

INTEGRATED ENERGY POLICY REPORT COMMITTEE WORKSHOP  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Preparation of the 2008 ) Docket No.  
Integrated Energy Policy ) 08-IEP-1D  
Report Update and the 2009 )  
Integrated Energy Policy )  
Report )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
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SACRAMENTO, CALIFORNIA

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COMMISSIONERS PRESENT

Jeffrey D. Byron, Presiding Member

Jackalyne Pfannenstiel, Associate Member

Karen Douglas

ADVISORS PRESENT

Kristy Chew

Tim Tutt

CPUC ADVISORS PRESENT

Stephen St. Marie, Advisor to Commissioner Bohn

STAFF PRESENT

Suzanne Korosec

Donna Parrow

David Vidaver

Jim Woodward

ALSO PRESENT

Simon Baker, California Public Utilities  
Commission (CPUC)

Colin Cushnie, Southern California Edison (SCE)

Valerie Winn, Pacific Gas and Electric Company  
(PG&E)

Mike McClenahan, San Diego Gas and Electric  
(SDG&E)

Michael Florio, The Utility Reform Network (TURN)

Sepideh Khosrowjah, California Public Utilities  
Commission, Division of Ratepayer Advocates (DRA)

David Ashuckian, California Public Utilities  
Commission, Division of Ratepayer Advocates (DRA)

Alan Taylor, Sedway Consulting (via telephone)

Steven Kelly, Independent Energy Producers (IEP)

Jane Turnbull, League of Women Voters

Nora Sheriff, Cogeneration Association of  
California/Energy Producers and Users Coalition  
(CAC/EPUC)

Dorothy Rothrock, California Manufacturers and  
Technology Association (CMTA)

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

10:11 a.m.

MS. KOROSSEC: My name is Suzanne Korosec, I am leading the IEPR effort this year for the Energy Commission. I have just a few housekeeping items. The restrooms are out the double doors and to your left. There is a snack room on the second floor at the top of the stairs under the white awning. And if there is an emergency and we need to leave the building follow the staff out the door to the park across the street and we will wait for the all clear signal.

For those who are listening on the webcast, I don't know if we are hooked up yet, but the number is 888-566-5914. The passcode is IEPR and the Call Leader is Suzanne Korosec.

We are looking at procurement issues because the Committee believes that how we are procuring power is a key issue that needs to be discussed in the IEPR.

For those who are not members of the procurement review groups the role of these groups is often rather murky in terms of how they affect power procurement.

And the intent of today's discussion is

1 to better understand how the PRGs assist in  
2 procuring power in the most cost-effective way,  
3 and also to hear from parties who are outside of  
4 the PRG process about their concerns.

5 We will start with a presentation by  
6 David Vidaver of the CEC staff, which will provide  
7 a brief history of the role of the PRGs and a  
8 discussion of confidentiality requirements. Then  
9 we will move to presentations by the parties in  
10 the order listed in the agenda, followed by an  
11 opportunity for questions and comments on what we  
12 have heard.

13 So with that I will turn it over to the  
14 Committee for opening comments.

15 PRESIDING MEMBER BYRON: Thank you,  
16 Ms. Korosec. Good morning. My name is Jeff Byron  
17 and I am the Presiding Member of the Integrated  
18 Energy Policy Report Committee. I would like to  
19 also welcome and thank you all for being here  
20 today, particularly those of you on our panel.

21 So many of you are so well-informed  
22 about the IOU procurement process. We are very  
23 interested in learning more about that process and  
24 how it benefits consumers.

25 With me are two fellow Commissioners.

1 The Associate Member of the IEPR Committee, our  
2 Chairman, Commissioner Pfannenstiel, and her  
3 advisor, Tim Tutt. And to my left Commissioner  
4 Douglas. Also joining us, representing the Public  
5 Utilities Commission and Commissioner Bohn's  
6 Office, Steve St. Marie. Thank you, Steve, for  
7 being here. And my advisor, Kristy Chew.

8 I would like to put my spin on today's  
9 workshop. The purpose in my mind is to really  
10 better understand and openly discuss how most of  
11 the electric power in the state is procured. And  
12 you might ask, why. It's not like it's the first  
13 time we have asked these questions.

14 I think because really the procurement,  
15 or the effective implementation of many of our  
16 energy policies in the state stem from the  
17 procurement process. And because we also want to  
18 examine how California's energy customers benefit  
19 from the current process since most of it they  
20 know nothing about.

21 The process since 2002 has been done  
22 through the Procurement Review Groups. And we are  
23 certainly interested in understanding why that got  
24 set up the way it did, how it has been working and  
25 who has been involved in that process. It has

1       also been modified over time, as Mr. Vidaver will  
2       go through when he discusses some of the  
3       historical aspects of the procurement process and  
4       confidentiality.

5               So I suppose one question might be, can  
6       it be modified and corrected and perfected or was  
7       it really just a short-term process that needs to  
8       be completely examined and reconstructed?

9               I understand this has also been looked  
10      at before by the Energy Commission. And in fact  
11      Commissioner Grueneich has reminded me that the  
12      PUC opened up an entire proceeding on  
13      confidentiality at the Public Utilities  
14      Commission.

15              The focus here today in my mind is  
16      keeping on the issue of how does this benefit  
17      customers? Of course there's an awful lot of  
18      other questions that are in the back of the  
19      Notice. And I hope you will all address those as  
20      you feel fit as well. As I said, we are really  
21      interested in understanding this process and why  
22      this is all being kept confidential.

23              So I would like to turn to my fellow  
24      Commissioners and ask if they have any comments  
25      before we get started.



1                   ASSOCIATE MEMBER PFANNENSTIEL: Let me  
2           join Commissioner Byron in welcoming you and  
3           thanking you for helping us on this thorny issue.  
4           It's thorny because I think many people would say,  
5           and probably a lot of the people on the panel will  
6           say, well the PRGs have been very valuable and  
7           useful and have contributed a great deal to the  
8           procurement in the state. I think that that's  
9           really true but the question comes up, is there a  
10          better way or are there problems that need to be  
11          corrected.

12                   The overall theme here isn't just a  
13          narrow critique of the PRGS. It's really much  
14          broader than that. It's really the question of  
15          electricity procurement in California and how to  
16          do that best to the benefit of customers and  
17          system reliability, of course.

18                   So I urge you to be broader in your  
19          responses to us. Help us not just understand the  
20          PRGs and what the problems might have been but  
21          really how do we get fundamentally to the whole  
22          question of procuring electricity in California.  
23          Thanks, Jeff.

24                   PRESIDING MEMBER BYRON: Thank you.  
25          Commissioner?

1                   COMMISSIONER DOUGLAS: I would like to  
2                   join my fellow Commissioners as well in welcoming  
3                   the panel. We appreciate your participation here  
4                   today. I really don't have opening comments but I  
5                   am looking forward to hearing from the panel.

6                   PRESIDING MEMBER BYRON: Mr. St. Marie,  
7                   any comments?

8                   CPUC ADVISOR ST. MARIE: Yes, thank you.  
9                   Commissioner Bohn regrets that he is unable to be  
10                  here today. And Happy Bastille Day to all of you  
11                  from all of us who share French surnames.

12                  (Laughter)

13                  PRESIDING MEMBER BYRON: All right then.  
14                  Suzanne and David, listen, I want to thank you  
15                  very much for all of the materials you prepared  
16                  for me ahead of time, that was very helpful. I  
17                  don't profess any expertise at this point but I  
18                  feel much more informed.

19                  MS. KOROSEC: All right. So we will go  
20                  ahead and start with Mr. Vidaver.

21                  MR. VIDAVER: Thank you. Good morning,  
22                  Commissioners. What you are about to get is a  
23                  rather dry look at the historical record with a  
24                  lot of quotations from --

25                  ASSOCIATE MEMBER PFANNENSTIEL: David,

1       could you speak a little closer to the mic, it is  
2       not projecting very well. Thank you.

3               MR. VIDAVER: What you are going to get  
4       from me this morning is largely a series of  
5       quotations from PUC decisions, from pieces of  
6       legislation, et cetera. So for those of you in  
7       the audience who are familiar with the historical  
8       record you can take a nap.

9               This presentation is divided into two  
10       parts. A brief history of the Procurement Review  
11       Group and a short discussion of Senate Bill 1488  
12       and confidentiality in the context of procurement.

13              The genesis of Procurement Review Groups  
14       was AB 57, passed I believe in 2002, which created  
15       a new Section 454.5 of the Public Utilities Code.  
16       This legislation put the utilities back into  
17       procurement after deregulation and the resulting  
18       energy crisis.

19              Subsection G of Section 454.5 required  
20       that the PUC ensure the confidentiality of market  
21       sensitive data while still providing access to  
22       non-market participants. Now the definitions of  
23       market sensitive and non-market participant would  
24       be topics of discussion in CPUC proceedings  
25       through the present day.

1           And it is perhaps more accurate to say  
2           that the PUC has defined what a non-market  
3           participant is. It is someone who is not a market  
4           participant. What a market participant is remains  
5           open to question.

6           Decision 02-08-071 in August 2002  
7           established the PRGs as a formal entity. They  
8           made the CPUC Energy Division and ORA staff ex-  
9           officio members of the Procurement Review Group  
10          and extended an invitation to Energy Commission  
11          and Power Authority staffs.

12          It is perhaps important to recall that  
13          at this point in time utility procurement was  
14          limited in scope. Neither Edison or PG&E were  
15          credit-worthy and procurement consisted largely of  
16          very short-term contracts.

17          You can see from the quotation on the  
18          screen that the Procurement Review Group was  
19          responsible largely for assessing procurement  
20          contracts and reasonableness criteria with each  
21          utility and offering assessments and  
22          recommendations to each utility and then to the  
23          PUC.

24          Now at the risk of revealing  
25          confidential information from my time on the

1 Procurement Review Groups, we have, at least as of  
2 2005 not reached the point that the Procurement  
3 Review Groups were making formal recommendations  
4 to the PUC as a unified body. That may have  
5 changed. If it has I'm sure people on the panel  
6 will inform you.

7 Ironically, the PRG process was  
8 established as an interim, one-year measure  
9 designed to get us through a period where AB 57  
10 was presenting new and novel ideas. Problems  
11 that did not have obvious solutions, at a time  
12 when PUC staffing was at low levels.

13 Over the next few years, however, as  
14 procurement became more complex the roles of the  
15 PRG multiplied. And I think parties would be  
16 rather amused if we tried to accomplish what the  
17 PRG accomplishes with \$600,000 in consulting  
18 services.

19 In June of 2003 a PUC decision  
20 implemented the Renewables Portfolio Standard and  
21 specified a role for the PRG, review of bids  
22 received and utility decisions regarding which  
23 contracts to take to the Commission in the Advice  
24 Letter form.

25 Later in 2003 a decision that authorized

1 an RFO by PG&E established a role for the PRG in  
2 both designing the RFO and evaluating the  
3 responses.

4 By the end of 2003 parties began to  
5 suspect that the PRGs might not be a transitional  
6 instrument for handling confidential materials. A  
7 decision extended the PRGs for another year and  
8 required regularly conferring with the PRGs, even  
9 in the absence of specific activities that  
10 required consultation.

11 I could run through another 10 or 15  
12 decisions but I am going to jump forward to  
13 December 2007 when the most recent utility plans  
14 were approved.

15 Here the CPUC all but confirms the  
16 permanent nature of the PRGs and restates their  
17 non-binding nature, noting that the IOUs are free  
18 to reject the advice of the PRGs and PRG members  
19 retain the right to litigate.

20 The decision summarized the areas in  
21 which the PRGs are now required to be consulted.  
22 In addition to regular quarterly meetings, and the  
23 review of all procurement transactions longer than  
24 three months, you can see that the PRGs are  
25 involved in a wide array of activities: RFO

1 development, the evaluation and ranking of bids  
2 received in those RFOs, gas supply plans, hedging  
3 strategies for both market electricity and natural  
4 gas, consumer risk tolerance triggers, nuclear  
5 fuel plans, congestion revenue rights, et cetera.

6 The decision also established a subgroup  
7 of the PRG called the Cost Allocation Methodology  
8 or CAM group. Prior to this decision the  
9 Commission had ruled that when new capacity is  
10 needed for reliability needs the investor-owned  
11 utilities are in the best position to provide the  
12 investment capital to build new capacity.

13 However, some of that capacity was being  
14 purchased on behalf of energy service providers.  
15 The Commission ruled that if energy service  
16 providers were going to be liable for a share of  
17 the cost of procuring that capacity that they  
18 should have a seat at the table when the provision  
19 of that capacity was being discussed.

20 Now any discussion of the role of the  
21 PRGs is in large part a discussion of  
22 confidentiality. While PRGs serve, in part, as an  
23 extension of energy division staff providing  
24 another set of eyes, as it were, to review utility  
25 actions, PRGs would be, arguably, and I stress the

1 word arguably, unnecessary if it were not for the  
2 fact that some of the materials reviewed by the  
3 PRG have been deemed confidential.

4 Senate Bill 1488 in September 2004 asked  
5 the utilities to ask the Public Utilities  
6 Commission to review the competing statutory  
7 directives in Section 454.5 of the Public  
8 Utilities Code and Section 583 and the Public  
9 Records Act. And directed that they be reconciled  
10 in a way that ensures meaningful public  
11 participation and open decision-making.

12 A while later Decision 06-06-066 came  
13 forth. It asserted that confidentiality  
14 protections are essential to avoid a repetition of  
15 electricity market manipulation.

16 It defined market-sensitive information  
17 as that which would have a material impact on a  
18 procuring party's market price for electricity.

19 It placed the burden of proof on the  
20 party producing the data. If a utility produced  
21 the data it was on the utility to show that it was  
22 indeed confidential.

23 The rulemaking, 05-06-040, under which  
24 this decision was issued, would also go on to  
25 attempt to define a market participant and yield a



1 model protective order that would be used in  
2 binding parties that viewed the data to  
3 confidentiality.

4 The decision also marked the appearance  
5 of the confidentiality matrix, which divided  
6 procurement and related data into 13 categories,  
7 not all of which I am going to discuss. I will go  
8 over three or four of them.

9 Data related to competitive  
10 solicitations and RFO was ruled to be  
11 confidential. However, when aggregated after  
12 final contracts were submitted to the PUC for  
13 approval, it was public. So in response to an  
14 RFO, counter-party names, prices and quantities  
15 offered are confidential. However, the total  
16 number of projects and megawatts bid by resource  
17 or technology type would be made public after the  
18 final contracts were submitted to the CPUC.

19 The specific quantitative analysis  
20 involved in scoring and evaluating the bids would  
21 be confidential for three years after the winning  
22 bids were accepted. This information included bid  
23 prices, transmission cost adders, congestion  
24 costs, dump energy quantities and costs and SEP  
25 calculations. The evaluation guidelines would be

1 public.

2           Regarding bilateral contracts between  
3 utilities and non-affiliated third parties:  
4 Contract summaries including counter-party,  
5 resource type, location, capacity, expected  
6 deliveries, delivery point, length of contract and  
7 online date would be public. I may have misstated  
8 something on a previous slide.

9           The other terms, notably the pricing  
10 terms, would be confidential for three years from  
11 the date of delivery or until one year following  
12 contract expiration, whichever comes first.

13           The confidentiality terms associated  
14 with RPS projects would also be confidential for  
15 three years. Score sheets, analyses and  
16 evaluation of proposed projects to be confidential  
17 for three years. However, as a rule, information  
18 related to RPS contracts and demand side energy  
19 efficiency, demand response agreements, tend to be  
20 public.

21           Regarding load forecasts. And now we  
22 are moving into an area which is predominately  
23 planning information as opposed to procurement  
24 information.

25           Procurement, as I use it, being defined

1 as RFOs, the conditions thereof and the evaluation  
2 of the responses thereto.

3 Planning information is, as I use it,  
4 associated with the ten year procurement plans  
5 submitted by the utilities on a biennial basis.  
6 Some of this information, of course, is common to  
7 both parts of procurement and planning.

8 The demand forecasting methodology the  
9 utility used is public. And the demand forecast  
10 for the first three years on a monthly and daily  
11 basis for the planning area is confidential.

12 All forecasts for the first three years,  
13 for the service area, are confidential. The  
14 service area is here defined as the forecasted  
15 load for the utility itself. The planning area  
16 forecast refers to the load expected by the  
17 utility and the ESPs.

18 As I said earlier, the impacts, the  
19 forecasted impacts of distributed generation, DSM,  
20 demand response and energy efficiency are public.

21 With regards to resource planning  
22 information. Notably the expected output from  
23 various generation sources, output from utility-  
24 owned generation, QFs, are confidential for three  
25 years, although public by resource category after

1 three years.

2 Forecasts of output from renewable  
3 resources and savings from other preferred  
4 resources are all public.

5 Forecasted activity in the market,  
6 market sales and purchases, are confidential for  
7 three years.

8 And forecasted costs have a similar  
9 pattern. The forecasted costs tend to be  
10 confidential for three years, public by resource  
11 category thereafter.

12 Forecasted costs of preferred renewable  
13 and demand side resources are public.

14 Market price forecasts are confidential  
15 for three years, unless they have been secured  
16 from a vendor and the vendor agrees to make those  
17 forecasts public.

18 And again, the aggregate costs of and  
19 revenues from forecasted activity in the market is  
20 public.

21 And finally, the utility's net open  
22 position. The amount of capacity and energy that  
23 it needs to procure to meet customer demand over  
24 the next three years is confidential.

25 And that concludes my presentation.

1           And I'm sorry, I may have provided a bit  
2   of misinformation in going through this matrix, I  
3   apologize. I am sure that there are several  
4   panelists who will be happy to correct any  
5   misstatement I have made regarding any particular  
6   element of the matrix.

7           PRESIDING MEMBER BYRON: Do you mean in  
8   your presentation or in your comments?

9           MR. VIDAVER: In my -- Actually I think  
10  there might be one in my presentation as well.  
11  The amount of sales and purchases I am certain is  
12  confidential for a three year period. It seems  
13  inconsistent to me that the aggregate costs and  
14  revenues from those activities would then be  
15  public. I think I may have put something down  
16  incorrectly. But I look to Mr. Cushnie or  
17  Mr. McClenahan to possibly correct that.

18          PRESIDING MEMBER BYRON: Okay, we will  
19  look for others to correct that, Mr. Vidaver,  
20  thank you. One question that I have though, and  
21  not dissecting the determination of all the  
22  confidentiality issues. But I was always under  
23  the impression that the forecast in the Integrated  
24  Energy Policy Report was what IOUs were to  
25  procure, and I don't believe that's confidential.

1           MR. VIDAVER: No, that certainly  
2       wouldn't be confidential. The load forecast that  
3       utilities use in their procurement would certainly  
4       be confidential. That forecast is necessary as  
5       utilities consider procuring a specific resource,  
6       then combine it with all the other resources they  
7       have in their portfolio and dispatch that against  
8       the forecasted load over a ten year or longer time  
9       frame. So they have to use a forecast in the  
10      procurement process of their own load, which isn't  
11      required to be the same as the CEC forecast.

12           They can also submit in the PUC's  
13      procurement process, as part of their ten year  
14      plans, other forecasts. The first three years of  
15      which don't necessarily have to be made public.

16           PRESIDING MEMBER BYRON: Okay, thank  
17      you. Any other questions? Do any of our  
18      panelists want to make a -- David offered up the  
19      opportunity for corrections of any errors that he  
20      may have made in his presentation. Do any of our  
21      panelists have any corrections or questions for  
22      him?

23           MS. ROTHROCK: I have a question.

24           PRESIDING MEMBER BYRON: Please go  
25      ahead. And turn on your microphone, Ms. Rothrock.

1 MS. ROTHROCK: It's on, yes. Thank you,  
2 yes. I am Dorothy Rothrock with the California  
3 Manufacturers and Technology Association.

4 I was just wondering if you could talk a  
5 little bit bout the membership of the PRG and how  
6 it was maybe set up at the beginning. Maybe it's  
7 changed over the years, maybe it hasn't. I have  
8 no idea. I'm curious if there's a short story  
9 there.

10 PRESIDING MEMBER BYRON: Good question.

11 MR. VIDAVER: Well, at the outset Energy  
12 Division and ORA staff were made ex-officio  
13 members. The Energy Division -- Energy Commission  
14 and staff of the California Power Authority were  
15 formally invited in a PUC decision to join the  
16 PRGs. To be quite honest, I am not even sure I am  
17 allowed to reveal the membership in the PRG at the  
18 time. But at the risk, there were such diverse  
19 participants as the California Farm Bureau --

20 MS. ROTHROCK: So you need to add the  
21 members of the PRG on the list of things that are  
22 confidential.

23 MR. VIDAVER: I'm being somewhat  
24 facetious.

25 MS. ROTHROCK: Okay.

1                   MR. VIDAVER: The California Farm Bureau  
2 participated. The Department of Water Resources  
3 participated but was excused whenever matters  
4 related to the dispatch of DWR contracts were  
5 discussed. It's been a while since I've been in  
6 there. I'm sure that the representatives of the  
7 investor-owned utilities can tell you more  
8 historically about who participated in the PRGs.

9                   Recently your organization and the  
10 California Large Energy Consumers Association were  
11 deemed by CPUC decision to be non-market  
12 participants. Now I don't know if that decision  
13 was ever finalized. I can't find any record that  
14 it was. Sepideh is nodding at me that it was.

15                  A definition of who is and isn't a  
16 market participant came out of the PUC. I can do  
17 my best to recall that if you, if you would like.  
18 It's anyone engaged in, I believe, the wholesale  
19 buying or selling of energy or capacity or the  
20 construction of a power plant. Or any entity that  
21 primarily engaged in lobbying for those entities  
22 or whose membership primarily consists of those  
23 entities, subject to a di minimis requirement.

24                  If you don't do a threshold amount of  
25 business, and I believe it's very, very small, you



1 are not considered a market participant.

2 A co-generator who sells entirely or who  
3 consumes entirely onsite is not considered a  
4 market participant. I believe there are one or  
5 two other small exceptions.

6 PRESIDING MEMBER BYRON: You know,  
7 instead of getting wrapped up in the definition I  
8 was provided a list. I'll offer up the names of  
9 the following organizations and perhaps others  
10 could correct me. It's two pages, one and a half  
11 pages. The first page is primarily the Public  
12 Utilities Commission, a number of individuals from  
13 the Energy Division and the Division of Ratepayer  
14 Advocates. And then I have California Utility  
15 Employees. DWR, Department of Water Resources.  
16 And NRDC, TURN and UCS. You had also mentioned  
17 DMV, Farm Bureau, CLECA, but they are not on my  
18 list. And I also recall reading Aglet earlier in  
19 one of the decisions or one of the meeting  
20 attendee lists.

21 MR. VIDAVER: NRDC. I left out TURN.

22 PRESIDING MEMBER BYRON: Is that a  
23 correct list that I'm reading from or is it  
24 different from utility to utility? Mr. Florio, go  
25 right ahead.

1           MR. FLORIO: Some of the groups  
2 ultimately dropped out. I believe the Farm Bureau  
3 was initially involved in San Diego's PRG. And  
4 Aglet was initially involved in, I believe, PG&E  
5 and Edison and they recently dropped out. UCAN  
6 was originally in San Diego's PRG. I think  
7 they've dropped out as well. There might be one  
8 or two others. Those are the most active members.

9           MR. KELLY: I think at one time the  
10 utility employees' union was eligible. And I  
11 don't know --

12          MS. SHERIFF: He mentioned it.

13          MR. KELLY: That's Steven Kelly with  
14 IEP.

15          MS. SHERIFF: And this is Nora Sheriff  
16 for CAC and EPUC. Can you tell me, has CLECA ever  
17 actively participated in a PRG? I don't think so.

18          PRESIDING MEMBER BYRON: My mistake in  
19 mentioning that, thank you.

20          MS. KHOSROWJAH: Can I respond? But  
21 they could if they want to.

22          PRESIDING MEMBER BYRON: You have to  
23 identify yourself, please.

24          MS. KHOSROWJAH: This is Sepideh  
25 Khosrowjah from DRA. The CLECA members could

1 participate if they want to.

2 ADVISOR TUTT: And just to add one last  
3 bit to the historical record on the PRGs. Of  
4 course the Energy Commission was included and  
5 involved for awhile and then dropped out  
6 ourselves. About two years ago, Commissioner  
7 Byron?

8 MR. BAKER: Correct.

9 PRESIDING MEMBER BYRON: All right.  
10 Thank you, everyone, for your help in clarifying  
11 that. It looks as if then we do have a pretty  
12 current list with regard to those that  
13 participate. And obviously there's been a number,  
14 a handful of folks that have dropped out.

15 Are there any other questions or  
16 clarifications with regard to Mr. Vidaver's  
17 presentation? Ms. Korosec.

18 MS. KOROSEC: All right, I think we'll  
19 move on to our panelists now. I put the questions  
20 on the screen. I apologize for the infinitesimal  
21 type but hopefully everyone's got a copy of the  
22 workshop notice that has the questions on it. I  
23 think we'll start with Simon Baker from the PUC.

24 PRESIDING MEMBER BYRON: You know, if  
25 it's all right with you I would like to recognize

1 all of our panel members right off the bat and ask  
2 them to just introduce themselves. Mr. Baker, if  
3 you don't mind go right ahead and we'll come back  
4 to you, okay.

5 MR. BAKER: Thank you, Commissioner  
6 Byron. Simon Baker with the Energy Division. I'm  
7 in the procurement section.

8 MR. CUSHNIE: Good morning. My name is  
9 Colin Cushnie. I am the director of regulatory  
10 affairs. I manage Edison's procurement review  
11 group. And I appreciate the opportunity to be  
12 here today.

13 MS. WINN: Valerie Winn from PG&E. I am  
14 responsible for managing PG&E's procurement review  
15 group. Thank you for the opportunity to be here.

16 MR. McCLENAHAN: Mike McClenahan, I am  
17 the director of procurement for San Diego Gas and  
18 Electric and I conduct San Diego's procurement  
19 review group meetings.

20 MR. FLORIO: Mike Florio, senior  
21 attorney for TURN. I or my colleagues are  
22 involved in all three of the utility PRGs, have  
23 been from the outset. And my goal for the day is  
24 to convince you to allow your staff to rejoin.

25 MS. KHOSROWJAH: My name is Sepideh

1 Khosrowjah and I work at the Division of Ratepayer  
2 Advocates at the Commission. I have been the  
3 project manager of the 2006 long-term procurement  
4 and have been participating in PRGs for the last  
5 three years for the three IOUs.

6 MR. TAYLOR: And my name is Alan Taylor.  
7 I am the president of Sedway Consulting, a firm  
8 that is and continues to serve as the IE in over a  
9 dozen California lease solicitations in the last  
10 three or four years. I'm sorry that I can't be  
11 there in person but I appreciate the opportunity  
12 to be able to participate via phone.

13 PRESIDING MEMBER BYRON: Mr. Taylor,  
14 thank you, this is Jeff Byron. I'm sorry if I  
15 missed this. Are you involved in all three  
16 procurement groups as well?

17 MR. TAYLOR: Only actually in two of  
18 them. I basically support the PRG and serve as  
19 the IE for solicitations involving Pacific Gas and  
20 Electric and Southern California Edison.

21 PRESIDING MEMBER BYRON: Thank you and  
22 thank you for joining us.

23 MR. KELLY: I am Steven Kelly. I am a  
24 policy director for the Independent Energy  
25 Producers Association, which is a trade

1 association that is not a participating entity.

2 PRESIDING MEMBER BYRON: Thank you.

3 MS. TURNBULL: I'm Jane Turnbull. I am  
4 the chair of the energy committee for the League  
5 of Women Voters of California. And I am here on  
6 behalf of the public interest.

7 MS. SHERIFF: Good morning, I am Nora  
8 Sheriff. I am here on behalf of the Cogeneration  
9 Association of California and the Energy Producers  
10 and Users Coalition and these groups are focused  
11 on combined heat and power interests. And we have  
12 been found to be market participants by the PUC in  
13 Decision 06-12-030.

14 MS. ROTHROCK: Hello, my name is Dorothy  
15 Rothrock. I am with the California Manufacturers  
16 and Technology Association. I am their lobbyist  
17 for energy matters.

18 PRESIDING MEMBER BYRON: Thank you.  
19 Thank you all for being here. I appreciate it  
20 very much. One last question of anyone in the  
21 audience. Do we have anyone here from the  
22 Division of Ratepayer Advocate by chance?

23 ASSOCIATE MEMBER PFANNENSTIEL: Yes.

24 PRESIDING MEMBER BYRON: I'm sorry, of  
25 course.

1 MS. KHOSROWJAH: We have more people  
2 here.

3 PRESIDING MEMBER BYRON: Okay. I'm sure  
4 your answers will be sufficient. Forgive me.

5 Mr. Baker, please.

6 MR. BAKER: Well I want to thank the  
7 IEPR Committee for an invitation to clarify the  
8 role and function of the PRGs and to answer these  
9 important questions, which are aimed at balancing  
10 the need for effective review of procurement  
11 transactions while ensuring the proper functioning  
12 of competitive markets.

13 This is an excellent group of panelists,  
14 highly qualified to respond to the IEPR  
15 Committee's questions. We look forward to hearing  
16 back from parties, market and non-market  
17 participants alike. But first I would like to  
18 make a few remarks, about a half-dozen remarks and  
19 clarifications.

20 The PRGs were established in 2002, as  
21 Dave mentioned, when the IOUs got back into the  
22 procurement business under AB 57. And AB 57  
23 sought to eliminate after-the-fact reasonableness  
24 reviews, a process that was heavily disputed by  
25 the IOUs at risk of rate recovery losses.

1           Instead the CPUC established up front  
2           standards for procurement activity coupled with  
3           quarterly compliance filings reviewed by the CPUC.  
4           As long as procurement rules are followed  
5           procurement costs are fully recovered in the  
6           annual ERA application proceedings. We have had  
7           five years of experience with the procurement  
8           review group and we are very happy with it. We  
9           think it works.

10           The second point I would like to make,  
11           and this may sound somewhat pedantic, but in the  
12           Energy Division's view the PRG is the worst  
13           procurement review process except for all of the  
14           others. Again, in the interest of balancing speed,  
15           the need for speed with the need for review and  
16           transparency.

17           Just an important fact, the CPUC  
18           oversees about \$11 billion in procurement  
19           transactions each year. And this is massive  
20           volumes of data requiring significant resources to  
21           verify reasonableness. And we see the PRG as  
22           being an acceptable strategy for balancing the  
23           need for speed and review and transparency.

24           The alternative to the PRGs would be for  
25           the Energy Division alone to review procurement



1 activity. With the result that parties would see  
2 utility requests and data for the first time in  
3 the application process or the buy/seller process.

4 So what PRGs do is they really get ahead  
5 of that formal proceeding process. They highlight  
6 issues of concern and they give an opportunity for  
7 feedback before the utilities come to the  
8 Commission with applications.

9 And we believe that PRGs also enhance  
10 the oversight function in general because it adds  
11 many new sets of eyes that are looking at these  
12 complex and detailed transactions from different  
13 perspectives.

14 Another clarification is that the PRGs,  
15 they provide the principal review for short-term  
16 transactions. These are transactions less than  
17 five years and they are usually procuring energy  
18 or capacity from existing resources.

19 But anything longer term, greater than  
20 five years, these would be new resources that  
21 would come out of long-term RFOs or applications  
22 for utility-owned generation projects. Those all  
23 go through the full review process with the IOUs  
24 submitting applications seeking approval of those  
25 contracts or transactions or deals.

1           And then finally just to clarify that  
2           the procurement review group is just that. It  
3           reviews and advises the IOUs on procurement  
4           matters but it has no direct involvement in  
5           resource planning. Or at least planning in the  
6           sense of the longer term time frame. The resource  
7           planning takes place in the long-term procurement  
8           proceedings where the procurement rules are  
9           established.

10           So with those remarks I just would like  
11           to turn to a few quick responses to the excellent  
12           questions posed by the Committee before passing it  
13           on to the many experts at the table.

14           With regard to the first question and  
15           the subjects covered in the PRG. Many subjects  
16           are mandated by decision. For example, RFO  
17           products that are greater than three months in  
18           duration or longer than three months ahead. Those  
19           are required to be presented to the PRGs, as are  
20           exceedances of the customer tolerance threshold.

21           The IOUs choose to discuss items not  
22           specifically mandated. And an observation, and  
23           perhaps a legitimate concern, is that utilities  
24           have a great degree of control over the  
25           information. And sometimes it is even hard to

1 know what passed in a PRG meeting just due to the  
2 information overload. But that's really the  
3 nature of the beast when you're dealing with the  
4 amount of transactions that are taking place to  
5 keep the lights on in California.

6 PRG members frequently request topics to  
7 be addressed and the IOUs are mostly responsive to  
8 those requests. And in rare cases PRG members,  
9 including the Energy Division, have presented  
10 information at meetings themselves.

11 With regard to the third question, how  
12 well are the PRGs doing to meet their intended  
13 purpose? We believe they serve an important role  
14 as a sounding board to speed the discovery process  
15 and providing an informal setting to challenge  
16 assumptions at an early stage. At the very least  
17 it is highly educational for PRG members. And of  
18 course the IOUs using it to make their decisions  
19 as they prepare their presentations to the PRG.

20 Is California unique in terms of its  
21 confidentiality treatment? We would say that any  
22 state that relies on market competition to share  
23 investment risk and reduce cost to ratepayers will  
24 face confidentiality issues. And we are grappling  
25 with those issues.

1           Is confidentiality properly applied,  
2       question five. An important clarification is that  
3       the confidentiality is not determined in the PRGs.  
4       It is controlled by the CPUC's confidentiality  
5       proceeding 05-06-040 implementing Senate Bill  
6       1488, as Dave mentioned. And it is principally  
7       guided by Decision 06-06-066.

8           Yet the CPUC has sought ways to match  
9       the appropriate level of confidentiality with the  
10      audience. For example, the recently established  
11      CAN group provides an opportunity for certain load  
12      representatives to participate in limited roles.  
13      This gave access to non-market participants  
14      impacted by system reliability purchases on behalf  
15      of all benefiting customers. And we think this is  
16      an example of how the Commission is continuously  
17      refining its guidance with respect to balancing  
18      the need for transparency with the need for  
19      effective review.

20           With regard to the steps that have been  
21      taken to increase transparency. I mentioned that  
22      the 2006 LTPP decision added this CAN group. It  
23      also added meeting calendars and topics to be  
24      discussed that would be posted publicly. And the  
25      IOU websites explain how non-market participants

1 can apply for the PRG if they wish. And we are  
2 happy to be here today to hear any new suggestions  
3 in that regard.

4 With regard to the use of independent  
5 evaluators. The Commission has taken great  
6 strides to involve outside, non-partial observers  
7 in the procurement process. And the independent  
8 evaluators are one way of doing that.

9 They provide a third party critique and  
10 verification of the RFO process and non-market-  
11 sensitive information is shared publicly in the  
12 independent evaluator reports, which accompany the  
13 utility applications.

14 The PRG members have the right to  
15 interview the independent evaluators without the  
16 IOU present and to offer their opinions.

17 How are we doing in terms of the  
18 successes and failures of the procurement process.  
19 The PRG membership is constituted by a wide range  
20 of non-market participants whose collective  
21 charter is to serve the public interest. And they  
22 include environmental groups, consumer groups and  
23 state agencies as we heard the list earlier.  
24 These groups need only have their representative  
25 sign a non-disclosure agreement and they can

1       verify that the public interest is served.

2               Process related, not substantive  
3       information, can and is shared publicly in  
4       independent evaluator reports, as I mentioned.  
5       And some parties -- For example, some parties even  
6       cite, quote/unquote, industry knowledge based on  
7       confidential PRG data. Perhaps making percentage  
8       comparisons without revealing specific  
9       information. And that industry knowledge is  
10      submitted in formal comments at formal  
11      proceedings.

12             How is it decided what information is  
13      confidential? The IOUs designate the protected  
14      material and make confidentiality declarations,  
15      citing specific provisions of 06-06-066. And the  
16      Energy Division and the PRGs review the veracity  
17      of these designations.

18             So those are the comments I wanted to  
19      make in response to the specific questions. And  
20      with that I would be happy to take any questions  
21      from the dais or from the panelists. Thank you.

22             PRESIDING MEMBER BYRON: Mr. Baker,  
23      thank you. Can you give us a sense, because no  
24      one really except those who we talked about  
25      earlier who participate in PRGs, no one really

1 understands how they work. And you have given us  
2 some indication of that. Do you participate in  
3 all the PRGs on a regular basis?

4 MR. BAKER: If I participated in all the  
5 PRGs that's about all I would do. But I do  
6 participate occasionally so I am familiar with  
7 them.

8 PRESIDING MEMBER BYRON: Okay. And so  
9 can you just give us a sense. Is there someone  
10 from the PUC that tracks each particular IOU's  
11 PRG? How are the meetings conducted, what's  
12 handed out and what's taken back. Are meeting  
13 minutes produced. You know, that kind of -- Can  
14 you give us a sense of what the meetings are like.  
15 Are they conducted by phone, are they live  
16 meetings, et cetera, et cetera?

17 MR. BAKER: That's correct. The Energy  
18 Division always has a representative that is  
19 either present in person or on the call. I  
20 understand that calendars and topics to be  
21 discussed are posted in advance. Agendas are  
22 distributed at the meetings or they are  
23 distributed by e-mail, as are presentations that  
24 are going to be made. They are distributed by e-  
25 mail to the PRG members. The utilities themselves

1 take minutes but they do not distribute them to  
2 PRG members.

3 PRESIDING MEMBER BYRON: What is the  
4 purpose then of collecting meeting minutes if you  
5 don't distribute them?

6 MR. BAKER: Do you want to step in and  
7 clarify here?

8 PRESIDING MEMBER BYRON: And  
9 clarifications are welcome. Because these are  
10 somewhat closed meetings I don't think everybody  
11 knows all the answers.

12 MS. WINN: Well certainly for PG&E we do  
13 prepare minutes and distribute those minutes to  
14 the procurement review group. I have to admit I  
15 moved into this position earlier this year and I'm  
16 rather tardy in distributing minutes to the PRG  
17 but soon they'll be out to you.

18 PRESIDING MEMBER BYRON: But those are  
19 confidential as well.

20 MS. WINN: Yes, they are.

21 MR. CUSHNIE: With respect to Southern  
22 California Edison, we do not take minutes. What  
23 we do do, though, is provide a very brief summary  
24 that we send to the entire PRG distribution list  
25 that summarizes the agenda items that we covered



1 and any open action items that either a PRG  
2 participant will take or that Edison is going to  
3 take.

4 The reason we don't take minutes, per  
5 se, is that the PRG process is a consultant  
6 process. Nothing in there can find its way into  
7 the record directly. So we don't want to be in a  
8 position of being accused of having misrepresented  
9 somebody's position. It could be a very time-  
10 consuming process if people had to go through  
11 there and say no, you didn't get my position quite  
12 right.

13 So we say nothing is going in the  
14 record, here's no reason to take minutes,  
15 therefore. But we will summarize for the benefit  
16 of those who couldn't make it to the meeting what  
17 was discussed, who were the presenters, what were  
18 any questions that didn't get answered that we are  
19 going to follow up on.

20 PRESIDING MEMBER BYRON: Please.

21 MR. McCLENAHAN: San Diego is similar to  
22 Edison. I'm Mike McClenahan with San Diego Gas  
23 and Electric.

24 Similar to Edison we do provide meeting  
25 summaries. I believe we are posting them on our

1 PRG website. And I believe that was even ordered  
2 in the last long-term procurement plan decision  
3 from the Public Utilities Commission.

4 PRESIDING MEMBER BYRON: And as  
5 Mr. Baker noted, it is an \$11 billion a year  
6 procurement process in this state and sometimes it  
7 is hard to know even what are the right questions  
8 to ask during the procurement meetings. So I  
9 recognize it is, it is complicated.

10 But you also said, it's informational to  
11 PRG members and it forces the utilities to work  
12 through their procurement. Would you all agree  
13 that that's generally what transpires in these  
14 meetings?

15 MR. CUSHNIE: Colin Cushnie of Edison.  
16 Yes.

17 PRESIDING MEMBER BYRON: Okay, thank  
18 you. I saw a lot of heads nodding and didn't see  
19 any disagreement. Mr. Baker, thank you. That  
20 helps us understand what these meetings are like.  
21 And of course, they are non-binding. These are  
22 primarily reviews that are conducted on behalf of  
23 various constituents and non-market participants  
24 that are in the meeting.

25 Have there been any registered protests

1 over the last four or five years? Any folks that  
2 have been upset? We note that some of these  
3 members have dropped out for various reasons. Is  
4 it because they couldn't afford to continue in the  
5 process or didn't think it was worth the time or  
6 did they actually have some dispute associated  
7 with the process?

8 MR. BAKER: Not to my knowledge. But I  
9 would defer to the other panelists to speak to any  
10 of the PRG members that have dropped out. The  
11 only significant protest that I'm aware of was the  
12 CEC's own protest.

13 MR. BAKER: And in addition to us.

14 (Laughter)

15 MR. FLORIO: Mike Florio for TURN. My  
16 recollection is that most if not all of the  
17 members that dropped out cited the time involved  
18 and didn't feel that they could devote the amount  
19 of attention required.

20 I believe Aglet did particularly cite  
21 delay by the Commission in issuing intervenor  
22 compensation decisions for PRG work as one of the  
23 reasons for their dropping out. But other than  
24 that I think it is just a lot of work.

25 MS. KHOSROWJAH: I just want to add to

1       this.  That these are -- What Mike Florio  
2       mentioned has to do with the MIM PRG participants.  
3       But during the 2006 LTPP we discussed similar  
4       issues in workshops regarding PRG and we heard  
5       from many parties on what they think of PRG.  And  
6       it was a similar type of panel but in an informal  
7       manner.  And the complaint was, again, that PRG  
8       decisions are being made behind closed doors.

9               PRESIDING MEMBER BYRON:  Yes.  Madame  
10      Chairman.

11             ASSOCIATE MEMBER PFANNENSTIEL:  
12      Mr. Baker, you mentioned this information  
13      overload.  That there's just so much information  
14      that the PRG kind of helps to process it and  
15      manage it.  And that makes sense.

16             My question:  It seems then that it  
17      takes an awful lot of time on the part of each of  
18      the PRG participants to become familiar with this  
19      information.  And it sounds like there's a lot of  
20      homework to be done.  And without having done that  
21      homework, which may in fact be voluminous, the  
22      actual value of the PRG discussion becomes rather  
23      weak.  Do you find that they have all done their  
24      homework when they come into the meetings?

25             MR. BAKER:  I certainly find that when

1 the utilities distribute materials and  
2 presentations in advance, particularly when they  
3 do their quarterly, so-called deep dives, the  
4 presentations that they prepare provide a good  
5 summary of the procurement activity.

6 And for somebody like myself who has  
7 only been with the Commission for now about ten  
8 months it is a really good school of learning and  
9 understanding how procurement works. We have  
10 people from Energy Division that have much more  
11 experience with this and can probably ask more  
12 intelligent questions than I can at this stage.  
13 So it is really a process for Commission staff and  
14 also for PRG participants themselves to just stick  
15 with it and understand the issues over time. And,  
16 you know, ask questions that are appropriate to  
17 their level of comprehension.

18 PRESIDING MEMBER BYRON: I would imagine  
19 few people understand the procurement process  
20 fully. Has anybody drowned during one of these  
21 deep dives?

22 (Laughter)

23 PRESIDING MEMBER BYRON: Any other  
24 comments from the dais? Questions? Tim.

25 ADVISOR TUTT: I just had one question.

1 I missed what the CAM stands for. Can you  
2 describe what that does?

3 MR. BAKER: It's the cost allocation  
4 methodology that was adopted by settlement in  
5 Decision 06-07-029. And essentially what it does  
6 is for new capacity that is procured on behalf of  
7 the system or all benefiting customers it  
8 establishes a mechanism for determining the net  
9 cost of that new capacity.

10 MS. KOROSEC: If there are no more  
11 questions shall we move on?

12 PRESIDING MEMBER BYRON: I do have just  
13 a couple more.

14 MS. KOROSEC: Okay.

15 PRESIDING MEMBER BYRON: And I think  
16 this is a good time to ask them just to understand  
17 procurement groups better and the way they are  
18 structured. Obviously they have evolved over time  
19 as a result of the various decisions that have  
20 come out and my staff prepared a very nice summary  
21 of kind of the -- I don't know how many,  
22 Mr. Vidaver, decisions there have been. At least  
23 a dozen over the last four years it seems. And I  
24 just want to make sure -- if I misunderstood.

25 Are the RFOs, the requests for offers.

1 Are those now only under the review and purview of  
2 the PUC or are the PRGs still participating in  
3 reviewing the RFOs as well. Do you know?

4 MR. BAKER: Are you referring to the RFO  
5 bid docs themselves?

6 PRESIDING MEMBER BYRON: Well I'm not  
7 sure.

8 MR. BAKER: Or the results of the RFOs?

9 PRESIDING MEMBER BYRON: I think I'm  
10 referring to the bid docs.

11 MR. BAKER: Probably both.

12 PRESIDING MEMBER BYRON: The bid  
13 documents.

14 MR. BAKER: I'll go back to the  
15 clarification that I made earlier, which is that  
16 the utilities have two types of RFOs. The first  
17 is an RFO for, a long-term RFO for new generation.  
18 And those result in contracts which are -- bids  
19 that are selected which then eventually become  
20 contracts that are submitted to the Commission for  
21 an application. So that goes through the full  
22 review process.

23 The long-term RFOs are initially  
24 reviewed by the PRGs, both the bid docs themselves  
25 and also the bid evaluation. And the independent

1 evaluator also oversees that process. And then it  
2 goes through the full Commission formal review  
3 process when the application is submitted.

4 The second type of RFO is an all source  
5 RFO, which is typically procuring for shorter term  
6 products, five years and under, and it could be  
7 procured from existing generation sources. That  
8 procurement activity is reported in the quarterly  
9 compliance reports and the quarterly PRG review  
10 meetings, the deep dives that I mentioned. They  
11 provide an overview summary of that shorter term  
12 procurement activity.

13 PRESIDING MEMBER BYRON: And so the RFO  
14 documents, because they are made public, they are  
15 put out in the bid market. Is any aspect of that  
16 process confidential? In other words, would the  
17 review and the determination of what goes into the  
18 bid spec documents, is that confidential?

19 MR. BAKER: The bid spec documents  
20 themselves are public, as you mentioned. But the  
21 evaluation criteria themselves are not public. So  
22 there is a broad definition of the evaluation  
23 criteria but not the weights and scoring and so  
24 forth. And I could probably allow the utilities  
25 to respond to that in a more detailed fashion.



1                   PRESIDING MEMBER BYRON: All right, so  
2 we'll get to them. So the evaluation criteria is  
3 not public.

4                   MR. McCLENAHAN: Mike McClenahan with  
5 SDG&E. The evaluation criteria is public. I  
6 think what is confidential in the formulation of  
7 the RFO documents is the product slot and the  
8 quantities. That tends to be the confidential  
9 piece. But once those decisions are made that's  
10 all in the bid documents and that's all public.

11                  PRESIDING MEMBER BYRON: Okay, so  
12 evaluation criteria is public.

13                  MR. CUSHNIE: If I may, this is Colin  
14 Cushnie with Edison. It might be helpful to  
15 understand what Mr. McClenahan is saying by  
16 evaluation criteria. He may be referring to the  
17 kinds of things that the utility will consider in  
18 its evaluation. But at least in the case of  
19 Southern California Edison, we don't put out the  
20 specific algorithms that we use to determine how  
21 we are going to rank the bids.

22                  PRESIDING MEMBER BYRON: Meaning the  
23 weighting of the various criteria.

24                  MR. CUSHNIE: The weighting correct. We  
25 don't provide publicly how we are going to go

1 about actually doing the evaluations and awards.  
2 But we do provide an indication of things that are  
3 important to us. We'll provide values for some of  
4 it.

5 PRESIDING MEMBER BYRON: There's three  
6 PRGs I take it. Do each of the utilities conduct  
7 their PRGs or follow the same -- conduct them the  
8 same or follow the same procedure? That's really  
9 what I am after. Do they follow the same  
10 procedure in their procurement process?

11 MR. CUSHNIE: No, they each go about it  
12 in their own unique way.

13 PRESIDING MEMBER BYRON: Okay. I have a  
14 feeling that are others on this panel that can  
15 probably answer this question quite well, who  
16 participate in all three as well.

17 MR. FLORIO: Yes, Mike Florio for TURN.  
18 For one thing, what goes on in each utility's PRG  
19 is confidential from the other utilities. So they  
20 don't really know what each other does. I think  
21 generally the process is similar but there are  
22 differences unique to each utility and how they  
23 present the information.

24 PRESIDING MEMBER BYRON: Well I can  
25 understand information being confidential but why

1 would the process be confidential?

2 MR. FLORIO: I am not sure what you mean  
3 by, the process.

4 PRESIDING MEMBER BYRON: You said it's  
5 confidential between the three utilities. They  
6 don't know what process each other follows.

7 MR. FLORIO: We have had workshops at  
8 the PUC where the PRG process is discussed. But  
9 we can't take a document that Edison produces and  
10 hand it to PG&E. In that sense the utilities  
11 themselves are market participants so we can't as  
12 PRG members be conduits for confidential  
13 information.

14 PRESIDING MEMBER BYRON: Well and I'm  
15 not, I'm asking a process question.

16 MS. KHOSROWJAH: Let me try to answer  
17 this question. The process is not confidential.

18 PRESIDING MEMBER BYRON: All right.

19 MS. KHOSROWJAH: You know what kind of  
20 information is being shared. You know that RFOs  
21 are being reviewed. You know who are the  
22 participants. Now they have all web pages for  
23 PRG. You have the agenda there. You have some  
24 kind of, for some you usually have some kind of  
25 minutes what was discussed there.

1                   But the information we get from Edison  
2                   we cannot share with PG&E, like their net position  
3                   or who participated in their RFO.

4                   PRESIDING MEMBER BYRON: Understood.  
5                   But again, that's getting to the information.

6                   MS. KHOSROWJAH: The information is  
7                   confidential but the process is not.

8                   PRESIDING MEMBER BYRON: And I  
9                   understand that. I'd like to see if we can  
10                  concentrate on process for a second. I am just  
11                  trying to understand why the procurement processes  
12                  would be different amongst the different IOUs.

13                  MS. TURNBULL: Jane Turnbull from the  
14                  League of Women Voters. I only sat through one  
15                  meeting.

16                  PRESIDING MEMBER BYRON: One PRG  
17                  meeting?

18                  MS. TURNBULL: One PRG meeting.

19                  PRESIDING MEMBER BYRON: Is that all you  
20                  could handle, Ms. Turnbull?

21                  (Laughter)

22                  MS. TURNBULL: Actually it was not even  
23                  a PRG meeting, it was a meeting to discuss the PRG  
24                  process at the PUC. And I found it a trying event  
25                  just to sit through that.

1                   PRESIDING MEMBER BYRON: How about this  
2 meeting?

3                   MS. TURNBULL: One aspect that hasn't  
4 been raised here is the role of the independent  
5 evaluator. I found that an enigma that was not  
6 really clarified during my one experience there.  
7 I left with a lot of concerns about the process  
8 because it was so complicated.

9                   MR. BAKER: Well, I noted Mr. Baker  
10 didn't refer to it as an independent evaluator.  
11 He referred to it as a third-party evaluator. Was  
12 that intentional?

13                  MR. BAKER: They are independent.

14                  PRESIDING MEMBER BYRON: Okay. We will  
15 get back to that, I hope in some more detail,  
16 Ms. Turnbull. Thank you for bringing it up.

17                  The other question that I want to make  
18 sure that we address at some point is in this  
19 process aspect, is I understand that the RFO will  
20 go out, bids will come in, and then there's a  
21 short list that's created and then there's a  
22 process that goes forward at that point. And I  
23 would like to understand that a little bit better  
24 too.

25                  How many of you are familiar with the

1 competitive procurement process in the  
2 construction industry? The way bids are done in  
3 the construction industry. And of course that  
4 kind of process is extremely disruptive in the  
5 construction industry. It has to be an open bid  
6 process where everything is revealed. You can't  
7 go back and renegotiate, otherwise you undermined  
8 the entire competitive solicitation. So I would  
9 like to understand that a little bit more as we  
10 get into this as well.

11 Mr. Baker, I have asked a lot of  
12 questions and I think I am delaying us at this  
13 point. Did you have anything else you wanted to  
14 add?

15 MR. BAKER: No thank you, Commissioner.

16 PRESIDING MEMBER BYRON: Thank you,  
17 thank you for coming.

18 MS. KOROSEC: All right, let's hear from  
19 Edison.

20 MR. CUSHNIE: Yes. Again, thank you.  
21 My name is Colin Cushnie with Southern California  
22 Edison. I want to thank the Energy Commission for  
23 inviting us here today. Like Mr. Florio said in  
24 his opening remark, Edison would be thrilled if  
25 the Energy Commission would reconsider its earlier

1 decision to withdraw from our PRG and to allow the  
2 staff to participate.

3 PRESIDING MEMBER BYRON: Why?

4 MR. CUSHNIE: There's just a tremendous  
5 amount of value that your staff will acquire by  
6 sitting in on our PRGs, primarily in terms of  
7 understanding the business, the overall  
8 considerations that we deal with. We also found  
9 it very helpful to get Energy Commission staff's  
10 perspective on things that we are working on, just  
11 like we appreciate the Energy Division, DRA and  
12 the other PRG participants' input. It is truly a  
13 collaborative process.

14 But at the end of the day the utility  
15 has the fiduciary responsibility to make the  
16 decisions it needs to on behalf of its customers  
17 and then put those decisions before the Public  
18 Utilities Commission and seek approval of those  
19 decisions.

20 But the information-sharing that  
21 precedes those submittals has greatly facilitated  
22 the process and made it more effective. I have  
23 been with the utility for over 20 years and I can  
24 describe in great detail the horrors of the old  
25 discovery we used to go through under the old

1 reasonable standards.

2 Now we have a compliance standard under  
3 AB 57 for a different standard and quite frankly  
4 we have quite a bit of discretion on how we  
5 operate under those standards. I mean, I can only  
6 imagine how difficult it would be for intervenors  
7 to come in and try to wade through all this  
8 information that we would submit to the  
9 Commission, make any sense of it, let alone  
10 demonstrate that we weren't in compliance with our  
11 procurement plan.

12 So having the PRG participants march  
13 with us step by step through our decision-making  
14 greatly facilitates their understanding of our  
15 business and they are able to pinpoint any issues  
16 or concern they have and take it to the  
17 Commission. So we have a very targeted debate  
18 before the Commission, it is not just wide open  
19 and people fishing for disallowances.

20 First I want to say that Mr. Baker did a  
21 very nice job of explaining the process. He  
22 actually touched on a lot of the points that I was  
23 going to make so I'll spare you going over that  
24 again. It sounds like it might be helpful just to  
25 take one or two minutes to sort of describe the



1 Edison PRG meeting process, what we typically do.  
2 And then I'll finish up with some of the other  
3 points I wanted to make.

4 Edison conducts numerous PRG meetings.  
5 I would say we probably conduct probably close to  
6 30 or 40 a year. It depends by the year and the  
7 activity that we have going on. What we try to do  
8 to manage that workload based on suggestions,  
9 again from our PRG participants, is to hold a  
10 biweekly meeting, a teleconference meeting. We do  
11 it every other Wednesday at three o'clock, it's a  
12 standing meeting.

13 And we will send out in advance of that  
14 meeting by Commission order, two days prior, an  
15 agenda and all the presentation materials that we  
16 are going to be reviewing. We then have a  
17 conference call, we go over the presentation  
18 materials, we take questions.

19 As I indicated we then provide a summary  
20 after the fact of who participated on the call and  
21 what the open actions are that either a PRG  
22 participant or Edison has. We also send out any  
23 follow-up that people had requested.

24 We also conduct something called -- We  
25 also have ad hoc meetings. Occasionally things

1 are time sensitive. We can't wait for that every  
2 other Wednesday meeting. If we have a decision to  
3 make that doesn't fall in that window we will set  
4 up an ad hoc meeting.

5 We also do what we call a quarterly face  
6 to face meeting. That's an all day meeting. We  
7 fly probably about 20 people from Rosemead up to  
8 San Francisco. And we have a room in our offices  
9 across the street from the PUC and we meet from  
10 9:30 as late as five o'clock. We go through a  
11 wealth of information.

12 The kinds of things that we through are  
13 reviews of our energy planning activities. We  
14 review our gas transaction activities. We review  
15 our power procurement transaction activity, our  
16 SO2 trading activity. We review our risk  
17 management reports. So we do a lot of just  
18 background review. It can be a bit of a grind so  
19 we are always looking for input from the PRG  
20 participants on how we can facilitate the  
21 production of this information and review of it.

22 But then we also get into some topics  
23 that are of interest to the PRG participants. So  
24 we are regularly polling our participants for  
25 things that they want to hear about. So we may

1 dig in deep on a particular gas model that we use.  
2 We may talk about a policy issue at the CPUC and  
3 why Edison has come to the policy decision that it  
4 is going to be presenting.

5 And so we are very mindful of the time  
6 that people have to expend so we look for our PRG  
7 participants to tell us if it is too much, too  
8 little.

9 It is an open exchange of information.  
10 Nobody gets shouted down, everyone has a forum.  
11 And by and large I think it works very well. It's  
12 not to say that occasionally there aren't a few  
13 disputes about what it is that we are going to do  
14 or not do.

15 But again, this is not a decision-making  
16 process. This is a collaborative process. It's  
17 an information-sharing process. And when we take  
18 whatever decision action to the Commission, that  
19 is the forum for PRG participants and any other  
20 market participant or non-market participant to  
21 then raise their claim at the CPUC. And that's  
22 where the issues get resolved. Hopefully that is  
23 somewhat helpful.

24 A few things here. Edison is very anal  
25 about the term PRG participant because it is a

1 participatory group, it is not a membership.  
2 There is no secret handshake or anything like  
3 that. There's no bylaws. There's absolutely no  
4 rules.

5 PRESIDING MEMBER BYRON: But there is a  
6 secret aspect to it though, isn't there?

7 MR. CUSHNIE: No. You sign a non-  
8 disclosure agreement.

9 PRESIDING MEMBER BYRON: Well isn't that  
10 a secret aspect?

11 MR. CUSHNIE: It's not a secret. All we  
12 are doing is we are implementing the Commission's  
13 confidentiality rules and protocols. The CPUC has  
14 come up with, as Mr. Vidaver explained, the  
15 confidential rules and protocols for all CPUC  
16 proceedings. So if we did not have a PRG group we  
17 would still require the people at this table to  
18 sign that same non-disclosure agreement to have  
19 access to our confidential information.

20 PRESIDING MEMBER BYRON: Which as I  
21 understood earlier is designated by you as  
22 confidential.

23 MR. CUSHNIE: We designate it as  
24 confidential. We are required to have an employee  
25 sign a declaration that cites back to the

1 confidentiality matrix. It explains why that  
2 information is confidential.

3 PRESIDING MEMBER BYRON: So all the  
4 information that you just mentioned earlier that  
5 you cover in PRG meetings around energy planning,  
6 trading, SO2 trading, natural gas trading, et  
7 cetera, et cetera. That information is obviously  
8 presented in handouts and overheads. Is all that  
9 information returned at the end of every meeting?

10 MR. CUSHNIE: No. The PRG participants  
11 are free to keep that information. They have  
12 agreed through the non-disclosure agreement to not  
13 release it without our concurrence.

14 PRESIDING MEMBER BYRON: Okay, I  
15 interrupted you. Back to your point about it's  
16 not a secret club.

17 MR. CUSHNIE: It's not a secret club  
18 because there is no membership. It is a  
19 participatory group. Participants are free to  
20 come and go as they please.

21 To the best of my knowledge -- I have  
22 been on our PRG since day one. Originally as a  
23 business person making presentations to the PRG  
24 participants; more recently from a regulatory  
25 standpoint in managing the group. And I am not

1       aware of us having turned down anyone that has  
2       asked to be on the group.

3               ASSOCIATE MEMBER PFANNENSTIEL:   Well how  
4       many is that?   How many people have asked to be on  
5       the group?   It sounds like the participants, the  
6       PRG participants are fairly limited to this  
7       handful.   Besides Mike Florio there aren't a whole  
8       lot of people knocking on your door to get on the  
9       group, is that correct?

10              MR. CUSHNIE:   There's not a lot of  
11       entities.   Now the Energy Division and DRA and the  
12       Water Division, the Legal Division of the CPUC, as  
13       Mr. Vidaver pointed out, are ex-officio members.

14              ASSOCIATE MEMBER PFANNENSTIEL:   I know  
15       bunches of PUC.   But other than PUC.

16              MR. CUSHNIE:   You're right.   I mean,  
17       TURN requested to be on our PRG and they are on  
18       our PRG.   NRDC was on it from day one.   They  
19       recently asked to be removed from our PRG  
20       distribution because of the time commitment that  
21       they couldn't keep up with.   DW Water is still a  
22       participants and UCS, Union of Concerned  
23       Scientists is still a participant.

24              But the Public Utilities Commission in  
25       training our CAM group, which is now listed in the

1 PRG. It is more expansive because it is looking  
2 at system resources. Should we allow our end-use  
3 customers to have representation on there?

4 We went out and beat the trees, so to  
5 speak, and we got two people who indicated  
6 interest to sit on that CAM group in addition to  
7 our normal PRG participants. So we are not trying  
8 to keep people off this function. We welcome more  
9 participation. That's why we are here asking you  
10 to follow along.

11 ASSOCIATE MEMBER PFANNENSTIEL: Did you  
12 just say you allow end-use customers on the CAM  
13 group --

14 MR. CUSHNIE: Right.

15 ASSOCIATE MEMBER PFANNENSTIEL: -- but  
16 they are not allowed on the PRG?

17 MR. CUSHNIE: Correct.

18 ASSOCIATE MEMBER PFANNENSTIEL: I  
19 thought I heard that CLECA could be on the PRG.

20 MR. FLORIO: You mean direct access.

21 MR. CUSHNIE: Yes, end-use. Mr. Florio  
22 is helping me here. It's direct access to end-use  
23 customers. Because the CAM group covers  
24 procurement that is going to be allocated to all  
25 customers, including direct access customers.

1 Most of our procurement activity is strictly  
2 related to bundled customers. And so there is no  
3 reason for a direct access customer to have access  
4 to that information because they are not being  
5 served from that portfolio.

6 ASSOCIATE MEMBER PFANNENSTIEL: Thank  
7 you.

8 PRESIDING MEMBER BYRON: The Public  
9 Utilities Commission is entitled to confidential  
10 information from the IOUs at all times, isn't it?

11 MR. CUSHNIE: Correct.

12 PRESIDING MEMBER BYRON: Do they have to  
13 sign the non-disclosure agreement?

14 MR. CUSHNIE: No.

15 PRESIDING MEMBER BYRON: So do members  
16 of DRA have to sign -- I'm sorry, do DRA employees  
17 have to sign it?

18 MR. CUSHNIE: No.

19 PRESIDING MEMBER BYRON: Okay. Thank  
20 you.

21 MR. CUSHNIE: So just a little  
22 background here to help understand why the big  
23 process works. As you have heard already we are  
24 operating in a new framework under AB 57 so it's a  
25 clients' framework. The utilities have up-front



1        achievable standards and criteria by which they  
2        know up front whether or not the procurement is  
3        eligible for cost recovery. It gravely changes  
4        the scope of the regulatory review from the old  
5        reasonableness review that we had.

6                We are also, since the inception of the  
7        PRG, been dealing in a competitive retail market.  
8        Prior to restructuring it was a wholesale market.  
9        And then even then the wholesale procurement was  
10       on sort of a short-term basis.

11               So having gone through the CPUC  
12       confidentiality proceeding we laid out our case as  
13       to why certain information needed to be kept  
14       confidential. The Commission disagreed with us in  
15       many cases and has come up with a very small  
16       subset of information that it has allowed to be  
17       kept confidential. I know there's some  
18       disagreement at the Energy Commission on that.

19               But what you might also be surprised to  
20       find out is a lot of the information we keep  
21       confidential we do because our suppliers want that  
22       information kept confidential. We would have no  
23       problem releasing it but a commercial reality is  
24       that they will not participate in our solicitation  
25       if we were to make their bids public, for example,

1 or certain terms that they were asking for,  
2 public. So it's a two-way street on much of the  
3 information that is kept confidential.

4 So to wrap up here I would like to  
5 emphasize, you know, what is the PRG. It's a  
6 collaborative process. It's a consultive process.  
7 It's a process where Edison can educate those who  
8 are interested in our procurement practices and to  
9 help them understand, as I said earlier, along  
10 every step of the way what it is we are doing, why  
11 we are doing it, why we believe it is compliant to  
12 our procurement plan.

13 And it situates people very nicely to  
14 then contest what we are doing if they disagree.  
15 Or to assure themselves that they are comfortable  
16 with what we are doing and therefore they don't  
17 need to expend any additional resources in  
18 challenging us in our compliance filings.

19 What is the PRG not? Well, the PRG is  
20 not a decision-making body. There are no  
21 decisions made at the PRG. The PRG is not a forum  
22 for determining confidentiality. That is done by  
23 the Commission through its confidentiality  
24 decisions and the matrix that they give us. If  
25 there was no PRG you could still have these same

1 confidentiality concerns that are very prominent  
2 in the questions that are posed to us.

3 And the final remark I have here is, why  
4 does it work? It works, as Mr. Baker said,  
5 because it is a tremendous wealth of information.  
6 We are able to respond to people's questions in a  
7 real-time basis, get the information they need to  
8 help them understand what we are doing.

9 In the absence of the PRG almost  
10 everyone, except maybe the Energy Division, would  
11 be flying blind in our proceedings and wouldn't  
12 even know where to begin to assess the reason. I  
13 don't want to use the words agree with us, but the  
14 veracity of our procurement and whether or not it  
15 was compliant with our procurement plan.

16 The PRG is a great complement to AB 57.  
17 To strike down the PRG would be a big mistake, in  
18 our opinion. Thank you for allowing me to make  
19 these comments and I would be happy to answer any  
20 questions.

21 PRESIDING MEMBER BYRON: Okay.  
22 Mr. Cushnie, thank you very much. But there's a  
23 little contradiction in my mind, maybe a  
24 substantial contradiction in some of the things  
25 you said. A PRG is not a decision-making body, we

1 still have confidentiality issues. Of course what  
2 PRGs say and tell you is non-binding. It is very  
3 limited in scope.

4 You make it sound like the entire public  
5 has access to this. Whereas, I was asking a bunch  
6 of folks at a conference on Friday if they knew  
7 what a PRG was and most people had no idea what it  
8 is. So with that limited understanding on the  
9 part of the public and the non-binding aspect that  
10 the PRG gives you, besides the questions that they  
11 ask what's the real purpose of a PRG?

12 MR. CUSHNIE: Well again, as I said, I  
13 think it's the information sharing. It allows us  
14 to present on a real-time basis what it is we are  
15 doing, why we are doing it, why we think it is the  
16 right thing to do. It allows for real-time  
17 feedback from consumer advocates and environmental  
18 advocates.

19 You're right, it does not provide an  
20 opportunity for market participants to give us  
21 full-time feedback but nor would we be able to  
22 consult with them on some of these decisions. So  
23 it's a chance to --

24 PRESIDING MEMBER BYRON: I was thinking  
25 more in terms of customers, not market

1 participants.

2 MR. CUSHNIE: Well, TURN represents  
3 customers, DRA represents customers.

4 MS. KHOSROWJAH: Can I respond to this?

5 PRESIDING MEMBER BYRON: Got you, got  
6 you, thank you.

7 MS. KHOSROWJAH: For us, I have heard  
8 this in the responses to your questions. But for  
9 us it really saves the discovery time.

10 PRESIDING MEMBER BYRON: Ah.

11 MS. KHOSROWJAH: And this means a lot to  
12 us at this point at the Commission because on a  
13 daily basis we have applications, procurement-  
14 related applications. We have three tracks of  
15 Edison. We have PG&E coming in with advice  
16 letters, 2004 for renewables, RFOs. Then we have  
17 San Diego. So we are bombarded by applications.

18 And the timing of these applications are  
19 sometimes -- it's just unbelievable. Like for  
20 Long Beach in the summer of 2007 track we had one  
21 week to write our testimony. One week to the  
22 hearing. That was the timing for us.

23 So these PRGs are the place that we get  
24 the opportunity to articulate our position. So we  
25 sit in these PRGs. It doesn't mean we agree with

1 the utilities. We have the fights inside, we have  
2 the fight outside.

3 They file an application then we are the  
4 parties that go and oppose that application. So  
5 that's basically how we use PRGs. I hope this  
6 responds to your question.

7 PRESIDING MEMBER BYRON: Okay, good,  
8 thank you.

9 ASSOCIATE MEMBER PFANNENSTIEL: Let me  
10 just follow up on that quickly. How many DRA  
11 staff are on each PRG?

12 MS. KHOSROWJAH: I am the main person  
13 participating in all PRGs all the time and this is  
14 a real time commitment. Really your life, it  
15 becomes your life. So we have one person making  
16 sure everything the utility says is consistent.  
17 They are doing things in a consistent manner.  
18 What's happening, that we can follow that.

19 Then we have the specific area group.  
20 Like we have renewable people who would  
21 participate only for RPS. Then we have gas people  
22 at DRA who would participate when we are dealing  
23 with gas hedging. So different experts come to  
24 different PRGs. One person in DRA coordinates all  
25 these efforts. So a great number of DRA people

1 for different reasons participate in different  
2 PRGs.

3 ASSOCIATE MEMBER PFANNENSTIEL: We just  
4 saw a long list of DRA staff.

5 MS. KHOSROWJAH: That's why. Because we  
6 have gas people, we have renewable people, we have  
7 like GHG folks, we have demand response, we have  
8 energy efficiency. We make sure the experts hear  
9 firsthand from the utilities what they are  
10 planning to do.

11 Does this make sense if they are telling  
12 us this is the energy efficiency that they are  
13 going to procure? Does it make sense for demand  
14 response contracts? Do the calls make sense? So  
15 we try to look at all these procurement decisions  
16 in a holistic manner and using the PRG for that  
17 purpose.

18 ASSOCIATE MEMBER PFANNENSTIEL: I was  
19 just wondering, with all those staff people  
20 working on the PRGs maybe that could be applied  
21 other ways of gathering this information rather  
22 than in the PRGs?

23 MS. KHOSROWJAH: Not all these people  
24 are in all PRGs. They re only in specific PRGs  
25 but their name is there because they are on the

1 e-mail list to receive information they need.

2 The other way to gather this information  
3 is just sending data requests when applications  
4 are filed. And that, with ten working days until  
5 the responses come back, it would take much  
6 longer. So there are other ways but it takes much  
7 longer.

8 PRESIDING MEMBER BYRON: I noticed a  
9 familiar face has approached the podium. Do you  
10 have a question, Mr. Ashuckian?

11 MR. ASHUCKIAN: Yes. I'm Dave  
12 Ashuckian, I supervise the procurement section of  
13 the Division of Ratepayer Advocates. I just  
14 wanted to add essentially a little more  
15 information to what Sepideh has just indicated.

16 DRA has about 140 people in the division  
17 that's devoted to looking out for ratepayers.  
18 That includes energy, water, telco, et cetera.  
19 About half of those focus on energy-related  
20 matters. As Sepideh said, we have folks in  
21 various aspects, renewables, demand response, gas.  
22 We don't have staff that are devoted specifically  
23 to PRG activities.

24 However, all the staff have something  
25 related to what at one time or another relates to



1        what's happening in the PRGs. So the PRGs act as  
2        an additional avenue, an additional venue to deal  
3        with the issues that staff are dealing with on a  
4        regular daily basis.

5                I was asked, how the Energy Commission,  
6        my work with the Energy Commission had changed  
7        from the work at DRA. And one of the things that  
8        I noticed is that at the Energy Commission we have  
9        a few reports due annually. Those reports end up  
10       being a few hundred pages each. At DRA we have a  
11       few hundred pages of reports due annually, each  
12       one being a few pages each.

13               And so that's the difference. We have a  
14       massive number of activities but very short in  
15       duration of each one. As opposed to the other  
16       aspect, which is a long-term, big aspect, but very  
17       few of them.

18               So again, PRGs are an avenue for staff  
19       to have more information about the things that  
20       they are dealing with on a regular basis. It  
21       doesn't require a massive involvement in a PRG.  
22       But essentially when we know something is  
23       happening on an activity that they are working on  
24       anyway, they can participate in the PRG and get  
25       more information about that specific activity they

1 are working on.

2 PRESIDING MEMBER BYRON: Thank you.

3 Getting back to our presenters. Mr. Cushnie,  
4 thank you. I believe you were done before we  
5 started asking questions but I wanted to ask if  
6 you had anything else you wanted to say.

7 MR. CUSHNIE: Well I'd be happy to talk  
8 all day but I'm mindful --

9 (Laughter)

10 PRESIDING MEMBER BYRON: All right,  
11 thank you then. We will move on, thank you.

12 MS. WINN: Thank you. Valerie Winn for  
13 PG&E. I won't repeat the areas that Mr. Baker and  
14 Mr. Cushnie have addressed on the Commission  
15 decisions setting forth confidentiality guidelines  
16 and establishing the reasons for the PRG.

17 But I would like to note that PG&E  
18 certainly values and appreciates its procurement  
19 review group's participation. And like Edison, we  
20 too would welcome CEC to participate in that  
21 process. We see many potential benefits from that  
22 sort of engagement.

23 It would be ideal for our policy makers  
24 to all be in one room and to hear the information  
25 at the same time. Many of the transactions we are

1 negotiating are commercially sensitive and it  
2 would be helpful for people to understand how we  
3 are making our decisions based on the information  
4 that we have at that time.

5 One element that has not been discussed  
6 a great deal is the role of the independent  
7 evaluator. In the 2006 long-term plan decision  
8 that was issued in December of 2007 the Commission  
9 has instituted -- the Public Utilities Commission  
10 has now instituted a requirement for an  
11 independent evaluator for any solicitation that is  
12 three months or more in term.

13 And that would be effective January 1,  
14 2009. And the utilities are required to form a  
15 pool of independent evaluators and then, you know,  
16 we'll pull from the pool whenever we are doing a  
17 solicitation. That could be for summer resource  
18 adequacy product, it's four months in term. It  
19 could be for a short-term gas procurement for  
20 electric bundled customers. As well as new  
21 generation requests for offers that we do every  
22 few years. That's not an annual issuance.

23 So I would -- From our perspective with  
24 the procurement review group and the independent  
25 evaluator, that there is a great deal of oversight

1 and monitoring of the utility's procurement  
2 activities. And we appreciate the input that we  
3 receive from them on a regular basis.

4 Now PG&E's PRG process is a little  
5 different from Edison's. We generally have one  
6 day a month scheduled for a meeting. It seems to  
7 be the second or the third Friday of each month.  
8 We have those scheduled through the end of the  
9 year. And then we have intermittent meetings as  
10 we need to. It might just be a conference call.  
11 But PRG participants always have the opportunity  
12 to come and sit in person at PG&E for these  
13 meetings.

14 We do issue presentations at least 48  
15 hours in advance of any procurement review group  
16 meeting to give the participants time to review  
17 and prepare any questions they might have on that  
18 material.

19 During the course of the meetings we  
20 will get questions, we will get requests for  
21 additional information that we provide to the  
22 procurement review group in a fairly expeditious  
23 manner.

24 As has been noted, that process really  
25 helps to reduce the amount of time that's spent in

1 the discovery process. And from PG&E's  
2 perspective that is very valuable because these  
3 commercial transactions for hundreds of millions  
4 of dollars don't stay open indefinitely in the  
5 marketplace.

6 And by not being able to secure  
7 Commission approval expeditiously it could cost  
8 our customers more money. And that's one of our  
9 primary concerns in this process. How can we get  
10 the expeditious regulatory approvals that we need  
11 in a way that doesn't expose our customers to  
12 increased costs while the transaction is not  
13 approved.

14 I will let my other panelists have an  
15 opportunity to comment. Thank you for this  
16 opportunity.

17 PRESIDING MEMBER BYRON: You mentioned  
18 new construction procurements. I have to admit,  
19 what I know about the PRGs, prior to a couple of  
20 weeks ago before I started really deep diving into  
21 them, was what I read in the press releases that  
22 the utilities put out. And I did notice that a  
23 number of years ago that there seemed to be a  
24 requirement that on some procurements they would  
25 be only open to new construction. Is that

1 correct?

2 MS. WINN: That's correct.

3 PRESIDING MEMBER BYRON: Can I ask why?

4 MS. WINN: Well actually as part of our  
5 procurement planning process at the Public  
6 Utilities Commission PG&E looks at what its  
7 bundled customer portfolio will be as well as what  
8 the other load service area may be.

9 And we look at the resources that will  
10 be available in our service territory and there is  
11 a determination made that there aren't enough  
12 resources, physical resources, to meet the load in  
13 our service territory. And so then the CPUC and  
14 through that procurement planning process there is  
15 a determination of how much new generation needs  
16 to be constructed.

17 PRESIDING MEMBER BYRON: I'd like to  
18 dive into this just a little bit further because  
19 having joined the Commission two years I have come  
20 to learn that this Commission has sited over 9,000  
21 megawatts of generating capacity that has not been  
22 built. And I'm just curious. I think there may  
23 be some close linkage to the procurement process  
24 and plants not being built. This is one of the  
25 main reasons why we are interested in this

1 subject. But what difference does it make if it  
2 is new construction or not? I think that's what  
3 we are trying to understand here.

4 MS. WINN: Well, you need to add new  
5 resources because older resources that might be  
6 reaching their retirement age will no longer be in  
7 service. And I think the CEC itself has estimated  
8 about 4,000 megawatts of new generation might be  
9 retiring starting in I believe 2012 when the AB 32  
10 requirements kick in. So that's a large number of  
11 megawatts.

12 PG&E is certainly, along with its  
13 customers, looking at energy efficiency, demand  
14 response, renewables as well as conventional  
15 generation as ways to meet its load growth. As  
16 older plants retire they do need to be replaced.  
17 And additionally, as you have more renewables  
18 coming into the system those intermittent  
19 resources will require some firming and shaping  
20 capacity to reliably operate the system.

21 So it is not as if you only have, you  
22 know, 100 megawatts of generation and that can  
23 retire and you never replace it. We do need to  
24 add new resources as some of our plants -- I  
25 believe Humboldt is about 50 years old now. That

1 plant can't operate indefinitely. And that's one  
2 of the facilities that has been replaced.

3 PRESIDING MEMBER BYRON: Okay, I don't  
4 think that's really -- I haven't gotten quite into  
5 the question I'm looking for.

6 MS. WINN: Okay.

7 PRESIDING MEMBER BYRON: But I am going  
8 to turn to Mr. Cushnie and Mr. Florio to see what  
9 they have to say.

10 MR. CUSHNIE: Colin Cushnie with  
11 Southern California Edison. It would be helpful  
12 to understand the types of solicitations we run  
13 and why we run them. When we run our bundled  
14 customer solicitations they are open to all  
15 resources. We call them all source RFOs. So it  
16 could be a renewable, it could be a conventional,  
17 it could be a new generation resource. So there  
18 are no limits. We are looking for the best  
19 economic value for our bundled customers.

20 But it is recognized at the CPUC that if  
21 the utilities held only all-source solicitations  
22 we wouldn't probably get the renewable resources  
23 we need because they cost more than conventional  
24 resources, existing conventional resources. And  
25 we probably wouldn't get the new resources that



1 the system needs because, again, existing  
2 resources can price themselves just below the new  
3 resource.

4 And if we are just buying for our  
5 bundled customers, which represent a large  
6 percentage of the load but not all the load, you  
7 will have the situation where we will have fully  
8 met our bundled customer needs on a forecast  
9 basis.

10 But when we get to real time, if other  
11 load-serving entities have not done likewise you  
12 will eventually have a supply shortage on a system  
13 basis. And what happens then? Well, ESBs are not  
14 obligated to serve customers, they can turn them  
15 back to the utilities. But now the utility  
16 doesn't have sufficient resources to serve them  
17 because they only bought what they had thought  
18 they were going to serve.

19 So what the CPUC has done is they have  
20 said, go target new generation to meet the  
21 projected shortfall on a system basis. And so  
22 that's why we have these limited new generation  
23 solicitations. To make sure there's sufficient  
24 full resources on the system. And these are the  
25 resources that we then allocate to all customers,

1 the costs of which to all customers. And we also  
2 allocate the resource adequacy benefit of those to  
3 all customers.

4 PRESIDING MEMBER BYRON: Well, I don't  
5 want to dive into this a whole lot further. I can  
6 tell you, though, that we are talking in  
7 generalities and this Commission is aware of  
8 specifics. Of generation resources that are  
9 licensed to build and aren't being built.

10 MR. CUSHNIE: We get a lot of expression  
11 of interest in our solicitations and we make  
12 awards. The Commission will authorize us to  
13 procure a certain amount of megawatts of new and  
14 we meet those numbers. And then all resources,  
15 new and old, are eligible to bid into our all-  
16 source solicitation.

17 I think the challenge is our all-source  
18 solicitations tend to be less than five years in  
19 duration and it is difficult for a new project to  
20 get financed with only a five-year contract.

21 PRESIDING MEMBER BYRON: Okay. So we'll  
22 leave it at that. Except that I will add, we are  
23 well aware of the resources that are being built  
24 and those that aren't. And this is what raises a  
25 lot of the questions that this Commissioner has

1 about this procurement review process.

2 Mr. Florio.

3 MR. FLORIO: Yes. I think it might be  
4 helpful to just briefly talk about what goes on in  
5 the long-term procurement proceeding at the PUC.  
6 They look at two distinct perspectives. They look  
7 at what has the utility contracted for to serve  
8 its bundled service customers. So that's a  
9 contractual analysis. They also look at, are  
10 there sufficient resources physically present to  
11 serve all of the anticipated load in that service  
12 territory. So one is a contractual look and the  
13 other is a physical look.

14 The PUC will take your load forecast and  
15 say, okay, in 2015 this service territory needs  
16 20,000 megawatts. Based on what we know of the  
17 resources that are there, potential imports, all  
18 of these factors, anticipated retirements, we only  
19 see 18,000 physical megawatts there. So the  
20 utility is told to go out and get the additional  
21 2,000 megawatts.

22 In that process they enter into a  
23 contract with one of the 18,000 that was already  
24 counted. They are not filling that 2,000 megawatt  
25 gap. So when the PUC determines we need 2,000

1 more megawatts that's new steel in the ground.  
2 And simply entering into a contract with an  
3 existing resource will not fill that 2,000  
4 megawatt gap. So that's why those are limited to  
5 new resources. Because that's what you are  
6 looking for are new, physical megawatts on the  
7 ground.

8 PRESIDING MEMBER BYRON: Thank you.

9 MS. KHOSROWJAH: And if I may add to  
10 this. This has nothing to do with the PRG. This  
11 is the determination of need, of physical need and  
12 contractual need that is being made in the long-  
13 term procurement proceedings. So that's where the  
14 utilities are ordered to go and procure this as  
15 new resources. So PRG, just after this was done  
16 in a public process of long-term procurement, just  
17 reviewed the RFOs that are going to go out. So it  
18 has nothing to do with the PRG necessarily.

19 PRESIDING MEMBER BYRON: Okay. And we  
20 characterize new as something that is not yet  
21 built or something that has not yet been applied  
22 for?

23 MS. KHOSROWJAH: It can be both. It can  
24 have a permit. It doesn't have to be permit. It  
25 can be both. But it is new steel in the ground,

1 the new resources. And this came in Decision  
2 06-07-029. Basically when the utility -- Nobody  
3 was building in California. And the first phase  
4 of the 2006 LTPP dealt with the physical resources  
5 need in California.

6 And that's where Edison launched its new  
7 resource RFOs which had three tracks. And then in  
8 this 2006 LTPP, Mr. Simon is more familiar with  
9 that because he was the one who worked on the  
10 decision. Where all the three IOUs, the  
11 Commission identified new resources needs. Which  
12 the Commission ordered them to procure new  
13 resources, not contract with existing resources.

14 PRESIDING MEMBER BYRON: So the  
15 Commission made this determination.

16 MS. KHOSROWJAH: Exactly. And it is in  
17 a public process.

18 PRESIDING MEMBER BYRON: In 2002? Is  
19 that when you said?

20 MS. KHOSROWJAH: It was 2006 LTPP.  
21 Decision 07-12-052, right?

22 PRESIDING MEMBER BYRON: But I believe  
23 the new construction requirement goes back further  
24 than that in PRGs.

25 MS. KHOSROWJAH: It goes back further

1       than that. But I am saying this is the most  
2       recent one.

3               PRESIDING MEMBER BYRON: And I think I  
4       understand what you are all saying but I have to  
5       tell you, I think this may be one of the major  
6       flaws in the thinking about how do you go about  
7       during this procurement because of the damage that  
8       it has done to the siting and construction of  
9       power plants. Let me ask you. In addition to the  
10      demand and the forecasting demand, were any other  
11      considerations such as environmental issues or  
12      transmission issues considered?

13             MS. KHOSROWJAH: Yes, I can respond to  
14      it. But what all I was trying to clarify, it has  
15      nothing to do with the PRG process. It's a  
16      different process at the Commission and it is an  
17      open, public process. That was the first point I  
18      wanted to clarify.

19             ASSOCIATE MEMBER PFANNENSTIEL: But as I  
20      said at the outset, we are interested in the whole  
21      process.

22             MS. KHOSROWJAH: Yes.

23             ASSOCIATE MEMBER PFANNENSTIEL: Not just  
24      the PRG.

25             MS. KHOSROWJAH: Yes, exactly. The PRG

1 just brings the results of the RFOs.

2 The other question you asked regarding  
3 demand. There are many people in this room who  
4 understand this forecasting much better than I do  
5 but I tried to explain how it works. The  
6 utilities use CEC's forecast, the MEET case I  
7 believe. And from that -- Lots of consideration  
8 goes into the demand forecast.

9 And the first thing they need to do is  
10 to reduce the demand by preferred resources in  
11 energy action plan. Which are energy efficiency,  
12 demand response, renewables and DGs. And after  
13 that whatever is left, it becomes the fossil fuel.

14 The point that I agree or disagree with  
15 is besides the point. I am explaining the process  
16 to you. And that's how it works.

17 PRESIDING MEMBER BYRON: All right,  
18 thank you, Ms. Khosrowjah.

19 MS. KHOSROWJAH: Thank you.

20 MR. CUSHNIE: Commissioner Byron, it  
21 would be helpful to me to be able to understand  
22 what about the process you think is harmful to the  
23 development of new generation. Because what we  
24 are trying to do is facilitate new generation. If  
25 you think something we are doing is somehow

1       detrimental to that process it would be very  
2       helpful to explain to me so I can go back and talk  
3       to my colleagues and figure out what we can do  
4       about it.

5               PRESIDING MEMBER BYRON: Fair enough.  
6       But I am not going to take away from your time now  
7       any more than I already have. I'll try and  
8       provide some conclusionary remarks that will  
9       address that. But we'll, of course, vet whatever  
10      my thoughts and recommendations are through the  
11      entire Commission here. So I am going to take a  
12      pass on your request right now and ask Ms. Winn if  
13      she had anything else she wanted to add before we  
14      move on. Any other questions?

15             MS. WINN: Thank you for the  
16      opportunity.

17             PRESIDING MEMBER BYRON: Thank you,  
18      Ms. Winn. Mr. McClenahan.

19             MR. McCLENAHAN: Mike McClenahan with  
20      San Diego Gas and Electric. I want to thank you  
21      also for allowing us to come here and hopefully  
22      promote the benefits of the PRG process. My  
23      utility colleagues have done an excellent job in  
24      laying out the utility experience and how we go  
25      about conducting PRG.



1                   PRESIDING MEMBER BYRON: Did you learn  
2 anything from them you didn't know about their  
3 procurement process before? I'm being facetious  
4 somewhat.

5                   (Laughter)

6                   MR. McCLENAHAN: No, I did not.

7                   PRESIDING MEMBER BYRON: You knew  
8 everything about that, right?

9                   MR. McCLENAHAN: I know all the public  
10 things there is to know about --

11                   (Laughter)

12                   MR. McCLENAHAN: And having worked with  
13 PG&E I know a little bit more about theirs maybe.

14                   The PRG sits in the middle. It's  
15 important to look at the big picture. They sit in  
16 the middle of two public processes. There's a  
17 continuum in this procurement process beginning  
18 with policy, which is an open process that is  
19 conducted at this Commission and at the Public  
20 Utilities Commission where we are given our  
21 marching orders in various decisions. All  
22 stakeholders have the ability to participate in  
23 setting policy.

24                   On the back end of that continuum are  
25 specific applications for approval of specific

1 transactions. Again, everyone is welcome to  
2 intervene in that process and many people take  
3 that opportunity to do so.

4 In the middle of it is the  
5 implementation stage and that's where the PRG  
6 really is a lot of help to us and I think they  
7 benefit as well, as some of the members have cited  
8 earlier here.

9 It is not a policy-setting body; it is  
10 not a decision-making body. It is a review of  
11 individual transactions and perhaps strategy.  
12 It's a give and take and to and fro where both  
13 sides are able to contribute and see things from  
14 different perspectives and hopefully improve the  
15 implementation of policies and direction.

16 The procurement process itself is well  
17 established. It's contained in our AB 57  
18 procurement plans that are the result of very  
19 lengthy processes at the California Public  
20 Utilities Commission.

21 We value the participation of the PRG.  
22 If there was no PRG we would probably continue  
23 with some sort of informal, ad hoc process that is  
24 very similar, a consultation. And in fact we do  
25 engage in consultations outside of the PRG itself,

1 sometimes with market participants. And of course  
2 in those instances the level of review and the  
3 granularity of data is different than it is with  
4 PRG members because we are very concerned about  
5 confidentiality.

6 Again, my colleagues have done a great  
7 job. I have not a lot to add. I would like to  
8 invite this Commission to have its staff resume  
9 its participation in the procurement review  
10 groups. I think there is a lot of benefit to be  
11 derived. This Commission does a lot of important  
12 work on things like siting and issuing AFCs. And  
13 getting a front line view of the conditions that  
14 we work in and how the market actually works I  
15 think would benefit this Commission in its day to  
16 day work. Thank you.

17 ASSOCIATE MEMBER PFANNENSTIEL: Let me  
18 just ask. I am looking for the reasons that  
19 people think the staff should go back into the  
20 PRGs. I am trying to keep a list. What did you  
21 think were the main reasons that the Energy  
22 Commission staff should rejoin the PRGs?

23 MR. McCLENAHAN: Well, let me give you  
24 an example. I think siting and AFCs for me. When  
25 you site a lot of -- you cite to 9,000 megawatts

1 of permits that are out there of generation. I  
2 don't think that any of those exist in the SDG&E  
3 service territory. They are not there. Because I  
4 don't believe there is a permitted project that is  
5 not under contract or underway at this point in  
6 time.

7 We have had difficulties. We struggled  
8 getting a project permit in San Diego. In the  
9 very recent past year our CEO has written letters  
10 supporting projects at this Commission and the  
11 Commission has been very helpful in trying to move  
12 those projects along.

13 But had the Commission been involved.  
14 Had the Commission staff been involved in our PRGs  
15 I think they would have known much farther  
16 upstream the difficulties we were facing in  
17 getting projects sited and permitted in San Diego  
18 and the difficulties we were having adding new  
19 generation.

20 ASSOCIATE MEMBER PFANNENSTIEL: So you  
21 believe, and I think Mr. Cushnie said this also,  
22 that the PRGs would be a good opportunity to  
23 educate our staff.

24 MR. McCLENAHAN: Yes.

25 ASSOCIATE MEMBER PFANNENSTIEL: And

1 educate them both on the needs in a specific  
2 service territory as well as the business issues.

3 MR. McCLENAHAN: Right, the difficulties  
4 we face in actually doing some of the things that  
5 seem, that perhaps appear to be easier than they  
6 actually are in policy setting and discussing the  
7 theory of RFO solicitations. There's no reason  
8 why they shouldn't work very smoothly and  
9 expeditiously but in fact they do not. To see  
10 that process unfold on a week-by-week, month-by-  
11 month basis I think is educational.

12 ASSOCIATE MEMBER PFANNENSTIEL: And do  
13 you have a feeling about how much our process, our  
14 AFC process considers need and perhaps market  
15 conditions? Is that a big part of our AFC  
16 process?

17 MR. McCLENAHAN: I am generally familiar  
18 with your AFC process, I have never gone through  
19 it myself.

20 ASSOCIATE MEMBER PFANNENSTIEL: Well, I  
21 should just point out that the AFC process does  
22 not consider need. We are not, by law not allowed  
23 to consider need as part of our process. Our  
24 process is largely environmental. So I am still  
25 looking for the kind of hook for the Energy

1 Commission to be in the PRGs.

2 MR. McCLENAHAN: Again, I think that  
3 understanding subjected decisions that have to be  
4 made in the context of our resource supply  
5 situation is worth it.

6 ASSOCIATE MEMBER PFANNENSTIEL: Thank  
7 you.

8 PRESIDING MEMBER BYRON: I'm confused a  
9 little bit by the term you used, subjected  
10 decisions that are being made in your process. Is  
11 that what you said?

12 MR. McCLENAHAN: Yes. I think the  
13 Commission, this Commission does have some  
14 discretion in terms of mitigating factors in an  
15 AFC. They can reject an AFC outright or they  
16 could order mitigation, and the levels of  
17 mitigation. I would think that the importance of  
18 bringing a project online may have something to do  
19 with what the mitigation was or how much  
20 mitigation was considered in a project  
21 application.

22 PRESIDING MEMBER BYRON: Mr. Ashuckian.

23 MR. ASHUCKIAN: Dave Ashuckian again,  
24 Division of Ratepayer Advocates. Just to answer  
25 Chairman Pfannenstiel's comment there on some of

1 the value that the Energy Commission might have in  
2 participating in the PRGs. The PRGs are a good  
3 forum for directly seeing how the cost  
4 implications of various state policies transpire  
5 in the real world. And having that knowledge  
6 would help better characterize possibly how state  
7 policy is developed. Understanding how the  
8 implications of those policies end up in the hands  
9 of ratepayers.

10 ASSOCIATE MEMBER PFANNENSTIEL: Thank  
11 you.

12 PRESIDING MEMBER BYRON: You know who  
13 else is, of course, missing from our panel, and  
14 that would be any members of our staff.  
15 Mr. Vidaver and Ms. Korosec, did you want to add  
16 any comments with regard to CEC participation?  
17 Excuse me, let me be more specific. The  
18 suggestion that we could offer some additional  
19 input with regard to some of the siting aspects of  
20 the procurement process.

21 MR. VIDAVER: Some of the siting aspects  
22 of the procurement process?

23 PRESIDING MEMBER BYRON: The Chairman  
24 corrected me. It may be the other way around.

25 ASSOCIATE MEMBER PFANNENSTIEL: Yes. I

1 think that the implication is that we would learn  
2 rather than we would provide input.

3 PRESIDING MEMBER BYRON: I'm mistaken  
4 then.

5 MR. VIDAVER: Mr. Florio may want to say  
6 something at this point.

7 PRESIDING MEMBER BYRON: No, you don't  
8 have to, it's all right.

9 MR. VIDAVER: I feel like I have to  
10 tread lightly here, I'm sorry. To be quite frank,  
11 I think Mr. Ashuckian put it quite well. He  
12 probably gave the best example. We get a better  
13 understanding of the implications of state policy  
14 for costs and therefore the costs of implementing  
15 certain state policies. Mr. McClenahan put it  
16 quite succinctly. We'd learn how utilities make  
17 decisions.

18 PRESIDING MEMBER BYRON: That may be but  
19 I have also heard from all three utilities saying  
20 that they want our participation in this because  
21 of the value that we bring to the PRGs.

22 MR. VIDAVER: I think that --

23 PRESIDING MEMBER BYRON: Excuse me, am I  
24 incorrect on that?

25 ASSOCIATE MEMBER PFANNENSTIEL: I would



1 have to say I didn't hear that from the utilities.

2 MR. VIDAVER: That we bring value?

3 MS. WINN: In an integrated resource  
4 planning perspective where we have policies that  
5 are being established by the Public Utilities  
6 Commission, the California Energy Commission as  
7 well as the ISO, how do we integrate all of those  
8 into a cohesive plan. And we have been talking  
9 about integrated resource planning since 2002,  
10 2003. And it is still a struggle to truly come up  
11 with an integrated resource plan that is looking  
12 at the variety of state policy, energy policy.

13 MS. KHOSROWJAH: And I want to add to  
14 this from the ratepayers' perspective. We know  
15 that there are forecasting differences between the  
16 CEC and the utilities. And with the CEC members  
17 to be there it's much easier for us to understand  
18 these differences and discuss them in PRGs. So we  
19 would think that it would be very beneficial if  
20 CEC staff come back to the PRGs.

21 MR. FLORIO: I would just add to that.  
22 Any time you add a new entity you bring a fresh  
23 perspective to the discussion. And the folks on  
24 your staff have a depth of expertise in a number  
25 of issues that may not be very well represented in

1 the PRG discussions now.

2 I mean, one thing that immediately comes  
3 to mind is we get bids in from potential new  
4 resources. You know, a big issue is, you know,  
5 how viable is this particular project. It may be  
6 a low bid but there are serious questions about  
7 whether a plant could ever be sited at the  
8 location indicated. Now your staff may not have  
9 seen an application from that applicant but they  
10 would know the kinds of issues that would be  
11 likely to come up in siting such a plant.

12 The worst outcome of all is when you go  
13 through the RFO, the approval process and the  
14 plant ends up failing in the siting process. Then  
15 we've wasted precious time and money on something  
16 that never came to fruition.

17 PRESIDING MEMBER BYRON: Yes.

18 MR. FLORIO: If that information were in  
19 the process sooner, you know, it might result in  
20 more successful projects.

21 ASSOCIATE MEMBER PFANNENSTIEL: Thank  
22 you, Mr. Florio. I appreciate that. And I have  
23 to say, that's the first comment I've heard that  
24 really talked about why. You know, what we would  
25 offer to the process.

1           I would add though, in terms of the  
2       example you just gave, that perhaps even more  
3       frustrating is for a plant to go all through that  
4       process then go all through our process and then  
5       have it not constructed after all because it  
6       didn't get a contract having gone through all of  
7       that. Which is a lot of the 9,000 megawatts.

8           PRESIDING MEMBER BYRON: And in fact did  
9       we have members from the siting division  
10      participating in the procurement review groups?

11           MR. VIDAVER: I don't recall anyone --

12           PRESIDING MEMBER BYRON: I don't believe  
13      so.

14           MR. VIDAVER: -- being in attendance.

15           PRESIDING MEMBER BYRON: Okay.

16           Mr. McClenahan, anything else that you  
17      would like to add?

18           MR. MCCLENAHAN: No, thank you.

19           PRESIDING MEMBER BYRON: Well, I am  
20      going to suggest that we take a lunch break. This  
21      discussion was very helpful and I hope you will  
22      all come back.

23           And we will plan on reconvening, I am  
24      going to say about ten minutes after one. Just  
25      because I know the Chairman and I have a meeting

1       that will go until one o'clock and we will look  
2       for an opportunity to eat a little bit of lunch  
3       beforehand.

4               So I am going to say 1:10 please and  
5       thank you very much. We'll adjourn until then.

6               (Whereupon, the lunch recess  
7       was taken.)

8                       --oOo--

## 1 AFTERNOON SESSION

2 PRESIDING MEMBER BYRON: Well thank you  
3 all for being punctual, I appreciate it very much.  
4 We will go ahead and go back on the record here.  
5 I will reconvene after our recess.

6 I believe the Chairman will be joining  
7 us again soon. I hope Commissioner Douglas will  
8 have an opportunity to rejoin as well.

9 Ms. Korosec, as I recall from the agenda  
10 we left off with -- Mr. Florio is next, correct?

11 MS. KOROSEC: That's right.

12 PRESIDING MEMBER BYRON: Mr. Florio,  
13 thank you for being here today.

14 MR. FLORIO: Thank you. I just would  
15 like to start out by clarifying something. The  
16 impression somehow gets conveyed that it is Mike  
17 Florio who is on the PRG. It's really all of  
18 TURN's energy staff. They all have signed the  
19 necessary confidentiality agreements.

20 And like DRA, you know, we have gas  
21 people, we have demand response people, we have  
22 energy efficiency people. And whatever the  
23 appropriate topic is different people participate.  
24 We also have an outside consultant who is an  
25 expert in modeling and system planning that

1 attends virtually all of the PRG meetings. So we  
2 do put a lot of resources into this. It is very  
3 time-consuming but we think very valuable.

4 I think any discussion of the PRG really  
5 has to start with AB 57. AB 57 fundamentally  
6 changed the way the Public Utilities Commission  
7 reviews and regulates procurement. In the pre-  
8 energy crisis period the approach was, utilities,  
9 go do what you do and we'll conduct an after the  
10 fact reasonableness review.

11 And those proceedings tended to take  
12 about two years to resolve. And if you are always  
13 two years behind and another year is being added  
14 you can kind of quickly see what the problem was  
15 as those reviews got very backlogged.

16 The utilities were at risk for costs  
17 that they had incurred years before and  
18 intervenors like TURN and DRA were in the position  
19 of trying to figure out what was the utility  
20 thinking when they made that decision three years  
21 ago and make that assessment without the benefit  
22 of hindsight, which of course is always 20/20. So  
23 that was the pre-AB 57 world.

24 Under AB 57 it is really a paradigm  
25 shift where it is preapproval of procurement. And

1       that is pursuant to a plan for the short- and  
2       medium-term transactions. And for long-term  
3       transactions specific PUC approval is required.  
4       That is by advice letter for renewable contracts  
5       and by application for long-term contracts with  
6       conventional resources.

7               I really agree with what Mr. Baker said  
8       that it is a terrible process except for all of  
9       the alternatives. I hear my fair share of  
10      criticism of the PRGs and my answer is always,  
11      well, what's the alternative.

12             Because when you have a preapproval  
13      process you've got a commercial entity there that  
14      is the utility's counter-party that wants to move  
15      forward with their project, whether it's renewable  
16      or conventional. But they have to wait and  
17      essentially hold their offer open through the  
18      entire PUC approval process. If that takes a  
19      year, like PUC proceedings used to do, that's a  
20      very long time and a great deal of risk for the  
21      counter-parties to be exposed for all that time to  
22      potential rejection of their agreement, even  
23      though very few are actually rejected.

24             As Sepideh said earlier, because of the  
25      PRG process the traditional intervenors like TURN

1 and DRA and others have to be much more nimble so  
2 that if the utility files a renewable contract by  
3 advice letter we have 20 days to comment on that.  
4 In some of the conventional procurement like the  
5 Edison Long Beach acquisition we had a week from  
6 the time the application was filed until we had to  
7 file our response. So you simply cannot use the  
8 traditional discovery back and forth motions to  
9 compel and two months to prepare testimony and two  
10 weeks of hearings. That just doesn't work when  
11 you have commercial agreements outstanding.

12 So we really see the PRG as the best  
13 tool we have been able to come up with so far for  
14 dealing with this issue. It gives the parties who  
15 represent the people who pay the bills with real-  
16 time access to what the utilities are doing.

17 And rather than waiting until they have  
18 done something and then a year later trying to  
19 criticize that decision we can weigh in at the  
20 time and say, do you really want to do X; what  
21 about Y or Z? So it's a different role for us  
22 than what we use to play in a more fully  
23 regulatory world. But given the environment we  
24 are in today we feel that it is appropriate.

25 There are, I think, some standard



1 misconceptions about the PRG. As I said to  
2 Commissioner Pfannenstiel at the break, every  
3 question on this list I feel like I have answered  
4 at least a dozen times in the last year. Because  
5 any process that is not public is inherently  
6 viewed with some suspicion.

7 PRESIDING MEMBER BYRON: Excuse me for  
8 interrupting. Are there other forums where you  
9 have been answering questions like this?

10 MR. FLORIO: The PUC had a workshop last  
11 year devoted to this very topic, the PRGs, how  
12 they work. Similar presentations, questions and  
13 answers.

14 PRESIDING MEMBER BYRON: Was it  
15 confidential? I didn't know about it.

16 MR. FLORIO: No, no.

17 PRESIDING MEMBER BYRON: Just kidding,  
18 I'm just kidding.

19 (Laughter)

20 MR. FLORIO: This was part of the long-  
21 term procurement proceeding. There was a workshop  
22 and I believe there was even a working group that  
23 continued on for some time after the workshop that  
24 was fully open to anybody who wanted to  
25 participate.

1           But just a couple of things to  
2       emphasize. Again, as I think has been made clear,  
3       PRGs don't make decisions. Nothing has to be  
4       approved or rejected by the PRG. There have been  
5       times we would have liked to reject some things  
6       but we do not have that power. Everything that  
7       comes through the PRG ultimately ends up before  
8       the PUC in some type of proceeding, either a  
9       quarterly compliance advice letter, a renewable  
10      advice letter or a long-term procurement  
11      application. So regardless of what the PRG does,  
12      there is a process at the PUC that comes after.

13           And the PRG neither by its own action or  
14      even indirectly does not make anything  
15      confidential. Things are confidential because of  
16      the PUC's confidentiality rules. Something going  
17      before the PRG doesn't make it confidential if it  
18      would not otherwise have been so under the  
19      Commission's rules.

20           PRESIDING MEMBER BYRON: We understand.

21           MR. FLORIO: Another point that I picked  
22      up in the questions that I think is worth  
23      addressing is in several places the questions  
24      refer to planning and procurement. I really think  
25      it is important to separate those two. PRGs deal

1 with procurement and really deal with planning  
2 only in a very short-term sense. You know, a year  
3 or two ahead.

4 All of the longer-term planning takes  
5 place here in your IEPR process or at the PUC in  
6 the long-term procurement proceeding. So the PRG  
7 doesn't sit there and say, well, should we do  
8 renewables or energy efficiency or fossil  
9 procurement. That is all in the public proceeding  
10 in the long-term procurement process.

11 What the PRG does is look at the  
12 implementation of that. We review utility RFOs  
13 for demand response contracts. We review  
14 renewables solicitations. We review conventional  
15 solicitations but only after the PUC has made the  
16 decision that that's what the utilities should go  
17 do.

18 So I like to think of it as once the  
19 policy has been set the utility goes to implement  
20 that policy. They are, in effect, acting as  
21 procurement agents on behalf of the bundled  
22 customers. Like any sort of principal/agent  
23 relationship you want to monitor what your agent  
24 is doing to make sure you are comfortable with it.  
25 I am not sure the utilities quite like that

1        characterization. I think they view themselves as  
2        the principals. But it is our money and we look  
3        after it quite carefully.

4                Just a couple of other points.

5        Commissioner Byron, you brought up the issue of  
6        permitted projects that have gone through the  
7        whole process here at the CEC and aren't getting  
8        built. In the procurement process we only see  
9        bids from people who decide to submit bids.

10               And I haven't looked at the list lately  
11        but I am pretty sure we would find a number of  
12        entities on that list of permitted projects who  
13        simply have not bid into any utility RFOs. If  
14        they don't bid they can't get selected. Some of  
15        them have bid and they have not gotten selected  
16        for any of a number of reasons. I think a few of  
17        them have bid successfully and have contracts with  
18        the utilities and hopefully are moving forward.  
19        But certainly having already obtained a permit  
20        from this Commission would be a big plus for a  
21        bidder in a utility RFO because --

22               PRESIDING MEMBER BYRON: But wouldn't  
23        that count as not being new construction then?

24               MR. FLORIO: No, no. New construction  
25        is actually, you know, being built. Physical

1 steel in the ground. The permitted but not built  
2 is still new construction that qualifies.

3 Now I believe Edison recently announced  
4 a contract for a repower of the NRG El Segundo  
5 facility. That I, believe, has already gone  
6 through your process. PG&E signed a contract with  
7 Calpine Russell City that was a permitted project.  
8 They certainly can win in one of those  
9 solicitations if they participate and if their bid  
10 rises to the top.

11 PRESIDING MEMBER BYRON: Can you think  
12 of an example of a plant, since you have mentioned  
13 a few already, that has been through the AFC  
14 process, been permitted, been selected and has  
15 been built?

16 MR. FLORIO: Well there's very little  
17 that has gone through the process that is actually  
18 built and online yet.

19 PRESIDING MEMBER BYRON: Or is under  
20 construction?

21 MR. FLORIO: Yes.

22 MR. McCLENAHAN: Palomar.

23 MR. FLORIO: Yes, San Diego's Palomar  
24 facility. Otay Mesa I believe is under  
25 construction. PG&E's Humboldt facility is, I

1 believe, either in permitting or construction.  
2 The Colusa project, the original developer dropped  
3 out and PG&E had to pick that up. But I believe  
4 they are at the process of beginning construction.  
5 The NRG Long Beach facility was refurbished as a  
6 result of winning a utility RFO.

7 I think you will see others coming  
8 along. As we all know it's a pretty long process  
9 to get from selection to actually constructed and  
10 online. But they are starting to line up in  
11 queue. If they can get through the queue at the  
12 ISO and get transmission, hopefully we'll be  
13 seeing more of those megawatts in the very near  
14 future.

15 That's really all I have to say that  
16 hasn't already been said but I am certainly happy  
17 to answer whatever questions you may have.

18 PRESIDING MEMBER BYRON: Madame  
19 Chairman.

20 ASSOCIATE MEMBER PFANNENSTIEL:  
21 Mr. Florio, you said sort of as an aside that  
22 there probably were projects that you wished  
23 weren't going forward or that you wouldn't have  
24 decided to approve if the PRG had been a decision-  
25 making body. But I assume those then went to the

1 PUC for prior approval.

2 MR. FLORIO: Yes, yes.

3 ASSOCIATE MEMBER PFANNENSTIEL: Now at  
4 that point did you or DRA protest that in front of  
5 the PUC?

6 MR. FLORIO: Yes.

7 ASSOCIATE MEMBER PFANNENSTIEL: And were  
8 you able to use information that you learned in  
9 the PRG, that you derived from the PRG in that  
10 information?

11 MR. FLORIO: Yes.

12 ASSOCIATE MEMBER PFANNENSTIEL: Even if  
13 it had been otherwise confidential?

14 MR. FLORIO: Yes.

15 ASSOCIATE MEMBER PFANNENSTIEL: How does  
16 that work?

17 MR. FLORIO: Well information can be  
18 submitted to the PUC under seal.

19 ASSOCIATE MEMBER PFANNENSTIEL: So you  
20 take the information that was given to you  
21 confidentially within the PRG and then you make  
22 your arguments and then submit the information to  
23 the PUC under seal.

24 MR. FLORIO: Yes. What we typically try  
25 to do is have testimony that is fully public and

1       then a confidential attachment that attaches the  
2       confidential information.

3               ASSOCIATE MEMBER PFANNENSTIEL: But if  
4       your opposition to a specific project then is  
5       based on the information that is totally outside  
6       of what the public would see, doesn't that seem  
7       like frankly it puts the PUC in a position of  
8       making decisions without having the light of  
9       public scrutiny on those decisions?

10              MR. FLORIO: To some extent that's true.  
11       Although an example of one project that TURN and  
12       DRA opposed, that Long Beach refurbishment. I  
13       mean, we were able to make the arguments. I mean,  
14       we could argue publicly we thought it was too  
15       expensive. In the confidential material we could  
16       say, you know, exactly what the cost was. We've  
17       gotten pretty adept at couching things in a way  
18       that we can get our points across without  
19       revealing the confidential information.

20              ASSOCIATE MEMBER PFANNENSTIEL: But you  
21       see that that really is the position that we find  
22       ourselves in. If our staff is on the PRG and we  
23       as Commissioners are not, it is hard for us to  
24       have that information unless we sign a  
25       confidentiality pledge. And then if so we are



1 less able to use the information in a public  
2 forum.

3 MR. FLORIO: Well I think we have  
4 generally found that we have been able to use the  
5 information without disclosing it. But it is  
6 difficult.

7 ASSOCIATE MEMBER PFANNENSTIEL: We tend  
8 to want to disclose the information on which we  
9 make our decisions. Yes.

10 MR. CUSHNIE: Thank you, Commissioner.  
11 What I would like to highlight here is the  
12 information that the PRG participants use, again,  
13 is available to any non-market participant. In  
14 the absence of the PRG process they probably  
15 wouldn't even be aware that that information  
16 existed. So it's sort of an additional level of  
17 discovery that they avail themselves of by  
18 choosing to participate in our PRG.

19 But again, and I know you are very  
20 mindful of this, all information that is deemed  
21 confidential at the CPUC is because it is governed  
22 as such by the CPUC's confidentiality rule.

23 I looked at the questions that were  
24 posed to us and I said, gee, this isn't hiding  
25 information. The PRG is actually making the

1 process more transparent than it would be without  
2 the PRG. In the absence of the PRG I submit that  
3 Mr. Florio wouldn't even know where to begin to  
4 ask for information.

5 ASSOCIATE MEMBER PFANNENSTIEL: Right.  
6 Then a few additional parties have access to some  
7 information.

8 MR. CUSHNIE: Any non-market participant  
9 can ask to be part of our participants.

10 PRESIDING MEMBER BYRON: Mr. Florio,  
11 going back to that statement that you made that  
12 the Chairman just referred to. I think it was  
13 something along the lines, there have been times  
14 we'd like to have rejected some things. Can you  
15 give any other examples that you are free to  
16 discuss or frustrations that you have had with the  
17 PRG process.

18 MR. FLORIO: Well, I am frustrated every  
19 time people don't agree with me and the utilities  
20 don't always agree with me. But some of them that  
21 have become public. In the last PG&E long-term  
22 RFO we felt that they signed up more megawatts  
23 than they should have. At the end of the day  
24 those may end up not all getting billed. But at  
25 the time of the decision we felt that there were

1 too many megawatts signed up in that RFO.

2 Another example: A renewable contract  
3 that Edison entered into for a wind project that  
4 we felt was just too expensive compared to other,  
5 other alternatives. Edison decided to go ahead  
6 with it anyway and that one is currently pending  
7 before the PUC.

8 PRESIDING MEMBER BYRON: Excuse me for  
9 interrupting. Don't you consider other state  
10 requirements such as the RPS when you make these  
11 kinds of --

12 MR. FLORIO: Absolutely.

13 PRESIDING MEMBER BYRON: Okay.

14 MR. FLORIO: Absolutely. We were  
15 primary supporters of the RPS legislation and have  
16 been involved in all the subsequent amendments to  
17 that. But we don't, we also don't support  
18 renewable at any price. And we felt that that  
19 particular contract, particularly for a wind  
20 resource, was simply out of the range of  
21 reasonableness.

22 Maybe a more developing technology we  
23 might have supported at that price but it is very  
24 much a case-by-case situation. I think I probably  
25 exhausted the list of projects that have come

1 through this process that we objected to. Often  
2 we just let the application or advice letter go  
3 by. In some cases we have even actively  
4 intervened in support of the utility's request,  
5 depending on if there is other opposition that we  
6 think is misguided.

7 Within the limits of our resources we  
8 follow what the utilities are doing in procurement  
9 very closely because it is probably 60 percent of  
10 the cost of the final utility bill, in the form of  
11 costs that come through this process. With the AB  
12 57 framework, if you don't make yourself heard at  
13 the outset you have pretty much lost your chance.

14 PRESIDING MEMBER BYRON: Without getting  
15 into the determination of confidentiality again.  
16 You participate in all of these PRGs. Let me be  
17 clear. Your organization participates in all of  
18 them.

19 MR. FLORIO: Yes.

20 PRESIDING MEMBER BYRON: What is your  
21 personal feeling? Is this information that is  
22 being held confidential essential to be held  
23 confidential in order to protect consumers'  
24 interests?

25 MR. FLORIO: In the main, yes, in my

1 opinion. The counter-parties that the utilities  
2 deal with do not make any of their internal  
3 deliberations or their market views public. And  
4 we think in order to compete on a level playing  
5 field the utilities shouldn't have to either.

6 That is not to say that there hasn't  
7 been on occasion a particular piece of information  
8 that we thought should be public. We've I think  
9 eve filed on occasion to make something public  
10 that the utilities wanted to keep private.

11 PRESIDING MEMBER BYRON: Good for you.  
12 But didn't you at one point recommend that the  
13 utilities be allowed to share this confidential  
14 information amongst themselves? In other words,  
15 from Utility A to B to C?

16 MR. FLORIO: I don't believe so.

17 PRESIDING MEMBER BYRON: I thought I  
18 remember reading a PUC ruling that said that that  
19 would not be the case and that it was TURN that  
20 had recommended that.

21 MR. FLORIO: I don't recall that.

22 PRESIDING MEMBER BYRON: Well, we'll  
23 look it up real quick, see if I can find it.

24 MR. FLORIO: Okay.

25 PRESIDING MEMBER BYRON: Mike,

1 Mr. Florio, just to see if this helps remind you.  
2 Back in July '04, a decision. Apparently PUC.  
3 Part of it reads:

4 "We reject TURN's  
5 recommendation that we amend the  
6 PRG confidentiality rules to allow  
7 PRG staff members to disclose to  
8 other utilities information  
9 regarding whether a particular  
10 project has offered in another  
11 utility's solicitation."

12 MR. FLORIO: I didn't remember because I  
13 wasn't the one working on that. I think it was a  
14 renewables solicitation where the same bidder was  
15 in two different utility RFOs or maybe even three  
16 RFOs. And of course they can only sign a contract  
17 with one.

18 I believe the current rules provide that  
19 once the utilities get to the short list part of  
20 the process the seller has to decide which short  
21 list they're going to go with. They can't keep  
22 playing the utilities off against each other  
23 beyond that point.

24 PRESIDING MEMBER BYRON: But the  
25 utilities would be able to share that information.

1 At least that was your recommendation.

2 MR. FLORIO: In the peculiar context  
3 that existed there.

4 PRESIDING MEMBER BYRON: Well what I am  
5 interested in is trying to understand TURN's  
6 reasons for participating. In fact, let me ask  
7 that question directly. Why does TURN participate  
8 in the PRG?

9 MR. FLORIO: Because it is the most  
10 effective forum available to us to advance and  
11 protect the ratepayers' interests in reliable,  
12 affordable electric service.

13 PRESIDING MEMBER BYRON: Okay. And of  
14 course it's difficult for us to make that  
15 determination so we rely upon you representing  
16 that organization in that regard.

17 Do you think that -- You know, I am not  
18 an attorney, I don't know how to ask these  
19 questions in an eloquent way. Do you think it  
20 would be beneficial to California's ratepayers to  
21 return to a competitive generation market?

22 MR. FLORIO: I think we have a  
23 competitive generation market. All these RFOs  
24 elicit dozens of bids from qualified suppliers. I  
25 think the generation market is competitive in

1 California.

2 PRESIDING MEMBER BYRON: I've pulled up  
3 something that you had written because I was  
4 curious to try and understand the reason why TURN  
5 participates. And if you don't mind I am just  
6 going to read your own words here.

7 "Over time then a competitive  
8 retail market is likely to result  
9 in higher wholesale prices for IOUs  
10 and ESPs alike as generators seek  
11 to recover their capital cost over  
12 a shorter period of time."

13 CPUC ADVISOR ST. MARIE: Retail.

14 PRESIDING MEMBER BYRON: So I took that  
15 out -- I've got the wrong point there?

16 MR. FLORIO: Yes. We actively have  
17 supported for many years competition among  
18 suppliers to sell to the utilities. We do not  
19 support retail competition or direct access.

20 PRESIDING MEMBER BYRON: Right.

21 MR. FLORIO: Because we believe that it  
22 ultimately results in higher prices for consumers,  
23 not lower.

24 PRESIDING MEMBER BYRON: Good. I stand  
25 corrected, thank you.



1           I have another question too. As I  
2       understand it as well, some of the PRG members are  
3       considered intervenors and therefore are  
4       compensated; is that correct?

5           MR. FLORIO: There are qualifications  
6       for intervenor compensation that apply generally  
7       the same way for PRG work as they do for work in  
8       Commission proceedings.

9           PRESIDING MEMBER BYRON: So I accept the  
10      argument because we have heard this as well from  
11      DRA. This is the most cost-effective way for your  
12      organization as an intervenor to get access to  
13      information. And forgive me, what was the phrase  
14      you used? Not disclosure. When you find  
15      evidence.

16          MR. FLORIO: Discovery.

17          PRESIDING MEMBER BYRON: Discovery,  
18      thank you. I accept that. But I am trying to get  
19      to, how much are we talking about here? It's not  
20      just you. You said all of TURN participates in  
21      this to some level to some extent. Can I ask,  
22      I'll be very direct about it, how much money are  
23      we talking about here on an annual basis?

24          MR. FLORIO: I can't give you a very  
25      good answer because we haven't even filed a

1 request in over two years, so it's been a while.

2 I would think --

3 PRESIDING MEMBER BYRON: We won't tell  
4 your bank.

5 MR. FLORIO: I think it's, I would guess  
6 maybe \$100,000 a year, something like that.  
7 That's a rough guess but I think that's normal.

8 PRESIDING MEMBER BYRON: I remember  
9 seeing something about three or four years ago  
10 prior to being a commissioner that disclosed  
11 intervenor rates and I thought I saw something --  
12 I'll ask you. What is the rate that you charge as  
13 an intervenor?

14 MR. FLORIO: I think it's currently --  
15 And I am at the very top of the range since I have  
16 been doing this for 30 years.

17 PRESIDING MEMBER BYRON: As you should  
18 be.

19 MR. FLORIO: I think -- Thank you. I  
20 think it's something like 530, 535 an hour,  
21 something like that. Most of our other attorneys  
22 are in the 200 to 300 range. Our consultant is, I  
23 believe, 225.

24 PRESIDING MEMBER BYRON: Okay.

25 MR. FLORIO: But we try to be very

1 efficient about how many hours we put in.

2 PRESIDING MEMBER BYRON: And of course I  
3 wouldn't ask anyone else on this panel how much  
4 they make.

5 MR. FLORIO: I don't make 500. My  
6 compensation at my organization --

7 PRESIDING MEMBER BYRON: The  
8 organization, your organization is getting  
9 ratepayer money to do this on their behalf.

10 MR. FLORIO: Yes.

11 PRESIDING MEMBER BYRON: And of course  
12 you sign a non-disclosure so they have to trust  
13 you that indeed you are doing the job that  
14 essentially they are paying you to do.

15 MR. FLORIO: That's true.

16 PRESIDING MEMBER BYRON: And it's very  
17 difficult for us to dive deep into that issue.

18 MR. FLORIO: Well if you let your staff  
19 participate they can tell you if we are adding  
20 value.

21 PRESIDING MEMBER BYRON: We won't ask  
22 them that. Mr. St. Marie?

23 MR. FLORIO: I think your staff adds  
24 value.

25 CPUC ADVISOR ST. MARIE: Commissioner,

1 if I could add something on that. The CPUC does  
2 from time to time review intervenor compensation  
3 policies and also intervenor compensation rates.  
4 I do not have citations to particular decisions at  
5 this time but I think I could provide to you the  
6 latest information on how those rates are set and  
7 what the rates are for various levels of expertise  
8 in different aspects of intervenor work.

9 PRESIDING MEMBER BYRON: I am just  
10 curious. And I think maybe \$100,000 may be low at  
11 500-plus dollars an hour. That's 200 hours a  
12 year. But what we are talking about here is  
13 perhaps a more cost-effective way to get this  
14 information. But still a substantial amount of  
15 TURN staff time is involved in this.

16 MR. FLORIO: That's true, although I  
17 think compared to going through a fully litigated  
18 proceeding it's much, much less.

19 PRESIDING MEMBER BYRON: Are any other  
20 PRG participants intervenors? You may not know  
21 the answer to this. But are any other PRG  
22 participants intervenors that are also being  
23 compensated?

24 MR. FLORIO: When Aglet was  
25 participating they were -- In fact the PUC's

1       slowness in authorizing their intervenor  
2       compensation is why they dropped out. I believe  
3       UCS and NRDC are both eligible for intervenor  
4       compensation and request it from time to time.  
5       Let me find the list.

6               PRESIDING MEMBER BYRON: Okay.

7               MR. FLORIO: But UCAN, when they were  
8       participating, sought intervenor compensation. I  
9       would say most of the non-state agency  
10      participants. And I think quite frankly that's  
11      why you don't see groups like CMTA and CLECA  
12      participating is because it is very expensive if  
13      you don't have access to funding.

14              PRESIDING MEMBER BYRON: All right.  
15      Madame Chairman, did you have a question?

16              ASSOCIATE MEMBER PFANNENSTIEL: Just  
17      one. Now that the utilities seem to be moving  
18      back into the generating business is that going to  
19      change the character of the PRGs?

20              MR. FLORIO: I think it makes them even  
21      more necessary. Because when there is a potential  
22      shareholder interest I think all the members of  
23      the PRG are particularly vigilant in watching what  
24      the utilities are doing.

25              If they are just buying from third

1 parties they don't have any incentive other than  
2 to get the best price for their consumers. But if  
3 there is a shareholder ownership interest I think  
4 everybody's ears perk up. And I would say those  
5 types of situations receive the closest scrutiny.

6 And I think by participating in the PRG  
7 we get insights into how affiliates or utility  
8 ownership is being treated that we would never be  
9 able to get through after-the-fact discovery. I  
10 think of all the things we do there that is the  
11 most important. To make sure that it's ratepayer  
12 interests and not shareholder interests that are  
13 being served in those circumstances where there  
14 may be a conflict.

15 ASSOCIATE MEMBER PFANNENSTIEL: Thanks.

16 PRESIDING MEMBER BYRON: Since you  
17 brought this topic up maybe this would be a chance  
18 to dive into it a little bit. We have different  
19 groups within a utility. Obviously the  
20 procurement group is who we have been talking with  
21 now here. But on some of the projects that you  
22 have already mentioned yourself, Humboldt and  
23 Colusa, are utility-owned generation.

24 I think it has been pretty clear to me  
25 on my time on the Commission and prior to being on

1 the Commission that the utilities want to get back  
2 into the generation business in a substantial way.  
3 And also I have heard recently they want to get  
4 into the renewables ownership business again as  
5 well.

6 How do we protect this procurement  
7 process from that same company participating in  
8 these different -- you know, both procuring and  
9 the ownership. And of course we also have  
10 transmission issues that come into play here as  
11 well.

12 MR. FLORIO: You know, as I said, that  
13 is when we as PRG members are at our most  
14 vigilant. We also have the independent evaluators  
15 who again are even more in the details of this, as  
16 I think Mr. Taylor will tell you later. He is  
17 there from the point where they open the bid  
18 packages through every stage of the evaluation.

19 You know, the IE, because they are  
20 focused on a particular solicitation, can go into  
21 even greater depth. Mr. Taylor runs his own model  
22 separate from what the utility does and they  
23 compare their results, just to make sure that  
24 there's nothing, you know, buried in the  
25 algorithms that's giving the utility a leg up.

1           Also the PUC in their most recent  
2       procurement decision required the utilities to  
3       have a code of conduct and separation of functions  
4       so that the people who are submitting a utility  
5       ownership project cannot talk with the people who  
6       are evaluating the bids and vice versa. And there  
7       are restrictions on movement of employees between  
8       the two groups and things of that nature.

9           I think every reasonable effort that I  
10      can think of is being made to assure that the  
11      competition is fair. Because what we want is the  
12      least cost, best fit resource for consumers and we  
13      don't really care who the owner is. We want the  
14      best deal.

15           PRESIDING MEMBER BYRON: So the code of  
16      conduct. I came across that in the documents I  
17      was reviewing as well. Can someone explain that  
18      just a little bit further. Is that something that  
19      someone reads or signs or is trained in? That the  
20      corporate officers have to attest to? What is the  
21      code of conduct?

22           MR. FLORIO: I think I'll punt this to  
23      Valerie for the details. I know insofar as the  
24      PRG was concerned, we and the Commission's Energy  
25      Division both reviewed the document that would



1       constitute the code of conduct. And significant  
2       input was given and changes were made in response  
3       to that input. But how PG&E goes about  
4       implementing it on a day-to-day basis I'll give to  
5       Valerie.

6               MS. WINN: Well once we had the code of  
7       conduct completed and signed off on by Energy  
8       Division, everyone working on the long-term RFO  
9       that was issued in April of this year, everyone  
10      within PG&E who was working on that solicitation  
11      was required to review it, understand it and sign  
12      the code of conduct. Those signed copies are  
13      maintained in PG&E's compliance area.

14             And we expect that as we present the  
15      results of our solicitation that there will be a  
16      review as to how PG&E complied with the  
17      provisions. And that can include how information  
18      was or was not shared. Particularly if the  
19      utility ownership offer is submitted in the RFO.  
20      Was the information shared appropriately or not  
21      with people who were eligible to know the  
22      information.

23             PRESIDING MEMBER BYRON: So we put a  
24      wall between the people in procurement and the  
25      people that are could be part of the solicitation.

1 Not solicitation.

2 MS. WINN: It's really a wall between  
3 energy procurement, where you are just conducting  
4 the solicitation, and PG&E's power generation  
5 unit, which would own and operate utility-owned  
6 facilities. And the power generation organization  
7 is not allowed to receive any information about  
8 what others might be bidding.

9 PRESIDING MEMBER BYRON: So you mean to  
10 tell me -- We don't want to impugn any PG&E or  
11 Southern California Edison or San Diego employees.  
12 But do you mean to tell me that the executives in  
13 these organizations don't know what they are going  
14 to be bidding upon and don't know what they are  
15 going to be procuring? In other words, that the  
16 CEO of your company doesn't know these things. He  
17 doesn't know what is going on in his organization.

18 MS. WINN: I would say that they are  
19 aware of what's going on but this is --

20 PRESIDING MEMBER BYRON: Did they read  
21 the code of conduct?

22 MS. WINN: They do. This is an all-  
23 source solicitation. Independent power producers  
24 may bid into the solicitation and the utility  
25 itself may decide to bid into the solicitation.

1 We don't want information from anyone's bids to  
2 get commingled and to influence some else's  
3 bidding strategy. Hence the need for the code of  
4 conduct.

5 PRESIDING MEMBER BYRON: Well it sounds  
6 very good. And I have met with all three utility  
7 executives in recent months so I think I can say  
8 this without impugning anyone. They know what's  
9 going on. They know what they are procuring and  
10 they know what they are bidding on. So I say the  
11 law may exist further down in the organization but  
12 I don't see how it could possibly exist or how you  
13 could infer that it would exist amongst your  
14 executives.

15 MS. WINN: Okay. And that could be  
16 dependant on what part of the organization they  
17 are in.

18 PRESIDING MEMBER BYRON: The top part of  
19 the organization.

20 MS. WINN: Well he, of course, would be  
21 getting all sorts of information that I may not be  
22 aware of.

23 PRESIDING MEMBER BYRON: I mean, this is  
24 kind of silly to think that a president or a CEO  
25 of a company doesn't know what's going on within

1 the divisions of his company and that a code of  
2 conduct would separate that, don't you think?

3 MS. WINN: I agree.

4 PRESIDING MEMBER BYRON: Okay.

5 MR. TAYLOR: Commissioner Byron.

6 PRESIDING MEMBER BYRON: Yes sir.

7 MR. TAYLOR: This is Alan Taylor with  
8 Sedway Consulting. As the IE certainly I have  
9 encountered the situation, not just with PG&E but  
10 also with various solicitations around the country  
11 and I think you are absolutely right. Ultimately  
12 there is somebody at the top who will be receiving  
13 information from both sides of the chain of  
14 command with the ethical barrier in place.

15 It is incumbent upon that person to make  
16 sure that they are not transferring information  
17 back down the other side of the chain. And that's  
18 usually what they are attesting to, not that they  
19 are going to be blind to the information coming up  
20 from both sides.

21 PRESIDING MEMBER BYRON: Thank you,  
22 Mr. Taylor. Someone else wants to speak.  
23 Mr. Cushnie.

24 MR. CUSHNIE: Yes, Colin Cushnie with  
25 Southern California Edison. I just want to

1 distinguish Edison's situation from PG&E's. And I  
2 am not too sure what San Diego does in this  
3 regard. But Edison has consistently taken the  
4 position that we will not submit a utility bid on  
5 its solicitations. So when we run a solicitation  
6 from three sources, either an all-source or a new  
7 gen, there are no utility bids competing for that,  
8 for that demand.

9 What we will do, and what we have done,  
10 is we submit an application to the CPUC for a  
11 stand-alone saying, here is a project that we want  
12 to do as a utility-owned project. And we'll put a  
13 cost justification into it. But it is free for  
14 all participants to challenge at the CPUC.

15 ASSOCIATE MEMBER PFANNENSTIEL: Mission.

16 MR. CUSHNIE: Mission is not part of the  
17 Edison company.

18 ASSOCIATE MEMBER PFANNENSTIEL: I  
19 understand it is not part of the Edison company  
20 but it is part of the whole corporate entity.

21 MR. CUSHNIE: Yes, but the utility  
22 employees do not work at all -- I mean, unlike the  
23 situation with PG&E where you have got the utility  
24 employees with a firewall, the Mission is in a  
25 different city, a different location.

1           We have strict codes of conduct. In the  
2       case of Mission, our CEO does not know what we are  
3       doing on the RFO side. Very clear rules. John  
4       Bryson our CEO does not get specific information  
5       on the RFOs that we run.

6           PRESIDING MEMBER BYRON: Please  
7       understand my questions. There's no one in this  
8       room, there's no one in this room that's being  
9       questioned, clearly. They are not in this room.  
10      They are on much higher floors than we are right  
11      now. And I believe that to be the case at the PUC  
12      as well.

13           I mean, this is really the PUC's  
14      responsibility. To think that an investor-owned  
15      utility, which last time I looked is a for-profit,  
16      money-making company, is going to look at the code  
17      of conduct and say, oh yeah, we adhere to that,  
18      and that's good enough. And so I just have a lot  
19      of trouble accepting that notion.

20           MR. CUSHNIE: And that's what I wanted  
21      to explain. We understand why you might think  
22      that and that's why we had decided from day one  
23      that we would not submit utility-owned bids into  
24      our own solicitations. Because we are not sure  
25      how we can separate our staffs effectively enough

1 to do that.

2 Now Mission on the other hand is just an  
3 affiliate. We think we can demonstrate to anyone,  
4 even the most skeptic of those amongst us, that  
5 there is no improper sharing of information  
6 between the utility and the affiliate.

7 PRESIDING MEMBER BYRON: Okay. Anyone  
8 else want to add anything? You have been very  
9 quiet, Mr. Kelly. We are going to get to you  
10 pretty soon.

11 MR. KELLY: I'm waiting. I've just been  
12 waiting.

13 MR. FLORIO: I would say also the PUC  
14 just last year had a proceeding where they  
15 reviewed their affiliate rules and made some  
16 changes. They didn't go as far as TURN would have  
17 liked but they probably went farther than the  
18 utilities liked in tightening up those rules to  
19 try to address these kinds of situations. Because  
20 they do come up, not just in this context but in a  
21 variety of other ways. And it's one of the major  
22 complications of the way we are doing business, I  
23 think.

24 PRESIDING MEMBER BYRON: Mr. Taylor can  
25 recall, before becoming a Commissioner, just

1 reading a press release on a procurement. I was  
2 quite concerned, just as a dumb, old, end-use  
3 customer as to what was going on. And not having  
4 access to the information raised some questions.  
5 And we found out who the third-party evaluator is  
6 for PG&E and we asked him if he would answer some  
7 questions. And he came in and met with us.

8 Really what we were after as consumers  
9 was the same thing that I am after here today.  
10 And that is trying to understand how this  
11 confidentiality and how this process really does  
12 protect consumers for the lowest cost.

13 And so that's really what we are after  
14 here today. Because it seems to me, based upon  
15 some of the things I have heard today, it may  
16 serve some other interests here too. That's why  
17 we are drilling down more on this.

18 Mr. Florio, did you have something else  
19 you wanted to add?

20 MR. FLORIO: No.

21 PRESIDING MEMBER BYRON: Any questions?

22 MR. FLORIO: Thank you.

23 PRESIDING MEMBER BYRON: Thank you,  
24 we'll press on.

25 MS. KHOSROWJAH: Good afternoon.



1 Originally I had good morning, Commissioners, but  
2 now it's afternoon. My name is Sepideh Khosrowjah  
3 and I represent Division of Ratepayer Advocates,  
4 which is an independent consumer advocacy division  
5 of the Commission, mandated by the Legislature.

6 And the mission of DRA is achieving the  
7 lowest cost, the lowest rates possible with  
8 reliable and safe service, keeping in mind the  
9 environmental goals of the state.

10 So having said that I have lots of  
11 comments here that have already been said by my  
12 colleagues in this panel. I just would like to  
13 emphasize again that the nature of the PRGs is  
14 advisory, it is not a decision-making entity.

15 And whatever is discussed in PRG would  
16 come to the Commission in formal proceedings,  
17 either as an application or as advice letters.  
18 And at that point the parties have ample  
19 opportunity to respond to those filings.

20 I have prepared answers to all the  
21 questions but it seems that everyone has answered  
22 those questions. I am going to try to find what I  
23 can add to this discourse. Which I would like to  
24 add to question number four regarding  
25 confidentiality. That I am not familiar with the

1 degree of the confidentiality in other states.

2 But consumers in California have  
3 suffered tremendously from lack of confidentiality  
4 during energy crisis through market manipulation  
5 by some market participants. So we need to be  
6 very cautious regarding how to approach the  
7 confidentiality of market-sensitive data in  
8 California. The Commission reviewed this issue as  
9 we discussed in the confidentiality OIR.

10 And the answer to the first question,  
11 which has to do again with confidentiality, what  
12 information should be confidential, what should be  
13 public, how we can -- If yes why and who not.  
14 This is a very broad question. We can't really  
15 answer this here.

16 I have had the opportunity very briefly  
17 to work on the confidentiality OIR and the matrix,  
18 it was like this big. And each column and row, we  
19 had to go through them and see if this should be  
20 confidential, is this market-sensitive. So it's  
21 not as easy to answer these questions.

22 But we share the same concerns with you  
23 because DRA does support a transparent and open  
24 public process. But we have to keep in mind that  
25 there are certain information that needs to be

1 confidential to protect ratepayers.

2 The other question I would like to  
3 address is question number six briefly. That it  
4 sounds like everything is fault of PRG, like  
5 conflict. But it is not true. PRG is only a  
6 venue for us to receive information beforehand and  
7 react in a timely manner.

8 There are all these proceedings at the  
9 Commission. Long-term procurement is a proceeding  
10 with 15 other proceedings, energy efficiency,  
11 demand response, greenhouse gas, RPS. And all of  
12 these proceedings, the public has an opportunity  
13 to participate.

14 PRESIDING MEMBER BYRON: And if 15  
15 proceedings isn't enough to scare people away I  
16 don't know what is.

17 MS. KHOSROWJAH: But it is not the fault  
18 of PRG. It is not the fault of the only entity  
19 that provides information. If you do not want  
20 PRG, that's fine. I don't want to participate in  
21 100 meetings a month.

22 But if we want real timing on our  
23 proceedings, we want to have at least three months  
24 for discovery, then we want to write our testimony  
25 in a timely manner, we want hearings. We want a

1 real due process. So we cannot take away the  
2 timing of discovery and everything and then say  
3 you cannot have access to information.

4 So PRGs actually has helped us to do  
5 things in a quicker way, as developers always  
6 want. So we are trying to really provide what  
7 they want in terms of moving faster but at the  
8 same time we are being criticized that you make  
9 decisions behind closed doors.

10 The last question I would like to  
11 respond to is the question of renewables. Which  
12 is a good question. I want to know the answer  
13 too. What are the real costs of renewables? I  
14 sit in PRGs. I receive all the confidential  
15 information and I don't know the answer. I don't  
16 think the PRG, opening up PRG would really respond  
17 to this question.

18 I think a detailed study on the cost of  
19 renewables would be the way to go for the state.  
20 Maybe Energy Commission should do a study of what  
21 are the real costs of renewables. What are the  
22 increases. Compare the increases in renewable  
23 costs to the fossil fuel because we have seen lots  
24 of increases in the fossil fuel generation. As  
25 well too compare them and see if that makes sense.

1           So that's basically the questions I  
2       wanted to respond and I think other folks on the  
3       panel responded to most of the questions.

4           PRESIDING MEMBER BYRON: Well thank you.  
5       And I think DRA's participation is extremely  
6       important in the PRG process. In fact it is my  
7       understanding, based upon what I have heard today  
8       and read elsewhere, that except for Mr. Florio's  
9       expertise, DRA really brings the strength of the  
10      review -- brings the strength of the organization  
11      to this review process, that is the PUC.

12           I am wondering, though, if there was no  
13      PRG which would allow other market participants  
14      in. DRA is not considered a market participant,  
15      you are part of the Public Utilities Commission.

16           MS. KHOSROWJAH: Our goal is lowest  
17      cost.

18           PRESIDING MEMBER BYRON: Right.

19           MS. KHOSROWJAH: For the rates for the  
20      consumers. So we are not a market participant.  
21      We are not into the business of maximizing profits  
22      of any company, like Mr. Florio of TURN.

23           PRESIDING MEMBER BYRON: But you do not,  
24      you do not sign the non-disclosure agreements.

25           MS. KHOSROWJAH: We are part of the

1 Commission but we are an independent arm of the  
2 Commission. So we are not supposed to -- We are  
3 covered as the Commission staff are covered.  
4 Individually we are not signing those  
5 confidentiality agreements. But as a legal  
6 division we should be the one who really answers  
7 this question. But we are -- How does it work  
8 where the legal division has already signed and  
9 all the staff are covered.

10 PRESIDING MEMBER BYRON: Yes. You are  
11 the regulatory, you are the regulatory commission.

12 MS. KHOSROWJAH: Right, so we have  
13 access to this information anyway.

14 PRESIDING MEMBER BYRON: But you raised  
15 a concern on my part. You have access to all the  
16 information that is provided to the PRGs and you  
17 still don't know what the true cost of renewables  
18 are. You could request additional information,  
19 could you not? You are the DRA.

20 MS. KHOSROWJAH: The reason is because,  
21 not because of PRGs or the utilities are not  
22 willing to tell us what is being offered. The  
23 reason is we look at the offers that come into the  
24 PRGs. But are these costs market-driven? Is it  
25 because of the pressure of RPS? Are these costs

1 because of MPR? It becomes a baseline for the  
2 cost of the renewables. We are not really sure of  
3 these answers.

4 PRESIDING MEMBER BYRON: But you could  
5 get whatever information you needed, right?

6 MS. KHOSROWJAH: Yes, we do, we do. But  
7 I am saying --

8 MR. FLORIO: Not from generators.

9 MS. KHOSROWJAH: But not from the  
10 developers. So that's what we really need to  
11 have. The developers put a price there. So what  
12 goes into price? Is it cost-based? It is not, it  
13 is market-based. And we don't know what's the  
14 real cost of those renewables. So developers do  
15 not provide information, they just put the bids  
16 for us.

17 MR. CUSHNIE: This is Colin Cushnie of  
18 Edison. If I may elaborate. I think what DRA is  
19 saying is that the discussion we have quite a bit  
20 is that DRA knows what the Edison Company is  
21 paying for renewables, at least what we signed up  
22 to pay for. We can't guarantee contract  
23 performance, only after the fact based on  
24 performance what we ultimately pay. I think what  
25 DRA is saying is we don't know what it actually

1 costs to develop these projects. All we know is  
2 what the utility has agreed to pay.

3 PRESIDING MEMBER BYRON: But this is a  
4 market principle that I think we can all agree to.  
5 In a competitive procurement one company might be  
6 able to make a widget for a lot less than another.  
7 But he is not going to price it down at the  
8 bottom, he is going to price it at what the market  
9 will bear.

10 MS. KHOSROWJAH: I agree.

11 PRESIDING MEMBER BYRON: Okay. So you  
12 are looking for the information on how much it  
13 cost him to make his widget?

14 MS. KHOSROWJAH: There is a question,  
15 question number nine. No, question number eight.

16 "The successes and failures of  
17 the procurement process are  
18 frequently obscured by  
19 confidentiality concerns. For  
20 example, broad claims have been  
21 made by utilities regarding both  
22 the low costs of renewables  
23 relative to the Market Price  
24 Referent and the high costs of  
25 renewables relative to other



1           resources. These claims have not  
2           been and cannot be verified by  
3           other parties in a public setting."  
4   That is what I was referring to.

5           ASSOCIATE MEMBER PFANNENSTIEL: I think  
6   the cost there refers to the cost to the utility.  
7   As opposed to the cost of production.

8           MS. KHOSROWJAH: That's one thing for  
9   ratepayers. So ratepayers' cost means the cost  
10   that developers have and rates and costs are two  
11   different things.

12          ASSOCIATE MEMBER PFANNENSTIEL: We are  
13   talking here about market as opposed to production  
14   costs.

15          MS. KHOSROWJAH: So that's what it is  
16   referring to, the cost of developers.

17          PRESIDING MEMBER BYRON: So one last  
18   question, if I may. If PRGs didn't exist. And  
19   DRA as a result of your regulatory authority could  
20   get any and all information you want to review  
21   these renewable contracts, renewable bids and  
22   contracts. Would the PRG essentially be then the  
23   DRA? In other words, you are a major component of  
24   the PRG. It would seem to me that your role and  
25   what is taking place right now would continue,

1 just perhaps not without the additional market  
2 participants, correct?

3 MS. KHOSROWJAH: I'm not sure what --

4 PRESIDING MEMBER BYRON: If PRGs didn't  
5 exist.

6 MS. KHOSROWJAH: Yes.

7 PRESIDING MEMBER BYRON: Would you still  
8 be doing the same role you are doing?

9 MS. KHOSROWJAH: Of course. But it is  
10 just as a said, we needed more time. Because for  
11 each application that comes into the Commission  
12 DRA needs to look and to see if the application is  
13 cost-effective. Advice letters as well too.  
14 These are the ratepayers' money. We have to make  
15 sure that we are spending --

16 PRESIDING MEMBER BYRON: Would you still  
17 be fulfilling the same role?

18 MS. KHOSROWJAH: We would be still  
19 fulfilling the same role if you are back to the  
20 same timing at the Commission having like three  
21 months. As I said, it is just we are doing it in  
22 a more timely manner.

23 PRESIDING MEMBER BYRON: Okay. It looks  
24 like Mr. Ashuckian wants to help you.

25 MR. ASHUCKIAN: I just wanted to make

1       some clarification. I think what Sepideh was  
2       trying to say was the PRGs provide an opportunity  
3       for ratepayer advocates to look at what the  
4       utilities are trying to do. We are looking at the  
5       regulated entity, which is the utility.

6               We still through the PRGs don't have  
7       access to the market participants' information,  
8       which would help in providing that true  
9       transparency on both sides. We don't have that  
10      information and the PRGs aren't facilitating that  
11      anyway.

12             So in that sense we don't have any idea  
13      on how much market participants are potentially  
14      manipulating the market based on the process. We  
15      cannot determine that per se. We can see what  
16      they are offering us and see if that's -- the  
17      utilities are making the best use of those offers.  
18      But we don't know how much the actual developers  
19      are profiting from the process.

20             ASSOCIATE MEMBER PFANNENSTIEL: When you  
21      talk about market manipulation are you talking  
22      about profits that the developer would make by --

23             MR. ASHUCKIAN: Absolutely.

24             ASSOCIATE MEMBER PFANNENSTIEL: Well  
25      let's not --

1 MR. ASHUCKIAN: As a regulating entity  
2 we can control the profit the utilities make.

3 PRESIDING MEMBER BYRON: Correct.

4 ASSOCIATE MEMBER PFANNENSTIEL: Right.

5 MR. ASHUCKIAN: But we cannot control  
6 the profit the market makes.

7 ASSOCIATE MEMBER PFANNENSTIEL: Right.

8 MR. ASHUCKIAN: As a ratepayer advocate  
9 we want to make sure that consumers don't pay  
10 excess profits.

11 PRESIDING MEMBER BYRON: Well.

12 MR. KELLY: I am going to step in now.

13 PRESIDING MEMBER BYRON: Go ahead,  
14 Mr. Kelly.

15 MR. KELLY: That's an example of a  
16 paradigm that we are not in. The presumption is  
17 that if you have got a competitive market and the  
18 RPS, all-source solicitation markets. All I've  
19 heard from the utilities is lots of people are  
20 bidding. Thousands of megawatts are bidding in,  
21 multiple parties are bidding, blah, blah, blah.

22 That information is kind of generally  
23 known out there. So the assumption is that when  
24 you have got that kind of liquid market, people  
25 who actually want to move to build a project are

1 going to be very competitive in their bids. And,  
2 you know, in a market, whether it's peanut butter  
3 or anything else, you've got to kind of assume  
4 that that competition is going to drive the price  
5 down to the most reasonable level so that you can  
6 actually build something.

7 So the notion that we have got to look  
8 at all the price curve of everybody who is bidding  
9 in order to be comfortable from a ratepayer  
10 advocate position is a totally different paradigm.  
11 We are not even in that world.

12 PRESIDING MEMBER BYRON: Go ahead.

13 MS. KHOSROWJAH: Just to clarify. This  
14 is not what I said. And I didn't say I want to  
15 see your costs or anybody's costs. I am just  
16 saying the answer to respond to the question,  
17 which I thought you meant the real cost of  
18 building a renewable plant, not the cost to  
19 ratepayers. I said, we see the market prices. I  
20 just want to clarify that.

21 We like to see competition. More  
22 competition we welcome. That's why we are in  
23 PRGs. So I just want to make it clear.

24 MR. FLORIO: Although I would just note  
25 that in real competition the buyer isn't under a

1 legal obligation to buy a certain amount of the  
2 product. So there are many unusual aspects to  
3 what we are dealing with here.

4 PRESIDING MEMBER BYRON: Ms. Khosrowjah,  
5 any additional comments?

6 MS. KHOSROWJAH: No thank you.

7 PRESIDING MEMBER BYRON: Okay, thank you  
8 very much.

9 MS. KHOSROWJAH: Thanks for the  
10 opportunity.

11 ADVISOR TUTT: Commissioner.

12 PRESIDING MEMBER BYRON: Yes.

13 ADVISOR TUTT: You asked Ms. Khosrowjah  
14 about what her role would be if the PRG didn't  
15 exist. I was going to pose the same question to  
16 Mr. Florio.

17 MR. FLORIO: Well we don't have the same  
18 statutory rights and obligations as the PUC staff,  
19 obviously. We would have the ability, once the  
20 utility files an application or advice letter, to  
21 ask for information. I can certainly say that we  
22 couldn't participate very effectively in an advice  
23 letter where there's 20 days to respond. We'd be  
24 lucky to get answers in that amount of time. So  
25 our participation would not be very effective.

1           In application proceedings, you know, we  
2       would be meeting with DRA and asking for more  
3       time. And if we could get it we could participate  
4       effectively but it would drag out the process. By  
5       doing it the way it is done now we can process  
6       these things more expeditiously and get a  
7       Commission decision so people can move forward.

8           PRESIDING MEMBER BYRON: Okay. Thank  
9       you. Let's go ahead and press on. I see that  
10      Mr. Taylor is next on the agenda. Suzanne, is  
11      that who we go to next?

12           MS. KOROSEC: Yes. Alan, are you on the  
13      line?

14           MR. TAYLOR: Yes I am, Suzanne. Is my  
15      presentation available as well?

16           MS. KOROSEC: Yes, I have it up on the  
17      screen now.

18           MR. TAYLOR: Okay.

19           MS. KOROSEC: So just tell me when you  
20      want to move through the slides.

21           MR. TAYLOR: Great. Well Commissioner  
22      Byron and Madame Chairman, I appreciate the  
23      opportunity to be able to address the CEC and  
24      participate in this workshop.

25           Two apologies. One, for not being able

1 to be there in person. And then a second apology  
2 that I am somewhat pressed for time and will have  
3 to drop off this call in about 30 minutes. So I  
4 am hoping that all IE-related issues can be vetted  
5 during my discussion here and look forward to  
6 answering whatever questions that people may have.

7 But I think that there has been a very  
8 good presentation here of what the PRG process in  
9 general has been about and the various benefits  
10 and values that it brings to the procurement  
11 process. There were a couple of questions early  
12 on about what the IE's role is in that process so  
13 I really wanted to focus most of my presentation  
14 on just giving people a very quick idea of what  
15 Sedway Consulting has been doing in it's  
16 Independent Evaluator role in various procurement  
17 actions in California.

18 First as far as some quick background on  
19 Sedway Consulting. I founded the firm about seven  
20 years ago in Boulder, Colorado and I have been  
21 involved in dozens of solicitations around the  
22 country and 12 or so in California just in the  
23 last three or four years.

24 The table on page one does identify the  
25 various RFOs or requests for offers that I have



1       been involved in overseeing and performing the  
2       independent evaluation process. Involving  
3       everything from the conventional new gens, long-  
4       term RFO-type of solicitation, such as for PG&E in  
5       2004 and their current one now in 2008. As well  
6       as the one for Edison in 2006 that had various  
7       tracks associated with seeking new power supplies.

8               Various other activities which I have  
9       been involved in. In the renewable area of the  
10      RPS solicitations and then the intermediate term  
11      all-source. And even the recent energy auction  
12      for the Long Beach facility which Mr. Florio was  
13      referring to earlier.

14             PRESIDING MEMBER BYRON: Mr. Taylor,  
15      this is Commissioner Byron. I don't know all the  
16      procurements by name and number. Is this most all  
17      of them, all of them, part of them?

18             MR. TAYLOR: This is most all of them.

19             PRESIDING MEMBER BYRON: Okay, thank  
20      you.

21             MR. TAYLOR: There is also some gas RFO  
22      activities that I am involved with for Edison  
23      right now at one station that has not been  
24      launched yet. But I am in the process of  
25      basically working with Edison and reviewing the

1 documents that would fill into that RFO.

2 PRESIDING MEMBER BYRON: Okay, you must  
3 be doing a good job.

4 MR. TAYLOR: Thank you. As far as on  
5 page two. A quick rundown of the kind of  
6 activities that I am going to be addressing in the  
7 following slides.

8 I have really broken this into the time  
9 periods, if you will, associated with the  
10 solicitation of everything up to the submission of  
11 proposals and the evaluation process.

12 Usually ending with a short list that  
13 launches into the negotiation phase.

14 Then a final selection out of those  
15 parties that got to the finish line. Or at least  
16 have negotiated terms and agreements that the  
17 utilities can live with.

18 And with the final selection, launching  
19 into the regulatory process.

20 Then moving on to page three. Prior to  
21 this submission I and my team have usually been  
22 involved with reviewing the RFO materials. The  
23 model or proforma contracts that are going to be  
24 part of the request for offer.

25 Also looking at exactly what is being

1 put in place for the evaluation processes. Making  
2 recommendations for any improvements to those  
3 processes.

4 And really locking down as many of the  
5 evaluation assumptions prior to bid opening as  
6 possible.

7 Also as Mr. Florio was mentioning  
8 earlier, Sedway Consulting does have a Response  
9 Surface Model, its own evaluation modeling system.  
10 This is perhaps a little different. I am speaking  
11 only for Sedway Consulting here because I know  
12 there have been some IEs involved in other  
13 solicitations where they do not attempt to  
14 parallel the utility's process.

15 That is what my firm does. We are  
16 actually there at the bid opening to retrieve  
17 electronic and hard copy versions of the proposals  
18 and I and my team do a parallel evaluation and  
19 interpret the proposals ourselves. We compare  
20 notes with the utilities to see where we are  
21 coming up with different rankings. Ultimately I  
22 present a position to agree or disagree with what  
23 the utility has determined and present a parallel  
24 set of results to the PRG. But that is not  
25 necessarily what every IE process has been in the

1 state.

2 Moving on to the next slide. After the  
3 bid opening then, as I say, Sedway Consulting is  
4 in a position to perform an independent evaluation  
5 of all the proposals. That is an initial review  
6 to seek any sort of deficiencies in the proposals  
7 or get clarifications from the developers.

8 The quantifiable information is  
9 analyzed, as I say, in Sedway Consulting's model,  
10 the RSM. Which is a spreadsheet-based,  
11 simplifying model that is something that can be  
12 shared with and has been shown to PRG members.

13 The non-price factors then are also  
14 assessed. Those are the qualitative issues that  
15 one can't really put into a model but which also  
16 affect the selection decision.

17 In addition to this evaluation activity  
18 I and my team basically monitor communications  
19 with bidders during this period, particularly in  
20 seeking clarifications from proposals and from  
21 developers themselves.

22 Always participating, of course, in  
23 meetings where there are deficiencies that can be  
24 cured by the developers and where proposals are  
25 being disqualified.

1           We are also in a position to review and  
2       comment on the utility's recommended short list.  
3       Again, we have got a parallel ranking and we are  
4       looking at our own results in developing  
5       information.

6           And that's really where we are doing a  
7       lot of providing the analytic support to the PRG.  
8       Members of the PRG are welcome to call me up, and  
9       frequently do, to ask specific questions on  
10      specific offers. I am also there, either live or  
11      on the phone, involved in all of the PRG meetings  
12      discussing RFO-related issues.

13          So I am there to basically provide  
14      additional insight and at times make independent  
15      presentations of the information that I have  
16      gleaned. And in certain circumstances PRG members  
17      have asked that I distribute all of the ranking  
18      information for Sedway Consulting's operations as  
19      well, the RSM model results.

20          On page five. We also are involved with  
21      the negotiation process. Continuing with the  
22      monitoring of the communications back and forth  
23      between the utility and the counter-parties.  
24      Reviewing the e-mails and the redline contracts.

25          Perhaps participating in the negotiating

1 sessions, either live at times or on the phone.

2 And often we are involved with the jury  
3 committee meetings or other team meetings where  
4 the negotiation prioritization decisions are being  
5 made. There is at the end of the negotiation  
6 process a best and final offer that is going to be  
7 requested.

8 We are, of course, involved with  
9 updating the evaluation analysis and refreshing  
10 the models as far as any sort of changes that have  
11 occurred in the marketplace. On page six.

12 PRESIDING MEMBER BYRON: Before you go  
13 on, Mr. Taylor.

14 MR. TAYLOR: Yes.

15 PRESIDING MEMBER BYRON: We skipped over  
16 what I think may be a crucial process in all of  
17 this. The bids as they come in, and if I  
18 understood earlier, you see all of the bids and  
19 information. In their raw form or are they  
20 digested before you see them?

21 MR. TAYLOR: No, we see them in the raw  
22 form.

23 PRESIDING MEMBER BYRON: Okay. So then  
24 where I was going to go with my question is, it  
25 sounds like there is a second process to this.

1       There is a short list, if I recall, and then you  
2       go through additional contact and negotiations  
3       with participants in the short list. Is that  
4       correct?

5               MR. TAYLOR: It can be. PG&E and  
6       Southern California Edison have conducted their  
7       processes more or less in a similar fashion. But  
8       there is not always a, they are not identical.  
9       But yes, relatively speaking there is the  
10      development of a short list to really focus the  
11      remaining procurement activities on some subset of  
12      the original set of offers that came in that  
13      really seemed to be most attractive and had the  
14      best development qualities and highest likelihood  
15      of ultimately being developed if the utility were  
16      to select them.

17             PRESIDING MEMBER BYRON: Are those on  
18      the short list notified? Does each member of the  
19      short list know who the others are?

20             MR. TAYLOR: Generally not, no.

21             PRESIDING MEMBER BYRON: Are they given  
22      an -- It sounds to me -- You used the phrase, best  
23      and final. So they are given an opportunity not  
24      knowing what they are up against to reduce their  
25      bids and/or change the terms of their bids.

1                   MR. TAYLOR: I guess I would back up and  
2 first say that in my first slide where I was  
3 listing all of the solicitations, there are many  
4 different solicitations on the table there. Some  
5 do not involve a best and final offer. Some  
6 really are focused on getting an offer that is the  
7 one and only offer.

8                   For example, with the energy auction  
9 that was recently concluded with Southern  
10 California Edison. There was not a two-stage  
11 process. There was only one bid. It was the one  
12 and only bid kind of phase where those who were  
13 interested in participating in the auction had one  
14 date to submit their price in. So there's not  
15 always this two-stage process where there's an  
16 initial set and then perhaps a final offer.

17                  PRESIDING MEMBER BYRON: So without  
18 going into the weighting of the criteria. And I  
19 haven't seen what the criteria are in any of the  
20 RFOs. Can you tell me, is credit worthiness and  
21 the capabilities of the bidders an important  
22 aspect of the evaluation?

23                  MR. TAYLOR: Yes it is.

24                  PRESIDING MEMBER BYRON: Okay, thank  
25 you.



1                   MR. TAYLOR: And to elaborate for a  
2 moment there, Commissioner Byron, on basically the  
3 bid opening process. I or my team members are  
4 there on site to physically open the boxes of  
5 proposals, extract the CDs. We usually take the  
6 electronic versions of the proposals, put that  
7 onto our computers and retrieve our own, single,  
8 hard copy version of the proposal. So that is our  
9 information that we get before the utility even  
10 gets to the CD or any of the hard copies of the  
11 proposals.

12                  PRESIDING MEMBER BYRON: And I think I  
13 understood you to say that you are present at all  
14 communication between the IOUs and the bidders.

15                  MR. TAYLOR: Either telephonically or in  
16 person, yes.

17                  PRESIDING MEMBER BYRON: Okay. But of  
18 course other PRG members are not present during  
19 that time.

20                  MR. TAYLOR: That's correct.

21                  PRESIDING MEMBER BYRON: Okay.

22                  MR. TAYLOR: They are basically relying  
23 on me and my team to report back to them on any  
24 unusual activities or anything that we saw in the  
25 process that we did not believe was fair or

1 consistent.

2 PRESIDING MEMBER BYRON: Okay. And you  
3 know Ms. Turnbull kind of alluded to some  
4 questions about the independent evaluator and I  
5 have a pretty direct question in that regard too.  
6 The use of the word independent is troubling here.  
7 Who pays your salary?

8 MR. TAYLOR: In the case of the  
9 California solicitations, and actually for most of  
10 the solicitations around the country, usually in a  
11 contract directly with the utility. However, I am  
12 certainly -- I see my constituency as being the  
13 ratepayers of the state where I am doing the work.

14 So I am definitely looking for two main  
15 objectives. One, to obtain the best, the lowest  
16 cost and lowest risk resources for the ratepayers.  
17 And secondly, to make sure that all bidders are  
18 treated fairly and that that information is  
19 strongly conveyed to the bidding community. So  
20 that future solicitations have maximum  
21 participation from the bidding community because  
22 they know that the process is being run fairly.

23 PRESIDING MEMBER BYRON: Well it's the  
24 word independent that I am having difficulty with.  
25 Having been a consultant myself I would

1 characterize you as a very reputable consultant  
2 but not as an independent consultant if you are  
3 under contract to the very entity whom you are  
4 overseeing.

5 MR. TAYLOR: Well I guess I would point  
6 out two things. First, definitely independent in  
7 that I have no financial interest in how the  
8 selection is going to work out.

9 PRESIDING MEMBER BYRON: I agree, that  
10 is the correct use of the term.

11 MR. TAYLOR: Secondly, with the response  
12 surface model, the RSM. That is an Excel  
13 spreadsheet that is used for containing all the  
14 bid information and all the calculations that go  
15 into determination of the quantifiable  
16 characteristics of the resources.

17 And that is something that I am prepared  
18 to share with and have done so with members of the  
19 PRG, with the Energy Division. With in fact  
20 anybody who is prepared to sign the  
21 confidentiality requirements. So it is something  
22 that I am willing to stand behind and show that  
23 this is an independent analysis of the  
24 information. One can see basically the mechanics  
25 behind the selection process.

1                   PRESIDING MEMBER BYRON: Okay, fair  
2 enough. Yes.

3                   MS. KHOSROWJAH: I would like to make a  
4 point that Division of Ratepayer Advocates  
5 recommended a number of modifications to the IE  
6 process and the Commission adopted. And now we  
7 have a very comprehensive framework for IE adopted  
8 by the Energy Division to bring more confidence to  
9 this process.

10                  PRESIDING MEMBER BYRON: I agree. I am  
11 sure there's many safeguards built in.  
12 Ms. Turnbull, did you want to ask something or add  
13 something?

14                  MS. TURNBULL: I do have a question of  
15 Mr. Taylor and that is, I wonder what the role of  
16 the independent evaluator would be if the PRG did  
17 not exist. Would the functions be the same, would  
18 the responsibilities be the same or would there be  
19 differences?

20                  MR. TAYLOR: It is largely the same in  
21 other state jurisdictions where I am simply  
22 reporting either directly to the Commission staff  
23 or in addition to provide testimony as far as the  
24 independent oversight that has been provided.  
25 Even though there is no actual committee of a

1 collection of PRG members, if you will. So I  
2 would say that a lot of the activities that I am  
3 describing in my presentation here mirror what I  
4 and my firm do in other solicitations where there  
5 is not a PRG.

6 PRESIDING MEMBER BYRON: I take it you  
7 do this for other IOUs outside of the state of  
8 California.

9 MR. TAYLOR: Yes I do.

10 PRESIDING MEMBER BYRON: Thank you.  
11 Mr. Tutt.

12 ADVISOR TUTT: And Mr. Taylor, do you  
13 perform this service for these other IOUs in areas  
14 where they are in competitive markets or are they  
15 in fully regulated markets?

16 MR. TAYLOR: Generally in places where  
17 there are regulated markets but there are  
18 requirements. Or in some cases it is simply the  
19 choice of the utility. But in certain instances  
20 it is required by the state that if they are going  
21 to compete in their own solicitations they need to  
22 have some sort of oversight.

23 PRESIDING MEMBER BYRON: My sense is,  
24 Mr. Taylor, that the reason you are utilized is  
25 because of your expertise in procurement and that

1       you bring a reputable, you bring your reputation  
2       to this process and I suspect it adds a great deal  
3       of credibility. We have another question here  
4       from Ms. Sheriff.

5               MS. SHERIFF: Thank you, Commissioner  
6       Byron. This is Nora Sheriff for the Cogeneration  
7       Association of California and the Energy Producers  
8       and Users Coalition. I have one question on slide  
9       six where you discuss your performance of a final  
10      independent --

11              PRESIDING MEMBER BYRON: I don't think  
12      he has even gotten to slide six yet.

13              MS. SHERIFF: Oh, okay.

14              PRESIDING MEMBER BYRON: Go right ahead.

15              MR. TAYLOR: I can go to it right there  
16      so that's a good segue.

17              MS. SHERIFF: It is the first bullet  
18      where you talk about performing a final  
19      independent evaluation. I just wonder how often  
20      does your final independent evaluation differ from  
21      the utility's?

22              MR. TAYLOR: I think that once data  
23      clarifications have been straightened out, which  
24      we have seen different rankings. But often driven  
25      down into issues of bid clarification. And I

1 think that that's one of the value of having a  
2 second pair of eyes, if you will, looking at these  
3 proposals.

4 Because they are often very complicated  
5 documents, very complicated packages. And as  
6 talented as both PG&E's and Edison's evaluation  
7 teams are, there are a lot of moving parts here  
8 and often a lot of different people trying to  
9 coordinate and get all the information together.

10 So to have a second team that has a lot  
11 of experience in doing this repeatedly around the  
12 country has, I think, provided the benefit of  
13 being able to cross check that the proposals, that  
14 the developer means X when they have said the  
15 following.

16 And if there are two different ways to  
17 interpret what the developer has expressed then  
18 it's time to get back to the developer to make  
19 sure that they clarify it. If indeed there simply  
20 has been some sort of error in the data entry  
21 process. Again, having a secondary cross-checking  
22 mechanism allows those errors to be caught before  
23 they propagate into an incorrect selection  
24 process.

25 So once those data issues have been

1       cleared up the selection element, I would say from  
2       my standpoint and what I have seen for PG&E and  
3       Edison, have lined up quite well.

4               MS. SHERIFF:  So you don't often come up  
5       with a, no, it would be better to select Bid X  
6       instead of Bid Y?

7               MR. TAYLOR:  No.  I would say certainly  
8       in the quantifiable ranking the results line up  
9       quite well.  People can always -- Reasonable  
10      people can disagree over some of the qualitative  
11      issues that are not as scientific, if you will, as  
12      the economic analysis proposals.  But even there I  
13      would say that I have tended to line up with what  
14      the utility has concluded.  Or if I have had a  
15      difference of opinion I have expressed that.  I  
16      can't cite specific examples but there are  
17      certainly instances where the utility has taken my  
18      view into consideration and revised their final  
19      list then.

20              PRESIDING MEMBER BYRON:  Go right ahead.

21              MS. SHERIFF:  This is Nora Sheriff  
22      again.  When you talk about the qualitative  
23      criteria.  I understand that they are probably  
24      confidential and I can't hear them.  But if you  
25      could speak about them generally.  What do you



1 mean by qualitative criteria.

2 MR. TAYLOR: Often they are listed in  
3 the RFO transmittal letter, the main RFP document  
4 itself, as far as the different characteristics  
5 that will have some consideration in the  
6 evaluation process. And there are things like the  
7 bidder's overall experience with developing this  
8 kind of technology, what their track record has  
9 been on permitting these projects, on financing  
10 them.

11 There are qualitative considerations  
12 sometimes outside of the project itself as far as  
13 what sort of transmission complications, if any,  
14 that may be faced by this project. Where it is in  
15 the CAISO queue. It's likelihood of having  
16 relatively small network upgrades associated with  
17 siting generation there. And having those  
18 upgrades completed in a timely fashion in order to  
19 bring the resource online.

20 Back to issues with the project itself.  
21 What sort of site control the project has.  
22 Whether there has been any public opposition or  
23 whether there has been public support for the  
24 project where it is listed.

25 So there are a variety of things that

1       aren't necessarily numeric in the sense that they  
2       can be run through an analytic process. They are  
3       more qualitative as far as differentiating between  
4       projects that seem to have a high likelihood of  
5       development success versus those that might run  
6       into problems.

7               MS. SHERIFF: Thank you.

8               PRESIDING MEMBER BYRON: Please press  
9       on, Mr. Taylor.

10              MR. TAYLOR: Okay. On page six. As far  
11       as the final selection process. If there is  
12       indeed a two-stage process with the submission of  
13       final offers. I have been involved in performing  
14       that, the final independent evaluation.

15              And again commenting on the selection  
16       process.

17              Participating in high-level meetings  
18       that are making these final decisions for the  
19       execution of contracts.

20              And of course providing the PRG with all  
21       of the information that has gone into Sedway  
22       Consulting's analysis and supporting the  
23       rankings, the decisions that I and my team are  
24       reaching independently.

25              As far as the regulatory process on page

1       seven. In most of the California solicitations  
2       there has either been an application or an advice  
3       letter where an IE report has been developed that  
4       describes everything that my team has been doing.

5               These reports often do have two sections  
6       to them. There is a main, public part of the  
7       report that actually describes a lot of what I  
8       have been covering in this presentation. There is  
9       also a confidential appendix that usually includes  
10      all of the details that went into Sedway  
11      Consulting's rankings, the quantitative analysis.

12             As far as the additional elements in the  
13      regulatory process. If there are more, if there  
14      is more information to be provided in the  
15      application there may be prefilled testimony.  
16      There may be rebuttal testimony and other  
17      surrebuttal stages of that process.

18             But one nice thing about the PRG impacts  
19      on these, on these regulatory phases of the  
20      solicitations. There tends to be much less of the  
21      back and forth that I see in other jurisdictions  
22      that I participate in around the country. So the  
23      testifying and the prefilled testimony is often a  
24      more expedited process in these proceedings that  
25      have gone through a PRG process. But I am

1 certainly in a position to respond and have  
2 responded to discovery requests and participated  
3 directly in hearings by taking the stand.

4 On the final slide. Basically  
5 throughout the process I and my team participated  
6 in all of the major decisions that management has  
7 been making.

8 Providing the periodic presentations, of  
9 course, to the PRG being a key role.

10 Ensuring that the RFO processes and  
11 evaluation procedures that were laid out prior to  
12 the bid opening process have been followed. Or to  
13 the extent that something new came up during that  
14 period that required a revision to the evaluation  
15 process that that revision was justifiable.

16 And basically supporting the selection  
17 of the best resources as my team sees it. And if  
18 we believe that the utility -- It is in my  
19 contract that if the utility, or any PRG member  
20 for that matter, or any outside bidder were to  
21 approach Sedway Consulting and try to pressure  
22 Sedway Consulting to make a decision other than  
23 what we felt was the best selection there are  
24 elements of the contract agreement that require  
25 Sedway Consulting to alert the PRG, and

1 specifically members at the Energy Division, as  
2 well as various ethics officers within the  
3 respective utilities about this undue pressure.  
4 So we stand by our selection as being our  
5 independent analysis and our judgement of what we  
6 believe are the best resources.

7 And the last bullet point here. Is  
8 again ensuring that all bidders are being treated  
9 fairly. And I think that that is an important  
10 element for the overall bidding community and to  
11 maintain their confidence that these processes are  
12 being run fairly. That the best resources are  
13 being selected. And that if they don't win in a  
14 particular solicitation it is because there really  
15 were better resources ahead of them and that they  
16 should definitely participate in future  
17 solicitations because this is a fair process.

18 PRESIDING MEMBER BYRON: Madame  
19 Chairman.

20 ASSOCIATE MEMBER PFANNENSTIEL:  
21 Mr. Taylor, of the dozen or so solicitations you  
22 have participated in in California. I just want  
23 to make sure. Am I right that in response to  
24 Ms. Sheriff's question you said that you have not  
25 disagreed with the utility managements in any of

1       them?

2                   MR. TAYLOR:  I don't believe I have, at  
3       the end.  I should say that this is a process, I  
4       think as Mr. Florio or others were commenting.  I  
5       certainly and my team are, are in daily  
6       communications, e-mails and phone calls back and  
7       forth comparing results.  And there may be  
8       disagreement during the evaluation process where  
9       we are going back and checking our information and  
10      making sure that we have got it -- you know, our  
11      systems correctly and the utility is doing the  
12      same at their end.

13                   But after all of that has occurred.  In  
14      the dozen solicitations that were represented at  
15      the beginning of the solicitation -- the beginning  
16      of this presentation.  I don't believe there has  
17      been disagreement in the final results.  
18      Recognizing that some of those solicitations are  
19      still underway, therefore we aren't at the finish  
20      line.

21                   ASSOCIATE MEMBER PFANNENSTIEL:  The PUC  
22      process, the procurement process is always  
23      referred to as least-cost and best-fit.  Mostly  
24      what I am hearing in terms of your evaluation,  
25      it's about the cost side of that and trying to get

1 to a point where everybody agrees on the cost.

2 How do you determine the best fit part of that?

3 MR. TAYLOR: The best fit is in a  
4 variety of areas. Often it is partly intertwined  
5 with the cost element in that we are looking at  
6 the value of resources that are delivering energy  
7 at a low cost at the most valuable time of day.  
8 So obviously those resources, be they renewable or  
9 conventional resources, that are going to be able  
10 to deliver power during the high value hours are  
11 going to fit in the utility's, and for that matter  
12 the overall marketplace's resource system the  
13 best.

14 I would also say that there is a best-  
15 fit element as far as transmission issues.  
16 Looking at the overall topography of the  
17 transmission system and where current generation  
18 could be -- or new generation could be accepted on  
19 the grid without significant upgrades being  
20 required is definitely a fit issue and that makes  
21 the point of the evaluation in a very real sense.

22 I would say also there are various  
23 technology considerations and counter-party  
24 concentration issues that sometimes come up,  
25 particularly at least in the development of the

1 short list. To make sure that there is sufficient  
2 diversity of technologies and counter-parties on  
3 the short list so that there is not too much  
4 exposure of any one counter-party or of any one  
5 technology. And again there is kind of a fit  
6 element there as far as what sort of new  
7 technology projects or a particular counter-  
8 party's developers would fit best into a utility's  
9 portfolio.

10 ASSOCIATE MEMBER PFANNENSTIEL: Okay,  
11 thanks. And so with all of those considerations,  
12 as well as the others that you mentioned in  
13 responding to Ms. Sheriff's question about the  
14 financial depth of the developer to -- the  
15 technical experience and the financial depth of  
16 the developer and all of that. Even with all of  
17 those you have never really come out at the end of  
18 the day with a disagreement with the utility in  
19 terms of the ranking.

20 MR. TAYLOR: I don't believe in the  
21 California solicitations I have. Or as I say, in  
22 the event that there was a disagreement I made a  
23 convincing argument for the final utility  
24 selection to be adjusted to recognize some of the  
25 value that Sedway Consulting had found in a



1 particular project.

2 ASSOCIATE MEMBER PFANNENSTIEL: And then  
3 your relationship with the PRG members themselves.  
4 Once you have gone through this. Have you had any  
5 problems, any push back? Any disagreements with  
6 the PRG about your ranking or how you arrived at  
7 it?

8 MR. TAYLOR: No. As far as problems I  
9 would definitely say no. I think that the -- I  
10 have had the pleasure of working with a very  
11 talented group and committed group of individuals  
12 in the PRG. And I think that they have brought  
13 very good insight into the process at very  
14 critical stages rather than as a Monday morning  
15 quarterback, which is often done in other states.

16 But I think having the PRG system in  
17 place allows these people who know a lot about the  
18 California system and have a great deal of  
19 institutional knowledge and history to provide  
20 their insight along the way. And I have not had  
21 any problems.

22 To say that we always agreed. The PRG  
23 itself is not agreeing necessarily internally.  
24 They don't speak with one voice. There may be  
25 different members of the PRG that believe

1 different types of projects or different specific  
2 developers may be bringing different qualities to  
3 the table.

4 And as has been mentioned earlier today  
5 there have been times even when PRG members  
6 disagreed with the final selection and sought to  
7 intervene in the final case. But at least they  
8 had had an opportunity to see the process all the  
9 way along and their intervention in the final case  
10 I think was streamlined and focused specifically  
11 on those areas where they did have disagreements  
12 with what the utility had ultimately done.

13 ASSOCIATE MEMBER PFANNENSTIEL: Thank  
14 you.

15 PRESIDING MEMBER BYRON: Mr. Taylor, we  
16 have a couple of other questions from the podium  
17 and elsewhere but I wanted to ask you. I think I  
18 heard you say that you use information about  
19 transmission access points, whether it be a good  
20 opportunity for injection of power. Did I  
21 understand that correctly, that that's part of the  
22 evaluation?

23 MR. TAYLOR: That is.

24 PRESIDING MEMBER BYRON: And how is it  
25 that you get access to that information?

1           MR. TAYLOR: Some of it comes in with  
2 the proposals themselves. If the developers are  
3 able to provide CAISO reports such as the  
4 feasibility study or system impact study or a  
5 facility study if they actually have been  
6 performed at that point in time. Then that direct  
7 information can be used in the evaluation of the  
8 proposal.

9           PRESIDING MEMBER BYRON: Okay.

10          MR. TAYLOR: In other cases there are  
11 proxies. Things like the Transmission Resource  
12 Cost Report, the TRCR, is something that all three  
13 utilities, San Diego, SCE and PG&E, do perform as  
14 a regular process of their renewable  
15 solicitations.

16          PRESIDING MEMBER BYRON: Thank you. But  
17 TRCR, that's a new one for us. We haven't heard  
18 that one before.

19          MR. TAYLOR: These are basically  
20 analyses that are often -- They are published as  
21 appendices to the public RFOs that are issued by  
22 the utilities in their RPS solicitations. And  
23 they represent the particular cost of new  
24 generation that might be inserted at particular  
25 regions. So they are reports that have been

1 developed by the utility's transmission department  
2 that basically assess what the costs may be of  
3 putting X number of megawatts in at different  
4 injection points in the utility's business.

5 PRESIDING MEMBER BYRON: Good. And that  
6 information is also public?

7 MR. TAYLOR: Yes it is.

8 PRESIDING MEMBER BYRON: Very good,  
9 thank you. We have got a couple of questions.  
10 I'm going to -- We have a gentleman from the  
11 Energy Commission staff. Please introduce  
12 yourself and go ahead.

13 MR. WOODWARD: Thank you, Commissioner.  
14 I am Jim Woodward and I just wanted to offer a  
15 word of appreciation for Alan Taylor as an  
16 independent evaluator. While I was serving on the  
17 PRG groups a couple of years back I was very  
18 impressed by the role of the independent evaluator  
19 in compiling, bringing together a wealth of  
20 information very promptly. Putting good  
21 information together in a comparative way with  
22 common denominators in a variety of ways.

23 And I recall some real disagreements  
24 that Alan Taylor had with utility staff regarding  
25 some of the weighting factors and rankings. But

1       this was an iterative process and over time there  
2       was more of a coalescing based on shared  
3       understandings, common understandings.

4               In some of the efforts to go back to a  
5       bidder with a last, best and final offer, many  
6       times that bidder was asked to bring more  
7       information into the contract in response to PRG  
8       questions and concerns that were raised at the  
9       time in an area that wasn't very strong or  
10      complete in the original bid. So that was a  
11      useful way to surface those potential problems.

12             Also in working with Alan Taylor I found  
13      him very responsive to PRG members. When he was  
14      doing a summary of the process for the PUC he gave  
15      it to PRG members and I wrote a wealth of  
16      comments, suggestions and even some suggestions  
17      about what more might be disclosed in the final  
18      document.

19             And not all of that was accepted but  
20      some of it was and I am glad for that. The  
21      documents with redactions are still hard to read,  
22      they don't have that kind of flow. But I think  
23      that also the independent evaluator provided some  
24      common ground between the three PRGs.

25             And in answer to an earlier question

1 about why there is a difference in the process.  
2 Sometimes it is just different corporate culture.  
3 San Diego is a little more like a big family and  
4 friendly, slow to surface disagreements.

5 PRESIDING MEMBER BYRON: And you can  
6 stop there.

7 MR. WOODWARD: Okay. Edison was strong  
8 in their legal areas, PG&E a bit more ad hoc. And  
9 Alan, in particular on the PG&E long-term RFO,  
10 helped to treat bidders fairly when the bidders  
11 weren't in equal status. There was one that was  
12 in bankruptcy that nonetheless had an AFC in hand  
13 for a project in Hayward. And what do you do?

14 That's a great site with transmission  
15 connections in the middle of a load pocket. And  
16 Alan and the utility staff worked very hard to  
17 keep them in the ball game as a bidder without  
18 being unfair to other bidders. And I think that  
19 was a successful use of the PRG.

20 PRESIDING MEMBER BYRON: Mr. Kelly.  
21 Thank you for your comments,  
22 Mr. Woodward. Mr. Kelly.

23 ADVISOR TUTT: Commissioner, I did have  
24 a couple of other questions.

25 PRESIDING MEMBER BYRON: Sorry, Tim.

1           ADVISOR TUTT: Alan, I was wondering  
2    if --

3           PRESIDING MEMBER BYRON: I'm sorry, I  
4    wasn't going to Mr. Kelly, you go right ahead with  
5    your question. I think he has a question as well  
6    before we proceed.

7           ADVISOR TUTT: Oh, okay.

8           PRESIDING MEMBER BYRON: Go right ahead,  
9    Mr. Tutt.

10          ADVISOR TUTT: I was wondering if the  
11    experience that you had in California in the sense  
12    of coming to agreement at the end with the  
13    utilities was similar to experience you have had  
14    in doing this in other states?

15          MR. TAYLOR: Yes. I would say -- I  
16    mean, it really is. It's the same, general  
17    process.

18          ADVISOR TUTT: Then Mr. Florio earlier  
19    mentioned a wind contract and I think you briefly  
20    maybe alluded to it as well, that some members of  
21    the PRG thought it was too expensive. Did you and  
22    the utility agree with the ranking of that  
23    particular project, can you say?

24          MR. TAYLOR: That is in the RPS process.  
25    And that is, of course, driven by the need to

1 reach various renewable goals. So the ranking is  
2 partly influenced by how the negotiations are  
3 proceeding. There may sometimes be some  
4 developers that have come in with some fairly low  
5 prices but don't really have the development  
6 expertise to follow through and conclude a  
7 contract.

8 And that's why I say -- That is an area  
9 I would say where there is a great deal of  
10 delicacy with trying to figure out what are the  
11 best renewable contracts. Because there may be  
12 contracts that reasonable people could disagree  
13 over as far as whether the price is too high or  
14 not. And Mr. Florio had his opinion on that and I  
15 certainly respect that.

16 It is also an issue, though, of whether  
17 lower priced contracts that don't seem to be  
18 getting to the finish line really represent the  
19 appropriate point of comparison. So when you  
20 speak of rankings it's a little bit of a softer  
21 issue in the renewable world, just because you  
22 don't tend to see as well-developed players.

23 There are some great companies that have  
24 a proven track record. But there is a general, a  
25 greater plurality of less-developed players where



1       there is a real question mark next to whether the  
2       utility is ultimately going to be able to finish a  
3       contract with them.

4                ADVISOR TUTT:   Okay, then one last  
5       question.  I presume that Edison and PG&E acquired  
6       your services through a competitive solicitation.  
7       How often do you bid for those contracts or do  
8       they rebid those -- Maybe they'd better answer  
9       that.  And do you know what happened with San  
10      Diego?

11               MR. TAYLOR:  I know a little bit of what  
12      transpired with San Diego because I have an  
13      associate in the consulting field who was their IE  
14      and I believe is in another process right now.  
15      But I am not, I am not intimately familiar with  
16      San Diego's solicitations beyond what I have read  
17      in some of the public filings.

18               And as far as my selection in PG&E and  
19      Edison's process.  Yes, I did go through a  
20      submission of material that it is my understanding  
21      were compared to similar submissions from other  
22      consulting firms.  And indeed I believe that there  
23      a consideration also as we approach 2009.  Because  
24      the utilities are under a requirement to go ahead  
25      and have a pool of IEs that they will be drawing

1 from.

2 ADVISOR TUTT: Thank you.

3 PRESIDING MEMBER BYRON: I believe we  
4 had another question. Mr. Kelly.

5 MR. KELLY: Yes, thank you. This is  
6 Steven Kelly with IEP. First let me premise my  
7 remarks by saying we support the concept or the  
8 function of the IE. We would like to see it  
9 actually funded through the Energy Division. We  
10 talked about that a little earlier.

11 This is a question for Alan, though. I  
12 notice you have been involved with five RPS  
13 solicitations between the two utilities here.  
14 There has been rumors on the street in the past  
15 about projects being selected that either did not  
16 have transmission, site control or technologies  
17 that were proven at a commercial level anyway.

18 Have you ever had occasion to go back  
19 and look at those RFOs to see how those projects  
20 could have been selected? Particularly at the  
21 expense of maybe other, more viable projects. And  
22 if so, what did you find?

23 MR. TAYLOR: Well I have certainly been  
24 involved in the selection process in real time.  
25 And I have been involved with listening in to the

1 progress of negotiations with those parties that  
2 were on the short list.

3 I think that it is a fair statement for  
4 both the PG&E and Edison processes as public  
5 information. They have been on the record saying  
6 that their short list has been rather inclusive.  
7 So they have generally given the benefit of the  
8 doubt to a broad range of entities and negotiated  
9 with quite a few different counter-parties in an  
10 effort to get everybody or as many competent  
11 bidders as possible to the finish line.

12 It's the challenge in today's market  
13 with renewable pricing moving up rather  
14 aggressively in a marketplace where we are seeing  
15 everything from turbine costs to other elements of  
16 the renewable project development cycle inflating  
17 rather quickly.

18 MR. KELLY: If I may. Are you seeing  
19 evidence of projects being bid that don't require  
20 new transmission?

21 MR. TAYLOR: In some instances, yes.

22 MR. KELLY: Are they winning?

23 MR. TAYLOR: They are being short listed  
24 and negotiations are being conducted. At times  
25 those projects don't move forward for reasons

1 beyond transmission or they sometimes don't move  
2 forward because ultimately it is determined that  
3 there will be some substantial network upgrades  
4 required and transmission becomes a prohibitive  
5 element there before the contract is even signed.

6 MR. KELLY: Thank you.

7 PRESIDING MEMBER BYRON: Mr. Taylor,  
8 thank you very much. I know we are probably right  
9 up against your witching hour. I thank you so  
10 very much for hanging in here with us. Is there  
11 anything else you wanted to add?

12 MR. TAYLOR: Just that I agree with some  
13 of the statements made earlier by various PRG  
14 members. I think that it would be great for the  
15 CEC to return to the fold of PRG. Because I  
16 certainly recall staff members from the CEC  
17 providing terrific insight into the selection  
18 processes and the overall procurement analyses  
19 that were being performed during the PRG  
20 presentations or being reviewed during the PRG  
21 presentations. And I think that the CEC is a very  
22 valuable member in that process. I think it would  
23 be great to have you back into the PRG process.

24 PRESIDING MEMBER BYRON: Thank you. I  
25 don't even recall. Was that one of the questions

1 we listed for the participants? Because they have  
2 all answered that question.

3 (Laughter)

4 PRESIDING MEMBER BYRON: All right.  
5 Mr. Taylor, thank you very much.

6 MR. TAYLOR: Okay. And again I am sorry  
7 I couldn't be there in person.

8 PRESIDING MEMBER BYRON: Okay.

9 MR. TAYLOR: Okay, bye-bye.

10 PRESIDING MEMBER BYRON: Bye. So I  
11 think the next person on our list is Mr. Kelly.  
12 Mr. Kelly, I would like to remind you it's your  
13 organization, or at least the folks that you  
14 represent in your organization, that we have this  
15 whole process that we are trying to protect  
16 ourselves against. So you might want to keep that  
17 in mind as you go through --

18 MR. KELLY: I understand. It was  
19 actually my organization and me, apparently,  
20 because of the ability to control things.

21 PRESIDING MEMBER BYRON: All right.

22 MR. KELLY: I appreciate the opportunity  
23 to talk here. One, I want to approach this issue  
24 about the PRG. It is really a piece of a larger  
25 issue that we have talked about, which is data

1 access, data confidentiality and a level playing  
2 field in various proceedings, particularly at the  
3 Public Utilities Commission.

4 It is kind of like a presidential  
5 election, you know. If you think everything is  
6 hunky-dory you might vote for the status quo and  
7 don't make any changes. But if you get a queasy  
8 feeling about what is going on right now you might  
9 look for improvements or change. Which I think is  
10 what you are doing and I think that's the correct  
11 thing to do.

12 I mean, as a practical matter I am -- my  
13 organization has been named as a market  
14 participant and I do view the PRG as kind of a  
15 club. And if you are in the club, and you have  
16 heard from all the people that are in the club,  
17 everything is hunky-dory and it's okay. And if  
18 you are out of the club and you are outside  
19 looking in you are kind of getting suspicious.  
20 And that makes me uncomfortable.

21 And the reason that I am uncomfortable  
22 is not so much the procurement decisions but all  
23 these issues, all these processes that come up at  
24 the PUC are actually decisions that are supposed  
25 to be based on the record in front of the

1 Commission.

2 And we've got -- You have heard this  
3 morning a lot of comment about the additional  
4 venue that the PRG provides parties that are in  
5 that group. I have heard that it is an education  
6 process, particularly on the business needs of the  
7 particular companies. If you are not in it you  
8 are flying blind was a comment that I heard this  
9 morning.

10 I have also heard that we do a lot of  
11 discovery in the PRG. Now that is discovery that  
12 is not coming up in the actual proceeding where I  
13 might be interested in participating as a equal  
14 participant. As one of many in California.

15 And then I heard the broad statement  
16 that we talk about the cost implications of state  
17 policy. Now most of these things, in my view,  
18 don't need to be confidential to have a discussion  
19 about the cost implications of what we are doing.  
20 In fact it should be out in the open.

21 And one of the outcomes of having the  
22 PRG implemented as it is today is that a lot of  
23 this discussion is going on amongst a subset of  
24 the parties in the PUC's proceedings. And I am  
25 not a part of that and that's troublesome.

1       Because when it gets to the actual decision-making  
2       there is an additional advantage in the  
3       litigation, in the argument and so forth, that I  
4       am not privy to.

5               Now having said that I understand and  
6       applaud the need for having communications between  
7       the consumer groups, the ratepayer groups, and the  
8       utilities in the decision-making process and how  
9       this potentially could speed things up. But we  
10      are in this dilemma where the PRG is acting as a  
11      consultation for reasonableness review.

12             And, you know, that might be okay. But  
13      there's this other whiplash kind of effect of this  
14      process which is the PRG in litigation. And in  
15      the debate before the Commission about the issues  
16      in front of the Commission on policy or on cost  
17      value or something where they are -- the people in  
18      that process have much greater access to data and  
19      make filings that are redacted that nobody else  
20      gets to see.

21             In my view that's a problem. It's a  
22      fundamental problem with the process at the PUC,  
23      particularly when some parties are treated in a  
24      more favorable fashion because of this access than  
25      others. It makes it hard for us to weigh in on



1       these policy deliberations.

2               So the big question is, is this worth  
3       it? Is this down side that comes from the role of  
4       the PRG accessing this information worth it in  
5       terms of speeding up their approval process. So  
6       far I am not convinced that we are achieving that  
7       much of a speedier process. Most of the approvals  
8       take about 12 to 18 months anyway. And I am not  
9       sure that we are getting that quickened response  
10      time from the Commission.

11             So let me talk about a few concerns of  
12      mine related to this process. And these are just  
13      kind of observations. The first is when you think  
14      of the PRG and this debate between market  
15      participants and non-market participants. Who is  
16      in and who is out. It raises the issue of  
17      membership. Again, as was pointed out earlier,  
18      you know, this is the opportunity to be within the  
19      PRG to argue amongst all the parties about issues.

20             But within the membership you have a  
21      number of parties that in my view have a very  
22      significant interest in the market outcomes. You  
23      potentially could have the utility employees union  
24      involved, who has an interest in certain kinds of  
25      outcomes in the procurement process.

1           You have -- I think I heard this morning  
2       that CLECA and CMTA could potentially be members  
3       in these groups. And that's fine. They have got  
4       members that are members of my association. So  
5       why is IEP blacklisted when these other groups  
6       have the potential to get in as well? So there's  
7       a problem there with the membership and how they  
8       define that.

9           I don't believe the Commission has done  
10      a very -- the Public Utilities Commission has done  
11      a very good job of defining who are really market  
12      participants and who aren't. I tend to think that  
13      everybody has an interest in the market outcomes  
14      here.

15           And you asked the question in the notice  
16      for this hearing about is California unique in  
17      this. California really is not that unique from a  
18      planning and procurement process and how they do  
19      stuff. What we are really unique in is that we  
20      are trying to create a competitive marketplace  
21      where the utilities are active participants in  
22      developing generation. So they are on both sides  
23      of the deal in this case. And that makes it  
24      particularly interesting when, for example, the  
25      utility employees union, who has an interest in

1 the utility's building projects, having the  
2 opportunity to participate in the PRG. They do  
3 have a market interest in this thing. I don't  
4 believe the Public Utilities Commission, again,  
5 has done a very good job of defining that out.

6 The other issue that I have raised is we  
7 have talked mostly this morning about procurement  
8 but I'll just focus in on some planning issues.  
9 And this is usually the long-term planning  
10 process, again at the Public Utilities Commission.

11 Presently there are really basically two  
12 documents filed by the utilities. One is the  
13 redacted document that is available to all the  
14 market participants such as myself and the other  
15 is the unredacted copy.

16 PRESIDING MEMBER BYRON: It's available  
17 to the public.

18 MR. KELLY: Yes, available to the public  
19 if they want to go through it.

20 PRESIDING MEMBER BYRON: Yes.

21 MR. KELLY: And then there's this other  
22 document which is the redacted piece. If you have  
23 had an opportunity to go through it you will  
24 notice that there's a lot of black strikeout in  
25 there. I am in a proceeding at the Public

1 Utilities Commission and we have got parties who  
2 have disparate access to data sets arguing the  
3 same kinds of policies. And it seems just to be  
4 fundamentally wrong to be able to -- to be doing  
5 it that way.

6 It really raises the concern over  
7 fairness in those proceedings when those  
8 proceedings are supposed to be made on the  
9 argument on the record and some of the argument  
10 can be made in a redacted form from all the other  
11 participants.

12 I have been through one of these LTPP  
13 proceedings down there as a market participant. I  
14 am having to deal with redacted data. There are  
15 kinds or questions that are posed that we have  
16 absolutely no means to respond, so we are silent.  
17 Whether that's good or bad I don't know but  
18 perhaps, you know, the technical expertise that I  
19 or some of my members might be able to bring to  
20 the table might be helpful in some regards in some  
21 of these debates. But we are not in a position to  
22 opine.

23 Actually this issue of redactedness of  
24 data generally expands beyond the long-term  
25 procurement proceeding. It actually comes up in

1 more discrete proceedings too. Again as a matter  
2 of policy at the Public Utilities Commission. But  
3 for example, in the QF proceeding where we are  
4 determining the avoided cost to the utilities,  
5 which is the methodology to determine the payments  
6 to QFs. It's established essentially at FERC that  
7 the QFs are supposed to have access to the data  
8 that is used for the basis for their payments.

9 In the last QF proceeding we had  
10 absolutely no access to any of the data sets that  
11 were being used by the utilities to determine the  
12 avoided cost payment structure for the QFs. We  
13 requested that repeatedly. We have actually  
14 protested that decision, and some of the other  
15 QFs, because of that problem.

16 But my point here is to say that the  
17 implications of redacting data spread much broader  
18 than just the immediate procurement issues that  
19 you are talking about or the long-term planning  
20 procurement issues. It get into other issues and  
21 it kind of spreads and weaves its way through  
22 other proceedings at the Public Utilities  
23 Commission in a way that I don't think is very  
24 helpful.

25 As just a general conclusion on the

1 procurement part. I will just note that a lack of  
2 transparency in the bid selection criteria, which  
3 is something that we talked about. We generally  
4 know the broad categories that the utilities are  
5 proposing to use when they evaluate projects.  
6 What we really don't know, and I think it's a  
7 mistake to do it this way, is to not tell bidders  
8 how much one of those criteria is important  
9 relative to another.

10 I used to be a consultant to the  
11 Department of Energy and you know that the  
12 Department of Defense when they do big contracts  
13 for planes or tanks or anything, they are very  
14 specific about what they use to evaluate their  
15 projects. One, it helps to base their decision-  
16 making on at the end of the day. But it actually  
17 tells the bidders what they want. This is more  
18 important than X. X is more important than Y.  
19 And people can frame their bids around that.

20 And I actually think that if you had  
21 more transparency in that aspect of the process  
22 you might get more projects designed to the  
23 selection criteria of the utilities. Better than  
24 what we are seeing today.

25 PRESIDING MEMBER BYRON: Actually I have

1 never seen a bid process that didn't disclose the  
2 criteria and the weighting. But what is your  
3 objection? All that would do would be to get you  
4 to the short list, at which time you enter into  
5 negotiations with the IOUs, if I understand it  
6 correctly.

7 MR. KELLY: Well there is that. But  
8 particularly in the RPS context, you know.  
9 There's been a number of solicitations from the  
10 utilities and most of those seem to be very well  
11 participated in by the development community. And  
12 then there's a lot of complaints about the  
13 integration costs of renewables.

14 I think actually if we could better  
15 specify the projects that people wanted we might  
16 be able to minimize the integration cost up front  
17 rather than have to come back later and complain  
18 about that. If people knew exactly what the  
19 weightings were and whether there were geographic  
20 specifications that were important than not. That  
21 would be helpful to people so they could plan  
22 their projects in advance rather than waiting for  
23 the RFOs to come out or rather than waiting until  
24 you have been selected on the short list and then  
25 start negotiating again.

1                   And ultimately that might speed up the  
2     process a bit. I am for getting more projects  
3     developed quicker so we are looking at trying to  
4     make this happen in a more effective way. And  
5     from a development perspective you want to see  
6     what the utilities want. We want them to tell us  
7     where they want us to build if that's an important  
8     criteria for them.

9                   You know, there are some -- I just  
10    briefly wanted to talk about some alternative  
11    models because I think you had raised those in  
12    some of your questions. I actually like the  
13    Energy Commission model. You too had gone through  
14    a long proceeding on this related to  
15    confidentiality. I actually think you got it  
16    better when your -- the burden of proof -- your  
17    presumption was that things were going to be  
18    transparent. The burden of proof was for parties  
19    to basically make the case why a particular data  
20    element shouldn't be publicly available.

21                  And there may be good reasons why  
22    certain types of data should not be publicly  
23    available. I recognize that. I think even for  
24    bidders there's certain types of data, patent data  
25    or other things that are very proprietary and



1       ought not to be publicly revealed. But the burden  
2       of proof I think the way you have set it up here  
3       is a little higher to make that case and I think  
4       that's a more appropriate way to deal with it.

5               The other thing that is missing today,  
6       particularly at the Public Utilities Commission,  
7       is a reasonable protective order. As a market  
8       participant I can get a reviewing representative,  
9       theoretically, to participate in these processes.  
10      But when you actually read the latest version of  
11      the protective order, I can't get anybody who  
12      knows anything about energy to sign that and  
13      represent me in that process.

14             My lawyer won't sign it because he is  
15      currently active, talking with other people in the  
16      world today about energy. And he is concerned  
17      that if he were to sign that document he would be,  
18      he would be violating some of the things that he  
19      signed. So he won't sign it. So I often get  
20      stuck outside the door.

21             Typically in these kinds of things --  
22      We've advocated for a protective order, a  
23      reasonable protective order similar to the ones  
24      that are used at FERC. The legal profession has  
25      got a long history of, a tradition that says, when

1 I sign a protective order I am going to adhere to  
2 it. And if you sign a protective order that you  
3 are not going to disclose the confidential data  
4 people generally think that that's what you are  
5 going to do. That's kind of the code of ethics.

6 It works at the federal level. We think  
7 it ought to work at the Public Utilities  
8 Commission. But the protective order they have  
9 got today is not something that my lawyers will  
10 sign. It would be interesting if you as a  
11 Commission could take a look at that and determine  
12 whether you would be interested in having any of  
13 your people sign it or whether it works in the  
14 marketplace.

15 Commissioner, you posed the question  
16 whether this process served customers. And we too  
17 are interested in serving customers. We serve  
18 them through the utilities and entering into a  
19 long-term PPA or whatever. So we share that  
20 interest.

21 I think when you evaluate the process  
22 that we are in today you really need to look at,  
23 are we getting projects interconnected. Is the  
24 process working the way people would anticipate  
25 that projects would be getting interconnected.

1 You probably heard my question earlier to the IE.

2 I know I have heard of people that are getting  
3 selected that don't have site control, don't have  
4 transmission and may not have commercially  
5 operable technologies. And they are getting  
6 chosen over other people that are complaining that  
7 they are available.

8 Now I don't know enough and don't have  
9 access to enough data to really evaluate that but  
10 I think we ought to look at that. We have  
11 actually asked the Public Utilities Commission to  
12 audit this process early on this year and they  
13 declined to take us up on that.

14 But it would be important to know if  
15 viable projects are not being selected that could  
16 come on-line sooner rather than later and why.  
17 Maybe it is cost. Maybe there's other reasons but  
18 it is important to know that. Because in all  
19 probability we are not going to meet the RPS goal  
20 for 2010. And you know we are setting ourselves  
21 up for a hard test in 2020 and it's important to  
22 get ahead of the curve on here.

23 The other thing to ask is, in a post-  
24 MRTU environment where we are going to have  
25 locational pricing up and down the state

1       apparently, if that ever gets in place, and you  
2       are going to see real time pricing.

3               Is it so important to have a shield of  
4       confidentiality over some of the pricing data or  
5       not? I don't know. It's something that I think  
6       we need to look at. There's going to be very  
7       publicly available pricing data from all sorts of  
8       different types of generation in a different kind  
9       of market. Really kind of a real time market, but  
10      it is going to be there. And it is going to set  
11      the tone for some of the other stuff that is going  
12      to be happening. People will be looking at that.

13             So I think one of the things you could  
14      do is be looking at the context of post-MRTU and  
15      determining whether the shield of redactedness is  
16      something that has a place in that world. Or is  
17      it another shield for creating impediments.

18             And as I said, I think there's a process  
19      question at the PUC where parties are treated  
20      unequally in the same proceedings that needs to be  
21      addressed here and it hasn't been addressed yet  
22      and so I bring it to your attention. And those  
23      are my remarks.

24             PRESIDING MEMBER BYRON: Thank you,  
25      Mr. Kelly. My understanding as I read through all

1       this material is that there is concern on the part  
2       of the IOUs, both on behalf of customers, on  
3       retaining data as confidential, but also on behalf  
4       of bidders. And I have heard that stated to me as  
5       well. Can you give me a sense. Is there bid data  
6       that your members provide that is indeed  
7       confidential from their perspective?

8               MR. KELLY: Well we've over the years  
9       had big discussions about this. We've come out  
10      with the message that greater transparency is  
11      better, recognizing though that there could be  
12      some data that is particularly market sensitive.  
13      As I had indicated in my prior comments, the one  
14      element that popped up repeatedly was, well, if I  
15      got a certain kind of patent that's a secret  
16      thing, you know. Okay, fine, that kind of stuff.

17             The other context has come up in whether  
18      or not all bidders should release data are just  
19      the winning bids. You know, in terms of public  
20      disclosure of who won. And I've thought about  
21      this a bunch. In a context in California today  
22      where there are multiple RFOs out on the street  
23      and multiple negotiations going on I don't think  
24      we are in a situation where having just the bids  
25      before you selected the winner being publicly

1 released. Because that is likely going to skew  
2 negotiations that you are doing somewhere else.  
3 And I think it might send a bad market signal.

4 I have to think about this a little bit  
5 more but my initial reaction is that in an  
6 environment where a developer might be bidding a  
7 single project or a facsimile of a project in  
8 multiple locations there could be, you could see  
9 resistance for releasing that initial, that data.  
10 Once somebody has been selected I have generally  
11 heard from my members that they are okay with more  
12 transparency.

13 PRESIDING MEMBER BYRON: I am not  
14 familiar with the RFOs between different IOUs,  
15 which is, I assume, what you are referring to when  
16 you say bids could be submitted at different  
17 locations. But they have got to all be different.  
18 Even though the offer might be the same generation  
19 asset the power has to go out to a different  
20 location, it would have different requirements  
21 associated with it. There would be a lot of  
22 reasons why the bidder might provide different  
23 bids, correct?

24 MR. KELLY: There could be, yes. There  
25 well may be a lot of reasons why it might be

1 different. One of the biggest is that, you know,  
2 you might have, you know. A bid submitted in  
3 January in this market today is going to be a lot  
4 different than a bid submitted in March, just  
5 because of the rising commodity costs.

6 But having said that, when you have got  
7 a group, a PRG group or something like that  
8 looking at all the bids simultaneously saying, why  
9 did you bid X in that solicitation and bid Y in  
10 this one. There is market power. You know, there  
11 seems to be a presumption that every time somebody  
12 bids a different price it is market power or  
13 something. So you have got those tensions. And I  
14 am not, I don't know how to deal with that quite  
15 yet. I have to think about this further, quite  
16 frankly.

17 PRESIDING MEMBER BYRON: Well, good.  
18 Because I think if the investor-owned utilities  
19 are going to make the case that they are also,  
20 they are not just protecting customers but  
21 protecting bidders from disclosing information,  
22 it's kind of difficult then to say open the bids  
23 and let's see what they say.

24 So I am reminded again of the  
25 construction industry where typically bids are

1 provided by a certain time and date and they are  
2 all opened in public. And that's not an optimum  
3 situation as well. Granted it's usually  
4 geographically centered in one place.

5 MR. KELLY: Right.

6 PRESIDING MEMBER BYRON: But all bids  
7 are disclosed and all information in those bids  
8 typically are disclosed. They don't have to be, I  
9 suppose. It's really the pricing and schedule  
10 that is important to everybody in that kind of  
11 situation. And then to hear you say that you are  
12 not sure your members are willing to have their  
13 information open to the public raises some  
14 concerns then about, why not.

15 MR. KELLY: Well like I say, I think  
16 it's because it is a competitive environment.  
17 Each of my members is competing with the other 35  
18 members of my association.

19 PRESIDING MEMBER BYRON: And the  
20 consumer wants the lowest price.

21 MR. KELLY: Right.

22 PRESIDING MEMBER BYRON: And the next  
23 bid. One concern is that everybody will bid up to  
24 the bottom of the selection on the next bid. But  
25 the reality is every RFO is different in the



1 construction industry and I suspect here as well.

2 MR. KELLY: Right.

3 PRESIDING MEMBER BYRON: And they have  
4 to compete. They are not going to get selected  
5 unless they are willing to compete lowest price.

6 MR. KELLY: And the concept of  
7 competition is something that we adore, so yeah.  
8 I am not seeing -- Maybe this is going on but I am  
9 not close enough to see this. But my impression  
10 is that there is a higher probability that people  
11 are bidding, low-balling their bids than high-  
12 balling their bids.

13 PRESIDING MEMBER BYRON: Good.

14 MR. KELLY: It's good if you can  
15 actually build your project. It's not good if you  
16 go through a 12 month process after you low-balled  
17 and your project can't come on line.

18 PRESIDING MEMBER BYRON: Well then you  
19 shouldn't be bidding.

20 MR. KELLY: That's why I would like to  
21 see project viability. The matrix on bid  
22 selection be more transparent so that we can try  
23 to create a process to eliminate or reduce those  
24 kinds of bids.

25 PRESIDING MEMBER BYRON: All right.

1 Well I would ask -- Before I turn to the Chairman  
2 I would ask that within your organization you  
3 really evaluate whether or not you would be  
4 willing to have bidding information be made  
5 public. I think that would be the beginning of  
6 opening this process up. It may not be the end  
7 but it certainly could be the beginning. It's  
8 hard to argue if we were to open up the  
9 procurement process if you are not willing to  
10 disclose your bidding.

11 MR. KELLY: I will take that up.

12 PRESIDING MEMBER BYRON: Thank you.

13 Madame Chairman.

14 ASSOCIATE MEMBER PFANNENSTIEL: Just  
15 quickly. On the question of what could be  
16 released. And actually in that you commented that  
17 you are hearing that people are low-balling their  
18 bids. Is that true for both renewables and non-  
19 renewables or more one or the other?

20 MR. KELLY: Well, like I say, this is  
21 just my impression. Just because no projects are  
22 really getting interconnected and I am frustrated  
23 with that. I am seeing it more in the RPS  
24 environment I think. Over the last four years we  
25 have only had 450 megawatts of new renewables

1       interconnected. I think during that time we have  
2       had a lot of new fossil. Obviously the new fossil  
3       has been able to move forward to completion. I  
4       don't know all the reasons why all the renewables  
5       aren't moving forward but I find it frustrating.

6               ASSOCIATE MEMBER PFANNENSTIEL: Thank  
7       you.

8               PRESIDING MEMBER BYRON: Does anyone  
9       else have any questions for Mr. Kelly?

10              CPUC ADVISOR ST. MARIE: I do.

11              PRESIDING MEMBER BYRON: Please,  
12       Mr. St. Marie.

13              CPUC ADVISOR ST. MARIE: Mr. Kelly,  
14       could we get a definition of low-balling. I was  
15       under the impression low-balling means bidding  
16       lower than you are really willing to supply and  
17       that that bid will eventually either go away or it  
18       will be revised upward. As opposed to bidding low  
19       and perhaps lower than you would otherwise be  
20       willing to supply in some other market at some  
21       other time. Could you distinguish between those  
22       two. And were you are referring to low-balling  
23       the way I defined it just now?

24              MR. KELLY: I think I was referring to  
25       your first illustration.

1 CPUC ADVISOR ST. MARIE: Okay.

2 MR. KELLY: Where somebody --

3 CPUC ADVISOR ST. MARIE: Low-balling  
4 where someone bids and then has really no  
5 intention of supplying at that low price.

6 MR. KELLY: Or can't.

7 CPUC ADVISOR ST. MARIE: Okay, or  
8 cannot, okay. One thinks of contractors low-  
9 balling in order to get the job. Then once you're  
10 halfway into the project suddenly the real costs  
11 become apparent.

12 MR. KELLY: Right. And I am actually  
13 thinking of the former. Because I don't see  
14 people getting to that point where they come  
15 halfway through the project and say, oh my, I  
16 can't do this.

17 CPUC ADVISOR ST. MARIE: Okay.

18 MR. KELLY: There is something else  
19 going on I think.

20 CPUC ADVISOR ST. MARIE: So you are not  
21 making a statement then about bidding theory in  
22 which it might be strategic to bid low secretly  
23 against your public reputation for never bidding  
24 below market, or something like that.

25 I'm thinking about reasons why people

1 may not wish to have their bids revealed. And one  
2 reason not to wish to have your bid revealed is,  
3 if I don't win this I sure don't want the next  
4 person to know that I was willing to supply  
5 turbines at a lower price than I state on the  
6 public record. So that's not what you were  
7 talking about. You were talking about low-balling  
8 in the sense of bidding below the price that you  
9 really intend --

10 MR. KELLY: To build the project, yeah.  
11 I mean, one of the problems we've got in this  
12 issue. And I think this refers to your second  
13 example. When it takes 12 to 18 months from your  
14 bid to get final PUC approval. In this market  
15 today the costs are going to go through the roof  
16 and you are going to get kind of stuck.

17 CPUC ADVISOR ST. MARIE: Right.

18 MR. KELLY: We've got that problem,  
19 we're trying to work about that, right. Trying to  
20 get this to go quicker. But you are going to get  
21 stuck. You've got a bid that was good when you  
22 made it and you are six months down the road. And  
23 now that bid is out of money and you're kind of  
24 stuck. So we have renegotiations, whatever we do.  
25 I am not talking about that example because that

1 is something that no bidder -- everybody is facing  
2 with that I think, whether it's renewable or  
3 fossil.

4 PRESIDING MEMBER BYRON: Right.

5 MR. KELLY: I am really talking about  
6 somebody who doesn't have a practical chance of  
7 building their project and coming in with a price  
8 that is quite low and seemingly --

9 CPUC ADVISOR ST. MARIE: Deliberately.

10 MR. KELLY: I'm just frustrated things  
11 aren't getting built.

12 PRESIDING MEMBER BYRON: You read all  
13 the RFOs. You see the --

14 MR. KELLY: No, actually I don't have  
15 time to read most of the RFOs. They're huge.

16 PRESIDING MEMBER BYRON: Okay.

17 MR. KELLY: And the ones I see are  
18 redacted.

19 PRESIDING MEMBER BYRON: No, the request  
20 for offers. That is a public document.

21 MR. KELLY: I read parts of them.

22 PRESIDING MEMBER BYRON: Well, have you  
23 gotten any feedback from members that there's been  
24 certain criteria in these requests for offers that  
25 seem to preclude certain projects from being able

1 to bid?

2 MR. KELLY: Well we filed a letter with  
3 the Public Utilities Commission complaining about  
4 the PG&E RFO, a recent one, because it seemed to  
5 exclude existing resources. You had a discussion  
6 about that earlier.

7 Our position is, this was a non-RPS I  
8 think solicitation but it was seeking resources,  
9 perhaps for reliability or whatever. In our view  
10 a megawatt is a megawatt or a megawatt hour is a  
11 megawatt hour, particularly in the non-RPS  
12 context, and don't understand why you would create  
13 a solicitation for just new resources when  
14 existing resources might be available. Now they  
15 may be too expensive but they ought to be able to  
16 bid. And we'll find that, we'll test that out.

17 The only reason, in my mind, that you  
18 would do that is because you know you can retain  
19 the existing resource without securing them under  
20 a long-term or medium-term contract at a pretty  
21 cheap price. That's the ISO's role, right?  
22 That's what in my view is going on.

23 It's prudent tactics to say, we are  
24 going to keep the resource tied to the system  
25 through the ISO tariff and get it at a much

1 cheaper rate. But I think in the long run it is  
2 counterproductive. It doesn't send good signals  
3 to the marketplace. Particularly not good  
4 repowering and investment signals to some of those  
5 generators that are out there that might be older.

6 PRESIDING MEMBER BYRON: Okay, no more.  
7 Oh, Mr. Florio.

8 MR. FLORIO: Yes, just a question for  
9 Mr. Kelly. I listened carefully to your comments  
10 and it seemed like you have a lot of concerns  
11 about what goes on at the PUC but most of them  
12 exist independent of the PRGs.

13 MR. KELLY: I think that's right. I  
14 prefaced my comments by saying that when I think  
15 of the PRG I think of it in the context of this  
16 data. A broader issue which is data access,  
17 confidentiality.

18 But there is this concern which I  
19 described that the PRG provides an additional  
20 venue available to some parties in PUC proceedings  
21 and not others to discuss a lot of issues, conduct  
22 discovery, do all these things not in a  
23 transparent manner.

24 For example, I might be interested in  
25 knowing the answer to DRA's discovery question,



1 had they done it in a formal proceeding. But if  
2 they have already addressed it in the PRG, one, I  
3 don't know that they have the question and two, I  
4 don't know the answer.

5 MR. FLORIO: But even if there weren't a  
6 PRG, TURN and PG&E could have a meeting and agree  
7 to keep what they talk about confidential. Just  
8 as I could have a meeting with one of your members  
9 and agree to that.

10 MR. KELLY: Yes. But I think it's --  
11 Based on the discussion this morning I get the  
12 feeling that a lot more is going on that should be  
13 going on in the actual proceeding.

14 MR. FLORIO: But it is before the  
15 proceeding even happens.

16 MS. KHOSROWJAH: I would like to add to  
17 this.

18 PRESIDING MEMBER BYRON: Ms. Khosrowjah.

19 MS. KHOSROWJAH: Because Mr. Kelly  
20 mentioned DRA. Whatever that we do the discovery  
21 is in the public. Like what you see in Long  
22 Beach. For you in order to get that information  
23 you need to get involved in the proceedings at the  
24 Commission when the utilities come in, like DRA  
25 and TURN do. When the utility comes in with

1        advice letter, application, you should protest  
2        them and ask for discovery. And you are going to  
3        receive the information based on confidentiality.

4                I just want to comment. Most of your  
5        discussion had nothing to do with PRG. It has  
6        just to do with the confidentiality issues at the  
7        Commission.

8                PRESIDING MEMBER BYRON: He agreed, he  
9        agreed.

10               MS. KHOSROWJAH: And I thought you were  
11        going to talk the merits of the PRG. But you just  
12        don't like it. It's different than -- I am just  
13        surprised what PRG has to do with all this. We  
14        can meet with the utilities and we do meet with  
15        utilities on issues that's not covered in PRGs.  
16        We ask them for information. So we are doing this  
17        in PRGs to just --

18                It sounds like you want things to be  
19        even quicker. How about if I tell you if PRGs  
20        weren't there things would be even slower.  
21        Because then we wouldn't agree on writing  
22        testimony in a week in a Long Beach case.

23                PRESIDING MEMBER BYRON: Okay.

24                MS. KHOSROWJAH: We wouldn't. I'm done,  
25        I'm sorry.

1                   PRESIDING MEMBER BYRON: We've got it.

2                   MR. KELLY: If I could respond real  
3 quickly on an example. I mean, they're right.  
4 All these conversations could occur in a less  
5 formal fashion outside of the PRG. They probably  
6 did historically. But by the time issues get to  
7 the Commission they seem they are getting  
8 resolved. And in an environment where we are  
9 trying to foster a competitive environment. And  
10 as was stated earlier, certainly TURN doesn't  
11 really care who builds some of this stuff, UOGs or  
12 IPPs. But I do, for example. We'll fight that  
13 one.

14                   Where these issues have been vetted  
15 formally within the PRG for a number of months  
16 about perhaps something as innocuous as gee, maybe  
17 the only way to do this is through some sort of  
18 UOG turnkey project, blah, blah, blah. There's a  
19 lot more discussion going on. And in the past  
20 that used to go on in the record, I think, and I  
21 don't sense it's going on now in the record.

22                   PRESIDING MEMBER BYRON: You know, I am  
23 going to go ahead and draw this discussion to a  
24 close. I found it far more troubling that  
25 Mr. Florio may have been disclosing that he is

1       having confidential conversations with PG&E that  
2       he is not disclosing.

3               Let's go ahead and move on. Thank you  
4       very much, Mr. Kelly. Ms. Turnbull, you have been  
5       very patient. And we are so glad that you are  
6       here representing the League of Women Voters and  
7       we would love to hear from you.

8               MS. TURNBULL: Thank you very much,  
9       Commissioner. I am Jane Turnbull. I am here on  
10      behalf of the League of Women Voters. Just to set  
11      it straight, the League is a nonpartisan political  
12      organization that encourages informed and active  
13      participation in government. It works to increase  
14      understanding of major public policy issues and  
15      influences public policy through education and  
16      advocacy.

17              It is based upon that that we are very  
18      interested in the Integrated Energy Policy process  
19      that the Energy Commission has put together and we  
20      commend the Energy Commission for all the good  
21      work that has been done over the past four years  
22      in this area.

23              I also would like to make the point that  
24      the League is also open to men. In California 25  
25      percent of our membership are men. And they, both

1 men and women, are interested in the energy issues  
2 across the state and we are trying to provide them  
3 with good information.

4 Before I get into my slides I would like  
5 to make a couple of comments based upon the  
6 opening remarks this morning of Commissioner Byron  
7 and Chairman Pfannenstiel. Commissioner Byron did  
8 speak to his perception of the lack of public  
9 understanding of the planning and procurement  
10 processes. And I think to a certain extent that  
11 is the case.

12 I am very glad that Mr. Florio pointed  
13 out that what we are talking about today are two  
14 different concerns. We are talking about  
15 procurement but we also are talking about  
16 planning. And I think to a certain extent the two  
17 have been melded and it is important to  
18 distinguish between the two.

19 Chairman Pfannenstiel indicated that she  
20 was looking for a new approach on the assumption  
21 that there is a broader public need that may not  
22 be currently being met. And I think that is  
23 really what the League is concerned about.

24 While AB 57 was conceived of in 2002 a  
25 great deal has happened over the last six years.

1 And the process of the PRGs was perhaps the right  
2 process six years ago but a great deal has evolved  
3 since that time.

4 We know that AB 57 came about because  
5 strategic planning was no longer the exclusive  
6 domain of the IOUs. We had a hybrid system that  
7 came about as the result of the transformation of  
8 an industry and we needed to find a way of having  
9 the state deal with that hybrid process.

10 Maybe this has worked very well for this  
11 period of time but I think there are some  
12 questions in terms of the actual effectiveness of  
13 the PRG process.

14 Over the last several years we are  
15 particularly cognizant of the increased complexity  
16 of the electricity system. Energy efficiency,  
17 demand side management, the RPS challenges,  
18 transmission corridor planning, smart grid  
19 developments, AB 32 implications, fuels price  
20 volatility are all issues that have become really  
21 a major consideration.

22 These are not issues that were really  
23 significantly on the plate in 2002. And I think  
24 we have to look at what strategic planning means  
25 today in light of those changes. And as Mr. Kelly

1       raised, the future also involves the MRTU. We are  
2       going to have local and regional impacts that we  
3       were really not cognizant of six years ago.

4               This is not to say that the State has  
5       not been doing a good job. Certainly the resource  
6       adequacy planning has evolved quite effectively  
7       And I think our State planning process begins to  
8       make some -- has begun to make some good sense.  
9       But this does not mean that that's adequate for  
10      the State as a whole.

11             The next slide speaks to broad societal  
12      impacts associated with the planning process.

13             We are concerned about the continued  
14      reliability of supply for all consumers at  
15      reasonable rate structures. I think TURN and the  
16      League are totally in concert on that. We are not  
17      always in agreement on everything but we certainly  
18      agree with that.

19             But we also very definitely are  
20      concerned about the sustainability issues. The  
21      greenhouse gas impacts, water use, land use, other  
22      air emissions. And those have to be on the table  
23      in the midst of the procurement process and the  
24      planning process

25             We also are concerned about the

1 increasing roles and responsibilities of local  
2 communities. We know our Attorney General has  
3 spoken out loudly and we know that our local  
4 counties and cities are going to have to be  
5 addressing the energy element in their general  
6 plans. This is something that is foreign to most  
7 small communities, most counties. They are  
8 frightened about this and they are going to need  
9 some kind of help along the way. Where they are  
10 going to get that help is not at all clear.

11 Transparency in decision-making is a  
12 League priority. It always has been.

13 We support the use of open meetings and  
14 workshops, the effective use of communications  
15 technologies, the importance of clarifying  
16 anticipated needs and challenges. We always ask  
17 for solid information and get rather frustrated  
18 when hyperbole seems to be the process.

19 This is not to say that all information  
20 should be in the public domain. We do accept the  
21 sanctity of certain contracts and indeed for a  
22 level of privileged information. But the basis  
23 for the decision process involving contracts is  
24 something that we feel should be in the public  
25 domain.



1           In addition we acknowledge that NIMBYism  
2   is a widespread phenomenon. I was pleased this  
3   morning that Mr. McClenahan spoke up about the  
4   problems that San Diego has been having in terms  
5   of implementing their resource portfolio in that  
6   part of the state.

7           I get trade press from that part of the  
8   state daily and see the extent to which there is a  
9   lack of public understanding and public  
10   appreciation of the real problems down there. I  
11   cannot believe that an entire population thinks  
12   that solar on the roof is going to solve all the  
13   problems for the next 20 years in San Diego but  
14   that seems to be the premise. The lack of public  
15   appreciation of the overall needs for the  
16   community is appalling.

17          And I have to say that someone is  
18   responsible for that. Some party is responsible  
19   for that. Where the blame lies, you can claim it  
20   if you want it. But it would be an awful shame to  
21   have San Diego really continue down the path that  
22   it has been working toward over the last couple of  
23   years.

24          I don't mean to point a finger but I  
25   think that is representative of a problem that

1       could be a statewide problem. NIMBYism is not a  
2       privileged commodity for San Diego.

3               Also the League is really supportive of  
4       what the Energy Commission has been doing in  
5       trying to foster land use planning at the state  
6       level. We think the interrelationship between  
7       sustainable energy planning and land use planning  
8       is tightly related. And the sooner that the State  
9       begins to appreciate it and incorporate it into  
10      all the thinking across the board the better off  
11      we will all be.

12             Also the League generally supports the  
13      importance of having the municipal utilities as  
14      part of any long-term planning process. The  
15      exclusion of 25 percent of the generation,  
16      assuming that they may be 25 percent of the  
17      generation 20 years from now, if they are not part  
18      of the planning process now this could be a  
19      critical omission.

20             And finally the last point that we would  
21      like to make is that we are experiencing a drought  
22      year. This is not the first year of a drought.  
23      It is probably the first of many years. And I  
24      think that the extent to which the procurement of  
25      energy and the dependance of our energy patterns

1 in the state relate to our water utilization  
2 patterns is critical. And that needs to be part  
3 of the procurement package that the State puts  
4 together.

5 Thank you for inviting us. I apologize  
6 for my voice.

7 PRESIDING MEMBER BYRON: No problem. So  
8 if you can bear a few more questions. Is there a  
9 reason why you representing the League does not  
10 participate in PRGs?

11 MS. TURNBULL: Well there's several  
12 reasons. I am not a lawyer. And the process of  
13 the PRG, and most PUC processes, are more  
14 litigious than the League finds as friendly.

15 PRESIDING MEMBER BYRON: I don't know, I  
16 think it is coming across as one big happy family.

17 (Laughter)

18 MS. TURNBULL: We really think that the  
19 workshop process that has been put together by the  
20 Energy Commission over the years has been very  
21 profitable. There are a great number of synergies  
22 that come out of the workshop venue.

23 I have to say there are a few PUC  
24 workshops that have been very useful. Pretty much  
25 the Energy Division I think deserves the credit

1       for those. But the style of the PUC process is  
2       certainly not one that is conducive to public  
3       participation.

4               PRESIDING MEMBER BYRON: Yes.

5               MS. KHOSROWJAH: I just want to say I am  
6       not a lawyer either.

7               (Laughter)

8               PRESIDING MEMBER BYRON: Yes. I don't  
9       think being an attorney is criteria for  
10      participation.

11              MR. McCLENAHAN: It's a hindrance.

12              PRESIDING MEMBER BYRON: You added a  
13      number of new elements, if you will, to this  
14      discussion and I suspect that many of your points  
15      apply not just to the procurement review group  
16      process that we are discussing here today.

17              I just have one last question with  
18      regard to what you meant by solid information, not  
19      hyperbole. Did that have to do in particular to  
20      anything with the PRGs? For instance, did it have  
21      to do with the concern that we are maybe  
22      speculating or taking some guesses as to what we  
23      are trying to protect against here?

24              MS. TURNBULL: Well I think the outcome  
25      of the contract negotiations that I see published

1 in the trade press do not present a comprehensive  
2 assessment of the likelihood of the completion of  
3 those contracts. The viability and the reality of  
4 what is proposed there is not something that the  
5 trade press can make a judgement on. And just  
6 posting the fact that 95 megawatts of something or  
7 other has been signed up as a contract for a  
8 particular part of the state is not necessarily a  
9 good indication of whether that 95 megawatts is  
10 really going to be an entity five years from now.

11 PRESIDING MEMBER BYRON: I see. Good  
12 point.

13 ASSOCIATE MEMBER PFANNENSTIEL:  
14 Ms. Turnbull, did the League participate in the  
15 PUC proceeding, or any of them that set the  
16 confidentiality rules?

17 MS. TURNBULL: No, we have not. We have  
18 participated in the resource adequacy discussions.  
19 We have participated in the energy efficiency  
20 development process and certainly the discussion  
21 of the RPS goals and the REC, the future of the  
22 REC. But from the perspective of policy  
23 development.

24 ASSOCIATE MEMBER PFANNENSTIEL: It does  
25 seem to me that when we are talking about the PRGs

1       there are two areas of transparency of information  
2       that we are concerned with. One is just the PUC  
3       rules on what is confidential and what isn't. And  
4       that's a process question that the PUC's  
5       procedures have determined. And I think the only  
6       way we can influence that is to go, you know, into  
7       another PUC process at some time in the future,  
8       trying to influence that.

9               The other is the question of how the  
10       workings within the PRG use information and  
11       whether any of that, you know, even within the  
12       existing PUC rules, whether that further hides or  
13       -- I don't think there is any intention of hiding  
14       but further obscures our ability to understand  
15       what is happening there.

16              Is that really the greater concern then  
17       within the PRG? Use of information.

18              MS. TURNBULL: I think as a result of  
19       the discussion today I have less confidence in the  
20       value of the PRG than when I arrived. I think the  
21       role of the independent evaluator has been made  
22       quite apparent. I think an incredible number of  
23       resources are going into a PRG process that may  
24       have very limited usefulness. I appreciate DRA's  
25       that it may have expedited discovery. But I think

1       that considering the numbers of very talented man  
2       hours that are currently going into a PRG, those  
3       hours might well be expended in a better way.

4               ASSOCIATE MEMBER PFANNENSTIEL:  Thanks.

5               PRESIDING MEMBER BYRON:  Ms. Turnbull,  
6       Mr. Cushnie indicated earlier they were out  
7       beating the bushes to see if they could find some  
8       more non-market participants for PRGs and I  
9       suspect Mr. Florio and TURN are getting rather  
10      lonely.  Have you ever considered becoming an  
11      intervenor and participating in PRGs?

12              MS. TURNBULL:  The League works as  
13      volunteers and I think our credibility is largely  
14      based upon that.

15              PRESIDING MEMBER BYRON:  So you think  
16      taking money would hurt your credibility.

17              MS. TURNBULL:  At this point I think it  
18      might, yes.

19              PRESIDING MEMBER BYRON:  I don't have  
20      any more questions.  Thank you so very much for  
21      being here, Ms. Turnbull.  If there's none other  
22      then we will turn to our most patient member of  
23      the panel, Ms. Sheriff.

24              MS. SHERIFF:  Thank you.  My name is  
25      Nora Sheriff.  I am here on behalf of the

1 Cogeneration Association of California and the  
2 Energy Producers and Users Coalition.

3 And CAC and EPUC share a common focus on  
4 the combined heat and power operational interest  
5 of their members. EPUC also has an interest in  
6 their end-user ratepayers and their end-user rates  
7 as large power users.

8 And I would like to make one  
9 distinguishing point on EPUC as opposed to TURN  
10 and DRA, who also represent ratepayers. TURN's  
11 focus, as I understand it, is exclusively the  
12 residential and small commercial customer class.  
13 DRA's primary focus is the residential and small  
14 customer class. EPUC focuses on the large  
15 ratepayers. Those ratepayer interests are not  
16 always 100 percent aligned.

17 So with that I would like to start by  
18 giving you an overview of the concerns that these  
19 combined heat and power groups have in terms of  
20 confidentiality in general and then two specific  
21 concerns with the PRG. And then I will provide  
22 some answers to your questions and end with a few  
23 recommendations.

24 The primary concern that combined heat  
25 and power groups have is that CHP has been mis-



1       classified as a market participant. And this I  
2       think stems from the fact that there is no  
3       recognition of the Public Utilities Commission's  
4       role as the regulator of the investor-owned  
5       utilities and the contracted-for electricity  
6       procurement. The confidentiality standards simply  
7       got that wrong. And the exemptions that they  
8       provided to the definition of market participant  
9       are simply too narrow.

10               When you look at the foundational law,  
11       the California Constitution, the Public Records  
12       Act, the Bagley-Keene Sunshine Act and also Senate  
13       Bill 1488 you realize that the process is supposed  
14       to err on the side of being more transparent, more  
15       open, more encouraging of public participation.

16               PRESIDING MEMBER BYRON: Excuse me. You  
17       also said something earlier about being mis-  
18       classified as market participants. Have any of  
19       your members participated in an RFO? Have they  
20       bid?

21               MS. SHERIFF: They have participated and  
22       bid but have -- To my knowledge, none of the  
23       utilities' RFOs, and please correct me if I am  
24       wrong. None of the utilities' RFOs that have been  
25       open to participation by qualifying facilities

1       have resulted in a successful contract awarded to  
2       that QF.

3               And I think the primary issue there is  
4       the fact that these operations are tied to an  
5       industrial process. This is cogeneration,  
6       combined heat and power. The production of  
7       electricity is really a byproduct of that  
8       industrial process. So when the utility's RFO  
9       goes through the least-cost/best-fit evaluation  
10      process. From what I understand, and again, this  
11      is from the outside looking in, I don't know the  
12      details.

13              PRESIDING MEMBER BYRON: We are all on  
14      the outside.

15              MS. SHERIFF: Okay. When it comes to  
16      that best fit criteria, even though you might have  
17      a very efficient baseload availability. If the  
18      utility isn't able to dispatch you that's a big  
19      ding on your bid and so you don't get it. I don't  
20      know that that's the case because they don't tell  
21      you where you went wrong in terms of your bid when  
22      you participate in the RFO.

23              The CPUC has set up a prospective QF  
24      program whereby they are setting, they have set  
25      the price. The PUC has set the price that these

1 combined heat and power QFs will get with the  
2 avoided cost contract. So the price is set and  
3 they are overseeing the development of the  
4 standard terms and conditions for the standard  
5 offer contract. So most of these units won't be  
6 going through the RFO process, they'll be getting  
7 a standard offer. Which is relatively heavily  
8 regulated by the PUC and the Energy Division is  
9 involved, as are the other utilities.

10 So the CHP QFs are in a situation where  
11 if they do participate in an RFO their bid is  
12 unlikely to win because they are simply not  
13 dispatchable. So they have a -- They pressed for  
14 and have gotten standard offer contracts to become  
15 available when it is finally negotiated.

16 And yet CAC and EPUC have still be  
17 classified as market participants, even though the  
18 contract price that they are going to get for  
19 their power sales to the utility is set by the  
20 Commission, by the Public Utilities Commission.  
21 And the terms and conditions by which they offer  
22 this power is also set by the CPUC. So it just  
23 seems to be that that classification is simply  
24 wrong.

25 There is an exemption, a price-taker

1 exemption from the definition of market  
2 participant, whereby if your price is set by the  
3 CPUC then you are not considered to be a market  
4 participant.

5 But that exemption is limited to those  
6 contracts that extend far out into the future.  
7 Many of our members have had contracts that have  
8 expired while they have been waiting for the QF  
9 program to become fully developed and that  
10 standard offer contract negotiation process is  
11 taking some time, as other members on the panel  
12 are aware.

13 So we think the price taker exemption is  
14 too narrow. It should simply be if your price is  
15 set by the PUC then you are not a market  
16 participant because you don't have an impact on  
17 what your price is.

18 There is also a combined heat and power  
19 exemption that says, if you do cogenerate your own  
20 power then we are going to exempt you from the  
21 market participant definition. However, that is  
22 only if you use all of your power onsite.

23 Now as you know, if you have a thermally  
24 matched combined heat and power unit, which is  
25 generally the most efficient form of this

1 technology, unless you have a significant amount  
2 of power needs you are going to have some excess  
3 power available.

4 And this CHP exemption doesn't permit  
5 you to make over the fence sales as permitted by  
6 218(b) of the Public Utilities Code. And it also  
7 makes you use all of your power onsite. So it is  
8 very narrow. I think it would be far more  
9 reasonable for that CHP exemption to say simply  
10 the majority of the power should be used onsite or  
11 over the fence with some of the power sold to the  
12 utilities.

13 So those are our basic concerns with the  
14 confidentiality standards. As Chairman  
15 Pfannenstiel mentioned at the beginning, this is a  
16 relatively broad topic. So let me focus in now on  
17 the PRG concerns that the CHP groups have.

18 First, when we look at the PRG  
19 membership. With all due respect to my colleagues  
20 on that side of the podium, we see the membership  
21 as being fundamentally unfair.

22 First, there is an utter lack of  
23 representation for customer generation departing  
24 load interests. And this gets to the question of,  
25 who is going to pay for this procurement. There

1 is a decision pending at the Public Utilities  
2 Commission in the 2006 long-term procurement plan  
3 proceeding on the applicability of the  
4 procurement's non-bypassable charge.

5 And in that proceeding we have asked for  
6 an exemption based in policy for all departing  
7 load served by combined heat and power. If that  
8 exemption isn't granted then those customers need  
9 to have a seat at the table in terms of the PRG.  
10 otherwise it is simply not fair to have these  
11 procurement decisions being studied, evaluated and  
12 made in a room where all of the other ratepayer  
13 interests are represented but our interests as  
14 customers who would be paying for part of it  
15 aren't sitting at the table. That is just not  
16 fair. And the same applies for --

17 PRESIDING MEMBER BYRON: So I take it  
18 you want to be at the table.

19 MS. SHERIFF: No, we don't. We would  
20 rather have that exemption and have that concern  
21 be completed mooted. So hopefully that will be  
22 the result that we get when we eventually get that  
23 decision from the PUC. I did just want to  
24 highlight that concern with the PRG membership.

25 The other concern that we have with the

1 PRG membership is the inability of combined heat  
2 and power QFs to participate when it comes to the  
3 PRG's future role for looking at whether or not a  
4 new CHP QF will get a utility contract. And I'll  
5 touch upon that in greater detail as I go through  
6 some of the answers to your questions.

7 CPUC ADVISOR ST. MARIE: Could you  
8 repeat that statement again.

9 MS. SHERIFF: The future role of the  
10 procurement review group in terms of evaluating  
11 whether or not a new CHP QF can get a contract  
12 over a utility's refusal for that contract. It's  
13 established in the QF Decision 07-09-040. Alluded  
14 to rather, it's described rather broadly.

15 And our concern there is the fact that  
16 there is no real ability for CHP QFs now as we  
17 have been defined, deemed to be wrongly we think,  
18 market participants. We don't have an ability to  
19 go in and participate in the PRG and argue our  
20 case, as it were.

21 Then turning to your specific questions.  
22 First, how do the utilities decide what to discuss  
23 and do the discussions cover items that are not  
24 specifically required. Not being in the room,  
25 don't know.

1                   But the 2006 long-term procurement plan  
2                   decision did direct the utilities and the PRG to  
3                   make agendas available on the utility websites and  
4                   make a calendar of meetings available and detail  
5                   who went. I didn't spend too much time over the  
6                   weekend looking for this information online but I  
7                   did spend some time and couldn't find it.

8                   MR. McCLENAHAN: San Diego's is online.  
9                   We'd be happy to send you the website.

10                  MS. SHERIFF: Thank you. PG&E?

11                  MS. WINN: As would PG&E. We  
12                  distributed the link to our calendar to the  
13                  service list for the long-term plan back in  
14                  February or March.

15                  MS. SHERIFF: Okay.

16                  MR. CUSHNIE: Edison also has an active  
17                  website and the link was distributed to the  
18                  service list. So we will provide that to you as  
19                  well.

20                  MS. SHERIFF: Thank you.

21                  PRESIDING MEMBER BYRON: And besides,  
22                  there's much better ways to be spending your  
23                  weekend.

24                  (Laughter)

25                  MS. SHERIFF: Duly noted. So to your



1 second question, how has the PRG's role evolved  
2 over time. I found this morning's discussion to  
3 be rather illuminating on that process. But  
4 again, our knowledge of the PRG's role in those  
5 discussions is limited to what's made publicly  
6 available. And the view from the outside looking  
7 in is that it's murky, it's opaque, it's non-  
8 transparent and it does make us uncomfortable.

9 PRESIDING MEMBER BYRON: If I could just  
10 interrupt you for a moment.

11 MS. SHERIFF: Certainly.

12 PRESIDING MEMBER BYRON: Mr. Cushnie and  
13 others have made a point of saying you want as  
14 much participation as you can on the part of  
15 customers. And I realize it is a PUC decision, or  
16 I suspect it is a PUC decision that the  
17 organization Ms. Sheriff says she represents is  
18 not -- I should say it positive. Yes, is a non-  
19 market -- they are a market participant and  
20 therefore cannot participate. What is your  
21 objection to their participation? Or do you have  
22 an objection?

23 MR. CUSHNIE: Well we do have an  
24 objection. We are argued strenuously at the CPUC  
25 that they are a market participant and therefore

1       should not have access to our confidential  
2       information.  It's confidential information.  The  
3       PRG doesn't always review confidential  
4       information.  What I heard Ms. Sheriff's concerns  
5       to be are they don't have access to confidential  
6       information.  I'd be happy to get into that  
7       proceeding here but --

8               PRESIDING MEMBER BYRON:  No, no, please.  
9       Thank you.  Am I correct?  It is a PUC decision  
10      that you are a non-market -- you are a market  
11      participant.

12             MS. SHERIFF:  It is a PUC decision and  
13      we do have an application for rehearing of that  
14      decision.  That has been pending since January of  
15      2007.

16             PRESIDING MEMBER BYRON:  Okay.  But it  
17      sounds like at least one IOU doesn't want you to  
18      participate either.

19             MS. SHERIFF:  I would bet that --

20             (Laughter)

21             PRESIDING MEMBER BYRON:  Let's take a  
22      guess.  It's probably all three.

23             MS. SHERIFF:  Right.

24             PRESIDING MEMBER BYRON:  Please  
25      continue.

1           MS. SHERIFF: Thank you. So turning to  
2           your third question, how well are the PRG's  
3           serving their intended purposes. Again, it is  
4           difficult to judge being outside of the room. But  
5           I do know that the PRG recommendations are not  
6           binding, they are simply advisory.

7           And based on the Edison Long Beach  
8           transaction where some of the PRG members voiced  
9           concerns over the relatively high heat rate that  
10          these units had, their age, the environmental  
11          limitations that would be placed on the number of  
12          hours they could operate, the very high cost, the  
13          greenhouse gas emissions associated with these,  
14          with these units.

15          It really concerns the combined heat and  
16          power groups when they look to the PRG, and based  
17          on the CPUC's prospective QF program, this is the  
18          group that we are supposed to turn to in hopes of  
19          overcoming a utility refusal to enter into a new  
20          CHP QF contract.

21          I don't know if the decision is or has  
22          been made that the PRG's role, for purposes of a  
23          new CHP QF is now going to be binding on the  
24          utility. That the utility can't simply disregard  
25          it. Or if it is similarly non-binding. And so

1       that really causes some concern for the members  
2       that we have that have a potential to put in new  
3       CHP units and expand the State's fleet of combined  
4       heat and power. So that's the area of the PRG  
5       role that does trouble us.

6               And then question number four, is  
7       California unique and is more confidential  
8       protection required here? Yes, of course  
9       California is unique. And my take on this is  
10      different from the rest of the panelists. I think  
11      I look to California as more a leadership role  
12      that it has taken in passing AB 32 and setting  
13      these greenhouse gas emissions challenges. And we  
14      are unique in taking that, that position in the  
15      fight against global warming.

16             That position I think argues against a  
17      response to, is more confidential protection  
18      required here. No. Less confidential protection  
19      should be given. We should be -- If we are taking  
20      a leadership position to show the rest of the  
21      western states and Canadian provinces, the rest of  
22      the country, the rest of the world how to take on  
23      global warming, then our procurement process and  
24      how the utilities procure electricity should be  
25      far more transparent than it already is.

1                   Because most of what -- I think most of  
2                   the effort in terms of meeting the AB 32 goals  
3                   seems to have been in the electricity sector. So  
4                   I think that would be my response to your question  
5                   number four.

6                   Question number five. Do the  
7                   confidential protections balance the need to  
8                   protect sensitive outcomes with the need to secure  
9                   sensitive information with the need to secure  
10                  efficient outcomes?

11                  Again it is difficult to judge. But our  
12                  position would be that you can protect information  
13                  through a reasonable protective order and increase  
14                  the participation. Have these determinations be  
15                  judged and the outcomes be analyzed with more eyes  
16                  looking at the process.

17                  I think our group, CAC and EPUC, can  
18                  bring a certain technical expertise in terms of  
19                  assessing the viability of a combined heat and  
20                  power operation that perhaps wouldn't be matched  
21                  by a utility or TURN or DRA.

22                  I think excluding our group from having  
23                  all of the information to give our feedback, our  
24                  critical analysis on the process, is detrimental  
25                  to the efficiency of the outcome. I know it is

1       certainly detrimental to the perception of the  
2       fairness of the process.

3               So I do think that if it were disclosed  
4       to all interested parties under a reasonable  
5       protective order, so you would still have some  
6       protection, there would be greater confidence in  
7       the outcome and you could possibly have greater  
8       efficiencies. So you have more critical eyes  
9       looking at the process.

10              Question six. Are there alternatives or  
11       steps now to take that could increase  
12       transparency? If you look at today's energy  
13       market, both the near-term variable costs are  
14       changing dramatically and relatively rapidly, as  
15       are the fixed capital installation costs.

16              Given these dramatic changes I suspect  
17       that what is discussed in the PRGs becomes stale  
18       relatively quickly. So perhaps there could be  
19       some consideration given to releasing the PRG  
20       documents within a certain time frame. Six  
21       months, a year, 18 months, depending on what the  
22       information is, how the market is changing.  
23       That's something to consider.

24              And in terms of the workshop process  
25       that we had in the 2006 long-term procurement plan

1 proceeding last year. CAC and EPUC participated  
2 in that proceeding. And we participated in the  
3 workshop on the PRG process and we participated in  
4 the working group conference calls.

5 And to a certain extent as the process  
6 wore on it became sort of a check the box, okay,  
7 we've discussed that. And so now we simply need  
8 to file a report saying, yes, this topic was  
9 discussed, even if no real resolution was reached.  
10 And that's a very frustrating place to be in if  
11 you are on the outside looking in.

12 I think in terms of the independent  
13 evaluator. I guess going on to question seven,  
14 the independent evaluator's role. I think it  
15 would add a neutrality, a level of objective  
16 analysis to the process. I am somewhat troubled  
17 by the fact that they have never ended up coming  
18 to a different result than the utility. But  
19 again, I am not sitting in the room. I don't know  
20 how that process works. But that does raise a  
21 question in my mind.

22 And then question eight. How to address  
23 the fact that the successes and failures are  
24 obscured by confidentiality concerns. Again that  
25 gets back to the point of, simply increase the

1 participation. Use a reasonable protective order  
2 and don't have these two classes of citizens,  
3 market participants and non-market participants.

4 If there is data to be protected do what  
5 they have done at FERC for years and years and  
6 what we used to do at the Public Utilities  
7 Commission. Simply release it under a protective  
8 order.

9 In terms of how can public -- question  
10 number nine, how can public discussion of  
11 significant issues that first surface in PRGs take  
12 place without violating confidentiality concerns.  
13 There can be use of aggregation, masking of  
14 possible identifiers, bidders' names, so on and so  
15 forth.

16 But then the question of how would these  
17 issues surface? I don't know how they would  
18 surface if it weren't for TURN or DRA making an  
19 issue or a point of it in their testimony that  
20 they file later on in the proceeding.

21 And that gets me back to my first point.  
22 The CPUC regulates the utilities. And they  
23 regulate the utility procurement. All of this,  
24 you know, information eventually comes before the  
25 PUC to make an assessment. Is this reasonable.



1 Do we think this is the right thing for  
2 ratepayers. Is it the right thing to meet our  
3 Energy Action Plan objectives, so on and so forth.

4 So the argument over needing a market  
5 participant distinction/non-market participant  
6 distinction I think really discredits that role.  
7 And the CPUC is a regulatory agency and that is a  
8 role that the serve. That's, I guess, our primary  
9 point.

10 So our recommendations, the CHP  
11 recommendations are to urge, ask the Energy  
12 Commission to in its IEPR urge the Public  
13 Utilities Commission to take a second look at its  
14 market participant definition and the exemptions  
15 and rule on the applications for rehearing that  
16 have been outstanding for over a year and a half.

17 Talk about increasing the public  
18 confidence. If parties raise legitimate questions  
19 and significant issues, and those questions and  
20 issues are simply disregarded, that doesn't serve  
21 to increase the public confidence in the process.

22 And simply answering the questions would  
23 go a long way I think to increasing the confidence  
24 in the process. And that, of course, in our minds  
25 would remove the EPUC and CAC market participant

1 designation because we are CHP-focused groups.

2 The prices that our members get for  
3 their power is set by the Commission. The terms  
4 and conditions of that power sale is generally set  
5 by the Commission. But regardless, even if it  
6 weren't. Even if they weren't avoided cost  
7 contracts, the PUC would still be the one to  
8 determine whether or not that would be a  
9 reasonable price to pay.

10 And then finally, permit new CHP QFs to  
11 participate fully in the PRG process when it gets  
12 to whether or not the new CHP contract should be  
13 awarded or not. And I guess that's a role of what  
14 the future of the PRG should be.

15 So thank you very much for inviting me  
16 to participate and offer you our view from the  
17 outside looking in. And I am happy to take any  
18 questions at the end of our day here.

19 PRESIDING MEMBER BYRON: Yes, I'm sorry  
20 that it is at the end of the day and we are in the  
21 home stretch now. You have introduced a lot of  
22 new points, many of which I was not aware of and  
23 familiar with. I guess I would ask if there's any  
24 response on the part of some of our PRG members  
25 here. What would help us understand this. She

1 speaks softly but they are strong words.

2 MS. KHOSROWJAH: And sounds more  
3 convincing as you are calmer. I just want to  
4 mention that DRA represents all the customers of  
5 California, residential or large customers.  
6 That's all the customers. And we try to represent  
7 the interests of all customers. That was a point  
8 that I wanted to make.

9 PRESIDING MEMBER BYRON: Yes, but  
10 nevertheless I think her point was well taken that  
11 you primarily represent residential and small  
12 commercial. I can remember as a customer  
13 approaching the Division of Ratepayer Advocates  
14 looking for some assistance and didn't get any.  
15 Perhaps because it was not an issue that DRA was  
16 concerned about. But I think the way she stated  
17 it was well-stated.

18 MS. KHOSROWJAH: Right, to this one.  
19 The other point that I would just like to make in  
20 general about today was most of -- I was just  
21 telling Mr. Florio that most of the discussions  
22 had to do more with confidentiality issues than  
23 PRG itself, which they are two separate things.  
24 And that's all I wanted to make as a point.

25 PRESIDING MEMBER BYRON: I was hoping

1        maybe some of the IOUs would address some of the  
2        concerns that she's raised about CHPs not being  
3        able to participate fully in the procurement  
4        process.

5                MR. McCLENAHAN:   Mike McClenahan, San  
6        Diego.   She did point out that her members are  
7        free to bid into the RFOs.   And we have been  
8        approached by QFs bilaterally to renegotiate their  
9        contracts.   I think that makes them full market  
10       participants.   Giving them our confidential  
11       procurement information would put us at a  
12       disadvantage if we were going to consider a  
13       bilateral or allow them to bid into an RFO.

14               MS. WINN:   And I would offer with  
15       respect to participating in the cost allocation  
16       mechanism group.   PG&E sought public nominations  
17       for end-use customer participation in that group.  
18       We received only two nominations from the direct  
19       access customer coalition but we received none  
20       from distributed gen customers.   So there has been  
21       an opportunity for them to participate.   In  
22       perhaps not the procurement review group but in  
23       other venues that are looking at our procurement  
24       costs and we have not heard from them.

25               MS. SHERIFF:   If I could respond really

1 quickly. My understanding is that as a designated  
2 market participating party neither EPUC nor CAC  
3 would be eligible to participate in the CAM PRG.

4 MS. WINN: Neither of those trade  
5 organizations but certainly an end use customer.  
6 For example, Robert Ule, who is with I believe JD  
7 Power Systems, is the customer representative on  
8 PG&E's cost allocation mechanism group for the  
9 direct access customer coalition. And a member of  
10 the organization itself cannot participate, but  
11 that individual customer can represent those  
12 interests.

13 PRESIDING MEMBER BYRON: And how many  
14 end-use customers are participating in this  
15 process?

16 MS. WINN: We have two. One is Robert  
17 Ule and the second is Caroline Kehrein, who has  
18 been a consultant on many energy issues. But she  
19 is not involved in the buying and selling of power  
20 to the utilities.

21 PRESIDING MEMBER BYRON: We could  
22 continue this discussion I suspect for a while  
23 longer. But I am going to draw it to a close and  
24 ask if you have anything else you wanted to add,  
25 or if there are any other questions for

1 Ms. Sheriff.

2 MS. SHERIFF: No, thank you very much.

3 PRESIDING MEMBER BYRON: Do we have  
4 anyone else on the phone that wishes to ask a  
5 question or anyone in the audience that has a  
6 comment or question that they would like to ask at  
7 this time?

8 MR. WOODWARD: If I may, Commissioner,  
9 just to add one other note.

10 PRESIDING MEMBER BYRON: Please  
11 introduce yourself.

12 MR. WOODWARD: Jim Woodward, California  
13 Energy Commission. It brought back some good  
14 memories and some tough memories when Sepideh said  
15 about the workload involved. I remember how  
16 intense it was to be dedicated to be on these  
17 PRGs, responsive and responsible.

18 And it is for the customer benefits I  
19 think of getting procurement in time. Resource  
20 adequacy, long-term procurement within a couple of  
21 years ahead. Long-term renewable energy and  
22 reliability for the system, the Cal-ISO system.  
23 It was a graduate school kind of education.

24 And I think the compliments that they  
25 have made about Energy Commission staff or their

1 appreciation really is about the people before me  
2 like David Vidaver, Connie Lenny, Ross Miller who  
3 served on PRGs from 2002 through 2006. And their  
4 insights really helped other staff like me that  
5 came to the electricity office later, about how  
6 things works, as Mike McClenahan said, on the  
7 front lines, in the complexities of real world  
8 procurement.

9 And we know a lot more about what the  
10 investor-owned utilities face in implementing  
11 decisions that are made elsewhere. And  
12 requirements, financial and elsewhere. I wish we  
13 had something like that for the publicly-owned  
14 utilities. It would be fascinating to sit in on  
15 their procurement decisions. Maybe a little  
16 farther out but they are more of a black box to us  
17 in that sense. Thank you.

18 PRESIDING MEMBER BYRON: Well thank you,  
19 Mr. Woodward. And I think it is pretty clear,  
20 given some of the comments from Energy Commission  
21 staff, that the staff that did participate in  
22 them, all of them I believe would prefer to  
23 participate and continue to do so in the  
24 procurement groups.

25 However, I am not the first commissioner

1 to take an interest in the procurement process.  
2 In our 2005 IEPR you are probably all aware that  
3 the Commission recommended that the PUC eliminate  
4 the use of PRGs in the procurement process,  
5 stating, quote:

6 "The Energy Commission  
7 believes that resources planning  
8 and procurement in California  
9 should be open and transparent to  
10 the public it serves."

11 And having joined this Commission two years ago,  
12 and realizing that indeed we had staff  
13 participating in that, seemed to be a little bit  
14 inconsistent with the recommendations of this  
15 Commission.

16 And the reason that I am concerned and  
17 interested in this, and I believe my Associate  
18 Member on the IEPR Committee is as well, is this  
19 affects so many different aspects of the energy  
20 policy in the state. It affects the  
21 implementation of the renewables and the RPS  
22 legislation. It affects whether or not we are  
23 ever going to get to a competitive market for  
24 generation.

25 It affects the environmental



1       considerations of this Commission in the siting of  
2       power plants. That is not really considered in  
3       the procurement process. It affects an AFC  
4       backlog and a lot of resources that go into  
5       permitting, if you will, power plant applications  
6       that may not be getting built. It affects this  
7       notion that we are supposed to be retiring aging  
8       power plants and replacing them, which does not  
9       seem to be happening as a result of this  
10      procurement process.

11               And it also affects, as Ms. Sheriff  
12      pointed out, the impact on some of this  
13      Commission's recommendations and the State's  
14      policy around combined heat and power and  
15      distribute generation. I don't mean to prejudge  
16      those but they are clearly all linked to the  
17      procurement process.

18               You know, I learned a number of things  
19      today and I just wanted to note a couple of them.  
20      The record speaks for itself.

21               Clearly AB 57 has put the IOUs back in  
22      the procurement process. Back in the procurement  
23      league. And what was intended as a temporary  
24      solution, that is the PRGs, has become permanent.  
25      And although it has been approved many times over

1 the last number of years the question remains, has  
2 it really solved the fundamental problem that we  
3 are trying to address here.

4 I was also struck by the comment, it's  
5 the worst process but for all other processes.  
6 And I don't know that I accept that as a good  
7 enough argument to continue down this path. The  
8 PRGs are clearly schools on procurement and offer,  
9 in the words of some of our panelists today,  
10 collaborative forums. And it is pretty clear that  
11 the members of the PRG are interested in seeking  
12 additional input from any and all sources that can  
13 qualify to be members.

14 It is also clear, and I said this  
15 earlier, that the PRGs do seem to be one big happy  
16 family.

17 MR. FLORIO: You should come to one of  
18 our meetings.

19 (Laughter)

20 PRESIDING MEMBER BYRON: And you like  
21 the members of our staff. All of you seem  
22 unanimous on the point to have them rejoin. And  
23 it is so good that the capabilities of our staff  
24 are missed, we appreciate that very much.

25 And just a note on what we learned about

1 the independent evaluator. They certainly add an  
2 additional level of evaluation and comfort. At  
3 least I feel more comfortable. But I am reminded  
4 of that Dr. Seuss story you may recall about the  
5 bee that is pollinating the flowers. To make sure  
6 that the bee did its job we had to have a bee  
7 watcher. And then there had to be a bee watch  
8 watcher. And I feel pretty comfortable that we  
9 have got the bee watcher in place. But again,  
10 that still raises some concerns because of the  
11 fact that this is all done in a confidential  
12 structure.

13 But perhaps the two biggest concerns  
14 raised that became clear today to me, that we  
15 still have, at least within the IOUs, the same  
16 company that is doing the procurement that is now  
17 also participating in it. And I think this raises  
18 a lot of questions that are not mitigated by the  
19 procurement review groups, not in my mind.

20 And I think fundamentally the PUC may be  
21 abrogating their responsibilities of oversight in  
22 this regard. And again, that is not a disparaging  
23 comment about anyone in this room. I think that  
24 is the role of the PUC.

25 The limited exposure of the procurement

1 process. Let me see, I am going to collect my  
2 thoughts here for a moment. And the fundamental  
3 issue is because the procurement process has such  
4 limited exposure, because of the confidentiality  
5 of the data, is really the fundamental issue that  
6 we are all struggling with. I suppose that  
7 reminds me of another children's book. That one  
8 was called Never Ending Story.

9 So a couple of thoughts come to mind for  
10 consideration, that we will certainly take into  
11 consideration, and one was just brought up. That  
12 is that the IOUs are not the only buyers of power  
13 in the state.

14 I have been spending time talking with  
15 POU's and trying to understand the way the  
16 publicly-owned utilities, or munis, order power.  
17 And let's just say, the implication just a moment  
18 ago was that they do it under a lamp shade as well  
19 and they do not. I think they provide the  
20 necessary protection to their customers in a much  
21 more open and transparent process and I intend to  
22 learn more about that.

23 I also think that having been on this  
24 Commission for a couple of years now I think we  
25 have got it right. At least we are fortunate

1 enough to do it this way. Where we conduct  
2 everything in the public, everything is  
3 transparent, nothing is kept confidential except  
4 as required by law.

5 And I am also reminded of my example of  
6 the construction industry. I recognize that there  
7 may indeed be differences between that industry  
8 and this one. But when regulators get involved in  
9 trying to control a bidding process I think we  
10 tend to create unintended consequences. The  
11 parallel for me works very well in the  
12 construction bidding industry.

13 Having said all that I would like to  
14 thank everyone. And I would assume that you are  
15 all glad to be here, seeing as how you need to get  
16 as much exposure and answer all these questions in  
17 the public as you can to increase our confidence  
18 and the confidence of the public around this  
19 process. Nevertheless I do very much appreciate  
20 you taking your entire day to be here. Madame  
21 Chairman, anything?

22 ASSOCIATE MEMBER PFANNENSTIEL: Let me  
23 also thank everybody. I think that while perhaps  
24 you didn't convince us of what you wanted to  
25 convince us of, which is to let the staff go back

1 on the PRGs, I think you did help us understand  
2 them. What they are and what they aren't. We  
3 came into this with some concerns, obviously,  
4 which is why we scheduled this.

5 And as I said at the outset, it's not so  
6 much about the PRGs as about procurement. And I  
7 think that you have helped us understand that  
8 process fundamentally better. So thank you all.

9 PRESIDING MEMBER BYRON: Thank you. We  
10 will be making some recommendations in the IEPR  
11 and we will be vetting those in public. You are  
12 all welcome to attend. Thank you for being here.

13 (Whereupon, at 4:30 p.m., the Committee  
14 Workshop was adjourned.)

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## CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Integrated Energy Policy Report 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 25th day of July, 2008.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345□