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COMMITTEE WORKSHOP
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Implementation of Renewables)	Docket No.
Investment Plan Legislation)	02-REN-1038
and)	
Implementation of Renewables)	Docket No.
Portfolio Standard Legislation)	03-RPS-1078
)	

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

WEDNESDAY, SEPTEMBER 26, 2007

2:32 P.M.

ORIGINAL

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Peter Petty
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COMMITTEE MEMBERS

John L. Geesman, Presiding Member

Jackalyne Pfannenstiel, Associate Member

ADVISORS, STAFF and CONSULTANTS PRESENT

Suzanne Korosec, Advisor

Kate Zocchetti

Heather Raitt

Gabriel Herrera

Manpreet Mattu

ALSO PRESENT

Scott Galati, Attorney
Galati Blek, LLP

Les Guliassi
Pacific Gas and Electric Company

Evelyn Lee, Attorney
Pacific Gas and Electric Company

Brenda LeMay
Horizon Wind Energy

Steven Kelly
Independent Energy Producers Association

Clair Tortia, Attorney (via teleconference)
Chatburn (phonetic) and Park Lawfirm

Jeremy Weinstein (via teleconference)
PacifiCorp

Rob Campell (via teleconference)
PowerEx

I N D E X

	<u>Page</u>
Proceedings	1
Introductions	1
Opening Remarks	1
Presiding Member Geesman	1
Overview	1
Background	3
CEC Staff Presentation Proposed Guidebook Changes	4
Renewables Portfolio Standard Eligibility Guidebook	
New Renewable Facilities Program Guidebook	
Overall Program Guidebook	
Schedule	10
Public Comments	10
Scott Galati, Galati Blek LLP	10
Les Guliassi, PG&E	29
Brenda LeMay	63
Steven Kelly, IEP	76
Clair Tortia	81
Jeremy Weinstein, PacifiCorp	85
Rob Campbell, PowerEx	97
Adjournment	97
Reporter's Certificate	98

P R O C E E D I N G S

2:32 p.m.

PRESIDING MEMBER GEESMAN: This is a workshop of the California Energy Commission's Renewables Committee. The topic is revisions to our guidelines for RPS eligibility in program implementation.

I'm John Geesman, the Presiding Member of the Commission's Renewables Committee. To my left Commissioner Jackalyne Pfannenstiel, the Commission's Chair and Associate Member of the Renewables Committee. To my right, Suzanne Korosec, my Staff Advisor.

Kate, why don't you get us started.

MS. ZOCCHETTI: Thank you. I'm going to lower the lights just a little bit here. So, welcome, everyone, good afternoon. Can you all hear me? Thank you.

I'm Kate Zocchetti; I'm the Program Lead for the RPS program at the Energy Commission. I want to thank you for coming today. I'd like to announce that if you are calling in and you don't realize that you can observe our slides here by going online at www.energy.ca.gov/webcast.

Likewise, if you want to call in, you

1 would call the number 800-779-9469, and the
2 passcode is workshop. And for those parties that
3 have been trying to call in during the business
4 meeting, we apologize for the delay, again.

5 Just briefly go over the agenda. You've
6 met the Renewables Committee. I'm going to go
7 over our proposed changes to three of our
8 guidebooks for the renewable energy program.
9 That's the RPS eligibility guidebook, the new
10 renewable facilities program guidebook, and the
11 overall program guidebook.

12 I'll briefly go over our schedule that
13 we've planned for the adoption of these revised
14 draft guidebooks. And after that there will be
15 opportunity for public comment, both from the
16 folks that are calling in, and those here in
17 attendance.

18 For the attendees that are here we ask
19 that you fill out a blue card if you do want to
20 make comment today; and give that to Heather here.
21 Also give our reporter your business card. And
22 when you are called to speak, please step up to
23 the microphone there in the center of the room.
24 And we'll have, I believe, the phone callers after
25 that. And all commenters, please identify

1 yourself and your affiliation before you begin.

2 We haven't planned a break, but
3 depending on how long we could go, we could
4 introduce a break.

5 So, I'll just give a very brief
6 background of the goal of the renewable portfolio
7 standard, is to increase the diversity,
8 reliability, public health and environmental
9 benefits of California's energy mix.

10 As I'm sure most of you know, our
11 current legislative goal from SB-107 last year is
12 20 percent of renewables by 2010; and staying with
13 the increase of at least 1 percent per year. The
14 Governor has expanded that goal to 33 percent by
15 2020.

16 Our roles, along with the PUC, are
17 defined by the legislation. And the Energy
18 Commission roles are to certify the facilities as
19 RPS eligible; to design and implement an
20 accounting system to track generation; and to
21 distribute SEPs, supplemental energy payments.

22 Our process is to implement RPS rules
23 through these guidebooks which are revised as
24 needed to respond to public comments, lessons
25 learned, regulatory development, and, of course,

1 legislative mandate.

2 When we have a business meeting adoption
3 they become, these changes that we make become
4 immediately effective.

5 So, I'll just launch into the proposed
6 changes. In the summary form you do have access
7 to the entire guidebook for RPS eligibility. All
8 three guidebooks online. We have copies of the
9 table of the RPS eligibility guidebook showing the
10 changes in underline and strikeout. So I'm just
11 going to go over a few of the highlighted sections
12 and the changes we've made.

13 Previously we had two sections that
14 dealt with facilities that use multiple fuels,
15 including fossil fuel. So we thought it would be
16 easier for the reader to combine those two
17 sections into one new section. We really didn't
18 change too much, but we did combine them into one
19 section called renewable facilities using fossil
20 fuels. So that's where you will find information
21 about multi-fuel facilities.

22 In that section we clarify that for QFs
23 operational before 2002, in order for them to use
24 up to 25 percent of fossil fuel and still count
25 all of their generation as RPS eligible, this is

1 clarified to show that this exception only applies
2 to facilities that were renewable QFs prior to
3 2002.

4 And also it requires -- it doesn't say
5 it here, but it says it in the guidebook -- that
6 they must currently be certified as a renewable
7 QF.

8 Again, in that same section for biomass
9 facilities, it's a little clarification about what
10 we mean by de minimis, because the term de minimis
11 applies not only to the RPS program, but to
12 another program in the renewable energy program
13 that most of you are familiar with, the existing
14 renewables facilities program.

15 We allow, as per the legislation, a de
16 minimis amount of fossil fuel use and still
17 account a hundred percent of the generation as RPS
18 eligible. And the Energy Commission defined 2
19 percent to mean de minimis for the RPS and SEPs.
20 But it's 5 percent for the existing renewable
21 facilities program.

22 And then if the facility generation
23 exceeds the de minimis amount per these
24 definitions, then only the generation that is
25 renewable will be counted towards RPS.

1 Moving on to the delivery requirement
2 section, we wanted to clarify that for out-of-
3 state facilities deliveries can be from any
4 location in the WECC, in the Western Electricity
5 Coordinating Council, as long as the energy is
6 delivered into California.

7 We wanted to revise references to NERC
8 tags previously by changing that term to NERC
9 etags to reflect industry standard terminology.
10 Everything's electronic, so.

11 On to the tracking system section,
12 WREGIS, the Western Renewable Energy Generation
13 Information System, we have modified the
14 requirement that was previously already in the
15 guidebook that said that participants in RPS must
16 participate in our accounting system, to note that
17 we will begin requiring participation January 1,
18 2008. And I made a little note there that it's
19 not in the guidebook but I wanted to point out to
20 everyone who doesn't know, that WREGIS has waived
21 fees for 2007.

22 And just sort of an aside, although I
23 know it's important to folks, that we have tried
24 to reformat and make our forms easier by last time
25 we modified our guidebooks, which was in March, we

1 bifurcated the forms so that if you didn't have
2 certain sections that applied to you, you didn't
3 have to skip over that part and have a 12-page
4 long form.

5 So we did find out after that that some
6 of the forms that were in the hardcopy guidebook
7 that was posted online differed from those that we
8 revised pursuant to some folks asking for a little
9 bit easier format. We found out that there were
10 some inconsistencies. So we apologize for that.
11 We accepted both kinds. And so the current
12 guidebook will reflect those changes.

13 We just clarified that under
14 supplemental energy payments that SEPs are not
15 available for electricity use to service load that
16 is not subject to the PGC.

17 And one SEP form was modified. A
18 calculation was modified. It explains it here.
19 That is something that has already been posted
20 online for everyone's convenience. That is to
21 calculate the per-kilowatt-hour supplemental
22 energy payment to be paid out over ten years. And
23 to calculate that it may be paid over ten years if
24 no cap is applied.

25 I don't necessarily need to read these

1 definitions to you, but we did modify our
2 definition for RPS purposes, our definition of
3 electrical corporation, includes PacifiCorp,
4 Sierra Pacific, Mountain Utilities and Bear
5 Valley. But for the existing and all the other
6 programs under the REPA, the renewable energy
7 program, we added Bear Valley.

8 In the overall guidebook, which the
9 definitions -- I'm sorry, I just mention these
10 definitions, they are in the overall guidebook,
11 but they're also reflected in the RPS eligibility
12 guidebook and the new guidebook. But the overall
13 program guidebook is really the home of the
14 definitions. And we've modified the definitions
15 of these terms to make it more clear. And we've
16 also added some more definitions that we thought
17 readers would appreciate.

18 As most of you probably know there are
19 two bills on the Governor's desk that would affect
20 our RPS eligibility guidelines. Senate Bill 1036
21 would basically remove SEPs from the Energy
22 Commission's purview. And Assembly Bill 809
23 changes the definition of eligible hydroelectric
24 facilities.

25 So, with that in mind, we have drafted

1 our schedule, being cognizant of if one or both of
2 those bills passes, we will need another revision
3 to our guidebooks. If neither of them pass we
4 plan to, after today's workshop and considering
5 everyone's comments, and incorporating all of
6 that, we will send out revised guidebooks. And we
7 plan for adoption in November.

8 However, if one of those bills, or both,
9 of course, are passed, then we will need to
10 reflect those legislative changes in a second
11 revision that would be publicly noticed in
12 November with plans for adoption in December. So
13 it basically bumps it by about a month.

14 So we do hope that all this is finished;
15 and we plan that it is all finished by the end of
16 the year.

17 This is where we would appreciate
18 receiving your comments in writing by this Friday.
19 And the address is shown here. You do need to
20 send, I believe it's 12 copies to dockets. That
21 information is on your workshop notice, those
22 details. This is our contact information if you
23 have specific questions about any one of the
24 guidebooks. If you haven't already reviewed the
25 guidebooks they're available online in underline/

1 strikeout.

2 That is the end of my presentation. We
3 can go back to the schedule -- or the agenda, I
4 should say.

5 So, open it to public comment.

6 PRESIDING MEMBER GEESMAN: Yeah, let's
7 take this fairly slowly. These are staff-proposed
8 changes. I think that members of the public,
9 you're catching the Committee fairly cold on the
10 subject. So, if we have to take some time to
11 fully understand the context of what you're
12 commenting upon, please bear with us.

13 I'd also emphasize the value of written
14 comments. We take those quite seriously, read
15 through them, and carefully evaluate what the
16 impact of the staff recommendation is, and the
17 associated comment, before coming to a conclusion
18 as a Committee.

19 So, I'll go with blue cards. First one
20 up is Scott Galati representing GB, LLP. I see
21 you wear various hats, Scott, but who is GB, LLP?

22 MR. GALATI: That's surprising, that's
23 my firm.

24 (Laughter.)

25 MR. GALATI: I'm never here on my own

1 behalf. But I am here on my own behalf, and I
2 would like to thank you very much for the
3 opportunity to make public comment.

4 As you know, both of you, that I'm not
5 new to this area, but I've been asked recently by
6 different proponents of renewable facilities, both
7 out of state and out of the country, on how one
8 would demonstrate the LORS compliance analysis.

9 And so I'm here to ask a few questions
10 and try to get some guidance on that. And maybe
11 we'll be able to follow up with some written
12 recommendations on maybe where we can have some
13 clarifications.

14 First with respect to out of country,
15 one of the things that I wanted to have some
16 clarification on, and we've been working with
17 staff, I think, closely and having dialogue on
18 this, as well. But I'm still confused, and I
19 think that's my fault.

20 When a facility is going to be built out
21 of the country, my understanding is that there
22 would be a list of the LORS that would apply to
23 that facility if it were built in this country, in
24 California. And that there would be an assessment
25 of whether or not the project would comply with

1 those LORS.

2 And I'm having difficulty on how I'd
3 demonstrate that. One way that comes to mind, and
4 a way I think that makes sense, would be -- I'm
5 going to try to give a specific example.

6 Let's take the area of cultural
7 resources, which is one of the areas listed.
8 There are several federal and state laws that
9 apply in California to both investigate, identify
10 and protect cultural resource sites.

11 The way I would like to show that is a
12 demonstration outside the country that they have a
13 similar series of laws that result in the same
14 investigation and protection of cultural sites
15 that are important to that country.

16 I can think of no other way to
17 demonstrate that an out-of-country facility would
18 be as protective of the environment, especially in
19 the area of cultural resources, for example.

20 This is a much more of a programmatic
21 approach, and was wondering if that was what was
22 intended; or can we have some additional guidance
23 in the guidebook that that might be applicable.
24 And, again, I'm talking about out of country.

25 PRESIDING MEMBER GEESMAN: Well, let me

1 start, and, Gabe, maybe you can help us on this.
2 What's our constitutional ability, as a state, to
3 apply a state standard out of country? And I
4 presume the countries we're talking about are
5 either Canada or Mexico, because of the
6 requirement that you be connected to the WECC
7 grid.

8 MR. GALATI: Right, and I'm going to
9 talk about Canada.

10 MR. HERRERA: Commissioner Geesman, the
11 law does not --

12 PRESIDING MEMBER GEESMAN: Microphone.

13 MR. HERRERA: The state law does not
14 require that the Energy Commission apply
15 California standards, environmental standards, on
16 this out-of-country, or even an out-of-state
17 facility.

18 What the law does require is that a
19 facility that's located out of country be
20 developed and operated in a manner as protective
21 of the environment as a similar facility in
22 California.

23 So the way the Energy Commission adopted
24 its guidelines is to say show us, Mr. Out-of-State
25 Facility, how you're going to operate and develop

1 your facility in such a way that it doesn't cause
2 certain environmental standards to be exceeded.
3 We want you to compare those environmental
4 standards to the environmental standards in
5 California.

6 And the guidebook identifies the 16 LORS
7 environmental categories that the Commission uses
8 for purposes of power plant siting cases.

9 Now, Mr. Galati has a unique opportunity
10 here, because this is the first time we've got an
11 out-of-country facility coming to us seeking
12 certification. So, I think we will probably need
13 to revise the guidelines once we go through this
14 once.

15 But I have talked to Mr. Galati; I've
16 talked to PG&E and others, as well, about how we
17 would require this. And I think what Mr. Galati
18 has proposed, I think, is a reasonable approach
19 with respect to cultural resources.

20 With respect to other resource
21 categories like air quality and water quality, I
22 think we would expect to see the environmental
23 standard in California, say for example, if it's a
24 certain percentage of dissolved solids per volume
25 of water in California, that the standard in out

1 of country be as protective, or as rigorous as
2 that requirement.

3 PRESIDING MEMBER GEESMAN: Do we have
4 the ability under NAFTA to do that?

5 MR. HERRERA: To do?

6 PRESIDING MEMBER GEESMAN: To do that as
7 vigorous as California, or as rigorous as
8 California?

9 MR. HERRERA: Well, I think until an
10 appellate court tells us that California's law is
11 unconstitutional, I think we're compelled to
12 follow those requirements.

13 PRESIDING MEMBER GEESMAN: Well, I think
14 we're compelled to follow the statute, but I think
15 we're also compelled, if we can, to construe it in
16 a fashion that's both consistent with --

17 MR. HERRERA: Right.

18 PRESIDING MEMBER GEESMAN: -- the
19 constitution and what treaties the country has
20 entered into.

21 MR. HERRERA: And I don't think we're
22 trying to apply the law in such a way that we
23 would violate either federal law or international
24 treaty law.

25 PRESIDING MEMBER GEESMAN: Okay.

1 MR. HERRERA: But again this is an
2 opportunity for us to perhaps make some revisions
3 after we go through this process for the first
4 time.

5 MR. GALATI: Yes, and as a person who's
6 trying to write it right now, I have very specific
7 examples. Like, for example, let's take biology.
8 In California we have designated California-
9 protected species. They are not going to be the
10 same protected species that are in B.C. But there
11 are protected species and a whole regime for
12 protecting what Canada has determined is an
13 important environmental biological resources.

14 I would like to show that scheme as
15 opposed to the standard. And part of the reason
16 is when you look at several of the items, air
17 quality might be one that's different; water
18 quality might be. But most of them, it's very
19 hard to say what is the standard. It's six.
20 Above six is bad, below six is good. It's very
21 very hard to identify those.

22 And so I think the word standard is
23 certainly tripping me up. And I keep coming back
24 to a more programmatic process approach. And I
25 just wanted to get a feel from the Committee --

1 because it's certainly what I'm proposing to
2 Gabe -- just want to get a feel from the Committee
3 if we're heading in the right direction, or if we
4 could get more guidance in this document that
5 would say that that's okay. Because I'm a little
6 concerned about how I make the demonstration, as
7 it's currently written.

8 MR. HERRERA: I think it's going to be
9 difficult for program staff to determine that what
10 Mr. Galati presents is adequate to actually see
11 it. I mean we certainly have, I think, several
12 months go make some revisions, if necessary. And
13 hopefully during that time period I can work with
14 program staff and Mr. Galati to see exactly what
15 they've identified and how that would work.

16 But I think the law does require
17 something more than an out-of-country facility
18 merely indicating that it complies with its own
19 requirements. Because if that was the case, the
20 California Legislature didn't need to enact laws
21 to require an out-of-country facility to comply
22 with its own requirements. It would have to
23 comply with its own requirements irrespective of
24 California law.

25 So I think what California requires is a

1 little bit more. And we're trying to demonstrate
2 that and require applicants to send us more
3 information.

4 PRESIDING MEMBER GEESMAN: So, take the
5 cultural resources area as an example. If Canada
6 had no particular requirements in the cultural
7 resources area, then it would be your view that we
8 would be applying the statute and saying, aha,
9 this one is deficient because they are not
10 protecting cultural resources in the same way that
11 California is.

12 MR. HERRERA: Right. But in that case
13 if there wasn't something comparable, then I think
14 what would happen is we could say, or the facility
15 operator/developer could say, we'll agree to
16 operate or develop our plant subject to these
17 conditions that will essentially provide the same
18 or the equivalent level of protection.

19 PRESIDING MEMBER GEESMAN: Same or the
20 equivalent level. I mean this is a slippery
21 slope, isn't it?

22 MR. HERRERA: It is. It's very
23 slippery.

24 ASSOCIATE MEMBER PFANNENSTIEL: And it
25 seems like when you get into air quality and water

1 quality it becomes even more difficult because
2 it's hard to say that they have to be exactly the
3 California standards.

4 MR. HERRERA: Right.

5 ASSOCIATE MEMBER PFANNENSTIEL: Because
6 most provinces may not have exactly the same
7 standards as California.

8 MR. HERRERA: And they could vary
9 depending on location within a province. And that
10 holds true, I mean, depending on where you're
11 located in California, the standards could be
12 different.

13 PRESIDING MEMBER GEESMAN: Right.

14 MR. HERRERA: With respect to air
15 quality, --

16 PRESIDING MEMBER GEESMAN: We allow
17 local variation to a considerable extent in
18 California in many of our standards, and that's
19 considered to be good government, to recognize
20 that local variation.

21 MR. HERRERA: And I think we allow that
22 in the guidebook now by allowing the applicant to
23 identify whatever location in California they
24 decide to compare their out-of-country facility
25 to.

1 So we don't say, pick the most rigorous
2 environmental transmission in California, which
3 may be --

4 ASSOCIATE MEMBER PFANNENSTIEL: So it
5 could be the least rigorous?

6 MR. HERRERA: Yes, it could be. We're
7 not saying use South Coast Air Quality Management
8 District's air pollution standards. We're asking
9 applicants to tell us which standards they would
10 compare their facility to.

11 PRESIDING MEMBER GEESMAN: And you think
12 that's a reasonable interpretation of what the
13 Legislature wanted in drafting this requirement?

14 MR. HERRERA: I think it is. And the
15 reason I think so is because facilities, even if
16 sited in California, could vary in terms of what
17 standards they would need to comply with it. The
18 standard says a similar facility in California.
19 The Energy Commission, I guess, has the discretion
20 to decide where that similar facility is located,
21 but it's chosen to give the developer the
22 discretion to decide for himself. To that degree,
23 it has provided a little flexibility.

24 MR. GALATI: One of the things we
25 certainly don't want to do is cherry-pick, okay,

1 and --

2 PRESIDING MEMBER GEESMAN: How could you
3 avoid it?

4 MR. GALATI: I have an idea.

5 PRESIDING MEMBER GEESMAN: Okay.

6 MR. GALATI: Let's take the area of
7 noise, for example. There are noise standards
8 that are developed by the community in generally
9 noise elements in California. That's how it's
10 done. Some communities decide to put a higher
11 value on quiet nighttime hours than other
12 communities.

13 If I could show you B.C. did the same
14 thing, wouldn't I be showing you that they're
15 protective of noise for the community of B.C. the
16 same way California would be? I don't have to
17 tell you the number is 45, because I'll go find a
18 number that's 65.

19 PRESIDING MEMBER GEESMAN: Sure.

20 MR. GALATI: Because I can.

21 PRESIDING MEMBER GEESMAN: Sure.

22 MR. GALATI: And I don't think that that
23 is really what's intended. I would prefer to say
24 here's the program how they do it. It's a similar
25 program how we do it. While the results might be

1 different, I don't know what the results are going
2 to be, the results are both protective of the
3 environment, as applied by their own laws.

4 And I think it's the standards when I
5 start to quantify them that I'm really having
6 difficulty. so I keep coming back to something
7 more programmatic and something that is, you know,
8 more process and programmatic oriented. And I
9 know that that's where we sort of, we're not maybe
10 seeing a hundred percent eye to eye. I'm just
11 having difficulty literally doing it, as opposed
12 to thinking about how to do it.

13 PRESIDING MEMBER GEESMAN: Do you think
14 that approach would address each of the enumerated
15 LORS that the guidelines articulate?

16 MR. GALATI: Certainly most of them. I
17 haven't yet found one, other than air quality, I
18 could say, you know, in a biomass facility what is
19 the emissions, or, you know, what I would try to
20 show is, you know, it's an offsetting approach, or
21 whatever, or something like that so that the net
22 result is X as opposed to a number.

23 But with respect to land use, that's a
24 tough one. You know, land use entire regulation
25 is done by city councils and supervisors based on

1 the wills of the community. So, height variances
2 and all the local issues related to land use, I
3 could pick a place where I was comparing a B.C.
4 wind facility so it didn't need a height variance.

5 But I'm not sure that that's really
6 getting around it, because I'll be maybe building
7 a wind facility and I pick a place in California
8 it wouldn't make sense to build a wind facility.

9 So, what I'd like to do is, again, make
10 an attempt to try to show that there is a series
11 of laws in place by working with B.C. council to
12 determine this is how we protect our land use
13 decisions. This is how we protect noise.

14 And then the Commission can look at
15 those and say, that makes sense to us.

16 PRESIDING MEMBER GEESMAN: Are you going
17 to raise a comment about in-U.S. facilities, as
18 well? Or can I jump to that hypothetical?

19 MR. GALATI: Yeah, I had a comment on
20 in-state facilities, only because I just wanted
21 clarification. My understanding is in-country,
22 out of state, that my understanding that that's a
23 different analysis.

24 We're looking to see whether or not
25 something right cross the border is really

1 affecting California. As opposed to whether it's
2 just as protective as California.

3 We're looking at something so if I'm in
4 the beginning of a watershed that ends up in
5 California, something I do here affects a
6 California standard, that, to me, if I'm across
7 the border and my air emissions go into
8 California. Those are something that I think are
9 easily addressed.

10 That's my understanding how that is
11 interpreted, is whether I'm causing or
12 contributing to a violation of California
13 standards. Not whether the facility, itself,
14 complies with California standards. Or is as
15 protective as California's. Am I interpreting
16 that right?

17 MR. HERRERA: That's correct, yes.

18 PRESIDING MEMBER GEESMAN: Okay.

19 So, Gabe, your concern is the direction
20 Scott is headed in is simply saying that my
21 facility will comply with all of the local laws in
22 my jurisdiction, and that it's not providing any
23 meaningful significance to the words that the
24 Legislature adopted in this standard or in this
25 requirement?

1 MR. HERRERA: Yeah, that's my
2 reservation, is the Legislature would not have
3 needed to speak on that particular point for an
4 out-of-country facility to comply with the out-of-
5 country requirements. So the Legislature must
6 have meant something more than just that.

7 But if Scott is suggesting that his
8 analysis will compare standards to the extent
9 there are numeric standards to compare to. And to
10 the extent they're not, like resources, cultural
11 resources for example, then perhaps in those
12 particular areas he shows that what the out-of-
13 country facility does, or other country does,
14 evaluates or utilizes a process to make sure that
15 there aren't any impacts in that resource.

16 Perhaps that would be adequate. Again,
17 the --

18 PRESIDING MEMBER GEESMAN: Are the words
19 of the statute that apply to out-of-country the
20 same as the words that apply to in-country but out
21 of state?

22 MR. HERRERA: No, they're different.

23 PRESIDING MEMBER GEESMAN: Okay, so the
24 Legislature clearly contemplated a different
25 standard --

1 MR. HERRERA: Yeah.

2 PRESIDING MEMBER GEESMAN: -- to address
3 the two situations.

4 ASSOCIATE MEMBER PFANNENSTIEL: Are the
5 words in the statute essentially what we have
6 picked up in the guidebook?

7 MR. HERRERA: Yes.

8 ASSOCIATE MEMBER PFANNENSTIEL: Okay, so
9 those are very different.

10 MR. HERRERA: I think the analysis for
11 the out-of-state, but in-country facilities is
12 perhaps a little bit easier because in that --

13 ASSOCIATE MEMBER PFANNENSTIEL: Yeah,
14 that is --

15 MR. HERRERA: -- case, as Scott has
16 pointed out, you know, if you have a facility
17 located right across California border then it
18 might be easy to show that, you know, the emission
19 plume from this biomass plant is wafting into
20 California, and causing California to exceed
21 certain air standards.

22 But say if you have a facility in
23 Wyoming or Idaho and it's a wind facility, you
24 know, that's probably an easier analysis because
25 it might be hard to show that there's any direct

1 impacts on California.

2 PRESIDING MEMBER GEESMAN: Migratory
3 birds.

4 MR. HERRERA: Well, I mean that's one
5 area. Bats. Understand you guys had a pretty
6 good discussion on that before lunch.

7 PRESIDING MEMBER GEESMAN: We're
8 pretty --

9 ASSOCIATE MEMBER PFANNENSTIEL: We're
10 pretty knowledgeable of that area right now.

11 MR. GALATI: And I listened to the last
12 part of that conversation, so I know that that's
13 not a LORS.

14 (Laughter.)

15 MR. GALATI: The guidelines that now we
16 need to demonstrate compliance with.

17 ASSOCIATE MEMBER PFANNENSTIEL: I'm glad
18 you understood that part of it.

19 MR. GALATI: I did; I understood that
20 very clearly.

21 PRESIDING MEMBER GEESMAN: It's your
22 feeling, Gabe, that we have the ability to be more
23 restrictive on an out-of-country project than an
24 in-country, but out-of-state project?

25 MR. HERRERA: Yes.

1 PRESIDING MEMBER GEESMAN: Consistent
2 with NAFTA?

3 MR. HERRERA: I reviewed general
4 provisions of NAFTA and felt that it was
5 consistent. Again, the out-of-country facility is
6 when you compare to an in-state facility, it is
7 subject to California's environmental standards.
8 The argument is that you're treating it the same.

9 But I recognize there are certainly
10 ambiguities in the law and the Commission
11 certainly has the discretion to modify the LORS
12 list, or to revise the way it evaluates the
13 analysis of those LORS categories.

14 PRESIDING MEMBER GEESMAN: Yeah, but
15 ideally the guidelines should be sufficiently
16 bright-lined that we're not dealing with
17 everything on a case-by-case basis.

18 MR. HERRERA: You know, it could be,
19 also, in terms of a programmatic approach, once
20 this analysis for an out-of-country facility is
21 done, perhaps that analysis could be used for all
22 future out-of-country facilities.

23 So, for example, in B.C. and the
24 Commission approves it once for a particular
25 facility, and then any other facilities that might

1 be sited in British Columbia would just rely upon
2 the work that was already done for the earlier
3 facility.

4 PRESIDING MEMBER GEESMAN: Pretty broad
5 range of potential types of projects we're likely
6 to see, though.

7 MR. HERRERA: Yeah, it would have to
8 vary by project type.

9 PRESIDING MEMBER GEESMAN: So maybe we
10 could have a B.C. guidebook and a Mexico
11 guidebook.

12 Well, Scott, we look forward to seeing
13 what you have to submit.

14 MR. GALATI: Okay.

15 PRESIDING MEMBER GEESMAN: You got
16 anything else you want to bring to our attention
17 here?

18 MR. GALATI: Not at this time, thank
19 you.

20 PRESIDING MEMBER GEESMAN: Thank you.
21 Les Guliassi, PG&E.

22 MR. GULIASI: Thank you; good afternoon,
23 Commissioners and Staff. Les Guliassi with PG&E.
24 We've made a lot of progress over the last year
25 when we first started discussing guidebook changes

1 pursuant to legislation that was passed in 2007,
2 SB-107.

3 We've been working very closely with the
4 staff since that time up to today. So press
5 further with some additional revisions and
6 clarifications that are needed in the guidebook.

7 If you recall we had lots of good,
8 productive discussions about shaping arrangements
9 dealing with intermittent resources from the
10 Northwest. We made very important and significant
11 guidebook changes to allow dairy and biogas
12 resources.

13 These are important, and they're
14 important for us for many reasons. And certainly
15 chief among them is the requirement that we need
16 to reach 20 percent deliverables by 2010. And
17 then go beyond that.

18 What I'm going to talk to you about
19 today is a pretty high-level depiction of what we
20 intend to provide in written form on Friday. What
21 I'm going to say to you reflects our practical
22 experience in dealing in the commercial
23 marketplace for power.

24 The remarks also reflect the guidance
25 that we've gotten from developers and from sellers

1 of renewable power.

2 What they're telling us is that the
3 guidebooks, while instructive, are not as clear as
4 they need to be. And so our goal here is to
5 provide you information in written form on Friday
6 that will add further clarification to the
7 guidebooks to provide greater certainty, not only
8 for us, but for the developers and the sellers who
9 want to enter this market.

10 So, I think it's important for you, the
11 Committee, to hear what we're going to say and
12 what we're going to submit. But it's also
13 important to have this information on the record.
14 And it's important for this dialogue to occur so
15 that sellers and developers get the clarity that
16 they're seeking.

17 We handed out, and I believe you have
18 before you, the summary. And we provided copies
19 available in the foyer; if people need to see
20 copies, they're on the table back there.

21 The handout really is in two parts. The
22 first part is sort of a set of principles that we
23 wanted to address. And the second part has to do
24 with some of the specific issues that we'll be
25 addressing in written form on Friday.

1 So, if you'll bear with me just for a
2 moment I wanted to walk through these three pages
3 to provide you with some of our thinking and the
4 reasoning behind our effort to make further
5 clarifications and improvements to the guidebook.

6 The important word on the front page
7 here is expanding. What we want to do is find
8 every opportunity to expand available resources.
9 We need to increase the availability of resources,
10 putting it very simply.

11 Again, these are sort of some guiding
12 principles that we came up with in thinking
13 through this process to provide you with wording
14 changes and clarifications.

15 We believe that the revisions should be
16 drafted with the goal of promoting renewable
17 developments; that's a key and kind of
18 foundational issue.

19 Eligibility criteria should be no
20 stricter than required by statute. I think the
21 discussion we just had a few minutes ago about
22 out-of-country and out-of-state deliveries is
23 instructive. To the extent that we can have clear
24 bright lines, that's great. We need that kind of
25 clarification.

1 And the dialogue we had about the degree
2 to which the Energy Commission has some discretion
3 is important, but not to be restrictive. To think
4 about expanding, not contracting.

5 The CEC should exercise its discretion
6 in favor of broadening the renewable market.
7 Certification process should be clear, reliable,
8 streamlined to avoid discouraging development in
9 the interests of California.

10 And I might say also, enduring. These
11 guidelines should last. They shouldn't be changed
12 arbitrarily. Obviously to the extent that we can
13 make further improvements and clarification,
14 great. But we should have something that endures.

15 The revisions should address real-world
16 problems. We believe that any retroactive
17 application of eligibility criteria creates costly
18 uncertainty and deters development.

19 Current out-of-state and out-of-country
20 certification requirements, we've heard, have
21 deterred prospective sellers. The guidebook
22 revisions are needed to implement legislation, but
23 they should be clear, correct, complete and
24 timely.

25 And I'm going to return to some of these

1 in specific form as I walk through the other
2 pages.

3 The requirements should not create the
4 impression that out-of-country resources are
5 ineligible. Again, these are things that we're
6 hearing. We're not making this up. These are
7 things we're hearing in our commercial
8 negotiations.

9 And finally, QF eligibility criteria
10 should create an incentive to go green. I was
11 thinking about a baseball analogy. You know, some
12 say that the tie goes to the runner. What we want
13 you to do here is create the incentive to give the
14 green flag and move forward, not provide
15 disincentives.

16 And sometimes those disincentives are,
17 frankly, in all cases. Those disincentives are
18 not intentional. We think they come about through
19 restrictive interpretation of statute. Or
20 sometimes they just come about because we're all
21 struggling to work through this. But we need to
22 continue to work together to make these
23 clarifications so we can expand the number of
24 resources available to us.

25 PRESIDING MEMBER GEESMAN: I wonder if

1 you would elaborate a bit on your second point on
2 this page about the inhibiting effect of current
3 out-of-state and out-of-country certification
4 requirements. Which ones do you have in mind?

5 MR. GULIASI: I think the dialogue we
6 just heard kicked off by Mr. Galati is precisely
7 the kind of things that we're talking about. We
8 are hearing from developers that there isn't
9 enough clarity in the current guidebook. They
10 don't know what to do. They don't know how to
11 apply the guidebooks. And we're struggling with
12 that.

13 I'm going to get -- I guess I can get to
14 that issue now. What I wanted to do is explain
15 why it's important for us, besides just the
16 general notion that we want to increase the
17 available supply.

18 As you may know, I know some of you
19 know, that we were awarded \$14 million from the
20 California Public Utilities Commission to
21 investigate the feasibility of available and
22 potential renewable resources from British
23 Columbia.

24 As a parenthetical to that, you, I
25 believe, know that we have begun to investigate

1 the possibility of a very large expansion in
2 development of a transmission line with other
3 parties, municipal utilities and others included,
4 to reach beyond California into the Northwest, and
5 then into British Columbia.

6 We think this transmission line will be
7 needed to import renewable resources from the
8 Northwest and from British Columbia.

9 We're supposed to produce a report on
10 the feasibility of renewable resources in British
11 Columbia by the end of this year. Moreover, we're
12 supposed to propose to the Public Utilities
13 Commission a demonstration project. Again, to
14 demonstrate the feasibility of developing
15 resources, principally wind, and principally small
16 hydro resources in British Columbia.

17 We'd like to be able to launch that
18 demonstration project as early as the first
19 quarter of next year.

20 Moreover, it's important for us, if we
21 are going to achieve the 20 percent renewable
22 target by 2010, and then go beyond that to
23 whatever the mandate may be, 33 percent or
24 whatever, in whatever year is chosen by the
25 Legislature, we're going to need these resources.

1 And we're relying on you to help us expand the
2 existing supply; help us find new available
3 resources that we can depend on to reach these
4 mandates.

5 And, you know, here we are, the third
6 quarter of 2007. And you know as well as anybody
7 how difficult it is to get a project permitted and
8 sited and constructed and have deliveries. Time
9 is running short and we need all the help we can
10 get and all the encouragement we can get.
11 Likewise, developers, sellers of renewable power,
12 need that kind of encouragement, that kind of
13 clarity. So that's the reason behind the
14 proposals that we will make and provide to you on
15 Friday in writing.

16 So I don't think I need to say anything
17 more about the out-of-state and the out-of-
18 country --

19 ASSOCIATE MEMBER PFANNENSTIEL: Well,
20 Les, --

21 MR. GULIASI: Yes.

22 ASSOCIATE MEMBER PFANNENSTIEL: --
23 before you leave that, on your matrix, I know you
24 haven't quite got to it yet, but on the out-of-
25 country you do have a recommended change that I

1 just don't understand at all.

2 On eligibility criteria, out-of-country,
3 it's page 2 of the matrix. The third column is
4 recommended change. And it says that once we find
5 that the development that the requirements are as
6 protective of the environment of California. And
7 the rest of that, it should also find that a
8 jurisdictional renewable resource which
9 demonstrates compliance with those requirements,
10 is RPS eligible. What are you trying to say
11 there?

12 MR. GULIASI: I think this -- what I
13 wanted to say is that I think, in trying to cram,
14 you know, some wording into a box, didn't do
15 justice to the idea. And we'll fully flesh this
16 out in our comments.

17 But the jurisdiction, itself, refers to
18 the British Columbia jurisdiction, specifically.
19 But the concept is, you know, what was termed a
20 programmatic approach, as, you know, we heard a
21 little bit earlier from Scott Galati. It's
22 basically the same concept, the same approach.

23 PRESIDING MEMBER GEESMAN: Okay, just so
24 I understand our earlier exchange, when I asked
25 you about which of the current out-of-state and

1 out-of-country certification requirements had
2 deterred prospective sellers, I think what you
3 said was when you used the word current you mean
4 those proposed in the staff guidebook.

5 MR. GULIASI: Yeah, the whatever, 15 or
6 16, whatever number of categories you have.

7 PRESIDING MEMBER GEESMAN: Okay, --

8 ASSOCIATE MEMBER PFANNENSTIEL: The
9 LORS.

10 PRESIDING MEMBER GEESMAN: -- okay, but
11 we're talking about things that have been
12 proposed, as opposed to existing --

13 MR. HERRERA: No. Just to clarify,
14 Commissioner, pardon me for interrupting, but
15 those 16 categories have been in the guidebook
16 since its adoption, I think in '06, '04. It's
17 been in there for awhile and we just -- we've made
18 some minor clarifications based on, frankly,
19 suggestions from PG&E. But we haven't changed
20 those 16 categories.

21 PRESIDING MEMBER GEESMAN: Okay. I'm
22 learning more as this workshop goes on.

23 ASSOCIATE MEMBER PFANNENSTIEL: So,
24 you're suggesting those 16 are just too many,
25 and --

1 MR. GULIASI: No, no, I'm not saying
2 there's anything wrong with that list. I think
3 what I'm saying is the application, you know, when
4 you get to the LORS --

5 PRESIDING MEMBER GEESMAN: Then that
6 they, in your experience, --

7 MR. GULIASI: -- that's where people --

8 PRESIDING MEMBER GEESMAN: -- they've
9 deterred prospective sellers?

10 MR. GULIASI: Yes. It's the lack of
11 clarification and the lack of, you know, what to
12 do and how you demonstrate compliance with the
13 guidebook, and presumably the statute behind it,
14 that requires, you know, the project to be as
15 protective of the California environment.

16 We need to go back just for a moment on
17 the banking and shaping issue. As I mentioned
18 earlier, that's the first one listed in the
19 eligibility criteria, having, as I mentioned
20 earlier, we've made a tremendous amount of
21 progress and I think all we're asking for here is
22 a very simple clarification that we introduce the
23 word intermediary in the guidebook so that it's
24 clear to developers that -- and it's explicit,
25 that a load-serving entity can achieve delivery

1 from an out-of-state renewable entity through an
2 intermediary, not just a generator, itself.

3 I think that's consistent with the
4 intent. And we've worked very closely with staff
5 to understand this, but it would help. Again,
6 this is an example of what we're hearing in our
7 negotiations, the kind of clarification that is
8 needed.

9 PRESIDING MEMBER GEESMAN: And it's your
10 belief, I presume, that that does not present
11 insurmountable documentation requirements? That
12 we could just as easily document that purchases
13 from an intermediary were actually coming from an
14 eligible renewable facility as we could purchases
15 from that generator, itself.

16 MR. GULIASI: I believe you can. I mean
17 there is already a burden placed on parties to
18 make that demonstration. I don't think it would
19 be any more burdensome to add this as a further
20 clarification.

21 The next issue has to do with small
22 hydro. Kate mentioned that if AB-809 is signed by
23 the Governor we would have to return here and have
24 further discussion about the application of that
25 new statute.

1 When we addressed this issue about a
2 year ago it was my understanding that the CEC was
3 fully supportive of developing responsible small
4 hydro facilities to add further to the eligible
5 supply of renewable resources. And we think the
6 passage of this legislation will help further.

7 PRESIDING MEMBER GEESMAN: Other than
8 conforming to the legislation, if it's signed, do
9 you have any comments on small hydro beyond that
10 statutory conformity?

11 MR. GULIASI: Not today. I mean we've
12 talked in general terms about doing everything we
13 can to expand the supply, and include, you know,
14 further resources from small hydro in an
15 environmentally responsible way. We don't have
16 anything more specific to add to that.

17 The next issue has to deal with hybrid
18 fuels from small power producers.

19 PRESIDING MEMBER GEESMAN: Now, Les, you
20 skipped over --

21 MR. GULIASI: I'm sorry.

22 PRESIDING MEMBER GEESMAN: -- a whole
23 bunch of stuff you had on out-of-state deliveries
24 and out-of-country deliveries. Are you doing that
25 intentionally, or --

1 MR. GULIASI: Yes. I said a moment ago
2 I don't think there's any need to go any further
3 into that issue. I think it was just covered --

4 PRESIDING MEMBER GEESMAN: Okay.

5 MR. GULIASI: -- in the dialogue that --

6 PRESIDING MEMBER GEESMAN: So you find
7 yourself in general agreement with the approach
8 that Mr. Galati's proposing --

9 MR. GULIASI: Yes.

10 PRESIDING MEMBER GEESMAN: -- to submit
11 to us?

12 MR. GULIASI: Yes. And, again, we will
13 add some specific recommendations in what we
14 submit on Friday.

15 PRESIDING MEMBER GEESMAN: Okay.

16 MR. GULIASI: What we're asking for,
17 with respect to the hybrid fuel for small power
18 producers, is a very simple change, the deletion
19 of one word, renewable. We think that the
20 guidebook, as written now, is too restrictive in
21 its interpretation.

22 So on page 24 if you deleted the word
23 renewable from the guidebook I think it would
24 solve that particular problem.

25 The next issue has to do with a simple

1 clarification. On the precertification of
2 deliveries, we're finding that in some cases an
3 eligible renewable resource cannot meet all the
4 requirements for certification at the time the
5 facility begins operation and commences
6 generation.

7 What we would like is that the guidebook
8 reflect and explicitly state that deliveries by a
9 generator that is precertified will be
10 retroactively deemed RPS eligible once it's met
11 the conditions for certification. This is, again,
12 just a clarification that, I think, would help.

13 The next two issues deal with
14 certification. I think they're not identical, but
15 they're similar. The first one has to do with one
16 certification and a recertification is required.
17 What we're finding is that the staff has asked
18 parties to recertify their facility sometimes
19 during the two-year certification period. Even
20 though there may not be any applicable, you know,
21 change in law during that period, there's been
22 this request by the staff for parties to recertify
23 their facilities.

24 I sort of think about this as like, you
25 know, a requirement by the Department of Motor

1 Vehicles when you have a drivers license. You're
2 to give them your drivers license for whatever
3 number of years, and during the period of time
4 when you're issued your license to the time it
5 expires, the law will change. And there will be
6 new laws put in place affecting motor vehicle use
7 and driving and so forth.

8 We're not required to go back to the DMV
9 and take a new test just because the law changed.
10 There's a presumption that, you know, you
11 understand the new law and you drive in accordance
12 with the new laws.

13 If you have to go back and take a test
14 when your license expires, you know, you would be
15 held accountable to understand what those new laws
16 are.

17 And we don't think it's necessary for a
18 facility to have to recertify their project during
19 the two-year period when it has already been
20 certified.

21 Similarly, though this is somewhat
22 different, is the issue about grandfathering.
23 Again, certification period runs for two years.
24 We believe that it would be -- it would add great
25 certainty and stability to the market if the

1 requirement were not in place to have
2 certification or recertification of an eligible
3 resource just because, you know, the law changed
4 for the period of time of the duration of the
5 contract in place.

6 Again, if you can't depend on your
7 project being eligible and if we can't depend on
8 counting the delivery from that project, it just
9 adds a great deal of confusion. And we're not
10 going to have an easy time achieving the goals.

11 PRESIDING MEMBER GEESMAN: And you feel
12 that that uncertainty has impeded you, to date?

13 MR. GULIASI: I'm not --

14 PRESIDING MEMBER GEESMAN: You've had
15 contracts where there's been some uncertainty as
16 to whether or not some future change in
17 legislation could render the resource ineligible
18 and that's caused a problem for you in the
19 contract?

20 MR. GULIASI: Well, we know certainly
21 there's a cost. If a project loses its
22 certification there's certainly a cost. Certainly
23 we loose the credit --

24 PRESIDING MEMBER GEESMAN: Have you
25 signed contracts with projects where you thought

1 that there was a risk that they could lose their
2 certification?

3 MR. GULIASI: No, not that I'm aware of.
4 But, again, there's a cost. If you lose
5 certification, you know, that project drops off.
6 We lose the credit. There may be a cost to us
7 with respect to a payment for ending the contract.
8 Or if there is such a cost, someone has to bear
9 that cost. Typically customers bear that cost.

10 So we want to avoid that situation. And
11 I think it would be prudent to do something to
12 help us so we don't face that situation.

13 There may be situations that I'm
14 personally not aware of. I could find out, but --

15 PRESIDING MEMBER GEESMAN: Yeah, is this
16 is anything other than a hypothetical concern, I'd
17 like to know about it. I think I understand what
18 you're driving at, and you'd like it more
19 explicitly stated that there's an implied
20 grandfathering through the effect of the contract.

21 I'm a little bit skeptical that that's
22 been an actual problem to date in any of your
23 existing contracts. I doubt that you'd sign --

24 MR. GULIASI: Well, if you'd give me a
25 moment I might -- I'm going to ask one of my

1 colleagues here --

2 PRESIDING MEMBER GEESMAN: Okay.

3 MR. GULIASI: -- and see if there
4 actually is such a situation.

5 PRESIDING MEMBER GEESMAN: And I don't
6 want to hold you just to whatever you're told
7 today.

8 (Pause.)

9 MR. GULIASI: Thank you for the brief
10 timeout. What my colleagues told me was there has
11 been an instance in the past with respect to
12 biomass facilities. If you recall, there was that
13 whole episode, and I just didn't recall a few
14 minutes ago, where, you know, biomass facilities
15 were all of a sudden ineligible. And it took an
16 act of the Legislature to clarify that and enable
17 biomass facilities to become eligible again.

18 But I'm also told from my colleague who
19 is intimately involved in contract negotiations
20 that this is always an issue that comes up from
21 counter parties.

22 And I guess what I'm telling you is that
23 what I said earlier, these are, you know, real-
24 life circumstances. And to the extent that you
25 could assist by providing that clarity or give

1 further assurance, it would just help us. And it
2 would allow us to sign contracts more swiftly and
3 bring clarity to the market.

4 PRESIDING MEMBER GEESMAN: Can I ask the
5 staff, was there a point in time where biomass
6 projects all of a sudden became ineligible and it
7 took an act of the Legislature to reinstate them?

8 MR. HERRERA: Well, there were some new
9 requirements, for example, under Senate Bill 107,
10 that applied to existing biomass facilities, the
11 same biomass fuel limitations that previously had
12 been applied only to biomass facilities seeking
13 SEPs.

14 So, where a newer biomass facility would
15 have to limit the type of biomass fuel it used to
16 receive SEP, what the Legislature did was took
17 those requirements and straddled existing biomass
18 facilities with those requirements in order for
19 those existing biomass facilities to receive
20 funding from the existing renewables facility
21 program.

22 PRESIDING MEMBER GEESMAN: But did an
23 existing RPS contract drop out of eligibility and
24 the Legislature have to reinstate it? I mean
25 that's the way I heard the situation described.

1 MR. HERRERA: I'm not aware if that
2 happened. And, also, if I could just quickly
3 interject to say that although program staff has
4 asked for facilities to reapply for RPS
5 certification based on changes in the law, and so
6 we've applied it in our guidelines, we haven't
7 done it for any others. It's always been because
8 there was a change in the law.

9 PRESIDING MEMBER GEESMAN: Right.

10 MR. HERRERA: Most recently, SB-1250 and
11 SB-107, those requirements changed some of the
12 eligibility requirements that we then had to apply
13 on some of the facilities that had previously
14 sought and obtained certification.

15 PRESIDING MEMBER GEESMAN: You got
16 anything to add?

17 MR. GULIASI: I want to thank staff
18 counsel for the clarification. But, I think there
19 was a biomass facility whose funding was at risk.
20 But there is a clear example with respect to
21 conduit you know, hydro, where last year passage
22 of legislation made conduit hydro ineligible. The
23 Legislature is attempting to address that issue
24 now. So, --

25 PRESIDING MEMBER GEESMAN: Did you have

1 contracts with conduit hydro projects which you
2 now think are no longer eligible, and it's going
3 to take a change of statute to put them back in?

4 MR. GULIASI: Again, I think this is
5 also in the category of, you know, avoidance.
6 It's one to avoid --

7 PRESIDING MEMBER GEESMAN: No, I'm clear
8 on that situation. But what you were describing
9 before, and I think the relief that you're asking
10 for, has to do with projects with which you have
11 signed a contract. And your concern is that those
12 contracted-for-projects will fall out of
13 eligibility based on some change in law.

14 And I'm trying to get a better
15 understanding of exactly which risk it is you're
16 asking us to address. If it's the prospective
17 what will be eligible in the future, I'm clear on
18 what you're describing there.

19 It's those existing contracts that have
20 a risk of all of a sudden becoming ineligible is
21 what I'm trying to get some clarification on.

22 MR. GULIASI: I understand. Well, I
23 can't give you that precise clarification now.
24 We'll see what we can do with respect to the --

25 PRESIDING MEMBER GEESMAN: I think your

1 counsel --

2 MR. GULIASI: -- guidance -- My counsel
3 can -- okay, go ahead.

4 MS. LEE: I'm sorry, Les. Commissioner
5 Geesman, Evelyn Lee from PG&E. Actually, this
6 year we were asked by staff to recertify our
7 resources. And one of the types of resources was
8 hydro.

9 Due to SB-107, a subset of small hydro
10 was identified, conduit hydro. And we had not
11 been in the habit of certifying them separately.
12 But we were asked by staff to do so.

13 I know that we have PG&E proprietary
14 conduit; and it's my belief that we also had small
15 QF conduit that we had to identify. But due to
16 the pendency of AB-809, which would make conduit
17 re-eligible, we decided to suspend that exercise.
18 So that is actually the example that we were
19 trying to provide to you.

20 PRESIDING MEMBER GEESMAN: Okay, you're
21 not talking about a contract then that you'd
22 already signed and counted as eligible that falls
23 out of eligibility?

24 MS. LEE: Yes, sir. In fact, these
25 small hydro facilities were part of our RPS

1 baseline, because these contracts were signed a
2 long time ago under PURPA. So we were at risk for
3 losing an amount of our baseline. And the exact
4 amount could be quantified if we looked at our
5 compliance report, but I don't have that exact
6 figure here.

7 PRESIDING MEMBER GEESMAN: And because
8 of that circumstance you feel it inhibits
9 prospective contracts with similar types of
10 facilities?

11 MS. LEE: No, actually. I think there
12 are, I can't keep them all straight in my mind
13 now, but at least three types of circumstances
14 where the lack of grandfathering causes problems
15 for PG&E.

16 There's the conduit hydro; there's the
17 situation where developers are reluctant to
18 execute contracts with us knowing that the
19 eligibility criteria can change during the term of
20 their 10-to-20-year contract. That imposes
21 potential costs on them if they're required by the
22 contract to maintain eligibility, maintain
23 eligibility under the RPS statute in order to
24 receive payments.

25 And also it creates a problem for the

1 California consumer who would have to continue to
2 pay a contract price even if the developer lost
3 its eligibility.

4 I mean these are unresolved -- these are
5 unresolved issues, because nothing like that has
6 come up yet, you know. The situation where we
7 sign a new 10- to 20-year contract and somebody
8 has fallen out of eligibility.

9 But it's a distinct possibility if the
10 law is interpreted as we understand the guidebook.

11 PRESIDING MEMBER GEESMAN: Is the
12 converse not also a potential risk, where, in
13 essence, you want to contractually indemnify a
14 party or perhaps indemnify -- have us implicitly
15 indemnify you from noncompliance with the law
16 simply because you've signed a contract?

17 MS. LEE: I don't think in terms of
18 indemnification, because that implies there was a
19 transfer of funds, and we're not asking for that.

20 What we're asking for is some certainty
21 when we contract with a developer who meets the
22 certification requirements on the date of
23 delivery, that that contractual arrangement, which
24 requires payment, a set sum of money, will be
25 respected for the 10- or 20-year period.

1 Anything less creates a risk for the
2 developer, and creates a risk for the consumer.

3 Also there's a point that Gabe and I
4 have ventured to discuss, which is laws generally
5 do not have retroactive effect unless provided so
6 by the legislation. And I don't think that's been
7 the case in any of the legislation involving RPS
8 eligibility.

9 So it's our understanding that the
10 Legislature does not intend to decertify or reduce
11 the categories of RPS-eligible resources through
12 legislation.

13 PRESIDING MEMBER GEESMAN: Yeah, I mean
14 it would seem to me that that would run into
15 potential dangers of impairing a contract.

16 MS. LEE: Yes, I agree.

17 PRESIDING MEMBER GEESMAN: And the
18 conduit hydro issue, if my memory's correct, that
19 came into status of legal uncertainty not so much
20 because of any intention of the Legislature, so
21 much as because of a chaptering sequence issue in
22 terms of when the Governor signed different pieces
23 of legislation, wasn't it?

24 MS. LEE: That's right.

25 PRESIDING MEMBER GEESMAN: So it was one

1 of those unintended consequences that I believe
2 AB-809 and I thought there was another one, SB-410
3 maybe, were intended to correct. Of course, it's
4 taken awhile to correct it, so I recognize your
5 concern about the time that's passed.

6 MS. LEE: Right, but you point out sort
7 of the fickleness of the whole scheme, that I
8 don't believe there's any intent, any policy
9 purpose in decertifying the conduit hydro
10 facilities, yet, you know, we were at risk of
11 being decertified until Ms. Zocchetti and I
12 realized that 809 was going to solve the problem.

13 PRESIDING MEMBER GEESMAN: Okay.

14 MS. LEE: Thank you.

15 PRESIDING MEMBER GEESMAN: That's
16 helpful.

17 MR. GULIASI: Just a couple more items,
18 and I think that really they can be classified
19 under the heading of sort of housekeeping.

20 I'm on page 4 of the handout that I left
21 you. The first one just has to do with, you know,
22 process, something I've been sort of harping on
23 the whole time up here

24 To the extent that the guidelines, as
25 published, are clear, that would just help. It

1 would help the market, help the developers, help
2 us.

3 The next item has to do with some out-
4 of-state issues in the certification requirements.
5 We're asking that you create a form in which the
6 purchaser will verify the California delivery and
7 consumption required to be submitted as an
8 attachment. Again, this is a very simple kind of
9 housekeeping cleanup issue.

10 The last issue has to deal with WREGIS.
11 What we're asking for here is just some
12 flexibility in the mandatory participation date.
13 Now it's set to be January 1st. I understand that
14 there's so many issues that need to get worked out
15 with respect to WREGIS, and it would just help if
16 you were to provide a little bit more flexibility
17 in the mandatory participation date for WREGIS.
18 And we'll provide more written information about
19 that in our comments on Friday.

20 I guess the last thing I want to say
21 is --

22 PRESIDING MEMBER GEESMAN: I wanted --

23 MR. GULIASI: Yes.

24 PRESIDING MEMBER GEESMAN: -- perhaps
25 you might address it in your comments on Friday,

1 as to what those many remaining issues might be
2 that would in any way jeopardize the January 1st
3 date.

4 MR. GULIASI: I think they're just, you
5 know, issues with respect to, you know,
6 contractual issues among the parties with WREGIS
7 that are being worked out. And I don't know how
8 long it will take to resolve those issues. Let's
9 hope that those issues can be resolved.

10 PRESIDING MEMBER GEESMAN: Yeah.

11 MR. GULIASI: But we're just asking you
12 to build in a little bit of flexibility in case
13 some of those issues can't get resolved by January
14 1st.

15 And finally I just want to talk a little
16 bit about the timing of the adoption of the
17 guidebook. Recognizing that the guidebook is a
18 living document, we've been here before to talk
19 about changes. These changes are important. As I
20 said, they're intended to add clarity and
21 certainty.

22 Yet we don't want to get into an endless
23 cycle of these revisions, either. To the extent
24 that they need it, we'll be here and we'll work
25 with you and we'll work with staff on a continuous

1 basis to add the clarification we need and others
2 need, parties need.

3 Recognizing we may have to be back here
4 after the first of the year, after certain
5 legislation is passed, but to the extent that you
6 can wrap up this process and adopt the changes
7 that we're talking about now, and post them on the
8 website and have current forms and so forth up and
9 running, it would just add that clarity that we're
10 seeking and that others are seeking, and that
11 we're experiencing others telling us they need
12 when we sit down across the negotiating table.

13 So, I'm just asking you to do what you
14 can to wrap this up, and provide the clarity
15 sooner rather than later, recognizing we'll have
16 to be back here anyway sometime early next year.

17 And I don't want -- and let me just say
18 finally, I don't want to impose an undue burden on
19 anybody, and particularly the staff. But, again,
20 to the extent that you can wrap this up and post
21 adopted guidelines, that would help.

22 PRESIDING MEMBER GEESMAN: What is it
23 that you think is going to compel you to be back
24 here after the first of the year?

25 MR. GULIASI: Well, we talked about the

1 passage of legislation. We've talked about the
2 thorny issue that we're dealing with respect to
3 out-of-country issues. You know, it may not be
4 possible to resolve and provide the clarity that
5 we need with respect to the out-of-country
6 delivery issues in the next three months, or two
7 months.

8 PRESIDING MEMBER GEESMAN: Really?

9 MR. GULIASI: Well, --

10 PRESIDING MEMBER GEESMAN: I take it
11 then from your comment that if it's not you would
12 suggest that we bifurcate the guidebook to get
13 something finalized before the end of the year,
14 and then hold out on the remaining issue until
15 next year.

16 MR. GULIASI: Well, you know, maybe
17 you're more hopeful than I am. I mean, I don't
18 know how much to read into your remark. But if --

19 PRESIDING MEMBER GEESMAN: Maybe we have
20 a different metabolism than your company does.
21 I'm at a bit of a loss, looking at the two pieces
22 of legislation that were mentioned as potentially
23 impacting this. What's going to be so hard about
24 either of those two pieces of legislation? It may
25 be that the out-of-country issue is more

1 complicated than any of us right now know. But is
2 the passage of additional time really going to
3 contribute that much to our insight?

4 MR. GULIASI: Well, I think we can
5 separate the two issues. The legislation may be
6 simple. Those clarifications may not require much
7 effort. And if that's the case, we have enough
8 time from when the Governor signs those bills to
9 when you're going to issue your revised
10 guidebooks.

11 I just know that things take a long
12 time. And we've --

13 PRESIDING MEMBER GEESMAN: I think
14 you're used to dealing with the other Commission.

15 (Laughter.)

16 MR. GULIASI: Well, I --

17 PRESIDING MEMBER GEESMAN: They don't
18 take that long here.

19 MR. GULIASI: I am used to dealing with
20 the other Commission, and this is really --

21 PRESIDING MEMBER GEESMAN: This isn't a
22 rate case.

23 MR. GULIASI: I'm used to dealing with
24 this Commission, as well. Let's say that I'm
25 hopeful. And, you know, I'll take it as a

1 positive signal that you, the Committee, will read
2 the comments that we're going to provide and
3 others will provide, carefully.

4 And, again, we'll continue to work with
5 staff. We've been doing that quite constructively
6 for quite a long time. And if we can move forward
7 and you see the wisdom in the kind of programmatic
8 approach that we're talking about with respect to
9 out-of-country deliveries and other parties you've
10 heard from today can provide you with the
11 necessary information; and we can get that
12 information codified in the guidebook, great.

13 We can run at a high rate, and our
14 metabolism can move very quickly. And we'll do
15 that, we'll do whatever we can with alacrity to
16 help you.

17 PRESIDING MEMBER GEESMAN: I think you
18 should figure the troops are going to be home by
19 Christmas.

20 MR. GULIASI: Okay. Commissioner
21 Geesman, you probably have a personal interest in
22 seeing this through.

23 PRESIDING MEMBER GEESMAN: No, if it
24 takes more time I'm willing to extend it to New
25 Years.

1 (Laughter.)

2 MR. GULIASI: We'll be here. We'll
3 sacrifice our Christmas vacations. Thank you.

4 PRESIDING MEMBER GEESMAN: Thanks, Les.
5 Those are the only blue cards I have. Is there
6 anyone else who wants to address us?

7 Or actually, I've got a third one.
8 Steven -- I got Brenda's in front of yours, so
9 let's let her speak.

10 MS. LeMAY: I've spent a lot of time
11 with Steve. I think I'm on a career shadowing day
12 with the two of you, and I'm very impressed.

13 (Laughter.)

14 MS. LeMAY: For those of you who didn't
15 have to sit in the morning session, it was quite
16 extensive.

17 So, Brenda LeMay with Horizon Wind
18 Energy. Good afternoon. I don't know if I'm
19 stepping into a bees' nest here or not, but I do
20 appreciate the changes that were made; the
21 clarifications were really helpful. And it was
22 some of the things that I was hoping for the first
23 time around. It's good to live with these for a
24 little while, though, to work with some of the
25 companies to see how it might actually play out.

1 Actually, first I want to comment on the
2 certification process. I find it to be fairly
3 straightforward to certify an out-of-state
4 windfarm. It does put the risk on the developer
5 if, for whatever reason, somewhere down the road
6 windfarms are no longer RPS eligible, that we then
7 have a contract that we can't satisfy.

8 I don't know how, if you have to certify
9 it every two years and there's, for some reason, a
10 change. I don't -- you know, I'm taking a bet
11 that that's not going to happen. But that is a
12 risk in the contract as it stands.

13 The other comment I wanted to make
14 was --

15 PRESIDING MEMBER GEESMAN: Because --

16 MS. LeMAY: Go ahead.

17 PRESIDING MEMBER GEESMAN: Let me
18 apologize, because for proprietary reasons
19 Commissioner Pfannenstiel and I don't see these
20 contracts, --

21 MS. LeMAY: Sure.

22 PRESIDING MEMBER GEESMAN: -- but
23 there's a clause in the contract that requires you
24 to stay eligible?

25 MS. LeMAY: Well, you can actually look

1 at it on the form contracts for both PG&E and
2 SoCalEdison in their RPS --

3 PRESIDING MEMBER GEESMAN: But we're
4 told each contract is entitled to individual
5 negotiation, is highly customized because of the
6 special value added brought by both the utility
7 and the developer.

8 MS. LeMAY: Sure, I would say that it's
9 a tough one for the developer to put onto the
10 utility. You know, you sort of try to divide the
11 risks as to what's in your control, what's not in
12 your control. And basically in this case -- in
13 our case, and what we've seen, is the developers
14 take RPS-related regulatory risk.

15 And that's standard across the country
16 and I'm not trying to --

17 PRESIDING MEMBER GEESMAN: Right.

18 MS. LeMAY: -- say that we couldn't do
19 better, but, you know, that's typically where it
20 lands.

21 PRESIDING MEMBER GEESMAN: I mean there
22 is a compliance risk; there's no way of getting
23 around that.

24 MS. LeMAY: Right, right, but in this
25 case you get precertified, which is very helpful.

1 Because then you mitigate that risk. But then if
2 you have to do it every two years, it begs the
3 question as to why.

4 PRESIDING MEMBER GEESMAN: Now the staff
5 says that they only impose that on change of law.
6 Is that consistent with the way you've read it?

7 MS. LeMAY: No. But, you know, I've had
8 a long week.

9 PRESIDING MEMBER GEESMAN: Kate, did I
10 mischaracterize?

11 MS. ZOCCHETTI: Just slightly.

12 PRESIDING MEMBER GEESMAN: Okay.

13 MS. ZOCCHETTI: We do require -- oh, I'm
14 sorry --

15 MS. LeMAY: Page 39.

16 MS. ZOCCHETTI: -- we require
17 reapplication every two years. And so when they
18 get their certificate it does have an expiration
19 date on it.

20 And in addition to that, if there's a
21 change in the law, it says in the guidebook that
22 the Energy Commission will contact affected
23 parties in writing, and that they need to respond
24 to that request for reapplication.

25 Otherwise it's every two years.

1 PRESIDING MEMBER GEESMAN: Now, what's
2 our rationale for the frequency, every two years?

3 MS. ZOCCHETTI: I'll have to look to my
4 historical memory over here, Gabe and Heather.
5 Probably just to make sure that everything remains
6 the same. Is that --

7 MS. RAITT: Yeah, it was basically to
8 keep the records up to date, and I think that was
9 actually a decision that we made back when we were
10 first forming the program. It's one part of a
11 program that we'd seen was considered to be useful
12 to keep the program up to date, basically.

13 MS. ZOCCHETTI: And it can --

14 PRESIDING MEMBER GEESMAN: But what's
15 that mean in terms of keeping the records up to
16 date? I mean why didn't we make it every two
17 weeks?

18 MS. RAITT: Well, because that would be
19 too burdensome.

20 PRESIDING MEMBER GEESMAN: Yeah. But --

21 (Laughter.)

22 PRESIDING MEMBER GEESMAN: -- we came to
23 the determination two years was the right cycle.
24 My presumption is that Commissioner Pfannenstiel
25 wouldn't agree to anything that stupid, but I

1 probably did.

2 (Laughter.)

3 PRESIDING MEMBER GEESMAN: What was my
4 rationale?

5 MR. HERRERA: We'd have to go back and
6 check. I mean one of the things that we did was
7 we said every two years, and then we put it upon
8 the applicant to notify us if there were any
9 changes. For example, if the project had been
10 sold and there was now a new company owner, they
11 were required to notify us of these kind of
12 changes.

13 But to make sure those kind of things
14 didn't fall through the cracks, we still required
15 reapplication or recertification every two years.

16 The Commission, of course, has
17 discretion to extend that, make it five years, if
18 it wanted to. And we'd have to go back and look
19 at the rationale, but for some reason two years
20 seemed like a good fit.

21 ASSOCIATE MEMBER PFANNENSTIEL: Can we
22 do that --

23 PRESIDING MEMBER GEESMAN: Yeah, but --

24 ASSOCIATE MEMBER PFANNENSTIEL: I'm
25 sorry. Can we do that now in this guidebook

1 change, if we wanted to make that change?

2 MR. HERRERA: Sure.

3 MS. ZOCCHETTI: I think it was our
4 understanding that the facilities often change
5 hands quite a bit, and --

6 PRESIDING MEMBER GEESMAN: Right.

7 MS. ZOCCHETTI: -- and we just wanted to
8 keep on top of --

9 PRESIDING MEMBER GEESMAN: And certainly
10 that's been our experience with the licenses that
11 we issue in our siting program. But our
12 information needs and addressing those information
13 needs may be quite a bit different than
14 contributing or creating a compliance risk on the
15 part of the project.

16 And I'd just like to unbundle those if
17 we can. And maybe there's something else that has
18 motivated us. And, if so, we ought to take --

19 MS. ZOCCHETTI: And this could very well
20 be a case where we, you know, we learn every time
21 that what we thought initially made sense needs to
22 be reevaluated. We're certainly open to that.

23 MS. LeMAY: Yeah, we're not going to put
24 a gas turbine to power to blow the wind -- to make
25 the wind blow. But, extending that would

1 certainly again mitigate some of the potential
2 risk. I mean it's a 20-plus-year lifecycle for
3 the equipment.

4 MR. HERRERA: Commissioner Geesman, if I
5 could interject real quick. It could also have
6 been the fact that the law was changing. I mean
7 it seems like every year the Legislature changes
8 requirements for RPS eligibility. And so we felt
9 a two-year cycle might be a good opportunity to
10 catch and implement some of those changes across
11 the board.

12 PRESIDING MEMBER GEESMAN: Yeah, I guess
13 I have a contract hangup there. And I know that
14 Les and Evelyn construed the hypothetical as if it
15 created some sort of economic burden on the
16 customer, conveniently ignoring the fact that 90-
17 plus percent of all of the energy associated with
18 every RPS contract any of the IOUs have signed has
19 come in below the market price referent. So it's
20 actually a cost benefit to the customer.

21 But assuming that that were not the
22 case, just seems to me that if somebody signed a
23 contract with a utility that both parties are
24 probably entitled to some form of presumption that
25 they'll remain eligible for the program based on

1 having been eligible when the contract was entered
2 into.

3 Now, we've taken the approach that the
4 Legislature shifts eligibility requirements. It
5 sounds like, by implication you think that we
6 should then reach through those contracts and
7 determine that an existing contract is no longer
8 eligible for the program. I'm not certain we've
9 ever had that philosophy consciously stated.

10 MR. HERRERA: Well, I think what we've
11 done is, you know, we've revised the guidelines
12 based on new changes in the law.

13 PRESIDING MEMBER GEESMAN: Right,
14 prospectively.

15 MR. HERRERA: Prospectively. And so we
16 haven't tried to apply the changes in the law
17 retroactively or retrospectively like an ex post
18 facto law, making something that was legal at one
19 point in time, illegal. So we haven't done that.

20 We've always applied the new eligibility
21 requirements prospectively, saying from the
22 effective date of the legislation, for example,
23 then these'll be the new requirements.

24 There are limitations in both the U.S.
25 and the State Constitution that preclude the

1 Legislature from enacting laws that could impair
2 contractual obligations. And perhaps that's the
3 argument that PG&E is making here.

4 But even if that's the case, the
5 Legislature still has ability, for public policy
6 reasons, to make changes in law that could impact
7 responsibilities.

8 You know, here, PG&E, we're talking
9 about existing contracts that they may have
10 entered into 15, 20 years ago.

11 PRESIDING MEMBER GEESMAN: I didn't find
12 that example very compelling, frankly.

13 MR. HERRERA: Okay.

14 PRESIDING MEMBER GEESMAN: I think that
15 you can always adjust the utilities' baseline up
16 or down. And the Legislature has the ability to
17 do that. I think either regulatory Commission has
18 the ability to do that. They may not like it, but
19 I don't think in that circumstance we're impairing
20 somebody's contract.

21 The case that Brenda's talking about,
22 though, it seems to me that we are creating or
23 contributing to a larger compliance risk that it's
24 hard for me to see the public benefit in doing so.

25 MR. HERRERA: I don't think that's been

1 the case. I mean in the context of existing
2 contracts I think that's one issue, the issue --
3 the newer contract that Brenda raised, I think, is
4 a more compelling argument. Trying to apply those
5 requirements on this previously certified facility
6 is problematic.

7 But I think with respect to existing
8 facilities one could look at the change of
9 requirements as the Legislature essentially
10 changing the rules for which the utilities have to
11 prove compliance with the RPS eligibility
12 requirements. Instead of ratcheting up the
13 percentage, they just say, okay, this existing
14 geothermal facility, existing biomass facility is
15 no longer eligible.

16 And so it's similar to changing the
17 requirements.

18 PRESIDING MEMBER GEESMAN: Right. And I
19 think that's within the Legislature's purview to
20 do.

21 MR. HERRERA: I agree, as well.

22 PRESIDING MEMBER GEESMAN: But, Brenda,
23 I understand the contract assigns the developer
24 compliance risk. And you may not attach a gas
25 turbine to your windfarm, but somebody may choose

1 to cofire their biomass facility with a different
2 fuel next year.

3 I don't think it's our intent, and I've
4 yet to see a public purpose in trying to impose a
5 new requirement on an existing contract where
6 there's not a clearly established legislative
7 rationale and directive for us to do that.

8 So if we can clarify that a bit in the
9 guidebook I'd be inclined to do it.

10 MS. LeMAY: Great. Would you prefer
11 that I draft something, or would you just -- do
12 you want to just chat later?

13 PRESIDING MEMBER GEESMAN: I think
14 chatting is probably the better approach.

15 MS. LeMAY: Okay. I am concerned that
16 my perspective is wind, and it certainly --

17 PRESIDING MEMBER GEESMAN: Yeah.

18 MS. LeMAY: -- doesn't apply to the
19 whole thing. So I don't know if you want to carve
20 out wind, or -- I don't know what the best
21 approach is, given the --

22 PRESIDING MEMBER GEESMAN: I think
23 talking to the staff is probably the best place to
24 start.

25 MS. LeMAY: Okay. And then the second

1 comment I had was on section 2(e) delivery
2 requirements. It's my belief, and it's informed,
3 that most of the contracts that will be signed for
4 out-of-state, you know, and the term banking and
5 shaping will be firm energy -- and I know there
6 might be some history here that I'm not privy to,
7 but I think it's overreaching to say that it has
8 to be firm.

9 So I would either strike that or just
10 say firm and nonfirm. And, again, I don't want to
11 have to raise a whole lot of stuff. I actually
12 think that this works great; and in fact, most of
13 the contracts will be firm. But I don't think
14 that that's what the law -- the intent of the law
15 was.

16 So, for wind, it's --

17 PRESIDING MEMBER GEESMAN: Does the
18 staff have a response to that?

19 MS. RAITT: Yeah, I think that was
20 intended just to be descriptive, and so we need to
21 clarify that. That was intended to restrict it to
22 firm.

23 MS. LeMAY: I didn't think so. And as I
24 was reading, because, you know, I'm thinking about
25 firm, as well, that's my mindset. But then I took

1 a step back and thought, you know, it might not be
2 the approach going forward.

3 PRESIDING MEMBER GEESMAN: Right.

4 MS. LeMAY: That was it. It looks
5 great.

6 PRESIDING MEMBER GEESMAN: Okay.
7 Thanks.

8 MS. LeMAY: From a wind perspective.
9 Thank you.

10 PRESIDING MEMBER GEESMAN: Steven Kelly.

11 MR. KELLY: Steven Kelly with IEP.
12 Thank you, Commissioners.

13 Just real quickly, on the subject you
14 were just talking about, about changing law and
15 comparing today with the existing resources, I'd
16 just make the observation that the existing
17 contracts are primarily the QF contracts.

18 The difference that exists today is
19 those contracts, I don't believe, had language
20 that said you had to remain eligible to changing
21 standards for eligibility. There was language in
22 those old contracts about maintaining QF status.

23 PRESIDING MEMBER GEESMAN: Right.

24 MR. KELLY: And that had to be
25 maintained. But that was pretty stable, and once

1 you attained it, you were pretty good.

2 There is a little bit of difference
3 here, and I agree with Brenda. Now what I
4 understand is how can these utilities have a
5 specific provision in the new contracts that say
6 you have to maintain eligibility vis-a-vis the
7 rules passed by the Legislature. And it does make
8 things rather complicated for a developer.
9 Certainly, at least it's going to increase prices
10 as they try to buy insurance or if they could for
11 those changing --

12 PRESIDING MEMBER GEESMAN: Well,
13 let's --

14 MR. KELLY: -- conditions --

15 PRESIDING MEMBER GEESMAN: -- assume,
16 Steven, that we have a desire within our statutory
17 authority to uncomplicate that as much as we can.
18 But to preserve the Legislature's ability to say
19 two years from now you can't cofire your biomass
20 facility with ground-up automobiles.

21 Some --

22 OPERATOR: Hello, this is the
23 Conferencing Coordinator; can I help you?

24 PRESIDING MEMBER GEESMAN: Doing a good
25 job so far.

1 OPERATOR: Okay. Somebody signaled for
2 the operator.

3 PRESIDING MEMBER GEESMAN: I don't think
4 so.

5 ASSOCIATE MEMBER PFANNENSTIEL: I think
6 it was an error.

7 OPERATOR: Okay, I'll --

8 PRESIDING MEMBER GEESMAN: Thank you.
9 So that's the tension.

10 MR. KELLY: Yeah. I understand. I mean
11 obviously it's kind of complicated because you
12 wouldn't be counting a resource that's deemed
13 ineligible by the Legislature for RPS. And I
14 don't know -- I have to think about this one,
15 about how to make it a smoother process to enter
16 into the contracts and make that work.

17 I haven't really had time to think about
18 it until I heard the discussion this afternoon.

19 PRESIDING MEMBER GEESMAN: Well, you
20 should assume we have a desire to uncomplicate it
21 as much as we can.

22 MR. KELLY: Yeah. My other comment was
23 related to the filing of comments on Friday of
24 this week. And a couple observations.

25 I heard the discussion that there may be

1 yet another iteration of your process for
2 conforming to the legislation, if it's signed and
3 so forth.

4 And I've kind of stumbled across this
5 workshop, quite frankly. I'm looking around the
6 room and I notice that it's pretty much filled
7 with utilities, because they have the resources to
8 do this.

9 And I'm surprised that there aren't a
10 lot of other people.

11 PRESIDING MEMBER GEESMAN: They would
12 say because they have the commitment to do it.

13 MR. KELLY: I know, and the ratebase.
14 But could I ask whether you might consider an
15 extension of time for parties to file comments?

16 PRESIDING MEMBER GEESMAN: How much?

17 MR. KELLY: Well, I presume this
18 legislation is going to be passed, and we're going
19 to have another get-go at this thing. And I don't
20 know how -- I heard your dialogue about how
21 quickly you would like to. And I understand
22 PG&E's concern about the need to firm up and
23 provide some regulatory certainty here.

24 But I would like some additional time to
25 seek out my members' review of this document; and

1 certainly provide myself a little additional time
2 to look at this, which I cannot do by Friday.

3 PRESIDING MEMBER GEESMAN: Is one week
4 beyond Friday sufficient?

5 MR. KELLY: It would be certainly
6 sufficient for me to be able to provide you
7 written comments. It will take a little bit
8 longer if I'm going to solicit input from my own
9 members, because that requires me to one, get them
10 to read it.

11 PRESIDING MEMBER GEESMAN: Two weeks?

12 MR. KELLY: Two weeks I think would be
13 nice if you could afford that.

14 PRESIDING MEMBER GEESMAN: We'll do
15 that. But let me tell you, paramount in my mind
16 is having this done by the end of the year. And
17 unless I'm wrong, if the Governor signs either or
18 both of those pending bills, it's a little hard
19 for me to see those as sufficiently complicated to
20 incorporate into these guidelines, to require an
21 additional workshop.

22 So, we may simply rely on a written
23 comment period for any conformity that we feel
24 compelled to do for the legislation that's signed.
25 We'll just have to see.

1 MR. KELLY: Yeah.

2 PRESIDING MEMBER GEESMAN: But paramount
3 is getting this resolved by the end of the year.

4 MR. KELLY: I would share that goal.
5 And if you could give us a couple weeks, that
6 would hopefully --

7 PRESIDING MEMBER GEESMAN: Two weeks
8 from Friday.

9 MR. KELLY: Thank you.

10 PRESIDING MEMBER GEESMAN: Other
11 comments? Nothing from Edison? They've got both
12 the resources and the commitment.

13 Okay, thank you all very much. We'll be
14 adjourned.

15 (Pause.)

16 PRESIDING MEMBER GEESMAN: Speak very
17 closely into it.

18 MS. MATTU: Clair Tortia; she'll be the
19 first one making comments.

20 PRESIDING MEMBER GEESMAN: Okay. Clair,
21 go ahead.

22 MS. TORTIA: Hi, can you hear me?

23 PRESIDING MEMBER GEESMAN: Yes.

24 MS. TORTIA: Okay. My name is Clair
25 Tortia and I'm from Chatburn (phonetic) and Park;

1 we're a lawfirm in Los Angeles. And we represent
2 several potentially eligible facilities that have
3 questions about how to structure new contracts
4 that qualify for the California RPS.

5 Specifically we have a question about
6 2(e), delivery requirements. And I know someone
7 just addressed this issue. But, this is on page
8 30 of the draft guidelines. There's a section
9 that says out-of-state energy may be banked or
10 shaped to allow for delivery of product into
11 California.

12 PRESIDING MEMBER GEESMAN: Yes.

13 MS. TORTIA: And then there's the -- the
14 guidebook gives several examples. It's example
15 two that we're focused on. Several of our clients
16 have an arrangement that is similar to this one,
17 but it isn't exactly the same. And we just wanted
18 to -- we are seeking confirmation that the
19 arrangement that we're envisioning would be in
20 compliance.

21 That example two says a third party may
22 provide banking and shaping services. For
23 example, a retail seller could buy energy and RECs
24 from an RPS-eligible facility and execute a second
25 PPA to resell the energy from the RPS-eligible

1 facility, but not the RECs, to a third party that
2 provides banking and shaping services.

3 Then the third party could provide the
4 retail seller with the firm schedule for delivery
5 into California. And what we're envisioning is
6 something where the retail seller could enter into
7 a PPA with the RPS-eligible facility under which
8 the facility would sell the energy, but not the
9 associated, RECs to a third party that would
10 provide the banking -- the shaping and firming
11 services.

12 And then the shaping and firming entity
13 would sell an equivalent amount back to the
14 facility. And the facility would then get that
15 energy and the RECs originally generated by the
16 facility to the retail seller in California.

17 So, we were just looking for
18 confirmation that the arrangement that we're
19 envisioning would also fit under the guidelines.

20 And, additionally, a related question is
21 that some of our clients are, you know,
22 potentially renewable energy facilities, are
23 located outside of California. And they intend to
24 contract with California retail sellers. But for
25 liquidity reasons, the facilities may rely on such

1 delivery outside the state, but within the WECC.

2 And we just wanted to confirm that they
3 could pick various points of delivery so long as
4 the same quantity of energy is finally delivered
5 to a hub in California.

6 PRESIDING MEMBER GEESMAN: Does staff
7 want to respond today, or do you want to take the
8 liberty to have a separate conversation with her?

9 MR. HERRERA: I think a separate
10 conversation would be helpful. It sounded like
11 the first example actually fit into one of the
12 footnotes on page 31 of the guidebook. But maybe
13 we just need to clarify it with the caller.

14 MS. TORTIA: Yeah, it's similar to the
15 example in the guidebook except that it's similar
16 to example 2, but the retail seller contracting,
17 when he's contracting with -- the eligible
18 facility would contract with a shaper, firmer
19 rather than a retail seller contracting with a
20 shaper, firmer. That's the main difference.

21 PRESIDING MEMBER GEESMAN: Well, I would
22 encourage you to be in contact with Gabe Herrera
23 of our staff.

24 MS. TORTIA: Okay. Again, we could just
25 send our comments this Friday.

1 PRESIDING MEMBER GEESMAN: Okay. Great.

2 MS. TORTIA: Thanks very much.

3 PRESIDING MEMBER GEESMAN: Thank you.

4 MS. MATTU: Next we have Jeremy
5 Weinstein from PacifiCorp.

6 PRESIDING MEMBER GEESMAN: Go ahead,
7 Jeremy.

8 MR. WEINSTEIN: Good afternoon. Thank
9 you very much for the opportunity to comment on
10 these guidebooks, these comments -- I mean the
11 revised guidelines.

12 And as a general statement, representing
13 PacifiCorp, we're very pleased with the direction
14 things are moving. We do have a couple of
15 specific comments and I think, Commissioner, that
16 some of what I have to say probably will go
17 directly to your request for some examples of what
18 people seeking out-of-state and other entities
19 seeking certification would -- you asked for
20 specific experiences in terms of some of the
21 extra-territorial jurisdiction issues and the
22 recertification issues.

23 And so I bring those to the table and
24 would like to discuss them with you.

25 PRESIDING MEMBER GEESMAN: Good.

1 MR. WEINSTEIN: With the group. And
2 when we had the original workshop back in January,
3 we originally surfaced the concerns we have with
4 the language in the guidebook, that the language
5 did leave itself open to extra-territorial
6 application of California law. And you expressed
7 deep incredulity at that time.

8 PRESIDING MEMBER GEESMAN: I did. Still
9 do.

10 MR. WEINSTEIN: What I'd like to do is
11 just read to you an email that I did get from
12 Commission Staff that I think, at least my
13 interpretation of it, it does seek to assert
14 extra-territorial jurisdiction.

15 And this was a staff response to an
16 application that we had filed for a wind facility
17 in Idaho. And this was the second application
18 because we had filed a group of applications for
19 our facilities before the end of last year. And
20 post the last revisions to the guidebooks we were
21 asked to refile any applications.

22 And so we were asked for more
23 information, list the LORS, and we were told --
24 and I wrote a letter back saying, you know, here's
25 the list of LORS. And none of them apply in

1 Idaho. Just kind of going one by one, you know,
2 California rules are (inaudible) don't apply in
3 Idaho.

4 And so I received back a response saying
5 according to the data provided is insufficient and
6 does not meet our intended purpose. We request
7 this information to determine if the facility is
8 operating under standards as strict or stricter
9 than the standards facilities located within
10 California are subject to. Would the facility be
11 able to operate within California and not violate
12 environmental quality laws, ordinances,
13 regulations and standards.

14 It is not simply a matter of not
15 violating any of California's LORS, because the
16 facility is -- by California. Please identify and
17 compare standards that Wolverine Creek is subject
18 to -- the name of the facility -- that corresponds
19 to the LORS.

20 And I have, you know, of course, we've
21 developed what I hope is perceived as a productive
22 relationship with Commission Staff. And staff
23 helpfully, along these lines, interact with us and
24 kind of temper that by saying okay, what we want
25 you to do is pretend the facility's in California

1 and tell us the LORS that would be applicable to
2 the facility in California.

3 And to me it still is kind of the same
4 animal, which is the staff is looking at the
5 manual and they're reading the manual and they're
6 taking the manual to say that you look at what
7 California law is, you apply it to the facility
8 even if it's not in California.

9 So that's, I guess, my example of what I
10 perceive as an extra-territorial application of
11 California law.

12 And so we would respectfully request,
13 and we will propose in written comments we're
14 submitting at the end of the week, some language
15 that I hope says that the analysis should be okay,
16 you know, what in California is affected by this
17 facility. And then you apply California law just
18 affecting California.

19 PRESIDING MEMBER GEESMAN: Well, I think
20 that's consistent with the way Mr. Herrera had
21 earlier described are intended these draft
22 guidelines. Gabe?

23 MR. HERRERA: I'm raising my hand,
24 Jeremy, because I know you and I had a followup
25 conversation. I think there was a bit of

1 confusion from program staff.

2 But I also believe, and correct me if
3 I'm wrong, but I sent you an email identifying how
4 the Energy Commission intended to apply the out-
5 of-state requirement, including an example that
6 referenced, for example, the LORS in Modoc County,
7 which would be the county in California closest to
8 PacifiCorp's proposed Idaho wind facility, right?

9 MR. WEINSTEIN: But, --

10 MR. HERRERA: Okay, --

11 MR. WEINSTEIN: -- and I'm, you know,
12 digesting that, kind of look at that saying
13 certainly we very much appreciate that; certainly
14 to step back and saying, okay, pretend Idaho is in
15 California.

16 But what this actually still does is
17 says pretend the facility is in California, when
18 it isn't.

19 So, I mean I do realize that, I mean
20 what we're being asked to do, and this is a -- let
21 me correct what I just said. You are not saying
22 pretend it's in California from the sense of okay,
23 here's how it applies. You're saying give us the
24 list of what applies, and then you can say it
25 doesn't apply. You did say that.

1 But, that is kind of a -- you know, we
2 discussed this, and you know, kind of the
3 perception of the developer is now at the position
4 of identifying, you know, the county in California
5 that it's closest to, and doing legal research on
6 that county. And there's no -- it's hard for me
7 to fathom, like the benefits to the Energy
8 Commission or to the public at large of
9 determining what the environmental laws are in
10 Modoc County that would be applicable to a wind
11 facility, when there's no wind facility in Modoc
12 County under discussion.

13 PRESIDING MEMBER GEESMAN: Try again,
14 Gabe.

15 MR. HERRERA: Well, you know, I think
16 what we're trying to do is we're just trying to
17 apply, you know, the language in the statute. And
18 obviously we're required to do something because
19 the Legislature identified that this out-of-state
20 facility can't impact California standards.

21 So what we've asked applicants to do is
22 identify those standards that could be potentially
23 impacted. And I don't think it's adequate for a
24 developer to come in and say we're located in
25 Wyoming, we're located in Idaho, and therefore

1 there's no way in heck that we can impact anything
2 in California without you telling us those
3 resources in California that could be potentially
4 impacted.

5 PRESIDING MEMBER GEESMAN: But I guess
6 where I'm thrown off is the Modoc County example.
7 It's really a question of whether there's any
8 impact from this facility in Idaho that physically
9 takes place within the state boundaries of
10 California.

11 MR. HERRERA: Right. As an example, I
12 mean I just went to the California map; found that
13 Modoc County is in the upper, you know, right-hand
14 corner of California. And said, that would be the
15 county in California closest to a proposed site in
16 Idaho. You know, direct line of sight.

17 And I said, as an example, for example,
18 if there are any impacts in Modoc County, then we
19 would want the developer to identify those.

20 PRESIDING MEMBER GEESMAN: Yeah, but
21 that doesn't mean that you wouldn't be equally
22 concerned with impacts in Imperial County, the
23 completely opposite end of the state.

24 MR. HERRERA: I gave it as an example
25 only, Commissioner Geesman, because the guidebook

1 allows the applicant to identify, you know, the
2 applicable LORS for California. And they could
3 compare themselves to, for example, Imperial. I
4 just went with the one that was physically, you
5 know, the location in California physically most
6 closest to the Idaho site.

7 PRESIDING MEMBER GEESMAN: But that
8 seems to me to be just a random selection.

9 MR. HERRERA: It was random. The
10 guidebooks don't identify which county or which
11 LORS that the applicant needs to identify. And,
12 again, the problem is that the LORS in California
13 vary depending on where you're located.

14 MR. WEINSTEIN: And I would say that
15 therefore one could say that the exercise, in
16 toto, is random because we're being asked to
17 identify and figure out what laws would apply in a
18 place in which the facility had no impact.

19 PRESIDING MEMBER GEESMAN: And isn't the
20 better test physical impact within -- on the
21 California environment?

22 MR. WEINSTEIN: That's what we would
23 propose.

24 PRESIDING MEMBER GEESMAN: Well, I guess
25 that, Gabe, --

1 MR. HERRERA: Yeah, I think it would be.

2 PRESIDING MEMBER GEESMAN: And is that
3 consistent with the statute?

4 MR. HERRERA: That is consistent with
5 the statute. Again, I gave Modoc County in my
6 discussions with Mr. Weinstein as an example only.

7
8 But if you had a small hydro facility
9 that might be located closest to say Modoc County,
10 but the water course emptied out in Trinity, then,
11 of course, you'd want to analyze the impact in
12 Trinity County, not in Modoc.

13 PRESIDING MEMBER GEESMAN: But the
14 triggering requirement is some physical impact on
15 the environment inside California.

16 MR. HERRERA: That's correct.

17 MR. WEINSTEIN: And all we're saying is
18 we would like the manual to be revised so it's
19 clear that that -- that what Gabe is saying is the
20 standard, and not what we initially heard from
21 staff is the standard.

22 PRESIDING MEMBER GEESMAN: So I think I
23 share that belief, Jeremy. We do look forward to
24 your suggested wording of how to best accomplish
25 that.

1 MR. WEINSTEIN: Thank you very much,
2 Commissioner. And I just have one other item that
3 is, I think, also along the lines of what you
4 asked for, experiences people had had with respect
5 to items that were brought up by other commenters.

6 And one of the experiences that we've
7 had is we have 11 facilities for which, since,
8 well, really in the past year, we've filed four
9 applications.

10 And we've had the experience of filing
11 applications, even getting certifications prior to
12 the end of last year, and being asked by staff to
13 refile all applications post the passage of SB-107
14 on the grounds that the law had changed. And
15 we're very happy to be accommodating.

16 And really my only request at this
17 juncture is to respectfully request that if the
18 manual is changed, that people who have received
19 their certification or who have pending
20 applications receive some sort of safe harbor so
21 they don't have to refile because the forms have
22 changed.

23 PRESIDING MEMBER GEESMAN: That seems
24 reasonable to me. I mean, am I missing something?

25 MS. RAITT: I think the -- well, the

1 substance of it is not that they would have to
2 refile because of the forms, but because there was
3 a law change that changed the eligibility
4 requirements. And that's what we had implemented.

5 PRESIDING MEMBER GEESMAN: Well, let me
6 ask without dwelling on it too long, in the
7 circumstance that I think he's referring to, SB-
8 107 had passed but not gone into effect. And you
9 wanted something refiled? Why wouldn't the
10 earlier recertification to have been sufficient?

11 MS. ZOCCHETTI: Well, SB-107 went into
12 effect in January of this year. And our
13 guidebooks came out in March. And we asked those
14 who might be affected by the changes in the law to
15 reapply, whether or not they were in the queue or
16 already had been certified or precertified.

17 Is that right, Jeremy? Isn't that what
18 you're referring to?

19 MR. WEINSTEIN: Right.

20 MS. ZOCCHETTI: Okay. It wasn't because
21 of a change in the form. The forms changed at
22 that same time --

23 MR. WEINSTEIN: There was, like the
24 final two weeks of -- I mean obviously one could
25 imagine we sort of pushed back on this. And I

1 think we did have some disconnect or some kind of
2 requirement that was put on it through the changes
3 of the form. I can recall there was something
4 additional on that. I can't really -- the
5 specifics, I did put together a timeline --

6 But all I'm asking for is I'm not asking
7 to say, okay, we're all asking for the safe harbor
8 at this stage, so we don't have to do it again.

9 PRESIDING MEMBER GEESMAN: Yeah.

10 MS. RAITT: I just want to say --
11 Jeremy, this is Heather Raitt. It sounds like you
12 had the unfortunate experience of maybe catching
13 us, we were in a little bit of a learning curve,
14 and got some misinformation from staff. And, you
15 know, I regret that. But that sounds a little bit
16 like there were just, you know, learning and
17 process going on during the time when you were
18 certifying with us.

19 MR. WEINSTEIN: Right, we're very happy
20 to participate, you know, we're -- we and our
21 customers are in this together, but we just kind
22 of want -- we're looking for what we see would be
23 fairer treatment if we did have a safe harbor.
24 Because we didn't like having to do it over and
25 over again, as you can imagine. The fourth time

1 was not the charm.

2 PRESIDING MEMBER GEESMAN: Yeah. Well,
3 hopefully we can avoid that in the future.

4 MR. WEINSTEIN: thank you very much,
5 Commissioner.

6 PRESIDING MEMBER GEESMAN: Thank you,
7 Jeremy. Anyone else on the phone?

8 (Pause.)

9 MS. MATTU: We might have one from Rob
10 Campbell from PowerEx. We're opening up his line.

11 PRESIDING MEMBER GEESMAN: Mr. Campbell?

12 MR. CAMPBELL: Actually we -- this is
13 Rob Campbell with PowerEx. And I'm the Manager of
14 Renewables and Power Trading. And we didn't have
15 any comments. Generally our sense of it is
16 supportive of the changes and think staff's done a
17 great job so far.

18 PRESIDING MEMBER GEESMAN: Okay, thank
19 you.

20 PRESIDING MEMBER GEESMAN: And that's
21 all our commenters on the phone? Anybody else in
22 the audience have anything to add?

23 Great. We'll be adjourned.

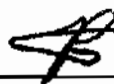
24 (Whereupon, at 4:24 p.m., the Committee
25 Workshop was adjourned.)

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Workshop; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of October, 2007.



PETER PETTY