SITING COMMITTEE WORKSHOP

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Order Instituting Proceeding (OII) on Methods for Satisfying California Environmental Quality Act Requirements Relating to Greenhouse Gas Emission Impacts of Power Plants	)	Docket No. 08-GHG OII-1

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 19, 2008

9:00 A.M.

ORIGINAL

Reported by:
John Cota
Contract Number: 150-07-001

COMMISSIONERS PRESENT

Jeffrey Byron, Presiding Member

Karen Douglas, Associate Member

ADVISORS PRESENT

Panama Bartholomy

Susan Brown

Laurie Ten Hope

STAFF PRESENT

Eileen Allen

Joe Bubbico

Matthew Layton

Richard Ratliff

Paul Richins

Sabrina Savala

Claudia Uresti

David Vidaver

PUBLIC ADVISER

Nick Bartsch

Elena Miller

ALSO PRESENT

Manuel Alvarez
Southern California Edison

Mike Boyd (via telephone)
CAlifornians for Renewable Energy (CARE)

Marc Campopiano
Latham & Watkins

Rory Cox
Pacific Environments
Ratepayers for Affordable Clean Energy

Christopher T. Ellison
Ellison, Schneider & Harris
California Independent Energy Producers
Association

Scott Galati
Galati|Blek
Pacific Gas and Electric Company

Jeffery D. Harris
Ellison, Schneider & Harris, LLP

Laura Hunter (via telephone)
Environmental Health Coalition

Mark Krausse
Pacific Gas and Electric Company

Jane E. Luckhardt
Downey Brand
MMC, J-Power & Macquarie

Jesse N. Marquez
Coalition for a Safe Environment

Bruce McLaughlin
Braun Blaising McLaughlin, PC
California Municipal Utilities Association

Loulena A. Miles
Adams Broadwell Joseph & Cardozo
California Unions for Reliable Energy (CURE)

ALSO PRESENT (CONTINUED)

Taylor Miller
Sempra Energy

William Rostov
Earthjustice

Seema Srinivasan
Alcantar & Kahl, LLP
Energy Producers and Users Coalition

Rachel Tornek
California Climate Change Registry

Lisa Trankley
State of California Department of Justice
Office of the Attorney General

Mark O. Turner
Competitive Power Ventures, Inc.

Lucille Van Ommering
California Air Resources Board
Office of Climate Change

Matthew Vespa
Center for Biological Diversity

William W. Westerfield III
Sacramento Municipal Utility District

I N D E X

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

2 9:10 a.m.

3 PRESIDING MEMBER BYRON: Good morning,
4 everyone. And I am sorry we are a little bit late
5 getting started this morning. I would like to
6 welcome you all to a Siting Committee Workshop on
7 Greenhouse Gases from Proposed New Power Plants.
8 This is really a continuation of the October 28
9 workshop that Commissioner Douglas and I
10 conducted. And I think what we will do in just a
11 moment is we will go around the room and that way
12 we can all introduce ourselves and provide our
13 name for the court reporter.
14 I think you all know we have a very
15 expedited schedule that we are adhering to. I
16 would like to thank you all for accommodating the
17 date today, the date that we selected a few weeks
18 ago, for this workshop. Staff has put together an
19 excellent agenda. We have got some very good
20 panelists and I really look forward to the
21 information and the exchange today.
22 As you can tell the format that the
23 staff has chosen for us is one of inclusion. What
24 we are trying to do is accommodate as many of
25 those of you who plan to speak today or feel that

1 you will be contributing to the discussion to join
2 us at the table.
3 That doesn't preclude anyone else at
4 all. It is just to try and make that process a
5 little more expedited. We welcome others to
6 speak. In fact, Mr. Richins, do we have a
7 microphone for others to step up to? Mr. Richins,
8 do we have a microphone for those that should step
9 up to? So up to the podium. So please, we don't
10 mean to exclude anyone in any way. Again, we are
11 just trying to get those that did speak up at our
12 October 28 workshop an opportunity to be a little
13 closer to the microphone for this discussion.
14 The purpose of the workshop, as you all
15 know, is to solicit input and discussion on how
16 the Energy Commission's responsibilities under
17 CEQA can be met to assess greenhouse gas impacts
18 of proposed new power plants.
19 I am going to keep my remarks brief. I
20 will ask my fellow Commissioner, Karen Douglas, if
21 she has any remarks, and then we will just do some
22 introductions and turn it over to Mr. Richins.
23 Commissioner?
24 ASSOCIATE MEMBER DOUGLAS: I think I am
25 going to set a record for brief introductory

1 remarks. Thank you to everyone for being here.
2 And thanks especially to everyone who submitted
3 written comments, those are very helpful to us.
4 And with that, we have got a long agenda so let's
5 get started.
6 PRESIDING MEMBER BYRON: Well let's do
7 this. Forgive me, Mr. Richins, I think I mis-
8 spoke your name. Where are you? There he is.
9 Let's go ahead to Commissioner Douglas' left and
10 proceed around the table. It's not a race.
11 Please give us your name and association for the
12 benefit of the court reporter.
13 ADVISOR BARTHOLOMY: Panama Bartholomy,
14 California Energy Commission.
15 MR. RICHINS: Paul Richins, California
16 Energy Commission.
17 SENIOR ADVISOR BROWN: Susan Brown,
18 Advisor to Commissioner Boyd.
19 MR. MILLER: Taylor Miller, Sempra
20 Energy, SDG&E.
21 MR. KRAUSSE: Mark Krausse, PG&E.
22 MR. GALATI: Scott Galati representing
23 PG&E.
24 MR. ALVAREZ: Manuel Alvarez, Southern
25 California Edison.

1 MS. LUCKHARDT: Jane Luckhardt on behalf
2 of MMC, J-Power & Macquarie.
3 MR. WESTERFIELD: Bill Westerfield,
4 SMUD.
5 MS. MILES: Loulena Miles, CURE.
6 PRESIDING MEMBER BYRON: Ms. Miles,
7 could you speak it into the microphone, please.
8 That way folks on the phone will be able to hear
9 us.
10 MS. MILES: Loulena Miles, California
11 Unions for Reliable Energy.
12 PRESIDING MEMBER BYRON: Welcome.
13 MR. VESPA: Matthew Vespa, Center for
14 Biological Diversity.
15 MR. ROSTOV: Will Rostov, Earthjustice.
16 MR. ELLISON: Chris Ellison, Ellison,
17 Schneider and Harris, on behalf of the California
18 Independent Energy Producers.
19 PRESIDING MEMBER BYRON: Welcome.
20 MR. RATLIFF: Dick Ratliff, counsel for
21 the Energy Commission.
22 MR. LAYTON: My name is Matthew Layton.
23 I am with the air unit. I am going to make a
24 presentation on some of the proposals today.
25 MR. VIDAVER: Dave Vidaver, California

1 Energy Commission, the electricity analysis
2 office.
3 ADVISOR TEN HOPE: Laurie Ten Hope,
4 Advisor to Commissioner Byron.
5 PRESIDING MEMBER BYRON: Thank you all.
6 And as I said, anyone else is welcome to speak.
7 We do have an agenda that we are going to try and
8 follow and I am going to turn it over to
9 Mr. Richins to take us through that.
10 MR. RICHINS: Good morning and thank you
11 very much for attending. There are some handouts
12 on the table as you walked in, including the
13 agenda and some of the PowerPoint presentations,
14 just two of them so far, that we have handouts
15 for.
16 We set the room up in this manner so we
17 can have informal dialogue and free discussion of
18 ideas and concepts. We want to make sure that
19 everybody has an opportunity to speak and provide
20 their ideas so that the Committee can, you know,
21 receive your comments and the information that you
22 provide.
23 When you do speak please just state your
24 name for the court reporter and also for people
25 that are on the telephone, that would be helpful.

1 And if you also have business cards, if you could
2 provide that also to the court reporter that would
3 also be helpful.
4 Just little housekeeping things. On the
5 notice that we sent out for this workshop we have
6 comments, written comments due December 12, I
7 believe it is, for any additional comments that
8 you want to make as it relates to this workshop.
9 So those would be due December 12.
10 Let me go quickly over the agenda. We
11 have two panels set up today. We have a panel in
12 the morning that is going to cover CEQA baseline,
13 CEQA thresholds of significance and concepts or
14 proposals on evaluating greenhouse gas emissions.
15 Should you do it project-by-project, case-by-case,
16 or should you take a programmatic or a systemwide
17 approach?
18 So we have four speakers. Dick Ratliff
19 from the Energy Commission will be speaking, Will
20 Rostov from Earthjustice, Chris Ellison from
21 Independent Energy Producers and then Matt Layton/
22 Dave Vidaver will be talking about some concepts
23 that we wanted to throw out for you to consider.
24 And really they are concepts to stimulate the
25 dialogue and the discussion. They are by no means

1 anything that has been agreed upon or put forth,
2 they are just concepts and for illustrative
3 purposes only.
4 And then after the presentations, hold
5 your questions on the presentations until all the
6 presenters are through and then we will open it up
7 for discussion and comments in the roundtable.
8 And the roundtable then will follow to the lunch
9 hour. We will take a break at the appropriate
10 time for lunch and then after lunch we will
11 probably continue on the same topics for an hour
12 or so. And then we will go to the second panel,
13 which will be on mitigation.
14 So if it is determined that greenhouse
15 gases exceed the thresholds of significance then
16 what kinds of mitigation might be appropriate. So
17 that will be the discussion we will have in the
18 afternoon. And we have three speakers there: a
19 speaker from ARB, a speaker from the California
20 Climate Action Registry, and then the third
21 speaker from the Attorney General's Office.
22 So with that, as an overview, I will
23 turn it over to Dick Ratliff who will make the
24 first presentation.
25 MR. RATLIFF: Dick Ratliff, counsel for

1 the Energy Commission.
2 I was asked to speak about some of the
3 difficulties of doing a CEQA analysis for
4 greenhouse gases for power plants. It gives me an
5 opportunity to talk about the things that I think
6 are most difficult about that kind of an analysis,
7 with the hope that maybe we will discuss some of
8 them and get some ideas of what the answers might
9 be today.
10 Fundamentally we have got, I think, two
11 kinds of proposals for how that analysis ought to
12 be done. There are variations on those proposals
13 but I think there are two distinct paths and those
14 paths diverge greatly.
15 The first proposal I think is a category
16 of proposals that can be described or is described
17 as a zero baseline proposal. The other is, for
18 lack of a better term, called the electrical
19 system approach.
20 The zero baseline proposal has the
21 advantage of being very direct. It treats power
22 plant as if they are essentially a smokestack. It
23 measures the greenhouse gas emissions that come
24 out of that stack, it determines whether they are
25 significant and it requires that you mitigate it.

1 Its principal advantage is that of
2 simplicity. Its proponents would, I think, also
3 argue that it is fair and enforceable. It also
4 has the additional advantage of not tying the
5 agency up in trying to determine what the baseline
6 would be for this kind of analysis or what
7 thresholds of significance. It doesn't require a
8 threshold of significance, although it may employ
9 a threshold of significance.
10 Others would also point to the advantage
11 that in some ways it resembles what air districts
12 typically do when they deal with criteria air
13 pollutant analysis. They determine what is coming
14 out of the stack and then they require emissions
15 mitigation which is sufficient to offset those
16 added emissions.
17 But I think it is when we discuss the
18 analogy to the air districts that we begin to see
19 the problems that that zero baseline approach
20 actually presents to the analyzing agency. The
21 air district approach or the approach to criteria
22 pollutants is probably the most comprehensive
23 approach ever devised by man for addressing a
24 cumulative impact. It is both federal, state and
25 regional in its enforcement mechanisms and it is

1 multi-sector. It engages everything from
2 transportation to the contents of paints to
3 stationary sources.
4 Secondarily, air districts when they
5 enforce criteria pollutant requirements have a
6 capped and very elaborate emissions inventory that
7 they are dealing with so they know the dimensions
8 of the problem. And they have been given a
9 performance standard by either EPA or CARB which
10 tells them what the goal is.
11 And since they have a multi-sector
12 approach they have a defined problem and they have
13 a defined performance standard. They are able to
14 actually determine what a threshold of
15 significance could be in that context which is a
16 great advantage. In addition to that they have
17 reliable offsets, which have been policed and
18 which have been vetted.
19 And by contrast the Energy Commission in
20 its analyses has none of these things. It has
21 only one portion of one sector, the electricity
22 sector. It is not retroactive in its approach, it
23 only has new power plants. It has no emissions
24 inventory which you can rely on in terms of the
25 global emissions of greenhouse gases. And it has

1 no absolutely certain or reliable mitigation bank
2 that they can use to provide offsets for
3 greenhouse gas emissions. And these are all, I
4 think, shortcomings of the approach that is
5 sometimes called the zero baseline approach so I
6 hope that today we will discuss some of those
7 issues.
8 The other approach is the electrical
9 systems approach. The advantage of that approach
10 is that it recognizes the complexities of the
11 electricity system. It views the proposed project
12 as one component of what might be described as a
13 big machine and that machine is the electric
14 generating system interconnected throughout the
15 western United States. It includes hydro imports
16 from Canada, it includes coal imports of
17 electricity from the mountain plants, nuclear
18 plants, renewables and so forth.
19 And it looks at the role of the power
20 plant in the operating system. The location of
21 that power plant, its function and whether or not
22 it would actually make the problem better or
23 worse, greenhouse gas emissions. In other words,
24 whether its effect on existing conditions, the
25 typical CEQA baseline, is positive or negative.

1 I think one of the advantages of that
2 approach is that it allows us to look at the role
3 a particular power plant might play in that
4 system. For instance, if you have a solar
5 facility, a solar generating system, but it has
6 emissions because it uses a boiler to get the
7 system up to speed in the mornings, that has
8 greenhouse gas emissions.
9 But I think we can say with some
10 certitude that that doesn't actually -- those
11 emissions don't make the project a significant
12 adverse impact. The overall effect of that
13 project is, I think most people would agree, a
14 positive impact because it reduces greenhouse gas
15 emissions for the entire electrical system. And
16 if you want to move down that continuum you might
17 say that peaker power plants in some locations
18 which integrate renewables into the system might
19 have a similar positive effect.
20 So in this manner you actually can look
21 at the effects of projects on a project basis and
22 you can make distinctions about the kinds of
23 projects and what their impacts are.
24 But the difficulties I think that the
25 electrical systems approach has are those of --

1 well, the analytic difficulties of determining
2 what exactly in that big, complicated system, the
3 impact of any individual plant would be. There is
4 a certain imprecision in trying to calculate
5 things, these effects, because the system is so
6 big and so complicated. It changes throughout the
7 day and it changes over time.
8 So when you try to determine what the
9 effect of a new power plant is within the context
10 of that system it is a very elusive task to get
11 any precise measurement of it. You might know
12 that adding a new power plant increases system
13 efficiency as a basic, underlying truth, but you
14 don't know to what extent that actually occurs.
15 Another disadvantage is the conundrum
16 that in the absence of cap and trade, if you build
17 fossil-fired power plants you may end up with a
18 system which has, due to load growth, greater
19 greenhouse gas emissions over time than you have
20 currently. And this would seem to, or at least is
21 arguably in conflict with the goals of AB 32 that
22 we be reducing greenhouse gas emissions,
23 presumably in the electricity sector as well as
24 other sectors.
25 And then finally tied to that

disadvantage I think you have the disadvantage that this increases the perception, both by the public and other agencies, that this is business as usual and that new power plants are not carrying the burden of mitigating their impacts as they should be. These, I think, are the problems that I see at least with the two approaches and I hope we have some discussion of those issues today.

MR. RICHINS: Okay, why don't we move to Will, Will Rostov from Earthjustice.

MR. ROSTOV: Hi, my name is Will Rostov and I am with Earthjustice. We did a letter with the Center for Biological Diversity, Communities for a Better Environment and the Community Environmental Council.

First I want to thank the Commission for allowing me an opportunity to speak early. I'm sure I'll have more comments as the day goes by so I won't spend that much time on my introductory comments. And I also appreciate that the Commission picked today as the day for the hearing as opposed to tomorrow, which has a conflict with AB 32.

So at first I wanted to just step back

1 for a second and talk about CEQA from the 10,000
2 foot level. I think sometimes CEQA gets lost in
3 -- when you start talking about all the details
4 you get lost about the fundamental purposes of
5 CEQA. And the fundamental purpose of CEQA is
6 public disclosure. It is really informing the
7 public and the decision makers about the
8 environmental effects of the projects that you are
9 siting.
10 And when you think about it from that
11 level, what are we trying to achieve by applying
12 greenhouse gases to, a greenhouse gas analysis to
13 power plant siting proceedings? What you are
14 trying to achieve is the reduction of greenhouse
15 gases. I think we all can agree that -- well,
16 most of us can agree. Most of the comments agree
17 that the introduction of greenhouse gases to the
18 environment is a significant cumulative
19 environmental effect and that we are now living in
20 a carbon constrained world.
21 So we have a real opportunity today to
22 really embrace CEQA and use CEQA, the power of
23 CEQA, to inform the public, inform the decision
24 makers about the problems building new fossil-
25 fueled power plants will create. The problems of

1 increasing greenhouse gases in the world and in
2 this state. So I think it is really important to
3 realize the public disclosure aspect of it.
4 A lot of the proposals from many of the
5 industry groups essentially propose a bunch of
6 exemptions, and those exemptions to CEQA would
7 essentially say, we are not going to analyze the
8 most pressing problem of the day. And I think it
9 is important to realize what we are talking about
10 is, we need to figure out what greenhouse gases
11 are going into the environment and how do we
12 address that problem from a siting perspective.
13 One more introductory remark would be, I
14 am here to advocate for the project-by-project
15 basis. And just a fundamental point is that
16 there's suggestion that there should be a
17 programmatic analysis. But right now there is no
18 programmatic document. And without a programmatic
19 document you cannot do a programmatic analysis.
20 So the place we are right now is, in a
21 situation where there are a lot of siting
22 proceedings going on and they are being done on a
23 project-by-project basis. There is no
24 programmatic document. So the only alternative,
25 because you are required under CEQA, the

1 California Energy Commission is required under
2 CEQA to analyze the greenhouse gases, is to do a
3 project-by-project analysis. I just really don't
4 see any other way out of the legal requirements of
5 CEQA right now.
6 The other preface I make is I think our
7 approach is consistent with the statute. When I
8 looked at many of the industry proposals I just
9 don't see them citing to the statute or really
10 proposing solutions that are consistent with the
11 statute.
12 So what does the project-by-project
13 approach get you? And I think it gets you what
14 CEQA wants you to get. It gets you an analysis of
15 an environmental impact. In this case it would be
16 analysis of the greenhouse gases that are being
17 put out by each project. And that's exactly what
18 the CEC does in every project they analyze. They
19 look at every environmental effect and then they
20 determine, are they significant.
21 So the first step in the analysis and
22 this grander idea of public disclosure is really,
23 what is this project doing. So the first thing we
24 think is very important is you have got to say
25 what the greenhouse gas emissions are. And since

1 the CEC has jurisdiction over power plants of 50
2 megawatts or greater, it seems like every one of
3 those power plants, fossil-fuel generating power
4 plants, are going to be, CEQA is going to be
5 applicable. So first you do the analysis.
6 Second CEQA requires, once you determine
7 that there is a significant effect, and a
8 significant effect is the emission of greenhouse
9 gases at this point, that the case of global
10 warming is real and it is right now. So putting
11 more emissions into the environment is the wrong
12 way to go. It's essentially, it is essentially
13 not allowed by CEQA. CEQA requires you to both
14 analyze and identify the significant effects and
15 then to mitigate or present alternatives to modify
16 the significant environmental effects. So what we
17 are advocating is essentially the application of
18 CEQA to greenhouse gases.
19 And if you look at it from a project-by-
20 project basis you can really dig into the
21 mitigations and the alternatives. And I think
22 that is the really important point here is looking
23 at alternatives. You know, alternatives can be
24 efficiency, they can be building.
25 You have to do two things. You have to

1 look at the project need. So say the project need
2 is a peaking power plant. If the project need is
3 a peaking power plant we can say, well, are there
4 alternatives. Are there alternatives such as
5 solar energy. Or if the project is proposed as a
6 baseload plant you could also consider, is this
7 baseload plant needed. Is there an alternative.
8 Is there a reasonably feasible alternative.
9 And when you are doing your alternatives
10 analysis I think it is really important to look at
11 where we are in terms of the energy system. Just
12 last week the PUC actually came out with a pretty
13 interesting report called the Renewables Portfolio
14 Standard Quarterly Report for October 2008. And
15 on page ten of that report it says something that
16 I found very interesting. And we would have cited
17 to it in our comments but it just came out after
18 our comments.
19 And it essentially states, if the state
20 is required to generate 33 percent of its energy
21 from renewable resources by 2020 then all new
22 procurement of new energy resources between now
23 and 2020 must be entirely renewable energy except
24 some new fossil for peaking capacity and to
25 replace aging fossil plants critical for renewable

1 integration.
2 If you look at power plant sitings on a
3 project-by-project basis and you are looking at
4 alternatives, you would need to consider this
5 fact. That if we are going to be trying to
6 achieve our 30 percent renewable standard, you
7 know, is this project going to be defeating our
8 purposes for attaining RPS.
9 So what you get by doing a project-by-
10 project analysis is an ability to like look into
11 local contacts. And also allow the -- this goes
12 back to the public disclosure idea. Allow the
13 people in that local community to really realize
14 what they are getting as part of the project. I
15 mean, I have been involved in a couple of power
16 plant siting cases over the years and local
17 communities are often concerned about the siting
18 of a power plant and they often want to come up
19 with alternatives.
20 And when you are saying, well this power
21 plant will put out a certain amount of greenhouse
22 gases, the local community is going to want to be
23 able to consider the alternatives. So they want
24 to know -- I think they would want to know, do we
25 really need this plant. And if we do need this

1 plant, what are the alternatives. Are there
2 alternatives for efficiencies, are there
3 alternatives for solar or are there mitigation
4 measures.
5 I think I have made my point about this
6 but I wanted to talk about the AB 32 discussion a
7 little too because that seems to be a consistent
8 point through a lot of the letter. And I think
9 really the AB 32 discussion proposed by many of
10 the parties really has it backwards. So
11 essentially the idea from many of the power
12 companies is that AB 32 will take care of the
13 problem.
14 But in reality what the CEC has is a
15 siting process that is CEQA equivalent and
16 requires the application of CEQA. So really the
17 way this should be thought of is, CEQA applies
18 now. You need to -- the California Energy
19 Commission needs to develop a legally compliant
20 CEQA and AB 32 is going to be in the future. So
21 compliance with AB 32 needs to be done, needs to
22 be considered after the CEC does a proper CEQA
23 analysis. And I guess I'll illustrate my point.
24 So essentially what we have been
25 advocating in our letters is that power plants

1 should be mitigated to zero. So if a power plant
2 is mitigated to zero, when in the future, which
3 2012 is the start of the cap and trade system. We
4 don't know if that will be delayed by litigation.
5 But whenever in the future the CEC could open up a
6 new proceeding and say, if we adopt, if the CEC
7 adopts our proposal and adopts zero mitigation for
8 new power plants they can propose within the AB 32
9 system that there isn't any future requirements
10 for mitigation.
11 So you would look at it from, you
12 wouldn't want to have a -- what I am trying to say
13 is, we are not saying we are trying to double
14 penalize companies but we are saying you have to
15 do the mitigation as part of the CEQA analysis.
16 And then determine within the new system, the AB
17 32 system, how you would get around double
18 counting or double mitigation on certain
19 facilities.
20 And there is actually a flip side to
21 this as well. The flip side is, if you do the
22 CEQA mitigation you should not be allowed to get
23 the credit for that in the AB 32 system because
24 the CEQA mitigation is required by law. So if you
25 go into the AB 32 system you can't have a system

1 where you did these mitigations and then somehow
2 you get credit and pay for your mitigations in AB
3 32.
4 I guess I have one more point about the
5 electrical system approach. I mean, I agree with
6 Mr. Ratliff that there's too many problems with
7 it. One is the problem of determining,
8 essentially, is the project needed. By looking at
9 it from the project basis you can determine if
10 there is a reliability issue.
11 This electric system approach doesn't
12 address all the issues that you need to address
13 when you are siting a power plant. A lot of the
14 issues that are arising now in California have to
15 do with electric reliability. If you look at it
16 from a statewide approach you are not looking at a
17 local or regional issue which has to do with
18 reliability.
19 I want to echo the point that the
20 electric system approach that is being proposed,
21 it really does just seem like business-as-usual.
22 It seems like business-as-usual in the sense that
23 it's -- going back to what I said earlier. It is
24 really not disclosing what we are doing with
25 greenhouse gases. What we are going to be

1 producing in the future in terms of our carbon
2 footprint.
3 What we have here is the opportunity to
4 really take a project-by-project approach and move
5 towards a low-carbon future. And the way to move
6 towards a low-carbon future is to really be
7 analyzing this on a project-by-project basis. And
8 doing it on a system approach, all you are really
9 going to do is provide a system where you don't
10 inform the public of what the greenhouse gas
11 emissions are or inform the public of how you are
12 dealing with the problem.
13 By looking at it on a project-by-project
14 approach the people who are interested in those
15 power plants that are being sited near them will
16 have an understanding of both the environmental
17 facts and also the understanding of, are there
18 alternatives.
19 And I think that's really important for
20 the Commission as well because the Commission
21 ultimately makes the decisions about the siting of
22 these power plants. And this Commission is going
23 to be faced, I think, with very tough decisions in
24 the future. Are you going to be siting power
25 plants that are contributing to global warming?

1 Or are you going to be seriously considering
2 alternatives that can mitigate or propose
3 alternatives that will not lock us into a system
4 that has too high of carbon into the future?
5 And with that I'll just conclude. I'm
6 sure there will be questions and comments. I'll
7 be happy to respond to them.
8 MR. RICHINS: All right, thank you very
9 much. Now we will hear from Chris and then after
10 that then we will go to Matt Layton.
11 MR. ELLISON: Thank you. I'm Chris
12 Ellison of Ellison, Schneider and Harris. I am
13 speaking today on behalf of the California
14 Independent Energy Producers Association. The
15 California Independent Energy Producers
16 Association is a trade association of non-utility
17 power plant developers, both renewable and non-
18 renewable. They are owners of existing plants as
19 well as developers of new plants. There is quite
20 a diverse membership within IEP.
21 As to my personal background I am just
22 going to mention a couple of things for those of
23 you who don't know me, because these past
24 experiences inform the comments that I am about to
25 make.

1 I have been involved in energy since
2 1978. I started here at the California Energy
3 Commission as an attorney/advisor to the Chairman.
4 I have been working on these issues since that
5 time. Now in private practice representing
6 entities such as the American Wind Energy
7 Association, the Western Electricity Coordinating
8 Council and a rather diverse client base in
9 addition to IEP. And I am currently involved in a
10 number of renewable projects in front of this
11 Commission.
12 First of all let me say on behalf of IEP
13 that IEP agrees that climate change is a very
14 serious problem that needs to be addressed. We
15 support this effort on the part of the Commission
16 to address it in the context of CEQA and in the
17 context of power plant siting cases.
18 We certainly agree that the electric
19 system in California is a contributor to
20 greenhouse gas emissions in the state and that
21 that needs to be looked at. That the electric
22 system needs to do its part to solving the problem
23 that we all face.
24 IEP also, I think, is quite confident if
25 you look at AB 32 that the electric system in

1 California is going to be asked to do more than
2 its share, actually, of solving this problem. I
3 think the latest numbers I have seen are something
4 like 40 percent attribution when in fact the
5 actual contribution of the electric system is
6 considerably lower than that.
7 The key points that I want to make on
8 behalf of IEP are really three and I am going to
9 focus on really just one. But the three points
10 are, first of all, a plea that we all work
11 together on this problem. This is a problem that
12 faces all of us. And I think a lot of energy
13 debates, in my experience, have been infused with
14 a certain level of adversariness that will not
15 stand us in good stead as we try to come to grips
16 with what is a very complicated and important
17 problem.
18 Secondly, it is very important I think,
19 not just for IEP or power plant developers but for
20 the state as a whole to have a program to address
21 greenhouse gas emissions that is consistent across
22 the entire state and hopefully across the entire
23 world, but at least here we are talking about
24 California. To the extent that we have
25 duplication conflict, overlap, we will not have an

1 effective greenhouse gas program in California.
2 So integration of CEQA and AB 32 and all those
3 things I think is extremely important. It is
4 certainly very important to entities that have to
5 comply with all of those requirements.
6 I am not going to say any more about
7 that today even though that is probably IEP's
8 greatest concern, simply because we are focusing
9 on other issues today. But I do want to emphasize
10 that this issue of integrating these programs and
11 being consistent is critical.
12 The last point and the one I am going to
13 focus on for he rest of my comments, though, is
14 that to work together to solve this problem,
15 probably the most important thing we need to do is
16 to be accurate, to be truthful. And let me start
17 by saying that I could not agree more with Will
18 Rostov's comment that the fundamental purpose of
19 CEQA is to inform the public about environmental
20 impacts of proposed projects, including the
21 environmental impacts of proposed power plants
22 here at the Energy Commission.
23 To the extent that we provide the public
24 with information that is wrong, we have
25 fundamentally violated CEQA. And the premise that

1 I am going to go forward with from this point is
2 to tell you that if you do not look at the impact
3 of new power plants on the system as a whole you
4 are doing precisely that. You are providing the
5 public with information that is wrong about the
6 environmental impacts of power plants.
7 So let me begin with some things that I
8 think are very important facts about the electric
9 system that go directly to this issue about
10 whether you do it project-by-project versus
11 system. And by the way, before I go any further
12 with that let me say that at the end I want to
13 talk a little more about that distinction.
14 I am not saying in doing a system impact
15 analysis that you don't do it in the context of
16 specific projects. But rather I am saying that in
17 the context of an EIR on specific projects you
18 take into account the effect of that project on
19 the system.
20 So to the extent that people are reading
21 me as saying a systems impact approach means you
22 don't do anything on a project-by-project basis,
23 that is not correct. What I am saying is that if
24 you do a project analysis that assumes that the
25 project is simply incremental to the emissions of

1 the rest of the system you are making a factual
2 assumption that is demonstrably wrong and
3 misinforming the public. And that you need to
4 account somehow for what the impact of the new
5 project is on the system as a whole.
6 So let me go back to these basic facts.
7 And I submit that anybody who looks hard at these
8 facts will find that they are all indisputably
9 true. First, the issue we are talking about here,
10 greenhouse gas emissions, is a cumulative impact.
11 I don't think anybody is alleging that any single
12 power plant in California by itself has a
13 significant impact on global climate. This is a
14 cumulative impacts issue.
15 Secondly, unlike criteria pollutants
16 under the Clean Air Act, greenhouse gas impacts
17 are not local. We are not concerned here about
18 the immediate impact on the public health of the
19 emission of CO2, for example. What we are
20 concerned about is the essentially worldwide
21 impact, not even statewide let alone local, of the
22 emissions of greenhouse gases. And so the
23 emission of a greenhouse gas in one part of the
24 state is equivalent to the emission of greenhouse
25 gas somewhere else in the state, which is not

1 always true for other pollutants under the Clean
2 Air Act.
3 Thirdly, greenhouse gas impacts occur
4 from power plant operation. They do not occur
5 from power plant construction. Now there are, of
6 course, some minor impacts of construction
7 equipment but I am going to ignore those. The
8 major impacts we are talking about are from the
9 operation of power plants. To the extent power
10 plants do not operate or operate more or less,
11 their greenhouse gas emissions are fundamentally
12 affected by that. And so you need to focus on the
13 way the system operates.
14 Next, the electric grid throughout the
15 western United States and the two provinces of
16 Canada and part of Mexico operates as a single
17 machine, as Mr. Ratliff put it. It is literally a
18 single machine. It is synchronized electricity.
19 It is operated by system operators that coordinate
20 their operation because they are, in effect,
21 running one machine that operates in real time.
22 That is the reason why a tree limb in Idaho can
23 put the lights out in Los Angeles.
24 Next, you cannot store electricity in
25 large quantities. And this is a fundamental

1 difference between looking at the impacts of
2 electricity production compared to many other
3 environmental impacts, for example housing
4 developments or refineries or even natural gas.
5 Electricity is unique in that way. It is
6 dispatched in real time to meet current, real time
7 demand because you cannot store it effectively.
8 Next, the construction of power plants
9 in California fundamentally does not change the
10 demand for electricity. The way we price our
11 electricity in California currently, maybe some
12 day in the future this will be different, but
13 right now demand is -- whatever the system demands
14 is essentially unaffected by the construction of a
15 new power plant.
16 Next, utilities have an obligation to
17 meet that demand. Under the law they will
18 dispatch power plants to meet whatever that demand
19 is to the extent they are able. There are unique
20 circumstances in which we turn the lights off but
21 that is not the policy of the state of California.
22 The policy of the state of California is to meet
23 the demand, whatever it is.
24 So what does this mean? It means that
25 the system is literally dispatched in real time to

1 meet whatever the consumers demand in terms of
2 electricity. And that that real time dispatch is
3 what governs the operation of power plants, which
4 in turn governs the system emissions and the
5 greenhouse gas effect of the electric system.
6 The other thing that is generally true
7 is that plants that are on the margin, in other
8 words, the ones that are dispatched last, are
9 typically the least efficient, oldest and most
10 polluting plants in California. And that is a
11 generalization, it is not always true, but it is
12 typically true.
13 And the last fact I would put forward is
14 that California despite 30-plus years of what I
15 consider to be quite progressive California Energy
16 Commission policy and a rather rigorous siting
17 process, continues to rely quite heavily at the
18 margin on power plants that are as much as half a
19 century old.
20 So what do all these facts mean when you
21 put them together? What they mean is that unlike
22 many other industries, in fact I would say unlike
23 virtually every other industry -- And this is
24 particularly important when you get into the legal
25 analysis and you are looking at cases that talk

about this situation with respect to other industries. But with respect to the electric industry it is not speculation that a new power plant will displace the operation of other power plants.

In fact, it is a certainty that it will displace the operation of other power plants. Wherever the demand is at a given moment, that demand will be met pursuant to the obligation to serve. And if the new power plant is not constructed, something else will be dispatched in its place to meet that demand. And if the new power plant is constructed, whatever would have been dispatched will not be dispatched.

That net impact is the environmental impact the public needs to know about. And to the extent that you ignore that fact, that fundamental fact about the electric system, and you instead assume that that new power plant's emissions are incremental as if they somehow increase the demand and that they are incremental to the net effect of the system, you are misinforming the public and you are creating bad policy. And you are not only creating bad policy but you are creating fundamentally unintended consequences.

1 And I have seen this in my career many
2 times. I have seen people who are good faith,
3 sincere advocates for environmental protection
4 opposing power plants when in fact they are
5 becoming unwitting advocates for the increased
6 operation of power plants that have a much greater
7 effect on the environment than the plant they are
8 opposing. I have seen this throughout my career.
9 The other thing I have seen throughout
10 my career is that in many cases -- One of the
11 roles that I play as a private sector attorney is
12 to advise prospective power plant developers on
13 their prospects in the permitting process of
14 California.
15 And one of the things that the public
16 typically does not see, and even many advocates in
17 this process do not see, and frankly even the
18 Energy Commission doesn't see, are the power
19 plants that don't get proposed. Or the power
20 plants that never make it off the drawing boards.
21 Or the power plants that people decide can't get
22 financing because they are not going to get
23 through the permitting process. Those casualties,
24 those power plants are real, I see them in my
25 practice frequently.

1 To the extent you set a policy that
2 creates barriers for new power plants that are,
3 that make them uneconomic or make them too costly
4 to build or make them too time consuming to build,
5 you will not necessarily see what the consequence
6 of that is in a palpable way because it will occur
7 behind the scenes. It will be the dog that didn't
8 bark, if you would.
9 So having said that, having said all
10 those things. I think it is critical to CEQA to
11 truly inform the public about what the impacts of
12 a new power plant are. That you do some
13 reasonable assessment of what its system impact
14 is. Of how the system will operate differently if
15 this plant is built than if it is not.
16 I am not going to take a whole lot of
17 time because we are going to discuss this but this
18 is a solvable problem. We did it. The Energy
19 Commission in its IEPR has the staff and the
20 expertise to identify what the likely marginal
21 plants would be that would be displaced by new
22 power plants likely to come through the permit
23 process in the next IEPR cycle.
24 That information could be used in
25 specific siting cases to assess the net impact of

1 a new power plant proposal where you would
2 identify what the greenhouse gas emissions from
3 the proposed project are and then you would use
4 the IEPR information to net that against what the
5 likely marginal impact of them introducing a new
6 power plant would be and you could get some
7 reasonable assessment.
8 Now is that assessment going to be
9 perfectly accurate? Of course not, nothing is
10 perfectly accurate. But it will be more accurate,
11 substantially more accurate than if you simply
12 pretend that the system doesn't change and that
13 you are just adding a new power plant and, in
14 effect, increasing demand where you are not doing
15 that. That is not only inaccurate, it can be
16 inaccurate to the extent of actually reversing,
17 being inaccurate in terms of sign, if you will.
18 In fact, I think this is not only
19 possible, I think it is likely. It is very
20 common, I think, that you will have new power
21 plants that have certain greenhouse gas emissions.
22 Let's say -- I won't use particular units but
23 let's say you have got five X greenhouse gas
24 emissions from a new power plant but it is
25 displacing ten. That power plant is in fact

1 reducing greenhouse gas emissions.
2 And if your information to the public is
3 that is increasing greenhouse gas emissions you
4 are not only numerically wrong, you are sending a
5 message to the public that is wrong fundamentally.
6 You are saying something is contributing to the
7 problem when it is, in fact, helping to solve the
8 problem. That is as wrong as you can be.
9 So with that let me say that I think the
10 complexities can be addressed. We did something
11 much more difficult, frankly, conceptually under
12 PURPA when we set avoided cost pricing. That was
13 a similar kind of marginal cost analysis. But it
14 was a marginal cost analysis and it was an
15 analysis of plants that didn't yet exist. They
16 were the plants that would be purchased if you
17 didn't purchase from the plant whose contract was
18 being debated. In this case we are talking about
19 identifying the marginal plants that are real
20 plants that are operating on the system and that
21 can be identified much more easily.
22 So with that let me thank you for this
23 opportunity. I look forward to the remainder of
24 the discussion. And I really do hope that we can
25 work on this problem together.

1 MR. RICHINS: Thank you very much. Matt
2 Layton now.
3 MR. LAYTON: Good morning, my name is
4 Matt Layton. I am here to just float four
5 proposals on conceptual approaches to evaluating
6 greenhouse gases from power plants. Again, these
7 ideas are interim. We are not proposing a process
8 that might be in place for a long period of time.
9 These are just for the interim to cover between
10 now and when the AB 32 does become in effect.
11 However, I think there is a lot of uncertainty
12 about when AB 32 might come into effect.
13 We would like you to consider these four
14 proposals, identifying the key issues that you
15 think are outstanding. And again, provide
16 comments for the record. I think the
17 Commissioners are looking for as much input as
18 possible on these issues.
19 Some caveats. Obviously these are a
20 range of options. We haven't captured everything
21 that might be out there. We are concerned that we
22 are missing some points so we would like to hear
23 from you on that.
24 And we do use mitigation, fees and
25 offsets interchangeably. We understand that there

1 may be other concepts. I think Will referred to
2 alternatives such as solar. That might be
3 something -- It is not mentioned explicitly here,
4 however, we just use the term mitigation. But
5 there's a range of options underneath that that we
6 are interested in hearing about.
7 Again, these are not comprehensive,
8 exclusive. These are just some ideas for you to
9 shoot at.
10 We have put numbers in these proposals.
11 We derived these numbers based on looking at the
12 system today, how the power plants are -- what
13 power plants are out there, what are being
14 proposed, what technologies are available. We put
15 the numbers in there for you to look at. These
16 are not final numbers, they have some issues with
17 them. Obviously I think it is important that we
18 recognize and you recognize that some of these
19 numbers that we propose as some of these
20 thresholds will significantly disadvantage certain
21 technologies, certain power plants, or
22 significantly advantage others. They are just a
23 starting point.
24 My discussion here is limited to these
25 proposals. There is a discussion this afternoon

1 that is going to talk about other issues about
2 mitigation. How to set the value for that
3 mitigation, the fee, the price. Some of the
4 methods that might go into a CEQA approach. Some
5 of the finer details are not being discussed here.
6 We are just trying to float some ideas. So how
7 you would net out, that obviously would be left
8 for a more detailed discussion.
9 And again, construction emissions, we
10 are not going to discuss that today.
11 We too are very concerned about what
12 other agencies are doing, other states, in the way
13 of greenhouse gas emissions. We would like to
14 make sure that any proposal that the Commission
15 comes up with does work with other agencies, other
16 entities, other states, and actually accomplishes
17 what all of us are trying to do. So that
18 particular issue I think is key. That needs to be
19 discussed today and throughout this whole process.
20 Dick Ratliff talked about the first
21 threshold, which may be to the far left, the
22 simplest, zero threshold. If you emit you are a
23 stack. You count the greenhouse gas emissions
24 from your stack and mitigation is required for any
25 of those emissions over that zero threshold. Very

1 simple to apply. However, it only applies to any
2 new sources that are being permitted by the Energy
3 Commission, it would not go back and apply to
4 others.
5 So Dick had suggested that some of the
6 -- what we are proposing is somewhat similar to
7 the air regulations that are out there but it
8 really doesn't apply to all power plants. We are
9 even limited more so. He said that we are limited
10 to power plants but we are actually limited to
11 only new power plants. I don't think we have the
12 ability to go back and enforce this on old power
13 plants or existing power plants. So our scope is
14 even narrower than say the districts or the state
15 agency on air quality.
16 A second proposal might be the system
17 threshold. There's a lot of discussion about the
18 system. If a power plant met a certain threshold.
19 In this case we chose what the system heat rate
20 was in 2004 for the California system. This
21 particular number happens to be derived from the
22 AB 32 -- excuse me, the ARB, Air Resources Board
23 inventory and our estimate of the gigawatt hours
24 that year. If a power plant say beat this
25 particular threshold it would not require

1 mitigation. If it did not beat or meet this
2 threshold it would have to supply mitigation for
3 those emissions over or all emissions, that would
4 be open to debate. It's a starting point.
5 Another proposal would be -- similar to
6 Proposals 1 and 2 where you have a zero threshold
7 or a system threshold. But a particular power
8 plant if it is built in a reliability area might
9 be given some latitude or it might be deemed
10 needed. And I use that term very loosely. And
11 therefore would be subject to different thresholds
12 or a range of thresholds.
13 And Dave Vidaver and I worked a little
14 bit on this and he is here to talk about, if you
15 have questions about local reliability he can
16 answer those questions. But again, this is just a
17 combination of these concepts. Perhaps this might
18 be more appropriate than say Concept 1 and 2. It
19 might achieve some of the goals that we need for
20 system reliability but at the same time addressing
21 the greenhouse gas emissions from the power plant.
22 The last concept would be the best
23 available control technology. We do use a lot of
24 air quality terms, air regulatory terms in the
25 context of talking about greenhouse gases. We do

so very loosely. I think there is a difference between air regulations and what we are proposing here. But this was to try to suggest that certain technologies or certain classes of equipment would be considered providing net benefit for greenhouse gases to the California system or to the WECC-wide system.

There has been some talk about peakers being needed. Peakers may be needed to allow renewables to come on-line so perhaps there would be a threshold for peakers. Or very efficient, highly-utilized combined cycles might be granted, might be deemed to provide a net benefit.

Similarly, cogeneration or solar thermal that have some fossil fuel input might also be assumed to provide some benefit to the system and therefore would not have to provide mitigation for their emissions. And power plants that did not meet this would be required to provide mitigation.

We do realize that, again, certain classes or technologies or even specific manufacturers may be disadvantaged by picking a very firm number as a threshold.

Anyway, those are just four proposals and we are available to discuss these. Anything

1 else?

2 MR. RICHINS: Okay, thank you, Matt.

3 What I would like to do now is I have

4 three blue cards but I think I am going to hold

5 the blue cards for a little bit and start kind of

6 the roundtable discussion and dialogue.

7 And so this is a time for anyone to ask

8 clarifying questions of any of the speakers, to

9 put forth ideas and concepts of their own, and

10 just start kind of a dialogue back and forth

11 trying to understand other people's positions,

12 where there might be movement in people's

13 positions, floating new ideas and so forth. And I

14 know we all have a lot of questions that relate to

15 this issue and so I am just going to turn it open

16 to the people around the table.

17 Also if there is someone in the audience

18 not at the table and you have a quick point that

19 you want to make or whatever, you can raise your

20 hand and we will recognize you. You can come up

21 to the podium here and speak. But would someone

22 like to begin the dialogue?

23 MR. MARQUEZ: Should the blue cards go

24 to the table or do the blue cards go to the

25 podium?

1 MR. RICHINS: I have the blue cards.
2 I'll call the names of the people on the blue
3 cards a little bit later.
4 MR. MARQUEZ: I know, but do they go to
5 the table or do they go to the podium?
6 MR. RICHINS: Oh, to the podium, yes.
7 MR. GALATI: Appreciate it. Scott
8 Galati for PG&E. We very much agree with many of
9 the comments that Mr. Ellison made but we also
10 wanted to make a distinction too. I think that
11 there has been some confusion as to project-by-
12 project versus a programmatic or a systemwide
13 approach.
14 We have never advocated nor do we
15 advocate that you are relieved of your obligation
16 in each individual siting case for creating a
17 record and an evaluation and public disclosure of
18 greenhouse gas emissions and how you are treating
19 them. So we never believed that a systemwide
20 approach or a programmatic approach would displace
21 that.
22 What we are really advocating is you
23 need that systemwide and programmatic approach to
24 inform those project-by-project analyses. And
25 that what we think is unwieldy is to provide, try

1 to do a systemwide approach in an individual
2 siting case and have evidentiary hearings and many
3 days of litigation about how the system operates
4 in every project.
5 So what we are advocating is that you
6 take a process, whether it be the IEPR or
7 something new, develop an analysis of the
8 systemwide effects, come up with some guidance on
9 how the system operates, that will inform your
10 project-by-project, case-by-case basis as they
11 come before you. Applicants will know what to
12 present as evidence, whether we are consistent and
13 whether we can tier off of.
14 So what we propose is something to do in
15 the meantime while you are developing that
16 programmatic and that was our best management
17 practices and performance standards. We believe
18 that those, both of those comply with CEQA. And
19 we believe that -- One thing that we would like to
20 develop further, and as you saw from our comments
21 we had a joint IOU letter. And we have been
22 working also together, although we haven't been
23 able to come up with one yet, is a joint outline
24 of what such a programmatic study would look like.
25 But it clearly is systemwide.

1 So I think that -- I don't think that
2 there's maybe as, from my perspective, as much
3 difference between what Mr. Rostov is advocating
4 and what Mr. Ellison is advocating on the process.
5 I understand there's differences on what the
6 threshold should be. But I just wanted to make it
7 absolutely clear. We weren't advocating that you
8 did not need to look at greenhouse gas emissions
9 on a project basis.
10 ASSOCIATE MEMBER DOUGLAS: This actually
11 brings up a question I had for Mr. Rostov. You
12 made the point that the Energy Commission should
13 not right now rely on a non-existent, programmatic
14 document in our siting cases and I don't think we
15 would try to do that.
16 But that doesn't answer the question
17 that Mr. Galati put to us which is, obviously
18 there's an interim in which we do not have a
19 programmatic document so we may very well be
20 litigating some of these issues on a case-by-case
21 basis right now. We may not, we may litigate a
22 more limited set of issues on a case-by-case basis
23 right now.
24 But that still raises the question of
25 next steps for the Energy Commission and whether

1 we should expeditiously seek to develop a
2 programmatic document. And if so, what are the
3 questions that that document should address that
4 would be helpful and help us understand better as
5 we continue to do the case-by-case analysis in
6 individual siting cases because that is obviously
7 how we are organized right now, how we approach
8 all of our siting.
9 MR. ROSTOV: Thank you for the question
10 and I appreciated Mr. Galati's comments. We are
11 not opposed to doing a programmatic analysis in
12 the future. But the programmatic analysis would
13 really have to look at how you are getting to a
14 low-carbon future. How you are providing the
15 energy and getting to the low-carbon future.
16 Actually we had a long discussion in the
17 car about this, me and Mr. Vespa. I firmly
18 believe that he is going to provide a better
19 answer than I will so I am going to defer to him.
20 MR. VESPA: Well we'll see. But this
21 goes to the sort of -- We have a -- The objective
22 here for CEQA purposes, what we are trying to
23 accomplish with the significant threshold is
24 avoiding dangerous climate change, and that's
25 something ARB recognized in its proposed

1 threshold. So we want to frame the issue
2 properly.
3 And I haven't quite seen that yet in the
4 CEC documentation but we want to kind of keep our
5 eye on the ball when we're thinking about how we
6 evaluate these issues, and that is, very
7 significant reductions by 2050. And I think the
8 road map to a low-carbon future should sort of
9 look at that, look at the energy sector, and think
10 about where we are going from our energy sector
11 needs to that low-carbon future.
12 And, you know, Chris raised this issue
13 of displacement and I think that's very valid. I
14 guess from the environmental perspective the
15 concern is, okay, maybe you are displacing
16 something, maybe temporarily, but that capacity
17 still exists. Do our energy needs go up does that
18 capacity come back on-line. I think climate
19 change is going to exacerbate our energy needs
20 even more.
21 So where is California going in terms of
22 its energy demand? How is that demand being met
23 by efficiencies first, then renewables and then
24 fossil fuels. That loading order. And, you know,
25 where are we really going. And I think the

1 problem with some of these sitings is, you are not
2 answering those questions, you are just adding new
3 capacity. Adding new capacity. Not necessarily
4 taking old capacity off-line but just saying,
5 well, we won't be using it right now because we
6 are going on-line first, without really showing,
7 you know, whether that is going to be off-line
8 forever or whether it is just temporary. And I
9 think that really would be useful.
10 And I don't think AB 32 gets to those
11 issues, it is more of a market-based cap-and-trade
12 approach that is multi-sector. I don't think it
13 is something we can exclusively rely on to deal
14 with our energy future. And I think -- You know,
15 there's all this talk about renewables and energy
16 measures but I haven't seen any analysis of how
17 that is getting at our demand. And where is that
18 incremental demand to be met and what is our
19 bridge to the future.
20 I think it is important to remember
21 that, you know, power plants built today will
22 probably be on-line in 2050. And so if you are
23 making long-term carbon commitments when we are on
24 a trajectory to a low-carbon future I would sort
25 of like to see how, if we all do have to make

1 those commitments, how we also are kind of getting
2 lowering. And I think that would be very helpful
3 to have.
4 ASSOCIATE MEMBER DOUGLAS: I think these
5 are really good points. I think I would agree
6 with the overriding point that the Energy
7 Commission is the energy policy agency for
8 California. So it is policy that we develop in
9 our IEPR and in other documents where we are
10 trying to look at how the system will evolve over
11 time, how we want it to change over time and so
12 on. That won't be answered if we don't step up
13 and look at that question. We are the ones really
14 to do that.
15 I had a very related question to what
16 you said, actually, for Mr. Ellison. I think you
17 made very good points about the system and how it
18 works. I think there is certainly a lot of logic
19 to what you put forward. One question that I find
20 that continues to bother me though is just the
21 implication that any power plant that makes the
22 system marginally more effective is therefore not
23 a significant impact.
24 And if we were to take the analogy to,
25 say, China. And I'll just throw a somewhat sort

1 of ridiculous, potentially ridiculous counter fact
2 out here. But let's say that we were sitting in
3 China right and trying to make the argument that
4 every coal plant that we build, because we are
5 building newer, more efficient coal plants, is
6 therefore making our system more efficient.
7 Therefore, the more we build and the faster we
8 build them the cleaner our system is getting, the
9 more the dirtier, old coal we are displacing. We
10 are not creating demand for these coal plants, we
11 are merely satisfying it. Therefore, there is no
12 significant impact.
13 I think there comes a point at which
14 that argument becomes hard to sustain, even though
15 I think when you apply it to California there are
16 very significant differences from the China
17 example. It's just something that would be
18 helpful for us to get your perspective on.
19 MR. ELLISON: Thank you, Commissioner
20 Douglas, for that question, because I wanted to
21 talk about this issue.
22 What this issue gets at is the
23 relationship of supply and demand for electricity
24 and the impact that new supply might have on
25 demand. And as I said in my opening remarks, in

1 California the introduction of new power plants
2 does not fundamentally change the demand for
3 electricity. It has to do with the way we price
4 it, it has to do with a lot of other things.
5 Your China analogy has implicitly buried
6 in it the idea that if you build enough of these
7 coal plants you are, in fact, somehow increasing
8 the demand. Or alternatively, that if you didn't
9 build them maybe you wouldn't meet that demand.
10 Neither of those are true in California.
11 In California our policy right now is we meet the
12 demand, whatever it is, and that demand is
13 fundamentally unrelated to how many power plants
14 we build. If we don't build a new power plant in
15 California the demand is met somewhere else. Out-
16 of-state coal is a likely possibility for doing
17 that.
18 But a couple of other points that I want
19 to make are, the loading order and the idea of the
20 Energy Commission doing this kind of plan for a
21 low-carbon future is, I think, a good idea. I
22 think that is something that the Energy Commission
23 should do. That's exactly one of the reasons I
24 think the Energy Commission was created.
25 IEP has been a strong supporter of the

1 loading order. It has been a strong supporter of
2 energy conservation. Incidently, one of the
3 things that makes energy conservation so effective
4 in the electric sector compared to other markets
5 is precisely this relationship, this real time
6 dispatch. If you conserve a kilowatt hour of
7 electricity you instantly reduce the operation of
8 a power plant somewhere. That is not true for
9 oil, that is not true for natural gas. Eventually
10 it works its way through the system in those other
11 markets. Eventually there is some balance of
12 supply and demand. But for electricity it is
13 certain and it is immediate.
14 And so that is one of the reasons that
15 energy conservation, if you are going to analyze
16 alternatives, one of the reasons energy
17 conservation is so effective is because you know
18 that it is going to have that immediate and
19 certain impact. But that is also true for end
20 reduction of new power plants.
21 And again at the risk of being redundant
22 -- And by the way, I agree with everything Scott
23 Galati said. At the risk of being redundant,
24 consistent with Mr. Rostov's theme that CEQA is
25 essentially about informing the public of what the

1 real impacts are.
2 Energy is complicated. There are a lot
3 of things about energy that are counter intuitive.
4 There are a lot of assumptions that the public
5 makes about energy that are just wrong. And if we
6 are going to make progress on this issue and if we
7 are going to solve this problem we have to do it
8 in a manner that is based upon the real facts of
9 the system.
10 You can't fool Mother Nature. If you
11 pretend that you have done something good when in
12 fact the real facts are that you haven't, you
13 haven't. And getting that information out to the
14 public about the way the system actually operates
15 and what the impacts of real power plants are is,
16 I think, a goal that we all should share. And I
17 think the Energy Commission is uniquely in a
18 position, with its expertise and its staff, to
19 perform this function.
20 The last thing I want to say is on this
21 issue of displacing power plants but maybe the
22 power plants are retired and someday come back.
23 Again that's an issue of meeting the demand. But
24 the fundamental question in a particular siting
25 case -- Let me separate this out. The idea of

1 having a long-term plan for achieving a low-carbon
2 future is a good idea. And that is where I think
3 you can address some of these issues. But any
4 particular siting case the fundamental CEQA
5 question is, what is the environmental impact of
6 siting versus not siting this power plant or
7 siting this versus some other alternative.
8 And if you fail to account for the
9 system impacts in doing that kind of analysis you
10 come up with an answer that is not only wrong but
11 will have unintended consequences that could, in
12 fact, be the exact opposite of what you are trying
13 to achieve.
14 MR. RICHINS: Yes, Taylor.
15 MR. MILLER: I'd just like to make a
16 couple of points. This is Taylor Miller with
17 SDG&E/Sempra. The first is we, of course, as a
18 group agree that there needs to be an analysis of
19 GHG in the environmental documentation and in the
20 proceedings. There is no exemption that anyone is
21 proposing here. So to frame the issue in those
22 terms is simply a red herring, in our view.
23 Secondly, one thing that hasn't been
24 mentioned, well I guess a little bit but not
25 directly, is the efficiency programs that are

1 already ongoing and will be increased under the
2 scoping plan as proposed by the ARB that are also
3 a system issue. In addition to the displacement
4 that has to be considered, if one is looking at
5 what is the context of the new power plant and how
6 it balances how the overall system is behaving,
7 the fact that we have multi billion dollar
8 literally efficiency programs going on in
9 California that have been quite effective, has to
10 be considered.
11 If you look at AB 32 and the projections
12 at the PUC and the modeling as well, about half of
13 the reduction by 2020 is coming from efficiency.
14 And those are not inexpensive programs. For SDG&E
15 just for 2008 we are budgeting $100 million for
16 efficiency programs. Actually more than that for
17 about five different programs. And that's for a
18 system that is maybe 25, 30 percent greater than
19 SMUD. So that is a significant expenditure per
20 year for just that system. And with PG&E and SCE
21 you can only imagine it's quite a bit more than
22 that.
23 So I think that that is another reason
24 why the system approach is relevant to this. If
25 you are trying to -- In looking at for just a

1 moment at the legal side of this, the task that
2 the Commission has is, first of all it is not
3 whether to do an analysis, that's a given. So we
4 are not talking about fair argument issues here at
5 all. We are talking about the ultimate conclusion
6 of significance at the end of the process.
7 And in that case we are looking at
8 whether a particular project is cumulatively
9 considerable. So considerable by itself
10 contemplates something more than zero. A zero
11 threshold is something not legally mandated. And
12 furthermore, in making that determination of
13 whether a project is cumulatively considerable is
14 absolutely appropriate, in fact required to look
15 at the overall contents. And so I think the
16 system is certainly relevant.
17 And my point here, I guess, is just that
18 in addition to the displacement that is quite
19 real, and I would certainly agree with Chris'
20 points, there is also the efficiency effects that
21 are going on. And those are all ratepayers costs
22 so we also need to be mindful that if there is
23 some additional mitigation required in this
24 interim period, we are laying it on top of
25 expenditures that are already being billed for

1 efficiency and for RPS compliance with the 20
2 percent requirement. And of course now we know we
3 are quite probably going to have a 33 percent
4 requirement and that again is going to certainly
5 reduce system impacts.
6 Finally, I think it is important to keep
7 in mind that the impacts of GHG are not local, are
8 not immediate. The goal in 2050 is to have a
9 limited concentration in the atmosphere, which is
10 essentially equivalent to a certain inventory in
11 the atmosphere at that time. How one gets to that
12 cap of inventory, there's a million ways to get
13 there. Whether you reduce this year or you reduce
14 next year, as long as you get there and keep that
15 concentration at whatever it is, 450 parts, 500
16 parts of CO2. That's the goal.
17 So we are not threatening a neighborhood
18 with immediate impacts of air emissions that need
19 to be mitigated at the same time frame
20 necessarily. I think that's a point that
21 sometimes gets lost in the discussion.
22 Oh, one last point and then I'll give up
23 the floor here is that the point on alternatives
24 analysis, as we both know having been through some
25 cases, there's a very rigorous alternatives

1 analysis that is already included in the process
2 that includes technology evaluation. So I don't
3 think that anyone is arguing against that, that's
4 already part of the system, that's already part of
5 the CEQA analysis.
6 So that's my comments, thank you.
7 MS. LUCKHARDT: I guess if I could just
8 add something. I think that -- First of all I
9 agree with the comments of Mr. Ellison,
10 Mr. Miller, Mr. Galati, but also just kind of
11 moving off and listening to some of the concerns
12 that have been expressed by Mr. Vespa and
13 Mr. Rostov.
14 You know, a lot of the issues in the
15 greater concern for reducing greenhouse gas really
16 cannot be addressed in an individual siting case.
17 And when we do the alternatives analysis that
18 Mr. Miller referenced we rely heavily upon the
19 efforts of this Commission in the IEPR and in the
20 other processes that set forth the loading order
21 and the energy efficiency goals.
22 And so in order to address the broader
23 issues that are the concerns that have been raised
24 by Center for Biological Diversity and
25 Earthjustice here and in other filings we need the

1 broader system approach to focus on. We are not
2 going to get the energy efficiency goals we need
3 out of a power plant siting case. You have got to
4 get that from a broader approach. You cannot get
5 the Renewable Portfolio Standard goals solved in
6 an individual power plant siting case. We need
7 this broader approach that then you apply to the
8 power plant siting case.
9 And we all have agreed so far and I
10 absolutely agree. We cannot not evaluate the
11 greenhouse gas impacts of an individual power
12 plant. That exposes everyone to all kinds of
13 litigation. I mean, that is just not a solution
14 and not anything any of us are asking for.
15 But I think in terms of evaluating what
16 is the impact of that power plant you have to look
17 at the broader system, you have to look at the
18 broader programs. You need to look at energy
19 efficiency. You need to look at what is going on
20 with renewable procurement and the Renewable
21 Portfolio Standards.
22 So I think, you know, the idea of doing
23 a broader system analysis that has been presented
24 is important not only to look at the overall
25 system and the interaction of the electric system

1 but the other programs that are ongoing, energy
2 efficiency and renewables. And then apply that
3 overall system approach to the individual power
4 plant in the individual power plant siting case.
5 MR. ELLISON: If I could briefly add one
6 other comment. And it goes again, Commissioner
7 Douglas, to your China example. And it also goes
8 to this issue of integrating a statewide effort
9 that goes beyond just electricity into all energy
10 sources.
11 Fundamentally, if we are going to reduce
12 greenhouse gases you have got to do something
13 about demand. I mean, your point about China was
14 right. If you simply have an ever-increasing
15 demand, and even though you are adding the most
16 efficient resources you could possibly do and
17 mitigating them to the fullest extent that you
18 can, you are nonetheless adding greenhouse gas
19 emissions and you are not going to achieve the
20 goal that you want to achieve.
21 But let me give you an example. Suppose
22 we decide that as part of our greenhouse gas
23 mitigation program or for whatever other reasons
24 we want to electrify our mobile transportation
25 sources, okay. Well the impact on the electricity

1 sector of that is probably going to be to increase
2 greenhouse gas emissions from the electricity
3 sector substantially, right, even though that is
4 probably a good thing to do. I am making
5 assumptions here. That's probably a good thing to
6 do from an overall greenhouse gas program
7 standpoint because of the huge reductions that you
8 would be getting from mobile sources.
9 These are the kinds of things you can't
10 possibly address in an individual siting case but
11 that are fundamental to achieving the goals of
12 addressing climate change. You know, the
13 incremental impact of a single power plant and
14 doing a kind of CEQA cumulative impacts analysis,
15 although it should be done, is nonetheless the
16 tail on the dog. The real heart of this problem
17 is something that has to be addressed through some
18 kind of integrated program that looks at all of
19 the emission sources. Worldwide ultimately but
20 certainly statewide for the purposes of
21 California. And that is what IEP supports.
22 MR. WESTERFIELD: Bill Westerfield on
23 behalf of SMUD. I am going to join the chorus in
24 support of the programmatic approach. But just
25 before that I would just like to mention that SMUD

1 really appreciates the inclusive format that the
2 CEC has laid out for today's workshop and
3 certainly for this entire informational
4 proceeding.
5 SMUD has, I think, one of the less or
6 least carbon intensive footprints of the state's
7 electric utilities. We have been a leader in
8 reducing and mitigating adverse environmental
9 impacts from power generation. So that's really
10 why we think programmatic is a better approach.
11 Commissioner Douglas, I would like to
12 address your concern about what to do in the
13 meantime if, for example, there is no program in
14 place. And I think that is a real question that
15 needs to be addressed. But let's, I am going to
16 address it from the big picture rather than the
17 weeds of a CEQA analysis for a second.
18 As we all know a tremendous amount of
19 work has gone into the Energy Commission and the
20 CPUC process to recommend greenhouse gas
21 strategies for implementing AB 32 at ARB.
22 Similarly, a big effort will be made, a huge
23 effort will be made at ARB over the next several
24 years and at the Western Climate Initiative. We
25 all have a tremendous job ahead of us in bringing

1 this program into fruition within the next couple
2 of years.
3 There have been a host of measures
4 already proposed by ARB to tackle this problem,
5 only one of which is cap-and-trade, and by which
6 ARB estimates that an inordinate burden will be
7 placed on the electric sector. You have already
8 heard the idea that we are going to be responsible
9 for 40 percent of the emissions.
10 And there have been some figures cited
11 in the proposed scoping plan that the electric
12 sector will take a 16 percent hit on employment,
13 business as usual, during the implementation of
14 these measures, and I think a similar hit in the
15 terms of absolute revenues.
16 So this program will be profound,
17 expensive and comprehensive. So not only does it
18 occupy the field of regulation but there are a
19 number of economic assumptions that ARB is
20 counting on to make their program work. And so I
21 guess my point is that the Energy Commission needs
22 to be very, very careful about changing the
23 economics of ARB's plans to transform California's
24 economy through AB 32.
25 Now cap-and-trade is the most obvious

1 example of that. It assumes a flexibility on a
2 portfolio-wide and statewide basis. It assumes
3 that flexibility will allow least-cost innovators
4 to reduce the cost of California as a whole to
5 make this transformation to a low-carbon economy,
6 instead of requiring each individual emitter, if
7 you will, to implement the standard that we hope
8 to meet, which is a 25 percent reduction
9 ultimately.
10 That's a different assumption maybe than
11 what we are looking at with CEQA. We need to
12 allow that or be cognizant that that is the plan
13 or is going to be the plan that this state is
14 going to follow. And I worry that by creating a
15 new cost to power plant siting that we might, the
16 Energy Commission could put into place rules that
17 could change those assumptions and truly interfere
18 with a program that we all know will happen. So
19 that's the big picture comment I think we would
20 like to make in that respect.
21 ASSOCIATE MEMBER DOUGLAS: Actually I'll
22 just respond very quickly. I actually expected
23 that to be the first distinguishing -- Mr. Ellison
24 made some very good points in trying to
25 distinguish from my China example but I had

1 expected also that one point would just be that
2 California has a commitment to a low-carbon
3 future, or at least is putting policies in place
4 at the ARB and at the Energy Commission and the
5 PUC to try to make that happen.
6 And so I think I -- I certainly do agree
7 with you that when we look at CEQA we don't want
8 to be working at cross purposes with the policies
9 that we are trying to put in place to achieve our
10 AB 32 goals. I think we also though have, as
11 Mr. Rostov pointed, out, obligations under CEQA to
12 analyze this issue and make certain findings right
13 now with much of the program still in development.
14 So that again gets us into our, what do we do now
15 conundrum, as well as the question of our
16 independent energy policy role in helping actually
17 shape and help this program to succeed.
18 MR. WESTERFIELD: Of course,
19 Commissioner Douglas, we certainly appreciate that
20 but what we do now will affect the operation of a
21 project for 40 or 50 years. We are looking at
22 what will happen in the next several years. In
23 fact, the decisions you make to try to cover that
24 gap of several years of, if you will, the absence
25 of a program, will have ramifications for

generations. Because that is how long the power plants operate.

PRESIDING MEMBER BYRON: If I could just add a comment as well. Maybe a couple of comments. One is that it sounds as though we are facing a substantial change in the way we might be doing things. But the fact is this Commission, of course, for many years has been working towards these same goals. If you look at the CO2 production per megawatt hour on the basis of GDP or per capita, this state is approximately half the basis of where the rest of the United States is. So the policies of this Commission and the State have been pretty well underway for a long time. I would like to take credit for them but I haven't been here long enough to do so.

The other comment I would like to make is maybe dispel a little bit of the myth around what we do here today determines the next 40 years in that if we build a power plant we are stuck with it. And that is not necessarily the case. I think it is very clear based upon the analyses that I have seen that we are relying upon technologies that don't yet exist in order to reach some of these goals.

1 We have seen repowering of power plants,
2 we have seen major changes of rotors, et cetera,
3 on gas-fired plants that are changed out for
4 efficiency purposes. And that could certainly
5 happen and will continue to happen. And the
6 notion of carbon capture and sequestration,
7 although right now seems like a very distant
8 prospect, is something that we are probably going
9 to need to rely on, if not in this state certainly
10 throughout the rest of the world.
11 So I guess I would like to dispel a
12 little bit of that myth. That this is not the
13 enormous sea change, perhaps, that we want to make
14 it out to be, we have been on the path for a long
15 time. And whatever we do on an interim basis does
16 not preclude correcting what we might do wrong at
17 this time, in the future, if I could state it that
18 way.
19 MR. ALVAREZ: Commissioner. Manuel
20 Alvarez, Southern California Edison. I guess -- I
21 want to bring up a couple of points. And you
22 actually raised the point that I was going to
23 raise in making it clear that we do see California
24 at a low-carbon future. That is our direction so
25 we don't have any concern with that.

1 The other issue I want to bring up is if
2 there was an impression in the joint filed
3 comments that we were asking for exemptions from
4 those requirements, I want to dispel that myth
5 because I don't think that's true. At least that
6 was our hope that it didn't come across that way.
7 And if it did --
8 MR. GALATI: It's my fault. I didn't
9 mean to write it that way.
10 (Laughter)
11 MR. ALVAREZ: Drafting a joint document
12 can also get very cumbersome. So I'll just share
13 that with you.
14 And as mentioned earlier, we are working
15 on a proposal for what the study would look like.
16 And in fact I will offer it now, if anybody would
17 like to participate in that discussion feel free
18 to contact us or any Commission staff or anybody
19 else. It is definitely something that I think has
20 to come together. But I just didn't want to leave
21 you with that impression.
22 It is clear from my vantage point that
23 California is moving in that direction of the low-
24 carbon future and that the parts that we are all
25 working on, energy efficiency and renewables, are

1 dispersed. I mean, they are located in a number
2 of agencies. But when you look at the context of
3 AB 32, it is definitely holding, or at least
4 trying to hold the state together on a common
5 strategy for climate change issues and power plant
6 facilities and energy conservation are discussed
7 there.
8 I think that is one of your biggest
9 challenges, is to demonstrate to the various
10 parties who are in this discussion how that is
11 coordinated among the agencies who have their
12 individual responsibilities because your
13 responsibilities for siting a power plant or
14 examining a facility are not relinquished during
15 the AB 32 process. So you are going to have to
16 wrestle with that and it is a difficult task.
17 Commissioner Byron brought up an issue
18 of future technology. And that gets to the point
19 that Mr. Ellison brought up about you not knowing
20 what's on the cutting room floor of projects that
21 don't show up here. And I guess the question for
22 me is, you know, why don't you know that.
23 And in fact my answer to that is, you do
24 know that. You do take a look out into the future
25 and ask what kind of technologies are available or

1 may be available to the state to comply with their
2 energy requirements and set up that energy plan.
3 It may not be as explicit as Project A or Project
4 B but you do present to all of us a sense of what
5 the future should look like. And then basically
6 using the planning process you do every two years
7 to kind of test yourself against that particular
8 goal.
9 Historically I think the Commission was
10 able to do that individually as a facility but
11 there were always problems with other agencies and
12 other policies either coming from the State or
13 local government's directions. And now you just
14 added additional complexity on AB 32. So that's a
15 longer and stronger effort of coordination that is
16 going to have to take place within government that
17 I don't think we have experienced in any kind of
18 energy planning or energy policy development
19 historically.
20 MR. GALATI: There is one other thing
21 that you could do immediate -- And first of all I
22 would like to applaud all the work that you have
23 been doing recently with the NCCP process, the
24 Natural Community Conservation Plan process, to
25 help with renewables. I think that process, while

1 we all agree we wish we would have done it five
2 years ago, five years from now we will be glad we
3 did. So very happy about that.
4 But there is something that you could do
5 right now. You know, the Energy Commission was
6 given authority and you adopted regulations last
7 year under SB 1059 Transmission Corridor
8 Designation. And I'm sure my colleagues here who
9 practice in siting projects would agree that
10 probably the number one thing facing new renewable
11 developers is access to transmission. And I give
12 you a lot of stories out in the desert of
13 transmission that is planned, permitted, not
14 built. Planned, can't get permitted. Permitting
15 processes that take 20 years.
16 Those, I think, are exactly the reason
17 why a transmission corridor designation that we
18 fought very hard -- And I think the utilities
19 specifically fought very hard to make that process
20 so encompassing from an environmental perspective
21 that it would be meaningful so that when you
22 wanted to site a transmission line that would
23 benefit all these renewable projects we wouldn't
24 be starting from square one.
25 And so I would urge the Energy

1 Commission. I know that you have been working on
2 it. But I think that that should be a number one
3 priority for you in helping shape the future for
4 renewables. Not only to get permitted through you
5 but to actually get built and deliver electricity.
6 I can't tell you how many projects that
7 we are currently discussing. And when the subject
8 of transmission comes up it is a four to five hour
9 discussion, at the end of which we don't know any
10 more than when we started. And what would really
11 be great is if there were some corridors out there
12 that we knew were coming. We in the development
13 community will respond. There isn't the overall
14 planning that there used to be but I think you
15 guys could take a leadership role in that.
16 And remember, you don't have to
17 designate a perfect corridor. You could designate
18 three imperfect corridors and that would be great.
19 And those three imperfect corridors will be
20 tweaked to be made more perfect or one of those
21 three will be used. So I would really encourage
22 you to use that authority that you have.
23 PRESIDING MEMBER BYRON: Mr. Galati,
24 thank you. And of course you make reference to
25 some ongoing work at this Commission, at the PUC

1 and the ISO with regard to the Renewable Energy
2 Transmission Initiative. How about six corridors?
3 I mean, just pick a number. We are working
4 towards that as you may know and I appreciate you
5 bringing that up as an integral part of the
6 solution that we are discussing here today.
7 MR. VESPA: Thanks. I just wanted to
8 get back to the question of what we do now. And
9 there seems to be general agreement that we have
10 to analyze greenhouse gas emissions as part of
11 these projects. But I think maybe some sticking
12 points would be, what do we do in that analysis.
13 And what I am hearing, maybe/maybe not,
14 is that a natural gas power could simply say, I am
15 more efficient than existing power plants.
16 Typically the less efficient ones go on-line last.
17 I am adding new capacity and therefore displacing
18 older, less efficient capacity. And therefore I
19 am also significant and that would be the end of
20 the analysis.
21 And that is a real concern to me.
22 Because you are displacing capacity but how are
23 you displacing that capacity? When you sort of
24 give us carte blanche to make a less than
25 significant finding, which this logic would allow

1 you to do for pretty much any project, you are not
2 looking at mitigation alternatives. And someone
3 mentioned we do look at alternatives but not in
4 the greenhouse gas context unless that impact is
5 significant.
6 And I think it is important to ask in
7 any of these sitings how might we otherwise
8 displace some of these needs. Could we use
9 renewables, could we use efficiencies? And I just
10 don't think it is appropriate for every project
11 just to make less than significant findings simply
12 through this displacement argument. Which
13 ultimately is adding new capacity to the system
14 and I think is a little too general and doesn't
15 really allow you to find alternatives to these
16 carbon commitments.
17 So I would kind of like to get to the
18 question of what the greenhouse gas analysis would
19 be. Because I think that is where, I think, there
20 is going to be a lot of disagreement.
21 MR. ELLISON: I'll offer a couple of
22 thoughts. One is, to the extent that it is
23 factually true that the more efficient plan is, in
24 fact, reducing system greenhouse gas emissions.
25 And I think it is factually true that it is not

1 contributing to the cumulative impact. And
2 respect for that truth I think is an important
3 touchstone to solving this problem. Because if
4 you don't respect that truth you will start making
5 decisions -- for example, let's say potentially
6 turning that power plant down because you required
7 it to mitigate in a way that it chooses or cannot
8 do. When in fact, if you had let it go forward
9 you would have improved the system. So that's my
10 first point, you know.
11 But the second point you raise is this
12 issue of alternatives and the idea that perhaps
13 you could do something that would be even better.
14 Even though this does not have a significant
15 impact maybe there is something even better. Well
16 let me suggest that it is better not because of
17 its impact on greenhouse gas, it is better for
18 some other reason.
19 That if you have kilowatt hours produced
20 -- Let's say you have got a gas-fired project and
21 a solar project. And I represent them both. If
22 the gas-fired project is in fact, and this is an
23 assumption I am making here. But let's assume for
24 the sake of the discussion that the gas-fired
25 project is, in fact, reducing system greenhouse

1 gas emissions and therefore it is not contributing
2 to any cumulative impact of greenhouse gas, okay.
3 And the kilowatt hours from the solar
4 project would do exactly the same thing. It is
5 the same number of kilowatt hours, it is
6 displacing the same thing, okay. They are
7 fundamentally equivalent in that respect. The
8 renewable project is not better than the gas-fired
9 project with respect to that.
10 Now it may be better with respect to a
11 whole bunch of other things, okay. It may be
12 better in terms of all sorts of other emissions.
13 It may be better in terms of diversity of fuel
14 supply. We all know a number of arguments that
15 could be made. The Energy Commission already does
16 that analysis. And that kind of analysis is
17 something that nobody in this room I don't think
18 is suggesting shouldn't be done.
19 MR. RICHINS: Well let me pose a
20 question. Taking the system approach I think it
21 is recognized that generally the system will
22 become more efficient with the addition of a new
23 plant and there will be marginal improvement on
24 carbon emissions. So I guess my question would
25 be, from a CEQA standpoint that meets the test, I

1 believe, of CEQA and CEQA significance.
2 However, taken out of the context of
3 CEQA and look at it from a policy perspective and
4 AB 32 kind of goals and objectives, is that enough
5 and is that where the Energy Commission should
6 stop in our CEQA analysis or should we also
7 include a policy oversight or a policy, additional
8 policy considerations in our analysis? So should
9 there be something above and beyond what the
10 system would show as a marginally -- marginal
11 improvement?
12 MR. ELLISON: We are here today to talk
13 about CEQA. And so the answer under CEQA is no,
14 it shouldn't if the impact is not there under
15 CEQA. That is what CEQA is about.
16 MR. RICHINS: And that's why I made the
17 distinction.
18 MR. ELLISON: Now let's shift the
19 discussion to AB 32 or the Energy Commission's
20 authority to, you know, adopt energy policy for a
21 whole variety of other reasons. Yes, maybe you
22 should be, you know, imposing or providing
23 guidance in siting cases or adopting new energy
24 efficiency standards or a whole variety of other
25 things that are necessary to move us forward.

1 And I think we ought to all be working
2 together towards that. I think a lot of the
3 voices around the table have suggested that
4 programmatic approaches to helping solve the
5 greenhouse gas problem that are integrated with AB
6 32 make sense. That that's, you know, what we are
7 here to do.
8 And to the extent we spend a lot of time
9 arguing and debating about the CEQA impacts that
10 in the hypothetical we are discussing do not
11 exist, we are taking time and energy away of all
12 of us, we have human resources here in this room,
13 from working on the other problem. So let me
14 suggest that keeping straight what your authority
15 is and what your purpose is and what you are doing
16 is an important part of solving the problem.
17 MR. MILLER: I would like to add a point
18 to that, Paul. This is Taylor Miller for Sempra.
19 The reference was made in one of
20 Mr. Rostov's statements, I think, that you might
21 want to look at how you can -- in an individual
22 siting case, how RPS might be complied with.
23 I think the basic concept of a portfolio
24 standard is the LSEs are directed, or at least the
25 IOUs are directed, to meet a given percentage on a

1 portfolio basis. And so that is the mandate that
2 is already there and that will be now 33 percent,
3 likely. That implies a certain amount of resource
4 planning that is still allowed to go on at the
5 IOUs.
6 So it is not a directive on how to get
7 there. And I think the tail would be wagging the
8 dog to have an individual siting case take up the
9 question of what is the best way to get to the
10 RPS. I do think the utilities are entitled to
11 some decision-making on that on a resource
12 planning basis across their system.
13 PRESIDING MEMBER BYRON: Does that apply
14 to transmission as well?
15 MR. MILLER: Well, you know --
16 PRESIDING MEMBER BYRON: I am just
17 making reference to some alternative decisions
18 before the PUC right now.
19 MR. MILLER: Yes. Well, you know, there
20 was a rather substantial alternatives analysis
21 done in that case.
22 PRESIDING MEMBER BYRON: We don't want
23 to get into that.
24 Mr. Richins, I think Mr. Vespa has a
25 comment.

1 MR. RICHINS: Yes, I could see that he
2 was jumping --
3 MR. VESPA: I just, you know, I take
4 issue with the systematic approach and the
5 assumption that all these new power plants are
6 presumptively less significant. And these are
7 carbon commitments. They are adding new capacity
8 to our system. And, you know, there is no
9 assurance that these dirtier systems won't be back
10 on-line in a couple of years. And these are long-
11 term commitments. And maybe at that instant that
12 power plant goes on-line something might get
13 displaced. But who is to say that those other
14 things won't come back on-line in the future.
15 There seems to be an assumption there
16 that these are less than significant and I
17 absolutely disagree. And I think we have to look
18 at how these new carbon commitments are affecting
19 our trajectories. And certainly that will happen
20 in a programmatic way in the future, I'm hoping.
21 But there is also a project level analysis to be
22 done and these can interfere with our carbon
23 future.
24 And I think they are significant on a
25 project-by-project basis with a lot of emissions

1 going into the atmosphere. Whether they displace
2 for a temporary amount of time something else.
3 You know, I don't think we can make that
4 assumption that all these power plants are less
5 than significant. Or else we just constantly --
6 Under that logic we can do whatever we want. We
7 can build as many power plants as we want. And
8 they are all less than significant because
9 something else is getting displaced. And that
10 just logically doesn't seem to flow for me.
11 PRESIDING MEMBER BYRON: Mr. Vespa,
12 doesn't AB 32 address that? I mean, aren't we
13 going to be required to see these goals met by
14 certain time periods? As Mr. Ellison pointed out,
15 we are addressing the CEQA issue here today, I
16 realize, but doesn't AB 32 really address that?
17 MR. VESPA: You know, the issue I have
18 with AB 32 is that it is really, it's a market-
19 based system that is dealing with more than just
20 the energy sector. And I don't think it really
21 answers the question of how we are approaching our
22 energy needs in a sort of systematic way. And so
23 it is a short-term goal. It doesn't look at
24 reducing climate change necessarily, it's a step
25 towards that goal.

1 And I think carbon commitments in the
2 future. These are emissions that will be, will be
3 for quite some time. I think you want to look a
4 little bit separately about whether those long-
5 term commitments are really necessary or not. And
6 having a market-based system to somehow trade and
7 pass around some of these things is useful, I
8 think, more as a mitigation measure but not in and
9 of itself as a way of determining significance.
10 Because these are long-term carbon
11 commitments and maybe they are necessary or they
12 may be not. And I think AB 32 should not obviate
13 the need to look at alternatives to more carbon-
14 intensive fuel energy production versus less
15 carbon-intensive productions like efficiency and
16 renewables. I would hate to see those
17 alternatives taken off the table because we are
18 assuming they are less than significant.
19 ASSOCIATE MEMBER DOUGLAS: I can't help
20 -- I'm sorry, Commissioner. At this point I
21 really want to point out that AB 32 is not just a
22 market-based system. The scoping plan has a suite
23 of regulations in it that affect virtually every
24 sector of our economy. It includes a 33 RPS, it
25 includes our aggressive energy efficiency goals.

1 So I think of AB 32 as a comprehensive plan to get
2 our economy to the 2020 target. It does not, in
3 AB 32 get us to the 2050 target.
4 MR. VESPA: Right.
5 ASSOCIATE MEMBER DOUGLAS: The market-
6 based system is, you know, potentially a part of
7 it if ARB makes certain findings. The market-
8 based system, interestingly, is the part of AB 32
9 that would most directly affect generators. Other
10 regulations in AB 32 put more of the burden on the
11 utilities.
12 So the interesting thing to me is the
13 market-based system is where if the point of
14 regulation is on deliverers, we actually do have
15 generators involved in a system that is getting us
16 to our targets. I would agree that we cannot just
17 assume that compliance with AB 32 meets the
18 significance threshold in CEQA. That is a
19 question that has to be asked. But being a long
20 time AB 32 person I just can't, I couldn't let
21 that one go unchallenged twice.
22 MR. VESPA: Right. I guess what I was
23 referring to more specifically was entering into
24 the cap-and-trade system, specifically that part
25 of it. And I think in terms of looking at the

1 significance of your impact, there are these other
2 renewable standards and so forth. And I think it
3 is worth asking whether adding more fossil fuel
4 commitments is somehow going to affect your
5 portfolio ratios and things like that. So that
6 was sort of more what I was getting at.
7 ASSOCIATE MEMBER DOUGLAS: Okay.
8 MR. ROSTOV: I just wanted to -- This is
9 Will Rostov from Earthjustice. I just wanted to
10 give an example of the flaw in the system
11 approach. I think it really has to do with local
12 reliability.
13 Often I have been involved, not in this
14 job but a few years ago in a different job I was
15 involved in some power plant sitings where it was
16 like, if we build this new power plant we will be
17 able to retire the old power plant. And there was
18 really no commitment to that and that wasn't what
19 happened. So just saying that we are going to
20 build more efficient power plants doesn't mean
21 that you are going to, one, solve your reliability
22 problem, or two, retire old power plants.
23 And that's part of the thing -- What we
24 are saying is, when you look at these, when you
25 look at project need you really have to look at

it. Are you trying to fulfill a reliability need? If you are trying to fulfill a reliability need you really need to consider, is this project fulfilling that reliability need.

The other point I want to make about the system approach is there are a lot of power plants that are 50 years old in this state and a lot of them are once-through cooling power plants. And the Clean Water Act, the new regulations in the Clean Water Act are going to essentially close those plants down in the next couple of years. So the idea of giving credit for greenhouse gases from plants that are already closing down because of regulations doesn't really make sense.

And I think that is why you really have to look at it from a project basis and look what you are displacing. Are you displacing something that was going to close down anyway or are you displacing something that was less efficient and not going to close down? Because if you are shutting down something that is already 50 years old and was going to shut down for other purposes you are increasing your baseline artificially and I don't think that is appropriate.

ASSOCIATE MEMBER DOUGLAS: But Will, if

1 you saw evidence in a record that those plants,
2 despite the effort to shut them down -- and the
3 Energy Commission has been advocating that these
4 plants be retired or repowered, consistently for
5 quite a long time. If there were evidence that
6 without newer, cleaner sources of generation
7 coming on-line the shutdown dates would most
8 likely be extended, how would that affect your
9 argument?
10 MR. ROSTOV: And I think this is why you
11 need to do it on a project-by-project basis.
12 Because then you can really look at it in terms of
13 that one project and say, is this project really
14 going to have that effect. It will affect it in
15 two ways, it will affect it in terms of the
16 analysis as well.
17 So if you have a plant that is 50 years
18 old and you do know it is going to be shut down
19 and you do know there are some problems. And
20 there's maybe like a five year lag where you
21 realize, if you don't get this plant you know you
22 have a five year lag.
23 Say you are shutting this plant down
24 five years sooner than you originally did. Then
25 you can calculate -- Since you have already

1 calculated -- We have all agreed they can
2 calculate the greenhouse gas emissions. You can
3 calculate those emissions for the first five years
4 and then put that into an analysis for your
5 mitigations over the 40 year life span of that
6 plant. So I think you take into account, you take
7 it into account in your analysis. And that is why
8 I think it is important to have some project-
9 specific analysis because you really have to kind
10 of dig into the facts of each specific power
11 plant.
12 I mean, I could mostly imagine where the
13 way the system is set up now is there's private
14 developers who have every right, and they do it
15 every day -- or not every day but often. They
16 propose new baseload power plants that for
17 whatever reason, you know, are not necessary for
18 the system and maybe not necessary in that
19 locality, and will make a new, significant
20 contribution to global warming.
21 I think having the ability to evaluate
22 that in terms of what is around it is very
23 important. And some of those plants probably, you
24 know, aren't necessary in terms of, you know, the
25 future we are trying to go towards. And I think

1 my example of the needing to do procurement only
2 for renewables, you know, kind of proves my point
3 to a certain degree. If that makes sense.
4 MS. ALLEN: So are you suggesting that
5 the all-source procurement --
6 PRESIDING MEMBER BYRON: Ms. Allen,
7 could you use a microphone, please.
8 MS. ALLEN: I am Eileen Allen; I am the
9 manager of the Commission's Siting and Compliance
10 Office. Are you suggesting that the all-source
11 procurement option be set aside in favor of
12 another approach?
13 MR. ROSTOV: I am not sure if I
14 understand your question.
15 MS. ALLEN: Well as I understand the
16 procurement process, at the overview level there
17 are requests for offers for renewable projects and
18 then there are requests for all sources. So from
19 the all sources perspective we tend to see a
20 number of gas-fired power plants proposed and then
21 separately there are the renewables.
22 MR. ROSTOV: I think I am saying once
23 you get into the proposal for a specific plant
24 then you need to do the analysis at that time.
25 Because at that time each project has specific

1 needs and specific purposes. So you have to look
2 at the project need and purpose when you are --
3 this is just basic CEQA law. Look at the project
4 need and purpose when you are doing mitigations
5 and looking at possible alternatives.
6 So I am looking at it from the context
7 of, and I am not sure about this, but from the
8 perspective of the California Energy Commission.
9 The California Energy Commission is presented with
10 the siting proposal. They have to make decisions
11 in a CEQA-equivalent document. They have certain
12 requirements to make. I think everybody agrees
13 that there has be some sort of CEQA analysis.
14 And I agree with Matt that the devil is
15 really in the details. But maybe my remark about
16 public disclosure kind of overshadowed my other
17 point. But once you agree that CEQA analysis is
18 required there's two other requirements that flow
19 directly from it. And those are mitigation and
20 alternatives analysis. So when you have a siting
21 proceeding you have to do all three as part of
22 your analysis. So you have to do it in that
23 specific project.
24 MR. ELLISON: If I could jump in again.
25 There are several points that have been made in

1 the recent discussion that I want to respond to,
2 all of which fall under the category of looking at
3 the existence of power plants as having impacts
4 and not looking so much at the operation of power
5 plants and the operation of the system.
6 And with respect to greenhouse gas it is
7 the operation of these power plants that matters.
8 This sort of simplistic assumption that more power
9 plants means more greenhouse gas emissions is not
10 true. It is the operation of the system, it is
11 the operation of the plants that causes the
12 emissions. So under that rubric let me address
13 several key points.
14 The idea that there are new, unneeded
15 power plants being proposed by power plant
16 developers, and that those unneeded power plants
17 are being built and are generating and producing
18 emissions is not true. And it is not true without
19 a regulatory solution. It is not true because of
20 the precise points I made earlier about the way
21 the system is dispatched.
22 If you build a power plant in this state
23 that is not needed it will not be dispatched. You
24 will make no revenue and you will lose your shirt.
25 That is why all of the power plants that we are

1 talking about that are being proposed are more
2 efficient than the ones that are currently on the
3 system. Because otherwise the private developer
4 won't make any money. They are needed in that
5 way. Which is why the Legislature removed the old
6 need test from the siting process, in recognition
7 that that is true. Okay.
8 And to the extent it is not true, if
9 somebody did, in fact, propose something that is
10 unneeded, there is a perfect, already in place
11 solution for it in that dispatch of the system
12 that I talked about.
13 Secondly, this idea that the new plant
14 would come on-line and only temporarily displace
15 the existing plant. Again, embedded in that is
16 this assumption that a plan is only displaced if
17 it is retired and goes away, okay.
18 Yes, if you build a new power plant and
19 it completely shuts down some other power plant,
20 and then five years from now that plant is needed
21 and to some extent starts operating again,
22 nonetheless it is still operating less than it
23 would have if you hadn't built that earlier plant.
24 Every kilowatt hour that that new plant that you
25 build, for the lifetime of that new plant is

1 displacing something that would be operating if
2 that new plant didn't exist. It is not a
3 temporary impact, okay. Again, you have to focus
4 on operations.
5 And lastly this idea, for example. I
6 noticed, Will, in your comments there was this
7 point about a study that had been done about, I
8 believe it was an LADWP power plant that was more
9 efficient but nonetheless had higher emissions
10 than the plant that it was replacing. I believe
11 it was a repower. And I emphasize I haven't read
12 the study but I will.
13 MR. ROSTOV: And it was actually several
14 plants. I was looking at the LADWP portfolio.
15 MR. ELLISON: Okay. I am willing to bet
16 my house --
17 (Laughter)
18 MR. ALVAREZ: In today's market it's a
19 lot less.
20 MR. ELLISON: -- that the reason that
21 those impacts were greater --
22 ASSOCIATE MEMBER DOUGLAS: Do you
23 realize that this is being recorded?
24 (Laughter)
25 MR. ELLISON: Yes I do. Do you realize

1 I'm holding the note. I just moved out of an
2 apartment this week.
3 (Laughter)
4 MR. ELLISON: That the reason that
5 that's the case is that those plants operated more
6 than the plants that they were replacing, okay.
7 And the reason that they operated more is that
8 they are more efficient and that somewhere in the
9 system something was operating a lot less. And if
10 you took a picture of the whole system and not
11 just the DWP portfolio you would see that the
12 introduction of the more efficient plant in fact
13 reduced impacts.
14 If you take a snapshot of just a piece
15 of the system you get information that can be very
16 misleading. So once again, when you build these
17 new plants, if they are in fact more efficient, if
18 they are in fact reducing greenhouse gas
19 emissions, it is not a temporary impact.
20 Under CEQA you are supposed to basically
21 look at what is the impact of the decision you are
22 making, the licensing decision of this plant. Is
23 the environment better off or worse off for making
24 the decision that is in front of you. And if the
25 truth is that the environment is better off as a

1 result of this then that should be the information
2 you provide to the public and that should be the
3 basis for your public policy. If under other
4 authority, non-CEQA authority, you want to do
5 something beyond that, that's a different
6 question.
7 MR. ROSTOV: I mean I --
8 MR. ALVAREZ: May I?
9 MR. RICHINS: Go ahead, Will.
10 MR. ROSTOV: Just to do a fast response.
11 I mean, I think you are assuming a zero sum game.
12 It goes back to Commissioner Douglas' question
13 about China in terms of, you are assuming that the
14 system never increases more power or reduces more
15 power. And actually that LADWP study that we
16 raised and put in our comments, I was going to
17 raise in response to your question so it's kind of
18 funny that you raised it.
19 I mean, there you had -- I mean, I think
20 it proves the point to a certain degree. You had
21 power plants that were operating less and then you
22 built new power plants that replaced them and
23 operating more and increased your emissions. So
24 you made your system more efficient but you still
25 increased your emissions. And that is not

1 necessarily --
2 That goes back to the zero sum game. If
3 you have a zero sum game for, you know, there's
4 only like 100 greenhouse gases in the system,
5 maybe that makes more sense. But that is not what
6 happened. What happened was there was probably an
7 increase in demand, an increase of energy use,
8 that increased, you know, all of the pollutants
9 listed in that report.
10 MR. ELLISON: Okay, let me respond.
11 First, if there was an increase in demand, okay,
12 it was not the result of those power plants being
13 constructed. Demand in California is not driven
14 by supply in that way for electricity, okay. That
15 demand increase would have occurred anyway, okay.
16 Secondly I suggest to you that I am not
17 assuming a zero sum game. Demand is increasing in
18 the state, I understand that, okay. What I am
19 assuming is that it is going to increase or it is
20 going to do whatever it does. If we develop
21 conservation programs that cause it to decrease
22 then it is going to do that. But it is going to
23 do whatever it does irrespective of whether we
24 build a new power plant or not.
25 What I think you are assuming, which I

1 think is wrong, is that the introduction of a new
2 power plant increases the demand for electricity.
3 That is not true.
4 MR. GALATI: Commissioners, I think that
5 this is -- We thought about this a lot. I think
6 that is why we came up what we are calling sort of
7 a three step approach. These questions are great
8 questions. And for those of us who have thought
9 about them in the electricity industry, we are
10 following a lot of these discussions.
11 It is exactly the kind of discussions
12 that should be had in a programmatic assessment to
13 ferret out whether what Mr. Rostov believes
14 happens is accurate or what Mr. Ellison believes
15 happens is accurate. That is exactly why we
16 proposed a systemwide, programmatic study. So
17 that is step two. Because we are here today, and
18 we have power plant siting cases before the Energy
19 Commission, so there is a step one we should
20 figure out.
21 Step three, in my opinion, is AB 32's
22 program as implemented. That program would be, I
23 am anticipating and it is possible that it doesn't
24 work out this way but I am anticipating that that
25 program will be so comprehensive that the Energy

1 Commission would be able to discharge its CEQA
2 obligations by ensuring that projects that come
3 before it are compliant with and not interfering
4 with the goals of that program. It is very
5 similar to what the Energy Commission does with
6 other nationwide programs or federal programs.
7 We will have to see if that works out
8 that way. We certainly will have on a case-by-
9 case basis, or maybe some other IEPR workshop
10 after AB 32 is implemented to see if that is the
11 case. So step three is AB 32 either fills the gap
12 or the Energy Commission does something to fill
13 the gap. We believe AB 32 will fill the gap.
14 Step two, let's do a systemwide study to
15 determine under what circumstances the system
16 behaves like Mr. Ellison says and under what
17 circumstances that Mr. Rostov believes. And it
18 could be in a systemwide approach that there are
19 some circumstances where it does behave like
20 Mr. Rostov believes.
21 So what do we do step one? We have
22 proposed that it is impossible for you at this
23 stage to develop a quantitative threshold that
24 makes sense. Therefore we ask you to say, look,
25 it is difficult for us to calculate under what

1 circumstances an individual power plant is
2 contributing cumulatively to a climate change
3 impact. Therefore what we are going to do instead
4 is to require efficient power plants and require
5 best management practices.
6 And maybe we should be doing more of a
7 workshop on what those might be in the interim.
8 But those are things that we could do in a
9 project-by-project basis. But to establish a
10 threshold today to do step one, when you don't
11 have the results from step two. I don't know what
12 you would establish it on.
13 Staff has proposed a few efficiency
14 based on things that might be very important to
15 ferret out in the programmatic study. Things like
16 how does the system operate, what is the average
17 efficiency. How does the new plant increase or
18 decrease. Those are all good questions. We think
19 the systemwide programmatic study will answer
20 that, create a framework.
21 So step one, we have to do something. I
22 think we proposed the only thing that makes sense.
23 Step two, do the programmatic study to determine
24 how it changes step one. Step three, AB 32. I
25 would be more than happy to continue to talk about

what the programmatic study should include but I think we should have some discussion about whether step one is acceptable to the Committee.

MR. RATLIFF: Mr. Galati, are you saying that PG&E is already doing step one?

MR. GALATI: Pardon?

MR. RATLIFF: Are you saying that PG&E is already doing step one?

MR. GALATI: I am saying that an individual power plant, what the Energy Commission could do is ensure that that power plant is efficient and look at best management practices. Some of which we are already doing, some of which a developer would already be doing. And again, this would not just be on PG&E, this is on the developer --

MR. RATLIFF: I must have the wrong step, maybe it was step two. Did you say that you are already doing some kind of step?

MR. GALATI: I apologize. We are working with the other IOUs. We are working jointly to try to develop an outline of what we think a systemwide programmatic assessment would look like and what the Energy Commission should do.

1 Many of the ideas that you have heard
2 here today I think are ideas that are inherent in
3 that, in that outline. And those are the kinds of
4 things, where would you go get the information,
5 to, how would you determine displacement. How
6 would you evaluate demand? How would you evaluate
7 the effects of RPS and energy efficiency programs?
8 Those are things that we think that if
9 you looked at a systemwide approach you would
10 study those, ferret those out, and your net,
11 whatever nets out of that report would inform what
12 you need to do on a project-by-project basis for
13 projects continuing to come forward.
14 I think we need something here that does
15 not stop projects that are in the queue now. And
16 I think that we have provided a CEQA-compliant
17 approach. Understanding that it could be informed
18 and it could be better, that's the purpose of the
19 systemwide study.
20 MR. ALVAREZ: And I guess I would just
21 like to point out that what we are talking about
22 here is the interim period between now and AB 32.
23 Perhaps it is an act of fate that AB 32 will in
24 fact encompass the concerns that Mr. Richins
25 raised about how they will make, how the

1 Commission will make its decisions and
2 evaluations. But until that process is complete
3 we won't really know that.
4 We may be back here, if AB 32 fails to
5 fulfill its obligations, discussing these issues
6 once again and we may have to go back to further
7 systems analysis. But I guess at this juncture we
8 have seen the work that the Commission and the
9 CPUC have done, and other agencies have done, to
10 work on that coordinated function for AB 32. And
11 I guess it is an act of fate that that may in fact
12 bring the answer to you that you will need in the
13 siting case.
14 And at that point you will see what gets
15 proposed to you post-AB 32 in terms of projects
16 that you need to approve. I don't think you can
17 do that today. I don't think you can prevent
18 anyone from walking in and giving you an
19 application saying, I would like to build this
20 power plant, and forcing you to process that power
21 plant. I don't see how you have that constraint.
22 MR. WESTERFIELD: I'd like to --
23 MR. RICHINS: Hold it, Bill. Is it
24 Laura?
25 PRESIDING MEMBER BYRON: Ms. Miles.

1 MR. RICHINS: Ms. Miles. I can't read
2 it from here.
3 MS. MILES: I'm afraid you can't really
4 see me. First of all I just want to say that I am
5 really happy to see this kind of discussion, this
6 rigorous debate happening. I had been working in
7 my past job going to a lot of Department of Energy
8 forums and they certainly did not have this kind
9 of collaborative debate. And I am just really
10 happy to see this, I think it is healthy.
11 Secondly I just wanted to say that I am
12 really tracking what Mr. Galati said about the
13 three steps. I think we find that
14 unobjectionable. I think in terms of step one and
15 what we are here to do today, I think it is really
16 important to focus on CEQA and to look at site-
17 specific impacts. I'm sorry, not site-specific
18 impacts but the site-specific process.
19 And I think it is incumbent upon every
20 project applicant to think about how they can
21 reduce greenhouse gases at their projects. And I
22 haven't really heard that from anyone here today,
23 which I was really surprised.
24 And I know that you cannot have huge
25 reductions at the site at this point because the

technology is not really there but there are small things that can be done right now like using microturbines instead of duct burners or upgrading construction equipment or using adjacent land for renewables. And I think other technologies are going to be coming out that will help us.

So I just don't want to see the Energy Commission letting go of that opportunity to hold an applicant's feet to the fire in terms of reducing greenhouse gases at the site. Because we are seeing, we are at possibly a tipping point. We are seeing, I think, the impacts of climate change right here in California in terms of our snowpack, in terms of our water resources and our temperature increases. And so I think we need to take every opportunity that we can to reduce greenhouse gases.

And in terms of a systematic approach I think we can, I think it makes sense for the Energy Commission to be looking at this throughout California and throughout the western electricity system. But I think there are so many uncertainties that I am not sure we are going to, it is going to take a lot of work to get to something that is concrete and usable and

1 defensible. But I think possibly we could get
2 there. And it would inform, especially the CEQA
3 alternatives analysis.
4 But, you know, I think right now
5 projects should look at alternatives in terms of
6 greenhouse gases and are there other things that
7 could be done. Could they do a hybrid facility
8 where they put solar on-site with their natural
9 gas plant, for example. Or would it make more
10 sense to do solar in a specific location, you
11 know. So I think that those are concrete things
12 that need to be done at this stage.
13 MR. RICHINS: Okay, Bill.
14 MR. WESTERFIELD: I am actually happy to
15 go after that comment because it is a great segue
16 for the point I wanted to make. I embrace
17 Mr. Galati's comments. I think they are very
18 constructive and I would like to build on those.
19 And I would like to make a slightly different
20 point about the CEQA analysis of significance.
21 We have been talking about emissions
22 here as if it is the same thing as adverse
23 environmental impacts. And there is a connection
24 that needs to be made in the CEQA analysis. It is
25 not enough to say that potentially one added

1 molecule of emission is a significant
2 environmental -- adverse environmental impact at
3 the project site. CEQA guidelines and CEQA law
4 make it plain that in analyzing what is
5 cumulatively considerable it is not necessarily
6 true that any level of incremental contribution of
7 the pollutant is necessarily cumulatively
8 considerable. That analysis has to be made.
9 There were some very good comments that
10 were made by the energy producers and users
11 coalition that make those connections within the
12 context of CEQA guidelines and CEQA law. And so
13 those points made in those comments are part of
14 your analysis. Your duty under CEQA is to
15 identify a significant effect on the environment
16 in the local area where the project is going to
17 be. That requires a very hard analysis that I
18 think is quite difficult. It is probably
19 speculative. But in order to make that connection
20 there has to be substantial evidence for that
21 local environmental impact.
22 And so to say we have got more molecules
23 of a greenhouse gas in a location that then
24 affects a world climate or the entire level of
25 greenhouse gases throughout the planet, that that

1 cause somehow comes back to actually affect some
2 not quantifiable but some identifiable adverse
3 environmental impact in the CEQA locality is very,
4 very speculative.
5 And if the Energy Commission launches
6 that kind of investigation in the context of the
7 project review it has got to be subject to the
8 challenge that making this kind of causal
9 connection is highly speculative and not supported
10 by substantial evidence. It could be a very
11 difficult thing to defend.
12 ASSOCIATE MEMBER DOUGLAS: I would like
13 to ask you to respond to a couple of questions
14 about that. It doesn't seem to me that that's
15 necessarily such a difficult line of argument to
16 follow. I don't think anyone is necessarily
17 arguing that a single power plant is a direct
18 impact. I think we are talking about cumulative
19 impacts. But there is a fairly extensive body of
20 scientific research at this point underlying the
21 issue of global warming.
22 The State of California and the Energy
23 Commission has been a leading part of the research
24 that we have done how global climate change
25 affects California. There is fairly good research

about increased temperatures increasing air pollution. There's information about differences in fire vulnerability, in water supply, changes in hydrology, that can affect most regions of California.

I think it would be challenging to pinpoint a region of California that you could not point to evidence, at least in some of the scientific research, of impacts to the local environment from global climate change. But I would like to offer you an opportunity to maybe elaborate on what you were saying and answer some of those questions.

MR. WESTERFIELD: Well first of all I am totally committed and a convert, if you will, to the dangers of climate change in California. I harp about it to my family all the time. And they dread inviting me over for dinner because I am always reminding them about it.

I think there is no question that we are feeling the effects of climate change now in California in so many terrible and profound ways. But the difficulty is making a connection between that local impact and the local cause of a particular project.

1 And we can argue in a general sense that
2 every contribution of greenhouse gases will add to
3 the total burden upon the plant ecosystem. But I
4 doubt that CEQA law and CEQA guidelines are ready
5 to embrace the one molecule rule on a global cause
6 and effect basis. And that's the problem that I
7 think we face.
8 ASSOCIATE MEMBER DOUGLAS: So what you
9 are raising is really the question of the one
10 molecule rule. One question that might be helpful
11 for you to provide some input to us on is whether
12 the one molecule rule is even, is relevant to what
13 we are trying to do. We have a 50 megawatt
14 threshold for a project to come into our siting
15 process, so we are not in the position of say a
16 local government approving a four-plex somewhere
17 and wondering whether that four-plex somehow is
18 cumulatively considerable as an impact.
19 That is potentially a question that is
20 not faced here, although I will pose it to the
21 group. It is one of the questions that has
22 occurred to us, given the threshold for Energy
23 Commission jurisdiction being 50 megawatts. I
24 think there are renewable projects where we might
25 face the analytical equivalent of the one molecule

1 test. But for some of the natural gas plants -- I
2 don't know that we do. Do we?
3 MR. MILLER: Yes, because if you look at
4 the system you would have to address it. And
5 incidently, the simple answer is, as the Court of
6 Appeals has said, the one molecule rule is not the
7 law. That's a quote. So I don't think that there
8 is any need for the Commission to feel that it has
9 an obligation to apply that standard, that's a
10 policy question.
11 MR. VESPA: You know, I do think a zero
12 threshold can be relevant in this case if you are
13 looking at a project-by-project basis and what you
14 are trying to mitigate to. So if you want it to
15 be less than significant how does your threshold,
16 that threshold would inform where you would want
17 to go. But clearly all these types of projects
18 would be significant. But the question is, how do
19 you get less than significant. And I think that
20 is where a numerical threshold, if that is how you
21 go, would be relevant.
22 And I would just take issue with the --
23 I don't think it is the law that you cannot have
24 any net increase. A net zero threshold I think is
25 appropriate in this case, given the reductions we

need to make. I don't think the one molecule rule was dicta in that case to not deal with global warming.

And the science shows we have to make extremely deep reductions, 80 percent below 1990 levels at least by 2050. And I think actually our dangerous climate change is actually 350 parts per million, not 450, which that was based on. And I think it is fair to say that any net increase is significant, given the enormity of climate change.

But, you know, I think that is sort of a separate question. ARB has a 7,000 ton threshold with performance standards built into that for industrial sources. If it was something that was at that level. You know, mitigating to something like that for a 50 megawatt power plant would be quite a minor difference. Between zero and 7,000 you're talking about hundreds of thousands of tons. So to the extent a zero threshold plays into this is just really where you are going in terms of finding a less than significant impact.

MR. RICHINS: Okay, we have a question on the phone or a comment on the phone so we will take the comment from the person on the phone.

MS. HUNTER: Yes, did you ask for a

1 comment on the phone?
2 MR. RICHINS: Yes please. Just state
3 your name and your affiliation, please.
4 MS. HUNTER: Okay, thank you very much.
5 My name is Laura Hunter and I am representing the
6 Environmental Health Coalition. We are an
7 environmental justice organization working in the
8 San Diego/Tijuana region and I really appreciate
9 your letting us comment by phone today. We also
10 are represented on the AB 32 environmental justice
11 advisory committee so we will be up again to
12 testify tomorrow.
13 We did file a letter on this issue and
14 it is a very, very important one for those of us
15 -- I mean, statewide obviously but we feel the
16 importance of this very acutely. Maybe it is our
17 unique perspective that we are facing multiple
18 proposals of new gas-fired generation in
19 communities, in environmental justice communities.
20 We are border communities and we are
21 looking at liquified natural gas starting to be
22 kind of offered as the fuel of choice and it has a
23 higher greenhouse gas result. We are also coastal
24 communities so we are worried about we are going
25 to feel the impact very acutely of sea level rise.

1 And we are in sunny, Southern California where we
2 have not even begun to tap the indigenous energy
3 resources that we have as a region.
4 So we just wanted to add our voice that
5 we strongly support the zero baseline and the
6 project-by-project approach for analyzing the
7 greenhouse gas emissions from power plants. For a
8 couple of reasons in addition to the ones that
9 were mentioned earlier.
10 First of all, the CEC makes their
11 decisions on power plant sitings and approvals on
12 a project-by-project basis. So we really strongly
13 believe that that's the best place for you as a
14 Commission to, you know, make that judgement
15 about, is this a project that we need and is this
16 the best alternative.
17 And we outlined in our letter an
18 approach about, just like we have in CEQA you have
19 to designate an environmentally preferred
20 alternative. We think you should require that one
21 of the alternatives be a climate friendly
22 alternative or a climate preferred alternative.
23 And I want to follow-up on whoever it
24 was that made the comment about the hybrid
25 project. I mean, I think that you can use your

1 power to force better implementation of the
2 loading order. And any project that comes before
3 you, you know, that part of the greenhouse gas
4 emission analysis should show how could you meet
5 the same effect on the grid, either through demand
6 reduction, energy efficiency, clean renewables and
7 gas-fired plants. How could you meet that same
8 impact on the grid? That 50 megawatt peaker, how
9 could you meet that using other elements of the
10 loading order?
11 We also -- It is a global problem we are
12 facing and we got to it, you know, by one
13 tailpipe, one smokestack, one fire, you know, at a
14 time. We got to it through many, many millions of
15 individual projects and we really have to address
16 it that way.
17 So we would really hope that you would
18 drive, you know, take command and kind of drive
19 the kinds of projects you get by saying look, we
20 are going to be looking for hybrid, climate-
21 friendly proposals that include all of the
22 cleaner, more sustainable elements of the loading
23 order. Forcing maybe -- I know they won't like it
24 but maybe these energy generator companies need to
25 get new partners in energy efficiency companies,

1 in solar producers. And it would also help grow
2 our local green economy in a way that is more
3 sustainable.
4 Again, in our letter we address the way
5 you could look differently at a 100 megawatt
6 peaker, a gas-fired peaker. You could look at it
7 as maybe from a hybrid approach.
8 We really think it is about how you are,
9 you know. We have to face a choice about how we
10 are going to meet this demand. And there's a
11 comment that said, you know, every new plant, gas-
12 fired plant is displacing something. Well it may
13 be but we are concerned when what it is displacing
14 is more energy efficiency, more money and more
15 commitment on clean renewables.
16 I mean, I am sitting here. We have a --
17 I live in inland San Diego County, sunny day, and,
18 you know, my house is the only one with a solar
19 system on the roof. And yet there is a new
20 peaking power plant that is proposed very close to
21 here. Why isn't part of that proposal solarizing
22 the rooftops of, you know, many, many large
23 buildings or homes in the area?
24 I think when we look at what we care
25 about, we look at where our money goes. And if

1 all the projects keep going into more gas-fired
2 plants we are really not going to get to the
3 things that we need in terms of reducing climate
4 change.
5 So, you know, at least now your
6 decisions are made on a project-by-project basis
7 we really do strongly support that you make these
8 analyses on a project-by-project basis. And that
9 you force a maximum analysis so that when you make
10 that decision you know if there is a more climate-
11 friendly way that this project could be met if, in
12 fact, it is needed.
13 So thank you very much for taking my
14 comments on the phone.
15 MR. RICHINS: Thank you very much, we
16 appreciate your comments. I have three blue cards
17 so why don't we go to the blue cards. I have a
18 Mr. Cox. Is he still here?
19 MR. RATLIFF: Paul, I was wondering if
20 before we leave the point -- I really appreciate
21 Ms. Hunter's comments. I think one of the
22 comments that she raised is particularly important
23 here to our discussion and that is the issue of
24 alternatives. And I think she was suggesting that
25 we should be looking for alternatives to peaker

1 facilities in perhaps the coastal load areas. I
2 wonder if it would be -- Our forecasting staff has
3 been wisely silent during this whole discussion.
4 (Laughter)
5 MR. RATLIFF: But I wonder if it
6 wouldn't be a good idea to talk about whether you
7 can have, for instance, a remote solar thermal
8 facility which serves as an alternative to a gas-
9 fired peaker in a coastal load pocket. Because I
10 think that is really important to an understanding
11 of what is feasible and what is interchangeable as
12 an alternative. And I know in my discussions with
13 the forecasting staff they say that they simply
14 are not interchangeable. And I would like to have
15 some further elaboration on that if we can.
16 MR. VIDAVER: First of all, I don't
17 really like to be called a member of the
18 forecasting staff. Forecasting is a four
19 letter --
20 PRESIDING MEMBER BYRON: Nevertheless,
21 please identify yourself.
22 MR. VIDAVER: Dave Vidaver with the
23 electricity analysis office of the Commission.
24 The first thing we should perhaps be
25 talking to is someone who is more familiar with

1 the technologies, the solar technology that you
2 are talking about. The primary function of a
3 peaking facility in San Diego insofar as local
4 reliability service would be the ability to meet
5 the ISO's requirements for coming on line within,
6 I believe, is less than ten minutes in some kind
7 of contingency which required additional
8 generation in the San Diego load pocket.
9 I am not familiar enough with the
10 current peaking technologies, much less those that
11 we are seeing proposed for San Diego to know
12 whether they can meet that. So it would have to
13 be someone who is familiar with peaking
14 technologies in general or the specifics of the
15 facility in the San Diego Basin that would come
16 before the Commission.
17 Nor am I intimately familiar with the
18 ability to dispatch, or at all familiar, with the
19 ability to dispatch gas-assisted solar facilities.
20 So in order to serve as a substitute for peakers,
21 which are needed largely for local reliability in
22 San Diego, they themselves would have to be
23 dispatched among the ISO and the utility. So you
24 need to ask someone who knows a bit more about the
25 two technologies than I do. How is that for

1 avoiding a question.
2 MS. ALLEN: Dave's points are well
3 taken. It would be good to have the ISO as a
4 participant in this discussion so we could talk
5 more about the reliability questions when it comes
6 to looking at power plants on a global and
7 regional basis.
8 MR. VIDAVER: I would agree.
9 MR. RICHINS: Laura Hunter is going to
10 respond to Dave.
11 MS. HUNTER: Yes. I just wanted to be
12 sure that my comments were not taken out of
13 context. When we are talking about a hybrid
14 solution to a peaking plant we are not trying to
15 advocate for, you know, a billion dollars of power
16 lines to the desert. I mean, we are talking about
17 within the same service area of where that peaker
18 is that you could look at solar nearby, reducing
19 the demand through energy efficiency and stuff.
20 It is on an in-basin, again, project-by-project
21 basis. So I didn't want our comments to be
22 misunderstood that we are somehow advocating for,
23 you know, any power lines that I know we are not
24 supposed to talk about. But I just didn't want to
25 be misinterpreted, thank you.

1 MR. VIDAVER: This is Dave Vidaver
2 again. Right now from an operational perspective
3 the need for capacity in the San Diego basin is to
4 meet local reliability needs. Over the long run
5 to be able to, from the Commission's perspective,
6 to be able to retire Encina and South Bay, the
7 aging facilities in the area.
8 In order to do that, given the
9 transmission concerns faced by San Diego, there
10 needs to be dispatchable capacity. This capacity
11 in the basin. It has to be dispatched according
12 to the ISO's or the utility's need to respond to
13 contingencies on a very fast basis. Building
14 capacity outside the basin and importing the
15 associated energy would not alleviate this need
16 nor would building capacity that could not be
17 dispatched. Thank you.
18 MR. RICHINS: Okay. Mr. Cox, we will
19 entertain your comments now.
20 MR. COX: Good morning and thank you for
21 this proceeding, this discussion and for the time
22 here. My name is Rory Cox. I am the California
23 program director of Pacific Environments. My main
24 job is to coordinate a coalition called Ratepayers
25 for Affordable Clean Energy or the RACE coalition.

1 We are about 30 different environmental,
2 community and environmental justice groups all up
3 and down the West Coast. Most of our members are
4 in California. The groups are everything from
5 small community groups to the Sierra Club of
6 California are included within our coalition. And
7 I just wanted to make a few comments.
8 First of all I just wanted to, you know,
9 second a lot of what Earthjustice, Center for
10 Biological Diversity and Environmental Health
11 Coalition have sid thus far. I don't need to
12 restate a lot of that.
13 And I also wanted to second what
14 Mr. Ellison said when he started off when he
15 talked about truthfulness and accuracy of how we
16 proceed with power plants and CEQA. And I wanted
17 to sort of drill down on an issue that has been
18 brought up in some of the comment letters but has
19 not really be discussed about here, which is that
20 it is important that the threshold count the life
21 cycle emissions of the feed stock or the fuel.
22 You know, the climate crisis just makes
23 it all the more critical that California do so.
24 In particular we are concerned with the
25 importation of liquified natural gas. By pretty

1 much scientific consensus, not counting the life
2 cycle emissions of that particular fuel is sort of
3 opening up a loophole that allows anywhere from
4 about four to six million tons of greenhouse gases
5 per year per LNG terminal just not go counted and
6 not be accounted for in any evaluations.
7 So when we talk about old power plants
8 with new power plants and the benefits that happen
9 with that, well that can very well be erased if it
10 is just fed with the imported LNG from Indonesia
11 when you count up all of the fuel from the tanker,
12 the processing in Indonesia, the different carbon
13 content, et cetera.
14 To quote CEQA:
15 "Any emissions or discharges
16 that would have a significant
17 effect on the environment of the
18 State of California are subject to
19 CEQA under a California public
20 agency, where a California public
21 agency has authority over the
22 emissions or discharges."
23 So obviously the effects are in California, as we
24 have heard before.
25 And currently AB 32 is actually looking

at the life cycle emissions of transportation fuels but we still have to persuade them to look at the life cycle emissions of electricity generation, which we think is a pretty significant source.

Unlike other sectors the life cycle emissions of electricity production are pretty easy to measure and track. And there is quite a growing scholarship and a growing consensus coming from Carnegie Mellon, the Oregon Department of Energy, the California Coastal Commission and other sources that pretty much point to the same thing, which is that there is a huge life cycle impact of liquified natural gas that is significantly higher than that of domestic natural gas.

So we will be submitting written comments to this effect, which will elaborate this more, but I just wanted to bring it up in these comments. Thank you very much.

MR. MILLER: Paul.

MR. RICHINS: Yes, thank you.

MR. MILLER: I am duty bound to respond to this, I think. This is Taylor Miller with Sempra Energy. The issue of life cycle emissions,

1 the distinction between pipeline gas and LNG is
2 currently being evaluated by the ARB in the low-
3 carbon fuel standard proceedings, as you probably,
4 mostly know. The Governor's Executive Order that
5 originally set that in motion did require a life
6 cycle analysis for that, for transportation fuel
7 purposes.
8 We have done a detailed analysis of this
9 with some assistance from outside consultants that
10 have looked at this in much more depth than has
11 been done up to now; submitted a study to the ARB
12 on Friday of this last week. And that study
13 concludes that this conventional wisdom that has
14 been just repeated now that LNG is more carbon
15 intensive on a life cycle is in fact not true.
16 So we will see how that works its way
17 out at ARB. And I am certainly not intending to
18 debate it right now. Just letting the audience
19 know and anyone on the phone that we have new
20 information on that issue and we certainly intend
21 to pursue that as much as it needs to be and
22 through the course of the LCFS proceeding.
23 MR. COX: Has your study been posted on
24 CARB's website?
25 MR. MILLER: Yes it has been. It was

1 submitted to the LCFS docket website on Friday and
2 I think you should be able to retrieve it there.
3 MR. COX: Will do, thanks.
4 MR. MILLER: Okay.
5 MR. RICHINS: Thank you for your
6 comments.
7 PRESIDING MEMBER BYRON: Mr. Cox, if I
8 may, just before you leave, ask a quick question.
9 MR. COX: Sure.
10 PRESIDING MEMBER BYRON: Have you
11 thought about the life cycle analysis GHG
12 emissions for renewable generation, particularly
13 solar, for instance?
14 MR. COX: Sure. They are there but they
15 are nowhere, they are significantly lower than
16 domestically produced natural gas. And, you know,
17 not troubling.
18 PRESIDING MEMBER BYRON: So below a
19 level of significance.
20 MR. COX: It depends on how you define
21 that level of significance. But certainly below a
22 state of the art natural gas power plant.
23 PRESIDING MEMBER BYRON: Thank you.
24 MR. RICHINS: Any other questions?
25 Okay, Jesse Marquez. Jesse?

1 MR. MARQUEZ: Good morning, thank you
2 very much for this opportunity. My name is Jesse
3 Marquez. I am executive director of the Coalition
4 for a Safe Environment. We are an environmental
5 justice organization headquartered in the Los
6 Angeles harbor community of Wilmington.
7 So that people know about Wilmington, we
8 are the home of the Port of Los Angeles, which is
9 the largest air pollution and greenhouse gas
10 source in Southern California. The Port of Long
11 Beach is our neighbor, which is the second largest
12 air pollution source and greenhouse gas source in
13 Southern California.
14 We have four oil refineries in
15 Wilmington, two that border Wilmington. There are
16 about eight boat-loading terminals in Wilmington
17 or bordering Wilmington so we take greenhouse gas
18 emissions very seriously.
19 I also sit on the AB 32 environmental
20 justice advisory committee. And as many other
21 organizations, we are networked and collaborative
22 members of other groups such as RACE, California
23 Communities Against Toxics, the Impact Project,
24 the Modesta Avila Coalition, so our network is
25 very extensive. We have members in over 25 cities

in California right now and one chapter in Baja California, Mexico.

I want to start off by saying that we do support complete compliance to AB 32, SB 1365, all CEQA rules and requirements, as well as the California Health and Safety Act and other various codes. We do not support any CEQA override, especially for repowering old or none-active facilities.

To give a good example of that, in the last 12 months the CPUC approved NRG to open up a 1929-built power plant, peaker power plant. And boy did they get a sweetheart deal. They are getting $30 million a year for ten years for being on standby for 150 hours a month. Three hundred million could have bought a lot of solar energy and a lot of alternative energy.

We do support any new facilities to be designed and built to comply with AB 32, SB 1368 as well as CEQA. We support a project-by-project assessment and compliance. The global problem was caused by individual project greenhouse gas sources. So even though they are trying to make it a big picture, in my world where I come from, in my community, it all starts at a home and then

1 emanates from there.
2 We do not support any CEQA exemptions,
3 waivers, variances or extensions. Older
4 facilities that cannot comply with existing laws
5 or new oncoming laws need to be replaced. Very
6 simple as that.
7 We do not support limiting any type of
8 environmental impact assessments but do support
9 inclusion of climate change impacts on infectious
10 diseases, respiratory and cardiopulmonary
11 diseases, degradation of infrastructure,
12 transportation, housing, et cetera.
13 We do not support any offsets, and cap-
14 and-trade programs or proposals because they fail
15 to decrease any greenhouse gases and air pollution
16 emissions in environmental justice communities.
17 And they also fail to mitigate these impacts as
18 well.
19 We do support all decision-making to be
20 based on feasible mitigation, which have high
21 reliability and long-term public protection and
22 global warming goals.
23 We do not support carbon capture and
24 storage technologies because they will allow the
25 construction operation of polluting, greenhouse

1 gas-generating power plants, while we know that
2 there are alternatives that do not need to go that
3 route.
4 We do support complete CEQA EIR
5 compliance. We have a problem in public
6 confidence with the CEC, CPUC as we as our local
7 AQMDs. Last year the South Coast AQMD made a rule
8 change, which was the Rule 1119, which was
9 priority reserve credits, in which they allowed
10 power plants to have access to those credits.
11 We opposed it because they did not do
12 any environmental impact report and they went
13 forward. Well, NRDC and several other groups and
14 us filed a lawsuit challenging the South Coast
15 District, they lost in court. So an environmental
16 impact report or assessment is a requirement, you
17 cannot bypass it.
18 They also tried to do the change so that
19 it would create extra credits. Well, they were
20 just found guilty two weeks ago of fraudulently
21 creating credits in order to give them to and sell
22 them to the power plant facilities. So they have
23 lost two court cases.
24 There is a third court case against them
25 right now in that there has been a review of how

they came up with their many credits that they sold. And we expect them to lose that lawsuit too because our attorneys went back and did homework looking at how they created it and found out that they came from thin air. So there is a lack of public confidence if there is going to be any type of credit and trading programs.

We are not trying to create barriers to any new power plants. We the public are mandating that all future power plants be based on renewable energy sources. The public no longer supports fossil fuel power plants. If you were to ask the average resident today, would you like to have solar energy installed in your home, on public buildings and public schools and libraries, they will universally, and the majority will say, yes. So there is a public support for that.

We do support the concept that any new source of greenhouse gases should be considered significant and cumulative impact. Because as I mentioned, I live in a community, an impacted community. We can't stand to have one more source.

And I have a best friend of mine, Mr. Richard Gateworth, Afro-American. He had an

1 acute asthma attack and died in 72 hours. So when
2 we are talking about when there is a flaring
3 incident or some other type of incident, or an
4 increase of something that is bad for human
5 health, it can have a devastating effect. He was
6 only 33 years old and left a beautiful wife and
7 three children. So we take it very seriously and
8 we ask that you take it as well.
9 We do support the preparation of
10 complete life cycle analysis and lifetime
11 environmental, public health, public safety and
12 economic cost assessments to be included.
13 The mitigation should not be limited to
14 just greenhouse gas technologies but also must
15 address those impacts that they cause. If there
16 is a public health impact then the mitigation must
17 offset the cost of the public health. Both Los
18 Angeles, Harbor General Hospital, Martin Luther
19 King Hospital and other county hospitals have lost
20 over 100 medical doctors because of financial
21 cutbacks.
22 Well, that's because there is increasing
23 public health problems. And those need to be
24 addressed and they are not being mitigated by the
25 polluters. And we do believe in the polluter

1 paying principle. And those costs must be built
2 into the proposal as well. And if it does not
3 come out economically feasible then you don't do
4 the project, very simple as that. You look for a
5 clean, green, non-harming technology.
6 We do not support a four-tier approach
7 as proposed by Latham & Watkins.
8 We do not support the statement that
9 construction project emissions are only short-
10 term. Most of these power plants take years to
11 build. And as I mentioned in my health situation
12 case, my example, it could be devastating to your
13 life.
14 Cap-and-trade programs throughout the
15 European Union are an absolute complete failure
16 today. It was a failure yesterday. The UK sent
17 out a memo not too long ago, they will not meet
18 this year's goals and they don't expect to meet
19 next year's goal. So no matter what lessons have
20 been learned from cap-and-trade, it is not
21 succeeding. And we do not encourage it or support
22 it by the CEC or by the ARB Scoping Plan as part
23 of the AB 32 program and project implementation.
24 As an example of things that can be
25 done: For six years our organization has had

1 various campaigns at the ports. And one of them
2 was that since you have all this open space you
3 should have solar energy. I am happy to announce,
4 because many of you do not know, last December the
5 Port of LA announced that they are going to build
6 ten megawatts of solar energy. And right now they
7 are going through that evaluation assessment of
8 the companies to do it.
9 So here is a situation where it can be
10 built on-site so there is no need for a fossil
11 fuel power plant somewhere else and there is also
12 no need for investment in any type of transmission
13 lines. You build it at the source.
14 In the last several public comments we
15 have made to both the Port of LA and Port of Long
16 Beach for new projects we included wind turbine
17 energy. But we also had another factor we had to
18 deal with, because we can't have the propeller
19 type because we do have endangered birds in the
20 port. But what we did find was there are
21 vertical-mounted type of wind turbines that would
22 meet that requirement. And so there are various
23 alternatives that we can use.
24 And I would just like to thank you at
25 this time and we will submit these in a written

form so you will have them as part of your record. Thank you for your time.

PRESIDING MEMBER BYRON: Mr. Marquez, may I ask you a question?

MR. MARQUEZ: Yes.

PRESIDING MEMBER BYRON: I heard everything you said but I was struck by one in particular that I would like to ask you about. The lack of public confidence or the credibility issue that you raised with the Energy Commission. Perhaps this just extends the Energy Commission by association with these other organizations that you are concerned with. But if you had something in particular with regard to our credibility I would be interested in hearing about that.

MR. MARQUEZ: One example, there should have been CEC oversight of the CPUC making this deal with NRG. It was not a good deal. The public lost on that deal.

Another good example is something that just happened recently, again where you could have had an input, was that two weeks before the close of the legislative session, Occidental College -- Occidental Petroleum got together with the mayor of Long Beach in terms of changing something that

1 existed there. Years ago Long Beach residents
2 changed the charter of Long Beach and created
3 ordinances that would prohibit offshore oil
4 exploration and drilling. So that was the mandate
5 of the public.
6 But what the mayor did with Occidental
7 Petroleum was got together with one of the
8 assembly members, you know, who proposed a bill.
9 And in the last two weeks before the close of
10 session there was a gut and amend bill. So here
11 was a bill that never went through any public
12 process. The only reason I even heard about it
13 was because I read about it in the newspaper on a
14 Thursday and the hearing was going to be in a
15 committee on Friday. So I showed up with three
16 other people including some Long Beach residents.
17 So here is a situation where the public
18 already had a mandate via a city charter, via a
19 city ordinance, and there was a back room deal to
20 cut legislation to be passed. Which it did pass
21 through the committees because Assembly Member
22 Betty Karnette was terming out and it is the good
23 old boy/good old girl situation down there, where
24 it passed the Legislature. So now Occidental has
25 an exclusive deal in perpetuity. Whereas the

1 ordinance and charter said that that could never
2 be done. It would have to be an open bid process
3 if it was to occur.
4 So these are just a couple of examples
5 where the public gets very concerned seeing deals
6 being made that do not seem right and they deserve
7 to have some more oversight. And those two
8 examples were examples where there should have
9 been that type of oversight.
10 PRESIDING MEMBER BYRON: All right,
11 thank you. I hope you understand, of course, that
12 we don't have a great deal of oversight over the
13 Legislature nor the PUC, although we do try and
14 exert periodic --
15 MR. MARQUEZ: But you do have a valuable
16 public comment. And to give you an example of
17 that. The US EPA typically on its world of
18 commenting on port EIRs spoke about environmental
19 impacts and mitigation but they never addressed
20 the issue of health. Well, this last go-around
21 they submitted a letter and one of the comments in
22 the letter is that there should be a health impact
23 assessment. Well now that will probably be part
24 of the process in the future.
25 So by CEC making recommendations in

1 public comment, when they are good ones, then we
2 see that they normally incorporated or being
3 considered for future use. And those type of
4 things we can rally around and say, yes, we
5 support the CEC in their recommendation too.
6 PRESIDING MEMBER BYRON: I would like to
7 thank you for your comments, And I do want to
8 acknowledge the level of frustration that
9 obviously is expressed in those comments.
10 MR. MARQUEZ: Okay, thank you.
11 MR. RICHINS: Yes, thank you very much.
12 Mark Turner?
13 MR. TURNER: No comment.
14 MR. RICHINS: No comment, okay.
15 And then Jeff Harris. While Jeff is
16 coming up just a note. All the comments that have
17 been filed with the Energy Commission in writing
18 the past due date have been placed on our website.
19 So you can go to the website and see all of the
20 comments that have been provided so far. As well
21 on the table there is a summary table that's on a
22 legal size paper that summarizes the comments of
23 each one of the participants here.
24 PRESIDING MEMBER BYRON: Mr. Harris, I
25 don't mean to put you on the spot but I think

following your comments we are going to break for lunch. Mr. Richins.

MR. HARRIS: Nobody likes lunch more than me.

MR. RICHINS: Yes, that's my plan.

MR. HARRIS: There you go. Thank you. I'll try to keep them brief. I am going to try to respond to things that were said at 10:26 and 11:15 and so my comments could jump around a little bit. But I'll try to be brief.

One of my roles in the law firm is to be the language police. I hear the word programmatic thrown around and systematic. I understand programmatic and systematic to be used interchangeably and not in the context of a programmatic CEQA EIR. I think that is an important point to make. I don't think you need an EIR to move forward with this, a programmatic EIR. You need to develop some kind of system model, if you will, to understand the systemic effects, to see the effect of individual projects on that system.

Just for that point of clarification, it is my understanding you are not talking about a programmatic EIR. I don't think you need one and

1 I don't think there is any great advantage to a
2 programmatic EIR as well because essentially that
3 just allows you to tier off. I mean, with the
4 dynamic nature of the electric system as well I
5 don't think you would gain a lot in that process.
6 So just that kind of opening comment.
7 A lot of discussion about need today and
8 I just want to put another fact on the table. At
9 peak California imports about 40 percent of its
10 electricity. And that's a probably 2007 number.
11 The ISO could give you a more current number. And
12 probably the gentlemen sitting at the table could
13 give you a more current number. But if you look
14 at the total peak in-state generation versus the
15 need, we are a net importer of electricity.
16 And a lot of the intellectual battles we
17 have in California about greenhouse gas are
18 directly related to the fact that we import
19 electricity. If we were a net exporter of
20 electricity we would know exactly what the
21 generation mix is in California. So that's one of
22 the issues that we just haven't dealt with as a
23 state, in my mind, in terms of energy
24 independence.
25 I agree with Mr. Ellison's comments

about it's the operations that matter and the dispatch that matters more than anything. You know, as a footnote too, we are also working on one of the solar projects. Feel free to show up at those meetings and support us as well moving forward through this Energy Commission.

In terms of where this all fits in in the CEQA process. I guess the point I want to make and the bumper sticker is that an EIR or a CEQA certification by the Commission is not a policy document. It is exactly the wrong place to be making policy, in individual siting cases. So I am glad that you are here trying to take a systemic or programmatic approach to these questions. We don't want to be dealing with policy in those individual siting cases.

Obviously you have to look at it. There are legitimate roles for these issues in a project-specific CEQA document. You have to look at the cumulative impacts issues. And as Mr. Westerfield alluded to, it gets sort of interesting with greenhouse gas because the environmental setting is the globe for GHG, so that's a pretty big setting to deal with.

It is also a legitimate question in

1 alternatives. What are alternatives to the
2 project and the project location. But again,
3 those alternatives analyses are focused on
4 alternatives to the project or the project's
5 location. They are not policy alternatives. It
6 is not a broader policy view. And that is the
7 kind of thing that I think also gets lost in the
8 environmental impact setting. So take a look at
9 the individual project and the project location.
10 It is not a policy document in that respect.
11 And then finally in terms of life cycle
12 analysis, you've heard a little bit about that. I
13 guess I would just admonish you to be
14 intellectually honest about those things. Those
15 questions are very important. If you do report
16 and you say that all of the gas burned in Southern
17 California is directly attributable to an LNG
18 project, that is just not correct. That project
19 did not cause people to turn on their furnaces, it
20 is not the cause of a power plant running.
21 So to go all the way in this life cycle
22 analysis, not only from the production of the fuel
23 source to the burner tip and suggest that that
24 project, the greenhouse gases associated with the
25 burning of gas in Southern California is a direct

1 result of an LNG project I think is just
2 intellectually dishonest.
3 And I think you do need to do it for all
4 technologies. We represent the Wind Energy
5 Association so I don't want to pick on wind. But
6 if you are going to be intellectually honest about
7 this thing take a look at a turbine that was
8 manufactured in Holland from steel from France,
9 shipped across the waters and put on a rail and
10 put up with a derrick that runs on diesel and then
11 do a per kilowatt greenhouse gas basis on that.
12 You may not like the result.
13 And I am not suggesting you need to do
14 that with wind at all. What I am suggesting is
15 you need to be intellectually honest and apply
16 those same analytical parameters to all of your
17 technologies moving forward. And with that I
18 think I'll end.
19 PRESIDING MEMBER BYRON: And that
20 certainly doesn't preclude you from giving
21 additional comments, Mr. Harris. Thanks for your
22 patience.
23 I am going to go ahead and suggest we
24 break. I, unfortunately, need to be on a call
25 with the Chairman at noon here. Do you want to

1 discuss when we will be back and what we will
2 discuss in the next hour?
3 MR. RICHINS: Right, yes. Let's take an
4 hour break for lunch and be back at one. And then
5 after the lunch hour we have about an hour, an
6 hour and 15 minutes to continue this dialogue.
7 Then after that we will go into mitigation.
8 And so in the hour after lunch, I think
9 we recognize the step one, two and three approach
10 as discussed by Mr. Galati and I think we would
11 like to focus on step one coming back after lunch.
12 And maybe in specifics get down to details on, you
13 know, the more practical. What the Energy
14 Commission should do between now and 2012 when AB
15 32 may become, may be implemented.
16 And one way of doing that to stimulate
17 the dialogue is why don't we take a look at the
18 concepts that Matt Layton presented this morning
19 and maybe go through those and kick those around a
20 little bit and discuss those, as well as any other
21 practical approaches that people have in mind.
22 And with that then, let's return at one
23 o'clock from lunch. Thank you very much.
24 (Whereupon, the lunch recess was taken.)
25 --oOo--

1 AFTERNOON SESSION

2 PRESIDING MEMBER BYRON: If you will all
3 be seated we will go ahead and restart this
4 workshop. And again, this is the workshop for
5 evaluating GHG emissions emitted from proposed new
6 power plants. And we are, I think we are pretty
7 much on schedule. I am going to turn this back
8 over to Mr. Richins who will moderate --
9 Mr. Richins, I am so sorry -- who will moderate a
10 continuation of our roundtable discussion by all
11 participants. Mr. Richins.

12 MR. RICHINS: I think we had some very
13 good discussions this morning and we want to kind
14 of continue in that theme. I have heard
15 Commissioner Byron indicate a number of times that
16 he interested in coming up with a uniform approach
17 that can be applied in our CEQA analysis. And so
18 I think this -- In the interim until AB 32 is
19 implemented.

20 So I think in the hour, hour and a half
21 that we have before we shift gears to talk about
22 mitigation, if we can come up with some ideas,
23 suggestions, discussion topics on what would be
24 kind of a practical approach that the Energy
25 Commission might be able to consider for providing

1 some uniformity in the CEQA analysis.
2 I will have Matt Layton, I think, start
3 the discussion and we will -- He is going to show
4 us a couple of graphs. And those will kind of
5 indicate where we are with the system, what the
6 system looks like, and then maybe have some
7 discussion about the four concepts and if you have
8 any other ideas. We are here to listen to and
9 entertain any ideas that you might have from an on
10 the ground practical approach to implementing kind
11 of a uniform approach to the CEQA analysis for
12 greenhouse gases. Okay, Matt.
13 MR. LAYTON: Good afternoon, I am Matt
14 Layton. Paul asked me to put these two charts up.
15 They have been showing up in our greenhouse gas
16 analyses that we have done to date on various
17 projects. This is ARB inventory, published
18 inventory, and our published demand for
19 electricity. So it is in-state and out of state.
20 And this is the resulting pounds or actually
21 metric tons per megawatt hour.
22 The trend is downward from 1990 through
23 2004. We don't have more recent numbers. So
24 2004, that's where the .04 metric tons per
25 megawatt hour came from that we put as a potential

threshold in our proposals. The variations due to hydro or the energy crisis. So it looks like about a 10, 15 percent reduction over those number of years.

The actual tons. These are a million metric tons. Again from 1990 through 2004. This is ARB data. The top line is just CO2, it does not include the bottom lines of the N20, CH4 and the SF6. You can see that the tons are relatively flat over those years.

Over those same years from 1990 to 2004 the electricity sector -- or electricity demand, not sector, not the capacity, grew about one and a half percent or 1.2 percent. I think a total of 18 percent over those same number of years. So there was an increase in demand by Californians over those 16, 17 years. The tons are relatively flat and then the efficiency has improved.

PRESIDING MEMBER BYRON: Mr. Layton.

MR. LAYTON: Yes sir.

PRESIDING MEMBER BYRON: Back to your previous slide. Those are CO2 equivalent, carbon equivalent, correct?

MR. LAYTON: The top bar is just CO2.

PRESIDING MEMBER BYRON: Yes.

MR. LAYTON: The bottom are the other, they are not -- The top line does not include, has not added it in. It would be a slight change.

PRESIDING MEMBER BYRON: Okay, that is what I'm getting at.

MR. LAYTON: The N2O is down at the very bottom and it is very flat.

PRESIDING MEMBER BYRON: But those are already scaled for their equivalency.

MR. LAYTON: Yes.

PRESIDING MEMBER BYRON: Okay. For their GHG equivalence.

MR. LAYTON: Again, they are very small contributors to the overall greenhouse gas from a power plant.

PRESIDING MEMBER BYRON: Even that information is helpful, thank you.

MR. LAYTON: And I guess Paul just wanted to then go into more discussion from there.

MR. RICHINS: Yes. And so I am just going to --

MR. LAYTON: You can refer to these graphs.

MR. RICHINS: Yes, I am just going to open it up to the group to maybe comment on

1 concept one, two, three and four. Or if you don't
2 want to comment on concept one, two, three or four
3 but comment on other approaches or concepts that
4 you might have.
5 Also there's other, you know. If you
6 think about what Commissioner Byron would like to
7 accomplish, and that is a uniform approach, that
8 might be done through policy statements, it might
9 be done through specific concepts like we are
10 throwing out here. It also might be done by
11 Commission findings.
12 And so we are interested in any of those
13 kinds of concepts or ideas that you might put
14 forth that if the Energy Commission adopted a
15 policy statement or a set of findings that would
16 then be helpful in providing a uniform approach.
17 All those would be something that we would
18 entertain. And I think those would be items that
19 you would want to cover in your written comments
20 as well that are due on December 12.
21 So any reaction to that?
22 MR. CAMPOPIANO: Could I make a comment?
23 MR. RICHINS: Sure, come right up. You
24 can come to the table, there are some empty spots
25 there.

1 MR. CAMPOPIANO: My name is Marc
2 Campopiano. I am with the law firm of Latham and
3 Watkins. I just wanted to -- I will definitely
4 touch on providing, elaborating on what was in our
5 written comments and I will leave the details for
6 our written comments.
7 It sort of expands on what I thought was
8 an open issue earlier then it adds, go towards a
9 proposed approach which at this point we haven't
10 nailed down. But the issue is what constitutes a
11 cumulatively considerable contribution to a
12 significant impact. And the Energy Commission has
13 discretion if it is based on substantial evidence
14 in the record to make that determination.
15 One thing that we have used when we have
16 talked about what is a similar model. You can
17 think in the air context but we also like to think
18 about it as if a city, a lead agency in a region
19 with significant traffic, let's say, is going to
20 have a range of projects that come before it.
21 So there is sort of a general consensus
22 that there is this cumulative traffic impact in
23 the region. And also an understanding that if you
24 add more cars with new projects it is going to
25 exacerbate the problem. Now a range of projects

are going to come before it. You can imagine a project with a lot of sprawl, a lot of cars, or an in-fill development project that has almost, very few cars that are being added because of mass transportation, et cetera.

So the ideas that you could look at these projects in different tiers. Like it is very appropriate to have different levels of scrutiny for different types of projects. It doesn't mean that you completely abdicate your responsibilities as a lead agency, but when you see certain types of projects like the in-fill project that is heavily reliant on mass transit, wouldn't it likely have a cumulatively considerable contribution to the traffic impact. So that is what we kind of called our Tier 1.

I think we may have used the term exemption. That might not have been legally accurate as far as the statutory or categorical exemption. But it is this idea that there would be some level of CEQA analysis, certainly, but the projects would have a very low probability of significance.

Another approach would be, let's just say there was a regional transportation program

1 fine where you could pay in and it mitigates your
2 transportation impacts. It is fairly common.
3 That could be analogous to when AB 32 comes on
4 line. Or it could be appropriate that if you fall
5 under that program it satisfactorily mitigates
6 your impacts. Like in this case it would be
7 greenhouse gas emissions.
8 Since that is not in place the lead
9 agency would look towards other things to
10 determine what constitutes a significant impact.
11 And here the traffic impact analogy I think is
12 appropriate because we would all be surprised if a
13 city within a region didn't look to inform its
14 decision at the broader contents. It didn't look
15 at regional transportation documents. It didn't
16 look at other things that were going on.
17 In this context the Energy Commission
18 could look at other things that are happening in
19 this field right now. For example, even the draft
20 stages of what is going on with AB 32, and of
21 course with Senate Bill 1368 and the performance
22 standards. So that could be a situation where the
23 Energy Commission doesn't abdicate its
24 responsibilities as a lead agency but it looks at
25 what's happening on the ground right now in

1 determining what a current project, the
2 significance of that project is.
3 And we propose that as sort of our third
4 tier where, for example, the Energy Commission
5 could determine that complying with the EPS and
6 1368 could lead it to determine that the impacts
7 were less than significant.
8 And then our fourth tier was where a
9 project would have to adopt certain mitigation
10 measures to actually get down to a less than
11 significant level. So that was just to sort of
12 highlight our four-tiered approach that we will
13 save the detail for our second written comments.
14 And then the last one was with the
15 concept of applying mitigation measures and
16 alternatives. Of course there is going to have to
17 be a reasonable range of alternatives studied in
18 any CEQA document. But it isn't true that -- this
19 is just a clarifying point, that every feasible
20 mitigation measure or feasible alternative is
21 required unless there is a significant impact that
22 needs to be reduced. So if the impact isn't
23 determined to be significant it is not that all
24 feasible mitigation measures have to be adopted.
25 MR. RATLIFF: Could you say that last

statement once more, your last sentence.

MR. CAMPOPIANO: Yes. It is the statement that if you have a significant environmental impact that triggers the obligation to implement all feasible mitigation measures that reduce that significant impact. But if the impact is not significant in the first instance the lead agency is not required to further reduce a less than significant impact.

ADVISOR BROWN: I had a question, this is Susan Brown, on the relationship to SB 1368. Could you elaborate further on how you see SB 1368, the emissions performance standards set there, connecting back to either the project-by-project analysis or the systems assessment. You completely lost me there.

MR. CAMPOPIANO: Okay, I'm sorry.

ADVISOR BROWN: SB 1368 applies to procurement contracts.

MR. CAMPOPIANO: Absolutely, it is not the same. It wouldn't be -- It would be something that would be, would help the Energy Commission, inform the Energy Commission on studying the level of what constitutes a cumulatively considerable contribution. Because the idea is that you have

1 the significant impact but not every contribution
2 to that impact is cumulatively considerable. And
3 that is grounded in the CEQA documents. That is
4 well accepted.
5 It could be that you could say any new
6 admission is cumulatively considerable. But the
7 Energy Commission has the discretion to set the
8 level somewhere else. And to inform the decision
9 on setting that level if it looked to other things
10 that are happening. And that is why I used sort
11 of the transportation analogy. Where a city could
12 look at other things that are going on in the
13 region, that other cities are doing.
14 In that context the Energy Commission
15 could certainly look to the determination it made
16 in the procurement contacts. It could look to
17 what ARB, of course with Energy Commission and PUC
18 input, has done with the Scoping Plan. It could
19 use the same analysis and the same approach to
20 inform its decision in this context.
21 And particularly with AB 32 there is --
22 Just as an example of the interrelationship
23 between what is now Health and Safety Code Section
24 38561(a). There is a specific requirement for the
25 Air Resources Board to consult with the Energy

1 Commission to ensure things such as provision of
2 reliable and affordable electricity service and
3 ensuring that it is complementary, non-duplicative
4 regulations of greenhouse gases. That was just in
5 that context but it is something that they could
6 take into account.
7 ADVISOR BROWN: Well it is conceivable
8 that the panel follows this discussion will be
9 talking about some of those things, in the context
10 of mitigation at least.
11 MR. VESPA: I would just say, when
12 thinking about significance I think the first
13 place to look is CEQA. And it does have to be
14 based on substantial evidence. And it is also
15 something that has to be based to the extent, I
16 think possible on scientific and factual data.
17 And I think it is something you need to frame in
18 terms of your environmental objective. I think
19 ARB is a good starting point for that. I think I
20 mentioned that earlier.
21 The environmental objective here is to
22 avoid dangerous climate change and that puts us on
23 a specific emission reduction pathway toward 2050.
24 That has significant reductions, at least 80
25 percent below 1990 levels. That's what we are

1 going for, that's our objective. And if we are
2 interfering with that objective it is a
3 significant impact.
4 And there's a lot of different proposals
5 here that I just, I don't think are framed with
6 that goal in mind. And I think if you are going
7 to have a proposal you have got to look at what
8 you have got capturing in that proposal. So if I
9 have this .400 metric ton per megawatt hour
10 threshold, basically, how many emissions am I not
11 capturing there. I mean, it's tons and tons and
12 tons. And it's letting that go, a significant
13 amount. And so it doesn't seem to me that those
14 types of thresholds can be supported by
15 substantial evidence.
16 I think it is worth noting that ARB, you
17 know, thought 7,000 tons with performance
18 standards was something that they could justify
19 and say, well look, if we let this go for
20 industrial sectors we are capturing I think 90
21 percent of everything. And so are you capturing
22 90 percent of all emissions from the power sector
23 at your threshold level? I mean, these are
24 questions to ask.
25 And I think if you want to support

1 something with substantial evidence, assuming you
2 are not just going to follow ARB on this question,
3 which I think might be appropriate, I think you
4 will need to look at what emissions are falling
5 through the cracks. What emissions collectively
6 are not captured under your significance threshold
7 and is it okay to let those go. Or is that
8 something that is inconsistent with the 2050
9 objectives and stabilizing the climate. And it is
10 a pretty aggressive reduction strategy.
11 I would also add that, at least the
12 Executive Order targets, are based on 450 parts
13 per million atmospheric concentration, which I
14 think we are seeing too high to relieve the more
15 dangerous climate change. So these are things to
16 think about in developing a significance criteria
17 should you want to make your own. And I think
18 maybe we don't need to go to this question as much
19 because these are very large projects and ARB has
20 something that seems to be supportable.
21 But to me, you know, the further you --
22 potentially supportable. The further you are from
23 zero on this issue, because it is such a critical
24 question and the reductions are so significant.
25 The further you are from zero, you know, the

1 harder it is going to be to support what you have
2 with substantial evidence and the more there is
3 going to be a fair argument that emissions below
4 that level may have an impact.
5 So I think those really need to inform
6 your analysis and looking at sort of, you know,
7 efficiency metrics. Are we doing the best we can.
8 Things sort of outside your environmental
9 objective and what you are capturing or not I
10 think are a bit of a distraction in terms of what
11 is significant and what is not.
12 MR. GALATI: One of the things I would
13 like to address is we keep hearing the ARB
14 standard proposal brought forth. The ARB is
15 pretty clear about deferring to the Energy
16 Commission for the electricity sector. And I
17 think exactly for the reasons that Mr. Ellison
18 pointed out. The electricity sector operates so
19 much differently than everywhere else.
20 For example, if I were building a new
21 glass manufacturing plant. Maybe a quantitative
22 standard such as ARB would be appropriate there
23 because there is no interrelationship between the
24 industry down the street and how it will operate
25 because I built a new glass plant. But clearly

1 the electricity system does not operate that way.
2 So again I think that such a quantitative standard
3 like that is very, very difficult.
4 I think -- And again, these comments are
5 real preliminary because we are just looking at
6 them now. But in looking at number four. And
7 again, I think the environmental objective ought
8 to be not trying to do with CEQA what the AB 32
9 program is intended to do. I think the
10 environmental objective for our perspective is not
11 to interfere with that process until that process
12 is implemented and to come up with trying to do
13 the best we can.
14 I think the best we can -- And I like
15 the approach of maybe looking at efficient
16 projects. So while we haven't run these numbers
17 by to determine whether these numbers make sense
18 to us or not, an approach like this with other
19 best management practices during construction,
20 there might be some other things you can do.
21 Ms. Miles brought up some other issues on other
22 things maybe you can do to minimize your
23 emissions. Those are the kinds of things I think
24 you should be doing between now and the time that
25 AB 32 is implemented. I would like to throw

1 number four on the table.
2 MR. RICHINS: Well let me just ask a
3 follow-up question to number four. I think those
4 numbers were derived at kind of technology that is
5 available right now. What if those numbers were
6 used but then there was a 10 or 20 percent
7 increase or decrease, however you want to think of
8 it, in recognition of the goals/objectives of AB
9 32?
10 MR. GALATI: And again I think it is
11 difficult at this stage to anticipate and do
12 something that promotes AB 32 goals. AB 32 is
13 going to apply to the project you license between
14 now and the time it is implemented. So whatever
15 AB 32 is going to do, AB 32 is going to address
16 the sector as a whole.
17 Here what we are looking at is, I think,
18 trying to permit efficient plants. Plants that
19 don't interfere with those goals. So I am not
20 sure about trying to accomplish more than that.
21 What actually would you do with that if you had --
22 for example, I'm assuming, Paul, that what you
23 were talking about is maybe taking those numbers
24 and reducing them by 20 percent.
25 MR. RICHINS: Correct. And then the

1 difference between the actual performance of the
2 machinery to that standard then would require some
3 sort of mitigation, which we will talk about later
4 on. I think it is kind of like what Oregon has
5 done. Oregon has set a number and then they have
6 just picked, I think 17 percent, to kind of force
7 technology and also to provide some mitigation for
8 greenhouse gases. So that is kind of the idea.
9 Okay, Chris. Unless -- I don't think
10 Scott wants to answer.
11 MR. GALATI: No, I don't have an answer
12 to that.
13 MR. ELLISON: Well, this is the first
14 that I have seen of these four proposals and so
15 IEP will respond specifically in their written
16 comments. The comments I am about to make should
17 be viewed as only preliminary.
18 PRESIDING MEMBER BYRON: These should
19 only, these are not, certainly not Committee
20 proposals. These are conversation starters, I
21 think. The intent of these is to generate
22 discussion around some ideas that the staff has
23 presented.
24 MR. ELLISON: And in that spirit I will
25 offer a couple of comments. My only caveat was to

say my clients haven't seen this. Until they do I don't know what they are going to say. But, you know, speaking for me at least, and speaking as a lawyer, again, we are talking about CEQA here. I want to separate out all the other authority that the Commission or other agencies might choose to exercise. We are talking about CEQA.

And again, I am not going to reiterate everything I said this morning but the first question is, do you have a significant, cumulative impact from the particular project that you are looking at? And as I said this morning, I think you have to account for the effect on the system as a whole to make that judgment. If you don't you are being dishonest and setting bad policy.

And so we are also talking here about an interim step. You know, step one is Scott's description here. So I am looking at these four proposals. First of all saying, okay, is this some sort of shorthand, temporary way of getting at this analyzing system effects problem? That is my first question.

And when I look at those in that way, number one clearly does not do that. It does not account for system effects at all and would

1 require mitigation from projects which do not have
2 a significant impact, in fact may have a
3 significant benefit and therefore I think is
4 highly subject to legal attack.
5 The second proposal looks to me as
6 though it is an attempt to get at the system
7 impacts. I am not going to comment on the numbers
8 but it does look like it is trying to, in a
9 shorthand way, estimate whether the project
10 increases or decreases the overall efficiency of
11 the system and I think that that has some
12 conceptual merit.
13 The third system is not so much based on
14 assessing the impact but more based on the kind of
15 need reliability criteria. Again, CEQA is an
16 environmental information document. Need and
17 reliability and those things are relevant in the
18 siting process but they don't get at this question
19 that I have been concerned about. So number three
20 to me is conceptually different and to me a less
21 desirable way.
22 And number four is basically a way of
23 defining what the mitigation would be. If you had
24 found the significant impact and if you did that
25 correctly then you are at the question of, what is

1 the mitigation. And certainly one form of
2 mitigation would be to say, you have to have the
3 best technology available. I think that is
4 certainly a reasonable way of getting at
5 mitigation. You are going to discuss that this
6 afternoon.
7 It is particularly important in this
8 context because we don't have an offset protocol
9 of any kind for greenhouse gas emissions. One of
10 the things that IEP members have been concerned
11 about is, if you are meeting the current emission
12 standards, and you have installed the best
13 technology available, and there is no offset
14 protocol and you are required to mitigate, how do
15 you do it. How do you even legally do that?
16 So my first reaction to these proposals
17 is that number two does appear to be a way to try
18 and get at this question of whether there is or is
19 not a significant cumulative impact, in what I
20 would consider to be an intellectually honest but
21 temporary way. And number four seems to be a
22 legitimate effort to get at what the mitigation
23 might be if you found that there was a significant
24 impact. And so those are the two that I think
25 probably have the most merit, at least as a

1 preliminary response.
2 MR. RICHINS: Well. Will agrees, I'm
3 sure, completely.
4 MR. ROSTOV: Actually I disagree,
5 believe it or not. I would say that number one is
6 really the most legally and scientifically
7 defensible, and that is the zero threshold
8 mitigation for all projects. And if you want a
9 situation where you want to do the systems
10 analysis, once you have adopted number one you
11 can. You can come in -- It should be the project
12 proponent's burden to say, we are not causing a
13 significant effect on the environment.
14 The significant effect is that at the
15 zero threshold you have a point source, you know
16 what the emissions are. Say they are a million
17 tons. And then you could come back and say, you
18 know what, we have these other analyses and these
19 analyses prove that, you know what, my project is
20 putting out a million tons. It really isn't
21 putting out a million tons because it has reduced
22 a million tons somewhere else in the system. And
23 you can do that in the project-by-project
24 perspective and you can do that with number one.
25 But the burden of proof is on you.

1 What is really happening here is really
2 switching the burden of proof saying -- and this
3 goes back to what I was saying earlier in my
4 opening comments about exemptions. We are trying
5 to say that, you know, if we are using best
6 available technologies, using the most efficient
7 things, they are de facto not significant. And
8 that is not taking into account the fact that they
9 actually are putting out greenhouse gases.
10 So by saying you want to rely on 1368 as
11 a threshold is really saying that you want to
12 exempt all the projects that comply with 1368. It
13 is a different way to say the same thing. And
14 what we have been saying, and I think are still
15 saying is, number one applies. You calculate the
16 emissions and then you find ways to both look at
17 mitigations and you also find ways to look at
18 alternatives within the context of your greenhouse
19 gas analysis. And the alternatives analysis will
20 change now.
21 I think you're right, the alternatives
22 analysis up to this point has been different. But
23 now that you have a greenhouse gas significant
24 impact you are going to have to look at your
25 alternatives analysis in a different way. And the

1 alternatives analysis is going to have to include
2 the fact that greenhouse gases is a significant
3 component of your fossil fuel project. And then
4 are there different ways to mitigate or do an
5 alternative, taking into account the greenhouse
6 gases?
7 MR. ELLISON: Well let me respond
8 quickly just to say, we may not be as far apart as
9 you think. The place where I think we differ -- I
10 mean, I think what I heard you say is that if a
11 project proponent wants to bring substantial
12 evidence in about the system impact that they
13 should be allowed to do that and the Energy
14 Commission should consider it.
15 The place where I think we may depart,
16 at least for the moment, is that what I think you
17 will find is that every project has that system
18 impact. That you will be doing it in every case.
19 And it is for that reason that I think that the
20 Energy Commission ought to be looking at this
21 effect.
22 And you are going to see that that
23 effect, although there may be some nuance
24 differences from case to case, for the most part
25 this system impact -- particularly remembering

1 here we are talking here about a temporary bridge
2 kind of issue here. That that system impact is
3 going to be the same for most projects.
4 In other words, the project that is on
5 the margin now that will be displaced by new
6 kilowatt hours in California is not different.
7 You know, there's a loading order, if you will.
8 There is a series of projects as you permit more
9 and more projects. But that sort of order of
10 projects that are likely to be displaced or
11 operate less is generic, it is not unique to each
12 case.
13 And I think there is some value to
14 having the Energy Commission, who will be
15 perceived as being, and I think is, more
16 objective, more expert, look at this issue and set
17 some standard for saying okay, this is what we
18 think the system impact proxy is for these new
19 projects as they come in. So I don't think we are
20 as far apart as you might believe.
21 Once you recognize that this kind of
22 information is relevant then the next step is you
23 have to recognize that it is going to come up in
24 every case. And is it the most efficient way to
25 litigate that in every single power plant siting

1 case, recognizing that you are going to be
2 basically having the same analysis done over and
3 over and over again.
4 And is it better to have the Energy
5 Commission do that analysis, who I would suggest
6 is more objective. Or is it better to have the
7 applicants, each individually, bringing this
8 analysis in to every siting case and relitigating
9 it over and over again. I think it is probably
10 best to have the Energy Commission do it.
11 MR. GALATI: I would add to -- again in
12 support of the systemwide study. There's a lot of
13 parties. And Commissioner Byron, I think you know
14 exactly what I am talking about. There are a lot
15 of parties who could be useful in a siting case,
16 if to understand the system, it is not the most
17 efficient way to try to understand the system in
18 an individual siting case.
19 So if you had a proceeding for a way to
20 study such that CAISO could be participating.
21 That maybe experts who are associated with what is
22 imported and exported. Certainly the IOUs and the
23 other load serving entities. That's the kind of
24 information and evidence that I could see having
25 to try to bring in an individual siting case for

1 someone who got a contract and is trying to permit
2 a plant.
3 And it just doesn't seem to me that I
4 can see -- It absolutely is inefficient. And two,
5 I don't think you have command over the parties in
6 that type of proceeding because they are not
7 parties to the proceeding. If you were to do a
8 systemwide study you would have command over those
9 parties.
10 PRESIDING MEMBER BYRON: May I just ask
11 a couple of questions.
12 MR. VESPA: Oh sure, yes.
13 PRESIDING MEMBER BYRON: I don't mean to
14 cut you off at all. Mr. Galati, part of the
15 difficulty -- well, not difficulty. I just ask it
16 as a question. I don't quite see how the approach
17 that you are suggesting meshes with the concerns
18 that I am hearing from Mr. Rostov and Mr. Vespa
19 with regard to once we make a decision on a power
20 plant siting case, we are stuck with it for 40
21 years. How do we deal with that? And I guess I
22 would then turn -- I mean, that is the issue that
23 they have raised as well. That we have made this
24 GHG producing decision that is going to last for a
25 long time.

1 And then I would turn, I think, this
2 direction and ask the same sort of question. On a
3 case-by-case basis don't I need to not just be
4 looking at this year permitting it but how do I
5 make those projections over the next 40 years,
6 particularly given the plot that I see that shows
7 that baseline, if you will -- I'm sorry, not a
8 baseline. That average number going down every --
9 It's changing, you know it's changing. Maybe
10 right now this year all the power plants that came
11 in for an application would be facing the same
12 kind of analysis, systemwide analysis, but that
13 will be different every year going forward.
14 I am stuck with this dilemma. I'd
15 appreciate any light the two of you could shed.
16 Or more of you could shed on that particular
17 subject.
18 MR. GALATI: I think the important thing
19 to try to recognize here is that AB 32 does play a
20 role. And that role, I think is going to satisfy
21 that concern long-term about what a power plant
22 you site today in 2008, gets built in 2010, what
23 happens in the couple of years in emissions,
24 possibly, that occur prior to the implementation
25 of AB 32. AB 32 will capture that power plant

from now until the time the program is ended or the power plant goes away.

In addition -- And so I think we are focusing on what can we do in the interim. And I think the best you can do in the interim right now is try to enforce efficiency and try to minimize emissions. As opposed to trying to -- If there were no AB 32 program coming I think that these are important questions and I think that you would have to identify, where are we going to be 40 years from now at the life of the plant.

MR. McLAUGHLIN: Could I join in, please. Bruce McLaughlin, California Municipal Utilities.

PRESIDING MEMBER BYRON: Welcome to the table, Mr. McLaughlin.

MR. McLAUGHLIN: Thank you. I had to leave at ten o'clock this morning so I am not sure if I am repeating but I do know that, or at least I heard that AB 32 was getting a little bit of a beating this morning and it seems like it still is. AB 32 is the law, it is a statute, it has been passed. We don't have all the regulations yet but we do have a cap. It is 427 million metric tons and that is what we will meet by 2020.

1 So that is already in place. It is not fiction.
2 And however we are going to get there we
3 do not know yet but we will get there. And
4 whether it is through multiple sector, multiple
5 sources, it does not matter, ARB will put
6 something in place. And so I think we are arguing
7 about something that -- And I support Mr. Galati
8 in his remarks here that AB 32 will be the great
9 equalizer.
10 I also support substantial evidence and
11 scientific fact. And I think the scientific basis
12 is very, very important and that is what we need
13 to talk about here as we are talking about a
14 project level or a systemwide level. Still what
15 we need to talk about is the scientific
16 perspective of what a significant impact is and it
17 is distinguished from the project level or the
18 systemwide level.
19 By analogy, if I had a candle and I was
20 in a tent it might heat it up. If I was in this
21 room you might even feel it from ten feet away.
22 If we wanted to measure the United States as the
23 scientific system that we are measuring whether
24 the temperature changed, it is not going to be
25 significant. I think it is important that we

1 determine the scientific perspective when we
2 determine what a significant impact is. And when
3 it comes to GHGs it is most definitely different
4 than a criteria pollutant.
5 MR. VESPA: Well, I have a couple of
6 comments. I think the candle metaphor looks at it
7 as a project that will impact -- we are talking
8 about millions and millions of candles everywhere.
9 So I don't think necessarily for those.
10 But I wanted to make a couple of other
11 comments about the systemwide approach, which I
12 just don't think is appropriate to apply at this
13 juncture. I mean, we saw from that graph that the
14 total emissions, while per capita are more
15 efficient, they are not going down. And we have
16 deep emission cuts to make by 2050 to avoid
17 dangerous climate change.
18 And so to rely on a system of
19 displacement that seems to only have function to
20 more or less keep total emissions at a sort of
21 flat level with some ups and downs, isn't our
22 target, our target is deep reductions. So I think
23 when you are adding carbon commitments to the
24 system, while they may displace something, they
25 seem only to result in sort of business as usual

1 emission levels when we have to reduce them.
2 And I think, you know, it is appropriate
3 to look at these carbon commitments that are being
4 made today. And if they are consistent with the
5 low-carbon future and if there are other
6 alternatives like renewables and efficiencies that
7 might lower that kind of commitment. It doesn't
8 seem like a system approach is functioning because
9 we are not on a trajectory to decrease, we are
10 just keeping it flat.
11 So that was just a comment about this
12 thought that everything is somehow not significant
13 on the systematic perspective. I mean, it just
14 doesn't, you know. Our goal is to decrease and
15 the system is not functioning to get at that
16 decrease. So it seems to sort of undermine what
17 our environmental objective is.
18 And the final point I would make is, you
19 know, all these projects, a lot of them have
20 significant impacts. And I think there seems to
21 be for greenhouse gases this sort of effort to try
22 to make everything less than significant through
23 all these different tiers, all these functions.
24 And I think large emissions, like any other
25 impact, can be significant.

1 You can do everything you can, you can
2 do BACT or whatever else. But sometimes the
3 emissions that are a consequence of that, you
4 know, are significant by virtue of their size.
5 And I don't think we should make necessarily
6 exceptions for greenhouse gases when CEQA treats
7 other impacts that are large as significant. It
8 is part of the environmental review process.
9 MR. MILLER: I'd like to make a comment.
10 You know, I have been quiet so long I just can't
11 take it.
12 (Laughter)
13 MR. MILLER: A couple of things. One
14 thing that has occurred to me, that I'm not sure
15 if this changes anybody's minds about anything. A
16 combined cycle plant probably would have to be
17 permitted in 2009 in order to emit anything before
18 2012. So we are looking at a fairly small
19 universe, potentially, of at least the large
20 projects. I don't know how many of those there
21 are for 2009. Probably enough to cause us to have
22 to do something. So that's the first point.
23 And then Paul's idea earlier of adding
24 on 20 percent, let's say, just to sort of do good.
25 And I guess that sounds nice except I guess the

1 question is, why. And coming back to the
2 ratepayers, which is sort of what Chris was
3 saying, you have to first of all have a
4 significant impact. I think the evidence is
5 pretty compelling, particularly for the peaker
6 projects, that we probably don't have a
7 significant impact.
8 And then I want to just repeat that if
9 one were to find the need for mitigation the
10 chances are you would say, well, you can't do much
11 with the project itself. You should do energy
12 efficiency, you should do RPS. Which is what we
13 have already been ordered to do, what the
14 ratepayers -- and we are doing more of every year.
15 Before 2012.
16 So if you combine the lack of an impact
17 with the fact that there is a lot of money being
18 spent by ratepayers, to then ask them to just
19 provide another 20 percent because it sort of kind
20 of puts the icing on the cake, gives us an
21 opportunity to say we have done something good. I
22 don't know if that is appropriate from the policy
23 perspective. That's my comments.
24 MR. GALATI: Another quick comment is I
25 respect what Matt is talking about when he is

1 talking about, what is our greater environmental
2 objective. CEQA is not the tool to achieve that
3 objective. CEQA is the tool to identify the
4 impacts from a project and then mitigate those.
5 So AB 32 is the tool to address Matt's concern and
6 how are we going to get there.
7 And I think what we are saying is, if
8 you looked at a systemwide effect or at a
9 systemwide approach, you would find out that a
10 particular project, new efficient project now,
11 does not result in a net increase. That's how the
12 displacement argument works.
13 So again I want to go back to the goal
14 of what you do in an individual siting case would
15 not be to get greenhouse gas emission reductions.
16 Although laudable that is not what you do in a
17 siting case. That is not what you do with CEQA.
18 The appropriate -- If you want to do
19 that from a policy perspective on how energy is
20 procured, how energy is used, greater efficiency
21 standards, things like that. Those are the
22 programs in which you achieve the larger
23 objectives. And I think that in the last comment,
24 I think that's why we seem at odds. I don't see
25 the individual siting case as the tool and I think

1 Matt does. And I think that might be where the
2 difference is.
3 MR. ELLISON: Three quick points. The
4 first one being that I agree with what Scott just
5 said.
6 The second would be in response to your
7 question, Commissioner Byron. I agree that AB 32
8 is the main answer to that problem. I would also
9 point out though that once you make a judgement
10 about the relative efficiency of the plant that
11 you are permitting compared to the less-efficient
12 resources, I am assuming that they exist, that are
13 on the system at that time.
14 The way the system is dispatched from
15 that day forward will also address your problem.
16 Because if you hypothesize that eventually the
17 plant you have permitted becomes the marginal
18 plant, is the least efficient plant on the system,
19 it too may be displaced at some point in the
20 future by something else that you have permitted.
21 Or it may be regulated by AB 32. It is not a
22 static. Once you make this decision for 40 years
23 you have to live with it, okay. That is not the
24 situation.
25 And then lastly, and maybe this is the

most important thing I want to say. I want to go back to this idea about CEQA being an information document for the public and about the environmental impacts of a specific project. I think an awful lot of what makes people uncomfortable about what I have been saying, about what other people say, is this prospect of permitting new power plants and not requiring mitigation from them.

And the reason that we say that is because we believe, and we believe if you look at the analysis and do it honestly you will find that these projects in fact do not have a significant cumulative impact. In fact just the opposite, they have a significant cumulative benefit.

If that is true, and I will leave it to you to decide that. But if that is the truth then what we are really talking about here is a political perception problem. That those who really understand the electric system know that that's true. They know that these new plants that are being permitted are in fact reducing greenhouse gas emissions, not adding to them, but the public doesn't yet understand that.

And if that is our problem then we need

to inform the public. That is what CEQA is all about. If instead of informing the public by putting out CEQA documents that tell the truth you do something different, you are not only violating the law, but you are really setting a precedent for a whole series of bad decisions in the future.

MR. McLAUGHLIN: Commissioner, is this a dialogue or are we supposed to be talking to you?

PRESIDING MEMBER BYRON: Oh no, it's a dialogue, Mr. McLaughlin.

MR. McLAUGHLIN: May I ask Mr. Vespa a question?

PRESIDING MEMBER BYRON: Sure, go ahead.

MR. McLAUGHLIN: Just for clarification. I wanted to talk about the one candle. You said it is not the one candle, it is the thousand.

MR. VESPA: Yes.

MR. McLAUGHLIN: And so I would presume that you think that, or you believe that if we have no standard, or a very high standard, it is the multitude of projects that will eventually impact the climate, it is not the one plant. If only plant was built there would be no impact. It's the multiple plants.

And so to switch analogies, if we had

1 two screens, little screens with holes in them.
2 And so if CEQA is the first screen with the big
3 holes; we have got AB 32 as the finer screen. Why
4 don't you think that AB 32 is going to catch all
5 these plants and keep those collective thousand
6 candles, mixing metaphors, below the necessary
7 cap?
8 MR. VESPA: Well gosh. You know, first
9 I would say there is a cumulative impact. So it
10 is something you look at that way and CEQA does
11 address it. AB 32 and CEQA are very different
12 statutes and I think they have different
13 objectives. And, you know, CEQA is intended to
14 look at what a significant environmental impact is
15 based on scientific data.
16 And I think, you know, you want to look
17 at what is dangerous climate change and what you
18 are trying to avoid. I think it allows you to
19 look at a longer term perspective than AB 32
20 necessarily does, which is just one point on our
21 emission reduction time line. Which I think is
22 why CEQA is important, because it can allow you to
23 look at these long-term objectives of climate
24 stabilization and whether additional carbon
25 commitments are appropriate.

1 I mean, these power plants are going to
2 go beyond 2020 to surely 2050, and do we want to
3 be in a situation where we have got these carbon
4 commitments in place that we are making today.
5 This carbon lasts for a hundred years in the
6 atmosphere and it is going to be around for a long
7 time and I think we want to think critically about
8 how many more of these commitments we should be
9 making versus other types of less carbon-intensive
10 commitments.
11 CEQA isn't necessarily the way to get to
12 2050. But I think when you are looking at what
13 significance is, that is the question you are
14 asking. Is it significant? Is this getting in
15 the way of our low-carbon future? That's just
16 what significance is. And where you go from there
17 is another question. But I think the bar for
18 significance is very low given where we have to be
19 and what our environmental objective is. And that
20 is just a question about significance. And how
21 you implement that through mitigation alternatives
22 is the second question.
23 MR. ROSTOV: I think everything he said
24 was great. I just wanted to add one --
25 (Laughter)

1 MR. ROSTOV: I just wanted to add one
2 extra thing. Something I said earlier today as
3 well in my opening remarks is by talking about AB
4 32 we are doing a -- that's the backward approach.
5 Actually what the siting proceeding is about is
6 the CEQA approach. And then if you have some
7 problems of interaction between CEQA and AB 32,
8 once you have established your CEQA approach you
9 then can go to ARB, through the ARB process, and
10 make sure there is no double counting or no double
11 mitigations.
12 But what we need to do now as a state is
13 determine our CEQA approach for the siting
14 proceeding. And that AB 32, since it is in the
15 future, those can respond in terms of what we do
16 at the end for our CEQA approach.
17 PRESIDING MEMBER BYRON: Thank you.
18 This is all very good discussion. I think
19 Mr. Richins may be closing us out here shortly. I
20 just wanted to make a comment. It may be a
21 question but I am not sure you can answer it in
22 the time remaining. I notice there is a
23 preponderance of attorneys around this table. And
24 Mr. Alvarez, I hope you are not offended in any
25 way.

(Laughter)

MR. ALVAREZ: No.

PRESIDING MEMBER BYRON: But actually I would like to refer to a comment that you made earlier. And that is, reality is these applications are going to continue to come in. We have to deal with them by a matter of law here at the Commission. I think we have 22 or 24 of them before the Commission right now. They are not all fossil-fired power plants.

In fact I would turn to Mr. Ratliff at this time and ask -- but before I ask. We need some sort of solution on an interim basis in order to begin addressing the current applications that are before us and the many more that we anticipate I think by the end of the fiscal year. My siting division tells me that we may see as many as 12 more. Aren't all of the projects before us, all of the Applications For Certification going to be subject to the same evaluation? And that if it is not something that we can do in a timely way won't they all be delayed?

MR. RATLIFF: Yes, I think that -- The simple answer is yes. Our intent is to, I think staff's intent is to have greenhouse gas analyses

in its cases going forward and that will probably include even the alternative projects as well.

PRESIDING MEMBER BYRON: Alternative meaning renewables?

MR. RATLIFF: That's right. Unless the Committee tells us otherwise. Or unless we decide that that analysis can be fairly brief inasmuch as we think that there is no potential significant effect on the environment from a renewable project. But our intent is to try to analyze greenhouse gas in each of our projects --

PRESIDING MEMBER BYRON: Right.

MR. RATLIFF: -- until such time as there is a programmatic approach.

PRESIDING MEMBER BYRON: So given that, gentlemen, ladies and gentlemen, I would really like to get somewhat beyond the academic and the legal arguments and I would really like to ask your assistance on helping us to focus on a practical, interim solution that we can use with existing projects.

Now Mr. Miller has an answer that I realize you may not all agree, or we may not be able to get to it in the next few minutes. But I would really appreciate it if your written

1 comments could focus on our need for an interim
2 solution to this.
3 Commissioner Douglas, did you want to
4 add anything to that? I would be glad to defer to
5 Mr. Miller but I would like to ask if you had
6 anything you wanted to add.
7 ASSOCIATE MEMBER DOUGLAS: I have a
8 couple of questions that I would be interested in
9 hearing perspective on. One is that I think it is
10 very clear that at least for the natural gas
11 plants the bulk of the emissions come from
12 operation. And at the time that we permit a plant
13 we don't necessarily know how that plant is going
14 to be operated over time.
15 We have an idea particularly based on
16 the type of plant it is and the region or the area
17 in which it is placed and what we know of the
18 system right now but we don't know -- the further
19 out in time we go the harder it is to place a
20 precise estimate on how that plant is really going
21 to be operated.
22 I think it is also challenging for us as
23 we look at this issue to know how exactly the AB
24 32 regulations are going to affect the electricity
25 sector. We have very clear energy efficiency and

1 RPS goals.
2 But as I think everybody here knows, we
3 have faced our share of challenges in meeting
4 those goals. We are attempting to accelerate
5 them. I think every passing year will make it,
6 will clarify to us whether we in fact are able to
7 meet and whether we are able to exceed those
8 goals. But sitting here today as we face cases in
9 front of us, there is a lot that we don't know
10 that is quite germane to assessing what the
11 project impacts might be.
12 One way to deal with that is that rather
13 than trying to quantify what the impacts are and
14 think of mitigation as a lump sum up front, so to
15 speak, there could be some kind of program that
16 actually is based on real operations or that looks
17 at real operations over time. I wanted to throw
18 that out. I know it is going to come up in the
19 mitigation discussion but I wanted to get a sense
20 from everybody here.
21 I also am interested in the perspective
22 on, you know, assuming that we are able to put
23 together a coherent and sort of strong analysis
24 for how we might move our system from where we are
25 today to the low-carbon future that we want and

what the components are. What is the CEQA significance, if any, of the state actually staying on target in terms of the actual building blocks of that vision? Those are two questions that I would be quite interested in, any input on either now or later.

PRESIDING MEMBER BYRON: Excuse me, but I put off Mr. Miller's response. You wanted to say something.

MR. MILLER: It is going to be anticlimactic now. I just thought that it is good to point to the fact that the Commission staff I think is doing a very good job now with the drafting of the analyses on GHG impacts.

And the conclusion that has been reached in recent cases is that because the system impacts are very difficult to analyze, that in fact there seems to be a reasonable probability that there will be a reduction in impacts. But it may well be speculative to reach a conclusion at this point and perhaps until the study that Mr. Galati has been referring to could be completed. So from a legal perspective there is absolutely nothing wrong with that. That is allowed under CEQA and you are following that process now.

1 One option that could be taken, perhaps
2 in combination with some of the choices that
3 Mr. Layton has developed, would be to continue to
4 acknowledge the reality that it is likely
5 speculative to reach a conclusion on a
6 cumulatively considerable impact. An indicator
7 that there is not an impact is X, Y and Z. That's
8 what is in the current analysis. And then perhaps
9 adding on maybe some reference to efficiency,
10 rules of thumb such as have been developed in some
11 of the alternatives.
12 That doesn't respond to either of your
13 questions. That was in response to Commissioner
14 Byron's point that we have to do something now. I
15 am just saying you already are doing something and
16 I think it is quite good, actually.
17 MR. ELLISON: Commissioner Douglas, let
18 me respond to your question briefly regarding the
19 uncertainty about how the project to be permitted
20 will operate in the future. That uncertainty is
21 something we deal with in the siting process
22 already all the time. You are assessing water
23 impacts, you are assessing air emission impacts.
24 All sorts of things that are related to the
25 operation of the plant will be affected by how

1 much that plant operates.
2 ASSOCIATE MEMBER DOUGLAS: Well we do.
3 But the interesting thing is, let's take air
4 impacts for example. We sort of take a worst
5 case. Or we assume that the plant is going to be
6 operating probably more than most of these plants
7 actually will and that's the level of mitigation
8 that is required.
9 MR. ELLISON: I understand that and that
10 leads to my response. Which is, in the case of
11 assessing the displacement issue that we are
12 talking about you can do that same thing. I don't
13 think it really matters. Because to the extent
14 that you assume the plant is operating --
15 Let's say the so-called worst case
16 maximum capacity. The greenhouse gas emissions
17 from the project are at its highest but the
18 displacement is also at its highest. In other
19 words, every kilowatt hour that that plant puts
20 out, no matter how many it is, has both an
21 emission factor and a displacement factor. And so
22 I don't think you have to know with perfect
23 precision exactly how that plant is going to
24 operate in the future to net those two things.
25 MR. ALVAREZ: Commissioner, I guess one

1 of the issues that I see that sort of appears, if
2 you try to do the impact on a case-by-case basis,
3 and one committee is looking at one project and
4 another committee is looking at another project,
5 each of them are going to go off on two,
6 independent paths in terms of the impacts of each
7 of the projects.
8 And ultimately to solve that problem
9 when you bring it to the full Commission they are
10 going to need to know what the system impacts are
11 anyway. So you are going to need to do a system
12 analysis at some level so that you can judge the
13 relative merits of those two projects if you get
14 down to that situation.
15 So the programmatic or the system
16 approach that we recommended I think is a
17 necessary condition ultimately, if you then decide
18 you want to do a case-by-case analysis also. I
19 don't see how you are going to avoid that.
20 MR. VESPA: I had a response to your
21 third question. I think it had to do with if you
22 find out the reality of what is happening on the
23 ground is not consistent with maybe the program
24 you have laid out.
25 And I think to me it would seem like

1 from a CEQA perspective, taking AB 32 or maybe
2 some kind of programmatic document the CEC might
3 prepare, if you are relying on the tiering
4 provisions I think it is 15064(h)(3). Under that
5 provision, the way I read it is, you do that if
6 there is still substantial evidence that even
7 relying on that program is still having
8 environmental impact, then you couldn't do that.
9 And so to me AB 32 coming into play, and
10 assuming that is not working out, the cap-and-
11 trade system is not resulting in actual reductions
12 and they are just sort of phantom trades and so
13 forth. I think projects could be challenged under
14 CEQA that may try to tier off AB 32 and say, well
15 look, this isn't working and there is substantial
16 evidence that there is still an environmental
17 impact. So I think CEQA can really serve as a
18 check on maybe systems that aren't operating as
19 predicted.
20 So that would be the answer to the third
21 question. I think the second one had to do with
22 sort of real-time operations and mitigation
23 monitoring programs which are part of CEQA may
24 play into that. Maybe there is an issue now about
25 while there may be a five year time lag between

now and when AB 32 kicks in and would you want to have mitigation that is temporal and then have AB 32 come in.

I mean, to me it would seem like you kind of look to the opposite; you would mitigate fully. And then potentially, I would think, as the cap-and-trade is developed try to get some kind of credit for what you have done. You know, just so long as you are not actually being able to sell those kind of credits because they were already legally required. But that's sort of how I would look at it. And I don't know the answer to the first question.

PRESIDING MEMBER BYRON: Well, maybe I could ask this of staff or anyone that feels they could answer it. But how long would it take for this Commission to do a programmatic or a system study that would be useful for this purpose?

MR. RATLIFF: I'm glad you asked that because this question has been on my mind throughout this discussion. There seems to be a notion that we can do this analysis and it would provide us with an answer. But there has been very little description of what that analysis would be, how long it would take and how

1 definitive it would be.
2 Again, I am not going to call Dave a
3 forecaster this time because it will offend him,
4 but I guess the electric analysis people really
5 are the -- they probably have more to say about
6 that than anyone else in terms of what are the
7 possible conclusions that you would get from this
8 and how long would it take you to do it.
9 I know staff has already done a great
10 deal of analysis in the last, in the last IEPR in
11 the scenarios analysis on how you would implement
12 AB 32. And various scenarios that could be
13 developed that might predict what the electric
14 system would look like if we tried to meet the AB
15 32 goals. I don't know how much that plays into
16 what is desired out of this further analysis and I
17 don't know what the further analysis would
18 require. But I hope maybe Dave has some idea
19 about that because I really don't know.
20 PRESIDING MEMBER BYRON: So I asked you
21 one question and you added at least two more. We
22 don't know the scope and we really don't, in my
23 mind, know how useful it would be for what period
24 of time either. So it would have to be updated on
25 some regular basis too. Go ahead, Mr. Vidaver.

1 MR. VIDAVER: I'm not certain exactly
2 what type of analysis you are talking about. If
3 you are talking about a kind of a -- adding a
4 project into the system and dispatching it. I
5 would agree with Mr. Ellison, you will come up
6 with emissions reductions on the system. The
7 plant will only be dispatched when it is more
8 efficient to do so.
9 I will disagree with his comment about
10 forcing it in at the number of permitted hours.
11 If you did that it could very easily increase the
12 systemwide emissions.
13 I agree with Mr. Alvarez's comment that
14 not being a veteran of the siting wars that I
15 think there would be a danger of litigating over
16 the data sets and the assumptions. Every time you
17 changed the gas price forecast and every time
18 there was an upgrade on a transmission line and
19 every time any power plant was added to the system
20 you would have to update your data set. And I
21 would strongly suspect that unless care was taken
22 to keep that from being an issue the siting cases
23 might drag on an awful long time and make lawyers
24 awfully wealthy.
25 PRESIDING MEMBER BYRON: I am reminded

too, I forget who may have said it earlier, maybe Mr. Ellison. I don't believe you put this number to it. But it is about 40 percent of the CO2 emissions in this sector come from out-of-state generation. And that is extremely difficult. We have not done a very good job, in my understanding at this Commission, in putting our arms around that completely. To do some sort of definitive analysis to be able to determine all that.

So there is going to be a great deal of uncertainty around this kind of analysis, let alone the amount of time it is going to take to do. What I am trying to get to here is how workable this is and what do we do in the interim? Did you want to add something, Mr. Ratliff?

MR. RATLIFF: Well I probably did but I really wanted to make a comment. And that was, I think -- First of all, I don't want to pick on Will and the Center for Biological Diversity. I am so glad you guys came today. You made our discussion so much more interesting, and I think beneficial, and I appreciate that. So thanks for being here.

PRESIDING MEMBER BYRON: So now you're going to pick on them.

1 (Laughter)

2 MR. ROSTOV: We can take it.

3 MR. RATLIFF: I think Will can take it,

4 yes. The last comments about the relationship

5 between what we are doing in AB -- what the state

6 is doing in AB 32 and what the Energy Commission

7 is doing in its analyses, to me gets it exactly

8 backward.

9 What we are doing in our CEQA analysis

10 is CEQA. We are trying to determine if any

11 individual project has a significant adverse

12 impact in this particular subject area, which is

13 greenhouse gas emissions. And that is a very

14 narrow focus. It doesn't tell you what your

15 system is going to be in 50 years. It doesn't

16 tell you anything about 50 years, it tells you

17 what our best estimate right now for this project

18 is. What you are doing in AB 32, I believe, is

19 much more foresighted, much more comprehensive,

20 much more programmatic in its embrace. And I

21 think that is where you accomplish something that

22 is real and big.

23 I think that the expectation that you

24 are going to do something much bigger through a

25 CEQA analysis and a significance determination

1 then you would through AB 32, is absolutely
2 backwards. So I just had to put that in because I
3 felt like I was hearing the contrary. The
4 interaction is there but I don't think we are
5 doing AB 32 through the CEQA itself.
6 MR. ROSTOV: Well I disagree. But I
7 think the main point is CEQA is about new plants.
8 AB 32 is about new and old plants. So all we are
9 talking about now is how are you going to do your
10 environmental analysis for your new plant that has
11 a certain amount of greenhouse gas emissions. And
12 then if you find it cumulatively considerable,
13 which we believe it is, then how are you going to
14 mitigate and study alternatives. That's the whole
15 story for CEQA.
16 AB 32 addresses both old and new plants.
17 So we are saying, you have the requirement for
18 CEQA now. And then you're right, you know. When
19 you are looking at the whole system, the old
20 plants as well as the new plants, then you do an
21 AB 32 analysis. But here you are doing a project-
22 by-project siting proceeding and you are applying
23 CEQA.
24 And AB 32 is very explicit. I'm citing
25 our comments. I don't know the statute off the

1 top of my head. That it did not take away the
2 CEQA authority. As a matter of fact it allowed
3 all the other laws to exist at the same time. It
4 did not, as somebody said earlier, occupy the
5 field. So I stand by my comments and respectfully
6 disagree.
7 MR. GALATI: Commissioner Byron.
8 PRESIDING MEMBER BYRON: We have someone
9 new that's joined us at the table.
10 MS. SRINIVASAN: I wanted to respond to
11 Commissioner Douglas' question about --
12 PRESIDING MEMBER BYRON: Would you
13 please identify yourself.
14 MS. SRINIVASAN: I'm sorry. My name is
15 Seema Srinivasan and I am here on behalf of the
16 Energy Producers and Users Coalition.
17 And I wanted to address Commissioner
18 Douglas' question about the conflict, the
19 potential conflict between CEQA and AB 32. I
20 wanted to give you a specific example and that is
21 the example of CHP. Because the installation of
22 CHP actually increases on-site emissions because
23 it essentially takes the place of both a boiler
24 and a generator, but yet it results in a net
25 decrease in emissions.

1 And so therefore if there was a site-by-
2 site evaluation it could deter the installation of
3 CHP, which directly conflicts with AB 32's --
4 sorry -- CARB's Scoping Plan recommendation to
5 increase reliance on CHP resources. And I just
6 wanted to point out that there is a direct
7 conflict depending on how the CEQA evaluations
8 take place.
9 MR. RICHINS: Okay. I think this is all
10 good discussion but we are scheduled to go to
11 mitigation here. So maybe if there's one or two
12 last comments and then we will maybe just take a
13 short stretch break and then go into mitigation.
14 I think Chris wants to say something. And if
15 someone else wants to say something we will and
16 then we will wrap this up. Although the dialogue
17 is real good we need to move on to the next panel.
18 MR. ELLISON: I just wanted to briefly
19 address your concerns about what workability,
20 Commissioner Byron.
21 PRESIDING MEMBER BYRON: Thank you.
22 Because that question is going to stand and that
23 is really what I am looking for from you all at
24 this point forward. Go ahead.
25 MR. ELLISON: I understand that. You

1 know, earlier I made the analogy that when we did
2 avoided cost pricing under PURPA. You can make
3 this analysis as complicated or as simple as you
4 want to make it in the amount of time that you
5 have and for the purpose that you have.
6 You can make it as simple as proposal
7 number two that the staff put forward. That is a
8 way of incorporating a system effect in a very
9 simple, short-term way. Or you could study it for
10 years if you want to.
11 The point is though, and the only point
12 I really want to make is that obviously as is true
13 in many technical aspects of the siting process,
14 you do the best you can with the information that
15 you have. And you try to get the best answer that
16 you can get and inform the public as best you can.
17 The answer that you get is almost certainly not
18 going to be perfectly, precisely correct. And
19 that is not limited to this area, it is limited to
20 all sorts of public policy arenas, as you well
21 know.
22 But, and here is my last and main point,
23 you are far better off to at least try to
24 incorporate this into your analysis to get to
25 something that is closer to the right answer, than

1 to throw your hands up and say, we are going to
2 use something that we know is wrong. That doesn't
3 consider a fundamental aspect of the way our
4 system operates simply because we can do it
5 easily.
6 MR. RICHINS: Scott.
7 MR. GALATI: Yes. The last point I
8 wanted to make, Commissioner Byron, along the same
9 lines was, I think your staff is going to have to
10 do this anyway. I think your staff is either
11 going to be challenged to do this in an individual
12 siting case.
13 PRESIDING MEMBER BYRON: Right.
14 MR. GALATI: A systemwide study to
15 determine what the net emissions are.
16 PRESIDING MEMBER BYRON: But I just want
17 to make sure I understand, based upon your steps
18 one, two, three, that would be in step two,
19 correct?
20 MR. GALATI: That's correct. And so
21 whether step two takes place inside an individual
22 siting case, and with all the boundaries around
23 it, or step two takes place outside, I don't see a
24 real difference in the amount of work your staff
25 would need to do. In fact I think maybe the

1 second step where it takes place outside the
2 siting case would even be more helpful to your
3 staff because there would be other participants.
4 PRESIDING MEMBER BYRON: Agreed.
5 MR. GALATI: So I think that to achieve
6 the goals, and as Chris says, to tell an accurate
7 story, you have to get that information. So I
8 don't think it is a matter of how long it will
9 take. It is more of, we have to do it, what is
10 the best forum to do it in. So we were trying to
11 propose from a step one perspective, how can you
12 keep projects continuing to move forward while
13 this study is taking place or this is taking
14 place.
15 PRESIDING MEMBER BYRON: Understood. In
16 fact, without showing any partiality to your
17 suggestions, I think yours were the --
18 MR. GALATI: You never do, Commissioner.
19 PRESIDING MEMBER BYRON: Yours were the
20 only comments that addressed really the interim
21 nature of what we need here. Otherwise I think we
22 are faced with the prospect that we wait for your
23 step two, or what we have been calling our
24 programmatic or systemwide approach, and the time
25 it will take to do that before we can move forward

on any other applications.

I don't think California is well-served if that is the approach we take. That's why we have tried to focus on something interim. That's the purpose of the expedited schedule. That does not preclude the fact that we are going to have to address this in a more substantial way.

MR. RICHINS: Okay. And I think --

MR. MILLER: I'll pass.

MR. RICHINS: Okay, all right.

PRESIDING MEMBER BYRON: Would it be anticlimactic?

MR. MILLER: No, it was actually going to be quite climactic. But I'll save it.

(Laughter)

MR. RICHINS: Okay, I think -- Why don't we take just a five minute stretch break and then we will move into mitigation. And we have three speakers.

But before you leave, some of you may be leaving, I'm not sure, but written comments are due on the 12th. You heard from the Commissioners the types of things that they are looking for. And I think it is some guidance, some direction, some practical approaches that can be applied so

that we can uniformly do a CEQA analysis for all these power plants in the interim between now and when AB 32 might take effect, or between now and when we do step two in a programmatic approach.

(Whereupon, a recess was taken off the record.)

MR. RICHINS: Okay, thank you for returning. This panel discussion is going to be on mitigation. And we want to caveat this by saying that if the Energy Commission determines that greenhouse gas emissions exceed the CEQA threshold of significance then mitigation may be required. So this is a discussion on if mitigation is necessary based on that premise.

And we have three speakers from -- Lucille is from ARB, the Office of Climate Change. Rachel is from the California Climate Action Registry, and then Lisa is from the Attorney General's Office. So we will take those three in that order. And two of them have PowerPoint slide presentations.

And then we will go to the same type of format that we had earlier this morning and afternoon where there is a free-flowing dialogue where you can ask questions of the presenters or

1 put forth other ideas and suggestions. But we are
2 interested on ideas on mitigation, existing
3 mitigation programs and so forth that might be
4 able to be used if the Energy Commission decided
5 mitigation was necessary. Thank you very much.
6 MS. VAN OMMERING: Okay. Can everybody
7 hear me okay or should I be closer?
8 MEMBER OF THE AUDIENCE: Be louder,
9 please.
10 MS. VAN OMMERING: Louder, okay. Well
11 thank you very much for inviting me over here. I
12 am a little short so for those of you who can't
13 see me, too bad.
14 (Laughter)
15 MS. VAN OMMERING: My presentation this
16 afternoon is going to focus on what ARB is
17 proposing for a greenhouse gas cap-and-trade
18 program, including the use of offsets. And so for
19 those of you who are intimately involved in what
20 we have been working on I apologize for being a
21 little bit redundant. But I think it always helps
22 to bring everybody on the same page, that way we
23 can kind of talk in the context of what you are
24 discussing today.
25 So what I will be doing is summarizing

1 not only the cap-and-trade program but also other
2 provisions in the proposed scoping plan that have
3 to do with voluntary reductions and the voluntary
4 offsets market. And hopefully that will assist
5 you in making the rest of the afternoon a useful
6 dialogue.
7 For those of you who are from another
8 planet, we did have legislation that was adopted a
9 couple of years ago, AB 32, that codified the 2020
10 greenhouse gas limit at the 1990 level.
11 It also mandated that ARB adopt a
12 Scoping Plan to achieve the maximum feasible and
13 cost-effective reductions. Our board will be
14 hearing from us tomorrow on the Plan but they will
15 be reserving their action until the December board
16 meeting. We do anticipate a full day tomorrow,
17 probably running into the evening and possibly
18 even a full day in December as well.
19 The proposed Scoping Plan as it relates
20 to the greenhouse gas emission reductions. We are
21 recommending measures that would lower those
22 emissions down to the 1990 level.
23 We are also proposing a cap-and-trade
24 program that not only is California-specific but
25 that would link to a US-Canadian regional market.

1 And AB 32 requires that all measures
2 must be launched by January 2012, which means we
3 have a very aggressive time schedule to get the
4 measures adopted.
5 PRESIDING MEMBER BYRON: Ms. Ommering,
6 if I may. We spent a lot of time at this
7 Commission and the PUC making some recommendations
8 to the ARB on some of those programmatic measures
9 to take in the electricity sector. Are they all
10 included in that scoping document? Namely 33
11 percent renewables and 100 percent economically
12 achievable energy efficiency.
13 MS. VAN OMMERING: Yes, those are. I
14 thought you meant the joint decision and that is
15 part of the rulemaking process.
16 Okay. So before reviewing what it was
17 that was contained in the proposing Scoping Plan,
18 I just wanted to review with you some of the key
19 elements that any cap-and-trade program would have
20 so that you kind of understand what the context is
21 when we go into the discussion of the offsets.
22 Of course there is the scope and
23 threshold which determines who is going to be in
24 the cap and how large the sources need to be
25 before they are eligible to be in the cap.

1 We also talk about where we would set
2 the cap in 2012 and how quickly the emissions cap
3 would decline to the 2020 target.
4 There is a discussion of the
5 distribution of allowances. Do we freely allocate
6 allowances or emissions to sources? Do we hold an
7 auction in which every source in the cap would
8 have to go in for what they think their emissions
9 are going to be over a three year compliance
10 period? Or would we have a hybrid approach?
11 Our proposed plan is to do a hybrid
12 starting low with the auction and moving rapidly,
13 as the Energy Commission and the PUC suggested, to
14 a full auction. Whether or not we go as rapidly
15 as the two commissions suggest is a question for
16 the rulemaking process.
17 We also would provide for a limited
18 amount of offsets and I will describe what we are
19 talking about there. But those are essentially
20 different than the offsets that power plants are
21 used to talking about in the criteria pollutant
22 side.
23 These are not the type of emissions that
24 mitigate or offset your remaining emissions after
25 you put on control technology, these are quite

1 different. These are additional reductions that
2 are achieved from outside the cap sector that
3 sources inside the cap can purchase to a limited
4 extent in order to be able to meet their total
5 compliance obligation at the end of the compliance
6 period.
7 Certainly we would have a very
8 aggressive reporting, tracking and enforcement
9 program. As many of you know, we already adopted
10 a mandatory reporting requirement which capture
11 for reporting purposes electric generation. That
12 is, I believe, one megawatt or larger. But in
13 terms of what would be in the cap would be mostly
14 key power plants, generators, but would not
15 involve -- would not include renewable energy,
16 clearly.
17 And finally, when we do have an auction
18 we have to consider in the rulemaking the fair
19 distribution of those auction revenues. It is the
20 government that is collecting them but the
21 revenues obviously belong to the public who will
22 ultimately be paying the price of the program.
23 Okay, so what have we proposed in the
24 Scoping Plan? We are saying that by 2012 we
25 believe that industrial facilities who emit 25,000

1 millimetric tons of CO2 equivalence or greater
2 would be in the program, including electricity
3 generators inside the state and a special approach
4 for imports, which we call the first
5 jurisdictional deliverer.
6 That definition right now is being
7 discussed. Some of you may have been
8 participating in the process. It is being
9 discussed at the Western Climate Initiative level
10 simply because those imports affect people within
11 those other states and provinces as well as those
12 who do not belong to the WCI. So we want to have
13 a clear definition as to how all the participants
14 in the cap-and-trade program, or I should say all
15 the jurisdictions, will be treating imports.
16 Beginning in 2015 we would include the
17 non-industrial sources of fuel combustion, natural
18 gas, for commercial and residential use as well as
19 transportation fuels, which is gasoline and
20 diesel.
21 The capped sources. In this case when
22 you participate in the cap-and-trade program you
23 would be required to hold allowances sufficient to
24 or equal to what your emissions are at the end of
25 a three year period. So if you see the cap-and-

1 trade program beginning in 2012, at the end of
2 2014 you would be expected to surrender as many
3 emissions allowances as you have emitted in that
4 period of time.
5 The auctions would be held at different
6 parts of that compliance period so that you
7 wouldn't have to anticipate at the very beginning
8 what you would need. There will be different
9 opportunities for you to go into the market if
10 there is an auction, or that the state would
11 distribute to you if in fact we decide that an
12 auction is not, is not the best way to distribute
13 allowances at the very get-go.
14 However, within that cap, as you have
15 been talking about before, there are different
16 regulations and standards that the cap stretches
17 over. Those are requirements that either already
18 exist or policies that the state has determined
19 are good for reasons in addition to greenhouse gas
20 emissions reductions. And those are the Low-
21 Carbon Fuel Standard, the Pavley car standards
22 which require a greater fuel efficiency, the
23 Renewable Portfolio Standard hopefully stretching
24 out to 33 percent rather than the 20, and also to
25 include the munis as well as the IOUs.

1 A very ambitious energy efficiency
2 target. And some reductions of industrial
3 sectors, including refineries, where we think that
4 providing them with a regulatory target provides a
5 greater incentive and greater assurance that those
6 reductions will occur.
7 So that being the case, when you look at
8 all those standards and regulations, those will
9 comprise really the great bulk of the reductions
10 that we think will occur by 2020. Therefore if we
11 are assuming from the emissions in the cap, which
12 are 174 millimetric tons that we will need to
13 reduce from the cap sectors in order to be able to
14 get to 2020, we are saying that those direct
15 regulations and policies will be responsible for
16 about 140 millimetric tons. And that when you
17 look at offsets, which I will discuss in another
18 slide or so, the offsets cannot be used to avoid
19 complying with those requirements.
20 So when you look at all those direct
21 regulations and the policies as I said, you wind
22 up with about 140 tons of reductions. What is
23 left would be about 35 millimetric tons of CO2E.
24 And of that portion we are proposing that no more
25 than 49 percent of the required reductions in that

1 total compliance period between 2012 and 2020 come
2 from offsets.
3 And that is to ensure that the bulk of
4 the reductions are coming from within California.
5 That is a policy decision that I think we are
6 going to stick with. That we want to see most of
7 the reductions come from within California, even
8 understanding why because this is a global climate
9 change problem, that we have to first look to
10 California to set the standard, set the goal for
11 others to follow.
12 The cap would be set in 2012. The cap
13 would decline to meet the 2020 target. And then
14 further down the line we would have to set,
15 assuming if in fact the federal government doesn't
16 do anything and I don't think that will be the
17 case. But if they were not to do something we
18 still, our intention is to move beyond that to the
19 climate stabilization, which we would look at in
20 terms of the 2050 goal.
21 So what is an offset? As it says here,
22 they are additional reductions from un-capped
23 sectors beyond that required by direction
24 regulation or other policies.
25 So for instance, forests are not

1 regulated in the proposed Scoping Plan. Ag lands
2 for the most part are not, although we are
3 proposing to have some level of manure management
4 over time. And landfills in terms of their
5 methane collection are not regulated. Those could
6 be examples of where you would look to get
7 offsets. In other words, surplus reductions that
8 are not already accounted for either outside of
9 the cap, because there are certain measures that
10 we account for outside of the cap, as well as
11 within the cap.
12 The purpose of having the offsets is to
13 provide lower cost reductions to market
14 participants when allowances are scarce.
15 Remember, that in order to achieve our 2020 goal
16 we are going to need emissions reduced well below
17 the business as usual. Therefore, companies that
18 are in the cap are going to need to think ahead as
19 to how they are going to reduce their energy
20 output as well as otherwise reduce their carbon
21 footprint.
22 We anticipate that most of these
23 reductions would come by the regulatory route.
24 Some will come from reductions from other sources
25 who may be able to go beyond or below what they

are otherwise required to do. But we also expect that as allowances become scarcer we will need an additional source of reductions that are not otherwise being controlled. If not here then in other jurisdictions or in other nations.

Well, so what are the criteria for these offsets in order for us to be able to bring them into the program? We want to be sure that these out-of-cap reductions withstand the same level of scrutiny, certainty and enforceability as any reductions we would expect from regulations that we see within California.

That means that any offsets that we allow into the cap have to reflect actual emissions reductions or removal out of the atmosphere.

That they have to be beyond what otherwise would have happened or in any way credits.

We have to be able to rely upon -- reliably measure them or estimate their emissions.

Obviously we have to be able to verify that in fact those reductions are occurring.

They have to be permanent or backed up by a guarantee that they are not going to go away.

1 And finally, we must be able to ensure
2 that they are enforceable in case a party decides
3 to walk away.
4 There are other things that we are
5 looking at in terms of bringing them into a cap-
6 and-trade program. AB 32 requires that whatever
7 we do that we not do anything to adversely affect
8 other stiff requirements that we have in place
9 that apply to criteria pollutants or air toxics.
10 And therefore as we proceed through the rulemaking
11 process we are going to take a look to see if
12 there are any reasons why offsets should be
13 restricted based upon local conditions.
14 There are also in addition to the cap-
15 and-trade program also other features in the
16 proposed Scoping Plan that allow for sources
17 outside of the cap, or even potentially in the
18 cap, to do something more and to get credit for
19 it. AB 32 specifically provides that we
20 appropriately recognize or credit voluntary, early
21 actions. The question that we are looking at is,
22 what is the starting point for that early
23 voluntary action?
24 We are clearly not going to go back to
25 2000 or 2004. We want to make it early enough so

that you are cognizant of the fact that these reduction requirements are in place and you want to do something now rather than wait for us to start the cap-and-trade program. But if you do do that, then we want to somehow properly acknowledge what you do within the baseline so that you are not starting off lower than you otherwise would be allowed to start off had you not done the early reduction.

So we looked at, in the Scoping Plan, three potential alternatives. One would be the early action allowance set-asides. That for the most part would either be relegated to those companies inside the cap that want to start early. And we will provide -- we take out some allowances and then return it to the person or the company doing the early action so that they would have some allowances to play around with and you wouldn't be shorted just because you acted early.

On the other hand we might also give those early set-asides to institutions or local governments or voluntary renewable markets who can provide more reductions, say in energy conservation or water conservation, that the companies within the cap could not do, but that

1 those companies such as the power plants would
2 benefit from because it would reduce the overall
3 load.
4 So what you would want to do is to
5 remove a pool or to carve out a section of the
6 total cap, provide it to these sources that will
7 be able to reduce the burden on capacity of the
8 electricity sector. And therefore by removing the
9 allowances off the top not allow the utilities to
10 then sell their excess capacity somewhere else.
11 We don't want to do that, that would be double
12 counting.
13 The second alternative would be to
14 account for early reductions in the allocations.
15 There what would happen would be, if we were to
16 have an auction, to the extent that somebody
17 reduces earlier, that company would not be
18 required to purchase more than what he has already
19 reduced to. So that benefits you as well.
20 Direct regulations could also recognize
21 or reward early actions. so that if we were to
22 establish a baseline for a utility -- Say, for
23 instance, they were operating using 100 emissions,
24 units of emissions, and they do something early
25 on. There is a new plant in town. They do

1 something that goes beyond that alternative for
2 BACT. We wouldn't set the overall cap, assuming
3 that they have gone down below where they
4 ordinarily would be, but we would give them enough
5 allowances so that what they did to reduce their
6 emissions earlier would be recognized. You
7 wouldn't start their baseline off with shorted
8 emissions.
9 If we were to allow any kind of
10 voluntary offsets or early reductions I think we
11 are looking at basically the same criteria that
12 would be comparable to offsets, only in this case
13 it will be applicable to an individual action
14 rather than to a category of offsets such as the
15 forest mitigation or methane collection. You have
16 to look at them category by category or source by
17 source in order to be able to ensure those
18 criteria are met there that you see on the screen.
19 Those are for voluntary offsets.
20 However, there is a possibility that if you do
21 these things early on and we say yes, they are so
22 good we would like to recognize them if you are
23 doing them for CEQA purposes, but now those were
24 good enough for us to consider as possibly used
25 for offsets within the cap-and-trade program. We

want to look at those actions to make sure that they are in fact additional for credit within AB 32. In other words, they could not be anyway credits and they have to meet an additional layer of scrutiny for us to be able to accept them.

Early on in February of this year the ARB adopted a policy statement to allow for these source-specific or project-specific voluntary early actions. A number of firms, including I believe Southern California Edison, came in with the idea that if they did something now could they be recognized for doing that once the cap-and-trade program was adopted. Other sources also came up to us with that idea.

The board considered it and they did adopt a policy statement. And what they directed the staff to do is to accept methodologies to quantify early actions. And then if those methodologies pass scrutiny then the ARB Executive Officer would issue an Executive Order that would confirm the technical soundness of the methodologies. Up to this point we have not seen any -- We have seen very few proposals and none of them really have passed what we believe would be sufficiently enforceable or carefully drawn

1 methodologies.
2 Okay. Voluntary offsets. Some of you
3 have or have heard of and know of these voluntary
4 markets. I forgot, one is called Terra something-
5 or-other. And I want to keep calling them
6 Terragrams but they are not.
7 MEMBERS OF THE AUDIENCE: Terra Pass.
8 MS. VAN OMMERING: Terra Pass, thank
9 you. And those occur when people go on airline
10 travel and they want to offset their emissions.
11 So they go into a market and they purchase these
12 offsets. They do exist. We have put them into
13 the context of the proposed plan so as to give
14 them an official place in the California program.
15 As we indicate in the plan, we want
16 firms and consumers who purchase such surplus
17 reductions to be assured that they are legitimate
18 reductions and not issued just by fly-by-night
19 companies. So there is some level of assurance,
20 although again, not strict enough we believe, to
21 pass muster for an AB 32 cap-and-trade program.
22 At this point in time the California
23 Climate Action Registry has identified different
24 voluntary offset categories and the ARB has
25 adopted several of them for use as voluntary

1 offsets and you see them down there in the bullet:
2 forest projects, urban forestry and manure
3 digesters.
4 However, before we incorporate any of
5 these protocols in a cap-and-trade program we are
6 going to give these protocols an additional scrub
7 to make sure that they meet the more stringent
8 requirements of AB 32. Therefore, until we adopt
9 such protocols, in whole or by reference into a
10 cap-and-trade program, they would not be available
11 for use by cap sources to meet their compliance
12 obligations.
13 I just wanted to give yo sense of where
14 we stand right now on the Scoping Plan schedule.
15 We have already had the Draft Scoping Plan
16 released in June. We held a number of workshops.
17 We proposed the Proposed Scoping Plan in October.
18 Tomorrow we will be having a hearing on it and
19 board action at the December meeting.
20 I just wanted to tell you what happens.
21 Yes, there is life after the Scoping Plan
22 adoption, which is what my staff is working on.
23 We will be busily working on the regulatory
24 development between 2009 and 2010. There will be
25 numerous people working on regulations including

1 policies and standards by the Energy Commission,
2 the PUC. The Waste Board will be looking at
3 measures. But my group will be working, if the
4 board directs us to do a cap-and-trade program, we
5 will be working on that regulation.
6 In order to be able to go through the
7 administrative process and have the program launch
8 in 2010, or excuse me, 2012, we will have to have
9 a final rule for the board's action no later than
10 November of 2010. So that does not give us much
11 time.
12 As some of my friends out here have
13 joked about, there will be a very intensive public
14 consultative process. We are hoping to establish
15 different working groups that will advise us in
16 how we develop these regulations. We understand
17 that there are a number of issues, not only in
18 terms of the California program, but when you look
19 at the fact that we are linking to a western
20 climate program and each state has their own
21 intricacies, different ways of doing things, and
22 so it is going to be lots of moving parts.
23 As you yourselves know coming from the
24 energy sector, and somebody said before, it is
25 just not California. What we do here influences

1 what happens throughout the WEC and what they do
2 also influences us as well. So we need to take
3 all that into account. I'm sure the WCI in the
4 different states and the WCI will be having their
5 process. We will be having ours as well. And we
6 will also be participating in the WCI process.
7 Finally, for those of you who don't know
8 where to find us, those are a few links that I
9 think will help you. You can also not only in
10 time for tomorrow's hearing but also all the way
11 up to the December board action, submit comments
12 on-line as well as formal comments by snail mail.
13 We'll accept them all. And we look forward to
14 seeing you tomorrow.
15 And with that, that will be a conclusion
16 to my presentation.
17 MR. RICHINS: All right, thank you very
18 much. And our next speaker will be Rachel --
19 MR. MILLER: Do we want to do questions
20 or not?
21 MR. RICHINS: No, we are going to do all
22 the presenters first and then we will do
23 questions.
24 MR. MILLER: Thank you.
25 MR. RICHINS: Rachel Tornek is a senior

1 policy manager for the California Climate Action
2 Registry.
3 MS. TORNEK: Thank you so much for
4 giving me the opportunity to come here and talk to
5 you about my organization, the California Climate
6 Action Registry, and a new program of the
7 organization called the Climate Action Reserve.
8 Again, we are speaking in the world of
9 ifs here, so if mitigation is something that you
10 all will be interested in looking for under CEQA,
11 the Climate Action Reserve is one direction that
12 you might take.
13 Let me start by telling you a little bit
14 about our organization quickly just so you
15 understand our history. We are a nonprofit
16 organization that was actually created by the
17 State Legislature back in 2001 as a way to
18 encourage voluntary reporting and reductions of
19 greenhouse gas emissions.
20 We were put in place to develop
21 protocols to track greenhouse gas emissions and
22 reductions as well. So we have focused over the
23 last seven years or so in helping companies,
24 nonprofits, academic institutions across the state
25 and across the country to inventory their

1 greenhouse gas emissions and have those verified
2 by independent third parties. Leading businesses,
3 government agencies, over 370 members to date and
4 650 million metric tons of CO2-equivalent
5 registered in our publicly available, on-line
6 reporting tool called CRT [pronounced carrot].
7 Now that California has taken this
8 leadership role, has sort of internalized the idea
9 of greenhouse gas reporting, we will have a
10 mandatory reporting program. And we have actually
11 worked to develop a sister organization called the
12 Climate Registry that will basically create a
13 system for consistent reporting across the United
14 States, Canada and Mexico.
15 We are sort of passing the torch on
16 entity level reporting and verification and the
17 climate registry, the California Climate Action
18 Registry, will be focusing on this new program,
19 the Climate Action Reserve, and working to bring
20 integrity and rigor to the voluntary carbon offset
21 market.
22 So the Climate Action Reserve is the
23 name of a new California registry program to
24 register and track carbon offset projects
25 throughout the United States. Although it is a

1 program of the California registry we are in no
2 way focused solely on carbon offset projects in
3 California. All of the protocols that we will be
4 developing into the future will be applicable
5 across the United States. And we are actually
6 looking to expand them to Mexico and Canada as
7 well.
8 This is a relatively new endeavor of the
9 California Registry. We launched earlier this
10 year in May 2008. We have established it at its
11 own name but it is co-branded, it is sort of a
12 sub-program of the California Registry.
13 Our intention is for it to be the
14 premier place to register carbon offset projects
15 in North America. As I mentioned, US-based
16 projects only right now but we will be working in
17 2009 to expand a couple of our existing protocols
18 to Mexico and Canada. And moving forward,
19 hopefully to be inclusive from the beginning.
20 Why are we taking on this new role in
21 our organization, starting this new program? You
22 all have probably heard plenty about the concerns
23 of the voluntary carbon market. All the carbon
24 cowboys out there selling a whole bunch of hot
25 air.

1 There's concerns that voluntary offsets
2 are not real or additional, sort of going beyond
3 that business as usual. We are not looking for
4 the anyway credit that Lucille was talking about.
5 We are looking at reductions that would not have
6 happened otherwise except for the existence of a
7 carbon market.
8 There's concerns that projects create
9 other social or environmental problems.
10 And that credits are being double
11 counted and double sold.
12 So we have, the California Registry has
13 developed a reputation for high-quality accounting
14 standards that we believe can address all of these
15 concerns. We supported ARB in the development of
16 their mandatory reporting rule. We definitely
17 have in turn, you know, been looked at as sort of
18 an expert in this field.
19 So our goal is to be the recognized seal
20 of approval for high quality offset credits.
21 There's a lot of words on this slide.
22 These are very similar to the principles that
23 Lucille spoke of, what goes into a quality offset.
24 It must be real, additional, permanent, verified,
25 unambiguously owned, not harmful to the

1 environment or to communities, and we also adopt a
2 principle of practicality. So we are trying to
3 minimize barriers for implementation of these
4 projects.
5 Those principles are sort of
6 internationally standardized at that point by the
7 World Resources Institute. World Business Council
8 for Sustainable Development developed a greenhouse
9 gas protocol, project protocol, and sort of laid
10 those out. ISO, the International Standards
11 Organization has created a Standard 14064. It's
12 sort of everybody works around those same
13 principles and we base all of our work on those
14 principles.
15 To give you a sense of where we are to
16 date, sort of how we do our work and what we have
17 done thus far. Our project protocols are
18 developed through a stakeholder-driven process
19 with broad, public input. The protocols that we
20 have developed are the same ones or many of the
21 same ones that Lucille mentioned. Actually the
22 protocols that ARB has adopted are the protocols
23 that we have developed at the California Registry.
24 So we have a project protocol for three
25 different types of forest projects, conservation

1 management, avoided deforestation and
2 reforestation. Currently those project protocols
3 are only applicable to California. But we are
4 actually going through a revision process right
5 now that will hopefully go to our board in
6 February that expanded those protocols across the
7 United States.
8 We have a landfill gas capture project
9 protocol, an agricultural methane capture project
10 protocol, urban forestry protocol. And we do plan
11 to develop six new protocols over the next 12 to
12 18 months. So that's my job is to develop new
13 project protocols.
14 I wanted to introduce you to the name of
15 our credits. They are called CRTs [pronounced
16 carrots], C-R-Ts, climate reserve tonnes. One CRT
17 is equal to one metric tonne of CO2-equivalent
18 reduced or removed from the atmosphere.
19 One of the things that we have done is
20 the reserve itself is a piece of software, web-
21 based software, where we track, serialize and
22 track each tonne that is created using our
23 approved project protocols. So each CRT has a
24 unique serial number that includes embedded
25 information about the project type, vintage and

1 location.

2 This will help avoid the double

3 counting, double selling,a nd also add a lot of

4 transparency to this market that in many

5 situations is a bit of a black box. You buy a

6 credit, you don't know what project it came from,

7 you don't what vintage it is. We are sort of

8 getting rid of all of that, increasing the

9 transparency with our CRTs.

10 The way that the reserve works: The

11 reserve is not an exchange. So it is not like the

12 Chicago Climate Exchange that actually has a role

13 in setting the price of carbon. We really act

14 more like a bank and so participants open an

15 account. You register a project, you get it third

16 party verified. And then you transfer CRTs from

17 account to account and you can retire them within

18 the reserve. And all of that is publicly

19 available and transparent.

20 CRTs are only issued on an ex-post

21 basis, which means there is no forward crediting.

22 They are not registered until they have been

23 created and verified. So we are not getting into

24 the market of crediting projects -- crediting

25 things before they have actually happened.

1 And Paul asked me specifically to
2 address how much do these things cost. As I
3 mentioned the Reserve doesn't play a role in
4 setting the price and we actually don't require
5 our buyers and sellers to disclose the price to
6 us. That happens contractually outside of the
7 Reserve. But New Carbon Finance did a voluntary
8 carbon index study over the last few months and
9 found the current average price of CRTs at about
10 $10.80 a tonne. At the premium end of the market
11 is the quote that they gave.
12 So I wanted to give you just a few
13 slides on, you know, what makes the Reserve
14 different than other voluntary carbon offset
15 programs out there or, you know, what we feel we
16 are doing better perhaps than the rest of the
17 players in the market, what we feel are our
18 strengths.
19 We are recognized and supported by a
20 number of organizations and stage governments.
21 The California Air Resources Board, as I
22 mentioned, the project protocols that we have
23 developed are the only ones that have been adopted
24 by them. It's for voluntary purposes but still we
25 think that that is a good vote of confidence for

1 our program.
2 The State of Pennsylvania. They have a
3 climate change committee that recently recommended
4 the Climate Action Reserve as a source for
5 businesses in Pennsylvania. If they wanted to buy
6 high quality offsets they recommend the Reserve as
7 a place where they can get those.
8 The Reserve is the only US program to
9 have received approval by the Voluntary Carbon
10 Standard, which is sort of an international
11 metastandard for setting a bar of integrity and
12 rigor in the voluntary offset market. So we are
13 the only program in the United States to receive
14 that approval.
15 We have a number of leading
16 environmental organizations standing behind us,
17 Environmental Defense Fund, NRDC, Sierra Club.
18 The last two, two of that -- Representatives from
19 each of those sit on our board. And EDF has been
20 involved in every one of our project protocols
21 that we have developed, part of that multi-
22 stakeholder work group.
23 And then some representation here in
24 California. PG&E's Climate Smart Program. They
25 have a program by which their customers can

1 actually offset the emissions from the electricity
2 and natural gas that they purchase through PG&E.
3 And PG&E uses exclusively credits from the Climate
4 Action Reserve to support that program.
5 And SMUD recently released an RFP for a
6 program similar to that. And although we are not
7 the only place you can get credits, or where SMUD
8 will source credits, we are definitely the first
9 place they want to go to get those credits.
10 Another of our strengths is
11 transparency. I mentioned briefly our protocol
12 development process. It is a very public and
13 stakeholder-driven process. We are up here in
14 Sacramento a lot doing public workshops, work
15 group meetings.
16 We bring together, it is usually about
17 20 or so individuals representing the industry,
18 government, academics, environmental
19 organizations. Get them all at the table and sort
20 of work through the issues. That's one of the
21 reasons why our protocol process takes a little
22 bit long. Usually about eight months to a year to
23 develop one of these project protocols. So we
24 take a lot of pride in that.
25 And then just the amount of information

that is publicly available about our projects and our process. So all of our protocols and methodologies, you could go to our website today and download those and see what the rules are for developing projects under our protocols.

If you go to the Climate Action Reserve there is a number of public reports. It lists all of the account holders on the reserve. Information about each and every one of the projects, including the verification report that was, you know, created by the third party verifier and verification opinion. A list of all the CRTs that have been issued for every project.

And there is even a function by which, you know, let's say that someone -- you purchased an offset and they said, yeah, it's from the reserve. You could actually go to the website, type in the serial number that they gave you for the CRT and see that it has been put into a retirement account. So you know that in fact it has been retired on your behalf.

And then another thing that we think is very important I have termed separation of powers. It might not be an exactly legally correct example of separation of powers but we have taken the

1 approach where we don't do everything in the
2 process. So we develop the protocols but we don't
3 develop projects. Whereas, for example, in Oregon
4 the Climate Trust will actually take monies from
5 power plants and go out and source projects
6 according to methodologies that they have
7 developed.
8 That is not what we do. We allow
9 project developers to develop the projects. We
10 create the rules by which they develop the
11 projects but we don't develop the projects
12 ourselves.
13 We also don't act as an exchange as I
14 mentioned before. Those transactions take place
15 off the reserve.
16 We are a not-for-profit organization.
17 A very stringent third party
18 verification requirement. This is sort of the way
19 that things have gone on the international scale
20 under the Kyoto's clean development mechanism.
21 You know, you have these accredited third party
22 verifiers that conduct verification on the
23 projects on an annual basis.
24 We are currently changing the system.
25 We have been in the -- Up until this time it has

been us working with the State of California to accredit all the verifiers under our program. We are actually out-sourcing that now to ANSI, which is -- too many acronyms. ISO's arm here in the United States is called ANSI. And so moving to a more internationally consistent model.

And then for each and every project we actually do a conflict of interest assessment. So to make sure that the accredited verifier that is conducting the verification for the project, you know, doesn't have a pre-existing relationship with the project developer. Just adding another level of assurance that the credits being produced are of high quality.

So I kept it brief. You can ask me questions, I guess, after the next presentation.

MR. RICHINS: All right, thank you very much, that was very informative. Now we have Lisa Trankley from the Attorney General's Office. She is an attorney in the environmental section there at the Attorney General's Office.

MS. TRANKLEY: Thank you. We appreciate the opportunity to be here. We were asked to come talk about some of the principles of mitigation that we look for in CEQA mitigation and some of

the mitigation measures that we have required in settlements.

A lot of what we have done in a lot of the settlements we have reached have been in the land use context or individual projects so I hope what I have to say is helpful today. But I will talk about the settlements that we have reached and some of the various -- just examples of types of mitigation measures that we have been able to negotiate.

I think as far as principles of mitigation go, the buzz words as far that people have used to talk about offsets as far as the real and quantifiable and verifiable. I mean, all that applies to mitigation as well under CEQA and that is pretty much what we would look to.

There's a few other things that we have tried to ensure when we have negotiated mitigation. One of those is that the mitigation should be as contemporaneous as possible with the impact as far as the timing goes rather than having it be deferred too far in the future. We have had people do mitigation over time but we like to keep it as contemporaneous as possible.

We have also had the preference for the

1 mitigation to be not only close in time to the
2 impact but also close in location. In other
3 words, that the mitigation should try to benefit
4 the community that is being affected. Part of
5 that has come from environmental justice
6 considerations, particularly we had these issues
7 come up in a negotiation we had on the
8 ConocoPhillips refinery in Richmond.
9 The greenhouse gas mitigation measures
10 usually reduce other pollutants as well, they have
11 co-benefits, so we like to keep them close to
12 home. And it is also easier to track and verify
13 if the mitigation is on-site or nearby.
14 I think we have really just stuck to our
15 CEQA basics. We have also had in some cases, if
16 you are trying to reach a target in particular, we
17 will ask the entity to monitor the mitigation and
18 see if it is working, and if not, be prepared to
19 make changes in the mitigation. But again, I
20 think what we have done here is, if somebody
21 disagrees, is pretty basic CEQA mitigation
22 principles.
23 Now when we first started working with
24 some of the local governments and development
25 projects, land development type projects, we got a

1 lot of criticism because we were told we were
2 asking them to work in a complete vacuum. So one
3 of the things we tried to do for mitigation to be
4 helpful was to make a list of acceptable
5 mitigation measures. Kind of a menu. And I don't
6 know that they would be applicable here but
7 perhaps the idea would be. But in any event, we
8 made a list of applicable mitigation measures for
9 development projects.
10 And then we also in response to a lot of
11 the questions put together a list of mitigation
12 measures for general plans and we posted these on
13 our website. So what we would ask project
14 applicants to do, or we would hope they would do,
15 is to go through and look at all our mitigation
16 measures and then discuss in their EIR why they
17 weren't feasible for their project. Hopefully put
18 the burden on them to say, well we can't do this
19 because, or this isn't relevant.
20 And we have seen a number of
21 jurisdictions and a number of developers actually
22 go through and use our checklist. They don't
23 always address them in the way that we'd like but
24 at least they do go through and address the
25 mitigation measures that we have suggested they

1 do.

2 So then on settlements: We have reached

3 about I think six or seven settlements. I am just

4 going to talk about a few of them. And by the

5 way, all the settlements that we have reached, all

6 our comment letters on projects, we have a special

7 global warming website from the AG's Office. It

8 is our regular website which is ag.ca.gov. But

9 then if you add a / [slash] and globalwarming, one

10 word, you will come up with our global warming

11 website.

12 But one of our early settlements was

13 with the ConocoPhillips refinery. They had

14 500,000 metric tons of CO2 a year, which we

15 thought was significant on its face, and

16 negotiated a settlement with them. We have only

17 filed one lawsuit, by the way, which is the San

18 Bernardino General Plan. These all, the rest were

19 all reached without filing a lawsuit.

20 But in that, in this ConocoPhillips

21 refinery, for example, we had them conduct a

22 facility-wide energy efficiency audit. They

23 didn't have to implement any of the findings of

24 the audit but we hope that they would because it

25 made sense to do. They had to do a greenhouse gas

emissions audit.

And then we got a little creative. We had them -- They agreed to make a payment of $7 million to a carbon offset fund that was created by the Bay Area Air Quality Management District. The payment was going to be used by the Air District pursuant to an MOU that was going to be entered into between our office and the Bay Area District. And the fund would be used to pay for projects undertaken in the San Francisco Bay area, again we wanted to keep it kind of local, to achieve reductions in GHG emissions.

We also had the refinery, ConocoPhillips agreed to pay $200,000 to the Audubon Society. And that went for restoration of San Pablo Bay Wetlands to offset the GHG emissions by increasing the sequestration of carbon.

We had another payment of $2.8 million that went to the California Wildfire Releaf, R-E-L-E-A-F, which was to use -- and they were going to use the funds for reforestation and/or conservation projects, which would be conducted in accordance with the CCAR's forestry project protocol.

Then we also -- Let's see. We gave them

1 a credit of 25 -- Let's see, where was this. I'm
2 sorry. We gave them a credit if they reduced
3 greenhouse gas emissions further. We gave them a
4 credit of $25 a tonne, I believe it was, that they
5 didn't have to pay. Or perhaps that was in a
6 different settlement. Anyway, that was the
7 refinery.
8 We also had a settlement with the Great
9 Valley Ethanol plant. We had some similar
10 mitigation here. We had a provision where they
11 are paying $1 million as a mitigation fee to a
12 fund that was going to be established by the San
13 Joaquin Valley Air Pollution Control District.
14 And again it was going to be done pursuant to an
15 MOU to be paying for GHG-reducing measures.
16 Then we also have an agreement where the
17 plant prior to the third full year of project
18 operations, so that's a little bit out in front
19 but prior to the end of the third year, they would
20 implement some feasible on-site and local
21 mitigation measures including things like
22 alternative on-site fuels measures, on-site
23 renewable energy projects.
24 And again in this -- Here it is. In
25 this agreement we had a provision where the

1 plant's payment to the San Joaquin Valley Air
2 District would be reduced by $25 for each real,
3 verifiable, permanent reduction of GHG that they
4 could achieve at their plant. So it was an
5 incentive for them to --
6 PRESIDING MEMBER BYRON: Per tonne?
7 MS. TRANKLEY: Per tonne. Yes, $25 per
8 tonne. To put some effort into reducing the
9 actual emissions and not just pay the Air
10 District.
11 MS. VAN OMMERING: Excuse me. Was that
12 GHG emissions or criteria pollutants?
13 MS. TRANKLEY: GHG.
14 PRESIDING MEMBER BYRON: Ms. Van
15 Ommering, would you do what I didn't. Please use
16 your microphone when you ask a question.
17 MS. VAN OMMERING: I just wanted to make
18 sure that the $25 a tonne for mitigation on-site
19 was for greenhouse gas emissions and not criteria
20 pollutants.
21 MS. TRANKLEY: Yes, that's right,
22 greenhouse gas reduction. That may have had the
23 effect of reducing criteria pollutants but we were
24 just looking at the greenhouse gas reduction.
25 Then finally another ethanol plant.

1 This was the Cilion plant. A different mitigation
2 measure that we had in an agreement here was that
3 they agreed to purchase 2,000 trees at $50 a tree
4 over a five year period to plant within Kern
5 County. And that they would comply with the urban
6 forest carbon protocol of the Climate Action
7 Registry.
8 They also agreed to pay money into the
9 San Joaquin Valley Air District fund and also
10 agreed to undertake additional projects such as
11 installation of on-site renewable energy products
12 or looking at alternative transportation options.
13 What we really try to do when we have
14 sat down to negotiate with the companies or with
15 the jurisdictions was to be creative and find what
16 helped them, what helped us, what helped the
17 state. We didn't have a lot of restrictions, a
18 lot of rules, and so we got pretty creative.
19 I don't know if the settlements -- you
20 know, these were negotiated settlements. These
21 were compromises. I don't know if all of these
22 measures would necessarily have been ordered by a
23 court or whether we would have advocated something
24 much stricter if we were, you know, in an
25 adversarial process. But at least as far as

1 getting some ideals, we have tried to be rather
2 creative in our settlements.
3 There's a few more that I don't think
4 are really relevant about land use. And like I
5 say, they are all listed on our web if anybody
6 wants to look them up.
7 PRESIDING MEMBER BYRON: I'm not an
8 attorney but aren't most settlements like this
9 typically kept confidential?
10 MS. TRANKLEY: No, not the ones that we
11 do.
12 PRESIDING MEMBER BYRON: Obviously.
13 (Laughter)
14 MS. TRANKLEY: Yes. You know, I think
15 in some instances they are.
16 PRESIDING MEMBER BYRON: Is there a
17 reason behind that?
18 MS. TRANKLEY: There are reasons to have
19 confidential settlements. And there may be parts
20 of it that have to be kept confidential but ours
21 are publicly available.
22 PRESIDING MEMBER BYRON: And for that
23 purpose, so that we all understand what kind of
24 creative settlements were workable.
25 MS. TRANKLEY: Yes.

1 PRESIDING MEMBER BYRON: Okay.
2 MS. TRANKLEY: They are transparent.
3 PRESIDING MEMBER BYRON: Good.
4 MR. RICHINS: I think all three
5 presentations were excellent and very informative.
6 At this time now we will open it up to -- I
7 noticed there were some questions over here, I
8 know I had some questions, I'm sure everybody has
9 some questions, and we will just open it up to
10 dialogue around the table.
11 I think if mitigation is something that
12 the Energy Commission would require I think we are
13 looking for, you know, programs that are already
14 in existence. How can we tap into those? Things
15 that aren't maybe as complicated as what the
16 Attorney General's Office has done because there
17 might be some difficulty from compliance and so
18 forth. But anyway, let's just open it up to
19 dialogue and discussion. And Dick, did you want
20 to say something?
21 MR. RATLIFF: Yes, I would like to ask
22 -- Can I call you Ms. Trankley?
23 (Laughter)
24 MR. RATLIFF: Lisa is an old colleague.
25 I wanted to ask you, you stated earlier that all

1 of the emissions that the AG has sought in
2 settlements fit the criteria of real, additive,
3 verifiable reductions. Sort of the magic language
4 which is often used for offsets.
5 But in the descriptions of the measures
6 that often appear in the settlement agreements it
7 sounds like maybe what those words mean might be
8 other than what it means when we are dealing with
9 offsets that are in an air quality bank. Can you
10 be creative in terms of fashioning mitigation, you
11 think, that meets the terms that AB 32 uses for
12 that kind of offset?
13 MS. TRANKLEY: I guess -- Technically it
14 may not be using it in the same way as an offset
15 but I think under CEQA you just have to use, you
16 have to have real offsets that you can account for
17 that are specific, that are enforceable. And none
18 of that is new, that is all traditional, basic
19 CEQA law.
20 I don't know if the way the buzz words
21 are being used in terms of the offsets are exactly
22 what I meant but I think what I was trying to say
23 was that everything is the same principle. The
24 mitigation we look for, it is not fleeting. It's
25 got to be something very real and accountable and

1 measurable in a way that someone can look at it
2 and ensure that it is actually being done. Did
3 that answer your question?
4 MR. RATLIFF: Yes, I think it does. And
5 if I, since I have still got the microphone and I
6 am going to have to pass it off to get the answer
7 to the next question. I wanted to ask if I could,
8 Ms. Overling --
9 PRESIDING MEMBER BYRON: I keep saying
10 it incorrectly as well.
11 MR. RATLIFF: I'm sorry.
12 PRESIDING MEMBER BYRON: It's Van
13 Ommering, Van Ommering.
14 MR. RATLIFF: Van Ommering.
15 MS. VAN OMMERING: Lucille will work
16 just fine.
17 MR. RATLIFF: I wanted to ask you if
18 someone seeking credits through the Climate
19 Registry, CRTs so to speak. If those could be
20 early action credit or credited in some other way
21 by CARB in terms of the -- If we were to require
22 such mitigation for power plants would that be
23 something that could be credited in an AB 32
24 context?
25 MS. VAN OMMERING: Yes, I was listening

1 to that with some interest. We have not -- We
2 have just started this program. We are still
3 waiting, obviously, for the board to take action
4 as to whether or not they want to go along with
5 it. But the law does specifically require us to
6 acknowledge in some way early reductions.
7 What we don't want to do is to do one of
8 two things. We don't want to set ourselves all
9 the way back so that somebody who was doing
10 something for a totally different purpose or who
11 had started doing it back in 2004, to allow that
12 to come into the system.
13 What we want to be able to do when we
14 start the cap-and-trade program, if we go that
15 route, will be to -- We don't want to replicate
16 the problem we had with RECLAIM where we started
17 way higher than what their actual emissions were.
18 We want to be able to start it at a point where
19 their actual emissions --
20 MR. RATLIFF: When you say started way
21 higher you mean --
22 MS. VAN OMMERING: In 2012.
23 MR. RATLIFF: You worry about giving out
24 too many credits?
25 MS. VAN OMMERING: Too many credits,

1 right.

2 MR. RATLIFF: Okay.

3 MS. VAN OMMERING: And it's not -- And

4 the thing we are trying to balance out is, unlike

5 RECLAIM this is not a sector-specific cap. It is

6 a cap for the entire economy. So we need to be

7 informed by, in the instance of the utilities,

8 what they think the procurement is going to be

9 over the next several years so that we will be

10 informed as to where to start the cap and then how

11 quickly the decline should be. Whether it should

12 be a straight line, whether there should be some

13 allowance, some arcing for the fact that maybe the

14 renewables can't start that quickly. So we want

15 to start the program fairly close to where their

16 actual emissions are or slightly below.

17 We also want to give people an

18 opportunity of getting on the stick now to make

19 these early reductions. Or in the case of new

20 power plants that will be coming on-line by 2012,

21 what we want to be able to do is to say, if you

22 are a new plant anyway and you are going to have

23 to meet BACT requirements for criteria pollutants,

24 are those requirements also good for the purposes

25 of looking to see whether or not those new plants

1 can meet equally efficient low-carbon types of
2 standards, whatever they may be.
3 And that is where we are going to be
4 looking to the Energy Commission and the PUC to
5 tell us what's a good standard from which new
6 companies can come in. If they want to put that
7 into the design of their plant now then how do we
8 recognize that within the overall context of the
9 cap so that we are not starting them lower than
10 what they actually will be.
11 Because they are going to displace some
12 electricity but they are also going to be building
13 units that perhaps provide more electricity than
14 the older power plants can. And I am not the
15 electricity expert so if I am not saying it
16 correctly forgive me. But the idea is to give
17 them some recognition, some due credit for doing
18 something before the program actually starts.
19 MR. VESPA: Could I follow up with that?
20 I'm just wondering if you have given any thought
21 to the intersection of CEQA and requirements under
22 CEQA in some of these early action credits? So
23 under CEQA some of these reductions might be
24 required because they are feasible. And so, you
25 know, is there some concern that then you might be

able to leverage those again and get credits. You took the action but it wasn't really additional because it was required under CEQA. And how are you dealing with maybe some of those questions.

MS. VAN OMMERING: We haven't. There has been some discussion with another group that was talking about it from the perspective of mitigation credits. And so a company comes in and says -- and not on-site, they purchased they somewhere else. And they come into the cap-and-trade program and say, I have offset all of my emissions. And it is like, well you have offset it for CEQA purposes but you still have to hold allowances equal to your emissions that you are emitting as part of your operations.

And so what we don't want to do is to -- first of all, we don't know whether or not the CEQA mitigation offsets would meet the criteria that we would establish for offsets. And secondly, it is a different set of requirements that we would have. So we are not there yet. We just don't --

MR. VESPA: Yeah.

MS. VAN OMMERING: I think it was Mr. Galati there, Scott, that talked about how you

have to look at the system operation and the fact that these companies are coming in. And that the cap-and-trade program is in essence the offset. I am not the CEQA expert. All I can tell you is what we would do under a cap-and-trade program.

MR. VESPA: Yeah. I would just put forward to add some attention to what a project might be doing under CEQA and scrutinize that on whether it is appropriate to give early action credit for something that presumably was required and not additional.

It is one thing if an existing project takes measures they weren't required to do that. But if a new project takes measures as part of CEQA, it would seem to me not appropriate to give them credit later on for doing something that was a legal mandate. I don't know if that's been thought about but I just wanted to bring it up.

PRESIDING MEMBER BYRON: Mr. Vespa, are you trying to give input to ARB on our time here?

(Laughter)

MR. VESPA: I am. Double tasking. I think I have a question actually for Lisa also. I was wondering if the AG -- I don't want to put you on the spot, but have any thoughts about the power

1 sector? You weren't here earlier but there were
2 some issues about, you know, what would be
3 significant for the power sector and what
4 mitigation would be appropriate.
5 And I think, you know, in some ways you
6 might analogize to some of these individual
7 projects like the Conoco settlement. These are
8 big emitters. On the other hand the power sector
9 may have some unique issues. But I was wondering
10 if a fair assessment of what we have talked about
11 a couple of hours -- the AG view on some of those
12 issues.
13 MS. TRANKLEY: I caught the tail end of
14 the last discussion. We really haven't given it
15 any -- I can't say we haven't given it any thought
16 because we have discussed it informally among
17 ourselves but we haven't looked at it in any kind
18 of systematic or, you know, formal way.
19 MR. VESPA: Okay.
20 MR. MILLER: I have a couple of
21 questions. This is Taylor Miller with Sempra. I
22 think Matt just started touching on this actually.
23 What I found myself thinking during your
24 presentation and also Rachel's was additionality
25 and enforceability.

1 One of the unique aspects of GHG in my
2 experience, having done a fair amount of criteria
3 pollutant offsetting in the past, that could be
4 pretty difficult in itself, is the concept of
5 additionality. And GHG seems to be a broader one
6 than it has been in the criteria pollutant world.
7 There is not just the question of
8 whether there is a legal mandate to do whatever is
9 being done, but also there is this issue of would
10 it have been done anyway. And then comes the
11 question, if there is a directive in the Scoping
12 Plan to do a lot of things does pretty much that
13 whole universe of mandates now become non-
14 additional?
15 Further, if there is an offset let's say
16 required, as Matt just pointed out, as a condition
17 of licensing. I think Dick you asked the question
18 earlier. If you bought a CRT could that then be
19 turned into a voluntary early action allowance
20 somehow under those three ways then.
21 Again, I'll just say Lucille because
22 it's easier, pointed out they have their standard
23 litany on both regulatory and voluntary credits of
24 additional enforcement. Well, on additionals.
25 So, you know, I really think that there are some

1 concerns there as to whether a lot of things that
2 might be otherwise done would count.
3 Another problem is there's this
4 conventional wisdom that anything, and you
5 mentioned this too. Any reduction within a cap
6 sector is ineligible for an offset. So anything
7 within the electricity sector, being the cap
8 sector, would be ineligible. RPS compliance, and
9 we have the whole REC world over there in the PUC
10 going on. They make the decision. And I believe
11 the voluntary markets already have done this.
12 That any renewable project used for RPS compliance
13 cannot be used for GHG compliance.
14 So there are a lot of disconnects
15 potentially here between using the offset system
16 as it has been designed, both for voluntary
17 markets and compliance with ARB, for offsetting.
18 If one were to need to do that, an offsetting
19 project here. Further, it seems difficult to
20 transfer that credit, if there were to have to be
21 an offset here, into the AB 32 offset world in a
22 couple of years. So those are my comments.
23 MR. RATLIFF: This is what concerns me
24 about it. Because if the Energy Commission -- The
25 first time the Energy Commission finds that, say,

1 the most efficient new power plant we have ever
2 seen before is a significant impact cumulatively
3 in global warming emissions and require it to
4 purchase CRTs, say, it will be the only facility
5 in the entire state that is doing so. And the old
6 dogs, the old boiler plants running down in LA
7 will keep right on running without buying CRTs.
8 Eventually, of course, all of these
9 projects, all of these power plants are going to
10 be subject to cap-and-trade, presumably, and we
11 hope in 2012. And if they are then they are all
12 subject to the same system of merits and demerits.
13 But until then the only facilities that are likely
14 to be paying mitigation, in essence, are going to
15 be the new, most efficient facilities that we have
16 licensed here in the interim period.
17 I guess the question I have is, is that
18 equitable and does it make sense if they get no
19 credit at CARB when cap-and-trade comes into
20 effect? And I guess my hope was that maybe the
21 purchase of CRTs could be recognized. But it
22 sounds like, if I understood your answer, and I
23 did in part, but I think you are saying it is not
24 so clear. It is not so clear whether that would
25 be recognized.

1 MS. VAN OMMERING: Right. I think what
2 we are trying to grapple with, among many other
3 things, is number one, the mitigation that might
4 be done on-site and how does that fit into -- is
5 it early reduction or is it just required and
6 therefore not worthy of credit. But still, where
7 do we set the path in recognition of the fact that
8 they made an early reduction? Is that going to
9 unfairly reduce the overall cap just because
10 something was required? But you still have to
11 provide electricity for an increasing number, an
12 increasing population.
13 The second thing is the CRTs, which
14 happens off-site. And there what we definitely
15 have in our mind is, to the extent that we have
16 already adopted some of those protocols that CCAR
17 had, those are good candidates for bringing in as
18 official offset protocols.
19 There are, however, some things that we
20 are going to have to keep in mind. Number one, we
21 want to make sure that protocols throughout the
22 region are consistent. Because if they are laxer
23 in one state than another that provides an unfair
24 advantage to another jurisdiction. So we want to
25 try and influence the other states through the WCI

to adopt one set of protocols.

Number two, of course we want to make sure that they are additional. As I mentioned before, in the short term we are not regulating ag lands for manure digesters. We could do that and at some point those offsets no longer are surplus.

And number three. And this is something that is unique to California because of AB 32. We have to make sure that the use of those offsets, which is something that the CCAR offsets don't look at, well maybe you do, are the EJ ramifications. So that if we allow one company to use offsets and emit up to a certain amount, is that in fact not having the same level of reductions they otherwise would have at their facility had they not purchased the offsets. So what does that mean for the community that surrounds that source.

That may require an additional look at the use of those offsets and certain restrictions placed on them, whether or not they occur in a certain community. But do I know that for certain what we are going to do? No I don't. Because that is all going to be laid out in the rulemaking process.

1 MR. McLAUGHLIN: Someone is going to
2 have to explain to me the concept. I understand
3 additionality. And when we get to the greenhouse
4 gas world though, if I have a plant emitting 1,000
5 units and I have an offset for 100 units, the
6 world sees 900 units.
7 And then when I go and make my
8 compliance filing, let's assume we have a cap-and-
9 trade, the end of the compliance period. As far
10 as I am concerned I don't see how you can require
11 me to have any more than 900 allowances. What is
12 the logic that we would have a double obligation?
13 I mean, that's what I hear being said here. And I
14 see it as a real distinction between criteria
15 pollutants and the greenhouse gas world. Apples
16 to apples to me.
17 MS. VAN OMMERING: Are you looking at
18 me?
19 MR. McLAUGHLIN: I'm looking at anybody?
20 We're having a discussion. I'm talking to Scott.
21 Or Matt.
22 (Laughter)
23 MS. TORNEK: It might be an issue for
24 CEQA mitigation. The CEC might allow CRTs. And
25 until the time that ARB would decide that CRTs are

1 appropriate for compliance -- in a compliance
2 mechanism. You know, let's say that the CEC, at
3 this point these CRTs are voluntary.
4 MR. McLAUGHLIN: Let's just make that
5 assumption.
6 MS. TORNEK: Okay.
7 MR. McLAUGHLIN: Let's make it the
8 assumption that CRTs are good. CRTs are accepted
9 by the CEC and CEQA, because we are assuming that
10 we need a mitigation. And let's assume that ARB
11 has said CRTs are great.
12 MS. TORNEK: I would think in that point
13 you wouldn't have. I mean, it would be 900 units.
14 MR. McLAUGHLIN: Okay.
15 MS. VAN OMMERING: One other thing
16 though that the Proposed Plan talked about was
17 that in any event you cannot hold more than half
18 of what your compliance obligation is.
19 MR. McLAUGHLIN: Right.
20 MS. VAN OMMERING: So if you bought 100
21 percent of your emissions from CRTs we would only
22 recognize a certain portion.
23 MR. McLAUGHLIN: Understood.
24 MS. VAN OMMERING: Okay.
25 MS. TORNEK: And just to get quickly

1 back to the EJ issue. It is not something that
2 our protocols look at comprehensively perhaps. We
3 don't make sure that the project -- obviously, I
4 mean, it's something that has to be somewhere
5 else. So we don't make sure that the impact is
6 decreased by the same amount. What we do ensure
7 that the project is not causing that facility to
8 go out of compliance. So by implementing that
9 project they can't be out of compliance with any
10 air or water quality.
11 MS. VAN OMMERING: Right. And it is not
12 the project, per se, that's the environmental
13 justice concern. It's the fact that it allows a
14 company who is subject to the compliance
15 obligation to avoid getting additional reductions
16 on-site.
17 MS. TORNEK: Right. And that's true.
18 That's the role that offsets have to play. It's
19 the fact that we can't get all the reductions we
20 need at the facilities where we need them
21 necessarily, we need to look more broadly. And
22 you can't regulate through command and control
23 mechanisms all of the sectors that we want to get
24 reductions in. So offsets are a way to
25 incentivize reductions in those sectors that you

1 might not be able to, you know, do a command and
2 control regulation. Transportation or, you know,
3 supporting conservation management of forests.
4 MR. GALATI: Ms. Trankley, the question
5 I have was, in your negotiated settlements you had
6 preferred to get offsets contemporaneous in time,
7 which I understand, but also you said,
8 contemporaneous location.
9 And one of the things I am struggling
10 with in thinking in terms of offsets, if to ensure
11 that if a power plant developer were licensing a
12 plant and chose or needed to mitigate went to get
13 offsets. I think in order to make sure that those
14 offsets would provide compliance under AB 32,
15 number one, we would be looking outside a capped
16 sector. And two, maybe that forces us outside the
17 state.
18 So my question is, from a CEQA
19 perspective, since the impact that we might be
20 talking about is global climate change. Is your
21 statement that the Attorney General prefers
22 contemporaneous location, is that more of like the
23 pirate guidelines instead of the law. That you
24 would comment negatively if an applicant chose to
25 mitigate, should mitigation be required, not

anywhere near the site?

MS. TRANKLEY: That hasn't really come up for us because we have been able to have all of our settlements result in mitigation that's been near the facility we are negotiating with. But I think we prefer to see the mitigation be in California for a couple of reasons. Because we have got not only the CEQA but our own AB 32 reduction goals. So we want to see the reductions be in California to help make the AB 32 goals.

And second of all, the mitigation is just easier to verify and to be comfortable with if it is closer to home. We don't have any rules, per se, like that but that's our thinking about why we would like to see them nearby. In addition to the, you know, environmental justice issues.

MR. MILLER: One point that might be worth pointing making here is that AB 32 requires accounting for electricity use in California, whether it is generated in California or outside of California. And as Commissioner Byron mentioned, 40 percent of the emissions related to electricity use are outside of California. So the program is attempting to reduce overall emissions, wherever they may be, related to electricity use.

1 So it's a little different, perhaps, than some of
2 the other cases that you may have encountered.
3 MS. TRANKLEY: That may be. We haven't
4 really sat and thought through a lot of the
5 systemwide types of issues and we have been just
6 negotiating with individual facilities. So I
7 don't know if my comments, I don't know how they
8 would be valid in a systemwide kind of analysis.
9 I just really haven't thought of that.
10 MR. RICHINS: Did ConocoPhillips or any
11 of the other refineries that you may have been
12 working with make an efficiency argument that the
13 additions that they are adding or they are making
14 to their refinery make their refinery more
15 efficient, either there at that particular
16 location or their refineries worldwide?
17 MS. TRANKLEY: Will, we had them do an
18 efficiency audit. Maybe I don't understand your
19 question.
20 MR. RICHINS: Well did they ask for
21 offsets or credits? Or saying that they didn't
22 have a significant impact because what they were
23 doing now made their refinery or made their
24 systems of refineries more efficient, and
25 therefore reducing their total contribution to

1 greenhouse gases.
2 MS. TRANKLEY: Maybe I don't understand
3 your question. The reason that we had them do the
4 efficiency audit and take the other mitigation
5 measures was because of the initial amount of
6 emissions they were emitting. So I don't think
7 they could then argue that they -- We expected
8 them to mitigate the emissions they were
9 producing. It sounds like you are asking if they
10 were then saying they are not emitting as much
11 because they are taking efficient measures. And
12 that's the point, that we want them to be
13 reducing. Yeah, the reduction in emissions can be
14 kind of a mitigation. Is that --
15 MR. RICHINS: Well we had a lot of
16 discussion this morning about the electricity
17 system being an integrated system. And that when
18 you add a new power plant that is highly efficient
19 the amount of greenhouse gases systemwide go down
20 the new plant is displacing an older plant. And
21 so I was just curious, did that concept come up in
22 the context of your settlement agreements with
23 like a refinery that has multiple locations. And
24 did they make the argument that by us doing this
25 our system contribution to greenhouse gases is now

1 going down. Maybe marginally but going down.
2 MS. TRANKLEY: I wasn't part of those
3 negotiations. I don't think they made that
4 argument and we were -- we were only looking at
5 the emissions coming from the one refinery. We
6 weren't looking at their system. And I don't
7 think that we considered whether as a whole the
8 system emissions went down. We were just looking
9 at one plant and what CEQA required to be
10 mitigated at that one plant.
11 MR. RICHINS: Okay, thank you.
12 ASSOCIATE MEMBER DOUGLAS: I --
13 MR. McLAUGHLIN: One quick --
14 ASSOCIATE MEMBER DOUGLAS: Go ahead.
15 MR. McLAUGHLIN: I'm sorry.
16 ASSOCIATE MEMBER DOUGLAS: No, go ahead
17 if this is on point. I was going to change the
18 topic.
19 MR. McLAUGHLIN: Yes, it was on the
20 ConocoPhillips. Because if I remember right
21 there's actually, they shut down a smaller plant a
22 good location away. So that was one of the
23 mitigating factors also. So they were able to
24 shut down an older, dirty facility.
25 MS. TRANKLEY: Was that, okay. I'm

1 sorry, I didn't see that in our agreement.
2 MR. McLAUGHLIN: Yes. I think it was
3 down in Oxnard or something like that. I'm pretty
4 sure it's in there.
5 MS. TRANKLEY: Okay.
6 MR. McLAUGHLIN: Just bringing it up.
7 That seemed to be on point. Sorry, Commissioner.
8 ASSOCIATE MEMBER DOUGLAS: I have a
9 question for Taylor. I saw him trying to sneak
10 out while you asked your last question so I had to
11 jump in there.
12 You know, you brought up the fact that
13 in the greenhouse gas world we don't think about
14 allowing offsets within capped sectors because in
15 large part I think, the concern about double
16 counting is just really difficult to get around
17 when you are looking within a capped sector.
18 I wanted to put on the table, and ask
19 you directly in particular, whether that reasoning
20 is appropriate for us, the Energy Commission, as
21 we look at how we might mitigate the impact of new
22 power plants, given that in, I think in our
23 assessment there is going to be the need for a
24 tremendous investment in the structure of our
25 electricity system in order to create this

transformation to a clean energy system, to 33 percent and beyond for energy efficiency and so on. So should we even be looking at buying CRTs or should we be looking at something more structural within the sector?

MR. MILLER: You know, it sounds like a repetition but to me we are already and have already been looking at structural changes in the sector for quite awhile. And largely because of the Commission's activities and, of course, the 20 percent RPS. And the PUC has been requiring the utilities to then engage in efficiency programs for a long time.

But I think the reality is for electricity, as I think I mentioned at our first meeting, it is really hard to reduce much at the site, at the power plant. In fact, it is because the incentives economically are all to reduce fuel use and to increase efficiency that new projects are already going to be whatever the current engineering state of the art is. And that's where Chris's argument comes into play that introductions of new generation will generally reduce emissions of the overall system.

So the problem that keeps coming back up

to me is that the main thing that would be suggested, and as a matter of fact I believe the Attorney General's guidelines have this as the first two items on the list, is energy efficiency and renewable resources would be one of the mitigation areas to look to. And we agree and essentially we are doing that.

And so from the ratepayers' perspective the question might be, as it were, we paid at the office, you know. We are sort of already doing that. So in addition to bringing up, to increasing overall system efficiency by bringing a new power plant on-line we are also doing the efficiency to reduce demand.

Whether one would want to for a new project that -- And I haven't even gotten into the need for firming the intermittent renewable resources for peakers. But if one were to require offsets and really talk about any kind of traditional offset, or now the non-traditional new GHG kind of offsets, you would probably be pushed out of the sector to go do forestry projects or something.

So I don't know if that really achieves the goal. I think if there is a need to do more

1 renewables or more efficiency that the way to get
2 to that is through the programs outside an
3 individual siting case and through either the ARB
4 process, the PUC or your Commission perhaps. I
5 don't know if that is responsive to your question.
6 I hope so because I am going to miss a plane.
7 ASSOCIATE MEMBER DOUGLAS: Go ahead.
8 MR. MILLER: Thank you very much.
9 MR. RICHINS: On that same note, Rachel
10 from the California Climate Action Registry also
11 has to catch a plane. So if we have specific
12 questions of her. I think she can be here for a
13 little while longer. But if we have any questions
14 specifically to CRTs or to her programs we want to
15 ask those early on because we are going to lose
16 her probably in a little bit.
17 MR. VESPA: I have a quick question for
18 her actually. We do a lot of CEQA commenting on
19 projects and there is this open question about
20 mitigation fees and sort of the lack of places
21 right now. If I was a medium-size or small
22 project. You are not brokering anything. So what
23 would be, if I would want to do a pound for pound
24 reduction as a project proponent, what are the
25 obstacles from these third party contracts and how

1 quickly can they be done? It seems a little
2 strange that you are not -- you are sort of off-
3 line. So what would --
4 MS. TORNEK: So you mean, how do the
5 buyers and sellers find each other?
6 MR. VESPA: Well what would one do if I
7 was recommending, you know, I think you should do
8 some offset mitigation and this is one place you
9 could do it. What would that person do?
10 MS. TORNEK: So they could go to the
11 reserve and look at the list of account holders
12 and reach out to the project developers or the
13 broker-traders. Because it is listed by account
14 type as far as who, you know, what their activity
15 is on the reserve. They can reach out to them.
16 We have, I mean, we just started in mid-
17 2008 so we have two projects that have completed
18 registration. There's two forest projects that
19 actually have CRTs issued but there's another 16
20 that are listed that are undergoing verification.
21 Not just forest. There's a few forest, a number
22 of landfill and a number of livestock.
23 MR. VESPA: Okay.
24 MS. TORNEK: And so while we only have I
25 think it's about 200,000 CRTs that have been

1 issued in the system, our goal is to have one-half
2 million by next, by this coming June.
3 MR. VESPA: So 200,000 CRTs, excuse me,
4 200,000 CRTs available for purchase?
5 MS. TORNEK: Right. They have all been
6 purchased.
7 MR. VESPA: They have all been
8 purchased. So there seems to be a lag between
9 what is available and what could be purchased
10 because you are not doing prospective CRTs.
11 MS. TORNEK: That's right. Which we
12 think is a good thing that we are not doing
13 prospective CRTs.
14 MR. VESPA: But then -- Sure, but then
15 it seems like there is nothing available right now
16 to buy or are they all bought?
17 MS. TORNEK: Well the 200,000 that have
18 been issued have been bought.
19 MR. VESPA: Yeah.
20 MS. TORNEK: We don't issue CRTs before
21 they are created. That doesn't mean that they are
22 not contracted for before they are created.
23 MR. VESPA: Okay.
24 MS. TORNEK: So you could reach out to
25 those project developers and see out of the

1 projects that they have that are going through the
2 verification process, if there are CRTs available
3 and get a contract in place for them. And
4 contracts, you know, they forward the contract so
5 they have a contract for the next ten years.
6 MR. VESPA: Okay.
7 MS. TORNEK: And our hope is that we
8 will get to the point where we have a system where
9 there is a bulletin board where people can talk
10 about how many CRTs they have available. But we
11 are just getting the bones of it up and running
12 now.
13 MR. RICHINS: And a CRT is good for one
14 full year? Is that the term?
15 MS. TORNEK: A CRT is good in
16 perpetuity, it's permanent.
17 MR. McLAUGHLIN: You are talking about a
18 tonne.
19 MS. TORNEK: One tonne.
20 MR. RICHINS: No, no, I understand. But
21 I didn't know if it was an annual or if it was
22 perpetuity.
23 MS. TORNEK: Once a CRT is created it is
24 a reduction that is --
25 MR. RICHINS: Forever.

MS. TORNEK: -- permanent in time forever.

MR. RICHINS: Okay.

MS. TORNEK: The projects get verified on an annual basis. Forests, actually they get monitored every year and verified every six years. You could do it more often if you want. So CRTs are created perhaps annually but the credit itself is good in perpetuity.

MR. BOYD: How do you certify their permanence?

PRESIDING MEMBER BYRON: Please identify yourself on the phone.

MR. BOYD: My name is Mike Boyd, I am the president of Californians for Renewable Energy, CARE.

How do you certify that there those credits are permanent?

MS. TORNEK: Well for many of the project types they are permanent just by their nature. If it is -- Like for under our livestock protocol, once you capture the methane and combust it there is no way for that methane to be recreated.

The places where you run into permanence

1 issues are with sequestration projects or forest
2 protocols, for example. And that is something
3 that we in our first version of our forest
4 protocols we left up to the contractors. So we
5 let the buyer or the seller determine if there was
6 a forest fire who would be replacing the CRTs and
7 so on and so forth.
8 In this next version of our forest
9 protocols we are actually -- We are proposing. I
10 can't say it will go through for sure because it
11 goes through a, you know, a public process. But
12 what is being proposed is creating sort of an
13 insurance buffer pool of CRTs to backfill in for
14 any CRTs that are lost due to forest fire, disease
15 or things like that.
16 MR. RICHINS: Okay, Panama.
17 ADVISOR BARTHOLOMY: Rachel, are you
18 folks planning on any kind of efficiency protocol
19 or a green building protocol?
20 MS. TORNEK: We are not. Basically with
21 energy efficiency and renewable energy, anything
22 related to grid electricity we see regulation as
23 pretty imminent for those sectors. And since you
24 can't create offsets in sectors that are capped we
25 just don't see it as really a viable place for us

to spend our time and resources to create a protocol.

It does take a good amount of work on the front side to create these protocols. We see that regulation coming pretty quickly and so we are not planning on developing renewable energy or energy efficiency for grid electricity. We are looking into potentially doing one for boiler efficiency, so fuel, but not electricity.

MR. RICHINS: Lucille.

MS. VAN OMMERING: And I just wanted to make sure because even though the protocol talks about creating a permanent reduction, that a company who is in the market for it does not necessarily have to purchase an eternal credit. They could go in and use a company that collects a pool of them and only purchase three years worth, correct?

MS. TORNEK: I don't think I understand the question.

MS. VAN OMMERING: Well you create the protocols, you don't create the projects themselves. There are projects that go forward, they abide by your protocols, and then they establish these number of offset credits.

1 Some company comes in, for instance, and
2 wants to mitigate their emissions for CEQA
3 compliance purpose. But it knows that it is going
4 to fall under a cap-and-trade and it doesn't want
5 to buy eternal ones because they -- or in
6 perpetuity because they may not need them or they
7 may not be allowed once they are in the cap-and-
8 trade program because we will only allow them to
9 hold a certain amount, the rest have to come from
10 reductions on-site.
11 So in that case then I would anticipate
12 that companies like EcoSecurities that pool the
13 number of credits, could sell a limited amount of
14 offsets to a firm who may only need it for a
15 certain period of time.
16 MS. TORNEK: Right. I mean, you decide
17 how many CRTs you want to purchase but each CRT is
18 good in perpetuity. So, you know, each project
19 creates a certain number of credits. Each project
20 has a crediting period of, you know, for most of
21 them it's ten years. So you can't create credits.
22 You know, sort of the life of the project is ten
23 years. But you can't buy a CRT that is good for
24 three years, you buy a CRT that is good in
25 perpetuity. You decide how many CRTs you want to

1 purchase but they are not temporary.
2 MR. RICHINS: So what I hear is that
3 maybe instead of buying 100 units for the life of
4 the project you end up buying five units that
5 would cover you for three out of 30 years or
6 something.
7 MS. TORNEK: You know, I still don't
8 really understand the concept of why you would
9 only want a CRT that is only good for three years.
10 Why you would want an offset that is only good for
11 a temporary amount of time.
12 MR. RICHINS: Well the Energy Commission
13 is looking for a bridging strategy or an interim
14 between now and when AB 32 comes into effect and
15 we also don't want to put a double jeopardy on
16 power plant developers. So if they are required
17 to get a CRT, say, for the life of the project,
18 and then they are hit a second time under AB 32,
19 we want to try to avoid that. So we are looking
20 at mitigation, if mitigation is necessary, that
21 would be during this bridging time.
22 MS. TORNEK: I would say --
23 MR. RICHINS: Which might be four years
24 or some number less than the life of the project.
25 ASSOCIATE MEMBER DOUGLAS: But that

1 doesn't mean that you want --
2 MS. TORNEK: If they were required to
3 buy them all up front then there would be the
4 potential of double jeopardy. But if you would
5 allow them to buy them annually then they could
6 just buy them annually until they didn't need them
7 anymore.
8 ASSOCIATE MEMBER DOUGLAS: Because even
9 in the first, if they used them for two years, the
10 tonnes they are putting into the atmosphere over
11 those two years are permanent. So the CRTs they
12 buy to offset those tonnes would need to be
13 permanent. So we are not talking about time-
14 limited CRTs so much as we are talking about all
15 of us hypothetically buying a number of them.
16 PRESIDING MEMBER BYRON: Commissioner, I
17 was thinking that we might begin to wrap up for a
18 4:30 finish. Mr. Richins, is that all right?
19 MR. RICHINS: That's fine.
20 PRESIDING MEMBER BYRON: Let's go ahead
21 and proceed that way and continue discussion until
22 then.
23 MS. TRANKLEY: May I just -- I have to
24 leave shortly also and I just wanted to elaborate
25 on what Mr. McLaughlin said. He is right that in

our Conoco agreement one of the mitigation measures, one of our offsets we had was that ConocoPhillips retired one of their existing refineries. They got 70,000 tonnes of greenhouse gas emissions as a credit or as a mitigation by retiring their plant. Thank you.

PRESIDING MEMBER BYRON: Ms. Trankley, we have found him to be correct most all the time.

MR. GALATI: Commissioner Byron, Commissioner Douglas. I just wanted to understand Commissioner Douglas' last question to Taylor so we will try to respond to it in our comments. Was your question about other forms of mitigation that might be strengthening infrastructure? For example, investment in a transmission line that might bring renewable energy on-line quicker.

ASSOCIATE MEMBER DOUGLAS: That's right. My question was in thinking about other kinds of mitigation that directly advance what we are trying to do in the electricity sector, whether it be -- and obviously programs that are not required by law. So whether it be weatherization of houses in the vicinity of a project or efficiency investments targeted at populations that aren't being reached by current utility programs. Say

1 heavy appliances in renter areas, for example,
2 where there is just a real principal agent problem
3 with getting those appliances switched out.
4 Or just other things that actually
5 accrue long-term to the benefit of the utility
6 doing them because they are in your service
7 territory. They are reducing your baseline but
8 don't necessarily present us with the issues of
9 having somebody make investments outside of the
10 sector.
11 And then having to work with ARB to
12 figure out how not to create a double mitigation
13 system that really just serves to create burdens
14 for the new efficient generation that actually
15 benefits our system that we would actually like to
16 see come on-line, at least in the right amounts.
17 And, you know, we see some of this investment as
18 very necessary.
19 So that was the question. Is there a
20 more creative or more appropriate way to think
21 about mitigation than just the offset paradigm. I
22 am very -- We invited CCAR and we are talking
23 about the offset paradigm because that is one way
24 to go and it is something that we are relatively
25 familiar with. We have some experience. There

are differences in the greenhouse gas context but those differences aren't so great that we can't get our minds around them on how it might work.

And I think we probably could work with ARB and find some way of not penalizing these plants in ARB's system. I don't quite know what it is. I think it is something that would take work. But the question was, are there better ways?

MR. GALATI: And one of the things I think we need to think about when we do that mitigation, it actually was one of the questions that we struggled with in our first comments, is to the extent that the mitigation is coming from activity from the load serving entity, when the load serving entity is not generating how that would work. And how do you account for it would be an issue.

I don't think that it -- I am not saying that it cannot be done. But I am saying that there would need to be a mechanism by which the generator is participating or the load serving energy is participating. And I am not sure how you would get it so that they are both participating.

1 Especially in an individual siting case.
2 It certainly could be something we looked at from
3 a systemwide perspective. But in an individual
4 siting case I am not sure Applicant A could
5 participate in Utility B's program. Or would do
6 their own program.
7 I am trying to get my head around that
8 as well. How could you make that work?
9 ASSOCIATE MEMBER DOUGLAS: I agree it's
10 a challenge. And in fact when you look at the
11 regulations, either through the Energy Commission
12 and the PUC or through ARB that apply to the
13 sector, I think we can say that with the exception
14 or possible exception of cap-and-trade, they
15 really apply to the load serving entities and not
16 to the generators.
17 And so we have got some load serving
18 entities or retail providers that also own and
19 control their own generation and so that presents
20 one set of issues. It actually resolves some of
21 those problems you brought up. But then in the
22 case of the IOUs, we do have that problem if we
23 were to think in that direction.
24 MR. McLAUGHLIN: I'm going to bring up a
25 subject that I don't want to bring up but the

1 recent Deseret case where the EPA is going to get
2 the opportunity to decide whether GHG or carbon
3 dioxide is a regulated pollutant underneath the
4 Clean Air Act, whether BACT is required. Does
5 anybody, maybe from the environmental community,
6 think that a BACT would be something we would go
7 near as far as mitigation as opposed to offsets to
8 projects?
9 MR. VESPA: It has always been our view
10 that offset mitigation comes first. So anything
11 that you could do to reduce emissions on-site
12 would be appropriate. I guess first and foremost.
13 And that would be your best available technologies
14 and efficiencies, which it sounds like are already
15 for the most part taking place, just based on the
16 economics. But you get to this offset issue, you
17 only get so far.
18 And I would second the idea that they
19 should be directed at sectoral issues in a local
20 community around efficiencies and renewables. It
21 would seem to me that would sort of support a lot
22 of the goals and just make a lot more sense.
23 MR. McLAUGHLIN: As opposed to -- I
24 guess I am talking about technologies. When we
25 think of BACT for criteria pollutants you think

about scrubbers or whatever. GHG. What is that, sequestration? We don't know. Best available technology might be --

MR. RATLIFF: We may find out in the relatively near future though, given that the Environmental Appeals Board issued the decision last week.

MR. McLAUGHLIN: Right.

MR. RATLIFF: Which did not require but apparently will result in BACT analyses for greenhouse gases from the air districts for PSD permits.

MR. McLAUGHLIN: Well they are going to determine whether they have to do that or not.

MR. RATLIFF: Well, that's what the decision says. But for any permits that are issued in the interim, at least the air districts that I have talked to are going to be doing what they think is a BACT analysis for power plant type emitters or for any PSD permit emitter. Because they think they almost have to do so without guarantee, the possibility that the permit will survive.

So I think we are going to see BACT analyses. The problem is there is no EPA

1 guideline yet for what those analyses look like.
2 So the air districts are basically flying in the
3 dark when they do them. But I think it will be
4 for, I suspect it will be for the most efficient
5 technology available.
6 MR. ROSTOV: Just following up on
7 Mr. Galati's last question. I was just wondering
8 if there's other questions the Commissioners had
9 that you would like us to address in our
10 subsequent comments?
11 ASSOCIATE MEMBER DOUGLAS: I think we
12 were going to cover some of that in our closing
13 comments. Is the dialogue exhausted? Shall we
14 move to closing comments?
15 (Laughter)
16 MR. GALATI: Well if it isn't we are.
17 MR. RICHINS: Yes, probably so.
18 PRESIDING MEMBER BYRON: I do not have a
19 list of questions other than the ones that we have
20 been working through ourselves here and I am not
21 prepared to summarize them, they are a couple of
22 pages long. So let me think, Mr. Rostov, how you
23 might be able to help me.
24 My interest primarily focuses on those
25 kinds of recommendations that we can use in the

1 short term in an interim process. The discussion
2 for the most part today I found very helpful and
3 informative. I want to thank all of you for being
4 here today and those that participated by phone as
5 well. But we had a strong need, with so many
6 siting cases on our docket right now, to get some
7 assistance to the various siting committees. And
8 consistency obviously is going to be extremely
9 helpful.
10 I think we have heard a number of the
11 participants who may be involved in one or more of
12 those cases indicate that if we go through this
13 process on an individual basis for each we are
14 going to definitely prolong those cases, and I do
15 not think that is in anyone's interest to do so.
16 I am concerned as well about the
17 regulatory uncertainty that this issue brings to
18 the development of future projects as well as the
19 existing ones.
20 So I am going to take the short answer
21 to your question and that is that we really need
22 to get beyond the negotiations at this point. We
23 need to get towards something that we can use and
24 work with here at the Commission. So the real and
25 positive suggestions that will be helpful to us

will be those that give us some guidance on how we can begin to apply an interim approach to addressing GHG under CEQA.

Now that's big I know. So I'll pass it back to the attorney on our Commission and see if maybe she can help. Commissioner.

ASSOCIATE MEMBER DOUGLAS: Thank you. I have one legal question that I think has, I think there has been fairly clear, divergent views on this point. I think it is a very fundamental question. And that is whether under CEQA, CEQA really asks us to stop our analysis at the point at which we have determined whether or not a project worsens existing conditions significantly.

Or whether CEQA is appropriately extended to look at what that project might do to our longer term desired trajectory, provided that that trajectory is based on our knowledge of what needs to be done to protect the environment.

I think that there have been a number of people around this table who have fairly strongly advocated that really once we have made a finding or if we make a finding that a power plant, regardless of what effect it may have in 2050, if CEQA really has us stop at the point at which we

1 found the power plant doesn't make our world worse
2 tomorrow because it has made the system, if
3 anything, incrementally more efficient, that
4 points to one path.
5 And I would say that if there is a
6 strong either legal argument or precedent that
7 could be pointed to looking at a baseline or a set
8 of conditions that we are comparing the plant
9 against that is different than that it might well
10 be appropriate to the climate change issue, just
11 given the urgency and importance of the issue and
12 the long-term commitment that California has made
13 to actually try to make this transformation. So
14 that is a legal question that I would be very
15 interested in participants' perspectives on and
16 that I think would be helpful to the Committee.
17 Other than that, I would like to just
18 second what Commissioner Byron said. I think that
19 we are very, very, very acutely interested in
20 coming up with a set of findings or an approach
21 that makes sense for us to deal with cases that
22 are in the door today that leads to an adequate
23 CEQA analysis of GHG impacts. And so everyone's
24 participation has been immensely valuable so far.
25 To the extent that you have further ideas or

1 approaches now that we have all really heard each
2 other out that you would like to suggest, that
3 would be very valuable.
4 And finally, this does not end in
5 December or January when the Committee issues its
6 draft and final findings or whatever it turns out
7 we draft. We take this responsibility seriously.
8 As the Energy Commission we have the
9 ability to look into these issues further in the
10 IEPR. We have the ability to do technical
11 analysis. We have a number of routes that we are
12 willing to employ to get better answers. So there
13 is the imperfect, near-term set of answers and
14 then there is the, you know, how might we approach
15 the longer term better answers. And I think these
16 are all very important questions to us.
17 I am, I think, less troubled by the
18 question of how do we avoid double penalizing
19 anyone in front of ARB just because I am quite --
20 I think that there is a very strong desire on the
21 part of Commissioner Byron and myself, and
22 probably the whole Commission, not to do that. I
23 think there are strong policy arguments for not
24 doing that. And I feel like once we have an
25 approach we can find a way to make it work with

ARB and AB 32 regulations. That may not be great. It may sound too much like trust us for project applicants to like that but I want you to understand that that's where we are coming from.

And that's -- I think that might do for my closing comments. We have covered a lot of ground today. I think we are all tired so it is probably a good time to be stopping unless anyone has anything further they would like to say at this point.

PRESIDING MEMBER BYRON: I think we will take that as our close. All right, Mr. Richins.

Again, thank you all very much for being here. It was a long day but the input was extremely valuable. And I hope you enjoy tomorrow and the next day at the Air Resources Board. We will be adjourned.

MR. RICHINS: Thank you very much.

(Whereupon, at 4:31 p.m., the Committee 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 Energy Commission Committee Workshop; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of December, 2008.