

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

Preparation of the) Docket No. 95-ER-96A
1996 Electricity Report (ER 96))
)

Public Workshop held by the
ER 96 Standing Committee
to Receive Comments on
Revisions to the ER 96
Integrated Assessment of Need and Need Cap

Wednesday, December 2, 1998

1:00 p.m.

Held at the:

California Energy Commission
1516 Ninth Street, Hearing Room B
Sacramento, California 95814-5512

Reported by:

Nancy and Susan Palmer

COMMISSIONERS

DAVID A. ROHY, Ph.D., Presiding Member (not present)

JANANNE SHARPLESS, Associate Member

ROBERT A. LAURIE, Commissioner

STAFF PRESENT
(Alphabetically listed)

AL ALVARADO

JONATHAN BLEES

TERRY EWING

SUSAN GRIFFIN, Facilitator

ROBERT HAUSSLER

JIM HOFFSIS

MELISSA JONES

ROBERTA MENDONCA, Public Advisor

MARYANN MILLER

ROSS MILLER

DANIEL NIX

TERRY O'BRIEN

ROSELLA SHAPIRO

ROBERT THERKELSEN

INDUSTRY PARTICIPANTS
(Alphabetically listed)

KAREN EDSON, Independent Energy Producers Association

PATRICIA FLEMING, Semper Energy

BILL GORHAM, ENSR

JOHN P. GRATTAN, Grattan & Galati

JEFF HARRIS

DOUGLAS KERNER

JANE E. LUCKHARDT, Downey, Brand, Seymour & Rohwer

RICHARD McCANN, Ph.D., M.Cubed

RICHARD H. MOSS, Pacific Gas & Electric, Law Department

BOB MUSSETTER

SCOTT NOLL, Thermo Ecotek

STU RUSSELL, Russell Associates

F. H. SANDIFER, Pacific Gas & Electric

EMILIO E. VARANINI, III, L&M

R. K. WEATHERWAX, SERA

MITCHELL D. WEINBERG, Sunlaw Energy Corporation

DAN WHITNEY, Sacramento Municipal Utilities District

C. E. "BILL" WOODS, Calpine Corporation

I N D E X

Agenda Item	Page
Opening Remarks by Facilitator Griffin:	5
Introductions by Those Present:	6
General Discussion of Options, Goals, etc.:	8
Comments and Questions by Commissioner Laurie:	60
Public Advisor's Reading of the NRDC's fax:	64
Closing Remarks and Adjournment:	74
Reporters' Certificates:	75

1 MR. EWING: Yes.

2 FACILITATOR GRIFFIN: Oh, hi, Terry.

3 Terry Ewing and Bob Haussler.

4 What I would like to do is for you all to introduce
5 yourselves first. And the purpose of the microphones is for
6 the recorder. It's not for us to hear you, but so she can get
7 things on tape. It will help her if the first time you speak
8 you say your name. It will help her if you speak into the
9 microphone. And it will help if you sit up at the table
10 rather than sitting back along the side in the peanut gallery.

11 So why don't we start right here. If you could come
12 up?

13 MR. RUSSELL: My name is Stu Russell, Russell
14 Associates.

15 MR. WOODS: My name is Bill Woods, with Calpine
16 Corporation.

17 MS. EDSON: Karen Edson representing the Independent
18 Energy Producers Association.

19 MR. WEINBERG: Mitch Weinberg, Sunlaw Energy
20 Corporation.

21 MR. MOSS: Richard Moss, PG&E.

22 MR. SANDIFER: Frank Sandifer, PG&E.

23 MS. FLEMING: Pat Fleming, Sempra Energy.

24 MR. ALVARADO: Al Alvarado, Energy Commission Staff.

25 MR. MUSSETTER: I am Bob Mussetter, Special Advisor

1 to Gray Davis for Commission appointments.

2 (Laughter.)

3 MS. SHAPIRO: Oh, do I get to make up who I am, too?

4 I am Rosella Shapiro, Advisor to Commissioner Sharpless.

5 MR. HOFFSIS: Jim Hoffsis, CEC Staff.

6 MR. O'BRIEN: Terry O'Brien, California Energy

7 Commission.

8 MR. EWING: Terry Ewing, CEC Staff.

9 MS. MILLER: MaryAnn Miller, CEC Staff.

10 DR. McCANN: Richard McCann, M.Cubed.

11 MR. WEATHERWAX: Bob Weatherwax, Sera Energy.

12 MR. THERKELSEN: Bob Therkelsen, California Energy

13 Commission Staff.

14 MR. NIX: Daniel Nix, CEC Staff.

15 MS. LUCKHARDT: Jane Luckhardt, Elk Hills.

16 MR. GORHAM: Bill Gorham, ENSR.

17 FACILITATOR GRIFFIN: Okay. And coming in in the

18 back is Melissa Anne Jones from CEC Staff.

19 MR. GRATTAN: John Grattan, Grattan and Galati.

20 MS. JONES: And Melissa Jones, Energy Commission

21 Staff.

22 FACILITATOR GRIFFIN: Thank you for coming today.

23 The reason that we're having this workshop is because

24 the Energy Commission believes there is a problem with what's

25 called the need cap in ER 96. And they would like to address

1 that problem. They want to address it in a way which is
2 legally acceptable, which meets the Commission's energy policy
3 goals and is also responsible to the community interests in
4 each locale where a siting project might be located.

5 So what we were asked to do was to put out a Staff
6 paper looking at the various options of how this thing could
7 be addressed and to come up with a recommendation. And we
8 came up with a very general one.

9 I'm assuming you all have a copy of the Staff paper.

10 And the other thing I put back on the table was just,
11 if people like to play lawyer, was the text from the
12 Warren-Alquist Act which refers to siting and integrated
13 assessment of need because that is the thing which we must
14 satisfy.

15 When we developed the Staff paper we looked at three
16 options. I think we looked at three. I'm losing count at
17 this point.

18 MR. BLEES: We looked at three or four.

19 FACILITATOR GRIFFIN: We looked at four. Thank you.
20 Yes.

21 The first one was just to eliminate the need cap,
22 just declare that it didn't exist, which seemed to be the way
23 to cut the Gordian knot and just say, "Okay, we know that we
24 want to not limit the number of siting cases which come in."

25 There was a concern that that didn't actually meet

1 the legal standard of which we are required to address. And
2 so that was why Staff recommended against that approach.

3 The second one was to modify the need cap based on an
4 updated demand-and-supply analysis. And when we sat down and
5 looked at the numbers --

6 Oh, more people who are coming in. Please do sign in
7 and please make your first choice of sitting at the table.
8 When you speak, please say your name and speak into the
9 microphone. And the microphone is for the benefit of the
10 recorder. It's not for the benefit of us. So speak up for
11 us. Speak to the microphone for the recorder.

12 When we looked at the concept of changing the
13 numbers, for one thing you can't absolutely say that updating
14 the numbers would increase the level of need which was
15 identified. In 2007 it might actually decrease the level.

16 We also know that, because we knew where all the
17 parties were going, we thought this would be an engagement of
18 people fighting over numbers with their thumb on the scale,
19 because they knew where it was they wanted to end up. We
20 didn't think that they would really be a very productive use
21 of anyone's time to go through that activity.

22 So the third approach we looked at was modifying the
23 rationale for the need conformance test. And that obviously
24 is the one where Staff would like to go. And we hope, in the
25 course of talking today, we can identify some of the options

1 about how that could be done.

2 The fourth one was to maintain the need cap until the
3 next Electricity Report is adopted, which would leave us with
4 a problem the Commission sees before it.

5 When we think about how long ER 96 might be in
6 effect, I'm using a working assumption of two years. That
7 would be 1999 and 2000. This is just an assumption, but you
8 have to make one. And we know there is going to be
9 consideration about legislation for the Energy Commission next
10 year. If that got passed, it would become effective in 2000.
11 And then you would have to do something, which might take
12 during the period of 2000 to do, if there was still something
13 that had to be done.

14 So I am assuming through the period of December 31,
15 2000 is the period we have consider as the pendency of ER 96.
16 And this activity day is solely limited to considering cases
17 under ER 96.

18 The Energy Commission has embarked on another
19 proceeding about how to revise the Warren-Alquist Act, how to
20 revise the whole process of looking at what it is that we do
21 and the siting. So I don't want to go off on that activity
22 here. I want to just focus on what do we do for the next
23 couple of years.

24 Before I get started leading a discussion, are there
25 people who want to make opening statements? And I did not

1 receive any written comments. Did anyone submit them?

2 (No response.)

3 FACILITATOR GRIFFIN: No. Does anyone want to make
4 an opening statement?

5 (No response.)

6 FACILITATOR GRIFFIN: No. Okay.

7 I'd like to take just a little straw poll. This is
8 just looking for numbers. I'm not trying to identify
9 organizations at this point as to where people are on these
10 four options that we identified.

11 So anybody who thinks we should just do this option
12 ("eliminate cap" written on board). Two people from Staff.

13 MS. EDSON: I'm going to comment on that.

14 FACILITATOR GRIFFIN: Okay.

15 MS. EDSON: I think the option, as it is put
16 forward, makes it appear that it is impossible to support that
17 outcome because it's not legally justifiable. And yet your
18 option three clearly articulates a way that you could build a
19 rationale for the need cap.

20 So my proposal would be to shift that rationale to
21 option one. In that case I would support that option.

22 FACILITATOR GRIFFIN: Okay. But it's option one
23 with a rationale?

24 MS. EDSON: With a rationale.

25 FACILITATOR GRIFFIN: So it's very close to option

1 three. It is option three.

2 MS. EDSON: No, it's very different from option
3 three.

4 FACILITATOR GRIFFIN: It is?

5 MS. EDSON: Yes.

6 FACILITATOR GRIFFIN: Okay. Could you articulate
7 how you see the difference?

8 MS. EDSON: It is limited to that option. Option
9 three has a series of different alternatives, several of which
10 my clients find very detrimental.

11 FACILITATOR GRIFFIN: So it is "eliminate the need
12 cap" with a rationale.

13 MS. EDSON: With, right.

14 MR. RUSSELL: And you have another supporter.

15 FACILITATOR GRIFFIN: So on the old we had two
16 people who are being cute, okay.

17 MR. MOSS: Richard Moss speaking.

18 We would also support eliminating it with the
19 rationale and with a clear understanding there would be no tie
20 to another ER. It's just eliminated, period.

21 FACILITATOR GRIFFIN: Okay. For the -- yes.

22 MR. MOSS: So the way it is stated, if you eliminate
23 the second part, that it is eliminated pending some future ER,
24 that part we object to. But the idea of just eliminating it
25 and explaining why that is an appropriate path, as was just

1 stated, we can support.

2 FACILITATOR GRIFFIN: You understand we cannot do
3 that without a change of law.

4 MR. MOSS: I don't --

5 FACILITATOR GRIFFIN: And that is not the subject of
6 this Commission workshop. It is just the pendency of ER 96.
7 I understand conceptually what you're saying, but I'm saying
8 for ER 96, as it stands today, one could not do what you just
9 said.

10 MR. MOSS: Well, we believe the rationale has found
11 a way around that in terms of more recent legislation that
12 adopted an open market, if you will, for generation and that
13 that supersedes the now absolute provisions of the
14 Warren-Alquist Act you're concerned about.

15 FACILITATOR GRIFFIN: Okay. Recent legislation
16 supersedes ER.

17 MR. MOSS: Well, and you stated that as part of the
18 rationale for number three.

19 FACILITATOR GRIFFIN: Okay. I just want to go back
20 here on my straw poll. So we have decided we are going to
21 revise this one to be "eliminate need cap with rationale," is
22 going to be option one. This is a straw poll only. People in
23 favor of that?

24 (Participants raise hands.)

25 FACILITATOR GRIFFIN: Ten.

1 Redo the numbers. Modify the rationale.

2 (No hands raised.)

3 FACILITATOR GRIFFIN: We have a lot of nonvoters.

4 Do nothing.

5 (No hands raised.)

6 FACILITATOR GRIFFIN: And the rest of you aren't

7 here. Okay.

8 And how many people did not vote? I just want to get

9 a body count here. How many people didn't vote?

10 (Participants raise hands.)

11 FACILITATOR GRIFFIN: Thirteen. And I didn't vote

12 and John didn't vote, so that's 15 of us. Sixteen, no vote.

13 MS. JONES: Maybe we should explore why people didn't

14 vote.

15 FACILITATOR GRIFFIN: Melissa has a good suggestion.

16 She says why didn't -- we should explore why people didn't

17 vote, other than that you're CEC Staff.

18 MR. VARANINI: Go ahead.

19 MS. LUCKHARDT: I think at this point the way you

20 have the options specified there isn't one here that I could

21 fully support and my project could fully support.

22 FACILITATOR GRIFFIN: Okay. Yes, sir.

23 MR. VARANINI: My name is Gene Varanini.

24 The reason I didn't vote, it seems to me the point

25 Karen Edson made needs to be thought through a little bit in

1 terms of what can be done or what is possible under current
2 law. And I think this isn't the right group of stakeholders
3 to be voting 10-to-nothing or 13 abstentions.

4 The real stakeholders who make this system operate
5 are the intervenors. And in the cases I have been associated
6 with, we have had over a thousand intervenors in one of those
7 cases. And the intervenors basically tend to hold the system
8 to the law or their interpretation of the law, rather than
9 judgments of the Commission.

10 And in virtually every case where those issues have
11 gotten to the committees hearing the cases, they have been
12 relitigated, such that we have relitigated the San Francisco,
13 PG&E -- dictated that we litigate essentially the San
14 Francisco operating criteria in a case where both the CEC and
15 the PUC had said it was needed about 10 different times over a
16 period of about 10 years.

17 So my point is you need to be careful about what the
18 existing law is. You need to be careful about what you're
19 doing because the challenge to this won't occur now. The
20 challenge occurs after an AFC is granted. The current system
21 basically has -- the entire process is held in limbo. And
22 then the challenge to the ER comes when the first AFC or the
23 AFC you don't like gets through the system.

24 So we are talking about a legal challenge that could
25 happen years from now on a plant that had gone through a very

1 long experience in the process and then somebody challenges a
2 policy decision of the Commission that may or may not be
3 appropriate to the law. So I think those are some of the
4 considerations from my perspective.

5 FACILITATOR GRIFFIN: Do other people want to say
6 why they didn't feel comfortable voting in a straw poll?

7 (No response.)

8 FACILITATOR GRIFFIN: No? Okay. Well, then let's
9 go back to -- remember when I started out there were three
10 goals that we had, that was: What's legal, what's public
11 policy and what would be acceptable to constituencies. And
12 Mr. Varanini used the word "intervenors."

13 Because, as we all know, from our experience, this
14 group tends to look at the concept of need as not being what
15 is perhaps a narrow, technical definition, but more generally:
16 Is this thing good for my community or good for the State, or
17 is it good enough for the State that I should accept it in my
18 community.

19 And that is sort of a public policy threshold that is
20 a little bit different from the word as when we use it more
21 narrowly.

22 Mr. Blees, -- this is fun. I get to put him on the
23 spot -- could you give us Staff's interpretation of what the
24 legal requirements of the need cap are?

25 MR. BLEES: Sure. The need cap or need criteria

1 adopted in conjunction with the integrated assessment of need
2 have to reflect a balancing of the factors set forth in
3 Section 25309(b) of the Warren-Alquist Act. That is:
4 Requirements of growth and development, protection of public
5 health and safety, preservation of environmental quality,
6 maintenance of a sound economy and the conservation of
7 resources.

8 Clearly each one of those is a broad category or
9 factor. And in reaching a balance among them, the Commission
10 has a substantial amount of flexibility. The Commission has
11 been able to use that flexibility in past ERs.

12 The integrated assessment of need and the associated
13 need criteria that are used in siting cases have varied quite
14 a bit. In fact, on page 4 of the Staff paper there is a table
15 setting forth the major components of the need criteria that
16 have appeared in the past.

17 As the State's energy situation has changed over the
18 years, the flexibility in the statute has enabled the need
19 criteria to also be sufficiently flexible so the need test in
20 power plant siting cases is geared towards what is foremost in
21 the State's electricity needs at that time.

22 From the standpoint of legal defensibility and the
23 defensibility against the potential challenge by, as Mr.
24 Varanini suggested, an intervenor in a siting case, I think
25 the greater the relationship between the need criteria and a

1 numerical forecast, which is part of the integrated assessment
2 of need if not the entirety of the integrated assessment of
3 need, the more defensible the need criteria will be. But that
4 doesn't necessarily mean the need criteria have to have a
5 numerical component.

6 And I think Mr. Varanini is nodding, and I am glad to
7 see that.

8 MR. VARANINI: Just a tick.

9 (Laughter.)

10 MR. VARANINI: As you age your brain goes.

11 FACILITATOR GRIFFIN: You were talking faster than I
12 was writing, but I think that is it. There needs to be a
13 relation to the numerical component of the IAN, but not
14 absolutely a number?

15 MR. BLEES: That's correct.

16 FACILITATOR GRIFFIN: Okay. Does everything agree
17 this is the legal standard that has to be met?

18 (Some participants nod their heads.)

19 FACILITATOR GRIFFIN: Yes. Okay. Well, that's
20 good, if we have a certain agreement about what it is we have
21 to do.

22 MR. VARANINI: I have a question before you go any
23 further, if I can ask it?

24 FACILITATOR GRIFFIN: Please. This is supposed to
25 be a workshop.

1 MR. VARANINI: Does this need also include CEQA
2 need?

3 FACILITATOR GRIFFIN: No.

4 Do you agree, Bob?

5 MR. THERKELSEN: (Nods head.)

6 FACILITATOR GRIFFIN: Yes, he's shaking his head
7 "Yes."

8 MR. BLEES: I would like to add something to that
9 which relates to what I was saying about the defensibility of
10 need criteria or, more broadly, a siting case to the decision.

11 If the Commission certifies a power plant that has a
12 significant adverse environmental impact -- let me back up.

13 If the Commission finds a proposed power plant would
14 have a significant adverse affect on the environment, the
15 Commission can certify that plant only if it finds the
16 benefits of the plant outweigh the harm from that significant
17 adverse impact.

18 I'm assuming, by the way, the Commission has already
19 imposed all of the mitigation measures that are feasible to
20 reduce or avoid the impact. But even after that, after those
21 measures are imposed there still remains a significant adverse
22 environmental impact.

23 I think it is easier for the Commission to make that
24 finding. And it will make the Commission's finding that there
25 are benefits that outweigh the adverse impact if the

1 Commission is able to say, based on the integrated assessment
2 of need, that this plant is "needed," whatever "need" might
3 be. But again the Commission's ability to say this plant is
4 "needed" in order to keep the lights on, or "needed" in order
5 to reduce oil use, or "needed" in order to increase the
6 diversity of the system is not a prerequisite to making the
7 finding under the CEQA that the benefits of the project
8 outweigh the adverse environmental impacts.

9 It just makes it easier for the Commission to do
10 that, when it makes any decisions on the public policy.

11 MR. HOFFSIS: Given that, --

12 FACILITATOR GRIFFIN: Please identify yourself.

13 MR. HOFFSIS: Jim Hoffsis, CEC Staff.

14 FACILITATOR GRIFFIN: And please come up to a
15 microphone.

16 MR. HOFFSIS: Given what you recall about the basis
17 or the findings of need that underlay certification of power
18 plants the Commission has certified during, say, the last 10
19 years or so, would those findings of need have been adequate
20 to justify a finding of overriding circumstances if the
21 Commission had wanted to or needed to exercise that, do you
22 suppose, or if you care to speculate at all?

23 And the reason I ask is the findings of need in the
24 past have not had quite that simple or straightforward
25 connotation as ordinary citizens and neighbors often have in

1 their mind of what it means to find a power plant needed.

2 And I think what they are usually thinking of is in
3 the absence -- if it is found "needed," it means in the
4 absence of this power plant there are going to be some kind of
5 very unpleasant consequences from a reliability standpoint.

6 In the last 10 years or so we have certified plants,
7 we have found them "needed," but in no case that I can recall
8 have there been those kinds of dire consequences associated
9 with that finding of need.

10 So I'm wondering if one of the things we are talking
11 about is a contingency some time out there in the future where
12 we want to exercise overriding circumstances. And we are
13 wondering if this new somewhat more flexibility concept of
14 need will serve that requirement. I'm wondering if the
15 findings of need in the past would have served that
16 justification for overriding circumstances?

17 MR. BLEES: Well, I can't answer that question
18 without having a specific case in front of me.

19 I also want to add, in addition to the CEQA type of
20 override, where the Commission must find countervailing
21 benefits from the plant that wants to grant a certificate in
22 the face of a significant environmental impact there is also
23 the override in the Warren-Alquist Act where, if the
24 Commission finds that a plant will violate a law, local or
25 regional or state law, the Commission may still certify the

1 plant, but only if it finds there is no more prudent and
2 feasible method of obtaining the public convenience and
3 necessity and the plant is, in fact, necessary to meet the
4 public convenience and necessity.

5 Again, I think the closer you are to saying, "If you
6 don't build this power plant the lights are going to go out,"
7 the easier it is to make that finding and the more defensible
8 the finding is.

9 But that doesn't mean, for example, the Commission
10 would be precluded from making the CEQA override findings or
11 the Warren-Alquist override finding if the only benefit was
12 injecting more competition into the marketplace. Depending on
13 the individual circumstances, that might be enough.

14 MS. EDSON: I have a question that goes to the same
15 issue, but it's really a question for the attorneys, the
16 people who know this much better than I.

17 Would it be possible for the Commission to make a
18 CEQA finding of override considerations that was not based
19 exclusively on environmental considerations?

20 MR. BLEES: In other words, can the benefit from the
21 project you would find outweighs an adverse environmental
22 impact, can that benefit for nonenvironmental?

23 MS. EDSON: Or can it be outside of what is called
24 for in the CEQA guidelines to the extent the integrated
25 assessment of need may enter into other areas?

1 MR. BLEES: I don't think it can be outside of what
2 is called for in the CEQA guidelines. But what the CEQA
3 guidelines say you can look to is overriding benefits are much
4 broader than environmental impacts, if it refers to social or
5 economic benefits. And I interpret that very broadly.

6 MS. EDSON: To encompass then the integrated-
7 assessment-of-need kinds of considerations?

8 MR. BLEES: I would be comfortable arguing that.

9 MR. THERKELSEN: Two things to keep in mind. I
10 believe there have been cases, and I can't name them right
11 offhand, in which Staff has found and recommended to the
12 Commission, and I think the Commission has found too, that
13 there are potential significant adverse impacts, but because
14 of other considerations, including considerations that were
15 laid out in a need assessment, they went ahead and approved
16 the project with whatever mitigation was available because of
17 those analyses.

18 The other thing to keep in mind is the Commission's
19 process is a certified regulatory program. It does not
20 require preparation of an EIR or line-by-line adherence to the
21 EIR requirements.

22 As a certified regulatory program the Resources
23 Agency, and Gene Varanini when he was Commissioner was in
24 charge of that committee that saw that process through, the
25 Resources Agency said the entire process is a functional

1 equivalent of CEQA.

2 And it meant when, in terms of the entire process, it
3 was looking at the Electricity Report, the analysis that led
4 to, in subsequent years, the integrated assessment of need and
5 the actual siting process was the entire program.

6 And for that reason, for example, in the law there is
7 a prohibition that if you consider alternatives or, I should
8 say, you consider energy efficiency which can be an
9 alternative in a siting case, if you consider that in the
10 Electricity Report you were precluded, specifically precluded,
11 from considering it in a siting case.

12 So it is the whole framework that goes together. And
13 when you affect one piece of that certified regulatory program
14 you have to understand what the implications are of the other
15 pieces. The need analysis has been an integral component of
16 that program.

17 MR. VARANINI: A follow-up comment. I think we are
18 between a rock and a hard place here. Most of us are
19 obviously concerned about the cap and we're concentrating on
20 the cap. And I think in the context of government, which has
21 withdrawn central planning for electricity and replaced it
22 with a market, those are kind of givens that are here.

23 And I think the tendency is to say, "Well, are we
24 here to solve the cap problem or are we here to solve the need
25 problem."

1 I would suggest, if we are here to solve the cap need
2 problem, there may be projects where need also can come into
3 the implication on reliability.

4 There are those, for example, who want to build or
5 compete in the reliability markets, the sites may be delimited
6 by ISO or they may be delimited by either Purchov's Law or
7 Faraday or Ohm's Law or something, such that it may be under
8 certain circumstances extremely important to have the
9 Commission indicate a plant is "needed" in some sense that it
10 can be imposed on a local government or a regional government.
11 I just think reliability is going to be a very important
12 issue.

13 The second is transmission. If in any sense we have
14 got to build out or we got to build to meet the system with
15 the plants, we may very much need some kind of a need
16 determination that gets us the ability or gets somebody the
17 ability to apply eminent domain so you have an administrative
18 law determination by some entity that, in fact, something's
19 needed enough to invoke eminent domain even if that eminent
20 domain comes from another agency, from whoever is empowered to
21 do that.

22 And then finally, as Bob points out, on CEQA
23 equivalency we also have a difficulty because we had the
24 elements that were approved in the Warren-Alquist Act for the
25 functional equivalent, but we also have a Supreme Court case

1 involving the Fish and Game Commission that tends to indicate
2 that not only is the equivalency your system, but it has to
3 follow the virtual letter of CEQA as well. So you get a
4 double whammy.

5 You have all of the niceties of the Warren-Alquist
6 Act and you have all the niceties of CEQA. And you have got
7 to get them all in there in order to have legally supportable
8 functional equivalency, whatever that means.

9 I think because of the concern about command and
10 control, I like to use the word "analytics," rather than
11 "forecast," or some implication about the Commission or
12 anybody else calling the ultimate balls and strikes on how
13 many power plants or which power plant is needed and then
14 which one in the queue isn't needed or which potential plant
15 isn't needed.

16 And I think the more we think about analytics and a
17 little less about calling the balls and strikes, I think it
18 tends to be a little less volatile and a little more
19 productive, at least from my perspective.

20 You see the analytics used now in the no-project
21 alternative. One way to deal with the no-project alternative
22 is to induce a form of production cost modeling or some other
23 kind of modeling to show that the rhetoric actually works,
24 that the market rhetoric is, in fact, adducible and that
25 that's what the banks are using. I mean it isn't like a

1 mystery.

2 So there is analytical work laying around that
3 promotes the doctrine of free markets. And those analytics
4 are used by the banks and the financiers and everybody else.
5 So you can have the appropriate analytics without having this
6 carried to the extreme that the government somehow weaves its
7 way to get back in charge.

8 Those are just some of the complexities I have been
9 seeing in the process.

10 FACILITATOR GRIFFIN: I think that segues nicely
11 into some points that Karen Edson brought up earlier in terms
12 of when you were talking about what rationales you would
13 consider acceptable and unacceptable. I would articulate this
14 as what public policies it is that you want to see articulated
15 in a need test. For example, it should be -- we should leave
16 to the market the choice which power plants.

17 So what I wanted to do was to have the group focus on
18 what public policies do you think should be involved when we
19 are looking at a rationale of how you go from an integrated
20 assessment of need to the elimination of the need cap, which
21 was for the pendency of this ER, which was the sort of initial
22 straw thing that we started with.

23 Does that segue back to you, Karen? I was trying to
24 get back --

25 MS. EDSON: Well, I guess my response is I think ER

1 96 lays out a very clear market-based approach to assessing
2 the need for new paradigms and kind of redefining -- ER 94 and
3 96 combined kind of lay the foundation for a different way of
4 thinking about the integrated assessment of need. And I don't
5 want to try to rearticulate that framework, but I think it is
6 there.

7 In light of the current stage of the market and what
8 appears to be happening now in the period of time over which
9 ER 96 is likely to remain in effect, that we really have a
10 choice here. The Staff has four options.

11 I would argue two of them are really options that
12 belong in an ER process: Redo the analysis, do the analytics.
13 And analytics have a role here clearly, or a very significant
14 change to what you think of in terms of integrated assessment
15 of need.

16 I have got a lot of concerns about the alternatives.
17 But your net-system-detriment kind of analysis or the bid-
18 sufficiency analysis, those things, those are all very brand
19 new kinds of concepts people haven't thought about, and I
20 think require considerable development and work to understand
21 what those frameworks are and how to respond.

22 So my reaction is that those kinds of considerations
23 belong in a very deliberative ER process.

24 And the other two options laid out by the Staff, the
25 eliminate the cap, that is as I would argue, modified to build

1 a rationale I think is possible for eliminating the cap, or
2 maintaining the status quo should be the options that we are
3 really talking about here as interim policies that can be put
4 in place for ER 96.

5 MR. VARANINI: Karen, when you talk about
6 eliminating the cap, are you thinking both for NOI exemption
7 purposes and as an offer of proof in an AFC proceeding?

8 MS. EDSON: Well, ER 96 talks about permitted
9 megawatts. And so it really is a path on permitted megawatts
10 as opposed to the NOI exemptions, at least as I think about
11 it. And so when I say, "eliminate the cap," I'm thinking of
12 the actual license. Build a rationale which can justify not
13 having a cap, a megawatt cap, on these plants for the pendency
14 of this ER.

15 MR. VARANINI: We never had a cap as far as I know
16 until that ER. There was always enough criteria that we could
17 build --

18 MS. EDSON: That's right. That's right.

19 MR. VARANINI: -- a need argument. If you were --

20 MS. EDSON: Courageous.

21 MR. VARANINI: -- thoughtful enough.

22 MS. EDSON: No, I think that's right. That's right.
23 There were numbers, but they weren't necessarily quite applied
24 in the same way as this one.

25 MR. THERKELSEN: Well, in the past what the

1 integrated assessment of need resulted in was an analysis.
2 And it resulted in need tests that were used to sort of be a
3 hurdle to determine whether or not you conformed or not.

4 In the last ER the Commission, rather than having
5 need tests, simply adopted this cap because they expected
6 never to see that many applications, but that was the number
7 they chose.

8 They could have had any one of the number of results
9 from the integrated-assessment-of-need analysis. That just
10 happened to be the one they chose.

11 And I guess the question in my mind is: Is there,
12 based upon the numbers that either existed or exist today and
13 the policy framework that exists today that was very unclear
14 back when ER 96 was adopted, is there a different framework
15 that can result, maybe not in a number, a need-cap number, but
16 in some other kind of need test, for example, -- I hate to use
17 that word -- that may be less restrictive. Because option
18 number four does nothing.

19 Right now we know of projects that will result in
20 exceeding that need cap in terms of being permitted roughly a
21 year and three months from now.

22 MS. EDSON: Don't get me wrong. I'm not saying I
23 like the do-nothing option, but I think those are the two
24 options we should be talking about. That's all I'm saying.

25 FACILITATOR GRIFFIN: In terms of what are the

1 public policy issues we want to address; what would be wrong
2 with certifying 20,000 megawatts of power this year?

3 MR. VARANINI: If you can pay the externality cost
4 to that, you'll have at it.

5 FACILITATOR GRIFFIN: So it is the potential
6 externality cost that is the issue?

7 MR. VARANINI: I think so. I think there is going
8 to be relative marriage. You're running a regulatory process.
9 At a minimum you're going to have externalities, real
10 pecuniary externalities, --

11 MR. WEINBERG: Can you define some of those?

12 MR. VARANINI: Yes. Air offsets, water, water
13 availability, appropriate land use, those types of things.

14 And then it seems to me the other thing, Karen, is
15 if you are not careful here you may drive cross-intervention
16 among developers into the game. And then you will have a very
17 exciting two-year program than you would for the next ER
18 because some of these things literally do -- when you raise
19 the question of the cap, as against the final approval, then
20 it seems to me if some cap is in place and you come in late in
21 the queue, it's in your interest to make the argument that
22 you're better than the lead plant or any other plant in the
23 queue. And, therefore, since it has no rights until it has a
24 certificate, and a certificate runs for 30 days, the approval
25 runs for 30 days.

1 So I think there are potential side effects or
2 perverse outcomes we need to think a little bit about as we
3 try to work this out.

4 MS. EDSON: But doesn't that argue, Gene, for
5 getting rid of the numeric cap?

6 MR. VARANINI: Yes, absolutely. I think a numeric
7 cap was just -- as Bob points out, it was really just an
8 affect of a consideration. There would never be that number
9 of plants in that two-year period, since we were going through
10 a pretty large systems change while that number was in effect.

11 I think that number would have been impossible had
12 there been in terms of an ER 98 versus a 96. So the cap, to
13 me, was a transitional point. And it has failed, thankfully.

14 MR. THERKELSEN: And the document said that. It
15 said it was simply a transitional number.

16 FACILITATOR GRIFFIN: Yes.

17 DR. McCANN: Richard McCann, M.Cubed.

18 FACILITATOR GRIFFIN: You need to come up and get a
19 microphone, please.

20 DR. McCANN: I just want to say on the ER 96 cap,
21 the rationale for eliminating the cap which would probably be
22 best justified, one, is the analytic process that was used to
23 derive that cap is basically now outdated to a large extent,
24 because there wasn't a full understanding of how the market
25 would work. The models weren't in place to do that kind of

1 analysis.

2 There wasn't a strong criteria for how to determine
3 what is the amount of megawatts needed in order to make a
4 market function versus the traditional regulatory approach.

5 The second factor is the need cap, once you overcame
6 those analytic hurdles which are substantial, is that the need
7 cap is actually going to vary by where these plants are sited,
8 what types of plants are in place, and that sort of thing,
9 because of the interrelationship with regard to reliability
10 and transmission constraints.

11 So what you have is actually a need cap that is
12 actually dependent on who you allow to be licensed in
13 particular locations. So trying to predetermine the need cap
14 on that basis is going to also be very difficult.

15 So you have both the analytic complication and the
16 system complication as well in trying to determine a megawatt
17 need cap. And so you can use that rationale to very easily
18 eliminate the ER 96 need cap. You just argue the original
19 rationale was outdated and was too shortsighted and therefore
20 it's time to eliminate it.

21 MS. EDSON: You could just acknowledge then if you
22 build in excess of the cap you have agreed to compete against
23 uncommitted DSM. That probably gives us a few more thousand
24 megawatts.

25 MR. VARANINI: Millions and millions.

1 FACILITATOR GRIFFIN: I think it actually could. It
2 gets us into the problem of legality. I actually did go back
3 and run the numbers, look and see what the ER numbers were,
4 because I didn't remember them anymore.

5 Once you get demand and you get existing and
6 committed, where you have 15480 left, uncommitted DSM was
7 6366, spot market was 2377. Now I can go enough of a -- well,
8 the spot market was what we used to stick in there because we
9 said it was silly to build a power plant when you had that
10 kind of inexpensive energy that could be obtained from
11 out-of-state.

12 Well, that stuff is obviously competing within the
13 instate market now, so you could make a rationale that that
14 should be inside what is considered as being available to be
15 built instate.

16 But that rationale, to me, goes back into this
17 ghastly: Redo the numbers. And if you redo one, you have to
18 redo them all. And none of us want to do that. We all think
19 that's really silly, especially those of us who would have to
20 do it.

21 Yes.

22 MR. RUSSELL: Stu Russell of Russell Associates. I
23 said I wouldn't talk, but I decided to talk.

24 Go back to your: What if you suddenly approved
25 20,000 and 30,000 megawatts units. And Gene's comment is

1 good. The externalities are a problem, but they really aren't
2 that much of a problem in terms of air, water and all the
3 operating problems, because you are going to operate the same
4 amount that will be dispatched.

5 And so maybe you might build something so you have a
6 land-use consideration. But in reality the only thing that is
7 going to operate is what is needed on the market itself.
8 Somebody may lose some money and somebody may not. So I'm not
9 so worried about the externalities, most of the issues.

10 Land use is a problem. And you do have this land-use
11 override yourself. So I think you're fine if you just
12 eliminate the cap and let the market decide.

13 MR. WEINBERG: In fact, I'm curious to hear if
14 anybody in the room has, in general, an opposing opinion. I
15 don't get the sense that anybody here is arguing for a need
16 cap in any way. It's just the details of whether the need
17 assessment needs to include this, that or the other.

18 But I mean is that a safe assumption? Is anybody in
19 here an advocate for having a number locked in? I guess if
20 you are already in the queue, you might be an advocate for
21 capping, but --

22 MR. THERKELSEN: The only comment I would make on
23 that is for today, for this present time that we see, the
24 foreseeable future, that's probably correct.

25 One of the concerns I have with us doing a wholesale

1 revamping of the integrated assessment of need is we can't say
2 today what may be needed or necessary for government policy
3 balancing the market five, ten, twenty years from now.

4 So, yes, today I don't know that I see a purpose for
5 a need cap.

6 MR. WEINBERG: Yes.

7 FACILITATOR GRIFFIN: Yes. I'm trying to do some
8 worst-case thinking, just to get that in my mind about what
9 might be a problem if you added 20,000 megawatts.

10 And one that I came up with was let's say we did put
11 that in, and then because of that we had to build new major
12 transmission lines. And the way the transmission money got
13 paid for, it became an uplift and it was spread to all
14 consumers because that was the politically palatable way to
15 get the transmission stuff built, that vote. That's the way
16 the ISO comes down on that: Bury your own dead or spread the
17 charges.

18 Then there is a cost that's imposed on consumers,
19 which they might not actually get the benefit of because, if
20 you have all of that generation, then you have the overhead of
21 that transmission. So that was one worst case I could think
22 of.

23 And you have a response.

24 MR. WEINBERG: Yes. My response would be that in a
25 truly free market situation, where you don't have plants that

1 are older, less efficient and more polluting that are not
2 really bidding their true cost into the system. If they were,
3 those are the plants that would be displaced. The end-user
4 that is going to bear the burden on the increased transmission
5 cost should also realize a lower commodity price, a lower
6 energy price. Maybe they offset. Maybe it's even a net
7 benefit.

8 And then if you look at the environmental impacts,
9 you are talking about plants that now have permits to run in
10 the 50 to 100 ppm. Let's just look at NOx, for example. A
11 50- to a 100-ppm NOx range, that those 20,000 megawatts I
12 guarantee you will be in the five or less range.

13 So you are talking about a tenfold improvement on NOx
14 just on per-cubic foot of effluent leaving the stack.

15 Now talk about 10,000 heat rate versus 6,000 heat
16 rate. You're burning almost half the fuel to get the same
17 kilowatt hours.

18 The net benefit of actually doing that and replacing
19 20,000 megawatts of 30-year-old plants is extraordinary if you
20 look at it from an environmental impact and fuel-use. This
21 country wants to conserve its natural gas supplies. I'd say
22 the best way to do it is to do exactly that, 20,000 megawatts
23 of new plants in California.

24 Clearly I'm a developer.

25 (Laughter.)

1 MR. WOODS: How could I guess.

2 MR. VARANINI: Just as an example, in something that
3 is not contemporary to California, we did some work with the
4 Arapaho Indians in Wyoming. And the cost of interconnecting
5 their plant to the grid was somewhere in the range of 1.5
6 billion, because the whole Western Grid had to be reinforced
7 and reconnected, and so forth and so on.

8 And then we got the happy news we wouldn't have to
9 pay for it, that all the users of the Western Grid would pay
10 for it. It was a free good to the project. So I think there
11 are lots of things to consider internal and external,
12 externalities.

13 I would consider a bill from somebody for a billion
14 and a half to basically have the project sponsors withdraw; a
15 bill for zero bought them on. So that is my consideration on
16 these.

17 "Externalities" is probably a euphemism for prodding
18 and for turning what appear to be reasonably priced goods into
19 scarce goods. I can't imagine what the end-put ton of NOx
20 would be worth in a system that came on this fast.

21 And the other thing, of course, is because of
22 transmission you are clustering projects. So you have some
23 implication of what happens with clustering. Those are just
24 considerations in terms of wanting to keep your analytics
25 straight.

1 And I think you give some of the people in the
2 audience a plug. I think an example of analytics that didn't
3 interfere or didn't derive central planning anyway was the
4 work done on the EIR or the EIR initial work for the sale of
5 the San Diego plants. That work was basically done to show
6 that, in fact, the common wisdom didn't prevail and the buyer
7 of those plants would reasonably use the plants and they
8 wouldn't insult the environment under any set of
9 considerations, including the highest possible use of the
10 plant.

11 So that is what I'm thinking about when I use the
12 word "analytics." It is using the advanced models or some
13 kind of capability we have to analyze the situation, not to
14 give some government body or any other particular set of
15 individuals the right to dominate or control a market.

16 MR. WEINBERG: Just to play devil's advocate, if
17 every project was required to bear the financial burden of
18 getting itself connected to the grid, that might serve as kind
19 of a de facto needs assessment.

20 If it's going to cost you a billion six to get on the
21 grid, maybe that is not the best place for your project.

22 Do you have any thoughts as to whether that is an
23 appropriate way to control it, or do you think the public
24 should bear it? I mean I don't know what the answer to that
25 is.

1 MR. VARANINI: Far be it from me, but I think the --

2 FACILITATOR GRIFFIN: And he goes right ahead.

3 MR. VARANINI: I had to put that disclaimer in.

4 It seems to me if power plants were conservation then
5 there wouldn't be any problem. But I think there is really a
6 game that goes on in a nonpejorative sense of a game.

7 And that is you have the urban plants, the
8 load-center plants that are trading certain values and cost.
9 And then you have the remote plants that are trading other
10 values and cost. Every place can't be Bakersfield.

11 So in trying to find that mix of opportunities, I
12 think you have transmission on the one side and then you have
13 load-center economics and problems, not the least of which are
14 certain cultural and other kinds of issues that are only now
15 developing in terms of the urban plants.

16 MR. WOODS: In that \$1 billion, also there would
17 probably be a substantial amount of system benefits, the way
18 the system benefits versus the project costs.

19 MS. LUCKHARDT: Yes.

20 MS. EDSON: I mean the ISO is the ultimate permit to
21 some extent. They are working on developing the congested
22 markets and the policies for assessing these transmission
23 charges. We don't have -- their policies just aren't done,
24 which it's a problem.

25 MS. LUCKHARDT: Right. Because a lot of their

1 transmission upgrades are not just going to be to the point of
2 interconnection. They are also going to be reconductoring and
3 adding on.

4 MS. JONES: But then there is the other
5 consideration under FERC rules anybody can go in to FERC and
6 make a claim they need transmission access. And FERC can
7 order the building of that transmission system.

8 Then there is a significant question about who bears
9 the burden of that, whether the developer would, indeed, bear
10 that burden or would it be spread across.

11 MR. VARANINI: FERC doesn't have eminent domain.

12 MS. EDSON: It sounds like ER 2000.

13 (Laughter.)

14 FACILITATOR GRIFFIN: This is sort of a little
15 role-playing, oh, no, which is put yourselves in the shoes of
16 an intervenor who doesn't want this project in their backyard.
17 I'm sure a lot of you have been there.

18 MR. VARANINI: They have assured us that is not
19 their interest.

20 (Laughter.)

21 FACILITATOR GRIFFIN: You are looking at what
22 vehicles do you have to object to the plant. You look at the
23 bald words in the Warren-Alquist Act. It says that all of
24 these things must be balanced. The whole way the balancing
25 currently occurs is this number. That number is one of the

1 key ways that balancing occurs. It's not the only one. So
2 there is a lot of focus on that number.

3 So what are some of the issues you, as intervenors,
4 would feel are public policy reasons about having a cap or not
5 having a cap? What are the public policy goals you want to
6 protect? That is what I'm trying to look at, because one of
7 the things we have to think about is if they are public policy
8 goals, they are legitimate to protect, is there some other way
9 to do them rather than using a number.

10 Got any players?

11 MS. EDSON: Well, the Commission, as Gene said,
12 isn't used to them. ER '96 was the first time this kind of
13 number was applied, so let's just read the old ERs and find
14 something represents those numbers.

15 FACILITATOR GRIFFIN: Well, actually I went back and
16 did that.

17 MS. EDSON: Oh, good.

18 FACILITATOR GRIFFIN: There is a numbers-based test
19 for every project, for everything. Yes, I went back through
20 ER '5.

21 MS. EDSON: I remember those ERs. We had the Hail
22 Mary test that was --

23 (Laughter.)

24 MS. EDSON: A lot of us had plans to come through on
25 that test.

1 FACILITATOR GRIFFIN: Well, for example, ER 92, I
2 called it "Beat the IDER up to 3202 megawatts." ER 90, there
3 was a specific number. ER '7, it continued, the physical and
4 economic need test of ER 96, so that was a numbers-based test.
5 Added the environmental consideration. Considered the
6 balancing option. There was no cap on the total thing, but
7 you had to do a numbers thing first and then you threw the
8 football.

9 The economic need test, which was introduced in ER
10 '6. And ER '5 was the boxes, so that was also a set of
11 numbers.

12 MR. VARANINI: I believe there was not a project
13 that passed a need test on the numbers after A.S. Placerita
14 (phonetic). And A.S. Placerita weaved between Midway and the
15 other Mission project. It actually came from third in the
16 queue and got first in the queue, and it got the last clean
17 allocation of numbers. That was '86.

18 FACILITATOR GRIFFIN: We're certainly not going to
19 disagree with you. The need tests have gotten torqued in
20 individual siting cases. I may just get smashed for saying
21 that, but he's far away.

22 We have a need cap today. That is the policy today.
23 That is what I have to deal with. So I am looking for some
24 assistance about what are the public policy issues that
25 intervenors are trying to protect.

1 Then we will go to the second step of: How could one
2 protect them. But the first step is what are the issues they
3 want to protect.

4 MR. RUSSELL: Actually I would argue that
5 eliminating the need cap would advance the interests of
6 intervenors because you could say this project here is not
7 necessarily needed. I think that is true in a market
8 situation. No one project is needed. Somebody else can
9 always fill in. So therefore if there is a specific objection
10 they have a better club than before.

11 I think that is actually advancing overall
12 environmental goals in the State, just as the lowest-price
13 project advances overall goals. And you cannot say to
14 somebody, "Yes, we absolutely need this project."

15 We can say, "This project is great for all these
16 other reasons and we want to build it for all these other
17 reasons, but we do have this deficit that you are dealing
18 with." And just let it be that way. And the balance will
19 then have to be made on other points, but not on this point.

20 MR. GRATTAN: I guess this is echoing that last
21 statement. I think in the current ER this balancing is done,
22 that the rationale is that the replacement of old new plants
23 with new plants assists in meeting environmental goals. It
24 talks about the growth of the State. It talks about economic
25 considerations.

1 And then this number is just kind of -- you reach in
2 back a millennia and put a number on top of this need test,
3 which is, in essence, that if you want to build it, it is
4 needed. The balancing test is there.

5 MR. VARANINI: The problem with that is history. If
6 they hadn't put the need cap in, then one could certainly make
7 that point.

8 But if you are thinking of this from an intervenor, I
9 mean I am not going to sit here and put on the record issues
10 that come back to haunt all of us, but it just seems to me
11 that once that number is there the number means essentially
12 that up to that number these things are true, or they have
13 been determined to be accurate, or whatever the right frame
14 is.

15 It's really trying to think through what happens
16 beyond that number or whether, John, the analytics can be
17 extended or something, because I think if there is vigorous
18 intervention, then the very fact there has been an adjustment
19 kind of -- this isn't mid-stream. This is an adjustment
20 between ERs. So I think we have to be careful about what the
21 adjustment is and essentially what the evidentiary
22 implications are as well.

23 It seems to me if you are in this queue and you're
24 early in the queue, for whatever reasons, then you have
25 certain inferences you may not have if you are beyond the

1 number unless we are very careful about how we deal with it.
2 Because at one level we don't know who is going to survive in
3 the queue anyway.

4 Someone comes in and picks up 1500 megawatts, I've
5 got to sign the lead 1500 megawatts and they have the project
6 from hell, the fact is that 1500 won't get satisfied anyway,
7 not that particular 1500 that was artificially allocated to
8 somebody who did nothing more than copy somebody else's
9 filing.

10 And let's be frank about this. There was probably
11 two original filings, and the rest of us got As in plagiarism.

12 So the facts are that, in fact, there is no queue
13 because, as Staff pointed out, there is nothing inviolate of
14 being first versus being in, unless the first makes it. So in
15 some sense you could have a number of plants literally
16 "competing" for lead elements in the queue, or you could have
17 a process that acknowledges the underlying policy that does
18 something careful with the numbers.

19 FACILITATOR GRIFFIN: Okay. Since we're going
20 nowhere on this one, I'm not going to do that.

21 (Laughter.)

22 FACILITATOR GRIFFIN: I want to come back to some of
23 the options that were put forth in the paper.

24 Bid sufficiency. I just want to talk about the pros
25 and cons of this. The concept that was written was that for a

1 market-based system you need nothing more than the absolute
2 minimum number of megawatts in order for there to be
3 competition.

4 The basis of the number was some market power
5 analysis which had been done for the ISO and the PX, I think
6 primarily focused at the ancillary services market, was where
7 that set of numbers came from.

8 Do you remember, was it the ancillary services market
9 or the whole market?

10 MR. NIX: I remember exactly because I was the one
11 who wrote that section. It's based on the experience of both
12 the ISO and the Power Exchange in looking at prices relative
13 to the quantity of demands they receive in response to an
14 offer they put into the marketplace. And that below about a
15 140-percent demand response, prices seemed to rise
16 meteorically. But above that level then they believe they
17 begin to see real competition. This simply reflects the fact
18 in competitive markets you have to have surplus capacity in
19 order for competition to occur.

20 There is nothing magic about 140 percent. That was
21 just a ballpark number that they often refer to as their
22 minimum goal. Their desired goal is 200 percent.

23 Now it is good to have goals. I doubt that the power
24 plant development community would build two times the absolute
25 peak demand capacity needed in the Western U.S. in order to

1 make the ISO and the Power Exchange feel comfortable.

2 So, at any rate, there is nothing sacrosanct about
3 140 percent. It simply embodies economic theory that says you
4 do need surplus capacity in order to have competition. The
5 public policy goal is to have competition. So therefore if
6 you need a number, take a forecast and multiply it by 140
7 percent or multiply it by 150 percent to come up with a number
8 that embodies the concept of competition.

9 And if I might have the opportunity --

10 MR. WEINBERG: But again you are talking about a
11 number that represents a ceiling as opposed to -- the way the
12 need cap is presented, it is a ceiling not a minimal.

13 MR. NIX: But that is a very, very high ceiling.
14 And, again, we thought that the last ten-year forward-looking
15 estimate would also be a ceiling that would never be reached.

16 MR. WEINBERG: I understand it is a high ceiling,
17 but the concept of a ceiling at all -- you know, the federal
18 government doesn't go around telling Blockbuster Video there
19 are enough Blockbuster Videos out on the corners, that that's
20 enough. It just seems the market ought to be able to
21 accomplish that ceiling.

22 I can understand a minimum more clearly than I can
23 understand a ceiling.

24 MR. NIX: This is a rationale that comes up with a
25 number. If a number is legally necessary it's a very, very

1 big number, but it is consistent with a competitive market.

2 Thanks for enjoining me in conversation here. I have
3 a question for you.

4 MR. WEINBERG: Sure.

5 MR. WOODS: Watch out.

6 (Laughter.)

7 MR. NIX: It probably will reflect my lack of
8 understanding about some environmental regulations in
9 California. But an older, inefficient power plant operating
10 at a five-percent capacity is replaced by a new power plant
11 that has a factor of ten fewer emissions. Is it not allowed
12 to produce the same total quantity of pollutants as the older
13 plant?

14 MR. WEINBERG: No. Where is the five-percent
15 capacity number coming from?

16 MR. NIX: That is an economic level of activity for
17 that power plant. It strikes me that with an air quality
18 permit you are entitled to emit a total quantity of pollutant.
19 And it is better to have an efficient plant because then your
20 generation can go up relative to the ceiling.

21 MR. WEINBERG: It depends how old your permit is,
22 whether you have been grandfathered, what the specific
23 conditions of your permit are. I know Stuart here has a lot
24 more experience than I do, but --

25 MR. NIX: There may be some real environmental

1 benefits then from replacing older units with newer units.

2 MR. WEINBERG: There are unquestionably real
3 environmental benefits from replacing.

4 DR. McCANN: Each permit has --

5 FACILITATOR GRIFFIN: In the back.

6 DR. McCANN: I would suggest that you read the EIRs
7 and the neg decs that were done on the divestiture studies
8 because they actually address some of those questions
9 precisely.

10 MR. NIX: Great. Thanks for the reference.

11 FACILITATOR GRIFFIN: Other discussion on this
12 concept. Is it the fact that it is any ceiling at all that
13 bothers you rather than the concept of bid sufficiency?

14 MR. WEINBERG: Me personally it is the notion that
15 there should be a ceiling in a market we have all strived so
16 hard to create as an open, free-market economy, that there
17 should, for some reason now, be a ceiling is
18 counterproductive. I don't see the value.

19 FACILITATOR GRIFFIN: That is your sole problem with
20 this approach? I'm just trying to get it specific because,
21 when we write a rationale, we have to write it specifically.

22 MR. WEINBERG: I will just be honest and tell you
23 that the whole -- there must be some well-known definition of
24 "bid sufficiency" that I am not aware of. So I can't tell you
25 that is my sole problem, because I don't understand the

1 concept of "bid sufficiency" well enough to answer that.

2 FACILITATOR GRIFFIN: Karen Edson, you had also
3 raised a concern with this concept in the early part of your
4 presentation.

5 MS. EDSON: Well, I guess I don't disagree with the
6 concerns just articulated.

7 In addition, if I thought I had an understanding of
8 what the implications of the numeric analysis were -- for
9 example, does that mean we're back into CFM and the level of
10 detail that had been called for in the past 20 years in that
11 data collection process? That raises a whole set of concerns
12 that are really quite significant.

13 If, instead, the Commission were going to take a much
14 more dynamic approach to their numeric analysis, an approach
15 that I think the industry has articulated in a unified manner
16 in a separate data collection proceeding, I think the concerns
17 here, aside from the need, the numerical concerns aren't
18 significant, but that would mitigate the whole issue.

19 I would just refer to the work the generators and, I
20 guess, the marketers, as well, have done to propose an
21 alternative data collection and analysis-type measures that
22 keeps us away from the replication of the CFM.

23 FACILITATOR GRIFFIN: So it is the potential amount
24 of work involved in generating a defensible or an acceptable
25 number?

1 MS. EDSON: That is a second consideration, the
2 concern about that.

3 FACILITATOR GRIFFIN: The second consideration.
4 Time and expense versus --

5 MS. EDSON: Yes.

6 MR. MOSS: And also, as articulated in that
7 proceeding, I think some very interesting objections by
8 parties who have not traditionally been part of supplying that
9 type of data to now being introduced into a requirement to
10 supply it. So really it bites off a whole other can of worms,
11 if you will, or opens a can of worms beyond anything just
12 simply having to do with a cap. But then if you are trying to
13 reconstruct the CFM from the market as it now is of generators
14 and independent producers and everybody else who basically has
15 their own stake in various data, it is going to be much more
16 difficult and legally challenging.

17 MS. SHAPIRO: Karen, I want to say something.

18 If we are just talking about the pendency of this ER
19 and not saying what will be in the next ER, what will be in
20 place of an ER, and just talking about what kind of cap should
21 there be, could a numeric cap work if it was a bid-sufficiency
22 cap?

23 You start with ER 96 and you come up with some number
24 that says you need more than your peak capacity, your peak
25 demand capacity. You need 40 percent more, you need 50

1 percent more, you need 200 percent more. Not forever, until
2 we figure out what to do next. Then there is no CFM involved.
3 The CFM is already done.

4 FACILITATOR GRIFFIN: So you are saying that the
5 issue is multiplied by 1.4 or 2.0?

6 MS. SHAPIRO: Yes. That is what the issue is.

7 MS. EDSON: That's not the way it is articulated in
8 the paper.

9 MS. SHAPIRO: Well, that is my understanding.

10 MS. EDSON: Yes. Okay.

11 FACILITATOR GRIFFIN: Somebody new, and then Dr.
12 McCann.

13 MR. KERNER: I am Douglas Kerner (phonetic). The
14 rationale for the 1.4 multiplier would be that, if I
15 understand the bid sufficiency theorem, because that is the
16 point at which we get to see the benefits of competition, or
17 even the question of why not 1.572, -3 or -4. It seems to me
18 the basis of the theorem is the more participation and
19 competition you have, the lower the price. So isn't that the
20 rationale you need to escape the cap completely?

21 MR. RUSSELL: That is a minimum. It's not a cap.

22 MR. KERNER: Yes, that is my understanding.

23 MR. WEINBERG: That is an important distinction.

24 You keep making a point I try to reinforce.

25 DR. McCANN: One other problem with the numeric cap

1 is an area we haven't talked about, which is the DSM
2 component.

3 ER 96 was based on the assumption the utilities were
4 going to manage the DSM programs and were going to aim for
5 megawatt savings and kilowatt hour savings for those programs.

6 The whole process of AB 1890 and other proceedings
7 the PUC had have completely changed that around. So now what
8 we have is a dollar amount that is going to be spent on DSM
9 without necessarily relating to a megawatt number that is
10 going to be generated by that amount of spending

11 So therefore the megawatt numbers that are in the ER
12 96 are, in fact, not relevant to the megawatt cap calculation
13 because they are based on a faulty, now obsolete assumption
14 about how the programs will be run.

15 Now we don't know how CBEE is going to be
16 reformulated or reconstituted with all the mess that they
17 have. But I think you basically have to say we no longer have
18 a valid DSM cap number or no longer have a valid DSM capacity
19 number to use in the cap calculation. And you don't know what
20 the number is, so you don't have a way of calculating the cap.

21 I would just add that to my two other rationales for
22 saying basically you can't arrive at a number in the cap with
23 the new setting we have.

24 FACILITATOR GRIFFIN: We are huddling on who is
25 presenting the next piece of this.

1 MR. NIX: But before leaving that -- I'm sorry.

2 FACILITATOR GRIFFIN: There is a price.

3 MR. NIX: I know, but maybe there is -- language is
4 such a fun thing. Rather than multiplying a number times 1.4
5 percent or 1.5 percent and calling it a need cap, suppose that
6 were described as a level of development that was necessary to
7 sustain a competitive market. So it becomes a policy goal
8 which is a floor.

9 Now if I remember my mathematics correctly, infinity
10 is a number still. We are not likely to see that level of
11 development. But if the concern is having a numeric cap, why
12 not call it a floor which is necessary to really achieve a
13 public policy goal?

14 MR. WEINBERG: But what can the Energy Commission do
15 to achieve the goal of the floor? I can see what it can do to
16 achieve the goal of a cap. It can stop projects at some
17 point, but it really can't do anything to get to a floor.
18 It's not a obtainable goal.

19 MR. NIX: Well, this goes back to whether, in
20 fact, --

21 MR. WEINBERG: Well, I understand. But the question
22 is do we need -- does the market need anything like that?

23 MS. EDSON: I know, that's the part.

24 MR. NIX: What we are talking about, as Karen said
25 earlier, is a two-year time period.

1 MR. WEINBERG: Sure.

2 MR. NIX: And we are trying to solve a problem that
3 is a consequence of existing legislation. So if the problem
4 is that our lawyers tell us we need a number in order to be
5 legally consistent with the integrated assessment of need --

6 MR. WEINBERG: And that is the rock bottom result at
7 this point? Do we --

8 MR. GRATTAN: I don't think our lawyers have said --

9 FACILITATOR GRIFFIN: No. No, he's saying "if."

10 MR. NIX: I say "if."

11 MR. WEINBERG: Oh, "if." Okay. I'm sorry. Go
12 ahead.

13 MR. NIX: I say "if."

14 FACILITATOR GRIFFIN: Okay.

15 MR. NIX: So if that is true, then there is a
16 rationale using the bid-sufficiency concept, which -- there is
17 no deep economic analysis of this. It is empirical. It is
18 the experience of both the Power Exchange and the ISO in
19 markets to this point in time. And it does reflect the
20 economic reality that you have to have surplus capacity to
21 have competition.

22 So if we were to morally reconfigure this concept of
23 a cap as a floor, but yet recognizing what we're doing is
24 attempting to achieve a public policy goal of having a
25 competitive market, then maybe there is a semantical solution

1 to this.

2 Now it doesn't solve the intervenor issue, which I
3 think is a very real problem. But, nevertheless, it is a
4 number with a rationale that does contribute to meeting the
5 public policy goal.

6 MR. VARANINI: And it seems to me in each case we
7 have the burden of proof. The applicants have the burden of
8 proof. So in some sense you can put on any case you like to
9 the extent the Commissioners and the committees won't rule it
10 irrelevant or inappropriate.

11 So it seems to me that for some of us I think it is
12 going to be very important to make offers of proof on
13 reliability and location vis-a-vis reliability and many other
14 things because of just the inverse relationship, just the
15 number of folks that are in the urban area versus the rural
16 areas. Not to say that rural folks don't organize well. But
17 generally I think if you look at where plants are today, there
18 are communities that have grown up around those plants. And
19 those communities have grown up based on a lower value of real
20 estate.

21 So there is essentially an agenda that started in the
22 San Francisco case that I think is going to move across cases.
23 It is going to take more -- you can have a cap or you can have
24 a floor. But to meet the floor for reliability plants in load
25 centers, I think it is going to take more than simply saying,

1 "Well, there is a number and we are either under the number or
2 we are over the number."

3 So, in any event, I think if you get past the number
4 as kind of an impediment, I don't know whether you can
5 translate that number into proof, but at least it gets you
6 past the impediment of the number, to get started and get your
7 chance. And then take your own chances in the market with
8 your offer of proof, among other chances you're taking.

9 MS. EDSON: Your semantic change strikes me as
10 possibly an elegant solution here. Consistent with what Gene
11 is saying, the developers at their peril, they don't make a
12 case. They can make the case or not. But now you have a kind
13 of elegant solution to the problem. I think the challenge is
14 to build the rationale, construct the rationale that's going
15 -- let the developers draft the cases, say the -- I guess the
16 concern I had in reading the Staff paper is that you were
17 literally proposing to redo the numbers and then apply your
18 bid-sufficiency criteria, which was a concern.

19 So we may be on to something here. It strikes me as
20 a simple way to do it and get us through the next two years.

21 FACILITATOR GRIFFIN: Okay.

22 MR. NIX: Okay.

23 FACILITATOR GRIFFIN: There was one other major
24 concept that was introduced in the paper. And that was one of
25 the sub-options under option three, which was no numbers. But

1 there was a net system detriment test that could be called
2 into account. When we were huddling, we were trying to see
3 who was going to articulate it. And Dan drew the long straw.

4 MR. NIX: Since I didn't really present that part of
5 the paper, I am going to have to give you my view of what I
6 think it means. So if the author is in the audience, please
7 step forward and correct whatever it is I may say that is in
8 error.

9 There is a concern that individual assessment of --
10 well, let's back up here. Starting back with the net system
11 detriment test, I think it embodies the idea that a new
12 facility ideally would provide system benefits rather than
13 detriments. That is, for example, putting a power plant in a
14 location preventing access to transmission from other
15 facilities that may have been in that area before that power
16 plant was built might be argued as a net system detriment
17 rather than a net system benefit.

18 And I think the intent there is to have a showing
19 that, in fact, a new proposal does not create additional
20 constraints on the existing system or, if there are
21 constraints that are created, that they are mitigated in some
22 way.

23 Now that may not be taking a one-and-a-half-
24 billion-dollar transmission upgrade and spreading it into the
25 ISO's uplift charge. That may not be a very desirable

1 solution. But at least some showing that the potential for
2 system impacts has been assessed and that a mitigation
3 strategy has been considered and would be put in place.

4 COMMISSIONER LAURIE: Although I certainly won't
5 take responsibility or accountability for authoring the
6 concept, I have some vague notion of what whomever did has in
7 mind. And I think Dan's explanation is correct.

8 FACILITATOR GRIFFIN: Commissioner Laurie, for those
9 of you who don't know him.

10 COMMISSIONER LAURIE: I'm sorry. Bob Laurie,
11 California Energy Commission.

12 The concept is under a competitive market you do not
13 have an artificial cap placed. The law demands there be an
14 integrated assessment of need formulated. The law then
15 demands a plant cannot be certified unless there is
16 conformance with that integrated assessment of need. The law
17 does not demand that there be a cap artificially,
18 superficially or otherwise placed on the allowable number of
19 megawatts as long as it is in "conformance," however that term
20 is defined in the ER.

21 If anybody disagrees with that, then I would like to
22 discuss that. But that is my understanding of what the law
23 says.

24 So under the concept, as noted, we would recognize
25 in a competitive market there is no justification for a

1 number; provided, however, it would not serve public policy to
2 create an amount of megawatts that -- and bear with me for a
3 moment -- "somehow is detrimental to the system that is not
4 otherwise mitigated."

5 We have some understanding of what "mitigation"
6 means, as you go through your certification process. And it
7 may be there is detriment to the system that is not addressed,
8 cannot be legally addressed through current Warren-Alquist
9 statutory authority.

10 And the concept goes that there will be no need test
11 unless, however, absent any other potential mitigation, it is
12 shown that through some form or another, to be specified,
13 there is a detriment to the system. That is the basic
14 concept.

15 FACILITATOR GRIFFIN: Comments?

16 MS. LUCKHARDT: I guess with respect to the
17 Commissioner, and I appreciate your explanation on this, this
18 concept is, as I see it, a real hindrance to competition.

19 This concept says if you are in existence and if you
20 have transmission access, then you are allowed to continue
21 that no matter how old or how dirty you may be. And any new
22 plant that may want to come into that situation has to
23 overcome the additional cost of ensuring there is no net
24 system detriment.

25 I just don't see that as fostering the concept of

1 competition.

2 MR. NIX: Let me try a counter argument. If the
3 policy goal is to have additional power plants in order to
4 foster competition, then when you look specifically at new
5 plants that are being proposed at certain locations if, in
6 fact, they constrain other parts of the system from competing
7 effectively, then have you, in fact, increased the level of
8 competition?

9 Under that hypothetical I would say, no, you have
10 not, even though you have proposed to build additional supply.
11 It is very site and location specific.

12 MS. LUCKHARDT: Well, I think anything that you put
13 into the system that makes it more expensive for a new
14 facility to come online, you have placed a barrier to that new
15 facility being built and coming online.

16 MR. NIX: Well, I agree. The costs have gone up and
17 the incentive has gone down.

18 MS. EDSON: Well, let me read from the Staff's own
19 paper. The Staff paper acknowledges that there needs to be a
20 lot of work done here to develop what this definition is, how
21 you measure it, how you mitigate it.

22 And, secondly, we all know the ISO is working on a
23 number of mechanisms to deal with congestive issues and local
24 area reliability measures, and they don't exist yet.

25 And so this strikes me as an issue ripe for the next

1 ER, but not for an interim measure to try to address this as
2 an immediate problem, unlike the other solutions up at the
3 top.

4 MR. NIX: Let's go to the back.

5 DR. McCANN: Just that one thing about that your net
6 system detriment test basically allocates property rights to
7 the existing power plant owners on the transmission system.
8 And so you have to ask the question: Are you willing to
9 allocate property rights to the transmission system, to the
10 existing power plant owners, because that's basically what
11 you're doing by doing that.

12 MR. NIX: Well, it's a fair question. I certainly
13 don't have an answer to it. And I think Karen is on the right
14 track, that this is a concept that deserves a lot more thought
15 and consideration.

16 As it is right now, it's the 30,000-foot perspective
17 that says, "New facilities may cause more problems than the
18 benefits they convey," and we should recognize that.

19 MR. HARRIS: I'm Jeff Harris.

20 And you should also take into account in that the
21 policies related to cogeneration, which has a specific site
22 already designated, which is the industrial site for that
23 cogen facility.

24 So in taking a look at this issue, make sure that you
25 are not disincenting people to build cogen plants as well,

1 because there is balance with congestion management, but a
2 cogen doesn't have the some kind of flexibility in the siting.

3 MS. MENDONCA: I'm Roberta Mendonca, the Public
4 Advisor at the Energy Commission. And I wanted to bring
5 comments that were faxed to me today from Peter Miller, who is
6 the Senior Scientist at the Natural Resources Defense Council.
7 It is really not long and it might contribute to your
8 discussion if I were to go ahead and read it into the record:

9 "As the workshop paper clearly summarizes, the
10 newly created market for retail electricity sales
11 and the needs cap adopted in ER 96 is expected to
12 lead to a flood in applications for power plant
13 construction in California that exceeds the ER 96
14 cap of 6,737 MW of merchant plant capacity. The
15 workshop paper describes a number of options for
16 addressing this situation. We urge the Commission
17 to add to this list a greenhouse gas emissions
18 standard as described below.

19 "The need cap adopted in ER 96 was based on the
20 assumption that merchant plants impose risks only on
21 private investors, rather than on captive customers.
22 However, the costs of greenhouse gas emissions
23 remain an uninternalized cost of the operation of
24 fossil-fuel-fired merchant plants. As a result,
25 these plants continue to impose costs on captive

1 customers and, more generally, on all California
2 citizens. These costs include the direct impacts of
3 climate change on California's citizens and its
4 environment as well as the economic cost imposed by
5 the risk of future greenhouse gas regulation.

6 "NRDC therefore recommends that the Commission
7 adopt a greenhouse gas emissions standard as part of
8 a revised need test. Adoption of a greenhouse gas
9 emission standard would reduce the costs imposed on
10 the State's economy and environment, level the
11 economic playing field for merchant plants, and
12 prevent relatively dirty merchant plants from
13 gaining a near-term market edge by taking advantage
14 of the currently uninternalized costs of CO2
15 emissions.

16 "It is important to note that the goal of this
17 proposal is not to reduce the replacement of older
18 capacity with new plants, since new plants are
19 generally much cleaner and more efficient than
20 existing plants. Fortunately, the Commission is
21 faced with a wealth of new market entrants.
22 Instead, the goal is to ensure that those new
23 entrants compete against each other on a level
24 playing field in which all generators must meet an
25 environmental standard.

1 "The Oregon legislature recently adopted a
2 greenhouse gas emissions standard for new plant
3 construction (a summary is attached). The Oregon
4 standard requires that all new power plants meet an
5 emissions level 17% lower than a plant with the best
6 available heat rate. Plants with emissions above
7 this level can comply with the standard through a
8 variety of means, including the purchase of
9 emissions offsets. Circumstances in California
10 differ, but the Oregon standard provides a useful
11 model for consideration.

12 "Adoption of a parallel standard for California
13 would require development of a set of definitions,
14 guidelines, and procedures including a metric (e.g.,
15 pounds of CO2 equivalent per kwh of generation), a
16 standard level, and a mechanism for purchase of
17 offsets. We urge the Commission to begin work on
18 this effort as soon as possible."

19 I can see that copies of this are available, should
20 anybody want to pick one up at the back of the room after, --

21 MR. NIX: That would be nice.

22 MS. MENDONCA: -- and make sure that it gets in as
23 part of the record.

24 And, unfortunately, one of the benefits of being a
25 Public Advisor is I don't have to answer your questions.

1 (Laughter.)

2 MR. NIX: Commissioner Laurie.

3 COMMISSIONER LAURIE: I'm going beyond, perhaps,
4 this issue.

5 If we tend to approach a no-number solution and the
6 law mandates, nevertheless, that we find conformance with the
7 integrated assessment of need, then I would like your input as
8 to how in the world we do that. What do we say?

9 Before you today is not the question of: Should
10 there be an IAN. Given an IAN, what are you suggesting we
11 say? Do we say: There is an IAN and everything is in
12 conformance, period? Would that withstand a legal attack,
13 because that's a very important question.

14 So given an IAN, without some kind of standard, what
15 are you going to utilize to defend a finding? And what kind
16 of finding do we make in finding conformance? Because the
17 statement that it conforms will not be legally adequate unless
18 there is some support in the record.

19 So what needs to be in the record to justify a
20 finding of conformance without some standard? And if there is
21 to be some standard then, in your view, what in the world
22 should that be? That's certainly the question that's on the
23 table for us.

24 MR. NIX: Well, let's see. Let me play the role of
25 target and throw out a Staff response.

1 In the past the integrated assessment of need was a
2 rather numeric-intensive way to embody a set of public policy
3 goals. And I will argue that perhaps there is a way to
4 articulate those goals and have a showing in individual cases
5 that a proposed project really contributes to reaching these
6 goals.

7 For example, does the project meaningfully or does
8 the project contribute to furthering a competitive electricity
9 market in California?

10 Does the project provide real or measurable
11 environmental benefits?

12 Does the project provide net system benefits or
13 detriments?

14 Now I don't know that those are the right questions
15 to ask and have answered. But I think the fundamentals of the
16 integrated assessment of need can be translated back into
17 subsidiary policy goals, which could be asked and perhaps
18 answered. So one person's view of how to answer your
19 questions.

20 COMMISSIONER LAURIE: Okay. Well, I'm certainly
21 interested in the evidence used. What kind of finding do you
22 think you need to make to legally defend your application when
23 it comes to: Is this application in conformance with the IAN?
24 What do you think we need, or is my question the wrong
25 question?

1 MR. VARANINI: It's probably the right question and
2 you have a group of people who are, for the record, probably
3 frightened to answer it, because it seems to me we will get it
4 quoted back to -- we could very well get it quoted back to us
5 if we are the test case for greenhouse gases.

6 I think that was a perfectly apropos presentation by
7 the NRDC. And it is a group I have great admiration for. But
8 those are the types of things, if you get picked as a test
9 case, then you have to literally potentially put on a case
10 about greenhouse gases, and so forth and so on.

11 I participated in one of those in Oregon. And I
12 believe there were 14 days of hearings, or something like
13 that, between workshops and hearings, on greenhouse gases and
14 greenhouse gas offsets.

15 I think, though, your question -- the numbers are
16 better for us who have to prove a case in terms of having at
17 least a basis upon which to cement our particular case in our
18 proceeding in front of you. So that it might be better, I
19 think we can work things out with more time, but I think the
20 concept of a floor and the floor being necessitated to carry
21 out a market function or perhaps the birth of a market
22 function, that number and the Commission's rationale on that
23 at least provides a way to anchor the case.

24 And then in the case you take off as many offers of
25 proof or any other evidence that you feel is necessary or

1 sufficient if you want to get the Commission to make some
2 judgments that might go beyond simple arithmetics or some form
3 of analytics.

4 The other thing it seems is within the need contest
5 is -- again, it really is the ongoing applicant's burden of
6 proof. And I think with the system changing, it's going to be
7 difficult. I think this concept originally was to have a
8 number. You simply recited the number and, in theory, no one
9 would attack you or could attack you.

10 And I think that nicety probably never existed. But
11 I am sure that there are those who will intervene and will not
12 accept that now, so there will be a need to put on a case.
13 But I think it is good to anchor it off of what was done in ER
14 94 and 96.

15 MR. NIX: Well, I heard earlier a sentiment that the
16 Commission should not embark on a number-intensive
17 integrated-assessment-of-need process.

18 Was that a fair characterization, Karen or Mitch?

19 MS. EDSON: Well, I guess what I was going to say
20 was that for this project --

21 MR. NIX: Well, I heard you firmly in that camp.

22 MS. EDSON: Certainly for this project, that it is
23 completely inappropriate. I agree completely with Gene. We
24 are building off of existing articulated policies of the
25 Commission and analyses that are in the record, et cetera, et

1 cetera, et cetera.

2 In terms of the number crunching that may support
3 some future integrated assessment of need, I simply defer to
4 the record in the data collection workshop where parties have,
5 I think, made a very good showing about alternative ways to
6 get good numbers for doing the analytic work to support
7 whatever it is the Commission wants to do with those numbers
8 and to have numbers that are in many ways more accurate and
9 more useful than numbers you might get through the kind of
10 mandatory data collection methods that are currently in place.

11 So that's kind of the basis of my data collection on
12 this.

13 FACILITATOR GRIFFIN: Okay. I am going to want to
14 move this to closure by three o'clock, because there's only
15 two hours of air in this room. We are using up the last bit.

16 (Laughter.)

17 FACILITATOR GRIFFIN: So are there other comments
18 that people want to make?

19 MR. MOSS: Again to follow-up on Karen's comment,
20 there is one aspect of that just to bring to the surface here.
21 And that is that many of the parties are going to invoke
22 confidentiality and the Commission's confidentiality
23 provisions in the data that they file, because of the
24 market-competitive nature of that.

25 So that data then will be very difficult to access in

1 these siting-type cases. I mean it will be there in
2 background for the Staff for their understanding. But it is
3 not going to be supportable.

4 So the Commission will end up, because of these
5 concerns that are already surfacing, getting more and more
6 filings probably that will be requested, in large part, to be
7 confidential.

8 MS. EDSON: And that was one of the reasons we
9 articulated for moving to a different method of gathering
10 information and analysis, because intervenors in those siting
11 cases will have a right to the input assumptions that you have
12 used in your analyses, and you won't be able to give it to
13 them if you go down the path that some have added to.

14 FACILITATOR GRIFFIN: All right. Other comments?
15 If not, thank you very much for coming.

16 MS. FLEMING: Karen?

17 FACILITATOR GRIFFIN: We've got a lot of --
18 Oh, yes, Pat.

19 MS. FLEMING: A question, not a comment.

20 Now what happens? Are you going to --

21 (Laughter.)

22 MS. FLEMING: Are you going to put out another work
23 paper --

24 FACILITATOR GRIFFIN: No.

25 MS. FLEMING: -- for us to comment on?

1 FACILITATOR GRIFFIN: No.

2 MS. FLEMING: No.

3 FACILITATOR GRIFFIN: The ER 96 Standing Committee
4 will issue its proposed ruling on December the 9th. And that
5 will be presented at the December 16th workshop (sic). There
6 were -- well, let's see. Sharpless and Rohy?

7 COMMISSIONER SHARPLESS: No. Rohy and Sharpless.

8 FACILITATOR GRIFFIN: Pardon?

9 COMMISSIONER SHARPLESS: Rohy and Sharpless.

10 FACILITATOR GRIFFIN: Okay. And so they will be
11 doing that. If they need our assistance in putting that paper
12 together, they will ask it. We will, of course, provide it.

13 Mr. Bles is the attorney in the case. I have a
14 strong hopes he is the person writing it. So that is what I
15 expect happens next.

16 (Comments off the record.)

17 FACILITATOR GRIFFIN: Yes, sir.

18 MR. GRATTAN: I am looking at page 8 of the Staff
19 handout. And the Staff was discussing in the paragraph the
20 ability under an assessment of need to determine whether a
21 project caused detriment, net system detriment.

22 I would like to know whether counsel and/or Bob
23 Therkelsen believe that the Commission, under its existing
24 authority in a siting case, can turn down or condition a
25 project based on its net system impacts.

1 MR. BLEES: Well, I can give you a short answer.
2 The long answer will extent us beyond the air cap figures that
3 have been established by Karen Griffin.

4 The short answer is yes, I believe that we do have
5 that authority.

6 MR. GRATTAN: Okay.

7 MR. THERKELSEN: I would agree with that.

8 FACILITATOR GRIFFIN: Okay. Thank you very much.
9 Run for the door. Oh, no, the lawyer has spoken.

10 MR. BLEES: I still have nine minutes.

11 MR. THERKELSEN: No, you don't. The floor does.

12 MR. BLEES: The Committee's Order said that anybody
13 who wants to propose particular language for an amendment to
14 ER 96 should have submitted such a proposal by this past
15 Monday, November 30th.

16 I want to invite anybody who would still like to do
17 that to submit comments to the docket. Although given the
18 short time between now and December 9th, whether or not the
19 Committee will actually be able to take those into account,
20 I'm not sure. But I would certainly invite you to do that,
21 with emphasis on specific wording changes to ER 96.

22 Thank you.

23 FACILITATOR GRIFFIN: Okay. We're done.

24 Thank you.

25 (Public Workshop concluded at 2:55 o'clock p.m.) --o0o--