

PREHEARING CONFERENCE
BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:)
)
Complaint Against and) Docket No.
Request for Investigation) 12-CAI-01
of CalcERTS, Inc.)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, MAY 8, 2012

8:00 a.m.

Reported by:
John Cota
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Kourtney Vaccaro, Hearing Officer

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

CEC STAFF PRESENT

Dennis Beck, Senior Staff Counsel

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

COMPLAINANTS

David Haddock, Attorney
David Haddock Legal

Patrick Davis
JAAR Sales, Inc.
DBA Valley Duct Testing

Erik Hoover
JAAR Sales, Inc.
DBA Valley Duct Testing

RESPONDENT

Jane E. Luckhardt, Attorney
Downey Brand, LLP

Shelby Gatlin, Attorney
Downey Brand, LLP

Charlie Bachand
CalcERTS, Inc.

Mike Bachand
CalcERTS, Inc.

ALSO PRESENT

John Flores
JAAR Sales, Inc.
DBA Valley Duct Testing

I N D E X

	<u>Page</u>
Call to Order and Introductions	1
Opening Remarks by Hearing Officer Vaccaro	3
Topics for Discussion	
Proposed Witnesses	6
Exhibits and Exhibit Lists	26
Post-Hearing Briefs	30
Timing of the Decision	33
Additional Issues	36
Public Comment	39
Comments by the Parties	40
Closing Remarks	43
Adjournment	43
Certificates of Reporter and Transcriber	44

1 MS. LUCKHARDT: Jane Luckhardt from Downey Brand
2 on behalf of CalcERTS. To my right is Shelby Gatlin, also
3 from Downey Brand.

4 To my left from CalcERTS is Mike Bachand and
5 Charlie Bachand, I need to make sure and get the order
6 right, both from CalcERTS. We also have other folks in the
7 audience as well. Thank you.

8 PRESIDING MEMBER DOUGLAS: Thank you. Let me
9 look. Is the Public Adviser here, Jennifer Jennings?
10 Jennifer Jennings is here today.

11 And with that let me ask if there are any
12 representatives of public agencies or public officials in
13 the room or on the phone?

14 (No response.)

15 PRESIDING MEMBER DOUGLAS: Very well. In that
16 case let me turn this over to the Hearing Officer.

17 HEARING OFFICER VACCARO: Thank you. Good morning
18 everyone. I think you have the honor of, at least for me,
19 being the only proceeding that I've had that started at 8:00
20 a.m. or close to 8:00 a.m. It's a pretty full house this
21 morning, which is good. It suggests that everyone is
22 prepared and has great interest.

23 I think with that I'll start by ensuring that
24 those of you who haven't participated in Energy Commission
25 proceedings before and those of you who have understand what

1 today is about and what it's not about.

2 Today is about housekeeping. This is about
3 organization to ensure that we have a very efficient and
4 orderly hearing this Friday. I think you will notice there
5 is only one day scheduled for a hearing. That means that
6 efficiency, organization and good preparation are going to
7 be in order.

8 We are going to discuss that a little bit as we
9 talk about the proposal for witnesses and witness testimony
10 because my rudimentary math tells me that the projected time
11 lines put us well over one day. We need to talk about that
12 a little bit.

13 Before we get there, though, I think thanks are
14 certainly in order. The parties were asked to provide for
15 the Committee a statement of facts and legal issues that are
16 going to guide the Committee's determination. We received
17 very concise, very clear and I think very pointed statements
18 from the parties. I think that is going to assist the
19 Committee in understanding the testimony, understanding
20 what's before them and swiftly issuing a decision in this
21 matter.

22 Also thank you to staff. We'll discuss some
23 issues with the staff a little bit later. But we did ask
24 staff to identify persons most knowledgeable about the
25 Commission's HERS program, identify those individuals and

1 make them available for this Friday's hearing.

2 Staff is not a party to this proceeding, which is
3 why they were ordered and directed to be here on Friday. If
4 you have questions about that I think Mr. Dennis Beck is
5 somewhere in the audience on behalf of Commission staff. I
6 believe he might have some questions for the Committee as
7 well. We'll get to those in short order. But I just wanted
8 to make sure everybody understands the lay of the land. The
9 parties are at the tables; staff is not. Staff is not a
10 party. Staff will be available to give testimony during
11 Friday's proceedings.

12 So for the first time ever I have an interesting
13 pre-proceeding disclosure to make. It's not my own, I do
14 this on behalf of someone else to my right, Jennifer Nelson,
15 Commissioner Douglas' advisor. She informed me before
16 today's proceeding that she has recently had a home
17 inspection done and it was performed by individuals that are
18 affiliated with CalcERTS. Now I am informed by Ms. Nelson
19 that these raters are not the Complainants. That in fact
20 she has no personal knowledge and didn't really have much
21 interaction with those raters, has no bias, no opinion, no
22 sentiment with respect to raters or CalcERTS.

23 However, it is very important that we make that
24 disclosure because although Ms. Nelson, the Committee and I
25 believe that there are no conflicts and there are no issues

1 before us with respect to Ms. Nelson's experience, the
2 parties may not share that view. And in that instance I
3 think we do need to hear from you.

4 I want to circle back and address that, I think,
5 just in a few moments so that you have some time to reflect
6 if there are any questions or thoughts that you might have,
7 something that you might want to pose to Ms. Nelson that we
8 can get there in a few minutes. Unless off the top of your
9 head, Mr. Haddock, and Ms. Luckhardt, you already have some
10 thoughts or questions that you think are pertinent that
11 would allow you to decide at this moment if you have any
12 questions or concerns with Ms. Nelson participating in this
13 proceeding. So, Mr. Haddock, do you need some time or do
14 you have a --

15 MR. HADDOCK: I prefer to take some time, please.

16 HEARING OFFICER VACCARO: Okay. Ms. Luckhardt?

17 MS. LUCKHARDT: I'd like to confer with my clients
18 as well, thank you.

19 HEARING OFFICER VACCARO: Okay. So I think, I
20 think for the purposes of our discussion this morning, which
21 is really procedural, we can move forward. And then take a
22 brief break, allow you to confer with your clients, think
23 about it and then move forward. There is nothing
24 substantive that we're doing at this time.

25 So I think that brings us directly to the issue of

1 proposed witnesses. Here is how I envision Friday's
2 proceeding. We have a complaint and request for
3 investigation that was brought by the Complainant. The
4 primary burden of proof is theirs. The case in chief needs
5 to be brought by the Complainants. CalCERTS can respond to
6 and defend against that.

7 So we have sort of a bounded universe of what the
8 topics and issues are in terms of what is going to be
9 presented in testimony, what's going to be responded to and
10 defended against.

11 So I think what I'd like to understand, and I'll
12 hear from each of you in turn is, Mr. Haddock indicated he
13 needs about two hours, give or take, that includes some
14 cross, and then maybe a little bit more to ask questions of
15 staff. CalCERTS has a time line and a great number of
16 witnesses that far exceeds the time allotted for the hearing
17 on Friday.

18 So I think I'd like to hear a little bit about
19 that, probably more so from Ms. Luckhardt than anyone else,
20 what the necessity is, perhaps, of having so many witnesses.

21 If in fact there might be cumulative testimony. If it is
22 really unique testimony. I understand in your footnote to
23 the prehearing conference statement that you're envisioning
24 a panel. Perhaps a panel is useful, perhaps not.

25 I think I'd like to understand a little bit how

1 you all see Friday going. Because right now the Committee
2 is not inclined to extend that hearing date beyond Friday,
3 nor is the Committee inclined to be here until eight, ten,
4 twelve o'clock at night. So I think we need to have a
5 realistic perspective of how things are going to proceed on
6 Friday. We'll begin with Mr. Haddock, we'll then hear from
7 you, Ms. Luckhardt.

8 MR. HADDOCK: If I could just ask a preliminary
9 question about the bounded universe that you had mentioned.
10 We have some concerns about what that universe is.

11 Our complaint raises two fairly narrow procedural
12 questions. And the concern that I have is that the
13 Committee not view this proceeding as a general appeal of
14 the decision that was made by CalCERTS about the
15 decertification. Our intention was not to focus on every
16 detail of whatever errors are alleged that they have made as
17 part of their HERS rating process.

18 And so it would be helpful for me to know, is this
19 bounded in terms of focusing on the questions that are
20 raised in the complaint and the reasonable related questions
21 that were raised by the answer or are we going beyond that
22 to look at the reasons why my clients were decertified, for
23 example. I'm not sure that's strictly relevant to the
24 question that was raised in the complaint.

25 But moving on -- I don't know if you want to deal

1 with that now but --

2 HEARING OFFICER VACCARO: I can answer that right
3 now. The answer is, the former. It is bounded by the
4 allegations of the complaint. And the answer in the
5 complaint does not question the findings. As I understand
6 the complaint, the complaint is focused on the process. And
7 I think that's what the focus is, not going into each and
8 every rating and the data that pertains to each and every
9 rating and home that was inspected. So I think it is the
10 former in terms of the way you posed the question and not
11 the latter.

12 MS. LUCKHARDT: May I respond to that?

13 HEARING OFFICER VACCARO: You certainly may.

14 MS. LUCKHARDT: Because I don't think that you can
15 talk about process and rights without looking at fraudulent
16 practices. I think it would be impossible to conduct an
17 evaluation of process without understanding whether the
18 actions that were taken were clearly fraudulent. Because
19 you have no vested right if the action -- if what you're
20 doing is creating fraudulent ratings. Therefore, I think it
21 is impossible to evaluate simply process without looking at
22 the underlying facts of the situation.

23 One of the questions that Mr. Haddock poses is
24 whether these raters were treated differently than other
25 raters. Why were they decertified where others were just

1 given a warning and subject to additional QA? And the
2 answer to that lies in the ratings that were submitted under
3 sworn testimony to be truthful and accurate.

4 And it is important to understand that there is no
5 way that those ratings could have been submitted as truthful
6 and accurate. They are clearly fraudulent. And in order to
7 take that into account you have to establish the facts, the
8 facts that they are fraudulent, and that will take going
9 into some of the detail. Not all of it but some of the
10 detail to establish that.

11 HEARING OFFICER VACCARO: I'm not certain that I
12 agree with you. I certainly understand the position that is
13 being advanced by your client in that the starting point for
14 you is the allegation that there were fraudulent
15 submissions.

16 Whether or not there were fraudulent submissions I
17 think is not critical to the issue of whether or not we're
18 dealing with state action, whether or not process was due,
19 what the extent of process should have been if in fact it
20 was due. So you are not going to be precluded from making
21 your offer of proof on what you think some of the
22 foundational issues are that led to the process of
23 decertification.

24 But there is, I think, a very big difference
25 between that and going into each and every home that was

1 rated and discussing each of the findings that were related
2 to each home that was rated. I think there is a large
3 distinction. If you want to discuss that further we
4 certainly can but you are not precluded from making your
5 foundational points and foundational assertions that support
6 your client's position.

7 MS. LUCKHARDT: We were not intending on going
8 into every home; we were going to pick like three. And we
9 were intending to show the -- we intended to show some of
10 the specific points which clearly show fraud. We had no
11 intention of going through each and every evaluation for
12 each and every home that has been done. So no, we are not
13 intending to do that. So if that is what your concern is,
14 that's not where we were going.

15 But we do believe it is critical to show the
16 egregiousness of the violations because we need to show
17 these raters -- and that is in fact one of the questions
18 that Mr. Haddock has posed is why were these raters
19 decertified? How was that decision made? In order to
20 determine whether that decision was proper or not you have
21 to understand the egregiousness of the violations.

22 MR. HADDOCK: Could I comment on that?

23 HEARING OFFICER VACCARO: Well, you can after I
24 do.

25 MR. HADDOCK: Okay.

1 HEARING OFFICER VACCARO: Understood and I think I
2 appreciate that you clarified that you are going to use just
3 a subset of exemplars and not give us the entire universe.
4 Because the answer in the declaration is pretty thick and
5 has a lot of supporting documentation so I'm glad that
6 you're going to cull that down.

7 And yes, you're free to make those presentations
8 on Friday. To the extent that it seems like it's
9 diminishing returns or repetitive or cumulative we'll
10 certainly let you know. But otherwise, that is part of your
11 case and you are entitled to make the case that you believe
12 is important to defend your client. Mr. Haddock?

13 MR. HADDOCK: We were not asking the Committee to
14 make a finding about whether my clients made particular
15 errors in their ratings. Respondents characterize it as
16 fraud. Our intention is not to try that issue here and I
17 don't think it's necessary for the Committee to resolve the
18 questions that we have put before it. So I just wanted to
19 make that point. I don't know that it's relevant. But I
20 thought it was -- especially when the question is conserving
21 the resources of the Committee and finishing our hearing on
22 time. I thought that one be -- may be one useful way to
23 limit the amount of time that's spent.

24 HEARING OFFICER VACCARO: Okay, understood, thank
25 you. I want to switch back to you, Ms. Luckhardt, just on

1 the number of witnesses and the timing and to -- you know,
2 my math could be wrong in terms of what I calculated. And I
3 know you just gave estimates and I understand they are total
4 ballparks and it is better to be conservative than to
5 undercut. But it looks like an awful lot of time
6 potentially for witness testimony. Not just -- and you
7 identified the categories of witnesses.

8 But I would encourage you -- and you don't have to
9 answer this, it's really just making a request -- to think
10 about whether or not you truly need all of those witnesses.

11 If some witnesses can, you know, say the same things that
12 someone else might, if you really do need each of them just
13 try to work on not giving us repetitive, cumulative
14 information, we really will get it the first time, and
15 trying to find a way of making this efficient. Because I am
16 serious that we are not continuing the hearing date and we
17 will not be in here at night time. And so everyone is
18 encouraged to be as efficient as possible in presenting
19 their cases.

20 MS. LUCKHARDT: That's fine. We brought or are
21 presenting all of the different people who had specific
22 interaction with these particular investigations. And just
23 as staff has offered the full range of folks who have
24 experience and specific knowledge, we are doing the same
25 thing. Because we do not know exactly what questions

1 Mr. Haddock will have and we wanted to be sure that we had
2 all the people in the room who might be able to answer the
3 question.

4 Because we too want to be done on Friday. It is
5 in our interest as well to keep this hearing to a reasonable
6 amount of time and have this issue resolved promptly. So it
7 is in our interest to do that and we do agree with you. On
8 the other hand, we feel it is important to have the people
9 here Friday who can answer the questions.

10 HEARING OFFICER VACCARO: Thank you for that
11 answer. It clarifies. Again, I understood that you were
12 being conservative and ensuring that you were covering all
13 bases. I just didn't know if the intent was that you were
14 putting everyone up or if you were just making sure that you
15 were completely protected and covered and able to address
16 anything that might arise on Friday. It sounds like that's
17 pretty much where you are.

18 MS. LUCKHARDT: Correct.

19 MR. HADDOCK: May I make a comment about
20 witnesses?

21 HEARING OFFICER VACCARO: Yes, Mr. Haddock, yes.

22 MR. HADDOCK: In our prehearing conference
23 statement we had listed a few witnesses, Mr. Hoover and
24 Mr. Davis and Mr. Flores, but we had reserved the
25 opportunity to call and examine the witnesses that CalcERTS

1 had put forward. We didn't specify those and that was
2 mainly because I didn't presume that I could require them to
3 appear here. But given that they are planning to appear we
4 would like to directly examine the CalcERTS panel as well as
5 at least a couple of the Energy Commission experts.

6 And so I -- because I didn't know who would be
7 available I haven't put an estimate about what the time
8 would be. But I would expect that the CalcERTS panel would
9 take a bit more than an hour and maybe 20 minutes with the
10 Energy Commission staff.

11 HEARING OFFICER VACCARO: Let's address each of
12 those in turn. We'll start with your request for direct
13 examination of the CalcERTS panel. Again, it wasn't
14 presented in the prehearing conference statement. I don't
15 know that it's anything that Ms. Luckhardt has had
16 opportunity to consider but you get to consider it now.

17 Do you have thoughts, objections, problems with
18 that and if so, let's hear it. Generally, of course, you'd
19 have the right to cross-examine. But if you're looking to
20 make them part of your case in chief, correct, just as you
21 would your own witnesses?

22 MR. HADDOCK: That's right. And we did state it
23 generally in the prehearing conference statement. We just
24 didn't specify their names because I didn't know who would
25 be available.

1 MS. LUCKHARDT: We assumed that Mr. Haddock would
2 use them for cross-examination since we are offering them as
3 our direct witnesses. It does come as a bit of a surprise
4 that he wants to offer them as his direct, as part of his
5 direct case.

6 HEARING OFFICER VACCARO: Well, you know, what
7 impediment is there, Mr. Haddock, to your eliciting the
8 testimony or asking the questions that you want to ask of
9 these witnesses but doing it on cross-examination?

10 MR. HADDOCK: Well my concern is that we haven't
11 had essentially any fact finding in this case. We haven't
12 had an opportunity to request documents that have been
13 provided or have any deposition testimony. And so we don't
14 know what, what facts they have that they can disclose.

15 And my concern is that if on my cross-examination
16 I am limited to the subjects that CalcERTS and their counsel
17 want to talk about we won't be able to get into the issues
18 about process, about policy, about the way CalcERTS operates
19 its quality assurance program. If they are focused only on
20 their issues, the ones that matter to our case won't come
21 out. And will never come out because we have had no fact
22 finding opportunity so far.

23 MS. LUCKHARDT: You know, I find it surprising
24 that he says he hasn't had an opportunity for fact finding
25 because we submitted a stack of documents in response to

1 your request for information, in addition to the documents
2 we provided in our answer. And so for him to say that he
3 hasn't had an opportunity, for Mr. Haddock to say that he
4 hasn't had an opportunity for fact finding, I find, frankly,
5 not credible in this instance.

6 You know, depositions are not something that is
7 standard for this commission. So just as he has not deposed
8 our witnesses we have not deposed his either. That's just
9 the way it works. This is an administrative hearing, it's
10 not a court proceeding. And so, you know, I don't think
11 that he is in any different position than any other party.

12 MR. HADDOCK: It's one --

13 HEARING OFFICER VACCARO: Here's what can happen
14 right now and here is what is not going to happen is the two
15 of you could do sort of a back and forth on this and that is
16 not the goal of this process. I think we understand your
17 position and your request. I understand what Ms. Luckhardt
18 is saying. That one for the moment we will take under
19 submission and return to before we finish today's
20 proceeding.

21 I think I will say, though, perhaps with a
22 different bent. This is an administrative proceeding. But
23 for any party to any proceeding at the Energy Commission,
24 when in doubt, if there is something that you want, if you
25 are not sure, the better approach, I think, is to not wait

1 until the eve of trial or eve of a hearing, ask it in
2 advance.

3 And so whether or not you could have had some sort
4 of limited discovery, what that might have been, whether or
5 not you could have subpoenaed witnesses and the like,
6 unfortunately those aren't issues to be decided now, those
7 are issues that could have been decided a week or two weeks
8 ago. So it does put the Committee in a somewhat difficult
9 position because hallmarks of the proceedings are always
10 full and fair proceedings. What you say resonates. On the
11 other hand it also resonates that there hasn't been a prior
12 request to issue the subpoena or to engage in the discovery.

13 So we will revisit the request and give you a
14 determination in just a little bit. I think I want to think
15 about it a little more. I think the Commissioner might also
16 want to weigh in on that. But at least we understand what
17 the positions of the parties are.

18 But in any event, the CalcERTS witnesses will be
19 available for cross-examination. And certainly based on
20 what Ms. Luckhardt represented moments ago about some of the
21 foundational issues that they'd like to present and her
22 representation that these were individuals that were
23 involved in the investigation, I suspect that many of the
24 things that you just raised will be within the scope of the
25 testimony given by them and that you will have an

1 opportunity to cross on the very issues that you believe are
2 important.

3 MR. HADDOCK: That's my only concern is that we be
4 -- you know, we have the opportunity to ask the questions
5 that are important to us. And so if the scope of the cross-
6 examination is broad enough to let us do that then I don't
7 have any objection to that.

8 HEARING OFFICER VACCARO: Okay so we'll come back,
9 we'll come back to that with some sort of determination from
10 the Committee.

11 Let's go to the second part of what you had raised
12 a while ago, Mr. Haddock. You asked about direct
13 examination of CalCERTS' panel but you also mentioned an
14 interest in asking questions of staff. CalCERTS has also
15 expressed the very same interest.

16 Mr. Beck, if you wouldn't mind coming to the
17 podium, I'm going to put you on the hot seat just for a
18 moment. But I think this will help us all have an
19 understanding.

20 The Committee's goal in directing persons most
21 knowledgeable from staff to appear is to be able to answer
22 some of those questions that neither party really has the
23 information, it's really information that resides with
24 staff. And also to be able to clarify for the Committee any
25 questions/concerns that the Committee might have in general

1 regarding the HERS program or in particular with respect to
2 this complaint proceeding.

3 You did an admirable job of identifying so many
4 people that are available to testify. Again, staff isn't a
5 party and I know that was something that you wanted to
6 understand and know what's staff's role is. Staff has been
7 called to present testimony as a witness or as witnesses.

8 I envision a panel approach. The Committee did
9 indicate that an informal process might be appropriate for
10 this proceeding. I think a panel of staff witnesses to be
11 able to answer questions. Again, it's not going to be
12 adversarial with respect to staff. They are going to be
13 asked questions and answering questions, I think, from the
14 parties and the Committee.

15 So I guess what I would like to hear, first of
16 all, any concerns or problems with staff appearing as a
17 panel? Allowing Mr. Haddock to ask his questions, allowing
18 Ms. Luckhardt to ask her questions of the panel, and then
19 having the staff available for any questions of the
20 Committee. We'll start with you, Mr. Haddock, we'll go to
21 Ms. Luckhardt then we'll hear from you, Mr. Beck.

22 MR. HADDOCK: I have no concerns about them
23 appearing as a panel. The outline that you described would
24 be fine for us.

25 MS. LUCKHARDT: We also have no concerns.

1 HEARING OFFICER VACCARO: Okay.

2 MR. BECK: I think that would be fine in a
3 situation where we are all up there and there may be a
4 question that is posed to one staff member and that staff
5 member realizes that it could best be answered by another
6 staff member. So I think that that would make for a much
7 more efficient questioning of staff and getting at that
8 information.

9 HEARING OFFICER VACCARO: Okay, thank you. And
10 with that I think it's important to note that the Committee
11 leaning --

12 (Mr. Beck started to step away from the podium.)

13 HEARING OFFICER VACCARO: Oh please don't go yet,
14 Mr. Beck. (Laughter). I have another question and then I
15 think you had indicated just before we opened the proceeding
16 that you might have a question for the Committee as well.

17 The leaning of the Committee at this point is to
18 have that panel comprised of technical staff. I note that
19 you identified yourself, Mr. Beck, as a potential person
20 most knowledgeable and you also identified Commission
21 Counsel IV, Dick Ratliff as another individual.

22 My concern is that those are attorneys. And I
23 think that the proceedings would be better served by not
24 having the attorneys opine and weigh in on issues relating
25 to the HERS program and instead leave that to the technical

1 staff. But if there is something in particular that you
2 believe you or Mr. Ratliff offer that makes your
3 participation critical or important I think the Committee
4 would like to hear that. But the leaning is to perhaps have
5 them available on call if necessary but that really leave it
6 to the technical staff that have been identified.

7 MR. BECK: In giving all of those names we wanted
8 to give the Committee the widest array of expertise that we
9 could. We weren't sure precisely on which issues the
10 Committee might want input from staff. So for example, we
11 weren't sure if the Committee would want input on what the
12 thinking of the Commission or what staff was when the
13 regulations were initially adopted and what the thought was
14 behind what the scheme should look like. Sort of an intent-
15 type of situation that may or may not be relevant to the
16 Committee. So that was our thinking in doing that.

17 Certainly that's why Mr. Ratliff is there.
18 Mr. Ratliff was the attorney who handled the initial
19 adoption of the HERS regulations, its first iteration. And
20 I have had some interactions with the HERS regulations for
21 the last three or four years; I have been the primary
22 attorney in that.

23 And I certainly agree with the Committee that we
24 would not want to and I don't think it's a staff attorney's
25 place to weigh in on what our legal opinion is about what

1 the statute or the regulations say or don't say and what due
2 process does and does not require. That's for, obviously,
3 the Committee and the decision-makers and whichever
4 attorneys the Committee is working with on the decision-
5 maker side to do. But only to be able to provide whatever
6 factual or foundational information might be needed.

7 I notice in the prehearing conference there was
8 perhaps a question for me on the foundation of documents.
9 It's probably not necessary considering the relatively
10 informal rules of evidence that are applied in
11 administrative hearings as opposed to a court hearing.

12 So we would certainly abide by whatever wishes the
13 Committee had in terms of having the attorneys -- we can
14 simply -- what I might suggest is that when we have the
15 panel that Mr. Ratliff and I simply be available in the
16 audience to come up and that the panel consists of whatever
17 the Committee and the parties believe are the most relevant
18 staff people. And of course the staff people that we have
19 identified are Mr. Pennington, Ms. Geisler and Mr. Holland.

20 HEARING OFFICER VACCARO: Thank you. Mr. Haddock,
21 do you have any comments about the composition of the
22 primary panel being technical staff with Mr. Beck and
23 Mr. Ratliff accessible and available as necessary?

24 MR. HADDOCK: My comment is that it sounded just
25 fine to me. It sounds like the best way to do it. We have

1 no concerns about it.

2 HEARING OFFICER VACCARO: Ms. Luckhardt?

3 MS. LUCKHARDT: I think it would be important to
4 have Mr. Ratliff and Mr. Beck available. There is one
5 document that is an exhibit, it may be an exhibit for both
6 parties, that has to do with Mr. Beck's January 11th, 2012
7 letter to Mr. Haddock that -- there may be questions about
8 that. But I know it's an exhibit for both parties so I
9 think it's important to have him here.

10 I think also the intent of the program. Because I
11 think that is also an important question because it relates
12 back to whether this is a public program and a public
13 entity-driven program which requires higher levels of due
14 process than those conducted by private companies. So I
15 think it will be important, although short. And having them
16 in the audience and come up and can answer a question or two
17 is all I have in mind.

18 HEARING OFFICER VACCARO: Okay, thank you.

19 MR. BECK: May I make one recommendation, having
20 been involved in one prior HERS-related administrative
21 enforcement proceeding. That perhaps in terms of the
22 documents that each side is planning on introducing and
23 having people there to authenticate, perhaps the parties
24 before Friday's hearing could discuss amongst themselves
25 which documents they are planning on entering into evidence

1 and agree on which ones they don't need to lay any
2 foundation for. And they could have a stipulation that
3 those documents be -- are authenticated and can be entered
4 into evidence quickly.

5 HEARING OFFICER VACCARO: You're a mind reader
6 because we were going to cross that bridge in short order.
7 And I think that's exactly -- it's an excellent suggestion
8 and we are headed there.

9 I think right now the good news is we do know all
10 of the documents that the parties intend to offer and have
11 admitted into evidence. But whether or not we need to spend
12 inordinate amounts of time on foundation and the like is
13 something that we'll be discussing in just a moment.

14 MR. BECK: I have one additional question on
15 behalf of staff. I don't know if you'd like me to address
16 that later or at this point. It regards ex parte
17 communications.

18 HEARING OFFICER VACCARO: Now is good.

19 MR. BECK: As the Hearing Officer said, staff is
20 not a party but we are also not advising directly the
21 Committee. So my understanding is that in terms of ex parte
22 communications on which side of the wall, so to speak, staff
23 is going to be on, it's going to be on -- not on the
24 Committee side but on what would be the party side.

25 So my understanding of staff's role at this point

1 is that we should not be communicating directly with the
2 decision-makers in this matter outside the context of a
3 public setting. And also that in terms of communications
4 with the parties. There are no ex parte restrictions and
5 that we may communicate with either side without
6 restriction.

7 HEARING OFFICER VACCARO: I notice Mr. Lemei
8 rolling in his chair over here. So before I answer I just
9 want to double-check if there is a comment.

10 Thanks for your patience. I think you stated it
11 exactly correctly. That yes, you should not -- no member of
12 staff should be having any contact or discussing this matter
13 with any of the decision-makers. That would be, of course,
14 the Commissioners, their advisors and me.

15 But there is no obvious constraint on staff being
16 able to communicate with the parties. So if someone has an
17 objection or believes that that's incorrect, certainly be
18 happy to hear. But I am not aware of why the ex parte rules
19 would apply to a non-party for communications with parties.

20 MR. BECK: And also just for the record. This is
21 the assumption that staff has adhered to since the complaint
22 was filed. We have not -- staff has not had communications
23 with the Commissioners or the Hearing Officer in this -- on
24 the substance of these matters.

25 HEARING OFFICER VACCARO: Does anybody have

1 anything to add? I notice there's some body shifting and
2 some interesting body language out there. But otherwise
3 that's the way that we see it.

4 MS. LUCKHARDT: That's fine. We have just been
5 looking for clarification on that for a couple of months so
6 it's great to have it.

7 HEARING OFFICER VACCARO: On the telephone, we
8 have a paused moment in the proceedings because I think
9 Mr. Beck well may have another question for me but he's
10 conferring with a colleague at this moment. Mr. Beck?

11 MR. BECK: Staff just had a concern -- just wanted
12 to make -- making sure that, again, Mr. Ratliff and I were
13 available to answer questions. And I did assure him that --
14 how we discussed it. That Mr. Ratliff and I would indeed be
15 available to ask (sic) any questions. We would just not be
16 part of the initial panel that was the subject of
17 questioning.

18 HEARING OFFICER VACCARO: Correct. Thank you.
19 Yes. Well, Mr. Beck probably could do my job a bit better
20 than I do it here but he did foreshadow for us the next
21 topic, which goes to the exhibits and the exhibit lists.

22 Again, thanks to the parties for following the
23 directive. For providing those exhibit lists in advance.

24 I believe Ms. Luckhardt has two additions to the
25 Exhibit List that was distributed. My understanding is that

1 Respondent would like to offer or at least have included in
2 the exhibit list documents that they would mark as
3 Respondent's number 249 and 250, which are two emails.

4 It is my understanding, Mr. Haddock, that just
5 before we began this morning Ms. Luckhardt made you aware of
6 these two documents. Do you have copies of them?

7 MR. HADDOCK: I do.

8 HEARING OFFICER VACCARO: Okay.

9 MS. LUCKHARDT: I have a question on Mr. Flores,
10 since it seems like we're moving off of witnesses. As to
11 the intent behind the offering of Mr. Flores as -- is it
12 your intent to offer Mr. Flores as an expert in this
13 proceeding?

14 MR. HADDOCK: Well going back generally from what
15 the prehearing conference statement looked like. It looked
16 to me, and based on the documents, that there was going to
17 be a lot of discussion about the individual ratings at
18 homes. And so Mr. Flores would be offered as an expert to
19 testify on -- in relation to that, other errors that the
20 CalCERTS raters had made in evaluating those homes.

21 If the scope of the hearing is going to be
22 narrowed and not go into a lot of detail relating to those
23 particular errors then I'm not sure Mr. Flores' testimony is
24 going to be required at all.

25 HEARING OFFICER VACCARO: Okay, fair enough. And

1 really this isn't the time that Mr. Haddock has to do an
2 offer of proof or prove the qualifications of his witnesses.

3 Just as you have identified your potential witnesses he has
4 identified -- Mr. Haddock has identified potential
5 witnesses.

6 And as we get to the hearing and before there is
7 testimony I think that's the time for objections or
8 requiring, if in fact someone is going to be offered as an
9 expert as opposed to just a percipient witness, ensuring
10 that they are qualified to give the testimony that they are
11 going to give. I mean, does that satisfy your, your
12 curiosity?

13 MS. LUCKHARDT: It does, thank you very much. And
14 since he could potentially be a witness then we would like
15 to add to our exhibit list. 249 would be the email dated --
16 email from John Flores dated April 11th, 2011 -- 2012, sorry
17 about that. April 11th, 2012. And 250 would be the email
18 dated October 14th, 2010. And that is from John Flores to
19 Mark Wiese.

20 HEARING OFFICER VACCARO: Thank you. And I'm sure
21 you already have this on your list of to-dos but if you
22 would please go ahead and just serve that via email and
23 ensure that those get docketed as well. Then we have all of
24 that housekeeping taken care of and a clean record in terms
25 of what you're hoping to offer and have admitted.

1 Which brings us, I think, really to the heart of
2 what Mr. Beck was saying. We have, not an unreasonable
3 amount of exhibits for Friday's proceedings, but there are
4 enough that it could take quite a bit of time going through
5 the typical process of laying foundation, authentication,
6 the various objections that could be raised to exhibits.

7 And what I would like to explore or understand is
8 whether or not the parties have had the opportunity to
9 engage in any discussions about potential stipulations.
10 That doesn't -- and when I say "the stipulations" I really
11 mean on just the admissibility and the documents being
12 admitted, not whether you agree with the content of it.

13 Perhaps there are some documents that you find
14 aren't relevant or are legitimately objectionable. Not just
15 because you are being oppositional but because they truly
16 are objectionable. But I can't imagine that every single
17 document is. So let's talk about where you are, where you
18 have been and where the Committee might wish for you to go
19 before we convene Friday at 11:00. We'll start with
20 Mr. Haddock then we'll hear from you, Ms. Luckhardt.

21 MR. HADDOCK: We have not conferred so far. I'm
22 open to making those sort of stipulations about -- I did
23 notice that we have a fair amount of duplication in the
24 exhibits that each side is putting forward but there's some
25 things that don't overlap. But I'd be open to meeting with

1 Ms. Luckhardt and coming up with some stipulations,
2 especially with regard to admissibility.

3 HEARING OFFICER VACCARO: Ms. Luckhardt?

4 MS. LUCKHARDT: Yeah. We have -- we put in our
5 prehearing conference statement that that was our desire as
6 well was to agree on what exhibits could come in without
7 foundation. And in fact I've gone through Mr. Haddock's
8 proposed exhibits and I only have concerns about four of
9 them. And so I think there's a -- it would be my feeling
10 that there's an awful lot of information here that we don't
11 need to go through the process of authenticating.

12 HEARING OFFICER VACCARO: Okay. Then the
13 Committee would ask that between now and Friday at 11:00, if
14 you can get that reduced to -- an oral agreement is fine, it
15 doesn't need to be reduced to writing. You could certainly
16 enter the stipulation into the record on Friday. But I
17 think that would make it, I think, so much more effective
18 and productive for everyone on Friday.

19 I think now we're at the point of, we've had the
20 hearing, we're looking at next steps. I mean, of course the
21 Committee is required to issue a Proposed Decision. But
22 what would be very helpful to that, to preparing the
23 decision, I think would be post-hearing briefs. I am not
24 always a fan of post-hearing briefs. Sometimes I find that
25 all they do is tell us what people told us they thought they

1 were going to tell us and they don't exactly get to what we
2 heard.

3 I think in this case there are some very critical,
4 factual and legal issues that the testimony is going to sort
5 of crystalize and put in, I think, better perspective. So
6 we would like post-hearing briefs from the parties.

7 I think for those to be useful to anyone they
8 should be informed by the hearing transcript. Now I think
9 we do like to move fairly swiftly and we ask the court
10 reporters to produce those as quickly as they can. But that
11 certainly doesn't mean next day service and in many
12 instances it could be a week to even two weeks depending on,
13 you know, what's done and how substantive the hearings are.

14 So what I would like to propose to the parties for
15 discussion is a briefing schedule that has the parties
16 submitting post-hearing briefs no later than seven calendar
17 days, maybe seven business days, after the Energy Commission
18 posts the hearing transcript. I think that is sufficient
19 time to draft a brief. But if that gives anybody major
20 heartburn I think we'd like to hear about that now.

21 Mr. Haddock?

22 MR. HADDOCK: I don't have any concerns about that
23 schedule, I think that would be fine.

24 HEARING OFFICER VACCARO: Calendar versus business
25 days? Because there is a difference.

1 MR. HADDOCK: Yes. Business days would be
2 preferred.

3 HEARING OFFICER VACCARO: Ms. Luckhardt?

4 MS. LUCKHARDT: We will proceed to draft prior to
5 receiving the transcript and then add the transcript
6 citations and stuff post receiving it so we can do that as
7 well. I think that seven business days is more realistic.

8 And I am also hoping that you will be -- that it
9 won't just be a general brief. That you will be providing
10 us with the issues you would like us to brief. Otherwise
11 we'll brief it. But if you know specifically what you would
12 like and can provide us that direction at the end of the
13 hearing that would be very helpful, of course, in focusing
14 on the issues you'd like us to focus on. Because otherwise
15 you probably will get what we told you in the hearing,
16 again.

17 HEARING OFFICER VACCARO: Your point is well made.

18 And I think if you have had any experience at all with
19 working with Presiding Member Douglas, you will get a sense
20 of exactly what it is that the Committee is seeking. And so
21 I think, of course, we need the hearings to take place, need
22 to digest just a bit what we heard, to be able to give
23 meaningful instruction. But yes, something will issue in
24 writing and it will also, you know, make clear the seven
25 business days after the transcript is posted. I know that's

1 slightly ambiguous but I think it's fair and reasonable.
2 And trying to pinpoint an arbitrary date right now I think
3 wouldn't be workable for anyone.

4 MS. LUCKHARDT: We would just ask that that
5 direction come significantly in advance of the seven days
6 from the transcript, if we can.

7 HEARING OFFICER VACCARO: Understood. So I think
8 that gets us directly now to the issue of the timing of the
9 decision. I think I am hoping that the parties have looked
10 at the regulations that pertain to the Commission's
11 complaint and investigation proceedings. And if so you'll
12 notice that there is a deadline within the regulations for
13 the issuance of a Proposed Decision by the Committee.

14 With a hearing conducted on May 11th, 21 days
15 after that would be June 1st. That's what the regulations
16 anticipate for a decision. However, as we sit here today, I
17 think the Committee is of the opinion that that is really
18 not enough time to get out, I think, a well-crafted,
19 thoughtful decision that takes into consideration not only
20 what transpired at the hearing but also your hearing briefs.

21 (Telephone line interference.)

22 So what the Committee is going to do, and the
23 Presiding Member of course has this authority under the
24 regulations, is extend that deadline by -- I think 14 days
25 is probably reasonable yet I'm going to let Commissioner

1 Douglas tell me if 14 days is truly reasonable. But I'm
2 looking at instead of June 1st for the issuance, June 15th.

3 But because I am not the only one involved in the crafting
4 of the decision I'll let Commissioner Douglas tell me if
5 that -- if that's reasonable or if it might be more prudent
6 to extend that by another seven days and make June 22nd the
7 deadline.

8 PRESIDING MEMBER DOUGLAS: Barring any expression
9 by the parties that the extra seven days is truly critical I
10 think that extending the additional -- that would be 21 days
11 -- would be prudent.

12 HEARING OFFICER VACCARO: Then we're looking at a
13 no later than June 22nd deadline to issue the decision. I'm
14 going to hear from the parties on that in just a moment.

15 But for those of you on the telephone. What's
16 really interesting is we have such great sound equipment we
17 are picking up a lot of background noise. So what we would
18 ask those of you on the phone is if you would please push
19 the mute button. And that would allow us to hear the people
20 in the room clearly and also allow you to hear us.

21 Please do not hit the hold button. That will play
22 Muzak or any other information that might be broadcast on
23 your business phone. But we would greatly appreciate if
24 you'd hit the mute button on your end.

25 Commissioner Douglas mentioned something you may

1 or may not have heard, parties, over the noise in the
2 background. She said, you know, barring any concerns from
3 the parties that moving this to June 22nd as opposed to June
4 15, you know, barring any concerns about that, we would go
5 with June 22nd. So I think in fairness we do need to hear
6 from the parties about what concerns that might raise for
7 you that we might from a June 1st to a June 22nd decision
8 issuance date. Mr. Haddock?

9 MR. HADDOCK: There are no significant impacts for
10 my clients so I think we're okay with that.

11 HEARING OFFICER VACCARO: Ms. Luckhardt?

12 MS. LUCKHARDT: No, we have no objection.

13 HEARING OFFICER VACCARO: Okay, good, thank you.
14 That brings us now, Mr. Haddock, back to your request about
15 having CalcERTS' witnesses serving as witnesses for your
16 direct.

17 I think, again, I told you there's much of what
18 you said that resonates. But I think it doesn't resonate
19 enough for us to not go with the standard process of you
20 being allowed to cross-examine those witnesses based on
21 their testimony to get to the important issues as you see
22 them.

23 But one thing to keep in mind in administrative
24 proceedings, and particularly those here at the Commission.
25 You generally have a very active committee, certainly a very

1 active hearing officer in me. That there are things that we
2 want to know as well and there is nothing that bars us from
3 asking questions of anyone at any time in these proceedings.

4 And so we too believe that there are a number of
5 important issues that need to be addressed. And if we find
6 that the witnesses aren't addressing them through the direct
7 and the cross-examination, we'll get that information. So I
8 think that sort of puts the end to that issue that I said we
9 would resolve before we closed today's proceedings.

10 I have covered everything on my list but that
11 doesn't mean that there might not be some issues on the
12 parties' lists. So I think right now we'll cover sort of a
13 catch-all of additional issues. So we'll start with you,
14 Mr. Haddock and then we'll move to Ms. Luckhardt.

15 MR. HADDOCK: There is just one other issue that I
16 wanted to mention. You may be aware that CalCERTS has filed
17 a separate complaint against Valley Duct Testing dealing
18 with the practices and procedures that they follow there.
19 My understanding is that that is not part of this and that
20 the Commission, in fact I think in its business meeting
21 tomorrow, is going to decide whether a committee should be
22 appointed to hear that question.

23 It does appear from the witness list that CalCERTS
24 intends to call some witnesses to talk about that issue and
25 I just wanted to clarify. I know we have moved with

1 efficient dispatch through the agenda of the things that
2 needed to be covered and so maybe we could have addressed
3 this earlier. But I want to clarify that that should be
4 dealt with as part of that other proceeding rather than as
5 part of this one.

6 HEARING OFFICER VACCARO: Yes, we're aware that
7 there is a complaint filed by CalCERTS against Valley Duct
8 Testing. I think you very accurately stated that that's a
9 matter that will be taken up in some fashion by the full
10 Commission at its business meeting.

11 But to be clear, there has been no Order directing
12 service of that complaint. There is yet no pending matter
13 before the Commission. What is pending is Commission
14 evaluation of a complaint that has been received. So no,
15 that is not part of that -- that new complaint is not part
16 of Friday's proceedings.

17 Anything else, Mr. Haddock, or is that it?

18 MR. HADDOCK: That's all I have, thank you.

19 HEARING OFFICER VACCARO: Okay. Ms. Luckhardt?

20 MS. LUCKHARDT: I just wanted to let you know that
21 I've had a chance to check with our folks and we have no
22 concerns about Jennifer Nelson's participation in this
23 proceeding. So I wanted to get back to you on that.

24 I also have a question about whether you are,
25 assuming that there is time to do a short opening statement

1 or a short closing, and we'd like to get some direction on
2 that. And if so, what kind of time we would have to present
3 it.

4 HEARING OFFICER VACCARO: Openings are always
5 welcome but lengthy openings are usually less welcome. So I
6 think both parties are certainly invited and encouraged to
7 do opening statements. They should not exceed five minutes.

8 I think you can say everything you need to say in fewer
9 than five minutes.

10 And yes, we also encourage and welcome closing
11 statements because I think we can all probably agree that we
12 are going to be hearing a lot of testimony on Friday. And
13 the parties' ability to give clarity and perspective to the
14 Committee on what we have all heard I think would be greatly
15 appreciated.

16 MS. LUCKHARDT: And are you thinking on the
17 closing at five minutes as well?

18 HEARING OFFICER VACCARO: Yes, not to exceed five
19 minutes.

20 MS. LUCKHARDT: Thank you.

21 HEARING OFFICER VACCARO: So Ms. Luckhardt, thank
22 you for bringing us back to the issue of Ms. Nelson. Before
23 you go on to any other list items I would like to turn my
24 attention to Mr. Haddock. Do you -- have you had the
25 opportunity to think about that or are you going to need a

1 few moments, do you think, to confer with your clients on
2 that? Because once we finish the laundry list we can give
3 you a few moments to do that before we adjourn today's
4 proceedings.

5 MR. HADDOCK: A few moments would be appreciated.

6 HEARING OFFICER VACCARO: Okay. So,
7 Ms. Luckhardt, I interrupted you. Do you have any, any more
8 questions or issues?

9 MS. LUCKHARDT: I believe that's all I have for
10 today.

11 HEARING OFFICER VACCARO: Okay, thank you. Do we
12 have any questions or concerns from the advisors or
13 Commissioner Douglas?

14 (Nos.)

15 HEARING OFFICER VACCARO: Okay. We have a number
16 of individuals in the room, most of whom appear to be
17 affiliated with the parties or the Commission. But I have
18 been wrong before so I want to just find out whether or not
19 there are any members of the public in the room who might
20 wish to make a comment at this time?

21 (No response.)

22 HEARING OFFICER VACCARO: Seeing none I will turn
23 to the people on the telephone. Is there anyone on the
24 telephone who wishes to make a public comment at this time?

25 (No response.)

1 HEARING OFFICER VACCARO: I hear none. I think
2 what we'll do then is we will go off the record for five
3 minutes. It is 9:10; we will go back on the record at 9:15.

4 This will allow Mr. Haddock an opportunity to confer with
5 his clients on whether or not there are any concerns
6 relating to Ms. Nelson's participation.

7 Thank you. Off the record.

8 (Off the record at 9:10 a.m.)

9 (On the record at 9:15 a.m.)

10 HEARING OFFICER VACCARO: Thank you for your
11 patience. We are back on the record, it is 9:15.

12 So we'll start with you, Mr. Haddock. And I
13 noticed there was a bit of conferring so maybe there is
14 something to report out or further questions for the
15 Committee. But we'll start first with you, Mr. Haddock, on
16 the issue of Jennifer Nelson.

17 MS. LUCKHARDT: I think before Mr. Haddock
18 responds I need to inform the record, and I did mention this
19 to Mr. Haddock so that he's aware of it, that there was also
20 a quality assurance evaluation done on Ms. Nelson's house.
21 So it wasn't just that it was rated, it was rated and there
22 was also a quality assurance evaluation done on that house.

23 HEARING OFFICER VACCARO: Thank you.

24 MS. LUCKHARDT: So just to make sure everything is
25 out in the open. We just -- our folks just confirmed that

1 with us.

2 HEARING OFFICER VACCARO: Thank you.

3 MR. HADDOCK: And I just wanted to clarify that
4 Ms. Nelson's rating was not done by a Valley Duct Testing
5 rater; is that right?

6 ADVISOR NELSON: That's correct.

7 MR. HADDOCK: Okay. We don't have any concerns.

8 HEARING OFFICER VACCARO: Okay, thank you.

9 MS. LUCKHARDT: I have a couple more questions, if
10 I might. I'm assuming that we don't need to enter either
11 the law or the regulations in formally into evidence, that
12 we can rely on those without entering them into evidence?

13 HEARING OFFICER VACCARO: Correct.

14 MS. LUCKHARDT: Okay. And then my other question
15 is, and I'm not sure if you all were going to confer on this
16 or not, is to whether we are presenting our witnesses from
17 CalCERTS as a panel or individually?

18 HEARING OFFICER VACCARO: I think your
19 recommendation, if I recall -- your prehearing conference
20 statement did address, I think, the manner in which you
21 proposed --

22 MS. LUCKHARDT: We believe that --

23 HEARING OFFICER VACCARO: -- some presentation of
24 witnesses. So what is your, what is your preference? I
25 think panel works.

1 MS. LUCKHARDT: Yeah. We would -- we believe that
2 it would be more efficient to do it as a panel because then
3 if you have questions that are misdirected you've got the
4 whole panel up there and the correct person can respond
5 without having to bring people back and forth. We think it
6 would be a more efficient way to conduct the hearing, a
7 panel.

8 HEARING OFFICER VACCARO: Yes, I agree. However,
9 we did invite the parties to comment if they had any
10 concerns about the possible more informal or panel approach.

11 I didn't register any objections from anyone so I'm
12 assuming, Mr. Haddock, that you are comfortable with
13 yourself presenting witnesses as a panel. Of course we said
14 staff would be presented as a panel and for CalcERTS to
15 present their witnesses as a panel.

16 Of course it doesn't affect your ability to target
17 questions to specific individuals but it does allow for
18 people to speak to their expertise. So you're nodding but I
19 need some words.

20 MR. HADDOCK: We have no objection to that.

21 HEARING OFFICER VACCARO: Thank you. So parties,
22 any further questions or issues? Because if not I believe
23 that Commissioner Douglas can adjourn this morning's
24 prehearing conference.

25 MR. HADDOCK: No comments, thank you.

1 MS. LUCKHARDT: Nothing further, thank you.

2 HEARING OFFICER VACCARO: Thank you.

3 PRESIDING MEMBER DOUGLAS: All right. Well, I'd
4 like to thank both of the parties for their preparation
5 coming into this and look forward to an efficient, well-
6 organized hearing where we will be able to get through this
7 material in the time allotted.

8 It looks to me, after hearing from both of you
9 today, that we should be able to do that. So thank you for
10 that. And with that we're adjourned, we'll see you Friday.

11 (The Prehearing Conference
12 was adjourned at 9:20 a.m.)

13 --oOo--

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of May, 2012.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

RAMONA COTA, CERT**478

May 11, 2012