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MEETING
STATE LANDS COMMISSION

State Capitol
Room 2170
Sacramento, California

ORIGINAL

THURSDAY, SEPTEMBER 29, 1977

10:00 A.M.

C.S.R. License No. 3434

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MEMBERS PRESENT

1
2 Hon. Kenneth Cory, Controller, Chairman

3 Mr. Sid McCausland, representing Roy M. Bell

4 Ms. Betty Jo Smith, representing Mervyn M. Dymally

MEMBERS ABSENT

5
6 Hon. Mervyn M. Dymally, Lieutenant Governor

7 Hon. Roy M. Bell, Director of Finance

STAFF PRESENT

8
9 Mr. William F. Northrop, Executive Officer

10 Mr. Richard S. Golden, Assistant Executive Officer

11 Mr. Robert C. Hight, Chief Counsel

12 Mr. Brian Sway, Legislative Coordinator

13 Mr. James F. Trout

14 Mr. Wilbur M. Thompson

15 Mr. Donald J. Everitts

16 Mr. Allen D. Willard

17 Mr. Donald L. Hoagland

18 Ms. Diane Jones

ALSO PRESENT

19
20 Mr. Jan Stevens, Deputy Attorney General

21
22
23
24
25

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P R O C E E D I N G S

--oOo--

CHAIRMAN CORY: We will call the meeting to order.

Are there any corrections or additions to the minutes of the August 25th meeting? Without objection, they will be confirmed as presented.

The report of the Executive Officer.

MR. NORTHROP: Mr. Chairman and members, before you you have AJR-54, which is sponsored by Assemblyman Kapiloff. It memorializes the President of the United States regarding the problems that we're having in California just keeping our heads above water on crude oil prices and the fact that we face a real threat that, given the Alaskan import treatment, production from the Wilmington field could, by the end of 1979 or early 1980 -- certainly by 1981 -- be totally uneconomic, and our production, rather than being 100,000 barrels a day, as it is now, would be zero. I think that AJR-54 deserves support from the Commission.

Secondly, along the lines of the last problem I just stated, the staff of the Energy Commission and the chief of staff of the Department of Consumer Affairs -- we've had several meetings discussing this problem -- and they all seem supportive of our action. Also, I understand the Chairman has arranged a meeting with the Water Resources and the state colleges and universities to put together a

1 program to allow us to continue producing the oil. I will
2 report as that progresses.

3 This week we received notice of three legislative
4 oversight hearings involving the State Lands Commission.

5 The first hearing, on October 13th, will be an
6 Assembly Resource, Land Use, and Energy Committee hearing
7 reviewing the state's role in resolving boundary disputes
8 involving tide and submerged lands.

9 Senator Nejedly has called for two hearings by
10 his Natural Resources and Wildlife Committee of the Senate.
11 The first of these hearings, entitled "Management of the
12 State's Sovereign and Granted Lands -- Inland Lakes and
13 Streams", will be held November 3rd at South Lake Tahoe.
14 A second hearing by the Senate Resources and Wildlife
15 Committee will focus on the title problems in the Delta.
16 Division staff has begun to work with both committees in
17 preparation for these hearings. As soon as final arrange-
18 ments have been completed, you will be notified.

19 We have some potential problems over the use of
20 state lands for filming motion pictures. Section 14998 of
21 the Government Code provides for the Motion Picture Develop-
22 ment Council to issue permits and establish fees to be
23 paid for the use of all state-owned property for the making
24 of commercial motion pictures. Chapter 1395 of 1976 added
25 a new section, which requires the approval of the Director

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1 of General Services, with the concurrence of the state
2 agency concerned, on application by the Motion Picture
3 Development Council for the use of state-owned property.
4 All fees collected are to be deposited in the Motion Picture
5 Development Council account within the special fund for
6 reimbursement to the operating departments for their actual
7 additional costs and for the support of the council.

8 Council activities are such that little if any
9 lead time is provided for state agencies to respond. Requests
10 are usually for filming to be accomplished within a few
11 weeks at the most of the notice. The law as passed preempts
12 the State Lands Commission's authority and responsibility
13 both as to uses of property under its jurisdiction and for
14 collecting a fair rental.

15 Response from the council to Division concerns
16 has been less than satisfactory, and filming has proceeded
17 on the Gaviota Pier without Commission approval. Current
18 efforts are under way to film the proposed blow-up of the
19 Marriott Hotel Pier at Santa Barbara without ample time
20 for State Lands Commission to act formally upon the matter.
21 It may be necessary to ask you to take formal action if
22 the Commission is to maintain control over the lands under
23 its jurisdiction. I will keep you advised on that.

24 CHAIRMAN CORY: Blow up what?

25 MR. NORTHROP: They're going to blow up a pier for

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1 a television series, and we got notice on that last week.
2 It's mind-boggling. If you blow up the pier, what pre-
3 cautions have been taken just to make sure we're not out
4 there in punts picking up pieces that have been blown up.
5 That's the problem. Certainly it's employment-producing,
6 but the problem is that when they do gross things like this

7 CHAIRMAN CORY: How are they planning on getting
8 those portions of pilings upon which the pier is resting --

9 MR. NORTHROP: Mr. Chairman, we have no idea how
10 they're planning on doing that, or whether that's even been
11 considered. We've got all kinds of problems. What happens
12 to the snags that are left?

13 CHAIRMAN CORY: We've got some federal money for
14 the snags.

15 (Laughter.)

16 MR. NORTHROP: Only in inland waterways.

17 MR. McCAUSLAND: May I ask what kind of response
18 you've received to date on your inquiries?

19 MR. NORTHROP Mr. Trout can address himself to
20 that.

21 MR. TROUT: Mr. McCausland, the basic response
22 has simply been that the Legislature gave all authority
23 over all state lands to the Motion Picture Development
24 Council, and would we please get out of the way.

25 MR. McCAUSLAND: I don't think that's a satisfactory

1 response.

2 MR. TROUT: I think we agree with you. And the
3 people at Marriott are quite concerned too, because it
4 appears that this outfit is just kind of steamrolling over
5 everybody.

6 The council was set up to encourage motion
7 pictures to be made in California rather than Italy, but it
8 is a real problem.

9 MR. NORTHROP: Mr. Chairman, at the August
10 meeting the Commission authorized the Executive Officer and
11 the Office of the Attorney General to take appropriate
12 action to effect the timely filing of an application for
13 reduction in the 1977 assessment of the Long Beach Unit
14 with the Los Angeles County Assessment Appeals Boards.
15 Participants owning 99 percent of the participating shares
16 in the Long Beach Unit, including all who own shares in
17 the offshore portion, authorized the State Lands staff to
18 act as their agent for the purpose of signing the application
19 and appearing before the Assessment Appeals Boards in this
20 matter. On September 15th, the Division filed the applica-
21 tion for reduction of the 1977 assessment.

22 The offshore contractors are authorized by
23 contract to pass an average of ninety-six and one-quarter
24 percent of their proprietary and mining rights taxes through
25 their net profits accounts, so that in effect state tideland

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1 oil revenue is being reduced by that amount. The assessor
2 increased the Long Beach Unit assessment by 40 percent in
3 1977, based on the assessor's opinion of fair market value,
4 which is a projection of future revenue. The Division
5 asserts there is no basis in fact for the 40-percent revenue
6 increase in view of the continuing federal price controls
7 on crude oil, which we discussed earlier, and considering
8 that nearly \$100 million of value was extracted from the
9 Long Beach Unit since the 1976 valuation was made.

10 As the Commissioners are already aware, an
11 estimated 20 barrels of crude oil --

12 MR. McCAUSLAND: Wait a second. Let's go back.
13 That's a heavy item also.

14 Where are we then at the present time? Are we
15 before the Appeals Board?

16 MR. NORTHROP: We're before the Appeals Board
17 at the present time.

18 MR. McCAUSLAND: When is that set for hearing?

19 MR. NORTHROP: Mr. Thompson of our staff --

20 MR. THOMPSON: We really don't know. They're
21 still receiving all those protests and will have some kind
22 of filing date for proceedings.

23 MR. McCAUSLAND: Would we have an opportunity
24 to be briefed on what our case is before we proceed with
25 that if time allows?

1 MR. NORTHROP: Yes.

2 CHAIRMAN CORY: There are two factors in that.
3 One, there is an obscure code section which allows anybody
4 in Los Angeles County to file an appeal, and if the Appeal
5 Board does not increase the assessed value, because of
6 the relative position of Los Angeles County to the statewide
7 average of other counties, will allow -- if my memory serves
8 me correctly -- about a seven-percent reduction in assessed
9 valuation automatically. They can't exceed a given
10 percentage of the statewide average. So any L.A. County
11 property taxpayer is entitled to that sort of tax relief
12 unless the Appeals Board anticipates that and arbitrarily
13 increases to compensate for it. So you've got a probable
14 reduction by filing the appeal anyway.

15 Then you've got the substantive reduction. One
16 of the questions, I think, is going to be whether or not
17 the files at the State Board of Equalization -- whether or
18 not we might get access to those as a sister state agency
19 to help us, because one of their jobs is looking at the
20 assessment practices of various counties. If perchance this
21 particular property has been selected by the division over
22 there for their appraisal assessment analysis, we might
23 have a fairly good factual case there. I don't know whether
24 it is or is not one of those items, but if it would be,
25 and that could be made public and used in the defense, it

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1 might have a strong therapeutic effect to support our case
2 that we're being overcharged.

3 MR. THOMPSON: Actually, to take care of that
4 particular part on the adjustment from the 25 percent to
5 the 24 percent, I guess it is, we had to file also on the
6 real property, although we had no real issue with the
7 assessor on the real property. We had to file on the real
8 property to get under that particular code.

9 What Mr. Cory is referring to here is in 1976 and
10 '77 the Board of Equalization in their sampling appraised
11 the Long Beach Unit. Their appraisal at that time is
12 this broken green line here (indicating on a chart), whereas
13 for the same year this (indicating) is the assessor's.
14 So there actually was this difference last year in the
15 assessment.

16 This year he then jumped the assessment over 40
17 percent up here (indicating). The appeal we filed is based
18 on this assessed valuation right here (indicating), the
19 difference between \$376 million and six hundred and --

20 CHAIRMAN CORY: Phil Watson's SB-90 property tax relief

21 MR. McCAUSLAND: Does the current law pending
22 in Congress relate to this matter in any way in terms of
23 future pricing?

24 MR. THOMPSON: This is one of the strange things.
25 The main difference of opinion we have with the assessor

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1 is over the oil pricing that was used. This (holding up
2 a different chart) actually is the oil pricing schedule that
3 was used by the assessor. He assumed that prices would
4 reach \$11.45 in about 1984. We don't know the basis for
5 this. These (indicating) are the actual prices paid and
6 the relationship to equalization tax. Actually, he would
7 have said that this would have been income to the Unit,
8 and if the tax goes through, it would be this red portion
9 (indicating), so we would be taxed in effect on what would
10 be going to the federal government.

11 MR. McCAUSLAND: Thank you.

12 CHAIRMAN CORY: Okay. Back to the Santa Monica
13 Bay oil spill.

14 MR. NORTHROP: As the Commissioners are already
15 aware, an estimated amount of 20 barrels of crude oil spilled
16 ashore at Santa Monica south of the Santa Monica pier on
17 Tuesday, September 20th. The oil was spilled from the
18 Exxon tanker "Manhattan" while unloading crude oil consigned
19 to Chevron, USA's El Segundo refinery. Chevron shipping
20 representatives have reported that the ballast was
21 accidentally pumped into the No. 6 starboard tank, either
22 through a valve that should not have been opened or through
23 a closed valve that leaked, thus overflowing the tank and
24 causing oil to overflow from an open ullage port. The oil
25 then ran over the top of the gunwale base and down the side

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1 of the ship. Scuppers were plugged.

2 Cleanup operations were conducted by contract
3 crews under the direction of Chevron and the U. S. Coast
4 Guard and paid for by Chevron. I personally inspected the
5 beach on the afternoon of the 22nd. A few half-dollar size
6 particles of seep oil remained on the beach. However, there
7 was no oil that I could observe on the rocks or on the
8 mussels that were attached to the rocks.

9 Chevron had notified the U. S. Coast Guard and the
10 Department of Fish and Game of the time of the spill.
11 However, due to a failure in what was thought to be a fail-
12 safe reporting system, the State Lands Division was not
13 notified by either Chevron, as the state's lessee, or by
14 the Office of Emergency Services Warning Center under the
15 State Oil Spill Contingency Plan.

16 We have contacted the OES and clarified the
17 nature of the Commission's interest and need to know. I
18 am currently in the process of preparing a procedures letter
19 to be addressed to all terminal operators on state and
20 granted lands spelling out the Division's requirements
21 with regard to spill reports.

22 As you will recall, the Commission held public
23 fact-finding hearings on tanker and tanker terminal safety
24 operations in Los Angeles and San Francisco last January.
25 Subsequent to such hearings, a staff task force was

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1 designated to develop any rules and regulations necessary
2 to protect the environment and enhance the safe operation
3 of marine terminals currently under lease arrangement with
4 this Commission. The results of that staff effort are
5 before you today.

6 I respectfully suggest that the Commission circulate
7 the draft regulations to industry, environmental interests
8 and the general public, and hold a public hearing or
9 hearings to receive comments on such rules and regulations
10 within 30 days of their circulation.

11 MR. McCAUSLAND: Is it appropriate to take action
12 on that?

13 MR. NORTHROP: Yes, I think recognition of that --

14 MR. McCAUSLAND: So move.

15 MS. SMITH: Second.

16 CHAIRMAN CORY: Without objection, such will be
17 the order.

18 MR. NORTHROP: In closing, Mr. Chairman, items
19 number 20 and C8 have been removed from the calendar.

20 CHAIRMAN CORY: Items 20 and C8. For anyone
21 in the audience on those two items, they have been removed
22 from the calendar: C8, I believe, at the request of the
23 City of San Diego; is that right?

24 MR. NORTHROP: C8 at the request of Fish and Game,
25 and 20 at the request of the City of Stockton.

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1 Mr. Chairman, that completes my report. Thank you.

2 MR. McCAUSLAND: I've tried to find out through

3 direct inquiry whether or not it's true that today --

4 CHAIRMAN CORY: It's out of order. We'll go on

5 to --

6 MR. NORTHROP: Mr. McCausland, it's my duty to

7 report that yea, verily, this is the Chairman's birthday.

8 MR. McCAUSLAND: It would seem appropriate perhaps

9 to join in a rousing --

10 (Laughter.)

11 MR. McCAUSLAND: It's been some years since he's

12 had such an occasion.

13 MR. NORTHROP: Seeing as how we may not have

14 unanimity the rest of the day, I think it would be well.

15 MR. McCAUSLAND: Who is good at --

16 MR. NORTHROP: I understand that Commissioner

17 Smith has perfect pitch and could lead us.

18 MS. SMITH: I have laryngitis.

19 (Laughter.)

20 MR. McCAUSLAND: Isn't anybody going to start it?

21 CHAIRMAN CORY: No. We aren't going to sing.

22 (Laughter.)

23 CHAIRMAN CO : There's nothing to sing about

24 on this birthday.

25 MR. NORTHROP: Would the Chairman care to share

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1 with the staff what this birthday means to you?

2 CHAIRMAN CORY: It means the loss of your job.

3 (Laughter.)

4 CHAIRMAN CORY: Moving right along, the report
5 of the Assistant Executive Officer.

6 MR. GOLDEN: This is a report on the areas in
7 which the State Lands Division concerns are interfacing with
8 Coastal Commission and Bay Conservation and Development
9 Commission matters.

10 The Bay Commission was petitioned by the city
11 of Redwood City to engage in planning for a special area
12 use plan for the areas within the city fronting the Bay.
13 We made our concerns known relative to the fact that we
14 have been engaged through the Bair Island Task Force in
15 working out a land use plan for a large contiguous parcel,
16 and that recommendations from that work should be coordinated
17 with the city's special area planning. As a result, the
18 chairman of the Bay Commission appointed Jim Trout of
19 our staff to work on coordinating these efforts.

20 By agreement with the Coastal Commission staff,
21 our staff has been furnishing maps of the coast delineating
22 the most landward extent to which a claim of public trust
23 lands might be made. These maps point out very plainly
24 that they should not be used to indicate a public trust
25 claim over any specific parcel. Such determination could

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1 be made only after much more extensive research. There are
2 several provisions of the Coastal Act dealing with public
3 trust lands. For example, no categorical exemptions from
4 permit controls may be given to any public trust lands.

5 Determining those lands subject to the public
6 trust is in some instances difficult to accomplish. Once
7 it is determined that certain lands are subject to the
8 public trust, a determination as to what uses are consistent
9 or inconsistent with the public trust must be made. It
10 may well be that a number of uses are consistent with the
11 trust, but giving priority to one type of use over another
12 may be the most difficult decision.

13 Working closely with such police power agencies
14 as the Coastal Commission, we can come to agreement as to
15 which of competing uses may be best on any given site to
16 meet the criteria of public trust concerns.

17 The State Coastal Commission staff has requested
18 State Lands assistance in implementing public access
19 portions of the Coastal Act. As part of their permitting
20 activities, they've been requiring applicants to dedicate
21 accessways to beach areas. In many of these instances,
22 local units of government have been unwilling to take over
23 these dedications because of maintenance and liability
24 costs.

25 The Coastal Commission would still like to preserve

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1 the option that if and when such local governments do wish
2 to undertake such dedications, a record of those easements
3 would be available. Thus they have asked us to record such
4 offer of easements and take care of exercising and trans-
5 ferring such easements to responsible units of government
6 when appropriate. Staff counsel is reviewing this proposal
7 with the Attorney General's office to determine what
8 additional liability if any such action would expose the
9 State Lands Commission to.

10 That completes my report.

11 CHAIRMAN CORY: Okay. The next items that we
12 have on the calendar are the consent calendar items. Those
13 are items C1 through 7 and C9 through 18.

14 Is there anyone in the audience who has any
15 problem with the suggested approval of any of those items?
16 If you have any, please step up now, because they will be
17 approved rather quickly in one group.

18 MR. McCAUSLAND: Move their adoption.

19 MS. SMITH: Second.

20 CHAIRMAN CORY: Without objection, the consent
21 calendar is approved as presented.

22 Item 19.

23 MR. NORTHROP: Mr. Chairman, in June 1976 the
24 existing contract expired for state-owned royalty gas
25 to be sold by Chevron Oil Company -- then Standard Oil

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1 Company of California -- from the Rio Vista, River Island
2 and Ryer Island gas fields. Prior to its expiration,
3 Chevron and Pacific Gas and Electric negotiated a sales
4 agreement which set the price at \$1.20 per thousand cubic
5 feet -- or mcf -- for approximately 96,000 mcf per day,
6 of which 7500 -- eight percent -- per day constitutes the
7 state royalty gas position.

8 Exercising its right under the master lease, the
9 State Lands Commission refused to approve the \$1.20 price.
10 At that time the Lands Commission felt in light of other
11 information available the \$1.20 price was not consistent
12 with gas prices being received by other producers in the
13 state, and in fact was less than prices currently approved
14 as the result of negotiations between other gas producers
15 and PG&E.

16 Based on the arbitration-induced prices, the
17 Commission instructed the staff to undertake an in-depth
18 study to ascertain the true market value of California's
19 royalty gas, and at the September 1976 Commission meeting
20 approved \$1.20 as the interim price for a six-month period
21 only, with the understanding that such approval would be
22 for an interim period only, to be adjusted retroactively
23 at the time the staff completed its survey.

24 Staff held a hearing on August the 11th, 1977,
25 and evidence was presented by both industry, producers and

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1 public utilities. In addition to that, the record was held
2 open for an additional period of time for rebutting comments.
3 This was to determine what the reasonable market value for
4 northern California gas should be. In addition to the in-
5 depth study by staff, a consultant was retained who was
6 thoroughly familiar with northern California gas pricing
7 from the producers' standpoint.

8 As a result of this hearing, staff is recommending
9 the following prices for gas: for the Rio Vista field,
10 for the period of January to June 1977, \$1.75; from July
11 to December in the Rio Vista field, \$1.91; and from
12 January to June 1978, \$2.08. All of these are for million
13 Btu or thousand cubic feet.

14 In the Isleton field, we are recommending \$1.62
15 for the period of January to June, 1977; July to December
16 1977, we're recommending \$1.77; and from January to June
17 1978 we're recommending \$1.93.

18 In the River Island field we're recommending
19 \$1.75 for the period from January to June 1977; and in the
20 period from July to December 1977 we're recommending \$1.91;
21 and in the period from January to June 1978 we're recommending
22 a price of \$2.08.

23 On the Ryer Island field, which is held in
24 exchange with PG&E and Chevron, we're recommending in the
25 primary period of January to June 1977 a price of \$2.05;

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1 in the secondary period, July to December 1977, a \$2.31-per-
2 mcf price; while in the final period of January to June 1978
3 we're recommending \$2.42.

4 The staff has attempted in this study not only
5 to take into consideration PG&E's prices, but has considered
6 the free market wherever it exists in northern California.
7 The testimony revealed that PG&E is charging Chevron \$2.29
8 for industrial gas at their Richmond refinery. Our
9 consultant also advises us that Chevron recently has
10 negotiated a contract to sell Spreckles Sugar Company gas
11 for \$2.25 at the wellhead from the Crossroads Field near
12 Sacramento. Spreckles, in addition, must lay all the
13 necessary gathering lines to transport the gas to their
14 manufacturing facility in the immediate area.

15 In light of the above examples, plus the national
16 average for renegotiated gas sales contracts and probable
17 LNG costs exceeding \$3, it is obvious that the prices
18 indicated by the Lands Commission staff survey are indeed
19 very reasonable.

20 Mr. Chairman, Mr. Everitts and Mr. Willard and
21 Mr. Lippitt are consulting and are available to answer
22 questions by the Commission at this time.

23 CHAIRMAN CORY: What is the wish of the
24 Commissioners? We have some people who wish to testify
25 on this. Do you want to take that testimony first?

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1 MS. SMITH: I would like to hear the testimony
2 first.

3 MR. McCAUSLAND: Yes.

4 CHAIRMAN CORY: Okay. Is Sylvia Siegel here?

5 MR. FALLIN: Mr. Chairman, my name is Jack Fallin.
6 I'm an attorney for Pacific Gas and Electric Company. I
7 think in the logic of people who may have statements on
8 this issue, it would make sense for us to speak first.

9 CHAIRMAN CORY: Well --

10 MS. SIEGEL: That's all right.

11 CHAIRMAN CORY: Mrs. Siegel asked permission
12 to speak first so she could get back to San Francisco. Does
13 that fit into your schedule?

14 MS. SIEGEL: I'll defer to Mr. Fallin.

15 CHAIRMAN CORY: Okay.

16 MR. FALLIN: Thank you, Mr. Chairman. I think it
17 will perhaps help everybody's understanding.

18 I have a written summary of what I will be saying
19 here today.

20 CHAIRMAN CORY: Is what you are going to say
21 today anything different from what was said at the hearing?

22 MR. FALLIN: It's probably quicker. It's much
23 shorter. It's primarily a summary of what's been said in
24 the hearing. A few items that have apparently appeared in
25 the record somehow after the hearing was closed, I'll address

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1 today too.

2 CHAIRMAN CORY: Well, the record was kept open for
3 30 days to allow anybody to submit any information they
4 wished.

5 MR. FALLIN: I think I received copies of all the
6 information that was submitted, and there was at least one
7 item mentioned this morning that was not in those materials.

8 Mr. Chairman, Miss Smith, Mr. McCausland, my
9 name is Jack Fallin, Jr. I'm a lawyer for Pacific Gas and
10 Electric. I have not appeared before this Commission
11 before, although I did testify on PG&E's behalf before
12 Mr. Northrop and members of your staff on this issue. PG&E's
13 position, as placed before that staff, is summarized in
14 the main and supplemental comments which are attached to
15 these comments as Exhibits 1 and 2.

16 No one disputes the fact that \$1.20 per million
17 Btu is the currently prevailing price for natural gas in
18 northern California. The staff -- even the representative
19 of the gas producers hired by the staff -- admit as much.
20 PG&E has shown, and indeed the Standard Oil Company has
21 confirmed, that those prevailing rates in fact are the
22 result of hard and informed bargaining.

23 Contrary to what the staff would have this
24 Commission think, there have been competitive sales of
25 new gas supplies in California which, as described in PG&E's

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1 testimony, fully support the \$1.20 level. Moreover, in the
2 renegotiated contracts in which most of the prevailing \$1.20
3 prices were set, the sellers had the option of taking the
4 matter to an arbitration where (quote) "reasonable market
5 value" would be the standard. That of course is the same
6 standard we're dealing with here.

7 The notion that this Commission can ignore the
8 prevailing price in northern California -- based solely on
9 the unsupported conclusion that PG&E's dominance makes use
10 of that price unnecessary -- is false.

11 CHAIRMAN CORY: I'm glad you're cleaning up your
12 language.

13 MR. FALLIN: The fact is that this Commission --
14 it's an art.

15 (Laughter.)

16 MR. FALLIN: -- should act [sic] the role of the
17 greedy landowner, grabbing everything he can get regardless
18 of the evidence or the consequences. There is no such
19 direction in the Constitution or in any other law of this
20 state. On the contrary, the law of this state clearly
21 establishes a policy directly contrary to the artificial
22 device the staff would like to use in place of the prevailing
23 price.

24 The device I'm speaking of is probably familiar
25 to you by now. That is, you simply take a set of administered

1 nonmarket prices -- i.e., the prices set by the Federal
2 Power Commission on the one hand, and the prices set by the
3 Canadian government on the other hand -- push them together
4 and come up with a figure, which you then call "market
5 price".

6 CHAIRMAN CORY: I don't think that's what the
7 staff did, sir.

8 MR. FALLIN: If they didn't, they didn't follow
9 their consultant's recommendation. And the prices they
10 came up with are only slightly below those levels,
11 Mr. Chairman. I have not seen an explanation of any other
12 method from them.

13 CHAIRMAN CORY: It's a weighted average of three
14 factors. Those are two of those three, and the other is
15 the factor you solely want us to use.

16 MR. FALLIN: That's right. I think --

17 CHAIRMAN CORY: It's a compromise, and I think we
18 ought to tidy up the record as to what it actually is.

19 MR. FALLIN: If in fact they added in the \$1.20,
20 what that means is that there is one market figure in their
21 formula. The only market figure they've used is the price
22 in northern California, if I'm correct. The other two are
23 regulated prices.

24 CHAIRMAN CORY: With you controlling the definition
25 of "market", I'll consent to that.

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1 MR. FALLIN: Well, if there's a definition of
2 "market" which includes prices set by government agencies --

3 CHAIRMAN CORY: Well, there are market prices set
4 by the renegotiated contracts of intrastate gas throughout
5 the nation that were not included or could be included.
6 That's a market price.

7 MR. FALLIN: Well, from what I understand, though,
8 that was a factor which apparently was thrown in as a way
9 of looking at the results, but it was not a part of the
10 formula used to reach those results.

11 CHAIRMAN CORY: True.

12 MR. FALLIN: In any event, the evidence before
13 this Commission is undisputed that Canada's government-
14 administered gas prices are directly linked to international
15 crude oil prices. The mechanism is simple. The gas is
16 converted to a Btu or heat value and then is tied to the
17 price of international crude oil, prices set by the OPEC
18 cartel. There is also no question but that OPEC, if
19 operating in this state, would be illegal under both the
20 federal antitrust laws and this state's Cartwright Act.

21 This Commission is charged with protection of
22 the public interest, yet no consideration whatsoever has
23 been given to the policy implications of importing administered
24 prices set at cartelized levels by equating them with the
25 standard of "reasonable market value".

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1 The point may be made here that for heaven's sake,
2 because PG&E is required to pay Canadian prices, they're
3 already in California. The answer is: there is no choice.
4 We're in the same position that the United States in general
5 has been with respect to OPEC's international crude oil
6 price. The law simply doesn't reach that far. But what
7 we're talking about now is this Commission, under no
8 compulsion, pulling those prices down into northern
9 California.

10 The staff's calendar item report asserts --

11 CHAIRMAN CORY: Let me make sure I understand that.
12 It's okay for your client to do it, because you can't control
13 it, but --

14 MR. FALLIN: To say that anything is okay because
15 the victim can't control it is perhaps a curious turn of
16 phrase.

17 CHAIRMAN CORY: I'm trying to understand your
18 position. That's why I ask it. Turn it however you wish,
19 sir, but I just want to delineate the issue you're trying
20 to point out.

21 MR. FALLIN: The situation with respect to oil
22 prices is simply one in which we've had no choice. I think
23 a number of people have tried to see: well, isn't there
24 some way we can protect ourselves against an international
25 embargo and a combination of exporting countries? The

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1 answer is: no, it's physically impossible. The law simply
2 cannot reach that far, much though we may want it to.

3 The same is true with respect to Canada. Canada
4 sets those prices and imposes them on gas that's in Canada.
5 If we want and need the gas from Canada, we have to take
6 those prices.

7 Our policy -- the policy of this nation and this
8 state, which abhors the existence of a combination designed
9 to allocate markets and set prices -- suffers, but unfor-
10 tunately there's not much we can do about it.

11 The suggestion by the staff's retained consultant,
12 and now by the staff, is that having once had that done to
13 us involuntarily, this Commission -- a Commission charged
14 with protecting the public interest -- should perform the
15 same function. And this time the function will result in
16 profits not flowing to OPEC, profits not flowing to Canada,
17 but profits going to the oil companies. The evidence, as
18 I say, on this issue -- on the manner in which these prices
19 are set -- is undisputed.

20 Now the staff's report asserts the existence of
21 an opinion by the Office of the State's Attorney General
22 that administered prices can be used to set market value.
23 No explanation is given for this doctrine; no opinion by the
24 Attorney General is provided; and more significantly, nothing
25 is said as to any opinion concerning the basis on which

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1 Canada's prices are administered. What I'm saying is that
2 there's been no finding, no showing, no anything as to
3 the policy implications of this action.

4 As PG&E pointed out at the hearings, ignoring the
5 policy consequences of using Canadian prices is only one
6 way in which the staff's desire to increase revenues from
7 this gas field ignores the public interest all public
8 officials are pledged to protect.

9 When we come to the consequences of this action,
10 I think there's a point that's important to make. PG&E's
11 position is that the testimony and evidence, fairly con-
12 sidered, shows that the prevailing price in fact -- well,
13 on this part of it there's no question: the prevailing price
14 is the market price; it is the market value established in
15 the relevant market. The question then becomes whether
16 it's reasonable or not.

17 CHAIRMAN CORY: And what the relevant market is.
18 That seems to be the real question.

19 MR. FALLIN: I guess if you want to somehow
20 pretend that this gas isn't in California, that it's in
21 Texas or Louisiana, that's a mental exercise that can be
22 performed, but unfortunately it's not the case.

23 CHAIRMAN CORY: You're making the contention that
24 Canadian gas isn't in California, and it seems to me it is.
25 It seems to me there's relevance there.

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1 MR. FALLIN: Mr. Chairman, I'm not sure what
2 the argument is here. There's no question but that this
3 gas is produced in a field in Rio Vista in California. The
4 contract refers to the market for that gas produced in
5 northern California. You want to talk about the market for
6 Canadian gas, you have to go to Alberta or Saskatchewan.
7 If you go to Alberta or Saskatchewan, you will find that
8 high prices indeed are being paid, because the Canadian
9 government extracts them. What you will also find is the
10 Canadian government is extracting nearly all the profit
11 from those high prices for its own benefit. That's some-
12 thing that doesn't happen in northern California. The
13 prices we're talking about here go directly to enhance the
14 return on capital of the oil companies and the gas companies
15 that produce, and also -- we'll give you -- the small amount
16 of revenue to the state involved in this case.

17 The fact is -- which brings me again to the
18 consequences -- the point I'm trying to make, however, is
19 that we're not bringing up the consequences as a reason
20 for making a wrong decision, as a policy reason for stretching
21 reason or the law. We're bringing up the consequences to
22 advise this Commission of what the results are of going the
23 wrong way. That's a distinction which I think is very
24 important. It's not an attempt to club reason with results.
25 Rather, it's an effort to indicate where reason goes and

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1 where the consequences lead.

2 The inference that there is some overarching
3 constitutional problem with accepting the prevailing price
4 set in the relevant market, we think has to be completely
5 wrong. For one thing, you've got to keep in mind that for
6 the past however many years that this Commission has been
7 in operation with respect to this particular field, this
8 Commission has accepted as reasonable market value the
9 prevailing prices in northern California set in exactly
10 the same way they are today: 35 cents in '71, 42 cents in
11 '73, 45 cents in '74, and 75 cents in '75, set in exactly
12 the same way the \$1.20 price was reached.

13 The argument that because PG&E is big something
14 has changed, is incredible. The market is exactly the same
15 as it was when the definition was written into that easement.
16 The market is exactly the same as it was when each and
17 every one of those prevailing prices was accepted as a
18 reasonable market value. In fact, if anything has changed,
19 the level of competition has increased.

20 PG&E is here. There's no question about it. PG&E
21 is a large purchaser of gas in northern California. That
22 was known to the oil companies when they came in and explored
23 here. It perhaps is a disadvantage in some ways, because
24 we are able to exert some reasonable control over these
25 prices. It was also an advantage, because PG&E's size and

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1 capacity allowed us to take that gas on a very rapid basis,
2 to build the lines in and market it quickly, providing the
3 kind of cash flow that got most of these operations under
4 way. Over the history of this development in California,
5 California's average gas prices have almost always -- and
6 today it is still true -- the average gas prices have
7 exceeded the average gas prices nationwide.

8 I think the gas producers would like to make
9 PG&E disappear. But it's a part of the market. It's as
10 much a part of the market as a range of mountains or any
11 other physical characteristic.

12 The fact is that no one -- well, save only those
13 gas producers who hope to profit by this Commission's
14 action -- can complain that a price set by reference to the
15 prevailing rate in the northern California market is somehow
16 unconstitutional, especially the way that rate has been
17 accepted by the vast majority of gas-producing corporations
18 with the option of having that rate set by arbitration at
19 reasonable market value. In this case, one producer --
20 Standard Oil -- has specifically testified that \$1.20 was
21 reasonable market value.

22 Not one iota of evidence has been produced that
23 any gas producer in California -- including the state --
24 has an inadequate return under the prevailing price. In
25 other words, there's been no evidence whatsoever that the

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1 market value is unreasonable in terms of what the producer
2 is making from it. Of course not. There is no such
3 evidence. Certainly if there was any such, the representative
4 of the producers, who served as consultant to the staff,
5 would have produced it.

6 The fact is that if this Commission approves the
7 use of the arbitrary border price formula, albeit salted with
8 one small element of market price -- in other words, what
9 they apparently would do would be to throw in the prevailing
10 price after already having reached the levels obtainable
11 by springing on FPC and Canadian prices -- it will have an
12 impact on the consuming public far beyond the amount of
13 money to be paid directly to the state from this field.

14 Mr. Lippitt has already testified for gas-producing
15 companies in arbitration proceedings last year which resulted
16 in significant price increases. He is expected to testify
17 in arbitration proceedings now pending between PG&E and
18 Texaco, and others. Let there be no doubt about this: he
19 will carry the number he obtains here directly into combat
20 for the producers he represents.

21 PG&E -- I -- will maintain that a Commission order
22 approving Mr. Lippitt's number is wrong, as it will be. There's
23 no doubt about that. There's no inference that we're going
24 to, on some kind of a voluntary basis, go and spread this
25 number around. However, we will be faced with a decision

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1 made by an agency of the State of California, seeming to
2 speak for all of its citizens, that this enormous price
3 increase is somehow justified. You can all imagine the
4 difficulty in arguing that use of Canada's oil-linked prices
5 are contrary to public policy, in the face of a State Lands
6 Commission decision adopting that very mechanism.

7 If this strategy works in those pending arbitrations,
8 the northern California consumers could be hit to the tune
9 of some \$22 million over the period through June 1978.

10 I think the staff report indicates something on
11 the order of an increased \$2 million return to the state
12 under their proposed price schedules.

13 A recent press release seeks to intimate that this
14 is a situation where PG&E seeks to gain some special advantage.
15 As the staff well knows, it is the ratepayers who pay for
16 increases in the cost of gas purchased by PG&E. I think that's
17 something that has to be noted here. It may be some people
18 don't follow what I'm saying. In other words, because the
19 cost of purchased gas is passed directly through to the
20 consumer, PG&E is not following some selfish motive in coming
21 before you, and following some selfish interest which is
22 going to increase its profit levels. Attempting to somehow
23 set the ratepayers against us in this case simply won't work.

24 The story doesn't end at the \$22 million which
25 Mr. Lippitt, I suppose, hopes to obtain in the arbitrations.

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1 Next July nearly all of PG&E's California contracts will
2 have to be renegotiated. These same price levels, presumably
3 inflated by some factor, will again be used in negotiations
4 and any ensuing arbitrations. If the strategy works, the
5 consequences would be a new price level based on the staff's
6 figures, at a cost to the consuming public of something on
7 the order of \$90 million.

8 Reference has been made in this proceeding to
9 various new gas prices. I would just interject for a moment:
10 the staff raised something which I was surprised to hear
11 them raise, this supposed \$2.25 price for Spreckles Sugar.
12 PG&E has difficulty obtaining price figures. For one
13 thing, it has to be careful from whom it seeks price
14 information, because of those same antitrust laws that I
15 referred to before. I do not know where the staff obtained
16 this number. It seems rather curious that pricing levels
17 are being exchanged, and this Commission is apparently becoming
18 a vehicle for broadcasting it.

19 However, I don't know what precisely that number
20 should be. I do know that number is wrong. I don't know
21 how much lower it is. I do know that in fact Spreckles is
22 a landowner in that situation. It gets one-sixth, or what-
23 ever the royalty position is. I don't know the amount.
24 It gets a substantial portion of that gas back free of
25 charge.

1 What I'm saying is that this latter-day incident,
2 which cropped up for the first time in this press release,
3 or whatever it was that came out at the beginning of this
4 week, is a red herring, based on facts -- I don't know the
5 exact details, but I do know that the details given are
6 wrong.

7 CHAIRMAN CORY: How do you come to that conclusion?
8 That's really a very arrogant statement.

9 MR. FALLIN: That those numbers are wrong?

10 CHAIRMAN CORY: That those numbers are wrong, yet
11 you don't know what they are, but you know they're wrong.

12 MR. FALLIN: Well --

13 CHAIRMAN CORY: I have trouble leaving that in
14 the record that way, because when I asked the question of
15 the people of Chevron, they did not deny those figures. They
16 took exception to them, saying it was an exception to the
17 rule, not that the figures were wrong.

18 MR. FALLIN: The people at Chevron, your Honor --
19 Mr. Chairman, are in a somewhat difficult position. As I
20 understand it, they have some confidentiality problems with
21 their deal with Spreckles, so they find it difficult to
22 come out and put a specific price level on it. But they have
23 informed me that although they're not free to indicate the
24 exact price levels, the level given by the staff is not
25 correct. They have also informed me that there are arrangements--

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1 and I think this is known also to the staff -- between
2 Upreckles and Chevron which make this contract very atypical.

3 CHAIRMAN CORY: I think the statement that it is
4 atypical is perhaps a valid statement, but to say that you
5 don't know the facts but you know the staff's version of
6 the facts are wrong, is somewhat --

7 MR. FALLIN: I might perhaps turn around, Mr. Chairman,
8 and ask the staff exactly from whom they obtained the
9 information that this price level was at \$2.25 without
10 provoking an exchange of price information between gas
11 producers.

12 CHAIRMAN CORY: You can ask, but get on with your
13 testimony.

14 MR. FALLIN: Mr. Northrop can reply to that, where
15 the information came from.

16 CHAIRMAN CORY: Go ahead with your testimony.

17 MR. FALLIN: By the way, you asked earlier if
18 there was anything new. I don't believe there is anything
19 about this in the transcript of the hearing. I believe
20 that this item here (indicating) came out after the time
21 had closed within which supplemental comments were filed.

22 Reference has also been made to new gas prices.
23 Price levels for new gas discoveries which directly encourage
24 the development of new gas supplies bear little or no
25 relationship to the issue in this case. Again, you might

1 note that this price we've just talked about is for a new
2 gas supply. You might also note that the only evidence
3 in the hearing with respect to new gas supplies in California
4 is that in areas where PG&E directly competes with Dow
5 Chemical Corporation for new gas supplies, the price levels
6 support the \$1.20 prevailing level.

7 The state's Rio Vista gas is not a new gas supply,
8 nor is any of the gas scheduled for arbitration or renegotia-
9 tion in the next year. There is no guarantee whatsoever
10 that money paid for this gas, long since discovered, will
11 ever be devoted to increasing this state's gas supplies.

12 I might add that if there was such a guarantee
13 available, it could have been provided by the producers
14 who seek this result.

15 MS. SMITH: I have one question. First of all,
16 I'd like to understand better how you reach the figures of
17 the impact on the consumer from these price increases.

18 MR. FALLIN: Okay. What we did was take the price
19 levels that were listed, I think, either in the agenda item
20 or in this press release, converted them against our existing
21 volumes of purchase, first from the people who were involved
22 in the arbitrations, and simply take the volumes of purchases,
23 apply those prices to them, and come up with a number. With
24 respect to the contracts that are coming up for renegotiation,
25 basically the same process: we take our overall volume of

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1 purchase from those people, apply those numbers to them, and
2 gave you the results in dollar figures.

3 Now obviously this is an extreme case, and I don't
4 want anybody to have any confusion about the fact that I'm
5 going to argue like crazy that this staff position is wrong,
6 if it's ever adopted. But this is in fact the result that
7 we'll obtain if Mr. Lippitt carries the number that he got
8 into this case into those other situations.

9 CHAIRMAN CORY: Sid, do you want to follow up on
10 that?

11 MR. McCAUSLAND: On that same line of questioning,
12 on your September 29th statement, this morning, at page 5,
13 you cite a \$22 million cost to the consumers of California
14 with a ceiling of perhaps \$90 million. On page 11 of your
15 August 11th statement, you speak of \$18 million and \$40
16 million. It's clear that you must be using different sets
17 of premises in the two different places. On your August 11th
18 statement, I guess you're using the price of \$1.34.

19 MR. FALLIN: Yes. In other words, initially,
20 frankly we thought that using the most unreasonable number
21 we might be able to come up with, the Commission might go
22 as high as \$1.50, which would yield \$40 million in result.
23 Mr. Lippitt frankly surprised us and sought to drive the
24 number up so high that we had to come back with a new set
25 of numbers, which I think were even higher than \$90 million.

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1 When the staff was so gracious as to salt its regulated
2 prices with the California market prices, that in turn
3 adjusted the number to the figure you have in this final
4 statement. That's the sequence of numbers that we presented.

5 MR. McCAUSLAND: Let me address the final state-
6 ment, then, if I could. In your statement of this morning,
7 you say, "If this strategy works in those pending arbitrations"
8 -- I assume that strategy is the \$1.90? \$2.10?

9 MR. FALLIN: It's the sequence that's presented in --

10 MR. McCAUSLAND: Okay. The sequence presented.
11 "If this strategy works, it could be hit to the tune of some
12 \$22 million over the period through June '78." Later you
13 say this \$22 million is not the end of the story. Dot, dot,
14 dot. "The consequences would be a new price level based
15 on the staff's figures at a cost to the consuming public
16 of something on the order of \$90 million."

17 Is there a time frame associated with the \$90
18 million?

19 MR. FALLIN: That's an annual increase.

20 MR. McCAUSLAND: So each subsequent 12-month period --

21 MR. FALLIN: Assuming that this artificial incre-
22 ment is added on, it would continue at roughly that rate
23 into the future.

24 The two numbers are roughly additive, at least on
25 a historical basis. You can actually say that having already

1 expended the \$22 million, you'll be expending another
2 \$90 million. I say "roughly": because of a continuance of
3 those arbitrations beyond this second figure, you have to
4 discount it slightly. So we did not put in the additive
5 figure, which would be--whatever it is: \$110 million. We kept
6 them separate.

7 CHAIRMAN CORY: Betty Jo?

8 MS. SMITH: Yes. Is the subject of your testimony,
9 or the crux of it, that the Commission took factors into
10 consideration in determining the reasonable market value
11 which are illegal to take into consideration? Or are you
12 just saying that as a matter of policy there are certain
13 factors which we should not include in reaching the price of
14 a reasonable market value?

15 MR. FALLIN: I'll try to answer that accurately.
16 I have a sort of a characteristic reluctance to call the
17 actions of this staff illegal. Parenthetically, I might
18 say that they were perhaps fulfilling their normal role in
19 this, which is acting as would the staff of any gas-producing
20 company or outfit to try to reach the highest price they
21 could.

22 What I'm saying is that the use of Canada's cartelized
23 prices is clearly contrary to the public policy of this
24 state and this nation, because it includes those cartelized
25 prices. I cannot answer for you here whether it is also

1 illegal: i.e., if somebody through a contractual arrangement
2 compelled or agreed to use that precise formula which in
3 turn was set by a cartel, whether that would be illegal or
4 not. In other words, it's the fact that what you're doing
5 is taking a price that you know to be set in a market that
6 would be illegal in this country, and you're bringing it into
7 this country not under any compulsion, but to pervert it as
8 far as you can under a standard which says "reasonable market
9 value". (a) It's not a market price. (b) How can you call
10 a price set by cartel "reasonable"?

11 CHAIRMAN CORY: Mr. Fallin, where I have trouble
12 and reject that whole argument as having any validity for
13 PG&E to submit is that when you go before the PUC, you take
14 those same prices, when you choose to buy Canadian gas instead
15 of buying more California gas, and say, "Give us higher
16 rates, and you stick it in the consumer's ear," and you do
17 it.

18 MR. FALLIN: Again you're back to the point where
19 the ratepayer really has a complaint with us as opposed to
20 this staff position. The answer is: we go before the
21 Commission and say, "It is reasonable for us, forced with
22 this conclusion by government fiat, to pay it." What we're
23 saying to you is that it is not reasonable to do the same
24 thing here.

25 CHAIRMAN CORY: You have an option in terms of your

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1 mix of gas -- your client does. Your client chooses to use
2 California gas for peak load only, and chooses not to use it
3 for full utilization.

4 MR. FALLIN: Two things --

5 CHAIRMAN CORY: And you're in essence using your
6 cheaper supply of gas -- your domestic California gas: Ryer
7 Island, Rio Vista gas -- for peak load, not for full utiliza-
8 tion; and you're taking Canadian gas constantly.

9 MR. FALLIN: First comment: PG&E doesn't get Ryer
10 Island gas. That's an exchange arrangement. That's Standard
11 Oil's gas.

12 CHAIRMAN CORY: River Island. Pardon me.

13 MR. FALLIN: Second, we do not use California gas
14 only on peak. That's wrong. We do use it for a lot of
15 peaking purposes --

16 CHAIRMAN CORY: These particular contracts --

17 MR. FALLIN: -- are not used only on peaking at
18 all. They are used more heavily on peaking, but it's not
19 at all accurate to say they're used only for peaking. I
20 think the staff will agree with that statement. To carry it
21 still further --

22 CHAIRMAN CORY: Let's go to your alternate fuel
23 sources.

24 MR. FALLIN: I would like to finish answering your
25 first question. We have been directed by the California

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1 Public Utilities Commission to husband supplies of California
2 gas for the very reason you're talking about, for the same
3 reason the government talks about husbanding supplies of
4 domestic crude oil: in an attempt to defend those supplies
5 against the fact that they're controlled from without. It's
6 just simply that true. The Commission has told us to husband
7 California gas.

8 Now that brings up a very interesting point. The
9 staff throws up another high number in our faces, and says,
10 "Well, gee, industrial customers pay \$2.29 for gas from PG&E."
11 The staff well knows -- Mr. Lippitt knows it perhaps better
12 than the rest of them do -- that PG&E's rates have been
13 skewed for policy reasons. We now have a lifeline arrange-
14 ment, which means that for the lowest levels of residential
15 gas customers, we're serving gas at essentially no return
16 at all -- in fact, at a return which is close to if not
17 below our average cost of purchased gas: in other words,
18 an absolute loss.

19 In turn industrial customers are paying a much
20 higher level. That's true. Putting that number in front
21 of you and in front of the public can't be described in any
22 other way but as deceptive.

23 But to carry the point a little further, the fact
24 that PG&E has been directed to husband this gas for the
25 California residential customer raises the point that in a

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1 very real sense this gas, the state's gas from Rio Vista,
2 has been dedicated to those residential customers at those
3 rates which currently recover us an absolute loss. If you
4 want to use that system to price this Rio Vista gas, you're
5 going to end up coming out below \$1.20, because if you want
6 to provide the cost of taking it to those residential
7 customers and provide a rate of return on the facilities
8 involved and back it up to a price, it's going to come out
9 below \$1.20.

10 That's a little bit of a long run. I think it's
11 followable, however.

12 MS. SMITH: On what basis or how did you determine
13 that the staff's method of calculating the reasonable market
14 value is against public policy?

15 MR. FALLIN: Okay. Essentially that is, I guess,
16 what you would call a matter of law as opposed to strictly
17 a matter of fact. We know the method used. The method used
18 was testified to by Mr. Lippitt before the staff, and Mr. Cory
19 has confirmed the method used. It is to include those
20 Canadian prices which have no relationship to the standard
21 you're using, which says "market value". They're not set
22 in any market. That's a contractual question, or a question
23 that we all can deal with.

24 The second question is: how are those prices
25 determined? It's our contention that those prices are

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1 determined in a way that makes their use in California without
2 compulsion contrary to public policy.

3 MS. SMITH: What is the public policy?

4 MR. FALLIN: The public policy is that contained
5 in the laws of this nation and the state which indicate
6 that any combination of producers or sellers, or any other
7 instrumentality which exists for the sole purpose of setting
8 prices and allocating markets, which is what OPEC is, is
9 disfavored.

10 CHAIRMAN CORY: I think, to tidy up the record,
11 public policy provides that having the capacity to do that
12 is against public policy, whether or not you combine for
13 the sole purpose. If you combine for another purpose and
14 you incidentally do that, that would still be against public
15 policy.

16 MR. FALLIN: But you sure make it a heck of a lot
17 simpler when you sit down and write up in your agreement that
18 you're there to set prices and allocate markets, which I
19 think we can agree is what OPEC does. The proof before
20 this Commission is --

21 CHAIRMAN CORY: No question. I just wanted --
22 in case someone else picked up this transcript, I did not
23 want them to think that the public policy of this state and
24 this nation was that you had to enter into that agreement
25 for that specific purpose. I think the public policy is

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1 relatively clear --

2 MR. FALLIN: What you're saying --

3 CHAIRMAN CORY: -- that price-fixing is against
4 public policy.

5 MS. SMITH: What's his position?

6 CHAIRMAN CORY: That Canadian gas should be
7 excluded because it's a result of price-fixing, and that is
8 an illegal combination if it had taken place here. Therefore
9 we should exclude that price, since that's how the Canadians
10 indirectly arrived at their price.

11 MR. FALLIN: I think I can with caution agree with
12 that. That's exactly what we're saying. Perhaps more
13 importantly for the purpose of this hearing, you'll note
14 that in the staff report there's no finding at all on this
15 issue. There's no finding at all that public policy favors
16 or disfavors or does anything else with respect to this kind
17 of an arrangement.

18 CHAIRMAN CORY: I think it is implicit in the
19 findings that there is a dispute, trying to put a focus
20 on it, as to what the market is. I think the staff has taken
21 the position that the market is the sum total of the various
22 sources of gas that PG&E acquires. They have, through their
23 own devices, chosen to acquire -- for good or bad, because
24 they had no other choice, or whatever -- they have chosen to
25 get Canadian gas. Therefore, the staff has come to the

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1 conclusion that that, as well as the artificially low prices
2 of interstate gas, should be included in the mix in the same
3 ratio through which PG&E has made a determination that they
4 will meet California's gas needs by using fixed prices
5 artificially low under Federal Power Commission interstate
6 gas, and Canadian gas fixed prices artificially high with
7 an OPEC base, and California source gas, using the three in
8 the ratio to which they found them in the marketplace. That
9 is the issue.

10 PG&E and Mr. Fallin would like to suggest that no,
11 the only true market we should look at is California source
12 gas --

13 MR. FALLIN: Well, I think that --

14 CHAIRMAN CORY: -- and exclude from that those
15 that do not reach their \$1.20. We should exclude the arbitra-
16 tion figures which have been located, and we should exclude
17 other abnormalities which they find in the market. I think
18 that's the issue.

19 MR. FALLIN: I think there are at least two comments
20 to that. One of them is that the definition of "market" is
21 pretty simple: the place the gas is produced and sold is
22 in California. It's true that gas is produced and sold in
23 Canada. This is a point which --

24 CHAIRMAN CORY: Canadian gas is produced in Canada
25 and sold in California, and you would like to exclude that

1 from the mix.

2 MR. FALLIN: But Mr. Commissioner, you're a seller
3 of gas in California. You're not a public utility. You're
4 not up in Canada or any place else.

5 CHAIRMAN CORY: But you as a public utility have
6 some right to go to Canada and buy that, and we have to
7 ignore that fact. That's what you're suggesting?

8 MR. FALLIN: There's no question about it that we
9 have to go to Canada to buy gas, and there's no question
10 that there is gas produced in Canada. Now let me carry
11 this a little further. I made this point --

12 CHAIRMAN CORY: Is there any question that you are
13 buying Canadian gas at roughly \$2.15 per mcf and bringing
14 it into the California marketplace and selling it to the
15 consumer? Is there any question as to that?

16 MR. FALLIN: Not that I'm aware of.

17 CHAIRMAN CORY: But you believe that that is not
18 part of the market, am I correct?

19 MR. FALLIN: Perhaps if I could finish my earlier
20 statement.

21 CHAIRMAN CORY: Could you answer my question, sir?

22 MR. FALLIN: Well, I'm still trying to answer the
23 statement that you --

24 CHAIRMAN CORY: I asked you a specific question
25 now. Can you answer it?

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1 MR. FALLIN: The question you first --

2 CHAIRMAN CORY: No, the question I just asked you,
3 would you care to answer it or not?

4 MR. FALLIN: Well, I guess my answer to that
5 question is that I care to answer your earlier question first,
6 and then perhaps --

7 CHAIRMAN CORY: I would prefer to have it the other
8 way.

9 MR. FALLIN: All right. There's no question but
10 that we are paying very high prices for Canadian gas, and
11 everybody knows the reason for that. The reason for that
12 is because the Canadian price is set that way.

13 CHAIRMAN CORY: And you bring that gas --

14 MR. FALLIN: The gas produced in Rio --

15 CHAIRMAN CORY: Let me say --

16 MR. FALLIN: I'd like to finish just one thing.

17 CHAIRMAN CORY: No. I would like to get a record
18 established for a purpose. We'll give you back the mike at
19 some point and let you make whatever speech you wish to make.

20 MR. FALLIN: Perhaps, Mr. Chairman, if you make a
21 statement which I then can respond to.

22 CHAIRMAN CORY: No. I want to ask you some
23 questions. If you wish to respond, fine. If you choose not
24 to respond, that's fine too. Okay?

25 MR. FALLIN: My problem is, briefly, that I'd like

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1 to be able to respond fully rather than be cut off when I
2 try to.

3 CHAIRMAN CORY: I have some very specific questions
4 which I'd like you to respond to. I think we have established
5 that you agree that Canadian gas is purchased in Canada and
6 brought to California and sold to the California consumer.
7 That price is, I believe, somewhere in the neighborhood of
8 \$2.15. Is that correct?

9 MR. FALLIN: I've said yes before, and I will
10 agree to that again.

11 CHAIRMAN CORY: I'm trying --

12 MR. FALLIN: In fact, I think it's in our testimony.

13 CHAIRMAN CORY: I'm trying to get resolved down to
14 what the real issue is. The next question is: I believe
15 the point you're trying to make is that the Canadian gas
16 should be excluded because it is not produced here, and that
17 you would choose to define the term "marketplace" as being
18 California gas produced in California, not gas consumed in
19 California.

20 MR. FALLIN: Now may I answer that question?

21 CHAIRMAN CORY: Yes.

22 MR. FALLIN: All right. You will note that the
23 issue of what the relevant market is, or what the market
24 is, is a legal question, and you're dealing here in this
25 easement with contractual interpretation.

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1 CHAIRMAN CORY: Is this an easement?

2 MR. FALLIN: Yes, it is.

3 You will further note that the staff, the staff's
4 attorneys, and Mr. Lippitt, who is also an attorney -- not
5 one of them has ever produced before this staff, before any-
6 body anywhere any case in this country which ever held that
7 in interpreting the standard of market price or market value,
8 it was valid to go outside of even the region in question,
9 let alone the state, let alone the nation. That's a legal
10 issue, and there's no question in my mind that the law is
11 that the market is the region -- in this case, the state --
12 where the material is produced. Now that's on a legal basis.
13 I'll carry that a little further also.

14 The fact is that this is a situation, if you want
15 to put it that way, where PG&E exists in the California
16 market. That, as I said earlier, poses some problems and
17 some advantages for the gas producers. Right now I suppose
18 they wish they were in Texas or Louisiana. Twenty years ago
19 they were darn glad to be in California. The fact is we are
20 here, and you can't make us disappear by imagining that
21 this gas is produced -- you've got to remember that these
22 are wellhead prices. The question is: what is the price at
23 the wellhead?

24 You can go to Canada and ask the same question:
25 what is the wellhead price in Canada? You'll find it's

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1 seemingly quite high. But you'll also find that nearly all
2 of the fat, all of the return to the producer -- and in this
3 case the state stands in the shoes of the producer -- is
4 simply taxed away by the Canadian government. They do not
5 see it. Now that is a major difference.

6 I suppose the argument is: "Well, it's unfair that
7 we're in California. We should be treated like we were in
8 Texas, or we should be treated like we were in Canada." The
9 fact is that they're making out better here in California
10 than they would be in Canada under the taxing system that
11 Canada uses. On an average basis -- now I'm using that term
12 advisedly -- on an average basis -- that means all new gas,
13 old gas, all the standards whatsoever -- on an average basis
14 they're doing just as well as they are anywhere else in the
15 country. That's because in Texas and Louisiana there are a
16 lot of very low fixed-price contracts.

17 What I'm saying again is: now suddenly they wish
18 they were someplace else. Maybe the state wishes it was
19 someplace else. But you're not. The market is here. It's
20 the same market that was here when this easement was drafted.
21 It's the same market that was here when this Commission
22 accepted payments based on exactly the same standard PG&E
23 is urging before you today.

24 The other minor kind of thing which apparently
25 the staff and perhaps you have skipped over is that the

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1 Canadian price isn't a market price. The FPC price isn't a
2 market price. Where on earth comes the justification for
3 cranking them into a market value determination? If you
4 can find a case that says that, I'd be interested.

5 MS. SMITH: I'm assuming that you have found cases
6 that say that's impermissible?

7 MR. FALLIN: Well again, to tell you the truth --
8 at one time somebody asked me that question, whether you
9 have authority for a given proposition. I was young enough
10 then to say to the judge, "Your Honor, I don't think I have,
11 because I don't think anybody's been dumb enough to assert
12 it before." I don't think anybody has ever gone through the
13 mechanism of trying to use a price set by a foreign govern-
14 ment, which is in turn linked to a cartel price --

15 MS. SMITH: So there is no precedent on this issue.

16 MR. FALLIN: I don't think so. If you want to
17 put it that way, I think we're making new ground, yes.

18 CHAIRMAN CORY: Are you familiar with the Occidental
19 arbitration?

20 MR. FALLIN: Painfully.

21 CHAIRMAN CORY: Did that use this mechanism?

22 MR. FALLIN: If you're asking me whether the
23 Occidental arbitrators came to the wrong result, the answer
24 is yes.

25 CHAIRMAN CORY: No. I want to know whether they

1 used the same mechanism.

2 MR. FALLIN: They did.

3 CHAIRMAN CORY: So there is court acceptance --

4 MR. FALLIN: No, there is no court acceptance.

5 As I suppose the lawyers in the room are well aware, arbitra-
6 tion is a peculiarly fiendish device when you attempt to
7 appeal from it. The standards are extravagantly broad, which
8 reach to the arbitrators making decisions on all sorts of
9 facts. They can basically redefine their own jurisdiction
10 in the process of determining it.

11 We did take it to the Superior Court in San Diego.
12 The judge did indicate that the issues raised by this
13 mechanism posed things that he thought should be addressed
14 by the Legislature. But under the strictures of the arbitra-
15 tion mechanism, he didn't think he could reach it. That's
16 where we got.

17 CHAIRMAN CORY: Unfortunately, that's basically
18 where I get. I've got somewhat the same problems philosophi-
19 cally, but I come down about where the judge did having read
20 that.

21 MR. FALLIN: What he's saying -- you know the way
22 appellate courts say these things. The decision may even
23 go so far as to say the decision was probably wrong, but
24 because of the mechanism in which it occurred, I can't do
25 anything about it. What you're saying is: the decision is

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1 probably wrong, so even though the burden is on me, I'm

2 going to accept it.

3 CHAIRMAN CORY: I didn't say that. I said I have

4 problems with the mechanism but I don't see a better solution

5 to the problem.

6 MR. FALLIN: Why is that?

7 CHAIRMAN CORY: I just don't see a better solution.

8 MR. FALLIN: Well, the better solution, I would

9 suggest, is to take a small, lingering look at the actual

10 prevailing price in northern California reached between PG&E

11 and such helpless entities as Standard, Shell, et cetera.

12 CHAIRMAN CORY: Tell me, sir: Is Standard Oil a

13 net gas consumer or purchaser?

14 MR. FALLIN: I imagine that they --

15 CHAIRMAN CORY: Because if you're going to develop

16 Standard Oil as an arm's-length transaction, I think it's

17 important to put on the record whether or not Standard Oil

18 sells you more gas or buys more gas from you. It's important

19 to know whether or not they really, in that particular

20 transaction, have an interest in keeping prices up or down.

21 MR. FALLIN: You mean whether they could see down

22 the line --

23 CHAIRMAN CORY: No.

24 MR. FALLIN: -- the \$90 million punishment and

25 therefore look a lower price?

1 CHAIRMAN CORY: No, no. Whether or not they are
2 in fact purchasing more gas from you than they are producing
3 in the market. Do they buy more gas from you than they sell
4 you?

5 MR. FALLIN: Because of the fact that gas of course
6 is used in the refining process heavily, I would say there's
7 a good chance they do, sure. But I'm not sure how that at
8 all affects their desire to get as much -- they don't have
9 any public interest strictures, as this Commission I hope
10 does. For them it's simply a question of getting as much
11 as they can for a sale of gas. If you are suggesting that
12 Standard somehow throws in the towel in sales of gas because
13 it has to pay a gas bill, that might be a profoundly enlightened
14 view, but it certainly doesn't occur. You can ask them
15 whether it occurs. You can ask them whether they think they
16 threw this price to us. I think they've already been asked,
17 and answered "No."

18 In fact, they raised the point, which the staff has
19 never mentioned -- in fact, it gets down to price levels which
20 the staff apparently doesn't even want to consider: i.e., the
21 prevailing price -- they brought up the point that at Rio
22 Vista PG&E does something unusual. At Rio Vista PG&E,
23 provides a compression service for the gas produced. We
24 don't do that for the gas that was involved in the Occidental
25 arbitration. Standard's testimony indicates that if you

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1 accurately value the compression service provided by PG&E,
2 the \$1.20 price for Rio Vista gas is closely equatable
3 with that Occidental arbitration result. That's their
4 testimony, and I don't see anybody who's mentioned that
5 here today.

6 CHAIRMAN CORY: There is an argument as to what
7 we should accept as the market. I think PG&E and Mr. Fallin
8 are saying the only market available to us is California-
9 produced gas. The staff and, I'm afraid -- as I look at the
10 arbitration -- the arbitrators -- and the court upheld that
11 arbitration -- used the market defined as the mix of all
12 the sources of gas. That's what I was trying to get at
13 with Mr. Fallin. That's the fundamental issue: defining
14 the market.

15 MR. FALLIN: Another quick comment: as I mentioned
16 the advantages and disadvantages for the producers of PG&E's
17 size, there are advantages and disadvantages in arbitration.
18 It's true, as we found to our regret, that it's virtually
19 impossible to overturn one of those things. It's also true
20 that an arbitration is nothing more than a fact-finding
21 by three men, and has no precedential value when turned
22 around and attempted to be used in the next forum. That's
23 kind of the other side of the problem. All that happens is:
24 three guys happened to reach that result.

25 CHAIRMAN CORY: Why is it that if these three

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1 people decide something, all these horrendous \$90 million
2 costs are going to accrue, and when those other three people
3 in Occidental can get their money for their land, we can't
4 come to the same conclusion in getting money for the --

5 MR. FALLIN: Okay. Well first of all, let's
6 establish the range we're operating in. If you're really
7 saying you want to get the Occidental price, you're talking
8 about \$1.35. You're not talking any \$1.75 or \$2.08 or any
9 of these other astronomical sums.

10 Second, if you are really talking about the
11 Occidental arbitration result, you cannot ignore Standard
12 Oil's testimony that the value of the compression services
13 provided to you amounts to something on the order of 15 cents.
14 If you're going to do that, all right.

15 Let me say something further. I'm still not saying
16 that you're accepting the right price. (a) I think that
17 their use of this Canadian mechanism was wholly wrong, and
18 I'll argue that again, and I think I've got a darn good
19 chance of winning unless this Commission comes out and says
20 that that's a valid way of doing things. (b) The other
21 part of that decision was based on a high contract we had
22 with Union Oil Company for their Union Island field. That
23 again was a unique contract. It involved ten years' worth
24 of extra peaking insurance beyond the basic term of the
25 contract, and a number of other factors, which we argued

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1 but they didn't believe it, and they said, "Well, that's okay."

2 I think the simplest proof of the fact that that
3 was a unique contract is -- Union turned around and took
4 \$1.20 for all of its other supplies. Those are things that
5 have changed since the arbitration.

6 Let's get one thing straight. If you are really
7 talking about looking at that as arbitration, those are
8 the factors you consider. You consider: what was the price?
9 What's the value of the compression services at Rio Vista?
10 Also, was the arbitration right or wrong? If you take the
11 facts as we know them now, I think the answer is probably --
12 for me it's "certainly"; for you it's "probably" -- it was
13 wrong and too high at the time.

14 CHAIRMAN CORY: The arbitration was appealed to
15 just Superior Court?

16 MR. FALLIN: Yes.

17 CHAIRMAN CORY: And the court refused jurisdiction,
18 or --

19 MR. FALLIN: The court said that the issues raised,
20 in its opinion, given the problems with overturning any
21 arbitration award, didn't give it enough room to do it. Its
22 point was that within the arbitration mechanism they raise
23 issues that the Legislature should perhaps -- in other words,
24 the Legislature could pass a law that says: in arbitrations
25 involving gas purchases, hold on a minute. You're going to

1 be able to relook at some of these facts. But that's not
2 the situation we have here.

3 Another point I think we should bring out: the
4 burden in this proceeding has to be on the staff's position,
5 because what you start out with is a given. You know what
6 the prevailing price is. If you want to talk about precedent,
7 you know the price that this Commission has accepted time
8 and time again in the past. Now the burden then is: well,
9 is that prevailing price, which is set in a market which
10 we know all about, is that unreasonable? You've got a
11 market value. Is it unreasonable? Is there any proof in
12 this record that any gas producer is hurting in California,
13 that that value is an unreasonable value?

14 CHAIRMAN CORY: Is that the question of reasonable-
15 ness which is a standard that the PUC needs to deal with,
16 or is the question of reasonableness the question of the
17 marketplace: what an informed buyer and an informed seller
18 in the marketplace would sell gas for.

19 MR. FALLIN: Well, I think the answer to that is:
20 you've got the first. You've got the market. You've got
21 the value that the market gives you. The question then is --

22 CHAIRMAN CORY: We don't have a market --

23 MR. FALLIN: -- is that value unreasonable?

24 CHAIRMAN CORY: No. We have a difference of
25 opinion as to what the market is. You believe it to be

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1 California-produced gas, and the arbitrators, the Superior
2 Court apparently agreeing and the staff agreeing, saying:
3 no, the market is the combination of California-produced gas,
4 imported interstate gas and Canadian imported gas. There's
5 an argument between us as to what the marketplace is.

6 MR. FALLIN: I keep saying that the argument goes
7 beyond that simplistic formula, because it's not just: how
8 big is the market. It's also the fact that if you're going
9 to define market value, there's one thing that's absolutely
10 crystal clear: you've got to use market prices. And if
11 there's one thing that's just as absolutely crystal clear,
12 it is that the Canadian price isn't a market price under
13 anybody's conception of any possible definition.

14 CHAIRMAN CORY: I think the federal government
15 and the FEA have taken the world market price set by OPEC
16 as market price, so your bald statement that it is obviously
17 apparent that it can't be is somewhat disproven.

18 MR. FALLIN: Now wait a minute.

19 CHAIRMAN CORY: Reasonable men can differ.

20 MR. FALLIN: You've just switched terms. I don't
21 think anybody has suggested that you go directly to OPEC and
22 ask them to write the price. So far the request is that you
23 use the Canadian price. I said there is no question but
24 that Canada's price is set by regulation; it's not set in the
25 market. Now if there's a disagreement with that, I'd like

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1 to respond to it.

2 CHAIRMAN CORY: I will accept that, but the cartel
3 mechanism gets in where there is a public policy question
4 based upon the Btu equivalent.

5 MR. FALLIN: There's no question that we've had
6 to live with international crude oil prices, and I think
7 everybody in this room knows the cruel consequences of that
8 fact. We're only really beginning to come out from under
9 it now.

10 CHAIRMAN CORY: I'm not so sure we're coming out.

11 MR. FALLIN: I'm not arguing that that's over or
12 they're going to disappear, or anything else. What I'm
13 saying is: for heaven's sake, don't use a standard which
14 says directly the opposite of reasonable market value to
15 import that kind of a philosophy into this state.

16 I think there are other --

17 CHAIRMAN CORY: A question for the Attorney General
18 does the contract use the term "reasonable" or just the term
19 "market value"?

20 MR. STEVENS: Jan Stevens, Attorney General's
21 office.

22 Mr. Chairman, I believe the criterion is, as
23 Mr. Fallin indicated, "market value".

24 CHAIRMAN CORY: As opposed to "reasonable market
25 value".

1 MR. STEVENS: Reference was made to advice from
2 our office. There is no formal opinion in this respect,
3 but we have advised the fact that the Commission has the
4 discretion to consider the market as it finds it, and not
5 a hypothetical free market, that it's proper for the staff
6 to consider regulated prices as well as other prices when
7 it determines what the market constitutes for this purpose.

8 CHAIRMAN CORY: Are you enough, Mr. Fallin?

9 MR. FALLIN: Mr. Chairman, I'd just like to point
10 out a significant thing that was just said. What Mr. Stevens
11 just said is that this Commission is not required to look
12 at some hypothetical free market, but should look at the
13 actual market. That is what the law says, and it's what
14 we've cited in our briefs. What that means for this Commission
15 is: you can't go and pretend that this gas isn't produced
16 in northern California and that PG&E isn't there. You can't
17 run away from those real facts based on -- I am not kidding
18 when I say -- a one-sentence conclusion that it's not ideal
19 or it's not free, or anything else. It's where it is.

20 The other question is: all right, you have to look
21 at the real market. You have to look at the \$1.20. That's
22 the prevailing price. The burden is on somebody else to say
23 there's something else around that indicates that's wrong.
24 My next step is to say -- at this point I think we part
25 company -- I don't see how you can call Canada's price a

1 market price.

2 I think that concludes my comments.

3 CHAIRMAN CORY: Mrs. Siegel.

4 MS. SIEGEL: Mr. Chairman, Miss Smith,
5 Mr. Commissioner, thank you. My name is Sylvia Siegel. I'm
6 Executive Director of Toward Utility Rate Normalization,
7 T.U.R.N. for short, a public interest group based in San
8 Francisco that represents consumers before the Public
9 Utilities Commission, the Energy Commission, generally in
10 opposition to PG&E -- or I would say always in opposition to
11 PG&E on rate applications -- and here I find myself on the
12 same side of the table, not only in support of PG&E, but
13 wishing I could afford to hire Mr. Fallin for our staff.

14 (Laughter.)

15 MS. SIEGEL: I probably ought to bite my tongue.

16 MR. FALLIN: I hope that's not being taken down.

17 (Laughter.)

18 MS. SIEGEL: I can't afford it, Mr. Fallin, so relax.

19 I think he did a magnificent job of setting out
20 the issues, of analyzing the facts, of presenting you with
21 what should be considered in determining what constitutes
22 the royalty payment for gas under your supervision.

23 I have no prepared statement. Rather, I'm reacting
24 to the press statement you made, Mr. Cory. I must say I'm
25 a little puzzled. I'm also shocked. I'm shocked at the

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1 consequences of what this decision if adopted would mean
2 to 22 million California consumers, and I'm puzzled because
3 I remember very well just three short years ago, Mr. Cory,
4 you were a magnificent tiger taking after all the oil
5 companies around the world, and here you are trying to side
6 with them. That puzzles me.

7 CHAIRMAN CORY: I thought Standard Oil was for
8 \$1.20; that's why I moved the other way.

9 (Laughter.)

10 MS. SIEGEL: I think the facts clearly indicate
11 that the prevailing and market rate really is \$1.20. I'm
12 not going to put in any information about rates. I think
13 the record has sufficient testimony on the question of rates.

14 I know that you must have some kind of ambivalence
15 -- or I would hope you have some kind of ambivalence -- about
16 this recommended decision in view of your constitutional
17 mandate to protect the public interest. I would submit,
18 ladies and gentlemen, that the constitutional mandate to
19 protect the public interest goes to the public interest of
20 22 million citizens in California, and not the mere fact
21 of trying to establish what's a reasonable royalty payment
22 for gas under your supervision.

23 In consideration of that, I'm also surprised,
24 Mr. Cory, why you did not get a competent economist to
25 put testimony into this record, and relied instead on

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1 Henry Lippitt, the potentate of the California fiefdom,
2 to pursue his own self-interest in hiking the prices of
3 California-produced gas. I find that shocking. I find that
4 a conflict of interest. Then I find out that not only is
5 Henry Lippitt permitted here to consult with you, but you're
6 also paying him out of our tax dollars. That will never do,
7 Mr. Cory.

8 You know and I know there are a lot of competent
9 energy economists around this country who could have testified.
10 Turning it around --

11 CHAIRMAN CORY: Could you suggest a few?

12 MS. SIEGEL: I sure can. I can suggest John
13 Wilson in Washington, Dave Schwartz -- I'll give you a whole
14 list of names. Talk to Terry Goggin, and he'll give you
15 a list of names who testified in the record in that legisla-
16 tive proceeding.

17 However, you selected Henry Lippitt and paid our
18 money for it. I assume you selected Henry Lippitt because
19 you felt that information on California's market was the thing
20 you had to consider. If that's the reason you selected Henry
21 Lippitt, I might forgive you. I agree: that's what you
22 have to consider.

23 I'm not a lawyer, so I'm not going to interpret
24 what the legal definition is of a market. But I think that
25 anybody examining the facts with respect to pricing California

1 gas would clearly conclude that the prevailing rate in the
2 northern California gas market is in fact the market. The
3 price paid for Canadian gas, for Mexican gas, for any other
4 kind of gas is irrelevant.

5 As a matter of fact, you might want to know,
6 Mr. Cory, that with respect to the rate set by the Federal
7 Power Commission of \$1.46 per mcf, T.U.R.N., along with 19
8 other organizations across the country, has appealed that
9 FPC Opinion 770, not only to the U.S. District Court of
10 Appeals, but we are taking it to the U.S. Supreme Court.

11 In view of the Congressional debate, which
12 incidentally I'm sure will go on for two or three weeks --
13 when I was in Washington last week, I know there was a line-
14 up of a hundred amendments that don't begin to come up to
15 the prices that were mentioned here in this record. But
16 in view of that kind of political situation, I don't think
17 there will be any quick settlement of the deregulation issue.
18 That's important for your consideration, because the facts
19 before you indicate that you could make a decision based on
20 \$1.20 for the three periods included in your instructions.

21 Now I don't want to bad-mouth Henry Lippitt, but
22 I guess I am. He's a nice fellow, and I'd like to see all
23 the California companies buy more California gas. His
24 testimony varies with the proceeding, so frankly, without
25 having a chance to cross examine him, I can't rely on most

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1 of the numbers that Henry Lippitt puts into this or any
2 other record. If this kind of proceeding contemplates
3 scrutiny of the evidence and allows for a period of cross
4 examination, I'll be glad to come back another day to perform
5 that function.

6 But I think it's unnecessary. I think the facts
7 are clear on the record that \$1.20, the prevailing market
8 rate in northern California, is the rate that should be
9 adopted by this Commission, or the consequences to the
10 consuming public in California will be frightful. I will
11 accept the figures of PG&E. Sometimes I do accept their
12 figures. I've reviewed them. I think that's a pretty good
13 estimate of what the consequences will be.

14 I think it's important when you determine what
15 the market price is to not use the universe as your universe,
16 but to use the proper universe, which in this instance is
17 northern California, or at the most the state of California.

18 I think if you examine pricing for intrastate gas
19 elsewhere -- I admit I've not done a great long study on it.
20 It's my recollection, however, that intrastate pricing in
21 other states is done on the basis of prices that exist
22 within that state. If you look at prices that exist now for
23 old gas, which is what we're talking about, you'll still
24 find some 23-cent, 35-cent gas prevailing, and will for
25 the duration of those contracts.

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1 In conclusion, Commissioners, I think your duty
2 goes beyond the very narrow duty of trying to establish
3 what might be the benefit of the state of California as a
4 landowner, to consider the effects on the population of
5 this state. Now frankly, with the state treasury overflowing
6 with money, I don't see why you're quibbling about a mere
7 \$2 million, which is all you would get, where the cost
8 translated to the consumer -- and make no mistake about it:
9 it's the ratepayers of PG&E -- Mr. Fallin made a magnificent
10 argument, but PG&E isn't going to pay it. I'm going to pay
11 it. Three million ratepayers of PG&E are going to pay it.
12 And three million ratepayers of Southern California Edison
13 and Southern California Gas are going to pay it -- maybe
14 not this month or in June, but you can be sure they're going
15 to pay it when their gas contracts come up.

16 So while I question whether PG&E does in fact
17 engage in hard bargaining -- I'll tell you: since 1973 I've
18 given John Sproul a very hard time on the stand. On this
19 last round of negotiations for the current contract price
20 under the same thorough scrutiny, I guess I was finally
21 convinced that they did in fact engage in hard bargaining.
22 As a matter of fact, we joined PG&E in appealing the arbitra-
23 tion award, even though we knew that might be a futile
24 gesture, because everybody knows the courts never overturn
25 an arbitration award. But I felt we had to do it.

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1 Now: here I am testifying for PG&E. It's very
2 hard --

3 CHAIRMAN CORY: I share your discomfort. We find
4 ourselves having strange allies at individual points.

5 MS. SIEGEL: All right. But damn my discomfort.
6 I'm not going to pay a penny more than I have to pay. There
7 are 22 million people in this state who are going to suffer
8 the burden of this raunchy decision. I urge you to go back
9 to the facts, to go back to what market economists would
10 determine is the proper market, and consider \$1.20 the
11 prevailing reasonable market value of the gas that you're
12 concerned with.

13 Thank you, Mr. Cory. Thank you, Commissioners.

14 CHAIRMAN CORY: I'd like to try to frame one
15 issue that I think is important, the one that I think is
16 the crux of the dilemma that we have. We are granting a
17 public resource, publicly owned gas. We did by a prior contract,
18 a contract which, if I had been on the commission, I don't
19 think I would have voted to allow us to enter into. But
20 we entered into it some time ago, and now we have the job
21 of administering that contract.

22 But we're talking about gas owned by 22 million
23 people of California, yet the ultimate effect of all of
24 those contracts is given to a few Californians.

25 MS. SIEGEL: Not so few. Three million isn't so

1 few.

2 CHAIRMAN CORY: Three million out of 22 million.
3 So one of our problems --

4 MS. SIEGEL: Three million households or customer
5 accounts. Multiplied by four, that's 12 million. Two and
6 a half million residential customers, and the rest commercial
7 and industrial.

8 CHAIRMAN CORY: I would question that PG&E in
9 terms of the total population of the state -- what? Sixty
10 percent? Forty percent?

11 MS. SIEGEL: Whatever.

12 CHAIRMAN CORY: But it's part of the state, and
13 the problem we get into, the real vexing dilemma we have,
14 is either driving the highest possible price or giving the
15 gas away. We could say: "Gee, the people would be better
16 served if we just gave them the gas." If there weren't two
17 middlemen -- Standard Oil and PG&E -- we'd be much better
18 off if we just gave them the gas. I'd have no problem with
19 that except that we're going to give two specific middlemen
20 and their particular consumers that gas. That's where the
21 problem comes in: whether the benefit does or does not flow
22 to the non-PG&E Californians.

23 MS. SIEGEL: Mr. Cory, let me make two points. As
24 I recollect, you were the fellow who put into the hopper
25 a bill that would establish a state oil and gas company.

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1 CHAIRMAN CORY: No.

2 MS. SIEGEL: Well, somebody did a couple of years
3 ago, and the purpose of that was to establish a benchmark
4 for determining the cost, because everybody knows that
5 pricing gas and oil should be related to the cost plus a
6 margin of profit, plus even a component for exploration and
7 development. I would give them very generous allowances
8 on that. In no way, if you used a cost-based formula, would
9 you even begin to arrive at \$1.20. Okay?

10 The second question is that you're not just
11 talking about PG&E's customers. Let me remind you that this
12 market is a state market and that you are affecting -- if
13 not this month, then six months from now -- the market for
14 southern California.

15 This is not a political issue. This is an economic
16 issue.

17 CHAIRMAN CORY: But in terms of the economics --

18 MS. SIEGEL: You're thinking of politics. I'm
19 sorry. I'm not a politician.

20 CHAIRMAN CORY: No, I'm thinking of the economics.

21 MS. SIEGEL: I'm thinking of my pocketbook and
22 that of every other consumer in this state.

23 CHAIRMAN CORY: It's a question of: if we gave
24 the gas away for nothing --

25 MS. SIEGEL: You're not --

1 CHAIRMAN CORY: If we came to the conclusion: let's
2 do it for ten cents --

3 MS. SIEGEL: I don't believe in giving gas away
4 for nothing. I believe in getting the reasonable value of
5 the commodity.

6 CHAIRMAN CORY: That's what we seem to be trying
7 to struggle with.

8 MS. SIEGEL: It's no struggle. I think the facts
9 are clear. You don't have to struggle. Let me respectfully
10 suggest: the facts are there. There's no struggle. It's
11 clear the rate should be \$1.20. That's the rate.

12 I don't know why you have to reach across the
13 border. I don't know why you have -- let me tell you:
14 there's gas going to come in from Chile, from Baja California;
15 there's lots of gas in the Gulf of Mexico. Are you going
16 to wait and get the prices for that gas when that comes in
17 to determine what should prevail between now and June of
18 '78?

19 That's already determined. It's predetermined.
20 Those contracts are in effect. The \$1.20 is there. Any rate
21 higher than that will be subject to other action. We're
22 prepared to seek declaratory relief if a rate higher than
23 \$1.20 is adopted.

24 MR. McCAUSLAND: Mrs. Siegel's reputation precedes
25 her as a layman who has spent so much time in devotion to

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1 this cause that she's developed an expertise that is respected
2 by her adversaries.

3 I have a distinct problem. I received the board
4 book yesterday. I read the two-page background about five
5 times last night trying to get the heart of the issue before
6 me, and it makes so little reference to the August 11th
7 hearing that I feel compelled, before taking a vote on
8 such a significant public policy issue, to spend a significant
9 amount of time reviewing the published record of what took
10 place in our August 11 hearing.

11 It's clear to me from the testimony that's being
12 presented today that I do not understand enough about the
13 relationship between the market issues in this particular
14 instance to determine that the price schedule laid before
15 me is substantiated by the facts.

16 MS. SIEGEL: Commissioner, I don't know if I'm
17 permitted to respond.

18 CHAIRMAN CORY: Sure.

19 MS. SIEGEL: I think there's a lot of obfuscation
20 in this record. Really, I hate to simplify things, but to
21 me it's a simple question of your market definition, and
22 that's clear. In 1973, '74, '75, this Commission had
23 traditionally considered northern California as the market.
24 Any economist in this kind of a setting would consider
25 northern California as the market. That's a simple statement.

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1 That's the record in this Commission.

2 MR. McCAUSLAND: I assume --

3 MS. SIEGEL: All this nonsense about all these high
4 figures trown around. Of course they are. Henry Lippitt
5 will get a big fat raise in fee or commission or whatever
6 it is he gets in gas, and we've had enough gas put into
7 this record.

8 (Laughter.)

9 MS. SIEGEL: I think the facts are clear. \$1.20
10 is it.

11 MR. McCAUSLAND: I'd like to come to that conclusion
12 through my research just as you came to it through your
13 research.

14 CHAIRMAN CORY: Any other questions?

15 Thank you.

16 MS. SIEGEL: Thank you.

17 CHAIRMAN CORY: Other people have indicated they
18 want to speak. Mr. Radford of Shell?

19 MR. NORTHROP: The reporter needs to change paper.

20 CHAIRMAN CORY: Let's do that while we sit in
21 place, because we're running late. We've got the rest of
22 the agenda to go through before we go to lunch.

23 (Thereupon a brief recess was taken.)

24 --

25 --

1 CHAIRMAN CORY: Mr. Radford.

2 MR. RADFORD: Mr. Chairman, my name is Earl Radford.
3 I represent Shell Oil Company. Shell hasn't appeared in
4 these hearings. Shell is a co-lessee with Standard-Chevron
5 under the two state leases which are committed to the
6 Ryer Island unit. For the record, the numbers of those
7 leases are 3743.1 and 3896.1. I want to deal specifically
8 with those leases.

9 I haven't looked at Standard Oil Company's leases.
10 I don't know what they say. But I do know this discussion
11 that's been going on in here has no reference at all to
12 the Ryer Island leases. The terms of the leases aren't
13 in discussion. So let's get back to the leases.

14 The specific terms of these leases establish the
15 amount of money payable to the state for gas that's
16 allocated to the leases under the provisions of the unit,
17 the leases as amended by the unit which was joined by
18 this Commission. These provisions are clear and without
19 any ambiguity.

20 The lease provides that the state is to get
21 sixteen and two-thirds percent of the current market price
22 at the well and of any premium or bonus paid on all
23 non-oil production -- and gas is a part of non-oil
24 production -- that's either removed or sold from the land.
25 That covers both removal and sale. The current market

L2 1 price at the well shall be determined by the state. In
2 this case, this is your Commission. It shall not be less
3 than the highest price in the nearest field in the state
4 of California at which such non-oil production of like
5 quality is being sold in substantial quantities.

6 Now that is the contract that exists between Shell
7 and the state. You will note that that provision provides
8 that payment for royalty on gas is to be computed solely
9 on the basis of the current market price at the well, with
10 a possibility of adjustment if similar gas is being
11 produced in the nearest field to Ryer Island for a higher
12 price. Now, "the current market price at the well" is a
13 phrase of definite meaning. Nobody put into this thing
14 the concept of "the reasonable market price". That isn't
15 a part of this Ryer Island contract. It can't be written
16 in at this stage. This is a price which an actual buyer
17 is paying or is willing to pay at such point under existing
18 conditions.

19 Now the state -- and that's this Commission -- is
20 given a duty to determine the market price at the well,
21 but this determination must be in good faith, based on the
22 facts that exist. The state has presented no instance --
23 the state or its consultants -- of a buyer either in
24 Ryer Island or elsewhere in the nearest field who is
25 purchasing or even offering to purchase gas at prices in

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L3
1 excess of \$1.20. The only evidence or information in this
2 matter pertaining to Ryer Island establishes \$1.20 as the
3 present market price in that case, and that market price
4 is the basis for royalty payments under the lease. The
5 state and this Commission should now confirm such amount
6 should be used until conditions in the actual market change.

7 The state consultant did not consider the clear
8 provisions of the Ryer Island lease. He took off on a
9 tangent. He gives his opinion on what a fair market value
10 or a reasonable market value is. But he doesn't say:
11 reasonable to whom? If I rent you an apartment as a
12 landlord, I might think a reasonable rent is \$1,000, but
13 as a tenant you might think a reasonable rent is \$200.
14 "Reasonable" is "reasonable to whom" at this stage.

15 Now whatever meanings these vague, subjective
16 phrases have -- either fair market value or reasonable
17 market value -- the point that I'm trying to make is that
18 these expressions are not contained in the Ryer Island
19 lease. They're just not in there. The consultant may
20 have read such expressions in other leases at other times
21 or perhaps in gas sales contracts, such as the one that
22 was being arbitrated. That may have been an issue in that
23 arbitration, but these phrases are not part of the Ryer
24 Island lease.

25 This lease was written and submitted by the state.

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L4
1 This isn't the oil company lease that's being interpreted.
2 This is a state lease that's being interpreted. In the
3 interpretation, the constant action of the parties over
4 the years has been to interpret it as to what is actually
5 being paid in California.

6 Now the lease in this case is a contract between
7 Shell and the state. At this point new provisions cannot
8 be added to the lease without the consent of the lessees.
9 To strike out the word "market price" and put in "reasonable
10 market value" is a substantial amendment of the lease.
11 To do what you're practically asking in this, it's the
12 same effect in dollars as to strike out the royalty of
13 sixteen and two-thirds and put in thirty-three and a third.

14 The basic contract law requires consent, an
15 agreement of the parties to amend leases. Besides that,
16 the constitutional provisions which bind the state of
17 California as a government entity prevent the impairment
18 of the validity of contracts, which is, I think, what is
19 being attempted here. I submit that under the existing
20 circumstances you should confirm the \$1.20 is now the
21 market price in the Ryer Island field, and that such sums
22 should continue to be used as a basis for the royalty
23 until the circumstances change.

24 I respectfully submit that the price of gas in
25 Alaska, which is referred to in the testimony, in Indonesia

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L5
1 or Algeria or Canada, in midcontinent United States or
2 eastern United States, has really no effect. Someday they
3 may have an effect in California. Someday people in
4 California might be dealing and arguing about those
5 prices. But until that effect exists, the contract
6 provides that the current market price at the well controls.

7 I also am amazed with the submission as the current
8 market price at the well, which is what the lease provides,
9 by the mental gymnastics that people go through to get
10 the sales price by a regulated public utility to be even
11 considered.

12 I thank you very much for listening to me go on.
13 I tried to get through before your time ran out.

14 CHAIRMAN CORY: Questions?

15 Thank you.

16 Mr. Leonard Snaider.

17 MR. SNAIDER: Mr. Chairman, members of the Commission,
18 my name is Leonard Snaider. I'm a Deputy City Attorney,
19 City and County of San Francisco. I'm here representing
20 City Attorney Thomas O'Connor, City Attorney of San Francisco.

21 Our office is extremely active in public utilities
22 rate matters. We are extremely concerned about the level
23 of rates that will be set, and we have been and will
24 continue to be extremely active in making sure that the
25 consumers get natural gas at the lowest possible price.

L6

1 What we must focus on here first are: who are the
2 real parties in interest, and what is involved in this case.
3 I read a press release that seemed to think that the
4 real issue was a windfall to the gas wholesalers, versus
5 \$2 million for the state of California. Those are not
6 the real parties, and those are not the dollars involved.

7 What is involved here are the ratepayers of the
8 state of California, and the gas producers of the state
9 of California. If this staff recommendation -- and I
10 really even hesitate to call it a staff recommendation,
11 because it is the recommendation of the California gas
12 producers. It is a scandal, and I'll go into this aspect
13 later, but it is a scandal that a state agency would have
14 called upon the gas producers to be their expert consultant.

15 A question was asked by you, Mr. Cory: who could
16 you have gotten? You could have started with a state agency
17 that has some expertise. Now I respect the staff for
18 getting a consultant, because they have no expertise in
19 this matter. I respect them for getting a consultant.
20 But you could have started with the Public Utilities
21 Commission of the state of California, a sister agency
22 that has expertise in gas matters. You could have looked
23 to the Energy Commission. There are various places you
24 could have gone. But you don't go to the gas producers.

25 Now what stake do the gas producers have in this?

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L7
1 You can be certain that the rate that you adopt, assuming
2 it is the gas producers' advocated rate that your staff has
3 willy-nilly adopted -- if you adopt that rate, the gas
4 producers will use that rate to gain higher rates in the
5 future for their other sales. So although you may get
6 \$2 million for the state, other gas rates could go up as
7 much as \$90 million a year.

8 That's the benefit for PG&E -- excuse me. That's
9 the benefit for the gas producers. Who pays it? Not PG&E.
10 PG&E is a middleman in this. The ratepayers will pay it,
11 and that's where the \$90 million will come from.

12 You've asked the question: "Well, shouldn't we
13 consider the interests of all of California, versus just
14 PG&E's ratepayers?" I submit that the interests will
15 coincide, and the mere \$2 million that you may get by
16 using your gas consultant's recommendation will be nothing
17 compared to the cost to all Californians. PG&E is not
18 alone. PG&E sells their gas sometimes to Southern California
19 Gas in the past, sometimes to Edison. What you have done
20 here might well be a precedent for the rest of the state.

21 There are certain questions of law that you probably
22 should have asked. I have heard reference to an Attorney
23 General's opinion -- not an opinion; the Attorney General
24 was quite clear it was not an opinion, but just an informal
25 comment. But you should ask the Attorney General: did you

1 err in setting these rates in the past? Has the past
2 method been illegal? He'll have to tell you it wasn't.
3 And it is that precise method that PG&E is advocating here.

4 I want to give you, as well as the dollar consequences,
5 what will probably be the legal consequences if you adopt
6 the gas consultant's report, although the gas consultant's
7 report carries the name of a so-called staff report. There
8 is going to be litigation. PG&E is going to have to
9 challenge you. I'll tell you why they're going to have
10 to challenge you. PG&E, to get rates from the ratepayers,
11 has to show that they used best efforts to keep those
12 gas rates low. So PG&E will of necessity challenge this
13 determination, and boy, do they have grounds.

14 The so-called staff hearing, as I understand it,
15 was little more than a kangaroo court. The staff consultant
16 who had ex parte contact with the staff, was not even
17 permitted to be cross examined by parties. The hiring of
18 this consultant alone raises significant legal questions.
19 You will be in court if you do this. I would assume that
20 we will join PG&E. I would assume that the California
21 Public Utilities Commission will join PG&E.

22 Let's assume though that these rates do go through
23 and that the rates are passed on to the consumers. It will
24 certainly be our recommendation that -- any surcharge for
25 this staff-gas producer collusive rate will be passed on to

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L9 1 the ratepayers, but we will specifically recommend to the
2 California Public Utilities Commission that it be passed
3 on in the form of a separately stated surcharge, and that
4 that surcharge be called the Cory-Dymally-Bell Surcharge.
5 The commission can do this. They put little notes on their
6 bills for surcharges.

7 (Laughter.)

8 MR. SNAIDER: We will also suggest to the commission --
9 and this commission is here explaining to you why you have
10 an unreasonable rate. The commission can also suggest
11 that a bill insert be sent to every ratepayer explaining
12 why this massive windfall of \$90 million a year to the
13 poor gas producers should be put in. This is the way this
14 will go if you persist.

15 Frankly, I hope this isn't what you do. I hope
16 you get down to the bottom of this and find out why this
17 staff retained that consultant, because that is improper
18 on its face. After you find that out, you should censure
19 the staff, and should adopt the same rate-making method
20 that was previously adopted, and which the Attorney General
21 will tell you was a reasonable method in the past.

22 That completes my comments. Thank you very much.

23 MS. SMITH: I'm assuming you attended the August 11th
24 hearing?

25 MR. SNAIDER: I did not, and I will tell you why I

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1 did not. For the most part, the interests of the
2 ratepayers in these matters are well protected by the
3 California Public Utilities Commission, who did attend.
4 And in this instance, PG&E has put in a good-faith,
5 honest showing, and we knew this would happen. We were
6 shocked when we found out that the staff, your staff, had
7 retained Mr. Lippitt. We're used to Mr. Lippitt. He's
8 always arguing for higher prices. And he's entitled to
9 argue for higher prices for his client. He should be up
10 here as an advocate, just as I'm up here as an advocate
11 now, but not as a consultant to your staff.

12 MS. SMITH: Before you leave, I'd like to ask the
13 staff: did anyone make a request to cross examine
14 Mr. Lippitt?

15 MR. NORTHROP: From the audience?

16 MS. SMITH: Any person who offered testimony.

17 MR. NORTHROP: I don't recall. They well may have.

18 MR. SNAIDER: Didn't PG&E? Do you remember that?

19 MR. NORTHROP: Miss Smith, we had a hearing, and
20 the hearing concept was to lay the facts on the table.
21 There was also a time -- as we mentioned earlier, they
22 had 30 days to rebut any testimony given by anyone. That
23 was available.

24 MS. SMITH: Was anyone allowed to ask questions
25 of the expert?

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1 MR. NORTHROP: I don't believe so. We did not
2 conduct that kind of an adversary proceeding.

3 MS. SMITH: You do not recall whether or not anybody
4 asked --

5 MR. NORTHROP: We did not conduct an adversary
6 proceeding.

7 MR. SNAIDER: Excuse me. Miss Smith, it's my
8 understanding of what happened at the meeting that
9 Mr. Northrop specifically prohibited that.

10 MR. NORTHROP: That's correct.

11 MR. SNAIDER: The answer to your question is that
12 Mr. Northrop specifically prohibited cross examination.
13 That's your due process in the kangaroo court that was
14 held by Mr. Northrop. But these can be put on the record.
15 The Attorney General can advise you on the reasonableness
16 of that type of procedure.

17 MR. NORTHROP: It also should be pointed out,
18 Miss Smith, that there was an Attorney General who approved
19 the form of that meeting that we held.

20 MS. SMITH: Who was that?

21 MR. NORTHROP: Alan Hager from the Attorney General's
22 office made the opening statement, I believe, and instructed
23 staff on the methods of handling the hearing.

24 MR. STEVENS: Procedurally, as far as I understand
25 it, there were no denials of due process as indicated by

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1 counsel. This type of hearing does not require cross
2 examination, but it does require an opportunity for
3 rebuttal, which I understand was provided.

4 CHAIRMAN CORY: Any further questions?

5 MR. SNAIDER: Thank you.

6 CHAIRMAN CORY: Mr. Way.

7 MR. WAY: Mr. Chairman, Commissioners, my name is
8 Greville Way. I'm Chief Gas Engineer with the California
9 Public Utilities Commission.

10 The California Public Utilities Commission did
11 present two statements at the August 11th hearing. One
12 statement was by the majority of the commission, and the
13 other statement was by one of the commissioners. I think
14 with everything that's been said, I'll just cut my
15 statement short, and indicate that three of the five
16 commissioners of the California Public Utilities Commission
17 urged the State Lands Commission to adopt the \$1.20 per
18 million Btu as the fair market value of gas in northern
19 California.

20 Thank you.

21 CHAIRMAN CORY: Questions?

22 MS. SMITH: Have you studied the impact of --

23 MR. WAY: Yes, I think the statement that was handed
24 out today on behalf of the California Commission indicated
25 that if the Lands Commission adopted the recommendations of

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1 the staff, the impact could well be -- I put down \$100
2 million. It didn't seem to me it made much difference
3 whether you're talking about \$90 million, \$100 million,
4 or \$110 million. The impact would be that severe on the
5 gas customers of California.

6 MR. McCAUSLAND: You mentioned that three out of
7 five commissioners of the Public Utilities Commission urge
8 us to set a price of \$1.20. Was that done by motion of
9 the commission in public session, or was that a straw vote?
10 Did the two members who did not join in that recommendation
11 vote against it?

12 MR. WAY: Well, that's very complicated, and I'd
13 hoped we wouldn't get into it. Actually, at the time the
14 statement was presented in August, there were only three
15 commissioners sitting at that time. Two of the commissioners
16 agreed with the statement; the third commissioner did not
17 and prepared his own statement.

18 Since then I contacted the four commissioners who
19 were present at this time, and three of those four were
20 for the \$1.20; the fourth commissioner was not.

21 MR. McCAUSLAND: So there is no public record of
22 this as an official commission vote. That's basically
23 my question. But you are aware that your statement --

24 MR. WAY: Well, I don't know. See, like I say,
25 at the time I presented the draft statement to the commission,

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1 there were only three commissioners sitting at that time.

2 MR. McCAUSLAND: I understand.

3 MR. WAY: Subsequently I contacted one of the
4 commissioners who had returned from vacation, and he sent
5 a letter -- I think it was August the --

6 MR. McCAUSLAND: I understand. You don't need to
7 go into it.

8 MR. WAY: -- 11th of his concurrence in it, and
9 that's the peculiar situation we're in.

10 CHAIRMAN CORY: Could you shed some light on the
11 question -- the real difficulty I think we get into in
12 this matter is the arbitration price at Occidental some time
13 ago. If you take the standard used by that, which has
14 been approved apparently subsequently by inaction of the
15 court, and put it into this later time frame, you come up
16 with these figures. Can you help us, as someone who
17 constantly looks at the consumer side of things, how we
18 can deal with that issue. Your statement is in essence
19 silent, as if that arbitration never occurred. It's just
20 a statement: fix the \$1.20. Can you help us with how we
21 can ignore that?

22 MR. WAY: I must say that the California Public
23 Utilities Commission was a party to the court action in
24 San Diego to hopefully overturn the arbitration award.
25 It was not successful. The California Commission has over

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1 the years had a problem in its mind with regard to the
2 price for California wellhead gas, and that view has
3 generally been that it has been too high. The commission
4 at the present time has a proceeding outstanding with
5 respect to the gas produced in northern California, with
6 a view as to whether or not it would determine \$1.20 or
7 some lower price was reasonable. I don't know of course
8 what the commission is going to do. I would assume they're
9 not going to go higher. I think PG&E did present to the
10 commission the offset costs based on the \$1.20, and the
11 commission did approve that.

12 I think that with the majority of the northern
13 California producers agreeing to the \$1.20, and looking
14 at what may be the market value, it does seem to me that
15 that is the reasonable market value. I think bringing
16 in costs beyond the wellhead is really not appropriate.
17 In the staff's presentation, you're bringing in the
18 transmission costs out of Canada, the costs of El Paso
19 beyond the wellhead, and so on like that. I think if the
20 staff had wanted to do a more reasonable approach and still
21 go beyond northern California, what they should have
22 attempted to do was to determine what the wellhead prices
23 were in these various areas.

24 Of course I think the other thing you should do
25 is relate the wellhead prices to the time production started

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L16 1 because certainly the gas consumer has a right under
2 contracts that the utilities or pipelines may have to the
3 gas. The only real benefit the consumer can get is by
4 higher price for new gas yet to be discovered. It does
5 seem to me that that does have some benefit to the consumer.
6 But to just continually price up gas that's not entitled
7 to higher prices doesn't really do the consumer much
8 benefit.

9 CHAIRMAN CORY: The question of gas he's entitled
10 to: there was previous testimony that there is a public
11 policy posture of the PUC that we should minimize our
12 consumption of California gas. Can you explain that
13 policy and that concept? You just stated that the consumer
14 is entitled to that older gas. They seem to be in conflict.
15 Is that the public policy?

7 16 MR. WAY: I think at one of the hearings two years
17 ago a question was raised -- I think it was raised by
18 Henry Lippitt -- as to whether or not California gas should
19 be produced at a higher rate than it was. PG&E historically
20 has used California gas as a peaking gas. You must
21 appreciate that compared to the gas that is now received
22 from Canada, and the quantity of gas that's now received
23 from El Paso, California gas is not a major item.

24 Of course I guess the other thing is -- at least
25 looking at it in a more close-to-home framework -- the

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1 Canadians about two years ago raised the issue of curtailing
 2 gas out of Canada. Certainly that's always in the wings.
 3 Therefore it doesn't seem to me that to some extent
 4 conserving the production of California gas is an advantage
 5 to the state.

6 But as I say, I think PG&E has contract commitments
 7 to produce a level of gas. They do produce it. They do
 8 use the gas primarily for peaking purposes.

9 CHAIRMAN CORY: I guess I don't like the dilemma
 10 I'm in with conflicting instructions in terms of how to
 11 look at this problem, and I presume you find yourself at
 12 the Public Utilities Commission in similar binds from time
 13 to time. But how can they use our gas for peaking rather
 14 than constant load if it's less expensive? I would feel
 15 far more compelled to seek \$1.20 or even 90 cents if they
 16 were showing evidence of good faith in using that first
 17 and foremost, rather than using it for peaking and using
 18 the higher priced gas.

19 Am I missing something? That's where I'm really
 20 having trouble deciding who's wearing the white hat in
 21 this whole mess. I'm not sure that anybody is.

22 MR. WAY: If you cut back on your Canadian takes,
 23 which I certainly wouldn't advise doing, and if you cut
 24 back on your takes from El Paso, which is one way of doing
 25 it, and produce California gas at a maximum, I think you

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1 would exhaust California gas rather quickly, because there
2 really is not a --

3 CHAIRMAN CORY: But you've got to play that hand out.
4 If you take that statement which you just said, maybe our
5 best public policy is to jointly go to the Legislature and
6 say, "Hey, our public policy should be to not allow these
7 things to be produced at all. Let's save them." I don't
8 know. Maybe that's what we should do.

9 But again if we look at costs, it seems to me we
10 should arbitrarily set all state-owned gas at 90 cents
11 and run it out as fast as we can. I don't know the answer
12 to that.

13 MR. WAY: Well, I don't either. It's certainly
14 very complicated. But as I say, there is an advantage,
15 I think, to also being sure that you're not totally cut
16 off from your gas supplies if Canada or somebody else
17 curtails.

18 Certainly the United States government at the
19 present time is storing sizable blocks of oil just in
20 assurance that the Arabs won't cut --

21 CHAIRMAN CORY: That is just as bizarre. We're
22 pulling out of Elk Hills, so we have oil to keep the price
23 down, and then taking other oil and putting it in a hole
24 in the ground. I sort of feel like no matter what I do,
25 it's got to be wrong.

L19 1 MR. WAY: Could well be.

2 (Laughter.)

3 MR. WAY: I don't think there are easy answers to
4 any of these questions or that there is one definitive
5 answer.

6 MR. McCAUSLAND: I move we go to the Legislature
7 and cap all the wells.

8 CHAIRMAN CORY: I'm prepared to go to the Legislature
9 if I could figure out what the hell to ask them for. I
10 really can't identify what the best position for the public
11 is. I really honestly can't.

12 I see some inconsistencies. Your statement is very
13 simple and very brief and sounds very nice, but the reasons
14 you buttress it with seem to be at loggerheads with one
15 another, and I can't figure out what the hell to do.

16 MR. WAY: Well, perhaps not, but the other thing
17 you must appreciate is that gas in the ground is like
18 money in the bank. If it's not produced, it's there. But
19 you also must appreciate that the producers have expended
20 a considerable amount of money to explore and develop gas
21 that is now being produced. Certainly I think there's an
22 entitlement on their part to recover these investments,
23 so I think --

24 CHAIRMAN CORY: I'm just wondering, though: maybe
25 we should jointly go and condemn it back. Pay them what

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1 they've got in it, and get out of these inane contracts
2 we have with two middlemen. We take the people's gas,
3 sell it to two middlemen, who make a profit on it, to
4 sell it back to the people. Harry Truman had a word for
5 that.

6 MR. WAY: I think the only one who is making a profit
7 on it is the producers, because PG&E does not make a
8 profit on the product they sell as a cost of gas. What
9 they're making a profit on is their investment in the
10 facilities to deliver the gas.

11 CHAIRMAN CORY: What would be the effect of that
12 last statement, so I understand it. If we decided not
13 to produce the gas, would their capitalized cost of that
14 gathering system still be in their rate base or not?

15 MR. WAY: Yes, it would, but you must appreciate
16 it would have an impact on the consumers in that PG&E
17 would want to recover the cost of its facilities, which
18 are not being used to the extent that they had previously
19 been used. So if you did cut off the production of
20 California gas, you would have, to some extent, a rate
21 increase out of that.

22 CHAIRMAN CORY: So they've got the system rigged
23 so that no matter what, they get the rate increase.

24 MR. WAY: I'm not sure it's rigged. I think it's
25 all by law or statute as to what they're entitled to recover.

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1 If you want to do what you want to do, it would be to pass
2 something in the Legislature forbidding any more exploration
3 activities beyond developmental drilling within reserves
4 that are now known.

5 CHAIRMAN CORY: I don't know if that's what I want
6 to do. I'm trying to ask you if you have any --

7 MR. WAY: I think that would be one way of approaching
8 what you want to do. That would then maintain the
9 production from the present reserves. But it could of
10 course have an impact on --

11 CHAIRMAN CORY: -- long-term gas supplies.

12 MR. WAY: Yes, you could have an impact on the
13 availability of gas into the future.

14 CHAIRMAN CORY: Staff, why don't you bring us easy
15 problems?

16 MR. McCAUSLAND: Let me ask a question.

17 CHAIRMAN CORY: Go ahead.

18 MR. McCAUSLAND: Along that line of thinking, if
19 we stayed at \$1.20, there's relatively little incentive
20 to upgrade the production capability of the existing fields.
21 Is there any thought in your mind that there might be
22 adequate supplies under the ground -- that if the price
23 were raised those fields would be producing at a higher
24 level and consequently exhaust it sooner?

25 MR. WAY: Well, of course, that could well come to

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1 pass. I presume that there are additional reserves to be
2 found in California onshore. I don't think there are
3 vast reserves such as we developed in the Delaware Basin
4 in Texas a number of years ago, but I think there are
5 reserves to be developed within California. Of course,
6 that's what you'd really cut back on if you didn't go
7 forward with allowing the parties to negotiate to purchase
8 leases and explore for gas.

9 Informally among the staff, we have had discussions
10 with PG&E as to whether one approach might be to maintain
11 a present price for California gas, and offer a higher
12 price for new gas on or after a specific date. However --
13 I guess because of the framework of California gas pricing
14 that has gone forward over the years -- nothing ever came
15 of that.

16 CHAIRMAN CORY: Do you think we'd be better off
17 if we regulated -- by the PUC or somebody -- intrastate
18 gas prices?

19 MR. WAY: Perhaps if it was taken out of politics,
20 it might work, but --

21 CHAIRMAN CORY: How does that happen?

22 MR. WAY: -- you must appreciate what happened with
23 the Federal Power Commission. The Federal Power Commission
24 -- I guess in around 1965 or so -- came out with their
25 Permian decision, which was the first decision that regulated

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1 the wellhead price of gas in the United States. Of course
2 later they came out with the South Louisiana decision. In
3 that determination was a reserves-to-production ratio which
4 at that time was about 18 years. In each year that
5 reserves-to-production declined, the Federal Power Commission
6 did nothing. I presume that the reason they did nothing
7 was because holding the price down had a lot of consumer
8 appeal.

9 The price continued to decline. Really at that
10 time the FPC should have taken action, but I don't think
11 they were in a position to politically. That of course
12 is the gambit you start to get into in governmental
13 regulation.

14 CHAIRMAN CORY: But everybody is in essence, as
15 I hear the testimony, heaping the burden of government
16 regulation on us by saying that if we do anything other
17 than acquiesce to whatever is happening out there in that
18 marketplace as some industry people want to define it,
19 we're in essence then setting the price higher for everyone
20 else.

21 MR. WAY: Certainly the staff-recommended figures --
22 you can appreciate yourself that it seems to me, of course,
23 that Henry Lippitt ought to be paying the staff rather
24 than the other way around.

25 (Laughter.)

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1 MR. WAY: If these figures that are being recommended
2 were adopted, PG&E is certainly going to face them in
3 the arbitration proceedings that are now outstanding --
4 I believe there are three of them -- and they're certainly
5 going to face them in negotiations with the producers
6 for a price on and after July 1, 1978. That's the game
7 that you're in.

8 It does seem to me that it's preferable to leave
9 a negotiation between -- as it is in northern California
10 anyway primarily -- between PG&E and the producers as to
11 where they want to agreeably land. I think that really
12 the production from the state lands is only about four
13 percent of the total production. It's not a major share.
14 But certainly --

15 CHAIRMAN CORY: Statewide?

16 MR. WAY: Yes, I believe that's right. Certainly
17 though, statewide -- the State Lands Commission coming
18 out with some type of an edict would certainly be taken
19 by everybody as a real determination, no matter how small
20 the volume of gas is.

21 CHAIRMAN CORY: But we're back to that question then.
22 It seems to me that if we don't do something to recognize
23 the existence of the arbitration proceeding, all of the
24 other producers in the state in the next renegotiation
25 cycle are going to get credit for that arbitration decision

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1 for their gas. Is there some way that the \$1.20 has a
2 chance of prevailing, rather than the \$1.34 updated by
3 time?

4 MR. WAY: I think there was testimony here by
5 Fallin relating the arbitration award to the \$1.20. I'm
6 not sure that there is, because of the compression --

7 CHAIRMAN CORY: No. I think it's important to look
8 at the concept as I understand it. If I'm wrong, I'd
9 appreciate getting the record clarified. It is my
10 understanding that that arbitration award was derived
11 by in essence using a factor formula with some adjustments
12 afterward, but basically using Canadian gas and --

13 MR. WAY: That's my understanding, yes.

14 CHAIRMAN CORY: -- and that once that dike has been
15 breached, the consumer is going to pay a hell of a lot
16 more for gas. Won't the other producers in northern
17 California during the next renegotiation period when each
18 of these contracts come up say: "Hey, you're paying Union
19 based on that. Why not pay me?"

20 Is there some way you can stop that at the PUC, to
21 keep that from happening for the others?

22 MR. WAY: There are many views as to what the
23 California Public Utilities Commission's jurisdiction over
24 California production may be, and I really don't know --
25 without legislation.

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1 CHAIRMAN CORY: If we held off, could we jointly
2 go to the Legislature and ask for that jurisdiction,
3 because what really bothers me is that we end up holding
4 firm or arbitrarily setting what might be a low price,
5 and then have everybody else in the world end up with a
6 higher price, and us being the only ones not getting it.
7 That seems to me to be a distinct possibility that nobody
8 wants to consider.

9 If we bought some time, would the PUC support that,
10 do you think?

11 MR. WAY: We'd certainly discuss it with the
12 president of the commission. I don't think though that
13 really with respect to the periods of time that you're
14 determining the value of the gas at, you would be getting
15 a price any different from the majority of the producers.
16 Whatever the price may be starting July 1, 1978, you will
17 know and can evaluate that price into the future.

18 CHAIRMAN CORY: But if we hold at \$1.20, everybody
19 else gets \$1.91 come July 1.

20 MR. WAY: Right, but you can a. , because these
21 prices, as I gathered from what the Executive Secretary
22 read, are only good up until July 1, 1978. I could be
23 wrong.

24 MR. FALLIN: Mr. Chairman, I could simplify that
25 a little bit. The \$1.20 price was reached after the

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1 arbitration. That was reached with every one of those
2 gas producers knowing that that result had been reached
3 in the arbitration. The numbers you're fixing here will
4 expire at roughly the same time all these renegotiated
5 contracts will. You're going to have another prevailing
6 price to look at at that time. You're not going to get left
7 behind what they do.

8 CHAIRMAN CORY: But we're still, on July 1, 1978,
9 left with the same problem.

10 MR. WAY: We all may be back.

11 (Laughter.)

12 CHAIRMAN CORY: That's delightful.

13 Okay. Any questions by the Commissioners?

14 Mr. Way, I appreciate your time.

15 MR. WAY: Thank you very much.

16 CHAIRMAN CORY: I would appreciate it if you could
17 pursue with the commissioners if they have any worthwhile
18 suggestions. Thus far the conversations I have had with
19 one of the commissioners really hasn't led me to any
20 great solution to the problem. We just sit here each time
21 wringing our hands, saying "Gee, it's terrible you have
22 that dilemma," with sort of an understanding that "it's
23 delightful that you have it rather than me." It seems to
24 me that there needs to be some sort of a legislative
25 solution to bring this thing into a realistic focus where

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1 the public interest might be served.

2 MR. WAY: We'll discuss it with our commission and
3 then be in touch with you.

4 CHAIRMAN CORY: Okay. Thank you.

5 Mr. Peckham.

6 MR. PECKHAM: My name is Robert Peckham. I'm
7 representing Chevron U.S.A., Inc., formerly Standard Oil
8 Company of California.

9 Chevron objects to the recommended schedule of
10 natural gas values appearing in calendar item number 19
11 for the reasons heretofore expressed by Chevron in its
12 testimony presented during the pendency of the staff's
13 hearings. My appearance here today and this statement
14 is simply made to complete the administrative record.

15 I have nothing more to submit, Mr. Chairman.

16 CHAIRMAN CORY: Any questions?

17 Thank you very much, Mr. Peckham.

18 The only other variable that needs to be put in the
19 record, which may or may not affect our alternatives, is
20 that both the House version and the Senate version of the
21 bills which are being vociferously debated, as I understand
22 it, have some mechanism to provide for a freeze or
23 regulation of intrastate gas, which has thus far not
24 occurred. So if we choose not to act, which is clearly
25 that which political wisdom would dictate, we run a certain

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L2
1 risk of having our options curtailed or our decision made
2 by someone else for better or for worse.

3 MR. FALLIN: Mr. Commissioner, I might address that
4 just briefly. You've got to remember that the mechanism
5 would be that it would be Standard's price which would be
6 fixed, which would be the \$1.20. If in fact that occurs,
7 there's nothing you can do here that's going to change it.

8 In other words, you could act today, and if they
9 set a price that says that the intrastate value would be
10 frozen as of last spring, your action will not affect that
11 one way or the other.

12 CHAIRMAN CORY: But the draft, for your information,
13 does not propose that it go back to the time including the
14 entire time frame that we're dealing with here.

15 MR. FALLIN: No, that's probably true.

16 CHAIRMAN CORY: So that it may or may not preclude
17 the retroactive portion of this, and that's something I
18 wanted on the record, so the Commissioners knew.

19 I have not spoken with the attorneys in Washington
20 today. I spoke with them late Tuesday and, I think, on
21 one occasion on Wednesday. It was unclear at that time
22 how that particular provision might be dealt with in the
23 so-called Jackson compromise that was being dealt with.

24 MR. FALLIN: It's also important to note that it
25 won't be a direct relationship. What they'll be ruling on

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1 is gas sales price. Whether or not that would affect a
2 royalty interpretation question which you wanted to have
3 retroactively effective, I think, is still open.

4 CHAIRMAN CORY: The point is that the final language
5 is not there. We may or we may not be affected, though
6 there is some indeterminate risk, as there is in all of
7 our decisions.

8 MR. McCAUSLAND: Mr. Chairman, I have to say that
9 in all the board and commission meetings that I have sat
10 on in the last two years, I've never heard testimony as
11 pointedly attack the professional judgments underlying
12 a decision. We've had vociferous debate in this Commission
13 on the question of throughput, and after extensive testimony
14 before us and extensive review of all available literature
15 by each member of the Commission, we took an action on
16 throughput. At that point any attacks focused on our
17 professional judgment.

18 I'm just not willing today, on the basis of a
19 two-page background report and an hour of totally negative
20 testimony, to adopt the staff recommendation, without
21 personally reviewing the record.

22 CHAIRMAN CORY: What kind of time frame?

23 MR. McCAUSLAND: Tomorrow? The next day? I don't
24 know how long the record is, because I've never seen it.

25 CHAIRMAN CORY: Can the staff give some indication

1 of the order of magnitude or size of the record?

2 Are we looking at a month, the next Commission
3 meeting? Shall we set a special order?

4 What is the size of the record?

5 MR. EVERITTS: It's about that much (indicating).

6 MR. WILLARD: The hearing was 140 pages.

7 CHAIRMAN CORY: Does that include the rebuttal
8 testimony?

9 MR. WILLARD: No.

10 CHAIRMAN CORY: How much is that?

11 MR. NORTHROP: I would say, Mr. Chairman, approximately
12 50 to 60 pages in rebuttal. So we're talking about 200
13 pages.

14 MR. McCAUSLAND: Does that set forth the methodology
15 that was utilized and consider the other kinds of
16 methodologies that have been used, so that a layman such
17 as myself could understand the relationship between this
18 formula approach and prior formula approaches?

19 MR. NORTHROP: Do you care to address yourself to
20 that, Mr. Everitts?

21 MR. EVERITTS: It sets forth very clearly what we
22 did and the source of our data.

23 MS. SMITH: Were memoranda of points and authorities
24 submitted?

25 MR. NORTHROP: I beg your pardon?

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1 MS. SMITH: Memoranda of points and authorities
2 on the definition --

3 MR. NORTHROP: Mr. Stevens, that's a legal matter.
4 Can you answer that?

5 MR. STEVENS: No, I think this was not briefed as
6 a legal question.

7 MS. SMITH: What about market price?

8 MR. STEVENS: This was treated as an object of
9 expert testimony, rather than a question of law, is my
10 understanding

11 There would be a discussion in the record. It would
12 not be based on case authority, because apparently there
13 isn't very much if any.

14 CHAIRMAN CORY: How long would it take if you
15 anticipate a request for a formal AG's opinion on the
16 question of the definition of the marketplace and the
17 legal propriety of including the Canadian price? What
18 is the normal time frame on that?

19 MR. STEVENS: I think we could supply you with a
20 letter on that subject within a week or so at the most.
21 If it were to take the form of a formal opinion, it would
22 be somewhat longer: perhaps as much as a month, because
23 of the reviews these things have to go through, and the
24 necessity of soliciting views.

25 MR. McCAUSLAND: Mr. Chairman, I don't know if it's

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1 appropriate to ask for an executive session or not, but
2 I would really like to explore the situation surrounding
3 the selection of the consultant and the publicly noted
4 criticisms that have been made here in this forum today,
5 and whether or not we can assure ourselves that we have on
6 the record the kinds of balanced material that we should
7 have before us for making this decision, which is a major
8 one.

8
9 Going back to throughput, we read every legal brief
10 that had ever been prepared by any side on that issue,
11 and we had as close as we could come to a well informed view
12 of the universe of the problem we were discussing.

13 On this one, everyone is telling me, I guess, that
14 if I look at the hearing record, I'm going to have a hard
15 time seeing through a biased presentation. I don't know
16 if I'm misunderstanding what I heard here this morning,
17 but it makes me very nervous.

18 CHAIRMAN CORY: The question is: what kind of time?
19 I'm not sure that an executive session would be appropriate
20 at this point in time, because I'm not sure the nature
21 of --

22 MR. McCAUSLAND: I'd like to review the record.

23 CHAIRMAN CORY: The record is there. It's a question
24 of whether we put it off till the next meeting.

25 MS. SMITH: If Mr. Stevens from the Attorney General's

L34
1 office believes that an opinion could be prepared within
2 a month, then I think a month's delay would be appropriate,
3 since there's no legal discussion of the issues that are
4 involved in making this decision in the record.

5 MR. STEVENS: Mr. Chairman, one possible alternative
6 in addition, of sorts, would be the possibility of a
7 meeting with counsel, within the context of attorney-client,
8 in order to discuss the authority of the Commission, since
9 this is a pending proceeding which is before it. I think
10 this is the only circumstance under which an executive
11 session could be held.

12 CHAIRMAN CORY: I am not comfortable with dealing
13 with this issue in an executive session unless there is
14 specific litigation the other Commissioners wish to discuss.
15 It seems to me the real issues are here before us and the
16 parties are here. I'm somewhat confused as to how we
17 can best serve our constitutional responsibilities and
18 the public interest, but I'm not sure that the public
19 interest would at all be served if we started meeting in
20 executive session. I think that would be highly misinterpreted.
21 I understand what you're saying, but I just think that
22 there --

23 MR. McCAUSLAND: My sole suggestion had to do with
24 the review of a personnel matter, and I withdraw the
25 suggestion.

L35
1 CHAIRMAN CORY: Was the consultant involved in the
2 arbitration of Occidental?

3 MR. EVERITTS: Yes.

4 CHAIRMAN CORY: I think he was selected -- I'm
5 guessing, just talking out loud -- I would guess that he
6 was selected because he was involved in that thing that
7 went to arbitration, and the arbitration was in fact
8 upheld by the court. The staff, as was suggested, was
9 functioning as a landowner, trying to get the guy who could
10 provide the best position for maximum revenue.

11 MR. NORTHROP: We see that as our function.

12 CHAIRMAN CORY: I think that's probably what they
13 should have done. Our job is to temper those decisions
14 with the appropriate things that the law will allow us to
15 do. I think that's the question that's here, but I don't
16 think there was anything untoward or inappropriate. I
17 don't know what the man charged. One of the comments that
18 perhaps he might have been willing to pay the state for
19 the opportunity is perhaps well taken, maybe not. But
20 few people contribute their time unless they have a very
21 specific probability of return. So I'm not too chagrined
22 at what happened. I think it's somewhat an overreaction
23 to suggest that something untoward was going on.

24 What then? Next month? Leave it until Commissioners
advise the staff that they are ready to deal with the issue?

L36
1 MR. McCAUSLAND: I'm willing to submit to the call
2 of the Chair on this particular matter. At any point in
3 time at which I've had a chance to review the record,
4 I'll be happy to make a decision.

5 CHAIRMAN CORY: If there was --

6 MS. SIEGEL: Mr. Cory, excuse me. May I request
7 that in any rescheduling of this meeting, the parties
8 be notified, so that we can be present with our lawyers
9 in order to act based on your decision?

10 CHAIRMAN CORY: Any of those who would like that
11 specific notice, if they could please contact the staff
12 as to how and where you would like that notice, so we
13 can provide that for you.

14 I would guess that we are not going to know any
15 more about what the federal legislation is going to be
16 until the last possible moment, and we could not act
17 prior to that in any event if we don't act totally blindly.
18 We could monitor the phone and wait for them to say, "You'd
19 better do something" -- that's probably not feasible. So
20 maybe we should just pay our dollar and take our choice
21 on that end of it.

22 So if we want to put it off, I assume we could have
23 an emergency meeting. If there were some new factors that
24 came up that would compel us to act, we could probably
25 proceed with some emergency meeting that way and notify the

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1 appropriate parties. Otherwise, do it next month?

2 . . SMITH: Yes.

3 CHAIRMAN CORY: You wish a formal Attorney General's
4 opinion on that, and you will meet with Jan after the
5 meeting to frame the question?

6 MS. SMITH: Yes.

7 MR. STEVENS: Mr. Chairman, if I may, in the event
8 that such an opinion is prepared, at this time I'd like
9 to solicit the views of Mr. Fallin and Mr. Snaider and
10 others in the audience who have testified or may wish to
11 contribute at the earliest possible time. Obviously the
12 question hasn't been precisely framed, but I think we're
13 pretty much aware of what the issues are.

14 MR. FALLIN: Mr. Stevens, I think I can indicate
15 at least for myself that if we get a copy of your opinion,
16 we can probably turn it around and have our comments and
17 expansion on anything you do within a few days.

18 MR. STEVENS: We would not submit a draft. We do
19 solicit views on the question.

20 CHAIRMAN CORY: Mr. Stevens is suggesting that
21 anyone in the audience who wishes to give the Attorney
22 General's staff the benefit of their views prior to them
23 writing an opinion, they are willing to receive any
24 points and authorities and information you would like to
25 submit. He is not, I don't believe, suggesting that they

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1 are going to deviate from their normal policy in allowing
2 you to participate in the draft. I hope that's perfectly
3 understood by everyone. I think that tends to be a standard
4 practice of the Attorney General's office.

5 MR. STEVENS: Yes.

6 CHAIRMAN CORY: Okay.

7 We may now proceed to item 20, which is off the
8 calendar, so we will go to item 21.

9 MR. NORTHROP: Mr. Chairman, you have in front of
10 you a draft document on the Consolidation Report involving
11 all the lands in the jurisdiction of California. We would
12 like permission to put this out for public comment.

13 CHAIRMAN CORY: Without objection, it will be so
14 ordered.

15 Item 22, City of San Mateo.

16 MR. NORTHROP: This resolves two lawsuits and some
17 property matters.

18 CHAIRMAN CORY: The Attorney General is happy with
19 what we're doing here?

20 MR. STEVENS: Yes, we have reviewed that transaction.

21 CHAIRMAN CORY: The compromise settlement. Without
22 objection, it is approved as presented.

23 Item 23.

24 MR. NORTHROP: Mr. Chairman, item 23 is a housekeeping
25 cancellation of an agreement, because one agreement covers

L39
1 two particular pieces of property.

2 CHAIRMAN CORY: Anybody in the audience on item 23?
3 Without objection, item 23 will be approved as
4 presented.

5 Item 24 is an authorization to negotiate a cutting
6 line agreement on burned land in Siskiyou County. Anybody
7 in the audience on this item?

8 Without objection, item 24 will be approved as
9 presented.

10 Item 25: City of Benicia dredging permit. Is there
11 anybody in the audience on item 25?

12 Without objection, the permit will be approved as
13 presented.

14 Item 26: authorize acceptance of quitclaim of
15 American Thermal Resources, Inc. Is there anybody in the
16 audience on item 26? Any questions by members?

17 Without objection, item 26 will be approved as
18 presented.

19 Item 27.

20 MR. NORTHROP: Mr. Chairman, item number 27 involves
21 two prospecting permits for approximately 3,461 acres in
22 Boggs Mountain State Forest. This property is owned by
23 the State Department of Forestry, and is putting up a
24 prospecting permit to cover the entire parcel.

25 We feel it would be difficult to call it a known

L40
1 geothermal area, because it is three miles to the nearest
2 producing well.

3 CHAIRMAN CORY: The distinction being that if it's
4 a known geothermal area, there are different revenues
5 which accrue to the state, but if it's a prospecting permit
6 where a guy goes out wildcatting, he in essence has
7 exclusive rights to the entire area if he happens to find
8 something. Is that it?

9 MR. NORTHROP: If it's a known geothermal area,
10 then we have different methods of leasing -- by net profits
11 or some other method -- but this is the method prescribed
12 by law.

13 CHAIRMAN CORY: The difficulty which I have with
14 this concept is that we are in essence giving a preferential
15 priority right over a relatively large piece of property
16 for the prospecting function: 3400 acres.

17 How much land is involved in our entire known
18 geyser area at the present time?

19 MR. NORTHROP: I'll refer that to Mr. Everitts.

20 MR. EVERITTS: We're probably talking about 4500,
21 5,000 acres in the known area.

22 CHAIRMAN CORY: And this is 3400, about 75 percent
23 of the existing area, that we would be giving a preferential
24 treatment.

25 MS. SMITH: Do we have any discretion as to whether

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1 we do this?

2 MR. NORTHROP: No, we have no discretion.

3 CHAIRMAN CORY: This is Department of Forestry
4 property, not ours. But by statute, we administer it.

5 MR. NORTHROP: I'm advised by counsel that the
6 language is that we "shall issue".

7 MR. McCAUSLAND: I think we should advise the
8 Legislature of our concern.

9 MR. NORTHROP: We had a bill in last year that was
10 not very successful, but we shall try again.

11 MS. SMITH: I think we should go to the Legislature
12 and ask them to change the statute so that we do have some
13 discretion.

14 CHAIRMAN CORY: There is someone who wishes to
15 speak to us on this item: Clyde Kahn; is that correct?

16 MR. KUHN: Thank you, ladies and gentlemen. My
17 name is Clyde Kuhn, a member of the Society for California
18 Archaeology, but I'm not representing that organization
19 today. I'm speaking as a member of the scientific
20 community.

21 It is my understanding of the proposed undertaking
22 as outlined in the draft final EIR that the total acreage
23 of Boggs Mountain will be open for geothermal prospecting
24 under the State Lands Commission -- that's exactly what
25 you said. The draft EIR clearly indicated that physical

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1 manifestations of past human activity -- or in other words,
2 archaeological, historical and prehistoric features -- are
3 present within the boundaries of the entire state forest.
4 These concerns were brought forth before the State Lands
5 Division in a review of the draft EIR. The Lands Division
6 commissioned a limited archaeological study of proposed
7 drill sites within the forest, but no steps, to my
8 knowledge, have been taken to evaluate similar features
9 within the entire forest, in spite of the fact that the
10 acknowledged area of permit authorization is the entire
11 forest, and not only specific drill sites. Furthermore,
12 the Lands Division-commissioned archaeological study was
13 so limited in scope that sufficient data was not collected
14 with which to adequately evaluate the significance or scope
15 of cultural resources at the specific drill sites.

16 Lastly, the Native American community, and
17 specifically the California State Native-American Heritage
18 Commission, has not been consulted in the identification
19 of possible sites of cultural heritage within the area of
20 potential impact, nor in the assessment of potential impact
21 upon such features growing out of or reasonably expected
22 at this stage of the undertaking.

23 The State Lands Division's final EIR does not
24 address these issues. The final EIR does contain a copy
25 of the archaeological report commissioned by the Lands

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1 Division, and references such study for all concerns
2 expressed with respect to cultural and scientific heritage
3 as if all issues of concern had been solved by this clearly
4 limited study. They have not.

5 It is my understanding that state agencies -- and
6 specifically the Office of Historic Preservation of the
7 Department of Parks and Recreation, and the Executive
8 Secretary's office of the Native-American Heritage Commission
9 -- as well as archaeologists and the general public, have
10 expressed concern over these issues to the Lands Division.
11 Mitigation measures contained in the final EIR do not set
12 forth adequate steps for the evaluation, protection and
13 recovery of cultural and scientific value within the area
14 of permit authorization. The steps are not adequate to
15 evaluate these values within the area of current
16 authorization and the project's acknowledged potential
17 environmental impact in a manner consistent with CEQA and
18 state EIR guidelines.

19 To rectify this inadequacy, the entire project
20 surface area -- in this case the 3,462 acres -- of potential
21 permit has to be examined and inventoried in detail on
22 foot under the supervision of archaeologists. An
23 identification of the social, scientific and cultural
24 values of the project area must be made on the basis of
25 some provisional understanding of the temporal and spatial

L44
1 circumstances and environmental setting of past human
2 activity.

3 Such understanding is obtained through an
4 interdisciplinary and temporal overview of the regional
5 non-cultural environment, history and ethnology. Upon this
6 understanding, a determination of the significance of
7 cultural resources and non-cultural physical and environ-
8 mental associations essential to understanding the context
9 and duration of past human activity within and adjoining
10 the project area has to be made well in advance of the
11 permit decision and incorporated in the published evaluation
12 of environmental impacts, in order to afford the general
13 and professional public the opportunity to consider all
14 potential impacts, the significance of threatened resources,
15 and all methods available to avoid or minimize adverse
16 impact.

17 In addition, concerned members of the local Native
18 American community and the State Native-American Heritage
19 Commission must be consulted in order to ascertain whether
20 or not areas of cultural significance to that community
21 will be impacted by the project.

22 I urge you to suspend any permit plans for Boggs
23 Mountain for geothermal purposes until such time as a
24 complete cultural resource surface intensive examination
25 of the proposed project area has been made.

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L45
1 I would also like to take this opportunity to
2 express dissatisfaction over the Lands Division's treatment
3 of and response to concerns expressed over this proposed
4 undertaking. It is not in the public interest to sacrifice
5 the people's heritage or to set aside the concerns of the
6 public for the sake of administratively expediting an
7 energy undertaking of considerable anxiety not only to
8 the local community, but to the community at large of the
9 state.

10 Nevertheless, my interaction with the Lands Division
11 has indicated a deliberate and consistent insensitivity
12 to public concerns and the public interest. For example,
13 I have been advised by Mr. Northrop that expressing such
14 concerns is (quote) "not in keeping with law" (unquote),
15 and it is not in the public interest to fund a comprehensive
16 study of cultural resources at Boggs Mountain, in spite
17 of the fact that the project's acknowledged potential
18 impact could very clearly affect such resources.

19 Who in the heck is Mr. Northrop that he has the
20 right to dictate the public interest? I understand that
21 these interests are still sovereign to the people and
22 their elected representatives in accordance with the U.S.
23 Constitution and the constitution of the state of California.

24 A last example -- but by no means exhausting all
25 possible examples of the Lands Commission's apparent

L46
1 circumvention of concerns -- is selective editing of
2 concerns expressed in response to the Boggs Mountain
3 draft EIR in the final EIR. How can the public possibly
4 hope to assess the environmental issues and impact of
5 such an undertaking in accordance with CEQA guidelines
6 if the Lands Division exercises a purposeful censorship
7 of this nature?

8 CHAIRMAN CORY: Are there questions by members of
9 the Commission?

10 MR. McCAUSLAND: One of the findings which we have
11 to make on page 73 of our agenda is to certify that the
12 final Environmental Impact Report has been completed in
13 compliance with CEQA, as amended, and the state guidelines,
14 and that the Commission has reviewed and considered the
15 information contained therein. I believe that your testimony
16 suggests that the information contained therein is --

17 MR. KUHN: Not to my understanding, sir.

18 MR. McCAUSLAND: -- less than adequate.

19 MR. KUHN: Not to my understanding. Certainly not
20 to my definition and understanding.

21 CHAIRMAN CORY: Mr. McCausland is suggesting that
22 your position is that the EIR is inadequate and insufficient.

23 MR. KUHN: That is correct.

24 MS. SMITH: Jan, have you reviewed the EIR?

25 MR. STEVENS: I have not, Commissioner. I did have

L47
1 a question with respect to the nature of the project, which
2 perhaps could be cleared up now. It's my understanding
3 that this is a so-called first stage EIR, and that if
4 more intensive development and exploration were to occur,
5 another EIR would have to be prepared. There is substantial
6 authority to that effect.

7 It is further indicated, both in the Commission's
8 action and in the Executive Officer's report, that only
9 two drill sites of approximately one acre each would be
10 used in this initial exploratory stage. There is a little
11 ambiguity on that, because the response to the EIR, which
12 appears on page 12 of "Issues and Responses", says that
13 five potential drill sites were selected jointly. I wonder
14 if that could be cleared up: if in fact we're only
15 authorizing two drillings in approximately one acre
16 localities at this time within the scope of this particular
17 EIR.

18 MR. EVERITTS: The sites were originally selected
19 on the basis that they were badly damaged from timber
20 operations, or -- Forestry pointed out: here are five spots
21 that we don't mind if you drill wells on, because it isn't
22 going to affect our forest operations. So based then on
23 the preliminary work, they plan on picking two of the five
24 sites to drill on.

25 CHAIRMAN CORY: Where is the Division of Forestry?

1 What agency? Is it within the Resources Agency?

2 MR. EVERITTS: It's the Department of Forestry now.

3 MR. NORTHROP: Right, the Department of Forestry
4 now. It was in Conservation, but now Mr. Moran heads it
5 up in its own area.

6 CHAIRMAN CORY: And Knox is with Parks and Rec?

7 MR. NORTHROP: Yes, he is with the Department of
8 Parks and Recreation.

9 MR. KUHN: Mr. Cory, could I say something?

10 CHAIRMAN CORY: Yes.

11 MR. KUHN: This whole process, the whole issue of
12 where the wells are going to be drilled, is really
13 irrelevant to the problem at the present time. The permit,
14 as I understand it, involves geophysical exploration
15 throughout the entire state forest. Is that correct, sir?

16 MR. EVERITTS: The terms of the lease, or the
17 conditions which Forestry set down, were that it would be
18 throughout the forest, but we could not get off of existing
19 roads. No new roads could be constructed.

20 CHAIRMAN CORY: Let me back up so I can understand.
21 This is Department of Forestry property. They decided
22 what they wanted to do, and then they bounced it to us?

23 MR. EVERITTS: No, sir. They own the land and the
24 minerals, but by Public Resources Code the State Lands
25 Commission has the responsibility of administering those

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1 minerals under terms and conditions set by the surface
2 owner -- or Forestry.

3 CHAIRMAN CORY: But in terms of trying to put it
4 in perspective for the public here, we are functioning in
5 a limited sense under the direction of Forestry; is that
6 correct?

7 MR. EVERITTS: They have written their own regulations
8 and established conditions to be used, and they stated
9 they're anxious to determine whether there are such
10 geothermal resources there.

11 MR. KUHN: Can I respond to that?

12 CHAIRMAN CORY: Yes.

13 MR. KUHN: To my understanding, sir, it's a very
14 clearcut case. The State Lands Commission proposes to
15 give a permit for exploration of this territory under the
16 jurisdiction of another agency.

17 CHAIRMAN CORY: Let me try to clarify that. As I
18 understand it, we are required by law to issue a permit.
19 Now is that correct, or do we have discretion?

20 MR. HIGHT: Mr. Chairman, the section reads that
21 the Commission "shall execute lease to qualified applicants"
22 a prospecting permit to qualified applicants. So yes, the
23 discretion seems to be very limited.

24 CHAIRMAN CORY: It is bad law. That's what we
25 started with.

L50
1 If you would come in here first and ask for it,
2 the prospecting permit --

3 MR. KUHN: In other words --

4 CHAIRMAN CORY: -- we would either have had to
5 exclude you as being an unqualified applicant, or we'd
6 have to issue you the permit.

7 MR. KUHN: In other words, you have no option when
8 someone approaches you with an application.

9 CHAIRMAN CORY: Yes. We tried to get that changed
10 in the Legislature last year. That which Mr. Northrop
11 says the law is -- he doesn't like it, but he has to do it.

12 MR. KUHN: Given the fact that the permit will have
13 to be issued, there still is a necessity of meeting certain
14 standards.

15 CHAIRMAN CORY: That's correct, and we'd like to
16 use those as best we can.

17 MR. KUHN: Again, to go back to the nature of the
18 undertaking, there will be certain specific sites,
19 apparently two sites for the drilling of deep geothermal
20 wells. But there are other operations which will occur
21 within the boundaries of the forest under the terms of the
22 permit, which would not occur if the permit were not given:
23 geophysical explorations.

24 It seems they may involve only current roads. There
25 is no evidence indicated, to my knowledge, in the final or

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1 draft EIR that would make that specifically spelled out,
2 to indicate the only other impacts that would occur.

3 MR. EVERITTS: Well, as a matter of record, that
4 is a fact. Further, the applicant is aware of it and
5 knows that they will have to do a detailed archaeological
6 study at the actual drill sites picked. We certainly have
7 no objection, and the applicant has no objection, to having
8 some qualified archaeologist observe these things.

9 MR. KUHN: There will be certain environmental
10 impacts that do not seem to have been addressed as far as
11 archaeology and heritage concerns that need to be addressed,
12 according to my understanding of CEQA, in that environmental
13 document. If I'm wrong, fine. But it seems to me that
14 I am right, and this information has indeed not been met
15 in the manner that is expected.

16 CHAIRMAN CORY: Mr. McCausland has a question.

17 MR. McCAUSLAND: Page 6 of the executive summary
18 of the Environmental Impact Report, which happens to be
19 the only portion of the Environmental Impact Report that
20 I have reviewed, stipulates quite clearly in the eighth
21 line: "No impact will occur on sites of archaeological
22 and/or historical value, because none exist on the sites
23 specific", period. That is a fairly closed-loop piece
24 of information. Can someone stipulate to that?

25 MR. STEVENS: I believe it's also set forth in the

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1 conditions imposed by the Department of Forestry, which
2 is Exhibit C here: well-drilling sites for each well have
3 to be developed and approved in writing before operation
4 begins. This applies to drilling.

5 There is an additional requirement that no new roads
6 will be constructed for geologic or seismic activities.

7 MR. McCAUSLAND: But I'd like an answer to my
8 question. Someone someplace has specified in writing,
9 and I'm about to say that they specified the right thing.
10 He specifically states: "No impact will occur on sites
11 of archaeological or historical value, because none exist
12 on the sites specific."

13 CHAIRMAN CORY: And the gentleman who is here from
14 the public is suggesting that that is contrary to fact.

15 MR. KUHN: Yes. As a matter of fact, the final
16 EIR contains information -- the Lands Division asked to
17 have a consultant actually look at the site, and there
18 was cultural debris present on some of the sites. I don't
19 remember how many of the five --

20 MR. NORTHROP: Mr. McCausland, in response to your
21 question, Mr. Charles Priddy and Mr. Don Hoagland worked
22 on that EIR and are familiar with it. They can probably
23 address that, because they were on the ground.

24 MR. HOAGLAND: My name is Don Hoagland. I'm with
25 the geothermal unit.

1 Mr. McCausland, in partial response to your question,
2 two things have occurred here: (1) the draft seeking
3 certain information on environmental impacts, and then
4 the hearing process in which new facts evolved in the
5 final. The statement you read, I admit, is a little bold.
6 In subsequent information we did determine, through the
7 study mentioned by Mr. Kuhn, that there were some
8 archaeological values found at two sites. I think
9 Mr. Everitts indicated that subsequently we suggested
10 that a limited study be done on those two sites if those
11 sites are selected after surficial exploration.

12 I think it should be pointed out that this is an
13 exploratory permit, and as such, we don't know at this
14 time which of the sites will be selected. The permittee
15 cannot walk on the land or do any surficial exploration
16 until he has a permit from this Commission. Therefore,
17 to talk about the impacts on any of the sites -- we don't
18 know which sites are going to be selected.

19 CHAIRMAN CORY: I'm not willing to take this matter
20 up at this time. There are questions as to the sufficiency.
21 I am philosophically disposed against prospecting permits
22 generally, which may in fact be clouding my judgment.
23 For that reason, what I'd like to do is put it over, if
24 the other Commissioners agree, for some unspecified period
25 while we try to resolve what the facts are.

1 I think if both Mr. Kuhn and Mr. Northrop and
2 Mr. Hoagland in future meetings try to listen to each
3 other, I think we as a Commission will have to spend less
4 time on this item, because I detect a certain communication
5 problem in terms of what was said about what we can and
6 cannot do and in terms of our concern with the law. I
7 detect a certain amount of lack of listening on the part
8 of our staff in terms of what he was trying to tell us.

9 If we both do that, maybe next time this is before
10 us, it can be disposed of with a little more alacrity.

11 I'm not mad at anybody, but there just seems to
12 be a mild communication problem. I think I know
13 Mr. Hoagland and Mr. Northrop and where their heads are at.
14 I'm thinking that when Mr. Northrop refers to the law,
15 it's because he's a little ticked off. He doesn't like
16 the law the way it is, and he tried to change it and can't.

17 You perhaps reacted to him as being hostile to
18 your purposes. I hope that's not the case, and I hope
19 you can get together. If you have trouble, give me a
20 call, and I'll try to negotiate those differences.

21 MR. KUHN: I'll make myself available. Thank you.

22 CHAIRMAN CORY: If the staff would try to get at
23 that and get back to the Commissioners as to the adequacy
24 of the EIR before we recalendar, that will give us a
25 clearer understanding of where we are. At the same time we

1 should probably give the Commissioners a staff report
2 as to where the difficulty of changing the statute in
3 this matter came from and how we might overcome those
4 difficulties.

5 Moving right along, item 28: request for authoriza-
6 tion to offer by competitive bidding --

7 MR. CONFORTE: Excuse me. Could I address the
8 issue of Geothermal Kinetics' permit?

9 CHAIRMAN CORY: Sure. We've blown enough of the
10 day.

11 (Laughter.)

12 MR. CONFORTE: I don't wish to take up a lot of
13 your time.

14 MR. NORTHROP: Could you give your name, please?

15 MR. CONFORTE: My name is Frank Conforte, and I
16 work for Geothermal Kinetics.

17 The discussion has centered on the archaeological
18 resources at the sites. It has also been pointed out
19 that geophysical exploration would occur over the entire
20 state forest.

21 Well, as has been pointed out, it wouldn't actually
22 occur over the entire state forest, because no new road
23 construction would be involved. I think from that,
24 archaeological damage is not really a problem.

25 In terms of the drill sites that were addressed,

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1 the archaeology report that was done by a member of --
2 I believe it was the Sonoma State archaeology department
3 as a result of the comments made at the hearing on
4 January 13th, 1977, listed the findings at these five sites.
5 There were some archaeological findings. Those are, for
6 drill site one, one flake of obsidian and one unmodified
7 obsidian pebble located at the site. Drill site two was
8 eliminated and therefore not considered. Drill site three:
9 two obsidian flakes and one unmodified obsidian pebble
10 were discovered in the bulldozer backdirt. This had
11 apparently already been severely disturbed by logging
12 operations.

13 Drill site four: two artifact fragments were noted
14 in the area, as well as one small obsidian flake. Drill
15 site five: one projectile point fragment was noted in the
16 area.

17 In addition to the drill sites, the top of the
18 low ridge between drill sites four and five was examined --
19 very briefly examined, to use the exact wording. The
20 entire ridge top had been recently burned and cleared.
21 One projectile point fragment was noted in the cursory
22 examination of this area.

23 I guess what I'm basically asking is: this application
24 has been in process for quite a long period of time, and
25 I understand fully your desire to ensure that the requirements

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1 of CEQA and of your own public trust are met. When no
2 time limit for this continuance of the process seemed to
3 have been arrived at, I was wondering if that was possible.
4 Is it possible to establish some time frame within which
5 we can know whether this is going to go? We're quite
6 anxious. We've been waiting for years.

7 ACTING CHAIRMAN McCAUSLAND: The specific answer
8 to your question is: yes, it would be possible to set a
9 time certain. The secondary answer to your question is
10 I believe that the Chairman requested staff to also report
11 to him on an equally important matter to him, which
12 represents the entire question of the Commission's posture
13 on the future of leases or prospecting permits that have
14 such long-term ramifications to the future contractual
15 relationship between the state and prospecting parties.
16 So I believe that to answer your question in all fairness:
17 while it is possible for us to set a time certain, it is
18 not the intent of the Commission at this time to limit
19 its options.

20 MR. CONFORTE: I understand your concern about the
21 leasing process in terms of what your obligations are to
22 the citizens of the state of California. Even in regard
23 to that, I had hoped that this might be possible to get
24 a time certain. Apparently you indicate it is not.

25 ACTING CHAIRMAN McCAUSLAND: That's probably why the

1 chairman stepped out of the room for a minute.

2 I understand. This Commission is quite concerned
3 about making decisions in a timely fashion, and I think
4 we will do everything we can to encourage the staff to
5 come back to us if at all possible on the next agenda, and
6 if not, as soon thereafter as possible. But you have to
7 understand that in this particular instance we're also
8 interested in pursuing this matter with the Legislature
9 and discussing the entire relationship of the development
10 of the state's geothermal resources not just on Boggs
11 Mountain, but throughout the state. I'm afraid that your
12 prospecting permit may in fact be the bellwether of a
13 significant controversy that may range over the entire
14 prospecting process.

15 MR. CONFORTE: I'm sure the company is more than
16 honored --

17 (Laughter.)

18 MR. CONFORTE: -- to be the kickoff for that
19 particular argument.

20 If I might clarify a point, it is my understanding
21 that that argument was raised last year or the year before
22 with the Legislature, the question of the leasing procedure?

23 MR. NORTHROP: Mr. Chairman, Mr. Sway is our legisla-
24 tive person. He can address this.

25 MR. SWAY: I am Brian Sway, legislative coordinator

1 for the Commission.

2 Geothermal legislation being carried by Senator Sieroty
3 -- I mean Senator Roberti -- is out of the Senate now
4 and before the Assembly. It does deal with prospecting
5 permits and the discretion of the Commission, and modifies
6 it. I'd be happy to share a copy with you --

7 MR. CONFORTE: If you would, please.

8 MR. SWAY: -- and an analysis of the bill. It is
9 on its way. It is before the Assembly and will be taken
10 up in January.

11 ACTING CHAIRMAN McCAUSLAND: Item 28, mineral
12 extraction: request for authorization to offer by competitive
13 public bidding some 6880 acres of sovereign land in Owens
14 Lake for a mineral extraction lease. Is there anyone
15 in the audience who wishes to testify on item 28?

16 If not, without objection item 28 will be approved.

17 Item 29, Long Beach operation: approve the Final
18 Report and Closing Statement of the 1976-77 Plan of
19 Development and Operations and Budget, Long Beach Unit,
20 Wilmington Oil Field.

21 MR. THOMPSON: Briefly, this is a summary of last
22 year's operations in the Long Beach Unit.

23 ACTING CHAIRMAN McCAUSLAND: I notice you're
24 coming out much richer than you went in. Is that because
25 you haven't learned how to spend money faster?

1 MR. THOMPSON: Basically that's the problem we were
2 discussing before of the drilling contract. We were not
3 able to keep our rigs going, so therefore our expenditures
4 were down.

5 The original budget approved was \$62 million. With
6 the carry-in, that became \$66 million, which you later
7 augmented then up to the final level of approximately
8 \$75 million.

9 ACTING CHAIRMAN McCAUSLAND: Without objection,
10 item 29 is approved.

11 Item 30: approval of bid specification for crude
12 oil sell-offs in the Long Beach Harbor Department. Anybody
13 in the audience wishing to testify on item 30?

14 Why don't you make a brief presentation on item 30,
15 please?

16 MR. THOMPSON: This is Commission approval of notices
17 inviting bids, bid forms, and crude oil sell-off contracts
18 to use in the contemplated sell-off of the royalty oil
19 taken in kind from these two particular City of Long Beach
20 parcels.

21 ACTING CHAIRMAN McCAUSLAND: We are not approving
22 the sale contract itself. We're merely approving the
23 notice and bid forms relevant to that; is that right?

24 MR. THOMPSON: You're approving the context of
25 the contracts. The actual award will be made sometime in

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1 the future.

2 I'd like to go into why this would have to be done.
3 In the first place, we now have existent sell-off contracts
4 on these parcels. They were started back in 1972 and
5 were to expire in 1975, but because of the FEA energy
6 regulations, you have to continue the supplier-purchaser
7 relationship. You can't stop those.

8 In about 1974 then, there was also a ruling in
9 which we could not receive a bonus. These particular
10 contracts were a bonus over posted price. In '74 they
11 ruled that we could not get this bonus; therefore, we
12 could only collect ceiling price or posted price, whichever
13 was the smaller. Up until 1976 these were the same. At
14 that particular time the posted price did not follow
15 ceiling price; we were about 60 cents below.

16 So at the present time we have these contracts in
17 existence in which we can collect thirty-two cents and
18 twenty-six and a half cents over the posted price. However,
19 on this eight-percent parcel, the present taker is not
20 paying this bonus, and we'll have to take legal action
21 against them.

22 So to change this existing supplier-purchaser
23 relationship, you must get a bonafide offer that is higher,
24 and then you give the present taker right of first refusal.
25 If he will match that offer, then he may continue in this

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1 relationship. If not, you award it to the person who has
2 a higher bonafide offer.

3 ACTING CHAIRMAN McCAUSLAND: Without objection,
4 item 30 is approved.

5 Item 31: find that the resolution adopted by the
6 Board of Directors of the East Bay Regional Park District
7 for Martinez regional shoreline conforms with the
8 requirements of the granting statute. Is there anyone
9 who wishes to testify on item 31?

10 If not, it stands approved without objection.

11 Item 32, contracts: authorize the Executive Officer
12 to enter into an Interagency Service Agreement with the
13 Department of Parks and Recreation. Is there anyone wishing
14 to testify on item 32?

15 If not, without objection item 32 is approved.

16 Item 33: authorize the Executive Officer to enter
17 into a Standard Agreement with the U.S. Fish and Wildlife
18 Service. Is there anyone wishing to testify on item 33?

19 Without objection, item 33 is approved.

20 Item 34, litigation: authorization to file Disclaimer
21 of Interest in the case of U.S.A. v. 440 Acres Of Land,
22 More Or Less. Is there anyone in the audience wishing to
23 testify on item 34?

24 Without objection, item 34 is approved.

25 Item 35, subventions to cities and counties: authorize

1 the reporting to the State Controller of the subventions
2 for the 1977-78 fiscal year. Is there anyone in the
3 audience wishing to testify on item 35?

4 Without objection, item 35 is approved.

5 Item 36: Bair Island Environmental Study, a request
6 for extension of Bair Island Environmental Study Agreement
7 in Redwood City, San Mateo County. Anyone to testify on
8 item 36?

9 Without objection, item 36 is approved.

10 Item 37, sublease of land: Anza Shareholders'
11 Liquidating Trust.

12 Mr. Northrop.

13 MR. NORTHROP: Mr. Chairman, Miss Smith, this is
14 a request by Anza Pacific to sublease some state lands,
15 and Mr. Trout from our land section will address himself
16 to that.

17 MR. TROUT: I think in view of the time, unless
18 you have questions: we had a boundary settlement. The
19 people we had the settlement with are now attempting to
20 get out of the business there, and they are attempting
21 to sublease the existing leases, and this is one of them,
22 which could provide development of a restaurant, dance hall,
23 card room, a few things like that, on a piece of property.

24 (Laughter.)

25 MR. STEVENS: Both public trust uses.

1 State of California)
2 County of Sacramento) ss.

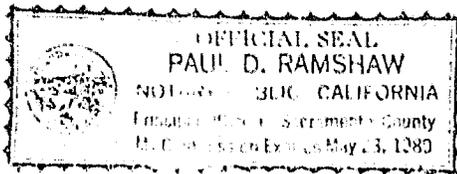
3 I, PAUL D. RAMSHAW, a Notary Public in and for
4 the County of Sacramento, State of California, duly appointed
5 and commissioned to administer oaths, do hereby certify:

6 That I am a disinterested person herein; that
7 the foregoing State Lands Commission Meeting was reported
8 in shorthand by me, Paul D. Ramshaw, a Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewriting.

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

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 and affixed my seal of office this 6th day of October,
16 1977.

Paul D. Ramshaw



19 Paul D. Ramshaw
20 Notary Public in and for the
21 County of Sacramento, State of
22 California
23 C.S.R. License No. 3434

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