

BEFORE THE  
CALIFORNIA ENERGY COMMISSION

In the matter of ) Docket No.12-OIR-1  
 )  
 Rulemaking to Consider Modification)  
 of Regulations Establishing a )  
 Greenhouse Gases Emission )  
 Performance Standard for Baseload )  
 Generation of Local Publicly )  
 Owned Electric Utilities )

<b>DOCKET</b>	
<b>12-OIR-1</b>	
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CALIFORNIA ENERGY COMMISSION  
 HEARING ROOM A  
 1516 NINTH STREET  
 SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 18, 2012  
 10:00 A.M.

Reported by:  
 Kent Odell

APPEARANCESCommissioners Present:

Robert B. Weisenmiller  
Carla Peterman

Staff Present: (\* via phone)

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

Others Present:

Steven L. Homer, Southern California Public Power Authority  
Norman Pedersen, Southern California Public Power Authority  
George F. Morrow, Azusa Light and Water  
C. Susie Berlin, MSR Public Power Agency  
Ben Machol, Environmental Protection Agency  
Bill Knox, California Air Resources Board  
Matt Vespa, Sierra Club  
Noah Long, Natural Resources Defense Council  
Randy S. Howard, Los Angeles Department of Water and Power  
Eugene Sadano, Southern California Edison  
Bill Carnahan, SCPPA  
\*Lucinda Roth, USDA NRCF  
\*Tony Andreoni, California Municipal Utilities Association

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

2 APRIL 18, 2012

10:17 A.M.

3 MS. VACCARO: For those of you on the telephone,  
4 I'm hoping that you can hear me. This is Kourtney  
5 Vaccaro with the Energy Commission. We haven't yet  
6 begun the proceeding, but I wanted to go over a few  
7 housekeeping rules.

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

25 CHAIR WEISENMILLER: Good morning. This is the  
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1 Chairman of the Energy Commission, Bob Weisenmiller. I  
2 would like to welcome everyone to the workshop to  
3 discuss possible changes to the Energy Commission  
4 Greenhouse Gas Emissions Performance Standards. Let's  
5 go around the room and then we'll go to the telephone,  
6 and then we will start with introductory statements.

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

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

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

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

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

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

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

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

25 MR. KNOX: Bill Knox, California Air Resources  
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1 Board.

2 MR. VESPA: Matt Vespa with Sierra Club.

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

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

7 COMMISSIONER PETERMAN: Carla Peterman, Energy  
8 Commission.

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

15 MR. SADANO: Eugene Sadano, Southern California  
16 Edison.

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

19 MR. CARNAHAN: Bill Carnahan with SCPA.

20 MS. ROTH: Lucinda Roth with USDA NRCF.

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

1           This rulemaking proceeding was initiated by a  
2 petition jointly filed by the Natural Resources Defense  
3 Council and the Sierra Club in November of 2011. The  
4 petition questions whether POUs have consistently  
5 complied with the Energy Performance Standards or,  
6 instead, have misinterpreted the applicability of the  
7 Commission's Regulations to investments in existing  
8 plans. They also note that, since the adoption of the  
9 EPS, the POUs have submitted compliance filings to this  
10 Commission for covered procurements at existing power  
11 plants, Petition page 4. So with that very general  
12 background, I'll turn it over to Commission Hearing  
13 Advisor Vaccaro to help move us along.

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

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

24           So just by way of brief background, I mean, this  
25 is the first in what will likely be a series of public

1 processes to explore the issues that were raised in the  
2 petition, but, more importantly, to implement the Order  
3 Instituting Rulemaking that was issued by this  
4 Commission recently; that really is the foundational  
5 document for today's workshop.

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

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

21           So, right now we'd really like to hear opening  
22 statements from the stakeholders, industry, and  
23 interested agencies. But what we'll do is start with  
24 the folks in the room because that's a little bit easier  
25 to manage. And I think, since this is a more informal

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1 roundtable process, I'm going to, I think, start with my  
2 right and we'll just sort of make our way around the  
3 table. Again, for the benefit of people who cannot see  
4 us all here and don't have a great memory of names, if  
5 you would please, before you speak, give your name and  
6 also, again, indicate the agency or entity with which  
7 you are affiliated.

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

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

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1 MS. VACCARO: Thank you.

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

23 So the Commission has it correct, they've had it  
24 correct up to this point, there is nothing under the  
25 cover, so to speak, going on. And so I'd like to see if

1 we could move this process along. Thank you.

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

12 The purpose of SB 1368 was to mitigate the  
13 financial risk for utilities and their ratepayers by  
14 forestalling investments that might be put at risk by AB  
15 32 implementation. We clearly support avoiding that  
16 risk for the benefit of our ratepayers. The point of SB  
17 1368 was not to create risk for our ratepayers by  
18 preventing maintenance required to prevent generation --  
19 that is necessary to prevent generation stations from  
20 atrophying.

21 The coal plants represent millions of dollars of  
22 investments and financial obligations. The need to  
23 avoid creation of risk was understood by the Legislature  
24 and it was explicitly expressed by the Commission in the  
25 FSOR adopting your EPS regulation. We've engaged in

1 dialogue with the Petitioners, we look forward to the  
2 dialogue with Petitioners and with you today. The  
3 chances for that dialogue to bear fruit and in the form  
4 of narrowed or even resolved issues will be maximized,  
5 in our view, if all parties remain faithful to the  
6 purpose underlying SB 1368 and the Commission's  
7 Regulation. In that spirit, we appreciate the  
8 opportunity to present -- we've appreciated the  
9 opportunity to present our opening and reply written  
10 comments, and we appreciate your convening of today's  
11 workshop. And so, in advance, thanks. And we're  
12 looking forward to today's discussion.

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

We believe

21 Each time we vote, we ask ourselves, "Does this project  
22 increase the capacity of the plant or extend the life of  
23 the plant?" Every time that we voted, the answer has  
24 been no, no project has ever increased the life,  
25 increased the capacity, or extended the life of the

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1 project. We don't think SB 1368 needs any revision. It  
2 is serving its purpose well and it is fine the way it  
3 is. We'll continue to participate in the dialogue with  
4 the Petitioners and with the Commission, and we're very  
5 interested today to hear what the staff's opinion is on  
6 these subjects. Thank you.

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

11 MR. HOWARD: This is Randy Howard with Los  
12 Angeles Department of Water and Power. LADWP is in an  
13 unprecedented transformation. We have 70 percent of our  
14 current operating resources that we're going to have to  
15 replace over the next 17 years and it's unlike anything  
16 any other California utility -- large California utility  
17 -- is being asked to take on. LADWP remains compliant  
18 with the EPS and has made its intentions clear that a  
19 key part of its transformation is to shift away from its  
20 reliance on coal-fired imports. It's not a matter of  
21 when and how, I mean, it's a matter of when and how, not  
22 that we're going to do it or not going to do it, and  
23 LADWP has gone through a very significant public  
24 outreach and continues that path to ensure that we do  
25 get input from all parties.

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1           Related to Navajo Generating Station, we're  
2 involved in two facilities, Navajo Generating Station  
3 and the Intermountain Power Project, and as the  
4 Operating Agent for Intermountain Power Project, I'm  
5 also speaking on behalf of Southern California  
6 participants. But LADWP has engaged in a very public  
7 discussion on Navajo about its options for early exit  
8 several years ahead of what would be a requirement under  
9 the EPS. We have notified the other owners of that  
10 facility of our intent to divest. We have hired an  
11 outside investment banking firm to assist us in that  
12 process, and we are actively involved in that right now.

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

23           One of the statutory requirements of SB 1368 to  
24 the California Energy Commission is that they must  
25 consider the reliability of the Grid and they must

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1 consider the cost and rate impacts to the ratepayers.  
2 We are quite concerned here in this discussion that  
3 somehow we might be required to take what we consider  
4 operating and maintenance expenditures and somehow bring  
5 those before the Commission with the Commission staff  
6 and, if that would somehow delay repairs that would be  
7 necessary or would put our units at risk for  
8 reliability, we don't think that has truly been  
9 considered as of yet in the discussion and we think that  
10 is a very significant point. As well, any additional  
11 cost of doing such filings and preparing such  
12 documentation, we think the cost to our ratepayers must  
13 be considered. Therefore, LADWP is strongly opposed to  
14 this rulemaking going forward. We don't think the  
15 petitioners have represented the facts correctly. We  
16 think they have continued to allege misconduct by the  
17 POU's without any true evidence that that is the case,  
18 and we don't believe it to be the case. And as we move  
19 forward with continuing our path of adding renewables to  
20 achieve the 33 percent RPS, and implementing the AB 32  
21 Cap-and-Trade Programs, we really seek to have all the  
22 parties working together to help us achieve these very  
23 significant goals and not to be looking back at what  
24 investments might have been made or what's going on with  
25 the coal facilities, but to move forward in our

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1 transition out of these generating facilities. So LADWP  
2 thanks the Commission and the staff for being allowed to  
3 participate and we look forward to further discussion  
4 today. Thank you.

5 MS. VACCARO: Thank you. Mr. Long.

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

10 I'll speak for NRDC and I'll let Matt speak for  
11 the club on this, but I just want to start out by saying  
12 what NRDC is looking for here, and the reason we brought  
13 this Petition, is a consistent and transparent statewide  
14 process for evaluation of the EPS and the functionality  
15 of the EPS retrospectively and, most importantly, how  
16 the EPS applies in light of very significant potential  
17 investments in the three coal plants that are in  
18 question here. We recognize that there are varied and  
19 somewhat complicated contractual obligations and  
20 ownership rights at those plants. We recognize that  
21 they are different for the different parties here, but  
22 we also recognized and we think it's important to note  
23 that it's not infinitely so, we're talking about three  
24 power plants with a range of upcoming operational  
25 requirements that would require very significant

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1 investments. And in light of that, and in light of the  
2 fact that over the last several years there hasn't been  
3 an opportunity for a statewide forum to ensure that the  
4 application of the existing emissions performance  
5 standard has been consistent across all the entities, we  
6 think that this rulemaking provides a really useful  
7 forum for all of the POU's, but also for the State in  
8 ensuring that the EPS is fully and consistently  
9 enforced.

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

23           So we're certainly open, at least we're open and  
24 we want to have a conversation about how to make sure  
25 that any requests for information about retrospective or

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1 prospective investments are reasonable, but they don't  
2 bog down either the POU's or the Commission in reams of  
3 paperwork. But I can say that from my experience  
4 working with Southern California Edison on the  
5 application of the EPS and that process, you know, there  
6 were a lot of maintenance investments, for sure, but  
7 it's very possible to go through those. It's not an  
8 infinite number and I think it's appropriate to make  
9 sure that we're getting it right and we're doing it  
10 consistently across the state. So I hope we can have  
11 some discussion about what the reasonable application of  
12 that would be here and how to best enforce and ensure  
13 consistent application of the EPS for these three power  
14 plants. Thanks.

15 MR. VESPA: Matt Vespa for Sierra Club. Sierra  
16 Club is very much aligned with NRDC on these issues.  
17 The CEC is charged with enforcing SB 1368 and it's  
18 difficult to imagine how they can fulfill that function  
19 without actually getting information and reporting from  
20 the POU's on expenditures. And you know, we've heard a  
21 lot of anecdotes about compliance historically, but,  
22 again, I think having information available can allow  
23 for more informed decision making and rulemaking on  
24 potential future reporting requirements. And as Noah  
25 mentioned, we are looking at significant future

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1 investments and environmental compliance obligations  
2 which, in our view, very much trigger SB 1368. And we  
3 believe it's in everyone's interest to have clarity now  
4 on the implications of those investments, rather than  
5 wait and kick this down the road. So we're hoping this  
6 proceeding can yield more useful guidance prospectively  
7 and, you know, to some extent historically, as well.

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

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1 potentially resulting in reduced development of other  
2 high carbon or high GHG emitting facilities in the  
3 future.

4           The Scoping Plan also has language that shows  
5 that it really counts on reductions from EPS and I'll  
6 quote again from the Appendix: "Assuming that  
7 electricity from these plants is replaced with  
8 electricity from combined cycle natural gas, the EPS  
9 will reduce California's emissions from imported  
10 electricity by almost five million metric tons of CO<sub>2</sub>  
11 emissions annually. Larger reductions are possible if  
12 renewable electricity is used to replace coal power."

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

22           We also see that the EPS, by precluding  
23 investment that would increase the life of non-compliant  
24 power plants by more than five years, that the EPS  
25 reduces the potential for leakage. If non-compliant

1 power plants are operated to extend their lives before  
2 divestment, then it's more likely that GHG emissions  
3 would continue at historic levels, despite an apparent  
4 reduction in California's emissions. Furthermore, there  
5 are some noncompliant plants, of course, as mentioned  
6 that are under contract beyond 2020, and so the EPS also  
7 would prevent investments extending the life of those  
8 plants.

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

14           MS. VACCARO: Thank you. We've heard, I think,  
15 pretty much from the folks around the table. There are  
16 some other people in the room. I don't know if there  
17 are any other interested agencies, industry,  
18 stakeholders in the room who might wish to make an  
19 opening statement? I'm looking around behind me and no  
20 one really wants to make eye contact, so I'm taking that  
21 as a no. So I think we'll turn to the telephones. Are  
22 there any such individuals on the telephone who wish to  
23 make an opening statement? Do we have everyone on mute,  
24 still? Because we might need to have you wave your hand  
25 or otherwise. So, again, I think I'll repeat the

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1 question. Are there any individual stakeholders,  
2 members of industry, or interested agencies on the  
3 telephone who might wish to make an opening statement?  
4 I'm hearing none, although we have quite an extensive  
5 caller list. I'm not sure, maybe we do have a hand.  
6 No, it appears that we don't have a hand and we don't  
7 have anyone on the phone at this time wishing to make an  
8 opening statement. But, again, this is going to be a  
9 lengthy process today, there will be opportunities for  
10 individuals to make comments later in the proceeding.

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

17 And this was a statement by Mr. Pedersen. You  
18 indicated that you're engaged in dialogue with the  
19 Petitioners and I think that's something that we've seen  
20 in the comments, as well. I think there will be time  
21 once we get to the individual questions to explore that  
22 further, but for the benefit of those of us who really  
23 don't know what those conversations are, or what the  
24 scope of the dialogue is, could you just give us a  
25 little foreshadowing to understand what is the nature,

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1 what is the scope, does it go to transparency, does it  
2 go to the mechanism by which there might be more public  
3 notification or involvement? You know, what is the  
4 scope and can you give us a sense of parameters -- I  
5 don't leave that only to you to answer, I'm sure  
6 Petitioners could answer that, as well, but I'm really  
7 interested in picking that thread.

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

20 MS. BERLIN: And this is Susie Berlin and I  
21 would just add before Noah does his introduction, the  
22 scope of the discussions included NRDC and Sierra Club  
23 representatives and also representatives from SCPPA an  
24 MSR and LADWP, so it was all affected parties  
25 participated in the discussion, either in person or via

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1 phone --

2 MS. VACCARO: Okay, thank you for that  
3 clarification.

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

6 MS. VACCARO: Thank you.

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

8 MR. HOWARD: You go ahead.

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

24 The nature of the conversation, I would say, was  
25 first focus on limitation of the scope of the rulemaking

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1 in ways that might benefit all of the parties and  
2 focusing of that scope in a way that benefitted all  
3 parties. You know, I don't know if I want to say much  
4 more than that because, again, we didn't come to a  
5 consensus position, so I don't want to misrepresent  
6 anybody's views on where they were on what limitations  
7 were appropriate. But free to have folks chime in.

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

10 MR. LONG: Thank you.

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

22 MS. VACCARO: Thank you. Well, I think the  
23 agenda indicates that we do have a presentation this  
24 morning before we move forward with the rulemaking. We  
25 have Ben Machol with the U.S. EPA, who has pre-loaded

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1 Powerpoint slides and is ready to go, so I think this is  
2 a perfect time for Mr. Machol to take the podium. There  
3 is a microphone that will allow us all to hear your  
4 narration, as well. And please let me know if you need  
5 any assistance with the slides.

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

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

22 So first off and, again, I'll let you know when  
23 I'm switching to the proposed rules, but the next few  
24 that I talk about are existing rules that have been  
25 finalized. This first one, the Mercury and Air Toxics

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1 Standard, actually the effective date was on Monday, so  
2 that's the pretty recent one. It impacts 1,400 coal and  
3 oil units around the country and focusing on, as the  
4 name implies Mercury, but air toxics, as well.

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

16 There are three different emissions standards,  
17 actually it's quite complex, but from what I understand,  
18 the three standards that are of most interest for coal-  
19 fired facilities are Mercury, Filterable PM, particulate  
20 matter, which will be a surrogate for the non-Mercury  
21 particulates, metals, and then HCL or SO<sub>2</sub> as a surrogate  
22 for the acid hazardous air pollutants.

23 Facilities will have three years -- three years  
24 from Monday -- to comply with this rule. It can be  
25 extended up to four years and I think many states will

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1 go this way, but at the State or permitting authority's  
2 discretion there can be four years to comply.

3           The costs nationally will be about \$9.6 billion  
4 a year, but the improvements for human health we value  
5 in about \$37 to \$90 billion a year, preventing up to  
6 11,000 early deaths, 130,000 asthma attacks, and 540,000  
7 missed days of work.

8           Okay, transferring over now to another final  
9 rule, our Regional Haze Rule, which has been on the  
10 books for some time, and it really focuses on visibility  
11 to what we call Class I Areas, but amounts to national  
12 parks and wilderness areas like Grand Canyon. And the  
13 goal here is to work so that there's no man-made  
14 visibility impairment at these Class I Areas. Each --  
15 states are responsible for submitting plans to control  
16 emissions of the various visibility affecting  
17 pollutants, and these are NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub>, which also  
18 happen to have either direct or indirect health impacts,  
19 as well. The terminology you hear for the Regional Haze  
20 Rules is BART, the Best Available Retrofit Technology,  
21 and for a certain subset of power plants, depending on  
22 their age and what rules were in place at the time of  
23 their construction, the states do a determination to  
24 figure out if additional controls, the best available  
25 retrofit technology is required at those plants. And it

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1 really varies facility by facility what controls would  
2 be necessary.

3           When I wrote this next rule, this is our  
4 tailoring rule for our PSD Program, Prevention of  
5 Significant Deterioration. And I realized coming in  
6 this morning, I'm focused here on our greenhouse gas  
7 rules because they're the newest, but, in fact, whenever  
8 there is a major modification of a facility that  
9 triggers an increase of certain levels of many different  
10 pollutants, not just greenhouse gases, but when those  
11 triggers are met, the facilities need to get a new  
12 construction permit, PSD permit. So with that in mind,  
13 what I've talked about here, the numbers here are really  
14 focused on greenhouse gases and we have a few different  
15 rules. I tried to simplify it on this slide and  
16 struggled to do it, but basically if a source already  
17 needs a PSD Permit for another -- some other criteria  
18 pollutants, non-greenhouse gas, and there's a  
19 modification for 75,000 tons a year increase in  
20 greenhouse gases, then they would need to do BACT, which  
21 I'll get to in a second, the Best Available Control  
22 Technology for greenhouse gases. And if they didn't  
23 otherwise need to comply with PSD, but had 100,000 tons  
24 per year of greenhouse gas CO<sub>2</sub> equivalence of greenhouse  
25 gases, then they would also need to do BACT.

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1           And so BACT, Best Available Control Technology,  
2 is really just typically would be energy efficiency  
3 measures when you're talking about greenhouse gases.  
4 But what can that facility do to reasonably reduce  
5 greenhouse gas emissions and still make their product,  
6 which in the case of a power plant would be energy? The  
7 interesting thing about BACT is that there isn't a  
8 universe of technologies that is decided upfront, it's  
9 really the market can sort of decide what BACT is. If a  
10 technology is demonstrated, and demonstrated again, then  
11 permit writers from around the country can see that  
12 technology and say, "Hey, we can put that in for this  
13 facility that's in our backyard."

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

21           The Emissions Standard will be 1,000 pounds of  
22 CO<sub>2</sub> per gross megawatt hour, so that's a slight  
23 difference from the 1,100, and it applies to IGCC  
24 facilities, natural gas combined cycle units, and we  
25 think natural gas units can meet the standard without

1 any add-on controls, but it also applies to coal and  
2 petcoke power plants that would need some sort of carbon  
3 capture and storage to comply with the rule. And in all  
4 these cases, I should say this upfront, this is for new  
5 facilities, not existing facilities, that's another very  
6 key difference.

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

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

22           Next up, a proposed rule, it was proposed back  
23 in June 2010, and I checked in before I came here and  
24 didn't have a clear idea of when it was going to go  
25 final, but the comment I got back was, "We had 450,000



1 comments." So it's taken a while for us to finalize  
2 this rule, though I would say for the MATS Rule, the  
3 Mercury and Air Toxics Standards, we had 900,000  
4 comments, so we were able to somehow sift through them  
5 and finalize a rule. But in this case, it's focused on  
6 coal combustion residuals, or coal ash, so it can be fly  
7 ash, but it could also be some of the materials that  
8 come from the control technologies that are required to  
9 reduce air contaminants.

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

20           We're proposing two different pieces -- this is  
21 under our RCRA, Resource Conservation and Recovery Act  
22 law -- we're proposing two different approaches to go  
23 forward on this, one is using our Subtitle C, our  
24 Hazardous Pollutant side of RCRA, and the other is  
25 Subtitle D, which focuses on solid waste. Both

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1 approaches would require liners at landfills and  
2 groundwater monitoring. The two very different  
3 approaches for Subtitle C, it would effectively phase  
4 out wet handling of coal ash and surface impoundments,  
5 whereas, with the Subtitle D approach, you still could  
6 have those impoundments, but it would require liners.

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

23 Okay, so that was a rundown of the five rules  
24 and now I'll try to talk a little bit about how they  
25 could impact the power plants that are represented here

1 today. I guess it's hard to say for the proposed rules,  
2 since they're not final, what their exact impacts would  
3 be and I guess I should also say for the PSD rule, it's  
4 also hard to know, I mean, if something in the future is  
5 going to trigger a major modification, whether -- or if  
6 it is a significant modification, if that would trigger  
7 PSD for your plants or not, but we can go through the  
8 other rules.

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

15           So for Navajo Generating Station, they are  
16 subject to the Regional Haze Rule. NGS impacts 11 Class  
17 I areas, including Grand Canyon and we do intend to  
18 propose BART limits, the Best Available Retrofit  
19 Technology limits, for NO<sub>x</sub>, and we had set limits already  
20 for SO<sub>2</sub> in 2010 and, as with Intermountain, the operators  
21 are going to need to figure out if additional controls  
22 are needed to comply with our Mercury and Air Toxics  
23 Standards.

24           For San Juan Generating Station, also subject to  
25 the Regional Haze Rules, we have NO<sub>x</sub> and SO<sub>2</sub> limits

1 already set, we did that in August 2011 after much  
2 analysis and discussion. The SO<sub>2</sub> limits can be met with  
3 the existing control technology, though the NO<sub>x</sub> limits  
4 will require SCRs, Selective Catalytic Reduction, and  
5 that will be required by September 2016. And as with  
6 all the power plants, it's really the operators now need  
7 to figure out if additional controls are necessary  
8 beyond what they already have to meet the Mercury and  
9 Air Toxics Rules.

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

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

24           MR. HOWARD: Just a clarification on one of your  
25 slides. It indicates plants owned by POUs. That isn't

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1 the case with Intermountain Power Project, so any  
2 requirements that they have to put in place to comply  
3 with Federal requirements has absolutely no bearing on  
4 the term or extension of the life of the contract for  
5 the parties in this room, the POUs. So the POUs,  
6 regardless of any measures the plant has to take, that  
7 does not extend their contracts, so I just want to make  
8 that clarification because it did seem to indicate that  
9 somehow we had an ownership position and we do not.

10 MR. MACHOL: Thanks.

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

19 MR. MACHOL: I can cover the basics of this and  
20 hopefully this will work, but basic -- if there's a  
21 modification -- any time there's a new source above a  
22 certain capacity, or emission limits, or a potential to  
23 emit certain amounts, or a major modification that  
24 triggers -- it varies by pollutant -- but if the change  
25 leads to an increase in emissions above a certain

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1 threshold that varies, then it would trigger the need  
2 for a PSD Permit. Does that answer your question?

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

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

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

18 MR. LONG: Uh huh.

19 MR. PEDERSEN: I perhaps have a question that is  
20 not directed so much to Mr. Machol, but maybe more to  
21 you, Kourtney, or Melissa, you know, you've clearly put  
22 the EPA presentation in a pretty prominent position in  
23 today's agenda coming right at the beginning and you  
24 seem to be setting the table for something, but I'm not  
25 sure exactly what that something is. You'll certainly,

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1 for San Juan -- I'm here for the SCPPA San Juan  
2 Participants -- you know, we're very aware of the  
3 Federal Implementation Plan, this has been going on for  
4 a long time, we're very aware of our obligations, and  
5 we've got, you know, a whole team working on it -- it  
6 doesn't include me -- but we've got a very large,  
7 regrettably, we have a very large team working on it.  
8 But where does that take us for purposes of today's  
9 discussion? What is the tie-in between Mr. Machol's  
10 presentation about the laundry list of EPA regulations  
11 -- of course, for us the Federal Implementation Plan is  
12 very significant -- but where does that take us for  
13 purposes of today's discussion? I'm a little bit at a  
14 loss here.

15 MS. JONES: This is Melissa Jones from the  
16 staff. And our interest was really in gaining a better  
17 understanding of some of the rules and some of the major  
18 investments that the POU's will be making in your coal  
19 facilities, and trying to understand better how and  
20 whether these investments constitute life extension, and  
21 therefore fall within the SB 1368 purview. So the  
22 Petitioners raised in their petitions that they're  
23 concerned about upcoming major investments to meet new  
24 environmental rules, these are the environmental rules,  
25 and so we wanted to have a better understanding of them.

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1 MR. PEDERSEN: Thank you.

2 MR. HOMER: This is Steve Homer with SCPPA.

3 Does the EPA consider these things to be life  
4 extensions? Or is this like putting a catalytic  
5 converter on an automobile?

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

14 MR. HOMER: Thank you.

15 MR. HOWARD: I have a similar question. So if  
16 you -- Randy Howard, LADWP, sorry -- you portray -- you  
17 list, and we're aware, as well, that the Navajo facility  
18 -- what some of those requirements might be and continue  
19 to have that discussion with the other joint owners. If  
20 those measures were installed on those facilities to  
21 meet the Emission or the Haze Rule, do they in any way  
22 in your mind extend the life of that facility? Do they  
23 -- these aren't measures on the generators themselves,  
24 right? They're measures that would be taken principally  
25 on the emissions.

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1           MR. MACHOL: You know, again, this is -- the  
2 extension of the life is not something that is part of  
3 the EPA framework, it's out of what these Regs are  
4 about. It's about controlling emissions. You're adding  
5 a definition that we don't use, so it's --

6           MR. HOWARD: Okay --

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

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

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

17          MR. HOWARD: Okay, thank you.

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

24 Is the Commission -- you know, there were some  
25 statements in the FSOR, and I have taken a look at the

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1 FSOR quite closely, but what is the Commission's view?  
2 Is the installation of, for example, SCRs at San Juan  
3 under the Federal Implementation Plan for NO<sub>x</sub> at San Juan  
4 -- does that constitute in your view an extension of the  
5 life of five years or more?

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

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

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

4           MR. LONG: Okay. I just thought in light of  
5 your interest in listening, I might respond to that  
6 question and also the comment by Mr. Howard on that  
7 question. The rules that Mr. Machol just discussed in  
8 our view are new operational requirements for the  
9 facilities. In order to continue to operate under the  
10 new regulatory regime, significant investments will need  
11 to be made. Now, plants have physical operational  
12 requirements dictated by the laws of physics and  
13 combustion engines, combustion generators, and they have  
14 regulatory operational requirements. And to the extent  
15 that a plant makes significant new investments to  
16 operate, to continue to operate, whether that's in order  
17 to meet legal requirements imposed by the Federal  
18 Government, or if it's in order to meet maintenance or  
19 other operational needs, those are the kinds of  
20 investments that need to be evaluated under the EPS to  
21 see whether they are, in fact, significant, whether  
22 they're new ownership financial commitments or new  
23 financial commitments. And I think -- so, in our view,  
24 the fact that they wouldn't by themselves necessarily  
25 affect the existing contractual arrangements does not by

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1 itself dictate whether or not it's a new ownership  
2 investment subject, SB 1368. But the question is one  
3 for the -- and I think this is the question that's  
4 really squarely before the Commission here -- is are  
5 investments potentially hundreds of millions of dollars,  
6 or many hundreds of millions of dollars in these plants  
7 over the next few years -- do they trigger California's  
8 requirement and scrutiny by the Energy Commission as to  
9 whether those investments are, in fact, new ownership  
10 investments? And I think to limit the question to say,  
11 "Well, they're not extending the contract," or, "We  
12 don't have an ownership position," would be  
13 inappropriate given the significance of these  
14 investments and the operational requirements that these  
15 plants are now under. Do you want to respond to that?

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

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1 ratepayers and so on, and should very much be within the  
2 purview of the Commission.

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

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

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

22 MR. LONG: I think we can -- sorry -- this is  
23 Noah Long again from NRDC -- I think we can sort of live  
24 and die by metaphors, I imagine if the catalytic  
25 converter cost \$100 million, you might have thought it a

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1 significant new ownership investment in her car. And so  
2 our view is that certainly we don't see a conflict of  
3 law situation here, there's not a situation where  
4 California laws prevent the application of catalytic  
5 converters or other control technologies necessary to  
6 meet these standards, but there is a question of what  
7 California entities can participate in under the law,  
8 and I think that's really the question here, not what  
9 the plants can do under some potential owner, but what  
10 California participants can rightfully participate in,  
11 whether as an owner, or in other contractual arrangement  
12 in the plant.

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

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1 do so.

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

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

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

12 MS. BERLIN: Actually, George had a question.

13 MR. MORROW: Yeah, you reminded me before -- and  
14 just in case you take off -- George Morrow, Azusa Light  
15 and Water -- so when EPA adopts a rule such as the Haze  
16 Rule, basically EPA is going to specify, "Here's the  
17 limit that the plant has to meet," and the plant can  
18 decide, or the State, the best available control  
19 technology, it could be a variety of things, it could be  
20 SCR, like you said, depending on how strict the level is  
21 that we're required to meet. But my question goes to  
22 what if a plant operator does not meet the standard,  
23 does the plant shut down? Do the Federal Marshalls show  
24 up and lock down the gates and say, "Okay, this does not  
25 operate anymore?" I don't think that's the case. I

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1 think plants continue to operate perhaps after a process  
2 of evaluating their performance they are deemed not to  
3 comply and they are subject possibly to penalties,  
4 strict penalties, but, you know, I don't know that  
5 there's not a continued life in the true technical sense  
6 for those plants.

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

18 MR. MORROW: Obviously, we would do the  
19 controls, or we would comply with the Federal laws, but  
20 going to the point of, you know, if for some reason  
21 somebody didn't, you know, some hard head somewhere  
22 decided not to do something, you know, the plant doesn't  
23 disappear into the earth, or is forced to not operate,  
24 it can continue to operate, but subject to then the  
25 penalty provisions under the --



1 MR. VESPA: Can I jump in?

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

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

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

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

17 MR. MORROW: Obviously, that's not what I'm  
18 saying, and you know I'm asking a question, I don't know  
19 that I would infer that anybody anywhere is not going to  
20 comply with the Federal Regulations. Of course, you  
21 heard Norm talking that, you know, that's very much the  
22 spirit of how we operate, we intend to comply. I think  
23 we may have questions sometimes about exactly which  
24 technology and exactly which timeframes, again, because  
25 we're not for profit and we're trying to do the right

1 thing for our citizens and ratepayers, and for society  
2 as a whole. So plants can continue to operate if -- I  
3 mean, we deal with hundreds and hundreds of regulations,  
4 this happens to be a very big one, a strict one that  
5 we're talking about, the Haze Rule, but there's lots of  
6 other regulations, lots of other limitations, and the  
7 plant doesn't stop running, technically.

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

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

21 MS. VACCARO: I liked that example. This is  
22 Kourtney Vaccaro. I liked the example of the catalytic  
23 converter in the car and generally this process is not  
24 to put anyone on the hot seat, but I guess I am curious,  
25 Mr. Knox, you know, if the Air Resources Board has any

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1 opinion, thoughts, or if you do, on the example of when  
2 that might become life extending, or when it might be  
3 perceived as life extending, if the very fact of doing  
4 it isn't life extending, or isn't intended for that  
5 purpose, other than keep the car running, or pass the  
6 smog test?

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

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

17 MS. VACCARO: Please do.

18 MR. LONG: Noah Long from NRDC. I'll make a  
19 zero emissions analogy here on life extension. I was  
20 biking yesterday to an appointment and my chain started  
21 coming apart, but I knew that I was late to an  
22 appointment and, as I biked along, I could hear it  
23 rattling and coming apart and I knew that I wasn't going  
24 to go very far, but I figured I could finish the few  
25 blocks and I had to eventually replace the chain. And

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1 in the same sense, the point that I made earlier about  
2 there are technical operational requirements and there  
3 are legal operational requirements; now, it's true that  
4 you can also bike without a light and you can bike as  
5 your chain is dismantling, but the fact that you can  
6 push a power plant beyond its operational, you know,  
7 beyond its intended maintenance requirements and push it  
8 into the ground, or you can operate illegally and  
9 subject to enforcement, I don't think changes the fact  
10 that legal operational requirements are, in fact,  
11 operational requirements.

12           The other point I wanted to make that I think  
13 your comment raised, which is an interesting one and an  
14 important one for this Commission and one that we tried  
15 to raise in our reply comments, is that there are -- the  
16 EPA rules discussed a moment ago by Mr. Machol raise a  
17 whole series of potential investments for the plant  
18 owners, and operators, and participants, and not all of  
19 them are simply about putting in place control  
20 technologies. For example, in the case of Four Corners,  
21 EPS has proposed closing three units and imposing  
22 control technologies on the remaining two units in order  
23 to reduce its overall emissions as part of an overall  
24 proposal for compliance. Likewise, as we've noted in  
25 our reply comments, there are opportunities for

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1 potentially closing units at San Juan, potentially  
2 converting some of those units to gas, and each of those  
3 proposals would have different potential implications  
4 with regard to compliance with the Emissions Performance  
5 Standard, whether it's replacing the existing units with  
6 combined cycle units, or simply converting the existing  
7 boilers to burn gas, those would have different  
8 emissions rates and different implications with regard  
9 to the Emissions Performance Standard. I think that  
10 variety of possible investments that are before the  
11 participants here today, and in the discussions that  
12 they need to be having with their co-participants in  
13 these plants, are the ones that were, I think, hoping to  
14 open up this rulemaking to consider so that the Energy  
15 Commission has an opportunity for scrutiny of those  
16 investments, an opportunity to make clear which sorts of  
17 investments might comply, and which sorts clearly would  
18 not. And I think, in light of the overall mandate from  
19 the State to use this statute and this regulation to  
20 minimize exposure to future emissions risk, clearly some  
21 of those kinds of investments would be better for the  
22 citizens of California and the customers of these  
23 utilities and others, and like I said, some would likely  
24 comply and others might not.

25 MR. HOWARD: Randy Howard, LADWP -- I'm sorry,  
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1 Suzie -- I'm going to ask the question over here, I'm  
2 going to do one quick one, though, but there's nothing  
3 in SB 1368 that grants the authority to the CEC to look  
4 over the investments of the POU's. I'll just stop there.  
5 Question. On all of the measures that are proposed that  
6 would impact the three coal power plants that are  
7 represented here, outside of -- well, even with the new  
8 proposed rules that are greenhouse gas, none of the  
9 other rules are related to greenhouse gas whatsoever,  
10 are they? So the implementation of those measures are  
11 related to toxic emissions, isn't that correct?

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

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

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

25 MR. HOWARD: Okay, so it's not -- these

1 investments in themselves don't benefit the greenhouse  
2 gas --

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

5 MR. HOWARD: Yes.

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

10 MR. HOWARD: Okay.

11 MR. VESPA: Matt Vespa from Sierra Club. Just  
12 to respond to some of those comments, SB 1368 does in  
13 the statute clearly contemplate the Commission ensuring  
14 compliance with the statute and enforcing the statute,  
15 Section -- I believe it's 8341(c)(1), so, you know, if  
16 you're going to force compliance, one would imagine you  
17 would need to actually review the investments. You  
18 can't enforce compliance if you can't actually see the  
19 investments and make that kind of independent  
20 determination. So in our view, the CEC very much has  
21 the authority to review these types of investments.  
22 With regard to the suggestion about whether this is  
23 greenhouse gas beneficial, some of these investments,  
24 the intent of the statute which articulated in its  
25 opening section is to protect ratepayers from air

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1 pollution control cost, or pollution-related control  
2 costs, more generally, it's not GHG specific; some of  
3 these pollution control costs are very very significant  
4 and it's very much within the CEC's purview to examine  
5 those and guard for ratepayer impacts. And, again, the  
6 Statement of Reasons has very clearly dealt with this  
7 issue about environmental compliance, has found it to be  
8 a covered procurement, and rejected suggestions it was  
9 not. You know, in our view, it is very much a covered  
10 procurement, and there may be a secondary question on a  
11 case-by-case basis whether there's some contractual  
12 obligations or reliability questions, that's within the  
13 Regulations. But as a threshold matter, you know, these  
14 are covered investments. What you do with that, as step  
15 2, I think, you know, would be open to discussion  
16 depending on a factual scenario.

17 MS. BERLIN: This is Susie Berlin. I have a  
18 couple points -- and I'm going to take the floor now --  
19 first of all, there's been a lot of reference to  
20 significant costs and substantial investments, and the  
21 POU's are public agencies, we are directly accountable to  
22 the residents, the ratepayers, and whatnot, so the  
23 amount of the cost is not unimportant to us at all, but  
24 it is irrelevant in terms of what the statute and what  
25 the regulation requires, there's no dollar limit. So,

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1 you know, if it's something that is a covered  
2 procurement that costs \$5.00, it needs to be treated and  
3 reviewed in the exact same manner as a covered  
4 procurement that costs \$5 million. It's a covered  
5 procurement.

6           The second point I want to make is something  
7 that I'm a little concerned with the tone that I think  
8 that we're going down, or that I'm hearing, is this  
9 notion that the life of the plant is linked to its  
10 regulatory permit, as well as its operational ability.  
11 And I don't believe that that is consistent with the way  
12 this regulation was written, I don't think it's  
13 consistent with industry standard, I don't think it's  
14 consistent with operations, in general. If it was, we  
15 would never have this notion of a stranded asset when  
16 you did have to shut down something because it couldn't  
17 get a permit or something, couldn't otherwise operate,  
18 or the State didn't want you to operate it, or  
19 something. So, we need to continue to operate -- and I  
20 keep looking at Noah because he's right across from me,  
21 sorry -- just like everybody -- but we need to continue  
22 to have this discussion in the context of the terms that  
23 are used in the regulation, the terms that are used in  
24 the statute, and as those terms are used in industry,  
25 and we can't apply retroactively a new definition to

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1 them at this time.

2 MR. PEDERSEN: Okay, now, actually picking up  
3 somewhat on what Susie was just saying -- Norman  
4 Pedersen, SCPPA San Juan Participants. You know, Matt  
5 has pointed out some language in the FSOR, and I'm  
6 familiar with the language Matt is talking about. We  
7 also have a regulation that is very specific about how  
8 you define a new ownership investment, extend the life  
9 for more than five years, for example. And so we've  
10 talked about the SCRs, I mean, I'm still not quite clear  
11 on, for example, what Noah thinks of the installation of  
12 SCRs, does it extend the life, or does it not extend the  
13 life? You know, certainly our understanding is -- Steve  
14 Homer expressed it -- it doesn't extend the life, it's  
15 just like putting a new catalytic converter on your car,  
16 you know, you're doing it to comply with the DMV, you're  
17 not doing it to extend the life of your car, that's our  
18 view. But, you know, there is an issue here, you know,  
19 and it's created by the language of the SFOR. Now, that  
20 might create a situation where, yes, 2907 might be  
21 called into play, Section 2907 is the section of the  
22 regulation that provides for a POU to come in to you to  
23 seek your determination about whether a given investment  
24 is a covered investment or not. You know, here we have  
25 this interesting situation where, in our view, the SCRs

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1 do not fall at all within the regulation, but we have  
2 some language in the FSOR that, you know, leads you to a  
3 different interpretation, which Matt would argue for, so  
4 that could lead to coming in for an evaluation. That's  
5 what 2907 was designed for. Now, you've made the point  
6 in your comments, opening reply that we haven't come in  
7 under Section 2907. We haven't come in for a very good  
8 reason. We haven't come in because we haven't had that  
9 situation. Are we going to have one coming up, going  
10 forward? Very possibly. No decision has been made  
11 about what to do with the SCRs, you know, we don't have  
12 to do anything right away, we're going to move very  
13 deliberately because it costs hundreds of millions of  
14 dollars. Nobody has denied this is a big investment, we  
15 will be proceeding deliberately. This may be a case  
16 where we come in. Your regulation was designed to  
17 accommodate that. Up to date, in our view, this  
18 regulation has worked very well. Have we been making  
19 investments? Absolutely. Just exactly like the chain  
20 on your bicycle, Noah, you know, we've had to replace  
21 chains. Actually, we don't wait for it to break like  
22 with the turbine blades, we try to do it before the  
23 turbine blades break, sometimes it can be pretty  
24 expensive, but it's pretty much understood that you have  
25 to replace them periodically, not every five miles, but

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1 periodically, and we do replace them. And that's the  
2 type of situations we've had up until now, since 2007,  
3 and Steve Homer is here, MSR is here, they can go  
4 through examples; we provided you some in our comments.  
5 But that's what we've had to date.

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

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1 actually be the example that proves the rule, the  
2 exception that proves the rule.

3 MR. VESPA: This is Matt Vespa from Sierra Club.  
4 Just setting aside, we feel like there may be other  
5 circumstances besides this compliance that would require  
6 reporting. But just in terms of this, you know, I  
7 appreciate your comments. Speaking for Sierra Club, and  
8 Noah may have a more nuanced view, compliance with  
9 environmental regulations are required to lawfully  
10 operate the plant and therefore extend its life. That's  
11 Sierra Club's view of that, therefore it is covered.  
12 But clearly there is a disagreement on that and it's  
13 interesting to hear this come out right now and I think  
14 it highlights the importance of this proceeding to  
15 proactively address that question, rather than wait for  
16 the POUs in their discretion to come to the CEC and ask  
17 for clarification. It's clearly teed up; I think  
18 guidance now rather than later would be extremely  
19 helpful as we move forward and considering there is this  
20 quite significant difference of opinion on whether these  
21 things are actually even covered procurements at all, it  
22 really does highlight the importance, I think, in  
23 everyone's interest of addressing this now rather than  
24 later so there's just more certainty moving forward for  
25 all the parties that are affected by potential POU

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1 investment in these types of control technologies.

2 MR. HOMER: Steve Homer with SCPPA. I just want  
3 to make sure the Commission understands the position  
4 that we're in, where the EPA is saying put in SCRs,  
5 which our estimate is \$750 million. The Petitioners are  
6 saying, "No, we can't do that." We're violating their  
7 version of the CEC rules. Very awkward position.  
8 Second, we're concerned about rate impact and we  
9 discussed converting to combined cycle gas. When the  
10 SCR issue first came up at San Juan, we went very  
11 rigorous examination of all the different alternatives  
12 and at first we got excited that, "Yeah, let's change to  
13 combined cycle up there." It was twice as expensive as  
14 the SCRs. Talk about rate impact. SCPPA, who has a  
15 little over 200 megawatts there, we're looking at over  
16 \$100 million which will go to the ratepayers, directly,  
17 we're a nonprofit. Combined cycle would double that.

18 MR. KNOX: One comment on the --

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

21 MR. KNOX: Yes, this is Bill Knox with ARB, and  
22 these are my own comments, but I also have a car that  
23 just failed smog and it failed smog a couple of years  
24 before, and I'd put in a catalytic converter and, at  
25 this point, you know, I'm not sure what it would

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1 require, maybe a catalytic converter and, let's see, the  
2 head gasket, and some other things. So at some point,  
3 it seems to me that the types of things that you need to  
4 do to be able to continue operating are, in fact, things  
5 that also extend the life. I don't know if this is a  
6 completely apt analogy, but, you know, at this point I'm  
7 going to get rid of the car because it's costing too  
8 much to keep it going legally, so anyway.

9 MR. MORROW: Let me follow up on that -- George  
10 Morrow, Azusa. I had a friend recently who said to me  
11 his catalytic converter was stolen and he said, "I'm  
12 going to get rid of my car" because the \$2,000 cost of  
13 the catalytic converter -- I guess it's got platinum in  
14 it and so forth now a days -- was not justified by the  
15 age of this car, so he's going to get a new car. Now,  
16 I'm also aware of folks that drive these almost brand  
17 new Jeep Cherokees which are a big target for catalytic  
18 converter thieves, you know, a one or two-year-old car,  
19 you get your catalytic converter stolen, you have to pay  
20 \$2,000, well, you do it. The car's life is far in  
21 excess of the cost of the retrofit, the catalytic  
22 converter. And that at this point is the determination  
23 of us involved with San Juan and the SCRs is that these  
24 are relatively new plants. Going back to my earlier  
25 comments, this is not Four Corners, Four Corners is 10

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1 to 15 years older than San Juan. San Juan is a  
2 relatively new plant in terms of the industry and, you  
3 know, we can justify putting on a catalytic converter  
4 vs., you know, getting a new plant and shutting it down.  
5 So, thank you.

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

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

12 MR. MORROW: Make it perform.

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

17 MS. VACCARO: I'm going to interrupt you for  
18 just one moment, sorry, we need to cover the  
19 housekeeping. For those of you on the telephone, it's  
20 been so easy for us to hear each other so far, but we  
21 are starting to get some background noise, we would  
22 greatly appreciate if you hit the mute button. We don't  
23 hear rustling, background conversations, or any other  
24 noises going on in your homes or work places. Please do  
25 not hold the hold button. But it was very difficult to

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1 hear a participant who is only three people away from me  
2 because I was hearing interference coming through the  
3 telephone line. Thank you.

4 MR. HOWARD: Thank you. Randy Howard, LADWP.  
5 So, on the Navajo Generating Station, if you just follow  
6 the EPS rules, LADWP contractually could stay until  
7 2019. We have evaluated it and we've done that publicly  
8 with our customers and our stakeholders. The potential  
9 costs that could be applied to that facility to meet  
10 some of these compliance obligations and recognizing  
11 that, really, we feel the requirements of SB 1368 still  
12 wouldn't allow us to go beyond the 2019 date because all  
13 of the members have to enter into a number of new  
14 contracts and we think the law clearly says that we  
15 couldn't do that.

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

21 And we clearly do understand and we do  
22 recognize, but these are investments that we don't  
23 necessarily believe would extend the life of the assets  
24 that are there today, but for us we have an end date and  
25 the investments won't pay off for our ratepayers. It

1 doesn't make sense for us to make those investments, so  
2 the decision has been made to divest early.

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

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

20           MR. HOMER: Steve Homer with SCPPA. To go back  
21 to the automobile analogy, it's a very apt one, power  
22 plants and cars both, the end of their life is an  
23 economic one. When it starts to cost more than you're  
24 willing to pay to keep it going, and you trade in that  
25 car, or you close down that power plant. It's the same

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1 type of analogy.

2 MR. LONG: If I may, thanks, yeah, this is Noah  
3 Long from NRDC. So I think, first of all, I appreciate  
4 all of the discussion of these various power plants, I  
5 hope it's useful. But I think, just as a preliminary  
6 matter, you know, we're sort of jumping back and forth  
7 between DWP's interest in Navajo and, you know, I'd love  
8 to commend DWP for their plans to make an early exit out  
9 of Navajo, and then, you know, Azusa's discussion of its  
10 participation in San Juan, you know, we've heard a  
11 little bit less about what's happening at IPP. You  
12 know, I think each of these interests is different, the  
13 rules that are facing each of these plants and the  
14 timelines are a little bit different, and I think the  
15 presentation from EPA hopefully highlighted that a  
16 little bit. And that's why in our opening comments and  
17 our reply comments, we thought it would be useful for  
18 the Commission to sort of have a little more information  
19 from each of the POU's on their unique situations with  
20 regard to these plants because I think having a sort of  
21 free flowing conversation, while useful, I just want to  
22 make sure we're not sort of confusing the issue of back  
23 and forth because, you know, because DWP is, I think,  
24 doing the right thing with regard to Navajo, you know,  
25 that doesn't necessarily implicate how folks will

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1 participate with regard to San Juan. Their interests  
2 are different, the plant is different, the rules that  
3 are affecting it are different, and the costs of  
4 operation are different. And so I think, you know, it  
5 might be useful going forward to make sure that we have  
6 that information and the investment plans for each of  
7 those plants available before the Commission so that we  
8 can sort of compare them more accurately and make sure  
9 that we're, as we've said before, sort of transparently  
10 and consistently applying the EPS with regard to each of  
11 these plants and their unique situations. So I hope  
12 that that becomes the shared objective of the Commission  
13 going forward.

14           And I just want to respond quickly, if I can, to  
15 Ms. Berlin's comments with regard to significance. I  
16 agree, you know, the term "significant" doesn't show up  
17 -- the question is whether or not these are new  
18 ownership investments and I think the comment just now  
19 sort of highlights that, there's not a clear end date  
20 for the operation of these plants for a physical  
21 characteristic, they can be operated maybe not  
22 indefinitely, but for a very long time if you continue  
23 to maintain them. So there is inherently some  
24 subjectivity with regard to what the end of a plant is  
25 and what life extension means, and that's why I think

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1 it's so important that the Commission evaluate this  
2 question of operational requirements as, I think, Mr.  
3 Vespa has said very eloquently, operational requirements  
4 are -- sorry, legal operational requirements -- are very  
5 much like physical operational requirements in that they  
6 can require very significant investments and, again, I'm  
7 using the word "significant," but very significant  
8 investments that can constitute new ownership investment  
9 in these plants. And the reason I've returned to this  
10 word "significant" is, while I agree a \$5.00 investment  
11 in a plant could constitute a new ownership investment,  
12 potentially as much as a \$100 million investment, I  
13 think in my experience with working with Edison on Four  
14 Corners, you know, it would be extraordinarily  
15 burdensome for this Commission to evaluate every new  
16 purchase of toilet paper or, you know, every one dollar  
17 line item on your budgets, I think that would be  
18 extraordinarily burdensome for the POU's here. And I  
19 think it's not in anyone's interest to do that kind of  
20 evaluation. So I think a certain threshold and, you  
21 know, I'm not suggesting what that threshold is, sort of  
22 lays on the table whether or not these investments are  
23 significant enough to scrutinize. Now, if folks  
24 disagree and they think the only way to determine  
25 whether it's a new ownership investment has nothing to

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1 do with its monetary value and we should just look at  
2 every single dollar, you know, I think we're open to  
3 that, I think that that just opens up the detail at  
4 which the Commission would have to evaluate investments  
5 to a level that probably wouldn't be in anyone's  
6 interest. And that's why we've been using this term  
7 "significance."

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

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1 Mr. Knox so you can tell us your availability.

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

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

16 Again, this was a noticed proceeding and I think  
17 what is really important for everyone to keep in mind is  
18 that this is a public process. I appreciate and think  
19 it's wonderful that the parties have had some discussion  
20 on their own that are parallel to this public process  
21 perhaps because the public process is cumbersome,  
22 perhaps because there are things that are worthy of  
23 discussion that you don't want to disclose in the public  
24 process, but it is a public process, there is a notice,  
25 there is a set agenda, and I think it's important that

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1 we get back to it while, again, allowing everybody to  
2 have sort of this free flowing discussion. The  
3 objective is not for you to come in as if this were a  
4 court and argue your case. I think what we want to do  
5 is understand the high points, reinforce what we need to  
6 know, and I guess sometimes I find that I might write  
7 something on a piece of paper and I think I've said  
8 everything I have to say. And then I think about, but  
9 what would I say if I was just saying it out loud, and  
10 it's completely different, or I hit different points, so  
11 I think we would like you to consider that as we move  
12 forward. You've given us a lot of written comments and  
13 you don't have to repeat them all, but we do want to  
14 make sure that we're understanding everything that  
15 you're intending to say.

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

21 COMMISSIONER PETERMAN: Ms. Vaccaro, I just want  
22 -- this is Commissioner Peterman and I haven't really  
23 said anything yet today, so I just wanted to interject  
24 here and say I second your comments. I would like to  
25 make sure we cover the topics that are raised in the

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1 notice. I appreciate that everyone will have additional  
2 information on everything, and we could talk about this  
3 for days and this will not be the only time we'll have  
4 this discussion. And so I've appreciated what I've  
5 heard so far, but I would encourage the Hearing Officer  
6 to keep us moving us along, as well.

7 MR. PEDERSEN: Pardon me, could I just say one  
8 thing? Just before you cut in, I thought we had a  
9 moment in this morning, and that was Noah saying that he  
10 recognizes that the Commission shouldn't want -- we  
11 wouldn't want -- the POU's wouldn't want to be coming in  
12 with, you know, every little thing, and that's really a  
13 significant statement. I don't want that to be lost  
14 because certainly I think we all are hoping that  
15 something we come out of today with is a narrowing, if  
16 not a resolution of issues. You know, as you no doubt  
17 got from our comments, we were profoundly concerned  
18 about the breadth of what the Sierra Club and NRDC were  
19 asking for, and it actually went far beyond their  
20 petition. On page 2 of their opening comment, they ask  
21 for information about all past and planned -- that means  
22 the future investments from POU's and noncompliant power  
23 plants, any and all information and alternative  
24 investment options considered, or under consideration,  
25 including alternative investments, a full review of all

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1 obligations, options, opportunities, it was a very  
2 expansive list. And what I was hearing from you, Noah,  
3 just now is, okay, can we put some reasonable bounds on  
4 this, and you would be willing to put some reasonable  
5 bounds on it. I would raise a question as to whether  
6 the reasonable bound should be, you know, a dollar  
7 limit, or whether instead it should be something like  
8 what we were talking about when we were talking about  
9 the SCRs. You know, a situation where there was a  
10 legitimate basis to say there was a question that would  
11 call for a Section 2907 determination by the Commission.  
12 You know, from my point of view, there's so many of  
13 these that are like your bicycle chain, they're just  
14 routine maintenance, and so maybe having a standard like  
15 that would be better than just a monetary standard --

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

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

20 MS. VACCARO: I think you're absolutely right  
21 and one of the things that I'm hoping not to do in this  
22 process is interrupt or talk over, but I do need to keep  
23 it moving and here's something that I want to ensure.

24 What I did was call out that that was teeing up a  
25 discussion, and I think that's what Mr. Long did, I

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1 think he teed that up in comments, as well. And we will  
2 be able to discuss that further, so thank you for  
3 underscoring that you see a place where there might be,  
4 if not some consensus or some good room for movement, I  
5 still need to keep everything moving and I really am  
6 hopeful that I won't be interrupting or talking over  
7 anyone today because I don't think that will be  
8 productive.

9           Again, just starting with the topic, I guess,  
10 again, the first one that was in the workshop notice,  
11 whether to establish a filing/reporting requirement for  
12 local publicly-owned electric utility investments and  
13 non-deemed compliant power plants, regardless of whether  
14 the investment comes within the meaning of covered  
15 procurement. We've got some very interesting comments  
16 on this point, but I think what we'd like to do is  
17 really hear from all of you and, again, this is  
18 something that I think didn't go unnoticed by the  
19 Commission. There was somewhat of an indictment from  
20 NRDC and Sierra Club, "You didn't go far enough in this  
21 notice in asking for information," that you were hoping  
22 for more. I think what we're doing is showing a  
23 willingness to hear from you, but also to understand why  
24 the POUs are saying, "No, you pretty much have enough,  
25 and if there is going to be more, let's talk about what

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1 that should be." I think that is the next set of  
2 discussions that we have. But the first one really has  
3 to do with the perception of the need for establishing  
4 such a filing requirement and what does that mean to the  
5 POUs if we did. And more so, what's the middle ground?  
6 I think that it's easy to get polarized, but I don't  
7 know, and maybe you can't always sort of split the baby,  
8 but if we can, I think that's where we need to start  
9 this discussion as opposed to reiterating the polarized  
10 views. So we'll start over here to my right, and let's  
11 make it a discussion, it's not an argument, you're not  
12 persuading or convincing, I think really think about it  
13 as ensuring that the Commission and the Commissioners  
14 understand.

15 MR. PEDERSEN: And certainly, in our view, the  
16 answer to that first question is no, there should not be  
17 a filing requirement. The purpose of SB 1368 was not to  
18 have people coming in reporting on every single  
19 investment they were going to be doing in a noncompliant  
20 power plant. The purpose of SB 1368 was to avoid the  
21 making of investments that would be to the financial  
22 disadvantage, actually, of the POUs and their ratepayers  
23 because we would have coming along a GHG regulation that  
24 might obviate being able to actually take advantage of  
25 that investment, so there was financial risk. So what

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1 we're supposed to do is evaluate, we're supposed to  
2 self-implement SB 1368 and the regulation by evaluating  
3 our investments to determine whether they're routine  
4 maintenance, fixing our bicycle chains, or whether they  
5 aren't. And certainly we are given an opportunity in  
6 the regulation to come in with the request for  
7 evaluation where there is cause for doubt. And that's  
8 the beauty of the regulation, it's focused on the  
9 situations where there is cause for doubt. You know,  
10 you've got the bright line on one side, it's routine  
11 maintenance, you know, maybe in some instances some  
12 might not think it's such a bright line, but we  
13 certainly thought turbine blades was a bright line  
14 routine maintenance and the Commission certainly agreed  
15 with that in the FSOR. Okay, on the other hand, you  
16 have investments that extend the life for more than five  
17 years, for example, you know, what is proscribed? To  
18 convert a base load -- to convert a peak plant to a base  
19 load. Those bright lines are established in the  
20 regulation. It's where we have the gray areas that were  
21 to come in -- you know, in so many instances we don't  
22 have gray areas, and why would you want us coming in  
23 where there is no gray area? So we think the regulation  
24 has been working, it has succeeded, it is preventing --  
25 it is doing exactly what the legislature wanted, it has

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1 prevented financial investments that would be put at  
2 risk by the GHG regulation and by the Cap-and-Trade  
3 Programs, specifically. It's been working and so  
4 something we should steer away from is a really  
5 counterproductive filing requirement that would require  
6 us to come in with each and every investment that we  
7 might be making, no matter how clearly it was on one  
8 side of the line, or on the other side of the line.

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

12 MR. PEDERSEN: Thank you.

13 MS. VACCARO: -- yet -- there's a yet -- yet it's  
14 one perspective and, while it's one perspective that is  
15 shared, it's not the only perspective because, if it  
16 were, I don't think we'd be sitting here today, and I  
17 think that's really sort of the heart of it, as we're  
18 hearing NRDC and Sierra Club say thanks for telling us  
19 all of that, and we get that you're telling us there's a  
20 level of transparency, and that these are parts of  
21 public processes, but from their perspective it should  
22 mean something to the Commission that there hasn't been  
23 any filing to date, that there hasn't been anybody  
24 coming into the Commission. And I think we do need to  
25 hear more about that -- why is that significant? Why do

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1 we not just believe the POUs that there hasn't been  
2 reason in these murky gray areas haven't presented  
3 themselves yet? Because I think you really are at  
4 extremes in terms of viewing what the perceived issue or  
5 problem is.

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

20 And I was concerned, it was interesting to hear  
21 the different view of the environmental compliance  
22 requirements and whether that would extend the life or  
23 not. I mean, I have thought coming in here it was just  
24 a no brainer, of course it's extending the life, you  
25 know, it would be illegal to operate -- but there's a

1 dispute there, obviously. And under the current regime,  
2 maybe the POU just thinks in their view this isn't  
3 covered, I don't even have to ask. And so I think one  
4 thing we were looking for is to make a more informed  
5 decision about how reporting might proceed, and we're  
6 sensitive to burdens and so on, and are willing to kind  
7 of think about that, is to actually have the information  
8 upfront about what have the historic investments been,  
9 what are the planned investments in the future, what are  
10 all the alternatives in the future for some of those  
11 planned investments, which would allow us to actually do  
12 the rulemaking based on information, rather than what  
13 we're hearing is just a lot of anecdotes -- this is  
14 working, you know, this isn't covered, and we're  
15 constantly in a position of having to rely on the POUs'  
16 assertions absent reporting or any other types of  
17 providing information. So that's our concern. And Noah  
18 will certainly say more.

19 MS> VACCARO: Before you say anything, Mr. Long,  
20 here's my question, I guess. This is, you know, treat  
21 me like I'm the slowest person in the room because  
22 sometimes, you know, I really can be. You have public  
23 agencies that are subject to a number of laws that  
24 relate to the conduct of daily business, they have a  
25 number of official duties, they have to comply with the

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1 Brown Act, and they do a lot of public meetings. Why is  
2 it that all of that information that is publicly  
3 available -- how is it that it's not informing your  
4 perception of the issues? I mean, is it that you're not  
5 able to get information to -- is it that you want the  
6 Commission to undertake that task? What's not available  
7 in the public domain to help inform this set of  
8 inquiries that you'd like the Commission to engage in?

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

21 MS. VACCARO: I think you're absolutely right if  
22 the issue is enforcement, but I guess I understood, I  
23 guess, a couple of things. It seemed to me that one of  
24 the issues that you're raising had to do with the  
25 transparency of the information that's provided, as

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1 well, not just the transparency of enforcement by the  
2 Energy Commission. Perhaps I misunderstood that, but it  
3 seemed as though you were talking about two  
4 interrelated, yet distinct things.

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

21 MS. BERLIN: Can I ask a clarifying question?  
22 And that might help -- this is Susie Berlin -- to better  
23 understand what the reporting process is that you're  
24 trying to envision. How does information regarding  
25 alternatives and deliberation on investment alternatives

1 play into whether or not it's a covered procurement?

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

21 COMMISSIONER PETERMAN: Randy has been waiting a  
22 long time.

23 MS. BERLIN: Can I just do a quick follow-up on  
24 what he was just saying, since Randy cut in front of me  
25 last time? No, just kidding.

1           MR. HOWARD: I can do that too. Well, a couple  
2 things. And I'll just go to just our view -- having  
3 been through the entire legislative process on SB 1368  
4 myself, having sat at this table multiple times during  
5 the rulemaking of SB 1368 in this room, and neither one  
6 of these gentlemen over here were the representatives  
7 that were sitting at the table at the time, we went  
8 through all this, and we went through it in great detail  
9 with more than sufficient discussion and debate, and we  
10 came forward with the existing rules that I do think are  
11 working and remain applicable. The CEC has the  
12 authority, and they've done that, to enforce. They've  
13 set the standard of 1,100 pounds per megawatt hour.  
14 They've identified how to quantify those emissions and  
15 accurately measure those standards, they've clarified  
16 what constitutes base load power. They clearly put  
17 those in place; part of those rules, though, also say a  
18 new ownership investment does not include routine  
19 maintenance. We went through multiple iterations and  
20 meetings as to routine maintenance and we clearly -- and  
21 the Commission at the time clearly decided that was not  
22 pertinent to the requirements to meet the statute, that  
23 the POU's have very open, very transparent processes for  
24 making expenditures. We have multiple public meetings  
25 where we vet our budgets, they lay out in great detail

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1 these expenditures. When we have problems with our  
2 plants or future investments, those are public meetings,  
3 they are in LADWP's case, they are televised and they  
4 can be webcast and they follow the Brown Act. It is not  
5 difficult to find out how we invest our money, how we  
6 expend our funds. Both of you have had that opportunity  
7 to look at that. We have been subjected to California  
8 Public Records Act requests related to these facilities.  
9 That's all available to you. So, from at least L.A.'s  
10 position, I'm really not sure what additional could be  
11 provided here, or to the CEC, that would change any  
12 opportunity that is available today because we are  
13 public entities, we don't profit from hiding or  
14 withholding information, I don't bet a bonus, I'm a  
15 civil servant, so there's really no motivation there to  
16 do so. And I don't think it would be useful time spent  
17 on behalf of the CEC staff's time. Again, if the CEC  
18 staff would like to look at our annual budgets, they're  
19 available to you, they're uploaded on our website, and  
20 they will lay out the expenditures for these facilities.

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

23 MR. KNOX: This is Bill Knox, ARB again. It  
24 seems to me going back there is, in fact, a gray area,  
25 though. There's -- and one of them -- you know, it

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1 occurs to me that it's one thing to take existing  
2 pollution control equipment and to fix it so that the  
3 plant can continue to be operating, but it's another  
4 thing when new regulations are promulgated and  
5 particularly if they involve considerable expense, it  
6 seems to me that there may be a difference between those  
7 two situations and what might be considered to extend  
8 the life of a facility for five years. You know, again,  
9 I do see that there -- you've got to both have the  
10 equipment that allows you to operate and there are  
11 certain kinds of major repairs, clearly, without which  
12 you couldn't -- which would, in fact, extend the life of  
13 a plant more than five years. And it seems that case  
14 can also be for new regulations that require new  
15 pollution controls, as well.

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

22 MR. KNOX: Right.

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

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

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

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

20 MR. PEDERSEN: And we already established that,  
21 yes, I mean, that is an example of where you might use  
22 2907, you know, we haven't come in for 2907 because no  
23 decision has been made about whether we want to pursue  
24 the SCRs, but that could be a 2907 request for  
25 evaluation. It could also be a 2913 request for

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1 exemption, so there are a couple of different procedural  
2 routes that might be followed there. So we could just  
3 stipulate that that is an example of an unclear  
4 situation. But what I'd like to go back to, to Matt and  
5 Noah with, on question 1, is, okay, if we were to  
6 establish a filing requirement, first of all, we're  
7 talking about prospective, going forward, it's something  
8 that we would report on going into the future. I think  
9 we've determined that there needs to be a separating out  
10 of the de minimus that was something you indicated. I  
11 think that your category 3 here would obviously come  
12 out, a full review, it wouldn't be included. A full  
13 review of all obligations, options and opportunities for  
14 California POU's under their existing contracts,  
15 noncompliant power plants should the POU's claim they are  
16 contractually bound to make investments at the  
17 noncompliant power plants. That can't be information  
18 that you're asked to asking us to submit, that's  
19 information that would come in if we decided to pursue  
20 at 2913 exemption, which we have not done to date. If  
21 we do, you -- the Commission will get that information.  
22 So you can cross off number 3, we've crossed off past --  
23 so if we're talking about prospective investments, what  
24 is your thinking about the criterion or criteria that  
25 would be used to de limit what POU's would report on.

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1           MR. LONG: Well, just first I don't think  
2 there's a consensus that we've crossed off areas for  
3 reporting yet, so I think you've made that point, I  
4 don't think that we're in agreement on that yet on past  
5 reporting, or necessarily the requirements under  
6 contractual obligations. I think, you know, the  
7 question is under 2907, if the Commission waits until  
8 maybe one, or maybe two, or maybe all of the POU's decide  
9 to utilize 2907, then can the Commission be sure that it  
10 will have consistent application under the emission  
11 standard across the state? And it seems to me very  
12 possible that one POU would decide to report, another  
13 might not, and we would have potentially inconsistent  
14 decisions under that process, and that's why we thought  
15 having a reporting process that is more complete would  
16 be a way to guarantee consistent application of the  
17 standard across the state. Now, with regard to this  
18 question of what the threshold for reporting is, I  
19 think, you know, our view is -- I'm not an Engineer and  
20 my sense is that, if all reporting is too burdensome,  
21 then some -- then the Commission ought to either with  
22 its own expertise, or from the expertise of the POU's,  
23 recommend some reasonable threshold for reporting. And  
24 I think we're open to seeing your recommendations for  
25 reasonableness with regard to reporting, and I think for

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1 us that extends both retrospectively and with  
2 prospectively. But I think, you know, we'd like to see  
3 what you think that threshold is. We agree, you know,  
4 not every question of maintenance will come to the  
5 question, is really subject to whether or not there's a  
6 new ownership investment. But, you know, there's  
7 leagues of litigation with regard to new source review,  
8 which is not the same standard, but it has some  
9 similarities, and that all comes about because plant  
10 owners and operators, participants, have different view  
11 on what maintenance is, essentially. So I think the  
12 idea that that's crystal clear and going to  
13 automatically be consistently applied by all the POU's is  
14 one that we should question.

15 MR. VESPA: This is Matt Vespa. Just more with  
16 a question in terms of the stated burdens of reporting  
17 and, you know, we've heard that within their specific  
18 public processes, you're reporting this to the public,  
19 there are meetings, and so on, for these expenditures.  
20 You know, if that's the case, what would be the  
21 additional burden of then sending that information to  
22 the CEC, as well? It sounds like these reports are  
23 already getting generated for specific expenses. It  
24 wouldn't necessarily require additional work. I'm just  
25 kind of curious what your response to that is because

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1 we've heard a lot about time and all that other stuff,  
2 but it seems like these are getting generated anyway.  
3 So just curious what your thoughts were.

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

14 MS. VACCARO: I think you raise an important --  
15 this issue is actually important. I think it's one that  
16 at least the folks sitting over here want to explore  
17 just a little bit before we might get off track, is  
18 basically then you're talking about there's some level  
19 of significance that would have the POUs bringing  
20 something to the Board because not everything is brought  
21 to the Board. What are those thresholds? What are  
22 those levels? You used the word "significant" with  
23 respect to the turbines. Is that in the eye of the  
24 beholder? Is there something that's part of your  
25 established policies? Because if we're talking about

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1 thresholds, there's got to be one that's already being  
2 used, even if it's different for each POU, and I  
3 understand that. It appears to me that that is  
4 something that you could readily answer or point to.

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

24 MR. LONG: Can I ask a question about that? So  
25 just to clarify about 100 a year, about how many of

1 those do you think go to the Board?

2 MR. HOMER: Very few.

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

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

16 COMMISSIONER PETERMAN: I'd like to hear from  
17 the other utilities, is that their same procedure for  
18 deciding what to bring to the Board or not --  
19 Commissioner Peterman.

20 MS. BERLIN: Commissioner, I'm not certain  
21 exactly what MSR's technical procedure is, I know that  
22 they have very huge binder full of things that were  
23 approved by the MSR Commission, and they may operate  
24 differently, so I can't say what Steve has described is  
25 exactly what MSR does, as well. And I don't mean to be

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1 facetious here, but I do want to ask -- I just want to  
2 turn this around -- when you say a reporting or filing,  
3 what do you want to do with that information? Are we  
4 just going to be doing what the Governor is blasting us  
5 all for doing, is generating more reports, and  
6 generating more paper? What do you envision being done  
7 with this reporting and filing information? And at the  
8 same time, what is the added transparency of sending it  
9 from one public agency to another if what you're talking  
10 about is the information that is already part of the POU  
11 public agency process? And that is already part of what  
12 you've even said is a finite universe; we're talking  
13 about three different facilities. So I don't mean to be  
14 sarcastic or facetious in turning it around, but what do  
15 you want out of this? I mean, it's not just a paper  
16 flood, so there must be something that you want  
17 articulated that you're not seeing articulated, and  
18 that's what we need to get at. Because asking for  
19 everything past, present, and future is just too much.

20 MR. VESPA: I'll start --

21 MR. HOMER: Before you answer, I can help with  
22 MSR's process, even though I don't work for MSR. MSR is  
23 a great believer in belts and suspenders, much more so  
24 than SCPPA and, in an abundance of caution, they bring  
25 every capital budget item to their Board, and they

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1 declare that this is routine maintenance, they've gone  
2 much farther than SCPPA does. SCPPA thinks we can read  
3 English, here's the criteria, if it meets those  
4 criteria, and it's not a covered procurement. MSR wants  
5 to cover all the bases and so that notebook is a very  
6 complete record of everything that has happened at Unit  
7 4, which is not identical, but would be very similar to  
8 what's happening in Unit 3, same types of investments.

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

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

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

22 COMMISSIONER PETERMAN: Okay.

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

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1 so forth.

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

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

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

9 COMMISSIONER PETERMAN: Thank you.

10 MR. HOWARD: So similar for LADWP, annually we  
11 have quite an extensive vetting of our budgets because  
12 we do consider this mostly routine maintenance, most of  
13 it is planned out, and so it is outlined in those  
14 budgets. And the Board consideration is done once and  
15 some of them are brought up to kind of a gross level.  
16 We don't tell them everything the painters at those  
17 facilities are going to paint, but we say X amount is  
18 related to painters. You know, X amount you might buy  
19 paint, but we don't tell them every pipe you're going to  
20 paint, not in that detail to the Board. Then the Board  
21 would see expenditures that would be unexpected, so if  
22 there were unplanned outages or issues that would occur,  
23 that would have levels above the authority of our  
24 general manager for expenditure, so his authority is  
25 \$150,000. Anything above that, he has to take it to the

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1 Board. Then it becomes public domain. But similar --  
2 even the level of detail down is public domain through  
3 our Public Records Act, so it is available and I'm kind  
4 of with Susie as to what we're going to do with this  
5 information, what kind of story do we believe it's going  
6 to tell.

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

12 MR. MORROW: The question I have following up on  
13 Susie's for our Petitioners is, you know, what is the  
14 timing of this data? If we were to provide more data,  
15 more reports, you know, what is the process for these  
16 reports? Is this to be done in advance of us doing  
17 projects? I mean, you know, I talked about this in my  
18 earlier statements several months ago, I am an Engineer,  
19 and the complexities of operating a joint power plant of  
20 the scale that we are all involved in is enormous, the  
21 timeframes, the committees, the subcommittees, the other  
22 participants, you know, reviewing of alternatives to the  
23 extent that we would do that, you know, are we to submit  
24 to somebody in advance and say, "Can we do this?" Or,  
25 "Can we not do this?" Or is it just a reporting --

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1 because I don't see how that process would happen. I  
2 don't see how the timeframes -- you know, it would be a  
3 mess. And so is it just the reporting requirement? And  
4 then what happens if somebody disagrees with what we  
5 file and that it is or isn't --

6 MR. PEDERSEN: That is question 1, though.  
7 Question 1 is just establishing of a reporting  
8 requirement, it isn't an action item, it's just  
9 reporting.

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

17 MR. PEDERSEN: Okay, thank you.

18 (Break at 12:31 p.m.)

19 (Reconvene at 1:41 p.m.)

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

1 additional comments on the very first question.

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

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

21 Just to kind of circle back, what we're talking  
22 about here is a rulemaking where we're trying to devise  
23 potential reporting requirements, and I think, you know,  
24 we're not trying to devise the rule for reporting now,  
25 we're trying to figure out how to do that in this

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1 process. And so, in my mind, it makes sense to sort of  
2 see all the stuff that's going on, that has gone on  
3 historically, things that are planned, to devise the  
4 appropriate rule. So I think we should air at this  
5 juncture on providing information, you know, we  
6 requested as part of our Petition and comments, so we  
7 can make more informed decisions about how we may  
8 proceed to require a rulemaking, you know, if that's  
9 appropriate.

10 MR. PEDERSEN: And we think it would be more  
11 appropriate to decide, if we are going to make a change  
12 in the regulation, to identify exactly what would be  
13 appropriate for the Commission to seek. You know, we  
14 have three points here and actually at some point I  
15 would like to go back over them because I think it's  
16 completely inappropriate to be seeking what would  
17 actually be filed in the process of seeking an  
18 exemption, which we may end of doing. You know, this  
19 number 3 here on the Sierra Club and NRDC's list is the  
20 definition of, to my mind, what would be submitted if  
21 you were to submit an application for exemption under  
22 2913, and it ought to wait until then. So we'd like to  
23 have that discussion about what the rule would look like  
24 and exactly which ones of these points 1, 2, and 3 in  
25 the Sierra Club and NRDC opening comment would really be

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1 eligible for consideration for inclusion in the rule.

2 MS. VACCARO: I think that's probably a good  
3 place to start. I think not everyone has before them, I  
4 think, today the same information, different levels of  
5 preparation. So maybe to ensure that we're all speaking  
6 of the same things, if you wouldn't mind passing to me  
7 your paper with the three points, I can let everyone  
8 know what you're speaking of, they can pull their own  
9 copies up, and -- thank you -- and we can kind of go  
10 from there. I think sometimes it's easier to not keep  
11 talking about whether we ought to do something or not,  
12 let's just jump to the hypothetical of, I think, let's  
13 just assume that something is going to be required.  
14 Well, what's that going to look like? And I think you  
15 should also assume maybe you're not going to get all  
16 this retrospective data.

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

24 And I do agree with Mr. Long that I think that  
25 does go to some of the other discussion points and I

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

22 I think, let's look at this in two parts.  
23 What's wrong with what they're asking for, POUs? What's  
24 the problem with all of this? So why don't we start  
25 there. And then we can maybe parse each one and see if

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1 it's too much from the NRDC's perspective, maybe it's  
2 just right, I think let's start there and understand  
3 what the problem is -- if there is a problem.

4 MR. PEDERSEN: Okay --

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

14 MR. LONG: I'm happy to answer that question if  
15 you think it's appropriate. This is again Noah Long  
16 from NRDC. The point here is that we'd like to make  
17 sure that decisions that are made with regard to the EPS  
18 and, you know, I think before lunch we highlighted the  
19 different decision making processes at SCPPA, MSR, and  
20 DWP, we want to make sure that those decisions are  
21 consistent across the state, that they're all applying  
22 the same standard, that they meet the standard, and that  
23 they're available to be made in time before the  
24 investments are made going forward. And going back, we  
25 want to make sure that previous investment decisions

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1 have, in fact, met the standard. So that's what we're  
2 concerned about. To the extent that --

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

9 MR. LONG: There's a variety of ways that that  
10 could happen, you know, I'm used to practicing at the  
11 Public Utilities Commission, I'm not suggesting that  
12 this is going to become like the Public Utilities  
13 Commission, but the utilities file advice letters that  
14 are subject to protests, you know, they can file planned  
15 investments, planned actions that unless protested will  
16 proceed. There's options for -- there are other  
17 alternatives where you can first file an application and  
18 then seek approval. I think, you know, a number of  
19 those things might be possible, there are emergency  
20 filing possibilities. But I think, getting to the point  
21 here, we're looking at, of critical concern to NRDC and  
22 the Sierra Club, are a small number of very significant  
23 investments, those are the highest priority, you know,  
24 that we want this Commission to address in advance and  
25 we think it's to everybody's benefit to have clarity on

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1 that in advance, rather than having an after the fact  
2 determination on those very significant investments.  
3 Then there's a question of, you know, how are all the  
4 public utilities defining routine maintenance? And I'd  
5 love to go around the room and see if everybody thinks  
6 there's the same definition to routine maintenance and  
7 see if those decisions are being made in a consistent  
8 way and to see if the Energy Commission agrees with that  
9 decision. And I think the reporting context beyond just  
10 the new emissions controls, or new pollution control  
11 technologies, to the extent it is broader than that, it  
12 would be to ensure that that decision making process is  
13 consistent.

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

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

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

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

21 MS. VACCARO: I think while, again, it's useful  
22 to have dialogue, I think I'd like it structured. I  
23 think we started out with some contentions that some of  
24 the items, or some of the things that NRDC and Sierra  
25 Club are requesting appear to give the POU's great

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1 concern. I think we just heard that, which is why I  
2 went back and read what those three items were. I think  
3 that's where I'd like to start. Let's assume not that  
4 there isn't going to be a filing or a reporting  
5 requirement, let's assume that there is, because I think  
6 that moves the ball a little bit further down the road.  
7 What is it -- let's put some parameters on that, or give  
8 that, I think, some scope.

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

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

24 MS. VACCARO: Fair enough. Gentlemen, can you  
25 respond to that?

1           MR. LONG: Well, I'm not sure that I can. I  
2 mean, I think that was a question to the Commission  
3 about what kind of filing would be required. I mean, I  
4 think our point was, for the purpose of the rulemaking  
5 and, to be clear, those three questions 1, 2 and 3, the  
6 points 1, 2 and 3 that you read a moment ago, were our  
7 requests for information for the rulemaking to proceed,  
8 not our recommendation for what the future filing  
9 requirement would be. Our points 1, 2 and 3 were in our  
10 view the information that would be useful in deciding  
11 what sort of future filing requirement would be useful  
12 and for the future definition changes to cover  
13 procurement could be useful. And so that would simply  
14 be a filing within the context of this proceeding that  
15 then the Commission would use to evaluate whether, in  
16 fact, routine maintenance has been applied evenly,  
17 whether in fact other investments may for some reason  
18 trigger the EPS, and more definitions would be useful  
19 for the future definition of covered procurement, and  
20 also for the Commission to best determine when in the  
21 process a filing might happen, for example, you know,  
22 should it be 30 days? Should it be 90 days? Before,  
23 should there be certain investments that could be filed  
24 30 days after, or 90 days after? I think a  
25 retrospective analysis would allow for a better

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1 understanding of how the filing requirement could be  
2 best constructed to both be meaningful to avoid  
3 violations of the EPS and also not too burdensome.  
4 Without that retrospective analysis, I think it could be  
5 difficult -- somewhat difficult -- to say.

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

22 MR. LONG: Norm, could I respond to that?  
23 Sorry. I don't mean to say we want all the trivia for  
24 the purposes of doing the rulemaking. I think, to the  
25 extent that there are reasonable limitations on -- I

1 just wanted to make it clear that questions, or points  
2 1, 2, and 3 there, were the information that we were  
3 hoping to get for the rulemaking, not necessarily the  
4 same as a filing. I think now that that's clearly on  
5 the table, the question is, is there a reasonable limit  
6 -- to points 1, 2, and 3 -- to what information is  
7 reasonably necessary for the rulemaking? Now, I think  
8 so far --

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

14 MR. LONG: Right.

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

25 MR. LONG: I think that -- my point is that I

1 think it is. I think it's very hard to figure out the  
2 timing of the rulemaking, or the perfect limits on the  
3 rule -- sorry, the timing of the reporting requirement,  
4 or the exact limits of the reporting requirement,  
5 without having some information about the nature of the  
6 investments and the nature of the decision making  
7 processes at the various utilities. Without having that  
8 information, other than the couple of examples that  
9 we've heard today, or the couple of examples in the  
10 comments, I think it's hard to craft the perfect  
11 reporting requirement that would match the need for  
12 ability to make clear decisions at a statewide level  
13 that are consistent with the ability to not overburden  
14 the utilities. I think those two things are hanging in  
15 balance, but without better information about the kinds  
16 of decisions that are being made and the timing of those  
17 decisions at the POU's, it's hard to --

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

24 COMMISSIONER PETERMAN: This is Commissioner  
25 Peterman. I'm would probably personally go a little bit

1 further than that and say that we look at the  
2 information we have at hand and also see what minimum  
3 additional information would be needed to have enough  
4 information, or to think about going forward with any  
5 type of a reporting requirement because I do appreciate  
6 that there might be more information we would need short  
7 of all the information that's been requested.

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

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

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

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

8 MR. PEDERSEN: The --

9 MR. VESPA: -- could I just -- one more point?  
10 You know, and so I think that sort of asks for  
11 additional scrutiny of certain investments.

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

17 MR. VESPA: I --

18 MR. PEDERSEN: They understand they are subject  
19 to the law, they follow the law, they intend to follow  
20 the law, and they have been following the law. This law  
21 is being administered, it is being administered by the  
22 POU's.

23 MR. VESPA: I appreciate that, I was certainly  
24 not trying to trivialize anything, but what we heard  
25 earlier today was a disagreement over whether

1 investments in environmental control technologies are  
2 actually covered, so there are different interpretations  
3 of actually what the law would require, which is part of  
4 the purpose of this proceeding, to provide additional  
5 clarity for that. So, given that there seems to be some  
6 differences in how this is interpreted, and it seems to  
7 me even within the POU context, different views of what  
8 might trigger a procurement, what might trigger a  
9 request to the PUC -- the CEC, excuse me -- you know,  
10 that's kind of what we're looking for in terms of  
11 clarity, so we're all on the same page and there's more  
12 transparency.

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

20 MR. LONG: Yeah, so I mean, I think our point  
21 is, and you know, in the comments we focused on the  
22 recommendation that the CEC get some more information  
23 before making that decision, so if there's not going to  
24 be a process between here in making that decision on  
25 collecting information on the range of potential

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1 investments, I think we have to sort of make that with  
2 what we've heard so far. Today we got some information  
3 about we know that there's some very significant  
4 potential investments with regard to pollution control,  
5 we don't know exactly the plans for each of the plant  
6 operators, or owners, or participants for meeting those  
7 requirements. And like I said before, there's a whole  
8 range of possibilities for compliance from shutting down  
9 the plant, to converting to gas, to building very  
10 significant new additions to the facilities to meet the  
11 pollution control requirements. And in our view some of  
12 those would trigger the EPS and some wouldn't. So I  
13 think some guidance on that would be useful. I think if  
14 the Commission had further information on the kinds of  
15 decisions that have been made in the past, it would be  
16 also easier to decide whether or not other guidance  
17 would be useful, for example, on routine maintenance, if  
18 we knew how that decision was being applied across the  
19 various POU's, we might be able to determine whether or  
20 not additional guidance on routine maintenance was  
21 advisable. Without more information on that question, I  
22 think it's very hard for me to weigh-in about whether  
23 more guidance is necessary on routine maintenance. It  
24 seems to me that, at least with regard to the pollution  
25 control investments, it's pretty clear that more

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1 guidance is necessary.

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

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1 that respect. We can have a single standard. But I  
2 just feel like we're all over the place, the past, the  
3 future, the present, that we need to focus our --

4 COMMISSIONER PETERMAN: Before you answer that,  
5 this is Commissioner Peterman, would the POU's be able to  
6 provide what their respective decision making processes  
7 are, acknowledging that they are different?

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

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

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

17 MR. LONG: So, you know, our interest -- and I  
18 don't think this is going to be particularly satisfying  
19 for you, Susie, so I apologize in advance, but I think  
20 our interest is making sure that there's full consistent  
21 application and compliance with the EPS across all of  
22 the POU's that are subject to it, so the highest  
23 priority, if the Commission is interested in my  
24 prioritization of it, the highest priority would be the  
25 big future investments, the big investments that are

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1 coming up next. But that's not to say that, whether or  
2 not that application has been consistent over the last  
3 five years isn't important, it seems to me that that's  
4 relevant and important. And whether or not it's  
5 consistently applied with regard to other investments,  
6 other than the big new pollution control requirement  
7 investments, is also important. You know, for example,  
8 in our reply comments we cited the fact that we  
9 understand that there's been a significant outage  
10 potentially from an explosion at IPP that's leading to a  
11 real -- to a long term outage there, that's going to  
12 require some level of new investment at that facility,  
13 it may be happening already. We don't know whether --  
14 what the nature of those investments are, whether they  
15 potentially should be considered under the EPS or not,  
16 so to ensure that when situations like that arise, going  
17 forward, there's consistent application of the EPS, I  
18 would say that is sort of priority number two, below  
19 ensuring that there's really clear and consistent  
20 application with regard to the pollution control  
21 investments.

22 MR. HOWARD: If I could, Randy Howard, LADWP.  
23 Noah, just because you raise the issue, I'm going to  
24 have to respond to it, that on IPP, let's take that as  
25 the example. Again, it's a contract with a termination

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1 date for all the California participants. It's the  
2 facilities owned by all the Utah participants, there's  
3 36 participants or so that own it, we don't own it. We  
4 have a contract, take or pay, by the output. So they  
5 had a failure in the turbine that has caused that unit  
6 to be down since January, it will be brought back up  
7 sometime May or June that has required a repair. But  
8 they're just repairing it to bring it back to operation.  
9 And I'm just so confused as to what you're saying is a  
10 new investment. This -- it had a failure to a  
11 mechanical part, an electrical part, most of that will  
12 be claimed through insurance anyhow, and that will be  
13 covered under warranty, so it's not necessarily a  
14 financial impact. But what would you expect the CEC to  
15 do about that? Do you think they're going to make a  
16 decision -- a financial decision impacting my ratepayers  
17 over that? I'm going to bring it somehow before them  
18 and say, "You know, the unit is down," and it's a  
19 decision to repair it or not? It's not really our  
20 decision, it's Utah's decision, they own the facility,  
21 it's not L.A.'s decision to bring that back. So what  
22 would you expect the CEC is going to do with that? I'm  
23 just --

24 MR. LONG: Can I respond?

25 MR. HOWARD: Yeah, go ahead.

1           MR. LONG: Sure. So two points, one is, you  
2 know, I think your contention is that because of the  
3 participant agreement with regard to IPP, it sounds like  
4 you're saying that any investment in that facility up  
5 until the contract end date wouldn't -- the EPS would  
6 not apply. And I think that that's not a contention  
7 that we agree with, so I think that's number one.  
8 Number two is, you know, what we're asking for is -- and  
9 I'm really not trying to imply that whatever is  
10 happening right now is in violation of the EPS, I don't  
11 know what's happening, and I appreciate the information  
12 on it -- all we're saying is it would be useful to have  
13 a statewide transparent forum for information of that  
14 sort, to say, you know, there's been an outage, it's  
15 going to be covered by insurance, here's the nature of  
16 it, here's why the EPS doesn't apply, and so  
17 stakeholders like ourselves and the CEC can ensure that  
18 it's being consistently applied throughout the state.

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

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1 the Energy Commission has that particular information  
2 that you were just referring to about --

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

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

14 MR. HOWARD: I think there continues to be some  
15 clear confusion as to what SB 1368 authorizes or asks  
16 the Energy Commission to do vs. the CPUC. The CPUC  
17 obviously carries a very different role of the  
18 utilities, I mean, they review the ratemaking, they  
19 review the procurement plans, they have a lot of  
20 additional elements that are not provided to the Energy  
21 Commission, and so to somehow imply that the Energy  
22 Commission should take on any of that responsibility, we  
23 do have governing authorities that allow that  
24 jurisdiction -- in L.A.'s case, I mean, we've been doing  
25 it well over 100 years. And so this statute, 1368,

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1 didn't transfer any of that authority from my reading,  
2 and I'm not an attorney, but what it clearly says is for  
3 the CEC to do a couple things, and to set a standard,  
4 set the criteria under which you're going to evaluate  
5 us, but it doesn't say, "Get involved in every decision,  
6 every process for the operation of the utility." I  
7 mean, again, I was sitting in this room with the  
8 Commissioners as we walked through this process and,  
9 clearly, nobody wanted to get involved in the  
10 operational aspects of the utility and the needs of the  
11 utility, and the statute itself clearly says, you know,  
12 there is criteria you have to consider the reliability  
13 of the Grid and the cost to the ratepayers in any of  
14 those decisions, and the decision was made that for the  
15 reliability of the Grid, the operational folks needed to  
16 do the expenditures to bring those units up, keep those  
17 units operation. It was never expected to bring any of  
18 that back to the Commission.

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

23 MR. PEDERSEN: Well, that was our perspective,  
24 that's how we were taking those three points, we were  
25 taking it from the standpoint of being a prospective --

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1 leading to a discussion of a prospective reporting  
2 burden --

3 MS. VACCARO: Yes.

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

8 MS. VACCARO: Of course.

9 MR. PEDERSEN: And I think we've had NRDC and  
10 Sierra Club admit that, you know, we don't want to get  
11 into the underbrush, you know, we were interested in the  
12 more important investments, however we define more  
13 important, and there's a dollar way of doing it and  
14 there's another way of doing it that, to my mind, is  
15 more operational, has to do with whether there is a  
16 legitimate question as to whether it constitutes routine  
17 maintenance. And what I was suggesting is we go down  
18 this list and analyze this list. I understand what Noah  
19 was saying, what he's saying is, well, he generated this  
20 list as being his list of what he would like to see all  
21 of us produce for this proceeding, that somehow we would  
22 wade through it, and then move on to whatever the next  
23 stage would be. But I'm using this list as a way to get  
24 at, okay, how would we develop a reporting burden, a  
25 reporting requirement? And it would be, as I'm seeing

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1 it, a reporting requirement. It is not an advice  
2 letter, it is not an application, you know, and for a  
3 very important reason and it goes back to what Randy was  
4 saying, there are entities that are assigned the primary  
5 responsibility of determining a POU's compliance with  
6 the Regulation, and that is the Boards of the Publicly-  
7 Owned Utilities. They are the ones that are charged in  
8 the first instance with making sure that the POU  
9 complies with the Regulation. And we believe that it  
10 has been done across the board to date. So that's  
11 another reason why we're focused prospectively only. So  
12 if we're going to start talking about a reporting  
13 burden, we think, Kourtney, you're on the right track,  
14 let's look at the alternatives for what might be  
15 reported, and start to identify what is agreed upon as  
16 being trivial or not necessary, what is perhaps on the  
17 flip side agreed upon as being significant.

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

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

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1 would be -- that implies -- pardon?

2 MR. MORROW: Current investments, but not  
3 planned.

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

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

21 The other comment I was going to make, and this  
22 might be my chance, is there seems to be again a lot of  
23 inferences that the CEC has done something wrong, or has  
24 not done their job, I heard that very clearly, I heard  
25 that very clearly, I'm sorry if I drew the wrong

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1 conclusion, but you heard Randy say it, and I said it in  
2 my opening comments, we think this has been handled  
3 appropriately, the CEC has taken the law and they've  
4 implemented regulations, they've made definitions,  
5 they've got a process, the terms are there, and I don't  
6 know that anything, again, that there is a problem. And  
7 so, you know, maybe the bigger question is, *is* there a  
8 problem. And I like the way things have been going and  
9 -- thank you.

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

14 MR. PEDERSEN: Okay, now then when you talk about  
15 -- once you've eliminated everything we've done back to  
16 2007, and we're talking about a rule that's going to be  
17 prospective, in effect, then you have to ask the  
18 question, well, are we asking for a POU to report on an  
19 investment after it's been made, or before? And  
20 frankly, you get a lot more precision if you make it  
21 afterwards and also, you know, again, the way the  
22 statute was structured is it's the POUs that are charged  
23 with responsibility for complying with the statute; the  
24 way the Regulation is structured, the POUs are charged  
25 with complying with the regulation. And so what you

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1 would do is you would tell the POUs to comply with the  
2 Regulation, and they would go out and make a decision  
3 that, "Oh, this is a routine investment," they would  
4 make it and they would report it to you. And so it  
5 would not be in the nature of an advice letter where,  
6 you know, like when SoCal Gas or Southern California  
7 Edison Company comes in and asks if they can do  
8 something prospectively in the future, would not be in  
9 the nature of a prospective request for permission, it  
10 would be reporting.

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

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

18 MR. LONG: Sure. Noah Long, NRDC. On that last  
19 point, first of all, I think the Regulation interpreting  
20 the statute currently sets about that structure that  
21 you've just indicated, Norm, but it's not my view that  
22 that's required by the statute, and I think the statute  
23 says quite clearly that enforcement and compliance is  
24 the responsibility of the Energy Commission. Now, to  
25 the extent that they decide -- the Energy Commission

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1 decides -- to have a prospective or retrospective  
2 reporting requirement in order to ensure compliance,  
3 that's a separate issue. And I would just add, to the  
4 extent that any reporting requirement -- and the current  
5 regulations are sort of one end of that spectrum, the  
6 current regulations essentially say "here's what would  
7 count, you decide if a particular investment is covered  
8 or not, let us know if you think it is, and then we'll  
9 take a look at it. If you don't think it is, then we  
10 don't need to see it and, once it's done, we may never  
11 see it within the Energy Commission." Now, a  
12 retrospective reporting requirement that you're  
13 indicating would take it one step closer so that at  
14 least the Energy Commission would see after the decision  
15 has been made whether or not an investment was deemed to  
16 be a covered procurement or not, and I think that shifts  
17 -- that still, I should say, leaves considerable risk  
18 that the POU's will interpret the Regulations or the  
19 statute differently, but to the extent that there is a  
20 different interpretation of the Regulations, or the  
21 statute, the Energy Commission would at least know right  
22 away in the sense that -- and a stakeholder would be  
23 able to see that afterwards. So that leaves some level,  
24 you know, some level of risk for inconsistency  
25 throughout the POU's.

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1           Now, a prospective reporting requirement would  
2 provide for the least risk because each of the publicly-  
3 owned utilities would ensure in advance of its decision  
4 making process that it would have the Energy  
5 Commission's agreement that it was interpreting the  
6 statute in a consistent manner. And we see some  
7 benefits to that, particularly in light of these very  
8 significant new investments that are coming up. And I  
9 would just say, you know, the Energy Commission doesn't  
10 have to apply the same reporting standards to all  
11 investments, it may be that many investments -- they ask  
12 for retrospective reporting, even for the majority of  
13 investments, but they might set a certain threshold that  
14 says for certain levels of investment, we want advance  
15 notice to ensure consistent application of the rule.  
16 And I think that would be very clearly within their  
17 responsibility and in their authority under the statute  
18 -- although it would be separate from the reporting  
19 requirement as it stands now.

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

22           MS. VACCARO: Please introduce yourself.

23           MS. BERLIN: Okay, sorry, Susie Berlin. We had  
24 that discussion back in 2007 about the prospective  
25 reporting and whatnot, and I don't want to go back to

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1 the transcripts, but I distinctly remember this debate  
2 and part of the reason why there is no prospective  
3 reporting is because the statute itself very clearly  
4 says, for example, on the part of the IOUs that the PUC  
5 has to approve everything, but there's no corresponding  
6 application with regard to the CEC's role over the POUs.  
7 So the whole notion was that, if POUs wanted certainty  
8 -- because there were some that said they wanted  
9 certainty in the case that there was any ambiguities,  
10 and they felt that there were ambiguities -- 2907 was  
11 born and that's where that certainty comes from. So I  
12 just -- I know we're talking about changing it and  
13 that's what your whole premise is, but I was just saying  
14 that this is not something that is coming up for the  
15 first time, that issue was debated back and forth, and  
16 the Regulation itself draws a distinction between how  
17 those issues are covered.

18 MR. HOWARD: If I could, Randy Howard, LADWP.  
19 During the original EPS rulemaking in 2007, LADWP and a  
20 number of the parties that are around the table today  
21 expressed concerns that routine maintenance includes  
22 necessary and beneficial expenditures to ensure  
23 continued safe and reliable plant performance and  
24 operation, and that such expenditures must be allowed to  
25 go forward under the EPS. The CEC did agree and

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1 responded -- and this is their quote -- "The Energy  
2 Commission understands LADWP's concern that certain  
3 maintenance activities not be precluded by these  
4 Regulations, therefore under Section 2901(J)(iv)(a) has  
5 been modified in the 15-day language to make explicit  
6 that routine maintenance does not trigger the EPS.  
7 Instead of having to apply for an exemption for  
8 maintenance activities that would otherwise trigger  
9 Energy Commission oversight, these activities are  
10 exempted outright. This should also address any due  
11 process concerns, as the POUs do not have to wait for an  
12 exemption to be processed." We wouldn't have that  
13 concern of waiting for the process. Further, the CEC  
14 recognized that the Legislature's intent was to prevent  
15 backsliding and a locking into new long term commitments  
16 in high emitting resources in advance of the enforceable  
17 greenhouse gas emission cap under AB 32. We all knew AB  
18 32 was coming. The Legislature recognized that  
19 establishing the Regulations to achieve the AB 32  
20 statewide 2020 emission cap would take several years, so  
21 the CEC provided additional clarification to us. The  
22 record is replete with comments from the POUs that, if  
23 they are not allowed to perform routine maintenance on  
24 their facilities in both reliability and their ability  
25 to comply with environmental laws. So we clearly had

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1 this discussion on environmental laws would degrade, SB  
2 1368, and this is the quote also from the CEC, the  
3 Commission at the time, "SB 1368 is not intended to shut  
4 down currently operating power plants. It's focus is  
5 ensuring that substantial investments are not made that  
6 would lead to further cost when AB 32 or a similar  
7 program establishing a greenhouse gas emission limit is  
8 implemented. Routine maintenance may include replacing  
9 parts when they wear out. The POU's are not prohibited  
10 from maintaining the operation of their power plants  
11 simply because there might be an incidental increase in  
12 capacity or investments that were necessary." And these  
13 were the quotes and the activity at the time.

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

24 MR. LONG: You haven't intended to allege that  
25 point, just to be clear.

1           MR. HOWARD: That seems to be the purpose of a  
2 reopening. So I just wanted to read the routine  
3 maintenance, how it came about, what was expected at the  
4 time from the Commissioners that were seated at the  
5 time, and the understanding of the legislative intent.  
6 And so it was meant to keep the plants operating. There  
7 was never an issue as to an investment that would be  
8 there to keep -- so I have a failure on a piece of  
9 equipment at IPP, or IPP has that, it was never intended  
10 to question whether to put the money back into keep that  
11 unit operational and that's the point I just really  
12 wanted to make.

13           MS. VACCARO: I think -- and thank you for that  
14 -- I think what that does is that's the type of comment  
15 that could take us in probably several different  
16 directions, and I think -- I hate to sound schoolmarmish  
17 -- but I really would like us to make sure that we have  
18 finished up with the topic of reporting. It seems as  
19 though what I've heard so far is prospective reporting,  
20 reporting, not asking for permission, that the reporting  
21 would happen after the fact, but there needs to be some  
22 refinement of what type of investments. I'm hearing not  
23 planned investment, but things that you would deem  
24 current, although I haven't heard a definition of what  
25 current means, or understood any distinction between

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1 planned vs. current from the POU point of view. But I  
2 think we need to get that worked out and end it, and if  
3 you want to talk about definitions, definitional  
4 changes, we can certainly do that, but I think we really  
5 still are on reporting.

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

17 MS. VACCARO: Yes.

18 MR. PEDERSEN: Instead of trying to start from a  
19 broad front and whittle down, how about starting out  
20 with what Noah has identified as being most important  
21 and go from there, see how much more we really want to  
22 get into? You know, Noah indicated that their primary  
23 focus is on the pollution control equipment, and we  
24 understand that, I mean, we had a robust discussion this  
25 morning. Maybe we could start out with what's most

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1 important from NRDC and Sierra Club standpoint, and then  
2 see to what extent there's really an interest in what  
3 goes on day to day or, you know, Steve Homer's 100  
4 investments a year at San Juan, I doubt that the vast  
5 majority of those investments are going to be of any  
6 interest. But the pollution control equipment is. I'm  
7 wondering, what would be -- we do have Section 2907 that  
8 is already in the Regulation and I think that we have,  
9 through Matt's comments and the colloquy we had this  
10 morning, identified the fact that that is one instance  
11 where, you know, you can raise a question. And Section  
12 2907 was put in the Regulation and, yes, I was involved,  
13 too, back in 2007 when we were putting the EPS  
14 Regulation together, and there was a lot of talk about  
15 Section 2907 and about the role it could play. You  
16 know, what if we were to tee that issue up, given that  
17 it seems to be such a focal point, occupied almost our  
18 entire morning, through a 2907 Request for Evaluation?  
19 How much further, I guess the question I have is, would  
20 we have to go from that? But I'm just trying to think  
21 of a way to resolve this without going through this  
22 broad front of material that was requested in points 1  
23 through 3 on page 2 of NRDC Opening Comment, and without  
24 going through all the different opportunities there are,  
25 or options there are for reporting.

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1           MR. VESPA: This is Matt Vespa from Sierra Club.  
2 Just to touch on the reporting and then move on, you  
3 know, we keep -- the three things required so  
4 burdensome, and again, that was intended when we wrote  
5 that to better inform our decision making because right  
6 now we have submissions with really not a lot of facts  
7 to them, and it is our view that getting that  
8 information would help this proceeding. That was not  
9 intended to mean you have to report this going forward.  
10 What would be helpful, I think, on our end in terms of  
11 reporting and making a better decision in light of the  
12 fact that we're not getting any of this background  
13 information as part of this proceeding, or it's looking  
14 that way, is to better understand the different IOUs'  
15 processes -- POU's, sorry -- POU processes -- I've been  
16 to the PUC a lot more -- POU processes for what becomes  
17 public. I mean, we heard earlier in some cases it's  
18 discretionary, what gets to that level, and what  
19 doesn't, what gets reported anyway, and that might kind  
20 of get a little bit more at some of these burdens for  
21 providing more reporting to the CEC. With regard to  
22 this issue of environmental compliance, you know, I  
23 think one of the issues that we have right now is that,  
24 again, it is the way the Regulations are structured, it  
25 is up to the discretion of the POU to seek advice from

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1 the CEC, and it sounded like there were very different  
2 views on whether these types of environmental  
3 investments were actually covered. And I think it would  
4 be in everyone's benefit as part of this proceeding, in  
5 terms of question -- moving to question 2 -- you know,  
6 what types of investments are covered procurements to  
7 squarely address whether these specific things, SCRs and  
8 so forth, are part of that, rather than leave it to the  
9 sort of case-by-case, but POU choosing to come to the  
10 CEC for that.

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

17 MS. VACCARO: I'm not sure, you know, this is  
18 Kourtney Vaccaro, I think we've had actually maybe about  
19 three suggestions on the table, in addition to mine, for  
20 how we move forward, and I'm not wedded to my approach,  
21 I mean, the point here is for the dialogue. But I will  
22 submit this, this is now a matter that is bigger than  
23 the concerns raised just by NRDC and Sierra Club, and  
24 while they have their priority item as they've  
25 articulated, I think we've now engaged and embarked upon

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1 a public process where I think we need to know more and  
2 to understand probably beyond just what their primary  
3 concerns are. I think what I would like to do is pick  
4 up the thread again of let's get to the covered  
5 procurement issue because I'm not so sure based on what  
6 we've heard that we can really put a finer point on the  
7 reporting issue, but I think what we are more aware of  
8 now are what some of the more detailed issues are  
9 relating to reporting, and we have clarification on what  
10 you did and didn't mean, NRDC and Sierra Club, by those  
11 three points. I think let's move past them because we  
12 will spend the next few hours talking about nothing but  
13 that, and that's not going to move us forward. I think  
14 we should move forward to getting a better  
15 understanding, then, of whether or not, you know,  
16 there's benefit to modifying the criteria for covered  
17 procurement -- notwithstanding all of the discussions  
18 that were had in 2007 because I believe all of us  
19 sitting around the table, whether or not we were here at  
20 that time, have had the benefit in preparing of looking  
21 at the transcripts, looking at the final rules,  
22 understanding a lot of the context. But now we're in  
23 2012 and we are presented with a situation where we're  
24 told there's reason for you maybe to go back and  
25 reevaluate something. Maybe there is no reason, but we

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1 need to hear it and understand it not just because it  
2 was put in a petition, and we need to understand why  
3 that's not such a good idea.

4 MR. PEDERSEN: I think we can -- Norman  
5 Pedersen, SCPPA San Juan Participants -- I think we can  
6 dispense with Question 2 pretty easily, the real  
7 question has to do with 3. Question 2 is about the  
8 definition of covered procurement. Actually, what the  
9 statute deals with, it addresses long term financial  
10 investments, and the Commission said, "Okay, long term  
11 financial commitments, what are those?" And it said,  
12 "Well, it could be -- we'll call it covered procurement,  
13 and what's the field that would be covered by covered  
14 procurement? Either a new ownership investment or a new  
15 or renewed contractual commitment." And that occupies  
16 the field. I mean, that is all the kinds of covered  
17 procurement that you could have. Either you're going to  
18 do what L.A. has with its investment, with its contract  
19 with IPP, where it has contracted for the receipt of  
20 power, or you're in a situation where you actually have  
21 an ownership investment, and that's what you have with  
22 the San Juan Participants. So I don't think it's a  
23 question about the definition of covered procurement.  
24 In defining covered procurement, the Commission  
25 identified these two types of ways in which POU's could

1 get involved in base load facilities and those are  
2 basically the two ways to do it. But what's really of  
3 interest is question 3, where we get into new -- the  
4 definition of new ownership investment. Nobody has much  
5 question about what a contractual commitment is, it  
6 seems, but there's a lot of question about new ownership  
7 investment and that's where we spent all our time back  
8 in 2007, and that's where you get into the determination  
9 as to whether you have routine maintenance on the one  
10 hand, or investment that is intended to extend the life  
11 by five years or more, increase the rate of capacity, or  
12 switch a plant from peak to base load. So what I  
13 suggest we do is skip past two because it really is kind  
14 of a trivial definition --

15 MS. VACCARO: So -- this is Kourtney Vaccaro --  
16 let's do that, let's skip past two, let's get to three.

17 COMMISSIONER PETERMAN: Does everyone else agree  
18 with that, though?

19 MS. VACCARO: Well, I think to get the  
20 conversation moving again on a topic where we're not  
21 churning, I feel like that's where we are right now, is  
22 that we're churning a little. Perhaps you disagree and  
23 that's fine, I'll defer. I feel like we need to move it  
24 forward.

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

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

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

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1 Juan Participants have in San Juan, or what I guess L.A.  
2 has with Navaho.

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

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

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

24 COMMISSIONER PETERMAN: Thank you, Mr. Chair,  
25 for that indulgence.

1 MS. BERLIN: MSR also agrees with that --

2 COMMISSIONER PETERMAN: And --

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

5 COMMISSIONER PETERMAN: Thank you, Ms. Vaccaro  
6 -- Commissioner Peterman, thank you for your suggestion  
7 to move to number 3. I will now follow it at your  
8 leadership, thank you.

9 MS. VACCARO: Well, with that!

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

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

23 MS. VACCARO: If you could identify yourself?

24 MR. HOWARD: I'm quite concerned -- Randy  
25 Howard, LADWP. When the utilities make a substantial

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1 investment in these plants, we borrow money, issue bonds  
2 as public entities, and we have a debt to pay to the  
3 bond holders, we do that based on the existing laws and  
4 regulations at the time. And we comply with everything  
5 that is available at the time, everything we know about.  
6 So ten years into the operations of a plant, an EPA  
7 comes up with a new rule or law, I am very astounded on  
8 how you think we could go back and say, "This somehow  
9 extends the life," or, "This is a new covered  
10 procurement," in a way that would jeopardize or risk the  
11 financing and all of those that have come together to  
12 put a power plant in place. Basically if we had that  
13 thought process cover all of our facilities, we would  
14 have no investors at all that would be willing to put  
15 their funds into the operations of our utilities. I  
16 mean, we can't -- we can't build something and  
17 jeopardize the risk of the life because this plant has a  
18 life expectancy and that's what we need to get to is  
19 talk about what is a life expectancy of a power plant  
20 because, if there is a regulatory change that occurs,  
21 and you might have to make an investment to comply with  
22 that regulation, you shouldn't jeopardize the underlying  
23 investment and the risk to the bond holders and others  
24 that have invested. I mean, otherwise we would never  
25 have anybody come to the table to build a wind farm, a



1 solar park, nothing. So I'm really confused as to why  
2 you think that type of activity would be considered  
3 covered, and I just need you to explain that a little  
4 bit more.

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

17 MS. BERLIN: You would have to look at -- this  
18 is Susie Berlin -- and I agree that you would have to  
19 look at your alternatives when making any decision, but  
20 you also need to look at the statutory language and the  
21 regulation as defined, which says, "Is this investment  
22 designed and intended to extend the life of the plant?"  
23 And when we're talking about life of the plant in the  
24 context of the Regulation that we're all operating under  
25 right now, notwithstanding some possible future changes,

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1 we're talking about the life of the plant as operational  
2 facility, and that's how that term was used at the time,  
3 as I mentioned earlier, that's why we have this whole  
4 notion of stranded assets, and if you can't operate them  
5 anymore. So we can't be saying that there are all these  
6 different kinds of lives of the plant. I bought a car,  
7 you know, this car is going to run 15 years, and whether  
8 or not I pay my vehicle registration fee every year,  
9 that car is still supposed to run 15 years, for example.  
10 And I think that perhaps we're looking at this from  
11 backwards, maybe we need to start and say, again,  
12 because we are talking about three finite facilities,  
13 what is the life of that facility? Is this facility  
14 supposed to go to 2020, or is this facility, the life of  
15 the plant, supposed to go to 2050? Because that is  
16 going to make a difference because, then, when you're  
17 talking about design and intended to extend the life, I  
18 mean, first of all, I don't believe that any of these  
19 qualify under the design and intended to extend, but  
20 let's just say that that's what they are for five years,  
21 right? So if the plant is supposed to go to 2020, and  
22 this is going to make the plant last until 2025, then it  
23 may be more of an issue in the immediate future, but if  
24 the plant is supposed to go to 2050 and this is going to  
25 make it go to 2055, are we really -- I mean, we need to

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1 start with what is the life of the facility at issue  
2 before you can determine whether or not it's extending  
3 the life.

4 MR. LONG: Can I respond to that? I'd like to  
5 respond quickly, so thank you, Noah Long from NRDC,  
6 respond quickly to Randy's comment if I can, first,  
7 which is I think the point that you were making really  
8 goes to a separate part of the Regulation, it goes to --  
9 I'm forgetting the number now -- 2912, which is  
10 exemptions for financial commitments or other  
11 reliability concerns, which I think is a separate issue  
12 as to whether or not it's either a covered procurement  
13 or a new ownership investment. So, setting that  
14 evaluation aside, the question that Susie is raising  
15 here is, I think, was raised well from the gentleman  
16 from SCPPA earlier that these plants don't -- it's very  
17 hard to know exactly what the life is. The more you put  
18 money and love and time into them, and investments into  
19 them, the longer they'll run. Under the new operational  
20 requirements from the EPA, San Juan has to shut down in  
21 2016, its permit to operate ends in 2016 unless it meets  
22 these new operational requirements. So the investments  
23 that would be made to extend the life beyond 2016 are at  
24 issue here and it seems to me that that falls squarely  
25 within the context of new ownership investment.

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1           MR. PEDERSEN: And that takes us to your  
2 question 3.

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

12           MR. MORROW: And I don't believe the operating  
13 permit goes away in 2016 either, even though a new  
14 statutory requirement for meeting NO<sub>x</sub> is imposed on the  
15 plant, there's not a permit issue to my knowledge.

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

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

2 MR. LONG: There is a permit change.

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

14 MR. LONG: And if I can, I just want to address  
15 one more issue on that, separate from -- sorry, Noah  
16 Long from NRDC, sorry, I know I'm going to pick that up  
17 at some point -- going back to the issue that Randy  
18 raised a few moments ago, I think the existing  
19 definition under new ownership investment under --  
20 sorry, (J)(iv)(a) here -- in our view, both new long  
21 term financial commitments, which is the statutory term,  
22 and new ownership investments, the regulatory term,  
23 contemplate investments at plants where, under a variety  
24 of ownership and partnership arrangements. So that is  
25 to say all three of these plants are potentially

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1 implicated with investments that could happen today or  
2 tomorrow, or far before the end of the contract, and I  
3 just want to give an example that might help that. So,  
4 you know, if a meteor came and hit IPP, wiping it off  
5 the face of the planet, and the participants in that  
6 plant decided to re-build that plant from scratch and,  
7 you know, reconnect the transmission line in order to  
8 re-provide power to California and the Utah  
9 participants, it seems to me that that would pretty  
10 plainly not be routine maintenance, it would pretty  
11 plainly be the new ownership investment and pretty new  
12 long term financial commitment, you're rebuilding an  
13 entire power plant.

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

21           MR. HOWARD: If I could, Randy Howard, LADWP,  
22 and my last comments were related to a representative  
23 from ARB that seemed to indicate that requirements that  
24 were issued, regulatory or environmental requirements,  
25 could somehow be a covered procurement, and I'm still

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1 struggling with that concept, but, Noah, I'm going to go  
2 to your point, and again I have to go back to what took  
3 place a little bit at the time. And the Legislature  
4 clearly, when it defined long term financial commitment,  
5 its application was to new and renewed contracts, not to  
6 existing contracts, they made that very clear. Had the  
7 Legislature felt it prudent to expand the EPS beyond the  
8 new and renewed power contracts, it would have included  
9 that, and they chose not to. They knew very clearly at  
10 the time LADWP and some of the Southern California  
11 participants were involved in a contract in Utah. At  
12 the time, NRDC was very active with us in these  
13 discussions and the Union of Concerned Scientists  
14 jointly recommended that the definition for covered  
15 procurement be clarified such that the existing  
16 contractual obligations through joint ownerships not be  
17 included. So NRDC clearly during the proceedings  
18 indicated that existing contractual obligations should  
19 not be included. So what you're proposing today is  
20 counter to what your predecessors had argued in this  
21 proceeding in 2007.

22 MR. LONG: First of all, I mean, I think it's  
23 useful -- sorry, Noah Long, NRDC -- so I think it's  
24 useful to go back through the whole record and, you  
25 know, if you're referring to a particular part of the

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1 statute that indicates that existing contracts are not  
2 implicated, I'd like to see exactly where in the statute  
3 that is, I read the statute differently. Existing  
4 requirements under existing contracts, the meaning of  
5 that, changes under the circumstances. At the time, new  
6 operational requirements under the existing contracts  
7 weren't contemplated. I think that the circumstance of  
8 change is why we're -- one of the principal reasons  
9 we're bringing this -- we've brought this petition and  
10 we've asked for this rulemaking.

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

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1 and oranges.

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

14 MR. PEDERSEN: But we are getting down -- Norman  
15 Pedersen for SCPPA -- we are getting down to what I  
16 think was probably the intent of having this workshop,  
17 to start to try to narrow down what exactly people's  
18 concerns are. And again, I'll go back to the fact that  
19 we're on question 3 and, you know, question 3 talks  
20 about whether we need to refine the meaning of terms  
21 used in the definition of new ownership investment and,  
22 again, new ownership investment is just one of the two  
23 kinds of covered procurements you can have, okay? And  
24 the two terms that came up were -- and this is in  
25 question 3 -- designed and intended to extend the life

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1 of one or more generation units by five years or more.  
2 And then the other term was routine maintenance. Now,  
3 Bill, you talked about routine maintenance, you said,  
4 well, these might not be routine maintenance and you're  
5 right. Most of what we do, almost everything we do, is  
6 clearly routine maintenance at these plants. In the  
7 FSOR, the Commission gave us a guide to how to interpret  
8 the term "routine maintenance," they said a term is to  
9 be taken literally, the term is to be given the meaning  
10 as generally understood elsewhere, we were told how to  
11 understand routine maintenance. And Steve Homer  
12 explained this morning how we deal with routine  
13 maintenance. Okay, but then the way the Regulation is  
14 structured, okay, it's -- if it's routine maintenance,  
15 it's okay, it could proceed. But then if it's going to  
16 be proscribed, it has to fall into one of three buckets,  
17 okay, one is increase the rate of capacity. Another one  
18 is be designed and intended to extend the life of one or  
19 more generating units by five years or more. Another is  
20 convert a peak load plant to a base load plant, and we  
21 really aren't talking about that at all here.

22           It seems like the point of disagreement that we  
23 have come to with regard to the SCRs is over the term  
24 "design" and "intended to extend the life of one or more  
25 generating units by five more years." Does the

1 installation of the SCRs fall within that? Or not fall  
2 within that? You're right, Bill, we're not saying it's  
3 routine maintenance; the question is whether it falls  
4 into that bucket of proscribed investment.

5 MR. MORROW: It wasn't our intent to design and  
6 install the SCRs in order to extend the life of these  
7 plants by five years or more, the intent is to comply  
8 with Federal Regulations and to be a good citizen and  
9 improve the environmental performance of those units,  
10 but we didn't go forth to design and extend the life.  
11 You know, I mentioned the first time I had some  
12 statements here that I've been involved in a number of  
13 power plants over the years and we make life extension  
14 decisions from time to time, it's actually a process and  
15 we say, okay, you know, this plant has sort of met its  
16 typical utility, useful life -- I'll just grab a number  
17 -- on the order of 50 years is typical for these assets,  
18 and we say, "Hey, you know, do we want to get another 10  
19 years, or another 20 years?" And if we do, we say,  
20 "Okay, what do we need to do to ensure that it operates  
21 reliably and efficiently and so forth for another 10 or  
22 20 years?" We look at the package of investments we  
23 will have to make and we make a conscious decision, so  
24 clearly at that point we would have intended and  
25 designed a life extension program to keep a unit

1 operating beyond what would have been a typical 50-year  
2 or so utility life. Here, none of that is going on. I  
3 don't remember ever saying, "Hey, we could get a little  
4 more life out of San Juan...," and I'm sure that goes for  
5 some of the other projects we're talking about, "...if we  
6 do A, B, and C." That's not kind of what's going on.  
7 The environmental upgrades are to comply with Federal  
8 Regulations, they, to be honest, were not our idea.  
9 Thank you.

10 MR. PEDERSEN: And the POU's tend to agree with  
11 what George said, but --

12 MR. MORROW: Oh, George Morrow!

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

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

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

24 MR. LONG: Thank you, Norm. Noah Long, NRDC. I  
25 think, yeah, and I would characterize it just a little

1 bit differently than you did, but I think we have  
2 crystallized it well here, which is to say I think this  
3 question of whether or not these pollution control  
4 investments are designed or intended is one question,  
5 and then the other -- sorry, designed or intended to  
6 extend the life of the facility by five years or more;  
7 the other question is whether that definition,  
8 designation of designed or intended to extend the life  
9 of the plant for five years or more, fully captures the  
10 meaning under the statute of new long term financial  
11 commitment. And I think that also should be discussed  
12 further in the proceeding.

13 MR. PEDERSEN: So you're saying --

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

19 MS. DECARLO: Thank you, Kourtney. Lisa  
20 DeCarlo, Energy Commission Staff Counsel. I just  
21 thought it would be good to kind of go back to what the  
22 original issue was in front of the Commission, back when  
23 we first implemented these Regulations, and the question  
24 presented to the Commission at that time by several  
25 stakeholders on whether or not we should grant an

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1 exclusive exemption for all improvements required by  
2 environmental regulations, and the Commission at the  
3 time declined to do so. They felt that they needed to  
4 get into the meat of each individual investment that was  
5 triggered by an environmental requirement to determine  
6 whether or not it complied with SB 1368. So, an  
7 argument at this point that no investments for  
8 environmental regulations, to comply with environmental  
9 regulations, are covered procurements, I don't think  
10 that is supported by the original Commission Decision.

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

12 MS. DECARLO: Yeah, right, by --

13 MR. LONG: And that was Norman Pedersen.

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

15 MR. LONG: And Noah Long from NRDC again. And  
16 if I just may, you know, we noted it in our Reply  
17 Comments that the legislative action on that may also be  
18 relevant if, for example, in the emissions performance  
19 standard in Washington State, which is otherwise quite  
20 similar, or in many ways quite similar to the Emissions  
21 Performance Standard in California, there's the  
22 legislative exception for requirements for pollution  
23 control technologies, whereas the California statute  
24 does not have that exception, so I think it's worth  
25 noting.

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1           MR. PEDERSEN: Norm Pedersen for SCPA San Juan  
2 Participants. So I guess, from my perspective, this has  
3 been helpful. You know, it seems like we have  
4 identified a point of difference, a point of  
5 disagreement, there might be a procedural question about  
6 the appropriate way to tee this up. I think I admitted  
7 this morning that this was the kind of question that  
8 2907 was designed to handle; we have not had it because  
9 we have had the guidance that was given by the  
10 Commission in the FSOR about how to interpret the words  
11 "routine" and "maintenance," and the vast majority of  
12 what we do is, you know, the bicycle chain that we  
13 talked about this morning, at our plants. But here, and  
14 I think Lisa has very appropriately underscored it, you  
15 know, given the language in the Regulation, given the  
16 language that we've all ready in the FSOR, you know,  
17 there's an issue that is ripe for determination. And I  
18 guess the question is how the Commission prefers to  
19 proceed with that issue. One is Section 2907, maybe  
20 another is another round of comments, as Noah suggested  
21 in this proceeding.

22           MS. DECARLO: Lisa DeCarlo, Energy Commission  
23 Staff Counsel. Norm, with regard to your statement  
24 about 2907, I just have a question. Do you intend with  
25 reference to 2907 to carve out a small mandatory

1 provision within that requiring the POU's to ask, to  
2 seek?

3 MR. PEDERSEN: No, no.

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

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

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

21 MS. BERLIN: This is Susie Berlin. I'd just  
22 like to clarify quickly because I haven't heard any of  
23 the POU's, and certainly don't want to leave the  
24 impression that that's what MSR believes, that these  
25 environmental upgrades are or are not covered

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1 procurements. They have not been reviewed, a  
2 determination has not been made, I agree with Norman  
3 that it's something we need to look at, we know what's  
4 in the FSOR, we need to look at the entire investment.  
5 But, I mean, I'm not sure who the number of POUs you're  
6 referring to, but just for the record, MSR has not made  
7 that determination.

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

23 MR. PEDERSEN: And just to be clear, George  
24 expressed the point of view that the SCPPA San Juan  
25 Participants have on the substantive issue as to whether

1 or not investment in the SCRs would fall within the  
2 phrase "designed and intended to extend the life for  
3 five years." All I was saying is I think we've  
4 identified an issue between us and I think we can agree  
5 that there's an outstanding issue.

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

8 MR. PEDERSEN: How about a break?

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

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

15 [Break at 3:07 p.m.]

16 [Reconvene at 3:18 p.m.]

17 MS. VACCARO: Those of you in the room and on  
18 the phone, thank you for your patience and for  
19 benefitting from the comfort break, but I think we're  
20 all ready to get back going. I understand a number of  
21 people have some time constraints and, while we've made  
22 great headway, I think there are still some very  
23 important issues that we need to cover today. One of  
24 the things that I wanted to move up on the agenda, we've  
25 had a request, as I mentioned there are some people with

1 time constraints and are going to leave. We'll wait for  
2 Mr. Knox to come back because, unless there is some  
3 groundswell of objection, I think we are going to need  
4 to fast forward to talk about the cap-and-trade, and  
5 then we can come back and cover some other issues. I  
6 think, again, what's great about today's discussion is  
7 it has been so fluid. Each conversation has led itself  
8 into all of these different points, but we want to  
9 ensure that people have the opportunity to underscore  
10 what they think we need to know. Unfortunately, though,  
11 Mr. Knox is MIA and -- in ten, okay -- so we're going to  
12 move forward and take -- use these 10 minutes to the  
13 best of our ability. I think it is important that he's  
14 here when we get that conversation going, he has some  
15 significant input, I think, in that regard.

16 I apologize, people were in the middle of  
17 conversation and I left the horseshoe here, I had to  
18 take care of another issue to ensure that the public was  
19 being fully represented in terms of their participation  
20 over WebEx and over the telephone. So if there's any  
21 closing thought or point that needs to be made, I think  
22 the Commissioners and staff understand that there is now  
23 apparently an issue that is sort of joined and before  
24 us, that people are looking for guidance on, I think the  
25 transcript is going to capture all of that discussion

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1 very well, but that is going to be something that  
2 ultimately the parties are looking for specific  
3 direction from the Commission. Is that fair?

4 MR. PEDERSEN: Yeah, Norman Pedersen for SCPPA  
5 San Juan Participants. I think it's absolutely fair,  
6 Kourtney, we have crystallized an issue between us. And  
7 as far as the issues that get us between question 3 and  
8 question 7, mainly 4, 5 and 6, frankly those are ones  
9 that we covered, I think, quite fully in our comments.  
10 For example, 4 asks about how and what instances POU's  
11 have applied the routine maintenance and designed and  
12 extended the life and deciding whether investments in  
13 non-deemed plants are consistent with EPS regulations,  
14 at least SCPPA gave concrete examples, we didn't go into  
15 certainly all 100 or so of what Steve Homer mentioned as  
16 being what we would do in the normal course of a year  
17 because, again, they fall within the plain meaning of  
18 routine maintenance and they're the sort of things that  
19 Engineers and non-Engineers can readily make a  
20 determination, so they don't advance to the level of  
21 board consideration. But we have presented examples of  
22 where we decided a prospective expenditure would clearly  
23 fall within routine maintenance, even though it would  
24 possibly increase rated capacity, and then another  
25 instance which is actually the only one which had been

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1 presented to us, where we had an opportunity brought to  
2 us by a contractor to increase the rate of capacity, we  
3 of course declined. So I think we pretty well, at least  
4 for SCPPA, answered question 4. I'm assuming Susie  
5 would have about the same thing to say for MSR.

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

10 MR. PEDERSEN: Would --

11 MR. MORROW: Would you respond to --

12 MS. BERLIN: Yes, yeah --

13 MR. MORROW: -- question 4.

14 MR. PEDERSEN: Right. And 5 was the one that  
15 seemed a little oddly worded, you know, we have not had  
16 instances where we've done routine maintenance where  
17 it's been a covered procurement. If it was routine  
18 maintenance, it's not a covered procurement and we have  
19 been doing routine maintenance. And as far as question  
20 6 is concerned, I think everyone here has explained the  
21 process that we use for making a determination and the  
22 nature in which the public is informed, and we can go  
23 through that again, but I think we covered it pretty  
24 adequately this morning.

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

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

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

16 MS. BERLIN: Okay.

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

24 MR. HOWARD: LADWP, Randy Howard. I think  
25 within our filed comments we covered quite a lot. We

1 did put together a list, as well, that we did not  
2 provide that lays out types of maintenance that we do  
3 for different types of outages or activities and these  
4 would be kind of like, again, go to the description of  
5 your vehicle, you know, you said that at 50,000 miles  
6 they recommend you do these various things, so we laid  
7 all that out when we put in what do we normally do  
8 during a routine maintenance, and we did not file that  
9 because I thought that just got a little too far down  
10 into the weeds for the various activities, but it is  
11 available if it would be of benefit to staff, we would  
12 file that as a supplement.

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

15 MR. HOWARD: We'll do that then.

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

20 MR. PEDERSEN: I missed that.

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

24 MS. VACCARO: And then, yes, we're not  
25 forgetting you over there.

1           MR. LONG: Oh, no problem, I didn't feel  
2     forgetted -- forgotten, sorry, long day.

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

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

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1 clear discussion of the definition of routine  
2 maintenance and more applications of that definition for  
3 this rulemaking process. So, you know, I agree there  
4 were a couple examples given in the comments, but we're  
5 still not comfortable that we've seen a clear  
6 application of that definition across the Board, and I  
7 think it may be that the question that Chairman  
8 Weisenmiller asked will get to that exact question, and  
9 I think there may be two questions there, as well.

10 MS. VACCARO: So --

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

22 MR. VESPA: Matt Vespa from Sierra Club. Just  
23 to elaborate on the question of what goes to the board  
24 and what doesn't, I think it would be helpful as part of  
25 that submission to understand, you know, what is the

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1 sort of decision making process, just to elaborate on it  
2 a little bit, of what does go to the board and what  
3 doesn't and who is making that determination. There was  
4 some talk earlier this morning about maybe certain  
5 considerations that factor into what goes to the board  
6 and what doesn't -- is that an individual's discretion?  
7 Was there some kind of standard articulated about that?  
8 I thought I heard in one case, I could be mistaken, the  
9 whole packet of everything went up and was public, so  
10 it's kind of just teasing out, you know, what's getting  
11 public, what's not, what are the decision making points  
12 for those different expenditures, would add some  
13 clarity, I think, to the process.

14 MS. BERLIN: Can I ask the Commission for a  
15 clarification? This is Susie Berlin for MSR. Each of  
16 the agencies, I believe, has a slightly different  
17 approach. Each of the agencies has a slightly different  
18 governance structure, and each of the agencies are  
19 subject to the different authorities that they operate  
20 under and local control issues. I understand the  
21 information we're going to be providing, giving you more  
22 detailed analysis of how each entity does it, but I'm a  
23 little concerned with this notion that somebody is  
24 looking to maybe compare these processes and come up  
25 with a single way in which it should be done. I want to

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1 be sure that that's not where we're going.

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

7 MS. BERLN: [Inaudible] [01:37:28]

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

10 MS. BERLIN: Thank you, Commissioner.

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

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

20 MR. HOWARD: If I could add one thing -- Randy  
21 Howard, LADWP -- the one thing, if you're looking for  
22 that and you want to see somewhat the forward look of  
23 how, at least in L.A.'s case, we're viewing the world of  
24 coal and the resource plans are the appropriate place to  
25 do that, and they -- our scenario cases went from early

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1 divestiture of Navajo to a contractual early release out  
2 of IPP in 2020, so those scenarios were all laid out,  
3 they were run and modeled to come to what's best for our  
4 ratepayers.

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

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

21 MS. VACCARO: Okay, thank you.

22 MR. ANDREONI: Thank you. My name is Tony  
23 Andreoni. I represent the California Municipal  
24 Utilities Association and thank you for letting me come  
25 through this discussion that you're going to have.

1 MS. VACCARO: Great. Thank you very much. And  
2 just to ensure that we are not leaving anyone out on the  
3 phone lines, we might have industry stakeholders or  
4 interested agencies who might wish to weigh-in on this  
5 next topic, as well, so if we can ensure that those  
6 folks aren't muted. But, again, we're not opening it to  
7 public comment. Well, we tried to be fair and  
8 inclusive, but we've had to take the unilateral action  
9 of muting everyone, but if you happen to be a  
10 stakeholder or someone in the industry, or an interested  
11 agency, please wave your hand or you can submit, I  
12 think, a comment via chat to the person who is helping  
13 us with WebEx, to let us know an appropriate time to  
14 unmute you, in particular. So with that, please bear  
15 with me, I'm going to read what was question 7 in the  
16 Workshop Notice: "Whether the requirements of Public  
17 Utilities Code Section 8341(F) have been triggered by  
18 the State Air Resources Board's recent adoption of cap-  
19 and-trade regulations, or whether ARB must first verify  
20 the efficacy of and compliance with its cap-and-trade  
21 regulations before Section 8341(F) is triggered.  
22 Section 8341(F) provides that the Energy Commission in a  
23 duly noticed public hearing, and in consultation with  
24 the California Public Utilities Commission, and the  
25 State Air Resources Board, shall reevaluate and

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1 continue, modify, or replace the Greenhouse Gases  
2 Emissions Performance Standard when an enforceable  
3 Greenhouse Gases Emissions Limit is established and in  
4 operation, that is applicable to local publicly-owned  
5 electric utilities."

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

14           MR. KNOX: Yeah, this is Bill Knox. I think  
15 basically ARB would say that we really -- we believe  
16 that the Energy Commission should not prematurely try to  
17 evaluate the Regulation under Section 8341, but rather  
18 that ARB needs to first verify the efficacy and  
19 compliance with the cap-and-trade regulation, and that  
20 currently, although the cap-and-trade regulation has  
21 been adopted by the Board, there is not -- during 2012,  
22 while there is a cap, there are no compliances required  
23 under the cap. And so there is not really an  
24 enforceable greenhouse gas limit over the course of  
25 2012.

1           But notwithstanding that fact, we think it makes  
2 sense to observe compliance with the Regulation when  
3 compliance is required in 2013, and then, in 2014 will  
4 be the first time that the compliance instruments are  
5 actually required to be turned in to demonstrate and, in  
6 fact, that is only 30 percent of the compliance  
7 instruments for 2013. So we think it probably will take  
8 a longer period of time to fully analyze compliance in a  
9 way that the different regulations work with each other  
10 to limit greenhouse gases emissions.

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

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

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

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

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

22 MR. PEDERSEN: Bill, I guess the nature of my  
23 question was, I'm just trying to understand, are you  
24 speaking for, you know, the Chair of the Board, Mary  
25 Nichols, for James Goldstein, the Executive Director?

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1 You know, is this the -- I'm looking for whether this is  
2 the official position of the ARB. And if it is, I'm  
3 going to be concerned because it is so at variance from  
4 what, for example, and we quoted this in our comments,  
5 what the Board had to say in response to Judge Goldsmith  
6 in coming up with a supplement to the functional  
7 equivalent document, a document with which I'm sure  
8 you're very familiar and I'm certainly familiar with.  
9 You know, we had -- and we can get into that -- but we  
10 had a variety of statements being made by the board that  
11 indicates basically the reverse of what you're saying is  
12 the need to continue the EPS regulation. But I see Tony  
13 Andreoni had his hand up over there.

14 MR. ANDREONI: Thank you. This is Tony Andreoni  
15 with CMUA, and I guess I want to echo some of the points  
16 that were made. CMUA did not provide comments on this  
17 particular filing for EPS, but many of our members,  
18 which are around the table here have spoken greatly  
19 about this issue. And there's a few things that I want  
20 to mention regarding cap-and-trade, and number one is  
21 all of our members participated fully in that process.  
22 They provided information and the cap has been set to  
23 the point where allocations under the rule are going to  
24 be issued later this year. So to me, since the cap has  
25 been set, everybody understands what the threshold of

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1 carbon emissions are at this point. The fact that  
2 there's going to be an auction later this year further  
3 moves the process forward and I will also say that many  
4 of the members are participating pretty actively with  
5 ARB in the implementation of the system, the actual  
6 tracking system that's going to be put into play. So I  
7 would say the system is really trying to move fairly  
8 quickly and get up to speed in the near term as all the  
9 members within the electric utilities have agreed to  
10 follow the process and make sure that the allocations  
11 are handled properly, and as they move forward with  
12 additional renewables under RPS, that that's going to be  
13 looked at, as well. So I just wanted to make that  
14 statement that, you know, it was an effort that was  
15 moving forward, we continue to move forward and get that  
16 program up and running at this point, and really see  
17 that as a point of contention where they're not looking  
18 to increase the amount of carbon emission with emissions  
19 at this point. So --

20 MR. MORROW: George Morrow, Azusa. I wanted to  
21 confirm, Tony, with you that, you know, the cap-and-  
22 trade is forcing agencies, utilities, to do things  
23 differently. You know, we're very cognizant of the cap  
24 and we're very cognizant of the limits. We're  
25 respecting what might happen economically to us if we

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1 don't make some adjustments in the things that we do and  
2 how we do them, so, you know, we're doing a lot of  
3 things that strategically and so forth -- maybe some  
4 even involve the things we're talking about here today  
5 because of the cap-and-trade and our belief that it will  
6 work, and it does work, and it was a very reasoned  
7 legitimate program. So it is working, and now we have  
8 this secondary process through the SB 1368 rules that  
9 seem -- they don't seem like they're as necessary  
10 anymore, so I just wanted to reiterate that -- because  
11 we're doing things, we're actually making change because  
12 of the cap-and-trade.

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

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

25 MR. KNOX: No, go ahead.

1 MS. BERLIN: This is Susie Berlin for MSR. One  
2 thing that you said struck me, you said that you believe  
3 that CARB should verify the efficacy of the program.  
4 What process or procedure would CARB's verification of  
5 the program take? And is that a procedure and a process  
6 that has been employed for other regulations?

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

18 MR. LONG: This is Noah Long from NRDC. If I  
19 may, I just want to make a couple of points. One is to  
20 reiterate if I may a comment that Mr. Knox from ARB made  
21 this morning, which is that I think the role that the  
22 EPS plays in the Scoping Plan is also relevant here.  
23 There are a number of complimentary measures intended to  
24 cumulatively bring about reductions. Now, you mentioned  
25 the RPS, there is also Energy Efficiency Programs, what

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1 the POU's and IOU's are required to participate in. There  
2 is a whole set of numbers, depending on the sector, for  
3 compliance requirements. And the fact that those  
4 compliance requirements affect the same entities, are  
5 potentially overlapping in effect, I don't think in any  
6 way undermines the complementary approach that the Air  
7 Resources Board has taken.

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

23           And lastly, if I might, I would just like to put  
24 the questions to the POU's on this. We were asked a  
25 couple of times what exactly was it we were trying to

1 accomplish through our Petition, which I think is a fair  
2 question, and I would ask here to the POU's, what is it  
3 exactly that you're hoping to accomplish, you know, if  
4 you view the Cap-and-Trade Program as in place, you view  
5 yourselves as in compliance with the Emissions  
6 Performance Standard, and you're pretty happy with the  
7 existing regulations, what purpose do you seek through  
8 sun-setting of that regulation, what harm has it caused  
9 so far to your customers or to your communities? And  
10 what would you do differently if it weren't there?

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

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

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

12 MR. HOWARD: So --

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

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

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1 formulating the EPS, itself?

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

9 MR. PEDERSEN: This is Norman Pedersen for SCPPA  
10 San Juan Participants. I was involved in the whole  
11 scoping memo process, the scoping plan process. And you  
12 know, the EPS was not a complementary measure. Folks  
13 are calling it a complementary measure, you can go to a  
14 table, I think it's on page 79 of the Scoping Plan,  
15 wherever it is, you know, it lists every one of the  
16 complementary measures -- EPS is not in the list.  
17 However, I'll admit, you know, though we have an issue  
18 here and that is whether or not the EPS should continue  
19 now that the Cap-and-Trade Program compliance obligation  
20 is going to be imposed starting 1/1/13, and by the way,  
21 we're not talking about getting rid of the EPS in 2012,  
22 you know, at least SCPPA has talked about suspending it  
23 effective when the cap-and-trade obligation becomes  
24 effective, we're not talking about 2012, we understand  
25 it's not effective -- the compliance obligation isn't

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1 being imposed for the 2012 due to the suspension of the  
2 effectiveness of the program. In the functional  
3 equivalent -- supplement to the functional equivalent  
4 document that I mentioned a little earlier, the ARB was  
5 completely clear that the reason that it was opting for  
6 the Cap-and-Trade Program as opposed to a carbon tax, or  
7 a suite of measures without any market mechanism being  
8 imposed, or other alternatives, was because the Cap-and-  
9 Trade Program provides certainty that you are going to  
10 achieve the goal. You don't have to wait for it as a  
11 matter of law, you will achieve the goal, because you  
12 will only have so many allowances and companies will  
13 have to have the allowances in order to meet the  
14 compliance obligation so you will meet the goal. It  
15 ensures -- that's the entire point of the Cap-and-Trade  
16 Program, you ensure obtaining the AB 32 goal of getting  
17 to 1990 emissions, 1990 levels of emissions by 2020.  
18 You don't have to wait to see whether there's efficacy.  
19 You'd have to do that with a carbon tax, you'd have to  
20 do that with a suite of mandatory measures like, you  
21 know, RPS, that were intended to be a proxy for getting  
22 the GHG emission reductions. Cap-and-trade attains it  
23 because it mandates as a matter of law that those  
24 emissions reductions occur and it does it through  
25 employing a market mechanism. And the ARB goes on to

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1 explain that, you know, the beauty of the Cap-and-Trade  
2 Program is that it does it in the most economically  
3 efficient manner. It goes to individual covered  
4 entities and says, "You make the decision about what the  
5 most economic way is to achieve the emissions  
6 reductions. We aren't going to put yourself in your  
7 boots, you make the decision. You know, it might be you  
8 shut down a coal plant, it might be you do something  
9 else, you know, but you are the one who will be making  
10 the decision and we are going to be assuming that you  
11 will be making the most economic decision.

12           And so, to continue, in our view, and it was the  
13 Boards who expressed in the functional equivalent  
14 document effectively to continue a measure that would  
15 mandate a covered entity to do one thing over something  
16 else to obtain the emissions reductions it has to  
17 attain, would be counterproductive. And so, in our  
18 view, again, we're not asking for there to be a  
19 suspension in 2012, but we do think, given what the  
20 board itself said about the Cap-and-Trade Program and  
21 the rationale for having a Cap-and-Trade Program, as  
22 opposed to, say, a carbon tax, that it would make sense  
23 to suspend the Cap-and-Trade Program. To Noah's point,  
24 yes, the statute does say continue, modify, or replace,  
25 well, modification is putting in the sunset provision.

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1 We are now in 2012 and what at least we have recommended  
2 in our opening comments is that the modification to the  
3 regulation be to insert another section providing for  
4 sun-setting of the EPS regulation upon the imposition of  
5 the compliance, the legally enforceable compliance  
6 obligation.

7 MS. BERLIN: This is Susie Berlin for MSR Public  
8 Power Agency. I wanted to follow-up to Noah's specific  
9 inquiries, what harm has EPS caused, why should it  
10 sunset, what would be accomplished. I don't believe the  
11 EPS has caused any harm. We believe it should sunset  
12 because we think it runs counter to what the intent of  
13 having a Cap-and-Trade Program, believe that it's not  
14 going to allow the Cap-and-Trade Program to work as  
15 efficiently as possible. Even the Scoping Plan, when it  
16 talked about emissions reductions associated with the  
17 EPS talked about the expiration of contracts or  
18 ownership interest, it didn't talk about the EPS working  
19 in concert with the Cap-and-Trade Program once Cap-and-  
20 Trade Program was up and running. And to clarify the  
21 point that Norman said, actually, the Scoping Plan  
22 specifically says is that this is not considered a  
23 separate measure in the Scoping Plan. So it was never  
24 one of the complementary measures to something out  
25 there. We would not have moved to have the EPS reviewed

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1 and reevaluated. What we're saying is that we believe  
2 that the Cap-and-Trade Program is all encompassing, and  
3 we believe that the EPS, after Cap-and-Trade Program is  
4 enforced, is not necessary, and we think that having a  
5 lot of stakeholder and CEC time spent on a measure that,  
6 at best, we believe, would only be effective until  
7 January 1, 2013, is not a good use of resources. That's  
8 why we're saying, now, if we're going to be -- that it  
9 should sunset because, right now, to have this review,  
10 and, okay, let's say we make some changes, for how long?  
11 How long is this process going to go on? And how long  
12 is the EPS really necessary? So, in light of what the  
13 Cap-and-Trade Program is designed to do, in light of  
14 what the Cap-and-Trade Program is said to be able to  
15 accomplish, that's the context in which the EPS needs to  
16 be reviewed now -- is it redundant? We believe so.

17 MR. KNOX: Okay, this is Bill Knox again, and I  
18 think one of the things is that the quote that Norm had  
19 in this comment was actually from the Draft Scoping Plan  
20 and not from the Scoping Plan which was the source of  
21 the quotes that I had in my introductory statement  
22 today. And also, I think that, you know, the Cap-and-  
23 Trade Program does guarantee -- it is the only type of  
24 program that can guarantee that there's a set limit for  
25 emissions in the period from 2013 to 2020. But we still

1 need the other programs. We need the RPS, we need the  
2 energy efficiency programs, and we need the EPS, as  
3 well. These are work in tandem to help us achieve our  
4 greenhouse emission reduction goals.

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

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

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

12 MR. KNOX: Which I don't think mention the EPS.  
13 Is that --

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

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

3 MR. LONG: Yeah.

4 MR. PEDERSEN: And we support it.

5 MR. LONG: I'm glad to hear that. But I just  
6 want to put the question back -- I don't think I got as  
7 quite as clear of an answer other than the sort of  
8 economic theoretical justification that Susie gave, but,  
9 you know, in our comments we've raised a couple of  
10 issues, one is that the EPS continues and provides  
11 certainty beyond 2020, which is the current extension of  
12 the Cap-and-Trade Program. The agreements extend beyond  
13 2020, the existing agreements. Certainly, the  
14 possibility for new high emitting resources exists  
15 beyond 2020 -- that's not -- I'm sorry Randy Howard just  
16 had to leave, but I've been instructed more times than I  
17 can count from my colleagues at LADWP about how the  
18 planning horizon for utilities is long, 10 years is a  
19 normal planning horizon for utilities, so I think the  
20 idea that having rules certain beyond 2020 would be of  
21 no use to the utilities, I find a little bit incredible.  
22 And then, lastly, I think just beyond the sort of  
23 economic theoretical justification that it might be  
24 duplicative of the final result, which I think could be  
25 said just as easily about any of the complementary

1 programs if that justification were taken to its fullest  
2 extent, I just want to be a little bit more clear, I  
3 mean, is there some kind of non-EPS compliant investment  
4 past 2013? Or a new coal plant that you all are  
5 evaluating, that you think --

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

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

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

17 MR. VESPA: Well, let me just -- this is Matt  
18 Vespa from Sierra Club, if I can add -- I mean, the  
19 implication of sun-setting the EPS, which I agree with  
20 Noah is not contemplated in the statute, it's continue,  
21 modify and replace. And sunset, discontinue, terminate  
22 is not a word in that series of words. But the  
23 implication is you would like to have the option of  
24 increasing your investments in coal. I mean, that is  
25 the implication. And is that something you want to have

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1 the option to do? And if not, then why are we fighting  
2 over this?

3 MR. PEDERSEN: Norman Pedersen, SCPPA San Juan  
4 Participants. You know, a fundamental principle of  
5 statutory construction is the interpreter in the first  
6 instance of a statute is the agency that is  
7 administering the statute, and the courts will give  
8 deference to the agency. And in the FSOR, this  
9 Commission explained what it saw as being the life of SB  
10 1368, it didn't see it as a backstop measure, it saw it  
11 as an anti-backsliding measure, and it saw it as a  
12 measure -- and we quoted the passages in our comments --  
13 it saw it as a measure that would last for five years.  
14 It would last until the Cap-and-Trade Program got  
15 implemented. Of course, at that time, they thought it  
16 was going to be implemented in January of 2012, and now  
17 we know it's going to be January of 2013, so we're  
18 talking about suspension on January 1, 2013. But that  
19 was the agency's view. And, you know, one of the ways  
20 that California gets in trouble is, you know, you'll  
21 come along, you have a statute, you have an implementing  
22 agency, a regulation is adopted for a period of time as,  
23 you know, a stopgap measure until we get to whatever it  
24 is, and then we get to whatever it is, and we find not  
25 only do you have the new regulation continue, but the

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1 old one keeps going, too. You know, we keep adding, but  
2 we don't do any subtracting. The clear view of the  
3 Commission back in 2007, and we were there, and the  
4 people who drafted the FSOR were there, you know, and it  
5 is in the FSOR, the clear view of the Commission was  
6 this anti-backsliding measure would be in place until  
7 the Cap-and-Trade Program took effect. And so, you know,  
8 now the ARB might have had whatever view it had, I'm  
9 clear it said in the Fed what it told Judge Goldsmith  
10 about the merits of the Cap-and-Trade Program and how it  
11 would work, you know, but that aside, the primary  
12 interpreter is this agency, and that's certainly their  
13 view and we think that view is correct. And that means  
14 that they were understanding an option under this  
15 language that you quoted from 8341(F) included  
16 suspension of the Regulation.

17 MR. ANDREONI: This is Tony Andreoni from CMUA.  
18 I would just like to add from what Norm and Susie and  
19 Randy had said earlier, is the fact that there's a need  
20 for certainty and what we're trying to do is get after  
21 the fact that, as Norm said, the EPS Rule was in place  
22 to have some certainty early on given the fact that AB  
23 32 and some of the measures had not been implemented,  
24 and nothing had been assembled. The Scoping Plan came  
25 out in 2008. It's going to be re-looked at again in

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1 2013 by ARB to look and see how it is progressing, how  
2 some of the measures are progressing. The fact is that  
3 we now have a rule in place that focuses on a Cap-and-  
4 Trade measure and takes into account all utilities  
5 sources and other industrial sources. And the fact that  
6 you cannot go out into an air district and implement a  
7 new source that is going to be higher than where your  
8 cap is right now and the fact it is going to diminish  
9 over the next seven years, we obviously don't know where  
10 it's going to go beyond 2020, but we need to have  
11 certainty.

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

20           MR. VESPA: Matt Vespa from Sierra Club. You  
21 know, just to make clear in terms of statutory  
22 interpretation, it's the plain meaning of the text that  
23 controls, legislative history or intent is secondary.  
24 And the plain meaning of the text, "continue, modify,  
25 replace," does not include "termination." I don't think

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1 there's a "there" there in terms of the statute. I  
2 think this is an extreme overreaching on the part of the  
3 POU's, and I don't think it should be entertained at all  
4 as part of this proceeding.

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

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1 say, briefly, and not repetitively on this point, please  
2 do.

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

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

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

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

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

24 MS. VACCARO: I don't think Mr. Long was  
25 insinuating, I think I'm going to infer a very

1 legitimate intent on his part to understand, and he's  
2 suggesting he doesn't. I'm hoping that there's nothing  
3 else that's coming out of that statement. You did have  
4 the ability, though, to express your concern with either  
5 his wording or intonation, or whatever it is, and I  
6 think, at that, let's leave this issue alone and move on  
7 to the next question, which was a resounding no from all  
8 of you, so I don't know that there's much to say.

9 The question was -- pardon me?

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

22 MR. ANDREONI: This is Tony Andreoni, CMUA, and  
23 I wasn't trying to infer that there was definite  
24 certainty on where we were headed on Cap-and-Trade, I  
25 was just trying to basically say that we're looking for

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1 certainty as we move forward with all of the measures  
2 that many of our utilities have to respond to and comply  
3 with. Obviously, if legal proceedings occur, we will  
4 continue to participate in those efforts.

5 MS. DECARLO: Sorry for that interruption,  
6 Kourtney.

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

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

22 MS. VACCARO: Anything else the POU's feel that  
23 you need to add, other than what you put in your papers?  
24 Okay, thank you. Final sort of catchall, but I think we  
25 really exhausted most of the issues that need to be

1 covered, but, again, just wanting to be fair in this  
2 process. Are there any other issues that have been  
3 raised by the OIR or so far in the discussions today  
4 that need, or require, or would benefit from discussion?  
5 I'll start over here with NRDC and Sierra Club, we'll  
6 make our way around, and hopefully we'll keep this  
7 somewhat brief.

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

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1 consider that number here.

2 MS. VACCARO: Thank you. Are we speaking for --  
3 anything from Sierra Club on that? Okay, thank you.

4 MR. PEDERSEN: Norman Pedersen --

5 MS. VACCARO: Are you the designated  
6 spokesperson?

7 MR. PEDERSEN: No, no, but I'll go ahead and  
8 take the mic, Kourtney. Norman Pedersen, SCPA San Juan  
9 Participants. Actually, we were a little surprised to  
10 see the point about the carbon sequestration plan. I  
11 assume you're talking about the one down in Kern County,  
12 and now you just raised the point about the thousand  
13 pounds vs. 1,100. Actually, you know, there was nothing  
14 in the Order Instituting this Rulemaking, as I recall  
15 it, that allowed for expansion of the scope, and so  
16 there might be cause -- I don't know a thing about the  
17 carbon sequestration issue, we were not involved in that  
18 project, but you know, it seems like we have plenty to  
19 handle in this rulemaking just staying within the four  
20 corners of the Order Instituting the Rulemaking  
21 Proceeding, without bringing in other sundry issues in  
22 which we are not particularly interested, but other  
23 parties might be very interested and not know this is  
24 all going on. We would probably prefer just to keep it  
25 within what we are trying to handle right now and hope

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1 we get a handle.

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

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

15 MS. BERLIN: No, kind of a closing comment, I  
16 believe that we really need to focus on fine tuning the  
17 discussion topics. I know we discussed a lot today and  
18 we went around and we do have differing views, I  
19 understand that, but I believe that resolution, whatever  
20 that might look like, is going to be more effective and  
21 more expedient if we focus on a priority list of issues,  
22 at a minimum. For example, are we looking at  
23 environmental improvements? Are those the issues at the  
24 forefront? What are they? I'm just uncomfortable with  
25 the broad scope and the chicken and egg in some of these

1 discussions that we're having. What does reporting look  
2 like? Well, it depends on what we're going to be  
3 reporting. And when would you report? Well, it depends  
4 what you're going to report. And I just really think  
5 that, to the extent that we can focus the scope on some  
6 kind of prospective action, that we would all be very  
7 well served and it would be more efficient, and I just  
8 also wanted to raise -- reiterate -- and sorry for doing  
9 so -- but a very strong concern I have regarding what  
10 appears to be some notion that there's going to be a  
11 retroactive application of any new decisions, and how  
12 that would impact -- any new definitions in how that  
13 would impact past decisions.

14 MR. MORROW: Okay, George Morrow, Azusa Light  
15 and Water, SCPA and San Juan. I serve on the Board of  
16 Directors for CMUA and I can tell you one of the  
17 initiatives of CMUA, and something that the general POU  
18 population is concerned about these days, I'm speaking  
19 perhaps to the Chairman and to the Commissioners, is the  
20 preponderance and the multiplicity of mandates that are  
21 coming out of the State of California. You know, going  
22 to this rulemaking, AB 32 feed-in tariffs, the solar SB1  
23 Program, we're talking about distributed generation  
24 goals, we've got storage requirements that folks are  
25 talking about, energy efficiency goals, all the

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1 reporting that goes with all that, all the staffing, all  
2 the rules and regulations that get adopted associated  
3 with all those things. I guess we're sort of getting  
4 pulled in where the IOUs have been pulled in for a long  
5 time, we're having to really -- you know, we're going to  
6 have to spend a lot of money and staff time to deal with  
7 all these things, and I don't know that it's necessary.  
8 We're locally controlled, we've been in business for 107  
9 years, most of the POUs have been in business for 100  
10 years, we've done just fine. Show us the goal line,  
11 point us to the goal line, we can get there without a  
12 lot of bureaucracy and paperwork and hearings, even  
13 though that's not good for Norm's kids' college  
14 education. So that's my appeal is just to kind of keep  
15 in mind the increasing burden on the POUs these days,  
16 and that's one of our concerns with this thing,  
17 continuing on if it's not really necessary, you know,  
18 let's cut one of the heads off of what is attacking us  
19 and we'd very much appreciate it and we'll work with you  
20 on something else. Thank you.

21 MR. LONG: This is Noah Long from NRDC. I just  
22 hope nobody cuts my head off as a response to  
23 rulemaking. So, you know, I think other than that we've  
24 made all the points we wanted to make on number 9, and I  
25 just want to thank the Commission and everyone else for

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1 their participation. I guess my only final comment is  
2 that the meaning of the EPS, I think, is as relevant  
3 today as it ever was, I think it's a really valuable and  
4 impactful standard, and I think the questions that we're  
5 getting at here today are the toughest questions that  
6 the EPS was intended to resolve for the State. And I  
7 think these are tough issues before the Commission. I'm  
8 really glad the Commission is willing to take them on,  
9 and I hope that we can move forward in a way that  
10 minimizes the long term greenhouse gas emissions of our  
11 state and also minimizes the ongoing other external  
12 impacts from these kinds of power plants going forward.  
13 So thanks everybody for your participation and I hope we  
14 can continue to work together.

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

20 MS. VACCARO: Thank you.

21 MR. ANDREONI: Thank you. This is Tony  
22 Andreoni, CMUA. I want to also thank the Commission for  
23 letting me come to the table here in the afternoon. I  
24 do and did hear a lot of things today sitting in the  
25 room, and I'm hopeful that many of our members will

1 continue to participate in the activities and in  
2 whatever rulemaking activity occurs with this EPS rule.  
3 I certainly did have some concerns raised today by the  
4 U.S. EPA that I won't go into right now, but certainly  
5 believe that when the term "useful life" was mentioned  
6 earlier today, in all my years of developing rules in my  
7 previous job at ARB, recognize the fact that "useful  
8 life" and the fact that control technologies in the  
9 number of facilities affected by both of those are  
10 extremely important when you start to promulgate a rule,  
11 it cannot be left out of the equation. So I would hope  
12 that everybody looks at that a lot closer as you start  
13 to move forward, especially the useful life of a  
14 facility. I would like to ask the Commission if there  
15 is an idea of moving forward from here, as far as the  
16 schedule, perhaps any of the workshops that will kind of  
17 move forward, and the overall timeline that you kind of  
18 expect to see this particular issue move forward at this  
19 point.

20 MS. VACCARO: Well, yes, what I was going to do  
21 -- those are very important questions and many of them  
22 are going to be addressed in this sort of closing  
23 remarks section. I was going to take the opportunity,  
24 in fact, to have us go through the public comment,  
25 listen to the public comment, and also, then, close

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

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

24           CHAIR WEISENMILLER: So, please mute if you're  
25 typing.

1           MS. VACCARO: I think that it stopped. Again,  
2 I'll just do a final call for public comment or any  
3 comments from folks on the phone line. Okay, hearing  
4 none, it's me back on the hot seat in terms of next  
5 steps.

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

17           I think today's discussion has helped  
18 crystallize, at least for me, and I believe probably for  
19 the Chairman, as well, the fact that there are some  
20 legal and factual issues that still need some narrowing.  
21 I think we have a sense of what those might be based on  
22 today's conversation, and I think in terms of next  
23 steps, what we'd like to do is put out in a paper to you  
24 what we'd like to see in terms of responses to what  
25 we've identified as truly the critical issues and facts.

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1 The goal is not to be repetitive at all of what it that  
2 we've already read and heard, it's to move this forward.  
3 I suspect that there will likely be another workshop and  
4 I think the goal is to move swiftly. The briefs or  
5 comments give us every indication that moving swiftly is  
6 something we should do one way or another in terms of  
7 reaching a decision because we do understand all of the  
8 points made by everyone.

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

23           MS. BERLIN: Can you repeat what you said what  
24 you would be putting out in the paper? A list of  
25 questions?



1 MS. VACCARO: We'll probably be asking the  
2 parties to address what we believe are the critical  
3 factual and legal issues that are going to help the  
4 Commission determine what direction ultimately to go in.

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

13 MS. VACCARO: Recognizing that I'm not in a  
14 role, I'm not a decision maker, I'm not a policy maker,  
15 I'm just a facilitator and significant part, I don't  
16 make recommendations along those lines and haven't. I  
17 think from where I sit, and I can only speak for myself,  
18 today was a critical juncture in really being able to  
19 move forward with what is a narrowing, and a necessary  
20 narrowing, of issues. When I say "swiftly" and "swift  
21 movement" and "getting something together," I don't mean  
22 six months from now, I mean like within the next week or  
23 two, you should get something and we'll be moving this,  
24 I think, along on pretty aggressive timelines. But  
25 other than that, I'm not in a position to make

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1 representatives on behalf of the Commission or the  
2 Chairman, but I think the Chairman, from what I  
3 understand, is interested in having staff evaluate and  
4 analyze, and then distill what we've heard, where we  
5 are, get those issues out there. I think right now  
6 we're still wanting you to answer some questions, as  
7 opposed to giving you direct answers or a sense of where  
8 we might be headed.

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

21 MS. VACCARO: That sounds reasonable.

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

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

10 [Adjourned at 12:18 p.m.]

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