BEFORE THE
CALIFORNIA ENERGY COMMISSION

In the matter of  ) Docket No.12-OIR-1

Rulemaking to Consider Modification
of Regulations Establishing a
Greenhouse Gases Emission
Performance Standard for Baseload
Generation of Local Publicly
Owned Electric Utilities

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

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APPEARANCES

Commissioners Present:

Robert B. Weisenmiller
Carla Peterman

Staff Present: (* via phone)

Kourtney Vaccaro, CEC
*Lisa DeCarlo, CEC
Melissa Jones, CEC

Others Present:

Steven L. Homer, Southern California Public Power Authority
Norman Pedersen, Southern California Public Power Authority
George F. Morrow, Azusa Light and Water
C. Susie Berlin, MSR Public Power Agency
Ben Machol, Environmental Protection Agency
Bill Knox, California Air Resources Board
Matt Vespa, Sierra Club
Noah Long, Natural Resources Defense Council
Randy S. Howard, Los Angeles Department of Water and Power
Eugene Sadano, Southern California Edison
Bill Carnahan, SCPPA
*Lucinda Roth, USDA NRCF
*Tony Andreoni, California Municipal Utilities Association
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MS. VACCARO: For those of you on the telephone, I'm hoping that you can hear me. This is Kourtney Vaccaro with the Energy Commission. We haven't yet begun the proceeding, but I wanted to go over a few housekeeping rules.

For those of you on the telephone line, we've got really great audio equipment, which means we can hear so many of the sounds going on in your work spaces, so if you're going to be rustling papers, perhaps having a side conversation, something of that nature, if you would please hit the mute button, we would greatly appreciate it. Please do not hit "hold." But there is someone, for instance, who I can hear every paper that you're rustling in the background and it's picking up pretty well in this room. So, again, if you can hit the mute button if you're going to be doing something that requires a lot of movement, otherwise we will end up muting you from this end, which might make it difficult when you do wish to speak. So I think we have another five minutes or so before we get started. Again, please hit the mute button, please do not hit the hold button.

Thank you.
Chairman of the Energy Commission, Bob Weisenmiller. I would like to welcome everyone to the workshop to discuss possible changes to the Energy Commission Greenhouse Gas Emissions Performance Standards. Let's go around the room and then we'll go to the telephone, and then we will start with introductory statements.

MS. VACCARO: I'm Kourtney Vaccaro. I'm with the Energy Commission. I'm in the Hearing Advisor's Office.

MS. JONES: Melissa Jones with the Energy Commission in the Electricity and Supply Analysis Division.

MS. DECARLO: Lisa DeCarlo with the Energy Commission, Staff Counsel.

MR. HOMER: Steven Homer, Southern California Public Power Authority.

MR. PETERSEN: Norman Pedersen, Southern California Public Power Authority.

MR. MORROW: George Morrow, Azusa Light and Water.

MS. BERLIN: Susie Berlin for the MSR Public Power Agency.

MR. MACHOL: Ben Machol with the Environmental Protection Agency.

MR. KNOX: Bill Knox, California Air Resources
MR. VESPA: Matt Vespa with Sierra Club.

MR. LONG: Noah Long with the Natural Resources Defense Council.

MR. HOWARD: Randy Howard with Los Angeles Department of Water and Power.

COMMISSIONER PETERMAN: Carla Peterman, Energy Commission.

CHAIR WEISENMILLER: Do we have anyone from the Public Advisor's Office here? Okay, so Jennifer Jennings is double-worked, but she will be the Public Advisor to assist people in their participation today. Anyone in the audience who wants to introduce themselves?

MR. SADANO: Eugene Sadano, Southern California Edison.

CHAIR WEISENMILLER: Okay, the rest of you on the line?

MR. CARNAHAN: Bill Carnahan with SCPPA.

MS. ROTH: Lucinda Roth with USDA NRCF.

CHAIR WEISENMILLER: Okay, let's start. Again, the purpose of this workshop today is to discuss possible changes to the Energy Commission's Performance Standards found in the Commission's Regulations as Sections 2900 through 2913.

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52 Longwood Drive, San Rafael, California 94901 (415) 457-4417
This rulemaking proceeding was initiated by a petition jointly filed by the Natural Resources Defense Council and the Sierra Club in November of 2011. The petition questions whether POUs have consistently complied with the Energy Performance Standards or, instead, have misinterpreted the applicability of the Commission's Regulations to investments in existing plans. They also note that, since the adoption of the EPS, the POUs have submitted compliance filings to this Commission for covered procurements at existing power plants, Petition page 4. So with that very general background, I'll turn it over to Commission Hearing Advisor Vaccaro to help move us along.

MS. VACCARO: Okay, well, first of all, thank you all for being here today. I think that the comments that everyone submitted in advance of today's proceeding are going to make for very lively, robust, and informative conversation.

The role that I usually play in these types of proceedings is to ensure that everybody who knows what's going on is dialed in, but also to ensure that members of the public who maybe are just learning of this for the first time understand what we're doing, as well.

So just by way of brief background, I mean, this is the first in what will likely be a series of public
processes to explore the issues that were raised in the petition, but, more importantly, to implement the Order Instituting Rulemaking that was issued by this Commission recently; that really is the foundational document for today's workshop.

We have an agenda that was made available to at least the parties that are here in person. We do not have that broadcast, unfortunately, over WebEx, but it is available through the Commission website for those of you who wish to follow along.

I think what we've indicated is we'd go ahead, do the welcome, the introductions, summary of purpose which the Chairman just did and, really, I think right now for the stakeholders and interested agencies, what we'd like to do is get opening statements. We'll certainly hear from members of the public, but that comes much later in the proceeding. Again, there is an agenda that lays out the format, but after we go through the roundtable discussion and hear from everyone, we will have a public comment session.

So, right now we'd really like to hear opening statements from the stakeholders, industry, and interested agencies. But what we'll do is start with the folks in the room because that's a little bit easier to manage. And I think, since this is a more informal
roundtable process, I'm going to, I think, start with my right and we'll just sort of make our way around the table. Again, for the benefit of people who cannot see us all here and don't have a great memory of names, if you would please, before you speak, give your name and also, again, indicate the agency or entity with which you are affiliated.

Okay, because we are having some interesting technical issues, again, I think I mentioned before we began the proceeding, we have very good audio equipment, sometimes it's too good, we've had to go ahead and mute a number of you on the telephone lines because we're getting a lot of feedback and paper rustling, so if you do wish to speak, we are going to need you to essentially use the feature that would allow you to wave your hand, we will see it, we've got screens projecting here in the room, then at some point perhaps we'll take you off mute just to make sure that we don't unintentionally exclude anyone from the discussion. I think, with that, let's go ahead and begin with opening statements for those of you who wish to make them, starting with my far right.

MS. BERLIN: I'm Susie Berlin and I'm representing MSR Public Power Agency. And MSR has an interest, a longstanding interest, in the coal-fired
facility, the San Juan Generating Station in New Mexico
and we submitted comments, opening and reply comments,
and we've reviewed the comments that were submitted by
other parties. So I think the issues are all fairly
well laid out. One of the things that we were hoping to
going more information on today is also what the
Commission's plans are with regard to implementing the
rulemaking and the various issues that were set forth
therein. I'm not going to reiterate all of our written
comments, unless you'd like me to read through them, but
we just maintain that we believe the EPS is sufficiently
clear, that includes definitions that have been applied
by the operational folks that are working at the plants
and that the transactions have all been carefully
reviewed by Management, and MSR Public Power Agency has
complied with the EPS at all times since it was adopted,
and we believe that this notion of no POU voluntarily
seeking to have a transaction reviewed for an advisory
position is just a
-- is a meaningless point to make because it implies
that there is some kind of wrongdoing simply for not
taking advantage of a voluntary provision. We believe
that that provision has not been taken advantage of
because it's not necessary, because the definition set
forth in the EPS are sufficiently clear. Thank you.
MS. VACCARO: Thank you.

MR. MORROW: George Morrow, Azusa Light and Water. For those of you that have met me, you probably know I'm a fairly simple person, so I've got some simple comments, straightforward comments, I believe. And that is I think I wanted to compliment the Commission that they've gotten this matter correct, that as I look around and we're all pretty much aware of what's going on, nobody is signing up for new coal out there, and I think we know that's a no-no, and also none of us are making life extension investments. You know, power plants last a long time, they're 50 to 60-year-old investments. The plants that I'm involved in, the San Juan project, they're relatively new plants as things go in the electric industry, and they're not even being considered for life extension. Life extension comes somewhere toward the end of their life. Things we are doing now are to keep the plants running reliably, efficiently, and enhancing their environmental performance, all very good things, you know, good for the ratepayers, good for the citizens, and good for the environment and the economy.

So the Commission has it correct, they've had it correct up to this point, there is nothing under the cover, so to speak, going on. And so I'd like to see if
we could move this process along. Thank you.

MR. PEDERSEN: Good morning. My name is Norman Pedersen. I am from the Southern California Public Power Authority. As the opening reply comments show, we are fundamentally aligned with the Petitioners in key regards. We all support GHG emission reduction. We all support effective implementation of the Commission's EPS Regulation. Where we differ is how best to achieve that goal, while staying true to the purpose of SB 1368, pending reevaluation of your EPS Regulation as required by Section 8341(f) of the Public Utility Code.

The purpose of SB 1368 was to mitigate the financial risk for utilities and their ratepayers by forestalling investments that might be put at risk by AB 32 implementation. We clearly support avoiding that risk for the benefit of our ratepayers. The point of SB 1368 was not to create risk for our ratepayers by preventing maintenance required to prevent generation -- that is necessary to prevent generation stations from atrophying.

The coal plants represent millions of dollars of investments and financial obligations. The need to avoid creation of risk was understood by the Legislature and it was explicitly expressed by the Commission in the FSOR adopting your EPS regulation. We've engaged in
dialogue with the Petitioners, we look forward to the
dialogue with Petitioners and with you today. The
chances for that dialogue to bear fruit and in the form
of narrowed or even resolved issues will be maximized,
in our view, if all parties remain faithful to the
purpose underlying SB 1368 and the Commission's
Regulation. In that spirit, we appreciate the
opportunity to present -- we've appreciated the
opportunity to present our opening and reply written
comments, and we appreciate your convening of today's
workshop. And so, in advance, thanks. And we're
looking forward to today's discussion.

MR. HOMER: Good morning. I'm Steven Homer.
I'm the Project Administrator for Southern California
Public Power Authority. We own 42 percent of San Juan
Unit 3. I am the representative on all the Project
Committees, the Engineering and Operating Committee, the
Coordinating Committee, and the Fuels Committee at the
workshops. I'm the guy that actually casts our vote on
capital projects.

We believe

Each time we vote, we ask ourselves, "Does this project
increase the capacity of the plant or extend the life of
the plant?" Every time that we voted, the answer has
been no, no project has ever increased the life,
increased the capacity, or extended the life of the
project. We don't think SB 1368 needs any revision. It is serving its purpose well and it is fine the way it is. We'll continue to participate in the dialogue with the Petitioners and with the Commission, and we're very interested today to hear what the staff's opinion is on these subjects. Thank you.

MS. VACCARO: I think at this time, we won't be hearing from Commission staff on opening statements, so we will move further to my left on the other side of Commissioner Peterman. Thank you.

MR. HOWARD: This is Randy Howard with Los Angeles Department of Water and Power. LADWP is in an unprecedented transformation. We have 70 percent of our current operating resources that we're going to have to replace over the next 17 years and it's unlike anything any other California utility -- large California utility -- is being asked to take on. LADWP remains compliant with the EPS and has made its intentions clear that a key part of its transformation is to shift away from its reliance on coal-fired imports. It's not a matter of when and how, I mean, it's a matter of when and how, not that we're going to do it or not going to do it, and LADWP has gone through a very significant public outreach and continues that path to ensure that we do get input from all parties.
Related to Navajo Generating Station, we're involved in two facilities, Navajo Generating Station and the Intermountain Power Project, and as the Operating Agent for Intermountain Power Project, I'm also speaking on behalf of Southern California participants. But LADWP has engaged in a very public discussion on Navajo about its options for early exit several years ahead of what would be a requirement under the EPS. We have notified the other owners of that facility of our intent to divest. We have hired an outside investment banking firm to assist us in that process, and we are actively involved in that right now.

As to the Intermountain Power project, any suggestion that the Petitioners have made as to any investment that would be made at that facility that would somehow renew or extend its existing coal contract with the Southern California participants beyond 2027 is unfounded and really without merit, but this transition for LADWP requires very careful planning and, as we aggressively move in this arena, we have to be very much concerned with the grid reliability and the rate impact to our customers.

One of the statutory requirements of SB 1368 to the California Energy Commission is that they must consider the reliability of the Grid and they must...
consider the cost and rate impacts to the ratepayers. We are quite concerned here in this discussion that somehow we might be required to take what we consider operating and maintenance expenditures and somehow bring those before the Commission with the Commission staff and, if that would somehow delay repairs that would be necessary or would put our units at risk for reliability, we don't think that has truly been considered as of yet in the discussion and we think that is a very significant point. As well, any additional cost of doing such filings and preparing such documentation, we think the cost to our ratepayers must be considered. Therefore, LADWP is strongly opposed to this rulemaking going forward. We don't think the petitioners have represented the facts correctly. We think they have continued to allege misconduct by the POUs without any true evidence that that is the case, and we don't believe it to be the case. And as we move forward with continuing our path of adding renewables to achieve the 33 percent RPS, and implementing the AB 32 Cap-and-Trade Programs, we really seek to have all the parties working together to help us achieve these very significant goals and not to be looking back at what investments might have been made or what's going on with the coal facilities, but to move forward in our
transition out of these generating facilities. So LADWP
thanks the Commission and the staff for being allowed to
participate and we look forward to further discussion
today. Thank you.

MS. VACCARO: Thank you. Mr. Long.

MR. LONG: Noah Long from NRDC. Thank you and I
appreciate the Commission's effort, staff effort, and
bringing together the parties, and obviously appreciate
the participation of all the POU's here today, as well.

I'll speak for NRDC and I'll let Matt speak for
the club on this, but I just want to start out by saying
what NRDC is looking for here, and the reason we brought
this Petition, is a consistent and transparent statewide
process for evaluation of the EPS and the functionality
of the EPS retrospectively and, most importantly, how
the EPS applies in light of very significant potential
investments in the three coal plants that are in
question here. We recognize that there are varied and
somewhat complicated contractual obligations and
ownership rights at those plants. We recognize that
they are different for the different parties here, but
we also recognized and we think it's important to note
that it's not infinitely so, we're talking about three
power plants with a range of upcoming operational
requirements that would require very significant
investments. And in light of that, and in light of the fact that over the last several years there hasn't been an opportunity for a statewide forum to ensure that the application of the existing emissions performance standard has been consistent across all the entities, we think that this rulemaking provides a really useful forum for all of the POUs, but also for the State in ensuring that the EPS is fully and consistently enforced.

And it's our view that the Commission really needs some more information. We've all presented our positions and I think in the opening and reply comments, and in the comments on the opening of the rulemaking, you've certainly seen the positions on whether or not the rulemaking is useful. But now that the Commission has opened this rulemaking, it's our sense that you need some information about what's really going on at these plants, what the plans are, and whether or not those plans will be consistent with the application of the EPS in the manner that the Energy Commission in its authority and responsibility with regard to the EPS sees fit.

So we're certainly open, at least we're open and we want to have a conversation about how to make sure that any requests for information about retrospective or
prospective investments are reasonable, but they don't
bog down either the POUs or the Commission in reams of
paperwork. But I can say that from my experience
working with Southern California Edison on the
application of the EPS and that process, you know, there
were a lot of maintenance investments, for sure, but
it's very possible to go through those. It's not an
infinite number and I think it's appropriate to make
sure that we're getting it right and we're doing it
consistently across the state. So I hope we can have
some discussion about what the reasonable application of
that would be here and how to best enforce and ensure
consistent application of the EPS for these three power
plants. Thanks.

MR. VESPA: Matt Vespa for Sierra Club. Sierra
Club is very much aligned with NRDC on these issues.
The CEC is charged with enforcing SB 1368 and it's
difficult to imagine how they can fulfill that function
without actually getting information and reporting from
the POUs on expenditures. And you know, we've heard a
lot of anecdotes about compliance historically, but,
again, I think having information available can allow
for more informed decision making and rulemaking on
potential future reporting requirements. And as Noah
mentioned, we are looking at significant future
investments and environmental compliance obligations
which, in our view, very much trigger SB 1368. And we
believe it's in everyone's interest to have clarity now
on the implications of those investments, rather than
wait and kick this down the road. So we're hoping this
proceeding can yield more useful guidance prospectively
and, you know, to some extent historically, as well.

MR. KNOX: Bill Knox, California Air Resources
Board. We see the Emissions Performance Standard as
being part of a suite of electricity measures that
includes the RPS, Energy Efficiency CHP, as well as cap-
and-trade, that together can reduce emissions in the
electricity sector. And we'd like to point back to the
scoping plan, which recognized the importance, or the
continued importance of the EPS. And just a couple of
quotes from the scoping plan, first: "Expiration of
existing utility long-term contracts with coal plants
will reduce greenhouse gas emissions when such
generation is replaced by lower greenhouse gas emitting
resources. These reductions will reduce the need for
utilities to submit allowances to comply with Cap-and-
Trade Program. And then, also from the Appendix C of
the Scoping Plan, this measure could influence -- again,
referring to the EPS -- this measure could influence the
power development market in the Western U.S.,
potentially resulting in reduced development of other high carbon or high GHG emitting facilities in the future.

The Scoping Plan also has language that shows that it really counts on reductions from EPS and I'll quote again from the Appendix: "Assuming that electricity from these plants is replaced with electricity from combined cycle natural gas, the EPS will reduce California's emissions from imported electricity by almost five million metric tons of CO₂ emissions annually. Larger reductions are possible if renewable electricity is used to replace coal power."

Now, as far as cap-and-trade, compliance with cap-and-trade is first required in 2014 when 30 percent of the allowances for 2013 emissions must be surrendered. And we have the view that, even if EPS were at some point to become unnecessary, it's really important to do that and, in turn, it's important to analyze what we see happening with cap-and-trade and with the other measures that form the full suite of measures to reduce emissions in the electricity sector.

We also see that the EPS, by precluding investment that would increase the life of non-compliant power plants by more than five years, that the EPS reduces the potential for leakage. If non-compliant...
power plants are operated to extend their lives before divestment, then it's more likely that GHG emissions would continue at historic levels, despite an apparent reduction in California's emissions. Furthermore, there are some noncompliant plants, of course, as mentioned that are under contract beyond 2020, and so the EPS also would prevent investments extending the life of those plants.

You know, we note that CEC has the responsibility for monitoring POU investments in noncompliant power plants as part of the EPS and, finally, just to put out that ARB does strongly support strictly maintaining the EPS requirements going forward.

MS. VACCARO: Thank you. We've heard, I think, pretty much from the folks around the table. There are some other people in the room. I don't know if there are any other interested agencies, industry, stakeholders in the room who might wish to make an opening statement? I'm looking around behind me and no one really wants to make eye contact, so I'm taking that as a no. So I think we'll turn to the telephones. Are there any such individuals on the telephone who wish to make an opening statement? Do we have everyone on mute, still? Because we might need to have you wave your hand or otherwise. So, again, I think I'll repeat the
question. Are there any individual stakeholders, members of industry, or interested agencies on the telephone who might wish to make an opening statement? I'm hearing none, although we have quite an extensive caller list. I'm not sure, maybe we do have a hand.

No, it appears that we don't have a hand and we don't have anyone on the phone at this time wishing to make an opening statement. But, again, this is going to be a lengthy process today, there will be opportunities for individuals to make comments later in the proceeding.

I think we're slightly ahead of schedule and, you know, while these were just opening statements, and I'm not in my typical role of presiding over a hearing, I think we got some foreshadowing and I'd like to maybe just ask one question about something that was said in the opening statements.

And this was a statement by Mr. Pedersen. You indicated that you're engaged in dialogue with the Petitioners and I think that's something that we've seen in the comments, as well. I think there will be time once we get to the individual questions to explore that further, but for the benefit of those of us who really don't know what those conversations are, or what the scope of the dialogue is, could you just give us a little foreshadowing to understand what is the nature,
what is the scope, does it go to transparency, does it
go to the mechanism by which there might be more public
notification or involvement? You know, what is the
scope and can you give us a sense of parameters -- I
don't leave that only to you to answer, I'm sure
Petitioners could answer that, as well, but I'm really
interested in picking that thread.

MR. PEDERSEN: At Noah's instigation, we have
had some discussions. I'm a little hesitant to
characterize a position, the opening position that NRDC
has taken, and I think I'd prefer to have Noah present
that, as opposed to have me try to interpret it for him.
So maybe it would be better if I turned it over to you,
Noah, to have you discuss some to the extent to which
you're comfortable with it, lay out some of the points
that were raised, that you raised in the discussion. I
actually was not involved, personally, in opening
discussions; that's another reason for me to actually
pass the baton to Noah.

MS. BERLIN: And this is Susie Berlin and I
would just add before Noah does his introduction, the
scope of the discussions included NRDC and Sierra Club
representatives and also representatives from SCPPA an
MSR and LADWP, so it was all affected parties
participated in the discussion, either in person or via
MS. VACCARO: Okay, thank you for that clarification.

MS. BERLIN: -- not the individuals actually represented today.

MS. VACCARO: Thank you.

MR. LONG: Do you want to jump in, Randy?

MR. HOWARD: You go ahead.

MR. LONG: Sure. I'll just say we had, I think a good meeting a couple weeks ago down at the DWP headquarters. There were several folks present, some folks on the phone. I don't think we -- the reason that our comments -- we mentioned in our comments that those meetings took place, I think you folks did, too, the reason that there wasn't more on the content of it is that it didn't ultimately lead to a consensus position that we could recommend to the Commission. I think the intent was that we could maintain an open dialogue both here in the workshop process, but also, you know, doing some of that work alongside the process in order to limit the need for the Commission to -- well, I guess to facilitate the Commission in making decisions in the process.

The nature of the conversation, I would say, was first focus on limitation of the scope of the rulemaking...
in ways that might benefit all of the parties and focusing of that scope in a way that benefitted all parties. You know, I don't know if I want to say much more than that because, again, we didn't come to a consensus position, so I don't want to misrepresent anybody's views on where they were on what limitations were appropriate. But free to have folks chime in.

MS. VACCARO: Thank you. Again, for those of you not in the room, that was Mr. Noah Long.

MR. LONG: Thank you.

MR. HOWARD: So, Randy Howard, LADWP. And I think Noah did characterize it properly. What we were attempting to do was to determine if, 1) we could come to some consensus on the scope that would be workable for both sides that we could present back to the CEC and determine if even this rulemaking was necessary to achieve the objective that the Petitioners had before them as to the concerns related to investments and just due to the timeline in this workshop coming up, we were unable to come to a consensus in that meeting. We do hope for additional dialogue going forward.

MS. VACCARO: Thank you. Well, I think the agenda indicates that we do have a presentation this morning before we move forward with the rulemaking. We have Ben Machol with the U.S. EPA, who has pre-loaded
Powerpoint slides and is ready to go, so I think this is a perfect time for Mr. Machol to take the podium. There is a microphone that will allow us all to hear your narration, as well. And please let me know if you need any assistance with the slides.

MR. MACHOL: Okay, I'll let you know that in about two seconds. I think this works. So let me move it forward. This is Ben Machol from U.S. EPA. And for those of you on the phone, I'll forward the slide so you don't have to see that one slide that's been on your screen this whole time. And I'm going to apologize in advance, there is some pretty text-heavy slides coming your way, but I thought that might be useful just so you can have these slides to refer to later on.

So what I'm going to cover today are a few final rules all in our Air Program, go into a little detail on each of them, but also two proposed rules, one an air rule, one a waste rule, that would impact coal-fired power plants, and then just a short summary of how these rules would impact the publicly-owned utilities that are here today.

So first off and, again, I'll let you know when I'm switching to the proposed rules, but the next few that I talk about are existing rules that have been finalized. This first one, the Mercury and Air Toxics...
Standard, actually the effective date was on Monday, so that's the pretty recent one. It impacts 1,400 coal and oil units around the country and focusing on, as the name implies Mercury, but air toxics, as well.

In 1990, there were three industrial categories that were responsible for about two-thirds of the Mercury emissions around the country. Power plants were number one on that list, municipal waste combustors were number two, and since that time have reduced Mercury emissions by 96 percent. The third one on the list, medical waste incinerators have reduced Mercury emissions by 98 percent. So power plants in that time, it's been about a 10 percent reduction, so there was a real need to figure out ways to tighten down -- reduce emissions from this last, but largest source.

There are three different emissions standards, actually it's quite complex, but from what I understand, the three standards that are of most interest for coal-fired facilities are Mercury, Filterable PM, particulate matter, which will be a surrogate for the non-Mercury particulates, metals, and then HCL or SO2 as a surrogate for the acid hazardous air pollutants.

Facilities will have three years -- three years from Monday -- to comply with this rule. It can be extended up to four years and I think many states will
go this way, but at the State or permitting authority's
discretion there can be four years to comply.

The costs nationally will be about $9.6 billion
a year, but the improvements for human health we value
in about $37 to $90 billion a year, preventing up to
11,000 early deaths, 130,000 asthma attacks, and 540,000
missed days of work.

Okay, transferring over now to another final
rule, our Regional Haze Rule, which has been on the
books for some time, and it really focuses on visibility
to what we call Class I Areas, but amounts to national
parks and wilderness areas like Grand Canyon. And the
goal here is to work so that there's no man-made
visibility impairment at these Class I Areas. Each --
states are responsible for submitting plans to control
emissions of the various visibility affecting
pollutants, and these are NO\textsubscript{x}, SO\textsubscript{2}, and PM10, which also
happen to have either direct or indirect health impacts,
as well. The terminology you hear for the Regional Haze
Rules is BART, the Best Available Retrofit Technology,
and for a certain subset of power plants, depending on
their age and what rules were in place at the time of
their construction, the states do a determination to
figure out if additional controls, the best available
retrofit technology is required at those plants. And it
really varies facility by facility what controls would be necessary.

When I wrote this next rule, this is our tailoring rule for our PSD Program, Prevention of Significant Deterioration. And I realized coming in this morning, I'm focused here on our greenhouse gas rules because they're the newest, but, in fact, whenever there is a major modification of a facility that triggers an increase of certain levels of many different pollutants, not just greenhouse gases, but when those triggers are met, the facilities need to get a new construction permit, PSD permit. So with that in mind, what I've talked about here, the numbers here are really focused on greenhouse gases and we have a few different rules. I tried to simplify it on this slide and struggled to do it, but basically if a source already needs a PSD Permit for another -- some other criteria pollutants, non-greenhouse gas, and there's a modification for 75,000 tons a year increase in greenhouse gases, then they would need to do BACT, which I'll get to in a second, the Best Available Control Technology for greenhouse gases. And if they didn't otherwise need to comply with PSD, but had 100,000 tons per year of greenhouse gas CO₂ equivalence of greenhouse gases, then they would also need to do BACT.
And so BACT, Best Available Control Technology, is really just typically would be energy efficiency measures when you're talking about greenhouse gases. But what can that facility do to reasonably reduce greenhouse gas emissions and still make their product, which in the case of a power plant would be energy? The interesting thing about BACT is that there isn’t a universe of technologies that is decided upfront, it's really the market can sort of decide what BACT is. If a technology is demonstrated, and demonstrated again, then permit writers from around the country can see that technology and say, "Hey, we can put that in for this facility that's in our backyard."

Okay, so now I'm transitioning over to proposed rules, and the first one came out last month, proposed last month, our Greenhouse Gas Emission Standard, so most similar to the SB 1368, what you're talking about today, but still very -- several key differences and, again, proposed, so we'll see where it goes before it goes final.

The Emissions Standard will be 1,000 pounds of CO₂ per gross megawatt hour, so that's a slight difference from the 1,100, and it applies to IGCC facilities, natural gas combined cycle units, and we think natural gas units can meet the standard without
any add-on controls, but it also applies to coal and petcoke power plants that would need some sort of carbon capture and storage to comply with the rule. And in all these cases, I should say this upfront, this is for new facilities, not existing facilities, that’s another very key difference.

So one of the things that we're proposing is that power plants have the option of averaging over 30 years how to comply with the standard, so it could allow for putting in carbon capture and storage at a later date, it could allow putting it in initially, but not necessarily at as low of a level as if you waited a few years, and it could also allow you to wait and see what the market is on CCS before you figure out exactly what you're going to build in.

We also have this category for what we're calling transitional sources, so if they already have a construction permit and they were about to construct within a year of our publication of this rule, then they would not have to comply with this new source performance standard.

Next up, a proposed rule, it was proposed back in June 2010, and I checked in before I came here and didn't have a clear idea of when it was going to go final, but the comment I got back was, "We had 450,000
comments." So it's taken a while for us to finalize this rule, though I would say for the MATS Rule, the Mercury and Air Toxics Standards, we had 900,000 comments, so we were able to somehow sift through them and finalize a rule. But in this case, it's focused on coal combustion residuals, or coal ash, so it can be fly ash, but it could also be some of the materials that come from the control technologies that are required to reduce air contaminants.

So two of the key environmental concerns that led us to develop this rule are concerns about leaching from surface impoundments or landfills into groundwater, but also structural failures of impoundments. And the key failure that we noted in our rule, but it really came out just before the rule that led to this rule being proposed was the 2008 structural impoundment failure in Kingston, Tennessee, where more than 300 acres of land were flooded with coal ash and then flowed into two nearby rivers.

We're proposing two different pieces -- this is under our RCRA, Resource Conservation and Recovery Act law -- we're proposing two different approaches to go forward on this, one is using our Subtitle C, our Hazardous Pollutant side of RCRA, and the other is Subtitle D, which focuses on solid waste. Both
approaches would require liners at landfills and groundwater monitoring. The two very different approaches for Subtitle C, it would effectively phase out wet handling of coal ash and surface impoundments, whereas, with the Subtitle D approach, you still could have those impoundments, but it would require liners.

I'm not going to go over this slide, but I just wanted to have it available to you, but it shows some of the similarities and differences between the Subtitle C, which is the hazardous waste approach, and subtitle D. I know the print is fine, is pretty small here, so hopefully, if you have interest -- and I'll give you the links to all of these sites at the very end, but you can walk through this probably easier than you can if you are in this room trying to look at a screen. I would say a key thing that I will bring up from this chart is the similarities between the two rules for landfills. If a landfill is in place before this rule is finalized, there would not be liner requirements, whether we went through Subtitle C or D approach, but they would require groundwater monitoring. But if a landfill is built after the rule is finalized, it would require liners.

Okay, so that was a rundown of the five rules and now I'll try to talk a little bit about how they could impact the power plants that are represented here.
today. I guess it's hard to say for the proposed rules, since they're not final, what their exact impacts would be and I guess I should also say for the PSD rule, it's also hard to know, I mean, if something in the future is going to trigger a major modification, whether -- or if it is a significant modification, if that would trigger PSD for your plants or not, but we can go through the other rules.

So for Intermountain, there are controls in place already and it's now the operators need to figure out if additional controls would be necessary to comply with MATS. So, I mean, that's the stage that we're at for that, but the other final rules -- I talked about Regional Haze -- would not apply here.

So for Navajo Generating Station, they are subject to the Regional Haze Rule. NGS impacts 11 Class I areas, including Grand Canyon and we do intend to propose BART limits, the Best Available Retrofit Technology limits, for NO\textsubscript{x}, and we had set limits already for SO\textsubscript{2} in 2010 and, as with Intermountain, the operators are going to need to figure out if additional controls are needed to comply with our Mercury and Air Toxics Standards.

For San Juan Generating Station, also subject to the Regional Haze Rules, we have NO\textsubscript{x} and SO\textsubscript{2} limits
already set, we did that in August 2011 after much analysis and discussion. The SO\textsubscript{2} limits can be met with the existing control technology, though the NO\textsubscript{x} limits will require SCRs, Selective Catalytic Reduction, and that will be required by September 2016. And as with all the power plants, it's really the operators now need to figure out if additional controls are necessary beyond what they already have to meet the Mercury and Air Toxics Rules.

So the last slide I have on here, because I covered a lot of information and you can go much more in depth in any of them, but it's really just a list of links on our website to each of these rules and proposed rules. But I'm happy to answer questions as well as I can for you folks today.

MS. VACCARO: The room is quiet, but thank you, Mr. Machol, for the presentation and I think this is a perfect opportunity if anyone in the room or on the telephone might have questions that Mr. Machol could answer either about the things specifically presented in the slides, or things that are tangentially related. I think you've got a captive audience with Mr. Machol here, so you might want to take advantage of it.

MR. HOWARD: Just a clarification on one of your slides. It indicates plants owned by POUs. That isn't
the case with Intermountain Power Project, so any
requirements that they have to put in place to comply
with Federal requirements has absolutely no bearing on
the term or extension of the life of the contract for
the parties in this room, the POUs. So the POUs,
regardless of any measures the plant has to take, that
does not extend their contracts, so I just want to make
that clarification because it did seem to indicate that
somehow we had an ownership position and we do not.

MR. MACHOL: Thanks.

MS. JONES: So this is Melissa Jones with staff.
I had a question about the triggers for the PSD Rules.
One of the things that was suggested in a conversation
that we had with the PUC staff related to trying to
establish when life extension occurs, and so we were
wondering if you could explain a little bit more how
those triggers work and whether they might be relevant
to what we're trying to do here.

MR. MACHOL: I can cover the basics of this and
hopefully this will work, but basic -- if there's a
modification -- any time there's a new source above a
certain capacity, or emission limits, or a potential to
emit certain amounts, or a major modification that
triggers -- it varies by pollutant -- but if the change
leads to an increase in emissions above a certain
threshold that varies, then it would trigger the need for a PSD Permit. Does that answer your question?

MS. JONES: That does answer my question. Thank you.

MR. LONG: Yeah, just, this is Noah Long. I guess I have a question for Mr. Machol, but you may not be the best person to answer, maybe the folks around the room are better in place to answer, and we just talked about a number of rules affecting all three of these plants. Does EPA have cost estimates? I know you said that the plant owners and operators are having to evaluate their options under the plants, but I'm wondering if EPA has separate cost estimates for each of these facilities for the application of those rules.

MR. MACHOL: Well, we wouldn't for MATS yet, but we certainly look at that for the Regional Haze Rules, so, yes, that's part of the record.

MR. LONG: Uh huh.

MR. PEDERSEN: I perhaps have a question that is not directed so much to Mr. Machol, but maybe more to you, Kourtney, or Melissa, you know, you've clearly put the EPA presentation in a pretty prominent position in today's agenda coming right at the beginning and you seem to be setting the table for something, but I'm not sure exactly what that something is. You'll certainly, CALIFORNIA REPORTING, LLC
52 Longwood Drive, San Rafael, California 94901 (415) 457-4417
for San Juan -- I'm here for the SCPPA San Juan Participants -- you know, we're very aware of the Federal Implementation Plan, this has been going on for a long time, we're very aware of our obligations, and we've got, you know, a whole team working on it -- it doesn't include me -- but we've got a very large, regrettably, we have a very large team working on it. But where does that take us for purposes of today's discussion? What is the tie-in between Mr. Machol's presentation about the laundry list of EPA regulations -- of course, for us the Federal Implementation Plan is very significant -- but where does that take us for purposes of today's discussion? I'm a little bit at a loss here.

MS. JONES: This is Melissa Jones from the staff. And our interest was really in gaining a better understanding of some of the rules and some of the major investments that the POUs will be making in your coal facilities, and trying to understand better how and whether these investments constitute life extension, and therefore fall within the SB 1368 purview. So the Petitioners raised in their petitions that they're concerned about upcoming major investments to meet new environmental rules, these are the environmental rules, and so we wanted to have a better understanding of them.
MR. PEDERSEN: Thank you.

MR. HOMER: This is Steve Homer with SCPPA. Does the EPA consider these things to be life extensions? Or is this like putting a catalytic converter on an automobile?

MR. MACHOL: I don't think we look at these rules in terms of whether it's an extension or not. We look at what is a facility that is required to do the changes and, you know, what would the change be? But it's not really about the life of the plant. So, I mean, we have rules that are separated by if it's a new source, a modified source, but that's not something that comes into the equation.

MR. HOMER: Thank you.

MR. HOWARD: I have a similar question. So if you -- Randy Howard, LADWP, sorry -- you portray -- you list, and we're aware, as well, that the Navajo facility -- what some of those requirements might be and continue to have that discussion with the other joint owners. If those measures were installed on those facilities to meet the Emission or the Haze Rule, do they in any way in your mind extend the life of that facility? Do they -- these aren't measures on the generators themselves, right? They're measures that would be taken principally on the emissions.
MR. MACHOL: You know, again, this is -- the
extension of the life is not something that is part of
the EPA framework, it's out of what these Regs are
about. It's about controlling emissions. You're adding
a definition that we don't use, so it's --

MR. HOWARD: Okay --

MR. MACHOL: -- I think the best thing I can say
is that I can't answer that.

MR. HOWARD: All right, and then one other, on
the proposed Emission Performance Standard, the Federal
proposed standard, again, that's just related to new
facilities, it doesn't apply to any existing facilities?

MR. MACHOL: Exactly. And, again, it's a
proposed rule, but it's not for new -- only for new
facilities and even facilities that would have a major
modification, it would not trigger this rule.

MR. HOWARD: Okay, thank you.

MR. PEDERSEN: Given what Mr. Machol just said,
we would tend to agree that certainly, you know, adding,
as Steve Homer expressed, a catalytic converter to a car
doesn't extend the life of the car. But coming back to
the Commission and the purpose for having Mr. Machol
give his presentation, what is the Commission's view?

Is the Commission -- you know, there were some
statements in the FSOR, and I have taken a look at the
FSOR quite closely, but what is the Commission's view?

Is the installation of, for example, SCRs at San Juan under the Federal Implementation Plan for NOx at San Juan — does that constitute in your view an extension of the life of five years or more?

MS. VACCARO: You know, what's interesting about this Q&A session is that there are probably going to be several questions posed to Commission staff, and I think in terms of the setting of the table, as you framed it, I think one of the things that is pretty vital from the Commission perspective is that it take sort of a position of being informed and educated today, and really more fully understanding some of the finer points of the arguments and comments that have been made by the parties on these issues. I don't envision, and of course the Chairman can correct me if I'm wrong, but I don't envision today's proceeding as the Commission giving declarative statements, or edicts, or even really weighing-in at this point on an opinion on the issues; rather, making sure that it's fully informed for when it does do that.

CHAIR WEISENMILLER: Certainly, my intent today was more to listen and to sort of, again, probe the finer points on the argument.

MR. LONG: If I may? Noah Long from NRDC —
CHAIR WEISENMILLER: But I was going to say, eventually there will be some sort of ruling, but, I mean, today we're going to listen.

MR. LONG: Okay. I just thought in light of your interest in listening, I might respond to that question and also the comment by Mr. Howard on that question. The rules that Mr. Machol just discussed in our view are new operational requirements for the facilities. In order to continue to operate under the new regulatory regime, significant investments will need to be made. Now, plants have physical operational requirements dictated by the laws of physics and combustion engines, combustion generators, and they have regulatory operational requirements. And to the extent that a plant makes significant new investments to operate, to continue to operate, whether that's in order to meet legal requirements imposed by the Federal Government, or if it's in order to meet maintenance or other operational needs, those are the kinds of investments that need to be evaluated under the EPS to see whether they are, in fact, significant, whether they're new ownership financial commitments or new financial commitments. And I think -- so, in our view, the fact that they wouldn't by themselves necessarily affect the existing contractual arrangements does not by
itself dictate whether or not it's a new ownership investment subject, SB 1368. But the question is one for the -- and I think this is the question that's really squarely before the Commission here -- is are investments potentially hundreds of millions of dollars, or many hundreds of millions of dollars in these plants over the next few years -- do they trigger California's requirement and scrutiny by the Energy Commission as to whether those investments are, in fact, new ownership investments? And I think to limit the question to say, "Well, they're not extending the contract," or, "We don't have an ownership position," would be inappropriate given the significance of these investments and the operational requirements that these plants are now under. Do you want to respond to that?

MR. VESPA: Well -- I'm Matt Vespa from Sierra Club -- just to add, I think that the Final Statement of Reasons on the Regulations, which was referenced earlier, is helpful here. It did several times say that environmental compliance costs are covered procurements. It looked like there were several efforts to put in language exempting those type of costs, which was rejected a number of times and, you know, in our view, these really do squarely fall within covered procurements, they're additional investment risk for
ratepayers and so on, and should very much be within the
purview of the Commission.

MR. PEDERSEN: Is it okay if we have a dialogue?

MR. LONG: That's the idea, actually.

MR. PEDERSEN: Great. Well, that's really --
what Noah and Matt just said is very helpful. Is it
your view, then, that something like installing the SCRs
at San Juan under the Federal Implementation Plan would
be precluded because it would extend the life of the
plant? You kind of talked around that, but you didn't
say that directly. Are you actually taking the position
that the plant would have to shut down but for the
installation of the SCRs? You know, we actually just
got -- my wife just got a catalytic converter on her
car, you know, and she didn't see it, you know, she
flunked the smog test, right? So she had to go and get
a catalytic converter and she didn't at all see it as
extending the life of the car. But certainly, you know,
if she didn't get that done, she wouldn't have been able
to drive it, right? So what's your interpretation? Are
you saying that the SCR is --

MR. LONG: I think we can -- sorry -- this is
Noah Long again from NRDC -- I think we can sort of live
and die by metaphors, I imagine if the catalytic
converter cost $100 million, you might have thought it a
significant new ownership investment in her car. And so
our view is that certainly we don't see a conflict of
law situation here, there's not a situation where
California laws prevent the application of catalytic
converters or other control technologies necessary to
meet these standards, but there is a question of what
California entities can participate in under the law,
and I think that's really the question here, not what
the plants can do under some potential owner, but what
California participants can rightfully participate in,
whether as an owner, or in other contractual arrangement
in the plant.

MS. VACCARO: Before we continue with this, just
one second, I'm sorry, Ms. Berlin, you know, I set this
up on purpose and so, again, some of the setting of the
table is the way my mind works, I wanted Mr. Machol to
be able to come in, make his presentation, have a
question and answer with him, but free him should he not
wish to be here all day long to go through all the other
issues. I think we really do want this type of
dialogue, but I'm hoping that, if we have more questions
for Mr. Machol that we can pose them because I didn't
get the sense that you were planning on staying all day.
But if you are, and to the extent you want to
participate in the dialogue, you're certainly welcome to
do so.

MR. MACHOL: I can stay throughout the morning, I'm happy to do that. It definitely sounds like the conversation is about the rule's implication in California, rather than the rules themselves, but I'm happy to sit here in case there's a question about the rules themselves.

MS. VACCARO: Okay, good, thank you. I just didn't want you to be sitting there and not feel that you could politely get up and leave.

So, Ms. Berlin, you were about to say something?

MS. BERLIN: Actually, George had a question.

MR. MORROW: Yeah, you reminded me before -- and just in case you take off -- George Morrow, Azusa Light and Water -- so when EPA adopts a rule such as the Haze Rule, basically EPA is going to specify, "Here's the limit that the plant has to meet," and the plant can decide, or the State, the best available control technology, it could be a variety of things, it could be SCR, like you said, depending on how strict the level is that we're required to meet. But my question goes to what if a plant operator does not meet the standard, does the plant shut down? Do the Federal Marshalls show up and lock down the gates and say, "Okay, this does not operate anymore?" I don't think that's the case.
think plants continue to operate perhaps after a process of evaluating their performance they are deemed not to comply and they are subject possibly to penalties, strict penalties, but, you know, I don't know that there's not a continued life in the true technical sense for those plants.

MR. MACHOL: Well, let me take the first crack at this. I mean, as you mentioned, George, there are penalty provisions or enforcement provisions in each of our statutes, the Clean Water Act, and RCRA that I talked about today, and when there's violations we go through the process, we do inspections, we work with the local permitting authorities, and it's very much case by case. Many times, well, you're talking about something about whether you're going to do the controls, or not do the controls in the first place, so that's a pretty significant --

MR. MORROW: Obviously, we would do the controls, or we would comply with the Federal laws, but going to the point of, you know, if for some reason somebody didn't, you know, some hard head somewhere decided not to do something, you know, the plant doesn't disappear into the earth, or is forced to not operate, it can continue to operate, but subject to then the penalty provisions under the --
MR. VESPA: Can I jump in?

MR. MORROW: -- but it's going to the life extension idea.

MR. VESPA: Well, I think what you're suggesting is unlawful --

MR. MORROW: I'm asking a question, I'm not suggesting anything.

MR. VESPA: Well, okay, well I think -- this is Matt Vespa from the Sierra Club -- what your question to me suggests is continued unlawful operation of a facility in violation of required emission control technologies, and I don't know if entertaining that question is all that productive, you would be asking the Commission to somehow say it's okay to continue to operate unlawfully because you could, for a certain fixed period of time.

MR. MORROW: Obviously, that's not what I'm saying, and you know I'm asking a question, I don't know that I would infer that anybody anywhere is not going to comply with the Federal Regulations. Of course, you heard Norm talking that, you know, that's very much the spirit of how we operate, we intend to comply. I think we may have questions sometimes about exactly which technology and exactly which timeframes, again, because we're not for profit and we're trying to do the right...
thing for our citizens and ratepayers, and for society
as a whole. So plants can continue to operate if -- I
mean, we deal with hundreds and hundreds of regulations,
this happens to be a very big one, a strict one that
we're talking about, the Haze Rule, but there's lots of
other regulations, lots of other limitations, and the
plant doesn't stop running, technically.

MR. MACHOL: Well, as I said earlier, there are
civil enforcement provisions, there are criminal
enforcement provisions in each of our statutes, and it
depends on the violation what happens next, but it
typically -- there's a process.

MR. MORROW: All right, so Norm's analogy on the
catalytic converter, technically that car could run, but
I have a feeling at some point it would be very
difficult to license, or there might be other penalties,
and so it doesn't say that the end of that car's life is
because there's, you know, there's some emissions that
don't comply. That's enough -- I guess you guys got the
flavor.

MS. VACCARO: I liked that example. This is
Kourtney Vaccaro. I liked the example of the catalytic
converter in the car and generally this process is not
to put anyone on the hot seat, but I guess I am curious,
Mr. Knox, you know, if the Air Resources Board has any
opinion, thoughts, or if you do, on the example of when
that might become life extending, or when it might be
perceived as life extending, if the very fact of doing
it isn't life extending, or isn't intended for that
purpose, other than keep the car running, or pass the
smog test?

MR. KNOX: I can't really speak for ARB on that
issue. I mean, I think that, you know, it's really more
up to the CEC to look at a particular case and see if
the particular investment is life extending, you know,
whatever the kind of investment -- if the investment is
something that is actually going to extend the life
beyond the five-year period, then that seems to be
something, to me, that would be subject to the EPS.

MR. LONG: This is Noah Long. Do you mind if I
jump in again, sorry?

MS. VACCARO: Please do.

MR. LONG: Noah Long from NRDC. I'll make a
zero emissions analogy here on life extension. I was
biking yesterday to an appointment and my chain started
coming apart, but I knew that I was late to an
appointment and, as I biked along, I could hear it
rattling and coming apart and I knew that I wasn't going
to go very far, but I figured I could finish the few
blocks and I had to eventually replace the chain. And
in the same sense, the point that I made earlier about there are technical operational requirements and there are legal operational requirements; now, it's true that you can also bike without a light and you can bike as your chain is dismantling, but the fact that you can push a power plant beyond its operational, you know, beyond its intended maintenance requirements and push it into the ground, or you can operate illegally and subject to enforcement, I don't think changes the fact that legal operational requirements are, in fact, operational requirements.

The other point I wanted to make that I think your comment raised, which is an interesting one and an important one for this Commission and one that we tried to raise in our reply comments, is that there are -- the EPA rules discussed a moment ago by Mr. Machol raise a whole series of potential investments for the plant owners, and operators, and participants, and not all of them are simply about putting in place control technologies. For example, in the case of Four Corners, EPS has proposed closing three units and imposing control technologies on the remaining two units in order to reduce its overall emissions as part of an overall proposal for compliance. Likewise, as we've noted in our reply comments, there are opportunities for...
potentially closing units at San Juan, potentially
converting some of those units to gas, and each of those
proposals would have different potential implications
with regard to compliance with the Emissions Performance
Standard, whether it's replacing the existing units with
combined cycle units, or simply converting the existing
boilers to burn gas, those would have different
emissions rates and different implications with regard
to the Emissions Performance Standard. I think that
variety of possible investments that are before the
participants here today, and in the discussions that
they need to be having with their co-participants in
these plants, are the ones that were, I think, hoping to
open up this rulemaking to consider so that the Energy
Commission has an opportunity for scrutiny of those
investments, an opportunity to make clear which sorts of
investments might comply, and which sorts clearly would
not. And I think, in light of the overall mandate from
the State to use this statute and this regulation to
minimize exposure to future emissions risk, clearly some
of those kinds of investments would be better for the
citizens of California and the customers of these
utilities and others, and like I said, some would likely
comply and others might not.

MR. HOWARD: Randy Howard, LADWP -- I'm sorry,
Suzie -- I'm going to ask the question over here, I'm going to do one quick one, though, but there's nothing in SB 1368 that grants the authority to the CEC to look over the investments of the POUs. I'll just stop there.

Question. On all of the measures that are proposed that would impact the three coal power plants that are represented here, outside of -- well, even with the new proposed rules that are greenhouse gas, none of the other rules are related to greenhouse gas whatsoever, are they? So the implementation of those measures are related to toxic emissions, isn't that correct?

MR. MACHOL: The two that I mentioned that impacted greenhouse gases for tailoring rules, so for the PSD Permitting Program and the New Source Performance Standard, which is a proposed rule.

MR. HOWARD: And that would impact these existing facilities, so in the operation of the existing facilities. So all the measures that are being proposed on the plants today are related to toxic rules. Isn't that correct?

MR. MACHOL: That's right. I guess the one opening for something beyond that is if you had a major increase in one of the pollutants that would trigger a PSD Permit. So otherwise, yes.

MR. HOWARD: Okay, so it's not -- these
investments in themselves don't benefit the greenhouse gas --

MR. MACHOL: Are you asking do they lead to reductions in greenhouse gas emissions?

MR. HOWARD: Yes.

MR. MACHOL: Well, if you retire a unit, potentially it would; if you're putting controls on it, and you're not capturing and sequestering carbon, then no.

MR. HOWARD: Okay.

MR. VESPA: Matt Vespa from Sierra Club. Just to respond to some of those comments, SB 1368 does in the statute clearly contemplate the Commission ensuring compliance with the statute and enforcing the statute, Section -- I believe it's 8341(c)(1), so, you know, if you're going to force compliance, one would imagine you would need to actually review the investments. You can't enforce compliance if you can't actually see the investments and make that kind of independent determination. So in our view, the CEC very much has the authority to review these types of investments. With regard to the suggestion about whether this is greenhouse gas beneficial, some of these investments, the intent of the statute which articulated in its opening section is to protect ratepayers from air...
pollution control cost, or pollution-related control costs, more generally, it's not GHG specific; some of these pollution control costs are very very significant and it's very much within the CEC's purview to examine those and guard for ratepayer impacts. And, again, the Statement of Reasons has very clearly dealt with this issue about environmental compliance, has found it to be a covered procurement, and rejected suggestions it was not. You know, in our view, it is very much a covered procurement, and there may be a secondary question on a case-by-case basis whether there's some contractual obligations or reliability questions, that's within the Regulations. But as a threshold matter, you know, these are covered investments. What you do with that, as step 2, I think, you know, would be open to discussion depending on a factual scenario.

MS. BERLIN: This is Susie Berlin. I have a couple points -- and I'm going to take the floor now -- first of all, there's been a lot of reference to significant costs and substantial investments, and the POUs are public agencies, we are directly accountable to the residents, the ratepayers, and whatnot, so the amount of the cost is not unimportant to us at all, but it is irrelevant in terms of what the statute and what the regulation requires, there's no dollar limit. So,
you know, if it's something that is a covered
procurement that costs $5.00, it needs to be treated and
reviewed in the exact same manner as a covered
procurement that costs $5 million. It's a covered
procurement.

The second point I want to make is something
that I'm a little concerned with the tone that I think
that we're going down, or that I'm hearing, is this
notion that the life of the plant is linked to its
regulatory permit, as well as its operational ability.
And I don't believe that that is consistent with the way
this regulation was written, I don't think it's
consistent with industry standard, I don't think it's
consistent with operations, in general. If it was, we
would never have this notion of a stranded asset when
you did have to shut down something because it couldn't
get a permit or something, couldn't otherwise operate,
or the State didn't want you to operate it, or
something. So, we need to continue to operate -- and I
keep looking at Noah because he's right across from me,
sorry -- just like everybody -- but we need to continue
to have this discussion in the context of the terms that
are used in the regulation, the terms that are used in
the statute, and as those terms are used in industry,
and we can't apply retroactively a new definition to
MR. PEDERSEN: Okay, now, actually picking up somewhat on what Susie was just saying -- Norman Pedersen, SCPPA San Juan Participants. You know, Matt has pointed out some language in the FSOR, and I'm familiar with the language Matt is talking about. We also have a regulation that is very specific about how you define a new ownership investment, extend the life for more than five years, for example. And so we've talked about the SCRs, I mean, I'm still not quite clear on, for example, what Noah thinks of the installation of SCRs, does it extend the life, or does it not extend the life? You know, certainly our understanding is -- Steve Homer expressed it -- it doesn't extend the life, it's just like putting a new catalytic converter on your car, you know, you're doing it to comply with the DMV, you're not doing it to extend the life of your car, that's our view. But, you know, there is an issue here, you know, and it's created by the language of the SFOR. Now, that might create a situation where, yes, 2907 might be called into play, Section 2907 is the section of the regulation that provides for a POU to come in to you to seek your determination about whether a given investment is a covered investment or not. You know, here we have this interesting situation where, in our view, the SCRs
do not fall at all within the regulation, but we have
some language in the FSOR that, you know, leads you to a
different interpretation, which Matt would argue for, so
that could lead to coming in for an evaluation. That's
what 2907 was designed for. Now, you've made the point
in your comments, opening reply that we haven't come in
under Section 2907. We haven't come in for a very good
reason. We haven't come in because we haven't had that
situation. Are we going to have one coming up, going
forward? Very possibly. No decision has been made
about what to do with the SCRs, you know, we don't have
to do anything right away, we're going to move very
deliberately because it costs hundreds of millions of
dollars. Nobody has denied this is a big investment, we
will be proceeding deliberately. This may be a case
where we come in. Your regulation was designed to
accommodate that. Up to date, in our view, this
regulation has worked very well. Have we been making
investments? Absolutely. Just exactly like the chain
on your bicycle, Noah, you know, we've had to replace
chains. Actually, we don't wait for it to break like
with the turbine blades, we try to do it before the
turbine blades break, sometimes it can be pretty
expensive, but it's pretty much understood that you have
to replace them periodically, not every five miles, but
periodically, and we do replace them. And that's the
type of situations we've had up until now, since 2007,
and Steve Homer is here, MSR is here, they can go
through examples; we provided you some in our comments.
But that's what we've had to date.

We do have this one situation, though, where
there is this muddiness and that might be appropriate
for 2907, I don't want to get into it, but it might also
be appropriate for another section and that is the one
on exemption, 2913. And so we have a couple different
sections coming into play on this very important
investment. But I think that the SCRs really highlight
how we have been conforming to the regulation, we've
been doing what I thought the Commission wanted us to do
and that was basically self-implement the regulation,
taking the burden off of the Commission's hands, we can
come in and seek an evaluation where we have this
situation that is very unusual. I don't know of any
other turbine blades -- in the FSOR, they said the
turbine blades are routine investments, but they
specifically found out, but they do have this language
that you point out, and that I agree is there, that
creates some doubts. So, you know, this might be the
exception, the SCRs and this conflict between the FSOR
language, and what's actually in the rule, might
actually be the example that proves the rule, the
exception that proves the rule.

MR. VESPA: This is Matt Vespa from Sierra Club.

Just setting aside, we feel like there may be other
circumstances besides this compliance that would require
reporting. But just in terms of this, you know, I
appreciate your comments. Speaking for Sierra Club, and
Noah may have a more nuanced view, compliance with
environmental regulations are required to lawfully
operate the plant and therefore extend its life. That's
Sierra Club's view of that, therefore it is covered.

But clearly there is a disagreement on that and it's
interesting to hear this come out right now and I think
it highlights the importance of this proceeding to
proactively address that question, rather than wait for
the POUs in their discretion to come to the CEC and ask
for clarification. It's clearly teed up; I think
guidance now rather than later would be extremely
helpful as we move forward and considering there is this
quite significant difference of opinion on whether these
things are actually even covered procurements at all, it
really does highlight the importance, I think, in
everyone's interest of addressing this now rather than
later so there's just more certainty moving forward for
all the parties that are affected by potential POU
investment in these types of control technologies.

MR. HOMER: Steve Homer with SCPPA. I just want
to make sure the Commission understands the position
that we're in, where the EPA is saying put in SCRs,
which our estimate is $750 million. The Petitioners are
saying, "No, we can't do that." We're violating their
version of the CEC rules. Very awkward position.

Second, we're concerned about rate impact and we
discussed converting to combined cycle gas. When the
SCR issue first came up at San Juan, we went very
rigorous examination of all the different alternatives
and at first we got excited that, "Yeah, let's change to
combined cycle up there." It was twice as expensive as
the SCRs. Talk about rate impact. SCPPA, who has a
little over 200 megawatts there, we're looking at over
$100 million which will go to the ratepayers, directly,
we're a nonprofit. Combined cycle would double that.

MR. KNOX: One comment on the --

MS. VACCARO: This is Mr. Knox speaking, excuse
me.

MR. KNOX: Yes, this is Bill Knox with ARB, and
these are my own comments, but I also have a car that
just failed smog and it failed smog a couple of years
before, and I'd put in a catalytic converter and, at
this point, you know, I'm not sure what it would
require, maybe a catalytic converter and, let's see, the head gasket, and some other things. So at some point, it seems to me that the types of things that you need to do to be able to continue operating are, in fact, things that also extend the life. I don't know if this is a completely apt analogy, but, you know, at this point I'm going to get rid of the car because it's costing too much to keep it going legally, so anyway.

MR. MORROW: Let me follow up on that -- George Morrow, Azusa. I had a friend recently who said to me his catalytic converter was stolen and he said, "I'm going to get rid of my car" because the $2,000 cost of the catalytic converter -- I guess it's got platinum in it and so forth now a days -- was not justified by the age of this car, so he's going to get a new car. Now, I'm also aware of folks that drive these almost brand new Jeep Cherokees which are a big target for catalytic converter thieves, you know, a one or two-year-old car, you get your catalytic converter stolen, you have to pay $2,000, well, you do it. The car's life is far in excess of the cost of the retrofit, the catalytic converter. And that at this point is the determination of us involved with San Juan and the SCRs is that these are relatively new plants. Going back to my earlier comments, this is not Four Corners, Four Corners is 10
to 15 years older than San Juan. San Juan is a relatively new plant in terms of the industry and, you know, we can justify putting on a catalytic converter vs., you know, getting a new plant and shutting it down. So, thank you.

MS. BERLIN: And on that note, I would -- this is Susie Berlin -- I would also just add that the catalytic converter is not designed to extend the life of the vehicle.

MR. HOWARD: Yeah, I'm going to get to the power plant --

MR. MORROW: Make it perform.

MR. HOWARD: I'm going to get to Navajo Generating Station as an example. So there are investments that are going to be required in that facility, so our contract relationship with --

MS. VACCARO: I'm going to interrupt you for just one moment, sorry, we need to cover the housekeeping. For those of you on the telephone, it's been so easy for us to hear each other so far, but we are starting to get some background noise, we would greatly appreciate if you hit the mute button. We don't hear rustling, background conversations, or any other noises going on in your homes or work places. Please do not hold the hold button. But it was very difficult to
hear a participant who is only three people away from me because I was hearing interference coming through the telephone line. Thank you.

MR. HOWARD: Thank you. Randy Howard, LADWP.

So, on the Navajo Generating Station, if you just follow the EPS rules, LADWP contractually could stay until 2019. We have evaluated it and we've done that publicly with our customers and our stakeholders. The potential costs that could be applied to that facility to meet some of these compliance obligations and recognizing that, really, we feel the requirements of SB 1368 still wouldn't allow us to go beyond the 2019 date because all of the members have to enter into a number of new contracts and we think the law clearly says that we couldn't do that.

Therefore, we have come to the conclusion that, for those other participants, it is best and it is best for the City of L.A. and our ratepayers, for us to get out earlier and that is our motivation to do so. So this is working. SB 1368 is working.

And we clearly do understand and we do recognize, but these are investments that we don't necessarily believe would extend the life of the assets that are there today, but for us we have an end date and the investments won't pay off for our ratepayers. It
doesn't make sense for us to make those investments, so
the decision has been made to divest early.

So I just want that recognized, that it's not
because we think it will extend because I'm -- back to
the catalytic converter issue -- it doesn't extend the
rest of the power plant, the power plant has a
particular life to it, these are just measures to be
compliant when you operate.

And we have so many compliance requirements well
beyond emissions. We have all kinds of water and waste
water and a tremendous number of requirements that we
have to abide by for the operations of the plant. So,
to think that meeting any type of a regulatory
requirement is an extension of its life, I just don't
see how that's practical at all. I mean, for what we go
through just related to OSHA and safety, I mean, are
those extensions of life just to keep your people safe?
I don't believe so. I think those are just the
requirements of operating the facility.

MR. HOMER: Steve Homer with SCPPA. To go back
to the automobile analogy, it's a very apt one, power
plants and cars both, the end of their life is an
economic one. When it starts to cost more than you're
willing to pay to keep it going, and you trade in that
car, or you close down that power plant. It's the same
Mr. Long: If I may, thanks, yeah, this is Noah Long from NRDC. So I think, first of all, I appreciate all of the discussion of these various power plants, I hope it's useful. But I think, just as a preliminary matter, you know, we're sort of jumping back and forth between DWP's interest in Navajo and, you know, I'd love to commend DWP for their plans to make an early exit out of Navajo, and then, you know, Azusa's discussion of its participation in San Juan, you know, we've heard a little bit less about what's happening at IPP. You know, I think each of these interests is different, the rules that are facing each of these plants and the timelines are a little bit different, and I think the presentation from EPA hopefully highlighted that a little bit. And that's why in our opening comments and our reply comments, we thought it would be useful for the Commission to sort of have a little more information from each of the POUs on their unique situations with regard to these plants because I think having a sort of free flowing conversation, while useful, I just want to make sure we're not sort of confusing the issue of back and forth because, you know, because DWP is, I think, doing the right thing with regard to Navajo, you know, that doesn't necessarily implicate how folks will...
participate with regard to San Juan. Their interests are different, the plant is different, the rules that are affecting it are different, and the costs of operation are different. And so I think, you know, it might be useful going forward to make sure that we have that information and the investment plans for each of those plants available before the Commission so that we can sort of compare them more accurately and make sure that we're, as we've said before, sort of transparently and consistently applying the EPS with regard to each of these plants and their unique situations. So I hope that that becomes the shared objective of the Commission going forward.

And I just want to respond quickly, if I can, to Ms. Berlin's comments with regard to significance. I agree, you know, the term "significant" doesn't show up -- the question is whether or not these are new ownership investments and I think the comment just now sort of highlights that, there's not a clear end date for the operation of these plants for a physical characteristic, they can be operated maybe not indefinitely, but for a very long time if you continue to maintain them. So there is inherently some subjectivity with regard to what the end of a plant is and what life extension means, and that's why I think
it's so important that the Commission evaluate this question of operational requirements as, I think, Mr. Vespa has said very eloquently, operational requirements are -- sorry, legal operational requirements -- are very much like physical operational requirements in that they can require very significant investments and, again, I'm using the word "significant," but very significant investments that can constitute new ownership investment in these plants. And the reason I've returned to this word "significant" is, while I agree a $5.00 investment in a plant could constitute a new ownership investment, potentially as much as a $100 million investment, I think in my experience with working with Edison on Four Corners, you know, it would be extraordinarily burdensome for this Commission to evaluate every new purchase of toilet paper or, you know, every one dollar line item on your budgets, I think that would be extraordinarily burdensome for the POUs here. And I think it's not in anyone's interest to do that kind of evaluation. So I think a certain threshold and, you know, I'm not suggesting what that threshold is, sort of lays on the table whether or not these investments are significant enough to scrutinize. Now, if folks disagree and they think the only way to determine whether it's a new ownership investment has nothing to
do with its monetary value and we should just look at
every single dollar, you know, I think we're open to
that, I think that just opens up the detail at
which the Commission would have to evaluate investments
to a level that probably wouldn't be in anyone's
interest. And that's why we've been using this term
"significance."

MS. VACCARO: I'm jumping in really quickly
because this has been -- this is great, and I think what
you've just done, Mr. Long, is teed us up for, I think,
one of the discussion topics that we do have later. We
want to hear from everyone, we want this discussion. I
have a couple of other sort of practical considerations,
though. First of all, we do have Mr. Knox here from
ARB. I was involved in securing you for the purposes of
today, I don't know what your availability is, but I
think we would like to hear from you about the Cap-and-
Trade Program. But if you're here all day, that's later
in the agenda; if you're not, then I think what I'd like
to do is sort of get us on the path of addressing some
of the issues that were raised in the workshop notice
and, of course, whatever response you have to Mr. Long,
if you could hold it because I think we do want to hear
it, I think it just comes a little bit later in the
process. But I'm talking and now I need to listen to
Mr. Knox so you can tell us your availability.

MR. KNOX: I'm actually available to stay into the afternoon.

MS. VACCARO: Excellent. Okay, with that, then, I think what I'd like to do is just make sure that folks on the line also have the opportunity to ask any questions of Mr. Machol, this has taken on a life of its own. I think it's been a very good discussion, but I do want to circle back to Mr. Machol if there is anyone on the telephone line who'd like to ask him a question because I think everyone in the room has already done so. We're scrolling, looking for waving hands. It doesn't sound as though anyone on the line has a question for Mr. Machol, so we're just going to move forward.

Again, this was a noticed proceeding and I think what is really important for everyone to keep in mind is that this is a public process. I appreciate and think it's wonderful that the parties have had some discussion on their own that are parallel to this public process perhaps because the public process is cumbersome, perhaps because there are things that are worthy of discussion that you don't want to disclose in the public process, but it is a public process, there is a notice, there is a set agenda, and I think it's important that
we get back to it while, again, allowing everybody to have sort of this free flowing discussion. The objective is not for you to come in as if this were a court and argue your case. I think what we want to do is understand the high points, reinforce what we need to know, and I guess sometimes I find that I might write something on a piece of paper and I think I've said everything I have to say. And then I think about, but what would I say if I was just saying it out loud, and it's completely different, or I hit different points, so I think we would like you to consider that as we move forward. You've given us a lot of written comments and you don't have to repeat them all, but we do want to make sure that we're understanding everything that you're intending to say.

I think, with that, let's start with the first question that is in the notice because that just gets us going, I think, to the issue of resources and burden and impacts on ratepayers that have already been discussed. Here's the question: What --

COMMISSIONER PETERMAN: Ms. Vaccaro, I just want -- this is Commissioner Peterman and I haven't really said anything yet today, so I just wanted to interject here and say I second your comments. I would like to make sure we cover the topics that are raised in the
notice. I appreciate that everyone will have additional information on everything, and we could talk about this for days and this will not be the only time we'll have this discussion. And so I've appreciated what I've heard so far, but I would encourage the Hearing Officer to keep us moving us along, as well.

MR. PEDERSEN: Pardon me, could I just say one thing? Just before you cut in, I thought we had a moment in this morning, and that was Noah saying that he recognizes that the Commission shouldn't want -- we wouldn't want -- the POU's wouldn't want to be coming in with, you know, every little thing, and that's really a significant statement. I don't want that to be lost because certainly I think we all are hoping that something we come out of today with is a narrowing, if not a resolution of issues. You know, as you no doubt got from our comments, we were profoundly concerned about the breadth of what the Sierra Club and NRDC were asking for, and it actually went far beyond their petition. On page 2 of their opening comment, they ask for information about all past and planned -- that means the future investments from POUs and noncompliant power plants, any and all information and alternative investment options considered, or under consideration, including alternative investments, a full review of all
obligations, options, opportunities, it was a very expansive list. And what I was hearing from you, Noah, just now is, okay, can we put some reasonable bounds on this, and you would be willing to put some reasonable bounds on it. I would raise a question as to whether the reasonable bound should be, you know, a dollar limit, or whether instead it should be something like what we were talking about when we were talking about the SCRs. You know, a situation where there was a legitimate basis to say there was a question that would call for a Section 2907 determination by the Commission. You know, from my point of view, there's so many of these that are like your bicycle chain, they're just routine maintenance, and so maybe having a standard like that would be better than just a monetary standard --

MS. VACCARO: I'm going to interrupt --

MR. PEDERSEN: -- and it's a significant step in the right direction to have an agreement -- I think we were getting towards agreement on a narrowing here.

MS. VACCARO: I think you're absolutely right and one of the things that I'm hoping not to do in this process is interrupt or talk over, but I do need to keep it moving and here's something that I want to ensure. What I did was call out that that was teeing up a discussion, and I think that's what Mr. Long did, I
think he teed that up in comments, as well. And we will be able to discuss that further, so thank you for underscoring that you see a place where there might be, if not some consensus or some good room for movement, I still need to keep everything moving and I really am hopeful that I won't be interrupting or talking over anyone today because I don't think that will be productive.

Again, just starting with the topic, I guess, again, the first one that was in the workshop notice, whether to establish a filing/reporting requirement for local publicly-owned electric utility investments and non-deemed compliant power plants, regardless of whether the investment comes within the meaning of covered procurement. We've got some very interesting comments on this point, but I think what we'd like to do is really hear from all of you and, again, this is something that I think didn't go unnoticed by the Commission. There was somewhat of an indictment from NRDC and Sierra Club, "You didn't go far enough in this notice in asking for information," that you were hoping for more. I think what we're doing is showing a willingness to hear from you, but also to understand why the POUs are saying, "No, you pretty much have enough, and if there is going to be more, let's talk about what
that should be." I think that is the next set of
discussions that we have. But the first one really has
to do with the perception of the need for establishing
such a filing requirement and what does that mean to the
POUs if we did. And more so, what's the middle ground?
I think that it's easy to get polarized, but I don't
know, and maybe you can't always sort of split the baby,
but if we can, I think that's where we need to start
this discussion as opposed to reiterating the polarized
views. So we'll start over here to my right, and let's
make it a discussion, it's not an argument, you're not
persuading or convincing, I think really think about it
as ensuring that the Commission and the Commissioners
understand.

MR. PEDERSEN: And certainly, in our view, the
answer to that first question is no, there should not be
a filing requirement. The purpose of SB 1368 was not to
have people coming in reporting on every single
investment they were going to be doing in a noncompliant
power plant. The purpose of SB 1368 was to avoid the
making of investments that would be to the financial
disadvantage, actually, of the POUs and their ratepayers
because we would have coming along a GHG regulation that
might obviate being able to actually take advantage of
that investment, so there was financial risk. So what
we're supposed to do is evaluate, we're supposed to self-implement SB 1368 and the regulation by evaluating our investments to determine whether they're routine maintenance, fixing our bicycle chains, or whether they aren't. And certainly we are given an opportunity in the regulation to come in with the request for evaluation where there is cause for doubt. And that's the beauty of the regulation, it's focused on the situations where there is cause for doubt. You know, you've got the bright line on one side, it's routine maintenance, you know, maybe in some instances some might not think it's such a bright line, but we certainly thought turbine blades was a bright line routine maintenance and the Commission certainly agreed with that in the FSOR. Okay, on the other hand, you have investments that extend the life for more than five years, for example, you know, what is proscribed? To convert a base load -- to convert a peak plant to a base load. Those bright lines are established in the regulation. It's where we have the gray areas that were to come in -- you know, in so many instances we don't have gray areas, and why would you want us coming in where there is no gray area? So we think the regulation has been working, it has succeeded, it is preventing -- it is doing exactly what the legislature wanted, it has
prevented financial investments that would be put at risk by the GHG regulation and by the Cap-and-Trade Programs, specifically. It's been working and so something we should steer away from is a really counterproductive filing requirement that would require us to come in with each and every investment that we might be making, no matter how clearly it was on one side of the line, or on the other side of the line.

MS. VACCARO: And I think -- and, of course, NRDC and Sierra Club are going to speak for themselves, but you say that so clearly and it makes sense, yet --

MR. PEDERSEN: Thank you.

MS. VACCARO: -- yet -- there's a yet -- yet it's one perspective and, while it's one perspective that is shared, it's not the only perspective because, if it were, I don't think we'd be sitting here today, and I think that's really sort of the heart of it, as we're hearing NRDC and Sierra Club say thanks for telling us all of that, and we get that you're telling us there's a level of transparency, and that these are parts of public processes, but from their perspective it should mean something to the Commission that there hasn't been any filing to date, that there hasn't been anybody coming into the Commission. And I think we do need to hear more about that -- why is that significant? Why do
we not just believe the POUs that there hasn't been
reason in these murky gray areas haven't presented
themselves yet? Because I think you really are at
extremes in terms of viewing what the perceived issue or
problem is.

MR. VESPA: I'll just -- this is Matt Vespa for
Sierra Club. I'll make a couple points and Noah can
certainly elaborate. I think one of the issues is we
have a statute that says the CEC is charged with
enforcing SB 1368. We have Regs that don't require any
reporting at all, leave the discretion to make a close
call up to the POU to ask the CEC to do that, and so it
really does beg the question of how is the CEC going to
enforce the statute when they're not getting any
information from the POUs, and when the decision whether
to even ask whether investment might be covered is
within the POU's hands. And so we're really trying to
change that dynamic here and have some more certainty
about these investments.

And I was concerned, it was interesting to hear
the different view of the environmental compliance
requirements and whether that would extend the life or
not. I mean, I have thought coming in here it was just
a no brainer, of course it's extending the life, you
know, it would be illegal to operate -- but there's a
dispute there, obviously. And under the current regime, maybe the POU just thinks in their view this isn't covered, I don't even have to ask. And so I think one thing we were looking for is to make a more informed decision about how reporting might proceed, and we're sensitive to burdens and so on, and are willing to kind of think about that, is to actually have the information upfront about what have the historic investments been, what are the planned investments in the future, what are all the alternatives in the future for some of those planned investments, which would allow us to actually do the rulemaking based on information, rather than what we're hearing is just a lot of anecdotes -- this is working, you know, this isn't covered, and we're constantly in a position of having to rely on the POUs' assertions absent reporting or any other types of providing information. So that's our concern. And Noah will certainly say more.

MS> VACCARO: Before you say anything, Mr. Long, here's my question, I guess. This is, you know, treat me like I'm the slowest person in the room because sometimes, you know, I really can be. You have public agencies that are subject to a number of laws that relate to the conduct of daily business, they have a number of official duties, they have to comply with the
Brown Act, and they do a lot of public meetings. Why is it that all of that information that is publicly available -- how is it that it's not informing your perception of the issues? I mean, is it that you're not able to get information to -- is it that you want the Commission to undertake that task? What's not available in the public domain to help inform this set of inquiries that you'd like the Commission to engage in?

MR. LONG: Different statutes -- the Brown Act is an example -- different statutes impose different authorities and responsibilities, divided differently between different public agencies. It's our view that this one clearly gives responsibility for enforcement and authority for statewide transparent consistent enforcement to the Energy Commission. So that's not to say that the POUs don't have a role and that they're not responsible to act as public representatives, but their responsibility doesn't unencumber the Energy Commission from its responsibility for statewide transparent enforcement of the statute.

MS. VACCARO: I think you're absolutely right if the issue is enforcement, but I guess I understood, I guess, a couple of things. It seemed to me that one of the issues that you're raising had to do with the transparency of the information that's provided, as
well, not just the transparency of enforcement by the Energy Commission. Perhaps I misunderstood that, but it seemed as though you were talking about two interrelated, yet distinct things.

MR. LONG: Yeah, so, I mean, each of the public utilities -- and they can speak to this better than I have, have their own process for evaluation of investments. As you've heard today, there are some very significant investments coming up on rather short order at some of these plants. To date, there's been some public process at some of these POU's with regard to these investments. We've seen, you know, compared to the level of these investments, the size of these investments, we feel relatively uninformed. It's our view that the Energy Commission to date is relatively uninformed about that and, in order to adequately ensure consistent application and potentially enforce the statute, it's our view that the Energy Commission needs information beyond just the discretionary provision of information under 2907 mentioned by Norman Pedersen.

MS. BERLIN: Can I ask a clarifying question? And that might help -- this is Susie Berlin -- to better understand what the reporting process is that you're trying to envision. How does information regarding alternatives and deliberation on investment alternatives
play into whether or not it's a covered procurement?

MR. LONG: So the alternatives that we were contemplating, there are alternative investment opportunities for compliance with the EPA rules, for example, or, you know, there is an anecdotal mention -- and I think it was in SCPPA's comments with regard to the turbine blade replacement for the opportunity to potentially increase capacity or not increase capacity with regard to a similar investment. And those kinds of alternatives are the ones that are weighed by plant operators and their maintenance committees, as well as owners and participants with regard to these EPA rules. So, it's our view that operational, as well as legal -- sorry, I should say technical, as well as legal operational requirements provide for -- sometimes provide for an array of potential investments that might meet those needs. And it's possible that some of those investments would meet the requirements of the EPS, and others would not. And so I think that range of investments is worth evaluation.

COMMISSIONER PETERMAN: Randy has been waiting a long time.

MS. BERLIN: Can I just do a quick follow-up on what he was just saying, since Randy cut in front of me last time? No, just kidding.
MR. HOWARD: I can do that too. Well, a couple things. And I'll just go to just our view -- having been through the entire legislative process on SB 1368 myself, having sat at this table multiple times during the rulemaking of SB 1368 in this room, and neither one of these gentlemen over here were the representatives that were sitting at the table at the time, we went through all this, and we went through it in great detail with more than sufficient discussion and debate, and we came forward with the existing rules that I do think are working and remain applicable. The CEC has the authority, and they've done that, to enforce. They've set the standard of 1,100 pounds per megawatt hour. They've identified how to quantify those emissions and accurately measure those standards, they've clarified what constitutes base load power. They clearly put those in place; part of those rules, though, also say a new ownership investment does not include routine maintenance. We went through multiple iterations and meetings as to routine maintenance and we clearly -- and the Commission at the time clearly decided that was not pertinent to the requirements to meet the statute, that the POUs have very open, very transparent processes for making expenditures. We have multiple public meetings where we vet our budgets, they lay out in great detail
these expenditures. When we have problems with our
plants or future investments, those are public meetings,
they are in LADWP's case, they are televised and they
can be webcast and they follow the Brown Act. It is not
difficult to find out how we invest our money, how we
expend our funds. Both of you have had that opportunity
to look at that. We have been subjected to California
Public Records Act requests related to these facilities.
That's all available to you. So, from at least L.A.'s
position, I'm really not sure what additional could be
provided here, or to the CEC, that would change any
opportunity that is available today because we are
public entities, we don't profit from hiding or
withholding information, I don't bet a bonus, I'm a
civil servant, so there's really no motivation there to
do so. And I don't think it would be useful time spent
on behalf of the CEC staff's time. Again, if the CEC
staff would like to look at our annual budgets, they're
available to you, they're uploaded on our website, and
they will lay out the expenditures for these facilities.

MS. VACCARO: Ms. Berlin. You don't want to
follow-up?

MR. KNOX: This is Bill Knox, ARB again. It
seems to me going back there is, in fact, a gray area,
though. There's -- and one of them -- you know, it
occurs to me that it's one thing to take existing pollution control equipment and to fix it so that the plant can continue to be operating, but it's another thing when new regulations are promulgated and particularly if they involve considerable expense, it seems to me that there may be a difference between those two situations and what might be considered to extend the life of a facility for five years. You know, again, I do see that there -- you've got to both have the equipment that allows you to operate and there are certain kinds of major repairs, clearly, without which you couldn't -- which would, in fact, extend the life of a plant more than five years. And it seems that case can also be for new regulations that require new pollution controls, as well.

MS. VACCARO: Or, just following up on what you're saying, I mean, I guess it could also be the difference between making a repair with equipment that was equivalent to what you're repairing or replacing, or perhaps repairing it or replacing it with brand new technology.

MR. KNOX: Right.

MS. VACCARO: But I think therein lies a very significant difference.

MR. KNOX: And I think -- I also think that the
Commission, I believe, does have the responsibility to
monitor compliance with this -- with the EPS, and so
there are cases in which they're going to need
information, but I don't think that means for every
little expenditure for routine maintenance, either. I
think there's something in between in which -- but
without -- I mean, the Commission, I don't think, is
going to have the resources to actually go in and follow
every public process, or every meeting of each of the
POUs that has investments in these noncompliant plants,
so it seems to me that there are certain investments,
however, that do rise to the level of things where it
may not be clear whether they actually are covered
procurements or not.

MS. VACCARO: Can you give an example or two?

MR. KNOX: Well, just the pollution controls
that Norm has been referring to, you know, it's not
clear to me whether or not that would be a covered
procurement right off the top.

MR. PEDERSEN: And we already established that,
yes, I mean, that is an example of where you might use
2907, you know, we haven't come in for 2907 because no
decision has been made about whether we want to pursue
the SCRs, but that could be a 2907 request for
evaluation. It could also be a 2913 request for
exemption, so there are a couple of different procedural
routes that might be followed there. So we could just
stipulate that that is an example of an unclear
situation. But what I'd like to go back to, to Matt and
Noah with, on question 1, is, okay, if we were to
establish a filing requirement, first of all, we're
talking about prospective, going forward, it's something
that we would report on going into the future. I think
we've determined that there needs to be a separating out
of the de minimus that was something you indicated. I
think that your category 3 here would obviously come
out, a full review, it wouldn't be included. A full
review of all obligations, options and opportunities for
California POUs under their existing contracts,
noncompliant power plants should the POUs claim they are
contractually bound to make investments at the
noncompliant power plants. That can't be information
that you're asked to asking us to submit, that's
information that would come in if we decided to pursue
at 2913 exemption, which we have not done to date. If
we do, you -- the Commission will get that information.
So you can cross off number 3, we've crossed off past --
so if we're talking about prospective investments, what
is your thinking about the criterion or criteria that
would be used to de limit what POUs would report on.
MR. LONG: Well, just first I don't think there's a consensus that we've crossed off areas for reporting yet, so I think you've made that point, I don't think that we're in agreement on that yet on past reporting, or necessarily the requirements under contractual obligations. I think, you know, the question is under 2907, if the Commission waits until maybe one, or maybe two, or maybe all of the POUs decide to utilize 2907, then can the Commission be sure that it will have consistent application under the emission standard across the state? And it seems to me very possible that one POU would decide to report, another might not, and we would have potentially inconsistent decisions under that process, and that's why we thought having a reporting process that is more complete would be a way to guarantee consistent application of the standard across the state. Now, with regard to this question of what the threshold for reporting is, I think, you know, our view is -- I'm not an Engineer and my sense is that, if all reporting is too burdensome, then some -- then the Commission ought to either with its own expertise, or from the expertise of the POUs, recommend some reasonable threshold for reporting. And I think we're open to seeing your recommendations for reasonableness with regard to reporting, and I think for
us that extends both retrospectively and with prospectively. But I think, you know, we'd like to see what you think that threshold is. We agree, you know, not every question of maintenance will come to the question, is really subject to whether or not there's a new ownership investment. But, you know, there's leagues of litigation with regard to new source review, which is not the same standard, but it has some similarities, and that all comes about because plant owners and operators, participants, have different view on what maintenance is, essentially. So I think the idea that that's crystal clear and going to automatically be consistently applied by all the POUs is one that we should question.

MR. VESPA: This is Matt Vespa. Just more with a question in terms of the stated burdens of reporting and, you know, we've heard that within their specific public processes, you're reporting this to the public, there are meetings, and so on, for these expenditures. You know, if that's the case, what would be the additional burden of then sending that information to the CEC, as well? It sounds like these reports are already getting generated for specific expenses. It wouldn't necessarily require additional work. I'm just kind of curious what your response to that is because...
we've heard a lot about time and all that other stuff,
but it seems like these are getting generated anyway.
So just curious what your thoughts were.

MR. PEDERSEN: I don't want to imply they're --
you have all sorts of investments, you know, that are
made to maintain the plant on a completely routine
basis, routine means down to daily. And if you think
that we go to the Board for daily decisions that are
made at San Juan and New Mexico, you know, we don't.
You have to have some kind of determination as to what
merits Board attention. And certainly when you get to
turbine blades, you know, that was a significant
investment, and so that did advance to the Board stage.

MS. VACCARO: I think you raise an important --
this issue is actually important. I think it's one that
at least the folks sitting over here want to explore
just a little bit before we might get off track, is
basically then you're talking about there's some level
of significance that would have the POUs bringing
something to the Board because not everything is brought
to the Board. What are those thresholds? What are
those levels? You used the word "significant" with
respect to the turbines. Is that in the eye of the
behavior? Is there something that's part of your
established policies? Because if we're talking about
thresholds, there's got to be one that's already being used, even if it's different for each POU, and I understand that. It appears to me that that is something that you could readily answer or point to.

MR. HOMER: Steve Homer with SCPPA. We bring things to the Board when there's a question about them. The turbine blades were an issue because they were planned to increase the capacity slightly, as a side effect of the real intent. It turns out they didn't provide that increased capacity after all. We brought it to the Board and said we think this is routine maintenance and the Board agreed. Normally, the eye of the beholder is my eye. We get about a 100 a year capital investment items at San Juan Unit 3, there's probably a similar amount for Unit 4, which MSR and Anaheim are in, it's not rocket science, you read the four or five-page description of these projects, and you ask the questions, "Does this increase the capacity? Does this extend the life?" And the answer is no, it's a no brainer. They run from $50,000 up to multi-millions, but it's clear to a non-Engineer that it does not increase the capacity and it does not extend the life of the project.

MR. LONG: Can I ask a question about that? So just to clarify about 100 a year, about how many of
those do you think go to the Board?

MR. HOMER: Very few.

MR. LONG: So it seems to me that, even if it were 100 a year that were also mailed on to the Energy Commission so that the Energy Commission had some sense of those, that's not an incredible burden on the Energy Commission or the public process, if you compare it to other utilities and their filings, that's not so much. And if you paired that down even further, it's even less. So it seems to me that, you know, on Matt's point about if there's already a process and some public process, I'm just not sure that there's an incredible new burden for having public transparency on those --

MR. HOMER: The burden would be on the Commission, itself.

COMMISSIONER PETERMAN: I'd like to hear from the other utilities, is that their same procedure for deciding what to bring to the Board or not --

Commissioner Peterman.

MS. BERLIN: Commissioner, I'm not certain exactly what MSR's technical procedure is, I know that they have very huge binder full of things that were approved by the MSR Commission, and they may operate differently, so I can't say what Steve has described is exactly what MSR does, as well. And I don't mean to be
facetious here, but I do want to ask -- I just want to turn this around -- when you say a reporting or filing, what do you want to do with that information? Are we just going to be doing what the Governor is blasting us all for doing, is generating more reports, and generating more paper? What do you envision being done with this reporting and filing information? And at the same time, what is the added transparency of sending it from one public agency to another if what you're talking about is the information that is already part of the POU public agency process? And that is already part of what you've even said is a finite universe; we're talking about three different facilities. So I don't mean to be sarcastic or facetious in turning it around, but what do you want out of this? I mean, it's not just a paper flood, so there must be something that you want articulated that you're not seeing articulated, and that's what we need to get at. Because asking for everything past, present, and future is just too much.

MR. VESPA: I'll start --

MR. HOMER: Before you answer, I can help with MSR's process, even though I don't work for MSR. MSR is a great believer in belts and suspenders, much more so than SCPPA and, in an abundance of caution, they bring every capital budget item to their Board, and they
declare that this is routine maintenance, they've gone much farther than SCPPA does. SCPPA thinks we can read English, here's the criteria, if it meets those criteria, and it's not a covered procurement. MSR wants to cover all the bases and so that notebook is a very complete record of everything that has happened at Unit 4, which is not identical, but would be very similar to what's happening in Unit 3, same types of investments.

MR. MORROW: And the SCPPA Board, we delegate to the staff, that's the value of joint action sometimes is we don't have to be involved in every single thing that happens and we have expertise that we delegate to administer projects on our behalf, and so we trust Steve and his judgment, and he'll bring to the Board directly anything that, again, is questionable and he thinks we should have our cement put on directly.

COMMISSIONER PETERMAN: Is it correct, then, if it's not brought to the Board, then it is not in the public domain?

MR. HOMER: I believe it is subject to the Public Records Act.

COMMISSIONER PETERMAN: Okay.

MR. MORROW: We've got an annual budget that he works within, and so he may provide some support in that annual budget process for what capital is being done and
so forth.

MR. HOMER: The total amounts go to the Board --

COMMISSIONER PETERMAN: And can I hear from
LADWP about their process? I'm sorry, I didn't mean to
cut you off, please make sure you finish.

MR. HOMER: Okay, the total budgets go to the
Board. The individual items, if they're controversial,
they do, otherwise no.

COMMISSIONER PETERMAN: Thank you.

MR. HOWARD: So similar for LADWP, annually we
have quite an extensive vetting of our budgets because
we do consider this mostly routine maintenance, most of
it is planned out, and so it is outlined in those
budgets. And the Board consideration is done once and
some of them are brought up to kind of a gross level.
We don't tell them everything the painters at those
facilities are going to paint, but we say X amount is
related to painters. You know, X amount you might buy
paint, but we don't tell them every pipe you're going to
paint, not in that detail to the Board. Then the Board
would see expenditures that would be unexpected, so if
there were unplanned outages or issues that would occur,
that would have levels above the authority of our
general manager for expenditure, so his authority is

$150,000. Anything above that, he has to take it to the
Board. Then it becomes public domain. But similar --
even the level of detail down is public domain through
our Public Records Act, so it is available and I'm kind
of with Susie as to what we're going to do with this
information, what kind of story do we believe it's going
to tell.

MR. HOMER: Steve Homer with SCPPA again. I
believe a year or maybe two years ago, Sierra Club asked
for the entire San Juan budget, and we provided that to
them and we had every single capital item on all four
units, so they've had that access.

MR. MORROW: The question I have following up on
Susie's for our Petitioners is, you know, what is the
timing of this data? If we were to provide more data,
more reports, you know, what is the process for these
reports? Is this to be done in advance of us doing
projects? I mean, you know, I talked about this in my
earlier statements several months ago, I am an Engineer,
and the complexities of operating a joint power plant of
the scale that we are all involved in is enormous, the
timeframes, the committees, the subcommittees, the other
participants, you know, reviewing of alternatives to the
extent that we would do that, you know, are we to submit
to somebody in advance and say, "Can we do this?" Or,
"Can we not do this?" Or is it just a reporting --
because I don't see how that process would happen. I
don't see how the timeframes -- you know, it would be a
mess. And so is it just the reporting requirement? And
then what happens if somebody disagrees with what we
file and that it is or isn't --

MR. PEDERSEN: That is question 1, though.

Question 1 is just establishing of a reporting
requirement, it isn't an action item, it's just
reporting.

CHAIR WEISENMILLER: Reporting. And actually,
we're at the 12:30 break point and so I'd certainly
encourage people to keep talking, you know, but we're
going to grab lunch, 1:30, if anyone wants to use the
room, that's fine. There's certainly places close by,
but I certainly encourage people to continue the
dialogue, but we'll officially pick it back up at 1:30.

MR. PEDERSEN: Okay, thank you.

(Break at 12:31 p.m.)

(Reconvene at 1:41 p.m.)

CHAIR WEISENMILLER: Good afternoon. We would
like to welcome everyone back, not only those in the
room, but those on the line. And, again, we want to
pick up -- we made the transition to marching through
specific questions and, at this point, we wanted to see
if anyone, after reflection over lunch, has any
additional comments on the very first question.

MR. LONG: If I could -- this is Noah Long from NRDC -- just a quick point, which is I think that the scope of the reporting requirements might be useful, to get back to that after there is a discussion of if there is refinement in the definitions of Covered Procurement, and if there is clarity about particularly whether or not new pollution control requirements count as covered procurements. I think that might help facilitate what is pertinent that gets reported and what need not.

MR. VESPA: And just to add, I mean, what we heard before lunch was different POUs and different procedures, different situations where things are made public, sometimes there's internal vetting that goes on and it appeared in other cases everything was forwarded publicly. You know, some situations there's a PRA option available, which could be quite cumbersome and timely to do. And so I think, you know, it underscores the need for more transparency reporting in a routinized way.

Just to kind of circle back, what we're talking about here is a rulemaking where we're trying to devise potential reporting requirements, and I think, you know, we're not trying to devise the rule for reporting now, we're trying to figure out how to do that in this
process. And so, in my mind, it makes sense to sort of see all the stuff that's going on, that has gone on historically, things that are planned, to devise the appropriate rule. So I think we should air at this juncture on providing information, you know, we requested as part of our Petition and comments, so we can make more informed decisions about how we may proceed to require a rulemaking, you know, if that's appropriate.

MR. PEDERSEN: And we think it would be more appropriate to decide, if we are going to make a change in the regulation, to identify exactly what would be appropriate for the Commission to seek. You know, we have three points here and actually at some point I would like to go back over them because I think it's completely inappropriate to be seeking what would actually be filed in the process of seeking an exemption, which we may end of doing. You know, this number 3 here on the Sierra Club and NRDC's list is the definition of, to my mind, what would be submitted if you were to submit an application for exemption under 2913, and it ought to wait until then. So we'd like to have that discussion about what the rule would look like and exactly which ones of these points 1, 2, and 3 in the Sierra Club and NRDC opening comment would really be
eligible for consideration for inclusion in the rule.

MS. VACCARO: I think that's probably a good place to start. I think not everyone has before them, I think, today the same information, different levels of preparation. So maybe to ensure that we're all speaking of the same things, if you wouldn't mind passing to me your paper with the three points, I can let everyone know what you're speaking of, they can pull their own copies up, and -- thank you -- and we can kind of go from there. I think sometimes it's easier to not keep talking about whether we ought to do something or not, let's just jump to the hypothetical of, I think, let's just assume that something is going to be required.

Well, what's that going to look like? And I think you should also assume maybe you're not going to get all this retrospective data.

Starting from where we are today, looking prospectively, if there were to be a filing or reporting requirement, what does it look like? And I guess from where I sit, I don't see that as a discussion that gets put off for another set of workshops. I think that really is something that we need to be tackling to the extent that we can today.

And I do agree with Mr. Long that I think that does go to some of the other discussion points and I
think everybody has noticed, this has been a somewhat fluid discussion as it is because these are all very interrelated points. So I think when you keep saying Items 1, 2, and 3, let me let everyone know what it is that we're talking about. There are some joint comments that were submitted by Natural Resources Defense Council and Sierra Club dated March 26th. On the second page of that document, there is a paragraph. I'm going to read it in its entirety: "The Commission needs sufficient information to develop appropriate criteria. The Commission should request information from the POUs on 1) all past and planned investments from POUs at noncompliant power plants; 2) any and all information on alternative investment options considered or under consideration, including alternative investments at the noncompliant plants, and alternative energy and capacity supply options, and 3) a full review of all obligations, options, and opportunities for California POUs under their existing contracts at noncompliant plants should the POUs claim that they are contractually bound to make investments at the noncompliant power plants."

I think, let's look at this in two parts. What's wrong with what they're asking for, POUs? What's the problem with all of this? So why don't we start there. And then we can maybe parse each one and see if
it's too much from the NRDC's perspective, maybe it's just right, I think let's start there and understand what the problem is -- if there is a problem.

MR. PEDERSEN: Okay --

MS. BERLIN: Well, wait, I'd like to go back a step and ask -- and have answered the question that I'd asked before lunch, what is it that you want done with the information? I mean, it seems like we're just, you know, dredging instead of saying, "We want exact information on this because the scope of what you're looking for is so amorphous and so outside of the EPS that, you know, so what is it that you think needs to be turned in and for what purpose?

MR. LONG: I'm happy to answer that question if you think it's appropriate. This is again Noah Long from NRDC. The point here is that we'd like to make sure that decisions that are made with regard to the EPS and, you know, I think before lunch we highlighted the different decision making processes at SCPPA, MSR, and DWP, we want to make sure that those decisions are consistent across the state, that they're all applying the same standard, that they meet the standard, and that they're available to be made in time before the investments are made going forward. And going back, we want to make sure that previous investment decisions
have, in fact, met the standard. So that's what we're concerned about. To the extent that --

MS. BERLIN: Okay, so for the going forward -- for clarification -- so the going forward procurements that you're talking about, so you're talking about a reporting and approval, CEC approval process. Because you said that to be sure they're correct, so you have somebody who would be making that determination.

MR. LONG: There's a variety of ways that that could happen, you know, I'm used to practicing at the Public Utilities Commission, I'm not suggesting that this is going to become like the Public Utilities Commission, but the utilities file advice letters that are subject to protests, you know, they can file planned investments, planned actions that unless protested will proceed. There's options for -- there are other alternatives where you can first file an application and then seek approval. I think, you know, a number of those things might be possible, there are emergency filing possibilities. But I think, getting to the point here, we're looking at, of critical concern to NRDC and the Sierra Club, are a small number of very significant investments, those are the highest priority, you know, that we want this Commission to address in advance and we think it's to everybody's benefit to have clarity on
that in advance, rather than having an after the fact
determination on those very significant investments.
Then there's a question of, you know, how are all the
public utilities defining routine maintenance? And I'd
love to go around the room and see if everybody thinks
there's the same definition to routine maintenance and
see if those decisions are being made in a consistent
way and to see if the Energy Commission agrees with that
decision. And I think the reporting context beyond just
the new emissions controls, or new pollution control
technologies, to the extent it is broader than that, it
would be to ensure that that decision making process is
consistent.

MR. PEDERSEN: What are the small and
significant set of investments of most concern here?

MR. LONG: The small number of very significant
investments are the pollution control investments that
are of most concern.

MR. HOMER: Steve Homer with SCPPA. Explain to
me how, you know, concern about us spending money on
pollution control devices that are ordered by the EPA,
when you're an environmental group, I would think you
would be all for the more pollution control, the better.
It seems like a contradiction in philosophy to me.

MR. LONG: I'm not sure that that's pertinent to
question 1, but I'm happy to respond if you guys think it's relevant to this discussion. Our view is, we are in favor of well considered environmental control requirements from the Federal Government, as well as from the State Governments. But whether it's in the interest of California customers, California utility customers, to continue to make investments, whether they're pollution control or other investments in very high GHG emitting facilities is, I think, a very important question for this proceeding given the fact that, you know, in 2006 the State Legislature passed this law intentionally limiting future risk at high emitting facilities. Now, if California utilities decide that it's in their interest to make very significant new investments in those facilities that will continue their operation for a very long time, I think that's a question that needs to be scrutinized under the EPS. It seems to me that those new investments are covered procurements under the meaning of the EPS.

MS. VACCARO: I think while, again, it's useful to have dialogue, I think I'd like it structured. I think we started out with some contentions that some of the items, or some of the things that NRDC and Sierra Club are requesting appear to give the POUs great
concern. I think we just heard that, which is why I
went back and read what those three items were. I think
that's where I'd like to start. Let's assume not that
there isn't going to be a filing or a reporting
requirement, let's assume that there is, because I think
that moves the ball a little bit further down the road.
What is it -- let's put some parameters on that, or give
that, I think, some scope.

I'm hearing, on the one hand from the POUs,
what's before you is unworkable, unwieldy, and
unacceptable. Well, is there something that is
acceptable? I mean, we've got a ceiling and a floor, I
think, that we can work with.

MS. BERLIN: And I'd just like to give another
point of clarification, if I may. This is Susie Berlin.
We need to know what this filing requirement is in order
to determine what needs to be submitted, and is it a
file and review and approval? And it is at what stage
in the process? Is it at the end when we've already
made the determination? I mean, that is significant to
the underlying inquiry because it goes to timing and it
goes to the magnitude of the information being
requested.

MS. VACCARO: Fair enough. Gentlemen, can you
respond to that?
MR. LONG: Well, I'm not sure that I can. I mean, I think that was a question to the Commission about what kind of filing would be required. I mean, I think our point was, for the purpose of the rulemaking and, to be clear, those three questions 1, 2 and 3, the points 1, 2 and 3 that you read a moment ago, were our requests for information for the rulemaking to proceed, not our recommendation for what the future filing requirement would be. Our points 1, 2 and 3 were in our view the information that would be useful in deciding what sort of future filing requirement would be useful and for the future definition changes to cover procurement could be useful. And so that would simply be a filing within the context of this proceeding that then the Commission would use to evaluate whether, in fact, routine maintenance has been applied evenly, whether in fact other investments may for some reason trigger the EPS, and more definitions would be useful for the future definition of covered procurement, and also for the Commission to best determine when in the process a filing might happen, for example, you know, should it be 30 days? Should it be 90 days? Before, should there be certain investments that could be filed 30 days after, or 90 days after? I think a retrospective analysis would allow for a better
understanding of how the filing requirement could be
best constructed to both be meaningful to avoid
violations of the EPS and also not too burdensome.
Without that retrospective analysis, I think it could be
difficult -- somewhat difficult -- to say.

MR. PEDERSEN: And that is exactly our concern
about 1, 2 and 3, if you are going to regard it as a
request for setting a foundation for this rulemaking.
If indeed we are going to be looking at the question as
to whether there should be some filing requirement, we
ought to look at the issue as you were just saying, as
to whether there should be a filing requirement and how
it should be carefully de limited to -- I mean, Noah has
admitted, you know, to not get the trivia, to get to the
important stuff. You know, that's what we should be
doing. And we're very concerned about coming in and
about NRDC and Sierra Club coming and saying, "Oh, well,
it wouldn't be appropriate to have a filing requirement
that would get all the trivia, but we want all the
trivia as a foundation for doing the rulemaking." You
know, that's bootstrapping and we shouldn't be doing it.

MR. LONG: Norm, could I respond to that?
Sorry. I don't mean to say we want all the trivia for
the purposes of doing the rulemaking. I think, to the
extent that there are reasonable limitations on -- I
just wanted to make it clear that questions, or points 1, 2, and 3 there, were the information that we were hoping to get for the rulemaking, not necessarily the same as a filing. I think now that that's clearly on the table, the question is, is there a reasonable limit -- to points 1, 2, and 3 -- to what information is reasonably necessary for the rulemaking? Now, I think so far --

MS. VACCARO: Noah, that's not my question. And I appreciate that you clarified, and I think that is important to know that 1 was sort of what you were looking at as a first step to inform the discussion of filing --

MR. LONG: Right.

MS. VACCARO: -- I think we all get that and thank you very much for that clarification. I'm moving way ahead now and saying, let's assume you got the data, you don't have the data, you're making the point absent data, you're suggesting to the Commission that it ought to implement or establish a filing or a reporting requirement. And I think what we're trying to do is figure out the why of it and the what of it and the when of it, and I don't think that's dependent on getting the information right now to questions 1, 2, and 3.

MR. LONG: I think that -- my point is that I
think it is. I think it's very hard to figure out the
timing of the rulemaking, or the perfect limits on the
rule -- sorry, the timing of the reporting requirement,
or the exact limits of the reporting requirement,
without having some information about the nature of the
investments and the nature of the decision making
processes at the various utilities. Without having that
information, other than the couple of examples that
we've heard today, or the couple of examples in the
comments, I think it's hard to craft the perfect
reporting requirement that would match the need for
ability to make clear decisions at a statewide level
that are consistent with the ability to not overburden
the utilities. I think those two things are hanging in
balance, but without better information about the kinds
of decisions that are being made and the timing of those
decisions at the POUs, it's hard to --

CHAIR WEISENMILLER: I think if we were to
launch that sort of investigation with the resources we
have, we would not have an answer in time to deal with
some of the prospective decisions. So I think we have
to look at what we have in hand and figure out how to
make improved steps.

COMMISSIONER PETERMAN: This is Commissioner
Peterman. I'm would probably personally go a little bit
further than that and say that we look at the
information we have at hand and also see what minimum
additional information would be needed to have enough
information, or to think about going forward with any
type of a reporting requirement because I do appreciate
that there might be more information we would need short
of all the information that's been requested.

MR. LONG: What information are you referring to
that you have in hand now?

MR. VESPA: I mean, that's the issue, I mean,
part of our concern in terms of the why are we doing
this, why aren't we reporting, what are we bringing
this, is that the CEC has a statutory duty to enforce
the SB 1368. Nothing is getting reported to the
Commission right now. We've heard things are reported
in different degrees within the context of the POU
process, but that's not the same thing. And so, you
know, you have nothing in hand, and so it's difficult to
craft this.

CHAIR WEISENMILLER: We have the filings in this
proceeding so far and it's not the extensive -- it's
certainly not the information you would have requested,
but we have what we have and we're trying to move
forward.

MR. VESPA: Okay, and in my view, and I
appreciate that, is what we have are a lot of assertions
of this is working, we're totally compliant, and leave
us alone. And it seems to me that, you know, one of the
issues with the way the Regs are is that, you know, all
the discretion points are left with the POUs. I mean,
they decide whether they even feel there's a question to
raise with the CEC about a type of investment, and so --

MR. PEDERSEN: The --

MR. VESPA: -- could I just -- one more point?

You know, and so I think that sort of asks for
additional scrutiny of certain investments.

MR. PEDERSEN: These are public entities, you
know, run by public officials, elected officials, that
are responsible to their electorate. I do not think we
should trivialize the decisions that are made by
publicly owned utilities.

MR. VESPA: I --

MR. PEDERSEN: They understand they are subject
to the law, they follow the law, they intend to follow
the law, and they have been following the law. This law
is being administered, it is being administered by the
POUs.

MR. VESPA: I appreciate that, I was certainly
not trying to trivialize anything, but what we heard
earlier today was a disagreement over whether
investments in environmental control technologies are actually covered, so there are different interpretations of actually what the law would require, which is part of the purpose of this proceeding, to provide additional clarity for that. So, given that there seems to be some differences in how this is interpreted, and it seems to me even within the POU context, different views of what might trigger a procurement, what might trigger a request to the PUC -- the CEC, excuse me -- you know, that's kind of what we're looking for in terms of clarity, so we're all on the same page and there's more transparency.

MS. VACCARO: Maybe that's a perfect segue to our next question. Again, a lot of what we're talking about is very fluid and they go into different topics, but why don't we talk, then, about this issue of whether or not to establish additional criteria for a covered procurement? I mean, I think you just sort of got us there.

MR. LONG: Yeah, so I mean, I think our point is, and you know, in the comments we focused on the recommendation that the CEC get some more information before making that decision, so if there's not going to be a process between here in making that decision on collecting information on the range of potential...
investments, I think we have to sort of make that with what we've heard so far. Today we got some information about we know that there's some very significant potential investments with regard to pollution control, we don't know exactly the plans for each of the plant operators, or owners, or participants for meeting those requirements. And like I said before, there's a whole range of possibilities for compliance from shutting down the plant, to converting to gas, to building very significant new additions to the facilities to meet the pollution control requirements. And in our view some of those would trigger the EPS and some wouldn't. So I think some guidance on that would be useful. I think if the Commission had further information on the kinds of decisions that have been made in the past, it would be also easier to decide whether or not other guidance would be useful, for example, on routine maintenance, if we knew how that decision was being applied across the various POUs, we might be able to determine whether or not additional guidance on routine maintenance was advisable. Without more information on that question, I think it's very hard for me to weigh-in about whether more guidance is necessary on routine maintenance. It seems to me that, at least with regard to the pollution control investments, it's pretty clear that more
guidance is necessary.

MS. BERLIN: This is Susie Berlin. If I may, with all due respect, Commissioners, and the Hearing Officer, I'm having trouble getting my arms around what we're trying to do. Is this about past investments? Is this about our future investments? Is your concern only with, you know, to ensure that our future investments are on track? Or you reviewed the past investments, you did a lot of data requests, you did a lot of stuff, you saw stuff that you think warrant a complaint because of a failure to comply? If we can -- I mean, it just seems like we're all over the place on this discussion. If, in fact, your concern is what's going to happen with these moving forward, very expensive, very extensive control mechanisms that were outlined this morning by the EPA, if that's really your hard and fast concern, then let's just make that the scope and have this discussion in the context of that. But this going back and forth about need to review some of your old ones and be sure -- not all the POUs are going to have the same decision making process. That's just not going to happen. They're all applying the same standard, they're all, you know, looking at the contracts, but every entity has different decision making processes, and you can't say we want one single uniform process to apply in
that respect. We can have a single standard. But I just feel like we're all over the place, the past, the future, the present, that we need to focus our --

COMMISSIONER PETERMAN: Before you answer that, this is Commissioner Peterman, would the POUs be able to provide what their respective decision making processes are, acknowledging that they are different?

MS. BERLIN: Yeah. So anyhow, I just believe that this whole discussion --

MR. PEDERMEN: That was actually in response to one of the questions --

MS. BERLIN: -- if we could fine tune this discussion into what exactly the issue is that we're dealing with right here and now, I believe that we would all make more progress. It feels like we're spinning on that little gerbil thing right now.

MR. LONG: So, you know, our interest -- and I don't think this is going to be particularly satisfying for you, Susie, so I apologize in advance, but I think our interest is making sure that there's full consistent application and compliance with the EPS across all of the POUs that are subject to it, so the highest priority, if the Commission is interested in my prioritization of it, the highest priority would be the big future investments, the big investments that are
coming up next. But that's not to say that, whether or not that application has been consistent over the last five years isn't important, it seems to me that that's relevant and important. And whether or not it's consistently applied with regard to other investments, other than the big new pollution control requirement investments, is also important. You know, for example, in our reply comments we cited the fact that we understand that there's been a significant outage potentially from an explosion at IPP that's leading to a real -- to a long term outage there, that's going to require some level of new investment at that facility, it may be happening already. We don't know whether -- what the nature of those investments are, whether they potentially should be considered under the EPS or not, so to ensure that when situations like that arise, going forward, there's consistent application of the EPS, I would say that is sort of priority number two, below ensuring that there's really clear and consistent application with regard to the pollution control investments.

MR. HOWARD: If I could, Randy Howard, LADWP. Noah, just because you raise the issue, I'm going to have to respond to it, that on IPP, let's take that as the example. Again, it's a contract with a termination
date for all the California participants. It's the
facilities owned by all the Utah participants, there's
36 participants or so that own it, we don't own it. We
have a contract, take or pay, by the output. So they
had a failure in the turbine that has caused that unit
to be down since January, it will be brought back up
sometime May or June that has required a repair. But
they're just repairing it to bring it back to operation.
And I'm just so confused as to what you're saying is a
new investment. This -- it had a failure to a
mechanical part, an electrical part, most of that will
be claimed through insurance anyhow, and that will be
covered under warranty, so it's not necessarily a
financial impact. But what would you expect the CEC to
do about that? Do you think they're going to make a
decision -- a financial decision impacting my ratepayers
over that? I'm going to bring it somehow before them
and say, "You know, the unit is down," and it's a
decision to repair it or not? It's not really our
decision, it's Utah's decision, they own the facility,
it's not L.A.'s decision to bring that back. So what
would you expect the CEC is going to do with that? I'm
just --

MR. LONG: Can I respond?

MR. HOWARD: Yeah, go ahead.
MR. LONG: Sure. So two points, one is, you know, I think your contention is that because of the participant agreement with regard to IPP, it sounds like you're saying that any investment in that facility up until the contract end date wouldn't -- the EPS would not apply. And I think that that's not a contention that we agree with, so I think that's number one.

Number two is, you know, what we're asking for is -- and I'm really not trying to imply that whatever is happening right now is in violation of the EPS, I don't know what's happening, and I appreciate the information on it -- all we're saying is it would be useful to have a statewide transparent forum for information of that sort, to say, you know, there's been an outage, it's going to be covered by insurance, here's the nature of it, here's why the EPS doesn't apply, and so stakeholders like ourselves and the CEC can ensure that it's being consistently applied throughout the state.

MS. VACCARO: But doesn't this get us back, I guess, to Ms. Berlin's questions which were, I mean, and we've heard it now a few times, so I think it's sort of, is this about a mother, or father, may I? Or is it just about making information known, truly transparency which is just a reporting function? And if it's about reporting, then what's the problem with ensuring that
the Energy Commission has that particular information
that you were just referring to about --

MR. HOWARD: And that's public information, it's
not withheld information. I mean, the market knows
because you have a major generating station in the
Western Grid that has an outage. I mean, so it's very
common knowledge, it's not unknown knowledge, it's
posted for any of the utility folks, I mean, it's well
known and --

MS. VACCARO: Yet we're hearing that there's --
and I appreciate that, but we're hearing that somehow or
another that's not fulfilling this desire to have a
statewide forum. I guess I'm not --

MR. HOWARD: I think there continues to be some
clear confusion as to what SB 1368 authorizes or asks
the Energy Commission to do vs. the CPUC. The CPUC
obviously carries a very different role of the
utilities, I mean, they review the ratemaking, they
review the procurement plans, they have a lot of
additional elements that are not provided to the Energy
Commission, and so to somehow imply that the Energy
Commission should take on any of that responsibility, we
do have governing authorities that allow that
jurisdiction -- in L.A.'s case, I mean, we've been doing
it well over 100 years. And so this statute, 1368,
didn't transfer any of that authority from my reading,
and I'm not an attorney, but what it clearly says is for
the CEC to do a couple things, and to set a standard,
set the criteria under which you're going to evaluate
us, but it doesn't say, "Get involved in every decision,
every process for the operation of the utility." I
mean, again, I was sitting in this room with the
Commissioners as we walked through this process and,
clearly, nobody wanted to get involved in the
operational aspects of the utility and the needs of the
utility, and the statute itself clearly says, you know,
there is criteria you have to consider the reliability
of the Grid and the cost to the ratepayers in any of
those decisions, and the decision was made that for the
reliability of the Grid, the operational folks needed to
do the expenditures to bring those units up, keep those
units operation. It was never expected to bring any of
that back to the Commission.

MS. VACCARO: Thank you. I guess that just
brings me back to the question, though, that if all
we're talking about is reporting and making information
known, then what is the problem with that? And --

MR. PEDERSEN: Well, that was our perspective,
that's how we were taking those three points, we were
taking it from the standpoint of being a prospective --
leading to a discussion of a prospective reporting burden --

MS. VACCARO: Yes.

MR. PEDERSEN: -- that would not involve reporting of the past, it's a -- this is a rulemaking and rulemakings are prospective, in effect. So for beginners, we would be forward looking.

MS. VACCARO: Of course.

MR. PEDERSEN: And I think we've had NRDC and Sierra Club admit that, you know, we don't want to get into the underbrush, you know, we were interested in the more important investments, however we define more important, and there's a dollar way of doing it and there's another way of doing it that, to my mind, is more operational, has to do with whether there is a legitimate question as to whether it constitutes routine maintenance. And what I was suggesting is we go down this list and analyze this list. I understand what Noah was saying, what he's saying is, well, he generated this list as being his list of what he would like to see all of us produce for this proceeding, that somehow we would wade through it, and then move on to whatever the next stage would be. But I'm using this list as a way to get at, okay, how would we develop a reporting burden, a reporting requirement? And it would be, as I'm seeing
it, a reporting requirement. It is not an advice
letter, it is not an application, you know, and for a
very important reason and it goes back to what Randy was
saying, there are entities that are assigned the primary
responsibility of determining a POU's compliance with
the Regulation, and that is the Boards of the Publicly-
Owned Utilities. They are the ones that are charged in
the first instance with making sure that the POU
complies with the Regulation. And we believe that it
has been done across the board to date. So that's
another reason why we're focused prospectively only. So
if we're going to start talking about a reporting
burden, we think, Kourtney, you're on the right track,
let's look at the alternatives for what might be
reported, and start to identify what is agreed upon as
being trivial or not necessary, what is perhaps on the
flip side agreed upon as being significant.

MS. VACCARO: Okay. So you've got the floor, so
let's do that.

MR. PEDERSEN: Okay, number one, all past and
planned investments, well, I would just start right
there and say this is a rulemaking proceeding,
rulemakings are in their nature prospective, in effect,
so we are not going to have a reporting of past
investments. And it wouldn't be planned investments, it
would be -- that implies -- pardon?

MR. MORROW: Current investments, but not planned.

MR. PEDERSEN: Yes. You know, we have plans that go far into the future. I think we're talking about a reporting of imminent investments of some size, and George is going to make an amendment to that, I think.

MR. MORROW: No, I was having a sidebar. You know, the word "planned" is bothersome to me. I only talk because I have to justify my travel expenses, so if I don't say anything and then I go home -- see, I wanted to get that in there. The word "planned" is tough because, you know, until it's real, until it's tangible, until it's something that is in front of us, and so I like the word "current" a little more, you know, things that we're actually looking -- we've dealt with or we're dealing with -- but "planned," you know, there's a horizon and I don't think we can go out very far sometimes in that horizon.

The other comment I was going to make, and this might be my chance, is there seems to be again a lot of inferences that the CEC has done something wrong, or has not done their job, I heard that very clearly, I heard that very clearly, I'm sorry if I drew the wrong
conclusion, but you heard Randy say it, and I said it in my opening comments, we think this has been handled appropriately, the CEC has taken the law and they've implemented regulations, they've made definitions, they've got a process, the terms are there, and I don't know that anything, again, that there is a problem. And so, you know, maybe the bigger question is, is there a problem. And I like the way things have been going and -- thank you.

MR. LONG: And if I can just respond to that quickly. You know, we're asking for a change in the rules, so we don't want to imply anything more than that we think a change in the rules would be appropriate.

MR. PEDERSEN: Okay, now then when you talk about -- once you've eliminated everything we've done back to 2007, and we're talking about a rule that's going to be prospective, in effect, then you have to ask the question, well, are we asking for a POU to report on an investment after it's been made, or before? And frankly, you get a lot more precision if you make it afterwards and also, you know, again, the way the statute was structured is it's the POUs that are charged with responsibility for complying with the statute; the way the Regulation is structured, the POUs are charged with complying with the regulation. And so what you
would do is you would tell the POUs to comply with the Regulation, and they would go out and make a decision that, "Oh, this is a routine investment," they would make it and they would report it to you. And so it would not be in the nature of an advice letter where, you know, like when SoCal Gas or Southern California Edison Company comes in and asks if they can do something prospectively in the future, would not be in the nature of a prospective request for permission, it would be reporting.

MR. LONG: If I can respond to that quickly --

MS. VACCARO: Just -- I've been informed by the Public Advisor that I've been derelict in not ensuring that everyone is identifying themselves for the record, so to those of you listening in, I apologize and we will now all, including myself, be much better. This is Kourtney Vaccaro. Mr. Long, please go head.

MR. LONG: Sure. Noah Long, NRDC. On that last point, first of all, I think the Regulation interpreting the statute currently sets about that structure that you've just indicated, Norm, but it's not my view that that's required by the statute, and I think the statute says quite clearly that enforcement and compliance is the responsibility of the Energy Commission. Now, to the extent that they decide -- the Energy Commission
decides -- to have a prospective or retrospective reporting requirement in order to ensure compliance, that's a separate issue. And I would just add, to the extent that any reporting requirement -- and the current regulations are sort of one end of that spectrum, the current regulations essentially say "here's what would count, you decide if a particular investment is covered or not, let us know if you think it is, and then we'll take a look at it. If you don't think it is, then we don't need to see it and, once it's done, we may never see it within the Energy Commission." Now, a retrospective reporting requirement that you're indicating would take it one step closer so that at least the Energy Commission would see after the decision has been made whether or not an investment was deemed to be a covered procurement or not, and I think that shifts -- that still, I should say, leaves considerable risk that the POUs will interpret the Regulations or the statute differently, but to the extent that there is a different interpretation of the Regulations, or the statute, the Energy Commission would at least know right away in the sense that -- and a stakeholder would be able to see that afterwards. So that leaves some level, you know, some level of risk for inconsistency throughout the POUs.
Now, a prospective reporting requirement would provide for the least risk because each of the publicly-owned utilities would ensure in advance of its decision making process that it would have the Energy Commission's agreement that it was interpreting the statute in a consistent manner. And we see some benefits to that, particularly in light of these very significant new investments that are coming up. And I would just say, you know, the Energy Commission doesn't have to apply the same reporting standards to all investments, it may be that many investments -- they ask for retrospective reporting, even for the majority of investments, but they might set a certain threshold that says for certain levels of investment, we want advance notice to ensure consistent application of the rule.

And I think that would be very clearly within their responsibility and in their authority under the statute -- although it would be separate from the reporting requirement as it stands now.

MS. BERLIN: But I just want to interject real quick here that we --

MS. VACCARO: Please introduce yourself.

MS. BERLIN: Okay, sorry, Susie Berlin. We had that discussion back in 2007 about the prospective reporting and whatnot, and I don't want to go back to
the transcripts, but I distinctly remember this debate and part of the reason why there is no prospective reporting is because the statute itself very clearly says, for example, on the part of the IOUs that the PUC has to approve everything, but there's no corresponding application with regard to the CEC's role over the POUs. So the whole notion was that, if POUs wanted certainty -- because there were some that said they wanted certainty in the case that there was any ambiguities, and they felt that there were ambiguities -- 2907 was born and that's where that certainty comes from. So I just -- I know we're talking about changing it and that's what your whole premise is, but I was just saying that this is not something that is coming up for the first time, that issue was debated back and forth, and the Regulation itself draws a distinction between how those issues are covered.

MR. HOWARD: If I could, Randy Howard, LADWP. During the original EPS rulemaking in 2007, LADWP and a number of the parties that are around the table today expressed concerns that routine maintenance includes necessary and beneficial expenditures to ensure continued safe and reliable plant performance and operation, and that such expenditures must be allowed to go forward under the EPS. The CEC did agree and
responded -- and this is their quote -- "The Energy Commission understands LADWP's concern that certain maintenance activities not be precluded by these Regulations, therefore under Section 2901(J)(iv)(a) has been modified in the 15-day language to make explicit that routine maintenance does not trigger the EPS. Instead of having to apply for an exemption for maintenance activities that would otherwise trigger Energy Commission oversight, these activities are exempted outright. This should also address any due process concerns, as the POUs do not have to wait for an exemption to be processed." We wouldn't have that concern of waiting for the process. Further, the CEC recognized that the Legislature's intent was to prevent backsliding and a locking into new long term commitments in high emitting resources in advance of the enforceable greenhouse gas emission cap under AB 32. We all knew AB 32 was coming. The Legislature recognized that establishing the Regulations to achieve the AB 32 statewide 2020 emission cap would take several years, so the CEC provided additional clarification to us. The record is replete with comments from the POUs that, if they are not allowed to perform routine maintenance on their facilities in both reliability and their ability to comply with environmental laws. So we clearly had
this discussion on environmental laws would degrade, SB 1368, and this is the quote also from the CEC, the Commission at the time, "SB 1368 is not intended to shut down currently operating power plants. It's focus is ensuring that substantial investments are not made that would lead to further cost when AB 32 or a similar program establishing a greenhouse gas emission limit is implemented. Routine maintenance may include replacing parts when they wear out. The POUs are not prohibited from maintaining the operation of their power plants simply because there might be an incidental increase in capacity or investments that were necessary." And these were the quotes and the activity at the time.

So we clearly had this discussion, we had it in the context of the legislative hearings, the legislative intent at the time, and the people that were in the room at the time were involved in the process. And so, to come back and to try to reopen it as if -- and make some assertions -- assertions are being made that somehow we're doing something incorrectly, or compromising the Emission Performance Standard. And I don't think you have proven that point. I do not that think we have done it --

MR. LONG: You haven't intended to allege that point, just to be clear.
MR. HOWARD: That seems to be the purpose of a reopening. So I just wanted to read the routine maintenance, how it came about, what was expected at the time from the Commissioners that were seated at the time, and the understanding of the legislative intent. And so it was meant to keep the plants operating. There was never an issue as to an investment that would be there to keep -- so I have a failure on a piece of equipment at IPP, or IPP has that, it was never intended to question whether to put the money back into keep that unit operational and that's the point I just really wanted to make.

MS. VACCARO: I think -- and thank you for that -- I think what that does is that's the type of comment that could take us in probably several different directions, and I think -- I hate to sound schoolmarmish -- but I really would like us to make sure that we have finished up with the topic of reporting. It seems as though what I've heard so far is prospective reporting, reporting, not asking for permission, that the reporting would happen after the fact, but there needs to be some refinement of what type of investments. I'm hearing not planned investment, but things that you would deem current, although I haven't heard a definition of what current means, or understood any distinction between
planned vs. current from the POU point of view. But I think we need to get that worked out and end it, and if you want to talk about definitions, definitional changes, we can certainly do that, but I think we really still are on reporting.

MR. PEDERSEN: Kourtney? Norm Pedersen for SCPPA San Juan Participants. Let me suggest that maybe we take a little bit different approach. You know, we started out this afternoon talking about the three points that you read from Noah's opening comment, and that covers a broad array of information we tried to winnow down, and then, just now, we're talking about reporting and all the different types of reporting that you might have, and as you're last statement indicated, there's just a myriad of different ways that reporting can be done.

MS. VACCARO: Yes.

MR. PEDERSEN: Instead of trying to start from a broad front and whittle down, how about starting out with what Noah has identified as being most important and go from there, see how much more we really want to get into? You know, Noah indicated that their primary focus is on the pollution control equipment, and we understand that, I mean, we had a robust discussion this morning. Maybe we could start out with what's most...
important from NRDC and Sierra Club standpoint, and then
see to what extent there's really an interest in what
goes on day to day or, you know, Steve Homer's 100
investments a year at San Juan, I doubt that the vast
majority of those investments are going to be of any
interest. But the pollution control equipment is. I'm
wondering, what would be -- we do have Section 2907 that
is already in the Regulation and I think that we have,
through Matt's comments and the colloquy we had this
morning, identified the fact that that is one instance
where, you know, you can raise a question. And Section
2907 was put in the Regulation and, yes, I was involved,
too, back in 2007 when we were putting the EPS
Regulation together, and there was a lot of talk about
Section 2907 and about the role it could play. You
know, what if we were to tee that issue up, given that
it seems to be such a focal point, occupied almost our
entire morning, through a 2907 Request for Evaluation?
How much further, I guess the question I have is, would
we have to go from that? But I'm just trying to think
of a way to resolve this without going through this
broad front of material that was requested in points 1
through 3 on page 2 of NRDC Opening Comment, and without
going through all the different opportunities there are,
or options there are for reporting.
MR. VESPA: This is Matt Vespa from Sierra Club.

Just to touch on the reporting and then move on, you know, we keep -- the three things required so burdensome, and again, that was intended when we wrote that to better inform our decision making because right now we have submissions with really not a lot of facts to them, and it is our view that getting that information would help this proceeding. That was not intended to mean you have to report this going forward. What would be helpful, I think, on our end in terms of reporting and making a better decision in light of the fact that we're not getting any of this background information as part of this proceeding, or it's looking that way, is to better understand the different IOUs' processes -- POU processes -- I've been to the PUC a lot more -- POU processes for what becomes public. I mean, we heard earlier in some cases it's discretionary, what gets to that level, and what doesn't, what gets reported anyway, and that might kind of get a little bit more at some of these burdens for providing more reporting to the CEC. With regard to this issue of environmental compliance, you know, I think one of the issues that we have right now is that, again, it is the way the Regulations are structured, it is up to the discretion of the POU to seek advice from
the CEC, and it sounded like there were very different views on whether these types of environmental investments were actually covered. And I think it would be in everyone's benefit as part of this proceeding, in terms of question -- moving to question 2 -- you know, what types of investments are covered procurements to squarely address whether these specific things, SCRs and so forth, are part of that, rather than leave it to the sort of case-by-case, but POU choosing to come to the CEC for that.

MR. PEDERSEN: This is Norman Pedersen for San Juan Participants. Actually, I think this morning Steve went through the decision making process that is used at SCPPA with regard to SCPPA's participation, San Juan, and Steve can certainly do a recap of that if he's willing.

MS. VACCARO: I'm not sure, you know, this is Kourtney Vaccaro, I think we've had actually maybe about three suggestions on the table, in addition to mine, for how we move forward, and I'm not wedded to my approach, I mean, the point here is for the dialogue. But I will submit this, this is now a matter that is bigger than the concerns raised just by NRDC and Sierra Club, and while they have their priority items as they've articulated, I think we've now engaged and embarked upon
a public process where I think we need to know more and
to understand probably beyond just what their primary
concerns are. I think what I would like to do is pick
up the thread again of let's get to the covered
procurement issue because I'm not so sure based on what
we've heard that we can really put a finer point on the
reporting issue, but I think what we are more aware of
now are what some of the more detailed issues are
relating to reporting, and we have clarification on what
you did and didn't mean, NRDC and Sierra Club, by those
three points. I think let's move past them because we
will spend the next few hours talking about nothing but
that, and that's not going to move us forward. I think
we should move forward to getting a better
understanding, then, of whether or not, you know,
there's benefit to modifying the criteria for covered
procurement -- notwithstanding all of the discussions
that were had in 2007 because I believe all of us
sitting around the table, whether or not we were here at
that time, have had the benefit in preparing of looking
at the transcripts, looking at the final rules,
understanding a lot of the context. But now we're in
2012 and we are presented with a situation where we're
told there's reason for you maybe to go back and
reevaluate something. Maybe there is no reason, but we
need to hear it and understand it not just because it was put in a petition, and we need to understand why that's not such a good idea.

MR. PEDERSEN: I think we can -- Norman Pedersen, SCPPA San Juan Participants -- I think we can dispense with Question 2 pretty easily, the real question has to do with 3. Question 2 is about the definition of covered procurement. Actually, what the statute deals with, it addresses long term financial investments, and the Commission said, "Okay, long term financial commitments, what are those?" And it said, "Well, it could be -- we'll call it covered procurement, and what's the field that would be covered by covered procurement? Either a new ownership investment or a new or renewed contractual commitment." And that occupies the field. I mean, that is all the kinds of covered procurement that you could have. Either you're going to do what L.A. has with its investment, with its contract with IPP, where it has contracted for the receipt of power, or you're in a situation where you actually have an ownership investment, and that's what you have with the San Juan Participants. So I don't think it's a question about the definition of covered procurement.

In defining covered procurement, the Commission identified these two types of ways in which POU's could
get involved in base load facilities and those are basically the two ways to do it. But what's really of interest is question 3, where we get into new -- the definition of new ownership investment. Nobody has much question about what a contractual commitment is, it seems, but there's a lot of question about new ownership investment and that's where we spent all our time back in 2007, and that's where you get into the determination as to whether you have routine maintenance on the one hand, or investment that is intended to extend the life by five years or more, increase the rate of capacity, or switch a plant from peak to base load. So what I suggest we do is skip past two because it really is kind of a trivial definition --

MS. VACCARO: So -- this is Kourtney Vaccaro -- let's do that, let's skip past two, let's get to three. COMMISSIONER PETERMAN: Does everyone else agree with that, though? MS. VACCARO: Well, I think to get the conversation moving again on a topic where we're not churning, I feel like that's where we are right now, is that we're churning a little. Perhaps you disagree and that's fine, I'll defer. I feel like we need to move it forward.

COMMISSIONER PETERMAN: I just wanted to get the
quick two-word response of LADWP's representative here
and NRCD and Sierra Club agree with the assertion that
two was a trivial matter before we move on, since you
did pose the question, and we've only heard from one
respondent.

MR. LONG: If I can, Noah Long from NRDC, I
think our view is that I wouldn't say that two is
trivial, but I think I agree with Norm on this point,
that the definitions are linked here, covered
procurement implies new ownership investment, and both
of those are intended to shed light on new long term
financial commitment, and I think I would just add that,
you know, this question doesn't ask about new long term
financial commitment, which is the term used in the
statute, and I think we should discuss that, as well.

MR. PEDERSEN: Covered procurement was what --
is the long term financial commitment. What the
Commission did is it said, "Okay, how are we going to do
this? What is proscribed long term financial
commitments in these base load, noncompliant base load
plants? Well, okay, but we'll call the long term
financial commitments are the covered procurements,
okay? And there are two types, and you can do it
through a contract which is what L.A. has with IPP, or
you could do it through ownership, which is what the San
Juan Participants have in San Juan, or what I guess L.A. has with Navaho.

MR. LONG: Yeah, I agree, Norm -- sorry, Noah Long again.

MR. PEDERSEN: That kind of occupies the field. So the next question is, okay, nobody seems to be talking about the contractual commitments, but there is a lot of talk about new ownership investment and, you know, this dichotomy we seem to have between routine maintenance on the one hand, and the proscribed investments on the other. And so I would propose we move to number 3 and talk about routine maintenance and I think that's the issue --

MR. LONG: If I can, Noah Long again from NRDC. I think I agree with that. My only point was that I think we shouldn't lose sight of the idea that both, in D -- in the Definitions section, Covered Procurements, and J, New Ownership Investment, were intended -- and you just said this, I just want to point it out again, that both of those were intended to shed light upon the meaning of new long term financial commitments, so I think we should keep the statutory term in mind as we're discussing the definition of those terms.

COMMISSIONER PETERMAN: Thank you, Mr. Chair, for that indulgence.
MS. BERLIN: MSR also agrees with that --

COMMISSIONER PETERMAN: And --

MS. BERLIN: -- MSR also agrees with moving to
number 3.

COMMISSIONER PETERMAN: Thank you, Ms. Vaccaro

-- Commissioner Peterman, thank you for your suggestion
to move to number 3. I will now follow it at your
leadership, thank you.

MS. VACCARO: Well, with that!

MR. KNOX: This is Bill Knox from the ARB and I
think one of the things to point out here is that the
investments that would be made pursuant to the new U.S.
EPA Regulations, I don't see how those could be
characterized as routine maintenance, so those are
things that may be covered procurements, and I think
it's been brought up that there are various ways in
which you could comply with the U.S. EPA Regulations,
and some of them might be covered procurements and some
of them might not be, and so that's part of the crux of
the issue is to identify --

MR. HOWARD: If I might ask a few questions
here?

MS. VACCARO: If you could identify yourself?

MR. HOWARD: I'm quite concerned -- Randy
Howard, LADWP. When the utilities make a substantial
investment in these plants, we borrow money, issue bonds as public entities, and we have a debt to pay to the bond holders, we do that based on the existing laws and regulations at the time. And we comply with everything that is available at the time, everything we know about.

So ten years into the operations of a plant, an EPA comes up with a new rule or law, I am very astounded on how you think we could go back and say, "This somehow extends the life," or, "This is a new covered procurement," in a way that would jeopardize or risk the financing and all of those that have come together to put a power plant in place. Basically if we had that thought process cover all of our facilities, we would have no investors at all that would be willing to put their funds into the operations of our utilities. I mean, we can't -- we can't build something and jeopardize the risk of the life because this plant has a life expectancy and that's what we need to get to is talk about what is a life expectancy of a power plant because, if there is a regulatory change that occurs, and you might have to make an investment to comply with that regulation, you shouldn't jeopardize the underlying investment and the risk to the bond holders and others that have invested. I mean, otherwise we would never have anybody come to the table to build a wind farm, a
solar park, nothing. So I'm really confused as to why you think that type of activity would be considered covered, and I just need you to explain that a little bit more.

MR. KNOX: There are two things. First of all, you're not claiming that that would be a routine maintenance, right? Complying with a new environmental law wouldn't be routine maintenance, right? I don't see how it could be construed as a routine maintenance. But then, second, I also mentioned that there may be different ways of complying with Federal Regulation, some that would extend the life of the facility, and some that would not. And so that some paths to compliance with the new Federal Regulation might be covered procurement, while other paths might not, but you'd have to look at the different investment paths.

MS. BERLIN: You would have to look at -- this is Susie Berlin -- and I agree that you would have to look at your alternatives when making any decision, but you also need to look at the statutory language and the regulation as defined, which says, "Is this investment designed and intended to extend the life of the plant?" And when we're talking about life of the plant in the context of the Regulation that we're all operating under right now, notwithstanding some possible future changes,
we're talking about the life of the plant as operational facility, and that's how that term was used at the time, as I mentioned earlier, that's why we have this whole notion of stranded assets, and if you can't operate them anymore. So we can't be saying that there are all these different kinds of lives of the plant. I bought a car, you know, this car is going to run 15 years, and whether or not I pay my vehicle registration fee every year, that car is still supposed to run 15 years, for example. And I think that perhaps we're looking at this from backwards, maybe we need to start and say, again, because we are talking about three finite facilities, what is the life of that facility? Is this facility supposed to go to 2020, or is this facility, the life of the plant, supposed to go to 2050? Because that is going to make a difference because, then, when you're talking about design and intended to extend the life, I mean, first of all, I don't believe that any of these qualify under the design and intended to extend, but let's just say that that's what they are for five years, right? So if the plant is supposed to go to 2020, and this is going to make the plant last until 2025, then it may be more of an issue in the immediate future, but if the plant is supposed to go to 2050 and this is going to make it go to 2055, are we really -- I mean, we need to
start with what is the life of the facility at issue
before you can determine whether or not it's extending
the life.

    MR. LONG: Can I respond to that? I'd like to
respond quickly, so thank you, Noah Long from NRDC,
respond quickly to Randy's comment if I can, first,
which is I think the point that you were making really
goes to a separate part of the Regulation, it goes to --
I'm forgetting the number now -- 2912, which is
exemptions for financial commitments or other
reliability concerns, which I think is a separate issue
as to whether or not it's either a covered procurement
or a new ownership investment. So, setting that
evaluation aside, the question that Susie is raising
here is, I think, was raised well from the gentleman
from SCPPA earlier that these plants don't -- it's very
hard to know exactly what the life is. The more you put
money and love and time into them, and investments into
them, the longer they'll run. Under the new operational
requirements from the EPA, San Juan has to shut down in
2016, its permit to operate ends in 2016 unless it meets
these new operational requirements. So the investments
that would be made to extend the life beyond 2016 are at
issue here and it seems to me that that falls squarely
within the context of new ownership investment.
MR. PEDERSEN: And that takes us to your question 3.

MS. BERLIN: Well, actually, I'd like to make a factual issue here. The life of a plant is something that doesn't end in 2016, the life of that plant does not end in 2016, not as it was determined when they reviewed putting together this facility, and not when it was determined when, you know, like various people look at how long is this plant going to be able to operate, not when it was reviewed in the context of selling bonds to finance the project.

MR. MORROW: And I don't believe the operating permit goes away in 2016 either, even though a new statutory requirement for meeting NOx is imposed on the plant, there's not a permit issue to my knowledge.

MR. LONG: Yeah, I mean, this is Noah Long again from NRDC, sorry, it may be useful to do more comments on this specific issue. It seems like this is a key issue going forward and one that there is some disagreement on. But I'll just -- I'll just point out the terminology may vary, but the point is that the legal operational requirements, as the facility exists today, end in 2016, and new operational requirements are set forth --

MR. MORROW: The permit expires and clearly a
permit does not expire.

MR. LONG: There is a permit change.

MR. VESPA: This is Matt Vespa from Sierra Club and, you know, just echoing those comments, I think the fact that we're having this debate over this term and what it means and how it is applied, you know, underscores the need for additional refinement of the definition. And, I mean, I think we're just going to agree to disagree at this juncture, it seems like something we would brief and get a Commission decision on, but it is so pivotal in our view about how this statute gets implemented. I mean, we could argue all day about whether it's covered or not, but --

MR. LONG: And if I can, I just want to address one more issue on that, separate from -- sorry, Noah Long from NRDC, sorry, I know I'm going to pick that up at some point -- going back to the issue that Randy raised a few moments ago, I think the existing definition under new ownership investment under -- sorry, (J)(iv)(a) here -- in our view, both new long term financial commitments, which is the statutory term, and new ownership investments, the regulatory term, contemplate investments at plants where, under a variety of ownership and partnership arrangements. So that is to say all three of these plants are potentially
implicated with investments that could happen today or tomorrow, or far before the end of the contract, and I just want to give an example that might help that. So, you know, if a meteor came and hit IPP, wiping it off the face of the planet, and the participants in that plant decided to re-build that plant from scratch and, you know, reconnect the transmission line in order to re-provide power to California and the Utah participants, it seems to me that that would pretty plainly not be routine maintenance, it would pretty plainly be the new ownership investment and pretty new long term financial commitment, you're rebuilding an entire power plant.

So I think, you know, that may be an extreme example, but the point is that there are things between here and the end of the contract date that are contemplated both in the statute and in the regulations that would implicate new long term financial commitments or new ownership investments between here and the end of that contract date.

MR. HOWARD: If I could, Randy Howard, LADWP, and my last comments were related to a representative from ARB that seemed to indicate that requirements that were issued, regulatory or environmental requirements, could somehow be a covered procurement, and I'm still
struggling with that concept, but, Noah, I'm going to go
to your point, and again I have to go back to what took
place a little bit at the time. And the Legislature
clearly, when it defined long term financial commitment,
its application was to new and renewed contracts, not to
existing contracts, they made that very clear. Had the
Legislature felt it prudent to expand the EPS beyond the
new and renewed power contracts, it would have included
that, and they chose not to. They knew very clearly at
the time LADWP and some of the Southern California
participants were involved in a contract in Utah. At
the time, NRDC was very active with us in these
discussions and the Union of Concerned Scientists
jointly recommended that the definition for covered
procurement be clarified such that the existing
contractual obligations through joint ownerships not be
included. So NRDC clearly during the proceedings
indicated that existing contractual obligations should
not be included. So what you're proposing today is
counter to what your predecessors had argued in this
proceeding in 2007.

MR. LONG: First of all, I mean, I think it's
useful -- sorry, Noah Long, NRDC -- so I think it's
useful to go back through the whole record and, you
know, if you're referring to a particular part of the
statute that indicates that existing contracts are not implicated, I'd like to see exactly where in the statute that is, I read the statute differently. Existing requirements under existing contracts, the meaning of that, changes under the circumstances. At the time, new operational requirements under the existing contracts weren't contemplated. I think that the circumstance of change is why we're -- one of the principal reasons we're bringing this -- we've brought this petition and we've asked for this rulemaking.

MR. HOWARD: So if I were to go to your meteor example -- Randy Howard, LADWP -- if I were to go to your meteor example, when the meteor hits IPP and there's no power flowing, I guess you have to look at the difference because, under a contract, do these Southern California participants carry a financial burden related to that meteor hitting? Is it the obligation of the Southern California participants that are under contract to rebuild that plant? Or is it the obligation of the owners of that plant? And so there's a very different question on the table, is for those that have a contract to take the output and pay for the output when they receive the output vs. if that plant had to be rebuilt, is it the obligation of those participants to do so? And I think you're mixing apples
and oranges.

MR. VESPA: This is Matt Vespa for Sierra Club. I just go back to the fact that there's a strong disagreement on whether this is covered, or perceived as covered. In our view, the Statement of Reasons supports our view. I think it's something we need a Commission decision on. I also think, you know, this may ultimately inform the reporting requirements, as well. I mean, I think this is really the crux of what we're getting at in a lot of ways, is are these types of investments actually -- do they fall within the statute, and I guess I don't see the utility in continuing to argue this orally here.

MR. PEDERSEN: But we are getting down -- Norman Pedersen for SCPPA -- we are getting down to what I think was probably the intent of having this workshop, to start to try to narrow down what exactly people's concerns are. And again, I'll go back to the fact that we're on question 3 and, you know, question 3 talks about whether we need to refine the meaning of terms used in the definition of new ownership investment and, again, new ownership investment is just one of the two kinds of covered procurements you can have, okay? And the two terms that came up were -- and this is in question 3 -- designed and intended to extend the life
of one or more generation units by five years or more.
And then the other term was routine maintenance. Now,
Bill, you talked about routine maintenance, you said,
well, these might not be routine maintenance and you're
right. Most of what we do, almost everything we do, is
clearly routine maintenance at these plants. In the
FSOR, the Commission gave us a guide to how to interpret
the term "routine maintenance," they said a term is to
be taken literally, the term is to be given the meaning
as generally understood elsewhere, we were told how to
understand routine maintenance. And Steve Homer
explained this morning how we deal with routine
maintenance. Okay, but then the way the Regulation is
structured, okay, it's -- if it's routine maintenance,
it's okay, it could proceed. But then if it's going to
be proscribed, it has to fall into one of three buckets,
okay, one is increase the rate of capacity. Another one
is be designed and intended to extend the life of one or
more generating units by five years or more. Another is
convert a peak load plant to a base load plant, and we
really aren't talking about that at all here.

It seems like the point of disagreement that we
have come to with regard to the SCRs is over the term
"design" and "intended to extend the life of one or more
generating units by five more years." Does the
installation of the SCRs fall within that? Or not fall within that? You're right, Bill, we're not saying it's routine maintenance; the question is whether it falls into that bucket of proscribed investment.

MR. MORROW: It wasn't our intent to design and install the SCRs in order to extend the life of these plants by five years or more, the intent is to comply with Federal Regulations and to be a good citizen and improve the environmental performance of those units, but we didn't go forth to design and extend the life. You know, I mentioned the first time I had some statements here that I've been involved in a number of power plants over the years and we make life extension decisions from time to time, it's actually a process and we say, okay, you know, this plant has sort of met its typical utility, useful life -- I'll just grab a number -- on the order of 50 years is typical for these assets, and we say, "Hey, you know, do we want to get another 10 years, or another 20 years?" And if we do, we say, "Okay, what do we need to do to ensure that it operates reliably and efficiently and so forth for another 10 or 20 years?" We look at the package of investments we will have to make and we make a conscious decision, so clearly at that point we would have intended and designed a life extension program to keep a unit...
operating beyond what would have been a typical 50-year
or so utility life. Here, none of that is going on. I
don't remember ever saying, "Hey, we could get a little
more life out of San Juan...," and I'm sure that goes for
some of the other projects we're talking about, "...if we
do A, B, and C." That's not kind of what's going on.
The environmental upgrades are to comply with Federal
Regulations, they, to be honest, were not our idea.
Thank you.

MR. PEDERSEN: And the POUs tend to agree with
what George said, but --

MR. MORROW: Oh, George Morrow!

MR. PEDERSEN: -- I think at least we agree that
-- Norman Pedersen --

MS. VACCARO: We have two speaking at once, but
we had our speaker identifying himself after the fact,
so let's have him do that --

MR. PEDERSEN: Norman Pedersen for SCPPA San
Juan Participants. I think, and I guess I look over at
Noah, I think we have probably crystallized a key issue
in this proceeding, and I don't know if there are other
issues, but it seems that that is a key issue that
brings folks to be sitting around this horseshoe.

MR. LONG: Thank you, Norm. Noah Long, NRDC. I
think, yeah, and I would characterize it just a little
bit differently than you did, but I think we have
crystallized it well here, which is to say I think this
question of whether or not these pollution control
investments are designed or intended is one question,
and then the other -- sorry, designed or intended to
extend the life of the facility by five years or more;
the other question is whether that definition,
designation of designed or intended to extend the life
of the plant for five years or more, fully captures the
meaning under the statute of new long term financial
commitment. And I think that also should be discussed
further in the proceeding.

   MR. PEDERSEN: So you're saying --
   MS. VACCARO: Excuse me, before you go further,
Ms. DeCarlo has been waiting very patiently to speak, so
I think let's hear from Lisa DeCarlo, we'll keep the
dialogue going, and please hold that question because I
think these are really very pertinent questions.

   MS. DECARLO: Thank you, Kourtney. Lisa
DeCarlo, Energy Commission Staff Counsel. I just
thought it would be good to kind of go back to what the
original issue was in front of the Commission, back when
we first implemented these Regulations, and the question
presented to the Commission at that time by several
stakeholders on whether or not we should grant an
exclusive exemption for all improvements required by environmental regulations, and the Commission at the time declined to do so. They felt that they needed to get into the meat of each individual investment that was triggered by an environmental requirement to determine whether or not it complied with SB 1368. So, an argument at this point that no investments for environmental regulations, to comply with environmental regulations, are covered procurements, I don't think that is supported by the original Commission Decision.

MR. PEDERSEN: By the FSOR, you're saying?

MS. DECARLO: Yeah, right, by --

MR. LONG: And that was Norman Pedersen.

MR. PEDERSEN: Yeah, I think we stipulated that.

MR. LONG: And Noah Long from NRDC again. And if I just may, you know, we noted it in our Reply Comments that the legislative action on that may also be relevant if, for example, in the emissions performance standard in Washington State, which is otherwise quite similar, or in many ways quite similar to the Emissions Performance Standard in California, there's the legislative exception for requirements for pollution control technologies, whereas the California statute does not have that exception, so I think it's worth noting.
MR. PEDERSEN: Norm Pedersen for SCPPA San Juan Participants. So I guess, from my perspective, this has been helpful. You know, it seems like we have identified a point of difference, a point of disagreement, there might be a procedural question about the appropriate way to tee this up. I think I admitted this morning that this was the kind of question that 2907 was designed to handle; we have not had it because we have had the guidance that was given by the Commission in the FSOR about how to interpret the words "routine" and "maintenance," and the vast majority of what we do is, you know, the bicycle chain that we talked about this morning, at our plants. But here, and I think Lisa has very appropriately underscored it, you know, given the language in the Regulation, given the language that we've all ready in the FSOR, you know, there's an issue that is ripe for determination. And I guess the question is how the Commission prefers to proceed with that issue. One is Section 2907, maybe another is another round of comments, as Noah suggested in this proceeding.

MS. DECARLO: Lisa DeCarlo, Energy Commission Staff Counsel. Norm, with regard to your statement about 2907, I just have a question. Do you intend with reference to 2907 to carve out a small mandatory
provision within that requiring the POUs to ask, to seek?

MR. PEDERSEN: No, no.

MS. DECARLO: No, so you'd still rely on the discretionary?

MR. PEDERSEN: I'm talking about leaving 2907 as it is, but as a way to present this issue to the Commissioners, to come in with a request for determination under Section 2907, so to utilize 2907.

MR. VESPA: This is Matt Vespa from Sierra Club. You know, we do have significant concerns with that approach. That is a discretionary determination by the POU, and we've heard from a number of POUs that believe that these would not be triggering 1368 compliance. So they may make an internal determination, they think their view is consistent with the law, it doesn't get moved to the CEC for review. And the fact that we have very different minds on this, I think clarity by the Commission, you know, going to them for clarification is really important, and not leaving it to POU discretion.

MS. BERLIN: This is Susie Berlin. I'd just like to clarify quickly because I haven't heard any of the POUs, and certainly don't want to leave the impression that that's what MSR believes, that these environmental upgrades are or are not covered
procurements. They have not been reviewed, a
determination has not been made, I agree with Norman
that it's something we need to look at, we know what's
in the FSOR, we need to look at the entire investment.
But, I mean, I'm not sure who the number of POUs you're
referring to, but just for the record, MSR has not made
that determination.

MR. HOWARD: If I could, Randy Howard, LADWP.
We do not intend to make that decision on Navajo, we
intend on divesting of Navajo and let the other owners
make their own decisions as to how they're going to
proceed with these environmental requirements. So it's
not before us where our plan is to move out, and it
wouldn't be an issue that we would bring before the CEC.
Again, as to the Intermountain Power Project, again,
we're going to stick to the position that, if they need
to make a decision up there, the owners of the plant
will make that decision to be compliant and that won't
be a decision that would be brought before the CEC
because the CEC really doesn't have the jurisdiction to
tell the owners in Utah how they should operate or
expend their funds.

MR. PEDERSEN: And just to be clear, George
expressed the point of view that the SCPPA San Juan
Participants have on the substantive issue as to whether
or not investment in the SCRs would fall within the phrase "designed and intended to extend the life for five years." All I was saying is I think we've identified an issue between us and I think we can agree that there's an outstanding issue.

COMMISSIONER PETERMAN: Hold for a minute, take a breath, stand up, stretch your legs.

MR. PEDERSEN: How about a break?

COMMISSIONER PETERMAN: It's Commissioner Peterman. We haven't been going that long, we just had lunch at 1:30! But, yes, a five-minute break?

CHAIR WEISENMILLER: Why don't we take a five-minute break? So, off the record, it's now 3:05, 3:10 we'll be back on the record.

[Break at 3:07 p.m.]

[Reconvene at 3:18 p.m.]

MS. VACCARO: Those of you in the room and on the phone, thank you for your patience and for benefitting from the comfort break, but I think we're all ready to get back going. I understand a number of people have some time constraints and, while we've made great headway, I think there are still some very important issues that we need to cover today. One of the things that I wanted to move up on the agenda, we've had a request, as I mentioned there are some people with
time constraints and are going to leave. We'll wait for Mr. Knox to come back because, unless there is some groundswell of objection, I think we are going to need to fast forward to talk about the cap-and-trade, and then we can come back and cover some other issues. I think, again, what's great about today's discussion is it has been so fluid. Each conversation has led itself into all of these different points, but we want to ensure that people have the opportunity to underscore what they think we need to know. Unfortunately, though, Mr. Knox is MIA and -- in ten, okay -- so we're going to move forward and take -- use these 10 minutes to the best of our ability. I think it is important that he's here when we get that conversation going, he has some significant input, I think, in that regard.

I apologize, people were in the middle of conversation and I left the horseshoe here, I had to take care of another issue to ensure that the public was being fully represented in terms of their participation over WebEx and over the telephone. So if there's any closing thought or point that needs to be made, I think the Commissioners and staff understand that there is now apparently an issue that is sort of joined and before us, that people are looking for guidance on, I think the transcript is going to capture all of that discussion.
very well, but that is going to be something that ultimately the parties are looking for specific direction from the Commission. Is that fair?

MR. PEDERSEN: Yeah, Norman Pedersen for SCPPA San Juan Participants. I think it's absolutely fair, Kourtney, we have crystallized an issue between us. And as far as the issues that get us between question 3 and question 7, mainly 4, 5 and 6, frankly those are ones that we covered, I think, quite fully in our comments. For example, 4 asks about how and what instances POUs have applied the routine maintenance and designed and extended the life and deciding whether investments in non-deemed plants are consistent with EPS regulations, at least SCPPA gave concrete examples, we didn't go into certainly all 100 or so of what Steve Homer mentioned as being what we would do in the normal course of a year because, again, they fall within the plain meaning of routine maintenance and they're the sort of things that Engineers and non-Engineers can readily make a determination, so they don't advance to the level of board consideration. But we have presented examples of where we decided a prospective expenditure would clearly fall within routine maintenance, even though it would possibly increase rated capacity, and then another instance which is actually the only one which had been
presented to us, where we had an opportunity brought to
us by a contractor to increase the rate of capacity, we
of course declined. So I think we pretty well, at least
for SCPPA, answered question 4. I'm assuming Susie
would have about the same thing to say for MSR.

MS. BERLIN: Except that I -- Susie Berlin for
MSR -- except that I can't give you the blow-by-blow. I
can provide you a written summary afterwards if you
want, you know, exactly all the steps that are taken.

MR. PEDERSEN: Would --

MR. MORROW: Would you respond to --

MS. BERLIN: Yes, yeah --

MR. MORROW: -- question 4.

MR. PEDERSEN: Right. And 5 was the one that
seemed a little oddly worded, you know, we have not had
instances where we've done routine maintenance where
it's been a covered procurement. If it was routine
maintenance, it's not a covered procurement and we have
been doing routine maintenance. And as far as question
6 is concerned, I think everyone here has explained the
process that we use for making a determination and the
nature in which the public is informed, and we can go
through that again, but I think we covered it pretty
adequately this morning.

MS. VACCARO: I think the comments were -- the
written comments were helpful. I think we did get some oral narrative. I think what I'd like to do is just make sure, since we have POUs here at the table, I'd like to make sure that there's affirmance from each of you that you believed that you kind of hit the high points and told us as much as you can, as we sit here today. Ms. Berlin, you indicate there's more information that you can provide and I think that the Commissioners would be interested in receiving that --

MS. BERLIN: Yeah, I apologize, I thought you were talking about the exact processes that they take orally, you know, like we call the board meeting, this is the date, but that's the Brown Act, we post our --

MS. VACCARO: Yes, that would be helpful to have that information, as well.

MS. BERLIN: Okay.

MS. VACCARO: But I think -- so, again, just going through and ensuring that everyone is in agreement, we did sort of -- we don't have a designated spokesperson so to speak, so I just want to make sure just on the record through the microphone you identify yourself and agree with Mr. Pedersen or not, if there's more to say.

MR. HOWARD: LADWP, Randy Howard. I think within our filed comments we covered quite a lot. We
did put together a list, as well, that we did not provide that lays out types of maintenance that we do for different types of outages or activities and these would be kind of like, again, go to the description of your vehicle, you know, you said that at 50,000 miles they recommend you do these various things, so we laid all that out when we put in what do we normally do during a routine maintenance, and we did not file that because I thought that just got a little too far down into the weeds for the various activities, but it is available if it would be of benefit to staff, we would file that as a supplement.

MS. VACCARO: I think so. I think that we would greatly appreciate that.

MR. HOWARD: We'll do that then.

CHAIR WEISENMILLER: I think the other thing that would be useful to get in writing is, again, the exact definition of what goes to your board and what doesn't and so we can understand -- in terms of --

MR. PEDERSEN: I missed that.

CHAIR WEISENMILLER: -- what types of expenditures or activities actually go to your board for approval vs. which don't.

MS. VACCARO: And then, yes, we're not forgetting you over there.
MR. LONG: Oh, no problem, I didn't feel forgotten -- forgotten, sorry, long day.

MS. VACCARO: Yes, it has been. The way that those particular questions were framed, obviously they were for the POUs to answer. I think they might have begged some questions, though, on the part of Sierra Club and NRDC. I think this is the time, perhaps we can touch on those. I'm assuming we're not going to have quite as robust discussion on those as we did this morning, but if you think that it is going to be a lengthy discussion or set of questions, I'd like to flip it because Mr. Knox is back and I wanted to get to the cap-and-trade issue. So --

MR. LONG: Yeah, I just wanted to say I think I agreed with Norm on one point, which is question 5 was a little difficult to understand. I think with regard to question 4 and question 6, I think our conclusions from this morning's discussion were a little bit different than the one Norm suggested, which is, you know, in our view, I think this question of what goes to the Board and what doesn't as a sort of proxy potentially for routine maintenance, what is routine maintenance and what is not. And I think it might be a little bit -- it might be useful, I think -- well, let me rephrase that --

- I think it would be useful to have a little bit more
clear discussion of the definition of routine
maintenance and more applications of that definition for
this rulemaking process. So, you know, I agree there
were a couple examples given in the comments, but we're
still not comfortable that we've seen a clear
application of that definition across the Board, and I
think it may be that the question that Chairman
Weisenmiller asked will get to that exact question, and
I think there may be two questions there, as well.

MS. VACCARO: So --

MR. LONG: And then -- sorry, just one more
point with regard to question 6, I would just also note
and, again, I think the question Chairman Weisenmiller
raised here with regard to what goes to the board is one
part of the board process, but I think it's also useful
to note, if there are other differences with regard to
the board process or the public accessibility. And then
the last point is that I think, you know, it may also be
worth discussing a little bit further the two roles of
the Board process and the oversight of the CEC since,
you know, those aren't necessarily the same thing.

MR. VESPA: Matt Vespa from Sierra Club. Just
to elaborate on the question of what goes to the board
and what doesn't, I think it would be helpful as part of
that submission to understand, you know, what is the
sort of decision making process, just to elaborate on it
a little bit, of what does go to the board and what
doesn't and who is making that determination. There was
some talk earlier this morning about maybe certain
considerations that factor into what goes to the board
and what doesn't -- is that an individual's discretion?
Was there some kind of standard articulated about that?
I thought I heard in one case, I could be mistaken, the
whole packet of everything went up and was public, so
it's kind of just teasing out, you know, what's getting
public, what's not, what are the decision making points
for those different expenditures, would add some
clarity, I think, to the process.

MS. BERLIN: Can I ask the Commission for a
clarification? This is Susie Berlin for MSR. Each of
the agencies, I believe, has a slightly different
approach. Each of the agencies has a slightly different
governance structure, and each of the agencies are
subject to the different authorities that they operate
under and local control issues. I understand the
information we're going to be providing, giving you more
detailed analysis of how each entity does it, but I'm a
little concerned with this notion that somebody is
looking to maybe compare these processes and come up
with a single way in which it should be done. I want to
be sure that that's not where we're going.

CHAIR WEISENMILLER: I think, again, just to the extent we've talked about, you know, go to your board, that's a public process at that point, I'm just trying to understand what those are. I mean, not trying to say which one of you is doing it correctly or incorrectly --

MS. BERLIN: [Inaudible] [01:37:28]

CHAIR WEISENMILLER: -- right, but just what is it, you know.

MS. BERLIN: Thank you, Commissioner.

MR. PEDERSEN: Norm Pedersen for SCPPA. We can certainly provide that to you and we've got Bill back.

MS. VACCARO: Okay, thank you all for keeping that brief. And I think what we'll do, just to make sure there are no misunderstandings, we will issue in writing the request for this so that the parameters are clear, and set a deadline for the POUs to make those submissions. So that brings us to, pretty soon, Mr. Knox.

MR. HOWARD: If I could add one thing -- Randy Howard, LADWP -- the one thing, if you're looking for that and you want to see somewhat the forward look of how, at least in L.A.'s case, we're viewing the world of coal and the resource plans are the appropriate place to do that, and they -- our scenario cases went from early...
divestiture of Navajo to a contractual early release out
of IPP in 2020, so those scenarios were all laid out,
they were run and modeled to come to what's best for our
ratepayers.

MS. VACCARO: Okay, thank you. So, I know
everybody is probably tired of hearing my voice, but
this last time, I'm going to read the lengthy question
and get the discussion going on cap-and-trade. I would
like to invite you to come sit at the table if you would
like, and I am pointing to someone in the audience and
it's because I don't have the name, and so when you sit
down if you could please give us your name and your
affiliation, and then I'm going to read the question,
and then we'll go ahead and have the discussion.

COMMISSIONER PETERMAN: And, Hearing Officer,
this is Commissioner Peterman, I'd just like to note
that I will have to leave before the session is over,
possibly in about 10 minutes, so I will talk out
silently, not to interrupt the discussion, but apologies
for that.

MS. VACCARO: Okay, thank you.

MR. ANDREONI: Thank you. My name is Tony
Andreoni. I represent the California Municipal
Utilities Association and thank you for letting me come
through this discussion that you're going to have.
MS. VACCARO: Great. Thank you very much. And just to ensure that we are not leaving anyone out on the phone lines, we might have industry stakeholders or interested agencies who might wish to weigh-in on this next topic, as well, so if we can ensure that those folks aren't muted. But, again, we're not opening it to public comment. Well, we tried to be fair and inclusive, but we've had to take the unilateral action of muting everyone, but if you happen to be a stakeholder or someone in the industry, or an interested agency, please wave your hand or you can submit, I think, a comment via chat to the person who is helping us with WebEx, to let us know an appropriate time to unmute you, in particular. So with that, please bear with me, I'm going to read what was question 7 in the Workshop Notice: "Whether the requirements of Public Utilities Code Section 8341(F) have been triggered by the State Air Resources Board's recent adoption of cap-and-trade regulations, or whether ARB must first verify the efficacy of and compliance with its cap-and-trade regulations before Section 8341(F) is triggered. Section 8341(F) provides that the Energy Commission in a duly noticed public hearing, and in consultation with the California Public Utilities Commission, and the State Air Resources Board, shall reevaluate and
continue, modify, or replace the Greenhouse Gases
Emissions Performance Standard when an enforceable
Greenhouse Gases Emissions Limit is established and in
operation, that is applicable to local publicly-owned
electric utilities."

Somewhat of a mouthful, but I think everybody
understands what the issue is and, again, keeping in the
similar theme, what we'd like this to be is a
discussion, there are different points of view that are
reflected in the various comments that were submitted,
and I think we would very much like to hear from ARB, so
if we could start with you, Mr. Knox, I would greatly
appreciate that.

MR. KNOX: Yeah, this is Bill Knox. I think
basically ARB would say that we really -- we believe
that the Energy Commission should not prematurely try to
evaluate the Regulation under Section 8341, but rather
that ARB needs to first verify the efficacy and
compliance with the cap-and-trade regulation, and that
currently, although the cap-and-trade regulation has
been adopted by the Board, there is not -- during 2012,
while there is a cap, there are no compliances required
under the cap. And so there is not really an
enforceable greenhouse gas limit over the course of
2012.
But notwithstanding that fact, we think it makes sense to observe compliance with the Regulation when compliance is required in 2013, and then, in 2014 will be the first time that the compliance instruments are actually required to be turned in to demonstrate and, in fact, that is only 30 percent of the compliance instruments for 2013. So we think it probably will take a longer period of time to fully analyze compliance in a way that the different regulations work with each other to limit greenhouse gases emissions.

MS. VACCARO: Thank you. I don't know if the better course is, if there are any questions people would like to pose with Mr. Knox, or if you want to respectfully sort of challenge what it is that he has put out there.

MR. PEDERSEN: Norman Pedersen for SCPPA. I would just like to ask, Bill, are you expressing your point of view, or the point of view of the ARB?

MR. KNOX: Well, I think it is ARB's point of view that it would be premature to evaluate under that section, 8341, to evaluate the need for the EPS because we think it's important for the compliance to begin and for some analysis of what happens once the cap-and-trade regulation compliance is underway.

MR. MORROW: George Morrow. I guess I have some
concern with that. You know, we have billions of
dollars at stake in the cap-and-trade rules that are
being implemented. I mean, there's a lot of skin in the
game for everybody, there's a lot of players, there's a
lot of things we have to do to comply, and I would hope
that the agency that adopted those rules would stand
behind them in saying this is going to accomplish what
we're trying to accomplish under the statute of AB 32,
and so forth. And to come and say, "Well, no, we better
watch it for a year or two," and then we're not sure,
and then I just -- I guess I have a spiritual problem
with it. Thank you.

MR. KNOX: I don't think -- this is Bill Knox
again -- I don't think we're saying that we're not
confident that the cap-and-trade regulation is not going
to work and that compliance is not going to occur, but I
think what we're trying to say is that, before we say
whether or not the EPS, you know, what the role of the
EPS is in the future, we want to have a few years of
cap-and-trade under our belt and see how all of the
regulations work together, the RPS, the EPS, the CHP --

MR. PEDERSEN: Bill, I guess the nature of my
question was, I'm just trying to understand, are you
speaking for, you know, the Chair of the Board, Mary
Nichols, for James Goldstein, the Executive Director?
You know, is this the -- I'm looking for whether this is the official position of the ARB. And if it is, I'm going to be concerned because it is so at variance from what, for example, and we quoted this in our comments, what the Board had to say in response to Judge Goldsmith in coming up with a supplement to the functional equivalent document, a document with which I'm sure you're very familiar and I'm certainly familiar with.

You know, we had -- and we can get into that -- but we had a variety of statements being made by the board that indicates basically the reverse of what you're saying is the need to continue the EPS regulation. But I see Tony Andreoni had his hand up over there.

MR. ANDREONI: Thank you. This is Tony Andreoni with CMUA, and I guess I want to echo some of the points that were made. CMUA did not provide comments on this particular filing for EPS, but many of our members, which are around the table here have spoken greatly about this issue. And there's a few things that I want to mention regarding cap-and-trade, and number one is all of our members participated fully in that process. They provided information and the cap has been set to the point where allocations under the rule are going to be issued later this year. So to me, since the cap has been set, everybody understands what the threshold of
carbon emissions are at this point. The fact that there's going to be an auction later this year further moves the process forward and I will also say that many of the members are participating pretty actively with ARB in the implementation of the system, the actual tracking system that's going to be put into play. So I would say the system is really trying to move fairly quickly and get up to speed in the near term as all the members within the electric utilities have agreed to follow the process and make sure that the allocations are handled properly, and as they move forward with additional renewables under RPS, that that's going to be looked at, as well. So I just wanted to make that statement that, you know, it was an effort that was moving forward, we continue to move forward and get that program up and running at this point, and really see that as a point of contention where they're not looking to increase the amount of carbon emission with emissions at this point. So --

MR. MORROW: George Morrow, Azusa. I wanted to confirm, Tony, with you that, you know, the cap-and-trade is forcing agencies, utilities, to do things differently. You know, we're very cognizant of the cap and we're very cognizant of the limits. We're respecting what might happen economically to us if we
don't make some adjustments in the things that we do and
how we do them, so, you know, we're doing a lot of
things that strategically and so forth -- maybe some
even involve the things we're talking about here today
because of the cap-and-trade and our belief that it will
work, and it does work, and it was a very reasoned
legitimate program. So it is working, and now we have
this secondary process through the SB 1368 rules that
seem -- they don't seem like they're as necessary
anymore, so I just wanted to reiterate that -- because
we're doing things, we're actually making change because
of the cap-and-trade.

MR. ANDREONI: Yeah. Many of the members --
this is Tony Andreoni again with CMUA -- many of the
members, both large and small, have had to make
adjustments and plan for the future for not only
renewables, but to make sure they're not increasing any
carbon emissions within their facilities, and that
they're able to handle the allocations that will be
given to them and be able to be used beginning once
they're released and into 2013 and beyond. So we look
at it as an active program.

MS. BERLIN: I have a question, but were you
going to say something, Bill?

MR. KNOX: No, go ahead.
MS. BERLIN: This is Susie Berlin for MSR. One thing that you said struck me, you said that you believe that CARB should verify the efficacy of the program. What process or procedure would CARB's verification of the program take? And is that a procedure and a process that has been employed for other regulations?

MR. KNOX: Well, I think that what I really mean by that -- this is Bill Knox again -- is that we're going to be monitoring compliance with cap-and-trade, but we won't be able to fully monitor compliance until we reach the end of a compliance period. And while we have every expectation and, you know, we're confident that cap-and-trade is the right regulation and that there will be compliance, but we still want to monitor it. And also, until that monitoring is done, we don't think it makes sense to take away the EPS any more than it does, say, the RPS.

MR. LONG: This is Noah Long from NRDC. If I may, I just want to make a couple of points. One is to reiterate if I may a comment that Mr. Knox from ARB made this morning, which is that I think the role that the EPS plays in the Scoping Plan is also relevant here. There are a number of complimentary measures intended to cumulatively bring about reductions. Now, you mentioned the RPS, there is also Energy Efficiency Programs, what
the POUs and IOUs are required to participate in. There is a whole set of numbers, depending on the sector, for compliance requirements. And the fact that those compliance requirements affect the same entities, are potentially overlapping in effect, I don't think in any way undermines the complementary approach that the Air Resources Board has taken.

Second of all, I just want to make the point that I think we made in our comments, but I want to reemphasize, which is that, looking clearly at the language of the statute, the obligation for reevaluation and continue, modify, or replace, none of those actionable verbs include the possibility of nullifying or sun-setting. I think they might be either continued as it is, it might be somewhat modified, or it might be replaced with a separate standard, but I don't think sun setting is contemplated by the statute. And lastly, and to that same point, I think the point of enforceability of the cap-and-trade rule is also relevant here, while there is a cap has been established, I can't imagine a set of circumstances under which it could yet be enforced.

And lastly, if I might, I would just like to put the questions to the POUs on this. We were asked a couple of times what exactly was it we were trying to
accomplish through our Petition, which I think is a fair question, and I would ask here to the POUs, what is it exactly that you're hoping to accomplish, you know, if you view the Cap-and-Trade Program as in place, you view yourselves as in compliance with the Emissions Performance Standard, and you're pretty happy with the existing regulations, what purpose do you seek through sun-setting of that regulation, what harm has it caused so far to your customers or to your communities? And what would you do differently if it weren't there?

MR. HOWARD:  Randy Howard, LADWP. I just -- we didn't file the petition, so we didn't open this proceeding, we -- you opened the proceeding, you filed the petition, the POUs came forward and said, look, if we're going to go through this process and look at it, is it the appropriate time, and I think that was the request and that's why it's here today is because is it -- if we're going to look at everything, if you want to reopen it and look at everything, then is this one of the items we should look at? One of the questions I will have for Mr. Knox is, the Legislature pretty much gave ARB the full authority on greenhouse gas, with the exception of the performance standard, and the performance standard was kind of the stopgap measure, some of us thought, while the ARB took control and

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developed programs to manage greenhouse gases. Didn't the ARB look at the opportunity to formulate their own EPS? Wasn't that one of the issues they looked at?

MR. KNOX: No, I think that we -- this is Bill Knox again -- we saw that the EPS was in place at the time and that it was a complementary measure like many of the other complementary measures that were included in the scoping plan. I mean, it wasn't listed in the same way as a scoping plan complementary measure, but it was a preexisting measure that we felt would also help to accomplish the same goal.

MR. HOWARD: So --

MR. KNOX: And the other thing is, is there are other measures that are being -- that affect entities currently that are not under the purview of the ARB directly, for example, the RPS. The RPS is administered through the CEC and the CPUC, and so -- and that's another complementary measure, as well. But even though we think that the cap will ultimately set the emissions quantities going forward, we still believe that it is necessary to have these other complementary measures.

MR. HOWARD: So it was -- you're saying it was ARB's belief that the continuation of the EPS was going to fulfill some kind of need and that was the reason why ARB at the time decided not to proceed down the path of
formulating the EPS, itself?

MR. KNOX: You know, it's hard to go back in
time to exactly what -- I joined the ARB in 2008 before
the scoping plan was finalized, and I noted at that time
we included the EPS as an existing measure that we
expected would result in greenhouse gas emissions
outside of the emission reductions associated with the
other measures and with cap-and-trade.

MR. PEDERSEN: This is Norman Pedersen for SCPPA
San Juan Participants. I was involved in the whole
scoping memo process, the scoping plan process. And you
know, the EPS was not a complementary measure. Folks
are calling it a complementary measure, you can go to a
table, I think it's on page 79 of the Scoping Plan,
wherever it is, you know, it lists every one of the
complementary measures -- EPS is not in the list.
However, I'll admit, you know, though we have an issue
here and that is whether or not the EPS should continue
now that the Cap-and-Trade Program compliance obligation
is going to be imposed starting 1/1/13, and by the way,
we're not talking about getting rid of the EPS in 2012,
you know, at least SCPPA has talked about suspending it
effective when the cap-and-trade obligation becomes
effective, we're not talking about 2012, we understand
it's not effective -- the compliance obligation isn't
being imposed for the 2012 due to the suspension of the
effectiveness of the program. In the functional
equivalent -- supplement to the functional equivalent
document that I mentioned a little earlier, the ARB was
completely clear that the reason that it was opting for
the Cap-and-Trade Program as opposed to a carbon tax, or
a suite of measures without any market mechanism being
imposed, or other alternatives, was because the Cap-and-
Trade Program provides certainty that you are going to
achieve the goal. You don't have to wait for it as a
matter of law, you will achieve the goal, because you
will only have so many allowances and companies will
have to have the allowances in order to meet the
compliance obligation so you will meet the goal. It
ensures -- that's the entire point of the Cap-and-Trade
Program, you ensure obtaining the AB 32 goal of getting
to 1990 emissions, 1990 levels of emissions by 2020.
You don't have to wait to see whether there's efficacy.
You'd have to do that with a carbon tax, you'd have to
do that with a suite of mandatory measures like, you
know, RPS, that were intended to be a proxy for getting
the GHG emission reductions. Cap-and-trade attains it
because it mandates as a matter of law that those
emissions reductions occur and it does it through
employing a market mechanism. And the ARB goes on to
explain that, you know, the beauty of the Cap-and-Trade Program is that it does it in the most economically efficient manner. It goes to individual covered entities and says, "You make the decision about what the most economic way is to achieve the emissions reductions. We aren't going to put yourself in your boots, you make the decision. You know, it might be you shut down a coal plant, it might be you do something else, you know, but you are the one who will be making the decision and we are going to be assuming that you will be making the most economic decision.

And so, to continue, in our view, and it was the Boards who expressed in the functional equivalent document effectively to continue a measure that would mandate a covered entity to do one thing over something else to obtain the emissions reductions it has to attain, would be counterproductive. And so, in our view, again, we're not asking for there to be a suspension in 2012, but we do think, given what the board itself said about the Cap-and-Trade Program and the rationale for having a Cap-and-Trade Program, as opposed to, say, a carbon tax, that it would make sense to suspend the Cap-and-Trade Program. To Noah's point, yes, the statute does say continue, modify, or replace, well, modification is putting in the sunset provision.
We are now in 2012 and what at least we have recommended in our opening comments is that the modification to the regulation be to insert another section providing for sun-setting of the EPS regulation upon the imposition of the compliance, the legally enforceable compliance obligation.

MS. BERLIN: This is Susie Berlin for MSR Public Power Agency. I wanted to follow-up to Noah's specific inquiries, what harm has EPS caused, why should it sunset, what would be accomplished. I don't believe the EPS has caused any harm. We believe it should sunset because we think it runs counter to what the intent of having a Cap-and-Trade Program, believe that it's not going to allow the Cap-and-Trade Program to work as efficiently as possible. Even the Scoping Plan, when it talked about emissions reductions associated with the EPS talked about the expiration of contracts or ownership interest, it didn't talk about the EPS working in concert with the Cap-and-Trade Program once Cap-and-Trade Program was up and running. And to clarify the point that Norman said, actually, the Scoping Plan specifically says is that this is not considered a separate measure in the Scoping Plan. So it was never one of the complementary measures to something out there. We would not have moved to have the EPS reviewed
and reevaluated. What we're saying is that we believe that the Cap-and-Trade Program is all encompassing, and we believe that the EPS, after Cap-and-Trade Program is enforced, is not necessary, and we think that having a lot of stakeholder and CEC time spent on a measure that, at best, we believe, would only be effective until January 1, 2013, is not a good use of resources. That's why we're saying, now, if we're going to be -- that it should sunset because, right now, to have this review, and, okay, let's say we make some changes, for how long? How long is this process going to go on? And how long is the EPS really necessary? So, in light of what the Cap-and-Trade Program is designed to do, in light of what the Cap-and-Trade Program is said to be able to accomplish, that's the context in which the EPS needs to be reviewed now -- is it redundant? We believe so.

MR. KNOX: Okay, this is Bill Knox again, and I think one of the things is that the quote that Norm had in this comment was actually from the Draft Scoping Plan and not from the Scoping Plan which was the source of the quotes that I had in my introductory statement today. And also, I think that, you know, the Cap-and-Trade Program does guarantee -- it is the only type of program that can guarantee that there's a set limit for emissions in the period from 2013 to 2020. But we still
need the other programs. We need the RPS, we need the energy efficiency programs, and we need the EPS, as well. These are work in tandem to help us achieve our greenhouse emission reduction goals.

MR. PEDERSEN: My quotes are actually from the Fed -- from the supplement to the Fed.

MR. KNOX: No, I think it was the quote that Susie was referring to and the one that was in your written comment.

MR. PEDERSEN: Well, the ones that I had were from the Fed, the Supplement to the Fed.

MR. KNOX: Which I don't think mention the EPS.

Is that --

MR. LONG: This is Noah Long from NRDC, if I can just respond. I think, first of all, "discontinue" is a pretty forced reading of continue, modify, or replace, you know, even if you're reading it into modification, I think "ending" is a pretty forced reading of ending. The Legislature could have easily included the term "discontinue" in those lists of options, and it chose not to. But furthermore, I think, you know, I understand your argument and I think, Norm, I thank you for making what I think it is an eloquent defense of cap-and-trade --

MR. PEDERSEN: Remember, I talked at the very
beginning about how we share some -- you know, there's a lot that we share.

MR. LONG: Yeah.

MR. PEDERSEN: And we support it.

MR. LONG: I'm glad to hear that. But I just want to put the question back -- I don't think I got as quite as clear of an answer other than the sort of economic theoretical justification that Susie gave, but, you know, in our comments we've raised a couple of issues, one is that the EPS continues and provides certainty beyond 2020, which is the current extension of the Cap-and-Trade Program. The agreements extend beyond 2020, the existing agreements. Certainly, the possibility for new high emitting resources exists beyond 2020 -- that's not -- I'm sorry Randy Howard just had to leave, but I've been instructed more times than I can count from my colleagues at LADWP about how the planning horizon for utilities is long, 10 years is a normal planning horizon for utilities, so I think the idea that having rules certain beyond 2020 would be of no use to the utilities, I find a little bit incredible. And then, lastly, I think just beyond the sort of economic theoretical justification that it might be duplicative of the final result, which I think could be said just as easily about any of the complementary
programs if that justification were taken to its fullest extent, I just want to be a little bit more clear, I mean, is there some kind of non-EPS compliant investment past 2013? Or a new coal plant that you all are evaluating, that you think --

MR. PEDERSEN: There's no new coal plant that we're evaluating. Come on, Noah.

MR. LONG: So I'm just wondering what the end of the use of the EPS would serve because it seems to me to be a pretty big change, and I'm just sort of wondering, beyond having something to negotiate with here, I'm sort of wondering what the real purpose of sun-setting the EPS would be.

MR. PEDERSEN: We've had a productive conversation, but talking about how we're looking at new coal plants, I mean, that's --

MR. VESPA: Well, let me just -- this is Matt Vespa from Sierra Club, if I can add -- I mean, the implication of sun-setting the EPS, which I agree with Noah is not contemplated in the statute, it's continue, modify and replace. And sunset, discontinue, terminate is not a word in that series of words. But the implication is you would like to have the option of increasing your investments in coal. I mean, that is the implication. And is that something you want to have
the option to do? And if not, then why are we fighting
over this?

MR. PEDERSEN: Norman Pedersen, SCPPA San Juan
Participants. You know, a fundamental principle of
statutory construction is the interpreter in the first
instance of a statute is the agency that is
administering the statute, and the courts will give
deferece to the agency. And in the FSOR, this
Commission explained what it saw as being the life of SB
1368, it didn't see it as a backstop measure, it saw it
as an anti-backsliding measure, and it saw it as a
measure -- and we quoted the passages in our comments --
it saw it as a measure that would last for five years.
It would last until the Cap-and-Trade Program got
implemented. Of course, at that time, they thought it
was going to be implemented in January of 2012, and now
we know it's going to be January of 2013, so we're
talking about suspension on January 1, 2013. But that
was the agency's view. And, you know, one of the ways
that California gets in trouble is, you know, you'll
come along, you have a statute, you have an implementing
agency, a regulation is adopted for a period of time as,
you know, a stopgap measure until we get to whatever it
is, and then we get to whatever it is, and we find not
only do you have the new regulation continue, but the
old one keeps going, too. You know, we keep adding, but
we don't do any subtracting. The clear view of the
Commission back in 2007, and we were there, and the
people who drafted the FSOR were there, you know, and it
is in the FSOR, the clear view of the Commission was
this anti-backsliding measure would be in place until
the Cap-and-Trade Program took effect. And so, you know,
now the ARB might have had whatever view it had, I'm
clear it said in the Fed what it told Judge Goldsmith
about the merits of the Cap-and-Trade Program and how it
would work, you know, but that aside, the primary
interpreter is this agency, and that's certainly their
view and we think that view is correct. And that means
that they were understanding an option under this
language that you quoted from 8341(F) included
suspension of the Regulation.

MR. ANDREONI: This is Tony Andreoni from CMUA.
I would just like to add from what Norm and Susie and
Randy had said earlier, is the fact that there's a need
for certainty and what we're trying to do is get after
the fact that, as Norm said, the EPS Rule was in place
to have some certainty early on given the fact that AB
32 and some of the measures had not been implemented,
and nothing had been assembled. The Scoping Plan came
out in 2008. It's going to be re-looked at again in
2013 by ARB to look and see how it is progressing, how some of the measures are progressing. The fact is that we now have a rule in place that focuses on a Cap-and-Trade measure and takes into account all utilities sources and other industrial sources. And the fact that you cannot go out into an air district and implement a new source that is going to be higher than where your cap is right now and the fact it is going to diminish over the next seven years, we obviously don't know where it's going to go beyond 2020, but we need to have certainty.

And the fact that we're still here at this table discussing what should be done here with EPS when it was clearly a greenhouse gas emission-related performance standard, not a toxic air contaminant that we discussed today with U.S. EPA about SCR control, but a greenhouse gas standard. So we're just trying to have certainty on what the requirements are on getting the emission reductions through the GHG path, which is AB 32.

MR. VESPA: Matt Vespa from Sierra Club. You know, just to make clear in terms of statutory interpretation, it's the plain meaning of the text that controls, legislative history or intent is secondary. And the plain meaning of the text, "continue, modify, replace," does not include "termination." I don't think
there's a "there" there in terms of the statute. I think this is an extreme overreaching on the part of the POUs, and I don't think it should be entertained at all as part of this proceeding.

MS. VACCARO: Well -- sometimes it's hard to be politic. I think everyone made their point, and you made them very well. I think ultimately we all know that we're not going to decide today issues of statutory construction. We're not going to adjudicate different legal interpretations. What we're trying to do is understand your points of view, what legal authorities, what practical considerations need to come to bear in this decision making process. You've all done that very well. And we heard you the first time, and I think what I mean by that is we don't need to keep hearing this particular line of dialogue -- I don't mean that in a disrespectful way, but I think we could really have a fun discussion, but that's not really what we're here for, we have another at least a couple more points to cover, public comment, and I know people at some point would like to go home. And so, again, I say that really quite respectfully. If there's more to add on this particular issue, please do, but I think otherwise we might be ready to move on. So I'm just looking around the room, if there's anyone else who has something to
say, briefly, and not repetitively on this point, please do.

MS. JONES: I'd just like to clarify -- it's Melissa Jones on the staff -- that at the time the EPS was adopted and when the record was developed, the Scoping Plan had not yet been adopted and the complementary set of measures had not yet been established, and so that's a new circumstance.

MS. VACCARO: Okay, it doesn't seem like anyone is clambering -- okay, Mr. Long.

MR. LONG: I just want to note that I don't think I've really fully understood this issue of what the POUs seek to gain from the removal of the EPS. And I think we can continue that conversation at some point either offline or on line, I'm not sure it needs to happen here. I just want to make note that that's not an issue I under --

MR. PEDERSEN: That's not the point, that's just like your comment about the coal. You know, we're not out looking for more coal and we're not seeking to gain anything. There's an insinuation there that I don't want to let slide by.

MR. LONG: No, Norm, I didn't mean to insinuate.

MS. VACCARO: I don't think Mr. Long was insinuating, I think I'm going to infer a very
legitimate intent on his part to understand, and he's suggesting he doesn't. I'm hoping that there's nothing else that's coming out of that statement. You did have the ability, though, to express your concern with either his wording or intonation, or whatever it is, and I think, at that, let's leave this issue alone and move on to the next question, which was a resounding no from all of you, so I don't know that there's much to say.

The question was -- pardon me?

MS. DECARLO: Oh, sorry, Lisa DeCarlo, Energy Commission Staff Counsel. Before we move right off of number 7, I just thought I should make this comment, notation that has me a little bit concerned about the certainty of the greenhouse gas, the Cap-and-Trade. It is still subject to litigation, so I know we haven't really talked about that, but there is the potential that there could be litigation with the Cap-and-Trade Program, so I don't know that there's 100 percent certainty that it will continue as adopted -- I hope so, but there is that small little chance that there could be litigation on it.

MR. ANDREONI: This is Tony Andreoni, CMUA, and I wasn't trying to infer that there was definite certainty on where we were headed on Cap-and-Trade, I was just trying to basically say that we're looking for...
certainty as we move forward with all of the measures that many of our utilities have to respond to and comply with. Obviously, if legal proceedings occur, we will continue to participate in those efforts.

MS. DECARLO: Sorry for that interruption, Kourtney.

MS. VACCARO: No, that's fine. I apologize, I don't have eyes on the side of my head, so I didn't see you, so my apologies to you. The next question in order was whether the Petitioners' concerns regarding possible violations of the EPS would be better addressed through initiation of the Commission's complaint and investigation proceedings, and then we cite the regulation. All of you, for various reasons, say no. I don't know that there's much more to be said about that, or at least, "No, not at this time, based on existing and known information." Mr. Long.

MR. LONG: Sure, yeah. Noah Long, NRDC. I would just say that that wasn't the course of action that we chose to take in this petition. I think that option remains open to us, going forward.

MS. VACCARO: Anything else the POUs feel that you need to add, other than what you put in your papers? Okay, thank you. Final sort of catchall, but I think we really exhausted most of the issues that need to be
covered, but, again, just wanting to be fair in this process. Are there any other issues that have been raised by the OIR or so far in the discussions today that need, or require, or would benefit from discussion? I'll start over here with NRDC and Sierra Club, we'll make our way around, and hopefully we'll keep this somewhat brief.

MR. LONG: Yeah, two points. One is -- and Noah Long, NRDC -- one is that we made in our comments the PUC, in response to a Petition to Modify from NRDC and others, made some changes to the EPS with regard to continued compliance and verification with regard to any carbon sequestration that took place as a compliance strategy under the EPS, and we think that that may be useful in this context, as well. I'm open to comments from the POUs on that point. And then, to the extent that the -- sorry -- Section 8341 is triggered, I think there has been interest from some to evaluate the appropriate number and appropriate greenhouse gas emissions limit number. I know the EPA number is somewhat lower. We originally, in the proceeding, NRDC suggested a thousand pound limit and that was also suggested -- we also suggested that the PUC, in the original rulemaking context, and given that the EPA has chosen that number, I think it may be appropriate to
consider that number here.

MS. VACCARO: Thank you. Are we speaking for --

anything from Sierra Club on that? Okay, thank you.

MR. PEDERSEN: Norman Pedersen --

MS. VACCARO: Are you the designated

spokesperson?

MR. PEDERSEN: No, no, but I'll go ahead and

take the mic, Kourtney. Norman Pedersen, SCPPA San Juan

Participants. Actually, we were a little surprised to

see the point about the carbon sequestration plan. I

assume you're talking about the one down in Kern County,

and now you just raised the point about the thousand

pounds vs. 1,100. Actually, you know, there was nothing

in the Order Instituting this Rulemaking, as I recall

it, that allowed for expansion of the scope, and so

there might be cause -- I don't know a thing about the

carbon sequestration issue, we were not involved in that

project, but you know, it seems like we have plenty to

handle in this rulemaking just staying within the four

corners of the Order Instituting the Rulemaking

Proceeding, without bringing in other sundry issues in

which we are not particularly interested, but other

parties might be very interested and not know this is

all going on. We would probably prefer just to keep it

within what we are trying to handle right now and hope
we get a handle.

MS. VACCARO: I think, not to be oppositional, I just want to make it clear that the OIR, it does sort of have a catchall provision in it that allows for, I think, exploration or discussion of other possible changes to the EPS that might be warranted, so while it wasn't expressly called out, I think in the fashion as framed by NRDC just now, it's within the ambit, certainly not within the full ambit of today's discussion because nobody had really any prior knowledge or ability to meaningfully comment on these points.

MR. PEDERSEN: That certainly covers us, we don't have any basis for taking a position one way or another on the carbon sequestration issue.

MS. BERLIN: No, kind of a closing comment, I believe that we really need to focus on fine tuning the discussion topics. I know we discussed a lot today and we went around and we do have differing views, I understand that, but I believe that resolution, whatever that might look like, is going to be more effective and more expedient if we focus on a priority list of issues, at a minimum. For example, are we looking at environmental improvements? Are those the issues at the forefront? What are they? I'm just uncomfortable with the broad scope and the chicken and egg in some of these
discussions that we're having. What does reporting look like? Well, it depends on what we're going to be reporting. And when would you report? Well, it depends what you're going to report. And I just really think that, to the extent that we can focus the scope on some kind of prospective action, that we would all be very well served and it would be more efficient, and I just also wanted to raise -- reiterate -- and sorry for doing so -- but a very strong concern I have regarding what appears to be some notion that there's going to be a retroactive application of any new decisions, and how that would impact -- any new definitions in how that would impact past decisions.

MR. MORROW: Okay, George Morrow, Azusa Light and Water, SCPPA and San Juan. I serve on the Board of Directors for CMUA and I can tell you one of the initiatives of CMUA, and something that the general POU population is concerned about these days, I'm speaking perhaps to the Chairman and to the Commissioners, is the preponderance and the multiplicity of mandates that are coming out of the State of California. You know, going to this rulemaking, AB 32 feed-in tariffs, the solar SB1 Program, we're talking about distributed generation goals, we've got storage requirements that folks are talking about, energy efficiency goals, all the
reporting that goes with all that, all the staffing, all
the rules and regulations that get adopted associated
with all those things. I guess we're sort of getting
pulled in where the IOUs have been pulled in for a long
time, we're having to really -- you know, we're going to
have to spend a lot of money and staff time to deal with
all these things, and I don't know that it's necessary.
We're locally controlled, we've been in business for 107
years, most of the POUs have been in business for 100
years, we've done just fine. Show us the goal line,
point us to the goal line, we can get there without a
lot of bureaucracy and paperwork and hearings, even
though that's not good for Norm's kids' college
education. So that's my appeal is just to kind of keep
in mind the increasing burden on the POUs these days,
and that's one of our concerns with this thing,
continuing on if it's not really necessary, you know,
let's cut one of the heads off of what is attacking us
and we'd very much appreciate it and we'll work with you
on something else. Thank you.

MR. LONG: This is Noah Long from NRDC. I just
hope nobody cuts my head off as a response to
rulemaking. So, you know, I think other than that we've
made all the points we wanted to make on number 9, and I
just want to thank the Commission and everyone else for
their participation. I guess my only final comment is that the meaning of the EPS, I think, is as relevant today as it ever was, I think it's a really valuable and impactful standard, and I think the questions that we're getting at here today are the toughest questions that the EPS was intended to resolve for the State. And I think these are tough issues before the Commission. I'm really glad the Commission is willing to take them on, and I hope that we can move forward in a way that minimizes the long term greenhouse gas emissions of our state and also minimizes the ongoing other external impacts from these kinds of power plants going forward. So thanks everybody for your participation and I hope we can continue to work together.

MR. KNOX: And this is Bill Knox, also we continue to believe that the EPS is an important part of the suite of tools that we have to deal with greenhouse gas emissions, and we thank the Energy Commission very much for inviting us to be involved in this process.

MS. VACCARO: Thank you.

MR. ANDREONI: Thank you. This is Tony Andreoni, CMUA. I want to also thank the Commission for letting me come to the table here in the afternoon. I do and did hear a lot of things today sitting in the room, and I'm hopeful that many of our members will
continue to participate in the activities and in whatever rulemaking activity occurs with this EPS rule. I certainly did have some concerns raised today by the U.S. EPA that I won't go into right now, but certainly believe that when the term "useful life" was mentioned earlier today, in all my years of developing rules in my previous job at ARB, recognize the fact that "useful life" and the fact that control technologies in the number of facilities affected by both of those are extremely important when you start to promulgate a rule, it cannot be left out of the equation. So I would hope that everybody looks at that a lot closer as you start to move forward, especially the useful life of a facility. I would like to ask the Commission if there is an idea of moving forward from here, as far as the schedule, perhaps any of the workshops that will kind of move forward, and the overall timeline that you kind of expect to see this particular issue move forward at this point.

MS. VACCARO: Well, yes, what I was going to do -- those are very important questions and many of them are going to be addressed in this sort of closing remarks section. I was going to take the opportunity, in fact, to have us go through the public comment, listen to the public comment, and also, then, close
everything out with a sense of what the next steps are.

I think Mr. Long indicated in an answer to Ms. Berlin earlier that the answer might not be fully satisfying, and I will make that disclaimer now. But I think what I will do is I want to go ahead and move forward with public comment, and then I will give you a sense of next steps, at least as I see them and, of course, we've got the Chairman and Melissa and Lisa here, as well, to chime in. So I'll answer your question, but I'm just putting it off just for a little bit longer.

And I think we've got everyone on the phone lines muted right now, still, because we've just been having, I think, horrible feedback. So we're going to take everybody off of mute for the moment, we might have to cringe in the room with some loud noises in the background, but I would like to give anyone on the phone lines who might wish to speak an opportunity to make a brief public comment at this time. So if we could unmute everyone? Okay and, of course, you're under no obligation whatsoever to make a comment, but if in fact there is a question or comment from anyone on the phone lines, this is the time to make it. I hear typing, but I hear no comments.

CHAIR WEISENMILLER: So, please mute if you're typing.
MS. VACCARO: I think that it stopped. Again, I'll just do a final call for public comment or any comments from folks on the phone line. Okay, hearing none, it's me back on the hot seat in terms of next steps.

You know, we started today's proceeding, I think, making it fairly clear that the goal was to make sure that there was a level of understanding and education coming from all the participants, directed towards the Commission. People have come with certain perspectives, arguments, positions; there are quite a number of facts that have been presented in the comments, there are a number of arguments, I would say there's a fair amount of rhetoric, as well. And at the heart, there's some legal issues. And I think we kind of can separate all of those things.

I think today's discussion has helped crystallize, at least for me, and I believe probably for the Chairman, as well, the fact that there are some legal and factual issues that still need some narrowing. I think we have a sense of what those might be based on today's conversation, and I think in terms of next steps, what we'd like to do is put out in a paper to you what we'd like to see in terms of responses to what we've identified as truly the critical issues and facts.
The goal is not to be repetitive at all of what we've already read and heard, it's to move this forward. I suspect that there will likely be another workshop and I think the goal is to move swiftly. The briefs or comments give us every indication that moving swiftly is something we should do one way or another in terms of reaching a decision because we do understand all of the points made by everyone.

So, again, as I say, it might not have been a satisfying response, I can't give you an absolute schedule, but I know that Ms. DeCarlo, Ms. Jones, and I work pretty swiftly, and we'll be able to turn something around, I think, in very short order, and give some pretty short deadlines, as well, for all of you to get some information back to us on what we believe are the key factual and legal issues. And I say that we may not see it the way that you do, and so that's something to be prepared for, as well, the framing of the questions or issues might not be as you would do it, but again, the purpose here is not partisanship or bias, it's to ensure a full and fair and transparent public process. So, yes, Ms. Berlin?

MS. BERLIN: Can you repeat what you said what you would be putting out in the paper? A list of questions?
MS. VACCARO: We'll probably be asking the parties to address what we believe are the critical factual and legal issues that are going to help the Commission determine what direction ultimately to go in.

MR. ANDREONI: Just a question, as well. This is Tony Andreoni, CMUA. Will you provide any type of summary of the major issues and where the CEC kind of sees where they're at, at this point, where we need full additional dialogue or further workshops on? And is there an endpoint that you already have kind of penciled in as far as when you think this rule amendment may go to the Commission?

MS. VACCARO: Recognizing that I'm not in a role, I'm not a decision maker, I'm not a policy maker, I'm just a facilitator and significant part, I don't make recommendations along those lines and haven't. I think from where I sit, and I can only speak for myself, today was a critical juncture in really being able to move forward with what is a narrowing, and a necessary narrowing, of issues. When I say "swiftly" and "swift movement" and "getting something together," I don't mean six months from now, I mean like within the next week or two, you should get something and we'll be moving this, I think, along on pretty aggressive timelines. But other than that, I'm not in a position to make
representatives on behalf of the Commission or the Chairman, but I think the Chairman, from what I understand, is interested in having staff evaluate and analyze, and then distill what we've heard, where we are, get those issues out there. I think right now we're still wanting you to answer some questions, as opposed to giving you direct answers or a sense of where we might be headed.

MR. LONG: This is Noah Long from NRDC. If I can just make one comment on the timing, as well, which is that I think it may be useful, and particularly in light of the San Juan plant, which I think is facing -- there is a 30-day stay, as I understand on the application of the rule, and there may be significant updates with regard to that rule, any day now or in the coming weeks, and I think it would just be useful for the purposes of this proceeding if the Commission kept abreast of that either directly through EPA, or through some other channels, in order to ensure that that is a part of the record going forward.

MS. VACCARO: That sounds reasonable.

CHAIR WEISENMILLER: So, again, is there anyone in the audience who have comments? Okay, anyone on the phone?

Okay, then again I would certainly like to thank...
everyone for their participation today and I think it's been informative, I think as Hearing Advisor Vaccaro said, she's done a great job of helping us narrow issues. Certainly, I encourage the parties to continue talking. We always tend to like fewer issues to resolve, or at least that will get us to a quicker resolution, the fewer issues we have to resolve. But, again, I think this has been informative. So, again, thanks.

[Adjourned at 12:18 p.m.]