

STATE OF CALIFORNIA - THE RESOURCES AGENCY
BEFORE THE
CALIFORNIA ENERGY COMMISSION (CEC)

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

California Energy Commission DOCKETED 12-OIR-01
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Public Workshop

California Energy Commission
Hearing Room A
1516 9th Street
Sacramento, California

Tuesday, January 29, 2013

1:10 P.M.

Reported by:
Kent Odell

COMMISSIONERS

Robert B. Weisenmiller, Chairperson

STAFF

Sekita Grant, Advisor to Chairperson Weisenmiller

Melissa Jones

Lisa DeCarlo, Staff Counsel

Blake Edwards, Public Adviser

Also Present (* Via WebEx)

Randy Howard, Director, of Power System Planning and Development, Los Angeles Department of Water and Power

Steven L. Homer, Director, Project Administration, Southern California Public Power Authority.

Martin R. Hopper, General Manager, MSR Public Power Agency

Susie Berlin, Counsel, MSA

James Lau, Director, Regulatory Affairs, Southern California Public Power Authority

Norman A. Pedersen, Attorney for the SCPPA San Juan Participants and City of Anaheim

Noah Long, Natural Resources Defense Council

Matthew Vespa, Sierra Club

Public Comment

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1

P R O C E E D I N G S

1

2 JANUARY 29, 2013

1:10 P.M.

3 MS. GRANT: Good afternoon, everyone. We'll get
4 started now. We're starting a tad bit late, but I think
5 we have enough time to get through the agenda.

6 Hopefully, everybody picked up an agenda on the
7 way in and signed in. There's a sign-in sheet outside.

8 I'd like to welcome everyone to this public
9 workshop to discuss the possible changes to the Energy
10 Commission's Greenhouse Gases Emissions Performance
11 Standard.

12 What we'll do to start out with is just have a
13 round of introductions. We'll start with Energy
14 Commission participants.

15 I'll start with myself. My name is Sekita Grant
16 and I'm Advisor to Chair Weisenmiller, and I'll be
17 facilitating today's discussions.

18 CHAIRPERSON WEISENMILLER: Hi, I'm Bob
19 Weisenmiller. I'm Chair of the Energy Commission.

20 MS. JONES: Melissa Jones, Energy Commission
21 staff.

22 MS. DE CARLO: Lisa DeCarlo, Energy Commission
23 Staff Counsel.

24 MS. GRANT: Okay, great.

25 So, now we'll go ahead. We'll start with

1 introductions in the room and then we'll ask for people
2 on the phone to introduce themselves, as well. So, we
3 can maybe start by going this way.

4 MR. HOWARD: Randy Howard, Director of Power
5 System Planning and Development for Los Angeles
6 Department of Water and Power.

7 MR. HOMER: Steven Homer, Director of Project
8 Administration for Southern California Public Power
9 Authority.

10 MR. HOPPER: Martin Hopper, General Manager, MSR
11 Public Power Agency.

12 MS. BERLIN: Susie Berlin, Counsel for MSR and
13 also CPA.

14 MR. LAU: James Lau, Director of Regulatory
15 Affairs, Southern California Public Power Authority.

16 MR. PEDERSEN: Norman Pedersen, Attorney for the
17 SCPPA San Juan participants and City of Anaheim.

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

20 MR. VESPA: Matt Vespa with the Sierra Club.

21 MS. GRANT: Yes, and we have Blake Roberts here,
22 the Public Adviser. He's in the audience, so if anybody
23 has any problems or they'd like -- have any comments or
24 concerns, they can bring it up to him.

25 We will have a public comment period at the end.

1 And for those of you who are new to the process, there
2 are blue cards outside, you fill them out and you give
3 them to Blake, and he'll make sure that you have an
4 opportunity to speak towards the end.

5 Okay, so I'll start with giving a little
6 background and purpose for today's workshop. Again, the
7 purpose is to discuss possible changes to the Energy
8 Commission's Emissions Performance Standard Regulations
9 that can be found at sections 2900 through 2913.

10 Specifically, today we would like to focus on
11 the limited scope of issues that were outlined in the
12 December 20th, 2012 workshop notice. Namely, we'll
13 basically march through three primary issues.

14 The first being to get a brief status update
15 from POUs on their activities related to investments to
16 meet environmental and regulatory requirements for
17 noncompliant facilities.

18 The second will be a discussion on a possible
19 filing or notification requirement for POU investments
20 in non-EPS compliant facilities.

21 Finally, we'll have a brief discussion on
22 whether the term "investment" should replace the term
23 "cover procurement" under section 2913 of the
24 regulations, regarding the case-by-case review of
25 preexisting multi-party commitments.

1 So, I'll just give a bit of the layout in terms
2 of what the discussion format will look like. I will
3 essentially state a topic or question, I'll ask for the
4 parties around the table to respond one at a time.

5 The purpose is not to have you repeat what was
6 in the written comments, you all did a very thorough job
7 with that, but is really to bring out anything that was
8 not covered in those written comments and, also, to
9 highlight some of the more critical points that you want
10 to make sure the Commission understands.

11 So, after each participant has spoken, there
12 will be a brief opportunity for others to respond or ask
13 questions, including the Chair, staff and myself. So,
14 that's kind of how we're going to march through this.

15 There's only three issues, but there could be a
16 very long discussion on this, but we like to keep it
17 short and to the point. Again, you guys did a great job
18 with the written comments, so I think quite a bit is
19 covered on the record there.

20 So, marching through the agenda, let's go ahead
21 and do opening statements. And again, these should be
22 brief and focused on some of the high points you want to
23 stress to the Commission on topics relevant to today's
24 workshop.

25 So, we can continue going this direction.

1 Randy, if you'd like to start.

2 MR. HOWARD: Sure. I didn't know I was in the
3 hot seat. So, I'm Randy Howard, Director of Power
4 System Planning and Development.

5 We thank you for the opportunity to allow
6 comments regarding this important rulemaking. I think
7 we've entered a number of comments over the last year
8 into the record. We had formal comments that we've also
9 provided for this proceeding, responding to the
10 questions.

11 I think LADWP continues to believe that the
12 record in this proceeding is pretty clear. There really
13 is no meaningful evidence of noncompliance by any POU
14 and that the POU's clearly do understand the provisions
15 of SB 1368, the legislative intent, and we are all
16 marching down that path of implementing measures that
17 remain compliant.

18 The transformation of energy policy in
19 California is moving at a record speed and our
20 ratepayers are unable to write checks quite fast enough
21 to keep up with the rate increases as proposed going
22 forward.

23 These actions include the RPS, the OTC, and
24 numerous other activities such as AB 32, and coal
25 replacement.

1 So, from LADWP's perspective, the parties in
2 this proceeding really need to spend their resources,
3 both labor and dollars, focused on these enormous
4 issues. And we believe that additional reporting
5 requirements and obligations are not necessary and,
6 actually, are not justifiable at this time.

7 As we get through later in the agenda, we will
8 be sharing more on the specific activities LADWP's
9 proceeding with on its divestiture of its coal assets,
10 and we'll go through those details.

11 So, thank you, I'll stop.

12 MR. LAU: So, this is James Lau, again, from --
13 I'm Director of Regulatory Affairs for the Southern
14 California Public Power Authority.

15 We are a joint powers authority that represents
16 11 public utilities and one irrigation district.

17 I wanted to just say a few words about our
18 broader efforts and then allow my colleagues to speak
19 more specifically to issues related to this workshop.

20 SCPPA supports the 1368's goal of reducing the
21 greenhouse gas emissions. In that spirit, SCPPA and our
22 members, member agencies who have an interest in San
23 Juan, having exploring options with multiple parties,
24 Sierra Club, NRDC, PNEM and others on how we can fully
25 achieve this goal.

1 While our conversations are confidential, we
2 have been making positive progress and we are committed
3 to continuing to have these conversations.

4 And I mean, we thank Sierra Club and NRDC for
5 their devotion and commitment to this effort and in the
6 near future we just -- we hope to have some positive
7 news to share with the Commission.

8 Until that time, I want to give it over to our
9 Legal Counsel, Norman Pedersen, who can talk more about
10 the specific issues, and Steve Homer, who is our Project
11 Director for San Juan. Thank you.

12 MR. PEDERSEN: We did file fairly extensive
13 opening comments, so I'm not going to belabor it. As
14 you saw from our comments on the options, we think that
15 if they were narrowed that they would be acceptable,
16 with the exception of one that actually turns out to be
17 the first choice of NRDC and Sierra Club.

18 MR. VESPA: Imagine that.

19 (Laughter)

20 MR. PEDERSEN: Almost pressing in that regard.
21 We are prepared, within the limits of our
22 confidentiality agreement, to provide you the update and
23 I think James actually gave you probably the high notes
24 on that one.

25 And we were very pleased to see in the notice of

1 this workshop the proposal to revise section 2913, and
2 we appreciate that.

3 And I don't have anything more. Do you have
4 anything, Steve?

5 MR. HOMER: No.

6 MR. HOPPER: Okay, I'll start, Martin Hopper,
7 General Manager of MSR.

8 We have filed extensive written comments, both
9 in the course of the proceeding and in response to the
10 most recent request. And if there are any questions on
11 those, I'll hand them ably off to Suzie Berlin.

12 But I think what I wanted to take a minute on
13 here is that as a matter of status I think it's pretty
14 fair to say that all of us, be it -- though I'm speaking
15 for MSR, I'll use the grand "we" and I'll throw in SCPPA
16 and LADWP. We're all in the path to exit out of these
17 non-EPS compliant facilities.

18 I think the record and public comments, and
19 positions we've taken are all pretty clear on that. And
20 I think Matt and Noah are doing their best to encourage
21 us down that path.

22 But I think the important thing to note is that
23 we are on that path. And that I think that really comes
24 back to what was the spirit of the statute. It was to
25 encourage us down that path and try and prevent

1 backsliding.

2 I think, as hinted in all of our filings to
3 various degrees, depending on how comfortable we are
4 under our various nondisclosure agreements, that the
5 prerequisites to divestitures, particularly as speaks to
6 San Juan, are really underway.

7 And I think it's interesting reading. It's not
8 filed in this proceeding, but with the 10th Circuit on
9 Thursday and Friday we all made a number of filings
10 there describing the progress being made with respect to
11 achieving a settlement of the San Juan project that
12 provides, I think to all our minds, a clear path for the
13 Californians to exit that project no later than December
14 31st of 2017.

15 So, we're on that path and I think what I want
16 to emphasize is kind of the interim nature of this
17 problem. We have non-EPS compliant facilities right
18 now. There is a date and a date fairly soon when we
19 will all be out of those facilities.

20 I think what's also important to note and we've
21 addressed this in our filings that as far as MSR goes,
22 we've not yet run into a covered procurement. We're
23 staring some actions in the fact that could conceivably
24 be covered procurements and we're doing our darndest to
25 stay out of them because we don't want to cross that

1 Rubicon. We want to get out cleanly and at the least
2 cost to our ratepayers, and that's really what it all
3 comes down to.

4 So, to summarize, we're on the way out and if
5 you all will help us so the door doesn't hit us too hard
6 in the backside as we go.

7 MS. BERLIN: Suzie Berlin for the MSR Public
8 Power Agency.

9 So, hopefully, I'm not going to sound like I'm
10 reiterating our comments. We did file comments and
11 Martin has given you a brief update as to where we are
12 with regard to the desire to divest and, as Martin very
13 aptly put it, to meet the intent of SB 1368.

14 We have a question that we'd like to address in
15 the context of this workshop with regard to what the
16 scope of this proceeding is, because we think that if
17 the policy is to provide notice to the public, assuming
18 that that's the purpose here to ensure that there's
19 notice of expenditures in these facilities, then the law
20 already provides adequate accommodations to meet this
21 objective.

22 The parties are all familiar with these
23 provisions. They've even utilized them in the past.
24 Parties know what transactions are occurring.

25 If the objective is something broader, then that

1 needs to be made clear and appropriately addressed.

2 It appears that what we're moving towards here
3 is a proposal to have some kind of review and approval
4 of POU transactions by the CEC in advance of the POU
5 embarking upon those transactions, and we don't think
6 that's appropriate within the context of the regulation.

7 If we are talking about revising the regulation
8 to do that, then we're talking about something that's a
9 lot more expansive than a mere notice requirement.

10 So, we need to ensure that the language we're
11 using is really consistent with what it is the
12 objectives are that we're trying to make with regard to
13 the revisions.

14 Like I said, I believe that calling these
15 "filing and notice requirements" is a misnomer because
16 we're talking about submitting stuff, in some instances
17 proposals for CEC approval. It's not sure what that
18 form would be.

19 Fundamentally, we think that additional filing
20 requirements are unnecessary. The information is
21 already out there. The POU's are all moving towards the
22 purpose of SB 1368. Nobody has made any finding that
23 the POU's are not complying with the current regulation.

24 Therefore, not to put it too bluntly, but if
25 it's not broken, why are we spending so many resources

1 to fix it? And there's not been any demonstration in
2 the record that there's anything wrong with the way in
3 which the process is currently working or that the POUs
4 have violated the regulation at all.

5 So, you touched on the mandatory Commission
6 evaluation and we believe that's problematic. And as a
7 practical matter, if there are third parties or the
8 Commission that does believe that there are violations
9 of the regulation, then there's already a process in the
10 record -- in the regulation to address how that can be
11 dealt with.

12 And we think that the existing regulation, as it
13 stands, meets the objectives of the SB 1368. We don't
14 think that there's been any filings that have
15 demonstrated a need to change that. And if there are,
16 we believe that we're embarking upon a much broader
17 scope change to the EPS than merely requiring a notice
18 requirement. Thank you.

19 MR. VESPA: Thanks. Yeah, I'll start and Noah
20 can finish up. This is Matt Vespa from Sierra Club.

21 You know, just to be clear on the scope of what
22 we're talking about, it's reporting on non-deemed
23 compliant power plants that provide baseload generation
24 that exceed the EPS. So, we're talking about a real
25 finite number, you know, Navajo, San Juan, IPP.

1 I saw in the filings references to headquarters
2 for SCPPA and a peaker plant. You know, this is a very
3 narrow subject of plants we're talking about, so I just
4 want to get that out to begin with.

5 And what we've seen from the filings is, A, you
6 know, a lot of these investments don't actually go to
7 the governing board in all cases. So, you know, that is
8 not necessarily the best way to be notified.

9 And B, there's differences of opinion on what is
10 or is not a covered procurement, you know, are these
11 environmental investments covered or not? You know,
12 there's some differences there.

13 And so because of those two things, you know, we
14 feel it would be helpful and necessary for the CEC and
15 other interested parties to have advance notice of some
16 of these potential investments in these three facilities
17 so we could all have some confidence on compliance.

18 You know, one of the things about option three,
19 which was a sort of prospective look at investments, is
20 this allows everybody to be on the same page about
21 whether these things can lawfully go forward.

22 And so, you know, the San Juan example, and I
23 will agree with Martin and others that we've had really
24 excellent communications since our lack workshop, and
25 encouraging divestment, that's been very positive.

1 You know, but one thing that came up there was I
2 think there was a lot of uncertainty with EPA, with the
3 out-of-state actors about what's going on in California.
4 Can they lawfully invest in some of these environmental
5 upgrades? No one really knew.

6 And I think teeing these things up in advance is
7 helpful for everyone. And we're really talking about,
8 you know, a finite and small number of potential
9 investments to ensure California completes this
10 divestment from coal. And that's happening. It's, I
11 think as Martin referenced, very much interim because
12 this will be -- I think if San Juan -- if they divest
13 from San Juan, you know, they're out and that's done.

14 And so we just want to ensure that this process
15 moves forward in a way where all the parties, not just
16 the POUs, but the out-of-state actors, the EPA,
17 different entities that have interest in these
18 facilities understand and have clarity on what is lawful
19 for California POUs to invest and what isn't.

20 MR. LONG: I think Matt's -- I'm sorry, Noah
21 Long from the NRDC. Matt's opening comments cover mine
22 as well.

23 I'll just add that Matt has the flu, so he can
24 come off a little bit grumpy right off the start. I
25 think we want to start by saying thanks for having this

1 workshop.

2 MR. VESPA: Yeah, thank you.

3 (Laughter)

4 MR. LONG: And also, thanks to our colleagues
5 from the POU's for coming up and having this
6 conversation.

7 I think it's an important conversation to have.
8 I can't agree more with the sentiments from Martin, also
9 from SCPPA on how far we've come with regard to San Juan
10 in the last few months. I think we've had really good
11 conversations. I'm very hopeful that we're going to
12 come to an agreement that we're all going to support.
13 You know, the devil's in the details and we're not there
14 yet, but I think we've made a lot of progress.

15 And I just want to add that I think relative to
16 our conversation today about the progress that we've
17 made there is that there's still a couple, a couple more
18 of these to do. Not a lot, but a couple more of these
19 to seal up.

20 And it's been very useful to have a forum. It's
21 been very useful to make sure that we know that the CEC,
22 which is the State agency empowered and entrusted with
23 the responsibility of implementing SB 1368, has a role,
24 and that we're going to be able to come back here and
25 discuss these issues.

1 And I think going forward the importance of
2 public notice and, you know, we've emphasized already
3 our preferences as between these options. But having
4 public notice in advance for the statewide forum and for
5 the Commission will make it much easier to have real
6 clarity and to promote the kinds of conversations that
7 we've had around San Juan in this past year. And,
8 hopefully, those conversations around San Juan won't go
9 forward, you know, indefinitely. Hopefully, we're going
10 to wrap those up soon but, you know, we have a couple
11 more of those to do.

12 And I think maintaining a certain level of
13 Commission involvement through the reporting process
14 could be really useful to do that. So, thank you.

15 MS. GRANT: Okay, thank you. Another reminder,
16 if we can have everyone on the line mute themselves,
17 there's some -- a little bit of background.

18 Okay. Great. Okay, perfect.

19 Okay, thank you guys for your opening
20 statements, they were brief and impressive. I left a
21 lot more time for those, so thank you.

22 So, the next thing on the agenda is to get into
23 the status update and roundtable discussion.

24 We'll start with the status update, and there
25 was a bit of that provided by the POUs during their

1 opening statements, so thank you for that.

2 And, you know, there's no need to repeat what
3 you've already said, but to the extent there's more
4 information you'd like to provide for us at this time,
5 we'd appreciate that.

6 So again, Randy.

7 MR. HOWARD: So, Randy Howard again with LADWP.
8 I'm going to pass around a handout that no one's going
9 to see that are listening in.

10 LADWP just completed -- we do an annual
11 Integrated Resource Plan, so we just did -- similar to
12 the CEC, every other year we do a partial update and
13 then we do a full blown. Last year was our full blown.

14 And this is our -- what we call our IRP in one
15 page. For those that have not seen it, it's available
16 online as well, and our full Integrated Resource Plan is
17 online.

18 So, it's a very transparent, public process in
19 which we develop the resources. We bring in the public,
20 the city council members, staff. We bring in other
21 types of stakeholders.

22 Both the NRDC and Sierra Club are very active
23 participants in our process of the Integrated Resource
24 Plan.

25 So, the top part of our plan really lays out the

1 foundation of our exit out of coal resources and then
2 identifies at least our view of the types of resources
3 that we need to add. And I'm going to get into some
4 very specifics on those for the upcoming coal plants.

5 So, we lay this out, we discuss it, we price it.
6 So, you can see the next category is our capacity, which
7 is obviously different than energy, and how we're going
8 to meet the obligations of keeping a reliable grid for
9 the City of Los Angeles and those resources. It's very
10 clearly showing the exit out of Navajo and the exit out
11 of IPP coal.

12 We ran this year I think almost close to 20
13 different models and scenarios based on input from
14 stakeholders and the community. And the recommended
15 case that did come out was a divestiture of Navajo by
16 2015 and a divestiture of Intermountain Power Project by
17 2027. I will go into, again, some details there.

18 And then it lays out what that does to our
19 overall CO2 emissions and then the increase in energy
20 efficiency, and how that assists us in meeting our
21 obligations, our removal of -- or elimination of once-
22 through cooling at our power plants and increase in RPS,
23 and then the cost, clearly outlining the cost to our
24 ratepayers because in the end they're the ones that have
25 to pay for this. We have to really bring them along in

1 the process of understanding what they're getting for
2 those costs and the environmental improvements that come
3 to the Los Angeles area and Southern California.

4 So, LADWP is in confidential, exclusive
5 negotiations to divest of Navajo Generating Station by
6 2015. We do plan on shortly having a signed term sheet
7 on that divestiture. This is four years ahead of the date
8 required by SB 1368.

9 These plans of the divestiture have been quite
10 public and they were discussed both in our 2011 and our
11 2012 Integrated Resource Planning proceedings.

12 Last Friday, a public presentation on the
13 specific action items was presented to our Board of
14 Commissioners in a public meeting and that is also
15 available.

16 So LADWP, to replace Navajo Generating Station,
17 issued late last year and RFP for replacement resources,
18 natural gas, combined cycle, combustion turbines.

19 We also did approve two very large solar
20 transactions for 460 megawatts of large-scale solar as
21 part of our replacement strategy.

22 We've now formally approved 100 megawatts of
23 local feed-in tariff in the City of Los Angeles as part
24 of our replacement strategy.

25 We've had a substantial increase in our energy

1 efficiency spending, also part of the strategy for the
2 replacement of the Navajo Generating Station.

3 As it stands, everything is on track to have
4 resources that will be fully built out, and in place,
5 and ready to deliver as we exist ourselves by 2015, the
6 end of 2015, off of Navajo Generating Station.

7 We do not see any action that would prevent us
8 or keep us from proceeding with the divestiture.

9 For Intermountain Power Project which is, as
10 we've discussed before in this forum, it's a power
11 purchase agreement. It terminates in 2027. It's not an
12 ownership. We do not carry, or any of the -- LADWP nor
13 California participants carry an ownership role there,
14 nor do we have a lot of the direct control over some of
15 the investments and expenditures in that facility.

16 That being said, the owners are Utah Utilities.
17 They're not subject to SB 1368, but they have clearly
18 recognized the benefits of having a diverse participant
19 mix in a future project at Intermountain Power project
20 or in Southern Utah.

21 They have recognized that there have been
22 benefits from the Southern California participants by
23 adding projects, such as the Milford Wind Projects 1 and
24 2. That's almost 300 megawatts there of wind. And the
25 Southwest Wyoming Wind Project, which is almost another

1 100 megawatts of wind coming through the Intermountain
2 Power Plants.

3 So, LADWP has moved forward, we've identified a
4 complex eight-step process to transition IPP to an SB
5 1368-deemed compliant baseload plant into the future.

6 The first step was to amend the Utah State law
7 that allowed -- that would allow non-coal generation at
8 IPP. That has been completed.

9 The second step was to amend the Intermountain
10 Power Agency Organization Agreement. This step has also
11 been completed and ratified by the IPA board.

12 Currently, the individual Utah municipal owners
13 are working on ratifying the amended agreements.
14 Approximately five of those owners have currently done
15 so. The rest are working on it.

16 The next step will be to amend the existing
17 power sales contracts. This step will be the first step
18 for the California POU participants to engage. That, we
19 expect to happen very soon.

20 This is part of a lengthy process to get us out
21 of a contractual obligation, potentially earlier, but to
22 transform a facility in which a number of participants
23 have invested billions of dollars over the years.

24 We think it's a very valuable asset for the
25 Southern California participants and the Utah

1 participants. We think there is a need to continue
2 having something there operating that would support
3 additional renewables that could be delivered into
4 Southern California, and so the parties are working on
5 that process today.

6 So, we think it's all positive steps, but we do
7 not believe, at least in the SB 1368, at least for
8 additional reporting obligations that, really, IPP has
9 much that we could do or would do because we just don't
10 see that the CEC in that venue, because LADWP Board, as
11 stated, really doesn't make specific decisions
12 associated with investments to keep that plant
13 operating.

14 One additional thing that I'll raise, in the
15 reporting and some of the suggestions by the
16 petitioners, was for these facilities, as we transform
17 these facilities there are lots of investments going on
18 really associated with transforming them into more
19 renewable type assets or assets that would complement,
20 or be able to allow us to integrate in more renewables,
21 such as the interconnections.

22 The transmission lines associated with Navajo
23 belong to the Navajo agreement and the Navajo
24 participants. They don't belong to LADWP. In the
25 divestiture, it's our objective to retain some of those

1 transmission assets, and separate them, and use them for
2 renewable purposes, but that takes working of all the
3 participants.

4 And the same thing in Utah; there are
5 investments being made that allow for additional
6 renewables to be built and brought from the Utah or that
7 area into Southern California. And those investments
8 have nothing to do with extending the life of coal, but
9 are strictly for the purposes of increasing renewables
10 and our access to renewables at the least cost for the
11 ratepayers in California.

12 So with that, I'll stop.

13 MS. GRANT: Yeah, before we go on, is there
14 anybody either here or on the line representing NCPA?
15 Okay, so you're the -- is there somebody else? Okay.

16 MS. BERLIN: NCPA does not have an ownership
17 interest in any non-EPS compliant facilities under the
18 current EPS level. But Scott Tomashefsky is also
19 participating via the webcast.

20 MS. GRANT: Okay, perfect.

21 MR. HOWARD: Steve Homer for SCPPA. SCPPA is
22 involved in confidential discussions and negotiations to
23 develop an alternate plan to the Federal Implementation
24 Plan for San Juan. I wish I could tell you more but,
25 basically, we're under orders from the EPA to spend

1 possibly a billion dollars on SCR technology.

2 No one in this room wants us to do that. None
3 of the owners of the plant want to do that. We're
4 feverishly working with the State of New Mexico and the
5 EPA to come up with an alternative plan that makes
6 everyone happy, that will meet the BART goals, and
7 regional HAZE issues.

8 We're very close to that, we think. It will
9 also allow the California entities to exit the project
10 and have no coal anymore. That's our goal, we're
11 getting closer and we just need a little more time to
12 accomplish that. Thank you.

13 MR. HOPPER: I'll take this one, as yours seems
14 to take a lot of feedback, Suzie. Martin Hopper here.

15 You know, kind of to amplify what Steve
16 indicated that there are these discussions ongoing, and
17 I know we've -- we, being the MSR, SCPPA and Anaheim
18 have met with the Sierra Club and NRDC folks a couple of
19 times and shared with them what we can share. They've
20 proffered some good ideas for moving the process
21 forward.

22 And, you know, looking at time lines and
23 information that we cannot yet share, unfortunately, but
24 I do want to report and reiterate what Steve says,
25 there's been some very good and substantial progress

1 there.

2 But I think what's most important for this room
3 is not so much the specifics of the settlement pending
4 among the New Mexico Environmental Department, the
5 Public Service Company of New Mexico, and the
6 Environmental Protection Agency, as interesting as it
7 is, what is key to that is it's providing the
8 prerequisite, the circumstance by which we,
9 Californians, can get out of San Juan, we can divest our
10 interest and see actual megawatts shut down there, go
11 cold, and stop contributing CO2 emissions.

12 But one of the things I think I want to touch on
13 is that the spirit of SB 1368, if we look at the
14 preamble, we look at the legislative analysis back when
15 it was enacted, back in 2006, and part and almost a
16 subtitle, if you will, was the economic protection of
17 our ratepayers.

18 And one of the things I'm going to say here is
19 that the decision of us to get out, to make these
20 proceedings moot is really -- it's good economics, it's
21 self-executing.

22 The time is right. We have a duty to our
23 ratepayers to provide the cleanest power at the best
24 price, and the best price is what's leading us out of
25 the San Juan Project.

1 We look at the economics there, it's where does
2 it sit vis-à-vis comparable baseload resources because
3 that's what 1368 is about is baseload resources. And we
4 start to do the economic analysis.

5 And the economic analysis has told MSR and is
6 members, regardless of the cost of carbon, whether it's
7 price at zero dollars or \$50 a ton, the right decision
8 is to get out of San Juan and we're going down that
9 path.

10 And I think what's also important to note here
11 is that if we are successful in these discussions, and I
12 have a very high degree of confidence that we will, that
13 we're going to be out of San Juan in less than five
14 years, 12/31 of '17.

15 And I think that's important for two reasons.
16 A, it's a date certain and we're all looking for a date
17 certain.

18 And B, it's less than five years out and I think
19 that gives us some of the -- again, with the spirit of
20 SB 1368 it talks about that five-year horizon. That's a
21 very magic number. And if we can be out less than five
22 years from now, I think that really puts us in a good
23 position as to what the statute was intended to do.

24 The statute has worked, we're on our way out.

25 MS. BERLIN: This is Susie Berlin. I'd just add

1 one more thing for those that might not be aware of it,
2 the discussions that are ongoing with multiple parties
3 are subject to confidentiality agreements, so that's why
4 further details are not being shared at this time.
5 We're simply unable to do so because we're restricted in
6 what we can share publicly.

7 MR. PEDERSEN: We can, however, share
8 information that has been released in a public notice or
9 press release. And something that we did append, I
10 think MSR appended as well to their comments, was the
11 most recent press release from PNM.

12 PNM, like us, can't talk about what is actually
13 being discussed with EPA because that is subject to a
14 confidentiality agreement. But they can tell what
15 they're doing and body language can say more than
16 anything sometimes.

17 And what they have said, as of the press release
18 on January 18th, is that they are suspending the work of
19 its engineering -- of PNM's engineering and construction
20 contractor on the SCRs that were mandated by the FIP.

21 And furthermore, the Public Service Company of
22 New Mexico has, in their terms, put on hold their plan
23 to request that the New Mexico Public Regulatory
24 Commission approve the SCR project. They're putting the
25 approval process on hold.

1 So that body language, which they can report on,
2 I think gives you a sense with how things are moving
3 with the negotiations regarding San Juan.

4 MR. HOPPER: And I think Norm, just to echo
5 that, one of the things I have in my hand here and we
6 didn't file this in the proceeding, these are the
7 filings that were made with the U.S. Court of Appeals,
8 for the 10th Circuit, on the 25th by all of the parties
9 in the San Juan litigation.

10 And I was carefully reading these last night so
11 I could temper my remarks to what was in the public
12 domain. I don't want to be the one who lets the cat out
13 of the bag on something I'm not supposed to.

14 But again, when you look at documents like this
15 it's very interesting because everybody has their
16 slightly different spin on what's going on.

17 But I think the important take home here is this
18 sense of optimism that we're on the cusp of getting this
19 done.

20 And I never want to speculate, I never want to
21 put a set of odds on it, but I think it is fair to say
22 that there's a lot of brain power, a lot of ingenuity, a
23 lot of prodding going on, I'm pointing to Matt and Noah,
24 to get this done. And I think that is huge, speaking
25 for MSR.

1 And then we hear Randy talking about the
2 positive steps they're taking.

3 So, again, I'm going to come back to my home
4 point, which I've made about four, or five, or six times
5 now, the statute is working.

6 MS. GRANT: Okay. James, did you want to add
7 anything now?

8 MR. LAU: No.

9 MS. GRANT: Okay. Thank you that.

10 MR. LONG: Can I just ask a quick question.

11 MS. GRANT: Do you want to respond? Sure.

12 MR. LONG: Sorry, not a response, but just a
13 question to Randy, if that's all right.

14 Randy, you mentioned an eight-step process for
15 IPP. And as I was jotting notes, I think I caught
16 through the first four. You said, changing the law in
17 Utah, amending the IPP agreement, then owners amending
18 their own agreements, and then changing the power sales
19 contract.

20 Can you disclose the next four steps to us or
21 not?

22 MR. HOWARD: No, at this point we're preparing
23 to work on three, which would be amending the power
24 sales agreements. And depending on how that goes, then
25 we'll have a better indication of steps four, five, six,

1 seven and eight.

2 But we've kind of laid out a long-term plan to
3 get us there.

4 Similar to the Navajo Generating Station, as I
5 indicated, we've had a large number of steps to get to
6 ensure -- or to ensure that we can supply reliable
7 energy in the City of Los Angeles. And so that's a
8 number of procurements that have had to go in parallel
9 to the proposed divestiture.

10 That is not different at IPP, as well, as we
11 look at what will be the future size or interest of the
12 parties. There's a lot of work to be done there and
13 there's a lot of work on replacement.

14 As most people recognize that have been involved
15 with a large power plant, I mean if you just think of
16 what you go through here at the CEC and that process,
17 it's really about a ten-year process.

18 And so when we're talking about replacing a
19 resource this large, so many members, so complex,
20 there's a lot of parts to how you're going to replace
21 that and how you're going to do it without just shutting
22 off and then starting. You know, you kind of have to do
23 this in tandem.

24 So, many of those steps are more involved with
25 that part and working with the actual owners of that.

1 So, at this point we're not prepared to discuss the
2 specific elements, but we believe we're at step three in
3 what will be a very lengthy, challenging process.

4 But I think what we're using is Navajo is kind
5 of the guiding process that we think could be duplicated
6 if it works out.

7 MR. LONG: Okay.

8 MS. GRANT: Okay, are there any other questions
9 or comments, either here in the room or over the phone?

10 MR. PEDERSEN: Probably just one last point.

11 MS. GRANT: Okay.

12 MR. PEDERSEN: And I think this stands certainly
13 for MSR, it's certainly true of SCPPA and Anaheim. As
14 public information becomes available, we're going to
15 convey it to you, through your staff, just as soon as it
16 becomes available to us.

17 So, when something comes out, you'll be the
18 first to know.

19 MR. LONG: I hope we'll be the second to know.

20 (Laughter)

21 CHAIRPERSON WEISENMILLER: I thought you were in
22 the settlement documents so you're before us.

23 MR. LONG: We know some, we don't know
24 everything.

25 MS. GRANT: We're going to unmute the phones.

1 If you don't have any questions, if you can mute
2 yourself.

3 Okay, sounds like nobody has any questions.

4 Thank you.

5 Okay, great, so we've gotten through. Hello?

6 (Technical issues with microphones)

7 MS. GRANT: Okay, hopefully, that's stopped.

8 Hello? Great. I feel like I'm mocking myself.

9 (Laughter)

10 MS. GRANT: Okay, hold on one second. Okay.

11 We're going to take a break and James is going to come
12 and fix this, if it's fixable. So, we'll go offline for
13 a couple of minutes and we'll be back without feedback.

14 (Off the record at 1:55 p.m.)

15 (Reconvene at 2:01 p.m.)

16 MS. GRANT: No more echoing. Okay, so we're
17 marching through. We've completed the status updates.
18 Thank you for that.

19 We'll now get into hearing comments on the
20 possible filing or notification filings that were laid
21 out in the workshop notice.

22 What we're going to do is we're going to walk
23 through each of the options separately. We're briefly
24 have the parties go through and make comments on each
25 option one by one.

1 And then we have a few, additional questions
2 after that regarding some of the details in the options.

3 We understand, again, you guys did a great job
4 briefing this in responses so, you know, keep it to the
5 points that you really want to reiterate and make sure
6 that we're focused on, and any points that were not
7 mentioned.

8 We also understand there might be quite a few
9 duplicative arguments and feel free to repeat, but
10 understand that we have those arguments on the record,
11 so there's no need to go into detail on them again.

12 So, let's go ahead and start with option one,
13 the POU's providing a URL and the Energy Commission posts
14 any investments in non-EPS compliant investments no
15 later than three days in advance.

16 This option does not require posting of backup
17 material and there would be no Energy Commission list
18 serve.

19 So, let's go ahead and have each of the parties
20 respond to that. And we'll change it around and maybe
21 start and go this way.

22 MR. VESPA: Noah, why don't you start.

23 MR. LONG: Well, our comments --

24 MS. GRANT: Oh, I'm sorry.

25 MR. LONG: Sure.

1 MS. GRANT: Before I forget, Blake reminded me,
2 if you all can just -- and myself, this is Sekita Grant
3 speaking. If we can all remember to say our names
4 before we begin talking, that would be great for the
5 people on the phone.

6 MR. LONG: I'm Noah Long from NRDC. Thanks for
7 the reminder. I'm terrible at remembering to do that.

8 I guess if I can just say one thing that I
9 think, before getting into the specifics of option one,
10 that I think that will be useful for the entire
11 conversation, and Matt alluded to this earlier, but I
12 think that there was a fair amount of discussion about
13 the breadth of any of these reporting requirements. And
14 I think it would be useful if we all, even if we have
15 some disagreements about the specifics of these
16 reporting requirements, agree in advance that the intent
17 of each of these options was limited to a very small
18 number of facilities, and likely a small number of
19 investments at those facilities.

20 You know, we certainly are not interested in
21 requiring additional reporting on the headquarters of
22 SCPPA, on transmission lines, on peaker plants that are
23 not within the scope of the already defined noncompliant
24 and non-deemed compliant, so those gas plants built
25 before 2007, for example, facilities.

1 So we really are, as far as we know, talking
2 about three coal plants. If there are other facilities
3 that people think fit into that narrower scope, we'd
4 love to hear about it. But as far as we know, that's
5 the limit of it.

6 So, I think, you know, that hopefully can narrow
7 our conversation and some of the concerns about
8 reporting from all the POU's that we, frankly, would
9 agree with.

10 MS. JONES: And this is Melissa Jones. I'd just
11 like to clarify that, yes, in terms of the options we
12 were only thinking of it being applied to noncompliant
13 facilities.

14 CHAIRPERSON WEISENMILLER: Just to either
15 complicate or clarify things a little bit more, as we go
16 forward, let's say if a deal was cut on San Juan would
17 that basically get rid of your concerns on that specific
18 of the three?

19 MR. LONG: Yeah, I think if there was an
20 enforceable agreement in place, unless there was some
21 change that meant there was a new investment plan in
22 that facility that I think some of the options, I think
23 option three is a good example, could potentially cover,
24 we wouldn't need ongoing reporting beyond -- beyond once
25 that agreement was in place.

1 At least, and Matt feel free to chime in, my
2 sense is once we know the clear investment and end-of-
3 investment trajectory for a facility, we don't need an
4 extensive annual reporting saying the same as last year.
5 That's not interesting to us and I think we're fine
6 without it.

7 You know, to the extent that something were to
8 pop up and SCPPA said, actually, oh, no, we do have to
9 invest in San Juan, then I think that would be triggered
10 in the next year's annual report or potentially in the
11 meeting reports, depending on the options.

12 Yeah, is that useful?

13 CHAIRPERSON WEISENMILLER: Yes.

14 MR. VESPA: And I just want to reserve, just
15 wait and see what the agreement actually provides. My
16 understanding --

17 MS. GRANT: What is your name?

18 MR. VESPA: Oh, Matt Vespa from Sierra Club.
19 You know, if -- as Martin sketched out, you know, this
20 is really shutting down a boiler, you know, it's not
21 transferring it and so on, I mean, I think that would
22 give us the assurance that there's no more need to
23 discuss this, but we'll have to see what actually comes
24 out of it.

25 MR. LONG: But I think the general question,

1 without getting into the specifics of each unit is could
2 something be phased out once we know that no further
3 investments are going to happen in that facility, and
4 certainly no more triggering the EPS, and I think the
5 answer is yes.

6 So, as to option one just -- I don't know that
7 we need to go into too much details. I think I can
8 maybe, again if I can, make a sort of general statement
9 about the options here.

10 Options one and two, as between options one and
11 two we prefer two. Both are about, you know, pre-notice
12 for imminent decisions by boards and, you know, they
13 differ in terms of the amount of the detail, the content
14 and how that information is distributed.

15 We prefer option two because it provides more
16 detail, is more clearly and easily distributed and,
17 therefore, more accessible and more amenable to a public
18 conversation.

19 Options three and four, which I won't get into
20 now, are really about more cumulative reporting so we
21 get a sense of the full activities.

22 And our preference was to combine one of those
23 first two options with one of the latter two options so
24 that you get a perspective sense of where the utility is
25 going, and then you get any -- either, you know, changes

1 or you get a sense of the imminent decisions that are
2 going to affect that trajectory along the course of the
3 year.

4 So, as between option one and two, Matt, do you
5 have any more to add as to why we prefer option two?

6 MR. VESPA: I mean, I think the whole purpose of
7 at least one and two is to give interested parties, you
8 know, a heads up that something's going to be
9 deliberated, and to give them enough information to know
10 whether it's important to show up and protest.

11 And I think option one, as it's currently
12 designed, doesn't fulfill that because you're not
13 providing any background material. Agendas, under the
14 Brown Act, can be quite sparse in detail and so, you
15 know, you may be wasting people's time in creating these
16 sort of fires that don't need to be there if you
17 provided a little more backup. So, I think that's why
18 two was preferable.

19 I also think some sort of instantaneous service
20 list notification, which might just be, you know, Sierra
21 Club and NRDC, not a big service list, is important
22 because the Brown Act is only 72 hours' notice.

23 I think it might have been LAWDP asked for sort
24 of a carve-out for emergencies, which are only 24 hours,
25 which if that's the case, fine. So, you want to make

1 sure people know right away and I think the service list
2 option takes the onus out of the Commission to
3 immediately have to let people know.

4 So, you know, I think it's basically cc'ing a
5 couple of extra people and I don't think it's really all
6 that much of a burden to fulfill really what is going to
7 be happening.

8 So, if one or two is adopted, I mean, I think
9 adding that in would be helpful in either case.

10 MS. JONES: This is Melissa Jones. Can I ask a
11 question; when you talk about backup material could you
12 describe that in a little more detail because I think
13 there's some concerns that you're requiring extensive
14 information to be produced for the purpose of this.

15 MR. VESPA: Well, I think option two, which is
16 the 2908 public notice, gives some requirements about
17 what you have to do in certain contexts. So, if you
18 look at that provision, I think if it's a new contract,
19 you have to show a certain thing, if it's a new type of
20 investment, you have to provide other background.

21 So, if you're going with option two and just
22 adding to 2908, I mean, it's just adding in those
23 provisions that already exist.

24 Did you have any other thoughts on that?

25 MS. BERLIN: Excuse me, this is Susie Berlin.

1 Matt, can you clarify what you just meant by that? I'd
2 like to expand upon Melissa Jones' inquiry because this
3 is where there's the fundamental disconnect, or
4 misunderstanding, or confusion on my part, because 2908
5 applies to covered procurements.

6 MR. VESPA: Uh-hum, right.

7 MS. BERLIN: So, when you have a determination
8 as a covered procurement there's a certain -- it's a
9 covered procurement.

10 So, now, if you're talking about things that
11 aren't covered procurements, you know, you could be
12 talking about replacing a toilet seat. So, I mean, what
13 do you mean by backup materials and how would that
14 backup material meet that desire for information above
15 and beyond what applies to covered procurements?

16 MR. VESPA: Well, let's take a step back for the
17 toilet seat scenario, which we -- you know, let's keep
18 it real here for a second.

19 So, we are talking about, in our proposal,
20 adding to the notice requirement major investments,
21 which we defined as investments above \$250,000. So,
22 hopefully, the toilet seat isn't costing that much.

23 MR. LONG: If there is, it's probably a problem.

24 MR. VESPA: You know, I think we'd all want to
25 know. You know, and/or investments to meet

1 environmental or other regulatory requirements.

2 So, we're talking about significant monetary
3 investments in a noncompliant facility, you know, and
4 some of these issues around SCR, for example, which
5 might be pursuant to some kind of mandate.

6 And understanding, you know, when those
7 deliberations are going to take place on those types of
8 investments.

9 MR. LONG: So, Susie just asked --

10 CHAIRPERSON WEISENMILLER: Let me just ask a
11 follow-up for a second. So, we're really talking three
12 specific units or plants, and I'm assuming that what
13 you're mostly concerned about although, obviously, I'm
14 not trying to tie you down, is these pending air quality
15 investments, as opposed to any number of other types of
16 investments that might occur?

17 MR. LONG: Yeah, I think that's mostly --

18 CHAIRPERSON WEISENMILLER: Is that fair?

19 MR. LONG: Yeah, that's mostly true. Obviously,
20 the -- sorry, Noah Long, from NRDC. Thanks, Chair
21 Weisenmiller.

22 Of course, you know, everybody has said here,
23 and we really appreciate there's clear intent to exit
24 these facilities over time and we really hope that that,
25 you know, is the continued intent over the next years.

1 But, of course, the statute and the regulations do cover
2 other things, like capacity additions or thing of that
3 nature that we would also be concerned about.

4 And I would just add, you used the words "air
5 quality" and not to be nitpicky but, you know, for
6 example the coal ash rule is not necessarily an air
7 quality regulation, but also it applied.

8 MR. HOPPER: This is Martin Hopper with MSR.
9 And I'm going to wear kind of my plant operator hat.
10 It's one I haven't worn for a long time, but it was kind
11 of ringing out here when I hear the word "regulatory
12 requirements."

13 Regulatory requirements could mean anything from
14 as is -- well, helping trigger our exit from the San
15 Juan Project, or a requirement or potential requirement
16 to install a billion dollars' worth of SCRs -- and
17 transcriptionist that was "billion" with a "b".

18 Or it could be OSHA coming in and saying they
19 want toe boards installed on a thousand feet of catwalk.

20 I don't think we're trying to capture putting
21 toe boards on a thousand feet of catwalk.

22 So, if one went down this kind of a path, and
23 we're not advocating that one does, that to avoid a
24 morass there's going to need to be some very, very
25 specific definition of what we mean here.

1 And then I'm going to put my rhetorical hat back
2 on, my manager hat back on and say, look, we're on our
3 way out, who cares? We're going to spend as little as
4 we can, we're going to be in a harvest mode until we're
5 gone.

6 MR. VESPA: In terms of the burden, one thing
7 I'm -- one thing we found in a lot of the filings was a
8 lot of these more routine types of low-cost expenditures
9 don't actually make it to the governing board for
10 approval.

11 So, you know, how much, if we defined as
12 regulatory requirements, even broadly, without putting a
13 price cap or anything else, realistically, how much of
14 this is already getting to the board for approval, in
15 which case they would have to be sort of cc'd to the
16 Commission and so on.

17 It seemed to me that most often they're not
18 getting to that level for approval.

19 So, I'm just kind of curious, you know, how
20 you're seeing this as being extra burdensome given what
21 appear to be the limited amount of review for individual
22 expenditures like that, the actual governing board
23 has --

24 MR. LONG: And just to put, you know, a finer
25 point on that, I can't imagine a toilet seat replacement

1 or something along those lines ever making it to any of
2 the governing boards, so I think that would make it
3 pretty clearly excluded.

4 And I think the definitions, as we've defined
5 them here in our 2908 recommendation, knows it even
6 further.

7 MR. HOPPER: Well, I -- Martin Hopper with MSR
8 here. I was going to point that I think as a totality,
9 and I'm going to use MSR as the example on it, and I'm
10 sure we've touched on it in one of our myriad filings,
11 but our plant budget as a whole goes to the board.

12 And when I look at the term of the regulation
13 and what MSR has done, and we've filed about this, is
14 that we have taken every capital expenditure since this
15 regulation went into effect to our board and made a
16 formal determination.

17 And, really, what that's extended to is
18 everything that has flowed through or can flow through a
19 utility accounting point of view through account 107,
20 construction work in progress.

21 Anything that touches that account we have taken
22 to our board.

23 Others have only taken major, major things. But
24 that's what we've done out of an abundance of caution.
25 and we may be throwing our brethren to the bus or under

1 the bus, but that's the criterion we have applied.

2 And the reason I'm bringing this up is to say
3 that this decision as to whether or not things have been
4 taking to the board has, in all the filings, been
5 carefully delineated processes at each of us. And what
6 we have done is applied what we feel is the best faith
7 way to demonstrate compliance with the statute.

8 MR. VESPA: Can I ask some follow ups?

9 MR. HOPPER: Sure.

10 MR. VESPA: So, you're taking it to the board,
11 it's going on the agenda.

12 MR. HOPPER: Yeah.

13 MR. VESPA: Would the budget actually be part of
14 the -- it's the budget would not be part of the filing,
15 it would just be agendized as reviewed.

16 So, what I'm wondering is could the provision of
17 materials just be what you're already taking to the
18 board for approval and just leave it at that?

19 So, let's say the budget doesn't get posted, but
20 that would be something that CEC might get.

21 So, it's just a matter of looping people in to
22 what's already taking place to relieve a burden of
23 additional work product or additional explanation, or
24 something like that.

25 MR. HOPPER: I was going to say if that is your

1 intent, and I'm not sure that comes from the written
2 document, but I think that we would need some very
3 careful definition here to make sure that's what we
4 accomplish.

5 MS. JONES: So --

6 MS. BERLIN: And this is --

7 MS. JONES: Oh, sorry. Melissa Jones. So, in
8 the current regulation we have delineated five elements
9 that would have to be reported and it was information
10 that would go to the board associated with the agenda
11 item, so that's already in the current regulations, and
12 that's pretty well defined.

13 MS. BERLIN: Excuse me, are you talking about
14 that 2908 requirement for covered procurements?

15 MS. JONES: Yes.

16 MS. BERLIN: So, this is Susie Berlin. So, two
17 questions directly on Melissa's point is your proposal
18 then that the 2908 would be for all investments or
19 procurements, whatever we're calling them? I mean,
20 because it -- I have serious concerns with the
21 definitional aspects of this.

22 MR. HOPPER: Uh-hum.

23 MS. BERLIN: And the regulation is entirely
24 drafted around reporting and addressing covered
25 procurements and we're going beyond that, so that's a

1 big concern. It doesn't lend itself to just inserting,
2 I believe, provisions here and there because the
3 provisions are carefully drafted around addressing
4 covered procurements, so that's one thing that we need
5 to keep in mind when we're having this discussion.

6 And the other thing is for purposes of revising
7 a regulation, we have to have language that articulates
8 exactly what it is that we intend to do and exactly
9 what's required.

10 And to that end I believe major -- and
11 reiterating our filings, and we're not the only one, but
12 major investments and investments to meet environmental
13 and regulatory compliance need to be defined. I don't
14 think they're self-defining. Perhaps a dollar amount on
15 major, although I'm not certain that actually works in
16 the context of some projects because it really depends
17 on the context in which these investments are being done
18 and, again, if they're covered procurements or not.

19 So, especially with regard to the latter,
20 though, the environmental and regulatory compliance, I
21 don't think that that's self-explanatory. I do believe
22 that it can go a number of different ways. And I do
23 believe that it is going to be -- and now I'm touching
24 on option two, rather than option one, but they're
25 interrelated in this discussion --

1 MR. VESPA: Yeah.

2 MS. BERLIN: -- that we can't have a definition,
3 we can't have a provision that talks about those two
4 terms without talking about a detailed definition of
5 what those terms mean.

6 MR. VESPA: Okay, well, just slow down. The
7 filings you're giving, is this an annual type of filing
8 or is it mostly every type of meeting? You know,
9 there's some expense with San Juan that you're line-
10 iteming for the board to approve.

11 MR. HOPPER: Well, I was going to say, as you've
12 noted from our filings that we have had, and in the case
13 of MSR we've had -- I'll call it a large cluster of
14 determinations that we make at the time of the annual
15 budget and then there are emergent projects that occur
16 over the course of the year.

17 And those could range from projects for which
18 the operating agent did not sufficiently justify at time
19 of budget adoption to things that broke during the
20 course of the year, or things that for ratemaking
21 purposes the operating agent determines is appropriate
22 to capitalize rather than to carry as an operating
23 expense.

24 But what I want to circle back to and I think
25 this fits with the points that both my counsel and Ms.

1 Jones made, is that for covered procurements there is a
2 very detailed step of areas that have to be touched upon
3 and reported.

4 And the processes that MSR uses are because
5 these are not covered procurements, and documenting that
6 they're not covered procurements are simpler. And what
7 we don't want to do is to take that formal reporting, as
8 we would do under 08, and apply that to everything.
9 That really just doesn't make sense to me as somebody
10 who has to manage the flow of work, never mind the legal
11 precedent or statute here that is just not what we
12 believe was intended.

13 MR. VESPA: You know, I think the concern we're
14 trying to address of what is or is not covered can be
15 somewhat subjective and having this extra layer of
16 public and CEC review of determinations about the
17 investments in a facility and that's it, so it's just
18 all reported.

19 It seems to me -- and I understand not wanting
20 to have -- you know, jumping through a bunch of hoops
21 and creating more requirements.

22 But it seems to me that if you were to cc or
23 send the CEC and interested parties the materials you're
24 giving already to your board for approval, this will be
25 what's on the agenda and also the documents, presumably,

1 you've already prepared for the board to review in
2 approving those expenditures, you know, you're basically
3 kind of just expanding the amount of viewers to some of
4 this information. You know, that, I think, would
5 satisfy our purposes.

6 You know, it's just getting at the question of
7 additional scrutiny of whether something might be
8 covered or not to people that might be interested in
9 those types of decisions.

10 MS. GRANT: I'm going to jump in at this point.
11 I think that's a very good, useful discussion for the
12 record.

13 What I want to do, so we keep it moving, is I'm
14 going to go around and we'll combine the option one and
15 two discussion at one time and then we'll go through and
16 do the options three and four discussion.

17 So, if you guys have anything -- do you have
18 anything more to say on option two and then we'll move
19 on to the other parties.

20 MR. LONG: Just before -- oh, so you're
21 combining one and two to see if anybody else --

22 MS. GRANT: Yeah.

23 MR. LONG: No, I think at this time we're fine
24 on one and two, unless we have something to respond to
25 from SCCPA or DWP.

1 MR. PEDERSEN: Yeah, we do have a comment but
2 I --

3 MR. VESPA: And, you know, I understand the
4 concerns that are getting raised and I think there's a
5 way to craft this in a way that meets everybody's needs
6 without creating additional, you know, generation of
7 newer product and so on.

8 MS. GRANT: Okay, so we'll go around. Norm,
9 would you like to start.

10 MR. PEDERSEN: Sure, that would be great.

11 MS. GRANT: Options one and two.

12 MR. PEDERSEN: That would be great, Sekita.

13 First of all, we had some conversation about the
14 breadth of the options as currently drafted. We, in our
15 comment, raised our concerns about the overly-broad
16 drafting. If we were to pursue either option one or
17 option two, we'd certainly want to make sure that they
18 are narrowly crafted to reach just exactly what Melissa
19 was talking about.

20 We understand the intent. Our only concern was
21 as drafted they would appear to reach beyond the intent
22 of the Commission.

23 Now, I just said if they were to be adopted.

24 Something I do want to underscore is, in SCPPA's
25 view, and I think this was highlighted by Randy's

1 comments, they were highlighted by Martin's comments, by
2 James as well, you have a regulation that's working. You
3 really don't need to go beyond the construct that you
4 have, and it isn't just 2908, it's 2909, 2910, 2911.
5 You look at the whole of the regulation, and the
6 requirements, and the interworking parts of the
7 regulation and you have a comprehensive scheme that is
8 effective and it has been effective.

9 So, we really don't think you need to have any
10 broadening of the requirements that are currently in the
11 regulation.

12 But if you were to consider going ahead, first,
13 as I just mentioned, with options one and two you'd want
14 to narrow them, in our view.

15 With regard to option one, that doesn't involve
16 the backup material as you've framed it. You would ask
17 us for a URL link. And in our view, if you were to
18 adopt option one what it would probably apply to would
19 be just exactly what Martin was talking about, the board
20 meetings at which -- for example, the SCPA board or the
21 governing board at Anaheim would consider the annual
22 budget for San Juan. That's the time at which the
23 investments foreseen for the year are all going to be
24 considered by the board.

25 As far as option two is concerned, we don't

1 think you need to have any further definition of what
2 you mean by actions to -- pursuant to an environmental
3 regulation or regarding major investments. Defining
4 major investments, from our standpoint, is particularly
5 difficult because major is a relative term. And at some
6 point you have to leave it to the regulated entity to
7 make some determinations about what, for them, is major
8 or minor.

9 Frankly, we had some mention at one point in
10 this procedure of \$50,000, another mention in the
11 January 22nd comments from NRDC and Sierra Club of
12 \$250,000.

13 Certainly, at my house those are major
14 investments, but at San Juan those aren't. It really is
15 a relative term. And so I think you have to leave the
16 reporting entity some discretion to determine what is
17 major.

18 Again, if you narrowly define the scope of the
19 reporting requirement that you propose in option two,
20 and you left discretion with the reporting entity to
21 determine, for example, what is a major investment, you
22 know, we believe we could probably live with option two.

23 But we're not encouraging it. We do think you
24 have a regulation that has worked, has worked well, and
25 so our fundamental plea with you is with regard to

1 option one and option two, stick with the regulation as
2 you have it.

3 MS. GRANT: All right, thank you. James?
4 Nothing. Suzie?

5 MS. BERLIN: I have an -- this might be more to
6 question three or four.

7 But, Matt, you've mentioned a couple of times
8 have an opportunity for the public and the Commission to
9 review and create a dialogue. What is the role, because
10 this isn't articulated anywhere in any of the filings,
11 what's the role of the CEC once you've submitted this
12 report or this filing, and what kind of time line are
13 you envisioning?

14 What is the process? What will this document --
15 what will be done with this document?

16 MR. LONG: This is Noah Long for NRDC. If I
17 may, I think that my sense of that question is it's more
18 pertinent to options three and four, since you're
19 talking about a particular document laying out
20 investment plans.

21 But to the extent that it applies to one and
22 two, I think the answer would be that it would depend on
23 the content of the filing, depend on the information
24 about the particular investment.

25 I think, obviously, the staff would be free to

1 review that information and then they would be in a
2 position to make a determination if any further action
3 were required or not.

4 To the extent that no further actions were
5 required because the investments were clearly allowed
6 under the statute, then no further action would be
7 needed by the Commission.

8 If a stakeholder disagreed with that, we would
9 obviously be free to take that up with the Commission
10 and the information would be available.

11 I don't think that there's any predetermined
12 activity by either the Commission staff, the
13 Commissioners or stakeholders. I think the idea is to
14 create clear public information about the ongoing
15 investments and decisions at these facilities so that to
16 the extent there are actions required, or considered by
17 the agency then they can be taken.

18 Does that answer your question?

19 MS. BERLIN: This is Susie Berlin. It does to a
20 certain extent, but then it begs different questions.
21 My fundamental concern here is that you're asking for
22 something to be submitted and my question then, and I
23 don't -- to the Commission or to, you know, the parties
24 that want this, what are you doing with that information
25 other than filling a file drawer? And that's my

1 question. And are you in fact anticipating or
2 advocating for a review and approval process from the
3 Commission prior to a POU expenditure?

4 MR. VESPA: You know, I think it's going to
5 depend. I mean, you know, one concern that we have is
6 getting notice 72 hours in advance of approval isn't
7 really helping everyone because it's sort of a bit of a
8 done deal at that point and --

9 MR. LONG: If I can just in, by itself.

10 MR. VESPA: By itself.

11 MR. LONG: I mean, that's why we've advocated
12 for a combination of option two and three.

13 MR. VESPA: By itself, right. And so, you know,
14 the point is to give everyone some notice to kind of
15 deal with these things prospectively before commitments
16 are made, before negotiations take place, before
17 expectations are built, not just with the POU but,
18 potentially, out-of-state actors that might also be
19 contributing to this type of investment, as we've seen
20 in San Juan.

21 And it just seems to be in everyone's interest
22 to look at this prospectively and flag potential issues,
23 you know, before you get to this point of no return or
24 before it becomes just more difficult to explicate
25 yourself.

1 And, you know, maybe there's a filing where we
2 see some kind of major investment planned for an
3 environmental upgrade that would extend the legal life
4 of the facility for five years, and we notice that and
5 we give you a call and say, hey, we've got some
6 concerns. You know, so it's out there. You know, not
7 72 hours before it's getting approved, but in advance.

8 And I think it's in everyone's interest to, you
9 know, flag potential issues sooner, rather than later.

10 MS. JONES: And this is Melissa Jones. To
11 clarify, when staff developed these options we were
12 looking at it as a notification role, so we would be
13 providing URL and backup information as already required
14 in the regulations.

15 Of course, staff always has the option, if they
16 see something, to initiate an investigation. But we
17 don't see the Commission in an approval mode at all.
18 It's not being submitted to us for approval. It's being
19 submitted to us so that we can put notices out to other
20 parties.

21 MS. BERLIN: This is Susie. Thank you, Melissa.
22 I appreciate the clarification on that.

23 MS. GRANT: Susie, did you have any more
24 comments for options one and two, just the questions?

25 MS. BERLIN: Not that we haven't already

1 articulated in our comments or have been encompassed in
2 this discussion.

3 MS. GRANT: Okay.

4 MS. BERLIN: Thank you.

5 MR. HOPPER: Actually, there was one thing I was
6 going to pile on here from just something that Matt had
7 said, and this really comes more in options three and
8 four, but I think it raised in option two, is that there
9 seems to be a change or an approach at redefining what
10 life means.

11 And if you could, I don't know what you mean by
12 the legal operating life; what are you driving at?

13 MR. LONG: This is Noah. I, maybe, can respond
14 to that. You've seen in our comments we requested this
15 change. We've requested versions of this change in our
16 previous comments before and I don't think that that
17 request is pertinent to options one, two, frankly, or
18 three and four.

19 It's more a reiteration that our view is that
20 that clarity would be an additional and very useful
21 change to the existing regulations.

22 It's not, frankly, directly related to the
23 notice requirement.

24 MS. GRANT: We have a couple of follow-up
25 questions after we go through the options that get a

1 little bit -- drill a little bit more down into some of
2 the language that we're suggested, so we'll get into
3 that in a little bit.

4 Randy?

5 MR. HOWARD: So, Randy Howard, LADWP. I think I
6 want to reiterate Norm's comments. It is LADWP's
7 opinion that neither one or two are necessary. That,
8 again, the existing and current requirements are
9 working.

10 I think in option one we did provide the
11 comments, you know, any investment is really unworkable
12 and I'm glad to hear that there's a little more
13 definition coming around what investment might mean, if
14 that were to be selected at all, even though we wouldn't
15 be very supportive.

16 There is some concerns, too, when it states
17 public meeting of a POU where deliberations are
18 occurring, you know, a POU's set up very differently
19 than IOUs, almost anything and everything we do becomes
20 quite public, and a lot of deliberations occur.

21 And, personally, I could look back at my
22 calendar, I was in approximately 30 meetings related --
23 public meetings related to the Integrated Resource
24 Planning activities where deliberations took place of
25 both DWP management and the public, and other

1 stakeholders as to different cases that could be run
2 related to exits of coal and noncompliant facilities.

3 We had over 40 meetings, community and public
4 meetings where deliberations took place related to rate
5 activity and the cost of exiting those resources.

6 It would just be an enormous task for us to
7 somehow look at those and say those are deliberations as
8 to options one and two, because they're both spelled out
9 that public meetings of a POU where there's
10 deliberations being made.

11 So, I think what you're looking for is more, if
12 you were, it would be where there's a governing
13 authority approval taking place, would be more
14 clarification that would be necessary.

15 MS. JONES: Randy, can I ask you a question?
16 Melissa Jones.

17 MR. HOWARD: Sure.

18 MS. JONES: In terms of the board meetings would
19 you, like MSR, have a time when an annual budget is
20 adopted?

21 MR. HOWARD: We do and I think we've had that
22 discussion before, because for our purposes, let's say,
23 the Intermountain Power Project, the board takes up an
24 annual budget in which they estimate the expenditures
25 over a given year related to what was reported to our

1 board for its budget.

2 That's very similar for Navajo Generating
3 Station and there are deliberations on that specific
4 budget.

5 MS. JONES: Thank you.

6 MR. HOWARD: But, again, there's not a lot of
7 clarity here as to what some of these terms mean.
8 That's very fearful -- I'm not an attorney, but I would
9 have a difficult time telling my staff on how we would
10 be compliant for any of these reporting requirements.

11 On option two, when we start discussing
12 environmental and regulatory requirements, generating
13 facilities have a multitude of requirements there,
14 involving not just air quality and greenhouse gas
15 emissions, but CEQA and NEPA, toxic and hazardous
16 substances, water, waste water, industrial hygiene,
17 worker safety, not to mention FERC regulations, NERC
18 regulations, WECC regulations and requirements that are
19 associated with the continued safe and reliable
20 operation of the facilities.

21 I can't see any measure by which we would
22 provide advanced notice or some notification on many of
23 these issues as to expenditures that need to be made for
24 compliance. You know, again, I don't think, from what
25 I'm hearing today, that's not your intent. Your intent

1 is looking at major. Again, what is major? That just
2 scares us because there's no formal definition as to
3 minor versus major.

4 Most of these regulations have nothing to do
5 with an expenditure that's designed and intended to
6 extend the life of the plant.

7 They are there for the purposes of ongoing
8 operations and the needs to protect the employees, the
9 public, and the reliability of the grid. They're not
10 there to extend the plant.

11 So, putting a blanket statement, we would find
12 would just not be acceptable or workable, at least from
13 our perspective. And I'll reiterate, we're in an exit
14 plan. We're not in a plan to retain these assets for
15 purposes of generating coal baseload, so we don't think
16 it's necessary.

17 MR. LONG: This is Noah Long from NRDC. Do you
18 mind if I just take a moment to respond and ask a
19 question?

20 I guess my first question is maybe if -- it
21 sounds like it might be useful to have a little bit of
22 dialogue between Randy and Norm on this question of
23 definitions, because it sounds like Randy's preference
24 is different than Norm's preference as to definition of
25 major investments.

1 MS. GRANT: We're going to get a little bit more
2 into definitions later, do you want to -- we can hold
3 off on that.

4 MR. LONG: Yeah, we can put that off. I just
5 want to note the difference between DWP's position and
6 what I perceive to be SCPPA's position on whether or not
7 major investments should be defined and whether or not
8 that's useful.

9 And so I think we can talk about that in a
10 moment.

11 And then another, I guess, just point of clarity
12 is -- and, Randy, I think it's useful -- is that you
13 point out that most, if not all, or I think you would
14 say all of those investments are not intended to extend
15 the life of the facility, they're ongoing investments.

16 And I think the point of a notice requirement
17 here is that it not predetermine that question and then
18 not put DWP in the position of having to say this is or
19 is not intended to extend the life of the facility.

20 Obviously, if it were intended to extend the
21 life of the facility by more than five years, it
22 potentially would be out of compliance.

23 But the notice requirement is to say we're not
24 requiring you to make that determination, we're not
25 putting on our investigative hat here, we're just saying

1 if you can provide that information when decisions are
2 being made, not just any public meeting, but a meeting
3 where a decision is made, if you can provide that
4 information in advance to the CEC and to interested
5 stakeholders, then it just makes -- facilitates
6 conversation and greater access to those decisions.

7 And I think that's the point, the difference
8 between a notice requirement and, you know, a
9 requirement of filing for any predetermined action that
10 has already decided that it will be a covered
11 procurement.

12 MR. HOWARD: This is Randy Howard. If I could
13 ask you, both of you, do you know if either one of your
14 agencies or both your agencies are currently on LADWP's
15 list serve?

16 MR. LONG: I know that some of my colleagues are
17 on some of your list serves. I believe there are a few,
18 yeah.

19 MR. HOWARD: Yeah, I do believe both of your
20 agencies are on the list serves, and so anything that
21 would be provided that would be before a governing --
22 our governing authority, you should be receiving it
23 today.

24 So, I'm not real sure, because I don't see a lot
25 of other interested parties, I'm not real sure, you

1 know, providing -- I mean, I can put CEC on my list
2 serve of our governing body and they would see anything
3 and everything that goes before the governing body on
4 the agendas.

5 The one thing that's kind of also concerning to
6 me, personally, and I don't know that any of the other
7 POU's have quite the same problem is, you know, we have a
8 five-member board of commissioners that makes decisions,
9 and they have a limitation of authority as to those
10 decisions. And a number of decisions that have longer-
11 term ramifications, including real estate and other
12 things, have to go then onto a city council for
13 approval, but some decisions do not, some expenditures
14 do not.

15 And the city council, on its own, could have
16 deliberations specific to some of the facilities and not
17 even include LADWP. So, I'm not really sure how I
18 obligate them or how I respond to them as to providing
19 notification because they can choose to do that on their
20 own.

21 And they're currently having a proceeding
22 relating to Southern California Edison and San Onofre.
23 It has nothing to do with LADWP, I'm not a participant
24 in that, LADWP's not a part of the proceeding, but they
25 do those types of things.

1 So, when we get a little broad here I'm a little
2 concerned as to how we manage that because I don't want
3 to come across as we're not being cooperative, we're not
4 compliant when I don't necessarily control or have
5 jurisdiction over the ability of what our public
6 officials say or do and when they deliberate.

7 So, when we say a deliberation, I also kind of
8 need to have a better appreciation of how we could put
9 boundaries around that, so that if there was a decision
10 that we would know how to funnel that.

11 MR. VESPA: Yeah, I just feel like this is
12 getting more complicated than it needs to be. I mean,
13 we're talking about three specific facilities right now
14 and moments where the governing body is actually going
15 to deliberate and potentially approve an investment in
16 one of the those three facilities.

17 And the agendas are already prepared, the
18 background material is already prepared and it is just a
19 matter of, you know, cc'ing the CEC on the agenda and
20 the background material for that approval and, ideally,
21 a service list as well. I mean, that's it.

22 So, you know, these are things that are already
23 happening, it's just a notification of, you know, these
24 deliberations and when they will occur to a broader
25 degree of entities.

1 MR. HOWARD: So, Matt, if I could -- Randy
2 Howard again, LADWP.

3 So, we recently had a debate and the city
4 council took control over our proposed 100-megawatt
5 feed-in tariff program. But during that process, and
6 discussion and debate, part of our objective on 100
7 megawatts is to meet some of our obligations to cover
8 Navajo Generating Station, so the divestiture of Navajo,
9 some of those.

10 So, the 100 megawatts exceeds the State
11 requirements, which our share is about 75 megawatts of
12 feed-in tariff.

13 So, the city council debated some of the thought
14 process as should we do 100 or should we just do the
15 obligation of 75 was one of the debates. And then how
16 soon should we do the 25 because they really haven't
17 made a decision on the divestiture of Navajo, but the
18 debate was there, the deliberations were there.

19 So, again, does that -- does that qualify for
20 what you're saying? I mean, or are you talking
21 investment covered --

22 MR. VESPA: In the specific plan, an investment
23 in the facility. I mean, the feed-in tariff is not an
24 investment in IPP. I mean, is there some capital
25 expenditure in IPP, some kind of upgrade, some kind of

1 pollution control technology that you are planning to
2 install in --

3 MR. HOWARD: A covered procurement issue.

4 MR. VESPA: Well, that's part of the question.
5 It's not necessarily covered, it's an investment. So,
6 you know, the CEC and interested parties can look at it
7 and kind of think about whether it may or may not be
8 covered.

9 And one of the issues here is those
10 determinations that are being covered are not subject to
11 a broader review and there is some disagreement about
12 what can be covered or what not. But it is specifically
13 an investment in the facility.

14 So, the feed-in tariff is not that, it would not
15 be part of this notice requirement.

16 MR. LONG: And Noah Long from NRDC. Just to be
17 clear, alternative procurement would never -- you know,
18 particularly a renewable alternative procurement, unless
19 there was alternative procurement in the baseload facility
20 emitting over 1,100 pounds a megawatt hour would never
21 come under that rubric.

22 MR. PEDERSEN: Maybe I could just cut in with
23 one comment. I think maybe it was -- maybe it was Noah,
24 one of you made the comment that this could become quite
25 complicated and I tend to agree with that.

1 And one of the reasons it becomes complicated is
2 different POU's operate differently. The way DWP
3 operates is dramatically different from the way the
4 SCCPA board operates. The SCCPA board is -- SCCPA's
5 made up of 12 different entities. The board consists,
6 essentially, of the general managers or their designees
7 from those entities.

8 The board meets once a month, its meeting is
9 agendized. You know, if a matter's going to come up,
10 it's going to come up at one of those meetings.

11 So, we take a look at, for example, option one.
12 You know, from our standpoint it's pretty clear cut.
13 You know, under option one we would only provide the URL
14 link when there's going to be a deliberation at a
15 business meeting. That's once a month for us, very
16 clear, pretty easy to understand.

17 From our standpoint, you know, and again we
18 don't think you need to expand the scope of the
19 regulation as you have it now, or any of the reporting
20 provisions of it.

21 But, you know, if you were to have something
22 like option one, narrowly defined so it would apply just
23 to the -- for us, it would be San Juan and that's it,
24 that's the only plant, just one, well, you know, we
25 would be able to provide you, for example, with a URL

1 link to the agenda at which the SCCPA board would be
2 considering the budget. The budget would include, of
3 course, capital investments.

4 So, you know, somewhat option one could work for
5 us. We're not advocating, but it could work for us.

6 But you get to another POU, you get to DWP, and
7 you can run into some real problems and you can have a
8 lot more that you would have to define for a DWP that
9 has a more complicated situation. And then you do have
10 the point that I think MSR raised, well, you know, you
11 do have situations -- this is something that I don't
12 know of ever happening at SCCPA, but you do have a
13 situation where there might need to be 24-hour notice,
14 rather than 36-hour notice.

15 So, once you start to go down this road I think
16 you do get the complications, and you're going to get to
17 complications because you have different POUs operating
18 differently, and you have a regulation that's going to
19 cover everybody.

20 MS. JONES: So, this is Melissa Jones. Just in
21 response to that, the current regulations require that
22 any public meeting to consider a public procurement --
23 so it's confined to covered procurements. But if you
24 applied that to all, you still have to make a
25 determination of what meetings it is that you need to

1 report on.

2 So, if it's complicated, then how are we sure
3 right now that we're getting adequate reporting.

4 MS. BERLIN: This is Susie Berlin for MSR. In
5 our estimation, what our public meetings are is not
6 complicated. In our estimation, it's coming up with a
7 definition of investment, if you literally mean
8 everything, that's more complicated.

9 And not to be argumentative in the least bit, I
10 don't want to come across as being argumentative, but
11 I'm not certain how that notification is any different
12 than somebody that signs up to receive all of the public
13 meeting notices for MSR, for example, or for SCCPA, or
14 LA. It would be the exact same thing, we do send out
15 the agendas if you request to be on that list, and the
16 like.

17 So, from MSR's perspective, it's not an issue of
18 what are our meetings. We know what our meetings are.
19 But we're not -- LADWP, we don't have as many different
20 facets, perhaps. But at the same time it goes down to
21 more we make determinations, or staff reports and
22 whatnot regarding covered procurements, and what we're
23 talking about here is just a lot broader expansion than
24 covered procurements.

25 So, it's not a what's-our-meeting issue, it's a

1 what's-the-topic issue, I guess.

2 MR. HOWARD: This is Randy Howard. Very
3 similar, I think under the covered procurement it's
4 pretty straight forward. I think we have -- we're
5 comfortable with the definition there, but when you get
6 to this broader investment it becomes more complicated.

7 The meeting notices of LA would be probably more
8 unique than most of them, and that's just because there
9 are three city council meetings a week, there are two
10 board meetings a month, at least, and then there are
11 city council committee meetings related to energy and
12 environment issues. So, there are multiple meetings in
13 which issues can be raised.

14 But if it's a covered procurement, we feel
15 fairly comfortable if you're just talking investment
16 without really, really narrow definitions, then I think
17 we could -- that's our concern.

18 MR. LONG: Noah Long from NRDC. I think, you
19 know, just two points. One is we're only talking about
20 three facilities so it's not -- it can't be that broad,
21 there can't be that number of -- that many meetings that
22 those facilities and investments in those facilities are
23 discussed.

24 And I think we're comfortable, even if it's --
25 if that is too broad, we're comfortable narrowing it to

1 make sure we're only talking about the major or
2 significant, and we can talk about how to define that in
3 a way that people are more comfortable, so we're not
4 catching flytraps and toilet seats.

5 Our point is these decisions are made. They're
6 made by these entities, about these facilities. There's
7 got to be a finite number of meetings per year where
8 decisions about major investments at those facilities
9 are made.

10 If we were talking about 300 facilities, rather
11 than three, I think the conversation that we're having
12 about the over-breadth would be one that we should be
13 very concerned about.

14 Given that we're only talking about three
15 facilities, and from the intent of everybody here that I
16 take very seriously, we're talking about a finite number
17 of years for those three facilities, it seems to me that
18 we ought to be able to craft a narrow enough
19 distinction.

20 And just as to the point of what's the
21 difference between being on the service list for SCPPA,
22 or for MSR, or for DWP, I think the point is that the
23 CEC has an independent obligation with regard to this
24 regulation.

25 And stakeholders, ourselves included, but

1 potentially other stakeholders in the future have
2 potentially an independent interest with regard to this
3 regulation and these facilities.

4 And having those items related to these very
5 important facilities for California's energy future
6 plucked out and provide some extra emphasis.

7 And so it rises to the top and people say, well,
8 this is something I need to pay attention to, this is a
9 major decision coming forward for Navajo, or for IPP, or
10 for San Juan. It provides extra value.

11 And, you know, I recognize all of these are
12 public entities, we can do Public Records Act requests,
13 but that's after the fact, it's slow, it's cumbersome,
14 it's difficult for you, it's difficult for us.

15 Having some ongoing, clear, quick notices about
16 these limited number of key decisions could be really
17 valuable in our perspective.

18 MS. GRANT: Let's go ahead and just touch on
19 options three and four, which are the annual filing
20 requirements, and then we'll get a little bit more into
21 some of these terms that are being thrown around.

22 So, if you guys would like to, Noah and Matt,
23 start again with options three and four.

24 MR. LONG: Sure, so, Noah Long from NRDC. Go
25 ahead, Susie.

1 MS. BERLIN: I would like to ask a preliminary
2 question, again from Melissa. You gave an answer with
3 regard to how you perceived the CEC's role vis-à-vis the
4 documents that are submitted under options one and two.
5 Does that apply to options three and four, as well? You
6 consider those as having -- you receive them, if you see
7 something wrong, then obviously an investigation would
8 prevail, but that it's not a review and approval
9 process.

10 MS. JONES: That's correct. Melissa Jones.
11 Yeah, that's correct. We don't envision a review and
12 approval process.

13 MR. LONG: So, Noah Long from NRDC, if I can
14 just continue.

15 So, not that it's necessary, but to quickly
16 summarize three and four, both annual reporting
17 requirements on all of the investments made and, unless
18 I'm mistaken, the major difference is that option three
19 is prospective whereas option four is retrospective.

20 We have a strong preference for option three,
21 and we think it's very useful along with option two, as
22 we've discussed. So that to the extent there are
23 changes along the year, or particular inflection points
24 where key decisions are made, you not only get the sense
25 of the breadth of the year in advance, but you also get

1 the notice about when those key decisions are made in
2 order to involve stakeholders or the CEC.

3 And the key point about the difference between
4 option three and four that's so important is that given
5 that we're talking about a finite number of facilities,
6 and a finite number of years, there is real value to
7 having clarity in advance of the decisions on
8 investments in those facilities.

9 And I think as my colleague Matt mentioned
10 earlier, in our perspective and not to say that we're
11 not equally optimistic about the finality of where the
12 San Juan discussion is going, but in our view there
13 could have been a lot less heartache, a lot less trouble
14 if there was more clarity in advance about what the role
15 of SB 1368 was with regard to limits on California
16 utilities' investment possibility into that facility.

17 So, having the conversation, even though we
18 didn't -- we didn't have necessarily all of the clarity,
19 but having the conversation in advance was really
20 critical to spur the kinds of negotiations and
21 discussions that we've had over this last year before
22 investment was made.

23 Now, if the only notice requirement were
24 retrospective, so that each entity made their own
25 determination about what was possible at San Juan, filed

1 that information, and then here we are at the Sierra
2 Club, or the NRDC, or for that matter the staff of the
3 CEC says, oh, wow, that doesn't look like to us like
4 it's allowed. There's a real question at that point
5 about what the remedy is, whether or not there's
6 anything to be done with the EPA, or with the other
7 implicated actors.

8 And to the extent that the filing requirement is
9 in anticipation, it allows everybody and gives everybody
10 the notice to make sure that those conversations happen
11 in advance, and we all come around to the table in
12 advance and make sure we have those conversations before
13 we're in the place of saying, oh, gosh, we sure think
14 you shouldn't have made that investment last year.

15 Matt, do you have anything to add?

16 MR. VESPA: No.

17 MR. PEDERSEN: When would this annual filing be
18 due or has the staff thought about that?

19 MS. JONES: No, that would be part of the
20 regulation.

21 MR. PEDERSEN: Yet-to-come feature of it, uh-
22 huh.

23 You know, from our -- from SCPPA's standpoint
24 and Anaheim's standpoint as with the other -- or the
25 first two options, we do have a concern about the

1 breadth. But this could be, as we've agreed, more
2 narrowly drafted so that for us it would apply just to
3 San Juan, nothing more, no other plants.

4 We still have a concern about it and it's just
5 the mechanics. You know, we don't do the budget for San
6 Juan, we don't prepare the investments. PMN is the
7 operating agent, they do all of that. We get the
8 package and then it's approved generally as part of --
9 well, as part of an overall budget.

10 At Anaheim, for example, they have a board and
11 they also have a city council and they would approve the
12 utility's entire budget, which would include the budget
13 for San Juan.

14 We don't control when that is going to happen
15 so, you know, we would have a detail that we would have
16 to work out. You know, we couldn't have a deadline that
17 we wouldn't be able to meet because, you know, we don't
18 control what PNM does and when we get the material from
19 PNM.

20 A further problem is that necessarily, and I
21 think that we've agreed on this point, it's an obvious
22 point, anything you have that is looking forward to an
23 entire year is necessarily going to be -- is going to be
24 exposed to the possibility of being incomplete.

25 Something very well may come up during the course of the

1 year and so what you're going to be getting is, you
2 know, an overview of what is expected. It's something
3 in the nature of a forecast. But you know what they
4 always say about forecasts, the only thing you know
5 about a forecast is it's going to be wrong.

6 So, our concerns about option three, you know,
7 aside from the over-breadth which we have agreed --
8 which we've stipulated we can solve, is the workability
9 of it. And given those features, it just seemed to us
10 that option three, when you were ranking these options,
11 ought to be actually put at the bottom of the list.

12 And I know that's directionality different from
13 where Matt and Noah see it going, but it seems to us
14 that just from a practical standpoint you ought to put
15 it at the bottom of the list.

16 MS. BERLIN: This is Susie Berlin. And rather
17 than reiterate all of the points Norman raised, it's the
18 same San Juan budget, it's the same issues, we also
19 agree that it's the least favorable option, and it also
20 suffers from the same definitional defects in our
21 estimation, as we've discussed in the context of the
22 previous options.

23 MS. JONES: Melissa Jones. I had one question
24 and I can't remember if it was your comment, Susie, but
25 one of you raised the issue that the retrospective was

1 similar to what the POUs would be doing. And what we
2 intended with that option was to make it what the LSEs,
3 under the PUC, have to do. And that's just a
4 retrospective, made an investment and an attestation.

5 The IOUs have a completely different role with
6 the PUC in terms of EPS compliance.

7 MR. PEDERSEN: But I think that's option four,
8 isn't it?

9 MS. JONES: Yes.

10 MS. BERLIN: Yes.

11 MR. PEDERSEN: You're moving to option four.

12 MS. JONES: We're doing three and four.

13 MS. GRANT: We're doing three and four combined,
14 I'm sorry.

15 MR. PEDERSEN: Oh, Norman Pedersen. Can I talk
16 about four?

17 (Laughter)

18 MS. GRANT: Yeah.

19 MR. PEDERSEN: You know, we are familiar with
20 what the small LSEs, as we call them in our filing and
21 our pleading, have to do for the CPUC. And, you know,
22 we think that that's something that we could do.

23 Again, we aren't advocating expanding the
24 current regulation, but it is something that we could
25 do.

1 However, from our standpoint, we would urge that
2 it be an option for a compliant POU, not a substitute
3 for the regulation we have.

4 We're comfortable with the regulation we have,
5 we understand the regulation we have and, you know,
6 better the devil you know than the devil you don't know.
7 You know, there very well may be POUs that would like to
8 just live with the regulation you have in place. There
9 may be some that do want to do something differently.

10 We're talking about a pretty small scope and
11 we're not too sure who they are, but there may be some,
12 and so it would be acceptable as an option.

13 MR. HOWARD: Randy Howard, LADWP. Related to
14 options three and four, related to option three in our
15 comments we currently, and I've passed around the
16 Integrated Resource Plan in a single page, it lays out
17 our foundation of the future and the objectives of the
18 utility.

19 Both the petitioners and their co-workers were
20 very involved in our Integrated Resource Planning
21 activities. It's a fairly robust process. The
22 documents are printed, they're on our website.

23 They lay out the strategic objectives related to
24 the two facilities. And again, we're talking three
25 facilities and two of them are really under LADWP's

1 purview or jurisdiction. So, if you're following LADWP,
2 you're capturing two of them and the balance of the
3 participants here are focused on the third.

4 So, related to the two facilities, the plans are
5 put out there, they're put out there annually. They're
6 discussed in great detail in the public forums.

7 I've provided to the Chairman here a
8 presentation that was provided publicly on Friday to our
9 board, and it's a presentation condensed on the IRP.
10 But the last page of that gives them the purview of what
11 are the action items, the key action items that they
12 should see this next year related to the IRP.

13 And there are three related to coal that are
14 laid out in there that they should expect to see. One
15 being an amended power sales agreement for IPP should
16 come before them.

17 One should be the divestiture of Navajo should
18 come before them in the 2013 period.

19 I'm drawing a blank to the third one. There's a
20 third one in there but -- but they're there, they're
21 public, so it's already provided.

22 If you're asking us to provide, you know,
23 additional notifications to folks, I think that's the --
24 oh, the third is to purchase combined cycle in 2013,
25 which we think there could be some purview. We don't

1 know that yet, until we make the selection and then
2 bring that before the CEC, potentially.

3 So, it's public. We don't think it's necessary
4 to do it any other way, but it's being done for two of
5 the facilities. And again, both of your entities are
6 actively engaged and we appreciate that because they
7 give a lot of valuable input into that process.

8 As to option four, it really -- if we were to
9 accept any of the options, we think that's the one that
10 we feel most comfortable with, using the existing
11 requirements of SB 1368. And if you want us to do an
12 attestation at the end of the year that we didn't
13 violate and that we were in compliance, I think LADWP
14 would be most comfortable to do that.

15 I think everything else for us, and the size of
16 our entity, and the complexity becomes more challenging
17 and we think there's enough processes in place, enough
18 transparency in the activity.

19 What we're just trying to do is not provide any
20 additional burdens or busy work that we just don't think
21 is necessary.

22 MS. BERLIN: This is Susie Berlin. With regard
23 to option four, like Randy said, if it involves the
24 existing definitions set forth in 1368 it's different.

25 As it stands now, with the undefined terms and

1 the expansion of the scope, we find that problematic.

2 If it was -- going back, we don't believe it's
3 necessary. I will save that further for closing
4 statements.

5 But if it pertains to this filing that's going
6 to address these undefined terms then, again, we have a
7 lot of the same problems that were discussed in the
8 context of the other options.

9 If, like Randy says, we are talking about an
10 end-of-the-year filing within the current definition or
11 structure of 1368, which applies strictly to covered
12 procurements and nothing else, then that could be
13 different.

14 MS. GRANT: Go ahead.

15 MR. LONG: Noah Long from NRDC. I appreciate
16 these comments.

17 Just a couple of responses, one that said --
18 Norm's comment on the option three being necessarily
19 incomplete, forecasts are always wrong, I think that's
20 exactly the reason why we saw it being so usefully
21 combined with option two. We don't expect it to be
22 perfect or, you know, have perfect tea leaf information
23 about the coming year, but we expect it to be the best
24 plan that you have.

25 And then filed in combination with option two,

1 we think that could provide a complete picture, and
2 that's how we saw those working together.

3 As to the comments from Randy, I think I just --
4 if I can, just take a step back and, first of all,
5 congratulate DWP on all the great work that they're
6 doing to divest from these facilities and take steps.

7 And I just want to remind folks where we were a
8 year ago where there was far less information available
9 to DWP and certainly to stakeholders about where these
10 plants were going, the same with San Juan.

11 And so when we started these facilities I
12 think -- I'm sorry, started these proceedings we had far
13 less information.

14 And I think it's a mark of all of our progress,
15 the progress of DWP, as well as of this Commission that
16 this statute's still in place, the regulation is still
17 in place and that we're going forward with divestment.

18 And I think I in no way mean for my comments, I
19 think my colleague Matt agrees, we're not trying to
20 undermine the intention of the management of DWP or of
21 the city council.

22 But at the same time we do view these additional
23 advance notices and notices as useful because just in
24 the same way that so much has changed in the last year,
25 we want to make sure that we maintain that momentum, and

1 that the Commission sees that momentum maintained and
2 carried through in the coming years.

3 And that's not to say that there's a lack of
4 trust for the work of DWP, but that we're all in this
5 together. And it's an important regulation and
6 providing notice on the progress, and the excellent
7 progress that you're making to make those divestments,
8 we don't see as particularly burdensome.

9 And we'll be happy to have further conversation
10 about limiting the definition so that it's not so
11 burdensome, but so that we can make sure that we do have
12 ongoing notice of the status of those discussions and
13 status of progress through divestment of those
14 facilities.

15 MS. GRANT: Okay. Great, thank you.

16 MR. VESPA: Can I make one last comment?

17 MS. GRANT: Sure.

18 MR. VESPA: Just on the foreseeability
19 expenditures and we certainly understand there's not
20 going to be, you know, complete clarity on what may or
21 may not come that year.

22 And one thing we had proposed amending the
23 requirement would be in the subsequent filings one could
24 say here are some expenditures we didn't reasonably
25 anticipate, here's why, here's what's coming forward in

1 the next year, so it kind of closes the loop on the
2 year-to-year expenditures.

3 So, in other words, if there was something in
4 your first year that you didn't identify, and that ends
5 up becoming an expenditure, you would identify that in a
6 subsequent report.

7 You know, I just think there's a real value in
8 prospectively flagging what major expenditures are in
9 these two or three facilities as we go forward, so we
10 can proceed apace with that investment.

11 MS. GRANT: Okay, thank you for the comments.
12 We're going to go ahead and before getting into some of
13 the questions around definitions, we'll just take a
14 short break.

15 So, we'll come back -- I have it at 3:07, we'll
16 come back at 3:15 and we'll finish up.

17 Thank you.

18 (Off the record at 3:07)

19 (Resumed at 3:20)

20 MS. GRANT: Okay, we'll get started. We'll get
21 started in just a second.

22 Susie, to your question, I think if folks had
23 wanted to submit follow-up comments that would be fine.
24 I'm trying to think if we should set a time line. Yeah,
25 I would say two weeks from today. If any further

1 additional comments, and I'll repeat this when Matt and
2 Noah get back in the room, if you guys could get in
3 comments by then, that would be great.

4 CHAIRPERSON WEISENMILLER: Two weeks. Yeah, two
5 weeks, and of course we encourage during comments.

6 MR. LONG: Sorry, this is Noah Long again.
7 You're referring to comments due in two weeks?

8 MS. GRANT: Right. So, Susie had asked if there
9 would be an opportunity to submit written comments in
10 response to the workshop and we were saying that's fine
11 if you guys could get it to us within two weeks, which
12 is February 12th.

13 MR. LONG: Okay.

14 MS. GRANT: So, if you could share that with
15 Matt?

16 MR. LONG: I will. He'll be back momentarily,
17 he's still in the rest room, I believe.

18 MS. GRANT: Okay.

19 (Laughter)

20 MR. LONG: What do you use breaks for, Susie?

21 MS. GRANT: So, we have a request to finish
22 quickly, by Norm, he needs to be out of here in half an
23 hour.

24 Okay, so we have Matt coming back.

25 We're going to march through just a few of these

1 terms that are being thrown around. Let's start with
2 major investments. I know, Noah, you had some response
3 to what had already been brought up by Randy and Norm,
4 so if you want to kind of kick off with that.

5 MR. LONG: Well, sure. Noah Long, NRDC. I
6 guess it was just the first question, I understood a
7 difference between Randy and Norm's positions.

8 Randy said we would need more definition, Norm
9 said please don't define that term any further. We'd
10 rather define it ourselves. Is that fair?

11 MR. PEDERSEN: I believe we were talking about
12 major investments.

13 MR. LONG: Major investments, yeah.

14 MR. PEDERSEN: Yeah. And I think Randy was
15 looking more at the term "investments" and we were
16 looking at the term -- we were looking at actually the
17 specific question the staff raised, which was defining
18 "major."

19 And your proposed, I think in your comments,
20 \$250,000. And what we said in our comments was please
21 leave it to the regulated entity to determine what major
22 is. \$250,000 might sound like a lot if, you know,
23 you're thinking about an add-on to your house. But I'll
24 tell you, at San Juan it isn't major.

25 And Steve, you might want to say a word about

1 that.

2 MR. HOMER: Sure. At San Juan there are
3 literally dozens, if not over a hundred of expenses,
4 capital items that would be over \$250,000 every year.
5 You know, we already report or talk about anything we
6 think might be a covered procurement. If you're talking
7 about everything that we spend there that's \$250,000 or
8 more, that's a lot of things. And I don't believe you
9 care about most of them.

10 MR. PEDERSEN: And going back to the word
11 "investments" that goes to the other issue that I think
12 we've already discussed, some POUs are different from
13 others.

14 And, you know, for us, you know, we looked at
15 option one, which is the first place the word
16 "investments" comes up and we saw we just have to
17 report -- we just have to provide our URL link and it
18 would be for meetings at which we would have a
19 deliberation. And I already described how, you know,
20 the numbers of meetings that the SCPPA board holds each
21 year are very limited, well defined.

22 And so if you limited option one to board
23 meetings, at which governing board meetings at which
24 there would be deliberations, well, you know, we didn't
25 get so concerned about the definition of the term

1 "investment" because you were limiting the number of
2 meetings.

3 And we already agreed that we were talking about
4 SCCPA one plant.

5 So, that was, you know, why we had the view that
6 we had regarding option one.

7 But when you hear from Randy you hear a little
8 bit different concerns and there's a very good reason
9 for that. LADWP is a lot different utility from SCCPA.

10 Well, in fact it is a utility, that's one
11 difference.

12 (Laughter)

13 MR. LONG: That would probably make a
14 difference. So, Noah Long from NRDC.

15 So, just as to this point of the question of
16 major investments, our intent, and it may be useful to
17 see proposed language from staff on this so that we're
18 not all sort of going all over the place.

19 But our intent was to limit the number of
20 decision points that we're talking about to the major
21 inflection points for these facilities that are non-EPS
22 compliant facilities, existing non-EPS compliant
23 facilities.

24 We offered the possibility of using a line with
25 regard to, you know, \$250,000. We're open to other

1 options under that. But our intent is to limit it to
2 the major inflection points for these facilities.

3 And I think beyond that, you know, we're not
4 specifically tied to a particular number value. I think
5 we don't want it so large that things can either, by
6 themselves or potentially broken up into little pieces
7 slide under it.

8 And we don't want it so small that we're hearing
9 about every piece of new office furniture at the plant.

10 So, that's the intent. And I think, you know,
11 to the extent that you all have further information
12 about where the rubric would be -- Steve, if you have
13 information about where you think that line could be
14 drawn, we're open to it.

15 MR. VESPA: And just to add, we looked -- we got
16 this number from looking at some of your own documents.
17 So, in San Juan's case it appeared from the contract,
18 the joint party contract, that if there was some kind of
19 emergency expenditure, if it exceeded \$250,000 there
20 would be some other level of review.

21 So, it's sort of like what is the point where
22 people tend to view other lines of scrutiny as being
23 necessary?

24 I think in LA's context it was this similar
25 situation where there would be this other committee that

1 would look through the expenditure if it was above a
2 quarter of a million dollars.

3 So, that's where we got it from and I think
4 that's the point of it's like what rises to the level of
5 needing a little bit more review.

6 And again, we're only talking about in terms of
7 notice, those investments that actually are before the
8 board for approval, which I think in many cases don't go
9 to the board for approval, and also the ones you may
10 list as part of your annual filing, which I think would
11 be already identified in some document.

12 So, just to provide some context for those
13 numbers.

14 MR. HOMER: This is Steve Homer with SCCPA. In
15 SCCPA's case, there's hardly any deliberation on routine
16 expenses at San Juan. We bring an annual budget and it
17 says here's a dollar figure for capital, but there's
18 very little detail there.

19 Where we have discussion is a few years ago we
20 had the rotor replacements that were controversial, we
21 bring it and we just discuss it.

22 I had maybe an out-of-the-box thought here, I'll
23 just throw it out, maybe it can save us all some time.

24 My feeling is that the Commission is not
25 interested in approving every expense that we make at

1 these plants.

2 The people who are interested are sitting right
3 over there and I haven't seen anyone else intervene or
4 participating here. So, would it -- could we just cut
5 out revising the regulations and put you on our
6 distribution list for our -- for our meetings, all of
7 our meetings.

8 If you call me the week before and say is there
9 anything on the San Juan, I'll tell you. We're wasting
10 a tremendous amount of government time on something that
11 you want a little bit more advance notice.

12 MR. LONG: NRDC -- Noah Long from NRDC. Steve,
13 I appreciate the thought and certainly the intent behind
14 it. I don't think that would meet our needs and I'm
15 sorry we can't so reasonably resolve our concerns.

16 I mean, I work for NRDC. I hope I work for NRDC
17 for a very long time. But, of course, I'm not the
18 responsible actor or entity here.

19 And I think our view is that there is a role for
20 CEC in this process because, like I said, it may be that
21 other entities take an interest in this, which obviously
22 implies the whole State of California, and all of us as
23 stakeholders, and for 1368.

24 Unfortunately, I don't think that quite resolves
25 the problem, but I do appreciate the intent.

1 MR. HOMER: All right.

2 MR. HOWARD: So, Randy Howard, LADWP, to dollar
3 numbers, again, it's quite challenging. If we were to
4 narrow it, as Matt indicated, that it's very specific to
5 expenditures that go before our governing commission, if
6 it was just the annual budget type issues or any special
7 issues it certainly is more workable.

8 But, you know, I get quite concerned. Navajo
9 Generating Station, you know, we're not the operating
10 agent, we don't put the agenda together, we don't
11 identify what the materials are that have to be
12 replaced. You know, but there is a representative of
13 DWP that participates in those committees when those
14 decisions are made.

15 You know, you put together -- or they put
16 together an annual budget, they provide it to us, our
17 board then gets to approve it or not approve it.

18 So, just the approval of the budget I think is
19 simple enough.

20 The challenge, I mentioned it, and Norm's out of
21 the room but, you know, for me it's like taking your car
22 to a shop to get something repaired. You know, you're
23 going to get new brake pads but when you go in they find
24 five other things, they always find five other things,
25 and instead of \$300, it's \$900.

1 You know, that happens. And so when we put
2 dollar thresholds, you know, I don't know if the five
3 other things are all individual or independent things,
4 or if it's one bill at the end that the \$250,000
5 threshold represents. I don't know that, nor do I want
6 to put that kind of burden, again, on some of the
7 personnel involved in this process as to make a
8 determination of has that been something that needs to
9 come back or get noticed.

10 So, I'm really concerned here. It is our
11 objective to get out of Navajo the end of this year and,
12 hopefully, this is a non-issue after that point. For
13 Navajo IPP, a very different type of situation, it's
14 really just an annual budget. There are really no
15 individual expenditures that would come before our
16 governing board. So, there would be really nothing
17 noticed here related to the specifics on an expenditure
18 that would be an investment in that facility.

19 With the exception, and I point out that we're
20 making investments in renewables that could intertie to
21 that facility. So, you could be making investments in
22 that facility that have nothing to do with the baseload
23 generation.

24 And that's why when it goes back to the
25 definition of "covered procurement" it's easy for me to

1 understand.

2 When you do this more generalized investment
3 without really refined definitions, then I'm going to
4 have more problems.

5 MR. HOPPER: I was going to say -- this is
6 Martin Hopper with MSR. And not conceding any of the
7 prior points, but one of the things that was mentioned
8 earlier is that there have been a review made of the San
9 Juan Participants Agreement, which suggested a
10 threshold.

11 And I'd suggest perhaps if we do want to go down
12 that path, which I don't believe we do, that agreement,
13 I think, provides some good illustration as to what
14 might be considered major.

15 And when one looks at the review provisions for
16 the owners in that agreement, you'll see the break point
17 is actually at \$5 million is a break point where further
18 scrutiny and a higher standard is held to proposed
19 projects. And that might be a more comfortable level if
20 one were to go down that path.

21 But what I want to do is sort of step back to a
22 point that Noah made, as indicating that what they want
23 to catch are inflection points of the project, things
24 that are going to change the course of where the project
25 is going.

1 And that, philosophically, might be much more
2 suited to what they're hoping to accomplish here, which
3 is to watch for backsliding.

4 Notwithstanding, I think we've all shown we're
5 on the way out here. And I would also probably suggest
6 if we do go down this path that we have an escape hatch.
7 Once you have a date certain exit you don't have to file
8 anything anymore because you're gone at date X. And I
9 think that could really simplify life here.

10 But this may be more of a closing remark than
11 anything else. I think one of the basic problems we
12 have here is that there's a level of distrust in the
13 room that if we aren't being forced to report, and the
14 CEC is being forced to review, that somehow we're all
15 going to ignore the requirements of statute.

16 And, frankly, I feel a little insulted in that
17 we've made some very good faith efforts here. We're
18 working hard to do what the statute wants us to do,
19 which is to get out of coal. The statute wasn't to
20 condemn coal, it was they encourage you to get out of
21 coal.

22 If it was a condemnation, actually it could have
23 made life very simple and easy, we could have had these
24 things condemned, we could have collected our investment
25 back from the State and we could have been down the

1 road. But that's not what the statute was about. The
2 statute was to encourage us to do the right thing.

3 We're doing the right thing and I resent that
4 we're being held that unless we bare our soul, like to
5 the TSA man that we're not going to do the right thing.

6 MS. BERLIN: This is Susie Berlin. I would just
7 add that I do believe that we have some significant
8 obstacles to overcome if we are going to use the terms
9 "major" and "investment" in the regulation. I think
10 it's problematic to define them. A dollar amount does
11 not provide a simple solution. Both the terms "major"
12 and "investment" are subjective and relative, and those
13 are things that we're going to have to really dig into
14 and likely spend a lot of time on if they are, in fact,
15 going to be part of any regulatory language.

16 MR. LONG: Noah Long from NRDC. Susie, if I
17 may, your problem with "major investment" was that it
18 was both subjective and relative, and you said a dollar
19 figure doesn't answer that, but it's neither subjective
20 nor relative.

21 Do you have another proposed solution or some
22 reason why something which is neither subjective, nor
23 relative doesn't work?

24 MS. BERLIN: My proposed solution is to use the
25 term "covered procurement."

1 MR. LONG: Okay, touché, fair. But can you
2 elaborate why a dollar solution --

3 MS. BERLIN: For the very reason -- for the very
4 reason -- I'm sorry, Susie Berlin. For the very reason
5 Martin just articulated. You read through the document
6 and you said if there's an expenditure of \$250,000 or
7 more there needs to be some notification. But that
8 notification does not necessarily comport with it being
9 a major investment.

10 You used \$250,000 based on some of your
11 readings. On Martin's understand of the documents and
12 what really triggers review, it's \$5 million.

13 And just to reiterate the points that have
14 already been made, like Norman said, we have \$250,000.
15 To me, if you're asking me to spend \$250,000, I'm going
16 to put major investment on that, but I'm not operating a
17 multi-billion dollar electric generation facility.

18 And I think that trying to constrain operations
19 into classifications of is it major, is it not, is it's
20 primary purpose this or is that it's secondary purpose,
21 or is that just an end result and that doesn't even --
22 now, I'm speaking to environmental compliance or
23 regulatory compliance, for example.

24 I don't think these issues are easily
25 pigeonholed, and I don't think that putting these kinds

1 of definitions on the transactions, consistent with the
2 way these facilities are operated, and I think that's
3 problematic.

4 And I don't think that we're going to be able to
5 resolve the myriad issues in the context of this
6 workshop. My understanding of the purpose of this
7 workshop is to raise what, if any, concerns we have with
8 that. And I don't think that resolving this is going to
9 be an easy endeavor.

10 MR. LONG: Well, just one brief comment, Noah
11 Long from NRDC, which is to say I recognize that there's
12 potentially a disagreement based on our filed comments
13 about what the number would be. And I think we're open
14 to some discussion of that.

15 But I think once determined, you know, if there
16 is a number, whether it's \$250,000, or \$2 million, or
17 some other number there is clarity about which
18 investments that either fit into that or don't fit into
19 that.

20 And so it does get over the problem of
21 subjectivity and lack of clarity.

22 As to whether that's the appropriate number to
23 meet the word "major", I think that's a second question
24 and I think ultimately, you know, we can look at a
25 couple of different reference points for where that

1 right number should be and then, you know, the staff can
2 make a suggestion on that issue.

3 MS. BERLIN: All right, Noah, thank you. This
4 is Susie Berlin and I appreciate that. But I do believe
5 that even if we assign a number to it, then whether it's
6 \$250,000 or \$2 million, we also have to define how that
7 is relevant to meeting the objectives of 1368.

8 Whereas the term "covered procurement" very
9 clearly does.

10 CHAIRPERSON WEISENMILLER: Okay. I actually
11 wish to sidestep things for a second. I'll just turn to
12 Norman. I think we're getting close to his half-hour
13 window. And I was going to point to the list --

14 MR. PEDERSEN: I changed my flight.

15 CHAIRPERSON WEISENMILLER: Okay, I was going to
16 give you an option if you wanted to talk about what was
17 remaining and hit the road, you could. But otherwise,
18 we can go back.

19 MR. LONG: I don't know that I have a further
20 comment. I think, you know, the point that we've tried
21 to make on that is we want to make sure that inflection
22 points are reported, and I think that that's the
23 additional purpose that we would identify. And so
24 there's clarity and a possibility for advanced public
25 process around those discussions.

1 MR. VESPA: Yeah, I just want to get at this
2 issue of distrust that Martin raised, because it's
3 really not. We had a great year, I think, negotiating.
4 It's not really about that. It's just that reasonable
5 minds, I think, differ on what may or may not be
6 covered.

7 And, you know, our view is all of these
8 environmental investments to meet pollution control
9 requirements are all covered, they all extend the life,
10 all of them.

11 I think some may say it's case by case, some
12 might say none of them do.

13 And so it's just the idea of noticing some of
14 these in advance and really just kind of cc'ing the
15 Commission and interested parties on things you're
16 already noticing to your governing board, and also an
17 annual report, which you're probably already preparing
18 about what these expenditures are, so there's an ability
19 to have an independent look at some of what are, I
20 think, somewhat discretionary judgments.

21 And that's the point. And it's not about
22 distrust, it's just about areas where reasonable minds
23 might disagree and ensuring compliance with the statute
24 in a more objective way.

25 MS. JONES: This is Melissa Jones and I've got a

1 question for you guys. You look at the word "major" and
2 if we're able to define for environmental and regulatory
3 investments do you need both terms? Or wouldn't the
4 environmental and regulatory probably get at everything
5 you're really concerned at?

6 MR. LONG: Well, I think it certainly wouldn't
7 get, for example, capacity increases or other things
8 subject to 1368 that are, you know, not covered under
9 environmental and regulatory requirements.

10 So, I think our view is that having both you
11 would definitely capture both areas.

12 All of the environmental and regulatory
13 requirement investments, in our view, our -- the ones
14 that we're worried about, our major, are also major
15 investments.

16 So in that sense, yes, I think there is a --
17 what's the word I'm looking for? They both capture the
18 same pool of investments. I think the only concern is
19 that the environmental and regulatory requirement
20 investments don't capture the full field of possible
21 investments at a facility.

22 I just want to make a quick note, if I can, as
23 to Randy's comment. And just to perhaps agree and
24 recognize that there's a need for clarity or at least I
25 would hope that the final -- any final language does

1 provide language that investments in renewable
2 facilities in Utah and increased transmission, for
3 example, or investments around the transmission
4 substation to provide for renewable investments
5 shouldn't -- shouldn't be captured here.

6 So, they would only be captured to the extent
7 that they affected the baseload facility, itself, and
8 not the electrical infrastructure to provide for
9 additional procurement opportunities.

10 MR. PEDERSEN: Norman Pedersen. I really wish I
11 would have had Melissa's idea because I think it is a
12 superb idea. It just had not occurred to me.

13 You know, we've got covered procurements.
14 Everything you mentioned, aside from that one disputed
15 area where we are doing major investments to meet an
16 environmental obligation, okay, all of the ones you're
17 concerned about are covered procurements and they're
18 already covered by the regulation.

19 Anything to expand capacity, it's already
20 covered by the regulation. Anything that, you know,
21 would extend the physical life for more than five years,
22 it's already covered by the regulation.

23 The one thing that concerns you, and we all in
24 this room know it, is where we're making an investment
25 to comply with environmental regulation. And everybody

1 in this room, we don't have to make any secret of it, we
2 don't think it extends the life within the meaning of
3 the regulation. You do.

4 And what you're asking for, you're very simply,
5 at the ground of it, you're asking for us to notify you
6 when -- and the public, through the CEC, when we are
7 going to make one of those investments because we do
8 have this dispute.

9 And so, I think that Melissa really -- if we
10 were to proceed with any of these options, options one,
11 two, three or four, of course I guess it isn't relevant
12 to option one. But if we were to proceed with any of
13 these, it would really narrow it significantly to just
14 limit it to investments to meet environmental or other
15 regulatory requirements and just skip the major
16 investments.

17 If we make a major investment that would be
18 along the line of what you're talking about it's going
19 to be covered, and then the test is will that investment
20 lead that plant to be within the EPS.

21 If it won't lead the plant to be within the EPS,
22 we can't do it. If it would lead to the plant being
23 within the EPS, we can do it.

24 MR. LONG: We're just having some conferencing
25 around that issue and I think, you know, I think I would

1 just stand by my previous comments. It's definitely,
2 likely the same subset of investments. To the extent
3 that there are other additional procurement -- sorry,
4 other additional investments, they would likely trigger
5 the covered procurement.

6 To the extent that there's agreement about what
7 covered procurement is, I think the only question is
8 that the noticing requirement recommended here is
9 additional across the board. It's an additional
10 noticing requirement that isn't currently in the
11 regulation.

12 MS. GRANT: All right, that's good. And, you
13 know, to the extent there's opportunities to provide
14 additional written comments, you guys can --

15 MR. LONG: Yeah, we'll address that issue in our
16 written comments.

17 MS. GRANT: All right, so let's move on from
18 that.

19 Now, it was proposed that if the Energy
20 Commission were to establish a requirement for
21 "investments to meet environmental or other regulatory
22 requirements", and now we just want comments on that
23 phrase and if additional definitions would be necessary.

24 MR. PEDERSEN: I think that's an easy one. We
25 can really move this meeting along on that one because I

1 think we had consensus. You don't need anything more on
2 that, as I read your comment.

3 MR. LONG: I understood Randy to disagree, that
4 that might affect a whole slew of other regulatory
5 requirements, OSHA requirements, FERC requirements.
6 We're not interested in those issues.

7 So, our concern would just be that it's not
8 over-broad.

9 MS. BERLIN: This is Susie Berlin for MSR and we
10 believe that there does need to be some fine-tuning of
11 it. I appreciate the clarification you've made in the
12 context of the workshop, that we know you're talking
13 about a specific set of investments, and EPA, perhaps
14 mandates and the rest.

15 But as the term is used, it's overly-broad, it's
16 ambiguous and it could capture a whole slew of things
17 that we don't think are relevant.

18 We talk a little bit more about that in our
19 comments and so I won't reiterate them now.

20 MS. GRANT: Okay.

21 MS. DE CARLO: How about the term -- this is
22 Lisa DeCarlo, Energy Commission Staff Counsel.

23 I am a little concerned about the potential for
24 ambiguity with such a kind of vague terminology. How
25 about would some reference to put the investments for

1 pollution control equipment get to what the parties are
2 interested in? That seems to me a little bit more
3 defined, but I'm not sure it gets to the heart of all
4 the intentions.

5 MR. HOPPER: Martin Hopper with the MSR. I
6 think, Lisa, you're heading in the right direction of
7 more definition. But just as I was sitting here, for
8 example, EPA may mandate a new technology for your CEMs,
9 your continuous emission monitors, and those things are
10 darned expensive.

11 And that, for example, doesn't change anything
12 other than how you're reporting and monitoring
13 compliance with an existing requirement. But that could
14 be a regulatory requirement that could be millions of
15 dollars and reportable here, and we would not want to
16 imply somehow that that's not something that you're
17 permitted to do. It doesn't change the life of the
18 plant, it doesn't change the emissions, but it's
19 necessary to achieve regulatory compliance.

20 Or the example, earlier, of OSHA decides a
21 thousand feet of catwalk need toeboards and that could
22 be very expensive, and so on, and so forth.

23 So, the term "regulatory" is very, very broad.
24 I don't have a better idea, but I think we do need a
25 better idea and I think you're right to suggest it.

1 MS. BERLIN: This is Susie Berlin. Lisa, will
2 you repeat your proposed language?

3 MS. DE CARLO: Well, the key phrase was
4 "pollution control equipment."

5 MS. BERLIN: Okay, thank you.

6 MS. GRANT: Maybe what we can have is to the
7 extent there's going to be written comments submitted
8 within two weeks, if you -- the parties can propose a
9 definition on how to narrow that phrase, "investments to
10 meet environmental or other regulatory requirements."

11 And jointly would be great, amongst all parties.

12 MS. JONES: We did jointly a lot in the original
13 rulemaking, so we should bring that back.

14 MR. LONG: I can't imagine a joint SCCPA, MSR,
15 DWP, and NRDC, and Sierra Club filing on that.

16 MS. BERLIN: Yeah, we had joint NRDC, CMUA,
17 LADWP, and MSR comments in the original rulemaking.

18 MR. LONG: I've seen them.

19 MS. BERLIN: I would -- this is Susie Berlin. I
20 would submit that if that was the scope of comments that
21 two weeks would probably be an insufficient amount of
22 time to collect all the --

23 MS. GRANT: All right, you guys, we'll give you
24 an extension if there's any progress.

25 MR. LONG: And, you know, we're open to

1 caucusing about trying to find a common definition in
2 advance, just to sort of seal the deal here and not go
3 back with the replies.

4 MS. GRANT: That's great.

5 Okay, so finally on the definition from, just to
6 throw out kind of a catchall, your comments on -- if
7 there's any definition that's short of all investments,
8 and maybe I'll start with you all, that you find would
9 be more suitable -- I know major investments was kind of
10 what was originally thrown out so --

11 MR. LONG: Yeah, my tendency was to put a dollar
12 number on there. And I think, like I said, we're
13 somewhat -- we threw out \$250,000 here. We're open to
14 some discussion of that and maybe we can add that to our
15 joint written reply comments here.

16 My only hesitancy in going further down that
17 road, frankly, is the fact that there seems to be some
18 disagreement among the POU's, but maybe we can all come
19 together and decide on a joint course forward that
20 works.

21 But beyond that, I have no further comment at
22 this time.

23 MR. LAU: This is James Lau from SCPPA. Really
24 quickly, Lisa, just back to your pollution control,
25 you're talking about in reference to CO2 emissions,

1 right, and not just other types of pollution or are you
2 talking about everything then?

3 MS. DE CARLO: I think it would be general, but
4 we'd be well open to comments from the parties on
5 whether or not that should be even further narrowed.

6 MR. LONG: And just to be clear, she's talking
7 about a reporting requirement on those investments to
8 meet those requirements. She's not setting up a
9 separate determination of compliance with the
10 performance standard.

11 MS. DE CARLO: Yeah, this --

12 MR. LONG: She's not saying that those
13 investments would not, per se, comply with the
14 performance standards, she's just saying that those are
15 the kinds of investments that you would report on, if I
16 understand you correctly, Lisa.

17 MS. DE CARLO: Yeah, that's for the noticing
18 that we're talking about, the additional noticing
19 requirement.

20 MS. GRANT: Okay great. So, before we go onto
21 the -- so, I'm just going to wrap up the language
22 portion of things, these definitions.

23 Before we go on to the final piece of the
24 discussion portion, I wanted to kind of bring up NRDC
25 submitted in their comments that they are interested in

1 having the Energy Commission clarify that investments to
2 meet environmental and other regulatory requirements
3 constitute a new ownership investment under the
4 regulations, section 2901(j), to the extent that they
5 extend the legal operating life of the facility by five
6 years or more.

7 I just wanted to, at this point, if the parties
8 or the POUs have a response to that portion of NRDC's
9 comments, if they'd like to make that now, you'd have an
10 opportunity to do so.

11 MR. PEDERSEN: I'm sorry, I'm not sure I'm with
12 you, Sekita.

13 MS. GRANT: There's -- in the -- I don't know if
14 you want to go into it, but NRDC's comments raised an
15 issue and it was not scoped in our notice, so it was in
16 the reply comments that NRDC provided to our notice.

17 MR. HOWARD: This is Randy Howard, LADWP, so
18 I'll give you our take. We disagree. We were very
19 engaged with the Legislature in the development of SB
20 1368 and very involved in the proceedings. I personally
21 was quite involved in the proceedings here on the
22 rulemaking, and the discussions that took place then.

23 And no, we disagree with that definitional
24 meaning and we do not believe that was the legislative
25 intent.

1 MR. PEDERSEN: I'd actually like to say a few
2 words on that. I was actually going to leave that for
3 closing comments, I didn't -- wasn't aware you were
4 going to raise it.

5 And this goes to the proposed revision for 2907,
6 several points. The first point, as we just discussed a
7 few moments ago, there is a point of disagreement that
8 we all understand and that is whether an investment to
9 meet an environmental or regulatory mandate is or is not
10 a covered procurement. And we're very strong on our
11 view that extending the life for five years means
12 extending the physical life.

13 We understand Noah and Matt's point of view on
14 it and they're asking you to reach that entire issue and
15 decide that entire issue here.

16 You know, that was not ever, as far as I know,
17 within the scope of this proceeding.

18 This passage, on page -- the passages on pages 5
19 and 6, and it ties in with their request regarding an
20 addition to section 2907, it's exactly the same sort of
21 thing. They are getting to an entirely new issue and at
22 some point the scope of this proceeding has to stop
23 being expanded.

24 You know, we've been through -- you know, we
25 started out with a proceeding. We migrated on to

1 considering whether the EPS should be revised. You
2 know, here in what we thought were our last round, our
3 penultimate round of comments, right before we comment
4 on whatever you have going to the Commission, you know,
5 we thought we were wrapping this up and we have an
6 entirely new issue being raised here.

7 We would urge you to not expand this proceeding
8 further so as to reach the issue raised here. For one
9 thing, it's just a very naughty issue, aside from the
10 fact that it is at this very late date a new issue.

11 We would really urge, frankly, that you take the
12 record you have, you give us a decision to be presented
13 to the Commission, give us our opportunity to provide
14 written comments on that, give us our opportunity to
15 present our views to the Commission meeting, and get
16 this proceeding wrapped up.

17 MR. LONG: Noah Long for NRDC. If I may,
18 quickly, I agree that it was not directly responsive to
19 the questions in this ruling. I guess I disagree that
20 it's a new issue. I think if you look back at our
21 comments from this summer, this is exactly the issue
22 that we were discussing in comments and we made
23 recommendations along these lines then.

24 The point of bringing it back up now was to say
25 if you were to do this, to then make this change, to

1 make it quite clear that these investments are not
2 allowed or, alternatively, to make the changes that we
3 recommended to 2907, we would view those as an effective
4 alternative to the monitoring and notice requirements
5 that are being considered today. And that's why we
6 brought them back up because we think it would make it
7 very clear which investments were allowed, which ones
8 were not allowed. The point of notice and inflection
9 points would be less necessary, frankly.

10 But, you know, so I agree that it's not directly
11 responsive to the question. We view it as an effective
12 alternative. I disagree that it's a new issue. I mean,
13 it's the issue we talked about last summer. It's the
14 issue we talked about in our first set of comments, and
15 going on and forward from there.

16 MR. PEDERSEN: We can stipulate it's not a new
17 issue, it goes back to 2007.

18 MS. BERLIN: This is Susie Berlin. So, two
19 things, with regard to a response to Sekita's what do we
20 believe, we believe that this issue should not be a part
21 of this rulemaking.

22 But at the same time we also believe that this
23 determination of adding a new definition for the legal
24 life of the plan is unnecessary, it's outside of the
25 intent of the legislation, and it is just a means to add

1 definitions to get an end that's not intended, whether
2 with -- neither with regard to when the legislation was
3 first passed, nor when the regulation was first passed
4 back in 2007 and 2006, and when we had the long
5 deliberative process.

6 I also will touch on the 2907 issue. We don't
7 think that that's appropriate, either, to have a
8 mandatory filing. If we are going to explore that
9 further, that needs to be explored in a lot more depth.
10 There needs to be a greater detail regarding what
11 factors will be used to review it and what this,
12 ostensibly, review and approval process would look like.

13 I would also like to get clarification from
14 Noah, and maybe I'm just not understanding or I missed
15 something, are you saying that NRDC would advocate
16 either one of these or your option two/three combined
17 reporting requirement, or this additional language to
18 2901(j), as an either/or option for proposed revision to
19 the regulation? Is that what you meant when you say
20 that you see them as an effective alternative?

21 MR. LONG: Noah Long for NRDC. We've said right
22 from the beginning of the proceeding that we think that
23 this would be a useful addition to the regulations that
24 would add clarity.

25 I think what I meant to say there was that the

1 2907 change that would require the utility to request
2 the Commission to evaluate upcoming investments would
3 preclude a need to notice those -- simply notice those
4 same investments for environmental and regulatory
5 requirements, because they'd be asking for permission to
6 do them or, you know, asking for clarity that they're
7 allowed.

8 You wouldn't -- you know, that would also cover
9 a notice requirement.

10 MS. GRANT: Okay, thank you.

11 So, the final topic we'll cover is whether to
12 replace the term "investment" with "covered procurement"
13 in section 2913 of the regulations.

14 We'll go through very briefly and get comments
15 on that. Norm, if you want to start.

16 MR. PEDERSEN: Thanks, Sekita. Yes, and as we
17 indicate in our comments, we strongly encourage you to
18 make that change.

19 You know, frankly, back in 2007 when we were
20 putting together 2913, I just wish that we all,
21 collectively working on that section, would have had it
22 go through our heads, oh, it's probably better to have
23 the word "investments" in there to avoid the implication
24 that somebody's who's coming in for a petitioner for
25 exemption is agreeing that they have a covered

1 procurement.

2 It would have been a lot better. We didn't
3 think of it. You know, but we certainly have thought of
4 it now and we strongly encourage you to make that
5 revision. It would make that section capable of doing
6 what we all intended back in 2007 for it to do.

7 MR. VESPA: I just had a --

8 MS. BERLIN: Susie Berlin. We agree with
9 SCPPA's position and what Mr. Pedersen just said, that
10 it would be a good idea to clarify this provision, to
11 capture the intent, but we want to ensure that we're not
12 bandying about definitions that could then get used in
13 other parts of the regulation as they pertain to the
14 scope of the EPS, itself.

15 So, the term "investment", if it was to be used
16 in the context of the 2913, that would address concerns
17 that have been raised in the past. But it's just
18 important the term "investment", when used in the
19 context of 2913, is not also attempted to be applied in
20 some other context because it's not a defined term with
21 regard to the applicability of the EPS.

22 MR. VESPA: I had a question about the change
23 that you're proposing. 2907 does provide a process to
24 request the Commission to determine whether a particular
25 investment is covered. So it does seem to be a process

1 to kind of figure this out in advance before moving to
2 what, I guess, was envisioned as a second step as to
3 whether there's some escape.

4 So, why does 2907 not deal with your problem?

5 MR. PEDERSEN: 2913, certainly in our view, is
6 not a second step. It deals with a situation, such as
7 the one that the San Juan participants are in, where
8 you've got an operating agent who, if the participants
9 in the plant decide they don't want to do something, but
10 the operating agent says we've got to do it and I, as
11 the operating agent are going to do it, and you're going
12 to pay for it, and then we're required to make the
13 investment.

14 But we can come into the Commission and say,
15 look, we're bound to do this, can you give us an
16 exemption.

17 And, you know, it might be a covered
18 procurement, it might not be a covered procurement. The
19 key feature is that we're contractually bound to make
20 the investment. That's what 2913 was. It was a very
21 simple situation we all knew about back in 2007, and
22 that was the point of 2913.

23 But it just has -- the way that we worded it
24 just has this unfortunate consequence that it puts a POU
25 in the position of appearing to have to -- to have made

1 a determination that investment was a covered
2 procurement in order to petition for an exemption.

3 So, to remove the possibility of that
4 implication being drawn, you know, certainly we have
5 proposed that we make this change which is, we think,
6 rather minor and a conforming modification, conforming
7 to the original intent underlying 2913, that we make
8 this change.

9 And we really appreciate the staff raising this
10 point and considering the proposal.

11 MR. LONG: Noah Long for NRDC. If I may, I
12 think our view is I think I can't imagine a circumstance
13 where the utilities -- under that circumstance of San
14 Juan is maybe a fair example, although we're not
15 stipulating, obviously, that we would agree that an
16 exemption would be necessary, but where you'd want to
17 come in for a request of an exemption.

18 I can't imagine a circumstance where you
19 wouldn't also -- where the Commission, either by itself
20 or because of other stakeholders, wouldn't also want to
21 evaluate whether or not they were giving an exemption
22 for a covered procurement, because I think that so
23 strongly affects the determination.

24 So, in my view, you may change the language of
25 2913, but in any case where that would happen there

1 would be a request for -- there should be a request for
2 an evaluation under 2907 concurrently.

3 MR. PEDERSEN: That would be irrelevant.

4 MS. BERLIN: This is Susie Berlin. Noah, I have
5 to say that that's not the case. What 2913 says is even
6 if it's a covered procurement, if we're contractually
7 bound that's the provision that we apply to the
8 Commission for.

9 If there is a recent expenditure, SCPPA and San
10 Juan parties voted, abstained, MSR voted no. PNM has a
11 say, now, in how that goes forward. It's not going
12 forward at this time and we addressed this issue in our
13 comments.

14 But there are instances where whether we like it
15 or not, depending on how this operates, there could be
16 covered procurements that the POUs have to pay for
17 because of these preexisting agreements. That's what
18 2913 addresses.

19 2907 addresses any noncompliant facility,
20 whether you've got a preexisting agreement or not, if
21 you've got expenditure -- or any facility at all if
22 you've got an expenditure coming up, I'm not sure is
23 this covered or not, and you can ask for the
24 Commission's determination on it.

25 2913 is not only available as a precursor -- or

1 excuse me, as a second step to a 2907 evaluation. As a
2 matter of fact, a 2907 evaluation is probably irrelevant
3 as compared to a 2913 request.

4 MR. PEDERSEN: Yeah, just to elaborate on what
5 Susie is saying, Norman Pedersen for SCPPA, there are
6 two necessary and jointly sufficient positions for
7 getting an exemption.

8 One, we have to show that the covered
9 procurements are required under the terms of the
10 contract or ownership agreement. And, two, the contract
11 or ownership agreement does not afford the local,
12 publicly-owned electric utility applying for the
13 exemption to avoid making such -- and there they use the
14 word "covered procurements."

15 It doesn't matter if it's a covered procurement.
16 If you meet those two jointly sufficient conditions,
17 then under 2913 you would be able to obtain an
18 exemption.

19 So, you know, 2907 is not a first step in any
20 way to getting to 2913. Yes, a utility, a POU could
21 come in requesting the determination under section 2907,
22 but it could proceed under 2913 without taking that
23 step, and without even going through the process of
24 determining whether or not a given investment would be a
25 covered procurement under the EPS regulation.

1 MR. LONG: Yeah, I recognize that it might be --
2 sorry, Noah Long for NRDC.

3 I recognize that it might be -- that might be
4 the strategy employed by a POU. I think in our view it
5 would be relevant and likely relevant to the activities
6 leading up to the contractual requirement or the
7 attested contractual requirement to make that
8 investment.

9 It would be relevant to determine whether or not
10 the POU -- how the POU had acted and whether or not they
11 had employed all of their available -- contractual
12 available options to avoid an investment.

13 And under those circumstances, the determination
14 of whether or not it's a covered procurement, and how
15 the board of the POU had acted, whether or not they had
16 voted appropriately in the operating committee of the
17 plant, for example, would be such a closely related
18 determination that I just can't imagine the circumstance
19 where the Commission would, in fact, not be interested
20 in whether or not that investment were also a covered
21 procurement.

22 MR. PEDERSEN: Well, the way the regulation's
23 stated now, the Commission shouldn't be interested
24 because it's not relevant to making the determination
25 given the two jointly sufficient conditions.

1 MS. BERLIN: This is Susie Berlin. And that's
2 the whole point, the whole point is it is -- let's
3 assume it is a covered procurement. It's a covered
4 procurement.

5 MR. PEDERSEN: Right.

6 MS. BERLIN: It should be prohibited, but these
7 preexisting agreements make it impossible for the POU to
8 avoid the transaction. So the Commission doesn't have
9 to make a determination or not.

10 MR. LONG: Noah Long for NRDC. Under those
11 circumstances, if it is a covered -- under the current
12 regulations it's agreed that it is a covered
13 procurement, I think that there would be an expectation
14 that the POU would have done everything possible to
15 avoid that investment.

16 MR. PEDERSEN: Well, those are the two necessary
17 and jointly sufficient conditions.

18 MS. BERLIN: Perhaps this is -- this is Susie
19 Berlin. Perhaps we are coming against is a -- I don't
20 know if it's because you're concerned about where to
21 insert the word "investment" or not. I mean, 2913
22 exempts covered procurements if these provisions take
23 place.

24 So, I don't see why you would -- that would be
25 linked in any way, shape or form with the 2907 where

1 you're getting the determination.

2 MR. LONG: Well, it's --

3 MS. BERLIN: Let's assume -- I mean, we wouldn't
4 even submit a 2913 if there wasn't a covered
5 procurement.

6 MR. LONG: Under the circumstances that Norman
7 is discussing, you would or could because it wouldn't
8 have to be determined that it were a covered
9 procurement. You could just say it's an investment and
10 we want an exemption. I think that's the point of the
11 request that you're asking.

12 MR. PEDERSEN: It's not an investment -- we want
13 an exemption. It's an investment that's required under
14 the term of the contract --

15 MR. LONG: Right.

16 MR. PEDERSEN: -- or ownership agreement. And
17 that contract or ownership agreement does not afford the
18 publicly-owned electric utility, applying for the
19 exemption, the opportunity to avoid making the
20 investment.

21 And you could easily have a POU not wishing to
22 get to the point of having to decide whether or not the
23 given investment is a covered procurement or not.

24 If the investment meets those standards, then it
25 should be able to come in and get the investment because

1 it can't avoid making the investment. It might be a
2 covered procurement. It might be a covered procurement
3 that would meet the EPS. It might not be a covered
4 procurement. You could still get the exemption because
5 you met the two necessary conditions.

6 So, you don't have to get to the issue that
7 you're saying you would have to get to.

8 MR. HOPPER: This is Martin Hopper with MSR.
9 What we're talking about here is regulatory efficiency.
10 You know, why if we can -- if we can avoid tying up the
11 resources for staff and go to the meat of what we want
12 to do or have to do.

13 And as we're talking here, just purely under
14 2913, you also note that under 2912 there are also
15 additional grounds by which a publicly-owned utility can
16 seek exemption from the requirements.

17 But whether or not, you know, if we go through a
18 2907 step, at the end of the day what has changed?
19 Okay, now we've formally determined it's a covered
20 procurement and then we go and do 2913, or we can go
21 right to 2913 and not utilize the resources and taking
22 the time and effort of going through 2907.

23 The burden, the test, as Norm has reiterated
24 several times, the test is still the same once you get
25 to 2913. You've got to show that you have to do this

1 and you have done what you can to not. Your test is
2 unchanged whether you go through 2907 or not. And we're
3 just adding, I think, an unnecessary regulatory burden
4 if we were to insist you go through 2907 as a
5 prerequisite to going into 2913.

6 MR. LONG: Noah Long for NRDC. If I may, I
7 guess one meta-point, first, which is to say that I
8 think the course we're on, and that I expect and I think
9 everybody agrees we're on for all of these facilities,
10 all the facilities we're concerned about, likely de-
11 prioritizes this issue.

12 So, to the extent that we're disagreeing about
13 it now, I think it's likely not the highest priority for
14 any of us.

15 I guess my concern is and, hopefully, we can
16 leave it at that, that it's an honest disagreement, is
17 that 2913, in the way I view it, would require a factual
18 determination that in fact the utility could not, does
19 not, was not afforded any opportunity to object, which
20 would mean that they used every available tool to them
21 to stop that investment.

22 In my view, the fact that the force of law of
23 California prevents such an investment, provides greater
24 leverage for a utility than a utility that is in advance
25 telling their partner from out-of-state or potentially

1 in-state, that they're saying we don't think we can do
2 this. We're going to go try and get an exemption. That
3 would preclude that factual determination that in fact
4 the utility had done everything that they could to stop
5 that investment. So, I think that's the difference.

6 MR. PEDERSEN: Okay, now you're shifting to
7 something else. Now, you're going to another test for
8 getting the exemption. You know, you were saying, oh,
9 well, you know, you'd have to go through determining
10 whether it was a covered procurement and now we're
11 moving to the actions a utility might take.

12 MR. LONG: Norman, my point was -- I'm sorry, if
13 I can just clarify. My point was that I think that's
14 why a determination would be useful.

15 MS. GRANT: Sorry, I'm going to interrupt. I
16 think this might be a good one for written comments, if
17 you guys would like to kind of clarify the points that
18 you're making.

19 I don't see that as one you might be able to
20 stipulate to within the next two weeks, but we never
21 know.

22 MR. LONG: I don't. That's why I recommended we
23 de-prioritize the issue.

24 MR. VESPA: I have a side point on this issue of
25 contracts I just want to raise for the record is that I

1 think it was Anaheim, in the San Juan context, in that
2 contract if you have a certain percentage of investments
3 you can say no, you know, depending on what your level
4 is.

5 And each of the POUs own a different percentage.
6 And I think Anaheim, what they had said was we own so
7 little, we can never say no to anything.

8 But if you collected that with the other POUs as
9 a block, you know, you can say no.

10 MR. LONG: Right.

11 MR. VESPA: And so when we talk about, you know,
12 every -- making all these opportunities to avoid it, I
13 think we do need to think about how the POUs function
14 collectively and not in their individual capacity.

15 And if we're going to look at amending this
16 section, I think some clarification on that might be
17 helpful, just based on some of the comments that were
18 made in the filings.

19 MS. BERLIN: This is Susie Berlin. I have to
20 interject here that I don't think that there's any
21 grounds to deny, for example, MSR an exemption if they
22 qualify for one under the language in the statute didn't
23 do something that you would have liked to have seen
24 Anaheim do.

25 MR. VESPA: I'm saying --

1 MS. BERLIN: So, I'm saying that you cannot make
2 a determination on whether or not -- or I do not believe
3 that it's appropriate to have a regulation in place
4 where the Commission is making a determination on
5 whether or not MSR qualifies for an exemption under 2913
6 based on looking at what all the POU's did collectively.
7 And that's what I heard you just say, where you need to
8 look at what the POU's do collectively, and that just
9 can't be the way it's done. We are individual entities.

10 MR. LONG: Noah Long for NRDC. If I may, that's
11 why a determination in advance as to whether or not it
12 was a covered procurement and required actions of the
13 covered procurement would be useful before getting to a
14 2913 evaluation.

15 MS. BERLIN: This is Susie Berlin. Because what
16 you're saying is a CEC determination of whether or not
17 it's a covered procurement has more weight than a POU
18 determination and whether or not it's a covered
19 procurement.

20 MR. LONG: To the extent that MSR and Anaheim
21 are acting on different determinations, I think it would
22 be very useful if there were a consistent approach.

23 MR. VESPA: For the same investment.

24 MR. LONG: For the same investment.

25 MS. GRANT: Okay, so that's --

1 MR. VESPA: For the same boiler, which they both
2 have property interest in.

3 MS. GRANT: This is the last one on this issue
4 and then we're going to go to public comment.

5 MR. HOMER: The underlying thing is that we
6 could all vote no on something and if PNM decides they
7 have to do it for prudent utility practice and to abide
8 by the law, they do it and we pay for it. It doesn't
9 matter and that's when we would ask for an exemption.

10 MR. LONG: That's right and that's why 2913 is
11 available.

12 MS. GRANT: So, at this point do we have --
13 well, thank you, that was great comments.

14 (Laughter)

15 MS. GRANT: I had -- a couple of hours ago I
16 thought we were going to end early. I was completely
17 wrong.

18 MS. JONES: Yeah, we thought that was a sleeper
19 issue.

20 MS. GRANT: Yeah. Okay, so we look forward to
21 written comments on some of these issues.

22 Blake, are there any public comments?

23 And so we'll just -- we're going to unmute in a
24 second, so if you can mute yourselves, unless you have a
25 comment, that would be great. So, we're going to unmute

1 everyone now.

2 No one. Okay, well, I don't think anybody had
3 any comments, right? We unmuted for a while.

4 MR. LONG: Are there some written questions
5 there?

6 MS. GRANT: We can try again.

7 Okay, so there's -- so maybe if we can unmute.
8 Do you want to unmute Carrie and just to get
9 clarification on her question? Carrie, are you there?

10 Okay. Blake, do you have any suggestion?

11 MR. VESPA: Well, it's not really a question.

12 MS. GRANT: It's not really a question. It's
13 kind of stating one of the topics we covered.

14 Okay, we've unmuted again, if anybody has any
15 comments.

16 Okay. All right, at this time if we can --

17 MR. PEDERSEN: Can you scroll down so we can see
18 who else is on? I actually didn't --

19 MS. GRANT: So, we'll go around now, briefly,
20 and just give closing statements.

21 Noah, if you want to start.

22 MR. LONG: Sure. Noah Long for NRDC, I'll keep
23 this very brief. I look forward to opportunities for
24 joint comments. I hope we can just prioritize a couple
25 of issues and make some recommendations on a possible

1 reporting requirement.

2 I just want to add one more point, which is to
3 say that, you know, while there's obviously some
4 significant disagreements here, I think we should
5 underscore the fact that I think we're making progress.
6 This regulation has done great things. I'm really glad
7 the regulation is still in place.

8 And I hope that we continue to make progress.
9 And I think an effectively and narrowly tailored
10 reporting requirement could be useful to ensure full
11 implementation of the intended purpose of the statute
12 over the coming years.

13 MS. GRANT: Randy?

14 MR. HOWARD: Sure. Randy Howard, LADWP. I just
15 want to again express my appreciation for allowing us to
16 provide both the written comments and the oral comments
17 today, and have the dialogue that we've been having.

18 I think LADWP continues to be committed to
19 reducing its GHG footprint and committed to this
20 process.

21 I would just urge the Energy Commission to, you
22 know, swiftly bring this rulemaking to a close and let's
23 focus on the efforts that are necessary to bring forward
24 all of the other activities that are going to be needed
25 to replace these big resources so, thank you.

1 MR. HOMER: Steve Homer, SCPPA. Amen.

2 MR. HOPPER: Martin Hopper, MSR. We'd like to
3 concur. We are -- I think we've made a lot of progress.
4 I think we've developed a good record in this
5 proceeding. We'd like to see it wrapped up.

6 On the other hand, we could drag it out and
7 render it moot because MSR will be out of the project by
8 the time this proceeding's done, otherwise.

9 MR. LONG: And I say amen to that.

10 (Laughter)

11 MS. BERLIN: We appreciate staff's time and on
12 presenting all the proposals, and the discussion that
13 we've had today, and the comments.

14 Just a fundamental issue, the statute, as Martin
15 has said, the statute is working. We're getting out and
16 doing everything that we can to advance the goals of the
17 statute and to divest of these interests.

18 We believe that there is nothing to demonstrate
19 that the POU's have not complied with both the intent and
20 the language of the statute and the regulation. If it's
21 not broke, don't fix it. We believe our resources are
22 better spent moving forward with the divestiture under
23 the regulation as it stands. Thank you.

24 MR. LAU: James Lau with SCPPA. Just wanted to
25 thank the Chair Weisenmiller and the CEC staff on all

1 their time on this proceeding, and just echo what
2 everybody else has said. And, hopefully, you know,
3 continue talks with you all and that this would -- that
4 we'll soon be out of this and all these talks will be
5 academic.

6 MR. PEDERSEN: It looks like we're up to me and
7 actually I'd just like to point out, you know, this
8 statute, for those of us who have lived with this
9 statute since 2007 know this, it was never intended to
10 drive people out of plants until the end of their
11 contract, or until the plant life expired. But it was
12 an anti-backsliding statute. It was to prevent people
13 from getting into new investments in facilities where
14 you'd have emissions greater than the EPS.

15 And what you've been hearing in this room today,
16 and there's a lot that's going on that we can't talk
17 about, what you have been hearing that we can talk about
18 is at least as far as these, and we've identified them,
19 three plants that people are concerned about, you know,
20 these utilities are going beyond the statute.

21 So, not only is the statute working to achieve
22 the legislatively intended purpose of the statute, but
23 we're going -- we're going beyond it.

24 And certainly, I think you've been hearing from
25 us that we need to spend our time not just complying

1 with the statute, but going beyond the statute and
2 moving to cleaner assets.

3 So, yeah, I would reiterate that we're going to
4 have another round of comments, it looks like, in about
5 two weeks. We'll obviously have an opportunity to
6 comment when this appears before the Commission.

7 But we would hope that you not continue to
8 expand the proceeding. Rather, you know, get these last
9 few items that you teed up in the Notice of Rulemaking
10 Workshop addressed, and wrap it up. Thanks.

11 CHAIRPERSON WEISENMILLER: Again, I want to
12 thank everyone for their participation in this. This is
13 an important issue. We've spent time on it. We've
14 tried to go through things carefully, as you know, the
15 parts of it.

16 And as we've done that investigation, frankly,
17 one of the things that became clear is that under the
18 leadership of the prior Commissioners Gieseeman and
19 Fahnenstiel, this was a pretty well-drafted regulation
20 at the start.

21 And I think at the same time situations have
22 changed. I think it's good to go back. I think, as you
23 pointed out examples and somebody pointed out examples
24 where things were -- people were beginning to wonder if
25 we had really thought through all the implications.

1 So, it's good to have had that. Certainly, I
2 think early on I've encouraged the parties to all
3 settle. And certainly, again, encourage that sort of
4 settlement so we can move forward.

5 Again, it's a great step. Glad where we're
6 going is in place.

7 Certainly, you know, I think everyone has the
8 same interest in mind. I would point out that -- I
9 guess PG&E's still here, but certainly a number of
10 noncompliant facilities they have in California have
11 either been shut down or transformed to other fuels.

12 So, again, I think trying to deal generally with
13 the noncompliant facilities is certainly what this
14 legislation, cap and trade, and everything is dealing
15 with.

16 And again, certainly encourage you guys to make
17 progress on all little things, certainly to make
18 progress on your bigger project and see if we can
19 basically get you out of any reporting requirements
20 sooner, as opposed to late. So thanks again.

21 (Thereupon, the Workshop was adjourned at

22 4:26 p.m.)

23 --oOo--

24

25