

COMMITTEE MEETING  
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 B  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

MONDAY, JUNE 11, 2012  
10:00 a.m.

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

COMMITTEE MEMBERS PRESENT

Andrew McAllister, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kourtney Vaccaro, Hearing Officer

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

CEC STAFF PRESENT

No Staff Present

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

COMPLAINANTS

David Haddock, Attorney (via WebEx)  
David Haddock Legal

RESPONDENT

Shelby Gatlin, Attorney (via WebEx)  
Downey Brand, LLP

ALSO PRESENT

George Nesbitt (via WebEx)

I N D E X

	<u>Page</u>
1. Call to Order	1
2. General Items	1
3. Party and Public Comment	6
4. Adjournment	9
Certificates of Reporter and Transcriber	10



1 today's proceeding, which is a Committee Meeting in the  
2 matter of the complaint against and request for  
3 investigation of CalcERTS, Incorporated. This is the second  
4 such meeting; the first was held several weeks ago. These  
5 were noticed meetings where the public and parties were  
6 advised by the Committee that the Committee intended to meet  
7 today in Closed Session to deliberate on the pending matter  
8 before it.

9 I think the things that have happened between the  
10 last time we met and today are that the parties did timely  
11 file their post-hearing briefs. So thank you very much,  
12 parties, for getting that done. That will enable the  
13 Committee to continue its deliberations today and to meet  
14 the proposed schedule of issuing a proposed Committee  
15 decision on or before June 22nd.

16 A lot of talking from me but what I would like to  
17 do is follow the typical pattern of ensuring that we have  
18 the introductions made. There is no one from the public and  
19 no parties here in the room. That is completely fine. I  
20 think we understood from the last proceeding but let me make  
21 it abundantly clear. There is nothing negative imputed to  
22 any person or party by not being present in the room and by  
23 not being present over the telephone. Although it appears  
24 that there are some parties represented -- represented  
25 parties on the phone and we'll hear from them in just a

1 minute in introductions. So again, an empty room means  
2 nothing. The Committee takes nothing from that. And even  
3 if the room was full of parties and their representatives,  
4 the Committee would take nothing by way of that either other  
5 than your interest in being present in the room before the  
6 Committee as it opens the meeting and closes the meeting.

7           So introductions. As I stated, I am Kourtney, I  
8 am the Hearing Advisor. To my immediate left, for the  
9 benefit of the court reporter and the Public Adviser, is  
10 Commissioner Andrew McAllister. To my right are the  
11 advisors of Commissioner Douglas, Jennifer Nelson and Galen  
12 Lemei. We do have the Public Adviser, Jennifer Jennings,  
13 present in the room. At this time is there anything that  
14 you wanted to report, comment on or present to the  
15 Committee, Jennifer?

16           MS. JENNINGS: No.

17           HEARING OFFICER VACCARO: Okay, thank you. I  
18 think with that, let's find out if we do have either of the  
19 two parties or their representatives on the phone line.  
20 We'll start with you, Shelby Gatlin. I know you are the  
21 attorney with Downey Brand and your firm does represent  
22 CalcERTS. So let's have you introduce yourself and anyone  
23 else that might be on the line affiliated with CalcERTS.

24           MS. GATLIN: Good morning, I'm Shelby Gatlin. I  
25 represent CalcERTS in this matter and I am with Downey

1 Brand. I'm just here in case there's any questions from the  
2 Committee and I would like, if possible, to know when you  
3 might be returning this afternoon, thank you.

4 HEARING OFFICER VACCARO: Thank you. That is  
5 certainly a fair question. We don't ever leave the room for  
6 a closed session without giving you a sense of when we're  
7 coming back so I'll circle back to that issue after we  
8 complete introductions. Is there anyone on the line  
9 representing the Complainants Mr. Hoover or Mr. Davis?

10 MR. HADDOCK: Yes, this is Dave Haddock appearing  
11 on behalf of Eric Hoover and Patrick Davis.

12 HEARING OFFICER VACCARO: Great, thank you. I  
13 think that's it in terms the parties so we don't really need  
14 introductions from anyone else on the phone line. Although  
15 we do, as a matter of courtesy and completeness, like to  
16 know whether there might be any members of local entities or  
17 any organizations that are on the phone line.

18 (No response.)

19 HEARING OFFICER VACCARO: I am hearing none.

20 I think there are again, as I mentioned, a number  
21 of individuals showing up in the WebEx sort of queue of  
22 listeners. There is always room for public comment in our  
23 proceedings. Today's proceeding, pursuant to the noticed  
24 agenda, will have public comment following the closed  
25 session.

1           So what will happen next is Commissioner  
2 McAllister and Commissioner Douglas' advisors and I will go  
3 to closed session and then we will come back from closed  
4 session. If there is anything to report out a report out  
5 will be made. If not we will move forward with public  
6 comment, which also includes any comments or concerns of the  
7 parties before we move forward to adjournment.

8           According to the clock on the wall here it is  
9 10:11. I suggest that -- and Commissioner McAllister will  
10 frown at me or smile at me if he likes my suggestion. I  
11 suggest that we take 45 minutes to go into close session,  
12 which will have us coming back on record at 11:00 a.m. Does  
13 that sound okay to you?

14           ASSOCIATE MEMBER McALLISTER: That's great.

15           HEARING OFFICER VACCARO: Okay. So what we will  
16 do is go off the record and come back at 11:00 a.m.

17           (Off the record at 10:12 a.m.)

18           (On the record at 11:04 a.m.)

19           HEARING OFFICER VACCARO: Okay everyone, thank you  
20 for your patience. This is Kourtney Vaccaro; it is  
21 approximately 11:04, we are back on the record.

22           One quick housekeeping item. I didn't mention it  
23 before because this isn't our typical proceeding. We are  
24 hearing some sighs and some background noise projected in  
25 the room, so if you wouldn't mind hitting the mute button if

1 you think you are going to have rustling papers or any other  
2 type of audible conversation or noise we'd appreciate that.

3           Again, for those of you who were not participating  
4 before 11:03, the Committee convened this Committee Meeting  
5 this morning, went into closed session and is now out of  
6 closed session. I previously indicated that if there were  
7 something to report out we would do so, however there is no  
8 report out at this time.

9           We will go ahead then and move forward to party  
10 and public comment. We will start first with the parties.  
11 Again, I continue with the same admonition. Whether or not  
12 you have a comment is not of consequence to the Committee in  
13 the sense of the Committee drawing any conclusions or making  
14 any impressions about your level of interest or your  
15 representation of your clients. If you have no comments to  
16 make today that's perfectly fine; and if you do have  
17 comments that's fine as well. So I'll start with you,  
18 Mr. Haddock, if you are still on the line, if there is any  
19 comment or question that you might have.

20           MR. HADDOCK: I am on the line and the  
21 Complainants have no comment today, thank you.

22           HEARING OFFICER VACCARO: Thank you. Ms. Gatlin,  
23 if you are still on the line or if there is another  
24 representative from Downey Brand on the line, you do have  
25 the opportunity at this time to ask a question or make a

1 comment.

2 MS. GATLIN: I have one question. I just wanted  
3 to clarify that we are on track for a decision from the  
4 Committee on -- a tentative decision on the 22nd. Is that  
5 right? Does that date remain?

6 HEARING OFFICER VACCARO: As I stated when we  
7 opened today's proceeding before we adjourned into closed  
8 session, I did indicate that we are still on track for a  
9 decision to issue on or before June 22nd. The closed  
10 session did not affect my prior statement.

11 MS. GATLIN: Great, thank you very much. No other  
12 comment.

13 HEARING OFFICER VACCARO: Okay, it looks as though  
14 we have a few other individuals on the telephone line. If  
15 you would like to make a public comment or ask a question  
16 you may do so. I would ask, though, that you stick to a  
17 three minute comment period.

18 I have a few names so I'll read what I have and  
19 then if there are any other individuals we'll go that way.  
20 So, Mr. Nesbitt is at the top of the list of the WebEx  
21 projection here. Mr. Nesbitt, would you like to make a  
22 comment or ask a question?

23 MR. NESBITT: Yes. Just kind of following up on  
24 the initial hearing as well as the brief. I wanted to say  
25 that when the Energy Commission created the HERS System of

1 Title 20 it regulated not only the HERS providers but the  
2 HERS raters, specifying, you know, the roles of both. Even  
3 though the Commission approves the provider and the provider  
4 certifies the rater, Title 20 does regulate the HERS rater  
5 and we are also viewed as special inspectors to local  
6 jurisdictions. Our whole job is to enforce the regulations  
7 of the Energy Commission and Title 24 Part 6 as well as  
8 Title 20 and specifically the HERS Rating System.

9           In further I just -- the Commission works  
10 extensively with the providers on a daily basis. I  
11 submitted written comments at the initial hearing. Staff  
12 has actually ordered providers to decertify raters. And it  
13 is my opinion that raters are due -- should have due  
14 process. Although that probably should reside at the  
15 provider level and the Commission should only be an ultimate  
16 arbitrator because you don't have direct control over the  
17 raters. And even if you felt someone was treated wrongly or  
18 rightly or whatever, it is ultimately up to the provider to  
19 take action with the rater. So I will submit that.

20           HEARING OFFICER VACCARO: Thank you, Mr. Nesbitt.

21           I have an individual identified as "Jim." I don't  
22 know if you would like to make a comment or if there is a  
23 question that you have at this time? But you are certainly  
24 under no obligation to do anything.

25           (No response.)

1 HEARING OFFICER VACCARO: I'm not hearing any  
2 interest from Jim. Let's see, I'm looking at the list. I  
3 don't see any other individual -- oh, Mark Silva, I see you  
4 on the line as well. Would you like to make a comment or  
5 ask a question?

6 (No response.)

7 HEARING OFFICER VACCARO: I am not hearing  
8 anything from Mr. Silva either. There are no members of the  
9 public in the room before me. Indeed at this time I am  
10 accompanied by Commissioner McAllister and we have the  
11 Public Adviser, Jennifer Jennings, in the room, and of  
12 course the court reporter. Other than that there are no  
13 individuals in the room. But I will just do one last pass-  
14 through on the telephone. Are there any individuals on the  
15 phone who wish to ask a question or make a comment?

16 (No response.)

17 HEARING OFFICER VACCARO: Okay, hearing none I  
18 will turn the microphone over briefly to Commissioner  
19 McAllister to adjourn today's proceedings.

20 ASSOCIATE MEMBER McALLISTER: Thanks everybody for  
21 joining us and sticking with the process and keeping  
22 everything on track. And thanks to Kourtney for restraining  
23 the proceedings and we are adjourned.

24 (The Committee Meeting adjourned at 11:11 a.m.)

25 --oOo--

## 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 Committee Meeting; that it was thereafter transcribed.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of June, 2012.

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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.

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RAMONA COTA, CERT\*\*478

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June 18, 2012