



LITTLE HOOVER COMMISSION

June 23, 2005

The Honorable Arnold Schwarzenegger
Governor of California

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The Honorable Don Perata
President pro Tempore of the Senate
and members of the Senate

The Honorable Dick Ackerman
Senate Minority Leader

The Honorable Fabian Núñez
Speaker of the Assembly
and members of the Assembly

The Honorable Kevin McCarthy
Assembly Minority Leader

Dear Governor Schwarzenegger and members of the Legislature:

The reorganization plan to create a Department of Energy has invigorated discussion about an issue that is essential to the prosperity, safety and well-being of all Californians. The Commission agrees that organizational changes are necessary and enthusiastically supports the proposal to create a Department of Energy led by a secretary of energy. The need for leadership on energy is essential and cannot be ignored.

However, the Legislative Counsel and the Attorney General have separately opined that one aspect of the plan – the transfer of some regulatory functions from the Public Utilities Commission to the Energy Commission – cannot be done through the reorganization process.

As a reorganization plan, the proposal cannot be amended, and it goes into effect automatically unless the Legislature formally rejects it. But if the plan submitted to the Commission in May were allowed to go into effect, it would be subject to legal challenge. Therefore, the Legislature should reject the plan. The Commission, however, also urges the Governor and Legislature to expeditiously put in place those reforms that would improve leadership and accountability in the State's efforts to ensure safe, clean, affordable and reliable energy. We encourage the Governor to resubmit the reorganization plan with those provisions that create a Department of Energy lead by an energy secretary, subject to the concerns described below.

Substantial progress has been made since the electricity crisis, but analysts agree that more needs to be done to increase supplies and manage demands. A compelling case can be made that diffused regulatory authority contributed to the State's clumsy response to the electricity crisis, and that a more centralized structure is needed to forge and execute a cohesive strategy for ensuring an adequate supply of energy.

The State does need to consolidate energy-related programs in a new Department of Energy led by a secretary reporting directly to the Governor. The department should include the market oversight and advocacy functions created when the State moved toward competitive electricity markets. It also should incorporate – with the appropriate legislative checks and balances – the electricity purchasing, financing and development functions that were created in response to the failure of those markets.

The Governor's proposal also attempted to streamline permitting over electricity transmission and natural gas facilities by transferring some regulatory authority from the Public Utilities Commission to the California Energy Commission. The legal opinions conclude that this transfer cannot be made through the reorganization process. Moreover, this proposal needs additional planning and analysis to ensure that

proposed changes will actually improve decision-making. The Public Utilities Commission and the Energy Commission have different competencies, decision-making procedures, and standards for judicial review. Given the importance of these proceedings, the administration should carefully review the regulatory procedures and present to the Legislature a comprehensive proposal for streamlining, integrating and if necessary consolidating authorities.

The plan also proposed to make the new secretary of energy the chairman of the refashioned Energy Commission. This move could better align the largely administrative functions of the new department with the regulatory functions of the Energy Commission. But the plan would have given extraordinary authority to the secretary – an at-will appointee of the Governor – particularly over the staff that would support the commission. Modification of this scheme, including provisions for an independent chairperson, could provide the desired integration without jeopardizing the fact-based analysis and independent decision-making that is necessary to preserve the integrity of often controversial proceedings.

There are numerous other issues that were raised in the public vetting of the proposal through the Little Hoover Commission's review that should be considered in refining the proposal. For example, minor changes to the plan would ensure that the State is both unified and expert in its dealing with the Federal Energy Regulatory Commission.

While legally flawed, the plan and discussions regarding it have provided significant value. The Governor is correct that organizational changes are overdue, and the Commission was impressed with the dedication of the individuals working to improve California's energy position. Their work has resulted in unprecedented levels of cooperation, particularly between the historically adversarial Public Utilities and Energy commissions. Indeed, the adoption of the Energy Action Plan demonstrates that progress can be made without the costs and risks of organizational change.

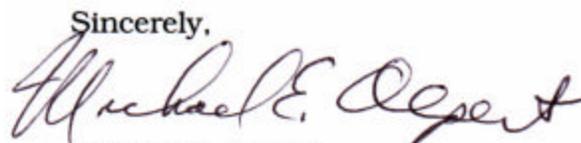
For the Governor and the Legislature, a new structure would provide an opportunity to demand and expect meaningful improvements on the outcomes that matter. The Legislature, in particular, would be able to conduct more meaningful oversight by holding a secretary accountable for targeted improvements. While consolidating authority is necessary to improve performance, the Legislature is the first and best "check and balance" to ensure that authority is being appropriately and expertly used to advance statutory goals.

This particular proposal has raised frustrations with a reorganization process that is deliberately short and intended to force a decision on a limited set of organizational issues, without substantial amendment. The historical record shows that legislative leaders truly believed it was the executive's responsibility to put forth such proposals, and that they would reserve judgment on both the wisdom and appropriateness of such plans.

Good diplomacy and good policy require a reasonable opportunity to assess proposals and strengthen those proposals when both deficiencies and remedies are clear. While the Legislature has not provided for the amendment of reorganization plans in response to the Little Hoover Commission's analysis – and perhaps it should – the Legislature maintains its authorities to fashion policy through traditional statutory means.

Unfortunately yet appropriately, the electricity crisis will be an indelible part of California's history. And most certainly, the inability of state government to strategically use all of its authorities and expertise contributed to the cost and depth of that crisis. The Commission believes that the central elements of this plan would have provided a substantial improvement in the organization and leadership of those authorities and expertise. Those elements should be advanced as soon as possible.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael E. Alpert". The signature is fluid and cursive, written over a light-colored background.

Michael E. Alpert
Chairman