreement PIR-11-027 for a grant of $731,770 to Altex Technologies Corporation. This is PIER Natural Gas Funding. Mike Kane.

MR. KANE: Thank you. I'm Mike Kane with the Energy Generation Research Office. I'm seeking approval for the tri-Generation energy system technology project with Altex Technologies Corporation for the amount of $731,770 for which Altex will be providing an additional matching contribution totaling $185,000.

The purpose of this project is to develop a combined cooling, heating and power system, also known as CCHP, that uses steam jet refrigeration to expand capacity of an existing microturbine-based combined heat and power flat form, to also support cooling loads and

process heat isn't needed. The project approach is to develop a preliminary system design and model of steam jet performance when integrated with its boiler burner and microturbine-based CCHP platform, to demonstrate a subscale steam jet system at its lab facilities in Sunnyvale, California, to validate the performance models, and to incorporate the lessons learned from this subscale demonstration to design a full-scale CCHP system, and predict its technical and economic performance parameters.

The key technical objective for the project is to verify that CCHP efficiencies of 82 percent are attainable, while meeting all applicable Air Resources Board Emissions Standards. The key economic objective is to achieve a payback of less than two years for a fully integrated tri-generation energy system retrofit. This project was recommended for funding in the Revised Notice of Proposed Awards dated April 6, 2012 for the Hybrid Generation and Fuel Flexible Distributed Generation Combined Heat and Power Grant Solicitation.

The purpose of this solicitation is to fund research, development and demonstration projects that advance the science and technology and market penetration of grid connected DG and CHP and diversified applications, and to include emerging technologies such

as energy storage and fuel flexibility.

And this project supports the Governor's Clean Energy Jobs Plan that calls for increased deployment of Combined Heat and Power for Electricity Generation. I would be happy to answer any questions you may have. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Commissioners, any questions or comments?

COMMISSIONER PETERMAN: It sounds like -- it is a good project and sounds like it, as well. I will move Item 17.

COMMISSIONER MCALLISTER: I will second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) Item 17 has been approved unanimously.

Item 18. Maxwell Technologies. Possible approval of Agreement PIR-11-031 for a grant of $1,392,464 to Maxwell Technologies. This is PIER electricity funding. Avtar.

MR. BINING: Good afternoon. My name is Avtar Bining. I manage the Energy Storage Program and the American Recovery and Reinvestment Act Projects on Smart Grid and Energy Storage at the Energy Commission.

This project resulted from a competitive solicitation of the 2011 Emerging Technology Demonstration Grant Program. Under this Agreement,

Maxwell Technologies will install and demonstrate ultracapacitors at two sites for the purpose of improving the solar power for stability. First, Maxwell will demonstrate ultracapacitors at a 28-kilowatt concentrating photovoltaic site at the University of California at San Diego campus.

The lessons learned from this demonstration will be applied to a larger ultracapacitor demonstration at the 250 kilowatt portion of a concentrating photovoltaic site in Newberry Springs, California.

Ultracapacitors have larger energy storage capability than conventional capacitors. This allows them to function effectively as energy storage devices. Ultracapacitors have undergone vast improvements in their capabilities and cost productions based on the experience gained from their applications in vehicles. This demonstration is important for showing to stakeholders that ultracapacitors can serve as cost-effective energy storage devices for intermittent and variable renewable generation on a commercial scale. Stable and reliable renewable power generation will enable California to achieve its 2020 Renewable Portfolio Standard and greenhouse gas reduction goals, as well as garner 12,000 megawatts of distribution generation goal.

The benefits of this demonstration includes

stabilized, clean and renewable power output, reduced need for utility power regulation, reduced cost of electricity to utilities and ratepayers, and improved reliability of utility services.

Maxwell Technologies will receive approximately $1.4 million of Public Interest Energy Research Electricity funds and will provide $434,000 in match funds for these demonstrations. The term of this agreement is about 36 months.

I request approval of this agreement and I will be happy to answer questions. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Commissioners, any questions or comments on this one? This obviously went through me as the R&D Lead Commissioner. It's a good project.

COMMISSIONER MCALLISTER: Right. I'll talk to you about it, then. No, it's good. I'll -- go ahead. I'll move to approve Item 18.

COMMISSIONER DOUGLAS: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) Item 18 passed unanimously. Let's go back to Item 6. Carlsbad. Let's take a three-minute stretch break while everyone moves around.

(Recess at 2:40 p.m.)

(Reconvene at 2:48 p.m.)

CHAIRMAN WEISENMILLER: Good afternoon. Let's go back in session. Let's take up Item 6, which is the Carlsbad Energy Center, 07-AFC-6. Paul Kramer.

HEARING OFFICER KRAMER: Good afternoon, Chairman Weisenmiller and Commissioners. I'm Paul Kramer, the Hearing Officer for the Carlsbad Energy Center Project. The CECP is an approximately 540 megawatt combined cycle fast start power plant proposed to be located on the inland portion of the existing Encina Power Plant site in the City of Carlsbad. The existing facility, that is the Encina facility, contains five steam generators of 1950's, three of those are 1950's, and two of 1970's vintage, in a 200-foot tall building, and they share a 400-foot exhaust stack. They use ocean water for cooling, which is what we call "once-through cooling" in our parlance. Total output from the plant is approximately 950 megawatts. Units 1 through 3 total about 320 megawatts and they would cease operation when this new project is completed, if it's approved and constructed. Units 4 and 5 total approximately 630 megawatts, and they would continue to remain operational, no matter what your action is today, until they are no longer needed for grid reliability.

The new project would, instead of once-through cooling, it would use air cooling with a closed loop

steam system. But even that kind of system needs the occasional injection of water to replenish it because some of the water escapes. And there are two possible sources for that water, one is reverse osmosis treated sea water, which would be drawn from the existing plumbing for the once-through cooling system for the Encina plant, and if Encina were to completely shut down, this project would continue to use that cooling system, but it draws much less water than the Encina plant does currently, and the Decision contains an analysis of whether or not that draw would cause any environmental impacts, for instance, to marine species, and concludes that it would not. The other option is reclaimed water, but that appears to be currently unavailable. But the proposed permit would allow the Applicant to go either direction. The operation of the new plant is limited by conditions to no more than 4,100 hours annually.

The Committee conducted several sets of evidentiary hearings on this project in early 2010, and again in 2011 on two different occasions. Eleven months ago, the Committee presented a Proposed Decision to the Commission for approval and the Commission sent it back to the Committee for further work. On three topics that the Commission listed, they were the impact of three new proposed projects that were proposed to receive Power

Purchase Agreements from SDG&E, the impacts on our Cumulative Impact Analyses, and Alternatives Analyses, and then, in its Proposed Decision, the Commission had Proposed Conditions Land-2 and Land-3, which were to cause this Applicant to begin to plan for and get permits for the demolition of the Encina equipment, that 200-foot building and 400-foot exhaust stack, among other things, but as they came later in the process, it was thought appropriate to conduct an analysis of any potential impacts that might occur from the activities that would result from complying with Conditions Land-2 and Land-3.

And then, finally, the Commission asked the Committee to look into grid reliability issues that were raised by some comments that the California ISO made during a hearing on June 30th, 2011, about 11 months ago, at your Business Meeting, in fact.

Now, the Committee was granted discretion to add additional issues they thought could benefit from additional testimony, and we did come up with three; one was about the fact that the Federal PSD Permit had not yet been issued for the project, and whether that required, for instance, the Commission to wait for the outcome of that process, and then the City in September and October of 2011 adopted amendments to its Land Use Regulations, and so we needed to consider evidence about

the impact of those changes. And then, because it looked like the possibility of overrides would be on the table, we offered the parties the opportunity to provide additional evidence on that topic, either in support of overriding impacts that could not be mitigated, or inconsistencies with LORS.

Again, there were further hearings in December 2011, and then the parties briefed some of the issues and the Committee prepared and issued a Revised Presiding Member's Proposed Decision on March 28th of this year. There followed a public comment period and we proposed further revisions to the Revised PMPD in response to the significant comments that we received, and that was published on May 16.

This morning, we issued some Errata that all of these documents, except for the Revised PMPD, which is too large to duplicate in numbers, are on the table outside the hearing room for people who want to pick up some of those, along with a couple documents I'll mention in a minute from the City.

The Proposed Decision finds that the proposed project would be consistent with all laws, ordinances, regulations, and standards, except the City General Plan and Zoning Regulations, and a requirement in the City's Redevelopment Area Plan that a power plant, if approved

in this vicinity provided what they call extraordinary benefits, in other words, something beyond the norm. And then also a height limitation in the City's Regulations, that the project would be higher than that limit, which as I recall is 35 feet.

In addition, while the Decision and the Committee believe that the Coastal Act is complied with in this case, there was enough disagreement, as characterized in the Proposed Decision as vociferous, on that point, that the Committee decided it was prudent to recommend that you override any inconsistencies with the Coastal Act that might be found, for instance, a court decided that they didn't agree with our assessment of that point. And then finally, there is a provision in the State Fire Code that the City argues gives the local Fire Officials the basically unfettered right to increase development standards; in this case the argument is over whether the fire access roads should be 28 feet, as proposed by the Committee after hearing from both the City, staff, and the Applicant's experts, or should it be, as the City would desire, 50 feet wide. So what we are proposing that the Commission do is override that State Fire Code Provision basically just giving the local fire officials the unfettered right to make that change in the standards.

We are not saying that 28 foot roads would be unsafe, quite to the contrary. We're saying that that is a reasonable width, given all the circumstances that apply to this particular parcel. We're simply overriding this provision that appears to let somebody else make that decision, rather than the Commission.

The land use inconsistencies, because of the way CEQA works with land use, the land use topic, it can be considered to be also environmental impacts under CEQA, and so we have called that out as an impact and we're recommending that you override that. We would note, however, that there were no actual impacts found from this project, there were no visual impacts, no impacts to species, no public health impacts, no air quality impacts, so some might characterize that as, in effect, a paper impact; it exists only because the planning document says that this particular parcel should not have a power plant on it.

Among the benefits -- and this is not an exhaustive list, the Committee recommends you find justify the override of the LORS inconsistencies and the environmental impacts -- are that this project will further redevelopment of the existing Encina Plant, it provides additional generation in the area. The California ISO has told us that, in a sub-area, they call

it the Encina Sub-Area, there must be 20 to 50 megawatts of generation to support the reliability of the grid. If all of the Encina generators were shut down, there would be no such generation unless this project is approved and brought on line. And what we've done in the Proposed Decision is, with Conditions Land-2 and Land-3, require that the Applicant begin to plan for and get permits to tear down the Encina facilities and, on an annual basis, ask the ISO for permission to be able to retire the remaining Units 4 and 5 because they will be needed, quite possibly, even after this project is constructed for a period of time until more generation is added in the area to make up for the continue deficit that this project only partially satisfies.

And when Encina is closed, there is a very desirable State benefit, and that is the elimination of the once-through cooling system because, as you know, the State Water Quality Control Board is required to force these facilities to modify their cooling systems, to either vastly reduce the amount of water they take in, or replace that with something else that doesn't use ocean water, and closing Encina would help achieve that goal for this particular power plant location.

Also, using this Encina site, which is currently developed with old oil storage tanks that are

no longer needed because the Encina facility no longer burns oil as a backup fuel supply, we would be developing an existing power generation site that has all the infrastructure there, fuel, transmission lines to take the power out to the customers, rather than putting a power plant in some new undeveloped site where a different set of people will experience the power plant in their neighborhood.

The issues you're likely to hear today are about fire safety and service. The City in their comments on the Revised PMPD first said that they were thinking about deciding to refuse to provide fire service to this project because of their concerns about safety issues. They have since, on Tuesday morning of this week, adopted an ordinance saying that they will be secondary fire service providers on an incident-by-incident basis. Yesterday, the City filed a request that you take official notice of their ordinance, and I recommend that you do so, but in addition to that ordinance I recommend that you take official notice of the Agenda backup materials that were sent to the City Council for their consideration in adopting that ordinance. Copies of both the City Motion and the Agenda backup materials were provided to you during the break.

You may also hear about conformance with the

Coastal Act policies. The Decision, especially with the revisions, explains that this project is consistent with the policies of the Act, which, kind of like any General Plan you might find, they have policies that tug each other and go in different directions, but there are clear policies in there that suggest that confining developing to existing industrial sites is preferred. There was a lot of argument among the parties about whether or not this project is coastal dependent, which means in essence whether it has to be on the coast in order to be able to operate. We do not believe that coastal dependency is required here, but also, we point out that because the project needs to get it's cooling makeup water from the desalinization plant that needs to be drawing from the ocean, that there is a very good argument that it is coastal dependent, it just doesn't matter. If this project had visual impacts, or biological impacts, then there might be some argument about whether it's consistent with the basic policies of the Act, but in fact, it does not.

And then, on the issue of the PSD or Prevention of Significant Deterioration Permit, it's been argued that the Commission needs to wait either for the Federal Government to act to issue that permit, or at least be further along in its analysis, before it can act on this

permit. A recent development there is that the San Diego Air Pollution Control District has begun the process of incorporating PSD requirements into the State Implementation Plan, but all they have done to our knowledge is adopted local rules, but then they have to submit that, I believe, to the State, and certainly to the Federal Government, to be approved to be inserted into the State Implementation Plan. So for the moment, the Permit remains a Federal Permit and we don't think that we need to wait until it is decided in order for you to act on this permit. There is a requirement that we added to the effect that the project cannot begin construction until the PSD is resolved, and we also have evidence and made findings that it is very unlikely that anything that will come out of the PSD permit process would cause either the design or any of our conditions that have been imposed for other air quality reasons to require amendments. So, again, we recommend that you go forward and don't wait for further progress on the PSD Permit issue.

And then finally, you're likely to hear from the Center for Biological Diversity about our greenhouse gas analysis. I don't believe there was anything new since you last heard about this June of last year. It appears to be simply a -- I don't know if you can call it

an agreement to disagree, but it is certainly a fundamental disagreement about the paradigm that we should apply in analyzing greenhouse gases. What we've done is asked about what the total system greenhouse gas emissions will be when this project comes on line, and because -- if one generator starts up, another is going to have to not generate, the system just doesn't ask for infinite amounts of electricity and say, "We'll take it," generation has to match load. So because this project would be so much more efficient than the other generators in the San Diego area, if it runs a less efficient or, to put it another way, a more significant greenhouse gas emitter, will not run, so the total emissions from the system will be reduced when this project runs, and therefore we find that that is a good result for greenhouse gases, and there's nothing to have to override there, or otherwise worry about.

While I've never been quite clear what the Center wanted us to use as an alternative and analytical method, it seems to be that they'd like this project to be viewed in a vacuum, as though it was just going to come on line and run at the maximum, and without regard for what the other parts of the system would have to do. And, again, we just don't think that's realistic.

The documents before you are the Revised PMPD,

Revisions to the PMPD; today's Errata, which makes minor changes, none of which haven't been telegraphed by either the earlier revisions or a comment made by another party; we have a Revised Proposed Adoption Order; we have the City Motion to take official notice of their Ordinance adopted on Tuesday morning regarding fire service and the City Agenda packet that relates to that Ordinance.

If you act to approve this project, we expect that the effective date -- the Order would be docketed tomorrow, and that would be the effective date of the Order, and we would start the time periods for requesting reconsideration of your decision, as well as Judicial review of your decision. At some later time, my office would, pursuant to that order, prepare a compilation so all the changes would be reflected in one document, but that would be extraneous to the running of the time limit, and when that is released because of scheduling issues, probably a couple weeks, that would not change the time limits to request reconsideration or to file a judicial challenge.

In closing, the Committee recommends approval of the Adoption Order that is before you. If there are any further amendments that you need to make today, we've set up the Adoption Order so that it has -- right now it's a blank Attachment A -- we recommend that you give

us direction, the Chief Counsel and I, and we will take a few minutes to prepare an Attachment A that is no longer blank, and bring that back to you so that everyone can look at it and make sure it is what you wanted, and then you could take final action. With that, I'm open to any questions.

CHAIRMAN WEISENMILLER: Thank you.

COMMISSIONER DOUGLAS: I think it would be helpful to hear from the parties unless you do have questions.

CHAIRMAN WEISENMILLER: Let's start with the Applicant.

MR. MCKINSEY: Thank you, Commissioners. My name is John McKinsey, Counsel for the Applicant. Also with me is George Piantka, he is the Environmental Director for NRG West and Project Manager for this project, and we both would like to say a few things and we'll begin with Mr. Piantka.

MR. PIANTKA: Good afternoon, Chair Weisenmiller, Commissioners Douglas, Peterman, and McAllister, Hearing Officer Kramer, Energy Commission staff, and the parties to the Carlsbad Energy Center proceeding. As John mentioned, I'm George Piantka, Environmental Director of NRG's West Region and the Project Manager for the Carlsbad Energy Center

Application for Certification. I'm speaking on behalf of Carlsbad Energy Center, LLC.

NRG is the parent company of Carlsbad Energy Center, LLC and is also the largest solar developer in the country with approximately 2,000 megawatts operating or in development. We also own solar energy -- I'm sorry -- wind energy resources and through our subsidiary, eVgo, we are investing in electrical vehicle infrastructure in portions of the U.S. to support EV adoption.

I wish to thank the Energy Commission staff and the Committee for your dedication to this project, your careful thorough analysis has led us to today's proposed adoption. The process has been meaningful and has advanced many significant project qualities. Carlsbad Energy Center is a better project today in an already good project that was presented several years ago in the AFC.

We are pleased through the Revised Presiding Member's Proposed Decision and the Errata's that the Committee has recognized the significant benefits of the 558 megawatt Carlsbad Energy Center Project. I'd like to run through some of those benefits. CECP is a rapid response generation delivering approximately 60 percent of its energy to the grid in as little as 10 minutes.

CECP is clean and efficient, combined cycle generation with a greenhouse gas emission rate well below the proposed Federal Standard. CECP is an ideal and efficient way to locally support the integration of renewable energy resources in the San Diego - Imperial Valley and to help ensure the reliability to the local San Diego area. CECP supports California's 33 percent RPS goals. CECP is air-cooled, eliminating the use of 225 million gallons per day of ocean water for cooling purposes, consistent with the State's OTC policy. CECP replaces aging energy infrastructure leading to the direct retirement of Encina's oldest steam boilers, Units 1, 2, and 3.

CECP paves the way for the retirement of Units 4 and 5, when allowed, and the demolition of existing Encina power generation structures, facilitating redevelopment west of the tracks. CECP will have reduced visibility through its construction in the recessed tank farms, tank farm basins. CECP is the same technology as El Segundo Energy Center, which was adopted by the CEC in 2010, and it's in its second year of construction. El Segundo Energy Center is scheduled to be on line the summer of 2013.

Above all, CECP is safe. As with all NRG plants, CECP will have trained personnel to address fire

and other casualty loss, as first responders. Per prior applicant testimony, CECP will be designed with fire protection systems to automatically extinguish any fire before any external response is needed. On behalf of NRG, I want to thank you for the opportunity to speak. We respectfully request your adoption of the Carlsbad Energy Center project today, as presented.

CHAIRMAN WEISENMILLER: Thank you. Staff, any comments?

MR. MCKINSEY: Commissioner, there was one additional note I wanted to make if it is all right, on behalf of the Applicant. I think the Hearing Officer correctly noted most of what you're going to hear about today, and it's worth noting that the Applicant is in complete agreement with all the elements of the Decision and both the Errata's, the one issued again this morning. There is one other issue you may hear brought up and that's the question of the need for the project, and this is another one of the topics that has been pushed around quite a bit and there's been some motions in the last few months regarding testimony and various pieces of evidence, and much like the other issues, we find the Decision, a document to have done a tremendously good and documented and noted job of tackling that issue, and for those reasons we're completely comfortable, not only with

the project that the Decision would approve, but also with the legal sufficiency and adequacy of the document.

CHAIRMAN WEISENMILLER: Thank you. Staff.

MR. RATLIFF: Dick Ratliff, Staff Counsel. Commissioners, this has been a very difficult and long proceeding, and staff has found itself, and I think the Commission as an institution finds itself, in the middle of a historical antagonism between the City of Carlsbad and the Encina Power Station. That antagonism has, I think, been very unfortunate inasmuch as it makes it very difficult to objectively analyze the benefits and environmental impacts of this project. In addition, it has created -- added to the unprecedented length of this process.

The City of Carlsbad and the Interveners in this project, we on the staff have great respect for; we think in many ways they have been the models of effective intervention, and it has been at times, I think, painful for some of us to disagree with the City and its allied Interveners. But we do disagree with them very fundamentally on the issues in this case. We, as staff, have included that the project complies with all of the applicable laws, ordinances, regulations and standards that are applicable to this project, with the exception of the recently induced non-conformity created by the

City's amendment of its local ordinances. Likewise, we believe that there are no significant impacts that have not been mitigated by the Conditions of Certification that we forward to you, so we believe that it complies with LORS and does not have significant impacts.

In addition, we think that this project has significant value and benefits. It closes Units 1, 2, 3, which are boiler generators that were built in the 1950's; it will, I think, create the likelihood or the possibility, at least, that the State will meet its once-through cooling policy goals of early closure; and in addition to that, it is exactly the kind of project that the ISO is saying is needed by the State of California to have flexible fast ramping generation that is valuable for integration of renewables that we are adding to our system, and in prodigious quantities these days.

So for all of these reasons, staff has recommended the licensing of this project and supports the override that the Commission proposes to do of the City's Ordinances, and likewise proposes the override of the Coastal Act to the extent that there may be any nonconformity, although staff has testified at length the reasons that it believes that there is no nonconformity with the Coastal Act.

Finally, I have to address one somewhat small

issue, but an issue just in terms of the correctness of the Revisions document and the Errata to it. At page 1, going on to page 2 of that document, there is discussion of the Prevention of Significant Deterioration Permit. The Errata actually addresses this correctly on page 3 that there remains an incorrect statement on page 1, going on to page 2 --

COMMISSIONER MCALLISTER: Could I -- you're referring to today's Errata, correct?

MR. RATLIFF: Today's Errata, yes, which states that the San Diego Air Pollution Control District has not adopted PSD provisions for their local rules, and the fact of the matter is they have quite recently done so. So I would suggest that that statement be corrected. There are many ways that it could be done. If you would prefer, I would just do it in writing, but if you want, I will read it for the record, how it might be corrected -- at your choice.

CHAIRMAN WEISENMILLER: Please read it for the record.

MR. RATLIFF: The third sentence of the paragraph that begins on page 1, beginning with the San Diego Air Pollution Control District, APCD, would read as follows: "The San Diego Air Pollution Control District, APCD, the agency that would normally issue any permit

absent the Energy Commission's preemptive statute…," "has not" would be stricken, "…has adopted requirements for its State Implementation Plan regarding the Federal PSD provisions…" and the additional language here would be: "…, but has not yet applied for, nor obtained EPA approval to include those provisions in the State Implementation Plan." With those changes, I think that would be a correct statement.

CHAIRMAN WEISENMILLER: Okay, thank you. Could you provide a copy of the written statement to the Hearing Officer?

MR. RATLIFF: Yes. Those conclude staff's comments.

CHAIRMAN WEISENMILLER: Okay, the City of Carlsbad.

MAYOR HALL: Good afternoon. I had quite a few prepared remarks, but just after listening to the last few comments, I'd like to start out by first thanking each of you. For me, it seems like it was just yesterday that we started down this path, and today we each know one another by our first names. The word "antagonism" was just used. If I or our staff has ever been antagonistic, then I wish to apologize. When I look at NRG, they are a worthwhile company, they produce power and they do it in a very efficient manner. We as a city

represent 108,000 people and we try to do that through our land use and other means. And today, what this is really about, it's not about right or wrong, it's about two different visions, 1) the vision of power and their ability to create power, the other is the vision of Carlsbad in trying to protect what is the most valuable resource to the City of Carlsbad and to the State of California, and that is our local coastal area. And that's what this is really about.

The question is, is that the best place to generate power for the future? No one can look themselves in the eye and say this is where this has to be built. We're building power facilities all over this region, most of which are in industrial parks today, and this facility could be built there also. What I would just like to say, this is about vision, it's about each of us positioning ourselves for a later day when this thing will be settled, one way or another, through some sort of negotiation. What we're trying to do today is to make sure that we're involved with a process that we are either appointed, or elected to do. And at the end of the day, we can each look one another in the eye, shake one another's hands, and say we followed the letter of the law. And I think at this moment in time, there are one or more boxes that we haven't checked, meaning we

haven't followed clear, procedures through this whole hearing process and my staff is going to articulate some of those. But I think we owe it to one another, so when I have to go back and say, "Guess what? Perhaps we didn't win today," I can look everybody in the eye and say, "But we got a fair hearing." I cannot say that at this moment in time.

The other thing that I think is very important is safety. To every one of us here today, safety is job one, whether it's Sacramento, a County or a City, safety is number one, whether it's your employees, our firefighters, or our citizens, we have to provide a safe environment. And one of the things that has been stressful to us is the configuration of how this plant is being built, it is in a very tight or constrained area. So as you sit there on the dais, 28 feet is about where these gentlemen here are sitting, that's the width of the access road. When an apparatus pulls into the area, when it's fully operational, it takes us 15 feet. Now, keep in mind where you're sitting, it's a piece of equipment that's several stories high. There is no toaster fire when something like this has a bad day, and you could only look to Escondido where it was simply a small incident, where it burned for a day and a half. And think about that. When we ask for 50 feet? That's that

post right there. So when you think about that and people going down into a pit 30 feet deep, with a 15 foot wall to their back, and you're asking them to perform safety, I don't think I would do that.

The other thing is, when you look at the safety of this site, and I appreciate the fact that they're going to be the first responders, the other thing that is very unique is I-5 is 75 feet away. From where you're sitting, that's probably just beyond that wall right there, so any kind of smoke, or any kind of thing billowing out of this facility, I-5 will start to slow, probably within 15 minutes, it will come to a halt, within 30 minutes, Carlsbad and all the surrounding areas will be locked in place as people dive off at Palomar Canyon, Tamarack, and Elm Street. That's not southbound, that's no northbound, that's both directions. Within an hour, that represents literally miles, so not only are you talking about the safety of this facility, a bad day, you're talking about the whole surrounding community, we're going to be frozen in place. So when we talk about safety and we're reacting to some of your Errata sheets from 15 days ago, that's why this is so important to us. So we're here today to represent the City of Carlsbad, we are not antagonistic, we're here to try and represent fact. And I truly appreciate NRG, I would like to say

I'm a personal friend of Bill Hoffman and Randy Hiccock. So with that, I'm going to introduce our next speaker, which is Ron Ball.

MR. BALL: Thank you. For the record, that was our Mayor, Matt Hall. And it's nice to see you again, Chairman Weisenmiller, and Commissioner Peterman, Commissioner Douglas and, to us, new Commissioner McAllister. And I know, as you've been pouring over the cold record, and there's been 30, probably 40,000 pages, you've been waiting for this moment to attach a name to that face, so when you look down and you see, oh, comments by Ron Ball, that's me. I'm the City Attorney for the City of Carlsbad, and the General Counsel for the Redevelopment Agency. As you know, the Redevelopment Agency has been dissolved and we are now the successor agency, that is, the City is the successor agency to the former Redevelopment Agency. And that's how we've submitted our pleadings.

And thank you very much, I know you haven't made a final ruling on our Request for Official Notice, we feel it's akin to a Mandatory Judicial Notice, as it would be in a court proceeding, and so our recommendation is that you do do that. That will require an Amendment to your Final Decision, of course, because that's not even referred to in the Decision, and so that is a LORS,

that is a local law, and you need to in your Final Decision address that local law, and either comply with it or not. And then you have to make the findings and adjust your Decision to override that.

With me today and really throughout the proceedings, which have been on for the last five years, is my co-counsel and special outside counsel, Alan Thompson, Attorney Thompson is well known to the Commission, he's been practicing before it for the last three decades. Also with me is Attorney Ralph Faust. Ralph Faust was the former General Counsel to the California Coastal Commission for over two decades, and then really our project team leader is Joe Garuba, he is a Manager in the City of Carlsbad, and he's testified and argued throughout these five years of proceedings. And then, finally, Mr. Bob Therkelson, who is well known to this Commission, too, I believe, because he was the former Director and worked here for 30 years. They will all be addressing the Commission and pointing out what we feel are real serious errors, legal errors that today is the day you need to correct them. And at the end of these proceedings, we'll be asking for relief. And the relief that we'll be asking for is either that the Commission retain jurisdiction and fix this Decision up, right here, not today necessarily, but retain

jurisdiction and fix the Decision to accommodate the things that we will point out as legal frailties, or the preferred approach is to remand it to the committee and have the committee take whatever steps are necessary to come back with a legally adequate recommendation that this Commission can adopt.

Now, I wanted to turn the microphone over to Mr. Thompson, but, really before I do, I wanted to just summarize what we feel are some of the inadequacies in the recommendation Decision before you. And, really, we have tried earnestly for the last five years to persuade the Committee to listen to us, recognize our concerns, and really meet and talk with us so that the proposal which was made in 2007 would be different and acceptable. That's really the requirement for the meet and consult, as contained in the law, in the Warren-Alquist Act. But over these five years, this proposed plan has not moved one inch, not one inch to the south, one inch to the north, one inch to the east, or one inch to the west. You would think, after five years of expressing our concerns, we would be able to move the plant one inch. And forgive the hackneyed expression, but it's kind of like the irresistible force vs. the immovable object, and that object is the power plant, and it has not moved. And I think primarily that's due to the inability, or

maybe not the inability, but the reluctance, and I don't understand why it's the reluctance, to follow the statute that says, "If there is an inconsistency with a local law, then the Commission will meet with the governing body to try and resolve any inconsistency." In an attempt to resolve any inconsistency. The record is devoid of any attempt to meet with the local governing body over any inconsistencies. Now, there have been discussions over five years, but none of them have been after the Commission has determined that there's an inconsistency -- after the Commission has determined there has been an inconsistency; then, that triggers your statutory duty, to meet and confer in an attempt to resolve that inconsistency. And I'm a positive person, I'm an optimist, and I believe some of those inconsistencies would be eliminated if the Commission engages in its statutory duty.

The Committee, in our opinion, has failed to -- well, it has obtained -- failed to obtain a Coastal Commission Report. I mean, we looked through the record, and whether it's 30,000 or 40,000 pages, you will not find a Coastal Commission Report in it, it's clear. Okay, do you have a statutory duty to do that? I believe you do. And I've submitted a number of letters to that effect. You do not have a Coastal Commission action, you

do not have a Coastal Commission report, you have some letters from the Executive Director of the Coastal Commission, but you do not have a Coastal Commission Report. So how can this Commission possibly override a non-existent Coastal Commission Report? So we hope you'll be able to answer that, and maybe you'll be able to address that in a revised Decision. Our suggestion, as I've said earlier, is to remand it.

There is in a number of your Decisions a recognition of the power of -- of your paramount jurisdictional power, but also the power of the local LORS, and that's been a tension, as far as I can see over the past 35 years of the Energy Commission's existence. And that number of El Segundo and Morrow Bay Decisions by this very Commission determined that it would not make a final decision as to interpreting the flurry, as I say, of legal arguments that went on and, instead, that resulted in a Memorandum of Understanding between the California Coastal Commission and the California Energy Commission. That MOA requires a report from the California Coastal Commission. So not only does the law require a report, in my opinion, but the MOA between this Commission and the Coastal Commission requires such a report, also. There is not one word in those 30,000 or 40,000 pages that indicates the MOA was followed. It's

not been rescinded, there's not been any action by the Coastal Commission, there's certainly not been any action by this Commission that would require that report, and we feel that's a fatal fundamental flaw.

I'm going to turn the microphone over to Attorney Thompson now to address the coastlines and the Fire Code.

CHAIRMAN WEISENMILLER: Okay, so the question is how many of your people do you have to speak? We'd like to --

MR. BALL: The ones I introduced, so Mr. Thompson and Mr. Faust.

CHAIRMAN WEISENMILLER: Okay, and if each of them could keep within three minutes, that would be good. We're trying not to be repetitive today, but certainly give you a chance to present your case.

MR. BALL: I think you'll find their testimony exciting and stimulating and not repetitive of anything I've said. Thank you.

CHAIRMAN WEISENMILLER: Thank you.

MR. THOMPSON: Good afternoon. My name is Alan Thompson and I don't know if I can do this in three minutes, Mr. Chair --

CHAIRMAN WEISENMILLER: I've assumed you've filed written documents, so you don't have to repeat

what's in the written documents, but try to summarize it, please.

MR. THOMPSON: Uh, okay. Mr. Faust will talk about the Coastal Act and I will come back and talk about the Fire Code. I did have some specific issues that we had that I wanted to bring up, however, if I'm really restricted to three minutes, let me discuss really a couple of the major ones. In fact, let me just go to Fire.

We are very concerned with the delegation of this authority, the fire authority, to an entity other than the local Fire Chief, whom under California law 5.2.2 of the Fire Code has been given the discretion to, in large access areas based upon local conditions. The reaction of the City to the May 15 Errata where the Energy Commission claims that it was the local fire authority and would handle first response was to clarify for the City that that was the recognition, that this Commission had made that determination. I think a brief look at what would happen if a fire similar to Palomar occurred at this site, 911 calls would come in, which would immediately go to the local fire department. I don't know how you're going to handle that, I don’t know whether the Energy Commission will be taking the 911 calls, or somebody else that you designate; 2) in Palomar

there was coordination between the San Diego Police Department, the Escondido Fire Department, and Hazardous Materials; again, I take it the Energy Commission would be handling that coordination.

Finally, there were some 20 pieces of apparatus that showed up according to a Memorandum of -- Joint Operating Agreements between entities. That may not work in this case because of the location of the CECP will prevent other trucks from arriving after a certain amount of time, and I think those Memorandum of Understanding are based upon a comfort level of the training that Fire Department personnel and the Fire Department equipment being compatible, and I suspect you may not have that in this case, and I'm down to zero, so let me say on a personal note that, after four and a half years, I wouldn't have hoped to have more than three minutes to discuss what I personally believe are significant errors in this Proposed Decision, but thank you.

MR. FAUST: Good afternoon. My name is Ralph Faust. I'm an Attorney in Bayside, California here on behalf of the City of Carlsbad. As was noted earlier, I spent many years as the Chief Counsel of the California Coastal Commission, and I come here to talk to you about Coastal issues. I'll try to be as quick as I can. The record, I think, is clear that there isn't any

evidentiary basis for you to find that this project is fully consistent with the Coastal Act, which is what would be required. In that circumstance, there's a provision in the Coastal Act, Section 30260, which allows for an override for Coastal dependent industrial facilities, there's been a lot of briefing back and forth about this. But as I think the record also is clear, when you look at the standard in the Coastal Act for what a Coastal Dependent Industrial Facility is, this does not meet it, this is not a Coastal Dependent Industrial Facility.

So what are you left with? The real problem here is that there's never been an actual analysis by the Energy Commission of the Coastal impacts, and there are many fingers to point, perhaps, as to why that occurred, certainly part of it is the Coastal Commission did not submit its report. But nonetheless, that analysis has never occurred. What has happened is that the Energy Commission has conducted an analysis pursuant to CEQA, but the standard of review for CEQA, what is actually looked at, the Standard against which the evidence is weighed, is different than the standard for the Coastal Act. And unless that analysis is completed, you can't really make a valid determination as to whether or not there is a consistency.

You all know about Section 30413 in the legislative mandate to conduct a review of coastal impacts. That didn't occur here for budgetary reasons. The only report was submitted by the City of Carlsbad. What you have here -- also, there was an MOU out -- I'll just skate past that because the Energy Commission didn't pursue into the MOU, complete the Coastal analysis either. Now, even if you'd gotten, even if there's no report from the Coastal Commission, this does not eliminate the requirement for the Energy Commission to conduct a Coastal analysis. The Legislature has said there's certain impacts you need to look at, there's a certain standard you need to take into account, and that hasn't been done. The Energy Commission has done an analysis based on CEQA, but this isn't the same. If you want to compare it on visual impacts, for example, compare your CEQA checklist with Section 30251 of the Coastal Act, they're different standards.

The Hearing Officer earlier testified that under his analysis, there were no marine impacts, amazing, no marine impacts from withdrawals of water from the lagoon. Compare that to the 1990 letter that the Coastal Commission submitted with respect to a different proposal facility at this location. [Reading] "Marin Impacts are a huge enormous difficult."

Now, what the revised Presiding Member's Proposed Decision proposes to do is to override these in a kind of blanket fashion, "Well, if there are any inconsistencies with the Coastal Act, we'll override them." What I submit to you is that you can't do that, that that really is against your law, and this is why. If you do a blanket override of inconsistencies that you haven't even identified, what do you have? What legal basis are you operating under when you do that? You have to identify what the inconsistencies are in order to override them. It's not enough to simply say, "Oh, we'll throw these out. They're not really worth paying attention to. Do whatever they are, it's fine, we know this is the right thing to do." You need to, at least, as the Legislature mandated, look at those impacts, do the coastal analysis that was required, and until you do that, I don't think you can properly proceed. I think that to do it in this way just eviscerates the whole point of there being a Coastal review, a review of Coastal impacts. And really, the whole point of your override, now, I know my time is up, I would ask for more time, but I will say briefly just what I was going to talk about next, and if you want to ask questions about it, I am happy to talk about it, there is a citation in the Proposed Decision, the Revised Proposal Decision, to

a Coastal Commission Decision in an Oxnard matter. This matter, it's suggested in there in some way, that this somehow makes it okay that the Coastal Commission looks at projects like this and says, "Oh, yeah, they're fine." That's just not the case in any respect, it's not -- the Oxnard proposal was less than a tenth of the size of this proposal, it's a little peaker plant, it has nothing like the same impacts, visual or otherwise. More important, perhaps, the standard of review that was utilized for that case is different than the standard of review of Coastal impacts that is presented before you. When the Commission looks at an appeal and there's a Certified LCP, they review it according to the Certified LCP, and that's what the Commission did in the Oxnard case, they looked at it and said, "This proposal is consistent with the Certified Local Coastal Plant." That's not what's before you today. What's before you today is a review of Chapter 3 impacts, and if you look at the difference, again, on visual, for example, compare what the LCP said in the Oxnard matter with Section 30251 of the Coastal Act, and you'll see that the standards are different. And to say that the Coastal Commission found something consistent with the LCP in Oxnard, therefore, this project is consistent with the Coastal Act is just to entirely misread that Decision. So for both of those

reasons, I think that the thing that you need to do is to remand this back to the Committee and ask them to conduct a complete examination of the Coastal impacts, based upon the standards in the Coastal Act. Thank you very much, and if you have any questions, I'd be very happy to answer them for you.

CHAIRMAN WEISENMILLER: Thank you. Commissioner?

COMMISSIONER PETERMAN: I don't have a question, I just did want to say something, though, as we're just having this discussion because a couple of the presenters so far have mentioned the time. I just wanted to, as a public member, I'm really cognizant of the fact of making sure we have opportunity for people to just talk and express their views, but I do want to say that we have heard these issues all before in the sense that we have discussed the PMPD, and I appreciated that discussion, and we had a much longer discussion at that Business Meeting, and there was also a series of Evidentiary Hearings and Status Conferences, etc., on this case. So those who have not been participating in these forums, I do want to say that these are not new issues to the Commission, to the Commissioners, we have been reviewing the revised documents, and so being cognizant of the time, it's more recognition that there's

a lot to cover, and that these are all issues that we have heard and been briefed on extensively before. So I just wanted to make that statement.

CHAIRMAN WEISENMILLER: Thank you.

MR. BALL: Mr. Chairman, can I just make a concluding remark?

CHAIRMAN WEISENMILLER: Sure.

MR. BALL: Thank you very much. You know, there's lots of issues, we couldn't cover them all in respect of your time, of course, but we do want to remind the Commission, we've asked for the fee schedule to include the development impact fees, and that's what the Regulations say, that's not however what the Proposed Decision says, the Proposed Decision talks about processing fees. We want the development impact fees and I assume that we will read the Decision consistent with the Regulation and we will obtain development impact fees. And we didn't discuss the Coastal rail trails in the record and the Commission is well aware that we're opposed to that condition.

So, in conclusion, we feel that the best remedy is to remand this to the Committee, and the second best alternative is to retain jurisdiction and work on a better Decision. A third and not preferred approach, is to adopt the Decision that is before you today, but with

the those frailties that would not withstand Judicial scrutiny. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Terrimar Association.

MS. JENNINGS: Chairman Weisenmiller, we do have a Mr. Rostov for Center for Biological Diversity here in the room to speak. He's an Intervener also.

CHAIRMAN WEISENMILLER: Sure, go ahead.

MR. ROSTOV: Good afternoon. Thank you. My name is Will Rostov. I represent the Center for Biological Diversity. I'm going to keep my comments relatively short. We've submitted many rounds of briefing evidence, and extensive cites to records, and so our positions are well known. And Mr. Kramer actually highlighted what we were going to talk about. So I will touch on two, instead of three issues, as well, in the interest of time.

So I want to touch on the failure to comply with the Warren-Alquist Act and inadequacy for review for greenhouse gases. One, the first issue, the only way the Commission can approve the project is to not follow its own enabling statute. The Warren-Alquist Act requires the Commission analyzes all air laws, including prevention of significant deterioration, PSD, which is a Federal requirement. The Act does not allow the

Commission to pick and choose what to analyze, but this is what has been done in the PMPD. The Errata applies a different standard of analysis because the Permit is a Federal Permit vs. a State Permit, a distinction not found in the statute. The Energy Commission's review is categorically different than what it does for other air laws. Staff extensively review their -- their air part of many decisions of the Air District with its preliminary determination of compliance process and the FDOC. Here, the Applicant has not even stated that the permit process -- has not even started the permit process with EPA, has not filed an application, or even taken a position on whether PSD applies. So based on an inadequate record, the Errata argues that the decision will comply with the PSD for two reasons, both of which I want to address. One, it argues that the Applicant will eventually need a PSD permit because it's Federal law. Although this is true, it doesn't relieve the Commission of its duty to do its own analysis. The Errata also finds, and I'll quote this, "that all the evidence persuasively indicates that the CECP will have no difficult complying with PSD requirements." And it cites to testimony, but the cited testimony provides no analysis, just simply opinions based on an inadequate record. For example, the Errata relies on the testimony

of Gary Rubenstein, he is one of the Applicant witnesses who is sitting over here, he says that he belies the project will comply with PSD, but he's the same person who testified that the Applicant would not even take a position on whether PSD applies. Staff's witness, Mr. Walters, expects the project will meet BACT, yet Mr. Walters did not review a PSD permit application, or a draft permit from EPA, and he didn't even review other greenhouse gas permits that EPA had issued.

So what we're saying is Applicant simply did not provide the Commission with enough information to review and to make a compliance decision. And additionally, neither witness supports the Errata's conclusions because a PSD analysis is by definition done on a case-by-case basis, there's no template here. Here, the PSD permit will involve permitting for greenhouse gases, and as the Commission knows, this is a relatively new requirement. So this adds to the speculation that the Decision is being based on in the record.

And the P -- the Errata's reliance on a PSD Permit from another case, with a different project, a different power plant, does not substitute for the analysis here. Essentially, the Errata's analysis does not withstand scrutiny and, to Mr. Kramer's point earlier, our argument has been from the start that there

is just not enough evidence in the record to make this compliance finding. You know, the Applicant at least had to do an application and I think they had to do a draft permit, but the fact that the Applicant didn't do any of that and you're just having staff and Applicant's witness pontificate about potential PSD requirements, it doesn't meet the standards of the Warren-Alquist Act.

I want to move to the second issue which the Center, also, as everybody knows, fundamentally disagrees with the Commission's CEQA analysis regarding greenhouse gases. With this decision and others, the Commission adopted a generic CEQA analysis for greenhouse gas emissions. In essence, any new fossil fuel source that is more efficient than the current system gets a pass on CEQA, it can't have a significant environmental impact stemming from its greenhouse gas emissions. This approach allows a whole class of fossil fuel power plants to be permitted. The PMPD recognizes that at some point there could be a limit, a future limit on the number of plants the Commission will permit because of greenhouse gas concerns. But an analysis that has been adopted by this Commission provides no mechanism to determine when that limit is. Our position is that limits are a past, that when would we get there.

We believe that the Commission has taken the

state in the wrong direction by permitting them intentionally and potentially locking in new fossil fuel infrastructure. We need to de-carbonize the system. New generators of greenhouse gas emissions -- this one is going to produce approximately, I think, 840,000 tons -- should be considered a significant impact under CEQA and analyzed as such.

Hearing Officer Kramer also made a point earlier that -- trying to find out about our position -- and our position is that, since under the efficiency theory put forward by the Commission you cannot prove that there's any displacement, you have to count all the emissions that are coming out of this plant, and then do a CEQA analysis, and then determine -- well, first determine if it's significant, and then do the rest of the CEQA analysis, which would be to consider alternatives and mitigations. Just a couple more points. The PMPD claims that the project would be beneficial because it will provide for renewable integration; this is a generic analysis, as well. We don't know how much new capacity is needed for renewable integration, if any, in San Diego. There's no showing that a 540 megawatt power plant is a number that you need for renewable integration. And there is no analysis if the power plants already there are doing the job that is needed.

I also want to point out, the PMPD just goes too far because it also claims credit for greenhouse gas reductions for the building of renewable projects. That is happening because of State law, not because of this project or any potential for renewable integration. You know, just taking a step back, the siting procedure, you know, to me is this grand opportunity for the Commission to analyze whether a specific plant fits into the energy system, you know, what are the alternatives? Is this the best place to site it? Here, this is one plant, let's do the analysis and see if it fits in the system and what its effects are. But unfortunately, with respect to greenhouse gas emissions, the Commission has adopted an efficiency theory that Mr. Kramer explained, that presumes the Commission's answer, the answer is this, new combined cycle power plants in California that are new sources of greenhouse gases will not have a significant effect on the environment from greenhouse gas emissions. We adamantly disagree, as you know. And more importantly, we believe it's contrary to CEQA.

So in sum, oh, I'd just like to say, based on everything we've submitted, which is a lot, as you know, and as well as all the significant points and submissions of the other Interveners, we urge the Commission to reject the PMPD. It's time to end this. So thank you

for your time and consideration.

CHAIRMAN WEISENMILLER: Sure, thank you. In terms of, is there any representative of CURE, either in the room or on the phone? Okay, Power of Vision, again, anyone either in the room or on the phone?

MS. BAKER: We're on the phone, sir.

CHAIRMAN WEISENMILLER: Thank you. Go ahead.

MS. BAKER: Oh, yes. Julie Baker representing Power of Vision. As you may know, Power of Vision is a citizen-based group that represents over 2,300 citizens in Carlsbad and the North County Region that have adamantly opposed the siting of this power plant in this location. One of the things that Power of Vision is concerned about in your issuing the overrides, the Warren-Alquist Act says that you must determine that the facilities required for public convenience and necessity and there are not more prudent and feasible means of achieving public convenience and necessity.

Mr. Kramer introduced the project at the beginning of this item and said that part of the reason that the overrides have been overridden, if you will, LORS have been overridden, is that ISO says there needs to be 20 to 50 megawatts generated in the Encina area. And it seems to us that 20 to 50 megawatts is not enough of a burden to grant an override for four different areas

of LORS violations. And at this time, that's all Power of Vision has to say about -- we've submitted many many many documents, but our main concern is that 20 to 50 megawatts does not meet the test, the level necessary, in order to grant these overrides, and there are more prudent and feasible ways of meeting this. For example, SDG&E, we've talked about this over and over again, has not signed a contract with NRG for this power output, obviously they are not concerned about the 20 to 50 megawatts of generation that needs to be in the Encina area, so it is a puzzle to Power of Vision and the citizens of Carlsbad why you're issuing overrides for such a paltry amount of electrical generation in this area. Power of Vision would ask that you deny the revised PMPD and say no to this project and, as Mr. Rostov put it so eloquently, end this now.

I would like to say that I have Kerry Siekmann who represents Terrimar also here on the line with me. Thank you, sir.

CHAIRMAN WEISENMILLER: Great, thank you. Then Kerry Seekman, do you want to go forward? At this point, I'm marching through the Interveners in the case, so go ahead.

MS. SEEKMAN: Thank you very much and good afternoon. And welcome, Commissioner McAllister for the

first time, and then Commissioner Douglas, Weisenmiller, and Peterman. As you know, we've been at this for four and a half years, and I just want to say that these delays have been caused by many things, including a year and a half the CEC spent on solar, and the cutbacks due to recession, and the delays requested at various times by all the parties, including NRG and the CEC. So this is not just an Intervener thing that it's taken so long, it's been created by all parties. So I want you to know that, today, I paid for a ticket to come to Sacramento, but with the excessive number of overrides, I expected that our efforts today would be for naught since you've decided to make four overrides, and now it looks like there's going to possibly be a fifth one. It's clear the CECP violates the Coastal Act, the Fire Code, our LORS, the Agua Hedionda LORS, CEQA. I believe it's the most overrides that the CEC has ever made. And these overrides are due to a speculative report from CAISO? And possibly a speculative issue, maybe, about San Onofre? Think about it. After it all settles down, do you want to leave Carlsbad with a public safety nightmare, a hazard for the next 40 years that violates LORS, Coastal, CEQA, to put 20 to 50 megawatts in our City, when the City of Carlsbad has already told you that they would take care of that particular need. Please

listen to the City, and the listen to our Fire Captain. You may approve this plant, but remember, this will always be your legacy, approving a plant that's going to be dangerous to public health and safety, to our fire department, to people, the ridership along the I-5, to my neighborhood? Is this what you want for your legacy? The stick -- the City of Carlsbad with the monolithic blighted structure that will be left on the coastline to rot because there is nothing about NRG putting any kind of money towards the removal of Encina, there's absolutely no contract with SDG&E, this will put a huge economic damper on our city and the new plant will still use -- it will still cause the effects of once-through cooling. NRG stated that, whether or not the CECP is built, they're still planning on shutting down Units 1, 2, and 3, so do you want to make these overrides your legacy for a plant that hasn't even applied to the EPA for a PSD? I want to make sure you understand that, even as of now, they have not applied to the EPA. Tell me how they could be on line by 2013 when usually this is a two-year process, and that process has not even begun. So, do you want to make at least four overrides when they don't even appear to be serious about this power plant? There is no -- they haven't been offered a contract with SDG&E, they still have yet to go to the PUC, so do you

really want to make at least four overrides for this contentious, dangerous project based on a speculative report? This is your last chance to make the right decision. Thank you.

CHAIRMAN WEISENMILLER: Okay, thank you. Rob Simpson, are you on the line? Okay, I'm first starting out -- I think the last two potential Interveners are either CURE or Rob Simpson? Otherwise, I think we have more public comment. Mr. Sarvey, go ahead.

MR. SARVEY: Oh, thank you, Commissioner. In this Decision, the Commission proposes to override the Fire Code and declare the onsite power plant personnel as first responders and the Carlsbad Fire Department as second responders. And I've been hearing for the last 12 years at the CEC that natural gas-fired power plants have a low probability of fire response needs. Tuesday, at the Tracy Power Plant, those first responders with their fire extinguishers were inadequate, and Tracy Rural Fire Department had to be called in to put out the fire. Significant damage was incurred to one of the intake structures. This damage places the current construction schedule in jeopardy and the Tracy Plant is required to be in operation soon, or be in violation of their Power Purchase Agreement. It turns out that the fire hydrants at the site had not been activated. Construction should

never commence until adequate fire protection is in place. The Energy Commission Worker Safety and Fire Protection Conditions of Certification have been inadequate for years and continue to be inadequate. I've urged this Commission in every proceeding I've been in since 2001 to improve them. Imagine the damage to the Tracy Power Plant and the nearby industrial facilities if Tracy Fire decided, as secondary responders, they had more important duties and failed to respond?

With the Carlsbad Fire Department refusing to respond, you will not be able to get any insurance company to underwrite this power plant. When you place your judgment ahead of the first responders, you're taking personal liability for the safety of the workers, the fire department personnel, and the public. The health and safety of the public is your responsibility and your decision to override the Fire Chief has far reaching implications. Additionally, your alternatives analysis is defective. As you state, 50 megawatts of local capacity is necessary for local capacity requirements. You have not considered a 50 megawatt project at the current site, or a transmission upgrade as an alternative. Both a 50 megawatt plant and a transmission upgrade would not violate the City of Carlsbad LORS. And for the record, I want to say that

limiting the City of Carlsbad, or any of the Interveners to three minutes to present their arguments is an abuse of discretion. I note the Applicant was not verbally limited to three minutes, this has not been a fair hearing, and it denies the Constitutional rights of the Interveners. And I would like you to correct that situation. Thank you very much.

CHAIRMAN WEISENMILLER: Thank you. Arnold Roe.

MR. ROE: And I won't try to present any verbal legal arguments in the case, however, I would urge the Commission to recognize that what you have before you is a grievously flawed document, full of internal inconsistencies, probably the worst document that's come out of the Commission in its entire history. I mean, even this morning in opening the meeting, Hearing Officer Kramer highlighted -- maybe not being aware of it -- highlighted some of the inconsistencies. Just one example was he said that the need for 20 to 50 megawatts of local power need, but that was predicated on Units 4 and 5 not being in operation; however, he then went on to say that Unit 4 and 5 will continue to operate into the indefinite future. The report is full of such inconsistencies. And you would think you would take enough pride in your work to want to certainly correct those internal inconsistencies in the document. The

other major drawback of the document that's been alluded to by many of the other speakers is the failure to adequately examine and look at the various legal requirements, but instead to simply make bold judgments that such and such is the case, without providing any supporting evidence for these judgments, nothing that any of the Interveners or other interested parties could contest to because they're simply judgments.

And the last point that bothers me as a concerned citizen is how this Commission could encourage the expenditure for a 558 megawatt power plant when only a smaller amount of energy is actually needed in that particular area load cell. So I urge the Committee to, if not to outright deny the application, at least for their own sense of honor, to revise the document so that it is internally consistent. Thank you.

CHAIRMAN WEISENMILLER: Thank you. Steven Moore.

MR. MOORE: I don't have any comments at this time.

CHAIRMAN WEISENMILLER: Okay, again, in terms of the Interveners, either CURE or Rob Simpson, any comments? Anymore public comment? Commissioner?

COMMISSIONER DOUGLAS: So I wanted to make a suggestion. I realize -- and I'll look at our Chief

Counsel as I say this -- that a number of issues have been raised and, of course, as Commissioner Peterman very accurately noted, most of them have been raised exhaustively through the process and before this body as a body once, as well, and have been briefed, and so on. But if it would benefit the Commission to have a deliberation in closed session, that's an option available to us.

MR. LEVY: It's certainly available to you. Before you do that, you might want to see if staff wants to offer a response to anything they've heard, as well.

COMMISSIONER DOUGLAS: That's a good point. We can offer that to staff. Go ahead.

COMMISSIONER MCALLISTER: Let me just suggest, I think there have been a number of people who seem not to quite have it clear, I believe, about the 20 to 50 megawatts and what the baseline for that 20 to 50 megawatts is, and what the sort of context for that actually is, so I would suggest that be one of the points that you describe more fully.

CHAIRMAN WEISENMILLER: Actually, one second, let's start with Paul Kramer and then go to staff.

HEARING OFFICER KRAMER: Okay, answering that specific question, I believe that was Dr. Arnold Roe who spoke most recently, I think he's confusing the local and

regional needs. There is a local need in an area called the Encina Sub-Area, and that testimony established does not include, for instance, any of the three Power Purchase Agreement plants that SDG&E is proposing to contract with, and in that area, there is a 20 to 50 megawatt -- there will be a continuing local need for 20 to 50 megawatts. The difference is the load of the Poseidon Desalinization Plant that the City has approved, and I believe is going to start construction pretty soon, although I'm not absolutely sure on that.

So, in the local area, the need is 20 to 50 megawatts. But there's also a regional need throughout San Diego, and the testimony was that, even if the three PPAs come online, and even if this Carlsbad plant joins them in generating, that the regional need will still be somewhat greater than the sum of all that, and for that reason, until additional generation is provided by one means or another, additional capacity, it may be that Units 4 and 5 at Encina have to continue to operate. But, again, in Land-2 and 3, we've asked the Applicant to ask on an annual basis and report back to the Commission, but ask every year for permission to shut those units down, it just may take a while. You know, the electricity system is very complicated. But what we do understand is that the three PPA plants won't meet the

local need, and we're already counting them in deciding that we need more even than the Carlsbad plant to meet the regional needs. It will take me a while if I go down all the other comments, but would you like me to do so?

CHAIRMAN WEISENMILLER: Yes.

HEARING OFFICER KRAMER: Okay --

CHAIRMAN WEISENMILLER: Actually, why don't you hold on for one second. Steven Moore did say that he did want to provide comments, so Mr. Moore, why don't you provide comments now?

MR. MOORE: I actually said I did not want to provide comments right now.

CHAIRMAN WEISENMILLER: Okay, I'm sorry. So there was a misunderstanding. So, Mr. Kramer, could you go forward?

COMMISSIONER MCALLISTER: Mr. Kramer, I just wanted to ask, so I think we just need to be really clear about the 20 to 50 megawatts, and that’s on top of what locally? So is that assuming that either the existing Encina plant continues, or that we're talking about the new plant, the Carlsbad Plant plus Units 4 and 5? Or what is that 20 to 50 megawatts on top of?

HEARING OFFICER KRAMER: Well, as I understand it, the Encina plant is the only generator in the local sub-area, right now. So if you were only trying to meet

the local sub-area need, you might be able to shut down Encina if Carlsbad went on line, but that wouldn't answer the regional question. Does that answer your question?

COMMISSIONER MCALLISTER: Thank you, yeah. Okay, on the question of alternatives, actually, I'm going to work my way back up the notes, it was suggested that we -- I wasn't able to write fast enough -- Mr. Sarvey suggested that we had not considered either a 50 megawatt plant or something else as alternatives. Does anybody recall what his second…?

COMMISSIONER MCALLISTER: I think he said 50 megawatts plus transmission --

HEARING OFFICER KRAMER: Oh, transmission upgrade, okay, right. The Decision did address both of those, perhaps not to his satisfaction, but in the Alternatives Analysis, we -- from taking the evidence that related to the other plants, basically on the 50 megawatt plant, it concluded that, yes, that could happen, but because the larger, the 540 megawatt plant, didn't have any environmental impacts, there was really -- there was no environmental impact problem to solve by reducing its size, and if we reduced its size, then we are in effect wasting some of the capacity that that site has to be a generator. So a peaker plant in that location was not preferred to the proposed Carlsbad

plant. Does that -- did that make sense? Okay.

Transmission was also addressed and, again, while that's one option to deal with the local need, it does not deal with the regional needs and, again, a plant that has no environmental impacts at, you know, an existing site was preferred to that because it's actual generation. Transmission upgrade still means that at some place electrons have to be generated, and that would result in impacts we can only speculate about in probably other portions of the county. So we did address both of those, at least in my opinion we did.

I really wouldn't want to comment on the fire at the Tracy plant without knowing what happened there. I'll just point out that we have worker safety conditions, the same ones that apply to every project that we require from the Applicant prior to starting construction, a fire protection plan for the construction phase and then, prior to operations, a similar plan for the operational phase. We don't have the details at this point, but we do have a requirement and those requirements will have to be satisfied.

Whether you want to override this project because it hasn't applied for its PSD and doesn't have the PPA, that's a policy decision for you to make and I don’t think you need my help with that.

The requirement that we analyze all LORS, including Federal LORS, to quote, says the decision has to discuss the conformity of the project with those LORS. It doesn't say we have to have the permit, or the Applicant has to have the permit in hand. We did discuss the conformity and, based on the evidence, although some of the parties obviously don't think it's convincing enough or adequate, we found that it is likely that the project will obtain its PSD Permit, meet the PSD requirements, and that those requirements are not likely to cause any changes in the project or in the conditions that we've imposed to meet other air quality laws.

And we'll just agree to disagree with Mr. Rostov on our methodology for the greenhouse gas analysis, at least that's the recommendation.

On Mr. Ball's comment about Socio. 1, we were presented with two alternative versions, one by the Applicant, and that's the condition that requires a payment of local development fees, in essence, and one from the staff, and I believe I based this condition, Socio. 1, more on the Applicant's language, but if you'd like you could ask the Applicant if it is satisfied with the language that the City proposed in their comments on the Revised PMPD and, if they do, we could certainly substitute that.

COMMISSIONER DOUGLAS: Yeah, Applicant, if you could respond to that question?

MR. MCKINSEY: The proposal by the City was -- it wasn't the exact language, but specifically they asked that the condition include impact fees. The condition as it is written now covers -- its wording is fairly precise and it says fees for services that the City provides as part of this, that they would otherwise have been compensated for. There isn't really a standard that I'd ever seen that the Socio. condition, when it shows up, it's usually because a local jurisdiction asked for it, and a lot of times the conditions that are agreed to are agreed to by Applicants simply out of a nicety because it's not a major concern. The Applicant does object to the reference to trying to change it to say "impact fees" simply because it gets into an ambiguity over what the Applicant really thinks looks like attacks, and so the language right now ensures that the City is made whole for costs and services, but doesn't turn this into what would be a windfall potential for the City to get compensation for something that, again, doesn't produce anything. And I would note that, in the decision to not provide fire service as a first responder, or at all, that's usually the only role that a City is left to have in a project when the City is usually left as the first

responder. And so, essentially the cost to the City of this project -- and Cities don't always understand that -- but because the Energy Commission keeps that jurisdiction and regulates and monitors the project and does all the services that the City would provide, there's really no necessity to modify the condition any further, and we're satisfied with it as it was proposed by the Committee.

HEARING OFFICER KRAMER: I'll have to say, though, that in my mind I understood that impact fees that would normally apply to development, for instance, if they have road fees, capital improvement programs for facilities that the development would enjoy, that -- I did not mean -- I did not interpret it to exclude those.

CHAIRMAN WEISENMILLER: Please clarify what you meant there.

MR. BALL: Yes, sir, thank you very much. You know, I brought this up, I guess, several times during the proceedings and I was assured that the City would receive its normal development impact fees, and so we put in our fee schedule, so there shouldn't be any ambiguity about what fees are normal development impact fees. The Commission's Regulations state that the project will pay normal development impact fees. That is, in our case, the public facilities fee, the traffic impact fee, the

planned local area drainage fees, there's probably a list that is in the record, that’s what we meant, not the processing fees because we understand that most of the processing will not be done by the City. We have some review and comment responsibility as a result of the proposed conditions, but those proposed conditions eliminate normal processing fees, that is, when we have to process a Permit Application. But there will be development impacts as a result of construction of a 540 megawatt plant, and the City charges all developers in its jurisdiction development impact fee. So I'm very shocked, in fact, I'm surprised and shocked, that the Applicant would take this position at this late date, that we are not entitled to development impact fees. I think your own Regulations say that we're entitled to normal development impact fees, and I respectfully request that that be included in the Decision if the Commission does so -- if the Commission does issue a Decision.

MR. MCKINSEY: And, Ron, if you could stay for a second, the condition that we proposed actually included the statement that didn't make it in, it said, "Such fees may include school impact fees, or other local jurisdictional fees." And that language would be acceptable. And if it needed to have a few additional

"such's" as well, but we weren't attempting to avoid that, but there's, I think, a three percent -- and you probably know the name -- I'm trying to find it in my notes real fast --

MR. BALL: Do you want me to help you out?

MR. MCKINSEY: Yeah.

MR. BALL: It's a 3.5 percent public facilities fee. That's one fee. There is a traffic impact fee, there's a planned local area drainage fee, there's probably other fees. We don't represent the school district, and that's not what we're asking for, we're asking for normal development impact fees as a result of development. If this were subject to the City's jurisdiction, you would have not only the processing fees, but you would have development impact fees, so we're disregarding most of the processing fees and we're seeking, and we should be assured, of obtaining normal development impact fees. We've submitted that schedule.

MR. MCKINSEY: If I could ask one more question, Ron. In your filing, you asked for also a license tax on new construction imposed by Carlsbad Municipal Code Section 509030 --

MR. BALL: Yes and --

MR. MCKINSEY: -- is that a license tax, as well?

MR. BALL: Not necessarily because the way that license tax is structured, is that a credit is given against an Applicant who pays the PFF, so there is no construction license tax due if the public facilities fee is paid voluntarily. If there's not, then the tax is triggered and the development, then, would be subject to the tax.

CHAIRMAN WEISENMILLER: Now, in terms of the fire issue, is there anything in your normal fees that would cover the cost of fire protection?

MR. BALL: No, we do not have any fire impact fees.

CHAIRMAN WEISENMILLER: Okay. Would it be possible for both of you to work out the precise language on this issue? Ron and the Applicant and staff?

MR. BALL: Today?

CHAIRMAN WEISENMILLER: Today, yeah.

MR. BALL: I think if someone could find -- we've submitted a fee schedule and I think we would just have to locate it, it's acceptable in knowledge and we would be satisfied if we would incorporate that fee schedule into your final Decision, so that could be done today, yes.

CHAIRMAN WEISENMILLER: Yeah, anyway, I want to encourage the Applicant, you, and the staff to try to pin

that down.

MR. MCKINSEY: Commissioner Weisenmiller, I think that the way that the condition is written, it's not written to provide a set schedule, that's one of the approaches that the Commission has taken in the past that, you know, a specific party asks for a specific -- I think the way that this condition is written is it places the burden on, first, the Applicant to submit what they think are the correct fees, and then it provides an opportunity for the City to say, "Yep, you got them all," or not, and then the Compliance Project Manager makes the decision to approve that. And so, to me, the question is simply what language to put in there to make it clear what category of fees should be on that list, so that the Compliance Project Manager knows. And we're talking about one or two words, I think. And, Mr. Ball, you may be able to suggest those words right now.

MR. BALL: Well, I'm really, first of all, I don't think this is the Applicant's decision, I think it's the Commission's decision.

CHAIRMAN WEISENMILLER: Sure.

MR. BALL: You have asked the Applicant's opinion and he's --

CHAIRMAN WEISENMILLER: I've asked his opinion and I've asked your opinion and I've asked --

MR. BALL: And I'm not in control, either, it's the Commission that's in control, and your Regulations say that we're entitled to normal development impact fees. We've given you a list of normal development impact fees, we'll be happy to work with the Applicant to come up with that list and read it into the record if that will be of assistance to the Commission.

CHAIRMAN WEISENMILLER: Well, obviously, and part of the -- encouraging it -- I was hoping at least in this one area you two could agree and reach a settlement on it and we won't have to.

MR. BALL: I hope you're correct, Mr. Chairman.

CHAIRMAN WEISENMILLER: Right.

MR. BALL: Thank you.

HEARING OFFICER KRAMER: Okay, then moving -- almost finished, I think, well, let's see, the Oxnard case, Mr. Faust suggested it was improperly applied, and in the Decision, it was used to illustrate the point that you do not have to be a Coastal dependent use in order to be approved in the Coast zone, nothing more than that, in essence.

As to the blanket override, we have identified the inconsistencies by a reference to the areas in which the City has alleged that we were inconsistent and, as I understood them, they were visual impacts and potential

impacts on marine biological species, both of which we found not to be the case here. He described the marine impacts as huge, but the Decision cited to some studies that were provided in the Applicant's testimony to the effect that they were -- I don't recall the percentage, but a relatively small percentage of the species that would be in the impacted water would be affected because, when the project is drawing water on its own, and not just taking the water that's already drawn and been through the Encina cooling system, that's a much lower water draw. And the evidence suggests that the impacts were not significant.

We asked for briefing on the question of whether the CEQA Standards of Significance applied, or were similar to those for determining Coastal Act consistency and I do not recall anybody specifically addressing that in any convincing way to suggest that the two standards are not functionally the same.

I don't have an answer for Mr. Thompson's question about who would take 911 calls, perhaps the staff does. And his other question, I wrote down as, "What do you do if too many fire trucks show up?" Well, I would let staff also address that, but it may be that not everybody has to drive down into the recessed area where the power plant is because there are too many of

them, perhaps, have arrived. But I'll leave it to staff if they have an opinion about whether, or the Applicant for that matter, whether that would affect the fire safety.

We discussed in the original PMPD, carried over into the Revised, whether we needed a Coastal Commission report and, in fact, it is optional for Applications for Certification. It does appear to be mandatory for Notices of Intention, but this is not one of those proceedings.

Given that the City just recently, well, last year after having the benefit of reviewing our Proposed Decision that's found the project consistent with the previous version of its zoning and other regulations, and after that they amended their regulations to specifically make this project inconsistent, it is hard to believe that those problems are going to be solved by further consultation. And the Proposed Decision has a specific finding that doing so would be futile. And I think that's it.

CHAIRMAN WEISENMILLER: Okay, staff.

MR. RATLIFF: Commissioners, as you might expect, a lot of things have been said and I could say a lot of things about the things that have been said. I don't want to go over issues that perhaps don't need to

be addressed, but I do want to answer any specific questions that you have. Having said that, I'll pick a couple of things that I think deserved to be addressed in the case that they do create questions in your mind that I would like to dispel.

The first one has to do with comments from CBD that apparently the only way you can know that Federal law is going to be consistent with this project for the Prevention of Significant Deterioration Permit, is for the Applicant to get a PSD Permit, a process which, if it is obtained from the Federal Government, can take years before the permit is final. We've never imposed that kind of requirement on anyone, nor would it make sense to do so. And those Federal laws are going to be enforced by EPA in any case, so the project has to comply with EPA, but with PSD. Secondarily, it's worth mentioning, and this was in the testimony, every project we have ever licensed that required a PSD Permit, had no difficulty obtaining one. California NSR requirements are so stringent that the additional requirements for PSD are not difficult to meet, so if in fact what is required in CBD's view is a prediction of compliance, it's quite reasonable to say, yes, it's very likely, almost certain, that any project that we would license would also receive a PSD Permit.

One of the things that I think was missing in CBD's discussion of -- and also in Mr. Kramer's discussion -- of compliance with AB 32 and with the issue of CEQA compliance regarding greenhouse gases, is that 1) as soon as this plant comes on line, if it ever does, when it operates it will immediately reduce greenhouse gas emissions from the current baseline because it will displace less efficient plants. That’s not a theory, that is an operating principle of the system that has been testified to by numerous people in this case. Secondarily, this project, like all other gas-fired plants, is subject to AB 32 provisions requiring allocations or offsets. It will participate in that program despite the fact that it actually reduces greenhouse gases, it will actually have to buy allocations or offsets for the gases that it emits. These are two very strong bases for finding that it complies with CEQA.

Regarding the Coastal Act issue, the staff testified that the project complies with the provisions in Chapter 3 of the Coastal Act, which are the substantive provisions and includes such provisions as rather generalized requirements regarding whether or not the project would be consistent with coastal views, and similar values. And we did an elaborate analyses

regarding visual impacts. The only two things that were mentioned by Mr. Faust were visual impacts, which we analyzed at great length, and secondarily marine impacts, both of which, by the way, were certainly with regard to marine impacts were actually improved quite a bit by the project because they reduce once-through cooling and withdrawals from the Hedionda Lagoon. So that isn't basically an impact which is detrimental, it is a fact of this project that is positive. Regarding visual impacts, to the extent that this project enables the shutdown of the existing facility, it will improve the visual scene, as well, ultimately because when the old facility is finally closed with all five units shut down, the provisions in this, the Conditions of Certification here require that there be the removal of existing old facility, and that would be a great visual improvement, certainly.

Regarding Mr. Ball's discussion about the necessity for meeting and conferring on inconsistency, the staff has been meeting and conferring with the City for five years on consistency either informally through discussions with the City before they became Interveners, or after the City became an Intervener in workshops, and we believe that that, in fact, satisfies this requirement. Any suggestion that it is the Commission,

itself, that has to perform this process is, I think, entirely unworkable and nonsensical.

If there are other things that you would like me to address, please tell me.

COMMISSIONER PETERMAN: Mr. Ratliff, I just want to follow-up on Mr. Kramer's -- I think he punted, if you will, the answer about some of the fire response to staff. Did I miss you respond to that? About how answers the 911 calls and all that?

MR. RATLIFF: I have no idea what the question was, I'm sorry.

COMMISSIONER PETERMAN: So, I mean, I can summarize it, but counsel is looking like he may, so please go ahead.

MR. LEVY: I was just going to say it sounded a little bit -- the suggestion in the ordinance that's been put before you, that somehow the Energy Commission is the first responder and would take fire calls seemed a little bit, respectfully, glib. I don't think they actually intend that the CEC is going to be answering the 911 calls. I don't know mechanically how it works when you dial 911 down there, but we do have testimony on the first response. It's going to be in effect at the facility.

MR. GARUBA: Well, Commissioners, I'd like to

clarify that last statement. My name is Joe Garuba, I'm the Project Manager for the City and I'm also the Municipal Property Manager for this project. Based on the recent revisions that came out in the Commission's documents and the Committee's documents, which put the Energy Commission in the first responder position, that our counsel clarified, we absolutely would transfer the 911 calls, and the way that happens is there's actually two different groups -- I'm going to just make a leap and say that your staff is unfamiliar with the way a fire service is delivered in San Diego, and there is a coalition of agencies that work together in a boundary drop scenario, they have a mutual dispatch center, so a call comes into our police station, we route it to the mutual dispatch center and, now, based on the most recent ordinance, it will come up on our fire maps, which are electronic, which says, "We are not responsible for this site," and then there will be a number that we will punch in, that will dispatch it to whomever you want us to dispatch it to, and then that call will go. At that point, it then becomes not our responsibility. If we're called on a mutual aid backup, we absolutely would look forward to trying to figure out what that is. Obviously, there are requirements for mutual aid agreements, but that's not a primary response, so that's not a primary

response for emergency services, both medical and fire. That is your responsibility.

COMMISSIONER PETERMAN: Thank you. Just in terms of the number issues that are being raised, but particularly the public safety ones are very important to me and, so, when comments are made, glibly or not, I just wanted to make sure that we were all on the same understanding about the responsibility, etc., so that was beneficial for me. Thank you.

COMMISSIONER DOUGLAS: So, I guess we have a couple of options. If Commissioners feel as though there's an interest in deliberation, I'm very open to it, I'm also very open -- oh, excuse me, Mr. --

MR. BALL: Thank you. I was going to ask the Chairman if it's all right to have about one minute worth of comments in response to the staff's comments and the Applicant's comments.

CHAIRMAN WEISENMILLER: That would be okay. Obviously, we're trying not to go back around, but that would be good. Go ahead, please.

MR. BALL: I believe that staff mischaracterized many of the conditions, unfortunately, so let me just leave that there. But what I do take exception to, and I hope this Commission will also, is a mischaracterization of the law. And whether it's

nonsensical or whether it's unworkable, it's still the law, and I can't change it, and you can't change it. And so in Section 25523 of the Act, Section (D)(1), it states, "If the Commission finds that there is a noncompliance with the…," I'm editing this a little bit, "…noncompliance with the local ordinance, it shall…," there's no futility exception in there, there's no non-sensical exception, there's no unworkable exception, it says, "It shall consult and meet with the local governmental agency concerned in an attempt to correct or eliminate the noncompliance." That's the law. And your staff can't change that, and it cannot characterize it as being nonsensical. It's unfortunate that that has gotten to this level, but the Commission needs to apply that law and it needs to do so in a way that's triggered when the Commission makes an overriding finding, not five years ago, not four years ago, not three years ago, not two years ago, but today. If the Commission makes a finding that there's a noncompliance with the local law, which is making five of them today, then it needs to look at this section and comply with it.

CHAIRMAN WEISENMILLER: Thank you.

MR. BALL: Thank you.

CHAIRMAN WEISENMILLER: Jennifer.

MS. JENNINGS: Chair, if I could ask for your

indulgence and allow Ms. Seekman, who represents citizens down in the local area, she has been involved in this project as an Intervener for over four years, she just wants to make a brief comment. Unfortunately, only one of the Commissioners has been down to Carlsbad to see the --

CHAIRMAN WEISENMILLER: I think she already spoke.

MS. JENNINGS: She did, but everybody else has spoken since and she wants just a brief remark.

CHAIRMAN WEISENMILLER: Again, if it's a one minute, but we're not going to go back around sequentially through everyone. So go ahead.

MS. JENNINGS: Thank you.

CHAIRMAN WEISENMILLER: Sure.

MS. SEEKMAN: Thank you. Commissioners, hello?

CHAIRMAN WEISENMILLER: Yes, go ahead.

MS. SEEKMAN: Hi, it is less than a minute. I just wanted to clarify something about the future needs, the future 20 to 50 megawatt local need is based on the full shutdown of Encina, but the shutdown of 4 and 5 are not part of this project, and it's very important that the Commission understand that. And then, also, the regional future need is based on the full shutdown of Encina, but Units 4 and 5 are not part of this project, the shutdown of 4 and 5. So those future needs that

they're talking about, 20 to 50 megawatt and that involves the other three projects, both are all based on the shutdown of 4 and 5, and that is not part of this project. Thank you.

CHAIRMAN WEISENMILLER: Okay, thank you. Commissioners, let's go into closed session and we'll be back.

(Closed Session at 4:45 p.m.)

(Reconvene at 6:05 p.m.)

CHAIRMAN WEISENMILLER: Mr. Kramer is here, so we're going to go back on the record.

COMMISSIONER DOUGLAS: So I thought that I would say a few words as we report out from the closed session. First of all, I wanted to say that we do want to take official notice of the new Carlsbad Ordinance and the accompanying staff report with the Ordinance, so we will add these materials to our record and the materials can be referred to by parties. Secondly, I wanted to just go through some of my thoughts and maybe once or twice ask our counsel a question.

First of all, I want to say that, while a number of parties raised legal issues on the record, and pointed out what they viewed to be legal inadequacies in the document, I come away from hearing all of that satisfied, from my point of view, that I don't agree with

those arguments, and I think the document is sufficient for the Commission to take action. I wanted to ask Mike Levy if you could elaborate on the meet and consult issue, in particular.

MR. LEVY: Yes, I'll be happy to do that, Commissioners, thank you. For everybody's reference, 25523 specifies that the Commission shall meet and confer, or more precisely, if the Commission finds that there is noncompliance with a LORS, it shall consult and meet with the State, local, or regional governmental agency concerned, to attempt to correct or eliminate the noncompliance. We've done a word search of the Warren-Alquist Act and, for everybody's reference, the word "Commission" occurs 1,404 times in the entire Act, yet the word "staff" only appears 24 times, and some of those instances aren't even referring to our staff, they're referring to other staff. The word "Commission" in Section 25104 is defined as the State Energy Resources Conservation and Development Commission, which of course includes the staff, and when your staff acts as your Delegatee, your staff acts in your lieu and stead for you and on your behalf, and essentially it is the act of the Commission. If you were to read every instance in the Warren-Alquist Act of the word "Commission" to mean the Commissioners sitting, themselves, as a public body, as

Mr. Ratliff points out, it would be a nonsensical result, it would mean that three of you would have to notice a Bagley Keene meeting to walk across the street and file your Notice of Decision with the Resources Agency under CEQA, as just one example. Your staff, as part of our process, serves you, your advocacy staff, and they are the ones who have done the meet and confers, as noted, for the past four and a half years on this matter. I would just want to clarify one of the findings, Finding 11 on page 8.1-32, which talks about the futility of consulting further with the City because of the fact that the LORS override is necessary because of the City's subsequent actions. I would want to just add the word "further" in the finding to clarify that your knowledge, of course, that your staff is the entity that is doing the consultation on your behalf, and so it would read -- did you do that already? I beg your pardon, it's already there. Thank you, Mr. Kramer. So I don't think that's not a cognizable, it's not an appropriate argument.

COMMISSIONER DOUGLAS: Thank you, Mr. Levy. Let me next ask Applicant and the City if they were able to reach any common understanding on the fee language.

MR. MCKINSEY: I'm sure I can speak for Mr. Ball and say we did not.

CHAIRMAN WEISENMILLER: Did you talk?

MR. MCKINSEY: We did, but we certainly disagree.

CHAIRMAN WEISENMILLER: Okay.

COMMISSIONER DOUGLAS: Okay, thank you. So coming back to some of the higher level issues here --

MR. BALL: We did find two things, we found the fee schedule and we found the Commission Regulation that talks about fees, that's 1715. And Mr. McKinsey and I disagree on the interpretation of that condition.

COMMISSIONER DOUGLAS: Okay. So to clarify, let's just dig into this issue a little bit further. So, Mr. McKinsey, from your perspective, is the language that's in the current Revised PMP accurate? Is there any clarification that you suggest? And I'll ask the same thing of the City.

MR. MCKINSEY: No, we feel that the current version of Socio. 1 in the Proposed Decision is accurate and conforms to the requirements of Section 1715 for reimbursement.

COMMISSIONER DOUGLAS: All right. Does the City have any additional points they'd like to make on this?

MR. BALL: Yes, Commissioner Douglas, I think where we disagree is the interpretation of this section, let's see, it's section 1715(a)(1)(A), which says, it

begins with "costs eligible for reimbursement," and so Mr. McKinsey can speak for himself, but as I understand this, it's reimbursement and the development impact fees aren't necessarily reimbursement, they're imposed on the privilege of development, and then they are expanded to defray or defray the impact of the development, so, for example, a stormwater fee, or a planned local drainage fee, it's collected and then put into a special fund, and then you use that special fund that's used to build a facility, a storm drain facility, or a drainage facility, that will offset the impacts of that development. They are routinely imposed in every City in California, including Carlsbad. So, in (A) it says, "Permit Fees, including traffic impact fees, drainage fees, park in lieu fees, sewer fees, public facilities fees, and the like." So we're content with that language, I guess, but we would rather have the specific fee schedule so there's no disagreements over what the phrase means and the like. Thank you.

COMMISSIONER DOUGLAS: Thank you. Staff, do you have anything to add?

MR. RATLIFF: No.

MR. MCKINSEY: And the difference in our position, and the reason that Mr. Ball may disagree, is that I find that the title in Section 1715 is Title

Reimbursement, Subsection (A) is Reimbursement, and (i) is Reimbursement of Agencies, and at the end of that, so it says Reimbursement, Reimbursement, Reimbursement," and in that (i) it explains reimbursement of agencies for costs incurred, and then it gives two categories of examples of such things that could be reimbursed, and to put it really simply, lurking on that fee schedule that Mr. Ball would like to have put in there is the equivalent of a tax, it's a three percent on the base price of the facility, or thereabouts, so it's millions upon millions of dollars that I think they would hope, by having that fee schedule in there, would now have to be paid, and they would not have to show that it actually reflected any actual costs that they incurred, that they would have to be reimbursed for. It's possible that it might be paid, but the way the condition is right now, it simply says that the Applicant can have -- the Project Owner has to reimburse for all costs incurred, period. And for services rendered. And so it meets the requirements of 1715, and it leaves it very open and probably for disagreement in the future, but it conforms to the requirements, but it might create a situation in the future where the City is insisting they deserve reimbursement for something and we may be here before you trying to defend whether or not that has to be paid.

MR. LEVY: So under 1715, I basically agree with what the Applicant just said -- under 1715, it basically specifies "local agencies shall be reimbursed for costs incurred, in accordance with actual services performed by the local agency, provided that the local agency follows the procedures set forth in this section." Socio. 1 specifies that they shall be reimbursed for the actual services performed, but the Regulation specifies a process for determining what's actually been incurred and what services have actually been performed, it does not need to be articulated in this proceeding now, or in the Order any more than Socio. 1 already specifies.

COMMISSIONER DOUGLAS: Okay, thank you. I'm satisfied on this question. If other Commissioners have questions, of course, they may go back to it. So I think I'm going to take a step back now and make a few more high level comments about where I'm coming from on this project.

As the participants in this case, the parties know very well, I stepped onto this case actually a little bit after the Commission remanded the Decision back to the Committee to expand the record on a few issues, and I have in the course of time become quite familiar with, you know, we went to the community twice, we listened to pretty exhaustive testimony that was very

far ranging on the issue. I certainly had a lot of interaction with the City, the Mayor came to at least one of the hearings and workshops that we had down there, we had the PMPD hearing, and we had an evidentiary hearing, if not both of them, and the City was certainly very active, as were other parties in both of those proceedings in Carlsbad. And I think that what we really have here, and I think the City said this in their opening comments, is a case where the local jurisdiction, for reasons that, you know, I'm not going to particularly sit here and criticize, for reason that to it are compelling, does not want to see this power plant built at the site that is proposed. And I think that we have seen a pattern of actions on the part of the City that I'm not going to criticize, but that to me accentuate and underscore very much that that's the case. And I could almost identify or talk about any number of issues when I talk about this, but I could talk about the width of the access road, where in March of 2009, the Fire Chief wrote a letter suggesting that the road should be a minimum of 24 feet, and then a little under a year later, in February 2010, testified that 50 feet minimum, 50 feet wide was minimum because he doubled 24 and added two. And of course, changes to testimony are permissible in our process and people can come in and say, "Well, I

reconsidered on the basis of something compelling," "I changed my mind is this is what the compelling evidence on which I changed my mind is." And we don't really see that in that case.

And you know, just on another example, of course there are the LORS issues, we had a City Resolution in August of 2008 opposing the power plant, October of 2009, City adopted an emergency ordinance to prohibit its expansion, or siting there in the Coastal Zone, and that expired. Later, the City adopted an Amendment to the General Plan and Zoning Ordinance and Precise Development Plan, and seeing a specific plan, making the CECP nonconforming, and of course, the ordinance that we just took notice of, enacted on Tuesday of this week, is another manifestation of the City's desire to not have the power plant permitted and built in Carlsbad, and I'm not going to sit here and criticize that, I'm not going to -- I'm not going to impugn any negative motivation to that, I'm just going to say that, from our perspective where we sit, or at least where I'll start with me, where I sit, I think the Warren-Alquist Act is here and the Energy Commission exists because the provision of reliable electricity to Californians is such a compelling State interest and such a compelling interest of the people of California, everywhere, and the

Energy Commission is given an authority that we do not exercise lightly and, in fact, we rarely exercise at all, to override LORS, to override other State laws where necessary when we make certain findings, and that authority exists in the service of this compelling interest to provide reliable electricity to Californians. And of course, the Energy Commission does many things other than site power plants; for several hours this morning, we debated and ultimately approved the Title 24 Building Standards Update, we just approved the most aggressive update, the biggest incremental improvement in energy efficiency for new buildings that we've ever done. We have renewable energy programs, we are working very hard on RPS, Renewable Portfolio Standard implementation, we're working very hard on permitting and planning for large-scale renewable energy.

In the context of what the Energy Commission is engaged in with other State agencies, we are engaged in a real effort to reduce the greenhouse gas intensity of our electricity system, to increase efficiency, to repower, or retire the aging natural gas fleet, of which the Encina Power Plant is a prime example, uses once-through cooling, it's a substantial visual impact on the community, it's not efficient, particularly compared to modern power plants such as the CECP, which is before us

today. And the CECP brings some of the fast start flexible capability in a load center, in a place where the electrical system is currently built around containing generation. There's a local need, there's a regional need and, of course, as far as we're able to go with the Renewable Portfolio Standard, and efficiency, and distributed generation, and all the other tools that we have available to us, in some ways -- the further we're able to go with some of these tools -- the more important it's going to be to have flexible generation in load centers. And that's not to say, as Will Rostov who I've worked with on climate issues for a long time, it's not to say that if one power plant is good, two is better, and I agree with you that one power plant being important does not mean that two is better, and three is better yet. However, in this case, under the facts that we have analyzed in this proceeding, I think that the plant will provide many benefits, some local, some regional, and some in service of achieving State policy goals. So it is not, I want to emphasize, lightly that I put forward a Proposed Decision with overrides in it and suggested to my colleagues that they override local LORS, and it's not without sympathy that I look at the City and understand their very clear and articulable and articulated desire not to have this project approved.

Nevertheless, my recommendation to the Commission is that we act on this Decision today and that we approve the project. And I think that, if there are additional questions, you know, or if I have any additional questions, I'll be happy to pipe up later. I think it would be good to hear my colleagues speak, and also the Hearing Officer distributed a proposed revision of the adoption order, so I don't know if, Mike, you suggest that we talk about that first? Or if we hear from all of the Commissioners?

MR. LEVY: Just to note, there's one typographical error in the handout, there should be -- the word "not" is missing, so perhaps Mr. Kramer could read the correction.

HEARING OFFICER KRAMER: Yeah, that's in the new finding 13, which is shown in red. And let's see, the sixth line of that paragraph says, "Under CEQA, because it does…," and you should insert the word "not" "…result in a new significant environmental impact from the project. I was typing quickly.

CHAIRMAN WEISENMILLER: I was going to say, why don't we go around the dais and then as we move forward. Andrew?

COMMISSIONER MCALLISTER: As the Junior member of the Energy Commission, this was my first siting case

and it's actually obviously very interesting, but also somewhat difficult having most recently come from San Diego, and having worked with a lot of folks in Carlsbad, including some of the folks that are here. And knowing what a lot of good stuff that city has done on the energy efficiency front, for sure, on the renewables front, how they have done planning at the municipal level very admirably and very capably for years -- for decades, really.

And I think that's illustrative, you know, my own career has been the same way, some power engineering and larger-scale issues, but really a passion and a lot of effort for energy efficiency, particularly, and renewable energy and distributed renewable, and the loading order in California includes all of that. In fact, energy efficiency is number one in the loading order.

If we really are -- if this future that we envision is many fewer power plants, then we actually -- we have a lot of work to do to get people to use less energy, and over time we'll get there and we'll work hard to get there. Energy efficiency and sort of all these new technologies, and storage, and distributed generation, and highly efficient natural gas technology are all part of the solution, and there are more

solutions coming up every day.

But we are where we are today and, while our per capita electricity consumption has stayed flat for a long time, our absolute quantity of energy consumption throughout the state still continues to rise; we need to change that, but we also -- we can't let the perfect be getting in the way of the good. And from my perspective, getting rid of the -- now, I know we're not doing that completely, or the new plant here that is on the table would not allow the Encina plant to go away completely, but that is absolutely, I think, my own hope and I think probably that of everybody in the room. And as I compare technologies of the new and the old, visual impacts, even the particular part of the site that's being impacted, the footprint, and the fact that there's all this existing infrastructure right there that doesn't have to be built as it would in another site, this clearly is a very unique -- I mean, every power plant, every siting application, is unique. And this one is unique and has sort of a -- I think it's a step in the right direction relative to what's there today and I definitely hope to pass by on the 5, or on the beach in Carlsbad, and one day not see that 400 foot stack there, and I think most, if not all the citizens of Carlsbad feel the same way.

So these are difficult choices and by

permitting a plant on that site, I and we are in no way saying, if that's what happens, in no way saying that energy efficiency, or distributed generation, or any of these other goals are any less valid; in fact, it sort of makes me want to roll up my sleeves more and say, you know, we've got to do a better job, you know, having as few of these kinds of decisions to make as we possibly can.

Having said all that, you know, a 540 megawatt power plant is not a trivial thing. And I think, listening to the community members, very passionately, you know, made clear that they do not want this new power plant, and they want to get rid of Encina, potentially, as obviously, on a personal level, you can't sort of not take that to heart at some level. So having said all that, you know, these decisions -- California does need to repower, to maintain its electricity system, to have reliable electricity, is something that we are charged with doing. And there's a transition that we're in the middle of that isn't done yet, and a sort of incremental improvement to highly efficient combined cycle is a step in the right direction. So I'm going to concur with my colleague, Commissioner Douglas, on this decision.

COMMISSIONER PETERMAN: Good evening, everyone. I am in full agreement with Commissioner Douglas and

Commissioner McAllister's statements, so I'll keep my statements brief in the interest of time. Very few people, if at all, want a power plant in their city and I respect that, and I agree that is why we have the Energy Commission and the Warren-Alquist Act to have a body that is able to look at the larger state issues and the needs of its citizens, including those in Carlsbad, as there are power plants we have permitted and supported in other parts of the state that are providing services in support to that area, as well.

I appreciate the City's long-term engagement on this issue, as well as the citizen groups. I do think this is a plant that is needed; we are concerned with reliability, particularly in areas where there is high load, and seeing that load increase with the addition of the desalinization plant.

And, you know, particularly I want to comment on the public involvement and the public process, you know, as the public member, I'm particularly sensitive to those concerns that are raised by the community groups and I want to make it very clear that we have been listening, you know, this is a proceeding where originally it was brought to the full Commission, and then it was sent back to the Committee for a number of issues, and so that gave myself as a Commissioner not

involved directly in the case another opportunity to go back and look at the facts. I have been hearing about the amount of public showing and support and interest in this project in terms of local meetings, and so that made me pay even closer attention to the record. And I do think this is an improvement over what is currently there. I also support getting rid of the existing plant and, although it's not a part of that proceeding, I think you will hear that come up from all of us.

I also respect the role of our sister agencies, the Coastal Commission, the California ISO, the PUC and their decision making power, and the information they've shared with us. We need to make our decision based on the record, and based on the record; I do think this is the right decision to approve this project. One of the Interveners commented about what our legacy will be and I think we want to leave the legacy of improvement; we're not going to get it perfect, but I think this is a step in the right direction, and we still need to continue to invest in our energy efficiency and our clean resources so that communities are not faced with this challenge, and the State is not faced with the challenge, of having to site facilities that are considered less favorable by the local community. So, again, thank you for engaging in our process. And I am supportive of the Lead

Commissioner's Proposed Decision.

CHAIRMAN WEISENMILLER: Yeah, first, I certainly want to thank the City of Carlsbad, particularly the Mayor for coming today. And you know, you commented that you were looking for a fair hearing and we really have tried to do that, it may not be the outcome you're looking for, but we have weighed the evidence and, ultimately, you know, this agency was set up in the middle '70s, '74, by Charlie Warren and Al Alquist, and we have sort of a dual role, one of those roles -- Al Alquist was very determined that the State have a one-stop siting agency, and was very concerned at the hodge-podge that was occurring at the local level, frankly, and at the same time really pushed us and built in very strong standards for us to do Building Appliance Standards, you know, very strongly committed to energy efficiency. And Charlie Warren was the other part of that DNA that sort of established the agency, and he wanted a very public process, you know, we were the first agency to have a Public Advisor, you know, I mean, our siting process specifies -- before us, there were power plants that were approved without a public hearing, period, you know, at the PUC. And so a very detailed process and a requirement that the Commissioners attend the hearings, basically really a public process, but also

he was very concerned about environmental protection, he was certainly the father of CEQA, father of the Coastal Protection Act, I mean, just every landmark environmental measure in California in the '70s, you know, Charlie wrote. And so we had that combination, a one-stop siting, very public process, and also one where we have an independent staff to really look at the projects and try to figure out how to make that the best footprint possible for the environment. And so that combination is rare, I would have to say I'm in the unique position -- Charlie, when this place was founded, the Commissioner he had appointed here was Ron Doctor, and my first time in the public service at the Energy Commission, I was Ron's Advisor, so when I was appointed, I had a nice note from Ron telling me that, you know, I had a lot to live up to since I was sort of directly connected to Charlie Warren and what this place is supposed to do.

So, again, I take very seriously that we have to look at the environmental impacts, and have a very public process. And certainly, as part of that, and I know all of us would like to reach out to the city and work in a collaborative way, dealing with some of the energy efficiency and renewable issues, but today what we have in front of us -- and to talk about a couple of things there, on the greenhouse gas part, I mean, my

motivation for coming back into public service was fundamentally dealing with the twin challenges of the climate change and dealing with jobs in California. And I think this is part of the approach for us to deal with climate change, greenhouse gas, by putting more efficient plants there, we're going to reduce fossil fuel consumption that enables us to really have the renewables, and also reduces the fossil fuel we use. So I think it's a key part of our greenhouse gas strategy.

And I know, I certainly respect the Center on this, these -- but I would say, for 30 years my career has been to really understand independently the power systems, you know, and how they operate. I had the honor of being selected by the Bankruptcy Court in New York City as an expert on the power systems, certainly the banks generally refer to me for power market assessments for tens of billions of dollars, so I can tell you how the system operates. And literally, you put this unit in, it's going to displace something else, and the reliability constraints in how this is going to operate, but it's going to replace something that is less efficient, so that's going to be part of an approach on greenhouse gas. I'll admit, as you push the units in, at some point, you know, there will be issues, but I'm pretty comfortable at this point we're not at that level.

And I would note, you know, one of the things that is sort of certainly looming in the background, and one of the things I spent a lot of time on recently, is San Onofre, and the unit is down, you know, we are doing contingency planning now for a summer without San Onofre, you know, I've testified before the Legislature on that, certainly, I don't know if the City attended the event that Mike Niggly had with Steve Berberich down in San Diego, on what the implications are, but they're serious, that's the bottom line. And frankly, the more I did into the San Onofre question, the more I'm convinced we need a plan, either for a long term -- well, which was said in the last IEPR -- first, if you look at the fleet of nuclear plants in the country, about 40 percent of them have had outages for a year or more, some of them for as long as 10 years. So, you know, San Onofre is a very unique situation in terms of the transmission grid and the generation there. So, you know, it's crazy we haven't had a plan in place to backstop that if it's out for a year and, frankly, we need a plan if it's not realized, or, frankly, if it doesn't come back from its current problems.

And in that context, you know, if you look at it, it turns out that the location of power plants really matter, and bottom line is we need power plants close to

where San Onofre is, which means either Orange County or North San Diego. And so this is a prime location. What we found is, without San Onofre, it really reduces substantially the amount of power that can be imported into San Diego from the Los Angeles Basin. And that has really substantial reliability and benefits impacts, that's why we've had to relicense -- restart Huntington Beach 4 and 5, which again we thought we shut down, everyone was sure it was gone, and we've just had to scramble phenomenally to get that back on line to basically keep the lights on in San Diego. I mean, it was a real -- and that area, as I said, it's not just a megawatt, but it influences the number of megawatts that you can import into San Diego. In a way, it's sort of a multiplier effect.

So, again, I don't know where the San Onofre situation is going to bounce through, but this location could be critical to us. And I know it's going to take a long time before this thing is built and stuff like that, but you know, as we start thinking about what happens if San Onofre is not relicensed, we need to think about power plants in that Orange County, North San Diego area, and I'm afraid it's better to have them where existing plants are than to try to do Greenfield development.

So for all those reasons, I think I support,

certainly, the Proposed Decision, I think we should go forward today and, again, certainly appreciate all the public participation, I think it's led to a much stronger project than what was originally proposed. But, again, I think it's time to move on.

COMMISSIONER DOUGLAS: So, thank you, Chairman Weisenmiller and colleagues. Just because I'm thinking of it, I'll add that, while we did not conduct evidentiary, real discussion on San Onofre, there was some discussion of it in the proceeding, and I wanted to mention that one issue Will Rostov raised, or one question he raised in the PMPD Hearing was pertaining to our greenhouse gas analysis, you know, net -- what if Carlsbad actually displaces San Onofre, rather than a natural gas plant? Is that a hole in the greenhouse gas analysis? I just wanted to say, you know, as we reflect on that question, as we reflect on the current situation with San Onofre, you know, I don't think it is a problem on the greenhouse gas now, as I see us reopening Huntington Beach Units that we thought were down, I hope we don't see a bunch of diesel generators down there somewhere on flatbed trucks, but, you know, we will before the lights go out, and so I think that -- and the Chair can speak to this better than I can, but I think that you might want to.

CHAIRMAN WEISENMILLER: No, I mean, no, in fact, I mean, certainly everything I know at this point is that plants are running much more in San Diego with San Onofre out, all the gas plants are including it, basically anything that can be ran is ran, and as Chairman -- excuse me -- Commissioner Douglas pointed out, I mean, at this point, SDG&E even has a proposal which they're calling Demand Response, but basically where they would fire all the backup utility generators to keep the lights on. So, I mean -- and similarly, they have a proposal pending at the PUC to go to the Indian Casinos which, as you know, are not regulated by the San Diego or APCD and, again, to run those units up to their legal limits and, again, with the backup utility generators which are much much much much much dirtier than this plant would ever be, they're talking about running those up to the permanent levels, and conceivably bringing in barges, perhaps gas-fired barges. But, again, it's, you know, a couple thousand megawatts is a big chunk of load to -- big chunk of generation to lose, particularly when you built the transmission system around the presumption that that's going to be providing power. And so, again, when we started the exercise, we -- the Governor's Office, myself, the CAISO, and the PUC -- to come up with a plan for this summer, we weren't

sure we needed it, and at this stage, certainly, oh, there's no expectation San Onofre is going to be up this summer, period. So, again, we need -- and, again, I'm not sure we can count on it being up next summer. So, you know, we talked about values, but one of the real values is, you know, again, we learned in the early part of this decade, we need to have a reliable power system or, you know, there are real consequences for all of our citizens and the quality of our lives.

COMMISSIONER DOUGLAS: Okay. All right, so I think if there are no further questions or clarifications, I'm ready to make a motion on this and, so, I'll just ask for help and clarification. Should I just move adoption of the Commission Adoption Order as modified with the addition of the word "not?"

MR. LEVY: Well, let's be precise, the Revised Proposed Commission Adoption Order, which was circulated by Mr. Kramer this afternoon, about 6:00 this evening, with the addition of the word "not" and with the language added to Attachment A, which memorializes Mr. Ratliff's earlier clarification about the status of the PSD regulatory process vis a vis the SIP.

COMMISSIONER DOUGLAS: Okay.

HEARING OFFICER KRAMER: Well, okay, then, now that you've mentioned one part of Attachment A, it's not

clear to me if the second part, which is to modify the Condition Socio. 1 or not would also be included, but it is on there. So do you want to modify Condition Socio. 1 as --

COMMISSIONER DOUGLAS: It sounded to me from what the City and the Applicant said that the existing language in the Revised PMPD is the correct language to move forward with.

MR. LEVY: Correction. The City didn't say that, the Applicant did, and I endorsed it.

COMMISSIONER DOUGLAS: The City did not exactly say that, but the City -- the City is now going to say what they said.

MR. BALL: Yes, Commissioner Douglas, the City did not concur with that and we disagree strongly with the interpretation that your Chief Counsel has made and the Applicant. Development impact fees are exerted and imposed on the privilege of development, and the regulation is clear that, but for this paramount jurisdiction of the Commission, normal and customary development impact fees would be imposed. So we -- if that doesn't come out in this Decision, and this is adopted, we assign that as error because it's, in my opinion, clearly error. Thank you.

COMMISSIONER DOUGLAS: Okay, thank you. So

thank you for that clarification. So I'm just looking at our Chief Counsel and my Hearing Officer.

CHAIRMAN WEISENMILLER: Yeah, but I think part of what we're frankly struggling with, is the City has tried a number of different ways to basically kill the project, and so I think we don't want to write the language here in a way that somehow gives you another quiver of error. I mean, again, we respect trying to make sure that you're made whole and get benefits from this, but not --

MAYOR HALL: Respectfully, if I could?

CHAIRMAN WEISENMILLER: Sure.

MAYOR HALL: The fees that we're asking for is what everyone pays, everyone. If you write in what you're doing, then you're specifically, I think, giving them an exemption as to what others have paid. And we have not raised any fee specifically towards them, nor will we.

COMMISSIONER DOUGLAS: I think, so the language in the Revised PMPD that we put forward requires full repayment of any costs incurred by the City --

MR. LEVY: But Socio. 1, as originally stated, not in the new language, requires the Project Owner to pay the fees, the costs incurred, it's in Socio. 1 in the Revisions to the Revised Presiding Member's Proposed

Decision, and it's consistent with the Regulation, and the Regulation in 1715 specifies the process for obtaining the reimbursement of the fee, and I don't think you need anything more than what is already in Socio. 1 as stated in the Revisions to the Revised Presiding Member's Proposed Decision. I would recommend not including the new language at the bottom of Attachment A.

COMMISSIONER DOUGLAS: Okay --

COMMISSIONER PETERMAN: Just a clarifying question to make sure I understand. Does that language preclude the collection of that fee? No, right?

MR. LEVY: The language in the Modified Proposed Condition Socio. 1 would specify components of how and when the fees would be requested and calculated by requesting a fee schedule and verification at a time certain. The process articulated in 1715 already specifies a process for collecting the fees, so this is unnecessary and an effort by Mr. Kramer to accommodate the City's wishes, but the process is already in existence, and since we haven't vetted the pieces of the new process, I would recommend just going with the original Socio. 1 and our Regulations to deal with the circumstance.

HEARING OFFICER KRAMER: That's fine with me.

COMMISSIONER DOUGLAS: Okay. I agree with

that, as well. So, I will move that we adopt the Revised Proposed Commission Adoption Order that Mr. Kramer circulated at about 6:00 today, without the proposed modification to Socio. 1 in this language, and with the clarification that the word "not" is inserted -- help me, which paragraph?

MR. LEVY: In Finding 13, which is --

COMMISSIONER DOUGLAS: In Finding 13, Line 6 that it will not result in a new significant environmental impact.

COMMISSIONER PETERMAN: I'll second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.) This also passes unanimously. Thank you.

Okay, so Item 19. Minutes. Possible approval of the May 9th, 2012 Business Meeting Minutes.

COMMISSIONER DOUGLAS: Move approval.

COMMISSIONER PETERMAN: Second.

CHAIRMAN WEISENMILLER: All those in favor?

(Ayes.)

Item 20. Lead Commissioner and Presiding Member Reports.

COMMISSIONER PETERMAN: I'll just take an opportunity to remind everyone we have two IEPR Workshops in the next, you know, two weeks. We have one on

Financing and R&D for Renewables on the 6th, and we have one on Integration issues on the 11th, and we also have one on June 22nd with the IEPR in L.A. on Reliability issues, which is pertinent to the discussion we were just having.

CHAIRMAN WEISENMILLER: Right.

COMMISSIONER DOUGLAS: I have nothing to report that I can recall at the moment.

COMMISSIONER MCALLISTER: Oh, sorry. No, I have nothing to report.

CHAIRMAN WEISENMILLER: You know, obviously the San Onofre stuff continues to bubble on. Item 21. Chief Counsel's Report.

MR. LEVY: I have no report, thank you.

CHAIRMAN WEISENMILLER: Item 22. Executive Director Report.

MR. OGLESBY: Nothing that won't wait.

CHAIRMAN WEISENMILLER: Item 23, Public Advisor.

MS. JENNINGS: I have nothing to report.

CHAIRMAN WEISENMILLER: Are there any public comments? This meeting is adjourned.

(Whereupon, at 6:50 p.m., the business meeting was adjourned.)