

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
November 30, 2018

Present: Member Mark Hariri, Vice Chairperson
Representative of the State Treasurer
Member Lee Adams
County Supervisor
Member Ken Alex
Director of the Office of Planning and Research
Member Yvette Stowers
Representative of the State Controller

Absent: Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member
Member Jacqueline Wong-Hernandez, Chairperson
Representative of the Director of the Department of Finance

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Vice Chairperson Hariri called the meeting to order at 10:04 a.m. Executive Director Heather Halsey stated that Ms. Olsen, Ms. Ramirez, and Ms. Wong-Hernandez would not be able to attend the hearing, noted that the existing membership of the Commission is seven and with four members present, a majority, there was a quorum, and called the roll.

APPROVAL OF MINUTES

Member Adams made a motion to adopt the minutes. With a second by Member Stowers, the September 28, 2018 hearing minutes were adopted by a vote of 4-0 with Members Olsen, Ramirez, and Wong-Hernandez absent.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

The Vice Chairperson asked if there was any public comment. There was no response.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Executive Director Halsey swore in the parties and witnesses participating in the Article 7 portion of the hearing.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

Item 2 Appeal of Executive Director Decisions

Executive Director Halsey stated that there were no appeals to consider for this hearing.

INCORRECT REDUCTION CLAIM

Item 3 *Enrollment Fee Collection and Waivers, 15-9913-I-02*

Education Code Section 76300; California Code of Regulations, Title 5, Sections 58501-58503, 58611-58613, 58620, and 58630
Fiscal Years: 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011

North Orange County Community College District, Claimant

Executive Director Halsey stated that the claimant notified Commission staff that they would not be sending a representative to the hearing. Senior Commission Counsel Eric Feller presented this item, and recommended that the Commission deny this Incorrect Reduction Claim.

Parties were represented as follows: Jim Venneman appeared on behalf of the State Controller's Office.

Following discussion among the Commission members, staff, and Mr. Venneman, Member Adams made a motion to adopt the staff recommendation. With a second by Member Stowers, the motion to deny this Incorrect Reduction Claim was adopted by a vote of 4-0 with Members Olsen, Ramirez, and Wong-Hernandez absent.

INCORRECT REDUCTION CLAIM

Item 4 *Interagency Child Abuse and Neglect Investigation Reports (ICAN), 17-0022-I-01*

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916;

¹ Renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29); “Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013

City of Palmdale, Claimant

Senior Commission Counsel Matt Jones presented this item and recommended that the Commission deny this Incorrect Reduction Claim.

Parties were represented as follows: Annette Chinn, appeared on behalf of the claimant. Masha Vorobyova, appeared on behalf of the State Controller’s Office.

Following discussion among the Commission members, staff, and parties, Member Alex made a motion to adopt the staff recommendation. With a second by Member Stowers, the motion to deny this Incorrect Reduction Claim was adopted by a vote of 4-0 with Members Olsen, Ramirez, and Wong-Hernandez absent.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

- Item 5 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

STAFF REPORTS

- Item 6 Legislative Update (info)

Executive Director Heather Halsey stated that there is nothing new to report.

- Item 7 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 8 Executive Director: Litigation and Personnel Subcommittee Appointments, Workload Update, and Tentative Agenda Items for the January and March 2019 Meetings (info/action)

Executive Director Heather Halsey presented this item, first describing the action item for the Commission’s Litigation and Personnel Subcommittee appointments, to replace Member Chivaro. Executive Director Halsey explained that subcommittees serve in an advisory capacity to the Commission but do not take actions, any member may volunteer to serve, recommended that members nominate themselves and serve upon approval of the Commission, and nominated the Director of Finance or the Director’s designee (in their absence) to serve on the Personnel Subcommittee.

Vice Chairperson Hariri inquired if the Commission needed to vote on this item and Executive Director Halsey asked that it be opened up for discussion among the members, and requested that if anyone wanted to volunteer for either position and then the members could vote on that upon

making the motion. Member Adams stated that he would accept the Executive Director's recommendation for the Personnel Subcommittee and suggested that there are a few attorneys who may be most appropriate for the Litigation Subcommittee.

Member Alex stated that the November 2018 meeting would be his last meeting. Executive Director Halsey noted that Member Ramirez was not present and that a replacement for Member Alex would also be needed. Member Alex suggested that the nominations be split and suggested dealing with the Litigation subcommittee nominations at the next meeting.

Member Adams made a motion to adopt staff's recommendation for the Personnel Subcommittee. With a second by Member Stowers, the motion to approve the Director of the Department of Finance or the Director's designee to serve on the Commission's Personnel Subcommittee was adopted by a vote of 4-0 with Members Olsen, Ramirez, and Wong-Hernandez absent. Executive Director Halsey then presented the workload and administrative workload updates.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/action)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

Trial Courts:

1. ***On Remand from the Third District Court of Appeal, Case No. C070357***
State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al. (petition and cross-petition)
Sacramento County Superior Court Case No. 34-2010-80000604
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
2. ***Fresno Unified School Dist. v. Commission on State Mandates***
Sacramento County Superior Court, Case No. 34-2017-80002768
[*Certificated School Employees – Parental Leave*, 16-TC-01]

Courts of Appeal:

1. ***Coast Community College District, et al. v. Commission on State Mandates***,
Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983,

Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

2. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929
Sacramento County Superior Court, Case No. 34-2015-80002016
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]
3. ***On Remand from California Supreme Court, Case No. S214855, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al*** (petition and cross-petition)
Second District Court of Appeal Case No. B292446
[Los Angeles County Superior Court, Case No. BS130730, Related Appeal from Second District Court of Appeal, Case No. B237153 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

California Supreme Court:

1. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
California Supreme Court, Case No. S239907
Fourth District Court of Appeal, Division One, Case No. D068657

San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509);
Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes
1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996,
Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7,
2006]

2. *California School Board Association (CSBA) v. State of California et al.*
California Supreme Court, Case No S247266
First District Court of Appeal, Case No. A148606
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a).

The Commission adjourned into closed executive session at 11:05 a.m., pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

RECOVENE IN PUBLIC SESSION

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:26 a.m., the Commission reconvened in open session, and Vice Chairperson Hariri reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Hearing no further business, Vice Chairperson Hariri adjourned the meeting by a unanimous voice vote of the Commission at 11:27 a.m.

Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

RECEIVED

PUBLIC MEETING

DEC 27 2018
**COMMISSION ON
STATE MANDATES**

FRIDAY, NOVEMBER 30, 2018

10:04 A.M.

STATE CAPITOL BUILDING

ROOM 447

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

REPORTED BY:

KATHRYN S. SWANK

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A P P E A R A N C E S

COMMISSIONERS

MARK HARIRI
Representative for JOHN CHIANG, Director
State Treasurer
(Vice Chair of the Commission)

KEN ALEX, Director
Office of Planning & Research

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

YVETTE STOWERS
Representative for BETTY T. YEE
State Controller

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COMMISSION STAFF

HEATHER A. HALSEY
Executive Director

HEIDI PALCHIK
Assistant Executive Director

MATTHEW B. JONES
Senior Commission Counsel

ERIC FELLER
Senior Commission Counsel

CAMILLE N. SHELTON
Chief Legal Counsel

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A P P E A R A N C E S C O N T I N U E D

PUBLIC PARTICIPANTS

Annette Chinn
Cost Recovery Systems
for Claimant City of Palmdale

Jim Venneman, Audit Manager
State Controller's Office, Division of Audits

Masha Vorobyova, Audit Manager
State Controller's Office, Division of Audits

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SACRAMENTO, CALIFORNIA

FRIDAY, NOVEMBER 30, 2018, 10:04 A.M.

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VICE CHAIRPERSON HARIRI: Good morning, everyone. The meeting of the Commission on State Mandates will come to order.

Ms. Halsey, will you please call the roll.

MS. HALSEY: Sure.

Ms. Ramirez, Ms. Olsen, and Ms. Wong-Hernandez contacted me to let me know they will be unable to attend today's hearing.

The existing membership of the Commission is seven; so with four members present today, a majority, we have a quorum.

Mr. Adams.

MEMBER ADAMS: Here.

MS. HALSEY: Mr. Alex.

MEMBER ALEX: Here.

MS. HALSEY: Mr. Hariri.

VICE CHAIRPERSON HARIRI: Here.

MS. HALSEY: Ms. Stowers.

MEMBER STOWERS: Here.

MS. HALSEY: Thank you.

VICE CHAIRPERSON HARIRI: Okay. The first item on the agenda is the minutes of the last September 28th,

1 2018, meeting.

2 Are there any objections or corrections to the
3 minutes from the September meeting?

4 MEMBER ADAMS: I would move approval.

5 MEMBER STOWERS: Second.

6 VICE CHAIRPERSON HARIRI: Is there a second?

7 We have a motion and a second for adoption of
8 the September 28, 2018, minutes.

9 All those in favor, please signify "aye."

10 (Ayes)

11 VICE CHAIRPERSON HARIRI: Any opposition?

12 (No response)

13 VICE CHAIRPERSON HARIRI: Any abstention?

14 (No response)

15 VICE CHAIRPERSON HARIRI: Okay. The minutes
16 are adopted.

17 MS. HALSEY: Now we will --

18 VICE CHAIRPERSON HARIRI: Is there any public
19 comment?

20 Oh, sorry.

21 MS. HALSEY: We will take up public comment now
22 for items not on the agenda. Please note that the
23 Commission cannot take action on items not on the
24 agenda. However, it can schedule issues raised by the
25 public for consideration at future meetings.

1 VICE CHAIRPERSON HARIRI: Okay. Is there any
2 public comment?

3 (No response)

4 VICE CHAIRPERSON HARIRI: Hearing no public
5 comments, we will move on to the next item, please.

6 MS. HALSEY: Since there are no proposed items
7 for consent this morning, let's move to the Article 7
8 portion of the hearing.

9 Will the parties and witnesses for Items 3 and
10 4 please rise.

11 (Parties/witnesses stood to be
12 sworn or affirmed.)

13 MS. HALSEY: Do you solemnly swear or affirm
14 that the testimony which you are about to give is true
15 and correct, based on your personal knowledge,
16 information, or belief?

17 (Affirmative responses were heard.)

18 MS. HALSEY: Thank you.

19 Item 2 is reserved for appeals of Executive
20 Director decisions. There are no appeals to consider
21 for this hearing.

22 Senior Commission Counsel Eric Feller will
23 present Item 3, an incorrect reduction claim on
24 enrollment fee collection and waivers.

25 The Claimant notified Commission staff that

1 they would not be sending a representative to today's
2 hearing.

3 MR. FELLER: Good morning. This incorrect
4 reduction claim challenges the Controller's reduction of
5 costs claimed for salaries and benefits for enrollment
6 fee collection and waiver activities and the adjustments
7 to offsetting revenues for Fiscal Years 98/99 through
8 10/11.

9 Staff finds the IRC is timely filed and the
10 Controller's reductions are correct as a matter of law
11 and not arbitrary, capricious, or entirely lacking in
12 evidentiary support.

13 The Controller agrees with the proposed
14 decision, but the Claimant does not.

15 Accordingly, staff recommends the Commission
16 adopt the proposed decision to deny the IRC and
17 authorize staff to make any technical, nonsubstantive
18 changes to the proposed decision following the hearing.

19 Will the parties and witnesses please state
20 your full name for the record, please.

21 MR. VENNEMAN: Jim Venneman, State Controller's
22 Office.

23 Controller's Office supports staff's conclusion
24 and recommendation.

25 VICE CHAIRPERSON HARIRI: Are there any public

1 comments on this item?

2 (No response)

3 VICE CHAIRPERSON HARIRI: Are there any
4 questions from the members?

5 (No response)

6 MEMBER ADAMS: Mr. Chairman, I would just make
7 the comment that I'm sorry the Claimant is not here.
8 Because what jumped out at me is there are estimates of
9 almost ten times over what was reality, and I would have
10 liked to have asked why such a discrepancy. If
11 something is a little off, that's fine, but ten times
12 off, some explanation would have been nice to hear.

13 VICE CHAIRPERSON HARIRI: So how do we deal
14 with issues like that? Just hold off to the question?

15 MS. HALSEY: The Claimant is not here to answer
16 that so...

17 MR. FELLER: According to the record, the
18 employees -- they took surveys of their employers [sic],
19 and based on those employee surveys, they estimated the
20 time that it took to perform the mandated activities.
21 So that's -- that's -- I believe that's where they
22 received that data.

23 MEMBER STOWERS: Chair? A question on that.
24 With respect to the surveys, can you elaborate how the
25 surveys -- do you know how they did the surveys? Is it

1 just interviewing the employees? Documenting their
2 time?

3 MR. FELLER: The -- each employee filled out a
4 form that had the columns and rows; and the rows for
5 each reimbursable activity were listed; and then they
6 listed the estimated number of minutes it took them to
7 perform that activity; and then the -- they -- the
8 employee signed the bottom of the form, certified under
9 penalty of perjury, that that was -- that was correct,
10 and they signed that.

11 But again, it differed with the Controller's
12 time study.

13 MEMBER STOWERS: But this particular office
14 was -- actually watched them perform the task and came
15 up with a different time frame?

16 MR. FELLER: According to the record. Yeah,
17 the Controller probably would be better qualified to
18 answer that one, however.

19 MR. VENNEMAN: Yes. We actually went to the
20 district and went to the various offices where the
21 activities were performed, and we observed the employees
22 performing the reimbursable activities and recorded the
23 average times it took them to do those. We asked the
24 district to comment on our observations about the time
25 it took, and they didn't respond one way or the other.

1 We felt that our -- the time estimate -- the
2 time, actual time, increments that we observed were
3 representative of the actual time it took to perform the
4 reimbursable activities.

5 MEMBER STOWERS: Thank you.

6 VICE CHAIRPERSON HARIRI: Okay. Is there any
7 further discussion?

8 (No response)

9 VICE CHAIRPERSON HARIRI: With no further
10 discussion, is there a motion?

11 MEMBER ADAMS: Mr. Chairman, I would make a
12 motion to approve the staff recommendation.

13 VICE CHAIRPERSON HARIRI: Is there a second?

14 MEMBER STOWERS: Second.

15 VICE CHAIRPERSON HARIRI: Okay. It has been
16 moved by Mr. Alex and -- sorry, by Mr. Adams; and
17 seconded by Ms. Stowers.

18 If there are no other questions, would you
19 please call the roll?

20 MS. HALSEY: Mr. Adams.

21 MEMBER ADAMS: Aye.

22 MS. HALSEY: Mr. Alex.

23 MEMBER ALEX: Aye.

24 MS. HALSEY: Mr. Hariri.

25 VICE CHAIRPERSON HARIRI: Aye.

1 MS. HALSEY: Ms. Stowers.

2 MEMBER STOWERS: Aye.

3 VICE CHAIRPERSON HARIRI: Okay. Motion
4 carries.

5 We'll go on to the next item.

6 MS. HALSEY: Senior Commission Counsel Matt
7 Jones will present Item 4, an incorrect reduction claim
8 on interagency child abuse and neglect investigation
9 reports, or ICAN.

10 MR. JONES: Good morning.

11 This IRC challenges reductions made by the
12 Controller to reimbursement claims filed by the City of
13 Palmdale for costs incurred during fiscal years
14 1999/2000 through 2012/2013 for the interagency child
15 abuse and neglect investigation reports mandate, or
16 ICAN.

17 The reductions at issue turn on adjustments
18 made to the Claimant's time study and indirect costs as
19 claimed. Staff recommends that the Commission deny this
20 IRC based on the following findings:

21 The Controller's adjustments to the time study
22 are correct as a matter of law and are not arbitrary,
23 capricious, or entirely lacking in evidentiary support;
24 and the Controller's disallowance of indirect costs as
25 claimed was correct as a matter of law and not

1 arbitrary, capricious, or entirely lacking in
2 evidentiary support.

3 Staff further recommends that the Commission
4 authorize staff to make any technical, nonsubstantive
5 changes following the hearing.

6 Will the parties and witnesses please state
7 your names for the record.

8 MS. CHINN: Annette Chinn, Cost Recovery
9 Systems, representative for the City of Palmdale.

10 MS. VOROBYOVA: Masha Vorobyova representing
11 State Controller's Office.

12 VICE CHAIRPERSON HARIRI: Okay. Would you
13 please explain your findings.

14 MS. CHINN: I have never done an incorrect
15 reduction claim before, so I apologize in advance.

16 First, I would like to thank staff and the
17 Commission for their time and consideration of our
18 issue. I have over 30 years of experience in working in
19 the field of government finance and as a consultant for
20 filing these claims for state reimbursement, but zero
21 experience with presenting IRCs.

22 One of the issues we wish to bring up today for
23 your consideration is the area where the State
24 Controller reduced our overhead costs, or ICRP rates, to
25 zero. We believe that we were denied overhead costs

1 that we were eligible for under the state laws, which
2 require reimbursement of both direct and indirect costs,
3 and the denial of these indirect costs resulted in loss
4 of revenue of approximately half a million dollars.

5 The City of Palmdale, like many cities in the
6 state of California, contract for their law enforcement
7 services. Palmdale's contract is with Los Angeles
8 County Sheriff Department; and within their contract,
9 there is a preset charge for the patrol deputies
10 established by the county. Within this billable hourly
11 rate, certain city -- or countywide overhead costs are
12 included, such as the benefits of the employee; base
13 supervisory support; countywide support, such as
14 providing dispatch evidence records; and other
15 specialized services, such as access to SWAT teams and
16 homicide units when needed. However, it does not
17 include all overhead costs.

18 We showed through our record that there were
19 supplemental charges both within the contract, such as
20 charges for additional clerical support, administrative
21 support. In the case of Palmdale, usually they had
22 additional administrative sergeants and clerks that they
23 had contracted with to be dedicated staff for just their
24 station. And then there were other outside costs, such
25 as the contract -- I'm sorry -- countywide -- let me

1 back up.

2 Sorry. There were citywide support costs that
3 were supported in the Cost Allocation Plan. In the Cost
4 Allocation Plan, cities are able to bill for the cost of
5 citywide services, such as of the City Attorney's
6 Office, City Manager's Office, support for review of the
7 contract, Finance Department's costs; and those are all
8 approved and eligible under the federal OMB guidelines.

9 We believe that Commission staff agrees with us
10 in the facts that we presented, that we did show that
11 our costs were indeed above zero percent, and they, in
12 theory, should be actual for state reimbursement.

13 I've worked for the City of Palmdale since
14 2000, and I have prepared their claims for state
15 reimbursement. As a part of my services, I annually
16 compute departmental overhead rates, or ICRPs, for all
17 the programs that have direct costs. This also includes
18 preparing overhead costs for the sheriff's contract as
19 well. The rates I computed range between 6 and
20 13 percent without taking account the citywide overhead,
21 which I mentioned was through the cost allocation plan.

22 We claimed 10 percent as an average because,
23 one, when you request a rate of 10 percent or less per
24 the claiming instructions, submission of backup to
25 support that rate is not required; and, two, because we

1 felt that in the case of audit, we would be able to
2 support or justify the rate that we submitted.

3 This was a fair rate, and not having to present
4 documentation was advantageous since we were on a tight
5 time frame. We were required to submit 14 years' worth
6 of claims in the three-month period. And usually, when
7 we do our annual claims, we have the same three-month
8 time allotment, so doing 14 years' worth of claims in
9 one 3-month chunk is a difficult task.

10 We presented our computations to the auditor
11 during our audit and provided the support to prove that
12 the rates that we claimed were supported and justified.

13 In addition to the overhead charges with the
14 L.A. County contract, as I said, the City also included
15 overhead contracts outside the contract to support the
16 law enforcement service program, and I have kind of
17 explained those. So when we factored in those county --
18 or the Cost Allocation Plan costs, our rates averaged
19 between 12 and 15 percent, so we felt that our request
20 for 10 was justified and reasonable.

21 According to the federal OMB and CFR
22 guidelines, these costs are eligible for inclusion in
23 the ICRP. And I will just read a quote to you. It
24 says, "Indirect costs may include both, one, overhead
25 costs of the unit performing the mandate; and, two, the

1 costs of central government services distributed by
2 other departments, based on a systematic and rational
3 basis through a Cost Allocation Plan." And that's
4 exactly what we did in preparation of our rates.

5 The State Controller auditor refused to
6 consider or allow any additional overhead costs, and our
7 ICRP was reduced to zero.

8 Our auditor explained -- and, again, I quote --
9 "I have reviewed the City's indirect cost support and
10 our position has not changed. The program's parameters
11 and guidelines allow a 10 percent indirect cost against
12 direct salaries claimed."

13 Because our salaries -- and that's the end of
14 the quote.

15 Because our salaries were technically contract
16 salaries, which included some base overhead, the State
17 Controller denied to add any additional overhead even
18 though we demonstrated that that overhead did exist.

19 We believe that the Controller's rationale is
20 not correct nor is it supported by federal OMB or
21 statutory guidelines. The rates we prepared were
22 appropriate, were actual, and were computed in
23 compliance with, again, federal and -- guidelines.
24 Appendix E of the federal guidelines on page 180 states
25 that the distribution base of indirect costs do not just

1 have to be based on salaries, but are allowed to be
2 computed based on, one, total direct costs, excluding
3 capital or other distorting items; two, direct salaries
4 and wages; or, three, another base which results in an
5 equitable distribution.

6 So again, the State Controller's stance that
7 just because our rates were not based on direct salaries
8 and wages invalidated them is not correct, because,
9 again, based on the federal guidelines, which
10 instructions say our mandates are supposed to comply
11 with, we can also compute those rates based on, again,
12 total direct costs or another base, which results in
13 equitable distribution, and we did exactly that.

14 It should be noted that nowhere in the claiming
15 instructions are there directions on how a local agency
16 is supposed to address or show claims for overhead costs
17 that are incurred under a contract-type scenario, as in
18 this situation. And we should not be penalized for this
19 deficiency in the instructions because we are simply
20 doing our best to claim what our actual costs were.

21 We understand that the State Controller has
22 broad authority and discretion over modifying the
23 claiming instructions. And I guess my question is, if
24 they feel that the presentation of overhead in a certain
25 way has to be presented in a certain format, I would

1 request that they make those rules clear to claimants,
2 because there are many cities in the state of California
3 that do contract for law enforcement services, and
4 there's no readily available means to include overhead
5 that we can do, other than what was done in the claim.
6 So I don't think it should just be not -- be denied for
7 that technicality.

8 Government Code section 17561(a) states, "The
9 state shall reimburse each local agency and school
10 district for all costs mandated by the state."

11 The instructions, again, say that both direct
12 and indirect costs are eligible costs for including in
13 our claim.

14 Government Code section 17561(d)(i) states that
15 the Controller shall "audit the records of any local
16 agencies or school district to verify the actual amount
17 of the mandated cost."

18 All that we requested during our audit was that
19 they give our ICRP, or our overhead rate, adequate
20 consideration and verify that those amounts were
21 actually -- are actual costs.

22 The Government Code and regulations state that
23 the auditor is to verify costs to determine if they are
24 not excessive or reasonable. We believe that the costs
25 of 10 percent were not excessive or unreasonable.

1 Denial of eligible costs due to a formatting dispute, we
2 believe, is arbitrary and capricious, which denied us of
3 costs close to half a million dollars. This denial of
4 costs represents a -- you know, a hardship to the City,
5 and we ask that the Commission respectfully consider
6 this issue and ask the State Controller's Office to
7 rereview our overhead rates and reinstate them to
8 actual.

9 VICE CHAIRPERSON HARIRI: Thank you, Ms. Chinn.

10 MS. CHINN: I have another issue, but I don't
11 know what the protocol is. Do we talk about this one
12 first or go on to the next one?

13 MS. HALSEY: That's really up to the members.

14 VICE CHAIRPERSON HARIRI: Okay. That's fine.
15 Go ahead. Go ahead.

16 MS. CHINN: Do you want issue 2 now too?

17 VICE CHAIRPERSON HARIRI: Please.

18 MS. CHINN: Okay. All right.

19 So our second issue or contention, that we
20 believe there was a inappropriate disallowance made to
21 our claims for state reimbursement, pertain to the
22 application of time for report writing.

23 In the parameters of this program, the main
24 eligible activities involve the time for the officer to
25 conduct the preliminary investigation in order to

1 prepare a report and determine if the case was founded,
2 unfounded, or inconclusive. When we prepared our claims
3 for state reimbursement, we started early, because I
4 knew that doing 14 years' worth of claims in three
5 months was going to be pretty much an impossible task.

6 So when I began contacting my clients, I asked
7 them for information based on what I thought was going
8 to be approved for state reimbursement. When I did
9 those analyses, you know, I reviewed all the
10 documentations; Statements of Decision; I attended the
11 prehearing conversations. It was pretty clear that the
12 scope was going to be primarily that investigative
13 component and then the report writing component.

14 However, I had interpreted a little bit more
15 conservatively than what was finally granted. I thought
16 that the time that was spent by the officer to prepare
17 the report was only going to be eligible for
18 substantiated cases.

19 So when I met with my clients, I explained to
20 them, you know -- you know, asked for time for these
21 different activities; have your time study track these
22 four major components. And when the City did so, the
23 first time when they prepared their time study, it
24 wasn't a true time study in the definition of what the
25 State Controller was looking for.

1 What the City had done was, they went back to
2 their computer-aided dispatch records, and they were
3 able to -- for those types of instances and
4 investigations, they were able to determine the time
5 that the officer arrived on scene, and then the time
6 that the officer departed from that call for service.
7 So they determined that that was the initial preliminary
8 investigation time, and we thought that that was
9 reasonable.

10 When I came back to the City the following
11 year, I reviewed their time study results. Oh, also,
12 just to back up.

13 During that time study, they also had done a
14 time study for report preparation, and it's not really
15 clear how they came up with their times. It averaged to
16 be about 1.28 hours of report writing time for those
17 investigations. And I know that cities have also
18 similar programs where they can record when an officer
19 logs in, types a report, and logs out. So I suspect
20 that that was the method in which they derived that 1.28
21 hours per case.

22 So technically, while it's not a time study in
23 the way the state, you know, wants you to sit there and
24 track minute by minute, we felt that those times were
25 reflective of actual costs.

1 So when I came to the City the next year,
2 instructions had still not been released, so we still
3 had more time, so I said, it's probably a good idea if
4 we do another time study that would comply with the
5 State Controller's rules. So I explained to them, you
6 know, here's a new form; here are the activities; track
7 them contemporaneously, so that when the deputy who does
8 those investigations goes out on those calls for
9 service, they would be tracking minute by minute what
10 that cost was.

11 So the following year when I returned and I
12 reviewed their reports again, while they had done that,
13 they had lumped together all the activities under one
14 line entry. And on that entry, they would enter Item 1,
15 review of the SCAR form; Item 2, conduct investigation;
16 Item 3, prepare the report; and Item 4, review and
17 approve of the report.

18 So what my intention had been was that there
19 would be Item 1 takes this amount of time; Item 2 takes
20 this. But they had lumped it all together. And at this
21 point in time, it was already too late to do another
22 time study, so we had to prepare based on the
23 information that we had.

24 So we knew in our time study, it was flawed
25 because, again, I told you in the beginning, that my

1 instructions to my clients were that we only thought
2 that the time to prepare substantiated reports would be
3 included, but not for the unfounded cases.

4 So accordingly, the deputy who did those time
5 studies, in her logs, did not note report writing time
6 for about 80 percent of the cases in that time study.
7 And that's pretty much reflective of what actual
8 statistics are. When law enforcements go out and
9 conduct these investigations, typically 80 percent are
10 unfounded. Maybe 10 to 20 percent are actual founded
11 and substantiated cases of child abuse. So the time
12 study reflected, in general, what actually occurs as a
13 whole, from what we observed.

14 So during the audit, we noticed that the state
15 had reduced our request by approximately an hour, and I
16 was trying to determine, well, where did that one-hour
17 reduction come from, and, at first, it wasn't clear to
18 me how -- how that reduction was made. And then it, you
19 know, became clear that the reduction is because, in our
20 time study, which the State took verbatim, they didn't
21 factor in that 80 percent of our cases had not included
22 report writing time. So we requested that they include
23 time for report writing, but the State Controller denied
24 that request.

25 So our stance is that that is not a fair

1 outcome. We asked for the opportunity to conduct
2 another time study, at which time -- you know, the
3 original time study was over a month period. We could
4 have done -- during a two-year audit, it would have been
5 a simple matter to do another time study that would
6 capture the time that it takes to prepare unfounded or
7 inconclusive reports, but we were denied that
8 opportunity.

9 So, therefore, I'm here before you today,
10 asking for an opportunity to do that, which wasn't
11 granted to us during our original audit.

12 VICE CHAIRPERSON HARIRI: Thank you, Ms. Chinn.
13 Can we hear from Ms. Vorobyova this morning.

14 MS. VOROBYOVA: Good morning.

15 Well, first of all, I would like to start with
16 saying that the State Controller's Office agrees with
17 the staff-proposed decision, and to quickly comment on
18 the two issues of indirect costs and the report writing
19 time.

20 The -- as Ms. Chinn indicated, the City did not
21 incur any direct costs because they don't have the
22 agency to perform the reimbursable activity. They
23 contract with Los Angeles County Sheriff's Department to
24 perform the reimbursable activities, and, therefore, the
25 costs that were claimed are the contract services costs.

1 The billable rates that the City paid to Los Angeles
2 Sheriff's Department do include some overhead items
3 built into the rates, and we have showed that in our
4 record. So some overhead costs are reimbursable through
5 the contract service rate.

6 The City did not claim indirect costs in
7 accordance with parameters and guidelines. The
8 10 percent rate that Ms. Chinn is referring to is only
9 allowable to be claimed on top of direct salary costs,
10 which, in this instance, were not incurred.

11 And on the subject matter of report writing
12 time, I would like to be clear that the time increment
13 that is allowable for the specific claim does include
14 report writing time within the average time increment.

15 As Ms. Chinn indicated, the time increment was
16 all encompassing without segregating the time increment
17 into each specific activity. So to validate those four
18 reimbursable activities, our staff performed interviews
19 with the deputies who actually performed these
20 investigations, and we asked about the report -- report
21 writing time in those interviews and validated that the
22 report writing time was, in fact, included in the
23 average time increment.

24 The reduction of the average time increment
25 actually would not reduce any report writing time. It

1 had to do with the -- eliminating from the time study
2 population one case that was ineligible to be claimed,
3 because that one case included activities that went
4 beyond the scope of the mandate and included activities
5 that happened after the case is found to be
6 substantiated and further investigation continues.

7 So I want to be clear that the change in the
8 time increment has nothing to do with report time --
9 report writing time. And I believe report writing time
10 is an additional increase that the Claimant is
11 requesting.

12 VICE CHAIRPERSON HARIRI: Thank you.

13 Are there any public comments on this item?

14 MS. CHINN: Can I -- rebuttal?

15 Okay. So the first point of the 10 percent not
16 being applicable and that cities are not incurring
17 direct costs is -- it's rather naive. I mean, the City
18 is incurring direct costs. They are just contract
19 costs. When a city hires an attorney, those rates -- if
20 they are doing the valid activities -- those are
21 eligible for reimbursement, as we were reimbursed for
22 that.

23 Masha, Ms. Vorobyova, mentioned that some
24 overhead was included in the rates that we requested,
25 and that's true. They did give us a 4 percent liability

1 rate that was a part of the contract. However, it did
2 not include any of the administrative staff, the support
3 staff, the clericals. Did not include cost allocation,
4 planned costs. Again, all of those costs are eligible
5 for reimbursement under federal guidelines. The way in
6 which we prepared the overhead rates are in compliance
7 in federal rules and federal guidelines. So the
8 10 percent is supported and is properly applied to the
9 contracted hourly rate. So that is not a valid point.

10 MEMBER ALEX: Maybe I can try to cut through
11 this.

12 It seems to me, there are two separate
13 questions here. One is, is it -- is it reasonable for
14 Palmdale to have overhead in addition to that in the
15 contract? That's one question.

16 It rolls into the next question, which is
17 whether those -- I think it's very likely -- I mean, the
18 State obviously charges overhead when it does
19 contracting and gets reimbursed. So I -- I think that's
20 pretty clear that you could.

21 So the real question, for me, is, does it -- is
22 it covered by the -- by the reimbursement requirements
23 here? And maybe you can speak to that. Because I think
24 it's pretty clear, there are -- there are indirect costs
25 incurred by the City. And the question is, is it

1 reimbursable in this context?

2 MS. CHINN: Maybe the legal staff can comment,
3 but based on legal descriptions in the California
4 constitution, it says local agencies are entitled --

5 MEMBER ALEX: Don't -- don't -- the
6 constitution and federal requirements, they are not
7 relevant to this --

8 MS. CHINN: Okay. So I am trying to answer the
9 question.

10 MEMBER ALEX: I -- I am asking the Controller
11 --

12 MS. CHINN: I believe the OMB guidelines do.

13 MEMBER ALEX: I am asking the Controller.

14 MS. CHINN: Okay. I'm sorry.

15 MEMBER ALEX: Okay. Thank you.

16 MS. VOROBYOVA: I believe determining
17 reasonableness applies a bit of subjectivity. When we
18 do our audits, we audit to the parameters and
19 guidelines. And parameters and guidelines are very
20 clear in how to claim where 10 percent applied and where
21 it does not. And, therefore, our reduction is in
22 accordance with parameters and guidelines, which is a
23 judgment criteria for the mandated cost claims.

24 MS. CHINN: So in other audits where we have
25 a -- and I know you guys don't like to go into other

1 audits but --

2 MEMBER ALEX: Hang on. Hang on a second.

3 MS. CHINN: Okay.

4 MEMBER ALEX: Maybe I can ask staff as well, if
5 you have an opinion on that.

6 Because, to me, the question is, the parameters
7 and guidelines control unless there's something that
8 overrules this. And so I just want to know your view of
9 the -- of the City's ability --

10 MR. JONES: Yes, sir. That's staff's
11 recommendation too: The parameters and guidelines only
12 allow 10 percent to be applied to direct costs, direct
13 salaries, and benefit costs. So when your salaries are
14 incurred through a contract, as this City's are, maybe
15 there's -- you know, maybe that's a flaw in the
16 parameters and guidelines, but it's -- there's just
17 not -- there's not a provision for that. It suggests
18 that -- the parameters and guidelines, in plain
19 language, says that if your direct -- your indirect cost
20 rate exceeds 10 percent, then you can prepare an
21 indirect cost rate.

22 And there is some documentation in the record
23 here that that was -- there was an attempt to do that.
24 But it's not clear -- when I look at the documentation,
25 I don't see anything supporting what the direct cost

1 basis is versus the indirect costs that are allocated.
2 I don't see anything -- and, again, the Commission staff
3 shouldn't be in the position of reweighing the evidence
4 that the Controller was looking at either.

5 So the finding here, that we're recommending
6 that you adopt, is that rejecting the -- or that
7 disallowing the 10 percent as claimed was correct as a
8 matter of law, and that, essentially, there was not
9 enough -- there's nothing here that would compel the
10 Commission to find that the Controller was arbitrary in
11 what came after that.

12 MEMBER ALEX: Right.

13 So you -- so you have a pretty high burden
14 here. I mean, it has to be on the record, and it has to
15 be in -- relevant to the parameters and guidelines.

16 MS. CHINN: So what if the parameters and
17 guidelines don't cover something like this adequately,
18 that the parameters and guidelines should allow for
19 overhead costs to be charged regardless of how it --
20 what the basis is, if it's salaries or if it's total
21 direct costs.

22 I think that there's an issue here with the
23 parameters and guidelines, in that it doesn't comply
24 with federal OMB guidelines. So to say that a local
25 agency is denied their overhead costs simply because the

1 way that the instructions are written, that it applies
2 only to salaries, is incorrect.

3 In cost accounting practice, that basis can be
4 salaries, benefits, and, as I read to you, can be total
5 costs. It can be another allocable basis that is a fair
6 representation of costs.

7 And, again, you know, I understand that the
8 Commission staff, they are not cost accountants, and,
9 perhaps, it would be wise for them to have some cost
10 accountants to give them some advice in matters such as
11 these. Because when parameters and guidelines -- I
12 would imagine, when they don't comply with federal
13 guidelines, then the federal guidelines should trump
14 instructions that are perhaps not adequately written to
15 allow for the provision of overhead costs that are
16 clearly reimbursable under constitution and the
17 parameters -- of the basic parameters that say direct
18 and indirect costs are eligible.

19 So deny it just, again, a "gotcha," like, oh,
20 sorry, you didn't exactly meet these requirements not
21 based on salaries; it's based on salaries and total
22 costs of that contracted position's hourly rate, it just
23 seems like it's overlooking the intent of the law for
24 the minuscule description of that law, which is written
25 by the State Controller's Office. And if that's not

1 correct and doesn't match federal guidelines, again, I
2 would think federal guidelines should trump State
3 Controller instructions.

4 MEMBER ALEX: Not in a state proceeding.

5 But -- but anyway, Camille, maybe talk to
6 the --

7 MS. SHELTON: Let me just comment a little bit.

8 MEMBER ALEX: Yeah.

9 MS. SHELTON: So the plain language of the
10 parameters and guidelines does allow the 10 percent for
11 employee costs, but does have that catch-all provision,
12 which is consistent with federal OMB. It allows you to
13 prepare an indirect cost rate proposal in those
14 situations. And that opportunity was provided, at least
15 based on the record, that you could have prepared an
16 indirect cost rate proposal, which was reviewed by the
17 Controller's Office, and we don't see any evidence that
18 they didn't review your proposal. So it's there.

19 Number 2, the Ps and Gs are binding. They went
20 through the process; all parties had an opportunity to
21 comment. If there's something lacking or you wanted
22 more clarity in the indirect cost rate language, that
23 needs to come up through comments and discussion when
24 the Ps and Gs are being adopted, or a request to amend
25 the parameters and guidelines is also available for

1 those reasons.

2 So these do comply with federal law because of
3 that catch-all proposal that allows you to prepare an
4 indirect cost rate proposal.

5 MS. CHINN: So which is it? If we can prepare
6 one, but they won't allow it?

7 MS. SHELTON: That is within the Controller's
8 discretion under the law.

9 MS. CHINN: How is that not arbitrary and
10 capricious, that we prepare a rate, it's in compliance
11 with federal law guidelines, but the State won't allow
12 or consider it?

13 I guess I am not understanding the transition
14 of the logical flow here.

15 MS. VOROBYOVA: We did consider it. And the
16 evidence in the record does show that we reviewed those
17 proposals, and it also shows some of the issues we found
18 with those proposals.

19 MS. CHINN: There were no discussions in -- in
20 earnest.

21 We only had two responses from the State
22 Controller's auditor, and, basically, he said, (as
23 read), "I have reviewed the indirect cost support and
24 the program's parameters allow a 10 percent indirect
25 cost rate against direct salaries claimed. Therefore,

1 no allowance of indirect costs were allowed."

2 There was no back and forth. There was no
3 discussion of -- "So why are you including this
4 sergeant? Why are you including this secretary? What
5 is proof of your departmental countywide overhead
6 costs?" None of that was ever addressed.

7 The only answer we got -- we presented and
8 presented and presented. And all we got back from the
9 State Controller's Office was a basic, flat-out, "no";
10 it doesn't comply with this. It's not a salary in the
11 sense of a salary; even though it is a salary, it's just
12 a contract salary. So, again, based on technicality,
13 the State is able to rob us of half a million dollars,
14 and that is not a just outcome.

15 They should be required to -- again, it says in
16 their guidelines, they are supposed to review based on
17 actual. So they are supposed to come to your claimed
18 city and reconcile to actual. Zero overhead is not
19 actual. So, clearly, a complete disallowance of costs
20 is not a fair outcome.

21 All we're asking for is that they come back and
22 review our actual rates, as they should have in the
23 beginning.

24 MEMBER ADAMS: Good morning.

25 A few different questions. Just on the comment

1 you just said of zero overhead, there actually is some
2 overhead that's reimbursed because of what is in the
3 contract with Los Angeles County, correct?

4 MS. VOROBYOVA: Thank you.

5 MS. CHINN: There was only 4 percent.

6 MEMBER ADAMS: Okay.

7 MS. VOROBYOVA: Yes. There's -- it's not only
8 liability and we included the sheet from the L.A. County
9 Sheriff's Office, which identifies what's included on --
10 in billable rates. There's also administrative
11 positions that are included. There's some overhead
12 built into the rates.

13 MS. CHINN: There is.

14 MEMBER ADAMS: With that -- with that said, I
15 don't want this to be a "gotcha" moment. I heard that
16 word.

17 And under the parameters -- parameters and
18 guidelines, would there have been an appropriate way to
19 claim these indirect costs? And did they miss that
20 opportunity? Or under the P and Gs, there's just no
21 way?

22 MR. JONES: May I speak to that, Mr. Adams?

23 MEMBER ADAMS: Please.

24 MR. JONES: Staff's position is that, yes,
25 there was an appropriate way, and it was to develop an

1 indirect cost rate proposal with documentation that the
2 Controller could review. And there's some evidence that
3 at least in the latter half of the audit prepared, there
4 is some documentation in the record.

5 But the way I read the record, and all the
6 correspondence between the auditor's staff and the
7 Claimant representative and the Claimant's finance
8 director, finance manager of the City, all -- the way I
9 read the record, the entire time up until this very last
10 comment that we have in our record, Exhibit E, the
11 Claimant has only ever sought the 10 percent and sought
12 to use that documentation to justify why the 10 percent
13 is a reasonable figure.

14 But it's not -- staff's position is that
15 it's -- it shouldn't be the Commission's place to tell
16 the Controller to do what's reasonable. The Commission
17 should only be determining whether the Controller did
18 something that was arbitrary or capricious.

19 And since the 10 percent -- by the plain
20 language, the 10 percent rate is clearly not available
21 to this Claimant, based on the Ps and Gs, that
22 documentation being used to justify the 10 percent or,
23 you know, to -- to support a rate that was reasonable is
24 just -- that's not really within the Commission's
25 purview, in our opinion.

1 MEMBER ADAMS: Understand.

2 MS. CHINN: So --

3 MEMBER ADAMS: Just -- just one other comment,
4 if I can. And that is, I'm finding interesting the real
5 property that is somehow part of this. I'm not quite
6 getting that nexus of how throwing in a piece of real
7 property becomes an indirect cost.

8 MS. CHINN: Oh. Oh, purchase of a facility for
9 the sheriff's office?

10 So that was one of the items -- I am assuming
11 that you were reading through in the record -- where the
12 City and the County partnered to construct a new
13 facility for -- for the sheriff's office. And as a part
14 of that partnership, there were certain infrastructure
15 improvements, land donation, which the State Controller
16 said that land donations technically do not comply under
17 OMB, which is true. But there were a lot of other
18 infrastructure improvements that were provided by the
19 City that we presented to the State, that show that
20 there were other valid costs.

21 We -- when we -- when I originally prepared my
22 claim, as I said, my first rates were 6 to 13 percent.
23 The question that the Commission staff mentioned was,
24 why did we wait until the last minute? Well, that was
25 because at the last minute, we were told that we were

1 going to be denied our 10 percent. All through the
2 audit process, we were focused on time, activities,
3 documentation, and then, at the last minute, we were
4 told, oh, and by the way, you are not going to get any
5 reimbursement for your overhead costs.

6 At that point, we scrambled and said, hey, we
7 have documentation, plenty of it. As I said, I've been
8 working with the City since 2000, and every year I've
9 been preparing these rates. I wouldn't have submitted
10 those requests for 10 percent if I did not believe that
11 we couldn't justify those rates and that those rates
12 wouldn't be reviewed in case of an audit.

13 So when the auditor said, we're not going to
14 give you your 10 percent, I said, wait, hold on,
15 here's -- I have tons of documentation, and I, you know,
16 kept sending more and more. Here's -- you know, here
17 are my rates that I prepared at the time,
18 contemporaneously. Here are additional costs that we
19 didn't even include or build into those 6 to 13 percent
20 rates.

21 So I feel like we -- as a City side, we did our
22 due diligence of requesting for costs that we felt were
23 supported and were actual.

24 And -- and those parameters and guidelines, if
25 it says direct salaries and benefits, well, then, it

1 should read to match the federal OMB guidelines which
2 lists those three components under which indirect costs
3 may be included.

4 Overhead costs may be based on -- sorry, too
5 many papers -- salaries and benefits and total direct
6 costs or another basis that results in a just and
7 reasonable allocation of costs.

8 So those parameters should match, you know, I
9 guess the State's parameters just took salaries and
10 benefits. In most cases that's what's going to happen.
11 But in contract cities, they are salaries and benefits,
12 but they are through a contract.

13 So, again, I don't know what the answer is. It
14 is a "gotcha" moment. But we -- you know, we just feel
15 that we've been treated unfairly and would like some
16 restoration of costs based upon our actual costs.

17 MR. JONES: Just to clarify, for the members,
18 the three direct costs or distribution basis that the
19 Claimant is describing are, in fact, in the parameters
20 and guidelines, but it's under the section that requires
21 you to actually prepare an indirect cost rate proposal.

22 MS. CHINN: Which we did.

23 MR. JONES: It's not -- the 10 percent does not
24 apply to those three options. The 10 percent only
25 applies to direct salaries and benefits placed -- based

1 on the plain language.

2 And as Camille said, if Claimants have an issue
3 with that language, then it needs to be brought up when
4 the parameters and guidelines are being adopted. They
5 are, in fact, binding --

6 MS. CHINN: Well, if it's --

7 MR. JONES: -- in this context.

8 MS. CHINN: -- there, then what do we have to
9 fix? You just said that they're in the parameters and
10 guidelines. So what is there to fix?

11 MR. JONES: Yes. But you've always been
12 claiming your -- excuse me. I don't mean to -- I will
13 address the members.

14 MS. CHINN: That's fine.

15 MR. JONES: The Claimant has been claiming
16 their indirect costs based on the 10 percent default
17 rate, in attempting to justify that 10 percent default
18 rate throughout the audit process. And essentially what
19 they are asking the members to do now is to rewrite
20 their claim and request that the Controller revisit this
21 audit many years past the deadline for amended claims.

22 MS. CHINN: Again, the --

23 MR. JONES: So that's -- staff's position is
24 that it's just not appropriate to do it at this time.

25 MS. CHINN: The instructions do not require us

1 to prepare or present --

2 MEMBER ALEX: Can I ask you to have the Chair
3 recognize you before you speak --

4 MS. CHINN: Yes.

5 MEMBER ALEX: -- so that we can have a
6 proceeding.

7 MS. CHINN: I'm sorry.

8 MEMBER ALEX: Thank you.

9 VICE CHAIRPERSON HARIRI: All right. Please go
10 ahead.

11 Are you done, first? Excuse me. Are you
12 finished?

13 Go ahead.

14 MS. CHINN: I just wanted to say that in the
15 claiming instructions, it says specifically, you do not
16 have to attach your overhead rate computations if your
17 rates are below 10 percent.

18 So we feel that we followed the instructions.
19 It said, you do not have to include -- do you want me to
20 show you where that is, Mr. Jones?

21 MR. JONES: No, thank you.

22 That -- you are actually misrepresenting the
23 parameters and guidelines at this point.

24 If I may, for the members, the parameters and
25 guidelines say that you can -- you can prepare an

1 indirect cost rate proposal if the indirect cost rate
2 claimed exceeds 10 percent, not if it's less than
3 10 percent.

4 MS. CHINN: It did not exceed 10 percent.
5 Okay? So our -- our amount we requested was 10 percent
6 under that amount.

7 Under the instructions, we weren't required to
8 submit those forms. We didn't submit them, but we had
9 them as back-up in case of audit. We understood that
10 the purpose of the audit was reconciled to actual. We
11 had actual ready. We had prepared them
12 contemporaneously. We had proof of actual costs. The
13 actual costs are not zero, yet the State reduced
14 everything. And I guess that there's not much more.

15 VICE CHAIRPERSON HARIRI: Thank you again for
16 your testimony. I think we have had enough information.

17 More questions?

18 MEMBER ALEX: Camille, I think you've wanted to
19 say something for a minute.

20 MS. SHELTON: Only to remind the members that
21 the standard -- the legal standard of review for these
22 audit issues, that the Commission may not reweigh the
23 evidence or substitute its judgment for that of the
24 Controller. The Commission's review is limited to
25 ensuring that the Controller has adequately considered

1 all relevant factors and has demonstrated a rational
2 connection between those factors and the choices made.

3 VICE CHAIRPERSON HARIRI: Thank you.

4 MEMBER ALEX: I -- I have a comment.

5 I mean, I -- I'm sympathetic to the City
6 because I do think their -- you know, my experience is
7 that there is overhead associated with a contract, and I
8 think it's typical.

9 But I have to say that there -- there is a
10 process to have -- if it was a parameters and guidelines
11 problem, that should have been raised in an -- in an
12 appropriate way. And then once that wasn't the case,
13 that it -- it does seem that the requirements, in terms
14 of the review and what's on the record, is not
15 supporting the City's position.

16 And so it's really hard for this Commission to,
17 as Camille just said, given the standard of review, to
18 go outside of that process.

19 MEMBER ADAMS: Mr. Chairman, if I could add
20 just some comments.

21 VICE CHAIRPERSON HARIRI: Sure. Go ahead.

22 MEMBER ADAMS: I, too, am sympathetic, but it
23 appears, to me, that there may be an issue with the
24 parameters and guidelines not fitting what you folks are
25 necessarily wanting to do. And that is -- my

1 understanding is, you get those administrative costs on
2 direct costs, not contract costs, but direct costs. And
3 for any other costs, if it's less than 10 percent, you
4 don't have to itemize. If it's over 10 percent, you
5 have to itemize.

6 But in this instance, yours were less than
7 10 percent, but they weren't based on direct costs, and
8 there lies your problem.

9 MS. CHINN: No. They were based on direct
10 costs.

11 MS. SHELTON: He means direct employee costs.

12 MEMBER ADAMS: Right. Yeah.

13 MS. CHINN: Oh.

14 MEMBER ADAMS: Yeah. As opposed to contract
15 costs.

16 MS. CHINN: They are direct costs. They are
17 just through a contract.

18 MEMBER ADAMS: Right.

19 So, again, I am sympathetic, but I'm not sure
20 we have many options here.

21 MS. SHELTON: The parameters and guidelines are
22 binding. You can't -- you have to follow the plain
23 language of the parameters and guidelines. You don't
24 have any authority to go beyond that.

25 MEMBER STOWERS: Mr. Chair?

1 VICE CHAIRPERSON HARIRI: Yes.

2 MEMBER STOWERS: Just a simple question for me,
3 to staff. You talked about the time period has expired
4 for them to have amended their claim. Can you, for the
5 record, share what that time period was.

6 MR. JONES: I don't know the exact date that
7 claiming instructions were issued in this case. Perhaps
8 the Controller's representative can speak to that.

9 But I do know that the claims, the original
10 claims, were filed sometime around June or July of 2014,
11 and then amended claims have already been filed in this
12 case in July of 2015, and the amended claims were timely
13 by maybe a week or a few days. So the time period for
14 filing the amended claims would have run out mid
15 July 2015.

16 MEMBER STOWERS: State Controller's Office?

17 MS. VOROBYOVA: That is correct.

18 And like Mr. Jones indicated, the original
19 claims were filed. And subsequent to that, about a year
20 later, claims were amended for a higher amount, and we
21 evaluated the amended claims clearly.

22 And I also would like to make a quick comment
23 that we always try to avoid a "gotcha" moment -- moment
24 to the State Controller's office. As we provided
25 evidence here and documentation to show that even though

1 we may have disagreed with some of the documentation
2 that was provided early on in the process, we worked
3 with the City, at length, to justify the time study that
4 was not performed contemporaneously. And if we wanted
5 to audit to a technicality, we would have disallowed the
6 entire time study, but we did not. And we take pride in
7 the fact that we did work with the City. We always work
8 with our claimants.

9 If there's evidence that activities did take
10 place -- which, in this case, of course they did -- we
11 work with the claimants as much as possible, trying to
12 provide for reimbursable costs.

13 And in this instance, even though we may
14 disagree with some of the findings, however, we believe
15 we did everything possible to review the proposed
16 indirect cost proposals, and they were always presented
17 to justify the 10 percent rate.

18 MEMBER STOWERS: Okay. Thank you.

19 VICE CHAIRPERSON HARIRI: Thank you.

20 Thank you. Thank you both.

21 MS. CHINN: Can I comment? Am I allowed to?

22 VICE CHAIRPERSON HARIRI: Okay. Go ahead.

23 MS. CHINN: That all sounds great. But there
24 are some issues with what Ms. Vorobyova said.

25 She said that we did not have a contemporaneous

1 time study, and that's incorrect. We had two. As I
2 mentioned, we had the first one that was done with the
3 CAD Report, and then we had a second one that was
4 contemporaneous, and the State found that it was
5 contemporaneous. So questioning our documentation is
6 not -- that was just not a correct comment.

7 And then the fact that they are saying that
8 they worked so hard with us, the evidence in the record
9 shows that that's not the case. If you look at the --
10 the span from when we were notified that we were not
11 going to get overhead rates included to the exit
12 conference, it was, like, a two-week time frame.

13 So their representation that, oh, we've done
14 everything that we can to review their rates is not
15 true. I mean, if that was true, there would be more
16 evidence in the record where they would say, well, prove
17 to us that your sergeants are administrative; prove to
18 us that these clerks are providing direct benefits to
19 the departmental costs.

20 None of that is in the record because none of
21 that took place. There was no back and forth. It was a
22 pretty clear definition and a decision by the State
23 Controller's Office that they were just going to deny
24 all indirect costs. There was no opportunity for back
25 and forth.

1 I was sending these attachments at the last
2 minute because that's all we had to do. We had two
3 weeks before we were notified we were not get getting
4 our indirect costs to, our exit conference is going to
5 be in two weeks from now. So, you know, if -- if that
6 was the case, then there wouldn't be incorrect reduction
7 claims. The Claimants would feel that they were treated
8 fairly by the State Controller's Office, but that's not
9 the case, as can be attested by the length and the
10 number of incorrect reduction claims that are out there.

11 And I think that there should be something like
12 a Claimant Bill of Rights that says, when you are being
13 audited, here are your rights: You have the right to
14 ask for a time study if something is not included, and
15 the State is just denying outright. What are the rights
16 that a city has to protect their reimbursements; there's
17 nothing like that.

18 So we're all forced to come here before you,
19 and then we're told by the legal staff that you can't do
20 anything to help us. So we're put in a catch-22
21 position of, we're playing by some set of rules, that
22 we're not aware of, what we have to do in order to be
23 able to substantiate and keep our money.

24 And the ball is always in the State
25 Controller's Court, where they can, like, bully you

1 around and do whatever they want, and you don't have a
2 chance --

3 VICE CHAIRPERSON HARIRI: Thank you. Thank you
4 very much.

5 I think we have taken enough time on this
6 issue.

7 MS. CHINN: Okay. I --

8 VICE CHAIRPERSON HARIRI: I would like to ask,
9 is there any public comments?

10 (No response)

11 VICE CHAIRPERSON HARIRI: Okay. Any further
12 questions from the members?

13 (No response)

14 VICE CHAIRPERSON HARIRI: Any further
15 discussion?

16 (No response)

17 VICE CHAIRPERSON HARIRI: Thank you.

18 I understand your further comment and we
19 sympathize with you as well.

20 I would like -- is there a motion?

21 MEMBER ALEX: I will move the staff report.

22 MEMBER STOWERS: Second.

23 VICE CHAIRPERSON HARIRI: Okay. Is there a
24 second?

25 Second.

1 Okay. There has been a motion moved by Mr. Lee
2 [sic] and a second by Ms. Stowers to adopt and approve
3 staff's recommendation.

4 Would you please take a roll call.

5 MS. HALSEY: Mr. Adams.

6 MEMBER ADAMS: Aye.

7 MS. HALSEY: Mr. Alex.

8 MEMBER ALEX: Aye.

9 MS. HALSEY: Mr. Hariri.

10 VICE CHAIRPERSON HARIRI: Aye.

11 MS. HALSEY: Ms. Stowers.

12 MEMBER STOWERS: Aye.

13 MS. HALSEY: Thank you.

14 VICE CHAIRPERSON HARIRI: Motion is carried.

15 MS. CHINN: Thank you.

16 MS. VOROBYOVA: Thank you.

17 VICE CHAIRPERSON HARIRI: Thank you both.

18 MS. HALSEY: Item 5 is reserved for County
19 applications for a finding of significant financial
20 distress, or SB 1033 applications.

21 No SB 1033 applications have been filed.

22 Item 6 is the legislative update, and there is
23 nothing new to report on that.

24 Chief Legal Counsel Camille Shelton will
25 present Item 7, the Chief Legal Counsel's Report.

1 MS. SHELTON: Good morning.

2 There have been no new filings since the last
3 Commission meeting, but there have been some recent
4 court decisions:

5 On November 19th, the California Supreme Court
6 did issue its decision in the County of San Diego versus
7 Commission on State Mandates decision on the sexually
8 violent predator mandate redetermination case.

9 The Court found that the Commission erred when
10 it treated Proposition 83 as a basis for terminating the
11 state's obligation to reimburse counties, simply because
12 certain provisions of the Sexually Violent Predator Act
13 had been restated without substantive change in
14 Proposition 83. The Court remands the matter to the
15 Commission to determine whether the expanded definition
16 of a "sexually violent predator" in Proposition 83
17 transformed the test claim statutes as a whole into a
18 voter-imposed mandate or, alternatively, did so to the
19 extent the expanded definition incrementally imposed new
20 additional duties on counties.

21 A second decision has been issued by the
22 Sacramento County Superior Court in Fresno Unified
23 School District versus Commission on State Mandates,
24 which challenged the test claim on certificated school
25 employees parental leave. There, the Court found that

1 the statute imposed a new program or higher level of
2 service, but agreed with the Commission's finding that
3 the test claim statute did not result in increased
4 actual costs mandated by the State.

5 We are still waiting for the Court's decision
6 in Paradise Irrigation District versus Commission on
7 State Mandates. And we have one hearing on the calendar
8 set for February 8th, 2019, on the remand for the
9 discharge of stormwater runoff.

10 And that's all I have.

11 VICE CHAIRPERSON HARIRI: Okay.

12 MS. HALSEY: Item 8 is the Executive Director's
13 Report.

14 I first have an action item, and that is for
15 our Litigation and Personnel Subcommittee appointments.

16 On -- the September 2018 meeting was the last
17 Commission hearing for Member Chivaro, who was an active
18 member of the Litigation Subcommittee and Personnel
19 Subcommittee for many years. As such, the Commission
20 needs to seek a replacement for him in these capacities.

21 Subcommittees serve in an advisory capacity to
22 the Commission, but do not take actions. Any member may
23 volunteer to serve and, upon vote of the Commission, may
24 serve on a subcommittee of the Commission. Commission
25 staff recommends allowing members to nominate themselves

1 and upon -- and serve upon approval of the Commission.

2 And on behalf of Finance, I would like to
3 nominate the director or the director's designee to
4 serve on the Personnel Subcommittee.

5 VICE CHAIRPERSON HARIRI: Do we need to vote on
6 this?

7 MS. HALSEY: I would first open it up for
8 discussion among the members, and if anyone wants to
9 volunteer for either of those positions, and then the
10 members could vote on that or make a motion.

11 MEMBER ADAMS: Mr. Chairman, I certainly would
12 accept the Executive Director's recommendation for the
13 Personnel Committee.

14 And as far as the Litigation Subcommittee, I
15 was going to suggest that I think there's a few
16 attorneys on the Commission. Whether or not that would
17 be most appropriate, to have somebody with a legal
18 background on that committee.

19 MS. HALSEY: That's -- that's true. And Carmen
20 is not here today --

21 MEMBER ADAMS: Yeah. I hate to push her under
22 the bus --

23 MS. HALSEY: Should we nominate her in her
24 absence?

25 MEMBER ADAMS: -- while she's not here.

1 MEMBER ALEX: And I should note, this is my
2 last Commission meeting.

3 MS. HALSEY: We'll be revisiting this again
4 next hearing to -- to replace Ken.

5 MEMBER ALEX: If it's appropriate, do you want
6 to split these? And I would make a motion to support
7 your recommendation for the Personnel Committee. And if
8 you want to deal with the next one at the next meeting,
9 so that we're not shoving Carmen under the bus while
10 she's not looking.

11 MS. HALSEY: If you like, we could do that.

12 MEMBER ADAMS: So that would be my motion.

13 MEMBER STOWERS: Second.

14 MS. HALSEY: Okay. Thank you.

15 So then Department of Finance will serve on the
16 Personnel Subcommittee.

17 And we're going to leave the Litigation
18 Subcommittee open until next hearing.

19 Thank you.

20 Oh, do we have a motion?

21 VICE CHAIRPERSON HARIRI: Make a motion on this
22 one?

23 MS. HALSEY: Yes, please.

24 MEMBER ALEX: A motion and a second.

25 VICE CHAIRPERSON HARIRI: Okay. Do I have a

1 motion?

2 MEMBER ADAMS: Yes.

3 VICE CHAIRPERSON HARIRI: Motion adopted.

4 MEMBER STOWERS: Second.

5 MEMBER ADAMS: Do we have to vote?

6 MS. HALSEY: Motion to appoint the Director of
7 Finance to Personnel Subcommittee.

8 VICE CHAIRPERSON HARIRI: Please do a roll
9 call.

10 MS. HALSEY: Okay.

11 MEMBER STOWERS: Do you want to restate the
12 motion?

13 VICE CHAIRPERSON HARIRI: Need some practice on
14 this one.

15 MS. HALSEY: Mr. Adams.

16 MEMBER ADAMS: Aye.

17 MS. HALSEY: Mr. Alex.

18 VICE CHAIRPERSON HARIRI: First time I'm doing
19 it.

20 MEMBER ALEX: Aye.

21 MS. HALSEY: Mr. Hariri.

22 VICE CHAIRPERSON HARIRI: Aye.

23 MS. HALSEY: Ms. Stowers.

24 MEMBER STOWERS: Aye.

25 MS. HALSEY: I think -- I think we could have

1 done that with a voice vote too.

2 VICE CHAIRPERSON HARIRI: Oh, okay.

3 MS. HALSEY: Thank you.

4 Also, we have a workload update. After this
5 hearing, there are 43 pending test claims. We have 22
6 notices of complete test claim filing that have issued
7 since we last met. And four of those issued after the
8 binder was issued for this hearing. Forty of these test
9 claims are regarding Stormwater NPDES Permits. Two
10 parameters and guidelines, including one regarding
11 Stormwater NPDES permits, and three statewide cost
12 estimates, including one regarding NPDES permits, are
13 pending. And the NPDES matters are on inactive status
14 pending the outcome of litigation regarding the test
15 claim decisions underlying those two matters.

16 In addition, there is one parameters and
17 guidelines amendment on inactive status pending the
18 outcome of litigation in the CSBA case, which is
19 currently pending before the California Supreme Court.

20 Finally, we have five incorrect reduction
21 claims pending. As of today, the Commission staff
22 expects to hear all currently pending test claims and
23 IRCs by approximately the March 2024 Commission meeting,
24 although that may be earlier if some of these test
25 claims are consolidated, which they may be.

1 And that is all I have.

2 If you have -- oh, sorry. No, it's not all I
3 have.

4 With regard to administrative workload, in
5 addition to preparing and presenting hearing matters
6 before the Commission, Commission staff are responsible
7 for all administrative duties of an agency. In that
8 respect, Commission staff is in the process of
9 implementing compliance measures and preparing a report
10 of compliance in response to the State Personnel Board
11 compliance audit process for human resources issues.

12 In addition, Commission staff are deeply into
13 the CalHR workforce planning process and are creating a
14 plan for the Commission's future workforce, which
15 will -- we will present to the Commission at a meeting
16 in the near future.

17 And then for tentative agenda items, please see
18 my report if an item that you are on, or are interested
19 in, is pending in the next couple of hearings. You can
20 also use your pending case load documents on the
21 Commission's website to find the status. Those are
22 updated at least bimonthly, and you can get an idea of
23 when something is tentatively expected to be heard.

24 And please expect to receive draft proposed
25 decisions on test claims and IRC matters at least eight

1 weeks prior to the hearing date; and a proposed
2 decision, approximately two weeks before the hearing.

3 And that is all I have. If there's any
4 questions...

5 VICE CHAIRPERSON HARIRI: Move to closed
6 session now? We move to the next item?

7 MS. HALSEY: Yes. Closed session.

8 VICE CHAIRPERSON HARIRI: Okay. The Commission
9 will meet in closed executive session, pursuant to
10 Government Code section 11126(e), to confer with and
11 receive advice from legal counsel for consideration and
12 action, as necessary and appropriate, upon the pending
13 litigation listed on the published notice and agenda;
14 and to confer with and receive advice from legal counsel
15 regarding potential litigation. The Commission will
16 also confer on personnel matters pursuant to Government
17 Code section 11126(a)(1). We will reconvene in open
18 session in approximately 15 minutes.

19 Thank you.

20 (Closed session was held from
21 11:05 a.m. to 11:26 a.m.)

22 VICE CHAIRPERSON HARIRI: The Commission met in
23 closed executive session pursuant to Government Code
24 section 11126(e), to confer with and receive advice from
25 legal counsel for consideration and action, as necessary

1 and appropriate, upon the pending litigation listed on
2 the published notice and agenda; and to confer with and
3 receive advice from legal counsel regarding potential
4 litigation -- litigations and pursuant to Government
5 Code section 11126(a)(1) to confer on personnel matters.

6 With no further business to discuss, I will
7 entertain a motion to adjourn.

8 All those in favor to adjourn, say "aye."

9 (Ayes)

10 VICE CHAIRPERSON HARIRI: Any opposed?

11 (No response)

12 MEMBER ALEX: Thank you.

13 VICE CHAIRPERSON HARIRI: All right. Thanks.

14 (Proceedings concluded at 11:27 a.m.)

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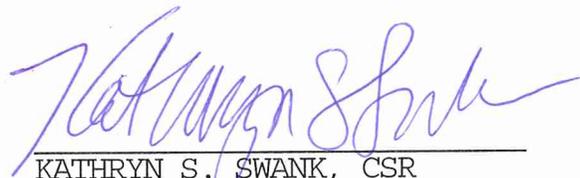
CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings was reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December 2018.



KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061